

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 Monday, 3 February 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	Ms K. O'Gorman
Counsel for CDPP	Ms A. Mitchelmore SC
Counsel for Police Handlers	Mr G. Chettle Ms L. Thies
Counsel for AFP	Ms I. Minnett
Counsel for Chief Commissioner of Police	Mr A. Coleman QC Mr P. Silver
Counsel for VGSO	Ms S. Keating
Counsel for Noel Ashby and Paul Mullett	Ms J. Condon QC
Counsel for Simon Overland	Mr J. Gleeson QC Ms G. Coleman

09:49:41 1 COMMISSIONER: For the directions hearing this morning I
09:49:45 2 have a considerable number of appearances. Counsel
09:49:51 3 assisting are as usual. We've got Mr Nathwani for
09:49:55 4 Ms Gobbo. Mr Coleman, are you involved in the directions
09:50:04 5 hearing?
09:50:05 6
09:50:05 7 MR COLEMAN: If it's with respect to cross-examination then
09:50:07 8 we'll say something.
09:50:07 9
09:50:07 10 COMMISSIONER: Yes, yes, all right then. Mr Coleman and
09:50:11 11 Mr Silver for Mr Ashton. We've got Mr Holt with Mr Purton
09:50:18 12 and Ms Jager for Victoria Police. Ms McCudden for the
09:50:21 13 State. Mr Chettle and Ms Thies as usual for the handlers.
09:50:28 14 Ms O'Gorman for the DPP. Ms Mitchelmore for the
09:50:32 15 Commonwealth DPP. Mr Minnett for the Australian Federal
09:50:35 16 Police and Ms Keating for the VGSO. We've got Mr Gleeson
09:50:38 17 and Ms Coleman for Mr Overland. Mr White for The Age and
09:50:44 18 Nine Network and Mr Croft for The Herald & Weekly Times,
09:50:50 19 Seven Network and Nationwide News.
09:50:53 20
09:50:53 21 Yes. Firstly I think we'll deal with the application
09:50:58 22 for Ms Gobbo to give evidence without her - with her image
09:51:04 23 only being seen by me and not streamed or publicly
09:51:10 24 available.
09:51:14 25
09:51:15 26 MR NATHWANI: Commissioner, it's obviously my application
09:51:17 27 on behalf of Ms Gobbo.
09:51:17 28
09:51:18 29 COMMISSIONER: Yes.
09:51:19 30
09:51:20 31 MR NATHWANI: I don't wish to say anything in an open
09:51:21 32 hearing.
09:51:21 33
09:51:22 34 COMMISSIONER: You want to rely on your written
09:51:24 35 confidential submissions.
09:51:25 36
09:51:26 37 MR NATHWANI: Absolutely.
09:51:26 38
09:51:28 39 COMMISSIONER: The confidential affidavit of Neil Paterson.
09:51:35 40
09:51:36 41 MR NATHWANI: Yes.
09:51:36 42
09:51:38 43 COMMISSIONER: The image, I've been shown a copy of that
09:51:45 44 this morning, as I requested, and that's been returned to
09:51:48 45 you, so I've seen that.
09:51:48 46
09:51:49 47 MR HOLT: It's been returned to us, Commissioner.

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09:51:51 2 COMMISSIONER: Returned to you, thanks, Mr Holt. Then
09:51:53 3 there was only one other issue I needed you to inform me
09:51:56 4 - - -
09:51:56 5
09:51:57 6 MR NATHWANI: They are detailed in the confidential
09:51:58 7 submissions.
8
09:52:00 9 COMMISSIONER: The information about her intention -
09:52:04 10 whether she has any intentions to give further - - -
09:52:09 11
09:52:10 12 MR NATHWANI: They're set out in detail in writing.
13
09:52:12 14 COMMISSIONER: Just give me the paragraphs then if you
09:52:14 15 don't want to give me any other detail.
09:52:36 16
09:52:36 17 MR NATHWANI: Paragraph 39(a) to (g). If you look at
09:52:55 18 39(d), 39(e).
19
09:52:57 20 COMMISSIONER: Nor does she intend to, thank you. I don't
09:53:02 21 think I need to hear anything further from you, unless you
09:53:05 22 wanted to say anything further.
09:53:05 23
09:53:06 24 MR NATHWANI: Thank you.
09:53:06 25
09:53:08 26 MR HOLT: Commissioner, I ought, because I don't think it
09:53:09 27 was done on Friday, file and read the confidential
09:53:16 28 affidavit of Mr Paterson - I should say Assistant
09:53:18 29 Commissioner Paterson - and we've also filed, Commissioner,
09:53:20 30 written submissions, confidential written submissions,
09:53:22 31 which I hope the Commission has received.
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09:53:24 33 COMMISSIONER: Yes, received and read.
09:53:25 34
09:53:26 35 MR HOLT: I don't intend to make any further submissions.
36
09:53:29 37 COMMISSIONER: No, there's no need to make any further
09:53:32 38 submissions.
09:53:33 39
40
09:53:33 41 MR HOLT: Based on your indications, but can I just simply
09:53:35 42 make the submission, Commissioner, if you're intending to
09:53:38 43 make a ruling obviously we just ask for it to be in the
44 barest of terms given the issues that are raised.
09:53:41 45 COMMISSIONER: Yes, all right then. I'm not intending to
09:53:43 46 go into private hearing to hear any further submissions, so
09:53:48 47 is there anybody who wants to say anything before I make my

09:53:51 1 ruling on this?
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3
09:53:56 4 MR WHITE: Yes, Commissioner. My name is White, I'm
09:53:59 5 appearing for The Age Company Limited and Nine Network
09:54:03 6 Australia.
7
09:54:03 8 COMMISSIONER: Yes.
09:54:05 9
09:54:05 10 MR WHITE: Commissioner, I haven't had the benefit of
09:54:07 11 seeing any of the confidential submissions.
12
09:54:09 13 COMMISSIONER: And I understand you won't.
09:54:12 14
09:54:12 15 MR WHITE: Well, if that is the case the submissions I can
09:54:14 16 put are reasonably limited. The proposed course amounts to
09:54:25 17 a suppression order that in my submission should only be
09:54:29 18 made insofar as it's necessary to achieve its purpose,
09:54:33 19 which I gather is to protect Ms Gobbo's personal safety.
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09:54:38 21 COMMISSIONER: And those of her family.
09:54:40 22
09:54:40 23 MR WHITE: And those of her family.
24
09:54:41 25 COMMISSIONER: Yes.
09:54:42 26
09:54:43 27 MR WHITE: So if that is the case, the order should only
09:54:47 28 be made - so the starting point is insofar as Ms Gobbo's
09:54:53 29 personal safety is already in danger, or might already be
09:54:56 30 at risk, this order can't assist that. It would only be if
09:55:02 31 the order can - it would only if it is demonstrated that
09:55:07 32 the publication of this particular image of Ms Gobbo would
09:55:12 33 pose or create an unacceptable risk to her safety, this
09:55:15 34 particular image, or would otherwise elevate the existing
09:55:19 35 risks to an unacceptable level that the order should be
09:55:22 36 made. So, with respect, it's difficult to see how that is
09:55:30 37 put in circumstances where Ms Gobbo's image is already
09:55:34 38 notorious to many people, and certainly would be notorious
09:55:39 39 to anyone who would want to harm her at the present time.
09:55:45 40 And it's also difficult to see how it's put in
09:55:48 41 circumstances where Ms Gobbo volunteered her own image
09:55:52 42 being published in an interview only a matter of months
09:55:56 43 ago. So it seems to me that unless there is evidence to be
09:56:06 44 satisfied that Ms Gobbo's image has fundamentally changed
09:56:12 45 since the time that she gave that interview, the
09:56:16 46 application ought to be refused, and ought to be refused on
09:56:22 47 the basis that her image is already notorious and known to

09:56:26 1 many members of the community, and unless the publication
09:56:35 2 of this particular image would elevate the risk that would
09:56:38 3 already exist against her, the application ought to be
09:56:41 4 refused.
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09:56:42 6 COMMISSIONER: Thank you.
09:56:42 7
09:56:42 8 MR WHITE: Thank you.
09:56:48 9
09:56:49 10 MR CROFT: If I could just make a further submission.
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09:56:51 12 COMMISSIONER: Mr Croft, yes.
09:56:53 13
09:56:53 14 MR CROFT: If I could just make a further submission in
09:56:55 15 relation to the potential safety risks to Ms Gobbo's
09:57:00 16 family. It's obviously difficult, without understanding
09:57:02 17 the evidence put before the Commission, but if it is in
09:57:07 18 relation to the heightened public scrutiny that the
09:57:10 19 evidence may be broadcast further and the risks to the
09:57:15 20 safety of her children and their psychological safety
09:57:19 21 because of this heightened public scrutiny, it is our
09:57:23 22 submission that the evidence of Ms Gobbo is going to
09:57:27 23 receive wide public attention and her image being shown
09:57:31 24 will not increase this public scrutiny any further. So the
09:57:35 25 order should not be granted. Thank you.
26
09:57:38 27 COMMISSIONER: Thank you.
09:57:45 28
09:57:46 29 This is an application by Ms Gobbo's counsel and by
09:57:52 30 counsel for Victoria Police that when Ms Gobbo gives her
09:57:56 31 evidence to the Commission tomorrow her evidence, which is
09:58:04 32 being streamed to the, or video linked to the Commission be
09:58:12 33 seen only by me and not be streamed publicly. In support
09:58:22 34 of that application her counsel have relied on their
09:58:29 35 written confidential submissions and the confidential
09:58:33 36 affidavit of Assistant Commissioner Neil Paterson.
09:58:39 37 Victoria Police also rely on their own confidential
09:58:42 38 submissions and Mr Paterson's confidential affidavit.
09:58:48 39
09:58:51 40 Mr White, on behalf of The Age and Nine Network, has
09:58:59 41 pointed out the difficulty in making submissions when
09:59:06 42 unable to see the confidential submissions and affidavit,
09:59:11 43 but emphasises that Ms Gobbo's safety and that of her
09:59:19 44 family are already at risk because of her notoriety, and
09:59:27 45 that she voluntarily put her own image on national
09:59:32 46 television recently so that it is difficult, he submits, to
09:59:37 47 understand why her image being broadcast at this time would

09:59:47 1 further elevate safety risks.

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Mr Croft, on behalf of the Herald & Weekly Times, Seven Network and Nationwide News, adopts those submissions and further submits that Ms Gobbo's evidence will in any case receive such wide publicity whether or not her image is shown that it is difficult to understand why the showing of her image would elevate safety risks.

I have considerable sympathy with those submissions, however, having considered the confidential submissions, the confidential affidavit and some other matters, and another matter which I have had the benefit of exploring, in light of the legislative and common law principles applicable to this case I am satisfied that the interests of justice, particularly the safety concerns for Ms Gobbo and her family members, warrant the following order:

I direct that at this stage Ms Gobbo's image during her evidence to the Commission be recorded, but not streamed or made publicly available, and that only I see her image whilst she is giving evidence.

MR HOLT: If the Commissioner pleases.

COMMISSIONER: There are some other directions that need to be given about Ms Gobbo's evidence and some applications about cross-examination and so forth.

MR WINNEKE: Yes.

COMMISSIONER: Yes.

MR WINNEKE: Commissioner, we wrote to various practitioners last week indicating that the circumstances in which Ms Gobbo will give evidence, and because of health issues and a number of other matters, it will mean that there will be relatively tight time constrictions and therefore we'd request that if parties have any particular questions or documents they consider should be put to Ms Gobbo these be provided to counsel assisting, and the request was they be provided no later than Friday last. We have received a number of items of correspondence. But it is our desire to ensure that the evidence is given expeditiously and we do desire notification as to questions and, alternatively, subject matters which the parties wish to put Ms Gobbo. We simply cannot have a process where

10:03:34 1 people are just lining up and asking questions. So it's
10:03:36 2 got to be done in the way in which we have sought,
10:03:39 3 Commissioner. At the moment, as I say, we've received some
10:03:42 4 materials, but on the basis of what we've been provided it
10:03:48 5 does seem that there won't be too many people asking
10:03:52 6 questions other than me.
7
10:03:54 8 COMMISSIONER: Obviously her health concerns meant that we
10:03:57 9 have limited the amount of questioning that she will be
10:04:02 10 subject to. At this stage it's four part days.
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10:04:09 12 MR WINNEKE: Yes.
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10:04:09 14 COMMISSIONER: Are we still proceeding tomorrow at 9.30, is
10:04:13 15 that the idea?
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10:04:14 17 MR WINNEKE: As I understand it, yes.
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10:04:16 19 COMMISSIONER: We'll do 9.30 till 1.30 with the usual
10:04:20 20 breaks if necessary. Is that as much as you think she can
10:04:24 21 manage, Mr Nathwani?
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10:04:25 23 MR NATHWANI: Yes, and I just add the caveat, we may need -
10:04:28 24 I'm not asking for longer breaks but it maybe two short
10:04:32 25 breaks during that period.
26
10:04:34 27 COMMISSIONER: Yes, all right. Is 9.30 till 2 o'clock with
10:04:37 28 two short breaks a possibility?
29
10:04:40 30 MR NATHWANI: Certainly day one. The concerns we have, as
10:04:45 31 evidenced by some of the material, is the ability to do it
10:04:49 32 day-in day-out. Of course, 9.30 to 2 o'clock with two
10:04:54 33 breaks we can see - - -
34
10:04:56 35 COMMISSIONER: See how we go on the first day. All right
10:04:58 36 then. At this stage we're planning on four days of those
10:05:05 37 hours for Ms Gobbo's evidence. The Commission - obviously
10:05:09 38 we're able to - the issues are much more well defined now
10:05:17 39 after all the witnesses that we've heard from and they're
10:05:20 40 extensive cross-examination so that your examination will
10:05:28 41 be quite refined. How long do you expect to be?
42
10:05:32 43 MR WINNEKE: Commissioner, it really depends on the way in
10:05:34 44 which Ms Gobbo answers questions. It's difficult to say,
10:05:38 45 but save to say that given the time constraints it's not
10:05:44 46 going to be possible to put questions to Ms Gobbo in all of
10:05:52 47 the areas that conceivably might be covered. There's vast

10:06:00 1 amounts of material before the Commission. There are areas
10:06:04 2 which it may well be that we won't get to but I would
10:06:07 3 imagine, Commissioner, I would be taking the best part of
10:06:13 4 two to three of the half days that we've got.
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10:06:19 6 COMMISSIONER: Yes. All right then.
7
10:06:23 8 MR WINNEKE: If not more. I'm certainly going to do my
10:06:26 9 best to limit it.
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10:06:28 11 COMMISSIONER: Mr Nathwani, I understand you'll only be
10:06:30 12 introducing her evidence.
10:06:32 13
10:06:33 14 MR NATHWANI: I will be no more than five minutes at the
10:06:35 15 beginning.
16
10:06:36 17 COMMISSIONER: And then you'll re-examine after the
10:06:41 18 cross-examination has concluded.
10:06:42 19
10:06:43 20 MR NATHWANI: Absolutely. Again, I'd like it to be short
10:06:47 21 but it's difficult to know, but I'm cognisant of wanting to
10:06:53 22 complete her evidence within the time frame for a number of
10:06:55 23 reasons, not just her health.
10:06:55 24
10:06:56 25 COMMISSIONER: Yes. Victoria Police have put in written
10:06:57 26 submissions which I've read, Mr Holt. Obviously you'll be
10:07:02 27 wanting to cross-examination.
10:07:07 28
10:07:08 29 MR HOLT: Yes, Commissioner.
30
10:07:09 31 COMMISSIONER: And I think that's proper but there are very
10:07:11 32 tight time frames we're with and you were talking about two
10:07:13 33 full days.
10:07:15 34
10:07:15 35 MR HOLT: No Commissioner. I think we'd indicated that if
10:07:18 36 the cross-examination by counsel assisting follows the same
10:07:21 37 sort of detailed path that it's followed to date, it
10:07:23 38 doesn't sound like it will be quite that detailed, but
10:07:27 39 nonetheless we would hope that we could limit
10:07:29 40 cross-examination to a day.
41
10:07:30 42 COMMISSIONER: And when you say a day, you mean a Gobbo
10:07:32 43 day?
10:07:32 44
10:07:33 45 MR HOLT: No, I mean a real day, Commissioner. And we'll
10:07:36 46 do our best, as we did, as the Commissioner will recall,
10:07:38 47 with Sir Ken Jones where but for constraints that otherwise

10:07:42 1 existed sensibly we could have cross-examined for a
10:07:51 2 significantly longer period of time. The difficulty,
3 without wanting to repeat the submissions, Commissioner, I
4 know you've read them and I don't want to labour things,
10:07:52 5 which will take time, but the difficulty here is that
10:07:54 6 Ms Gobbo, and indeed others, have had the opportunity to
10:07:56 7 cross-examine police witnesses, including central police
10:08:00 8 witnesses and comparatively peripheral police witnesses, in
10:08:05 9 effect at large, and those witnesses for whom we act, and
10:08:09 10 also the organisation, I think it fair to say, confidently
10:08:13 11 it could not at least be said that the Commission wouldn't
10:08:16 12 be considering adverse findings in respect of some of those
10:08:20 13 persons, and in those circumstances our respectful
10:08:24 14 submission is that the requirements of procedural fairness
10:08:28 15 require, with respect, Victoria Police, on its own behalf,
10:08:31 16 and also Victoria Police, the witnesses who we represent,
10:08:34 17 current and former members, to be entitled to cross-examine
10:08:38 18 the key witness in respect of all this at least in a
10:08:42 19 fashion that proximates, to some extent, the way in which
10:08:46 20 those witnesses for whom we act have been cross-examined
10:08:49 21 over the course of this hearing and the practical
10:08:51 22 considerations, with respect, we well understand, but they
10:08:55 23 don't override and can't, as the authorities we've
10:08:58 24 identified, override the requirement for procedural
10:09:03 25 fairness, particularly if there is any prospect of adverse
10:09:07 26 findings being made against Victoria Police or against
10:09:11 27 those particular members for whom we act. So can I say we
10:09:15 28 take very seriously our obligation to assist this tribunal,
10:09:20 29 and we understand that cross-examination at large is not
10:09:23 30 generally something which occurs in an administrative
10:09:25 31 tribunal or a Royal Commission, and we will limit, as much
10:09:28 32 as we can, but our respectful submission is we must be
10:09:40 33 permitted to cross-examine, and in a way that's meaningful,
34 and one of the fundamental difficulties here, and again
10:09:41 35 without in any sense giving criticism, is that we don't
10:09:41 36 have a statement from Ms Gobbo, nor does the Commission, of
10:09:44 37 course. At the same time we know from the public
10:09:47 38 statements Ms Gobbo made recently, with the greatest of
10:09:51 39 respect, almost anything might be said, the sort of hints
10:09:55 40 at issues and the way in which Victoria Police is described
10:09:57 41 and members were described in pejorative terms, we simply
10:10:02 42 don't know at this stage, nor does the Commission, but we
10:10:04 43 don't know.
10:10:04 44
10:10:04 45 COMMISSIONER: Nor does the Commission. We're no better
10:10:06 46 informed than you.
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2 MR HOLT; No, I understand.
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4 COMMISSIONER: We have been asking for a statement since
5 the beginning of the Commission's formation.
6
7 MR HOLT: I understand, Commissioner. We're obviously at
8 the pointy end of this Commission in all ways and we are
9 dealing with a witness who will touch on and deal with
10 matters which will go to the heart of the questions and
11 what findings are made against Victoria Police and
12 individual current and former police members and we can't,
13 with respect, concede that we not cross-examine. I
14 understand from what the Commissioner has said that that's
15 not proposed, and I'm grateful, and it's very, very
16 difficult for me at present to say how long or short it
17 might be, recognising that we will do our very best to
18 assist the Commission in accordance with our obligations.
19 But one suspects that some of the most significant issues
20 in cross-examination won't be known until Ms Gobbo answers
21 questions.
22
23 COMMISSIONER: The other difficulty too is going to be, why
24 it's in everyone's interests to be as concise as possible,
25 is that there is no evidence other than that her health is
26 precarious and it might be that she's not able to continue
27 with lengthy evidence.
28
29 MR HOLT: And ultimately - - -
30
31 COMMISSIONER: In that case you're not going to be able to
32 cross-examine at all.
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34 MR HOLT: No, we're not, and that will have consequences
35 for the decision making process of the Commissioner and
36 submissions can be made, but in terms of a pre-emptive
37 decision which in these very particular circumstances seeks
38 to limit cross-examination or requires us to provide topics
39 to counsel assisting, who have properly been challenging
40 our clients, to then be - those people who are putting
41 questions to Ms Gobbo is difficult, at least on certain
42 topics.
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44 COMMISSIONER: Yes.
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46 MR HOLT: It makes things very hard. We're not trying to
47 be difficult, Commissioner, we will do what we can.

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10:11:56 2 COMMISSIONER: All right. You will be able to
10:11:58 3 cross-examine but it's obvious that it should be as brief
10:12:02 4 as possible.
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10:12:03 6 MR HOLT: I'm grateful for that indication, Commissioner,
10:12:06 7 thank you.
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10:12:07 9 COMMISSIONER: Mr Chettle, you'll be - - -
10:12:09 10
10:12:10 11 MR CHETTLE: Commissioner, I would be seeking I think, for
10:12:12 12 all the reasons Mr Holt said - we don't know what she's
10:12:15 13 going to say. At the moment I would anticipate I'd be half
10:12:18 14 an hour to an hour. Again, who knows what she's going to
10:12:22 15 say.
16
10:12:23 17 COMMISSIONER: Yes. I think you will be able to put your
10:12:26 18 case, and I think we all know what your case is, fairly
10:12:29 19 concisely, and I think that's probably, is going to
10:12:32 20 be - - -
10:12:35 21
22 MR CHETTLE: Commissioner, everything's she said was just
23 recorded.
24
25 COMMISSIONER: Yes, exactly.
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10:12:36 27 MR CHETTLE: But she has said some very nasty things about
10:12:39 28 some of my clients. Whether that matters to you or not, I
10:12:42 29 don't know. But we'll see what happens. I would formally
10:12:44 30 adopt Mr Holt's submissions and Mr Overland's submissions.
10:12:49 31 Really what I want to say is I'll have to wait and see, but
10:12:53 32 I'll be very short if it is.
33
10:12:56 34 COMMISSIONER: Who wants to make submissions next?
10:12:58 35
10:13:00 36 MR COLEMAN: Thank you, Commissioner. I just want to say
10:13:02 37 that we haven't put any written submissions in. We adopt
10:13:06 38 the principles as espoused in those you've received, and
10:13:10 39 for the reasons that have already been expressed to you.
10:13:10 40 We don't think at the moment that we'll be asking or
10:13:15 41 seeking to ask Ms Gobbo any questions. But because we
42 don't know what she's going to say and we don't know the
10:13:22 43 topics that our learned friend counsel assisting will be
10:13:23 44 exploring with her, and her responses to those topics, we
10:13:25 45 simply would say that if and when there is a matter that
10:13:29 46 affects our client's interests, we would consider that and
10:13:32 47 we would notify counsel assisting and, if necessary, seek

10:13:35 1 to ask questions about it, but at the moment we don't
10:13:40 2 anticipate that we will.
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10:13:43 4 COMMISSIONER: Yes. Mr Gleeson, your submissions really
10:13:47 5 have been covered in what's been said by others.
10:13:51 6

10:13:51 7 MR GLEESON: Yes, Your Honour. If I can just add this:
10:13:53 8 can we put to one side for the moment the health concerns
10:13:56 9 about Ms Gobbo, only for this reason, that counsel
10:14:02 10 assisting, and we understand from what the Commissioner has
10:14:04 11 said, Commissioner, also is approaching the question of the
10:14:10 12 cross-examination of Ms Gobbo and its duration and its
10:14:13 13 potential content, at least partly by reference to time
10:14:17 14 constraints, and we understand and accept that. There are
10:14:20 15 constraints that are beyond the Commission's control. But
10:14:23 16 we do want to place on the record our concern that these
10:14:28 17 time constraints are informing the nature and extent of
10:14:31 18 cross-examination of Ms Gobbo in a way that wasn't apparent
10:14:33 19 to me in relation to my client Mr Overland or other
10:14:37 20 witnesses, and if, and insofar as, these time constraints
10:14:42 21 become more acute, because, for example, there was
10:14:45 22 unfettered cross-examination of my client, that would be a
10:14:47 23 matter of concern to us. I'm not here speaking about
10:14:50 24 limits on the amount of cross-examination I might wish to
10:14:53 25 conduct of Ms Gobbo, because I reasonably anticipate it
10:14:57 26 will be of the order of 15 minutes to half an hour, if it's
10:15:00 27 required at all. That's on the assumption that she's
10:15:03 28 thoroughly examined by counsel assisting, who's already
10:15:06 29 indicated that he feels limited time-wise, and thoroughly
10:15:10 30 examined by others along the Bar table for the police and
10:15:13 31 the handlers. We say with great respect that putting aside
10:15:18 32 her health concerns, time constraints in themselves should
10:15:22 33 not unduly or unreasonably limit this examination of this
10:15:27 34 witness. This is not a Royal Commission into the Victoria
10:15:29 35 Police. It's not a Royal Commission into Mr Overland.
10:15:32 36 It's a Royal Commission into the entirety of the
10:15:34 37 circumstances and Ms Gobbo is pivotal to that. So we don't
10:15:38 38 say, with great respect, that time concerns should now
10:15:43 39 impact on this very, very crucial witness. Thank you.
40

10:15:49 41 COMMISSIONER: Mr Winneke, have you thought about the
10:15:55 42 possibility of just letting others cross-examine and then
10:15:59 43 you re-examine?
44

10:16:02 45 MR WINNEKE: I must say I have, Commissioner. But I don't
10:16:04 46 think that would be appropriate given what's gone before.
10:16:07 47 I should say this, Commissioner: this Royal Commission is

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These claims are not yet resolved.

10:16:09 1 in possession of vast amounts of material from Ms Gobbo's
10:16:15 2 own mouth.
3
10:16:15 4 COMMISSIONER: Yes, I think the issues are pretty refined
10:16:18 5 now.
6
10:16:19 7 MR WINNEKE: In addition to that, contemporaneous notes
10:16:21 8 taken by Mr Chettle's clients which, to a significant
10:16:25 9 degree, set out in relatively clear terms interaction
10:16:29 10 between members of Victoria Police and Ms Gobbo.
11
10:16:31 12 COMMISSIONER: And the tape recordings, yes.
13
10:16:34 14 MR WINNEKE: The tape-recordings. I mean we know what she
10:16:36 15 said. We've got hours and hours of recordings of what she
10:16:39 16 said.
17
10:16:40 18 COMMISSIONER: Exactly.
19
10:16:41 20 MR WINNEKE: And we've got thousands of pages of
10:16:43 21 contemporaneous notes of records taken by experienced
10:16:46 22 police officers as to conversations with Ms Gobbo. So it's
10:16:50 23 not going to be necessary to rehash all of that. Yes, it
10:16:54 24 has taken time to get that story out. We've had police
10:16:59 25 officers in the witness box for a significant period of
10:17:03 26 time, but obviously the Terms of Reference require us to
27 consider the conduct of Victoria Police and their
10:17:11 28 management of Ms Gobbo. I don't anticipate that it's going
10:17:13 29 to be necessary to have Ms Gobbo, restrictions or
10:17:20 30 otherwise, here for significant periods of time. I do
31 believe that we will have the opportunity in the time that
10:17:25 32 we do have to cover the topics necessary to fully vindicate
10:17:28 33 the Terms of Reference. If people say, for whatever
10:17:31 34 reason, they believe that they need opportunities, well
10:17:33 35 they can make those submissions in due course. I
10:17:38 36 sympathise with submissions to the effect that, "Well look,
10:17:41 37 we don't know what she's going to say". One would imagine,
10:17:45 38 however, that members of the Victoria Police and their
10:17:47 39 legal representatives will have an understanding of the
10:17:49 40 sorts of areas that might concern them. They've been
10:17:52 41 involved in this process for quite some time. We have
10:17:55 42 asked for an indication of questions. If that's too
10:17:58 43 difficult we'd certainly like to have an indication of the
10:18:01 44 topics that our learned friends wish to examine upon and
10:18:05 45 it may well be that once we have those we'll get a clear
10:18:10 46 understanding of those concerns and we'll cover those
10:18:12 47 topics. So we would appreciate - and we would ask our

10:18:15 1 friends to cooperate in that regard. Other than that,
10:18:19 2 Commissioner, I think we can - and perhaps we ought to get
10:18:23 3 going with the witnesses and no doubt we'll deal with it as
10:18:26 4 we go along and we've done it relatively cooperatively
10:18:31 5 throughout the course of this last year but I would
10:18:34 6 certainly hope that everyone has the opportunity to ask
10:18:37 7 questions, if I don't ask them, having been provided with
10:18:40 8 lists of topics, if not questions and documents, that will
10:18:43 9 need to be asked.

10

10:18:44 11 COMMISSIONER: Does anyone else want to be heard on this
10:18:46 12 issue of cross-examination?

10:18:47 13

10:18:47 14 MR NATHWANI: Just me. I make no submissions that those
10:18:50 15 who may have an interest be allowed to cross-examine
10:18:55 16 because I well understand the point. I am concerned that
10:18:56 17 Victoria Police, for example, would want to take two days.

18

10:18:59 19 COMMISSIONER: One full day.

10:19:01 20

10:19:01 21 MR NATHWANI: One full day, so sorry two proposed days.
10:19:04 22 And the suggestion we put aside Ms Gobbo's health concerns.
10:19:08 23 I remind them of the words in your ruling back on 4
10:19:11 24 October, which was as follows, and it was repeated then
10:19:14 25 again on 4 December. It was in considering that she did
10:19:19 26 suffer from the conditions as set out in the plethora of
10:19:22 27 medical material placed before you, over a 13 year period,
10:19:27 28 that you said you did think that she was able to give
10:19:31 29 evidence by telephone and in short bursts of two hours to
10:19:36 30 accommodate her medical condition. The Commission also has
10:19:39 31 the power to significantly limit the length and nature of
10:19:40 32 cross-examination. Again, I don't suggest on her behalf
10:19:43 33 that she not be cross-examined by those who have a relevant
10:19:46 34 interest as determined by you and counsel assisting, but
10:19:50 35 that the cross-examination should be limited to the four
10:19:53 36 days that we have in a way as between parties, but not
10:19:57 37 extend beyond that, by virtue of her health and also issues
10:20:01 38 in relation to security which have been put before you.
10:20:05 39 And, of course, as has been set out, Mr Winneke may cover
10:20:10 40 much of the area that many of those wish to cover and they
10:20:13 41 can really put the main distinct matters of their
10:20:16 42 particular cases. That's all I really wish to say.

43

10:20:19 44 COMMISSIONER: The major cross-examination seems to want to
10:20:22 45 be done by Victoria Police at the moment so we'll keep that
10:20:26 46 in mind. Keep all these matters in mind. It's a little
10:20:29 47 bit of an unknown. We'll just see how we go.

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10:20:32 1
10:20:33 2 MR NATHWANI: Thank you.
3
10:20:34 4 COMMISSIONER: Anything else we need to deal with at this
10:20:36 5 stage? All right then.
6
10:20:39 7 MR WINNEKE: Not as far as I'm concerned, Commissioner.
8
10:20:41 9 COMMISSIONER: We can have the witness return to the
10:20:44 10 witness box, thank you.
10:20:55 11
10:20:55 12 MS MITCHELMORE: Commissioner, I appear for the
10:20:57 13 Commonwealth DPP. Before Mr McRae moves into evidence I
10:21:01 14 should just indicate - I just wanted to indicate,
10:21:08 15 Commissioner, that on Thursday last a provisional objection
10:21:11 16 was made by the Commonwealth DPP to a particular paragraph
10:21:14 17 of Mr McRae's statement which was paragraph 7.54.
18
10:21:18 19 COMMISSIONER: Yes.
10:21:20 20
10:21:20 21 MS MITCHELMORE: Together with footnote 103 of the
10:21:23 22 evidence. We've taken instructions and the Commonwealth
10:21:27 23 DPP does not maintain any objection to those parts of
10:21:32 24 Mr McRae's statement. I understand that there are public
10:21:37 25 interest immunity concerns which have been raised
10:21:39 26 separately by the AFP and I don't wish to be heard about
10:21:42 27 those, that's a separate matter for the AFP. But insofar
10:21:46 28 as the paragraph and the footnote is concerned to which the
10:21:49 29 Commonwealth DPP objected, I think that was at pp.12891 to
10:21:54 30 20 of the transcript, the Commonwealth DPP does not wish to
10:22:00 31 press any objection to that material.
32
10:22:02 33 COMMISSIONER: Thank Ms Mitchelmore. Does that mean a
10:22:06 34 non-publication can be withdrawn?
35
10:22:17 36 MR WINNEKE: Yes, I'm not too sure what the position is
10:22:20 37 with the AFP, Commissioner. I assume that - - -
38
10:22:22 39 COMMISSIONER: Maybe we can look into that to see if we can
10:22:25 40 withdraw a non-publication order.
41
10:22:27 42 MR WINNEKE: I don't know it will change things at this
10:22:28 43 stage until I've spoken to the AFP, Commissioner.
44
10:22:31 45 COMMISSIONER: Perhaps somebody else could do that for you,
10:22:34 46 one of your juniors could do that and get that sorted.
10:22:38 47 Obviously if there's a non-publication order that can be

10:22:42 1 revoked, that would be nice.
10:22:44 2
10:22:44 3 <FINDLAY GERARD MCRAE, recalled:
4
10:24:12 5 MR HOLT: Commissioner, can I inquire as to whether the
10:24:14 6 real-time transcript is working at present? It's not on
10:24:18 7 our screen.
8
10:24:19 9 COMMISSIONER: It is on mine.
10:24:23 10
10:24:24 11 MR HOLT: It appears just to be my screen. I wonder if one
10:24:31 12 of the helpful people - - -
13
10:24:33 14 COMMISSIONER: Sure, sure. Can you try and assist Mr Holt?
15
16 MR HOLT: It just makes things much easier.
17
10:24:35 18 COMMISSIONER: Of course it does.
10:24:35 19
10:24:36 20 MR WINNEKE: Nothing was been said. Commissioner, are you
10:24:38 21 ready for me to proceed?
22
10:24:41 23 COMMISSIONER: Yes, certainly.
24
10:24:45 25 MR WINNEKE: Mr McRae, one of the issues that you raise in
10:24:48 26 your statement is an advice that's being sought from
10:24:53 27 Mr Ryan arising from the allegation made by Ms Gobbo that
10:24:58 28 she had been in a relationship with Mr Pope, do you recall
10:25:00 29 that?---No.
30
10:25:04 31 Perhaps if you have a look at - - - ?---Are you talking
10:25:07 32 about Mr Le Grand?
33
10:25:10 34 I'm sorry, Mr Le Grand. Did I say - well, yeah. If you
10:25:15 35 have a look at paragraph 5.18 of your statement?---Yes.
36
10:25:20 37 You're quite right. You received an advice from
10:25:23 38 Mr Le Grand regarding the Pope accusation and what he
10:25:28 39 ultimately said was that as far as he was concerned the
10:25:34 40 allegation of sexual relations created a potential or
10:25:37 41 perceived conflict of interest and he recommended that the
10:25:42 42 conflict of interest be managed?---Yes.
43
10:25:45 44 Right. He went further to that, he said that it ought be
10:25:51 45 managed in a certain way and he felt that it would be,
10:25:58 46 firstly, worth discussing the matter with Mr Pope to advise
10:26:04 47 that the fact of the allegation was sufficient to justify

10:26:07 1 his removal from decision-making roles concerning
10:26:12 2 Ms Gobbo?---Yes.
3
10:26:13 4 To avoid the potential for any perceived conflict of
10:26:15 5 interest interfering in the proper management of the
10:26:23 6 source?---Yes.
7
10:26:23 8 So was it your understanding that as a consequence of that
10:26:26 9 Mr Pope would not be involved in any decision-making roles
10:26:31 10 concerning Ms Gobbo?---In terms of management of Ms Gobbo
10:26:37 11 moving forward, yes, yes.
12
10:26:38 13 In terms of management of her or with respect to any
10:26:41 14 decision-making role concerning her, what was your
10:26:45 15 understanding?---My understanding was that he was to
10:26:50 16 continue in position and he should disassociate himself
10:26:57 17 with any ongoing matters in regard to her.
18
10:27:01 19 Was it also the view that he ought not participate in the
10:27:08 20 steering committee that was dealing with her?---Yes.
21
10:27:11 22 And which steering committee did you understand that
10:27:13 23 was?---I imagine that would have been Driver.
24
10:27:16 25 Driver?---M'mm.
26
10:27:17 27 Did he continue, however, his involvement in the Driver
10:27:20 28 steering committee?---I don't know.
29
10:27:23 30 All right?---I didn't have visibility of Driver.
31
10:27:28 32 All right. Following the Maguire advice a review was
10:27:46 33 commissioned, if you like, and that was the Comrie
10:27:49 34 review?---Yes.
35
10:27:50 36 The Terms of Reference of that review, which concerned the
10:27:53 37 management of Ms Gobbo certainly historically?---Yes.
38
10:27:58 39 Were developed and Mr Pope certainly had a role in the
10:28:04 40 development of those terms, did he not?---Mr Gleeson kept
10:28:08 41 Mr Pope informed as the head of the department. I didn't
10:28:14 42 know exactly what had happened in terms of the direction to
10:28:18 43 Mr Pope from Mr Cartwright because I wasn't present. I was
10:28:23 44 present at an earlier meeting, because when it first came
10:28:26 45 to my attention we decided in a discussion with, I think it
10:28:33 46 may have been Mr Ashton at that stage, that at least as an
10:28:39 47 interim Mr Pope stay in position but he not have dealings

10:28:43 1 with the future management of matters in regard to
10:28:50 2 Ms Gobbo.
3
10:28:51 4 Yes?---But I wasn't privy to what Tim Cartwright discussed
10:28:58 5 with Mr Pope.
6
10:28:59 7 All right. Did you not consider it, or you considered it
10:29:04 8 appropriate for Mr Pope though to be involved in the
10:29:10 9 development of the review, including its Terms of
10:29:13 10 Reference?---I don't think I applied my mind to it at the
10:29:21 11 time, and I regret that.
12
10:29:22 13 Yes?---I regret that for everyone, that I didn't follow
10:29:28 14 that up with Mr Pope, given particularly the way that's
10:29:34 15 played out publicly for everyone.
16
10:29:36 17 So it might have been better if he had no involvement at
10:29:39 18 all in the Comrie review and the establishment of it,
10:29:42 19 that's what you say - - - ?---I don't think Mr Gleeson -
10:29:46 20 Mr Gleeson would have put a stop to it immediately if he
10:29:49 21 thought there was any question about a perception. And as
10:29:55 22 it turned out, Mr Paterson settled the terms because
10:30:00 23 Mr Pope was on leave in any event. But the - yeah, it
10:30:05 24 would have been better if he wasn't involved.
25
10:30:07 26 All right?---Consistent with the advice provided by Shaun
10:30:12 27 Le Grand and the advice that I'd provided in the earlier
10:30:17 28 meeting.
29
10:30:18 30 One of the early file notes that we can see in relation to
10:30:23 31 the establishment of this is VPL.0100.0001.0493 at 0535.
10:30:36 32 That's a file note concerning - it's your file note, 15
10:30:44 33 November. Then we see at the bottom, "Terms of Reference,
10:30:47 34 JP to prepare", do you see that?---Yes.
35
10:30:51 36 There was a discussion about a law firm. The VGS0 was
10:30:56 37 suggesting it was preferred to keep it in government and
10:31:00 38 then there's experts considered, Comrie, Bill Kelly and
10:31:06 39 another person called Ken Money; is that right?---Ken
10:31:11 40 Moroney.
41
10:31:13 42 Moroney, I apologise?---So we're thinking about who could
10:31:17 43 possibly be the independent expert that we brought in.
44
10:31:22 45 Yeah, all right?---I can only imagine at that stage that I
10:31:26 46 was focused on the broad terms.
47

