

Annexure:

The individual submissions

<u>A</u>	<u>SUBMISSION OF DETECTIVE INSPECTOR MARTIN ALLISON</u>	2
<u>B</u>	<u>SUBMISSION OF FORMER DETECTIVE INSPECTOR LINDSAY ATTRILL</u>	4
<u>C</u>	<u>SUBMISSION OF FORMER SUPERINTENDENT GRAHAM BROWN</u>	7
<u>D</u>	<u>SUBMISSION OF INSPECTOR BORIS BUICK</u>	8
<u>E</u>	<u>SUBMISSION OF FORMER DEPUTY COMMISSIONER TIM CARTWRIGHT</u>	33
<u>F</u>	<u>SUBMISSION OF ASSISTANT COMMISSIONER LUKE CORNELIUS</u>	37
<u>G</u>	<u>SUBMISSION OF FORMER INSPECTOR DOUGLAS COWLISHAW</u>	73
<u>H</u>	<u>SUBMISSION OF INSPECTOR ANDREW GLOW</u>	75
<u>I</u>	<u>SUBMISSION OF ACTING INSPECTOR MARK HATT</u>	80
<u>J</u>	<u>SUBMISSION OF DETECTIVE SERGEANT CRAIG HAYES</u>	88
<u>K</u>	<u>SUBMISSION OF ASSISTANT COMMISSIONER ROBERT HILL</u>	89
<u>L</u>	<u>SUBMISSION OF SERGEANT TIM JOHNS</u>	93
<u>M</u>	<u>SUBMISSION OF ACTING SENIOR SERGEANT MICHELLE KERLEY</u>	97
<u>N</u>	<u>SUBMISSION OF MR FINDLAY MCRAE</u>	100
<u>O</u>	<u>SUBMISSION OF FORMER ASSISTANT COMMISSIONER DANNYE MOLONEY</u>	137
<u>P</u>	<u>SUBMISSION OF FORMER DETECTIVE SENIOR SERGEANT SHANE O'CONNELL</u>	149
<u>Q</u>	<u>SUBMISSION OF SUPERINTENDENT JOHN O'CONNOR</u>	169
<u>R</u>	<u>SUBMISSION OF SUPERINTENDENT MARK PORTER</u>	171
<u>S</u>	<u>SUBMISSION OF DETECTIVE SUPERINTENDENT PAUL SHERIDAN</u>	178
<u>T</u>	<u>SUBMISSION OF DETECTIVE INSPECTOR STEVEN SMITH</u>	181
<u>U</u>	<u>SUBMISSION OF FORMER INSPECTOR STEPHEN WADDELL</u>	184
<u>V</u>	<u>SUBMISSION OF FORMER SUPERINTENDENT RODNEY WILSON</u>	186

A Submission of Detective Inspector Martin Allison

1 Martin Allison

- 1.1 Detective Inspector Allison is a sworn member of Victoria Police and has served since 1981.¹ Detective Inspector Allison has worked in myriad roles and locations, and currently occupies the position of Detective Inspector in the Joint Anti Child Exploitation Team of the Crime Command unit.² He enjoys a strong reputation both professionally and among the wider community, which he has diligently forged through decades of faithful service to Victoria Police.
- 1.2 In summary, Counsel Assisting has submitted that:
 - (a) Ms Gobbo and then Detective Inspector De Santo had a "*frank discussion*" about Mr De Santo's investigations into members of the Drug Squad, which included an investigation into then Sergeant Allison;³
 - (b) Detective Inspector De Santo made a diary entry of a conversation with Ms Gobbo about Sergeant Allison and Mr Strawhorn on 26 April 2002;⁴
 - (c) On 9 May 2002, Police Officer 1, at the request of Sergeant Allison, asked Ms Gobbo why she sought a meeting with then D/S/S Strawhorn. It is further noted that the planned meeting between D/S/S Strawhorn and Ms Gobbo did not occur due to a proposal to include Sergeant Allison.⁵
- 1.3 The misdeeds of certain members of the Drug Squad are well-documented. By associating Detective Inspector Allison with these individuals, Counsel Assisting's submissions tar Detective Inspector Allison with the same brush and he is consequently portrayed as corrupt by association. It is submitted that the claims made by Counsel Assisting against Detective Inspector Allison throughout paragraphs [179.3] to [179.5] are taken out of context, detrimental to his reputation and, at best, peripheral to the Royal Commission's Terms of Reference. The submissions made by Counsel Assisting ought to be rejected.
- 1.4 Importantly, the matters raised in Counsel Assisting's submissions were not put to Detective Inspector Allison during cross-examination. Consequently, Detective Inspector Allison has been deprived of an opportunity to respond. In Detective Inspector Allison's evidence before the Royal Commission, he flatly denied knowing that Ms Gobbo was interacting with members of the Drug Squad, including D/S/S Strawhorn.⁶ It was Detective Inspector Allison's evidence that he knew Ms Gobbo was "*ingratiating herself with police*"⁷ and had close ties to underworld figures such as Tony Mokbel that fell "*outside the normal lawyer/client relationship*".⁸ Mr Allison did not trust Ms Gobbo and sought to distance himself from her.⁹
- 1.5 Additionally, Counsel Assisting's failure to acknowledge evidence favourable to Detective Inspector Allison exacerbates the procedural unfairness. For example, in regards to Detective Inspector De Santo's investigation into Detective Inspector Allison referred to in paragraph [179.3], Counsel Assisting rely solely on documents prepared by Ms Gobbo, yet fail to acknowledge the context including Ms Gobbo's admitted motivation in drafting the documents.
- 1.6 Mr De Santo's evidence before the Royal Commission was that:¹⁰

¹ Exhibit 89 – Statement of Martin Thomas Allison at [6] (VPL.0014.0019.0001)

² Un-tendered Supplementary Statement of Martin Thomas Allison (VPL.0014.0019.0007)

³ Counsel Assisting's Submissions, Volume 2 at [179.3]

⁴ Counsel Assisting's Submissions, Volume 2 at [179.4]

⁵ Counsel Assisting's Submissions, Volume 2 at [179.5]

⁶ T1194.44-1195.2

⁷ T1196.23-24

⁸ T1195.18-41

⁹ T1196.23-33

¹⁰ T1501.23-44 (De Santo)

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it was the same from all of my involvement with her, was that she and her counsel, whoever she was instructing - it's more senior counsel - believed that their clients that were facing serious charges before all the courts could have benefited from my investigations or the Task Force investigations into the corruption of the Kayak Task Force which would then impact on their credibility in those, in those trials.

- 1.7 When Counsel Assisting put this matter to Ms Gobbo in cross-examination, she conceded that she sought to acquire information about members of the Drug Squad in order to benefit her clients.¹¹ Counsel Assisting fails to acknowledge Ms Gobbo's ulterior motives and takes at face value evidence favourable to its narrative.
- 1.8 On the basis of the above, it is unfortunate that Counsel Assisting have made these submissions without support on the evidence and without affording Detective Inspector Allison the opportunity to answer them in cross-examination. The submissions ought to be rejected categorically.

Saul Holt QC
Adam Purton

¹¹ T13028,30-13029,12 (Gobbo)

B Submission of former Detective Inspector Lindsay Attrill

2 Introduction

- 2.1 This submission relates to former Detective Inspector Attrill's role in Operation Khadi, a 2006 Ethical Standards Division (ESD) investigation into allegations of serious misconduct by Victoria Police members stationed at Brighton Police Station.¹² At the time, Mr Attrill was a Detective Inspector at the ESD.
- 2.2 From March 2002 to July 2007, Mr Attrill took leave without pay while he worked in advisory and training roles in Papua New Guinea, the Solomon Islands and Iraq. He resumed his position at ESD in December 2005 upon returning from the Solomon Islands until October 2006 when he commenced his advisory role in Iraq. On 16 July 2007, Mr Attrill retired from Victoria Police and continued working in Iraq in other various advisory and management capacities until December 2008.
- 2.3 Mr Attrill's diaries from the period relevant to Operation Khadi have not been located.¹³ However, it is clear that Mr Attrill's practice was to contemporaneously record events in Information Reports (IRs). His IRs are very detailed, much in the way that a good lawyer would prepare a file note. Therefore, Mr Attrill's IRs are the best contemporary record of what occurred, and Mr Attrill's thoughts and concerns at the relevant time.
- 2.4 At some point during Operation Khadi, either just prior to or immediately following his meeting with Ms Gobbo, Mr Attrill was told that Ms Gobbo was assisting Victoria Police at a very senior level with other matters overseen by Deputy Commissioner Simon Overland.¹⁴ Mr Attrill cannot recall who advised him of this. Mr Attrill was never told and did not know anything about Ms Gobbo's clients, or any other matters involving Ms Gobbo.
- 2.5 For the reasons set out below, Counsel Assisting's submissions in relation to Mr Attrill's meeting with Ms Gobbo on 24 July 2006 are not available on the evidence.¹⁵ As Mr Attrill's IR demonstrates, he conducted an assessment of Ms Gobbo and made a determination based on his professional judgment. He does not resile from that decision to this day.¹⁶ The assertion that Mr Attrill "did in fact have detailed notes" of his meeting with Ms Gobbo that were not provided to the OPI is not supported by reference to any evidence. Neither submission has an evidentiary foundation and ought not be adopted by the Commissioner.
- 2.6 Further, the Commissioner should not make the findings contended for by Counsel Assisting at paragraph [2096]. The proposed findings at [2096] are not necessary and they fail to take into account that there were legitimate reasons for not calling Ms Gobbo as a potential witness. It would be wrong to make the findings contended for at paragraph [2096] because doing so would put undue emphasis on the *outcome* of not calling Ms Gobbo as a witness in Operation Khadi, as opposed to the *process* followed by those people responsible for making that decision. Such a finding would demonstrate hindsight bias.
- 2.7 Finally, Mr Attrill adopts Part 2 of the submissions made by Victoria Police in relation to procedural fairness. In circumstances where Mr Attrill has not been afforded the opportunity to comment in oral evidence on issues raised by Counsel Assisting, caution should be exercised in adopting factual findings that contrast with his statement.

¹² Exhibit 1220 – Statement of Lindsay Frank Attrill at [7] (VPL.0014.0049.0001).

¹³ Exhibit 1220 – Statement of Lindsay Frank Attrill at [6] (VPL.0014.0049.0001).

¹⁴ Exhibit 1220 – Statement of Lindsay Frank Attrill at [13]–[14] (VPL.0014.0049.0001, at .0002–.0003).

¹⁵ CA's Submissions, pp 511–512 [2017] (VPL.1500.0001.0644–.0645); and pp 519–520 [2061] (VPL.1500.0001.0652–.0653).

¹⁶ Exhibit 1220 – Statement of Lindsay Frank Attrill at [22] (VPL.0014.0049.0001, at .0004).

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3 The events leading to Ms Gobbo's withdrawal as potential witness

- 3.1 Mr Attrill adopts the outline of events leading to Ms Gobbo's withdrawal as a potential witness in Operation Khadi set out in Part 3 of the Submission of Rod Wilson.
- 3.2 Counsel Assisting submits that, following a meeting on 15 June 2006 with Officer Sandy White and Superintendent Wilson, it would have been clear to Mr Attrill that "Ms Gobbo was prepared to share confidential and perhaps privileged information" with the SDU.¹⁷
- 3.3 As best as can be discerned, the information which Counsel Assisting contend is confidential or privileged is the information about the \$20,000 that was in the possession of Azzam Ahmed at the time of his arrest on 16 August 2004 that she passed on to the SDU on 9 June 2006. There are two observations that can be made about that information.
- 3.4 **First**, the information was quite obviously not confidential. As the submissions of Counsel Assisting say, on 4 November 2004, Ms Gobbo raised the very same allegation outside Court in a discussion with Jack Vandersteen of the OPP after she had appeared for Mr Ahmed during his bail application.¹⁸ The only significant difference between this information and the information Ms Gobbo provided to the SDU in 2006 was the amount.
- 3.5 This information was known to police at the time Operation Khadi was commenced and is specifically referred to in the Operation Khadi Final Report.¹⁹
- 3.6 **Second**, the information does not appear to be information that would necessarily attract a claim of legal professional privilege. It is information that Ms Gobbo has shared in circumstances where her client was the victim. While it is possible to imagine a scenario where that information may be privileged, a person receiving that information would not immediately reach that conclusion.
- 3.7 Contrary to Counsel Assisting's submission that "Ms Gobbo managed to convince Mr Attrill that she should not be further pursued",²⁰ Mr Attrill's concerns and the reasons why the ESD decided to withdraw Ms Gobbo from the investigation are clearly stated in the IR that Mr Attrill submitted following his meeting with Ms Gobbo:²¹

Swindells and I returned to the office and discussed our concerns with Detective Superintendent Wilson. I firmly believe Gobbo has genuine concerns for her safety. I am of the view that if Gobbo is required to make a statement for this investigation or appear before any hearing and this becomes public knowledge or was conveyed in any way to persons having criminal connections it will have serious consequences for her (i.e. professionally and/or will result in harm coming to her).

A decision must be reached quickly at a senior level between Victoria Police and the OPI to ensure that the issues raised in this report are discussed fully before any further approach is made to Gobbo. There are other more serious issues to consider with this witness and in the context of this investigation I do not believe the potential risks for Gobbo, warrant compelling her to make a statement or appear before any hearing to give evidence in this investigation, providing she is able to assist in an alternative way.

- 3.8 In outlining Mr Attrill's communications with the Office of Police Integrity (OPI), Counsel Assisting asserts that Mr Attrill had "detailed notes" of his meeting with Ms Gobbo that

¹⁷ CA's Submissions, pp 509-510 [2008] (VPL.1500.0001.0642-.0643). See also Exhibit RC0283 Information Report, 15 June 2006 (VPL.0005.0147.0151).

¹⁸ CA's Submissions, p 496 [1947] (Vol 2).

¹⁹ Exhibit 0826 – VPL.0005.0147.0001.

²⁰ CA's Submissions, pp 511-512 [2017] (VPL.1500.0001.0644-.0645).

²¹ Exhibit 0284 – VPL.0005.0147.0119.

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were not provided to the OPI, "presumably out of concern that they might have revealed Ms Gobbo as an informer".

- 3.9 For a number of reasons, this submission should not be adopted by the Commissioner.
- 3.10 **First**, and fundamentally, Mr Attrill was not called to give evidence before the Commission and has therefore not been given an opportunity to comment on the suggestion that "detailed notes" were not provided "presumably out of concern that they might have revealed Ms Gobbo as an informer". Counsel Assisting's submission is therefore speculative and without evidential basis.
- 3.11 **Second**, Counsel Assisting's assertion is not supported by reference to any evidence. It is unclear what Counsel Assisting is referring to by "detailed notes". It is to be noted that Mr Attrill's email to the OPI on 4 September 2006 contains the entire contents of Mr Attrill's IR about his meeting with Ms Gobbo.²² Mr Attrill records in the IR and the email to the OPI that he took notes of his meeting with Ms Gobbo. Mr Attrill's diary from this period has not been located. There is no evidentiary basis to suggest that his diary notes were more detailed than the IR Mr Attrill prepared shortly after meeting Ms Gobbo. In any event, neither Mr Attrill's IR, nor his subsequent email to the OPI can be criticised for being short on detail.
- 3.12 **Third**, Counsel Assisting provides as an example of one of the matters of "substance" not reported to the OPI was the allegation that \$20,000 had been stolen rather than \$5,000. In the circumstances of the decision that was being made by the ESD, it is difficult to see how this was a matter of substance or could "reveal" that Ms Gobbo was an informer.
- 3.13 Finally, it is not open to the Commissioner to make the findings contended for by Counsel Assisting at paragraph [2096] because the decision to withdraw Ms Gobbo as a potential witness was a sound one based on all of the information available to those persons responsible for making that decision. Making a finding that withdrawing Ms Gobbo as a witness represented a "loss of opportunity" would demonstrate hindsight bias by focusing on the outcome of the decision, rather than on the reasonableness of the decision and the factors taken into account in reaching it.

Susanna Locke

²² Exhibit 0864 – Email Lindsay Attrill to Michael Davson, 4 September 2006 (IBAC.0020.0001.0023).

C Submission of former Superintendent Graham Brown

4 Graham Brown

- 4.1 Former Superintendent Graham Brown attended a meeting on 24 July 2007, at 4.30pm. That meeting is described in Counsel Assisting's Submissions at [2468] – [2484].
- 4.2 Mr Brown gave evidence about this meeting in his statement. His evidence is not referred to by Counsel Assisting.
- 4.3 Mr Brown did not know Ms Gobbo's role and did not know who '3838' was.²³ Mr Brown's diary note of this meeting lists the attendees but does not refer to 3838 or Ms Gobbo. It then records, "To brief Simon Overland by JB / TB / [Sandy White] / JO'B".²⁴ Mr Brown's diary note does not refer to obtaining legal advice. That Mr White's diary note of this meeting refers to '3838' surprised Mr Brown.²⁵ If Ms Gobbo's role as an informer had been discussed, he expects he would have remembered.²⁶
- 4.4 Mr Brown's note of the meeting records that it ran from 4.30pm – 5.45pm.²⁷ Notes of other attendees suggests the meeting ran to at least 6.20pm, if not 6.40pm.²⁸
- 4.5 Counsel Assisting at [2484.1] state that it is open to the Commissioner to find that the 'attendees discussed the potential of obtaining legal advice from a judge specifically addressing Ms Gobbo's use as a human source'. Mr Brown's evidence is that he was a 'region man': an outsider at the Crime Department.²⁹ Mr Brown is only referred to in Counsel Assisting's submissions in the context of this meeting. His evidence, as set out above, is that he did not know of Ms Gobbo's role, or of her registered human source number. If legal advice was discussed in the context of Ms Gobbo's use as a human source during a meeting, it is highly unlikely to have been discussed at a meeting with Mr Brown in attendance. The finding should not apply in these terms to Mr Brown.
- 4.6 If the Commissioner were to find in those terms, given the discrepancy in the timing of the meeting itself, there is a real possibility that Mr Brown was not present for that part of the discussion.
- 4.7 To the extent that there is any room in Counsel Assisting's assertion that 'crime investigators' chose not to obtain legal advice [2484.7] for it to apply to Mr Brown, it is relevant that:
 - (a) this is a meeting that Mr Brown expects he only attended because another Superintendent was unavailable;³⁰
 - (b) Mr Brown's diary³¹ (and others' diaries³²) ascribe actions out of this meeting to Mr O'Brien, Mr Biggin, Mr Blayney and Mr White.
- 4.8 There can be no force in a submission that Mr Brown chose not to obtain legal advice: to the extent the matter was discussed, and he was present for the discussion, the actions are clearly a matter for others.

Saul Holt QC
Susanna Locke

²³ Exhibit RC1253 - Statement of Graham Brown, [65], [66], VPL.0014.0097.0001 at .0008.

²⁴ Exhibit RC1253 - Statement of Graham Brown, [32], VPL.0014.0097.0001 at .0003 - .0004.

²⁵ Exhibit RC1253 - Statement of Graham Brown, [33], VPL.0014.0097.0001 at .0004.

²⁶ Exhibit RC1253 - Statement of Graham Brown, [37], VPL.0014.0097.0001 at .0004.

²⁷ Untendered Diary entry of Mr Brown, 24 July 2007, VPL.0005.0216.0001 at .0032.

²⁸ Exhibit RC0933 Diary entry of Mr O'Brien, 24 July 2007, VPL.0098.0103.0001 at .0064 and Exhibit RC0817 Diary entry of Mr Blayney, 24 July 2007, VPL.0005.0241.0385, .0460.

²⁹ Exhibit RC1253 - Statement of Graham Brown, [20], VPL.0014.0097.0001 at .0002.

³⁰ Exhibit RC1253 - Statement of Graham Brown, [37], VPL.0014.0097.0001 at .0004.

³¹ Untendered Diary entry of Mr Brown, 24 July 2007, VPL.0005.0216.0001 at .0032.

³² Exhibit RC0933 Diary entry of Mr O'Brien, 24 July 2007, VPL.0098.0103.0001 at .0064 and Exhibit RC0817 Diary entry of Mr Blayney, 24 July 2007, VPL.0005.0241.0385, .0460.

D Submission of Inspector Boris Buick

5 Introduction

- 5.1 Inspector Buick's involvement with Ms Gobbo can be broken down into two distinct phases:
 - (a) As a member of Purana Taskforce (**the Purana Taskforce phase**); and
 - (b) As a member of Driver Taskforce (**the Driver Taskforce phase**).
- 5.2 As a Detective Senior Constable then Detective Sergeant at Purana Taskforce, Inspector Buick had carriage of the investigations into the deaths of Paul Kallipolitis, Andrew Veniamin and Victor Peirce. He was the nominal informant in the prosecution of Mr McGrath for the murder of Michael Marshall.³³
- 5.3 At Driver Taskforce, then Detective Senior Sergeant Buick had carriage of the prosecution of Mr Paul Dale for giving false and misleading information to the Australian Crime Commission (ACC) (**the ACC prosecution**) and preparation of the inquest brief of evidence in relation to the deaths of Terrence and Christine Hodson.³⁴
- 5.4 Mr Buick recalls discovering that Ms Gobbo was a registered human source when Purana Taskforce were investigating the Mokbels around the time of Mr Cooper's arrest.³⁵ At no time did he form a belief that Ms Gobbo had a conflict of interest or that she had interfered with any of his investigations.
- 5.5 For the reasons set out in this submission, the Commissioner should find that Mr Buick's beliefs were reasonable. More importantly, there can be no finding that Mr Buick knowingly or intentionally fell short of meeting any obligation he may have had to disclose Ms Gobbo's role as human source to those individuals that he investigated.
- 5.6 In fact, Mr Buick's conduct demonstrates a commitment to good disclosure practices, including obtaining legal advice. Indeed, it was his decision to involve the VGSO and Mr Maguire on public interest immunity (**PII**) issues arising from the prosecution of Mr Dale and was a catalyst for the events that have led, ultimately, to the Royal Commission, starting with the Comrie Review in 2012.
- 5.7 Regrettably, Counsel Assisting's submissions in relation to a number of the proposed findings are based on speculation and fail to have regard to critical evidence. They assume wrongdoing and then analyse the evidence through that lens rather than permitting the evidence to lead to the inevitable conclusion that Mr Buick has behaved properly and professionally in his dealings with this matter.
- 5.8 This submission addresses:
 - (a) the quality of Mr Buick's evidence (part 6);
 - (b) the context in which Mr Buick was operating (part 7);
 - (c) Mr Buick's knowledge and awareness of Ms Gobbo's actions as a barrister and as a human source during the Purana Taskforce phase (part 8);
 - (d) Mr Buick's developing understanding of Ms Gobbo's actions as a barrister and as a human source during the Driver Taskforce phase (part 9);
 - (e) Mr Buick's demonstrable pattern of escalating concerns within the Victoria Police hierarchy (part 10); and
 - (f) Mr Buick's disclosure practices (part 11).

³³ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [7], [10], [13], [40] (VPL.0014.0029.0001 at .0003, .0005, .0007).

³⁴ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [31], [33], [42] (VPL.0014.0029.0001 at .0007, .0010).

³⁵ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [45] (VPL.0014.0029.0001 at .0010).

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6 Mr Buick's evidence

- 6.1 In his evidence before the Commissioner, Mr Buick was open, made reasonable concessions, was clear about what he knew and did not know at various times and was open to the possibility that there may be matters he can no longer recall. The Commissioner can have confidence in Mr Buick's evidence.

7 The context in which Mr Buick was operating

- 7.1 Mr Buick's evidence needs to be considered in the context of:
- (a) the influence of the 'need to know' principle within Victoria Police; and
 - (b) the 'golden rule' that members must protect the identity of a human source.³⁶
- 7.2 The Commissioner should also take into account Mr Buick's evidence about his perception of Ms Gobbo as a barrister.³⁷
- 7.3 Finally, the Commissioner should have regard to directions to members about their role and responsibilities in committal proceedings and trials.

The operational environment

- 7.4 An important feature of the operational environment was the influence of the 'need to know' principle on information sharing amongst investigators.³⁸ Members understood that they might not have the full picture but accepted that they had the information that they needed to conduct their tasks.
- 7.5 This feature is critical where the Commissioner is being invited to make a finding about a member's knowledge of particular facts, in circumstances where there is no evidence that such information was communicated. Drawing inferences about what information was shared amongst members of an investigative crew, team, office or department must take that principle into account.
- 7.6 Further, protecting the identity of human sources was a 'golden rule' within Victoria Police. It has been emphasised in the *Victoria Police Manual (VPM)* and various other communications to members since 1986.³⁹
- 7.7 To illustrate, Mr Buick believed that the DSU would have been involved in the approval of Ms Gobbo's use a human source, and in particular, that her use would have been approved at the Superintendent level as required by the Victoria Police policy at the time.⁴⁰ It would have been (a) outside Mr Buick's chain of command, (b) not information necessary for him to conduct his investigations, and (c) risked disclosing a human source's identity, if he had enquired with the DSU as to whether the relevant policies and procedures were being complied with.

Mr Buick's perception of Ms Gobbo as a barrister

- 7.8 **First**, Mr Buick viewed Ms Gobbo as a 'ticket barrister' who appeared for bail applications, administrative hearings and mentions, such as filing hearings and subpoena returns. It was hard to identify precisely on any given day who she was representing.⁴¹
- 7.9 She would be available and ready for those type of hearings but would not be engaged in the running of the substantive trial.⁴²

³⁶ Victoria Police Tranche 2 Submissions Part 4.

³⁷ T8531.46-T8532.2; T8622.45-T8623.1; T8622.45-T8623.1.

³⁸ Also see Part 2 of these submissions "hindsight reasoning and the reality of memory"

³⁹ Victoria Police Tranche 2 Submissions [4.23]-[4.25].

⁴⁰ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [47] (VPL.0014.0029.0001, at .0010).

⁴¹ T8531.46-T8532.2 (Buick); T8622.45-T8623.1 (Buick).

⁴² T8622.45-T8623.1 (Buick).

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- 7.10 **Second**, Mr Buick saw Ms Gobbo as entrenched in the criminal networks that Purana Taskforce were targeting. He did not, however, recall that Ms Gobbo was regarded as a suspect by Purana Taskforce:

We were focusing on solving the homicides, not on policing the conduct of her, [Solicitor 2], Condello, Defferos.⁴³

- 7.11 It was evident from the early days of Purana Taskforce that Ms Gobbo associated socially with members of both the Gatto and Williams groups.⁴⁴ Before 2011, Mr Buick avoided contact with Ms Gobbo. He "had nothing to do with her." Exposure at court was peripheral to her contact with others.⁴⁵

The role and responsibilities of Victoria Police members in committal proceedings and trials

- 7.12 Particularly relevant to Mr Buick's Purana Taskforce phase was the way in which the VPM made plain the limited role of police members once a defendant was before the court. Prosecutors had conduct of the proceedings. The informant either had limited and specific duties or assisted as required by the prosecutor.⁴⁶
- 7.13 This is particularly relevant to any consideration by the Commissioner as to whether Mr Buick should have done more to address any potential conflicts arising out of Ms Gobbo's acting for more than one individual. Experienced solicitors, Crown Prosecutors and judicial officers were involved in the prosecutions arising from Mr Buick's investigations. They were well placed to raise and respond to the risk of conflicts of that nature.

8 The Purana Taskforce phase

Overview

- 8.1 As lead investigator of the murder of Mr Kallipolitis, then DSC Buick was a founding member of Purana Taskforce in April 2003, focusing on Mr Veniamin, Mr Williams and Mr Gatto (and their associates).⁴⁷ His last involvement with Purana Taskforce was the Supreme Court trial of Mr Orman for the murder of Mr Peirce in August 2009.
- 8.2 Between April 2003 and August 2009 Mr Buick had periods away from Purana Taskforce.
- 8.3 Between January 2005 and February 2006, he performed Acting Sergeant duties at Prahran Police Station and then returned to the Homicide Squad. In February 2006, Mr Buick returned to Purana Taskforce to investigate the murder of Mr Condello.⁴⁸
- 8.4 In March 2008, Mr Buick left Purana Taskforce for the role of Staff Officer to the Crime Department Board of Management. He did not return to Purana Taskforce after that time although he retained carriage of prosecutions where he was the informant (including the prosecution of Mr Orman for the murder of Mr Peirce).⁴⁹
- 8.5 From the inception of Purana Taskforce, Mr Buick was aware of the active oversight and routine reporting upwards to Assistant Commissioner Simon Overland.⁵⁰ He knew that AC Overland had organised and facilitated the establishment of Purana Taskforce, which was controversial because it necessitated a de-resourcing of the homicide squad. Although Mr Buick did not experience AC Overland's active oversight, he was aware that Purana Taskforce was "dealt with quite a little bit differently by Crime Command".⁵¹

⁴³ T8517.31-38 (Buick).

⁴⁴ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [9] (VPL.0014.0029.0001 at .0004).

⁴⁵ T8618.44-T8619.5 (Buick).

⁴⁶ Victoria Police Tranche 2 Submissions [4.17]-[4.20].

⁴⁷ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [8] (VPL.0014.0029.0001 at .0004).

⁴⁸ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [42] (VPL.0014.0029.0001 at .0010).

⁴⁹ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [3] (VPL.0014.0029.0001 at .0001 - .0002).

⁵⁰ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [47] (VPL.0014.0029.0001 at .0010).

⁵¹ T8497.25-39 (Buick).

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- 8.6 Mr Buick describes his awareness of Ms Gobbo's role as a registered human source as "developmental",⁵² i.e. the extent of her role as a registered human source revealed itself to him over time.
- 8.7 Mr Buick did not discover in 'one fell swoop' that Ms Gobbo was registered human source 3838 providing information to Purana Taskforce. Rather, he came to understand there was a human source involved in Detective Inspector Jim O'Brien's investigations into Mr Tony Mokbel and his associates.⁵³ At some stage thereafter, he became aware of the source's registered number. Sometime thereafter again, he became aware of the source's identity. He is unable to specifically recall in terms of dates and events when he discovered these things.⁵⁴ However, he was clear that while he was at Purana Taskforce, his understanding was that the information the human source was providing was "specific and was isolated to drug matters".⁵⁵
- 8.8 Contrary to Counsel Assisting's submission, it is submitted that Mr Buick's emails of 2 May 2006 to Sandy White and 26 July 2006 to DI O'Brien are not evidence of Mr Buick's knowledge of the identity of DI O'Brien's human source at that time.
- 8.9 Counsel Assisting invites the Commissioner to find that Mr Buick was "indicating with sarcasm" and "obviously being sarcastic" in stating he did not "of course" know who the human source was.⁵⁶
- 8.10 Mr Buick was open to the possibility that he may have "been told about Ms Gobbo's involvement" by this time because he cannot say for certain when exactly he became aware.⁵⁷
- 8.11 Nonetheless, when Counsel Assisting put the 2 May 2006 email to Mr Buick and suggested that he was being a bit "tongue in cheek", a bit of a "joker", he denied making the comment in any type of jest. He maintained that the email indicated he was not aware of the source's identity at that time.⁵⁸
- 8.12 His interpretation of Officer Smith's subsequent comments was that he was being privately admonished for referring to a human source at all.⁵⁹
- 8.13 Counsel Assisting did not put the 26 July 2006 email to Mr Buick and as such he was not provided with an opportunity to comment on the suggestion that he was "repeating a joke" from an earlier email.⁶⁰
- 8.14 In light of Mr Buick's evidence about the email dated 2 May 2006 and his "developmental" awareness of Ms Gobbo's use as a human source, the Commissioner is simply not in a position to find as a matter of fact that Mr Buick was being "sarcastic" in these emails, and that he was aware at that time that Ms Gobbo was the registered human source being utilised by DI O'Brien in relation to the Mokbels.

Mr McGrath

- 8.15 Mr Marshall was murdered by Mr McGrath and Mr Andrews on 25 October 2003. Mr Buick was in the Purana Taskforce listening device monitoring room when the murder was committed. Mr McGrath and Mr Andrews were arrested by the Special Operations Group (SOG) later that day.⁶¹
- 8.16 Mr Buick was the nominated informant for the murder charge against Mr McGrath. Detective Sergeant Stuart Bateson was the informant for the murder charge against Mr

⁵² T8619.13 (Buick).

⁵³ T8619.7-24 (Buick).

⁵⁴ T8781.24-45 (Buick).

⁵⁵ T8619.12-15 (Buick); T8781.39 (Buick).

⁵⁶ Exhibit 1674B – Email from Buick to O'Brien sent to White and Smith (VPL.0099.0113.0567); Counsel Assisting's Submissions at p 372 [1654], Vol 2.

⁵⁷ T8584.40-43 (Buick).

⁵⁸ T8484.45-T8485.5 (Buick).

⁵⁹ T8585.6-9 (Buick).

⁶⁰ Counsel Assisting's Submissions at p 372 [1654], Vol 2.

⁶¹ T8507.29 (Buick).

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- Andrews and the lead investigator for the entire murder investigation.⁶² Over time, Mr Buick's involvement in the investigation dropped away although he retained carriage of the prosecution of Mr McGrath.
- 8.17 While Mr McGrath was in Mr Buick's custody, he indicated that he was prepared to provide information about who was behind Mr Marshall's murder. Mr McGrath had not had any contact with Ms Gobbo at the time he made this offer.⁶³ Prior to interview, Mr McGrath spoke to Theo Magazis who subsequently appeared for him at the filing hearing.⁶⁴
- 8.18 Simultaneously, DS Bateson was investigating the murders of Mr Pasquale, Mr Barbaro and Mr Jason Moran. On 12 November 2003, he advised Mr Magazis about an application pursuant to s 464B *Crimes Act* 1958 to interview Mr McGrath in relation to that investigation.⁶⁵
- 8.19 DS Bateson and Mr Buick attended the Melbourne Magistrates' Court the next day for the hearing of the application. Ms Gobbo and Mr Magazis appeared for Mr McGrath.⁶⁶ Mr Buick does not recall interacting with Ms Gobbo.
- 8.20 On 14 November 2003, Mr Buick attended a meeting with other Purana Taskforce members including Detective Inspector Gavan Ryan, Detective Inspector Andrew Allen and Detective Senior Sergeant Phillip Swindells.
- 8.21 It was noted that Ms Gobbo had visited Mr Andrews in custody and had subsequently met with Mr Williams and Mr Thomas.⁶⁷ DI Ryan's notes further record "calls seem to be social" and further on "SPU / ESD re calls being pulled re Lawyer / Client privilege".
- 8.22 Counsel Assisting submits, on the basis of those notes, that Purana Taskforce investigators were considering gaining access to and reviewing phone calls involving Ms Gobbo, which may have been quarantined by the SPU due to LPP.⁶⁸
- 8.23 It is submitted that no such finding can be made.
- 8.24 Mr Buick's evidence was that he did not recall any discussions about trying to listen to such calls. He did note that a lot of the telephone conversations that Ms Gobbo was captured on were of a social nature. However, his experience was that:
- the monitors who would listen to the calls before investigators would err on the side of caution and pull those calls and investigators wouldn't see them.⁶⁹*
- ...sometimes calls that the monitors listened to that would slip through, would slip through because it's clearly a social call. It's not apparent to the monitor that it is in any way a lawyer/client conversation. So, you know, certainly I'm aware of calls such as that.⁷⁰*
- 8.25 In relation to the meeting on 14 November 2003, Mr Buick fairly conceded that Counsel Assisting's interpretation of the notes was possible. On the other hand, he stated that he did not recall that that was the thrust of the meeting. He did not see the supposed desire of Purana made out in DI Ryan's notes of the meeting.⁷¹
- 8.26 Further, Mr Ryan's evidence was that his notes could not be interpreted that way, although he could not recall the meeting.⁷²

⁶² T8507.38-43 (Buick).

⁶³ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [10] (VPL.0014.0029.0001 at .0004).

⁶⁴ Exhibit 252 – Bateson Chronology (VPL.0015.0001.0409).

⁶⁵ Exhibit 252 – Bateson Chronology (VPL.0015.0001.0409).

⁶⁶ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [11] (VPL.0014.0029.0001 at .0004); T8511.47–T8512.2 (Buick).

⁶⁷ Exhibit 312 – Diary of Gavan Ryan dated 14 November 2013 (VPL.0005.0148.0001 at .0002).

⁶⁸ Counsel Assisting's Submissions at p 111 [517], Vol 2.

⁶⁹ T8516.5-7 (Buick).

⁷⁰ T8517.9-15 (Buick).

⁷¹ T8516.9-45 (Buick).

⁷² T4417-T4430 (Ryan).

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- 8.27 Finally, there is no evidence that Purana Taskforce investigators took any steps to further this supposed interest. The Commissioner can make no more of Mr Ryan's notes than that they record that calls between Ms Gobbo and various persons of interest are not provided to investigators due to LPP.
- 8.28 Mr Buick had no further involvement in the Barbaro and Moran murder investigation or subsequent prosecution.
- 8.29 On 11 March 2004, Mr Buick received a call from Karen Ingleton, solicitor. His daybook entry states:
- Karen Ingleton... Rang for copy of the brief, is now acting. Gobbo is still briefed.*⁷³
- 8.30 On 22 March 2004, Mr Buick attended the Melbourne Magistrates' Court for Mr McGrath and Mr Andrews' committal mention. Ms Ingleton appeared for Mr McGrath. Mr Grant appeared for Mr Andrews. Mr Buick's daybook notes next to Mr Grant's appearance "(Nicole GOBBO here but not acting)".⁷⁴
- 8.31 At the committal mention, Ms Gobbo spoke to DS Bateson about Mr McGrath's proposed cooperation. Mr Buick did not dispute that this conversation occurred or that he and DS Bateson would have discussed the substance of it, but Mr Buick does not recall it.⁷⁵
- 8.32 Mr Buick had no contact with Ms Gobbo in relation to Mr McGrath after 22 March 2004. He was not involved in taking statements from Mr McGrath. As the nominal informant, Mr Buick was of course advised about the resolution of Mr McGrath's matter. Ms Gobbo dealt directly with DS Bateson and Mr Horgan QC.⁷⁶
- 8.33 From at least September 2004, Mr Langslow was briefed to appear for Mr McGrath in his plea to Mr Marshall's murder.⁷⁷
- 8.34 The Commissioner heard evidence about changes made to Mr McGrath's statements after they were reviewed by Ms Gobbo.
- 8.35 Mr Buick allowed for the possibility that he no longer recalled conversations with DS Bateson about his contact with Ms Gobbo, and Ms Gobbo's comments about Mr McGrath's statements.⁷⁸
- 8.36 Nonetheless, Mr Buick maintained that the extent of his awareness of Ms Gobbo's involvement was that she had acted for Mr McGrath when he had decided to cooperate and had negotiated resolution of his matter with the Crown Prosecutor briefed. He did not think that he was aware at the time that she had read and advised him about his statements before they were signed, or that Mr McGrath's statement was changed after she "expressed scepticism" and spoke to Mr McGrath.⁷⁹
- 8.37 As set out comprehensively in the submissions for Com. Stuart Bateson, Counsel Assisting's submissions proceed on the fallacy that, on Ms Gobbo's instructions, a "substantial alteration" was made to Mr McGrath's statements, which went directly to his credit, and was not subsequently disclosed to Mr Thomas (**the credit issue**). These submissions will return to that issue in due course.
- 8.38 It is submitted that the Commissioner should accept Mr Buick's evidence for a number of reasons. Mr Buick was the nominal informant for Mr McGrath. The bulk of the work was done by DS Bateson and his crew, of which Mr Buick was not a member.⁸⁰ Mr

⁷³ T8531.19-39 (Buick); Untendered Inspector Buick diary dated 11 March 2004 (VPL.0005.0193.0172 at .0175).

⁷⁴ Un-tendered Inspector Buick diary dated 11 March 2004 (VPL.0005.0193.0172 at .0178).

⁷⁵ T8533.47-T8534.2 (Buick).

⁷⁶ T8537.13-24 (Buick); T8539.41-43 (Buick); T8545.26-36 (Buick); Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [14] (VPL.0014.0029.0001 at .0005); Exhibit 252 – Bateson Chronology (VPL.0015.0001.0409 at .0414).

⁷⁷ Exhibit 252 – Bateson Chronology (VPL.0015.0001.0409 at .0420).

⁷⁸ T8546.3-24 (Buick); T8546.33 (Buick).

⁷⁹ T8553.33-T8554.3 (Buick).

⁸⁰ T8554.8-12 (Buick).

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Buick was not involved in the taking of statements from Mr McGrath, which were obtained by DS Bateson for use in his investigations.

- 8.39 Mr Buick's understanding of Ms Gobbo's involvement in Mr McGrath's matter is important when it comes to assessing Mr Buick's awareness of the possibility of a conflict of interest in Ms Gobbo's representation of both Mr McGrath and Mr Thomas.

