

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

ROYAL COMMISSION INTO THE MANAGEMENT
OF POLICE INFORMANTS

Held in Melbourne, Victoria

On Friday, 31 January 2020

Led by Commissioner: The Honourable Margaret McMurdo AC

Also Present

Counsel Assisting: Mr C. Winneke QC
 Mr A. Woods
 Ms M. Tittensor

Counsel for Victoria Police Mr S. Holt QC
 Mr A. Purton

Counsel for State of Victoria Ms C. McCudden

Counsel for Nicola Gobbo Mr R. Nathwani

Counsel for DPP/SPP Mr P. Doyle

Counsel for Police Handlers Mr G. Chettle
 Ms L. Thies

Counsel for Chief
 Commissioner of Police Mr A. Coleman SC

Counsel for Noel Ashby and Ms J. Condon QC
 Paul Mullett

Counsel for VGSO Ms S. Keating

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09:36:45 1 COMMISSIONER: Yes, the appearances are pretty much as they
09:36:50 2 were yesterday, save that we have Ms McCudden here for the
09:36:54 3 State. Before we begin, business of the day. Mr Mokbel,
09:37:00 4 through his lawyers, has asked for leave to appear in
09:37:02 5 respect of this witness. Counsel assisting doesn't oppose,
09:37:06 6 so unless there's any objection from anyone I'll grant
09:37:10 7 Mr Mokbel leave to appear.

8

09:37:13 9 I think there was a request about jackets. Why don't
09:37:17 10 we see how we go. It might be worth having something to
09:37:22 11 look forward to if the air conditioning struggles. But if
09:37:26 12 at any stage anyone feels warm and wants to take off their
09:37:31 13 jacket they're free to do so, thank you.

09:37:33 14
09:37:34 15 MR HOLT: Commissioner, can I raise one issue as a matter
09:37:34 16 of housekeeping. Commissioner, you may recall on 20
09:37:36 17 December late last year during Mr Overland's evidence there
09:37:39 18 were two folders, hard copy blue folders, which contained a
09:37:43 19 number of documents. They were marked for identification
09:37:45 20 on that day, A and B. One issue has had to be resolved in
09:37:49 21 the meantime, we understand that the Commission wishes them
09:37:52 22 to be produced. That relates to a single document in them
09:37:56 23 which was in folio 156. By agreement with those assisting
09:38:00 24 you, a version of that document has gone into the folder to
09:38:05 25 replace the original and there's a note within the folder
09:38:08 26 explaining precisely what has happened, and the original of
09:38:11 27 that document is being kept securely with Task Force Landow
09:38:15 28 at Victoria Police. It is only because it's for relevance
09:38:21 29 and contains highly sensitive material. That's the only
09:38:26 30 extent to which the two folders differ in any sense from
09:38:26 31 the way in which they were first discovered. They are now
09:38:30 32 in a position to be tendered. We would seek an order,
09:38:32 33 because they're a hard copy document, Commissioner, that
09:38:33 34 they be kept in a class C safe.

35

36 COMMISSIONER: Okay.

37

09:38:36 38 MR HOLT: We have been requested via those assisting you to
09:38:40 39 have investigations done and a statement summarising those
09:38:44 40 investigations as to precisely the provenance of those two
09:38:48 41 folders and that is underway, Commissioner, I can indicate
09:38:51 42 and we'll have that. I'll update the Commissioner as soon
09:38:56 43 as that is done.

09:38:56 44

09:38:57 45 COMMISSIONER: Is it intended these documents will go on to
09:38:59 46 the database?
09:39:02 47

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09:39:02 1 MR HOLT: No, Commissioner, the underlying documents are
09:39:04 2 already on the database. For reasons which we understand,
09:39:05 3 the Commission, those assisting the Commission requested
09:39:09 4 that the hard copy folders be available to the Commission
09:39:12 5 for the purposes of its decision, because the way in which
09:39:14 6 they're put together is relevant to assessments as to the
7 provenance of the documents.
8

09:39:19 9 COMMISSIONER: What I would think I would do then, subject
09:39:21 10 to what others might ask me to do, is to tender each folder
09:39:25 11 as a separate exhibit, so two exhibits. Is it necessary to
09:39:30 12 identify any particular exhibits within those folders?
13

09:39:33 14 MR HOLT: No, Commissioner. I think they've been called
09:39:36 15 the blue folders from the Assistant Commissioner of Crime
09:39:40 16 office, I think that's the extent they can probably be
09:39:42 17 referred to.
18

09:39:42 19 COMMISSIONER: One is folder A and one is folder B, is that
09:39:45 20 right?
21

09:39:46 22 MR HOLT: The difficulty is they have different markings on
09:39:49 23 the spine from the cover, we obviously haven't changed
09:39:53 24 anything in them, but yes, I think one is folder A and one
09:39:56 25 is folder B.
26

09:39:57 26 COMMISSIONER: Folder 1 and folder 2.
09:39:58 27
09:40:00 28

09:40:01 29 MR HOLT: Yes, I think there is an A and a B otherwise.
09:40:06 30
09:40:06 31

09:40:06 31 COMMISSIONER: Folder 1 and folder 2.
09:40:08 32
09:40:09 33

09:40:09 33 MR HOLT: Perhaps the spine labelled folder 1 and folder 2.
09:40:09 34 If they could be tendered but again because they're hard
09:40:13 35 copy documents they need to be - - -
09:40:14 36
09:40:14 37

09:40:14 37 COMMISSIONER: What did you describe them as, the blue - -
09:40:17 38 -
39

09:40:18 40 MR HOLT: Blue folders found in the Assistant Commissioner
09:40:25 41 of Crime office. I'm sorry, Commissioner, they won't need
09:40:33 42 A and B because the original documents, the documents will
09:40:36 43 already have been tendered. The hard copies are only as we
09:40:40 44 understand it for the purposes of the Commission to review.
09:40:43 45
09:40:43 46

09:40:43 46 COMMISSIONER: Okay. Are you happy with that, Mr Winneke?
09:40:46 47

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09:40:47 1 MR WINNEKE: Yes, Commissioner. It's probably convenient
09:40:49 2 simply to have them as one exhibit.
09:40:51 3
09:40:51 4 COMMISSIONER: Okay, happy with that. Okay, the blue
09:40:56 5 folders found in the Assistant Commissioner of Crime
09:41:02 6 office, folders 1 and 2, will be Exhibit 1084.
7
09:40:27 8 #EXHIBIT RC1084 - Folders 1 and 2 of the blue folder in
09:40:29 9 Assistant Commissioner Crime office.
09:40:29 10
09:41:07 11 MR HOLT: Thank you, Commissioner, and we'll arrange that
09:41:10 12 statement to be finalised as soon as possible.
09:41:12 13
09:41:12 14 COMMISSIONER: Thanks Mr Holt. Yes Mr Winneke.
09:41:14 15
09:41:17 16 <FINDLAY GERARD McRAE, recalled:
09:41:19 17
09:41:19 18 MR WINNEKE: Mr McRae, I think we were about 13 May 2010
09:41:26 19 yesterday when we concluded. That was the day you believe
09:41:30 20 that you discovered that Ms Gobbo not only had provided a
09:41:39 21 statement in relation to Dale, I think you've conceded that
09:41:46 22 you were aware that she was assisting, or that she was
09:41:49 23 prone to speak to police officers and by, or prior to this
09:41:53 24 you were aware that she had made a statement or at least a
09:41:56 25 draft statement in relation to Briars, the Briars matter,
09:41:59 26 is that fair to say?---Yes, that's on the records. I can't
09:42:02 27 recall that.
09:42:03 28
09:42:03 29 I follow on that. On the basis of the documents you've
09:42:06 30 seen yesterday you're prepared to concede that's probably
09:42:09 31 the case?---Yes.
09:42:10 32
09:42:10 33 Effectively what you say is that that was the date where
09:42:14 34 you discovered that she was an informer?---Well that's the
09:42:19 35 date that I've got a note of it.
09:42:21 36
09:42:21 37 Yes?---H'mm.
09:42:22 38
09:42:23 39 And is that the day that you effectively said, "Righto,
09:42:26 40 well look, I want to find out exactly what's going on, as
09:42:31 41 much as I can, about this situation whereby we've got a
09:42:34 42 criminal barrister as an informer", is that right?---It was
09:42:40 43 in the civil litigation process, so I was awaiting to see
09:42:43 44 what the civil team would uncover in their normal process
09:42:47 45 of gathering the materials.
09:42:48 46
09:42:48 47 Right. But as I understand what you were saying yesterday,

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09:42:51 1 this was in effect the commencement of your relentless or
09:42:56 2 determined effort to expose what had gone on by Victoria
09:42:59 3 Police?---No, I'm not saying that at all. I'm saying it's
09:43:03 4 part of the jigsaw puzzle that was unfolding over time. At
09:43:07 5 this point I was dealing with the civil litigation matter
09:43:10 6 and we were in a document gathering exercise.
09:43:13 7
09:43:13 8 So do you say this was just one part of what occurred over
09:43:18 9 the years which you've described as a relentless attempt to
09:43:23 10 get to the bottom of it, would that be fair to say?---Well
09:43:26 11 at that time I'm dealing with civil litigation, so my focus
09:43:33 12 changes depending on what I'm dealing with at the time.
09:43:36 13
09:43:36 14 Yes?---As I said at the outset, I'm running a department,
09:43:41 15 I'm the head of legal, I've got a lot of things on my plate
09:43:45 16 and I drop in and out of this matter as it arises.
09:43:48 17
09:43:48 18 Right. So effectively, I mean yesterday you were giving
09:43:55 19 the impression that you'd been misled by people as to what
09:44:01 20 had actually gone on, do you maintain that's the case or
09:44:05 21 not?---Who did I say - I can't remember saying that.
09:44:08 22
09:44:08 23 You don't believe you were misled by anyone?
09:44:12 24
09:44:13 25 MR HOLT: I think that aspect needs to be more specific,
09:44:19 26 with respect. It's a very general proposition. There are
09:44:19 27 a large number of - - -
09:44:19 28
09:44:20 29 MR WINNEKE: Do you recall suggesting yesterday that in
09:44:22 30 effect you'd been misled?---Well there were a number of
09:44:25 31 occasions where with the benefit of hindsight I can see
09:44:30 32 where there's information that may have gone to a better
09:44:34 33 understanding.
09:44:35 34
09:44:36 35 Yes?---And - for example, I can remember being frustrated
09:44:42 36 that the VGSO had been working on the MOU and I'd lost
09:44:48 37 sight of it.
09:44:48 38
09:44:50 39 Previously you've said that you didn't know that the VGSO
09:44:54 40 were working on the MOU?---That's correct.
09:44:56 41
09:44:57 42 But now you say that having seen the documents you were
09:45:01 43 aware that they were dealing with it, but it was going on
09:45:05 44 without you knowing details of it. Is that effectively
09:45:12 45 what you're saying?---No.
09:45:13 46
09:45:14 47 No?---No. If you recall, I engaged a solicitor at arm's

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09:45:23 1 length at request, presumably of Mr Cornelius, or someone -
09:45:33 2 probably Cornelius, I don't think I've got a note of it -
09:45:37 3 and in the conversation with Stephen Lee at head office
09:45:43 4 I've said that, I seem to have indicated that I want to be
09:45:48 5 kept apprised and then I don't hear anything.
09:45:52 6
09:45:52 7 Did you follow it up to see what was going on?---No,
09:45:57 8 because the instructions were being given by Geoff Alway
09:46:01 9 from the head of the Witness Protection Unit. So my role
09:46:04 10 would have been to engage head office, which is a little
09:46:09 11 unusual.
09:46:09 12
09:46:12 13 To be fair, what you said yesterday was this, this is at
09:46:24 14 p.12679. I was asking you if you'd read paragraph 11, you
09:46:38 15 recall that's the letter of 7 September?---Yes, yes.
09:46:43 16
09:46:45 17 And you've said, "Well if I had, with hindsight that's why
09:46:51 18 we're here today and I know this more than anyone because
09:46:55 19 I'm the one who has exposed this over the years
09:46:58 20 relentlessly"?---Yes.
09:46:59 21
09:46:59 22 "So what I would have done is referred that to the lawyers
09:47:03 23 to make further inquiries. I would have asked questions.
09:47:03 24 Which lawyers? The VGSO, my lawyers. What would you have
09:47:07 25 asked them? Well that's the very question you're putting
09:47:12 26 to me, what's this mean? What's it all about?", I ask you.
09:47:14 27 "What assistance has this barrister" and you said, "I did
09:47:14 28 that on 21 June 2010 when it was disclosed to me and I
09:47:19 29 lined them up, lined them all up on a table like this and
09:47:24 30 asked them, right, and it still doesn't disclosed to me as
09:47:28 31 the story will tell"?---Yes, so I'm looking forward, not
09:47:32 32 backwards.
09:47:32 33
09:47:32 34 You're looking forwards?---Yes.
09:47:33 35
09:47:34 36 You're saying, well look, it wasn't disclosed to you when
09:47:37 37 you lined them up and said, "What's going on? What has
09:47:40 38 happened with this barrister"?---Well we're looking at it
09:47:43 39 from a civil litigation point of view at that stage, so
09:47:46 40 we're getting a status report from each area on what
09:47:50 41 they're doing.
09:47:51 42
09:47:51 43 Yes?---And I'm very concerned - - -
09:47:54 44
09:47:54 45 What are you concerned about?---That the communications
09:47:59 46 cease.
09:47:59 47

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09:47:59 1 You're concerned that the communications cease. You've
09:48:04 2 also said that it's unthinkable that a barrister would be
09:48:07 3 an informer?---Yes, a defence barrister.
09:48:09 4
09:48:09 5 A defence barrister?---Yes, against their own clients and
09:48:12 6 that hadn't occurred to me.
09:48:13 7
09:48:13 8 You say you hadn't thought about that?---No.
09:48:16 9
09:48:16 10 So when you say, "I lined them up and said what's going on"
09:48:21 11 it's not about, "What has this barrister done in the past,
09:48:24 12 who I now know is an informer. I'm very concerned there
09:48:27 13 may have been issues about providing information about
09:48:31 14 clients"?---No, no, no, that's not what I'm dealing with at
09:48:36 15 that point.
09:48:36 16
09:48:36 17 So you weren't lining them up to get to the bottom of what
09:48:40 18 she'd been doing?---I was in the sense of the civil
09:48:43 19 litigation and the risk that that created. It hadn't
09:48:46 20 occurred to me at that point, I wasn't asking them, "Has
09:48:50 21 she breached privilege?" If I had have been asking them
09:48:54 22 that I would have taken a note.
09:48:56 23
09:48:56 24 You didn't ask them that at all?---I can't remember - I can
09:49:00 25 only go on the notes I've got. They're very brief. I can
09:49:04 26 see that the issues of the witness statements are dealt
09:49:14 27 with, but the question of the Source Development Unit seems
09:49:19 28 to be in abeyance awaiting the three barristers that we've
09:49:25 29 appointed to view those documents.
09:49:27 30
09:49:27 31 What we might do is just go to the documents to see in fact
09:49:30 32 what you did do?---H'mm.
09:49:32 33
09:49:35 34 You say that you lined them up. In effect what occurred
09:49:41 35 was that you sought to have people who were across the
09:49:52 36 issues?---Who were in charge.
09:49:53 37
09:49:53 38 In the three areas?---Yes.
09:49:53 39
09:49:54 40 Come and explain to you what the situation was?---Yes.
09:49:56 41
09:49:57 42 Whether there was still any interaction with
09:50:01 43 Ms Gobbo?---Well it's in the sense of a civil litigation,
09:50:03 44 so we want - we're getting a high level briefing on what's
09:50:07 45 going on.
09:50:08 46
09:50:08 47 Okay. Insofar as you suggested yesterday that it was an

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09:50:16 1 attempt to expose what had occurred, that really wasn't the
09:50:19 2 case on the 21st, it was - that perhaps wasn't exactly what
09:50:24 3 you were intending to suggest to this Commission?---I don't
09:50:29 4 really understand what you're saying.

09:50:31 5
09:50:32 6 On that occasion you weren't attempting to relentlessly
09:50:36 7 expose what had occurred in the past, it was really a case
09:50:39 8 of moving forward in the litigation?---Yes, of course
09:50:42 9 because that's what I was dealing with at the time.

09:50:44 10
09:50:51 11 If we have a look at the email chain, VPL.0005.0010.2579.
09:51:02 12 Can we look at that, that's an email from a Peter Lardner.
09:51:10 13 Peter Lardner was in your civil litigation - - -?---Yes, he
09:51:15 14 was the head of the civil litigation unit.

09:51:17 15
09:51:18 16 Right. And at the bottom, "I require someone who is across
09:51:21 17 or involved in the three different investigation areas to
09:51:25 18 provide an overview for Victoria Police's counsel in this
09:51:28 19 matter. I've spoken to Luke Cornelius who indicates that
09:51:31 20 he was deliberately not included in the knowledge of all of
09:51:34 21 the areas but that you would be", and that's a reference to
09:51:37 22 Dannye Moloney. "Thus can you please give me a call when
09:51:42 23 suits in relation to possibly providing a briefing next
09:51:45 24 week some time", and then Dannye Moloney responds, "Just so
09:51:49 25 you're clear of privacy, Petra and Briars placed under a
09:51:55 26 steering committee chaired by Luke as the investigation was
09:51:57 27 placed under ESD. I was on the committee, as was OPI. In
09:52:01 28 regard to Purana, they had dealings with her under crime.
09:52:06 29 David will explain that as well. Luke had no awareness of
09:52:09 30 the Purana details". Now who is David?---I don't know.

09:52:13 31
09:52:13 32 Right. And then Peter Lardner responds and CCs you, "I'm
09:52:22 33 just trying to get a sense of who in the organisation would
34 be across all of the limbs of her involvement with us so
09:52:25 35 that we can make decisions to do with the writ. Someone
09:52:28 36 who is able to consider the impact on all of the possible
09:52:31 37 areas she is involved in, it may be Sir Ken or Simon,
09:52:35 38 possibly they are the only ones who are so positioned", so
09:52:39 39 that's the communication that was said to arrange that
09:52:44 40 meeting?---That's consistent with my memory.

09:52:46 41
09:52:47 42 Righto, okay. Did you have discussions with Mr Cornelius
09:52:53 43 about this particular matter and ask him about whether or
09:52:59 44 not he was deliberately kept out of the loop in relation to
09:53:02 45 Purana, and if so, why?---I can't remember having
09:53:05 46 discussions with Luke about it.
09:53:07 47

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09:53:07 1 All right. What had occurred was that by 21 May there had
09:53:18 2 been some discussions already and the VGSO had already been
09:53:27 3 involved, is that your understanding?---They would have
09:53:30 4 been, yes.
09:53:30 5
09:53:31 6 Because the writ had been issued?---Yes.
09:53:33 7
09:53:33 8 I think on 29 April?---Yes.
09:53:35 9
09:53:35 10 So there had been some movement. They provided an advice.
09:53:38 11 If we can have a look at - I think that document is already
09:53:42 12 tendered, Commissioner.
09:53:43 13
09:53:44 14 COMMISSIONER: It is, 1047.
09:53:46 15
09:53:48 16 MR WINNEKE: If we can have a look at this next document,
09:53:48 17 VPL.0005.0010.2514. That's a document which is a VGSO
09:53:59 18 advice which has been prepared, I think if we go to the
09:54:02 19 bottom of it, I think it's David Ryan. If we go to the
09:54:07 20 bottom of the document. David Ryan?---Yes.
09:54:13 21
09:54:13 22 And it's a document that you obviously would have been
09:54:17 23 aware of?---Yes.
09:54:18 24
09:54:19 25 And would have read. Do you agree with that?---Yes.
09:54:22 26
09:54:22 27 Yes. Now, one of the things or a number - it says a number
09:54:25 28 of things but if we go to paragraph 19, it says that
09:54:30 29 another issue - you refer to this in your statement, but,
09:54:33 30 "Another issue in relation to the defence of the defendants
09:54:36 31 is the history of the plaintiff's relationship with
09:54:39 32 Victoria Police. I understand that the plaintiff's
09:54:42 33 provided information to Victoria Police in matters other
09:54:44 34 than the Dale prosecution and that she may still be
09:54:47 35 providing information to Victoria Police. Status as an
09:54:50 36 informer is highly confidential and sensitive, disclosure
09:54:53 37 likely to further increase the risk to her safety"?---Yes.
09:54:56 38
09:54:57 39 That is obvious. "The plaintiff claims that she suffered
09:54:59 40 injury as a result of being referred to as an informer",
09:55:02 41 that's paragraph 20. And then there's a question as to
09:55:06 42 whether or not would be pleaded that she was an informer in
09:55:09 43 the defence, do you follow that?---Yes.
09:55:11 44
09:55:11 45 And then there's a reference to a confidential briefing for
09:55:14 46 counsel, "Counsel requested Victoria Police arrange a
09:55:17 47 confidential briefing on the extent of Ms Gobbo's

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09:55:20 1 relationship with Victoria Police and how it may impact the
09:55:24 2 way the defence is drafted. Counsel also wanted to
09:55:28 3 ascertain whether information provided to Victoria Police
09:55:30 4 in matters other than the Dale prosecution may be protected
09:55:33 5 by legal professional privilege", do you see that?---Yes,
09:55:35 6 yes.
09:55:35 7
09:55:36 8 I take it you would have understood that to mean that
09:55:40 9 counsel were concerned to find out whether Ms Gobbo had
09:55:44 10 been providing information to Victoria Police in
09:55:47 11 contravention of any duty that she may have owed to her
09:55:50 12 clients of legal professional privilege?---Yes.
09:55:53 13
09:55:54 14 That was a concern that they expressed, but no doubt that
09:55:57 15 would have reflected your concerns as well?---I was
09:56:04 16 awaiting their advice in that briefing and their
09:56:09 17 assessment, yes.
09:56:10 18
09:56:10 19 But do you agree with my proposition, that counsel, it
09:56:13 20 appears that counsel have been concerned about that issue,
09:56:16 21 "Has this woman who is a barrister provided information to
09:56:21 22 Victoria Police that may have been subject to LPP"?---Yes.
09:56:24 23
09:56:25 24 And that's, I mean effectively that's your worst nightmare,
09:56:29 25 isn't it? That could well be the case. If that's
09:56:32 26 happened, it could well mean that proceedings that have
09:56:36 27 gone before may well have been perverted?---Yes.
09:56:40 28
09:56:40 29 Now, do you accept that that was an issue that you would
09:56:44 30 have considered at the time?---What do you mean?
09:56:49 31
09:56:49 32 Well the fact - - ?---I was awaiting their advice.
09:56:51 33
09:56:51 34 I understand that. But did you, despite the fact that you
09:56:54 35 were involved in civil litigation, did you turn your mind,
09:56:58 36 as a person responsible for looking at police risk, to the
09:57:02 37 possibility that this informer, criminal barrister, defence
09:57:06 38 barrister - - ?---I was sending three barristers in to do
09:57:10 39 it.
09:57:10 40
09:57:11 41 Just listen to the question. Did you consider the
09:57:13 42 possibility that this may have had significant implications
09:57:17 43 upon Victoria Police and the matters that it had prosecuted
09:57:22 44 or caused to be prosecuted in the past?---Not at that
09:57:24 45 point.
09:57:25 46
09:57:25 47 Despite the fact that counsel were expressing those

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09:57:28 1 concerns, you say as Victoria Police's risk manager you
09:57:32 2 weren't concerned?---From what I can see of the paragraph
09:57:35 3 they're saying they're going to have a look.
09:57:37 4
09:57:38 5 It appears, if you read it, they're concerned to ascertain
09:57:42 6 whether the information provided to Victoria Police in
09:57:44 7 matters other than the Dale prosecution may be protected by
09:57:47 8 LPP?---Yes.
09:57:48 9
09:57:49 10 Now, did you take that to mean what I'm suggesting it
09:57:54 11 means?---I can't recall.
09:57:57 12
09:57:59 13 Did you consider at this stage the possibility that this
09:58:02 14 barrister might have breached her duties to her
09:58:05 15 clients?---Well, I can't recall. It was, this is almost a
09:58:09 16 decade ago.
09:58:10 17
09:58:10 18 I understand that, but I mean you've said to this
09:58:14 19 Commission that the idea of a criminal barrister as an
09:58:18 20 informer is unheard of, unthinkable, and that's something
09:58:21 21 that you considered from the very outset, correct?---I'm
09:58:24 22 heartened by the fact that they were looking at it.
09:58:26 23
09:58:26 24 Right. Did you want to follow it up and ensure that their
09:58:31 25 concerns, what appear to be their concerns, were either
09:58:35 26 correct or incorrect, founded or unfounded?---I was
09:58:39 27 expecting it to be done.
09:58:40 28
09:58:44 29 Now, did you follow it up? I mean if that is a concern, if
09:58:50 30 that's a genuine concern, shouldn't you, not just be
09:58:53 31 dealing with civil litigation but be turning your mind to
09:58:56 32 the possibility that there were implications for the
09:59:00 33 criminal justice system?---I attended a number of high
09:59:07 34 level meetings from this file.
09:59:09 35
09:59:09 36 Yes?---I didn't manage it personally.
09:59:12 37
09:59:13 38 No, but you had Peter Lardner, who is not a lawyer, is
09:59:16 39 he?---No, he's not.
09:59:17 40
09:59:17 41 He is managing it, you say?---I had plenty of lawyers on
09:59:21 42 it. I had the senior lawyers from litigation at VGSO
09:59:27 43 working on it.
44
09:59:29 45 Who were they?---David Ryan and Stephen Lee.
09:59:31 46
09:59:32 47 What about within your organisation?---No, because - I

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09:59:34 1 think you've got to bear in mind that I started as the only
09:59:37 2 lawyer in this organisation, I built it up over time. We
09:59:41 3 have lawyers in civil litigation now but we didn't then.
09:59:44 4
09:59:45 5 What about this proposition, that the civil lawyers at the
09:59:47 6 VGSO are dealing with the civil proceedings, you're the
09:59:51 7 person who's in control of the risk to Victoria
09:59:53 8 Police?---Yes.
09:59:53 9
09:59:54 10 Surely those are matters that are very much within your
09:59:56 11 remit?---Absolutely, and - - -
09:59:58 12
09:59:59 13 What I'm asking is what did you do to satisfy yourself?---I
10:00:02 14 awaited the advice.
10:00:03 15
10:00:04 16 What did you do to satisfy yourself that there were no
10:00:06 17 concerns or there was no exposure for Victoria Police
10:00:10 18 arising out of Ms Gobbo being a defence barrister who was
10:00:15 19 an informer?---I awaited the advice of the three very
10:00:21 20 experienced counsel, all of whom I trust, and the VGSO
10:00:24 21 lawyers, who were proposing to look at the issue.
10:00:30 22
10:00:32 23 But like the VGSO lawyers counsel were engaged in that
10:00:36 24 civil litigation, it wasn't their task to be looking at
10:00:39 25 prosecutions and finding out, grilling, relentlessly
10:00:43 26 exposing your investigators and finding out from them what
10:00:49 27 had gone on?---I would have expected that if they thought
10:00:53 28 there was a miscarriage of justice they would have raised
10:00:57 29 it with me. That's what that says in essence.
10:01:00 30
10:01:00 31 Would it be reasonable to assume that you would follow it
10:01:04 32 up and ensure that this potential nightmare wasn't a
10:01:08 33 nightmare at all?---It was overtaken by events.
10:01:13 34
10:01:17 35 COMMISSIONER: That document really is a plea for what the
10:01:20 36 facts are?---Yes.
10:01:21 37
10:01:22 38 Asking Victoria Police to tell us what the facts
10:01:25 39 are?---It's very consistent, Commissioner, with the
10:01:26 40 approach. We had an outsourced legal civil litigation
10:01:32 41 branch at that time. We ran on a skeleton staff of very
10:01:35 42 good people, Peter Lardner's an excellent investigator and
10:01:40 43 excellent police officer. Previously it was Steve Gleeson
10:01:43 44 who ran the area. We had a very close relationship with
10:01:47 45 the VGSO and we engaged excellent barristers, but it was
10:01:52 46 very much outsourced.
10:01:54 47

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10:01:54 1 No. But they're asking Victoria Police for the
10:01:58 2 facts?---Yes.
10:01:58 3
10:01:58 4 Did you tell Peter Lardner, when you saw this, "Get the
10:02:02 5 facts"?---Yes.
10:02:04 6
10:02:04 7 Well tell us about that. What did you say to him and what
10:02:09 8 happened?---I can't remember the conversations we had back
10:02:13 9 then. I attended the meeting on the - I think it's 21 June
10:02:22 10 2010, I've got a short file note saying that the barristers
10:02:26 11 are going in to have a look at the source materials and I
10:02:29 12 was heartened by that, that they're actually looking at the
10:02:34 13 source materials. I trusted Peter Lardner to call in the
10:02:41 14 heads of these units, like I had, and to have the
10:02:47 15 comprehensive briefing that counsel was asking for but I
10:02:50 16 didn't participate in it.
10:02:52 17
10:02:52 18 You say you'd called them in for a confidential briefing
10:02:56 19 before this?---That was in terms of setting the scene.
10:03:01 20
10:03:01 21 Did you ask for the facts? Did you ask for the facts in
10:03:04 22 this confidential briefing?---The first one?
10:03:07 23
10:03:07 24 Yes?---The fact I was concentrating on with that one was
10:03:11 25 that the interaction with this person was not continuing
10:03:17 26 and what is the status of the person, is this person a
10:03:20 27 witness or is this person a source, what is the nature of
10:03:25 28 the information that's being passed over? So they each
10:03:29 29 spoke and we used that to form the basis of informing the
10:03:36 30 lawyers, but because we were outsourced I wasn't managing
10:03:40 31 the instructions myself on a day-to-day basis, I was
10:03:45 32 relying on the VGSO to do that forensic analysis, I
10:03:51 33 suppose.
10:03:51 34
10:03:52 35 They couldn't do that until they had the facts, could
10:03:54 36 they?---Yes, yes, of course.
10:03:55 37
10:03:55 38 What were you doing to ensure they had the facts?---My
10:03:58 39 understanding was that Mr Lardner was calling in the - was
10:04:06 40 in charge of that and calling in the relevant areas to look
10:04:12 41 at the files. But to be frank, at that stage it hadn't
10:04:18 42 occurred to me that there was a risk of her giving
10:04:21 43 information against her own clients. We weren't having
10:04:25 44 that conversation. Counsel in this case are very
10:04:28 45 experienced and very competent, so they raised it as an
10:04:32 46 issue, and they've asked for a full confidential briefing
10:04:37 47 and my understanding is that Peter Lardner arranged that,

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10:04:42 1 but I wasn't part of it.
10:04:43 2
10:04:43 3 So Peter Lardner was not a lawyer, he was an investigator
10:04:46 4 in your team?---Yes.
10:04:48 5
10:04:48 6 In charge of civil litigation. Were you supervising his
10:04:52 7 work?---Yes, he reported to me, yes.
10:04:54 8
10:04:54 9 Thank you, yes Mr Winneke.
10:04:56 10
10:04:57 11 MR WINNEKE: Just to be clear, what you were dealing with,
10:05:00 12 what Peter Lardner was dealing with, what David Ryan, under
10:05:07 13 the supervision of Stephen Lee were dealing with, was this
10:05:10 14 litigation that Nicola Gobbo had issued against Christine
10:05:13 15 Nixon, Simon Overland and Victoria Police?---Yes.
10:05:16 16
10:05:16 17 It was not an investigation into whether or not criminal
10:05:20 18 justice processes had been perverted by Victoria Police's -
10:05:22 19 - - ?---No.
10:05:22 20
10:05:23 21 - - - use of a - - -?---No.
10:05:25 22
10:05:25 23 You say at that stage it didn't occur to you that that
10:05:28 24 might have happened, right, is that what you say?---Yes.
10:05:33 25
10:05:33 26 Despite the fact that it had apparently occurred to counsel
10:05:37 27 and it appears to have been something that they have
10:05:40 28 referred to in their discussions with David Ryan?---Yes.
10:05:43 29
10:05:44 30 Do you accept that?---Yes.
10:05:44 31
10:05:45 32 It wasn't their role to investigate that and ensure that
10:05:49 33 criminal justice processes had been interfered with,
10:05:52 34 correct?---No, no.
10:05:53 35
10:05:53 36 That was Victoria Police's and your role, I suggest to you,
10:06:06 37 correct?---Well if I formed a view that there'd been a
10:06:10 38 miscarriage, I would have - well, that there had been
10:06:13 39 misconduct, I would have raised that.
10:06:15 40
10:06:15 41 If you'd formed the view there was a risk - - -?---There
10:06:18 42 may have been.
43
44 Exactly. And it was incumbent on you - - - ?---The
10:06:23 45 possibility of it.
10:06:23 46
10:06:25 47 - - - then to take steps to see it had not occurred, do you

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10:06:28 1 accept that proposition?---Yes, if I'd formed that view.
10:06:30 2
10:06:31 3 Do you mean to say then having read that advice from the
10:06:34 4 VGSO you still didn't form the view that it might have been
10:06:41 5 a possibility?---There may have been a possibility that
10:06:44 6 there's privilege issues in there.
10:06:47 7
10:06:47 8 All right?---And I understand they're looking at it with my
10:06:51 9 team.
10:06:51 10
10:06:51 11 Right. So can we assume then that you were relentlessly
10:06:55 12 following that up to make sure that that had not
10:06:58 13 occurred?---Look, when I made that statement I was talking
10:07:06 14 about this whole process as a whole. I mean - as I said
10:07:12 15 before, throughout the course of this saga we were looking
10:07:19 16 at it through the lens of whatever we were dealing with at
10:07:23 17 the time.
10:07:23 18
10:07:23 19 I follow that. Can I suggest this to you: despite the
10:07:28 20 fact that there were real risks, dark clouds on the
10:07:32 21 horizon, you did not at this stage take steps to ensure
10:07:38 22 that criminal justice processes had not been interfered
10:07:43 23 with by Gobbo and Victoria Police, your investigators?---I
10:07:48 24 hadn't formed that view that they had. What counsel were
10:07:52 25 looking for was a confidential briefing. I can't remember
10:07:58 26 what form that briefing took because it was managed by my
10:08:01 27 head of civil litigation, but I would have been confident
10:08:04 28 at the time that David Ryan, who is a highly experienced
10:08:08 29 litigator for Victoria Police.
30
10:08:10 31 Yes, yes?---And Peter Lardner would have arranged it.
10:08:12 32
10:08:12 33 All right?---And that it was a sensible thing to do.
10:08:20 34
10:08:20 35 Now, the investigators apparently turned up what I think
10:08:33 36 has been referred to as a highly protected document
10:08:36 37 regarding Witness F. It was, we assume it's the management
10:08:40 38 chronology or the source management log which we've heard
10:08:43 39 lots about during the course of this Royal
10:08:46 40 Commission?---Yes.
10:08:46 41
10:08:46 42 Now, did you at any stage ask to see that document and
10:08:52 43 examine it yourself?---I can't recall.
10:08:54 44
10:08:57 45 Did you take any steps to ensure or to see that someone
10:09:05 46 within your office at Victoria Police looked at that source
10:09:09 47 management log to assess whether or not there could have

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10:09:12 1 been issues involved in the management of Ms Gobbo?--Well
10:09:15 2 my file note says that it's going to be provided to the
10:09:19 3 barristers.
10:09:19 4
10:09:20 5 Who are dealing with the litigation?--Yeah, and obviously
10:09:25 6 this issue, I can't recall it, but - and Peter Lardner
10:09:29 7 would have taken the running of that.
10:09:31 8
10:09:32 9 Okay. Now, did you have discussions with Peter Lardner
10:09:37 10 about the source management log that you can recall?--I
10:09:39 11 would have been talking to him about it, yes.
10:09:41 12
10:09:44 13 Now, you refer to, at paragraph 420, a conference that you
10:09:51 14 had with Superintendent Lardner, Superintendent Gleeson,
10:09:57 15 Stephen Gleeson?--Yes.
10:09:58 16
10:09:59 17 What position was he in at that stage?--I think he, he may
10:10:07 18 have been doing the fires.
10:10:09 19
10:10:10 20 Right. But he appears to have made an appearance in these
10:10:19 21 matters on 1 June, is that right?--Yes, I'd have to look
10:10:23 22 at - is there a file note?
10:10:24 23
10:10:25 24 Yes, there is. Just before I move to that, can I tender
10:10:28 25 that letter dated 21 May.
10:10:36 26
10:10:36 27 COMMISSIONER: Is it a letter or - yes, it is.
10:10:42 28
10:10:43 29 #EXHIBIT RC1085A - (Confidential) VGSO advice 21/5/10.
10:10:47 30
10:10:47 31 #EXHIBIT RC1085B - (Redacted version.)
10:10:49 32
10:10:49 33 If we have a look at this document here,
10:11:01 34 VPL.0005.0010.2474. We'll have some difficulty reading it.
10:11:05 35
10:11:05 36 MR HOLT: Commissioner, I've raised this with our friend,
10:11:08 37 that the version that will come up on the screen is almost
10:11:17 38 illegible. Significant steps have been taken to see
39 whether there is a legible version. There isn't. This is
40 as good as it gets.
41
10:11:19 42 COMMISSIONER: Thank you.
10:11:19 43
10:11:19 44 MR WINNEKE: Thanks Mr Holt. This appears to be a file
10:11:20 45 note. We'll get this up on the screen. What it appears to
10:11:39 46 be is a file note of a meeting, attendance, Lardner, McRae,
10:11:47 47 Gleeson with Stephen Lee, Dave Ryan and John Cain. John

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10:11:53 1 Cain was the Victorian Government Solicitor at that stage,
10:11:57 2 is that right?---Yes.
10:11:57 3
10:11:58 4 There's early discussions about whether or not counsel,
10:12:02 5 particular counsel have or don't have conflicts and that
10:12:05 6 matter is dealt with?---Yes.
10:12:06 7
10:12:07 8 And then there's briefings by various police officers, it
10:12:15 9 seems. There's a briefing at 12.15 by Petra police officer
10:12:20 10 Steve Smith?---Am I supposed to be looking at the file
10:12:23 11 note?
10:12:24 12
10:12:24 13 Yes, once - I'll get it?---Okay.
10:12:27 14
10:12:27 15 So you can have a look at it. I'm just foreshadowing
10:12:36 16 what's in it?---Yes.
10:12:38 17
10:12:38 18 There seems to be two briefings, one Stephen Smith and he
10:12:42 19 provides a bit of a summary of the background of Gobbo's
10:12:47 20 involvement, the matters relevant to the statement that she
10:12:51 21 makes. And then there's a briefing by a person called Mick
10:12:56 22 Hughes who provides some details, or a briefing about
10:13:03 23 Purana. Now, you may not recall it but, or you may, do you
10:13:08 24 have a recollection?---No.
10:13:09 25
10:13:10 26 All right. You've referred to it in your statement. One
10:13:13 27 assumes you've seen this file note and that's refreshed
10:13:21 28 your recollection. If we can get it - - -?---Not much from
10:13:24 29 the statement, all I say is I attended.
10:13:26 30
10:13:26 31 Yes. This appears to be the briefing from Steve Smith,
10:13:33 32 provides a summary of documents to all present. And
10:13:40 33 there's a reference to Mr Lardner restating that there's
10:13:44 34 no, that no cross, it looks like pollination to take place
10:13:49 35 between investigators as they're confined to their must
10:13:53 36 know only to protect security. And then there's a
10:13:58 37 reference to, if we scroll through, I don't want to take
10:14:02 38 you to any detail.
10:14:03 39
10:14:03 40 MR HOLT: Can I approach my friend, I think there might be
10:14:06 41 confusion about file notes.
10:14:36 42
10:14:37 43 MR WINNEKE: Perhaps if we can go to the first page of this
10:14:39 44 document. Can we go back to VPL.0005.0010.2474. If you
10:15:02 45 can have a close look at that. That's a document which
10:15:08 46 suggests that you were at a meeting on 1 June at 9.30 and
10:15:13 47 stops at ten o'clock. Now, I might be incorrect about what

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10:15:17 1 I've just put to you about the briefing from Mr Smith and
10:15:21 2 subsequently from Mr Hughes, but what appears to be the
10:15:25 3 case is that you're at a meeting with Steve Lee, Dave Ryan,
10:15:30 4 John Cain, Gleeson and Lardner, do you see that, and this
10:15:34 5 appears to be a discussion about briefing barristers and
10:15:38 6 there's a question about Mr Wheelahan?---Yes.

