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Royal Commission into the Management of Police Informants

STATEMENT OF DEPUTY COMMISSIONER WENDY MAREE STEENDAM IN RELATION TO TERMS OF REFERENCE 3 AND 4

- 1 My full name is Wendy Maree Steendam. I am a Deputy Commissioner, Specialist Operations, Victoria Police. I have held this position since November 2018.
- 2 I have previously made two statements to the Royal Commission dated 4 December 2019 and 20 January 2020. Those statements addressed matters that concerned the Royal Commission's inquiry in relation to Terms of Reference 1 and 2.
- 3 This supplementary statement provides responses to 27 questions asked of me in a letter from the Royal Commission dated 3 March 2020, which concern the Commission's inquiry in relation to Terms of Reference 3 and 4.
- 4 In relation to my qualifications, educational background and employment history, I refer to paragraphs 4 to 15 of my statement dated 4 December 2019.
- 5 As Deputy Commissioner, Specialist Operations, I have executive responsibility for the promulgation and implementation of Victoria Police's human sources policy, as described below.
- 6 As discussed below, the human source policy continues to evolve. As at the date of making this statement, we are in a transition to implementing a new Victoria Police Manual (VPM) on human sources. This is consistent with our commitment to continuous improvement.
- 7 Any further proposed changes to human source management and disclosure frameworks will need to be considered in the context of the organisation's service delivery model, broader systems and organisational interdependencies, and the current financial landscape. In addition, several significant changes discussed in this statement in response to the questions asked will require substantial resourcing. This includes the proposal to move to dedicated human source handling teams, specialised disclosure officers and the need for an improved information technology system for case and document management. Implementation of these approaches will have significant resourcing implications for Victoria Police.
- 8 It is also important to note the following at the outset:

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- (a) the issues relating to the recruitment and handling of Nicola Gobbo occurred between approximately 10 to 25 years ago and the human source management model and governance framework has evolved significantly since that time;
- (b) the current human source management model and governance framework would not permit what occurred with Nicola Gobbo to occur again. This is borne out by the fact that there has not been a repeat of the use of a lawyer as a human source where legal obligations of privilege and confidence were breached; and
- (c) Victoria Police welcomes scrutiny of its current practices and procedures and will consider any recommendations in the context of its commitment to the continuous improvement of its human source management model and governance framework and its approach to complying with disclosure obligations in criminal cases.

CURRENT POLICY FRAMEWORK

Qu 2 Please outline the changes that Victoria Police intends to include in the version of the *Victoria Police Manual Human Sources* that is proposed for implementation in March 2020, including:

- 2(a) The nature, purpose and drivers of these changes.**
- 2(b) The decision-making and governance processes adopted by Victoria Police to consider and develop changes to its policy framework for the management of human sources.**
- 2(c) The processes adopted by Victoria Police to obtain operational input to inform changes to its policy framework.**
- 2(d) How Victoria Police informs officers of changes to its policy framework.**

9 Victoria Police has a structured approach for policy development. Policy is developed as part of a process of continuous improvement and to adapt to new and emerging issues within our operating environment.

10 In his statement dated 22 March 2019, Assistant Commissioner Paterson outlined the continual development of human source policies from our first policy in 1986 to the current VPM Human Sources policy introduced in March 2016 and updated in May 2018 (**Current VPM Human Sources Policy**)¹.

¹ VPL.0002.0001.1776.

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- 11 Since the events that led to this Royal Commission, which occurred between approximately 10 to 25 years ago, Victoria Police has continued to work on improving its policies in relation to human sources. The approach to and understanding of human source policy worldwide has developed rapidly and significantly over that time and Victoria Police has more than kept pace with those developments.
- 12 Part of this process of improvement means that since the Current VPM Human Sources Policy was published, the Human Source Management Unit (**HSMU**), the Central Source Registrar (**CSR**) and Assistant Commissioner Paterson have been continuing to consider improvements to the policy in preparation for an updated policy, the **New VPM Human Sources Policy**,² which will replace the Current VPM Human Sources Policy.
- 13 Drivers for the improvements to the New VPM Human Sources Policy include:
 - (a) information gleaned from the international study tour undertaken by Assistant Commissioner Paterson and Superintendent Mahony in February 2019;
 - (b) information and consultation with the Australasian Human Source Working Group;
 - (c) feedback from human source handlers, controllers, Officers in Charge (**OIC**) and Local Source Registrars (**LSR**);
 - (d) feedback received from the HSMU, the dedicated unit which manages high risk sources, the Victorian Government Solicitor's Office (**VGSO**) and court matters where human source issues have been raised;
 - (e) learnings from issues explored in the Royal Commission hearings; and
 - (f) consulting with subject matter experts.
- 14 A small number of further amendments have been made to the New VPM Human Sources Policy since Victoria Police provided a draft to the Royal Commission. Where I refer to the New VPM Human Sources Policy in this statement, I am referring to the most recent iteration of that document.³ In this statement, I address the key substantive changes made to the New VPM Human Sources Policy. However, these changes do mean that at the time of making this statement, Victoria Police's approach to the registration and management of human sources is in a state of transition. While this requires additional explanation for the changes and makes explaining matters more complex than it would

² VPL.0005.0285.0001

³ VPL.0005.0285.0001

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otherwise have been, it is essential that Victoria Police continues to develop and improve its policies.

- 15 The New VPM Human Sources Policy has been approved by me in consultation with Victoria Police's Executive Command and thus articulates Victoria Police's position on the appropriate management of human sources. It will not be implemented until after the delivery of training to all relevant members. Training has commenced and will continue during April 2020, and it is proposed that the New VPM Human Sources Policy will take effect from 4 May 2020. There is presently no indication that this timeframe will not be met, however, ongoing training will be subject to any limitations imposed by Victoria Police's response to the COVID-19 pandemic.
- 16 The purpose of the New VPM Human Sources Policy, is to ensure that the management and governance of human sources by Victoria Police reflects international best practice, local and national learnings and learnings developed through the Royal Commission. Victoria Police seeks to be a leader in this space and to have a model that is recognised as reflecting international best practice.
- 17 The New VPM Human Sources Policy has been developed primarily by Assistant Commissioner Paterson and Superintendent Mahony. Assistant Commissioner Paterson reports directly to me. I had significant input into the revised policy and hold executive responsibility to approve the policy and its promulgation into the Victoria Police Manual. As Deputy Commissioner, Specialist Operations, I am ultimately accountable for ensuring its effective implementation.
- 18 Assistant Commissioner Paterson, as the Assistant Commissioner for the Intelligence and Covert Support Command (**ICSC**) of Victoria Police, is the policy owner of the Current VPM Human Sources Policy and the New VPM Human Sources Policy.
- 19 When a near-to-final draft was produced, the policy was shared with Victoria Police subject matter experts, operational members undertaking the management of high risk human sources, the Legal Services Department, Corporate Policy Unit (Capability Department), Deputy Commissioner, Specialist Operations and Deputy Commissioner, Regional Operations.
- 20 Victoria Police has obtained operational input into the draft policy through consultation with:
 - (a) all members of a dedicated unit that manages high risk human sources;
 - (b) staff at the HSMU who provide ongoing subject matter expert advice to all members of human source handling teams across Victoria Police;

(c) staff in other dedicated units across Victoria Police that manage human sources; and

(d) staff who, whilst not in dedicated units, are regularly involved in the management of human sources.

21 Victoria Police informs our members of changes to our policy framework in a number of ways, including Policy In Focus newsletters, targeted email communications, face-to-face training, online training and promulgation of new or updated policy in the Victoria Police Manual. This includes training days with members who work in dedicated teams or have frequent involvement in human source management.

DECISION-MAKING AND GOVERNANCE

Qu 6 Please outline the decision-making responsibilities of relevant personnel involved in the registration and management of human sources, including:

6(a) The role of the Handler, Controller, Officer in Charge, Local Source Registrar, Central Source Registrar, Human Source Management Unit and ICSC Ethics Committee.

Roles and responsibilities

22 The role of the handler, controller, OIC, LSR, CSR, HSMU and the Human Source Ethics Committee (**HSEC**) is set out in section 2 of the New VPM Human Sources Policy.

23 The handling team must comprise the following, as a minimum: a handler, a co-handler, a controller, an OIC and a LSR.

Handler

24 The role of a handler is described in section 2.2 of the New VPM Human Sources Policy. As the name suggests, the handler has the key face-to-face relationship with a human source. They have the primary responsibility for contact with a human source and for initially evaluating the information a source provides. They also have important reporting obligations, as set out below.

25 No member can be assigned to the role of handler (or to any other handling team role) unless they have first completed the **PII** [REDACTED] as a minimum. The **PII** [REDACTED] training, described in my responses to questions 10 and 11, is currently being further developed to ensure that it equips handling teams with the

appropriate knowledge to implement the New VPM Human Sources Policy.⁴ Once the PII training is updated in accordance with the New VPM Human Sources Policy, all relevant members, handlers, controllers, OICs and LSRs will be required to requalify at the PII . This is a mandatory requirement to operate under the new policy.

- 26 All members also receive risk assessment training generally, as it is intrinsically connected with all aspects of policing. The PII includes specialised risk assessment training to address working with human sources.

Controller

- 27 A controller has direct supervision over a handler. The controller must be a Sergeant or above and must be PII qualified, as a minimum, but preferably PII .
- 28 As set out in section 2.4 of the New VPM Human Sources Policy, the controller is responsible for overseeing the human source Interpose file and ensuring that details are completed and maintained as required by the New VPM Human Sources Policy. Controllers are required to carry out 'intrusive', active supervision. This is explained below in answer to question 4(b) and is relevant to the manner of the controller's functions.
- 29 The controller is the first level of governance and they are the first supervisor to assess the registration file and determine its suitability to progress further. Once the registration is approved, the controller has the responsibility for actively supervising the handlers and the ongoing relationship. This involves inspecting the contact reports within 7 days of their creation and ensuring they are appropriate. The controller PII to ensure that they are satisfied with the way the relationship between the handlers and the human source is progressing. It is the controller's role to record any issues they identify and address them with the handling team and where appropriate report up to the OIC on any matters requiring higher level attention.

Officer in charge

- 30 The OIC is a member in charge of a police station, squad, unit or workgroup with line control over staff who are part of a human source handling team (with the exception of the LSR).

⁴ VPL.0005.0280.0087.

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- 31 The OIC becomes part of the handling team and supports the controller by providing advice, analysis of risk and oversight. This is achieved by reviewing the Interpose registration file and discussions with the handling team as required.
- 32 As part of the registration process, the OIC, in consultation with the controller, is required to provide written advice to the LSR and record that advice in the human source Interpose file.

Local Source Registrar

- 33 The LSR is a divisional superintendent with line control over members who register human sources in that division.
- 34 The LSR is responsible for recommending the approval or non-approval for all human source registrations (see New VPM Human Sources Policy at section 3.2). It is the LSR's role to determine if they believe that the registration is necessary and justified and a worthwhile use of resources given the crime issues within their division. The LSR should consider, among other matters, the appropriateness of the training of the members on the proposed handling team and all the risks associated with the source prior to making a recommendation for approval.

Central Source Registrar

- 35 The CSR has oversight of all human source registrations and activity and is the person who occupies the position of Detective Superintendent, Covert Services Division (**CSD**), ICSC.
- 36 The CSR has the final decision on many matters. The CSR will make final decisions where disagreements arise between members over the management of human sources.
- 37 The CSR must authorise all human source identity disclosures prior to any such disclosure. If the LSR disagrees with the decision of the CSR, then the decision can be reviewed by the Assistant Commissioner, ICSC and/or the Deputy Commissioner, Specialist Operations.
- 38 The CSR can refer matters to the HSEC in certain cases, as set out in the New VPM Human Sources Policy.
- 39 In cases of human sources assessed as "Low" or "Medium" risk, the role of CSR, in approving the registration, may be delegated and performed by the HSMU, however the CSR maintains overall authority for all human source governance functions.

Human Source Management Unit

40 The HSMU is responsible for the governance of the human source register, via the Interpose human source module.

41 The HSMU provides oversight in relation to all human source management and ensures compliance with policy as stated in the Current VPM Human Sources Policy and, in the future, the New VPM Human Sources Policy.

42 As set out in New VPM Human Sources Policy at section 2.8, the HSMU:

- (a) oversees all human source management and registration processes and compliance with policy;
- (b) provides specialist advice and support to handlers, controllers, OICs and LSRs;
- (c) is responsible for the governance of the human source register, including via the Interpose human source module;
- (d) is responsible for the coordination of the human source reward payment process and performing the secretariat function for both the Human Source Rewards Committee and the HSEC;
- (e) must conduct checks to ensure that the person recommended for registration is not currently registered;

(f)

(g)

6(b) The effectiveness and efficiency of the current decision-making arrangements.

43 The response to question 6(b) is addressed in my response to question 9.

Qu 7 Please outline the purpose, role and decision-making processes of the ICSC Ethics Committee, including:

7(a) The composition of the Committee.

- 7(b) The factors that guide the Committee's decisions about the registration and management of human sources.
- 7(c) The number of meetings held and matters considered by the Committee each month from 2016 to February 2020.
- 7(d) The average number of days taken by the Committee to decide on a matter following referral.
- 7(e) How the Committee performs its ongoing monitoring and oversight role.

The ICSC and the Human Source Ethics Committee

- 44 The ICSC provides specialist services to policing Regions and Commands across Victoria Police. The HSMU (and the Witness Protection Unit) sits within the ICSC.
- 45 While the Current VPM Human Sources Policy refers to the ICSC Ethics Committee, it is more commonly known as, and now formally referred to as, the HSEC.⁵
- 46 The establishment of the Human Source Management Ethics Committee in 2014, as the HSEC was then known, is part of the evolution of Victoria Police's human source management,⁶ and constitutes an implementation of a key recommendation from the 2012 Comrie Review. Its role now also responds to the recommendations made in the Kellam Report. In March 2020, the HSEC adopted new terms of reference to be promulgated when the New VPM Human Sources Policy is implemented (**New HSEC Terms of Reference**).⁷ The New HSEC Terms of Reference provide that the purpose of the HSEC is to:⁸

provide ethical governance and decision-making over certain human sources or certain potential human sources as per the categories in section 8.3 of the VPM Human Sources. The committee may also review applications to manage human sources outside the technical requirements of the policy.

- 47 The HSEC is the mandatory decision-making body for certain topics. Pursuant to the New HSEC Terms of Reference and the New VPM Human Sources Policy, section 8.1, the mandatory matters the HSEC is required to determine are whether:

⁵ VPL.0100.0099.0001 at .0025.

⁶ As described in the statement of AC Paterson dated 22 March 2019, [4.54]–[4.59]. VPL.0014.0005.0001 at .0034–0035.

⁷ VPL.0005.0285.0045.

⁸ VPL.0005.0285.0045 at .0047

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- (a) certain potential human sources (categories 1 – 4) will be approached and/or registered and if so under what terms and conditions. This is explained in sections 8.3–8.10 of the New VPM Human Sources Policy and paragraph 48. Additional requirements, (discussed in paragraph 114) must be adhered to when a potential human source has legal obligations of privilege or confidentiality;
- (b) an active or deactivated human source should be transitioned into a witness to give evidence in relation to information they provided to police as a human source, as set out in section 1.4 of the New VPM Human Sources Policy; and
- (c) to permit any departure from a technical requirement of the policy found in the New VPM Human Sources Policy in relation to the management of a human source, as described in 8.11 of the New VPM Human Sources Policy. This is explained below at paragraph 50.

48 The New VPM Human Sources Policy provides an additional level of oversight and decision-making for four categories of sources. The categories are:

- (a) Category 1 – Lawyer, Doctor, Parliamentarian, Court Official, Journalist or Priest;
- (b) Category 2 – A person under the age of 18 years;
- (c) Category 3 – A person with a serious mental health or serious medical health condition; and
- (d) Category 4 – A person whose risk would not normally permit registration (explained in the response to question 1(h)).

49 While the HSEC is the decision-making body in relation to the registration of any category 1 to 4 person, the CSR must also be made aware of the proposed registration of any category 1 to 4 person.

50 On application from a member of a handling team, the HSEC can also approve the handling team's departure from a technical requirement of the New VPM Human Sources Policy, pursuant to section 8.11 of the New VPM Human Sources Policy. A technical requirement may include the requirement to conduct [REDACTED] PII [REDACTED]. Any technical departure request cannot include HSEC's requirement to approve the registration of a category 1 to 4 person.

The composition of the HSEC

- 51 The HSEC is comprised of the following core members: Assistant Commissioner, ICSC (Chair); Assistant Commissioner, Professional Standards Command; two Assistant Commissioners or Commanders, (other Command or Region than a matter under consideration in that meeting); and Executive Director, Legal Services (where they must be present at HSEC meetings for there to be a quorum).
- 52 Quorum consists of at least three committee members, which must include the Assistant Commissioner, ICSC and the Executive Director, Legal Services Department, or their proxy. The requirement for the HSEC to include a legally qualified member from the Legal Services Department at all meetings is to ensure adherence to the New VPM Human Sources Policy and the specific requirements in relation to certain categories of human sources, including that HSEC obtain appropriate legal advice in relation to approaching and / or registering category 1 human sources.
- 53 In addition to the core members, the HSEC is supported by the CSR in an advisory capacity, and the Detective Inspector, HSMU as secretariat. The CSR will present matters to the HSEC for its consideration as required.
- 54 In the event that a member of the HSEC cannot attend a particular meeting, they can nominate a proxy to attend on their behalf. Any proxy for the Executive Director, Legal Services Department, must be legally qualified.
- 55 As noted in paragraph 46 above, the New HSEC Terms of Reference have been developed and will be promulgated with the New VPM Human Sources Policy.⁹ They provide that meetings of the HSEC will be scheduled on a monthly basis. The New HSEC Terms of Reference also provide that additional meetings can be scheduled as required by the CSR in consultation with the Detective Inspector, HSMU, for example, if a matter requires urgent consideration by the HSEC.
- 56 The HSEC may invite a suitably qualified external person to advise the HSEC on any particular issue.

Decision making by the HSEC

- 57 The New HSEC Terms of Reference provide for the decision-making role of the HSEC.¹⁰ The matters the HSEC take into account are addressed in response to question 1(f).

⁹ VPL.0005.0285.0045.

¹⁰ VPL.0005.0285.0045.

Consideration of matters from 2016 to 2020

- 58 Between 1 January 2016 and 9 April 2020, the HSEC convened on 13 occasions. The current terms of reference for the HSEC do not stipulate how often meetings must be held — meetings are held as and when required.
- 59 Ordinarily, matters brought before the HSEC are decided at the meeting. Information relevant to the meeting is circulated prior to the meeting via a secure folder within Interpose so committee members are briefed prior to the discussion.
- 60 If necessary, some matters might be adjourned off in order for the HSMU to obtain further information or to obtain legal advice. In such cases these matters may then be resolved out of session via email with a link to further information provided in Interpose or the committee may re-convene.

Ongoing monitoring and oversight by the HSEC

- 61 The HSEC provides both general and specific monitoring and oversight through section 8 of the New VPM Human Sources Policy.¹¹
- 62 Pursuant to section 8.10 of the New VPM Human Sources Policy, on receiving a referral in relation to a human source in any of the four categories, the HSEC can do the following, depending on the registration process:
- (a) decide whether to permit an approach to a potential human source to allow the assessment phase to proceed and if so, on what conditions; and/or
 - (b) decide whether the potential human source should be registered and if so, on what conditions (including any special conditions in the AOR).¹²
- 63 Where HSEC decides to permit either assessment or registration of a category 1 to 4 human source to proceed, the HSEC must put in place conditions for the HSMU to report back to the HSEC.
- 64 Pursuant to section 8.13 of the New VPM Human Sources Policy, where a member who is dealing with a potential human source or a registered human source considers that a complex or difficult question arises in relation to that source, the member must raise the

¹¹ See also, Current VPM Human Sources Policy, section 1.20: VPL.0002.0001.1776 at .1784.

¹² New VPM Human Sources Policy, section 8.10: VPL.0005.0285.0001 at .0033.

issue with the CSR (via HSMU) who may refer the case to the HSEC for advice, guidance or direction.

Qu 8 Please outline the purpose, role and decision-making processes of the Human Source Governance Committee including:

8(a) The composition of the Committee.

8(b) How the Committee performs its strategic advice and continuous improvement role.

The Human Source Governance Committee

65 The role of the Human Source Governance Committee (**HSGC**) was explained in the statement of Assistant Commissioner Paterson dated 5 March 2020 at paragraphs 77 to 79.¹³

66 When the New VPM Human Sources Policy is implemented, this committee will be renamed the Human Source Advisory Committee (**HSAC**) to better reflect its future role and function.

67 Currently, the HSGC provides (and the HSAC will continue to provide) strategic advice, feedback and guidance in the management of human sources, compliance with policy and its ongoing continuous improvement, service delivery, training, statistical analysis, evaluation, audit and reporting.

68 The committee is the vehicle by which the CSR and the HSMU keep the Regions and Commands that manage human sources up to date with contemporary issues and trends, and identify risks and other matters considered relevant to pass on to the Regions and Commands.

69 The terms of reference of the HSAC inform its ongoing role.¹⁴ The terms of reference confirm that:

(a) the role of the committee role is to *"provide advice in relation to human source management, strategic implications, identify issues and provide feedback to the Assistant Commissioner, Intelligence and Covert Support Command (ICSC) to*

¹³ VPL.0014.0005.0109 at .0118.

¹⁴ VPL.0005.0280.0292

support the development of strategies, policies, processes, procedures and practices that relate to human source management. ..."; and

- (b) the committee will undertake the following functions;
 - (i) report on compliance with human source policy at a Regional or Command level;
 - (ii) foster the development of human source management capability within Regions and Commands;
 - (iii) provide feedback and guidance on improvements to human source policy, training and compliance & disclosure issues;
 - (iv) promote the use of human sources in investigations and intelligence gathering operations by regions and commands; and
 - (v) provide strategic advice to the CSR and Assistant Commissioner, ICSC on improvements to the human source governance and management model.