Mr Andrews

- 8.40 As previously noted, Mr Buick was not involved in the Barbaro/Moran murder investigation, or the subsequent prosecution of Mr Andrews, Mr Thomas and Mr Williams.⁸¹
- 8.41 In March 2006, Mr Andrews made a statement and became a prosecution witness. Mr Buick became aware at some stage that this had occurred.⁸² He was not involved in the statement taking process.
- 8.42 Mr Buick had some contact with Mr Andrews after he left Purana Taskforce. However, Ms Gobbo played no role in Mr Buick's contact with this witness.⁸³

Murder of Mr Condello

- 8.43 On 2 August 2006, Mr Buick commenced coordinating multiple ACC and [PII] hearings in relation to the February 2006 murder of Mr Condello. Mr Buick was not aware of any person examined being represented by Ms Gobbo.⁸⁴

Mr Thomas

- 8.44 Mr Buick's initial involvement with Mr Thomas was in relation to his investigation of the murder of Mr Kallipolitis.
- 8.45 As noted, Mr Buick had no involvement in the investigation or prosecution of Mr Thomas for the murders of Pasquale Barbaro and Jason Moran, with which Mr Thomas had been charged on 16 August 2004.⁸⁵
- 8.46 On 31 August 2004, Mr Buick attended the Melbourne Magistrates' Court for a s 464B Crimes Act 1958 application made by DSC Gallagher and DSC Moreland to interview Mr Thomas in relation to Mr Kallipolitis' murder.⁸⁶
- 8.47 Mr Buick's daybook records that Ms Gobbo and Mr Valos appeared for Mr Thomas.⁸⁷ Mr Buick does not recall engaging with Ms Gobbo on this occasion. The application was granted, and Mr Thomas was taken to St Kilda Road Police Station. Mr Buick returned to the Melbourne Supreme Court where he was managing a trial and did not go to St Kilda Road Police Station.⁸⁸
- 8.48 Mr Buick had nothing further to do with Mr Thomas until July 2006.
- 8.49 Statements were taken from Mr Thomas between 6 and 20 July 2006. DS Bateson, the informant in the Barbaro/Moran investigation, coordinated the taking of statements from Mr Thomas by various statement takers.⁸⁹
- 8.50 As part of that process, on 10, 14 and 19 July 2006, Mr Buick took statements from Mr Thomas about the murder of Mr Kallipolitis.⁹⁰
- 8.51 Mr Buick did not engage directly with Ms Gobbo over this time.⁹¹ However, he noted in his diary on 19 July 2006 that Ms Gobbo had "checked" Mr Thomas' statements.⁹² He

⁸¹ T8560.18 (Buick).

⁸² T8508.38-44 (Buick).

⁸³ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [29] (VPL.0014.0029.0001 at .0007).

⁸⁴ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [17] (VPL.0014.0029.0001 at .0005).

⁸⁵ T8562.10-11 (Buick).

⁸⁶ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [15] (VPL.0014.0029.0001 at .0005).

⁸⁷ Exhibit 644B – Diary of Boris Buick dated 31 August 2004 (VPL.0005.0193.0030 at .0036).

⁸⁸ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [15] (VPL.0014.0029.0001 at .0005).

⁸⁹ T8591.4-17 (Buick).

⁹⁰ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [16] (VPL.0014.0029.0001, at .0005).

⁹¹ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [16] (VPL.0014.0029.0001, at .0005).

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- was aware that Ms Gobbo was acting for Mr Thomas,⁹³ and that DS Bateson was in contact with her.⁹⁴
- 8.52 Mr Buick was not privy to the events leading to Mr Thomas agreeing to provide statements.⁹⁵ He was aware that Mr Thomas had "rolled" and that statements followed but he was not aware of the "mechanics" of how that occurred.⁹⁶
- 8.53 Mr Buick was also not aware that Ms Gobbo had arranged with Det. Sgt Bateson to meet with Mr Thomas on 13 July 2006 at the Victoria Police Centre.⁹⁷ Further, Mr Buick was not made aware of any of Ms Gobbo's discussions with her handlers about Mr Thomas' statements and his truthfulness. None of that information "filtered through".⁹⁸
- 8.54 Mr Buick does not recall ever seeing a statement that Ms Gobbo had written on.
- 8.55 A note from Det. Sgt Bateson (**the Bateson post-it note**) attached to Mr Buick's diary entry for 19 July 2006 states:⁹⁹
- Boris,*
- Here is the statement. It has some red pen on it. These alterations were made by Nicola last night. If you don't have this format let me know and I will email to you.*
- Regards,*
- Stu*
- 8.56 Mr Buick agreed that this note suggests that he was provided with a statement that she had marked.¹⁰⁰
- 8.57 Disclosure to the Royal Commission of the Bateson post-it note is addressed in part 7 below.
- 8.58 A second post-it note attached to Mr Buick's diary entry for 19 July 2006 in Ms Gobbo's hand-writing (**the Gobbo post-it note**) states:
- PK's solicitor was actually Valos (Jim) from Valos Black. He had a letter from PK. (However Thomas may not know this and may genuinely believe it's Dan C.)¹⁰¹*
- 8.59 Notably, Mr Thomas' statement was not altered in this respect.¹⁰²
- 8.60 Commander Bateson, who managed the statement taking process from Mr Thomas and dealt directly with Ms Gobbo, gave evidence that Ms Gobbo corrected grammatical errors only and he has no recollection of anything material being written on them.¹⁰³
- 8.61 Ultimately, Mr Buick did not charge any person with the murder of Mr Kallipolitis while he had carriage of that investigation.
- 8.62 After July 2006, Mr Buick only dealt with Mr Thomas as a witness. As of July 2007, Mr Buick was aware that Ms Gobbo remained involved with Mr Thomas. He and DSC Mark Hatt attended Prison to discuss security concerns with him after he raised these with Ms Gobbo who had in turn raised them with DSC Hatt.¹⁰⁴

⁹² Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [16] (VPL.0014.0029.0001, at .0005).

⁹³ T8601.2-3 (Buick).

⁹⁴ T8599.40-41 (Buick).

⁹⁵ T8589.28-31 (Buick).

⁹⁶ T8589.39-T8590.1 (Buick).

⁹⁷ T8596.11-17 (Buick).

⁹⁸ T8597.17-22 (Buick).

⁹⁹ Untendered Inspector Buick diary entry dated 19 July 2006 (VPL.0005.0193.0039 at .0042).

¹⁰⁰ T8956.13-14 (Buick); T8598.22-25 (Buick).

¹⁰¹ Untendered Inspector Buick diary entry dated 19 July 2006 (VPL.0005.0193.0039 at .0042).

¹⁰² T8601.5-19 (Buick); T8955.45-T8956.5 (Buick).

¹⁰³ T9700.28-31 (Bateson)

¹⁰⁴ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [21] (VPL.0014.0029.0001 at .0006).

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- 8.63 Counsel Assisting submit that it is open to the Commissioner to find that Mr Buick should have questioned Ms Gobbo's involvement in Mr Thomas' matter because:¹⁰⁵
- (a) In 2003 and 2004 he was the informant alongside Commander Bateson in the prosecution of Mr McGrath and Mr Andrews and must have been aware of Ms Gobbo's representation of Mr McGrath; and
 - (b) He had known that Ms Gobbo was a human source, whose information was being used to assist the Purana Taskforce, from around the time of the Posse arrests in April 2006.
- 8.64 Counsel Assisting's submission cannot be sustained in light of the evidence before the Commission. Counsel Assisting's submissions in relation to Mr McGrath and Mr Thomas are premised on two fundamental errors.
- 8.65 First, Counsel Assisting emphasise the "substantial alteration" to Mr McGrath's statement, allegedly on Ms Gobbo's instructions, implicating Mr Thomas.¹⁰⁶ This is the credit issue referred to in these submissions at para 4.37. The alteration relates to Mr McGrath initially telling police that he did not know that Mr Marshall was to be murdered, rather that the visit was for the purposes of a debt collection. His signed witness statement, however, admitted his knowledge in advance that Mr Marshall was to be murdered.
- 8.66 Counsel Assisting proceed on the basis that these different versions were kept from Mr Thomas by investigators and as a result Mr Thomas was cheated of an opportunity to challenge Mr McGrath's veracity. Furthermore, Ms Gobbo, who was aware of the different versions that could be used to undermine Mr McGrath's credibility, had a conflict of interest when acting for Mr Thomas.
- 8.67 However, as set out in Victoria Police Tranche 1 Submissions, Submission of Com. Bateson at [14.53]-[14.62], transcripts of conversations between then DS Bateson and Mr McGrath, which contained his initial version, were disclosed to Mr Thomas prior to the committal in those proceedings. Mr McGrath was subsequently cross-examined extensively at the committal as to his credit, based on his purported lies.
- 8.68 The second error is that Counsel Assisting ignores Mr Thomas' own evidence to the Commission, which is that he had briefed Ms Gobbo knowing that she had acted for Mr McGrath when he provided statements to police implicating him.¹⁰⁷ Furthermore, up until the time of his arrest he was paying Ms Gobbo a monthly cash retainer to keep him informed as to whether any of his associates were to be charged or were likely to make statements against him.¹⁰⁸
- 8.69 Finally, not only was Ms Gobbo's representation of Mr McGrath a matter of public record and known to those at the Office of Public Prosecutions with carriage of these matters, it was known to Mr Thomas' own solicitor and Queens Counsel.¹⁰⁹
- 8.70 Returning to Mr Buick's involvement, he was not involved in taking statements from Mr McGrath and denied any deliberate concealment from Mr Thomas of Ms Gobbo's representation of him.¹¹⁰ Mr Buick believed that Mr McGrath had made a wholesome and truthful statement and that Ms Gobbo had acted in his best interests in achieving a favourable plea deal.¹¹¹
- 8.71 Similarly, in relation to Mr Thomas, Mr Buick's belief was that Ms Gobbo was "entirely acting as his barrister".¹¹²

¹⁰⁵ Counsel Assisting's Submissions at p 215 [987], Vol 2.

¹⁰⁶ Counsel Assisting's Submissions at p 151 [714], Vol 2.

¹⁰⁷ Exhibit 1175 – Statement of Mr Thomas at [31] (RCMP1.0131.0001.0001_0001 at _0008).

¹⁰⁸ Exhibit 1175 – Statement of Mr Thomas at [18]-[21] (RCMP1.0131.0001.0001_0001 at _0005_0006).

¹⁰⁹ Counsel Assisting Submissions at p 155 [738], Vol 2.

¹¹⁰ T8554.39-42 (Buick).

¹¹¹ T8534.10-15 (Buick).

¹¹² T8612.35-38 (Buick).

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...when [Mr Thomas] was making these statements it was my understanding – I acknowledge I was wrong, I accept I was wrong – it was my understanding that she was acting just as his barrister, making sure he got the best deal for the plea he was making on a number of murders. I accept now as I sit here it was different to that, but at the time that was my state of mind.¹¹³

- 8.72 Mr Buick was not aware of any of the “mechanics” that led to Mr Thomas becoming a witness.
- 8.73 Further, Mr Buick’s role in relation to Mr Thomas was limited to managing him as a witness. Mr Buick was aware that he was having significantly less contact with Mr Thomas than other investigators. He considered it to be important in managing witnesses like Mr Thomas to restrict contact, and he was not uncomfortable with the limited contact he was having. Mr Buick was also happy to limit his contact with Mr Thomas because he was aware that Mr Thomas harboured significant animosity towards him.¹¹⁴
- 8.74 Mr Buick cannot be criticised for not “questioning” Ms Gobbo’s involvement in Mr Thomas’ matter as a result of being aware that Ms Gobbo was a registered human source. First, it is unclear from Counsel Assisting’s submissions what “questioning Ms Gobbo’s involvement” translates to in practical terms. Most importantly, though, Mr Buick gave evidence about his incremental knowledge of Ms Gobbo’s role as a human source. While he was at Purana Taskforce, Mr Buick’s understanding was that Ms Gobbo was only providing information in relation to DI O’Brien’s drug investigations into the Mokbel syndicate.

Prosecution of Faruk Orman for the murder of Victor Peirce

- 8.75 On 21 September 2006, then Detective Sergeant Buick commenced an investigation into the May 2002 murder of Victor Peirce. On that day, he took possession of a statement Mr Thomas had made in relation to Mr Peirce’s murder, which implicated, amongst others, Faruk Orman. Mr Buick was not involved in taking that statement from Mr Thomas.¹¹⁵

Initial arrest, filing hearing and committal mention

- 8.76 On 22 July 2007, Mr Buick arrested Mr Orman for Mr Peirce’s murder.¹¹⁶
- 8.77 Mr Orman asked to contact Ms Gobbo and was allowed to call her.
- 8.78 Counsel Assisting criticise Mr Buick for not informing Mr Orman “that this would be inappropriate, or otherwise discourage his seeking advice from Ms Gobbo”.¹¹⁷
- 8.79 Fundamentally, Mr Buick did not consider that he should interfere with Mr Orman’s right to contact the legal practitioner of his choice.¹¹⁸ His training and experience, consistent with the requirements of s 464C of the *Crimes Act 1958*, emphasised to him the importance of allowing a person upon arrest to communicate with or attempt to communicate with a lawyer of their choice. As described in Victoria Police’s submissions, this was a core obligation which was emphasised in the Victoria Police Manual and in the training provided by Victoria Police. There are exceptions to these obligations, but they are strict and expressly set out in s 464C of the *Crimes Act 1958*. None of the exceptions provided a basis upon which Mr Buick could refuse Mr Orman’s request.
- 8.80 It also did not occur to Mr Buick at the time that because Ms Gobbo had represented Mr Thomas the previous year when he had become a prosecution witness, that in that

¹¹³ T8612.41-47 (Buick).

¹¹⁴ T8633.10-25 (Buick).

¹¹⁵ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [18] (VPL.0014.0029.0001 at .0005-.0006); T8590.47-T8591.2 (Buick).

¹¹⁶ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [22] (VPL.0014.0029.0001 at .0006).

¹¹⁷ Counsel Assisting’s Submissions at p 707 [2837], Vol 2.

¹¹⁸ T8633.33-37 (Buick).

OFFICIAL Sensitive

moment she was not an appropriate person for Mr Orman to call.¹¹⁹ Nor was it, in any sense, Mr Buick's place to manage any such conflict.

- 8.81 In any event, Mr Orman left a message on Ms Gobbo's phone. He then spoke to Carly Marks of Galbally Rolfe who attended St Kilda Road Police Station prior to his interview.¹²⁰
- 8.82 Ms Marks then appeared for Mr Orman at his filing hearing at the Melbourne Magistrates' Court. Brian Rolfe appeared for Mr Orman at the committal mention on 1 October 2007.¹²¹

Conditions in custody

- 8.83 The suggestion by Counsel Assisting that Mr Buick could have had any involvement in Mr Orman being held in isolated conditions by Corrections Victoria is wrong.¹²² Mr Buick does not recall being told that Mr Orman was an obsessive compulsive regarding cleanliness and needed people around him.¹²³ He was adamant that if he did receive this information, he did nothing with it.¹²⁴
- 8.84 Counsel Assisting suggest that this information could be used to "devise a strategy to [REDACTED]". Mr Buick stated that the information was factually inaccurate according to his knowledge of Mr Orman and doubts it would have been useful.¹²⁵
- 8.85 Mr Buick agreed that Mr Orman was placed in isolated conditions in custody. Mr Buick provided a common-sense explanation for this:

Ms Tittensor: Do you know how that came about?

Inspector Buick: Well, virtually all the, for want of a better term, underworld suspects when they were incarcerated were placed in a very strict protective regime because both groups were in the same prison, but they were matters entirely for Corrections.

Ms Tittensor: Was there any information supplied by Purana that might have assisted them to make that decision?

Inspector Buick: Only in terms of who's on what side.

- 8.86 Counsel Assisting submits that it is "very likely" that Mr Buick would have been a participant in a conversation with Mr Orman following his arrest about [REDACTED].¹²⁶ In his evidence to the Commission, Mr Buick allowed for the possibility that Mr Orman may have been spoken to about this although he did not recall such a conversation occurring in his presence.¹²⁷
- 8.87 Counsel Assisting's submission ignores Mr Buick's evidence that:
- I've never had a conversation with him about that or really was of the view that he would do that.*¹²⁸
- 8.88 Counsel Assisting's submission cannot be sustained, particularly if such a finding was to be used to support an inference that Mr Buick manipulated Mr Orman's conditions in custody to attempt to [REDACTED]. Such a conclusion is an exercise in gross speculation.

¹¹⁹ T8633.39-42 (Buick).

¹²⁰ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [23] (VPL.0014.0029.0001 at .0006).

¹²¹ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [23] (VPL.0014.0029.0001, at .0006).

¹²² Counsel Assisting's Submissions at p 708 [2841], Vol 2.

¹²³ T9012.28-30 (Buick).

¹²⁴ T9013.6-8 (Buick).

¹²⁵ T8637.37-39 (Buick).

¹²⁶ Counsel Assisting's Submissions at p 707 [2836], Vol 2.

¹²⁷ T8787.44-T8788.1 (Buick).

¹²⁸ T8638.13-15 (Buick).

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Return of subpoenas

- 8.89 Ms Gobbo, instructed by Mr Rolfe, appeared for Mr Orman on 29 October 2007 and 19 November 2007 for the return of defence subpoenas.¹²⁹ Mr Buick has no recollection of engaging with Ms Gobbo at these hearings.¹³⁰ It appears that Mr Buick did not attend court for the hearing on 19 November 2007.¹³¹
- 8.90 Mr Buick had no contact with Ms Gobbo about the subpoena during this period.¹³² It appears that were discussions between Mr Rolfe and Brian Dennis on behalf of the Chief Commissioner of Police and agreement was reached between them in relation to PII claims.¹³³
- 8.91 After 29 October 2007, Mr Buick had no contact with Ms Gobbo until 15 February 2011.¹³⁴
- 8.92 Mr Buick admitted that he was surprised to see Ms Gobbo at court.¹³⁵ Nonetheless, her appearance at court was consistent with his impression of her as a "ticket barrister".¹³⁶
- 8.93 Mr Buick's surprise was that of an investigator, not a lawyer:
- I didn't realise that Gobbo was representing, engaged with what was essentially the enemy of the Williams and Mokbel network. I thought she was embedded – I saw her embedded with the Williams network group and to a lesser extent clearly she's also involved herself with the Gatto group.*¹³⁷
- 8.94 His opinion at the time that Ms Gobbo's appearance was not "particularly problematic" is reasonable in the circumstances as he knew them to be because:¹³⁸
- (a) His understanding of her involvement with Mr Thomas is that she had advised him as a barrister in order to achieve a satisfactory plea;¹³⁹
 - (b) He had no awareness of Ms Gobbo's involvement in the months before Mr Thomas "rolled";
 - (c) With such a limited awareness of Ms Gobbo's involvement with Mr Thomas, it could not have occurred to Mr Buick that Ms Gobbo would seek to "control" the subpoena process to protect her own interests; and
 - (d) Again, Ms Gobbo's representation of Mr Thomas was matter of public record.
- 8.95 From Mr Buick's perspective, that was the end of Ms Gobbo's involvement on behalf of Mr Orman.¹⁴⁰

Committal proceedings

- 8.96 Galbally Rolfe withdrew from acting for Mr Orman on 13 February 2008. Alastair Grigor commenced acting and briefed Robert Richter QC. As Counsel Assisting fairly acknowledge, Ms Gobbo "ceased acting, at least overtly",¹⁴¹ for Mr Orman around this time.¹⁴²
- 8.97 Mr Buick was not aware of any involvement of Ms Gobbo in the background of the committal, assisting Mr Richter QC and Mr Boyce with preparation.¹⁴³

¹²⁹ Exhibit 661 – Office of Public Prosecution file note dated 19 November 2007 (OPP.0011.0005.0268).

¹³⁰ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [25] (VPL.0014.0029.0001, at .0006).

¹³¹ Exhibit 661 – Office of Public Prosecution file note dated 19 November 2007 (OPP.0011.0005.0268).

¹³² T8650.42-43 (Buick).

¹³³ Exhibit 662 – Letter from Inspector Buick to Melbourne Magistrates' Court of Victoria dated 19 November 2007 (OPP.0011.0005.0013).

¹³⁴ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [29] (VPL.0014.0029.0001 at .0007).

¹³⁵ T8622.42-44 (Buick).

¹³⁶ T8622.45-46 (Buick).

¹³⁷ T8624.38-43 (Buick).

¹³⁸ T8623.14-15 (Buick).

¹³⁹ T8623.28-34 (Buick).

¹⁴⁰ T8787.6-9 (Buick).

¹⁴¹ Counsel Assisting's Submissions at p 716 [2891]-[2892], Vol 2.

¹⁴² Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [26] (VPL.0014.0029.0001, at .0007).

¹⁴³ T8799.25-27 (Buick).

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- 8.98 In relation to Mr Orman's committal, Counsel Assisting invite the following findings of fact that:
- (a) Mr Buick would brief Mr Thomas on legal professional privilege (LPP) and would contact the handler regarding any issues;¹⁴⁴
 - (b) Mr Buick and DSC Hatt were "aware of the arrangements put in place to protect Ms Gobbo from compromise";¹⁴⁵
 - (c) Mr Buick provided the SDU with updates during the committal;
 - (d) the committal proceeded in circumstances where investigators, including Mr Buick, knew that Ms Gobbo had acted for Mr Thomas and Mr Orman "at the same time";¹⁴⁶
- 8.99 The evidence is incapable of supporting a finding that Mr Buick briefed Mr Thomas about LPP as a way of protecting Ms Gobbo.
- 8.100 A notation by Officer Wolf in the SML on 7 March 2008 records that Det. Sgt Bateson was going to speak to Mr Thomas.¹⁴⁷ Mr Buick's evidence was that he was not meeting with Mr Thomas around the time of the committal because he was aware of Mr Thomas' animosity towards him.¹⁴⁸ Mr Buick was not among the Purana Taskforce members on Mr Thomas' visitor list.¹⁴⁹
- 8.101 In addition, Mr Buick stated categorically that he was "absolutely not" speaking to Ms Gobbo's handlers throughout this period.¹⁵⁰
- 8.102 Mr Buick did not accept that he was aware of any concerns about Ms Gobbo's "influence or involvement" with Mr Thomas being revealed.¹⁵¹
- 8.103 In relation to the making of a PII claim, Mr Buick's evidence was that as the informant, it was his role to make such claims should the need arise.¹⁵² However, he also stated that claiming PII initiated a process in which VGSO was engaged, independent counsel was engaged, affidavits were prepared and the matter was argued before the court.¹⁵³
- 8.104 As Mr Buick pointed out, claiming PII was not a process "designed to avoid" Ms Gobbo's role being revealed. It is a legitimate process in which the Court adjudicates competing interests. It may in fact lead to an order that disclosure is required.¹⁵⁴
- 8.105 Mr Buick conceded it was possible that they considered making a PII claim in relation to Ms Gobbo's representation of Mr Thomas because "it certainly puts Nicola Gobbo at great risk if others understand that she has assisted her client in providing evidence against them."¹⁵⁵
- 8.106 He reiterated that his primary concern was Ms Gobbo's safety having acted for Mr Thomas when he decided to become a witness.¹⁵⁶
- 8.107 Counsel Assisting submit that it is "significant" that Mr Buick's contact with the SDU during this period was not recorded in his diary or daybook.¹⁵⁷
- 8.108 This submission is problematic for a number of reasons:

¹⁴⁴ Counsel Assisting's Submissions at p 718 [2905], Vol 2.

¹⁴⁵ Counsel Assisting's Submissions at 718-719 [2908], Vol 2.

¹⁴⁶ Counsel Assisting's Submissions at p 775 [3196], Vol 2.

¹⁴⁷ Untendered Source Management Log dated 7 March 2008 (VPL.0100.0179.0001 at .0014).

¹⁴⁸ T8808.29-31 (Buick).

¹⁴⁹ T8627.18-19 (Buick).

¹⁵⁰ T8803.16-26 (Buick); Counsel Assisting's Submissions at p 717 [2901], Vol 2.

¹⁵¹ T8800.12-28 (Buick).

¹⁵² T8807.22-23 (Buick).

¹⁵³ T8807.32-33 (Buick).

¹⁵⁴ T8808.3-5 (Buick).

¹⁵⁵ T8808.7-15 (Buick).

¹⁵⁶ T8811.36-43 (Buick).

¹⁵⁷ Counsel Assisting's Submissions at p 721 [2914], Vol 2.

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- (a) Counsel Assisting have made no attempt to explain the supposed "significance" and have left Mr Buick in the undesirable position of having to infer what the significance of that may be.
 - (b) The period which this submission relates to is three days.
 - (c) The contact between Mr Buick and the SDU in this period appears to be one telephone call to Officer Wolf on 12 March 2008, two telephone calls with Officer Wolf on the evening of 13 March 2008, and attendance at a meeting with Officers Black, Preston and Wolf, and Purana Taskforce members, DSC Kelly and Hatt on 14 March 2008.
 - (d) Mr Buick was not asked why this contact is not recorded in his diary or daybook.
- 8.109 The Commissioner should not draw any adverse conclusion from this contact not being noted in Mr Buick's diary or daybook.
- 8.110 There are many reasons why this contact may not be recorded in Mr Buick's diaries and daybooks. In circumstances where Mr Buick was not given an opportunity to offer an explanation, choosing Counsel Assisting's thinly veiled cynicism would be inappropriate.
- 8.111 Further, much of the contact that occurred between Mr Buick and the SDU on 13 and 14 March 2008 related to managing a security issue that arose from a meeting between Ms Gobbo and Mr Gatto. It was not related to Mr Orman's trial. It appears that Mr Buick became involved because he was investigating Mr Gatto.
- 8.112 Tellingly, an SML entry on 13 March 2008 states that Mr Buick is "unaware of the Source's status".¹⁵⁸
- 8.113 In relation to the possibility of a conflict of interest for Ms Gobbo in acting for Mr Orman having acted for Mr Thomas, by the time the committal proceedings occurred, from Mr Buick's perspective, that possibility had evaporated. He understood her involvement had ceased following her appearances in October and November 2007. In the intervening period, Galbally Rolfe had ceased acting. Mr Orman was represented by a new solicitor and two highly experienced defence barristers.
- 8.114 Mr Buick concedes his view at the time might have been naïve, but he did not consider that Ms Gobbo was conflicted out of appearing for Mr Orman on the basis that she had "represented the witness in the making of his statements and the negotiation of his plea".¹⁵⁹
- 8.115 Mr Buick said:
- ...as a Detective Senior Constable, Acting Sergeant pursuing the investigations on the ground, you know, you don't encounter these issues. I didn't speak a word with Nicola Gobbo over the whole passage of this time from my recollection. I certainly saw her at court, knew she was involved in representing people, but I had no conversations with her such as to get a grasp of her conflict or not.*¹⁶⁰
- 8.116 It was put to Mr Buick that Ms Gobbo was in a position to know of material that could assist to discredit Mr Thomas.¹⁶¹
- Inspector Buick: Well I certainly concede that she knew what the witness had said, but whether she was able to discredit the witness, I don't necessarily agree with that.*
- Ms Tittensor: She held instructions on behalf of the witness?*
- Inspector Buick: Yes.*

¹⁵⁸ Untendered Source Management Log dated 13 March 2008 (VPL.0100.0124.0952 at .0966).

¹⁵⁹ T8633.39-45 (Buick).

¹⁶⁰ T8544.23-30 (Buick).

¹⁶¹ T8649.43-47 (Buick).

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Ms Tittensor: She was in a position to potentially know information that could discredit that witness?

Inspector Buick: I agree with that potential, yes.

8.117 Mr Buick held legitimate concerns about Mr Thomas' credibility as a result of him being a "career criminal". There was nothing, however, about the process of taking statements that Mr Buick was aware of that in itself gave rise to concerns about Mr Thomas' truthfulness.¹⁶²

8.118 Counsel Assisting submit that "Mr Buick and other members of the Purana Taskforce were content to raise the issue of conflict of interest, when it was regarded as advantageous to their case".¹⁶³ Counsel Assisting seek to illustrate this submission with examples such as Mr Rolfe's representation of Mr Orman in circumstances where he had previously represented Mr Peirce; and Mr Rolfe's representation of Mr Orman in circumstances where he had previously represented Mr Thomas.¹⁶⁴

8.119 Again, this submission ignores Mr Buick's evidence:

Ms Tittensor: But it didn't occur to you that Ms Gobbo's involvement might compromise this court process?

Inspector Buick: No.

Ms Tittensor: Even though you're raising conflicts of a solicitor acting for Mr Orman who'd previously acted for people related to the trial?

Inspector Buick: I'm raising it with the OPP at the request of Wendy Peirce. She alleges a conflict that I had no idea about until she raised it, and a witness also raised a conflict that I had no idea about in terms of the representation - I raised it on their behalf. I didn't necessarily see the conflict but I was asked to raise a conflict and I did so. And in both cases Mr Rolfe continued to act for Mr Orman. There clearly wasn't a conflict.¹⁶⁵

8.120 Similarly, Mr Rolfe's possible conflict in relation to Mr Thomas had been raised with Mr Buick by Mr Thomas himself.¹⁶⁶

8.121 Ms Peirce and Mr Thomas were both so concerned about Mr Rolfe's possible conflict, that there were also each intending to write to the Chief Justice of the Supreme Court, the Chief Magistrate and the Law Institute of Victoria.¹⁶⁷ As the informant managing key witnesses in the prosecution, it was entirely appropriate that Mr Buick communicated these concerns to the OPP solicitor.

8.122 Putting aside Mr Buick's evidence that he was not conscious of the possibility of a conflict in Ms Gobbo's representation of Mr Orman, the OPP were themselves aware of this. In a memorandum from Vicky Prapas, solicitor at the OPP to Geoff Horgan SC dated 13 March 2008, Ms Prapas notes:

Of greater significance is the role Nicolas Gobbo has played in the lead up proceedings in this matter. She appeared for Orman in two special mentions regarding Defence summonses. You may recall that Gobbo has acted for both [Mr Thomas] and [a family member of Mr Thomas] in recent OPP prosecutions.

¹⁶² T8650.2-11 (Buick).

¹⁶³ Counsel Assisting's Submissions at p 709 [2847], Vol 2.

¹⁶⁴ Counsel Assisting's Submissions at p 709 [2848], Vol 2.

¹⁶⁵ T8781.4-14 (Buick); T8778.25-26 (Buick).

¹⁶⁶ T8779.8-12 (Buick).

¹⁶⁷ T8780.7-14 (Buick).

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In particular, she was involved in the negotiations surrounding [Mr Thomas] indemnity and guilty plea to the murders of Moran and Barbaro.¹⁶⁸

- 8.123 Finally, Counsel Assisting do not clarify how it might have been "advantageous" to Victoria Police to agitate the possible conflicts of interest involving Mr Rolfe. This submission is without merit.
- 8.124 Having no awareness of the mechanics behind Mr Thomas's decision to provide a statement to police, Mr Buick was simply not alive to the possibility of any possible influence or interference by Ms Gobbo in the witness statement that he relied on in charging Mr Orman.
- 8.125 On 31 March 2008, Mr Buick commenced upgraded duties as the staff officer to the Crime Department Board of Management. He did not return to Purana Taskforce after this date.¹⁶⁹ He retained carriage of the prosecution of Mr Orman.

Mr Orman's trial

- 8.126 Mr Buick had contact with Mr Thomas as a witness in the trial against Mr Orman. Ms Gobbo played no role in his contact with Mr Thomas.¹⁷⁰
- 8.127 Mr Orman was represented by Mr Richter QC and Mr Boyce in his trial in the Supreme Court, which ran from 17 August to 29 September 2009.¹⁷¹ Mr Buick was not aware of Ms Gobbo playing any role in Mr Orman's trial.¹⁷²

Prosecution of Mr Orman for the murder of Mr Kallipolitis

- 8.128 Mr Buick was not the informant in the prosecution of Mr Orman for the murder of Paul Kallipolitis. Detective Senior Constable Tony Hupfeld charged Mr Orman with Mr Kallipolitis' murder on 8 May 2008.¹⁷³ Mr Buick had moved to Crime Command at this stage. He had no involvement with this prosecution until DSC Hupfeld forwarded a subpoena to him in 2012.
- 8.129 In 2013, the prosecution of Mr Orman for the murder of Mr Kallipolitis was withdrawn.
- 8.130 Counsel Assisting suggest that:¹⁷⁴

Mr Buick told the Commission this was not because of a desire to "hide" Ms Gobbo's role, but because of other issues associated with the prosecution.

- 8.131 In actual fact Mr Buick's evidence is as follows:

Ms Tittensor: Do you know why that was, on what basis there was a withdrawal?---

Inspector Buick: No, I don't recall. I don't recall.

Ms Tittensor: Do you know if it related to concerns over disclosure of material?---

Inspector Buick: No, I wouldn't think so. I know that the OPP, because I was around at the time that the OPP decided not to proceed against Vendetti, but I'd gone by the time they were dealing with Orman. And I can say with some confident memory that the Kallipolitis investigators weren't blessed with the ACC/TI material, or the TI saturation that was in place when Peirce was killed. There was no such saturation when Kallipolitis was killed.

¹⁶⁸ Exhibit 674B – OPP memorandum from Prapas to Horgan dated 13 March 2008 re Orman committal (OPP.0011.0005.0021 at .0022).

¹⁶⁹ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [27] (VPL.0014.0029.0001 at .0007).

¹⁷⁰ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [29] (VPL.0014.0029.0001 at .0007).

¹⁷¹ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [30] (VPL.0014.0029.0001 at .0007).

¹⁷² Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [30] (VPL.0014.0029.0001 at .0007).

¹⁷³ Exhibit 1207 – Statement of Anthony Hupfeld dated 3 October 2019 at [15] (VPL.0014.0068.0001, at .0003).

¹⁷⁴ Counsel Assisting's Submissions at p 1030 [4423], Vol 2.

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- 8.132 Mr Buick was not asked any questions during his evidence about Mr Orman's charge being withdrawn because of a desire to "hide" Ms Gobbo's role, as Counsel Assisting's submission implies.

Mr Gatto

- 8.133 On 23 March 2003, Domenic Gatto shot and killed Andrew Veniamin. Mr Buick was the informant in this matter and charged Mr Gatto with Mr Veniamin's murder that same day. Mr Gatto spoke to solicitor George Deferos before he was interviewed. Mr Deferos appeared for Mr Gatto at the filing hearing.¹⁷⁵
- 8.134 Mr Buick was not aware of Ms Gobbo playing any role in Mr Gatto's defence.¹⁷⁶
- 8.135 Mr Richter QC, instructed by Brian Rolfe, appeared for Mr Gatto in his Supreme Court trial, which concluded on 16 June 2005 with a verdict of not guilty.
- 8.136 In November 2006, Purana Taskforce requested access from the ACC for surveillance records and other materials relating to Gatto and Veniamin. These materials were received by Purana Taskforce from March 2007 onwards.¹⁷⁷

November 2007

- 8.137 In November 2007, Detective Acting Sergeant Hatt and Mr Buick served Mr Gatto with a summons to a coercive hearing.
- 8.138 On 21 and 22 November 2007, Mr Richter QC and Ms Gobbo attended at a coercive hearing for Mr Gatto.¹⁷⁸ Mr Buick was not at the hearing on those days.¹⁷⁹
- 8.139 Counsel Assisting submit that it is likely that Mr Buick would have been informed that the coercive hearing on 21 and 22 November 2007 was adjourned due to a perceived conflict on the part of Mr Richter QC and Ms Gobbo.¹⁸⁰ Counsel Assisting are also critical of Mr Buick for not raising an issue about Ms Gobbo's involvement despite his awareness of her "obvious conflict".¹⁸¹
- 8.140 Counsel Assisting do not explain how it is that Mr Buick would have known ahead of time who was going to appear for Mr Gatto. It is then significant that Mr Buick did not attend the coercive hearings and so would not have found out that way.
- 8.141 There is also no evidence about when Mr Buick was advised about what had occurred at the coercive hearing or the ordinary timeframe within which he would have received a transcript of the hearing.
- 8.142 Further, the possibility of a conflict of interest with respect to both Mr Richter QC and Ms Gobbo was raised at the coercive hearing.¹⁸²
- 8.143 Finally, Mr Buick did not subsequently charge Mr Gatto with any criminal offending. He thus had no cause to turn his mind to any conflicts of interest in Mr Gatto's representation. There was no criminal process in which disclosure was required.
- 8.144 In November and December 2007, Ms Gobbo spoke to her handlers about Mr Gatto. Information was conveyed to DI Ryan and to Det. Sgt Bateson. Mr Buick does not have any recollection of discussing Ms Gobbo's status as a human source with Det. Sgt Bateson.¹⁸³

¹⁷⁵ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [13] (VPL.0014.0029.0001 at .0005).

¹⁷⁶ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [13] (VPL.0014.0029.0001 at .0005).

¹⁷⁷ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [19] (VPL.0014.0029.0001 at .0006).

¹⁷⁸ T8792.5-8 (Buick).

¹⁷⁹ T8792.24 (Buick).

¹⁸⁰ Counsel Assisting's Submissions at p 715 [2884], Vol 2.

¹⁸¹ Counsel Assisting's Submissions at p 715 [2884], Vol 2.

¹⁸² T8792.5-17 (Buick).

¹⁸³ T8782.38-42 (Buick).

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- 8.145 Counsel Assisting submit that there was a failure by Mr Buick to question the circumstances in which police came to have this information, which was self-evidently of a privileged nature.¹⁸⁴
- 8.146 Although Mr Buick allowed for the possibility that DI Ryan or Det. Sgt Bateson had passed on information from Ms Gobbo's handlers, he did not recall this being the case.¹⁸⁵ Mr Buick observed that much of what Counsel Assisting put to him from the ICR would have been known to him because of the coverage of his information sources.¹⁸⁶ As Commander Bateson observed, none of the information provided by Ms Gobbo was "particularly earth shattering" and he did not remember thinking anything about it at the time.¹⁸⁷
- 8.147 Mr Buick's evidence was that he was not aware that any information conveyed to him at this time was coming from Ms Gobbo.¹⁸⁸

March 2008

- 8.148 The Commissioner heard evidence about two incidents related to Mr Gatto that occurred during Mr Orman's committal. The first is that Mr Gatto made a public statement referring questions to his legal representative, Ms Gobbo. The second was an incident that concerned the possible disclosure of Ms Gobbo's role as a human source to a member of the State Surveillance Unit (SSU).
- 8.149 In relation to the possible disclosure of Ms Gobbo's role to a member of the SSU, Mr Buick conceded that by virtue of his attendance at a meeting on 14 March 2008, it was reasonably possible that he knew that Ms Gobbo was a human source at this stage. He accepted that it was possible he knew that she was providing information about Mr Gatto.¹⁸⁹
- 8.150 Counsel Assisting are critical of Mr Buick for not raising any concerns in response to Mr Gatto's public statements that Ms Gobbo was his legal representative.¹⁹⁰
- 8.151 However, as far as Mr Buick was aware, Ms Gobbo had not been involved in representing Mr Orman since November 2007. Further, while Mr Buick was investigating Mr Gatto, he did not ultimately charge him with any offences. He thus had no cause to turn his mind to any of conflicts of interest in Mr Gatto's representation.¹⁹¹
- 8.152 Counsel Assisting invite the Commissioner to find that Mr Buick either knew that Ms Gobbo was acting for Mr Gatto, or alternatively had cause to make inquiries as to whether Ms Gobbo was acting for Mr Gatto, because he:
- (a) knew Ms Gobbo was a barrister and a registered human source;
 - (b) had prior experience with Ms Gobbo and knowledge of her role with Victoria Police and in particular her assistance to the Purana Taskforce;
 - (c) was the lead investigator in relation to murder investigations against Mr Gatto;
 - (d) was aware of Ms Gobbo's involvement with Mr Thomas and did not raise any concern as to her conflict;
 - (e) was aware of Ms Gobbo's involvement with Mr Orman, and did not raise any concern as to her conflict;
 - (f) was aware that Mr Gatto had cause to receive legal advice;
 - (g) was aware that Victoria Police was receiving information as to the advice being provided to Mr Gatto by Mr Richter QC

¹⁸⁴ Counsel Assisting's Submissions at 713-714 [2880], Vol 2.¹⁸⁵ T8792.1-3 (Buick).¹⁸⁶ T8789.16-22 (Buick).¹⁸⁷ T9916-9917 (Bateson).¹⁸⁸ T8794.22-23 (Buick); T8790.19-20 (Buick).¹⁸⁹ T8814.14-19 (Buick); Counsel Assisting's Submissions at p 722 [2918]-[2926], Vol 2.¹⁹⁰ Counsel Assisting's Submissions at p 715 [2886], Vol 2.¹⁹¹ Counsel Assisting's Submissions at p 715 [2886], Vol 2.

