



Submissions of Ms Nicola Gobbo with respect to Terms of Reference 1 and 2

Royal Commission into the Management of Police Informants

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Executive Overview

1. These submissions are made in response to Counsel Assisting submissions with respect to Terms of Reference 1 and 2 of the Royal Commission into the Management of Police Informants (**Commission**) served on us on 26 June 2020.

Procedural fairness

2. At the outset, it may be observed that Counsel Assisting took over four months to produce their submissions. Counsel for Ms Nicola Gobbo was afforded a mere six weeks. An extension was sought of the Commissioner but was refused – despite the introduction of Stage 3 and, latterly, Stage 4 COVID-19 restrictions in Victoria.
3. Counsel Assisting have provided three volumes of submissions totalling over two thousand pages. In their submissions, it is apparent they had access to material not disclosed to Ms Gobbo as well as material that was not tendered. That was tendered on 6 July 2020 but only provided to Counsel (in read only electronic form by Victoria Police, not the Commission) on 4 August 2020.
4. Not all the untendered material has been provided. By the time of service of these submissions, not all of it had been provided. This is contrary to the basic principle of procedural fairness. It is submitted the entire process adopted was not procedurally fair, in contravention of section 12 of the *Inquiries Act 2014* (Vic) (***Inquiries Act***). This was exacerbated by the restricted conditions Ms Gobbo found and continues to find herself in, and lack of access she has been granted to much of the material relied upon by Counsel Assisting. More detailed submissions are made at Chapter 1 on procedural fairness. These reference the way Ms Gobbo has been treated unfairly during the Royal Commission, including having been misled as to the context of private telephone calls with the Commission.
5. To that end, we have not addressed every single adverse comment made in the submissions of Counsel Assisting. We have not been afforded the time to do so. The focus of these submissions has been on topics where Counsel Assisting seek specific findings against Ms Gobbo.

Approach of Counsel Assisting to the evidence

6. Throughout their submissions, Counsel Assisting have made adverse comment, often through innuendo, without always seeking findings by the Commissioner. Unless specifically referenced

within these submissions, they have not been addressed. The fact they are not addressed should not be seen as any concession on behalf of Ms Gobbo.

7. As can be ascertained by considering these submissions, it is submitted that Counsel Assisting have not considered all of the evidence.
8. The professional duties of Counsel Assisting are codified. They state, *inter alia*, that :
 - (a) A barrister who appears as counsel assisting an investigative/inquisitorial tribunal ***must fairly*** assist the tribunal to arrive at the truth and must seek to assist the tribunal with adequate submissions of law and fact.¹
 - (b) A barrister who appears as counsel assisting an investigative/inquisitorial tribunal must not, by language or other conduct, seek to inflame or bias the tribunal against any person appearing before the tribunal.²
9. In this matter, it is submitted that Counsel Assisting lost sight of the primacy of the terms of reference and fell into the temptation of pursuing individuals as standalone targets, one of which was Ms Gobbo. In doing so, Counsel Assisting did not fairly assist the Commissioner, in that they had adopted over time a pre-conceived narrative with evidence considered in the context of that narrative, as opposed to allowing the evidence to lead to the conclusions.
10. An obvious example concerns the Thomas case study. Counsel Assisting sought to suggest that Ms Gobbo and Victoria Police had misled Mr Thomas [REDACTED] by hiding the fact that Mr McGrath had initially considered the murder of Mr Marshall to be a debt collection as opposed to a murder.
11. This became the premise for many of their submissions relating to Mr Thomas. It was regularly stated by Counsel Assisting that Counsel for Mr Thomas was deprived of cross-examination on this very important point.
12. In fact, however, Counsel Assisting had in their possession material that demonstrated that Mr Thomas, at his committal, was aware of the debt collection point and that Mr McGrath was extensively cross-examined about it by Counsel over several days. This is not mentioned anywhere in Counsel Assisting's submissions and yet they had the transcript as in fact they copy and paste parts of it in their submissions. That transcript was never provided by the Commission to Ms Gobbo.

¹ The Legal Profession Conduct (Barrister) Rules 2015, r 97.

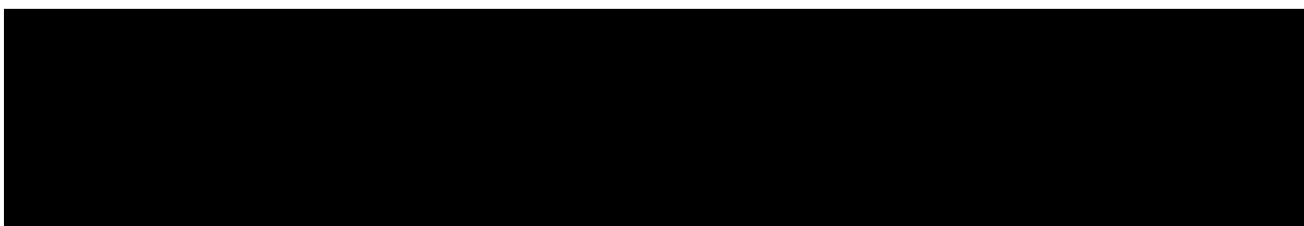
² The Legal Profession Conduct (Barrister) Rules 2015, r 98.

It so happens Ms Gobbo had a copy of some of that evidence. This is considered in more detail in the Thomas case study at Chapter 9.

13. There are many more examples of this selective use of material, some of which only Counsel Assisting had, including the transcripts of Mr Cooper's plea, which is detailed in submissions relating to cash at Chapter 6 and also the Cooper case study at Chapter 10. It demonstrates that Counsel Assisting have not been "fair" to Ms Gobbo.

Volume 3 – Affected cases

14. It is submitted that Counsel Assisting have failed to address the matters raised in the Terms of Reference. It is why the assessment of what cases may be affected is particularly wide and without significant analysis of individual cases, beyond those of Mr Cooper and Mr Thomas.
15. These submissions do not address volume 3 of Counsel Assisting's submissions. Again, the fact they do not should not be seen as acceptance of anything contained therein, unless concessions are specifically made within the submissions that follow. Any submissions of Counsel Assisting in volume 3 should be approached with caution given the omissions made by Counsel Assisting in relation to Mr Thomas and Mr Cooper, as detailed in the chapters relating to their cases.
16. It is not for Ms Gobbo to comment upon what cases may or may not have been affected by the conduct of Victoria Police and herself. That is a matter for the Commissioner to answer and the Courts to consider. To that end, Ms Gobbo makes no submissions beyond those where Counsel Assisting seek specific findings.
17. Further, given that the Terms of Reference relate to affected people, and the definition of affected people is those convicted, Ms Gobbo does not make specific submissions in relation to Operation Petra, Operation Briars and others. This is notwithstanding that Counsel Assisting spent considerable time on these matters.
18. Unusually, the Commission has asked that Ms Gobbo's legal team complete a table setting out brief responses to each finding Counsel Assisting seek. We have not completed that table and decline to do so. In our submission, tables of this kind create an unacceptable risk that the detailed responses to Counsel Assisting submissions are given undue attention.



[REDACTED]

21. As far as Mr Thomas is concerned, the submissions of Counsel Assisting are based on a misleading, false premise.

22. In relation to Mr Cooper, it is not accepted that Ms Gobbo passed on significant information in breach of legal professional privilege or confidentiality, given that the information related to ongoing crime, that Mr Cooper could not be seeking legal advice about. Further, Mr Cooper described Ms Gobbo as his best friend and it is apparent that much of the information he provided was in that context. When Ms Gobbo attended the police to represent Mr Cooper, her actions were undertaken due to her genuine fear that she would be killed if it became known she had assisted the police. In addition, the advice she gave Cooper was appropriate in the circumstances [REDACTED]

[REDACTED]

23. [REDACTED]
[REDACTED] The evidence indicates that Ms Gobbo believed she was entitled to payment for her services [REDACTED] As it happens, she was briefed to undertake tasks, which she did, often successfully. For example, she represented Mr Rob Karam at a trial and was paid for her work. Mr Karam was acquitted at that trial.

Legal professional privilege and conflict

24. The evidence demonstrates that many criminals provided Ms Gobbo with information in a social setting or in a setting where they were discussing new criminal offending for which they had not been charged. That does not attract legal professional privilege and can be disclosed in some

circumstances as a permissible breach of confidentiality. One of the difficulties for the Commission is trying to ascertain if the information provided was in fact the subject of any specific legal duties.

25. It is apparent that the real issue is that Ms Gobbo often acted in circumstances of a conflict of interest. To that end, submissions are made as to the culture of conflict that existed at the time of her practice and, to some extent, that perpetuate to this day. Those submissions are found within the Thomas case study at Chapter 9.

Conclusion

26. Our overall submission is that a fair, balanced analysis of the evidence will reveal what Hon Murray Kellam AO QC found; that Victoria Police (and Ms Gobbo) behaved negligently (in allowing Ms Gobbo to breach her duties as she did). That conduct impacted upon the administration of justice but was not unlawful, and was mitigated by the lack of oversight and guidance by senior decision makers at Victoria Police. Moreover, Counsel Assisting submissions import the clarity of hindsight analysis and fail to give due weight to the mistakes that decision makers make (including Ms Gobbo) often in circumstances where good intentions are a motivating consideration.

TABLE OF CONTENTS

Part A – Legal Principles.....	8
1. Procedural fairness.....	8
3. Other responses to Volume 1 – Legal principles	49
Part B – Substantive matters.....	71
4. Nicola Gobbo – Personality, health, recruitment and motivation.....	71
5. Allegations made by Mr Thomas	96
6. Mr Cooper and Cash.....	114
7. Purported lies on admission	122
8. Purported lies to Ginnane J and the Commission	128
9. The Thomas case study	139
10. The Cooper case study.....	187
11. Jeff Pope.....	217
Part C – Conclusion	226
12. The role of Victoria Police and Simon Overland	226
Annexure A	
Annexure B	

Part A – Legal Principles

1. Procedural fairness

Legal principles

28. Section 12 of the *Inquiries Act* states:

A Royal Commission may conduct its inquiry in any manner that it considers appropriate, subject to –

- (a) the requirements of procedural fairness;
- (b) the letters patent establishing the Royal Commission; and
- (c) this Act, the regulations and any other Act.

29. Section 14 of the *Inquiries Act* confirms that a Royal Commission is not bound by the rules of evidence or any practices or procedures applicable to courts of record and may inform itself on any matter as it sees fit.

30. Section 36 of the *Inquiries Act* sets out that where a Royal Commission proposes to make an adverse finding against a person, the Royal Commission must be satisfied that the person is:

- (a) aware of the matters on which the proposed finding is based; and
- (b) has had an opportunity, at any time during the course of the inquiry, to respond on those matters.

31. Consequently, it follows that the Commission can conduct its inquiry in any manner it deems appropriate and is not bound by the rules of evidence and practices and procedures applicable to courts of record. However, the Commission's powers are subject to the requirements of procedural fairness.

32. There exists long-standing, well established principles established by the Courts relating to procedural fairness, which must still be adhered to in a Royal Commission.

33. In *Annetts v McCann* (1990) 170 CLR 596, Mason CJ, Deane and McHugh JJ observed that:

It can now be taken as settled that, when a statute confers power upon a public official to destroy, defeat or prejudice a person's rights, interests or legitimate expectations, the rules of natural justice regulate the exercise of that power

*unless they are excluded by plain words of necessary intendment...[A]n intention on the part of the legislature to exclude the rules of natural justice...[is] not to be assumed nor spelled out from 'indirect references, uncertain inferences or equivocal considerations'. Nor is such an intention to be inferred from the presence in the statute of rights which are commensurate with some of the rules of natural justice.*³

34. The explanatory memorandum to the Inquiries Bill 2014 (Vic) (**Bill**) states that, where the Bill imposes certain specific requirements in respect of procedural fairness (for example, section 36 which outlines the process to be followed in respect of adverse findings), it is not intended that these provisions exhaust the content or scope of a Royal Commission's general obligation to afford procedural fairness.⁴ The explanatory memorandum also confirms that a Royal Commission has flexibility and independence in how it conducts its inquiry.⁵
35. As is apparent from the explanatory memorandum, section 12 of the *Inquiries Act* imposes on a Royal Commission a general obligation to afford procedural fairness. The content and scope of that obligation will be informed by the requirements of the common law.
36. Counsel Assisting refer in their submissions to section 12 of the *Inquiries Act*.⁶ They state that, although the Commission is not bound by the rules of evidence (by reason of section 14 of the *Inquiries Act*), "it has not disregarded them in so far as they assist in providing 'substantial justice' to the parties concerned".⁷ It is not accepted that Ms Gobbo has been afforded "substantial justice".
37. Ms Gobbo's right to procedural fairness is enlivened by the submissions, proposed findings and comments made by Counsel Assisting.⁸ As much appears to be conceded by Counsel Assisting, who state that the obligation to afford procedural fairness "extends to any person whose rights, interests or legitimate expectations may be 'affected' in a direct and immediate way". They go on to state that the variety of interests protected by the requirements of procedural fairness are not limited to legal rights, and include "status, reputation, liberty, confidentiality, livelihood and financial or other benefit".⁹

³ *Annetts v McCann* (1990) 170 CLR 596, 598.

⁴ Explanatory memorandum to the Inquiries Bill 2014, page 12.

⁵ *Ibid.*

⁶ Counsel Assisting submissions, Volume 1, [32].

⁷ *Ibid* [34].

⁸ See for example, *Cornall v AB* [1995] 1 VR 372, 396.

⁹ Counsel Assisting submissions, Volume 1, [64].

38. The question of what is fair will depend on the nature of the matters in issue and what constitutes a reasonable opportunity for a party to present its case in the circumstances. As Mason J observed in *Kioa v West* (1985) 159 CLR 550, "the expression 'procedural fairness' conveys the notion of a flexible obligation to adopt fair procedures which are appropriate and adapted to the circumstances of the particular case".¹⁰
39. The fundamental basics of procedural fairness are that:
- (a) a person who is the subject of a decision or finding is given a fair hearing (**the hearing rule**); and
 - (b) the decision maker and the process adopted is not affected by bias or a reasonable apprehension of bias (**the bias rule**).
40. It is submitted that the nature and conduct of Counsel Assisting offended both the hearing and bias rule as far as Ms Gobbo was concerned.

The hearing rule

41. The hearing rule is a basic, trite, fundamental right of a person the subject of potential adverse findings by a decision maker, such as the Commissioner. Simply put, it affords Ms Gobbo the right to know of material that is potentially adverse to her so as to offer an opportunity to challenge and respond to it accordingly. To that end, fairness dictates that Ms Gobbo be afforded sufficient time to consider the material and provide instructions and challenge it accordingly.
42. In this particular Commission, the matter was undertaken akin to a criminal trial in that a number of parties had standing leave, were represented by Counsel, and permitted to challenge some of the witnesses that made adverse comments and allegations against a party. That process is therefore the barometer of what procedural fairness principles applied to Ms Gobbo, such as being provided material that was adverse to her interests in advance, to take instructions upon and be permitted sufficient time to consider and challenge.
43. It is evident that, by adopting this process, the Commissioner intended for parties to be afforded procedural fairness. It is certainly the case that Ms Gobbo was afforded the right to legal representation, standing leave and an ability to cross-examine. Superficially, this afforded Ms Gobbo procedural fairness.

¹⁰ *Kioa v West* (1985) 159 CLR 550, 585.

44. However, when the circumstances upon which the hearing was conducted as far as Ms Gobbo is concerned are considered objectively, it cannot be said that the process Ms Gobbo in fact received was fair.

Breaches of the hearing rule

45. The hearing rule requires that affected persons be told in advance of material adverse to their interests which is "significant, relevant and credible".¹¹
46. To be able to properly challenge material that is potentially adverse to an individual, that individual must be given an adequate opportunity to meaningfully consider the material, provide instructions to allow investigation, and then prepare for cross-examination and the making of submissions.
47. However, from the very outset, Ms Gobbo and her legal representatives did not receive disclosure of statements until very late. On occasion, the statements were served whilst the witness was giving evidence. On other occasions, exhibits referred to as part of statements were never provided to or sighted by Counsel for Ms Gobbo. Further, some exhibits were only ever seen when referred to by Counsel Assisting and depicted upon the screen. Consequently, there was insufficient time to obtain instructions from Ms Gobbo. Attached to these submissions as Annexure A is a schedule setting out the date of service of statements coupled with the date the witness attended to give evidence.¹²
48. The inability to obtain instructions in time was compounded by the personal and situational circumstances of Ms Gobbo. The Commission was aware from the outset that Ms Gobbo's living and situational circumstances were such that obtaining instructions was not simply a process of calling Ms Gobbo and obtaining instructions. Ms Gobbo's historic mental and physical health issues are set out in detail at Chapter 4. A large number of experts, unchallenged, have provided material to the Commission relating to Ms Gobbo's health and the consequent impact it has had on her memory and her ability to give accurate information. Despite this, there was little to no weight given to this when it came to disclosing material for instructions to be sought.
49. Further, it was known to the Commission that there was a process (and situation) here which meant that obtaining instructions was not expedient. Notwithstanding this, disclosure of material occurred in such a way that it made obtaining instructions and properly challenging witnesses on detailed, historic information difficult and, ultimately, caused an unfairness.

¹¹ Ibid, 587; *Johns v Australian Securities Commission* (1993) 178 CLR 408, 472.

¹² Schedule prepared by MinterEllison, indicating dates of service of statements and exhibits and dates of witness cross-examination.

50. Undeniably, much of the material was sensitive. However, to be permitted to see the material and prepare as best in the circumstances, Counsel for Ms Gobbo and those instructing were the subject of undertakings that allowed sight of the material. However, those undertakings did not permit Counsel or the solicitors for Ms Gobbo to show Ms Gobbo the material and take instructions from her. Those undertakings were only lifted (to a degree) when the Commissioner refused Ms Gobbo's application to be excused from giving evidence. Consequently, Ms Gobbo was prohibited from sighting material that was relevant to potential adverse comments against her.
51. Against this background, it may be noted that Victoria Police was responsible for disclosure (including public interest immunity (**PII**) redactions) and controlled what Ms Gobbo could and could not see. It was well known from the outset that the positions of Ms Gobbo and Victoria Police were in conflict. Indeed, in the very first private conversation the Commission had with Ms Gobbo, this was apparent. Nonetheless, the process was such that Victoria Police, a party that is the subject of the Terms of Reference, controlled which parties received what material and upon what conditions. The irony should not be lost on the Commission. As an example, when the first witness, Mr Neil Paterson, gave evidence there were at least four differing versions of his statement at the Bar table – with the Commission, Victoria Police, Source Development Unit (**SDU**) and Ms Gobbo having differing levels of redaction (with the version provided to Counsel for Ms Gobbo having the most redactions). Still some material referenced in that statement has not been made available to Ms Gobbo or her legal team. The decision as to what was redacted and for whom was made by Victoria Police with the acquiescence of the Commission. It has continued throughout the life of the Commission.
52. Further, Counsel for Ms Gobbo only had access to the Informer Contact Reports (**ICRs**) and transcripts at a police location. Unlike Counsel for other parties, who had free access to the material as and when they required it, Ms Gobbo's legal team had to attend at a particular location for access and could not access this material as and when required. The manner the process was run allowed this situation to develop as it did – where one party the subject of the Terms of Reference was permitted to control access to relevant material to a party with which it was in conflict.
53. Accordingly, Ms Gobbo did not have sight of or access to the ICRs, the many hours or recordings between her and her handlers or the transcripts of those meetings. This is despite Ms Gobbo being one party to those conversations. There could be no realistic PII claim as Ms Gobbo had discussed the relevant sensitive matters over 15 years ago and was evidently well aware of them. However,

she was denied access to them, whereas every single Victorian Police officer who came to give evidence had sight of relevant contemporaneous material and was able to give evidence having fairly refreshed their memory.

54. In stark contrast, Ms Gobbo was not afforded the same fairness. In the event, as the Commission would be aware, Ms Gobbo had two days with her lawyers to prepare to give evidence. The relevance of her health and circumstances is not rehearsed in detail here but is relevant. Two days was not on any view a fair and appropriate amount of time for Ms Gobbo to prepare for cross-examination (and criticism) relating to matters from many years ago.
55. Prior to those two days, a request for certain material to be provided to Ms Gobbo to read in advance of those two days was made. Victoria Police frustrated that process. Counsel for the Commission was asked to assist. It was wholly unsatisfactory. Ms Gobbo received one folder of material the evening before meeting with her legal team and the other at the beginning of the second morning. Yet, she was then cross-examined and criticised for her inability to recall some matters.
56. It is apparent that the unfairness complained of impacted on Ms Gobbo's evidence:
 - (a) Ms Gobbo was asked questions about transcripts that she had not heard or read, from up to 15 years ago. She responded at times stating she wished to read the transcripts,¹³ and that she had only heard a limited number of the audio files.¹⁴
 - (b) Ms Gobbo indicated she could not answer a particular question as she had not seen the material and had not looked at all the conversations and was criticised for it.¹⁵
 - (c) Rather than cure the unfairness, Counsel Assisting asked, "can you just accept I'm putting propositions put to you that is supported by materials we have."¹⁶ How could Ms Gobbo answer that?
 - (d) Ms Gobbo answering she cannot dispute what she does not know.¹⁷
 - (e) When Ms Gobbo sought to read a document that she was asked minute detail about, Counsel Assisting replied, "We are trying to get through this without taking too long."¹⁸
 - (f) Ms Gobbo asking for an opportunity to read a different transcript put to her.¹⁹

¹³ See eg, Transcript of Ms Nicola Gobbo (6 February 2020), page 13327.

¹⁴ Ibid, page 13324.

¹⁵ Transcript of Ms Nicola Gobbo (7 February 2020), page 13456.

¹⁶ Transcript of Ms Nicola Gobbo (6 February 2020), page 13332.

¹⁷ Transcript of Ms Nicola Gobbo (6 February 2020), page 13354.

¹⁸ Transcript of Ms Nicola Gobbo (6 February 2020), page 13359.

¹⁹ Transcript of Ms Nicola Gobbo (7 February 2020), page 13444.

(g) Counsel for Victoria Police putting material that had not been tendered or served on any party to Ms Gobbo – highlighting the unfairness in a party in conflict controlling disclosure. It was only disclosed afterwards.²⁰

(h) Consequently, Ms Gobbo's evidence was that her evidence was accurate and true to the best of her ability, without looking at all the material.²¹ Ms Gobbo was in effect pointing out the unfairness that had accompanied her evidence.

57. The general unfairness of this situation was made clear to the Commission in written submissions dated 21 October 2019 when it was pointed out that Ms Gobbo had not been provided the material to consider, unlike virtually every other witness who attended the Commission, yet, Ms Gobbo had the most material to consider.²²

58. Further, it is apparent from Counsel Assisting's submissions that reliance is placed on material that was, at the time of writing, (i) never tendered,²³ and/or (ii) never provided to Ms Gobbo or her legal team, and/or (iii) Ms Gobbo was not cross-examined about. Again, this cannot be said to be procedurally fair; in particular given the Commission adopted the procedure similar to a criminal trial, as it did as far as hearings were concerned.

59. In the event, on 9 July 2020, Counsel Assisting "tendered" a large number of documents that are referred to in volume 2 of their submissions, by producing to parties a 23 page schedule detailing the material that was referred to but not provided to the parties. That material was then provided to Victoria Police to review. On 4 and 5 August 2020, some of that material was provided to the parties with standing leave to appear. This was two days before the purported deadline for providing submissions. It is an example of the Commission permitting a party, Victoria Police, to control proceedings. Further, it shows that lip service only was paid to the concept of procedural fairness. One hundred and forty documents were provided days before the submissions were due to be served.

60. After the hearings for Terms of Reference 1 and 2 were concluded, Victoria Police disclosed transcripts and summaries of telephone calls between Ms Gobbo and Mr Cooper. From the submissions of Counsel Assisting it is also apparent there exists material relating to calls between Ms Gobbo and Messrs Thomas and Bickley. Some of that material is still outstanding and has not

²⁰ Transcript of Ms Nicola Gobbo (11 February 2020), page 13728.

²¹ Transcript of Ms Nicola Gobbo (7 February 2020), page 13473.

²² Exhibit RC791, Submission of Counsel for Ms Gobbo, re: Publication of Private Phone calls, (21 October 2019), [8].

²³ A schedule of these materials was provided to parties on 10 July 2020 (2 weeks after the submission were served).

yet been provided to the legal team for Ms Gobbo, despite comment by Counsel Assisting on those matters. This is after the service of Counsel Assisting's submissions. On any view, it means the Commission has had sight of material that materially impacts on findings and has not provided those materials to Ms Gobbo to consider and respond to. That is, it is submitted, in direct breach of section 12 of the Inquiries Act.

61. It also became apparent during the process that Counsel Assisting would speak to witnesses prior to them giving evidence. There is no criticism of that process. However, the criticism is in the lack of disclosure that such a discussion had taken place and material matters discussed that were potentially adverse to Ms Gobbo.
62. For example, Counsel Assisting, Mr Woods, spoke to both Mr Cooper and Mr Bickley prior to their giving evidence. Mr Cooper had not provided a witness statement and wanted a discussion with Counsel Assisting to put his mind at ease. Counsel Assisting took Mr Cooper through his plan as to what evidence he was to lead. This should have been disclosed.
63. On the Sunday before Mr Bickley gave evidence, he had a discussion with Mr Woods. When he did, he amended his statement. That was not made clear on the Monday when Mr Bickley came to give evidence. An amended statement of Mr Bickley was simply provided to parties without any explanation. The process of how those changes occurred was not disclosed. This may be contrasted with the criticisms made by Counsel Assisting in their submissions in relation to the statement of Mr McGrath in July 2004 and amendments made to it.
64. Counsel Assisting have been afforded several months to draft their submissions. It is understood from Counsel Assisting that they commenced in January 2020. It is also understood Counsel Assisting sought an extension to the original deadline. Initially, affected parties, including Ms Gobbo were provided eight weeks to respond to the lengthy, dense submissions. That in itself was not sufficient. Despite delays in the provision of the submissions, with them eventually being disclosed to Ms Gobbo's legal team in the late afternoon of 26 June 2020, no extension to the time to respond was granted. It means only six weeks have been provided to respond, despite the limitations of access to material already set out herein. An application for an extension of time was made based on this, and the fact that Victoria went into stage 3 (and later stage 4) COVID-19 restrictions for a large proportion of the time afforded to Ms Gobbo's legal team. That application was refused.
65. Further, the Commission is due to receive submission from other parties with standing leave, including Victoria Police, the SDU, the Office of Public Prosecutions (**OPP**), Mr Simon Overland

and others. It is inevitable that they will make submissions that will seek adverse findings/negative comment against Ms Gobbo. The Commission timetable did not incorporate an appropriate opportunity to respond to those submissions. This would have meant, again, that the Commission having before it material contrary to Ms Gobbo's interests that Ms Gobbo would not have been provided an opportunity to challenge. This would have been an affront to the principles of procedural fairness. At the same time as seeking an extension, this significant procedural fairness issue was pointed out. It is troubling that it was necessary to do so. Two weeks were requested on the understanding that some of the other responses are voluminous and require time to respond. One week was granted.

66. Taken together, these limitations shed light on the ability of Counsel for Ms Gobbo to fairly and properly cross-examine witnesses in a meaningful way, based on instructions. Due to the procedure adopted, Counsel were severely hampered in their ability to best represent Ms Gobbo's interests and challenge adverse evidence due to the process that developed during the life of the Commission.

The bias rule

67. The test for apprehended bias/partiality is whether a well-informed hypothetical observer might reasonably apprehend partiality on the part of the Commissioner (not Counsel Assisting).
68. In *Firman v Lasry* [2000] VSC 240, it was held that if the conduct of Counsel Assisting a Royal Commission was, or reasonably appeared to be, partial, and the Commissioner appeared to condone that conduct, then the hypothetical observer might reasonably apprehend partiality on the part of the Commissioner. Ashley J gave the following example of such conduct:

If the conduct of counsel assisting showed an evident and persisting inequality of treatment as between witnesses espousing one view of the matters under inquiry and witnesses espousing an opposing view, if one group of witnesses was apparently aided in giving its account of events whilst the other group was apparently frustrated in its attempts, and if a Commissioner either gave support to or took no action to redress the situation which unfolded before him, it would not be wrong to consider that support or inaction if all allegation of apprehended bias on the Commissioner's part was raised by an individual whose conduct was

*under scrutiny. Whether a conclusion adverse to a Commissioner might them be drawn must depend on the particular circumstances.*²⁴

69. For the reasons set out below, it is submitted that a well-informed observer would apprehend bias as against Ms Gobbo by Counsel Assisting. The Commissioner should be slow to simply accept Counsel Assisting submissions without scrutiny, as to do so may give the appearance of bias.
70. From the outset, it was apparent that Counsel Assisting embarked on a pre-conceived narrative and have not shifted from that view. If anything, the written submissions appear to further entrench that narrative. For example, it is evident from these submissions that the way Counsel Assisting treated some witnesses (Messrs Thomas, Bickley and Cooper) was more favourable than others (Ms Gobbo, the SDU, Purana members) – Counsel Assisting were quick to label the latter liars, but more reticent to consider dishonesty of the former. There are specific submissions relating to Messrs Thomas, Bickley and Cooper that set out the lies given by those witnesses and Counsel Assisting's failures to even acknowledge the lies.
71. Throughout the currency of the Commission, Counsel Assisting embarked upon a narrative that was akin to a pursuit of Ms Gobbo (and others); necessarily this detracted from a focus on cases affected (the main term of reference directed by the Victorian Government). In many respects, Counsel Assisting submissions demonstrate this. Beyond two case studies, the Government are hardly helped as to which cases have been truly affected by Ms Gobbo working as a police informer.
72. There are far too many examples to indicate that Counsel Assisting embarked on a particular narrative with a closed mind and in a biased way, but some examples follow.
73. When it came to Ms Gobbo reporting to her handlers that she had gone into a fellow barrister's room and looked at some material, Counsel Assisting repeatedly described this as a "*burglary*". However, it is obvious that Ms Gobbo (even if trespassing) lacked the requisite criminal intent (such as entering to steal). The result was sensationalist headlines that were inaccurate. Counsel Assisting submissions demonstrate that the entering Ms Cure's office was not a criminal offence – as they eschew any suggestion that a burglary was committed.
74. Other examples of not referring to all the evidence or all the relevant law include:

²⁴ *Firman v Lasry* [2000] VSC 240, [28].

- (a) suggesting Ms Gobbo committed a breach of the *Australian Crime Commission Act 2002* (Cth) or the *Police Integrity Act 2008* (Vic), by referring to the legislation but not then pointing out the statutory defence which Ms Gobbo's explanation clearly enlivened;
- (b) suggesting Ms Gobbo had obtained \$60,000 from Mr Karam by deception despite the legal issue of dishonesty and, more so, that \$50,000 of that \$60,000 represented fees Ms Gobbo received for representing Mr Karam during a trial – where he was found not guilty;
- (c) not cross-examining Ms Gobbo about the memorandum to Mr Allan SC. Not only do Counsel Assisting seek an adverse finding against Ms Gobbo about this (which is a breach of procedural fairness), they do not even refer in detail to Mr Carl Williams' complaints which put the memorandum into context;
- (d) tendering Mr Solomon's statement which was adverse to Ms Gobbo and not calling him for cross-examination, despite having had possession of the statement for a lengthy period of time. Other relevant witnesses were not called, such as Ms Tess Walsh AC; and
- (e) referring to the case of the Nguyens. This was never considered evidentially at all and Ms Gobbo was asked no questions about it.

75. Another example relates to asking Ms Gobbo if she sought an ethics ruling relating to representing a party when in a conflict. Ms Gobbo was criticised for it. It is well known that the issue of conflicts of interest can be complex and hardly straightforward. This was highlighted by the fact that one of Counsel Assisting in fact represented Mr Fox of the SDU at the Independent Broad-based Anti-corruption Commission (**IBAC**) proceedings before Kellam J, yet this only came out when Counsel Assisting were critiquing Mr Sandy White who pointed out the irony in the questions. It is evident that the public would not have learnt of Counsel Assisting's own conflict.
76. It was also clear that, rather than follow the evidence and consider whether or not lawyers or organisations knew of Ms Gobbo's behaviour and/or condoned it beyond Victoria Police (such as prosecuting bodies, prosecuting barristers, defence barristers etc), Counsel Assisting refused to consider that colleagues and former colleagues may also have a knowledge about matters and did not investigate them despite having an opportunity to consider if a culture existed within the profession. Rather, the only lawyer who was scrutinised and criticised was Ms Gobbo.
77. For example, Mr Horgan SC, Senior Crown Prosecutor, clearly knew that Ms Gobbo was acting in conflict; not only did he allow it, he also used it in his closing address to the jury in the Carl Williams

trial. Mr Horgan knew Ms Gobbo acted for Mr McGrath; at one of his pleas, he was involved in plea resolution relating to him. He was also involved in discussions with Ms Gobbo during those plea discussions when he asked who does she act for and does she have a conflict. Conflicts were discussed. On another occasion Ms Gobbo discussed her “difficult position” within the context of the negotiations and her representing several parties. Mr Horgan SC was present questioning Mr Thomas when Ms Gobbo represented him at the Australian Crime Commission (**ACC**). He also knew that she represented Mr Thomas before King J. Evidence shows that he spoke to Ms Gobbo and asked when Mr Thomas was going to plead. There is also evidence to show that Mr Horgan SC in fact made submissions before King J that Solicitor 1 not act as she was acting in conflict. He also made clear to Mr Gavin Ryan that Mr Brand could not act for Mr Andrews due to conflict. This demonstrated that he was alive to people acting in conflict situations and acted as necessary. It is of note that the OPP also would have been aware as the lawyer with conduct was involved throughout the proceedings, as well as Mr Horgan's junior at the time, Mr Tinney (now Tinney J). However, he said nothing relating to Ms Gobbo. This was despite Mr Horgan SC being the lead prosecutor for all the gangland murders. The OPP had a vested interest in those who rolled when represented by Ms Gobbo rolling. It was left unexplored that the Senior Prosecutor appeared to be aware of these facts and would then use them in his closing submissions to the jury trying Mr Carl Williams for murder. Counsel Assisting appear to have simply accepted Mr Horgan's response (via the Director of Public Prosecution's (**DPP**) statement) that he could not recall matters.

78. Mr Rod Wilson was asked about an entry in the Source Management Logs. They appeared to indicate that during the prosecution of Mr Mokbel for the murder of Mr Lewis Moran, Mr Rapke was made aware that Ms Gobbo was potentially involved in Operation Briars (as a human source), and this would have to be disclosed in the Mokbel proceedings in response to a subpoena. The advice from Mr Rapke, then DPP, was that either the charges would have to be withdrawn against Mr Mokbel, or a confidential affidavit provided to the Court although the judge in question would not entertain it. Mr Wilson's evidence was that it was obvious from the material that Mr Rapke knew about Ms Gobbo's role as a human source. This was in October 2008.²⁵
79. There are other examples. Ms Gobbo was a relatively junior barrister when acting for Mr McGrath and others in 2003. Those around her were acting in conflict; there was evidence Barrister 1 was not permitted to represent a party at a coercive hearing as he had acted for another party, with Ms

²⁵ Transcript of Mr Rod Wilson (5 December 2019), pages 10525-26.

Gobbo his junior. Barrister 1 played a significant part in Ms Gobbo's career development. Further, Mr Sean Grant (now a Judicial Officer) appeared for one of the gangland criminals early in proceedings and then changed later in proceedings, all of which Ms Gobbo was involved in. However, no investigation into that conduct nor its subsequent impact on Ms Gobbo was considered by Counsel Assisting. To do so would have meant accepting the evidence of Mr Stuart Bateson, who coincidentally is another person who Counsel Assisting determined from early on would be severely criticised.

80. There was evidence of other barristers (now Judicial Officers) becoming aware of Ms Gobbo's role but no investigations being undertaken by Counsel Assisting. There was material to suggest two current Supreme Court Judges, the Commonwealth Director of Public Prosecutions (CDPP) and DPP/OPP knew of Ms Gobbo at the very least acting in conflict. The CDPP became aware in 2011 that Ms Gobbo was a police informer and involved in the Tomato Tin bust, yet nothing was done in relation to that case. The main protagonists were not sentenced for around six months after the CDPP became aware of Ms Gobbo's role. It is well understood that Crown Prosecutors and Judicial Officers cannot be compelled to attend a hearing; it does not however preclude Counsel Assisting considering the evidence and where it takes them with an open mind.
81. At times, for understandable reasons, Ms Gobbo would indicate that the lapse of time had made matters difficult (not forgetting the medical evidence relating to Ms Gobbo that Counsel Assisting were aware of) but Counsel Assisting were quick to label her dishonest. On the other hand, a number of witnesses whom Counsel Assisting's narrative characterised as victims, such as Messrs Cooper, Thomas and Bickley, would demonstrably lie but were not challenged.
82. There are specific submissions made separately in relation to Mr Bickley. However, the use of him by Counsel Assisting demonstrates their partisan nature; Mr Bickley during his evidence repeatedly said anyone who suggested he had met Mr Cooper prior to the time when PII [REDACTED] was lying. He repeated this on oath, vehemently on several occasions. As it transpired, during his evidence, Victoria Police disclosed a transcript of that recording. Not only did it reveal both men knew each other, knew about their family dynamic, but they also discussed events from Mr Cooper's party (which Mr Bickley had denied attending but it is apparent from the transcript he had attended). When faced with this, it was raised with Counsel Assisting (Mr Woods) that perhaps a party cross-examine Mr Bickley explaining that it was clear he was a liar. Counsel Assisting assured the parties he would put this. This did not happen. Instead, Counsel Assisting

tried to repair the damage, as though Mr Bickley was his witness, and instead asked if Mr Bickley was mistaken given the passage of time. It should not be forgotten that Mr Cooper in evidence accepted that he had met Mr Bickley on several occasions and that Mr Bickley was at his party,²⁶ thereby evidencing Mr Bickley's dishonesty.

83. Counsel Assisting have now retreated from Mr Bickley's assertion that the Police had in fact provided Ms Gobbo as his lawyer (which is patently a lie). However, rather than concede Mr Bickley had committed perjury and lied before the Commission, Counsel Assisting instead have simply suggested that the evidence was equivocal and "it is submitted that the Commissioner need not resolve that conflict".²⁷ These matters are addressed in more detail in the Bickley specific submissions. However, given the subject matter and the terms of reference, the allegation raised by Mr Bickley ought to be resolved by the Commissioner. This is because he was alleging the police had conspired to have Ms Gobbo represent him.
84. In relation to the Gangland murders, virtually every single witness gave evidence in a closed court. This was on the basis that it allowed them to speak freely and be able to give evidence fairly. As a consequence, Messrs Bateson, Flynn, O'Brien, Rowe, Thomas, Cooper and Bickley were permitted to give evidence for parts/all of their evidence in closed court. Ms Gobbo and Mr Overland were not permitted to. It resulted in unfairness to Ms Gobbo – it is clear from the evidence that at times Ms Gobbo was unclear who Counsel Assisting was referring to. She even articulated unfairness herself.²⁸ This all in the context of the medical evidence as to her ability to answer questions. When it was raised with the Commissioner the response was for any unfairness to be cured in re-examination by Ms Gobbo's counsel in private. This was an unsatisfactory palliative cure; Ms Gobbo was being criticised by Counsel Assisting in a public arena; to cure the unfairness in a private session was no cure at all.
85. In addition, during the cross-examination of Ms Gobbo, Counsel Assisting would frequently cut Ms Gobbo off, talk over her, misrepresent evidence to her and put material to her that Ms Gobbo made clear she had not seen. Counsel Assisting's narrative was such that there was an impression that Ms Gobbo's answers to evidence were irrelevant. It was simply a matter of getting through her evidence as quickly as possible, to allow Counsel Assisting to then criticise her in their submissions.

²⁶ Transcript of Mr Cooper (20 January 2020), page 12419.

²⁷ Counsel Assisting submissions, Volume 2, [1308].

²⁸ Transcript of Ms Nicola Gobbo (6 February 2020), pages 13333-4.

Ms Gobbo was asked questions repeatedly. When complaint was made on her behalf, they were rejected. In fact, on one occasion, the Commissioner's response was:

MR NATHWANI: No, no, this is the same question that we keep coming back to over and over again.

COMMISSIONER: I think it would be quicker if we just get the answer and then we'll move on. All right.

MR NATHWANI: Or not repeat it.

COMMISSIONER: We'll just get the answer and move on. Thanks, Mr Nathwani. Could you answer the question, Ms Gobbo?---Sorry, can you say it again, please?²⁹

86. It is expected that there were pressures of time, but it is unfortunate that expediency was accorded a higher priority than fairness at times in the case of Ms Gobbo.
87. It is also submitted the Commissioner allowed Counsel Assisting's narrative cloud her view. When presented with medical evidence relating to Ms Gobbo's health and ability to provide evidence, the Commissioner referred to one line of a hypothetical, lengthy conversation where Ms Gobbo suggested to her handlers that she feign illness to get an adjournment for Mr Cooper's plea. The fact the Commissioner was prepared to refer to one line taken out of context as against Ms Gobbo was surprising. This is particularly so given that elsewhere in the transcript Ms Gobbo said to her handlers after that comment that "*we need to come up with a reason and I cannot lie.*"³⁰
88. Further evidence of Counsel Assisting's commitment to their narrative is revealed by the content of their submissions. There are no references to the cross-examination of any other party beyond Counsel Assisting, evidencing a reluctance to consider evidence adduced by other parties in a balanced, fair way.
89. The reticence of Counsel Assisting to make any adverse findings as against Mr Pope is not supported by a fair assessment of the evidence. It has been evident throughout the proceedings that Ms Gobbo and the SDU were deemed most culpable in Counsel Assisting's view. Both Ms Gobbo and the SDU were in conflict with Mr Pope. Ms Gobbo was registered by Mr Pope; he apparently forgot this when signing an affidavit in 2011. Ms Gobbo also alleged a sexual relationship

²⁹ Ibid, page 13311.

³⁰ Transcript of conversation between Ms Gobbo and her handlers (5 April 2006), VPL.0005.0076.1119.

with Mr Pope. The affidavit he provided denied this. As it transpired, diary entries of Ms Gobbo undermined Mr Pope's affidavit. When Mr Pope was investigated for that matter, he was stood down from any decision making in relation to Ms Gobbo. It is evident he paid no more than lip service to this (and also demonstrated relevant conduct as far as the upper echelons of Victoria Police were concerned). As far as the SDU were concerned, they were the scapegoats of the Comrie Review and were shut down, with Mr Pope the prime driver of this. He evidently had an interest in shutting them down given his prior registration of Ms Gobbo and the allegations made against her. He escaped all criticism from Counsel Assisting. It is on that basis Counsel Assisting ignored the diary entries that undermined his account. Mr Pope and the proposed findings are considered in more detail at Chapter 11.

90. It is accepted the relationship between Counsel Assisting and the Commission is not like judge and prosecutor. However, in this matter, the Commissioner permitted Counsel Assisting to embark on the narrative and behaviour they did, at times without criticism or control. Here, the closeness of the relationship between the Commissioner and Counsel Assisting was perhaps best demonstrated with the Commissioner mid hearing saying, "Just a moment, Megan,³¹" to Counsel Assisting. As it transpires, the transcript was automatically amended and does not reflect the actual wording used, which can be confirmed by the audio recording. Further, the Commissioner often referred in public hearings to Counsel Assisting as "we" and "us".
91. In addition, the Commission, encouraged by Counsel Assisting, deployed tactics akin to those it now seeks to criticise Victoria Police and Ms Gobbo about, in that it misled Ms Gobbo as to the nature of telephone conversations to her detriment.
92. Ms Gobbo was deemed to have a reasonable excuse not to attend on 19 March 2019. Consequently, after communication from Mr Howard Rapke, senior solicitor for Solicitors Assisting, it was agreed Ms Gobbo would engage in a conversation with Counsel Assisting and members of Solicitors Assisting.³² An email followed stating that the Commissioner wished to be involved and present in the phone conference and asked if Ms Gobbo objected,³³ making clear the conversation would not be on oath.

³¹ Transcript of Mr Dannye Moloney (20 February 2020), page 14566.

³² Exhibit RC557, Letter from Howard Rapke to Solicitors for Ms Gobbo, (18 March 2019).

³³ Email from Howard Rapke to Solicitors for Ms Gobbo, (18 March 2019 at 7pm).

93. After the first private discussion on 20 March 2019, Mr Rapke wrote again,³⁴ asking for a further conversation to assist in advance of hearings on 15 April 2019 and that the conversation “*will mirror the last occasion*”. That telephone call occurred on 11 April 2019. A similar process occurred on 13 June 2019. Thereafter, Mr Rapke provided the transcripts of those telephone conferences.
94. The Commission had accepted that Ms Gobbo was not fit to give evidence on oath, but nonetheless sought her assistance (in a non-evidential way) despite accepting she had a reasonable excuse not to give evidence (“*poor physical and mental health, suffering from considerable pain for which she is being medicated*”).
95. The Commissioner in the first hearing identified that the hearing was not under oath and it meant that (i) Ms Gobbo was not provided the protections under the *Inquiries Act*,³⁵ and (ii) any weight that could be attached to what Ms Gobbo said would be limited at best as it was not under oath.³⁶ It was made clear to the Commission that Ms Gobbo had not been provided with any of the relevant material to review prior to answering questions.³⁷
96. Notwithstanding the fact that Ms Gobbo had been deemed to have a reasonable excuse not to attend and give evidence at that time, and had not considered much, if any, of the material, the Commission ordered disclosure of that material to other parties. As was then evident from her evidence, Ms Gobbo was cross-examined and criticised by parties for the answers she gave.
97. The Commission had brought about that unfairness by misleading Ms Gobbo as to the nature of the calls (a conference, where initially the Commission was not to be present, and when it was suggested the Commissioner was going to be, Ms Gobbo was asked if she objected), obtaining information not on oath but instead obtaining information (akin to instructions) to allow Counsel Assisting to prepare cross-examination of upcoming witnesses. The informal nature was not just evident by the emails in advance nor the conduct of the conference (for example, no oath was made) but also by the fact that Ms Gobbo's children were present and could be heard during the conversations.
98. To then use this material as the Commission did, despite submissions to the contrary, was akin to breaching Ms Gobbo's confidence and by analogy, similar to disclosing privileged material, which of course is the subject matter of the Commission. It also attended procedural fairness on Ms Gobbo

³⁴ Letter from Howard Rapke to Solicitors for Ms Gobbo, (7 April 2019).

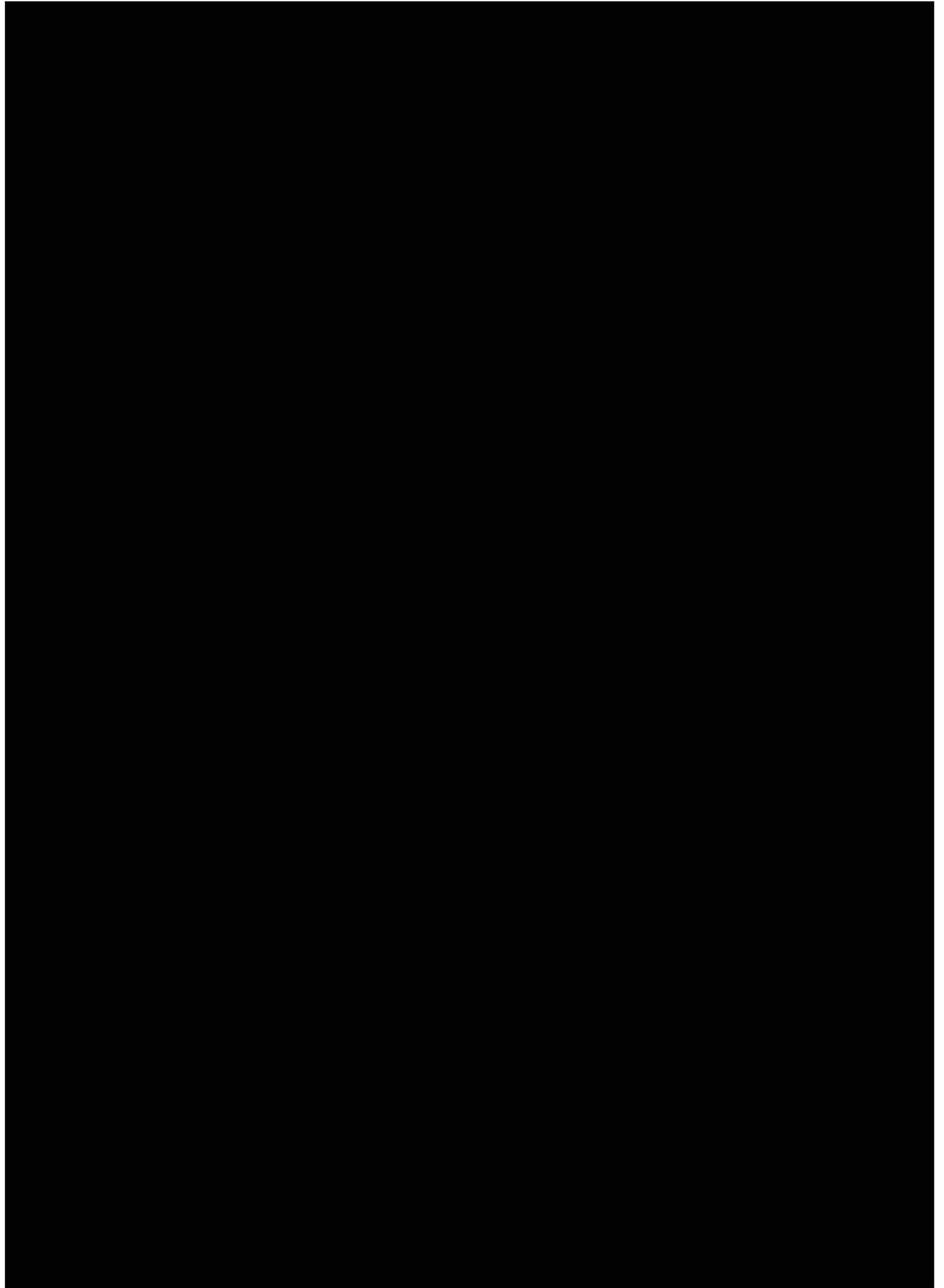
³⁵ Exhibit RC787, Transcript of conversation between Ms Gobbo and the Commission (20 March 2019), page 210.36-38.

³⁶ Ibid, page 210.22-28.

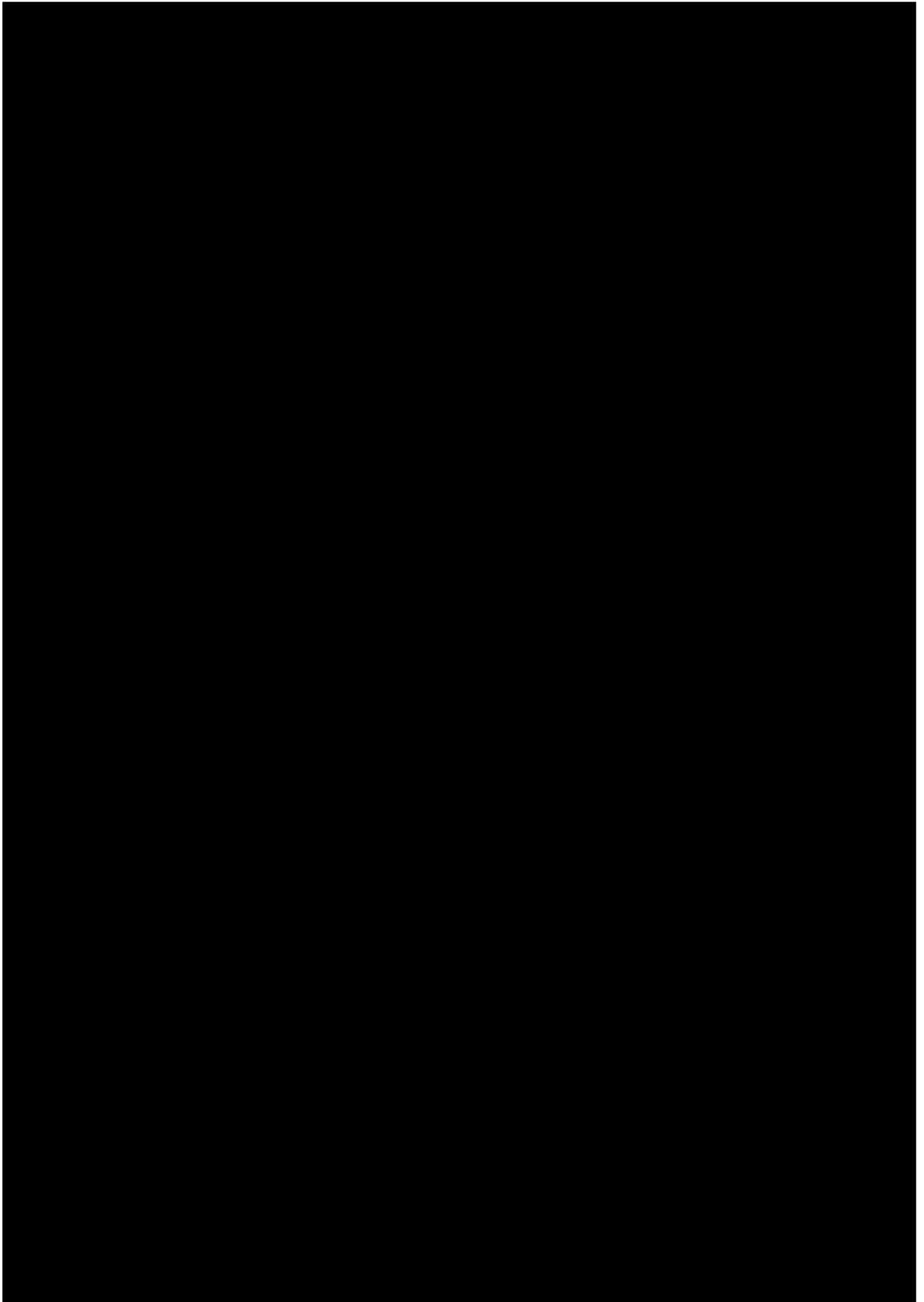
³⁷ Ibid, page 166.25-41 and then again, at pages 213.39-214.8.

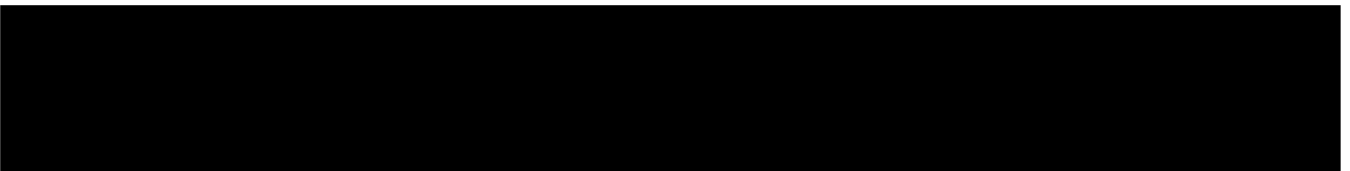
as she was criticised for answers despite the limitations of her ability to answer questions at that time, that the Commission was all too aware of.

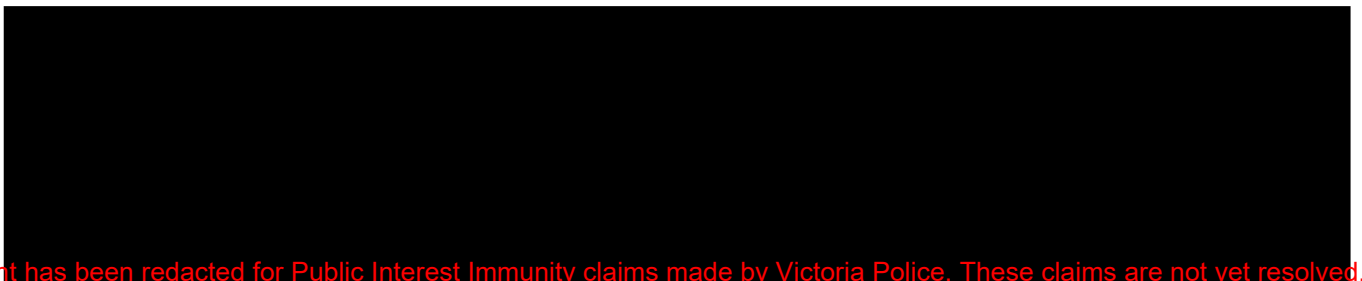
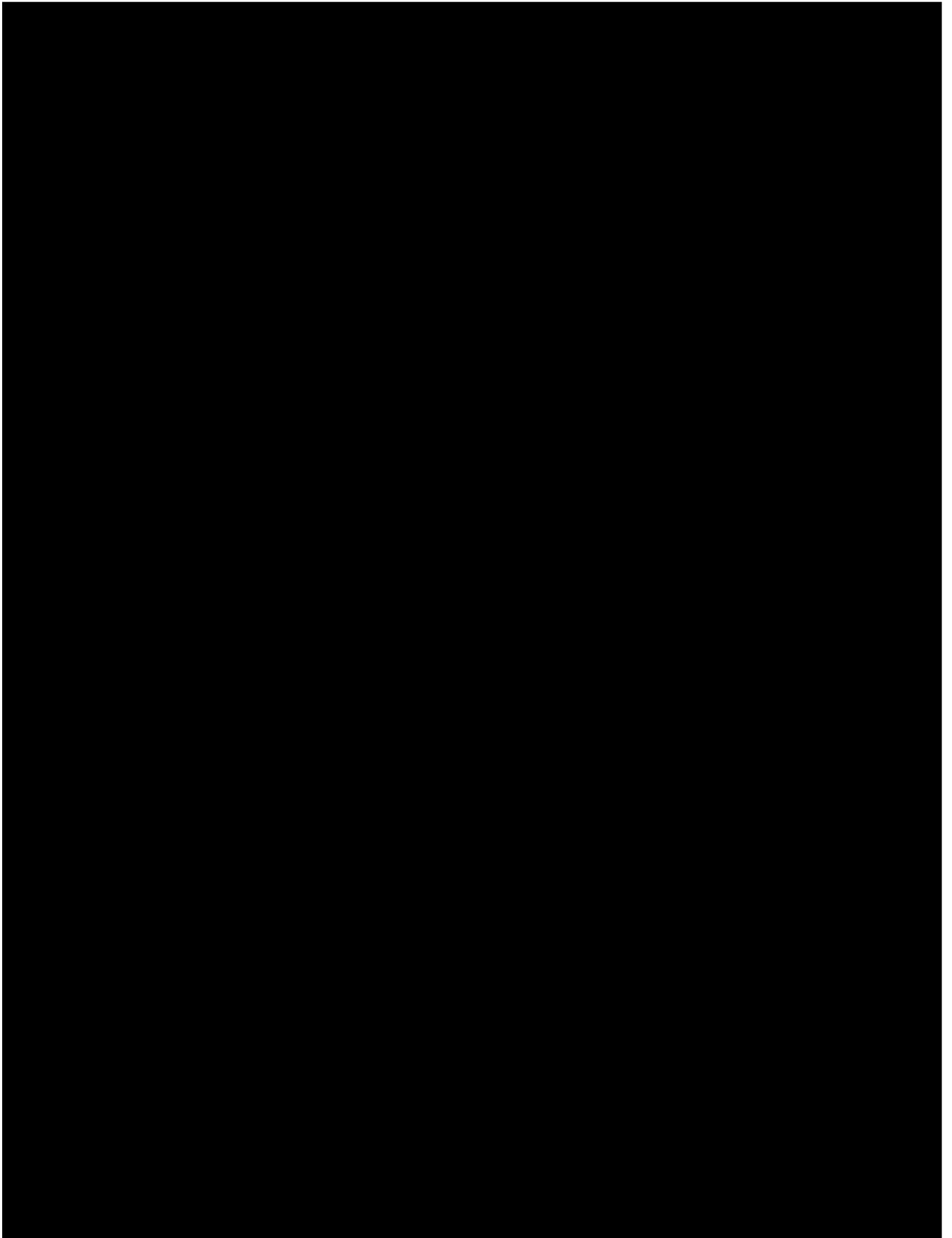
99. All of the matters referred to herein, taken together or in isolation, would lead a well-informed bystander to apprehend bias from Counsel Assisting as against Ms Gobbo. That being so, the Commission should be slow to simply accept the narrative set out and the submissions made by Counsel Assisting.
100. For the aforementioned reasons, it is submitted that, despite the best intentions of the Commissioner, Ms Gobbo did not receive a procedurally fair hearing.

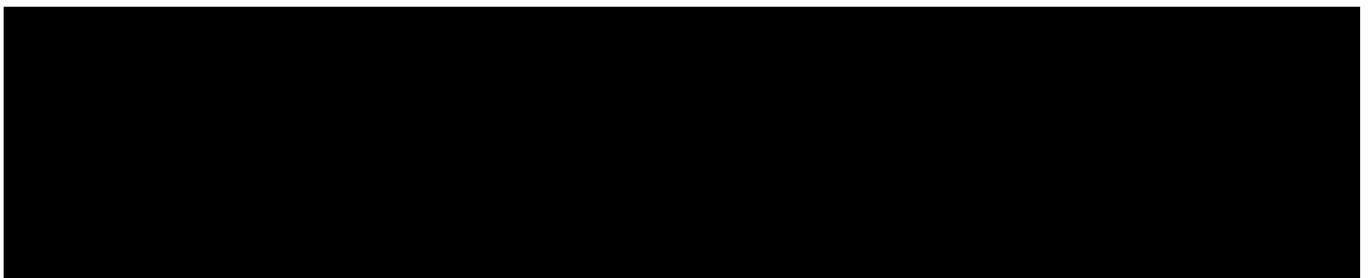
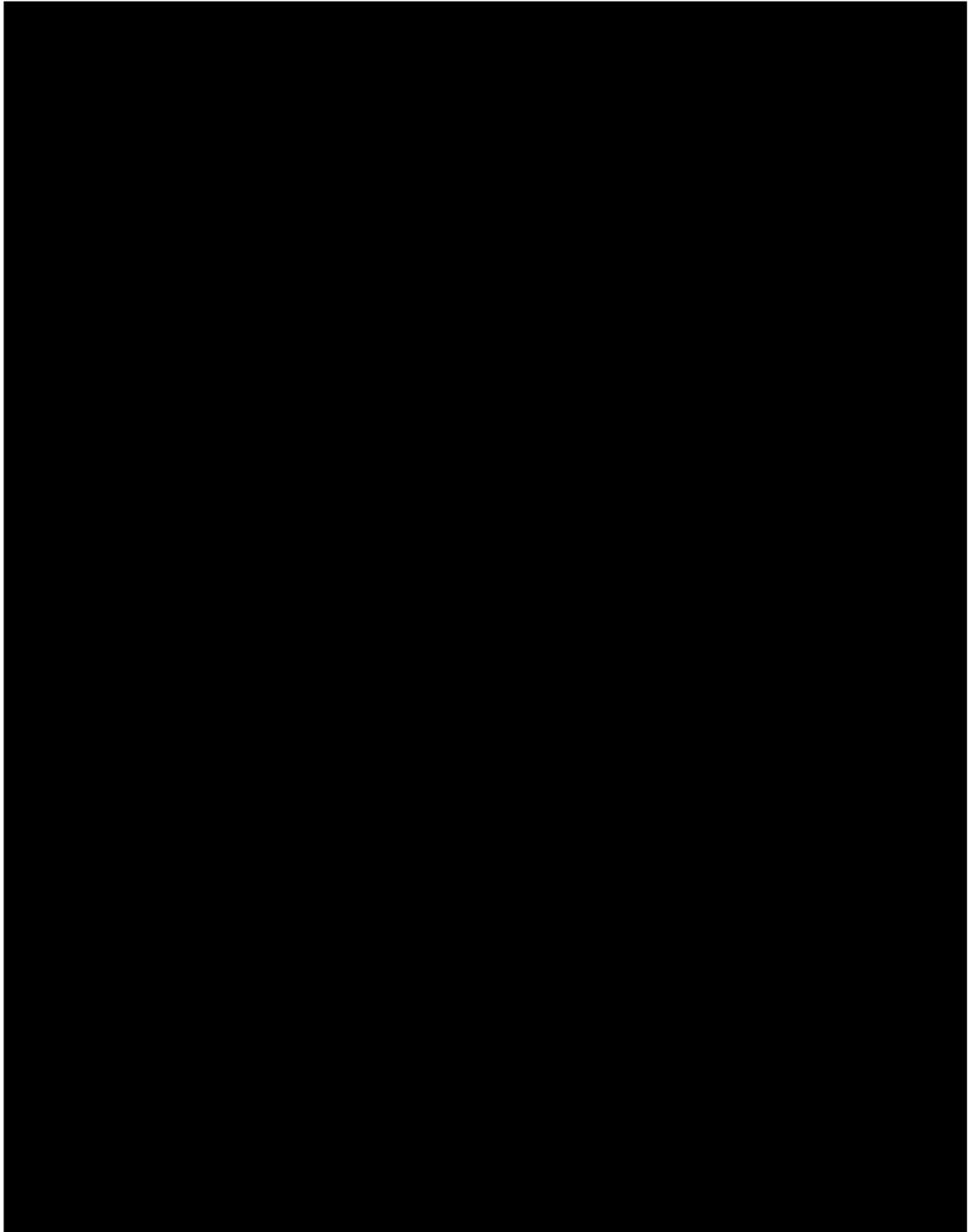






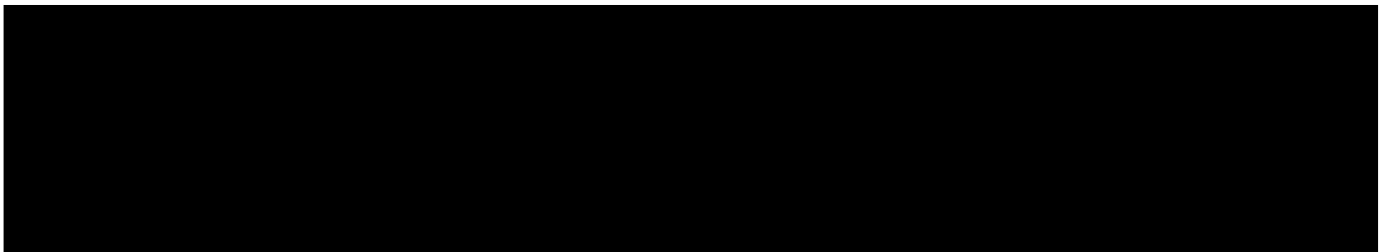
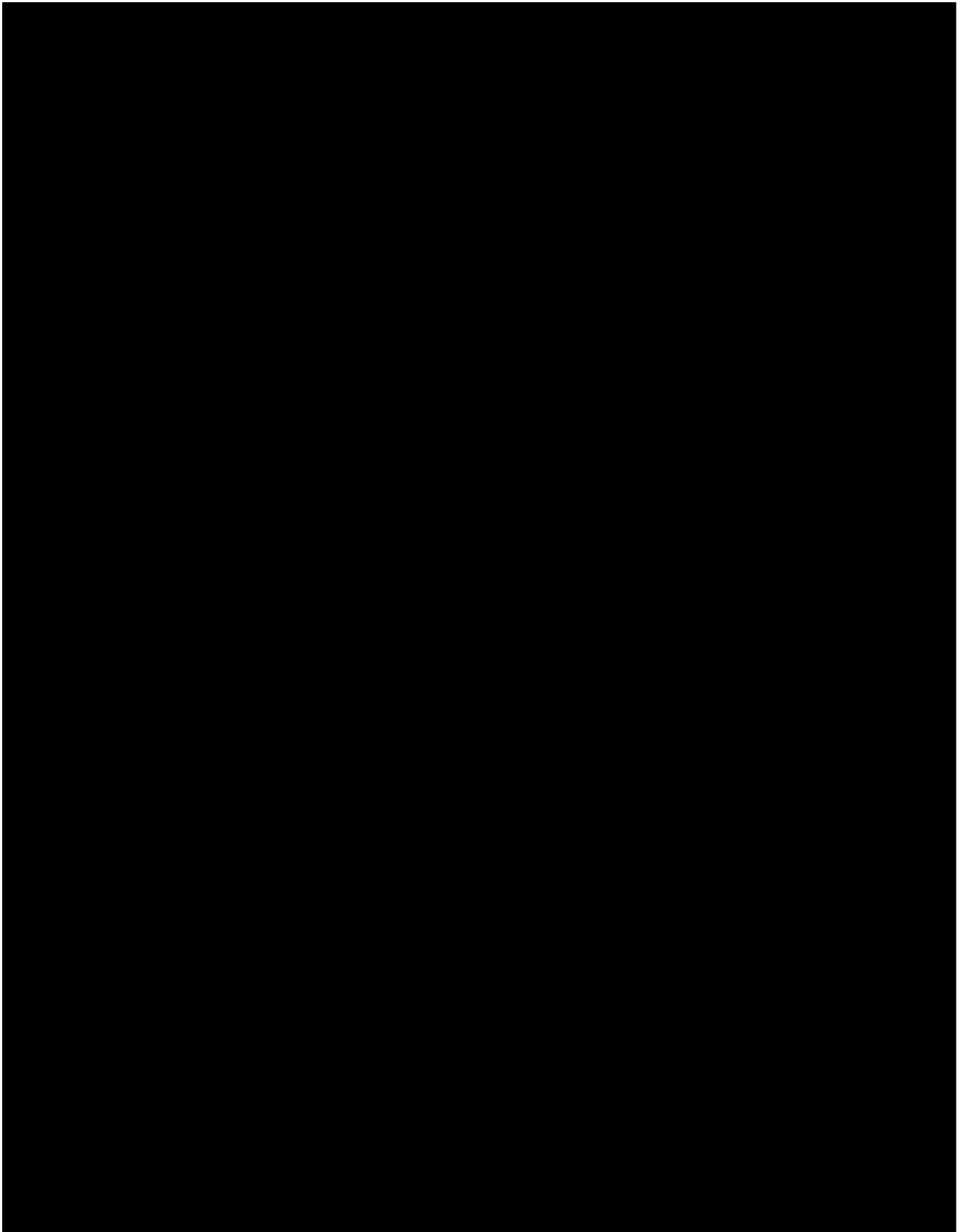


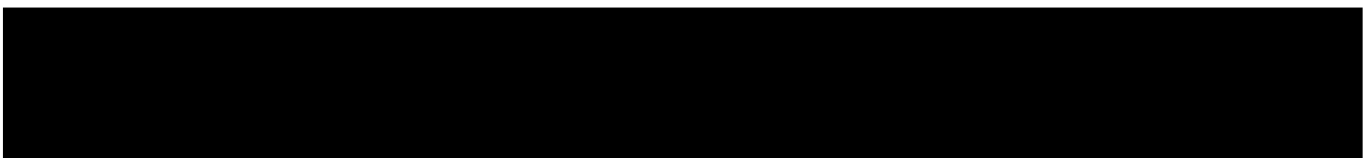
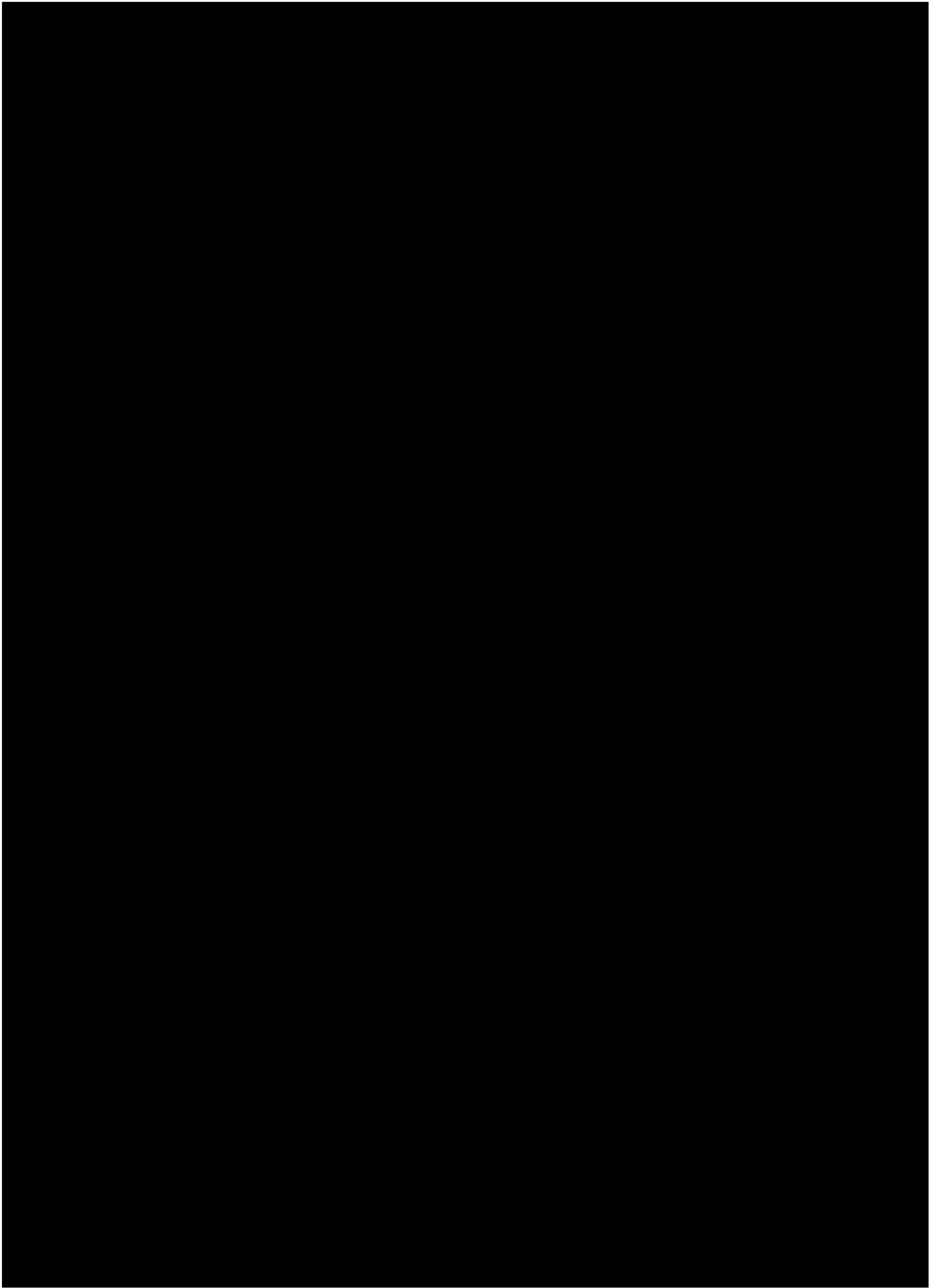