70 The HSAC will provide advice as opposed to having a role in the governance in relation to the management of human sources.

Composition of the Human Source Advisory Committee

71 The HSAC is comprised of: the CSR (Chair); Detective Superintendent Organised Crime Division, Crime Command; Detective Superintendent Serious Crime Division, Crime Command; Detective Superintendent Finance and Cyber Division, Crime Command; Superintendent Counter Terrorism Command; Detective Superintendent Professional Standards Command who performs the role of the Professional Standards Command CSR; Superintendent Eastern Region; Superintendent North West Metro Region; Superintendent Southern Region; and Superintendent Western Region.

72 The composition of the HSAC expands upon the current composition of the HSGC.

Relationship between the Human Source Ethics Committee and Human Source Governance Committee

73 There is no formal relationship between the HSEC and the HSAC. The common individual on both the HSEC and the HSAC is the CSR. However, the Committees perform separate and distinct functions. The HSAC supports state-wide implementation of the New VPM Human Sources Policy, in the decentralised operating model we have, by bringing together

knowledge as to practice and compliance. The HSEC, on the other hand, is a decision-making body.

- 74 In addition to the roles of the HSEC and the HSGC, there is also an expectation that the Assistant Commissioner, ICSC will exercise intrusive leadership and that matters involving considerable risk to Victoria Police will be escalated, through ordinary governance channels to the Deputy Commissioner, Specialist Operations and the Chief Commissioner of Police as required.

SOURCE CLASSIFICATIONS

Qu 3 Please outline the range of source classifications adopted by Victoria Police and the differences between these types of sources including:

- 3(a) The differences in risks posed by each type of source**
- 3(b) The differences in the processes and safeguards applicable to each type of source**
- 3(c) The purpose and outcomes of the 'confidential contact pilot' conducted in 2018, how 'confidential contacts' and their management differ from other types of sources, and whether Victoria Police intends to incorporate this category into force-wide pilot.**

- 75 The Royal Commission has helpfully advised that "source classification" in this question is intended to refer to:

- (a) the source categories/classifications in the Current VPM Human Sources Policy, namely "human source", "community source", "juvenile source", "one-off information"; and
- (b) to the extent that it has been, is currently being or is intended to be used by Victoria Police, the category/classification "confidential contact".

- 76 Some of these categories are found in the Current VPM Human Sources Policy but are either not found, or are found in modified forms, in the New VPM Human Sources Policy.

Human Source, definition and categories 1–4

- 77 The New VPM Human Sources Policy defines "human source" as a person who:¹⁵

¹⁵ New VPM Human Sources Policy, Definitions section: VPL.0005.0285.0001 at .0002.

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- (a) volunteers or provides information on a confidential basis to Victoria Police to assist with criminal investigations;
- (b) has an expectation that their identity will remain confidential; and
- (c) is registered as a human source.

78 Within this broader definition, there are four categories of human sources that are treated and managed differently.

- (a) a category 1 human source refers to a source that is a lawyer, doctor, parliamentarian, court official, journalist or priest, or, in some cases, has a connection with one of these occupations;
- (b) a category 2 human source is a person under the age of 18 years;
- (c) a category 3 human source is a person with a serious mental health or serious medical health condition; and
- (d) a category 4 human source is one that would not normally be registered.

79 Where a category 1 human source is registered, they are treated and managed as a high-risk human source in accordance with section 5.2 of the New VPM Human Sources Policy.¹⁶

80 In all cases, the term "human source" can only refer to a person whose registration has been approved.

81 A "prospective human source" is a person whose registration as a human source has commenced but has not yet been approved.

82 The New VPM Human Sources Policy states that human sources may include persons who:

- (a) actively seek out further information at the direction, request or tasking of police;
- (b) develop or maintain a relationship with person/s of interest for the purpose of obtaining and providing that information; or
- (c) provide 'one-off' information (addressed below at paragraphs 104 to 105).

¹⁶ New VPM Human Sources Policy, section 8.4: VPL.0005.0285.0001 at .0029.

- 83 The registration process for a human source, in the usual case, is found in section 3 of the New VPM Human Sources Policy and is as follows.
- 84 Upon identifying a person to be registered as a human source, the handling team submits a registration application via the human source module in Interpose to their listed OIC for assessment, unless the member is aware that the potential human source falls within a category 1 to 4, in which case, they must follow the process in sections 8.4 to 8.7, as relevant, of the New VPM Human Sources Policy.
- 85 The system creates safeguards against the use and management of a human source prior to their registration, being provided with an acknowledgment of responsibility document (which they must be invited to sign) and a risk assessment being completed. These safeguards are as follows:¹⁷
- (a) Interpose generates a human source registration number which indicates the creation of a human source file as the beginning of the registration process. However, the registration is not approved until such time as the CSR, or if required, the HSEC, provides that approval;
 - (b) until a human source's registration has been approved in Interpose as 'Approved – Tasking may be undertaken', the human source must not be tasked with any conduct;
 - (c) no information reports are to be created or information verbally disseminated in relation to information from a human source until their registration has been approved;
 - (d) no application for a Major Drug Investigation or any PII is to occur using the information from a human source until the human source registration is approved; and
 - (e) the human source registration number is not to be used in any manner until the registration has been approved by the CSR (or HSEC if required), including warrant applications.
- 86 If immediate actioning of the information is required, the member must contact HSMU. There is a regime for such actioning and registration after hours, in section 3.4 of the New VPM Human Sources Policy.¹⁸

¹⁷ The Interpose system barriers listed also seek to prevent "off the books" use of human sources.

¹⁸ VPL.0005.0285.0001 at .0013.

- 87 The risk assessment process that relates to all human sources is set out in the response to question 4. Where additional safeguards are in place in relation to category 1 to 4 human sources, they are reflected here. The usual registration process for a human source that does not fall within categories 1 to 4 is found in section 3.2 of the New VPM Human Sources Policy.¹⁹

Community source

- 88 The category “community source”, found in section 1.2 of the Current VPM Human Sources Policy is removed from the New VPM Human Sources Policy.²⁰
- 89 Until this change is promulgated, Victoria Police has maintained two categories of human sources: a “human source” and a “community source”. A community source is defined under the Current VPM Human Sources Policy as:

an individual who has volunteered information to the police with an expectation that their anonymity will be preserved. Typically, the role of a community source will be confined to providing eyes and ears intelligence.

- 90 The two key differences between a human source and a community source are that a community source is not able to be tasked with actively gathering intelligence, other than what they routinely see and hear and there is no requirement to deliver to them an AOR.²¹
- 91 The key part of the definition of a community source is that they are a person who “volunteers information”, meaning that they come forward to police rather than police recruiting them to provide information. There have been times where this nuance has been overlooked and has led to some inappropriate people being registered as community sources as there was no plan to task them but the prospective source did not volunteer the information rather the police members sought the information from them.
- 92 This removal of community sources as a category of human source in the New VPM Human Sources Policy was seen as the best way to proactively reduce risk in a scenario where a person with an extensive criminal background volunteers information to police in order to obtain a sentence discount for charges they are facing and the police members register the person as a community source, as they feel it would be too dangerous to task

¹⁹ VPL.0005.0285.0001 at .0010-.0011.

²⁰ VPL.0002.0001.1776 at .1777.

²¹ As explained, under the New VPM Human Sources Policy, all human sources will be required to have an AOR (other than one-off sources, who will have a Consent for One-Off Registration). With this in mind, Victoria Police will require all current community sources to have an AOR prior to the implementation of the New VPM Human Sources Policy, to ensure that they will comply with the future requirements and to ensure consistency.

the person. In such circumstances there is a high risk of the source continuing to offend whilst maintaining a relationship with police. It is believed that all persons who wish to provide confidential information to police should be provided with an AOR. Under the New VPM Human Sources Policy, the member must provide an AOR in all cases, in the case of one-off information, the form is called a Consent for One-Off Registration Form.

- 93 While the community source category will be removed, when a human source is being registered, their approval has to identify if the source is approved with or without tasking.

Juvenile human source

- 94 Juvenile sources are a sub-category of human sources and fall within category 2 of the New VPM Human Sources Policy.

- 95 The New VPM Human Sources Policy specifically addresses human sources under 18 years of age due to the increased level of risk involved in dealing with such sources. The process and safeguards relevant to the registration of a category 2 human source are found in section 8.7 of the New VPM Human Sources Policy.²² They require that any member who realises that the person falls within category 2 must refer the question of approaching and / or registering that potential source to the CSR (via HSMU), who in turn must refer it to the HSEC for decision. No steps are to be taken in relation to that potential human source until the HSEC makes its decision in relation to that source.

- 96 There are specific risk assessment factors that apply to the registration of a human source under the age of 18 years. This is provided for in 5.4 of the New VPM Human Sources Policy.²³

Human source with a serious mental or medical health condition

- 97 Human sources with a serious mental or medical health condition fall within category 3 of the New VPM Human Sources Policy. Section 8.8 specifically addresses this category of human source due to the increased risk level of dealing with such sources. The increased risks are:

- (a) mental health:
 - (i) a particularly serious mental health condition may compromise the reliability or credibility of information received;

²²VPL.0005.0285.0001 at 0032.

²³ VPL.0005.0285.0001 at .0020.

- (ii) the human source may not have the mental resilience to undertake the role which could result in further mental harm;
 - (iii) the human source may disclose to others their human source role;
 - (iv) an inability to follow instructions; and
 - (v) their medications may affect their cognitive functioning; and
- (b) medical health:
- (vi) the stress associated with being a human source may affect an already present serious medical health condition; and
 - (vii) their medications may affect their cognitive functioning.

98 Only the HSEC can approve the approach and/or registration of a potential human source in categories 1 to 4.

99 When undertaking an assessment for possible registration of a human source, the handling team must use [REDACTED] to address whether the source could be a category 3 source. [REDACTED]
[REDACTED] This assists the handling team to identify and continue to assess whether the source falls within category 3.

100 [REDACTED] the handling team consult with the HSMU, who may consult with a psychologist regarding the manageability of symptoms, work with the handling team to formulate a management plan or provide advice about suitability for registration and tasking.

101 A serious medical health condition is defined as one that may affect the ability of a person to make sound judgments, including their ability to understand the AOR. The New VPM Human Sources Policy sets out criteria for determining a serious medical health condition.

102 Any member who realises that a potential human source falls within this category must refer the matter to the CSR (via HSMU) who must refer it to the HSEC for decision.

103 Where a handler, controller, member of the HSMU or other person involved in managing a human source considers that the source has developed or manifested a serious mental or medical health condition since registration, and proposes to continue using the person as a human source, that must be authorised by the HSEC and no information is to be sought

²⁴ New VPM Human Sources Policy, sections 3.5 to 3.7: VPL.0005.0285.0001 at .0013-.0014.

pending that decision. In making a decision in relation to a source that may have a serious mental or medical health condition as described in this paragraph, the HSEC must obtain advice from a suitably qualified medical practitioner.²⁵

One-off human source

104 The New VPM Human Sources Policy provides a separate registration, management and risk assessment process where it is clear that a potential human source wishes to provide confidential information on a one-off basis.²⁶

105 In such a case, the following applies pursuant to section 14 of the New VPM Human Sources Policy:

- (a) the members handling the potential human source must be PII [redacted] qualified, [redacted];
- (b) on Interpose:
 - (i) the PII [redacted] of the source's Interpose file are to be completed as normal; and
 - (ii) the PII [redacted] has an entry from a controller indicating that the registration is for one-off information only;
- (c) the AOR is replaced with the one-off consent form, which ensures the person is providing their consent but also covers off the AOR areas required for a one-off registration where there will be no on-going relationship; and.
- (d) the source must provide their consent to their registration as a one-off human source, in a Consent For One-off Registration Form. The consent does not address the full information in an AOR as there is no ongoing relationship, but requires the source to acknowledge that there is risk to them. The handler discusses the consent form with the one-off source;
- (e) a One-Off Registration Risk Assessment must also be completed.²⁷ It includes a series of questions, where a positive response to any of them requires that HSMU must be contacted. These include circumstances where the potential source is a category 1 to 4 person or where information to be provided may be subject to legal

²⁵ New VPM Human Sources Policy, section 8.8: VPL.0005.0285.0001 at .0032.

²⁶ The current human source registration requirements are time consuming and not supported by adequate systems. This can result in a risk of members running sources "off the books" to avoid the required process, particularly in relation sources providing one-off information. The one off process seeks to provide a regulated, easily implemented option to avoid this.

²⁷ VPL.0005.0280.0296.

professional privilege or confidentiality. The one-off information registration cannot be applied to a human source who is required to be referred to the HSEC (including category 1 to 4 sources);²⁸

- (f) contact reports must be completed as normal and checked as appropriate by the controller;
- (g) no LSR approval is required;
- (h) the HSMU must approve the file (as delegate of the CSR) prior to an information report resulting from the one-off human source's information being disseminated;
- (i) once the information report is disseminated, the source's registration and file must be deactivated and the source will be deactivated; and.
- (j) no debrief of the human source is required after they provide their information (and they are deactivated as a human source).

The purpose and outcomes of the 'confidential contact pilot' conducted in 2018, how 'confidential contacts' and their management differ from other types of sources and whether Victoria Police intends to incorporate this category into a force-wide pilot.

- 106 When criminals are arrested, they often wish to provide information relating to other criminals. This offer of information is usually on a confidential basis and often on a one-off basis so the offender in custody might be able to better their position.
- 107 To manage this, the Current VPM Human Sources Policy requires that, a police member would have to carry out the usual registration of the person as a human source, which can take around two weeks for the registration to be approved before the police member is able to disseminate the information they obtained. This process can be a deterrent to police members receiving confidential information on a one-off basis and managing it according to policy.
- 108 The confidential contact concept has been piloted as an alternative and easier approach to managing situations where an offender wishes to provide confidential information to police on a one-off basis. Importantly, until the pilot is approved and implemented, the one-off human source process in the New VPM Human Sources Policy (as outlined above) will be followed upon its implementation. At present, the confidential contact pilot cannot

²⁸ New VPM Human Sources Policy, section 14: VPL.0005.0285.0001 at .0039-.0040.

be implemented State-wide because Interpose is unable to support the pilot's requirements.

- 109 Where information is being provided on a one-off basis, the risk management is different to when police plan to maintain an on-going relationship with someone who is providing confidential information. The key risks for a one-off source distil down to:
- (a) will the person be at risk if police act on the information?
 - (b) is the person a suitable person to take the information from (vulnerable person, occupation with legal obligations of privilege or confidentiality, not otherwise suitable)?
 - (c) is the information safe to receive (not derived from an occupation with legal obligations of privilege or confidentiality)?
- 110 If the approach in the pilot is ultimately approved and adopted it would replace the one-off registration process at a future point in time.

LEGAL OBLIGATIONS OF CONFIDENTIALITY OR PRIVILEGE

Qu 1 Please outline Victoria Police's approach to defining, identifying and managing human sources or information subject to obligations of confidentiality or privilege, including:

1(a) How Victoria Police defines human sources or information subject to obligations of confidentiality or privilege?

- 111 Human sources subject to legal obligations of privilege or confidentiality are defined by reference to their connection to a relevant occupation.²⁹ The occupations have been referred to as the "Kellam occupations" and are lawyers, doctors, parliamentarians, court officials, journalists and priests. The New VPM Human Sources Policy defines people working in these occupations as being within category 1.
- 112 People who have a connection to these occupations (they previously worked in one, have a close relationship with a person working in one, or work in a role where they may receive

²⁹ This is provided for in sections 8.3 to 8.5 of the New VPM Human Sources Policy (VPL.0005.0285.0001 at .0029-.0031) and 4.6 of the Current VPM Human Sources (VPL.0002.0001.1776 at .1791).

legally privileged information) may also have relevant obligations of privilege or confidentiality, as provided for in section 8.5 of the New VPM Human Sources Policy.

- 1(b) Who is responsible for deciding (or is able to decide) that a prospective human source and/or the information they provide is not subject to an obligation of confidentiality or privilege.**

Registration of category 1 human sources

- 113 In nearly all cases, the HSEC is responsible for determining whether a potential human source in category 1 (and thus with a legal obligation of privilege or confidentiality) should be registered and, if so, on what terms, taking into account whether the information they might provide is or is not subject to a legal obligation of privilege or confidentiality. This is explained below.
- 114 If the HSEC considers there are exceptional and compelling reasons that support the registration or tasking of a human source where it is intended to obtain legally privileged or confidential information in the interests of national security or for the purpose of preventing a serious threat to life or serious injury, and there are no other reasonable means of obtaining the information, that decision must be escalated to the Deputy Commissioner, Specialist Operations (currently me).
- 115 The management of legal privilege and confidentiality considerations is addressed in section 5.3 of the New VPM Human Sources Policy.³⁰ It requires members to be aware that some human sources, as a result of their occupations, being those listed in paragraph 111 above, may have legal obligations of privilege or confidentiality. This is addressed in the PII training members must complete to be a handler, as discussed in the response to question 10.
- 116 When a handler discovers that a person falls within or may fall within one of these occupations, or information they may supply may be derived from one of these occupations, the handler must contact the HSMU who will refer the matter to the CSR. In this way, handlers have a role in identifying whether a source falls within category 1.
- 117 However there are system safeguards to assist them in this process (and to block the registration of a source who could be in a category 1 occupation). This is explained in the response to question 13.

³⁰ Also provided for in section 4.6 of the Current VPM Human Sources Policy (VPL.0002.0001.1776 at .1791).

- 118 This means that a category 1 human source can **only** be registered after the HSEC has considered whether they should be registered or approached to be registered, approved their registration and set out the terms for that registration. In approving such a source, the HSEC will decide whether the source is subject to a legal obligation of privilege or confidentiality.

Management of category 1 human sources

- 119 If a category 1 person is approved for registration, there are minimum conditions that apply to the handling and management of that person, as set out in section 5.3 of the New VPM Human Sources Policy.³¹ These are:

- (a) the human source Interpose file must accurately reflect the planning and methodology to be followed in managing such a human source; and
- (b) HSEC and HSMU advice is binding and may include the quarantine of information transmitted that may breach a legal obligation of privilege or confidentiality.

- 120 Where a category 1 person is approved for registration, they will be treated as a "high-risk human source" and must be managed in accordance with section 5.2 of the New VPM Human Sources Policy.³²

- 121 The New VPM Human Sources Policy, at section 5.3, states that:

The strict adherence to this policy seeks to manage the risk in circumstances where the HSEC has approved the registration.

- 122 A category 1 person can only be approved for registration for a specific purpose and for a specific time period. The approval to register them must record that purpose and time period, as approved by the HSEC.

- 123 It is important to recall that the number of people ever likely to fall within category 1 is extremely small. The overwhelming majority of human sources are criminals and criminal associates.

Legally privileged or confidential information

- 124 As explained, obtaining legally privileged and confidential information can only be done in very limited and exceptional circumstances. If legally privileged or confidential information is obtained, either from a potential human source or an approved human source, the

³¹ VPL.0005.0285.0001 at .0019-.0020.

³² New VPM Human Sources Policy, section 8.4: VPL.0005.0285.0001 at .0029-.0030.

information may be stored within a source contact report. However, there is now no capacity within Interpose to create an information report with legally privileged or confidential information from a potential human source because information reports cannot be created in Interpose before a human source's registration is approved. This is a safeguard against information that could be legally privileged or confidential being disseminated, for example, to investigators. If an approved human source was to provide information that may be subject to legal obligations of privilege or confidentiality, then the source contact report must be quarantined and no information transferred into an information report. In addition, the file would be suspended to allow the HSEC to consider the information, and escalation to the Deputy Commissioner, Specialist Operations if necessary and appropriate.

Sources with a connection to a Kellam occupation

125 HSEC is also responsible for deciding whether a potential human source who has a connection to a lawyer, doctor, parliamentarian, court official, journalist or priest should be registered and determining if the information being provided by the potential human source is:

- (a) not relevant to their occupation;
- (b) relevant to their occupation and not subject to a legal obligation of privilege or confidentiality; or
- (c) subject to a legal obligation of privilege or confidentiality.

Information provided that may be subject to legal obligations of privilege or confidentiality

126 These protections also apply to where a human source who is not in a relevant occupation provides information that may be legally privileged or confidential.

127 Where an active human source who is not subject to a legal obligation of privilege or confidentiality provides information which appears to be, or could possibly be, subject to a legal obligation of privilege or confidentiality, section 8.5 of the New VPM Human Sources Policy must be followed. This provides that the handler must refer the matter to the CSR, who must then refer the matter to the HSEC, as described above. The human source file must be suspended until such time as a decision is made by the HSEC. The handlers would record the information received in a source contact report which only the handling team members and the HSMU can access. The HSEC would then make a decision on what happens to that information. If the HSEC makes a determination to proceed, they must then obtain approval from the Deputy Commissioner, Specialist Operations.

- 128 HSEC and HSMU advice to handling teams is binding and may include the quarantine of information transmitted that may breach a legal obligation of privilege or confidentiality.

1(c) What if any requirements exist to seek legal advice or consultation and/or approval of the ICSC Ethics Committee in making a decision as referred to in 1(b)?

- 129 The ICSC Ethics Committee is now referred to as the HSEC. The role of the HSEC is explained in the response to question 7.

- 130 The New VPM Human Sources Policy requires that before considering whether to approve a category 1 person, the HSEC **must** obtain “appropriate legal advice” as to the legal implications of registering and using a potential human source and as to any conditions or safeguards that should be put in place in the event that the HSEC provides approval to register the potential human source.³³

- 131 As described in the response to question 7, all HSEC meetings must be conducted with the Executive Director, Legal Services (or their legally qualified delegate) present. Additionally, the HSEC may seek external legal advice and it is expected that this will occur in more complex cases.

1(d) Who is responsible for deciding to register a human source who is subject to an obligation of confidentiality or privilege or who may provide confidential or privileged information?