10:31:29 1 Yes?---But as I say, I regret that.
2
10:31:31 3 In any event, in the early drafts of the Term of Reference
10:31:35 4 - - - ?---That wasn't my decision, of course. I would have
10:31:40 5 been told that as the head of department that he was to
10:31:43 6 settle the Terms of Reference.
7
10:31:45 8 Right. I take it as a legal advisor you are in a position
10:31:53 9 to at least counsel and suggest - - - ?---As I did earlier,
10:31:58 10 yes.
10:31:58 11
10:31:58 12 Yes. The initial drafts referred to the Maguire advice.
10:32:02 13 So if we can have a look at VPL.0100.0001.0493 at p.534.
10:32:13 14 We see that, I think this is one of the first proposals, it
10:32:18 15 makes specific reference to Mr Maguire being engaged by
10:32:25 16 Victoria Police to provide advice on public interest
10:32:27 17 immunity matters relating to 3838 being called as a
10:32:31 18 potential witness and the legal advice raised concerns
10:32:35 19 about how she was tasked by the SDU and there's a section
10:32:43 20 under heading "Review", "Having regard to the advice
10:32:50 21 provided by Mr Maguire, which will be provided in due
10:33:05 22 course, Victoria Police seeks a review of the following,
23 all aspects of the recruitment and tasking and a sample of
24 other human sources and the appropriateness and
10:33:05 25 effectiveness", et cetera. Do you see that?---Yes.
26
10:33:08 27 As the draft progressed it's reasonably clear, when one
10:33:14 28 looks at the final version of the Terms of Reference, that
10:33:16 29 there was no specific reference to the Maguire advice, nor
10:33:21 30 to the matter in parentheses, that is that it could be
10:33:30 31 provided in due course. Was there a reason for that, do
10:33:34 32 you know?---I don't know.
33
10:33:37 34 I tender that file note, Commissioner, that I've just had
10:33:42 35 up on the screen, and also that draft Term of Reference.
10:34:01 36 If we can just go back to that file note. Do you know what
10:34:16 37 that note is on?
10:34:16 38
10:34:18 39 MR HOLT: Sorry, I apologise. Commissioner, was that
10:34:19 40 exhibit number for the file note or for the draft proposal
10:34:21 41 that followed? I think both were tendered.
42
10:34:24 43 COMMISSIONER: Only one thing has been tendered, hasn't it?
44
10:34:28 45 MR WINNEKE: Sorry, no, Commissioner. They perhaps ought
10:34:30 46 be tendered as a separate exhibit. Firstly this file note
10:34:35 47 can be tendered - perhaps before it is, can I ask Mr McRae

10:34:38 1 this: do you know whether this was a file note of a
10:34:41 2 discussion with anyone or was it simply a note to
10:34:43 3 file?---It will be a discussion with someone. I'm taking
10:34:46 4 instructions.
5
10:34:46 6 Do you have any idea about who it was with?---No, I'd be
10:34:51 7 guessing but the review was called for by Tim Cartwright.
10:35:05 8 So it's possible that it was Tim Cartwright.
9
10:35:12 10 Yes, Commissioner. I tender that note.
10:35:15 11
10:35:17 12 #EXHIBIT RC1101A - (Confidential) File note.
10:35:23 13
10:35:23 14 #EXHIBIT RC1101B - (Redacted version.)
10:35:26 15
10:35:26 16 The draft proposal I tender as separate.
10:35:28 17
10:35:29 18 #EXHIBIT RC1102A - (Confidential) Draft proposal.
10:35:32 19
10:35:32 20 #EXHIBIT RC1102B - (Redacted version.)
21
10:35:35 22 If we can have a look at a note, this is
10:35:47 23 VPL.6072.0003.6404. This is an email from Steve Gleeson to
10:35:52 24 Jeff Pope, CCing yourself, and it says that, "Forward,
10:35:59 25 provide terms to Jeff. We have spoken". The email says
10:36:05 26 this, "Jeff, Finn advised that he has spoken to you re
10:36:09 27 this. Given our conversation on Tuesday and my subsequent
10:36:11 28 conversation with Neil Comrie, [REDACTED] and with the
10:36:19 29 VGSO" - I think I'm entitled to say that name - "I have had
10:36:27 30 a crack at revising the draft ToRs as to tighten the focus
10:36:35 31 to the critical and discrete issues identified as of
10:36:38 32 greatest concern. I'm not at all precious about this and
10:36:43 33 would welcome your feedback as to if it is what you have in
10:36:48 34 mind". It would be reasonable to say that Mr Gleeson at
10:36:51 35 least at that stage has the view that Mr Pope is to be
10:36:54 36 involved in settling the Terms of Reference?---Yes.
37
10:36:57 38 Obviously you're CCed because you're the legal advisor and
10:37:02 39 they want your input on it if appropriate or if you felt -
10:37:05 40 - - ?---Yes.
41
10:37:05 42 Do you recall any discussion which led to the further
10:37:09 43 revising of the Terms of Reference because - - - ?---No, I
10:37:13 44 took a step back at that stage. I had complete faith in
10:37:16 45 Steve Gleeson to get the Terms of Reference done.
46
10:37:21 47 As we'll in what I understand to be the annexed document,

10:37:26 1 the further draft proposal for the Terms of Reference. In
10:37:29 2 that there is no - and we have it here, VPL.6072.0003 -
10:37:36 3 there is no reference at this stage to the Maguire advice
10:37:41 4 or it being provided to those carrying out the review, do
10:37:46 5 you see that?---Yes.
6

10:37:55 7 The note suggests that you and Gleeson have spoken and you
10:38:04 8 advised him that he has spoken to Mr Pope about this and
10:38:12 9 are you able to recall whether you did have any discussions
10:38:16 10 with Mr Gleeson and/or Mr Pope about refining the Terms of
10:38:20 11 Reference of exclude reference to the Gerard Maguire
10:38:25 12 advice?---No.
13

10:38:26 14 Was there a reason that you can think of for the removal of
10:38:32 15 that particular aspect of the term?---Only that it was
10:38:36 16 going to be a broad review.
17

10:38:38 18 Right?---But it always encompassed the legal issues and the
10:38:42 19 intention was for Steve to get whatever legal advice he
10:38:46 20 needed.
21

10:38:46 22 Do you think if it was designed to closely examine the
10:38:51 23 matters that were raised particularly in paragraph 53 and
10:38:54 24 54 of Mr Maguire's advice, it might have been appropriate
10:38:57 25 to make that clear in the Term of Reference, or the Terms
10:39:06 26 of Reference?---At that stage I don't think we were in a
10:39:09 27 panic about miscarriage issues. The impetus for the review
10:39:16 28 was Graham Ashton's concern about what was happening and
10:39:20 29 whether we were getting appropriate information and
10:39:23 30 feedback.
31

10:39:24 32 Yes?---From the SDU.
33

10:39:26 34 Right?---And from Intel and Covert. So Tim Cartwright, who
10:39:36 35 was the senior officer at the time, decided, as we often
10:39:40 36 do, that we should bring someone eminent and independent in
10:39:45 37 so that we could have a broader look at what are their
10:39:49 38 policies and procedures and what is going on.
39

10:39:52 40 I follow?---So it was never the intention just to have it
10:39:55 41 focused on the Maguire advice.
42

10:39:58 43 Yes, I follow that. But the Term of Reference really
10:40:01 44 doesn't - and ultimately the Term of Reference, which was
10:40:04 45 the final Term of Reference, doesn't even refer to it in
10:40:10 46 the preamble of the Term of Reference, that is those
10:40:12 47 concerns about the possibility of Mokbel convictions and

10:40:16 1 others, do you accept that?---Yes.
2
10:40:19 3 Do you think that it should have been referred to
10:40:21 4 specifically?---No, no. It was - the essence of what
10:40:27 5 Gleeson did was to look at the source materials, the
10:40:36 6 records, and go through it with a fine-tooth comb.
7
10:40:40 8 Yes, all right?---And whatever fell out of it fell out of
10:40:42 9 it, and having Mr Comrie there was to ensure that it was
10:40:49 10 done in a very open, transparent and fearless way.
11
10:40:54 12 Right. I tender that email, Commissioner, and the further
10:41:00 13 draft which was annexed to it as - I think that can be one
10:41:07 14 exhibit.
10:41:08 15
10:41:09 16 #EXHIBIT RC1103A - (Confidential) Email and attached draft.
10:41:14 17
10:41:14 18 #EXHIBIT RC1103B - (Redacted version.)
10:41:16 19
10:41:16 20 The Terms of Reference were finalised on 7 February and I
10:41:20 21 think they're exhibited, Commissioner, but if we can have a
10:41:24 22 look at VPL.0005.0013.1429. You've got the various
10:41:32 23 paragraphs, being the preamble at the outset. I suppose
10:41:37 24 the closest it could be to issues arising out of Ms Gobbo's
10:41:46 25 role as a barrister would be this short paragraph here,
10:41:50 26 "Complexities also arose as a consequence of the particular
10:41:54 27 professional standing of 3838". Then it talks about the
10:42:00 28 disentanglement, civil litigation and, "Police are now
10:42:04 29 seeking an independent review to consider and provide
10:42:08 30 advice upon specific aspects of this matter and the review
10:42:10 31 is to focus on the process of associated issues whereby
10:42:14 32 human source may transition to become a witness, including
10:42:16 33 the adequacy of controls and risk recognitions,
10:42:21 34 arrangements for mitigation for such instances. And,
10:42:23 35 secondly, the adequacy of existing human source polices,
10:42:27 36 procedures, instructions and controlled measures, including
10:42:27 37 actual management and operational practices utilised having
10:42:32 38 regard to the particular professional standing of
10:42:35 39 Ms Gobbo"?---Yes, very comprehensive.
40
10:42:37 41 It was your anticipation, you say, arising out of ToR 2,
10:42:45 42 you might well get an analysis of cases that might have
10:42:49 43 been affected by the management of Ms Gobbo?---Well we
10:42:51 44 weren't jumping to any conclusions in regard to those
10:42:55 45 cases.
46
10:42:56 47 No?---But absolutely.

1
10:42:59 2 Right?---That's correct.
3
10:43:03 4 At this stage obviously Mr Gleeson's not a lawyer?---He's
10:43:11 5 certainly an experienced prosecutor.
6
10:43:12 7 Not a lawyer. And Mr Comrie is not a lawyer?---Yes.
8
10:43:16 9 Correct? There was no lawyer engaged to review the
10:43:22 10 materials at this stage?---Mr Gleeson had access to any
10:43:27 11 legal advice that he wanted.
12
10:43:28 13 Yes?---And I felt that it was important that we had someone
10:43:31 14 who could read the coded materials of the Source
10:43:36 15 Development Unit. If we sent a lawyer in who didn't have
10:43:39 16 those skills they'd be totally bamboozled.
17
10:43:43 18 In any event, they were the terms and the expectation was
10:43:57 19 that the review would commence around March or thereabouts;
10:44:04 20 is that right?---I can't recall
10:44:04 21
10:44:10 22 COMMISSIONER: That's Exhibit 888 by the way.
23
10:44:16 24 MR WINNEKE: Do you say these are the final terms or not,
10:44:19 25 do you know?---I can't recall.
26
10:44:20 27 It may well be they're not but you're not in a position to
10:44:25 28 say?---No.
29
10:44:37 30 You refer to - I tender that document, Commissioner.
31
10:44:46 32 COMMISSIONER: It's Exhibit 888.
33
10:44:48 34 MR WINNEKE: You refer to a letter that Ms Gobbo wrote to
10:44:51 35 Kieran Walshe in your statement?---Yes.
36
10:44:53 37 Dated 20 February?---Yes.
38
10:44:55 39 In that letter, amongst a number of other matters, Ms Gobbo
10:44:59 40 pointed out that during 2008 she enjoyed a full life, good
10:45:08 41 health, in as far as her chronic pain was under control,
10:45:15 42 very busy career at the Bar, in addition to vast amounts of
10:45:19 43 time assisting your organisation. Ms Gobbo was also
10:45:22 44 offering to provide further information to assist Victoria
10:45:24 45 Police in inquiries, particularly in relation to the Hodson
10:45:30 46 murders; is that right?---I can't recall, but I'm not
10:45:33 47 surprised by that.

1
10:45:35 2 She says further that, "Please understand, should anything
10:45:38 3 happen to me I've provided specific instructions to my
10:45:41 4 solicitor as to making your advice, the correspondence
10:45:45 5 between myself and Victoria Police and my repetitive
10:45:48 6 requests for assistance and clarification are a matter of
10:45:51 7 public record", and that letter contained a notation that
10:45:57 8 it had been CCed to John Champion, the Director of Public
10:46:02 9 Prosecutions?---Yes.
10
10:46:03 11 You were, I take it, provided with a copy of that
10:46:06 12 letter?---I was.
13
10:46:14 14 If we can just put the letter up, VPL.0005.1013.1437.
10:46:23 15 That's the letter, is it?---Yes.
16
10:46:28 17 I tender that, Commissioner, if it hasn't been already.
10:46:34 18
10:46:36 19 #EXHIBIT RC1104A - (Confidential) VPL.0005.1013.1437.
10:46:39 20
10:46:39 21 #EXHIBIT RC1104B - (Redacted version.)
22
10:46:42 23 In your statement you refer to an email of 15 March and
10:46:47 24 that's VPL.6072.0004.1941. Do you see that?---Yes.
25
10:46:59 26 This was an update that was provided to you by Steve
10:47:07 27 Gleeson, and also to Jeff Pope, setting out his, a draft
10:47:14 28 consultancy agreement for Neil Comrie to undertake the
10:47:17 29 works and also setting out some of his studies to date. He
10:47:26 30 mentioned that he met with John Nolan from the OPI, got a
10:47:30 31 feel for what he was undertaking in the context of the
10:47:34 32 Williams matter on behalf of the Coroner. There's also a
10:47:39 33 suggestion that he was keen to ensure that the
10:47:47 34 investigative considerations and Witsec considerations
10:47:50 35 would be given appropriate objective and joint
10:47:54 36 consideration was grappling with how best this could be
10:47:57 37 done. Mr Gleeson outlined to John Nolan the scope for the
10:48:01 38 Comrie review "and we agreed that there did not appear to
10:48:05 39 be any overlap", so you understood that the OPI was looking
10:48:08 40 into matters with respect to the death of Carl Williams; is
10:48:13 41 that right?---Yes.
42
10:48:13 43 And there was a reference to meeting up in four to six
10:48:16 44 weeks to compare notes?---Yes.
45
10:48:18 46 Talks about his progress. He says it's a slog. To date
10:48:22 47 he'd produced thousands of pages of contact reports to a

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10:48:27 1 summarised account of significant issues of 60 pages and
10:48:31 2 about halfway through the file. "Summarised account
10:48:35 3 identifies matters consistent with the Terms of Reference
10:48:37 4 and also other out of scope matters that should perhaps be
10:48:41 5 followed up in another environment as it's unclear if such
10:48:45 6 issues have been appropriately dealt with"?---Yes.
7
10:48:48 8 I take it, or did you understand what he meant by "out of
10:48:52 9 scope issues" at that stage?---He probably spoke to me
10:48:56 10 about it, yes.
11
10:48:58 12 It would be clear enough that he was talking about his
10:49:01 13 gathering concerns about what ultimately he put in his out
10:49:07 14 of scope report, that is the possibilities that Ms Gobbo
10:49:11 15 had engaged in conduct, and Victoria Police officers had
10:49:15 16 engaged in conduct which might well have given rise to
10:49:20 17 concerns of, if not miscarriages of justice, inappropriate
10:49:26 18 conduct or unethical conduct on the part of
10:49:32 19 Ms Gobbo?---Yes.
20
10:49:32 21 All right?---Up until that time we were of the
10:49:35 22 understanding that there were controls in place.
23
10:49:38 24 Yes?---And he was gradually questioning that view.
25
10:49:42 26 Yes?---On the basis of some of the things that he'd seen.
27
10:49:46 28 Right. As he became concerned, do you accept that he would
10:49:51 29 communicate with you and also Jeff Pope?---We chatted - I
10:49:55 30 don't know about Jeff Pope, but Gleeson and I have chatted
10:49:59 31 about this for ten years. Starting from this time.
32
10:50:02 33 Starting from around this time?---Yes.
34
10:50:05 35 On 17 April there was a further update from Mr Gleeson and
10:50:09 36 at that stage you understood that he was seeking an advice
10:50:12 37 from the VGSO, having identified certain preliminary
10:50:18 38 concerns, "And these will become clearer when I complete my
10:50:27 39 consultations". Again, that's a reference to his
10:50:31 40 increasing concerns about these out of scope matters?---It
10:50:34 41 will be, yes.
42
10:50:35 43 23 April 2012.
10:50:40 44
10:50:41 45 MR HOLT: Are you going to tender that?
10:50:43 46
10:50:43 47 #EXHIBIT RC1105A - (Confidential) VPL.6072.0004.1941.

10:50:45 1
10:50:46 2 #EXHIBIT RC1105B - (Redacted version.)
10:50:48 3
10:50:48 4 MR WINNEKE: Thank you, Commissioner. If we have a look at
10:50:57 5 an email chain, VPL.0005.0195.0953 at 1108. It's an email
10:51:08 6 chain in which you were included. There have been
10:51:11 7 inquiries made with respect to the Gobbo letter, that is
10:51:14 8 the earlier letter, and about whether or not there was any
10:51:24 9 need for Ms Gobbo to provide any further assistance. Do
10:51:28 10 you see that?---Yes.
11
10:51:35 12 David Ryan and yourself, "I've liaised directly with
10:51:44 13 Witsec, who have trimmed down my draft. I attach a copy
10:51:47 14 with their tracked changes and a clean copy with the
10:51:50 15 changes accepted. You will just need to confirm with
10:51:54 16 Graham Ashton that VicPol does in fact not require any
10:51:58 17 further information or assistance from her at this stage".
18 Then there's a note from Peter Lardner indicating that he's
19 spoken to Doug Fryer as Acting AC Crime. He indicated that
10:52:02 20 Ms Gobbo - that if she was undertaking any activities for
10:52:05 21 VicPol, then he and Jeff Pope would be aware. Confirms
10:52:06 22 that F is not required to provide any information or
10:52:09 23 assistance to VicPol at this stage. I tender that,
10:52:13 24 Commissioner.
10:52:13 25
10:52:14 26 #EXHIBIT RC1106A - (Confidential) VPL.0005.0195.0953 at
10:51:06 27 1108.
10:52:16 28
10:52:16 29 #EXHIBIT RC1106B - (Redacted version.)
10:52:18 30
10:52:18 31 The next thing is Ms Gobbo - a letter is written to
10:52:30 32 Ms Gobbo and Ms Gobbo responds. Could we have a look at
10:52:34 33 this document. This is the response. VPL.0005.0195.0953
10:52:48 34 at 1100. That's the short response of Victoria Police to
10:52:58 35 Ms Gobbo's letter of 21 February; is that correct?---Yes,
10:53:03 36 it appears so.
37
10:53:04 38 I take it you would have been aware of that when it - - -
10:53:08 39 ?---I didn't provide instructions on it but I knew we were
10:53:11 40 responding.
41
10:53:11 42 I tender that, Commissioner.
10:53:13 43
10:53:14 44 #EXHIBIT RC1107A - (Confidential) VPL.0005.0195.0953 at
10:52:48 45 1100.
10:53:15 46
10:53:17 47 #EXHIBIT RC1107B - (Redacted version.)

1
10:53:21 2 You were aware that a response was going?---Yes.
3
10:53:28 4 On 30 April Mr Gleeson provided a detailed update as to his
10:53:36 5 progression. You accept that you received that on 30
10:53:43 6 April?---Yes.
7
10:53:48 8 That's at 6023.0003.0750. Commissioner, I'll tender it
10:54:18 9 when it's - you recall it, it was a fairly detailed
10:54:21 10 briefing note?---It's in my statement, yes.
11
10:54:24 12 I tender that, Commissioner. We're having difficulty
10:54:29 13 locating it but I think if we can't it's perhaps
10:54:35 14 unnecessary.
15
10:54:37 16 COMMISSIONER: The 30 April update with Gleeson, that will
10:54:42 17 be 1108A.
18
10:54:44 19 #EXHIBIT RC1108A - (Confidential) 30 April update with
10:54:45 20 Gleeson.
10:54:46 21
10:54:46 22 #EXHIBIT RC1108B - (Redacted version.)
23
10:54:48 24 MR WINNEKE: On 24 May you received a letter which Ms Gobbo
10:54:49 25 had sent in response to that letter of Mr Walshe's, 26
10:54:56 26 April, do you accept that?---Yes.
10:55:02 27
10:55:03 28 And it referred to a number of matters, but again Ms Gobbo
10:55:14 29 stated that should anything happen to her, "I've provided
10:55:19 30 specific instructions to my solicitor as to making your
10:55:21 31 advice, the correspondence", et cetera, "a matter of public
10:55:26 32 record". Again that was CC'd to Mr Champion the Director
10:55:30 33 of Public Prosecutions?---Yes.
34
10:55:34 35 She also says in response to the final comments in your
10:55:37 36 letter, "Regarding the adequacy of my references to the
10:55:41 37 history of my dealings with Victoria Police, I remind you
10:55:44 38 that the facts will speak for themselves. They can be
39 referenced in hundreds of hours of covert recordings made
10:55:49 40 by your members each time they met with me and acting on
10:55:50 41 behalf of the Chief Commissioner, (indistinct) deceive me,
10:55:53 42 I commend you to those secret recordings". You had a
10:55:56 43 meeting - and I tender that letter, Commissioner, again, if
10:56:02 44 it hasn't been tendered already. I don't believe it has.
10:56:06 45
10:56:07 46 #EXHIBIT RC1109A - (Confidential) 24 May letter of Ms Gobbo
10:56:07 47 sent to witness in response to letter

10:54:59 1 of Mr Walshe's 26 April.
 10:56:08 2
 10:56:08 3 #EXHIBIT RC1109B - (Redacted version.)
 10:56:10 4
 10:56:13 5 You meet with Deputy Commissioner Walshe. If we can have a
 10:56:19 6 look at this document, VPL.0005.0195.0953 at 1088. In your
 10:56:33 7 statement you say at 6.13 that you discussed Ms Gobbo's
 10:56:37 8 reference to hundreds of hours of materials and the
 10:56:39 9 concerns that had been raised by Mr Maguire at the time of
 10:56:43 10 the Commonwealth DPP case against Dale. "The gravity of
 10:56:48 11 the information was so significant that I was of the view
 10:56:50 12 that there was a problem and we needed to go to the DPP and
 10:56:54 13 discuss it with him"?--Yes.
 14
 10:56:57 15 There's a file note here and there's a reference to the
 10:57:03 16 letter dated, I assume it's dated 20 May?--Yes.
 17
 10:57:07 18 But you haven't put the date in?--M'mm.
 19
 10:57:10 20 Require - what do you - - - ?---Prepare response via VGS0.
 21
 10:57:15 22 There's a note here, "Brief AC Fryer and Deputy
 10:57:24 23 Commissioner Ashton and to brief the DPP", right?--Yes.
 24
 10:57:28 25 You say, "Brief DC Walshe of safety concerns regarding the
 10:57:32 26 witness if secret tapes become public. Safety of witness
 10:57:36 27 is a paramount consideration"?--Yes.
 28
 10:57:39 29 Was there a concern of the possibility of this material or
 10:57:42 30 this matter getting into the public domain?--Yes.
 31
 10:57:46 32 Was that one of the reasons why it was felt appropriate to
 10:57:51 33 communicate with the DPP?--Well for me it gave me the
 10:57:55 34 perfect conduit to arrange for Mr Fryer or someone to brief
 10:57:59 35 the DPP.
 36
 10:58:00 37 Yes?--Because the police were particularly concerned about
 10:58:05 38 the risk to her life.
 39
 10:58:08 40 Right?--And this went directly to the risk of her life.
 10:58:11 41 So it was a very compelling position for me to put to
 10:58:15 42 Mr Walshe.
 43
 10:58:17 44 I just want to ask you this: what role would the DPP have
 10:58:23 45 on issues concerning the protection of Ms Gobbo's life or
 10:58:26 46 preventing this matter getting into the public domain?--It
 10:58:36 47 wasn't about the DPP's role.

1
10:58:40 2 M'mm?---It was about making the DPP aware of the status of
10:58:46 3 the witness and the risks that she faced and the history.
4
10:58:51 5 Did you understand that the DPP was proposing to call her
10:58:55 6 in any matter at all?---No.
7
10:58:59 8 What was the critical or the additional grave information
10:59:05 9 which caused you to want to brief the DPP?---The
10:59:09 10 discussions I'd had with Mr Gleeson.
11
10:59:14 12 Do you say it's the out of scope matters which led you to
10:59:20 13 want to speak to Mr Gleeson?---It's the fact that she had
10:59:25 14 been a long time informer.
15
10:59:27 16 Yes?---She was a defence barrister and I wanted the DPP to
10:59:31 17 be aware of it.
18
10:59:32 19 Right. You note - your statement says, "We discussed
10:59:37 20 reference to hundreds of hours of material"?---Yes.
21
10:59:40 22 "And the concerns that were raised by Ms Gobbo"?---And that
10:59:43 23 was an unknown for me.
24
10:59:45 25 What's that?---The hundreds of hours of materials.
26
10:59:49 27 But had you not been aware well prior, in fact during the
10:59:54 28 civil litigation, that there were hundreds of - - -
10:59:58 29 ?---It's all part of the jigsaw that I'd spoken about,
11:00:01 30 Mr Winneke.
31
11:00:02 32 Yes?---That this information's falling into place. We've
11:00:05 33 commenced a review.
34
11:00:07 35 Yes?---Mr Gleeson's reading all the materials and he's
11:00:10 36 telling me he's got some concerns.
37
11:00:12 38 Yes?---I needed a way to bring this matter to the attention
11:00:19 39 of the DPP.
40
11:00:21 41 Right. But I mean, for example, if we go back to your
11:00:26 42 whiteboard presentation, there's a reference to 225 hours
11:00:31 43 of tapes?---I accept that.
44
11:00:34 45 He had the Maguire advice back in 2011. Can I suggest
11:00:37 46 there really isn't anything more in the materials that you
11:00:40 47 refer to as the reasons why you decide at this point to go

11:00:46 1 to Mr Champion. You had all of that information
11:00:51 2 prior?---Because Mr Gleeson's told me that he has concerns.
3
11:00:54 4 Right?---And I just Mr Gleeson's judgment.
5
11:00:57 6 Okay, all right?---And I know that he's been looking at the
11:00:59 7 materials. There was nothing in the Maguire advice to tell
11:01:02 8 me anything of any specifics and Mr Maguire's advice was
11:01:10 9 not to disclose - not to disclose, it was not to disclose,
11:01:12 10 and that's a large part of the reason why we decided to
11:01:16 11 have an independent review.
12
11:01:21 13 Do you say that Mr Maguire's advice was not to disclose to
11:01:25 14 the DPP?---Well he said he wouldn't imagine how disclosure
11:01:29 15 - well, he couldn't imagine how it would - those matters
11:01:33 16 would be aired basically.
17
11:01:40 18 Mr Maguire said that?---Yes.
19
11:01:42 20 Where do you say he said that?---In his advice, in the
11:01:45 21 second-last paragraph.
22
11:01:49 23 What do you say he says in the second-last paragraph of his
11:01:53 24 advice?---He says something along the lines of he couldn't
11:01:59 25 imagine how it would come to light or something like that.
11:02:02 26 He wasn't addressing - he recommended disclosure in one
11:02:06 27 matter, but he wasn't recommending disclosure in the other
11:02:11 28 matters, even though he was across the other matters. I
11:02:15 29 think that's one of the reasons why Mr Ashton was concerned
11:02:18 30 that we have an independent review.
31
11:02:20 32 He recommended that the issues be raised with senior
11:02:24 33 management with Victoria Police, this is paragraph 55, "For
11:02:28 34 their consideration in the context of the current committal
11:02:30 35 which is due to commence in November. I suggest that
11:02:33 36 urgent consideration be given to providing a copy of the
11:02:36 37 relevant logs to the prosecutor for the purposes of
11:02:38 38 determining what, if any, disclosure is required in the
11:02:42 39 interests of fairness. This may require relevant
11:02:49 40 information reports or member's diaries to also be obtained
41 and reviewed. If there are any questions arising out of
11:02:56 42 this advice I'd be happy to advise further". That's what
11:02:57 43 he said?---In the recommendation. But in the body of his
11:03:00 44 advice he's said he doesn't know how these matters will be
11:03:04 45 raised.
46
11:03:05 47 He said he doesn't know how they'll play out?---They'll

11:03:09 1 play out, yes.
2
11:03:10 3 But there was no suggestion that you shouldn't be making
11:03:12 4 appropriate disclosures to Directors of Public Prosecution,
11:03:19 5 whether it be Commonwealth or State, and indeed he's
11:03:22 6 suggesting, certainly insofar as the committal of Dale is
11:03:26 7 concerned, that there should be appropriate
11:03:29 8 disclosure?---Yes, in that matter, and in that matter
11:03:31 9 alone.
10
11:03:31 11 He's also making it clear that there are concerns with
11:03:34 12 respect to Mokbel and others?---Yes.
13
11:03:36 14 He's not saying, "Don't look at those issues and make
11:03:40 15 disclosure where appropriate", is he?---And he's not saying
11:03:45 16 to disclose either.
17
11:03:46 18 He doesn't need to say something which you know perhaps
11:03:50 19 ought be done, can I suggest?---Well he was providing the
11:03:52 20 advice to the investigators and it didn't happen.
21
11:03:55 22 Yes. In any event - so the view is taken that the DPP
11:04:08 23 ought be notified. Was any discussion had, aside from with
11:04:13 24 DC Walshe on this day, as to whether or not you should go
11:04:19 25 to the OPP?---He gave me permission to go to the OPP.
26
11:04:26 27 He gave you permission on the 24th; is that right?---Yes.
28
11:04:31 29 Do you believe you had any further discussion with any
11:04:33 30 other members of Command, for example, the Chief
11:04:39 31 Commissioner or anyone else before you went to see
11:04:43 32 Mr Champion?---I can't recall.
33
11:04:46 34 Okay?---My memory or my notes indicate I went - sorry, to
11:04:51 35 Mr Champion?
36
11:04:52 37 Yes?---I had a further meeting with Mr Ashton.
38
11:04:59 39 When do you say you had that meeting? In your statement
11:05:02 40 you don't refer to it, you simply say that - just excuse me
11:05:06 41 - you meet with DC Walshe on 24 May. Then the next entry
11:05:14 42 in your statement at 614 is you attending upon - - - ?---I
11:05:20 43 must had a meeting with them to arrange for them to attend,
11:05:23 44 for Mr Fryer to attend with me.
45
11:05:26 46 So you've clearly had a discussion?---Yes, had discussions.
47

11:05:31 1 You've briefed Mr Fryer?---Yes.
2
11:05:32 3 And Deputy Commissioner Ashton you believe?---Yes.
4
11:05:35 5 Is there a note of that discussion that you had?---If it's
11:05:38 6 not in my statement there mustn't be.
7
11:05:40 8 Yes, all right. I take it you obviously can't recall what
11:05:45 9 was discussed in the absence of a file note?---No.
10
11:05:51 11 Would you likely have made a file note?---Generally I make
11:05:54 12 file notes, yes.
13
11:05:56 14 In any event you can't locate one?---It's not in my
11:05:58 15 statement. It could be in my materials if I've missed it.
16
11:06:03 17 Okay. On 31 May - we have examined Mr Gleeson's diaries.
11:06:11 18 I'm not sure, Commissioner, whether these are Relativity
11:06:16 19 yet. There's a diary entry - - -
11:06:19 20
11:06:19 21 MR HOLT: Sorry, can I just approach my friend?
11:06:33 22 Commissioner, at counsel assisting's request we made
11:06:37 23 available some additional Gleeson diaries last week. I've
11:06:40 24 just spoken to my learned friends, it may well be that in
11:06:43 25 the communication we haven't got to the production of the
11:06:45 26 ones that have been identified by counsel assisting as
11:06:46 27 being relevant. I think Mr McRae, if the Commission is
11:06:49 28 satisfied, can be comfortable that what's being read is
11:06:53 29 from the diary and we'll ensure that production occurs once
11:06:56 30 I've had a chance to - - -
31
11:06:59 32 MR WINNEKE: We may have it, but if we go to
11:07:05 33 VPL.0099.0021.0039 and it may well be that - that refers to
11:07:12 34 a diary entry I think in June of 2012, but we're looking
11:07:15 35 for an entry on 31 May of 2012, which is at p.230 of that
11:07:24 36 PB13. We've got - if we can roll through that. If we can
11:07:36 37 get to p.230. What I think we'll find is there's a note to
11:07:41 38 this effect, Mr Gleeson's had discussions with Neil.
11:07:45 39 "Recent revelations and indications that members of the SDU
11:08:01 40 have an awareness that their conduct in operating 3838 may
11:08:05 41 have underpinned unsafe verdicts thereby perverting the
11:08:09 42 course of justice." Do you see that?---Where is it?
43
11:08:15 44 On about the fourth line you'll see, fifth line, "Unsafe
11:08:24 45 verdicts, thereby perverting the course of justice"?---Yes.
46
11:08:28 47 "Not blindly done", it appears to say. "Knowingly done.

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11:08:34 1 Uncertain if Petra steering committee any way involved in
11:08:44 2 receipt of this information". Then, "Questions. Where
11:08:51 3 take this given Petra steering committee involved ESD,
11:08:55 4 Crime Deputy Commissioner, OPI and Intel Covert Support".
11:09:01 5 The note is, "Overland, Ashton, Cornelius, Moloney and
11:09:08 6 Biggin". Do you see that? So those were obviously matters
11:09:10 7 exercising Mr Gleeson's concerns, that there's at least a
11:09:13 8 possibility that these very senior members of Victoria
11:09:15 9 Police might in some way have acted improperly. That was
11:09:20 10 at least a suggestion raised in that note, do you see
11:09:23 11 that?---Yes.

12
11:09:24 13 And Neil's advice, one assumes that that's Neil Comrie,
11:09:29 14 "Beyond scope of what I was engaged to provide. Direction
11:09:32 15 required. Suggest meet with Ken Lay and Finn. Not to
11:09:36 16 include Jeff Pope, given potential involvement in
11:09:38 17 arrangements, to obtain direction. I also explained other
11:09:43 18 issue of new and potentially incriminating avenues of
11:09:47 19 information only now being made known to me". Again, there
11:09:51 20 was advice, "Do not pursue at present, await meet with Ken
11:09:55 21 and Finn. Game changing though and direction required. No
11:09:58 22 statutory obligation on Neil to act. Certainly one that
11:10:02 23 applies to me". Do you see that?---Yes.

24
11:10:06 25 I take it you'd understand about the statutory obligation
26 reference, "Neil Comrie no longer being a member of
27 Victoria Police - - - "?---Yes.

28
11:10:11 29 "Has no obligation pursuant to the *Police Regulation Act*",
11:10:12 30 to make a notification to the OPI , I assume?---Yes.

31
11:10:17 32 But there was an obligation upon Steve Gleeson - - -
11:10:22 33 ?---Yes.

34
11:10:22 35 - - - to make that because he's a member of Victoria
11:10:27 36 Police?---Yes.

37
11:10:28 38 Do you believe that you spoke to - you had a meeting the
11:10:34 39 following day with the DPP. Do you know whether you would
11:10:38 40 have had a discussion with Steve Gleeson before you went to
11:10:45 41 the OPP?---On 1 June?

42
11:10:47 43 Yes?---I don't know.

44
11:10:48 45 Right. If you had have had a meeting and he made those
11:11:04 46 points clear to you, no doubt you would have taken a note
11:11:09 47 of it I would assume?---Yes.

1
11:11:11 2 Because these are quite significant matters?---Yes.
3
11:11:14 4 That he's set out there in his diary?---Yes.
5
11:11:18 6 I tender that diary entry, Commissioner.
11:11:21 7
11:11:21 8 #EXHIBIT RC1110A - (Confidential) VPL.0099.0021.0039.
11:11:24 9
11:11:25 10 #EXHIBIT RC1110B - (Redacted version.)
11:11:28 11
11:11:34 12 The following day you did have a meeting with Mr Champion
11:11:39 13 and Mr Gardiner, who's an experienced Office of Public
11:11:44 14 Prosecutions lawyer?---Yes.
15
11:11:46 16 And you went with Mr Fryer; is that correct?---Yes.
17
11:11:52 18 You made a file note of your meeting; is that
11:11:56 19 correct?---Yes.
20
11:11:57 21 And if we have a look at this document, VPL.0005.0003.2535.
11:12:09 22 Your note is, "Letter to DC Walshe" at the top, dated 20
11:12:21 23 May 2012. Was that the subject of the discussion?---That
11:12:26 24 was one point in the discussion, yes. The starting point.
25
11:12:31 26 Starting point?---Yes.
27
11:12:32 28 And then you've got a note, "F, duty to keep
11:12:37 29 the"?---"Citizen."
30
11:12:38 31 "Citizen safe"?---That's the Chief Commissioner's duty.
11:12:44 32
11:12:44 33 Yes. "Exposure of intel role and extreme risk to
11:12:50 34 F"?---Yes.
35
11:12:52 36 What do you mean by "intel role"?---Human source.
37
11:12:56 38 Right. Are you able to say the terms in which you would
11:13:05 39 have spoken to Mr Champion about Ms Gobbo's role - - -
11:13:11 40 ?---Doug Fryer explained that.
41
11:13:13 42 Did he?---Yes.
43
11:13:14 44 Right. Then there's a note - - - ?---So I took Doug Fryer
11:13:18 45 to explain to the DPP what the status of Ms Gobbo was.
46
11:13:22 47 Right?---Yes, or had been.