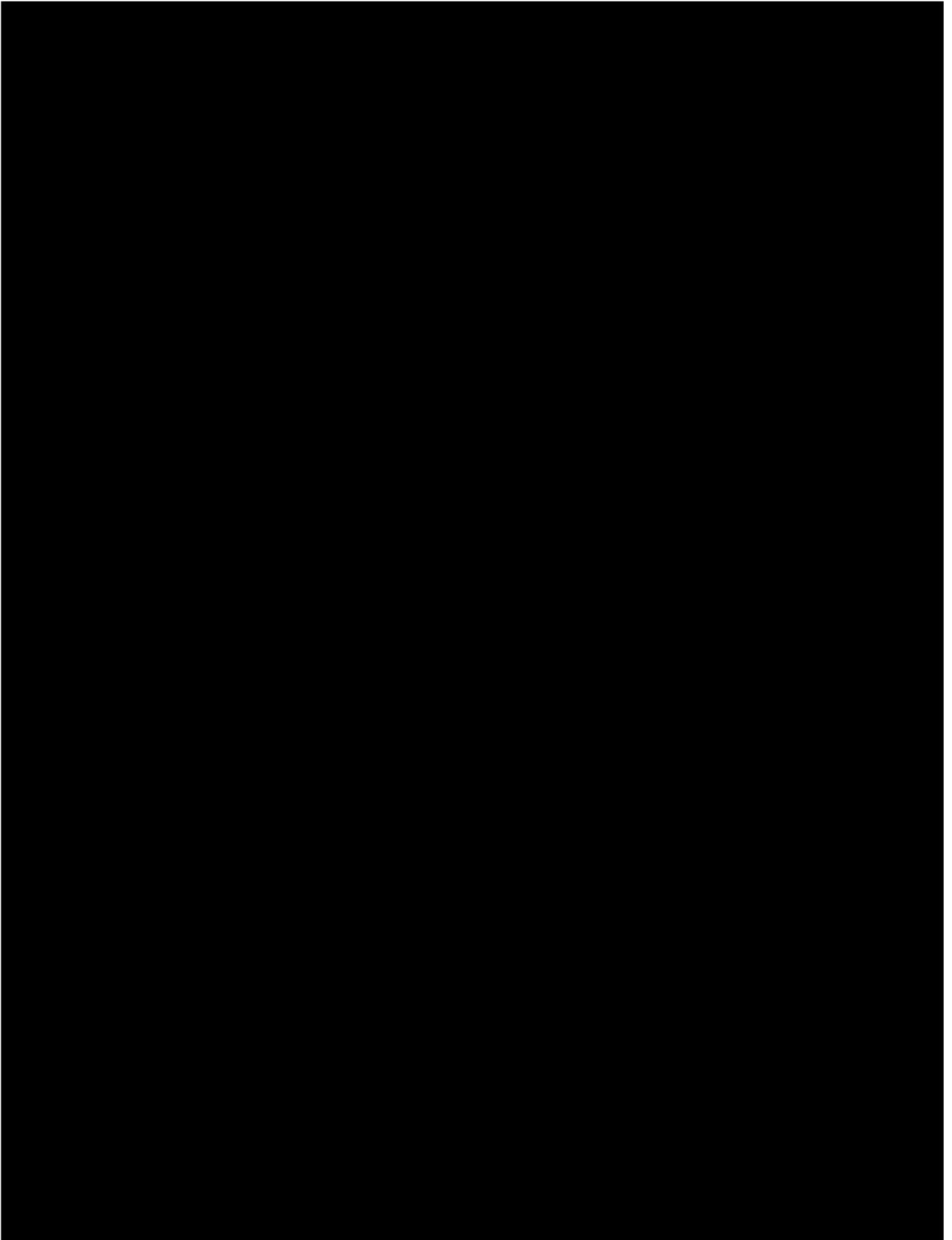


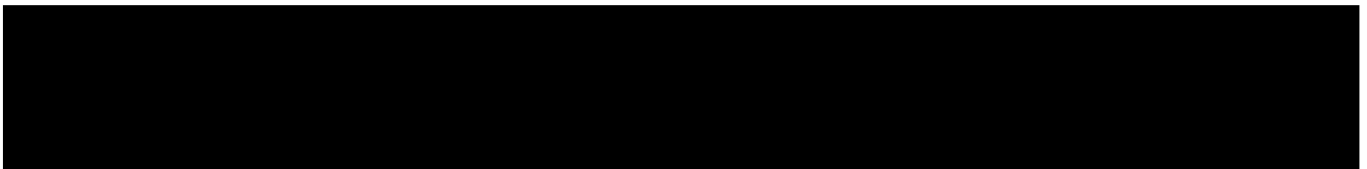
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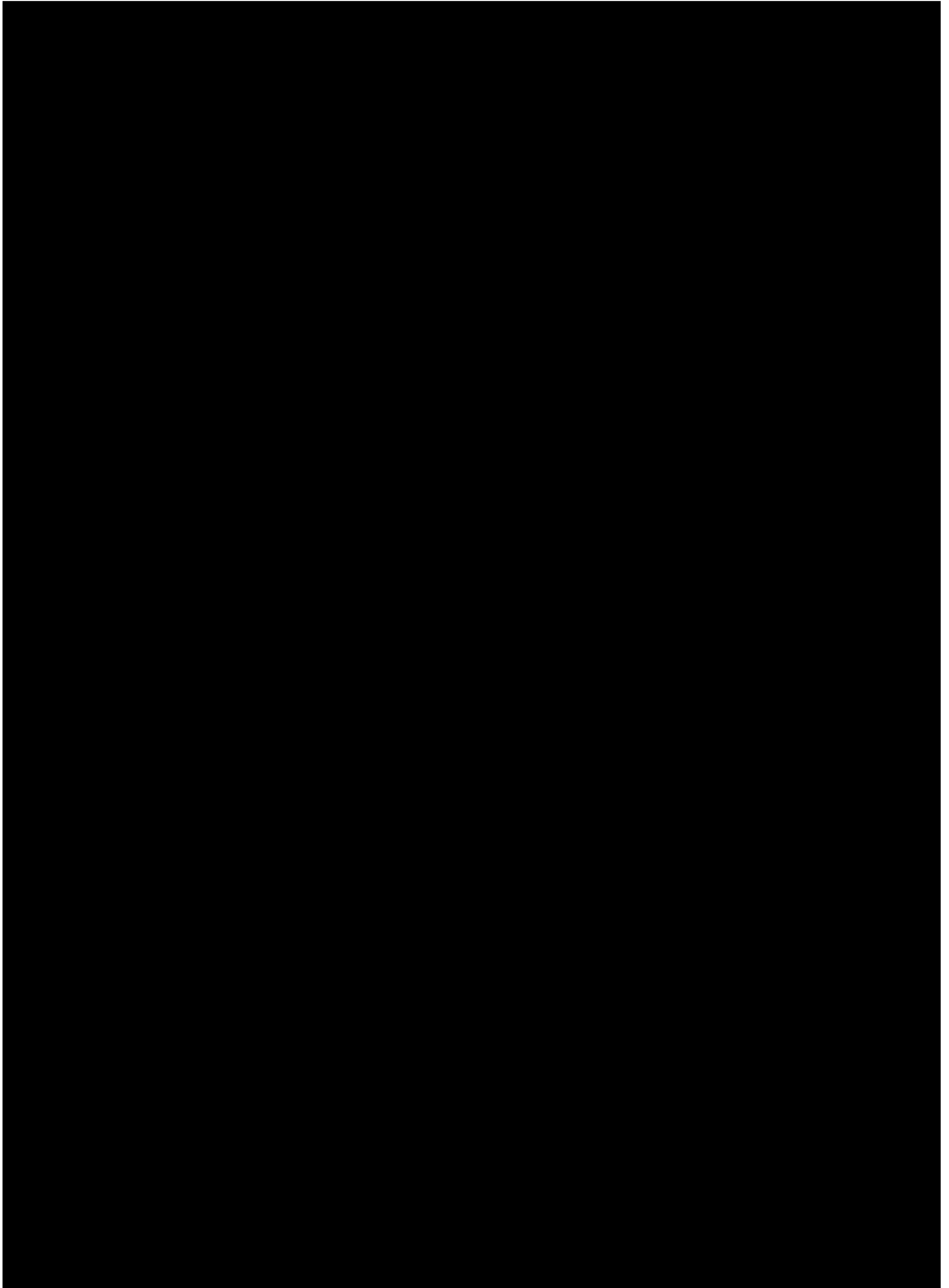
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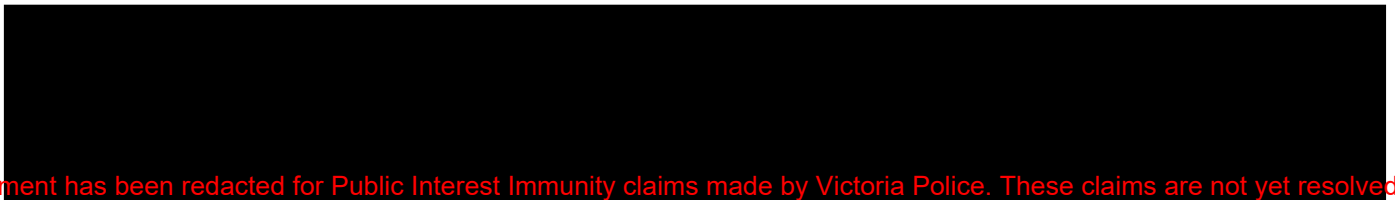


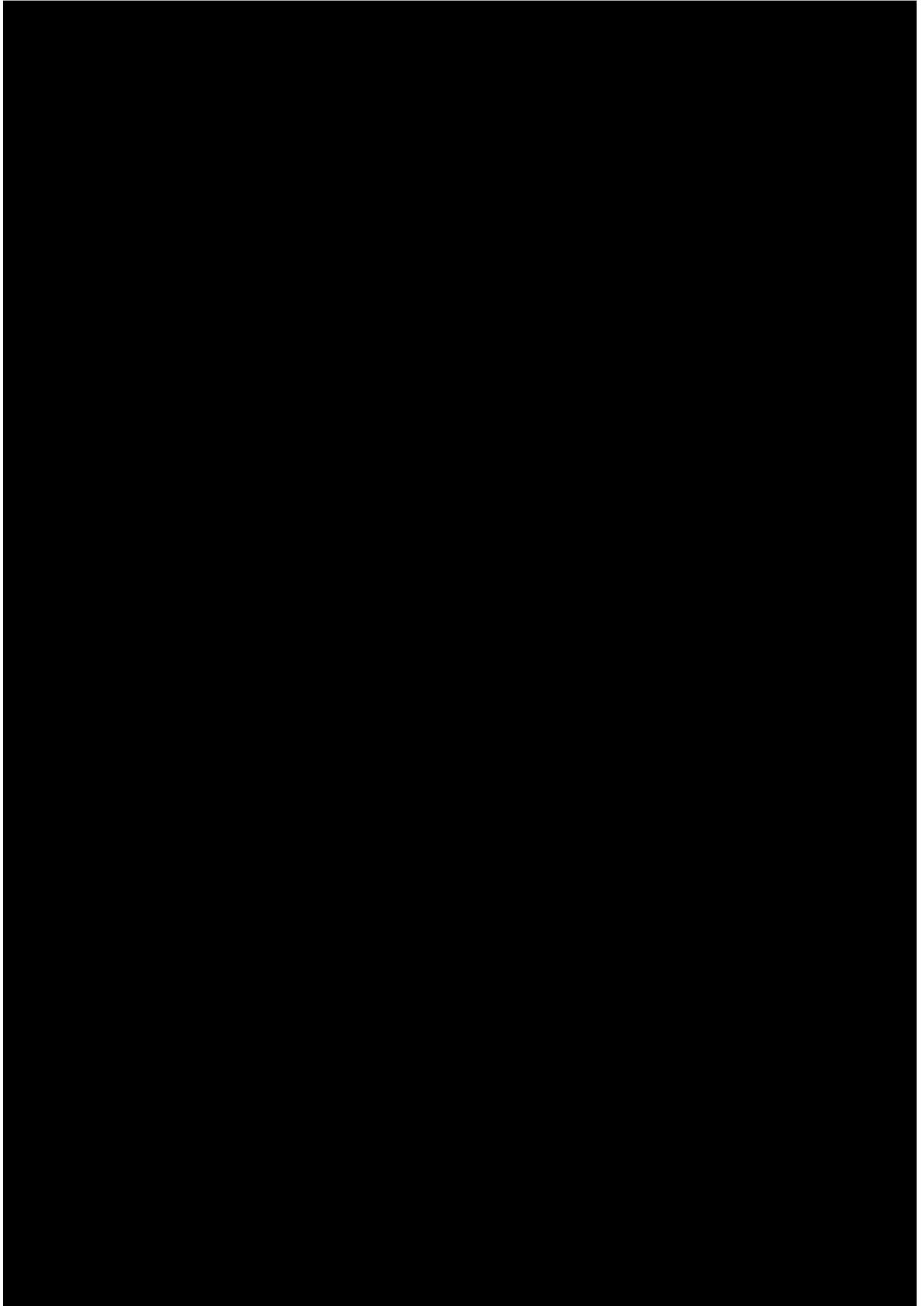


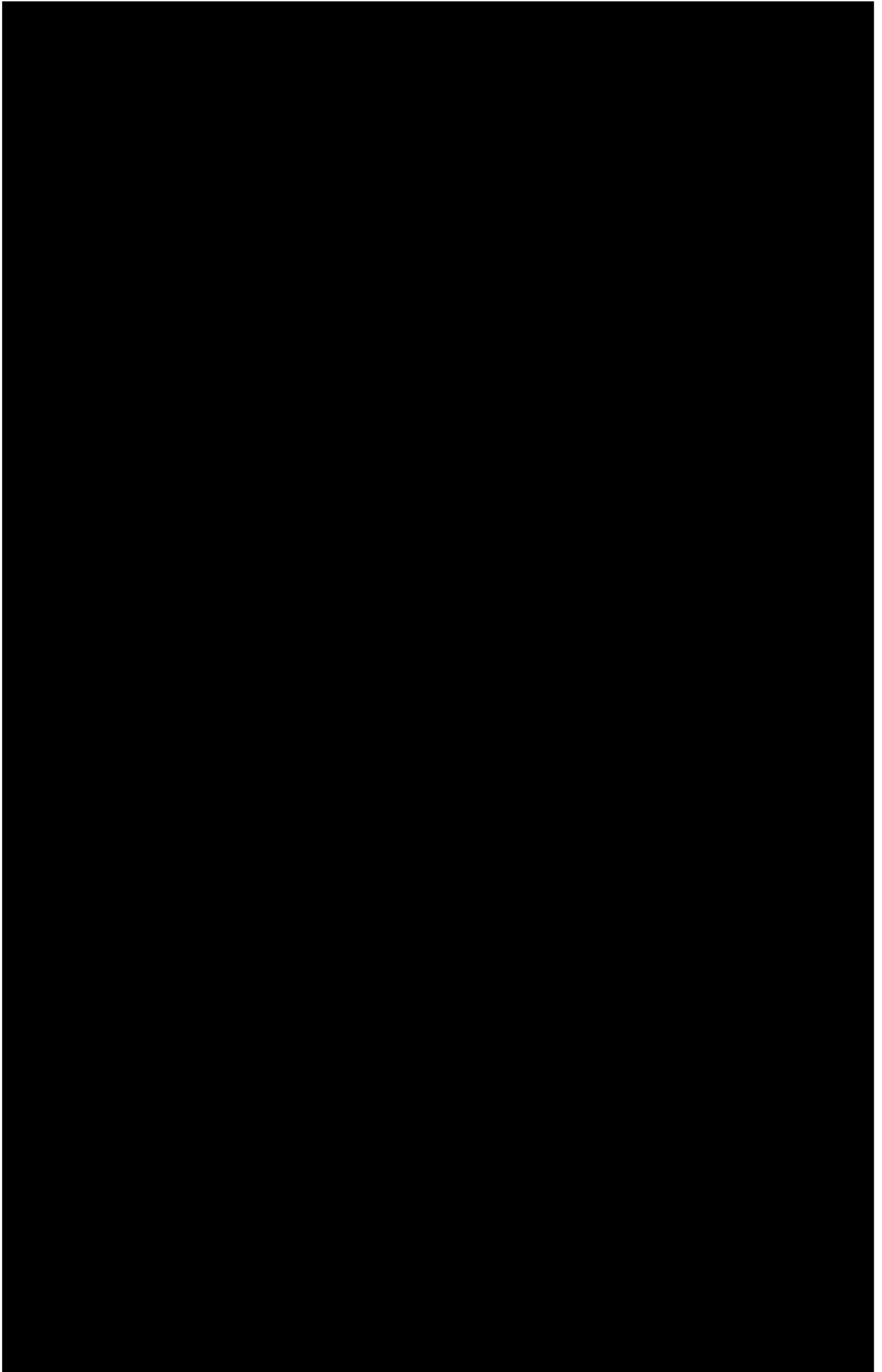


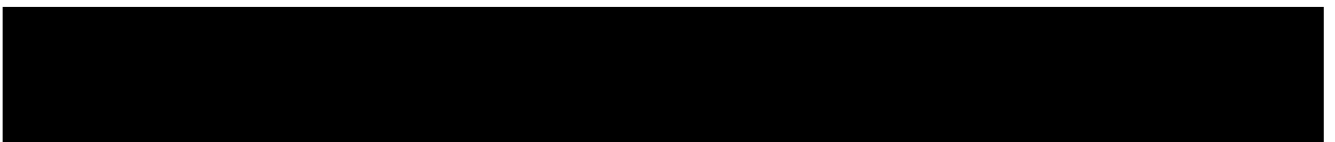
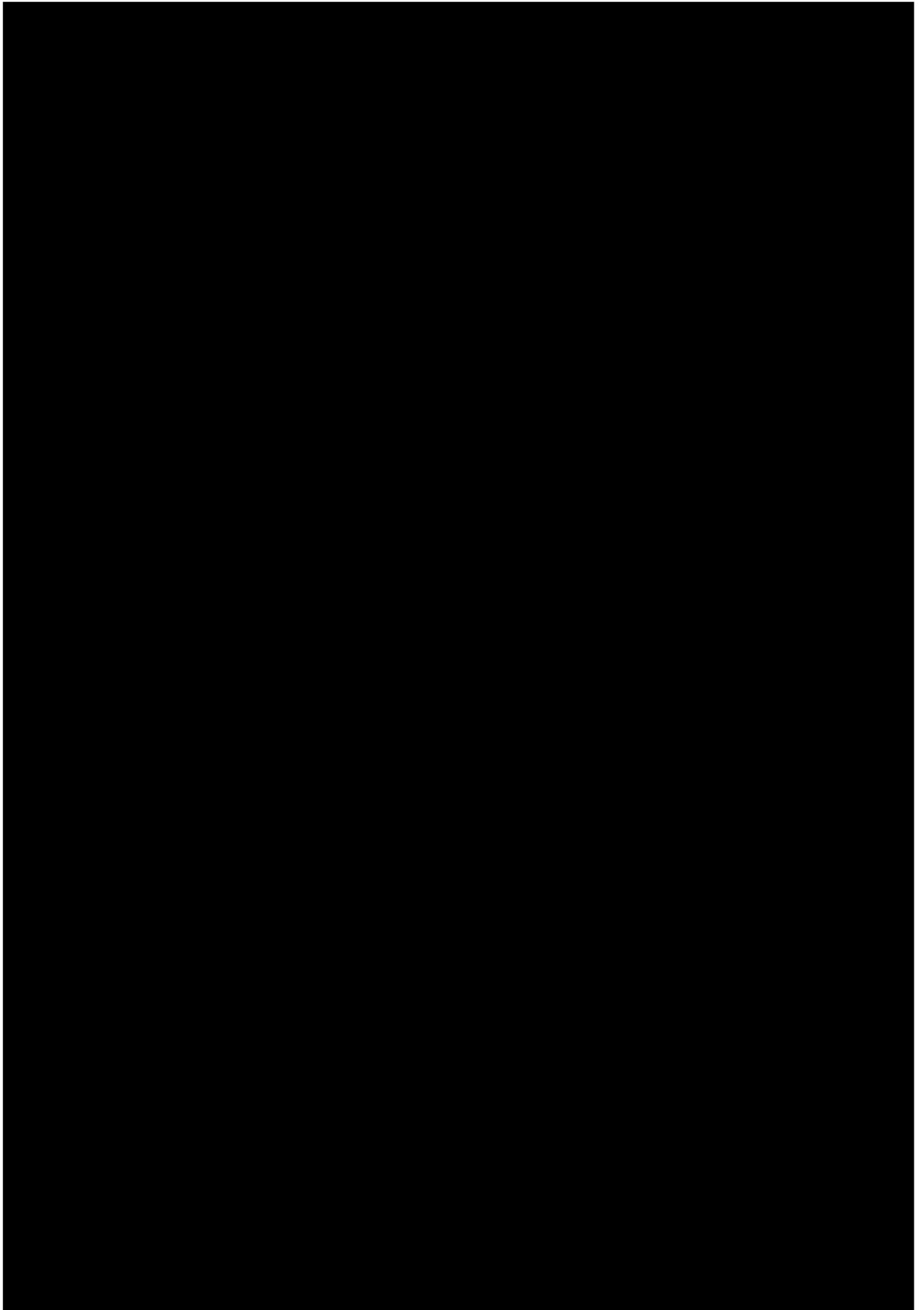


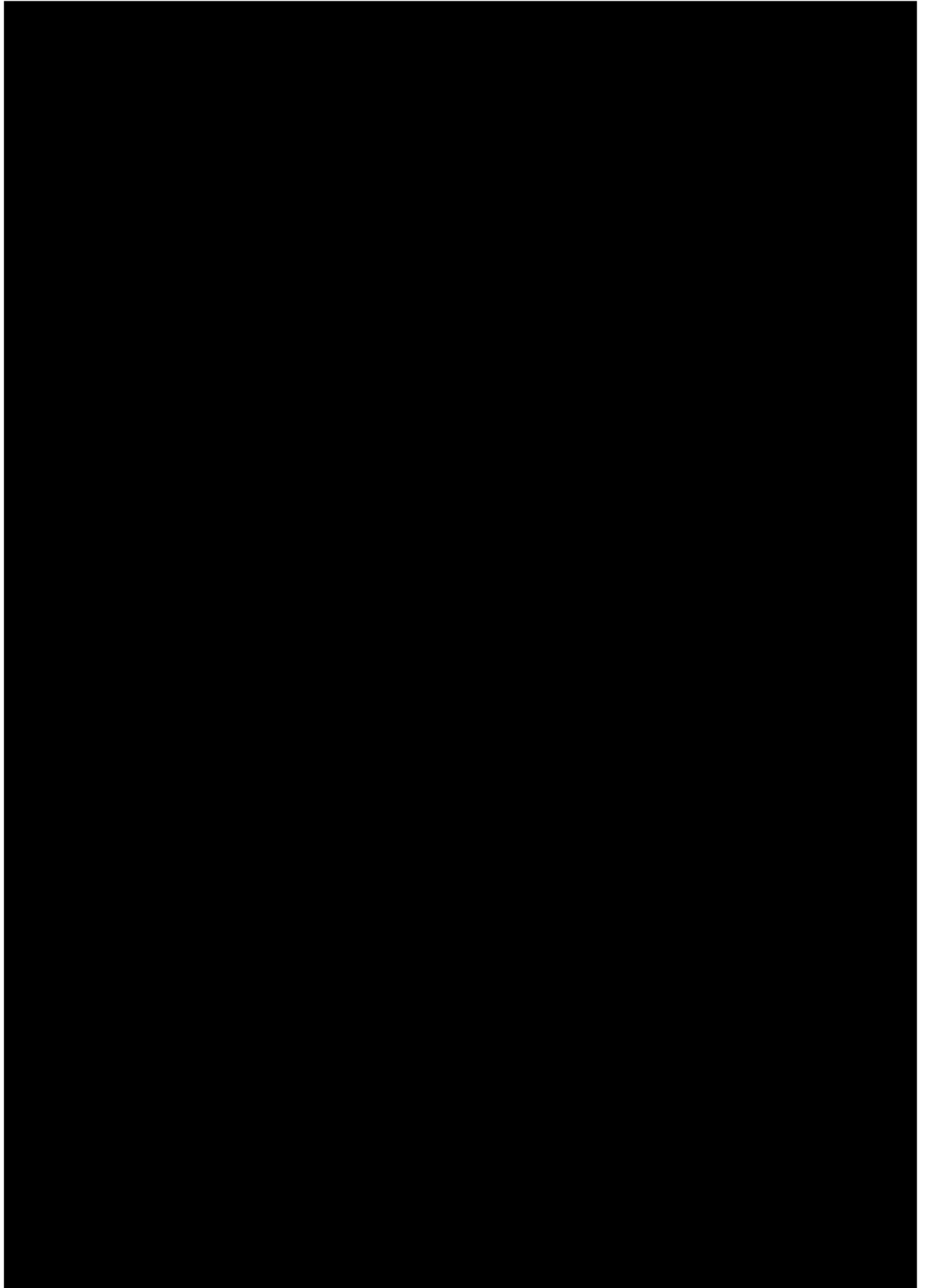


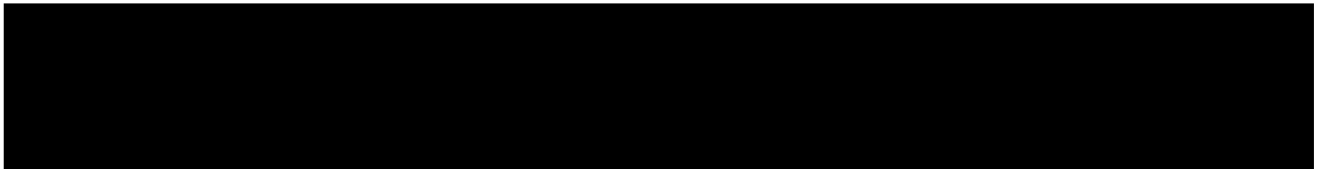


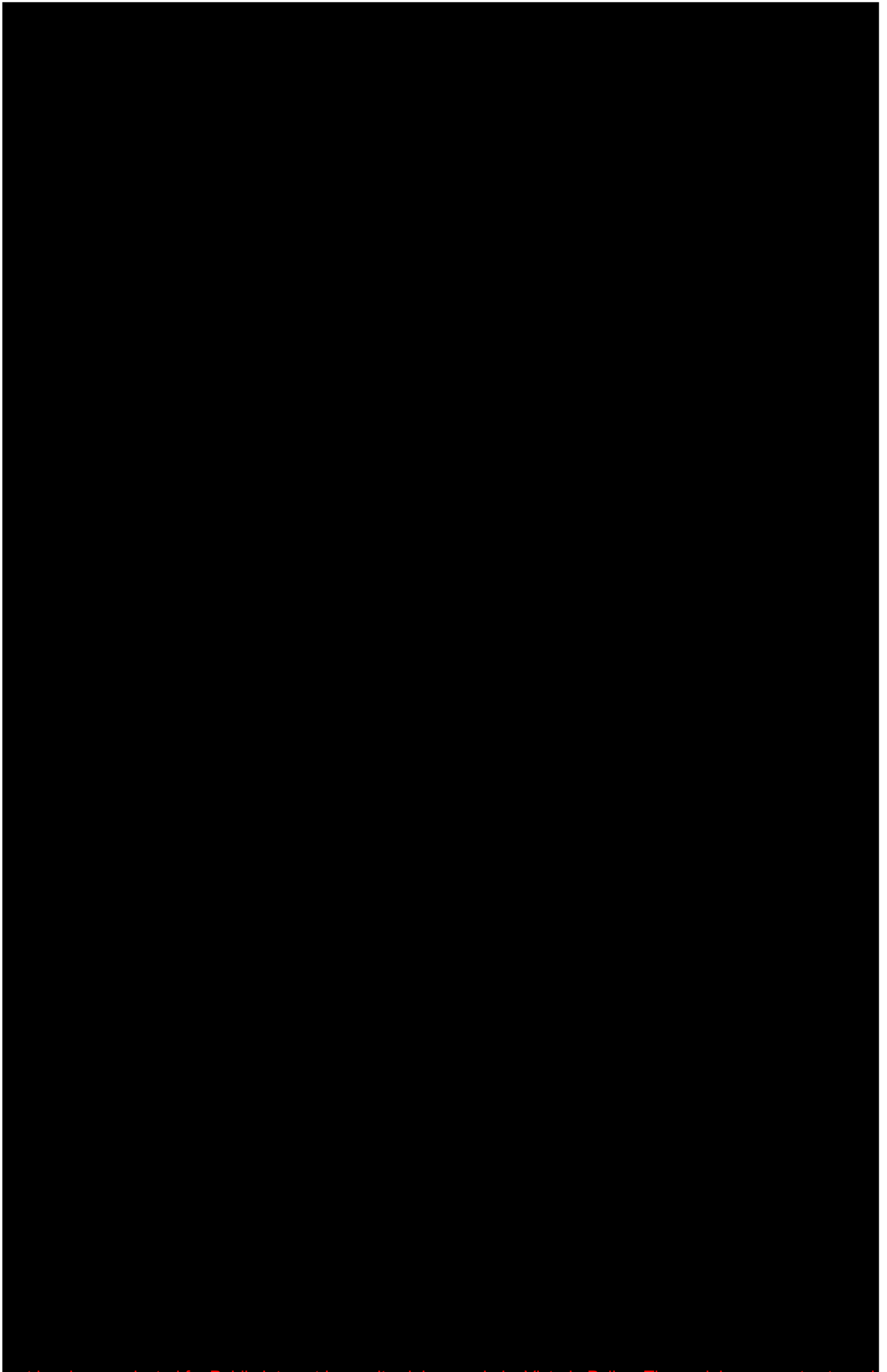


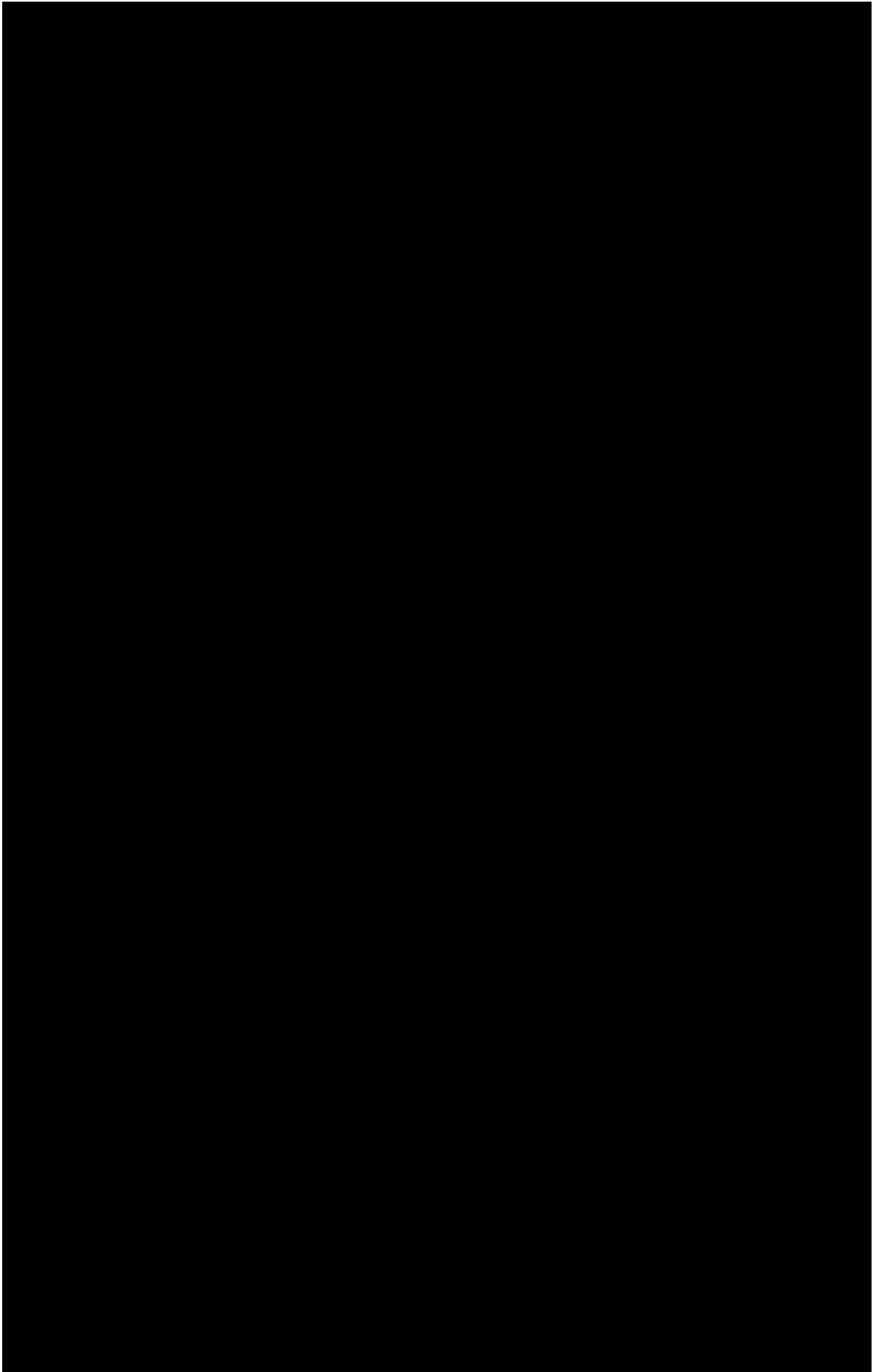


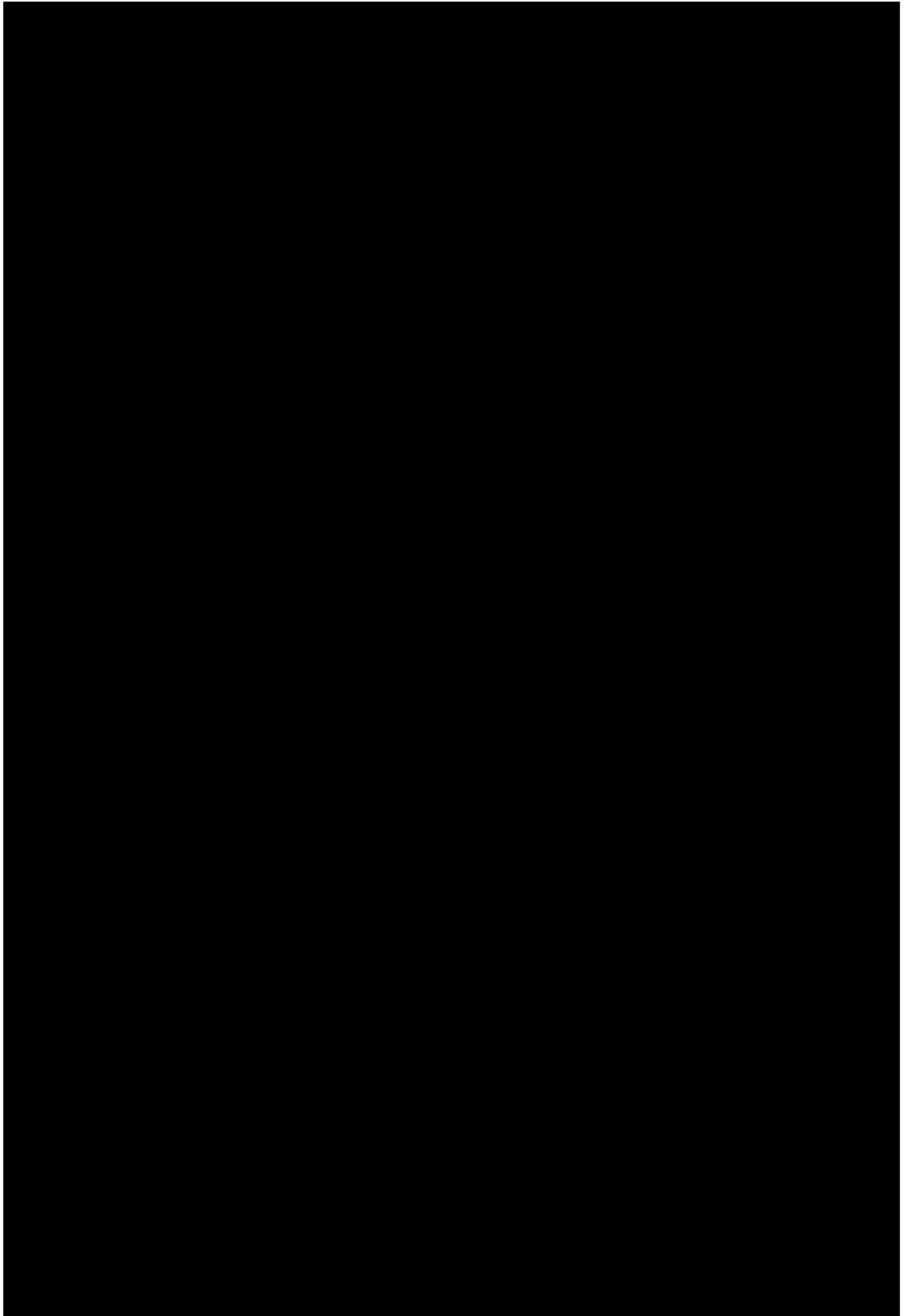


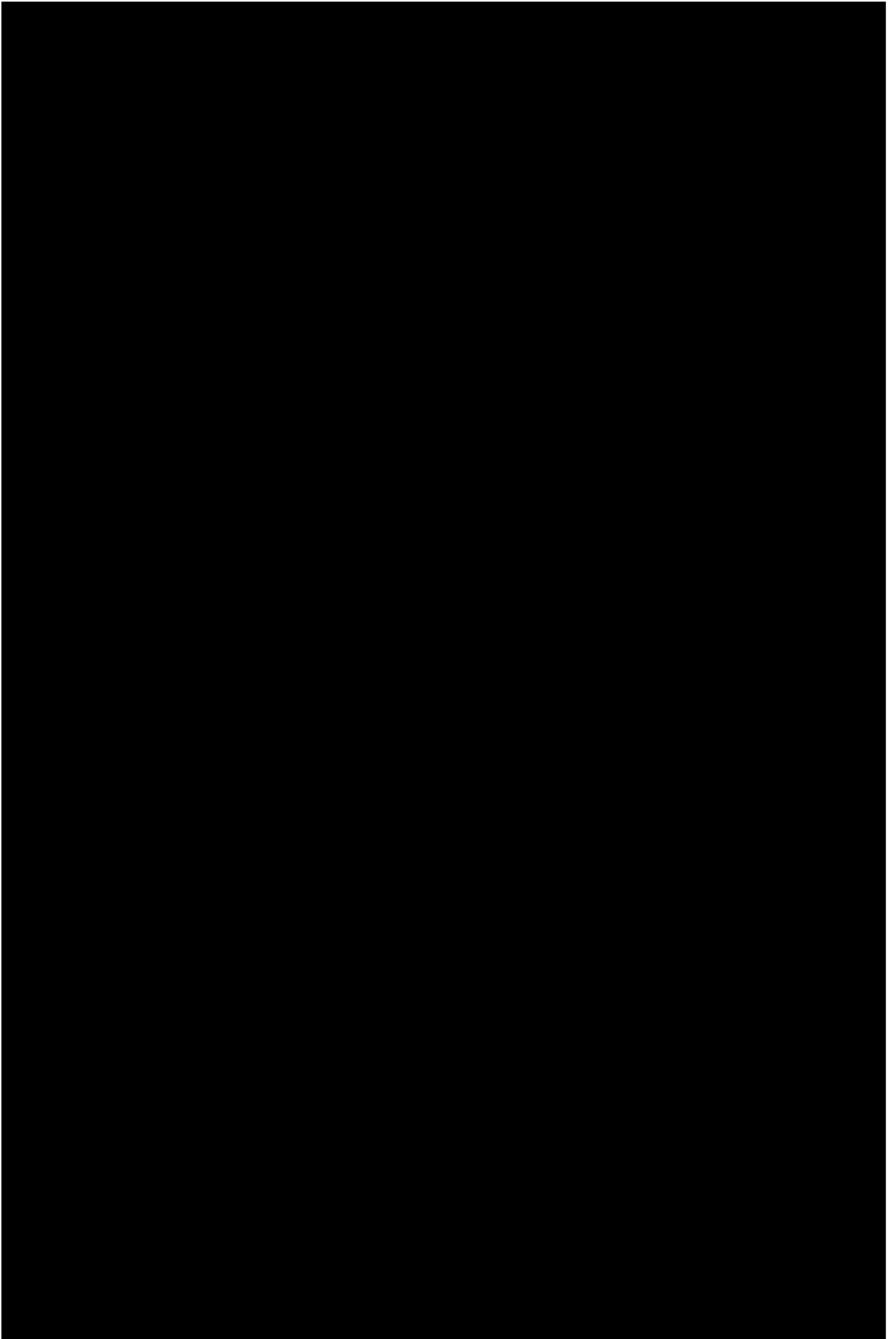


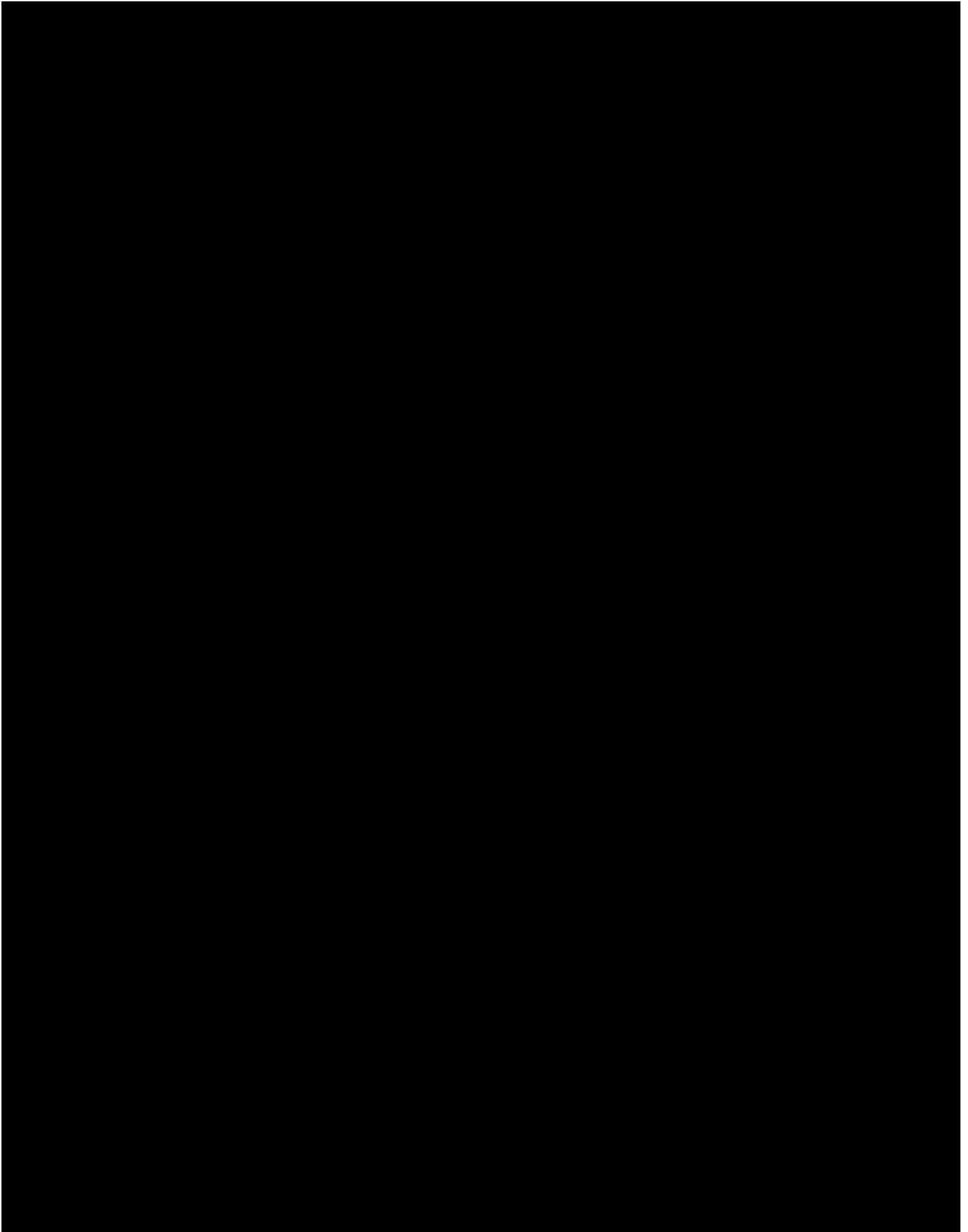


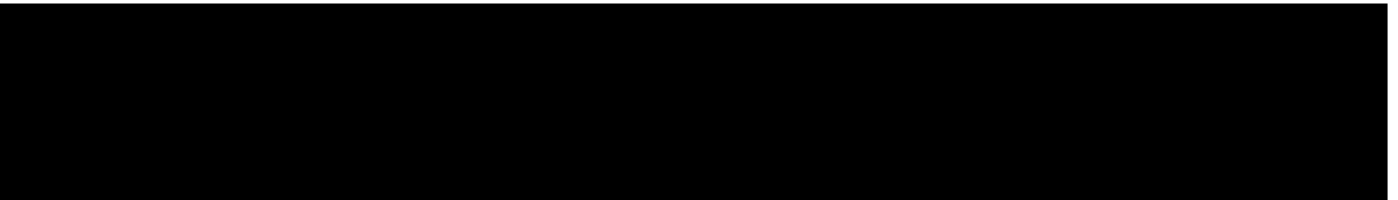


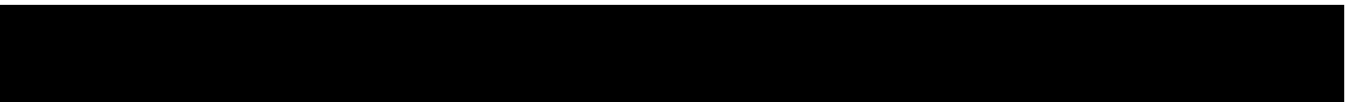
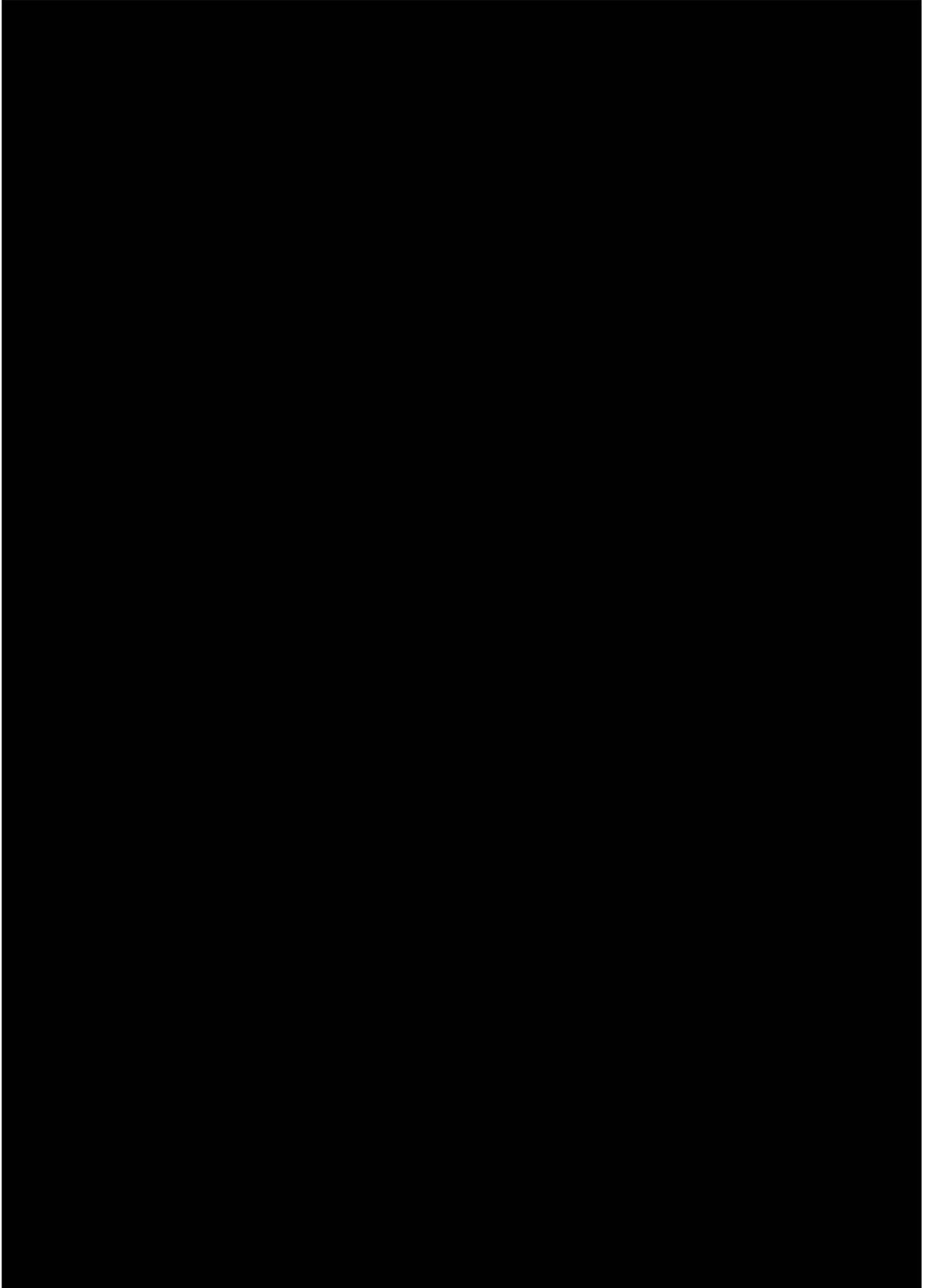


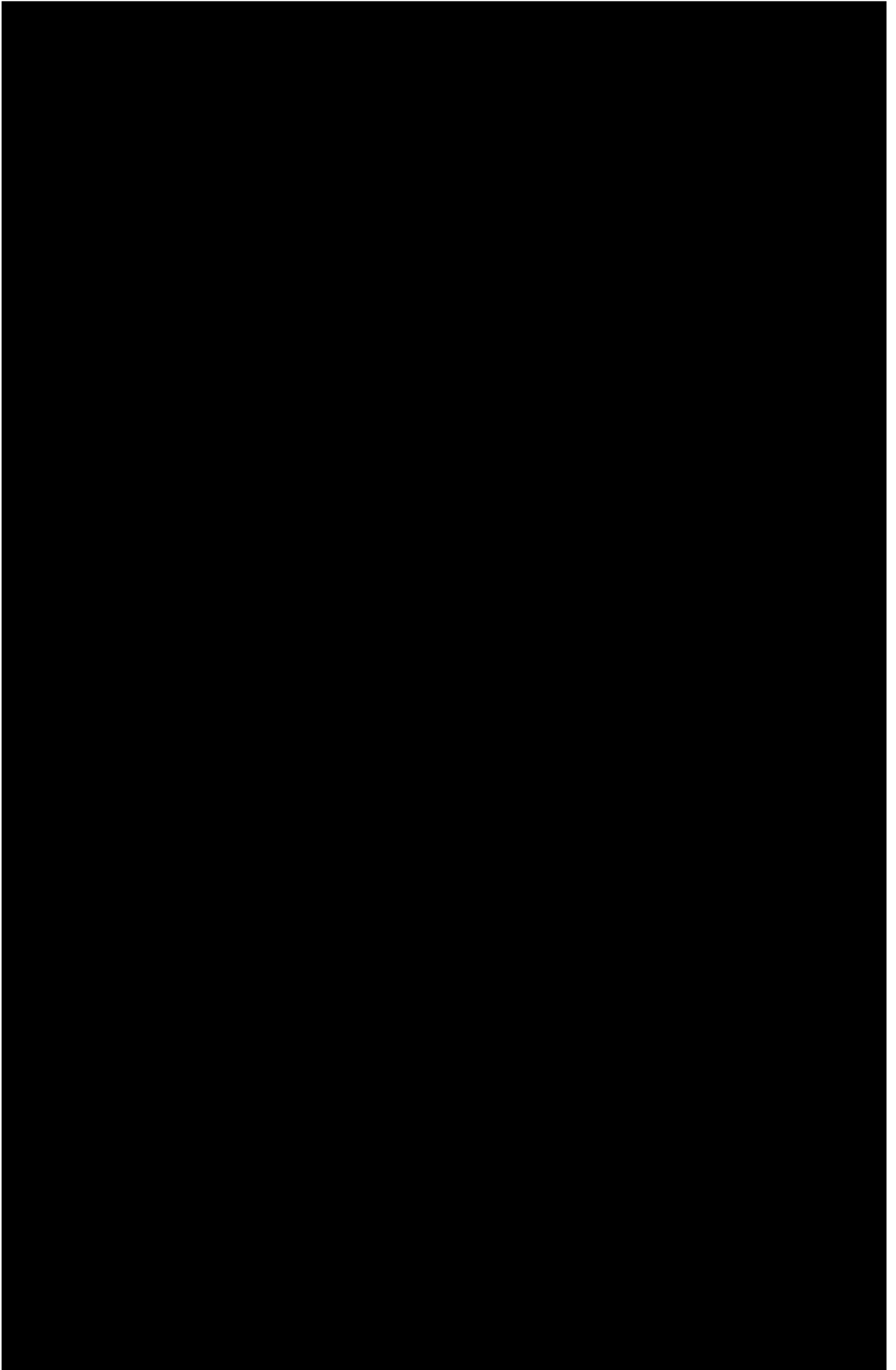


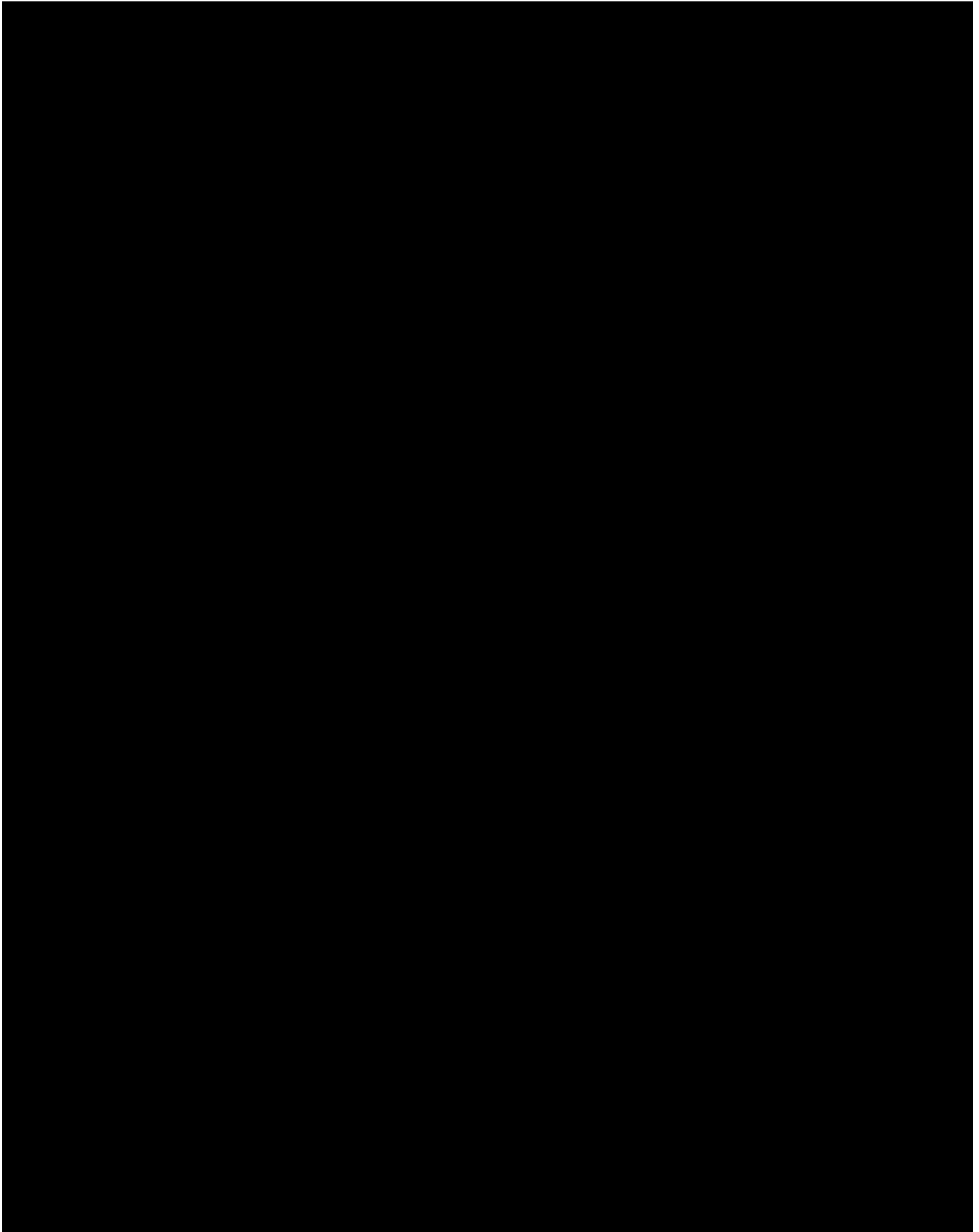


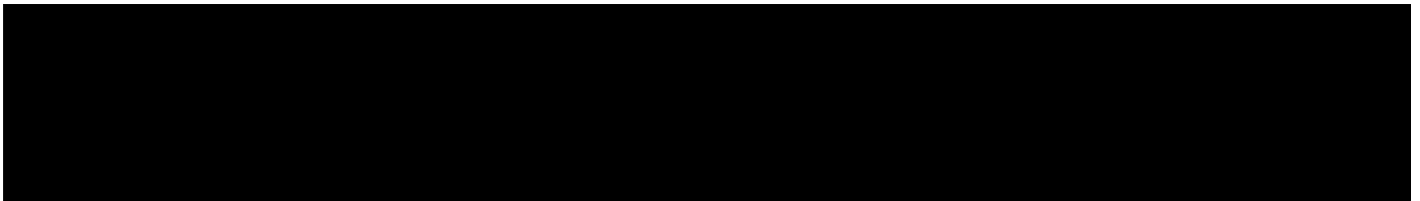


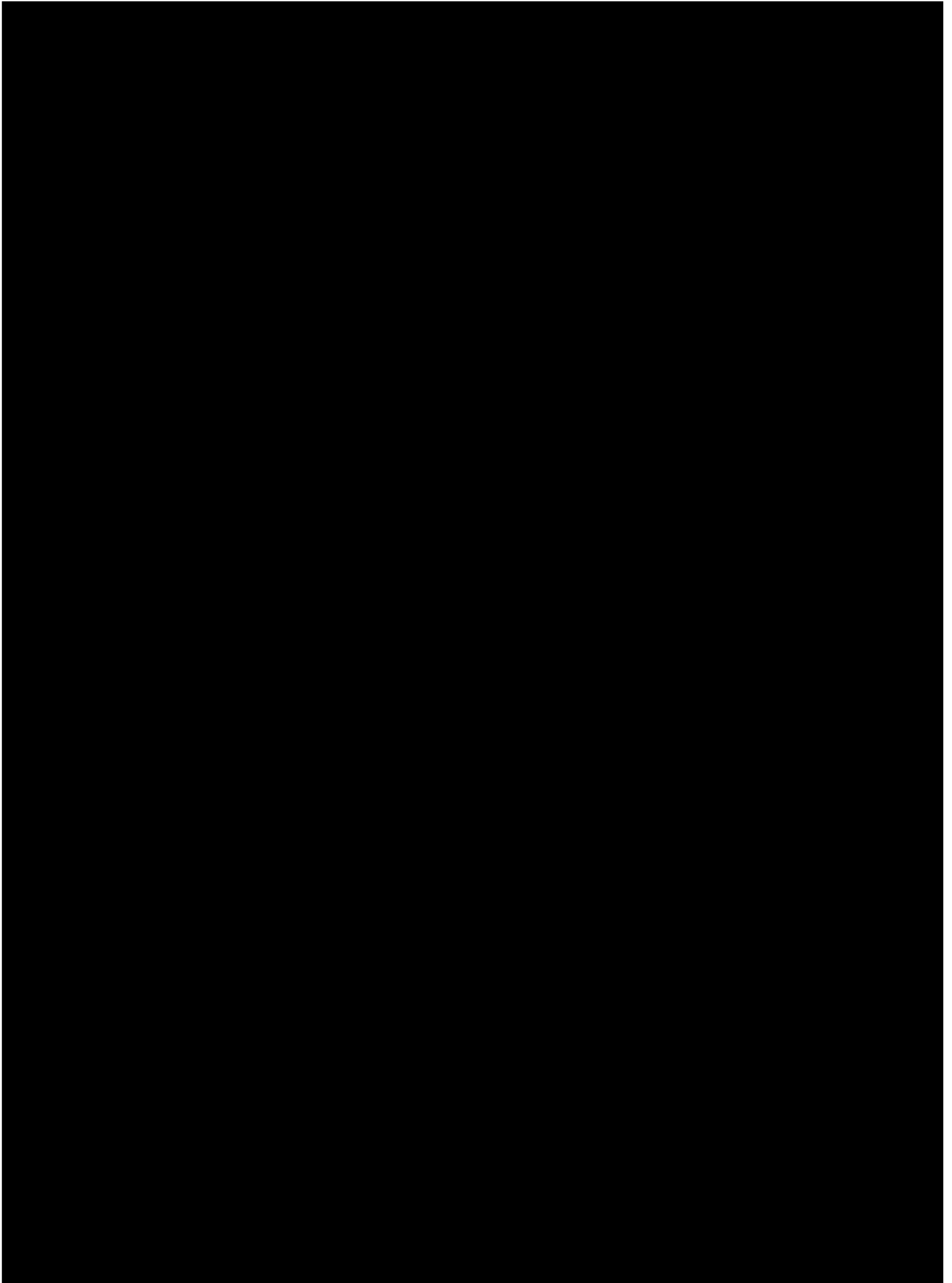


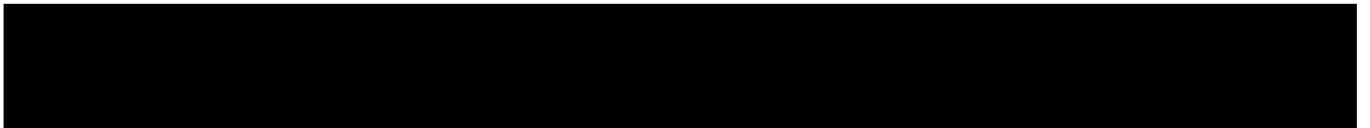














3. Other responses to Volume 1 – Legal principles

Substantial miscarriage of justice

156. Section 276(1) of the *Criminal Procedure Act 2009* (Vic) (**CP Act**) provides that:

On an appeal under section 274, the Court of Appeal must allow the appeal against conviction if the appellant satisfies the court that-

- (a) the verdict of the jury is unreasonable or cannot be supported having regard to the evidence; or*
- (b) as the result of an error or an irregularity in, or in relation to, the trial there has been a substantial miscarriage of justice; or*
- (c) for any other reason there has been a substantial miscarriage of justice.*

157. Prior to the enactment of the *CP Act*, appeals were brought under section 568(1) of the *Crimes Act 1958* (Vic) (**Crimes Act**) which provided three distinct grounds of appeal. Under this provision, even if one of the grounds was made out, the Court was entitled to dismiss the appeal if "*no substantial miscarriage of justice has actually occurred*". This is known as the "*proviso*" and legislation of this nature is still in force in other states.

158. The submissions of Counsel Assisting correctly cite *Baini* as the leading authority for the test for "*substantial miscarriage of justice*":

No single universally applicable description can be given for what is a 'substantial miscarriage of justice' for the purposes of s 276(1)(b) and (c) [of the CP Act]. The possible kinds of miscarriage of justice with which s 276(1) deals are too numerous and too different to permit prescription of a singular test. The kinds of miscarriage include, but are not limited to, three kinds of case. First there is the case to which s 276(a)(a) is directed: where the jury have arrived at a result that cannot be supported. Secondly, there is the case where there has been an error or an irregularity in, or in relation to the trial and the Court of Appeal cannot be satisfied that the error or irregularity did not make a difference to the outcome of the trial. Thirdly, there is the case where there has been a serious departure from the prescribed processes for the trial. This is not an exhaustive list. Whether

*there has been a 'substantial miscarriage of justice' ultimately requires a judgment to be made.*⁸²

"Serious departure"

159. Where the error or irregularity is a "*serious departure from the prescribed processes for trial*", a substantial miscarriage of justice will be established even if the guilty verdict was inevitable.

160. In *Quartermaine v The Queen*, a case in which the relevant legislation was of the proviso kind, Gibbs J, with whom Stephen and Murphy JJ agreed, found:

*Ordinarily, when there has been a misdirection of law, the proviso to s 689 will be applied if the Crown establishes that if there had been no misdirection the jury would (or must) have come to the same conclusion. However, Wickham J, who delivered the judgment of the Court of Criminal Appeal in the present case, recognized that even if this were established 'there might still be a substantial miscarriage of justice if the trial was so irregular that no proper trial had taken place, in that 'there had been a serious departure from the essential requirements of the law'.*⁸³

161. The case law on this type of miscarriage of justice under section 276(1) of the *CP Act* centres on the way the trial was conducted (i.e. "*the prescribed processes for trial*") and therefore often concerns actions or inactions of the trial judge. The following cases considered whether there had been a "*serious departure*":

(a) *Baini*: The Court found there had been a serious departure for two reasons:

- (i) the trial judge failed to provide adequate reasons for the verdict where he was obliged by statute to do so; and
- (ii) the trial was conducted on the basis of a joint criminal enterprise when that theory of liability did not apply to Commonwealth offences.⁸⁴

⁸² *Baini v The Queen* (2012) 246 CLR 469, [26].

⁸³ (1980) 143 CLR 595, 600-601. This was cited with approval in *Saricayir v The Queen* [2018] VSCA 319 which was a case that considered the application of section 276 of the *CP Act*.

⁸⁴ *Baini v The Queen* (2012) 246 CLR 469, [26].

- (b) *Baini v The Queen (No 2)* (**Baini No 2**): The Court held that a failure to sever charges, even if inadmissible evidence is consequently heard by the jury, does not necessarily constitute fundamental error.⁸⁵
- (c) *Andelman v The Queen*: The Court found there had been a serious departure for two reasons:
 - (i) the judge failed to advise the unrepresented accused about his right to seek an unreliable evidence warning; and
 - (ii) the judge permitted the Crown to adduce tendency and coincidence evidence despite the accused not being represented.⁸⁶
- (d) *Tunja v The Queen*: The Court held that a misdirection concerning the likely truthfulness of alleged admissions made by the accused was not a serious departure.⁸⁷

Error or irregularity making a difference to the outcome of a trial

162. The High Court held in *Baini* that, in circumstances where there has been an error or an irregularity in or in relation to the trial that does not involve "a serious departure from the prescribed processes for a trial", the Court of Appeal must consider whether it is satisfied that the error or irregularity did not make a difference to the outcome of the trial. It framed this as an inquiry into whether a guilty verdict was inevitable, not whether it was open.⁸⁸ The strength of the Crown's case is therefore relevant, albeit not determinative. The fact that the jury returned a guilty verdict, in some cases, may also be relevant, but again not determinative.
163. In *Baini (No. 2)*, the Court of Appeal expanded on the test of inevitability in *Baini* stating that the test is whether, but for the error or irregularity, "*the jury acting reasonably and applying the correct onus and standard of proof would have been bound to conclude that the Crown case... left no room for reasonable doubt*".⁸⁹ This framing of the test is not raised in the submissions of Counsel Assisting.

Szabo

164. The submissions of Counsel Assisting devote considerable attention to a case from the Queensland Court of Appeal, *R v Szabo* (**Szabo**) in which the accused had not been informed that his counsel

⁸⁵ [2013] VSCA 157, [14].

⁸⁶ [2013] VSCA 25, [90]-[91].

⁸⁷ [2013] VSCA 174, [20].

⁸⁸ *Baini v The Queen* (2012) 246 CLR 469, [32].

⁸⁹ *Baini (No 2)* [2013] VSCA 157, [32].

and counsel for the prosecution had been involved in a prior romantic relationship.⁹⁰ In *Szabo*, the Court effectively applied the "apparent bias test" in determining to exercise its power to set aside a conviction on the basis that there was a miscarriage of justice.

165. Thomas JA found that:

*the importance of maintaining full confidence in the integrity and impartiality of those entrusted with the administration of justice, and in particular counsel, should not be under-estimated. In the end I conclude that an ordinary fair-minded citizen in the position of the appellant, with knowledge of all relevant circumstances, would entertain a reasonable suspicion that justice miscarried.*⁹¹

166. As acknowledged in the submissions of Counsel Assisting, *Szabo* has not been considered in Victoria.

167. Further, the power of the Court of Appeal to set aside a conviction is framed differently in the relevant Queensland legislation than in section 276 of the *CP Act*. The relevant section in the Queensland legislation is section 668E of the *Criminal Code 1899* (Qld) which provides as follows:

(1) *The Court on any such appeal against conviction shall allow the appeal if it is of opinion that the verdict of the jury should be set aside on the ground that it is unreasonable, or cannot be supported having regard to the evidence, or that the judgment of the court of trial should be set aside on the ground of the wrong decision of any question of law, or that **on any ground whatsoever there was a miscarriage of justice**, and in any other case shall dismiss the appeal.*

(1A) *However, the Court may, notwithstanding that it is of the opinion that the point or points raised by the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred. (Emphasis added.)*

168. It is thus apparent that the relevant test differs as between Queensland and Victoria. Under the Queensland legislation, the Court *may* set aside a conviction if satisfied that "*there was a miscarriage of justice*" but, if it considers that no substantial miscarriage of justice has actually


⁹⁰ [2000] QCA, 194.

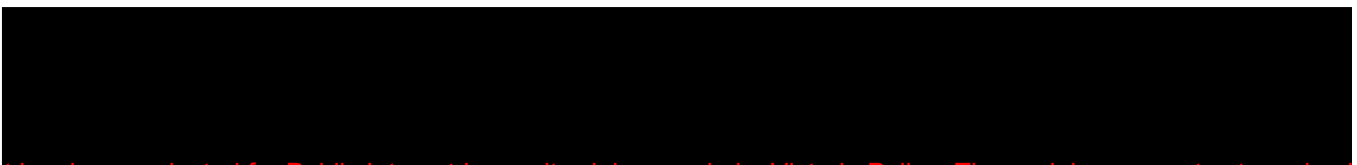
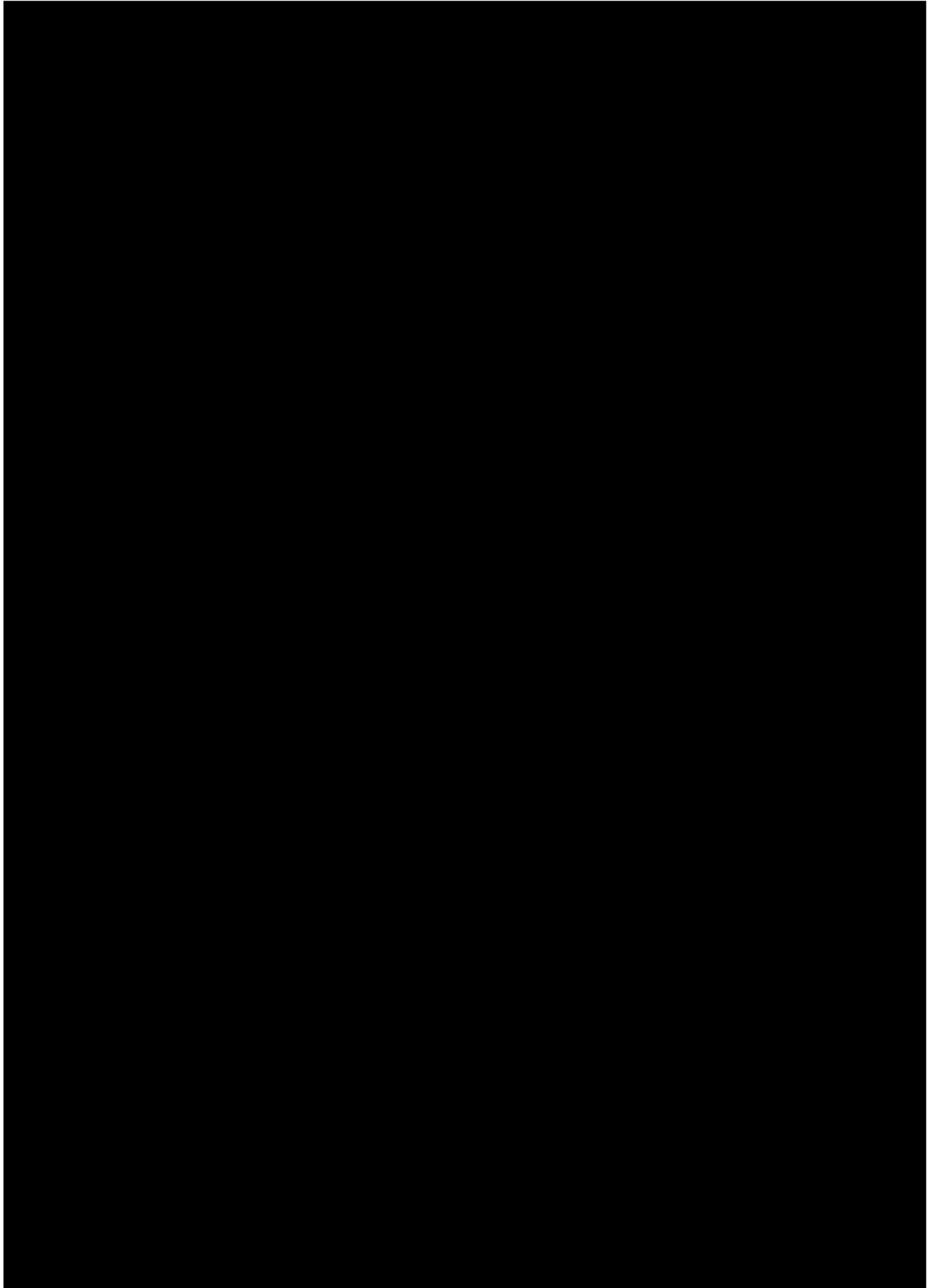
⁹¹ *Ibid* [80].

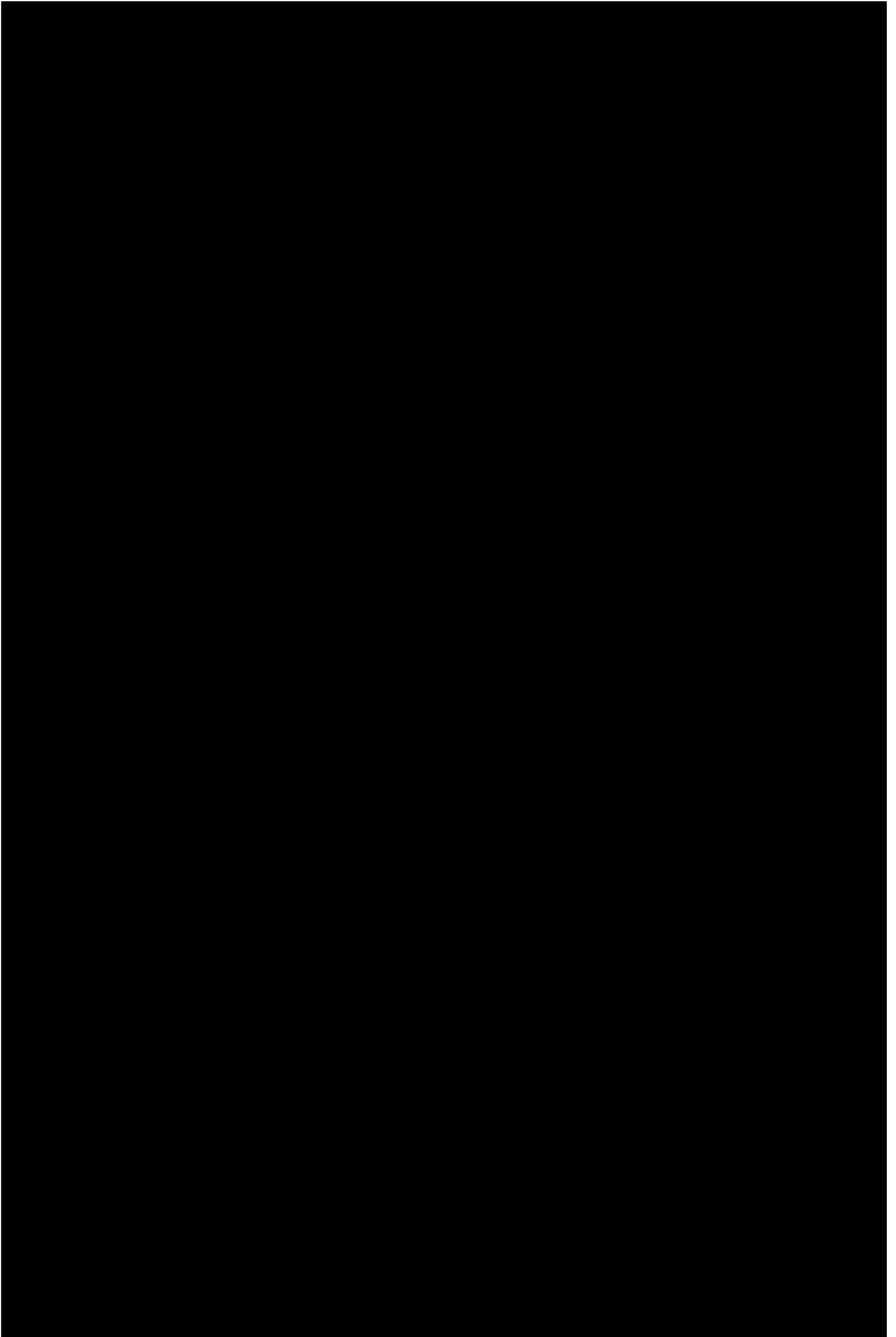
occurred, it has the discretion to dismiss the appeal. In contrast, under the Victorian legislation, the Court *must* allow the appeal "*if there has been a substantial miscarriage of justice*". For this reason, the test framed by Thomas JA arguably has limited utility in the Victorian context, which perhaps explains why *Szabo* has not been considered in Victoria.