- 132 As set out above, the registration of a human source who is subject to a legal obligation of privilege or confidentiality or who may provide legally privileged or confidential information may only proceed with the approval of the HSEC, and in some cases the Deputy Commissioner, Specialist Operations.

- 133 Where there is no intention to use a human source relationship to obtain legally privileged or confidential material from that source, HSEC is responsible for determining whether to approach and / or register a source subject to a legal obligation of confidentiality or privilege.

- 134 Where there is an intention to use a human source relationship to obtain legally privileged or confidential material, section 8.6 of the New VPM Human Sources Policy provides that approval by the HSEC and the Deputy Commissioner, Specialist Operations will only be

³³ New VPM Human Sources Policy, section 8.4: VPL.0005.0285.0001 at .0029-.0030.

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

granted if there are exceptional and compelling reasons to authorise the obtaining of the information:

- (a) in the interests of national security; or
- (b) for the purpose of preventing a serious threat to life or serious injury – and
- (c) there is no other reasonable means of obtaining the information.

1(e) The factors taken into account in decisions about whether to register a human source who is subject to an obligation of confidentiality or privilege or who may provide confidential or privileged information.

135 The HSEC take the following matters into consideration:³⁴

- (a) the seriousness of the offence to which the information relates, including potential for serious injury or death to a person or persons;
- (b) the imminent threat to which the information relates;
- (c) the likelihood of investigators obtaining the same information through other, less intrusive, investigatory or intelligence methods;
- (d) the potential to obtain the information from another human source that is not a category 1 to 4 human source;
- (e) the disclosure obligation if the HSEC were to approve the use of a human source and information was obtained that was subject to a legal obligation of privilege or confidentiality;
- (f) the impact on the human rights of any individuals or the community if the information is or is not utilised;
- (g) the legal advice obtained on the use of the potential human source and the use of any information obtained from the source that is subject to a legal obligation or privilege or confidentiality;
- (h) any other legal or ethical considerations the HSEC considers relevant;

³⁴ Statement of AC Paterson dated 5 March 2020, [31]: VPL.0014.0005.0109 at .0112–.0113; New HSEC Terms of Reference, section 12: VPL.0005.0285.0045 at .0049–.0050.

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- (i) the conditions that should apply to the AOR to ensure that information which is subject to legal obligations of privilege or confidentiality is not obtained;
- (j) the specific purpose and length of time for which any approval will apply;
- (k) the review time period for any approach or registration approval;
- (l) how the risk to the safety of the potential human source will be mitigated;
- (m) the potential for reputational damage to Victoria Police by entering a human source relationship with the person; and
- (n) any other specific conditions that should apply to the approach or registration.

136 The HSEC also considers whether something is of significant community impact and whether the measure is necessary and proportionate.

- 1(f) The circumstances in which Victoria Police considers it justifiable to use a human source who is subject to an obligation of confidentiality or privilege or who may provide confidential or privileged information.**

137 The registration of a human source subject to a legal obligation of privilege or confidentiality is described in Assistant Commissioner Paterson's statement dated 5 March 2020, from paragraphs 35 to 45

138 The circumstances in which Victoria Police considers it justifiable to use a human source with a legal obligation of privilege or confidentiality is determined having regard to the factors listed in paragraph 135 above.

139 When considering whether to register a human source subject to a legal obligation of privilege or confidentiality, the HSEC will assess whether the information likely to be provided is also likely to be subject to issues of privilege or confidentiality. In most cases, it would not and so the registration can proceed, subject to requirements that the nature of the information collected is reviewed to determine whether it is legally privileged or confidential. In these circumstances the AOR would contain a clause to ensure the human source was aware that they were not to provide any information which is subject to legal obligations of privilege or confidentiality.

140 If, despite the AOR, information was obtained that was likely to be legally privileged or confidential then the requirements of section 5.3 of the New VPM Human Sources Policy must be followed. The HSEC will consider the matters set out in paragraph 135 above

and if a decision is made to continue with the registration, a decision will also be made as to how to manage and protect that information. If information was obtained that is likely to be legally privileged or confidential, then that information can only be used for exceptional and compelling reasons, in the interests of national security or for the purpose of preventing a serious threat to life or serious injury, and there is no other reasonable means of obtaining the information, and only with the approval of the HSEC and then the Deputy Commissioner, Specialist Operations, as provided for in section 8.6 of the New VPM Human Sources Policy.

- 141 Since the commencement of the Current VPM Human Sources Policy in May 2018, no human sources have been registered who have a legal obligation of privilege or confidentiality. Post the Comrie Review and prior to May 2018, the registration process was commenced for one potential human source who had a legal obligation of privilege or confidentiality, but after considering and applying the Current VPM Human Sources the potential human source was not approved for registration.

1(g) The safeguards in place to manage the risks of acquiring and using confidential or privileged information from a human source.

- 142 This section responds to risks relevant to legally privileged or confidential information. As outlined, the New VPM Human Sources Policy has a range of safeguards to manage the risks of acquiring and using legally privileged or confidential information from a human source. These are also described in the statement of Assistant Commissioner Paterson dated 5 March 2020.³⁵ There are two possible scenarios:

- (a) the registration or tasking of a human source with the express intention of obtaining legally privileged or confidential information, which can only occur for exceptional and compelling reasons in the interests of national security or for the purpose of preventing a serious threat to life or serious injury, and there is no other reasonable means of obtaining the information, and must be approved by the HSEC and then the Deputy Commissioner, Specialist Operations; and
- (b) the registration of a human source where there is a risk that they may provide legally privileged or confidential information.

- 143 Safeguards relevant to paragraph 142(b) above are as follows.

³⁵ VPL.0014.0005.0109.

- 144 First, the HSEC must consider any proposal to approach and / or register a category 1 to 4 human source and, with legal advice, determine the terms and conditions for the approach or registration, management and use of that human source and the use of information they provide. AORs are required to expressly inform human sources that they are not permitted to disclose legally or privileged information. A condition could, for example, require handlers to remind a human source at every meeting that they are not to provide any information that may be subject to legal obligations of privilege or confidentiality.
- 145 Second, the HSEC must approve the registration (of a category 1 person), the approval must be for a specific purpose and for a specified time period, as approved by the HSEC.³⁶ In considering the type of specific purpose or relevant timeframe in which the specific purpose must be achieved, the HSEC has regard to the community impact of the information to be provided by the potential human source and the proportionality and necessity of utilising that information.³⁷
- 146 Third, any registration of a person who has an occupation where there is a legal obligation of privilege or confidentiality would be deemed high risk. This would result in the human source being managed by a dedicated team which manages high risk sources which has members who have been highly trained and dedicated human source managers who operate under principles of intrusive supervision.
- 147 Fourth, the New VPM Human Sources Policy provides for the use of sterile corridors, as explained in section 6.6. The primary purpose of a sterile corridor is to ensure that the safety of the human source is not compromised to achieve investigative outcomes. However, where a sterile corridor exists and the human source is a category 1 human source, if information was provided that is subject to a legal obligation of privilege or confidentiality, it would be quarantined in the source contact report and not shared with investigators.
- 148 Fifth, the New VPM Human Sources Policy, at section 5.3, states that where a human source, who is in a position to which legal obligations of privilege or confidentiality apply, has been approved and subsequently volunteers information that is or appears to be in breach of that obligation then the following must occur at the earliest opportunity:
- (a) the information must be recorded on a source contact report within Interpose;

³⁶ New VPM Human Sources Policy, section 8.4: VPL.0005.0285.0001 at .0029-.0030; Statement of AC Paterson dated 5 March 2020, [43]: VPL.0014.0005.0109 at .0114.

³⁷ Statement of AC Paterson dated 5 March 2020, [45]: VPL.0014.0005.0109 at .0114.

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

- (b) the PII [REDACTED] must be updated with a notation that the information appears to be in breach of a legal obligation of privilege or confidentiality and quote the source contact report number;
- (c) the information received must not be acted upon or disseminated further (including verbal dissemination);
- (d) the HSMU must be immediately advised;
- (e) the HSMU must advise the CSR, who will refer the matter to the HSEC;
- (f) the HSEC will review the information and decide on how the information and the human source will be treated. Registration will be suspended until the HSEC makes a determination; and
- (g) in accordance with section 8.6 of the New VPM Human Sources Policy, the use of the information can only occur for exceptional and compelling reasons in the interests of national security or for the purpose of preventing a serious threat to life or serious injury, and there is no other reasonable means of obtaining the information, and must be approved by the HSEC and then the Deputy Commissioner, Specialist Operations.³⁸

1(h) The kinds of individuals whom Victoria Police would not normally register as a source or accept information from, the rationale for this position and the ways in which this position is communicated to Victoria Police officers.

149 As explained, there are four (subset) categories of human sources, categories 1 to 4, that are all treated in a different regime to that normally provided for other human sources.

150 Victoria Police would not normally register sources with certain characteristics, persons under the age of 18 and those with serious mental health or medical conditions. The rationale for each category differs slightly but in relation to category 2 to 4 human sources, the additional protections and safeguards created by the Current VPM Human Sources Policy (and the New VPM Human Sources Policy) are directly linked to the source's vulnerability, human rights and the potential harm that can come to them should they be registered.

³⁸ New VPM Human Sources Policy, section 5.3: VPL.0005.0285.0001 at 0019-0020.

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151 The amendments to the New VPM Human Sources Policy labels human sources where the risks would not normally permit registration as category 4. Such sources are in the Current VPM Human Sources Policy and the New VPM Human Sources Policy, but the amendments to the New VPM Human Sources Policy labels them as category 4. The way in which such sources are treated is largely unchanged.³⁹ Labelling them as category 4 is intended to make clear the different regimes that apply to these four sub-sets of all human sources.

152 Section 8.9 of the New VPM Human Sources Policy, now provides for the registration of category 4 human sources, sources Victoria Police would not normally register or receive information from.

153 Where a potential human source would not ordinarily be registered but a member of a handling team, the HSMU or the CSR wishes to register that person because the information that the person has is of extraordinarily high value, no such registration can occur without the approval of the HSEC.

154 PII [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

PII [REDACTED]

³⁹ Statement of AC Paterson dated 5 March 2020, [29]: VPL.0014.0005.0109 at .0112.

155 The reasons for not ordinarily registering such persons as a human source, and the underlying rationale, is explained to police members during training.

1(i) The steps, if any, that Victoria Police considers it should take to notify relevant professional regulators where the provision of information to Victoria Police appears to be in breach of a prospective human source's professional obligations and duties.

156 It is not Victoria Police's practice to notify relevant professional regulators if information provided to it appears to be in breach of a prospective human source's professional obligations and / or duties. To do so would likely risk revealing the identity of a human source and thus risk their safety.

RISK ASSESSMENTS

Qu 4 Please outline Victoria Police's approach to the initial risk assessment of prospective sources and the ongoing risk assessment and review of registered sources including:

4(a) The risk assessment tool adopted by Victoria Police.

157 Assistant Commissioner Paterson has provided much of the information in this section about risk assessment. However, because of my role, responsibilities and experience, I am familiar with risk assessment methodology and implementation.

158 The risk assessment requirements for human sources are currently contained in the Current VPM Human Sources Policy and the New VPM Human Sources Policy. The New VPM Human Sources Policy provides for the use of three types of risk assessment tools:

- (a) Human Source Risk Assessment (**HSRA**) (used only at the point of initial registration where it is not a one-off registration);⁴⁰
- (b) Human Source Dynamic Risk Assessment (**HSDRA**) (used subsequent to the HSRA through the life of the human source relationship);⁴¹ and

⁴⁰ VPL.0005.0275.0001

⁴¹ VPL.0005.0280.0279.

- (c) One-off Registration Risk Assessment (refer to section 14 of the New VPM Human Sources Policy).⁴²

159 The HSRA is a document that is currently in use but is being revised and will be replaced by an "Initial Human Source Risk Assessment". Some of the terminology contained in the HSRA therefore reflects previous human source policy documents. It is estimated that the revision process will continue over the next six months. The HSDRA and One-Off Registration Risk Assessment are new documents that will be rolled out with the implementation of the New VPM Human Sources Policy.

160 All human sources are required to be the subject of a risk assessment which identifies risks in five categories:⁴³

- (a) risk to human source of compromise;
- (b) risk to handling team;
- (c) risk to information/investigation;
- (d) risk to public; and
- (e) risk to Victoria Police.

161 These risks are assessed and recorded in the HSRA.

162 The risk assessment must clearly articulate the purpose for engagement of the human source, and if there is any change to that purpose, a new risk assessment must be undertaken.⁴⁴ Where a category 1 human source is approved for registration, the approval must relate to a specific purpose and be for a specific time as approved by the HSEC.⁴⁵

163 Risk cannot be assessed against one category alone. It cannot and must not be outweighed by the imperative of an operational objective.⁴⁶

164 The HSRA must be completed and uploaded to Interpose within PII [REDACTED] PII [REDACTED] with the human source. It must accurately reflect all known or perceived risks at the time the assessment is undertaken. Each human source is allocated an 'overall

⁴² VPL.0005.0280.0296.

⁴³ New VPM Human Sources Policy, section 5.1: VPL.0005.0285.0001 at .0018; Current VPM Human Sources Policy, section 4.3: VPL.0002.0001.1776 at .1790.

⁴⁴ New VPM Human Sources Policy, section 5.1: VPL.0005.0285.0001 at .0018.

⁴⁵ New VPM Human Sources Policy, section 8.4 VPL.0005.0285.0001 at .0029-.0030.

⁴⁶ New VPM Human Sources Policy, section 5.1: VPL.0005.0285.0001 at .0018; Current VPM Human Sources Policy, section 4.3: VPL.0002.0001.1776 at .1790.

risk rating' which is the same level as the highest risk assessed for each question once mitigation strategies have been put in place for management of risk.⁴⁷

165 Relevantly to the Royal Commission's Terms of Reference, the HSRA includes as a risk consideration the following questions:⁴⁸

- (a) is the source occupationally bound by other duties which may give rise to legal, ethical or medical privilege or confidentiality considerations?
- (b) are there any conflicts of interest?

166 The control measures that may be put in place to mitigate these risks are as follows:

- (a) identify potential legal privilege or confidentiality issues with the source or potential conflicts;
- (b) establish motivation;
- (c) in cases where legal privilege or confidentiality might be an issue, notify HSMU who will refer the matter to the CSR for consideration, and if supported, to the HSEC for consideration;⁴⁹
- (d) ensure appropriately trained and skilled handling team involved; and
- (e) develop a plan to manage potential conflicts.

167 HSEC and HSMU advice or directions may include the quarantine of information transmitted that may breach a legal obligation of privilege or confidentiality.⁵⁰ The risk assessment process is carried out by the handler, with extensive supervision as outlined below.

168 As a result of the risk assessment process, a human source will be identified as belonging to one of the following risk categories:

- (a) extreme;
- (b) high;

⁴⁷ New VPM Human Sources Policy, section 5.1: VPL.0005.0285.0001 at .0018; HSRA: VPL.0005.0275.0001.

⁴⁸ HSRA Questions 10 and 11: VPL.0005.0275.0001 at .0006.

⁴⁹ New VPM Human Sources Policy, section 5.3: VPL.0005.0285.0001 at .0019-.0020.

⁵⁰ New VPM Human Sources Policy, section 5.3: VPL.0005.0285.0001 at .0019-.0020.

(c) medium; or

(d) low.

The HSRA provides that human sources who fall within the "Extreme" category are not to be utilised.

169 The process for reviewing the initial assessment, and ongoing risk assessment review, is outlined in the response to question 4(b).

170 The current risk assessment tool has been developed over years of consultation with other agencies both nationally and internationally. The initial risk assessment is a static risk assessment that identifies risk factors at the time of completing the assessment. The risk assessment document is designed to deal with high risk sources and as such many of the questions are not relevant for low risk sources or community minded people wishing to offer information on a confidential basis.

171 The HSRA is currently being redeveloped with the input of a senior forensic psychologist who has expertise in designing risk assessments. This psychologist has also contributed significantly to the new dynamic risk assessment that will be used for ongoing risk assessment of human sources once the New VPM Human Sources Policy has been implemented.

172 The HSDRA focuses on changes in risk profile that have taken place since the last assessment. It is updated in the event of a change occurring, and upon each three-monthly review of human source risk carried out by handlers.

173 The HSDRA prompts the handler to record current mitigation strategies in place for previously identified risks and whether they have proven effective. The handler must then record whether anything has changed that affects risk since the last assessment, and whether changes are attributable to:

(a) change in motivation;

(b) change in target;

(c) change in tasking;

(d) whether the human source has behaved in a way that has created an operational security risk;

(e) whether there is an emerging risk based on the source's information;

- (f) whether there is increased risk due to drug use;
- (g) whether there is increased or new risk due to close relationships;
- (h) whether there is increased or new risk due to mental health;
- (i) whether there is increased or new risk due to criminal activity;
- (j) whether there is increased risk due to significant stressors; and
- (k) other emerging risks.

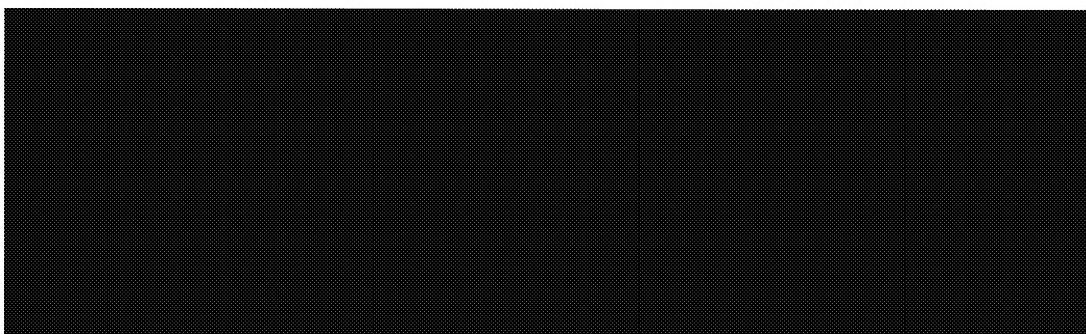
174 In relation to each new or changed risk, the handler must then outline compliance and management strategies.

175 The handler also assesses the intelligence value of the human source since last assessment and revises the overall risk assessment in light of the new and changed risks identified.

176 The controller fills out a separate section of the HSDRA to reflect whether risks have increased due to handling team issues, which may include change in the team, lack of required training, ethical risk, relationship problems and disclosure issues.⁵¹

177 Where the HSEC approves the registration of a human source in categories 1 to 4, a report must be tabled at each monthly meeting detailing the progress of the relationship, including any change in risk assessment, and whether any information that is likely to be subject to a legal obligation of privilege or confidentiality has been obtained.⁵²

178



⁵¹ HSDRA: VPL.0005.0280.0279.

⁵² New HSEC Terms of Reference: VPL.0005.0285.0045.

⁵³ VPL.0005.0283.0005

4(b) The role of senior supervising officers in the risk assessment process.

179 The New VPM Human Sources Policy requires supervisors, particularly human source controllers, to practice "intrusive supervision", which includes:⁵⁴

- (a) understanding the expectations of Victoria Police in managing the inherent risks in human source relationships;
- (b) PII [REDACTED] or situational awareness of, tactical deployments of human sources;
- (c) knowing how, where and when handlers are meeting with human sources;
- (d) verbally briefing and debriefing handling teams following face-to-face contacts and other contacts (e.g. phone contact) where significant information is obtained or changes to risk are identified;
- (e) PII [REDACTED]
- (f) PII [REDACTED]
- (g) PII [REDACTED]
and
- (h) ensuring that the AOR has been delivered, is appropriate, is being reinforced, remains appropriate and compliance is monitored.

180 Each risk assessment of a human source must be recommended for approval by the OIC and LSR.⁵⁵

181 Each human source is provided with an AOR, which is a formal acknowledgment by the human source that they are registered as such, and an acknowledgment of the accountabilities in the human source relationship that must be adhered to.

182 Handlers must update the risk assessment every three months or when a change in risk profile occurs (whichever occurs sooner).⁵⁶

183 The controller must ensure that the risk assessment is completed, including assessment for potential and identified risks, and that sufficient and appropriate mitigation strategies

⁵⁴ New VPM Human Sources Policy, section 6.5: VPL.0005.0285.0001 at .0022.

⁵⁵ HSRA, 1: VPL.0005.0275.0001 at .0001.

⁵⁶ New VPM Human Sources Policy, section 5: VPL.0005.0285.0001 at .0017.

are in place.⁵⁷ The controller must monitor and review all activities within the human source Interpose file, and review the risk assessment and AOR requirements on a monthly basis to ensure that they are still appropriate.

- 184 The OIC is required to review the application and risk assessment prior to delivery of the AOR to the potential human source.⁵⁸
- 185 The OIC must review the risk assessment every three months.⁵⁹
- 186 The LSR must also review the risk assessment to ensure that a comprehensive assessment has been undertaken and that appropriate mitigation strategies are in place.⁶⁰
- 187 Upon receipt of the full Interpose human source file, the CSR will also review the risk assessment to ensure that a comprehensive assessment has been undertaken and appropriate mitigation strategies are in place.⁶¹ The CSR will make final recommendations for all high risk human source registrations.⁶²
- 188 All high risk human sources are required to be managed by a dedicated unit, unless exceptional circumstances exist and approval is given by the HSEC. All high risk human sources must be managed in a sterile corridor.⁶³ The HSMU, in consultation with the CSR, has oversight of all active human source registrations.⁶⁴
- 189 Where the risk assessment is rated as low or medium, the HSMU may approve the registration on behalf of the CSR. Where the HSMU considers that the risk rating should be different to that determined by the handling team, the matter must be referred to the CSR.⁶⁵
- 190 The adequacy of the AOR is reviewed by a number of parties including the controller, OIC, LSR, CSR, HSMU and the HSEC, providing a range of decision-making processes in which any deficiency in the AOR can be identified.⁶⁶

⁵⁷ New VPM Human Sources Policy, section 3.2: VPL.0005.0285.0001 at .0010-.0011.