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- (h) was legally qualified.¹⁹²
- 8.153 These submissions have already canvassed:
- (a) Mr Buick's limited knowledge of Ms Gobbo's role as a human source;
 - (b) Mr Buick's limited knowledge of Ms Gobbo's assistance to Purana Taskforce;
 - (c) Mr Buick's awareness of Ms Gobbo's involvement with Mr Thomas and Mr Orman; and
 - (d) Mr Buick's awareness as to whether Victoria Police was receiving information about the advice being provided to Mr Gatto by Mr Richter QC.
- 8.154 As the lead investigator against Mr Gatto, there was no further opportunity for him to enquire into Ms Gobbo's representation of Mr Gatto. Mr Buick did not subsequently charge Mr Gatto with any offences. When Ms Gobbo had appeared as junior counsel to Mr Richter QC for Mr Gatto in the coercive hearing in November 2007, the matter was adjourned on the basis that they both had a potential conflict of interest.¹⁹³
- 8.155 Mr Buick's law degree is a distraction on this issue. Conflicts of interest are undoubtedly complicated. They are the types of matters on which reasonable minds can differ. While studying law expanded Mr Buick's understanding of the criminal justice system and the role and obligations of lawyers within that system, first and foremost, he was an investigator.
- 8.156 Having not practised as a lawyer, he had not had the opportunity to develop the type of working knowledge that comes with navigating these types of issues in practice.
- 8.157 As Mr Buick said:
- ...as a Detective Senior Constable, Acting Sergeant pursuing the investigations on the ground, you know, you don't encounter these issues. I didn't speak a word with Nicola Gobbo over the whole passage of this time from my recollection. I certainly saw her at court, knew she was involved in representing people, but I had no conversations with her such as to get a grasp of her conflict or not.*¹⁹⁴

Conclusion – the Purana Taskforce phase

- 8.158 Mr Buick had a very limited awareness of Ms Gobbo's involvement with a number of the individuals he had cause to deal with during the Purana Taskforce phase.
- 8.159 Accordingly, he had no comprehension of the possible conflicts of interest that arose either as a result of Ms Gobbo's representation of a number of the individuals, or as a result of her status as a registered human source. Mr Buick did not knowingly or deliberately fall short of any obligation of disclosure that he had to those individuals.
- 8.160 Mr Buick admitted he was surprised when he learned that Ms Gobbo was a registered human source.¹⁹⁵ Nonetheless, his understanding during this phase was that she was providing information specifically in relation to Purana Taskforce's investigations into the Mokbel syndicate. Mr Buick had nothing to do with these.¹⁹⁶
- 8.161 Furthermore, Ms Gobbo's contact had historically blurred the line between lawyer/client contact and social contact.¹⁹⁷ As Mr Buick described it, Ms Gobbo was entrenched in particular circles.
- 8.162 Mr Buick's evidence was that if he had been concerned about Ms Gobbo being in a position of conflict, he would have done something about it.¹⁹⁸ This is demonstrated by his conduct as set out in Part 6 below.

¹⁹² Counsel Assisting's Submissions at p 714-715 [2883], Vol 2.

¹⁹³ T8792.5-17 (Buick).

¹⁹⁴ T8544.23-30 (Buick).

¹⁹⁵ T8576.43-45 (Buick).

¹⁹⁶ T8567.26-27 (Buick); T8577.41-43 (Buick).

¹⁹⁷ T8633.4-8 (Buick).

¹⁹⁸ T8490.43-47 (Buick).

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9 The Driver Taskforce phase

- 9.1 On 29 November 2010, then Mr Buick was seconded to Driver Taskforce from ESD. He was allocated the investigation of Paul Dale for giving false and misleading evidence at Australian Crime Commission (ACC) hearings (the ACC prosecution), and preparation of the inquest brief in relation to the death of Terence and Christine Hodson (Operation Loris).¹⁹⁹
- 9.2 He reported to Inspector Mick Frewen who in turn reported to Superintendent Doug Fryer. Superintendent Fryer reported to Assistant Commissioner Graham Ashton.²⁰⁰
- 9.3 Ms Gobbo was listed as a witness in the ACC prosecution brief of evidence, which was prosecuted by the Commonwealth Director of Public Prosecutions (CDPP). Mr Buick took possession of a statement of Ms Gobbo made on 7 January 2009, detailing her recording of a conversation with Mr Dale.²⁰¹
- 9.4 Mr Buick had no involvement in the taking of this statement, or the circumstances leading to Ms Gobbo's statement.²⁰²
- 9.5 On 15 February 2011, Mr Buick served charges on Mr Dale related to the ACC prosecution. Later that morning, Mr Buick advised Ms Gobbo that Mr Dale had been charged and that she was a prosecution witness in the matter.²⁰³ This is the first contact Mr Buick had had with Ms Gobbo since October 2007.²⁰⁴
- 9.6 Between 15 February 2011 and 9 November 2011, Mr Buick had a significant amount of contact with Ms Gobbo, managing her as a prospective witness in the forthcoming prosecution.²⁰⁵ He documented the contact on Interpose, including audio recordings of his contact with Ms Gobbo. Mr Buick also noted his contact with Ms Gobbo in his daybook.²⁰⁶
- 9.7 As a result of Mr Buick's contact with Ms Gobbo from February to November 2011, he came to have much fuller appreciation for the extent of Ms Gobbo's involvement with Victoria Police.
- 9.8 When asked by Counsel Assisting why he hadn't developed concerns in 2011 about SDU's handling of Ms Gobbo, Mr Buick said:
- I guess I had faith that they were structured in a way and managed in a way and adhering to policy in a way that meant these matters were being properly managed, assessed and reported on.*²⁰⁷
- 9.9 Officer Sandy White had reiterated, as had Ms Gobbo, in conversations that occurred in 2011, that:
- At no stage was any of the information she was providing, of which was a great deal, was she breaching client/lawyer privilege, that was the assertion that was made by Sandy White and Nicola Gobbo.*²⁰⁸
- 9.10 Mr Buick attended the Melbourne Magistrates' Court on 31 August 2011 for a mention in the ACC prosecution. Mr Dale's lawyer Tony Hargreaves indicated to Magistrate Rozencwajg that he would be issuing a subpoena seeking "documents concerning the engagement, development and management of Ms Gobbo as a witness by Victoria

¹⁹⁹ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [31]-[32] (VPL.0014.0029.0001 at .0007).

²⁰⁰ T8821.13-20 (Buick).

²⁰¹ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [33] (VPL.0014.0029.0001 at .0008).

²⁰² Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [33] (VPL.0014.0029.0001 at .0008).

²⁰³ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [34]-[35] (VPL.0014.0029.0001 at .0008).

²⁰⁴ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [35] (VPL.0014.0029.0001, at .0008).

²⁰⁵ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [39] (VPL.0014.0029.0001, at .0009).

²⁰⁶ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [36] (VPL.0014.0029.0001 at .0008).

²⁰⁷ T8851.24-27 (Buick).

²⁰⁸ T8825.33-37 (Buick).

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Police.” The matter was adjourned to 6 October 2011 in anticipation of PII argument related to material to be sought in the subpoena.²⁰⁹

- 9.11 The same day, Mr Buick sought approval from Inspector Frewen to engage VGSO “immediately”. As a result of Mr Buick’s request, Gerard Maguire of counsel provided advice dated 4 October 2011.²¹⁰
- 9.12 On 9 November 2011, at AC Ashton’s request, Ms Gobbo was withdrawn by the CDPP as a prosecution witness.²¹¹
- 9.13 Mr Buick’s last contact with Ms Gobbo was on 14 May 2014. At the request of Detective Superintendent Tess Walsh, Mr Buick rang Ms Gobbo and provided an update regarding the Hodson inquest. The call was audio recorded and uploaded to Interpose.²¹²

10 Inspector Buick’s pattern of escalating his concerns

- 10.1 Mr Buick was the first member of Victoria Police to seek independent legal advice about disclosure of Ms Gobbo’s history as a human source. Mr Maguire’s advice dated 4 October 2011 was a catalyst for the events that have led, ultimately, to the Royal Commission, starting with the Comrie review in 2012.
- 10.2 In relation to relevant issues before the Commission, Mr Buick also:
- (a) Escalated an allegation by Ms Gobbo about an historic sexual relationship with AC Pope;
 - (b) Circulated the Kallipolitis subpoena to Commander Bateson and the Officer-in-Charge of the SDU to ensure it was appropriately responded to; and
 - (c) Escalated concerns about the possible registration of another lawyer in respect of whom confidential submissions have been made to the Royal Commission.

Issue Cover Sheet - Notification of anticipated subpoena in Dale prosecution

- 10.3 On 31 August 2011, Mr Buick forwarded to Superintendent Frewen an Issue Cover Sheet requesting permission to engage VGSO in relation to PII claims over items sought in a subpoena issued by Mr Dale’s lawyers. As Counsel Assisting acknowledge, this was the first time counsel were instructed by Victoria Police “to the extent that allowed for sensible advice to be provided”.²¹³
- 10.4 Counsel Assisting suggest that Mr Buick was motivated to engage VGSO to prevent disclosure of Ms Gobbo’s history as a Victoria Police informer.²¹⁴ That is unfair and irrational. If the motive was to improperly hide something then why would Mr Buick seek independent legal advice about the issue?
- 10.5 Counsel was briefed because in the contact that Mr Buick had with Ms Gobbo over many months in 2011 it became apparent to him that she had been a human source over a long period of time in relation to a large number of matters.²¹⁵ This raised questions on which legal advice was necessary. Counsel Assisting’s unwillingness to give Mr Buick credit for that step is difficult to understand.
- 10.6 Counsel Assisting suggest that Mr Buick was not sufficiently concerned about the individuals whose convictions may have been affected by Ms Gobbo’s role as a human source. Mr Buick admits that he was concerned primarily with Ms Gobbo’s safety and

²⁰⁹ Exhibit 680B – Issue Cover Sheet re notification of anticipated subpoena in Dale prosecution dated 31 August 2011 (VPL.6025.0005.7898).

²¹⁰ Exhibit 689B – Draft advice of Mr Maguire (VGSO.5000.0051.0014).

²¹¹ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [40] (VPL.0014.0029.0001 at .0009); Exhibit 703B – Letter from Mr Ashton to Mr Kirne, Deputy Director CDPP dated 8 November 2011 (VPL.0010.0001.0001 at .0089).

²¹² Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [42]-[43] (VPL.0014.0029.0001, at .0010).

²¹³ Counsel Assisting’s Submissions at p 963 [4123], Vol 2.

²¹⁴ Counsel Assisting’s Submissions at p 967 [4146], Vol 2.

²¹⁵ T8835.25-28 (Buick).

OFFICIAL: Sensitive

police methodology in relation to managing human sources.²¹⁶ But that is not the point. Regardless of his concerns, he sought independent advice and there is no suggestion that he did so other than with an intention to act on it, regardless of what it said.

- 10.7 Further, Mr Buick then escalated the issue to his immediate supervisor, which in turn led to senior members of Crime Command becoming involved in addressing the issues.
- 10.8 Finally, as has already been stated, Mr Buick's evidence to the Commissioner on a number of occasions was that the making of a PII claim does not automatically prevent disclosure, indeed it can facilitate it.²¹⁷

Allegation of sexual relationship between AC Pope and Ms Gobbo

- 10.9 On 21 October 2011, Ms Gobbo alleged that she had previously engaged in a sexual relationship with AC Pope. At the time that Ms Gobbo made the allegation, AC Pope was the Assistant Commissioner, Intelligence and Covert Support Department and a member of the Driver Taskforce Steering Committee.²¹⁸ This conversation was audio recorded. Mr Buick immediately briefed his superior officers DI Frewen and Superintendent Fryer.²¹⁹
- 10.10 Mr Buick did not have anything further to do with the investigation into the allegation.
- 10.11 The allegation was tabled at the next Driver Taskforce Steering Committee meeting and AC Pope stood aside from the Driver Taskforce Steering Committee while an investigation was carried out.²²⁰
- 10.12 This is an indication that when Mr Buick was aware of a potential conflict of interest he raised it.

Kallipolitis subpoena

- 10.13 On 2 March 2012, DSC Hupfeld, the informant in the proceedings against Mr Orman for the murder of Mr Kallipolitis, referred a subpoena to Mr Buick given his historic involvement in the investigation.
- 10.14 Mr Buick forwarded the subpoena to Commander Bateson.²²¹
- 10.15 More importantly however, on 5 March 2012, Mr Buick forwarded the subpoena to the Officer-in-Charge of the SDU, copying in the Staff Officer to the Assistant Commissioner Intelligence and Covert Support. Mr Buick specifically drew attention to the fact that the subpoena was seeking the production of intelligence products related to Ms Gobbo.²²² Counsel Assisting fail to refer to this evidence in their submissions. This further demonstrates that Mr Buick was motivated to ensure that Victoria Police did comply with its obligations.²²³
- 10.16 Mr Buick had no further involvement in the Kallipolitis matter after responding to the subpoena issue.²²⁴

Concerns about possible registration of another lawyer

- 10.17 Again, Mr Buick demonstrated his willingness to escalate concerns about issues at the heart of this Royal Commission when he emailed AC Fontana on 3 April 2014.²²⁵ Notably, Mr Buick stepped outside of his chain of command and raised the concerns directly with the relevant senior investigators.

²¹⁶ T8835.36-40 (Buick).

²¹⁷ T8807.30-43 (Buick).

²¹⁸ T8822.2 (Buick).

²¹⁹ Exhibit 636B – Statement of Boris Buick dated 10 May 2019 at [39]-[40] (VPL.0014.0029.0001 at .0009).

²²⁰ Exhibit 1273 – Statement of Tim Cartwright dated 17 December 2019 at [35]-[36] (VPL.0014.0121.0001 at .0005).

²²¹ Untendered email from Inspector Buick to Det. Sgt Bateson (VPL.6031.0023.3046).

²²² Exhibit 710A – Email dated 5 March 2012 to SDU Officer-in-Charge re subpoena 1 re Gobbo (VPL.6031.0023.3118).

²²³ T8807.2-5 (Buick).

²²⁴ T9014.30-31 (Buick).

²²⁵ Untendered email from DI Boris Buick to AC Stephen Fontana dated 3 April 2014 (VPL.6109.0096.3204).

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- 10.18 Mr Buick's concerns were further escalated by AC Fontana to Deputy Commissioner Graham Ashton, and he ultimately met with Victoria Police's Executive Director of Legal Services Fin McRae and the Superintendent with oversight of [REDACTED]
- 10.19 Counsel Assisting's insinuation that Mr Buick was motivated simply by the risk of reputational damage to Victoria Police is at best "uncharitable" and in reality deeply unfair.²²⁶

11 Disclosure practices

- 11.1 There are two disclosure-related issues raised by Counsel Assisting's submissions that ought to be responded to:
- (a) Disclosure to the Royal Commission of Mr Buick's diary entry for 19 July 2006 which did not include the Bateson post-it note; and
 - (b) Criticisms of the statement taking process by Purana Taskforce investigators.

The disclosure of Inspector Buick's notes for 19 July 2006

- 11.2 As set out in Counsel Assisting's submissions, Mr Buick's diary notes for 19 July 2006 formed part of material produced to the Royal Commission twice, the first occasion being around the time that his witness statement was produced; the second occasion following a request for inspection in around September 2019.
- 11.3 The Bateson post-it note was not attached to Mr Buick's diary notes for 19 July 2006 when first produced.
- 11.4 Mr Buick accepts that he was responsible for copying his diary entries in the first instance.²²⁷
- 11.5 Counsel Assisting submit that "very concerningly, it is apparent" that the Bateson post-it note appears to have been removed before copying.²²⁸ Counsel Assisting further submit that one of the reasons the post-it note is "significant" is that it gives rise to "concerns as to who removed the post-it note before copying the relevant page originally supplied to the Commission, and why that was done".²²⁹ Counsel Assisting submit that Mr Buick could not explain why the post-it note was not initially produced to the Royal Commission.²³⁰ The insinuation, of course, is that the post-it note was deliberately not disclosed in the first instance. Counsel Assisting ignore Mr Buick's evidence on this issue.
- 11.6 The Commissioner cannot, on an objective analysis of the evidence, make such a finding. The submission in support of it is misleading because it does not refer to the explanation that Mr Buick actually gave and it is irrational because the content of the post it note was included in Mr Buick's statement to the Royal Commission which accompanied the first provision of the diaries and daybooks.
- 11.7 When the two different versions of his diary entry for 19 July 2006 were first shown to Mr Buick, he accepted Counsel Assisting's proposition that "it is apparent that before that photocopy was made that post-it note had been removed". He accepted Counsel Assisting's further proposition that "It's apparent that the post-it note was put back on to the page".²³¹
- 11.8 However, when Counsel Assisting returned to the issue the following day, Mr Buick explained that he could not recall removing the Bateson post-it note before photocopying the page. Then, and in direct contrast to Counsel Assisting's submission that Mr Buick could not explain why the post-it note was not initially provided to the Commission, he did in fact provide a logical and credible explanation:

²²⁶ Counsel Assisting's Submissions at p 1115 [4861], Vol 2, T9042.14

²²⁷ T8493.20-30 (Buick); T8773.15 (Buick).

²²⁸ Counsel Assisting's Submissions at p 214 [985], Vol 2.

²²⁹ Counsel Assisting's Submissions at p 216 [992], Vol 2.

²³⁰ Counsel Assisting's Submissions at p 216 [993], Vol 2.

²³¹ T8598.27-34 (Buick).

OFFICIAL: Sensitive

I think what, I'm not certain, but I think what's happened, I've clearly made reference to that note in my statement, so the note is referred to in my statement. I make a notation in my statement about the statements having been reviewed by Gobbo. I don't know – I'm not sure that that note was actually on the page that the date relates to, or that the event related to. It's come off another document and I've put it into my daybook. But I don't know that I've actually put it into my daybook on that date. So I am guessing here but I think what's happened is I've taken it off another page and put it in the correct page sequentially.²³²

- 11.9 Further, Mr Buick's statement included that very material in it:
16. *On 10 July 2006 I commenced obtaining a statement from Mr Thomas in relation to the PII murder of PII and the 2002 murder of Paul Kallipolitis. This statement was continued over the 14th and 19th of July. On 19 July 2006 I have a note that the statements are being checked by Ms Gobbo. I did not engage directly with Ms Gobbo over this time.*
- 11.10 It makes no sense to deliberately conceal the Bateson post-it note yet include its content in a statement made to the very people who it is suggested the content was to be kept from.
- 11.11 Regrettably, it has to be said that Counsel Assisting's submission in this regard should be rejected and is irresponsible.

Criticism of Purana Taskforce's statement taking process

- 11.12 Counsel Assisting submit that several members of Purana Taskforce had a practice of essentially shielding witnesses who were liable to having their credibility challenged by not retaining draft statements, so that inconsistencies could not subsequently be used by defence counsel.²³³
- 11.13 Mr Buick's evidence was that there was no Purana-wide policy or process of procedure.²³⁴ His practice in relation to taking statements was that he would "type it on a computer, print it, they review it, and if they're happy with it they sign it."²³⁵
- 11.14 In some circumstances, a previous unsigned version of a statement might be retained if it had been printed prior to signing and changes were subsequently made. However, in most circumstances, if the statement had not been printed, one would go back into it and make alterations to the original document.²³⁶ Mr Buick stated that it was his practice to retain previous versions where a matter of substance changed.²³⁷
- 11.15 Mr Buick's evidence is reasonable, logical and consistent with common practice. It is common practice for statements that are taken on an electronic device to be revised and amended until they are sufficiently advanced so as to be considered a complete 'draft' of the intended final work produced. This is particularly so when the statements are lengthy, addressed complex subject matter or call for precision.
- 11.16 When similar issues were raised at a mention in the prosecution of Carl Williams on 30 March 2006, Justice King said that her practice was to "sit there and type and change it as I go and I delete and move forward, that's how people do it who are computer literate and can type".²³⁸ That description is entirely consistent with the practice described by Mr Buick.
- 11.17 Finally, Mr Buick's answer must be seen in the context of the absence of any policy or standard operating procedure for taking witness statements. Mr Buick had never received any training about appropriate practices with respect to taking statements or

²³² T8773.17-31 (Buick).

²³³ Counsel Assisting's Submissions at p 209 [965], Vol 2.

²³⁴ T8546.42-43 (Buick).

²³⁵ T8548.4-6 (Buick).

²³⁶ T8548.30-32 (Buick).

²³⁷ T8548.37-38 (Buick).

²³⁸ Untendered – Transcript of Hearing 30 March 2006 T35.6-9 (VPL 0099.0025.0504 at .0539)

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when drafts should be retained.²³⁹ Victoria Police did not mandate the procedure for taking statements. There was no directive as to what constituted a 'draft' in the context of electronic word processing devices nor the circumstances in which drafts were to be kept and disclosed. Accordingly, each officer developed their own practice. Mr Buick's practice was broadly consistent with other officers who gave evidence to the Commission and with the process described by Justice King.

11.18 It is also open to the Commissioner to find that:

- (a) it was common practice for statements to be taken on a computer without iterative drafts being kept and with revisions to the statement being made in a single electronic document, with the consequence that (other than perhaps by reference to metadata) it was not possible to identify what changes were made when and by whom; and
- (b) Victoria Police had no policy in place detailing the requirements for taking statements and no policy governing what constituted a draft statement and the circumstances in which draft statements, and the record of changes made by an accused, were to be retained and disclosed.

11.19 In fact, Mr Buick's practices in relation to disclosure showed a genuine commitment to proper process. In relation to PII claims, his evidence was that it was appropriate for a police officer to make their own redactions regarding relevance, but that the VGSO should be involved in making claims for PII and that material proposed to be redacted would be discussed with them.²⁴⁰

11.20 Mr Buick described the procedure for a public interest immunity claim. He explained that he would engage with the VGSO, compile a schedule to outline the material sought not to be disclosed and the reason for that and would work with a barrister to compile an affidavit so that the matter could be brought before the court.²⁴¹

11.21 He gave evidence that where counsel was briefed to appear in relation to a claim for public interest immunity, his practice was to supply VGSO or counsel with copies of the requested materials highlighted to indicate sections of the document where redaction was required. He would not make that decision himself in relation to public interest immunity.²⁴²

11.22 By way of illustration of the above, in relation to the ACC charges for Paul Dale, the steps that Mr Buick took resulted in VGSO and counsel being engaged to provide advice.²⁴³ In the Issue Cover Sheet prepared to recommend that advice be obtained, he identified that revelation of details of Ms Gobbo's engagement would expose sensitive police methodologies and would place her life at risk, and ought to be the subject of a PII claim.²⁴⁴ This was an entirely proper basis for PII to be considered and Mr Buick engaged in an entirely proper process to have that claim assessed by VGSO and counsel. No material relating to Ms Gobbo's registration as a human source was produced as a result of this advice because Ms Gobbo was withdrawn as a witness and charges relating to her evidence were withdrawn, but that was not Mr Buick's decision.

Saul Holt QC
Susanna Locke

²³⁹ T9857.8 (Bateson).

²⁴⁰ T8493.38-T8494.28 (Buick).

²⁴¹ T8493.38-8494.9 (Buick).

²⁴² Exhibit 1428 – Statement of Paul Millett (VPL.0014.0126.0006 at .0010); T8493.38-T8494.9 (Buick).

²⁴³ Exhibit 636B – Statement of Boris Buick [57] (VPL.0014.0029.0001 at .0012).

²⁴⁴ Exhibit 1258 – Statement of Michael Frewen at [53] (VPL.0014.0123.0002 at .0010); Untendered Issues Cover Sheet (VPL.0100.0013.3983)

E Submission of former Deputy Commissioner Tim Cartwright

12 Overview

12.1 It is submitted on behalf of Mr Cartwright that:

- (a) **first**, the submission of Counsel Assisting that former Deputy Commissioner Cartwright and others failed to appropriately action concerns raised in a meeting on 3 November 2011 regarding disclosure to those associated with the Tomato Tins importation and to Mr Tony Mokbel, should be rejected by the Commissioner;²⁴⁵
- (b) **second**, the submission of Counsel Assisting that the terms of reference of the Comrie Review were drafted in a way so as to avoid examining questions that had been raised in the Gerard Maguire advice of 4 October 2011, insofar as it concerns Mr Cartwright, should be rejected by the Commissioner;²⁴⁶ and
- (c) **third**, to the extent that the Commissioner intends to make any comment in relation to the accuracy of Mr Cartwright's comments at a press conference on 10 February 2015, his comments were accurate according to information supplied to him at the time, and were later the subject of correction in a statement issued by the DPP on the same day.²⁴⁷

13 3 November 2011 meeting

- 13.1 On 3 November 2011, Mr Cartwright attended a meeting with Assistant Commissioner Ashton and Mr McRae. The day before, on 2 November 2011, Mr Cartwright had received the 4 October 2011 advice from Gerard Maguire.²⁴⁸
- 13.2 It is clear that the three attendees of the 3 November 2011 meeting each had different degrees of knowledge relating to Ms Gobbo's prior involvement with Victoria Police and the prosecutions considered in the Maguire advice. Whereas Counsel Assisting attempt to synthesise all three accounts of the 3 November 2011 meeting, it is evident that, due to the varying degrees of knowledge going in to the 3 November meeting, what was discussed did not necessarily carry the same significance for each. Mr Cartwright's account of the 3 November 2011 meeting is set out in the contemporaneous notes he prepared during the meeting, which were typed into a document later that day.²⁴⁹
- 13.3 While Mr Cartwright accepts that there may have been a "failure of communication" arising out of the action items for the attendees of the 3 November meeting, Counsel Assisting's submission that he failed to ensure that the concerns raised at the meeting were adequately actioned is not supported by the evidence and should not be accepted.
- 13.4 In considering the proposed findings in paragraphs 4328 to 4331 and paragraph 4375 of the submissions of Counsel Assisting, the Commissioner should also take into account the following matters:
 - (a) Disclosure to the DPP and CDPP, as submitted in paragraphs 4330 and 4331, would have required Messrs Cartwright, Ashton and McRae to have had knowledge of the actual matters to be disclosed. As at the time of the 3 November 2011 meeting, none of them, least of all Mr Cartwright who had only recently been appointed to his portfolio at the time,²⁵⁰ had sufficient knowledge to have made disclosure to the DPP or CDPP.

²⁴⁵ Counsel Assisting's Submissions, Volume 2, paragraphs [4328]–[4331]; [4375]; [4381].

²⁴⁶ Counsel Assisting's Submissions, Volume 2, paragraph [4403].

²⁴⁷ Counsel Assisting's Submissions, Volume 2, paragraph [4680].

²⁴⁸ Statement of Timothy Cartwright at [41]; VPL.0014.0121.0001 at .0006.

²⁴⁹ VPL.0100.0013.0053 at 0099.

²⁵⁰ T.14230.14 – T.14230.33.

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- (b) In relation to the CDDP prosecution involving Paul Dale, Mr Cartwright was aware – and satisfied by the fact – that the CDDP had been provided the Maguire advice and was being provided access to the Source Management Log.²⁵¹
 - (c) In relation to Operation Inca, which was a matter unknown to Mr Cartwright prior to having reviewed the Maguire advice,²⁵² Mr Cartwright's view was that Mr McRae had been tasked to "consider the requirements" for disclosure in the context of Inca.²⁵³ While the tasking of Mr McRae was evidently the subject of a failure of communication, for which Mr Cartwright as the most senior member in attendance acknowledges responsibility,²⁵⁴ Mr Cartwright had understood that the matter would be being handled by Mr McRae, and reported back by Mr McRae to Mr Cartwright if there was any particular difficulty.²⁵⁵
 - (d) In relation to Mr Tony Mokbel, Mr Cartwright recognised that there was no clear action item in his notes of the 3 November 2011 meeting concerning disclosure to Mr Mokbel, but he believed that the matter would be dealt with by Mr Ashton and McRae and form part of the Comrie Review if necessary.²⁵⁶
- 13.5 Following the 3 November 2011 meeting, Mr Cartwright instigated the Comrie review, the purpose of which was to investigate and gather the information required to adequately respond to potential concerns relating to disclosure and affected proceedings articulated in the Maguire advice (such as those associated with the Tomato Tins importation and Mr Tony Mokbel) and effectively action Mr Cartwright's item from the 3 November 2011 as to how Victoria Police could ensure appropriate governance for human source management, particularly in circumstances where a human source was a legal practitioner.²⁵⁷ Mr Cartwright followed up this action item by raising the matter with the sworn executive of Victoria Police,²⁵⁸ and subsequently, on 16 November 2011, instructing Messrs Ashton, Comrie and Pope to prepare terms of reference for the Comrie Review.²⁵⁹ Counsel Assisting has accepted that the 3 November 2011 meeting was in fact the "catalyst that led to" the Comrie Review.²⁶⁰
- 13.6 Given the actions taken by Mr Cartwright, and the degree of his knowledge at the time of matters that were potentially disclosable, the Commissioner should not accept the submission from Counsel Assisting that Mr Cartwright failed to appropriately action concerns arising from the 3 November 2011 meeting.
- ## 14 Comrie Review Terms of Reference
- 14.1 As noted in paragraph 13.5 above, on 16 November 2011 Mr Cartwright instructed Messrs McRae, Ashton and Pope to draft the terms of reference for what would become the Comrie Review.²⁶¹ While Mr Cartwright provided some oversight in relation to reviewing the draft terms of reference on two occasions,²⁶² their development was primarily managed by Mr McRae, Assistant Commissioner Pope and Superintendent Gleeson.²⁶³
- 14.2 In reviewing a draft of the terms of reference on 21 November 2011 (which contained express reference to the Maguire advice), Mr Cartwright noted that the terms of reference should address both the specific issues relating to Ms Gobbo's involvement with Victoria Police and the potential for systemic issues in relation to human source

²⁵¹ VPL.0100.0013.0053 at 0115; T14233.46 – T14234.13.

²⁵² T14241.30 – T14241.33.

²⁵³ VPL.0100.0013.0053 at .0099.

²⁵⁴ T14240.5 – T14240.6.

²⁵⁵ T.14240.46 – T14241.5.

²⁵⁶ T14245.3 – T14245.5.

²⁵⁷ VPL.0100.0013.0053 at .0099.

²⁵⁸ Statement of Timothy Cartwright, [55]: VPL.0014.0121.0001 at .0008.

²⁵⁹ VPL.6027.0015.9005.

²⁶⁰ Counsel Assisting's Submissions, Volume 2, [4387]

²⁶¹ VPL.6027.0015.9005

²⁶² Statement of Timothy Cartwright, [66]: VPL.0014.0121.0001 at .0010.

²⁶³ Statement of Jeffrey Pope, [89]–[97]: VPL.0014.0013.0004 at .0030–.0031; Statement of Stephen Gleeson, [18]–[23]: VPL.0014.0084.0001 at .0004–.0005.

OFFICIAL: Sensitive

management within Victoria Police. Mr Cartwright did so by noting that the terms of reference should:²⁶⁴

- (a) ask Mr Comrie to review the "specific issues" of Ms Gobbo's involvement with Victoria Police;
- (b) address questions arising from the Maguire advice and more generally around policy formation, culture and training.

- 14.3 Mr Cartwright's direction that the terms of reference should also cover a broader review of Victoria Police's policy formation, culture and training was borne out of Mr Cartwright's experience in navigating Victoria Police's response to the affidavit swearing issues brought to light in the *Marijancevic* proceeding. In dealing with that matter, Victoria Police was required to grapple with broader cultural and compliance issues that had come to the attention of the Victoria Police executive through one specific instance of noncompliance. Accordingly, when Mr Cartwright became aware of potential issues relating to Victoria Police's interactions with Ms Gobbo, he commenced the process of a broader review that would also encompass policy formation, culture and training.
- 14.4 A later draft of the terms of reference received by Mr Cartwright on 20 January 2012 also contained express reference to the fact that the Comrie Review may be used to "seek legal advice with respect to [Victoria Police's] dealings with 3838 or other high risk sources".²⁶⁵
- 14.5 Around this time in January 2012, Mr Cartwright was permanently appointed to the position of Deputy Commissioner.²⁶⁶ From this time, he did not have direct involvement in settling the terms of reference, although he did receive a further version of the Comrie Review terms of reference in February 2012,²⁶⁷ and provided the approval for financial management delegations for the engagement of Mr Comrie.²⁶⁸ While Mr Cartwright acknowledged in evidence that, in hindsight, the final terms of reference could have been drafted differently to more closely address matters in the Maguire advice,²⁶⁹ ultimately, by the time the terms of reference were settled they were not within Mr Cartwright's direct oversight.

15 10 February 2015 Press Conference

- 15.1 The submissions of Counsel Assisting refer to comments made by Mr Cartwright at a press conference following the completion of the Kellam Report.²⁷⁰
- 15.2 At the 10 February 2015 press conference, Mr Cartwright stated words to the effect that:²⁷¹

We've been talking with the Director of Public Prosecutions in the State and Federal arenas ... There is no evidence at this stage of any threat to any conviction or any evidence of mistrial. ... If any evidence comes to light we will certainly be talking to the DPP and we'll be advising IBAC. That is both in the State and Federal arenas.

- 15.3 A media statement to similar effect was also released by Victoria Police on the same day.²⁷²
- 15.4 While no submission is made by Counsel Assisting in respect of the press conference, the DPP has stated that Mr Cartwright's statement was incorrect as Victoria Police had

²⁶⁴ VPL.6023.0136.9294.

²⁶⁵ VPL.6019.0023.6258; VPL.6019.0023.6259.

²⁶⁶ Statement of Timothy Cartwright, [65]: VPL.0014.0121.0001 at .0010.

²⁶⁷ VPL.0100.0040.0568.

²⁶⁸ Statement of Timothy Cartwright, [66]: VPL.0014.0121.0001 at .0010; VPL.0100.0029.0631 at .0644–.0647.

²⁶⁹ T14327.6 – T14327.13.

²⁷⁰ Counsel Assisting's Submissions, Volume 2, paragraph [4681].

²⁷¹ VPL.0100.0058.0739 at .0746–.0747.

²⁷² VPL.0100.0058.0739 at .0747.

OFFICIAL: Sensitive

not provided the DPP with the documents necessary to conduct a review of the relevant prosecutions involving Ms Gobbo.²⁷³

- 15.5 Mr Cartwright acknowledges that his statements at the 10 February 2015 could have been interpreted as suggesting that the DPP had provided formal advice on each matter, which had not in fact occurred. While Counsel Assisting do not submit that Mr Cartwright's comments had been intended to mislead anyone, for the avoidance of any suggestion otherwise, Mr Cartwright's comments were consistent with information that had been provided to him as a result of his involvement with Operation Bendigo.
- 15.6 For example, in the last Operation Bendigo steering committee meeting attended by Mr Cartwright on 18 December 2014, before he took the position of acting Chief Commissioner, Mr Cartwright had been informed that:²⁷⁴
- (a) Mr McRae had been in "consultation with the DPP";
 - (b) "the DPP did not want to take possession of any files or additional information in relation to the case studies as they were satisfied that there was no evidence to support a miscarriage of justice at [that] stage"; and
 - (c) "the DPP would require evidence relating to the dates, names, places and subject matter before considering further any suggestion of a miscarriage".
- 15.7 That position was also essentially reflected in Bendigo Steering Committee minutes dated 6 February 2015 (although that meeting was not attended by Mr Cartwright).²⁷⁵ The DPP also issued a media statement on 10 February 2015 responding to Mr Cartwright's comments.²⁷⁶
- 15.8 To the extent that the Commissioner intends to make any comment in relation to Mr Cartwright's statements, it is submitted that Mr Cartwright's comments were consistent with information provided to him at the time, and were later the subject of correction in a statement issued by the DPP on the same day.

Saul Holt QC

²⁷³ Counsel Assisting's Submissions, Volume 2, paragraph [4681]; Statement of Kerri Judd, [86]: RCMP1.0104.0001.0001 at .0012

²⁷⁴ VPL.0005.0063.0131 at .0156-.0158.

²⁷⁵ VPL.0005.0063.0131 at .0149-.0154.

²⁷⁶ VPL.0100.0058.0739 at .0747.

F Submission of Assistant Commissioner Luke Cornelius

16 Executive summary

- 16.1 In April 2009, AC Cornelius first became aware that Ms Gobbo had acted as a human source.²⁷⁷ His understanding was that Ms Gobbo had only provided information in relation to one issue only for Taskforce Briars.²⁷⁸ On learning of Ms Gobbo's involvement as a human source AC Cornelius obtained independent legal advice²⁷⁹ and ensured that her status as a human source was disclosed at the earliest possible opportunity, being Mr Dale's bail hearing on 13 March 2009.²⁸⁰
- 16.2 AC Cornelius only became aware of the full extent of Ms Gobbo's role as a human source in 2014 by way of media reports.²⁸¹
- 16.3 Counsel Assisting seek a finding that AC Cornelius was aware of Ms Gobbo's role well before then, in 2006 and – at least by implication – that he failed to act appropriately with this knowledge.²⁸² The evidence supporting that proposition is circumstantial, based on unfounded assumptions and speculation. This finding is not supported by a fair consideration of the objective documentary evidence.
- 16.4 The submissions of Counsel Assisting ignore critically relevant evidence that AC Cornelius was never made aware of the full extent of Ms Gobbo's role as a human source, including that:
- (a) AC Cornelius has given consistent and credible evidence that he did not know of the use of Ms Gobbo as a human source at all until 2009, and then only in a limited way;
 - (b) the evidence demonstrates the extent to which others made assumptions about AC Cornelius' knowledge of Ms Gobbo's status as a human source;
 - (c) the 'need to know' principle was applied. The operation of this principle appears to have prevented AC Cornelius from learning of the full extent of Ms Gobbo's role as a human source; and
 - (d) in particular, email correspondence in 2010 makes it clear that AC Cornelius was not told of Ms Gobbo's role as a human source in respect of Taskforce Purana.
- 16.5 Counsel Assisting submit that at a meeting on 6 June 2006, Mr Overland²⁸³ briefed AC Cornelius, along with Mr Wilson and Mr Masters, about Ms Gobbo's status as a human source.²⁸⁴ This submission ignores the evidence of AC Cornelius that he was not briefed about this information as well as the evidence of Superintendent Wilson who recalls that he was briefed alone by Mr Overland.²⁸⁵ Superintendent Wilson's diary entry resulted in a series of incorrect records that wrongly assumed that AC Cornelius was aware of Ms Gobbo's status as a human source.
- 16.6 Counsel Assisting submit that alternatively it is open to the Commissioner to find that AC Cornelius was aware of Ms Gobbo's role during Operation Khadi.²⁸⁶ However, the evidence demonstrates that AC Cornelius had no knowledge of Ms Gobbo's role as a human source during Operation Khadi.

²⁷⁷ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [97]–[98] (VPL.0014.0057.0001 at .0015).

²⁷⁸ T12376.45 – T12379.3 (L Cornelius).

²⁷⁹ T12498.16–22 (L Cornelius).

²⁸⁰ T13483.11–16. (N Gobbo).

²⁸¹ T12387.40–43 (L Cornelius).

²⁸² Counsel Assisting's Submissions, Volume 2 at [1990]; [2071].

²⁸³ Given Mr Overland's title changed three times across the relevant time period, he will be referred to as Mr Overland throughout this submission to avoid error or confusion.

²⁸⁴ Counsel Assisting's Submissions, Volume 2 at [1990].

²⁸⁵ T10421.3–8 (R Wilson).

²⁸⁶ Counsel Assisting's Submissions, Volume 2 at [2071].

OFFICIAL: Sensitive

- 16.7 Counsel Assisting submit that it is open to the Commissioner to find that AC Cornelius wrote down Ms Gobbo's name and then scrubbed it out during a meeting on 10 September 2007.²⁸⁷ This is no more than speculation with no evidential foundation, and it stands in direct contrast to AC Cornelius' recollection of that meeting.
- 16.8 Counsel Assisting submit that AC Cornelius read a letter from Ms Gobbo addressed to Mr Overland regarding [REDACTED] and if he did not read it, he should have.²⁸⁸ This is unreasonable. AC Cornelius received the letter moments before the beginning of a meeting. During that meeting, he was immediately briefed on the contents of the letter by Detective Inspector Smith. The task of drafting a response to the letter was then referred to the legal department. It was appropriate for AC Cornelius to rely on the briefing of the contents of the letter by his colleague and for the matter to be referred to the legal department.
- 16.9 Finally, Counsel Assisting assert that AC Cornelius, together with Mr McRae, discussed Ms Gobbo's role as a human source with Mr Smith in the context of Mr Dale's committal hearing and that AC Cornelius and Mr McRae made a positive decision to ignore Mr Maguire's legal advice and to not disclose Ms Gobbo's history as a human source.²⁸⁹ This submission is grossly speculative. It ignores the evidence that AC Cornelius only became aware of Ms Gobbo's involvement as a human source in a very limited capacity. So far as AC Cornelius was aware, Victoria Police was complying with its disclosure obligations.
- 16.10 It would be unfair for the Commission to hold AC Cornelius in any way responsible for the events that led to this Royal Commission when he did not have the information that would have caused him to act on these events.²⁹⁰
- 16.11 Emails exchanged between Mr Peter Lardner (Legal Services Department) and Assistant Commissioner Dannye Moloney (Crime Department) in May 2010²⁹¹ demonstrate that a decision was made to isolate AC Cornelius from information about Ms Gobbo's role as a human source. Further, the operation of the need to know principle impacted the flow of information to AC Cornelius. There are examples of information relating to Ms Gobbo's involvement as a human source bypassing AC Cornelius.²⁹²
- 16.12 In his third statement to the Royal Commission, Detective Sergeant Solomon, who was the team leader of the investigation into the Hodson murders, held that there was a "powerful force" working to ensure that this murder was never properly prosecuted.²⁹³ No such allegation is made in Counsel Assisting's submissions.
- 16.13 There is no evidence that AC Cornelius was aware of Ms Gobbo's status as a human source or had taken steps to conceal Ms Gobbo's involvement as an informer. Rather, like DS Solomon and his lead investigator Mr Cameron Davey, AC Cornelius was not aware of the extent of Ms Gobbo's involvement with Victoria Police.
- 16.14 At all times, AC Cornelius acted ethically with the information that he possessed.²⁹⁴ Once he became aware of Ms Gobbo's involvement as a human source, he knew that Victoria Police had disclosure obligations and he sought independent legal advice.²⁹⁵
- 16.15 AC Cornelius has over 30 years of experience as a police officer. He has dedicated himself to serving the public interest, including by leading Victoria Police's response to the Victorian Equal Opportunities and Human Rights Commission independent review

²⁸⁷ Counsel Assisting's Submissions, Volume 2 at [2548].