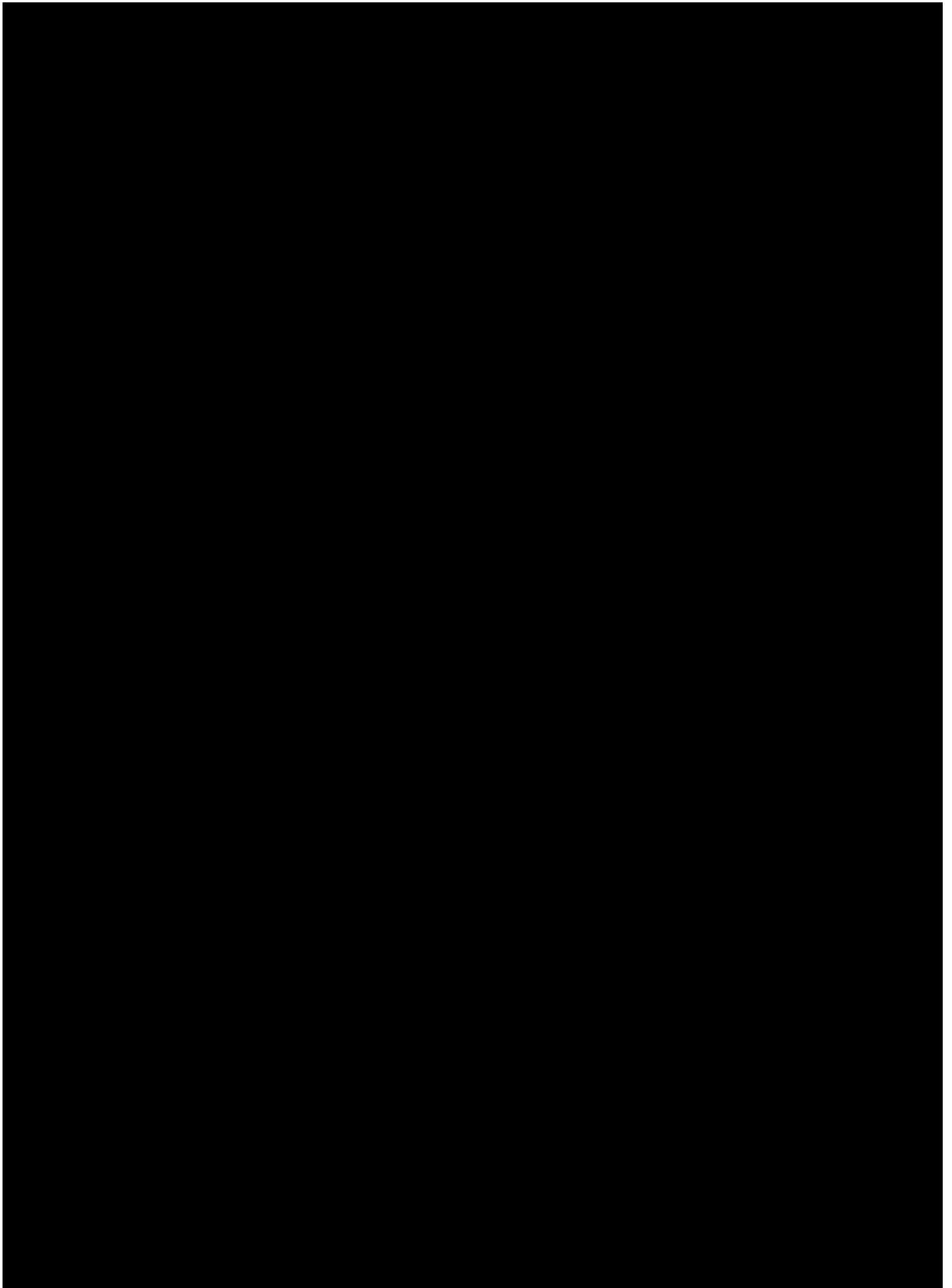
169. In addition, the facts of *Szabo* are distinguishable from the facts relating to Ms Gobbo acting as a human source in relation to those she represented. In *Szabo*, the accused's Counsel was in a relationship with the person who was prosecuting his trial. That prosecutor had a temporal and contextual link to his case. The prosecutor made decisions that impacted directly upon the case and was actively seeking a conviction against him.
170. Counsel Assisting interpret *Szabo* as laying the basis that every case Ms Gobbo was involved in, after she had provided information to Mr Wayne Strawhorn from May 1998 up to 2013, is affected. It is submitted this is stretching the principles and findings in *Szabo* well beyond that which is rational (notwithstanding why it appears as though it has not been adopted in Victoria).
171. If Counsel Assisting were correct, this would mean that a drink driver Ms Gobbo represented when she was naively providing information to Mr Strawhorn about Major Drug Investigation Division (**MDID**) drug cases, would be affected. That illustrates how widely and irresponsibly Counsel Assisting have sought to cast Ms Gobbo's actions.
172. It is apparent that Counsel Assisting derive their categories A1 and A2 from the use of *Szabo*.
173. Taking the principles supported, adopted and encouraged by Counsel Assisting further, Counsel Assisting submit that to define human source, it is necessary to consider the meaning of "*assisting police*". They define assisting police as "*to include conduct that sought to assist in the prosecution, which is taken to include the police investigation.*"⁹² Applying this definition, if a defence barrister witnessed a crime, reported it to police and became a witness in the subsequent prosecution, this would amount to "assisting police" and so it would be incumbent on that barrister to tell all clients that s/he was supporting a police prosecution. If they did not, they would have breached their duty, and using Counsel Assisting's liberal interpretation of *Szabo* (applied under Category A1) those represented by that barrister may have convictions that were affected. This example demonstrates how ludicrous the submission made by Counsel Assisting is.

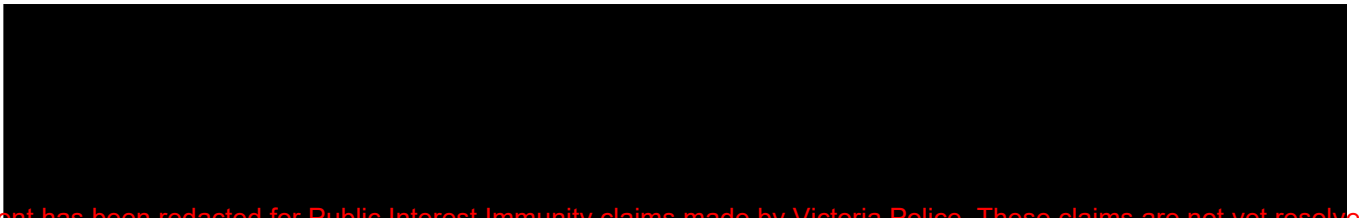
⁹² Counsel Assisting submissions, Volume 2, [20].

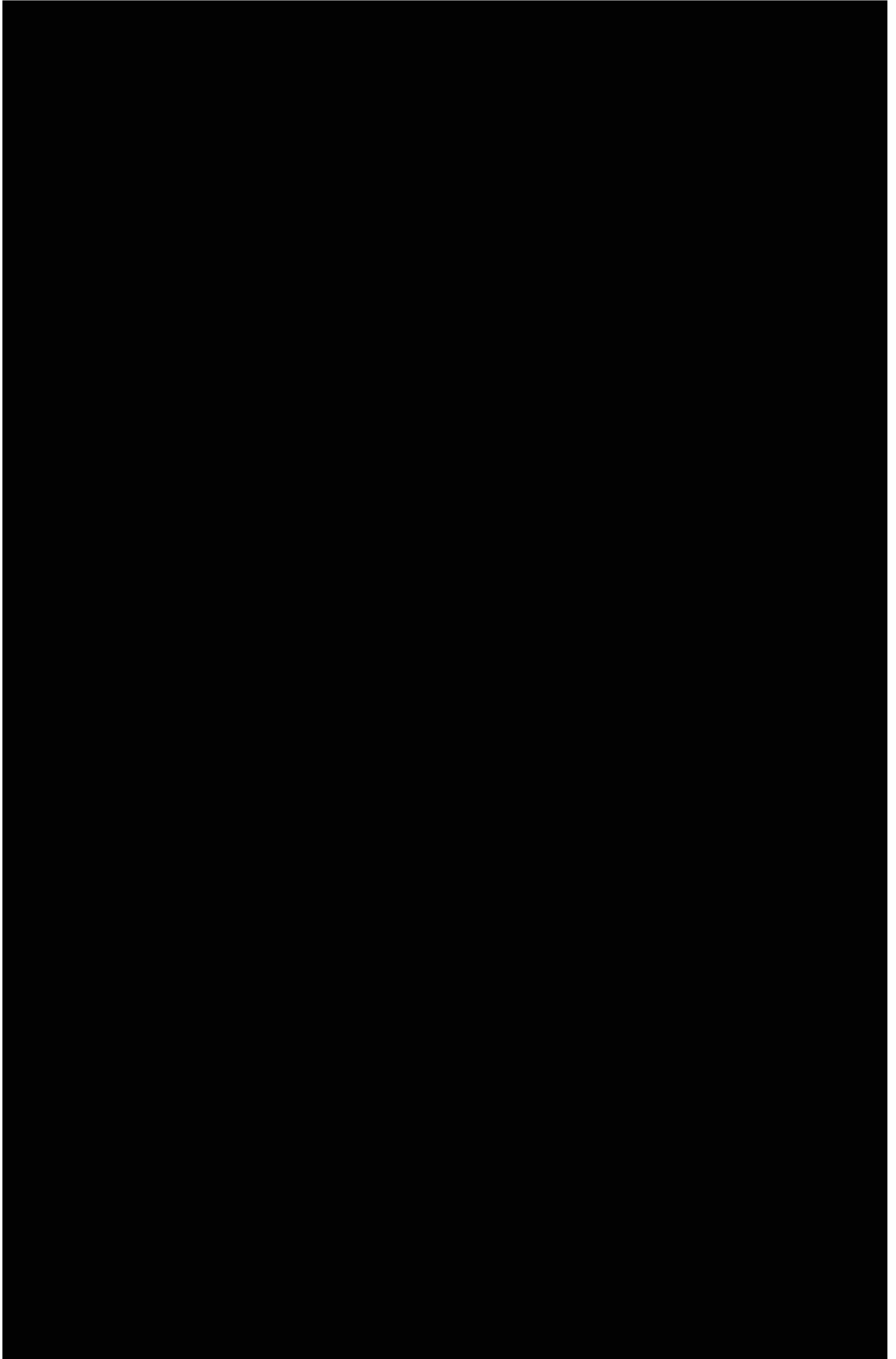
174. Counsel Assisting's broad definition evidences a lack of focus on the actual language of the Terms of Reference of the public hearings. To state that any person represented by Ms Gobbo after she provided limited information on discrete topics to Mr Strawhorn over a short period of time from May 1998 to 2013 lacks proper justification. There are periods of time between May 1998 and 2013 when Ms Gobbo was not speaking to any police officer. During the period of time between 1998 and September 2005, she was speaking to individual police officers about specific, discrete topics. With Mr Strawhorn, it was primarily in relation to a client who had become an informer. How can Ms Gobbo speaking to Mr Strawhorn in that context affect the convictions of people she represented in completely unrelated matters? In 1999, she was speaking to Mr Pope about a discrete money laundering allegation involving her former employer and one client. When speaking to Mr Bateson, it was related to money laundering of a solicitor. When speaking to Mr Peter De Santo about corrupt police officers – this was to in fact improve her clients' positions – Mr Tony Mokbel was bailed because of Mr De Santo charging a number of police officers with corruption. The focus of the Commission should be on cases where Ms Gobbo provided information to police related directly to the cases of individuals, being the period of Ms Gobbo's relevant registration – from 16 September 2005 until January 2009.
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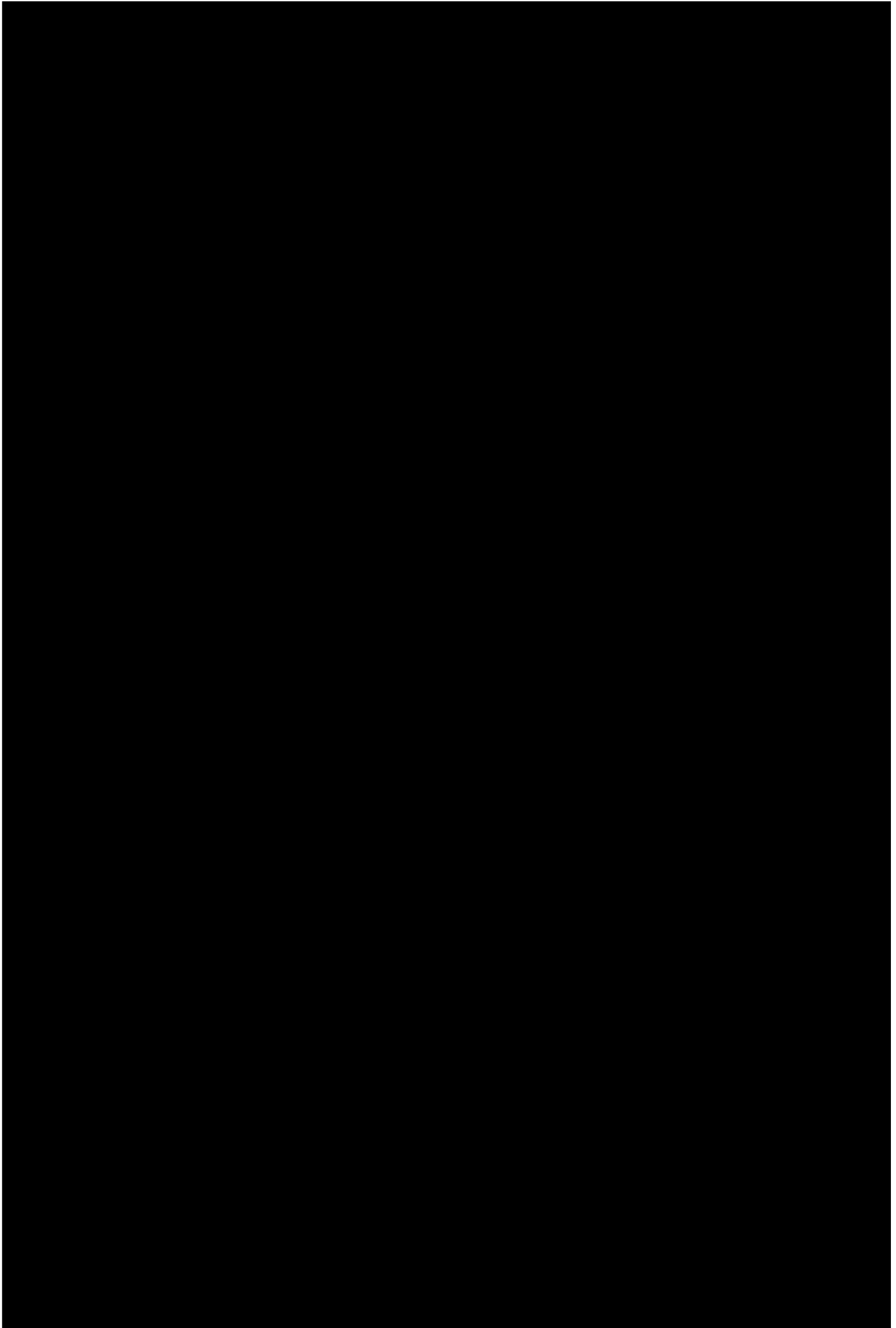


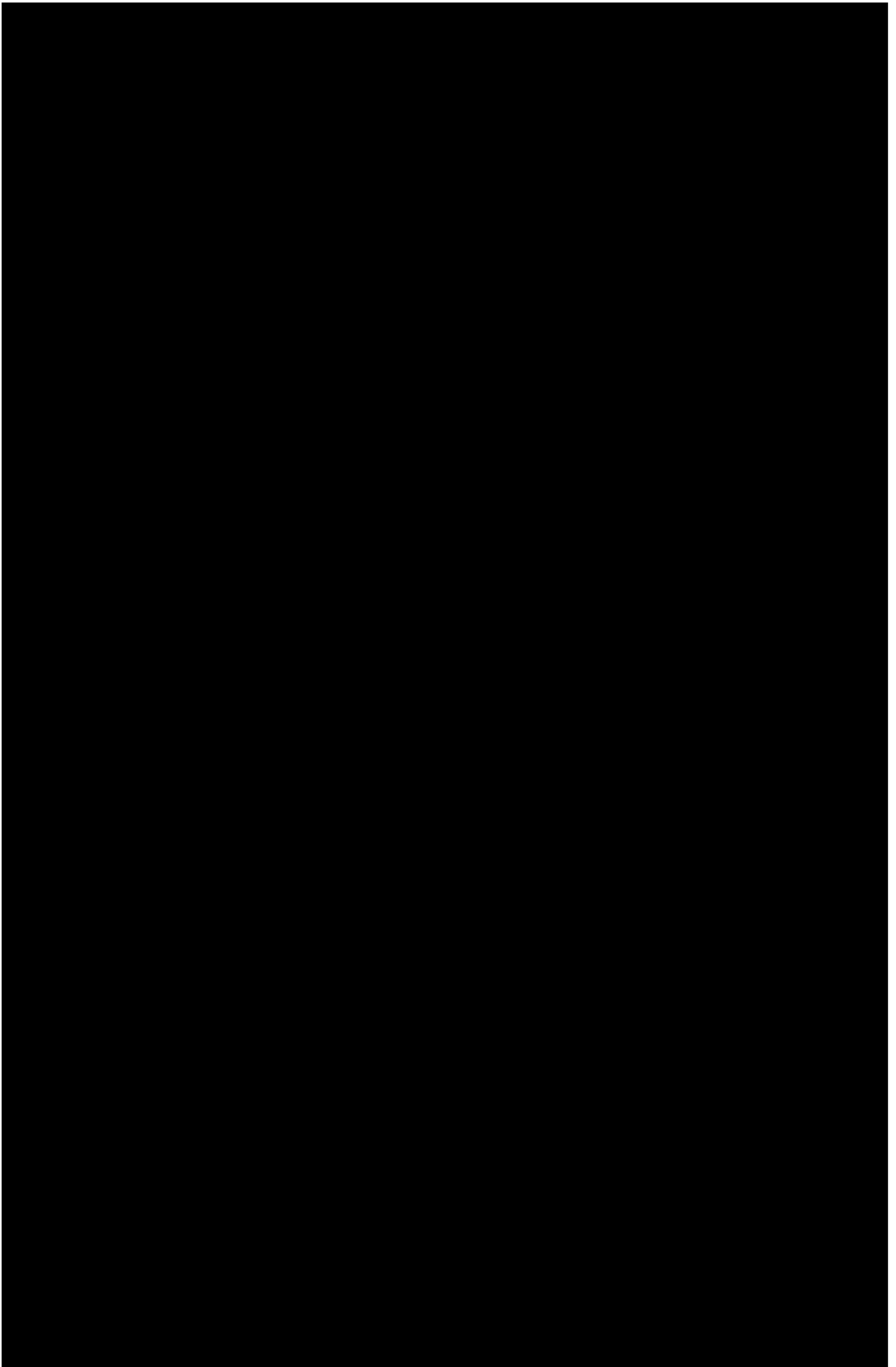


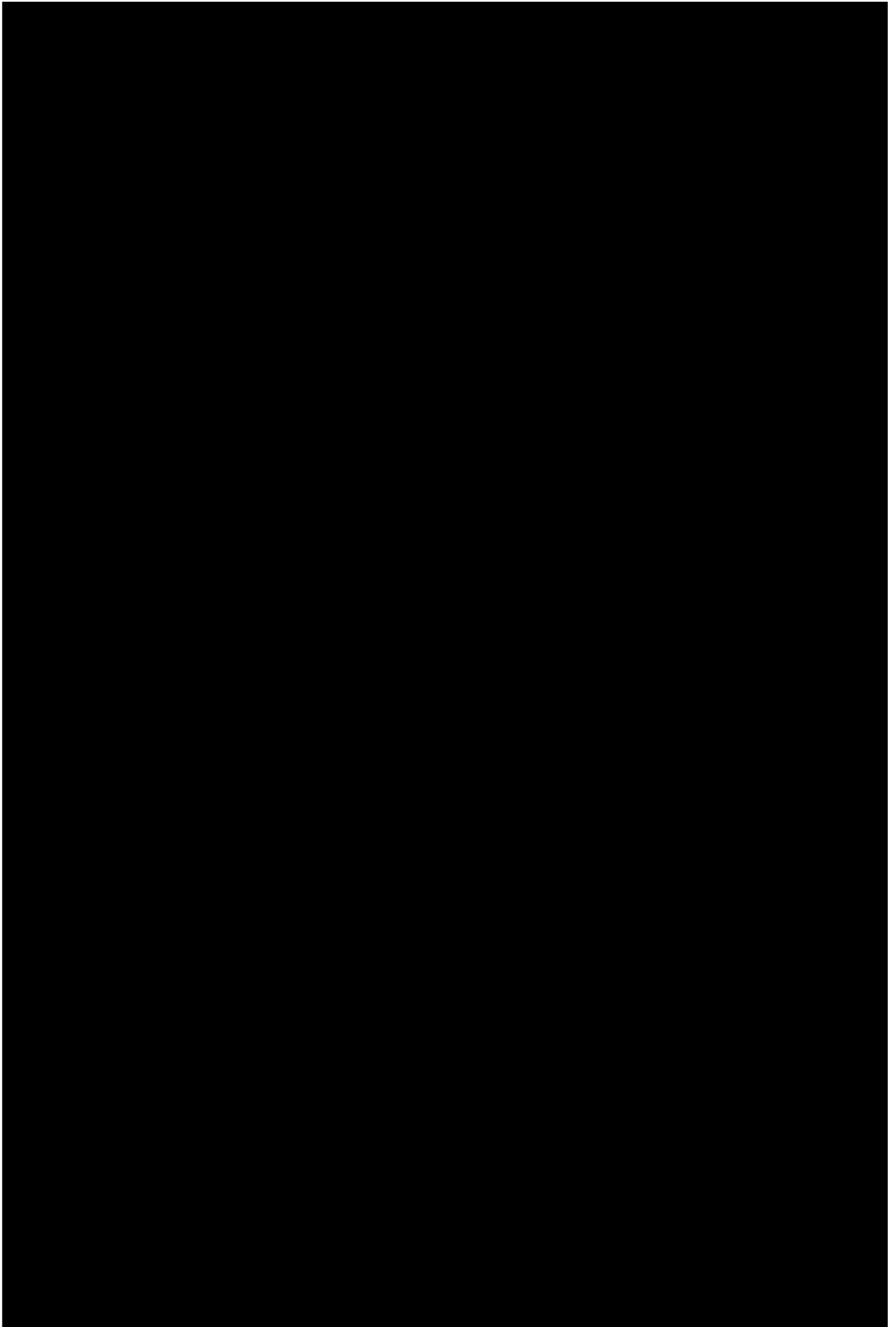


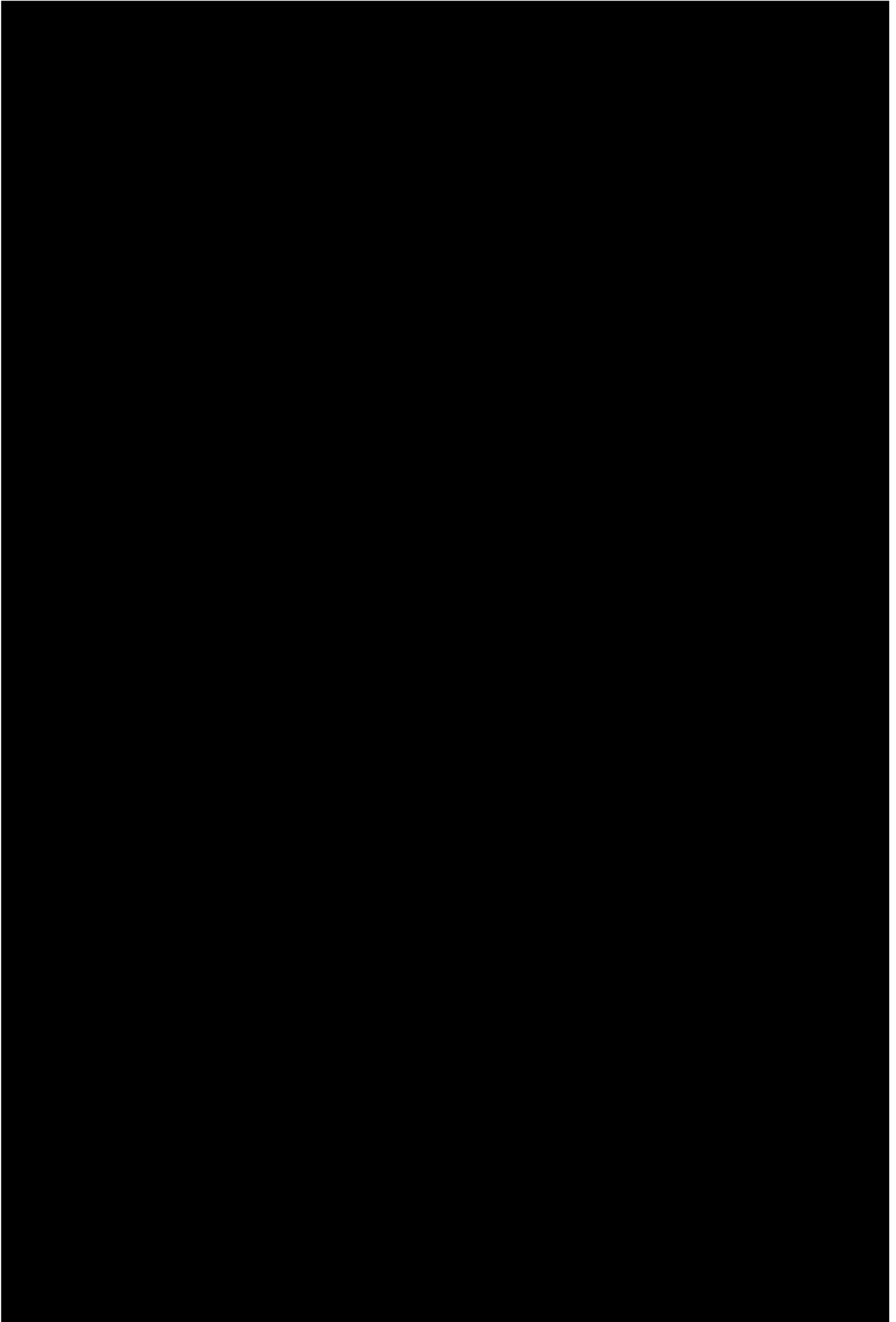


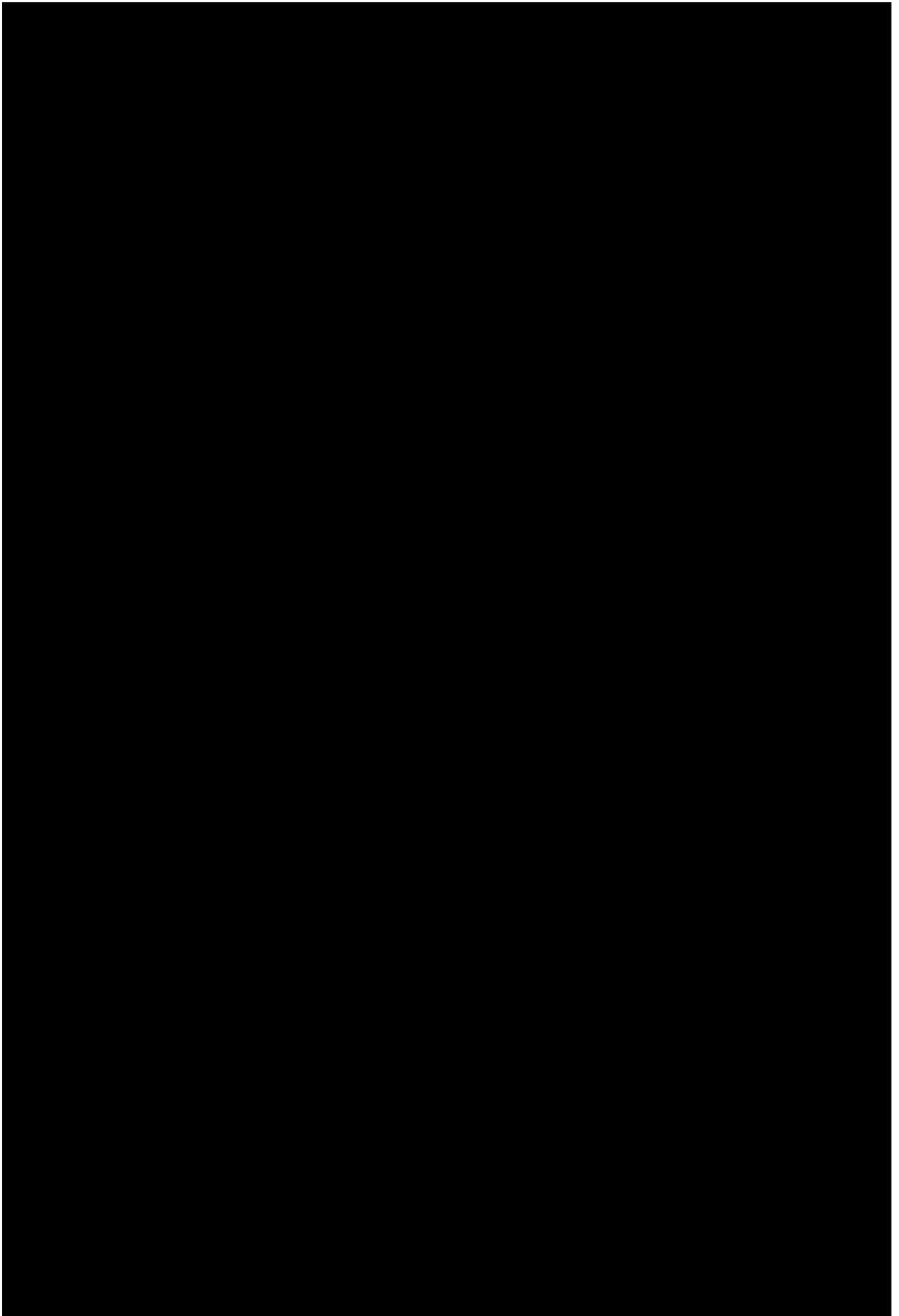


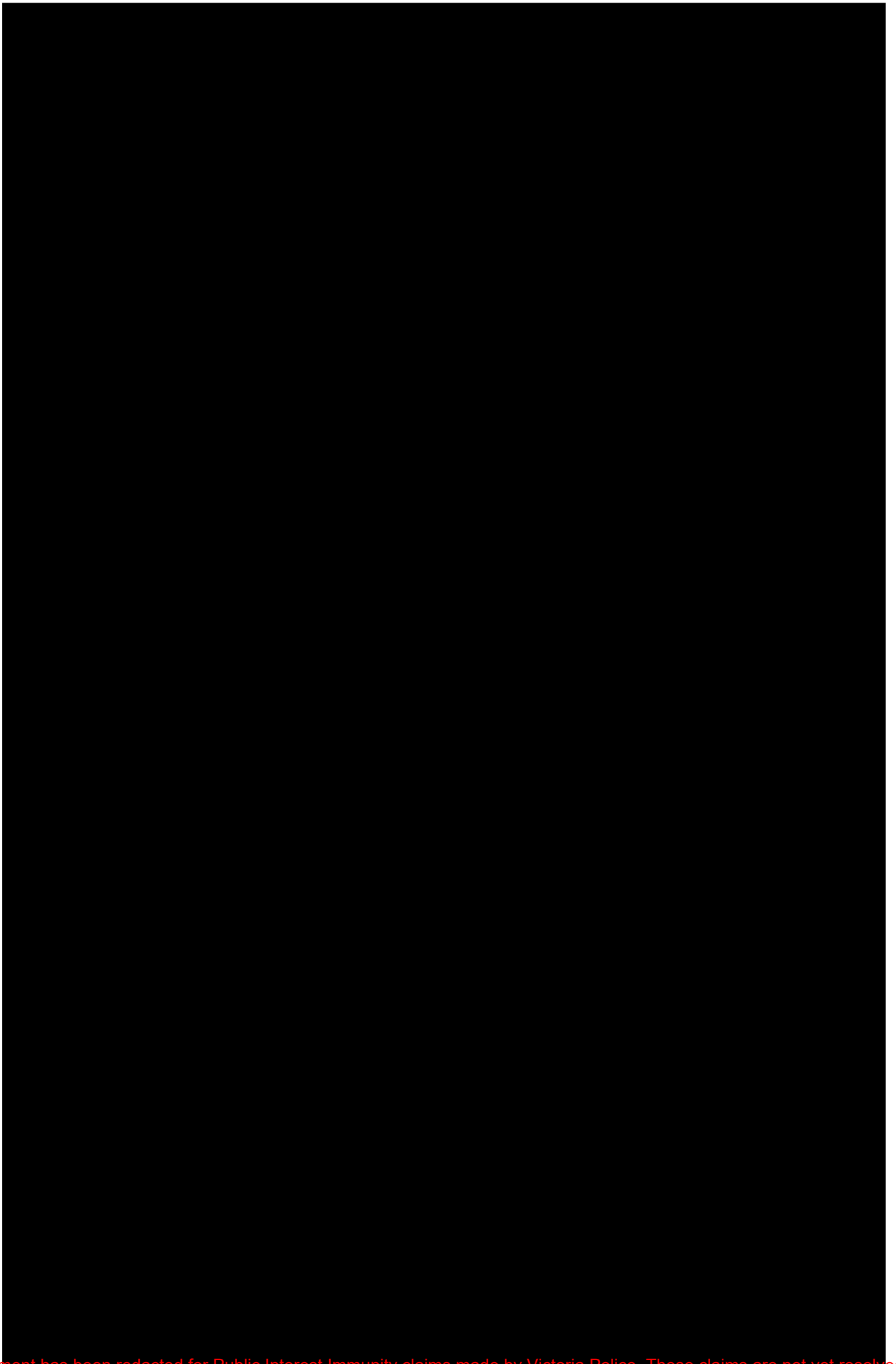










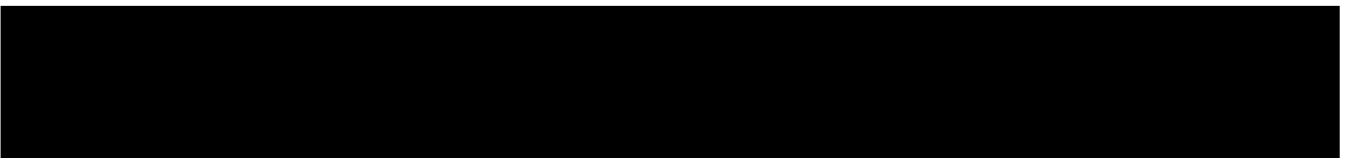
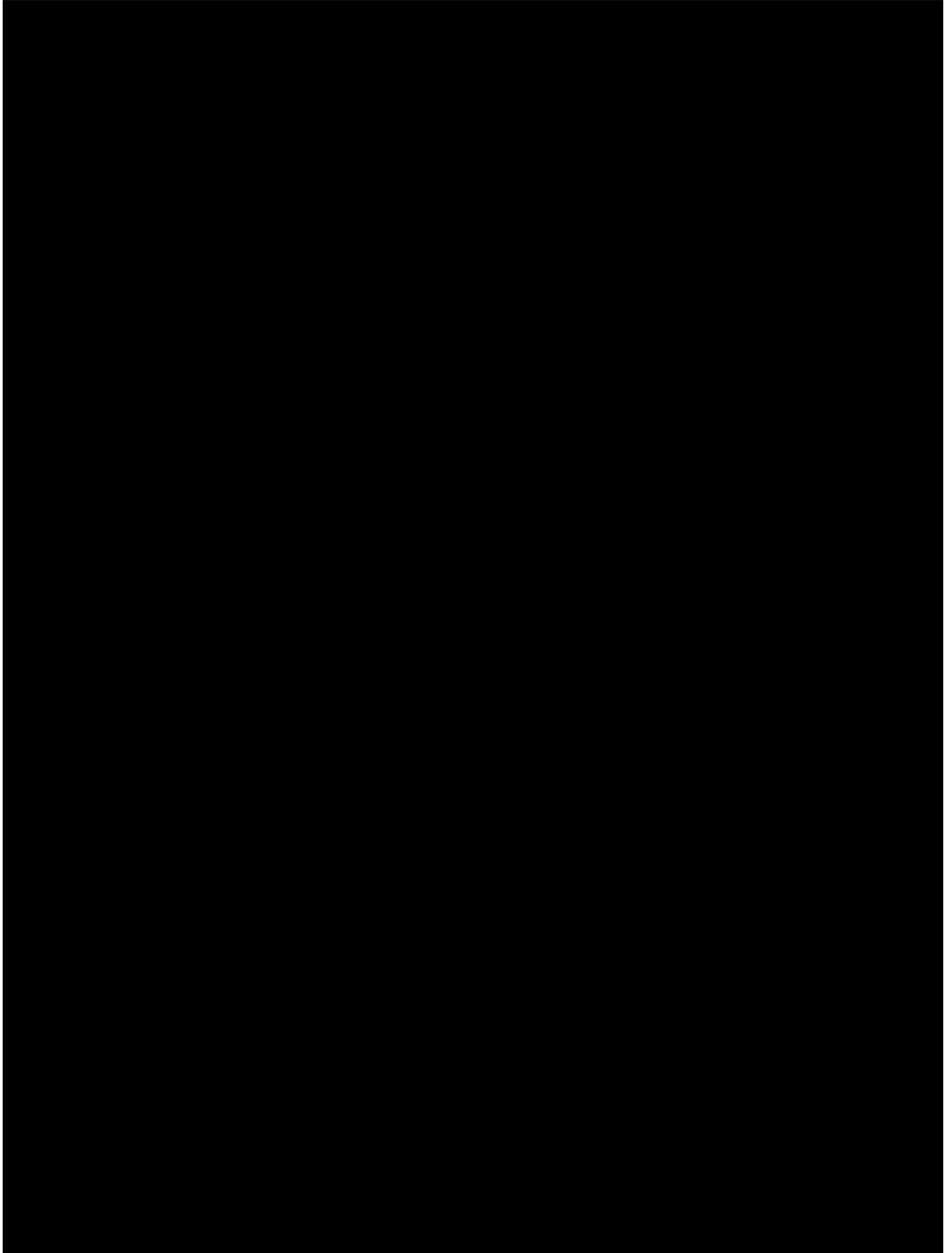


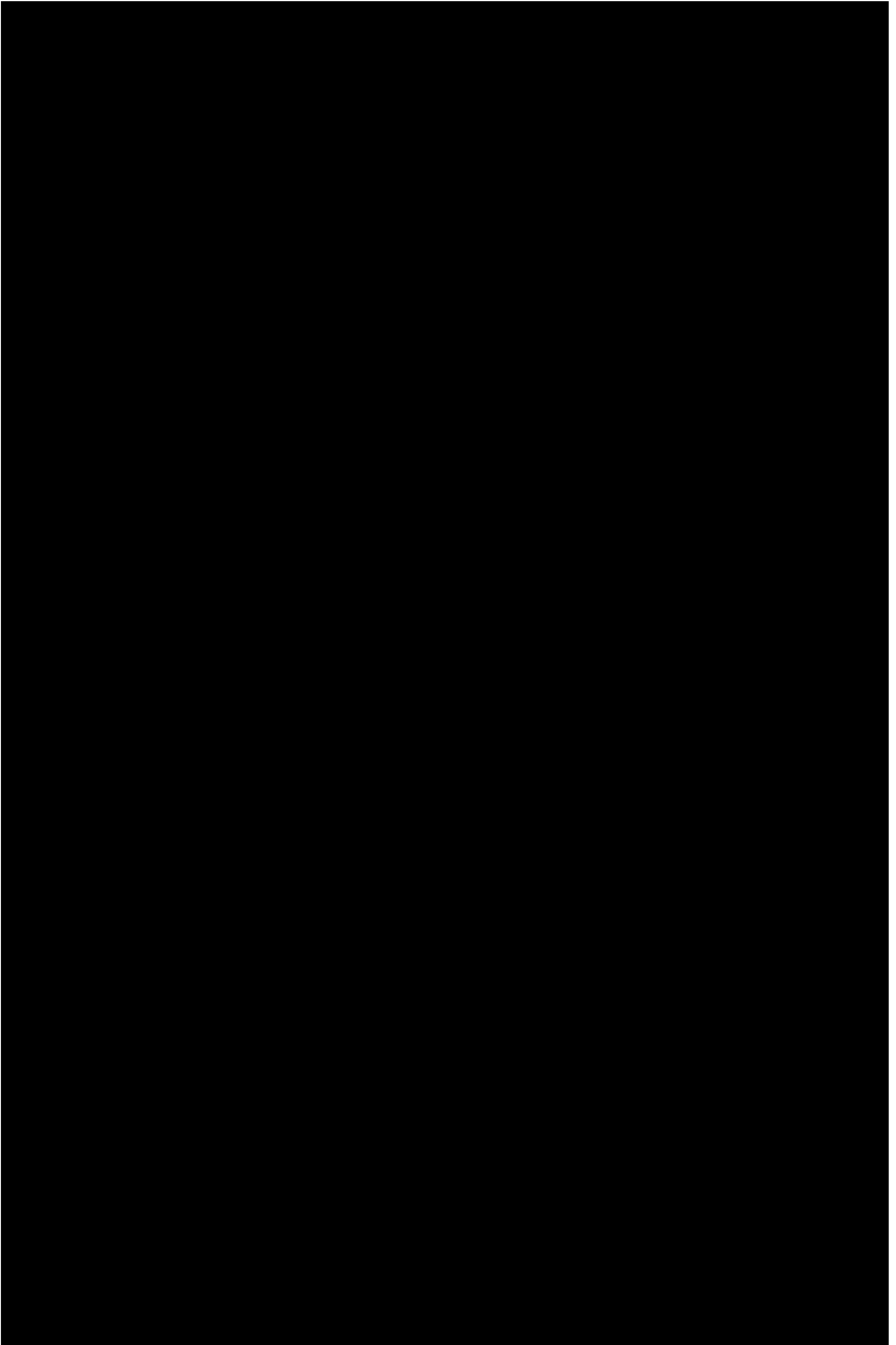
[REDACTED]. However, noting that dishonesty is a subjective concept, on the evidence, Ms Gobbo was not dishonest because she believed she had a legal right to the fees obtained: as she told the Commission, she "[did] whatever I said I was going to do". Ms Gobbo as a lawyer concluded that she had a legal right to the fees as part of the contract engaged with each individual - this goes to the reasonableness of her belief that she had a legal right to the fees. [REDACTED]

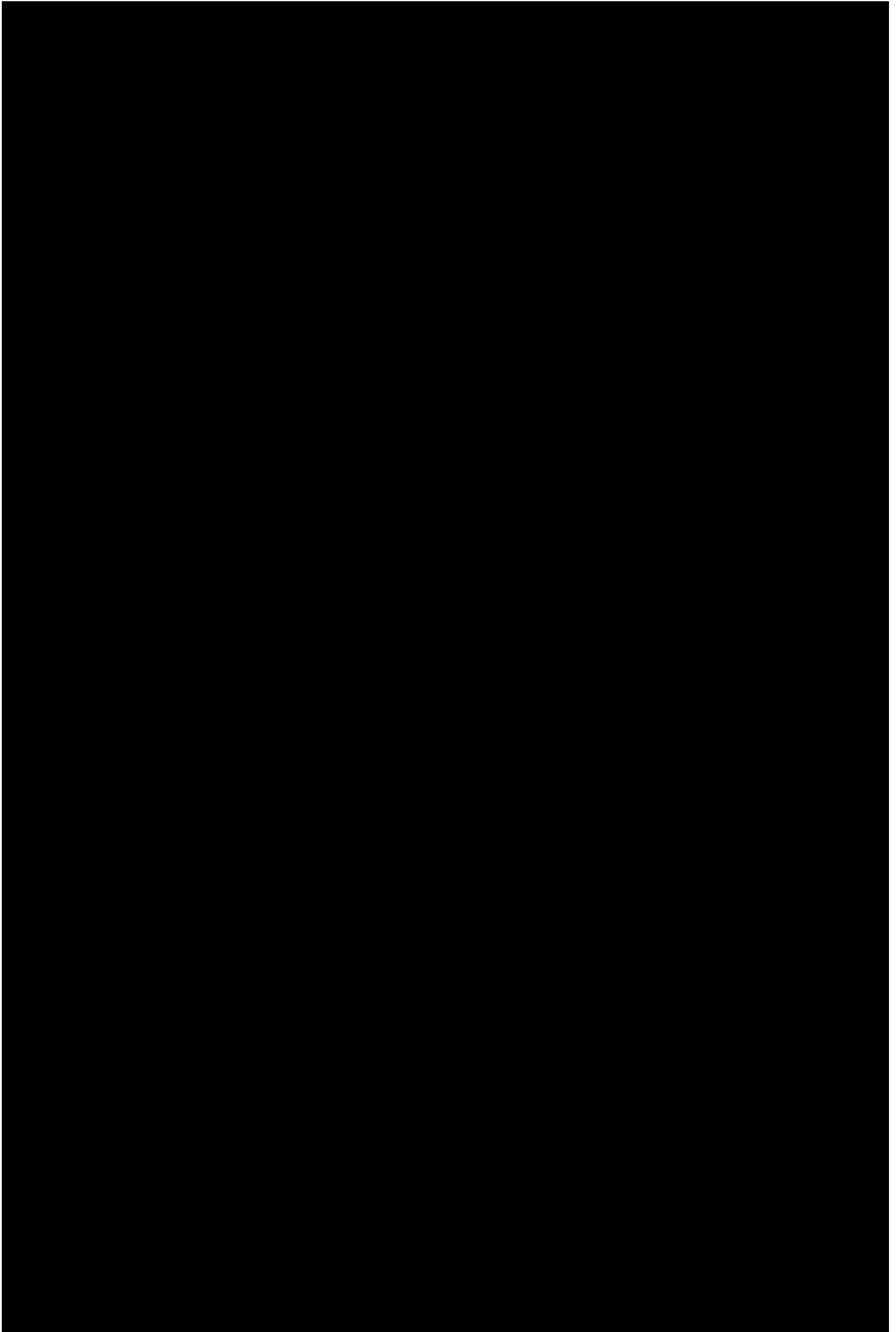
223. It follows, that it is not accepted that Ms Gobbo [REDACTED]
[REDACTED] Mr Thomas was well aware Ms Gobbo had acted for Mr McGrath when he became a Crown Witness against Mr Thomas. [REDACTED]
[REDACTED] Further, Ms Gobbo was briefed for particular matters – seeking a stay (successfully), applying for bail, completing paperwork. She provided the service she was engaged for and was paid accordingly. This is considered in detail in the Thomas case study at Chapter 9.

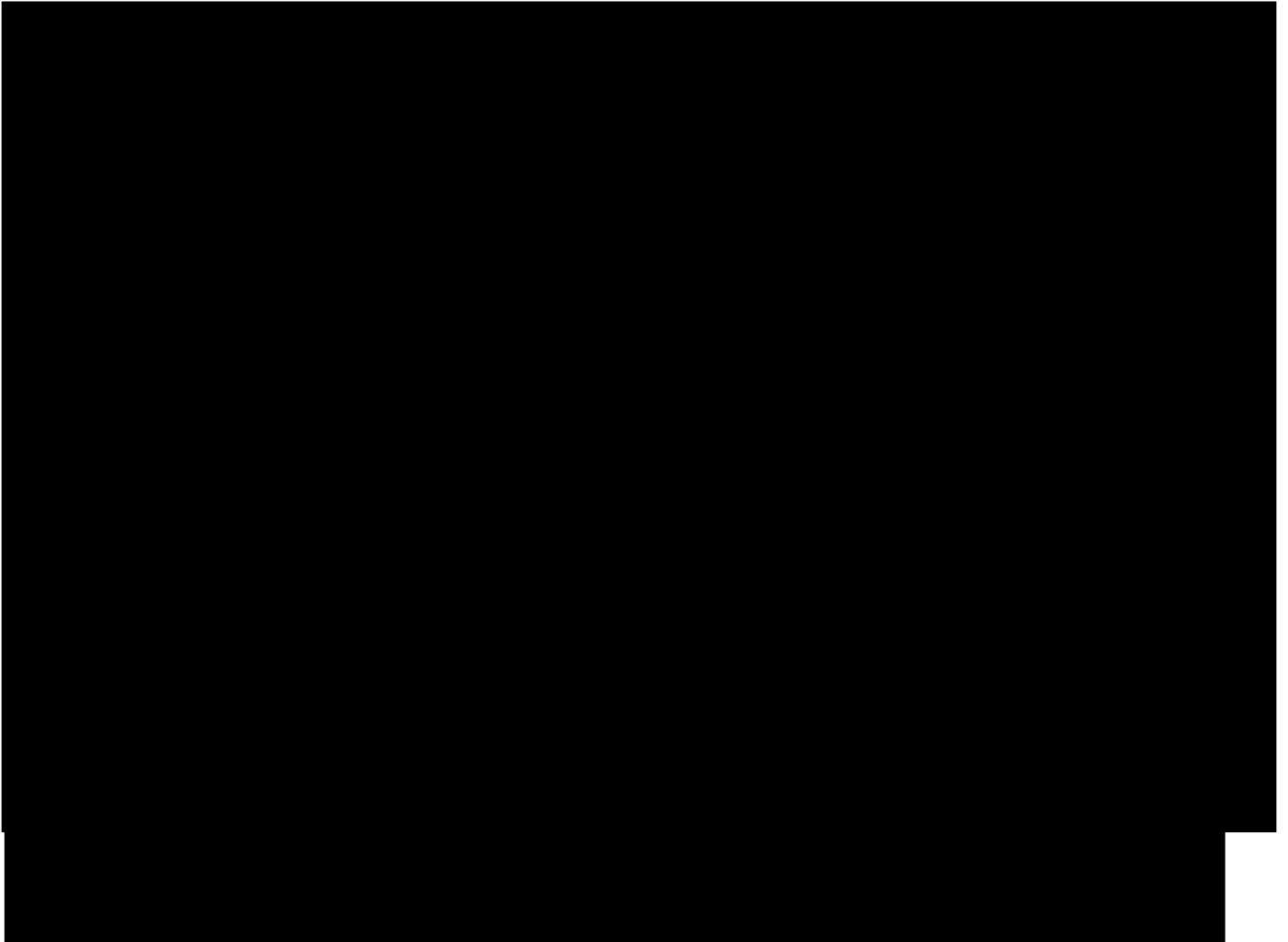
224. In relation to Mr Cooper, the same matters apply. From 2002 to September 2005, Ms Gobbo was not providing any information on Mr Cooper [REDACTED]
[REDACTED] It is accepted that from September 2005 onwards, Ms Gobbo was providing information against Mr Cooper. [REDACTED]
[REDACTED] She held a subjective, reasonable belief that she was entitled to the monies paid. She was briefed to undertake various tasks, and she did so, from drafting various documents, perusing papers and appearing at hearings. She also appears to have issued one invoice during this time to Mr Cooper – for an application to adjourn as Mr Cooper was sick in hospital. She was successful.

225. [REDACTED]



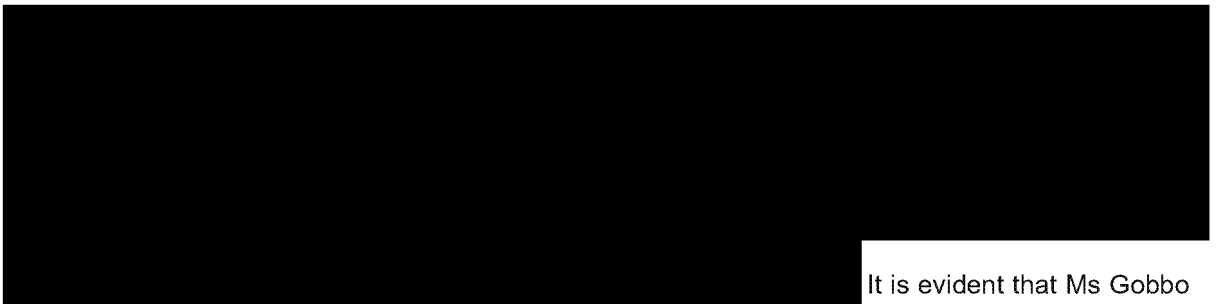






When discussing for example, Mr Cooper, Ms Gobbo described the ethics as "*fucked*" and the behaviour was morally inappropriate, but Ms Gobbo and the police all affirmed that they were not doing anything illegal. Whilst it is not necessary for Ms Gobbo or her handlers to know that the conduct in question is illegal [REDACTED] it is relevant to their state of mind that they each reaffirmed their conduct was not "illegal".

247.



It is evident that Ms Gobbo (and the police) were concerned about her personal safety should her role be revealed. For example, when discussing representing Mr Cooper, Ms Gobbo gave the rationale as that she did

¹³⁶ Counsel Assisting submissions, Volume 1, [496].

not want to be dead this month. There is unchallenged evidence before the Commission that Ms Gobbo was at serious risk of death if her role ever became publicly known.

248. The High Court recognised that Ms Gobbo (and later her children) would be at “grave risk of harm” should there be disclosure of her role.¹³⁷ The police officers, [REDACTED]

[REDACTED] all had this well in their minds when making decisions relating to Ms Gobbo. [REDACTED]

249.

[REDACTED]

The evidence demonstrates that Ms Gobbo's intentions in for keeping her identity unknown and continuing to represent some of those she informed against was to ensure she was not killed. [REDACTED]

250.

[REDACTED]

¹³⁷ *AB v CD & EF v CD* [2018] HCA 58 at [11].

Part B – Substantive matters

4. Nicola Gobbo – Personality, health, recruitment and motivation

251. There is a body of evidence before the Commission relating to Ms Gobbo's personality and her health that are relevant matters for the Commission to consider:

- (a) when assessing Ms Gobbo's motivations in becoming an informer (as well as when she was an informer); and
- (b) in considering Ms Gobbo's reliability (as opposed to credibility) when giving evidence almost two decades after material events.

Ms Gobbo's personality traits

252. Ms Gobbo's father died 5 months into her Year 12. She described herself as heartbroken from losing her father. She described her greatest fear as disappointing her parents. They also reminded her that if she did not work hard and take advantage of the education they had provided her, it would be akin to stealing from them.¹³⁸

253. Ms Gobbo's personality traits are relevant for the Commission to put into context Ms Gobbo's actions and behaviour.

254. The impact of her father dying suddenly as he did is relevant to Ms Gobbo's association with older, father-like figures, who fulfilled a void that existed in Ms Gobbo's life. As much was identified by Psychologist 1 during evidence before Ginnane J in 2016 (emphasis added):¹³⁹

Do you know when her parents died?---Yes. So her father died when she was doing year 12, so she would have been 18. Her mother had had two bouts of cancer prior to that and her father was quite a bit older than her mother. And so - and there were two other children by the father's former marriage, so she has two half-siblings. And her father died and that was relatively catastrophic for her, it

¹³⁸ The 7.30 Report, Interview of Ms Nicola Gobbo, Australian Broadcasting Corporation (aired 10 December 2019).

¹³⁹ Exhibit RC531, Evidence given to Supreme Court before Justice Ginnane by Pain Specialist 1 and Psychologist 1, (23 November 2016), [167]-[168].

was a very difficult event, and then her mother died in 2011 from pancreatic cancer, which is a very nasty condition.

Have you observed the absence of EF's mother in her life on an ongoing basis has had any effect in relation to the relationship you have with her as her therapist?---Yes. Look, I would say that it's - probably one of the things that is the most difficult thing to manage with a patient like her is potential dependency on me. And I'm very conscious of that because one of the tenets of pain management is to try and construct a self-management plan for any patient and to be able to get to a situation where they're actually able to manage their chronic pain on their own; so, in other words, where you're trying to do yourself out of a job. And that's not been possible here, and I think the reason for that is partly to do with the PTSD and partly due to the fact there is no-one for her to speak to. And to that degree I think both the dependency she's formed on me and, I guess, the loss of her mother, which means in some respects perhaps in her mind I'm, you know, a safe person to speak to, like a mother would be she was very close to her mother. That relationship has formed between us in that sense.

In your treatment of EF have you observed that the death of her father has resulted in any similar issues?---Yes. **So one of the things we've worked on, and this is a common treatment with trauma, is to help her to deconstruct, if you like, and speak about the matters that occurred some years ago in relation to her relationship with Victoria Police and so we've spoken a lot about why she got involved with that and her sense of there being a void in her life and that some of the people she got involved with at Victoria Police really fulfilled a father figure type of role. I think in that respect, she certainly would be a person, you would say, was vulnerable to that kind of influence.**

Was there any particular member of Victoria Police that you understand from your discussions with her played that role?---Yes, she spoke about Sandy White.

What about her discussion with Sandy White makes you select him?---Well, I think it's more about the amount of time she spent with him. She said to

me that she spent over 250,000 hours with this gentleman and was very involved- not with him, but in doing activities in relation to her relationship with him. In that respect, she spent a lot of time with him. I think she felt that he treated her as somebody special and valued her contributions to the work they were doing together.

255. It is of note that Ms Gobbo provided information to Mr Strawhorn, Mr De Santo and Mr White, all of whom fulfilled the role identified by Psychologist 1. All of them fulfilled the void identified by Ms Gobbo of the older figure in a position of authority. It is clear from the evidence heard by the Commission that Ms Gobbo sought to impress Mr Strawhorn, Mr De Santo and Mr White and sought their continual approval.
256. The void that Ms Gobbo sought to fill with fatherly figures was also accompanied by Ms Gobbo's personality traits. Ms Gobbo described herself as having a type A personality.¹⁴⁰ That is, work obsessed, competitive, achievement orientated, impatient and time urgent. During his evidence, Mr White described Ms Gobbo as such (emphasis added):

I appreciate that you're only speaking as lay person, don't misunderstand me. But although you would perhaps feel uncomfortable with describing Ms Gobbo as having a psychological disorder, you might agree with her having a personality disorder of some kind?---Probably, yes.

And how do you articulate that, what are the features of it as you observed it?--- Oh, well I think she was a very needy person. We had more contact with her than any other source and quite a lot more than any other source. That wasn't all related to intelligence that she wanted to provide. Often times I think it was just a welfare type of chat. So I think she was needy from that point of view. She could be a bit of a drama queen at times. She would totally exaggerate something and then when you'd point that out she'd come back to something normal. She had a - and I'm not saying these are necessarily bad traits.

Yes?---But she didn't have, seem to have any social life, everything revolved around work and she'd be working some very late hours and of course the lines,

¹⁴⁰ Transcript of Ms Nicola Gobbo, (6 February 2020), page 13307.

well in our view the lines between her work and meeting with criminals were very blurred.

*Yes?---Again, I certainly don't want to be seen to be claiming to have any psychological expertise **but I do think her whole, all her sort of social needs were provided by serious criminals and then over time that transferred to the source handlers.***

Yes. Do you agree that over time she - I think it's implicit in your earlier answers, but she became heavily dependent upon her social relationships with the source handlers for her psychological welfare?---I think that's right.

Do you agree that she over time incorporated the values of the police handlers in terms of this attitude that it was important to pursue significant criminal conduct and put the perpetrators in gaol?---That's right, yep.

Essentially she really became a member of the team, didn't she, at least in her mind?---In her mind maybe, yes.¹⁴¹

257. Ms Gobbo's personality also made it such that whatever she applied herself to, she had to be the best at, or not do it at all.¹⁴² The passage of time has allowed Ms Gobbo to reflect and she recognised that *"in hindsight, it was to obviously, um, boost, um, my self-esteem and to make me feel more important about what I was doing and, you know, my type A personality was making me do more and more".¹⁴³*
258. Ms Gobbo's conduct should be seen in this context. Ms Gobbo was pre-disposed and vulnerable to approach from older figures, in positions of power. This coupled with her desire to impress and also be the best meant that Ms Gobbo became an enthusiastic informer, as she conceded.
259. These same personality traits explain why Ms Gobbo became so involved with the criminal underworld. Her desire to be the best criminal barrister (having come from a well-known legal family from Civil Law) meant that Ms Gobbo made herself indispensable to leading counsel and instructing solicitors. She also made herself available to her clientele at all hours. Her reputation developed to the point where she was representing the key figures within the criminal underworld. For these reasons, Ms Gobbo became one of the barristers of choice.

¹⁴¹ Transcript of Mr Sandy White (20 August 2019), pages 4958-9.

¹⁴² Transcript of Ms Nicola Gobbo (11 February 2020), page 13698.

¹⁴³ Transcript of Ms Nicola Gobbo (6 February 2020), page 13307.

260. The view of Victoria Police through a number of witnesses was that Ms Gobbo appeared to be close to a number of the serious criminals that they were investigating, to the extent there was a suspicion that she was part of the criminal group (although, as accepted by virtually all, there was no evidence she in fact committed any offences). This is no doubt in part because she was often seen with her clientele at all hours. Without her connection to the underworld, it is unlikely that Victoria Police would have sought to recruit Ms Gobbo as they did.
261. The ICRs also support the contention that Ms Gobbo's personality as well as her loneliness made her predisposed to wanting to please others and feel wanted. On one occasion, Ms Gobbo disclosed she had four friends that were not associated with either crime or the legal profession.¹⁴⁴ She often referenced her father and the impact of his death upon her. It is therefore unsurprising that Mr White accepted that the SDU were in many ways, a form of emotional support for Ms Gobbo.

Health

262. Ms Gobbo's health is also a relevant factor for the Commission to bear in mind when:

- (a) considering her actions and behaviours;
- (b) considering the continued use of her by Victoria Police; and
- (c) considering the reliability (as opposed to honesty) of her memory and evidence.

263. Ms Gobbo has a complex medical history, and suffers from several underlying health conditions. Her health issues include both physical and psychological conditions which are highly interrelated and require active and multi-disciplinary specialist treatment.

Stroke (July 2004)

264. On 24 July 2004, Ms Gobbo suffered a left cortical stroke and was admitted to [REDACTED] Hospital for treatment. This caused transient left side paralysis and a temporary loss of speech.¹⁴⁵ Brain scans confirmed the stroke diagnosis and also showed patent foramen ovale and an atrial septal aneurysm, a condition that increases the risk of strokes over time.¹⁴⁶

¹⁴⁴ Exhibit RC281, ICR/3838, (ICR/10).

¹⁴⁵ Confidential Affidavit of EF (21 November 2016), [12].

¹⁴⁶ Medical records of Ms Nicola Gobbo, RCMP1.0053.0001.0005 at0074.

265. In November 2004, Ms Gobbo was admitted to hospital for surgery to close a hole in her heart. Ms Gobbo's treating practitioners believed this heart problem may have been the cause of the clot which caused Ms Gobbo's stroke in July 2004.¹⁴⁷
266. Between 23 July and 26 July, Ms Gobbo was admitted to hospital for surgical procedure for removal of carbuncle on inner right thigh.¹⁴⁸
267. Of note, the ICRs and other material shows that Ms Gobbo's memory from around the time of her stroke, both before and after, was materially impacted. In one ICR from 2009, she was recorded as saying that she had been advised by her doctor that her memory from eight weeks prior to the stroke and three weeks after was compromised and that this was normal as the brain had been starved of blood before and after a stroke.¹⁴⁹
268. The ICRs and transcripts with her handlers also reveal Ms Gobbo discussing her stroke and its impact on her loss of memory on several other occasions, including on 21 September 2005,¹⁵⁰ 9 November 2005,¹⁵¹ December 2005,¹⁵² March 2006¹⁵³ and August 2007.¹⁵⁴

Neurological pain and other psychological health issues (2006 onwards)

269. In October 2006, Ms Gobbo began experiencing facial pain, commencing on the right side of her face progressing to the left, eventually progressing to have bilateral features. She began a comprehensive investigative process to determine the source of the facial pain, which commenced with treatment by her general practitioner and subsequent to that she was seen by a neurologist, who diagnosed her with atypical facial pain, most likely a thalamic pain syndrome.¹⁵⁵
270. Ms Gobbo's medical records reveal:
- (a) In October 2006, she presented at the Emergency Department of a hospital with difficulty swallowing and altered sensation on the left side of her face.¹⁵⁶

¹⁴⁷ Confidential Affidavit of EF (21 November 2016), [12]; Medical records of Ms Nicola Gobbo RCMP.0053.0001.0005 at 0183.

¹⁴⁸ Medical records of Ms Nicola Gobbo, RCMP.0053.0001.0005_0004 - 0023.

¹⁴⁹ Exhibit RC281, ICR/2958, (ICR/53).

¹⁵⁰ Exhibit RC297, Transcript of Discussion between Ms Gobbo, Officer 'White' and Officer 'Smith' (21 September 2005), page 35.

¹⁵¹ Exhibit RC281, ICR/3838, (ICR/8).

¹⁵² Exhibit RC281, ICR/3838, (ICR/11), [74]-[78].

¹⁵³ Exhibit RC281, ICR/3838, (ICR/23), [195].

¹⁵⁴ Exhibit RC281, ICR/3838, (ICR/96), [1142].

¹⁵⁵ Exhibit RC531, Evidence given to Supreme Court before Justice Ginnane by Pain Specialist 1 and Psychologist 1 (23 November 2016), page 128.

¹⁵⁶ Medical records of Ms Nicola Gobbo, RCMP.0053.0001.0005_0206-0214.

(b) In November 2007, Ms Gobbo was admitted at hospital for an arthroscopy of the temporomandibular joint (key hole surgery to explore her jaw).¹⁵⁷

(c) In February 2008, Ms Gobbo had an MRI of brain.¹⁵⁸

271. In February 2008, Ms Gobbo was referred to Pain Specialist 1, a chronic pain management specialist at [REDACTED] Hospital.¹⁵⁹ Pain Specialist 1 commenced treatment of Ms Gobbo to assist her in managing her pain and subsequently diagnosed Ms Gobbo with a chronic neuropathic pain condition.¹⁶⁰ Ms Gobbo's pain was so severe that she required opioid analgesia. On one occasion she required inpatient treatment. Pain Specialist was of the view the pain condition was a consequence of the stroke Ms Gobbo suffered in 2004. He described the pain as "disabling"¹⁶¹ and at times, Ms Gobbo was rendered "housebound".¹⁶² Ms Gobbo was prescribed a heavy dosage of analgesia.¹⁶³ When describing the symptoms of the pain Ms Gobbo suffered, Pain Specialist 1 described it "*impacts upon attention, concentration, memory and also behavioural and emotional.*"¹⁶⁴

272. In early 2010, Pain Specialist 1 referred Ms Gobbo to Psychologist 1,¹⁶⁵ a clinical and counselling psychologist, with whom Ms Gobbo commenced regular appointments.¹⁶⁶ Psychologist 1 subsequently diagnosed Ms Gobbo with major depressive disorder and post-traumatic stress syndrome.¹⁶⁷ At times, Ms Gobbo has expressed suicidal ideations to Psychologist 1 but these have always been without intent.¹⁶⁸

273. Pain Specialist 1 and Psychologist 1 have been Ms Gobbo's primary medical practitioners, and have worked together in managing both her chronic pain and psychological conditions,¹⁶⁹ which

¹⁵⁷ Medical records of Ms Nicola Gobbo, RCMP1.0053.0001.0005_0179-0185.

¹⁵⁸ Medical records of Ms Nicola Gobbo, RCMP1.0053.0001.0005_015.

¹⁵⁹ Exhibit RC531, Evidence given to Supreme Court before Justice Ginnane by Pain Specialist 1 and Psychologist 1 (23 November 2016), page 129.

¹⁶⁰ Confidential Affidavit of EF (21 November 2016), [62].

¹⁶¹ Exhibit RC531, Evidence given to Supreme Court before Justice Ginnane by Pain Specialist 1 and Psychologist 1 (23 November 2016), pages 128-9.

¹⁶² Ibid, page 130.

¹⁶³ Ibid.

¹⁶⁴ Ibid, pages 133-4.

¹⁶⁵ Confidential Affidavit of EF (21 November 2016), [64]; Exhibit RC531, Evidence given to Supreme Court before Justice Ginnane by Pain Specialist 1 and Psychologist 1 (23 November 2016), page 136.

¹⁶⁶ Exhibit RC531, Evidence given to Supreme Court before Justice Ginnane by Pain Specialist 1 and Psychologist 1 (23 November 2016), page 164.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid, page 176.

¹⁶⁹ Ibid, pages 165-6.

are inter-related conditions requiring active multi-disciplinary care. Both practitioners have told Ms Gobbo that her chronic pain is exacerbated by high levels of stress.¹⁷⁰

274. Ms Gobbo's neuropathic pain and mental health conditions remain ongoing and have never been brought under control. Over the years, Pain Specialist 1 has prescribed various forms of pain relief medication (including opiates) and has worked together with Psychologist 1, whose management of Ms Gobbo's mental health conditions has included the prescription of anti-depressants, regular counselling, cognitive behavioural therapy and techniques such as meditation, mindfulness and relaxation.¹⁷¹ Treatment of mental health conditions also assists in reducing their aggravating impact on Ms Gobbo's chronic pain.¹⁷²

275. While Ms Gobbo's treatment for her chronic pain has generally occurred on an outpatient basis, she was hospitalised in June 2009 for approximately 17 days for inpatient pain rehabilitation.¹⁷³

Neuro-dermatological skin condition (September 2009 onwards)

276. In September 2009, Ms Gobbo began to develop a number of ulcerated wounds which became increasingly severe. She was subsequently diagnosed with a neuro-dermatological condition that causes her to develop stress related dermal and epidermal breakdowns. As a result of this condition, Ms Gobbo has been admitted to hospital on multiple occasions for surgery to treat ulcerated wounds.¹⁷⁴

Cancer of the vulva (2010 onwards)

277. In early 2010, Ms Gobbo was diagnosed with cancer of the vulva, which has been treated by a gynaecological oncologist. Since diagnosis, Ms Gobbo has had several surgeries to treat and remove cancerous cells.¹⁷⁵

278. The treating oncologist informed Ms Gobbo during treatment that severe stress over prolonged periods was likely to have been a causative factor for her cancer.¹⁷⁶

¹⁷⁰ Confidential Affidavit of EF (21 November 2016), [65].

¹⁷¹ Exhibit RC531, Evidence given to Supreme Court before Justice Ginnane by Pain Specialist 1 and Psychologist 1 (23 November 2016), page 164-166.

¹⁷² Confidential Affidavit of EF (21 November 2016), [63].

¹⁷³ Exhibit RC531, Evidence given to Supreme Court before Justice Ginnane by Pain Specialist 1 and Psychologist 1 (23 November 2016), page 128; Confidential Affidavit of EF (21 November 2016), [71].

¹⁷⁴ Confidential Affidavit of EF (21 November 2016), [71]; Exhibit RC531, Evidence given to Supreme Court before Justice Ginnane by Pain Specialist 1 and Psychologist 1 (23 November 2016), pages 169-70.

¹⁷⁵ Confidential Affidavit of EF (21 November 2016), [66].

¹⁷⁶ Ibid [67].

279. On 31 May 2011, Ms Gobbo was admitted to hospital for removal of lump in breast.¹⁷⁷
280. As at late 2016, Ms Gobbo was continuing to have regular check-ups her gynaecological oncologist.¹⁷⁸

Mental/medical health (2018 onwards)

281. Ms Gobbo continued to see Psychologist 1 and Pain Specialist 1 up to the end of 2018.
282. In early 2019, Ms Gobbo began regular appointments with Pain Specialist 2, Psychologist 2 and Psychiatrist 1.
283. In March 2019, the Royal Commission accepted Ms Gobbo had a reasonable excuse for not honouring a notice to attend. Part of the reasons accepted by the Commission related to her mental health.
284. On 1 September 2019, Psychiatrist 1 provided an opinion that Ms Gobbo was not responding to pharmacological intervention in respect of her psychological condition, and expressed a 'legitimate concern' that she may suffer a psychotic breakdown.¹⁷⁹ Psychiatrist 1 would later describe Ms Gobbo as having reached the "*stage of therapeutic nihilism*".¹⁸⁰
285. On 12 September 2019, Specialist 2 provided an opinion that Ms Gobbo's ongoing symptoms are consistent with a diagnosis of Chronic Post-Stroke Pain.¹⁸¹ While the pain was 'fairly well managed' during January and February 2019, Ms Gobbo experienced an escalation in pain in March 2019 (despite medication),¹⁸² aggravated by ongoing stressors in Ms Gobbo's life, including sleep issues, stress and a lack of social support.¹⁸³ With the assistance of medication, Specialist 2 described Ms Gobbo's pain control as 'stable' by August 2019, however reiterated Ms Gobbo's 'delicate' condition and the importance of maintaining multi-disciplinary care to assist her in coping with ongoing and interrelated mental and physical health issues.¹⁸⁴ In December 2019, Pain Specialist 1 provided an opinion that Ms Gobbo's conditions remained the same.¹⁸⁵
286. On 14 September 2019, Psychologist 2 provided an opinion that while Ms Gobbo had initially "*came with symptoms of Acute Stress*", she has since "*displayed symptoms of Depression and Anxiety*".¹⁸⁶

¹⁷⁷ Medical records of Ms Nicola Gobbo, RCMP1.0053.0001.0005.

¹⁷⁸ Confidential Affidavit of EF (21 November 2016), [72].

¹⁷⁹ Exhibit RC535, Report of Psychiatrist 1 (1 September 2019).

¹⁸⁰ Ibid.

¹⁸¹ Exhibit RC532, Report of Pain Specialist 2 (12 September 2019), [4].

¹⁸² Ibid [5]-[6].

¹⁸³ Ibid [6].

¹⁸⁴ Ibid [9]-[10].

¹⁸⁵ Supplementary Report of Pain Specialist 2 (6 December 2019).

¹⁸⁶ Exhibit RC534, Report of Psychologist 2 (14 September 2019), [2]-[3].

Psychologist 2 described her current state as a *"major concern"*¹⁸⁷ with generally worsening symptoms including *"being unable to eat"*, *"having little interest in anything and not being able to muster up energy to engage with anyone [REDACTED] medical professionals"* and *"complex pain requiring pharmacological management"*.¹⁸⁸

287. Psychologist 1 had contact with Ms Gobbo throughout 2019. She provided a report on 29 September 2019 within which she stated that Ms Gobbo's mental state and pain syndrome "appear to be at the same or worse state then when I first met her in 2010" and that she continues to have issues with energy, motivation, concentration and memory,¹⁸⁹ with symptoms including:¹⁹⁰

- (a) reduced cognitive function, low mood, helplessness and concentration and memory problems; and
- (b) overwhelming facial pain and symptoms of trigeminal neuralgia and teeth clenching.

288. During her evidence, for all but one of the days, Ms Gobbo had a psychologist present to monitor her health and counsel Ms Gobbo. It is also noted that despite medical evidence opining that a maximum period of time be specified for Ms Gobbo to be questioned each day; in the event this was breached significantly.

289. The Commissioner should make appropriate allowances for Ms Gobbo's limited cognitive functioning (particularly in relation to her memory) when considering making adverse findings based on Ms Gobbo's evidence, both before the Commission and before Ginnane J. Unchallenged medical evidence over 15 years consistently demonstrates the pain issues Ms Gobbo suffers from and the consequent impact it has upon her ability to recall matters and accurately give evidence.

290. A summary of Ms Gobbo's relevant medical history is provided in an affidavit of Psychologist 1, which is found at Annexure B to these submissions.

Ms Gobbo's health – knowledge of Victoria Police

291. It is submitted that Victoria Police knew of Ms Gobbo's medical health issues throughout the period of time that she was a registered police informer, and in fact before.

¹⁸⁷ Ibid [10].

¹⁸⁸ Ibid [3]-[4].

¹⁸⁹ Exhibit RC555, Addendum Report of Psychologist 1 (29 September 2019).

¹⁹⁰ Ibid.

292. The day after her stroke, Mr Bateson spoke to Ms Gobbo about Mr McGrath. He was made aware she was in hospital after a stroke.¹⁹¹ As set out at [267] to [268] above, Ms Gobbo's handlers were aware of the impact of the stroke upon Ms Gobbo and her cognitive functioning.
293. The Commission heard evidence that whilst she was in hospital, members of Victoria Police were in Lorne, including Sandy White and Jim O'Brien. Sandy White's notes include considering approaching Ms Gobbo whilst in hospital as she may be vulnerable and susceptible to such an approach.
294. Mr Rowe gave evidence that the stress in Ms Gobbo's face was obvious on 31 August 2005 and was not faked. He and Mr Mansell were present and reported back to Jim O'Brien. All were aware she was tearful and stressed.
295. Simon Overland's evidence before Kellam J indicated he was aware she had psychological issues. He accepted that before the Commission.
296. In the ICRs and recordings with her handlers, Ms Gobbo discussed on several occasions the impact her stroke had upon her.
297. Additionally, the ICRs evidence Ms Gobbo's personality, physical and mental health issues.
- (a) Ms Gobbo appeared lonely and enjoyed SDU interaction;¹⁹²
 - (b) Ms Gobbo was emotional and appreciative of support;¹⁹³
 - (c) Ms Gobbo was depressed and visited her father's grave. She was appreciative of the SDU's support over Christmas;¹⁹⁴
 - (d) Ms Gobbo was worried about Mr White not being impressed with her efforts;¹⁹⁵
 - (e) on 10 June 2006, Ms Gobbo raised her need for psychiatric help;¹⁹⁶
 - (f) Ms Gobbo reported that she had been suffering from stress for 13 months;¹⁹⁷
 - (g) Ms Gobbo had been in tears for an hour and a half on 1 November 2006 after meeting Horty Mokbel;¹⁹⁸

¹⁹¹ Exhibit RC282, Chronology of Mr Stuart Bateson, (27 July 2004), page 10.

¹⁹² Exhibit RC281, ICR/3838, (ICR/9).

¹⁹³ Exhibit RC281, ICR/3838, (ICR/12).

¹⁹⁴ Exhibit RC281, ICR/3838, (ICR/14).

¹⁹⁵ Exhibit RC281, ICR/3838, (ICR/20).

¹⁹⁶ Exhibit RC281, ICR/3838, (ICR/34).

¹⁹⁷ Exhibit RC281, ICR/3838, (ICR/51), page 520.