1
11:13:25 2 You've made a note of human rights there?---Yes.
3
11:13:29 4 Underneath that there's a reference to Glen Barr away for
11:13:33 5 three months?---Yes. Three weeks.
6
11:13:35 7 I'm sorry, three weeks. Then there's a note,
11:13:40 8 "Prosecutors". Do you know what that was
11:13:43 9 about?---Mr Champion wanted to know whether prosecutors
11:13:46 10 were aware of it.
11
11:13:47 12 Right. Then, "F, OPP aware of allegations of breach of
11:13:52 13 ethics with F in transcript of case of Cvetanovski.
11:13:59 14 Apparently the court ordered the evidence be suppressed
11:14:04 15 with evidence given in regard to Mokbel and information to
11:14:07 16 VicPol and other clients"; is that right?--- Yes.
17
11:14:11 18 That reference to Mokbel and information to VicPol and
11:14:15 19 other clients, was that, to your understanding, evidence
11:14:18 20 given in the Cvetanovski trial which was suppressed, or was
11:14:23 21 that a separate issue, do you know?---That follows on from
11:14:26 22 the discussion because the DPP raised his concerns with
11:14:29 23 that trial.
24
11:14:30 25 Yes?---And the conflict of interest that arose in that
11:14:35 26 trial.
27
11:14:36 28 Right. But the point I'm asking you is this: is that the
11:14:40 29 reference evidence given with regard to Mokbel and
11:14:43 30 information to VicPol and other clients, a reference to
11:14:47 31 evidence given in the Cvetanovski proceeding?---Well it is,
11:14:50 32 and the continued discussion that Doug and the DPP had
11:14:53 33 about conflict of interest and which criminals were
11:14:57 34 involved.
35
11:14:57 36 Do you have a specific recollection of that?---Yes.
37
11:15:01 38 You can actually recall Doug Fryer talking about these
11:15:06 39 sorts of matters, can you?---Yes. Because I couldn't
11:15:11 40 follow what they were talking about because I didn't know
11:15:13 41 who the people were.
42
11:15:22 43 In your statement you say this, "My recollection of the
11:15:35 44 meeting is that acting Assistant Commissioner Fryer
11:15:38 45 explained that Ms Gobbo had been a source for a long time
11:15:42 46 and that she needed to be protected. He also said that
11:15:44 47 she'd given information to Victoria Police about Tony

11:15:48 1 Mokbel and his associates. We raised the fact that
11:15:51 2 conflicts of interest may have existed". At 17 you say, "I
11:15:57 3 made a reference in my note to human rights. This is a
11:16:01 4 reference to how I was thinking about this issue at the
11:16:03 5 time. There were two aspects to this. On the one hand
11:16:07 6 Ms Gobbo's safety", you were concerned about that, "and the
11:16:12 7 right to life, and on the other hand I was concerned about
11:16:14 8 the right to a fair trial"?---Yes.
9
11:16:19 10 You have a clear recollection of that, do you?---I was keen
11:16:24 11 to talk to, commence a discussion with the Office of Public
11:16:27 12 Prosecutions on human rights more generally.
13
11:16:29 14 Right?---So it's probably more general comment than just
11:16:33 15 weighing up those two matters in this example.
16
11:16:37 17 Have you seen a copy of Mr Gardiner's notes subsequent to
11:16:42 18 you making the statement?---I couldn't access the notes.
19
11:16:46 20 Right. But you seem quite specific in your statement about
11:16:51 21 what you were referring to with respect to human
11:16:55 22 rights?---Well my memory of that meeting is hazy.
23
11:16:58 24 Yes?---But I was interested in human rights and ongoing
11:17:03 25 dialogue.
26
11:17:04 27 Right. It may well be then that your statement isn't
11:17:13 28 entirely accurate, would that be fair to say?---Well it's
11:17:17 29 right smack in the middle of a conversation about this
11:17:20 30 matter.
31
11:17:21 32 Yes?---So I think it goes to this matter, that I raised
11:17:25 33 human rights, but I can remember that I wanted to have a
11:17:28 34 more focused discussion with the DPP and the OPP about the
11:17:34 35 Charter because the Charter was fairly new.
36
11:17:37 37 Yes, all right. Do you think that the notes that we see
11:17:43 38 here were taken contemporaneously?---Yes.
39
11:17:48 40 Or might they have been taken at later time, written later
11:17:51 41 on?---They would have been made after the meeting by the
11:17:55 42 looks of them.
43
11:17:56 44 Why do you say that?---Because they're fairly tidy.
45
11:18:00 46 They're tidy?---I think they are.
47

11:18:04 1 For you?---For me, yeah.
2
11:18:05 3 It may well be that it was a summary of matters discussed
11:18:09 4 made later on?---Yeah, in the day.
5
11:18:13 6 The reason I ask that is because it appears that
11:18:18 7 Mr Gardiner has taken contemporaneous notes of what had
11:18:21 8 occurred. We've got a transcript which he has provided to
11:18:29 9 the Royal Commission and it's RCMPPI.0004.0001.0001 at
11:18:45 10 p.124. We can run them together. These are notes taken at
11:18:49 11 a meeting which occurred on 1 June 2012 between 10 am and
11:18:52 12 10.30 and the handwritten notes say as follows, and you can
11:18:56 13 see in the notes there what he has apparently done is in
11:19:02 14 effect typed out what was handwritten and it appears that
11:19:06 15 what he's doing in his handwritten notes is making
11:19:10 16 reference to, you'll see there Doug, and one assumes that
11:19:14 17 that will be a reference to Doug Fryer, who says certain
11:19:18 18 things, and then Finn says certain things, do you see
11:19:21 19 that?---Yes.
20
11:19:22 21 And apparently Doug starts by talking about, "Investigating
11:19:27 22 Dale re lies to ACC. Decided not to call F as a witness.
11:19:32 23 Wouldn't accept terms of safety. VicPol told F it can't
11:19:37 24 use you as a witness without accepting VicPol security
11:19:40 25 arrangements", et cetera. You said, "It appears that she's
11:19:43 26 mentally unwell, she wants to be hero witness. Risk to her
11:19:49 27 are serious if she was witness against Dale and others
11:19:52 28 too"?---Giving them a bit of a potted history.
29
11:19:54 30 Potted history. Although it may well be that the reference
11:19:58 31 to her wanting to be a hero witness is that which is set
11:20:03 32 out in her more recent letters, that is wanting to provide
11:20:07 33 more information and give evidence?---Yes.
34
11:20:09 35 Mr Champion makes comments, "So not using her because
11:20:12 36 unreliable and unsafe"?---Yes.
37
11:20:15 38 And then there's further comments made by Mr Fryer, we
11:20:19 39 don't need to go into all of those. And you make certain
11:20:22 40 comments. Do you say that these notes do more or less
11:20:25 41 reflect the course of the discussion as it went along?---I
11:20:28 42 think so, yes. They look like they do.
43
11:20:32 44 You talk about at one stage VicPol providing certain
11:20:38 45 things - I don't need to go into detail. But unsafe
11:20:42 46 because she created unsafe meetings?---I'm just looking
11:20:45 47 through under "Finn McRae said". I didn't say all of that

11:20:50 1 because I don't know about that.
2
11:20:52 3 It may well be that you say if we go to - - - ?---Up to
11:20:59 4 "Coroner if F is used in the Hodson Inquest". I had
11:21:06 5 nothing to do with the Hodson Inquest. That would be Doug.
11:21:09 6 "VicPol would give Coroner her statements - ethical
11:21:12 7 question."
8
11:21:13 9 Perhaps if we can move back somewhat?---They're not my
11:21:17 10 comments.
11
11:21:18 12 "Finn McRae said at one stage"?---Yes, that's correct.
13
11:21:22 14 "Wants it again. Unsafe because F sought more money.
11:21:25 15 Failed. Doug Fryer said F telling meet her", so it may
11:21:27 16 well be then that Doug's - - - ?---Then it says "Doug Fryer
11:21:29 17 said".
18
11:21:30 19 Yes?---So Doug did most of the talking with the DPP.
20
11:21:35 21 I follow that. Then, "Finn McRae saying to F 'you have
11:21:40 22 VicPol contact if problems'," et cetera. Then, "We don't
11:21:43 23 need her statement". Up to "Coroner if F is used in Hodson
11:21:54 24 Inquest". That's referred to in correspondence between
11:21:57 25 VicPol and Ms Gobbo, so those are matters that you would
11:22:00 26 have been aware of in any event?---I knew the Hodson
11:22:02 27 Inquest was happening, I wasn't involved in it.
28
11:22:05 29 But you were aware that the matters about Ms Gobbo
11:22:09 30 potentially being required to give evidence were matters
11:22:12 31 which had been discussed in her letter?---The earlier
11:22:16 32 letter?
33
11:22:17 34 One or other of the letters?---Yes.
35
11:22:20 36 If not both. Doug Fryer - "Then VicPol would give Coroner
11:22:25 37 her statements, if any. Ethical question re F" and a name
11:22:30 38 that we won't read out, do you see that?---Yes.
39
11:22:38 40 Do you think that that "ethical question re F" and that
11:22:43 41 name who we won't read out related to a matter that
11:22:47 42 Mr Champion had referred to - - - ?---Yes.
43
11:22:51 44 - - - in the Cvetanovski matter?---Yes.
45
11:22:53 46 And then there's a note of Doug Fryer saying, under
11:22:58 47 "Threat" that F wanted to keep name, identity, et cetera.

11:23:01 1 There's a reference to, "Cvetanovski transcript re F.
11:23:04 2 Available transcript, asked", et cetera. There's
11:23:07 3 discussion about getting a hold of the transcript, do you
11:23:10 4 see that?---Yes.
5
11:23:11 6 Then Mr Gardiner apparently says, "No current prosecution
11:23:14 7 files affected by F at present". There's a comment
11:23:18 8 attributed to Mr Champion, "If she approached us we would
11:23:23 9 tell VicPol". Then there's reference to Moti and
11:23:28 10 discussions about Rapke, former DPP, tax deal with
11:23:35 11 Williams, et cetera, Operation Driver. "Finn McRae said
11:23:40 12 new rules re deals, Task Force decisions re money, et
11:23:43 13 cetera. Discussion about Driver and Briars. New rules re
11:23:49 14 approval of money." Would that be a reference to rules
11:23:52 15 following the decision in Moti?---Yes, it would be.
16
11:23:55 17 Finn McRae said - "Jeremy Rapke said prosecution had
11:24:02 18 discretion as to whether evidence would be suffice re
11:24:02 19 deals", so now we're talking about payment of money it
11:24:06 20 seems?---Yes.
21
11:24:07 22 Mr Champion is talking about discussing indemnities, et
11:24:11 23 cetera. So this is a bit of a historical discussion about
11:24:13 24 the payment of moneys to people, to witnesses, do you see
11:24:16 25 that?---Yes.
26
11:24:17 27 "Finn McRae said need to discuss F's ethical issues re she
11:24:25 28 is witness at Inquest. Wants to answer questions". Then
11:24:29 29 discussion about various other matters. Then there's a
11:24:32 30 note here - - - ?---Doug says she's still associating with
11:24:37 31 serious criminals.
32
11:24:38 33 Yes. John Champion said, "Should process her via Bar
11:24:43 34 ethics processes". He gives an example there. Then you
11:24:48 35 say, "Maybe we should have referred her to the Legal
11:24:51 36 Services Commission, but we didn't". Do you recall what
11:24:54 37 that was about, what that comment was about?---Would have
11:24:57 38 been about her breach of ethics.
39
11:24:59 40 Right. In what regard?---In regard to her own clients.
41
11:25:05 42 Right?---Actually, in the context of this meeting it's
11:25:10 43 about conflict of interest. Conflict of interest, yes.
44
11:25:16 45 Right. There's certainly no - that may well be - are you
11:25:24 46 able to say whether that issue of conflict of interest is a
11:25:28 47 reference to the conflict that Mr Champion had drawn to

11:25:34 1 your attention, being Cvetanovski?---Yes.
2
11:25:38 3 There doesn't appear to be any reference to the possibility
11:25:43 4 of unsafe verdicts or information, providing information
11:25:47 5 about clients for whom she was representing, do you see in
11:25:53 6 those notes of that conversation?---Yes.
7
11:25:56 8 Nor indeed any overt statement to the effect that she was a
11:26:01 9 human source?---No, we were just discussing the fact that
11:26:04 10 she'd given us hundreds of hours of information and the
11:26:10 11 risk.
12
11:26:11 13 Where you do you say that is in the notes?---It's in the
11:26:14 14 letter.
15
11:26:14 16 I understand it's in the letter but I'm asking you about
11:26:17 17 the conversation - - - ?---That was the whole basis of the
11:26:19 18 meeting.
19
11:26:20 20 Right. Do you say that the notes that Mr Gardiner has
11:26:27 21 recorded more or less faithfully record the discussion
11:26:33 22 which took place?---It's a snapshot.
23
11:26:36 24 A snapshot?---Yes.
25
11:26:38 26 It's certainly more comprehensive than your notes?---I was
11:26:41 27 going to the main issues, the way I saw them.
28
11:26:47 29 In any event, the hundreds of hours of tapes that you were
11:26:49 30 aware of, they were Petra tapes, that is tapes of
11:26:55 31 Ms Gobbo's conversations with the Petra investigator,
11:27:00 32 Mr O'Connell, Shane O'Connell in particular, I take it
11:27:03 33 you're aware of that, you understand that?---I wasn't
11:27:07 34 limiting the tapes to Petra.
35
11:27:10 36 But you weren't offering the information. You say save for
11:27:16 37 the matters that are referred to here?---This is the
11:27:18 38 initial discussion that we have about - it was overtaken by
11:27:22 39 the DPP's discussion of conflict of interest.
40
11:27:26 41 Right. What Mr Gardiner does at the bottom, the remainder
11:27:35 42 of document 4 is notes about an unrelated issue, do you see
11:27:39 43 that?---Yes.
44
11:27:40 45 If we do continue with his notes - keep going if you
11:27:44 46 wouldn't mind - there's a line drawn and then we see human
11:27:52 47 rights and I think that's, "Marisa Dickey re impacts on

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

11:27:59 1 OPP issues for VicPol re cells/racial questions", is that
11:28:06 2 right, or something along those lines?---Yes.
3
11:28:08 4 Were they discussed?---Well if he's got notes of it we must
11:28:13 5 have discussed it.
6
11:28:15 7 Glen and - "GS and JC spoke to SARC re human right
11:28:23 8 questions"?---Yes.
9
11:28:24 10 Then, "Glen is overseas for three weeks and Finn will see
11:28:30 11 Glen when he returns"?---M'mm.
12
11:28:32 13 Can I suggest to you in your statement where you're talking
11:28:34 14 about - - - ?---I accept Bruce's notes.
15
11:28:35 16 It may well be that your statement where your - as I took
11:28:43 17 you to before - where you're saying well look, the human
11:28:45 18 rights issue was about - human right to life and also human
11:28:50 19 right to a fair trial, wasn't what that was about at all,
11:28:54 20 do you accept that?---I'm concerned all the way through
11:28:57 21 about her right to life and fair trial issues.
22
11:29:01 23 Yes, but - - - ?---No, I accept, I accept what you say,
11:29:03 24 he's got more contemporaneous notes than me.
25
11:29:06 26 So you would accept that your statement isn't accurate
11:29:09 27 about that, do you?---It was a long time ago.
28
11:29:12 29 I follow that, all right.
30
31 MR HOLT: Can I just approach my friend.
32
11:29:28 33 MR WINNEKE: I'll do it fairly. What your statement says,
11:29:34 34 to be quite fair, is this: "I made a reference in my note
11:29:39 35 to human rights. This is a reference to how I was thinking
11:29:45 36 about the issue at the time. There were two aspects to
11:29:48 37 this. On the one hand I was concerned about Ms Gobbo's
11:29:53 38 safety and the right to life, and on the other I was
11:29:57 39 concerned about the right to a fair trial"?---Exactly,
11:30:02 40 right. In my notes and my advice I always include the
11:30:05 41 Charter.
42
11:30:06 43 I follow that. What I'm simply putting to you is that - -
11:30:11 44 - ?---I agree.
45
11:30:12 46 COMMISSIONER: It's about your thoughts, so you may not
11:30:15 47 have expressed your thoughts, is that what you're

11:30:16 1 saying?--Well going back to - because my notes were so
11:30:20 2 brief I was trying to remember what the discussion was at
11:30:24 3 the meeting, but in terms of the framing of the issues, I
11:30:29 4 always go to the Charter in Victoria. The Charter was
11:30:32 5 fresh.
6
11:30:33 7 We're just interested in what was said at this
11:30:37 8 conversation?---I accept that we would have had a
11:30:40 9 discussion along the terms that Bruce has written about -
11:30:45 10 because he's got more comprehensive notes than me.
11
11:30:49 12 Whilst that was in your mind you may not have expressed
11:30:52 13 that at the meeting, is that what you're saying?---Yes.
14
11:30:57 15 Thank you.
16
11:30:58 17 MR WINNEKE: Do you accept that certainly the notes of
11:31:03 18 Mr Gardiner don't convey a suggestion that comments were
11:31:14 19 made by either you or Mr Fryer that there was concerns
11:31:18 20 about Mr Mokbel's trial potentially being affected by the
11:31:28 21 conduct of Ms Gobbo?--No, that's correct.
22
11:31:33 23 Do you think that that particular matter may not have been
11:31:38 24 put as forcefully as you believe it was put?---No, no. We
11:31:43 25 were talking about conflict of interest and her
11:31:50 26 representing multiple parties, perhaps in the same matter,
11:31:54 27 and Victoria Police receiving information from her.
28
11:31:58 29 Yes, but not as an informer, not acting for people, for
11:32:04 30 clients and at the same time providing information against
11:32:07 31 them in circumstances where convictions could be
11:32:12 32 potentially suspect?--We didn't raise that specifically
11:32:17 33 until the next meeting.
34
11:32:18 35 Right, okay. Thanks very much?---I don't know, Doug's
11:32:23 36 notes, you'd have to look at Doug's notes and statements as
11:32:26 37 to what he said because I had trouble following the
11:32:30 38 conversation between the DPP and Doug.
39
11:32:32 40 All right, thanks very much. I tender both the handwritten
11:32:38 41 notes and the typed version.
42
11:32:42 43 MR HOLT: They're part of the exhibit that's already been
11:32:44 44 tendered which was in the statement of Ms Judd of Queens
45 Counsel.
46
47 MR WINNEKE: You're quite right.

1
11:32:46 2 COMMISSIONER: Sorry, they're part of which statement?
11:32:50 3
11:32:50 4 MR HOLT: They're part of the statement that was the
11:32:53 5 statement of the Director and had annexures and these were
11:32:55 6 annexures to that. I apologise, I don't immediately recall
11:32:59 7 the number.
8
11:33:00 9 COMMISSIONER: All right. We'll have the mid-morning
11:33:02 10 break.
11
12 (Short adjournment.)
13
12:03:05 14 COMMISSIONER: Yes, Mr Winneke.
12:03:07 15
12:03:07 16 MR WINNEKE: Thanks Commissioner. Just before I continue
12:03:09 17 with Mr McRae, can I please tender some documents which I
12:03:14 18 neglected to. A file note of Finn McCrae dated 24 May
12:03:20 19 2012, VPL.0005.0195.1088.
12:03:26 20
12:03:27 21 #EXHIBIT RC1111A - (Confidential) File note of Finn McCrae
12:03:18 22 24/5/12 VPL.0005.0195.1088.
12:03:28 23
12:03:29 24 #EXHIBIT RC1111B - (Redacted version.)
12:03:30 25
12:03:31 26 File note of Finn McCrae dated 1 June 2012,
12:03:42 27 VPL.0005.0003.2535.
12:03:43 28
12:03:44 29 #EXHIBIT RC1112A - (Confidential) File note of Finn McCrae
12:03:35 30 1/6/12 VPL.0005.0003.2535.
12:03:45 31
12:03:46 32 #EXHIBIT RC1112B - (Redacted version.)
12:03:47 33
12:03:48 34 The Exhibit 1108 included I think just the covering email,
12:03:52 35 but what should be attached to it is also the detailed
12:03:56 36 briefing note, 6023, that is VPL.6023.0003.0751.
12:04:04 37
12:04:08 38 COMMISSIONER: You don't want that tendered as a separate
12:04:11 39 exhibit, it will be part of 1108?
12:04:13 40
12:04:14 41 MR WINNEKE: Yes, part of 1108, Commissioner. One other
12:04:17 42 matter, Commissioner, the file note of Bruce Gardiner, the
12:04:20 43 handwritten and typed, is I think a relatively significant
12:04:25 44 exhibit, I think it ought be tendered as a separate
12:04:28 45 exhibit. If I might change my mind about that and tender
12:04:32 46 that as a particular exhibit. It's RCMPPI.0104.0001.0001 at
12:04:42 47 0116 and following.

12:04:46 1
12:04:46 2 #EXHIBIT RC1113A - (Confidential) Handwritten and typed
3 file note of Bruce Gardiner
12:04:35 4 RCMPPI.0104.0001.0001 at 0116 and
12:04:45 5 following.
12:04:47 6
12:04:48 7 #EXHIBIT RC1113B - (Redacted version.)
12:04:49 8
12:04:50 9 Thanks Commissioner. Now, Mr McRae, 4 June you had a
12:04:56 10 meeting with Mr Gleeson, Mr Ryan, Mr Lardner and I think
12:05:05 11 also Mr Lee. Can we have a look at your file note
12:05:10 12 0100.0001.0493 at 0503?---Is that 6 June?
12:05:31 13
12:05:31 14 4 June. In your statement you talk about 6 June meeting
12:05:36 15 with Ryan, Lee and Gleeson where the VGS0 advice was being
12:05:41 16 discussed. You don't refer to a file note in particular
12:05:46 17 but perhaps if I ask you to look at this, and it may well
12:05:49 18 be that you're incorrect about what you say in paragraph
12:05:53 19 620. Do you see that? Now what appears, correct me if I'm
12:06:10 20 wrong, you meet with those people?---Yes.
12:06:14 21
12:06:16 22 And there are a number of matters discussed, including the
12:06:19 23 ethical duties of a lawyer?---Yes.
12:06:22 24
12:06:22 25 Conduct that goes to breach of own client privilege, is
12:06:27 26 that right?---Yes.
12:06:28 27
12:06:29 28 Role of police in eliciting information?---Yes.
12:06:32 29
12:06:33 30 Duty to keep confidence with same?---Source.
12:06:36 31
12:06:37 32 Source, is it?---Yes.
12:06:38 33
12:06:39 34 Right. Then is it, "Entities for review"?---Options for
12:06:47 35 review.
12:06:48 36
12:06:49 37 OPI or DPP?---No, Ombudsman Victoria.
12:06:53 38
12:06:54 39 Right. So the three possibilities. If we can scroll down.
12:06:58 40 "Next steps. Neil Comrie to seek guidance from the Chief
12:07:07 41 Commissioner of Police. Test whether", is it "cases
12:07:11 42 impacted"?---Yep.
12:07:13 43
12:07:14 44 "Continue with current project"?---Yes.
12:07:16 45
12:07:18 46 Now, do you say that that's the meeting that you're
12:07:21 47 referring to on 6 June?---I don't think so.

12:07:23 1
12:07:23 2 You don't think so. I tender that file note, Commissioner.
12:07:27 3
12:07:31 4 #EXHIBIT RC1114A - (Confidential) File note 4/6/12
12:05:08 5 VPL.0100.0001.0493 at 0503
12:07:33 6
12:07:34 7 #EXHIBIT RC1114B - (Redacted version.)
12:07:35 8
12:07:35 9 Can you add anything to what we can see in the file note,
12:07:41 10 do you have any recollection of what those matters were
12:07:43 11 about, save for I suppose what might be obvious?---No.
12:07:46 12
12:07:46 13 All right. You say that you did have a meeting on 6 June.
12:07:54 14 Do you have a file note of that meeting, that is two days
12:07:57 15 later where you're discussing the legal advice?---Only if
12:08:03 16 it's attached to my statement.
12:08:04 17
12:08:04 18 It appears not to be?---Okay.
12:08:10 19
12:08:10 20 It doesn't appear to be?---My memory is they were already
12:08:14 21 meeting and I came in late and we had a short discussion.
12:08:17 22
12:08:17 23 And that legal advice was the one that Mr Gleeson had
12:08:20 24 sought from the VGSO concerning a number of matters, but
12:08:25 25 particularly with reference to lawyer's obligations to
12:08:32 26 their clients?---Yes.
12:08:33 27
12:08:33 28 In circumstances where they might be providing information
12:08:36 29 to police?---Yes.
12:08:37 30
12:08:37 31 That is the advice which found its way in summary into the
12:08:41 32 Comrie Review, is that correct?---Yes.
12:08:43 33
12:08:43 34 That advice is VPL.0005.0014.0002. That's the advice that
12:08:57 35 you're discussing?---Yep.
12:08:59 36
12:08:59 37 I tender that, Commissioner.
12:09:00 38
12:09:01 39 #EXHIBIT RC1115A - (Confidential) Advice
12:08:49 40 VPL.0005.0014.0002.
12:09:02 41
12:09:03 42 #EXHIBIT RC1115B - (Redacted version.)
12:09:08 43
12:09:10 44 You mention I think in your statement that you continued to
12:09:13 45 follow up, tried to get a hold of the transcript in the
12:09:17 46 Cvetanovski case?---Yes.
12:09:18 47

12:09:18 1 And you had communications with Mr Gardiner or his office
12:09:25 2 to follow that up, is that right?---Yes.
12:09:27 3
12:09:27 4 I tender a chain of emails VPL.6023.0102.1915?---Yes.
12:09:40 5
12:09:40 6 Is that the chain there?---Yep.
12:09:42 7
12:09:46 8 Can I ask you about an entry in Mr Gleeson's diary of - - -
12:09:52 9
12:09:53 10 #EXHIBIT RC1116A - (Confidential) Chain of emails
12:09:53 11 VPL.6023.0102.1915.
12:09:54 12
12:09:55 13 #EXHIBIT RC1116B - (Redacted version.)
12:09:58 14
12:09:58 15 Mr Gleeson's diary of 13 June 2012, VPL.0099.0021.0039,
12:10:10 16 p.40. That's at p.235 of Mr Gleeson's PB13. It refers to
12:10:18 17 a meeting that you have with Mr Gleeson in the morning at
12:10:22 18 8.40 on 13 June. It looks like you have coffee at, maybe
12:10:34 19 the Mint, would that be right?---Yes.
12:10:37 20
12:10:41 21 "Finn confirmed issues conveyed to Ken Lay. To meet with
12:10:46 22 Neil to discuss same in due course. Advise that Neil had
12:10:51 23 seen when in Mildura yesterday and agreed in a brief sense
12:10:57 24 to revelations and need for VicPol to think how to
12:11:02 25 appropriately manage these as outside" - it seems to say,
12:11:08 26 "Outside Term of Reference of review", do you see that?---
12:11:11 27
12:11:11 28 "Alerted Finn to comments within ICR reflecting
12:11:14 29 inappropriate usage and outcomes. Shown ICR at 48", p.124,
12:11:22 30 "And told of associated entries suggesting Petra steering
12:11:27 31 group had knowledge of how the source was utilised and
12:11:45 32 question source. Finn suggested" - perhaps we can just go
12:11:50 33 back to the - "how source is utilised", it's not all
12:12:02 34 together clear what that says - "and who source was"
12:12:07 35 perhaps, says Mr Chettle. If we then go to the next entry.
12:12:11 36 "Finn suggested discussions with Neil as to how best to
12:12:15 37 present such material. My concern is fulfilling my
12:12:19 38 obligation under the Police Regulation Act to report on
12:12:23 39 such matters" and then at 9.25 it appears, "Spoke to Neil,
12:12:29 40 received legal advice and drafted sections previously
12:12:31 41 provided". Do you accept that you had a meeting with
12:12:38 42 Mr Gleeson about those matters that are set out in his
12:12:42 43 notes?---If he's made a note of it we did. We had many
12:12:47 44 discussions.
12:12:47 45
12:12:48 46 I tender that note, Commissioner.
12:12:50 47

12:12:52 1 #EXHIBIT RC1117A - (Confidential) Mr Gleeson's diary
12:12:55 2 13/6/12.
12:12:55 3
12:12:55 4 #EXHIBIT RC1117B - (Redacted version.)
12:12:57 5
12:12:59 6 Could I ask you about the file note of yours,
12:13:06 7 VPL.0100.0001.0493 at 0495. Meeting with Steve Gleeson and
12:13:46 8 Jeff Pope, "File 3838. Issues, legal practitioner as a
12:13:51 9 witness". You're told about the risk assessment, SWOT
12:13:54 10 analysis and briefing note on 31 December 2008. There's a
12:13:57 11 reference to a name there which we know as Mr Black, do you
12:14:00 12 accept that?---Yes.
12:14:02 13
12:14:06 14 And that's reference to a note that he prepared on 31
12:14:11 15 December 2008. There's a reference to unsafe verdicts,
12:14:16 16 serving barrister assisting police, human source policy is
12:14:21 17 inadequate when dealing with legal professional privilege.
12:14:26 18 "Next steps. Steve Gleeson to continue on the project.
12:14:29 19 Jeff Pope to brief the Chief Commissioner Ken Lay", is that
12:14:33 20 right?---Yes.
12:14:34 21
12:14:35 22 I tender that.
12:14:37 23
12:14:38 24 #EXHIBIT RC1118A - (Confidential) File note of Finn McRae.
12:13:02 25 VPL.0100.0001.0493 at 0495.
12:14:40 26
12:14:40 27 #EXHIBIT RC1118B - (Redacted version.)
12:14:41 28
12:14:43 29 Do you believe that you were shown the briefing note?---I
12:14:46 30 don't know.
12:14:47 31
12:14:47 32 All right. If we have a look at Mr Gleeson's diary which
12:14:52 33 suggests you were, VPL.0099.0021.0039 at p.42. If we have
12:15:02 34 a look at the 9.15 note. It says, "With Jeff Pope and", it
12:15:15 35 seems to say, "Finn, 3838 matter. Further issue re
12:15:21 36 inappropriate use of 3838". It's the same day, same
12:15:26 37 meeting. "Details of briefing note for Petra steering
12:15:30 38 group delivered by Dannye Moloney. Paper by Biggin and
12:15:33 39 another by Mr Black. Clearly alerting to legal
12:15:40 40 practitioner being utilised as human source. Reference to
12:15:43 41 unsafe verdicts. Impacted on prosecutions current, Mokbel,
12:15:47 42 and future and legal and ethical implications. Briefing
12:15:53 43 notes shown to Finn McCrae and Jeff Pope". And, "Implies
12:15:59 44 members were aware of usage being inappropriate. Also
12:16:02 45 implies existing policy re LPP, et cetera, insufficient.
12:16:07 46 Where to?" Now, it may be that Finn's crossed out but,
12:16:13 47 "Jeff to brief Ken Lay recommending referral to question

12:16:19 1 mark OPI in part conflicted". Now would that be a
12:16:24 2 reference to the fact that Mr Ashton had been at the OPI at
12:16:29 3 a time that he was on the Petra steering committee?---I
12:16:33 4 don't know.

12:16:33 5
12:16:34 6 You would have been aware of that at the time, one assumes,
12:16:37 7 given you're at this briefing and would have been
12:16:39 8 discussing these matters?---Yeah, I would have been aware
12:16:41 9 of it, yeah.

12:16:43 10
12:16:43 11 Right. And then, "Possibly both OPI and Ombudsman
12:16:52 12 Victoria. Steve Gleeson to continue with the review and
12:16:58 13 release same". 9.30, there's a note that - finalise
12:17:07 14 perhaps it is?---Finalise, yes.

12:17:09 15
12:17:09 16 And then, "Provided at 9.30". It says, "VPC to. Provided
12:17:22 17 with copy of Maguire advice regarding 3838 and LPP issues.
12:17:28 18 Retained a copy of same and discussed with Finn McRae and
12:17:34 19 Shaun Le Grand, plus context of same, Dale or Mokbel
12:17:39 20 related". Do you see that?---Yes.

12:17:41 21
12:17:41 22 Now, do you know why Mr Gleeson hadn't been provided with a
12:17:47 23 copy of Mr Maguire's advice prior to this time?---No.

12:17:52 24
12:17:52 25 I take it you would say he should have been?---Yes.

12:17:54 26
12:17:54 27 I think Mr Gleeson says in his statement, I'll be corrected
12:17:59 28 if I'm wrong, he discussed with you earlier on in the
12:18:02 29 process, perhaps back the previous year, the Maguire advice
12:18:08 30 and he may have been shown some paragraphs of it. Do you
12:18:11 31 recall whether or not - - -?---I don't know.

12:18:13 32
12:18:13 33 It appears he wasn't, certainly it is suggested he hadn't
12:18:18 34 been provided with the advice until this time?---I don't
12:18:20 35 know why that's the case.

12:18:21 36
12:18:22 37 I take it you would agree that he most certainly should
12:18:25 38 have been provided with that advice?---I would have
12:18:28 39 expected him to be provided with it.

12:18:29 40
12:18:30 41 And do you, who would you say had the obligation to make
12:18:34 42 sure that he was properly briefed at the outset? Would it
12:18:45 43 have been your obligation to ensure that?---No.

12:18:47 44
12:18:48 45 Whose obligation?---I mean partially, yes, but he knew
12:18:51 46 about the Maguire advice so I can't understand why he
12:18:55 47 didn't have it.

12:18:56 1
 12:19:05 2 Now, on 21 June 2012 it appears that had you a discussion
 12:19:20 3 with Mr Gleeson, again if we have a look at those.
 12:19:24 4
 12:19:24 5 COMMISSIONER: Are you tendering those?
 12:19:25 6
 12:19:26 7 MR WINNEKE: I tender that, Commissioner.
 12:19:27 8
 12:19:27 9 #EXHIBIT RC1119A - (Confidential) Diary notes of Mr Gleeson
 12:14:53 10 VPL.0099.0021.0039 at p.42.
 12:19:28 11
 12:19:29 12 #EXHIBIT RC1119B - (Redacted version.)
 12:19:34 13
 12:19:40 14 It appears that he hadn't been provided with the Petra
 12:19:43 15 steering committee documents at this stage. Were you aware
 12:19:45 16 of any difficulties that he was having in getting access to
 12:19:48 17 those documents?---I think he told me he was having
 12:19:51 18 problems at the time. We'd discussed his work fairly
 12:19:56 19 regularly.
 12:19:57 20
 12:19:57 21 Right. Do you know what steps were being put in train to
 12:20:00 22 get access - - -?---I don't know.
 12:20:02 23
 12:20:02 24 If we have a look at Mr Gleeson's diary at p.43
 12:20:07 25 VPL.0099.0021.0039 at p.43. Was there a discussion at
 12:20:16 26 14:05 - there's a discussion with yourself, "Discuss, 1,
 12:20:34 27 draft report to Jeff Pope re inappropriate source usage
 12:20:39 28 recommended minor amendment of client, otherwise no issue.
 12:20:47 29 2, OPI and OV reports released this day". Do you know what
 12:20:54 30 that was about?---Bullet point 1 or 2? Bullet point 1?
 12:21:04 31
 12:21:04 32 Yes?---I think that's the work he's doing on the concerns
 12:21:07 33 that he had.
 12:21:07 34
 12:21:07 35 And the, "OPI and OV reports released on this day"?---I
 12:21:13 36 can't remember.
 12:21:13 37
 12:21:13 38 Then at 14:30 it appears that he's made a note of speaking
 12:21:18 39 to Ken regarding 3838, "Query and referral of matters
 12:21:22 40 outside of scope"?---Yes. He was working with Ken Lay at
 12:21:29 41 that point.
 12:21:31 42
 12:21:31 43 All right. Now, I tender that note, Commissioner.
 12:21:34 44
 12:21:37 45 You accept that you had a discussion about these
 12:21:39 46 matters?---Yes.
 12:21:40 47

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

12:21:43 1 #EXHIBIT RC1120A - (Confidential) Diary notes of Mr Gleeson
12:20:03 2 VPL.0099.0021.0039 at p.43.
12:21:44 3
12:21:45 4 #EXHIBIT RC1120B - (Redacted version.)
12:21:46 5
12:21:41 6 On 22 June 2012 Mr Gleeson prepared a letter with the out
12:21:49 7 of scope issues?---Yes.
8
12:21:57 9 And what he did was to provide that, do you understand that
12:22:02 10 he provided that to Mr Pope?---I think he did.
12:22:05 11
12:22:06 12 Right. If we have a look at this document,
12:22:13 13 VPL.0100.0105.0001. Could we could go to the bottom? So
12:22:19 14 if we have a look at this document here. This is a letter
12:22:26 15 to, addressed to Assistant Commissioner Jeff Pope, "Re
12:22:30 16 human source 3838 case review, notification of recognition
12:22:34 17 of issues of significance outside review Terms of
12:22:39 18 Reference", and you've read that, I take it, in the
12:22:45 19 past?---I think I would have, yes.
12:22:47 20
12:22:47 21 It makes reference to a number of matters. On 15 June he's
12:22:53 22 provided with two folders of material related to the Petra
12:22:56 23 Task Force, so he got those about a week before this.
12:23:00 24 Could you scroll through. And it talks about the Petra
12:23:12 25 steering group records reflect that on 5 January Mr Moloney
12:23:16 26 delivered to Deputy Commissioner Overland a file that
12:23:19 27 originated from the Covert Services Division, et cetera,
12:23:23 28 and it concerned the transition. And it talks about some
12:23:28 29 of the matters that are - - -?---Yes.
12:23:31 30
12:23:32 31 - - - raised in that report?---Yes.
12:23:33 32
12:23:33 33 Now, if we can just go to the top of that document, if we
12:23:38 34 may, or scroll up. Keep going. It seems that the Chief
12:23:59 35 Commissioner has been provided with the report on the 22nd,
12:24:08 36 or at least Mr Pope gets it on 22 June. He attached it for
12:24:14 37 Mr Lay's information, do you see that?---Yes.
12:24:16 38
12:24:16 39 Can we keep moving up. In the other direction, if we
12:24:25 40 might. There's an unsigned letter - I'm sorry, no. Can we
12:24:34 41 go to the second page, please. Keep going down to the
12:24:38 42 third page. There's an unsigned letter to Ron Bonighton
12:24:50 43 dated 25 July 2007. Is it your understanding - - -
12:24:55 44
12:24:56 45 MR HOLT: 2012.
12:24:57 46
12:24:58 47 MR WINNEKE: I'm sorry, 2012. Is it your understanding

12:25:00 1 that Mr Bonighton was provided with a copy of the out of
12:25:06 2 scope document?---Yes.
12:25:08 3
12:25:08 4 He was?---Yes.
12:25:09 5
12:25:10 6 And how do you know that?---Because I was told at the time.
12:25:16 7
12:25:16 8 Right. Did you have any discussion with Mr Bonighton at
12:25:26 9 all at that stage?---No.
12:25:27 10
12:25:31 11 If we can keep going down. Perhaps go to the front of that
12:25:35 12 document. And there's a note, it seems, that the file was
12:25:45 13 put into Mr Pope's hands on 22 June, Commander Fryer on 1
12:25:52 14 August 2013 and then it goes to a different office in 2019.
12:25:59 15 Can I just have a look at the second page of that. It's a
12:26:05 16 letter from Acting Inspector Brian Horan to Commander Fryer
12:26:11 17 indicating that Assistant Commissioner Jeff Pope departed
12:26:16 18 Victoria on 26 July and he's cleared the safe and this file
12:26:21 19 was retrieved. Have you seen a signed copy of the letter
12:26:30 20 to Mr Bonighton at all?---I can't recall.
12:26:34 21
12:26:36 22 I tender that document, Commissioner. That file in fact.
12:26:45 23
12:26:45 24 COMMISSIONER: This is the file that was retrieved from
12:26:48 25 Pope 's safe after he'd left, is that right?
12:26:50 26
12:26:51 27 MR WINNEKE: Yes Commissioner.
12:26:51 28
12:26:52 29 #EXHIBIT RC1121A - (Confidential) VPL.0100.0105.0001.
12:26:54 30
12:26:54 31 #EXHIBIT RC1121B - (Redacted version.)
12:27:00 32
12:27:13 33 The out of scope document I think was forwarded to you on
12:27:15 34 22 June, is that correct?---If you say so. I can't recall.
12:27:22 35
12:27:22 36 All right. You had a discussion with Superintendent
12:27:26 37 Gleeson and Assistant Commissioner Pope on 22
12:27:31 38 August?---Yes.
12:27:32 39
12:27:32 40 Regarding whether Victoria Police was required to make
12:27:35 41 disclosure?---Yes.
12:27:36 42
12:27:36 43 To the DPP regarding Tony Mokbel and we agreed that
12:27:40 44 yourself and Pope would discuss the matter with Chief
12:27:43 45 Commissioner Ashton?---Yes.
12:27:45 46
12:27:45 47 You made a note of the discussion?---I'm not sure that

12:27:51 1 Mr Ashton was Chief Commissioner then.
12:27:53 2
12:27:53 3 Deputy Commissioner, yes?---H'mm.
12:27:55 4
12:27:56 5 If we can have a look at that note. It's
12:28:07 6 VPL.0005.0003.2820. Is that your file note?---Yes, it is.
12:28:33 7
12:28:34 8 "Issue whether further disclosure required to the DPP in
12:28:39 9 Mokbel", is that right?---Yes.
12:28:40 10
12:28:42 11 "Noted DPP aware of general terms of activities of
12:28:48 12 Gobbo"?---Yes.
12:28:49 13
12:28:49 14 "FM to read Comrie Report and", what does that
12:28:56 15 say?---Recommendations.
12:28:57 16
12:28:58 17 And "note", what does that say, does that say
12:29:02 18 "note"?---Yes, note.
12:29:02 19
12:29:03 20 "Note: Paragraph 54 of Maguire advice, has this been
12:29:07 21 actioned"?---Yes.
12:29:08 22
12:29:09 23 And do you recall that being an issue during the course of
12:29:14 24 the meeting, had it been actioned?---That's what I've said,
12:29:18 25 yes, I want to know whether it's been actioned.
12:29:21 26
12:29:22 27 You were asking whether 54 had been actioned?---Yes.
12:29:25 28
12:29:26 29 What aspect of 54 were you talking about there or were you
12:29:30 30 referring to of Mr Maguire's advice?---I would have been
12:29:34 31 thinking about what information had been given to the State
12:29:37 32 DPP or the OPP by the investigators or the intel
12:29:41 33 practitioners.
12:29:42 34
12:29:42 35 About the possibility of Mokbel's trial being
12:29:48 36 affected?---About any of those matters.
12:29:51 37
12:29:51 38 Right. Do you, effectively you would have said, wouldn't
12:29:58 39 you, "Look, it's been actioned because I went to the DPP
12:30:02 40 and spoke to him and told him about the concern about
12:30:05 41 Mokbel's conviction"?---I hadn't at that stage.
12:30:09 42
12:30:09 43 You hadn't, no. So it certainly hadn't been discussed, you
12:30:12 44 would say, on 1 June?---Well I didn't know, because I
12:30:16 45 didn't know what the investigators had done.
12:30:19 46
12:30:19 47 Right?---With Mr Maguire.