⁵⁸ Statement of AC Paterson dated 5 March 2020, [35]: VPL.0014.0005.0109 at .0113; New VPM Human Sources Policy, section 4.1: VPL.0005.0285.0001 at .0015.

⁵⁹ New VPM Human Sources Policy, section 5: VPL.0005.0285.0001 at .0017-.0018.

⁶⁰ New VPM Human Sources Policy, section 3.2: VPL.0005.0285.0001 at .0010-.0011.

⁶¹ New VPM Human Sources Policy, section 3.2: VPL.0005.0285.0001 at .0010-.0011.

⁶² New VPM Human Sources Policy, section 5: VPL.0005.0285.0001 at .0017-.0018; Current VPM Human Sources Policy, section 5: VPL.0002.0001.1776 at .1793.

⁶³ New VPM Human Sources Policy, section 5.2: VPL.0005.0285.0001 at .0018-.0019.

⁶⁴ Statement of AC Paterson dated 5 March 2020, [65]: VPL.0014.0005.0109 at .0116.

⁶⁵ New VPM Human Sources Policy, section 5: VPL.0005.0285.0001 at .0017.

⁶⁶ Statement of AC Paterson dated 5 March 2020, [36]: VPL.0014.0005.0109 at .0113.

4(c) The extent to, and ways in which, the risk assessment process and associated policy guidance require officers to consider necessity and proportionality, human rights and risks to the administration of justice in relation to the registration, use and management of human sources.

- 191 Consideration of rights under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter of Human Rights**) has been specifically required under the VPM Policy Rules – Human rights equity and diversity standards (**Human rights equity and diversity standards**) since 2015. Since the Charter of Human Rights was enacted Victoria Police has actively sought to embed a human rights framework into its decision making.
- 192 The New VPM Human Sources Policy specifically provides that all members of Victoria Police have a legal obligation under the Charter of Human Rights to “properly consider” and “act compatibly” with the 20 human rights protected by the Charter pursuant to section 38 of the Charter.
- 193 The New VPM Human Sources Policy sets out the most common rights that may be limited in this context as being the right to life (section 9), privacy and reputation (section 13), freedom of thought, conscience, religion and belief (section 14), peaceful assembly and freedom of association (section 16), protection of families and children (section 17), cultural rights (section 19) and rights in the criminal process (section 25).⁶⁷
- 194 If there is a proportionate justification that properly considers and balances the impacts on a person’s human rights, then Victoria Police may lawfully limit that person’s human rights. Where rights are not considered or the consideration is not proportionate and justified, then any breach of rights may be unlawful.
- 195 “Proper consideration” of human rights requires identification of rights relevant to the decision and whether and how those rights will be interfered with by the decision, and balancing of the competing public and private interests involved in the decision.⁶⁸
- 196 The New VPM must also be considered in the context of other Victoria Police practices and procedures. The Human rights equity and diversity standards apply to all Victoria Police members including members who deal with human sources.⁶⁹ It records that Victoria Police as a public authority is bound by the Charter of Human Rights to act in a

⁶⁷ New VPM Human Sources Policy, section 1.3: VPL.0005.0285.0001 at .0005.

⁶⁸ New VPM Human Sources Policy, section 1.3: VPL.0005.0285.0001 at .0005

⁶⁹ VPL.0005.0280.0267.

way that is compatible with human rights and to ensure that proper consideration is given to relevant human rights in the decisions that Victoria Police makes.⁷⁰

197 The Human rights equity and diversity standards provide that limitation of a person's human rights can only be done to the extent that it is reasonable and can be justified. All limitations of a human right must be for a legitimate purpose, necessary, proportionate and lawful pursuant to section 7(2) of the Charter of Human Rights.⁷¹

198 When making decisions, all members are required to consider:⁷²

- (a) Under what law or authorisation are you acting?
- (b) Which human rights are relevant and will your actions protect or limit these rights?
- (c) If your actions limit human rights, is the limitation reasonable and can it be justified in the circumstances?
 - (i) Is the limitation authorised by law?
 - (ii) Is it for a legitimate purpose?
- (d) Is the limitation necessary and proportionate to the goal you are trying to achieve?
- (e) Is there another reasonable way of achieving your goal that is less restrictive of human rights; can it be done better or differently?

199 The HSEC was established to provide ethical governance and decision-making over certain human sources or certain potential human sources. In considering whether to allow an approach to a potential human source or to register a human source that has been referred to the HSEC, the New HSEC Terms of Reference provide that it must consider (among other things) the impact on the human rights of any individuals or the community if the information is utilised or not utilised.

4(d) Changes to the risk assessment process and tool in recent years and the nature, purpose and drivers of those changes.

200 The changes to risk assessment process and tools in recent years, and the drivers for those changes, are described in the responses to questions 4(a) to (c).

⁷⁰ Human rights equity and diversity standards, 1: VPL.0005.0280.0267 at .0267.

⁷¹ Human rights equity and diversity standards, 2: VPL.0005.0280.0267 at .0268.

⁷² Human rights equity and diversity standards, 3: VPL.0005.0280.0267 at .0269.

4(e) The nature, purpose, drivers and any outcomes of the ‘dynamic risk assessment’ trial.

- 201 The dynamic risk assessment model was trialled under a pilot program with the dedicated team that manages high risk sources at the HSMU that commenced on 1 November 2019.⁷³
- 202 The trial was approved by Assistant Commissioner Paterson and is based on a dynamic risk assessment tool developed by a senior forensic psychologist.
- 203 The dynamic risk assessment tool replaces the requirement to use the standard risk assessment tool throughout the relationship with the human source. The dynamic risk assessment focuses on changes to risk, which may be based on a new target, a new tasking, or other change of circumstance. It is designed to be used to manage risk in an ongoing way after the initial risk assessment has been completed and is in place.
- 204 The dynamic risk assessment document contains a section on risk assessment which facilitates identification of specific categories of risk and a description of each one.
- 205 It also incorporates a risk management plan, which should clearly outline the risk mitigation strategies to be employed by the handling team in order to mitigate the identified risks.
- 206 The document is designed to be clear, user-friendly, to reliably track through updates to risk and be less based on operator experience to fill out the various components.⁷⁴
- 207 Although the pilot is currently subject to evaluation, the use of the dynamic risk assessment tool by the dedicated team that manages high risk sources is continuing in the meantime. The dynamic risk assessment tool has also been replicated in the HSDRA that will be rolled out more broadly with the implementation of the New VPM Human Sources Policy. Dynamic risk assessment is well accepted as being more sophisticated and a better predictor of risk than a static risk assessment. It is for this reason that it is being used while the evaluation of the specific trial is continuing.

⁷³ Human Source Dynamic Risk Assessment Pilot, 1: VPL.0005.0280.0115.

⁷⁴ Human Source Dynamic Risk Assessment Pilot, 8–9: VPL.0005.0280.0115 at .0122–.0123.

AUDIT AND MONITORING

Qu 5 Please outline the internal audit and monitoring processes in place in respect of Victoria Police's use of human sources including:

- 5(a) The focus of these audit and monitoring activities (for example, a compliance focused assessment of adherence to specific policy provisions and timeframes, or a more qualitative assessment of the appropriateness of decision-making and risk management strategies).
- 5(b) The methodology adopted for these audit and monitoring activities.
- 5(c) The personnel or units responsible for undertaking these audit and monitoring activities.
- 5(d) The outcomes of scheduled compliance audits undertaken by the Human Source Management Unit since the completion of the Kellam Report.

208 The audit and review procedures currently in place, and mandated in the New VPM Human Sources Policy, include compliance based assessment, and qualitative reviews and checks on decision-making. The human source policy is based around intensive supervision and inspection of the source files by the controller, the OIC, the LSR, the HSMU, the CSR and on some occasions the HSEC, as outlined below. In effect, the human source file (including community sources), is constantly being audited. One of the core responsibilities of the HSMU is to ensure that the human sources being managed by Victoria Police are being managed according to policy. This requires constant file auditing. However, the work of the HSMU does go further than just policy compliance, and the HSMU staff provide qualitative assessments during the registration process.

209 It has been standard practice for many versions of the policy that an AOR form must be delivered to a human source within PII.⁷⁵ The AOR must be reviewed at least monthly by the controller, and the outcome must be endorsed on Interpose.⁷⁶

210 Pursuant to both the Current VPM Human Sources Policy and the New VPM Human Sources Policy, HSMU monitors compliance with policy provisions and timeframes. HSMU is to notify the LSR of:⁷⁷

⁷⁵ New VPM Human Sources Policy, section 3.2: VPL.0005.0285.0001 at .0010-.0011.

⁷⁶ Statement of AC Paterson dated 22 March 2019, [4.63]: VPL.0014.0005.0001 at .0036.

⁷⁷ Statement of AC Paterson dated 5 March 2020, [87]: VPL.0014.0005.0109 at .0119-.0120; New VPM Human Sources Policy, section 22: VPL.0005.0285.0001 at .0043-.0044; Current VPM Human Sources Policy, section 16: VPL.0002.0001.1776 at .1804.

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

- (a) source files dormant longer than stipulated review periods;
 - (b) risk assessments or AORs not provided or updated;
 - (c) incidents whereby a source is harmed as a result of their relationship with Victoria Police;
 - (d) any high risk sources that require monthly review and endorsement of the risk assessment; and
 - (e) other management issues that should be brought to the LSR's attention.
- 211 For high risk sources, the LSR must endorse current risk assessments to reflect that no new risks have arisen that would require the revision of a risk assessment and must document checks and inquiries undertaken.⁷⁸ The LSR must carry out this review on a monthly basis.⁷⁹ This check covers both compliance and is also a qualitative review in that the LSR actively enquires into the existence of new risks arising since the previous assessment.
- 212 The reviews conducted by controllers every month and OICs every three months are both compliance based and qualitative. They consider not only whether the risk assessment has been updated but also the content of the risk assessment.
- 213 LSRs carry out reviews every three months subsequent to OIC review. At present, the LSR position is occupied by a divisional superintendent.
- 214 Pursuant to the New VPM Human Sources Policy:⁸⁰
- (a) controllers must complete a monthly review of the human source relationship, risk assessment and value of the continued relationship;
 - (b) OICs must review active registrations every three months and make a comment on the source file; and
 - (c) for high-risk human sources, the LSR must endorse current risk assessment as fit for purpose on a monthly basis.
- 215 The Compliance and Risk Management Unit (**CaRMU**) within the ICSC also conducts rolling six-monthly audits of human source registrations. The unit was officially formed on

⁷⁸ Statement of AC Paterson dated 5 March 2020, [87]: VPL.0014.0005.0109 at .0119–.0120; New VPM Human Sources Policy, section 22: VPL.0005.0285.0001 at .0043–.0044.

⁷⁹ New VPM Human Sources Policy, section 5.2: VPL.0005.0285.0001 at .0018–.0019.

⁸⁰ New VPM Human Sources Policy, section 22: VPL.0005.0285.0001 at .0043–.0044.

1 January 2017.⁸¹ The audits were commenced in 2017 and have continued since then, with the measures being audited being reviewed periodically.⁸² The audit measures currently in place include criteria in relation to:

- (a) responsibilities and procedures;
- (b) registration process;
- (c) risk assessment, including whether the controller evaluated the risk assessment for potential and identified risks and ensured that sufficient mitigation strategies were in place;
- (d) contact with sources; and
- (e) audit and compliance.

216 As part of the upgrade to the Interpose human source module in October 2019, every member of a handling team now has the ability to generate compliance spreadsheets on Interpose relating to all human sources under the member's control.⁸³

217 Interpose also has the function to record specific information relating to either a human source or information subject to a legal obligation of privilege or confidentiality.⁸⁴

Audit outcomes since the completion of the Kellam Report

218 Since 2018, the ICSC has carried out four audit and compliance measures/activities in relation to human source management. These are detailed in the statement of Assistant Commissioner Paterson dated 5 March 2020. In broad terms, the four processes were:

- (a) spreadsheets detailing compliance status of human source registrations;⁸⁵
- (b) audits carried out by the CaRMU in May 2017, November 2018 and August 2019 which did not involve any human source engaged in a Kellam Occupation or that provided information subject to legal privilege or confidentiality obligations⁸⁶ (referred to above at paragraph 215);

⁸¹ Statement of AC Paterson dated 5 March 2020, [92]–[93]: VPL.0014.0005.0109 at .0120.

⁸² VPL.0005.0280.0015; VPL.0005.0280.0045; VPL.0005.0280.0062; VPL.0005.0280.0271

⁸³ Statement of AC Paterson dated 5 March 2020, [99]: VPL.0014.0005.0109 at .0121.

⁸⁴ Statement of AC Paterson dated 5 March 2020, [100]: VPL.0014.0005.0109 at .0121.

⁸⁵ Statement of AC Paterson dated 5 March 2020, [90]: VPL.0014.0005.0109 at .0120.

⁸⁶ Statement of AC Paterson dated 5 March 2020, [93]: VPL.0014.0005.0109 at .0120.

- (c) an instruction issued 21 February 2019 to LSRs that no human source registration should be approved unless the "occupation" and "employer" fields are completed; and⁸⁷
 - (d) upgrade to the Interpose human source module on 26 October 2019 introducing an automated alert to the HSMU if issues of legal privilege or confidentiality are identified at the time of human source registration, or if a Kellam Occupation is entered in the system.⁸⁸
- 219 The upgrade to Interpose introduced on 26 October 2019 also introduced a number of compliance measures, including:⁸⁹
- (a) access to an automatically generated Compliance Report by staff with access to the Human Source Module;
 - (b) automatic suspension of a human source for whom there are overdue compliance requirements;
 - (c) a pop-up window when a new human source is registered asking if there are any perceived legal privilege or confidentiality considerations; and
 - (d) introduction of a field to capture occupations triggering a question regarding legal obligations of privilege or confidentiality.
- 220 The Interpose system generated Compliance Report was developed in order to facilitate audits by LSRs of the sources being managed by their staff. This function replaced the manually created governance reports that were sent out by email to the LSRs every two months.
- 221 Assistant Commissioner Paterson in his statement of 5 March 2020 also refers to the Victoria Police response to instances of non-compliance with the Current VPM Human Sources Policy identified in a HSMU audit conducted of all active human source registrations in June 2018.⁹⁰
- 222 This audit reviewed **PII** active human source records and identified that **PII** were non-compliant with at least one of the audit areas. All issues of non-compliance related to administrative or technical non-compliance apart from an instance when information reports were released prior to registration. Nevertheless, as a result of discussions

⁸⁷ Statement of AC Paterson dated 5 March 2020, [94]: VPL.0014.0005.0109 at .0120.

⁸⁸ Statement of AC Paterson dated 5 March 2020, [95]–[98]: VPL.0014.0005.0109 at .0121.

⁸⁹ VPL.0005.0280.0070.

⁹⁰ Statement of AC Paterson dated 5 March 2020, [102]–[107]: VPL.0014.0005.0109 at .0121 to .0122.

between Assistant Commissioner Paterson and Deputy Commissioner, Specialist Operations and Assistant Commissioner, Professional Standards Command, the Independent Broad-based Anti-corruption Commission (IBAC) was briefed on the non-compliance issues on 23 July 2018.

- 223 Any human source file identified as non-compliant had its registration status changed to "not approved". The handler, controller and LSR for each non-compliant file were informed of the specific non-compliance issues and asked to bring the file into compliance or to deactivate the human source. In relation to the instance of non-compliance involving the release of information reports prior to registration, three members of the PII [REDACTED] were referred to Professional Standards Command and a decision was subsequently made that the handling team no longer wished to pursue the registration of the human source.

HUMAN SOURCE MANAGEMENT MODEL

Qu 9 Please outline the current structure of Victoria Police's human source management model including:

- 9(a) The effectiveness, benefits and risks of the current 'hybrid' model (incorporating a combination of dedicated/centralised and decentralised units and functions).**
- 9(b) The measures in place to manage any risks arising from the current model (for example, the operation of dedicated source units or the decentralisation of human source management functions).**
- 9(c) The basis for determining whether a dedicated source unit should be established in a region and who holds responsibility for making this determination.**

The 'hybrid model'

- 224 Section 6 of the Current VPM Human Sources Policy provides the current human source management model. This model is largely repeated in section 6 of the New VPM Human Sources Policy.

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

- 225 The model is referred to as a hybrid model because across Victoria Police there is currently a mix of dedicated human source units in some work areas, and in other work areas, investigators will be handling their own human sources.
- 226 The current framework is based on each operational superintendent deciding if they will take resources from other units within their division to create a dedicated human source team rather than an agreed organisational structure and allocation of resources.
- 227 This approach has the benefit of allowing work areas to determine their own priorities while retaining dedicated and specialised units to ensure capability and guidance is available.
- 228 However, this model also has limitations. Victoria Police has identified the following as challenges with the current hybrid human source management framework.
- (a) the existing governance framework can lead to difficulties in regional areas without sufficient human source training and experience, which can in turn create challenges in governance;
 - (b) the absence of dedicated teams can lead to conflict with other work priorities;
 - (c) there can be a lack of alignment of source activity to regional or divisional priorities;
 - (d) human source management skills are perishable, and members are being trained in human source management who then do not regularly or consistently use those skills, primarily because they have reactive policing roles. Also, some members may not have the right attributes for the role; and.
 - (e) the hybrid model can make it difficult to identify where a human source in one division may be in a position to be tasked to fill intelligence gaps relative to another region or command.
- 229 In recognising the limitations of the hybrid model, in December 2019 Victoria Police Executive Command noted and provided in principle support (subject to further development of the resourcing allocation, delivery model and investment requirements) for the following principles to guide a different structure and approach to the hybrid model:
- (a) there should be dedicated specialist teams to enable intrusive supervision and consistent practice;
 - (b) human source registrations should primarily be for a specific purpose that is in line with current priorities, not just based on opportunity;

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

- (c) those involved with the recruitment and approval of human sources should have human rights at the core of the decision making process when determining the necessity to obtain and use the information along with the proportionality of any infringement of human rights that the registration may involve. In relation to the registration of persons with legal obligations of privilege or confidentiality this may involve external advice or oversight, such as the Public Interest Monitor as part of the HSEC;
- (d) there should be independent oversight of the registration of human sources with legal obligations of privilege or confidentiality (but that it is not necessary that such independent oversight apply to the registration of other human sources);
- (e) that intuitive IT systems to support registration, oversight and auditing should be implemented;
- (f) that IT systems to support information report management and are linked to case management and human source management systems;
- (g) that a confidential contact framework be established for one-off confidential disclosures;
- (h) having a dedicated centralised training team;
- (i) PII [REDACTED]
- (j) having appropriate analytical support to enable best practice in state-wide human source tasking and coordination process;
- (k) having dedicated disclosure officers; and
- (l) having increased internal audit capacity and capability.

230 The VPM Human Sources Policy implemented the Kellam recommendations and created a new framework to manage risks, including those arising from the current model. The New VPM Human Sources Policy makes further improvements to the policy framework.

Managing risks arising from the current model

231 In order to manage the limitations of the existing framework, the CSR developed a governance report that was the predecessor to the compliance report now created by Interpose. The HSMU also conducts training days with the members of dedicated source

teams in an attempt to build relationships with the members and use the opportunity to explain changes in policy, pass on emerging issues and lessons learnt.

- 232 Interpose is an important tool in the management of risks as the system is programmed to create checks and limits on decision-making and conduct in relation to the use of human sources. For example, when a member seeks to register a potential human source, the member is asked questions about that person's occupations and a decision-tree guides the steps that must be taken (i.e., as explained, that the CSR is notified if the source works in any of the Kellam occupations and the registration cannot proceed without further steps being taken).
- 233 As far as possible, the Current and New VPM Human Sources Policy requirements are reflected in Interpose. For example, a member cannot create an information report based on information from a human source whose registration has not yet been approved. In this way, the system requires that the steps be taken before matters progress.
- 234 Human source management will always rely on human assessment of risk and appropriate governance, which highlights how resources dedicated to the role can develop a much higher capability in risk management than is achievable with the current framework. Risk assessment and management need to be supported by IT systems but the IT systems cannot be relied upon to manage risk.

TRAINING

Qu 10 Please outline the human source management training requirements for Victoria Police officers who hold human source management responsibilities and/or the ability to be involved in the management of human sources including:

10(a) Handlers and Controllers (in dedicated source units and otherwise)

Handlers and Controllers (in dedicated source units and otherwise)

- 235 Training for members of the handling team for a human source are set out in the Current VPM Human Sources Policy.⁹¹ PII


PII


⁹¹ Statement of AC Paterson dated 5 March 2020, [20]: VPL.0014.0005.0109 at .0111.



PII



236 Training is provided to assist members to identify information or intelligence that may be subject to legal privilege or confidentiality obligations.⁹³

237 The CSR may also require a human source to be managed by members with a nominated PII .⁹⁴

238 The New VPM Human Sources Policy contains training recommendations for controllers as well as handlers. 

239 A source identified as high risk must be managed by members with PII 


240 The implementation and allocation of Human Source Management training is monitored by the HSGC (now the HSAC) and the Assistant Commissioner, ICSC to ensure the organisation has the capacity to obtain and act on human source intelligence across all operational work units.⁹⁸

241 

⁹² VPL.0098.0046.0451; VPL.0098.0046.0459; VPL.0098.0046.0476; VPL.0098.0046.0492; VPL.0098.0046.0514.

⁹³ Statement of AC Paterson dated 5 March 2020, [69]: VPL.0014.0005.0109 at .0117.

⁹⁴ Statement of AC Paterson dated 5 March 2020, [70]: VPL.0014.0005.0109 at .0117.

⁹⁵ New VPM Human Sources Policy, section 2.4: VPL.0005.0285.0001 at .0008.

⁹⁶ New VPM Human Sources Policy, section 6.1: VPL.0005.0285.0001 at .0020-21.