²⁸⁸ Counsel Assisting's Submissions, Volume 2 at [3793].

²⁸⁹ Counsel Assisting's Submissions, Volume 2 at [3967].

²⁹⁰ T12369,21-29 (L Cornelius).

²⁹¹ Exhibit RC1047a - Emails between Detective Superintendent Peter Lardner and Mr Dannye Moloney dated 20 and 21 May 2010 (VPL.0005.0010.2579).

²⁹² See Pt 7.10.

²⁹³ Exhibit RC1547b - Statement of Sol Solomon dated 2 March 2020 at [80] (COM.0060.0001.0005 at .0013).

²⁹⁴ Counsel Assisting's Submissions, Volume 2 at [2073], [3794]-[3795].

²⁹⁵ T12498,16-22 (L Cornelius); T13483,11-16 (N Gobbo).

OFFICIAL: Sensitive

into sex discrimination, sexual harassment, and predatory behaviour among Victoria Police employees between October 2015 and April 2019. This was a significant undertaking in a challenging environment.

16.16 During cross-examination AC Cornelius described his approach to his profession:²⁹⁶

I've always sought to conduct myself ethically. I've also, of course, always sought to conduct myself within the law. But the key piece for me, has always been that focus on the public interest and subjecting self-interest or personal motivations to the pursuit of the public interest.

16.17 AC Cornelius recognises the problems with Victoria Police's use of Ms Gobbo. He considers that Victoria Police prioritised the protection of the identity of the human source at too great a cost. AC Cornelius does not and never has, "*subscribed to an 'end justifies the means' argument*".²⁹⁷ He hopes that this Commission "*ultimately provides a significant opportunity for us to significantly improve our arrangements*".²⁹⁸

16.18 These submissions address these matters in the following sections:

- (a) Section 2 sets out AC Cornelius' career history and his evidence of his view's about the use of Ms Gobbo to demonstrate that he was not a police officer who would ignore Ms Gobbo's role as a human source if he had been properly aware of it;
- (b) Section 3 addresses the issue of hindsight reasoning and assumptions;
- (c) Section 4 sets out AC Cornelius' association with Ms Gobbo through Operation Khadi, Taskforce Petra and Taskforce Briars and the extent to which AC Cornelius became aware of Ms Gobbo's role as a human source;
- (d) Section 5 demonstrates that AC Cornelius was isolated from information about Ms Gobbo by other members of Victoria Police;
- (e) Section 6 explains how it was possible that information about Ms Gobbo's involvement with Victoria Police as a human source was able to bypass AC Cornelius;
- (f) Section 7 demonstrates that the evidence fails to show that AC Cornelius knew of Ms Gobbo's role as a human source earlier than 2009;
- (g) Section 8 addresses Counsel Assisting's assertion that AC Cornelius ignored evidence about Ms Gobbo's broader involvement as a human source;
- (h) Section 9 demonstrates that AC Cornelius acted appropriately with the knowledge and information that he possessed; and
- (i) Section 10 sets out why it would be unreasonable for the Commissioner to find AC Cornelius in any way responsible for the events that led to this Royal Commission.

17 AC Cornelius' position has remained consistent and thoughtful. His evidence, background and service history are at odds with someone who would ignore misconduct

17.1 Over several fragmented days of persistent questioning, AC Cornelius was resolute that:

- (a) he was not aware of the extent of Ms Gobbo's role during his tenure as Assistant Commissioner of the Ethical Services Division (ESD);

²⁹⁶ T12357.24-27 (L Cornelius).

²⁹⁷ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [164] (VPL.0014.0057.0001 at .0026).

²⁹⁸ T12609.19-20 (L Cornelius).

OFFICIAL: Sensitive

- (b) he only became aware of the full extent of Ms Gobbo's relationship with Victoria Police in 2014 by way of media reports;²⁹⁹ and
 - (c) his appreciation for the expansiveness of Ms Gobbo's involvement as a human source was not apparent to him until these proceedings.³⁰⁰
- 17.2 AC Cornelius was confident that had he become aware of Ms Gobbo's involvement with Victoria Police at an earlier point in time he would have made sure that legal advice was obtained³⁰¹ and that there was appropriate oversight of the relationship between Ms Gobbo and Victoria Police.³⁰²
- 17.3 More importantly, he would not have ignored it. His view is that the end never justifies the means and that this behaviour should never have occurred.³⁰³

AC Cornelius was isolated from the information that would have caused him to take steps to control the use of Ms Gobbo as a human source

- 17.4 Time and time again in cross-examination, AC Cornelius was presented with information which he was previously unaware of. For example:³⁰⁴

COUNSEL ASSISTING: The OPI had been recruited into this operation for the very purpose of using the coercive hearings. The fact is your investigators were now going back to the OPI to say, "We don't want a coercive hearing, at least for Ms Gobbo". Surely you would have been told about that?

AC CORNELIUS: I don't recall being told about it. I think if I had been told about it I'd remember it.

- 17.5 Each time, AC Cornelius calmly, and reasonably explained his position and recollection:³⁰⁵

COUNSEL ASSISTING: Do you find that extraordinary?

AC CORNELIUS: Well, certainly with the benefit of hindsight I do, but I can't speak for Mr Overland or others, but as I say to you, I'm surprised at SDU being involved in the interactions between the Petra Task Force members and a person who was very much a person of interest to us.

- 17.6 Having held the role of Assistant Commissioner of ESD, and having sought to conduct himself ethically, it was obviously frustrating for AC Cornelius to learn time and time again that he had not been made aware of pertinent information.
- 17.7 It is not fair to hold AC Cornelius responsible for the events leading to this Commission because he was not put in a position to be able to avert or manage it.

AC Cornelius is critical of the approach taken by Victoria Police in managing Ms Gobbo

- 17.8 In his statement³⁰⁶ and in cross-examination, AC Cornelius was unwavering in his position that he did not approve of Victoria Police's use of Ms Gobbo as an informant

²⁹⁹ T12387.40-43 (L Cornelius).

³⁰⁰ T12388.14-18 (L Cornelius).

³⁰¹ T11056.10-11 (L Cornelius).

³⁰² T11033.2-8 (L Cornelius).

³⁰³ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [164] (VPL.0014.0057.0001 at .0026).

³⁰⁴ T11071.11-1 (L Cornelius).

³⁰⁵ T12339.44 – T12340.2 (L Cornelius).

³⁰⁶ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [163] (VPL.0014.0057.0001 at .0026).

OFFICIAL: Sensitive

against clients that she was legally representing. He also recognised that the use of a criminal barrister as a human source was "extraordinary".³⁰⁷

- 17.9 In his statement, he explained that:³⁰⁸

I have read the High Court's decision and the decision of Justice Ginnane. In preparing this witness statement I have reflected on the events that have led to this Royal Commission.

As a qualified lawyer admitted to practice as a barrister and solicitor of the ACT Supreme Court, and an experienced Police Officer, I am well aware of - and committed to - the principles that exist to protect an accused's right to a fair trial. In particular, the accused's right to be represented by a lawyer acting in the accused's interests second only to their role as an officer of the court.

It is my strong view that the use of Nicola Gobbo in the manner she was as a human source should not have happened. I agree with the decision of the High Court.

I do not, and never have, subscribed to an "end justifies the means" argument. It does not.

- 17.10 With the benefit of hindsight, AC Cornelius explained to the Commission that Victoria Police had prioritised the protection of human sources. As AC Cornelius stated:³⁰⁹

...Victoria Police, and I think policing more generally, had long operated on the presumption that the safety of a witness, or indeed a human source, was paramount and that would, if you like, trump other considerations.

- 17.11 This is illustrated by Officer Sandy White in his second statement to the Royal Commission where he stated that he did not seek independent legal advice about Ms Gobbo's duties as a lawyer because:³¹⁰

[t]he protection of the relationship with Ms Gobbo was always my most important concern...I believed then and I believe now that lawyers are no different to policeman, they talk between themselves and I was not prepared to take the risk of sharing this secret with people who did not need to know.

- 17.12 In his evidence, AC Cornelius noted the decision of Ginnane J of the Supreme Court of Victoria and accepted that it was a "watershed moment".³¹¹ He explained that:³¹²

I think the Ginnane analysis and the Ginnane judgment has made it very clear to us that actually fair trial is an overarching principle that indeed does trump all other considerations, including witness safety and the protection of human sources.

AC Cornelius is sympathetic to the position of individual police officers

- 17.13 For AC Cornelius "the best defence about these things going wrong is the individual police ...[who] ought to have been calling this out".³¹³ However, he recognises that individual police officers need leadership:³¹⁴

...it does come down to leadership, it does come down to setting clear expectations as to behaviour and conduct, but it also does come down to

³⁰⁷ T11031.32-36 (L Cornelius).

³⁰⁸ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [161]-[164] (VPL.0014.0057.0001 at .0026).

³⁰⁹ T12594.5-13 (L Cornelius).

³¹⁰ Untendered Second Statement of Officer White at [251] (VPL.0014.0046.0001 at .0058).

³¹¹ T12358.15-16 (L Cornelius).

³¹² T12358.9-13 (L Cornelius).

³¹³ T12354.46-T12355.5 (L Cornelius).

³¹⁴ T12356.17-22 (L Cornelius).

OFFICIAL: Sensitive

ensuring that you have the level of scrutiny that allows you to service and test whether or not expectations as to lawful conduct in fact is being carried through.

- 17.14 There is particular need for clear expectations as police officers are, as AC Cornelius recognised, often in situations where they are required *"to make highly conflicted decisions"* and *"to balance competing public interest considerations"*.³¹⁵ Indeed, earlier in his career, AC Cornelius had managed informants. This gave him a critical understanding of the ethical tensions involved in this process. He was sympathetic to the position that individual officers found themselves in. In his statement, he explained that:³¹⁶

I am nevertheless sympathetic to the position of a number of individual police officers who were having to deal with unique and unusual situations as they arose. Police officers were in a very difficult position being in possession of information that was important and needed to be investigated. They could not "unknow" what they had been told.

- 17.15 It is difficult to associate such insight with someone who knew but chose to ignore Ms Gobbo's role as a human source.

AC Cornelius recognises that the Royal Commission is an uncomfortable opportunity for Victoria Police

- 17.16 At the end of his evidence, AC Cornelius reflected on the impact of a Royal Commission on Victoria Police. He explained that Royal Commissions:³¹⁷

are never comfortable and policing goes through considerable pain when Royal Commissions are conducted because it does call us to account...

- 17.17 But he went on to recognise that:³¹⁸

the work that is being done by this Commission, ultimately provides a significant opportunity for us to significantly improve our arrangements...any opportunity that we can have out of this Commission that allows us to continue to deal with the information that comes to us, but [to] do that in a more accountable and transparent way, would be of great assistance to us.

- 17.18 These are the statements of a police officer who is deeply invested in the work and the integrity of the police force. AC Cornelius has done all that he can to assist the Commission. In fact, in closing he stated that:³¹⁹

Reflecting on the matters that have been put to me, and the additional information that's come to me as a result of being asked questions in the course of this Commission, I was thinking about it last night actually and I – yeah, I myself am satisfied that I've given you everything I can.

- 17.19 AC Cornelius recognised that moving forward the approach of Victoria Police to meeting their disclosure obligations *"certainly requires significant improvement"*.³²⁰

AC Cornelius' training, career history and reputation

- 17.20 AC Cornelius' training, career history and reputation all suggest that he would not turn a blind eye to questionable police conduct.

- 17.21 AC Cornelius has dedicated his life to police work. Beginning at the Australian Federal Police (AFP) in 1989, his career as a police officer has spanned 30 years and has

³¹⁵ T12609.24-27 (L Cornelius).

³¹⁶ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [164] (VPL.0014.0057.0001 at .0026).

³¹⁷ T12609.14-17 (L Cornelius).

³¹⁸ T12609.18-32 (L Cornelius).

³¹⁹ T12609.7-12 (L Cornelius).

³²⁰ T12358.3-8 (L Cornelius).

OFFICIAL: Sensitive

included a role as a United Nations Police Officer. He has worked at Victoria Police since August 2003.

- 17.22 AC Cornelius has put a deliberate emphasis on acting ethically throughout his career and has always sought to act in the public interest. He stated in his evidence that:³²¹

I can't speak for the entire leadership of Victoria Police, I can only speak for my part, and I've always sought to conduct myself ethically. I've also, of course, always sought to conduct myself within the law. But the key piece for me, has always been that focus on the public interest and subjecting self-interest or personal motivations to the pursuit of the public interest.

- 17.23 Consistent with this deliberately ethical approach to his career, we get the sense from his evidence that AC Cornelius is not adverse to introspection. He does not seem to be someone who would be unwilling to criticise his own behaviour and actions. At times, AC Cornelius seemed almost embarrassed by the fact that he was unaware of the events leading to this Commission. He explained that:³²²

*...you've seen me give my evidence, you've been putting matters to me that I have to say to you, while I've been sitting here in this witness box, have been complete news to me and I find myself wondering had I known then what I'm being shown now, what would my response be, and I can only point to my track record and my reputation in relation to how I respond to matters that go to whether or not we've conducted ourselves lawfully, and **it's always been to call it out and challenge it and seek to address it.***

- 17.24 This commitment to the public interest and this self-reflection are not consistent with someone who would ignore the questionable use of a criminal defence barrister as a human source.

AC Cornelius was aware of the risks of using a criminal defence barrister as a human source

- 17.25 There can be no doubt that AC Cornelius would have been alive to the risks associated with using a criminal defence barrister as a human source. Whilst he had never practiced, he was a trained lawyer, and joined Victoria Police as Commander of Legal Services.³²³

- 17.26 AC Cornelius expected that police officers of all ranks should be alive to issues of legal professional privilege and the right to a fair trial. For example, the following exchange occurred in cross-examination:³²⁴

COUNSEL ASSISTING: *There was an obvious risk that might be associated with a defence barrister providing information to Victoria Police?*

AC CORNELIUS: *Yes.*

COUNSEL ASSISTING: *You would expect anyone of a senior enough rank to be alive to such a risk?*

AC CORNELIUS: *Well, not just anyone of a senior rank, in fact the issue about legal professional privilege and the privilege that exists between a client and a lawyer is something that's widely known in policing at many ranks.*

COUNSEL ASSISTING: *And it's something that you become attuned to from the very early stages because you're giving*

³²¹ T12357.24-27 (L Cornelius).

³²² T12357.27.36 (L Cornelius).

³²³ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [13]-[14] (VPL.0014.0057.0001 at .0002).

³²⁴ T11032.11-30 (L Cornelius).

OFFICIAL: Sensitive

people warnings when they're arrested. You're giving people their caution and rights?

AC CORNELIUS:

Indeed, and one of the fundamental rights that we're required under legislation and in long-standing practice is to afford suspects an opportunity to speak to a lawyer.

COUNSEL ASSISTING:

Yes, and not just a lawyer, an independent lawyer?

AC CORNELIUS:

Indeed.

AC Cornelius' career history suggests that he was not someone afraid of ringing alarm bells or challenging behaviour within Victoria Police.

- 17.27 AC Cornelius is not someone who is comfortable ignoring unethical behaviour. From October 2015 until 15 April 2019, he was responsible for leading the Victoria Police response to the Victorian Equal Opportunities and Human Rights Commission independent review into sex discrimination, sexual harassment and predatory behaviour among Victoria Police employees.³²⁵
- 17.28 The obvious question therefore is: why did he not challenge the lack of transparency and accountability around Ms Gobbo's role as a human source? The simple answer is: AC Cornelius did not know about it.
- 17.29 In assessing this situation, it is crucial not to judge AC Cornelius' position with the benefit of hindsight or make assumptions about his knowledge at the time based on information that may seem obvious now.

18 Counsel Assisting's submissions demonstrate the dangers of hindsight reasoning and flawed assumptions

- 18.1 These events occurred a long time ago. AC Cornelius' evidence shows that in some instances it is difficult for him to recall details or exactly what happened.³²⁶ AC Cornelius relied heavily on his review of available records as well as his emails in order to make his statement.³²⁷ His records in relation to Taskforce Briars and Taskforce Petra were limited to the Taskforce update papers which were prepared by the Detective Superintendent or Detective Inspector responsible for leading the investigative team. He also relied on his handwritten notes on the update papers and his annotations on administrative files to refresh his memory.³²⁸
- 18.2 AC Cornelius did not seek to fill these gaps in his evidence. This is to his credit as it discloses a transparent and self-reflective reasoning process. However, it also leaves uncertainty.
- 18.3 This uncertainty drives a natural tendency towards hindsight reasoning and assumptions. Both are attractive because they blind us to uncertainty. Hindsight reasoning allows us to:³²⁹

exaggerate how much certainty there is. Because after the fact, everything is explained. Everything is obvious. And the presence of hindsight in a way mitigates against the careful design of decision making under conditions of uncertainty.

³²⁵ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [12] (VPL.0014.0057.0001 at .0002).

³²⁶ See, eg, T11071.15-17 (L Cornelius); T11072.16-19 (L Cornelius); T11091.1-2 (L Cornelius); T11094.35-38 (L Cornelius).

³²⁷ T11029.44 – T11030.2 (L Cornelius); Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [18] (VPL.0014.0057.0001 at .0008).

³²⁸ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [18]-[19] (VPL.0014.0057.0001 at .0003); T11030.4-6 (L Cornelius).

³²⁹ Unknown, 'Daniel Kahneman on the Danger of Hindsight', *Wall Street Journal* (Article, 21 November 2006) <<https://www.wsj.com/articles/daniel-kahneman-on-the-danger-of-hindsight-1479783901>>.

OFFICIAL: Sensitive

- 18.4 Hindsight can be both useful and deceiving in assessing conduct. Hindsight is very effective in enabling us to review, analyse and assess processes and procedures, particularly at an organisational level. More difficult though is assessing the choices and decisions of individuals with the benefit of hindsight. Hindsight suggests that he *should have known, should have asked questions, and he should have acted*.
- 18.5 When assessing the behaviour of an individual in the past, it is easy to see relationships and join dots which may not have been apparent or available to that person at that particular snapshot in time.
- 18.6 One response to incomplete information is to make assumptions. Like hindsight, assumptions deliver comfort because they mask uncertainty. However, while assumptions generate conclusions, they do not necessarily result in the truth. For this reason, there is a need to be cognisant of when we are making assumptions about AC Cornelius' conduct, and when we are assessing his conduct with the false certainty of hindsight.
- 18.7 The following categories of assumptions are relevant in this case:
- (a) Counsel Assisting relies on assumptions, informed by hindsight, in an attempt to demonstrate that AC Cornelius knew of Ms Gobbo's status as a human source; and
 - (b) Members of Victoria Police made assumptions that AC Cornelius knew the extent of Ms Gobbo role as a human source.

Identifying assumptions is particularly important given the operation of the need to know principle

- 18.8 The need to know principle was an organisational norm to ensure the highest levels of operation security. It operated in the following ways:
- (a) Information was only shared between members of the police force when it was absolutely necessary.³³⁰
 - (b) It was not a given that all the members of an investigation would be privy to the same degree or depth of information.
 - (c) Officers did not ask or fish for information as it increased the risk of a security breach.
- 18.9 The operation of this principle was illustrated by former Assistant Commissioner Blayney who explained in cross-examination:³³¹
- It is common practice that it's a need to know basis and if you don't need to know in the role that you're performing then you don't ask, so you're not assessed as a security risk for anything you don't know.*
- 18.10 Adherence to the need to know principle was crucial to ensure that senior police officers did not create opportunities for security breaches by putting junior members in compromising positions. There is therefore a tension between the need to know principle and the chain of command framework that was intrinsic to the organisation of Victoria Police.
- 18.11 The use of the need to know principle was explicit within Victoria Police, including in formal documents such as the initial briefing document from Mr Overland to AC Cornelius, directing the establishment of Taskforce Briars. In this document, Mr Overland stated that:³³²
- The 'need to know principle' needs to strictly apply at all stages of the investigation.*

³³⁰ See, eg, T12547.31-36 (L Cornelius).

³³¹ T10209.37-41 (J Blayney).

³³² Untendered Direction to establish Taskforce Briars to investigate the murder of Chartres-Abbott dated 5 March 2007 (VPL.0005.0012.0644 at .0650).

OFFICIAL: Sensitive

- 18.12 While a member of the AFP, AC Cornelius had been provided with formal training on the need to know principle. Whilst there were a number of references to the operation of the need to know principle throughout the course of this Royal Commission, there were no references to any formalised training, documentation, guidelines or policies about this principle for members of Victoria Police.

The need to know principle was crucial to managing human sources

- 18.13 As AC Cornelius explained in his evidence:³³³

...when it comes to the management of human sources, and in particular the identification of a human sources, the identity of a human source ought to be held very tightly and not shared widely.

- 18.14 In his evidence, AC Cornelius demonstrated high regard for and adherence to the need to know principle.³³⁴
- 18.15 While this principle helped to ensure that information was tightly contained, it made it difficult for individual police officers to determine exactly who knew about Ms Gobbo's informer status.
- 18.16 There was and is no record of when the need to know principle impacted communication about Ms Gobbo. As a result, individual police officers were forced to assume or even guess what their colleagues knew. No one could genuinely say who knew what.

Counsel Assisting criticises AC Cornelius' decision to stop keeping a diary³³⁵

- 18.17 There is a general requirement on police officers at certain ranks and in certain commands to keep diaries as a method of record keeping.³³⁶ AC Cornelius was not subject to that obligation.
- 18.18 AC Cornelius stopped regularly keeping a diary in June 2006, and he ceased using a diary entirely in July 2006.³³⁷
- 18.19 This decision must be assessed in context. Victoria Police – and ESD in particular – were handling a number of very sensitive cases. In evidence, to which Counsel Assisting do not refer, AC Cornelius explained that his decision to stop keeping a diary was based on the highly sensitive nature of the investigations he was involved with. In particular, he was concerned about the risk of carrying records about these investigations outside of the office.³³⁸ The consequences of a diary of a senior police officer being misplaced or falling into the hands of the wrong person could be extremely serious.
- 18.20 Stopping keeping a diary was both consistent with policy and sensible in the circumstances. Yet Counsel Assisting elevate it to a symptom of impropriety.
- 18.21 This suggestion of impropriety is rendered impotent when one considers that AC Cornelius maintained administrative files comprised of briefing papers, annotations on those briefing papers, key emails and correspondence, and file notes to ensure that key information, deliberations and decisions were tracked and recorded.³³⁹ In his statement to the Commission, Acting Commander Millett noted that in his preparation, he became aware that AC Cornelius had prepared his own file of Petra Taskforce weekly updates and that documents within that file had AC Cornelius' own hand written notes.³⁴⁰ AC Cornelius maintained these files for both Taskforce Briars and Taskforce Petra.³⁴¹

³³³ T11061.4-9 (L Cornelius).

³³⁴ See, eg, T12339.29-35 (L Cornelius); T12559.14-16 (L Cornelius).

³³⁵ Counsel Assisting's Submissions, Volume 2 at [2046].

³³⁶ T.11029.26-29 (L Cornelius).

³³⁷ VPL.0014.0057.0001 at 0003 [18].

³³⁸ T11030.24-30 (L Cornelius).

³³⁹ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [18] (VPL.0014.0057.0001 at .0003); T11030.18-22 (L Cornelius); T11098.19-22 (L Cornelius).

³⁴⁰ Exhibit RC1550a – Statement of Acting Commander Paul Millett dated 5 June 2020 at [15] (VPL.0014.0126.0054 at .0056).

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18.22 These records reflect a commitment to maintaining accountable, secure and contemporaneous records. AC Cornelius has also always advised oversight bodies of the existence of these files so that they can be made available upon demand. He did not retain these files but deliberately left them at ESD, in the Assistant Commissioner's office so that the files could be available to any competent authority who may have required access to them.³⁴² These files remain a contemporaneous and comprehensive record of the information that AC Cornelius had at the time and his response to that information. AC Cornelius did not fail to recognise the importance of record keeping and he certainly did not stop keeping a diary to avoid recording information about Ms Gobbo's status as a human source.

19 AC Cornelius only became aware of the extent of Ms Gobbo's involvement as a registered human source in 2014³⁴³

19.1 AC Cornelius was involved with three investigations that had some association with Ms Gobbo: Operation Khadi, Taskforce Briars and Taskforce Petra. Brief summaries of AC Cornelius' involvement in these investigations are set out below.

19.2 Operation Khadi

- (a) AC Cornelius was involved in Operation Khadi from the beginning, having signed a joint agency agreement with Mr Ashton, then Assistant Director of the OPI on 5 June 2006.³⁴⁴ The purpose of Operation Khadi was to investigate police corruption.³⁴⁵
- (b) Prior to the commencement of Operation Khadi, between February and March of 2006, AC Cornelius was involved in the finalisation of a proposed dismissal notice (known as a 's 68 Notice') of Senior Sergeant Richard Shields of Brighton Police Station.³⁴⁶ The basis for his dismissal was due, in part, to Senior Sergeant Shields' inappropriate relationship with Ms Gobbo.³⁴⁷
- (c) In his diary entry on 6 June 2006, Mr Masters recorded that he spoke with AC Cornelius at 7:30am about "[p]roblems with Operation Khadi". Counsel Assisting's assertion is that the "problems" Mr Masters discussed with AC Cornelius was the problem of Ms Gobbo's involvement as a human source.³⁴⁸ It is speculative to conclude that this was the problem referred to by Mr Master's in his diary.³⁴⁹
- (d) There is evidence that shows that on occasion Mr Wilson briefed Mr Overland directly, rather than reporting to his superior, AC Cornelius. For example, Mr Wilson has recorded in his diary that he briefed Mr Overland on 17 August 2008 and 5 September 2008.³⁵⁰
- (e) AC Cornelius has no recollection of being made aware of Ms Gobbo's status as a human source at this earlier date. AC Cornelius is adamant that had he been made aware he would have found it "extraordinary" to use a criminal barrister as a human source,³⁵¹ and that he would have taken steps to seek legal advice and to

³⁴¹ T12539.44-46 (L Cornelius).

³⁴² T12539.41-T12540.2 (L Cornelius).

³⁴³ T12544.46 – T12545.10 (L Cornelius).

³⁴⁴ Exhibit RC863b – Joint Agency Agreement between OPI and Victoria Police dated 5 June 2006 (VPL.0005.0147.0063)

³⁴⁵ Exhibit RC863b – Joint Agency Agreement between OPI and Victoria Police dated 5 June 2006 (VPL.0005.0147.0063)

³⁴⁶ Untendered email of Shields notice from Garry Neilson to Rowena Orr dated 22 March 2006, (VPL.6009.0003.0152);

Untendered email of Shields notice between Rowena Orr, Garry Neilson and Luke Cornelius dated 22 March 2006

(VPL.6009.0003.6709).

³⁴⁷ T11049.32-44 (L Cornelius).

³⁴⁸ Counsel Assisting's Submissions, Volume 2 at [1969].

³⁴⁹ Untendered diary of Mr Phil Masters dated 6 June 2006 (VPL.0005.0206.0003 at .0003).

³⁵⁰ Exhibit RC0828b – Diary of Mr Rodney Wilson, multiple dates (VPL.0005.0213.0023 at .0080 and .0089).

³⁵¹ T11031.32-36 (L Cornelius).

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make sure that there were defined boundaries around Ms Gobbo's relationship with Victoria Police.³⁵²

- (f) The evidence does not safely permit the conclusion that any events in relation to Operation Khadi would have caused AC Cornelius to become aware or suspicious of Ms Gobbo's involvement with Victoria Police as a human source.

19.3 Taskforce Briars

- (a) AC Cornelius was involved in Taskforce Briars from its establishment.³⁵³ It was a joint agency investigation conducted by Victoria Police's ESD and the Office of Police Integrity (OPI).³⁵⁴
- (b) A specialist taskforce was setup to conduct the investigation due to the suspected involvement of current and former Victoria Police members, in particular Mr David Waters and Mr Peter Lalor.³⁵⁵
- (c) AC Cornelius chaired the Investigations Management Committee (IMC) for Taskforce Briars between March 2007 and approximately May 2010.³⁵⁶
- (d) At a Taskforce Briars IMC meeting on 10 September 2007, AC Cornelius became aware that a human source referred to as 3838 was providing information to Victoria Police about Mr Waters and Mr Lalor.³⁵⁷
- (e) In early 2009, Ms Gobbo was identified to AC Cornelius by Detective Inspector Steve Waddell, a senior investigator in ESD, as a potential witness for the Briars investigation.
- (f) During the discussions that followed, AC Cornelius gradually became aware that Ms Gobbo had acted as a human source in relation to the Briars investigation.³⁵⁸ He is not aware of the precise moment that he became aware of this information.³⁵⁹ He recalls that by a Taskforce Briars meeting on 20 April 2009, it was clear to him that Ms Gobbo was the human source 3838.³⁶⁰
- (g) His understanding throughout the Briars investigation was that Ms Gobbo had only provided information about Mr Waters and Mr Lalor, specifically that Ms Gobbo had been party to a conversation with Mr Waters in 2007 in which Mr Waters indicated that he and Mr Lalor had some involvement or knowledge of how the person who murdered Mr Chartres-Abbott had got the address of the deceased.³⁶¹
- (h) AC Cornelius was alert to potential risks regarding Ms Gobbo and legal professional privilege in respect of Mr Waters.³⁶² As a result, he organised for the Victoria Police Legal Department (VPLD) to obtain independent legal advice.³⁶³

³⁵² T11033.2-8 (L Cornelius).

³⁵³ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [26] (VPL.0014.0057.0001 at .0004).

³⁵⁴ Exhibit 865b – Joint Agency Agreement between OPI, Victoria Police and ACC dated 22 March 2007 (VPL.0005.0012.0610).

³⁵⁵ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [24] (VPL.0014.0057.0001 at .0004).

³⁵⁶ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [28] (VPL.0014.0057.0001 at .0004).

³⁵⁷ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 (VPL.0014.0057.0001 at .0009 [63] and .0010 [67]).

³⁵⁸ T11041.17-20 (L Cornelius).

³⁵⁹ T12453.1-7 (L Cornelius).

³⁶⁰ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [97]-[98] (VPL.0014.0057.0001 at .0015).

³⁶¹ T12376.45 – T12379.3 (L Cornelius).

³⁶² T11041.10-13 (L Cornelius).

³⁶³ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [120] (VPL.0014.0057.0001 at .0021); Exhibit RC0833a – Email from Mr Steve Waddell to Assistant Commissioner Luke Cornelius dated 15 July 2009 (VPL.0013.0001.0087).

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- (i) At no point was AC Cornelius aware that Ms Gobbo's role as a human source extended beyond the information that she provided in respect of Mr Waters and Mr Lalor.³⁶⁴
- 19.4 Taskforce Petra
 - (a) AC Cornelius was a member of the IMC for Taskforce Petra between April 2007 and May 2010 and he chaired the IMC from April 2009 until May 2010.³⁶⁵
 - (b) With respect to this investigation, AC Cornelius understood that Ms Gobbo was a person of interest, who subsequently became a witness after she was spoken to by Taskforce Petra investigators in November 2009 and had agreed to provide a statement relevant to the prosecution of Mr Dale.³⁶⁶
 - (c) AC Cornelius was never aware that Ms Gobbo had acted as a human source in relation to this investigation.³⁶⁷
- 19.5 It should be noted that AC Cornelius had very limited knowledge of Ms Gobbo's involvement with Taskforce Purana.³⁶⁸ He was merely aware that she had provided legal advice to a witness, in her capacity as a lawyer.³⁶⁹

AC Cornelius' role at ESD ceased in May 2010³⁷⁰

- 19.6 After AC Cornelius moved to the role of Assistant Commissioner of the Southern Metropolitan Region, he no longer had any involvement with Taskforce Petra or Taskforce Briars. His successor, Mr Emmett Dunne assumed the chair for both Taskforces.³⁷¹ No part of his role required or permitted him to be involved in these issues beyond that point.
- 19.7 During his tenure as Assistant Commissioner of ESD, AC Cornelius was not aware that Ms Gobbo's role as a human source was more expansive than the information Ms Gobbo had provided to Victoria Police about Mr Waters and Mr Lalor in respect of Taskforce Briars. He only became aware that her role was more involved through media reports in 2014.³⁷²

20 A series of communications in 2010 disprove the proposition that AC Cornelius had greater awareness of Ms Gobbo's role than he has claimed

- 20.1 Counsel Assisting cross-examined AC Cornelius concerning his recollection of events starting in 2006, in an attempt to challenge the proposition that he did know that Ms Gobbo was a human source at various points between 2006 and 2009. Each of those points is dealt with below.
- 20.2 A critical series of communications in 2010 demonstrate that, notwithstanding that cross examination, AC Cornelius was deliberately isolated from the extent of Ms Gobbo's role as a human source.
- 20.3 These emails demonstrate that the suggestion that AC Cornelius possessed knowledge at an earlier point in time are premised on hindsight reasoning and false assumptions.

³⁶⁴ T11041.30-32 (L Cornelius).

³⁶⁵ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [41]-[42] (VPL.0014.0057.0001 at .0006).

³⁶⁶ T11037.38-44 (L Cornelius).

³⁶⁷ T12377.24-26 (L Cornelius); T12467.8-11 (L Cornelius).

³⁶⁸ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [53]-[54] (VPL.0014.0057.0001 at .0008); Untendered Petra Taskforce Weekly Update, 18 May 2009 (VPL.0005.0012.3573); Exhibit RC1047a – Emails between Detective Superintendent Peter Lardner and Mr Dannye Moloney dated 20 and 21 May 2010 (VPL.0005.0010.2579).

³⁶⁹ T12453.25-38 (L Cornelius).

³⁷⁰ T12347.22-30 (L Cornelius).

³⁷¹ T12347.36-38 (L Cornelius).

³⁷² T12544.46 – T12545.10 (L Cornelius).

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- 20.4 The relevant emails were exchanged between Mr Peter Lardner (Legal Department) and Assistant Commissioner Dannye Moloney (Crimes Department) in May 2010.³⁷³ The emails are set out in full below:

³⁷³ Exhibit RC1047a – Emails between Detective Superintendent Peter Lardner and Mr Dannye Moloney dated 20 and 21 May 2010 (VPL.0005.0010.2579).

~~OFFICIAL Sensitive~~**Lardner, Peter**

From: Lardner, Peter
 Sent: Friday, 21 May 2010 2:08 PM
 To: Moloney, Danyne
 Cc: McRae, Findlay
 Subject: RE: Witness F -SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE

SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE

Danyne,

I am just trying to get a sense of who in the organisation would be across all of the limbs of her involvement with us so that when we make decisions to do with the writ someone is able to consider the impact on all of the possible areas she is involved in.

It may be Sir Ken or Simon possibly that are the only ones who are so positioned.

Regards

Peter

From: Moloney, Danyne
 Sent: Friday, 21 May 2010 1:45 PM
 To: Lardner, Peter
 Cc: Cornelius, Luke
 Subject: RE: Witness F

Peter,

Just so your clear of primacy - Petra and Briars placed under a Steering Committee chaired by Luke as the investigation was placed under ESD. I was on the committee as was OPI.

In regard to Purana - they had dealings with her under Crime. David will explain that as well. Luke had no awareness of the Purana details.

Danyne Moloney

Danyne Moloney | Assistant Commissioner | Crime Department | Victoria Police

PII

From: Lardner, Peter
 Sent: Thursday, 20 May 2010 5:21 PM
 To: Moloney, Danyne
 Subject: Witness F

Hello Danyne,

Hope all well in your world.

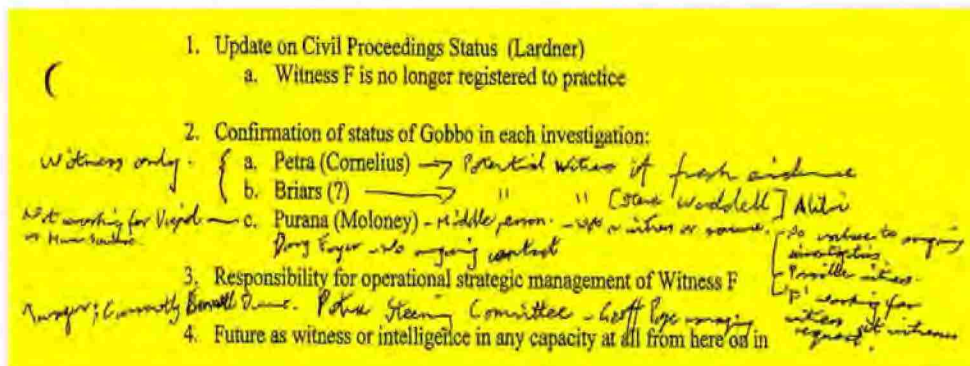
Tried to call but no answer in office and I do not have your mobile.

Re Witness F writ, I require someone who is across her involvement in the three different investigation areas to provide an overview for Victoria Police's counsel in this matter (Michael Wheelehan, Rowena Orr, Michael Rush). I have just spoken to Luke who indicates that he was deliberately not included in the knowledge of all of the areas but that you would be. Thus, can you please give me a call when suits in relation to possibly providing a briefing next week some time?

Regards

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- 20.5 An assessment was plainly made that it was not necessary for AC Cornelius to know the full extent of Ms Gobbo's role as a human source.³⁷⁴
- 20.6 A meeting note regarding "*Witness F Status*", drafted one month later, on 21 June 2010, by Mr Finn McRae, of the Victoria Police Legal Department, corroborates AC Cornelius' position. At this meeting, Mr McRae was seeking to understand Ms Gobbo's status in various investigations and taskforces. He "*lined them all up on a table like this and asked them*".³⁷⁵ Mr McRae's handwritten notes on the agenda from that meeting clearly indicate that AC Cornelius was only aware of Ms Gobbo's involvement as a witness.³⁷⁶ Mr McRae notes that for Taskforces Petra and Briars, Ms Gobbo was a "*witness only*" and that she is a "*potential witness*".³⁷⁷



- 20.7 AC Cornelius' evidence to this Royal Commission is consistent with his contribution at this meeting of 2010, he was not aware of the extent of Ms Gobbo's role as a human source. These notes do not indicate that AC Cornelius was informed of anything that may have given rise to any concern regarding Ms Gobbo's status or role in relation to the nominated investigations. Mr McRae's notes indicate that Mr Moloney described her as a "*middle person - not a witness or source*" and also "*not working for VicPol as human source*" and "*no value to ongoing investigations - possible witness. 'F' working for witness at witness request*". These notes unequivocally support the evidence that AC Cornelius has given to this Commission.
- 20.8 Throughout his evidence, AC Cornelius expressed surprise at his exclusion from key information. For example:³⁷⁸
- COUNSEL ASSISTING: Do you find that extraordinary?
- AC CORNELIUS: Well, certainly with benefit of hindsight I do, but I can't speak for Mr Overland or others, but as I say to you, I'm surprised.
- 20.9 While it may seem odd that the Assistant Commissioner of ESD, the Chair of Briars Taskforce and the successor to the Chair of Petra Taskforce, was not made aware of the extent of Ms Gobbo's involvement as a human source that is what the evidence demonstrates.
- 20.10 It may well be that the emphasis on the protection of human sources by Victoria Police explains why AC Cornelius was never made aware of the extent of Ms Gobbo's role as a human source. It is also likely that this information was not shared with AC Cornelius as a result of the operation of the need to know principle.

³⁷⁴ T12379.32-26 (L Cornelius).

³⁷⁵ T12679.29-32 (F McRae).

³⁷⁶ Exhibit RC1050a - Notes of meeting between Mr Findlay McRae, Mr Dannye Moloney and others dated 21 June 2010 (VPL.0005.0010.2322).

³⁷⁷ Exhibit RC1050a - Notes of meeting between Mr Findlay McRae, Mr Dannye Moloney and others dated 21 June 2010 (VPL.0005.0010.2322).

³⁷⁸ T12339.44-47 (L Cornelius).