10:15:42 7
10:15:42 8 See that? And ultimately he was engaged, he's a very
10:15:49 9 experienced barrister?---Yes.

10:15:51 10
10:15:52 11 Or was, he's now a judge. If we go then over to the third
10:15:56 12 page of the document. That appears to be another briefing,
10:16:03 13 these are, we understand it, notes of Mr Lardner, is that
10:16:05 14 his handwriting to your recollection?---I don't know.

10:16:08 15
10:16:08 16 Don't know, all right. Do you recall being at a briefing,
10:16:16 17 and it may well be that you were not, given that the
10:16:20 18 briefing that occurred previously was from 9.30 to
10:16:23 19 ten o'clock, half an hour, it appears there was further
10:16:27 20 briefings going on afterwards - - -

10:16:30 21
10:16:31 22 MR HOLT: Sorry, Commissioner.

10:16:43 23
10:16:43 24 WITNESS: I can't recall it.

10:16:44 25
10:16:44 26 MR WINNEKE: It may well be you weren't, but we see, if we
10:16:47 27 go back to the first page, we can see that there's a
10:17:14 28 signature, Peter Lardner, and then 11.25, speaks to Paul
10:17:19 29 Sheridan, Intel and Covert Support, policy check, outcomes,
10:17:25 30 et cetera. Now, do you think that you may not have been at
10:17:33 31 the subsequent briefings involving Paul Sheridan, Steve
10:17:36 32 Smith and Mick Hughes, which obviously went on, and if we
10:17:41 33 go over to the final page we see that it's gone on
10:17:44 34 virtually for the best part of the day and they stop at
10:17:47 35 about 2.15. It may or may not be the case that you were
10:17:50 36 there?---I wouldn't have been there, Peter - I think Peter
10:17:54 37 had a concern early that I may have been conflicted.

10:17:57 38
10:17:58 39 Right?---Because of the dealings that I'd had with
10:18:00 40 Ms Gobbo.

10:18:01 41
10:18:01 42 In relation to witness protection?---Yes.

10:18:03 43
10:18:04 44 Right?---H'mm. So he was doing the forensic gathering of
10:18:09 45 information, which he's excellent at, in the same way as
10:18:13 46 Mr Gleeson is. The only difference between their expertise
10:18:16 47 is Mr Gleeson is an experienced prosecutor as well.

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10:18:20 1
10:18:20 2 Yes, I follow that?---H'mm.
10:18:21 3
10:18:23 4 Well look, did you have discussions with Mr Lardner about
10:18:29 5 what was going on nonetheless?---I would have, yes.
10:18:33 6
10:18:33 7 It does appear that a person by the name of Hughes has
10:18:36 8 given him a briefing and he's explained some matters
10:18:40 9 concerning Gobbo and there's a note at 13:55, or at least
10:18:46 10 under that time point, Gobbo has engaged as legal
10:18:54 11 professional privilege for some Purana, and then it says
10:18:57 12 not involved, an arrow saying not involved, which may mean
10:19:05 13 privilege has not been involved or not been breached, but
10:19:10 14 that's not clear. Then we see Mokbel and Williams, Gobbo
10:19:15 15 acted for people in here, then there's a reference to phase
10:19:19 16 1, 2 and 3, which appears to be the various phases of
10:19:24 17 Purana. Does that ring a bell with you or not?---No.
10:19:27 18
10:19:29 19 Commissioner, I'll tender that as one exhibit and obviously
10:19:41 20 Mr McRae has given evidence about it and it's unlikely he
10:19:45 21 was there for the second part of the briefing.
10:19:48 22
10:19:49 23 #EXHIBIT RC1086A - (Confidential) Document
10:14:42 24 VPL.0005.0010.2474.
10:19:51 25
10:19:51 26 #EXHIBIT RC1086B - (Redacted version.)
10:19:54 27
10:19:59 28 Now, what did occur, as I understand it, is that there was
10:20:04 29 a briefing on 3 June of 2010 and you say in your statement
10:20:12 30 that Superintendent Lardner and you briefed the Chief
10:20:18 31 Commissioner and Deputy Commissioner Ken Jones?---Yes.
10:20:21 32
10:20:22 33 And you say that your recollection was that Chief
10:20:27 34 Commissioner Overland wanted to defend the proceeding and
10:20:29 35 there was no pressure from Command to settle the
10:20:32 36 case?---The only comment that was made in terms of
10:20:34 37 settlement was from Sir Ken.
10:20:36 38
10:20:36 39 Yes?---Who said that, to Simon, "This is one you ought to
10:20:41 40 settle".
10:20:41 41
10:20:41 42 He said - - -?---"This is one you ought to settle."
10:20:47 43
10:20:47 44 Right. Did you make a note of that anywhere?---No, I
10:20:49 45 didn't, but it played on my mind because we hadn't received
10:20:54 46 our legal advice yet. But I didn't feel any pressure.
10:20:57 47

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10:20:58 1 You haven't put that your statement either, is that
10:21:01 2 something that has come to mind subsequent to making the
10:21:05 3 statement?---I didn't think it was relevant for the
10:21:07 4 statement because it was a throwaway line, it didn't
10:21:12 5 concern me, but I did observe Ken's evidence, Sir Ken's
10:21:16 6 evidence, yeah.
10:21:17 7
10:21:21 8 Now, he was very keen to find out about the use of
10:21:25 9 Ms Gobbo, wasn't he? What you say had been made of her as
10:21:31 10 an informer?---Not that I'm aware of.
10:21:33 11
10:21:33 12 Do you say he didn't ask you about what use Ms Gobbo had
10:21:38 13 provided as an informer?---No, he didn't ask me about any
10:21:42 14 of the legal matters.
10:21:43 15
10:21:43 16 Did you ask Mr Overland about what use had been made of
10:21:46 17 Ms Gobbo as an informer?---Are you talking about at this
10:21:50 18 meeting or generally?
10:21:51 19
10:21:51 20 At this meeting firstly?---At this meeting I was keen for
10:21:55 21 Sir Ken and Mr Overland to understand the nature of the
10:22:01 22 writ and what was claimed.
10:22:03 23
10:22:03 24 Right?---And to discuss the possible defences.
10:22:07 25
10:22:07 26 Right. And you were aware that Mr Overland had been, as
10:22:14 27 Assistant Commissioner of Crime and Deputy Commissioner,
10:22:17 28 quite closely involved in Purana operations?---Yes.
10:22:20 29
10:22:21 30 Did you not take the opportunity to say, to ask Mr Overland
10:22:25 31 what use had been made of Ms Gobbo as an informer, what
10:22:31 32 information she'd provided?---It was really a high level
10:22:37 33 briefing for the two of them to get them across the early
10:22:41 34 stages.
10:22:41 35
10:22:42 36 Yes?---I wasn't using it as evidence gathering.
10:22:49 37
10:22:49 38 No. Well this Commission's heard that Mr Overland was
10:22:53 39 involved in an operation called Posse, the target of which
10:22:57 40 was the Mokbel cartel?---H'mm.
10:22:59 41
10:23:00 42 And a significant informer for Victoria Police at that
10:23:04 43 stage was Ms Gobbo, who was acting for Mr Mokbel at the
10:23:08 44 time and acting for other people who were ultimately to
10:23:11 45 give evidence against Mr Mokbel, so in effect he was
10:23:15 46 utilising Ms Gobbo as an informer against her
10:23:18 47 clients?---All of which I was unaware of.

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10:23:20 1
10:23:20 2 You didn't ask him about what use was being made of
10:23:23 3 Ms Gobbo?---I didn't ask him about what I was unaware of.
10:23:27 4 I knew we were going through a process.
10:23:29 5
10:23:30 6 If you're unaware of something then it might be worthwhile
10:23:33 7 asking about it, mightn't it?---It was a briefing to get
10:23:36 8 them across the state of a writ that had been commenced so
10:23:40 9 that they could understand the causes of action and for
10:23:45 10 Peter to give a little bit of an outline on the way the
10:23:49 11 defence may play out.
10:23:50 12
10:23:50 13 Okay. And you had a whiteboard set up and you were writing
10:23:57 14 on the whiteboard various matters which were pertinent to
10:24:02 15 the litigation, is that right?---Can you repeat that?
10:24:05 16
10:24:05 17 Yes. You had a whiteboard set up in the room for the
10:24:10 18 purpose of the briefing, is that correct?---Yes.
10:24:12 19
10:24:13 20 And you made notes on that whiteboard?---Yes.
10:24:17 21
10:24:17 22 And that was to explain the status of the
10:24:19 23 proceeding?---Yes.
10:24:19 24
10:24:21 25 Righto. If we can have a look at that document. Now, what
10:24:47 26 I might do, before - - -
10:24:56 27
10:24:56 28 COMMISSIONER: This is Exhibit 912.
10:24:59 29
10:25:00 30 MR WINNEKE: Yes. Perhaps before we go there, because this
10:25:03 31 might be something that you used for the purposes of your
10:25:07 32 briefing, if we can have a look at this document,
10:25:13 33 VPL.0005.0013.1182. I think I asked you before about the
10:25:34 34 logs or the chronology of Ms Gobbo's involvement as a human
10:25:40 35 source and asked whether you recall reading it or seeing it
10:25:43 36 and you say you don't recall it?---I don't recall it, no.
10:25:47 37
10:25:48 38 You know what the document is, the source management
10:25:53 39 log?---I see.
10:25:54 40
10:25:54 41 It's what might be described as a chronology of significant
10:25:59 42 milestones in the relationship between Victoria Police, or
10:26:02 43 at least the SDU?---Yes.
10:26:03 44
10:26:03 45 And Ms Gobbo?---Yes.
10:26:05 46
10:26:06 47 If we see here on 27 May 2010, it's an email from John

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10:26:12 1 O'Connor who was at that stage in effect in charge of the
10:26:16 2 SDU. He said to you, and to Peter Lardner, CCing Paul
10:26:22 3 Sheridan who was his Superintendent, "He emails you today
10:26:30 4 to offer the assistance of myself and my management team in
10:26:33 5 relation to the above mentioned document", that is a highly
10:26:36 6 protected document in relation to Witness F. You've
10:26:39 7 referred to that in your statement and can I suggest that
10:26:41 8 that is the source management log?---It would be, yes.
10:26:44 9
10:26:44 10 "The management chronology of F dealing with the Source
10:26:47 11 Development Unit is comprehensive and gives a real insight
10:26:51 12 into the use of F as a human source. There are a number of
10:26:54 13 abbreviations, initials, et cetera, that I'm happy to
10:26:57 14 explain to you if you need clarification as to the identity
10:26:58 15 of the persons mentioned in it, both in police circles and
10:27:01 16 the criminals that were targeted. This document contains
10:27:08 17 significant details of how several high profile criminal
10:27:18 18 networks were brought to justice over the three to four
10:27:22 19 year period utilising the intelligence provided by F before
10:27:24 20 she became a witness. Once you've read the document you
10:27:26 21 will realise the position of F. The position that F is in
10:27:29 22 if members of these criminal networks are able to join the
10:27:33 23 dots. You have the only copy of this highly protected
10:27:36 24 document. Please contact me if I can be of assistance".
10:27:40 25 You were obviously emailed and, this email was sent to you,
10:27:50 26 and it seems that the document was provided to you and to
10:27:53 27 Peter Lardner?---Yes.
10:27:55 28
10:27:59 29 Do you say that you would have seen the document and read
10:28:04 30 the document?---No, I don't say that. I would have
10:28:08 31 expected that I would have given it to Peter Lardner.
10:28:11 32
10:28:11 33 And you would expect that Peter Lardner, being a competent
10:28:18 34 and, indeed highly competent police officer, had been a
10:28:26 35 prosecutor, had he?---No, Detective.
10:28:29 36
10:28:30 37 Detective?---H'mm.
10:28:31 38
10:28:31 39 You would, I take it, have had discussions with him about
10:28:34 40 this document because ultimately you had to make this
10:28:37 41 presentation to the Chief Commissioner?---I don't think we
10:28:43 42 were talking about that document at that presentation.
10:28:45 43
10:28:45 44 Well, at the presentation, certainly by the time - -
10:28:49 45 -?---The intention, from what I can see from my notes, the
10:28:52 46 intention was to have the barristers go through the log.
10:28:55 47

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10:28:56 1 Yes?---And provide advice on it.
10:29:00 2
10:29:00 3 Right. Mr McRae, you're a lawyer, an experienced lawyer,
10:29:05 4 you're the Chief lawyer of Victoria Police?---Yes.
10:29:06 5
10:29:07 6 Managing risks, et cetera?---Yes.
10:29:08 7
10:29:09 8 You've had Mr Lardner have a look at this document, I take
10:29:12 9 it you would have discussed it with him?---I would have
10:29:19 10 discussed the whole case with him, yes.
10:29:20 11
10:29:20 12 But this document I'm asking you about in particular, the -
10:29:22 13 - -?---He would have spoken to me about it, yes.
10:29:24 14
10:29:24 15 Can I suggest it would have been apparent from reading the
10:29:28 16 document the sorts of information who Ms Gobbo had, sorts
10:29:31 17 of information that Ms Gobbo had been providing?---I
10:29:34 18 presume so, yes.
10:29:35 19
10:29:38 20 In relation to the likes of Mokbel, et cetera?---Yes, yep.
10:29:42 21
10:29:43 22 You must have been aware at this stage that Ms Gobbo had
10:29:46 23 acted for Mr Mokbel?---Yes.
10:29:49 24
10:29:49 25 Would that not have caused you some concern?---If it was
10:29:53 26 raised with me, yes, as it did.
10:29:55 27
10:29:55 28 Was it raised with you at this time?---No.
10:29:58 29
10:29:58 30 Do you think it might have been?---No. No, those issues
10:30:02 31 were not raised with me at that time. Well, other than
10:30:07 32 what you're saying in terms of, you picked up in terms of
10:30:13 33 counsel wanting to look at the issues of privilege.
10:30:16 34
10:30:16 35 I mean, this email itself points out that she has had
10:30:25 36 involvement in providing information to Victoria Police and
10:30:28 37 it has significant details of how several high profile
10:30:32 38 criminal networks were brought to justice, and once you've
10:30:35 39 read the document you'll realise the position that F is in
10:30:40 40 if members of these criminal networks are able to join the
10:30:43 41 dots?---Yes.
10:30:44 42
10:30:44 43 It's apparent from this email that there's significant
10:30:47 44 information in the document about the sort of people
10:30:50 45 Ms Gobbo has been providing information about?---Yes.
10:30:53 46
10:30:53 47 And it's a very good opportunity to find out if Ms Gobbo

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10:30:56 1 has been acting for any of these people?---Yes.
10:30:58 2
10:30:59 3 All you need to do is ask the very simple question, "Peter,
10:31:03 4 can you tell us, what's the situation? Has she been acting
10:31:06 5 for any of these people"?---I was awaiting the outcome.
10:31:09 6
10:31:09 7 You say, "I simply wasn't told"?---It was overtaken by
10:31:13 8 events.
10:31:13 9
10:31:13 10 What events overtook it to prevent you from finding out
10:31:18 11 about these significant issues, what events overtook
10:31:22 12 it?---Counsel came back with an advice.
10:31:24 13
10:31:25 14 Right. And what was that advice?---That we should admit
10:31:31 15 liability, not defend the matter and go to a mediation on
10:31:35 16 quantum.
10:31:35 17
10:31:36 18 But that had nothing to do with the risks to Victoria
10:31:39 19 Police about using a criminal barrister against her own
10:31:42 20 clients?---But that's not what we were talking about at
10:31:46 21 that stage.
10:31:47 22
10:31:47 23 Right. Well, I suppose if the proceedings settled and
10:31:51 24 resolved and filed away, those issues don't come to
10:31:54 25 light?---I can tell you the only person who came to me, to
10:31:59 26 tell me that he had suspicions, was Steve Gleeson in 2012.
10:32:07 27
10:32:07 28 Right, okay. Can I suggest to you that there was ample
10:32:11 29 opportunity for you to find out well before 2012 what had
10:32:15 30 been going on?---I accept that those materials were there,
10:32:19 31 that if they had have been gone through with that
10:32:22 32 perspective in a more considered way, if we had have been
10:32:31 33 focused on that area, we would have discovered it earlier.
10:32:35 34
10:32:35 35 Yes. So again, and I'm coming back to your words
10:32:42 36 yesterday, there was no relentless attempt to expose what
10:32:46 37 had been going on with Ms Gobbo, can I put that to you
10:32:50 38 quite squarely?---I don't accept that at all. I'm saying I
10:32:54 39 was dealing with civil litigation at the time, it was very
10:32:57 40 difficult civil litigation, I had tremendous counsel
10:33:01 41 involved, I had one of my best investigators, or civil
10:33:05 42 litigation managers involved. I was kept out of, well,
10:33:10 43 it's just simply not possible for me to run individual
10:33:14 44 cases, but I did have concerns and, as you will see, as you
10:33:20 45 move through my statement, that there was smoke coming out
10:33:26 46 of this file and I did, took steps that I wouldn't
10:33:30 47 ordinarily take.

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10:33:31 1
10:33:31 2 Can I suggest to you that there was not just smoke, well if
10:33:35 3 it was smoke it was billowing out of the file?--Well, you
10:33:39 4 say that but Rowena Orr was a regular barrister that we had
10:33:44 5 working on our cases. Michael Rush is excellent. Michael
10:33:48 6 Williams - - -
10:33:50 7
10:33:51 8 These people were in civil litigation. They were not
10:33:54 9 dealing with the risk Victoria Police was confronted
10:33:56 10 with?--I accept that. I accept that.
10:33:59 11
10:34:02 12 COMMISSIONER: Mr Winneke, I think that document's already
10:34:04 13 been tendered as Exhibit 354, together with an
10:34:08 14 acknowledgement of receipt. So it's very early in the
10:34:11 15 proceedings.
10:34:11 16
10:34:12 17 MR WINNEKE: Yes. Commissioner, I'm not certain that this
10:34:16 18 document, the 27 May email has been tendered.
10:34:20 19
10:34:20 20 MR CHETTLE: It has.
10:34:20 21
10:34:21 22 MR WINNEKE: It has. Good, okay.
10:34:23 23
10:34:23 24 COMMISSIONER: Yes, 354, and it was tendered with an
10:34:27 25 acknowledgement of receipt, I presume that is from
10:34:30 26 Mr McRae.
10:34:31 27
10:34:31 28 MR HOLT: It's an email that simply says "thanks" or
10:34:34 29 something to that effect, but it was that document.
10:34:37 30
10:34:37 31 COMMISSIONER: It was, Mr Holt, tendered confidential for
10:34:41 32 the time being, presumably at your request, so there's no
10:34:44 33 need for it to be a confidential exhibit.
10:34:45 34
10:34:47 35 MR HOLT: No, I think that was before the position in
10:34:49 36 respect of LPP had been clarified, Commissioner, so no,
10:34:51 37 that's correct.
10:34:51 38
10:34:51 39 COMMISSIONER: Indeed, it could now be published, couldn't
10:34:53 40 it? There's nothing in that that could possibly be PII?
10:34:58 41
10:34:58 42 MR HOLT: Can I just review that over the break,
10:35:00 43 Commissioner? I don't want to make any rash promises about
10:35:04 44 that, I'll do that immediately.
10:35:06 45
10:35:06 46 COMMISSIONER: Thank you.
10:35:07 47

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10:35:07 1 MR WINNEKE: If I can briefly come back to the whiteboard,
10:35:14 2 if I may. This is, this I take it is your handwriting on
10:35:31 3 the document, is that right?---Yes.
10:35:33 4
10:35:33 5 And it was basically a recording, a printed recording of
10:35:41 6 what was written on the whiteboard during the course of the
10:35:44 7 meeting?---Yes.
10:35:44 8
10:35:44 9 We see under the heading of "issues" a number of matters.
10:35:48 10 Then there's alleged - are you able to read it?---Which
10:35:53 11 part?
12
10:35:54 13 The first, under "issues", there's - - -?---Damages
10:35:57 14
10:35:57 15 Damages, and there's reference to an amount of
10:36:00 16 money?---Pre-existing injury.
10:36:02 17
10:36:02 18 Yes?---Stroke.
10:36:04 19
10:36:04 20 Yes?---2004, aggravation. Alleged conduct commences 5
10:36:12 21 March 08.
10:36:12 22
10:36:12 23 Yes?---That would be in the writ.
10:36:14 24
10:36:14 25 Yes. Doesn't include human source registration 2005?---No.
10:36:18 26
10:36:18 27 To 2008?---Risk discovery - - -
10:36:24 28
10:36:24 29 What was the - so risk, what's the matters underneath
10:36:31 30 risk?---Legal professional privilege, safety.
10:36:33 31
10:36:33 32 What does that mean?---Which one?
10:36:37 33
10:36:38 34 Legal professional privilege?---It would be a reference to
10:36:42 35 the advice I'd say.
10:36:48 36
10:36:49 37 Well - - -?---It would be consistent with what counsel had
10:36:52 38 said.
10:36:52 39
10:36:52 40 Firstly there's discovery, there's a risk of discovery.
10:36:56 41 That's discovery which might expose her role as a human
10:36:59 42 source?---I presume so.
10:37:00 43
10:37:01 44 Other than that, sensitive matters to do with police
10:37:03 45 methodology and so forth?---Yes.
10:37:05 46
10:37:05 47 Matters dealing with informers?---Yes.

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10:37:07 1
10:37:07 2 As set out in the legal advice by David Ryan from the
10:37:11 3 VGS0?---Yes.
10:37:11 4
10:37:13 5 And legal professional privilege, that's under
10:37:18 6 "risk"?---Yes.
10:37:18 7
10:37:20 8 What does that mean? Is that a reference to the
10:37:24 9 possibility that Ms Gobbo may have breached LPP?---It must
10:37:27 10 be. It must be. The way this was put together, I spoke to
10:37:31 11 Peter and we white boarded it.
10:37:33 12
10:37:33 13 Yes?---I dealt with the claim.
10:37:35 14
10:37:35 15 Yes?---And he took us through the issues.
10:37:39 16
10:37:39 17 Right?---Because he was, he was leading that part with the
10:37:43 18 lawyers.
10:37:43 19
10:37:43 20 I follow. And so that was a potential risk that Ms Gobbo
10:37:47 21 had breached legal professional privilege?---It must be.
10:37:50 22
10:37:50 23 Right. And obviously safety of Ms Gobbo?---Yes.
10:37:53 24
10:37:54 25 And then if we keep going down. Other mitigation. What's
10:38:04 26 that say?---Defence refers only to Petra and pleading.
10:38:11 27
10:38:11 28 And pleading. The defence only refers to Petra?---Yes.
10:38:16 29
10:38:16 30 And so the issue was, at this stage, "Do we run a defence
10:38:22 31 which sets out her involvement elsewhere? Perhaps as an
10:38:25 32 informer, or not"?---I don't know, that would be in Peter's
10:38:29 33 knowledge.
10:38:30 34
10:38:30 35 Okay. And then other investigations?---Yes, witness role.
10:38:36 36
10:38:36 37 So her role in other investigations?---I presume so.
10:38:39 38
10:38:40 39 Her role in other investigations?---Yeah.
10:38:42 40
10:38:42 41 Options, et cetera. What's that say?---"Defence to include
10:38:47 42 2005 to 2008", and, "Be suppressed".
10:38:50 43
10:38:50 44 Right. And public interest immunity?---And suppression
10:38:54 45 issues.
10:38:55 46
10:38:55 47 And then finally?---"Witness management standards, OPI

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10:38:59 1 review. Witsec" - - -
10:39:00 2
10:39:00 3 What's that a reference to?---It's probably a PII issue,
10:39:05 4 and also - yeah, it would be, I think, PII issues.
10:39:10 5
10:39:11 6 Would it be fair to say that OPI review may well refer to
10:39:15 7 the possibility that if all this gets out there will be a
10:39:18 8 review by the - - -?---No, there'd been a previous review
10:39:22 9 on human sources by the OPI I think.
10:39:25 10
10:39:25 11 Yes, but was there a concern with respect to the use of
10:39:27 12 Ms Gobbo and the potential for an OPI involvement?---Not at
10:39:30 13 all.
10:39:31 14
10:39:31 15 What's the reference?---It was an open book as far as I was
10:39:34 16 concerned.
10:39:34 17
10:39:34 18 What's the reference to OPI review to your
10:39:38 19 recollection?---I think it's the previous OPI review, but I
10:39:40 20 couldn't be certain.
10:39:42 21
10:39:43 22 It says witness management - - -?---Standards.
10:39:46 23
10:39:46 24 What does that mean?---Process - because they did a review
10:39:50 25 of it. So at that - I was still getting confused between
10:39:54 26 my language between witness and human source at that point.
10:39:56 27
10:39:56 28 Yes, yes. So witness management standards is management of
10:40:04 29 human sources?---Yes.
10:40:04 30
10:40:04 31 It may well refer to - - -?---There was a previous review.
10:40:08 32
10:40:08 33 I follow?---So we would have been telling them there has
10:40:11 34 been a previous review and it might enter into Witsec and
10:40:16 35 other witnesses and human sources.
10:40:17 36
10:40:18 37 Is it the potential, is it a reference to the potential of
10:40:22 38 further reviews?---Not arising out of this because it was
10:40:29 39 civil litigation.
10:40:30 40
10:40:30 41 Yes, but assuming this gets out, is it - assuming this
10:40:36 42 litigation runs and is not settled?---We had no concern
10:40:39 43 about OPI or oversight body oversight and my intention at
10:40:46 44 that time was to run it and deal with whatever flowed from
10:40:49 45 it.
10:40:49 46
10:40:50 47 I follow. And then if we go to the next column, I think

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10:40:55 1 there's a reference to transcriptions, 225 hours of
10:41:06 2 meetings and assess representations made. One assumes
10:41:10 3 that's an assessment of whether there were representations
10:41:14 4 made to Ms Gobbo?---Yes, because of the promissory estoppel
10:41:20 5 aspect of it.
10:41:21 6
10:41:23 7 What was your understanding as to the reason why she was
10:41:27 8 being taped?---I don't think I had any understanding of why
10:41:33 9 she was taped at that point.
10:41:34 10
10:41:40 11 That's an exhibit, Commissioner.
10:41:43 12
10:41:43 13 COMMISSIONER: Yes, Exhibit 912.
10:41:45 14
10:41:46 15 WITNESS: At that time I suggested that, I wrote to VGSO
10:41:49 16 and asked them to put it on Ringtail, but that was overcome
10:41:56 17 by events again.
10:41:57 18
10:41:57 19 MR WINNEKE: To put this on Ringtail?---H'mm.
10:42:00 20
10:42:03 21 Can we have a look at 21 June. You attended a meeting.
10:42:12 22 The purpose of the meeting you say was to bring together
10:42:14 23 the relevant commanders of the operations that may have
10:42:18 24 received assistance from her to obtain an update as to her
10:42:22 25 current status and make future, decisions as to the future
10:42:26 26 contact with Ms Gobbo in the light of the ongoing
10:42:29 27 litigation and obviously at that stage you were aware she
10:42:32 28 had provided assistance to Victoria Police through the
10:42:35 29 Purana, Petra and Briars Task Forces?---Yes.
10:42:37 30
10:42:38 31 It wasn't the purpose of this meeting to ascertain what had
10:42:42 32 gone on in the past and to allay any concerns that Ms Gobbo
10:42:45 33 may have engaged in unethical conduct, is that right, do
10:42:52 34 you accept that?---Well, it may have been, but it was
10:42:56 35 primarily - you can see that that's an issue.
10:43:00 36
10:43:00 37 Yes?---But primarily I can, I can gauge from my notes, the
10:43:08 38 only point that I'd taken is they're stopping the
10:43:13 39 behaviour, I'm drawing a line in the and.
10:43:15 40
10:43:16 41 Do you accept my proposition, we can't look at this as an
10:43:19 42 example of your attempts to expose what had occurred
10:43:25 43 before?---Well, we're going through a forensic exercise of
10:43:28 44 gathering the information that we need to provide to
10:43:32 45 counsel.
10:43:32 46
10:43:33 47 To deal with the litigation?---And whatever flows from it.

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10:43:36 1
10:43:36 2 All right. Let's have a look at this document, it's in
10:43:39 3 your statement but if we can put it up, VPL.0005.0010.2322.
10:43:53 4 This is the agenda and your notes made on the agenda, is
10:43:57 5 that right?---Yes.
10:43:57 6
10:43:58 7 And you were speaking to Dannye Moloney, Luke Cornelius and
10:44:03 8 Peter Lardner?---I think Peter was running the meeting.
10:44:06 9
10:44:06 10 He was running the meeting. And we can see there that
10:44:15 11 there was an update, and then there's confirmation of
10:44:19 12 status of Gobbo in each investigation. Do you see
10:44:24 13 that?---Yes.
10:44:24 14
10:44:25 15 And obviously that's referable to what's going on at
10:44:29 16 present, that is current status, do you see that?---Yes.
10:44:35 17
10:44:35 18 And Petra and Briars, she's said to be witness only.
10:44:44 19 "Potential witness if fresh evidence in the case of Petra"
10:44:50 20 and obviously at this stage proceedings against Mr Dale had
10:44:58 21 been withdrawn, correct?---I would think so.
10:45:03 22
10:45:06 23 And Briars, there's notes there which speak for themselves.
10:45:19 24 In relation to Purana, it says, from Mr Moloney, middle
10:45:25 25 person - are you able to read that? "Not a witness or
10:45:32 26 source"?---"Not a witness or a source. No value to ongoing
10:45:36 27 investigations. Possible witness. F working for witness
10:45:41 28 at witness's request." I don't know what that means.
10:45:47 29
10:45:47 30 Okay. And, "Not working for VicPol as human source".
10:46:01 31 That's that current situation, according to that
10:46:05 32 briefing?---Yes.
10:46:05 33
10:46:06 34 So there wasn't - she had been in the past, did you find
10:46:10 35 that out, the extent to which she had provided information
10:46:13 36 in the past?---At that meeting?
10:46:13 37
10:46:15 38 Yes?---No, because that was happening through the civil
10:46:19 39 process.
10:46:19 40
10:46:20 41 Okay. Thank you. Now, that also is an exhibit,
10:46:42 42 Commissioner.
10:46:42 43
10:46:43 44 COMMISSIONER: It is 1050. I'm not sure if that's got the
10:46:47 45 handwritten notes on it though. It does. It's Exhibit
10:46:52 46 1050, yes.
10:46:55 47

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10:47:07 1 MR WINNEKE: What you were told is that she had been, F was
10:47:11 2 working for a witness at the witness's request in relation
10:47:17 3 to a Purana matter. Now that's, can I suggest that's what
10:47:21 4 was discussed. You say you can't recall what that's all
10:47:26 5 about, but, "F working for witness at witness's request".
10:47:30 6 So there's a witness for Purana and F's working for that
10:47:33 7 person at that person's request, do you see that?---Yes.
10:47:37 8
10:47:38 9 Right. Now, subsequent to that there's an email and if we
10:47:45 10 can have a look at this document, VPL.0005.0010.2317. Can
10:47:56 11 I suggest that there was a concern that that may have been
10:48:03 12 problematic. Do you recall that or not?---I can't really
10:48:08 13 recall.
10:48:09 14
10:48:09 15 Let's have a look at this, it's an email from Peter
10:48:12 16 Lardner, Wednesday, 23 June 2010, to Danye Moloney, Emmett
10:48:18 17 Dunne, Luke Cornelius, Jeff Pope. And CCed to you.
10:48:25 18 Heading, "Gobbo no longer registered to practice. Hello
10:48:29 19 all, just wanted to make sure that you were all aware of
10:48:31 20 this. The fact that she has not been registered to
10:48:34 21 practice since 30 June 2009 may impact on investigations if
10:48:39 22 she has been involved since then in the purported role as a
10:48:43 23 formal legal representative". Do you see that?---Yes.
10:48:47 24
10:48:48 25 And if we go down the bottom, we see that there's obviously
10:48:54 26 been a request to find out whether she was registered and
10:48:59 27 Monica Pekevka has sent a note to Peter Lardner to the
10:49:05 28 effect that the Legal Services Board have confirmed that
10:49:08 29 Gobbo no longer holds a practising certificate and that
10:49:11 30 expires on 30 June 2009 and has not been renewed by Gobbo,
10:49:16 31 or this - yes. Do you see that? However she's still
10:49:20 32 registered on the Victorian Bar roll as being on leave, do
10:49:24 33 you see that?---Yes.
10:49:24 34
10:49:25 35 Do you think that that might have been a concern that if
10:49:30 36 she is providing advice to a witness who is being
10:49:34 37 investigated, that that is something that should have been
10:49:38 38 a concern?---We would have been concerned about that.
10:49:40 39
10:49:40 40 Do you know whether anything was done about that?---Well, I
10:49:45 41 know that directions were given eventually.
10:49:47 42
10:49:48 43 Yes. And what were those directions?---To cease contact.
10:49:56 44
10:49:57 45 What about her role with respect to providing advice
10:50:00 46 potentially to a witness in an investigation, do you know
10:50:02 47 what was done in relation to that matter?---I don't know.

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10:50:05 1
10:50:06 2 Have you found any directions that you've given about that
10:50:09 3 matter?---That I've given?
10:50:11 4
10:50:11 5 Yes?---I couldn't give directions on those matters.
10:50:14 6
10:50:14 7 Made any suggestions or - - -?---I would have been strongly
10:50:18 8 against her continued practice.
10:50:20 9
10:50:20 10 Yes?---Or any involvement - - -
10:50:22 11
10:50:22 12 Or purporting to practice and advise?---Of course.
10:50:26 13
10:50:28 14 All right. Could we have a look at - I tender that note,
10:50:39 15 Commissioner, if it hasn't been tendered already.
10:50:42 16
10:50:42 17 COMMISSIONER: I don't think so.
10:50:44 18
10:50:45 19 #EXHIBIT RC1087A - (Confidential) Email from Peter Lardner
10:48:13 20 23/6/10 to Danye Moloney and others.
10:50:46 21
10:50:47 22 #EXHIBIT RC1087B - (Redacted version.)
10:50:58 23
10:51:00 24 Can I ask you this, Mr McRae: do you know whether - in due
10:51:12 25 course there needed to be a person who represented Victoria
10:51:15 26 Police at the mediation and there was some discussion as to
10:51:18 27 who the front person, if you will, was going to be?---Yes.
10:51:21 28
10:51:22 29 At the mediation. At one stage Mr Pope was thought to be
10:51:27 30 an appropriate person who might engage in that role. Do
10:51:31 31 you recall having discussions about that with him?---No.
10:51:35 32
10:51:37 33 Mr Pope says in his statement at paragraph 17 he'd been
10:51:42 34 asked by Finn McCrae and Peter Lardner to be the senior
10:51:46 35 VicPol representative but when he told them of his previous
10:51:49 36 dealings with Ms Gobbo in 99 and 2000, it was agreed that
10:51:52 37 he would not be the best person. Do you recall having a
10:51:57 38 discussion with Mr Pope about his involvement previously
10:52:00 39 with Ms Gobbo?---No.
10:52:03 40
10:52:03 41 At around this time, in 2010?---No.
10:52:05 42
10:52:06 43 Would you say that that did not occur?---No, no, I'm not
10:52:09 44 saying that.
10:52:10 45
10:52:10 46 So it may have occurred?---It may have occurred. If he
10:52:13 47 said it occurred, it would have occurred.

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10:52:16 1
10:52:16 2 Would you have made a note of what he had told you? If for
10:52:20 3 example he had said, "Look, I had dealings Ms Gobbo in the
10:52:23 4 past as an informer manager or informer handler"---I make
10:52:32 5 notes of everything.
10:52:34 6
10:52:35 7 If he had told you that you believe there would be a note
10:52:39 8 of that somewhere?---Probably with Peter.
10:52:41 9
10:52:41 10 Peter Lardner?---Yep.
10:52:43 11
10:52:48 12 Now, on 24 of 2010 there was - 24 June 2010 there was a
10:52:58 13 meeting of a Gobbo writ management steering committee. If
10:53:02 14 we can have a look at this document, I think you said
10:53:04 15 yesterday there might have been only one meeting?---That I
10:53:07 16 was aware of.
10:53:09 17
10:53:09 18 It may well be there's another one. Do you see that there?
10:53:13 19 Have a look at that document there. It appears that you
10:53:17 20 were an attendee, there's a tick against your name?---Okay.
10:53:24 21
10:53:24 22 A number of matters are set out there. That's obviously
10:53:28 23 not your handwriting, or it doesn't appear to be in any
10:53:40 24 event?---Do I say anything?
10:53:47 25
10:53:47 26 Firstly, do you think that's your handwriting or not?---No,
10:53:51 27 it's not, no.
10:53:52 28
10:53:56 29 What there is, is a note which includes subpoena meant
10:54:04 30 sensitive material provided to VGS0. Were you aware that
10:54:08 31 there was sensitive material? See around point 5. Was it
10:54:13 32 your understanding that there would be sensitive material
10:54:15 33 and that Mr Gipp had been engaged?---I can't recall that,
10:54:20 34 but I can recall thinking that we needed to put it on
10:54:24 35 Ringtail.
10:54:24 36
10:54:25 37 Right. When you say put it on Ringtail?---Or something
10:54:27 38 like that.
10:54:28 39
10:54:28 40 What do you mean by that?---All the information, because I
10:54:32 41 thought it was going to be a huge case.
10:54:34 42
10:54:34 43 And what's the purpose of putting it on Ringtail?---So we
10:54:37 44 can search it and access it.
10:54:39 45
10:54:39 46 I follow. And it was agreed to finalise the matter without
10:54:44 47 realising too much information as per broad wording of

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10:54:47 1 defence?---I'll accept that. So they'd pleaded in response
10:54:55 2 to the pleading of the writ, h'mm.
10:54:57 3
10:54:57 4 Was that your understanding, that it was an, there was a
10:55:03 5 general view that it would be appropriate to finalise the
10:55:05 6 matter without releasing too much information as per the
10:55:09 7 broad wording of the defence, was that your
10:55:11 8 understanding?---Looking at the documents that appears to
10:55:14 9 be the case.
10:55:15 10
10:55:22 11 There's a note that, "Meeting has occurred with Moloney and
10:55:25 12 Cornelius re status of Purana, Petra and Briars, they
10:55:30 13 informed of defence strategy and time frame". Do you have
10:55:33 14 an understanding of what that's about?---I can't recall.
10:55:38 15
10:55:40 16 And so you don't know whether they informed you or you
10:55:43 17 informed them as to the defence strategy and time
10:55:47 18 frame?---We would have been running the defence strategy.
10:55:50 19
10:55:50 20 Right. So you would have informed them of the defence
10:55:52 21 strategy?---Yes, or Peter would have.
10:55:54 22
10:55:54 23 And ultimately there was, when the matter did resolve, one
10:55:59 24 of the terms was she wouldn't be used as a witness. Do you
10:56:03 25 understand that?---I think it was in the recitals.
10:56:06 26
10:56:06 27 In the recitals?---H'mm.
10:56:08 28
10:56:08 29 Was it made clear to you that that's something that
10:56:12 30 Victoria Police could cope with, that is with Ms Gobbo not
10:56:15 31 being used as a witness?---I think that eventuated on the
10:56:19 32 day, so I don't think there was forward planning on that.
10:56:22 33
10:56:22 34 Wasn't there?---No.
10:56:23 35
10:56:23 36 Do you know who suggested that?---I can't recall but I
10:56:28 37 think Sir Ken Jones was part of it and Emmett Dunne.
10:56:32 38
10:56:32 39 Right. And Mr Jones was contacted about it, is that right,
10:56:37 40 do you say that occurred?---I don't have first-hand
10:56:40 41 knowledge of that, I don't know.
10:56:41 42
10:56:41 43 You weren't present at that meeting?---Yes, I wasn't
10:56:45 44 present.
10:56:45 45
10:56:46 46 Did you have any knowledge of what occurred and how that,
10:56:48 47 the recital ended up in the agreement or not?---I wasn't

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10:56:53 1 there.

