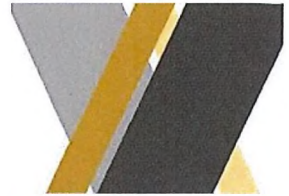




Royal Commission  
Into the Management of Police Informants



No. NP-279

***Inquiries Act 2014***

**Section 17**

**FORM 1**

**VARIED NOTICE TO PRODUCE DOCUMENTS TO A ROYAL COMMISSION**

Regulation 11

TO: Nicola Gobbo

AT: c/- MinterEllison, Level 23, Rialto Towers, 525 Collins Street, Melbourne VIC 3000

A Royal Commission is being held into the Management of Police Informants.<sup>1</sup>

**What you must do**

You must—

- ☒ produce the document/s or other thing/s specified below; or
- ☐ attend the Royal Commission and produce the document/s or other thing/s specified below; or
- ☐ attend the Royal Commission to give evidence until excused; or
- ☐ attend the Royal Commission to give evidence until excused and produce the document/s or other thing/s specified below.

**Where you must produce documents and/or things**

You must produce the documents and/or things specified in the Schedule below to the offices of the Solicitors Assisting the Royal Commission situated at Level 6, 555 Bourke Street, Victoria **by 10.00am on 9 July 2019.**

**Note:**

You should bring this notice with you when attending the Royal Commission.

**Objecting to this notice**

You may object to this notice if you have (or will have) a reasonable excuse for failing to comply with the notice. For example, it is a reasonable excuse to fail to comply with the notice if you are prohibited from disclosing the document/s or other thing/s by a court order. See section 18 of the ***Inquiries Act 2014 (the Act)*** and Annexure B to this notice for further examples of what constitutes a reasonable excuse.

You may also object to the notice by claiming that the document/s or thing/s specified in the notice are not relevant to the subject matter of the inquiry.

If you wish to object to this notice, you must do so in writing to Howard Rapke, Holding Redlich Lawyers, Level 8, 555 Bourke Street, Melbourne, Victoria, 3000 or by email to: [howard.rapke](mailto:howard.rapke@hr.com.au) by 4 July 2019. Your written objection must outline your reasons for objecting. If the Royal Commission is satisfied that your claim is made out, the Royal Commission may vary or revoke this notice.

<sup>1</sup> The terms of reference of the Royal Commission, contained in the Letters Patent dated 13 December 2018, as amended by the Letters Patent dated 7 February, are set out as Annexure A to this Notice.

Failure to comply with this notice without a reasonable excuse may constitute a criminal offence. The maximum penalty for this offence is 240 penalty units or imprisonment for two years. See section 46 of the Act.

Failure to comply with this notice without a reasonable excuse may also result in the Royal Commission making an application to the Supreme Court of Victoria. The Court may then order you to comply with the notice within a specified period. See section 23 of the Act.

Name: The Honourable Margaret McMurdo AC

Title: Commissioner, Royal Commission into the Management of Police Informants

Date: 2 July 2019

### SCHEDULE

The Commission requests production of documents in relation to the following:

1. From 1 January 1995, correspondence between Nicola Gobbo and the Australian Federal Police or any personnel of the Australian Federal Police, and file notes recording communications between Nicola Gobbo and the Australian Federal Police or any personnel of the Australian Federal Police.
2. From 1 January 1995, call log records and text messages extracted from mobile phone devices recording communications between:
  - (a) Nicola Gobbo and the contacts listed in Annexure A to this Notice; or
  - (b) Nicola Gobbo and persons using unknown telephone numbers (that is, telephone numbers not assigned to any particular contact in the mobile phone device).
3. From 1 January 1995, correspondence and file notes provided to Nicola Gobbo in respect of persons who were the subject of information provided by Nicola Gobbo to Victoria Police or any personnel of Victoria Police.
4. Documents relating to a burglary carried out at 23 Dublin Street, Oakleigh East in September 2003.
5. Documents relating to investigations, charges or proceedings against Paul Dale.
6. Documents relating to an event held at Wheat restaurant on Saturday, 11 March 2006.
7. Documents relating to an inquiry conducted by the Legal Services Commissioner in 2006 in response to a complaint made by or on behalf of Carl Williams.



.....  
The Honourable Margaret McMurdo AC  
Commissioner



## NOTES

### 1. *Rights and obligations arising from this notice*

Annexure B to this notice sets out the rights and obligations of a recipient of a notice issued under section 17 of the *Inquiries Act 2014* (Vic).

### 2. *Meaning of 'document'*

In this notice, 'document' includes, in addition to a document in writing:

- (a) any book, map, graph or drawing;
- (b) any photograph;
- (c) any label, marking or other writing which identifies or describes anything of which it forms part, or to which it is attached by any means whatsoever;
- (d) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (e) any film (including a microfilm), negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (f) anything whatsoever on which is marked any words, figures, letter or symbols which are capable of carrying a definite meaning to persons conversant with them.