12:30:21 1
 12:30:21 2 Right. But you knew about Mr Maguire's advice and
 12:30:25 3 paragraph 54 of Mr Maguire's advice?---Yes, but there were
 12:30:33 4 public interest immunity matters continuous, so I didn't
 12:30:36 5 know what had happened in the meantime, this was a stock
 12:30:41 6 take.
 12:30:41 7
 8 When you say there were public interest issues what do you
 12:30:41 9 mean, as between you and the DPP?---No, I don't get
 12:30:44 10 involved directly with public interest immunity
 12:30:47 11 instructions given by the investigators. I'm just seeking
 12:30:52 12 an update.
 12:30:53 13
 12:30:53 14 What did you understand the actioning to be?---I didn't
 12:30:59 15 know. That's why we're discussing it.
 12:31:02 16
 12:31:02 17 What did you find out, did you say, "Well look, Mr Maguire
 12:31:06 18 in paragraph 54 of his advice back in" - - - ?---Well I
 12:31:12 19 don't think the DPP had been informed.
 12:31:14 20
 12:31:15 21 Right. Well effectively you're accepting this proposition,
 12:31:21 22 that you hadn't informed him?---No, I hadn't. I hadn't had
 12:31:25 23 instructions to inform him.
 12:31:28 24
 12:31:28 25 All right?---And it wouldn't be for me to inform him
 12:31:34 26 anyway.
 12:31:34 27
 12:31:37 28 Do you accept that the issues raised in paragraph 54 of
 12:31:42 29 Mr Maguire's advice back in October the previous year, now
 12:31:47 30 we're almost coming up on 12 months, created organisational
 12:31:52 31 risks, not just risks as far as convictions are
 12:31:55 32 concerned?---That's exactly - - -
 12:31:57 33
 12:31:57 34 Risks as far as Victoria Police are concerned?---That's
 12:32:00 35 exactly the conversation that Mr Gleeson and I were having
 12:32:03 36 and why we were chasing it up.
 12:32:04 37
 12:32:06 38 Effectively you're saying as at August of 2012, "Look, I
 12:32:10 39 don't know what's being done about Maguire's advice,
 12:32:14 40 paragraph 54"?---Well, yes, I don't. I'm chasing it up.
 12:32:21 41
 12:32:21 42 You recall that Mr Ashton called you into the meeting on 3
 12:32:25 43 November of 2011?---Yes.
 12:32:28 44
 12:32:28 45 Because he wanted to draw your attention to paragraph 54 of
 12:32:34 46 the Maguire advice?---Yes.
 12:32:36 47

12:32:36 1 In between that time and now do you say that it still
12:32:39 2 hadn't been actioned?---Yes, other than calling the Comrie
12:32:45 3 Review and having Mr Gleeson go through those records with
12:32:48 4 a fine-tooth comb. It's my belief that the investigators
12:32:53 5 relied on the Maguire advice.
12:32:55 6
12:32:55 7 The investigators relied on it?---H'mm.
12:32:57 8
12:32:57 9 To do what?---Nothing.
12:32:59 10
12:32:59 11 Which investigators are you talking about?---I don't know
12:33:03 12 and that's what I'm checking here.
12:33:05 13
12:33:05 14 I see, all right. And the action item is, "JP and Finn
12:33:10 15 McCrae to discuss with Graham Ashton"?---Yes.
12:33:13 16
12:33:15 17 So Mr Gleeson is effectively saying to you, he has real
12:33:20 18 concerns about all this?---Yes.
12:33:22 19
12:33:22 20 It's been building as far as he's concerned and he thinks
12:33:26 21 something needs to be done about it?---Yes, yes.
12:33:28 22
12:33:29 23 And effectively he's saying, "Well look, can you please
12:33:34 24 discuss this with Graham Ashton"?---Well he wanted to - I
12:33:38 25 don't know.
12:33:39 26
12:33:40 27 Yes?---I don't think that's Mr Gleeson's action.
12:33:44 28
12:33:44 29 Right. Just before I move on, you'd been involved in
12:33:53 30 Mokbel litigation, had you not, in 2011, being his
12:33:58 31 application to change his plea?---No.
12:34:01 32
12:34:01 33 You were on a steering committee dealing with - -
12:34:04 34 -?---Affidavits.
12:34:04 35
12:34:05 36 - - - affidavit issues?---H'mm.
12:34:06 37
12:34:06 38 And that was a matter which was front and centre of
12:34:10 39 Mr Mokbel's application throughout the latter part of 2011
12:34:15 40 into 2012, correct?---Sorry? I don't understand your
12:34:19 41 question.
12:34:19 42
12:34:20 43 The basis of Mr Mokbel's application before the Supreme
12:34:25 44 Court was the issue of the affidavits?---Yes.
12:34:28 45
12:34:29 46 Right. So you were aware of that litigation?---Yes.
12:34:32 47

12:34:32 1 You were aware of the investigators involved in that
12:34:35 2 litigation?---Yes, and they disclosed.
12:34:37 3
12:34:37 4 Did you have any discussion with those investigators about
12:34:40 5 the matter raised in paragraph 54 - - - ?---No, we took
12:34:44 6 advice from the Crime Department on that. They were
12:34:47 7 represented at the steering committee.
12:34:48 8
12:34:48 9 Who else was on the steering committee?---The same people
12:34:50 10 that I said last time, it was the, chaired by Tim
12:34:54 11 Cartwright, it was the Academy, because we had to deal with
12:34:58 12 the policy issues, Ethical Standards, because I think we
12:35:03 13 set up the disclosure regime through Ethical Standards, in
12:35:12 14 various parts of command that were investigating so they
12:35:18 15 could tell us what they were doing.
12:35:20 16
12:35:20 17 Did you raise with that committee the issues in the Maguire
12:35:26 18 advice, paragraph 54?---No, I didn't.
12:35:28 19
12:35:28 20 Do you think it might have been appropriate to do so?---To
12:35:31 21 disclose to the full committee the human source issues?
12:35:34 22
12:35:34 23 Yes?---I would not have been given permission to do that.
12:35:37 24
12:35:37 25 You could have sought permission to do it, couldn't
12:35:42 26 you?---Could seek permission to do anything but I wouldn't
12:35:45 27 have been allowed to do it.
12:35:46 28
12:35:46 29 You wouldn't know until you asked for permission though,
12:35:50 30 would you? You disagree with that?---(No answer).
12:35:58 31
12:35:58 32 Do you say that you would not have bothered, or you would
12:36:01 33 not have sought permission to raise it with, paragraph 54
12:36:05 34 of the Maguire advice with the Task Force dealing with the
12:36:10 35 affidavit issue which concerned, amongst other matters - -
12:36:17 36 -?---Mr Maguire was working on those matters with the VGS0.
12:36:21 37 I wasn't on the ground working with those matters. I was
12:36:24 38 trying to facilitate a massive disclosure exercise across
12:36:29 39 the board.
12:36:31 40
12:36:31 41 Yes. Look, the point is though, Mr McRae, what I'm
12:36:38 42 suggesting is, yes, Mr Mokbel was running litigation which
12:36:42 43 concerned the Marijancevic issue, but there was another
12:36:48 44 significant issue in the background which can I suggest
12:36:50 45 should have been made apparent, or brought to the attention
12:36:54 46 of those who were dealing with that matter, with that
12:36:56 47 litigation?---Those people were aware, they would have been

12:37:00 1 aware of that litigation. Far more aware than I was.
12:37:05 2
12:37:05 3 They would have been aware of the litigation - - - ?---So
4 Mr Maguire and the investigators.
5
12:37:08 6 - - - what about the matters raised in paragraph 54, that
12:37:11 7 is that Mokbel's conviction?---Yes, and they were taking
12:37:15 8 advice from Mr Maguire on that.
12:37:17 9
12:37:18 10 And who were they, who were the people who were taking
12:37:21 11 advice from Mr Maguire?---I don't know. It was Mr Buick
12:37:24 12 was the one that requested the advice, but Mr Maguire was
12:37:27 13 across a range of matters.
12:37:29 14
12:37:29 15 Mr Buick was dealing with the Commonwealth prosecution of
12:37:32 16 Paul Dale. I'm focusing on the State matter of Tony
12:37:38 17 Mokbel?---I understand.
12:37:38 18
12:37:38 19 Which he's trying to set his plea aside on the basis that
12:37:43 20 affidavits were improperly sworn, but there was another
12:37:45 21 issue behind the scenes which you were well aware of which
12:37:50 22 apparently wasn't brought to his attention or to his legal
12:37:54 23 advisors or those prosecuting him, do you follow what the
12:37:57 24 issue is?---Yes, I understand what you're saying, yes.
12:38:00 25
12:38:01 26 Do you say that the Mokbel investigators were taking advice
12:38:05 27 from Maguire?---I don't know, I can't recall, it was ten
12:38:08 28 years ago. But I know that Mr Maguire was across a range
12:38:12 29 of matters from the billing at that time.
12:38:15 30
12:38:18 31 Now, on 28 June 2012 you were provided with a draft report
12:38:24 32 from the Ombudsman, you recall you'd given evidence the
12:38:28 33 previous year on about 24 October about the settlement of
12:38:35 34 the Gobbo litigation, do you recall that?---Yes.
12:38:37 35
12:38:37 36 Can we have a look at this V0.0001.0002.0023. I tender
12:38:48 37 that before we go on, that file note, Commissioner.
12:38:52 38
12:38:56 39 #EXHIBIT RC1122A - (Confidential) File note
12:28:02 40 VPL.0005.0003.2820.
12:38:59 41
12:38:59 42 #EXHIBIT RC1122B - (Redacted version.)
12:39:00 43
12:39:03 44 This report, or the draft report was provided to you with
12:39:07 45 specific paragraphs for your comment, do you recall
12:39:10 46 that?---Yes.
12:39:11 47

12:39:12 1 And here we have the document and it's written to you, if
12:39:18 2 we can just scroll up to see who the author of the document
12:39:23 3 was. It's on the first page. Go to the bottom of that
12:39:33 4 page. Mr Brouwer, who is the Ombudsman?---Yes.
12:39:36 5
12:39:37 6 "Finalise his investigation into allegations of improper
12:39:40 7 conduct involving Victoria Police and I've completed a
12:39:43 8 draft report. Providing you with an opportunity to comment
12:39:48 9 on relevant sections before I finalise. Sections of the
12:39:52 10 draft report relevant to you are enclosed. If you wish to
12:39:55 11 make any response please do so and appreciate you advising
12:40:00 12 me accordingly. Please note if you elect not to make a
12:40:03 13 comment I would appreciate you advising me accordingly.
12:40:05 14 Please note that you are personally responsible for any
12:40:07 15 response you may wish to make". Now, if we can go to
12:40:14 16 paragraph 13. If we can just go through. These are the
12:40:23 17 sections that were said to be relevant to your involvement
12:40:28 18 in the investigation, do you accept that?---Yes.
12:40:29 19
12:40:30 20 And there's a reference to, "Ms Gobbo, former criminal
12:40:34 21 barrister, alleged to have provided Victoria Police with
12:40:36 22 information about underworld murders and drug-related
12:40:39 23 crimes. Agreed to give evidence", et cetera. "There are
12:40:42 24 allegations made by whistle blowers that the writ was
12:40:46 25 settled quickly and not defended. Writ made false claims
12:40:50 26 not supported by evidence. Purana Task Force encouraged
12:40:53 27 Ms Gobbo to provide police with information about her
12:40:55 28 clients who faced criminal charges. Writ was settled to
12:40:58 29 avoid public exposure. Settlement included a condition
12:41:02 30 which released Ms Gobbo from being called as a witness", do
12:41:06 31 you see that?---Yes.
12:41:07 32
12:41:07 33 If we move through the document, just scroll through the
12:41:11 34 document. Paragraph 103 is a paragraph considered to be
12:41:15 35 relevant to you. "Information obtained by Ms Gobbo during
12:41:25 36 her former dealings with clients while a barrister is
12:41:29 37 subject to LPP" and s.3.1 of the professional conduct and
12:41:35 38 rules of practice are set out, do you see that?---Yes.
12:41:37 39
12:41:39 40 And if we go to the next paragraph. It refers to the fact
12:41:46 41 that Ms Gobbo was interviewed on 20 January and 21 February
12:41:50 42 2012 and said that Victoria Police did not encourage her to
12:41:56 43 solicit information from her clients for the purpose of
12:42:00 44 assisting criminal investigations. She further said she
12:42:03 45 did not provide Victoria Police with information about her
12:42:06 46 clients for the purpose - evidence provided by Ms Gobbo,
12:42:12 47 interview and documents obtained from Victoria Police's

12:42:16 1 civil litigation division do not indicate that Ms Gobbo
12:42:19 2 provided information about her clients to Victoria Police".
12:42:21 3 Do you see that?---Yes.

12:42:22 4
12:42:25 5 And paragraph 145 - in fact before I go there. Can I
12:42:31 6 suggest that you had information available to you which
12:42:36 7 would cast doubt upon those propositions. Do you accept
12:42:41 8 that?---Well, it wasn't the information that was available
12:42:47 9 to the civil litigation division.

12:42:49 10
12:42:52 11 But you had information, Victoria Police and you had
12:42:55 12 information which cast doubt upon the proposition that
12:42:59 13 Ms Gobbo had not provided, and her assertion that she
12:43:02 14 hadn't provided that information, do you accept
12:43:05 15 that?---Yes.

12:43:05 16
12:43:06 17 Do you think that there was an obligation upon you to
12:43:10 18 correct that situation?---When I responded to this I was
12:43:20 19 responding to the comments in regard to the comments that I
12:43:24 20 made.

12:43:24 21
12:43:24 22 Right?---To make sure that they were correct.

12:43:27 23
12:43:27 24 Right. And you didn't respond, I take it you accept that
12:43:32 25 you didn't respond to the matters that are set out in
12:43:35 26 paragraph - - -?---I can't remember addressing those
12:43:37 27 matters. I didn't put in, I wasn't part of the
12:43:40 28 organisational response.

12:43:41 29
12:43:41 30 I follow that. Can I suggest to you that you didn't
12:43:44 31 provide any response or correct what might have been
12:43:47 32 regarded as a - - -?---I can't recall that I addressed that
12:43:52 33 paragraph.

12:43:52 34
12:43:53 35 If we have a look at your response which is
12:44:02 36 V0.0001.0002.0022. If we have just have a quick look at
12:44:06 37 that. I tender that document, Commissioner, if I might.

12:44:10 38
12:44:14 39 #EXHIBIT RC1123A - (Confidential) Ombudsman report.

12:44:16 40
12:44:16 41 #EXHIBIT RC1123B - (Redacted version.)

12:44:17 42
12:44:22 43 You've dealt with a number of matters, including paragraph
12:44:25 44 20 which deals with quantum, paragraph 41, paragraph 60,
12:44:32 45 91, 92, 99, 101, 105. But you haven't provided a response
12:44:41 46 with respect to the matters that are set out in 104?---I've
12:44:47 47 confined it to what I've said and the reasons for the

12:44:50 1 settlement of the civil writ, not the broader issues.
 12:44:54 2
 12:44:54 3 Do you think that it might have been appropriate to convey
 12:44:59 4 to Mr Brouwer that Victoria Police did have information
 12:45:03 5 which contradicted Ms Gobbo's assertions?---Yes, I think I
 12:45:07 6 could have done that, yes.
 12:45:09 7
 12:45:09 8 Do you know whether that was done, aside from - - -?---No,
 12:45:12 9 I didn't have any - because I was a witness, I didn't have
 12:45:15 10 any involvement in the organisational response.
 12:45:17 11
 12:45:18 12 Yes. I mean this was at a time when you were considering
 12:45:23 13 making disclosure to the OPI?---Yes.
 12:45:26 14
 12:45:29 15 Or the Ombudsman, that is you recall discussions that you'd
 12:45:34 16 been having with Mr Gleeson?---Yes, yes.
 12:45:36 17
 12:45:37 18 About whether the OV was - - -?---That's correct.
 12:45:39 19
 12:45:39 20 I tender that document, Commissioner.
 12:45:42 21
 12:45:44 22 #EXHIBIT RC1124A - (Confidential) V0.0001.0002.0022.
 12:45:45 23
 12:45:45 24 #EXHIBIT RC1124B - (Redacted version.)
 12:45:46 25
 12:45:55 26 Now, do you think you may have brought to Mr Brouwer's
 12:46:19 27 attention the matters that you were aware of or suggested
 12:46:22 28 someone else might do so?---At some other stage do you
 12:46:27 29 mean?
 12:46:27 30
 12:46:27 31 At around this time and particularly when you were aware of
 12:46:31 32 the matters in the draft report?---No, I can't remember
 12:46:38 33 making a report to the Ombudsman.
 12:46:41 34
 12:46:41 35 Okay?---Because I thought OPI was the appropriate body.
 12:46:45 36
 12:46:45 37 Did you suggest or advise anyone else to do so?---No,
 12:46:50 38 because I was prohibited by law from discussing these
 12:46:57 39 matters.
 12:46:57 40
 12:46:58 41 Could you not have made a recommendation to police command
 12:47:04 42 or informed them about the matters raised in the draft
 12:47:09 43 report and your response and suggested to them - - -?---My
 12:47:14 44 view was that I was prohibited from talking to anyone about
 12:47:17 45 the matters.
 12:47:18 46
 12:47:18 47 Because of the - - -?---Yes, it's a fairly comprehensive

12:47:22 1 provision.
12:47:23 2
12:47:23 3 But equally you could have made a suggestion that there
12:47:26 4 could be a disclosure without referring to what was in the
12:47:30 5 draft report and your response?---I concentrated on what my
12:47:37 6 issues were as a witness and the issues that were relevant
12:47:41 7 to my evidence and that part, at the time I gave evidence,
12:47:47 8 was not an issue that I addressed.
12:47:50 9
12:47:50 10 All right?---But look, I just didn't have any visibility of
12:47:56 11 the organisational response.
12:47:58 12
12:47:58 13 Okay. Could I just have a look, could we have a look at
12:48:02 14 this document please, VPL.0099.0047.0003. Sorry, 0001 at
12:48:12 15 p.3. This is a letter from Mr Comrie. I'll read that
12:48:32 16 again, 0099 - if we have a look at p.3. This is a letter
12:48:43 17 from Neil Comrie to Ken Lay. Now I think I suggested to
12:48:48 18 you before that on 7 February 2012 there was a final
12:48:54 19 version of the Terms of Reference for the Comrie Review.
12:48:58 20 It appears that, if we look at this letter, from Comrie to
12:49:04 21 Ken Lay. He says, "As requested I've undertaken a review
12:49:08 22 of the human source 3838 matter consistent with the Terms
12:49:11 23 of Reference provided which required my consideration of".
12:49:15 24 Now, "The adequacy of existing human source policies,
12:49:19 25 procedures, instructions, control measures including actual
12:49:21 26 management, operational practices, et cetera and process
12:49:26 27 and associated issues whereby human source may transition
12:49:29 28 to become a witness, including the adequacy of controls and
12:49:34 29 risk recognition arrangements and mitigation for such
12:49:35 30 instances". Now it appears that the Terms of Reference had
12:49:39 31 changed between 7 February and the date of this letter
12:49:44 32 which I think is 2 August, if we go down. 2 August. Now,
12:49:53 33 do you know how it came about that the Terms of Reference
12:49:57 34 did change as time progressed?---I can't recall.
12:50:01 35
12:50:01 36 All right. Can I just ask you to have a look at, if we go
12:50:07 37 back to about - if we can scroll back to the previous page,
12:50:13 38 please. Now, if we have a look at about the fourth
12:50:18 39 paragraph from the bottom, we can see here that, "In
12:50:21 40 accordance with instructions provided at the outset of this
12:50:26 41 review there has been no consultation with investigators
12:50:29 42 from Task Force Petra", do you see that?---Yes.
12:50:32 43
12:50:32 44 Was that your understanding, that the reviewers were not to
12:50:36 45 speak to anyone on Task Force - - -?---I'm not aware of
12:50:39 46 that.
12:50:39 47

12:50:42 1 Given the concerns, and we note that June 15, the review is
12:50:50 2 provided with two further large binders of
12:50:54 3 correspondence?---That's not an instruction I gave.
12:50:57 4
12:50:57 5 That's not?---No.
12:50:58 6
12:51:01 7 Would it not have been appropriate for the reviewers to
12:51:05 8 speak to the Petra Task Force members, particularly given
12:51:09 9 what was then the second Term of Reference, to consider the
12:51:12 10 transition of Ms Gobbo?---Yes, that was an option, yes.
12:51:17 11
12:51:18 12 If they were tasked to look into the transition and the
12:51:23 13 reasons and so forth surrounding it, wouldn't it be obvious
12:51:26 14 that they would need to speak to the people whose decision
12:51:29 15 it was to make that transition, or to order that she be
12:51:36 16 transitioned, do you agree with that?---It's an option.
12:51:40 17
12:51:40 18 Well it would - do you agree that it would be really
12:51:46 19 absolutely necessary, if you're looking at - if we go back
12:51:50 20 to the front page, if you're looking at the process and
12:51:55 21 associated issues whereby a human source is transitioned,
12:51:58 22 including the adequacy, controls and risk recognition
12:52:04 23 arrangements and mitigation, why wouldn't you want to speak
12:52:08 24 to the people whose decision it was to make that
12:52:11 25 decision?---I don't know.
12:52:11 26
12:52:15 27 Do you know, who would have directed Mr Comrie and
12:52:19 28 Mr Gleeson not to speak to those people, that is - -
12:52:24 29 -?---You'd have to ask Mr Gleeson.
12:52:26 30
12:52:27 31 - - - the people who were on the Task Force?---You'd have
12:52:29 32 to ask Mr Gleeson, I don't know.
12:52:31 33
12:52:31 34 So you don't know, have you got no idea?---Well the
12:52:35 35 instructions changed over time. Initially it was Jeff
12:52:39 36 Pope.
12:52:39 37
12:52:39 38 Yes?---And with Tim Cartwright over the top of - more
12:52:46 39 senior.
12:52:47 40
12:52:47 41 Yes?---And then later Mr Gleeson worked to Mr Lay, but I
12:52:55 42 don't think Mr Lay would be getting into detail like this,
12:52:59 43 he was more about outcomes.
12:53:01 44
12:53:06 45 I tender that, Commissioner.
12:53:08 46
12:53:09 47 #EXHIBIT RC1125A - (Confidential) Letter from Mr Comrie

12:48:03 1 VPL.0099.0047.0001 at p.3.
12:53:11 2
12:53:11 3 #EXHIBIT RC1125B - (Redacted version.)
12:53:13 4
12:53:15 5 Do you believe there was a concern on the part of those who
12:53:21 6 were providing instructions not to investigate those
12:53:29 7 outside of the SDU?---I don't know.
12:53:32 8
12:53:33 9 Because - - -?---They didn't raise it with me.
12:53:36 10
12:53:37 11 No.
12:53:38 12
12:53:38 13 MR CHETTLE: Before that moves on, Commissioner, in that
12:53:40 14 previous exhibit, is it to include all the documents in
12:53:44 15 that or just the letter? Because there is a document
12:53:49 16 before that that's relevant.
12:53:51 17
12:53:52 18 MR WINNEKE: Let's have a look at the document before it.
12:53:54 19
12:53:54 20 COMMISSIONER: Is there a date to that letter, by the way?
12:53:57 21
12:53:58 22 MR WINNEKE: 2 August, Commissioner.
12:53:59 23
12:53:59 24 COMMISSIONER: Thank you.
12:54:01 25
12:54:02 26 MR WINNEKE: Can we go to the document immediately
12:54:03 27 preceding that letter. Second page. That's the start of
12:54:23 28 the letter I've tendered, Commissioner. The document above
12:54:29 29 is it the bill rendered by Mr Comrie.
12:54:32 30
12:54:32 31 COMMISSIONER: What's the problem, the letter - - -
12:54:34 32
12:54:34 33 MR CHETTLE: I'm the one that brought Mr Winneke's
12:54:37 34 attention to it.
35
36 COMMISSIONER: Yes, thanks Mr Chettle.
37
12:54:38 38 MR CHETTLE: This document, I would have tendered the whole
12:54:40 39 lot. This is when the Comrie Report gets delivered by Neil
12:54:44 40 Comrie with the photocopy of the front of the document,
12:54:47 41 with his bill which outlines how much work he did and some
12:54:50 42 comments about what he has done.
12:54:51 43
12:54:51 44 COMMISSIONER: You want the whole lot tendered?
12:54:53 45
12:54:54 46 MR WINNEKE: I tender the whole lot, Commissioner.
12:54:57 47

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

12:54:57 1 COMMISSIONER: Okay. And the attached report?
12:55:00 2
12:55:02 3 MR WINNEKE: And the attached report, yes.
12:55:05 4
12:55:06 5 MR CHETTLE: The attached report is not in the exhibit,
12:55:09 6 they don't have the report.
12:55:10 7
12:55:10 8 COMMISSIONER: They don't.
12:55:11 9
12:55:12 10 MR WINNEKE: Can we scroll through the document, please,
12:55:15 11 page by page.
12:55:16 12
12:55:16 13 COMMISSIONER: All right, cover sheet and bill.
12:55:21 14
12:55:22 15 MR WINNEKE: Keep going, please. And there's the report,
12:55:30 16 so it is. I'm only concerned, Commissioner, to tender the
12:55:35 17 first part but it's clear that the report was attached to
12:55:38 18 it, so the first six pages of that document.
12:55:41 19
12:55:42 20 MR CHETTLE: The report has been tendered.
12:55:43 21
12:55:43 22 COMMISSIONER: Sure, sure. I'm just a bit confused, what
12:55:46 23 are we tendering?
12:55:47 24
12:55:49 25 MR WINNEKE: Can we scroll to the top. I just want to
12:55:51 26 tender the letter.
12:55:53 27
12:55:53 28 COMMISSIONER: The letter.
12:55:54 29
12:55:55 30 MR WINNEKE: And the bill rendered by Mr - so that document
12:55:58 31 there and the accompanying letter.
12:56:01 32
12:56:01 33 COMMISSIONER: And it's common ground that it accompanied a
12:56:05 34 copy of the Comrie Report?
12:56:07 35
12:56:07 36 MR WINNEKE: Well, it is now common ground. It's now
12:56:12 37 evidence. If there is to be any doubt I suppose - - -
12:56:14 38
12:56:15 39 COMMISSIONER: It can be explored.
12:56:16 40
12:56:16 41 MR WINNEKE: It can be explored, but it's clear enough that
12:56:18 42 on 2 August Mr Comrie rendered a bill, the covering letter
12:56:23 43 and the report.
12:56:28 44
12:56:28 45 COMMISSIONER: Okay.
12:56:47 46
12:56:48 47 MR WINNEKE: Ultimately - if we go to the second page of

12:56:54 1 the letter or the last page of the letter, please. You'll
12:57:02 2 see here that he writes in conclusion that, "A number of
12:57:07 3 policies and practices should be developed. Recognises a
12:57:18 4 unique case that presented significant challenges for which
12:57:22 5 there was in many instances no easy solutions.
12:57:24 6 Nevertheless this review indicates that the utilisation and
12:57:29 7 management of 3838 was problematic for a number of reasons,
12:57:32 8 including transitional arrangements from human source to
12:57:36 9 witness were not sufficiently managed or structured". That
12:57:39 10 is one of the matters that he developed. In any event I
12:57:42 11 tender that.

12:57:43 12
12:57:44 13 COMMISSIONER: That's tendered at 1125A and B.

12:57:51 14
12:57:52 15 MR WINNEKE: Thanks, Commissioner. Having had - if we can
12:57:58 16 go back to the 23rd. You've had this meeting with
12:58:04 17 Mr Gleeson and Mr Pope. Mr Gleeson has been indicating to
12:58:08 18 you that you should speak to Mr Ashton. You then have a
12:58:11 19 meeting with Mr Ashton on 23 August, correct? That's set
12:58:16 20 out in your file note of that day, 23 August 2012?---Yes.

12:58:21 21
12:58:21 22 VPL.0005.0003.2800?---Yes.

12:58:27 23
12:58:27 24 You meet with him and Pope. The issue is further
12:58:32 25 disclosure to the DPP regarding activities of Witness
12:58:36 26 F?---Yes.

12:58:37 27
12:58:37 28 "Agreed that OPP should be informed that VicPol is
12:58:41 29 examining the information passed to police regarding
12:58:47 30 potentially her own clients"?---Yes.

12:58:51 31
12:58:51 32 "Comrie Review noted, noted that the OPP aware of one case
12:58:57 33 that evidence was led in regard to the activities of
12:59:00 34 Witness F. OPP questioned the relevance to that trial" and
12:59:09 35 that's Cvetanovski?---Yes.

12:59:11 36
12:59:11 37 And, "I request that F" - - -?---No, "Impact of F
12:59:16 38 activities not known".

12:59:18 39
12:59:18 40 "F activities not known. Previous disclosure to
12:59:21 41 Commonwealth OPP re Dale"?---"And Maguire advice."

12:59:26 42
12:59:26 43 "And Maguire advice"?---H'mm.

12:59:28 44
12:59:28 45 So that was the discussion that you had?---Yes.

12:59:30 46
12:59:31 47 And do you say that as a consequence of that it was agreed

12:59:37 1 that you would then go back to the DPP or not?---Yes.
12:59:48 2
12:59:48 3 In addition to that - you say that Mr Gleeson formed the
12:59:59 4 view that he had to report the matters to the OPI and that
13:00:02 5 occurred on 31 August, is that right?---Yes.
13:00:05 6
13:00:14 7 And your recollection is that you provided the OPI with
13:00:18 8 copies of legal advice received from the VGS0, is that
13:00:22 9 right?---Yes.
13:00:23 10
13:00:24 11 And Interpose information in relation to the conflict
13:00:28 12 issues that Gleeson had identified?---Yes.
13:00:31 13
13:00:31 14 What Interpose information do you think you're referring
13:00:35 15 to?---My understanding is that the SDU information had been
13:00:41 16 migrated to Interpose and that's what Mr Gleeson used to
13:00:46 17 conduct his searches.
13:00:47 18
13:00:47 19 Yes. Are you able to recall or is there any record of the
13:00:52 20 material that you provided to the OPI?---That would be with
13:00:56 21 Mr Gleeson.
13:00:57 22
13:00:57 23 Right. You don't know, you're not in a position to say
13:01:01 24 what material was provided?---No, I don't.
13:01:04 25
13:01:04 26 Was there a discussion about the out of scope matters that
13:01:13 27 you can recollect?---That's why we were there, yes.
13:01:18 28
13:01:20 29 And was it suggested that it may well be that Mr Mokbel's
13:01:26 30 proceedings had been interfered with?---No. No, no. It
13:01:30 31 was a general discussion about her passing on information
13:01:35 32 to police against her own clients that was potentially not
13:01:42 33 regulated properly and the types of conduct that Mr Gleeson
13:01:48 34 had observed.
13:01:50 35
13:01:51 36 Well, Mr Gleeson was of the view that he was required to
13:01:55 37 report his concerns or his view that potentially senior
13:02:02 38 members of Victoria Police might have been involved in
13:02:05 39 inappropriate conduct?---Yes.
13:02:07 40
13:02:07 41 Was this a formal reporting of that concern?---Yes. Yes,
13:02:11 42 it was.
13:02:12 43
13:02:12 44 And was the material that was provided to the OPI that
13:02:16 45 which contained or provided at least an indication of that
13:02:22 46 potential impropriety?---It was the primary source
13:02:27 47 documentation.

13:02:29 1
13:02:29 2 Right. Did Victoria Police keep a record of what it
13:02:35 3 provided to the OPI?---Steve Gleeson would, yes.
13:02:38 4
13:02:38 5 Did you, as the lawyer?---No.
13:02:40 6
13:02:41 7 Make a record of what information was provided?---Only in
13:02:43 8 terms of what I've recorded in my file note, because of the
13:02:48 9 nature of the information.
13:02:50 10
13:02:50 11 You don't seem to have a file note that you've referred to
13:02:53 12 in your statement, do you believe that there was or
13:03:05 13 not?---Yes, I expect I would have but maybe I couldn't find
13:03:08 14 it.
13:03:09 15
13:03:13 16 Now, having had the discussion with - I'll move on to 4
13:03:20 17 September, Commissioner - having had the discussion with
13:03:22 18 Mr Ashton.
13:03:24 19
13:03:24 20 COMMISSIONER: That was Exhibit 889.
13:03:30 21
13:03:31 22 MR WINNEKE: You went to see the DPP again?---Yes.
13:03:34 23
13:03:36 24 Can I ask you what the reason was that you needed to go to
13:03:41 25 Mr Ashton to get - did you need to get permission from
13:03:48 26 Mr Ashton to speak to the DPP?---Yes.
13:03:50 27
13:03:55 28 Were you aware of the potential conflict that Mr Ashton may
13:04:03 29 have had, given his involvement with the OPI and being a
13:04:07 30 person who was on the Petra steering committee?---Yes, I
13:04:12 31 would have been.
13:04:13 32
13:04:14 33 Did you discuss that with Mr Ashton?---No. Well actually I
13:04:22 34 should correct that. With that meeting with Ashton and
13:04:25 35 Pope, it was Pope who owned the documents in my view, so it
13:04:30 36 was Pope who gave us permission to release the documents.
13:04:35 37
13:04:35 38 Right?---H'mm.
13:04:36 39
13:04:37 40 To the DPP?---To the OPI.
13:04:39 41
13:04:39 42 I'm sorry, the OPI. All right?---And with the DPP I was
13:04:44 43 clarifying what the situation is again in terms of what
13:04:48 44 disclosures had been made more broadly and - yes, we were
13:04:55 45 seeking permission from - - -
13:04:57 46
13:04:58 47 Graham Ashton to go - - -?---Yes, we would have been,

13:05:01 1 because he's head of crime.
 13:05:02 2
 13:05:02 3 To be fair, I think with respect to the OPI you thought it
 13:05:06 4 was appropriate to - - -?---Sorry, I was getting two
 13:05:11 5 meetings conflated. It's very difficult.
 13:05:14 6
 13:05:14 7 Probably I caused that - but because of your concern it
 13:05:17 8 wasn't appropriate in the circumstances to provide the
 13:05:24 9 notification through ESD?---Exactly, yes.
 13:05:27 10
 13:05:27 11 Because of - - -?---Because of Mr Gleeson's concerns, yes.
 13:05:31 12
 13:05:31 13 And you're aware that senior members of Victoria Police may
 13:05:35 14 have been involved in the history?---Yes.
 13:05:36 15
 13:05:36 16 So you have a meeting with the DPP?---Yes.
 13:05:40 17
 13:05:41 18 And you asked that there be a file note kept of the
 13:05:46 19 meeting, is that right?---Yes.
 13:05:48 20
 13:05:50 21 You also keep a file note?---Yes.
 13:05:53 22
 13:05:53 23 Could we have a look, firstly, at a file note which was
 13:05:57 24 created by Mr Gardiner, which is RCMPI.0104.0001.0001 at
 13:06:07 25 p.126. He notes that you attended at the OPP and spoke to
 13:06:23 26 John Champion and Bruce Gardiner at approximately 12 midday
 13:06:29 27 to 1 pm and you'd spoken previously on several occasions
 13:06:34 28 generally about Nicola Gobbo and VicPol issues re handling
 13:06:39 29 her while in or not in", one assumes - yeah, "Not in
 13:06:45 30 Witsec. Today Finn advised us that upon a review of VicPol
 13:06:49 31 intelligence material, HSMU material, et cetera, there may
 13:06:52 32 be a suggestion that she was providing information to
 13:06:54 33 VicPol about persons she then professionally represented,
 13:07:00 34 including Tony Mokbel"?---Yes, that's information that
 13:07:02 35 Mr Gleeson had given me.
 13:07:03 36
 13:07:04 37 "Possibly suggesting she had provided information to VicPol
 13:07:09 38 which enabled VicPol to detect and then arrest him in
 13:07:09 39 Greece which then led to his extradition"?---Yes, that was
 13:07:12 40 Mr Gleeson's view taking it at its highest.
 13:07:15 41
 13:07:15 42 Was that confined to the extradition issue or was it more
 13:07:20 43 generally?---It's hard for me to recall but I think it was
 13:07:24 44 around the extradition because he hadn't looked at every -
 13:07:28 45 the entirety of the records. So that's the information
 13:07:34 46 that he came across.
 13:07:35 47

13:07:48 1 Now, did you advise him about the Maguire advice?---No.
13:08:01 2 Not that I recall. We talked about the Comrie Review.
3
13:08:04 4 Yes. Did Mr Gleeson suggest to you that in his view it
13:08:16 5 would be appropriate to advise the DPP about the Maguire
13:08:21 6 advice and the comments in the Maguire advice, particularly
13:08:25 7 with respect to paragraph 54?--Well the whole meeting was
13:08:31 8 about conflict of interest and breach of duties and
13:08:35 9 information passing to police.
13:08:36 10
13:08:37 11 Did you ever consider it might be appropriate to get the
13:08:41 12 authority from Mr Ashton to provide the Maguire advice to
13:08:45 13 the DPP?---I don't think at that stage I did.
13:08:50 14
13:08:52 15 Right. And then, "Also discussed in the meeting was
13:08:56 16 whether Gobbo provided data to VicPol regarding her own
13:08:59 17 client in breach of LPP. It was noted that Mr Mokbel had
13:09:03 18 recently filed appeal against conviction alleging some
13:09:08 19 issue regarding the extradition and the details of the
13:09:10 20 appeal weren't yet clear". And - - -?---They would have
13:09:15 21 told me that.
13:09:15 22
13:09:16 23 No, that was discussed during the meeting, was it?---Yes.
13:09:22 24 Well if Bruce has said that, yes.
13:09:24 25
13:09:25 26 Mr Gleeson suggests in his statement that he was present at
13:09:32 27 this briefing with the DPP?---My memory is he was present,
13:09:37 28 but - yeah - - -
13:09:38 29
13:09:39 30 What is it that assists you with that recollection, do you
13:09:44 31 have a note to that effect or - - -?---I haven't recorded
13:09:48 32 him as being there.
13:09:49 33
13:09:49 34 No?---But I remember that Jeff Pope was supposed to attend
13:09:55 35 this meeting.
13:09:55 36
13:09:55 37 Yes?---And he pulled out.
13:09:56 38
13:09:57 39 Right?---And I drove to prosecutions and asked Steve to
13:10:01 40 come with me because I didn't have first-hand knowledge of
13:10:04 41 the detail and I needed someone to explain it.
13:10:09 42
13:10:09 43 Right. Do you believe you explained it or Mr Gleeson
13:10:13 44 explained it?---I think I did most of the talking.
13:10:16 45
13:10:16 46 Right. Just that neither your file note nor Mr Gardiner's
13:10:22 47 file note refers to Mr Gleeson being present?---Well,

13:10:27 1 Mr Gleeson wasn't supposed to be present.
13:10:29 2
13:10:29 3 Right?---My memory is I drove to his office and I said,
13:10:34 4 "Can you come with me" and I took him up there.
13:10:38 5
13:10:38 6 All right. Mr Gleeson's note is equivocal, his diary
13:10:45 7 doesn't suggest he was there, it doesn't suggest he wasn't
13:10:49 8 there?---I can't find any records of it, yes.
13:10:51 9
13:10:55 10 MR HOLT: Can I just approach my friend?
13:10:58 11
13:11:02 12 MR WINNEKE: Mr Gleeson, I should say, Commissioner, says
13:11:05 13 that he may well not have had his diary with him. He has a
13:11:09 14 recollection that he attended, may well not have had his
13:11:12 15 diary with him and therefore his explanation is that it
13:11:16 16 wouldn't have been referred to in his diary, certainly
13:11:20 17 contemporaneously, but there's no record in his diary of
13:11:24 18 him having attended?---I always took a member of police to
13:11:29 19 do the direct briefing on these issues.
13:11:32 20
13:11:32 21 Do you say you wouldn't go to a briefing - - -?---Not of
13:11:35 22 this nature.
13:11:36 23
13:11:36 24 Not of this nature, all right. And there's a note here,
13:11:42 25 "Issue, does the OPP have a duty of disclosure now to Tony
13:11:48 26 Mokbel regarding Nicola Gobbo information"?---Sorry, is
13:11:52 27 that Bruce's note?
13:11:54 28
13:11:55 29 Having a look at the note there. Do you see that?---Yes.
13:12:00 30
13:12:08 31 "Note: Nature of duty per Farquharson and Jama",
13:12:14 32 et cetera, do you know what those matters refer to?---Of
13:12:20 33 course.
13:12:20 34
13:12:20 35 Two cases which refer to obligations of disclosure?---Yes.
13:12:27 36
13:12:28 37 It says, "Finn could not tell us more at present. Agreed
13:12:28 38 at present he has nothing concrete to tell us". Is that
13:12:31 39 your recollection?---Well, what I was telling them is that
13:12:34 40 we had a lawyer who was giving us information in regard to
13:12:39 41 Mokbel and other people and we already knew that there was
13:12:45 42 hours and hours of information, but we didn't - because of
13:12:49 43 the way the information was recorded, it was difficult to
13:12:57 44 understand what the concrete facts were.
13:13:01 45
13:13:02 46 Could you have said, for example, that "We've had
13:13:05 47 Mr Maguire look at the source management log and Mr Maguire

13:13:09 1 has advised us that there is, that he has a concern having
13:13:13 2 looked at it that Mokbel's convictions, and others, may be
13:13:16 3 suspect", I can't recall the exact words he used?---He said
13:13:21 4 that it might draw challenges, I think. Mr Maguire's
13:13:25 5 advise had been overtaken by events of Mr Gleeson's work.
13:13:30 6
13:13:31 7 Mr Gleeson and what he had told you wouldn't have given you
13:13:34 8 any less cause for concern, would he?---No.
13:13:38 9
13:13:38 10 So if anything concern was mounting?---Yes, which was why I
13:13:43 11 was in his office, h'mm. And it's why we delivered the
13:13:52 12 files to the OPI.
13:13:54 13
13:13:54 14 Right. Not to the DPP though?---No.
13:13:59 15
13:14:02 16 Is there a reason why you wouldn't deliver it to the
13:14:07 17 DPP?---No, if I had instructions I would deliver it to the
13:14:11 18 DPP without hesitation.
13:14:13 19
13:14:13 20 Did you seek instructions to do so?---I sought instructions
13:14:17 21 to go and inform the DPP of the situation, the concerns
13:14:20 22 that we had, and then with the full expectation that we
13:14:27 23 would have a collaborative approach to whatever the next
13:14:30 24 steps were.
13:14:31 25
13:14:32 26 In any event, you didn't provide any documents, you
13:14:36 27 provided the information which is set out or that which is
13:14:40 28 set out and was discussed, no documents were
13:14:43 29 provided?---No.
13:14:44 30
13:14:44 31 "Finn is happy for the DPP to discuss with appeal counsel.
13:14:48 32 Finn may provide us with more at a later stage"?---More
13:14:52 33 than happy, it's appropriate. Bearing in mind that I'm not
13:15:04 34 the owner of the documents.
13:15:05 35
13:15:06 36 I understand that. Mr Gleeson makes a note on the 22nd of
13:15:08 37 his discussion with you, "Meet Finn McCrae, Jeff Pope, 3838
13:15:13 38 issues. Duty to alert OPP re Maguire advice and
13:15:19 39 forthcoming appeal by Tony Mokbel. Jeff and Finn to
13:15:22 40 approach Graham Ashton tomorrow and convince Ashton to,
13:15:34 41 convince agree to OPP approach". That's a note of
13:15:40 42 Mr Gleeson at 16:15 on 22 - - -?---I accept that, but I
13:15:49 43 don't think Mr Ashton would have taken much convincing. If
13:15:52 44 he was provided with advice that it should be done, he
13:15:56 45 would of course say that that's okay.
13:16:00 46
13:16:01 47 You provided documents to the OPI?---Yes.