10:56:53 2

10:56:53 3 Yes, okay. So you weren't - were you providing

10:56:56 4 instructions or being - - -?---They updated me.

10:57:00 5

10:57:00 6 So you were being updated?---Yes, yes.

10:57:04 7

10:57:04 8 As to those sorts of decisions about whether or not she was

10:57:10 9 to be used as a witness, did you provide any views about

10:57:14 10 that or were you asked about that?---I didn't provide the

10:57:19 11 instructions on the night in regard to that. I was asked

10:57:23 12 about it subsequently.

10:57:24 13

10:57:25 14 Right. Did you have discussions with Mr Jones about - -

10:57:30 15 -?---No, no, I wasn't talking to Sir Ken.

10:57:33 16

10:57:33 17 Righto. I tender that document, Commissioner.

10:57:40 18

10:57:42 19 MR CHETTLE: What date is it?

10:57:44 20

10:57:44 21 MR WINNEKE: 24 June 2010.

10:57:47 22

10:57:48 23 #EXHIBIT RC1088A - (Confidential) Writ management steering

10:52:55 24 committee meeting notes 24/6/10.

10:57:49 25

10:57:50 26 #EXHIBIT RC1088B - (Redacted version.)

10:57:51 27

10:57:55 28 Could I ask you about a file note which appears to be your

10:57:59 29 file note of 27 July 2010, VPL.0005.0010.2095. We won't

10:58:15 30 mention the name there on the file note, do you see that?

10:58:21 31 There are a number of people at the mediation including

10:58:25 32 Jeff Pope, Geoff Alway, a person who we won't name and

10:58:29 33 yourself?---That's a meeting, not the mediation.

10:58:35 34

10:58:36 35 I'm sorry?---You said the mediation. That's a meeting I

10:58:40 36 think.

10:58:40 37

10:58:43 38 There were mediation issues discussed though, this isn't -

10:58:47 39 - -?---I see, I see.

10:58:48 40

10:58:48 41 And some of the matters discussed are - - -?---Yes.

10:59:02 42

10:59:03 43 This may be the discussion about who's available and not,

10:59:08 44 but - - - ?---I think it's about protection.

10:59:10 45

10:59:10 46 Yes, and she wants the protection of the s.10 of the

10:59:17 47 Witness Protection Act?---H'mm.

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10:59:20 1
10:59:22 2 Do you want that removed?
10:59:26 3
10:59:26 4 MR HOLT: Sorry, Commissioner.
10:59:28 5
10:59:39 6 MR WINNEKE: And there's a note to the effect that, if we
10:59:42 7 move down. Can we keep going? "Jeff Pope not available for
11:00:08 8 mediation", do you see that?---Yes.
11:00:10 9
11:00:12 10 Do you think that might be when Mr Pope mentioned to you
11:00:20 11 that he wouldn't be able to attend?---I don't know, but
11:00:23 12 I've obviously made a note that he's not available.
11:00:28 13
11:00:29 14 As I say, ultimately in his statement he mentions that he
11:00:34 15 told you certain things about his involvement previously.
11:00:37 16 Now you don't make a note of it there, but I mean what do
11:00:41 17 you say about what Mr Pope says, do you agree with that or
11:00:44 18 disagree?---What did he say?
11:00:47 19
11:00:48 20 He said that he informed you that he wouldn't be the
11:00:50 21 appropriate person to be the front person at the mediation
11:00:53 22 because of his prior involvement with Ms Gobbo?---I accept
11:00:56 23 that.
11:00:57 24
11:00:57 25 Yes, all right?---If he says it.
11:00:59 26
11:00:59 27 It may not have been that he told you there at that point
11:01:01 28 because you say you would have made a note of it?---Yes.
11:01:05 29 Is he at the meeting?
11:01:06 30
11:01:06 31 Yes?---Well I don't know. I don't know whether he, he
11:01:15 32 would have disclosed it at the meeting or - if he says he
11:01:19 33 disclosed it to Lardner and myself, it may or may not have
11:01:24 34 been at that meeting, I don't know. Lardner was at the
11:01:26 35 meeting as well.
11:01:27 36
11:01:27 37 Yes?---H'mm.
11:01:29 38
11:01:30 39 Okay, all right. Now, could we have a look at - I tender
11:01:40 40 that, Commissioner.
11:01:41 41
11:01:42 42 #EXHIBIT RC1089A - (Confidential) File note 27/7/10
10:58:02 43 VPL.0005.0010.2095.
11:01:44 44
11:01:44 45 #EXHIBIT RC1089B - (Redacted version.)
11:01:46 46
11:01:51 47 I just want to ask you about a file note made by Mr Lardner

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11:01:57 1 of a meeting, a conference that he had with counsel
11:02:03 2 concerning this writ and if we have a look at this
11:02:05 3 document, it's VPL.0005.0010.2286. What we see is that he
11:02:19 4 had a meeting with Messrs Wheelahan and Rush regarding
11:02:24 5 briefing on Ms Gobbo's prior involvement with the human
11:02:28 6 services unit. Human Source Unit, rather. Indicated start
11:02:38 7 date of file and spoke of, spoke to entries related to Dale
11:02:43 8 and her health and finances. So what that appears to be is
11:02:50 9 Mr Lardner speaking to matters in the, probably the source
11:02:57 10 management log, and providing information about entries in
11:03:02 11 that log concerning Dale and her health and finances and
11:03:07 12 what it says there is, "Did not allow them to see contents
11:03:10 13 of the file or inform them in relation to the non-Petra
11:03:15 14 material in the file", do you see that?---Yes.
11:03:17 15
11:03:19 16 And, "File removed by me from locked safe, kept in my
11:03:25 17 possession and returned to locked safe without opportunity
11:03:25 18 for any person to incidentally see or make copies of
11:03:30 19 content of the file", and that's signed by Peter Lardner.
11:03:34 20 Now, was that your understanding then, that counsel were
11:03:42 21 going to be provided with a very limited view only of what
11:03:47 22 was in that source management log?---No, my understanding
11:03:51 23 is consistent with the note that I made.
11:03:54 24
11:03:54 25 Yes?---At the meeting of 21 June.
11:03:58 26
11:03:58 27 Yes?---Where I noted that counsel were going to get access
11:04:02 28 to the log.
11:04:02 29
11:04:03 30 Right. Well certainly this doesn't, that note there
11:04:06 31 doesn't suggest that that occurred, does it?---I agree.
11:04:09 32
11:04:09 33 And one assumes, or are we entitled to assume that if
11:04:16 34 you've got oversight of what Mr Lardner is doing you would
11:04:19 35 have been aware of that and would have indeed - - -?---I'm
11:04:21 36 not aware of that.
11:04:22 37
11:04:23 38 No. Well that seems to be inconsistent with your view that
11:04:26 39 you were waiting for some sort of opinion from counsel as
11:04:29 40 to whether or not things had gone awry with the use of
11:04:34 41 Ms Gobbo as a human source?---Well I'm awaiting counsel
11:04:38 42 having a full briefing of the dealings with Ms Gobbo that
11:04:44 43 they demanded - Mr Wheelahan demanded in his advice.
11:04:49 44
11:04:49 45 One assumes then, if this is a step that's been taken by
11:04:54 46 Mr Lardner he must have discussed it with you, this is an
11:04:57 47 important matter, surely?---No.

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11:04:58 1
11:04:59 2 You say he didn't discuss it with you?---Well I don't know,
11:05:02 3 but I would have said let counsel look at the documents
11:05:05 4 they need to look at.
11:05:06 5
11:05:06 6 Can I suggest to you that Mr Lardner, it is likely that
11:05:12 7 Mr Lardner would have discussed this with you either before
11:05:18 8 or after it had occurred?---I don't know.
11:05:23 9
11:05:23 10 Well, do you agree that this is a significant matter, that
11:05:30 11 is briefing counsel of information?---I can say that if it
11:05:33 12 was put to me that access to a file was going to be
11:05:38 13 limited, I would have said open up the file.
11:05:41 14
11:05:41 15 Okay?---As per the instructions or the advice that I
11:05:44 16 received at the meeting.
11:05:45 17
11:05:45 18 Right?---How can you give advice without looking at the
11:05:50 19 file?
11:05:50 20
11:05:51 21 Do you know whether he did or didn't at any other stage see
11:05:55 22 the file?---I don't know.
11:05:56 23
11:06:06 24 All right. Now, I tender that note, Commissioner.
11:06:09 25
11:06:10 26 #EXHIBIT RC1090A - (Confidential) File note made by
11:01:56 27 Mr Lardner VPL.0005.0010.2286.
11:06:12 28
11:06:12 29 #EXHIBIT RC1090B - (Redacted version.)
11:06:13 30
11:06:21 31 Now, Mr Ryan provided advices to various settlement quantum
11:06:35 32 options. I take it you would have been aware of that
11:06:40 33 advice?---Yes.
34
11:06:40 35 And those options as to the range of settlement?---There
11:06:47 36 were a couple of advices I think, yes.
11:06:50 37
11:06:50 38 There was an advice concerning scenarios?---Yes, that was
11:06:55 39 from Mr Wheelahan, it was written up by Mr Ryan, yes. I
11:06:59 40 think Mr Rush did the quantum advices and Mr Wheelahan
11:07:07 41 presented it to us.
11:07:08 42
11:07:19 43 Now a defence, I think, was filed somewhere around 27 July,
11:07:25 44 is that right?---It sounds - yes, yep.
11:07:30 45
11:07:30 46 Can I ask you this: there was an email from Ms Gobbo by
11:07:36 47 way of a response to the Victoria Police defence. Could we

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11:07:39 1 have a look at this, VPL.0005 - - -
11:07:46 2
11:07:46 3 MR HOLT: I'm sorry, my friend has the date of the filing
11:07:50 4 wrong.
11:07:55 5
11:07:56 6 WITNESS: 25 June, yes, it's in my statement.
11:07:58 7
11:07:59 8 MR WINNEKE: Yes. Perhaps I've got ahead of this but I'll
11:08:05 9 go back to it. It having been filed on 28 June there was a
11:08:08 10 response from Ms Gobbo in an email which had been obtained,
11:08:18 11 sent to Jason Kelly, obtained by Mr Smith and sent on to
11:08:22 12 David Ryan and Lardner and Mr Bona. Can we have a look at
11:08:27 13 this, VPL.0005.0010.2245. You'll see that there's an email
11:08:55 14 from Steve Smith to David Ryan and Peter Lardner and
11:08:59 15 obviously Peter Lardner's operating the file under your
11:09:03 16 supervision. It's confidential and it says, "Dave, SMS
11:09:07 17 received from F following service of defence on Friday.
11:09:11 18 SMS received Saturday not by me and it says this, 'Am
11:09:14 19 totally wrecked after yesterday, got defence. Am deeply
11:09:19 20 offended and staggered by the dishonesty and stupidity of
11:09:23 21 it. Pandora's box is well and truly open given what has
11:09:27 22 been pleaded' and if that is any indication of her attitude
11:09:32 23 to me I welcome a trial and the Royal Commission that will
11:09:35 24 inevitably follow". Do you recall being briefed on that
11:09:41 25 email by Peter Lardner?---I can't recall.
11:09:46 26
11:09:48 27 One assumes that that's the sort of thing that Mr Lardner
11:09:52 28 would probably tell you if the plaintiff in this proceeding
11:09:57 29 has provided that response and she's welcoming trials and
11:10:00 30 Royal Commissions, that's the sort of thing that Mr Lardner
11:10:03 31 would be likely to tell you about, surely?---He may have.
11:10:06 32
11:10:07 33 Do you agree it's the sort of thing he is likely to tell
11:10:10 34 you about?---It's possible.
11:10:19 35
11:10:21 36 Well, do you agree or disagree that - - -?---But we were
11:10:25 37 talking about proceedings, so he may have told me. That's
11:10:28 38 as high as I could put it.
11:10:30 39
11:10:30 40 This might give an indication whether or not this case is
11:10:33 41 likely to settle or not and those sorts of things are very
11:10:38 42 relevant to defence lawyers who are running litigations,
11:10:41 43 surely?---I don't think this is an unusual email or
11:10:46 44 statement.
11:10:47 45
11:10:47 46 Well, it is?---From Ms Gobbo.
11:10:49 47

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11:10:49 1 It is. It's talking about the potential for a Royal
11:10:54 2 Commission?---She was prone to statements like this.
11:10:57 3
11:10:57 4 All right. Did you wonder what, assuming - - -?---I was
11:11:03 5 quite happy for it to proceed and for everything to be
11:11:08 6 dealt with.
11:11:09 7
11:11:09 8 All right. Would you have been interested in a suggestion
11:11:15 9 that there might well be a Royal Commission?---I see it as
11:11:19 10 a threat to get us to pay money.
11:11:21 11
11:11:22 12 Would that have interested you at all, a suggestion from
11:11:26 13 Ms Gobbo as an informer/barrister that there might be a
11:11:31 14 Royal Commission if this all blows up?---I wasn't taking
11:11:36 15 advice from her.
11:11:37 16
11:11:37 17 No, I understand that. I follow that?---I would have noted
11:11:42 18 it.
11:11:43 19
11:11:44 20 Would it have, would you have asked yourself, "What would
11:11:47 21 she be talking about? Why would there be any concern for a
11:11:51 22 Royal Commission"?--Well, we were working - I was taking
11:11:56 23 advice from my lawyers and Peter.
11:11:58 24
11:11:59 25 Do you think that what she was saying, perhaps I can
11:12:03 26 suggest this, that what she's suggesting is that her role
11:12:10 27 with respect to Victoria Police as an informer could well
11:12:14 28 be the subject of a Royal Commission?--Well, if that was
11:12:17 29 the case, that was the case. I was - my position was to
11:12:26 30 just, in good faith, defend the matter and take advice.
11:12:30 31
11:12:30 32 I understand that. But you were also the primary legal
11:12:35 33 officer in Victoria Police, those matters would be of
11:12:38 34 significance to you, can I suggest?---This, the whole
11:12:41 35 action was of significance.
11:12:42 36
11:12:44 37 I tender that, Commissioner.
11:12:45 38
11:12:47 39 #EXHIBIT RC1091A - (Confidential) Email from Steve Smith to
11:08:57 40 David Ryan and Peter Lardner
11:08:27 41 VPL.0005.0010.2245.
11:12:49 42
11:12:50 43 #EXHIBIT RC1091B - (Redacted version.)
11:12:51 44
11:12:58 45 Might it have given you another reason, if you didn't have
11:13:01 46 any reasons at that stage, or had few reasons, to say to
11:13:07 47 your investigators, "What is this about? We need to get to

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11:13:10 1 the bottom of Victoria Police's relationship with Ms Gobbo
11:13:13 2 as an informer", do you think that might have occurred to
11:13:18 3 you?---No, I was dealing with the Royal Commission - not
11:13:21 4 the Royal Commission, the civil litigation.
11:13:24 5
11:13:24 6 All right?---And that was a pretty big job.
11:13:28 7
11:13:28 8 Okay. Now, can you - - -?---Or we were dealing with it.
11:13:36 9
11:13:36 10 Yes. On 5 August you had a meeting with the OPI, is that
11:13:50 11 correct, that was shortly prior to the mediation?---What
11:13:58 12 was the date of that email?
11:13:59 13
11:14:00 14 That email was - I went back, that email was - - -
11:14:05 15
11:14:06 16 COMMISSIONER: 28 June.
11:14:06 17
11:14:07 18 WITNESS: That was around the defence period.
11:14:09 19
11:14:09 20 MR WINNEKE: Exactly?---I see.
11:14:11 21
11:14:12 22 25 June I think was the filing of the defence. That email
23 was 28 June?---Okay.
24
11:14:16 25 I've skipped forward now because there had been discussions
11:14:20 26 about amounts for resolution of the proceeding?---Yes.
11:14:23 27 There was more than that discussion. I did not want to
11:14:26 28 settle this matter.
11:14:27 29
11:14:27 30 Yes. You were giving instructions, I assume?---Well,
11:14:39 31 ultimately this was a matter that was out of the hands of
11:14:44 32 Victoria Police for instructions. The instructions were
11:14:47 33 coming from, for settlement.
11:14:50 34
11:14:51 35 Yes?---It would have been through Simon.
11:14:54 36
11:14:54 37 Right?---Overland, but in terms of the running of the
11:15:00 38 matter, the broader issues.
11:15:01 39
11:15:01 40 Yes?---Myself and my legal team were providing instructions
11:15:06 41 on that, but the issue about when we had the conference
11:15:12 42 with Mr Wheelahan, was this - I was taken by surprise by
11:15:20 43 the promissory estoppel issue, and it stopped us dead in
11:15:24 44 our tracks, so we were gearing up for a massive trial.
11:15:28 45
11:15:28 46 Right?---And - - -
11:15:31 47

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11:15:32 1 So you say that what, after that, after the advice in
11:15:37 2 conference with counsel obviously - - -?---No, I accepted
11:15:41 3 the advice.
11:15:41 4
11:15:42 5 Yes?---Because on model litigant grounds we could not
11:15:46 6 proceed.
11:15:46 7
11:15:47 8 So what you say is up until the meeting where you had an
11:15:52 9 advice from counsel, senior counsel, you were informed
11:15:55 10 about - - -?---It was quite a debate.
11:15:58 11
11:15:59 12 Right?---With senior counsel.
11:16:00 13
11:16:00 14 Yes, okay. You say up until that time you were gearing up
11:16:04 15 to run this proceeding?---Absolutely.
11:16:06 16
11:16:06 17 Okay?---And we knew that it was going to be a massive
11:16:09 18 discovery exercise, that whatever was there was there.
11:16:12 19
11:16:13 20 Yes?---And we weren't shying away from it.
11:16:15 21
11:16:19 22 Now, there was a meeting, I think on 28 July, and it was a
11:16:31 23 meeting attended by you, Mr Overland, Mr Leane,
11:16:38 24 Mr Cornelius and there's a file note at
11:16:46 25 VPL.0005.0010.2085?---Can I just clarify something?
11:16:48 26
11:16:49 27 Yes?---One of the important points of that very difficult
11:16:54 28 conversation that I had with Mr Wheelahan was that he had
11:16:58 29 listened to the tapes.
11:16:59 30
11:16:59 31 Right. Tapes of communications between Ms Gobbo and - -
11:17:04 32 -?---Handlers.
11:17:06 33
11:17:06 34 COMMISSIONER: Sorry, which tapes, could you clarify that,
11:17:09 35 please?---It turned out to be the promissory estoppel issue
11:17:14 36 with the representation that she would be no worse off
11:17:20 37 financially.
11:17:21 38
11:17:21 39 Yes?---But that clarified my understanding, that counsel
11:17:26 40 had been listening to the tapes.
11:17:27 41
11:17:28 42 The tapes, I'm just wanting to clarify which tapes?---Tapes
11:17:32 43 of source handlers with Ms Gobbo. My understanding is that
11:17:39 44 the barristers were given access to the source materials
11:17:43 45 and listened to it to enable them to prepare their defence.
11:17:50 46
11:17:50 47 MR WINNEKE: One assumes you didn't get a bill from

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11:17:53 1 Mr Wheelahan for listening to 225 hours - - -?---He didn't
11:17:58 2 listen because the way the writ was framed it pointed him
11:18:02 3 to the relevant representation.
11:18:04 4
11:18:04 5 And there was a representation?---Is what I suspect.
11:18:07 6
11:18:08 7 By Mr Smith, I think, was it - - -?---No.
11:18:10 8
11:18:13 9 O'Connell?---I'm not sure that in fact he should be named
11:18:19 10 but there was a - - -
11:18:21 11
11:18:21 12 Yes, Shane O'Connell, he can be named?---Okay.
11:18:23 13
11:18:23 14 In any event what you say is Mr Wheelahan said, "Look, I've
11:18:28 15 heard a representation from Shane O'Connell and
11:18:33 16 Ms Gobbo"?---My understanding, because I pushed back,
11:18:35 17 because I wanted this dealt with.
11:18:36 18
11:18:38 19 Okay.
11:18:38 20
11:18:39 21 MR CHETTLE: Commissioner, you asked the question which I
11:18:41 22 think the answer needs to be clarified. I believe the
11:18:44 23 tapes they're talking about are the Shane O'Connell
11:18:47 24 tapes?---Yes.
11:18:48 25
11:18:48 26 As distinct from all the source management tapes.
11:18:52 27
11:18:52 28 COMMISSIONER: Exactly, we need that clarified, thank you.
11:18:55 29
11:18:55 30 WITNESS: That would be the tape, that would be the tape.
11:18:57 31
11:18:57 32 MR WINNEKE: You certainly didn't understand that counsel,
11:19:00 33 or indeed your litigation department or VGSO were going
11:19:04 34 through tapes of communications between Ms Gobbo and her
11:19:08 35 handlers?---No, it was overtaken by events, as I said.
11:19:13 36 When senior counsel found the representation, formed a view
11:19:16 37 that there was a very strong promissory estoppel argument.
11:19:20 38
11:19:20 39 Yes?---Then we had a very robust conversation over a couple
11:19:25 40 of hours.
11:19:26 41
11:19:26 42 Right?---And then we moved into what do we do now in terms
11:19:30 43 of considering quantum and how we deal with this matter.
11:19:35 44
11:19:35 45 Right, okay. So then you have this meeting, having met
11:19:39 46 with counsel you have a meeting with Overland - - -?---With
11:19:48 47 respect, I think we're brushing over a very important

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11:19:51 1 meeting. The other part was how do we deal with the matter
11:19:55 2 moving forward? Who needs to be involved? We decided that
11:20:00 3 we needed someone at retired High Court judge level. I was
11:20:06 4 taking this matter seriously.

11:20:09 5
11:20:09 6 I'm not suggesting you weren't, Mr McRae, I'm not
11:20:11 7 suggesting that at all. And having taken all those matters
11:20:16 8 into consideration, the fact that there was going to be
11:20:19 9 Mr Callinan, et cetera, which you've set out in your
11:20:23 10 statement, there's a discussion you have with Mr Overland,
11:20:25 11 Stephen Leane and you're briefing them about what's gone on
11:20:29 12 I take it?---Yes.

11:20:30 13
11:20:33 14 And there was a recommendation made on the basis of advice
11:20:36 15 from counsel?---Yes.

11:20:37 16
11:20:41 17 That there be a cap and there be a letter written to the
11:20:49 18 Minister for Police?---Yes.

11:20:51 19
11:20:52 20 Because there needed to be authority from him to resolve
11:20:55 21 the proceedings?---It was outside the delegation of the
11:21:03 22 Chief Commissioner.

11:21:03 23
11:21:04 24 Yes, I follow that. Subsequent to that - I tender that
11:21:08 25 document, Commissioner.

11:21:09 26
11:21:09 27 COMMISSIONER: I think it's been tendered, 1053.

11:21:12 28
11:21:14 29 MR WINNEKE: Thank you. You have a meeting with Mr Cain,
11:21:23 30 Michael Strong, who at that stage was the Director of the
11:21:26 31 Office of Police Integrity?---Yes.

11:21:28 32
11:21:28 33 And the Deputy Director Paul Jetkovic?---Yes.

11:21:34 34
11:21:34 35 And you brief them with a copy of the writ, the defence and
11:21:37 36 the VGSO advice?---Yes.

11:21:39 37
11:21:46 38 There's a note here of your briefing, do you see
11:21:51 39 that?---Yes.

11:21:51 40
11:21:54 41 And do you say that on 5 August there was, the issue to be
11:22:00 42 discussed apparently was the mediation strategy and
11:22:03 43 settlement proposal Gobbo v State of Victoria?---Yes.

11:22:10 44
11:22:10 45 And the briefing concluded with a copy of, or perhaps it's
11:22:17 46 better if you read it, defence and VGSO advice?---Writ,
11:22:23 47 defence and VGSO advice and the brackets are a reference to

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11:22:25 1 the document numbers that were retained by the OPI.
11:22:30 2
11:22:30 3 Do you know which documents F3 and F4 were?---No, but
11:22:38 4 they're Peter Lardner's references.
11:22:42 5
11:22:42 6 Yes. So the two documents are attained - - -?---There are
11:22:48 7 two documents, yes.
11:22:49 8
11:22:50 9 Would that be the writ and the defence, but not the VGSO
11:22:53 10 advice?---No, they were all provided. There's two
11:22:57 11 documents that have document numbers because there are
11:23:04 12 limited numbers of them because of security.
11:23:07 13
11:23:08 14 Are we able to identify which documents they are?---Peter
11:23:11 15 Lardner would be able to, I can't recall. But all those
11:23:14 16 documents were provided.
11:23:15 17
11:23:15 18 So what you're saying is - - -?---Actually, it could be
11:23:18 19 more documents, I don't know, I can't recall. It could be
11:23:22 20 two other documents.
11:23:23 21
11:23:23 22 Right, okay. What was the purpose of the meeting with the
11:23:33 23 OPI?---Well I'd spoken to John Cain - because this is a
11:23:38 24 matter of such high public importance, that we're proposing
11:23:42 25 to settle a matter that involves a defence practitioner who
11:23:47 26 has been a human source and it involves the Government, in
11:23:55 27 a very difficult scenario for us because of the high risk
11:23:58 28 of death that always follows with human sources involved
11:24:03 29 with matters of this nature.
11:24:06 30
11:24:06 31 Yes?---That we needed to be fully transparent to the Office
11:24:17 32 of Police Integrity and hear what they had to say about it.
11:24:20 33
11:24:21 34 Right. When you say fully transparent, you're talking
11:24:29 35 about full transparency with respect to the civil
11:24:33 36 litigation?---No, I'm talking about the status of this
11:24:36 37 person who we're proposing to move into a mediation and
11:24:40 38 that we're taking it very seriously, we want a mediator of
11:24:45 39 the highest status.
11:24:46 40
11:24:46 41 Yes?---And I wanted the VGSO sitting next to me to answer
11:24:52 42 any questions in regard to the advice that's been provided
11:24:55 43 and the risks.
11:24:56 44
11:24:57 45 Was there discussion that you can recall about - - - ?---I
11:25:01 46 should say the head of the VGSO, not David Ryan. I didn't
11:25:06 47 want any police there, I wanted this to be a legal

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11:25:08 1 discussion.
11:25:09 2
11:25:09 3 Yes?---On a high risk matter with the body that is
11:25:13 4 responsible for the integrity of Victoria Police, and I saw
11:25:17 5 it as a broader Government issue of course.
11:25:21 6
11:25:21 7 Yes, I follow that?---Public interest.
11:25:23 8
11:25:23 9 And obviously there were safety issues involved as well,
11:25:27 10 because Carl Williams had recently been murdered?---It's
11:25:36 11 inherent at all times there's safety issues in this matter.
11:25:40 12
11:25:40 13 And she was being exposed or at least there was a risk of
11:25:44 14 her exposure?---Well, that's an interesting question
11:25:51 15 because she had self-exposed through the writ, there'd been
11:25:56 16 a television interview. The whole of the criminal/legal
11:26:05 17 community knew of her status by then.
11:26:07 18
11:26:08 19 As a witness against Paul Dale?---No. The gossip around
11:26:13 20 the Bar and through connections was rife, an open secret
11:26:24 21 that she was assisting police. They didn't know
11:26:28 22 necessarily the registration number. I knew that, that
11:26:33 23 there was that risk, and - but it was open now, very much
11:26:41 24 open, that Ms Gobbo was assisting police.
11:26:43 25
11:26:44 26 So as far as you were concerned, look, it was well-known
11:26:48 27 that Ms Gobbo was an informer at that stage?---Well, people
11:26:52 28 have claimed to have known it, but - - -
11:26:54 29
11:26:54 30 Do you say they did or didn't, ultimately we've been
11:26:59 31 through litigation now for years to prevent this from
11:27:03 32 getting out, you're saying it was known in any event?---Our
11:27:07 33 concern wasn't that someone from the Criminal Bar would
11:27:09 34 murder her. Our concern was that a criminal who wasn't
11:27:12 35 apprised of that information would murder her.
11:27:15 36
11:27:15 37 Yes, all right?---And that was a point that was attested to
11:27:21 38 by Mr Fontana and others at many hearings.
11:27:25 39
11:27:26 40 Did he attest to the fact it was well-known within the
11:27:30 41 Criminal Bar that Ms Gobbo was an informer?---Yes.
11:27:33 42
11:27:33 43 Did he?---Well, there was submissions made that it was an
11:27:38 44 open secret - - -
11:27:39 45
11:27:39 46 Submissions made by who?---From parties, it was put by the
11:27:43 47 DPP, there was that discussion. It was a balancing act -

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11:27:48 1 so when the litigation came about it was about, they were
11:27:52 2 talking about hiding in plain sight. So that was an issue
11:27:58 3 that was a live one.
11:28:01 4
11:28:02 5 You say that you wanted to be transparent with the
11:28:06 6 regulator?---Yes.
11:28:07 7
11:28:08 8 But how could you say you're being transparent with the
11:28:15 9 regulator when at that stage you yourself hadn't got to the
11:28:19 10 bottom of the use of Ms Gobbo as a human source?---Well I
11:28:22 11 was being transparent with what I knew at the time, which
11:28:25 12 is the best I could do.
11:28:26 13
11:28:26 14 There was ample basis, can I suggest for you, at that stage
11:28:32 15 for you to get to the bottom of it, at least make attempts
11:28:36 16 to get to the bottom of it, to enable you to be fully
11:28:40 17 transparent with the regulator but you hadn't done so by
11:28:43 18 this stage?---I reject that. I reject that. There's many
11:28:46 19 excellent legal minds working more closely on this file
11:28:49 20 than me and I'm managing a department, a multitude of
11:28:54 21 issues, and I'm doing the best I can to ensure that this
11:28:59 22 goes through a transparent process and people are briefed
11:29:02 23 properly. I do have concerns with the file and that's why
11:29:06 24 I went to the OPI with the head of the VGSO, who was
11:29:10 25 providing the legal advice sitting next to me.
11:29:12 26
11:29:13 27 You're interested to hear back from the OPI if there are
11:29:16 28 any matters which they wanted to raise with you?---Yes.
11:29:19 29
11:29:19 30 What sort of matters were you thinking that they might want
11:29:22 31 to raise?---I wasn't limiting their matters at all.
11:29:24 32
11:29:25 33 Did they raise any matters with you?---Michael Strong heard
11:29:30 34 what we had to say. He said that it was a matter
11:29:35 35 ultimately for Victoria Police and the proper authorities
11:29:40 36 to deal with.
11:29:41 37
11:29:42 38 That is the mediation strategy which was the issue of your
11:29:46 39 discussion?---Yes.
11:29:46 40
11:29:46 41 And how it would resolve?---Yes, with a lawyer who was a
11:29:50 42 registered informer.
11:29:51 43
11:29:51 44 Right. There were no, there was no, do you say there was
11:29:58 45 or wasn't - withdraw that. Was there any discussion about
11:30:02 46 this unusual concept of a criminal barrister being an
11:30:05 47 informer?---Well they seemed to be aware of it.

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11:30:09 1
11:30:09 2 Yes. You say that I think Mr Jetkovic said at one stage,
11:30:15 3 made a comment to you which suggested that he was aware of
11:30:18 4 it?---What he said to me when we walked in is that she had
11:30:22 5 prevented a lot of harm.
11:30:24 6
11:30:24 7 Did that cause you to wonder how he got that
11:30:28 8 information?---It did.
11:30:28 9
11:30:29 10 Did you ask him?---I didn't interrogate the regulator. I
11:30:32 11 put forward the documents that I had and the knowledge that
11:30:37 12 I had in regard to what I was dealing with so that they
11:30:42 13 could make any comment.
11:30:43 14
11:30:43 15 Right?---And what we proposed to do moving forward.
11:30:48 16
11:30:48 17 Yes, all right. Thanks very much. I wonder if that's an
11:30:51 18 appropriate time.
11:30:52 19
11:30:53 20 COMMISSIONER: Yes, we will adjourn now and have the
11:30:56 21 midmorning break.
11:31:25 22
11:31:26 23 (Short adjournment.)
11:31:26 24
12:07:33 25 COMMISSIONER: Yes, Mr Winneke.
26
12:07:37 27 MR WINNEKE: Thanks, Commissioner. Just before I move on
12:07:41 28 from 5 August, the documents that were provided to the OPI
12:07:54 29 included, you say, the writ, the defence and your note says
12:07:58 30 the VGS0 advice?---Yes.
31
12:08:09 32 I take it, are you referring to the VGS0 advice which was
12:08:12 33 the advice concerning settlement of the proceeding and the
12:08:21 34 quantum?---I think so.
35
12:08:24 36 The advice of the - because you'd received two
12:08:30 37 advices?---Yes.
38
12:08:31 39 There was a preliminary advice which you got I think in
12:08:32 40 May, 21 May. Subsequently there was another advice dated
12:08:35 41 28 July I think?---M'mm.
42
12:08:37 43 Are you able to confirm which one it was that you
12:08:42 44 provided?---I can't recall but I expect it would be the
12:08:45 45 quantum advice.
46
12:08:48 47 You don't make a note, if we have a look at your file note

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12:08:52 1 of the meeting which we had up previously, there's no note
12:08:57 2 about the fact that Ms Gobbo had been a registered informer
12:09:05 3 from the period 2005 through to 2009?---I think it's in the
12:09:09 4 advice.
5
12:09:09 6 There is a reference in the advice?---Yes.
7
12:09:12 8 If that's the advice which was provided to the effect that
12:09:15 9 Ms Gobbo was registered?---Yes.
10
12:09:17 11 If we go to the advice itself, I think - without putting it
12:09:26 12 up - but the note is to the effect, "We understand the
12:09:31 13 plaintiff has provided information to Victoria Police in
12:09:33 14 matters other than the Dale prosecution and that she may
12:09:36 15 still be providing information to Victoria Police". Then
12:09:42 16 it says, "Clearly the plaintiff's status as a police
12:09:46 17 informer is highly confidential and sensitive and its
12:09:51 18 disclosure is likely to further increase the risk to her
12:09:55 19 safety"?---Yes.
20
12:09:56 21 Do you know whether there was any discussion over and
12:10:02 22 above, save for the provision of the advice which contained
12:10:05 23 those sentences, do you say that there was any discussion
12:10:10 24 at all about the fact that in Ms Gobbo was an
12:10:18 25 informer?---Well that's why I was there.
26
12:10:20 27 Right. According to - - - ?---There would have been a
12:10:22 28 discussion, yes.
29
12:10:23 30 The note says the issue was the mediation strategy and
12:10:26 31 settlement - - - ?---Yes.
32
12:10:27 33 - - - proposal for Gobbo and the brief concluded with the
12:10:31 34 copy of the written defence. As we know, the writ and the
12:10:34 35 defence make no reference to the fact that she's an
12:10:37 36 informer, and indeed the writ is based on the proposition
12:10:39 37 that she was made promises with respect to her role as a
12:10:46 38 witness - - - ?---Yes.
39
12:10:47 40 - - - in the Paul Dale proceeding, and there is no
12:10:49 41 referral at all to he informer status?---I don't see why we
12:10:54 42 wouldn't have talked about the entirety of the advice.
43
12:10:57 44 I'm sorry, say that again?---I don't see why we wouldn't
12:11:01 45 have talked about the entirety of the advice.
46
12:11:03 47 You might have made a note about it, though, if you were

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12:11:05 1 kept for that to be a matter of the record, that you did
12:11:11 2 disclose, for example, that she had been a registered
12:11:14 3 informer for Victoria Police for the period which you by
12:11:17 4 then were aware of, that is from 2005 through to 2009?---I
12:11:22 5 think it was a given at that meeting she was providing
12:11:26 6 information to Victoria Police.
7

12:11:30 8 Do I take it then - when you say it was a given that she
12:11:34 9 was providing information to Victoria Police?---Yes.
10

12:11:40 11 What was actually said to your recollection?---I can't
12:11:43 12 remember. I kept a very brief note of it.
13

12:11:46 14 Yes?---But clearly I'm there so that they have visibility
12:11:51 15 of what's happening.
16

12:11:52 17 Yes. Mr Cain, who was present, has no recollection of a
12:11:58 18 discussion - of knowing that Ms Gobbo was an informer. Now
12:12:03 19 what do you say about that?---Well like the other lawyers,
12:12:10 20 I just think that it didn't send a flag up for them and
12:12:17 21 he's forgotten.
22

12:12:19 23 Yeah, right. Do you think you may have forgotten about
12:12:22 24 what was discussed?---Yes, I have. I can't remember the
12:12:31 25 conversation that we had but I remember I went up there
12:12:34 26 because of her status and because we were moving forward
12:12:38 27 with the mediation.
28

12:12:40 29 If one looks at the issue, it's - - -?---And in no way
12:12:48 30 would I have not disclosed to the oversight body the full
12:12:53 31 picture, as far as I knew it, for the purpose of the civil
12:12:57 32 litigation.
33

12:12:58 34 What you say is, look, you deal with the issue at hand.
12:13:02 35 The issue at hand was that there was a writ against
12:13:06 36 Victoria Police and the Chief Commissioners to the effect
12:13:08 37 that they had let her down, if I can put it that way, with
12:13:15 38 respect to the use of her as a witness, not as an
12:13:17 39 informer?---The settlement amount took into account the
12:13:21 40 discovery issues and the - you know, the commerciality, the
12:13:26 41 usual sort of advice the VGSO would give in those
12:13:30 42 circumstances.
43

12:13:30 44 I follow that?---Yes.
45

12:13:31 46 And that's in the advice. What I'm asking you about is the
12:13:34 47 discussion, what was said overtly. You say it was taken as