¹⁹⁸ Exhibit RC281, ICR/3838, (ICR/52), page 35.

- (h) Ms Gobbo was having trouble sleeping;¹⁹⁹
- (i) Ms Gobbo described her stress as going through hell by the end of November 2006;²⁰⁰
- (j) Ms Gobbo was provided a plate to stop her grinding her teeth at night;²⁰¹
- (k) Ms Gobbo's health issues were recorded as including having ulcers, unable to sleep and grinding her teeth due to stress;²⁰²
- (l) Ms Gobbo described herself on 22 January 2007 as clinically depressed and unemployed. She was referred to a police psychologist;²⁰³
- (m) Ms Gobbo was reported as stressed at being uncovered as an informer and being shot, she accepts there is nothing she can do to stop this things. She was advised to unload this issues on the psychologist;²⁰⁴
- (n) on 2 May 2007, Ms Gobbo was having another mini breakdown;²⁰⁵
- (o) on 4 June 2007, Ms Gobbo was not eating and been vomiting. She attributed this to stress.²⁰⁶ An SDU entry on 15 June 2009 indicated a concern about Ms Gobbo's health and her ability to cope with the stress. She stated she was stressed about having to lie all day;²⁰⁷
- (p) on 27 June 2007, Ms Gobbo was described as hardly able to speak. She was in agony with her jaw. She had taken seven Panadeine Forte and the pain had not gone way. She was considering going to hospital for a morphine injection;²⁰⁸
- (q) in late June 2007, Ms Gobbo discussed not having a personal relationship and speculated about her ideal man;²⁰⁹
- (r) on 16 August 2007, Ms Gobbo was again noted as vomiting all night;²¹⁰
- (s) on 17 January 2008, Ms Gobbo mentioned thoughts of suicide;²¹¹

¹⁹⁹ Exhibit RC281, ICR/3838, (ICR/52), page 544.

²⁰⁰ Exhibit RC281, ICR/3838, (ICR/54), page 564.

²⁰¹ Exhibit RC281, ICR/3838, (ICR/57), page 581.

²⁰² Exhibit RC281, ICR/3838, (ICR/58).

²⁰³ Exhibit RC281, ICR/3838, (ICR/63), page 610.

²⁰⁴ Exhibit RC281, ICR/3838, (ICR/63).

²⁰⁵ Exhibit RC281, ICR/3838, (ICR/77), page 820.

²⁰⁶ Exhibit RC281, ICR/3838, (ICR/82), page 875.

²⁰⁷ Exhibit RC281, ICR/3838, (ICR/83), page 902.

²⁰⁸ Exhibit RC281, ICR/3838, (ICR/85), page 943.

²⁰⁹ Exhibit RC281, ICR/3838, (ICR/86), page 948.

²¹⁰ Exhibit RC281, ICR/3838, (ICR/95), page 1100.

²¹¹ Exhibit RC281, ICR/3838, (ICR/119), page 1578.

- (t) on 22 March 2009, Ms Gobbo made her handlers aware she was seeing a full time specialist (relating to her pain);²¹²
 - (u) on 4 April 2008, Ms Gobbo discussed removing herself from the situation, commenting that only her mother kept her in Melbourne;²¹³
 - (v) Ms Gobbo describes the impact of her father's death, including the date he had a stroke and then passed away;²¹⁴
 - (w) on 5 June 2008, Ms Gobbo informed her handlers that she sits at home worrying about things and predicaments in her life;²¹⁵
 - (x) Ms Gobbo admitted in mid-2008 that she had been suicidal twice before.²¹⁶ She repeated those suicidal thoughts later and detailed taking too many prescription drugs;²¹⁷ and
 - (y) on 20 September 2008, Ms Gobbo's health had appeared to deteriorate further.²¹⁸
298. The Commission also heard about the death threats Ms Gobbo received over a protracted period of time, from the likes of Carl Williams, Andrew Veniamin and others linked to Tony Mokbel (Operation Gosford for example). This included the firebombing of her car.
299. From before Ms Gobbo's recruitment through to her deregistration (which only occurred as a result of Mr Overland directing that Ms Gobbo be a witness against Paul Dale), Victoria Police were well aware of all of the issues relating to Ms Gobbo's health, both physical and mental. Notwithstanding this, it is submitted Victoria Police took the view that Ms Gobbo's utility as to the "*glittering prize*" was more important than her health. That decision, to recruit her, to continue to use her to the benefit of Victoria Police and also to then use her as a witness notwithstanding the health of Ms Gobbo, was made by decision makers within Victoria Police. The evidence before the Commission suggested it was Assistant Commissioners and the like. At stages, Mr Overland was clearly involved in the decision-making process in relation to the use of Ms Gobbo (he admitted as much as far as Paul Dale was concerned).

²¹² Exhibit RC281, ICR/2958, (ICR/10), page 105.

²¹³ Exhibit RC281, ICR/2958, (ICR/12), page 133.

²¹⁴ Exhibit RC281, ICR/2958, (ICR/16), page 225.

²¹⁵ Exhibit RC281, ICR/2958, (ICR/22), page 391.

²¹⁶ Exhibit RC281, ICR/2958, (ICR/30), page 537.

²¹⁷ Exhibit RC281, ICR/2958, (ICR/37), page 585.

²¹⁸ Exhibit RC281, ICR/2958, (ICR/41), page 648.

Recruitment

300. It is submitted that the Commissioner should find that Ms Gobbo was actively recruited by Victoria Police.

301. Although some witnesses, such as Jim O'Brien,²¹⁹ sought to suggest Ms Gobbo came to Victoria Police, the evidence clearly demonstrates Victoria Police targeted and recruited Ms Gobbo. The following timeline of events demonstrates this:

- (a) On 21 July 2003, Ms Gobbo successfully appeared at a bail application for Lewis Moran. She had been warned not to do so by Tony Mokbel and Carl Williams. Ms Gobbo told her handlers on 12 July 2006 about this incident and that she had been advised by Senior Counsel to tell Tony Mokbel he would put her on a retainer so she did not act for anyone else.²²⁰ Tony Mokbel laughed at the suggestion. Subsequent to that, Andrew Veniamin came to her house and made threats. Those threats were heard by Victoria Police on a listening device. Veniamin, a hitman, made clear to Ms Gobbo that she had been told not represent Moran and threatened her.²²¹
- (b) On 22 September 2003, Ms Gobbo appeared for a bail variation for Lewis Moran. After the hearing, Detective Senior Phillip Swindells of Victoria Police approached Ms Gobbo and made her aware that he was aware of the threats she had been subjected to. She was asked if she wished to make a statement. She was told that if she wanted to speak to the police, she knew how to contact them.²²²
- (c) On 18 June 2004, Mr Bateson told Ms Gobbo that the "door was always open".²²³
- (d) On 24 July 2004, Ms Gobbo suffered a stroke, causing transient left sided paralysis and temporary loss of speech. An issue with her heart was identified. Ms Gobbo underwent heart surgery towards the end of 2004.²²⁴
- (e) Around 10 August 2004, at a police conference in Lorne, Mr White and others, including Jim O'Brien of Purana, became aware of Ms Gobbo's stroke and considered she might be vulnerable to an approach to provide assistance to Victoria Police. That did not eventuate.²²⁵

²¹⁹ Transcript of Mr Jim O'Brien (9 September 2019), page 5853.

²²⁰ Transcript of Conversation between Ms Gobbo and Her Handlers (12 July 2006), page 282.

²²¹ Confidential Affidavit of EF (21 November 2016).

²²² Exhibit RC251, Statement of Mr Philip Swindells, (6 May 2019), [29]-[34].

²²³ Exhibit RC282, Chronology of Mr Stuart Bateson (18 June 2004), page 7.

²²⁴ Confidential Affidavit of EF (21 November 2016), [12]; Medical records of Ms Nicola Gobbo, RCMP.0053.0001.0005 at 0183.

²²⁵ Transcript of Mr Sandy White (1 August 2019), pages 3717-18.

- (f) On 1 November 2004, Operation Posse commenced.²²⁶
- (g) From March 2005 – September 2005, Ms Gobbo was providing information to Mr Bateson relating to Solicitor 2.²²⁷
- (h) 16 May 2005, Operational Document re: Posse.²²⁸ It is apparent from later Operation Posse documents,²²⁹ and Mr Overland's comments before Kellam J,²³⁰ that the tactic to target individuals and make then roll on Tony Mokbel was the aim. Those individuals included Mr Cooper and Mr Bickley.
- (i) On 15 August 2005, Mr Bickley was arrested. Ms Gobbo spoke to him as his legal advisor on the telephone.
- (j) On 31 August 2005, Ms Gobbo was briefed to represent Mr Bickley at a bail application. She rang Mr Rowe, the informant, and indicated that having listened to Mr Bickley's record of interview, it was apparent police suspected that Tony Mokbel was involved and it caused her some embarrassment/conflict, such that representing Mr Bickley would not be in his best interests, rather that of Tony Mokbel (including not being able to cross-examine Police in a way that would assist Mr Bickley but would harm Tony Mokbel). Mr Rowe stated that he and Mr Mansell would be at Court early should Ms Gobbo want to discuss further.²³¹
- (k) Messrs Mansell and Rowe immediately spoke to Mr O'Brien about this disclosure, which confirmed their belief that Tony Mokbel was controlling others in his syndicate, including providing their legal representation, who were expected to look after Tony Mokbel's interests over the syndicate member represented. Mr O'Brien told his investigators to covertly record interaction with Ms Gobbo with a view to her repeating this.²³²
- (l) At court, Ms Gobbo repeated these matters to Mr Messrs, Mr Rowe and Mr Mansell. Ms Gobbo expressed the pressure she was under from Tony Mokbel to make sure she represented individuals in his interests, and not theirs. Mr Rowe described the stress and angst apparent in Ms Gobbo's face at the time. Towards the end of the conversation, Mr Mansell said to Ms Gobbo, "*you should get on board*". Ms Gobbo's response was that if

²²⁶ Transcript of Mr Simon Overland (16 December 2019), page 11401.

²²⁷ Exhibit RC282, Chronology of Mr Stuart Bateson, (23 March 2005 – 1 September 2005), pages 18-23.

²²⁸ Transcript of Mr Simon Overland (16 December 2019), page 11402; See also, Exhibit RC314, Operation Posse Operational Assessment into the Mokbel Criminal Cartel (April 2005).

²²⁹ Exhibit RC923, Operation Posse Powerpoint Presentation, (presented to Premier Bracks 29 August 2006).

²³⁰ Exhibit RC1.13, Transcript of IBAC examination of Mr Simon Overland before Kellam J (22 November 2014), page 13.

²³¹ Exhibit RC266, Statement of Mr Paul Rowe (25 June 2019), [12] to [15].

²³² Ibid [17].

anyone found out, she would end up dead. It was decided that they would speak later that afternoon.²³³

- (m) Mr Messrs, Mr Rowe and Mr Mansell returned to the office where they spoke to Mr O'Brien. He told his investigators to record the conversation with Ms Gobbo. Mr Rowe recalls that there was a decision made to have an open conversation with Ms Gobbo to understand what information she might be able to provide and if she was interested in cooperating.²³⁴
- (n) At 12.27pm, Mr Messrs, Mr Mansell and Mr Rowe collected Ms Gobbo and drove to a car park in Footscray Market. Ms Gobbo gave some information to Mr Messrs, Mr Rowe and Mr Mansell, confirming Mr Tony Mokbel's control of lawyers. She also expressed this was causing her a lot of pressure and stress, which included affecting her health. A discussion ensued about the process that would occur if she formally began assisting the police. Ms Gobbo commented that "*she would be killed*".²³⁵
- (o) On 8 September 2005, Mr Messrs, Mr Mansell and Mr Rowe met with members of the SDU (including Mr White), D/A/S Hill and Detective Inspector White. It was resolved that the SDU would meet with Ms Gobbo and assess her viability as a human source.²³⁶
- (p) On 12 September 2005, Mr O'Brien's diary notes a meeting with Simon Overland discussing Operation Posse, Tony Mokbel and Ms Gobbo. Mr Overland denies that he was made aware of events of the preceding days involving Ms Gobbo.²³⁷
- (q) On 16 September 2005, Ms Gobbo met with Mr White, Peter Smith and Mr Messrs, Mr Mansell and Mr Rowe. At that meeting, Ms Gobbo was misled about the meeting being recorded. Also, Ms Gobbo was told that if she continued her path, she would end up dead or in jail. Ms Gobbo was asked to tell them "*all about Mr Mokbel*". Ms Gobbo was duly registered as a human source.²³⁸
- (r) On 21 October 2005, Mr Overland approved an Operation Posse plan (targeting Tony Mokbel using Ms Gobbo), prior to his departure on leave.²³⁹

²³³ Ibid [18]-[21].

²³⁴ Ibid [24].

²³⁵ Ibid [27]-[32].

²³⁶ Ibid [41].

²³⁷ Exhibit RC933, Diary entry of Mr Jim O'Brien, 12 September 2005. Transcript of Mr Simon Overland (21 January 2020), page 11993-5.

²³⁸ Exhibit RC266, Statement of Mr Paul Rowe (25 June 2019), [43]; Transcript of part of audio recording between Ms Gobbo and SDU (16 September 2005).

²³⁹ Transcript of Mr Simon Overland (21 January 2020), pages 12028-9.

302. The above chronology demonstrates that on three separate occasions, Ms Gobbo was told by members of Victoria Police to "*get on board*". On each occasion, it was when Ms Gobbo was vulnerable – Mr Bateson did so when Ms Gobbo was concerned about her own welfare if her role in assisting Mr McGrath became known. When Mr Swindells made the comment, it was when Ms Gobbo had been threatened by a known hitman of Carl Williams for having represented the "*other side*". When Mr Mansell made the approach, it was after Ms Gobbo had been tearful and stressed at having to represent Mr Bickley (contrary to his interests but in favour of Tony Mokbel's interests). It is also of note that Mr White's diary relating to the Lorne meetings involved a discussion with Jim O'Brien suggesting that Ms Gobbo may be vulnerable to an approach by police. As it transpired, she was approached in this manner only three months later.
303. It is also evident that Victoria Police in 2004 and 2005 were actively targeting the Williams/Mokbel syndicate; Operation Posse was in its development stage. The police were acutely aware that Ms Gobbo was not loyal to the Williams/Mokbel syndicate as:
- (a) she had represented Lewis Moran contrary to the Williams/Mokbel syndicate directions;
 - (b) she had represented McGrath and he had turned against Williams/Mokbel;
 - (c) she had given discrete information to Mr Bateson about Solicitor 2, a solicitor for the Williams/Mokbel syndicate; and
 - (d) she had expressed her concern at Tony Mokbel compelling her to represent Bickley. It is not surprising that the first topic of substance Ms Gobbo is asked to discuss with her handlers was Tony Mokbel.
304. It is submitted that information was known to the Senior Purana officers and Mr Overland. The threat posed by Mr Veniamin was known to Mr Swindells and others at Purana. Mr Bateson was the informant for Mr McGrath and Mr Overland was involved in that process. Mr Bateson reported to Gavin Ryan, his superior, the information Ms Gobbo provided about Solicitor 2. Mr Rowe's contemporaneous notes indicate he and Mr Mansell kept Mr O'Brien apprised and were directed to record meetings by him. Ms Gobbo was then referred to the SDU. Before that happened, it is submitted that Mr O'Brien's notes of 12 September 2005 accurately record what happened. Mr Overland was consulted about Ms Gobbo's potential use against Tony Mokbel. The inference is that Mr Overland agreed and authorised this, as Ms Gobbo met with the SDU on 16 September 2005. Not long after, on 21 October 2005, Mr Overland authorised Operation Posse, which involved using Ms Gobbo against Tony Mokbel, Mr Cooper, Mr Bickley and others.

305. Accordingly, the Commissioner should conclude that Ms Gobbo was recruited by Victoria Police, with the authorisation of those at the highest levels.

Information provided prior to registration

306. It is correct to say that Ms Gobbo provided information to Mr De Santo, Mr Strawhorn (and Mr Pope) as well as Mr Bateson. Counsel Assisting categorise this as Ms Gobbo providing information about a number of her clients. The evidence before the Commission does support that conclusion.
307. Ms Gobbo's interactions with Mr Strawhorn were for the benefit of her clients. At the material times, she was representing [REDACTED] [REDACTED] Mr Strawhorn was [REDACTED] [REDACTED] He was also responsible for providing evidence at [REDACTED] [REDACTED] [REDACTED] On that basis, Ms Gobbo engaged with Mr Strawhorn. The Commissioner should not lose sight of this. Ms Gobbo now accepts that, with the benefit of hindsight, she provided information to Mr Strawhorn that she should not have.
308. As far as the information Ms Gobbo provided during her earlier registrations, they were also limited. Ms Gobbo had no idea she had previously been registered. The evidence before the Commission was that often, those registered were not made aware of such. Nevertheless, her 1995 registration and information provided was in relation to Mr Wilson and not beyond. She was not his lawyer and so no duties arose.
309. In 1999, she provided limited information to Mr Pope. Again, she was not made aware of the registration. The information she provided to Mr Pope was limited to the discrete topic of the purported money laundering of her employer, Solicitor 1 and a client he was laundering for. It was not in relation to a large number of clients. As an aside, under money laundering legislation that now exists, Ms Gobbo would be fulfilling an obligation in reporting her suspicions, as she then did.
310. When Ms Gobbo provided information to Mr De Santo, this was generally with a view to assisting her clients, primarily Tony Mokbel. Ms Gobbo used the police corruption that Mr De Santo was investigating to successfully apply for bail for Tony Mokbel. Further, later in time, when Ms McGuire was charged with offences, Ms Gobbo acted as a conduit between Tony Mokbel and Mr De Santo. It is clear that Ms Gobbo's relationship with Mr De Santo began in the best interests of her clients. As with Mr Strawhorn, Ms Gobbo accepts with the benefit of hindsight that over time she provided information to Mr De Santo she should not have.

311. In relation to the information provided to Mr Bateson prior to her registration, Ms Gobbo provided information solely about Solicitor 2. Solicitor 2 was not her client and Ms Gobbo believed Solicitor 2 was involved in money laundering. It is correct to say Ms Gobbo also was in contact with Mr Bateson about Mr McGrath and Mr Thomas. However, this was as their legal representative and in doing so, was in their interests based upon their instructions.
312. At [128] to [129] of volume 2 of their submissions, Counsel Assisting seek a finding that between 1993-1999, Ms Gobbo demonstrated a willingness and strong desire to inform to law enforcement relating to her partner, her employer and her clients. Counsel Assisting go on to submit that, at that stage, Ms Gobbo showed a willingness to become possessed of confidential information to provide to law enforcement authorities.
313. It is submitted this is a stretch of the evidence as it existed between 1993 and 1999. Counsel Assisting submission show as much, as they are having to rely on a piece of transcript of Ms Gobbo's evidence when she is in fact being asked questions about her conduct relating to Mr Messrs, Mr McGrath and Mr Thomas in 2004 to 2006.²⁴⁰ As set out above, Ms Gobbo was not in fact provided material (that has been identified) to the detriment of her clients (generally). Her contact with Mr Strawhorn was primarily in relation to Person 3 who was assisting police; her contact with Mr Pope was in relation to her employer money laundering – in the present day, this would be expected of her. In relation to her partner, she owed him no legal duty. So to use her conduct in 1993 to 1999 is stretching the boundaries significantly. It is accepted, as was accepted by Ms Gobbo in her evidence, by the time of her registration, she did want to be the holder of information. The evidence of ten years prior does not support any such finding that this was the case then.
314. The only individual whose evidence raises the potential that Ms Gobbo may have provided information that was directly contrary to their interests (where proceedings were on foot) could be Mr Arnautovic, as Mr Strawhorn provided an IR suggesting that Mr Arnautovic's defence would be a form of entrapment. Superficially, it appears as though that could only have come from Mr Arnautovic's legal team (Ms Gobbo). However, just considering the basic facts of Mr Arnautovic's case it is clear that he only had three plausible explanations: entrapment, denial of knowledge the items were drugs or duress. Mr Arnautovic and another had supplied nine ounces of heroin to a covert operative. Between them they were paid \$67,500 and had a gun on them. More drugs were

²⁴⁰ Transcript of Ms Nicola Gobbo (6 February 2020), page 13288.

found nearby at their location. They were arrested at the exchange with the covert operative.²⁴¹ In reality, the evidence was such Mr Arnautovic was knowingly supplying heroin. The only realistic type of explanation by him was entrapment. Mr Strawhorn was an experienced police officer. It would have been obvious to anyone if Mr Arnautovic was contesting the charges, this was his only plausible defence. So it follows, the evidence does not support the conclusion to the requisite standard that Ms Gobbo provided information about Arnautovic's defence.

Motivation

315. The evidence demonstrates that when Ms Gobbo first became registered, there was an understanding from Ms Gobbo (and the SDU handlers) that neither would seek matters the subject of legal professional privilege. It was not the intention of either party to breach legal professional privilege.
316. However, as accepted by Ms Gobbo in recordings and her evidence, over time this stance eroded until Ms Gobbo provided information that was privileged and the SDU received it. It was often disseminated with the investigators using it.
317. This dovetailed with Ms Gobbo's acceptance that her personality traits (as set out above) were that she *"wanted to belong, feel valued and needed"*.²⁴²
318. The evidence as to Ms Gobbo's motivation was to stop Tony Mokbel, Mr Williams and others controlling those who were part of their syndicate who had been apprehended (and wanting to prove the assumption wrong that she was in fact party to this).²⁴³ Victoria Police suspected (correctly) that Tony Mokbel, Mr Williams et al would ensure that only a small cadre of lawyers would represent anyone from the syndicate who was arrested. That lawyer's primary obligation was to ensure the person arrested did not implicate/adversely affect the interests of Tony Mokbel, Mr Williams et al. The arrested person's interests were of a secondary or collateral importance.

²⁴¹ Exhibit RC66, Operation Carron Final Report.

²⁴² Transcript of Ms Nicola Gobbo (6 February 2020), pages 13288, 13296.

²⁴³ Exhibit RC282, Chronology of Mr Stuart Bateson (22 March 2004), page 5; Transcript of Ms Nicola Gobbo, (6 February 2020), pages 13781, 13753, 13200.

An example - Mr Bickley

319. An example is Mr Bickley. Mr Bickley maintains that he was given the number of Ms Gobbo by the police. Ms Gobbo and Victoria Police refute this. On the evidence, the Commissioner should find that Mr Bickley was provided the contact details for Ms Gobbo by Tony Mokbel. That is because:
- (a) Mr Bickley was closely associated criminally with Tony Mokbel and had information capable of implicating Tony Mokbel (as in fact it ultimately did).
 - (b) In his police interview, Mr Bickley lied about knowing Tony Mokbel. In his evidence before the Commission, he eventually accepted that he had lied about knowing Tony Mokbel.
 - (c) Ms Gobbo's reactions to having to represent Mr Bickley that led to her registration demonstrate she was distraught at having to represent Mr Bickley for the benefit of Tony Mokbel and not Mr Bickley. She would not have had such a reaction had she been sent to represent Mr Bickley by Victoria Police.
 - (d) When in custody, Mr Bickley was attended by Solicitor 2, who held up a note saying she had also been sent by Tony Mokbel and to keep his mouth shut. It demonstrates Tony Mokbel was trying to get to Mr Bickley to ensure he did not implicate Tony Mokbel.
 - (e) Immediately upon release from prison, Mr Bickley went straight to Tony Mokbel. Tony Mokbel told him not to bother going through a trial, to plead guilty and Tony Mokbel would look after his family.²⁴⁴
 - (f) Tony Mokbel paid for Mr Bickley's legal expenses up until Tony Mokbel fled Australia.
 - (g) Mr Rowe's evidence is that he did not know Ms Gobbo prior to Mr Bickley's first arrest. There is no evidence to the contrary.
 - (h) Ms Burrows, Mr Rowe and Ms Gobbo all provide consistent evidence that it was Mr Bickley who asked for Ms Gobbo and that Ms Gobbo had not spoken to police in advance (and engaged in a conspiracy as Mr Bickley asserts).
 - (i) On 9 June 2006, Ms Gobbo told her handlers that Mr Bickley had told Dale Flynn on arrest that he wanted to speak to Ms Gobbo. Mr Flynn asked how he knew Ms Gobbo and Mr Bickley said, *"I don't know, I have been told to speak to her"*. Mr Rowe then called Ms Gobbo's old number. When Ms Gobbo later told Mr Bickley that Mr Rowe had called the

²⁴⁴ Transcript of Mr Bickley (19 November 2019), page 9307, 9389-90.

wrong number, Mr Bickley replied, *"What a fuckin' load of crap. They did that on purpose because I had your number in my phone."*²⁴⁵

- (j) Mr Bickley was interviewed on 15 and 16 August 2005.²⁴⁶ The questions and answers put to Mr Bickley lead to the inference (with the rest of the material here) that he had in fact asked for Ms Gobbo's telephone number and been provided it. At Q13 of his interview on the 16 August 2005, in response to being asked if he wants a lawyer, he states, *"I don't have a number on me"*; he did not state, he did not know a lawyer, rather he did not have the number (for the lawyer). It was Mr Bickley and not the police who suggested the name of Ms Gobbo²⁴⁷. This would be consistent with Tony Mokbel's funding of the matter and Mr Bickley immediately seeing Tony Mokbel on his release, as well as Solicitor 2 attending upon him, as she did, telling him she had been sent by Tony Mokbel.
- (k) Mr Bickley provided no comment in relation to answers that could implicate Tony Mokbel or denied knowing him. He had never previously been interviewed and had received no legal advice when he selectively provided no comment as he did.
- (l) Mr Bickley is a dishonest individual:
 - (i) He lied in his statement,²⁴⁸ and then repeatedly on oath (on more than a dozen occasions)²⁴⁹ about not having met Cooper before, including stating *"I've never met the guy. I can tell you now. I'm absolutely – I've been resolute in not only my statement but all the way through"*²⁵⁰ and *"I urge Mr Chettle to produce that [photo from Cooper's party] because I never socialised with anyone to do with Mokbel"*.²⁵¹ The recording of his meeting with Mr Cooper demonstrates that he in fact attended Mr Cooper's party. When confronted with this, he tried to suggest it was a drinks event on a weekend and that is why he could not remember. He also maintained that he *"thought he had never met Harty before"*.²⁵² The recording demonstrates

²⁴⁵ Exhibit RC550, Transcript of conversation between Ms Gobbo, Officer White and Officer Green (9 June 2006), page 697-698.

²⁴⁶ Exhibit RC762, Transcripts of Police Interview with Mr Bickley (15-16 August 2005).

²⁴⁷ Transcript of Mr Bickley, (18 November 2019), page 9364; Exhibit RC762, Transcripts of Police Interview with Mr Bickley (15-16 August 2005), ROI 1 -Q16, Q37, Q84, Q86 and then Q1-Q22.

²⁴⁸ Exhibit RC741, Statement of Mr Bickley, (5 October 2019), as amended in Further Statement of Mr Bickley (17 November 2019), [4].

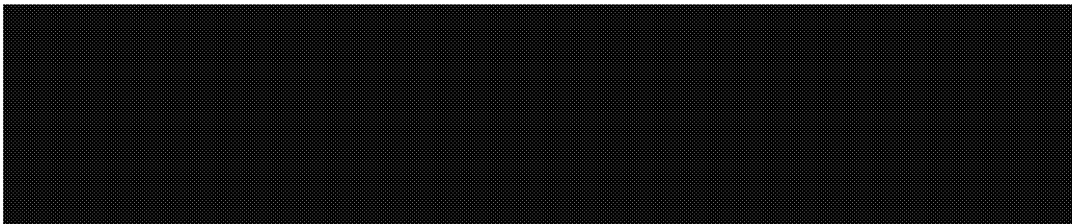
²⁴⁹ Transcript of Mr Bickley (18 November 2019), pages 9312, 9314, 9316, 9379, 9392, 9379, 9399, 9400, 9411, 9404, 9408.

²⁵⁰ Ibid, page 9401.

²⁵¹ Ibid, page 9404.

²⁵² Ibid, page 9418.

him saying to Mr Cooper, "*I don't know Horthy from a bar of soap, I met him at your party.*"²⁵³ The only purpose was to paint himself in a favourable, non-criminal light.

- (ii) Even when Counsel Assisting suggested he was "*mistaken*" about vehemently denying multiple times during his evidence that he had met Mr Cooper and attempted to restore his credibility as a witness, Mr Bickley replied, "*I've never met the guy...*" and that he was absolutely certain about this.²⁵⁴
- (iii) Mr Cooper in his evidence confirmed he had met Mr Bickley prior to their meeting on 24 April 2006.²⁵⁵
- (iv) In answering Counsel Assisting's questions, Mr Bickley painted a dishonest picture as to his character to the extent that the Commissioner permitted Counsel for Ms Gobbo and Victoria Police to adduce evidence showing his criminal character.²⁵⁶
- (v) On reading a summary of his transcript with Mr Cooper, he sought to suggest his discussion about serious criminal drug dealing and manufacture was "*a bit of bravado*".²⁵⁷
- (vi) He lied in his interview about knowing Tony Mokbel.²⁵⁸ At first during his evidence before the Commission he denied this. He even suggested he was as "*transparent as he could be*" during those interviews.²⁵⁹ However, in the face of the document, he eventually had to accept this was a lie.²⁶⁰
- (vii) 
- (viii) He accepted that at the very least, he considered paying a bribe to a police officer to make his charges disappear.²⁶²

²⁵³ Exhibit RC761, Transcript of conversation between Mr Cooper and Mr Bickley (24 April 2006), page 20.

²⁵⁴ Transcript of Mr Bickley, (18 November 2019), page 9408.

²⁵⁵ Transcript of Mr Cooper, 24 January 2020, 12419

²⁵⁶ See eg, Transcript of Mr Bickley (18 November 2019), page 9384.

²⁵⁷ Ibid, page 9318.

²⁵⁸ Exhibit RC762, Transcripts of Police Interview with Mr Bickley (16 August 2005), from Q138.

²⁵⁹ Transcript of Mr Bickley, (18 November 2019), page 9374.

²⁶⁰ Ibid, page 9384.

²⁶¹ Ibid, page 9449. See also, ICR/3838, (ICR/69), page 673.

²⁶² Ibid, page 9311.

320. For the aforementioned reasons, the Commissioner should find that Victoria Police did not recommend Ms Gobbo to Mr Bickley. More so, Tony Mokbel had advised Mr Bickley to use Ms Gobbo and that is why he contacted her.
321. Having contacted her, the evidence demonstrates that Ms Gobbo felt under great pressure and stress as Mr Bickley's interests were in conflict with Tony Mokbel. Consequently, she did not think she could act in Mr Bickley's best interests and was tearful and stressed as a result. This ultimately led to Ms Gobbo becoming a police informer.
322. The circumstances leading to her becoming a police informer demonstrate that Ms Gobbo was troubled by Tony Mokbel controlling lawyers to his benefit to the detriment of others. On one view, Tony Mokbel was engaging in criminal behaviour with the lawyers to act in his interests and not those of the person they were representing. Ms Gobbo's motivation was to rid herself of Tony Mokbel trying to use her in such a way, and allow her to act in the best interests of an individual. It is clear this was one of Ms Gobbo's primary motivations.
323. Ms Gobbo's actions in helping Mr McGrath, contrary to the instructions of Carl Williams and Tony Mokbel also evidence this same motivation.

Evolving motivations

324. Thereafter, there is evidence that Ms Gobbo's intentions as a police informer evolved over time. Broadly, it is evident that throughout, her motivations were:
- (a) to stop Tony Mokbel controlling lawyers to look after his interests and not that of those that they were representing, such as Mr Cooper, **Mr Ketch**, Mr Bickley and others;
 - (b) to ensure she was not killed – given she had assisted Mr McGrath to implicate Carl Williams and thereafter Mr Cooper implicating the Mokbel Syndicate, Ms Gobbo was acutely aware that she would be killed. That informed her motivation and decision making over the subsequent 3 years. As Ms Gobbo conceded, *“by 2004-2005, she was out of her depth, really stuck and needed to go to police”*.²⁶³ Later, it was *“not about wanting to provide information – it was fear of death I continued and did not walk away. I was immature and irrational”*.²⁶⁴ There are references in the transcripts with her handlers that Ms Gobbo was fearful of being killed if she was to be revealed in any way as a source or being involved in

²⁶³ Transcript of Ms Nicola Gobbo (6 February 2020), page 13200.

²⁶⁴ Ibid pages 13311-2.

individuals rolling. There was unchallenged police evidence that those fears were well founded and that Ms Gobbo was receiving serious death threats (Operation Gosford); and

- (c) related to her "A" type personality, Ms Gobbo wanted to be the best informer that she could be and to that end, wanted to be the source of all information. Consequently, whilst her initial motivation related to Tony Mokbel, it then snowballed and criminals told her all sorts of information.²⁶⁵ Mr Thomas in his evidence gave an insight that when Ms Gobbo described herself as a piece of furniture in the room who criminals spoke openly in front of, she was correct.

²⁶⁵ Ibid, page 13691. See also Transcript of Conversation between Ms Gobbo and O'Connell (7 January 2009), VPL.0100.0237.0438; Exhibit RC1348, Transcript of Conversation between Ms Gobbo & O'Connell (January 2009), VPL.0100.0001.3179.

5. Allegations made by Mr Thomas

325. Mr Thomas makes a number of allegations against Ms Gobbo in two statements he made to the Commission. They are not addressed in any real detail by Counsel Assisting in their submissions. Notwithstanding this, they are before the Commission and should be the subject of findings by the Commissioner, namely that the allegations are without merit.
326. To be clear, the Commissioner should find that the following allegations made by Mr Thomas are untrue, and/or that the Commissioner is not satisfied to the requisite standard that they have occurred:
- (a) Ms Gobbo was paid a regular retainer by him in return for information and received this as cash she knew to be proceeds of crime;
 - (b) Ms Gobbo attended the police station after Mr Thomas was arrested for murder August 2004;
 - (c) Ms Gobbo acted for Mr Carl Williams "*off the books*";
 - (d) Ms Gobbo pressured and persuaded Mr Thomas to plead guilty and also give evidence against others;
 - (e) Ms Gobbo told the police about proceeds of crime of Mr Thomas and ^{Mr Thomas' Personal} ~~Personal~~;
 - (f) Ms Gobbo told Mr Thomas to leave her out of his statements;
 - (g) Ms Gobbo used drugs in his presence;
 - (h) Ms Gobbo passed on privileged information to Mr Thomas;
 - (i) Ms Gobbo persuaded Mr Thomas to sign a statement with incorrect information in it; and
 - (j) Ms Gobbo acted as a knowing false alibi for an attempted murder by travelling to Cairns with Mr Thomas at the time of a shooting, so as to provide him with an alibi.

Mr Thomas as a witness

327. Anything Mr Thomas says should be severely scrutinised before it is accepted to be truthful. This is because Mr Thomas is someone who is prepared to lie to suit his own needs and will also do so on oath:
- (a) when he provided a proposed statement to the police in relation to his involvement of murders that occurred in June 2003, the police and DPP decided that he was not a witness

of truth (given other evidence they had that undermined what he was suggesting) and made it clear they did not intend to use him as a witness;

- (b) he lied on oath over three hearings at the ACC. He lied about everything he gave evidence on from his personal circumstances, through to his associations and criminality;
- (c) he admitted lying on oath at the Orman Committal proceedings;²⁶⁶
- (d) he and Carl Williams set up Ms Gobbo to be an alibi for the murder he eventually pleaded guilty to; and
- (e) he was a drug dealer who was prepared to do what was necessary for money. He accepted that even now, *"he is a crim."*²⁶⁷

328. Mr Thomas also resorted to racist abuse when fairly challenged by Counsel. That is an indication of the type of person the Commission should be slow to accept as a credible witness.

329. Mr Thomas also lied (on oath) in relation to a number of matters before the Commission:

That Ms Gobbo persuaded him to sign a statement with incorrect information in it

330. In his first statement to the Commission, Mr Thomas stated that Ms Gobbo *"persuaded me to sign my statement about the Barbaro/Moran murders with incorrect information in it"*.²⁶⁸ In his evidence to the Commission, he repeated this.

331. He went on to explain when questioned by Counsel Assisting (emphasis added):

*Yes?---Right. Why would I kick up a stink - this is where I was going, Mr McGrath says, when McGrath, I had to go and see Carl Williams, I went to see Carl Williams, McGrath was there and Andrews was there. Right. The deal - I said to Carl, "I'll find out where he is, but then this has got to stop". Sweet. So I found out where Jason Moran was, I let him know, right. The week after McGrath and Andrews went there to stake out the Auskick, because it was never supposed to happen there, supposed to see where he goes and then take care of him. Not in front of kids. **In their statement McGrath said that I was there the week before with them, right.***

Yes, I understand?---I argued - do you understand what I'm saying?

²⁶⁶ Transcript of Mr Thomas (10 February 2020), page 13633.43.

²⁶⁷ Ibid, page 13632.14.

²⁶⁸ Exhibit RC1175, First Statement of Mr Thomas (undated), [59].

Yes?---I argued with Nicola, I said, "Why should I sign this statement when that is wrong? I wasn't there the week before planning the job with them. The deal was I give them the details, I give them the gun, that is it. I don't care, you can supply the alibi. It doesn't worry me. I'm not going to go there and help them plan it".

Yes?---Right. She's going, "Well at the end of the day you're pleading guilty, just cop it and sign it". I argued with her over that.

Did you take her advice as to what, as to whether or not -
 --?---We argued, we argued. Whatever location I was, we argued about it. I said but I'll tell you straight, as it is. I said, "McGrath's made up that story", I'm getting angry because this is what happened when I argued with him. McGrath's made up that story, Andrews had to follow McGrath, why didn't I follow Andrews, right. I could have followed him and then there was no headaches, but no, I plead guilty so why would I argue that point. She's saying to me, "Just sign it and it will go away" and I ended up doing it. I signed something I shouldn't have signed.

In fact what you have said on previous occasions is that you'd specifically said to those individuals, "Not in front of kids", is that right?---That's right.

So you say on her advice you signed that statement with that incorrect information in it?---Yes, if she wanted me to follow suit on McGrath and Andrews. Because it makes - "if we go to court" - "if we go to court", she was waffling on, "If we go to court, McGrath's story, Andrews' story, and then you've changed your story, you can see what could happen, put doubt in the jury. Just sign it", and that was it. I signed it and I never agreed to it. I didn't want to sign it, and she knew that I was angry about that.

But it was described to you as part of the deal, was it?---Yeah. ²⁶⁹

332. In cross-examination, Mr Thomas confirmed this and reiterated that, Ms Gobbo had made him sign the Moran/Barbaro murder statement despite it saying that he was **at the Cross Keys** with Messrs McGrath and Andrews the week before the murder (which he vehemently denied).²⁷⁰ It was his

²⁶⁹ Transcript of Mr Thomas (10 February 2020), pages 13623-4.

²⁷⁰ Ibid, pages 13628, 13629.

allegation that Ms Gobbo had persuaded or forced him to do so (as Messrs McGrath and Andrews had in fact put that in their statements).

333. It was made clear to Mr Thomas that he was lying in stating Ms Gobbo had forced him to sign his statement accepting that he was at the Cross Keys the week before the shooting. Mr Thomas denied this. Consequently, his signed Barbaro/Moran statement was then produced.
334. Mr Thomas accepted the statement was his and it bore his signature. It was dated 15 July 2006. Paragraph 30 read:

*I have read the statements of both Andrews and McGrath. I did not go to the Cross Keys Reserve that Saturday. I believe I was at home.*²⁷¹

335. When he realised the statement he signed undermined the account he had given on oath less than 20 minutes earlier and in his statement to the Commission, Mr Thomas could not answer why his statement did not reflect what he said Ms Gobbo had apparently forced him to put in the statement that was untrue. In fact, the statement reflected that what Mr Thomas said was true; that he did not attend the Cross Keys Reserve the week before the murders. This, coupled with his failure to explain why the document showed he had lied, demonstrate Mr Thomas is prepared to lie and did lie on oath before the Commission.
336. His signed statement did not evidence what he had alleged in his account on oath. It follows that Ms Gobbo did not put pressure on him to sign the statement knowing it to be false as the statement did not contain the apparent false information that Mr Thomas had been at the Cross Keys with Messrs Andrews and McGrath.
337. This demonstrates that Mr Thomas did not only lie on oath in evidence before the Commission, but when he signed his statement for the Commission in 2019, he included a matter he knew to be a lie. The independent evidence demonstrates that what Mr Thomas said was included in his statement was in fact, not. The Commission should positively find therefore that Ms Gobbo did not persuade him to include false information in his statement to the police relating to the Moran/Barbaro murder.

²⁷¹ Exhibit RC1642, Statement of Mr Thomas (15 July 2006), page 7, [30].

Ms Gobbo attended the police station when he was arrested without him contacting her

338. At [29] of his statement to the Commission, Mr Thomas stated that “*she attended the police station where I was immediately taken to following my arrest without the need for me to contact her.*”²⁷² It is clear he was doing so in trying to suggest the police had arranged this.
339. As it transpires, evidence from the time demonstrated that Ms Gobbo did not attend to represent Mr Thomas, and in fact Mr Thomas’s solicitor attended the police station. Ms Gobbo was not involved with him on the day of his arrest and certainly was not already on her way down to the police station as he alleged.
340. When he was pushed in cross-examination, Mr Thomas suggested he could not recall and she might have visited once he was in prison. When he was asked as to how it was he was so clear in his witness statement (in particular given he is vastly experienced at making police statements and giving evidence), he said he could not recall.²⁷³
341. It is submitted this was another lie by Mr Thomas. He simply retorted to being unable to recall when confronted with evidence contrary to his statement. The Commission should find that Ms Gobbo did not attend the police station to represent Mr Thomas and Mr Thomas was lying about her attending without him asking for her.

Ms Gobbo provided details about Mr Thomas’ money laundering

342. At [40] of his statement,²⁷⁴ Mr Thomas suggested that Ms Gobbo told the police about his and Mr Thomas’ money laundering. Again, looking at the evidence Mr Thomas gave at the ACC, it is apparent in fact that cheques he used and the evidence he gave gave the police the information relating to his and Mr ; money laundering.
343. Mr Thomas was questioned at the ACC in September and December 2004. This was prior to Ms Gobbo becoming registered as a police informer. More so, the evidence available to the Commission is that when she discussed some matters with Mr Stuart Bateson, it was limited to the actions of Barrister 1 and Solicitor 2. It did not relate to Mr Thomas and more so, not to Mr . This is a simple baseless assertion made by Mr Thomas. Analysis of the transcripts of his questioning demonstrate Mr Horgan SC (who was asking the questions) was armed with banking information, cheques and other matters that evidently derived from independent documentation

²⁷² Exhibit RC1175, First Statement of Mr Thomas (undated), [29].

²⁷³ Transcript of Mr Thomas (10 February 2020), pages 13637-8.

²⁷⁴ Exhibit RC1175, First Statement of Mr Thomas, [40].

(likely from the banks). There is no evidence at all that Ms Gobbo provided any information to the police about Mr and Mr Thomas' money laundering activity. Further, Mr Thomas' answers themselves gave rise to money laundering, as well as purchasing a bright coloured sports car valued well beyond his declared means. Accordingly, the Commissioner should find there is no evidence to suggest Ms Gobbo provided information to the ACC or Victoria Police in 2004 (or before) relating to Mr and Mr Thomas' financial dealings.

Ms Gobbo told him/persuaded him not to mention her in statements he made

344. Mr Thomas alleged in his statement²⁷⁵ and repeated in evidence that Ms Gobbo persuaded him not to mention her in statements that he provided to the police.²⁷⁶
345. There is no evidence to support this beyond the word of a thoroughly dishonest witness.
346. Further, as it so happens, Mr Thomas did mention Ms Gobbo in statements he provided, relating to the Moran/Barbaro murder,²⁷⁷ the Lewis Moran statement,²⁷⁸ the [REDACTED] statement²⁷⁹ and the Mark Moran statement.²⁸⁰ Yet again, independent material contradicts the evidence of Mr Thomas and demonstrates he did include Ms Gobbo in statements. This is consistent with his use of her as an alibi for the Moran/Barbaro murders.
347. It follows, the Commission should find that Mr Thomas is not telling the truth about this matter either.

Ms Gobbo persuaded him/forced him to plead guilty and roll

348. Mr Thomas in both his statement²⁸¹ and evidence²⁸² maintained that Ms Gobbo persuaded and pressured him to plead guilty and become a prosecution witness.
349. Other evidence available to the Commission contradicts this. On consideration of this material, the Commissioner should conclude that the evidence does not demonstrate that Ms Gobbo did in fact pressure or persuade Mr Thomas to plead guilty and roll.
350. To consider this assertion made by Mr Thomas, it is necessary to consider the changing nature of his case before the Courts and the chronology of his interaction with police leading up to his arrest and leading up to his decision to plead guilty and assist the authorities:

²⁷⁵ Exhibit RC1175, First Statement of Mr Thomas (undated); Transcript of Mr Thomas (10 February 2020), page 13618.

²⁷⁶ Transcript of Mr Thomas (10 February 2020), page 13635.

²⁷⁷ Exhibit RC1642, Statement of Mr Thomas (15 July 2006), page 8, [30].

²⁷⁸ Untendered Statement of Mr Thomas, relating to Lewis Moran, [25].

²⁷⁹ Untendered Statement of Mr Thomas, relating to the murder of [REDACTED] [16].

²⁸⁰ Exhibit RC164, Statement of Mr Thomas (19 July 2006), [35].

²⁸¹ Exhibit RC1175, First Statement of Mr Thomas (undated), [37]-[38].

²⁸² Transcript of Mr Thomas (10 February 2020), pages 13635-6.

Date	Event
4/07/03	<ul style="list-style-type: none"> Mr Thomas, Mr Jim Valos and Ms Gobbo see Mr Bateson and in part, discuss a deal in relation to the Moran/Barbaro murders.²⁸³
25/10/03	<ul style="list-style-type: none"> Messrs McGrath and Andrews arrested for murder. By his own admission, Mr Thomas was aware that Mr McGrath was in the process of pleading guilty.²⁸⁴
27/07/04	<ul style="list-style-type: none"> Mr Bateson recorded a conversation he had with Mr Thomas about threats made to Mr Thomas. They arranged to meet the next day.²⁸⁵
28/07/04	<ul style="list-style-type: none"> An information report was recorded that indicated that whilst Ms Gobbo was in hospital, Mr Thomas met with Mr Stuart Bateson and Mr Dean Grande. Mr Bateson's clear memory is that Mr Thomas was asked to become a witness and time was running out for this choice.²⁸⁶
16/08/04	<ul style="list-style-type: none"> Mr Thomas is arrested for the Moran/Barbaro murders. Mr Thomas asked to speak to Mr Valos but he was unavailable. He then asked to speak to Ms Gobbo prior to his interview.²⁸⁷ He was interviewed and primarily answered no comment. Mr Thomas was charged and remanded. Mr Valos represented him at the filing hearing.
31/08/04	<ul style="list-style-type: none"> Mr Bateson spoke to Mr Thomas about giving evidence.²⁸⁸ The police made a successful section 464B application to question Mr Thomas relating to the murder of Mr Paul Kallipoltis. Ms Gobbo and Mr Valos represented Mr Thomas.
5/09/04	<ul style="list-style-type: none"> Conference with Ms Gobbo.
6/09/04	<ul style="list-style-type: none"> Mr Thomas appeared at ACC hearing represented by Ms Gobbo. He was questioned by Mr Horgan SC.

²⁸³ Exhibit RC272, Diary of Mr Stuart Bateson (4 July 2003).

²⁸⁴ Exhibit RC1175, First Statement of Mr Thomas (undated), [28].

²⁸⁵ Exhibit RC252, Chronology of Mr Stuart Bateson (27 July 2004), page 10; Exhibit RC272, See also Diary of Stuart Bateson (not in Ms Gobbo's possession).

²⁸⁶ Exhibit RC252, Chronology of Mr Stuart Bateson (28 July 2004), page 10; Exhibit RC272, Diary of Mr Stuart Bateson.

²⁸⁷ Exhibit RC252, Chronology of Mr Stuart Bateson (16 August 2004), page 11; Exhibit RC272, Diary of Mr Stuart Bateson.

²⁸⁸ Exhibit RC252, Chronology of Mr Stuart Bateson (31 August 2004), page 12; Exhibit RC272, Diary of Mr Stuart Bateson; Exhibit RC269, Statement of Mr Stuart Bateson (7 May 2019), [65].

9/09/04	<ul style="list-style-type: none"> Mr Thomas appeared at ACC hearing represented by Ms Gobbo. He was questioned by Mr Horgan SC.
18/10/04	<ul style="list-style-type: none"> Mr Thomas' rang Nigel L'Estrange stating that Mr Thomas wanted to meet Mr L'Estrange on the quiet.²⁸⁹
20/10/04	<ul style="list-style-type: none"> Mr L'Estrange visited Mr Thomas at his request sent via Mr [REDACTED].²⁹⁰
1/12/04	<ul style="list-style-type: none"> Mr Thomas appeared at ACC hearing represented by Ms Gobbo. He was questioned by Mr Horgan SC.
19/01/05	<ul style="list-style-type: none"> Mr McGrath was sentenced to 18 years imprisonment (10 year non-parole period).
14/02/05	<ul style="list-style-type: none"> Ms Kerley served on Mr Valos the telephone intercept material relating to Mr Thomas.²⁹¹
01/04/05	<ul style="list-style-type: none"> Mr Thomas applied for a separate trial from Mr Carl Williams and Mr Andrews. That application was refused.²⁹²
23/09/05	<ul style="list-style-type: none"> Mr Thomas' bail application was refused.²⁹³
14/11/05	<ul style="list-style-type: none"> Mr Carl Williams was convicted of the murder of Mr Michael Marshall. Mr McGrath gave evidence against Carl Williams.
03/02/06	<ul style="list-style-type: none"> The OPP receive a letter from Mr Andrews indicating he wishes to do a deal.²⁹⁴
08/02/06	<ul style="list-style-type: none"> Mr Andrews made further approach to give evidence for the Crown.²⁹⁵
13/02/06	<ul style="list-style-type: none"> Mr Andrews begins makings statements. He dispenses of the services of Solicitor 2.²⁹⁶
19/02/06	<ul style="list-style-type: none"> Mr Bateson attends Jim Valo's office where he meets Mr Valos and Ms Gobbo. He is told Mr Thomas wishes to see him relating to the murders of Messrs Jason Moran, Mark Moran, [REDACTED] and the shooting of [REDACTED].²⁹⁷
22/02/06	<ul style="list-style-type: none"> Jim O'Brien and Stuart Bateson [REDACTED] Mr Thomas [REDACTED] They record the conversation.²⁹⁸ The transcript of that recording reveals: <ul style="list-style-type: none"> Mr Bateson told Mr Thomas the "<i>Offer was on table since day dot</i>".²⁹⁹

²⁸⁹ Exhibit RC252, Chronology of Mr Stuart Bateson (18 October 2004), page 13.

²⁹⁰ Ibid, page 13.

²⁹¹ Ibid, page 16.

²⁹² Ibid, page 18.

²⁹³ Ibid, page 24.

²⁹⁴ Ibid, page 26.

²⁹⁵ Ibid, page 26; Also see Notes of Michelle Kerley.

²⁹⁶ Exhibit RC252, Chronology of Mr Stuart Bateson (13 February 2006), page 27; Exhibit RC272, Diary of Mr Stuart Bateson.

²⁹⁷ Exhibit RC252, Chronology of Mr Stuart Bateson (19 February 2006), page 27; Exhibit RC272, Diary of Mr Stuart Bateson.

²⁹⁸ Exhibit RC475, Transcript of Meeting between Mr Thomas, Mr Jim O'Brien and Mr Stuart Bateson (22 February 2006).

²⁹⁹ Ibid, page 2.

	<ul style="list-style-type: none"> ○ Mr Thomas stated, <i>"I want to assist"</i>.³⁰⁰ ○ Mr Thomas told the police that he <i>"should have said from the start"</i>.³⁰¹ ○ Mr Thomas said of his situation, <i>"I'm totally fucked"</i>.³⁰² ○ Mr Thomas without pressure said, <i>"Carl's not the shooter"</i>.³⁰³ ○ Mr Thomas denied he agreed for the shooting to occur where it did - <i>"But not there"... "I never agreed to in front of the kids"</i>.³⁰⁴ ○ Mr Thomas confirmed Solicitor 2 was suggesting parties had made statements to each other, including Mr Andrews.³⁰⁵ ○ Mr Thomas recalled a conversation about rolling with Mr Williams - <i>"I said to Carl, if Mr [redacted] makes up a story, I'm rolling by myself"</i>.³⁰⁶ ○ Mr Thomas reiterated his view of his position, <i>"I'm fucked"</i>.³⁰⁷ ○ He then asked for his solicitor, Mr Jim Valos (not Ms Gobbo) to see him.³⁰⁸ ○ Mr Thomas revealed to investigators <i>that "Jim told me to be frank"</i>.³⁰⁹ ○ He then revealed, <i>"Jim's the one who told me to fucken roll..."</i>³¹⁰ ○ And that <i>"I should have rolled..."</i> Mr Bateson replied, <i>"I gave you enough opportunities didn't I?"</i>³¹¹ ● At the conclusion, Mr Thomas asked Mr Bateson to speak to Mr Jim Valos (not Ms Gobbo). ● Later that day, Mr Bateson spoke to Mr Valos relating to Mr Thomas' concerns about an induced statement being taken from him.³¹²
10/3/06	<ul style="list-style-type: none"> ● Mr Andrews' plea hearing after signing his statements implicated Mr Thomas.³¹³
14/03/06	<ul style="list-style-type: none"> ● Mr Andrews is sentenced to a life sentence with a non-parole period of 23 years. ● Mr Andrews' actions (including assistance) were declared in open court.³¹⁴
15/03/06	<ul style="list-style-type: none"> ● Messrs Jim O'Brien and Stuart Bateson [redacted] Mr Thomas again [redacted] and [redacted] recorded the conversation.³¹⁵

³⁰⁰ Ibid, page 3.

³⁰¹ Ibid, page 5.

³⁰² Ibid, page 5.

³⁰³ Ibid, page 8.

³⁰⁴ Ibid, page 12.

³⁰⁵ Ibid, page 19.

³⁰⁶ Ibid, page 26.

³⁰⁷ Ibid, page 31.

³⁰⁸ Ibid, page 34.

³⁰⁹ Ibid, page 35.

³¹⁰ Ibid.

³¹¹ Ibid.

³¹² Exhibit RC252, Chronology of Mr Stuart Bateson (22 February 2006), page 27; Exhibit RC272, Diary of Mr Stuart Bateson.

³¹³ Exhibit RC252, Chronology of Mr Stuart Bateson (10 March 2006), page 28; Exhibit RC272, Diary of Mr Stuart Bateson.

³¹⁴ Exhibit RC252, Chronology of Mr Stuart Bateson (14 March 2006), page 28; Exhibit RC272, Diary of Mr Stuart Bateson.

³¹⁵ Exhibit RC772, Transcript of Meeting between Mr Thomas, Mr Jim O'Brien and Mr Stuart Bateson, (15 March 2006).

	<ul style="list-style-type: none"> Relevant to his decision to ultimately plead guilty, Mr Thomas said: <ul style="list-style-type: none"> <i>"I'm fucked... doing 30-40 years".</i>³¹⁶ In referring to Mr Andrews' plea hearing Mr Thomas referenced the judge commenting about the discount he received for assisting the authorities; <i>"the judge said if he had not assisted."</i>³¹⁷ <i>"from day 1, I should have just opened my life and get it over and done with".</i>³¹⁸ <i>"I'll cooperate."</i>³¹⁹ <i>"9/10, I am going to take it.. not do 30-40 years..."</i>³²⁰ <i>"I should have told you from start."</i> Mr Bateson replied: <i>"I told you that..."</i>³²¹
22/03/06	<ul style="list-style-type: none"> Mrs Thomas called Mr Bateson and told him that Mr Thomas wanted to meet Mr Bateson to tell the truth.
23/03/06	<ul style="list-style-type: none"> Mr Bateson and Mr O'Brien [REDACTED] Mr Thomas [REDACTED] recorded him.³²² Almost immediately, Mr Thomas provided detailed information relating to several murders and the shooting of [REDACTED] – having passed on the message via Mr [REDACTED] that he was going to tell the truth. Mr Thomas said the following of relevance to his decision to plead guilty and assist the Crown: <ul style="list-style-type: none"> <i>"I've got nothing to hide; if I don't tell you the truth, I'm going to get slammed anyway".</i>³²³ confirmed that Mr Andrews and Mr McGrath were paid;³²⁴ <i>"I should have said the truth from the start".</i>³²⁵ and he was asked how he felt having provided information to the police. He replied, <i>"Grouse."</i>³²⁶
24/03/06	<ul style="list-style-type: none"> Mr Bateson spoke to Mrs Thomas (not Ms Gobbo), and told her that in Mr Bateson's mind, Mr Thomas was only 90 percent truthful.³²⁷

³¹⁶ Ibid, page 4.

³¹⁷ Ibid, page 5.

³¹⁸ Ibid, page 6.

³¹⁹ Ibid, page 13.

³²⁰ Ibid, page 25.

³²¹ Ibid, page 28.

³²² Exhibit RC476, Transcript of Meeting between Mr Thomas, Mr Jim O'Brien and Mr Stuart Bateson (23 March 2006).

³²³ Ibid, page 1.

³²⁴ Ibid, page 29.

³²⁵ Ibid, page 77.

³²⁶ Ibid, page 80.

³²⁷ Exhibit RC252, Chronology of Mr Stuart Bateson (24 March 2006), page 29; Exhibit RC272, Diary of Mr Stuart Bateson.

19/04/06	<ul style="list-style-type: none"> Messrs O'Brien, Gavin Ryan and Stuart Bateson met and decided not to further approach Mr Thomas anymore regarding assisting. The transcript of conversation between Messrs O'Brien, Bateson and Thomas was to be provided to Ms Gobbo with edits and have her approach Mr Thomas.³²⁸
21/04/06	<ul style="list-style-type: none"> Mr Bateson spoke to Ms Gobbo and was informed Mr Thomas will possibly be pleading guilty and give evidence (for the Crown).³²⁹
22/05/06	<ul style="list-style-type: none"> Mr Thomas became aware that Mr Cooper was co-operating with police.³³⁰ He would at the very least have suspected he would be implicated by him in relation to his drug dealing.
15/06/06	<ul style="list-style-type: none"> Mr Gavin Ryan informed Mr Bateson that a message via the prison system was that Mr Thomas wished to see Mr Bateson and tell all.³³¹
16/06/06	<ul style="list-style-type: none"> Mr Bateson and Ms Kerley [REDACTED] Mr Thomas. That meeting was recorded. The transcript demonstrates that Mr Thomas had kept the meeting secret from his lawyers Ms Gobbo and Mr Valos. He indicated that he wished to plead guilty, that he wanted the charges against Mr Thomas dropped and would provide information but did not want to give evidence. Mr Bateson made clear he would need to be a witness.³³²
21/06/06	<ul style="list-style-type: none"> Mr Thomas spoke to Ms Gobbo and told her that she wanted to sign statements for Purana. Consequently, she called Mr Bateson and passed on that message.³³³
22/06/06	<ul style="list-style-type: none"> Accordingly, Mr Bateson and Ms Kerley [REDACTED] Mr Thomas. Again, the conversation was recorded.³³⁴ Mr Thomas confirmed that he signed statements. In relation to his decision to plead guilty and assist the prosecution, he said: <ul style="list-style-type: none"> "I'll tell you what I want... I want to [REDACTED]"³³⁵ "So you're looking to get least amount of years? Yeah I am being honest."³³⁶ Mr Bateson said he did not believe Mr Thomas when he said he did not plan it (the Barbaro/Moran murder). Mr Thomas replied, "Let's just work, can we work this out because I want to just minimise my sentence but at the same time I don't want to put

³²⁸ Exhibit RC252, Chronology of Mr Stuart Bateson (19 April 2006), page 30; Exhibit RC272, Diary of Mr Stuart Bateson.

³²⁹ Exhibit RC252, Chronology of Mr Stuart Bateson (21 April 2006), page 30; Exhibit RC272, Diary of Mr Stuart Bateson.

³³⁰ Exhibit RC281, ICR/3838, (ICR/32), page 305.

³³¹ Exhibit RC252, Chronology of Mr Stuart Bateson (15 June 2006), page 30; Exhibit RC272, Diary of Mr Stuart Bateson.

³³² Exhibit RC479, Transcript of Meeting between Mr Thomas, Mr Stuart Bateson and Ms Michelle Kerley (16 June 2006).

³³³ Exhibit RC252, Chronology of Mr Stuart Bateson (21 June 2006), page 31; Exhibit RC272, Diary of Mr Stuart Bateson.

³³⁴ Exhibit RC479, Transcript of Meeting between Mr Thomas, Mr Stuart Bateson and Ms Michelle Kerley (23 June 2006).

³³⁵ Ibid, page 2.

³³⁶ Ibid.

	<p>[REDACTED] <i>I'm going to tell you it'll be the whole truth, I'm not going , ya know, nothing to hold back because make sure that I hold nothing back".</i>³³⁷</p> <ul style="list-style-type: none"> ○ <i>"What I want to do, look I'm being straight out with youse right ok. I just want to end this mess... all my charges just end it all I just want to just, the less time I can get the better it is".</i>³³⁸ ○ <i>"I want it over... this is killing me... I deserve to do time as far as, I'll admit that..."</i>³³⁹ ○ <i>"I mean I'm just, what I'm trying to work out here is right, Mr Bateson I'm not being smart, I just wish I just said if from the start and got it over and done with".</i>³⁴⁰ ○ Mr Thomas then asked Mr Bateson's view on the discount he would receive in providing evidence as well as pleading guilty as compared to the sentence he would receive for just pleading guilty.³⁴¹ ○ <i>"I just want to finish it right off, everything, everything. All I want is just this all over and done with.... What do you think I'd be looking at altogether?"</i>³⁴² ○ Mr Thomas then indicated possibly getting 3-4 years off his sentence for giving information and went on to discuss the discount Mr McGrath received and the sentence Mr Goussis received.³⁴³ ○ <i>"I want, this is what I want to do, I want to roll but I've got to be careful, right I don't destroy Mr [REDACTED] completely".</i>³⁴⁴ ○ Mr Thomas then went on to give detailed information relating to the planning to kill Mr Jason Moran. ○ <i>"I got to try, can't, I want to do the less possible time where..."</i>³⁴⁵ ○ Mr Thomas was insisting that he was telling the truth, asking to take a lie detector test, and said, <i>"What do you want me to do? All I want is the less possible time where I can stay with Mr Thomas"</i>.³⁴⁶ Mr Thomas went to advise Mr Bateson to tell the DPP that he needed to save a lot of time in prison to [REDACTED] He even suggested house detention or a good behaviour bond.
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³³⁷ Ibid, pages 3-4.

³³⁸ Ibid, page 3.

³³⁹ Ibid, page 4.

³⁴⁰ Ibid, page 5.

³⁴¹ Ibid, pages 5-6.

³⁴² Ibid, page 13.

³⁴³ Ibid, pages 13-18.

³⁴⁴ Ibid, page 20.

³⁴⁵ Ibid, page 39.

³⁴⁶ Ibid, page 42.

	<ul style="list-style-type: none"> ○ Mr Thomas discussed how many years in prison Mr _____ could “put up” with.³⁴⁷ He then provided a list of other murders/crimes he was prepared to assist with. ○ Mr Thomas then indicated if he gave statements he didn’t want the discount, instead he wanted Mr _____ to be given a helping hand on her charges, with even one charge being dropped against her.³⁴⁸ ○ Towards, the conclusion, Mr Thomas stated, <i>“I was going to roll but then I was worried about Andrews”</i>.³⁴⁹ ○ <i>“If I am I’m only going to save three, four, five years, I’m better off just shutting up”</i>.³⁵⁰ ● Mr Bateson met with Mr Overland and others. They decided Mr Thomas was not a witness of truth. Mr Bateson called Ms Gobbo to let her know their stance on her client, in particular Mr Thomas maintaining that he tried to stop the Barbaro/Moran murders.³⁵¹
23/06/06	<ul style="list-style-type: none"> ● Mr Bateson and Ms Kerley met with Mr Geoff Horgan SC and Mr Andrew Tinney. They discussed Mr Thomas’ contact with Purana. It was resolved that the OPP were not interested in Mr Thomas’ evidence for the Moran/Barbaro murder as he was not considered a witness of truth. However, if he was to plead guilty and provide evidence on other matters, he would receive a discount. Mr Bateson passed on the information to Ms Gobbo with the message she was to contact Mr Horgan to discuss.³⁵²
26/06/06	<ul style="list-style-type: none"> ● Ms Gobbo and Mr Valos had a conference with Mr Thomas. Mr Valos sought to talk Mr Thomas out of pleading guilty.³⁵³ This evidently was unsuccessful.
27/06/06	<ul style="list-style-type: none"> ● Ms Gobbo and Mr Valos met with Mr Horgan SC and Mr Tinney. A basis of plea for Mr Thomas was agreed.³⁵⁴
29/06/06	<ul style="list-style-type: none"> ● Mr Thomas was arraigned and pleaded guilty to the murder of Mr Moran. Ms Gobbo appeared on his behalf. ● Mr Thomas spoke to Mr Bateson, Ms Gobbo and Mr Valos in the cells and indicated he would be making statements to assist the police.³⁵⁵

³⁴⁷ Ibid, pages 43-4.

³⁴⁸ Ibid, page 46.

³⁴⁹ Ibid, page 48.

³⁵⁰ Ibid, page 49.

³⁵¹ Exhibit RC252, Chronology of Mr Stuart Bateson (22 June 2006), page 31; Exhibit RC272, Diary of Mr Stuart Bateson.

³⁵² Exhibit RC252, Chronology of Mr Stuart Bateson (23 June 2006), page 31; Exhibit RC272, Diary of Mr Stuart Bateson and Ms Michelle Kerley.

³⁵³ Exhibit RC281, ICR/3838 (ICR/36), page 346.

³⁵⁴ Memorandum from Ms Gobbo to Mr Duncan Allen SC (12 August 2008), MIN.5000.0002.4494.

³⁵⁵ Exhibit RC252, Chronology of Stuart Bateson (29 June 2006), page 31; Exhibit RC272, Diary of Mr Stuart Bateson and Ms Michelle Kerley.

06/07/06 – 20/7/06	<ul style="list-style-type: none"> Mr Thomas provided a large number of statements to the police, including in relation to: the Jason Moran/Barbaro murder, the Mark Moran murder, the [REDACTED] Kallipolitis murder, the [REDACTED] murder, the [REDACTED], a drug manufacturing statement, a Lewis Moran statement, Mr Paul Dale and corruption statement.
07/07/06	<ul style="list-style-type: none"> Mr Thomas wanted to see Ms Gobbo before signing the statements.³⁵⁶
13/07/06	<ul style="list-style-type: none"> Ms Gobbo spent around 90 minutes in conference with Mr Thomas.³⁵⁷
18/07/06	<ul style="list-style-type: none"> Ms Kerley provided Ms Gobbo access to Mr Thomas's statements.³⁵⁸
19/07/06 – 20/07/06	<ul style="list-style-type: none"> Mr Thomas signed the various statements made to the police.
07/09/06	<ul style="list-style-type: none"> Mr Duncan Allan SC appeared for Mr Thomas at his plea. Prior to that he was provided all of Mr Thomas' statements to consider.³⁵⁹ Mr Thomas' plea then commenced.
27/09/06	<ul style="list-style-type: none"> Mr Thomas was sentenced to 23 years imprisonment with a 12 year non-parole period (minus 770 days PSD).

351. When taking all the evidence together, it is clear Mr Thomas was intending to plead guilty and assist the authorities. He did so of his own free will and accord; Ms Gobbo did not persuade or pressure him. As Mr Bateson set out in his evidence, Mr Thomas was always looking to do what resulted in the least amount of time in prison for him.

352. It is clear that the pressure to plead guilty and become a Crown witness was born out by the following:

- (a) From the outset, prior to the arrest of Messrs McGrath and Andrews, Mr Thomas was speaking to the police in relation to assisting them. It is clear he was trying to keep his options open.
- (b) After Mr Andrews and Mr McGrath were arrested, the pressure increased on Mr Thomas, knowing the risk that either of those arrested could (and ultimately did) implicate him.

³⁵⁶ Exhibit RC281, ICR/3838 (ICR/37), [352].

³⁵⁷ Exhibit RC272, Diary of Mr Stuart Bateson (13 July 2006), [136].

³⁵⁸ Exhibit RC252, Chronology of Mr Stuart Bateson (13 July 2006), page 31; Exhibit RC272, Diary of Mr Stuart Bateson and Ms Michelle Kerley.

³⁵⁹ Exhibit RC252, Chronology of Mr Stuart Bateson (7 September 2006), page 36; Exhibit RC272, Diary of Mr Stuart Bateson and Mr Nigel L'Estrange.

- (c) The police put pressure on Mr Thomas shortly before his arrest to assist.
- (d) Mr Thomas was arrested and charged with murders that were in the public conscience.
- (e) The ACC investigation would have made clear to Mr Thomas that Mr [REDACTED] could be arrested. In the event, she was then charged with money laundering (relating to [REDACTED] purchased in her name alone), again increasing pressure on him.
- (f) Mr McGrath's statement would have become known to Mr Thomas. It was the plan of Mr Thomas, Mr Andrews and Mr Carl Williams to discredit Mr McGrath.
- (g) The Supreme Court ordered that the order of trials were a matter for the Crown. This meant Mr Carl Williams was tried for the Marshall murder first.
- (h) Realising the evidential difficulties he faced (including on his own account that he needed to be separately tried from Mr Andrews and Carl Williams) he sought a separate trial. That application was refused, as was a subsequent bail application. As detailed in the Thomas Case Study, during the bail application, King J made observations that the assessment of the strength of the evidence would turn on whether a jury believed Mr McGrath or not in the Marshall murder trial.
- (i) Mr Williams was then convicted on the evidence of Mr McGrath. The plan to discredit him had failed.
- (j) Mr Andrews recognised as much. He sought a deal.
- (k) Around this time, Mr Thomas became aware Mr Cooper was assisting authorities. He knew, given his criminal activity with Mr Cooper, he would also likely be charged with serious drug offending.
- (l) Mr Thomas became aware and did not want to miss out so he engaged with more flirting with Purana. The information he provided in the recorded conversations are apposite. Mr Thomas realised he was "fucked", was looking at a very long sentence, and wanted to [REDACTED]
[REDACTED] It is clear Mr Thomas' [REDACTED] was involved in arranging meetings for Mr Thomas to see Mr Bateson and his Purana colleagues. Mr Thomas made clear he wanted the least number of years in prison to [REDACTED] He also arranged at least one meeting without his legal team (Ms Gobbo) knowing.
- (m) Further, when first asked, Mr Thomas volunteered that Mr Valos had advised him and made him roll, not Ms Gobbo. Finally, it was clear from his own mouth that he had always intended

on rolling and should have done at the beginning (in 2004). When asked how it felt to finally co-operate, he replied, "Grouse". Hardly the words of someone who had been forced or put under pressure to take a course of action they did not want to do.

- (n) The Commission heard Mr Thomas give evidence. He made clear he was at the top of the gangland tree.³⁶⁰ It is unbelievable that he would have been forced or pressured into doing anything he did not choose to do.

353. It follows, that the evidence does not support another allegation made by Mr Thomas.

354. Being generous to Mr Thomas, even if his evidence was accepted or even if the material was considered equivocal on this point, it appears as though Ms Gobbo did no more than [REDACTED] [REDACTED] provide robust legal advice. As it transpired, Mr Thomas' decision to provide assistance as he did saved him a significant number of years within prison and it is clear was a course he had always considered taking. Ms Gobbo did not play the role that Mr Thomas suggests she did. The Commission should therefore find that it is not satisfied that Ms Gobbo forced or pressured Mr Thomas to plead guilty and assist the police. This is reinforced by the plethora of statements he provided about a large number of murders and criminal activity, which hardly evidence any reticence on his behalf to assist the police.

Suggesting that Ms Gobbo was prepared to provide an alibi to a murder/attempted murder by travelling to Cairns with Mr Thomas at the time of a shooting

355. Mr Thomas, in his second statement to the Commission, suggested that Ms Gobbo was aware that [REDACTED] was to be killed and Mr Thomas was leaving to go to Cairns to have an alibi. To strengthen his alibi, he invited Ms Gobbo to Cairns. Mr Thomas alleged that Ms Gobbo attended knowing she was to be his alibi for a murder or attempted murder.

356. Ms Gobbo rejected this as yet a further example of Mr Thomas' capacity to fabricate serious allegations without foundation. She denied visiting Cairns or Port Douglas with him.

357. Mr Thomas confirmed the account in both statement form and later on oath in evidence before the Commission. Victoria Police were not present during this part of the evidence as Mr Thomas had no indemnity as he had never mentioned this before (despite providing a statement relating to the attempted murder of [REDACTED]).

³⁶⁰ Transcript of Mr Thomas (10 February 2020), page 13635.

³⁶¹ *Meissner v The Queen* (1995) 184 CLR 132.

358. Matters relating to Mr Thomas' credibility are not repeated here. It is noteworthy that if Mr Thomas was telling the truth, he would have mentioned in his statement about [REDACTED] that he was with Ms Gobbo. In fact, he does not mention her at all (despite mentioning her in other statements):

*"I then went on holidays to Cairns with Mr Thomas' Personal. Whilst I was away I heard on the news about a shooting in Melbourne. At the time I didn't think anymore of it."*³⁶²

359. He signed that statement as the truth. Not only did he not mention Ms Gobbo, he suggests that when he heard about a shooting in Melbourne, he did not think any more of it. This is inconsistent with his second statement to the Commission and his evidence which was that he was aware there was going to be a shooting, wanted Ms Gobbo as an alibi and knew when he saw the news it had occurred. Also, if she was to be an alibi for him, one would have expected him to mention being in Queensland with Ms Gobbo. The statement does not.
360. More so, records indicate [REDACTED] was shot on [REDACTED]. Ms Gobbo's diary shows she was in Melbourne at the time of the shooting. She travelled to Queensland after the shooting.
361. All the evidence before the Commission suggests Ms Gobbo's diaries are accurate and there has been nothing to suggest otherwise. On that basis, the diaries support what Ms Gobbo states, and more importantly demonstrate Mr Thomas is lying.
362. The Commission should find that the evidence demonstrates Ms Gobbo did not attend Cairns with Mr Thomas to give him an alibi and was therefore not present in a bar with him watching the news reporting the shooting. In fact, she was still in Melbourne. It follows, Mr Thomas has further lied to the Commission and committed perjury.

³⁶² Exhibit RC164, Statement of Mr Thomas (19 July 2006), [4].

Ms Gobbo has taken drugs in his presence

Ms Gobbo was paid a cash retainer by him, by Mr Mokbel

Ms Gobbo was working off the books for Mr Carl Williams

Ms Gobbo passed on privileged information to Mr Thomas

363. The only evidence in relation to these allegations comes from Mr Thomas. Ms Gobbo denies these allegations.
364. Given the number of matters relating to Mr Thomas' dishonesty already outlined coupled with the demonstrable lies he told on oath to the Commission lead to the irresistible conclusion that he cannot be believed in relation to these other matters.
365. In relation to the drug use, Mr Thomas says the only occasion he saw Ms Gobbo use drugs was whilst in Cairns with her. The records demonstrate he was not telling the truth about Ms Gobbo being in Cairns at the time [REDACTED] was shot.
366. In relation to passing on privileged information to him, the evidence of others suggest that Ms Gobbo did not pass on privileged information between clients (although of course it is accepted she did provide such information to the police). For example, Mr Cooper confirmed she never provided instructions of others to him.³⁶³
367. There is no evidence whatsoever to support the other allegations Mr Thomas makes. On the basis of the material set out herein, it is submitted the Commission cannot be satisfied to the requisite standard of anything Mr Thomas says, absent corroborative material. It follows the Commissioner should find these allegations unfounded.
368. Further, the evidence demonstrates Mr Thomas lied on oath before the Commission. The Commissioner should make the finding that he committed perjury. He is someone who is well-versed in giving evidence and that should be considered when judging his evidence.

³⁶³ Transcript of Mr Cooper (31 October 2019), page 8734.