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- 20.11 Rather than recognising that the 2010 emails stand powerfully against the proposition that AC Cornelius was aware of the full extent of Ms Gobbo's use as a human source, Counsel Assisting seek to suggest that these emails show that AC Cornelius was aware of Ms Gobbo's involvement as a human source.³⁷⁹
- 20.12 Paragraphs 4042 and 4043 of Counsel Assisting's submissions do not fairly characterise the emails or AC Cornelius' oral evidence in relation to these matters.³⁸⁰
- 20.13 Paragraph 4042 infers that the emails between AC Cornelius, AC Moloney and Superintendent Lardner on 21 May 2010 suggest that a defence barrister had been assisting Victoria Police *"in relation to matters where she was representing people"*.³⁸¹ They do not.
- 20.14 During his oral evidence, it was not suggested to AC Cornelius that the email chain revealed that Ms Gobbo was providing information in relation to matters where she was representing people. Rather it was put to AC Cornelius that through these emails, AC Cornelius had become aware that Ms Gobbo was providing information and assisting Taskforce Purana. The relevant exchange was as follows:³⁸²
- MS TITTENSOR: *You've just become aware that a defence barrister has had dealings, providing information with Purana, there's an investigation area, she has been assisting with Petra, been assisting with Briars, now I find out she has been assisting with Purana?*
- AC CORNELIUS: *No, that email doesn't say that.*
- MS TITTENSOR: *Did you make any inquiry to find out at all?*
- AC CORNELIUS: *You're reading a lot into the email. No, there is nothing in this email that suggested to me that Ms Gobbo was engaged in or assisting Purana beyond what I knew about Purana. When I was asked, well, we need to look at Gobbo's dealings with Purana, my response to that was to say, "Well I don't know about that, you need to talk to Dannye Moloney about it".*
- MS TITTENSOR: *You've indicated that you've been deliberately locked out of a particular area?*
- AC CORNELIUS: *Yeah, and I took that - that's a reflection of, I mean why? I would take that as being an assessment of the need to know principle. So presumably someone's made a decision that I did not need to know about the Purana dealings.*
- MS TITTENSOR: *Isn't it raising alarm bells with you that it's a defence barrister that's been assisting Victoria Police in relation to an area where you've already given evidence you're aware she was representing people?*
- AC CORNELIUS: *It didn't raise those alarm bells.*
- 20.15 It is critical to note that at no point in his evidence did AC Cornelius state or concede that he knew that Ms Gobbo *"was representing people"*. He did not have this knowledge. In May 2009, he became aware that Taskforce Petra had been approached by members of Taskforce Purana to arrange a meeting with Ms Gobbo, a client of Ms

³⁷⁹ Counsel Assisting's Submissions, Volume 2 at [4043].

³⁸⁰ Counsel Assisting's Submissions, Volume 2 at [9042] - [4043].

³⁸¹ Counsel Assisting's Submissions, Volume 2 at [9042].

³⁸² T12547.17-42 (L Cornelius).

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Gobbo and members of Taskforce Purana.³⁸³ As he explained in cross-examination, "*I just simply understood that she was assisting a client in discussions with police, in the same way that many other lawyers do so*".³⁸⁴ There was simply nothing to suggest to AC Cornelius that Ms Gobbo had been assisting Victoria Police. This is consistent with Mr McRae's notes of 21 June 2010, referred to above, that AC Cornelius was only aware of Ms Gobbo's involvement as a witness.³⁸⁵

- 20.16 Paragraph 4043 of the submissions of Counsel Assisting attempts to draw a comparison between AC Cornelius's response to the 21 May 2010 email and his hypothetical response to what he would have expected to occur within the OPI if the "SWOT analysis" document had become apparent to him in 2008.³⁸⁶ Such a comparison is baseless.
- 20.17 For the reasons that are explained in paragraphs 21.28 to 21.34 of these submissions, the "SWOT analysis" raises a number of concerns about Ms Gobbo's handling by the SDU which should have been acted on by Victoria Police. The "SWOT analysis" document raised obvious issues and AC Cornelius' reaction to that document - that he would have picked the loose thread and started pulling it until he understood all of the issues around it³⁸⁷ - was an entirely appropriate response to that document and was consistent with the reaction of every other witness to be shown it during their oral evidence.
- 20.18 The content and form of the email chain is completely different to the SWOT analysis document. To suggest that a comparison can be drawn between AC Cornelius' hypothetical response to the SWOT analysis and his response to the May 2010 email chain is not sound.

21 Information about Ms Gobbo's status as a human source was able to bypass AC Cornelius because his role relied on others bringing information to him

- 21.1 As Assistant Commissioner of ESD, AC Cornelius received information through two main channels: (i) his investigators and (ii) updates at the IMC meetings for Taskforce Briars and Taskforce Petra.
- 21.2 In order to understand the flow of information to AC Cornelius, it is important to understand the role of the ESD.
- 21.3 The ESD was a department within Victoria Police that was responsible for the oversight of the ethical and professional standards of the members of the police force. In his evidence, AC Cornelius explained that one key focus for the ESD was "*to undertake investigations into reasonable suspicion of corrupt or criminal or unethical conduct on the part of Victoria police members*".³⁸⁸
- 21.4 The ESD was not responsible for the assessment and audit of operational risk within specific units of Victoria Police or the organisation in general. This function was held by the Corporate Management Review Department.
- 21.5 The role of the ESD was to investigate issues of unethical behaviour. The ESD investigators would receive reports, and where necessary would investigate allegations of unethical or corrupt behaviour by police officers.³⁸⁹

³⁸³ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [53] (VPL.0014.0057.0001 at .0008).

³⁸⁴ T12385 at 21-25 (L Cornelius).

³⁸⁵ Exhibit RC1050a – Notes of meeting between Mr Findlay McRae, Mr Dannye Moloney and others dated 21 June 2010 (VPL.0005.0010.2322).

³⁸⁶ Counsel Assisting's Submissions, Volume 2 at [4043].

³⁸⁷ T12369, 23-29 (L Cornelius).

³⁸⁸ T11026, 27-29 (L Cornelius).

³⁸⁹ T11026, 27-30 (L Cornelius); T12575, 39-46 (L Cornelius).

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- 21.6 AC Cornelius was not involved in the daily conduct of the investigators,³⁹⁰ but relied on his investigators to apprise him of important information.³⁹¹

I understood that I was receiving briefings from the investigation team in relation to pertinent developments in the investigation.

- 21.7 AC Cornelius also received information at the IMC meetings for Taskforce Briars and Taskforce Petra in the form of update papers prepared by the lead investigator and presented orally at the meetings.³⁹²
- 21.8 Once the operational processes of the ESD are understood, one can understand why information about investigative and operational matters did not necessarily flow to the Assistant Commissioner. AC Cornelius was only privy to the information that others chose to make known to him. Those decisions were governed by the need to know principle.
- 21.9 There are at least six occasions where information about Ms Gobbo that was known to ESD investigators was not shared with AC Cornelius.

First, AC Cornelius was not made aware of a meeting on 21 May 2007 between Ms Gobbo, Officer Anderson, and Mr White (Ms Gobbo's handler)

- 21.10 At this meeting, Ms Gobbo discussed her knowledge of Mr Dale's relationship with Mr Williams; the Dublin Street Burglary; the thefts of the information report; and intelligence in relation to Mr Ahmed.³⁹³ On 22 May 2007, the SDU also briefed Detective Inspector Ryan in relation to this information.³⁹⁴
- 21.11 AC Cornelius explained that he relied on the investigators to give weekly updates and that he did not recall ever being told this information.³⁹⁵
- 21.12 While this information was given by DI Ryan to Mr Overland, AC Cornelius does not recall it being shared by Mr Overland at the next IMC meeting.³⁹⁶ There is also no reference to this information in the Taskforce briefing documents submitted to any IMC meeting attended by AC Cornelius.
- 21.13 Counsel Assisting's cross-examination proceeded on the basis that it was essentially inconceivable that this information was not shared.³⁹⁷

COUNSEL ASSISTING: *How can that committee be in an informed position, how can Mr Ashton be providing any oversight if the committee is not being informed of very fundamental facts?*

AC CORNELIUS: *Well, you're identifying these as fundamental facts. I understood that I was receiving briefings from the investigation team in relation to pertinent developments in the investigation.*

- 21.14 Counsel Assisting's questions show the risk of hindsight reasoning in assessing AC Cornelius' conduct. He was not provided with that information, likely by combination of the need to know principle and the reality of the role of the IMC, being distanced from the work of the investigations.

Second, in late May 2007, AC Cornelius was not made aware that Ms Gobbo possessed notes that she obtained from Mr Dale while visiting him in custody

³⁹⁰ T12325.4-17 (L Cornelius).

³⁹¹ T11114.32.41 (L Cornelius).

³⁹² T11036.23-32 (L Cornelius); T11102.1-10 (L Cornelius); Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [31] (VPL.0014.0057.0001 at .0005).

³⁹³ T11113.39-46 (L Cornelius).

³⁹⁴ T11113.11-14 (L Cornelius).

³⁹⁵ T11114.3-6 (L Cornelius).

³⁹⁶ T11114.11-23 (L Cornelius).

³⁹⁷ T11114.29-35 (L Cornelius).

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- 21.15 An Informer Contact Report indicates that Ms Gobbo was wary of the ethical implications of handing the documents over to Victoria Police, but did so anyway.³⁹⁸ AC Cornelius gave evidence that he was not briefed about these matters, and that he was surprised to learn of it.³⁹⁹

COUNSEL ASSISTING: Does it surprise you?

AC CORNELIUS: Yes, it does.

COUNSEL ASSISTING: Does it indicate that there needed to be some significant oversight and scrutiny occurring in relation to informer management?

AC CORNELIUS: Yes, it does.

COUNSEL ASSISTING: And that wasn't happening?

AC CORNELIUS: Well, I'm wondering at how those ethical implications were in fact assessed. It doesn't appear to me that they were.

- 21.16 These statements are not congruent with someone who was aware of the extent of Ms Gobbo's use as a human source. They are consistent with someone who has always acted in accordance within a strong ethical framework, and who is surprised to learn that these events were occurring.

Third, in July 2007, AC Cornelius was not informed that ESD investigators decided not to put Ms Gobbo before the OPI

- 21.17 In July 2007, Detective Inspectors Attrill and Swindells decided to hold an informal discussion with Ms Gobbo, instead of putting Ms Gobbo before a planned coercive hearing with the OPI.⁴⁰⁰ AC Cornelius was not made aware of this decision.⁴⁰¹

- 21.18 It was AC Cornelius' evidence that a coercive hearing would have been the more appropriate forum, as it would have allowed Ms Gobbo to rely on legal professional privilege if necessary.⁴⁰²

- 21.19 Ms Gobbo's concerns about trespassing over legal and ethical boundaries were not shared with AC Cornelius but dealt with through Mr Overland.⁴⁰³ AC Cornelius stated that:⁴⁰⁴

I would have thought that if those concerns were being expressed, I would have thought that those matters would have been raised with me so that I would be the one having the conversation with the Office of Police Integrity... However, it's very clear that instead the issues are being addressed via Simon Overland.

- 21.20 Counsel Assisting submits that "the continuing absence of enquiry, particularly by Mr Cornelius is conspicuous".⁴⁰⁵ This submission fails to recognise that AC Cornelius was isolated from the information about Ms Gobbo. It also falls over in the face of evidence that once AC Cornelius was made aware of her status as a human source, he recognised that Victoria Police had disclosure obligations and he sought independent legal advice.⁴⁰⁶ AC Cornelius did not turn a blind eye.

Fourth, during Taskforce Briars, AC Cornelius was not told that the investigators interviewed Ms Gobbo in January 2008⁴⁰⁷

³⁹⁸ T11120.12-26 (L Cornelius).

³⁹⁹ T11120.12-36 (L Cornelius).

⁴⁰⁰ T11068.14-23 (L Cornelius).

⁴⁰¹ T11068.39-43 (L Cornelius).

⁴⁰² T11065.47 - T11066.18 (L Cornelius); T11073.15-19 (L Cornelius).

⁴⁰³ T11072.39-43 (L Cornelius).

⁴⁰⁴ T11076.13-20 (L Cornelius).

⁴⁰⁵ Counsel Assisting's Submissions, Volume 2 at [2518].

⁴⁰⁶ T11045.11-13 (L Cornelius); T12498.16-22 (L Cornelius).

⁴⁰⁷ T12321.42 - T12322.5 (L Cornelius).

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- 21.21 When asked in cross-examination if he could think of any reason why his investigators would interview Ms Gobbo, and not share it with him, his response was:⁴⁰⁸

No, I can't. I can't answer that question. I don't know what they were thinking.

- 21.22 It is worth noting that this information was also not recorded in any IMC briefing notes.

- 21.23 It is crucial to remember that once AC Cornelius became aware in March 2009 that Ms Gobbo had acted as a human source in respect of Taskforce Briars, he was concerned to determine the nature of her evidence and to identify any disclosure obligations or issues arising as a result of legal professional privilege.⁴⁰⁹

Fifth, during Taskforce Petra, AC Cornelius was not aware that investigators used Ms Gobbo, in her capacity as a lawyer, to provide advice to Mr Hodson

- 21.24 Ms Gobbo encouraged Mr Hodson to take a polygraph test.⁴¹⁰

- 21.25 In cross-examination, Mr Cornelius explained what he would have done had his inspectors made him aware of this situation:⁴¹¹

COUNSEL ASSISTING: *The scenario that I've just taken you through, do you see any problems with that?*

AC CORNELIUS: *I don't think it's – I mean, if you put yourself in Mr Hodson's shoes, I think he would, quite rightly, have concern that the person who he might have turned to for legal advice is in effect, if you like, acting on our instructions.*

COUNSEL ASSISTING: *Yes. His lawyer is a police agent?*

AC CORNELIUS: *Yes, that's the point I'm making.*

COUNSEL ASSISTING: *Do you think there might have been an issue with all of this if it had turned out there was enough evidence to charge Mr Hodson with the murder, do you think there might have been issues with this?*

AC CORNELIUS: *Well, of course.*

COUNSEL ASSISTING: *If you had known that this was going on, that your investigators were using Ms Gobbo in this way, what would you have done?*

AC CORNELIUS: *I would have told them not to do it.*

- 21.26 From the above, it is clear that AC Cornelius does not agree with the approach.

- 21.27 AC Cornelius was critical of the fact that he was not told that a human source, such as Ms Gobbo, was being transitioned into the role of a witness.⁴¹²

AC Cornelius was not made aware of a correspondence cover sheet dated 2 January 2009 and a SWOT analysis document dated 31 December 2008⁴¹³

- 21.28 These documents were created by the SDU and exchanged between Superintendent Porter (Intelligence and Covert Support Department), AC Moloney and they were finally shared with Mr Overland for action by the Petra Taskforce IMC.⁴¹⁴

- 21.29 Officer Black from the SDU, who was one of Ms Gobbo's handlers, prepared these documents under the direction of Superintendent Biggin. These documents were

⁴⁰⁸ T11036.45 – T11037.2 (L Cornelius).

⁴⁰⁹ T11040.41-44 (L Cornelius); T11041.6-13 (L Cornelius).

⁴¹⁰ T12327.41-43 (L Cornelius).

⁴¹¹ T12330.13-30 (L Cornelius).

⁴¹² T11039.30-43 (L Cornelius).

⁴¹³ T12366.38-39 (L Cornelius).

⁴¹⁴ T12366.24-36 (L Cornelius); T12367.14-24 (L Cornelius).

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created urgently, within a matter of hours, due to the potential transition of Ms Gobbo from a human source to a witness.⁴¹⁵ The cover sheet indicated that Ms Gobbo had been a source since September 2005 and was formerly registered as human source 3838.

- 21.30 The SDU perceived that a SWOT analysis was required by the IMC. The purpose of the document was to ensure that the decision makers were in possession of relevant information to allow for proper decisions to be made and for the decision makers to be able to consider the long-term implications for Victoria Police.⁴¹⁶
- 21.31 The preparation of this document suggests that the SDU were concerned that not all members of the IMC had the same level of knowledge or understanding of Ms Gobbo's role as a human source or perhaps in fact that the SDU were concerned that not all members of the IMC were aware of Ms Gobbo's status as a human source.
- 21.32 Despite the efforts of the SDU, AC Cornelius, and other members of the Petra Taskforce IMC, were not made aware of these highly sensitive documents. Mr Overland gave evidence that he did not recall receiving the SWOT analysis. Consequently, given the SDU had intended for Mr Overland to brief the Petra Taskforce IMC about this analysis, it would make it entirely implausible that the IMC received and reviewed these documents.⁴¹⁷
- 21.33 AC Cornelius was on leave during the period in which the SWOT documentation was created, and the decision was made to transition Ms Gobbo from a human source to a witness.⁴¹⁸ AC Cornelius had no reason to review this decision or the documentation that had been discussed in his absence. It seems a fair assumption by AC Cornelius that when a decision was made by investigators to make someone a witness, it would be a carefully informed decision. Further, AC Cornelius regarded it as an uncontroversial decision at the time because he understood that it was a decision to treat Ms Gobbo as a witness, rather than a person of interest.
- 21.34 Had AC Cornelius been made aware of these documents he would have taken action. He stated, with reference to the SWOT analysis that:⁴¹⁹
- I would have picked up the loose thread and started pulling it. I may well have moved from having a wonderful Persian carpet to a pile of string, but it would be a question of pulling the thread until you understood all of the issues around it so that you're in a position to make a lawful and ethical decision in response to it.*
- 21.35 The decision to not share these documents with AC Cornelius may have been in keeping with the 'need to know principle'. Indeed, AC Cornelius explained that in his role as Assistant Commissioner of ESD:⁴²⁰
- ... I didn't have an expectation that I would know the identity of a human source. I do have an expectation that I'd be told information relevant to the pursuit of the investigation.*
- 21.36 AC Cornelius accepted in cross-examination that the other members of Taskforce Petra, including the investigators, seemed to know that Ms Gobbo was a human source, but he remained unwavering in his position that he was not aware of the extent of her involvement as a human source.⁴²¹ He emphatically denied DI Ryan's evidence to the Commission that Ms Gobbo was being discussed as a human source at Taskforce Petra management committee meetings.⁴²²

⁴¹⁵ T8279 31-38 (Officer Black).

⁴¹⁶ Untendered Human Source making statement to Petra Taskforce dated 5 January 2009 (VPL.0100.0035.0001 at .0002).

⁴¹⁷ T11837.32-36 (S Overland).

⁴¹⁸ T12580.41 – 46 (L Cornelius).

⁴¹⁹ T12369.23-29 (L Cornelius).

⁴²⁰ T11113.34-37 (L Cornelius).

⁴²¹ T11128.30-34 (L Cornelius).

⁴²² T11128.25-28 (L Cornelius).

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- 21.37 There is no reference to Ms Gobbo as a human source in any of the Taskforce Petra IMC briefing papers retained by AC Cornelius, including the papers tabled at the IMC meetings by DI Ryan.
- 21.38 AC Cornelius' evidence accords with the email chain from 2010 that AC Cornelius was isolated from information about the extent of Ms Gobbo's status.
- 21.39 AC Cornelius was not the only police officer involved with the Petra Taskforce who was isolated from information about Ms Gobbo's involvement with Victoria Police. In his statement, DS Solomon, said that he and his lead investigator, Mr Davey "were driving the investigation" and that:⁴²³

"[n]either of us was aware of GOBBO's true status. We were never told, and it seems obvious now that important matters which were occurring impacting on our efforts to solve this murder were deliberately kept from us which I will never reconcile".

- 21.40 It would be unfair for the Commission to hold AC Cornelius responsible for failing to make lawful and ethical decisions about Ms Gobbo when he was unaware of information that would have allowed him to pull the thread.⁴²⁴

22 The records that are said to show AC Cornelius' knowledge of Ms Gobbo's status as a human source do not withstand scrutiny

- 22.1 There is no direct evidence that AC Cornelius knew the extent of Ms Gobbo's status as a human source. Counsel Assisting therefore rely primarily on five pieces of circumstantial evidence, spanning four years, to show that AC Cornelius knew of her status:
- (a) a record in Superintendent Wilson's (ESD investigator) diary of 6 June 2006;⁴²⁵
 - (b) a record in Superintendent Wilson's diary of 27 July 2006;⁴²⁶
 - (c) two scribbled out words on a Taskforce update paper dated 10 September 2007;⁴²⁷
 - (d) in June 2009, concerns were intended to be raised about Ms Gobbo in a meeting with AC Cornelius; and
 - (e) that as at 12 March 2010, AC Cornelius would have been exposed to Ms Gobbo's history as a human source as a result of discussions with Mr Smith around Mr Dale's committal hearing.⁴²⁸
- 22.2 Such evidence should be treated with caution. It is largely based on the perpetuation of wrong assumptions. Two powerful examples are (i) the cascade of incorrect records that resulted from Superintendent Wilson's diary of 6 June 2006 and (ii) a source management log (SML) recorded by Mr Sandy White, who ran the SDU, on 25 November 2008.

Superintendent Wilson's diary entry of 6 June 2006 created a cascade of incorrect records that created an assumption that AC Cornelius knew the extent of Ms Gobbo's informer status

⁴²³ Exhibit RC1547b – Statement of Detective Sergeant Sol Solomon dated 2 March 2020 at [37] (COM.0060.0001.0005 at .0006)

⁴²⁴ T12369.21-29 (L Cornelius).

⁴²⁵ Counsel Assisting's Submissions, Volume 2 at [1990], T11054.37 – T11056.18 (L Cornelius).

⁴²⁶ Counsel Assisting's Submissions, Volume 2 at [2079], Exhibit RC0828b – Diary of Mr Rodney Wilson dated 27 July 2006 (VPL.0005.0213.0023 at .0067).

⁴²⁷ Counsel Assisting's Submissions, Volume 2 at [2548], Exhibit RC0830b – Briars Taskforce Update dated 10 September 2007, also known as Exhibit RC0593 and Exhibit RC0901b, (VPL.0100.0048.1578 at .1579).

⁴²⁸ Counsel Assisting's Submissions, Volume 2 at [3967]

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- 22.3 On 6 June 2006, AC Cornelius recorded in his diary that he attended a meeting with Superintendent Phil Masters (in charge of surveillance at the ESD), Superintendent Wilson and Mr Overland to discuss Operation Khadi.⁴²⁹ AC Cornelius does not recall the details of that meeting but he accepts that there may well have been a discussion about a proposed coercive hearing with Ms Gobbo.⁴³⁰
- 22.4 Superintendent Wilson recorded that during this meeting Mr Overland briefed the attendees about Ms Gobbo's involvement as a human source. Counsel Assisting point to this diary entry of Superintendent Wilson to suggest that AC Cornelius did in fact know of Ms Gobbo's role as an informer at a much earlier date.⁴³¹
- 22.5 In cross-examination AC Cornelius rejected the suggestion that he was told of Ms Gobbo's status as a human source at this earlier date. He insists that her status was not shared at this meeting and that the entry in Superintendent Wilson's diary "*may in fact be a conflation of two conversations*".⁴³² That conclusion is supported by Superintendent Wilson's recollection, who explained in cross-examination that he had a memory that he was in fact briefed separately by Mr Overland about Ms Gobbo's role as a human source.⁴³³
- 22.6 Mr Overland does not recall whether he briefed all the attendees or just Superintendent Wilson. When asked in cross-examination if there was a reason he would only brief Superintendent Wilson, Mr Overland referred to the need to know principle. He said:⁴³⁴
- ...the general issue around trying to keep the identity of sources as confidential as possible, that may have been a reason why I only spoke to Mr Wilson, but I honestly don't recall now.*
- 22.7 In contrast,⁴³⁵ Counsel Assisting point to the evidence of Mr Overland who confirmed that he did not see any "*reason not to brief [AC Cornelius] as a matter of principle*".⁴³⁶ It seems that the need to know principle may well have been a potential reason for AC Cornelius to have been excluded from these communications.
- 22.8 Counsel Assisting seek to extrapolate meaning from contemporaneous notes made by Mr Wilson. They assert that AC Cornelius leaving the meeting of 6 June 2006 would be "*noteworthy*".⁴³⁷ While there is no record of AC Cornelius leaving the meeting, it is not reasonable or fair to conclude that the absence of such a note meant that AC Cornelius was present, especially given the evidence of AC Cornelius, Mr Overland and Superintendent Wilson in cross-examination.
- 22.9 Superintendent Wilson's diary caused a cascade of inaccurate record keeping that led to a number of other people assuming that AC Cornelius knew about Ms Gobbo's status.
- 22.10 Mr White made an entry in the SML, dated 6 June 2006, recording that Superintendent Wilson told him that AC Cornelius and Superintendent Masters were now also aware of Ms Gobbo's role.⁴³⁸
- 22.11 He made a similar note in his diary on 6 June 2006.⁴³⁹ The problem is – as demonstrated below at paragraphs 22.17 to 22.19 – that two years later in 2008 Sandy

⁴²⁹ T11054.28-35 (L Cornelius); Exhibit 0934 – diary entries of Luke Cornelius dated 6 June 2006 (VPL.0005.0173.0001 at .0007).

⁴³⁰ T11055.46 – T11055.4 (L Cornelius).

⁴³¹ T11055.31-42 (L Cornelius); Counsel Assisting's Submissions, Volume 2 at [1990].

⁴³² T11058.28-34 (L Cornelius).

⁴³³ T10421.3-8 (R Wilson).

⁴³⁴ T11544.22-26 (S Overland).

⁴³⁵ Counsel Assisting's Submissions, Volume 2 at [1985].

⁴³⁶ T11545.25-26 (S Overland).

⁴³⁷ Counsel Assisting's Submissions, Volume 2 at [1987].

⁴³⁸ Untendered Source Management Log dated 6 June 2006 (VPL.2000.0006.0001 at .0034 – .0035).

⁴³⁹ Untendered diary of Officer White dated 6 June 2006 (VPL.0100.0096.0157 at .0261); T11057.41 – T11058.34 (L Cornelius).

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- White made a record noting that it was “assumed” that AC Cornelius knew of Ms Gobbo’s status as a human source.
- 22.12 Mr White’s diary entry of 6 June 2006 also caused Superintendent Wilson to assume in cross examination that he had in fact briefed AC Cornelius - contrary to his memory of what actually occurred. Indeed, the most telling point on this issue is that Mr Overland and Superintendent Wilson both have an independent recollection all these years later that the briefing about Ms Gobbo only involved the two of them. This strongly suggests that this joint recollection is accurate.
- 22.13 It was, as AC Cornelius said in evidence, a case of “*Chinese whispers*”.⁴⁴⁰ It also powerfully demonstrates the problems of cross examination of one person on the historical notations of others.
- 22.14 This series of inaccurate records explains why the SDU thought or assumed that AC Cornelius knew about Ms Gobbo’s status. An assumption that was, as can be seen below, compounded by the perpetuation of other inaccurate assumptions.
- 22.15 Again, it must be recalled that AC Cornelius has given evidence that had he become aware of Ms Gobbo’s role he would have “pulled the thread”. That he did not is a powerful indication that he was not briefed on this occasion.
- 22.16 This is not an isolated incident of members of Victoria Police assuming other members knew about Ms Gobbo’s status as an informer. The perpetuation of assumptions is a risk because the communication of assumptions amplifies the impact of the original assumption. Therefore, any inaccuracy within the initial assumption, as can be seen above, is likely to be obscured.
- 22.17 A second potent example of members of Victoria Police relying on records based on assumption is a SML of 25 November 2008 made by Mr White. In this SML, it is recorded that:⁴⁴¹
- Petra steering committee – OVERLAND, MALONEY, CORNELIUS and OPI director ASHTON, all aware of HS identity and role.*
- 22.18 This entry indicates that there was no uncertainty about AC Cornelius’ knowledge. However, this SML was, as was normal practice, a later summary of an entry in the Information Contact Reports (ICRs). The summarised ICR, also dated 25 November 2008, recorded a conversation between Mr Smith (Ms Gobbo’s handler) and Senior Sergeant O’Connell that provided:⁴⁴²
- Persons on steering committee reported to by DI SMITH are D/C OVERLAND, A/C MOLONEY, A/C CORNELIUS and Deputy Director OPI Graham ASHTON, therefore assume all three know identity of HS2958.*
- 22.19 In cross-examination, Mr White agreed that the ICR entry was the basis for the subsequent SML but more crucially he agreed that the accurate version was in fact the ICR entry which noted an assumption that all three members of the steering committee knew the identity of HS2958.⁴⁴³
- 22.20 It would be entirely contrary to evidence – and an exercise in gross speculation – to conclude that AC Cornelius knew of Ms Gobbo’s status as a human source in June 2006.

Counsel Assisting assert that it is open to the Commissioner to find that AC Cornelius became aware of Ms Gobbo’s status as a human source during the Operation Khadi investigation⁴⁴⁴

⁴⁴⁰ T11059,26-29 (L Cornelius).

⁴⁴¹ Exhibit RC0284 – Source Management Log, various dates (VPL.2000.0001.9236 at 9292).

⁴⁴² Exhibit RC0281 – ICR 2958(047), Human Source Contact Report, various dates (VPL.2000.0003.1452 at 1454).

⁴⁴³ T4935.41 – T4936.2 (Officer White).

⁴⁴⁴ Counsel Assisting’s Submissions, Volume 2 at [2071].

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- 22.21 Council Assisting's assertion is based on a series of events that occurred between 25 July and 27 July 2006. These assertions are based on unfair assumptions, ignore key pieces of evidence before the Commission and they are in contrast to AC Cornelius' evidence.
- 22.22 On 25 July 2007, Mr Wilson recorded in his diary that he "[b]riefed A/C Cornelius re *issue re Gobbo*".⁴⁴⁵ In cross-examination, it was put to Mr Wilson that it was apparent by that stage that AC Cornelius knew of her status as a human source. Mr Wilson responded that he "*assume[d] so*".⁴⁴⁶ Mr Wilson was led to agree with Counsel Assisting's statement that he would have informed AC Cornelius that a coercive hearing would have exposed Ms Gobbo to risk. AC Cornelius has no recollection of that meeting. He gave evidence however that "*it may well have been in relation to our ongoing interest in Ms Gobbo in terms of her association with any number of people who were people of interest to us*".⁴⁴⁷ Further, he gave evidence that if he had been told about the risk to Ms Gobbo he would have remembered it. AC Cornelius was surprised that such matters were being addressed via Mr Overland.⁴⁴⁸
- 22.23 Counsel Assisting point to three meetings on 27 July 2006 to suggest that AC Cornelius must have had knowledge of Ms Gobbo's status, and that he actively participated in disrupting the OPI investigation:
- (a) a meeting at 10:00am between Mr Overland, Mr Ashton and AC Cornelius;
 - (b) a meeting at 11:30am between AC Cornelius and Mr Wilson; and
 - (c) a meeting at 1:30pm between Mr Overland, Mr Biggin and Mr White.
- 22.24 AC Cornelius was however unaware of the decision to not hold a coercive hearing with the OPI.
- 22.25 Counsel Assisting rely on a note in Mr Ashton's diary on 27 July 2006,⁴⁴⁹ that Mr Ashton attended a meeting with Mr Overland and AC Cornelius in order to assert that AC Cornelius became aware of Ms Gobbo's status as a human source during the Operation Khadi investigation. There are several pieces of evidence which Counsel Assisting has chosen to ignore. First, Mr Ashton's diary entry makes no reference to Operation Khadi, it referred solely to Operation Air, nor does it make reference to OPI hearings.⁴⁵⁰ Second, in cross-examination, Mr Ashton gave evidence that the diary entry was a complete record of the subjects discussed at the meeting. He explained that if other matters were discussed, he would have taken a note of them.⁴⁵¹
- 22.26 Counsel Assisting submit that the information Mr Overland told Mr Biggin and Mr White was the information discussed in the meeting that occurred at 10:00am.⁴⁵²
- 22.27 On that basis Counsel Assisting submit that this same information was also shared by AC Cornelius with Mr Wilson and Mr Attrill.⁴⁵³ There is no basis for this assumption.
- 22.28 In his diary, Mr Wilson recorded that at 11:30am on 27 July 2006, AC Cornelius briefed him about the "*Gobbo issue*" and recorded that the OPI wanted to coercively question her regarding Dale and Hodson matters. He also noted "*Attril briefed*".⁴⁵⁴ Despite what Counsel Assisting submit it cannot be presumed that that the meeting canvassed issues relating to Operation Khadi. There is no mention of Operation Khadi in Mr Wilson's diary entry.

⁴⁴⁵ Exhibit RC0828b – Diary of Mr Rodney Wilson dated 25 July 2006 (VPL.0005.0213.0023 at .0065).

⁴⁴⁶ T10442.37-38 (R Wilson).

⁴⁴⁷ T11075.23-32 (L Cornelius).

⁴⁴⁸ T11076.10-20 (L Cornelius).

⁴⁴⁹ Exhibit RC0861 – diary of G Ashton dated 27 July 2006 (RCMPI.0097.0001.0001 at .0055).

⁴⁵⁰ T11553.26-45 (S Overland).

⁴⁵¹ T10703.43-45 (G Ashton).

⁴⁵² Counsel Assisting's Submissions, Volume 2 at [2055].

⁴⁵³ Counsel Assisting's Submissions, Volume 2 at [2053], [2057].

⁴⁵⁴ Counsel Assisting's Submissions, Volume 2 at [2079], Exhibit RC0828b – Diary of Mr Rodney Wilson dated 27 July 2006 (VPL.0005.0213.0023 at .0067).

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Counsel Assisting submit that it is open to the Commissioner to reject Mr Cornelius's denial of the use of Ms Gobbo's name during the meeting on 10 September 2007⁴⁵⁵

- 22.29 It is clear on the face of a Taskforce Briars update paper on 10 September 2007⁴⁵⁶ that two words were scribbled out.
- 22.30 Counsel Assisting have submitted that it is open to the Commissioner to reject Mr Cornelius's denial of the use of Ms Gobbo's name during the meeting.⁴⁵⁷
- 22.31 Such a finding would be speculative and unfair. The evidence does not permit it to properly be made.
- 22.32 As at 10 September 2007, AC Cornelius was aware that 3838 was a human source who was assisting Taskforce Briars.⁴⁵⁸ He gave evidence that he was not aware that 3838 was Ms Gobbo.⁴⁵⁹
- 22.33 His assessment is that he must have written down the wrong number and then corrected it.⁴⁶⁰
- 22.34 In fact, during cross-examination, Mr Cornelius' explained that:⁴⁶¹
...it's not my practice to write down the name of a human source anyway. I'd only ever use a registered number.
- 22.35 He accepted that the other members of the Taskforce knew at this point that Ms Gobbo was 3838, but stated that:⁴⁶²
...[if people] had been referring to a human source by name at a meeting that I was involved in I'd take exception to it.
- 22.36 Counsel Assisting's submission about the scribbled out note is an exercise in gross speculation. There is no evidence that the word "Gobbo" is written underneath it. Counsel Assisting invites that conclusion only because it is consistent with a pre-determined case theory.

Counsel Assisting point to evidence that members of the SDU intended to raise issues about Ms Gobbo in a meeting with AC Cornelius in June 2009 to suggest that he knew of her status as a human source

- 22.37 During the week prior to the meeting in question, his inspectors and members of the SDU (Officer Black, Detective Inspector Glow, Superintendent Porter and Mr Smith) met on a number of different occasions to discuss the impact of Ms Gobbo providing a statement to Taskforce Briars. These meetings occurred independent of Mr Cornelius.⁴⁶³
- 22.38 During these meetings concerns were raised about Ms Gobbo's security, credibility as well as legal professional privilege and the risk of a Royal Commission if she were to become a witness.⁴⁶⁴
- 22.39 Commander Porter's evidence was that the intent of DI Glow, Superintendent Porter and Mr Smith was to "further elevate" these issues to Mr Cornelius.⁴⁶⁵

⁴⁵⁵ Counsel Assisting's Submissions, Volume 2 at [2548].

⁴⁵⁶ Exhibit RC0830b – Briars Taskforce Update dated 10 September 2007, also known as Exhibit RC0593 and Exhibit RC0901b, (VPL.0100.0048.1578 at .1579).

⁴⁵⁷ Counsel Assisting's Submissions, Volume 2 at [2548].

⁴⁵⁸ T11128.14-16 (L Cornelius); T11130.26-28 (L Cornelius).

⁴⁵⁹ T11037.4-6 (L Cornelius); T12312.11-16 (L Cornelius).

⁴⁶⁰ T11136.30-33, 43-47 (L Cornelius); T11137.20-25 (L Cornelius).

⁴⁶¹ T1136.37-39 (L Cornelius).

⁴⁶² T11138.23-25 (L Cornelius).

⁴⁶³ T12466.33 – T12467.35 (L Cornelius).

⁴⁶⁴ T12466.33 – T12467.35 (L Cornelius).

⁴⁶⁵ T12470.3 (L Cornelius).

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- 22.40 During evidence, there was some back and forth regarding who scheduled the meeting, but this is academic.⁴⁶⁶ AC Cornelius does not refute that there was a meeting held on 10 June 2009. He recalls that this meeting was primarily concerned with the:
- (a) probative value of Ms Gobbo's witness statement for use in prosecuting offenders in relation to the Briars investigation and the potential harm it may cause to the witness, such as death threats;⁴⁶⁷ and
 - (b) Mokbel subpoena that had been issued on 1 June 2009, and whether that subpoena would capture material that would disclose Ms Gobbo's identity as a potential witness in respect of Taskforce Briars.⁴⁶⁸
- 22.41 AC Cornelius' handwritten notes from that meeting on 10 June 2009 do not reflect the content and material that Det. Insp. Glow, Superintendent Porter and Mr Smith had intended to elevate to AC Cornelius. Again, this is an example of Counsel Assisting selectively choosing how to use diary entries.
- 22.42 AC Cornelius' notes were:⁴⁶⁹
- Re 3838*
- How far does 3838's stmt take us?*
- Probably enough to charge vs matter for DPP.⁴⁷⁰*
- Balance with benefit to Briars vs potential harm to witness.*
- Will her evidence be admissible?*
- Lawyer client privilege?*
- Only if lawyer / client r'ship exists.*
- She says she was not, at the time acting for Waters – lawyer / client r'ship did not exist.*
- Steve W to assess the --- material to assess any risks to credit*
- Then assess the probative value of the stmt B4 it is signed.*
- Need to clearly scope the --- + filter material on the Human Source side and then release the material to SW for assessment*
- Note the Mockbel Affidavit.*
- Gerard Mcguire briefed. Agreed he needs to be briefed about 3838 – relevance per par 18, 4th dot point, p6. Subpoena re Antonius Mockbel, returnable on 1.7.9.*
- 22.43 The reference in the subpoena provided "Statements implicating Witness C, Goussis or Messrs Waters or Lalor".⁴⁷¹ As AC Cornelius explained in cross-examination, "the reason why Ms Gobbo was captured or potentially captured by the terms of that subpoena was because she was providing us with a statement in relation to Waters and Lalor".⁴⁷² Therefore, this request was concerning for Victoria Police because providing these documents to Mr Mokbel's legal counsel would disclose that Ms Gobbo was a witness in the Briars investigation. As this investigation was ongoing, Victoria Police were concerned that disclosure might compromise the investigation and expose Ms Gobbo to the threat of harm.

⁴⁶⁶ T12470.27-30 (L Cornelius).

⁴⁶⁷ T12474.2-12 (L Cornelius).

⁴⁶⁸ T12465.29 – T12466.4 (L Cornelius); T12470.23-25 (L Cornelius).

⁴⁶⁹ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [112] (VPL.0014.0057.0001 at .0019).

⁴⁷⁰ Victoria Police raised this issue with the DPP who confirmed that they regarded Ms Gobbo as a compellable witness. See T12495.4-8 (L Cornelius).

⁴⁷¹ Untendered Subpoena – The Queen v Antonios Sajih Mokbel dated 1 June 2009 (VPL.0005.0012.1208 at .1224).

⁴⁷² T12476.47-12477.3 (L Cornelius).

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- 22.44 AC Cornelius' reference in his notes to Mr McGuire needing to be "briefed about 3838" was specifically a reference to Ms Gobbo's involvement in the Briars investigation and the potential for compromise to that investigation if her involvement was disclosed prior to the investigation being concluded. The words "briefed about 3838" were not a reference to any broader involvement of the part of Ms Gobbo with Victoria Police.
- 22.45 These notes do not lack detail. There is no reference to Ms Gobbo's involvement in Taskforce Petra as a human source, any reference to a Royal Commission or any of the other previously identified concerns.
- 22.46 It is not clear why these issues were not raised with AC Cornelius, but it would be contrary to the written record to conclude that they were.
- 22.47 It is worth noting here that in response to the subpoena, AC Cornelius authorised DI Waddell's email request of 10 June 2009 to obtain legal advice.⁴⁷³ This suggests that AC Cornelius was concerned to determine Victoria Police's legal obligations in respect of the subpoena, so as not to act unlawfully or unethically.