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12:13:38 1 given. Do you mean to say that it was something that
12:13:41 2 wasn't discussed but you assumed that everyone
12:13:44 3 understood?---Yes, absolutely. The second.
4
12:13:47 5 The second?---Yes.
6
12:13:48 7 Not discussed but the assumption - - - ?---No, no, no. You
12:13:51 8 questioned me in two parts. I'm accepting the second part
12:13:54 9 which is that, you know, it was fundamental to the
12:13:59 10 discussion.
11
12:14:00 12 So it was discussed openly that she was an informer?---Oh
12:14:03 13 yes.
14
12:14:05 15 Right?---That's my memory. What year's that? It's 2010.
12:14:13 16 It's ten years ago.
17
12:14:15 18 I understand that?---But I had never gone to the OPI, and I
12:14:18 19 haven't been to IBAC since, on any matter regarding civil
12:14:22 20 litigation in Victoria Police. I was there because I
12:14:25 21 thought it was a case of public interest.
22
12:14:27 23 Yes?---Unusual status of the litigant, asking for a
12:14:31 24 significant amount of money. In terms of quantum, it's not
12:14:36 25 a significant amount of money, but it's a significant
12:14:40 26 amount of money in the circumstances of this case.
27
12:14:44 28 Yes?---And I want to have some visibility of the oversight
12:14:50 29 body of what we're doing moving forward with this matter.
30
12:14:54 31 Right?---And if they've got some comments to make, I'm open
12:14:57 32 to that as well.
33
12:14:59 34 You wanted visibility as to what you were doing with this
12:15:03 35 litigation?---Yes, a registered informer who is a lawyer.
36
12:15:08 37 Okay?---Who we'd made representation to that her career
12:15:13 38 will not continue but she will be no worse off.
39
12:15:17 40 Yes. That's what the litigation was. That's what was
12:15:21 41 claimed - - - ?---Yes.
42
12:15:22 43 - - - in her statement of claim and in the defence?---If
12:15:27 44 we ran it, it would be a massive trial that would go for
12:15:34 45 months. There'd be huge discovery issues and hence the
12:15:37 46 quantum.
47

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12:15:37 1 In any event, you say, "Look, the VGSO advice was
12:15:41 2 provided"?---Yes.
3

12:15:44 4 Yeah, all right. Was there any discussion about whether or
12:15:48 5 not she may, or what she had been seeking, that is
12:15:54 6 significant sums of money, \$█ million and the like, had
12:16:00 7 that been - was that raised?---We could have discussed that
12:16:04 8 but I can't recall.
9

12:16:05 10 What about the possibility that she might be due for a
12:16:10 11 reward?---That wouldn't have entered my mind.
12

12:16:15 13 What you say is, "I cannot recall what I said"?---Not
12:16:22 14 verbatim, no.
15

12:16:23 16 The gist of what you said?---Yes.
17

12:16:25 18 And what was that?---A briefing on the claim.
19

12:16:31 20 Yes?---And her status and what we were doing moving
12:16:35 21 forward, and then opening it up.
22

12:16:39 23 And then opening it up?---Yes.
24

12:16:41 25 What do you mean by that?---For discussion.
26

12:16:47 27 I take it there wasn't a discussion about the fact that
12:16:51 28 Ms Gobbo was an informer who had been informing upon her
12:16:58 29 clients?---I would have made a note of that.
30

12:17:01 31 You would have?---M'mm.
32

12:17:02 33 So that wasn't discussed?---No. If they had have told me
12:17:07 34 that I would have made a note of it.
35

12:17:11 36 Well certainly the document that had been provided to you,
12:17:16 37 the source management log which was provided to you and
12:17:20 38 Mr Lardner, if you'd read that, that would have given you
12:17:27 39 some information which would have suggested to you that she
12:17:30 40 was informing on people that she was acting for?---If you
12:17:34 41 knew who the clients were, yes.
42

12:17:35 43 And full disclosure, full transparency to the oversight
12:17:42 44 body would have included that information, wouldn't
12:17:44 45 it?---If they had have requested it we would have provided
12:17:48 46 it.
47

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12:17:49 1 They wouldn't request it if they didn't know about
12:17:51 2 it?---Well they knew that we had materials that went to the
12:17:55 3 - it's involving a massive discovery process.
4

12:17:58 5 Yes. But look the point I'm making is you're wanting to
12:18:02 6 come along here and say, "We wanted to be fully
12:18:05 7 transparent", whereas you had in your possession, you had
12:18:09 8 provided to you a document which would have made it
12:18:12 9 abundantly clear that Ms Gobbo was being used as a source
12:18:16 10 against her clients and that wasn't provided to the
12:18:20 11 OPI?---No, I had not formed a view that there'd been
12:18:24 12 misconduct. I wasn't referring it on the basis of
12:18:27 13 misconduct or misbehaviour.
14

12:18:29 15 No. It was on the basis of her conduct with respect to
12:18:32 16 settling this litigation?---Yes, in extraordinary
12:18:35 17 circumstances.
18

12:18:37 19 Did Mr Strong say anything to you which suggested that he
12:18:40 20 was surprised that the barrister, who was a high profile
12:18:45 21 criminal defence lawyer, was an informer?---No.
22

12:18:49 23 Do you recall what he said about it, if anything, to
12:18:52 24 you?---He said it was a matter for Victoria Police.
25

12:18:54 26 What, you can recall him saying, "It's a matter for
12:18:58 27 Victoria Police to use a criminal barrister"?---No, not at
12:19:01 28 all. No, No, no, in terms of the way we move forward with
12:19:03 29 the litigation.
30

12:19:04 31 With the litigation?---Yes.
32

12:19:05 33 This discussion was about litigation, it wasn't about
12:19:08 34 Ms Gobbo as a human source?---Well it was, yes, I accept
12:19:11 35 that.
36

12:19:12 37 It was about settling litigation in which Ms Gobbo was a
12:19:16 38 barrister and a promise had made to her?---Yes.
39

12:19:19 40 But it wasn't about her as a human source?---Well, it's in
12:19:23 41 the advice. But I accept that it's about promissory
12:19:28 42 estoppel, of course.
43

12:19:33 44 I take it at that stage there were provisions that you were
12:19:39 45 aware of, I think in the *Police Regulation Act*, which
12:19:43 46 disclosure to the regulatory body or by - - - ?---By a
12:19:46 47 sworn member, yes.

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1
12:19:47 2 By a sworn member?---Yes, m'mm.
3
12:19:48 4 If there was any suggestion of - or if they were aware of
12:19:52 5 conduct which was conduct which might, I think there's a
12:19:55 6 number of - - - ?---Levels of it.
7
12:19:58 8 - - - levels of it?---Yes.
9
12:19:59 10 But misconduct, which I think includes misconduct which
12:20:02 11 might bring Victoria Police into disrepute?---Yes.
12
12:20:05 13 Improper conduct and the like?---Yes.
14
12:20:07 15 Those sorts of things?---Yes.
16
12:20:09 17 So you weren't making a formal report to the OPI regulator
12:20:12 18 about any concern that you had or Victoria Police
12:20:16 19 had?---No.
20
12:20:16 21 About its own conduct?---No.
22
12:20:18 23 There was no suggestion on your part that what had occurred
12:20:21 24 was improper?---No. There was no suggestion on anyone's
12:20:26 25 part that it was improper.
26
12:20:28 27 No, well - all right. There was a confidential - a note
12:20:40 28 was provided - if I haven't tendered that file note of the
12:20:50 29 meeting between Mr McRae and Mr Strong, Commissioner. I
12:20:56 30 tender that.
31
12:20:57 32 COMMISSIONER: And others, yes. 5 August.
12:20:59 33
12:21:00 34 #EXHIBIT RC1092A - (Confidential) File note of meeting
12:20:51 35 between Mr McRae, Mr Strong and others,
12:21:01 36 5/08/10.
12:21:01 37
12:21:01 38 #EXHIBIT RC1092B - (Redacted version.)
39
12:21:10 40 MR WINNEKE: There was, as we understand it - just excuse
12:21:14 41 me. Commissioner, what I was going to do was refer to an
12:21:53 42 advice which was I think not signed by Mr McRae, but has
12:22:02 43 Mr Lardner's signature on it above Mr McRae's name I think,
12:22:06 44 which was an advice to the Minister which enabled him to
12:22:13 45 give approval of the settlement, that which we've discussed
12:22:16 46 already. Now I've just raised with Mr Holt whether or not
12:22:20 47 there's any claim made by Victoria Police and he says no,

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12:22:23 1 but the issue may well be an issue for the State.
12:22:26 2
12:22:26 3 MR HOLT: To the extent that Victoria Police owns a
12:22:30 4 privilege in respect of that document or that advice, the
12:22:32 5 position is as I indicated it yesterday, but given that
12:22:34 6 it's going to the Minister, we're not in a position to
12:22:39 7 waive privilege in respect to the Minister obviously enough
12:22:43 8 and that may well be a matter for the State, Commissioner.
9
12:22:45 10 COMMISSIONER: Yes, all right.
11
12:22:51 12 MR WINNEKE: I'm happy - if there needs to be instructions
12:22:54 13 sought about that well I won't do it at this stage.
14
12:22:58 15 COMMISSIONER: Ms McCudden.
12:22:59 16
12:23:00 17 MS McCUDDEN: Yes, Commissioner. I would like to make sure
12:23:04 18 we have the exact document that's the subject of the
12:23:07 19 discussion between Mr Holt and - we've made some inquiries.
12:23:10 20 We're not obviously possessed of all the information that's
12:23:13 21 been produced by most and so if we could have a copy of
12:23:18 22 what that discussion is and obviously we'll get
12:23:21 23 instructions as soon as we can.
24
12:23:23 25 COMMISSIONER: Do you have access to the material,
12:23:25 26 computerised material?
12:23:27 27
12:23:27 28 MS McCUDDEN: No.
29
12:23:28 30 COMMISSIONER: All right. Could you print out a copy of the
12:23:30 31 document you're wanting to put to the witness and tender?
32
12:23:37 33 MR WINNEKE: That can be done, Commissioner.
34
12:23:38 35 COMMISSIONER: If that can be done and provided to
12:23:41 36 Ms McCudden as soon as possible. And would you be able to
12:23:45 37 get instructions over the lunchtime break?
12:23:48 38
12:23:48 39 MS McCUDDEN: Commissioner, subject to the - we will
12:23:52 40 definitely - - -
41
12:23:53 42 COMMISSIONER: You'll try.
12:23:54 43
12:23:57 44 MS McCUDDEN: (Indistinct).
45
12:23:59 46 COMMISSIONER: Yes, thanks Ms McCudden.
12:24:01 47

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12:24:02 1 MR HOLT: Commissioner, while we have a brief break, in
12:24:05 2 terms of housekeeping matters, there was an exhibit earlier
12:24:08 3 which was an email which I indicated that I would look at
12:24:11 4 quickly. It has been reviewed. There's no, as,
12:24:12 5 Commissioner, you appreciate, there were no public interest
12:24:15 6 immunity issues with it but there are phone numbers,
12:24:17 7 including mobile numbers, in the footer, so we've just
12:24:18 8 arranged for those to be redacted and produced on that
12:24:21 9 basis to the Commission. You should have them today.
10
12:24:24 11 COMMISSIONER: Thanks, Mr Holt. What exhibit number was
12:24:27 12 that? It was an earlier exhibit number, 343 or something?
12:24:34 13 354.
12:24:35 14
12:24:35 15 MR HOLT: Yes. So there's no PII claim but there's a
12:24:38 16 mobile phone number and a direct dial number that should be
12:24:44 17 redacted before publication.
18
19 COMMISSIONER: Sure.
20
12:24:50 21 MR HOLT: And we've arranged for that to be sent.
22
12:24:53 23 COMMISSIONER: It should be Exhibit 354. So I note that
12:24:56 24 it's no longer a confidential exhibit and a copy is being
12:24:59 25 currently prepared to - - -
12:25:01 26
12:25:02 27 MR HOLT: I've seen it. It's been prepared. It will just
12:25:05 28 be produced, however long that technical process will take,
12:25:07 29 but today I'm told and it will be ready to go. It's purely
30 - - -
31
12:25:10 32 COMMISSIONER: So will that be produced forthwith?
12:25:13 33
12:25:13 34 MR HOLT: I understand it's already happening,
12:25:15 35 Commissioner. In about an hour, I'm told. It's in the
12:25:18 36 production stream and redactions were made this morning.
37
12:25:19 38 COMMISSIONER: That's fine. Thank you.
39
12:25:24 40 MR WINNEKE: Perhaps if I can deal with it to this extent.
12:25:29 41 The mediation I think was on 12 August; is that
12:25:32 42 correct?---I accept it if you say that.
43
12:25:34 44 Well it's in your statement. On or around 12 August
12:25:37 45 mediation took place. But leading into that there was an
12:25:40 46 advice, an additional advice sought from senior counsel,
12:25:44 47 Mr Hanks, with respect to the settlement?---Yes.

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1
12:25:49 2 And he advised that as far as he was concerned the
12:25:53 3 settlement was a reasonable one, or a settlement within
12:25:58 4 that range was a reasonable settlement?---Yes.
5
12:26:01 6 Up to I think - well, I won't use the figure. Then I think
12:26:10 7 a confidential briefing note was prepared and that's the
12:26:13 8 one that the State's getting some instructions
12:26:16 9 about?---Yes.
10
12:26:16 11 And that was sent by Mr Overland in his capacity as Chief
12:26:24 12 Commissioner?---Yes.
13
12:26:25 14 To Mr Cameron, who was the Minister responsible?---No.
15
12:26:29 16 No?---No. You're talking about two different processes
12:26:33 17 there.
18
12:26:34 19 Right?---So the Hanks' advice was provided for the head of
12:26:39 20 the VGSO to brief the Police Minister.
21
12:26:41 22 I understand?---Separately.
23
12:26:45 24 That was provided separately to brief the Police
12:26:49 25 Minister?---Yes. And our legal team provided the
12:26:51 26 background information for that.
27
12:26:53 28 Yes?---And Mr Hanks provided an independent advice and that
12:26:59 29 information went to the Minister via the VGSO separately,
12:27:02 30 the head of the VGSO.
31
12:27:04 32 Did that advice go to the minister?---I don't know because
12:27:06 33 I wasn't involved in it.
34
12:27:08 35 Right?---The other note that you're referring to is the
12:27:13 36 usual situation for briefing up to a Minister through the
12:27:20 37 Department of Justice.
38
12:27:20 39 Yes?---So Peter prepared a note through the Commissioner to
12:27:25 40 the department so the department could brief the Minister.
41
12:27:28 42 Right. When you say Peter, you're talking about
12:27:31 43 Mr Hanks?---Sorry, Mr Lardner.
44
12:27:34 45 I apologise, Mr Lardner prepared a briefing note?---Yes.
46
12:27:37 47 I think that's dated 9 August. It goes ultimately to the

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12:27:44 1 Minister and it's on the basis of - - - ?---I presume it
12:27:47 2 does.
3
12:27:47 4 You presume. The advice of Mr Hanks was provided to the
12:27:53 5 VGS0?---Yes.
6
12:27:55 7 To enable them to form a view as to whether or not the
12:27:59 8 settlement was appropriate, or a proposed settlement?---To
12:28:02 9 the Minister, yes.
10
12:28:03 11 Yes?---To give the Minister a separate advice.
12
12:28:06 13 As to whether or not that advice was provided, it's not
12:28:10 14 something that you know of?---No.
15
12:28:18 16 Did you see the briefing note - it's got your signature
12:28:22 17 block on it but it's signed by Mr Lardner?---I think I was
12:28:26 18 absent.
19
12:28:27 20 Right?---So Mr Lardner prepared it.
21
12:28:29 22 Yes?---With the - in the usual way with the departmental
12:28:34 23 officials.
24
12:28:35 25 Right. Without going into the details of it, would you
12:28:39 26 have expected it to have referred to the fact that she was
12:28:41 27 a police informer or not?---No, I think that was done
12:28:45 28 through the separate briefing.
29
12:28:46 30 By?---Mr Hanks' advice.
31
12:28:50 32 Okay. But you didn't know whether that was going to be
12:29:00 33 provided or not to the Minister?---Well I was expecting -
12:29:03 34 after John and I met with the OPI we had discussed how to
12:29:07 35 brief the Minister in a safe way.
36
12:29:09 37 Yes?---So that the name of the person wasn't - was properly
12:29:16 38 protected.
39
12:29:17 40 It was public litigation though, wasn't it?---But in terms
12:29:21 41 of the registered informer part.
42
12:29:24 43 Right?---So it was agreed that John would facilitate the
12:29:30 44 separate advice.
45
12:29:31 46 I see, all right. So as far as you understood the Minister
12:29:38 47 did become aware of the fact that she was - - - ?---I don't

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12:29:42 1 know.
2
12:29:42 3 You don't know. Do you believe that was the
12:29:44 4 intention?---Well the intention was for him to have a
12:29:46 5 separate advice that's not advice for the Chief
12:29:49 6 Commissioner.
7
12:29:50 8 Yes?---That dealt with the quantum aspect.
9
12:29:54 10 Right?---And for Mr Hanks QC to provide that advice, of
12:30:05 11 course he needed the information.
12
12:30:08 13 Do you say that you had a discussion with Mr Cain
12:30:10 14 separately about these matters, about whether or not - - -
12:30:11 15 ?---Yes. Well, that was the aftermath of the OPI report,
12:30:15 16 about what her next steps were. Sorry, the OPI meeting.
17
12:30:18 18 Meeting?---M'mm.
19
12:30:19 20 Did you keep a note of that discussion?---I don't think so.
21
12:30:25 22 You'd say that was a significant discussion to have about
12:30:30 23 how the Minister was going to be briefed?---Well that was
12:30:33 24 really a matter for Mr Cain.
25
12:30:35 26 Right, okay. But you don't recall the exact - what was
12:30:41 27 discussed in that meeting in any detail?---With the
12:30:44 28 Minister?
29
12:30:45 30 No, with Mr Cain?---Well, only the gist of it which is the
12:30:50 31 Minister - in these circumstances it would be beneficial
12:30:54 32 for the Minister to have a separate advice, because it's -
12:30:59 33 he - the intention of the other note was to provide a
12:31:03 34 delegation back to the Chief Commissioner.
35
12:31:04 36 Yes?---And he would need a basis to do it.
37
12:31:07 38 But that wasn't dealing with the fact that she was an
12:31:11 39 informer?---It's about the quantum, yes.
40
12:31:15 41 About the quantum?---Yes.
42
12:31:18 43 As I say, the evidence of Mr Cain is that he was not aware
12:31:21 44 at this stage that she was an informant. Now you say,
12:31:25 45 look, he must have forgotten about. When I say evidence,
12:31:30 46 we have a statement from Mr Cain to that effect?---Okay.
47

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12:31:33 1 And what do you say?--Well, have a look at clause 3 under
12:31:38 2 the sub-heading "Background" of the advice where it says
12:31:43 3 that - where Mr Hanks says this person was a defence
12:31:47 4 barrister and a registered police informer.
5
12:31:52 6 Yeah, okay. I follow that. All right. Were you aware -
12:32:00 7 the matter resolved on the 12th. Were you aware that - - -
12:32:11 8 ?---There was no secret amongst the legal practitioners
12:32:14 9 that this person was a registered informer. That was the
12:32:17 10 basis of what we were looking at with the discovery issues
12:32:20 11 that we had.
12
12:32:21 13 Yes?---M'mm.
14
12:32:22 15 No, I follow that?---M'mm.
16
12:32:27 17 I suppose to be - perhaps what I might do is ask you about
12:32:31 18 this?---I'm not surprised that he's forgotten because it
12:32:37 19 wasn't the issue in the case at that point. The case had
12:32:41 20 moved on to quantum and dealing with those aspects.
21
12:32:48 22 Can I ask you then perhaps to have a look at an email -
12:32:52 23 sorry, a note of a discussion on 9 June or a meeting on 9
12:33:00 24 June 2010 at which Mr Lardner was present,
12:33:15 25 VGS0.2000.0131.0405. As I say, I'm not suggesting that you
12:33:27 26 were present but it appears that there was Mr Cain,
12:33:31 27 Mr Lardner, Mr Gleeson and David Ryan and it involved a
12:33:38 28 discussion about the management of documents, do you see
12:33:40 29 that?---Yes.
30
12:33:46 31 And it seems the practicalities or the management issues
12:33:55 32 involving the litigation, and there's a note to this
12:34:04 33 effect: "Most significant informer in Australia's legal
12:34:08 34 history", do you see that?---Yes.
12:34:10 35
12:34:10 36 "Significant LPP issues"?---Yes.
37
12:34:20 38 Was that your understanding at the time, having had
12:34:23 39 discussions with Mr Lardner, that Ms Gobbo was one of the
12:34:30 40 most significant, or the most significant informer in
12:34:33 41 Australian legal history?---That's not Mr Lardner's note,
12:34:38 42 no.
43
12:34:39 44 Do you know whose note that is?---That would be Stephen
12:34:42 45 Lee, head of litigation.
46
12:34:44 47 He would have been present at this meeting you say?---It

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12:34:49 1 looks like one of his file notes.
2
12:34:51 3 Yes. There's reference to stand alone laptops, highly
12:34:55 4 encrypted memory sticks, et cetera?---Yes, because of the
12:34:57 5 amount of information that we were trying to put together,
12:35:00 6 m'mm.
7
12:35:01 8 But still, were you aware at that stage that she was an
12:35:04 9 extraordinarily significant informer?---Yes. That's why I
12:35:09 10 was at the OPI.
11
12:35:12 12 If we go on to the next page, there's a reference to 250
12:35:17 13 hours of conversations, Ringtail must stand alone?---Yes.
14
12:35:23 15 And security issues provided?---That's my memory about
12:35:26 16 Ringtail, because I thought we'd need to deal with it as an
12:35:31 17 electronic trial.
18
12:35:43 19 Would you have had discussions with Mr Lardner about any of
12:35:48 20 the matters that are referred to in that conference on 9
12:35:52 21 June?---I certainly had discussion with him about
12:36:01 22 preparation of - it was my idea to have Ringtail, so I have
12:36:05 23 contemplated the size of the discovery issues.
24
12:36:08 25 Right. Do you know whether at that stage, if we can go
12:36:24 26 back down, go to the other - first page. The note,
12:36:33 27 "Significant LPP issues", did you have any discussions with
12:36:38 28 Mr Lardner about significant legal professional privilege
12:36:42 29 issues at that stage?---I would have, which is reflective
12:36:46 30 of the notes that he put in considering the defence.
31
12:36:50 32 What did you understand the significant LPP issues to
12:36:54 33 be?---I don't know. I wasn't at this meeting.
34
12:36:58 35 No, but I'm asking you if you were aware that there were
12:37:04 36 significant LPP issues associated with Ms Gobbo being the
12:37:10 37 most significant informer in Australian legal
12:37:13 38 history?---M'mm.
39
12:37:13 40 Were you aware of that at that time?---Not of this, no.
41
12:37:18 42 You weren't at the meeting but in discussions with
12:37:22 43 Mr Lardner?---Not put in those terms, no.
44
12:37:25 45 Were you aware there were significant LPP issues
12:37:28 46 surrounding her role as an informer?---Well we would have
12:37:32 47 been looking at LPP, as you've seen.

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1
12:37:36 2 Commissioner, I'll tender that document. It's been
12:37:43 3 identified as a file note. You say that's Mr Lee's
12:37:47 4 handwriting?---That's what it looks like to me. I can't
12:37:50 5 confirm that.
12:37:51 6
12:37:52 7 #EXHIBIT RC1093A - (Confidential) VGS0.2000.0131.0405.
12:37:55 8
12:37:55 9 #EXHIBIT RC1093B - (Redacted version.)
12:38:09 10
12:38:09 11 WITNESS: I can't confirm that. It makes sense.
12
12:38:12 13 MR WINNEKE: Yes, all right. I take it you are aware -
12:38:32 14 after this litigation resolved were you involved in
12:38:36 15 discussions or were you aware of discussions that were to
12:38:41 16 be put in place to ensure that communications or any
12:38:47 17 communications with Ms Gobbo were very carefully
12:38:51 18 controlled, ongoing?---I was aware of it, yes.
19
12:38:54 20 I take it your desire was that there be no
12:38:58 21 communications?---Well, we needed a safety communication.
22
12:39:02 23 Yes?---M'mm. But I agree with you, yes.
24
12:39:08 25 What do you mean by that, "We needed a safety" - - -
12:39:13 26 ?---Well she was high risk, and welfare concerns for her as
12:39:16 27 well.
28
12:39:16 29 Yeah?---M'mm.
30
12:39:17 31 Your understanding was that Ms Gobbo, for whatever reason,
12:39:24 32 was likely to want to continue to engage with Victoria
12:39:28 33 Police?---That's what they told me, yes.
34
12:39:32 35 So were you involved in any processes which developed
12:39:37 36 guidelines to control what communication there was with
12:39:41 37 Ms Gobbo should it continue?---I think Peter took the lead
12:39:45 38 from the Legal Services Department on that.
39
12:39:49 40 Right?---As a flow on from the litigation.
41
12:39:54 42 Can we have a look at this - - - ?---Peter Lardner.
43
12:39:56 44 Peter Lardner. Look at this email chain,
12:40:17 45 VPL.0005.0010.2020. This is obviously an email which is,
12:40:19 46 it seems to have been printed off Mr Bona's system, but it
12:40:23 47 doesn't include you but it's to Doug Fryer, Shane

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12:40:28 1 O'Connell, Graham Evans, Peter Lardner?---Yes.
2
12:40:32 3 It says, "Witness F continued contact with Purana members.
12:40:37 4 Great news re the settlement with Witness F yesterday
12:40:41 5 whoever you'll see" - - -
12:40:41 6
12:40:42 7 MR HOLT: Commissioner, there's just been a name raised
12:40:43 8 which needs to be taken from the transcript, it's at line
12:40:46 9 5. It's the second to last name, that full name.
10
12:40:50 11 MR WINNEKE: Oh, yes.
12:40:51 12
12:40:51 13 MR HOLT: If that can be taken from the transcript. There
12:40:54 14 is a pseudonym for that which sits at number 10 on Exhibit
12:40:59 15 81.
16
12:40:59 17 COMMISSIONER: Line 45.
12:41:00 18
12:41:01 19 MR HOLT: Line 45, the second to last name.
20
12:41:04 21 COMMISSIONER: On 12769.
22
23 MR HOLT: If that could be replaced with the pseudonym.
24
12:41:07 25 COMMISSIONER: The third name on the line.
26
12:41:10 27 MR HOLT: At ten, and taken from the live transcript, I'd
12:41:14 28 be grateful.
29
30 MR WINNEKE: I thank Mr Holt for that. I apologise.
31
12:41:19 32 COMMISSIONER: It should be taken from the live streaming
12:41:22 33 and the transcript and be replaced with pseudonym number 10
12:41:31 34 in Exhibit 81.
12:41:32 35
12:41:32 36 MR HOLT: Thank you.
37
12:41:34 38 MR WINNEKE: You see below that she has already recommenced
12:41:38 39 contact by SMS with a Purana member - and I won't mention
12:41:40 40 that name either - and appears to be trying to
12:41:45 41 re-engage?---Yes.
42
12:41:45 43 You can see the message, the text message that she
12:41:49 44 received, that is the person who was in receipt of the text
12:42:04 45 message?---Yes.
46
12:42:04 47 I take it you were aware of these issues generally, if not

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12:42:09 1 this particular email?---Oh yes, yes. That we needed to
12:42:13 2 shut down communications.
3
12:42:18 4 I think ultimately - - - ?---Other than for safety and
12:42:21 5 welfare.
6
12:42:22 7 You came to the view and were aware at this time that
12:42:28 8 Ms Gobbo was in effect, if not impulsively, or compulsively
12:42:39 9 wanting to engage with Victoria Police?---Yes.
10
12:42:42 11 That suggests - she's just settled litigation with Victoria
12:42:46 12 Police. It does suggest she's got a strong desire, if I
12:42:50 13 can put it mildly, to be speaking to police
12:42:53 14 officers?---Yes.
15
12:42:53 16 She's hooked on informing, if you like, do you agree?---I'm
12:43:02 17 a little bit distant from that but she - yeah, she
12:43:10 18 definitely wants to continue to talk to police about
12:43:12 19 matters, yep.
20
12:43:15 21 As a criminal defence barrister can I suggest that is -
12:43:20 22 would be a concern?---Yes. Absolutely, yes.
23
12:43:23 24 Because it may well mean that in terms of the filter that
12:43:28 25 she should be applying to any communications with Victoria
12:43:31 26 Police, there isn't much of a filter?---M'mm.
27
12:43:35 28 That is another - can I suggest it's another reason why
12:43:38 29 you, as the person who manages risk, should have been very
12:43:42 30 keen to find out what she's been doing?---Yes.
31
12:43:47 32 You accept that?---Well it's a flag. I mean there's
12:43:50 33 sliding door moments everywhere in this matter.
34
12:43:52 35 When do you think the first sliding door moment
12:43:56 36 was?---Well, whenever she has contact with us. I mean -
37 are you talking about for me?
38
12:44:00 39 What about your first sliding door moment, were there any
12:44:00 40 sliding doors as far as you were concerned?---Sliding door
12:44:05 41 moments happen in every interaction. All I could do is do
12:44:10 42 the best I could, get the advice that I could, speak to the
12:44:12 43 people who were on the ground dealing with things and take
12:44:16 44 what steps that I thought were necessary, which is what I
12:44:19 45 was doing.
46
12:44:20 47 Do you think with the benefit of hindsight that you missed

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12:44:25 1 the train at any stage?--Well I can tell you that we had
12:44:28 2 some of the best legal minds in Victoria working on that
12:44:32 3 and we were all of the same view.
4
12:44:36 5 Okay?--And they were looking directly at materials that I
12:44:40 6 wasn't.
7
12:44:41 8 Okay. I tender that, Commissioner.
12:44:53 9
12:44:54 10 #EXHIBIT RC1094A - (Confidential) Email chain,
12:39:59 11 VPL.0005.0010.2020.
12:44:55 12
12:44:56 13 #EXHIBIT RC1094B - (Redacted version.)
14
12:45:01 15 The upshot of this, or subsequent to the litigation, there
12:45:06 16 was a notation to the effect that if any lawful request,
12:45:16 17 order for production or subpoenas are received, this is by
12:45:22 18 the officer in charge of the Subpoena Management Unit, that
12:45:27 19 the Director of Legal Services be notified immediately
12:45:30 20 about those?---Yes.
21
12:45:31 22 That request?---Yes.
23
12:45:32 24 You're aware of that?---Yes. Meaning my department, yes.
25
12:45:37 26 Sorry?---My department.
27
12:45:38 28 Yeah?---M'mm.
29
12:45:39 30 Any documents pertinent to Ms Gobbo in the investigation of
12:45:42 31 other matters conducted by Victoria Police must go to the
12:45:46 32 Director of Legal Services and the officer-in-charge.
12:45:49 33 Civil Litigation Division are to be notified
12:45:51 34 immediately?---Yes.
35
12:45:52 36 You're aware of that?---Yes, because the Subpoena
12:45:55 37 Management Unit at that time was in our policy area.
38
12:45:57 39 Yes?---Now it's in Legal Services.
40
12:45:59 41 What was the purpose of that?---So that we could deal with
12:46:02 42 any issues arising, any legal issues arising out of that.
43
12:46:09 44 Indeed, it wasn't just to go to your department, but it was
12:46:12 45 to go to you in particular?---No.
46
12:46:15 47 Well it says - let me put this up.

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12:46:19 1 VPL.0005.0010.1989?---That would see it come to the staff
12:46:27 2 officer and it would be allocated to whatever area we
12:46:30 3 needed to allocate it to.
4
12:46:31 5 So that's a - - - ?---I'm like a post box. I'm the head of
12:46:39 6 the department and everything is addressed to me.
7
12:46:41 8 I follow?---Yes.
9
12:46:42 10 That's the effect of the discussion, sorry, the direction
12:46:44 11 is set out there?---Yeah, it could have said "staff
12:46:47 12 officer", but that wouldn't have given it enough
12:46:50 13 importance.
14
12:46:51 15 Yes. And it was to remain in place until 20 August this
12:46:55 16 year, 2020?---I don't know why that is.
17
12:46:59 18 And the officer-in-charge of the Civil Litigation Division
12:47:03 19 there. So two people, both the Director of Legal Services
12:47:06 20 and the OIC Civil Lit Division?---Obviously we wouldn't
12:47:13 21 both be working on it, so the OIC Civil Litigation would
12:47:19 22 take it.
23
12:47:21 24 I tender that, Commissioner.
12:47:22 25
12:47:22 26 #EXHIBIT RC1095A - (Confidential) VPL.0005.0010.1989.
12:47:24 27
12:47:25 28 #EXHIBIT RC1095B - (Redacted version.)
29
12:47:27 30 It may well be that that date is relevant because of the
12:47:35 31 terms of settlement. Do you know whether that's the case
12:47:38 32 or not?---I can't recall.
33
12:47:40 34 No, I follow that. Were you aware that Mr Overland, the
12:47:51 35 Chief Commissioner, communicated with the Minister,
12:47:55 36 Mr Cameron, as a consequence of a letter which had been
12:48:00 37 written to him undertaking that he would everything
12:48:02 38 possible to ensure that there'd be no repeat of such a
12:48:05 39 claim against Victoria Police. Were you aware of - - -
12:48:10 40 ?---I was aware of the letter. I can't recall the
12:48:12 41 communication.
42
12:48:13 43 Right. Were you involved in the preparation of guidelines
12:48:17 44 that were produced to deal with ongoing contact with
12:48:20 45 Ms Gobbo?---I think that would have been through my civil
12:48:25 46 litigation group but I would have been aware of it, that
12:48:29 47 something was happening.

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1
12:48:30 2 And were you aware that there was in fact ongoing
12:48:34 3 communication with Ms Gobbo and Ms Gobbo provided further
12:48:37 4 information to Victoria Police subsequent to the settlement
12:48:41 5 of the litigation?---I can't recall that. In regard to
12:48:49 6 what?
7
12:48:50 8 Discussions and providing of information?---At that time?
9
12:48:57 10 Subsequent - the Commission has evidence or information
12:49:01 11 that Ms Gobbo continued to provide information to Victoria
12:49:04 12 Police?---She continued - I have no doubt she continued to
12:49:07 13 contact people.
14
12:49:08 15 Right?---M'mm.
16
12:49:09 17 Were you involved in the preparation of guidelines to deal
12:49:16 18 with communications with her should they occur?---Not
12:49:20 19 directly. I think I would have been informed in the sense
12:49:23 20 - I'm not sure what you mean by guidelines. I think there
12:49:27 21 were directions put out to cease contact is my memory.
22
12:49:32 23 Right. Well if we have a look at this document,
12:49:39 24 VPL.0005.0013.1038. This is in your statement, you say,
12:49:45 25 "For example, on 8 September, 8.43 am Superintendent
12:49:49 26 Lardner sent an email to Superintendent Paul Sheridan in
12:49:54 27 relation to how any future contact between Ms Gobbo and
12:49:57 28 Victoria Police was to occur and the [REDACTED] of a
12:49:59 29 [REDACTED] that Ms Gobbo had been
12:50:04 30 using"?---That must have been on my file. That's
12:50:06 31 consistent with my memory that Peter was dealing with it,
12:50:09 32 m'mm.
33
12:50:10 34 All right. I tender that, Commissioner.
35
12:50:16 36 COMMISSIONER: It's already been tendered, I'm told, 838.
37
12:50:26 38 MR WINNEKE: She wishes to speak to witness protection
12:50:30 39 people to assess her situation re risk and with
12:50:33 40 consideration to entering the program. She also wishes to
12:50:36 41 [REDACTED] et cetera?---I see.
42
12:50:38 43 She also seeks to provide information concerning the Driver
12:50:43 44 investigation, do you see that?---Yes.
45
12:50:45 46 Were you aware that the guidelines indicated that the
12:50:47 47 source - that the information can be accepted and kept by

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12:50:53 1 Victoria Police but the source of the information shouldn't
12:50:56 2 be recorded? Were you aware that those - the guidelines
12:51:01 3 that were set up which were - - - ?---No, I'm not aware of
12:51:05 4 that. I mean obviously information that's received should
12:51:08 5 be recorded but I'm not aware of those arrangements.
6
12:51:15 7 Would that be unusual, that the source of the information
12:51:18 8 wouldn't be recorded?---Yes.
9
12:51:26 10 I tender that, Commissioner.
11
12:51:34 12 COMMISSIONER: Is that Exhibit 838? That's already
12:51:36 13 tendered. Exhibit 838, yes.
14
12:51:43 15 MR WINNEKE: If I can move on to a different topic. You
12:51:51 16 were aware - now, is it fair to say that as far as you were
12:51:59 17 concerned once this litigation had resolved you weren't
12:52:04 18 going to take any further steps to delve into and get to
12:52:09 19 the bottom of the extent to which Ms Gobbo had been
12:52:11 20 providing information, whether she'd been providing
12:52:14 21 information against her clients, and so forth?---No, I
12:52:16 22 think we were focused on safety at that point, m'mm.
23
12:52:20 24 Right. You agree with that proposition?---Yes.
25
12:52:26 26 That you weren't - - - ?---No, I wasn't working on it.
27
12:52:29 28 No. You had no intention at that stage of trying to
12:52:34 29 establish whether or not Ms Gobbo had done anything
12:52:37 30 unethical or Victoria Police officers had done anything
12:52:41 31 unethical with respect to her use as an informer?---No.
32
12:52:45 33 Right. The next thing that occurs, or at least as far as
12:52:50 34 you're concerned, is that Mr Dale, Paul Dale was charged
12:52:57 35 with 12 offences in relation to evidence that he gave to
12:53:02 36 the ACC, the Australian Crime Commission?---Yes.
37
12:53:06 38 In 2007 and 2008?---Yes.
39
12:53:08 40 Were you aware that he was going to be charged?---No. I
12:53:12 41 know there was some discussion about it but I wasn't aware
12:53:16 42 he was going to be charged.
43
12:53:18 44 Right. I take it the discussion that you were aware of -
12:53:25 45 what were you aware of?---I think it related to the recital
12:53:32 46 and whether she could be called.
47

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12:53:34 1 Yes?---And there was - I had some short discussions with
12:53:40 2 Ken Jones and - probably at Ken Jones level - where he was
12:53:47 3 querying whether that was lawful.
4
12:53:49 5 Yes?---And obviously if a prosecution authority wants to
12:53:54 6 compel a witness, she was compellable.
7
12:53:56 8 Yes?---So Sir Ken was informed of that.
9
12:53:59 10 You understand that Mr Jones, Deputy Commissioner Jones,
12:54:07 11 was involved with Operation Driver at that stage?---Yes.
12
12:54:09 13 And he was keen to have Mr Dale charged with those
12:54:12 14 offences?---Yes.
15
12:54:13 16 And you had discussions with him about the recital?---Yes.
17
12:54:18 18 And he indicated, did he, that he questioned the
12:54:23 19 recital?---Yes.
20
12:54:24 21 Did it suggest to you that he wasn't aware of the
12:54:28 22 recital?---No, he knew about the recital. He was asking
12:54:31 23 whether it was binding.
24
12:54:32 25 Right?---M'mm.
26
12:54:36 27 Did he suggest to you that it surely couldn't be binding
12:54:46 28 because it was necessary, if it was necessary for Ms Gobbo
12:54:51 29 to give evidence about that matter then she would have to
12:54:53 30 be able to give evidence, is that the gist of what he was
12:54:56 31 saying?---No, no. He was asking whether it was binding in
12:55:01 32 the sense that she shouldn't be called.
33
12:55:04 34 Right?---And we provided advice back that she was competent
12:55:09 35 and compellable.
36
12:55:13 37 Right. When you say we, did you personally provide advice
12:55:16 38 or did you get advice - - - ?---I think I had VGSO check
12:55:21 39 the Terms of Reference and it was just by an email.
40
12:55:24 41 When you say the Terms of Reference, the - - - ?---Sorry,
12:55:26 42 the terms of the agreement, yeah, the settlement.
43
12:55:40 44 You were aware that there would be issues, which were
12:55:47 45 similar issues which had arisen in the murder prosecution
12:55:50 46 against Dale, with respect to subpoenas?---Well my
12:55:59 47 response, from memory, was not about that. It was about

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12:56:05 1 the reliability of her evidence, whether we'd end up in
12:56:09 2 litigation again.
3
12:56:10 4 Right?---And I pushed back.
5
12:56:16 6 You pushed back on what?---I pushed back on the thought of
12:56:22 7 her being a witness again.
8
12:56:23 9 In your statement you say Victoria Police had concerns.
12:56:26 10 "Whilst I don't recall the circumstances in which the issue
12:56:29 11 emerged, Victoria Police had concerns that Dale would issue
12:56:33 12 a subpoena with a similar scope to the subpoena served by
12:56:36 13 him in his committal for the murder of the Hodsons"?---I
12:56:39 14 think that came later.
15
12:56:41 16 Right. So by August you were aware that the Commonwealth
12:56:44 17 DPP intended to call her as a witness, "And while I don't
12:56:51 18 recall" - - - ?---I'm talking about February.
19
12:56:53 20 I follow that. One assumes that if - you would have been
12:57:00 21 aware that he was going to be charged - - - ?---No.
22
12:57:03 23 - - - there would be issues with the subpoenas?---Yes, of
12:57:06 24 course. Sorry, bu I - with the commencement of the
12:57:10 25 investigation or prosecution I wasn't involved.
26
12:57:12 27 No?---So it came up later, yes.
28
12:57:15 29 Right. You were aware of the concerns about
12:57:21 30 subpoenas?---What concerns are you talking about?
31
12:57:24 32 Well I'm asking you. Dale would issue a subpoena, Victoria
12:57:29 33 Police had concerns that he'd issue a subpoena with a
12:57:32 34 similar scope to the subpoena served by him in the
12:57:36 35 committal proceeding, that's what you've said in your
12:57:38 36 statement?---Yes.
37
12:57:39 38 What were the concerns?---I'll have to go to the file note
12:57:42 39 that's attached. Is there a file note? Because I can't
12:57:45 40 recall.
41
12:57:45 42 There's no file note.
43
12:57:47 44 COMMISSIONER: Do you want to have a look at your
12:57:48 45 statement?---What's the date of it?
46
12:57:52 47 MR WINNEKE: 5.1.