⁹⁷ New VPM Human Sources Policy, section 5.2: VPL.0005.0285.0001 at .0018-.0019.

⁹⁸ GLA.0003.0006.0137 VPL.0005.0280.0292

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

[REDACTED] PII

242 [REDACTED] PII In

2019, researchers at the Sellenger Centre for Research in Law, Justice and Social Change published findings from research examining the perceptions of experienced handler as to the core attributes of effective human source handlers.⁹⁹ Since the

P [REDACTED] PII PII PII

243 [REDACTED] PII PII

For these reasons, Executive Command of Victoria Police has approved in principle a move to a dedicated and centralised framework for human source management. In such a framework there would be an entry

[REDACTED] PII PII PII PII PII

10(b) Officers in Charge, Local Source Registrars, Central Source Registrars, Human Source Management Unit, Central Source Registrars and members of the ICSC Ethics Committee.

244 The training requirements for OIC and LSR are set out in sections 2.4 and following of the New VPM Human Sources Policy. No member can be assigned to these roles unless they have completed the [REDACTED] training as a minimum.¹⁰⁰

⁹⁹ VPL.0005.0280.0135.

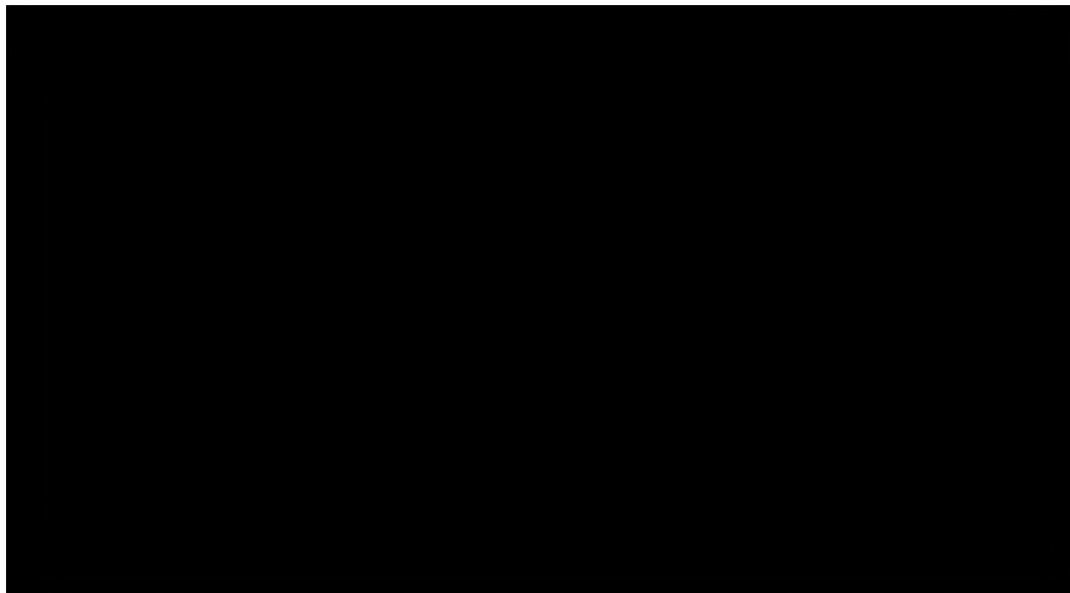
¹⁰⁰ New VPM Human Sources Policy, section 2.2: VPL.0005.0285.0001 at .0007.

245 The New VPM Human Sources Policy requires [REDACTED] training qualification from the OIC, LSR and members delegated any functions of the LSR.¹⁰¹

246 The role of the CSR is filled by the Superintendent of the Covert Services Division. The member who fills this role is selected on the basis of their policing career and background. A member would not be placed in this role without significant front-line policing and investigations experience and experience in policing roles that demonstrate a high level of risk management. The role of the CSR carries a high level of risk and responsibility that is quite specialised so a broad background in policing environments that require high levels of risk management is a pre-requisite. This background can then be built upon once in the role.

247 The current CSR, Superintendent Mahony, since being appointed to the role has attended the annual Australian Human Source Working Group and PII [REDACTED] training courses interstate and within Victoria. He also attended the last PII [REDACTED] training course held in Australia.

248



249 Members of the ICSCEC (now the HSEC) receive training on the Charter of Human Rights in relation to relevant human rights considerations.¹⁰²

¹⁰¹ New VPM Human Sources Policy, section 6.1; VPL.0005.0285.0001 at .0020-.0021.

¹⁰² Statement of AC Paterson dated 5 March 2020, [22]; VPL.0014.0005.0109 at .0111.

10(c) The rationale for the minimum training requirements applicable to officers listed in 10(a) and 10(c).

250 PII training is considered to meet the training requirements for handlers and controllers generally so they can register a human source within policy. PII training is generally recommended for members engaged in tasking of human sources and those members likely to register human sources more frequently. PII training is also recommended for members who will perform the role of a controller.

251 PII training is a highly intensive form of training and is only required for those handling high risk sources or those members who wish to increase their skills in this specialised area.

252 As noted above, the CSR role is a high-level governance role and therefore there is no specific training requirement imposed. There are few training courses available for members filling this role. The UK Authorising Officers course is the training that is most closely aligned to the role of the CSR.

Qu 11 Please outline the training provided to Victoria Police officers listed in 10(a) and 10(b) regarding:

11(a) The identification of professional obligations of confidentiality or privilege held by prospective human sources

253 Training requirements for those involved in human source management are currently being reviewed and revised training will be undertaken by all members following the implementation of the New VPM Human Sources Policy. The revised training will cover identification of human sources with a legal obligation of privilege or confidentiality, as well as those with a connection to those persons, and address the procedures in place under the New VPM Human Sources Policy for managing human sources of this type.

254 Outside of the human source management context, the Research and Training Unit (Legal Services Department) (RTU) offers a course for police prosecutors which includes a module on privilege in Module 2.¹⁰³ The course covers:

- (a) client legal privilege;

¹⁰³ VPL.0098.0045.0161

- (b) journalist privilege (sections 126J-K Evidence Act);
- (c) religious confessions (section 127 Evidence Act);
- (d) privilege against self-incrimination (section 128 Evidence Act);
- (e) judicial decision-making (section 129 Evidence Act); and
- (f) matters of State (section 130 Evidence Act).

255 Furthermore, legal professional privilege issues are covered in presentations provided in the PII training course. This includes human sources in the "Kellam occupations".¹⁰⁴

11(b) the identification, use, management and disclosure of confidential or privileged information provided by human sources

256 In support of the implementation of the New VPM Human Sources Policy, PII training includes public interest immunity (PII) claims. Training will indicate that PII should be claimed at the earliest opportunity and that advice should be sought from HSMU in advance of court proceedings.¹⁰⁵ The PII training will also include issues relating to the registration of human sources in categories 1 to 4, as outlined in section 8 of the New VPM Human Sources Policy.

257 The Risk Assessment Theory version 1.5 (Jan 2020) module is incorporated in PII training. The course identifies the existence of legal professional privilege and confidentiality (lawyers, doctors, parliamentarians, court officials, journalists, priests and others with professional obligations regarding confidentiality) as a risk factor in human sources.¹⁰⁶ The module advises contact with HSMU at the earliest opportunity (and preferably before meeting the human source) if this situation arises.

258 Training in relation to disclosure generally is being significantly revised and is outlined in detail in the response to question 12 below.

11(c) human rights issues associated with the use of human sources

¹⁰⁴ [REDACTED] Risk Assessment Theory presentation, 6: VPL.0005.0280.0029 at .0034 [REDACTED] Human Source Assessment, 6: VPL.0005.0280.0249 at .0254.

¹⁰⁵ [REDACTED] Modules: VPL.0098.0046.0451; VPL.0098.0046.0459; VPL.0098.0046.0476; VPL.0098.0046.0492; VPL.0098.0046.0514.

¹⁰⁶ [REDACTED] Risk Assessment Theory presentation, 6: VPL.0005.0280.0029 at .0034 [REDACTED] Human Source Assessment, 6: VPL.0005.0280.0249 at .0254.

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

- 259 All members are bound by the Human rights equity and diversity standards which link to the Charter of Human Rights.
- 260 Victoria Police as a public authority is bound by the Charter of Human Rights to act in a way that is compatible with human rights and to ensure that proper consideration is given to relevant human rights in the decisions we make. The Centre for Professional Policing (CPP), which provides foundation training at the Victoria Police Academy introduces recruits to the Charter of Human Rights in Phase One of their foundation training and it underpins all of the content delivered. The CPP aims to equip the recruits with the information and resources to identify and understand human rights in order to apply their knowledge in the course of their duties.
- 261 There is online training on the Victoria Police Learning Hub titled "Human Rights: Everyday Policing 2019" which is available for all Victoria Police members and employees and covers three modules:
- (a) Protecting Human Rights is Everyday Policing;
 - (b) Human Rights and the Charter of Human Rights; and
 - (c) Applying Human Rights Considerations in Everyday Situations.
- 262 This online learning environment also links the participant with reference documents such as the Charter of Human Rights handout, the Human Rights Ready Reckoner and the Human Rights Practitioner Guide.
- 263 The PII training specifically refers to the rights mentioned in the New VPM Human Sources Policy, namely the right to life (section 9), privacy and reputation (section 13), freedom of thought, conscience, religion and belief (section 14), peaceful assembly and freedom of association (section 16), protection of families and children (section 17), cultural rights (section 19) and rights in the criminal process (section 25).¹⁰⁷
- 264 The relevant training module also sets out the need for the human source handling team to consider whether there is a legitimate purpose for use of the source, and whether the use is necessary and the breach of any human right proportionate in all the circumstances.

¹⁰⁷ VPL.0005.0280.0087 at .0095; PII Module 4:
VPL.0098.0046.0492.

11(d) conflict of interest issues relevant to the use of human sources

265 In November 2019 and March 2020, members who are currently actively involved as handlers have participated in a training course presented by VGSO on issues of legal privilege and disclosure.

266 The PII training is currently being revised. When rolled out, it will include issues relating to human sources with legal obligations of privilege and confidentiality. All members performing roles as handlers, controllers, OICs and LSRs will be required to requalify once the revised training commences.

Qu 12 Please outline the training provided to Victoria Police officers regarding disclosure obligations, including at the Victoria Police Academy and Detective Training School.

267 The People Development Command (PDC) is based at the Victoria Police Academy and provides promotional and development programs for police and VPS staff. It consists of a number of Centres of Learning including the Centre for Family Violence, Centre for Professional Policing, Centre for Road Policing, Centre for Law and Operational Development and Centre for Crime Investigation formerly known as Detective Training School. Of those Centres of learning there are three centres which provide disclosure training.

Centre for Crime Investigation

268 The Centre for Crime Investigation (CCI) delivers the Advanced Diploma of Police Investigation (ADPI) to newly appointed Detectives. Disclosure obligations are threaded throughout training and are addressed specifically in two sessions of 'Investigative Ethics'. The ADPI also includes a 'Judicial Day' where trainee detectives visit the Victorian court precinct and receive lectures from the VGSO, Office of Public Prosecutions (OPP) and a Magistrate.

269 The CCI also delivers the Investigation Managers Course to supervisors of detectives. It currently covers the topic of disclosure in a case study session.

Centre for Law and Operational Development

270 Disclosure training for recruits is covered in sessions on briefs of evidence. An overview of disclosure is provided in the student notes and includes guides on what to provide on

briefs of evidence for both the prosecution and accused. Constables returning to the Police Academy undertake the 'Take Charge' program where they receive training in evidence and court procedure. Part of that training includes a session covering what must be disclosed and pre-hearing disclosure obligations.

Promotional Programs Unit

271 The Promotional Programs Unit which provides training for Sergeants and Senior Sergeants addresses disclosure in a training session delivered by a member of the Salus Taskforce. The specific subject of Public Interest Disclosures is discussed, and students are provided with a document detailing their obligations.

Police Prosecutor Training Course

272 The Police Prosecutor Training Course (PTC) is delivered by the Victoria Police RTU. At the completion of the PTC students attain the Graduate Certificate in Police Prosecutions which is a nationally accredited qualification. The course incorporates two lectures focused on disclosure, the roles and responsibilities of police prosecutors in summary matters and privilege. From March 2020, prosecutors also undertake training in relation to PII. Prosecutors undergoing this training are also provided with a hard copy of the Victoria Police Disclosure Handbook.¹⁰⁸

273 The lectures cover:

- (a) *Criminal Procedure Act 2009* (Vic) (**Criminal Procedure Act**) sections 1(a)-(m), 35, 39-46, 48, 53A;
- (b) types of disclosure: statutory, FOI, further and better particulars, ethical;
- (c) *Magistrates Court Act 1989* section 43; and
- (d) Ethical disclosure: *R v Lucas* [1973] VR 693.

274 Coverage of section 45 of the Criminal Procedure Act (grounds on which informant may refuse disclosure) touches on PII as a ground for refusal of discovery.¹⁰⁹

275 Training does not refer directly to the Policy of the Director of Public Prosecutions for Victoria (**DPP Policy**) on disclosure but reflects the content of paragraph 15 of the DPP Policy, and there is a link on the intranet to the DPP Policy. Paragraph 15 provides:

¹⁰⁸ Victoria Police Legal Services Department Disclosure Action Items: VPL.0005.0284.0001.

¹⁰⁹ VPL.0098.0045.0161.

Subject to any claim of public interest immunity or legal professional privilege or any statutory provisions to the contrary, prosecutors must disclose to the accused any material which is known to them which, on their sensible appraisal:

- (i) is relevant or possibly relevant to an issue in the case; or*
- (ii) raises or possibly raises a new issue that is not apparent from the evidence the prosecution proposes to use; or*
- (iii) holds out a real as opposed to fanciful prospect of providing a line of inquiry which goes to (i) or (ii) above.*

- 276 Disclosure obligations are also addressed in training of operational members at the Brief Quality Assurance Course (**BQAC**). The BQAC was developed in partnership with the Centre for Leadership, the RTU and the Regional Training Officer (**RTO**) network to assist members performing the complex task of checking and authorising briefs of evidence. It is delivered by the Prosecutions Frontline Support Unit, RTOs and Divisional Training Officers. The course covers disclosure obligations specifically in relation to preliminary and full briefs of evidence with relevance and PII also addressed. The training must be successfully undertaken by sworn officers before they undertake brief checking and authorisation and as part of the Sergeants Qualifying Program.
- 277 The VGSO recently conducted a disclosure training session at the Human Source Conference which is attended by members of the HSMU and members of dedicated source management teams.¹¹⁰ This training focussed on disclosure, oppression, legitimate forensic purpose, client legal privilege and public interest immunity. An earlier disclosure training session had been conducted by the VGSO to the HSMU staff only which focussed on disclosure, client legal privilege and public interest immunity.
- 278 A training needs analysis is being undertaken by a dedicated project team within PDC to identify and analyse training needs and gaps as they relate to relevant legislation, VPM, Victoria Police Disclosure Handbook and the Victoria Police Disclosure Framework which is currently under development. Following this, existing training will be strengthened. In addition, it is proposed to develop refresher training for all police to ensure they fully understand and meet their disclosure obligations. Finally, any further training will be informed by the findings and recommendations of the Royal Commission and other enquires.

¹¹⁰ Victoria Police Legal Services Department Disclosure Action Items: VPL.0005.0284.0001.

279 The Victoria Police Disclosure Handbook which was produced by the VGSO at the request of Victoria Police was finalised earlier this year and is available to Victoria Police members via the Prosecution Frontline Support, Legal Services Department intranet page and will also be available on the Disclosure Management Intranet page.

SYSTEM CAPABILITY

Qu 13 Please outline the recent enhancements to the human source management module on Interpose, particularly with respect to human sources or information subject or potentially subject to obligations of confidentiality or privilege, including:

13(a) The nature, purpose and drivers of those changes

13(b) The adequacy of the Interpose module following the implementation of these enhancements.

13(c) Any further system enhancements considered necessary by Victoria Police.

Nature of changes to the human source management module on Interpose

280 Interpose includes a module dedicated to the management of human sources (the **human sources module**). The module was added to Interpose in 2009 and using the module became a requirement of the human source policy, from 2011.¹¹¹

281 The human sources module aims to provide a registry function for human source management and capture information relative to the policy and procedure set out in the Current VPM Human Sources Policy. The human sources module had a number of additional functions added to it in October 2019 to increase the capacity of Victoria Police and handling teams to comply with policy, including the New VPM Human Sources Policy.

282 Assistant Commissioner Paterson has explained the upgrades to the human sources module.¹¹² When developing these upgrades, subject matters experts from the HSMU advised the technical team to add specific elements to Interpose and why.

283 Interpose is a controlled access system: this means that access to the human source module in Interpose is restricted to the handling team and cannot be accessed by

¹¹¹ Statement of AC Paterson dated 22 March 2019, [3.44]: VPL.0014.0005.0001 at .0012.

¹¹² Statement of AC Paterson dated 5 March 2020, [95]–[100]: VPL.0014.0005.0109 at .0121.

- members outside that team. The exception to this is that a manager who is part of the handling team in an area in which human sources are registered will have access to the module.
- 284 The human sources module enables the handler to record the required details of a human source and the information they provide.
- 285 The human sources module provides a number of new safeguards, for example, through pop up reminder and question windows, technical barriers, automated emails and automated compliance dates being generated. These seek to ensure that the procedures and the safeguards in the Current VPM Human Sources and the New VPM Human Sources Policy are implemented.
- 286 Some key functions of the current human source module are as follows:¹¹³
- (a) in applying to register a source, a new pop up window is displayed asking the handler if the source could be subject to a legal obligation of privilege or confidence (for example, by being in one of the category 1 occupations) or whether the registration could breach a legal obligation of privilege or confidentiality. If the member selects, "yes", they must discuss the source with the HSMU and no further action can be taken with respect to that source;
 - (b) the New VPM Human Sources Policy provides that a source has to have a status: "draft", "review", "approved", "not approved", "suspended" or "deactivated". The status enables or triggers different steps, as outlined below. Within Interpose when a registration is in draft it may have the status of Team Assign. When it has the review status within Interpose it might have the status of "LSR Approval" or "CSR Approval". Within Interpose the status of Suspended is known as "Suspended Non-compliance issues";
 - (c) if a source is "not approved" or "suspended" (a new status), the module prevents an information report from being created and uploaded in relation to information from that source. This means that before HSEC considers whether to register a source that may have a legal obligation of privilege or confidentiality, information from that source cannot be taken and stored on Interpose in information report. (In the past, information reports could be uploaded in relation to potential human sources. This function has been removed);

¹¹³ VPL.0005.0280.0070.

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- (d) in addition to (a) above, in applying to register a human source, the handler must identify the source's occupation and employer in drop down menus, in order to trigger the CSR's and the HSEC's consideration of that source, if they are a category 1 individual or have a connection to one. These fields are mandatory fields;
- (e) the employment section of a source's details also identifies current or previous occupations. This seeks to ensure that where a source has, or may have, a legal obligation of privilege or confidentiality, the human source module triggers the appropriate scrutiny as to whether that source should be registered, and if so, on what terms (as set out in the response to question 7). The mechanism for this is as follows:
 - (i) there is a yes/no button to identify if the source has or may impart information subject to a legal obligations of privilege or confidentiality. If the employment status is "Employed", the question "Does this occupation have an obligation regarding privilege or confidentiality?" is asked.
 - (ii) if yes is selected,
 - (1) the message "You must contact HSMU immediately" is displayed;
 - (2) a second question must also be answered, which is, "Could the information being provided during this registration be as a result of their occupation and lead to a breach of disclosure or confidentiality?" A message is again displaced, "You must contact HSMU immediately."
 - (3) information reports cannot be prepared and the registration cannot be progressed until the CSR's and HSEC's consideration of the answers given; and
 - (4) when the message "You must contact HSMU immediately" is displayed, this does not prevent the person completing the registration information from continuing, but the HSMU is notified and follow up with the person, if they did not contact them; and
 - (iii) if no is selected, the message "You must include details of how the information was acquired in the risk assessment" will be displayed;

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

- (f) each source has a risk rating: "low", "medium", "high". If a source risk is "high", a message is displayed to contact the HSMU immediately. When this message is displayed, it does not prevent further action being taken without HSMU approval, however, the HSMU would be immediately notified of the "high" rating and the member seeking to register the source would be referred to the dedicated team responsible for managing high risk sources with a view to this team progressing the registration if they felt it viable;
- (g) dates for complying with OIC reviews, risk assessment time periods and the delivery of AOR is calculated automatically and displayed. If compliance dates are not met, the file is automatically suspended until the necessary steps are taken;
- (h) the human source module displays the LSR review of the registration;
- (i) information reports from any human source can be counted and searched;
- (j) the human source module has an area for LSR and CSR commentary and an area for them to approve certain steps and direct that certain steps be taken. For example, through commentary, they can direct that information that might be subject to a legal obligation of privilege or confidentiality not be filed as an information report until other steps are taken, such as consideration by HSEC. It is important to note that where a registered human source provides information that appears to be in breach of a legal obligation of privilege or confidentiality, the information must be recorded in a source contact report (and it must not be disseminated or acted upon), and the matter must be escalated to the HSEC via the HSMU and CSR. The information may only be put into an information report and acted upon in certain circumstances following approval from HSEC and the Deputy Commissioner, Specialist Operations;
- (k) there is a field in relation to the HSEC, where the CSR or HSMU notes details of reviews by HSMU and HSEC;
- (l) where HSEC reviews are required, this is noted on the human source module and actions cannot proceed without the review;
- (m) a compliance report can be generated, in which the system reviews all human source records and generates a report;
- (n) any member of a handling team can generate a compliance report for the human sources relevant to that police member;

- (o) if a record shows non-compliance with a certain required time within policy, or action required in policy, then relevant members must act to remedy that; and
- (p) when a human source has overdue compliance requirements, the human source module automatically suspends the human source. This will occur when:
 - (i) a record has a source contact report/s that has not been reviewed by the controller within 7 days;
 - (ii) the last monthly controller review was over 30 days ago or it has been 30 days since registration approved for new registrations;
 - (iii) PII [REDACTED] PII ; or
 - (iv) the last OIC file review was over 90 days ago.