### 3. *Production by email or electronically*

To comply with this notice, you may produce the documents described in the Schedule to the address stated in the notice by emailing an electronic copy of the documents to howard.rapke [REDACTED]. Please specify the reference number of the notice in the subject line of your email.

Where production by email is not practicable (such as for production of large quantities of documents), you may produce such documents by way of a USB or other form of electronic storage device delivered to the address set out in the notice.

Production must be in accordance with the Royal Commission into Management of Police Informants Document Management Protocol.

### 4. *Production of things*

You may comply with this notice by delivering or posting things sought by the notice which are unable to be produced in electronic form to the address specified in the notice.

### 5. *Practice Directions*

You should consult all relevant Practice Directions published by the Royal Commission on its website prior to production.

**ANNEXURE A****TERMS OF REFERENCE**

The Letters Patent dated 13 December 2018, as amended by the Letters Patent dated 7 February 2019, requires and authorises the Royal Commission to inquire into and report on the following matters:

1. The number of, and extent to which, cases may have been affected by the conduct of EF as a human source.
2. The conduct of current and former members of Victoria Police in their disclosures about and recruitment, handling and management of EF as a human source.
3. The current adequacy and effectiveness of Victoria Police's processes for the recruitment, handling and management of human sources who are subject to legal obligations of confidentiality or privilege, including:
  - a. whether Victoria Police's practices continue to comply with the recommendations of the Kellam report; and
  - b. whether the current practices of Victoria Police in relation to such sources are otherwise appropriate.
4. The current use of human source information in the criminal justice system from human sources who are subject to legal obligations of confidentiality or privilege, subject to section 123 of the *Inquiries Act 2014*, including:
  - a. the appropriateness of Victoria Police's practices around the disclosure or non-disclosure of the use of such human sources to prosecuting authorities; and
  - b. whether there are adequate safeguards in the way in which Victoria Police prosecutes summary cases, and the Office of Public Prosecutions prosecutes indictable matters on behalf of the Director of Public Prosecutions, when the investigation has involved human source material.
5. Recommended measures that may be taken to address:
  - a. the use of any other human sources who are, or have been, subject to legal obligations of confidentiality or privilege and who come to your attention during the course of your inquiry; and
  - b. any systemic or other failures in Victoria Police's processes for its disclosures about and recruitment, handling and management of human sources who are subject to legal obligations of confidentiality or privilege, and in the use of such human source information in the broader criminal justice system, including how those failures may be avoided in future.
6. Any other matters necessary to satisfactorily resolve the matters set out in paragraphs 1-5.



## ANNEXURE B

### STATEMENT OF RIGHTS AND OBLIGATIONS OF A PERSON SERVED WITH A NOTICE UNDER SECTION 17 OF THE *INQUIRIES ACT 2014* (VIC)

#### ***Failure to comply with a notice***

1. Pursuant to section 46 of the *Inquiries Act 2014* (Vic) (**the Act**), a person served with a notice under section 17 of the Act (**notice**) must not, without reasonable excuse, fail to comply with the notice.

**It is a criminal offence to refuse or fail to produce a document or other thing to the Royal Commission without reasonable excuse. The maximum penalty for this offence is 240 penalty units or 2 years imprisonment.**

#### ***Person may make a claim that he/she has a reasonable excuse for failing to comply with a notice to produce***

2. Subsection 18(1)(a) of the Act provides that a person on whom a notice is served may make a claim to the Royal Commission that the person has or will have a reasonable excuse for failing to comply with the notice.
3. Without limiting what may be a reasonable excuse for the purposes of subsection 18(1)(a), subsection 18(2) of the Act provides that it is a reasonable excuse for a person to fail to comply with a notice by refusing to give information to the Royal Commission if the information:
  - a. in the case of a natural person, might tend to incriminate the person or make the person liable to a penalty; or
  - b. is the subject of parliamentary privilege; or
  - c. is the subject of public interest immunity; or
  - d. is prohibited from disclosure by a court order; or
  - e. is prohibited from disclosure by a provision of another enactment that specifically applies to the giving of information or the production of documents or other things to a Royal Commission; or
  - f. is prohibited from disclosure by a provision of another enactment that is prescribed by the regulations for the purposes of section 34 of the Act.

#### ***Person may make a claim that a document or other thing specified in the notice is not relevant***

4. Subsection 18(1)(b) of the Act provides that a person on whom a notice is served may make a claim to the Royal Commission that a document or other thing specified in the notice is not relevant to the subject matter of the inquiry.

#### ***Royal Commission may vary or revoke the notice***

5. Subsection 18(3) of the Act provides that if the Royal Commission is satisfied that the person's claim under subsection 18(1)(a) or (b) is made out, the Royal Commission may, by further written notice served on the person, vary or revoke the notice.