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1
12:57:53 2 COMMISSIONER: Yes, 5.1.
12:58:14 3
12:58:15 4 WITNESS: No, that's in January. And then by August. Yes,
12:58:17 5 I see. Yep, m'mm.
6
12:58:19 7 MR WINNEKE: Now, do you recall what the concerns
12:58:29 8 were?---Well my memory is that the investigators had
12:58:39 9 concerns about the broadness of potential subpoenas, as
12:58:47 10 they always do.
11
12:58:48 12 Yes?---But the issue for me, when I was brought into it,
12:58:54 13 was that having her as a witness in the Dale matter again
12:59:00 14 presented a high risk to her life.
15
12:59:04 16 Right?---So Mr Ashton instructed Mr Fryer to ask me to
12:59:14 17 attend some meetings because they had formed the view that
12:59:22 18 she should not be a witness because it was too high risk.
19
12:59:25 20 I got the impression from what you were saying yesterday is
12:59:30 21 that you regarded investigators as being cavalier with
12:59:33 22 Ms Gobbo's safety?---No, no, not at all.
23
12:59:37 24 Well - - - ?---No, no. I mean the investigators - you've
12:59:41 25 got the investigators who are dealing with the safety
12:59:44 26 issues.
27
12:59:44 28 Yes?---But you've also got the investigators who want to
12:59:48 29 call her as a witness.
30
12:59:49 31 That's what I'm talking about?---But they're not cavalier
12:59:52 32 with safety, they're very concerned about safety.
33
12:59:55 34 No, I understand that. The impression I got yesterday was
12:59:58 35 that you were critical of investigators who simply wanted
13:00:02 36 to use Ms Gobbo as a witness and you got quite upset about
13:00:07 37 it?---Yes, I did.
38
13:00:08 39 And your view was that they were, at all costs, keen to use
13:00:14 40 Ms Gobbo at the expense of her safety?---When you mentioned
13:00:18 41 the stabbing of the leg - - -
42
13:00:21 43 Yes?---- - - it brought back memories of not only members
13:00:28 44 of Victoria Police, but others, not taking into account the
13:00:35 45 - her welfare.
46
13:00:43 47 I was asking you questions - - - ?---And it wasn't a

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13:00:45 1 criticism, because they're trying to achieve outcomes, I
13:00:49 2 understand that. As I said, they would call it today, but
13:00:54 3 there are broader issues that are before this Royal
13:00:57 4 Commission about safety and disclosure and procedures.
5
13:01:01 6 Yes?---That were beyond some of those investigators.
7
13:01:07 8 Right, okay. At about this time you were dealing, and I
13:01:14 9 touched upon this yesterday, with issues which had arisen
13:01:18 10 with investigators who had failed to properly attest to
13:01:25 11 affidavits in support of warrants for various, you know,
13:01:32 12 processes like - - - ?---The affidavit issues.
13
13:01:36 14 Marijancevic issues?---Yes, yes, yes. Investigators - it
13:01:41 15 was 9,500, it was the entire workforce nearly.
16
13:01:47 17 As I understand it - and you talked yesterday about
13:01:54 18 processes which you had to engage in with the OPI and with
13:01:58 19 the OPP?---Yes.
20
13:01:59 21 To bring about a situation where you could get these
13:02:03 22 investigators, police officers to come forward?---Yes.
23
13:02:05 24 And admit that they actually had not done what they had
13:02:11 25 been required to do?---Yes.
26
13:02:14 27 I think what you were saying in your statement - you say
13:02:22 28 this, that prior to getting that, resolving that issue with
13:02:26 29 respect to [REDACTED], there'd been a trickle of
13:02:29 30 disclosures, I think 14 disclosures - - - ?---I think in
13:02:33 31 the first week or something like that.
32
13:02:34 33 The first week?---Yes.
34
13:02:36 35 And then there was a process undertaken to get the
13:02:39 36 [REDACTED] and then there was a veritable flood of
13:02:43 37 disclosures once it had become plain to police officers
13:02:46 38 that nothing would come of it as far as they were
13:02:49 39 concerned, there'd be no disciplinary proceedings, no
13:02:53 40 prospect of criminal charges or anything like that. You
13:02:57 41 were flooded with disclosures, 9,000 of them?---Yes.
42
13:03:01 43 That no doubt caused you a real issue because it may well
13:03:04 44 be, given the outcome of that County Court litigation, the
13:03:08 45 case of Marijancevic, where a County Court judge had said,
13:03:11 46 "Look, I'm going to exclude evidence which had been
13:03:13 47 obtained pursuant to a warrant where there hadn't been a

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13:03:17 1 sworn affidavit"?---Yes.
13:03:18 2
13:03:19 3 "I'm going to exclude that evidence, it can't be used."
13:03:24 4 Your view then was, well look, it may well be that people
13:03:25 5 now will have been convicted or people are now being
13:03:29 6 prosecuted on the basis of evidence which is
13:03:32 7 inadmissible?---Yes.
8
13:03:34 9 And therefore there might be convictions set aside if this
13:03:38 10 position stands?---Yes.
11
13:03:39 12 So it was a great deal of certain, and you were dealing
13:03:41 13 with it at that stage, in a number of ways, correct?---Yes,
13:03:45 14 we were meeting every night.
15
13:03:47 16 Meeting every night, you were working - - - ?---We had a
13:03:48 17 steering committee. All the relevant senior officers were
13:03:50 18 there and we met up on the Chief's floor each night.
19
13:03:54 20 Who were the officers who were dealing with this issue
13:03:57 21 with?---The senior officers?
22
13:03:59 23 Yes, do you remember?---Tim Cartwright was the convener.
24
13:04:09 25 Yes?---And I think we Ethical Standards Crime, the Academy,
13:04:14 26 Legal Services. A cross section of - policy people.
27
13:04:20 28 Yes?---M'mm.
29
13:04:22 30 So you were dealing with a number of, things, but the first
13:04:25 31 thing, was as a result of that decision, "Well look, we
13:04:29 32 have to find out how many - how wide this problem
13:04:34 33 is"?---Yes.
34
13:04:34 35 And, as you say, it turned out to be endemic?---Yes.
36
13:04:38 37 That that led to the real possibility of a flood of appeals
13:04:41 38 and those sorts of issues?---Yes, and we were making
13:04:45 39 thousands of disclosures.
40
13:04:47 41 When you say you were making thousands of disclosures?---Or
13:04:50 42 hundreds.
43
13:04:51 44 Hundreds of disclosures. What was the process of making
13:04:53 45 disclosures?---Through the two prosecution offices we wrote
13:04:56 46 to accused - the barristers and solicitors.
47

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13:05:00 1 To accused's solicitors?---Yes.
2
13:05:02 3 And effectively you were writing to both the DPP,
13:05:05 4 Commonwealth and State, and saying, "Look, here's a
13:05:07 5 problem. It appears we've got this problem"?---Yes.
13:05:10 6
13:05:10 7 "It may well be that these people have been improperly
13:05:15 8 convicted"?---Yes.
9
13:05:16 10 And you were writing to defence counsel?---In individual
13:05:18 11 cases, yeah, that's right.
12
13:05:19 13 Individual cases?---So when someone did an affidavit they
13:05:22 14 identified the cases and it went via the - we set up a
13:05:28 15 system with the working group and we had the informants
13:05:37 16 providing information to the prosecutors, both police
13:05:41 17 prosecutors and the Office of Public Prosecution.
18
13:05:44 19 So you believe that there were hundreds of disclosures
13:05:49 20 made?---Yeah.
21
13:05:49 22 To people who had been convicted and people who were facing
13:05:54 23 charges?---I think we were dealing with the matters that
13:05:55 24 were before the court as a priority.
25
13:05:59 26 So you hadn't made disclosures to people who had been
13:06:02 27 convicted already?---I don't know. I can't recall.
28
13:06:04 29 That could be thousands?---Yes.
30
13:06:08 31 Because this practice might have been going on for years
13:06:11 32 and years?---Yes.
33
13:06:12 34 So what you then were also focusing on was changing the
13:06:18 35 legislation to enable you, in effect, to say, "Well look,
13:06:21 36 which was illegal previously is now okay", or it now
13:06:23 37 doesn't mean the evidence hasn't been rendered
13:06:27 38 inadmissible?---There were cases, but there was also the
13:06:29 39 decision of Borg with Justice Lasry that said the steps
13:06:33 40 that the prosecution agencies and police had taken were
13:06:38 41 adequate and he admitted evidence, yes, on the balancing
13:06:40 42 act.
43
13:06:41 44 Yes, I follow that?---Yes.
45
13:06:44 46 But you were liaising with government in connection with
13:06:46 47 legislative reform in order to overcome the issues?---Well

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13:06:49 1 both agencies were, yes.
2
13:06:52 3 Was there legislative change?---Yes.
4
13:06:57 5 Which meant that any of those issues in effect were put to
13:07:00 6 bed?---Yes.
7
13:07:02 8 Right. At that stage, or at least shortly - well around
13:07:12 9 that time Mr Mokbel was making an application before the
13:07:20 10 Supreme Court?---Yes.
11
13:07:21 12 To change his plea; is that right?---Yes.
13
13:07:24 14 And I think he had entered a plea of guilty in about April
13:07:31 15 or thereabouts - I stand to be corrected - of 2011 and then
13:07:37 16 I think in about October of 2011 he sought to change his
13:07:42 17 plea?---Yes.
18
13:07:42 19 On the basis of evidence which had been admitted against
13:07:45 20 him would probably have been obtained on the basis of
13:07:50 21 improperly - - - ?---Yes.
22
13:07:53 23 - - - produced affidavits?---Yes.
24
13:07:55 25 And so that was, at that stage, his attempt to set aside
13:08:02 26 his plea of guilty?---Yes.
27
13:08:06 28 Correct?---Yep.
29
13:08:07 30 I take it you were aware of that?---Yes.
31
13:08:10 32 Right. That was, you say, distracting you at the time when
13:08:16 33 the issue of Ms Gobbo's - sorry, the litigation with
13:08:23 34 respect to Dale was also coming to your attention?---I
13:08:26 35 don't know that it was distracting me but I was working on
13:08:29 36 it, m'mm. It was a huge task.
37
13:08:32 38 It was a huge task?---M'mm.
39
13:08:36 40 Were you aware that the litigation which was going on in
13:08:42 41 front of Justice Whelan involved a number of members of
13:08:46 42 Purana giving evidence about whether or not they had
13:08:49 43 properly sworn affidavits?---Yes.
44
13:08:52 45 You understood that senior counsel was engaged in that
13:08:57 46 matter, both for Mr Mokbel and also for the Crown?---Yes, I
13:09:04 47 think so.

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1
13:09:05 2 It was a fairly important piece of litigation?---Yes, the
13:09:08 3 matter before Justice Whelan?
4
13:09:10 5 Yes?---Yes.
6
13:09:11 7 And you were aware of all of that?---Yes.
8
13:09:16 9 To what extent were you involved, what was your involvement
13:09:22 10 in that matter?---My awareness is on the steering committee
13:09:24 11 because we went round the table to check whether
13:09:28 12 disclosures had been made.
13
13:09:29 14 Yes?---And I understood disclosures were made in that
13:09:32 15 matter.
16
13:09:33 17 Is that what led to Mr Mokbel attempting to change his
13:09:36 18 plea?---I think he'd already - - -
19
13:09:39 20 As far as you were aware?---I think he'd already done it.
21
13:09:43 22 Because he'd heard about - - - ?---Yeah, because - - -
23
13:09:50 24 Okay. Also going on at that time, can I put you into this
13:09:58 25 picture, Ms Gobbo was still speaking to members of Victoria
13:10:03 26 Police and she was speaking to Mr Buick, Boris Buick, I
13:10:09 27 take it you know him?---Yes, I know him but I didn't know
13:10:12 28 that.
29
13:10:14 30 And there were discussions going on between Victoria Police
13:10:16 31 and the CDPP about that prosecution?---Right.
32
13:10:19 33 Right. As you've said in your statement, you're aware that
13:10:26 34 the CDPP wanted to call her in the Dale
13:10:30 35 prosecution?---Eventually, yes.
36
13:10:32 37 It seems that in a discussion between Mr Buick, the CDPP
13:10:39 38 and Ms Gobbo about whether or not she would be called to
13:10:44 39 give evidence, Ms Gobbo was making it plain that she didn't
13:10:48 40 want to give evidence and that there were various health
13:10:50 41 issues which would cause difficulties for her in giving
13:10:54 42 evidence?---Okay.
43
13:10:55 44 But she also said that there was an enormous amount of
13:11:00 45 material, and this has been evidence before the
13:11:04 46 Commission?---Yes.
47

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13:11:05 1 Could be subpoenaed that would cause her irreparable harm.
13:11:13 2 And that's p.114 of a transcript of a discussion on 24
13:11:15 3 August 2011. At p.118 of the transcript she said that, "I
13:11:27 4 don't want to talk cryptically but it's maybe a
13:11:30 5 conversation for another day, but it affects", and this is
13:11:33 6 the subpoena matters, "affects matters that are being
13:11:37 7 prosecuted by your office at the moment". "Okay", says
13:11:41 8 Ms Breckweg. "Very significant matters", says Ms Gobbo.
13:11:47 9 That was what Ms Gobbo raised in that discussion by way of
13:11:51 10 a sort of a warning flag?---Yes.
11
13:11:54 12 Right. Later she had a discussion with Mr Buick and she
13:12:01 13 made it clear to Mr Buick that what she was talking about
13:12:05 14 in that meeting with the CDPP was the tomato tins
13:12:12 15 importation?---I see.
16
13:12:13 17 Right?---Yes.
18
13:12:14 19 You subsequently became aware of this issue, I take it,
13:12:17 20 because it was a matter you discussed on 3 November with
13:12:20 21 Mr Cartwright and Mr Ashton, do you accept - do you recall
13:12:24 22 that?---No.
23
13:12:25 24 Right. I'll take you to it. You were aware, as you've
13:12:33 25 indicated in your statement, that there were issues about
13:12:36 26 subpoenas. It's quite clear you were aware about that,
13:12:41 27 concern about that?---Yes.
28
13:12:42 29 And you were aware that Mr Buick sought an advice from the
13:12:48 30 VGSO about whether the Witness Protection Act could be used
13:12:53 31 to protect Ms Gobbo from disclosure, so that issue had
13:12:57 32 arisen again?---Yes.
33
13:12:59 34 And ultimately you received an advice, I think in relation
13:13:02 35 to that, again I think it's a matter that you refer to in
13:13:08 36 your statement, if I'm not incorrect. Do you accept
13:13:11 37 that?---I can't recall.
38
13:13:23 39 At p.31 at 5.18. I withdraw that?---Are you talking about
13:13:36 40 the 4 October advice?
41
13:13:38 42 No, no. Perhaps I'll leave that?---I don't recall that.
43
13:13:49 44 You don't recall that, okay. 5.9, "I received advice from
13:13:55 45 Greg Elms of the VGSO as to whether the WPA could be
13:14:00 46 invoked to protect a witness in a criminal trial"?---I see.
47

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13:14:05 1 And you footnote that advice. Again, this advice was
13:14:09 2 requested by the Crime Department?---Yes.
3
13:14:10 4 Without your awareness?---I wouldn't know about it.
5
13:14:13 6 No, okay. You accept you received it?---Yes. All advices
13:14:22 7 are sent to me.
8
13:14:30 9 Were you aware that Mr Buick wanted an advice with respect
13:14:34 10 to an anticipated subpoena?---No.
11
13:14:42 12 Have a look at this document, 6025.0005.7898. This is on
13:14:52 13 31 August 2011. I think it's tendered, Commissioner. Do
13:15:06 14 you believe you would have seen this document, an issue
13:15:10 15 cover sheet prepared by Mr Buick, in which he was
13:15:13 16 requesting an advice in anticipation of a subpoena in the
13:15:15 17 Dale prosecution?---I can't recall it.
18
13:15:20 19 I note the time, Commissioner.
20
13:15:21 21 COMMISSIONER: Yes, that's Exhibit 680 I'm told. All right
13:15:25 22 then, we'll adjourn until 2 o'clock and then we're hearing
13:15:29 23 the application of Mr Nathwani.
13:15:33 24
13:15:33 25 MR NATHWANI: Yes. As you know, by necessity it will have
13:15:37 26 to be - - -
27
13:15:38 28 COMMISSIONER: I beg your pardon? Could you just speak
13:15:39 29 into a microphone, please.
13:15:41 30
13:15:41 31 MR NATHWANI: As you are aware it will be a hearing that
13:15:44 32 will need to be in private.
33
13:15:45 34 COMMISSIONER: It will start in public and you can say
13:15:47 35 publicly the nature of the application and we'll take it
13:15:49 36 from there.
13:15:50 37
13:15:51 38 MR NATHWANI: I can say the nature of the application now.
39
13:15:53 40 COMMISSIONER: All right then.
13:15:53 41
13:15:54 42 MR NATHWANI: Because it just saves time in many respects.
13:15:57 43 The application is that, as with other witnesses, that you
13:16:01 44 only be able to see the image of Nicola Gobbo and the
13:16:05 45 public be restricted from doing so.
46
13:16:09 47 COMMISSIONER: Can you tell me, is there any - does

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13:16:14 1 Ms Gobbo plan to give any further media interviews,
13:16:18 2 television interviews in particular?
13:16:21 3
13:16:21 4 MR NATHWANI: No, not as far as I'm aware.
5
13:16:23 6 COMMISSIONER: Have you got instructions to that effect?
13:16:26 7
13:16:26 8 MR NATHWANI: Again, I'd rather not do this in public.
9
13:16:29 10 COMMISSIONER: No, well I think that's a relevant factor to
13:16:31 11 be told in public.
13:16:33 12
13:16:35 13 MR NATHWANI: I've said no.
14
13:16:36 15 COMMISSIONER: Well I'd ask you over the lunchtime to get
13:16:37 16 instructions as to whether she intends to do any television
13:16:40 17 interviews because it's absolutely relevant to the nature
13:16:43 18 of the application you're making.
13:16:45 19
13:16:45 20 MR NATHWANI: Of course, I understand.
21
13:16:46 22 COMMISSIONER: Thank you. All right, we'll adjourn until 2
13:16:48 23 o'clock.
13:17:09 24
13:17:10 25 <(THE WITNESS WITHDREW)
13:17:11 26
27 LUNCHEON ADJOURNMENT
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13:47:31 1 UPON RESUMING AT 2.00 PM:
13:57:46 2
13:57:46 3 (At this stage Ms R Enbom SC appeared on behalf of Victoria
4 Police.
5
13:57:50 6 Mr S White appeared on behalf of The Age and Nine Network.
7
13:58:10 8 Mr A Croft appeared on behalf of the Herald and Weekly
13:58:55 9 Times, Seven Network and Nationwide News.)
14:02:29 10
14:02:31 11
14:02:34 12 COMMISSIONER: Now, this is an application concerning the
14:02:40 13 method in which Ms Gobbo's evidence will be taken next
14:02:45 14 week. The appearances are slightly different but I think
14:02:48 15 it's your application, Mr Nathwani.
14:02:50 16
14:02:51 17 MR NATHWANI: It is, and I understand it's supported by
14:02:55 18 Victoria Police.
14:02:55 19
14:02:55 20 COMMISSIONER: Ms Enbom for Victoria Police.
14:02:57 21
14:02:57 22 MS ENBOM: Yes Commissioner.
14:02:59 23
14:02:59 24 MR NATHWANI: To that end - - -
14:03:00 25
14:03:00 26 COMMISSIONER: I think there are some other appearances too
14:03:03 27 I have in respect of this application. The Age and Nine
14:03:08 28 Network, Mr White, a solicitor, is here.
29
14:03:12 30 MR WHITE: Yes Commissioner.
14:03:13 31
14:03:13 32 COMMISSIONER: Just come forward to the Bar table for the
14:03:17 33 time being, thanks. And Mr Croft for the Herald and Weekly
14:03:23 34 Times and the Seven Network and Nationwide News.
14:03:27 35
14:03:27 36 MR CROFT: Yes, Commissioner.
14:03:28 37
14:03:28 38 COMMISSIONER: Does anybody else want to be heard on this
14:03:30 39 application? All right then. Yes, Mr Nathwani.
14:03:36 40
14:03:38 41 MR NATHWANI: Commissioner, you've received a confidential
14:03:41 42 affidavit.
14:03:42 43
14:03:42 44 COMMISSIONER: I have, from Victoria Police.
14:03:44 45
14:03:45 46 MR NATHWANI: It is, and it's from AC Paterson and I wish
14:03:50 47 to properly make this application, to go into significant

14:03:55 1 detail relating to some of the contents therein and given
14:03:59 2 the nature of the material that's contained within it and
14:04:02 3 the legislation that applies.

14:04:05 4
14:04:05 5 COMMISSIONER: This could all be done by - you're asking
14:04:09 6 for - - -

14:04:09 7
14:04:09 8 MR NATHWANI: For a closed hearing, for a private hearing.
14:04:13 9 I do so cognisant of the Court of Appeal's comments and
14:04:18 10 rulings when your Commission sought to appeal or relax or
14:04:24 11 change suppression orders in relation to certain people and
14:04:27 12 they considered the issue of the *Inquiries Act*, plus other
14:04:30 13 Acts and how they co-existed, and the presumption as from
14:04:35 14 that authority, from I think it was Justice Whelan, Justice
14:04:40 15 Weinberg and others, was that the principle, the
14:04:41 16 presumption certainly is that given the matters that are to
14:04:45 17 be considered and discussed, the hearing should be in
14:04:48 18 private.

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14:04:49 20 [REDACTED]
14:04:53 21 [REDACTED]
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14:04:55 23 [REDACTED]
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14:11:58 5 [REDACTED]
14:11:58 6 [REDACTED]
14:12:02 7
14:12:02 8 COMMISSIONER: Of course, you're most welcome.
9
14:13:05 10 Before we return to the witness's evidence,
14:13:07 11 Mr Winneke, there's the material from the DPP that is to be
14:13:10 12 tendered.
14:13:11 13
14:13:12 14 MR WINNEKE: Yes, Commissioner. We have made a request to
14:13:20 15 the state DPP and received a response from the Director of
14:13:32 16 Public Prosecutions by way of a letter dated 8 November
14:13:34 17 2019 with a number of annexures which is responsive to our
14:13:43 18 request for information and I tender that, Commissioner.
14:13:46 19
14:13:46 20 COMMISSIONER: It's now gone through the PII process.
14:13:49 21
14:13:49 22 MR WINNEKE: It has been through that process and it's able
14:13:53 23 to be put up on our system.
14:13:57 24
14:13:57 25 COMMISSIONER: Are we tendering it as an A and B or will we
14:14:00 26 just tender it as the PIIed one?
14:14:03 27
14:14:07 28 MR WINNEKE: I think it can simply be tendered as an
14:14:09 29 exhibit which has been through a process of redactions. We
14:14:14 30 have an A and B, we do.
14:14:15 31
14:14:15 32 COMMISSIONER: We have an A and B I think that's right.
14:14:18 33
14:14:18 34
14:14:19 35 #EXHIBIT RC1096A - (Confidential) DPP response to the
14:14:20 36 Commission's inquiries 8/11/19.
14:14:29 37
14:14:31 38 #EXHIBIT RC1096B - (Redacted version.)
39
14:14:42 40 COMMISSIONER: Yes Mr Winneke.
14:14:43 41
14:14:45 42 <FINDLAY GERARD McRAE, recalled:
14:14:47 43
14:14:47 44 MR WINNEKE: Before we broke for lunch I'd asked you to
14:14:52 45 have a look at a cover sheet which Mr Boris Buick had put
14:14:55 46 together because he had become concerned about material
14:14:58 47 which might be disclosed in any subpoena in a proceeding

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14:15:07 1 against Paul Dale for allegedly lying to the Australian
14:15:13 2 Crime Commission, correct?---Okay.
14:15:14 3
14:15:14 4 Now, I asked you if you'd seen it and your belief is that
14:15:18 5 you hadn't seen it?---I can't recall.
14:15:20 6
14:15:23 7 Right. Now it seems also that around the same time
14:15:29 8 Mr Buick had sought an advice from the VGSO in relation to
14:15:35 9 the Witness Protection Act and its application to Ms Gobbo
14:15:40 10 and you say you received that advice?---Yes.
14:15:42 11
14:15:43 12 And it was forwarded to your office I think subsequently on
14:15:48 13 about 8 October and you've referred to that I think in your
14:15:53 14 statement?---Yes.
14:15:54 15
14:15:57 16 Now - - -?---6 October.
14:16:03 17
14:16:04 18 6 September he sought the advice - we'll put it up,
14:16:08 19 VPL.0100.0049.0001.
14:16:20 20
14:16:21 21 MR NATHWANI: Sorry, Commissioner, could I ask that the
14:16:24 22 live stream not, or the live stream be redacted for the
14:16:27 23 currency of what was discussed prior to this witness
14:16:31 24 returning. The reason being references were made, even if
14:16:39 25 - references were made to certain matters that should not
14:16:42 26 be in the public arena.
14:16:46 27
14:16:46 28 COMMISSIONER: I suppose you support that - Ms Enbom has
14:16:49 29 gone.
14:16:51 30
14:16:51 31 MR HOLT: I'm aware generally of the issues, on that basis
14:16:54 32 of the knowledge we have I do support the application.
14:16:56 33
14:16:57 34 COMMISSIONER: What do you say, Mr Winneke?
14:16:58 35
14:16:59 36 MR WINNEKE: I don't take issue at this stage with those
14:17:02 37 matters. We haven't received the submission that was being
14:17:05 38 discussed and perhaps it might be safer if we do before -
14:17:09 39 but I don't take any issue with that, Commissioner.
14:17:51 40
14:17:51 41 COMMISSIONER: Mr Nathwani, it would probably be from about
14:17:54 42 line 33 after "Inquiries Act".
14:17:58 43
14:17:58 44 MR NATHWANI: Yes. Given very little of substance actually
14:18:02 45 occurred, it's not just the transcript, it's also the live
14:18:05 46 stream, just simply, because it's been adjourned until
14:18:08 47 Monday, whether or not - - -

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14:18:11 1
14:18:12 2 COMMISSIONER: I'm not taking it out holus-bolus. I'm
14:18:21 3 sorry, Mr Nathwani, I know you're under a lot of pressure.
14:18:25 4
14:18:26 5 MR NATHWANI: No, no. Which page are we at?
14:18:29 6
14:18:29 7 COMMISSIONER: 1287, it's preliminary matters up to that
14:18:34 8 point and the first mention of the matters you're concerned
14:18:36 9 about seem to be at line 33 after Inquiries Act. So then
14:18:44 10 the rest - - -
14:18:45 11
14:18:45 12 MR NATHWANI: Can I ask line 16, because there's reference
14:18:50 13 to a decision that contains all of the material in many
14:18:57 14 respects that - - -
14:18:58 15
14:18:58 16 COMMISSIONER: All right then. Okay, after line 17, the
14:19:20 17 end of the first sentence, "In private", from that point.
14:19:24 18
14:19:24 19 MR NATHWANI: Thank you. Up until the return of Mr McRae.
14:19:56 20
14:19:56 21 COMMISSIONER: Okay, and then I think we can kick in again
14:20:00 22 at line 37.
14:20:11 23
14:20:11 24 MR NATHWANI: Sorry, which page is that, Commissioner?
14:20:13 25
14:20:14 26 COMMISSIONER: 12788, line 37.
14:20:24 27
14:20:24 28 MR NATHWANI: Yes.
14:20:29 29
14:20:30 30 COMMISSIONER: There's nothing else after that I think that
14:20:32 31 concerns us.
14:20:33 32
14:20:33 33 MR NATHWANI: No, I think that's right.
14:20:35 34
14:20:35 35 COMMISSIONER: All right. And there's another matter,
14:20:47 36 while we're still on that issue. The confidential
14:20:51 37 affidavit of Mr Paterson, it does say in paragraph 5,
14:21:08 38 "Should the Commissioner wish to provide the confidential
14:21:10 39 affidavit more broadly, I request I be given notice of the
14:21:13 40 details of the individuals, the Commission wishes to
14:21:17 41 provide the confidential affidavit and the reasons so I can
14:21:20 42 assess the need to apply any redactions", et cetera. I
14:21:24 43 would like the confidential affidavit to be made available
14:21:28 44 to counsel assisting Ms Tittensor and Mr Woods and the COE
14:21:33 45 of the Commission, Ms Kylie Kilgour.
14:21:37 46
14:21:38 47 MR HOLT: I'll take those instructions, I suspect I can get

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14:21:43 1 them promptly.
14:21:44 2
14:21:44 3 COMMISSIONER: Thank you. Yes Mr Winneke.
14:21:46 4
14:21:46 5 MR WINNEKE: Thanks, Commissioner. Ultimately you received
14:21:48 6 the advice on 6 October 2011, I'll come back to it, but if
14:21:57 7 we go - and you can see, see the first page there, you've
14:22:01 8 got your stamp on it which indicates that it's come to your
14:22:05 9 office?---Yes.
14:22:05 10
14:22:06 11 You see there are two stamps, received from the office of
14:22:09 12 the Director on 7 October and then it has your stamp,
14:22:13 13 Director, Legal Services, so there's certainly two stamps,
14:22:18 14 one when it gets to the office and one when it gets to
14:22:22 15 you?---No, it's a number for the document.
14:22:24 16
14:22:24 17 Is it?---Yes, so it will be with my staff officer.
14:22:27 18
14:22:28 19 That request was made, the request for that advice was
14:22:32 20 made, coverage of the Witness Protection Act, Driver Task
14:22:36 21 Force was made by Mr Buick on 6 September?---Yes.
14:22:40 22
14:22:40 23 Go right down to the bottom of that document, scroll
14:22:43 24 through it. That's as far as it goes, is it? No. There's
14:22:55 25 an issue cover sheet, 8 September, and that's an example I
14:23:00 26 think of a request for an advice, signed by Mr Buick, at
14:23:10 27 least signed by Mr Buick on 6 September and it's a
14:23:14 28 reference to a person called J Doe, so in effect it's
14:23:20 29 hypothetical?---Yes.
14:23:21 30
14:23:21 31 We had some discussion about that recently, whether that
14:23:24 32 sort of advice can be done and I take it that's the sort of
14:23:28 33 thing that can be done?---Hypothetical advice, yes.
14:23:33 34
14:23:33 35 Yes?---Yes.
14:23:34 36
14:23:36 37 There's an asterisk there, it's in fact a pseudonym, it may
14:23:43 38 well not be it's not hypothetical, it's a pseudonym?---Yes.
14:23:47 39
14:23:48 40 That's one way of getting advice to protect a
14:23:51 41 person?---Yes.
14:23:51 42
14:23:52 43 Another way is for it to be completely hypothetical?---Yes.
14:23:57 44
14:23:58 45 I take it you have been asked for advices in hypothetical
14:24:01 46 circumstances in your time with Victoria Police or sought
14:24:06 47 those sorts of advices from the VGS0?---The VGS0, yep.

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14:24:10 1
14:24:12 2 So it seems that Mr Buick around that time is concerned
14:24:16 3 about a criminal proceeding and there's difficulties with
14:24:22 4 respect to the witness protection regime. "It's
14:24:26 5 anticipated that when called as a witness she'll be
14:24:31 6 cross-examined as to how she came to be engaged by Victoria
14:24:35 7 Police as a witness against the accused, unchallenged such
14:24:38 8 cross-examination is likely to lead to disclosure as to how
14:24:43 9 J Doe came to be engaged and managed by Victoria Police as
14:24:46 10 a human source and such disclosures would lead to revealing
14:24:52 11 Victoria Police protected investigative methodologies and
14:24:57 12 place J Doe's safety at risk." So there we see some
14:25:04 13 provisions about some, I'm sorry, paragraphs underneath
14:25:14 14 that concerning sections of the Act?---Yes.
14:25:18 15
14:25:18 16 Under consideration, all right. Now ultimately an advice
14:25:21 17 is provided and you get that advice, I think, on 8
14:25:28 18 October?---The 6th, I think.
14:25:29 19
14:25:29 20 I apologise, 6 October. If we go to the top. You get it
14:25:41 21 on the 6th, it's received at your office on the 7th, right,
14:25:47 22 and it's directed to you, which you would say is
14:25:51 23 normal?---Yes. The relevant requesters seem to be Boris
14:25:58 24 Buick and Peter Lardner.
14:26:02 25
14:26:06 26 At about this time it seems that Mr Buick wanted advice
14:26:17 27 with respect to an anticipated subpoena and that's when
14:26:25 28 that issue cover sheet that I've previously shown you
14:26:28 29 arose.
14:26:30 30
14:26:30 31 COMMISSIONER: That was Exhibit 682 by the way.
14:26:33 32
14:26:34 33 MR WINNEKE: Thanks, Commissioner. And you become aware of
14:26:51 34 it, I take it, somewhere around 21 or prior to 21
14:26:57 35 September, become aware of this issue, is that right?---On
14:27:04 36 21 September I've got records I was at a conference with
14:27:10 37 Greg Elms and Gerard Maguire. Yes.
14:27:20 38
14:27:23 39 And one assumes that prior to that meeting you would have
14:27:28 40 been made aware of what the issues were generally
14:27:31 41 speaking?---I don't think so.
14:27:33 42
14:27:33 43 What, you - - - ?---I don't know.
14:27:35 44
14:27:35 45 You wouldn't have turned up to the meeting without any
14:27:38 46 understanding at all about what was going to be
14:27:41 47 discussed?---Well I've said I've received instructions from

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14:27:44 1 Doug Fryer, but I don't know.
14:27:46 2
14:27:48 3 If we have a look at - just excuse me, on 15 September
14:27:55 4 there was a meeting between Mr Lardner and Mr Bona with
14:28:01 5 Gerard Maguire and VGS0 - sorry, Mr Bona, Lardner and VGS0
14:28:17 6 solicitors, and if we can put this document up,
14:28:21 7 VGS0.5000.0051.0060. These are file notes taken of the
14:28:26 8 meeting, meeting with Bona, Peter Lardner and Gerard
14:28:31 9 Maguire, do you see that?---Yes.
14:28:32 10
14:28:32 11 And during the discussion, and that's on the 15th, do you
14:28:36 12 see that?---Yes.
14:28:37 13
14:28:38 14 Notes taken by Louise Jarrett, who I take it you
14:28:42 15 know?---Yes.
14:28:42 16
14:28:43 17 And one of the things mentioned in the meeting is that, a
14:28:47 18 number of things were mentioned, but one of them is there
14:28:50 19 may be a problem if she has been involved in informing on
14:28:54 20 clients of hers, criminals will appeal sentences?---Okay.
14:28:59 21
14:28:59 22 Do you see that at the bottom of that section there?---I'm
14:29:04 23 definitely not aware of that.
14:29:05 24
14:29:06 25 You're not at the meeting, but Mr Lardner's there?---Yes.
14:29:09 26
14:29:09 27 And he is a person who you supervise?---Yes.
14:29:12 28
14:29:12 29 And one assumes that at some stage between 15 September and
14:29:20 30 21 September he would have had a discussion with you about
14:29:23 31 what was going on with Mr Maguire and the concern about the
14:29:26 32 subpoenas?---I don't know.
14:29:27 33
14:29:27 34 You say in your statement that you became aware of concerns
14:29:31 35 Victoria Police had with respect to subpoenas?---Well I
14:29:33 36 don't know what detail he gave me, I don't know when it
14:29:37 37 was.
14:29:37 38
14:29:37 39 Can you accept this much: Mr Lardner would have briefed
14:29:41 40 you that there was going to be a meeting with Gerard
14:29:44 41 Maguire on 21 September, it relates to subpoenas, we've got
14:29:49 42 concerns about what might be produced or at least Victoria
14:29:52 43 Police has concerns about what might be produced if the
14:29:58 44 subpoena is issued and one of the problems might be that if
14:30:02 45 she's been involved in informing on her clients, criminals
14:30:06 46 could well appeal sentences or convictions?---No, he
14:30:09 47 definitely didn't tell me that.