Counsel Assisting suggest Mr Dale's request for the production of informer management files relating to witnesses should have alerted AC Cornelius to the extent of Ms Gobbo's history as a human source

- 22.48 In cross-examination, AC Cornelius was asked about discussions between Mr Gipp and Mr Hargreaves, Mr Dale's lawyer, on 10 March 2010 regarding a request for an informer management file in relation to Ms Gobbo. AC Cornelius was adamant that if this request had been raised with him he would recall it.⁴⁷⁴ He also explained that in his search for material to allow him to respond to the Notice Produce he did not find any documents that suggested he had been told about the request for her informer management file.⁴⁷⁵
- 22.49 AC Cornelius' evidence is consistent with the emails set out above which suggest a deliberate strategy by Victoria Police to not share the extent of Ms Gobbo's status as a human source with him.

23 Counsel Assisting suggest that AC Cornelius missed evidence of Gobbo's role and therefore failed to identify and neutralise the risks involved

- 23.1 In particular, Counsel Assisting rely on three matters:
- (a) Ms Gobbo's letters to Victoria Police regarding [REDACTED],⁴⁷⁶
 - (b) the evidence of the drafting of [REDACTED] in relation to [REDACTED] and [REDACTED],⁴⁷⁷
 - (c) SDU's reluctance to handover the material about Ms Gobbo.⁴⁷⁷
- 23.2 However, these matters can only be considered 'clues' with the unfair benefit of hindsight. Given the limited knowledge that AC Cornelius had about Ms Gobbo's informer status, it is not reasonable to expect that these instances would have triggered alarm bells for him.

Counsel Assisting submit that it is open to the Commissioner to find that AC Cornelius did read a letter from Ms Gobbo to Mr Overland and if he did not read it, he should have done so⁴⁷⁸

⁴⁷³ T12471.35-35 (L Cornelius).

⁴⁷⁴ T12533.22-30 (L Cornelius).

⁴⁷⁵ T12538.13-16 (L Cornelius).

⁴⁷⁶ Exhibit RC1034b Letter from 'Witness F' to Mr Simon Overland with notes dated 7 September 2009 (VGSO.2000.1358.0157).

⁴⁷⁷ T12402.45 – T12403.4 (L Cornelius); T12396.1-5 (L Cornelius).

⁴⁷⁸ Counsel Assisting's Submissions, Volume 2 at [3793]-[3795].

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- 23.3 A series of letters were exchanged between Ms Gobbo and Victoria Police to try to agree upon ^{P11} [redacted] arrangement that was acceptable for both her and Victoria Police.⁴⁷⁹
- 23.4 In a letter dated 7 September 2009 addressed to Mr Overland from Ms Gobbo there is reference to her "*unprecedented assistance*" across the period 2005 to 2009 and the consequential prosecution of numerous organised crime figures.⁴⁸⁰
- 23.5 Counsel Assisting was indignant in cross-examination, stating that "[i]t simply begs the question: what assistance has she provided from [2005] and what assistance was she still providing?"⁴⁸¹
- 23.6 However, AC Cornelius did not read the detail of this letter. On his copy of the letter, AC Cornelius noted that he received it at the beginning of a Petra IMC meeting at 4pm.⁴⁸² In evidence, he explained that upon receipt of the document he was immediately briefed on its contents by DI Smith, having not had a chance to read it personally.⁴⁸³ Anyone who has operated in a senior role in an organisation will recognise this as orthodox practice. Heavy reliance is placed on briefings.
- 23.7 The letter was then referred to Mr McRae of the VPLD by the IMC for a response.⁴⁸⁴
- 23.8 AC Cornelius' evidence was that if he had read the letter this phrase would have "*leapt out at*" him.⁴⁸⁵
- 23.9 Given he did not have time to read the letter, was briefed on it by someone he trusted to provide a proper briefing and that it was referred to the VPLD, it is not fair or reasonable to expect that a paragraph halfway through the third page of Ms Gobbo's letter would have raised alarm bells.
- 23.10 AC Cornelius was not involved in the drafting of any of the letters in response to Ms Gobbo.⁴⁸⁶
- 23.11 It was not his role to address the letter directly or involve himself with the details. AC Cornelius was included in the process as he was trying to ^{P11} [redacted]. The review, assessment, negotiation and finalisation of these documents should have and would have been the role of other areas of the organisation.
- 23.12 It is tempting to conclude that AC Cornelius should have been closer to document, and across the finer detail. However, given AC Cornelius' role in the ESD and the circumstances in which he was briefed on this document, such a conclusion is not fair. Whilst AC Cornelius holds a law degree, he was not and is not a practising lawyer. He responsibly and appropriately left to the details of the document to the VPLD.
- 23.13 At the time, AC Cornelius' overarching concern was protecting Ms Gobbo and providing for the safety of the Victoria Police officers who were responsible for minding her. With this in mind, his role at these meetings was to provide oversight and direction in order to facilitate Ms Gobbo's ^{P11} [redacted].⁴⁸⁷

Counsel Assisting suggest that AC Cornelius ignored references to Ms Gobbo's assistance to Taskforce Purana in the MOU⁴⁸⁸

⁴⁷⁹ T12487.15-43 (L Cornelius); T12492.32 – T12493.23 (L Cornelius).

⁴⁸⁰ T12500.20-28 (L Cornelius); Exhibit RC1034b Letter from 'Witness F' to Mr Simon Overland with notes dated 7 September 2009 (VGSQ.2000.1358.0157 at .0159).

⁴⁸¹ T12501.35-37 (L Cornelius).

⁴⁸² Exhibit RC0947b – Letter from Ms Nicola Gobbo to Mr Simon Overland dated 7 September 2009 (VPL.0005.0012.3299)

⁴⁸³ T12500.37-40 (L Cornelius).

⁴⁸⁴ T12500.37-40 (L Cornelius).

⁴⁸⁵ T12500.34-35 (L Cornelius).

⁴⁸⁶ T12527.43-47 (L Cornelius).

⁴⁸⁷ T12385.35-T12386.5 (L Cornelius).

⁴⁸⁸ See, eg, T12521.40-43 (L Cornelius).

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- 23.14 AC Cornelius was peppered with questions by Counsel Assisting about the reference to Taskforce Purana contained in an earlier version of [PII] prepared in respect of Ms Gobbo [PII].
- 23.15 However, a VGSO file note explains AC Cornelius telephoned someone to check what this reference to Taskforce Purana related to.⁴⁸⁹ AC Cornelius believes that he would have called his senior investigations officer for this information.⁴⁹⁰ He was told that the reference to Ms Gobbo's other assistance was not relevant to [PII]. This explains why it may have been removed from the final version of the document.⁴⁹¹
- 23.16 It was AC Cornelius' experience that MOUs were often recycled. Templates from other operations were often copied and then modified. While he has no specific memory of this being the case for this MOU, AC Cornelius may have assumed that the reference to Taskforce Purana was retained in [PII] as a drafting error, left over from another [PII] in an unrelated Taskforce Purana matter. This may be why AC Cornelius was prepared to accept an explanation from his senior investigations officer that the reference was irrelevant.
- 23.17 Ultimately, it was a small reference in a very lengthy document. To suggest that it should have triggered alarm bells for AC Cornelius is to assess the situation unfairly with hindsight.
- 23.18 AC Cornelius acted in a conscientious and considered manner, in accordance with the information available to him, by seeking advice in order to avoid making assumptions and exposing the organisation to risk.
- 23.19 Further, given aspects of Ms Gobbo's role across all three investigations had been deliberately obscured from him, it is not fair to suggest that this reference should have triggered alarm bells for him. Indeed, his evidence was:
- I don't think that that reference in [PII] would have been sufficient for me to trigger the sort of response you're pointing to. And I certainly don't recall it doing so...It wasn't relevant to the reason why I was seeking to have Ms Gobbo [PII]*
[PII]⁴⁹²
- 23.20 It is important to pause and consider the environment in which AC Cornelius was acting at the time. Despite the best efforts of Victoria Police, Ms Gobbo was refusing [PII] [PII] and there were significant concerns for her safety as well as for the officers protecting her. Ms Gobbo had been the subject of death threats and there was concern that her 'hiding in plain sight' strategy was exposing her and members of Victoria Police to enormous risk. Indeed, her ad hoc security arrangements had been terminated due to the risk it posed to the officers involved.⁴⁹³
- 23.21 AC Cornelius regarded [PII] as the best way to protect her and individual officers from the risk of serious physical harm or death. His involvement in the [PII] process was in the interests of prioritising the safety of Ms Gobbo and members of Victoria Police.⁴⁹⁴

Counsel Assisting suggest that AC Cornelius should have been put on alert by the SDU's reluctance to hand over material about Ms Gobbo

- 23.22 In May 2009, Ms Gobbo travelled with Taskforce Briars investigators to a neutral location to make a witness statement. A 15-page statement was obtained from her.⁴⁹⁵ AC Cornelius did not see a copy of her statement.⁴⁹⁶

⁴⁸⁹ T12522.39-42 (L Cornelius).

⁴⁹⁰ T12523.39-41 (L Cornelius).

⁴⁹¹ T12521.14-19 (L Cornelius); T12523.1-7 (L Cornelius).

⁴⁹² T12521.31-38 (L Cornelius).

⁴⁹³ T12499.13-16 (L Cornelius); Exhibit RC1033b – Letter from mr Kieran Walshe to Ms Nicola Gobbo dated 26 August 2009 (VPL.0100.0237.1171).

⁴⁹⁴ T12508.1-16 (L Cornelius).

⁴⁹⁵ Untendered Briars Taskforce Update dated 1 June 2009 (VPL.0005.0012.0896 at .0896); Exhibit RC1012 – Briars Task Force meeting file note dated 1 June 2009 (VPL.0005.0012.0894).

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- 23.23 In order to verify her statement, DI Waddell had requested tapes from SDU but he was refused access.⁴⁹⁷ He asked AC Cornelius for assistance to obtain that information.⁴⁹⁸
- 23.24 AC Cornelius was not shocked by SDU's response to DI Waddell. He regarded it as a "fairly standard response" from SDU in relation to information requests from other departments.⁴⁹⁹
- 23.25 His understanding was that the scope of DI Waddell's request for access to information was limited to the information needed to verify the statement and that the entities listed in that email were persons of interest in relation to Taskforce Briars. He never understood DI Waddell's request to be a reference to other material, nor did he know that the SDU was holding material in relation to Ms Gobbo beyond the scope of the Briars investigation.⁵⁰⁰
- 23.26 DI Waddell had told him that he was:⁵⁰¹
- seeking the material to complete the statement made by 3838 and to satisfy [him]self that the statement is based on the best available evidence and there are no surprises down the track.*
- 23.27 AC Cornelius had no reason to doubt DI Waddell, particularly when you consider that:⁵⁰²
- (a) AC Cornelius was not aware that DI Waddell (and Detective Senior Sergeant Iddles) already had access to some SDU material in relation to Ms Gobbo,⁵⁰³ and
 - (b) he was never made aware they were seeking to verify issues that arose from her involvement as a human source since 2005.⁵⁰⁴
- 23.28 AC Cornelius believed that all of the material held by SDU linked back to the information she provided on Mr Waters and Mr Lalor.⁵⁰⁵ He trusted his senior investigators to alert him to relevant information.⁵⁰⁶ During examination he stated:
- I am happy to rely on the assessment of my colleagues if they've made that assessment within the context of the need to know principle.*⁵⁰⁷
- 23.29 With hindsight, it is clear to AC Cornelius that the SDU were reluctant to hand over this information because they were concerned that if Ms Gobbo was pursued as a witness for Taskforce Briars her role as a human source would be discovered.⁵⁰⁸
- 23.30 In an email exchange between AC Cornelius and Acting Commander Jouning (Intelligence Covert Support Department) on 2 June 2009,⁵⁰⁹ Acting Commander Jouning indicated that he was "still working through the access to recordings and some of these risks this presents but we should have an acceptable resolution".⁵¹⁰
- 23.31 Despite what Counsel Assisting suggested in cross-examination,⁵¹¹ there is nothing in that email chain that would alert a reader to probe Acting Commander Jouning's

⁴⁹⁶ T12402.30-32 (L Cornelius).

⁴⁹⁷ T12402.30-32 (L Cornelius).

⁴⁹⁸ T11046.35-40 (L Cornelius).

⁴⁹⁹ T12396.7-10 (L Cornelius).

⁵⁰⁰ T12408.28 – T12409.27 (L Cornelius).

⁵⁰¹ T12409.22-27 (L Cornelius); Exhibit RC1018b – Emails between Assistant Commissioner Luke Cornelius, Mr Rod Jouning, Mr Danyne Moloney and Mr Steve Waddell dated 2 June 2009 (VPL.0005.0012.0854 at 0856).

⁵⁰² T12402.46 – T12403.1-7 (L Cornelius).

⁵⁰³ T12389.39-41 (L Cornelius).

⁵⁰⁴ T12406.14-15 (L Cornelius).

⁵⁰⁵ T12408.41-43 (L Cornelius).

⁵⁰⁶ T11114.32,41 (L Cornelius).

⁵⁰⁷ T12559.14-16 (L Cornelius).

⁵⁰⁸ T12405.39-45 (L Cornelius).

⁵⁰⁹ Exhibit 1018b – Emails between Assistant Commissioner Luke Cornelius, Mr Rod Jouning, Mr Danyne Moloney and Mr Steve Waddell dated 2 June 2009 (VPL.0005.0012.0854).

⁵¹⁰ T12459.2-4; Exhibit 1018b – Emails between Assistant Commissioner Luke Cornelius, Mr Rod Jouning, Mr Danyne Moloney and Mr Steve Waddell dated 2 June 2009 (VPL.0005.0012.0854).

⁵¹¹ T12459.17-39 (L Cornelius).

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comment: "some of the risks this presents".⁵¹² The SDU controlled information tightly and AC Cornelius was aware that Ms Gobbo had provided information as a human source in respect of Taskforce Briars.

- 23.32 It is only with the benefit of hindsight and the full background of Ms Gobbo's involvement with Victoria Police that any reference to "risks" can be given its full weight. Indeed, AC Cornelius explained that:⁵¹³

...the key risk that I had in mind at the time...was the concern that Steve Waddell had expressed to me and that was he was wanting to check matters of fact in relation to what Ms Gobbo had told us in her draft statement...

- 23.33 And importantly AC Cornelius went on to say:⁵¹⁴

...I had a clear view about what I saw the risks as being and I don't recall ever being briefed by Rod Jouning or anyone else about risks that might have been identified by the SDU.

- 23.34 This is consistent with the proposition that AC Cornelius was deliberately isolated from Ms Gobbo's involvement as a human source.

- 23.35 Further, for AC Cornelius, delays in requests and refusals were part of everyday life in a large organisation.⁵¹⁵ He was also aware that the SDU had a strict mandate to tightly control information about human sources.⁵¹⁶ Given this, it was not unreasonable for AC Cornelius to have operated under the assumption that the SDU was operating in alignment with their standard operations and in the best interests of the organisation.

- 23.36 In all of these circumstances it would be unfair to expect to AC Cornelius to have become suspicious from the limited information he was provided with.

- 23.37 Given his lack of knowledge of the extent of Ms Gobbo's role as a human source, AC Cornelius explained in his evidence that:⁵¹⁷

...the benefit of hindsight is a wonderful thing, I dealt with these issues on the basis of the information that was available to me at the time.

24 AC Cornelius behaved properly with the information that he had

- 24.1 AC Cornelius was not in possession of the full picture. Even when he took over from Mr Overland as Chair of the Petra investigation, he was not apprised of the extent of Ms Gobbo's involvement as a human source.⁵¹⁸

- 24.2 At all times, AC Cornelius acted ethically and lawfully in response to the information that he did have.

- 24.3 On his return from leave in January 2009, AC Cornelius became aware that Ms Gobbo had been made a witness for Taskforce Petra. As a result, he knew there were disclosure requirements.

- 24.4 Her status as a witness was disclosed at the earliest opportunity, being Mr Dale's bail hearing on 13 March 2009.⁵¹⁹

- 24.5 He stated that had he known Ms Gobbo was a human source he would have recognised that further steps needed to be taken. He explained that:⁵²⁰

⁵¹² T12459.1-4 (L Cornelius).

⁵¹³ T12459.25-32 (L Cornelius).

⁵¹⁴ T12459.36-39 (L Cornelius).

⁵¹⁵ T12403.6-8 (L Cornelius).

⁵¹⁶ T11061.4-9 (L Cornelius).

⁵¹⁷ T11088.4-6 (L Cornelius).

⁵¹⁸ T12378.29-32 (L Cornelius).

⁵¹⁹ T13483.11-16 (N Gobbo).

⁵²⁰ T12352.11-20 (L Cornelius).

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I would have immediately recognised that there were significant problems with that, because it is a long-standing and established principle that using a human source as a witness is fraught with danger, first and foremost because, by definition, if you're using someone as a witness, you do, of course have to disclose their identity.

- 24.6 In cross-examination, AC Cornelius was surprised to learn of the concept of a "barrier break",⁵²¹ a strategy of deploying Ms Gobbo as a witness from Taskforce Petra rather than the SDU, in order to avoid disclosing her previous involvement with the SDU as a human source.⁵²² AC Cornelius described this concept as a "legal fallacy" and in his view it would not have provided a means of avoiding Victoria Police's disclosure obligations.⁵²³
- 24.7 As explained above, in early 2009, he became aware of Ms Gobbo's role as an informer - to a limited extent - in Taskforce Briars. Once he was aware of that role, he knew that Victoria Police had disclosure obligations. AC Cornelius' unwavering view was that:⁵²⁴
- The bottom line [was] that we were under a positive obligation to disclose all matters relevant to Ms Gobbo.*
- 24.8 In July 2009, DI Waddell raised concerns about Ms Gobbo's evidence, including about issues of legal professional privilege. In a summary prepared by DI Waddell and presented to the Taskforce Briars IMC on 13 July 2009, DI Waddell noted:⁵²⁵
- Is source acting for Waters – at one stage source tells handlers that he will come to her for advice re OPI hearing – sounds like acting in capacity as (sic) solicitor. In other parts of material source makes it clear she has only ever acted for Water on 56a application re Strawhorn – only other advice she has proffered (sic) as a friend.*
- 24.9 This was the first time AC Cornelius was alerted to issues of legal professional privilege with respect to Ms Gobbo.
- 24.10 DI Waddell also repeated these concerns in an email to AC Cornelius on 15 July 2009.⁵²⁶ AC Cornelius recognised the risks associated with Ms Gobbo potentially having acted as an informant against a client, and he assisted DI Waddell by referring the matter to Mr McRae, in the VDLP, in order to engage outside legal counsel.
- 24.11 In evidence, Mr Cornelius explained that he thought it was appropriate to brief counsel given the sensitivity of the issues:⁵²⁷
- I thought it was appropriate within the context of considering PII matters, and the sensitive issues around disclosure of someone potentially as a registered human source, that we ought [to] get independent legal advice on that point and that's why Mr Maguire was briefed.*
- 24.12 This response mimics the steps taken by AC Cornelius, as set out earlier, in response to the Mokbel subpoena and the ██████████ letters. Whenever red flags were raised AC Cornelius obtained independent legal advice.
- 24.13 Counsel Assisting submit that AC Cornelius made a decision to ignore the independent legal advice, given by Mr Maguire, and along with Mr McRae determined that Ms Gobbo's history as a human source was simply not relevant and therefore not to be the subject of any legal advice and judicial scrutiny.⁵²⁸

⁵²¹ T12360.22-28 (L Cornelius).

⁵²² T12361.1-10 (L Cornelius).

⁵²³ T12368.30-33 (L Cornelius).

⁵²⁴ T11045.11-13 (L Cornelius).

⁵²⁵ Exhibit RC1203b – Witness summary prepared by Mr Stephen Waddell, undated (VPL.0005.0012.0828 at .0832).

⁵²⁶ Untendered email from Stephen Waddell to Luke Cornelius regarding legal advice dated 15 July 2009 (VPL.0013.0001.0103).

⁵²⁷ T12498.16-22 (L Cornelius).

⁵²⁸ Counsel Assisting's Submissions, Volume 2 at [3967].

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- 24.14 Mr Maguire's advice was revised during the course of the relevant period. His revised advice provided that Ms Gobbo's history with Victoria Police would be required to be disclosed to the court, at a minimum, with respect to Mr Dale's prosecution. Mr Maguire had also advised that if Mr Perry was charged with murder it was probable that the extent of her assistance would be made known.⁵²⁹
- 24.15 AC Cornelius did not ignore Mr Maguire's legal advice. His understanding of the advice was limited to the summary of Mr Maguire's advice in the Taskforce Briars update dated 24 August 2009. It stated that:
- early advice from Maguire is that witnesses past can probably be protected in prosecution of Dale. On other hand it is probably that if Perry is charged with murder it is probably that extent of witness assistance will be known.*
- 24.16 In his statement, AC Cornelius notes that: "*I do not recall anything further about this 'early advice'.*"⁵³⁰ Additionally, AC Cornelius explained that he did not recall seeing any final advice from Mr Maguire, not being told about its contents. He has not been able to locate a copy of any written advice in his records from Mr Maguire in preparing for this Royal Commission.⁵³¹
- 24.17 AC Cornelius explained in cross-examination, in relation to Taskforce Petra, it was his understanding that Mr Maguire's advice was that as her involvement in Taskforce Briars was not relevant to Mr Dale's prosecution, "*then it would be open to us to argue on PII ground that her assistance to us in relation to the Briars matter and her registration as a human source...would not need to be disclosed*".⁵³² At no point was AC Cornelius made aware that Ms Gobbo had acted as a human source with respect to Taskforce Petra. With respect to Taskforce Briars, he explained that "*if we relied on her statement in relation to admission that...Perry had made to her...then I think my understand was that we would then need to disclose her existence as a human source*".⁵³³ This is "how [he] understood [Mr Maguire's] advice".⁵³⁴
- 24.18 AC Cornelius was never provided all the information about Ms Gobbo. As explained above, there seems to have been a deliberate choice to ensure that he was not fully appraised with knowledge of the extent of Ms Gobbo's involvement with Victoria Police. It is unfair to expect him to have pulled a thread or to make a complete risk assessment when he was unaware that the thread or threat even existed. At all times, AC Cornelius did the best he could with the knowledge he possessed.
- 25 The Commissioner should find that AC Cornelius is not in any way responsible for the events that have given rise to this Royal Commission**
- 25.1 The appropriate conclusions that the Royal Commission should make about AC Cornelius are that:
- (a) AC Cornelius was an honest witness.
 - (b) At all times during his tenure as Assistant Commissioner of ESD, he acted ethically and lawfully.
 - (c) At material times AC Cornelius was not made aware of the extent of Ms Gobbo's role as a human source. He did not know and was never made aware that she had been a registered human source since 2005.

⁵²⁹ T12509.39 - T12510.4 (L Cornelius).

⁵³⁰ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [127] (VPL.0014.0057.0001 at .0022).

⁵³¹ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [129] (VPL.0014.0057.0001 at .0022).

⁵³² T12497.23-31 (L Cornelius).

⁵³³ T12497.33-40 (L Cornelius).

⁵³⁴ T12497.47-T12498.1 (L Cornelius).

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- (d) He was only made alive in 2009 to the fact that Ms Gobbo had provided source material on Mr Waters and Mr Lalor in respect of Taskforce Briars.
- (e) Once he became aware that Ms Gobbo may have acted for Mr Waters and that there were concerns regarding her professional obligations as a legal practitioner, he obtained independent legal advice.⁵³⁵
- (f) AC Cornelius does not condone the actions of Victoria Police in managing Ms Gobbo as a human source and recognises the need for change to processes, procedures and behaviours as well as increased vigilance both at an organisational level and for individual members of the Victoria Police.

Saul Holt QC
Amelia Hughes

⁵³⁵ Exhibit RC0898 – Statement of Assistant Commissioner Thomas (Luke) Cornelius dated 20 September 2019 at [118]-[120] (VPL.0014.0057.0001 at .0020 –.0021).

G Submission of former Inspector Douglas Cowlshaw

26 The Risk Assessment

- 26.1 Mr Cowlshaw was the Acting Inspector of the SDU in the period from 16 September 2005 to 15 March 2006. This submission relates to Counsel Assisting's proposed findings about that period and specifically, Mr Cowlshaw's knowledge of a risk assessment completed by the SDU on around 23 November 2005 (**Risk Assessment**).
- 26.2 There are four matters which are critical to a fair assessment of the evidence that Mr Cowlshaw gave to the Royal Commission in relation to the risk assessment.
- 26.3 *First*, Mr Cowlshaw acted as Inspector of the SDU shortly after it was established and at a time where the unit had no full time Inspector. In fact, as the submissions of Counsel Assisting say, there was no full time Inspector of the SDU until 2010.⁵³⁶
- 26.4 The lack of funding for a full time inspector and the difficulties that it posed for Mr Cowlshaw are acknowledged in the submissions of Counsel Assisting.⁵³⁷ Counsel Assisting also refer to the other responsibilities that Mr Cowlshaw had at the time.⁵³⁸ While Mr Cowlshaw does not shy away from the responsibilities that he had as Officer in Charge of the SDU in that period,⁵³⁹ the reality was that this role was additional to the already significant responsibilities that Mr Cowlshaw had within Victoria Police at the time and it was not – and could not be – his number one priority.
- 26.5 *Second*, Mr Cowlshaw's evidence to the Royal Commission was that he does not recall ever receiving or seeing the risk assessment.⁵⁴⁰ Given the passage of time it is understandable that Mr Cowlshaw's recollection of this event is incomplete.
- 26.6 Contrary to the submissions of Counsel Assisting (at [306]), Mr Cowlshaw did not accept that he received the risk assessment and would have read it. The passage relied on by Counsel Assisting is equivocal:⁵⁴¹

MS TITTENSOR: If we can - this is probably only going to be - if we can go up to the 23rd. If you see there this is Officer Green's diary entry for the same date, Wednesday the 23rd, and that's of November. You'll see on the bottom of the next page that it's November and he likewise records handing you a document, and if you looked at the corra number of the document it will match the one that's in Officer Black's diary. There's two separate diaries that indicate that they've delivered documents to you on that date, one of which is the risk assessment. Do you accept that you received the risk assessment from Officer Black on that day?

MR COWLISHAW: I have, I just have no recollection of ever seeing it. I just don't remember.

MS TITTENSOR: Do you accept on the basis of those diary entries that you were handed it on that day?

MR COWLISHAW: Yeah, the only - yeah, I do. The only strange thing there is that I haven't noted it in mine. I don't know why that is if I received them. It's something I would do, so I can't explain that.

MS TITTENSOR: You've not recorded anything that day in your diary?

⁵³⁶ Counsel Assisting's Submissions, Volume 2 at [301].

⁵³⁷ Counsel Assisting's Submissions, Volume 2 at [315].

⁵³⁸ Counsel Assisting's Submissions, Volume 2 at [303].

⁵³⁹ T10301.25-32 (Cowlshaw).

⁵⁴⁰ T10332.21-25; T10332.21-25

⁵⁴¹ T10314.18-45 (Cowlshaw).

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- MR COWLISHAW: No.
- MS TITTENSOR: *Save for the date at the top of the page; is that right?*
- MR COWLISHAW: *Yeah, and I don't know why that is.*
- MS TITTENSOR: *Assuming that you got the document it's something that you would have read at the time?*
- MR COWLISHAW: *If I got it, yes.*
- 26.7 Later, Mr Cowlshaw clearly states that he has no recollection of having received the Risk Assessment:⁵⁴²
- MR CHETTLE: *Do you accept that there is no doubt whatsoever that you were given the risk assessment and you simply don't remember it?*
- MR COWLISHAW: *I simply don't remember.*
- MR CHETTLE: *Do you accept you got it?*
- MR COWLISHAW: *No, I don't accept I got it. just simply don't --*
- MR CHETTLE: *You won't accept you've got it if you don't have an entry in your diary?*
- MR COWLISHAW: *No. No, I don't accept that I got it simply because I can't remember it.*
- 26.8 *Third*, while Mr Cowlshaw acknowledges the diary entry of Officer Black, it does not exclude the possibility that the Risk Assessment was delivered to the office of Mr Cowlshaw, rather than being delivered to Mr Cowlshaw personally.
- 26.9 *Fourth*, the evidence before the Royal Commission is that the policies and procedures surrounding the SDU were in their infancy at the time that Ms Gobbo was registered. Mr Cowlshaw refers to and adopts the submissions of Victoria Police in relation to these issues.⁵⁴³
- 26.10 In light of the above matters, there is no basis for the Royal Commission to find that Mr Cowlshaw received and read the Risk Assessment. Accordingly, there is no basis for the Royal Commission to find that Mr Cowlshaw failed to identify the risks or concerns that were posed by Ms Gobbo's use as a human source.
- 26.11 As Mr Cowlshaw said in his oral evidence:⁵⁴⁴
- MS TITTENSOR: *You're aware that that document indicated that Ms Gobbo acted for significant gangland figures, including Mr Mokbel?--*
- MR COWLISHAW: *I haven't seen the document, so.*
- MS TITTENSOR: *You're not aware of - - - ?*
- MR COWLISHAW: *I can't recall. I can't recall the document and I can't recall having that knowledge.*
- 26.12 It is not open for the Royal Commission to make the findings proposed at paragraph [314] of the Submissions of Counsel Assisting.

Adam Purton

⁵⁴² T10325.7-16⁵⁴³ See Part 6(S) Closing Submissions on behalf of Victoria Police and Individual Members.⁵⁴⁴ T10315.11-17

H Submission of Inspector Andrew Glow

27 Introduction

- 27.1 In February 2008, Inspector Andrew Glow was appointed as the officer-in-charge of both the Source Development Unit (SDU) and the Undercover Unit (UCU). In May 2010, Detective Inspector John O'Connor was appointed as Inspector in charge of the SDU. Inspector Glow retained management of the UCU.⁵⁴⁵
- 27.2 Inspector Glow reported to Superintendent Tony Biggin until May 2010, when Supt Biggin was succeeded by Superintendent Paul Sheridan.
- 27.3 Counsel Assisting invite the Commissioner to reject Inspector Glow's evidence despite him not being called to give oral evidence before the Royal Commission. As a result, Inspector Glow has not had an opportunity to expand on his written statement or respond to Counsel Assisting's criticisms of his conduct during his tenure as OIC of the SDU. If Inspector Glow had been provided with an opportunity to address the Commission on the matters raised by Counsel Assisting, he would have responded in the terms outlined in this submission.
- 27.4 It is submitted on behalf of Inspector Glow that the Commissioner should resist making the findings suggested by Counsel Assisting because they are speculative, inaccurate and to do so would be procedurally unfair.
- 27.5 Further, the proposed findings against Inspector Glow do not advance the Royal Commission's Terms of Reference.

28 Procedural fairness

- 28.1 Inspector Glow adopts Part 2 of the submissions made by Victoria Police in relation to procedural fairness.
- 28.2 One of the key tenets relied on is the Commission's obligation to only make findings of fact where satisfied there is a proper basis to do so. The failure to put a matter or to cross-examine in respect of a matter may not necessarily require a finding to be rejected, but it ought, at the very least, affect the weight attached to that evidence.⁵⁴⁶
- 28.3 There are significant contextual matters about which the Commissioner has not heard directly from Inspector Glow. These include his lack of involvement in investigating organised crime for many years before he was appointed as Inspector in charge of the SDU and UCU. As a result, Inspector Glow was not familiar with key players in organised crime or the lawyers that frequently represented them.
- 28.4 Another relevant matter the Commissioner has not heard from Inspector Glow about is that he had not had any investigative or operational experience for many years prior to being appointed as the Inspector across the SDU and the UCU. He had developed strengths in policy and management.
- 28.5 Finally, paragraph [12.16] of Victoria Police's Tranche 2 Submissions is adopted in relation to Inspector Glow. Police diaries are not, and are not intended to be, verbatim notes. There is a reason why in a criminal case a person would not be cross examined on someone else's notes which they did not adopt at the time. It is a potentially unreliable and flawed process and the outcomes likewise. Counsel Assisting's submissions in relation to Inspector Glow, to the extent that they invite the Commissioner to adopt another member's diary notes to contradict Inspector Glow's evidence, should be treated with extreme caution.

⁵⁴⁵ Exhibit RC1217 Statement of Inspector Andrew Glow, 21 November 2019, para [4] (VPL.0014.0095.0001).

⁵⁴⁶ *Royal Commission into the Building and Construction Industry: Final Report*, Volume 2: Conduct of the Commission –Principles and Procedures (February 2003) (Cole Report, Vol 2), 51 at [18].

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29 Evidence of Inspector Glow

- 29.1 Fundamentally, Inspector Glow states that he cannot specifically recall learning when Ms Gobbo was registered source 2958 and 3838.⁵⁴⁷ He states that by the time he joined the Witness Protection Unit in January 2011, he was aware that Ms Gobbo was Witness F. He does not recall making the connection at that time between Ms Gobbo, 3838/2958 and Witness F.⁵⁴⁸
- 29.2 Inspector Glow describes it as a cardinal rule that human sources were always referred to by their number not their name. He says that members of the SDU would use registration numbers in discussion. Inspector Glow operated on the basis that he did not need to know the identity of human sources to do his job.⁵⁴⁹
- 29.3 Inspector Glow maintains this position in response to Counsel Assisting's submissions.

30 Term of Reference 2

- 30.1 The second term of reference of the Royal Commission was to inquire into and report on the conduct of current and former members of Victoria Police in their disclosures about and recruitment, handling and management of Ms Gobbo as a human source.
- 30.2 There are a number of reasons why, in circumstances where Inspector Glow did not give evidence to the Royal Commission, the proposed findings against Inspector Glow do not advance that term of reference.
- 30.3 **First**, Inspector Glow commenced his role at the SDU in February 2008, towards the end of Ms Gobbo's registration as a human source.
- 30.4 **Second**, he had no direct involvement in her recruitment, registration, nor in her management and handling prior to that time. He had limited and indirect involvement in the management and handling of 3838/2958 from February 2008. This can be contrasted with officers above and below Inspector Glow in his chain of command who had been involved in the recruitment, registration, handling and management of Ms Gobbo since September 2005.
- 30.5 **Third**, it is clear that an accepted organisational failure of Victoria Police, not to appoint dedicated inspectors to each of the SDU and UCU, impacted on Inspector Glow's ability to engage in the day-to-day management of the SDU. Inspector Glow ^{PII} [REDACTED] which he considered to present the greatest risks due to members' involvement in ^{PII} [REDACTED]. Inspector Glow would ^{PII} [REDACTED] once or twice a week.⁵⁵⁰ Counsel Assisting accept Inspector Glow's evidence that he was "spread very thin" across the two units. They observe that far less than half his time was spent supervising the SDU.⁵⁵¹
- 30.6 **Fourth**, it is borne out by the evidence before the Commission and from the totality of Counsel Assisting's submissions that Inspector Glow was an insignificant figure in any of the key decision-making events that occurred during his tenure as Inspector of the SDU. Further, and related to the second point above, Inspector Glow was not a necessary or regular participant in briefings related to Ms Gobbo that occurred between officers above and below him in his chain of command.
- 30.7 This is most clearly evident in the meetings that occur in June 2009 when Briars Taskforce want to take a statement from Ms Gobbo. As Officer Black recorded, as of 1 June 2009 "OIC unaware of situation and had not been briefed".⁵⁵² At the meetings Inspector Glow attended, the issue was consistently being escalated up the chain of

⁵⁴⁷ Exhibit RC1217 Statement of Inspector Andrew Glow, dated 21 November 2019, [para 6] (VPL.0014.0095.0001).

⁵⁴⁸ Exhibit RC1217 Statement of Inspector Andrew Glow, dated 21 November 2019, [para 7] (VPL.0014.0095.0001).

⁵⁴⁹ Exhibit RC1217 Statement of Inspector Andrew Glow, dated 21 November 2019, [para 24] (VPL.0014.0095.0001).

⁵⁵⁰ Exhibit RC1217 Statement of Inspector Andrew Glow, dated 21 November 2019, [para 17] (VPL.0014.0095.0001 @ .0003).

⁵⁵¹ Exhibit RC1217 Statement of Inspector Andrew Glow, dated 21 November 2019, [para 23] (VPL.0014.0095.0001 @ .0004); Counsel Assisting's Submissions, Volume 2 at [326].

⁵⁵² Exhibit RC0591B Officer Black diary, dated 1 June 2009, 694, (RCMPI.0090.0001.0001 @ 0694).

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command. For example, A/Commander Jouning attended a meeting on 2 June 2009. Superintendent Mark Porter attended a meeting on 3 June 2009. The outcome of this meeting was that the matter was to be escalated by Supt Porter to Assistant Commissioner, Crime Dannye Moloney.⁵⁵³

- 30.8 On 15 June 2009, a meeting was attended by Supts Biggin and Porter with an outcome noted in Inspector Glow's diary that the Briars Taskforce Board of Management, namely AC Moloney and Assistant Commissioner Luke Cornelius would determine the issue.⁵⁵⁴ In Inspector Glow's own words:

*It might have been better for me to understand these issues more thoroughly to be part of these discussions, but the specialist SDU members and very senior Victoria Police members were present and active participants at these meetings.*⁵⁵⁵

- 30.9 In Inspector Glow's circumstances, it is submitted that the Commissioner cannot be satisfied that making findings against him personally can advance the Royal Commission's terms of reference.

31 Recommended findings

- 31.1 Counsel Assisting is sceptical of Inspector Glow's statement that he was not aware of the identity of 2958 and 3838 while overseeing the SDU.⁵⁵⁶
- 31.2 Counsel Assisting, relying on 22 different matters, invite the Commissioner to find that, contrary to his evidence, Inspector Glow "was aware that Ms Gobbo was a barrister who was acting as a human source".⁵⁵⁷
- 31.3 To make this finding the Commissioner needs to reject Inspector Glow's evidence. This is of no small import – the Commissioner must find that Inspector Glow either lied or was mistaken about his recollections in his statement. In the absence of him being cross-examined, the Commissioner is simply not be able to differentiate between those two situations. Relying again on procedural fairness, it is submitted that great care must be taken before a finding is made that requires the Commissioner to first reject Inspector Glow's evidence on this fundamental point.
- 31.4 Further, it is submitted that when the matters set out in para [33] are critically assessed their value evaporates.
- 31.5 The responses set out below to the matters in paras [333.1] to [333.22] must be read in light of the totality of these submissions, including primarily the submissions in relation to procedural fairness, and the undisputed evidence that Inspector Glow was "spread very thin" supervising the SDU and the UCU in circumstances where it is conceded that Victoria Police should have appointed dedicated inspectors to each unit.
- 31.6 The submission at [333.1] takes the Commissioner no closer to being able to reject Inspector Glow's evidence. Whether or not Inspector Glow understood the "implications of potentially tainted evidence in the court environment" (whatever that means), the submission relies on a detailed awareness of matters such as the source's occupation, who the source was providing information about, and the fact that the source may have been acting for those people. There is simply no evidence that suggests Inspector Glow had any such detailed awareness of 3838 / 2958 or in fact any of the sources that the SDU was handling.
- 31.7 In relation to para [333.2], no "procedural, ethical and value audit" completed by Inspector Glow has been found. No replies to Inspector Glow's emails to Officers

⁵⁵³ Exhibit RC1217 Statement of Andrew Glow, dated 21 November 2019, at [53]-[54] (VPL.0014.0095.0001, @.0008).

⁵⁵⁴ Exhibit RC1217 Statement of Andrew Glow, dated 21 November 2019, at [55] (VPL.0014.0095.0001, @.0008-9).

⁵⁵⁵ Exhibit RC1217 Statement of Andrew Glow, dated 21 November 2019, at [64] (VPL.0014.0095.0001, @.0010).

⁵⁵⁶ Counsel Assisting's Submissions, Volume 2 at [330].

⁵⁵⁷ Counsel Assisting's Submissions, Volume 2 at [333].