Purpose of changes to Interpose Human Source module

287 The purpose and drivers of the changes include the desire to continually improve Victoria Police's management of human sources and to have regard to the Comrie Review and Kellam Report recommendations.

Further system enhancements

288 Interpose has been improved and modified within its functionality. However, it is a legacy system that was developed as an investigative case management system. Significant improvement is likely to require new systems rather than further changes, although we will continue to make improvements to support human source management.

Qu 14 The Commission understands that Victoria Police has identified the need for a new electronic document management system to support fulfilment of its disclosure obligations. Please outline:

14(a) The issues associated with current Victoria Police systems and how this affects the fulfilment of disclosure obligations

14(b) How the proposed new electronic document management system would address the issues outlined in 14(a).

14(c) Specifications and costs associated with the proposed new electronic document management system (if known)

14(d) How the proposed new system fits into Victoria Police's broader ICT strategy.

- 289 Victoria Police does not have an electronic document management system to record, categorise or share all of the information it obtains. This can create challenges for complying with disclosure obligations in criminal proceedings as documents are not centrally stored and are not readily accessible. In the vast majority of cases these issues do not impact on disclosure because the informant will be well aware of documents relevant to the investigation. However, where documents relevant to the investigation have been created elsewhere, finding those can be challenging.
- 290 The difficulties with Victoria Police's historical document management systems have been evident in this Royal Commission. This shortfall also extends to how we currently manage legacy paper records and physical artefacts held at the Victoria Police Archive Services Centre in Laverton.
- 291 To overcome these difficulties, substantial additional funding will be required. This would be a significant IT infrastructure project.

Initiatives to improve document management

- 292 Victoria Police has made significant progress over the years to modernise its processes for the benefit of the community through improved frontline policing. However, this has also resulted in more data being captured.
- 293 Victoria Police currently has over 30 information capture technology initiatives in progress that are aimed at reducing waste, improving efficiency and modernising our operations, including a business case for a new Case Management System that would ultimately integrate with an electronic document and record management system. This is described below.
- 294 To address some of these issues Victoria Police implemented an intelligence management system, called Neo.
- 295 Neo allows searching and analytics across approximately 15 base information systems within Victoria Police. Neo connects the information systems and it has enhanced search capabilities, including on free text in various fields, and can prepare Persons of Interest

profiles very quickly. It is not a case management system but will complement one. Neo is also not a document management system.

- 296 However, Neo does go some way to improving Victoria Police's technical capacity to make disclosure.¹¹⁴ Neo connects some data sources and so aids in managing disclosure by enabling broader searching.
- 297 A fit for purpose, best practice document management system would be a fully integrated system where information can be linked and managed. We have stabilised the Interpose platform and a lot of work has been done to ensure that it is as functional as possible pending the development of a new system.
- 298 An electronic document and records management system (**EDRMS**) would assist Victoria Police to address gaps and uplift its Information Management maturity over time.
- 299 EDRMS would be an enabler for Victoria Police to better capture, use, manage and share information throughout the information management lifecycle. Having timely access to up-to-date Police information on demand (anytime, anywhere from any device) is critical in terms of meeting demands associated with Royal Commissions and inquiries, protecting the community and embedding more efficiencies into police practices (operations and corporate).
- 300 The next phase to uplift Victoria Police's information management capability with respect to corporate information is through an EDRMS, to support robust searching, accessibility and disclosure. It would allow management of information through a single source, avoiding duplication and giving confidence that all data has been accessed and searched.
- 301 The Victoria Police Blue Paper and subsequent Capability Framework have identified information management as a critical enabler to achieving its objectives. Victoria Police began its digital transformation process through the Blue Connect program (2016-current) and developed the Victoria Police ICT Strategic Roadmap 2020-2025, which relies on continued investment. It is not possible at this point in time to identify the costs and specifications of a component part of that program of likely work but they are likely to be significant.

¹¹⁴ Neo should also enhance the risk assessment process in relation to a human source. A handler can use the NEO database to assess the source and will have access to all information Victoria Police has access to (if security clearance is not an issue) on that person.

NATIONAL CONSISTENCY AND INTEROPERABILITY

Qu 15 Please outline Victoria Police's engagement with other Australian police agencies in relation to the use and management of human sources including:

15(a) The need for and extent to which there is national consistency in policies, procedures and training across jurisdictions

15(b) The need for and extent to which there is interoperability between jurisdictions in respect of the use and management of human sources

National consistency in policies, procedures and training

302 Each jurisdiction has its own framework for the utilisation of human sources, which will depend upon the operational requirements of each jurisdiction. To that extent, there is little scope for a national approach to the utilisation of human sources.

303 Principles of tradecraft — that is, how to practically engage with a human source — are nationally accepted and training in relation to tradecraft is interchangeable between jurisdictions. [REDACTED]

[REDACTED]

Members from interstate can participate in Victorian training courses and vice versa. The tradecraft component of human source management is interoperable between jurisdictions, while administrative, risk management, and disclosure processes are jurisdiction-specific.

304 The Australian Human Source Working Group comprises representatives from each state and territory police force, the Australian Federal Police, the Australian Criminal Intelligence Commission, Australian Border Force and PII [REDACTED] as a non-voting guest. Through this working group national training competencies have been developed, policy issues are shared and discussed, case studies are provided to highlight lessons learnt, and equipment and training issues are also discussed.

Interoperability between jurisdictions for the use and management of human sources

305 It is not completely clear what is meant by "interoperability between jurisdictions". To the extent that this refers to cooperation or consistency of policy between jurisdictions, as noted above, each jurisdiction has its own framework for the utilisation of human sources.

306 There is generally no need for human sources to be managed within different jurisdictional frameworks. For example, if Victoria Police was to make contact with a potential human source who had information pertinent to the investigation of Commonwealth criminal offences, Victoria Police would do one of two things. It would either register the human source and capture the information and disseminate it to the relevant agency via an information report, or it would introduce the potential human source to the relevant federal body. The potential human source would then be managed within federal frameworks for human source management.

COMRIE AND KELLAM REPORT IMPLEMENTATION AND RELATED ISSUES

Qu 16 Please outline Victoria Police's approach to the implementation of the Kellam Report recommendations in relation to the following:

- 16(a) How Victoria Police addressed all aspects of Recommendation 1 of the Kellam Report (parts (a) to (e) of the recommendation) in the policy changes implemented since completion of the Kellam Report.
- 16(b) The implementation of Recommendation 3(d) of the Kellam Report, the origin of the term 'positive obligation' and the basis for defining 'positive obligation' in the manner described in section 1.20 of the current version of the Victoria Police Manual - Human Sources.
- 16(c) The occupations that Victoria Police considers may be subject to obligations of confidentiality or privilege (whether listed in Recommendation 1(b) of the Kellam Report or otherwise).
- 16(d) The internal decision-making and governance processes in place for implementing and evaluating the implementation of the Kellam Report and Comrie Review recommendations.
- 16(e) The date at which Victoria Police considers it had fully implemented each of the Kellam Report and Comrie Review recommendations.

307 It is important to recognise that the Comrie Review recommendations were made seven years ago, and the Kellam Report recommendations were made five years ago, and were made in relation to a risk management framework for the management of human sources that has since evolved significantly. Consistent with the process of continuous

improvement, the risk management framework continues to evolve, as is evident from the New VPM Human Sources Policy, explained in detail in the responses to question 1 and questions 6 to 8. Accordingly, any assessment of how the recommendations have been implemented must take account of the whole of the risk management framework for the management of human sources that has been implemented by Victoria Police.

Internal decision-making and governance processes in place for implementing and evaluating the implementation of the Comrie Review and Kellam Report recommendations

- 308 The internal decision-making and governance processes for implementing and evaluating the implementation of the Comrie Review recommendations and the Kellam Report recommendations is summarised in the statements of Mr McRae¹¹⁵ and Assistant Commissioner Paterson.¹¹⁶
- 309 Following the Kellam Report, a steering committee chaired by a Deputy Commissioner was established to monitor the implementation of the recommendations. The committee comprised department heads and the (then) Assistant Commissioner, ICSC. After the Kellam recommendations were assessed, the committee made recommendations as to their implementation at a portfolio level and a discussion as to how this would occur. Assistant Commissioner Paterson's statement of 22 March 2019¹¹⁷ describes how the HSMU considered amending the applicable VPM Human Sources Policy to implement relevant recommendations.
- 310 Internal decision-making and governance processes have been improved, as set out in the responses to questions 1 and 6. In particular:
- (a) the Current and New VPM Human Sources Policy require that Victoria Police give specific consideration to the authorisation and use of a human source with a legal obligation of privilege or confidentiality;
 - (b) the HSEC has been formed to have the ultimate decision-making authority on the use of any human source who is subject to a legal obligation of privilege or confidentiality (other than where the purpose of the registration or tasking is to obtain legally privileged or confidential information, or it is proposed to use information that is or appears to be in breach of a human source's legal obligation of privilege or confidentiality, and there are exceptional and compelling reasons to authorise obtaining or using the information, in the interests of national security or for the purpose of preventing a serious threat to life or serious injury, and there is

¹¹⁵ Statement of Findlay McRae dated 13 November 2019, parts 6–8: VPL.0014.0089.0003.

¹¹⁶ Statement of AC Paterson dated 22 March 2019, parts 7, 8, 9 and 11: VPL.0014.0005.0001.

¹¹⁷ Statement of AC Paterson dated 22 March 2019, [4.70]–[4.103]: VPL.0014.0005.001 at .0038–.0044.

no other reasonable means of obtaining the information, following approval by the HSEC and then the Deputy Commissioner, Specialist Operations); and

- (c) between 2014 and 2016, Victoria Police piloted and subsequently established a dedicated source management team responsible for the management of all high-risk human sources across the organisation.

311 Consistent with Victoria Police's commitment to continuous improvement, the Assistant Commissioner, ICSC, has the ongoing responsibility for ensuring that the recommendations continue to be implemented and evaluating the effectiveness of the measures Victoria Police have put in place.

The date at which Victoria Police considers it had fully implemented each of the Kellam Report and Comrie Review recommendations

312 In his statement dated 13 November 2019, Mr McRae notes that by August 2015, most of the recommendations from the Kellam Report had been implemented.¹¹⁸

313 Assistant Commissioner Paterson's statement dated 22 March 2019 explains changes made to the VPM Human Sources Policy issued on 15 March 2016 which incorporated the Kellam Report recommendations.¹¹⁹ Implementation of those recommendations continued to evolve and improve through the Current VPM Human Sources Policy, which came into force in May 2018, and again with the New VPM Human Sources Policy.

314 Assistant Commissioner Paterson's statement of 22 March 2019 identifies a spreadsheet dated 3 March 2018 and prepared by Victoria Police which details the implementation of the Comrie Review and Kellam Report recommendations.¹²⁰ To my knowledge, this is an accurate reflection of the status of those recommendations at that time.

315 There were a small number of recommendations made in the Comrie Review that Victoria Police determined, at the executive level, not to implement and one that was partially implemented. These are recommendations 12, 15, 16, 19 and 22. Victoria Police's reasons for this are set out in the spreadsheet dated 3 March 2018 and referred to in Assistant Commissioner Paterson's statement dated 22 March 2019, to which I refer in paragraph 314 above.

¹¹⁸ Statement of Findlay McRae dated 13 November 2019, [8.7]: VPL.0014.0089.0003 at .0058.

¹¹⁹ Statement of AC Paterson dated 22 March 2019, [4.70]–[4.84]: VPL.0014.0005.0001 at .0038–.0042.

¹²⁰ Statement of AC Paterson dated 22 March 2019, [11.6]: VPL.0014.0005.0001 at .0070; VPL.0005.0013.0516.

316 Victoria Police has also devoted significant resources to the process of disclosure of material to potentially affected persons.

Kellam Report Recommendations 1(a)-(e) and 3(d)

317 The following table sets out how Victoria Police has implemented recommendations 1(a) to (e) and 3(d) of the Kellam Report in the VPM Human Sources and the New VPM Human Sources Policy.

Kellam Recommendation	Summary of Implementation
(1) That all Victoria Police human source policies, associated instructions and practice guides be revised to clearly reflect:	
(a) That special considerations apply to the obtaining, usage and management of information that may be subject to legal professional privilege.	<p>Registration of a human source who is a lawyer requires review and approval by the HSMU, CSR and the HSEC.¹²¹ Both the Current and New VPM Human Sources Policies set out how information that is received from an approved human source who is in a position to which legal obligations of privilege or confidentiality apply and who subsequently volunteers information that is or appears to be in breach of that obligation, is dealt with, including quarantining of such information.¹²²</p> <p>The information may only be used in exceptional and compelling circumstances in the interests of national security or for the purpose of preventing a serious threat to life or serious injury, and there is no other reasonable means of obtaining the information following approval by the HSEC and then the Deputy Commissioner, Specialist Operations.¹²³ The human source registration will be suspended pending the decision by the HSEC and Deputy Commissioner.</p> <p>These requirements also apply in the context of human sources who, while not personally bound by obligations of legal privilege or confidentiality, provide information that appears to be subject to legal professional privilege or obligations of confidentiality.¹²⁴</p>
(b) That the utmost caution ought to be exercised before engaging a human source who may have conflicting professional	The registration of a human source who may have conflicting professional duties is subject to review and approval by the CSR and the HSEC. ¹²⁵ Where the purpose of the proposed relationship with a human

¹²¹ Current VPM Human Sources Policy, sections 1.20, 4.6: VPL.0002.0001.1776 at .1784; .1791–.1792; New VPM Human Sources Policy, section 8.4: VPL.0005.0285.0001 at .0029–.0030.

¹²² Current VPM Human Sources Policy, section 4.6: VPL.0002.0001.1776 at 1791–.1792; New VPM Human Sources Policy, section 5.3: VPL.0005.0285.0001 at .0019–.0020.

¹²³ New VPM Human Sources Policy, section 8.6: VPL.0005.0285.0001 at .0031.

¹²⁴ New VPM Human Sources Policy, sections 5.3, 8.5: VPL.0005.0285.0001 at .0019–.0020; .0030–.0031.

¹²⁵ Current VPM Human Sources Policy, section 1.20: VPL.0002.0001.1776 at .1784; New VPM Human Sources Policy sections 5.3, 8.3: VPL.0005.0285.0001 at .0019–.0020; .0029.

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

Kellam Recommendation	Summary of Implementation
duties (eg lawyers, doctors, parliamentarians, court officials, journalists and priests etc)	source is to obtain information subject to legal obligations of privilege or confidentiality, the registration must be approved by the HSEC and then the Deputy Commissioner, Specialist Operation. Approval may only occur in exceptional and compelling circumstances in the interests of national security or for the purpose of preventing a serious threat to life or serious injury, and there is no other reasonable means of obtaining the information following approval by the HSEC and then the Deputy Commissioner, Specialist Operations. ¹²⁶
(c) That prior to the registration of any human source to whom a professional duty may apply, appropriate legal advice must be obtained	Under the Current VPM Human Sources Policy, the CSR must consult with the Executive Director, Legal Services prior to having the matter considered by the HSEC. ¹²⁷ Under the New VPM Human Sources Policy, the HSEC must obtain legal advice regarding the potential registration, and the Executive Director of the Legal Services Department (or a legally qualified representative) must be present for a meeting of the HSEC to form a quorum. ¹²⁸
(d) That handlers should not actively seek information from human sources to whom a professional duty may apply which would knowingly cause the human source to breach such a duty.	Section 4.6 of the Current VPM Human Sources Policy provides that "[h]andlers must not actively seek information from human sources to whom a professional obligation may apply if such information would cause the human source to breach such a duty knowingly." The extensive registration approval requirements under the New VPM Human Sources Policy make clear that in almost no circumstances should handlers (or any other member) seek information from a human source with legal obligations of privilege or confidentiality.
(e) That source handling and management duties provide no indemnification that would allow those performing such duties to disregard confidential notices that may be issued for OPI, ACC or similar types of coercive hearings. Contravening such notices, in the absence of formal authority to do so, carries risk of criminal prosecution.	Both the Current and New VPM Human Sources Policies outline members' obligations in circumstances where a human source provides information relating to coercive hearings. ¹²⁹ The New VPM Human Sources Policy contains guidance in relation to members' disclosure obligations of human source information. ¹³⁰ To the extent that recommendation 1(e) relates to notifying members that there is no indemnification in performing human source management duties, members are aware that in carrying out their policing duties they are required to comply with their legal obligations. Members are encouraged to seek advice in circumstances where they may not be sure of their legal obligations. ¹³¹

¹²⁶ New VPM Human Sources Policy, section 8.6: VPL.0005.0285.0001 at .0031.

¹²⁷ Current VPM Human Sources Policy section 1.20: VPL.0002.0001.1776 at .1784.

¹²⁸ New VPM Human Sources Policy, sections 8.2, 8.4: VPL.0005.0285.0001 at .0028–.0030.

¹²⁹ Current VPM Human Sources Policy, section 2.3: VPL.0002.0001.1776 at .1786–.1787; New VPM Human Sources Policy, section 1.5: VPL.0005.0285.0001 at .0006.

¹³⁰ New VPM Human Sources Policy, section 9: VPL.0005.0285.0001 at .0034–.0035.

¹³¹ Current VPM Human Sources Policy, sections 2.3, 6.5: VPL.0002.0001.1776 at .1786–.1787; .1796–.1797; New VPM Human Sources Policy, sections 1.5, 7.6, 8.13, 9, 10.5: VPL.0005.0285.0001 at .0006; .0027–.0028; .0033–.0035; .0037.

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

Kellam Recommendation	Summary of Implementation
<p>(3) That Victoria Police develop a more comprehensive and robust human source risk assessment process to address the many shortcomings apparent in the 3838 risk assessment process. This revised process, in particular, must ensure:</p> <p>...</p> <p>(d) that any risk assessment reliant on positive obligation to utilise a source must be subjected to the utmost scrutiny to reflect upon the issues of proportionality and necessity. Positive obligation reliance must be for specific purpose only and approval must lapse upon fulfilment of this purpose. Where positive obligations are to be relied upon consultation must first occur with the Victoria Police Director Legal Services</p>	<p>The New VPM Human Sources Policy does not feature the term 'positive obligation', because the terms has typically been subject to confusion from members.¹³²</p> <p>The New VPM Human Sources Policy features additional safeguards in relation to the registration of category 1 to 4 sources, outlined in my response to question 3.</p> <p>The Current VPM Human Sources Policy provides that, in the context of a human source with a positive obligation:¹³³</p> <ul style="list-style-type: none"> (a) the source would be by default a high risk source, with registration approval required from the CSR and the HSEC; (b) the positive obligation reliance must be for a specific purpose only and approval must lapse upon fulfilment of this purpose; and (c) as part of the approval process the CSR must consult with the Executive Director, Legal Services Department. <p>The term positive obligation is featured in the Comrie Review, and section 5.4 of the Australasian Human Source Risk Assessment Manual.¹³⁴ The basis for Victoria Police's interpretation of the term positive obligation is set out in the statement of Assistant Commissioner Paterson dated 5 March 2020.¹³⁵</p>

318 Victoria Police no longer refers to the term "positive obligation". The New VPM Human Sources Policy instead refers to categories of human sources. Category 1 is defined by reference to the occupations in which the source is employed.

Occupations subject to legal obligations of confidentiality or privilege

319 As discussed in the response to question 3, Victoria Police has used the Kellam Occupations as the starting point but has also designed an extended regime that captures others who may come into possession of legally privileged or confidential information.

¹³² Statement of AC Paterson dated 5 March 2020, [11]: VPL.0014.0005.0109 at .0110.

¹³³ Current VPM Human Sources Policy, section 1.20: VPL.0002.0001.1776 at .1784–.1785.

¹³⁴ VPL.0005.0016.0042.

¹³⁵ Statement of AC Paterson dated 5 March 2020, [10]–[27]: VPL.0014.0005.0109 at .0110–.0112.

Qu 17 Please outline Victoria Police's approach to the implementation of the Operation Loricated Completion Report recommendations and the date at which Victoria Police considers it had fully implemented each of the recommendations.

- 320 In response to recommendation 20(a) of the Comrie Review, in January 2013, Victoria Police commenced an investigation entitled Operation Loricated, which, over 18 months, compiled in one folder, electronic versions of all available source documents relating to Nicola Gobbo's use as a human source and which created a web based program titled Operation Loricated Web-Based Solution, which allowed for easy navigation of the information contained in the source documents with links to electronic versions of the source documents.
- 321 The primary objectives of Operation Loricated were to collect, reconstruct and review the human source file held by Victoria Police in relation to Nicola Gobbo. In addition, Operation Loricated, identified investigation themes and opportunities to improve intelligence collection in the future.
- 322 Two police members prepared a report for Victoria Police, the Loricated Completion Report dated 21 May 2014.¹³⁶ The Loricated Completion Report sets out the terms of reference, objectives and project governance and outcomes for each of the four stages of Operation Loricated. The Operation formally concluded on 21 March 2014. The statement of Detective Acting Superintendent Damian Jackson dated 21 February 2020 sets out the details of Operation Loricated and the Completion Report.¹³⁷
- 323 The Loricated Completion Report sets out a number of findings and recommendations in respect of each of the four stages of the Operation. In total, there were twenty recommendations of which two are identical. There was no formal process to implement the recommendations many of which covered similar themes to those referred to in the subsequent Kellam Report recommendations. I am informed by Assistant Commissioner Paterson, who has reviewed the recommendations, that eight of the recommendations have been addressed and one recommendation has been partially addressed in the Current VPM Humans Sources Policy, five of the recommendations have not been addressed because they would require a new information technology solution and the other recommendations have not been addressed because they would require acting on information acquired from Nicola Gobbo which should and did not occur, have been superseded by the Kellam Report recommendations or were not sufficiently specific.