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14:30:11 1
14:30:12 2 And there's a note here in this meeting, do you see on the
14:30:17 3 left-hand side, "Purana, Briars, Petra, Driver, techs, SPU,
14:30:25 4 HSU, covert support and Witsec", those are the matters that
14:30:31 5 might come into play in a subpoena concerning
14:30:33 6 Ms Gobbo?---Yes, I doubt that I was involved in that at
14:30:36 7 all.
14:30:36 8
14:30:39 9 Now, do you accept this proposition, that you get a
14:30:45 10 briefing before you go to the meeting?---I don't know.
14:30:48 11
14:30:49 12 You don't think you would have discussed with Peter Lardner
14:30:52 13 what the meeting was about at all?---I cannot remember.
14:30:55 14
14:30:55 15 You would have gone in cold?---Possibly, but my memory is
14:31:03 16 that I was given a briefing in regard to safety from
14:31:10 17 Mr Fryer on behalf of Mr Ashton. Now Peter as the head of
14:31:16 18 civil litigation, as I said, would have been dealing with
14:31:19 19 coordination and assistance to the investigators on those,
14:31:23 20 on the ground PII issues. I very much doubt I would have
14:31:28 21 been involved. I'm the head of the department. I'm not
14:31:31 22 involved in, in the day-to-day provision of legal advice.
14:31:37 23
14:31:38 24 What's the point of you going to a meeting then?---I don't
14:31:41 25 know.
14:31:41 26
14:31:42 27 What's the point of you going to a meeting on 21 September,
14:31:45 28 which we know you went to?---Well let's have a look at the
14:31:49 29 notes.
14:31:50 30
14:31:52 31 Do you not - do you remember the meeting, 21
14:32:01 32 September?---Can we look at the notes so I can refresh my
14:32:04 33 memory?
14:32:05 34
14:32:06 35 It's just have a look at VGS0.5000.0051.0045 - - -?---It's
14:32:15 36 nine years ago, I can't remember.
14:32:17 37
14:32:17 38 I follow that. RC345.
14:32:22 39
14:32:22 40 COMMISSIONER: The previous document that was up was
14:32:24 41 Exhibit 686.
14:32:29 42
14:32:29 43 WITNESS: Do I have notes of this meeting? It looks like I
14:32:36 44 do.
14:32:53 45
14:32:54 46 MR WINNEKE: Before we go - I apologise. If we go to your
14:32:57 47 notes, which are VPL.0005.0003.2995. Now, do you accept

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14:33:28 1 that you went to the meeting?---Yes.
14:33:31 2
14:33:32 3 And it's in Gerard Maguire's chambers?---I don't know.
14:33:37 4
14:33:41 5 If we scroll down - keep going. All right. The note is
14:33:59 6 with respect to Ms Gobbo, do you accept that?---Yes.
14:34:06 7
14:34:07 8 It's relevant to subpoenas which are being issued, or which
14:34:12 9 are likely to be issued in proceedings against Paul
14:34:15 10 Dale?---Yes.
14:34:16 11
14:34:17 12 You've made a number of notes and one of which is that the
14:34:24 13 Source Development Unit is to be contacted, is that
14:34:28 14 right?---Yes.
14:34:28 15
14:34:29 16 And not to be called as a witness?---That's a reference to
14:34:33 17 the recital.
14:34:36 18
14:34:36 19 I'm sorry?---It's a reference to the recital from the terms
14:34:40 20 of settlement.
14:34:41 21
14:34:41 22 The note not to be called as a witness for any proceeding
14:34:45 23 is the recital?---That's what it will be, yes.
14:34:48 24
14:34:48 25 Relevance of background material to credit, would that be
14:34:52 26 what that is that note's about?---Yes.
14:34:55 27
14:34:55 28 There may be material produced which would be relevant to
14:34:58 29 her credit?---Yes.
14:34:59 30
14:34:59 31 Dale will claim that Gobbo was his lawyer?---Yes.
14:35:02 32
14:35:03 33 And the question, was girlfriend - - -?---I see, yes.
14:35:09 34
14:35:10 35 Do you see that?---Yes.
14:35:11 36
14:35:11 37 Was she a girlfriend, was she a lawyer, question
14:35:14 38 mark?---Yes.
14:35:14 39
14:35:15 40 And managed by, is that what it says?---Yes.
14:35:18 41
14:35:18 42 And was it role of informer?---Yes.
14:35:21 43
14:35:22 44 Equals profit, is that right?---Yes, in terms of the Moti
14:35:27 45 type.
14:35:28 46
14:35:28 47 Sorry?---The Moti type issue.

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14:35:30 1
14:35:31 2 Moti?---Yes.
14:35:32 3
14:35:32 4 Then there were discussions about legitimate forensic
14:35:36 5 purpose?---Yes.
14:35:37 6
14:35:37 7 And you've got a note, "Witness cross-examination"?---Yes.
14:35:43 8
14:35:44 9 Peter Lardner and Steve Smith?---Yes.
14:35:46 10
14:35:46 11 What do you think that means?---They may be witnesses.
14:35:49 12
14:35:49 13 And they might be cross-examined?---Yes.
14:35:50 14
14:35:52 15 And they might be called upon to answer questions which
14:35:55 16 would reveal her role as a human source?---Possibly, yes.
14:36:00 17
14:36:01 18 Then you've got a note, "F evidence, suppression"?---Yes.
14:36:05 19
14:36:05 20 And what's that about?---A suppression of her evidence, I
14:36:10 21 suppose.
14:36:10 22
14:36:11 23 Right?---H'mm.
14:36:12 24
14:36:12 25 And Mr Maguire obviously says something, is that
14:36:16 26 right?---Yes. I'd say this is all Mr Maguire.
14:36:18 27
14:36:18 28 And what does that say?---"VicPol discussion on merits."
14:36:22 29
14:36:23 30 Yes. Do you recall what that was about?---No.
14:36:26 31
14:36:27 32 And then further down?---"Appearance."
14:36:32 33
14:36:32 34 Appearance?---Yes.
14:36:35 35
14:36:35 36 Yes. "Acting as a solicitor"?---Yes. "Accusation of
14:36:40 37 breach of trust."
14:36:41 38
14:36:41 39 Accusation of breach of trust?---Yes, and on the left it
14:36:45 40 says, "Can be managed".
14:36:46 41
14:36:46 42 What does that mean?---Gerard will be telling us that it
14:36:49 43 can be managed.
14:36:50 44
14:36:50 45 That is she is acting as a solicitor?---They can refute
14:36:55 46 that argument I suppose.
14:36:56 47

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14:36:56 1 There will be an allegation that she has breached the trust
14:37:01 2 in which she has been by held her client?---Yes.
14:37:04 3
4 The allegation would be that Dale is saying, "Look, she's
5 breached my trust"?---Yes.
6
14:37:05 7 "Because she's my lawyer"?---Yes.
14:37:07 8
14:37:09 9 And that can be managed. And then there's a risk,
14:37:11 10 "Litigation appearing at court", is that right?---Yes.
14:37:14 11
14:37:14 12 There's another risk, "Risk of injury and death"?---Yes.
14:37:18 13
14:37:18 14 Then there's a risk to other sources and
14:37:22 15 investigations?---Yes.
14:37:22 16
14:37:23 17 Do you know what those were?---That will be methodology and
14:37:26 18 ongoing investigations.
14:37:27 19
14:37:27 20 And during the discussion Detective Superintendent Fryer
14:37:30 21 said words to the effect that there was a risk of her death
14:37:34 22 if she's called as a witness?---No, I corrected that at the
14:37:38 23 outset, as you'd recall. I had instructions - - -
14:37:43 24
14:37:43 25 You're quite right, you're quite right?---Yes, yes. But
14:37:47 26 I'm not sure exactly when that was.
14:37:50 27
14:37:50 28 Yes, I follow?---It seems to me Peter's trying to get me
14:37:53 29 across this range of issues.
14:37:55 30
14:37:55 31 Right. Did he raise with you a concern that she might have
14:38:01 32 provided information against her clients?---No, I would
14:38:04 33 have noted that.
14:38:05 34
14:38:05 35 Did he tell you that?---No.
14:38:07 36
14:38:08 37 In a conversation prior to the meeting?---No.
14:38:09 38
14:38:10 39 No, all right. Can we have a look - and they're the only
14:38:15 40 notes that you've taken?---Yes.
14:38:17 41
14:38:17 42 Although it does say "see attached at the top", do you
14:38:20 43 believe that there was a further document which might have
14:38:22 44 been an agenda?---Yes.
14:38:23 45
14:38:24 46 And I think we do have an agenda?---Yes.
14:38:26 47

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14:38:26 1 Of the meeting in Mr Maguire's chambers and it sets out the
14:38:30 2 number of people who were present?---Yes.
14:38:32 3
14:38:35 4 Now, this was a fairly significant meeting because it
14:38:44 5 wasn't just to you, it was to - it was a discussion amongst
14:38:50 6 a number of people, including representatives of the
14:38:53 7 Commonwealth DPP, Ms Breckweg was there, Krista
14:38:59 8 Breckweg?---Yes.
14:38:59 9
14:39:00 10 And there were members of the VGSO present, including
14:39:05 11 Louise Jarrett, do you accept that?---No.
14:39:08 12
14:39:08 13 You don't, all right?---No, I don't think they were at this
14:39:11 14 part of the meeting. I think that's the following meeting.
14:39:16 15
14:39:17 16 You were at both meetings as I understand it?---Yes.
14:39:20 17
14:39:21 18 Can we have a look at - - -
14:39:23 19
14:39:23 20 COMMISSIONER: Could I just clarify that, was this a file
14:39:26 21 note of your meeting with Mr Maguire before - - -?---I
14:39:29 22 think it was a pre-meeting by the looks of it. So it's the
14:39:33 23 briefing that you're talking about.
14:39:34 24
14:39:35 25 MR WINNEKE: This is the briefing you're getting before the
14:39:38 26 actual meeting?---Yes.
14:39:39 27
14:39:39 28 Did you take any notes at the meeting at all? Did you find
14:39:42 29 any in your preparation for your witness
14:39:45 30 statement?---They're not in my statement?
14:39:48 31
14:39:48 32 No.
14:39:50 33
14:39:50 34 MR HOLT: Can I just approach my friend?
14:39:53 35
14:39:53 36 MR WINNEKE: The attached document is VPL.0005.0003.2997.
14:40:01 37
14:40:01 38 COMMISSIONER: Do you want to tender this document?
14:40:03 39
14:40:03 40 MR WINNEKE: I'll tender that, Commissioner. Before I
14:40:10 41 tender this I'll tender it with the agenda because Mr McRae
14:40:13 42 has made notes on that so I might tender them as one
14:40:14 43 exhibit.
14:40:14 44
14:40:14 45 COMMISSIONER: We have the agenda with his notes on it,
14:40:17 46 sure.
14:40:18 47

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14:40:20 1 MR WINNEKE: VPL.0005.0003.2997. We see the agenda?---Yes.
14:41:06 2
14:41:07 3 It's apparently being produced probably by
14:41:10 4 Mr Maguire?---Yes.
14:41:11 5
14:41:11 6 He has his chambers on top and the number of people who are
14:41:14 7 attending, do you see that?---Yes.
14:41:16 8
14:41:17 9 Including yourself and Mr Elms who was obviously at the
14:41:22 10 pre-briefing, pre-meeting briefing that you had with
14:41:25 11 Mr Maguire?---Yes.
14:41:26 12
14:41:34 13 And you've made notes against various matters, civil
14:41:41 14 litigation, list of classes of documents, do you see
14:41:44 15 that?---Yes, yes.
14:41:44 16
14:41:45 17 Litigation documents, is that right?---Yep.
14:41:48 18
14:41:49 19 Mediation - - -?---Mediation agreement, sealed terms of
14:41:59 20 settlement.
14:41:59 21
14:42:00 22 Sealed terms of settlement and then there are notes made
14:42:03 23 against Driver Task Force and Petra Task Force?---Yes, yes.
14:42:06 24
14:42:07 25 What do they say?---It says, "With Hargreaves, Driver".
14:42:12 26 Gerard is giving us an update on the negotiations in regard
14:42:16 27 to documents, so Driver Task Force with Hargreaves, who is
14:42:20 28 a solicitor.
14:42:21 29
14:42:21 30 Yes?---Petra Task Force, it says Loris subpoena, 18 volumes
14:42:27 31 of materials. Briars it says Gerard Maguire advice. HSU,
14:42:33 32 it says contact reports, information reports, so we must
14:42:36 33 have been talking about that.
14:42:37 34
14:42:39 35 It may well be the Loris subpoenas refer to subpoenas that
14:42:42 36 had been issued previously in the prosecution of Paul Dale
14:42:46 37 and Rodney Collins for the murder of the Hodsons?---Okay.
14:42:46 38
14:42:49 39 That material had already been produced?---I see, yes.
14:42:50 40
14:42:50 41 I suggest that was what was discussed?---Yes, it makes
14:42:53 42 sense.
14:42:53 43
14:42:54 44 HSU effectively means the SDU or the people who were
14:42:58 45 handling Ms Gobbo?---Yes.
14:42:59 46
14:43:00 47 And Gerard Maguire advice with respect to Briars Task

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14:43:04 1 Force. Does that indicate, or is that a note referring to
14:43:07 2 the fact that Mr Maguire had previously provided advice in
14:43:10 3 relation to the Briars matters?---I don't know.
14:43:12 4
14:43:14 5 And there were discussions to be had about proposed
14:43:19 6 procedures for counsel review of documents, proposed
14:43:23 7 release to Mr Hargreaves and the undertaking with respect
14:43:27 8 to the earlier subpoenas, do you see that?---I just don't
14:43:30 9 know that we went through all of that.
14:43:33 10
14:43:33 11 Right?---Because I haven't taken any notes.
14:43:36 12
14:43:37 13 No, I follow that. But nonetheless if you have a look at
14:43:40 14 that it's pretty apparent that you've discussed the Loris
14:43:43 15 subpoenas because you've made a note of those?---Yes.
14:43:46 16
14:43:46 17 And that Hargreaves is going to be released from the
14:43:48 18 undertaking that he'd given in relation to those
14:43:50 19 subpoenas?---I see, yes.
20
14:43:51 21 So he's permitted to use that material in the present
14:43:54 22 proceedings?---Yes.
23
14:43:55 24 That's effectively what that's about?---Yes.
14:43:57 25
14:43:57 26 And there's identification, public interest immunity
14:43:59 27 arguments, et cetera?---That's the agenda that Mr Maguire
14:44:06 28 has compiled.
14:44:07 29
14:44:07 30 All right. Now, I tender, now I tender, Commissioner,
14:44:13 31 those two documents as one exhibit, being Mr McRae's notes
14:44:21 32 of the meeting on 21 September 2011.
14:44:26 33
14:44:27 34 #EXHIBIT RC1097A - (Confidential) Mr McRae's notes of
14:44:30 35 meeting 21/9/11.
14:44:30 36
14:44:31 37 #EXHIBIT RC1097B - (Redacted version.)
14:44:33 38
14:44:33 39 Can I ask you to look at some other notes which were taken.
14:44:36 40 Firstly, the notes of Ms Jarrett which I had on the screen
14:44:40 41 before, this is Exhibit 345, VGS0.5000.0051.0045. And if
14:44:59 42 we can go through to 47. This was the document that was up
14:45:11 43 before. You'll see here that these are Louise Jarrett's
14:45:28 44 notes?---Yes.
14:45:29 45
14:45:29 46 Of the meeting of 2.30 to 3.10 and you'll see the subpoena
14:45:35 47 hasn't been issued that we know, why it's scope is

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14:45:40 1 affected, one assumes that's what she meant, including such
14:45:43 2 as settlement terms, anything to do with her contact with
14:45:46 3 VicPol, do you see that?---Yes.
14:45:47 4
14:45:47 5 If we keep going down?---Yes.
14:46:01 6
14:46:02 7 Are you reading that?---Yes.
14:46:03 8
14:46:03 9 And does that refresh your recollection?---Well it seems
14:46:07 10 consistent with what I wrote.
14:46:09 11
14:46:09 12 Right. "Critical information, first contact with police,
14:46:13 13 Drug Squad, first contact with Sandy White", do you see
14:46:18 14 that, who is in attendance at the meeting, he is the SDU
14:46:24 15 person? Do you know who Sandy White is?---Yes.
14:46:28 16
14:46:29 17 Yes?---I didn't at the time.
14:46:31 18
14:46:32 19 No. And then there's a reference to the HSU has
14:46:37 20 chronology?---Yes.
14:46:38 21
14:46:38 22 That's the chronology, can I suggest, which had been
14:46:41 23 provided to you previously?---Yes, okay.
14:46:43 24
14:46:43 25 And Mr Maguire wants this?---Yes.
14:46:46 26
14:46:46 27 So that will have been discussed?---Yes.
14:46:48 28
14:46:49 29 And if we go through. "Contact with Sandy White has been
14:46:53 30 extensive, every day, four to five years, up to one to 12,
14:46:59 31 up to 12 conversations a day". Mr Maguire wants to know
14:47:04 32 whether log will give major highlights and he says yes and
14:47:08 33 it's the first document he needs to look at, do you see
14:47:11 34 that?---Yes.
14:47:11 35
14:47:13 36 And, "Will the log say who the people were who were being
14:47:16 37 investigated, whether they were represented by Ms Gobbo",
14:47:20 38 do you see that?---Yes.
14:47:21 39
14:47:21 40 And then there's a note that Krista Breckweg says, "At
14:47:27 41 least one", do you see that?---Where's that? Yes, I see,
14:47:31 42 yep.
14:47:31 43
14:47:31 44 She has chimed in and said as far as she was concerned at
14:47:36 45 least one person was?---Yes.
14:47:37 46
14:47:38 47 So she was aware of at least one, that might be a reference

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14:47:41 1 to information that we subsequently, or that you
14:47:46 2 subsequently know about and that is with respect to
14:47:49 3 Operation Inca?---Yes.
14:47:50 4
14:47:51 5 And there's discussion about - - -?---So Breckweg knows
14:47:55 6 that?
14:47:56 7
14:47:56 8 I took you to conversation which had - background
14:48:00 9 conversation which had occurred previously I think on 24
14:48:03 10 August in which Ms Gobbo, Mr Buick - - -?---I see, I see.
14:48:08 11
14:48:08 12 Do you remember that?---Yes.
14:48:09 13
14:48:09 14 It may well be that that's what she is referring to?---I
14:48:14 15 see.
14:48:14 16
14:48:15 17 What is clearly being discussed and I suggest, Mr McRae, is
14:48:19 18 there is at least a concern that Ms Gobbo has been
14:48:24 19 providing information against people for whom she's
14:48:29 20 acting?---Yes, and that's going to be a line of attack on
14:48:32 21 her.
14:48:32 22
14:48:33 23 It may well be?---Yes.
14:48:34 24
14:48:36 25 Not only might it be a line of attack on her, do you accept
14:48:39 26 that that now is information which would be of great
14:48:44 27 concern to you?---In hindsight are you talking about?
14:48:51 28
14:48:52 29 At the time?---Well, at the time I was there with
14:48:57 30 instructions to - it was a pretty robust meeting - to
14:49:09 31 support Gerard in asking for the witness not to proceed
14:49:12 32 because of risk to her life.
14:49:13 33
14:49:13 34 Yes?---I wasn't across this level of detail.
14:49:26 35
14:49:26 36 No. Look, ultimately you do get an advice from
14:49:29 37 Mr Maguire?---Yes.
14:49:29 38
14:49:30 39 And effectively what it says ultimately is there are real
14:49:34 40 problems because it appears that Ms Gobbo has been
14:49:38 41 providing information against her clients?---Yes, it's in a
14:49:41 42 similar vein to this, yes.
14:49:42 43
14:49:43 44 And really what, can I suggest, is - that sort of
14:49:47 45 information to you, your nightmare is coming true?---Yes.
14:49:51 46
14:49:52 47 Now you know when you get the advice that there is a real

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14:49:56 1 possibility that this person who has been a barrister and
14:49:59 2 an informer has been providing information against her
14:50:03 3 clients?---Yes.
14:50:04 4
14:50:04 5 Right. Now, as you now concede, going back to 2009 it was
14:50:11 6 becoming apparent to you that Ms Gobbo was a person who was
14:50:17 7 prone to providing information to police, do you accept
14:50:21 8 that?---And everybody else.
14:50:22 9
14:50:24 10 So that was information that was available - - -?---In 2009
14:50:27 11 I had very little awareness of Ms Gobbo.
14:50:30 12
14:50:31 13 Yes, I understand that?---I hadn't socialised with her, I
14:50:34 14 wasn't part of the Criminal Bar, I wasn't part of the
14:50:43 15 higher jurisdiction cases. I wasn't concentrating on those
14:50:47 16 matters.
14:50:47 17
14:50:48 18 But you do know what the law says, you know that a person
14:50:51 19 is entitled to legal representation, independent legal
14:50:56 20 representation, do you understand that?---Yes, and that's
14:50:59 21 why we called a review.
14:51:01 22
14:51:02 23 That's why you called a - - -?---To have a review, the
14:51:05 24 Comrie Review.
14:51:05 25
14:51:06 26 No, the reason you called the Comrie Review
14:51:09 27 ultimately was to look into practices and procedures of the
14:51:13 28 human source - the SDU?---Yes, because we thought that
14:51:17 29 there were - - -
14:51:17 30
14:51:18 31 Guidelines and so on?---We thought there were difficulties
14:51:21 32 in the SDU, we wanted to know what was happening. And the
14:51:24 33 reason I appointed Steve Gleeson to help Mr Comrie was he
14:51:29 34 was an experienced investigator, he'd done the Drug Squad
14:51:33 35 review previously and I wanted to get to the bottom of it.
14:51:37 36
14:51:38 37 In any event can I suggest to you that if you hadn't been,
14:51:41 38 if you didn't have any cause for concern before this time,
14:51:44 39 and I suggest you did have, but if you didn't have any
14:51:47 40 cause for concern before this time now you were on notice
14:51:50 41 that there was concern about that particular matter?---Well
14:51:53 42 Gerard - - -
14:51:55 43
14:51:55 44 Do you accept that?---- - - was concerned, yes, and he
14:52:00 45 seemed to be across all the matters.
14:52:01 46
14:52:02 47 Did you, as the primary legal officer of Victoria Police,

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14:52:06 1 did you yourself say, "Look I better have a look at this
14:52:09 2 source management log and see what it's all about"?---No.
14:52:13 3
14:52:13 4 No. All right. Why not?---Because we set up a review.
14:52:17 5
14:52:17 6 That wasn't, that came later?---Well it did, yeah.
14:52:22 7
14:52:22 8 All right?---And I put my best person on it, with an
14:52:29 9 independent retired Chief Commissioner.
14:52:33 10
14:52:33 11 You would have been keen - now you were aware - were you
14:52:36 12 aware that Mr Maguire was engaged to provide a formal
14:52:42 13 written advice about the subpoena issues?---No.
14:52:46 14
14:52:47 15 Did you say to Peter Lardner, "Look, I want Maguire to read
14:52:55 16 this document, tell me what's going on" - - -?---Maguire
14:52:58 17 was already dealing with it.
14:53:00 18
14:53:00 19 Right. So you didn't walk out of this meeting saying,
14:53:04 20 "Look, I want to know what's going on, I want to get an
14:53:08 21 advice about this"?---I walked out of the meeting and I had
14:53:12 22 subsequent discussions with Doug Fryer and the Chief
14:53:15 23 Commissioner about the way the meeting ended.
14:53:17 24
14:53:17 25 When did you have those discussions with Doug Fryer and the
14:53:20 26 Chief Commissioner?---What's the date of this meeting?
14:53:23 27
14:53:23 28 21 September 2011?---Over the course of the - well probably
14:53:33 29 that day.
14:53:35 30
14:53:35 31 Probably on 21 September?---Yes.
14:53:38 32
14:53:38 33 Because the instruction I'd been given was to assist Gerard
14:53:46 34 to, in the consideration of having this person withdrawn as
14:53:50 35 a witness because of the danger.
14:53:51 36
14:53:51 37 Yes?---But it became a broader ranging discussion of
14:53:56 38 course.
14:53:56 39
14:53:56 40 Right. Mr White, Sandy White, who was Ms Gobbo's
14:54:06 41 controller throughout the period that she was a registered
14:54:10 42 informer on the third occasion was there. Did you speak to
14:54:14 43 him about - - -?---I didn't know who he was.
14:54:18 44
14:54:18 45 - - - matters that had been raised?---I didn't know who he
46 was.
47

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14:54:22 1 You would have discovered at the meeting who he was because
14:54:26 2 he was speaking at the meeting?---Was he? I can't recall
14:54:29 3 that.
14:54:29 4
14:54:30 5 Do you see that, "Contact with Sandy White, extensive every
14:54:35 6 day, four to five years, up to 12 conversations a
14:54:39 7 day"?---We knew she was a human source at that stage.
14:54:43 8
14:54:43 9 Subsequent to the meeting did you sit down with Mr White
14:54:45 10 and say, "It's been suggested or it may be suggested that
14:54:49 11 she provided information in relation to her clients, can
14:54:52 12 you tell me what the story is"?---No, we called a review,
14:54:55 13 called the Comrie Review. I put my best officer on it to
14:55:00 14 support a retired Chief Commissioner and he did a deep dive
14:55:03 15 into what they were doing.
14:55:05 16
14:55:05 17 This happened much later, it started - - -?---Not much
14:55:08 18 later at all.
14:55:09 19
14:55:09 20 Look, you've told the Commission that the concept of a
14:55:13 21 barrister acting as a human source was unthinkable?---No,
14:55:17 22 no, no, the concept of a defence barrister giving
14:55:21 23 information against their own clients.
14:55:23 24
14:55:23 25 Which had been raised in this meeting?---Yes.
14:55:26 26
14:55:26 27 And you've got the man there, and you could ask him,
14:55:30 28 "What's all this about", do you say that?---I can't
14:55:33 29 remember what I said. There were a lot of people in that
14:55:35 30 meeting.
14:55:36 31
14:55:36 32 All right?---Who were all very much engaged in it.
14:55:40 33
14:55:40 34 In any event, as you say in your statement, Mr Maguire you
14:55:46 35 say was attempting to persuade the CDPP not to call
14:55:50 36 Ms Gobbo?---Yes.
14:55:51 37
14:55:52 38 And you say that Ms Breckweg made it clear despite what
14:55:58 39 Mr Maguire was saying, the CDPP intended to call Ms Gobbo
14:56:02 40 as a witness?---Yes, and the meeting finished abruptly.
14:56:06 41
14:56:07 42 You say that you attended a number of meetings and copied
14:56:10 43 into a number of emails. In between that meeting and
14:56:21 44 subsequently a further meeting which you had on 3 November,
14:56:31 45 you say that you didn't know that a written advice had been
14:56:36 46 sought from Mr Maguire, is that right?---I don't think I
14:56:40 47 was involved in that.

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14:56:41 1
14:56:41 2 And you didn't direct that a written advice be
14:56:45 3 obtained?---I knew he was providing advice on it already.
14:56:47 4
14:56:47 5 You say that you weren't involved in the decision to brief
14:56:49 6 him to provide an advice as he had been engaged
14:56:55 7 directly?---Not that I can recall. Bearing in mind that I
14:56:59 8 hadn't been involved in that, bringing that matter back to
14:57:02 9 court.
14:57:02 10
14:57:03 11 What was the purpose of you being at the meeting?---The
14:57:07 12 Chief Commissioner instructed Doug Fryer to have me attend
14:57:10 13 so that I could assist Mr Maguire in his goal of not having
14:57:15 14 that person called.
14:57:17 15
14:57:17 16 So the view was - - -?---I had a specific task to do.
14:57:20 17
14:57:21 18 Prior to that meeting you had been instructed by Mr Fryer,
14:57:25 19 who was instructed by the Chief Commissioner?---To assist.
14:57:28 20
14:57:28 21 To assist you?---Yes.
14:57:30 22
14:57:30 23 In effect preventing Ms Gobbo from being called as a
14:57:33 24 witness?---Yes, because of the risk to her life.
14:57:35 25
14:57:35 26 Do you have a note anywhere of that?---I don't know. It's
14:57:42 27 probably in my statement somewhere.
14:57:44 28
14:57:45 29 At that stage the Chief Commissioner was?---It was Graham
14:57:51 30 Ashton actually, it was Graham Ashton. Not the Chief
14:57:55 31 Commissioner, it was Graham Ashton.
14:57:57 32
14:57:57 33 Even prior to this meeting it was your understanding that
14:58:00 34 there was a view that Ms Gobbo was not to be called as a
14:58:04 35 witness?---Yes.
14:58:06 36
14:58:06 37 Right, I follow?---Yes, and that discussion comes later
14:58:10 38 when I meet with Tim and Graham again.
14:58:13 39
14:58:13 40 I follow that. That's on 3 November?---Yes.
14:58:16 41
14:58:16 42 Okay, all right?---So that's why I'm there. I'm not there
14:58:25 43 to run the matter, Gerard's there with the other lawyers
14:58:28 44 and the instructors.
14:58:30 45
14:58:30 46 All right?---And Doug's keeping an eye on it.
14:58:35 47

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14:58:35 1 Would you have conveyed to Mr Ashton and/or Mr Fryer this
14:58:39 2 information, for example, that Krista Breckweg had
14:58:44 3 mentioned that as far as she knew Ms Gobbo had provided
14:58:49 4 information against one of her clients?---I made mention
14:58:52 5 that it was a line of attack, but I can't remember.
14:58:56 6
14:58:59 7 We're not talking about a line of attack, we're talking
14:59:02 8 about someone saying, a legal representative of the
14:59:04 9 Commonwealth DPP making a comment that Ms Gobbo - -
14:59:11 10 -?---The way I read it, not knowing the information that
14:59:14 11 you had of the previous meeting, I was taking it that she
14:59:18 12 was saying that an allegation had been made by somebody.
14:59:21 13
14:59:21 14 An allegation had been made?---Yes. That's the way I read
14:59:26 15 the note, but I can't remember the meeting, it's nine years
16 ago.
17
14:59:31 18 Do you accept if that information was conveyed in a meeting
14:59:35 19 it would have caused you concern?---Yes, I was concerned
14:59:39 20 because Graham Ashton had told me that there was a severe
14:59:41 21 risk to her life.
14:59:42 22
14:59:43 23 I'm not talking about risk to Ms Gobbo, I'm talking about
14:59:46 24 risk to the criminal justice system?---Yes.
14:59:49 25
14:59:49 26 Were you concerned about that prospect?---I probably was
14:59:53 27 because I became very much more concerned fairly quickly.
14:59:57 28
14:59:58 29 Yes?---H'mm.
14:59:58 30
14:59:58 31 When was that?---After the meeting with Mr Ashton and
15:00:02 32 Mr Cartwright.
15:00:03 33
15:00:04 34 Yes?---And then subsequently with meetings with Mr Gleeson,
15:00:08 35 who I trusted his judgment on these matters.
15:00:11 36
15:00:18 37 I wonder if we could put up this document. Put the
15:00:28 38 previous document up, VPL.5000.0051.0043. You see these
15:00:47 39 are other notes, I think of Mr Elms' at the meeting.
15:00:54 40 There's a reference to Mr Maguire talking about subpoenas,
15:00:57 41 responses, et cetera, discussions of VicPol, indecipherable
15:01:07 42 note, with relevant documents and then Mr Maguire first
15:01:10 43 contact with F, what information/when, and then you're
15:01:17 44 contributing something about civil process and chronology,
15:01:21 45 do you see that?---Yes.
15:01:22 46
15:01:22 47 And then there's a note that, it seems Sandy White is

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15:01:26 1 saying, great pains to ensure that Victoria Police never
15:01:30 2 obtain information on people that Ms Gobbo represented and
15:01:35 3 a note saying that Ms Gobbo, or F, this is your
15:01:46 4 contribution, Ms Gobbo agrees with this, do you see
15:01:51 5 that?---Yes.
15:01:51 6
15:01:52 7 So it may well be that in your meeting, you recall you had
15:01:52 8 a meeting with her on - - -?---It did stick in my mind that
15:01:56 9 she had said - - -
15:01:56 10
15:01:57 11 That's something that you made a note of, that that's what
15:02:01 12 she'd said?---Yes.
15:02:03 13
15:02:03 14 Keep going. So what happens then is the Commonwealth
15:02:15 15 public prosecutions, Hargreaves' negotiations over
15:02:19 16 relevance. If we keep going. So then we see there's a
15:02:32 17 note of a discussion on the letter to release Hargreaves
15:02:36 18 from the undertaking and she has a precedent document and
15:02:40 19 then the discussion continues minus the CDP, do you see
15:02:46 20 that?---Yes.
15:02:46 21
15:02:47 22 It seems the Commonwealth are there for the first part of
15:02:50 23 it, it then continues absent the CDP and then you start
15:02:54 24 talking about risk assessments, personal safety,
15:03:00 25 information - - -?---I would have been giving them the
15:03:02 26 instructions that I had.
15:03:05 27
15:03:07 28 Information provided, Mr Maguire talks about information on
15:03:10 29 people she was acting for?---Yes.
15:03:12 30
15:03:13 31 So do you know whether he said that that was a concern that
15:03:18 32 he needed to look into?---I can't recall.
15:03:22 33
15:03:22 34 All right, okay. Keep going. Then a note here that
15:03:34 35 potential identification is a source and that's a risk.
15:03:40 36 And then there's a note that Mr Buick says, "Isolate her as
15:03:44 37 a witness, public interest, to proceed, cross-examination
15:03:48 38 on potential source and it shouldn't proceed"?---I see,
15:03:51 39 yes.
15:03:51 40
15:03:52 41 Do you see that? All right. Then it appears that
15:03:55 42 Mr Maguire goes away and prepares an advice.
15:04:08 43
15:04:08 44 COMMISSIONER: Those documents are all part of Exhibit 345.
15:04:13 45
15:04:13 46 MR WINNEKE: I believe they are, Commissioner.
15:04:14 47

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15:04:15 1 COMMISSIONER: They are, yes.
15:04:16 2
15:04:16 3 MR COLEMAN: What number was that, Commissioner?
15:04:18 4
15:04:19 5 COMMISSIONER: 345.
15:04:19 6
15:04:20 7 MR WINNEKE: If we can just keep scrolling for a moment.
15:04:26 8 Okay, thanks very much. Do you accept that those were the
15:04:30 9 sorts of things that were discussed at the meeting?---Yes.
15:04:33 10
15:04:35 11 Now, on 24 October 2011 - I've been reminded that something
15:05:20 12 I have missed is this, 13 September 2011, there's a meeting
15:05:26 13 between Mr Maguire, the VGSO, Mick Frewen and Boris Buick
15:05:31 14 and this might explain your attendance at the meeting,
15:05:35 15 VGSO.5000.0051.0062. These are notes of Louise Jarrett
15:05:57 16 again of a meeting between the barrister Maguire, Mick
15:06:00 17 Frewen, Boris Buick and if we go down we'll see discussions
15:06:09 18 about Nicola Gobbo, conversation with Dale, not covered by
15:06:12 19 LPP, she says she wasn't his lawyer. Keep going. Need to
15:06:21 20 identify work units who have Nicola Gobbo documents. Human
15:06:25 21 source. Need to speak to civil litigation about
15:06:29 22 settlement. That may well be Peter Lardner and you?---It
15:06:32 23 will be Peter.
15:06:33 24
15:06:34 25 Keep going. Boris Buick is concerned about it coming out
15:06:38 26 when she started becoming a source in 2004, life in danger.
15:06:43 27 Keep going. Stop. But if we argue that shows she was
15:06:49 28 playing both sides, but this buttresses Dale's argument
15:06:52 29 that he thought she was a lawyer. Keep going. Do you see
15:06:56 30 the note, "How do we ring fence her prior relationship with
15:07:00 31 Victoria Police? Need to know what relationship was, need
15:07:03 32 to look at information, she's a human source", do you see
15:07:06 33 that?---Yes.
15:07:07 34
15:07:07 35 "Need to find out what's relevant or not." Keep going.
15:07:19 36 Now, "Need to be able to talk to the handlers from Petra,
15:07:23 37 investigators from Briars, speak to Peter Lardner about
15:07:27 38 being central repository, speak to Finn McCrae. Need to
15:07:33 39 protect organisation, may jeopardise other proceedings,
15:07:36 40 convictions", do you see that?---Yes.
15:07:38 41
15:07:39 42 At this meeting there's concern about the possibility of a
15:07:49 43 subpoena exposing documents which may jeopardise other
15:07:53 44 proceedings and jeopardise convictions, do you see
15:07:58 45 that?---H'mm.
15:07:59 46
15:07:59 47 Can I suggest to you that those issues must have been

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15:08:02 1 conveyed to you prior to your attendance at the meeting on
15:08:05 2 the 21st?---Not at all, I took my instructions from Doug
15:08:09 3 Fryer, from Graham Ashton about safety.
15:08:11 4
15:08:13 5 Why would not those issues have been raised with you prior
15:08:16 6 to the meeting?---You'd have to ask others that.
15:08:19 7
15:08:19 8 Right?---Who was at the meeting? It's Boris, Boris never
15:08:25 9 spoke to me. Who else is there?
15:08:27 10
15:08:27 11 Mr Maguire?---Boris Buick, sorry. Gerard never spoke to me
15:08:33 12 about it. And Mick Frewen never spoke to me about it, so
15:08:37 13 that explains that.
15:08:38 14
15:08:38 15 He must have - one assumes there was a desire that you and
15:08:42 16 Mr Lardner be present at a conference with Mr Maguire, so
15:08:46 17 one assumes that Mr Frewen has spoken to Mr Fryer?---Yes.
15:08:50 18
15:08:50 19 Who has then spoken to you?---Well - yes, it's come through
15:08:59 20 Crime Command.
15:08:59 21
15:09:00 22 Frewen is crime, Fryer is crime, and speaks to you, does he
15:09:06 23 not?---Fryer was probably in crime at that stage, yes.
15:09:09 24 It's gone through Crime Command to me, yes, but none of
15:09:13 25 those people are speaking to me directly about it.
15:09:16 26
15:09:17 27 After the meeting - - -?---It's Driver, I think Fryer was
15:09:23 28 on Driver.
15:09:25 29
15:09:25 30 After the meeting on the 21st, I'm jumping forward now,
15:09:30 31 there is a Driver Task Force meeting and Mr Ashton has
15:09:37 32 summarised the meeting in his diary and what he says is,
15:09:44 33 "Driver Task Force, OPP meeting re Dale. Witness F. ACC
15:09:50 34 charges, risks. Finn, Doug and I will go and meet with the
15:09:55 35 CDDP re Witness F risks on Dale prosecutions"?---Yes.
15:10:00 36
15:10:00 37 On prosecution, right. Now, do you accept that that's what
15:10:04 38 Mr Ashton recorded in his diary summary?---Sure.
15:10:07 39
15:10:08 40 COMMISSIONER: Can I just mention the last document you had
15:10:10 41 on the screen was Exhibit 685.
15:10:13 42
15:10:13 43 MR WINNEKE: Thank you, Commissioner. 22 September 2011.
15:10:18 44 If we can have a look at an.
15:10:54 45
15:10:54 46 COMMISSIONER: If anyone wants to take their jackets off,
15:10:57 47 they're most welcome, including you Mr McRae?---Thank you.

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These claims are not yet resolved.