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- White, Black and Hardie about how to conduct such an audit have been located.⁵⁵⁸ It would be dangerously speculative to guess at the material Inspector Glow might have looked at, to suggest he knew the identity of 3838/2958 at this time.
- 31.8 Inspector Glow does not dispute the submission at para [333.3] that he was aware of an individual human source with the registration numbers 3838/2958. There is no evidence that Inspector Glow saw the Issue Cover Sheet related to Ms Gobbo's change in registration number. Inspector Glow's awareness of human source 3838 / 2958 takes the Commissioner no further in being able to reject Inspector Glow's evidence that he did not know the identity of this source.
- 31.9 Inspector Glow does not dispute that on 14 March 2008, shortly after he commenced in his role as Inspector in charge of SDU, Officer Black advised him about an incident involving 2958.⁵⁵⁹ There is no basis for Counsel Assisting's submission that it is "most unlikely" that Inspector Glow would not have been briefed in relation to the identity of 3838 / 2958 at this time. Unfortunately, the Commissioner has not had an opportunity to hear from Inspector Glow about this. Nonetheless, the issue arose because of a miscommunication between the SDU and the State Surveillance Unit that may have led to the identity of a human source being revealed. From a risk management point of view, there is no reason why Inspector Glow needed to know the identity of 3838 / 2958 to address the miscommunication between two Victoria Police units.
- 31.10 In relation to paras [333.5] – [333.10] and [333.17],⁵⁶⁰ there is simply no evidence that the identity of 3838/2958 was revealed in any of these circumstances. For example, while there may be references to Ms Gobbo by her name in some entries in the Source Management Log (SML), there is no evidence that Inspector Glow read or was provided with those entries. In fact, the evidence is that Inspector Glow was spread very thin between the SDU and UCU so is likely to have read less than more of the SML, if he read any of it at all. Further, if he had read Ms Gobbo's name it would not have resonated with him as he was not attuned to the players in the scene. Another example is the off-site SDU conference (para [333.6]) and the overnight workshop (para [333.17]). Evidence that he attended some parts of a conference or workshop at which 3838/2958 may have been discussed is insufficient for the purposes of making a finding – in direct contrast with Inspector Glow's unchallenged evidence.
- 31.11 At para [333.11], Counsel Assisting misleadingly points to Inspector Glow being included in an email in which arrangements were made "to provide Ms Gobbo's identity" to the Assistant Director of the OPI, Graham Ashton as further evidence that Inspector Glow was aware of Ms Gobbo's identity.⁵⁶¹ Counsel Assisting's submission ignores Inspector Glow's evidence. As he pointed out, he was copied into the final email in a chain sent by Supt Biggin to Officers White and Black that referred simply to 2958.⁵⁶² The email did not require any action on his part.⁵⁶³
- 31.12 Counsel Assisting refer to the authorisation of concert tickets for "3838" as further evidence that Inspector Glow was aware of the identity of that source. Again, there is nothing in this submission that links 3838 to Ms Gobbo.⁵⁶⁴
- 31.13 Similarly, there is nothing in the material related to paras [333.13] to [333.16], that is revealing of the identity of 3838/2958. In particular, there is no evidence that Inspector Glow saw the "SWOT analysis" provided by Supt Biggin to Command in January 2009. Ms Gobbo is consistently referred to by her source numbers. Inspector Glow was one

⁵⁵⁸ Exhibit RC1217 Statement of Inspector Andrew Glow, dated 21 November 2019, para [44]-[45] (VPL.0014.0095.0001, @ .0007).

⁵⁵⁹ Counsel Assisting's Submissions, Volume 2 at [333.4].

⁵⁶⁰ Counsel Assisting's Submissions, Volume 2 at [333.5]-[333.10].

⁵⁶¹ Counsel Assisting's Submissions, Volume 2 at [333.11].

⁵⁶² Untendered email from Supt Biggin to Officers White and Black, 13 August 2008 (VPL.2000.0002.0084)

⁵⁶³ Exhibit RC1217 Statement of Inspector Andrew Glow, dated 21 November 2019, para [49] (VPL.0014.0095.0001, @ .0007-8).

⁵⁶⁴ Counsel Assisting's Submissions, Volume 2 at [333.12].

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of four senior members who signed Ms Gobbo's deactivation form, and the member who had had the least to do with her.

- 31.14 The matters raised in paras [333.18] – [333.21] relate to the concerns raised in June 2009 about the taking of a statement from Ms Gobbo by Briars Taskforce.⁵⁶⁵ At this time, Inspector Glow was Acting Staff Officer to Rod Jouning, the Acting Commander, Intelligence and Covert Support Command (I&CS). These duties were in addition to supervision of the SDU and UCU.⁵⁶⁶ Inspector Glow's evidence is that he does not recall the details set out in Officer Black's electronic diary entries in June 2009 and does not know the extent to which he was provided with this information at the time. He believes he was aware at the time that the issues related to 3838/2958 however expects that discussions involved references to the source numbers, rather than the source's identity.⁵⁶⁷ It is clear that to some extent, Inspector Glow was on the "outer" in relation to this event as Officer Black records on 1 June 2009 that "OIC unaware of situation and had not been briefed".⁵⁶⁸
- 31.15 There is no evidence to support Counsel Assisting's assertion at para [333.22], that Inspector Glow's attendance at a conference in July 2009, approximately six months after Ms Gobbo had been deactivated, indicates an awareness by him of the identity of 3838 / 2958. There is nothing to suggest that the conference provided anything more than an opportunity to workshop the unique challenges posed by features of the human source known as 3838 / 2958.
- 31.16 It is submitted that the Commissioner cannot be satisfied on the evidence that Inspector Glow was aware that Ms Gobbo was 3838/2958 while he was the Inspector in charge of the SDU. Thus, the proposed findings at para [334] are not open to the Commissioner.
- 31.17 Finally, at para [335], Counsel Assisting invite the Commissioner to find (in the event the Commissioner is not satisfied that Inspector Glow was aware that 3838/2958 was Ms Gobbo and a barrister) that he was in possession of sufficient information (set out at paras [333.1 to 333.22] that he was:

*obliged to investigate and sought further information regarding risks which pertained to the use of Ms Gobbo as a human source and then satisfied himself that such risks did not exist or had been mitigated.*⁵⁶⁹

- 31.18 For the reasons set out in these submissions, such a finding against Inspector Glow would be grossly unfair. Throughout his tenure as Inspector of SDU he reported directly to Supt Biggin who had a well-established relationship with, and was frequently briefed directly by, Officers Black and White. It is evident from much of the correspondence during this time, that Inspector Glow is frequently a secondary recipient of emails, a bit player in decision-making that occurs in relation to 3838 / 2958. By the time Inspector Glow joined the SDU, her handlers were looking to contain the relationship and move it towards deactivation.⁵⁷⁰

32 Conclusion

- 32.1 For the reasons set out herein, it is submitted that Counsel Assisting's proposed findings against Inspector Glow are not open to the Commissioner.

Saul Holt QC
Susanna Locke

⁵⁶⁵ Counsel Assisting's Submissions, Volume 2 at [333.18]-[333.22].

⁵⁶⁶ Exhibit RC1217 Statement of Inspector Andrew Glow, dated 21 November 2019, para [50] (VPL.0014.0095.0001, @ .0008).

⁵⁶⁷ Exhibit RC1217 Statement of Inspector Andrew Glow, dated 21 November 2019, para [62] (VPL.0014.0095.0001, @ .0010).

⁵⁶⁸ Exhibit RC0591B Officer Black diary, 1 June 2009, 694, (RCMPI.0090.0001.0001 @ .0694).[need to check]

⁵⁶⁹ Counsel Assisting's Submissions, Volume 2 at [335].

⁵⁷⁰ Exhibit RC1217 Statement of Inspector Andrew Glow, dated 21 November 2019, para [77] (VPL.0014.0095.0001, @ .0012).

I Submission of Acting Inspector Mark Hatt

33 Introduction

- 33.1 Counsel Assisting submit that it is open to the Commissioner to make findings about Acting Inspector (**Act. Insp.**) Mark Hatt as follows:
- (a) That he was aware of Ms Gobbo's involvement with Mr McGrath, and her preparedness to share with police matters which, quite obviously, should have remained confidential as between her and her client.⁵⁷¹
 - (b) That he was aware that Mr Thomas would not be told of Ms Gobbo's involvement in Mr McGrath's statement-taking process because of a claim of "public interest" and may therefore have contributed to a potential injustice.⁵⁷²
 - (c) That he was aware of the arrangements put in place to protect Ms Gobbo from compromise during the committal proceeding of Orman.⁵⁷³
- 33.2 These findings are not open on the evidence.
- 33.3 First, *none* of the critical allegations underpinning each proposed finding were put to Act. Insp. Hatt in his cross-examination. In particular, it was not put to him that he was aware:
- (a) that Ms Gobbo was prepared to share with police matters which should have remained confidential between Ms Gobbo and her client Mr McGrath;
 - (b) that Mr Thomas would not be told, presumably by officers of Victoria Police, of Ms Gobbo's role in Mr McGrath's statements, on the basis of a claim of "public interest"; or
 - (c) of arrangements put in place to protect Ms Gobbo from compromise during Mr Orman's committal proceeding.
- 33.4 Second, the allegation at paragraph [690], to the extent it can be understood, is entirely unparticularised. Further, it is contradicted by the evidence:
- (a) given by Mr Thomas that he was aware of Ms Gobbo's involvement with Mr McGrath in the preparation of statements that implicated Mr Thomas;⁵⁷⁴ and
 - (b) that Mr Thomas' solicitor and senior counsel were aware of Ms Gobbo's prior representation of Mr McGrath.⁵⁷⁵
- 33.5 Third, the proposed findings ignore the uncontradicted evidence given by Act. Insp. Hatt. Counsel Assisting offer no explanation for why Act. Insp. Hatt's evidence has not been put before the Commissioner, nor is it suggested that there is any basis for the Commissioner to disbelieve that evidence.
- 33.6 Fourth, contrary to Counsel Assisting's submissions, there is *no* evidence to suggest that Act. Insp. Hatt was aware of any alleged arrangements put in place to protect Ms Gobbo from compromise during Mr Orman's committal proceeding.
- 33.7 These issues are explored in detail below. Counsel Assisting are invited to withdraw the submission that these findings are open.

⁵⁷¹ Counsel Assisting's Submissions at p 134 [641], Vol 2.

⁵⁷² Counsel Assisting's Submissions at pp 143-144 [690], Vol 2.

⁵⁷³ Counsel Assisting's Submissions at pp 718-719 [2908], Vol 2.

⁵⁷⁴ T13581.20-T13583.35 (Thomas).

⁵⁷⁵ Exhibit RC1163B – Memorandum to Counsel from Valos Black to Colin Lovitt QC, 18 February 2005 at p 10 (MIN 5000.0002.4504 at .4513).

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34 Context and background

- 34.1 Act. Insp. Hatt was a member of the Purana Taskforce between September 2003 and November 2004, as a Detective Senior Constable, and again between October 2006 and April 2010, as a Detective Acting Sergeant.
- 34.2 During both periods, he was a junior member of a crew investigating numerous gangland murders that had been committed in Victoria. In his first period at the Purana Taskforce, Act. Insp. Hatt was one of the most junior members. He worked under the direction and supervision of his superiors. He is one of the most junior officers (when the relevant events occurred) to have been the subject of adverse comment in Counsel Assisting's submissions.
- 34.3 Counsel Assisting do not submit that Act. Insp. Hatt acted other than in accordance with the instructions of his superiors and his training. Nor is such a submission open. Act. Insp. Hatt has an exemplary record as an officer, as evidenced by the summary of his career at Victoria Police and the professional awards he has received.⁵⁷⁶

35 Proposed finding at paragraph [641]

- 35.1 On 25 October 2003, Mr McGrath was arrested and charged with the murder of Michael Marshall.
- 35.2 At that time, Hatt's crew was led by Detective Sergeant Stuart Bateson and included Detective Senior Constables Nigel L'Estrange and Michelle Kerley. Act. Insp. Hatt did not process, interview or charge Mr McGrath upon his arrest for the Marshall murder.⁵⁷⁷
- 35.3 Act. Insp. Hatt believed that Mr McGrath decided to cooperate with police on the day of his arrest due to the insurmountable evidence against him for the murder of Mr Marshall.⁵⁷⁸
- 35.4 On 16 February 2004, Act. Insp. Hatt became aware that Ms Gobbo was representing Mr McGrath. He became aware of that matter when, during a prison visit, Mr McGrath asked him to arrange for Mr McGrath's partner to call Ms Gobbo.⁵⁷⁹
- 35.5 Mr McGrath's statements were taken between 22 and 30 June 2004. Ms Gobbo had no involvement in that process. She also had no involvement in the investigative process that preceded it.
- 35.6 There were three statements – a statement in relation to the Marshall murder, a statement in relation to the Mark Moran murder, and a statement in relation to the Jason Moran and Pasquale Barbaro murders. DSC Hatt had taken the first two statements and Det. Sgt Bateson the latter statement.⁵⁸⁰
- 35.7 On 9 July 2004, then Det. Sgt Bateson and DSC Hatt attended on Mr McGrath in prison for him to read his unsigned statements about the Marshall murder and the Moran/Pasquale murders. The Mark Moran statement was still being drafted.
- 35.8 After Mr McGrath had read his two unsigned statements, he asked for minor amendments, which Det. Sgt Bateson and/or DSC Hatt made in Mr McGrath's presence on the laptop computer(s).⁵⁸¹ Mr McGrath then said he wanted his lawyer Ms Gobbo to review his statements prior to signing them.⁵⁸² There is nothing unusual about an accused person making such a request. It is common which reflects the transparency of his notes recorded in his diary.

⁵⁷⁶ Exhibit RC0262B – Statement of Acting Inspector Mark Hatt, 17 June 2019 at Annexure A (VPL.0014.0043.0001 at .0015–0016).

⁵⁷⁷ Exhibit RC0262B – Statement of Acting Inspector Mark Hatt, 17 June 2019 at [8] (VPL.0014.0043.0001 at .0001).

⁵⁷⁸ T3142.35-38 (M Hatt).

⁵⁷⁹ T3135.27-30 (M Hatt).

⁵⁸⁰ T3377.8-30 (S Bateson); Exhibit RC0785B – Statement of Mr McGrath in relation to the Marshall murder, 13 July 2004 at p 1043 (COM.0103.0001.0002_HA); Untendered statement of Mr McGrath in relation to the Moran and Barbaro murders, 13 July 2004 at p 1017 (VPL.0100.0025.4283 at .4300).

⁵⁸¹ T3378.36-42 (S Bateson); T3380.44-T3381.4 (S Bateson); T9809.45-T9810.1 (S Bateson).

⁵⁸² T3378.32-34 (S Bateson).

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- 35.9 On 10 July 2004, DSC Hatt then took Mr McGrath's unsigned statements to Ms Gobbo in her chambers and she reviewed them.⁵⁸³
- 35.10 Ms Gobbo did not mark up the unsigned statements, nor did she suggest changes. She wrote notes about matters that she intended to speak to Mr McGrath about.⁵⁸⁴ Ms Gobbo identified some of those matters to DSC Hatt, and he noted them in his diary.⁵⁸⁵
- 35.11 The substance of the notes made by DSC Hatt is as follows:
- Paragraph included re indemnity (M/B)*
- Advised police will liaise with OPP*
- Last paragraph – doesn't make sense as there is previous mention of being paid \$50 000 (M/B) – Gobbo to canvass with [McGrath];*
- Knowledge it was a murder (MM) – Gobbo to canvass with [McGrath]*
- 35.12 It was entirely appropriate for Ms Gobbo to raise the first matter with DSC Hatt. It concerned the terms of the indemnity that Mr McGrath was to receive in connection with the evidence he would give. Consistently, DSC Hatt recorded that he advised Ms Gobbo that Victoria Police would liaise with the OPP.
- 35.13 The second and third comments were indiscreet. As to the second, it is no more than a comment on an inconsistency in the statement. Ms Gobbo makes no comment on what the statement should say. She simply notes the inconsistency and that she will take instructions about it.
- 35.14 As to the third, she should not have shared her view, but it was a view common amongst those involved in the investigation and prosecution, including Det. Sgt Bateson. Ms Gobbo was, in that sense, stating the obvious. Ms Gobbo was not revealing to investigators anything they did not already know. Ms Gobbo should not have done it, but in circumstances where Mr McGrath's lack of candour was obvious, it was hardly a significant event.
- 35.15 As to the submission at [641]:
- (a) while Counsel Assisting cross-examined Act. Insp. Hatt about the meeting, he was not cross-examined about whether he understood from the meeting that Ms Gobbo had preparedness to share with police matters which, quite obviously, should have remained confidential as between her and her client;
 - (b) it follows that Act. Insp. Hatt was deprived of the opportunity to address the submission now put against him at [641];
 - (c) for these procedural fairness reasons alone, the Commissioner is compelled not to accept the submission at [641] to the extent that it relates to Act. Insp. Hatt.
- 35.16 Finally, the submission at [641] ignores the relevant evidence given by Com. Bateson and others.
- 35.17 Com. Bateson's evidence was that it was not unusual for defence barristers to express scepticism about their client's statements.⁵⁸⁶ Com Bateson's evidence was realistic and frank. As he said, legal practitioners are not always discreet. Sometimes they express a view that they should keep to themselves. That is what happened on this occasion. Com Bateson said that it was not the first time that a lawyer had been indiscreet in that way.
- 35.18 If Counsel Assisting had asked Act. Insp. Hatt the question that the Commissioner asked Com. Bateson, then the answer may well have been the same. It is unlikely that Com. Bateson is the only police officer to have observed defence counsel being

⁵⁸³ Exhibit RC0776B – Diary of Acting Inspector Mark Hatt, 10 July 2004 (VPL.0005.0114.0001 at .0030); Exhibit RC0273B – Diary and Court Book of Ms Nicola Gobbo, 10 July 2004 at p 5 (MIN.0001.0014.0002 at .0065).

⁵⁸⁴ Exhibit RC0273B – Diary and Court Book of Ms Nicola Gobbo, 10 July 2004 at p 5 (MIN.0001.0014.0002 at .0065).

⁵⁸⁵ Exhibit RC0776B – Diary of Acting Inspector Mark Hatt, 10 July 2004 (VPL.0005.0114.0001 at .0030).

⁵⁸⁶ T3443.32-39 (S Bateson).

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indiscreet. In fact, there is evidence that one of the reasons that some members of Victoria Police were reluctant to go to external counsel for advice was because they had experienced similar indiscretion.⁵⁸⁷

35.19 If those at the meeting on 12 July 2004 had similar experiences to Com. Bateson and others at Victoria Police, then Ms Gobbo being indiscreet with her view about an aspect of her client's statement would have hardly been of any moment.

35.20 Even without that experience, Ms Gobbo's comment was likely to have been of no real significance in the context of the work that these officers were doing at the time and in the context of their focus, which was finalising Mr McGrath's statements.

36 Proposed finding at paragraph [690]

36.1 Counsel Assisting submit at paragraph [690.2] that Act. Insp. Hatt "knew" that Mr Thomas would not be told of Ms Gobbo's role in advising Mr McGrath about his statements because of a claim of "public interest immunity" and therefore may have contributed to a potential injustice.

36.2 In light of the evidence detailed in the individual submissions of former Detective Inspector Gavan Ryan and Com. Bateson within Victoria Police Tranche 1 Submissions, the entire basis for this proposed finding has fallen away. The information about Ms Gobbo's involvement in Mr McGrath's statement-taking process was disclosed subject to a PII claim. The Chief Magistrate upheld the PII claims over the 10 and 11 July 2004 notes.

36.3 As a preliminary matter, paragraph [690.2] asserts that the conduct of Act. Insp. Hatt "*may have contributed to a potential injustice*". The potential injustice is not identified. Act. Insp. Hatt should not be left to guess as to the existence of a "*potential injustice*" to which he is said to have possibly contributed. Procedural fairness requires it to be identified by Counsel Assisting.

36.4 If the "*potential injustice*" is that Mr Thomas and his other legal representatives were not aware that Mr McGrath initially informed police that he did not know that Mr Marshall was to be murdered and he thought it was only a debt collection, but said in his signed statement that he did believe that Mr Marshall was to be murdered, then Act. Insp. Hatt responds as follows.

36.5 There was no potential injustice because, as is set out in detail in the submissions of Com. Bateson and Mr Ryan:

- (a) Victoria Police had disclosed to Mr Thomas and his two co-accused the transcripts of the conversations between Mr McGrath, Det. Sgt Bateson and three other members when Mr McGrath was in custody after the s 464B application;⁵⁸⁸
- (b) the transcripts of the conversations record that Mr McGrath initially told police that he did not know that Mr Marshall was to be murdered and he thought it was only a debt collection;
- (c) these transcripts were used to attack Mr McGrath's credit during the committal hearing by senior counsel for both Mr Thomas and Mr Williams – including on the change of belief that is apparent from comparing the transcripts of Mr McGrath's conversations with Det. Sgt Bateson with Mr McGrath's statement and the facts underpinning his guilty plea;⁵⁸⁹ and
- (d) while Mr Thomas did not have the draft statement, he had the information that was in it and he used it to attack Mr McGrath's credit.

⁵⁸⁷ For example, T6071.25-31 (Smith); T12358.35-12359.21 (L Cornelius).

⁵⁸⁸ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews at pp 3089-3106 (OPP.0041.0001.0002 at .3110-3127).

⁵⁸⁹ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews at T150.21-151.9, T170.13-22, T174.21-31, T244-280, T548-560, T583-586 (OPP.0041.0001.0002). Time has not permitted a full review of the entire transcript of the committal hearing and, therefore, other parts of the transcript may also be relevant.

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- 36.6 Further, documents disclosed to the defence, including Com. Bateson's daybooks and diaries, disclosed that:
- (a) on 9 July 2004, Mr McGrath said that he would not sign his statements until his legal representatives were shown them; and
 - (b) on 12 July 2004, Mr McGrath asked for changes to be made to his statements and said again that he would not sign them until his legal representatives had reviewed them.
- 36.7 Finally, in the course of cross-examination Com. Bateson explained that Mr McGrath had:
- (a) asked his legal representatives to review his statements before they were signed; and
 - (b) made changes to his statements.
- 36.8 Com. Bateson was not asked what changes were made to the statements, or which lawyer advised him.
- 36.9 All of this occurred in an environment in which there is documentary evidence that senior counsel for Mr Thomas and his instructing solicitor knew that Ms Gobbo had acted for Mr McGrath.
- 36.10 There was no "potential injustice": the defence was well aware of the information that Counsel Assisting allege that Com. Bateson was not going to tell Mr Thomas.
- 36.11 In any event, the proposed finding in paragraph [690] cannot be made for other reasons. The proposed finding rests on three premises:
- (a) that 'Ms Gobbo was aware of the circumstances in which Mr McGrath's statements had been made, and therefore the potential weakness in his evidence';
 - (b) that Ms Gobbo had a personal interest in Mr Thomas not finding out about her role; and
 - (c) that Act. Insp. Hatt was aware that Ms Gobbo had advised Mr McGrath about his statements and he was aware that Mr Thomas would not be told because of a claim of public interest immunity.
- 36.12 As to the first, it is true that Ms Gobbo was aware that Mr McGrath initially told police that he did not know that Mr Marshall was to be murdered and he thought it was only a debt collection. All other legal representatives of Mr Thomas and his co-accused knew this as well. This is apparent from the transcripts that were disclosed to Mr Thomas and his two co-accused and the cross-examination of Mr McGrath.
- 36.13 As to the second, the falsity of this premise has been comprehensively demonstrated in the submissions of Com. Bateson and Mr Ryan. Mr Thomas knew that Ms Gobbo had acted for Mr McGrath when he became a Crown witness. Accordingly, Ms Gobbo had no "personal interest" in Mr Thomas not finding out: he already knew. Indeed, she kept him informed about Mr McGrath's decision to cooperate, the progress of his statements and the likely time at which Mr Thomas would be arrested.
- 36.14 The proposition that Ms Gobbo had a personal interest in Mr Thomas not finding out something which he already knew cannot be maintained.
- 36.15 The third premise is also false. There is no evidence at all that Act. Insp. Hatt knew that Mr Thomas would not be told about Ms Gobbo's "role" on the basis of public interest immunity.
- 36.16 The submission at paragraph [690] appears to proceed on the basis of the unstated premise that Ms Gobbo's "role" in reviewing Mr McGrath's statements and advising him was improper. For the reasons set out earlier, it was not.

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- 36.17 Mr McGrath was entitled to instruct his legal representative to review his statements before he signed them, and Ms Gobbo was entitled to take instructions from Mr McGrath about their content and she was obliged to advise him.
- 36.18 Finally, it should not be overlooked that:
- (a) these events occurred well before Ms Gobbo was registered by the SDU as a human source;
 - (b) Ms Gobbo had no involvement in the investigative process;⁵⁹⁰
 - (c) Victoria Police had expected that Mr McGrath would sign his statements on 9 July 2004;
 - (d) Mr McGrath's unsigned statements were shown to Ms Gobbo on 10 July 2004 because Mr McGrath asked for them to be shown to her;
 - (e) it is not unusual for a criminal Crown witness to ask his legal representative to review his statements before they are signed and to provide advice;
 - (f) Ms Gobbo did not mark up the unsigned statements or ask Victoria Police to make any changes to them;
 - (g) Ms Gobbo made notes about matters she wished to speak to Mr McGrath about – conduct that is entirely consistent with his request that she review the statements;
 - (h) Ms Gobbo visited Mr McGrath on 11 July 2004 and took instructions from him;
 - (i) there is no evidence that Victoria Police asked Ms Gobbo to say anything to Mr McGrath about his statements or their contents;
 - (j) Ms Gobbo said also that she would have advised Mr McGrath to be "open and frank with the police so that he would ... be entitled to the maximum benefit".⁵⁹¹
 - (k) As far as we know, the Commission does not know what Mr McGrath's evidence would be about the advice Ms Gobbo and/or his other lawyers gave him, because he was not asked and his solicitor was not asked either by those assisting the Commission;
 - (l) Ms Gobbo did not, after speaking to Mr McGrath, communicate to Victoria Police any particular changes that Mr McGrath wanted to make to his statements – saying only that he would be "honest"; and
 - (m) the changes were made by Mr McGrath at a meeting with DSC Hatt and Det. Sgt Bateson without Ms Gobbo being present.
- 36.19 Further, Act. Insp. Hatt believed that the OPP was aware that Ms Gobbo may have had a conflict in acting for Mr Thomas in circumstances where she had previously acted for Mr McGrath.⁵⁹² That belief is supported by the evidence, and the Senior Crown Prosecutor's recollection of raising concerns about such conflicts with Ms Gobbo on several occasions.⁵⁹³
- 36.20 In addition, there is the evidence of Act. Insp. Hatt's process for making PII claims. His general practice was to supply the court with both a redacted copy and an un-redacted copy, so that the trial judge or magistrate could make informed decisions on claims for PII and relevance.⁵⁹⁴ When pressed about how he would have approached hypothetical redactions of Ms Gobbo's name from his diary, in circumstances where she was being discussed as a representative of Mr Thomas, Act. Insp. Hatt maintained that he would

⁵⁹⁰ T3414.30 (S Bateson).⁵⁹¹ T13270.1-6 (Gobbo).⁵⁹² T3189.14-42 (M Hatt).⁵⁹³ Exhibit RC1096B – DPP response to the Commission's inquiries, 8 November 2019 at p 24 (RCMP).0104.0001.0001 at 0024).⁵⁹⁴ T3171.44-T3172.4 (M Hatt).

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follow his ordinary practice – providing all the information contained in the diary or day book to enable the judge or magistrate to properly decide the issue.⁵⁹⁵

36.21 Finally, these allegations were not put to Act. Insp. Hatt. He has therefore been denied procedural fairness.

36.22 For any and all of these reasons, the proposed finding should not be made.

37 Proposed finding at paragraph [2908]

37.1 Counsel Assisting submit that the evidence “suggests” that Act. Insp. Hatt was aware of the arrangements put in place to protect Ms Gobbo from compromise during the committal proceeding of Mr Orman.

37.2 There is no utility in a finding that the evidence “suggests” something. The evidence either supports a finding, or it does not. Evidence that merely “suggests” something, is not evidence on which this Commission can rely to make an adverse finding against Act. Insp. Hatt.

37.3 There are other reasons why the finding should not be made. The **only** evidence relied on by Counsel Assisting in support of this submission is an SML entry from 11 March 2008 that reads “D/Sgt Boris BUICK and S/D Mark HATT to be present during proceedings”.⁵⁹⁶

37.4 That is not evidence that Act. Insp. Hatt was aware of any alleged arrangements to protect Ms Gobbo from compromise. Nor was Act. Insp. Hatt asked about this. In fact, Act. Insp. Hatt was not asked a single question about Mr Orman’s committal proceeding.

37.5 Contemporaneous records show that Act. Insp. Hatt’s role in the committal proceeding was limited to overseeing Mr Thomas’ welfare and ensuring the “logistics” were in place for Thomas to give evidence.⁵⁹⁷ Given the manner in which Mr Thomas gave evidence at the committal, it appears that Act. Insp. Hatt was not present in Court for at least that portion of the committal.⁵⁹⁸ Counsel Assisting have not set out this evidence.

37.6 Act. Insp. Hatt had a limited role in the prosecution of Mr Orman for the murder of Mr Peirce more generally.⁵⁹⁹ His only participation in Mr Orman’s trial was to give evidence on one occasion.⁶⁰⁰

37.7 Prior to the committal, Act. Insp. Hatt’s involvement was:

- (a) In 2006 Ms Gobbo told Act. Insp. Hatt that Mr Thomas had said that he was concerned for his safety, and that of his family, because he had implicated Mr Orman in the murder of Mr Victor Peirce.⁶⁰¹
- (b) On 22 and 29 May 2007, Act. Insp. Hatt took a further statement from Mr Thomas regarding Mr Peirce’s murder, which related to telephone intercepts of phone calls between Mr Thomas and Mr Andrew Veniamin that had been recently obtained. Mr Thomas deciphered these calls because they were conducted largely in code. The content of these calls implicated a number of people in Mr Peirce’s murder, including Mr Orman.⁶⁰²

37.8 Act. Insp. Hatt was not aware of Ms Gobbo’s continued representation of Mr Orman. In fact, the evidence is that he positively believed she was *not* acting for Mr Orman. Mr Orman was arrested for the murder of Mr Peirce on 22 June 2007. On 29 June 2007,

⁵⁹⁵ T3172.15-36 (M Hatt).

⁵⁹⁶ Exhibit RC0284B – SML2958, 11 March 2008 (VPL.2000.0001.9236 at .9248).

⁵⁹⁷ See for example Exhibit RC0263B – Diary of Acting Inspector Mark Hatt, 14 February, 10-12 March 2008 (VPL.0005.0114.0001 at .0147-0149).

⁵⁹⁸ Exhibit RC0263B – Diary of Acting Inspector Mark Hatt, 14 February, 10-12 March 2008 (VPL.0005.0114.0001 at .0147-0149).

⁵⁹⁹ T3178.15-20 (M Hatt).

⁶⁰⁰ T3178.15-20 (M Hatt).

⁶⁰¹ T3165.18-28 (M Hatt).

⁶⁰² Exhibit RC0262B – Statement of Acting Inspector Mark Hatt, 17 June 2019 at [54] (VPL.0014.0043.0001 at .0009).

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Act. Insp. Hatt had a conversation with Ms Gobbo in which she told Act. Insp. Hatt that she would not be representing Mr Orman given her previous representation of Mr Thomas.⁶⁰³ Act. Insp. Hatt believed that she had no involvement with Mr Orman after that conversation.⁶⁰⁴ This evidence is not referred to by Counsel Assisting.

- 37.9 It is not open to the Commissioner to find that the evidence "suggests" that Act. Insp. Hatt was aware of the arrangements put in place to protect Ms Gobbo from compromise during the committal proceeding of Mr Orman. Such a finding cannot assist the Commission.
- 37.10 Further, Act. Insp. Hatt was denied procedural fairness. That is another reason why the finding ought not to be made.
- 37.11 Finally, the finding is not supported by evidence.

Siobhan Kelly
Holly Jager

⁶⁰³ T3168.26-45 (M Hatt).

⁶⁰⁴ T3187.20-24 (M Hatt).

J Submission of Detective Sergeant Craig Hayes

38 Craig Hayes

- 38.1 This is the submission of Det. Sgt Craig Hayes responding to assertions made by Counsel Assisting at [4212].
- 38.2 Det. Sgt Hayes has reviewed and accepts the matters set out in Victoria Police's organisational submissions at Part 24, Chapter 107 (Trial of Zlate Cvetanovski), noting that the meeting with Mr Champion SC on 11 April 2011 presented an opportunity for Victoria Police to disclose to Mr Champion SC and to the Court the conduct of Victoria Police and Ms Gobbo. However, Det. Sgt Hayes notes that:
- (a) On 8 April 2011, then DSC Hayes contacted members of the SDU because Mr Champion had raised an issue about concoction of statements involving Mr Cooper and Ms Gobbo. DSC Hayes was aware that Ms Gobbo was a source, and so he contacted the 'people that deal with source material'.⁶⁰⁵ DSC Hayes spoke with Officer Graham Evans⁶⁰⁶ [REDACTED] who spoke with Officer Peter Smith, who identified they would discuss the matter with Officer Richards [REDACTED].⁶⁰⁷
 - (b) the following week, DSC Hayes discussed the matter with Mr Flynn (then a Detective Senior Sergeant).⁶⁰⁸
 - (c) DSC Hayes considered that Mr Flynn and Officer Pearce were 'aware of issues outside my scope in relation to the welfare and safety of Ms Gobbo'.⁶⁰⁹
 - (d) on 11 April 2011, there was a meeting between Mr Champion SC, DSC Hayes, Mr Flynn, and Officer Pearce to discuss the matters raised by Mr Pena-Rees.
- 38.3 As set out above, when DSC Hayes was advised of an issue by Mr Champion SC, he proceeded to raise the issue with those superior to him in rank.⁶¹⁰ That accords with the way in which issues at Victoria Police are noted and dealt with: they are passed up the chain of command.
- 38.4 There was then a meeting between Mr Champion SC and those superior DSC Hayes in rank. The issue had been identified and was dealt with.
- 38.5 Counsel Assisting's proposed finding draws no distinction between the roles and responsibilities of each of the attendees of the 11 April 2011 meeting. That is inappropriate in circumstances where Victoria Police operates as a hierarchical organisation and issues are passed up the chain of command in the decision making process. DSC Hayes raised issues as he understood them with officers more senior than him.

Adam Purton

⁶⁰⁵ T9118:4-11 (Hayes).

⁶⁰⁶ T9116:30-39 (Hayes).

⁶⁰⁷ T9117:21-22, 26-27 (Hayes).

⁶⁰⁸ T9121:23-24 (Hayes).

⁶⁰⁹ T9128:38-41 (Hayes).

⁶¹⁰ T9125:22-24 (Hayes).

K Submission of Assistant Commissioner Robert Hill

39 Introduction

- 39.1 This submission primarily focuses on the period of time from September to November 2005 when AC Hill had limited involvement in Operation Quills.
- 39.2 AC Hill was recently appointed as the Assistant Commissioner, Crime Command.
- 39.3 Relevant to this submission, AC Hill was promoted in 2001 to the rank of Detective Inspector and performed the role of Staff Officer to the Assistant Commissioner - Crime, and Task Force Management assignments. Later he became Detective Inspector, Units 1 & 3 Major Drug Investigation Division (MDID) until he was transferred from the Crime Department in 2006 to a Regional Inspector role.
- 39.4 In 2005 the MDID had three separate investigative units, namely: Unit 1 (Cannabis), Unit 2 (Clandestine Laboratories) & Unit 3 (Heroin). As Detective Inspector for Units 1 & 3 AC Hill's focus was on crimes relating to the commercial cultivation and trafficking of cannabis and the trafficking of heroin. He had limited knowledge about the investigations being undertaken in Unit 2, where the investigations in relation to Mokbel cartel were taking place.
- 39.5 For less than three months between September and November 2005, AC Hill was Acting Superintendent and Inspector at the MDID. During this period, he had responsibility for all three units at the MDID.⁶¹¹ In this role he also had oversight of all major drug crime investigation throughout Victoria (in addition to the three MDID units).
- 39.6 In 2005, the MDID unit with 70 staff in 15 crews was undertaking between 40 and 50 complex investigations at any one time. In addition, investigators were receiving new information relevant to fresh investigations and there were individuals working on the brief preparation/prosecution phase. Between 2002 and 2005 the MDID charged over 587 people with 1,508 serious drug offences and seized a total of 3,600kg of illicit drugs with a value of \$69M dollars.
- 39.7 Within each unit of MDID a Senior Sergeant was in charge of a number of investigative crews. Those investigative crews included Sergeants and three or four Detective Senior Constables, together with assignees from other parts of the organisation working with them. Each crew were investigating high level major drug trafficking. They were reporting to a Senior Sergeant and then to the Inspector position, which was a managerial role.⁶¹²
- 39.8 When asked about his memory of matters at this time, AC Hill stated in his evidence before the Royal Commission:-
- "...Keeping in mind that my focus in those times were in the two divisions that primarily I had responsibility for that was Unit 1 and 3. The matters that were operating in Unit 2 I was not familiar with and we were very conscious in those times of, you know, maintaining the confidentiality of our investigations and how matters were proceeding in the respective units."*⁶¹³
- 39.9 As such he does not recall being made aware of the investigations relating to Tony Mokbel.⁶¹⁴ Further, AC Hill was aware that Ms Gobbo was a criminal defence lawyer, however, does not recall being aware of her representation of Tony Mokbel in 2005.
- 39.10 This is not surprising. During the short period when he was upgraded to the position of Acting Superintendent, and even as an Inspector, AC Hill's focus would have been on the active investigations that he was briefed about day to day by his subordinates in Units 1 and 3.

⁶¹¹ T1780 [4-13]

⁶¹² T1778 [5-15]

⁶¹³ T1782 [10-16]

⁶¹⁴ T1780 [28-32]

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- 39.11 After charges were laid, significant work would be undertaken by the investigators to compile a brief. The Superintendent, nor Inspector would not be involved in these processes. The Superintendent nor Inspector was also not involved in court proceedings that were underway at any particular time. They also did not form the subject of the regular briefings.
- 39.12 AC Hill's first recollection of involvement in a matter relevant to this Royal Commission, was his attendance at a meeting on 8 September 2005 in relation to Operation Quills.⁶¹⁵
- 39.13 Prior to commencing upgraded duties in September 2005, AC Hill had no prior involvement with Operation Quills and he only had limited involvement with Unit 2 during prior periods of upgraded duties.
- 39.14 AC Hill's diary for 8 September 2005⁶¹⁶ reflects

8/9/05	Friday 8 September
	ABATE. DISCUSSION IN RELATION TO RP.
	QUILLS. Other doc [REDACTED] 8
	LEGAL REP. GOBBO.
1535	CONCLUDE MEETING.

- 39.15 An SML entry for the previous day, completed by Mr Sandy White, suggests that AC Hill had requested the SDU to assist regarding the assessment of a Human Source who had approached two police members.⁶¹⁷
- 39.16 As detailed in his statement, and in his evidence to the Royal Commission, AC Hill does not have any independent recollection of that request being made to him and is unaware who completed the document titled "Request for Assistance Source Development Unit" dated 7 September 2005. AC Hill provided evidence to the Royal Commission that the first time he had seen the Request for Assistance Source Development Unit was during the preparation of his evidence for this Royal Commission.⁶¹⁸
- 39.17 AC Hill does not have a diary entry for 7 September 2005 that suggests this request was made by him, and does not have more than a vague recollection of being approached by Detective Sergeant Mansell around this time.⁶¹⁹
- 39.18 Given that these events occurred 15 years ago, it is understandable that AC Hill's recollection of the meeting on 8 September 2005 is incomplete. Nonetheless, referring Ms Gobbo to the SDU for assessment at this time was plainly the appropriate course of action to take because she was identified as a high risk human source.⁶²⁰

40 Meeting of 12 September 2005 – Knowledge of Ms Gobbo's use as a human source

- 40.1 Paragraph 1344 of the submissions of Counsel Assisting asserts:

On the evidence, it is open to the Commissioner to find that by 12 September 2005, prior to Ms Gobbo's third registration, at least each of Mr Rowe, Mr Mansell, Mr Hill, Mr Ryan, Mr O'Brien and Mr Overland knew that Ms Gobbo was acting for Mr Tony Mokbel, who was the focus of Operation Quills, and that her use as a human source against her client, Mr Tony Mokbel was being considered.

- 40.2 For the following reasons, the proposed finding against AC Hill is not open on the material before the Royal Commission.

⁶¹⁵ Exhibit RC114 – Statement of Robert John Hill dated 9 May 2019 [10] (VPL.0014.0028.0001)

⁶¹⁶ Exhibit RC 117 – Diary of Robert Hill dated 8 September 2005, VPL.0005.0013.0892 [0893-0894]

⁶¹⁷ Exhibit RC0284 SML3838, dated 7 September 2005, 1, VPL.2000.0001.9447 @.9447.