6. Subsection 18(4) of the Act provides the Royal Commission, by further written notice served on a person, may at any time on its own initiative vary or revoke a notice to produce or notice to attend served on the person.

***Legal professional privilege does not apply***

7. Pursuant to subsection 32(1) of the Act, it is not a reasonable excuse for a person to refuse or fail to produce a document or other thing to the Royal Commission on the grounds that the information, document or other thing is subject to legal professional privilege.
8. Pursuant to subsection 32(2) of the Act, information or a document or other thing does not cease to be the subject of legal professional privilege only because it is given or produced to a Royal Commission with a requirement to do so under the Act.

***Privilege against self-incrimination does not apply***

9. Pursuant to subsection 33(1) of the Act, it is not a reasonable excuse for a person to refuse or fail to comply with a requirement to give information or produce a document or other thing to the Royal Commission on the grounds that such production might tend to:
  - a. incriminate the person; or
  - b. make the person liable to a penalty.
10. Pursuant to subsection 33(2) of the Act, subsection 33(1) does not apply to the refusal or failure to produce a document or other thing if:
  - a. proceedings for an offence with which the person has been charged have not finally been disposed of; or
  - b. proceedings for the imposition or recovery of a penalty that have been commenced against the person have not finally been disposed of.

***Statutory secrecy and confidentiality***

11. Pursuant to subsection 34(1) of the Act, it is not a reasonable excuse for a person to refuse or fail to comply with a requirement to give information (including answering a question) or produce a document or other thing to the Royal Commission on the grounds that another enactment prohibits the person from giving the information or producing the document or other thing or imposes a duty of confidentiality on the person in relation to the information, document or other thing.
12. Pursuant to subsection 34(2) of the Act, a person is not subject to any criminal, civil, administrative or disciplinary proceedings or action only because the person complies with the requirement to give the information (including answering a question) or produce the document or other thing to the Royal Commission.
13. Pursuant to subsection 34(3) of the Act, subsections 34(1) and (2) do not apply to:
  - a. a provision of another enactment that specifically applies to the giving of information or the production of documents or other things to a Royal Commission; or
  - b. a provision of another enactment that is prescribed by the regulations for the purposes of this section.



***Publication of information relating to Royal Commission inquiries***

14. Pursuant to subsection 24(1) of the Act, the Commissioner may make an order excluding any person from a proceeding of the Royal Commission if:
  - a. prejudice or hardship might be caused to any person, including harm to their safety or reputation; or
  - b. the nature and subject matter of the proceeding is sensitive; or
  - c. there is a possibility of any prejudice to legal proceedings; or
  - d. the conduct of the proceeding would be more efficient and effective; or
  - e. the Commissioner otherwise considers the exclusion appropriate.
15. Pursuant to subsection 26(1) of the Act, subject to subsection 26(2), the Commissioner may make orders prohibiting or restricting the publication of:
  - a. any information that may enable the identity of a person who has given, or is to give, information or evidence to the Royal Commission for the purposes of an inquiry to be ascertained; or
  - b. any information or evidence given to the Royal Commission for the purposes of an inquiry.
16. Pursuant to subsection 26(2) of the Act, the Commissioner may make orders prohibiting or restricting the publication of information or evidence if:
  - a. prejudice or hardship might be caused to any person, including harm to their safety or reputation; or
  - b. the nature and subject matter of the information is sensitive; or
  - c. there is a possibility of any prejudice to legal proceedings; or
  - d. the conduct of the proceeding would be more efficient and effective; or
  - e. the Commissioner otherwise considers the prohibition or restriction appropriate.

**It is an indictable offence to knowingly or recklessly contravene an order made under section 24(1) or 26(1) of the Act. The maximum penalty for an offence is 600 penalty units or imprisonment for 5 years.**

***Admissibility of answers, information, documents and other things***

17. Pursuant to subsection 40(1) of the Act, the production of a document or other thing to the Royal Commission and the fact that the document or other thing was produced is not admissible in evidence against the person in any other proceedings (being criminal, civil or administrative proceedings before a court, tribunal or person acting judicially or disciplinary proceedings), except in proceedings for:
  - a. an offence against the Act; or
  - b. an offence against sections 254 or 314 of the *Crimes Act 1958* (Vic) in relation to Royal Commissions.

***Production of false or misleading information***

18. Pursuant to subsection 50(1) of the Act, a person must not produce a document or other thing to a Royal Commission that the person knows to be false or misleading in a material particular unless the person indicates to the Royal Commission the respect in which it is false or misleading and, to the extent practicable, provides the correct information.

**It is an offence to produce a document or other thing to a Royal Commission that the person knows to be false or misleading in a material particular. The maximum penalty for this offence is 120 penalty units or 12 months imprisonment.**