13:16:04 1
 13:16:04 2 Why wouldn't similarly documents be provided, or similar
 13:16:08 3 documents be provided to the DPP?--Well they would be if
 13:16:11 4 the DPP wanted them.
 13:16:13 5
 13:16:13 6 Right. If he doesn't know what exists wouldn't you be
 13:16:19 7 obliged to say, "Well look this is what we've got, we've
 13:16:22 8 conducted a review"?--Well that's what we did.
 13:16:26 9
 13:16:26 10 "We've got an advice from Mr Maguire"?--When Mr Gleeson
 13:16:30 11 talks about the advice, the advice of Mr Maguire is that it
 13:16:37 12 appears that Ms Gobbo has given information to police in
 13:16:41 13 regard to some of her clients and we'd moved on from that
 13:16:45 14 very general proposition.
 13:16:47 15
 13:16:48 16 Okay. In your notes VPL.0005.0003.2555, which is set out
 13:16:58 17 in your statement, you - - -?--What's the date?
 13:17:05 18
 13:17:06 19 That's 4 September?--Yes.
 13:17:07 20
 13:17:07 21 The same meeting. These are your notes.
 13:17:13 22
 13:17:13 23 COMMISSIONER: 891.
 13:17:16 24
 13:17:16 25 WITNESS: Yes. I've asked about that case again. As I did
 13:17:22 26 at every meeting.
 13:17:24 27
 13:17:24 28 MR WINNEKE: Righto. "Evidence regarding potential
 13:17:29 29 conflict of interest, et cetera, review of human source
 13:17:32 30 procedures, review of Witsec procedures, alleged use of
 13:17:37 31 LPP", what does that say, "Materials by F, duty relating to
 13:17:43 32 Mokbel"?--"Relating to Mokbel extradition."
 13:17:45 33
 13:17:46 34 "VicPol does not have details of" - what is
 13:17:49 35 it?--"Information passed on, if any", because this is part
 13:17:53 36 of intelligence holdings. So Steve is telling me that the
 13:17:57 37 information is in broader, may be in broader holdings of
 13:18:00 38 intelligence, it hasn't been assessed.
 13:18:02 39
 13:18:02 40 "VicPol is preparing to review the intelligence
 13:18:06 41 holdings"?--"Over a period of some months in regard to F."
 13:18:09 42
 13:18:09 43 "VicPol to consider whether disclosure is required on
 13:18:14 44 specific items"?--Yes.
 13:18:15 45
 13:18:16 46 So is it the case that effectively you're saying, "Look,
 13:18:20 47 the ball is in our court at this stage"?--Well, I'm saying

13:18:24 1 we're just about to embark on a massive undertaking of
13:18:28 2 analysis.
13:18:29 3
13:18:29 4 All right. So the DPP would be entitled to assume that you
13:18:32 5 would come to them when you had matters that would give
13:18:39 6 rise to their obligation to disclose, would that be fair to
13:18:42 7 say?---The DPP wanted us to construct factual scenarios for
13:18:55 8 his consideration that had some, he used the word
13:18:59 9 certainty.
13:19:00 10
13:19:00 11 In any event, effectively can I put it this way, and do you
13:19:07 12 accept this proposition, the ball was in your court?---We
13:19:09 13 were continuing with further analysis. All I've said to
13:19:14 14 him is that in terms of Mokbel and associates, it appears
13:19:19 15 that information is in our holdings and we're going to
13:19:23 16 analyse it.
13:19:24 17
13:19:24 18 All right. Alleged use of LPP and you're going to analyse
13:19:28 19 it and we'll get back to you?---Of course, yes.
13:19:32 20
13:19:32 21 You accept that proposition, you're at the meeting with the
13:19:35 22 ball in your court?---That we're going to do a lot more
13:19:40 23 work on it, that's right.
13:19:41 24
13:19:41 25 I tender that note - - -
13:19:42 26
13:19:42 27 COMMISSIONER: That's already tendered, 891.
13:19:47 28
13:19:47 29 MR WINNEKE: Sorry. And also the note of Mr Gardiner's of
13:19:50 30 the same date.
13:19:53 31
13:19:53 32 COMMISSIONER: That's 889, isn't it?
13:20:00 33
13:20:00 34 MR WINNEKE: In the same way I tendered - - -
13:20:02 35
13:20:02 36 COMMISSIONER: That forms part of Exhibit 1096, which was
13:20:10 37 all the material produced.
13:20:11 38
13:20:12 39 MR WINNEKE: Yes, it was, Commissioner, but I think because
13:20:13 40 of the significance of it I think it ought to have a
13:20:16 41 separate exhibit number.
13:20:18 42
13:20:19 43 #EXHIBIT RC1126A - (Confidential) File note 4/09/12.
13:20:21 44
13:20:21 45 #EXHIBIT RC1126B - (Redacted version.)
13:20:23 46
13:20:23 47 I apologise, I've gone over time.

13:20:26 1
13:20:26 2 COMMISSIONER: All right then. We'll adjourn then until -
13:20:28 3 - -
13:20:28 4
13:20:28 5 MR HOLT: Sorry, Commissioner, I raise the same issue.
13:20:30 6 Mr Moloney is present having travelled from country
13:20:34 7 Victoria to give evidence this afternoon and I wonder if
13:20:39 8 it's possible to know whether he is likely to be required.
13:20:42 9
13:20:42 10 COMMISSIONER: Yes.
13:20:43 11
13:20:43 12 MR WINNEKE: I would hope so, Commissioner. I'm not
13:20:49 13 suggesting he'll be turned away if he is here.
13:20:53 14
13:20:53 15 COMMISSIONER: We have to adjourn at 4.30 because we have
13:20:55 16 another application on at 4.30. Mr Winneke, how much
13:21:00 17 longer do you think you'll be?
13:21:02 18
13:21:04 19 MR WINNEKE: Well, Commissioner, I would hope that I will
13:21:07 20 finish before 4.30 with Mr McRae and then there's
13:21:14 21 cross-examination.
13:21:14 22
13:21:14 23 COMMISSIONER: There's cross-examination. So that doesn't
13:21:16 24 sound as though Mr Moloney is going to be needed today.
13:21:24 25
13:21:25 26 MR WINNEKE: Mr Chettle has - - -
13:21:28 27
13:21:28 28 MR CHETTLE: How long is a piece of string?
13:21:31 29
13:21:31 30 COMMISSIONER: If you're going to take until 4.30 there's
13:21:34 31 no way we're going to get to Mr Moloney this afternoon.
13:21:37 32
13:21:38 33 MR WINNEKE: Commissioner, I hope I'll be finished before
13:21:41 34 4.30. I'm going to move as quickly as I can.
13:21:47 35
13:21:47 36 COMMISSIONER: If he's here already. I don't know, I can't
13:21:50 37 do any better than that, I'm sorry.
13:21:53 38
13:21:54 39 MR HOLT: I understand. We'll keep him here and I'll ask
13:21:58 40 my friend if his view changes over lunch.
13:22:01 41
13:22:02 42 COMMISSIONER: Yes thank you. All right, we'll adjourn
13:22:03 43 until 2 o'clock, thank you.
13:22:31 44
13:22:32 45 <(THE WITNESS WITHDREW)
13:22:33 46
13:22:33 47 LUNCHEON ADJOURNMENT

13:22:34 1 UPON RESUMING AT 2.10 PM:
2
14:10:07 3 COMMISSIONER: Yes, Mr Winneke.
14:10:09 4
14:10:09 5 <FINDLAY GERARD MCRAE, recalled:
6
14:10:16 7 MR WINNEKE: Before lunch I was dealing with your meeting
14:10:18 8 with the DPP on 4 September 2012 and you indicated to the
14:10:24 9 DPP that you were soon to consider a review - - - ?---Yes.
10
14:10:28 11 - - - of the file or the material. That review in fact
14:10:36 12 was the Loricated review?---Yes.
13
14:10:38 14 That didn't commence really until the end of January
14:10:42 15 2013?---Yes.
16
14:10:44 17 And there was a steering committee set up?---Yep.
18
14:10:47 19 And you were on that?---Yes.
20
14:10:50 21 With Messrs Sheridan, Dunn and Fryer; is that right?---From
14:10:57 22 memory, yes.
23
14:11:03 24 That work commenced, as I say, at the end of January and it
14:11:08 25 continued for quite some time, many months, didn't
14:11:11 26 it?---Yes, it did.
27
14:11:13 28 The idea was to gather together all of the documents as per
14:11:18 29 the first recommendation in Mr Comrie's report?---Yes.
30
14:11:22 31 It might be suggested that all of those documents were in a
14:11:27 32 more or less complete form within the SDU materials and
14:11:35 33 they were available had members of the SDU been asked and
14:11:39 34 they could have pointed to a complete set of documents
14:11:42 35 which were in an appropriately kept form. No doubt
14:11:47 36 Mr Chettle would suggest that. What do you say about that
14:11:49 37 proposition?---I don't know about that.
38
14:11:51 39 Do you agree that if someone had asked them, it now appears
14:11:56 40 that all of this work might have been avoided by simply
14:11:59 41 going to the SDU and saying, "Look, what have you
14:12:03 42 got"?---I'm not aware of that.
43
14:12:10 44 Mr Gleeson had by this time read and been through the
14:12:13 45 majority of the information contact reports, the ICRs and
14:12:18 46 put together a summary of the information contained in
14:12:22 47 those reports, do you accept that?---Yes.

1
14:12:27 2 Can you explain why it took so long to complete the task
14:12:34 3 that Mr Comrie suggested in his first Term of
14:12:40 4 Reference?---It was a very complex job. I don't know.
14:12:44 5 Other witnesses, the project managers would be better
14:12:50 6 placed to explain that.
7
14:12:51 8 All right?---But I understand that initially when they put
14:12:53 9 the team together, they identified software, and the actual
14:13:01 10 process of getting everything on to the software for the
14:13:04 11 team seemed to be laborious.
12
14:13:07 13 Right. In any event, that's what you were being told,
14:13:11 14 "This is taking a long time and it's very complicated and
14:13:16 15 complex"?---Yes.
16
14:13:17 17 There was a meeting on 14 March of the steering committee
14:13:22 18 and you and Mr Fontana were absent but what was discussed
14:13:30 19 at the meeting, in effect, was the task of the Loricated
14:13:38 20 project and item 6 in the minutes set out what was proposed
14:13:50 21 and part of the proposal was to fulfil the specific wording
14:13:55 22 of recommendation 1 and, additionally, the essence of the
14:14:02 23 projects team's work was to collect and analyse all of the
14:14:06 24 intelligence holding so that it may be used at a later
14:14:10 25 date. Do you accept that?---Yes.
26
14:14:13 27 It was suggested that there was a blurring of positions
14:14:15 28 between 3838 being a human source and a witness and there
14:14:18 29 was a grey period until the transition was completed. The
14:14:22 30 next point was that the steering committee agreed that the
14:14:24 31 project team should not consider the Petra material and
14:14:28 32 should only look at intelligence and dealings with the SDU.
14:14:33 33 This time frame will include the transition period to
14:14:38 34 Petra. Now, whilst you weren't present at that meeting,
14:14:44 35 subsequently on 28 March 2013 you were present where those
14:14:49 36 minutes were approved, right. So do you accept you would
14:14:56 37 have been a part of the committee which agreed that the
14:15:00 38 task of the Loricated project team was not to examine Petra
14:15:08 39 material?---Yes.
40
14:15:11 41 Was there a reason why Petra material wouldn't be
14:15:14 42 examined?---I can't recall.
43
14:15:20 44 I mean on one view the Petra material was significant
14:15:23 45 because at the very least it contained evidence about how
14:15:32 46 she became a witness, do you accept that?---Yes.
47

14:15:40 1 Would you accept that those materials would be relevant to
14:15:47 2 the task of the Loricated committee, or the Loricated
14:15:51 3 project?---For a full analysis of the history, yes.
4

14:15:58 5 And yet it wasn't going to take those matters into
14:16:02 6 consideration, that was the decision which was
14:16:10 7 made?---Apparently, yes.
8

14:16:11 9 And equally it had a lot of information about the knowledge
14:16:15 10 of senior members of Victoria Police Command, do you
14:16:19 11 agree?---Yes.
12

14:16:21 13 Messrs Cornelius, Ashton, Overland, Moloney were on the
14:16:26 14 Petra Task Force steering committee?---Yes.
15

14:16:29 16 Do you think there was a concern that it might be best not
14:16:32 17 to include potentially embarrassing material?---Not that
14:16:36 18 I'm aware of.
19

14:16:37 20 In the project. No, all right. In any event the Terms of
14:16:44 21 Reference were set up and the project commenced and it
14:16:47 22 continued throughout 2013, do you accept that?---Yes.
23

14:17:03 24 On 2 September 2013 there's a Loricated steering committee
14:17:08 25 meeting, and it's referred to in your statement at
14:17:11 26 paragraphs 7.8 to 7.10, and I think you note, or it's noted
14:17:21 27 in minutes which are attached to your statement - I
14:17:39 28 withdraw that - that you discussed a meeting you'd had with
14:17:53 29 the DPP on 28 August 2013 where the issue of conflict of
14:17:57 30 interest regarding issues with Ms Gobbo were canvassed.
14:18:01 31 "Advice from the Director was that where clear conflict of
14:18:05 32 interest in the role of Ms Gobbo and clients was identified
14:18:09 33 by the project team, then that was information that the DPP
14:18:13 34 would be interested in"; is that right?---Yes.
35

14:18:16 36 There was a clarification of what clear conflict of
14:18:20 37 interest meant and you understood, and instructed I think
14:18:26 38 Mr Jackson, Loricated team manager, that he should identify
14:18:31 39 instances where Gobbo was acting for a particular person
14:18:34 40 while at the same time providing information to Victoria
14:18:36 41 Police about them?---Yes.
42

14:18:38 43 And that's something you understood that the DPP would
14:18:41 44 regard as a clear conflict of interest?---Yes.
45

14:18:43 46 And would want to know about?---Yes.
47

14:18:53 1 Effectively that process continues and it might be said, if
 14:19:03 2 one was to be critical, in a fairly slow way, and it was
 14:19:08 3 kind of trundling along when there was a newspaper article
 14:19:14 4 in the latter part of March of 2014. There's a couple of
 14:19:20 5 propositions in that question, I suppose I should break it
 14:19:22 6 up. Do you accept that the process was perhaps, given the
 14:19:29 7 matters of importance that it was looking at, too slow?---I
 14:19:34 8 wouldn't be critical of the team. I think they seemed to
 14:19:42 9 be very committed to what they were doing, and it did seem
 14:19:45 10 to be very complicated. I asked them to identify matters
 14:19:49 11 that went to conflict, legal risk, court matters, and they
 14:19:53 12 appeared to find that very difficult.
 13
 14:19:55 14 Right. Without rehashing material
 14:20:03 15 Mr Gleeson - - -?---Ideally it would have happened much
 14:20:08 16 quicker and I didn't expect it to take that long.
 17
 14:20:12 18 Could it not have been done by providing the work that
 14:20:15 19 Mr Gleeson had already done to a lawyer to look at it and
 14:20:19 20 to come up with an opinion in expeditious time to identify
 14:20:26 21 any of these sort of conflict issues - - - ?---I think we
 14:20:29 22 needed the base materials and the ability to search.
 23
 14:20:32 24 Yes?---And it needed to be a multidisciplinary team.
 25
 14:20:37 26 What I'm suggesting is Mr Gleeson had been through all of
 14:20:42 27 the ICRs, he had access to the IRs, he'd formed a view in a
 14:20:46 28 relatively short space of time. That wasn't provided to a
 14:20:50 29 lawyer, was it?---It was eventually.
 30
 14:20:54 31 Eventually?---Yes.
 32
 14:20:56 33 But it certainly hadn't been prior to 31 March 2014?---We
 14:21:00 34 gave it to the OPI.
 35
 14:21:04 36 I'm suggesting a lawyer with a specific brief to engage in
 14:21:08 37 the task of looking at it to see whether there might be
 14:21:13 38 problems with previous trials, et cetera, in the way in
 14:21:15 39 which Mr Maguire had done with the SML now years
 14:21:20 40 back?---Yes.
 41
 14:21:21 42 Right. Now, do you agree that that could have been
 14:21:24 43 done?---Oh yes, we could have brought a lawyer into the
 14:21:29 44 team.
 45
 14:21:31 46 Yes?---M'mm.
 47

14:21:36 1 Once that Lawyer X story broke there was a meeting - so the
14:21:43 2 Lawyer X story broke on or about 31 March 2014, do you
14:21:47 3 accept that?---If you say so, yes.
4
14:21:51 5 And then on 1 April 2014 there was a meeting with the DPP
14:21:56 6 and can I suggest that was prompted by revelations in the
14:21:59 7 Herald Sun about Lawyer X the day before?---Yes.
8
14:22:01 9 Do you accept that?---Yes.
10
14:22:03 11 Your file note indicates that it's described as a follow-up
14:22:07 12 from the 4 September 2012 meeting?---Yes.
13
14:22:13 14 So do you accept that aside from the note that you made of
14:22:17 15 the discussion with the Director of Public Prosecutions on
14:22:21 16 28 August 2013, this was the next substantive discussion
14:22:26 17 about issues which had been discussed back in 2012,
14:22:31 18 September - - - ?---Well we'd had discussions.
19
14:22:37 20 Right?---M'mm.
21
14:22:38 22 You describe it in your note as a follow-up from the 4
14:22:41 23 September?---Yes, because of the publicity.
24
14:22:44 25 It was noted in your note that there'd been a call for a
14:22:47 26 Royal Commission, correct?---Yes.
27
14:22:49 28 And a number of other matters were noted, including this,
14:22:55 29 that there was general discussion about the progress of
14:22:58 30 Operation Loricated, working through intelligence holding
14:23:03 31 relating to barrister X, identifying any further follow-up
14:23:06 32 items, general discussion about the theme of information
14:23:09 33 relating to own clients arising out of Operation Loricated.
14:23:14 34 It was resolved that Shaun Le Grand of the VGSO and Finn
14:23:21 35 McRae would have a look at the packaging material that's
14:23:23 36 been identified by the analysts working for Operation
14:23:26 37 Loricated and further discuss with the DPP, discussions
14:23:29 38 would ensue after that"?---Yes.
39
14:23:33 40 It also noted that, "At present there is no information
14:23:39 41 that indicates there has been a miscarriage of justice and
14:23:41 42 there are a number of avenues open for these issues to be
14:23:45 43 raised", do you agree with that?---Yes.
44
14:23:53 45 Mr Gardiner made a file note of the meeting that was held
14:24:00 46 on 1 April and amongst other things he noted that, "Finn
14:24:05 47 McRae doesn't yet know if Nicola Gobbo did give police data

14:24:09 1 re a person who was then a client and query if she informed
 14:24:13 2 on her own client. Finn McRae said 18 matters ? possibly
 14:24:19 3 affected. Amongst other matters, 18 instances, information
 14:24:23 4 reports in which Nicola Gobbo may have given information to
 14:24:27 5 Victoria Police re her client", and Mr Gardiner's file note
 14:24:34 6 on 1 April 2014 also includes the note that you said IBAC
 14:24:40 7 has the Comrie review and will ask Stephen O'Bryan
 14:24:43 8 regarding their progress and he says that you may get Shaun
 14:24:49 9 Le Grand of the VGSO to look at it. Would you accept that
 14:24:52 10 those matters were discussed?---Yes.
 11
 14:25:03 12 Commissioner, I'm not going to go to details but that file
 14:25:07 13 note is in the document that's already been tendered as
 14:25:11 14 part of the materials provided by the State DPP.
 15
 14:25:17 16 COMMISSIONER: 1096, yes.
 17
 14:25:20 18 MR WINNEKE: At that stage there hadn't been a review of
 14:25:25 19 cases, had there? A legal review of cases?---No.
 20
 14:25:39 21 You have a meeting with IBAC on 1 April 2014, the same
 14:25:45 22 day?---Yes.
 23
 14:25:46 24 And you make notes of that meeting and they're set out in
 14:26:00 25 your statement at paragraph 7.16?---Yes.
 26
 14:26:15 27 Amongst your notes you say that the existence of the Comrie
 14:26:21 28 file, which was provided to the OPI, and it was noted the
 14:26:24 29 OPI had left the matter with Victoria Police to progress
 14:26:27 30 through Operation Loricated. It was noted that, "IBAC does
 14:26:31 31 not consider that it is oversighting the investigation, nor
 14:26:34 32 has a review function at this point"?---Yes.
 33
 14:26:41 34 The Chief Commissioner under the heading "Next steps", "The
 14:26:44 35 Chief Commissioner is to consider whether to write to IBAC
 14:26:47 36 to be provided with the final report or to consider to
 14:26:49 37 request some review function", do you accept that?---Yes,
 14:26:53 38 yes.
 39
 14:26:53 40 So it was your understanding at that stage that the OPI -
 14:26:57 41 I'm sorry, IBAC didn't consider that it was oversighting
 14:27:00 42 the investigation?---Yes.
 43
 14:27:01 44 At that stage. Was it your view at that stage that in some
 14:27:07 45 way the OPI was - I'm sorry, that IBAC was going to
 14:27:15 46 consider whether cases had been affected at that stage?---I
 14:27:17 47 was hoping that IBAC would be involved, yes.

1
14:27:20 2 But it was noted that they do not consider that it's
14:27:23 3 oversighting the investigation?---That's correct.
4
14:27:25 5 Nor does it have a review function at that stage?---Yes.
6
14:27:28 7 If that's what you were hoping - - - ?---It didn't happen.
8
14:27:31 9 - - - it would have been made relatively clear in that
14:27:35 10 meeting that they weren't doing so?---Yes.
11
14:27:43 12 You write to the DPP on 7 April?---Yes.
13
14:27:47 14 Do you agree?---Yes.
15
14:27:49 16 You indicate you're about to commence a triage of matters
14:27:52 17 related to potential prosecutions undertaken by the OPP and
14:27:55 18 that you will provide any information that arises that may
14:27:59 19 warrant consideration of your office and that you haven't
14:28:03 20 received any such thing at this stage?---Yes.
21
14:28:08 22 Effectively again the OPP is waiting for you to come to
14:28:13 23 them and say, "Well look, we've got concerns and you should
14:28:16 24 therefore have concerns"?---Waiting for Victoria Police,
14:28:19 25 yes.
26
14:28:21 27 You got an advice from the VGS0 on 23 April?---Yes.
28
14:28:26 29 And that's VPL.0005.0003.5877. If we can just quickly put
14:28:34 30 that up. The advice from Shaun Le Grand - the advice you
14:28:51 31 were seeking was what sort of form this should take, this
14:28:54 32 examination, is that right, or this triage process?---Well
14:29:00 33 the steering committee had agreed to give Legal Services
14:29:04 34 the documents in March.
35
14:29:06 36 Yes?---And once the documents were received I organised to
14:29:11 37 meet with Mr Le Grand and others to work out how we would
14:29:17 38 analyse it and this was the advice from Shaun.
39
14:29:20 40 Right. What they said is, "We consider only a person with
14:29:24 41 a thorough understanding of the persons and information the
14:29:28 42 subject of the log entries and the criminal proceedings to
14:29:31 43 which these persons were subject could possibly make an
14:29:34 44 adequate assessment", et cetera?---Yes.
45
14:29:36 46 "In the circumstances an option we suggest is to engage
14:29:39 47 counsel to provide a vetting framework for police members

14:29:42 1 with adequate knowledge of the source's material to
14:29:45 2 identify whether there is information disclosed by the
14:29:50 3 source that had the potential to interfere with justice in
14:29:54 4 a particular case, in particular whether client legal
14:29:59 5 privilege or confidentiality may have been
14:30:02 6 breached"?---Yes.
7
14:30:02 8 They suggested that Brian Dennis might be the appropriate
14:30:07 9 person for the task?---Yes.
10
14:30:08 11 Was he engaged?---Yes.
12
14:30:10 13 What was he asked to do?---Initially assist in the
14:30:14 14 formulation of the question - so we put together a
14:30:16 15 multi-disciplined team.
16
14:30:18 17 Yes?---I took my senior lawyer from the Coroner's office
14:30:20 18 who was a prosecutor and a lawyer.
19
14:30:22 20 Who was that?---Judy Brumby, Monique Swain, who's also an
14:30:31 21 experienced prosecutor from Crime, some analysts, we needed
14:30:34 22 analysts, because cross-referencing the data was quite
14:30:38 23 difficult. We put a group together. Brian Dennis was to
14:30:43 24 provide advice as necessary to the group, but initially to
14:30:46 25 assist us to frame the questions so that when they looked
14:30:50 26 at the case studies that we'd identified as the most high
14:30:57 27 risk case studies.
28
14:30:58 29 Yes?---That they would go to the very issues we needed them
14:31:03 30 to go to.
31
14:31:06 32 Right?---Which was conflict.
33
14:31:10 34 One of the issues would have been legal professional
14:31:13 35 privilege but also was she engaged by a particular person
14:31:17 36 at the same time as providing advice to them?---Exactly. I
14:31:20 37 think they got confused with privilege. That was the
14:31:23 38 secondary issue. The first issue was, was there a conflict
14:31:27 39 between her and her client?
40
14:31:28 41 Was Brian Dennis engaged at that stage to draft the
14:31:31 42 questions or the issues that they should consider?---We had
14:31:34 43 a conference with him to do it, yes.
44
14:31:37 45 You had appointments with him?---A conference, yes, yes.
14:31:40 46
14:31:41 47 Did he provide you with any document or advice as to - - -

14:31:44 1 ?---He didn't provide written advice. We settled the
14:31:47 2 approach - that I can recall.
3
14:31:48 4 Yes?---We settled the approach fairly quickly and the team
14:31:54 5 drew up a project plan in effect.
6
14:31:58 7 What were the questions or the issues that they had to
14:32:04 8 focus upon?---Well the issue - there were three questions
14:32:09 9 in my document here.
10
14:32:10 11 Yes?---At conference, it was 12 May 2014.
12
14:32:19 13 Yes?---So it's very small, this file note. Information
14:32:27 14 provided to police - - -
15
14:32:29 16 COMMISSIONER: What paragraph of your statement, please?
14:32:31 17 Obviously 7.31, is it?---7.31, yes. So the questions are:
14:32:41 18 information provided to police regarding own clients, is
14:32:43 19 the question. How was the information used? Has it been
14:32:46 20 given to an investigator? Did the information have an
14:32:49 21 impact on court outcomes potentially?
22
14:32:54 23 That was the meeting that you had with Mr Dennis?---Yes.
24
14:32:57 25 In effect they were the questions that he settled, if you
14:33:00 26 like?---Yes.
27
14:33:02 28 Did you have any further dealings with Mr Dennis at all
14:33:06 29 throughout this - - - ?---I didn't.
30
14:33:08 31 Was he involved at any stage?---I don't know.
32
14:33:11 33 Do you believe or do you have any information to suggest
14:33:14 34 that he was involved later on in reviewing cases or
14:33:19 35 anything like that?---I don't know, because the case
14:33:21 36 studies were put together and they were overtaken by events
14:33:24 37 with the Kellam inquiry.
38
14:33:27 39 All right. The case studies were identified with the
14:33:37 40 assistance of Mr Gleeson; is that right?---Yes.
41
14:33:43 42 The case studies came to you, and there were five of them,
14:33:48 43 there was a cover sheet and then behind the cover sheet
14:33:51 44 there was a factual analysis?---Yes.
45
14:33:54 46 And the cover sheet basically summarised - - - ?---Yes.
47

14:34:02 1 - - - the conclusions; is that right?--Yes.
2
14:34:04 3 What you say is save for a ^{PII} witness, and I'm not going
14:34:10 4 to refer to his name?---Yes, I understand.
5
6 You know who I'm talking about?---I understand, yes.
7
14:34:13 8 The conclusion reached was to the effect that there was no
14:34:16 9 clear evidence that Gobbo's involvement had impacted on the
14:34:21 10 outcome of the court process?---M'mm.
11
14:34:23 12 In any case - so in the case of that particular person
14:34:29 13 there was a conclusion that it had affected the process or
14:34:34 14 could have affected the process?---Possibly.
15
14:34:38 16 Can I suggest to you that certainly insofar as that case
14:34:42 17 study is concerned, there would have been real cause for
14:34:45 18 concern that in fact that person had not been advised by an
14:34:53 19 independent legal practitioner and there was a real
14:34:55 20 prospect that that case had been affected, do you accept
14:34:59 21 that?---Yeah, that's why we took that one to the High
14:35:02 22 Court.
23
14:35:02 24 Right?---As the example of the most concerning behaviour.
25
14:35:07 26 Exactly. And can I suggest to you that that was the case
14:35:13 27 where it was quite clear that police had used Ms Gobbo as
14:35:18 28 an informer whilst she was acting for him, do you accept
14:35:22 29 that?---Yes.
30
14:35:24 31 You've read the conflict report and the cover sheet?---Yes.
32
14:35:29 33 Perhaps we can put it up, VGS0 - - - ?---I accept it.
34
14:35:33 35 Right. I just want to briefly take you to a couple of
14:35:39 36 matters within it, if I might, Mr McRae.
14:35:47 37 VGS0.2000.1501.0244. Example 4, there's a summary there,
14:36:06 38 relates to information supplied by Ms Gobbo regarding the
14:36:09 39 person which ultimately led to his arrest and subsequent
14:36:13 40 successful prosecution, and he also became a witness and
14:36:18 41 his evidence led to at least a further, ^{PII} further arrests
14:36:22 42 and prosecutions?---M'mm. It's the matter that the DPP
14:36:28 43 raised with me at our first meeting.
44
14:36:30 45 If we go through the cover sheet it refers to extensive
14:36:34 46 reference - can I just correct you on that. This wasn't
14:36:39 47 the matter that was raised by - - - ?---It's the issue that

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These claims are not yet resolved.

14:36:42 1 he raised with me.
2
14:36:43 3 Yes, but the Cvetanovski case was the matter that was
14:36:46 4 raised with Mr Champion, correct?---M'mm.
5
14:36:49 6 And one of the matters that arose out of that or perhaps
14:36:55 7 might have caused concern out of that - - -
14:36:58 8
14:36:58 9 MR HOLT: Excuse me, Commissioner.
10
14:37:10 11 MR WINNEKE: What this document or what this cover sheet
14:37:15 12 makes clear to you is that insofar as there may have been
14:37:23 13 allegations in that case, this in clear terms, black and
14:37:31 14 white terms, makes it abundantly clear that there was a
14:37:39 15 real prospect that Ms Gobbo had acted as a lawyer and
14:37:44 16 informer in such a way as to lead to a miscarriage of
14:37:47 17 justice?---Possibly. That's why I took them to the DPP.
18
14:37:50 19 I'm going to come to that?---M'mm.
20
14:37:53 21 There was extensive reference to Gobbo representing this
14:38:01 22 person throughout PII as well as advising him when
14:38:07 23 he was arrested in PII?---Yes.
24
14:38:10 25 Having informed against him and provided the police with
14:38:13 26 the information which permitted them to arrest him in
14:38:16 27 PII?---Yes.
28
14:38:17 29 And so you would, I take it, accept the proposition that
14:38:21 30 that conflict report was clearly indicating that there was
14:38:36 31 likely to be a miscarriage of justice in that case, do you
14:38:39 32 accept that?---Yes.
33
14:38:41 34 Likely to need to be disclosed?---Yes.
35
14:38:45 36 Subject, of course, to considerations of public interest
14:38:49 37 immunity which no doubt you would - - - ?---Of course.
38
14:38:52 39 Right?---We lived it for three years.
40
14:38:55 41 No, I understand that?---That's why I took it to the DPP.
42
14:39:02 43 Can I suggest to you that not just that case, but the other
14:39:06 44 legal conflict reports in relation to the other subjects,
14:39:15 45 contained factual matters which whilst not exactly
14:39:18 46 replicating those which were raised - - - ?---They were
14:39:21 47 concerning and I didn't accept the conclusions. I never

14:39:25 1 signed off on any of those conclusions.
2
14:39:28 3 It may well be that - these weren't lawyers, the people who
14:39:32 4 were providing these reviews, were they, they were police
14:39:35 5 officers?---And lawyers.
6
14:39:37 7 Analysers?---Lawyers. Australian - there was at least one
14:39:42 8 legal practitioner.
9
14:39:43 10 Was there?---Yes.
11
14:39:43 12 Which one was that?---Jenny Brumby.
13
14:39:47 14 Did she do one of these reviews?---They all worked on the
14:39:51 15 reviews.
16
14:39:51 17 What, she was - - - ?---I wasn't asking them for legal
14:39:54 18 advice. All I wanted was a factual analysis that answered
14:39:59 19 the questions that had been posed. Because I thought they
14:40:02 20 were appropriate questions.
21
14:40:04 22 Do you accept that some of the questions that were being
14:40:07 23 considered were misleading or potentially wrong?---I didn't
14:40:14 24 look behind them. The purpose of the case studies was to
14:40:20 25 provide a factual background.
26
14:40:23 27 Yes?---To position me to be able to brief the DPP.
28
14:40:27 29 Yes. You gathered together all of these conflict reports
14:40:37 30 and do you say that these were the reports that you needed
14:40:40 31 to brief the DPP about?---Yes. That was the purpose. We
14:40:46 32 weren't doing them for anyone else.
33
14:40:49 34 Right. In any event, the reports speak for
14:40:56 35 themselves?---The reason was that when the raw data came
14:41:00 36 across it wasn't in a form that we could properly
14:41:03 37 understand.
38
14:41:03 39 Right?---I'd given that to lawyers. The lawyers couldn't
14:41:08 40 understand it.
41
14:41:09 42 Yes?---They suggested having a multidisciplinary team. I
14:41:13 43 agreed with that. We put the team together. I called in
14:41:16 44 the assistance of Mr Gleeson because he was by far and away
14:41:19 45 the most effective at understanding the coded language of
14:41:26 46 the intel groups and then I asked them to prepare the case
14:41:32 47 studies posthaste. They did that. The case studies came

14:41:37 1 in in dribs and drabs over time.
2
14:41:40 3 Yes?---And eventually I took a few of them to the DPP, as
14:41:46 4 you see.
5
14:41:47 6 Right. Well you certainly - you had them all by the time
14:41:52 7 you went to see the DPP, didn't you?---I'm not sure that I
14:41:56 8 did.
9
14:41:57 10 You had the one that I've been discussing, the significant
14:42:09 11 one?---I can't remember.
12
14:42:11 13 On 19 September can I suggest?---I can't remember.
14
14:42:18 15 You don't argue, you don't cavil with that proposition,
14:42:22 16 that you had it by 19 September?---I don't know. Is that
14:42:26 17 what I've said in my statement? The date they were
14:42:30 18 completed aren't the date that I received them.
19
14:42:33 20 How do we know when you received them?---I think there is a
14:42:40 21 date.
22
14:42:43 23 COMMISSIONER: 7.35, is it, you say from September to
14:42:46 24 November?
25
14:42:48 26 MR WINNEKE: Perhaps if we scroll through this one that's
14:42:51 27 on the screen. Just come back, there's a date on it?---I
14:43:01 28 think that the case studies were completed over time.
29
14:43:06 30 Yes?---And I was given them officially at a later date.
31
14:43:09 32 Right. We see the date on this, Monique Swain's signature
14:43:18 33 is on 16 September 2014, do you see that?---Yes.
34
14:43:21 35 And it goes to Detective Superintendent Frewen it looks
14:43:26 36 like 19 September 2014?---To Mr Leane, yes
37
14:43:33 38 Rather, Stephen Leane?---Yes.
39
14:43:37 40 You would expect it was available to you around this
14:43:39 41 time?---I don't know.
42
14:43:40 43 You were on the steering committee?---They weren't coming
14:43:44 44 to me through the steering committee.
45
14:43:45 46 How were they coming to you?---I don't know.
47