6. Mr Cooper and Cash

369. Mr Cooper in his evidence suggested he had provided Ms Gobbo with \$395,000 in cash³⁶⁴ before he was incarcerated in mid-2006. He indicated that he had \$400,000; \$150,000 was Ms Gobbo's in legal fees in relation to his representation and a co-accused, \$5,000 was for Mr Bickley (payment for a pill press) and the remaining \$245,000 was for her to hold on his behalf until he was released. Ms Gobbo vehemently rejects this allegation, as she did in her evidence.
370. In evidence, Mr Cooper continued that when released from prison, Ms Gobbo denied knowledge of this money. Mr Cooper's evidence was that as this money was the proceeds of crime, he could not pursue Ms Gobbo for it. He contended that the fact that she had denied knowledge of that cash when he was released from prison pretty much ended their relationship (whilst incarcerated, Mr Cooper regularly spoke to Ms Gobbo. Those calls were recorded. They will contradict Mr Cooper's allegation).³⁶⁵
371. When asked as to the circumstances of his allegation that he gave Ms Gobbo money, Mr Cooper indicated it happened around the time "of the meeting with Bickley" when he "felt police presence".³⁶⁶
372. This was inconsistent with an answer he had given shortly earlier when Mr Cooper stated that around the time he was apprehended in April 2006 he had money worries. The Commissioner picked up on this inconsistency with Mr Cooper suggesting he had \$400,000 around the time that he met Mr Bickley. When pushed by Counsel Assisting as to how those two things fit together, that he had \$400,000 in cash and yet was skint, the only answer Mr Cooper could come up with was as follows:

MR WOODS: How do those two things fit together, that you had \$400,000 in cash and yet you were skint?---The 250 was mine. I was owed a hell of a lot of money from the Mokbels and such. I owed money for chemicals. There was just an overwhelming amount of - and all I know that that was going to be my money for my retirement or for when all this was over, I at least had something.

Is it the case then that you didn't intend to pay all of the debts then that at that stage you owed, is that the situation?---Well at the point that I started doing what

³⁶⁴ Transcript of Mr Cooper (31 October 2019), pages 8730-1.

³⁶⁵ Ibid.

³⁶⁶ Ibid, page 8732.

I did, those things are no longer prevalent or no longer relevant. All I've got now I'm in damage control and the only way I can look after myself Family Member is what I have left and I have nothing left. ³⁶⁷

373. Counsel Assisting have made some reference to these matters at [1734] –[1744] of volume 2 of the submissions under the heading “More Money Matters”. Whilst no finding is proposed by Counsel Assisting (evidently as the material taken cumulatively undermines the account provided by Mr Cooper), it is submitted the Commissioner should make a finding that the Commission is not satisfied that Ms Gobbo received money as alleged by Mr Cooper.
374. Ms Gobbo in her evidence denied that Mr Cooper had given her anything other than payment for his legal fees. She utterly rejected the suggestion that she had held onto, and then in effect stolen, \$250,000 in cash from Mr Cooper.
375. Counsel Assisting have not included all of the relevant entries in the ICRs as to Ms Gobbo’s comments on Mr Cooper’s suggesting that he wanted Ms Gobbo to hold money on his behalf. In short, it is submitted that the evidence reveals (i) Mr Cooper had no money, (ii) was in debt and owed money, (ii) is dishonest and someone prepared to repeatedly commit serious crimes in the name of cash. As such, his evidence should not be accepted on this matter.
376. The evidence available reveals:
- (a) Mr Cooper told Ms Gobbo that he was owed \$500,000 by the Mokbels.³⁶⁸
 - (b) Mr Cooper paid \$50,000 to Mr Milad Mokbel that was then paid into Barrister 1’s trust account. Mr Cooper had won that money from a casino interstate. Mr Cooper still owed Barrister 1 \$60,000 in fees (for Mr Milad Mokbel). Mr Cooper reported to Ms Gobbo that he did not have the \$60,000.³⁶⁹ Mr Cooper feared the Mokbels but thought he might one day be paid by them and so he maintained contact with them.³⁷⁰
 - (c) Mr Cooper was owed money by an Outlaw Motorcycle Gang.³⁷¹ The amount was reported by Mr Cooper to be \$250,000.³⁷² It was still outstanding in February 2006.³⁷³

³⁶⁷ Ibid.

³⁶⁸ Exhibit RC281 ICR/3838 (ICR/7), [38].

³⁶⁹ Transcript of Conversation between Ms Gobbo and Her Handlers, 26 September 2005, VPL.0005.0076.0004 at 0103.

³⁷⁰ Exhibit RC281, ICR/3838, (ICR/9), [65].

³⁷¹ Exhibit RC281, ICR/3838, (ICR/10), [72].

³⁷² Exhibit RC281, ICR/3838, (ICR/14), [100].

³⁷³ Exhibit RC281, ICR/3838, (ICR/19), [162]–[163].

- (d) Mr Cooper would routinely travel interstate and gamble.³⁷⁴ He was not always successful. For instance, he was reported to have lost \$300,000 on or around 24 January 2006.³⁷⁵
- (e) Mr Cooper continued to report that he was owed a very large amount of money by the Mokbels.³⁷⁶
- (f) In February 2006, Mr Cooper had spent \$500,000 on ketone.³⁷⁷
- (g) Mr Cooper reported at the end of February 2006 that he was expecting a lot of money the following week.³⁷⁸ He later reported that \$200,000 from the Outlaw Motorcycle Gang was expected that week. He believed that he would also receive \$400,000 for the drugs he was cooking.³⁷⁹
- (h) On 11 March 2006, Mr Cooper was reporting that he was still awaiting payment of \$400,000.³⁸⁰
- (i) On 16 March 2006, Mr Cooper reported collecting \$80,000.³⁸¹
- (j) On 19 March 2006, Mr Cooper met Mr Bickley (this is the time Mr Cooper suggests he provided Ms Gobbo with the \$395,000 cash). Mr Bickley reported that Mr Cooper needed to get some money before Mr Bickley could assist Mr Cooper³⁸² (with a pill press). Around this time, Mr Cooper also reported to Ms Gobbo that he was jumpy and aware of police interest in him.³⁸³
- (k) By early April 2006, Ms Gobbo was reporting that Mr Cooper had asked Ms Gobbo to provide him with \$200 per month when he was incarcerated.³⁸⁴
- (l) On 14 April 2006, Ms Gobbo was reporting that having seen Mr Cooper, he had indicated he anticipated meeting a criminal associate and expected to be paid a significant amount of cash that he wanted to pass onto Ms Gobbo to hold on his behalf.³⁸⁵ Ms Gobbo was led to believe this was \$100,000.³⁸⁶

³⁷⁴ Exhibit RC281, ICR/3838, (ICR/5) [29]; (ICR/9), [65]; (ICR/12), [80].

³⁷⁵ Exhibit RC281, ICR/3838, (ICR/16), [131].

³⁷⁶ Exhibit RC281, ICR/3838, (ICR/17), [141].

³⁷⁷ Exhibit RC281, ICR/3838, (ICR/18), [149].

³⁷⁸ Exhibit RC281, ICR/3838, (ICR/20), [168].

³⁷⁹ Exhibit RC281, ICR/3838, (ICR/21), [178].

³⁸⁰ Exhibit RC281, ICR/3838, (ICR/22), [184].

³⁸¹ Exhibit RC281, ICR/3838, (ICR/23), [190]-[191].

³⁸² Exhibit RC281, ICR/3838, (ICR/23), [196].

³⁸³ Ibid [201].

³⁸⁴ Exhibit RC281, ICR/3838, (ICR/25), [226].

³⁸⁵ Exhibit RC281, ICR/3838, (ICR/26), [238].

³⁸⁶ Ibid [240].

- (m) Ms Gobbo was told by Mr Cooper that he wanted to give her money as he did not trust Mr Cvetanovski and the amount was possibly \$300,000.³⁸⁷ In the event, Mr Cooper did not receive that money and instead expected to collect it on Wednesday. That Wednesday was 19 April 2006. He did however provide Ms Gobbo with \$2,000 to recompense her for paying part of his [REDACTED] bill. Mr Cooper left to go and collect \$20,000.³⁸⁸
- (n) On 16 April 2006, Mr Cooper was bemoaning having to arrange [REDACTED] for his Family [REDACTED] for the next 10 years as well as arranging birthday cards [REDACTED] (the Family [REDACTED] were [REDACTED])
- (o) By 18 April 2006, Ms Gobbo was reporting that Mr Cooper had not yet received the cash he wanted to be drip fed to him whilst in prison.³⁸⁹ Ms Gobbo opined that she did not think Mr Cooper was “*cashed up*” and that Mr Cooper has to cook to make things alright for his Famil (financially) whilst he is prison.
- (p) On 19 April 2006, Mr Cooper sent Ms Gobbo a text message cancelling dinner with Ms Gobbo as he indicated he was going to give Family [REDACTED] Easter eggs instead.³⁹⁰
- (q) On 20 April 2006, Ms Gobbo met her handlers in the evening. She was due to meet Mr Cooper that evening for dinner as he had suggested by text message.³⁹¹ In the event, he did not contact her. At 11.53pm. Ms Gobbo sent a text to Mr Cooper asking what happened to him tonight.³⁹² Ms Gobbo remained with her handlers until 1.06am on 21 April 2006.

377. On 21 April 2006, there was an attempted contact between the phones of Ms Gobbo and Mr Cooper at 6.53pm. It was unanswered.³⁹³ There was no further contact between them prior to Mr Cooper's arrest. The cumulative impact of this evidence demonstrates that:

- (a) Mr Cooper was a gambler. At times, he had success. However, by the time he purports to have given Ms Gobbo \$395,000 in cash in mid-March 2006, he had lost around \$300,000 at the end of January 2006.
- (b) Mr Cooper was owed significant money and was moaning about not receiving it shortly prior to his arrest and incarceration.

³⁸⁷ Exhibit RC281, ICR3838, (ICR/27), [241].

³⁸⁸ Ibid, [243].

³⁸⁹ Exhibit RC281, ICR3838, (ICR/28), [250].

³⁹⁰ Untendered SMS Cooper to Gobbo, 19 April 2006 at 3.47pm, VPL.0098.0063.346

³⁹¹ Untendered SMS Cooper to Gobbo, 20 April 2006, 8.29am, VPL.0098.0063.349.

³⁹² Untendered SMS Gobbo to Cooper, 20 April 2006, 11.38pm, VPL.0098.0063.356.

³⁹³ Untendered Attempted phone call between Cooper and Gobbo, 21 April 2006, 6.53pm, VPL.0098.0063.357.

- (c) Mr Cooper did not have money to pay Mr Bickley nor pay \$60,000k to Mr Milad Mokbel. This appeared to be the position around the time he met Mr Bickley in mid-March.
- (d) Mr Cooper was hoping to get \$300,000 prior to his incarceration to give to Ms Gobbo. It was anticipated by 19 April 2006, he would get it. It does not appear as though he did. Even if he did, the evidence demonstrates he did not meet up with Ms Gobbo after he received that money on 19 April 2006 (if he in fact did).
- (e) This is consistent with Mr Cooper's initial evidence before the Commission that he had no money prior to his arrest.³⁹⁴
- (f) His answer when pressed as to the inconsistency did not answer the question and was deliberately evasive.

378. At his plea hearing in 2007, Mr Cooper agreed to a pecuniary penalty of \$300,000.³⁹⁵ He also undertook to give evidence in line with a number of statements confirming the truth of the statements whilst on oath. One related to Mr Milad Mokbel owing him \$2 million, whilst he was also owed \$3.3 million.³⁹⁶

379. Further, Mr Cooper's Counsel, Mr Allan SC mitigated in the following way on behalf of Mr Cooper:

- (a) In 1997, Mr Cooper and Family lost everything financially and returned to Melbourne.³⁹⁷
- (b) Not long after, they took out a significant mortgage and Mr Cooper began to struggle financially. He blamed the [REDACTED] on the financial problems they were suffering.³⁹⁸
- (c) In that context, he asked Mr Milad Mokbel for a job, cooking drugs in 2001.³⁹⁹
- (d) He [REDACTED] The marital home was sold and all the proceeds were provided to Family.⁴⁰⁰
- (e) Mr Cooper hired a property where he cooked drugs for Mr Milad Mokbel. The property caught fire. It resulted in Mr Cooper incurring a debt of \$5 million to Mr Nick Radev.⁴⁰¹

³⁹⁴ Transcript of Mr Cooper (31 October 2019), page 8692.

³⁹⁵ Untendered Plea of Mr Cooper (8 February 2007), [28], MIN.0002.0003.2305 at 2333.

³⁹⁶ Untendered Plea of Mr Cooper (8 February 2007), [43], MIN.0002.0003.2305 at 2348.

³⁹⁷ Untendered Plea of Mr Cooper (9 February 2007), [132.7]-[132.16], MIN.0002.0003.2305 at 2438-2439.

³⁹⁸ Ibid, pages 133.9-133.14.

³⁹⁹ Ibid, pages 133.23-133.27.

⁴⁰⁰ Ibid, pages 135.9-10.

⁴⁰¹ Ibid, pages 137.1-5.

- (f) Mr Cooper continued to cook in order to meet his debts.⁴⁰²
- (g) His debt increased with a further \$300,000 owed to Mr Milad Mokbel for a failed laboratory.⁴⁰³
- (h) The payments he received for cooking for the Mokbels was not what was promised and not sufficient to cover all his debts, which included further debt to a family member.⁴⁰⁴ He was then incarcerated. On his release, he then began cooking again for the Mokbels.
- (i) His attributed his cooking in 2006 due to his debt.
- (j) *"Sensing that he was trapped in this cycle of being in and out of debt to other criminals, and the offer – the prospect of making sums of money to do that, and also to cure his own personal problems, Your Honour. He had financial difficulties. He needed money."*⁴⁰⁵

380. It follows therefore that Mr Cooper's clear instructions to his Counsel (in significant detail) demonstrate he was in financial difficulty at the time of his arrest in 2006. He has therefore either lied to the Commission about this matter, or allowed his Counsel to mislead the Court on his plea. It is apparent from the plea that when Mr Cooper was unhappy with his Counsel's submissions, he instructed Counsel to correct the issue, who duly did so.⁴⁰⁶

381. On 29 December 2009, Mr Cooper wrote to Mr Dale Flynn.⁴⁰⁷ It is evident from that letter he was interested in receiving financial recognition for assisting the police. He compared his position to a number of others who received significant payments and/or privileges. He concluded that letter by asking Mr Flynn to begin negotiating with him. To put this in context, if his evidence before the Commission was true, by this time he did not know that Ms Gobbo had taken his cash. It demonstrates an individual driven by financial greed, as does his continual drug manufacturing, for significant monetary gains, despite being on bail.

382. At the time of his arrest, Mr Cooper had not completed the manufacturing of the methamphetamines he had invested in and so was also unable to realise that asset. In fact, his loss of those chemicals (by apprehension) would likely have caused him to incur further debts.

383. As already set out, Mr Cooper's evidence was that soon after his release, he met Ms Gobbo before Christmas 2012 and fell out with her and they never spoke again. He was released around

⁴⁰² Ibid, pages 137.8-137.9.

⁴⁰³ Ibid, pages 137.13-137.16.

⁴⁰⁴ Ibid, pages 137.28-138.2.

⁴⁰⁵ Ibid, pages 139.6-139.12.

⁴⁰⁶ Ibid, pages 146.19-147.29.

⁴⁰⁷ Exhibit RC1014A, Series of text messages between Mr Cooper and Ms Gobbo.

386. Counsel Assisting set out a schedule of cash found at Ms Gobbo's property at [1744]. The intention of Counsel Assisting putting these matters in writing when Mr Cooper was alleging that Ms Gobbo received criminal property from him is obvious, yet there is no suggestion of a criminal finding. Ms Gobbo was asked about four of the 13 items listed.⁴¹⁴ Procedural fairness was not provided by asking Ms Gobbo about the other nine cash finds. She provided a response that it related to her car wash business.⁴¹⁵ That is supported by evidence in the ICRs.⁴¹⁶ However, given it is not consistent with Counsel Assisting's narrative, it was not included in their submissions.

⁴¹⁶ See for example, Exhibit RC281, ICR3838, (ICR/21), [176]; (ICR/25), [223].

387. It is submitted that there is evidence in possession of Counsel Assisting that demonstrated Mr Cooper did not have \$400,000 available to him. Additionally, the evidence of the finding of cash at Ms Gobbo's home is nothing more than speculative. There is no evidence as to the provenance of the money beyond Ms Gobbo's recall that it was from her car wash business; Ms Gobbo could have received the money as a gift from family, could have withdrawn cash from an ATM, it could have derived from her car wash business, could have been a return of \$10 owed for lunch or a coffee. Notwithstanding this, Counsel Assisting have chosen to include this as they have. It demonstrates anything other than an open mind by them towards anything relating to Ms Gobbo.
388. Further, there was evidence that Ms Gobbo in fact received legitimate cash payments, in particular from a car wash she owned. There are references in the ICRs to such payments.⁴¹⁷ Further, it should not be lost on the Commissioner that Ms Gobbo was reporting what she should do, should Mr Cooper give her cash. She never once then said he did. She also flagged with her handlers if it was permissible to receive \$2,500 in cash from Mr Cooper (as repayment for his [REDACTED]) if it was paid into a trust account and drawn out. So Ms Gobbo was in fact keeping her handlers updated with all cash received from Mr Cooper.
389. It follows, that not only should the Commissioner find that the evidence does not satisfy that Mr Cooper did pay cash as alleged, but also that the Commissioner is not satisfied that the cash found at Ms Gobbo's property was that which Ms Gobbo knew to be criminal property.

⁴¹⁷ Ibid.

7. Purported lies on admission

390. At [7], [12], [15], [17] and [19] of volume 2 of their submissions, Counsel Assisting ask the Commissioner to find that Ms Gobbo deliberately misled the Board of Examiners in her 4 February 1997 affidavit in that she:

- (a) sought to convey to the Board that Mr Wilson was a tenant, when he was in fact a co-owner. In doing so, Ms Gobbo was trying to minimise her relationship with Mr Wilson;
- (b) sought to convey her shock at drugs being found in the house. In fact, she was herself in possession of a small quantity of cannabis and amphetamine;
- (c) sought to convey her shock at the drugs find, when in fact she directed police to the hiding place of a large quantity of drugs, demonstrating a prior knowledge of their whereabouts;
- (d) sought to convey previous cannabis use, and by omission, sought to convey that she had not used amphetamine. In fact, she had used both by the time interviewed by police; and
- (e) suggested she only pleaded guilty as it was in her house; when in fact she was guilty as she herself was in possession.

391. In effect, Ms Gobbo was cross-examined by Counsel Assisting that she had deliberately misled the Board of Examiners. Ms Gobbo, in hindsight, accepted that, the way Counsel Assisting put it, *"it wasn't... the full story"*.⁴¹⁸ When asked (with the benefit of hindsight), if it was misleading, Ms Gobbo responded, *"because of the material omitted, yes"*.⁴¹⁹

392. Notwithstanding these appropriate concessions by Ms Gobbo, it is not accepted that at the time of the formulation and swearing of the affidavit that Ms Gobbo intended to deliberately mislead the Board of Examiners.

The circumstances the affidavit was made in

393. By letter dated 30 January 1997,⁴²⁰ Ms Gobbo provided a letter setting out her disclosures. The letter on the Board of Examiners' file has written on it that in blue pen (some of which was intelligible)

⁴¹⁸ Transcript of Ms Nicola Gobbo (4 February 2020), page 13004.

⁴¹⁹ Ibid.

⁴²⁰ Exhibit RC14, Application for Admission from Ms Nicola Gobbo to Board of Examiners (30 January 1997)..

that the letter was passed to the Chairmen. That person had asked Ms Gobbo to appear before the Board. There is no evidence as to whether she did or not.

394. Further, the writing denotes⁴²¹ that Ms Gobbo was to appear on 17 February 1997 and she will lodge on 3 February 1997. The author states he gave her "*all details*". There is then reference to "*x2 Sched G amended*". Interpreting this writing, it indicates the author of the writing spoke to Ms Gobbo ("*I gave her all details*"). This was in reference to Ms Gobbo lodging something on 3 February 1997. Ms Gobbo lodged an affidavit on 4 February 1997. It is submitted that the item to be lodged was a reference to the affidavit and the inference is that Ms Gobbo was given "*all details*" as to what the affidavit was to address. There is no evidence before the Commission of what that advice was, and more so, if the affidavit as completed addressed that issue. More so, there is no evidence as to the note that Ms Gobbo was to appear on 17 February 1997. Her answers before the Board of Examiners were part of the overall application and the Commissioner cannot consider if Ms Gobbo deliberately misled the Board of Examiners without this information.

Who drafted the affidavit?

395. After making the concession that the material omitted indicated that the affidavit was misleading, Ms Gobbo was further asked about the inaccuracies. Ms Gobbo clarified this, by stating that she was "*not walking away from the suggestion*" that the affidavit was inaccurate but she could not "*recall the circumstances in which the affidavit was drafted or who drafted it*".⁴²²
396. Counsel Assisting did not consider this issue further. However, when questioned by Counsel for Victoria Police days later, Ms Gobbo referred to this issue again, stating that she did not draft the affidavit and what that person "*chose to put in there, obviously whoever is drafting decides how to word it and put it in there, in the same way that I would do if I was drafting something now*".⁴²³ Ms Gobbo went on to confirm that she did then swear the contents to be true and correct.
397. The evidence demonstrates that Mr Stogdale drafted the affidavit. Looking at the affidavit,⁴²⁴ it is apparent that the affidavit was prepared by Molomby and Molomby Solicitors – the document says as much. The reference on the document is "*G/S/NMG*". This is standard legal filing code. The NMG is Nicola Marie Gobbo, the 'client' initials. The GIS refers to the solicitor with conduct of the matter and it is submitted to who drafted the affidavit. GIS are the initials of George I Stogdale. He

⁴²¹ Ibid.

⁴²² Transcript of Ms Nicola Gobbo (4 February 2020), page 13005.

⁴²³ Transcript of Ms Nicola Gobbo (11 February 2020), page 13724.

⁴²⁴ Exhibit RC15, Affidavit of Ms Nicola Gobbo to Board of Examiners (4 February 2007).

witnessed the affidavit as is apparent by his signature. On the evidence, it appears that Mr Stogdale drafted it, or a lawyer on his behalf (as per the document and Ms Gobbo's unchallenged evidence). Despite this information on the face of the document, no attempts seem to have been made to ascertain from Mr Stogdale the circumstances in which the affidavit was taken, despite Ms Gobbo's evidence. Instead, Counsel Assisting immediately seek an adverse finding as against Ms Gobbo.

Ms Gobbo's belief as to the purpose of the affidavit

398. Ms Gobbo, in recalling the purpose of the affidavit, was told by her supervisor for her articulated clerkship that *"the most important thing is to, where you have a previous matter involving drugs, is to be clear about whether or not you're still using drugs or have used drugs"*.⁴²⁵
399. Later, Ms Gobbo was cross-examined by Counsel for Victoria Police. Mr Holt QC suggested that the fact Mr Wilson moved back into the Ms Gobbo's home did not appear in the affidavit as Ms Gobbo thought it would be adverse to her application. Ms Gobbo rejected this, stating, *"I don't agree with that. My recollection is that the most significant, um, matter that had to be, that had to be explained was why I had a, um, albeit a no conviction, why I had been to court"*.⁴²⁶
400. Further, it also is apparent from the Application letter that a person from the Board of Examiners spoke to Ms Gobbo and gave her advice about the affidavit (and by inference, its contents). There is no evidence before the Commission of what Ms Gobbo was told the affidavit should contain.
401. Counsel Assisting undertook no exploration as to what circumstances Ms Gobbo's affidavit was drafted, who drafted it, what was included/excluded and who made that decision and what advice Ms Gobbo received. This would go some way to the Commissioner being able to properly consider if Ms Gobbo *"deliberately misled"* the Board of Examiners at the time the affidavit was provided to them (as opposed to looking back in with the benefit of hindsight).
402. To that end, Ms Gobbo also could not recall if the affidavit had the police summary attached or not:
- I can't remember whether the summary was attached to this or not. Obviously, it's not my drafting of, I didn't draft the affidavit.*⁴²⁷

⁴²⁵ Transcript of Ms Nicola Gobbo (4 February 2020), page 13005.

⁴²⁶ Transcript of Ms Nicola Gobbo (11 February 2020), page 13724.

⁴²⁷ Transcript of Ms Nicola Gobbo (4 February 2020), page 13003.

403. Evidently, if the police summary of the offending was attached, it could not be maintained that the Board of Examiners were deliberately misled. Counsel Assisting did not explore this in their questioning nor in further documentation.
404. It is evident that Ms Gobbo had been advised that the most important matter was to disclose convictions (or attending court), sufficient for the Board of Examiners to determine if she was still using drugs or not. Further, Ms Gobbo did not draft the affidavit – it is apparent a lawyer did, determining what information was relevant to include and exclude. As a prospective lawyer, it is perhaps unsurprising that the evidence leads to the inference that Ms Gobbo followed that advice; as one would follow a doctor's advice. Furthermore, when the person providing the advice and completing the affidavit was at the time, her superior and someone Ms Gobbo would inevitably defer to, in particular where that person was an officer of the court.

Applying the circumstances to the affidavit

405. If the purpose (as perceived by Ms Gobbo) was to explain her conviction (or non-conviction as it so happens), it cannot be said that she misled the Board of Examiners.

Mr Wilson paying the mortgage?

406. At [8] of the affidavit, it is correct that Ms Gobbo does not say that Mr Wilson was part owner of her property. However, the paragraph details the purchase of the property and Mr Wilson moving in to help pay the mortgage. It is noted the lawyer who drafted the document did not use the term rent. The affidavit is equivocal as to whether Mr Wilson was a tenant or in fact paying the mortgage. Read in plain English, the affidavit states he was helping to pay the mortgage. It is not accepted that the only interpretation is that he was a tenant as Counsel Assisting conclude.

Shock and embarrassment at what?

407. [10] of the affidavit reads as follows:

On September 3 1993 the District Support Group (Victoria Police) executed a search warrant at my home. They found quantities of marijuana and amphetamines on the premises. I was embarrassed and shocked when this occurred as I did not know what was taking place at my house. Five days earlier I had formed some suspicions of Wilson and I reported him to the police.

408. The “*shock*” and “*embarrassment*” has been interpreted by Counsel Assisting as shock and embarrassment at the drugs being found; in fact, the proper reading of the paragraph can only

mean that Ms Gobbo was expressing her shock and embarrassment at the police executing a search warrant. It cannot be the finding of drugs as the last sentence of the paragraph sets out that Ms Gobbo had formed suspicions of Mr Wilson's drug possession so much so that she had reported him to police. If she had reported him to police, she would hardly have been shocked and embarrassed – she had tipped the police off! Reading the paragraph without any pre-conceptions, and in plain English, the shock and embarrassment is directed towards the police executing a warrant at her house; not the fact that there were drugs present (that she had tipped them off about).

Drug use

409. [11] of the affidavit details the charges Ms Gobbo faced – namely two counts of possession of drugs and one count of use. Referring back to [10], the drugs referred to were marijuana and amphetamine. It follows, the clear inference was possession of marijuana and amphetamines. Additionally, Ms Gobbo's recollection was that she believed her summary/charge sheet was provided. This would have demonstrated what she had been charged with. The affidavit was not lying about these issues. Far from it.
410. It is correct that [13] and [14] of the affidavit refer to prior marijuana use and are silent about amphetamine use. As accepted by Ms Gobbo, in hindsight, this was misleading. It is not accepted that it was deliberately so at the time of swearing the affidavit. Ms Gobbo had disclosed her convictions and had, as she had been told, provided evidence to the Board of Examiners about her current drug use – she had not used drugs since 1991-92.
411. Furthermore, just because a cigarette packet was found in her bedroom containing a small amount of drugs, it does not mean that Ms Gobbo was using those drugs. Mr Ashton's notes from the time indicate Ms Gobbo suggesting they were her and Mr Wilson's drugs. There are no admissions as to her using them. Ms Gobbo being aware of the item (knowledge) and the presence in her house could in based on her knowledge then amount to possessions. However, that does not mean the drugs were Ms Gobbo's and the fact they were in her room does not automatically equate to custody and control of the drugs. So, without further information/evidence, it is not proper to suggest Ms Gobbo misled the Board about this matter either.

The “ongoing relationship” with Mr Wilson

412. It is also correct to say the affidavit is misleading in relation to Ms Gobbo's further relationship with Mr Wilson, and that she had omitted to mention she had directed the police to where drugs were

found. However, she was not charged with that offending. Ms Gobbo's charges related to a small amount of drugs found in her home.

413. Taking into account that Ms Gobbo's intention in the document was to set out her conviction sufficiently and to address her current drug use, Ms Gobbo made clear drugs were found in her house; she received possession and use charges and received a good behaviour bond. Further, she had not used drugs since. Those matters were all accurate. Similarly, the fact that Mr Wilson was convicted and received a suspended sentence.
414. In relation to Mr Wilson moving back into the house and his further arrest in 1995, based on Ms Gobbo's belief as to the purpose of the affidavit, this was not relevant. Ms Gobbo's belief was the document was about her convictions; she was not convicted on any offence in 1995. Mr Wilson was – the affidavit was not about him. Consequently, on her belief as to the purpose of the document, Ms Gobbo was not misleading and certainly not deliberately so.

Conclusion

415. Accepting Ms Gobbo's belief as to what was required in the affidavit (i.e. information about current drug use), and the fact it was drafted by a lawyer who she had worked with, it is not appropriate for the Commissioner to find that Ms Gobbo deliberately misled the Board. There is also no evidence as to what she was advised by the Board of Examiners to include and, whether she appeared before the Board and if so, what she disclosed.
416. At the end of cross-examination on this point, Counsel Assisting sought to suggest that had Ms Gobbo disclosed her "*ongoing relationship*" with Mr Wilson in more detail, she may not have been admitted or may have been under more scrutiny. As Ms Gobbo replied, anything is possible.⁴²⁸ Ms Gobbo's response indicated the speculative nature of Counsel Assisting's suggestions; case law in fact suggests that Ms Gobbo would have been admitted – there have been those with far more serious antecedent history and relationships being admitted to practice.
417. For the reasons set out, the evidence does not allow the Commissioner to conclude that Ms Gobbo deliberately misled the Board of Examiners. As accepted by Ms Gobbo, on reflection, the affidavit was misleading by omission, albeit not drafted by Ms Gobbo.

⁴²⁸ Transcript of Ms Nicola Gobbo (4 February 2020), page 13007.

8. Purported lies to Ginnane J and the Commission

418. At [692] of volume 2 of Counsel Assisting's submissions, Counsel Assisting suggest the Commissioner can find Ms Gobbo's evidence before Ginnane J in the *AB v CD & EF* proceedings,⁴²⁹ relating to Mr McGrath's statement, was untruthful, and most likely deliberately so.

419. Further, at [696], Counsel Assisting also ask the Commissioner to find that Ms Gobbo's evidence before the Commission on the topic was deliberately evasive and suggests she had lied, or at best knowingly misled the Supreme Court whilst on oath.

420. For the reasons set out below, it is submitted that the evidence does not allow the Commissioner to come to that conclusion, and it follows, no such findings should be made.

The *AB v CD & EF* proceedings

421. To fairly consider whether Ms Gobbo lied to Ginnane J, or knowingly misled the Supreme Court, it is necessary to consider the nature of the litigation, the material provided to Ms Gobbo and Ms Gobbo herself at the time she gave evidence in 2016.

422. The *AB v CD & EF* proceedings were not at any point in relation to Mr McGrath, Mr Thomas etc. The point of the proceedings was as follows: the DPP had made Ms Gobbo aware that he intended to write to seven people to indicate their convictions may have been impacted by the fact that Ms Gobbo was a police informer whilst representing them. Those seven individuals were Tony Mokbel, Milad Mokbel, Mr Cooper, Mr Bickley, Steve Cvetanovski, **Mr Agrum** and **Mr Ketch**.⁴³⁰ The proceedings were concerned with the period from 2005 onwards when Ms Gobbo had become a registered police informer.

423. Counsel for several parties sought to introduce material relating to other individuals.⁴³¹ Ginnane J regularly made clear that he was only interested in evidence relating to the seven people the subject of the proceedings.⁴³² Dr McNicol SC for the DPP, who first cross-examined Ms Gobbo, was

⁴²⁹ Exhibit RC1177, Transcript of Proceedings, (Supreme Court of Victoria, *AB v CD, EF and EF v CD, Ginnane J*, 1 March 2017), page 373.10-374.25.

⁴³⁰ *AB & EF v CD* [2017] VSC [350], [1]-[9].

⁴³¹ See eg, Transcript of Proceedings, (Supreme Court of Victoria, *AB v CD, EF and EF v CD, Ginnane J* (21 February 2019) 140.5.

⁴³² See eg, Transcript of Proceedings - Ruling, (Supreme Court of Victoria, *AB v CD, EF and EF v CD, Ginnane J* (27 February 2017), page 225.16-23.

sanctioned for trying to refer to Mr McGrath and his case.⁴³³ In fact, Ginnane J made a ruling as to the scope of the evidence and proceedings.⁴³⁴

424. Further, on the first day of Ms Gobbo's evidence, the DPP had issued a subpoena against Victoria Police for the production of relevant material (the ICRs in some form and also recordings/transcripts of Ms Gobbo with her handlers).⁴³⁵ That material was produced the next day with all parties given the day to consider it.

425. As is known to the Commissioner, the material is significant and voluminous. Understandably, it was not possible for Ms Gobbo and her legal team to consider all the material. It is clear she listened to two of the recordings with her handlers, relating to the question Ginnane J was considering; not in relation to issues relating to Messrs McGrath, Thomas et al.

426. Also, Ms Gobbo was not permitted to have the materials to consider herself – she had to be in the company of some of her legal team.⁴³⁶

427. Consequently, Ms Gobbo was not provided unfettered access to the material, nor was she given time to refresh her memory. The Commissioner should note that Ms Gobbo was looking at material and was later to be asked questions relating to more than ten years previous. It is clear when Mr Woinarski questioned Ms Gobbo, she had only listened to two recordings:⁴³⁷

Now, you've listened to two tape-recordings of - is the word "debrief" a fair word to use? Is that an appropriate term?---Yes.

Okay. You've listened to two debriefings last week, have you not, between yourself and some handlers?---Yes.

And they're of 15 June 2007?---Yes.

And one of the 16 September 2005?---Yes.

428. Further, Ms Gobbo was suffering from her various illnesses that bring about issues with her memory and also, when under stress, limit her cognitive ability. This is dealt with in more detail at Chapter 4.

⁴³³ Transcript of Proceedings - Ruling, (Supreme Court of Victoria, AB v CD, EF and EF v CD, Ginnane J, 27 February 2017), page 229.17-26.

⁴³⁴ Transcript of Proceedings - Ruling, (Supreme Court of Victoria, AB v CD, EF and EF v CD, Ginnane J, 21 February 2017), see eg page 108.2-7 and page 109.12-20.

⁴³⁵ Ibid, page 108.8-26,

⁴³⁶ Ibid, see eg 165.8-14.

⁴³⁷ Exhibit RC1177, Transcript of Proceedings, (Supreme Court of Victoria, AB v CD, EF and EF v CD, Ginnane J, 1 March 2017), page 345.3-10.

429. Of note, the ICRs and other material shows that Ms Gobbo's memory from around the time of her stroke, both before and after, was materially impacted. In one ICR from 2009, she was recorded as saying that she had been advised by her doctor that her memory from eight weeks prior to the stroke and three weeks after was compromised and that this was normal as the brain had been starved of blood before and after a stroke.⁴³⁸
430. The ICRs and transcripts with her handlers also reveal Ms Gobbo discussing her stroke and its impact on her loss of memory on several other occasions, including on 21 September 2005,⁴³⁹ 9 November 2005,⁴⁴⁰ December 2005,⁴⁴¹ March 2006⁴⁴² and August 2007.⁴⁴³
431. Ms Gobbo's stroke was on 24 July 2004. Ms Gobbo's reviewing of Mr McGrath's statements and his signing of them was 14 days prior to her stroke. On the information, matters relating to Mr McGrath's statement fell within the period where Ms Gobbo had complained of memory loss issues and a Doctor ([REDACTED] neurologist) confirmed as much. This is a significant factor for the Commission to consider if Ms Gobbo did in fact lie, or was rather, just unreliable given the matters set out here. Ms Gobbo's relevant medical history is set out separately at Chapter 4 and is not rehearsed here.
432. Further, at the beginning of her evidence on 1 March 2017, it was made clear that it was necessary for Ms Gobbo to take medication at the appropriate juncture.⁴⁴⁴ That occurred shortly before the questions and answers that Counsel Assisting now criticise Ms Gobbo about.⁴⁴⁵
433. Consequently, to consider her answers as untruthful in those circumstances is grossly unfair and demonstrates that Counsel Assisting have been exceptionally subjective in the manner in which they have considered the evidence, and have been selective as to the evidence that which suits their narrative.
434. It is also necessary to consider all of the questions and answers leading up to the comment that Counsel Assisting criticise Ms Gobbo about. The topic Ms Gobbo was being questioned about was acting in conflict – not in relation to her amending/reviewing of Mr McGrath's statements.

⁴³⁸ Exhibit RC281, ICR/2958, (ICR/53).

⁴³⁹ Exhibit RC297, Transcript of Discussion between Ms Gobbo, Officer 'White' and Officer 'Smith', (21 September 2005), page 35.

⁴⁴⁰ Exhibit RC281, ICR/3838, (ICR/8).

⁴⁴¹ Exhibit RC281, ICR/3838, (ICR/11), [74]-[78].

⁴⁴² Exhibit RC281, ICR/3838, (ICR/23), [195].

⁴⁴³ Exhibit RC281, ICR/3838, (ICR/96), [1142].

⁴⁴⁴ Exhibit RC1177, Transcript of Proceedings, (Supreme Court of Victoria, AB v CD, EF and EF v CD, Ginnane J, 1 March 2017), page 342.17-19.

⁴⁴⁵ Ibid, page 373.10-374.25.

435. A review of the questioning of Ms Gobbo leading to the exchange that Counsel Assisting seek an adverse finding against Ms Gobbo evinces that the purpose of the questioning was acting on conflict.⁴⁴⁶

- (a) Mr Woinarski was asking Ms Gobbo about representing Mr Williams (for threats to kill), Mr McGrath, Mr Thomas and Mr Andrews.
- (b) It was in the context of Mr McGrath implicating Williams, Mr Thomas and Mr Andrews.
- (c) An objection was raised by Mr Collinson and Ginnane J queried, "What's Mr McGrath got to do with the matter? I did ask Dr McNicol a similar question yesterday."⁴⁴⁷
- (d) Mr Woinarski continued this questioning. He asked Ms Gobbo if she had represented Mr McGrath on 13 November 2004. He handed Ms Gobbo a document. Asked her a few questions and then asked for the document to be returned.
- (e) Ms Gobbo expressed she could not recall the matter referred to.
- (f) Ms Gobbo was asked about the knowing that the charges against Messrs Thomas, Andrews and Williams were based upon Mr McGrath's statements.
- (g) Ms Gobbo was asked if and why she then appeared for Mr Thomas, including at a stay application as a committal had been unfairly obviated by the DPP.
- (h) At that stage, Ginnane J said, "I'm not interfering or stopping cross-examination, but I do want to make it clear and reiterate what I have said on a number of occasions: I'm only going to decide this case on the disclosures the Director has indicated in the letter, not in respect of other individuals."⁴⁴⁸
- (i) Ms Gobbo was then asked if she had told Mr Thomas that she had acted for McGrath and as a result, told Mr Thomas that it would not be appropriate for her to represent him. Ms Gobbo confirmed that Mr Thomas was aware and knew that Ms Gobbo could not cross-examine Mr McGrath at a committal but could appear at a legal hearing such as the Stay application.
- (j) It was then the issue of making submissions based on Mr McGrath's evidence led to the exchange about the statement taking process.

⁴⁴⁶ Exhibit RC1177, Transcript of Proceedings, (Supreme Court of Victoria, AB v CD, EF and EF v CD, Ginnane J, 1 March 2017), page 367-78

⁴⁴⁷ Ibid, 369.3-5.

⁴⁴⁸ Ibid, 372.19-24

436. It is clear from these paragraphs that Ms Gobbo's memory was not accurate on a number of matters and she was not fully appraised of the material to refresh her memory:

- (a) as he was asking Ms Gobbo questions, Mr Woinarski provided Ms Gobbo with a short document to read;⁴⁴⁹
- (b) Ms Gobbo could not remember the relevant section of an act under which Mr McGrath was questioned under on 13 November 2003;⁴⁵⁰
- (c) when first asked, Ms Gobbo could not remember if she represented Mr Thomas at committal.⁴⁵¹ "To jog her memory" Mr Woinarski reminded her that Mr Thomas was initially directly presented— which exceptionally unusual but Ms Gobbo had not independently remembered;⁴⁵²
- (d) despite having her memory jogged, Ms Gobbo thought she appeared at the hearing with Paul Holdenson, SC⁴⁵³. This was incorrect as she appeared alone;⁴⁵⁴ and
- (e) Ginnane J repeated at this stage to Mr Woinarski that he had made a ruling and was only going to make his decision in the case relating to the evidence relating to the seven identified people, and not Messrs McGrath, Thomas and others.⁴⁵⁵

437. As previously set out, the purpose of the questioning was for Ms Gobbo to answer questions to acting in conflict, not in relation to the content of Mr McGrath's statement. However, Counsel Assisting in fact omitted from their submissions the subsequent questions and answers of Ms Gobbo that indicate she believed the questions related to the statement making process (i.e. the actual taking of all the details) as opposed to the reviewing the statements at the end of the process and suggesting to Mr McGrath that he was not entirely truthful. It also indicated (as with her earlier answers) Ms Gobbo's memory was failing her:⁴⁵⁶

But you knew what he said about Mr Thomas, didn't you? --- Yes, so did Mr Thomas

And you had been acting for Mr McGrath during the period of time in which he made

these statements to police? No, I wasn't. He made the statement – my understanding

is he – we did the County Court plea in front of Justice – His Honour John Smallwood

⁴⁴⁹ Ibid, page 369.22-26.

⁴⁵⁰ Ibid, page 370.6-9.

⁴⁵¹ Ibid, page 371.28-31.

⁴⁵² Ibid, page 372.1-8.

⁴⁵³ Ibid, page 372.13-17.

⁴⁵⁴ Ibid, pages 372.29 – 373.3 and 374.5-9.

⁴⁵⁵ Ibid, page 372.19-25.

⁴⁵⁶ Ibid, pages 374-26- 375.13.

sometime in the first few months of 2004. I was – that was – I think referred to it the other day. I was threatened by Tony Mokbel and Carl Williams to make sure that I saw Mr McGrath and told him to keep his mouth shut, and I think I referred to them telling me to get a psychiatrist to assess him as insane, so that if he made statements, they couldn't be used against him – against them. And my recollection is that he – that he was up to a stage of – whatever process was going to happen for him to make statements in and around the time I ended up hospitalised in mid-2004, because I – I don't – I certainly didn't partake in any statement-making that McGrath did.

As Ms Gobbo explained before the Commission, she did not engage in the statement making of Mr McGrath – that is, sit down with Mr McGrath and take his statement.

438. Furthermore, the topic was revisited later in Ms Gobbo's evidence by Mr Woinarski and sheds some light on Ms Gobbo's understanding of the "statement taking process." At the later part of her evidence before Ginnane J, Ms Gobbo accepts that she "edited a bloke's statement before they were sworn and served".⁴⁵⁷ Ms Gobbo was played a short extract of her conversation with her handlers on 16 September 2005 and the following questioning occurred (emphasis added):⁴⁵⁸

MR WOINARSKI: Is there anything - you recognise your voice. Is there anything in the transcript you want to change?---It's only where it says at the second line, "who ultimately was one". I say, "who is one of the most important Crown witnesses".

*Now, the last - -?---And the - - -
I'm sorry - I'm sorry?---and the third - third-last line, where I say, "It's going to take his - for the Supreme Court judge", I say "some" Supreme Court Judge.*

Thank you. Not the last three lines, or the last two-and-a-bit lines, "It's me they're speaking to", and you then go on to say, "It's me editing this bloke's statements before they sworn and served." That is a reference to Mr McGrath isn't it? Yes it is.

⁴⁵⁷ Exhibit RC1177, Transcript of Proceedings, (Supreme Court of Victoria, AB v CD, EF and EF v CD, Ginnane J, 2 March 2017), page 466.30-31.

⁴⁵⁸ Ibid, page 466.19-467.3.

HIS HONOUR: But Mr McGrath's not one of the seven, Mr Woinarski.

439. Ms Gobbo is correct in that she was not involved in the actual taking of the statements of Mr McGrath. The unchallenged evidence is that Mr McGrath gave statements to Victoria Police (primarily Stuart Bateson) over several days. Prior to signing the statements, he wished to speak to Ms Gobbo, his legal advisor. She was then involved in considering the statements in advance of his plea hearing. Ms Gobbo speaking to Mr Bateson as to the comments was no different to the process of a "can-say" statement. This is further considered at [483] to [492] and within the Thomas case study at Chapter 9.
440. The evidence demonstrates that Mr Bateson on 22 March 2004 spoke to Ms Gobbo and indicated the next step for Mr McGrath was to compile a "can say" statement.⁴⁵⁹ From 22 June to 30 June 2004, Mr McGrath was attended by Messrs Mark Hatt and Stuart Bateson and gave information in the form of draft statements.⁴⁶⁰
441. On 9 July 2004, Mr McGrath reviewed his statements with Mr Bateson and stated he would not sign them before approved by Ms Gobbo. On this material, Ms Gobbo was not part of the "statement making process" as Mr McGrath had provided the statements to Messrs Hatt and Bateson.⁴⁶¹
442. On 10 July 2004, Ms Gobbo reviewed the statements. Mr Bateson's notes and his chronology reveal he expressed scepticism relating to "no payment" and "not knowing it was going to be a murder."⁴⁶² Ms Gobbo, acting in Mr McGrath's best interests was obliged to make him aware of this, as Mr Bateson was responsible for the letter of comfort and/or evidence at Mr McGrath's plea as to the level of honesty and assistance of Mr McGrath. It was obvious to the police that Mr McGrath was not telling the truth about knowing Mr Marshall was to be killed. Evidently, that was conveyed to Ms Gobbo who conveyed it to Mr McGrath. It was a matter for him as to whether or not he signed off any proposed amendments; in the event he did.
443. Ms Gobbo did not see the final statement Mr McGrath in fact signed. Ms Gobbo saw Mr McGrath on 11 July 2004. She reported back to Mr Bateson that Mr McGrath was worried about his sentence and so he would be truthful. This again was in Mr McGrath's interests as Ms Gobbo was ensuring that Mr McGrath got the best discount for his assistance; the fact he was worried about his sentence also supports this.

⁴⁵⁹ Exhibit RC282, Chronology of Mr Stuart Bateson (22 March 2004), page 5.

⁴⁶⁰ Exhibit RC282, Chronology of Mr Stuart Bateson (22 June – 30 June 2004), pages 7-8.

⁴⁶¹ Exhibit RC282, Chronology of Mr Stuart Bateson (9 July 2004), page 8.

⁴⁶² Exhibit RC282, Chronology of Mr Stuart Bateson (10 July 2004), page 8.

444. On 12 July 2004, Mr Bateson attended Mr McGrath in prison. Ms Gobbo was not there. Mr McGrath made some changes to his statements. Mr Bateson then ran them past Ms Gobbo later that day. Mr McGrath then signed the statements on 13 July 2004. There is no suggestion Ms Gobbo saw the final statement.
445. So, when Ms Gobbo gave evidence before Ginnane J that she was not involved in the statement making process, strictly speaking, she was correct. Further, Ms Gobbo also had not seen the final signed statement at the time it was signed by Mr McGrath. Finally, when asked further questions about the incident, Ms Gobbo accepted she had edited some of the statements of Mr McGrath.
446. Taking her evidence together, coupled with the limitations of her memory, the lack of ability to consider material prior to her evidence, her childcare responsibilities, her medical health as at March 2017 when she gave evidence as well as the fact the proceedings were not in relation to Messrs McGrath, Thomas et al and Ms Gobbo's memory needed jogging, it should not be accepted that Ms Gobbo was deliberately untruthful before Ginnane J. The Commissioner on **all of the material** cannot be satisfied to the requisite standard that Ms Gobbo deliberately lied or was untruthful.

Evidence before the Commissioner regarding evidence given to Ginnane J

447. It is with this in mind that the Commissioner should consider the evidence of Ms Gobbo before the Commission that Counsel Assisting ask the Commissioner to find Ms Gobbo's evidence as evasive.
448. Counsel Assisting's submissions are predicated on the basis that Ms Gobbo did not mention her involvement with Mr McGrath and his statements before Ginnane J. In the passage referred to by Counsel Assisting in their submissions, that is correct. However, it is clear in her continued cross-examination by Mr Woinarski, Ms Gobbo did in fact refer to it as set out above. It cannot therefore be said that Ms Gobbo knowingly misled Ginnane J as Counsel Assisting suggest.
449. Counsel Assisting did not ask Ms Gobbo about her evidence before Ginnane J where she was asked about "editing this blokes statement" who she confirmed as Mr McGrath.
450. Further, when questioned before the Commission, Ms Gobbo had not been permitted access to the transcript of her evidence before Ginnane J at all. In fact, Ms Gobbo told Counsel Assisting that "I just want to read it."⁴⁶³ She was not given the opportunity to consider all of the evidence so she

⁴⁶³ Transcript of Ms Nicola Gobbo (7 February 2020), page 13412.

could point out that she had in fact referred to this. Counsel Assisting had all the material and decided not to provide her with that part of the transcript.

451. When first asked about the transcript of evidence before Ginnane J, Ms Gobbo pointed out that she has "never read the transcript."⁴⁶⁴ She also stated that she had not lied to either Ginnane J or the Commission.⁴⁶⁵ To date, Ms Gobbo has still not had access to her evidence before Ginnane J.
452. It is also clear that Ms Gobbo was not involved in what she understood to be the statement taking process as outlined above. When questioned by Counsel Assisting Ms Gobbo said (parts in bold omitted by Counsel Assisting in their submissions):⁴⁶⁶

Mr Winneke: Right. He asked you about that and whether you'd informed him because you'd acted for Mr McGrath, it would not have been appropriate for you to represent him. And you said, 'Yes, he knew that I couldn't cross-examine and appear at a committal proceeding because of that issue. Well why were you appearing for him on this occasion? Because this was application to ask the judge to order that they have a committal. and you were making submissions about the evidence of somebody whom you'd previously acted for? Correct. But I didn't know what, I didn't know what the contents of his statements was. You didn't know the content of his statement, do you want to maintain that? Of Mr McGrath's statement, yes. No, I wasn't part of his statement making process'; do you see that?-

Ms Gobbo: No, I edited Them, that's right. I didn't make the statements with him. And I don't think, I don't think I read them before he signed them.

Mr Winneke: Right?

Ms Gobbo: ---Um, but I wasn't part of him sitting down and drafting them, but I certainly at some point looked at them and put corrections or notes on them.

Mr Winneke: You were conscious of that and you remembered that when you gave that evidence before Justice Ginnane, is that right, Ms Gobbo?

⁴⁶⁴Ibid, page 13410,

⁴⁶⁵Ibid, page 13409,

⁴⁶⁶ Ibid, pages 13411-3.

Ms Gobbo: I can't - I'd be making it up if I said I could remember what my, where my head was that day.

Mr Winneke: Yeah, all right. And then on the following page you went further and you were asked about similar matters and you said at around line 12, 'Because I don't, I certainly didn't partake in any statement making that Mr McGrath di'd, right, do you agree with that, that's what you said?'

Ms Gobbo: I just want to read it, sorry.

Mr Winneke: Yeah?

Ms Gobbo: What line?

Mr Winneke: Line 12. Look, just to be clear, and I'll give you the opportunity to read from line 23 on p.374 through to line 15, if you like, on p.375?

Ms Gobbo: Yes.

Mr Winneke: You read that?

Ms Gobbo: Yep.

Mr Winneke: Do you agree that the evidence that you gave to Justice Ginnane wasn't the truth?

Ms Gobbo: No, I don't remember.

Mr Winneke: Why do you say it was the truth? How do you say it was the truth?

Ms Gobbo: If you want to pick about the wording used.

Mr Winneke: Yes?

Ms Gobbo: What I said in - if you start from the page before where he says, um, 'But you know what he said about

Mr Thomas', onwards, what I said there is what happened. Um, if you go down to, um, if you go down to, um, I wasn't involved in the – what I've said there at line 10, whatever process happened with the police taking his statements.

Mr Winneke: Right.

Ms GOBBO: And I didn't – and true, I didn't partake in, or read final versions and 'Yep, that's okay for you to sign.' I think that happened after hospital. Um, if you want to pick at the wording, um, the statement making process I wasn't involved in, but I did correct them yes.

Mr Winneke: Yes, all right. I'll move on, Commissioner?

Ms Gobbo: Sorry, I don't want to sound like I'm argumentative but if you want to suggest that I intentionally lied to a court, no, I don't agree with that.

Mr Winneke: I'll put it to you quite squarely, that at the time that you made that comment you knew that you had been part of the statement making process, you knew you had?

Ms Gobbo: Not the making of the statement where he's sitting down and telling a police officer what did or didn't happen, no, I wasn't.

Mr Winneke: Did you think that, what, your role in the final production of those statements wasn't relevant to what you were talking to Justice Ginnane about?

Ms Gobbo: Well, I was answering the questions.

453. As it so happens, Ms Gobbo did not read the final version and it was amended and signed after she in fact saw the draft statement. The statement was signed on 13 July 2004. Ms Gobbo saw the statements on 10 July 2004. Mr McGrath amended them on 12 July 2004. It follows she was not evasive before the Commission.
454. Mr Winneke's last question in that exchange is also relevant. Ginnane J repeatedly said the issue of Mr Thomas/Mr McGrath was not relevant to what he had to consider and was not the focus of the hearing or related to its purpose.
455. It follows that it would be unjust on the material before the Commission to find that Ms Gobbo was evasive before the Commission relating to this topic and that she lied to Ginnane J.
456. The fact that Counsel Assisting left out of their submissions parts of the evidence of Ms Gobbo both before Ginnane J and the Commissioner is unsatisfactory given the criticisms they make of other parties for similar behaviour.

9. The Thomas case study

457. Counsel Assisting encourage the Commissioner to make a number of findings relating to Mr Thomas as far as Ms Gobbo is concerned. Those findings are set out in the following paragraphs of Counsel Assisting's submissions:

(a) Paragraph 469 – That Ms Gobbo and Mr Bateson knew it was inappropriate, if not unethical, for Ms Gobbo to continue to represent Mr Thomas in circumstances where it was reasonable to suppose that she might at some stage be required to testify about those phone calls.

(b) Paragraph 690 – That Ms Gobbo was in conflict in that she was aware that Mr McGrath's statements were made in circumstances which, if disclosed, would weaken his evidence, yet Ms Gobbo had a personal interest in Mr Thomas not finding out about her role in Mr McGrath's statement.

Paragraph 692 – That Ms Gobbo was most likely deliberately untruthful in her evidence before Ginnane J in saying that she did not know the contents of Mr McGrath's statements and that she was not part of his statement making process. In paragraph 696, Counsel Assisting invite the Commissioner to find that Ms Gobbo's evidence before the Commission on this point was evasive and suggests she lied or knowingly misled the Supreme Court whilst on oath.

(c) Paragraph 730 – That, on the evidence, it is open to the Commissioner to find that Ms Gobbo could not properly fulfil her duties to Mr Thomas without disclosing confidential information concerning Mr McGrath, which would likewise have exposed her own role in the negotiations and the statement-taking process (it appears this relates to the period up to 24 September 2004, based on the preceding paragraphs of Counsel Assisting's submissions).

(d) Paragraph 765 – Had Ms Gobbo's role in acting for Mr McGrath been made transparent at that time, it is unlikely that she could have continued to act for Mr Thomas and it is likely Ms Gobbo's clients would no longer have regarded her as a lawyer who was part of their crew and would have likely stopped using her.

(e) Paragraph 1011 – That Ms Gobbo was dishonest in her memorandum of 12 August 2006, as to her knowledge she had numerous other conflicts of the very kind that Carl Williams was complaining about.

(f) Paragraph 1034 – Applying Categories 1A, 1B, 2A and 2B, Ms Gobbo had a conflict of interest and, as such, her conduct may have constituted a breach of her duty to the administration of justice, her duty to the court, her duty to her client and her fiduciary duties, and may constitute a breach of legal professional privilege and/or confidence.

(g)

(h)

(i)

(j) Paragraph 1039 – That, between 19 and 22 April 2006, Ms Gobbo was provided transcripts of Mr Thomas' discussions with Jim O'Brien and Stuart Bateson to encourage Mr Thomas to implicate associates, [REDACTED]

(k)

The false premise of the “*conflict*” submissions

458. Counsel Assisting submissions are based on the premise that Ms Gobbo represented Mr McGrath when he decided to co-operate with Purana. To that end, he provided a number of statements. Those statements implicated, *inter alia*, Carl Williams, Mr Andrews and Mr Thomas. Shortly before Mr McGrath came to sign his statements, he made Purana detectives aware he would not sign them prior to Ms Gobbo sighting the statements. Ms Gobbo was given sight of those statements on 10 July 2004. Records demonstrate she questioned the veracity of two parts of the draft Marshall statement:

- (a) whether Mr McGrath really knew it was a murder of Mr Marshall, or whether it was a debt collection as he suggested; and
- (b) Mr McGrath's assertion that he had not been paid for the killing.

459. As the Commission is aware, Ms Gobbo saw Mr McGrath in conference on 11 July 2004. On 12 July 2004, Mr McGrath amended his statements, altering his belief that the shooting was a

murder as opposed to debt collection as he initially deposed. He also altered the detail relating to payment. He signed the statement on 13 July 2004.

460. Counsel Assisting repeatedly asserted that the defence were not provided with the changes, and that any defence practitioner would want to cross-examine Mr McGrath on these changes but were denied the opportunity:

Mr Winneke: And it is something that any barrister worth his or her salt cross-examining a witness at committal would be very keen to find out about, correct?

*Ms Gobbo: Yes.*⁴⁶⁷

461. Counsel Assisting go as far as saying this ultimately lays the foundation for the conclusion that Ms Gobbo and the Victoria Police [REDACTED] To that end, Counsel Assisting set out at [763] the material changes that were not available to be cross-examined upon.

462. At [745] of their submissions, Counsel Assisting state:

It is submitted that knowledge of the changes that had been made to the statement and how those changes had come about would have given counsel for the Accused an avenue upon which to challenge Mr McGrath's credibility, which was not available to them.

463. From the outset, it is noted that Mr McGrath's Marshall statement went only to his credibility as far as Mr Thomas was concerned. Mr Thomas was not charged with the Marshall murder. He was only charged with the Moran and Barbaro murders. It appears as though he was given the statement by virtue of being in the same trial as Andrews and Williams, who were charged with both murders. Accordingly, Mr McGrath's Marshall statement was only relevant to one small issue relating to the credit of Mr McGrath. It could only advance Mr Thomas' case in that way – that Mr McGrath was capable of underplaying his role and knowledge to get the best deal for himself.
464. It is apparent that Counsel Assisting had before them the committal transcript of Mr McGrath's evidence from 1 to 9 March 2005. At [742] to [744] of the submissions of Counsel Assisting, they in fact copy and paste parts of the evidence at the committal.

⁴⁶⁷ Transcript of Ms Nicola Gobbo (6 February 2020), page 13269.

465. Counsel for Ms Gobbo only have access to two days of transcript from the committal hearing. These compromise Mr McGrath's evidence on 2 and 3 March 2005 (the second and third days of the committal).
466. It is unequivocally clear from that material that Mr McGrath was in fact cross-examined extensively in relation to his belief that the shooting of Marshall was a debt collection and not a murder.
467. On 13 November 2003, Mr McGrath was conveyed from the custody centre to a police location. On the journey to the police station, Mr McGrath discussed his knowledge of the Marshall murder. That discussion was covertly recorded. The transcript of that recording was provided (by Purana detectives) to the defence. As much is apparent from McGrath's committal evidence. It follows there was not an attempt to hide from the defence that fact that Mr McGrath, described by Counsel Assisting as the star witness, had been equivocal about whether he knew Marshall was to be killed or whether it was a debt collection.
468. The only non-disclosure by police was to hide Ms Gobbo's name, as it was not relevant to the credit issue and, on a PII application, her safety was of concern. As much was set out by Mr Bateson in his evidence to the Commission when questioned by Counsel Assisting (emphasis added):⁴⁶⁸

But what is important for defence barristers in order to deal with that spin - effectively it was being suggested, in an oblique way by the judge, "You're giving me a bit of a story, but ultimately all is going to come out in the wash when you get into the witness box and defence barristers start cross-examining you", do you accept that?---Yep.

*For that to occur properly and for the person who is being charged on the basis of that person's statement, or that person's evidence, **it's only fair that defence be provided with all of the relevant information?---Yeah, I thought they had.***

Well - you accept that, don't you?---I accept that's a fair point, yes.

If the situation is Ms Gobbo's involvement is being filleted out of this and defence counsel are not getting the full picture, that is a most unfortunate circumstance for the presentation and for the person who's trying to get to the truth, to get

⁴⁶⁸ Transcript of Mr Stuart Bateson (21 November 2019), page 9708.

through the spin, do you follow what I'm saying?---Look, I think it's a balancing act between - --

What's it between?---It's between protecting someone's safety. I truly believe if Carl Williams and Tony Mokbel and others knew that she'd assisted or advised Mr McGrath through this process, then she would have been either seriously hurt or killed. Now we've got to balance that fact that she was involved against the needs of what you've just put to me.

Yes?---Now, her involvement, as I've said, in my view was never particularly all that great or important. So from my point of view I thought that balance fell very much in the favour of protecting her.

469. Mr Bateson's memory was correct, as material relating to Mr McGrath's prior inconsistent statement (that he believed the Marshall murder to be a debt collection) was provided to the defence. No doubt he thought that Ms Gobbo's role was not of great importance to that point, as Mr McGrath had in fact provided that explanation separate to Ms Gobbo's involvement.

Mr McGrath's evidence at committal

470. Mr McGrath was cross-examined on the following issues, at the time when Mr Thomas was represented by Mr Lovitt SC, Mr Williams by Mr Heliotis QC, and Mr Andrews by Mr Papas QC:
- (a) On the first day of his evidence, Mr McGrath confirmed that, from the moment he was arrested and started speaking to Purana detectives, he was honest with them. He repeated this several times.⁴⁶⁹
 - (b) He had a history of providing information to the police about others (such as Messrs Dupas and Lowe) and even offered to provide information on arrest against Mr Williams, Mr Mokbel and Mr Veniamin.
 - (c) He was prepared to lie for his own benefit, in particular in relation to his staying in custody and length of his sentence.⁴⁷⁰ He accepted this.⁴⁷¹

⁴⁶⁹ Untendered Transcript of Mr McGrath Examination, R v Carl Williams, Andrews and Thomas, (2 March 2005), pages 145.9-19; 147.20-24; 149.7-9.

⁴⁷⁰ Untendered Transcript of Mr McGrath Examination, R v Carl Williams, Andrews and Thomas, (3 March 2005), pages 278.23 – 280.8.

⁴⁷¹ Ibid, pages 260-2.

- (d) As a result of his assistance, he received 10 years' imprisonment for involvement in four murders, when he accepted he would have received at least 20 years for each one but for his providing information, which was for his own benefit.⁴⁷² He accepted this.⁴⁷³
- (e) It was put to Mr McGrath that he lied to the police on 13 November 2003 about the state of his relationship with Mr Andrews, when he suggested he barely knew him.⁴⁷⁴ He accepted this was a lie.⁴⁷⁵
- (f) He accepted that he had told a lie to Purana, despite his earlier evidence that he had not lied to Purana once he was arrested.⁴⁷⁶
- (g) He gave differing accounts as to his relationship with Mr Williams, as well as Mr Williams' involvements in the murders.
- (h) On 13 November 2003, after Mr Marshall had been murdered, he suggested that Mr Andrews go back to Mr McGrath's house, as Mr McGrath knew the house was bugged and wanted to get Mr Andrews talking to implicate him and show Mr McGrath did not know it was meant to be a murder.⁴⁷⁷
- (i) On 13 November 2003, Mr McGrath had told police that he was driving Mr Andrews prior to the murder of Mr Marshall and Mr Andrews had pulled out and waved around a gun. It was only at that point that Mr McGrath "*started to believe that it was more serious than just a collection of an outstanding debt.*" He replied that was correct.⁴⁷⁸
- (j) Differences between his statements and what he told the police on 13 November 2003 were put to him in strong terms as evidence of his dishonesty and questionable credibility.⁴⁷⁹
- (k) He lied in his police interview and so this was contrary to his assertion that he told the truth from the moment he spoke to Purana detectives.⁴⁸⁰
- (l) Based on all the material, Mr McGrath was asked whether, when he speaks of the truth, he is in fact manipulating the situation. Mr McGrath agreed.⁴⁸¹

⁴⁷² Untendered Transcript of Mr McGrath Examination, R v Carl Williams, Andrews and Thomas, (2 March 2005), page 164.12-14;

⁴⁷³ Untendered Transcript of Mr McGrath Examination, R v Carl Williams, Andrews and Thomas, (3 March 2005), pages 258.14 – 259.11.

⁴⁷⁴ Untendered Transcript of Mr McGrath Examination, R v Carl Williams, Andrews and Thomas, (2 March 2005), page 148.7-10.

⁴⁷⁵ Ibid, pages 209.21-210.11.

⁴⁷⁶ Ibid, page 231.24-28.

⁴⁷⁷ Ibid, pages 149-150; 158.9-25.

⁴⁷⁸ Ibid, page 150.

⁴⁷⁹ Ibid, page 159.20-25; also page 165.17-27.

⁴⁸⁰ Untendered Transcript of Mr McGrath Examination, R v Carl Williams, Andrews and Thomas, (3 March 2005), pages 248-58.

⁴⁸¹ Untendered Transcript of Mr McGrath Examination, R v Carl Williams, Andrews and Thomas, (2 March 2005), page 184.15-29.

- (m) Mr McGrath accepted he lied to police about his knowledge of and involvement in the Moran and Barbaro murders. Material from recordings and interviews providing false information and alibis was put to him. He agreed he was lying (and at times providing detailed falsities) and that the lies were manipulative.⁴⁸²

Mr McGrath's evidence on Counsel Assisting's false premise

471. Mr McGrath was asked on four separate occasions about his belief as to whether he knew that Mr Marshall was to be killed or whether it was in fact it was a debt collection. On the second day of Mr McGrath's evidence (before Mr Lovitt QC's cross-examination), Mr McGrath was asked the following questions (emphasis added):

- (i) **MR HELIOTIS: *The first time - is it the truth that the first time you became aware that this was more than a non-violent collection was in the car on the way to the killings?---Yes, that's correct.***

When the gun was pointed at you?---When two guns were produced.

So not when the gun was pointed at you, but when two guns were produced?---

Yes.

Tell me about what happened when the gun was pointed at you?

---It was waved around the car in my general direction for a brief period.⁴⁸³

- (ii) *A little later you say this. Mr Bateson says: "I don't get this bit about Andrews." You say: "What do you mean? Well, why did you take him back there?" "Because I knew the place was bugged up. I fucking - I lost him. Once he did the dirty on me, well, fuck him. I did everything I could to get as much evidence on him as I could." "How did he do the dirty on you?" "He pointed the thing at me and suggested, 'well, you're fucking coming with me' sort of thing. I told him I was uncomfortable about it." "What, you weren't aware up until that point?" "No." correct?---Yes, that's correct.⁴⁸⁴*

⁴⁸² Untendered Transcript of Mr McGrath Examination, R v Carl Williams, Andrews and Thomas, (3 March 2005), pages 245.31-246.31, 248, 249, 252.

⁴⁸³ Untendered Transcript of Mr McGrath Examination, R v Carl Williams, Andrews and Thomas, (2 March 2005), page 151.3-12.

⁴⁸⁴ Ibid, pages 160.24 – 161.3.

(iii) **When did you become aware that you say Mr Andrews was going to shoot Mr Marshall?---Do you mean - by shoot do you mean murder?**

Let us start off with shoot?---Most probably within the days leading up to the murder.

How many days leading up to the murder?---Only - maybe a week or so.

What was the trigger point for you becoming aware that he was going to shoot Mr Marshall, or that he (indistinct) to shoot Mr Marshall?---It wasn't a talk of actually shooting him, but as time progressed and the lack of talk about a collection, well, there was more of the view that he may have been shot.

Do you remember this question I asked you - when did you become aware that he was going to shoot Mr Marshall and you wanted to know whether shoot or murder and I said let's take shoot. So the question is when did you become aware that he intended to shoot Mr Marshall and I thought you told us about a week or so before?---I was never a hundred per cent certain he was actually going to be shot, but that thought had crossed my mind.

When did you become a hundred per cent sure that he was going to be shot?---When he was in my car on the way there.

Sorry?---When he was in my car on the way there. When?---On the day of the murder.

What happened, what triggered off your now being sure as distinct from it crossing your mind?---He produced two firearms from a bag.

When did you become confident, or when did you become sure that he intended to murder Mr Marshall?---It was probably by about that stage.

Then why did you ask me whether I meant shoot or murder, if it all happened at the same time?---Because the thought had crossed my mind before that, that he may have been shot. When you got in the car on the day of the shooting, you got in that car, knowing that he may well shoot Mr Marshall? ---Yes.

Did it cross your mind as you got in that car that he might kill Mr Marshall?---No.

No?---After he produced two firearms, then I was sure.

But I thought you told us that in the week or so before you became aware at least of the shooting, because there' been no more talk about collection; remember that?---Yes.

The lack of talk about collection money would apply to both shooting and killing, wouldn't it?---No.

No?---In many - no, in many debt - underworld debt collections, people are maimed or warning shots are fired.

Sure, but you told me - what I understood you to say is that you realised that there might be a shooting because he wasn't talking about collecting any more. If he wasn't talking about collecting, there is not much point in you guessing whether he was going to intimidate him or not. The fact that he's no longer talking collection, is a pretty good indication that that's not what you are going out there to do, isn't it?---We - he seemed to know a lot more about the person than I did (indistinct).

*I am not asking about that, I'm asking about the answer you gave us that it crossed your mind. Originally you said more than it crossed your mind. But let's say crossed your mind that this was a shooting because in the week or so before he was no longer talking about collecting, remember that? **Now if he was no longer talking about collecting that gave rise to at least the thought in your mind that's not what you're going out there to do, correct?---Yes, that's correct.***

And if you're not going out there to collect, you're going out there for some other reason?---The thought crossed my mind that he may have been shot or shots fired to intimidate him to pay up.

Well, if that was the truth, Mr McGrath, then he'd still be talking about collecting, wouldn't he, he'd be talking about well, look, if he doesn't pay up, if we can't collect, then I'm going to put a shot in him or I'm going to frighten him or something, but they'd still be talking about collecting wouldn't there?---No, there wouldn't.

There wouldn't?---Well, he would've just been shot and that's it.

Whether he had the money or not?---I assumed by a previous conversations that there was some difficulty collecting. And - so does that mean that irrespective of whether he produces the money on the night or not, he's going to get shot, does it?---I don't know.⁴⁸⁵

- (iv) *MR HELIOTIS: Mr McGrath, I'm going to read you a passage and stop from time to time. "On the van on the way back, just before I was arrested, I asked him did you - did you fuck him". That's you speaking to Bateson, right, in the car.*

HIS HONOUR: Where are you, Mr Heliotis, sorry.

MR HELIOTIS: 367. "I whispered to him did you and he said yeah, and I said where did you put them, and he said - and then he pointed, he put them all over the victim's head, and I've gone fuck and then you guys grabbed me." Do you remember saying that?---Yes, I do.

Bateson, "So he actually told you that he'd shot him? And what was his exact wording?" And you reply, "Well, there was whispering, but he pointed with his finger towards his - - -". Remember that?---Yes.

Bateson, "And was this the first time you were aware of it?" Your answer, "Yeah." "You must've heard the shots, surely?" "That's - yeah." "But prior to that, were you aware of what was going to happen?" "No." "You never spoke about it?" "No, I thought it was always going to be a debt collection." Now, that's untrue, isn't it? What you were telling the police there was a lie?---I was trying to - - -

HIS HONOUR: Mr McGrath, sorry. Do you mean all of it, Mr Heliotis, or the last bit?

MR HELIOTIS: When you were saying to him - thank you, sir - that you first became - did you always thought it was going to be a debt collection, you

⁴⁸⁵ Ibid, pages 169.7 – 171.26.

only become aware of it in the car having heard the shots when he did what he did?---Yes.

But prior to that - that is you must have heard the shot surely? "That's - yeah."

"Prior to that were you aware of what was going to happen?" "No." "You never spoke about it?" "No. I thought it always going to be a debt collection." That's not true is it?---I was trying to relate to Mr Bateson that to some degree I had just dismissed the possibility of a murder from my mind.

"You said you never spoke about it?" "No. I thought it was - - -", you pleaded guilty to this murder didn't you?---Yes.

You pleaded guilty on the basis that for at least an hour before the murder you were aware that there was going to be a murder?---Yes.

You weren't in the car for an hour were you?---I'm not sure of the exact time.

Certainly, what was said to the judge on your plea was that you were aware of it well before you heard the shot and Mr Andrews came back in the car and indicated that he'd shot him?---Yes.

Why do you say this to the police? "Prior to that were you aware of what was going to happen?" "No." "Never spoke about it?" "No. I thought it was always going to be a debt collection"?---Well, to some degree - - -

It's just not the truth.

HIS HONOUR: Just wait minute please?---To some degree it is the truth.

MR HELIOTIS: Prior to hearing the shots you weren't aware of what was going to happen? That's the truth is it, Mr McGrath, as your understanding?---I'm not sure.

I beg your pardon?---I'm not sure.

If that was the truth, if you were not aware of what was going to happen prior to hearing the shots, if you believed always it was going to be a debt collection, no way you would have pleaded guilty to murder on the basis that you knew he was

going to be killed about an hour beforehand, would you?---You're asking - I'm guessing you're asking about my frame of mind at the time and I'm not sure.

I'm asking you about what you told the police that is inconsistent with what you said on your - what was said on your behalf on your plea of guilty to murder. Were you aware about an hour beforehand that what was going to happen was that Mr Marshall was going to be murdered? ---To a large degree, yes.

No, you pleaded guilty on the basis that you became aware about an hour beforehand, didn't you? Was that the truth? ---Yes.

How can it be the truth that until you heard the shots you were not aware of what was going to happen. You thought it was going to be a debt collection. How can that be the truth?---Because I was trying to relay to Mr Bateson that to some degree I had dismissed the possibility from my mind.⁴⁸⁶

472. On the third day of Mr McGrath's evidence, there was further mention of the debt collection point, with Mr Horgan referring to disclosed material:

MR HORGAN: He says he thought it was going to be 'a debt collection'; right at the bottom of the page. "When you were here last time you indicated to my senior sergeant the initials CW, what was that all about?" McGrath; "He was suggesting I can't remember what questions he asked but that person may - no a few things I'm not sure - but I've suggested to him on the phone I may be able to find out things" and then he talks about Andrews being closer. At the bottom of the next page. Page 13, towards the bottom, two-thirds of the way down, "Are you prepared to tell us his name?" "We know his name is Carl Williams". McGrath says, "I don't know that". You go over the page. There's talk about the background to these things, about the [REDACTED] about the [REDACTED] and if you turn over to p.16 now, top of the page, "How did this debt collection talk come up?" "Well he approached me about it, that's the sort of thing I'm not interested in"; McGrath says. "It is sort of low profile." "How much did he owe?" This is Marshall. "I think so, yes." "There's talk about we were supposed to get half and it was divided between me and Mr [REDACTED] 'I said I don't give a fuck about it." "Who did he owe

⁴⁸⁶ Ibid, pages 174.10 – 176.30.

*this money to?" "Who did Marshall owe the money to?" "I'm only guessing." "But that same person Carl." "Which person?" "The one I gave you the initials for." He says he makes an assumption. So on and so forth.*⁴⁸⁷

473. Mr Heliotis QC then returned to the topic:

Have a look at p.24, a few pages later. Start off with, "Mr McGrath, I may have an answer, he's now told you he doesn't believe you and you are starting to expand your position a bit, right". Go back to the previous page, "I make no judgments on who Jason Moran or anyone else is, as I've tried to get across to you I am about to prove - - -" and you say "Yeah". "And that is what I am looking for". McGrath, "Well, I may have known you'd fucking want him, I didn't know he was going to kill him, that's fucking - I may have thought he might - he was going to be a bit more heavier than just a fucking debt collection, but I didn't know he was going to kill him". What's happened is that Mr Bateson is telling you he doesn't buy your story so far, you are starting to expand a bit on it?---Yes, that is correct.

"Who are we talking about, Andrews, who are we talking about Marshall or Moran/Marshall" and you go on to discuss what you think was going to happen. "I thought it was a debt collection but when the gun appears I thought it was going to be a bit more heavier". "What really did you think?" "Maybe scare the shit out of him or put one in the knee cap or something like that". That is not true either, is it. Once the gun was produced, you have already told us you pleaded guilty to murder from that point?---Yes, that's correct.

So that answer is not true either?---Yes, most of that's true.

You, at that stage, once the gun's been produced, it's no longer a case of you thinking he was going to scare the shit out of him or put one in the knee cap, what you say is you, at that stage, believe he was going to kill him. That's why you pleaded guilty to murder from the point when the gun was produced?---It's a bit hard to say.

⁴⁸⁷ Untendered Transcript of Mr McGrath Examination, R v Carl Williams, Andrews and Thomas, (3 March 2005), pages 271.31-272.25.