¹³⁶ VPL.0002.0001.0209.

¹³⁷ VPL.0014.0129.0001.

EXTERNAL OVERSIGHT

Qu 18 Please outline Victoria Police's views on the independent external oversight of the registration, use and management of human sources, including:

18(a) Whether the registration, use and management of human sources should be subject to independent external oversight.

18(b) The benefits, risks and challenges associated with independent external oversight of the registration, use and management of human sources by Victoria Police.

18(c) The most appropriate model of independent external oversight for the registration, use and management of human sources by Victoria Police

Independent external oversight of human sources

324 The New VPM Human Sources Policy builds in considerable compliance, auditing and oversight. Victoria Police's capacity to ensure and monitor compliance has also been improved by the changes to the Interpose human source module, as outlined in the response to question 13.

325 The CaRMU also provides an oversight function in relation to the HSMU to ensure that their supervision of the registration, use and management of human sources is being carried out properly and appropriate.

326 Nonetheless, Victoria Police agrees that external oversight may be appropriate for the registration, use and management of human sources who have a legal obligation of privilege or confidentiality. Victoria Police does not consider that there is good evidence to support extending external oversight to other categories of human sources, given the level of internal governance and oversight, the risks to those sources and the fact that no issues have been identified that would justify such oversight.

327 The appropriate nature of external oversight will differ in relation to each of the three functions identified: the registration, use and management of a human source.

(a) Oversight as to **registration** may properly consider whether all of the necessary steps were taken and whether the registration was in accordance with the New

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VPM Human Sources Policy. This could provide oversight as to the functions provided for in section 8.4 of the New VPM Human Sources Policy (the HSEC's decision-making in relation to category 1 human sources). In the United Kingdom, the external oversight body is the Investigatory Powers Commissioner's Office (IPCO). The IPCO inspectors review the approval process of human sources to ensure that they are compliant with the *Regulation of Investigatory Powers Act 2000* (UK), the UK Covert Human Intelligence Sources Code of Practice and the *European Convention on Human Rights*.

- (b) Oversight as to the **use** and **management** of a human source requires more consideration. There will be many operational decisions that should be properly left to Victoria Police, for example, how human sources are tasked, how their cover is managed and the like. This is consistent with the UK model where the IPCO Inspectors do not review the tasking or use of a covert human intelligence source once registered.
 - (c) Oversight may also address whether a human source is or is not revealing legally privileged or confidential information in breach of their obligations.
 - (i) if the source is providing legally privileged or confidential information, and the provision of that information has not been approved, then the information should be quarantined and not used. The provision of the information would be a breach of the source's AOR, in which they would have been advised by Victoria Police **not** to provide legally privileged or confidential information.
 - (ii) in the unlikely event that approval has been granted to obtain legally privileged or confidential information by the Deputy Commissioner, Specialist Operations, then Victoria Police may have disclosure obligations if the information results in a criminal charge being laid.
- 328 While the benefits of external oversight are clear and supported by Victoria Police, the risks must also be identified in the design and implementation of any such model. The main risk is that the sharing of any information about human sources makes it more likely that the identity of the human source will become known. In turn, the prospect of information about a human source being made known to an oversight body may need to be disclosed to a potential human source. This risks creating a chilling effect. Victoria Police would support safeguards to limit the nature of any information about a human source provided to that which is genuinely needed.

Appropriate external oversight body and model

- 329 Victoria Police has considered whether the HSEC could include an independent external agency, such as the Public Interest Monitor (**PIM**), as a member of the committee to enhance the oversight and focus on the public interests. This would not operate as an external oversight function but would ensure external advice to HSEC in its decision-making. True, oversight should properly occur completely separately from Victoria Police, that is, not by membership of the decision making body.
- 330 IBAC may be an appropriate body to perform oversight functions of Victoria Police's registration, use and management of human sources subject to legal obligations of privilege or confidentiality. Victoria Police and IBAC maintain independence from each other and there are existing structures in place that could be relatively easily adapted to this process.
- 331 Currently, however, IBAC may not have the expertise and operational knowledge and experience to provide an external oversight function in relation to human sources, although there are ways in which that can be remedied. Further, IBAC is the only other state entity that also utilises human sources. The State may consider a separate body to review both Victoria Police's and IBAC's use of relevant categories of human sources, noting we do not believe this should extend beyond category 1 human sources.
- 332 Victoria Police considers that the most appropriate body may be the Victorian Inspectorate. The Victorian Inspectorate already performs an oversight function in relation to investigatory bodies and their officers, including IBAC and to a lesser extent, Victoria Police. It is an independent Victorian statutory office, reporting directly to the Victorian Parliament. It currently has powers to inspect and audit certain records held by Victoria Police in relation to warrants and is obliged to ensure it does not affect Victoria Police's operations in preparing its reports.¹³⁸ In this way, it is well placed to understand the sensitivity in overseeing this function.
- 333 Victoria Police could provide annual or biannual reports on:
- (a) the HSEC's decisions to approach and register category 1 sources and the terms and conditions on which they are registered, as found in the AORs; and
 - (b) the use of information obtained from human sources that is legally privileged or confidential.

¹³⁸ *Victorian Inspectorate Act 2011* (Vic), section 13(10A)(b).

334 Certain kinds of breaches of the New VPM Human Sources Policy could also be a trigger for a referral to an external oversight body to review that breach. Relevant breaches would include a breach of certain procedural safeguards in the New VPM Human Sources Policy in relation to category 1 sources, including those found in sections 8.4, 8.5 and 8.6.

Qu 19 Please outline Victoria Police's views on the independent external oversight arrangements that currently apply to covert and other intrusive powers exercised by Victoria Police including:

19(a) The benefits and challenges of the existing oversight arrangements.

19(b) What, if any, improvements could be made to the existing arrangements.

Independent external oversight for covert and other intrusive powers

335 The *Public Interest Monitor Act 2011* (Vic) (**PIM Act**) created the offices of the Principal and Deputy Public Interest Monitors and confers functions on them, in addition to other criminal investigation legislation in Victoria.¹³⁹ The object of the PIM Act is to provide additional, external safeguards in relation to the conduct of investigations.¹⁴⁰

336 The Public Interest Monitor has, pursuant to s 14 of the PIM Act, the following functions:

- (a) to appear at any hearing of a relevant application to test the content and sufficiency of the information relied on and the circumstances of the application; and
- (b) for the purposes of testing the content and sufficiency of the information relied on and the circumstances of the application;
 - (i) to ask questions of any person giving information in relation to the application; and
 - (ii) to make submissions as to the appropriateness of granting the application; and
- (c) any other functions conferred on the Public Interest Monitor.

¹³⁹ The *Major Crime (Investigative Powers) Act 2004* (Vic), the *Surveillance Devices Act 1999* (Vic), the *Telecommunications (Interception) (State Provisions) Act 1988* (Vic); and the *Terrorism (Community Protection) Act 2003* (Vic).

¹⁴⁰ PIM Act, section 3.

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

- 337 In 2017, the role of the PIM was expanded to include functions under the *Witness Protection Act 1991* (Vic) to inform the making of a relevant decision by the Chief Commissioner.
- 338 Victoria Police must notify the PIM when it is making a “relevant application”, which includes applications for a coercive powers order, a surveillance device warrant, a telecommunications intercept warrant, a covert search warrant, a prohibited contact order or a preventative detention order under the *Terrorism (Community Protection) Act 2003* (Vic). Except in limited circumstances, a PIM will then attend the hearing of that application.
- 339 External oversight of applications for the approval of the use surveillance devices and telephone intercepts is performed by the Court. The PIM has a public interest role in the consideration of these applications - but not an oversight role. Additional retrospective oversight is provided by the Commonwealth Ombudsman (for telephone intercepts) and the Victorian Inspectorate (for surveillance devices) through their respective audit functions.
- 340 Victoria Police agrees that the above oversight arrangements for surveillance and telephone intercepts are robust and suitable and operate well and has no comment to make in relation to any improvements that could be made.
- 341 This is not to suggest that these oversight models are appropriate for the oversight of the use of human sources who have a legal obligation of privilege or confidentiality. Victoria Police considers that the Victorian Inspectorate may be the most appropriate body to provide external oversight as set out in the response to question 18.

FURTHER IMPROVEMENTS TO VICTORIA POLICE’S HUMAN SOURCE MANAGEMENT FRAMEWORK

Qu 23 Please outline any further changes Victoria Police considers necessary to improve its policy, procedures and practices relating to the use and management of human sources who may provide confidential or privileged information (beyond those intended for inclusion in the version of the Victoria Police Manual- Human Sources that is proposed for implementation in March 2020) particularly with respect to:

23(a) Risk assessment and registration

- 342 Victoria Police continues to improve risk assessment processes to enhance efficiency without losing effectiveness. The use of a dynamic risk assessment tool discussed in detail above is the primary way in which this will continue to be advanced.

23(b) Decision-making and governance arrangements

- 343 The principles approved by Executive Command and listed at paragraph 229 above provide the framework for continued improvement in this area.

23(c) Organisational structure, including the operation of centralised and/or dedicated source units or functions

- 344 The principles approved by Executive Command and listed at paragraph 229 above provide the framework for continued improvement in this area. Any major change within Victoria Police, particularly with respect to our operating model comes with significant interdependencies and complexity. Effective implementation of reforms requires careful consideration and planning to ensure we understand the tasks and time required to implement the requisite change. To manage these factors, any major reform to our operating models are generally through a staged implementation process. Estimating the time required for any change will depend on the level of complexity and impact of the proposed change.

23(d) Legislative and regulatory framework

- 345 There are no specific changes to the legislative and regulatory framework that Victoria Police is advancing in this context. It is, however, recognised that oversight arrangements would likely require legislative change.

23(e) Policy and procedural guidance

- 346 The principles approved by Executive Command and listed at paragraph 229 above provide the framework for continued improvement in this area.

23(f) Training and continuous development

- 347 The principles approved by Executive Command and listed at paragraph 229 above provide the framework for continued improvement in this area.

23(g) Information technology and system capability

- 348 The principles approved by Executive Command and listed at paragraph 229 above provide the framework for continued improvement in this area as part of the overall Information Technology Strategy for Victoria Police discussed above.

COORDINATED INVESTIGATIONS WITH IBAC

- Qu 20** The Commission understands that the Independent Broad-based Anti-corruption Commission (IBAC) conducted a coordinated investigation with Victoria Police in 2014 regarding Operation Clinique, under section 72 of the Independent Broad-based Anticorruption Commission Act 2011 (Vic). Please outline:

20(a) How many coordinated investigations have Victoria Police and IBAC conducted under this provision?

20(b) How were these investigations conducted, including any similarities or differences in the ways IBAC and Victoria Police conduct coordinated investigations compared with how the Office of Police Integrity and Victoria Police conducted joint investigations?

20(c) What are the benefits, risks and challenges of conducting coordinated investigations?

Number of coordinated investigations

- 349 It is not currently possible to advise on how many specific investigations have utilised the authority of section 72 of the *Independent Broad-based Anticorruption Commission Act 2011* (Vic) (**IBAC Act**). There has not been a tracking mechanism within Victoria Police to record activities that may engage section 72 of the IBAC Act.
- 350 Section 72 of the IBAC Act would apply to a fully integrated joint investigation with investigators from both agencies co-located and structured under a unified investigative leadership model. Whilst a supporting memorandum of understanding or similar may be applied in relation to section 72 of the IBAC Act, there is no requirement for that. However, the section may also be of broader application and operate in respect of investigations

where there has merely been a sharing of information and discussion about investigative strategies.

- 351 Since the inception of IBAC there have not been any fully integrated joint investigations in the manner described above. However, there will have been many investigations where investigators from both agencies have exchanged information and discussed investigative strategies.
- 352 Operation Clinique is the Victoria Police name for an investigation where IBAC were engaged. The IBAC component was named Operation Bannister and their substantive involvement related to their conduct of coercive hearings in support of Operation Clinique. IBAC considered their component as falling under section 72 of the IBAC Act and reported this in their August 2015 'Special report concerning police oversight'.

Conduct of coordinated investigations

- 353 Consistent with current IBAC arrangements detailed in paragraphs 349 to 352 above, there would have been many investigations where the OPI and Victoria Police will have shared information and had discussions about investigative strategies.
- 354 However, there were two approaches adopted between the OPI and Victoria Police in relatively unique circumstances. The first being Taskforce Briars where the OPI and Victoria Police investigators co-located under a closely aligned leadership model. The second being Taskforce Petra where the OPI were represented on the Steering Committee overseeing that Taskforce. The same type of investigation structures have not been created since the commencement of IBAC.
- 355 Some examples of investigative support between IBAC and Victoria Police that have occurred are listed below. Whether these matters were 'coordinated investigations' for the purpose of section 72 of the IBAC Act, is not clear.
- 356 In Operation Clinique, Victoria Police had exhausted appropriate internally available investigative techniques so consulted with IBAC in relation to the potential use of IBAC's coercive hearing authority to support the investigation. This was agreed to by IBAC who established Operation Bannister. Several coercive hearings were then conducted by IBAC in support of facilitating potential further evidence for use by Operation Clinique investigators.
- 357 In Operation Santeras, Victoria Police had exhausted appropriate internally available investigative techniques so consulted with IBAC who had appropriate access to a broader suite of investigative techniques. IBAC then established Operation Blackmore and

assumed primary carriage of the investigation from that point. Victoria Police Operation Blackmore investigators retained engagement with and welfare support for associated parties with whom they had already established a professional relationship.

- 358 Operation Apsley was an IBAC investigation in relation to potential drug offending by some Victoria Police members. IBAC engaged Victoria Police investigators to conduct targeted Drug and Alcohol Testing in support of Operation Apsley as IBAC did not possess this power.

Benefits, risks and challenges of coordinated investigations

- 359 Coordinated investigations allow for:

- (a) utilisation of a broader range of powers that may not be available to a single agency;
- (b) access to a broader range of intelligence that may not reside within a single agency;
- (c) access to a range of technical expertise and technical assessment tools that do not exist within a single agency, for example, telephone analysis capability;
- (d) avoidance of duplication of effort or conflicting investigative techniques if each agency conducting an operation independently on the same subjects; and
- (e) can act as a mitigation strategy for potential conflict of interest issues.

- 360 Risks created relate to:

- (a) a marginal increase in information security risks as sensitive information becomes known across both agencies; and
- (b) a potential lack of clarity regarding: investigation ownership, decision making on high risk investigation strategies and ultimate accountability for the conduct of the investigation.

- 361 The key challenges relate to the issue of how effective independent oversight of the investigation is maintained.

DISCLOSURE OBLIGATIONS

Qu 21 *Please outline the changes that Victoria Police is considering and introducing to enhance its practices, policies and training to support officers to effectively discharge their disclosure obligations, including:*

21(a) The nature, purpose and drivers of these changes.

21(b) Any preliminary findings or observations about the strengths and weaknesses of these changes and new initiatives.

Rationale for changes

362 Victoria Police has recognised the key challenges currently being experienced within the human source management framework. In relation to disclosure, these include:¹⁴¹

- (a) a lack of dedicated resources to meet disclosure obligations, resulting in workload pressures for investigators and a lack of specialised knowledge; and
- (b) limitations on document management systems.

363 Notwithstanding these challenges, there is an opportunity to enhance knowledge of, and consistency of approach to, disclosure obligations across Victoria Police, particularly in respect of the complex issue of disclosure of human source related information;

Improvements to disclosure processes and materials

364 The Victoria Police Disclosure Handbook was drafted by the VGSO on request of the Victoria Police Legal Services Department, and has been internally published on the Victoria Police intranet. The Disclosure Handbook:

- (a) explains the critical importance of proper disclosure of relevant material;
- (b) notes that disclosable material includes all material on which the prosecution will rely, but can also include material that the prosecution is not relying on, including material obtained solely for intelligence purposes;
- (c) requires investigators to identify any statutory prohibitions on disclosure and provides a checklist of PII and legal professional privilege considerations;

¹⁴¹ Human Source Management — A future Framework working document: VPL.0005.0281.0052 at .0055.

(d) provides guidance for the types of material that may be relevant in a particular context; and

(e) provides guidance on who to contact where advice is required.

365 Victoria Police's Prosecution Frontline Service Unit assists the process of disclosure in summary crime by providing advice to investigators in relation to discovery as required. In addition to assisting the process of disclosure in summary crime, the Prosecution Frontline Service Unit, also provides brief quality assurance and training on the production of briefs in conjunction with Regional Training Officers. It is envisaged that dedicated disclosure officers would play a more substantive role in managing disclosure obligations within Victoria Police.

366 In 2009, Advancing Investigation Management (**AIM**) was introduced. The purpose of AIM was to reform the Regional Investigative Model in line with the Major Crime Management Model, introducing new investigative processes, tasking and resource coordination, accountabilities and guidelines.¹⁴² AIM had the effect of changing ownership of files from the informant to the police station to which they were attached and centralising storage of briefs in one place to make them accessible by officers at the station and facilitating disclosure more easily.

367 Key components of AIM are the Initial Action Pad (**VP502**) and Investigation Case File (**VP1313**) which are required to be completed for all investigations. The Initial Action Pad is used to take handwritten notes, statements at first instance, photo logs and exhibit logs in a chronological manner and replace the use of daybooks. The VP1313 is a folder that forms the basis of an Investigation Case File and must include all the information that could be reasonably obtained from the scene prior to handover.

368 The New VPM Human Sources Policy contains a section on disclosure obligations relating to human sources, including examples, in section 9.¹⁴³ The new section 9 highlights:

- (a) that disclosable material may be held on a human source file;
- (b) that this creates challenges due to the confidentiality of such material; and
- (c) the importance of members involved in handling and management of human sources and human source information being proactive to identify and consider potentially disclosable material.

¹⁴² Project AIM Summary, 8: VPL.0005.0280.0162 at .0169.

¹⁴³ VPL.0005.0280.0005 at .0007.

369 Where a member becomes aware that human source material may be disclosable, they must immediately advise the HSMU. If the material is potentially disclosable, the HSMU will advise the CSR and the matter is referred to the Legal Services Department and the VGSO for advice.

Proposed future approach

370 In relation to disclosure, principles which Victoria Police supports in principle for the future were set out in its response to the Royal Commission's Consultation Paper and are as follows:¹⁴⁴

- (a) a mechanism for greater involvement of the OPP in assessment and decisions about PII issues;
- (b) a mechanism for early determination of such PII issues;
- (c) disclosure officers embedded on both sides of the sterile corridor, seeking legal advice where necessary in relation to disclosure obligations;
- (d) improved document management systems;
- (e) a codified disclosure regime.

371 The use of dedicated disclosure officers at either end of the sterile corridor is seen as a key measure in supporting the disclosure regime. Dedicated officers are utilised in the United Kingdom and in Western Australia.¹⁴⁵ While in-principle support exists for dedicated disclosure officers, how this will ultimately be implemented will depend on resourcing and operational requirements.

372 To test the value of a dedicated disclosure model two disclosure officers have recently been recently appointed by Victoria Police. The officers, who are sworn members and lawyers, have been appointed for a 12-month period and report to the Superintendent, Legal Prosecutions Specialist Branch. An important task that these roles are already undertaking is to identify and advise on how these roles will work within Victoria Police.

373 Part of their role is to analyse and review relevant case management processes and evidence, and to identify and action relevant disclosable material. They will also work with

¹⁴⁴ VPL.0005.0278.0288.

¹⁴⁵ Human Source Management — A future Framework working document, 17: VPL.0005.0281.0052 at .0068.

Crime and Intelligence and Covert Support Commands to provide support for investigators and promote the effective management of, and compliance with, disclosure obligations.¹⁴⁶

- 374 Having dedicated disclosure officers, with separate line management accountability, ensures independence of disclosure from the investigation process as well as utilisation of specialist skills and knowledge. Differences of opinion between investigators and disclosure officers in terms of disclosure obligations could be resolved with the assistance or advice by a proposed disclosure governance committee that would report to the Legal Services Department.
- 375 In the United Kingdom, the Disclosure Manual provides that officers involved in intelligence operations should regularly and actively consider whether information they have bears upon any live investigations or prosecutions, and bring it to attention of the disclosure officer and prosecutor.¹⁴⁷ In the model envisaged for Victoria, this obligation would be shared with disclosure officers located at the human source management end of the sterile corridor, who would be better placed than dedicated human source management units to actively monitor ongoing investigations and prosecutions.

Legal Services Department plan for disclosure improvement

- 376 The Legal Services Department has developed an Action Plan” for improvements to the current disclosure regime. This outlines a series of steps that have either been completed or are underway for improving and embedding disclosure practices within Victoria Police. The measures are outlined in the “Victoria Police Legal & Prosecutions Specialist Branch — Disclosure Action Pan”.¹⁴⁸ Key elements of the plan are:
- (a) the appointment of two disclosure officers in March 2020 for a 12 month period. The disclosure officers are both sworn members of Victoria Police and lawyers who are attached to Legal Services Department and are tasked with reviewing various aspects of disclosure and coordinating improvements in training and process relating to disclosure;
 - (b) provision of resources to members outlining disclosure obligations through a dedicated intranet page, publication of the Disclosure Handbook, publication of Gazette article on disclosure to all members, publication of BlueTube video on the Police learning hub;

¹⁴⁶ VPL.0005.0284.0001.

¹⁴⁷ UK Disclosure Manual, 14: VPL.0005.0278.0106 at .0122.

¹⁴⁸ VPL.0005.0284.0001. “Disclosure Managers” was a working title for what is referred to elsewhere in this statement as disclosure officers”.