14:43:51 1 In any event, if you're going to see the DPP, if you're
14:43:54 2 saying, "I'm doing this for the purposes of going to speak
14:43:57 3 to the DPP, if they're available on 19 September, if
14:44:02 4 they've been done", you would make sure you've got it
14:44:05 5 before you go and see him, surely?---Yes, before I brief
14:44:08 6 him, yes.
7
14:44:09 8 Of course?---Yes.
9
14:44:10 10 If it's available on 19 September, you're briefing him in
14:44:13 11 October, can you agree with this proposition, that you
14:44:16 12 would have had it and you would have read it?---Yes, I
14:44:20 13 would have read - I can't off the top of my head remember
14:44:25 14 which ones because I know that I didn't read each of them
14:44:28 15 to him. I only read three of them. And it would have been
14:44:33 16 the three that I had.
17
14:44:35 18 They're not particularly lengthy documents?---No, they're
14:44:37 19 not.
20
14:44:38 21 There's a cover sheet that's about a page, and then the
14:44:41 22 document itself which is, I think about the longest is 19
14:44:44 23 pages or thereabouts?---Yes. I didn't read 19 pages of
14:44:48 24 documents to him in the meeting.
25
14:44:50 26 Why wouldn't you have read 19 pages of documents?---Because
14:44:53 27 he didn't want me to.
28
14:44:54 29 Sorry?---He didn't want me to.
30
14:44:56 31 Who didn't want you to?---The DPP.
32
14:44:58 33 You didn't bring 19 pages?---No, I didn't read 19 pages to
14:45:03 34 him.
35
14:45:03 36 I follow. You read the document yourself though?---Yes, of
14:45:07 37 course.
38
14:45:07 39 Yes, of course, right. Sorry, I misheard you. I tender
14:45:15 40 that, Commissioner, and I'm going to tender four others.
14:45:25 41
14:45:27 42 #EXHIBIT RC1127A - (Confidential) VGS0.2000.1501.0244,
14:45:33 43 Example 4.
14:45:33 44
14:45:33 45 #EXHIBIT RC1127B - (Redacted version.)
46
14:45:49 47 Certainly by the time you're dealing with IBAC on 27

14:45:51 1 October you've got copies of the reviews of SDU holdings
14:45:55 2 created 2013/14, including case studies. Now that's in an
14:46:00 3 email chain on 27 October 2014, a day prior to the meeting
14:46:06 4 with Mr Champion?---Okay.
5
14:46:07 6 You accept that?---Yes.
7
14:46:09 8 So you've got them at that stage?---If that's in an email
14:46:14 9 chain.
10
14:46:16 11 I tender that, which is an issue cover sheet and the case
14:46:19 12 study itself, Commissioner.
13
14:46:21 14 COMMISSIONER: Sorry, is that a different one to the one I
14:46:25 15 just tendered?
16
14:46:27 17 MR WINNEKE: Sorry. Perhaps I was - yes, it is,
14:46:30 18 Commissioner. I thought I just tendered example 4. Sorry,
14:46:43 19 same one. I was just - the next one, Commissioner, is an
14:46:49 20 issue cover sheet and conflict report concerning Milad
14:46:57 21 Mokbel, Ahec and Barbaro briefs, VGS0.2000.1501.0217.
22
14:47:14 23 COMMISSIONER: Is there a date on that one?
24
14:47:17 25 MR WINNEKE: We can have a look.
26
14:47:19 27 COMMISSIONER: It's at the end of the document probably.
14:47:22 28 It's 30 October 2006.
29
14:47:25 30 MR WINNEKE: If we go through. No, no, 19 September 2014.
31
14:47:30 32 COMMISSIONER: Yes.
14:47:36 33
14:47:37 34 #EXHIBIT RC1128A - (Confidential) Issue cover sheet and
14:46:54 35 conflict report concerning Milad
14:46:57 36 Mokbel, Ahec and Barbaro briefs,
14:47:02 37 VGS0.2000.1501.0217.
14:47:38 38
14:47:39 39 #EXHIBIT RC1128B - (Redacted version.)
14:47:42 40
14:47:43 41 MR WINNEKE: Issue cover sheet and legal conflict report
14:47:47 42 concerning example 2, Zaharoula Mokbel, which is
14:47:55 43 VGS0.2000.1401.0278.
14:48:06 44
14:48:06 45 #EXHIBIT RC1129A - (Confidential) Issue cover sheet and
14:47:45 46 legal conflict report concerning
14:47:47 47 example 2, Zaharoula Mokbel,

14:47:53 1 VGS0.2000.1401.0278, 22/10/14.
 14:48:08 2
 14:48:08 3 #EXHIBIT RC1129B - (Redacted version.)
 14:48:09 4
 14:48:10 5 COMMISSIONER: Do you have a date for that one?
 6
 14:48:13 7 MR WINNEKE: If we can put that up we'll be able to see.
 14:48:31 8 22 October 2014.
 9
 14:48:34 10 COMMISSIONER: Yes.
 11
 14:48:36 12 MR WINNEKE: The next one is an issue cover sheet and legal
 14:48:41 13 conflict report concerning Mr Karam, VGS0.2000.1501.0263.
 14:49:09 14 If you can go to the second page of that.
 14:49:11 15
 14:49:11 16 #EXHIBIT RC1130A - (Confidential) Issue cover sheet and
 14:48:41 17 legal conflict report concerning
 14:48:44 18 Mr Karam, VGS0.2000.1501.0263,
 14:49:13 19 25/09/14.
 14:49:13 20
 14:49:13 21 #EXHIBIT RC1130 - (Redacted version.)
 14:49:14 22
 14:49:14 23 COMMISSIONER: The date please?
 24
 14:49:16 25 MR WINNEKE: 25 September 2014.
 26
 14:49:19 27 COMMISSIONER: Thank you.
 28
 14:49:21 29 MR WINNEKE: I think it also had your name and date against
 14:49:24 30 that as well, Mr McRae?---That's not the date I received it
 14:49:28 31 though, that's the date someone's typed on it.
 32
 14:49:31 33 Right. In any event, the same propositions would hold.
 14:49:35 34 Certainly by the time you're dealing with IBAC - - -
 14:49:40 35 ?---Yes, I have them by the time I go to IBAC, yes.
 36
 14:49:44 37 The next one concerns the Mokbel extradition, conflict
 14:49:50 38 cover sheet and report, VGS0.2000.1501.0231, 1 October 2014
 14:50:12 39 it appears to have - I'm sorry, 25 September 2014.
 14:50:29 40
 14:50:29 41 #EXHIBIT RC1131A - (Confidential) Mokbel extradition,
 14:49:49 42 conflict cover sheet and report,
 14:49:51 43 VGS0.2000.1501.0231, 25/09/14.
 14:50:31 44
 14:50:31 45 #EXHIBIT RC1131B - (Redacted version.)
 14:50:34 46
 14:50:47 47 What you say is they're comprehensive and insofar as the

14:50:56 1 conclusions suggest that they didn't clearly provide
14:51:03 2 evidence that Gobbo's involvement had an impact, you
14:51:06 3 weren't prepared to accept that view?---Correct.
4
14:51:10 5 On 28 October 2014 you attend upon Mr Champion; is that
14:51:19 6 right?---Yes.
7
14:51:22 8 And did you go there with anyone on that occasion?---I
14:51:27 9 can't recall. I'd have to look at the file note.
10
14:51:30 11 If we have a look at your file note?---I'm generally taking
14:51:35 12 someone.
13
14:51:39 14 If we can have a look at VPL.0005.0003.2694. It may not
14:51:49 15 help you. Do you say that you took three of the reports
14:52:25 16 with you?---No.
17
14:52:27 18 Did you take any of the reports with you?---No, I don't
14:52:30 19 think I had them then.
20
14:52:32 21 You didn't have them then?---Not to take to him. I'm
14:52:37 22 giving him an update that the investigators have told me
14:52:40 23 that they've completed them.
24
14:52:45 25 Right?---And that we were considering barristers. I may
14:52:48 26 have had them, I don't know, but I'm not giving him an
14:52:52 27 update on the substance of the reports at that stage and I
14:52:55 28 haven't formed a view that there's been a miscarriage in
14:52:58 29 one of them at that point.
30
14:52:59 31 I see that. But the job has been done at this
14:53:04 32 stage?---Yes.
33
14:53:07 34 They'd been completed and I think you said before that you
14:53:09 35 had them available to you and the likelihood is that you
14:53:17 36 would have read them in order to enable you to brief the
14:53:20 37 DPP?---I can't recall whether I'd read them at that point
14:53:25 38 or read some of them.
39
14:53:28 40 How did the meeting come about?---I would have been getting
14:53:30 41 a briefing from the investigators.
42
14:53:35 43 Right?---And I passed that on to him.
44
14:53:38 45 Right?---I can't remember the meeting.
46
14:53:40 47 What you say is, "Update on case studies completed by

14:53:43 1 investigators"?---Yes.
2
14:53:44 3 "Barrister advice not yet obtained"?---Yes.
4
14:53:50 5 So you know that they've been completed?---Yes.
6
14:53:53 7 You know that because the evidence is they have
14:53:55 8 been?---Yes.
9
14:53:55 10 You're going to brief the DPP?---Yes.
11
14:53:58 12 They've been created for the purposes of briefing the
14:54:01 13 DPP?---Yes.
14
14:54:02 15 You're the person who's doing that job and can you accept
14:54:05 16 this proposition, that it's likely that you would have read
14:54:07 17 them?---No, I don't know.
18
14:54:09 19 Why not? Why wouldn't you have read them?---It depends if
14:54:15 20 they've made it to me or not. I may have read them, I
14:54:18 21 don't know. I can't recall.
22
14:54:19 23 You're going to brief the DPP. The whole purpose of you
14:54:22 24 briefing the DPP is to brief him about what you've been
14:54:26 25 doing, what your Task Force has been doing?---I've probably
14:54:33 26 read some of them, I don't know. I just can't recall.
27
14:54:36 28 You must have read the one that was of most concern to
14:54:39 29 investigators, surely?---No. Depends at what point it was
14:54:44 30 completed.
31
14:54:44 32 Right?---And given to me.
33
14:54:47 34 Mr McRae, you're a legal practitioner. You're the head
14:54:51 35 legal lawyer for Victoria Police. You're going to brief
14:54:53 36 the DPP. Surely you will have looked at these documents
14:54:58 37 because it's central to the very matter you're going to
14:55:01 38 brief him about?---Yes, well I essentially have read them
14:55:05 39 all when they are given to me and I go and read them to
14:55:08 40 him.
41
14:55:11 42 And a barrister's advice had not yet been obtained?---We
14:55:16 43 must have been talking about having a barrister overview
14:55:20 44 them.
45
14:55:20 46 You'd engaged Mr Dennis. You'd had a meeting with him but
14:55:22 47 you didn't get him at - no one had been obtained at that

14:55:27 1 stage to consider what was in them?---Yes. As far as I
 14:55:29 2 know the team didn't, hadn't got his advice, so that's what
 14:55:31 3 that reflects. Because I would have told the DPP we were
 14:55:36 4 going to get a barrister's advice because that was my
 14:55:38 5 intention.
 6
 14:55:39 7 Right. What you say is, "No matters of substance to report
 14:55:43 8 as yet"?---Yes.
 9
 14:55:46 10 Can I suggest to you that that which was contained in the
 14:55:49 11 report concerning the person who's name we cannot mention
 14:55:53 12 was a matter of substance?---I agree.
 13
 14:55:59 14 What you say in your statement is that, "'There were no
 14:56:03 15 matters of substance to report as yet' is something that I
 14:56:06 16 said on a number of occasions to the DPP. The point that I
 14:56:09 17 was making was that I had not identified any matters that
 14:56:12 18 would suggest that there had been a miscarriage of
 14:56:15 19 justice"?---Yes.
 20
 14:56:16 21 "As distinct from an obligation to disclose"?---Yes.
 22
 14:56:20 23 But what Mr Champion had said to you is that a clear
 14:56:24 24 conflict is a case where she's acting for a person and
 14:56:29 25 providing information against that person, in relation to
 14:56:33 26 that person, that's clear conflict, correct? That's what
 14:56:37 27 he'd made clear to you?---That's the test that I'd
 14:56:40 28 formulated, yes.
 29
 14:56:41 30 And that's the test that you'd advised Mr Jackson about,
 14:56:45 31 your project manager?---Yes.
 32
 14:56:47 33 That's what you've got to look for?---Yes.
 34
 14:56:49 35 That's what was found in the case study. And yet you're
 14:56:52 36 telling the DPP on 28 October no matters of substance to
 14:56:56 37 report yet?---Yes, because I don't know whether I've looked
 14:56:59 38 at that case study yet.
 39
 14:57:00 40 Well, had you looked at that case study and reported that
 14:57:04 41 to him that would clearly be - - - ?---It would be, yeah.
 42
 14:57:07 43 It would be wrong, wouldn't it? If you had looked at it
 14:57:11 44 and then been aware of the contents of it and said, "No
 14:57:15 45 matters of substance to report as yet", you'd be misleading
 14:57:18 46 him, wouldn't you?---Well that didn't happen.
 47

14:57:21 1 What you say is, "I certainly didn't mislead him and I
14:57:24 2 didn't say to him that there were no matters of substance"
14:57:28 3 - - - ?---There was no point in me misleading anyone. We
14:57:31 4 had just spent 18 months putting together these materials.
14:57:36 5 There was no point in me trying to hide all that work. The
14:57:41 6 whole point of it was to put together case studies to get
14:57:46 7 to the bottom of this.
8

14:57:47 9 What's the point of distinction - sorry, Mr McRae, I didn't
14:57:50 10 mean to interrupt you. What's the point of the distinction
14:57:52 11 you make in paragraph 7.39 between a miscarriage of justice
14:57:57 12 as distinct from an obligation to disclose? There's no
14:58:01 13 point in that distinction, is there?---Is that a question?
14

14:58:06 15 Yes, it is. That's a question. You seem to be suggesting
14:58:10 16 that there was a fine point of distinction between, "The
14:58:17 17 point that I was making was that I had not identified any
14:58:19 18 matters that would suggest that there had been a
14:58:21 19 miscarriage of justice as distinct from an obligation to
14:58:26 20 disclose"?---I told the DPP if I'd formed a view there was
14:58:31 21 a miscarriage of justice I'd tell him.
14:58:35 22

14:58:36 23 You that's what you meant by saying no matters - - -
14:58:38 24 ?---He'd already told me that he didn't think his
14:58:40 25 obligation had been triggered. That's why I've done all
14:58:43 26 this extra work.
27

14:58:44 28 But Mr McRae, surely - are you suggesting in your
14:58:48 29 statement, "Look, even the case report concerning the
14:58:51 30 person whose name we can't mention" - - - ?---No, I'm not
14:58:55 31 suggesting that at all because I don't know that I had that
14:58:58 32 report.
33

14:58:58 34 So you say if you had that report that would not only be
14:59:09 35 red light for obligation to disclose, it would also be red
14:59:14 36 warning light for miscarriage of justice?---It was, yes.
14:59:14 37 Which is why we took it to the High Court as the case that
14:59:18 38 we found as the high point of the most concerning
14:59:22 39 behaviour.
40

14:59:22 41 You took it to the High Court because you didn't want to
14:59:25 42 disclose it?---No, because only the court could decide the
14:59:30 43 public interest issues.
44

14:59:31 45 Justice Ginnane decided it?---Yes, and he stated in his
14:59:38 46 judgment that it was an appropriate course to take because
14:59:42 47 in his view only the court could decide it.

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These claims are not yet resolved.

1
14:59:44 2 COMMISSIONER: And then Victoria Police appealed that to
14:59:47 3 the Court of Appeal and then to the High Court?---Yes.
4
15:00:00 5 MR WINNEKE: If I haven't tendered that, Commissioner, I
15:00:03 6 probably have, can I tender it?
15:00:08 7
15:00:09 8 #EXHIBIT RC1132A - (Confidential) VPL.0005.0003.2694.
15:00:10 9
15:00:11 10 #EXHIBIT RC1132B - (Redacted version.)
15:00:13 11
15:00:15 12 Just before I move on, can we have a look at an email
15:00:19 13 communication between IBAC and Mr McRae,
15:00:49 14 VPL.0005.0018.0019. What we've got here is a communication
15:00:57 15 chain, email chain between you and Alissa Martin, who was a
15:01:03 16 representative, senior investigator at IBAC, do you see
15:01:10 17 that?---Yes.
18
15:01:31 19 In fact it's not the document I was after. You were called
15:02:00 20 to give evidence before IBAC; is that correct?---Yes.
21
15:02:12 22 What you say in your statement is this, that you attempted
15:02:24 23 to have IBAC examine the case studies; is that
15:02:30 24 right?---Yes.
25
15:02:36 26 You were served with a summons to give evidence before
15:02:40 27 IBAC. The summons required you to produce certain
15:02:42 28 documents prior to attending to give evidence?---Yes.
29
15:02:46 30 And as part of the process you attempted to produce to IBAC
15:02:50 31 the Bendigo investigation group case studies?---Yes.
32
15:02:53 33 However IBAC didn't accept them?---Yes.
34
15:03:04 35 How did you make that attempt?---I took them to the
15:03:07 36 hearing.
37
15:03:08 38 Right?---Along with others files because, of course, I was
15:03:16 39 asked to produce materials.
40
15:03:17 41 Your idea was that you thought that they might want to look
15:03:25 42 at them for the purposes of examining whether there'd been
15:03:28 43 miscarriages of justice?---Yes.
44
15:03:34 45 They'd previously said to you that they weren't
15:03:36 46 oversighting that particular project, Bendigo, hadn't
15:03:40 47 they?---That was some time before but the - we - I was keen

15:03:47 1 that those case studies be given to IBAC.
2
15:03:51 3 Right?---We had attempted to get IBAC to take them
15:03:56 4 previously.
5
15:03:56 6 Yes?---And IBAC said it wasn't within their jurisdiction to
15:04:03 7 deal with it.
8
15:04:08 9 Sorry, Mr McRae, I apologise?---So my advice to the Chief
15:04:18 10 Commissioner was that IBAC was a better organisation to
15:04:23 11 deal with it because of the powers of a standing Royal
15:04:26 12 Commission.
13
15:04:28 14 They're an organisation - - - ?---With those case studies,
15:04:32 15 than Victoria Police, because they could safely call
15:04:34 16 witnesses and use their confidentiality provisions to
15:04:42 17 manage whatever inquiries they made. We'd been doing paper
15:04:46 18 based inquiries.
19
15:04:47 20 Right. But you weren't - you're not meaning to suggest
15:04:50 21 that sending it to IBAC in some way absolved you from
15:04:57 22 making appropriate disclosure to the DPP?---No, we kept
15:05:00 23 going. We never stopped.
24
15:05:01 25 You hadn't, by the time you went to IBAC, provided the case
15:05:04 26 studies to Mr Champion?---No, no. I offered them during
15:05:09 27 the course of the IBAC inquiry.
28
15:05:13 29 You offered them to IBAC, did you?---I offered them to
15:05:17 30 IBAC, yes. And then I offered them to the DPP.
31
15:05:20 32 You didn't offer them to the DPP on 28 October 2014?---No.
33
15:05:25 34 Because you hadn't taken them?---No. No, I hadn't, no.
35
15:05:30 36 You didn't read them to the DPP, did you?---On the 28th ?
15:05:40 37
15:05:40 38 Of October?---No, no, I didn't have them with me.
39
15:05:43 40 Right. I think I suggested to you that there was an email
15:05:48 41 chain which showed that you had those documents on 27
15:05:52 42 October and I withdraw that proposition?---Okay.
43
15:05:55 44 I think it was on 7 October that you had communications
15:05:59 45 with the DPP and indicated that you had those?---Yes.
46
15:06:03 47 Right. Which isn't to say that you didn't have them before

15:06:06 1 that time?---It's possible because they came in dribs and
15:06:11 2 drabs.
3

15:06:19 4 Do you accept this proposition, the order in which the
15:06:22 5 studies were completed, the first one was the one that was
15:06:25 6 of most concern, the one - - - ?---I can't recall.
7

15:06:28 8 - - - that concerned the 16th and 19th September. The
15:06:31 9 second one, Milad, Ahec, and Barbaro, 16 and 19 September.
15:06:37 10 Zaharoula Mokbel, 22 and 24 September. Karam, 25
15:06:39 11 September, and Mokbel extradition 1 October. So all
15:06:44 12 completed in that time frame from the 16th of September
15:06:47 13 through to 1 October, do you accept that?---Okay.
14

15:06:49 15 Okay. The transcript of your hearing before IBAC reveals
15:07:05 16 your discussions with I think Mr Hevey about the documents
15:07:10 17 that you produce and I think you said that you had a large
15:07:15 18 amount of documents, two themes, this is at p.10 of your
15:07:23 19 transcript. Two themes, "Was this person providing
15:07:29 20 information about a paid client? Secondly, miscarriages of
15:07:33 21 justice type issues were our advice tasking this witness in
15:07:36 22 a way that would have a tendency to effect an outcome of a
15:07:40 23 trial?" Mr Hevey said, "Those last two issues are beyond
15:07:44 24 the scope of this inquiry and are being looked at by other
15:07:49 25 appropriate authorities but our scope is, on necessity,
15:07:54 26 limited because of timeframes", et cetera, and you said you
15:07:57 27 were very disappointed about that?---Yes, I was.
28

15:07:59 29 Had you at any time prior to this date had any discussions
15:08:03 30 with IBAC or sought any legal advice yourself about whether
15:08:07 31 IBAC did have the legislative capacity - - - ?---Yes, we
15:08:11 32 wrote to them.
33

15:08:12 34 What did they say?---Andrew Kirkham wrote back and said it
15:08:16 35 was outside their jurisdiction.
36

15:08:18 37 Outside the jurisdiction, all right. They were examining
15:08:21 38 police conduct, correct?---Yes.
39

15:08:28 40 That was on 12 November. You appeared there,
15:08:34 41 correct?---Yep.
42

15:08:36 43 I perhaps should tender, Commissioner, for the sake - I
15:08:39 44 think it's already an exhibit?---And on the 13th we got the
15:08:44 45 letter, m'mm.
46

15:08:45 47 You got the letter?---The letter from Kirkham.

1
15:08:48 2 Indicating it was outside the scope?---Yes.
3
15:08:51 4 Yeah, okay. 17 November, you have a meeting to consider
15:08:59 5 the next steps and you refer to that at paragraph
15:09:04 6 745?---Yes.
7
15:09:05 8 The options were to refer to the DPP, State and
15:09:08 9 Commonwealth. Refer to a QC or an SC and refer to the DPP
15:09:16 10 with SC/QC advice?---Yes.
11
15:09:22 12 Protection of the source arising from any of the steps.
15:09:26 13 And then the next steps were, "AC Leane and Finn McRae to
15:09:31 14 meet State DPP and brief the Chief Commissioner of
15:09:34 15 Police"?---Yes.
16
15:09:34 17 The view was, "We will go back. We're not going to get any
15:09:40 18 assistance from IBAC"?---Yes.
19
15:09:42 20 "We'll go back to the DPP"?---Yes.
21
15:09:44 22 Is that the idea?---Yes.
23
15:09:49 24 On 24 November 2014 you send an email to Bruce Gardiner
15:09:57 25 regarding the case studies?---Yes.
26
15:09:59 27 This is VPL.0005.0003.2563. Go down the bottom, thanks.
15:10:11 28 You say, "Bruce, would John like a list of the cases prior
15:10:15 29 to our meeting? We have chronologies and case summaries
15:10:19 30 and I thought we could discuss and then consider next
15:10:24 31 steps, if anyway. Finn". That's sent on 21 November and
15:10:29 32 you got a response, "Yes, he would. Thanks". Then there's
15:10:37 33 an index of legal conflict reports which is attached in
15:10:41 34 return email; is that right?---Yes.
35
15:10:42 36 Is that this document, VPL.0005.0003.2585? Can we try
15:11:15 37 this - perhaps try 2564. What appears to be the case is
15:11:42 38 you send an index of cases?---I did.
39
15:11:46 40 Simply a page document with an index, but not the case
15:11:49 41 cover sheets?---Yes, that's right.
42
15:11:51 43 Or the summaries themselves?---I wouldn't email those.
44
15:11:54 45 Right. The examples were the five examples which had been
15:12:02 46 prepared?---Yes.
47

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15:12:03 1 Correct? All right. So that's sent. Then on the next day
15:12:09 2 you have a meeting with you and Mr - you and Mr Leane go
15:12:15 3 and visit Mr Champion and Mr Gardiner, correct?---Yes.
4
15:12:19 5 If we can look at the same code, VPL.0005.0003.2565. Would
15:13:01 6 it be correct to say that that document which you faxed was
15:13:09 7 the first occasion that Victoria Police had given the OPP
15:13:13 8 information about any person other than Mr Mokbel in
15:13:17 9 respect of whom a duty of disclosure might have arisen in
15:13:22 10 relation to Ms Gobbo's activities as an informer?---There
15:13:24 11 was discussion from the very outset in terms of names but
15:13:29 12 in this formal sense, yes.
13
15:13:31 14 Well when you say discussion of names from the very outset,
15:13:36 15 what do you mean by that?---Mokbel and associates.
16
15:13:39 17 Right?---Yep.
18
15:13:41 19 So you say that there was Mokbel - the discussion was
15:13:44 20 Mokbel and associates?---Yes. And, as I said, I couldn't
15:13:49 21 follow the names at first because I didn't know who they
15:13:51 22 were.
23
15:13:52 24 Righto. In any event that's the document that you
15:13:55 25 faxed?---Yes.
26
15:13:56 27 I tender that?---Emailed I think .
28
15:13:59 29 Emailed, I'm sorry. That can be one exhibit, Commissioner.
15:14:05 30 The email of 24 October with that attachment.
31
15:14:09 32 COMMISSIONER: Right.
15:14:10 33
15:14:10 34 #EXHIBIT RC1133A - (Confidential) Email of 24/10 with
15:14:09 35 attachment.
15:14:17 36
15:14:17 37 #EXHIBIT RC1133B - (Redacted version.)
38
15:14:23 39 MR WINNEKE: I take it you made a file note of your
15:14:25 40 meeting; is that right?---Yes.
41
15:14:27 42 Can we have a look at that, VPL.0005.0003.2559 I think it
15:14:33 43 is. There's background. What does that say?---"Overview
15:14:54 44 of behaviours".
45
15:14:55 46 Options?---"Retired judge, miscarriage barrister. If yes,
15:15:03 47 who? Crown prosecutor or office of the DPP. Next steps

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

1 Commonwealth OPP. Possibly meet the State OPP" - that's
15:15:11 2 the two agencies getting together, "see dictation this
15:15:13 3 day".
4
15:15:13 5 Did you type a file note as well?---I didn't type it, I
15:15:18 6 dictated it, yes.
7
15:15:19 8 Dictated it, I'm sorry?---Yep.
9
15:15:21 10 Is that VPL.0100.0001.0848, at 0916. I tender that,
15:15:40 11 Commissioner, that document there?---Yes.
12
15:15:45 13 #EXHIBIT RC1134A - (Confidential) VPL.0005.0003.2559.
14
15:15:49 15 #EXHIBIT RC1134B - (Redacted version.)
15:15:52 16
17 The dictated note is that which we see on the screen, is
18 that right?---Yes.
19
15:15:52 20 Meeting held at 11.30 am and background description of
15:15:55 21 Comrie review and identification of case studies.
15:16:00 22 Description of the thematic approach and the reconstruction
15:16:02 23 of file. Description of the ongoing work on the five case
15:16:05 24 studies identified in the Comrie review. "There is no
15:16:09 25 evidence of a deliberate attempt to pervert the course of
15:16:12 26 justice or orchestrate court outcomes." Some discussion on
15:16:16 27 the difficulties of a defence practitioner being a source.
15:16:19 28 And there's further discussions there. "It was noted that
15:16:24 29 information provided in affidavits for LDs and TIs would
15:16:30 30 not of itself constitute a miscarriage. Many notations in
15:16:35 31 the records indicate that information that went to the
15:16:37 32 defence strategy or what the handlers considered to be
15:16:40 33 legally professorially privileged information was
15:16:45 34 quarantined from the relevant informants. It appears that
15:16:48 35 Jim O'Brien was privy to some information, although there
15:16:53 36 is no record of him passing that on to informants or
15:16:58 37 prosecutors". Where did that information come from,
15:17:02 38 because the evidence that we've got is that Mr O'Brien was
15:17:05 39 constantly getting information and utilising that
15:17:08 40 information?---I must have been told that.
41
15:17:10 42 Right. That appears to be inaccurate, doesn't it?---Yes.
15:17:14 43
15:17:14 44 "Some discussion with regard to the exception to privilege
15:17:20 45 in regard to furtherance of the crime articulated in the
15:17:23 46 Uniform Evidence Act s.125." Then there's the notes about
15:17:28 47 consulting with the OPP re Karam and considering a retired

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15:17:33 1 High Court judge. Mr Chettle's suggested something that
15:17:48 2 I'll put to you. Do you know whether the - let me ask you
15:17:56 3 this: the information referred to in the second-last dot
15:18:06 4 point, was that information concerning conflict information
15:18:13 5 or LPP information?---Any information.
6
15:18:17 7 Right. So that's not confined simply to privileged
15:18:21 8 information?---No.
9
15:18:21 10 It's information in general?---Yes.
11
15:18:24 12 That would include information which was provided by
15:18:26 13 Ms Gobbo against her clients?---Yes.
14
15:18:29 15 While she's - I follow?---Yes.
16
15:18:30 17 I follow, okay. I tender that, Commissioner.
15:18:37 18
15:18:38 19 #EXHIBIT RC1135A - (Confidential) VPL.0100.0001.0848 at
15:15:38 20 0916.
15:18:40 21
15:18:41 22 #EXHIBIT RC1135B - (Redacted version.)
15:18:43 23
15:19:02 24 If we have a VGS0.2000.1501.0217. Can we go to p.3. Do
15:19:30 25 you know what that is?---Yep.
26
15:19:36 27 That's the conflict report in relation to Milad Mokbel,
15:19:44 28 Ahec and Barbaro, is that right? Go back a page, please,
15:20:09 29 to the first page. Keep going. Keep going back. This
15:20:13 30 concerns Mokbel, Barbaro - - - ?---Yes, I see that.
31
15:20:19 32 That examination of brief?---Yes.
33
15:20:22 34 Let's go down to paragraph 5 in the actual report. Keep
15:20:24 35 going. It says in that paragraph that intelligence that
15:20:29 36 was assessed - or during the period Gobbo was managed by
15:20:35 37 the SDU various members are referred to there, do you see
15:20:41 38 that?---Yes.
39
15:20:42 40 "Sandy White held overall responsibility for her
15:20:44 41 management. Intelligence that was assessed as relevant to
15:20:50 42 Operation Posse was passed to the officer-in-charge of Task
15:20:54 43 Force Purana, Detective Inspector Jim O'Brien, and later
15:20:58 44 Dale Flynn, who's an investigator", do you see that?---Who
15:21:03 45 gives it to Flynn?
46
15:21:07 47 Well it's provided to O'Brien and later to Detective Senior

15:21:13 1 Sergeant Dale Flynn. Both of those people are
15:21:15 2 investigators, do you accept that?---Yeah.
3
15:21:19 4 Do you accept that the information was being provided to
15:21:25 5 investigators?---Yes.
6
15:21:28 7 Was that contrary to that which was being explained to the
15:21:31 8 DPP?---No, that was a comment about Jim O'Brien that
15:21:36 9 someone must have advised me of. But that's not
15:21:38 10 inconsistent with that statement.
11
15:21:40 12 Look, the reality is Jim O'Brien was the conduit through
15:21:46 13 whom information was received by Purana?---I know that now.
14
15:21:50 15 Right. So if you were provided that information, and if it
15:21:53 16 was passed on, it was inaccurate, do you accept
15:21:58 17 that?---Yes. We all know a lot more now. I was dealing
15:22:02 18 with the information I had at the time.
19
15:22:04 20 That's information that you've got at the time, that there
15:22:06 21 in front of us now. Can I suggest to you that that doesn't
15:22:10 22 enable you to go to the DPP and say, "Don't worry, the
15:22:15 23 information wasn't passed on"?---I didn't say that. That
15:22:22 24 is a massive misrepresentation of what I was doing at that
15:22:25 25 meeting.
26
15:22:26 27 Well, what were you doing at the meeting?---I was briefing
15:22:28 28 the DPP.
29
15:22:29 30 Right?---By reading the case studies to him and then we had
15:22:33 31 a general discussion.
32
15:22:35 33 Do you say that you had these case studies with you when
15:22:38 34 you were reading them to him?---Yes.
35
15:22:42 36 How many of them did you read and which ones did you
15:22:45 37 read?---I can't remember. I just read a little bit to him
15:22:48 38 so that he got a flavour of what the behaviours were and
15:22:53 39 then we had a general discussion.
40
15:22:55 41 Why didn't you provide the - - - ?---I handed them over.
15:22:59 42 He didn't - he declined to take them.
43
15:23:12 44 Did he explain why?---No. Well he did in an email that
15:23:26 45 came back from Bruce Gardiner afterwards.
46
15:23:29 47 Where's the note of you offering to provide them and him

15:23:33 1 declining, do you have a note to that effect?---No, I
15:23:36 2 don't. But maybe if you check Stephen Leane's notes it
15:23:40 3 might be in there. But I doubt that he would have notated
15:23:45 4 me handing over a document.
5

15:23:53 6 I wonder if we could - - - ?---I mean we were having a
15:24:01 7 general discussion about what to do next. I wasn't forcing
15:24:04 8 any documents on him.
9

15:24:05 10 Yes?---He knew that those documents would be subject to
15:24:09 11 public interest immunity arguments that I wasn't
15:24:11 12 necessarily authorised to provide in any event. I was
15:24:16 13 there with the head of Ethical Standards.
14

15:24:20 15 That's the point. I mean if he'd have asked you for them
15:24:23 16 you wouldn't have provided them to him?---Yes, I would
15:24:26 17 have.
18

15:24:27 19 I thought - if you have a look at your statement?---I would
15:24:33 20 have handed them over for perusal and then to - obviously
15:24:38 21 because of the nature of the case studies, the way they'd
15:24:41 22 been put together.
23

15:24:42 24 Yes?---They weren't in a proper form for disclosure. They
15:24:46 25 would have needed to be reworked and public interest
15:24:52 26 immunity issues been taken into account.
27

15:24:54 28 Exactly. You say at 737 you consider that IBAC was the
15:24:58 29 most appropriate forum?---Yes, I did.
30

15:25:00 31 "Because of the ongoing duty of disclosure I considered the
15:25:04 32 DPP as the relevant prosecuting authority was the
15:25:08 33 appropriate body to refer the case studies to"?---Yes.
34

15:25:11 35 "However, after numerous conferences with the DPP it was
15:25:14 36 apparent to me whilst the DPP was aware of the existence of
15:25:18 37 documents he had not required access to those documents and
15:25:21 38 if the DPP had required access to those documents it was
15:25:26 39 probable there would be lengthy PII arguments"?---Yes.
40

15:25:29 41 If he'd have said to you, "Can I have the case studies, I
15:25:32 42 want to see them", you'd say, "No, I can't give them to.
15:25:37 43 We'll have to have a PII fight about it". Is that what
15:25:41 44 you're meaning to suggest in that paragraph in your
15:25:44 45 statement?---Handing over the case studies would have meant
15:25:47 46 reshaping them into a PII analysis in a proper form for
15:25:57 47 disclosure.