The next bit I suggest is not all that hard to say, Mr Bateson says, "Yeah, well what about Moran?" Your answer, "I don't know, I can always find out things, but I don't know" and that is when you leave the car, right?---Yes.

That is the final position that you put in relation to Jason Moran in any event, "I don't know".

That is your final word to the police at that point?---In this informal conversation in the back of the car.

We have gone through an informal conversation in the back of the car, going over and you told lies. We have gone through a record of interview, a formal document and you have told more lies. Now we have got an informal conversation, you are telling more lies, right?---Yes, still testing the water, I'm still in fear of my life and I'm still emotional and still a lot of things.⁴⁸⁸ (Emphasis added.)

474. Mr Heliotis QC then went to cross-examine Mr McGrath as to how the Marshall statement was made. Mr McGrath accepted that:

- (a) the Marshall statement came first, followed by the statements concerning Moran/Barbaro then Mark Moran;⁴⁸⁹
- (b) the statements each took a period of time to complete;⁴⁹⁰
- (c) the statements required changes from time to time;
- (d) he had the brief in relation to the Marshall murder in his possession in his cell prior to making his statement;⁴⁹¹
- (e) during the making of his statements, the police referred him to relevant telephone records to show his phone at particular locations at particular times; and⁴⁹²
- (f) he was provided the audio evidence from the Marshall murder before committing to a statement,⁴⁹³ as well as surveillance evidence.⁴⁹⁴

475. Mr McGrath made similar concessions in relation to the other statements he made.⁴⁹⁵

⁴⁸⁸ Ibid, pages 278.23 – 280.8.

⁴⁸⁹ Ibid, page 307.17-19.

⁴⁹⁰ Ibid, page 307.29-30.

⁴⁹¹ Ibid, page 308.2-19.

⁴⁹² Ibid, page 310.5-16.

⁴⁹³ Ibid, page 310.17-22.

⁴⁹⁴ Ibid, page 310.23-26.

⁴⁹⁵ Ibid, pages 313 – 314; 317-319.

476. What followed this evidence was the cross-examination of Mr McGrath by Mr Lovitt QC and Mr Papas QC and then days of further evidence, including the cross-examination of Mr Bateson.
477. What the cross-examination of Mr McGrath demonstrates is that Mr McGrath was extensively questioned about matters relating to his credibility, including his suggestion that he initially maintained his belief that the Marshall murder was in fact a debt collection. He was questioned about that topic by Mr Heliotis QC on several occasions over two days.
478. Counsel for Ms Gobbo has not sighted the remaining days of the committal evidence nor the depositions. Counsel Assisting have. It is understood they contain the transcript of the 13 November 2003 recording (as is evident that Mr Heliotis QC was referring to pages numbers of it). It is apparent that all parties had been disclosed this material, including Mr Thomas. It was not hidden in a conspiracy with Ms Gobbo, as Counsel Assisting imply.
479. The only matter hidden was that Ms Gobbo had read the statements prior to Mr McGrath signing the statements. It was disclosed, however, that a lawyer had read the statements before Mr McGrath signed the statements – Counsel Assisting set out at [753] of volume 2 of their submissions a passage where Mr Lovitt QC in fact asks about Mr McGrath's legal representative looking at the statement before it is signed, with Mr Lovitt QC describing it as a "*negotiated statement*". As has already been outlined, the rationale for withholding Ms Gobbo's name was in relation to her safety and the belief her life was at risk. It is perhaps why the Magistrate did in fact agree to the redactions he did, knowing the issues were in fact fairly before the Court.
480. Accordingly, it is apparent these issues were known to Mr Thomas (and his Counsel, Mr Lovitt QC). They had the material prior to the committal and the matter of the "*debt vs murder*" was the subject of extensive cross-examination in Mr Thomas' presence. Additionally, Mr McGrath was questioned about the process of how his statement was taken with amendments made over a period of time, as well as the fact he wanted to speak to his legal representative before the statement was signed.
481. Consequently, Counsel Assisting's submission that Mr Thomas was unaware as to the material change in Mr McGrath's stance (that is, that the matter was a debt collection as opposed to murder) and that it was not known to Mr Lovitt QC and Mr Thomas it utterly misleading and patently incorrect. The transcripts evidence that Mr McGrath was questioned about that matter. It follows that the premise for many of the allegations made by Counsel Assisting are unfounded.
482. It is most surprising that Counsel Assisting felt fit not to refer to this at all (i) during hearings, and (ii) in their extensive submissions in volume 2. This is accentuated by the fact that the evidence of Mr

Bateson was that Mr McGrath was questioned about this issue.⁴⁹⁶ On one occasion, Mr Bateson in fact recalled that Mr Heliotis QC had cross-examined Mr McGrath over several days about this very point.⁴⁹⁷ Counsel Assisting never addressed this orally or in writing. Mr Bateson returned to continue his evidence months later, and Counsel Assisting did not remedy their omission.

Editing of statements/"can-say" process

483. Much has been made by Counsel Assisting on the issue of Mr McGrath requesting that Ms Gobbo sight his statements before he signed them. It is submitted that the practice in Victoria of taking a "can-say" statement is such that this was, and is, a regular practice.
484. A "can-say" statement is a reverse caution statement where an accused (or someone who has committed a crime) provides a statement to the prosecution or police as to what they could say if they were a witness. A "can-say" statement is provided on the basis the material within it is not used to prosecute the accused (hence the reverse caution). Its purpose is to allow the prosecuting body to assess whether the person could be a credible, honest and reliable witness and, if so, whether to engage in providing plea negotiations and/or indemnities.
485. As was accepted by Mr Bateson⁴⁹⁸ and Mr O'Brien⁴⁹⁹ in evidence before the Commission, that process can be undertaken with an accused and his lawyers providing a "can-say" statement or the police taking the statement from the accused directly. In the latter process, on occasion, the police will provide it to the accused's legal representative before it is signed. There is nothing untoward in this: it is a practice that continues to this day in Victoria. Best practice nowadays is that the "can-say" process should in fact be recorded so that a record is kept. This is not a rule, however. Mr O'Brien gave the example of one of the leading silks in Victoria viewing a statement in his chambers with Mr O'Brien before the accused then signed it in front of both of them.⁵⁰⁰
486. As a recent illustration, in *DPP v Pesefea* [2018] VSC 479, one of five accused was charged with murder. The other four accused were charged with unintentional killing in the course or furtherance of a crime of violence, contrary to section 3A of the *Crimes Act*. In the event, those four accused provided "can-say" statements. All but one of those four provided "can-say" statements directly to Victoria Police. The other (Siilata) did not, but instead provided a final statement taken directly by

⁴⁹⁶ Transcript of Mr Stuart Bateson (2 July 2019), pages 3385.21-22; 3387.39-47; 3389.

⁴⁹⁷ Ibid, pages 3385.21-22; 3387.39-47; 3389.32-37.

⁴⁹⁸ Ibid, pages 3442-3444.

⁴⁹⁹ Transcript of Mr Jim O'Brien (10 September 2019), page 5974-5976.

⁵⁰⁰ Ibid, page 5983.

his solicitors and provided to the prosecution, with no notes of amendments. Their evidence was used in the trial of the accused charged with stabbing the deceased. No complaint was made by anyone, including the Supreme Court judge, as to the process adopted.

487. Where the accused provides a statement to the police that has been taken by their legal representative, drafts are not provided, nor a summary of all amendments prior to the finalisation of the document. It follows that, if someone is charged as a result of that statement, they and their legal teams are unaware as to the changes, in particular if no notes are taken of the changes.
488. Further, the defence and prosecution usually discuss any issues as between the police's view and the accused's version of events as set out in the statement provided. The rationale is that, usually, the police will either give evidence at the plea of the accused as to the accuracy and value of the statement or provide a letter to the sentencing court. To that end, it is in the accused's interests to ensure the police do not suggest there are material untruths in the statement, so as to obtain the maximum sentence discount. That necessarily involves discussions between the police and lawyers for the accused to resolve any issues. Often, the accused legal representative's will be "*fishing*" to ascertain the police's view. However, the decision to sign the statement is one entirely for the accused, having signed the jurat confirming the truth of the statement.
489. The situation of the "*can-say*" process is analogous to what occurred when Ms Gobbo was involved in the perusal of the statements prior to Mr McGrath signing the statements. Mr Bateson's notes and chronology detail that, after Mr McGrath's plea for unrelated matters in [REDACTED] he advised Ms Gobbo that the next step was to take a "*can-say*" statement. That process then followed, with police taking the details and Ms Gobbo having sight of the statements. There was nothing untoward about the process. Mr McGrath asked his legal practitioner to view the statements before he signed them. In fact, the statements were further amended after Ms Gobbo had sighted them. Mr McGrath signed them – Ms Gobbo did not influence that decision. By signing them, Mr McGrath confirmed them to be the truth. He did so knowing that Mr Bateson had expressed scepticism to his face about Mr McGrath's belief that the Marshall murder was to be a debt collection (on 13 November 2003, as per the covert recording put to Mr McGrath extensively by Mr Heliotis QC at the committal) and that Ms Gobbo had, by inference, repeated this scepticism.
490. It is noted that, after Ms Gobbo ceased acting for Mr McGrath, Stratton Langslow was briefed. Prior to Mr McGrath's plea, it is clear that he at times went back on his decision to assist police. On those occasions, Purana contacted Mr Langslow. He would be granted an expedited visit to placate Mr

McGrath. He would then report back to Purana that Mr McGrath was happy to co-operate again. He also viewed the statements of Mr McGrath. Mr Langslow was used by Purana in much the same way. It is noted that no criticism is made in any way of that conduct. As is apparent from the committal, the fact that Mr Langslow was involved was neither here nor there; the defence were interested in the point of Mr McGrath changing his mind, as if playing a game. And they were able to cross-examine on that point, just as they were able to do so in relation to his belief that it was to be a debt collection as opposed to a murder and as to how the statement was made before it was signed.

491. Further, the evidence indicates that, prior to Mr Andrews signing his statements and adopting them, Mr Horgan SC for the OPP and Mr Duggan for Mr Andrews considered them. On 3 March 2006, Mr Horgan SC and Mr Duggan reviewed the draft "can-say" statements. Mr Andrews later signs them on 7 March 2006. In between providing the unsigned statement to both the prosecution and defence and the actual signing of the statement, Mr Bateson recorded that there was "further discussion and instructions re: the plea".⁵⁰¹
492. Mr Williams undertook a similar process, refusing to sign his statement until his lawyers, Marita Alman and Sharon Cure (both now judicial officers), reviewed them.⁵⁰²

Conflicts

493. As the Commissioner will be well aware, it is possible for Counsel and solicitors to act for one party and later act for another that has been, or could be, in conflict with the first. It depends on many considerations.
494. It is also noteworthy to consider Ms Gobbo's professional career to the time that she began representing Messrs McGrath, Thomas et al.
495. Ms Gobbo had worked as a solicitor up until 1998. It is apparent that, even after being called to the Bar, she was instructed by firms who, in effect, asked her to act as both Counsel and litigator. The Commission has before it memorandums from solicitors to leading Counsel that Ms Gobbo had drafted. She also met clients and obtained instructions from them. Consequently, the lines were blurred for Ms Gobbo as to her differing roles. This may go some way to explaining why Ms Gobbo was at the beck and call of all her clients and became so close to them. It is also perhaps why she dealt so frequently with police officers, akin to how solicitors would. It is noted that, in other

⁵⁰¹ Transcript of Mr Bateson (28 November 2019), pages 10095-6.

⁵⁰² Ibid 10097.

jurisdictions, the delineation is made clear from qualification, when in fact lawyers choose from the outset to be either Counsel or a solicitor. In addition, the evidence demonstrates that Ms Gobbo had a significant bail practice. By necessity, that required her to liaise with informants prior to their being cross-examined by her, which resulted in her having more direct contact with police officers.

The example of her seniors

496. By the time Ms Gobbo was representing Mr Mokbel, Mr McGrath, Mr Thomas et al (from 2002 onwards), she was still a fairly junior barrister, barely four years' call.

497. Many of the solicitors by whom she was briefed represented several accused in a case, often where there may have been (or in fact were) conflicts as between the accused. The evidence demonstrates this occurred. For example, Mr Williams had James Valos represent a number of accused when they were arrested; Mr Andrews and Mr McGrath were both represented by him. Solicitor 2 acted for many parties, and was often cited for acting in conflict. That solicitor was also in a relationship with a gangland individual. Mr Magazis represented Mr Thomas, Mr Williams and Mr McGrath.⁵⁰³

498. Further, those who led Ms Gobbo often acted when they were in conflict. For example, the Commission has before it evidence that Barrister 1 acted in conflict; there is the example of where he sought to [REDACTED]

[REDACTED] Further, there was a stage when Mr Mokbel was being investigated and the AFP sought statements from Ms Gobbo and Barrister 1 by way of an application to a Magistrate. With this pending, Barrister 1 continued to act for Mr Mokbel.

499. During a committal hearing where Mr McGrath gave evidence, Barrister 1 represented Mr Williams. He asked Mr McGrath about who else might have wanted the Morans dead.⁵⁰⁴ He pushed Mr McGrath and Mr McGrath volunteered names, including Mr Mokbel and Mr Veniamin. Both were answers that were of assistance to Mr Williams. Barrister 1 then cross-examined to the benefit of Mr Mokbel;⁵⁰⁵ not Mr Williams. Barrister 1 immediately sought a suppression order protecting those named;⁵⁰⁶ in particular as he represented one in ongoing proceedings.⁵⁰⁷

⁵⁰³ Transcript of Mr Stuart Bateson (20 November 2019), page 9588.

⁵⁰⁴ Transcript of Mr McGrath, Committal Proceedings (2 March 2006), page 205.18-206.023.

⁵⁰⁵ Ibid, pages 206.1 – 207.29.

⁵⁰⁶ Ibid, pages 207.30-208.4..

⁵⁰⁷ Ibid, pages 214.4 – 215.1; 225.13-226.7.

500. It was not just those who led Ms Gobbo but also those more senior to her in cases she co-defended who acted in conflict. The Commission heard evidence that Sean Grant (now a judge in NSW) appeared for Mr Andrews at his filing hearing on 27 October 2003. At some point, Solicitor 2 was also acting for Mr Andrews. Eventually, Mr Andrews pleaded guilty and was to provide evidence against Mr Williams. Thereafter, Mr Grant and Solicitor 2 acted for Mr Williams. Indeed, the matter was raised before King J on 30 March 2006.⁵⁰⁸ An extract was read to the Commission and it demonstrates a view from Solicitor 2 that she could manage the conflict by simply not being present in Court when Mr Andrews was to give evidence and be cross-examined.⁵⁰⁹ Counsel Assisting also asserted that, based on material he had read, Mr Grant had also been to the custody centre early in 2003 to visit Mr McGrath.⁵¹⁰ It follows that he represented Mr McGrath, and thereafter Mr Andrews and, after he rolled, Mr Williams, all in the same matter; all in conflict.
501. Further, the Commission also heard evidence that, during those proceedings, Mr McGrath sacked his solicitor (Solicitor 2) and sought a replacement. He initially sought to instruct Mr Brand. Mr Brand was stopped from acting by Mr Horgan SC who advised Gavan Ryan that there should be objection to Mr Brand acting as he was in conflict. As a result, Paul Duggan was engaged (who was regularly used by the police and OPP in acting for those assisting the prosecution). There are numerous other examples.
502. Counsel Assisting also note that Ms Gobbo attended the christening of Dhakota Williams. They omitted the fact that other lawyers were present on the same (lawyer) table as Ms Gobbo: Mr Grant (who, as noted above, is now a judge), Theo Magazis, Peter Faris QC, Solicitor 2 and respective partners.
503. It is noted that the same leading barrister represented Mr Cooper and Mr Thomas on their respective pleas. Mr Cooper provided statements to the police from April 2006 onwards. Some of those statements would implicate Mr Thomas in drug trafficking. Mr Thomas pleaded guilty to the murder charge he faced and provided statements to the police in 2006. One of those statements was a drugs statement. It implicated Mr Cooper. At Mr Thomas' plea, he swore to give evidence in line with his statements. The barrister who appeared at his plea was the same who appeared in February 2007 for Mr Cooper. Mr Cooper gave evidence swearing to give evidence consistent with the statements he provided. So, the same barrister (who, as it happens, was a mentor to the

⁵⁰⁸ Exhibit RC780A, Transcript of *R v Williams* and Thomas before Justice King, (30 March 2006).

⁵⁰⁹ Transcript of Mr Stuart Bateson (21 November 2019), pages 9734-5.

⁵¹⁰ Transcript of Mr Stuart Bateson (19 November 2019), page 9548.

Counsel Assisting who acted in conflict in the Commission) acted for both Mr Cooper and Mr Thomas, despite them implicating each other. The situation is similar to Ms Gobbo representing Mr McGrath then Mr Thomas.

504. On one view, Mr Horgan SC also acted in conflict. In 2004, he represented the police at the ACC and cross-examined Mr Thomas. Mr Thomas had not been charged with any murders then, but was suspected of many. Mr Horgan SC obtained information from Mr Thomas in relation to the murders, as well as other information. He was then briefed to prosecute Mr Thomas. He had in his possession material evidence given by Mr Thomas at a coercive hearing and was armed with it as the prosecutor in his murder trial. Prima facie, he had a conflict and still acted, in circumstances where he was one of the most senior Crown prosecutors in the State.
505. Despite Mr Horgan SC's memory of events, the contemporaneous notes also indicate that he was aware of Ms Gobbo's conflict in acting for Mr McGrath, Mr Thomas, Mr Andrews etc. There is evidence that he made submissions to prevent Solicitor 2 and Mr Brand acting in the case. However, it does not appear as though he made any attempts to stop Mr Grant or Ms Gobbo appearing in circumstances of apparent conflict. It is noted in the submissions of Counsel Assisting that, in Mr Horgan SC's closing address to the jury in the Marshall murder trial, he actually relied on a call where Mr Williams had spoken to a solicitor confirming that he had sent Ms Gobbo for Andrews and Mr Grant for Mr McGrath. The Crown case, as put by Counsel Assisting, was that "*Mr Williams had orchestrated the murder and was orchestrating the defence by arranging legal representation*".⁵¹¹ It is apparent that Mr Horgan SC's junior, Mr Tinney (now Supreme Court judge), and members of the OPP (Vaile Anscombe) were all aware, or should have been aware, that Ms Gobbo had acted for Mr McGrath then Mr Thomas, that Mr Grant had acted for Mr Andrews and then Mr Williams, and that Mr Horgan SC had acted at the ACC. No criticism is made by Counsel Assisting of the prosecuting body when in fact they were best placed to raise these matters with the Court, as they had done at times during the proceedings. Instead, they used the conflict to their advantage during the trial.
506. It is noted that, in Episode 2 of Trace, which was released after the Commission hearings concluded, Mr Horgan SC's memory appears to have improved.

⁵¹¹ Counsel Assisting submissions, Volume 2, [498]-[500].

507. The relevant evidence relating to parties' knowledge of Ms Gobbo's conflicts of interest are as follows (unless stated otherwise, these are taken from volume 2 of Counsel Assisting's submissions):

- (a) Ms Gobbo saw Mr Andrews at the custody centre on 26 October 2003. Her notes show:⁵¹²
 - (i) the police told Mr Andrews they watched him do it (that is, kill Mr Marshall);
 - (ii) there was a reference to \$500; and
 - (iii) the Police were undertaking gunshot residue testing.
- (b) Ms Gobbo saw Mr McGrath on 3 November 2003. Her court book notes reveal that:⁵¹³
 - (i) Mr McGrath had told Ms Gobbo that he told police that it was a debt collection and said that Mr Andrews had pointed a gun at him. He repeated this to police on 13 November 2003; and
 - (ii) he said nothing about Mr Thomas or Mr Williams.
- (c) Ms Gobbo saw Mr McGrath on 10 November 2003. Her notes of that meeting indicate that:⁵¹⁴
 - (i) Theo (Magazis) would write to the homicide squad;
 - (ii) Mr McGrath would wear it (that is, plead guilty) if Mr Andrews walked. He asked if Carl (Williams) was okay with this or not;
 - (iii) Mr Andrews called Mr Williams to say the horse had been scratched.
- (d) Ms Gobbo visited Mr Andrews on 11 November 2003. Her notes show:⁵¹⁵
 - (i) Ms Gobbo told him about Mr McGrath;
 - (ii) Mr Andrews was "ok" about witnesses; and
 - (iii) Mr Andrews wanted to speak to Theo (Magazis) (the same solicitor acting for Mr McGrath, according to the notes of the day before).
- (e) On 7 December 2003, Ms Gobbo attended on Mr McGrath. The notes reveal:⁵¹⁶

⁵¹² Exhibit RC336, Court Book extracts from Ms Gobbo, page 1.

⁵¹³ Ibid, page 2.

⁵¹⁴ Ibid, page 3.

⁵¹⁵ Ibid, page 4.

⁵¹⁶ Ibid, page 5.

- (i) Ms Gobbo attended with Theo (Magazis);
 - (ii) Mr McGrath told them that after the 464B (on 13 November 2003), Mark Hatt had turned up and offered him a deal to give up others;
 - (iii) Ms Gobbo advised that "*becoming a Crown witness involves admitting the offence*";
 - (iv) Ms Gobbo offered "*another solicitor/barrister to negotiate as we act for Mr Andrews*";
 - (v) Mr McGrath stated that he was a bit worried about things and wouldn't give evidence against "*him*"; and
 - (vi) "*Tapes shown to him Theo to get*". This is a reference to the 464B conversations and admissions Mr McGrath made, including suggesting that this was a debt collection and not a murder.
- (f) Ms Gobbo visited Mr McGrath on 26 February 2004. This was not referred to in Counsel Assisting's submissions. The notes show:⁵¹⁷
- (i) Mr McGrath reports that Philip Swindells had offered him a deal;
 - (ii) Ms Gobbo explains "*independent lawyer/solicitor*" for him;
 - (iii) "*independent legal advice given; options explained*" to McGrath;
 - (iv) Mr McGrath details his moral dilemma about the killing; and
 - (v) "Leanne Warren (Karen) to come and see me." This is a reference to a new solicitor. Ms Gobbo arranged this respected solicitor, who was not involved in representing any party in the gangland wars, to ensure there was no conflict.
- (g) On 5 April 2004, Mr McGrath made Ms Gobbo aware that Purana had visited him and wanted full disclosure. That was after Mr Horgan SC, Ms Anscombe and Purana detectives met about Mr McGrath's potential co-operation. Later that day, Mr Bateson spoke to Ms Anscombe making her aware that he would contact Ms Gobbo, as McGrath's legal representative, to discuss the "*can-say*" process. Mr McGrath was then attended by Mr Bateson and Mr Buick. Mr Bateson rang Ms Gobbo and mentioned that the DPP had been consulted and that a "*reverse caution*" statement would be required.

⁵¹⁷ Ibid, page 6.

- (h) Karen Ingelton was now instructed to act for Mr McGrath with Ms Gobbo. Both attended on Mr McGrath on 6 April 2004. Mr McGrath provided extensive details as to his criminality. Mr McGrath was then discussed at the County Court by Mr Ryan, Andrew Allen, Ms Ingelton and Ms Gobbo. Mr Ryan noted issues relating to conflict on 7 April 2004. Ms Gobbo's notes refer to Mr Horgan SC as well as a "*can-say*" statement⁵¹⁸. This suggests a "*can-say*" statement was requested by Mr Horgan SC, and that Ms Gobbo and Ms Ingelton, as Mr McGrath's legal representations, were asked to be involved in that process.
- (i) On 9 April 2004, Ms Gobbo discussed issues relating to Mr McGrath with Mr Allen.
- (j) On 27 April 2004, Mr Swindells and Mr Allen met with Mr Horgan SC. Purana issues were discussed, including Ms Gobbo. Mr Horgan SC was to contact Ms Gobbo.
- (k) On 28 April 2004, Mr Horgan SC did that. Ms Gobbo's court book notes⁵¹⁹ reflect that he asked Ms Gobbo who she acted for and if she had a conflict. Mr Horgan SC's knowledge of this issue can only have arisen by virtue of Mr Ryan and Mr Swindells discussing it with him. The note continues, "*Want a can say statement: the next step to be taken.*" It was evidently contemplated by Mr Horgan SC that Ms Gobbo would be involved in the "*can-say*" process.
- (l) On 4 May 2004, Mr Swindells contacted Ms Gobbo. Mr Swindells was noted as saying, "*The OPP have overall control of the brief.*" The Court book also reflects, "no issue re: conflict Mokbel, Williams and Thomas." Ms Gobbo then called her instructing solicitor, Ms Ingelton. Her court book entry suggests Ms Gobbo related her conversation with Mr Horgan SC about "*my difficult position.*" This can only be a reference to her potential conflict. The strong inference is that Mr Horgan SC had not said anything to stop Ms Gobbo acting.
- (m) On 18 June 2004, Ms Gobbo represented Mr McGrath. Mr Horgan SC prosecuted. By that time, the evidence indicates Ms Gobbo and Mr Horgan SC had discussed a plea deal for Mr McGrath. He then began providing statements to Purana – the "*can-say*" process that Mr Horgan had requested had begun.
- (n) During the statement-making process, Mr Horgan SC was consulted about a change to Mr McGrath's statement. Mr Bateson's contemporaneous records state "[s]poke to Geoff Horgan. Agreed paragraph not required in McGrath's statement".⁵²⁰ (Mr Horgan also met

⁵¹⁸ Ibid, page 9;

⁵¹⁹ Ibid, page 10.

⁵²⁰ Transcript of Stuart Bateson (28 November 2019), pages 10090-1.

Mr McGrath (with Ms Anscombe from the OPP) and discussed how Mr McGrath should give evidence, including his demeanour. Mr Horgan SC also appeared to use Mr Bateson to relay information to Mr McGrath about his evidence).⁵²¹

- (o) On 16 August 2004, Mr Thomas was arrested for the murders of Barbaro and Moran, based upon the statements of Mr McGrath. As he detailed in evidence, he knew that McGrath had rolled from the moment he was arrested and Ms Gobbo was representing him. Notwithstanding this, he had Ms Gobbo, instructed by Mr Valos, represent him.
- (p) In September and December 2004, Mr Thomas appeared before the ACC represented by Mr Horgan SC. Mr Horgan SC was briefed from the outset in the murders of Barbaro and Moran. He knew that Mr McGrath implicated Mr Thomas, as he had requested the "can-say" process and, more so, had been consulted during the time Mr McGrath made his statements. He did nothing to stop Ms Gobbo acting. He also did not see any issue in questioning Mr Thomas at a coercive hearing and then prosecuting him in serious proceedings that were on foot.
- (q) From September to December 2004, there were also numerous Supreme Court proceedings for Mr Williams, Mr Thomas and Mr Andrews. Mr Horgan SC appeared for the Crown throughout, and Ms Gobbo for Mr Thomas.
- (r) In March 2005, Mr McGrath was cross-examined extensively in relation to his statement, including the process by which it was taken. Mr Horgan SC prosecuted. He was aware the identity of the "*unknown legal practitioner*" was Ms Gobbo.
- (s) From March to September 2005, there were several Supreme Court mentions and hearings. Ms Gobbo appeared for Mr Thomas. Mr Horgan SC, often with Mr Tinney, appeared for the Crown. This included hearings relating to Mr McGrath's credibility. Nothing was done by Mr Horgan SC about the potential conflict which he was aware of.
- (t) On 8 September 2005, Ms Gobbo makes a bail application for Mr Thomas. Mr Tinney appears for the Crown.
- (u) On 9 September 2005, there was a further case mention. Mr Grant now appeared for Mr Williams, having initially appeared for Mr Andrews, who by this time had indicated he would likely plead guilty. Mr Horgan SC and Mr Tinney appeared for the Crown. By that time, Mr

⁵²¹ Ibid pages 10091-2.

Horgan SC would have been aware of the call made by Mr Williams on 26 October 2004, to Mr Magazis about Sean Grant representing Mr McGrath and Ms Gobbo representing Mr Andrews, which he would deploy it to his advantage weeks later.

- (v) Between September and November 2005, Mr Williams stood trial for the murder of Mr Marshall. He was convicted. Mr Horgan SC and Mr Tinney appeared for the Crown. As set out above, they relied on Mr Williams co-ordinating Counsel as part of the closing address.
- (w) In response to Mr McGrath's evidence being accepted by a jury, and Mr Williams being convicted, Mr Andrews co-operates with Purana. Mr Horgan SC tells Mr Ryan that Mr McGrath's prospective new solicitor was conflicted and should not act.
- (x) On 19 February 2006, Mr Thomas had indicated a willingness to also assist the authorities. Mr Horgan SC was notified. He was further updated on 20 February 2006.
- (y) On 28 March 2006, there was a hearing before King J relating to Solicitor 2's conflict in acting for Mr Williams having acted for Mr Andrews. It was adjourned to 30 March 2006 for parties to consider the solicitor's position. Mr Horgan SC appeared for the Crown.
- (z) On 29 March 2006, Mr Horgan SC met with the DPP, Mr Overland, Ms Anscombe and others relating to the Williams proceedings. It appears there was discussion about resolving Mr Williams' matters.
- (aa) On 30 March 2006, the Solicitor 2 conflict returned to Court. Mr Bateson's notes indicate that it was resolved with "*Solicitor 2 undertaking to not speak to Mr Williams about Moran/Barbaro and Mr Andrews' solicitor to be Solicitor 2's associate.*"⁵²² Mr Bateson opined that this was a useless direction. It is submitted he was not wrong. It does indicate, if accurate, that Senior Counsel in the State, including the senior prosecutor and the kudge felt that was an appropriate means of dealing with the conflict. This is a clear indication of the culture that existed at the time.
- (bb) On 21 April 2006, Ms Gobbo was summonsed to appear before King J in relation to acting in conflict. Mr Horgan SC acted for the Crown. Mr Bateson became aware of the issue and spoke to Mr Horgan SC. He recorded the discussion as relating to Solicitor 2 and Ms Gobbo conflict of interest.

⁵²² Exhibit RC282, Chronology of Mr Stuart Bateson (30 March 2006), page 29; also Bateson notes.

- (cc) On 21 April 2006, after the hearing above, Ms Gobbo contacted her handlers. She recorded Mr Horgan SC approaching her on the steps of Court in front of all parties and asking her "[w]hen is Mr Thomas going to plead?"⁵²³ Given that Mr Horgan SC knew that Ms Gobbo had represented Mr McGrath when he implicated Mr Thomas and given that these issues had just been aired before the Court, it is astonishing that Mr Horgan SC sought to ascertain this information. He was well aware of the conflict and the issue that had arisen in Court but continued to encourage Ms Gobbo to provide information about someone who, on the face of it, she was conflicted from acting for. Mr Bateson was spoken to by the handlers and recorded as saying Mr Horgan SC "*is not totally aware of HS involvement in this.*" In other words, he did not know that she was a human source. He did, however, know, for the reasons set out here, that she had acted for Mr McGrath and then Mr Thomas, and so, acted in conflict.
- (dd) On 23 June 2006, after Mr Thomas had begun assisting authorities, Mr Bateson attended a meeting with Mr Horgan and Mr Tinney. It was decided that Mr Thomas was not to be believed on certain matters and this was to be conveyed to Ms Gobbo on behalf of the OPP. Mr Bateson did this and told Ms Gobbo to contact Mr Horgan SC to discuss further.
- (ee) On 27 June 2006, Ms Gobbo and Mr Valos attended upon Messrs Horgan SC and Tinney. A plea deal was agreed. It would have been known to Mr Horgan SC at the very least that Ms Gobbo had represented Mr McGrath and that he had spoken to her about the "can-say" statement process at the time of Mr Thomas' plea negotiation.
- (ff) On 29 June 2006, Mr Thomas was arraigned and pleaded guilty. Mr Horgan SC appeared for the Crown, with Ms Gobbo appearing for Mr Thomas.

508. Consequently, the material before the Commission demonstrates that, as a young barrister, Ms Gobbo was exposed to a culture where the legal position in relation to conflicts was not strictly adhered to by some of the most renowned practitioners of the time.

509. The resolution of Solicitor 2's conflict on 30 March 2006 best illustrates that. It is apparent that a Supreme Court judge, Mr Horgan SC, and others present (it is not clear who) could not see that the direction given did not, in reality, cure the conflict issue.

⁵²³ Exhibit RC281, ICR/3838, (ICR/28), page 258.

510. Further, the Commission itself indicates a perpetuation of sorts of that culture within the criminal law. The best example is Counsel Assisting. One of Counsel Assisting accepted a brief to act despite having appeared for SDU handler Mr Fox before Kellam J in relation to the same subject matter canvassed in the Commission. Mr Fox gave evidence with that Counsel representing him, listening to his confidential instructions and confidential evidence. Counsel then acted for the Commission in actively investigating the conduct of the SDU. Mr Fox has deposed that consent was not sought from him for Counsel to act in conflict until after the revelation that Counsel was acting in conflict had been aired in public. Thereafter, in a similar vein to what Solicitor 2 suggested to King J, that member of Counsel absented themselves during Mr Fox's evidence before the Commission as though somehow that cured the conflict, giving the appearance that the conflict had been managed, when, in substance, it had not.
511. The issue of the perpetuating culture of acting in conflict is also apparent in how the evidence suggests a conflict can be managed. Ms Gobbo gave evidence that, in short, it was possible for her to act for a party (who had been implicated by a party she had previously represented) as long as she was not involved in attacking the witnesses' credibility; for example, by not appearing when they gave evidence and only appearing in administrative hearings, such as filing hearings or mentions. It is of note that Counsel Assisting did exactly the same thing with Mr Fox – by being absent during the evidence of Mr Fox.
512. There are further examples. Mr Orman's solicitors were aware that Ms Gobbo was of the view that she could not act for Mr Orman (as she had acted for Mr Thomas and he implicated Mr Orman). Notwithstanding this, the ICRs record that the solicitors were content for Ms Gobbo to act at a particular hearing as it did not involve the cross-examination of Mr Thomas. The solicitor went as far as to say that he and Mick Gatto (who was funding Mr Orman) had no issue with Ms Gobbo acting as junior counsel to Mr Richter QC, on the basis she was not present during Mr Thomas' evidence. As it happened, Ms Gobbo was retained in circumstances where the solicitors and, by inference, the client were aware of her having represented Mr Thomas when he became a Crown witness.⁵²⁴

⁵²⁴ Exhibit RC281, ICR/3838, (ICR/103), (3 October 2007); also (ICR/106) (29 October 2009), when Ms Gobbo attends the subpoena hearing.

513. Legal practitioners are often encouraged to contact respected peers or more senior mentors in relation to issues such as conflicts of interest. All those surrounding Ms Gobbo were part of a culture where the rules relating to conflict were, at the very least, liberally applied.

Ms Gobbo's options after representing Mr McGrath

514. Ms Gobbo attended upon Mr McGrath and very quickly realised that he was going to turn against Mr Williams, Mr Thomas and Mr Andrews. At that stage, Ms Gobbo could have withdrawn from representing Mr McGrath. However, as Mr Bateson confirmed, the reality and culture of the gangland wars was that, if she had done so, it would have made it obvious to Messrs Williams, Mokbel et al (individuals all capable of murder) that Mr McGrath was implicating them. If Ms Gobbo had therefore done that, she would have been doing exactly what the police suspected a number of lawyers to be doing for Messrs Williams and Mokbel, and arguably be complicit in a criminal offence.
515. To act in Mr McGrath's best interests, it was incumbent on Ms Gobbo to assist him in his decision to become a Crown witness. That she did. She made clear to Mr Bateson she would not be passing the information back to Mr Williams as she was not his stooge. Having assisted Mr McGrath as she did, if her role had come to be known to Mr Williams and his cartel, there was a significant risk to Ms Gobbo's safety. She had been seriously threatened by Mr Williams' hitman for simply making a bail application for Lewis Moran. Ms Gobbo would have been aware of the risk to her. Mr Bateson and others, best placed to comment on the risk to her, gave evidence of this.
516. Had Ms Gobbo then refused to represent Mr Thomas, it would have highlighted her role. Consequently, Ms Gobbo was caught in a vicious cycle. She was doing the best by the person she represented, whilst at the same time ensuring that her life and the life of the person she represented was not at risk.
517. To that end, Ms Gobbo declared what she could. As set out below, Mr Williams, Mr Thomas and others knew that she represented Mr McGrath when he became a Crown witness. Instructing solicitors, leading Counsel and prosecution Counsel knew (including potentially the DPP). Then, when she represented Mr Thomas, Mr Williams knew of her conflict, as did Mr Orman's lawyers.
518. Ultimately, the Commission should not lose sight of all the evidence. Mr McGrath was always going to assist police. The [REDACTED] recording of 13 November makes that clear, as does the fact that, upon his arrest, Mr McGrath drew "CW" on a table, representing Mr Williams. The evidence against him relating to the Marshall murder was overwhelming. He was recorded prior to the offence discussing

it, then the offence was captured on a recording, and his behaviour and actions afterwards were also caught on the device. He was arrested and the firearm used found at his home. During the [REDACTED] recording with Mr Bateson, his contact with Mr Bateson up to the provision of his statements, and in the committal evidence, he consistently made clear he wanted the shortest sentence possible and would do whatever it took to get it. As he agreed at committal, he was responsible for or involved in four murders. He received a sentence of 18 years with a 10 year non-parole period, with three murders not proceeded with. On any view, that was an exceptional outcome for him and what he had accepted was his motivation from the outset.

519. When Mr Williams pleaded guilty to a number of murders, it is apparent the police thanked Ms Gobbo. Based on the evidence and what was disclosed relating to Mr McGrath's evidential weaknesses, there is an inference that Mr Bateson was thanking Ms Gobbo for representing Mr McGrath in his interests and not in the interests of Mr Williams, as the police initially suspected. Further, in doing so, Ms Gobbo had put herself in danger yet acted in Mr McGrath and later Mr Thomas' best interests. On the evidence, this is an inference available to the Commissioner, as opposed to the more nefarious inference put by Counsel Assisting.

Mr Thomas' knowledge of conflict

520. Mr Thomas was well aware that Ms Gobbo had acted for Mr McGrath, as was Mr Lovitt QC and Mr Thomas' solicitor, Mr Valos. Mr Thomas permitted this situation and so there was not a conflict as he consented to Ms Gobbo appearing as she did. He also did so knowing that when Ms Gobbo was representing Mr McGrath, Mr McGrath had stated that he did not believe the Marshall murder to be a murder but a debt collection. Mr McGrath had said as much in November 2003 to Mr Bateson, which was disclosed to Mr Thomas and his lawyers.
521. In his first statement, Mr Thomas accepted that he knew that Mr McGrath was represented by Ms Gobbo and that police would be coming for him next, after Mr McGrath had sorted out his deal.⁵²⁵ In his evidence, he also said that he and Mr Williams "*knew from day one, from the first night he got arrested, we knew 100 percent that he had rolled.*"⁵²⁶

⁵²⁵ Exhibit RC1175, First Statement of Mr Thomas (undated), [31].

⁵²⁶ Transcript of Mr Thomas (10 February 2020), page 13581.

522. Mr Thomas went on that Ms Gobbo had told Mr Williams and himself that Mr McGrath had rolled and this was face to face. She told Mr Thomas first, and then Mr Thomas and Ms Gobbo told Mr Williams.⁵²⁷

523. Mr Lovitt QC and Mr Valos also knew, and it follows that Mr Thomas must also have known, that Ms Gobbo had acted for Mr McGrath at material times. RC/1163 is part of a memorandum that was sent to Mr Lovitt QC about Mr Thomas on 18 February 2005. The following matters are particularly relevant:

(i) *As a result of Mr Williams being spoken to by police we understand that he told Police that he was with Mr Thomas and had attended a doctor for a blood test. As a result of that, Police then contacted Mr Thomas requesting that he attend Homicide and speak to Police with a view of confirming not his movements specifically but rather those of Carl Williams. At that time Ms Gobbo was briefed to appear for Mr Thomas in relation to the matters that Judge Gullaci subsequently sentenced him for and she attended St Kilda Road Police with Mr Thomas wherein he was asked about his movements on that date and indeed indicated what he says in his record of interview about attending a doctor and then subsequently a blood test. Mr Thomas confirmed his movements for the day in question and included the fact that he had called Ms. Gobbo (who was leaving for overseas on the morning of the murder). We mention this only in passing as Purana would have certainly checked the calls made to her mobile in order to confirm that which was claimed by Mr Thomas.*⁵²⁸

(ii) *Counsel is advised that Mr. Con Heliotis QC is appearing for Carl Williams and it is our understating that Mr. Nick Papas is appearing for Mr Andrews at the Committal commencing on 1 March 2005. We had briefed Ms Gobbo in relation to various mentions for Mr Thomas and in relation to the Stay Application but given her previous involvement in acting for Mr McGrath up until the time that he became a Crown witness we do not view it as appropriate if she appears at the Committal although she maintains a brief in this matter.*⁵²⁹

⁵²⁷ Ibid.

⁵²⁸ Exhibit RC1163, Memorandum from Valos Black & Associates (Nicola Gobbo) to Colin Lovitt QC (18 February 2005).

⁵²⁹ Ibid.

524. The memorandum to Mr Lovitt QC ended with Counsel being invited to contact Mr Valos with any queries. On the basis of this material, Mr Lovitt QC's suggestion on page 3 of his witness statement (as summarised at [741] of volume 2 of Counsel Assisting's submissions) that he did not know Ms Gobbo was instructed flies in the face of this memorandum. The memorandum states that Ms Gobbo had acted for Mr McGrath up until he became a Crown witness. **It also states that, as a result, Ms Gobbo would not appear at the committal but would maintain a brief for Mr Thomas.** Once the case was committed to the Supreme Court, Mr Lovitt QC did not appear at certain hearings, but Ms Gobbo did, for example, on 1 September 2005 and 8 September 2005 (at a bail application). This is entirely consistent with what was set out the memorandum to Mr Lovitt QC. There were many hearings thereafter. Mr Lovitt QC would have known that Ms Gobbo was still acting and appearing, as he sometimes appeared at some hearings (such as when Mr Andrews pleaded guilty in March 2006).
525. The memorandum therefore reveals that Mr Valos and Mr Lovitt QC (and Mr Thomas as their client) all knew Ms Gobbo had acted for Mr McGrath *"up until the time that he became a Crown witness"*. It also demonstrates the aforementioned culture of acting in conflict. Not only was no issue identified but, more so, the cure was that Ms Gobbo would not appear at the committal (when McGrath would be cross-examined) but would nevertheless retain a brief.
526. This demonstrates that Mr Thomas was aware of Ms Gobbo's conflicted position; again, contrary to the submissions of Counsel Assisting. In the circumstances where both the lay and professional client consent to the course undertaken, Ms Gobbo was not restrained from acting.
527. It is also noted from the memorandum that Mr Lovitt QC, Mr Thomas and Mr Valos were all aware that Ms Gobbo might be a witness in relation to the phone calls. Not one of those people appear to have had any issue whatsoever with that. This is discussed further below.

Ms Gobbo to be a witness?

528. Superficially, Counsel Assisting's submission at [469] that Ms Gobbo *"may have been conflicted"* because she was a potential witness in relation to the Barbaro/Moran murder, is attractive. However, on proper analysis, there is nothing that precluded Ms Gobbo from acting for Mr Thomas.
529. Mr Thomas, in his statement and his evidence, set out that on the day of the Moran/Barbaro murder, he and Mr Williams had decided to go as far away from the Cross Keys area to provide themselves with an alibi. They went to a doctor in Prahran. Whilst there, they spoke to Ms Gobbo by telephone on two occasions. Ms Gobbo made them aware that there had been a murder at Cross Keys. They

returned the call. It was their intention if arrested or charged to suggest that they were not the shooters as they were in Prahran and this could be verified by (i) the doctor, (ii) Ms Gobbo and (iii) Ms Gobbo's phone records.

530. The police case, and, subsequently, the prosecution case, was that Mr Williams had organised the shooting, that Mr Thomas had supplied the firearm and that Mr McGrath and Mr Andrews had carried it out.
531. It is apparent that, around the relevant time, there was a telephone intercept on at least Mr Williams' phone – as the day after the Marshall murder, the police heard Mr Williams arrange the representation of Mr Andrews and Mr McGrath.
532. Given the positions of the parties, there was never going to be any dispute that Ms Gobbo had been in telephone contact with Mr Thomas (and Mr Williams) around the time of the shooting and that the telephone records would demonstrate that they were away from the Cross Keys area (and so had not fired the fatal shots at Moran or Barbaro). The issue at the trial would be the interpretation of those calls. It was not the police case that they were the shooters but the organisers; and so, the fact that they called Ms Gobbo and mentioned they were in a doctor's surgery for slimming pills would have been accepted by all parties. It was the motive behind this which was in dispute – were they setting up a false alibi (and so had a consciousness of guilt) as the Crown suggested, or were they genuine in what they were saying. Ms Gobbo would not have been able to answer as to their state of mind. Consequently, the chances of her being called as a witness were remote. This would have been reinforced when she attended the police station with Mr Thomas on July 2004 to meet Mr Bateson, at which time no issue was taken.
533. There was no special treatment of Ms Gobbo. It should be noted that, at the time, she was considered by Purana to be part of the criminal cartel. Counsel Assisting at [474] indicate that, around 2 July 2003, Ms Gobbo became the focus of Purana investigations. This was at the time she attended the police station with Mr Thomas. Despite this, Purana did not seek a statement from her. It supports the submission that in fact it was because they did not dispute the phone calls. It was Thomas/Williams' intentions when making them. Was it a fake or true alibi, with Ms Gobbo just the stooge (as Mr Thomas conceded).
534. The memorandum to Mr Lovitt QC described above at [523] also sets out that Ms Gobbo had spoken to Mr Thomas on the day of the Moran/Barbaro murders and that Purana had no doubt obtained the call records. It is noted that Mr Valos and Mr Lovitt therefore were aware of this issue

after the charge and no-one saw an issue. It is not suggested Mr Lovitt formed the view Ms Gobbo needed to provide a statement to assist the defence and be a witness. There is no reference to anyone suggesting Ms Gobbo may be conflicted and, as such, could not continue to act.

535. Accordingly, it is submitted that it was not reasonable to suppose that, at some stage, Ms Gobbo would be required to testify about the phone calls. She never was. Both the prosecution and defence were aware of this. Not one sought to take a witness statement from her, let alone call her. Ms Gobbo was therefore justified to act as she did; on the facts, it was not unethical or inappropriate. It is no different to one of Counsel Assisting acting in the Commission when they had represented Mr Fox at Kellam J at IBAC. Mr Fox could have said at the Commission that, "*I was advised by my counsel to say the following.*" Counsel would then have been a witness. It was just as foreseeable. In the event it did not happen, just like Ms Gobbo being called to be a witness did not happen.

Mr Thomas' bail application

536. Counsel Assisting say that Ms Gobbo was so hopelessly conflicted that she could not have fulfilled her duties as counsel to Mr Thomas when making his bail application without revealing her role in Mr McGrath's statement and so, by failing to discharge her duties, breached them [REDACTED]
537. For the aforementioned reasons, it is not accepted that Ms Gobbo acted in an impermissible conflict. Mr Thomas knew, as did leading counsel, Mr Lovitt SC and the instructing solicitor, Mr Valos. Mr Thomas accepted as much and a memorandum to Mr Lovitt SC at the time confirms as much.
538. Counsel Assisting make allegations about how Ms Gobbo ran the bail application, without having recourse to the transcript of the hearing. It is not referred to anywhere in Counsel Assisting submissions. That is unfortunate.
539. A review of the bail application demonstrates Ms Gobbo did in fact discharge her duties to Mr Thomas and did present evidence relating to Mr McGrath's credibility.
540. The bail application occurred on 8 September 2005. This was before Ms Gobbo had become a registered human source.
541. The bail application occurred a short time after King J had ruled that the Crown could run the trials in the order they wished. As a consequence, the Crown wished to proceed with the Marshall murder first. This impacted Mr Thomas, who was not charged with that murder (Mr Williams and Mr Andrews were). When this was raised, Mr Horgan SC made some comments that inferred it would

be relevant to a bail application for Mr Thomas, and may work in his favour. The bail application was listed very shortly thereafter.

542. Ms Gobbo appeared at the bail application. This undermines Mr Lovitt QC's suggestion that he did not think she was instructed after the committal, as it was months later. It coincides with what is contained in the memorandum sent to him in February 2005.
543. At the bail hearing, evidence was called on behalf of Mr Thomas and two affidavits provided by his instructing solicitor. There were also affidavits before the Court from Mr Bateson and Mr L'Estrange. As a preliminary issue, King J raised that she had read confidential information reports that were adverse to Mr Thomas but not disclosable to Ms Gobbo.⁵³⁰ Ms Gobbo sought Mr Thomas' instructions on this point. It is clear Mr Thomas was present throughout proceedings.
544. Ms Gobbo made submissions as to the credit of Mr McGrath in the following terms:⁵³¹

MS GOBBO: One of the principal matters that is relied upon in support of Mr Thomas is the question of the case against him. As has been deposed to in the affidavit, it is submitted that it is a weak case, and I want to take Your Honour through some - - -

HER HONOUR: It's a weak case if you look at the fact that by far the majority of the evidence against him comes from a co-offender, who will have the warning, but an alleged co-offender who will have, of course, the accomplice warning, but juries have in the past, despite the warning, acted upon evidence of accomplices.

MS GOBBO: Of course.

HER HONOUR: And if they accept the evidence of the witness, it's not a weak case.

MS GOBBO: No, however, it is a case where what the witness asserts is not capable of being independently corroborated.

I'm not saying that where, as has been pointed out previously, where the witness asserts that, for example, he's at a particular location on a particular day, and as is apparent from the cross-examination at the committal, he's had access to CCRs and phone records and the like to be able to confirm or recollect where he

⁵³⁰ Transcript of Bail Application of Mr Thomas (8 September 2005), page 8747-53.

⁵³¹ Ibid, pages 8757-8.

was on a particular day, that is not corroboration of the facts in issue in relation to the evidence he gives against Mr Thomas.

HER HONOUR: I agree with that. But what I'm saying is juries have acted upon the uncorroborated evidence of an accomplice on many occasions and if they accept what the witness is saying is true, then it's a strong case against your client. If they don't accept the witness, your client will be acquitted.

MS GOBBO: And that is why Your Honour is probably aware that at the committal proceeding there was quite a challenge to the witness's credibility, motivation and his own criminal history. In relation to the weakness of the case against him, Your Honour, I was going to take Your Honour through parts of his statement, first of all, and parts of the cross-examination in support of that, but I don't know that that would necessarily assist Your Honour.

HER HONOUR: If you want to do it, you can certainly do it, but I accept that basically this is an uncorroborated accomplice which comprises the bulk of the evidence against your client.

545. From that exchange, it is apparent that Ms Gobbo wished to take her Honour through the relevant material but her Honour stopped her, in effect, saying that she accepted the criticisms but that the case against Mr Thomas would only be weak if a jury did not accept Mr McGrath's evidence. Reading between the lines, Ms Gobbo took the strong hint not to go through all the detail. However, it was clear she was referring to the committal transcripts and had evidently read them, and so was well aware there was evidence relating to Mr McGrath suggesting that the murder of Mr Marshall was a debt collection. Given Mr Thomas was not charged with that murder, this point only went to the credit of Mr McGrath. King J was making observations that credit points were for the jury to weigh up.
546. Ms Gobbo then went on to set out the issues of delay in Mr Thomas' favour,⁵³² that Mr Horgan SC had made a concession that running the Marshall murder first may mean Mr Thomas would make a favourable bail application (as he was not charged with that murder).⁵³³ She later called medical evidence, corrections evidence and also evidence of employment.

⁵³² Ibid, pages 8759-61.

⁵³³ Ibid, page 8761.

547. During the hearing, her Honour returned to the issue of the strength of the case against Mr Thomas, and that Mr McGrath was an untested accomplice. However, strength of the case against Mr Thomas (who was charged with Moran/Barbaro murders, but not that of Marshall) would be better known after the Marshall murder trial as it would be known whether a jury had believed him or not. Rather than simply accept that, as one would expect of Ms Gobbo if she was trying to hide the weaknesses in Mr McGrath's account to her benefit, Ms Gobbo in fact engaged King J in a discussion about Mr McGrath's credibility⁵³⁴:

HER HONOUR: I think the position would be infinitely stronger then in terms of the weakness of the Crown case, for example, and the prospects of your client perhaps being acquitted by comparison to where you stand now. At the moment we have an untested accomplice.

MS GOBBO: You say untested. He has to a degree been tested at committal proceedings.

HER HONOUR: Untested in the eyes of a jury is what I meant by that. Of course, he's been tested at committal.

MS GOBBO: And in the context of him being tested at committal, Your Honour may have had an opportunity to see or read the cross-examination by Mr Lovitt

HER HONOUR: I've had the opportunity.

MS GOBBO: And the witness's evidence of what he said about Mr Thomas in his statement doesn't get any better or any stronger by reason of the cross-examination. He simply cannot refer to anything specific, that is a location, a restaurant, a detail, despite being cross-examined by Mr Heliotis and Mr Lovitt on that point, but nevertheless I hear what Your Honour says.

HER HONOUR: I'm not sure that that cross-examination was designed to assist him to recall, was it?

MS GOBBO: I don't know. Mr Heliotis certainly pressed him.

HER HONOUR: Pressing him and asking - it's all comment of mine. I'll leave that.

⁵³⁴ Ibid, page 8763.

548. From that exchange, it is apparent that Ms Gobbo referred her Honour to the committal proceedings. In those proceedings, as already set out above, Mr McGrath was cross-examined about the issue of whether he believed the Marshall murder to be a planned killing or a debt collection. Any advocate making such an enquiry would expect to take the Court to the material if the Court had not seen it. Here, her Honour not only said she had read the transcript but she clearly had considered it in sufficient detail to question whether Mr Heliotis QC's cross-examination was designed to assist Mr McGrath to recall. So, on any view, her Honour had well in mind the significant credit issues relating to Mr McGrath. Having read the committal transcript, and bearing in mind Mr Thomas was not charged with the Marshall murder, the "*debt collection v murder*" point was only one of the matters that went to credibility; there were a plethora of other, perhaps more significant matters, for Mr Thomas' case in the Barbaro/Moran proceeding. The issue evidently was before King J and was not as significant as Counsel Assisting have suggested.

549. To emphasise King J's view, she said:⁵³⁵

MS GOBBO: [...]...Your Honour is no doubt aware of all of the authorities on the question of exceptional circumstances, and this, in my submission, is one of those cases where Your Honour ought not wait and see what is going to happen, because what Your Honour is indicating is, properly, that Mr Thomas may well be in a much stronger position if Marshall proceeded and failed.

HER HONOUR: There is no doubt that he would be.

MS GOBBO: And also because of the concession made by Mr Horgan, namely, the Crown would have to reassess where it was headed with all of this, but in any event, in my submission Your Honour shouldn't wait to see what happens.

HER HONOUR: The problem that you face in respect of this is that these are exceptionally serious charges in that this is, on any interpretation, an execution - execution murders related to gangland wars which have a basis that it would appear, from what I have been able to read, a drug basis; they are conducted in public, they are conducted around children and many, many children, many adults, incredibly dangerous situation. It brings it to a very high level of a charge of murder...

⁵³⁵ Ibid, page 8764.

550. Later, Ms Gobbo addressed Mr Thomas' purported role, to evidence that he was not as seriously implicated as his co-accused. She repeated that the evidence was weak and uncorroborated. Ms Gobbo suggested the uncorroborated evidence, the delay, the lower role ascribed to Mr Thomas, the fact he had not been in custody and other personal matters amounted to exceptional circumstances to justify the grant bail.⁵³⁶

551. King J returned again to the weight to attach at that stage to Mr McGrath's untested account:⁵³⁷

HER HONOUR: It's not a matter of even ignoring the warnings, the warnings don't say you cannot convict. The warnings say you must be careful, you must examine. So it's not a direction to acquit, it's a direction to be careful, to examine carefully, to assess this witness. Now juries have done that many times in the past. Sometimes they have said, "We don't accept this witness", other times they have said they do, and when you are in cases of this nature where basically it's underworld-type activity or gang-type activity, the persons that will be used to give the evidence are people of that nature, so it's not surprising that that is who it is.

552. Despite King J forming a clear view that Mr McGrath's credit was for a jury and a jury only, Ms Gobbo pursued the point in Mr Thomas' interests:⁵³⁸

MS GOBBO: No, but in my submission Your Honour ought not determine this is a strong case.

HER HONOUR: As I said, it depends entirely upon what a jury makes of him.

MS GOBBO: And as Your Honour has indicated, Mr Thomas's position would be quite different.

HER HONOUR: If he's been disbelieved by a jury, of course the position would be very different, or not even disbelieved, but a jury not being satisfied to act upon his evidence. Equally that would put Mr Thomas in a much stronger position.

MS GOBBO: And, as Your Honour referred to, in circumstances where if Marshall fails, and if Mr Thomas was refused bail today and Marshall failed, that would alter his circumstances totally.

⁵³⁶ Ibid, page 8766.

⁵³⁷ Ibid, page 8769.

⁵³⁸ Ibid, page 8770.

HER HONOUR: Absolutely.

553. King J then went on to set out the material she had read from information reports (all prior to Ms Gobbo becoming an informer; there is no material to suggest she provided any information about Mr Thomas prior to 16 September 2005) that indicated:⁵³⁹
- (a) Mr Thomas had very close relationship with Mr Williams;
 - (b) that he was present at the scene of another shooting (that of [REDACTED] and
 - (c) he had financial resources that are not commensurate with any paid employment. Her Honour had significant doubts this was legitimately earned. (This is also relevant to Mr Thomas' allegation that Ms Gobbo provided the ACC with the information relating to his [REDACTED] There were in fact information reports from other sources that evidently did so.)
554. Her Honour then heard further submissions from Ms Gobbo. Her Honour made observations about the gangland killings and how they appeared tit-for-tat. Ms Gobbo also referred her Honour to the cross-examination of Mr Bateson by Mr Lovitt QC at the committal.⁵⁴⁰
555. Mr Tinney then made submission in response. He reiterated that if Mr McGrath's evidence was accepted against Mr Thomas in the Moran/Barbaro trial, then it would result in conviction and that it would be hard for a judge to pass value judgment on such a case. King J did not disagree, again repeating, with Mr Thomas present, *"there will be a distinct difference once the Michael Marshall matter is over, simply because a jury will pass a decision one way or the other on the credibility of Mr McGrath."*⁵⁴¹
556. The bail decision was adjourned. The ruling is not available; however, it was obviously refused. The comments made by King J indicate the rationale for that was that these were serious gangland murders, in public, in front of children; the killings were tit-for-tat; and, whilst the Court accepted there were credibility issues, it was not possible to call the case weak – that was for a jury in the Marshall trial to assess. Further, there were information reports which suggested Mr Thomas was very closely associated with Mr Williams, was at the scene of another gangland killing [REDACTED] with the affidavit of Mr Bateson including reference to him being a suspect for that murder as he had been implicated [REDACTED] in 2003), and that he had money available to him that King

⁵³⁹ Ibid, page 8771-2.

⁵⁴⁰ Ibid, page 8813-5.

⁵⁴¹ Ibid, pages 8820-21.

J strongly suspected was from criminal activity. Also appended to Mr Bateson's statement was a statement from Michael Flanagan who was Acting Senior Sergeant of a drugs operation where Mr Thomas had been implicated and was seen on surveillance and heard on covert devices discussing supplying drugs and in fact supplying them to Mr Hutchinson.⁵⁴² There was a body of material considered by King J which meant that Mr Thomas' bail application was never going to be successful until an acquittal in the Marshall trial.

557. Having considered the bail application, it is clear that Ms Gobbo provided all the information that she could that was relevant. King J had read about the points relating to credibility raised at the committal, including the "*debt v murder*" point Counsel Assisting make so much of. It is unequivocally clear that King J's view as to the credibility of Mr McGrath would not be shifted; it was a matter for the jury in the Marshall trial to consider. If acquitted, Mr Thomas would either have proceedings withdrawn against him, or his bail application premised on the weakness of Mr McGrath's evidence would have more substance. Her Honour made her view apparent to anyone reading the bail transcript. So when considering the actual facts as they were at the hearing, there was no more Ms Gobbo could have done to sway King J. Mr Thomas' application for bail, based upon the reasoning espoused by King J, was always going to fail. [REDACTED]

[REDACTED] It appears as though she was prepared to take King J through the credibility issues of Mr McGrath as explored at committal, including the debt point. King J was appraised of it when she made her decision; her Honour said as much.

558. As a consequence, it is submitted that Ms Gobbo was not conflicted in that hearing to the extent it adversely impacted the administration of justice. She had not breached her duty to Mr Thomas, as he was aware of material matters and also knew Ms Gobbo had acted for Mr McGrath when he became a Crown witness. [REDACTED]

[REDACTED] There was actually very little more she could have added, given the comments made by King J.

559. King J had indicated the strength of the case against Mr Thomas was contingent on the outcome of the trial of Mr Williams for the Marshall murder. Ms Gobbo and Mr Tinney did not disagree. As it happens, the jury accepted the evidence of Mr McGrath despite all the credibility issues relating to him that were put at committal, and one assumes, deployed by Mr Heliotis QC at the Marshall trial.

⁵⁴² Affidavit of Mr Stuart Bateson relating to Bail application of Mr Thomas (8 April 2005), MIN.0002.0003.1078-1099.

In King J's words, that made the case against Mr Thomas strong, as it showed a jury did accept Mr McGrath's evidence. It had a significant impact on Mr Thomas – his trial judge would now consider the case against him strong. It no doubt played a significant part in his decision to plead guilty.

Mr Thomas' decision to plead guilty

560. By the time Mr Thomas pleaded guilty, he did so aware that:

- (a) Ms Gobbo had represented Mr McGrath up to the point he became a Crown witness;
- (b) he was armed with the 13 November 2003 transcript within which Mr McGrath had stated that he believed the Marshall murder was a debt collection;
- (c) he had seen Mr McGrath's credit seriously attacked and undermined at a committal hearing. This included Mr McGrath accepting he was a manipulative liar and would do what was necessary to get the lowest sentence. He was also questioned about his belief it was a debt collection. His evidence about this at committal was equivocal;
- (d) he had sought to have a separate trial from Mr Williams but this had failed;
- (e) he sought a bail application. Ms Gobbo made the judge, King J, aware of the credibility issues, including by referring to the committal transcript. King J made plain she had read the material (and so was aware of the debt collection point) but that a jury could still believe Mr McGrath and concluded that Mr Thomas' bail application and the strength of the case against him would turn on whether a jury believed Mr McGrath in the upcoming Marshall murder;
- (f) Mr Williams was convicted of the Marshall murder. It demonstrates that, despite the credibility issues associated with Mr McGrath (including the debt collection point), a jury did believe him beyond reasonable doubt;
- (g) Mr Andrews then decided to assist the authorities and Mr Thomas was aware of this. He would know he was to be implicated. In the event, he was;
- (h) evidentially, Mr Thomas was now in significant trouble. At the time, Mr Thomas was putting significant pressure on him and he "wanted to [REDACTED]";
- (i) Mr Thomas was well aware of the heavily discounted sentences Mr McGrath and Mr Andrews received. This was his primary motivation, with a view to [REDACTED] He knew police suspected him in relation to the murders of Victor Pierce, Paul Kallipolitis and

██████████ as well as drug dealing and laundering money, as he was asked as much during ACC hearings from September to December 2004. He was aware that both Mr Andrews and Mr McGrath received certain indemnities and was an avenue for him if he assisted authorities.

- (j) Throughout 2003 to 2006, Mr Thomas had flirted with Purana about pleading guilty. The chronology of his interactions and comments to police are dealt with in the Thomas case study at Chapter 9, and are not repeated here.
- (k) Mr Lovitt QC ceased acting for Mr Thomas. On 19 June 2006, the ICRs show that "*Mr Thomas had lost faith with Mr Lovitt*",⁵⁴³ that "*he had no money*" and so "*cannot get legal funding*". This suggests Mr Lovitt QC was no longer retained. It is known by the time of the plea that Mr Allan SC had replaced Mr Lovitt. This supports Ms Gobbo's evidence that, once the funding had dried up, Mr Lovitt QC returned the brief. By the time he pleaded guilty, Mr Thomas had been represented by Ms Gobbo, Mr Lovitt QC, Mr Allan SC, Mr De Luca and Mr Valos. Whatever their advice, he entered guilty pleas as he did.

- 561. It follows that Mr Thomas made the decision to plead guilty of his own free will and in possession of all relevant facts.
- 562. It is correct to say that, at that time Ms Gobbo was a registered police informer, she did provide some information relating to Mr Thomas. Very little of substance was disseminated and often occurred after the fact. When considering the impact on his case, it has little to no impact.
- 563. Consequently, for the reasons set out here, it is strongly submitted that, in the circumstances, Ms Gobbo did not act in an impermissible conflict. Mr Thomas was aware of the issue. Relevant material relating to Mr McGrath's belief that the Marshall murder was to be a debt collection was in Mr Thomas's possession and was also deployed as part of the defence during the committal. Matters relating to Mr McGrath's credit were well known to Mr Thomas when he chose to plead guilty. As King J identified, the case against Mr Thomas changed significantly depending on whether the jury in the Marshall trial believed Mr McGrath or not. As it is, they did. Mr Thomas and Mr Andrews realised this and sought a deal for their own personal benefit. Both received modest sentences for their accepted and believed criminality. Neither is an affected person, nor were any convictions obtained by virtue of their evidence.

⁵⁴³ Exhibit RC281, ICR/3838, (ICR/36), page 336.

564. The allegations made by Counsel Assisting are unfounded when the evidence is considered. The administration of justice was not adversely affected [REDACTED]
[REDACTED]
[REDACTED] Ms Gobbo's intentions were clearly to represent the interests of Mr McGrath and Mr Thomas, to their benefit and not that of Mr Williams.
565. More so, for the reasons set out at Part A, it is not accepted that categories A1 and A2 amount to a person's case being affected. It is far too broad a category. For the reasons set out there, there was no duty on Ms Gobbo to declare that she had provided information to Wayne Strawhorn, Jeff Pope, Peter De Santo or others. It is stretching the bounds of legal principles and is too remote to the cases of Mr Thomas et al.
566. In relation to categories B1 and B2, as outlined, information passed by Ms Gobbo to her handler about Mr Thomas was either not passed on, or if it was, it was of minor relevance and did not impact his decision to plead guilty to the charges he faced.
567. [REDACTED]
[REDACTED] Ms Gobbo provided a service to Mr Thomas. He was aware that she was acting for him having acted for Mr McGrath when he rolled. Ms Gobbo undertook the work required of her and provided that service. Ms Gobbo's evidence (and so her intent/belief) was that she was entitled to the money. [REDACTED]
[REDACTED]
568. It is submitted that Mr Thomas was disclosed relevant material and challenged Mr McGrath fully at committal and that he consented to Ms Gobbo acting for him, and that, accordingly, nothing untoward occurred in his case. [REDACTED]
[REDACTED]

Alleged dishonesty to Duncan Allan SC in a memorandum dated 12 December 2006

569. Counsel Assisting submit at [1011] of their submissions that Ms Gobbo was dishonest in a memorandum to Mr Allan SC on 12 December 2006, in stating she was no longer appearing for Mr Thomas because she had represented Mr Williams and his father. The purported dishonesty

asserted by Counsel Assisting is that Ms Gobbo had not mentioned other conflicts, including acting for Mr McGrath.

570. It is not accepted Ms Gobbo was dishonest in not setting this out in the memorandum.
571. Ms Gobbo was not asked one question about this, and yet, Counsel Assisting are not only importing knowledge and intent in drafting the memorandum, but they are not affording Ms Gobbo one iota of procedural fairness.
572. The memo was sent via the solicitors in the case, Valos Black, on behalf of Mr Valos. As set out above, he was aware that Ms Gobbo had appeared for Mr McGrath; the memorandum sent to Mr Lovitt QC says as much.
573. Much of the content in the memorandum to Mr Lovitt QC in February 2005 was replicated in the memorandum to Mr Allan QC on 12 December 2006 (it is understood Mr Allan QC also received the memorandum to Mr Lovitt QC). Thereafter, Ms Gobbo set out the context upon which she no longer acted for Mr Thomas. It culminated with this paragraph, which Counsel Assisting submit amounts to Ms Gobbo being dishonest:

The plea for Mr Thomas was listed to proceed on 9 August but the Williams camp found out about the date and about me appearing for Thomas. Carl Williams took it upon himself to write directly to Betty King complaining that I had a conflict (having appeared for him and his father George as Heliotis' junior in a drug trafficking committal two years ago). The Ethics committee cleared me but irrespective of that, Williams instructed his Counsel to apply for me to be disqualified and to seek an injunction against me appearing. At that point I decided it was in Thomas's best interests that I not appear.

574. It is Counsel Assisting's submission that Ms Gobbo was dishonest as she had numerous other conflicts of the kind Mr Williams was complaining about. Counsel Assisting have taken this paragraph wholly out of context.
575. In the memorandum, Ms Gobbo is explaining why she cannot appear and why the plea for 9 August 2006 was adjourned. It was known to Mr Thomas and his solicitor that Ms Gobbo had acted for Mr McGrath at the time that Mr McGrath had implicated Mr Thomas. Mr Thomas said as much in his statement and evidence to the Commission as set out at [521] to [522] above. It follows that she did not withdraw because she had represented Mr McGrath. The reason for the withdrawal was

the complaint and potential conflict as far as Mr Williams was concerned. She had a conflict in representing Mr Thomas where it was alleged by Mr Williams that Ms Gobbo had acted for him and his father, and so was disqualified from acting for Mr Thomas the moment Mr Thomas implicated Mr Williams. That is why she was withdrawing. That was the relevant information for Mr Allan SC as to why Ms Gobbo could not appear.

576. On 2 August 2006, Mr Williams wrote to King J and copied the letter to Ms Gobbo.⁵⁴⁴ Mr Williams set out that Ms Gobbo had acted for Mr Thomas and Mr Andrews and then said, *"I raise this with you because it gives me grave concerns, as Nicola Gobbo has acted in the past for my family members and myself, if ever a conflict of interest arises, I am sure it does and has for a long time here"*. That letter was also copied to Mr Coghlan QC as the DPP. The letter gave Ms Gobbo a few days to reply, or the matter would be aired on Court on 7 August 2006.

577. It is apparent that the cause of Mr Williams ire was that he considered there was a conflict because Ms Gobbo had acted for him and his family.

578. On 7 August 2006, Mr Faris QC appeared for Mr Williams. Mr Horgan SC and Mr Tinney appeared for the Crown. Mr Faris QC set out the basis for Mr Williams' complaint, namely that Ms Gobbo had represented Mr Mokbel (who Mr Thomas implicated) and represented Mr Williams as junior to Mr Heliotis QC and that she had also represented Mr Williams at a coercive hearing. On this basis, Mr Williams considered that Ms Gobbo was conflicted.⁵⁴⁵ It was left that Mr Faris QC would speak to Ms Gobbo and that she would seek an ethics ruling.

579. After the hearing, Mr Faris QC wrote a memorandum to Ms Gobbo which set out the issues relating to her withdrawal from representing Mr Thomas. The relevant parts read as follows:⁵⁴⁶

1. *As I understand the position, you act for Mr Thomas and propose to present a plea on his behalf on Wednesday next, 9 August 2006, before King J.*
2. *As you are aware, I act for Carl Williams who is currently in the preliminary stages of the Moran/Barbaro murder trial before the same judge.*
3. *As I advised you earlier today, the instructions from my client are that you are ethically conflicted with relation to acting for Thomas.*
4. *Since speaking to you I have received further, more detailed instructions.*

⁵⁴⁴ Untendered Letter from Lethbridges to Ms Gobbo enclosing letter of Carl Williams (3 August 2006), MIN.0001.0012.0321.

⁵⁴⁵ Transcript of *R v Mr Williams*, Mention (7 August 2005), pages 4239-40.

⁵⁴⁶ Memorandum from Mr Faris, QC to Nicola Gobbo (7 August 2005), MIN.5000.0001.3733.

5. *My client alleges that you have acted for-*

- a. *Him in a recent drug committal;*
- b. *His father ,George Williams ,in the same committal and*
- c. *[a family member at a coercive hearing].*

6. *As you know, Thomas is a critical Crown witness in Williams' trial. It is proposed by the Crown that Thomas will give evidence which directly implicates Williams in the murders.*

7. *As you have acted for my client and his family in recent times, the objection is made that there is a conflict of interest.*

580. Mr Faris QC went on in that memorandum to state that, unless Ms Gobbo withdrew, he would apply on the day of the plea to have Ms Gobbo disqualified and would seek an injunction, irrespective of whether she sought an ethics ruling or not.

581. That evening, Mr Faris QC sent Ms Gobbo an extract from the transcript earlier in the day, reaffirming the basis that Mr Williams objected; that is, in relation to her having represented him and his family members in recent times.

582. Ms Gobbo then did not appear for Mr Thomas and his plea was adjourned. Mr Allan SC was instructed (tellingly, not Mr Lovitt QC). Ms Gobbo wrote the memorandum on 12 August 2006 – five days after the final contact from Mr Faris QC and with the letter from Mr Williams to her (via Lethbridges Solicitors) fresh in her mind. It is obvious to anyone reading the memorandum that the purpose was to explain the very recent events and why she could not act. Mr Faris QC orally and in writing (to Ms Gobbo) laid out the grounds – that she had acted for Mr Williams and his family and so Mr Williams objected to her representation of Mr Thomas on that basis. At this time, Mr Williams' complaint was not that she had represented Mr McGrath or Mr Andrews. Mr Williams said raised that in a later letter in September 2006, but, at the time Ms Gobbo drafted the memorandum to Mr Allan SC, Mr Williams had not raised those issues.

583. Ms Gobbo did not lie in the memorandum to Mr Allan SC. She was setting out why she could no longer act and, to do so, repeated what Mr Faris QC had said to her. It was that, and nothing else, that had led her to withdraw. She was not in conflict acting for Mr Thomas because of her involvement with Mr McGrath, as Mr Thomas had consented to her appearing nonetheless. Here the issue was Mr Williams and his unhappiness that she had represented him and his family

members. Counsel Assisting's submission on this point is taken out of context, without reference to relevant material and, as a consequence, is misleading. Accordingly, it should not be accepted.

10. The Cooper case study

584. In Chapter 11 of volume 2 of their submissions, relating to the case study of Mr Cooper, Counsel Assisting seek the Commissioner make a number of findings that:

(a) Ms Gobbo's conduct under categories 1A, 1B, 2A and 2B evinces a conflict of interest and may constitute breaches of her legal duties, including to the court, to her client and her fiduciary duties. In certain circumstances it may also constitute a breach of legal professional privilege and/or confidence;

(b)

(c)

(d)

585. This Chapter responds to those conclusions and the matters relevant to those considerations.

February 2002 – September 2005 (prior to Ms Gobbo's registration)

586. Counsel Assisting submit that the three cases prior to Mr Cooper's arrest for the Posse charges in April 2006 are cases that may have been affected by the conduct of Ms Gobbo and Victoria Police.⁵⁴⁷

587. It is not accepted that Mr Cooper's criminality as evidenced by his guilty pleas prior to Ms Gobbo becoming a human source are cases that may be affected. There is no evidence at all to suggest that Ms Gobbo provided the police any information relating to Mr Cooper or his continued high level drug manufacturing prior to him entering guilty pleas for those cases. Those guilty pleas cannot be said to be potentially infected by the fact that Ms Gobbo was a human source, as the evidence, and the intention to plead guilty to those charges (in the face of overwhelming evidence), all occurred prior to Ms Gobbo becoming a registered informer.

588. In relation to the 2002 Landslip case, Mr Cooper caused a fire to develop at his laboratory on Anderson Street, Pascoe Vale. The summary of that case indicate there was a risk the fire would harm nearby residents. Mr Cooper initially fled the scene but returned such was the risk to human life of the fire he started. He was also told to return by the Mokbels,⁵⁴⁸ so as to not allow an investigation into them to develop. He was duly arrested at the location. The evidence against him

⁵⁴⁷ Counsel Assisting submissions, Volume 2, page 1745.2.

⁵⁴⁸ Exhibit RC667, Transcript of Plea Hearing of Mr Cooper (9 February 2007), page 136.20-24.

was overwhelming. He indicated to the Courts an intention to plead guilty a long time before Ms Gobbo became a human source in September 2005.