15:11:02 1
15:11:02 2 It's warming up a bit now.
15:11:08 3
15:11:38 4 MR WINNEKE: Whilst we're getting there, can I suggest it
15:11:40 5 was an email to you on 25 September 2011, indicating -
15:11:46 6 there it is here. Michael Frewen has sent an email to
15:11:56 7 Graham Ashton, Doug Fryer and yourself, "Results of Mick
15:12:00 8 Frewen's meeting with Krista Breckweg, Commonwealth DPP.
15:12:05 9 Talk about ways forward, in particular what our discussions
15:12:09 10 were. Progressing as planned. Vigorously running all PII
15:12:15 11 arguments with a view to winning them, however it appears
15:12:17 12 that there may be a loss in an argument on this point, that
15:12:20 13 then exposes either Witness F or other high risk
15:12:26 14 individuals or methodologies, then we'd look at withdrawing
15:12:30 15 as the risk factor was too great. Also floated ideas of
15:12:31 16 other ways of progressing should this happen, ie leave
15:12:36 17 witness off the brief, proceed without Witness F,
15:12:39 18 introduction of Witness F's evidence via other ways,"
15:12:41 19 et cetera?---It's all about the safety issue from my
15:12:46 20 perspective.
15:12:47 21
15:12:47 22 If they're perceptive of this and understood the risks to
15:12:51 23 that end she still maintains the prosecution brief is of
15:12:56 24 high standard and well worth progressing. I told her that
15:12:58 25 Finn, Graham and Doug would like to meet with Shane Kirne
15:13:02 26 in the near future in order to formally progress this but I
15:13:02 27 was meeting her now so she didn't hear through other ways.
15:13:08 28 She was going to seek counsel's advice and other options
15:13:14 29 and was hopeful of available options, do you see
15:13:18 30 that?---Yes.
15:13:18 31
15:13:18 32 She said that Shane Kirne would probably have to take the
15:13:22 33 matter to the Commonwealth Director in Canberra for final
15:13:27 34 sign off for agreement due to the high risks that F
15:13:29 35 posed?---Yes.
15:13:30 36
15:13:32 37 Mick Frewen says, "I guess you're clear to arrange a letter
15:13:38 38 and a meeting with Shane Kirne, Graham and yourself now
15:13:39 39 this has been addressed", do you see that?---Yes.
15:13:44 40
15:13:44 41 And you say you'll arrange the meeting?---No. In the email
15:13:50 42 I may, but you can see my note down below that Graham
15:13:54 43 Ashton is to arrange.
15:13:55 44
15:13:55 45 You say yes, and then you indicate, you must have spoken to
15:14:01 46 Graham - - -?---He would have told me, because I was taking
15:14:03 47 my instructions from Graham.

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15:14:05 1
15:14:05 2 So you're aware that these matters are being discussed.
15:14:09 3 There's concern about Ms Gobbo and you say clearly it is a
15:14:13 4 concern with respect to safety?---I'm happy to help, if
15:14:16 5 they want me to facilitate a meeting I'll do it.
15:14:19 6
15:14:20 7 In the meantime - I tender that, Commissioner.
15:14:27 8
15:14:27 9 #EXHIBIT RC1098A - (Confidential) Email from Mr Frewen to
15:10:23 10 Mr McRae VPL.0005.0003.2994.
15:14:30 11
15:14:30 12 #EXHIBIT RC1098B - (Redacted version.)
15:14:32 13
15:14:32 14 In the meantime Mr Maguire has been reading the source
15:14:36 15 management log and has prepared an advice and it appears
15:14:42 16 that the advice has been forwarded to Shaun Le Grand at the
15:14:50 17 Victorian Government Solicitor's Office?---Yes.
15:14:52 18
15:14:54 19 Now, that advice then comes to your office on 5 October, a
15:15:00 20 day after he receives it, and it's given a Legal Services,
15:15:05 21 Director of Legal Services number?---Yes.
15:15:08 22
15:15:15 23 Given that you had been involved in the discussions with
15:15:21 24 Mr Maguire, you'd been involved in the meeting on 21
15:15:27 25 September, you'd had discussions about setting up a meeting
15:15:33 26 with the Commonwealth DPP?---Yes.
15:15:36 27
15:15:37 28 And you'd spoken to Mr Ashton about it, and I assume you
15:15:42 29 were concerned about Ms Gobbo's safety?---Yes.
15:15:46 30
15:15:46 31 And - - -?---Well he was, yes.
15:15:48 32
15:15:48 33 And no doubt you might have been also concerned about any
15:15:52 34 information that would suggest that Ms Gobbo had been
15:15:55 35 informing on her clients, that would have been a concern to
15:15:58 36 you also, would you not?---Well, I would have been
15:16:08 37 concerned about the notion of it, but I wasn't actioning it
15:16:10 38 at that point.
15:16:11 39
15:16:11 40 No. That prospect had been raised in the meeting?---Yes,
15:16:16 41 it had been discussed.
15:16:17 42
15:16:17 43 Can I suggest you would have been interested to know what
15:16:20 44 Mr Maguire said in his advice?---Yes.
15:16:22 45
15:16:22 46 It comes to your office on 5 October 2011?---Yes.
15:16:27 47

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15:16:28 1 I take it it would have been brought to your attention
15:16:31 2 fairly soon after it comes to your office?---No, I didn't
15:16:34 3 see it.
15:16:35 4
15:16:35 5 How do you know?---Because I can remember the meeting of 3
15:16:38 6 November.
15:16:38 7
15:16:39 8 Right. And does that enable you to say, "Well look, I
15:16:44 9 didn't read the advice before the meeting"?---I was asked
15:16:50 10 at short notice to go upstairs to see Graham and Tim and I
15:16:55 11 wasn't across the issues.
15:16:56 12
15:16:56 13 How do you know that, is that a recollection that you've
15:16:59 14 got?---Yes, and I didn't open a file.
15:17:01 15
15:17:02 16 How do you know you were asked at short notice to go and
15:17:05 17 attend?---My memory was that I was called upstairs and I
15:17:08 18 went into the room and they were already there.
15:17:10 19
15:17:11 20 Right. In the meantime you'd been called before the
15:17:18 21 Ombudsman to talk about Ms Gobbo?---About the civil
15:17:22 22 settlement.
15:17:22 23
15:17:23 24 Civil settlement?---Yes.
15:17:24 25
15:17:25 26 And there were suggestions that the civil settlement had
15:17:29 27 been done precipitously and without due considerations and
15:17:35 28 so forth?---Yes, yes.
15:17:36 29
15:17:37 30 Suggestions that it was done to hide Ms Gobbo's role as an
15:17:41 31 informer?---H'mm.
15:17:42 32
15:17:43 33 Those sorts of things?---Yes, it was a payment for personal
15:17:47 34 injury and - yes.
15:17:48 35
15:17:48 36 Right. So you were asked questions about those
15:17:54 37 matters?---Yes.
15:17:54 38
15:17:56 39 In your office there was an advice from Mr Maguire, it
15:18:00 40 seems, at least or about 20 days before you gave evidence.
15:18:05 41 Would that not have been brought to your attention at any
15:18:08 42 time before you gave evidence before the Ombudsman?---I
15:18:12 43 don't think I saw the advice till 3 November.
15:18:16 44
15:18:17 45 Who would it have been given to in your office?---My staff
15:18:21 46 officer.
15:18:21 47

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15:18:22 1 Who is that?---All the advices are given to my staff
15:18:25 2 officer.
15:18:25 3
15:18:27 4 Who was your staff officer?---I can't recall.
15:18:29 5
15:18:29 6 At this time you don't recall the name of the person?---No.
15:18:33 7
15:18:34 8 How many staff officers have you had?---I've had many over
15:18:37 9 the years.
15:18:38 10
15:18:38 11 Physically how many people were in the office?---In 2011?
15:18:42 12
15:18:42 13 Yes?---What do you mean, on the floor?
15:18:45 14
15:18:46 15 Well, it's received at the office of the Director, an
15:18:49 16 advice which is - - -?---It would have been put in the
15:18:52 17 advices register.
15:18:53 18
15:18:55 19 Right. If someone wants to get an advice to you, how does
15:19:02 20 that occur?---For an advice like that I'd expect it to be
15:19:05 21 brought over and handed to me.
15:19:07 22
15:19:07 23 So you would have expected to have seen this advice and had
15:19:12 24 it handed to you?---Yes. If there's something that I need
15:19:15 25 to action personally, I'd expect it to be given to me.
15:19:18 26
15:19:18 27 Given that you'd been at this meeting with Mr Maguire, you
15:19:21 28 would expect that this is the sort of advice that would
15:19:24 29 come to you directly?---Yes, from the VGS0.
15:19:29 30
15:19:29 31 Yes?---With a proper briefing on what the issues were.
15:19:35 32
15:19:35 33 Right. So ordinarily you would expect that this would have
15:19:38 34 come to your attention, if it comes into your office on 5
15:19:42 35 October, you would expect that it would have been brought
15:19:45 36 to your attention ordinarily shortly before?---Or I'd be
15:19:49 37 called over to the VGS0 and taken through the advice.
15:19:53 38
15:19:53 39 Right?---By a lawyer or with Gerard, not just lodged in my
15:19:59 40 advice register, in basically the post box.
41
15:20:07 42 Do you say your view is the way in which this particular
15:20:10 43 advice came to you was irregular, it should have been
15:20:14 44 brought - - -?---It was irregular. The advice wasn't
15:20:18 45 addressed to me, it was addressed to Mr Buick, and it's
15:20:22 46 been given to the senior officer at the VGS0 who's given it
15:20:28 47 to my staff officer, or someone has.

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15:20:30 1
15:20:31 2 If we can have a look at the advice - - -?---I mean I would
15:20:44 3 have thought an advice of this nature would have resulted
15:20:47 4 in a conference.
15:20:56 5
15:21:03 6 It appears that there's a meeting on 28 September of 2011
15:21:08 7 with Gerard Maguire, Paul Sheridan, Boris Buick, Mick
15:21:14 8 Frewen and a number of officers from the VGSO, including
15:21:19 9 Louise Jarrett, Greg Elms and Shaun Le Grand who seems to
15:21:25 10 be the person who is ultimately given the advice by
15:21:27 11 Mr Maguire, and the note suggests that the advice - the
15:21:34 12 draft advice is in effect in terms or in similar terms to
15:21:38 13 the advice that is subsequently published?---Yes.
15:21:43 14
15:21:43 15 It's given to them. There's discussions about Mokbel,
15:21:52 16 can't predict what will happen, eg effect on Mokbel. Whole
15:21:57 17 thing, in relation to Dale - sorry, whole thing unravels if
15:22:02 18 they find out that she was a source since 2007. A number
15:22:05 19 of things are discussed at this meeting and then the advice
15:22:08 20 is to be given to Jeff Pope and Graham Ashton?---And that's
15:22:12 21 how I get it.
15:22:13 22
15:22:14 23 Well, your office gets it on the 5th?---I'm talking about
15:22:19 24 physically getting it.
15:22:20 25
15:22:20 26 And you say you get it from Graham Ashton?---From Graham
15:22:26 27 Ashton on 3 November.
15:22:27 28
15:22:27 29 Again you would say it's surprising, wouldn't you, if -
15:22:34 30 it's quite apparent that the advice is going to be a
15:22:36 31 significant advice?---Yes.
15:22:37 32
15:22:38 33 It's got to go to Ashton and Pope, you would expect that it
15:22:42 34 would come to you?---Yes.
15:22:43 35
15:22:44 36 But it doesn't?---It's gone through Crime Command, it's
15:22:47 37 been prepared for Crime Command and it's come back through
15:22:50 38 Crime Command in the old way.
15:22:52 39
15:22:52 40 All right, okay?---This is November 2011. The new policy
15:23:01 41 that I put in that all advices must come from me was
15:23:06 42 introduced in 2011.
15:23:06 43
15:23:08 44 Yes?---So it's gone the old way.
15:23:11 45
15:23:11 46 All right. And indeed, the advice is significant in a
15:23:19 47 number of respects, but what Mr Maguire says, if we can put

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15:23:28 1 up the advice, VPL.0005.0003.2968. It seems that the
15:23:57 2 advice is received by Shaun Le Grand at 2 pm on 4 October
15:24:02 3 and he's obviously copied that, it's got a stamp - if we go
15:24:10 4 right down the bottom or at least to the next page of the
15:24:13 5 advice you'll see that it has a stamp?---Yes, he's lodged
15:24:18 6 it under the - he's trying to comply with the new
15:24:23 7 procedures by giving it to my staff officer.
15:24:25 8
15:24:26 9 He gives it to your staff officer?---Who stamps it and
15:24:30 10 gives it a document number.
15:24:32 11
15:24:32 12 But doesn't give it to you?---Not that I can find, because
15:24:35 13 I don't have any notes, and I don't open a file, and I'm
15:24:39 14 not aware of it when I'm speaking to Tim and Graham.
15:24:42 15
15:24:42 16 And they, you say that, as I understand it what occurs is
15:24:48 17 you're called to the meeting on 3 November by Mr Ashton, is
15:24:52 18 that right, because he wants to discuss with you some
15:24:58 19 paragraphs in the advice in particular?---Yes, the Maguire
15:25:04 20 advice, yep.
15:25:05 21
15:25:07 22 You say that, "On 3 November I met with acting Deputy
15:25:13 23 Commissioner Tim Cartwright and Assistant Commissioner
15:25:16 24 Ashton. My recollection is that I was called to the
15:25:19 25 meeting because Ashton and Cartwright had received
15:25:23 26 Maguire's advice of 4 October. I was called to discuss it.
15:25:26 27 I took a handwritten file note of the meeting", which
15:25:29 28 you've set out below, that you had an additional
15:25:32 29 recollection that Ashton brought paragraphs 52 to 56 of
15:25:37 30 Maguire's advice in particular to your attention?---I think
15:25:40 31 he did because he was concerned about what was going on in
15:25:43 32 the SDU, h'mm. Or what had gone on, yeah.
15:25:47 33
15:25:50 34 52 to 56, if we can scroll through to 52 to 56. "Source is
15:26:14 35 not a participant in any Witness Protection Program.
15:26:17 36 Victoria Police have not been able to persuade her",
15:26:24 37 et cetera. Then 53 is the complication, further
15:26:28 38 complication is the professional role undertaken by the
15:26:33 39 source. "Once identified as acting as an informer from
15:26:37 40 February 07 it's likely the defence will press to obtain
15:26:40 41 documents in relation to other dealings between the police
15:26:42 42 and the source on the basis it will show that the source
15:26:45 43 was providing legal services and advice to other targets at
15:26:49 44 the same time as information was being provided to police.
15:26:52 45 This would form the basis of a credit attack as well as
15:26:57 46 bolstering the proposition that the recorded conversation
15:27:00 47 with Dale was on an occasion which attracted LPP"?---Yes.

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15:27:04 1
15:27:10 2 "If the role of the source were to be fully exposed there
15:27:14 3 is also a possibility that persons such as Mokbel, who was
15:27:19 4 convicted in absentia in March of 2006, would seek to
15:27:23 5 challenge their convictions on the basis that it was
15:27:27 6 improperly obtained. It is difficult to predict how such
15:27:31 7 an issue might be raised or played out, but there might be
15:27:35 8 an attempt to raise the issue in a venue such as the Court
15:27:39 9 of Appeal. It might also have a collateral effect in
15:27:43 10 relation to the current sentencing of Mokbel for drug
15:27:44 11 trafficking offences after he fled the jurisdiction", do
15:27:47 12 you see that?---Yes.
15:27:47 13
15:27:49 14 You say that that was brought particularly to your
15:27:52 15 attention at that meeting?---Yes, we discussed that.
15:27:57 16
15:27:57 17 And Mr Maguire suggested that the issues be raised with
15:28:03 18 senior management within Victoria Police for their
15:28:05 19 consideration?---Yes.
15:28:05 20
15:28:06 21 "In the context of the current committal which is due to
15:28:10 22 commence in 2011", that is with respect to Dale?---Right.
15:28:15 23
15:28:15 24 "I suggest that urgent consideration be given to providing
15:28:16 25 a copy of the relevant log entries to the prosecutor for
15:28:17 26 the purposes of determining what disclosure is required in
15:28:20 27 the interests of fairness"?---Yes.
15:28:23 28
15:28:23 29 "This may require relevant information reports, all
15:28:26 30 members' diaries to be obtained and reviewed"?---Yes.
15:28:29 31
15:28:30 32 I take it that advice and those particular paragraphs were
15:28:34 33 quite significant, were they not?---Yes.
15:28:36 34
15:28:41 35 Also at this time, and accepting that you're very busy, but
15:28:48 36 Mokbel not only is being sentenced but at this stage he's
15:28:52 37 wanting to change his plea, isn't he, because at this stage
15:28:57 38 Mokbel is arguing before Justice Whelan that there would be
15:29:05 39 evidence obtained by police against him by police officers
15:29:11 40 improperly, that is without properly swearing affidavits,
15:29:14 41 do you accept that?---Yes.
15:29:15 42
15:29:15 43 That's going on at the same time as this, or in this
15:29:19 44 period, can I suggest?---I think so, yes.
15:29:21 45
15:29:21 46 There were arguments being put and evidence being heard
15:29:24 47 before Justice Whelan in the months of October, November,

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15:29:28 1 December of 2011?---H'mm.
15:29:30 2
15:29:30 3 You would have been aware of that?---Yes, through the
15:29:33 4 affidavit steering committee, yep.
15:29:34 5
15:29:34 6 And here you have information which was relevant to that
15:29:39 7 and indeed it was pointed out as being relevant by
15:29:43 8 Mr Maguire, who says it also has a collateral effect in
15:29:46 9 relation to current sentencing of Mokbel for drug
15:29:48 10 trafficking offences?---H'mm.
15:29:50 11
15:29:51 12 Would it not be relevant to bring that information
15:29:54 13 immediately to the attention of the State DPP?---Yes.
15:29:59 14
15:30:02 15 Was that done?---I don't know. Not by me.
15:30:05 16
15:30:05 17 Did you direct anyone to do so?---No.
15:30:07 18
15:30:11 19 Is there a reason why not?---Well, if you go to my notes,
15:30:19 20 it sets out what I was to do.
15:30:21 21
15:30:21 22 Okay. Let's have a look at your notes. Your notes are -
15:30:31 23 just excuse me. VPL.0005.0003.2945.
15:30:38 24
15:30:38 25 COMMISSIONER: This document is the attachment 75 to Neil
15:30:43 26 Paterson's statement, but it might be that this one has
15:30:46 27 handwriting on that you particularly want, I'm just not
15:30:50 28 sure.
15:30:51 29
15:30:52 30 MR WINNEKE: I agree, Commissioner. Perhaps if I can ask
15:30:57 31 the witness this question: do you know whose handwriting
15:31:03 32 that is on the document there?---That's mine.
15:31:06 33
15:31:06 34 COMMISSIONER: You probably will want to tender this one?
15:31:10 35
15:31:11 36 MR WINNEKE: I will, Commissioner, in that case. When do
15:31:14 37 you think you made that note on the document?---I don't
15:31:19 38 know.
15:31:19 39
15:31:19 40 Subsequently obviously to - - -?---Yes, I'm just
15:31:23 41 cross-referencing it.
15:31:24 42
15:31:24 43 To 3 November?---Yes.
15:31:25 44
15:31:48 45 If we can have a look at your file note. The file is in
15:31:48 46 relation to the Dale prosecution; is that correct?---Yes.
47

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15:31:48 1 The attendance is upon Tim Cartwright and Graham Ashton in
15:31:54 2 Tim Cartwright's office it seems?---Yes.
3
15:31:57 4 Is he upstairs from your office?---Yes.
5
15:32:00 6 And the note says, "Legal advice concerning Witness F and
15:32:07 7 Mokbel"?---Yes.
8
15:32:11 9 And so does that suggest that the particular matters of
15:32:15 10 interest to you are that you've noted, in any event, the
15:32:19 11 legal advice of Maguire, which on its face had nothing to
15:32:23 12 do with Mokbel, it was to do with the Dale
15:32:26 13 prosecution?---Yes. No, no, it's noting the Mokbel issue.
14
15:32:29 15 It's noting the Mokbel issue?---Yes.
16
15:32:32 17 And then, "Disclosure to prosecutors to occur today and
15:32:37 18 logs", I think it says?---Yes.
19
15:32:39 20 "And Maguire advice"?---Yes.
21
15:32:41 22 That's in relation to the Commonwealth prosecution?---I
15:32:44 23 think so.
24
15:32:45 25 We know that I think on that day - - - ?---Disclosure
15:32:49 26 occurred.
27
15:32:50 28 - - - Mr Beale attended and was shown the log and was
15:32:53 29 permitted to read that log?---Yes.
30
15:32:56 31 So that issue was already in hand?---Yes.
32
15:32:59 33 Disclosure to the Commonwealth prosecution, you agree with
15:33:02 34 that?---Yep.
35
15:33:03 36 And then you've got a note, "Review of human source
15:33:07 37 procedures is an option"?---That's the Comrie review.
38
15:33:12 39 That's the Comrie review?---Yes.
40
15:33:13 41 Which finds its genesis there?---Yep.
42
15:33:17 43 Then there's a note, "Maguire advice"?---We're talking
15:33:21 44 about the Maguire advice again under that.
45
15:33:26 46 Then the next note is, "Inca potential"?---No, it's
15:33:31 47 pre-trial.

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1
15:33:33 2 Sorry, "Inca pre-trial", is it?---Yes.
3
15:33:35 4 What's that note about?---It's saying that Inca is
15:33:38 5 pre-trial.
6
15:33:38 7 The trial with respect to the tomato tins is in pre-trial
15:33:48 8 stage?---I don't know what Inca was, but yes.
15:33:52 9
15:33:52 10 You mightn't have known before this but you would have
15:33:55 11 known after this meeting?---No.
12
15:33:56 13 Why did you write down "Inca pre-trial" for?---Because
15:33:59 14 that's what Graham said.
15
15:34:00 16 He just said Inca is in pre-trial?---We had a chat about
15:34:04 17 Inca but that's what I've noted.
18
15:34:06 19 You say you knew nothing about Inca and it's of no
15:34:11 20 significance or consequence to you?---I'm saying - well I
15:34:15 21 didn't - I'm saying I didn't know anything about Inca. It
15:34:18 22 was a Commonwealth trial.
23
15:34:19 24 I understand that?---I didn't know who was involved in it.
25
15:34:22 26 Yes. During the course of the meeting did you discover
15:34:28 27 what it was about?---I don't know.
28
15:34:31 29 Right.
30
15:34:39 31 COMMISSIONER: I think we might take the afternoon break
15:34:41 32 now.
33
15:34:42 34 MR WINNEKE: I'm sorry, yes.
35
15:34:43 36 COMMISSIONER: That is - the current document you've got up
15:34:47 37 is Exhibit 896. So you want to tender the one before with
15:34:50 38 the handwriting on it, the Maguire advice with the
15:34:53 39 handwriting?
15:34:54 40
15:34:55 41 MR WINNEKE: If I haven't tendered it, Commissioner, I'll
15:34:57 42 do so.
43
15:34:58 44 COMMISSIONER: No.
15:34:58 45
15:34:59 46 #EXHIBIT RC1099A - (Confidential) Maguire advice with
15:34:53 47 handwriting.

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15:35:01 1
15:35:03 2 #EXHIBIT RC1099B - (Redacted version.)
15:35:05 3
15:35:06 4 Ms McCudden, did you have any luck getting instructions?
15:35:10 5
15:35:11 6 MS McCUDDEN: Commissioner, we were able to only confirm
15:35:13 7 the documents of this morning and get a copy to my client
15:35:17 8 around 1.15, so I don't have those instructions.
9
15:35:18 10 COMMISSIONER: You don't have the instructions yet, okay.
15:35:22 11
15:35:22 12 MS McCUDDEN: I've spoken to Mr Winneke and assured him
15:35:24 13 we'll continue to communicate.
14
15:35:25 15 COMMISSIONER: Thanks very much. All right, we'll have a
15:35:27 16 short break now.
17
18 (Short adjournment.)
19
15:57:05 20 COMMISSIONER: Yes, Mr Winneke.
21
15:57:07 22 MR WINNEKE: Thanks, Commissioner. I was asking you
15:57:08 23 questions about that meeting that you had with Cartwright
15:57:11 24 and Ashton on the 3rd. In your statement you say - perhaps
15:57:20 25 I go to that. You say there's Inca pre-trial?---Yes.
26
15:57:26 27 Can I suggest that there was a discussion about that
15:57:29 28 matter?---Yes.
29
15:57:29 30 In the meeting?---Yeah, it's the first I'd heard of it.
31
15:57:32 32 And I'll take you to Mr Cartwright's notes in a moment.
15:57:39 33 Then there were issues of public interest and OPP
15:57:44 34 guidelines. Do you know what that - - - ?---That would
15:57:45 35 have been about the potential withdrawal of the Dale
15:57:47 36 matter.
37
15:57:48 38 And the guidelines being guidelines for disclosure?---No,
15:57:50 39 no, guidelines for prosecution.
40
15:57:53 41 I follow?---Yeah.
42
15:57:55 43 Okay. "Witness protection option and Witsec to approach";
15:58:05 44 is that right?---Yes.
45
15:58:06 46 And "letter for F"?---Yes.
47

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15:58:08 1 All right. You say in your statement that your
15:58:12 2 recollection of the meeting is that Ashton brought
15:58:14 3 paragraphs 52 of 56 of the advice to your attention?---Yes,
15:58:20 4 he was concerned.
5
15:58:22 6 He recommended urgent consideration be given to a - sorry,
15:58:23 7 providing a copy of the relevant log entries to the
15:58:26 8 prosecutor for the purposes of determining what, if any,
15:58:28 9 disclosure was required in the interests of fairness and
15:58:31 10 you weren't involved in the decision to make disclosure to
15:58:35 11 the CDPP?---No.
12
15:58:37 13 Can I suggest that that had already been put in train?---It
15:58:44 14 had, yeah. It was happening, m'mm.
15
15:58:46 16 Yeah. Do you say that those matters that had been brought
15:58:52 17 to your attention, 52 to 56, weren't particularly relevant
15:59:00 18 to - or weren't exclusively relevant to the Dale
15:59:05 19 prosecution but were relevant to the Mokbel
15:59:09 20 prosecution?---They were broader issues - and Mokbel, yes.
21
15:59:12 22 Broader issues, and Mokbel?---Yes.
23
15:59:16 24 But you certainly didn't go and see the Director of Public
15:59:24 25 Prosecutions, the State Director of Public Prosecutions at
15:59:26 26 this time?---No, I wasn't asked to.
27
15:59:29 28 You weren't asked to?---No.
29
15:59:31 30 Well what did you understand the purpose of bringing those
15:59:34 31 paragraphs to your attention to be?---Mr Ashton was
15:59:38 32 concerned with what was going on, and what had been going
15:59:41 33 on, which caused the Comrie review to be called for.
34
15:59:45 35 Right. In terms of your knowledge of what was going on
15:59:52 36 with Mokbel, and in particular the reference to the fact
15:59:55 37 that it might have a collateral effect in relation to the
15:59:59 38 current sentencing of Mokbel for drug trafficking offences
16:00:02 39 after he fled, what did you take out of that?---Exactly as
16:00:15 40 the words say.
41
16:00:18 42 That it may have a collateral effect?---Yes.
43
16:00:21 44 Right. So did you believe that there should be disclosure
16:00:24 45 made to the State DPP or at least - well, to the DPP in
16:00:30 46 relation to the prosecution of Mokbel that was then going
16:00:35 47 on, that is to the State DPP?---I didn't turn my mind to

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16:00:41 1 the prosecution that was happening at the time.
2
16:00:43 3 Yes?---Because we decided to do a review.
4
16:00:47 5 Yeah?---A more holistic review.
6
16:00:50 7 Right?---I knew that the investigators and Gerard were
16:00:55 8 working on it, although I'd note that the advice doesn't
16:00:58 9 say to disclose.
10
16:01:00 11 No?---M'mm.
12
16:01:02 13 Did it concern you though?---Yes.
14
16:01:05 15 Right. Did you think, "Well look, we need to consider
16:01:08 16 whether or not this should go to the people who are
16:01:11 17 currently dealing with Mokbel", before the Supreme Court,
16:01:18 18 before Justice Whelan?---We had a number of - I don't know
16:01:23 19 if I knew the - when is the date of that? I don't know
16:01:27 20 whether I knew the date.
21
16:01:30 22 Can I suggest to you that argument before Justice Whelan,
16:01:35 23 evidence before Justice Whelan was being heard in, as I
16:01:38 24 said to you before, in October, November, December of - - -
16:01:42 25 ?---Okay. Well I would have thought that Gerard was
16:01:44 26 engaged to work through those issues, continuing to work.
27
16:01:48 28 You made the assumption that that's the case?---Yes,
16:01:50 29 because I knew they were still working and we had
16:01:53 30 conversations over the subsequent days.
31
16:01:55 32 Yes, but Mr Maguire had been engaged particularly with
16:02:02 33 respect to the Dale prosecution?---Yes.
34
16:02:02 35 Not with respect to anything else?---Yes. I'm not sure
16:02:07 36 about that.
37
16:02:07 38 Do you accept that these are matters which should have been
16:02:09 39 brought to the attention of the - - - ?---With hindsight,
16:02:12 40 absolutely.
41
16:02:12 42 Right?---That's one of those sliding door moments.
43
16:02:15 44 Well, Mr Mokbel was saying, "Well look, I've got an
16:02:20 45 argument that my plea of guilty shouldn't go ahead because
16:02:25 46 of the affidavit issue", it may well be that if he was
16:02:30 47 aware of these other issues which we now know about - - -

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16:02:33 1 ?---Would have raised them at the time, yes.
16:02:35 2
16:02:36 3 It might have provided him another and a better, perhaps,
16:02:39 4 basis to have his plea set aside?---Yes. I didn't know
16:02:42 5 whether those issues were being raised or not.
6
16:02:46 7 Which issues?---Of disclosure.
8
16:02:47 9 Yes?---With Mr Maguire and Boris. I know in my later file
16:02:53 10 notes I ask if they were.
11
16:02:55 12 What, you asked if the issues with respect to Mokbel had
16:03:00 13 been brought to the attention of - - - ?---Yes.
14
16:03:02 15 - - - I think Mr Kidd was - - -?---You'll see that. You'll
16:03:05 16 see that in my file notes as you go through.
17
16:03:09 18 Before Mr - - - ?---So I was thinking that there was
16:03:13 19 continued activity with the investigators, with the crime
16:03:17 20 instructors.
21
16:03:17 22 Which matter are you talking about?---Mokbel.
23
16:03:22 24 Right. And which instructors and which lawyers are you
16:03:25 25 talking about?---Maguire.
26
16:03:29 27 Right. Well - - -?---And whoever was doing subpoenas for
16:03:36 28 Mokbel.
29
16:03:37 30 We know - - - ?---Because the VGS0 were briefing all the
16:03:39 31 lawyers.
32
16:03:40 33 Mr Kidd was representing the Crown in the Mokbel matter,
16:03:49 34 the plea change?---I accept that it didn't happen.
35
16:03:52 36 When did you find out that it hadn't occurred, that is
16:03:57 37 disclosure hadn't been made at least to the OPP?---I think
16:04:01 38 it was June or July when I checked on it after the Comrie
16:04:07 39 review, fine, yeah.
40
16:04:11 41 And you checked on it how and with whom?---With Jeff Pope
16:04:14 42 and Steve Gleeson.
43
16:04:17 44 Were you surprised that there hadn't been disclosure?---I
16:04:24 45 don't know that I was surprised, but I felt that we needed
16:04:27 46 to disclose.
47

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16:04:31 1 When was that disclosure made?---In August the following
16:04:33 2 year.
3
16:04:34 4 August of 2012?---2012, yes.
5
16:04:38 6 There was disclosure made to who?---The DPP.
7
16:04:42 8 That Mr Mokbel's trial might have been, at least evidence
16:04:48 9 against him might have been improperly obtained?---No, it
16:04:53 10 was that Gobbo had been speaking to - we had records that
16:04:56 11 Gobbo had been speaking to handlers in regard to Mokbel and
16:05:04 12 associates.
13
16:05:05 14 Yes, all right. As far as you were aware up until that
16:05:09 15 time, as far as you knew there had been appropriate
16:05:12 16 disclosure; is that right?---I don't know.
17
16:05:17 18 Can we look at - - - ?---What I'm saying is I wasn't tasked
16:05:21 19 to do it.
20
16:05:23 21 You weren't tasked to do it?---M'mm.
22
16:05:25 23 Can we look at the notes - were you tasked to do anything
16:05:28 24 at this meeting, do you believe?---Well, we continued to
16:05:31 25 talk over the days after this meeting.
26
16:05:34 27 Yes?---And I was tasked to assist with the review.
28
16:05:39 29 All right. If we can have a look at the minutes of the
16:05:43 30 meeting of - - - ?---When I'm tasked to do something I
16:05:47 31 write "action".
32
16:05:49 33 Right?---I put a semicolon and I put the action down that
16:05:53 34 I'm doing. Or I put a sub-heading "action" and I write
16:05:57 35 down what it is that I'm going to do.
36
16:05:59 37 I follow. And because there's - where do we see the action
16:06:03 38 that you were tasked to do here?---There aren't any actions
16:06:06 39 in there. We continued to have conversations over the
16:06:09 40 following days while we were working out what it is that we
16:06:13 41 were going to do next.
42
16:06:14 43 Right. Do you believe that there are some occasions when
16:06:18 44 it might be appropriate to take action yourself even if you
16:06:21 45 haven't been tasked?---Absolutely, and that's what I did
16:06:23 46 the following year when I realised the difficulty we were
16:06:26 47 in.

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1
16:06:27 2 If we can have a look at - - - ?---Because I took matters
16:06:30 3 into my own hands.
4
16:06:32 5 Thank you?---I couldn't wait for instructions any further.
6
16:06:34 7 Can we have a look at Deputy Commissioner Cartwright's
16:06:40 8 notes of that meeting, VPL.0002.0002.0065. This has been
16:06:57 9 exhibited already, Commissioner, but I can't recall the
16:07:00 10 number. What this evidence as it appears is a meeting that
16:07:05 11 you were at.
12
16:07:08 13 COMMISSIONER: Exhibit 844 I'm told. Thank you.
14
16:07:10 15 MR WINNEKE: Thanks, Commissioner. It concerns "F as
16:07:18 16 witness for Dale prosecution" and then there's reference to
16:07:24 17 "Maguire's legal advice, 4 November, received by
16:07:31 18 Mr Cartwright on 2 November. Provided at the request of
16:07:32 19 the VGS0. Briefed at the committal, if required, to claim
16:07:36 20 public interest immunity". The OPP prosecutor has received
16:07:39 21 the advice as well and that refers to the CDPP
16:07:46 22 prosecutor?---Yes.
23
16:07:47 24 Do you accept that?---Yes.
25
16:07:48 26 Maguire's advice raises the issue of governance of human
16:07:53 27 sources when the human source is a legal practitioner and
16:07:55 28 there's an action item there for Tim Cartwright to discuss
16:07:58 29 with Jeff Pope "as to how we can ensure appropriate
16:08:01 30 governance"?---Yes.
31
16:08:03 32 As I say that's - - - ?---We thought it was a bigger issue,
16:08:05 33 m'mm.
34
16:08:06 35 Sorry?---We thought it was a bigger issue.
36
16:08:10 37 And then there's a note that Graham Ashton has concerns
16:08:18 38 around Inca. There's a pending AFP matter for large scale
16:08:24 39 drug importation after joint operations. That is
16:08:28 40 consistent with your note about pre-trial for Inca?---Yes.
41
16:08:32 42 "F was the originating human source." AFP matter for drug,
16:08:37 43 large scale drug importation - sorry. "AFP, although aware
16:08:42 44 of the importance of the human source, are not aware that
16:08:45 45 it was F. Some concern that F was acting as legal advisor
16:08:50 46 to one of the accused at the time, and consequently a
16:08:55 47 requirement to disclose or, at the least, make the

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16:08:58 1 prosecution aware of F's involvement and the potential that
16:09:01 2 she was a legal advisor. Action: Finn to consider the
16:09:09 3 requirements"?---Yes.
4
16:09:11 5 So that appears to be Mr Cartwright's understanding of the
16:09:14 6 meeting that you were to action, or you were to consider
16:09:17 7 the requirements to make disclosure in relation to this
16:09:23 8 information or this concern around Inca?---That's what he
16:09:27 9 decided at 4 o'clock that day. He didn't tell me that.
10
16:09:36 11 How do you know - why do you say that that was decided at 4
16:09:40 12 o'clock?---Because he says, "Notes compiled at 4 o'clock".
16:09:45 13 "Handwritten", I see.
14
16:09:47 15 "From handwritten"?---I have no doubt that that was his
16:09:49 16 intention.
17
16:09:49 18 Right?---But Inca was a Commonwealth matter.
19
16:09:52 20 Yes?---I didn't know anything about Inca.
21
16:09:55 22 Yes?---I didn't know who was involved. Normally when
16:09:58 23 people ask for advice they contact me, they email me, they
16:10:01 24 come to my office. They tell me who's involved in the
16:10:06 25 case. I had no line of sight on Inca and no action item.
26
16:10:12 27 Do you accept that in this meeting there was a discussion
16:10:16 28 about concern around Inca and the fact, or a concern that
16:10:20 29 she was acting as a human source and a barrister?---Well
16:10:27 30 that's what it says.
31
16:10:28 32 Right?---Yes.
33
16:10:30 34 And it appears to be consistent with a comment made by
16:10:33 35 Ms Breckweg at an earlier meeting at which you were present
16:10:37 36 that as far as she was aware there was at least one case -
16:10:42 37 - - ?---Yeah, she didn't tell me it was Inca though.
38
16:10:44 39 She may not have. But you're told in this meeting that
16:10:48 40 that's the case. Can I ask you, albeit you say, contrary
16:10:52 41 to the note of Mr Cartwright that there was no requirement
16:10:54 42 for you to consider the requirements, did you off your own
16:10:58 43 bat consider that something should be done about it?---I
16:11:01 44 would have actioned it immediately if someone had have
16:11:04 45 contacted me.
46
16:11:06 47 If someone had contacted you?---Yes.