1
15:25:58 2 Right?---I'm just saying what happened.
3
15:26:01 4 I follow that. Can we have a look at RCMPI.0104.0001.0001
15:26:23 5 at p.76.
6
15:26:29 7 COMMISSIONER: Do you want to tender the one of 28 August
15:26:33 8 2014?
9
15:26:37 10 MR WINNEKE: 25 November 2014, Commissioner.
11
15:26:40 12 COMMISSIONER: Is that the current one that's coming up or
15:26:42 13 the one we've just had? I'm trying to see whether we
15:26:46 14 tendered the one we've just had.
15
15:26:48 16 MR WINNEKE: The one we've just had is - it's 0104. The
15:26:57 17 one we've just had on the screen, Commissioner, is already
15:27:00 18 an exhibit.
19
15:27:01 20 COMMISSIONER: Right, okay.
21
15:27:08 22 MR WINNEKE: Can we go to RCMPI - Commissioner, I note the
15:27:13 23 time. Can I deal with this over the break and fix it up?
15:27:18 24
15:27:19 25 MR HOLT: Can I stand down, Mr Moloney, Commissioner, until
15:27:21 26 tomorrow afternoon?
27
15:27:26 28 COMMISSIONER: Yes, I think so.
29
30 MR HOLT: Thank you.
31
32 (Short adjournment.)
33
15:47:32 34 COMMISSIONER: Yes Mr Winneke.
15:47:33 35
15:47:33 36 MR WINNEKE: Thanks Commissioner. Now, Mr Gardiner was
15:47:40 37 present with the Director of Public Prosecutions at the
15:47:42 38 meeting on 25 November 2014?---Yes.
15:47:46 39
15:47:47 40 And he has taken a file note of the meeting and it's
15:47:57 41 RCMPI.0104.0001.0001 at p.158 of that document, 0158. It's
15:48:09 42 a handwritten note and he's transcribed that, or typed it,
15:48:15 43 to make it easier to read. Now, we can see there that the
15:48:29 44 meeting is at 11.30 and then if we go to about, the second
15:48:37 45 page - perhaps before we go there. There's a description
15:48:40 46 about Operation Bendigo. "Neil Comrie review. To ID all",
15:48:51 47 looks like "data with her". Just excuse me. Sorry, I'll

15:49:09 1 start again. "Source Development Unit found five case
15:49:13 2 studies with legal conflict. Lawyer v client. Then
15:49:17 3 Operation Loricated to identify all data re her in order to
15:49:21 4 follow up". It says, "Most resolved. SL, Steve Leane,
15:49:27 5 staff checked Ethical Standards questions", either Steve
15:49:32 6 Leane's or, it seems that's what Mr Gardiner was referring
15:49:36 7 to when he's transcribed his notes. "Report re discussion
15:49:42 8 with HSMU handlers." If we can keep going up the page.
15:49:50 9 "About 80 pages. Finn and" - 280 pages. No, according to
15:50:05 10 the note of Mr - yes, thanks very much for that. You'll
15:50:12 11 see on the right-hand side, you'll see the transcription,
15:50:15 12 "Report re discussion of HSMU handlers about 80 pages", so
15:50:18 13 that seems to be an abbreviation for "about", the squiggle.
15:50:26 14 "Finn and Shaun Le Grand studied but could not identify
15:50:31 15 clear conflicts, lots in code", et cetera?---That's the
15:50:35 16 earlier analysis when Shaun Le Grand provided the advice.
15:50:40 17
15:50:41 18 Right. You say that doesn't relate to the case
15:50:44 19 studies?---He didn't work on the case studies.
15:50:46 20
15:50:46 21 Right. "Operation Bendigo, safeguard X, eg suppression
15:50:56 22 orders about her. And check. Chartres-Abbott and Hodson
15:51:05 23 inquest. Team of police check material, looked at five
15:51:06 24 cases from Comrie Report, three weeks ago finished. They
15:51:11 25 concluded re her conversations, raised privilege questions,
15:51:15 26 affected trials." So does that indicate that that's what
15:51:24 27 was said to the DPP?---Well that's the discussion we were
15:51:28 28 having, yeah.
15:51:29 29
15:51:29 30 Right. "Police think no deliberate attempt to pervert the
15:51:37 31 course of justice or affect outcomes. If had happened
15:51:39 32 would need collusion with prosecutors, didn't. Did X
15:51:42 33 breach privilege, LPP? Yes. When she did it was
15:51:46 34 controlled but sometimes no notes so not sure". And
15:51:48 35 there's, "Eg phone intercepts, need to quarantine depending
15:51:53 36 on who is on the phone. Question is concept of events,
15:51:56 37 defence practitioner continuing to act as such okay.
15:51:58 38 Registered source 2005 to 2009. Two examples where she
15:52:03 39 told police re crimes re her client but not in the matter
15:52:08 40 she is briefed in, i.e. re pending commissioner of crime re
15:52:10 41 own client". Now, do you say that that is the case with
15:52:18 42 respect to the person who was the matter of, whose case
15:52:26 43 study was subject to your main concern?---I don't think so.
15:52:31 44
15:52:31 45 So, "Two examples where she told police re crimes her own
15:52:38 46 client but not in matter she is briefed in, i.e. re pending
15:52:39 47 commission of crime re her own client"?---I think one would

15:52:42 1 be Karam. I don't know what the other one is.
15:52:45 2
15:52:46 3 So certainly that doesn't apply to - - -?---The one we were
15:52:52 4 talking about, yes.
15:52:52 5
15:52:53 6 Because that was a case where she's providing information
15:52:56 7 in relation to a matter that she subsequently advises
15:53:00 8 him?---Yes.
15:53:01 9
15:53:01 10 Then there's a reference to the UEA, then there's
15:53:05 11 discussion about a case of Robertson?---It's actually
15:53:08 12 Robinson, yes.
15:53:09 13
15:53:09 14 And there's discussion about the UK legislative
15:53:14 15 scheme?---Yes.
15:53:14 16
15:53:14 17 Do you know who brought that up, that particular topic?---I
15:53:17 18 would have been telling them, I imagine.
15:53:19 19
15:53:19 20 Do you think you had been briefed about the case of
15:53:23 21 Robinson?---I knew about Robinson, yes, that was a law
15:53:27 22 clerk in the UK.
15:53:28 23
15:53:28 24 And you'd discovered that case?---I think it was part of
15:53:33 25 the research we did for the Comrie Review.
15:53:36 26
15:53:36 27 Righto. And it goes on. "She provides data non-privileged
15:53:41 28 re client to VicPol. Continues to act for client because
15:53:44 29 to cease would endanger her" and there's the name there is
15:53:48 30 the person who we're concerned about?---Well that would
15:53:51 31 have been their explanation.
15:53:53 32
15:53:53 33 Right?---Or her explanation.
15:53:56 34
15:53:56 35 "Did she work for client's interest? Yes, re that outcome.
15:54:05 36 Note that person and Ahec and Mokbel all believe she acted
15:54:08 37 for them"?---Yep.
15:54:09 38
15:54:10 39 "So believe no attempt to pervert the course of justice.
15:54:13 40 She has breached client privilege"?---Yes.
15:54:16 41
15:54:16 42 "None of her information went to informants in given
15:54:21 43 cases." That's not correct, is it, if that was
15:54:24 44 said?---Yeah, that's not correct.
15:54:26 45
15:54:26 46 "But Jim O'Brien knew of some data but no notes of passing
15:54:29 47 to informants or prosecutors"?---That must have been what I

15:54:32 1 was told going into the meeting.
 15:54:34 2
 15:54:34 3 "Overriding issue, defence solicitor providing data to
 15:54:38 4 VicPol while acting for many clients"?---Yes.
 15:54:41 5
 15:54:41 6 "John Champion process re this informant from now on" and
 15:54:47 7 you explain, Karam's a Commonwealth matter and you - she
 15:54:54 8 may have been part of criminality in the Commonwealth
 15:54:56 9 matter and that's Inca?---Yep.
 15:54:58 10
 15:54:58 11 She became a courier but then gave it to the police?---Yes.
 15:55:04 12
 15:55:05 13 You're referring to the bill of lading?---Yes.
 15:55:06 14
 15:55:07 15 "Question her role in acting or helping course of conduct,
 15:55:10 16 became an informant to save herself" and there's a process,
 15:55:15 17 IBAC referred to, question mark. And at that stage you
 15:55:19 18 knew that IBAC wasn't going to be conducting an analysis of
 15:55:25 19 miscarriages of justice, I take it?---Yes.
 15:55:28 20
 15:55:28 21 Would you have made that clear?---Yes.
 15:55:30 22
 15:55:30 23 "IBAC will talk to the Informer Management Unit", the IMU
 15:55:35 24 and that's as we understand they were proposing to do, is
 15:55:38 25 that right?---I imagine.
 15:55:39 26
 15:55:39 27 Do you believe that?---I don't know.
 15:55:42 28
 15:55:42 29 "Thinks police members acted in good faith", would you have
 15:55:45 30 made that point?---Well that would have been made by the
 15:55:49 31 people who did the case studies.
 15:55:51 32
 15:55:51 33 All right?---Yep.
 15:55:52 34
 15:55:52 35 "Need to record, consider client privilege, advise them to
 15:55:56 36 get legal advice." What's that, who needs to be advised to
 15:56:02 37 get legal advice?---I can't remember.
 15:56:04 38
 15:56:04 39 Members of the SDU or - - -?---Possibly, yeah.
 15:56:08 40
 15:56:08 41 Or the clients of Ms Gobbo?---No, I think it's SDU in that
 15:56:13 42 circumstance, I think we're talking about IBAC.
 15:56:15 43
 15:56:15 44 Right. "No appeals run yet regarding Ms Gobbo but in
 15:56:21 45 Chartres-Abbott Gobbo problem mentioned in court. John
 15:56:27 46 Champion and accused might seek extension of time fresh
 15:56:31 47 evidence appeal, her access to material, questions

15:56:35 1 disclosure, court orders to produce" and, "VicPol might
15:56:38 2 resist production but material could probably not be kept,
15:56:42 3 not disclosed"?---Yes.
15:56:43 4
15:56:43 5 So in other words your view was it's likely even though
15:56:47 6 you'd seek to disclose it, not to disclose it, the
15:56:51 7 likelihood is that a court would order its
15:56:55 8 disclosure?---Yes.
15:56:56 9
15:56:56 10 Had you had advice to that effect at that stage?---I don't
15:57:00 11 think so.
15:57:01 12
15:57:02 13 That was your view, wasn't it?---Yes.
15:57:05 14
15:57:06 15 Then there's a, "Versus VicPol duties directs", there are
15:57:12 16 two points there, the disclosure versus the risk, is that
15:57:17 17 right?---Yep.
15:57:18 18
15:57:20 19 Then you say, "IBAC would do report then. Would that be
15:57:24 20 the end of it? also", is that right, what that means?---No,
15:57:28 21 I don't know. You'd have to ask Bruce.
15:57:32 22
15:57:32 23 "VicPol duty to court, any miscarriage of justice, thinks
15:57:36 24 no." Would that be - - -?---That's me saying that if I
15:57:40 25 think there's a miscarriage, I'm going to tell him that.
15:57:44 26
15:57:44 27 I'm sorry?---That's me saying that if there's a miscarriage
15:57:48 28 I'm going to tell him that, but the advice from the
15:57:53 29 investigators, of course, was contrary to that.
15:57:56 30
15:57:56 31 Yes. I mean what do you think that means, were you saying
15:58:01 32 that you thought there hadn't been any miscarriage?---I
15:58:04 33 don't know. I can't tell from Bruce's notes.
15:58:09 34
15:58:10 35 Right. But that's consistent, isn't it, with what you were
15:58:13 36 saying to the DPP, in effect, "Look, we haven't reached a
15:58:22 37 stage where we think that there's any matters that we need
15:58:30 38 to, or you would need to disclose about"?---I wasn't giving
15:58:37 39 him advice on disclosure. I was making him aware of the
15:58:40 40 facts of those cases.
15:58:42 41
15:58:42 42 Yes. Was it a discussion with the DPP about whether you
15:58:49 43 thought, or VicPol thought that there might have been or
15:58:52 44 there were any miscarriages of justice?---It was about what
15:58:56 45 steps we would take next.
15:58:58 46
15:58:58 47 Right. What about that line, do you have a recollection of

15:59:03 1 saying to the people present at that meeting that you did
15:59:06 2 not believe there were any miscarriages of justice?---No, I
15:59:15 3 can't remember that. I mean I hadn't formed a view there
15:59:23 4 had been a miscarriage of justice.
15:59:25 5
15:59:25 6 What the DPP - - -?---We were talking about what to do
15:59:29 7 next.
15:59:29 8
15:59:30 9 What the DPP wanted to know, didn't he, was whether there
15:59:34 10 were clear conflicts?---Yes.
15:59:36 11
15:59:37 12 Did you tell him that in your view there were clear
15:59:39 13 conflicts?---Yes.
15:59:41 14
15:59:41 15 And did you - where do we see reference to that?---I think
15:59:48 16 back at the start where you saw that she was giving
15:59:52 17 information about her own clients.
15:59:54 18
15:59:54 19 Okay. You're indicating there - - -?---That's just a given
15:59:58 20 in this statement.
16:00:00 21
16:00:06 22 There's a note there to the effect that, "High Court view
16:00:10 23 is repugnant therefore conviction unsafe"?---Yes. That's
16:00:16 24 the legal advice, yes. That's the legal advice from VGS0.
16:00:19 25
16:00:20 26 From VGS0, I follow that. All right. "See s.568 of the
16:00:27 27 Crimes Act proviso", that was discussed, was it?---I can't
16:00:31 28 remember.
16:00:31 29
16:00:32 30 "IBAC report to Parliament"?---Yes.
16:00:34 31
16:00:34 32 "Media releases were being discussed"?---Yes.
16:00:38 33
16:00:38 34 "Would this be enough to cause defence practitioners to
16:00:41 35 seek an extension of time appeal. Steve Leane what will
16:00:42 36 VicPol do if IBAC do know more? John Champion says next
16:00:48 37 steps for VicPol. Finn McCrae says would tell OPP if MOU" -
16:00:54 38 do you know what that means?---I don't know what that
16:00:57 39 means.
16:00:57 40
16:00:57 41 "Whether to brief but would need to do so with Commonwealth
16:01:01 42 DPP. Finn McCrae hasn't told Michael McGarvie identity of
16:01:07 43 X because of risk to X"?---Yes.
16:01:09 44
45 He's the Legal Services Commissioner?---Yes.
46
16:01:10 47 "Stephen Leane VicPol trying to protect her but she won't

16:01:14 1 go into Witsec"?---Yes.
16:01:16 2
16:01:16 3 And we don't know whether she sought ethics rulings?---Yes.
16:01:21 4
16:01:22 5 There's no note there, likewise there's no note that you
16:01:28 6 make to the effect that you sought to press into
16:01:33 7 Mr Champion's hands the case studies - - -?---I didn't seek
16:01:37 8 to press, I didn't force any issue with him. I just made
16:01:40 9 the offer.
16:01:40 10
16:01:41 11 I mean would it not be a point that you would certainly
16:01:46 12 want to note down that you've got in your hand the report,
16:01:50 13 particularly in relation to one person in particular, but
16:01:52 14 indeed all of them, and you've sought to provide to the DPP
16:01:56 15 - - -?---I had all the reports.
16:01:57 16
16:01:57 17 Excuse me, he has refused to accept it. Would that not be
16:02:02 18 something that is worthy of noting down?---I do note that
16:02:06 19 he declined the reports.
16:02:07 20
16:02:07 21 Where do you say that?---In all my notes.
16:02:10 22
16:02:10 23 You say you in your handwritten note of that meeting you
16:02:14 24 made a note that he declined?---No, no.
16:02:16 25
16:02:16 26 Where do you make a note of it?---Well, I went back and
16:02:20 27 informed the Bendigo steering committee from memory that he
16:02:25 28 didn't want the case studies.
16:02:27 29
16:02:28 30 Right?---And we were trying to - we were actually, I was
16:02:31 31 awaiting his response at that point. I shouldn't get ahead
16:02:36 32 of myself. I was awaiting his response. So we all left
16:02:39 33 the meeting.
16:02:40 34
16:02:41 35 Right. So the discussion is had and your view is it's a
16:02:48 36 question, at that stage you say, "Well look, the ball's in
16:02:51 37 the OPP's court"?---Yes.
16:02:53 38
16:02:53 39 You've done all you can do?---Yes. Well, no, I'm waiting
16:02:57 40 to hear what he has to say about it.
16:02:59 41
16:03:00 42 So if we have a look at, can we have a look at an email of
16:03:17 43 11 December 2014, and you refer to it at 7.48 of your
16:03:27 44 statement.
16:03:27 45
16:03:27 46 COMMISSIONER: Are you wanting to tender the file notes?
16:03:31 47

16:03:32 1 MR WINNEKE: Yes, I tender the handwritten and transcribed
16:03:34 2 notes, please.
16:03:35 3
16:03:36 4 #EXHIBIT RC1136A - (Confidential) Handwritten and
16:03:36 5 transcribed notes.
16:03:36 6
16:03:37 7 #EXHIBIT RC1136B - (Redacted version.)
16:03:38 8
16:03:49 9 Do you say that you offered to provide the Comrie
16:03:53 10 Report?---No.
16:03:54 11
16:03:55 12 Just the case studies?---Yes.
16:03:57 13
16:04:03 14 You say that you received an email from Mr Gardiner from
16:04:09 15 the OPP in relation to the case studies. And this is at
16:04:15 16 VPL.0100.0001.0848 at 0864. "This matter was discussed
16:04:26 17 earlier this week by the Director's committee. In brief
16:04:35 18 the Director believes that at present the PPS has no duty
16:04:39 19 of disclosure to the defence in any of the five case
16:04:42 20 studies you sent us, largely as a consequence of the
16:04:45 21 uncertainty about the nature, extent or timing of X's
16:04:49 22 behaviour in those matters. We don't yet have sufficient
16:04:52 23 information to invoke the processes in our miscarriage of
16:04:57 24 process policy. That position may change depending on the
16:05:00 25 outcome of the IBAC investigation and whatever findings or
16:05:01 26 recommendations it may make. For the same purpose the
16:05:05 27 reasons the Director sees no purpose in us undertaking a
16:05:11 28 review of the files in issue at this stage, it is almost
16:05:14 29 certain that nothing of relevance would exist on the
16:05:14 30 prosecution file. Please let me know if you're awaiting
16:05:17 31 anything further from us at this stage. I'd be interested
16:05:20 32 to hear what the LSC thinks about the client privilege
16:05:23 33 issues if you raise it with him". You understood the
16:05:27 34 Director's committee comprising the Chief Crown Prosecutor
16:05:34 35 and solicitor of the OPP, is that your
16:05:38 36 understanding?---Yes.
16:05:38 37
16:05:38 38 Then you raise those matters with the steering committee,
16:05:45 39 the Bendigo steering committee?---I think I did, yeah.
16:05:48 40
16:05:48 41 And you briefed them about the meeting with the DPP on 25
16:05:54 42 November?---Yes.
16:05:55 43
16:05:55 44 Right. And I think if we have a look at your statement,
16:06:02 45 and also the issue cover sheet, if we have a look at
16:06:22 46 VPL.0100.0001.0848 at 854. If I haven't tendered that
16:06:32 47 email I'll do so.

16:06:36 1
16:06:36 2 COMMISSIONER: File note.
16:06:37 3
16:06:37 4 #EXHIBIT RC1137A - (Confidential) File note.
16:06:38 5
16:06:39 6 #EXHIBIT RC1137B - (Redacted version.)
16:07:07 7
16:07:07 8 You agree that there'd be no value in the DPP examining its
16:07:12 9 own files because there wouldn't be any information in
16:07:15 10 those files that would be in any way enlightening as to the
16:07:19 11 issues that you were discussing?---I'd asked the DPP to
16:07:23 12 look at the first case because I thought it was important
16:07:26 13 to understand the conflicts. I think it would have been
16:07:28 14 helpful.
16:07:29 15
16:07:29 16 To look at the DPP's own files?---Yes, to look at the
16:07:33 17 conflict issue, h'mm.
16:07:34 18
16:07:34 19 The conflict issues wouldn't be apparent in the DPP
16:07:38 20 materials, they're apparent in your materials?---I beg to
16:07:41 21 differ on that, Mr Winneke. This person was representing
16:07:45 22 multiple people.
16:07:46 23
16:07:47 24 Yes. So in any event - - -?---Information that
16:07:55 25 unfortunately through the Loricated process we didn't have
16:07:59 26 sufficient records to pick up on, which drew the Loricated
16:08:04 27 process out, meant that we missed a large slab of potential
16:08:08 28 conflict issues that now have become apparent in this
16:08:11 29 inquiry.
16:08:12 30
16:08:16 31 Was there any discussion about a joint approach between the
16:08:20 32 OPP and VicPol as to - - -?---That's why I was meeting with
16:08:23 33 him.
16:08:24 34
16:08:24 35 Did you at that stage have any idea about who Ms Gobbo had
16:08:27 36 acted for and with any - - -?---Not with certainty.
16:08:31 37
16:08:31 38 Did you seek to find out whether, for example, the person
16:08:36 39 in particular was still in custody or any of the people she
16:08:38 40 had acted for were still in custody?---At the early stages
16:08:42 41 I only thought Mokbel.
16:08:43 42
16:08:44 43 Did you seek to find out, ask - - -?---We did the case
16:08:47 44 studies, we picked the cases, I brought in Mr Gleeson and
16:08:51 45 Mr Lardner, who I considered to be two of the leading
16:08:55 46 investigators in Victoria Police. I asked them to identify
16:08:58 47 the cases that were most at risk. They came up with that

16:09:02 1 list. We obviously didn't get every case, but it was
 16:09:07 2 certainly indicative of the high risk ones.
 16:09:10 3
 16:09:10 4 Did you write to the DPP and ask for a list of names who
 16:09:13 5 Ms Gobbo had been representing as far as their records - -
 16:09:16 6 -?---No, I met with him. I disclosed what the possess was.
 16:09:20 7 I was seeking for a collaborative approach and I continued
 16:09:24 8 to meet with him.
 16:09:25 9
 16:09:25 10 Did you ask for a list of names?---No.
 16:09:27 11
 16:09:27 12 Okay. All right then?---Well other than asking for the
 16:09:33 13 case where he said that there was evidence of conflict,
 16:09:36 14 which I thought might be informative, but I didn't get it.
 16:09:41 15
 16:09:41 16 Okay. So VPL.0100.0001.0848, at 0854. That was a cover
 16:09:51 17 sheet that was circulated at the Bendigo steering
 16:09:55 18 committee. Do you see that?---Yes.
 16:09:57 19
 16:09:58 20 Under the heading "other matters discussed", "Investigation
 16:10:02 21 team reported there was no evidence of a deliberate attempt
 16:10:06 22 to pervert the course of justice or orchestrate court
 16:10:06 23 outcomes"?---Yes.
 16:10:08 24
 16:10:08 25 Further down, "Many notations and records indicate that
 16:10:13 26 information that went to the defence strategy or what
 16:10:15 27 handlers consider to be LPP was quarantined and O'Brien
 16:10:19 28 privy to some information, no record of him passing it on",
 16:10:22 29 et cetera?---Yes.
 16:10:23 30
 16:10:24 31 I tender that. Just before we do, at that stage, as per 11
 16:10:31 32 December email from Mr Gardiner, there's a note - just can
 16:10:41 33 we go down - handwritten note, "Next steps", that's your
 16:10:44 34 handwriting, I take it?---Yes, it is, yes.
 16:10:46 35
 16:10:46 36 "AC Leane, miscarriage of justice is a matter for the DPP.
 16:10:51 37 OPP indicated that the best place to test this is at
 16:10:55 38 appeal"?---DPP indicated that.
 16:10:58 39
 16:10:58 40 Sorry, "DPP indicated best place to do this was at appeal.
 16:10:59 41 Response of DPP has changed our position", is that
 16:11:02 42 correct?---Yes.
 16:11:03 43
 16:11:03 44 In other words, so at that stage your position now was, "We
 16:11:06 45 do nothing"?---No.
 16:11:07 46
 16:11:07 47 No?---No, our position is that we consult with the

16:11:10 1 Commonwealth DPP.
16:11:11 2
16:11:11 3 Yes?---And consult with the Legal Services Commissioner
16:11:14 4 because we can't wait for the DPP to do it and we will
16:11:18 5 inform IBAC of the next steps because the DPP is not taking
16:11:21 6 any actions.
16:11:22 7
16:11:22 8 I tender that, Commissioner.
16:11:24 9
16:11:25 10 #EXHIBIT RC1138A - (Confidential) VPL.0100.0001.0848 at
16:09:48 11 0854. Cover sheet circulated at the
16:09:54 12 Bendigo steering committee.
16:11:26 13
16:11:27 14 #EXHIBIT RC1138B - (Redacted version.)
16:11:28 15
16:11:31 16 At this stage have you engaged a barrister to review the
16:11:37 17 case, the conflict case reports?---No, because we were
16:11:40 18 suggesting to the DPP maybe we get a retired High Court
16:11:43 19 judge or a QC to do that and we were leaving it with him to
16:11:47 20 consider the position.
16:11:48 21
16:11:50 22 When did you discover that that wasn't occurring?---He
16:11:56 23 wrote back to me saying that - - -
16:11:59 24
16:11:59 25 On the 11th?---He wanted to wait for IBAC, yep, so we were
16:12:04 26 all waiting for IBAC.
16:12:05 27
16:12:05 28 But IBAC wasn't looking at these matters, it wasn't looking
16:12:09 29 at miscarriages of justice?---That's true.
16:12:12 30
16:12:12 31 Did you make that clear to the DPP?---Yes.
16:12:15 32
16:12:15 33 Nonetheless you're both waiting for IBAC?---That's why I
16:12:18 34 went to DPP because IBAC would not take the matters.
16:12:21 35
16:12:21 36 Yes, I follow?---I felt IBAC was an appropriate forum
16:12:25 37 because it had in camera hearings, coercive questioning and
16:12:30 38 confidentiality notices that would mean the whole question
16:12:33 39 could be dealt with in a safe environment and minimise the
16:12:36 40 risk of death and get to the truth of the matter.
16:12:38 41
16:12:40 42 The problem is IBAC is not looking at it, the DPP won't
16:12:44 43 take the case studies?---I was in a very difficult
16:12:47 44 position.
16:12:47 45
16:12:47 46 Why wouldn't you then brief a barrister and say, "I can't
16:12:50 47 get anyone to look at these case studies, let's get a

16:12:54 1 barrister to look at them"?---IBAC was imminent at that
16:12:57 2 stage. This was during the course of the IBAC hearings.
16:13:02 3
16:13:02 4 Righto?---So I was willing to give him the benefit of the
16:13:05 5 doubt.
16:13:06 6
16:13:06 7 Even though they've said they're not interested in these
16:13:09 8 issues?---IBAC?
16:13:10 9
16:13:11 10 Yes?---Well, IBAC, despite not dealing with the miscarriage
16:13:16 11 issues, were settling the facts and the facts settled by
16:13:23 12 that, would be, go beyond what we knew, I was hoping, and
16:13:27 13 that would be useful.
16:13:31 14
16:13:31 15 Righto. Now, at least it was potentially the case there
16:13:40 16 were people in gaol?---I didn't know that.
16:13:42 17
16:13:42 18 Did you take any steps to find out?---I had case studies
16:13:45 19 prepared by a team, a cross disciplinary team as you saw.
16:13:51 20
16:13:51 21 The next thing you did was to have meetings with the
16:13:57 22 Commonwealth DPP and you have meetings I think on 21
16:14:01 23 January and 3 February and those are referred to in your
16:14:04 24 statements and I'm not going to go to those?---Yes, yes.
16:14:08 25
16:14:10 26 And the upshot of that was there was no action being taken
16:14:13 27 by the Commonwealth DPP?---Correct.
16:14:15 28
16:14:23 29 Then the next thing I want to ask you about, 21 May 2015.
16:14:33 30 ADC Paton and yourself meet with the DPP and Mr Gardiner
16:14:37 31 again and that's set out in your statement at 8.5. By this
16:14:42 32 time you are in receipt of the Kellam report, is that
16:14:50 33 right?---Yes, we all were.
16:14:51 34
16:14:51 35 You got that in February. And just excuse me?---We
16:14:59 36 received the Kellam report I think in February.
16:15:03 37
16:15:04 38 2nd of February?---We gave it to the DPP State who then
16:15:08 39 provided it to the Commonwealth.
16:15:09 40
16:15:12 41 At that stage in your statement you say that, you make a
16:15:26 42 file note of the meeting, is that right?---Yes.
16:15:29 43
16:15:30 44 And you've set that out in your statement?---Yes.
16:15:33 45
16:15:35 46 There's a heading "case studies"?---Yes.
16:15:38 47

16:15:39 1 And one of the notes is that, "At this stage there is no
16:15:46 2 indication of a miscarriage of justice. Mr Champion was of
16:15:51 3 the view that any further work by Victoria Police for the
16:15:54 4 DPP was not necessary"?---Yes.
16:15:56 5
16:15:56 6 "He indicated that he didn't require the chronologies or
16:16:00 7 executive studies from the case studies at that time hence
16:16:03 8 it is not proposed to engage two QC's as mentioned in the
16:16:08 9 Kellam report to prepare any further materials for the
16:16:12 10 DPP"?---Yes, he was of the view that it wouldn't add
16:16:14 11 anything.
16:16:15 12
16:16:17 13 How could you leave him with the view, given that you've
16:16:20 14 read at least the significant case study, that there was no
16:16:24 15 indication of a miscarriage of justice?---No, that's what
16:16:28 16 he was telling me.
16:16:29 17
16:16:29 18 But he hadn't seen the case study?---He had the Kellam
16:16:34 19 report which had the base facts of those case studies in
16:16:37 20 it.
16:16:38 21
16:16:39 22 The case study concerning, one by Baker had not been, it
16:16:45 23 wasn't in the Kellam report, it wasn't in the Comrie Review
16:16:49 24 obviously. It hadn't been - - -?---Sorry, the case studies
16:16:53 25 as far as I know did go to Kellam.
16:16:56 26
16:16:56 27 They weren't in the Kellam report?---Okay.
16:17:00 28
16:17:00 29 Now, how could - he refused to take them, do you
16:17:07 30 recall?---Yes.
16:17:07 31
16:17:07 32 He says it wasn't his remit. If Mr Champion is of the view
16:17:11 33 that, and he's saying that there's no indication of a
16:17:15 34 miscarriage of justice, did you not have an obligation to
16:17:18 35 say, "John, that's just not right?" Did you not have that
16:17:24 36 obligation?---I'd already read the case studies to him. I
16:17:29 37 was perfectly willing to give him the case studies and give
16:17:33 38 him more work. That's what he was telling me after reading
16:17:36 39 the Kellam report.
16:17:37 40
16:17:37 41 Do you say on your oath that you read the case study of the
16:17:41 42 person that concerns you most, had you read that out in
16:17:45 43 terms which made it abundantly clear that Ms Gobbo had not
16:17:49 44 only been an informer - - -?---No, I didn't read the whole
16:17:52 45 case study.
16:17:53 46
16:17:53 47 You have to be a bit careful about what you're

16:17:56 1 saying?---Yes, I understand.
16:17:57 2
16:17:58 3 Had you done so - - -?---I've never said that I read the
16:18:01 4 whole case study.
16:18:02 5
16:18:03 6 You just said you read it to him. Now, do you say you did
16:18:07 7 or not?---Yes, I did.
16:18:08 8
16:18:08 9 Did you read it in such terms that he would have understood
16:18:12 10 that Gobbo is an informer, she's acted for this person for
16:18:16 11 a number of years, she has provided information?---I can't
16:18:19 12 recall. I can't recall, with that case study. I can't
16:18:22 13 recall with any of the case studies how much I read because
16:18:26 14 he stopped me.
16:18:28 15
16:18:28 16 You had a concern, you had a concern that there was quite
16:18:32 17 potentially a miscarriage of justice arising out of that
16:18:36 18 case study?---I thought that was the highest risk case
16:18:39 19 study, yes.
16:18:40 20
16:18:40 21 Do you accept this proposition, that that case study
16:18:44 22 contained an indication of a miscarriage of
16:18:49 23 justice?---There's the possibility there, yes.
16:18:50 24
16:18:51 25 Do you accept that it contained at least an indication of a
16:18:56 26 miscarriage of justice?---Possibly, yes. I didn't - when I
16:19:01 27 was looking at it I wasn't certain of the facts.
16:19:04 28
16:19:04 29 All right?---Because we'd done a paper analysis of it.
16:19:11 30
16:19:11 31 Can I suggest to you that at the end of that meeting it
16:19:14 32 would have been apparent to you that the DPP was still not
16:19:18 33 aware that there were very serious concerns held at the
16:19:21 34 very least in relation to that case?---No, I didn't think
16:19:24 35 that.
16:19:24 36
16:19:25 37 You didn't think he was sufficiently concerned?---Well he
16:19:27 38 was doing his own, he was advising me of what he had found
16:19:34 39 after his discussions with the Commonwealth DPP. Actually,
16:19:39 40 that note's in regard to the Commonwealth DPP. We're not
16:19:48 41 even talking about his case studies.
16:19:49 42
16:19:51 43 This is a meeting that you have with him and Mr Gardiner,
16:19:54 44 it's referred to in your statement?---Yes.
16:19:56 45
16:19:56 46 And you make a note, can you say what that - - -?---"JC
16:20:01 47 indicated that the Commonwealth DPP had completed the

16:20:03 1 review of the Robby Karam case", is that the paragraph
16:20:06 2 you're reading?
16:20:08 3
16:20:08 4 Yes, keep going down?---"Indicating there were no further
16:20:14 5 issues requiring review, there'd been no miscarriage of
16:20:16 6 justice." As far as I was concerned Mr Champion was - had
16:20:20 7 been, had conducted a review of all these cases arising out
16:20:24 8 of the Kellam report and I wasn't privy to what he'd looked
16:20:28 9 at or what he had done. He was just informing me.
16:20:31 10
16:20:31 11 Did you ask him and find out?---Find out what?
16:20:34 12
16:20:34 13 Did you say to him, "Look, I'm concerned that you do not
16:20:37 14 really understand the issues with respect to these case
16:20:42 15 studies, in particular one of them, I've got it here, I
16:20:45 16 think you should have it. You should read it"?---I don't
16:20:49 17 think that was the tenor of the meeting.
16:20:52 18
16:20:52 19 Right. All right?---I wasn't there to pass the case
16:20:57 20 studies on again. We were having a catch up with the
16:21:03 21 Deputy Commissioner Paton who was now in charge of the
16:21:07 22 Bendigo steering committee and the reason I provided so
16:21:11 23 much background was to make sure that everyone was on the
16:21:15 24 same page of the history of the matter and what had
16:21:18 25 happened.
16:21:18 26
16:21:18 27 Ultimately it appears that Mr Champion, having carried out
16:21:22 28 his own review, came to the conclusion that it was
16:21:26 29 necessary to make disclosure to a number of people, seven
16:21:31 30 people in particular?---Yes, a year after receiving the
16:21:34 31 report, h'mm.
16:21:35 32
16:21:36 33 And are you able to say to this Commission when was the
16:21:42 34 first time that you provided the case studies to a
16:21:47 35 barrister to provide an opinion about them?---Well, in the
16:21:52 36 civil litigation the case studies were with our barristers.
16:21:57 37 Is that what you're talking about?
16:21:59 38
16:21:59 39 No, no, the case studies produced by Bendigo, Operation
16:22:03 40 Bendigo, those conflict case studies. When was the first
16:22:06 41 time, the five of them, the ones that we've been talking
16:22:09 42 about?---Yes.
16:22:09 43
16:22:09 44 When was the first time those case studies or any of them
16:22:14 45 were provided to a barrister to provide you with an opinion
16:22:17 46 about whether or not there ought be disclosure?---I gave
16:22:20 47 them to the VGS0 to review.

16:22:22 1
16:22:22 2 Yes?---The DPP had indicated that he didn't want any
16:22:28 3 further - wasn't asking us to do any further work, but I
16:22:33 4 reformed the Loricated working group asking them to finish
16:22:37 5 off the rest of the records that we had. That information
16:22:40 6 was passed to the VGS0 and I asked the litigation advocacy
16:22:47 7 group at the VGS0 to provide an advice on the adequacy of
16:22:51 8 those reports.
16:22:51 9
16:22:51 10 Right. What about providing them to a criminal barrister,
16:22:56 11 or someone experienced in the laws concerning the conduct
16:23:02 12 of criminal trials to consider whether they should be
16:23:08 13 disclosed because there may be a miscarriage of
16:23:13 14 justice?---I relied on the VGS0.
16:23:14 15
16:23:14 16 As far as you were concerned they weren't provided to any
16:23:18 17 barrister until they were provided to Peter Hanks in 2016,
16:23:22 18 is that right?---Yes.
16:23:23 19
16:23:23 20 When you did provide them to him, he provided you with an
16:23:26 21 advice, I think on 14 September 2016, effectively saying to
16:23:35 22 you that there was no reasonable prospect of preventing
16:23:39 23 disclosure to that person in question?---Right.
16:23:43 24
16:23:43 25 Do you accept that?---Yes, yes, whatever his advice was,
16:23:50 26 was his advice, yes.
16:23:51 27
16:23:51 28 I gather privilege isn't maintained in respect of this
16:23:55 29 advice, Commissioner.
16:23:55 30
16:23:55 31 MR HOLT: I've already indicated that.
16:23:58 32
16:23:59 33 MR WINNEKE: Yes. VPL.0005.0003.2121. This is at a time
16:24:04 34 that the proceedings had been issued?---Yes.
16:24:08 35
16:24:08 36 But hadn't commenced in full. Do you accept that?---Yes,
16:24:12 37 yes.
16:24:12 38
16:24:12 39 There was a proceeding listed before Justice Ginnane on 21
16:24:16 40 November. There was an estimate of two to five days and at
16:24:22 41 paragraph 2 there's an advice that, "In memorandum we set
16:24:26 42 out the reasons for an opinion that is not tenable for the
16:24:30 43 Chief Commissioner to maintain in this proceeding the
16:24:32 44 absence of further evidence the disclosure of 3838's role
16:24:34 45 with respect to the person in question would appreciably
16:24:38 46 increase the risk to her safety the public interest
16:24:46 47 immunity operates to displace, the Victorian DPP's duties

16:24:51 1 to disclose mountains Gobbo's role to the person and to
16:24:55 2 delay the resolution of this proceeding in relation to that
16:24:57 3 particular person"?---Yes.
16:24:58 4
16:24:59 5 That was the advice, the effect of the advice that you
16:25:01 6 got?---H'mm.
16:25:02 7
16:25:03 8 And if we go through to paragraph 3, "We formed the opinion
16:25:07 9 on the basis of our review of that case study"?---Yes.
16:25:10 10
16:25:11 11 That I've been perhaps labouring?---Yes.
16:25:12 12
16:25:13 13 "Documents in CDPP possession but not yet in evidence,
16:25:19 14 concern that there is a real risk the CDPP may be
16:25:24 15 criticised for delaying resolution of proceedings of that
16:25:27 16 matter in circumstances where CDPP had possession of the
16:25:31 17 knowledge in the case study, particularly if it has not
16:25:34 18 been disclosed to the DPP or the court." And the advice
16:25:40 19 goes on and focuses on Ms Gobbo's role in that matter and
16:25:50 20 also there's a reference to the fact that it would have
16:25:53 21 potentially a flow on effect to other cases?---Yes. That's
16:25:58 22 why we used that as the main fact scenario for the court.
16:26:02 23
16:26:03 24 Yes. If we go down to paragraph 23, it explains the reason
16:26:09 25 for the focus on that case study?---H'mm.
16:26:12 26
16:26:12 27 "It's the strongest case for a conclusion that the
16:26:14 28 activities of Ms Gobbo led to a miscarriage justice
16:26:18 29 requiring the convictions to be quashed"?---Yes.
16:26:20 30
16:26:20 31 "It appears to us possible that if disclosure required to
16:26:23 32 that person then significant ramifications for future
16:26:28 33 conduct of this proceeding more generally and activities of
16:26:30 34 Gobbo critical to investigation that led to that person
16:26:34 35 being charged" and sets out why. If we go to paragraph 48,
16:26:46 36 "Unless the DPP is prepared to review that case study and
16:26:49 37 decide what implications that has for the manner in which
16:26:52 38 the DPP would approach any appeal against conviction by
16:26:55 39 that person the CDPP will need to file that case study in
16:26:59 40 evidence. In our opinion, 49, the CDPP cannot properly
16:27:03 41 invite the court to determine the issue of disclosure to
16:27:05 42 that person without the court having access to the analysis
16:27:08 43 the CDPP has undertaken of the significance of the
16:27:11 44 information provided by Gobbo for that person's conviction.
16:27:16 45 To do so would run the considerable risk that the CDPP's
16:27:21 46 submissions in support of the proposition that disclosure
16:27:23 47 should not occur would mislead the court". At that stage

16:27:27 1 it seems had you sought advice as to whether or not it was
16:27:29 2 necessary to hand over that particular case study?---Had I
16:27:37 3 requested that advice?
16:27:39 4
16:27:39 5 Yes?---I can't recall who requested the advice. What's the
16:27:43 6 date of it?
16:27:44 7
16:27:44 8 It does appear that you were seeking advice as to whether
16:27:48 9 or not it was necessary to hand over that case
16:27:51 10 study?---Yes, yes.
16:27:51 11
16:27:52 12 And there was a - - -?---We wanted to put the most serious
16:27:56 13 matter up as the facts scenario.
16:27:58 14
16:27:58 15 No, but did you want to - did you want not to have to hand
16:28:03 16 over that case study?---No.
16:28:05 17
16:28:06 18 Well - - -?---Well they certainly weren't my instructions,
16:28:14 19 they were the case study I had asked to be put together.
16:28:17 20 I'm sure that the people in the intelligence area would
16:28:22 21 have been reluctant to hand it over because of the risks
16:28:25 22 that they would have thought that would have created. It
16:28:29 23 depends who you're asking.
16:28:30 24
16:28:30 25 All right. I tender that, Commissioner.
16:28:33 26
16:28:33 27 COMMISSIONER: Is there a date?
16:28:35 28
16:28:35 29 MR WINNEKE: It's 14 September 2016, Commissioner.
16:28:43 30
16:28:43 31 COMMISSIONER: It's a joint advice, who else is on it,
16:28:46 32 Mr Hansen and - - -
16:28:49 33
16:28:49 34 MR WINNEKE: If we can go to the bottom of the advice.
35
36 COMMISSIONER: Thank you.
37
16:28:53 38 MR WINNEKE: Can we go to the bottom there, thanks.
16:29:05 39
16:29:06 40 #EXHIBIT RC1139A - (Confidential) VPL.0005.0003.2121.
16:29:07 41
16:29:07 42 #EXHIBIT RC1139B - (Redacted version.)
16:29:15 43
16:29:15 44 Was it the case that Victoria Police was seeking to get an
16:29:18 45 advice as to whether or not it was possible to run the
16:29:20 46 litigation without handing over that analysis?---Not that
16:29:25 47 I'm aware of.

16:29:26 1
16:29:34 2 Then if we can have a look at a further matter, an email
16:29:40 3 chain VPL.0005.0003.2174. Can we move up, please. "We
16:30:11 4 refer to our letter to Bruce Gardiner of the OPP dated 25
16:30:15 5 October regarding the DPP's request for Operation Loricated
16:30:19 6 case studies". So at that stage he hadn't requested - -
16:30:24 7 -?---Yes.
16:30:24 8
16:30:24 9 - - - all of the case studies. Did you provide some case
16:30:28 10 studies but not all?---There was a negotiation that took
16:30:33 11 place. I wasn't privy to it.
16:30:35 12
16:30:35 13 Right. And was the main case study or the concerning case
16:30:41 14 study at that stage handed over?---Yes, as far as I know.
16:30:44 15
16:30:45 16 Are you sure?---I don't know.
16:30:47 17
16:30:47 18 Right?---But it was at some stage.
16:30:50 19
16:30:50 20 If we go on as you note, "Bruce has advised they were not
16:30:54 21 in a position to respond to our proposal that the court
16:30:58 22 focus on the particular case study in the first instance
16:31:02 23 until they receive a copy of the" - - - ?---Yes.
16:31:04 24
16:31:04 25 - - - "Operation Loricated case studies relevant to the
16:31:07 26 persons subject of the proceeding i.e. the persons named in
16:31:10 27 paragraph 5"?---I think when the intel people saw the way
16:31:15 28 the case studies had been constructed they pushed back
16:31:18 29 pretty hard on PII grounds so we had to deal with that.
16:31:21 30
16:31:21 31 Right. So it's clear enough that, was it, there was a
16:31:27 32 desire only to hand over redacted versions of the case
16:31:32 33 studies?---I'm sure there would have been.
16:31:34 34
16:31:34 35 And who were the intel people who were pushing back?---Well
16:31:40 36 I don't know because I wasn't dealing personally with that,
16:31:43 37 but I can remember the intel and covert people because of
16:31:48 38 the large number of references to potential sources and so
16:31:54 39 on, that they were worried about it.
16:31:56 40
16:31:56 41 All right, okay. And then finally, if we can have a look
16:32:06 42 at - we understand that in November 2016, this is a
16:32:14 43 statement of Marlow Baragwanath. I tender that.
16:32:21 44
45 COMMISSIONER: Are you nearly finished?
46
47 MR WINNEKE: I am. In fact this is the last matter.