589. Having been released on bail for trafficking (manufacture) of a large commercial quantity of methylamphetamine, Mr Cooper thought it wise to carry on cooking for the Mokbels, no doubt for financial reasons.
590. His Counsel, Mr Duncan Allan SC submitted as much on his plea that he was cooking through financial debt traced back to a business he owned that collapsed, as well as owing serious criminals large amounts of money ⁵⁴⁹ (Mr Allan SC giving the example of \$5 million owed to Mr Nick Radev⁵⁵⁰ and \$300k to Mr Milad Mokbel⁵⁵¹). Mr Allan SC (evidently based on Mr Cooper's instructions) concluded, "[h]e had financial difficulties. He needed the money," as justification for his continued drug offending. ⁵⁵²
591. Mr Cooper was duly arrested again in relation to Operation Matchless – relating again to manufacturing a large commercial quantity of methylamphetamine between September 2002 – 11 April 2003. He was arrested having just delivered some of the drugs to a member of the Mokbel family on 11 April 2003. He was apprehended having been seen by police to drop off the drugs. Again, the evidence was overwhelming against him.
592. Given the offence was committed whilst on bail for similar offending, Mr Cooper was remanded in custody from April to December 2003. Relevant to sentence, it was likely the two offences would attract a significant amount of cumulation. Further, the guilty plea to the Landslip case meant that Mr Cooper was a serious drug offender for sentencing purposes relating to the subsequent cases. ⁵⁵³ This meant more serious punishment.
593. It is clear from telephone intercept evidence shortly before he was initially due to be sentenced, that for the two cases together, Mr Cooper anticipated a sentence well into double figures:
- (a) In speaking to a female who appeared to be close to him in April 2006 (just before his scheduled plea), Mr Cooper was heard telling her he would receive a high sentence, in particular given the deterrent sentences being imposed due to the gangland wars at the times. He gave an example of someone else who manufactured far less than him and on

⁵⁴⁹ Ibid, 132-139.

⁵⁵⁰ Ibid, 137.1-11.

⁵⁵¹ Ibid, 137.13-16.

⁵⁵² Ibid, 139.12.

⁵⁵³ See Sentencing Remarks of HHJ Howie, *R v Cooper* [REDACTED]

one indictment getting a severe sentence. He pointed out that he had two cases (indictments).⁵⁵⁴

(b) In a further call to a male associate around the same time (end of April 2006), he discussed expecting a sentence in high double figures, more than a person would get for murder.⁵⁵⁵

(c) Mr Cooper also wanted to raise money for Family including providing a present for their [REDACTED] birthdays. At that time, his Family [REDACTED] was [REDACTED] of age (and so, by inference, he was expecting to be in prison serving more than 13 years).⁵⁵⁶

This is contrary to the evidence he gave to the Commission many years later that he was expecting far less, suggesting somewhere between six to eight years.⁵⁵⁷

594. Mr Cooper's Landslip and Matchless cases resolved to a guilty plea in March 2005.⁵⁵⁸ That being so, it cannot properly be said that his guilty plea on those cases were affected. Further, by the time of his plea, he had distinguished Senior Counsel to represent him and had the benefit of his advice on those two cases, as well as Operation Posse. He was formally arraigned at his plea hearing when represented by Leading Counsel on 7 February 2007, on the evidence that had existed prior to Ms Gobbo providing the police information relating to him. It is therefore not accepted that the Matchless (including the cannabis) and Landslip convictions are affected in any way whatsoever.

595. For all three cases, Mr Cooper received less time to serve than he had expected and been telling friends in April 2006 for just the Matchless and Landslip cases.

The Operation Posse case and Ms Gobbo's provision of that information

596. Given his propensity for serious drug offending, it is unsurprising that Mr Cooper once again returned to manufacturing large amounts of commercial drugs upon his release in December 2003. It is apparent from what he told Ms Gobbo, this was not limited to supplying just the Mokbels as was the case previously but extended to many others, including Mr Rob Karam,⁵⁵⁹ Mr Bickley, Mr

⁵⁵⁴ Untendered, Redacted only available to Counsel on Kiteworks via Victoria Police, VPL.0005.0289.0002, page 5; 1500 CONV at 17.31. Unknown date April 2006.

⁵⁵⁵ Untendered, Redacted only available to Counsel on Kiteworks via Victoria Police, VPL.0005.0289.0002, page 6; 1581 CONV at 12.30.38. Unknown date April 2006.

⁵⁵⁶ Exhibit RC281, ICR/3838, (ICR/27), page 247.

⁵⁵⁷ Transcript of Mr Cooper, (31 October 2019), page 8673.

⁵⁵⁸ Exhibit RC538, Statement of Mr Dale Flynn (17 June 2019), [24].

⁵⁵⁹ Exhibit RC281, ICR/3838, (ICR/10), page 68; (ICR/16), pages 125–9; (ICR/20), pages 167–8.

Condello,⁵⁶⁰ Mr Malkoun⁵⁶¹ and Mr D'Amico.⁵⁶² The list of people he gave evidence about demonstrates how he increased his criminality beyond the Mokbel syndicate.

597. When Mr Cooper was represented by Ms Gobbo from 16 September 2005 (when she first gave any information about Mr Cooper) to April 2006 (when he was arrested), Ms Gobbo was only instructed in relation to the Matchless and Landslip cases. Proceedings were not on foot or anticipated for the Posse case. It follows, that anything Mr Cooper told Ms Gobbo about new offending (i.e. Posse) was not caught by legal professional privilege. Mr Cooper was providing information to Ms Gobbo and not seeking advice in relation to his ongoing/new offending.
598. Counsel's duties permit Counsel to not treat as subject to legally professional privilege anything disclosed to them by a client that relates to ongoing crime.

*Communications in furtherance of a crime or fraud are not protected by legal professional privilege, because the privilege never attaches to them in the first place. While such communications are often described as 'exceptions' to legal professional privilege, they are not exceptions at all. Their illegal object prevents them becoming the subject of the privilege.*⁵⁶³

599. Lawyers are not prohibited from passing on information given to them in confidence when it relates to serious criminality and can harm the safety/welfare of an individual. The often used example is if a client tells a defence lawyer they are going to kill someone. In those circumstances, Counsel would be permitted to breach that confidence and tell the authorities. Where the line is drawn as to what offending is permitted to be disclosed is a matter of interpretation.
600. In relation to ongoing offending, namely his manufacturing of drugs, there is no evidence (at all) that Mr Cooper was seeking to obtain legal advice from Ms Gobbo about that, nor could he. It could never be a protected communication.
601. It appears as though his personal relationship with Ms Gobbo was why he was providing that detail to her; there is nothing to suggest he was seeking legal advice about cooking methylamphetamine and/or laundering the proceeds of his offending at the various laboratories.

⁵⁶⁰ Exhibit RC281, ICR/3838, (ICR/20), page 166.

⁵⁶¹ Ibid.

⁵⁶² Ibid.

⁵⁶³ *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1996-7) 188 CLR 501, 556, per McHugh J, summarising the effect of the leading authorities including *Varawa v Howard Smith & Co Ltd* (1910) 10 CLR. 382; *Attorney-General (NT) v Kearney* (1985) 158 CLR 500.

602. The criminality he was involved in was of the most serious kind. As Mr O'Brien set out in his statement,⁵⁶⁴ and is also trite and well known across the legal criminal world, drugs are one of the main causes of serious criminality. The gangland murders were caused by high end drug offending. Mr Cooper was one of the main manufacturers of methylamphetamine (and other drugs) at that time. He was also cooking for the Mokbels, believed to be the main drug cartel in Melbourne at the time. He had begun extending his criminal association to working with Mr Karam (also a high level drug supplier), as well as with Mr Bickley (in expanding into ecstasy production). Further, Mr Cooper carried a firearm to protect himself when cooking, in case a rival came to steal the drugs.⁵⁶⁵ (Mr Cooper admitted as much on his plea).⁵⁶⁶ In addition, the method of cooking was dangerous. In 2002, he had managed to start a fire whilst cooking. So concerned was he that someone would get killed, that he returned to the scene and this led to his apprehension. Ms Gobbo was aware of all of this information and provided the police with the information about Strathmore; further, when she provided the information that the new laboratory in Strathmore was next to a primary school, the risk of history repeating itself, with another fire, now came with an increased risk to innocent primary school children. Months earlier, the gangland war had spilled into an assassination at Cross Keys in front of children attending Auskick.
603. Mr Cooper had firearms to defend himself. This was in a residential property next to a primary school. Nothing has been said about Mr Cooper's moral compass, notwithstanding his attack on Ms Gobbo's. He was making the drugs that were causing assassinations on the streets of Melbourne (including in front of children). His motivation as put forward on his plea was financial. He had set fire to a property but nonetheless thought it appropriate to begin cooking next to a primary school. He kept a firearm there in case someone came to steal the drugs. Consequently, it is submitted that Ms Gobbo was entitled to tell the authorities about Mr Cooper's new drug offending as there was an obvious risk and imminent danger to the safety of primary school children. The information provided that led to Mr Cooper's apprehension was not caught by legal professional privilege and was not a wrongful breach of her duty of confidence. Counsel Assisting appear to concede as much in volume 1 of their submissions at [306].

⁵⁶⁴ Exhibit RC464, Statement of Mr Jim O'Brien (14 June 2019), [12].

⁵⁶⁵ Exhibit RC493, Transcript of meeting between Ms Gobbo, Peter Smith and Mr Green (22 April 2006), page 186.

⁵⁶⁶ Untendered, Plea of Mr Cooper (9 February 2006), page 139.13-19.

Other information provided by Ms Gobbo – as lawyer/friend?

604. At [1788] and [1794] of volume 2 of their submissions, Counsel Assisting set out general areas where Ms Gobbo provided information to her handlers about Mr Cooper, including his phone number, who he associates with, his movements etc. On one view, that information was obtained by Ms Gobbo as Mr Cooper's legal practitioner. If so, it is accepted that provision of that material could amount to a breach of Ms Gobbo's professional duties and obligations. However, the evidence is not clear on this point.
605. On another view, the information referred to by Counsel Assisting was information Mr Cooper provided to Ms Gobbo as his friend. It is apparent that many of their meetings had absolutely nothing to do with the provision/obtaining of legal advice. The line as to her professional duties to Mr Cooper were blurred, and so it is not obvious that the information set out in those paragraphs related to Ms Gobbo receiving the information as Mr Cooper's legal practitioner, as opposed to his "best friend".⁵⁶⁷ It is noted Mr Cooper did not provide that information to his solicitor, Mr Tony Hargreaves – whereas discussions relating to his case often involved Mr Hargreaves.⁵⁶⁸ There appeared to be a distinction in both Mr Cooper and Ms Gobbo's mind.
606. Further, on occasion, Ms Gobbo would be present when Mr Cooper and associates would discuss ongoing criminality. The ICRs are replete with meetings at restaurants where Ms Gobbo was invited along with a number of the criminal underbelly of Melbourne: Mr Milad Mokbel, Mr Karam, **Mr Agrum**, **Mr Steve Cvetanovski**, **Mr Noble**, and Mr Jack Schmidt, to name but a few. Most have been convicted of serious drug offending. At those dinners, they would openly discuss their drug enterprise.⁵⁶⁹ There was no privilege attached to those communications and passing the information on was not a wrongful breach of confidence. It appears as though Counsel Assisting concede that is the state of the law as it stands – at [306] of volume 1 of their submissions, they accept the bill of lading received from Mr Karam that came from Mr Manella was not the subject of legal professional privilege and passing that information on would not constitute a wrongful breach of confidence. It is noted there that the risk to life a person was not immediate and perhaps not even apparent. The position with information obtained from Mr Cooper relating to his new criminal cooks falls within the same principles.

⁵⁶⁷ Transcript of Mr Cooper, (31 October 2009), page 8686.

⁵⁶⁸ For example, Untendered, Redacted only available to Counsel on Kiteworks via Victoria Police, VPL.0005.0289.0002. Telephone intercept material indicates Ms Gobbo would have conferences with Mr Cooper with Mr Hargreaves present.

⁵⁶⁹ See eg, Exhibit RC281, ICR/3838, (ICR/17), page 143; (ICR/14), page 101.

607. At [1801] of volume 2 of their submissions, Counsel Assisting set out material that Ms Gobbo provided to her handlers. 23 examples are set out. They relate to the specifics of information about Mr Cooper's drug activities. Most of that material was disseminated to Operation Purana detectives. Not one of those 23 examples are protected by legal professional privilege, as "*privilege never attached to them in the first place*"⁵⁷⁰; that is, they were communications in furtherance of a crime. It all related to new drug manufacturing that Mr Cooper was engaged in. Ms Gobbo was not instructed to act for him in those matters, as he had not been charged and evidently he did not believe would be detected. It follows that Ms Gobbo did not breach her professional legal duties in passing on that information; it does not even appear as though the information was passed on to her as a legal representative of Mr Cooper.
608. It follows that generally, Ms Gobbo did not breach her legal professional privilege duties or duties of confidence as far as Mr Cooper was concerned.
609. The evidence is equivocal as to other matters, such as phone numbers, financial information etc. It is not clear if Mr Cooper passed those details on to Ms Gobbo as his legal advisor, or friend. It is accepted that there are some examples, such as passing on information about him meeting a psychologist for a court report, that may give rise to breaches of her professional duty to Mr Cooper. For most other examples, the Commission does not have clear evidence that Mr Cooper passed on the information to his legal advisor, as opposed to his best friend.

Seeking an adjournment for the plea

610. Counsel Assisting are impliedly critical of Ms Gobbo (and her handlers) in written submissions suggesting they were prepared to mislead a court to have Mr Cooper's plea adjourned, so as to allow the police more time to apprehend Mr Cooper cooking drugs for a third time, which would give them more leverage in trying to make him assist the authorities.
611. This is primarily based upon a conversations Ms Gobbo had with her handlers on 5 and 20 April 2006. When legal submissions were made on Ms Gobbo's behalf based upon the fact she was too unwell to give evidence, the Commissioner unfairly placed reliance upon one line, where Ms Gobbo said she could feign illness as a means to obtain an adjournment to question the validity of expert medical evidence from practitioners who had treated Ms Gobbo for lengthy periods of time.

⁵⁷⁰ *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1996-7) 188 CLR 501 at 556, per McHugh J, summarising the effect of the leading authorities including *Varawa v Howard Smith & Co Ltd* (1910) 10 CLR. 382; *Attorney-General (NT) v Kearney* (1985) 158 CLR 500.

612. It is significant here that Mr Cooper in fact wanted an adjournment, to allow him to make money by manufacturing drugs, so as to be able to provide cash for Family whilst he was incarcerated.⁵⁷¹ Any application to adjourn would have been on instruction and with his knowledge.
613. During the conversation of 5 April 2006,⁵⁷² Ms Gobbo, Mr Peter Smith and Mr Green discussed a potential adjournment. From the outset, Ms Gobbo said that she would not go near a court room to seek an adjournment unless the prosecution agreed. Thereafter, over **fifty pages** of transcript, differing suggestions were proposed to obtain an adjournment. One was Ms Gobbo saying that she could say she was sick, although this was a last resort.
614. In their written submissions, Counsel Assisting only referred to the fact Ms Gobbo suggested feigning illness.⁵⁷³
615. As the ignored evidence reveals, Mr Smith describes the conversation as workshopping potential adjournment reasons, and they included: ⁵⁷⁴
- (a) Mr Smith suggesting Ms Gobbo be away on a holiday;⁵⁷⁵
 - (b) that Ms Gobbo could be sick;⁵⁷⁶
 - (c) ensuring Leading Counsel is away the week of the plea;⁵⁷⁷
 - (d) using the co-accused to get an adjournment;⁵⁷⁸
 - (e) Mr Cooper being sick, which he had legitimately been;⁵⁷⁹
 - (f) the Crown could come up with issues relating to charging others;⁵⁸⁰
 - (g) hoping a judge isn't allocated;⁵⁸¹
 - (h) medical histories of Mr Cooper and his relative;⁵⁸²
 - (i) an agreed application by all parties;⁵⁸³
 - (j) telling Mr Cooper to have a car accident and break his leg;⁵⁸⁴

⁵⁷¹ Exhibit RC281, ICR/3838, (ICR/27), page 247.

⁵⁷² Transcript of conversation between Ms Gobbo, Peter Smith and Mr Green (5 April 2006).

⁵⁷³ See eg, Counsel Assisting submissions, Volume 2, [1814.1].

⁵⁷⁴ Transcript of conversation between Ms Gobbo, Peter Smith and Mr Green (5 April 2006), page 60.

⁵⁷⁵ Ibid, page 52-53.

⁵⁷⁶ Ibid, page 53.

⁵⁷⁷ Ibid, page 55.

⁵⁷⁸ Ibid, page 54.

⁵⁷⁹ Ibid, page 57.

⁵⁸⁰ Ibid, page 58.

⁵⁸¹ Ibid, page 62.

⁵⁸² Ibid, page 68.

⁵⁸³ Ibid, pages 68-9.

⁵⁸⁴ Ibid, page 72.

- (k) asking Mr O'Brien if he has any ideas;⁵⁸⁵
- (l) hoping the case was assigned to a sympathetic judge;⁵⁸⁶
- (m) if Mr Cooper (or his co-accused) was giving information to the police, asking the judge for an adjournment to allow that to continue;⁵⁸⁷ and
- (n) the Crown could seek an adjournment saying Mr Cooper is the subject of an ongoing investigation.

616. Counsel Assisting (and the Commissioner during submissions as to Ms Gobbo's ability to attend) did not then go onto consider what Ms Gobbo said about the suggestion of her being sick:⁵⁸⁸

Ms Gobbo: I am open to any suggestions and I can't lie

Peter Smith: No, we don't want to put you in that position. I mean, I wouldn't ask you to, wouldn't want you to.

617. Counsel Assisting have not made reference to this, which is the conclusion of the conversation. This puts into context the suggestion that she feign illness to engineer an adjournment. It was simply said with no intention of it being carried out. This was a "workshopping", hypothetical conversation where Ms Gobbo set out that she would not mislead the court. This was repeated later in a discussion with Sandy White.
618. As it happens, the DPP at the time (and now Supreme Court Judge) agreed to an adjournment when approached by Mr Simon Overland and Mr Jim O'Brien. Ms Gobbo had no involvement in that matter. No criticism is made of the then DPP by Counsel Assisting.

April 2006 onwards

619. It is accepted that the moment that Mr Cooper is arrested and Ms Gobbo attends the police station to represent him, Ms Gobbo did breach her professional duties to Mr Cooper. As she conceded, she was not an independent practitioner representing him at that time.
620. It is apparent that from around 20 April 2006 onwards, Ms Gobbo provided information to the authorities that was arguably privileged. Again, some of the material in Ms Gobbo's knowledge

⁵⁸⁵ Ibid, page 80.

⁵⁸⁶ Ibid, page 83.

⁵⁸⁷ Ibid, pages 88-90.

⁵⁸⁸ Ibid, page 92.

came from her personal relationship with Mr Cooper as opposed to her professional relationship with him.

621.

622.

Was the advice provided by Ms Gobbo inappropriate?

623. It is right to say, that Ms Gobbo did have an interest in Mr Cooper pleading guilty – that is, if Mr Cooper pleaded guilty and assisted the authorities he would not have a trial. By not having a trial, it was likely Ms Gobbo's role as an informer would not come to light. It is clear Ms Gobbo feared death if it did come to light.

624. On the face of the material, the advice Mr Cooper received was consistent with robust, appropriate advice [REDACTED] The advice received was telling Mr Cooper to think of himself and his family. Further, Mr Tony Mokbel had fled the jurisdiction, and was not the threat to Mr Cooper as he was prior to fleeing. Ms Gobbo told Mr Cooper it was in his interests to assist police.

625. It is clear that advice was the appropriate advice for Mr Cooper. He had already resolved two serious drug manufacture cases whereby he was expecting to receive a sentence of high double figures (in his own words - more than those facing a murder sentence would receive). In the Operation Posse matter, there was evidence that he was seen coming and going from the property and that he was caught inside it cooking (again). On any view, he would receive further cumulation for that case. In his mind, if he was expecting high double figures for Matchless and Landslip, then adding Posse (more commercial quantity drug manufacturing whilst on bail for two separate indictments of precisely the same offending) would increase it well beyond the murder sentences he referred to.

626. The Commissioner should not lose sight of the fact that Mr Cooper was also represented by a solicitor (who had no knowledge of Ms Gobbo's role) and also by Mr Allan SC. He received advice from both prior to entering his guilty plea, during arraignment and then when giving the Court undertakings on his plea that he would give evidence in line with his statements if called to do so.

627. On the basis of the advice, Mr Cooper received a sentence of 10 years imprisonment with a non-parole period of 7 years. As the Court described, that was "exceptional leniency". As Ms Gobbo also accepted in conversation with her handlers, Mr Cooper's personal situation was "three thousand times better than it was the day before," he decided to assist the authorities.⁵⁸⁹
628. Immediately after providing the advice to Mr Cooper, Ms Gobbo was debriefed by her handlers. She described that she looked after Mr Cooper's interests to the exclusion of others (including her own) as her life was now at risk. She gave him "the best advice for him."⁵⁹⁰

Would the fact that Ms Gobbo provided the information leading to Cooper's arrest been admissible at trial against him?

629. Obviously, Mr Cooper was not advised that Ms Gobbo had provided the information that had led to his arrest. Mr Hargreaves and Mr Allan SC were also not aware of this information. Would it have changed the advice of an independent practitioner advising at the police station? Would it have resulted in evidence against Mr Cooper obtained being excluded? It is submitted that it would not have changed the advice nor would the evidence have been being excluded by a Court.
630. For the reasons set out at [597] to [609] above, the information provided by Mr Cooper leading to his apprehension for the third time was not privileged. It also appears to have been provided to Ms Gobbo in the context of their friendship as opposed to the lawyer-client relationship. Based on purely that information, it is unlikely the evidence leading to the location of his cooking (and subsequent apprehension) would amount to a basis to have the evidence excluded against him. If the information leading to his apprehension is not provided in a legal context, it is akin to a spouse, a relative or friend providing information on an Accused. That fact itself does not lead to the exclusion of that material, or, similarly, if the material had come from an informer.
631. Counsel Assisting place reliance on Ms Gobbo's remarks during a conversation with her handlers asking if she was complicit by encouraging Mr Cooper to continue cooking. To that end, it may have given rise to the issue of entrapment.
632. As a starting point, there is no defence of entrapment in Australia. However, any material obtained by entrapment can be the subject of legal argument (and exclusion) if it can be shown the conduct (here the cooking of drugs) would not have happened but for the agent provocateur. Even if that is established, it does not result in automatic exclusion of evidence.

⁵⁸⁹ Exhibit RC282, Transcript of Ms Gobbo, Sandy White and Peter Smith (23 April 2006), page 402.

⁵⁹⁰ Exhibit RC493, Transcript of meeting between Ms Gobbo, Peter Smith and Mr Green (22 April 2006), page 17.

633. On the material before the Commission, it is patently obvious Mr Cooper would have continued to manufacture huge amounts of drugs whether or not Ms Gobbo was talking to him about his criminality or not. There is evidence that Mr Cooper was well aware that he was going to prison for a long time for the Matchless and Landslip indictments, and he wanted to carry on cooking to raise money for to support his children. Mr Cooper himself accepted that it was not for Ms Gobbo to tell him to stop cooking drugs and it was his own decision – “She's not in control of what I do. Ultimately, I own what I do”.⁵⁹¹
634. Further, on proper analysis of the transcript where Ms Gobbo asks rhetorically whether or not she is complicit, it is obvious she was:
- (a) playing devil's advocate;
 - (b) was not in fact encouraging Mr Cooper to manufacture drugs; and
 - (c) it was the view of all involved that it did not amount to encouragement, incitement etc and so fell well short of any conspiracy/complicity.
635. The relevant transcript is Ms Gobbo speaking to her handlers on 20 April 2006. In what is a recurring theme, it is necessary to consider the criticised part of the document in context; Counsel Assisting have put forward only part of the discussion.
636. Ms Gobbo and the handlers had discussed the legal implications of her attending the police station to represent Mr Cooper when he was arrested. This was a discussion considering the legal ethics, the moral issues and legality of her attending the police station. The conversation is littered with the parties asking questions to find the boundaries of their conduct as they understood them to be. Ms Gobbo concluded that whilst it was ethically “fucked”, it was not conduct that was “illegal”⁵⁹² (which is relevant to her intention in attending the police station which is considered further below).
637. Ms Gobbo then said it was more unlawful for her having to listen to a conversation about drug trafficking with her clients every day.⁵⁹³ Ms Gobbo then repeatedly pursued the theme (evidently to ascertain the views of others present) and said (emphasis added):⁵⁹⁴

*MS GOBBO: I was being - you know, not that I was being told all sorts of things
for years and years and putting them together 'cause I spent far too much time*

⁵⁹¹ Transcript of Mr Cooper (31 October 2019), page 8755.

⁵⁹² Exhibit RC282, Transcript of Meeting between Ms Gobbo, Mr Green, Sandy White and Peter Smith (20 April 2006), page 283.

⁵⁹³ Ibid.

⁵⁹⁴ Ibid, pages 278-9, 288-9.

thinking about things than anything else. The problem was being used by people to, you know, manipulate all sorts of systems - or not so much criminal justice system but really being used by people. That's what it - that's part of - that part of it was a guilty conscience I guess **but it's not from - not from doing anything illegal myself** but from knowing about these and not doing anything about them. **With Cooper it's just gone way in one direction because he's now decided that - I mean, I'm almost or probably bordering on conspiring with him where, you know, when I sit down and have these conversations with him and he's telling me about how much he's cooking and how much this and how much that. Why am I the equivalent of an aider and abetter?**

MR GREEN: **What are you doing to assist?**

MS GOBBO: **O.K. Forget about assisting but I'm encouraging. I'm inciting him. I'm conspiring with him.**

SANDY WHITE: **You're not inciting him.**

MS GOBBO:

MR GREEN: Yeah, you'd have to be - like, if you were a chemical engineer and you're saying, "No, no, don't do that, do it like this and you'll get another kilo out of it" - - -

PETER SMITH: **I can't see it though. If you're sitting there and he's telling you stuff and**

MS GOBBO: **Yeah, but I'm not saying that I'm inquiring about it, so how's this going, how's that going. How else am I supposed to get things out of him?**

MR GREEN: So you'd be using that knowledge for potentially other clients you have that are in a nasty situation. Acquiring knowledge isn't - - -

SANDY WHITE: and all those other things.

MS GOBBO: **I know.**

638. Ms Gobbo raised the question (rhetorically) as to whether what she was doing as far as Mr Cooper was concerned by asking him questions about his drug manufacturing amounted to a conspiracy or was aiding and abetting him. It is apparent from what she said, that she was not.

639. The height of what Ms Gobbo did was to "inquire" about Mr Cooper's criminal activity, ask "*how this is going, how's that going*". That is not encouraging Mr Cooper to cook drugs, nor inciting him. Nor can it be characterised as an overt act of in furtherance of a conspiracy. It is not in any way Ms Gobbo suggesting she was criminally involved. Only a few sentences before she had told her handlers she had not done anything illegal. To suggest this was Ms Gobbo believing she had conspired with Mr Cooper or aided and abetted him in manufacturing drugs is not reflected in the true, fair, objective interpretation of this transcript. At the end, Ms Gobbo accepts as much when it is stated that acquiring knowledge isn't encouraging, inciting etc, she responds, "*I know*".

640. Further, Ms Gobbo provided information to her handlers as to how Mr Cooper would in fact make her aware of the information that she passed on to them:

- (a) Ms Gobbo told her handlers on 26 September 2006 that Mr Cooper was, "*easy for me to talk to*". He would tell her so much freely that she asked if "*why are you telling me this stuff?*". He told her so much information that six months prior, she suspected he was an informer to see if she passed on the information:⁵⁹⁵

*"I actually thought Mr Cooper was an informer. I thought, 'you're telling me this to see whether I tell anybody else' because why on earth would anyone with a brain be telling anyone this... I could not work out why he was suddenly telling me all this, but then his relationship fell apart, so, maybe he thought he could talk to me."*⁵⁹⁶

- (b) Ms Gobbo described in the ICRs and in evidence how Mr Cooper and his associates would meet and discuss criminality around her. Mr Cooper himself described when questioned by Counsel Assisting:⁵⁹⁷

Mr Woods: Can you explain from your point of view whether or not she was correct when she was saying she could ask you anything and you'd tell her but she didn't want to know any of that stuff?

⁵⁹⁵ Transcript of Conversation between Ms Gobbo, Sandy White and Peter Smith, (26 September 2005), page 61-2, 64-5.

⁵⁹⁶ Ibid.

⁵⁹⁷ Transcript of Mr Cooper, (31 October 2019), pages 8671-2.

Mr Cooper: How can I put this? She would ask - looking at it now she would ask about it in a roundabout way when there were things going on with other associates and I was the, letting her know about what that was about and as I was doing that I was also incriminating myself now that I see it. So I, I specifically never tried to tell her too much because I never wanted to incriminate my legal, I felt I owed a duty to her as much as she owed a duty to me. Although I was offending, I lied to her on occasions and I kept her out of the loop, but there was ways where she was fishing and I obviously said things indirectly which obviously she reported to them.

Mr Woods: Thanks for that. There appears to be a change, it might be that there was a change in that relationship from this period of time onwards, i.e. she's saying that to the handlers in October but then from there on the records show that there was more and more specific information being provided by you about precursor chemicals and locations. Is it the case that you started to feel more comfortable at a period of time or she became more inquiring in a period of time or was it pretty much the same the whole way through?

Mr Cooper: I think it was a bit of both, yeah.

Mr Woods: A bit of both in that - - - ?

Mr Cooper: She took interest and I felt that I probably needed to vent a little bit.

641. During his evidence before the Commission, Mr Cooper was asked if Ms Gobbo did anything to encourage his cooking. He had said that he did not want to give Ms Gobbo pre-knowledge of his cooking as he did not want her to be an aider and abetter. He stated that Ms Gobbo knew when he went away for a couple of days, she knew what he was doing (cooking drugs). He said the only act of encouragement was when she talked about her tax bills and that by mentioning them, she needed his help to pay them and the only way he could help her was by cooking drugs.⁵⁹⁸
642. There is no evidence from Mr Cooper that he gave Ms Gobbo money to pay her tax bills, far from it. When cross-examined, Mr Cooper accepted that he never told Ms Gobbo that he was in fact

⁵⁹⁸ Ibid, page 8710-11.

cooking drugs,⁵⁹⁹ and she never asked him to cook drugs for her to pay her tax bills, it is something he just assumed.⁶⁰⁰

643. The only money he gave her for her use was the money she was paid for legal services (the other money he asserts he gave her is the subject of separate submissions at Chapter 6).
644. It is apparent therefore that Ms Gobbo simply saying she had to pay her tax bill, without asking Mr Cooper to pay her tax bill or cook drugs to pay her tax bill does not in law amount to encouraging or inciting him to cook and an act in furtherance of a joint agreement/conspiracy to cook drugs.
645. It follows, there is no evidence that Ms Gobbo did anything to encourage Mr Cooper to cook.
646. Consequently, for the reasons set out herein, it is submitted the legal advice Mr Cooper received would not realistically have been very different to that he received from Ms Gobbo. An independent practitioner armed with the knowledge a person close to Mr Cooper had provided the information that led to his arrest would not have come to the conclusion that fact would give him a viable means of defending his case. Therefore, Mr Cooper was left with a case where he was caught red handed cooking drugs, whilst on bail for two similar offences. He would receive a significant sentence that could only be mitigated by pleading guilty, and even more so, by assisting the authorities.

Was Ms Gobbo in fact instrumental in his deciding to assist the police and plead guilty?

647. To consider if Mr Cooper made an informed decision to plead guilty and to put into context whether or not Ms Gobbo in fact played a significant role [REDACTED]
[REDACTED] it is necessary to consider if in fact Mr Cooper was going to assist the police irrespective of who represented him.
648. In his evidence, Mr Cooper indicated that he would not have assisted the police had Ms Gobbo not advised him to.⁶⁰¹
649. As already outlined, Ms Gobbo's advice was appropriate advice that most independent legal practitioners would have provided to Mr Cooper.
650. Mr Cooper is also not a trustworthy, reliable witness. The submissions relating to the allegations made by Mr Cooper that Ms Gobbo was given cash by him are not repeated here. Nor is the stark

⁵⁹⁹ Ibid, page 8753.

⁶⁰⁰ Ibid, page 8753.

⁶⁰¹ Ibid, page 8759.

difference in the evidence to the Commission as to the sentence he expected compared to contemporaneous utterings of his at the time.

651. Further, there was other evidence to indicate Mr Cooper was strongly considering assisting the police prior to Ms Gobbo arriving at the St Kilda Road Police Station, and was always likely to.
652. In his statement to the Commission, Mr O'Brien set out that in February 2002, Mr Cooper was arrested at scene of the Pascoe Vale property. The admitted facts at his plea indicate Mr Cooper returned to the scene initially as he was aware the firefighters and others might be harmed by the fire his drug manufacturing may have caused. However, he was also sent back to the laboratory by the Mokbels. They had told him he had to return (and be caught so as to deflect attention from themselves). He was duly arrested and interviewed. Mr O'Brien sets out that during that interview, Mr Cooper told the police he wanted to assist them but was more scared of the Mokbels than the police.⁶⁰² Mr O'Brien recalls from that point onwards, he was of the view Mr Cooper would be open to assisting the police.
653. During the resolution period of his two cases, Mr Dale Flynn was in contact with Mr Cooper and also Ms Gobbo on his behalf. His police notes from the time, as referenced in his statement, indicate that on 20 May 2005 and 23 May 2005, Mr Cooper was indicating, via Ms Gobbo, his intention to plead guilty as well as assist the authorities.⁶⁰³ This was no doubt to obtain a reduced sentence and be present for [REDACTED] of Family lives.
654. It should be noted that Mr Cooper was evidently concerned about Tony Mokbel controlling the lawyers for his own benefit. As explained in evidence by Ms Gobbo, Mr Cooper was aware of this and to that end instructed Mr Hargreaves, who was trusted to act in his client's best interests and not those of others.
655. Mr Cooper himself explained the clutches the Mokbels had over him. During his plea, Mr Allan SC referenced how dangerous the Mokbels were.⁶⁰⁴ It is noted that in that passage, Mr Cooper's counsel, based on his instruction, put before the court that Mr Cooper had a gun held to his head by one of the Mokbel brothers.⁶⁰⁵ Mr Cooper denied this before the Commission.⁶⁰⁶ It is telling as to his credibility.

⁶⁰² Exhibit RC464, Statement of Mr Jim O'Brien (14 June 2019), [15].

⁶⁰³ Exhibit RC538, Statement of Mr Dale Flynn (17 June 2019), [25]-[26].

⁶⁰⁴ Untendered Transcript of Mr Cooper's plea (8 February 2006), page 91, and 147.1-24.

⁶⁰⁵ Ibid, page 147.15-17.

⁶⁰⁶ Transcript of Mr Cooper (31 October 2019), pages 8748-9.

656. By the time of his arrest in April 2006, Tony Mokbel was less of a threat. As explained by Mr O'Brien, Mr Tony Mokbel had fled Victoria in March 2006. His ability to harm Mr Cooper and/or control him was significantly reduced. More so, of course, if Messrs Horthy and Milad Mokbel were incarcerated, which ultimately came to fruition. Consequently, the impediment identified by Mr Cooper in 2002 had gone.
657. Further, at the time of his arrest, Mr Cooper was now implicated (with overwhelming evidence in each case) in another drug manufacture. At two of the cases (Landslip and Posse) he was arrested at the scene (for Landslip the agreed case summary reveals his clothing and belongings were present at the fire ravaged property, leading to the inference (that was accepted by Cooper) that he lived at the property). For Matchless, he was arrested having been seen to supply a Mokbel with a large amount of drugs. Consequently, Mr Cooper was looking at a significant sentence. For two offences, he was anticipating high double figures, "*more than you get for murder*". He now was to be sentenced for three offences, two of which were offences on bail, which of course aggravated his case enormously.
658. Further, it is apparent that before Ms Gobbo arrived that the police had made Mr Cooper aware of this and he was genuinely in the process of agreeing to cooperate.
659. On 22 April 2006, Ms Gobbo met her handlers to debrief after she had seen Mr Cooper. When she first saw Mr Cooper, Mr Smith was also present, [REDACTED]
[REDACTED] Ms Gobbo and Mr Smith discussed what had occurred prior to her attending and what happened as she attended.⁶⁰⁷

MS GOBBO: Gee, it's lucky I didn't tell any lies about what I had or hadn't done with Mr Cooper because it would all come out now.

PETER SMITH: Now, that was a slightly - slightly awkward moment very early when - just when you got there and Mr Cooper was asking about - he'd obviously asked you to contact some people and you hadn't done so.

MS GOBBO: Yeah.

⁶⁰⁷ Exhibit RC493, Transcript of meeting between Ms Gobbo, Peter Smith and Mr Green (22 April 2006), page 220-222.

MR SMITH: In retrospect should have spoken about that but I wasn't sure of all the machinations at that stage except for what you said and you said something that made him think - - -

MS GOBBO: I said I'd try them

PETER SMITH: Yeah, try them and there was also a question about had a question to Dale about - I can't remember the detail now but there was a bit of confusion on Cooper's face there for about three seconds.

MS GOBBO: About what

PETER SMITH: Talked about why - why you didn't - yeah, when you first got there.

MS GOBBO: When he said, 'You haven't rung anyone, have you?'

PETER SMITH: Yeah, and - and - that's right. Do you know that it's been put to him - do you know that it's been put to Cooper to roll over?

MS GOBBO: Mm.

PETER SMITH: And that at that stage you didn't officially know. Is that right?

MS GOBBO: That's right.

PETER SMITH: That's right. That was a hiccup.

MS GOBBO: And Cooper figured it out.

PETER SMITH: Yeah, but you said something that - that - no, 'cause Dale - Dale said something about, 'I was - I was vague about it but she would have known.'

MS GOBBO: Mm.

PETER SMITH: And he - he said of course you would have known.

MS GOBBO: Mm

PETER SMITH: Yeah, that was - got over it O.K. but we probably in that respect should have - I honestly didn't expect to be in that room. In retrospect I probably didn't need to be but we didn't know what was gonna happen and we thought - -

MS GOBBO: Nor did I. I thought someone would have told before I walked into the room

PETER SMITH: It happened really quickly. I was trying to you and with this thing, it's got this fuckin' pre-emptive text thing and I couldn't turn it off.

MS GOBBO: pre-emptive text is fantastic.

PETER SMITH: I've never used it. I don't know how to use you know what, I was trying to send you a simple message that said, 'I am in the room,' [REDACTED]

660. In this conversation, Mr Smith, who was in the room with Mr Cooper before and whilst Ms Gobbo attended, was trying to text her that he was in the room but was unable to. Prior to Ms Gobbo arriving, the police had put to Mr Cooper to roll over. When Ms Gobbo arrived, it was slightly awkward, as Mr Cooper understood that Ms Gobbo did not know that the police had offered Mr Cooper a deal to co-operate. To that end, when Ms Gobbo entered the room, Mr Cooper said to her, "You haven't rung anyone have you?" The reason Mr Cooper was hoping that Ms Gobbo had not rung anyone was because at the very least, he was giving serious consideration to the offer he had been made by police, and did not want anyone knowing that he was at the police station, as it would tend to reveal that he was arrested and potentially, assisting the authorities. This passage, almost immediately after Mr Smith and Ms Gobbo left Mr Cooper (and Ms Gobbo waited to potentially return to the police station) is as close a contemporaneous record of what occurred as there is. It shows that Mr Cooper was already considering rolling to the extent that he was hoping Ms Gobbo had not tipped off any of his associates, or those he would provide information on, that he had been apprehended. Coupled with the statements and evidence of Mr O'Brien and Mr Flynn, it is apparent Mr Cooper would most likely have rolled irrespective of who represented him and the advice he received.

661. At his plea hearing before the Court, Mr Cooper provided instructions to his counsel, Mr Allan SC. Mr Allan SC cross-examined Dale Flynn based on those instructions. Much of the transcript available to Counsel for Ms Gobbo is redacted. However, in relation to his decision to assist the authorities, the following evidence was adduced by Mr Cooper's Leading Counsel:⁶⁰⁸

He agreed to assist you after a frank conversation with you, or you having a frank conversation with him on the night that he was arrested whilst he was in custody at the St Kilda Road police station, is that right?---Correct.

662. In his concluding cross-examination, Mr Allan SC had the following exchange with Mr Flynn:

Finally did it become apparent to you once the process started of him providing you with this information that there was a sense of relief that overcame him, a sense that he was out of the clutches of the lifestyle that he was leading and the people that he was mixing with?---It was a relief to be out of not just the fact that he's providing police with information, but a relief to be out of the whole criminal sphere that he was in, which involved certainly concerns about us and the efforts he would make to avoid our detection, and then concerns and problems he was having with other criminal associates.

Including the Mokbel family?---Including the Mokbel family, yes.

663. On the basis of his instructions, in a closed hearing before the Court where only legal representatives were present, Mr Cooper was suggesting that it was a frank discussion between himself and Mr Flynn that caused him to co-operate with the police, and that he felt a great relief as he was no longer looking over his shoulder with the police seeking to arrest him and had also rid himself of the grip of the Mokbels. No doubt, the offer of 8 years imprisonment agreed by the then DPP and conveyed to Mr Cooper also had some influence on his decision to assist the authorities.
664. The mitigation he placed before the Court was also not the only place he suggested that Mr Flynn had persuaded him (and not Ms Gobbo) to assist the police. On 28 December 2009, Mr Cooper wrote a letter to Mr Flynn as he was upset with a cell mate.⁶⁰⁹ He then sets out what made him agree to assist the police on 22 April 2006:

⁶⁰⁸ Exhibit RC1883, Transcript of Plea of Mr Cooper and a relative (8 February 2007), page 81, [2386].

⁶⁰⁹ Exhibit RC670, Letter from Mr Cooper to Dale Flynn (28 December 2009),

- (a) A promise by Mr Flynn of a conversation with Family Member⁶¹⁰
- (b) The pressure police put him under to roll stating that the *"Police have been the kings of intimidation since the dawn of time. Tell me the significance of an interview room with a number on the door. Please don't insult my intelligence. Were [sic] there is a will there is a way"*.⁶¹¹
- (c) He asked Mr Flynn to recall what was discussed at "the board room in St Kilda Road – with ever pressing intimidation and realisation from Flynn and Mr O'Brien that Milad Mokbel would be bailed – Mr Cooper signed at the thought Milad would harm Family Member⁶¹²
- (d) He was promised by Mr Flynn that his debriefing/statement taking process would be in a pleasant environment. It was not.⁶¹³
- (e) He was promised one last night of romance and passion with his off/on partner of the time.⁶¹⁴ That did not occur.
- (f) In the dark blue Commodore on the way back to the police station on Anzac day 2006, moments before Mr Cooper "put the nail in the coffin of the Mokbel empire", Mr Flynn promised psychologists of Family Member⁶¹⁵ and assurances for their safety.⁶¹⁵ That did not eventuate.
- (g) Mr Cooper described the lack of loyalty from the Mokbels as the reason he has taken this "action" (implicating them) against them.⁶¹⁶

665. It is apparent from the letter of Mr Cooper to Mr Flynn as well as the instructions he gave to his Counsel for his plea, that the reason for his assisting the police was a frank discussion with Mr Flynn, that included promises of a conjugal visit, favourable prison conditions, and contact with his Family Member⁶¹⁶ as well as psychological care for them. He also felt wronged by the Mokbels and it motivated him to take "action" against them.

666. When the letter was put to Mr Cooper, the Commission sought to distinguish it on the basis it was written at a time Mr Cooper did not know Ms Gobbo had informed against him. With respect, that is the time when his views as to why he chose to plead guilty and assist and what influenced him are

⁶¹⁰ Ibid, page 2.

⁶¹¹ Ibid.

⁶¹² Ibid..

⁶¹³ Ibid.

⁶¹⁴ Ibid.

⁶¹⁵ Ibid.

⁶¹⁶ Ibid.

untainted and most reliable. This is exacerbated by his own admission that he takes action against those who breach his loyalty; there is no doubt Ms Gobbo did that.

667. It is correct to say that Ms Gobbo was of the view that Mr Cooper needed a push over the line and in her view, she provided it. It should be noted that she had a propensity of exaggerating her influence/role (no doubt due to her desire to impress Mr Sandy White). Of course, Mr Cooper was best placed to say what had influenced him. Before the Commission, he said it was Ms Gobbo; there can be no doubt he felt aggrieved at her being involved in his apprehension (the letter he wrote talks of loyalty and the ramifications of those who betray it). To the Court on his plea during a closed hearing and later in writing, he suggested it was Mr Flynn and his promises. The Commission should not forget the evidence that Mr Flynn was present when Ms Gobbo spoke to Mr Cooper about his options.

668. On all the evidence, it is apparent Mr Cooper had considered assisting the police both in 2002 and 2005, and the impediment (Tony Mokbel) to do so had been removed in 2006. A frank discussion with Mr Flynn coupled with the huge reduction in sentence no doubt was influential on his decision. It is not accepted that the evidence allows the Commission to conclude that but for Ms Gobbo's presence and advice, Mr Cooper would not have assisted police. It is apparent, he was strongly considering doing so prior to her attending. Consequently, it is not accepted that the act of Ms Gobbo representing Mr Cooper having implicated him allows the Commissioner to conclude [REDACTED]

Ms Gobbo's [REDACTED] intention in attending the police station on 22 April 2006

669. [REDACTED] The evidence indicates Ms Gobbo did so honestly believing she was acting in his best interests with the advice she was giving and that by attending, she was ensuring his and her safety.

670. When she first became a registered informer, Ms Gobbo's intention as expressed was to stop the Mokbels controlling the legal representation of others within their criminal network and ensuring that when someone was arrested, they put the Mokbels' interests ahead of their own and did not implicate the Mokbels. The Bickley example is what triggered Ms Gobbo's registration. Mr Cooper was a victim of this Mokbel modus operandi. In a conversation with her handlers, Ms Gobbo spoke of when preparing Mr Cooper's plea in 2005 and he indicated she was not allowed to implicate the

Mokbels and others during his plea as it was not permitted. Ms Gobbo got emotional as she was recalling that incident.⁶¹⁷

671. When Ms Gobbo first provided information about Mr Cooper in late 2005 and early 2006, it is apparent that the police and Ms Gobbo did not expect for Mr Cooper to be arrested for a new offence.
672. Initially, the plan [REDACTED] was to manufacture a situation [REDACTED]
[REDACTED] That did not materialise.
673. Thereafter, there was a discussion about Ms Gobbo pretending to [REDACTED]
[REDACTED]
[REDACTED] Again, that plan did not eventuate.
674. It is apparent the plan and intention of all was to get Mr Cooper to meet with Mr Flynn [REDACTED]
[REDACTED] during a face to face conversation.
675. Around that time, Mr Cooper was providing more and more information to Ms Gobbo about his manufacturing of drugs. It is right to say Ms Gobbo was then tasked with information relating to Mr Cooper's new criminal enterprise and that ultimately led to the finding of the Strathmore laboratory by the school.
676. Ms Gobbo provided that information to the police on 13 April 2006.⁶¹⁸ Unbeknown to her, on 15 April 2006, Mr Flynn had identified the property.
677. It is apparent the SDU and Ms Gobbo were not aware of if and when Mr Cooper would be arrested until late in the piece. On 18 April 2006, members of the SDU met with Messrs Flynn and O'Brien to discuss the tactics in getting Mr Cooper to assist the police. The process occurred relatively quickly, and it is submitted the Commission should take this into account when considering Ms Gobbo's intentions.
678. On 20 April 2006, Mr Sandy White, Mr Smith and Mr Green met with Ms Gobbo. She provided them with details about Mr Cooper and information she felt relevant to the police approach to get Mr Cooper to assist the authorities.

⁶¹⁷ Exhibit RC584, Transcript of Conversation between Ms Gobbo, Peter Smith and Sandy White (23 April 2006), pages 497-500.

⁶¹⁸ Exhibit RC281, ICR/3838, (ICR/27), pages 243-4.

679. In that conversation, Ms Gobbo was acutely aware that if she did not attend, it would potentially cause harm to Mr Cooper and also to herself, as she was expected to report back to the Mokbels. When asked about attending, Ms Gobbo said (emphasis added):⁶¹⁹

SANDY WHITE: How does that work?

MS GOBBO: If?

SANDY WHITE: If you represent him whilst at the same time you've been instrumental in his apprehension.

MS GOBBO: Yeah, that's - yeah, that's one of the things that keeps me up at night.

SANDY WHITE Have you got a plan how you're gunna manage that or - - -

MS GOBBO: What's the big deal? You're not gunna tell him

SANDY WHITE: No, we're not but - - -

MS GOBBO: Nor am I. I don't really feel like being dead this month. I'm not saying...

680. Ms Gobbo's reaction and intention when confronted with the prospect of attending to represent Mr Cooper having being involved in his apprehension was that she did not want to die this month. By failing to attend and represent him, or by saying she had a conflict, Ms Gobbo feared death.
681. To that end, Ms Gobbo had expressed to her handlers that she had to be present when Mr Cooper was arrested, to control the flow of information (to protect Mr Cooper and herself):
- (a) On 5 March 2006, Ms Gobbo told her handlers she wanted to be present when Mr Cooper was arrested to control the flow of information.⁶²⁰
 - (b) On 8 March 2006, Ms Gobbo discussed the arrest of Mr Cooper and mentioned she wanted to be present when the arrest does take place so she would have some control over what is said and done.

⁶¹⁹ Exhibit RC282, Transcript of Meeting between Ms Gobbo, Mr Green, Sandy White and Peter Smith, (20 April 2006), page 258.

⁶²⁰ Exhibit RC281, ICR/3838, (ICR/21), page 177.

(c) On 18 March 2006, Ms Gobbo asked to be around when Mr Cooper was arrested due to the fallout.⁶²¹

682. She repeated this on 20 April 2006.⁶²²

683. Further, Ms Gobbo, as a lawyer, was asked if attending the police station to represent Mr Cooper in these circumstances was legal. On several occasions, she repeated whilst it was immoral and not ethical, it was not "*illegal*".⁶²³

684. Whilst this conversation occurred a very short time before Mr Cooper's arrest, Ms Gobbo was told during the conversation by her handlers that an adjournment was necessary to Mr Cooper's plea for Landslip and Matchless (listed 1 May) as it would reduce pressure on the investigators having to do something in the ten days up to his listed plea hearing.⁶²⁴

685. Immediately after Ms Gobbo represented Mr Cooper at the police station, she then had a debrief with her handlers. During that conversation, the following exchange occurred:⁶²⁵

MR GREEN: Have you helped Cooper?

MS GOBBO: Today?

MR GREEN: Maybe it might not be so easy to see now but, like, if you were to put yourself forward a week or two weeks or six weeks or even five years down the track and look back, have you helped Cooper?

MS GOBBO: Yes, I have and getting him to - pushing him over the line tonight, which I knew I'd be able to do, yeah, he'll appreciate it in time.

MR GREEN: Not only ethically giving him the correct advice on what have you, cast all that aside, emotionally for you, have you done the right thing for him? Have you been - - -

MS GOBBO: For him?

MR GREEN: - - - true to the - - -

⁶²¹ Exhibit RC281, ICR/3838, (ICR/23), page 248.

⁶²² Exhibit RC282, Transcript of Meeting between Ms Gobbo, Mr Green, Sandy White and Peter Smith, (20 April 2006), page 274.

⁶²³ Ibid. pages 282, 284.

⁶²⁴ Ibid, page 208.

⁶²⁵ Exhibit RC493, Transcript of meeting between Ms Gobbo, Peter Smith and Mr Green (22 April 2006), pages 217-18.

MS GOBBO: For him, yes.

MR GREEN: Yeah, yeah, O.K. What's the main thing that you've done that's right or good for him?

MS GOBBO: Looked after his interests.

MR GREEN: Yeah

MS GOBBO: Looked after his interests to the exclusion of others including myself because by looking after his interests I have put my life at risk.

MR GREEN: You jeopardised your own

MS GOBBO: Not livelihood, life.

MR GREEN: Yeah, O.K.

MS GOBBO: What was I thinking?

MR GREEN: Well, what do we - we do need to think. That's the way

MS GOBBO: That's the way...

MR GREEN: --- why are you so sure that your life is now at risk? What will transpire

MS GOBBO: The fact that I - - -

MR GREEN: - - - from now - - -

MS GOBBO: - - - have not rung Milad and - principally Milad or got a message to him or Horthy, let's just say the Mokbels.

Conclusions

686. In conclusion, the following is submitted.

Breach of professional duties

687. It is accepted that where Ms Gobbo acted for Mr Cooper and received information from him as his lawyer (and not his friend), and Ms Gobbo relayed it (and it was not in relation to ongoing crime) then Ms Gobbo did pass on information to her handlers that on occasion was in an impermissible breach of legal professional privilege/confidentiality, and on occasion, this constituted a breach of her legal duties, including to the Court.

688. However, the main information Ms Gobbo passed on was not privileged. It often related to new criminal offending of Mr Cooper and was also often provided in a social setting, as a friend, within a group, dinner environment.

690.

The advice given to Mr Cooper was appropriate. The disclosure of an informer providing information leading to arrest (as the information was not privileged) would not have resulted in the exclusion of that evidence in the future.

691. Further

She intended to give Mr Cooper the best advice for his situation whilst also trying to ensure she and Mr Cooper were not harmed.

692.

693. At this point, the Kellam findings need to be borne in mind. Mr Kellam found that there was negligence by the police (and Ms Gobbo). He found it was mitigated by the lack of oversight and control by the senior decision makers within Victoria Police. The evidence received by the Commission does not alter that conclusion.

[REDACTED]

694. [REDACTED]
[REDACTED] Ms Gobbo honestly believed she had a right to the money she charged Mr Cooper.

695. Ms Gobbo represented Mr Cooper from 2003 – September 2005 when she was not a police informer. During that period of time, she was contracted (briefed) to do work and perform tasks in his ongoing representation. She completed those tasks.

696. The same applies to the period from 16 September 2005, after she was a police informer. Her fee book indicates from that date onwards, she only charged Mr Cooper limited fees.

697. On 17 October 2005, Ms Gobbo appeared for Mr Cooper and his relative and sought an adjournment of his plea. The reason for the adjournment application was as Mr Cooper was in hospital. That application was made on instruction and granted. Ms Gobbo's belief was that she was entitled to the money in return for her providing a service.

698. Ms Gobbo's fee book does not reflect the issuing of any further invoices to Mr Cooper for services rendered. Consequently, beyond that one occasion where she achieved the result requested of her, Ms Gobbo did not charge Cooper any fees after she began providing information about him.

699. Where Counsel Assisting refer to Ms Gobbo waxing ironic that she won't be paid for representing Mr Cooper (on his arrest and thereafter), Ms Gobbo did not in fact charge him any fees.

700. [REDACTED]
[REDACTED] Ms Gobbo honestly believed she was entitled to the money she charged Mr Cooper for the services he and his instructing solicitor asked her to undertake, which she in fact did.

[REDACTED]

(b) Ms Gobbo believed the police officers [REDACTED]
primarily the safety of her life in not revealing her to be a human source;

- (c) Ms Gobbo [REDACTED]
[REDACTED] intentions in hoping the police kept her role secret was so that she would not be killed; and
- (d) Ms Gobbo believed the conduct engaged in was in the best interests of Mr Cooper, which as it so happened, they were.

11. Jeff Pope

702. At [125] of the volume 2 of their submissions, Counsel Assisting ask the Commissioner not to find that Mr Jeffrey Pope had a sexual relationship with Ms Gobbo. It is submitted on the evidence, the Commissioner can be satisfied that Mr Pope did have a sexual relationship with Ms Gobbo.

Relevance

703. Term of Reference 2 asks the Commissioner to report on Victoria Police handling of Ms Gobbo. Mr Pope was involved in her use over many years (some of which was unknown to Ms Gobbo):

- (a) He received information from her knowing her to be a legal practitioner.
- (b) He registered her in 1999 as a human source and was her handler (without Ms Gobbo's knowledge or consent). It is during this time that Ms Gobbo alleged an affair with him. It is relevant to Victoria Police handling of her.
- (c) Ms Gobbo's files from that period went missing. The audit trail suggests they were left in Mr Pope's custody – There was a note that read, "All HSMU physical files moved to AC Pope on 13 August 2012".⁶²⁶ If he had an affair with Ms Gobbo, it would give him a motive to discard that material.
- (d) When he returned from the ACC (after similar allegations were made against him), Mr Pope became involved in the Driver Taskforce and was involved in decision making relating to Ms Gobbo. He did not declare that he previously registered Ms Gobbo as a human source and also denied his relationship with her. This goes to Senior Victoria Police attitudes to Ms Gobbo as a human source.
- (e) Mr Pope swore an affidavit denying his relationship with Ms Gobbo. If this was untrue, it gives an insight into a culture and attitude by at least one of the senior decision-makers relating to Ms Gobbo.
- (f) Despite being told not to be involved in any process relating to Ms Gobbo after she made the disclosure, it is clear Mr Pope was involved, and had a proactive role in the use of Ms Gobbo as a witness and in shutting down the SDU (based on the use of Ms Gobbo). He would have every motive to blame her use as a source on another unit, to hide his own

⁶²⁶ Exhibit RC536, Audit Trail relating to Nicola Gobbo 1999 Informer Registration.

secret. This demonstrates how Senior Victoria Police members dealt with serious issues internally.

Evidence

704. On 21 October 2011, in a covert recording, Ms Gobbo told Mr Boris Buick and Mr Lebusque that she had been watching the television on one occasion and saw Mr Pope. On doing so, Ms Gobbo told her sister that she had an affair with Mr Pope many years previous.⁶²⁷ Ms Gobbo had raised this in response to a question about inappropriate behaviour by high ranking individuals, including police officers. She went on to state that it was inappropriate for Mr Pope to be involved in a steering committee relating to her, and had bet Mr Pope had not declared it.⁶²⁸

705. As it happened, the Commission was provided contemporaneous evidence of Ms Gobbo, namely text messages sent to her sister that detailed her seeing Mr Pope on television and recognising him as someone she had an affair with many years prior.

706. On 26 August 2010, Ms Gobbo sent her sister the following text message:⁶²⁹

Boy oh boy do I have a claim. Just saw the story on the news about VicPol being unable to explain how all those kiddies at risk got placed with sex offenders. "it's a terrible mistake" said Assist Commissioner Jeff Pope, also famous for sitting on the Steering Committee which decided my fate. I remember him quite clearly from my alcohol fling days. Definitely him. Multiple times. He was married at the time. Perhaps I should write to Slimey? Or leave it to 4 corners instead!

707. Ms Gobbo's sister replied mentioning Four Corners, Ben Cousins and Brendan Fevola. Ms Gobbo's response was:

You are correct as usual. Momentarily forgot about Slimey interfering with my sex life re the Fev. What a fucking disgrace that Pope didn't declare his frolicking to his bosses. I even remember when he bought his house in [A Melbourne Suburb] 10 years ago!

⁶²⁷ Exhibit RC62, Extract of Transcript between Ms Gobbo and Mr Buick & Lebusque (21 October 2011), VPL.0002.0002.0072.

⁶²⁸ Ibid at 0073.

⁶²⁹ Text Message exchange between Ms Gobbo and her sister (26 August 2010), MIN.7000.0004.3707.

708. Ms Gobbo also sent messages to and from another individual. During those messages, when referring to comments Mr Pope had made in the media, she asked the other person, "*Where can I read my former fling's comments?*"⁶³⁰
709. There is no plausible reason why Ms Gobbo would be lying when speaking in private messages to her sister about her drunken days and having a sexual relationship with Mr Pope.
710. On the other hand, Mr Pope had much to lose. Admitting an affair would have meant he had betrayed his wife. It would also mean he had lied in an affidavit in 2011 and committed a criminal offence in doing so. Further, it would have revealed a significant conflict of interest that Mr Pope had when involved in the decision making process regarding Ms Gobbo and the Paul Dale ACC prosecution, that he had not declared to others, as well as his instrumental involvement in the eventual closure of the SDU.
711. Counsel Assisting suggest that Mr Pope's affidavit appears consistent with Ms Gobbo's diaries of their last meeting. It is submitted that on proper analysis, Counsel Assisting are wrong.

Mr Pope's 2011 affidavit

712. Mr Pope's affidavit was sworn on 2 November 2011 purely in relation to the allegation made by Ms Gobbo.⁶³¹ There were no proceedings on foot at all.
713. At [2], Mr Pope states, "*I have never **had a sexual, personal or any sort of inappropriate relationship with***" Ms Gobbo (emphasis added). As detailed below, on his own admission, Mr Pope was discussing personal matters with Ms Gobbo, including the location of a new property he had purchased in a Melbourne suburb. Ms Gobbo was also sending him emails relating to a legal course. That, on any view, was not part of a professional relationship. It follows that by saying he did not have a "personal" relationship with Ms Gobbo was at the very least, downplaying his relationship with her.
714. At [3] to [4] of the affidavit, he states:

I believe that I first met [Ms Gobbo] in about 1999 or 2000 when she was a practising lawyer. I do not recall how I was introduced to her. [Witness F] at that point, wanted to provide information to me about a solicitor that she believed was stealing money. I do not recall if I registered her as a human source as the

⁶³⁰ Untendered Instant Message exchange between Ms Gobbo and Paddy Murphy (7 August 2012).

⁶³¹ Exhibit RC61, Affidavit of Mr Jeffrey Pope (2 November 2011).

*level of relationship never really got past assessing whether she was a human source or not. **I believe I met with her on six occasions.*** (Emphasis added.)

715. Again, in being generous to Mr Pope, he was again downplaying his role (no doubt as he was acutely aware at the time of the affidavit there was a risk Ms Gobbo's use as a human source could come out in the Paul Dale ACC proceedings, given the Commonwealth Prosecutors were viewing the Source Management Log at the same time as the affidavit was sworn). Mr Pope had also seen the Maguire advice by then. He knew the criticisms and ramifications of registering her previously as a human source. It was and is unique for a lawyer to be registered as a human source. It is inconceivable that Mr Pope forgot that he registered Ms Gobbo, despite his evidence to the contrary.⁶³² By the time of his signing the affidavit in 2011, he had a history in intelligence and covert services, as well as a period at the ACC. Mr Pope's evidence to the Commission that he did not remember registering Ms Gobbo should be rejected. The basis of the Commission is to look into the use of lawyers as human sources and it is apparent there have been very few examples. It is noted that the 1999 Gobbo registration went missing, with the paper trail unequivocally indicating that it was in Mr Pope's custody from 13 August 2012.
716. Mr Pope states that he met with Ms Gobbo on about six occasions. The informer contact report completed by Mr Pope shows that he met her on six occasions in between May – June 1999.⁶³³ Ms Gobbo's diary of 1999 indicates references to Mr Pope on 10 occasions from May 1999 – December 1999.⁶³⁴
717. At [5] of the affidavit, Mr Pope swore that the last time they met, Ms Gobbo propositioned him suggesting he go on holiday with her as she was off to the United States. In evidence, he recalled it was Hawaii. He alleged that Ms Gobbo asked if life became more meaningful after turning 30. Ms Gobbo enquired if their relationship was to become more personal and Mr Pope asserts that he told her that no, he was happily married. At [6], he stated, "[s]ince then I have never had **any** sort of contact with Ms Gobbo or contact her in anyway" (emphasis added).
718. It is submitted on careful analysis, this is a lie. Mr Pope first gave evidence about this matter on 1 April 2019.⁶³⁵ Mr Pope went through his work diary and the Informer Management Log, and confirmed registrations and meeting with Ms Gobbo in May-June 1999. Mr Pope, in evidence before

⁶³² Transcript of Mr Jeff Pope (19 February 2020), page 14504.

⁶³³ Exhibit RC58, Informer Management Log, MFG-13.

⁶³⁴ Exhibit RC1181, Diary of Ms Gobbo (1999),

⁶³⁵ Transcript of Mr Jeff Pope (1 April 2019), pages 718-720.

the Commission, suggested the last time he saw Ms Gobbo, as set out in his affidavit of 2011 at [5], was either 1999 or 2000. On his evidence and in his affidavit, Mr Pope gives the distinct impression that the contact he had with Ms Gobbo (those six occasions) was purely as a potential human source, and most definitely professional contact. On the last occasion (the sixth or seventh occasion) she propositioned him. She then went on holiday and he never saw or spoke to her again.

719. Comparing his evidence to the Commission and the other available evidence (primarily Ms Gobbo's diaries) it shows:

- (a) Mr Pope met Ms Gobbo well beyond the six occasions he suggests.
- (b) On 12 May 1999, Ms Gobbo met Mr Pope and Mr Gavan Segrave for the first time. The next day Mr Pope sought to have her registered as a human source. That occurred on 26 May 1999.
- (c) Ms Gobbo's informer log shows that Mr Pope further met Ms Gobbo on 17 May 1999, 19 May 1999, 27 May 1999, 4 June 1999, 14 June 1999.⁶³⁶
- (d) An IR was submitted by Mr Pope after meeting Ms Gobbo on 1 October 1999.⁶³⁷ Mr Pope in evidence accepted this was the final meeting and had no further meetings with her as an informer.⁶³⁸
- (e) On 3 January 2000, Mr Segrave applied to have Ms Gobbo deregistered. The letter stated that *"investigators have had no contact with Ms Gobbo since 23 September 1999"*.
- (f) During the period that Ms Gobbo was registered as a human source and handled by Mr Pope, Ms Gobbo's diary of 1999 shows the following contact with Mr Pope: on 26 May 1999, 1 June 1999, 22 August 1999, 23 August 1999, 28 August 1999, 2 September 1999, 7 September 1999.⁶³⁹
- (g) Ms Gobbo's 1999 diaries have her going to the Los Angeles/Hawaii on 4 August 1999.

720. Putting Mr Pope's evidence and affidavit together, he indicated that he did not have contact with Ms Gobbo that was anything but professional. That being so, given Ms Gobbo was deregistered on

⁶³⁶ Exhibit RC58, Informer Management Log, MFG-13.

⁶³⁷ Exhibit RC49, IR submitted by Mr Jeff Pope after meeting Ms Gobbo on 1 October 1999.

⁶³⁸ Transcript of Mr Jeff Pope (2 April 2019), pages 785-6.

⁶³⁹ Exhibit RC273, Diary of Ms Gobbo (1999).

3 January 2000, any contact with Ms Gobbo after that date was not professional and can only have been personal in nature.

721. Further, the letter of Mr Segrave of 3 January 2000 selects a particular date as to the last contact between Ms Gobbo and investigators/her handler. Her handler was Mr Pope. The letter states that the last contact was 23 September 1999. That is based on the Informer Log relating to Ms Gobbo at that time.
722. If Mr Pope's affidavit is accurate as to the sequence, he was discussing speaking to Ms Gobbo "*the last time*" before a trip to America (Hawaii) in 1999. Ms Gobbo went to Los Angeles (Hawaii) in August 1999. By that time, Mr Pope had seen Ms Gobbo around six times by then (12, 17, 19, 27 May and 4 and 14 June 1999). That is consistent with his affidavit. Further, when first asked about the last conversation with Ms Gobbo, Mr Pope volunteered that he thought the trip was to Hawaii.⁶⁴⁰ Ms Gobbo's diary shows that in August 1999, she went to "*LA/Hawaii*"; in contrast, her 2000 diary shows on 29 July 2000 "*leave for USA*" and on 13 August 2000 "*back from USA*". The 2000 diary makes no mention of Hawaii, whereas the 1999 diary does. Taking this all together, this therefore places the "*holiday conversation*" as 1999 not 2000.
723. It follows, that on his account, Mr Pope would have no professional reason for contact with Ms Gobbo after 23 September 1999, which was declared as the last contact the handler (Mr Pope) had had with Ms Gobbo. In fact, the informer log for MFG-13, Ms Gobbo, shows the last face to face contact in June 1999, which is consistent with the upcoming holiday of Ms Gobbo being the 1999 trip to Hawaii/USA, not 2000, as Counsel Assisting wrongly assert.
724. Ms Gobbo's diaries show contact with Mr Pope after when Ms Gobbo was last spoken to as MFG-13 (and so cannot be as part of a professional relationship) on:⁶⁴¹
- (a) 14 December 1999 – "Catch Up with Jeff Pope".
 - (b) 17 December 1999 – "Jeff Pope."
 - (c) 9 March 2000 – "6pm, Jeff Pope: Notes."
 - (d) 14 March 2000 – "5pm Jeff Pope" (there is an arrow moving this to 15 March 2000).
 - (e) Saturday 18 March – "Disc – Jeff Pope"

⁶⁴⁰ Transcript of Mr Pope (2 April 2019), page 793.

⁶⁴¹ Exhibit RC273, Diaries of Nicola Gobbo (1999 and 2000); Exhibit RC1183, Diary of Nicola Gobbo (2000).

- (f) 23 March 2000, "3pm – Jeff Pope – disk!!"
- (g) 12 May 2000 – "11/12pm – Lunch – Jeff Pope?"
- (h) 15 May 2000 – "6pm – Call Jeff Pope"
- (i) 9 June 2000 – "11am – Call Jeff Pope".
- (j) 21 July 2000 – "4pm, Drink w/ Jeff Pope."

725. Ms Gobbo's diaries, which were consistent with Mr Pope's informer log/diaries as to contact in 1999, indicated ongoing contact with Mr Pope, well beyond her deregistration as a source in January 2000 and more so, indicated contact with Mr Pope after 23 September 1999, which was the last declared contact by him on her informer log. It also is well beyond the six contacts he swore he had with Ms Gobbo which from evidence occurred between May – June 1999. The evidence demonstrates Mr Pope grossly underplayed the contact he had with Ms Gobbo in his affidavit of November 2011.
726. Further, where Mr Pope deposed that he had not had any "*sexual or personal*" relationship with Ms Gobbo, it is submitted that was a lie. He had contact with Ms Gobbo well beyond the time he handled her as a human source. He did not declare that.
727. It is submitted that the lie about a "*sexual or personal relationship*"; that he had could not recall registering a Defence barrister as a human source; and that he seriously downplayed the amount of contact with Ms Gobbo were because he had in fact been in a personal relationship with her. Ms Gobbo in contemporaneous documents (text messages to her sister and her diary) indicated more than a handler-informer relationship.
728. There is also evidence that the media were enquiring as to whether Mr Pope had a sexual relationship with Ms Gobbo at the same time they were asking her if she was an informer.⁶⁴²
729. Ms Gobbo in fact knew the address of a home Mr Pope had moved into around 1999 (on his admission in evidence). That is not the sort of information one would expect to be passed between an informer and a handler. The evidence indicates, to the requisite standard, that Mr Pope did have a non-professional relationship with Ms Gobbo and that contemporaneous diaries support this whilst a private message between sisters indicates it was sexual in nature.
730. It is noted that Ms Gobbo accepted sexual relationships with several police officers (Messrs Tim Argall, Paul Dale and Stephen Campbell for instance) from her "*drinking days*". Not one of those

⁶⁴² Transcript of Ms Gobbo with Mr Fontana (4 April 2014), page 161.

witnesses disputed that. There is absolutely no benefit whatsoever in Ms Gobbo admitting her previous liaisons with Mr Pope at all.

731. It follows, that the Commissioner should find that Mr Pope and Ms Gobbo engaged in a non-professional relationship in 1999-2000, and that it was sexual. The Commissioner should also find Mr Pope was not entirely candid in his affidavit sworn in November 2011.
732. It is noted that Counsel Assisting do not criticise Mr Pope for the omissions from his affidavit yet criticise others for affidavits/statements provided for downplaying matters.

Attitude of senior Victoria Police members

733. The Pope affidavit and investigation into Ms Gobbo's indication of their sexual affair evidences an attitude by Senior Victoria Police members into the use of Ms Gobbo.
734. Mr Pope maintains he told a number of people about his prior involvement with Ms Gobbo, in particular Mr Overland,⁶⁴³ Mr Anthony Biggin,⁶⁴⁴ and Mr McRae⁶⁴⁵. They dispute this – Mr Biggin confirming he was only told after the sexual allegation made by Ms Gobbo. On one view, it is another untruth on the affidavit of Mr Pope. Ms Gobbo's MFG-13 1999 file also went missing for a period with Mr Pope being recorded as last having it. It was obviously not declared to the Supreme Court, Court of Appeal or High Court and only came to light once Taskforce Landow found it after the commencement of the Royal Commission.
735. At the time of the Pope affidavit, November 2011, senior decision makers at Victoria Police had been provided the Maguire advice which raised a number of concerns about the use of Ms Gobbo as a human source. Anyone reading that document would have realised that Victoria Police had some serious issues to deal with.
736. Further, the Commonwealth DPP were seeking to call Ms Gobbo as a witness in the Paul Dale ACC proceedings. Victoria Police had decided to do everything they could to ensure Ms Gobbo was not called, primarily because if she was called, it was likely that disclosure to Mr Dale's defence would be include material contained in Ms Gobbo's ICRs, which would have revealed her as a human source and caused reputational damage to Victoria Police as well as to call into question a number of high-profile convictions.

⁶⁴³ Transcript of Mr Simon Overland (19 December 2019), pages 11889-90.

⁶⁴⁴ Transcript of Mr Biggin (9 October 2019), page 7481.

⁶⁴⁵ Transcript of Mr Findlay McCrae (4 February 2020), page 13072.

737. Mr Pope was part of the decision makers at Victoria Police relating to Ms Gobbo at the time. Minutes of meetings reveal Mr Pope was stood down from the Driver Task Force and was not to be involved in any decision making relating to Ms Gobbo.
738. The investigation into the sexual relationship accepted by Ms Gobbo was to be conducted anonymously. In fact, it was not. The transcript sent to Mr Ashton had Mr Pope's name in it. It was not as anonymous as it was meant to be – the names of Ms Gobbo and Mr Pope were obvious to any reader. Thereafter, Mr Cartwright, who witnesses the affidavit, then considered the allegation and found in favour of his colleague, who sat on Taskforce Steering Committee's with him. Legal advice obtained from the VGSO advised Mr Pope was not to be involved in "*the steering committee and any other decision-making involving*" Ms Gobbo;⁶⁴⁶ that was not followed at all. He was involved in a raft of decisions relating to her use in the ACC proceedings. The entire "*investigation*" into Mr Pope's conflict was a sham . Given Mr Pope's conflict and obvious personal relationship with Ms Gobbo, it is perhaps no surprise that he had strong views about shutting down the SDU and instituted an internal review (Comrie) which was purely to review the use of Ms Gobbo (not other sources) by the SDU. In doing so, it would push under the carpet Victoria Police's Gobbo secret, as well as his own and lay blame on others.

⁶⁴⁶ Exhibit RC851, Advice from Shaun Le Grand, VGSO to Mr Cartwright (11 November 2011).

Part C – Conclusion

12. The role of Victoria Police and Simon Overland

739. During her evidence, Ms Gobbo made a number of appropriate concessions and generally accepted that she breached her legal duties to her clients, often acting in conflict. She also accepted that, whilst she and the SDU initially intended not to breach legal professional privilege, this eroded over time, until it went “out of the window”.⁶⁴⁷ Nothing set out in this chapter seeks to minimise or detract from those concessions. Ms Gobbo has, and continues to, accept her failings. However, without the conduct of Victoria Police, in particular senior decision-makers, this Commission would not have been necessary. It was Victoria Police's decision to register Ms Gobbo, to deploy her, to continually use her and then seek to use her as a witness. Mr Overland was intimately involved in that process, with his “*trusted*”⁶⁴⁸ investigators and the SDU following his instructions.
740. The cross-examination of Ms Gobbo, in particular by Victoria Police and Mr Overland, appeared to apportion a degree of blame upon Ms Gobbo for Victoria Police's continued decision to use her as a human source for several years. That cross-examination deflects attention from the knowledge and responsibility of Mr Overland and other senior decision-makers at Victoria Police.
741. In short, the general tenor of the cross-examination was that Ms Gobbo was breaching her professional duties from when she engaged with Jeff Pope and Wayne Strawhorn in 1999-2000, with Peter De Santo from that period to 2004, with Purana in 2003-4, and then from 2005-2009 when providing information to the SDU (primarily for task forces and operations for which Mr Overland was responsible – namely, Purana, Posse, Khadi, Briars and Petra). Between 2003 and 2010, Mr Overland was involved in the aforementioned taskforces and they all involved, to some degree, Ms Gobbo in her covert role. As the evidence demonstrates, he was also involved with the SDU.
742. Thereafter, Mr Overland made the decision to transition Ms Gobbo into a witness for Petra (despite the threats to her life that existed at that time and the advice of most of those around him not to do so).

⁶⁴⁷ Exhibit RC282, Transcript of Meeting between Ms Gobbo, Mr Anderson and Sandy White (21 May 2007), pages 193-5, VPL.0005.0137.0001 at 0193-0195.

⁶⁴⁸ Transcript of Mr Simon Overland (16 December 2019), page 11356.