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1
16:11:09 2 But there was a discussion in the meeting about it, do you
16:11:11 3 not accept that?---Yes.
4
16:11:13 5 Well, what did you do?---Well I didn't have an action item
16:11:16 6 for it. That note is not my note. That's Tim's note.
7
16:11:20 8 I understand?---I spoke to Tim and Graham on a number of
16:11:25 9 occasions over the coming days.
10
16:11:27 11 Right?---And they didn't seek that advice.
12
16:11:31 13 They didn't ask you?---No.
14
16:11:34 15 Right?---I action requests for advice immediately.
16
16:11:40 17 Right. Do you accept that an issue had arisen in this
16:11:44 18 meeting, not just with respect to putting Mr Kidd, who's
16:11:48 19 running the Mokbel prosecution, on notice that there may be
16:11:51 20 a concern?---Yes.
21
16:11:52 22 But also putting the Commonwealth DPP on notice about
16:11:55 23 Operation Inca?---Absolutely, yes.
24
16:11:57 25 And it appears - - - ?---And it should have been done.
26
16:12:00 27 Yes?---By the investigators.
28
16:12:02 29 Yes?---With the lawyers who were involved.
30
16:12:04 31 Right. And it appears that it hasn't been done?---Well I
16:12:07 32 know now that it wasn't done.
33
16:12:12 34 Did you, after this meeting, take any steps to find out
16:12:15 35 whether anything had been done about it?---Yes. Not Inca,
16:12:19 36 because I didn't have any sight of Inca after that.
37
16:12:22 38 Yes, right?---But in terms of the - as you know from my
16:12:29 39 statement.
40
16:12:29 41 Yes?---With the State DPP, Mr Gleeson reported back to me
16:12:39 42 on what he'd found along the way.
43
16:12:41 44 Yes?---Well actually reported to Mr Ashton and myself in
16:12:47 45 March of 2012 of some of the concerns that he had. I was
16:12:53 46 highly concerned by that. Subsequently, with the jigsaw
16:13:03 47 pieces falling together, I went to Kieran Walsh and I told

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16:13:09 1 Kieran Walsh that we must disclose the status of Gobbo to
16:13:16 2 the State DPP.
3
16:13:17 4 This is much later on, isn't it?---Yes.
5
16:13:22 6 You had just been before - - - ?---But that's the sequence
16:13:24 7 of events.
8
16:13:25 9 I follow. I take it you don't accept the note that was
16:13:37 10 apparently being taken by Mr Cartwright?---I accept that
16:13:41 11 was his intention.
12
16:13:42 13 Right?---When he made the note.
14
16:13:43 15 Yes?---He just didn't tell me or action it.
16
16:13:47 17 It appears that - do you accept or do you say, "Look,
16:13:50 18 there's been a misunderstanding between Mr Cartwright and
16:13:53 19 myself"?---Yes.
20
16:13:55 21 "I left the meeting thinking that there was nothing that I
16:13:58 22 needed to do"?---No. No, we were continuing our
16:14:02 23 conversation. I had no visibility of Commonwealth
16:14:04 24 prosecutions or joint Commonwealth prosecutions.
25
16:14:08 26 Right?---Like any other legal office, if they want advice,
16:14:12 27 they come to us and ask the advice. They provide - I need
16:14:18 28 an informant, I need a police officer, I need some
16:14:20 29 information to act on.
30
16:14:23 31 You'd been given information by two very senior officers -
16:14:27 32 - - ?---I don't go looking for it.
33
16:14:28 34 You'd been given information, one in relation to
16:14:33 35 Mr Maguire's advice. It's been brought to attention,
16:14:36 36 particular paragraphs had been brought to your
16:14:38 37 attention?---Yes.
38
16:14:39 39 Those paragraphs which talk about the potential for
16:14:41 40 Mokbel's matter to have been affected and also other
16:14:44 41 matters?---I can tell you we decided to undertake a review
16:14:47 42 to get to the bottom of it.
43
16:14:49 44 Yes?---The investigators were providing instructions to the
16:14:55 45 lawyers who were involved in the usual way. I know that
16:15:00 46 they had meetings but I wasn't privy to them.
47

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16:15:03 1 Mr McRae, I'm going to come to the Comrie review. But the
16:15:07 2 Comrie review was not about trying to determine whether any
16:15:11 3 cases had been affected. That was not part of the Terms of
16:15:14 4 Reference for Mr Comrie or Mr Gleeson, was it?---I don't
16:15:17 5 accept that.
6

16:15:18 7 Right. Can I suggest to you that it was by the way, it
16:15:24 8 just so happened that Mr Gleeson, when reviewing it,
16:15:27 9 discovered matters which caused him considerable concern,
16:15:31 10 what he described as the "out of scope matters", do you
16:15:34 11 understand that?---Yes.
12

16:15:35 13 So his very description of them, "out of scope matters",
16:15:38 14 suggests that they weren't what he was originally tasked to
16:15:42 15 examine?---It wasn't a miscarriage. It wasn't set out as a
16:15:50 16 miscarriage review.
17

16:15:52 18 No?---It was a review to find out what was going on that
16:15:56 19 would cause an advice like this to come through.
20

16:15:58 21 Yes, I follow?---And Mr Gleeson was perfectly placed with
16:16:05 22 his skill set to make those inquiries.
23

16:16:08 24 Can I ask you this question: Mr Maguire has provided an
16:16:12 25 advice, he's gone through the source management log, and he
16:16:18 26 is a trusted barrister?---Yes.
27

16:16:20 28 Who Victoria Police has no problems about including him on
16:16:24 29 the most, the deepest darkest secrets of Victoria Police,
16:16:29 30 Mr Maguire can know about them?---Yes.
31

16:16:31 32 Why don't you simply say to Graham Ashton and Tim
16:16:34 33 Cartwright, "Look, it seems to me it would be appropriate
16:16:38 34 that Maguire's seized of this, he's read the source
16:16:43 35 management log, let's brief him and get him to have a close
16:16:45 36 look at this matter so as he can really tell us what's
16:16:47 37 going on"?---That's actually what I thought was the outcome
16:16:51 38 of the meeting.
39

16:16:52 40 You thought that was the outcome of the meeting?---That
16:16:55 41 they would consider the disclosure requirements.
42

16:16:58 43 But why wouldn't you - - -?---That's what we were talking
16:17:01 44 about.
45

16:17:01 46 But do you follow what I'm saying, it would have been a lot
16:17:04 47 easier, rather than setting Mr Gleeson off on a task which

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16:17:07 1 was to review guidelines - - - ?---Because the advice - - -
2
16:17:10 3 Just listen to the question, please?---Okay.
4
16:17:12 5 Why not say to Mr Maguire, brief him, "You've told us this,
16:17:17 6 I'm very concerned about this. Can you give us a very
16:17:20 7 close advice/analysis about whether Mokbel's matter has
16:17:24 8 been affected"? Why don't you do that?---That's not my
16:17:27 9 decision.
10
16:17:28 11 Whose decision is it?---It was Tim Cartwright's and Graham
16:17:33 12 Ashton's decision to get an independent assessment of this
16:17:35 13 because of the nature of the advice.
14
16:17:39 15 Yes?---Independent. Not from the people who were saying -
16:17:42 16 if you read that advice from the front to the back, it's
16:17:49 17 saying don't disclose. Not disclose. They're saying don't
16:17:53 18 disclose.
19
16:17:54 20 Mr Maguire is an independent practitioner?---He's saying
16:17:58 21 don't disclose.
22
16:17:59 23 He's an independent practitioner who has brought to your
16:18:02 24 concern a concern. He's a barrister and he understands the
16:18:04 25 law in this area?---Yes.
26
16:18:06 27 Clear understanding of criminal law?---Yes, and he says in
16:18:09 28 his advice he couldn't imagine how it had come to the
16:18:13 29 attention of the accused.
30
16:18:14 31 Yes?---That was something that we were concerned about.
32
16:18:17 33 And what happens after his advice, there's such a degree of
16:18:21 34 concern about the disclosure of Ms Gobbo as a human source,
16:18:26 35 that charges are withdrawn against Dale?---No, that was
16:18:31 36 about safety.
37
16:18:33 38 Yeah, disclosure of Ms Gobbo as a human source?---And
16:18:35 39 leading to her death.
40
16:18:37 41 Exactly. And instead of pursuing the case against Dale in
16:18:41 42 relation to those charges, the charges are
16:18:46 43 withdrawn?---Yes. Ah, sorry, the charges are withdrawn?
44
16:18:50 45 Yeah, charges which relied upon Ms Gobbo as a witness were
16:18:54 46 withdrawn?---I see.
47

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16:18:56 1 Based on Mr Maguire's advice?---I see.
2
16:19:00 3 Do you say that it wouldn't have been an appropriate thing
16:19:03 4 to do to have Mr Maguire revisit the short opinion that
16:19:06 5 he'd provided in paragraphs 53 and 54 and drill into it and
16:19:12 6 provide a more comprehensive advice about whether or not
16:19:15 7 Mr Mokbel's matter had been - - - ?---Again, it's a sliding
16:19:18 8 door moment, isn't it?
9
16:19:20 10 Okay, that's perhaps an opportunity that was missed?---It
16:19:22 11 is. It is most definitely.
12
16:19:24 13 All right?---And it would have brought forward the
16:19:28 14 disclosure that I made in August by nine months.
15
16:19:32 16 Thanks, Mr McRae. Around this time, and I think this
16:19:48 17 information, this advice comes to you and this meeting
16:19:52 18 occurs a week or so - I'm sorry, perhaps three weeks after
16:19:58 19 you'd appeared before the Ombudsman and had been asked
16:20:02 20 questions about Victoria Police's relationship with
16:20:05 21 Ms Gobbo?---Yes.
22
16:20:09 23 There's a transcript of the discussion with the Ombudsman
16:20:13 24 and I'd just like to put a couple of passages to you if I
16:20:18 25 might. The transcript is at VPL.0005.0149.0001. As you've
16:20:30 26 indicated before, the Ombudsman was concerned about the
16:20:33 27 settlement of the proceeding?---Yes.
28
16:20:37 29 It goes on for some time but if we can go through to p.56.
16:20:42 30 You were asked to characterise Ms Gobbo's relationship with
16:20:46 31 Victoria Police. I think at question 223, "Tell us about
16:20:56 32 her involvement?" "It's huge", you say. And you say,
16:21:02 33 "Initially she provided information. I don't know whether
16:21:06 34 that was as a registered, it may have been times as a human
16:21:10 35 source, then later as a witness, more recently as a
16:21:13 36 litigant. It probably characterises the phases of her
16:21:16 37 relationship. And now again more continuing
16:21:19 38 contact"?---Yes.
16:21:19 39
16:21:20 40 "Have you had any direct contact with her? Yes", and that
16:21:23 41 was in relation to witness protection, do you see
16:21:26 42 that?---Yes.
43
16:21:26 44 Then if we go through to question 261 to 2, asked about
16:21:38 45 conditions relating to contact with Ms Gobbo, you indicated
16:21:41 46 that she would contact people - at 261 to 2 - I'll just get
16:21:51 47 you to have a look at that. Keep going. You're being

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16:21:59 1 asked about, it seems, the recital?---Oh yes.
2

16:22:04 3 "No longer seeks the plaintiff's assistance in relation
16:22:09 4 thereto and accordingly the second defendant herself or
5 authorised officer will direct members of Petra not to
6 contact the plaintiff"?---Yes.
7

16:22:14 8 "Or remove the current prohibition on the head of the
16:22:17 9 Source Development Unit or his delegate communicating with
16:22:19 10 the plaintiff or remove surveillance equipment
16:22:21 11 installed"?---Yes.
12

16:22:22 13 If we go on. Keep going. I'd just like to - now, "Having
16:22:31 14 said that, we're talking to her right now. It's very
16:22:35 15 difficult to stop because she will contact people, she
16:22:39 16 lives and breathes this stuff"?---Yes.
17

16:22:42 18 I was suggesting before that you were aware that Ms Gobbo
16:22:47 19 was in effect compulsively - she couldn't help
16:22:52 20 herself?---Yeah, I accepted that.
21

16:22:54 22 That's where that comes from, you accept that's something
16:22:57 23 you were aware of?---Yes.
24

16:22:59 25 Then if we go on down to 304 to 307. You're asked
16:23:14 26 questions. It says, "There are good reasons why Victoria
16:23:18 27 Police may wish to avoid public disclosure in its dealings
16:23:22 28 with Ms Gobbo", talking about the advice. "Obviously the
16:23:24 29 advice didn't go into any more details as to what those
16:23:27 30 reason are. Can you recall" - - - ?---Is that the Hanks'
16:23:30 31 advice?
32

16:23:31 33 No. You say, "I didn't brief Hanks on this feature,
16:23:34 34 someone else did. But the issues are because we got this
16:23:37 35 as a second advice that that's comfort advice for the
16:23:42 36 Minister"?---Yes.
37

16:23:44 38 Keep going. We get down to the - just stop there. "The
16:23:51 39 reasons that exposure of the people that she was talking to
16:23:55 40 would lead to the risk of their health and well-being
41 because she gave so much information on so many criminals,
42 including people who had given information of other people
16:24:02 43 who may be in the same prisons, that if that came out
16:24:06 44 through discovery, through an open court or something like
16:24:08 45 that. Yeah. Through the court process". You say, "It
16:24:13 46 would never come out through an open court because the
16:24:15 47 court would - we'd always suppress it"?---Yes.

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1
16:24:17 2 "But the documents fly around and then somehow copies are
16:24:20 3 given to other people"?---I was talking about the leaks,
4 yes.
5
16:24:23 6
16:24:24 7 Yes. "Once it's in the court process we lose
16:24:27 8 control"?---M'mm.
9
16:24:28 10 So effectively you're saying, "Well look, we would not let
16:24:31 11 this get out, we'd always suppress it"?---Well we would if
16:24:38 12 we could, on the basis of risk to life, yes.
13
16:24:41 14 If we go down to 310. Just go back, please, a little way.
16:24:41 15 Just this one last matter. If we go to 310. There's a
16:25:03 16 reference to Ms Gobbo's criticism set out in the statement
16:25:09 17 of claim not being very balanced. She wanted to maintain a
16:25:12 18 lifestyle in Melbourne - I'm sorry, okay. Keep going,
16:25:21 19 please. This is the answer, "But having said that, I don't
16:25:25 20 discount the fact that she gave evidence. That's led to a
16:25:32 21 lot of matters. Not gave evidence, gave us information
16:25:35 22 because as a witness, and she's not a good witness, but in
16:25:38 23 terms of giving us information that led to inquiries she
16:25:41 24 did, it was very brave. Well worth the money for the
16:25:45 25 Victorian community"?---That's what OPI told me.
16:25:48 26
16:25:52 27 I'm sorry?---That was a throw-away line in regard to what
16:25:57 28 OPI said.
16:25:57 29
16:25:58 30 "I've forgotten how much, how high the settlement was. I
16:26:02 31 still say it's worth the money though". You agree with
16:26:06 32 that, if it was given to you by the OPI, you agree with it,
16:26:10 33 still say it's worth the money?---It was a throw-away line
16:26:13 34 in a closed hearing.
35
16:26:15 36 Yes?---Well, the money was appropriate.
37
16:26:19 38 You don't discount the fact that she gave evidence that's
16:26:22 39 led to a lot of matters?---Well that's what they said.
40
16:26:26 41 A lot of information?---M'mm.
42
16:26:27 43 Yeah, okay?---I didn't know what the matters were.
44
16:26:32 45 Three weeks later you're now concerned that some of the
16:26:38 46 information that she gave - - - ?---Yes.
47

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16:26:46 1 I tender that transcript, Commissioner.
16:26:53 2
16:26:53 3 #EXHIBIT RC1110A - (Confidential) Transcript
16:20:19 4 VPL.0005.0149.0001.
16:26:56 5
16:26:57 6 #EXHIBIT RC1110B - (Redacted version.)
16:26:59 7
16:26:59 8 MR HOLT: Commissioner, I'm aware of that document. It's a
16:27:01 9 very long document that deals with a number of unrelated
10 issues also. Would it be possible for us perhaps pinpoint
11 those parts that Mr Winneke has taken the witness to and
16:27:06 12 deal with those as a matter of production? Maybe can we
16:27:09 13 liaise with our friends about it, but otherwise there'll be
16:27:13 14 a lot of PII review for the purposes - - -
15
16:27:18 16 MR WINNEKE: There's a lot of redaction in the document
16:27:20 17 anyway.
16:27:20 18
19 MR HOLT: But can I review the document, Commissioner,
16:27:21 20 rather than wasting time?
16:27:22 21
16:27:22 22 COMMISSIONER: Yes. It might be that you can highlight the
16:27:24 23 portions that are relevant to the Commission for PII, that
16:27:26 24 would help.
25
16:27:27 26 MR WINNEKE: Yes, Commissioner. I'm going to move on to
16:27:30 27 the Comrie review, Commissioner. Mr Doyle, for the State
16:27:43 28 Director of Public Prosecutions, is unavailable next week.
16:27:45 29 It does look as if Mr McRae will be continuing into Monday
16:27:50 30 morning at least. Mr Doyle isn't available next week and
16:27:54 31 he's discussed with me some matters that he needs to put to
16:27:57 32 Mr McRae concerning discussions that Mr McRae has had with
16:28:01 33 the Director.
34
16:28:03 35 COMMISSIONER: So that they'll finish in a half an hour or
16:28:06 36 so?
16:28:07 37
16:28:08 38 MR DOYLE: Commissioner, I do seek leave to ask some
16:28:10 39 questions of Mr McRae now. I'm not available on Monday.
40
16:28:14 41 COMMISSIONER: Yes. You'll finish within half an hour,
16:28:17 42 will you?
16:28:17 43
16:28:18 44 MR DOYLE: Yes, I'll take ten minutes or so.
45
16:28:20 46 MR WINNEKE: It's probably easier if he does it now.
47

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16:28:23 1 COMMISSIONER: Okay. Yes Mr Doyle.
16:28:27 2
3 <CROSS-EXAMINED BY MR DOYLE:
4
16:28:27 5 Mr McRae, you've been asked questions today about your
16:28:33 6 state of knowledge in 2010, 2011, and even later,
16:28:37 7 concerning this matter. Can I start by taking you back to
16:28:40 8 when you first got involved?---Yes.
9
16:28:43 10 And consider for a moment what was apparent to you in June
16:28:47 11 2009 shortly before your dealings with the then DPP Jeremy
16:28:53 12 Rapke?---Yes.
13
16:28:55 14 When you first got involved you were told that Ms Gobbo was
16:28:59 15 a witness against Paul Dale?---Yes.
16
16:29:02 17 And she was in danger?---Yes.
18
16:29:05 19 When the matter was first raised you suggested yesterday
16:29:08 20 you would have been given just some basic information by
16:29:12 21 Luke Cornelius?---Yes.
22
16:29:15 23 It was soon after that that you met with Ms Gobbo
16:29:19 24 herself?---Yes.
25
16:29:20 26 Who did most of the talking during the meeting you had with
16:29:23 27 her and Rod Wilson?---Yes.
28
16:29:28 29 You knew at that stage she was someone who socialised with
16:29:32 30 police?---I didn't really - I didn't know much about her at
16:29:38 31 all.
32
16:29:38 33 Did you learn shortly after you became involved that she
16:29:43 34 had a personal relationship with Mr Dale?---At some stage.
35
16:29:49 36 Did you learn about - - - ?---Not in those early witness
16:29:55 37 protection discussions. That would have come up as part of
16:30:00 38 the prosecution.
39
16:30:02 40 Did you learn that her role in that investigation was as a
16:30:07 41 witness to a conversation with Mr Dale?---Yes.
42
16:30:11 43 So you'd learned that she was in a position to have had a
16:30:14 44 conversation with him?---Yes.
45
16:30:16 46 And to give evidence about what he said?---Yes.
47

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16:30:19 1 A conversation occurring just between the two of
16:30:22 2 them?---Yes.
3
16:30:26 4 Mr Winneke asked you yesterday whether you'd be interested
16:30:30 5 to know more than that, based on the information you had,
16:30:36 6 but can I suggest to you to the contrary, that at the time
16:30:40 7 it was really, as far as you were concerned, as simple as
16:30:45 8 that?---Yes.
9
16:30:46 10 And at that stage you didn't have any information to
16:30:49 11 suggest that there was a need to investigate further the
16:30:55 12 circumstances in which she had become a witness in that
16:30:58 13 matter?---I wasn't second-guessing the DPP's prosecution.
16:31:04 14 My concern was the safety aspect in getting her into
16:31:07 15 witness protection.
16
16:31:09 17 And what you learned about her involvement in that case,
16:31:12 18 and the circumstances in which she'd come to have a
16:31:16 19 conversation with Paul Dale, gave you absolutely no basis
16:31:19 20 to suppose that she had been informing to police on her
16:31:25 21 clients?---No.
22
16:31:28 23 And it follows, doesn't it, that in none of your
16:31:32 24 communications with Mr Rapke would he have learned of any
16:31:36 25 reason to suppose anything of the sort, that that's - - -
16:31:41 26 ?---I never raised client issues with Mr Rapke.
27
16:31:45 28 Nor would you have said anything to him to give him any
16:31:48 29 reason to suppose that that is what might have been going
16:31:51 30 on, that is her informing on a series of her own
16:31:54 31 clients?---No. Well I agree with that, yes.
32
16:32:00 33 If I could take you to the first meeting you had with the
16:32:06 34 State Director, who was at that stage Mr Champion. This is
16:32:10 35 on 1 June 2012?---Yes.
36
16:32:14 37 So I'm going to paragraph 6.14 of your statement. Was the
16:32:21 38 immediate catalyst for that meeting the letter which
16:32:24 39 Ms Gobbo had written to Mr Walsh on 20 May 2012?---Well it
16:32:30 40 was two letters that I read in conjunction, that I re-read
16:32:36 41 in conjunction with information given to me by Mr Gleeson.
16:32:43 42 So I'd read them in a new light.
43
16:32:46 44 That letter that she'd written to Mr Walsh on 20 May 2012
16:32:51 45 was actually copied into Mr Champion?---Both letters were.
46
16:32:57 47 That meeting that you had was with Mr Champion and Bruce

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16:33:01 1 Gardiner?---Yes.
2
16:33:02 3 From the OPP?---Yes.
4
16:33:04 5 Have you since had the chance to look at Mr Gardiner's note
16:33:10 6 that was taken of that meeting?---I haven't been through it
16:33:13 7 in detail.
8
16:33:15 9 But you've had a chance to at least - - - ?---I had a quick
16:33:18 10 look at it. I think it came up the night before I gave
16:33:21 11 evidence or something. It was 11.30 at night.
16:33:28 12
16:33:28 13 MR HOLT: Commissioner, we only received permission from
16:33:30 14 the Commission to allow Mr McRae to see that material just
16:33:37 15 before he gave evidence?---Yes.
16
17 So that's the provenance of that answer in case it is
18 otherwise confusing.
19
16:33:39 20 COMMISSIONER: Do you want to get the document up on the
16:33:41 21 screen, Mr Doyle?
16:33:42 22
16:33:43 23 MR DOYLE: There's probably no need to go through in that
16:33:46 24 level of detail, Commissioner. There's only a couple of
16:33:48 25 simple points I want to explore about that.
26
16:33:53 27 COMMISSIONER: Sure.
16:33:53 28
29 MR DOYLE: Mr McRae, the notetaking by Mr Gardiner begins
16:33:55 30 when it goes through the topics discussed with a reference
16:33:56 31 to the letter?---Yes.
32
16:33:57 33 And then records Doug Fryer giving some background about
16:34:01 34 the investigation into Dale, at that time the case against
16:34:08 35 him being concerned with alleged lies told to the Crime
16:34:16 36 Commission?---Right, yes.
37
16:34:17 38 Does that accord with your recollection of at least how the
16:34:20 39 meeting began, that is reference to the letter to Mr Walsh
16:34:20 40 and an explanation - - - ?---Yes.
41
16:34:22 42 - - - of the case against Dale and her role in it?---Yes.
16:34:26 43 Because the letter talked about hundreds of hours of audio.
44
16:34:29 45 Yes, and the only subject matter, which was at least
16:34:33 46 apparent from the letter itself, was the Dale prosecution,
16:34:37 47 that is the letter didn't refer to any other matter in

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16:34:40 1 respect of which the hundreds of hours of audio might have
16:34:43 2 been generated?---That's not what we were talking about
16:34:45 3 though. The purpose of that meeting was for Doug to
16:34:50 4 explain her status as a registered informer and the risk.
5
16:34:56 6 Yes. There was more that was explored later in the
16:34:59 7 meeting?---Yes.
8
16:35:00 9 But at least that's how it began?---Yes.
10
16:35:06 11 Can I jump ahead for a moment to the meeting you had with
16:35:09 12 the Director and Mr Gardiner in September of that year.
16:35:16 13 Did you document the reason for that subsequent meeting in
16:35:18 14 a file note you made on 23 August 2012?---Yes.
15
16:35:25 16 And if I could refer you, Mr McRae, to the part of your
16:35:30 17 statement which deals with this, it's paragraph 6.23?---Can
16:35:37 18 that be put on the screen because I can't see it in the
16:35:40 19 statement?
20
16:35:40 21 Yes, if I can read out the number, it's VPL.0005.0003.2800.
16:36:09 22 That's the file note that we're talking about,
16:36:13 23 Mr McRae?---Yes.
24
16:36:16 25 This was a discussion you had with Mr Ashton and
16:36:19 26 Mr Pope?---Yes.
27
16:36:20 28 About what was seen as the need for further disclosure to
16:36:26 29 DPP regarding activities of Witness F?---Yes.
30
16:36:31 31 And I'll just read out the first portion of the note that
16:36:34 32 you took?---Yep.
33
16:36:36 34 And if you look down, is the next part of the note an
16:36:40 35 explanation of what kind of further disclosure is
16:36:44 36 required?---Yes.
37
16:36:45 38 That is, that Ms Gobbo was potentially passing on
16:36:49 39 information regarding her own clients?---Yes.
40
16:36:57 41 The meeting that was subsequently had with the DPP and
16:37:04 42 Bruce Gardiner, that this note refers to, occurred on 4
16:37:11 43 September 2019?---Yes.
44
16:37:15 45 Sorry, 4 September 2012?---2012, yes.
46
16:37:21 47 Have you seen another file note of that meeting that

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16:37:23 1 Mr Gardiner also took?---It was 11.30 at night. I can't
16:37:29 2 recall it very well.
3
16:37:31 4 I don't need to take you again to the detail of it but this
16:37:35 5 one was typed up.
6
16:37:36 7 COMMISSIONER: The last document was Exhibit 889 for the
16:37:38 8 record.
16:37:41 9
16:37:41 10 MR DOYLE: Yes. Do you recall seeing a note that unlike -
16:37:44 11 it was typed up in large bold text?---Okay.
12
16:37:49 13 Perhaps I will just throw this one up on the screen,
16:37:52 14 Commissioner. I do have a number for it, it's recently
16:37:55 15 been tendered. We've got it, thank you. Do you see there
16:38:14 16 Mr Gardiner has recorded, "Finn advised us today that upon
16:38:18 17 a review of internal VicPol intelligence material/HSMU
16:38:24 18 material", et cetera, "there may be a suggestion that
16:38:29 19 Nicola Gobbo was providing information to VicPol about
16:38:32 20 persons she then professionally represented, including T
16:38:38 21 Mokbel"?---Yes.
22
16:38:41 23 That's consistent, isn't it, with the note you took back in
16:38:45 24 August?---Yes.
25
16:38:47 26 Of what needed to be conveyed to the DPP?---Yes.
27
16:38:52 28 And that was information that was additional, hence the
16:38:56 29 reference to further disclosure in earlier file note, from
16:39:00 30 the information which had already been conveyed in
16:39:04 31 June?---Yes, specifically in regard to Mokbel.
32
16:39:06 33 Yes. I suggest that the reference specifically to a
16:39:13 34 suspicion that there may be informing on her own clients,
16:39:19 35 when put that explicitly, was also something that was
16:39:22 36 additional, that is it was raised in the September 2012
16:39:25 37 meeting?---Yeah, in the earlier meeting, the breach of her
16:39:30 38 ethics, yes.
39
16:39:31 40 Mr Mokbel's name, I suggest, might have come up for the
16:39:35 41 first time in that September meeting, that is 4 September
16:39:39 42 2012?---I can't remember that but I know at this meeting -
16:39:45 43 have you got Bruce's handwritten notes?
44
16:39:48 45 Yes, they've also been exhibited. There were no
16:39:51 46 handwritten notes for this particular meeting?---Oh.
47

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16:39:54 1 So if we show you the next page. You see there halfway or
16:40:09 2 two-thirds of the way down it said, "Finn did ask that we
16:40:13 3 file note this conversation with him"?---Yes.
4
16:40:15 5 That's consistent, isn't it, with you wanting to make sure
16:40:18 6 that the additional information you were conveying was
16:40:21 7 recorded as having been conveyed?---I wanted to make sure
16:40:25 8 they wrote it down, yes.
9
16:40:28 10 On that date?---Yes.
11
16:40:31 12 The previous file note Mr Gardiner took of the meeting on 1
16:40:35 13 June 2012 has no reference to the name of Mokbel?---Right.
14
16:40:45 15 Your notes from that same meeting don't have a reference to
16:40:48 16 that name either. If you take that from me for the moment,
16:40:55 17 do you agree that it may be that the first time that
16:40:59 18 particular name was mentioned by you in one of your
16:41:02 19 meetings with the Director and Mr Gardiner was at this
16:41:07 20 meeting on 4 September?---Yeah, I specifically - I'd
16:41:12 21 obtained permission to specifically raise the issue of the
16:41:15 22 numerous conversations that we'd found with her about
16:41:20 23 Mokbel. We didn't know whether it impacted on the trial or
16:41:28 24 not, we just wanted him to know, because it was still on
16:41:31 25 foot.
26
16:41:32 27 Even then, as Mr Gardiner noted in his file note of 4
16:41:35 28 September 2012, it wasn't even clear at that point that
16:41:40 29 Ms Gobbo was acting for Mr Mokbel in a relevant
16:41:43 30 capacity?---We didn't know whether she was acting with
16:41:46 31 Mokbel at the time because we were talking about the
16:41:50 32 extradition I think.
33
16:41:52 34 And you also didn't know whether in fact any specific
16:41:56 35 information relevant to that extradition had been
16:41:59 36 provided?---No.
37
16:42:00 38 That was still on foot?---No, no.
39
16:42:05 40 So if we go back just for a moment, Mr McRae, to your
16:42:08 41 statement at paragraph 6.16.
42
16:42:17 43 COMMISSIONER: Will we tender that file note of 4 September
16:42:21 44 12 which you've just been cross-examining on? Would you
16:42:26 45 like that tendered?
46
16:42:27 46
16:42:28 47 MR DOYLE: It's already been tendered separately,

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16:42:31 1 Commissioner, as part of the exhibit that constitutes the
16:42:34 2 Director's response, 1096.
3
16:42:36 4 COMMISSIONER: Is it? Okay, thank you. Part of 1096, all
16:42:42 5 right. Thanks.
16:42:48 6
16:42:49 7 MR DOYLE: Mr McRae, if I refer you back to paragraph 6.16
16:42:52 8 for a moment. In the second sentence you say that Acting
16:42:56 9 Assistant Commissioner Fryer also said that she'd given
16:43:01 10 information to Victoria Police about Tony Mokbel and his
16:43:03 11 associates?---Yes.
12
16:43:04 13 We raised the fact that conflicts of interest may have
16:43:07 14 existed. Do you now think, having gone through that
16:43:11 15 chronology, that at least some of the contents of that
16:43:14 16 paragraph were in fact raised in the September meeting,
16:43:18 17 rather than the 1 June meeting?---No.
18
16:43:21 19 With the exception perhaps of the name of Tony
16:43:23 20 Mokbel?---No, it's just we didn't have the particulars in
16:43:26 21 the earlier meeting about the extradition. So there was a
16:43:30 22 meeting in between that I had with, I think Pope and
16:43:34 23 Gleeson, where Gleeson raised - Gleeson was raising
16:43:39 24 concerns with Jeff Pope that the Mokbel trial was ongoing,
16:43:42 25 and he'd done it on a number of occasions, and that's why
16:43:49 26 Steve and I decided to make sure that disclosure occurred
16:43:56 27 and with more particulars the second time about the, that
16:44:02 28 there's information around the time of the extradition that
16:44:05 29 he'd found and make sure that that was noted.
30
16:44:10 31 Yes, but the reason for the additional meeting was
16:44:14 32 recorded, wasn't it, in your file note of August
16:44:19 33 2012?---Yes.
34
16:44:20 35 And that's more broadly expressed than anything specific to
16:44:25 36 do with Mr Mokbel or any extradition?---The first one?
37
16:44:32 38 Your file note of 23 August 2012?---Yes, it's broad. It's
16:44:35 39 broad. We're talking about breach of ethics at that stage.
40
16:44:38 41 Yes. What you recall, as you record in paragraph 6.16 of
16:44:44 42 your statement, is your recollection of that first meeting
16:44:46 43 from June, that is the specific matters you refer to in
16:44:50 44 that paragraph - - - ?---Sorry, I'm confused here. Did you
16:44:52 45 say the August meeting or the June meeting?
46
16:44:56 47 Sorry, I'll take you back to the June meeting?---Yes.

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1
16:44:58 2 You set out in paragraph 6.15 of your statement your file
16:45:03 3 note?---Yes.
4
16:45:10 5 There's no reference to Mr Mokbel in there?---Yes, there
16:45:18 6 is.
7
16:45:18 8 Sorry, I might have missed that. Perhaps if we can display
16:45:22 9 it on the screen?---That's the central proposition we're
16:45:25 10 putting, that the information that she has is in regard to
16:45:29 11 Mokbel and - it's the Mokbel cartel.
12
16:45:34 13 Sorry, the word doesn't appear is all I'm getting at,
16:45:40 14 Mr McRae?---Sorry?
15
16:45:42 16 The specific name?---Mokbel?
17
16:45:44 18 Yes?---Can we bring it up on the screen so I can see it.
16:45:52 19 6.15.
20
16:45:53 21 COMMISSIONER: Paragraph 6.15 of the witness's statement
16:45:55 22 has the - - -
16:45:56 23
16:45:57 24 MR DOYLE: The document number is VPL.0005.0003.2535.
25
16:46:08 26 COMMISSIONER: Is that the file note or the statement?
16:46:10 27
16:46:10 28 MR DOYLE: That's the file note, Commissioner.
29
16:46:13 30 COMMISSIONER: Thank you.
16:46:17 31
16:46:18 32 WITNESS: Yes. I apologise for my handwriting again. But
16:46:23 33 in the second-last line - - -
16:46:28 34
16:46:28 35 MR DOYLE: I see?---Yes.
36
16:46:38 37 Yes, I see the reference to it there?---Yes.
38
16:46:41 39 Thanks Mr McRae?---That's what we're discussing at the
16:46:46 40 meeting in regard to the trial that you see there. So
16:46:53 41 we've raised it and the DPP's explained what's happened at
16:46:58 42 that trial and the serious conflicts of interest.
43
16:47:09 44 It took a long time, even from that point, to explore this
16:47:14 45 question of the potential conflicts of interest and whether
16:47:19 46 or not Ms Gobbo was actually providing information to
16:47:23 47 police in respect of persons for whom she was at that time

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16:47:27 1 acting?--Well I raised that trial continually with the DPP
16:47:32 2 and Bruce Gardiner over the next six months. I was trying
16:47:35 3 to obtain the transcript so I could understand it better
16:47:39 4 and in the end I just asked for information that
16:47:44 5 characterised what went on, but it was never given to me,
16:47:53 6 and then we entered into the Loricated work that we'd
16:47:58 7 indicated at the second meeting we'd do. I'd indicated, on
16:48:03 8 the advice of Steve Gleeson, that it'd take a few months
16:48:09 9 but it took over 12 months. It was much more complicated
16:48:13 10 than we thought.

11
16:48:15 12 Yes, it was a very lengthy and laborious process within
16:48:18 13 Victoria Police?---Yes.

14
16:48:21 15 Mr McRae, can I take you back to the September meeting for
16:48:25 16 a moment. Your notes of that meeting refer to a review by
16:48:32 17 Victoria Police of human source procedures and intelligence
16:48:37 18 holdings?---Yes.

19
16:48:38 20 And similarly Mr Gardiner's notes refer to the same
16:48:43 21 thing?---Yes.

22
16:48:44 23 That is, a review of internal VicPol intelligence material
16:48:48 24 and Human Source Management Unit material?---Yes, being
16:48:53 25 the - - -

26
16:48:53 27 In substance that was a reference to the Comrie
16:48:57 28 review?---Yes.

29
16:48:59 30 But your notes don't refer to that name as such, and nor do
16:49:04 31 Mr Gardiner's, so it's probably of no moment, Mr McRae, one
16:49:09 32 way or the other?---My notes are very short.

33
16:49:12 34 Yes. But it may be that the surname Comrie wasn't used,
16:49:17 35 but rather the substantive activity described was what was
16:49:25 36 discussed during the meeting?---I think we would have,
16:49:26 37 possibly, but we were talking about a review, yes.

38
16:49:29 39 Yes. Lastly, the meeting that you've been asked about
16:49:36 40 today that you had with Mr Ashton in November 2011, the
16:49:42 41 disclosure to prosecutors to be carried out in that meeting
16:49:50 42 concerned Commonwealth prosecutors who had carriage of an
16:49:54 43 ongoing matter?---Yes.

44
16:49:55 45 To which the disclosure was relevant. At the bottom of
16:50:02 46 your file note from 23 August 2012, if you wouldn't mind
16:50:06 47 looking at that again. That was extracted at 6.23 of your

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16:50:15 1 statement. It's VPL.0005.0003.2800. If you wouldn't mind,
16:50:44 2 Mr McRae, just reading out the last two lines of the
16:50:48 3 handwritten note you took there?---"Impact of F activities
16:50:51 4 not known. Previous disclosure to Commonwealth DPP
16:50:54 5 regarding Dale and Maguire advice." So I'm checking with
16:51:03 6 them what the extent of it was done, or we're noting that's
16:51:06 7 what happened.

8
16:51:08 9 Yes?---That it was limited to that.

10
16:51:11 11 That confirms your recollection, that as far as you were
16:51:14 12 concerned the disclosure that had been spoken of the
16:51:18 13 previous year related to the Commonwealth - - - ?---Yes,
16:51:22 14 because I followed it up at every meeting.

15
16:51:25 16 Yes. And that further disclosure needed to be made, as the
16:51:31 17 beginning of the note records, to the State DPP at that
16:51:34 18 time?---Well I formed that view after speaking with
16:51:37 19 Mr Gleeson on two bases. One was to ensure that the - well
16:51:46 20 the first one was when I felt that we couldn't wait till
16:51:51 21 the end of the Comrie review, so I approached Kieran Walsh,
16:51:55 22 who was the Deputy Commissioner at the time, and got his
16:52:00 23 permission to take Doug Fryer, who was the head of Intel
16:52:03 24 and Covert at that time, to provide a briefing to the DPP
16:52:07 25 on the status of Ms Gobbo and Ms Gobbo's activities, and
16:52:15 26 naturally that led to a discussion about conflict of
16:52:18 27 interest because the DPP was aware of serious conflicts of
16:52:24 28 interest, which is not surprising given the level of
16:52:28 29 representation of that barrister with multiple people in
16:52:33 30 similar matters. The second disclosure to the DPP arose
16:52:39 31 because Steve Gleeson was mindful that the Mokbel case was
16:52:47 32 still before the court and we needed to notify the DPP that
16:52:56 33 he had found source logs that referred to conversations
16:53:05 34 with her about Mr Mokbel around the time of the
16:53:10 35 extradition.

36
16:53:10 37 Thanks, Mr McRae. I have nothing further for Mr McRae.

38
16:53:13 39 COMMISSIONER: Thank you. Mr Winneke, did you have any
16:53:15 40 short matters to finish off with or - - -

41
16:53:20 42 MR WINNEKE: Not really.

43
16:53:23 44 COMMISSIONER: I think everyone's probably feeling a bit
16:53:26 45 exhausted by the heat but the only trouble is I don't think
16:53:29 46 it's going to be any better outside. We'll adjourn until
16:53:33 47 9.30 Monday.

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16:53:35 1
16:53:36 2 MR HOLT: Commissioner, I apologise. Is it possible to
16:53:41 3 stand Mr Moloney down until say after lunch on Monday?
4
16:53:48 5 COMMISSIONER: I'm not sure. How much long do you think
16:53:49 6 you'll be?
7
16:53:51 8 MR WINNEKE: Commissioner, I think it's safe to stand
16:53:52 9 Mr Moloney down until after lunch.
10
11 MR HOLT: I'm very grateful.
12
16:53:57 13 COMMISSIONER: All right. Yes, certainly. And we have the
16:53:57 14 other matter at 9.30, which hopefully won't take too long,
16:54:02 15 but it will take probably half an hour.
16
17 MR HOLT: Yes, thank you, Commissioner.
18
16:54:04 19 COMMISSIONER: All right then. Thank you.
16:54:37 20
16:54:37 21 <(THE WITNESS WITHDREW)
16:54:39 22
16:54:41 23 ADJOURNED UNTIL MONDAY 3 FEBRUARY 2020
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