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

- (c) disclosure officers to liaise with the Subpoena Management Unit, Professional Standards, VGSO and OPP to ensure consistency of approach to disclosure issues;
- (d) expansion of approach to categories of disclosable documents agreed between all stakeholders (including courts) for in sexual offence matters and setting out agreed categories of documents for disclosure across other areas;¹⁴⁹
- (e) improved and expanded training in disclosure obligations (in relation to which refer to section on Training) (Action item 2); and
- (f) the establishment of a Disclosure Governance Committee, potentially comprising Disclosure Managers, HSMU, Crime Command, Capability Department, Professional Standards, People Development Command, and potentially external agencies such as the OPP and the VLA.¹⁵⁰

Cooperation with the prosecution in determining disclosure issues and resolving PII claims

- 377 Victoria Police is in favour of the model of disclosure adopted in the United Kingdom, whereby police are able to seek advice in relation to disclosure issues from the Prosecution Service. Prosecutors will generally have a better understanding of how the case is to be presented in court, and likely defences that may be relied upon, and are therefore best placed to make decisions regarding more complicated questions of disclosure. This would also provide an important check and balance on the assessments and judgments made by police in relation to the complex issues arising in some disclosure scenarios.
- 378 In the United Kingdom, disclosure officers prepare a schedule of non-sensitive material and a schedule of sensitive material (relevant unused material the disclosure officer believes should be withheld from the defence). The latter is not provided to defence, but is provided to the prosecutor, with an indication where material is believed to give rise to a real risk of serious prejudice to an important public interest if revealed.¹⁵¹
- 379 The schedule is provided to the prosecution to determine whether material is disclosable to defence. The Disclosure Handbook imposes obligations on both police and the Crown Prosecution Service to protect intelligence information and material given in confidence.¹⁵²
- 380 Victoria Police considers that it is vital to ensuring comprehensive disclosure in complex cases that investigators be able to obtain the advice of prosecutors, where required, in

¹⁴⁹ VPL.0005.0280.0011.

¹⁵⁰ VPL.0005.0284.0001.

¹⁵¹ UK Disclosure Manual, 24: VPL.0005.0278.0106 at .0129.

¹⁵² UK Disclosure Manual, 24: VPL.0005.0278.0106 at .0129.

determining what material is disclosable without the defence being made aware of its existence in the first instance.

- 381 Where material is considered to be subject to PII, police will currently apply to the court for a ruling on PII in the absence of guidance from the OPP as to the significance of the material to the prosecution, a subject upon which the prosecution is in a better position to express an opinion due to their expertise and knowledge of the issues in the particular case. Prosecution input is essential given that the court has to balance the risk to the human source (and to the system of human sources) against the benefit that the accused will gain in the particular case.
- 382 Further, the issue of PII may need to be revisited once the matter proceeds past committal to trial. This may necessitate a further application in a different court, again without the engagement of prosecutors to assist in determining whether the material in question is prima facie disclosable. This also has the potential to result in delays of proceedings as PII issues are ventilated in the absence of prosecutor consideration of whether material ought to be disclosed. One implication of such delay is the risk that an accused may be in custody in circumstances where earlier consideration may have resulted in a decision to discontinue the case against them.
- 383 In some exceptional cases, the identity of a human source will be so sensitive that it should not even be disclosed to prosecutors. In those cases, there should be a mechanism for Victoria Police to bring ex parte PII claims without the need to disclose the material the subject of the claim to the prosecution or to defence.
- 384 In other circumstances, where the material can be disclosed to the prosecution, there should be a mechanism for police and OPP to jointly bring a claim for PII in relation to the material.
- 385 Ultimately, Victoria Police supports the adoption of a provision similar to s 15A of the *Director of Public Prosecutions Act 1986* (NSW). Section 15A provides that law enforcement officers have a duty to disclose to the OPP all relevant information obtained during the investigation that might reasonably be expected to assist the case for the prosecution or defence, however this does not extend to information that is the subject of a claim of privilege, PII or statutory immunity. The OPP should be informed of the existence of that information and the nature of it, and if requested by the OPP, the law enforcement officer must provide it.
- 386 The OPP can then assist in the bringing of a PII claim in respect of the material if it forms the view that the material is disclosable.

387 The legislation would need to be accompanied by relevant obligations on both police and prosecution to maintain confidentiality of the material in question, and to only disclose the material if the court determines that PII does not apply, and police are of the view that the matter should proceed to trial. This will ensure that in circumstances where PII is not granted, a discretion to withdraw the charge where disclosure would jeopardise the safety of a human source.

The threshold for relevance in relation to human source material

388 Although this question is directed towards steps that Victoria Police has taken and intends to take in relation to disclosure, it is important to note a potential issue where guidance can be taken from the UK position.

389 Section 416 of the Criminal Procedure Act preserves the prosecution's common law duty to disclose to the accused "material relevant to a charge". The test is further incorporated in s 41(1)(e) of the Act, which requires disclosure of "any other information, document or thing in the possession of the prosecution that is relevant to the alleged offence ..."

390 In determining the regime for disclosure in matters where human source material is involved, there is a need to balance competing considerations. It is critical that accused people are provided with material that will genuinely assist in their defence. It is also critical to ensure that Victoria Police's human source function, which is predicated on confidentiality, is able to function. Essential in the policy mix is the need to ensure — to the greatest extent possible — the protection of the safety of human sources given the known and extreme risks that they face.

391 The public interest in disclosure of relevant material to accused persons must therefore be balanced against the need to maintain confidentiality of the identity of human sources, and to protect material that would lead to the identification of human sources, or that otherwise should be protected in the public interest. The identity of police informers has traditionally been regarded as absolutely confidential except in limited circumstances, including where disclosure may be of substantial assistance to the defendant in combating the case for the prosecution.¹⁵³ It should be noted that even making a PII claim in relation to a human source, if that claim is made known to the accused, can identify the existence of a human source and put people at risk.

392 Victoria Police has considered disclosure systems in other jurisdictions, including the United Kingdom, United States and Canada, and considers that the model in the United

¹⁵³ *Jarvie v The Magistrates Court of Victoria* [1995] 1 VR 84.

Kingdom appears to be generally successful in maintaining the balance between the competing interests outlined above.

- 393 In the United Kingdom, relevant material is collated and then assessed against the "Disclosure Test". Disclosure is to be made of "any material which might reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the case for the accused, and which has not previously been disclosed".¹⁵⁴
- 394 The test is facilitated by a "Disclosure Management Document" which is required in all Rape and Serious Sexual Offences and Complex Casework Unit Crown Court cases. It is completed in consultation with the Disclosure Officer and identifies what has been considered a reasonable line of enquiry in the case, and how all seized electronic material has been dealt with. The document is served on defence, who are invited to identify additional lines of enquiry that they consider to be reasonable and which have not been undertaken.¹⁵⁵
- 395 The adoption of a threshold test for disclosure of human source related matters would provide an appropriate means of balancing the competing public interests referred to above. A claim for PII could then be made in circumstances where the information was likely to lead to identification of a human source or disclosure of PII material.

Qu 22 Please outline Victoria Police's views on further changes necessary in respect of disclosure obligations and the use of human source information, including:

- 22(a) The controls that Victoria Police considers necessary regarding the use and management of human sources to ameliorate issues related to disclosure where information obtained from a human source is used in an investigation.**
- 22(b) Whether the policy framework for the use of human sources should embed specific mechanisms to ensure appropriate and timely disclosure to the Director of Public Prosecutions, and if so, the nature of these mechanisms and any challenges or barriers.**

¹⁵⁴ UK Disclosure Manual, 5: VPL.0005.0278.0106 at .0110.

¹⁵⁵ UK Disclosure Manual, 7: VPL.0005.0278.0106 at .0112.

Further changes

- 396 The further changes and improvements that Victoria Police considers are appropriate are set out and discussed in detail in the response answer to question 21.

Controls necessary to ameliorate issues relating to disclosure of material where information from a human source is used in an investigation

- 397 This statement has set out a series of measures current and proposed that will ameliorate the disclosure issues that arise from the use of human sources in investigations. They include, the use of dedicated disclosure officers at either end of the sterile corridor, the agreement in principle to move to a more centralised model of human source management, improvement in training in relation to disclosure obligations, the potential establishment of a Disclosure Governance Committee to resolve issues and the increased involvement of the OPP in considering disclosure issues and facilitating the resolution of PII claims. In addition, there is the more substantial requirement for improved document management which is discussed elsewhere in this statement.

Mechanisms to ensure timely and appropriate disclosure to the OPP

- 398 As discussed above, Victoria Police supports a regime such as that in NSW and in the UK where there is a formal requirement to disclose the existence of relevant material to a prosecuting authority and a concomitant obligation on that authority to assist in the determination of disclosure issues.
- 399 All indictable cases in Victoria are conducted by the OPP from the first hearing in the Magistrates' Court. In some other jurisdictions, the OPP (or the equivalent office) is more involved in identifying and managing PII issues. This means that complex questions of relevance and the significance of the material to the case can be addressed with input from both the informant and the prosecutor, who are in the best place to know the precise details and nuances of the case. However, this has not generally been the case in Victoria as the usual process has been for Victoria Police to litigate the PII claims completely independently of the OPP. The OPP does not in general receive material that will not be produced to the defence including material over which the Chief Commissioner is claiming PII.
- 400 Victoria Police has not identified any additional mechanisms that might be embedded into the human source policy framework that would assist in this regard but welcomes the opportunity to comment on any proposals that the Royal Commission may have.

OTHER ISSUES

Qu 24 Please outline what Victoria Police considers to be the key causes and contributing factors relevant to the events being examined by the Commission.

Qu 25 Please outline the extent to which Victoria Police is satisfied that the key causes and contributing factors relevant to the events being examined by the Commission have been addressed.

How key causes and contributing factors have been, and are being, addressed

401 The causes and contributing factors to the events being examined by the Royal Commission will be comprehensively examined in Victoria Police's submissions on Term of Reference 2. Those submissions will follow receipt of the submissions of Counsel Assisting the Commission. This statement does not seek to traverse areas that will be covered by those submissions for obvious reasons, including procedural fairness to those whose actions will be the subject of those submissions.

402 However, for the purposes of setting a context for policy responses, Victoria Police has been actively considering the causes and contributors to the events related to Nicola Gobbo.

403 Before discussing those causes and contributing factors it is important to note that many of these events occurred over a period of time that is now 10 to 25 years ago. As with all organisations, Victoria Police's processes, policies and systems have continued to evolve and improve over that time. As a result, very many of the issues relevant to the recruitment and use of Nicola Gobbo are of their time and have already been dealt with through organisational changes and developments. Equally, Victoria Police has made substantial changes to its management of human sources in response to the Comrie Review and the Kellam Report.

404 It is therefore important to emphasise two related matters at the outset:

- (a) under the systems that are currently operating, and have been for many years, what occurred in relation to Nicola Gobbo could not occur again; and
- (b) this is demonstrated by the fact that since Nicola Gobbo's registration, there has been no repeat.

405 This does not mean that the current processes are perfect and Victoria Police sees the process of human source policy and management as one of continuous improvement.

406 It is also important to be clear about what the relevant “events” relating to Nicola Gobbo are in order to accurately identify the precise problems or risks to which any policy or practice response should be directed.

407 Victoria Police considers that the critical events are:

- (a) that Nicola Gobbo gave information to her handlers about current clients and continued to act for those clients while continuing to give information about them **(the conflict of interest issue)**;
- (b) that Nicola Gobbo gave some information to her handlers, which was, or may have been, protected by Legal Professional Privilege **(the LPP issue)**;
- (c) that information received by Nicola Gobbo’s handlers was disseminated to investigators in ways that did not avoid information impacted by the conflict of interest issue and the LPP issue and which did not create an adequate record of disseminated material **(the dissemination issue)**; and.
- (d) that Nicola Gobbo’s involvement was not the subject of disclosure to prosecuting authorities in a timely way in respect of a number of accused people facing criminal charges **(the disclosure issue)**.

408 As noted above, there has been no other analogous example of this occurring in Victoria Police before, during or after her involvement. The only other situation in which a lawyer has been considered for registration in anything approaching analogous circumstances resulted in the person not being registered as a human source after risk assessment.

409 It follows that, while the issues identified above are serious and occurred over a lengthy period of time, they were not repeated with others. Because this issue arises solely within the heavily regulated sphere of human source management, changes in order to prevent these issues occurring again have already been implemented through changes in the regulation, governance, policy and oversight of human source management within Victoria Police. The steps taken in this regard are noted below, and explained in detail in other parts of this statement.

410 The disclosure issue is different. Victoria Police recognises that the likely causes of the disclosure issue are more systemic, complex and multi-factorial. While a number of responses can and have come from Victoria Police, dealing with this issue requires a whole of Government response including, but not limited to, statutory reform.

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- 411 The key causes and contributing factors to the conflict of interest issue, the LPP issue and the dissemination issue relate to the recruitment, risk assessment, registration, handling and management of Nicola Gobbo.
- 412 Victoria Police has identified the key decision points and processes that need to be kept in mind when identifying causes and contributors:
- (a) the decision to consider recruiting Nicola Gobbo and to refer her to the SDU;
 - (b) the process of risk assessment and the decision to proceed following that risk assessment;
 - (c) the setting of ground rules for the management of Nicola Gobbo; and
 - (d) managing problems and issues including what should have been "relationship ending events".
- 413 The starting point is the decision to recruit Nicola Gobbo and the process by which the risks in doing so were assessed and ground rules established. Victoria Police does not accept that it could never be appropriate to use a lawyer as a human source. This can occur most obviously when the information that the person is giving has nothing to do with that person's professional role. Also, Victoria Police's current policy recognises that there may be situations of significant and immediate risk to public safety that can justify such use.
- 414 The key causes of the recruitment and assessment of Nicola Gobbo in a way that permitted the conflict of interest issue and the LPP issue to arise and to not be adequately dealt with are referred to below. In doing so, it is critical to recall that the SDU at the time represented a genuine attempt by Victoria Police to learn from and implement international best practice in human source management.
- 415 Nonetheless, Victoria Police considers that the key structural causes of the recruitment of Nicola Gobbo in a way that permitted the conflict of interest issue, the LPP issue and the dissemination issue to occur were:
- (a) the absence of restrictions on the recruitment and use of human sources or potential human sources with legal obligations of privilege;
 - (b) the absence of an internal oversight body such as the HSEC with access to high-level legal advice to deal with issues of this kind;
 - (c) an inadequate risk assessment framework; and.

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- (d) the inadequate resourcing of the SDU, in particular the absence of a dedicated inspector to that unit.
- 416 There were also significant circumstantial contributing factors mainly related to the timing of the recruitment and assessment phase and the stage of maturation of the SDU and its integration into the ICSC. They were:
 - (e) the SDU was still in its infancy and a dedicated unit of this sort was entirely new for Victoria Police. Although staffed by highly skilled human source handlers, it was still developing its Standard Operating Procedures, changes were being made to forms and processes, it was attempting to obtain and settle its resourcing on a recurrent basis and was not yet integrated into the organisation. The structure, operating model and precise approval processes were not fully formed and clear; and
 - (f) Nicola Gobbo presented unique challenges, not least of which was the very large volume of material that was being provided.
- 417 The circumstantial contributing factors are obviously time and context specific. However, in the last 14 years, Victoria Police's approach to the establishment and integration of new work groups into the organisation is substantially more sophisticated. There is a specified and required internal process for the development and content of business cases for new units or capabilities that includes resourcing, structural, cultural and integration considerations. Any new capability is formally considered and approved (or not) at executive command level and subject to evaluation and review.
- 418 Victoria Police considers that the structural causes of the registration and deployment of Nicola Gobbo without adequate assessment and without adequate safeguards have been resolved by changes made to human source management and governance. Those responses are discussed in more detail elsewhere in this statement, but in summary include:
 - (a) the requirement that no step in relation to any human source or potential human source with legal obligations of privilege or confidentiality can be taken without the express approval of the HSEC; and
 - (b) the requirement that the HSEC cannot sit without the Executive Director of Legal Services or that person's legally qualified nominee.
- 419 These specific requirements, together with the significantly increased sophistication of HSMU in its governance function create confidence that if a person such as Nicola Gobbo

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was today being considered in any way for registration that would be highly unlikely to proceed at all, and that if it did it would be on a considered, legally correct and constantly monitored basis.

420 That is not to say that systems cannot continue to be improved. In particular, Victoria Police accepts that the implementation of a formal oversight capacity external to Victoria Police in relation to this category of human sources is appropriate.

421 However, it should be emphasised that there has not been a repeat of what occurred with Nicola Gobbo at any stage before, during or after her registration in 2005 and it is important to put the proposed solutions into that context.

422 The situation that existed with Nicola Gobbo was a complex one. Our current systems would have recognised that complexity and escalated decision making with good risk assessment processes so that correct decisions could be made.

423 Even so, it is important to recognise the complexity and uniqueness of the situation as it existed at the time:

- (a) the information that Nicola Gobbo was able to give was of a high value in relation to very serious and organised crime, which represented an ongoing threat to community safety;
- (b) Nicola Gobbo had both social and professional relationships with significant organised crime figures. Nicola Gobbo continued to give or seek to give much information that was cogent to ongoing investigations that came from the social relationships;
- (c) it was impossible to end the relationship entirely because of the extreme risk to Nicola Gobbo's life and Victoria Police's duty of care. As the High Court recognised, a major issue throughout has been Nicola Gobbo's unwillingness to enter into protective arrangements;
- (d) she became significant to other major investigations including Petra and Briars; and
- (e) there were not processes in place to allow Nicola Gobbo to be appropriately exited from her role as a human source. It was a unique situation that had not been comprehended and was highly unusual in human source handling and management.

424 The disclosure issue is, as noted above, more complex. There was information recorded in informer contact reports, records of other police officers and the Source Management

Log that were relevant to charges that a number of people faced and which, in at least some circumstances had the capacity to be used by accused people to apply for stays of proceeding or to argue for the exclusion of evidence on the basis that it had been obtained improperly.

- (a) The Term of Reference 2 hearings have indicated that some of the potential causes of the failure to disclose this material in relation to Nicola Gobbo may be: A lack of clarity for Police Officers about (a) their disclosure obligations in the context of human sources and (b) how to deal with and make a PII claim when the identity of human source is in issue.
- (b) The commitment to the protection of the identity of a human source in order to protect the life and safety of the human source.
- (c) The operation of the 'need to know' principle and the steps taken in consequence which prevented access to human source holdings.
- (d) The absence of a coordinated approach to resolution of PII claims with the OPP in indictable cases.
- (e) The absence of a mechanism or process to allow searching of human source records to make an assessment for the purpose of disclosure.

Clarity of disclosure obligations

- 425 There are two primary responses to this issue dealt with in more detail elsewhere in this statement. The first is enhanced training on disclosure obligations and the second is the potential deployment of dedicated and specialised disclosure officers.
- 426 While Victoria Police has a more sophisticated approach to training than it did in the period of time relevant to this Royal Commission, there is always opportunity for improvement. The three steps noted above will, if properly resourced and implemented, substantially improve the situation.

Commitment to protecting the identity of human sources

- 427 As will be discussed in more detail in Victoria Police's submissions on Term of Reference 2, there are multiple examples in the evidence called in the hearings of Police Officers seeing the duty to protect the identity of Nicola Gobbo as a human source as being absolute or close to absolute.

- 428 This seems to have stemmed from two related matters. The first is that there was a view that PII would always protect the identity of a human source (at least while that person remains a human source). The second is the obviously extreme nature of the risk to Nicola Gobbo's life should her identity have become known. Avoiding her being murdered was a correct motivation for keeping her identity tightly held.
- 429 This highlights the risks of the concept of the "sterile corridor". The "sterile corridor" keeps investigators separate from human sources. It does so for important reasons in light of the history in Victoria and elsewhere of corruption of such relationships. The Royal Commission is considering the extent to which a sterile corridor existed in respect of Nicola Gobbo and whether the existence of a sterile corridor had unintended consequences in relation to disclosure. Having said that, the rationale for a "sterile corridor" remains of critical importance and it will and should remain a guiding principle for human source management modified to meet the lessons learnt from this case.
- 430 While there has not been another Nicola Gobbo type human source, these issues highlight the broader question of how to ensure that disclosure from covert or intelligence sources is made in appropriate cases without damaging Victoria Police's intelligence functions in a way that would be contrary to the public interest. This difficult issue is dealt with in more detail elsewhere in this statement. The solution is likely to lie in a combination of statutory reform, dedicated disclosure officers at either end of the sterile corridor and improved IT based case and document management systems. These reforms, however, require substantial additional investment and resourcing.

The 'need to know principle'

- 431 The disclosure issues in relation to Nicola Gobbo were also impacted by the "need to know" principle. While that principle is essential in the handling of sensitive and classified information, it can have unintended consequences. In the Nicola Gobbo case, it meant that when information came to the attention of relevant people it was not shared, or not shared with the right people, because officers operate with the highest regard for secrecy, even at senior levels.
- 432 As with the "sterile corridor" principle, the 'need to know' principle is of critical importance in an organisation dealing with highly sensitive and classified information the dissemination of which could cause serious harm, including loss of life. Its unintended consequences can, however, be ameliorated by having stand-alone, robust disclosure processes combined with access by decision-makers to legal advice.

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Qu 26 Please outline any steps taken by Victoria Police to ensure that information provided by Ms Nicola Gobbo has been quarantined and is unable to be used or relied on in current or future investigations and prosecutions.

433 Victoria Police has quarantined the information provided by Nicola Gobbo and recorded in source contact reports or information reports in two ways:


- (a) it has created the Loricated database to which access is controlled by the HSMU; and
- (b) all material on Interpose has been located within a secure covert group controlled by the HSMU. This material cannot be accessed by investigators.

434 It should be noted that notwithstanding the above arrangements, if information contact reports, information reports and/or Source Management Logs containing information provided by Nicola Gobbo are published by the Royal Commission, this information will be in the public domain and available for access by anyone including members of Victoria Police.

Qu 27 Please provide information on any other matters you consider relevant to the Commission's inquiry into terms of reference 3 to 6

435 The responses to questions 1 to 26 have dealt with all of the issues that Victoria Police considers relevant to Terms of Reference 3 to 6.

Dated: 16 April 2020


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Wendy Maree Steendam APM