743. From 2009 to 2010, Mr Overland was keen to use Ms Gobbo as a witness. Ms Gobbo then successfully sued Victoria Police – on the basis of (false) assurances made by Mr Overland (via Shane O'Connell)⁶⁴⁹ that Ms Gobbo would receive significant reward or compensation for assisting Petra and, as a consequence of having to cease her employment and relocate, the promise of an unprecedented degree of flexibility with respect to Victoria Police providing her with appropriate witness protection “*having regard to her personal circumstances*”. After Ms Gobbo won her civil suit (with Victoria Police settling based upon the assurances made by Mr O'Connell on behalf of Mr Overland), Victoria Police continued to attend on Ms Gobbo, and continued to receive information from her. The evidence suggests that this continued until as late as 2013. (This included Boris Buick attending upon her to be a witness in the Dale prosecution within 48 hours of her mother's death.)
744. For Mr Overland (until he left Victoria Police) and Victoria Police to recognise the risks related to Ms Gobbo, as the evidence demonstrates, but then continue to use her indicates that Victoria Police and Mr Overland were prepared to receive and use information from Ms Gobbo, irrespective of breaches of her professional duties and irrespective of the serious risk it caused to her. The decision making in relation to Ms Gobbo demonstrates that Victoria Police saw her health and the risk to her safety as a collateral or secondary issue as compared to her utility to the investigations that Victoria Police were undertaking.
745. Ms Gobbo was recruited because she had made remarks about her client, Tony Mokbel, to Paul Rowe and Steve Mansell. Jim O'Brien was aware of this. They met with the SDU. The records indicate Mr Overland was kept abreast of this development.⁶⁵⁰ At the first meeting, every police officer in the room was aware that Ms Gobbo represented Mr Mokbel. After introductions, the first question was to ask Ms Gobbo to tell all about Mr Mokbel, her client. From the outset, Victoria Police were prepared to use her as necessary.
746. In response to questions from Counsel for Mr Overland, Ms Gobbo accepted she was a “*spectacularly good liar*”,⁶⁵¹ in relation to her not telling her clients that she was a human source and by virtue of her lies to keep that secret. This was adopted to some degree by Counsel for Victoria Police in questioning Ms Gobbo.⁶⁵²

⁶⁴⁹ Transcript of Ms Nicola Gobbo (7 February 2020), page 14476.

⁶⁵⁰ Diary of Mr Jim O'Brien (12 September 2005), page 3, VPL.0005.00130893 at 0894.

⁶⁵¹ Transcript of Ms Nicola Gobbo (7 February 2020), page 13472.

⁶⁵² Transcript of Ms Nicola Gobbo (11 February 2020), page 13724.

747. What the questioning failed to acknowledge (or deliberately omitted) was that Mr Overland and Victoria Police engaged Ms Gobbo to undertake this deceit, they continued to encourage and foster it over several years and, without them, none of it would have occurred. From the very first meeting they asked her information about Mr Mokbel, her known client. The note in Mr O'Brien's diary of the Purana meeting with Mr Overland four days earlier, on 12 September 2005, stated that "*there was a discussion re: Solicitor Nicola Gobbo – opportunities re Quills*". The note went on to mention Mr Overland and Mr Mokbel. Quills was an operation into Mr Mokbel. Given Ms Gobbo had been recruited by Mr Rowe and Mr Mansell days earlier with Mr O'Brien's knowledge, this note can only reflect Mr Overland being told about it.
748. As Ms Gobbo set out in evidence, everything she did was with the imprimatur of Victoria Police. The evidence shows that it was not the SDU, but rather the senior decision-makers, who were responsible for Ms Gobbo's use – primarily Mr Overland. The SDU were providing a service to the investigators. The investigators were reporting up to Mr Overland. Mr Overland was also involved in meetings with the SDU relating to Ms Gobbo's use, reward, phasing out and transition into a witness.

Knowledge of earlier conduct of Ms Gobbo

749. By the time the SDU sought to register Ms Gobbo as a human source (with Mr Overland's knowledge, on or around 12 September 2005), there was information not provided to the SDU that was relevant to the decision to register Ms Gobbo.
750. Several police officers were aware that Ms Gobbo had previously provided information to Victoria Police and, arguably, in circumstances that indicated she was breaching her professional duties:
- (a) In 1995, Ms Gobbo had been registered as a human source. John Blayney and the controller had concerns as to her reliability (notwithstanding that he had never met or spoken to her).⁶⁵³ That information was never made available in any way to the SDU years later.
 - (b) Mr Pope registered Ms Gobbo as a human source. Gavan Segrave was involved in that process.⁶⁵⁴ It is convenient that Mr Pope forgot that he had registered Ms Gobbo as a source.⁶⁵⁵ The information Ms Gobbo provided related to her then employer and a client.

⁶⁵³ Exhibit RC70, Operation Scorn Progress Report, (22 February 1996), VPL.00050007.0122.

⁶⁵⁴ Exhibit RC34, Informer Registration Application, (13 May 1999), VPL.0005.0013.0952.

⁶⁵⁵ Exhibit RC61, Affidavit of Mr Jeff Pope (2 November 2011), VPL.0002.0002.0067 at 0068.

That this information was not available to the SDU five years later is deplorable. It may also go some way to explaining why it was that years later there was a note indicating the file for Ms Gobbo had been moved by Mr Pope.

- (c) Mr Strawhorn, a prominent member of the MDID, was receiving information from Ms Gobbo. Mr O'Brien and Sandy White were members of MDID. It is noted that Mr O'Brien commented that, whilst at the MDID, team members would discuss Ms Gobbo⁶⁵⁶. It beggars belief that senior members of the MDID were not aware that Ms Gobbo was providing information. Ang Hantsis, Jason Kelly, Mr Rowe, Mr Mansell, Dale Flynn, Mark Hatt and Nigel L'Estrange were all at the MDID at differing stages and later were involved with Ms Gobbo in her dual role.
- (d) Mr De Santo received information from Ms Gobbo. He was the head of Ethical Standards at Victoria Police. The head of Ethical Standards was receiving information from Ms Gobbo in circumstances where at times she was potentially in a conflict of interest. Yet he continued to attend upon her, and contact her to obtain information. He was someone who was entrusted with ensuring Victoria Police engaged in the best ethical conduct yet he encouraged Ms Gobbo to speak to him and happily received information from her. He was, in this role, receiving information from Ms Gobbo whilst Mr Overland was also involved in her use via Purana.
- (e) In 2004, Purana was under the control of Mr Overland. At that time, Purana had a close relationship with Ms Gobbo in relation to the cases of Mr McGrath, Mr Thomas and Carl Williams. Mr Overland was directly involved in the negotiation process for Mr McGrath and Mr Thomas.⁶⁵⁷ He would receive information from Stuart Bateson who was liaising directly with Ms Gobbo and would relay information back to Ms Gobbo (for example, at a meeting on 26 June 2006, Mr Overland made Mr Bateson aware that the police did not accept Mr Thomas's statement regarding the Moran/Barbaro murders – Mr Bateson then called Ms Gobbo to make her aware).⁶⁵⁸ The conflicts Ms Gobbo accepted she was engaged in would and should have been in the forefront of Mr Overland's mind, in particular given his legal qualifications (namely, a first class law degree).

⁶⁵⁶ Statement of Mr Jim O'Brien (14 June 2019), [40], VPL.00014.0040.0001 at 0009.

⁶⁵⁷ See Exhibit RC282, Chronology of Mr Bateson (20 February 2006, 6 March 2006, 29 March 2006, 22 June 2006);

⁶⁵⁸ Exhibit RC282, Chronology of Mr Stuart Bateson (22 June 2006), page 31.

751. It does not appear as though any of this information was relayed to the SDU at the time they were considering registering Ms Gobbo. All of it was within the knowledge of Victoria Police. It is an institutional failing that none of this was known to the SDU; not Ms Gobbo's.

The dishonest relationship

752. Whilst Ms Gobbo accepted her double life and deceit of clients, both professional and lay, it is clear that she too was the victim of deceit at the hands of Victoria Police, the SDU and Mr Overland.

753. Victoria Police were prepared to mislead, lie to and, at times, manipulate Ms Gobbo to their end. There are far too many examples to list exhaustively here. However, the evidence demonstrates that Ms Gobbo was lied to and manipulated throughout her contact with Victoria Police. Some examples follow:

- (a) Ms Gobbo was not aware that she was registered both in 1995 and 1999.
- (b) In 2003, Mr De Santo sought to use Ms Gobbo's relationship with Andrew Hodson to Victoria Police's benefit.
- (c) In September 2005, Mr Rowe and Mr Mansell covertly recorded Ms Gobbo at the direction of Mr O'Brien.⁶⁵⁹ Mr O'Brien was then in contact with Mr Overland about Ms Gobbo on 12 September 2005.⁶⁶⁰
- (d) In her very first meeting with the SDU on 16 September 2005, Sandy White lied about the meeting being recorded.⁶⁶¹
- (e) Ms Gobbo suggested in that first meeting that perhaps her leaving for six months would be the best course. Sandy White persuaded her that was not correct as her issues would still be same.⁶⁶²
- (f) In that same discussion, the SDU suggested that if Ms Gobbo continued on the path she was on, she would end up dead or in jail. Although Ms Gobbo completed the sentence and used the words "*dead or in jail*" the analysis of the transcript clearly shows she was completing Mr White's sentence; he did not then suggest she was wrong.⁶⁶³

⁶⁵⁹ Exhibit RC266, Statement of Mr Paul Rowe (25 June 2019).

⁶⁶⁰ Diary of Mr Jim O'Brien (12 September 2005), page 3, VPL.0005.00130893 at 0894.

⁶⁶¹ Exhibit RC267, Transcript of Meeting between Ms Gobbo, Sandy White, Peter Smith, Steve Mansell and Paul Rowe, page 12, VPL.0005.0051.0002 at 0013.

⁶⁶² Exhibit RC267, Transcript of Meeting between Ms Gobbo, Sandy White, Peter Smith, Steve Mansell and Paul Rowe, page 116, VPL.0005.0051.0002 at 0117.

⁶⁶³ Exhibit RC267, Transcript of Meeting between Ms Gobbo, Sandy White, Peter Smith, Steve Mansell and Paul Rowe, pages 72-73 and 116, VPL.0005.0051.0002 at 0073-74 and 0117.

- (g) When Ms Gobbo expressed guilt about Mr Cooper, the handler's response was that Ms Gobbo could stop assisting police at any time. However, they reminded her that Mr Cooper was a serious drug manufacturer and reminded Ms Gobbo of the impact of drugs on society.⁶⁶⁴
- (h) When Ms Gobbo suggested material may be privileged, the SDU stated that she should not provide this detail but, in the same breath, indicated that she should provide any information and they could deal with it from there.⁶⁶⁵
- (i) Mr Overland authorised the SDU to question Ms Gobbo about the death of the Hodsons despite at the time believing it was best to ease Ms Gobbo out from being a source.⁶⁶⁶
- (j) When Petra wanted to question Ms Gobbo, the SDU told her that it was in relation to Azzam Ahmed, when in fact it was in relation to the phone calls between her, Paul Dale and Mr Williams and her movements.⁶⁶⁷
- (k) Sandy White, following orders from Mr Overland, persuaded Ms Gobbo to become a witness, despite his own views that it was not in her interests to do so.
- (l) Even when opposing Ms Gobbo's transition into a witness, the SDU and Mr Biggins' primary concern was exposure of themselves, as opposed to Ms Gobbo's safety.⁶⁶⁸
- (m) Suggesting that Ms Gobbo's health, safety and welfare was their primary concern, despite regularly deploying her in dangerous situations, and once she received serious death threats, deciding to use her for Operation Briars and Petra, culminating in transitioning her to a witness.

754. Armed with the knowledge of how Victoria Police handled her, primarily at Mr Overland's direction, it is apparent why Ms Gobbo believes Mr Overland is "*evil, corrupt and dishonest*."⁶⁶⁹

⁶⁶⁴ Exhibit RC281, ICR/3838, (ICR/14), page 105.

⁶⁶⁵ Exhibit RC626, Transcript of Conversation between Sandy White, Peter Smith, Mr Black and Ms Gobbo, (28 October 2005), pages 139-40, VPL.0005.0051.0336 at 0474-5.

⁶⁶⁶ Statement of Mr Ryan (13 June 2019), [62].

⁶⁶⁷ ICR/2958, (ICR/43).

⁶⁶⁸ SML/2958, (8 January 2009), Email from Mr Biggin to various police officers.

⁶⁶⁹ Transcript of Ms Nicola Gobbo (7 February 2020), page 13484.

The involvement of Mr Overland

755. The evidence before the Commission makes unequivocally clear that Mr Overland was involved in the decision-making process as far as Ms Gobbo was concerned, despite his protestations to the contrary.

756. Mr Overland gave evidence before IBAC. When he did, he said the following (emphasis added):⁶⁷⁰

I immediately arranged to be briefed on this situation and began moves to establish and resource what became known as Operation Purana. I was responsible for or involved in many of the key decisions during its course up to 2009. Operation Purana was formed against a background where it became apparent that the then traditional investigative approach taken by Victoria Police would not solve this complex series of shootings, murders and drug-related crimes. One of my first responses was to build as complete and intelligent picture as possible. Victoria Police had a lot of information but it was fragmented. I arranged for this information to be pulled together.

This required sharing across internal and external organisational boundaries, something Victoria Police had struggled to do until then. I tasked analysts to paint a picture of what they thought was happening based on that intelligence. The key in this was to understand the intersecting criminal networks operating in this domain and to undertake network and market analysis as a means of identifying intelligence gaps. I was particularly interested in identifying weaknesses and vulnerabilities in these networks that might be exploited. This meant looking for persons involved in serious criminality who could be targeted, arrested and charged with serious criminal offences and then used to provide evidence against co-accused, or other, more significant criminals, particularly those involved in the murders in exchange for leniency on sentence. I immediately stressed that all such undertakings under my leadership were done with full knowledge and agreement of then Director of Public Prosecutions, Mr Paul Coghlan QC, and primarily Scene Crown Prosecutor, Mr Geoff Horgan QC.

⁶⁷⁰ Transcript of IBAC examination of Mr Overland (22 November 2014), page 13.

757. That tactic, which Mr Overland was taking credit for before IBAC, was used in relation to Mr McGrath, Mr Andrews and Mr Thomas becoming witnesses for the Crown. It was the same tactic that was then used in Operation Posse – a document he authorised in October 2005.⁶⁷¹ Ms Gobbo represented Mr McGrath, Mr Thomas and then later, in Operation Posse, Mr Cooper, Mr Bickley, **Mr Agrum** and others.
758. During the negotiation process for Mr McGrath and Mr Thomas, Mr Overland was centrally involved, with Mr Bateson often attending meetings with Mr Overland, Mr Horgan SC and others to provide information relating to those negotiations. To that end, Mr Overland was then involved in the decision to accept plea deals and "can-say" statements. After many of those meetings, Mr Bateson would then liaise directly with Ms Gobbo.⁶⁷² To suggest that Mr Overland was not aware that Ms Gobbo was representing Messrs McGrath and Thomas is incredible, given how intimately involved he was in the process – he even went as far as meeting Mr McGrath, whilst Mr Horgan SC met with Mr Thomas. Such was the importance of Mr McGrath co-operating (and subsequently Mr Thomas) that Mr Overland was actively involved, as was Mr Horgan SC and, at times, the DPP. They would have known Ms Gobbo acted for Mr McGrath and thereafter, Mr Thomas.
759. More so, Mr Overland's evidence was that he recruited to Purana only those he trusted.⁶⁷³ To that end, he oversaw Purana from its inception. He had regular meetings with his trusted investigators. One of those was Gavan Ryan. Mr Ryan detailed that, in meetings with Mr Overland, Ms Gobbo was discussed:
- (a) On 4 November 2003, at the Purana sergeants' meeting, Ms Gobbo was discussed in that she was to see Mr Mokbel days after she had seen Mr Andrews.⁶⁷⁴ He was regularly briefing Mr Overland at this stage.
 - (b) On 19 January 2004, there was a complaint about Ms Gobbo that was discussed with Mr Overland.⁶⁷⁵ By that time, she had represented Messrs McGrath, Thomas and Andrews.
 - (c) On 12 July 2004, Mr Ryan was to meet with Mr Overland. One of the items for discussion was "*McGrath (Gobbo)*".⁶⁷⁶ At that time, Ms Gobbo had seen Mr McGrath prior to his signing his statement and expressed scepticism which she had relayed to Mr Bateson. Mr Bateson's

⁶⁷¹ Transcript of Mr Simon Overland (21 January 2020), pages 12024-5; 12038-9.

⁶⁷² See Exhibit RC282, Chronology of Mr Stuart Bateson, 20 February 2006, 6 March 2006, 29 March 2006, 22 June 2006;

⁶⁷³ Transcript of Mr Simon Overland (16 December 2019), page 11356.

⁶⁷⁴ Exhibit RC310, Supplementary Statement of Mr Gavan Ryan (31 July 2019), [3(a)].

⁶⁷⁵ Exhibit RC310, Supplementary Statement of Mr Gavan Ryan (31 July 2019), [3(b)].

⁶⁷⁶ Exhibit RC310, Supplementary Statement of Mr Gavan Ryan (31 July 2019), [3(d)].

line commander, and person he reported to, was Mr Ryan. The strong inference is that the discussion related to Mr McGrath's statement. It was signed the next day. Mr Overland's diary (once located) appeared to confirm this – *"McGrath final read... Checked by Gobbo – clarify claims re: Marshall"*.⁶⁷⁷

760. In July 2004, Ms Gobbo had a stroke. There is some evidence that, at a police conference in Lorne, Mr O'Brien, a trusted investigator of Mr Overland's, and Sandy White considering approaching Ms Gobbo to be a source, at a time when they knew Ms Gobbo was in hospital.
761. In early September 2005, Ms Gobbo was engaged in the registration process with the SDU. Mr O'Brien had regular meetings with Mr Overland. His notes for 12 September 2005 indicate a meeting with Mr Overland where the subject of Ms Gobbo was raised.⁶⁷⁸ Given Mr O'Brien had tasked Messrs Rowe and Mansell to record Ms Gobbo days earlier (and this led to her meeting the SDU), the only inference to be drawn was that Ms Gobbo had provided information about Mr Mokbel and was in the process of being registered.
762. In effect, Mr Overland denies that he became aware of Ms Gobbo's registration on 12 September 2005. The Commission should reject his evidence on this point. One of his trusted investigators, Mr O'Brien, had contemporaneous notes. Those notes, coupled with events at that time, lead to the irresistible conclusion that Mr O'Brien did in fact make Mr Overland aware of the registration, in particular given Mr Overland's involvement and interest in Operations Quills and later Posse, both relating to Mr Mokbel. The fact that the registration went through undermines Mr Overland's suggestions that he was *"surprised and concerned"*⁶⁷⁹ about Ms Gobbo becoming a human source. The evidence leads to the conclusion that Mr Overland was aware of the process and did nothing to prevent it, no doubt as he was interested in pursuing Mr Mokbel.
763. Generally, the Commission should scrutinise Mr Overland's evidence where there exists contemporaneous material, as it tends to undermine Mr Overland. The Commission should not forget that, until 20 December 2019, Mr Overland had broadly stated that he had stopped taking notes in relation to Ms Gobbo (and other sensitive matters) and so an absence of notes does not determine matters one way or another. Once it was revealed during the 20 December 2019 hearing that some diaries had been located belonging to Mr Overland, he provided a second statement.

⁶⁷⁷ Exhibit RC981, Supplementary Statement of Mr Overland (17 January 2020), [64].

⁶⁷⁸ Diary of Mr Jim O'Brien (12 September 2005), page 3, VPL.0005.00130893 at 0894.

⁶⁷⁹ Exhibit RC915, Statement of Mr Overland (19 September 2019), [8].

That second statement had the effect of flipping his position.⁶⁸⁰ Despite evidence on oath suggesting that he had not kept a diary, once they were produced, he relied on the fact that the diaries did not mention Ms Gobbo as positive evidence that he was not aware of matters relating to her.⁶⁸¹

764. Further, Mr Overland's evidence, and credibility, should be seen in the context of:

- (a) the inconsistency with what he says at IBAC compared to his attempts to distance himself from the use of Ms Gobbo during his evidence before the Commission;
- (b) the evidence of weekly briefings and the contents of those briefing notes which indicate a more intimate knowledge of Ms Gobbo's use than Mr Overland was prepared to accept;
- (c) the fact that he signed the Operation Posse document in October 2005. In his first statement, Mr Overland suggests that he was aware of the decision to target Mr Mokbel as part of Operation Posse, but was not involved in its establishment or did not have a detailed knowledge of its conduct;⁶⁸²
- (d) Mr Overland denying he knew about Ms Gobbo's registration on 12 September 2005 – contrary to Mr O'Brien's notes and evidence;
- (e) Mr Overland in his statement⁶⁸³ (and in his evidence to IBAC⁶⁸⁴) suggesting that he had concerns about the use of a legal practitioner as a source and that he made that plain to those who managed her (the SDU and the investigators, Mr O'Brien and Mr Ryan in particular), which is contrary to the evidence and notes of the SDU, Mr O'Brien and Mr Ryan, who deny any such conversation or direction.⁶⁸⁵ It is also contrary to Mr Overland's actions as far as using Ms Gobbo were concerned.
- (f) At [88] to [89] of his first statement, Mr Overland gave the impression that Ms Gobbo was so difficult to manage due to her behaviour that he discussed an exit strategy. This flies in the face of his authorising her use for Petra in May 2007,⁶⁸⁶ for Briars in August 2007,⁶⁸⁷ and then using her to record Paul Dale in December 2008.

⁶⁸⁰ Exhibit RC981, Supplementary Statement of Mr Overland (17 January 2020), [14].

⁶⁸¹ For example, Exhibit RC981, Supplementary Statement of Mr Overland (17 January 2020), [32].

⁶⁸² Statement of Mr Overland (19 September 2019), [72].

⁶⁸³ Ibid, [85].

⁶⁸⁴ Transcript of IBAC examination of Mr Overland (22 November 2014), pages 39, 46.

⁶⁸⁵ Statement of Mr Overland (19 September 2019), [114].

⁶⁸⁶ RC/284, SML/3838, (16 May and 25 May 2006).

⁶⁸⁷ RC/284, SML/3838, (6 August 2007).

- (g) The SML entry on 6 August 2007 is telling of Mr Overland's primary concern as his investigations, with the consequential impact on Ms Gobbo being secondary. In a meeting with Mr Ryan, Mr Biggin, Mr Blayney and Sandy White, it was agreed that it was not an option to use Ms Gobbo as a witness due to safety concerns. It was also agreed she would not be tasked but simply kept in the relationship for her safety. At the same time, the next line in the SML, from the same meeting, states *"discussed utilising Ms 3838 to speak to targets re: Op Petra and Op Briars"* [REDACTED]⁶⁸⁸ In other words, tasking Ms Gobbo. She was then tasked in relation to Dave Waters and Mr Dale. It shows the primary concern was the investigations – not Ms Gobbo's health or safety. Whilst it was deemed that she should not be a witness at that time, once she had more information on Mr Dale (having been tasked), Mr Overland was quick to change his stance and sought to turn her into a witness.
- (h) Mr Overland gave evidence that it was in Ms Gobbo's best interests to become a witness for Petra.⁶⁸⁹ In fact, it was in Mr Overland's best interests as he wanted to take the accolades for prosecuting Mr Dale for the Hodson murders and associated corruption. Virtually all police officers he spoke to, including Mr Biggin, Sandy White, Mr Ryan and Mr O'Brien all were of the view that the golden rule was that an informer does not become a witness due to the obvious risk to life issues (as demonstrated by the assassinations of the Hodsons). It is telling that only other senior decision-makers, such as Graham Ashton, supported Mr Overland's decision.
- (i) Mr Overland would have known that Mr Dale would say that Ms Gobbo was his legal advisor when he met her. He then chose to use her as a witness against him despite this. This undermines his suggestion that he did not want Ms Gobbo deployed in circumstances where legal professional privilege and legal duties were breached, as does the primary purpose of registering Ms Gobbo as far as Mr Overland was concerned: Mr Mokbel and Operation Posse.
- (j) The deliberate decision not to keep a record (diary) of sensitive matters. This clandestine practice demonstrated a distrust of the judicial process in relation to PII claims and effectively took those determinations away from the Courts. It is noted that Mr Overland

⁶⁸⁸ Exhibit RC284, SML/3838, (6 August 2007).

⁶⁸⁹ Transcript of Mr Simon Overland (22 January 2020), page 12112.

also authorised Mr O'Brien to use a second diary, purely in relation to Ms Gobbo. Again, he permitted the hiding of material and thus precluded appropriate judicial oversight. This was from one of the most prominent police officers in Victoria Police at the time.

- (k) Mr Overland's evidence in relation to the SWOT analysis. Despite his memory on this point, the totality of the evidence (including the indisputable paper trail) leads to the inference that Mr Overland was provided the SWOT analysis in early 2009 and chose not to pass on its contents to Christine Nixon, Mr Ashton and other senior decision-makers.

765. It is paradoxical that his Counsel labelled Ms Gobbo as a "*spectacular liar*".
766. From the SMLs, it is evident Mr Overland was kept apprised of significant decisions in relation to Ms Gobbo, from her use and deployment, the provision of a reward and also her use and appearance at coercive hearings. He was also on the Steering Committees and/or involved in the management of relevant task forces relating to her use (and would receive regular briefings): Khadi, Purana, Posse, Petra and Briars.
767. Mr Overland in his statement also suggested that Steering Committees were not involved in guiding investigations.⁶⁹⁰ Again, this is contrary to the evidence of other police officers. Rod Wilson, Mr Overland's chief of staff at one point (and also involved in Operation Khadi), sets out in his statement Mr Overland's decision-making in relation to Operation Khadi and Operation Briars and Ms Gobbo,⁶⁹¹ including eventually deciding to withdraw her involvement. Mr Wilson was asked to comment and concluded Mr Overland was involved in guiding the investigation.⁶⁹²
768. Mr Overland was also involved in the process relating to Mr McGrath's plea. In relation to Operation Petra and Briars, he was involved in:
- (a) deciding that Ms Gobbo could be questioned by the SDU/Mr Ryan;
 - (b) deciding Ms Gobbo could be deployed against Mr Waters and Mr Dale;
 - (c) becoming involved in the OPI investigation in relation to Ms Gobbo and Petra; and
 - (d) deciding Ms Gobbo could be deployed in relation to Mr Dale and thereafter, transitioning her to a witness, including compelling Sandy White to fall in line with his advice to Ms Gobbo and allowing Mr O'Connell to make promises on his behalf to Ms Gobbo.

⁶⁹⁰ Statement of Mr Simon Overland (19 September 2019), [153].

⁶⁹¹ Exhibit RC825, Statement of Mr Rod Wilson (19 November 2019), [12], [22], [29], [32], [39], [41], [47], [51], [60].

⁶⁹² Transcript of Mr Rod Wilson (5 December 2019), pages 10527-8.

769. The evidence leads to undeniable the conclusion that Mr Overland was involved in the decision-making and conduct of investigation and operations.
770. Further, the evidence of his investigators and other police officers was that Mr Overland was involved in the authorisation or continued use of Ms Gobbo:
- (a) Mr Ashton was of the view that Mr Overland was involved in the initial and continued authorisation of Ms Gobbo;⁶⁹³
 - (b) Sandy White believed Mr Overland was briefed by Mr O'Brien in September 2005;⁶⁹⁴
 - (c) Mr O'Brien's diary and statement detail Mr Overland being told on 12 September 2005;
 - (d) Mr Ryan, who regularly met with Mr Overland, was of the view that Mr Overland had ultimate oversight of Ms Gobbo's use;⁶⁹⁵ and
 - (e) Boris Buick suggested that, from the outset, he was aware of the active oversight and routine reporting up to Mr Overland.⁶⁹⁶
771. On his own admission (despite evidence of earlier knowledge), Mr Overland knew of Ms Gobbo's use at the inception of Operation Posse in October 2005. He said as much before IBAC:⁶⁹⁷

*MR OVERLAND: Well, that sounds right to me. I mean, my recollection is I had concern before this time. **My recollection is I had concerns at the outset because she's not the only high risk source that Victoria Police have managed. I had been involved in various ways around the management of some of them**, some of which had gone well and some of which hadn't, and so I was very alert to the particular challenges around what I call high reward, high risk sources. She clearly fell into that category, and she clearly behaved in ways that indicated to me that she was incapable, as I said, of recognising and acting in her own best interest, and that could only end one way - well two ways. She was either going to get herself killed - - -*

MR KELLAM: Yes.

⁶⁹³ Exhibit RC856, Statement of Mr Ashton (30 August 2019), [127(a)].

⁶⁹⁴ Exhibit RC275, Statement of Sandy White (undated), [129].

⁶⁹⁵ Exhibit RC310, Statement of Mr Ryan (13 June 2019), [100].

⁶⁹⁶ Exhibit RC636, Statement of Mr Buick (10 May 2019), [47].

⁶⁹⁷ Transcript of IBAC examination of Mr Overland (22 November 2014), page 48.

MR OVERLAND: - - - or she was going to effectively be outed as a source and she would finish up in witness protection, as I pointed out in my statement.

772. Even if one accepts Mr Overland's evidence at IBAC that he knew in October 2005 and not September 2005, it still indicates that Mr Overland's purported concerns about the use of Ms Gobbo given her behaviour, her mental health, the threats to her and that she was informing on her clients were not borne out by his actions and decisions he made for the next three and a half years. Mr Overland did not seek to phase Ms Gobbo out. The only time it appears as though he tried to was in May 2006 when Mr Ryan reported the threats to Ms Gobbo. At that time, Operation Posse had succeeded. Mr Cooper and Mr Bickley had co-operated. Mr Mokbel had fled the jurisdiction. The vast majority of the other Mokbels and their network were either in jail or charged with offences. Ms Gobbo's utility at that time had been exhausted. That is why Mr Overland was happy to phase her out. The success of Operation Posse and the dates he thought of phasing her out is no coincidence.
773. As it happens, Mr Ryan was made aware that detectives had found the recordings in relation to Mr Dale and Mr Williams on 1 April 2007⁶⁹⁸ and, from that point onwards, the focus of Mr Overland, and consequently the investigators and SDU (at his direction) was Mr Dale and Operation Briars. It is noteworthy that the view to phase her out had changed to tasking/deploying her. Ms Gobbo's safety was never a primary consideration for Mr Overland, or those he commanded. Given what had happened to Terry Hodson, Mr Overland's actions in his decision making as far as Ms Gobbo was concerned were deplorable – or “evil”, certainly, from the point of view of her safety. As the Commissioner is aware from restricted material before her, Ms Gobbo's safety on account of her role as an informer is to this day precarious.
774. If Mr Overland is right, Victoria Police, through him and his observations to his staff, had concerns relating to Ms Gobbo, ranging from her mental health, her behaviour, her safety, her potential to manipulate and also that she was informing on her clients in breach of her legal duties. He knew all of that from early in the piece. Notwithstanding that, Victoria Police continued to use Ms Gobbo, under Mr Overland's direction, until 2009. Even then, Mr Overland chose to use her as a witness despite all of these issues. Mr Overland summed up why before IBAC (emphasis added):

MR OVERLAND: people who were there - ultimately directions - well, I think with this witness in particular I ultimately gave a direction to a taskforce not to deal with her. Not to go anywhere near her, because she wouldn't let go and she was

⁶⁹⁸ Exhibit RC310, Statement of Mr Ryan (13 June 2019), [70].

*very good at finding her way back in, so I think that was part of the problem. **And look, the other issue, as I've said, she's the best source I've seen in 25 years of investigation. She was unbelievable in terms of the quality of what she could do and provide and, you know, it's - as an investigator, sometimes difficult to let that go.***⁶⁹⁹

775. The conduct of other Victoria Police officers should be seen in the context of their leadership at the time. Luke Cornelius' evidence, and inconsistency with the contemporaneous notes, is not rehearsed in detail here. Mr Cornelius was another senior police officer involved with Ms Gobbo who has made denials in the face of contemporaneous documentary evidence to the contrary.
776. The evidence demonstrates that the SDU and investigators were acting in line with commands and following the behaviour of the leadership, of which Mr Overland was at the epicentre. At least some of those police officers, such as Sandy White, Mr O'Brien and Mr Biggin, have accepted their responsibility for these events, unlike many of their superiors.

Kellam Findings

777. The Hon Murray Kellam AO QC made a number of findings as a consequence of the evidence heard at IBAC. Ultimately, he concluded that Victoria Police (and, it is submitted, Ms Gobbo as well) acted in a negligent way, of high order. Victoria Police failed to act in accordance with appropriate policies and guidelines. Mr Kellam AO QC did not find any unlawful behaviour had occurred, although he did cite that the conduct of Victorian Police officers was mitigated by the lack of oversight by senior decision-makers. It is submitted that the evidence relating to Ms Gobbo, Victoria Police and also Mr Overland and other senior decision-makers supports this finding. The Commissioner should be slow to depart from Mr Kellam's measured conclusions.
778. Ms Gobbo undoubtedly breached her professional duties in relation to a number of clients upon whom she informed and also continued to act for. However, it is apparent that much of the information she provided was not legally privileged, as it related to ongoing crime. Further, the criminals involved often discussed matters with Ms Gobbo in non-professional settings, blurring the relationship between lawyer-client and associate-friend. As Ms Gobbo described, often these individuals would discuss criminality in front of her as though she was a piece of furniture in the room. That information could never be privileged and, as conceded by Counsel Assisting, disclosure

⁶⁹⁹ Transcript of IBAC examination of Mr Overland (22 November 2014), page 49.

of it in many circumstances was a permissible breach of confidentiality. As set out in these submissions, Ms Gobbo's conduct fell far below the standard expected of a legal representative.

[REDACTED] Where Ms Gobbo in fact also represented the individuals, such as Mr Cooper, Mr Thomas and Mr McGrath, they ultimately received sentences far, far more lenient than they inevitably would have received but for their assisting the authorities. The advice given to them was, in fact, objectively, appropriate advice.

Reform

The role of the OPP

779. One of the failings of Victoria Police was the failure to obtain legal advice. It is submitted that part of this issue was because Victoria Police and the OPP are separate when it comes to disclosure. Had the OPP and not the VGSO been responsible for disclosure issues/subpoenas, it is likely much of what occurred would not have. Prosecutors who knew the issues in trials would be more alive to the issues in the case, as opposed to Counsel briefed by the VGSO, who often are briefed by the police purely to stop disclosure of material. Counsel briefed by the OPP have a different role – to ensure a fair trial. Even now, the VGSO will send Counsel to hearings for *ex parte* applications where the prosecution and defence are removed. The VGSO-briefed barrister is wholly unaware of the issues in the case and what is and is not disclosable. Their brief is to resist much disclosure in line with PII principles. By way of example, in a murder allegation just concluded in the Supreme Court, a police officer had failed to correctly redact his notes. It led to the revelation of a telephone intercept. VGSO sent Counsel to the committal hearing to resist disclosure. That was successful. Unfortunately, the transcript of the *ex parte* hearing was disclosed to all parties. It demonstrated the material was in fact disclosable. That material resulted in resolution of the matter to manslaughter. Had the transcript not being disclosed in error, the material would most likely never had surfaced. In other jurisdictions, such as the United Kingdom, the trial prosecutor is responsible for PII applications, even in cases of national secrets, to prevent such episodes occurring.

Transparency in the disclosure process

780. Further, the disclosure process in Victoria is such that there is no audit trail of material collected by the police during an investigation. Without that documentation, the defence are often confronted with an informant stating that everything that assists a defence case or undermines the prosecution case has been disclosed. Sometimes the officer may not recall what has been collected during the

investigation; other times the informant is a nominal informant and does not in fact know. Suspicious practitioners would say some officers simply are not honest about the material collected. There is no sufficient audit trail, as in other jurisdictions, and so it is much harder to hold the police accountable. This must change. The United Kingdom disclosure process is cited, not because it is above criticism, but because Counsel is well-acquainted with it as a means of comparison. There, the disclosure process (unused material, sensitive and unsensitive schedules) are means of keeping the police and prosecution accountable and, more so, can allow the Courts to become involved in the process.

781. It is submitted that these two proposals would go some way to preventing the errors the subject of this Commission being repeated again.

Annexure A

**Schedule setting out date of service of statements and dates
witnesses attended to give evidence**

NB: Witnesses who were not called to give evidence are shaded in grey

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
	Allen, Andrew	11 June 2019	17 June 2019	N	Y. The unredacted statement does not appear to have been served.	26 June 2019	Y	N – exhibits do not appear to have been served before they were tendered.
	Allison, Inspector Martin	29 April 2019	30 April 2019	N	N	1 May 2019	N	N/A
	Gardener-O	Unknown	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	'Andrews'	Unknown	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Argall, Detective Senior Sergeant Tim	27 March 2019	28 March 2019	N/A	Y	1 April 2019	N	N/A
	Arthur, Detective Senior Sergeant Rodney	26 March 2019	28 March 2019	N/A	N	The witness gave evidence on 1 April 2019. The witness was not cross-examined by Ms Gobbo's legal representatives.	N	N/A
	Ashby, Noel	27 August 2019	Tendered on 21 February 2020.	N/A	N/A	N/A	N	N/A

Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
		The statement was not served before it was tendered.					
Ashton, Chief Commissioner Graham	30 August 2019	3 October 2019	Y	Y. The unredacted statement does not appear to have been served.	11 December 2019	Y	N – exhibits do not appear to have been served before they were tendered.
Ashton, Inspector Trevor	21 March 2019	28 March 2019	N	No	29 March 2019	Y	N – exhibits do not appear to have been served before they were tendered.
Attrill, Lindsay	14 August 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
'Avenue'	28 August 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
Baragwanath, Mario	13 June 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
	Bartlett, Detective Senior Constable David	2 May 2019	1 May 2019	N/A	N/A	2 May 2019	N	N/A
	Bateson, Commander Stuart	7 May 2019	17 June 2019	N	Y. The unredacted statement was served on 1 July 2019.	2 July 2019, 28 November 2019 and 2 December 2019	Y	N – exhibits do not appear to have been served before they were tendered.
		Supplementary statement: 17 November 2019	19 November 2019	Y	N	See above.	See above.	See above.
	Bezzina, Charlie	17 April 2019	13 May 2019	N	N	14 May 2019	Y	N – exhibits do not appear to have been served before they were tendered.
		Supplementary statement: 9 May 2019	13 May 2019	N	N	See above.	See above.	See above.
	'Bickley'	4 October 2019	18 November 2019	Y	Y. The unredacted statement does not appear to have been served.	18 November 2019	N	N/A
	Biggin, Anthony	14 June 2019	2 October 2019	N	N	10 October 2019	Y	N – exhibits do not appear to have been

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
								served before they were tendered.
		Supplementary statement: 25 July 2019	2 October 2019	N	Y. The unredacted statement does not appear to have been served.	See above.	See above.	See above.
		Further supplementary statement: 12 August 2019	2 October 2019	N	N	See above.	See above.	See above.
	Black, David	29 October 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	'Black' [REDACTED] [REDACTED]	5 June 2019	26 July 2019	Y	N	25 October 2019	Y	N – exhibits do not appear to have been served before they were tendered.
		Supplementary statement: 1 August 2019	22 October 2019	Y	Y. The unredacted statement does not appear to have been served.	See above.	See above.	See above.

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
		Further supplementary statement: 2 September 2019	22 October 2019	Y	N	See above.	See above.	See above.
	Blayney, Assistant Commissioner John	27 March 2019	28 March 2019	N	N	3 December 2019	Y	N – exhibits do not appear to have been served before they were tendered.
		Supplementary statement: 25 July 2019	2 December 2019	Y	N	See above.	See above.	See above.
	Bostjancic, Lita	26 September 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	'Boulevard'	Undated	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Bowden, Mark	11 April 2019	15 April 2019	N/A	N/A	16 April 2019	N	N/A
	Brigham, Peter	15 August 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
	Brouwer, George	24 February 2020	Tendered on 8 April 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Brown, Graham	22 November 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Buick, Boris	10 May 2019	17 June 2019 Further redacted version: 14 October 2019	N	Y. The unredacted statement does not appear to have been served.	11 November 2019	Y	N – exhibits do not appear to have been served before they were tendered.
		Supplementary statement: 13 May 2020	Tendered on 13 May 2020. The statement was not served before it was tendered.	N/A	N/A	See above.	See above.	See above.
	Burrows, Detective Senior Constable Liza	10 May 2019	14 May 2019	N	Y. The unredacted statement does not appear to have been served.	15 May 2019	Y	Exhibit RC199 was served with the statement. Exhibit RC120 was not served before it was tendered.

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	Cain, John	20 September 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Campbell, Ian	23 September 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Campbell, Stephen	16 May 2019	20 May 2019	N	N	21 May 2019	Y	N – exhibits do not appear to have been served before they were tendered.
	Cartwright, Tim	17 December 2019	14 February 2020	Y	N	The witness gave evidence on 14 and 18 February 2020. The witness was not cross-examined by Ms Gobbo's legal representatives.	Y	N – with the exception of Exhibit RC1288, exhibits do not appear to have been served before they were tendered.
		Supplementary statement: 12 February 2020	14 February 2020	Y	N	See above.	See above.	See above.
	Cheesman, Inspector Wayne	14 May 2019	15 May 2019	N	N	16 May 2019	Y	N – exhibits do not appear to have been


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								served before they were tendered.
	Collins, Ray	13 November 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Coghlan, Detective Sergeant James	12 November 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Highway-O	Unknown	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Coombs, Steve	Unknown	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Officer Esplanade	Unknown	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Cornelius, Assistant	20 September 2019	9 December 2019	Y	N	24 January 2020	Y	N – exhibits do not appear to

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	Commissioner Thomas (Luke)							have been served before they were tendered.
	Cowlshaw, Doug	26 July 2019	20 November 2019	Y	N	The witness gave evidence on 3 December 2019. The witness was not cross-examined by Ms Gobbo's legal representatives.	Y	N – exhibits do not appear to have been served before they were tendered.
	Crisp, Andrew	29 November 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	'Cruze'	Unknown	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Cure, Magistrate Sharon	10 February 2020	Tendered on 11 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Curran, Commander Brett	28 March 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A

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		Supplementary statement: 29 November 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Dale, Paul	20 May 2019	21 May 2019	Y	N. The redacted statement was subsequently served on 11 June 2019.	25 June 2019	Y	N – exhibits do not appear to have been served before they were tendered.
	De Santo, Peter	7 May 2019	7 May 2019 Final redacted version: 10 May 2019	N	Y. The unredacted statement does not appear to have been served.	10 May 2019	Y	N – exhibits do not appear to have been served before they were tendered.
	Davey, Cameron	13 May 2019	Tendered on 13 August 2019. The statement does not appear to have been served before it was tendered.	N/A	N/A	N/A	N	N/A
		Supplementary statement: 4 March 2020	Tendered on 25 May 2020. The statement was not served before it was tendered.					
		Further supplementary	Tendered on 25 May 2020. The					

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	statement: 22 May 2020	statement was not served before it was tendered.					
Defteros, George	11 April 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
Dennis, Brian	15 November 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
Dickinson, Ashley	17 December 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
Dunne, Emmett	26 November 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
Edwards, Inspector Bernard	29 November 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
Elms, Greg	18 November 2019	Tendered on 20 December 2019.	N/A	N/A	N/A	N	N/A

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			The statement was not served before it was tendered.					
	'Evans'	Unknown	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Ms Alley	Unknown	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Firth, Paul	14 May 2019	Tendered on 22 May 2019. The statement was served on 22 May 2019 after it was tendered.	N/A	N/A	N/A	N	N/A
	Fitzgerald, Gerald	20 December 2019	21 January 2020	Y	N	N/A	N	N/A
	Fletcher, Russell	5 May 2020	Tendered on 7 May 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Flynn, Inspector Dale	17 June 2019	19 June 2019	N	Y. The redacted statement was	4 October 2019	Y	N – exhibits do not appear to have been served before

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				served on 27 June 2019.			they were tendered.
	Supplementary statement: 6 May 2020	Tendered on 7 May 2020. The statement was not served before it was tendered.	N/A	N/A	See above.	See above.	See above.
Fontana, Stephen	29 November 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
Foster, David	30 April 2019	1 May 2019	N	N	N/A	N	N/A
'Fox' 	31 May 2019	26 July 2019	Y	N	The witness gave evidence on 13 and 18 September 2019. The witness was not cross-examined by Ms Gobbo's legal representatives.	Y	N – exhibits do not appear to have been served before they were tendered.
Frewen, Mick	Unknown	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
'Gardner'	2 December 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A

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Gassner, Leigh	25 September 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
Gipp, Ronald	12 September 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
Gawne, Chris	7 November 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
Gibson, John	27 March 2019	28 March 2019	N/A	N/A	29 March 2019	Y	N – exhibits do not appear to have been served before they were tendered.
Gleeson, Stephen	6 November 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
Glow, Inspector Andrew	21 November 2019	3 December 2019	Y	N	N/A	N	N/A

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	Supplementary statement: 21 February 2020	Tendered 8 April 2020. The statement was not served before it was tendered.	N/A	N/A	See above.	See above.	See above.
Grant, Richard	28 November 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
'Green' [REDACTED]	29 May 2019	26 July 2019	Y	N	8 October 2019	Y	N – exhibits do not appear to have been served before they were tendered.
Grigor, Alistair	9 May 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
Gregor, Andrew Murray	14 May 2019	15 May 2019	N (but provided subject to request for no dissemination)	Y. The unredacted statement does not appear to have been served.	The witness gave evidence on 17 May 2019. The witness was not cross-examined by Ms Gobbo's legal representatives. The transcript records that senior counsel for Ms Gobbo reserved his	Y	N – exhibits do not appear to have been served before they were tendered.

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						client's position. He noted that: "we don't have any present intention of cross-examining this witness but I'm conscious we haven't seen a lot of the statements. I've been helpfully given access to them just in the last half hour but we haven't really had a chance to consider them". Mr Gregor was never recalled.		
	Hanks, Peter	5 September 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Hardiman, Brian	21 June 2019	2 July 2019	Y	N	N/A	N	N/A
	Hargreaves, Tony	2 May 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Hatt, Acting Inspector Mark	17 June 2019	19 June 2019	N	Y	28 June 2019	Y	N – exhibits do not appear to have been served before

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								they were tendered.
	'Haven'	4 September 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Hayes, Detective Sergeant Craig	25 July 2019	8 November 2019 Further redacted version: 11 November 2019	Y	Y. The unredacted statement does not appear to have been served.	The witness gave evidence on 12 November 2019. The witness was not cross-examined by Ms Gobbo's legal representatives.	Y	N – exhibits do not appear to have been served before they were tendered.
	Heliotis, Con	9 May 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Hill, Ian	9 May 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Hill, Assistant Commissioner Robert	9 May 2019	14 May 2019	N	Y. The unredacted statement does not appear to have been served.	15 May 2019	Y	N – with the exception of Exhibit RC0117, the exhibits do not appear to have been served before

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								they were tendered.
	Holding, Michael	27 March 2019	28 March 2019	N/A	N/A	29 March 2019	Y	N – exhibits do not appear to have been served before they were tendered.
	Hollowood, Superintendent Paul	19 November 2019	11 February 2020	Yes	Yes	The witness gave evidence on 12 February 2020. The witness was not cross-examined by Ms Gobbo's legal representatives.	Y	N – exhibits do not appear to have been served before they were tendered.
	Crescent-O	Unknown	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	'Hotham'	15 November 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Hupfeld, Detective Sergeant Tony	3 October 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A

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		Supplementary statement: 7 January 2020	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	See above.	See above.	See above.
	Member 1	1 May 2019	Unsigned statement: 1 May 2019	N	N	N/A	N	N/A
	Iddles, Ronald	3 June 2019	12 February 2020	Y	N	14 February 2020	Y	N – exhibits do not appear to have been served before they were tendered.
		Supplementary statement: 11 February 2020	13 February 2020	N	Y. The unredacted statement does not appear to have been served.	See above.	See above.	See above.
	Jackson, Acting Superintendent Damian	2 March 2020	Tendered on 8 April 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Jackson, Darren	Unknown	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A

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	Jeans, Roger	11 April 2019	16 April 2019	N	N	N/A	N	N/A
	Jennings, Samantha	19 June 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Jevtovic, Pavle (Paul)	Undated	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Johns, Tim	11 December 2019	16 February 2020	Y	N	The witness gave evidence on 20 February 2020. The witness was not cross-examined by Ms Gobbo's legal representatives.	Y	N – exhibits do not appear to have been served before they were tendered.
		Supplementary statement: 18 February 2020	Tendered on 16 February. The statement was not served before it was tendered.	N	Y. The unredacted statement does not appear to have been served.	See above.	See above.	See above.
		Further supplementary statement: 5 May 2020	Tendered on 7 May 2020. The statement was not served before it was tendered.	N/A	N/A	See above.	See above.	See above.

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	Johnson, Detective Senior Sergeant Dale	2 December 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Jones, Sir Ken	27 September 2019	11 December 2019	Y	Y. The unredacted statement does not appear to have been served.	13 December 2019	Y	N – exhibits do not appear to have been served before they were tendered.
		Amended statement: 7 December 2019	12 December 2019	N	N	See above.	See above.	See above.
	Jouning, Rodney	4 December 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Judd, Kerri	8 November 2019	Tendered on 31 January 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
		Supplementary statement: 26 February 2020	Tendered on 8 April 2020. The statement was not served before it was tendered.	N/A	N/A	See above.	See above.	See above.

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	Kelly, Superintendant Jason	12 June 2019	17 June 2019	N	Y. The unredacted statement does not appear to have been served via email. The transcript from 19 June 2019 indicates that the unredacted statement was provided to counsel for Ms Gobbo by counsel for Victoria Police.	20 June 2019	Y	N – exhibits do not appear to have been served before they were tendered.
		Supplementary statement: 12 June 2019	19 June 2019	Y	N	See above.	See above.	See above.
	Kerley, Detective Superintendent Michelle	28 November 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	'Kruger'	28 March 2019	Tendered on 2 April 2019. The statement does not appear to have	N/A	N/A	8 May 2019	Y	N – exhibits do not appear to have been served before

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			been served before it was tendered.					they were tendered.
	Lalor, Peter	2 October 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	'Lane', Mr	4 October 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	'Lane', Ms	10 September 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Lay, Ken	15 December 2019	7 February 2020	Y	N	The witness gave evidence on 10 February 2020. The witness was not cross-examined by Ms Gobbo's legal representatives.	Y	N – exhibits do not appear to have been served before they were tendered.
		Supplementary statement: 9 February 2020	10 February 2020	Y	N	See above.	See above.	See above.
	Lardner, Detective Superintendent Peter	27 November 2019	Tendered on 14 February 2020. The statement was	N/A	N/A	N/A	N	N/A

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			not served before it was tendered.					
	Leane, Assistant Commissioner Stephen	3 December 2019	16 February 2020	Y	N	The witness gave evidence on 18 February 2020. The witness was not cross-examined by Ms Gobbo's legal representatives.	Y	N – exhibits do not appear to have been served before they were tendered.
	L'Estrange, Detective Senior Sergeant Nigel	11 June 2019	17 June 2019	N	Y. The unredacted statement does not appear to have been served.	28 June 2019	Y	N – exhibits do not appear to have been served before they were tendered.
	Lewenberg, Alex	20 May 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Le Grand, Shaun	24 September 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	A 2nd PO [not on the Commission's website]	15 April 2019	Tendered on 16 April 2019. The statement does not appear to have been served before it was tendered.	N/A	N/A	16 April 2019	Y	N – exhibits do not appear to have been served before they were tendered.

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Livermore, Garry	28 October 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
Lovitt, Colin	14 November 2019	Tendered on 21 November 2019 and again on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
Lyon, Justice Greg	Unknown	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
Maguire, Gerard	8 August 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
Martin, Stephen	29 April 2019	1 May 2019	N	N	1 May 2019	Y	N – exhibits do not appear to have been served before they were tendered.
Masters, Phil	12 November 2019	Tendered on 14 February 2020.	N/A	N/A	N/A	N	N/A

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		The statement was not served before it was tendered.					
McBride, Office	Supplementary statement: 25 June 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
'McGrath'	Undated	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
McKechnie, Nicole	24 September 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
McKinney, Timothy	23 January 2020	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
McLean, Geoff	Unknown	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
McRae, Findlay	13 November 2019	28 January 2020	Y	Y. The unredacted	4 February 2020	Y	N – exhibits do not appear to

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
			Further redacted version: 30 January 2020		statement does not appear to have been served.			have been served before they were tendered.
		Supplementary statement: 13 November 2019	Tendered on 30 January 2020. The statement does not appear to have been served before it was tendered.	N/A	N/A	See above.	See above.	See above.
		Further supplementary statement: 20 January 2020	Tendered on 30 January 2020. We understand this is a confidential exhibit.	N/A	N/A	See above.	See above.	See above.
	McWhirter, Dean	2 September 2019	20 November 2019	Y	N	The witness gave evidence on 2 December 2019. The witness was not cross-examined by Ms Gobbo's legal representatives.	Y	N – exhibits do not appear to have been served before they were tendered.
	Miechel, David	Undated	22 May 2019 (same day as tendered)	N/A	N/A	22 May 2019	Y	N – exhibits do not appear to have been served before they were tendered.
	Millett, Paul	30 January 2020	Tendered on 21 February 2020. The statement was	N/A	N/A	N/A	N	N/A

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
			not served before it was tendered.					
		Supplementary statement: 6 May 2020	Tendered on 7 May 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Moloney, Danyne	28 November 2019	1 February 2020	Y	Y. The unredacted statement does not appear to have been served.	The witness gave evidence on 20 February 2020. The witness was not cross-examined by Ms Gobbo's legal representatives.	Y	N – exhibits do not appear to have been served before they were tendered.
		Supplementary statement: 19 February 2020	Tendered on 20 February 2020. The statement was not served before it was tendered.	N/A	N/A	See above.	See above.	See above.
	Mullett, Paul	26 August 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Murphy, Sir Jonathan	28 April 2020	Tendered on 13 May 2020. The statement was not served before it was tendered.	N/A	N/A	The witness gave evidence on 13 May 2020. Ms Gobbo's legal representatives were not present at the hearing and did not cross-examine the witness.	N	N/A

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
	Nancarrow, Peter	11 October 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Nixon, Christine	30 October 2019	17 December 2019	Y	N	The witness gave evidence on 18 December 2019. The witness was not cross-examined by Ms Gobbo's legal representatives.	Y	N – exhibits do not appear to have been served before they were tendered.
		21 February 2020	Appears to have been tendered on 18 December 2019. The statement was not served before it was tendered.	N/A	N/A	See above.	See above.	See above.
	Nolan, John	10 December 2019	16 February 2020	Y	N	The witness gave evidence on 21 February 2020. The witness was not cross-examined by Ms Gobbo's legal representatives.	Y	N – exhibits do not appear to have been served before they were tendered.
		Supplementary statement: 18 February 2020	19 February 2020	N	Y. The unredacted statement does not appear to have been served.	See above.	See above.	See above.

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
	Nolan, Lucinda	27 November 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Notman, Christopher	29 April 2019	30 April 2019	N	N	1 May 2019	N	N/A
		Supplementary statement: 1 May 2019	Tendered on 1 May 2019. The statement does not appear to have been served before it was tendered.	N/A	N/A	See above.	See above.	See above.
	Oates, Acting Detective Sergeant Steven	23 October 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	O'Brien, James	14 June 2019	26 July 2019	Y	N	10 September 2020	Y	N – exhibits do not appear to have been served before they were tendered.
		Supplementary statement: 14 June 2019	26 July 2019	N	N	See above.	See above.	See above.
		Further supplementary	Tendered on 7 May 2020. The statement was not	N/A	N/A	See above.	See above.	See above.

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
		statement: 5 May 2020	served before it was tendered.					
	O'Connell, Shane	5 December 2019	16 February 2020	Y	Y. The unredacted statement does not appear to have been served.	The witness gave evidence on 18 and 21 February 2020. The witness was not cross-examined by Ms Gobbo's legal representatives.	Y	N – exhibits do not appear to have been served before they were tendered.
		Supplementary statement: 18 February 2020	18 February 2020	N	Y. The unredacted statement does not appear to have been served.	See above.	See above.	See above.
	O'Connor, Superintendent John	11 October 2019	20 November 2019	Y	N	The witness gave evidence on 27 November 2019. The witness was not cross-examined by Ms Gobbo's legal representatives.	Y	N – exhibits do not appear to have been served before they were tendered.
	O'Connor, Michael	26 November 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	O'Doherty, David	3 October 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
	Olney, Kira	21 March 2019	Tendered on 2 April 2019. The statement does not appear to have been served before it was tendered.	N/A	N/A	N/A	N	N/A
	Orr, Rowena	21 August 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Overland, Simon	19 September 2019	3 October 2019	Y	Y. The unredacted statement does not appear to have been served.	21, 22 and 23 January 2020	Y	<p>N – exhibits do not appear to have been served before they were tendered.</p> <p>The transcript from 22 January 2020 records counsel for Ms Gobbo making the following comment in relation to Exhibit RC923: "Sorry, this is the first time I've properly</p>

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
								seen this document' and 'This is the first time I've seen it in significant detail'.
		Supplementary statement: 17 January 2020	19 January 2020	Y	N	See above.	See above.	See above.
	Owen, Glenn	Unknown	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	'Paige'	21 June 2019	26 July 2019	Y	Y. The unredacted statement does not appear to have been served.	The witness gave evidence on 13 August 2019. The witness was not cross-examined by Ms Gobbo's legal representatives.	Y	N – exhibits do not appear to have been served before they were tendered.
	Paterson, Assistant Commissioner Neil	22 March 2019	Tendered on 27 March 2019. The statement does not appear to have been served before it was tendered.	N/A	N/A	9 May 2019	Y	N – exhibits do not appear to have been served before they were tendered.
	Peacock, Warren	2 October 2019	Tendered on 20 December 2019. The statement was	N/A	N/A	N/A	N	N/A

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
			not served before it was tendered.					
	Pearce, Officer	14 February 2020	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Pekevskia, Monika	2 October 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	'Person 12'	17 May 2019	20 May 2019	N	N	22 May 2019	N	N/A
	'Plaza'	13 September 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Pope, Jeff	1 April 2019	Tendered on 1 April 2019. The statement does not appear to have been served before it was tendered.	N/A	N/A	2 April 2019	Y	N – exhibits do not appear to have been served before they were tendered.
		Supplementary statement: 21 January 2020	16 February 2020	Y	N	See above.	See above.	See above.
	Porter, Superintendent Mark	15 August 2019	17 September 2020	Yes	Yes	19 September 2019	Y	N – exhibits do not appear to have been

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
								served before they were tendered.
	Preston, Diane	11 December 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Pucar, Ilena	7 May 2020	Tendered on 13 May 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Purton, Terry	6 May 2019	13 May 2019	N	Y. The unredacted statement does not appear to have been served.	14 May 2019	Y	N – with the exception of Exhibit RC109, the exhibits do not appear to have been served before they were tendered.
	Plaza-O	13 September 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	'Richards'	3 September 2019	9 October 2019	N	Y. The unredacted statement	23 October 2019	Y	N – exhibits do not appear to have been

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
					does not appear to have been served.			served before they were tendered.
	Richter, Robert	25 November 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Rosenes, Malcolm	Undated	Tendered on 22 May 2019. The statement does not appear to have been served before it was tendered.	N/A	N/A	N/A	N	N/A
	Rowe, Detective Sergeant Paul	25 June 2019	27 June 2019	N	Y. The unredacted statement was served on 27 June 2019.	The witness was not cross-examined by Ms Gobbo's legal representatives on 1 July 2019. The transcript from that date records senior counsel for Ms Gobbo stating that: "Commissioner, as events turned out I didn't get any documents this morning. I've discussed it with my various friends at the Bar table and because this witness will be returning in any	Y	N – exhibits do not appear to have been served before they were tendered.

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
						event, I think it has been thought appropriate that we defer any cross-examination until then. I'm certainly not in a position to cross-examine this witness." The witness was cross-examined by Ms Gobbo's legal representatives on 19 November 2019.		
		Supplementary statement: 5 May 2020	Tendered on 7 May 2020. The statement was not served before it was tendered.	N/A	N/A	See above.	See above.	See above.
	Rush, Michael	21 August 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Ryan, David	19 September 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Ryan, Gavan	13 June 2019	17 June 2019	N	Y. The unredacted statement was served	14 August 2019	Y	N – exhibits do not appear to have been served before

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
					(subject to the undertaking) on 8 August 2019.			they were tendered.
		Supplementary statement: 31 July 2019	8 August 2019	Y	N	See above.	See above.	See above.
		Further supplementary statement: 5 May 2020	Tendered on 7 May 2020. The statement was not served before it was tendered.	N/A	N/A	See above.	See above.	See above.
	Sadler, Glenn	12 May 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Scicluna, John	Unknown	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Segrave, Detective Inspector Gavan	22 March 2019	28 March 2019	N/A	N/A	1 April 2019	Y	N – exhibits do not appear to have been served before they were tendered.

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
	Sheridan, Superintendent Kevin	13 May 2019	14 May 2019	N	N	16 May 2019	Y	N – exhibits do not appear to have been served before they were tendered.
	Sheridan, Detective Superintendent Paul	12 November 2019	3 December 2019	Y	N	5 December 2019	Y	N – exhibits do not appear to have been served before they were tendered.
		Supplementary statement	Tendered on 7 February 2020. The statement was not served before it was tendered.	N/A	N/A	See above.	See above.	See above.
	Silbert, Gavin	1 April 2020	Tendered on 8 April 2020. The statement was not served before it was tendered.	N/A	N/A	N	N/A	N/A
	Smith, Detective Inspector Steven	Undated	Tendered on 12 February 2020. The statement does not appear to have been served before it was tendered.	N/A	N/A	The witness gave evidence on 12 and 13 February 2020. The witness was not cross-examined by Ms Gobbo's legal representatives.	Y	N – exhibits do not appear to have been served before they were tendered.

Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
'Smith' [REDACTED]	28 May 2019	26 July 2019	Y	N	12 September 2019	Y	N – exhibits do not appear to have been served before they were tendered.
	Supplementary statement: Undated	Tendered on 10 September 2019. The statement does not appear to have been served before it was tendered.	N/A	N/A	See above.	See above.	See above.
Sneddon, Robert	29 November 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
'Solicitor 2'	16 June 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
Solomon, Detective Sergeant Solon	15 January 2019	Tendered on 13 August 2019. The statement does not appear to have been served before it was tendered.	N/A	N/A	N/A	N	N/A

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
		Supplementary statement: 14 June 2019	Tendered on 13 August 2019. The statement does not appear to have been served before it was tendered.	N/A	N/A	See above.	See above.	See above.
		Further supplementary statement: 2 March 2020	Tendered on 25 May 2020. The statement was not served before it was tendered.	N/A	N/A	See above.	See above.	See above.
	Steendam, Deputy Commissioner Wendy	4 December 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
		Supplementary statement: 20 January 2020	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	See above.	See above.	See above.
		Further supplementary statement: 16 April 2020	Tendered on 7 May 2020. The statement was not served before it was tendered.					
	Stephens, Cassandra	30 September 2019	Tendered on 14 February 2020. The statement was	N/A	N/A	N/A	N	N/A

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			not served before it was tendered.					
	'Street'	Undated	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Stewart, Peter	19 September 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Strawhorn, Wayne	18 April 2019	26 April 2019	N	Y. The unredacted statement does not appear to have been served.	30 April 2019	Y	N – exhibits do not appear to have been served before they were tendered.
	Person 04	6 May 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Swindells, Phillip	6 May 2019	17 June 2019	N	Y. The unredacted statement was served on 27 June 2019.	27 June 2019	Y	N – exhibits do not appear to have been served before they were tendered.

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
	Tapai, George	14 May 2019	16 May 2019	Y	Y. The unredacted statement does not appear to have been served.	16 May 2019	Y	N – exhibits do not appear to have been served before they were tendered.
	Haven-O	4 September 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Taylor, Superintendent Wayne	15 November 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	'Terrasse'	11 October 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Thomas, Ian	18 September 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	'Thomas'	Undated	9 February 2020	Y	Y. The unredacted statement was	10 February 2020	Y	N – exhibits do not appear to have been served before

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
					served during his evidence.			they were tendered.
	Thwaites, Susan	22 November 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Trichias, Detective Senior Sergeant Peter	17 June 2019	19 June 2019	N	Y. The unredacted statement was served on 25 June 2019.	29 March 2019	Y	N – exhibits do not appear to have been served before they were tendered.
	Valos, James	27 May 2019	Tendered on 20 December 2019. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Waddell, Stephen	17 September 2019	11 February 2020	Y	N	The witness gave evidence on 13 February 2020. The witness was not cross-examined by Ms Gobbo's legal representatives.	Y	N – exhibits do not appear to have been served before they were tendered.
		Supplementary statement: 20 February 2020	Tendered on 8 April 2020. The statement was not served before it was tendered.	N/A	N/A	See above.	See above.	See above.

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
	Officer Malachite	Unknown	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Walshe, Kieran	22 November 2019	Tendered on 14 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Waters, David	Undated	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	Watson, Dennis	24 December 2019	Tendered on 21 February 2020. The statement was not served before it was tendered.	N/A	N/A	N/A	N	N/A
	'White'	Undated	27 July 2019	N	Y. The unredacted statement does not appear to have been served.	21 August 2019	Y	N – exhibits do not appear to have been served before they were tendered.
	White, Superintendent Adrian	29 November 2019	Tendered on 14 February 2020. The statement was	N/A	N/A	N/A	N	N/A

	Name of witness	Date of statement	Date statement served on Ms Gobbo's legal representatives	Was the statement provided subject to undertaking?	Was the statement served in redacted form? If yes, what date was the unredacted statement served?	Date the witness was cross-examined by Ms Gobbo's legal representatives	Were exhibits tendered through the witness?	Were the exhibits served with the statement?
			not served before it was tendered.					
	Wilson, Rodney	19 November 2019	3 December 2019	Y	N	5 December 2019	Y	N – exhibits do not appear to have been served before they were tendered.
	Wolf [REDACTED] [REDACTED]	Undated	26 July 2019	Y	N	N/A	N	N/A
	Woolfe, Mark	22 March 2019	28 March 2019	N	Y. The unredacted statement does not appear to have been served.	N/A	N	N/A

Annexure B

Affidavit of Psychologist 1 affirmed 5 August 2020 (redacted)

IN THE ROYAL COMMISSION INTO THE MANAGEMENT OF POLICE INFORMANTS

AFFIDAVIT OF [REDACTED]

Date of document: 5 August 2020
 Filed on behalf of: Nicola Maree Gobbo
 Prepared by:
MinterEllison
 Level 23, 525 Collins Street
 Melbourne VIC 3000

Solicitor's Code: 8510
 DX 204 Melbourne
 Telephone: (03) 8608 2000
 Ref: 1239986

I, [REDACTED] of [REDACTED]

psychologist, **AFFIRM AS FOLLOWS:**

1. I am a clinical and counselling psychologist. I currently [REDACTED]
 [REDACTED]
 [REDACTED] I have provided psychological treatment to Nicola Gobbo since 2010.
2. I make this affidavit to outline certain information obtained by me in the course of treating Ms Gobbo which may be relevant to the inquiries being undertaken by the Royal Commission into the Management of Police Informants (**Commission**).
3. Except where otherwise stated, I depose to the facts in this affidavit on the basis of my own knowledge and review of records maintained by me.

Background and experience

4. I hold [REDACTED]
 [REDACTED] In addition, I hold a [REDACTED]
 [REDACTED]
5. I have over [REDACTED] years of experience as a psychologist. I was the [REDACTED]
 [REDACTED]
 [REDACTED] I have a specialist interest in [REDACTED] and have [REDACTED]
 [REDACTED]

consulted in [REDACTED]

[REDACTED] I am a [REDACTED]

and I am [REDACTED]

[REDACTED] I operated a [REDACTED]

Treatment of Nicola Gobbo

6. In December 2009, Dr [REDACTED], a [REDACTED] specialist who was treating Ms Gobbo, referred her to me for management of [REDACTED] arising from a [REDACTED] stroke which she had suffered in 2004.
7. My first consultation with Ms Gobbo took place on 1 February 2010. Between February 2010 and 2016, I treated Ms Gobbo on a regular basis. I estimate that, on average, she consulted me once or twice a week over this period.
8. I continued to provide counselling to Ms Gobbo throughout 2017 and 2018. I had three consultations with her in 2017 and four consultations in 2018.
9. I spoke with Ms Gobbo a few times in 2019. I made arrangements for her to be referred to a clinical psychologist [REDACTED] I also had contact with her for the purpose of preparing reports for the Commission on her psychological condition.
10. I provided daily counselling to Ms Gobbo when she appeared before the Commission to give her evidence on 4, 5, 6, 7 and 11 February 2020. Since February 2020, I have consulted with Ms Gobbo initially once per week and then, from April 2020, twice per week.

Information provided by Ms Gobbo

11. Over the course of my therapeutic relationship with Ms Gobbo, she has provided me with information about her early life, her legal career, her health and her dealings with Victoria Police.
12. Ms Gobbo has told me that:
 - (a) her father was a widower when he married her mother. Her father's first wife had died of cancer. Ms Gobbo has two half siblings from her father's first marriage;
 - (b) her father was a workaholic. Her parents made sacrifices to put her through private school. They told her that she had to work hard or she would be stealing from them;
 - (c) her mother was diagnosed with cancer in 1984, when she was in Year 7. Her mother underwent nine months of treatment (chemotherapy and surgery);
 - (d) her father was diagnosed with the same form of cancer as her mother. He died when she was midway through Year 12. She was the school captain that year. Prior to her father's death, she had promised him that she would look after her mother; and
 - (e) while she was at university, she was charged with possession of cannabis and was given a good behaviour bond.
13. In relation to her legal career, Ms Gobbo has told me that:
 - (a) she completed a Bachelor of Arts degree, a Masters of Law and subsequently, in 2002, a Graduate Diploma in Fraud Investigations;
 - (b) she was admitted as a lawyer in 1997;
 - (c) as a barrister, she developed a practice in the niche area of bail applications because she had an overwhelming drive to help and rescue people; and
 - (d) her practising certificate lapsed in March 2009.

14. In relation to her health and her dealings with Victoria Police between 2004 and early 2010, Ms Gobbo has told me that:

- (a) in July 2004, when she was 32 years old, she suffered a [REDACTED] stroke. She was alone at the time of the stroke because her mother and sister were on holiday in the United States. From 2006, she began suffering chronic [REDACTED];
- (b) she began acting as an informer in 2004. There were 215 hours of recordings of her conversations with Victoria Police between 2004 to 2008;
- (c) in 2009, Victoria Police discontinued her role as an informer after she gave a statement in relation to Paul Dale;
- (d) in March 2009, she travelled to [REDACTED] under the protection of [REDACTED] [REDACTED] officers. She became suicidal during this period. After she returned to Melbourne from [REDACTED] she entered the [REDACTED] [REDACTED] under the care of Dr [REDACTED];
- (e) in December 2009, witness summonses were issued in the Dale proceeding. In February 2010, she made an application, through her lawyers Piper Alderman, to be excused as a witness; and
- (f) she developed lesions on her right leg and was diagnosed with cancerous cells by her gynaecologist, Dr [REDACTED].

15. As I have noted above, Ms Gobbo first consulted me in February 2010. At this time, she was the subject of significant media interest by reason of her involvement in the Dale proceeding. Ms Gobbo told me that she was taking a number of medications, namely [REDACTED]

16. On 3 March 2010, I had a telephone conversation with Dr [REDACTED] in which we discussed making arrangements for a psychiatrist to review Ms Gobbo. Ms Gobbo subsequently had [REDACTED]

four sessions with Dr [REDACTED], a consultant psychiatrist. Dr [REDACTED] ceased treating Ms Gobbo after [REDACTED] formed the view that [REDACTED] had a conflict of interest. Ms Gobbo then consulted another psychiatrist, Dr [REDACTED] whom she saw on three occasions throughout 2010.

17. I administered a number of psychometric tests to Ms Gobbo in 2010, including the Depression, Anxiety and Stress Scale (**DASS**) and the Minnesota Multiphasic Personality Inventory (**MMPI2-RF**). These tests indicated that Ms Gobbo was suffering from PTSD, severe depression, moderate anxiety, high stress and paranoia.
18. My notes from my sessions with Ms Gobbo in late 2010 and early 2011 record that:
 - (a) in July 2010, she received a death threat over the phone. Members of Victoria Police put pressure on her to enter witness protection;
 - (b) in August 2010, she underwent surgery to remove cancerous skin lesions from her face;
 - (c) in November 2010, her mother was again diagnosed with cancer. The cancer was found in her mother's pancreas, kidney, spleen and adrenal glands;
 - (d) in December 2010, the Bar council rejected her application for a practising certificate;
 - (e) on 14 February 2011, her mother died. Ms Gobbo developed further lesions on her legs;
 - (f) in May 2011, she underwent surgery to remove benign breast lumps; and
 - (g) in mid 2011, contact with her sister was severed. She reported symptoms of trauma, dreams of death and problems sleeping.

19. I administered a number of psychometric tests to Ms Gobbo in mid 2011, namely the DASS, Beck Depression Inventory and Trauma Symptom Inventory. These tests indicated that Ms Gobbo was still suffering from PTSD.
20. My notes from my sessions with Ms Gobbo in late 2011 and early 2012 record that:
- (a) in November 2011, she decided to [REDACTED]
[REDACTED] At this time, she had been planning to undertake studies in nursing, but she was forced to withdraw from the course due to continuing memory and concentration problems; and
 - (b) in August 2012, she described feeling uncontrollable rage and being physically ill at the sight of a Victoria Police car.
21. My notes from my sessions with Ms Gobbo from early 2013 to early 2015 record that:
- (a) in May 2013, she reported that [REDACTED]
[REDACTED]
 - (b) in May 2014, she reported that she had been on the front page of the Herald Sun. Members of Victoria Police were attempting to force her into witness protection by making threats to remove her child;
 - (c) in September 2014, [REDACTED]; and
 - (d) in early 2015, she continued to hold concerns that her role as an informer would be exposed, particularly following the publication of an IBAC report authored by Murray Kellam AO QC regarding human source management within Victoria Police.
22. I note that I witnessed some of the threats to remove Ms Gobbo's child. In May 2014, the Chief Child Protection officer, Robyn Miller, and Assistant Police Commissioner Tess Walsh arranged a meeting with myself and Ms Gobbo at my rooms to "provide as much support to our witness as we can". At this meeting, Ms Gobbo was told that her children were a safety [REDACTED]

risk due to Ms Gobbo's informer status and that, if she didn't enter Witness Protection, the Chief Child Protection officer would take out a Court order to have both the children taken into State care.

23. From 2016 to 2018, Ms Gobbo was the president and administrator of a kindergarten and community childcare centre. She received an award from the Premier of Victoria for services to the community.

Legal proceedings involving Ms Gobbo

24. From late 2016, Ms Gobbo was involved in a legal proceeding which, as I understand it, concerned whether her role as an informer should be disclosed to potentially affected persons. I gave evidence in this proceeding in March 2017.
25. Based on my discussions with Ms Gobbo and her legal representatives, I am aware that the outcome of the proceeding was adverse to Ms Gobbo's interests, and was the subject of appeals to the Court of Appeal and the High Court.
26. In February 2018, Ms Gobbo reported to me that she had been involved in a motor vehicle accident and suffered major injuries, including a hematoma and injuries to her neck, back and lower legs.
27. Based on media reporting, I am aware that, in December 2018, the High Court revoked special leave to appeal and, on 17 December 2018, a suppression order in relation to the proceeding was lifted. My attempts to contact Ms Gobbo around this time were unsuccessful. She later reported to me that she [REDACTED] had gone into hiding.
28. Ms Gobbo has reported to me that Victoria Police and the Department of Health and Human Services have sought to rely on the judgments handed down by the courts to assert that Ms Gobbo's children are at risk.
- [REDACTED]

Recent health conditions

29. As I have noted above, I have treated Ms Gobbo on a regular basis since February 2020.
30. As at April 2020, Ms Gobbo was consulting me twice a week and had also commenced treatment with a psychiatrist and [REDACTED]. She continued to suffer from a number of health conditions, including severe venous insufficiency and valve failures in her legs necessitating surgery and cracked teeth and jaw misalignment caused by teeth grinding. She told me that she was taking [REDACTED]
[REDACTED]
31. In my opinion, Ms Gobbo is presently suffering Major Depressive Disorder, Pain Disorder and PTSD. She has [REDACTED] anhedonia, persecutory pre-occupations, rage directed at Victoria Police, poor sleep and poor appetite. She is despondent and lacks hope for the future and is intermittently suicidal without intent. She is able to perform her role as [REDACTED] within the limits of her circumstances. She has physical problems such as de-conditioning due to lack of normal exercise, back pain related to her car accident, skin cancers, lesions due to stress on her legs, jaw and dental problems and generally experiences a poor quality of life.

The contents of this affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offences of perjury.

This document was electronically signed in accordance with the *COVID-19 Omnibus (Emergency Measures) (Electronic Signing and Witnessing) Regulations 2020*.

This document was witnessed by audio-visual link in accordance with the *COVID-19 Omnibus (Emergency Measures) (Electronic Signing and Witnessing) Regulations 2020*.

[REDACTED]

AFFIRMED by [REDACTED]

at [REDACTED]

this 5th day of August 2020

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Before me:

[REDACTED]

[REDACTED]
of 525 Collins Street, Melbourne
An Australian Legal Practitioner within the meaning of
the Legal Professional Uniform Law (Victoria)

A person authorised under section 19(1) of the *Oaths and Affirmations Act 2018* (Vic) to take an affidavit.

As an authorised affidavit taker, I state the following matters in accordance with the requirements of section 49E of the *Oaths and Affirmations Act 2018* (Vic):

1. The affidavit was signed or initialled by the deponent by electronic means.
2. I witnessed the deponent signing a copy of this affidavit by electronic means in real time.
3. I attest or otherwise confirm witnessing the deponent's electronic signature, over an audio visual link.
4. I am reasonably satisfied this affidavit signed by me is an electronic copy, not an original of the affidavit signed by the deponent.