1
16:32:22 2 #EXHIBIT RC1140A - (Confidential) Email chain
16:29:40 3 VPL.0005.0003.2174.
16:32:33 4
16:32:34 5 #EXHIBIT RC1140B - (Redacted version.)
16:32:35 6
16:32:35 7 Can I suggest that as at November 2016 Victoria Police were
16:32:38 8 still trying to get advice as to whether they could hand
16:32:41 9 over only a redacted case study in relation to the main
16:32:48 10 matter, the main witness?---If that's what the records say.
16:32:51 11
16:32:52 12 And was Victoria Police told, no, they can't do that, "You
16:32:58 13 cannot hand over only a redacted case study"?---Our legal
16:33:02 14 team would have pushed back very hard about redactions.
16:33:05 15
16:33:06 16 When finally was disclosure made to the person who, full
16:33:12 17 disclosure made to that particular person?---That would
16:33:19 18 have been through the DPP's office.
16:33:21 19
16:33:21 20 Right?---I don't know the date. I don't know the date.
16:33:24 21
16:33:24 22 Has full disclosure been provided as of yet?---I don't know
16:33:27 23 because I've stepped away from that, that process.
16:33:30 24
16:33:31 25 All right. Yes, thank you very much.
16:33:33 26
16:33:33 27 COMMISSIONER: Is there any cross-examination?
16:33:36 28
16:33:36 29 MR NATHWANI: Yes.
16:33:37 30
16:33:37 31 COMMISSIONER: There is? How long is it going to take
16:33:41 32 because we have a video link application at 4.30?
16:33:46 33
16:33:47 34 MR HOLT: Commissioner, on the basis of the estimates that
16:33:49 35 have been given, including the fact that I would need I
16:33:51 36 think at least 20 minutes in re-examination, I can't see
16:33:54 37 any reasonable prospect of dealing with Mr McRae tonight,
16:33:59 38 and I'm aware of the application.
16:34:00 39
16:34:01 40 COMMISSIONER: Yes. How long will you take?
16:34:04 41
16:34:05 42 MR CHETTLE: Half an hour to an hour, I'm hoping to be
16:34:08 43 less.
16:34:09 44
16:34:12 45 COMMISSIONER: We're planning to deal with witnesses other
16:34:14 46 than Ms Gobbo from 3 till 5 tomorrow. So we'll have to ask
16:34:20 47 you to come back I'm afraid Mr McRae at 3 o'clock

16:34:23 1 tomorrow?---Yes.
16:34:25 2
16:34:25 3 MR HOLT: Thank you Commissioner.
16:34:26 4
16:34:26 5 COMMISSIONER: We need to adjourn then before the - - -
16:34:30 6
16:34:31 7 MR HOLT: Sorry, Commissioner, can I proceed on the basis
16:34:33 8 then that that would apply to Mr Moloney as well to be
16:34:36 9 present to follow Mr McRae?
16:34:38 10
16:34:39 11 COMMISSIONER: I understand, and we've only just been told
16:34:41 12 this, that he has to travel two and a half hours each way
16:34:46 13 to attend the Commission each day.
16:34:48 14
16:34:48 15 MR HOLT: I heard two hours, Commissioner. He is in
16:34:49 16 country Victoria and he comes in by train.
16:34:51 17
16:34:51 18 COMMISSIONER: It doesn't seem as though he is the most
16:34:54 19 suitable witness to have when he is supposed to be giving
16:34:57 20 evidence over a couple of days, in literally days of
16:35:01 21 evidence.
16:35:01 22
16:35:02 23 MR HOLT: Commissioner, he well understands the fact that
16:35:04 24 he's going to be interposed. He's, as we advised the
16:35:08 25 Commission some time ago, for both medical and
16:35:11 26 long-standing issues that follow from that, not available
16:35:14 27 beyond the end of this week so we are very anxious to have
16:35:17 28 him done if we can and he understands that, Commissioner.
16:35:19 29
16:35:20 30 COMMISSIONER: It seems terrible to have to travel five
16:35:23 31 hours to give two hours worth of evidence each day.
16:35:28 32
16:35:28 33 MR HOLT: Yes, Commissioner. Can I take instructions and
16:35:31 34 just see whether tomorrow might be a different story? But
16:35:31 35 I suspect that the answer will be that he would want to
16:35:34 36 continue. We don't want to be in a position where we don't
16:35:34 37 have him available next week, Commissioner.
16:35:34 38
16:35:34 39 COMMISSIONER: I see.
16:35:34 40
16:35:35 41 MR HOLT: We simply don't want to be in that position. So
16:35:35 42 I think the preference would be, even though there is some
16:35:41 43 awkwardness about it, to have him continue. He's been
16:35:42 44 aware that his evidence would be interposed in between
16:35:46 45 Ms Gobbo's evidence.
16:35:47 46
16:35:47 47 COMMISSIONER: Yes.

1
2 MR HOLT: He's aware of that, he's made arrangements around
3 that.
4
16:35:47 5 COMMISSIONER: All right. Well I suppose there is always
16:35:48 6 the prospect if her evidence falls through early that he
16:35:52 7 can give more than two hours on those days.
8
9 MR HOLT: Commissioner, we'll arrange for him - - -
10
16:35:57 11 COMMISSIONER: It's very much an unknown quantity that
16:35:59 12 we're going into tomorrow I'm afraid.
16:36:01 13
16:36:01 14 MR HOLT: And we're at the pointy end, as I said earlier.
16:36:01 15 We understand that people need to be flexible around that.
16:36:05 16
16:36:05 17 COMMISSIONER: The other possibility might be for
16:36:07 18 arrangements to be made for him to stay in Melbourne rather
16:36:10 19 than doing all that travel, but I guess that's something
16:36:13 20 you can work out with him.
16:36:15 21
16:36:15 22 MR HOLT: Can I say that's been raised with him and his
16:36:18 23 preference is the current arrangement.
16:36:19 24
16:36:19 25 COMMISSIONER: All right then. We'll just stand down for a
16:36:22 26 few minutes while the video link for the next application
16:36:53 27 is organised.
28
29 <(THE WITNESS WITHDREW)
16:36:54 30
16:36:55 31 (Short adjournment.)
16:36:55 32
33 (At this stage Mr S Dawson SC appeared via telephone for
16:41:35 34 ABC.)
16:41:35 35
16:41:35 36 COMMISSIONER: Yes Mr Woods.
16:41:37 37
16:41:37 38 MR WOODS: Commissioner, I think we have Mr Dawson on the
16:41:40 39 line from Sydney.
16:41:42 40
16:41:42 41 COMMISSIONER: That's right. Mr Dawson.
16:41:44 42
16:41:45 43 MR DAWSON: Yes, I'm here, thanks Commissioner. Can I say
16:41:49 44 thank you for accommodating my movements, I'm very grateful
16:41:52 45 for that.
16:41:53 46
16:41:53 47 COMMISSIONER: You're appearing for the ABC in this

16:41:56 1 application, is that right?

16:41:57 2

16:41:58 3 MR DAWSON: I am, yes.

16:41:59 4

16:41:59 5 MR WOODS: Commissioner, as you're aware on 10 December the
16:42:03 6 ABC aired 20 minutes or so of footage on the 7.30 Report of
16:42:10 7 an interview with Ms Gobbo. During that interview Ms Gobbo
16:42:14 8 spoke about a number of things that are relevant to the
16:42:16 9 Terms of Reference, including her motivation to become an
16:42:20 10 informer with Victoria Police and spoke about various
16:42:23 11 individuals whose interests may be effected. Following
16:42:27 12 that the Commission issued a Notice to Produce on the ABC
16:42:31 13 for unedited footage. That was provided by the ABC and has
16:42:36 14 been reviewed by the Commission. It's clear that just the
16:42:42 15 same as the 20 minutes that was aired, there is also
16:42:45 16 material that might effect interests of a number of people,
16:42:49 17 but moreover is relevant to the Terms of Reference in that
16:42:52 18 unedited footage. It's more than three hours I think and
16:42:55 19 less than four hours, I can't remember exactly how long it
16:43:00 20 is. We have a transcript of that footage. Recently
16:43:04 21 Mr Hargreaves on behalf of the handlers made, wrote to the
16:43:08 22 Commission asking whether or not such footage had been
16:43:10 23 obtained by the Commission and if so requesting a copy.
16:43:15 24 The Commission then wrote to the ABC, who in providing the
16:43:20 25 documents, the footage, had said it sought a right to be
16:43:25 26 heard were the footage to be provided to any other parties.
16:43:28 27 The letter was sent to the ABC advising of the request and
16:43:32 28 also copies to each of the other parties with standing
16:43:38 29 leave. Mr Dawson will no doubt make submissions as to the
16:43:42 30 ABC's position, but just briefly, I'll say that from
16:43:46 31 counsel assisting's point of view the transcript at least,
16:43:51 32 rather than the audiovisual, which I think might be too
16:43:57 33 cumbersome to edit and hand over, the transcript of the
16:44:00 34 interview is something that is relevant, it's something
16:44:03 35 that might effect the interests of various parties with
16:44:06 36 standing leave, and in my submission like any other
16:44:09 37 document that meets that criteria, should be handed to each
16:44:12 38 of those parties. Obviously it would require a PII review
16:44:19 39 prior to that happening which I think, having read the
16:44:23 40 transcript and viewed the footage, would be something that
16:44:26 41 could be done very quickly given its contents. That's
16:44:30 42 counsel assisting's position in relation to the
16:44:34 43 application. I think the application is properly made by
16:44:36 44 Mr Chettle, but in outlining counsel assisting's position I
16:44:40 45 think I've probably encompassed everything that he would
16:44:44 46 say.
16:44:44 47

16:44:45 1 COMMISSIONER: Is there anything you wanted to add,
16:44:47 2 Mr Chettle?
16:44:47 3
16:44:48 4 MR CHETTLE: I adopt Mr Woods' submissions.
16:44:49 5
16:44:50 6 COMMISSIONER: Thank you. Does anybody else want to say
16:44:51 7 anything before we hear from Mr Dawson?
16:44:54 8
16:44:54 9 MR HOLT: No, we adopt Mr Woods' position, Commissioner. I
16:44:57 10 should indicate we had anticipated the need for PII review
16:45:02 11 hearing, but there is a transcript, it will make that
16:45:04 12 easier. As per Mr Woods' indication that there are
16:45:06 13 unlikely to be significant issues, we have resources set
16:45:09 14 aside to do that as soon as the Commission orders.
16:45:12 15
16:45:12 16 COMMISSIONER: Does anyone want to say anything?
16:45:16 17
16:45:17 18 MR COLEMAN: Nothing in addition.
19
20 COMMISSIONER: Nothing in addition but you're joining in,
21 are you?
22
16:45:19 23 MR COLEMAN: We don't know what's in it of course but we'd
16:45:22 24 like to see it if counsel assisting thinks it may affect
16:45:26 25 interested parties.
16:45:27 26
27 COMMISSIONER: Yes, all right then. Thanks Mr Coleman.
16:45:28 28 Yes, Mr Dawson, over to you. What do you have to say as to
16:45:30 29 why it shouldn't be provided?
16:45:30 30
16:45:31 31 MR DAWSON: Thank you very much, Commissioner. Could I
16:45:33 32 inquire first of all before I start, just so I know how
16:45:37 33 freely I should speak or how particularly I should speak,
16:45:41 34 is the courtroom closed or is there otherwise a
16:45:44 35 non-publication order over this hearing or should I speak
16:45:50 36 carefully?
16:45:50 37
16:45:51 38 COMMISSIONER: You should speak carefully, it's a public
16:45:53 39 hearing. There's no non-publication order at the moment.
16:45:57 40
16:45:57 41 MR DAWSON: Thank you, I just wanted to make sure before I
16:46:01 42 went into anything in the unedited footage before dealing
16:46:07 43 with the terms on which access might be granted, that kind
16:46:10 44 of thing. But I can deal with that. Can I start just by
16:46:11 45 saying - - -
16:46:12 46
16:46:12 47 COMMISSIONER: Mr Dawson, sorry to interrupt, in terms of

16:46:15 1 that, what is proposed that it would be public interest
16:46:18 2 immunity reviewed and that would also take into account any
16:46:22 3 suppression or other orders that would be affected,
16:46:26 4 Victoria Police believe me does a very thorough job on
16:46:29 5 that, so all those matters would be removed, any matters
16:46:31 6 that could lead to any danger to her or her family would be
16:46:35 7 removed. So that's the first thing.

16:46:39 8
16:46:39 9 MR DAWSON: No, I understand that, thank you. Can I start
16:46:44 10 by saying that our intention in appearing today is first to
16:46:51 11 ensure that we assist the Commission appropriately, as
16:46:55 12 we've sought to date to do in relation to these Notices to
16:46:59 13 Produce. But also to protect the ABC's interests.
16:47:06 14 Ultimately we invite the Commission to treat the unedited
16:47:10 15 footage and the transcript of it as material akin to
16:47:15 16 material that attracts the description commercial in
16:47:18 17 confidence for commercial entities, I will turn to that and
16:47:23 18 say something briefly about that in a moment if I may. We
16:47:27 19 understand that the application relates to the unedited
16:47:30 20 footage and we would embrace Mr Woods' proposition that the
16:47:35 21 transcript is the most convenient way to grant access to
16:47:38 22 anything in that material if it's considered appropriate to
16:47:41 23 do so, but - - -

16:47:43 24
16:47:43 25 COMMISSIONER: Mr Chettle has indicated his agreement with
16:47:45 26 that, it's all he's asking for.

16:47:49 27
16:47:49 28 MR DAWSON: Yes, thank you. Thank you very much for that
16:47:51 29 indication. We had been proceeding on the basis, I must
16:47:55 30 say, that it was only an application brought by Ms Gobbo's
16:48:01 31 police handlers and no other party, but having heard
16:48:06 32 Mr Woods indicate that in the opinion of counsel assisting
16:48:10 33 there may be other parties to the proceedings whose
16:48:14 34 interests are affected, should I proceed on the basis that
16:48:17 35 the application for any access proposed might be given to
16:48:22 36 other interested parties?

16:48:23 37
16:48:24 38 COMMISSIONER: Two other witnesses who have a legitimate
16:48:26 39 interest in the material, yes.

16:48:30 40
16:48:30 41 MR DAWSON: Yes. Well, I'll do that.

16:48:33 42
16:48:33 43 COMMISSIONER: At this stage all that is suggested is those
16:48:36 44 with standing leave who are, Mr Woods?

16:48:38 45
16:48:39 46 MR WOODS: Well, just before I answer that, Commissioner,
16:48:42 47 it's also the case one would expect that there might be

16:48:46 1 things that Ms Gobbo says or propositions she puts in the
16:48:50 2 interview that parties, certainly including counsel
16:48:53 3 assisting, might want to put to Ms Gobbo in open hearings,
16:48:57 4 her answers that she gave to the ABC. I think Mr Dawson
16:49:00 5 should expect that subject to a PII review and any matters,
16:49:05 6 specific matters that he can convince the Commission should
16:49:09 7 be removed, that it would become a public document in due
16:49:13 8 course.

16:49:13 9
16:49:13 10 COMMISSIONER: Yes, I think that's fair, yes.

16:49:17 11
16:49:17 12 MR DAWSON: Yes, I'm grateful for that indication. That is
16:49:20 13 really the focus of our concern. What I wanted to
16:49:26 14 highlight, and perhaps I can do it by reference to the
16:49:30 15 police handlers as an example, is that in the several hours
16:49:36 16 of footage and the many pages of transcript, there are,
16:49:41 17 using the police handlers as an example, only a very
16:49:46 18 limited number of references to them. As the Commission
16:49:53 19 has probably already gleaned for itself, with respect,
16:49:57 20 there are many answers in the unedited footage where
16:50:01 21 Ms Gobbo declines to answer particular questions or go into
16:50:04 22 detail about certain matters on the basis that those are
16:50:08 23 matters before the Commission and it's not appropriate for
16:50:10 24 her to do so. And we have conducted, in the time we've
16:50:18 25 had, a review of the transcript to see how much, in terms
16:50:22 26 of quantity, is there, without assessing or attempting to
16:50:26 27 assess the relevance of it, about the police handlers and
16:50:30 28 there were some items in the 42 minutes or so that were
16:50:36 29 broadcast that related to those handlers and there are
16:50:39 30 about an additional six or seven lines of transcript where
16:50:43 31 they're mentioned but they're not otherwise referred to.
16:50:46 32 So what that raised in our minds and we respectfully raise
16:50:50 33 it with the Commission, is what is the forensic purpose of
16:50:55 34 having access to that material for those parties, that is
16:51:00 35 the police handlers using them as an example for the
16:51:04 36 moment? We are probably, the ABC, the first party not in a
16:51:11 37 position to make a judgment about that, we would accept
16:51:13 38 that that is a matter for the Commission and for counsel
16:51:17 39 assisting, but what it does throw up is that if the
16:51:21 40 Commission is minded to grant access, having been satisfied
16:51:25 41 that there's a legitimate basis on which to do so, and I
16:51:29 42 might return to that in a moment, we would be willing, if
16:51:34 43 the Commission thought it appropriate, to prepare extracts
16:51:40 44 of the transcript relevant to the particular individuals or
16:51:43 45 parties with leave so that extracts of the transcript were
16:51:49 46 provided rather than the entirety of the document simply
16:51:53 47 being made available with the intention, which I must say

16:51:57 1 we find a little alarming that it would become a public
16:52:01 2 document in due course. So we are keen to convey that we
16:52:05 3 are willing to cooperate if access is considered
16:52:09 4 appropriate, and perhaps that has - - -
16:52:11 5
16:52:11 6 COMMISSIONER: She did give a public interview on
16:52:14 7 nationwide television, Mr Dawson.
16:52:17 8
16:52:17 9 MR DAWSON: That's certainly true, I'm not suggesting
16:52:21 10 otherwise.
16:52:21 11
16:52:22 12 COMMISSIONER: I don't know why you'd be surprised why it
16:52:22 13 should become a public document, but anyway. I must be
16:52:27 14 missing something.
16:52:28 15
16:52:29 16 MR DAWSON: Can I address that directly then. The reason
16:52:31 17 that we're concerned about it becoming a public document is
16:52:34 18 that out of the three hours or four hours or so of footage
16:52:37 19 that was recorded, only 42 minutes have been broadcast and
16:52:42 20 the balance of it has been retained by the ABC with the
16:52:45 21 intention that in the future segments of it, when
16:52:51 22 appropriate, and obviously bearing in mind any restrictions
16:52:55 23 on publications, the subject matter imposed by the
16:53:00 24 Commission or any other body, that material would be
16:53:03 25 broadcast as part of future programming and there is, it's
16:53:09 26 self-evident, if I may say so, from the terms of the
16:53:12 27 interview and the footage itself, that a lot of time and
16:53:15 28 resources went into having that interview recorded and
16:53:20 29 making it possible. And it was obviously, from the ABC's
16:53:27 30 point of view, very significant that Ms Gobbo chose to
16:53:31 31 speak as she did to the ABC and not to anybody else. We're
16:53:36 32 not a commercial organisation obviously, we're the national
16:53:40 33 broadcaster, but that doesn't deprive this material of real
16:53:45 34 value to the ABC as the national broadcaster fulfilling its
16:53:51 35 obligations under its statutory Charter. Our concern is
16:53:55 36 not to interrupt at all the proper process of the
16:53:59 37 Commission and I am anxious to convey to the Commission
16:54:02 38 that if the Commission takes the view that the material is
16:54:05 39 appropriately the subject of access or limited access to
16:54:09 40 the parties before it that we wish to cooperate as best we
16:54:12 41 can in achieving that, but we would like to do it in a way
16:54:15 42 that preserves the ABC's interest in the material and
16:54:19 43 preserve the value to the ABC in the material. And it's
16:54:23 44 not an answer to that concern, if I may respectfully say
16:54:28 45 so, to say, "Well she's given a public interview". Of
16:54:32 46 course she did, but it's what we didn't broadcast that
16:54:36 47 remains of value. If the material that we have, that is

16:54:39 1 the ABC, is made public in some way or is accessible by,
16:54:46 2 for example, other media, then the value of that unedited
16:54:50 3 footage, the unbroadcast material, is immediately
16:54:52 4 destroyed.
16:54:52 5
16:54:53 6 COMMISSIONER: The obvious answer to that then would be to
16:54:56 7 only allow the part to be tendered that was relevant to any
16:55:01 8 cross-examination of her, but Mr Woods might have something
16:55:03 9 to say about that.
16:55:04 10
16:55:05 11 MR DAWSON: Yes, and that's the kind of approach we would
16:55:07 12 urge on the Commission to balance the competing interest.
16:55:10 13 Obviously if this material is relevant to the Commission's
16:55:15 14 Terms of Reference and it's as a matter of fairness
16:55:19 15 appropriate in the Commission's view that parties have
16:55:22 16 access to it so that relevant questions can be put on the
16:55:25 17 basis of it, it's not something for the ABC to stand in the
16:55:30 18 way of in the present circumstances. What we wish to do is
16:55:34 19 to ensure that our position is protected, which we say is,
16:55:40 20 we hope persuasively, just like any third party who is
16:55:45 21 compelled to produce documents to a Royal Commission or a
16:55:47 22 court, courts regularly take steps to protect the
16:55:54 23 commercial interests or other interests of those third
16:55:57 24 parties who comply with Notices to Produce to defendants
16:56:02 25 and other compulsory processes. So we would invite the
16:56:11 26 Commission, the first step to consider, having itself seen
16:56:15 27 the entirety of the footage and read the entirety of the
16:56:19 28 transcript, what parts of it ought to be considered for
16:56:23 29 access by the particular individuals that Mr Woods has
16:56:28 30 referred to, including the police handlers, and to
16:56:33 31 communicate with the ABC which parts of the transcript they
16:56:37 32 would propose to give access to, given the Commission's and
16:56:43 33 counsel assisting's superior knowledge obviously of the
16:56:48 34 matters of concern and the Terms of Reference compared to
16:56:50 35 ours, and we will cooperate in that endeavour to prepare
16:56:55 36 extracts for each of the parties seeking access. And if
16:56:59 37 there's a submission to be made about why access ought not
16:57:02 38 be granted to that portion of the transcript, we can make
16:57:06 39 it at that time rather than at a general level, which might
16:57:09 40 be unhelpful and difficult to allocate to any particular
16:57:15 41 party or issue. So that's the first practical process we
16:57:21 42 would invite. And we would also invite the Commission at
16:57:28 43 the appropriate time, after the PII review's occurred, and
16:57:32 44 at the point where it was proposed that questions be put
16:57:37 45 based on the transcript, that there be some protection by
16:57:42 46 way of an order under s.26 of that material if necessary.
16:57:47 47 We don't ask simply for blanket orders because obviously

16:57:51 1 there will be some material in the transcript and in the
16:57:55 2 footage which we might accept is not material that attracts
16:58:02 3 the description in s.26(2). For example, we may not
16:58:07 4 contend it's sensitive or would cause prejudice or that
16:58:12 5 it's otherwise appropriate to prohibit or restrict the
16:58:17 6 publication of that information as part of the public
16:58:19 7 record of the inquiry, but we would certainly wish to be
16:58:22 8 heard once there's some knowledge of what it is that's
16:58:27 9 proposed to be the basis of questioning and what it is
16:58:30 10 proposed be put before the Commission as a public document,
16:58:34 11 that is some extract of the transcript. But we wish to be
16:58:39 12 sensible about it, not difficult or unrealistic, but we are
16:58:44 13 legitimately concerned about ensuring that the unedited
16:58:48 14 footage and its transcript is appropriately protected in
16:58:52 15 the circumstances.

16:58:57 16
16:58:57 17 COMMISSIONER: Are you finished?

16:58:59 18
16:59:00 19 MR DAWSON: That's all I wish to say unless there was
16:59:04 20 something you wish to raise directly with me. That's in
16:59:08 21 brief format our position. And if it would assist, we
16:59:16 22 could prepare a short document which proposed the type of
16:59:21 23 protocol I'm talking about so as to facilitate access in
16:59:25 24 the way that we've suggested. And we also would be - - -

16:59:31 25
16:59:32 26 COMMISSIONER: You could have done that for today, you've
16:59:34 27 had notice for some days of this application. So you
16:59:39 28 haven't done so at this stage, but I understand you'd like
16:59:43 29 the opportunity to do that if I accede to your submissions,
16:59:46 30 is that correct?

16:59:48 31
16:59:49 32 MR DAWSON: Yes, it is, Commissioner, and I would also
16:59:51 33 propose an order now to be considered and debated if
16:59:58 34 necessary as the kind of order that we would ask for if
17:00:02 35 parties wished to place material before the Commission with
17:00:07 36 the intention that it becomes public. May I just apologise
17:00:11 37 for not having prepared the protocol before now. I had
17:00:15 38 been proceeding on the understanding, I think things might
17:00:18 39 have overtaken this understanding during the course of the
17:00:22 40 day and I was in court all day and didn't have an
17:00:25 41 opportunity to attend to this, but I had understood the
17:00:29 42 proposal for questioning of Ms Gobbo by parties other than
17:00:33 43 counsel assisting was going to be facilitated by questions
17:00:37 44 being given to counsel assisting who would then ask the
17:00:40 45 questions, rather than direct examination or
17:00:43 46 cross-examination being permitted. I understand that's no
17:00:45 47 longer the position and so our position had been predicated

17:00:50 1 on that being the process, so I apologise for suggesting a
17:00:55 2 protocol without a document. We can certainly turn that
17:00:59 3 overnight and provide it in the course of the morning
17:01:01 4 tomorrow if that would assist.
17:01:03 5
17:01:03 6 COMMISSIONER: Is there anything else you want to say?
17:01:06 7
17:01:06 8 MR DAWSON: No. Thank you for the opportunity to make
17:01:08 9 submissions.
17:01:09 10
17:01:10 11 COMMISSIONER: All right then. Mr Chettle, do you want to
17:01:11 12 say something?
17:01:12 13
17:01:13 14 MR CHETTLE: Very briefly, Commissioner. I have no
17:01:15 15 interest in making, for my part, making the document as a
17:01:21 16 whole a public document. I only seek it so I can use it
17:01:24 17 for the basis of asking questions if necessary. I would
17:01:28 18 not be tendering parts of it if she were to accede that's
17:01:33 19 what she said. From my point of view I'm quite happy to
17:01:36 20 give an undertaking that I would not use or disclose it in
17:01:40 21 any other way than what I've I have just indicated.
22
23 COMMISSIONER: Thank you.
24
17:01:41 25 MR CHETTLE: I understand the confidence and we respect
17:01:43 26 that.
17:01:44 27
17:01:44 28 COMMISSIONER: Does anybody else want to be heard, Mr Holt?
17:01:47 29
17:01:47 30 MR HOLT: Commissioner, there are probably two aspects to
17:01:49 31 it. One is the provision of the document. With respect
17:01:53 32 it's difficult for those with some knowledge of this
17:01:58 33 proceeding to understand how the document might be
17:02:04 34 divisible for the interests of the parties at the Bar
17:02:05 35 table. But adopting something Mr Chettle has said, we
17:02:06 36 cannot see immediately any need for the entirety of the
17:02:09 37 transcript to be tendered, unless the Commission wished it
17:02:12 38 to be so. It may be there are portions that become
17:02:16 39 particularly relevant that counsel assisting wish to
17:02:17 40 tender. That could be fine, but one would imagine the
17:02:19 41 legitimate issues the ABC has raised can be dealt with
17:02:24 42 simply by tendering only relevant portions or simply by the
17:02:30 43 transcript of those matters being put in cross-examination
17:02:31 44 and we certainly don't seek anything further than that.
45
17:02:32 46 COMMISSIONER: Yes. Anybody else want to say anything?
17:02:32 47

17:02:32 1 MR COLEMAN: We agree, Commissioner, that there's a
17:02:35 2 difference between the provision of the whole of the
17:02:37 3 transcript and the use of parts of it, which can be
17:02:41 4 protected in the manner that others have said. It's all
17:02:45 5 about context. It's all right for the ABC to say, "We'll
17:02:48 6 give what parts are relevant to a particular party", but
17:02:50 7 there may be things they miss that may be thought to be
17:02:54 8 relevant by the party once they see the whole of the
17:02:55 9 transcript.
17:02:55 10
17:02:56 11 COMMISSIONER: No one is suggesting that it should be given
17:02:59 12 on anything other than a confidential basis at this stage?
17:03:03 13
17:03:03 14 MR COLEMAN: Absolutely.
17:03:03 15
17:03:05 16 COMMISSIONER: Yes, Mr Woods.
17:03:05 17
17:03:05 18 MR WOODS: Only if it would assist I've got a couple of
17:03:06 19 things to say, Commissioner. We only have four half days
17:03:09 20 at this stage with Ms Gobbo and that commences in a little
17:03:12 21 over 15 hours for the protocol to play out properly, and
17:03:16 22 we're certainly wanting to put publicly some of the things
17:03:20 23 Ms Gobbo said to the ABC to Ms Gobbo and that would be
17:03:25 24 expected we would get to some of those things tomorrow.
17:03:29 25 It's simply not going to play out in that amount of time.
17:03:35 26 The fact there's only a few references to handlers is
17:03:39 27 undoubtedly the case. What was seen in the footage that
17:03:43 28 was aired and is seen through the uncut version is Ms Gobbo
17:03:48 29 is talking about her motivations in quite a lot of detail.
17:03:51 30 That's very relevant to a number of parties who have
17:03:54 31 standing leave. It would be difficult, difficult for those
17:03:59 32 parties to make submissions about it because they haven't
17:04:01 33 read or seen the uncut footage, but it's difficult to
17:04:05 34 divide the transcript in that way. Next, I just want to
17:04:11 35 say a couple more things. One is the commercial, perhaps
17:04:14 36 not commercial, the public interests in staging the
17:04:20 37 production or the airing of the footage is something in my
17:04:27 38 submission that simply shouldn't come into the analysis.
17:04:31 39 And lastly, it's hardly a surprising thing in the
17:04:35 40 circumstances of when the interview was given and what,
17:04:41 41 given the application that was being made on Ms Gobbo's
17:04:44 42 behalf at around that time to this Commission, trying to be
17:04:47 43 excused from giving evidence, that firstly the Commission
17:04:50 44 would seek to obtain the uncut footage and, secondly, would
17:04:55 45 seek to use the uncut footage. It doesn't really change
17:04:58 46 that, the fact we now have Ms Gobbo coming to give
17:05:02 47 evidence. It's relevant material, it's of interest to

17:05:05 1 parties, in my submission it shouldn't be divided in the
17:05:08 2 way it's being sought. The matters in s.26(2) that were
17:05:13 3 identified, 26(2) I concede is a non-exhaustive list of
17:05:19 4 reasons why something like this might not be published, but
17:05:24 5 the factors that are listed there before the provision that
17:05:28 6 says any other thing that the Commission might see as
17:05:31 7 relevant, don't tend to protect or to show that Parliament
17:05:40 8 were seeking to protect documents of this nature and that's
17:05:43 9 all I wanted to say.

17:05:44 10
17:05:45 11 COMMISSIONER: Could I just clarify, at this stage I
17:05:47 12 understood we were just dealing with Mr Chettle's
17:05:51 13 application and the application of other people who might
17:05:55 14 be potentially affected by it to use the material, and
17:05:59 15 Mr Chettle's made it very clear the limited use that will
17:06:04 16 be and that the material would be provided on a
17:06:06 17 confidential basis. Are you suggesting that the Commission
17:06:10 18 intends to tender the uncut material?

17:06:16 19
17:06:17 20 MR WOODS: Not necessarily. My point is that there are
17:06:20 21 issues throughout the transcript that might well be put to
17:06:23 22 Ms Gobbo, depending on the time that we've got with her.

17:06:26 23
17:06:27 24 COMMISSIONER: Sure.

17:06:27 25
17:06:28 26 MR WOODS: So my point was rather that it shouldn't be
17:06:31 27 assumed that it's only a particular bit here or there that
17:06:35 28 will be referred to. We simply don't know at this stage.

17:06:38 29
17:06:38 30 COMMISSIONER: No, I appreciate that, but I think it's
17:06:42 31 probably not necessary for me to rule at this stage on
17:06:45 32 whether the whole footage, as it were, goes in as a public
17:06:54 33 exhibit.

17:06:54 34
17:06:54 35 MR WOODS: No, I certainly agree with that. I just wanted
17:06:57 36 to make the point because it didn't seem apparent that it
17:07:00 37 was clear to everyone that there would be broad questions
17:07:04 38 based on, there might well be broad questions based on the
17:07:08 39 entire transcript. Because we're having a public hearing,
17:07:12 40 by necessity some of those things will be aired, they'll be
17:07:16 41 made available to the public. Certainly things that
17:07:19 42 haven't got any risk of trespassing against PII or anything
17:07:24 43 like that that is.

17:07:25 44
17:07:25 45 COMMISSIONER: At this stage unless it was necessary to
17:07:30 46 tender the transcript or the video as a prior inconsistent
17:07:37 47 statement, you wouldn't be seeking to tender it at this

17:07:42 1 stage?
17:07:43 2
17:07:43 3 MR WOODS: No, at this stage, certainly there's no
17:07:45 4 intention of tendering it during Ms Gobbo's evidence at
17:07:48 5 this stage. I'm simply supporting the application that's
17:07:51 6 been made that parties should have access to the
17:07:54 7 transcript.
17:07:54 8
17:07:54 9 COMMISSIONER: Sure.
17:07:55 10
17:07:55 11 MR WOODS: If that happens, if they're required to give
17:07:58 12 particular undertakings, then so be it, but as a matter of
17:08:02 13 fairness in my submission they should be provided with it.
17:08:04 14
17:08:05 15 COMMISSIONER: Thank you. Yes, Mr Dawson.
17:08:07 16
17:08:09 17 MR DAWSON: Thank you very much, Commissioner. Can I just
17:08:12 18 say, having heard those submissions and the careful way in
17:08:18 19 which the parties are proposing to proceed, and bearing in
17:08:22 20 mind the practical problem of time, I think it would be
17:08:29 21 appropriate for us to indicate that putting in place the
17:08:35 22 protocol we've suggested sounds like it's going to be an
17:08:39 23 interruption rather than to be of assistance. If that's a
17:08:44 24 view that you have, Commissioner, then, with respect, it
17:08:48 25 might be a more practical solution to the present debate
17:08:54 26 for access to the transcript to be given to those who seek
17:09:01 27 it on the basis that it be treated confidentially, as
17:09:06 28 Mr Chettle has responsibly proposed. That of course would
17:09:12 29 serve everybody's interests for the moment and allows the
17:09:18 30 risk of things being missed or matters of context being
17:09:23 31 kept from the parties or the Commission. And I think
17:09:27 32 attempting to be cooperative, if that's the view the
17:09:31 33 Commission comes to, then we don't want to stand in the way
17:09:34 34 of that practical course. We are obviously encouraged by
17:09:39 35 the fact that what's proposed is that if there is to be
17:09:43 36 cross-examination it may not be necessary for any part of
17:09:45 37 the transcript to be tendered, depending on the answers.
17:09:49 38 But if it is necessary in the view of a particular party to
17:09:52 39 tender parts of the transcript, it will be on a portion by
17:09:57 40 portion basis and it's not at the moment proposed, although
17:10:04 41 I appreciate counsel assisting hasn't ruled this out, but
17:10:07 42 it's not for the moment proposed that the whole of the
17:10:10 43 transcript would be tendered so as to risk it being a
17:10:13 44 public document. If there are parts that are proposed to
17:10:18 45 be tendered after the cross-examination, or indeed if it's
17:10:22 46 proposed that the whole of it be tendered, we would
17:10:25 47 appreciate being heard at that point as to whether or not -

17:10:32 1 not whether the transcript should be received into evidence
17:10:36 2 or portions of it, but more if there should be an order
17:10:40 3 under s.26, if at all. There's real possibility that if
17:10:44 4 only portions are tendered, for example, to establish a
17:10:49 5 inconsistent statement by Ms Gobbo versus what she might
6 say during the evidence she gives during the Royal
17:10:50 7 Commission hearings, there's a real possibility we wouldn't
17:10:57 8 seek to be heard about any publication restriction because
17:11:01 9 if it's only a portion then the interest we're seeking to
17:11:05 10 protect wouldn't be imperilled. I can certainly see that
17:11:09 11 as being the most likely situation at that point. If it's
17:11:13 12 the whole transcript then that's a different story and we
17:11:16 13 would like to be heard at that later point then, if that
17:11:19 14 can be accommodated. So practically, can I suggest that
17:11:26 15 rather than provide any protocol I'd outline, appreciating
17:11:32 16 the timing difficulties and counsel assisting's concerns
17:11:34 17 about context, that restricted access be granted to the
17:11:39 18 transcript on the basis that it be treated confidentially
17:11:41 19 and not disclosed, and then there be a protocol in place
17:11:45 20 for us to be notified if some portion of the transcript is
17:11:48 21 proposed to be tendered, or alternatively the whole of the
17:11:52 22 transcript is proposed to be tendered so that we can appear
17:11:56 23 and be heard as to what order, if any, we propose under
17:12:01 24 s.26 be made at that point in time.

17:12:03 25
17:12:03 26 COMMISSIONER: I think we'll do that by way of written
17:12:06 27 submissions, thanks Mr Dawson. We're very busy here. Yes,
17:12:11 28 all right.

17:12:11 29
17:12:12 30 MR DAWSON: I appreciate that.

17:12:12 31
17:12:13 32 COMMISSIONER: All right, thank you.

33
17:12:15 34 Under s.12 of the *Royal Commission Act*: "It may
17:12:19 35 conduct its inquiry in any manner it considers appropriate
17:12:21 36 subject to the requirements of procedural fairness and the
17:12:23 37 Letters Patent establishing the Commission, and the Act and
17:12:26 38 any regulations under the Act, and any other Act, the rules
17:12:33 39 of evidence, practising procedure to courts of record do
17:12:38 40 not bind the Commission which may inform itself on any
17:12:43 41 matter as it sees fit".

42
17:12:45 43 I consider it appropriate in this case that the
17:12:50 44 transcript of the material not used by the ABC during its
17:13:00 45 recent interview of Ms Gobbo should be provided to the
17:13:07 46 parties with standing leave on a confidential basis, with
17:13:16 47 the prospect that Victoria Police will, as a matter of

17:13:22 1 priority, redact the transcript for public interest
17:13:31 2 immunity.
3

17:13:31 4 In the meantime, parties with standing leave who wish
17:13:36 5 to examine Ms Gobbo about anything she may have said in
17:13:41 6 this material may do so on the basis of it and I will deal
17:13:52 7 with any application to tender extracts or the whole of the
17:14:02 8 transcript, or indeed the whole of the uncut material,
17:14:09 9 including video, if and when that arises, at which point I
17:14:16 10 will give Mr Dawson, on behalf of the ABC, an opportunity
17:14:20 11 to make written submissions.
12

17:14:23 13 At this stage I'm not satisfied that it is appropriate
17:14:26 14 for me to make any orders under s.26 of the *Inquiries Act*
17:14:31 15 as to non-publication.
16

17:14:34 17 Yes all right then, we'll adjourn.
18

17:14:36 18
19 MR DAWSON: If the Commissioner pleases.
20

17:14:37 21 MR HOLT: Sorry Commissioner, I'd be very grateful if the
17:14:42 22 transcript can be provided to us immediately by those
17:14:44 23 assisting.
24

17:14:44 24
17:14:45 25 MR WOODS: Happening at this very moment.
26

17:14:46 26
17:14:46 27 COMMISSIONER: It will happen forthwith, the parties
17:14:49 28 present will be given a copy of it on a confidential basis
17:14:52 29 and Victoria Police will be in that category of course and
17:14:58 30 will be invited to - - -
31

17:14:59 31
17:15:00 32 MR HOLT: Sorry, Commissioner, I think the proposal from
17:15:01 33 counsel assisting, and certainly as I had understood it,
17:15:04 34 was that we would have the transcript first for that
17:15:06 35 purpose. There is at least - we'll do it now effectively.
17:15:10 36 We'll have that reviewed immediately, but we don't know
17:15:14 37 what we don't know.
38

17:15:15 38
17:15:15 39 COMMISSIONER: Is that right?
40

17:15:17 40
17:15:17 41 MR WOODS: I think so. It's not going to take a long time
17:15:20 42 and I think as a matter of caution it should be done that
17:15:23 43 way.
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17:15:23 44
17:15:23 45 MR HOLT: We will prioritise it.
46

17:15:26 46
17:15:26 47 COMMISSIONER: It will be a couple of days before there's

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

17:15:28 1 cross-examination needed on that point.
17:15:30 2
17:15:30 3 MR HOLT: People will need to prepare and we will do it on
17:15:33 4 that basis. I'm told we already have it.
17:16:04 5
17:16:05 6 COMMISSIONER: All right then, we'll adjourn until 9.30
17:16:08 7 tomorrow morning.
17:16:10 8
17:16:13 9 ADJOURNED UNTIL TUESDAY 4 FEBRUARY 2020

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