⁶¹⁸ T1790 [29-33]

⁶¹⁹ T1784 [24-30]

⁶²⁰ T1789.8-26

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- 40.3 **First**, by 12 September 2005, AC Hill had been undertaking upgraded duties for 11 days at most. The evidence suggests he may have participated in one, *possibly* two, meetings about Operation Quills (on 7 and 8 September 2005), for which he does not have a recollection, beyond what is reflected in his diary. His attendance at these meetings was for the specific purpose of management of the MDID.
- 40.4 **Second**, there is no evidence that AC Hill was involved in the investigation relating to Operation Quills before 8 September 2005. AC Hill did not have operational knowledge about Operation Quills until he commenced upgraded duties in September 2005, as he was responsible for Units 1 and 3 of MDID which had a very different investigative focus.
- 40.5 **Third** during his evidence to the Royal Commission on 15 May 2019, AC Hill observed that the Request for Assistance Form reflected that Ms Gobbo was being considered at that time as a potential informer for the MDID. The description at the bottom of the form as to the nature of the assistance required says, "Source capable of providing quality intelligence regarding Mokbel cartel"⁶²¹ The evidence does not support a finding that AC Hill knew that Ms Gobbo was *acting for* Tony Mokbel.
- 40.6 **Fourth** AC Hill did not prepare the Request for Assistance Form ⁶²² even though he believes he would have given tacit approval on the day.⁶²³ At the time he was aware of the possibility Ms Gobbo could provide intelligence in relation to the *Mokbel cartel*.⁶²⁴
- 40.7 **Fifth**, AC Hill does not recall nor did he make a diary note of his attendance at the meeting on 12 September 2005,⁶²⁵ AC Hill's diary entry on 12 September 2005⁶²⁶ indicates he was at a training program from 9am to 3.30pm; and did not attend the meeting.⁶²⁷
- 40.8 He said that it 'may have occurred without [his] knowledge because of the sensitivity of the matters at hand'⁶²⁸ which accords with the general proposition that investigators carefully guarded information sharing. AC Hill would have expected to be told about the meeting but in the circumstances his evidence was that it was possible Mr O'Brien might have taken it directly to the Assistant Commissioner or the Assistant Commissioner might have sought out Mr O'Brien directly.⁶²⁹
- 40.9 **Sixth** the finding is framed such that it suggests Ms Gobbo's use against her client, Tony Mokbel was being discussed prior to 12 September 2005. There is no evidence to indicate that AC Hill participated in any such discussion, if it took place.
- 40.10 In support of this submission, AC Hill adopts the submissions of Victoria Police at Part E in relation to the "need to know" principle and at Part 2C in relation to the risks of hindsight reasoning.
- 40.11 Considering the matters outlined above, namely AC Hill's limited recollection of events during this period of time, his absence from a key meeting on 12 September 2005 and the superimposition of others knowledge onto AC Hill, it is submitted that it is not open to the Commissioner to make the finding sought at paragraph [1334] of submissions of counsel assisting. A proper and fair finding in relation to this issue would be in the following terms:

⁶²¹ T1790-1791.46-6⁶²² VPL.2000.0002.0712⁶²³ T1790-91.13-25⁶²⁴ T1792.30-41; T1804.35-45⁶²⁵ Mr Overland was briefed on matters at the meeting.⁶²⁶ Exhibit RC 117 – Diary of Robert Hill dated 12 September 2005, VPL.0005.0013.0892 [0894]⁶²⁷ T1796.21-32⁶²⁸ T1795.17-24⁶²⁹ T1795-96.46-19

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On the evidence, it is open to the Commissioner to find that by 12 September 2005, AC Hill knew that Victoria Police was considering using Ms Gobbo as a Human Source.

Corrs Chambers Westgarth

L Submission of Sergeant Tim Johns

41 Introduction

- 41.1 At the relevant times, Mr Johns was one of the most junior officers in the Purana Taskforce. He was a Detective Senior Constable (DSC). Critically, Sergeant Johns was not involved in the investigation of Mr Cooper or aware of Ms Gobbo's involvement in the events leading up to Mr Cooper's arrest. Throughout his career, Sergeant Johns has always acted with professionalism, the utmost integrity and in accordance with his Victoria Police training at all times.
- 41.2 In recommending that the Commissioner make proposed findings against Sergeant Johns in relation to his response to two subpoenas in 2008, Counsel Assisting have often misstated or selected the evidence in favour of the particular findings being sought. Importantly, in relation to the 12 August 2008 subpoena, the evidence demonstrates that then DSC Johns had a conversation with Mr Grigor, Horthy Mokbel's solicitor, who indicated he was content to receive a transcript of Mr Cooper's record of interview in compliance with the subpoena.⁶³⁰ Further, in relation to the 1 September 2008 subpoena, DSC Johns appropriately sought advice from the VGSO and Barrister Mr Gipp to comply with the subpoena. DSC Johns was grappling with a conflict in his own mind that *"throughout our training we're taught to keep an informer's identity secret"*⁶³¹ but in this particular circumstance, if Gobbo's identity had been revealed *"she would have been killed"*.⁶³²
- 41.3 Counsel Assisting have also failed to recognise some of Sergeant Johns' exemplary disclosure practices, for example:
- (a) In relation to a summons issued in the committal proceedings on 19 November 2007, DSC Johns spoke to Victoria Police's legal advice office, the solicitor from the OPP, officers at Victoria Police who had access to the documents sought and also the prosecutor appearing at the committal in relation to public interest immunity issues.⁶³³ In relation to that committal, Johns swore a confidential affidavit in support of a public interest immunity claim relating to police methodology and means of gathering evidence. Advice was sought from a barrister in relation to the making of the claim.⁶³⁴
 - (b) As was DSC Johns' usual practice, he included all relevant inculpatory and exculpatory evidence when preparing the brief of evidence in the lead up to Mr Horthy Mokbel's trial in 2008.⁶³⁵
- 41.4 The examples above at paragraph 53.3 are not consistent with a police officer inclined to engage in improper disclosure practices.
- 41.5 At the outset, it is also important to correct some factual errors made by Counsel Assisting:
- (a) At [3014], Counsel Assisting have misquoted Sergeant Johns' evidence: Sergeant Johns gave evidence that he **was not** aware of the significance of Ms Gobbo's role in the arrest of Mr Cooper and stated: *"I don't think I thought of that at the time"*.⁶³⁶ Sergeant Johns **now** accepts the significance with the benefit of hindsight;
 - (b) Sergeant Johns was not the informant for **Mr Ketch**

⁶³⁰ Untendered Second Statement of Tim Johns at [15] (VPL.0014.0118.0021, at .0023)

⁶³¹ T14683.6-12 (Johns)

⁶³² T14683.14-16 (Johns)

⁶³³ Untendered Second Statement of Tim Johns at [7]-[8] (VPL.0014.0118.0021 at .0021 - .0022)

⁶³⁴ Exhibit 1332 – First Statement of Tim Johns at [70]-[79] (VPL.0014.0118.0001 at .0009 - .0012); Un-tendered Second Statement of Tim Johns at [7] (VPL.0014.0118.0021 at .0021)

⁶³⁵ Exhibit 1527 – Third statement of Tim Johns at [9]-[23] (VPL.0014.0118.0026 at .0029 - .0031)

⁶³⁶ T14682.12-24 (Johns)

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- (c) Mr Johns gave evidence that he discovered Ms Gobbo's role as a human source in the **days** after Mr Cooper's arrest; not the **day** after.⁶³⁷

41.6 Mr Johns refers to and adopts Inspector Flynn's submissions on the 12 August 2008 and 1 September 2008 subpoena issues.

The 12 August 2008 subpoena

- 41.7 On 16 August 2008, DSC Johns' diary records that he spoke with Mr Grigor about the subpoena. As Mr Johns explains in his statement, "My diary records that Mr Grigor was content to receive a transcript of Mr [Cooper's] record of interview in compliance with the subpoena".⁶³⁸
- 41.8 DSC Johns proceeded on that basis in order to comply with the subpoena and provided the transcript of Mr Cooper's interview to Mr Grigor.⁶³⁹
- 41.9 There is simply no basis for the finding set out at [2975] of Counsel Assisting's submissions. In circumstances where an agreement was reached between the parties to narrow the scope of the subpoena, the evidence does not support a finding that Victoria Police should have nonetheless produced further materials to the court in response to the subpoena.
- 41.10 Paragraph [2976] asserts that investigators and the SDU sought to "improperly" sanitise notes and "improperly" purport to reach agreement with defence lawyers in order to limit the production of materials.
- 41.11 There is no evidentiary basis upon which the Commissioner can find that Messrs Flynn and Johns acted improperly in securing an agreement from the defence lawyers because Mr Grigor agreed that all he was seeking was an unredacted transcript of Mr Cooper's record of interview.
- 41.12 Sergeant Johns expressly denied that he attempted to suggest to Mr Grigor that there wasn't material available or which would be of assistance other than the record of interview.⁶⁴⁰ When Counsel Assisting asked Mr Johns for his explanation as to why Mr Grigor was prepared and happy to accept the record of interview and no other records, Sergeant Johns replied, "*I can't guess the state of mind of Alistair Grigor*".⁶⁴¹
- 41.13 The Commission has received a statement from Mr Grigor but it does not deal with this issue. The absence of any evidence from Mr Grigor about why he and Mr Shirrefs were prepared to accept the record of interview in satisfaction of the subpoena means that there is no evidence to support Counsel Assisting's assertion that this agreement was reached because of any improper conduct on the part of Messrs Flynn and Johns.
- 41.14 At paragraph [2978], Counsel Assisting assert that Sergeant Johns, as well as Messrs Flynn, White and Green must have known that Ms Gobbo's involvement as a human source against Mr Cooper was improper. This submission has no basis on the evidence because:
- (a) Sergeant Johns was not involved in the investigation of Mr Cooper or aware of Ms Gobbo's involvement in the events leading up to Mr Cooper's arrest.⁶⁴²
 - (b) Sergeant Johns never saw Ms Gobbo or had any dealings with Ms Gobbo on the night of Mr Cooper's arrest⁶⁴³. Mr Johns only found out in the days afterwards that she was at St Kilda Road on the night of the arrest.⁶⁴⁴
 - (c) Sergeant Johns did not appreciate the impropriety of Ms Gobbo's conduct in relation to Mr Cooper.

⁶³⁷ T14655.21-29 (Johns)

⁶³⁸ Untendered Second Statement of Tim Johns at [15] (VPL.0014.0118.0021 at .0023).

⁶³⁹ Untendered Second Statement of Tim Johns at [17] (VPL.0014.0118.0021 at .0023)

⁶⁴⁰ T14668.43 (Johns).

⁶⁴¹ T14668.28 (Johns).

⁶⁴² Exhibit RC1332 – First Statement of Tim Johns at [15]-[23] (VPL.0014.0118.0001 at .0002 - .0004

⁶⁴³ T14654.36-38 (Johns)

⁶⁴⁴ T14654.40-41 (Johns)

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(d) In any event, he had a limited understanding of lawyers' conflicts and did not appreciate the impact on subsequent prosecutions.

41.15 Further, as Counsel Assisting have conceded, Sergeant Johns was not aware of the contents of Inspector Flynn's unredacted notes.

41.16 The findings in respect of Sergeant Johns regarding 12 September 2008 are not made out on the evidence.

The 1 September 2008 subpoena

41.17 In relation to the subpoena of Information Reports in the lead-up to the trial of Mr Horty Mokbel and Mr Bayeh on 1 September 2008, DSC Johns worked with VGSO and a barrister (Mr Gipp) to make a claim for public interest immunity over the content of reports that had been redacted and supplied on the advice of the SDU.⁶⁴⁵ Based on Mr Gipp's advice, DSC Johns prepared a confidential affidavit claiming public interest immunity in relation to ongoing investigations and the identity of sources. Both redacted and unredacted versions of the reports were exhibited to the affidavit.⁶⁴⁶

41.18 It is clear that Mr Shirrefs was only seeking the information reports pertaining to the activities of Mr Cooper between 1 November 2004 and 30 April 2006 because in previous proceedings the information reports had large portions redacted; so he communicated that he was only "seeking to obtain that information".⁶⁴⁷

41.19 DSC Johns was always of the view that in order to comply with the subpoena, it was necessary to provide redacted and unredacted versions of the 16 Information Reports. This is consistent with the evidence of his discussions with Mr Mandy who indicated he would be issuing a subpoena for the specific Information Reports.⁶⁴⁸

41.20 DSC Johns emailed the redacted Information Reports previously used in the trial against Kabalan Mokbel to Officer Fox and sought guidance as to whether he had used the correct process for excluding the "date submitted" from the reports.⁶⁴⁹

41.21 Mr Johns recalled a discussion with DSC Beale regarding Ms Gobbo acting as a human source, in which he recalled that both of them were comfortable that the SDU would take the necessary steps to address any risks arose from the fact of a lawyer being a human source.⁶⁵⁰

41.22 While Counsel Assisting criticises Sergeant Johns for failing to reveal to Mr Gipp that the informer in the IRs was actually Ms Gobbo, and seek advice in relation to that, Sergeant Johns explained that he did not do so because of the need to protect the identity of human sources, and he was also conscious of the closeness of the legal fraternity. Sergeant Johns relies on the submissions made by Victoria Police regarding the paramount importance that was then given to protecting the identity of human sources.

41.23 The allegation by Counsel Assisting that Sergeant Johns was "apparently of the view that it was necessary to mislead her [Justice Curtain] as to the informer's gender"⁶⁵¹ was not put to Sergeant Johns in cross-examination nor is it based on any evidence. The allegation should not have been made and the Commissioner should disavow it.

41.24 Sergeant Johns gave evidence that new members who joined Purana Taskforce were not told that Ms Gobbo was a human source.⁶⁵² The restriction of information about Ms Gobbo to only certain persons meant that police members who might otherwise be in a

⁶⁴⁵ Exhibit 1332 – First Statement of Timothy Johns at [76] (VPL.0014.0118.0001 at .0011)

⁶⁴⁶ Exhibit 1428 – Statement of Paul Millett at Annexure B (VPL.0014.0126.0006 at .0012)

⁶⁴⁷ Exhibit RC1331 – Transcript of proceedings, *The Director of Public Prosecutions v Horty Mokbel and Tareq Bayeh* (Supreme Court of Victoria, Curtain J, 3 September 2008) at 751 (VPL.0005.0273.0001 at .0002)

⁶⁴⁸ Exhibit 1332 – First Statement of Timothy Johns at [75] (VPL.0014.0118.0001 at .0011)

⁶⁴⁹ Exhibit 1332 – First Statement of Timothy Johns at [73] (VPL.0014.0118.0001 at .0011)

⁶⁵⁰ Exhibit 1332 – First Statement of Timothy Johns at [99] (VPL.0014.0118.0001 at .0014 – .0015)

⁶⁵¹ Counsel Assisting's Submissions, Volume 2 at [3004]

⁶⁵² Exhibit 1332 – First Statement of Timothy Johns at [33] (VPL.0014.0118.0001 at .0006)

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position to make decisions about disclosure of relevant matters were not in possession of the information that would enable them to do so.

- 41.25 Sergeant Johns had a general understanding of issues of privilege, and recalled that this was covered in Detective Training School in the context of search warrants executed at lawyers' offices. He was aware that intercept material between a lawyer and a client would not be provided to investigators.⁶⁵³ However, he also relied upon his assumptions that issues in relation to privilege and conflicts would be dealt with by superiors and by the SDU.
- 41.26 Sergeant Johns also gave evidence that he would redact from his diary notes any irrelevant material but also material that would be the subject of a claim for public interest immunity. He would bring his unredacted diaries to court so that he could explain the redactions if called upon to do so.⁶⁵⁴ Irrelevant material, privacy material, and material that may be subject to a public interest immunity claim would be redacted without distinction; this was a practice he learned during his time as a police officer.⁶⁵⁵
- 41.27 Sergeant Johns summed his assumption up succinctly as follows: "Although I was aware by this time that Ms Gobbo had been a human source, I treated her as any other lawyer involved in these matters. I assumed that anything to do with her role as a source was being managed by the SDU and that when Ms Gobbo was acting as a lawyer, she was doing her job separate from any role as a source."⁶⁵⁶
- 41.28 Further, Sergeant Johns believed that any legally privileged information provided to the SDU would be withheld from investigators, similar to the procedure for redacting privileged conversations recorded in telephone intercept material.⁶⁵⁷
- 41.29 Sergeant Johns strongly rejects any suggestion he acted improperly or failed to comply with the subpoena.
- 41.30 On the basis of the above, it cannot be said that Sergeant Johns acted improperly at all and the findings that counsel assisting have proposed at [3007], [3010], [3011], [3019], [3020] and [3021] are not made out on all of the evidence.

Saul Holt QC

⁶⁵³ Exhibit 1332 – First Statement of Timothy Johns at [103] (VPL.0014.0118.0001 at .0015)

⁶⁵⁴ Exhibit 1332 – First Statement of Timothy Johns at [60]-[61] (VPL.0014.0118.0001 at .0009)

⁶⁵⁵ T14660.32-38 (Johns)

⁶⁵⁶ Exhibit 1332 – First Statement of Timothy Johns at [95] (VPL.0014.0118.0001 at .0014)

⁶⁵⁷ Exhibit 1332 – First Statement of Timothy Johns at [31] (VPL.0014.0118.0001 at .0005)

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M Submission of Acting Senior Sergeant Michelle Kerley

42 Introduction

- 42.1 On 18 July 2006, Ms Gobbo attended at St Kilda Road Police Station and read Mr Thomas's draft statements. The officer who attended to her that evening was Acting Senior Sergeant Michelle Kerley.
- 42.2 Counsel Assisting's submissions about the events of 18 July 2006 are unfair to Ms Kerley in that:
- (a) Counsel Assisting submit that it was only after investigation by the Commission that Ms Kerley was identified as the officer who attended on Ms Gobbo that night when, in truth, Ms Kerley notified the Commission that she attended that night and the information was also contained in documents produced to the Commission by Ms Kerley and Victoria Police;
 - (b) Counsel Assisting submit that Ms Kerley was "clearly wrong" in her recollection that Ms Gobbo had not written or marked up Mr Thomas's statement, when that was Ms Kerley's best recollection of events; and
 - (c) Counsel Assisting submit that Ms Kerley altered a diary note to make it sound "more benign", when there is persuasive evidence to the contrary that was not drawn to the Commissioner's attention.
- 42.3 For the reasons explained below, these submissions are made without reference to all of the available evidence. Once that evidence is taken into account, it is seen that the submissions are without merit and should be rejected.

The allegation and Ms Kerley's evidence

- 42.4 On 4 August 2008, Ms Gobbo told her handlers that:
- (a) she went to Purana secretly one night and edited Mr Thomas' statements;⁶⁵⁸ and
 - (b) they way that "they" did it was very good because "the Detective that I did it with is not a witness so it can never come out with people just telling the truth".
- 42.5 A/S/Sgt Kerley, a member of Commander Bateson's crew at the relevant time, provided statements to the RCMPPI explaining that:
- (a) she believed from her diary entries that she had been the officer who met with Ms Gobbo on the evening that Ms Gobbo had attended the Purana headquarters to review Mr Thomas's statements;⁶⁵⁹
 - (b) far from being a detective who would not be called as a witness (as Ms Gobbo asserted), (then) Detective Senior Constable Kerley was a member of Det. Sgt Bateson's crew and a witness in the proceedings in which Mr Thomas's statements were used;⁶⁶⁰
 - (c) there was nothing clandestine or secret about the meeting.⁶⁶¹ Ms Gobbo entered the St Kilda Road Police Headquarters through the front entrance (the only entrance to the building) where she would have been required to sign in with the Protective Services Officers stationed at glass security doors.⁶⁶²

⁶⁵⁸ Exhibit 480 – Transcript of conversation between Ms Nicola Gobbo, Officer White and Officer Green, 4 August 2008, p 239 (VPL.0100.0239.0001 at 0239)

⁶⁵⁹ Exhibit 1417 – Statement of Michelle Kerley, 26 September 2019 at [13] (VPL.0014.0062.0001 at 0003).

⁶⁶⁰ Exhibit 1417 – Statement of Michelle Kerley, 26 September 2019 at [45] (VPL.0014.0062.0001 at 0006).

⁶⁶¹ Exhibit 1417 – Statement of Michelle Kerley, 26 September 2019 at [21] (VPL.0014.0062.0001 at 0004).

⁶⁶² Exhibit 1417 – Statement of Michelle Kerley, 26 September 2019 at [23] (VPL.0014.0062.0001 at 0004).

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No information was withheld

- 42.6 At paragraph [989], Counsel Assisting submit that, "following investigation by the Commission", it became apparent that Ms Gobbo had met with (then) DSC Kerley at St Kilda Road on 18 July 2006.
- 42.7 The submission suggests that Ms Kerley withheld information from the Commission or that the information was only uncovered after "investigation" by the Commission. Both propositions are untrue.
- 42.8 First, Ms Kerley took steps to notify Victoria Police that she was the officer who met with Ms Gobbo on the night of 18 June 2006. As such, to the extent that paragraph [989] suggests or invites the inference that Ms Kerley withheld information from the Commission it must be rejected.
- 42.9 Second, Ms Kerley's attendance on 18 June 2006 was not withheld from the Commission in any event. It was, in fact, contained in the chronology prepared by former Purana members and produced to the RCMP⁶⁶³ and in diary notes kept by DSC Kerley and produced to the RCMP in advance of a statement being requested from A/S/Sgt Kerley.⁶⁶⁴ As such, the suggestion that the information only came to the attention of the Commission following "investigations" must also be rejected.

Ms Kerley was not "clearly wrong"

- 42.10 Counsel Assisting submit that Ms Kerley was "clearly wrong" in her recollection that she did not recall Ms Gobbo writing on or marking up Mr Thomas's statements.⁶⁶⁵ How someone can be "clearly" wrong about their evidence that they do not recall something is unclear. Presumably, Counsel Assisting intend to submit that, despite Ms Kerley's recollection, Ms Gobbo did mark up the statements.
- 42.11 The basis for this allegation is Ms Gobbo's claim, set out above. This conversation is reproduced and apparently accepted at [976] of Counsel Assisting's submissions.
- 42.12 Despite Ms Gobbo's assertion that she "edited" Mr Thomas's statements, the evidence shows that the most Ms Gobbo may have done was to scribble some notes on a post-it note and possibly to write on some of the statements in red pen.⁶⁶⁶
- 42.13 The submission that Ms Kerley was "clearly wrong" about not recalling Ms Gobbo marking up the statement should not be accepted in circumstances where:
- Counsel Assisting appear to have simply accepted Ms Gobbo's claim that she 'edited' the statements at face value, despite Ms Gobbo's obvious and serious lack of credibility.
 - No statement has been found which contains the alleged amendments made by Ms Gobbo; the most that has been found is the post-it notes described above.
 - Ms Gobbo herself could not recall the night in question and could say only "it sounds like something I would have done".⁶⁶⁷ Ms Gobbo could not say what amendments she may have suggested nor whether any such amendments were actually made.⁶⁶⁸
 - Counsel Assisting makes no allowance for the fact that A/S/Sgt Kerley did not assert an absolute fact, but merely described her own recollection (or lack thereof), having done her best to recall matters which occurred nearly 15 years ago.

⁶⁶³ Exhibit 252 – Purana Chronology, 33 (VPL.0015.0001.0409 at .0441).⁶⁶⁴ Untendered – Diary entry of M Kerley, 18 July 2006 (VPL.0005.0134.0001 at .0053).⁶⁶⁵ CA Submissions at [991].⁶⁶⁶ Exhibit 469D – Day book of DS Boris Buick with post-it note, 19 July 2006 (VPL.0005.0128.0031 at .0098).⁶⁶⁷ T13390.26-34 (Gobbo).⁶⁶⁸ T13391.37-40 (Gobbo).

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- 42.14 A/S/Sgt Kerley was not, in these circumstances "clearly wrong". In addition to there being insufficient evidence that Ms Gobbo "edited" the statements, there is no reason to believe that Ms Kerley did not give her evidence to the best of her recollection.

A/S/Sgt Kerley did not alter a diary entry to make it 'more benign'

- 42.15 A/S/Sgt Kerley kept a diary note of her meeting with Ms Gobbo. Counsel Assisting allege that A/S/Sgt Kerley deliberately changed the word "review" to the word "read" in her diary note, because she may have "thought better" of her original notation and chosen a word that "sounded more benign".
- 42.16 That submission suggests conscious engagement by Ms Kerley in activity that she knew to be untoward or improper. The submission, and its inference, must be absolutely rejected.
- 42.17 In making the above submission, Counsel Assisting failed to draw to the Commission's attention Ms Kerley's evidence about the diary note and the reason for the change.⁶⁶⁹
- 42.18 A/S/Sgt Kerley's explanation was that she:
- (a) had misspelled the word "review" as "reveiw", so she simply wrote "read" over the top of the misspelled word and initialled that change;
 - (b) made the change at the time of making the original diary entry and not at anyone's direction or request; and
 - (c) considered the words "read" and "review" to mean exactly the same thing.
- 42.19 A/S/Sgt Kerley's explanation was straightforward and honest. There is no reason for this Commission to disbelieve her. That is particularly so when the allegation was not put against her and there is no other material before the Commission that could support an inference that A/S/Sgt Kerley acted improperly at any time.

Conclusion

- 42.20 Counsel Assisting's submissions about the events of 18 July 2006 fail to draw to the Commissioner's attention directly relevant evidence that is contrary to their submissions. The effect is to create a misleading impression about A/S/Sgt Kerley, her involvement in those events and her cooperation with this Commission, which has been absolute.
- 42.21 They must be rejected.

Siobhan Kelly
Caroline Dawes

⁶⁶⁹ CA Submissions at [991].

N Submission of Mr Findlay McRae

43 Introduction

- 43.1 Mr McRae is an experienced lawyer. Since 2006, he has been the most senior lawyer employed by Victoria Police. He is held in the highest regard by those in Police Command.
- 43.2 Since 2009, Mr McRae has played a significant role in Victoria Police's involvement with Ms Gobbo. His involvement has come at a personal toll and can be divided into two time periods:
- (a) Between 2009 and 2011, Mr McRae was called on from time to time to assist Victoria Police in its response to an urgent situation involving Ms Gobbo. Invariably, Mr McRae was called on because of serious concerns as to Ms Gobbo's safety. Decisions in which Mr McRae was involved were literally life and death decisions. Ms Gobbo's safety was always a paramount consideration and Mr McRae's actions should be viewed through that prism.
 - (b) From 2012 onwards, as he learned more of Ms Gobbo's history as a police informer, Mr McRae did everything he could to ensure that these matters were properly investigated and that potential disclosure issues were adequately addressed.
- 43.3 Mr McRae's evidence is referred to extensively in the submissions of counsel assisting. For the most part, Mr McRae accepts the evidence as it is put. However, as these submissions show, there are a number of instances where counsel assisting have mischaracterised the evidence, recommended findings that are not open on the evidence before the Royal Commission or have interpreted Mr McRae's evidence in a way that is unfair.
- 43.4 The errors of counsel assisting can be summarised in the following way:
- (a) In some instances, counsel assisting have assessed Mr McRae's evidence based on the significance of the outcome, rather than on the process followed by Mr McRae and others within Victoria Police. Most notably, counsel assisting fall into error with regard to their proposed findings surrounding the 7 September 2009 letter from Ms Gobbo to Chief Commissioner Overland. The reasoning adopted by counsel assisting demonstrates hindsight bias and should not be accepted.
 - (b) Counsel Assisting also recommend findings about Mr McRae's evidence, without giving due regard to the full circumstances surrounding those matters. Most notably, counsel assisting fall into this error with regard to Mr McRae's dealings with the DPP.
 - (c) In some instances, counsel assisting fail to have regard to procedural fairness by making findings about matters that were not put to Mr McRae. In many instances, such findings are also inconsistent with other evidence before the Royal Commission. For example, having regard to the evidence before the Royal Commission and the cross examination of Mr McRae, it is not open to the Royal Commission to make any findings regarding Mr McRae's knowledge of the Dale and Collins committal.
- 43.5 For the reasons that are explained in these submissions, the steps taken by Mr McRae to ensure that Ms Gobbo's involvement with Victoria Police was properly investigated and potential miscarriages of justice were disclosed were appropriate. Mr McRae was, in truth, an important and driving force behind Victoria Police disclosure to the Legal Services Commissioner, OPI, IBAC and the DPP.
- 43.6 As these submissions show, from 2009 onwards, most – if not all – of the high level disclosure briefings with outside agencies, experts, regulators and other stakeholders

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were instigated by Mr McRae, or took place because Mr McRae advised that they were necessary. Those briefings include the following:

- 2009 Advice sought from the DPP, Jeremy Rapke in relation to the proposed MoU in light of the Queensland Supreme Court decision of *R v Moti*.
The DPP was briefed with a copy of the MoU.
 - 2010 Advice sought from Senior Counsel and the VGSO in the context of the civil litigation.
Mr McRae and the Victorian Government Solicitor briefed the VGSO about Ms Gobbo and the civil litigation.
 - 2011 Mr McRae was involved in the establishment of the Comrie Review
 - 2012 Mr McRae briefed the DPP on two occasions
 - 2012 Mr McRae attended a briefing with the OPI on the "out of scope" matters
 - 2013 Mr McRae attended a briefing with the DPP about the progress of Loricated. The DPP advised that he wanted complete analysis done before he would consider the issue further.
 - 2014 Mr McRae attended briefings with IBAC and sought an independent investigation into the matter by IBAC.
 - 2014 Mr McRae instigated further briefings with the DPP, including with the case studies
 - 2015 Mr McRae attended briefings with the State DPP after the Kellam Report was handed down
 - 2015 Mr McRae facilitated briefings with the Commonwealth DPP about the Karam matter
 - 2015 Mr McRae facilitated a briefing with the Legal Services Commissioner about ethical issues and safety concerns
- 43.7 In these submissions, Mr McRae sets out some of the evidence before the Royal Commission of internal communications with the Office of Public Prosecutions and file notes of the Director of Public Prosecutions. This evidence demonstrates that the DPP held concerns about whether Ms Gobbo's conduct may have impacted on convictions at the time that Victoria Police was briefing the DPP about these matters.
- 43.8 Mr McRae first briefed the DPP in 2012. The evidence from the OPP is crucial to assessing the adequacy of Victoria Police's briefings. The DPP and OPP are not passive participants in the disclosure process. From 2012, they were informed of and actively involved in the process followed by Mr McRae and Victoria Police to investigate potential miscarriage issues.
- 43.9 The steps taken by Mr McRae were endorsed by the DPP and Mr McRae kept the DPP fully informed. The OPP file notes of internal meetings refer to these briefings as the "*Fin Meeting*"⁶⁷⁰ and the information discussed as the "*Fin Info*".⁶⁷¹ Evidently, it was Mr McRae that was driving disclosure.
- 43.10 In 2014, the DPP considered whether it was necessary to make disclosure to potentially affected persons and instead decided to await the completion of the work being done by Victoria Police and IBAC. The Royal Commission decided not to call oral evidence from anyone within the OPP. It should be inferred that the DPP decided to await the completion of steps taken by Victoria Police and IBAC because he was satisfied that those steps were being undertaken in a diligent and timely manner.

⁶⁷⁰ Exhibit 1096 – Attachment 16 to the DPP Statement (RCMPI.0104.0001.0001 at _0140).

⁶⁷¹ Exhibit 1113 – Attachment 13 to the DPP Statement (RCMPI.0104.0001.0001 at _0128).

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44 Mr McRae's role within Victoria Police

- 44.1 Mr McRae is the Executive Director of Legal Services at Victoria Police. He has been the Director/Executive Director of Legal Services for over 13 years. In that time, the Legal Services Department of Victoria Police has expanded from a department employing a single lawyer (Mr McRae) to a department of 123 lawyers, making it one of the largest legal departments in the Victorian Public Service.
- 44.2 Mr McRae is held in extremely high regard within Victoria Police Command.
- 44.3 Former Chief Commissioner Overland said that he found Mr McRae to be "a very diligent and capable director of legal services".⁶⁷² Former Chief Commissioner Ashton said that he has "a great deal of confidence in Fin, he's a very professional person".⁶⁷³ Similarly, in the context of the meeting between Deputy Commissioner Cartwright, Assistant Commissioner Ashton (as he then was) and Mr McRae that took place on 3 November 2011, DC Cartwright said that "I've got to say Fin's an extremely efficient person. I've had dealings with him for years. So ... if I'd said Fin, do it, and Fin understood that, Fin would do it, or come back to me and say, 'I can't' and why."⁶⁷⁴
- 44.4 Mr McRae is an ethical and diligent lawyer. When Mr McRae learned of the Supreme Court of Queensland decision in *R v Moti* [2009] QSC 207, he took immediate steps to ensure that Victoria Police stop making payments to witnesses – including Ms Gobbo – that might have been impermissible in light of that decision. In 2011, Mr McRae was the architect of Victoria Police's response to the affidavit issue, whereby Victoria Police received 9,000 disclosures about improperly sworn affidavits.
- 44.5 There are two distinct parts to Mr McRae's role as Executive Director of Legal Services.
- 44.6 *First*, The Legal Services Department acts like any other legal office. As Executive Director, Mr McRae's role is akin to that of the principal of a legal practice. The Legal Services Department receives instructions and maintains files in much the same manner as a law firm. The Victoria Police Legal Services Division does not go looking for matters to advise on. If a police officer or member of Police Command requires legal advice, then he or she must seek it.⁶⁷⁵
- 44.7 *Secondly*, Mr McRae is a member of Police Command and occupies a general counsel type function. In this function, Mr McRae reports directly to the Chief Commissioner.
- 44.8 It was suggested in cross examination that Mr McRae should have investigated matters in relation to Ms Gobbo more thoroughly. For example, in the context of Mr McRae's involvement in ^{FBI} negotiations, Mr McRae was asked:
- Did you not think it would be appropriate to find out how this had come about, in your position, not just as an interested observer but from your position as a legal officer at Victoria Police?*⁶⁷⁶
- 44.9 Cross-examination of this nature demonstrates a fundamental misunderstanding as to the nature of Mr McRae's role within Victoria Police and the role of the Legal Services Department generally. Mr McRae is not an investigator and the Legal Services Department is not ESD, the Office of Police Integrity or IBAC. In the period from 2009-2011, Mr McRae had no reason to look behind his instructions and did not do so.
- 44.10 As is evident from the Legal Services Department organisational chart,⁶⁷⁷ Mr McRae's responsibilities extend from the State-wide Prosecutions Division (which provides legal services for all matters dealt with summarily), to the Civil Law Division (dealing with civil and compliance). In order to function effectively, the Legal Services Department, like

⁶⁷² T11891.40-43 (Overland).

⁶⁷³ T11008.24-28 (G Ashton).

⁶⁷⁴ T14241.1-5 (Cartwright).

⁶⁷⁵ T12833.26-29 (McRae).

⁶⁷⁶ T12643.31-35 (McRae).

⁶⁷⁷ Legal Services Department Organisational Chart dated July 2019 (VPL.6023.0041.2365).

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any other department, relies on others. Similarly, as Executive Director, Mr McRae could not possibly oversee every file, advice or matter.

45 The danger of hindsight reasoning

- 45.1 A general observation that can be made about the facts set out in chapters 18 to 22 of the submissions of Counsel Assisting is that through the period from 2009 to 2016, more and more people learned that Ms Gobbo had acted as a police informer but that no one reached an immediate conclusion that Ms Gobbo (or Victoria Police) had acted improperly.
- 45.2 The people that learned that Ms Gobbo had provided information and assistance to Victoria Police included many legal practitioners, each of whom were told – to varying degrees – about the kind of information and assistance that Ms Gobbo had provided. Those legal practitioners included:
- (a) the Director of Public Prosecutions and Commonwealth Director of Public Prosecutions;
 - (b) lawyers from the Office of Public Prosecutions and Commonwealth Office of Public Prosecutions;
 - (c) the Victorian Government Solicitor;
 - (d) numerous solicitors within the Victorian Government Solicitor's Office;
 - (e) various members of the Victorian Bar, including senior counsel and counsel;
 - (f) prosecutors within the Commonwealth Office of Public Prosecutions.
- 45.3 Why did no one ask any questions about the propriety of Ms Gobbo's use as a police informer?
- 45.4 Based on the evidence before the Royal Commission, it appears that one reason why no one asked any questions about Ms Gobbo's use as a human source is that people assumed that those responsible for Ms Gobbo's recruitment and handling had obtained legal advice and that Ms Gobbo was handled in accordance with that legal advice. We now know that this is not the case. But for many people – especially those external to Victoria Police – it was reasonable for them to assume that such advice had been sought, and accordingly that Ms Gobbo's use as a human source was proper.
- 45.5 However, all those people who have assumed that Ms Gobbo's use as a human source was proper have done so on the premise that in certain circumstances, it is appropriate for a legal practitioner to act as a human source. If it was never appropriate for a legal practitioner to act as a human source, then no legal advice would have countenanced it.
- 45.6 The evidence before the Royal Commission suggests that many who learned that Ms Gobbo was a police informer also assumed that no barrister would ever inform on his or her clients. Again, such an assumption is reasonable. Ms Gobbo is unique. This Royal Commission has uncovered no other examples of barristers informing on their clients.
- 45.7 In his oral evidence, Mr McRae described the concept of a barrister informing on his or her own clients as "*unthinkable*". In doing so, Mr McRae drew a distinction between a barrister providing information to police, and a barrister providing information about their own clients.
- 45.8 The submissions of counsel assisting (at [3596]) mischaracterise the evidence of Mr McRae in relation to this issue. In order to avoid any confusion, the relevant extracts are set out in full below:⁶⁷⁸

MR WINNEKE: *You say that the use of a barrister as an informer is an extraordinary concept?*

MR McRAE: *I think it's unthinkable.*

⁶⁷⁸ T12632.42-T12633.4 (McRae).

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MR WINNEKE: Unthinkable?

MR McRAE: Yes.

MR WINNEKE: Any suggestion that a barrister might be providing information to police that touches upon or concerns their clients would be, as far as you were concerned, unthinkable and extraordinarily troubling?

MR McRAE: I think it's inconsistent with what I would view a defence barrister's role.

45.9 Mr McRae also said:⁶⁷⁹

MR WINNEKE: If you'd come to the view that she was an informer, can I suggest that those were the questions that you should have asked?

MR McRAE: I don't think that just the fact that she's an informer would be enough to cause me to make - to start an inquiry, like a fulsome inquiry.

MR WINNEKE: But not a fulsome inquiry. Let's say it's not a fulsome inquiry. You find out a barrister, criminal defence barrister acting for significant, and I assume you must have been aware that she acted for people charged with serious offences?

MR McRAE: Yes.

MR WINNEKE: Was providing --- ?

MR McRAE: Just the notion of a lawyer providing information, if it's against their own clients it's unbelievable.

MR WINNEKE: Yes?

MR McRAE: But the notion of a lawyer giving information to police is not unbelievable.

45.10 Should Mr McRae or anyone else be criticised for not identifying the potential for miscarriage of justice sooner? Or, at the time was it so unthinkable that Ms Gobbo would have provided Victoria Police with information about her own clients as to explain why it is that no one would have investigated these matters thoroughly until the Corrie Review?

45.11 It was reasonable for Mr McRae and others to have assumed that Ms Gobbo would have acted in accordance with her ethical obligations, as they did. The fact that such an assumption was made is critical context to the events described below that took place in the period from January 2009 to June 2012.

45.12 In assessing the reasonableness of Mr McRae's actions, the Royal Commission should focus on the process followed at the time. As is explained below, there are instances where Mr McRae is unfairly criticised in the submissions of counsel assisting because the reasoning adopted by counsel assisting is based on hindsight bias.

45.13 Hindsight bias is the tendency for people considering a past event to overestimate their likelihood of having predicted its occurrence.⁶⁸⁰ Hindsight allows us to:

*exaggerate how much certainty there is. Because after the fact, everything is explained. Everything is obvious. And the presence of hindsight in a way mitigates against the careful design of decision making under conditions of uncertainty.*⁶⁸¹

⁶⁷⁹ T12684.23-40 (McRae).

⁶⁸⁰ Arkes, Faust, Guilmette and Hart, 'Eliminating the Hindsight Bias', *Journal of Applied Psychology* (1988) at p 305.

⁶⁸¹ Unknown, 'Daniel Kahneman on the Danger of Hindsight', *Wall Street Journal* (Article, 21 November 2006)

<<https://www.wsj.com/articles/daniel-kahneman-on-the-danger-of-hindsight-1479783901>>.

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- 45.14 Courts have long accepted the dangers of hindsight reasoning. In *Macks v Viscariello* (2017) 130 SASR 1, the Full Court of the Supreme Court of South Australia held (at [538]) that:

Self-evidently, judicial reasoning ought not to be founded on hindsight reasoning. Hindsight bias has harmful effects on an evaluation by a decision maker. It can lead to an assessment of the quality of the decision not by whether the process was sound but by whether its outcome was good or bad. There is a limit to the ability of a person to forecast; everything makes sense in hindsight. It is a trap to think that what makes sense in hindsight was predictable. A judge should always bear in mind that actions that seemed acceptable in foresight can look irresponsibly negligent in hindsight.

46 [REDACTED] negotiations and Petra Taskforce (January-December 2009)

- 46.1 Chapter 18 of the submissions of counsel assisting sets out the events in 2009-2010, leading to the committal of Paul Dale and Rodney Collins for the murder of Terence and Christine Hodson. During this period, Mr McRae had limited involvement in negotiations surrounding Ms Gobbo [REDACTED].⁶⁸² He met with Ms Gobbo on a single occasion.⁶⁸³ He had no involvement in the events surrounding Taskforce Briars, or the Taskforce Petra subpoena arguments, save than to facilitate the engagement of the VGSO to advise on those issues.⁶⁸⁴

- 46.2 Paragraphs 3779 to 3807 of the submissions of counsel assisting contend that a number of findings are open to the Royal Commission in relation to a letter dated 7 September 2009 that Ms Gobbo sent to Victoria Police in relation to [REDACTED].

- 46.3 Mr McRae adopts the submissions of Victoria Police in relation to that letter.⁶⁸⁵ In addition, Mr McRae makes the following submissions in response:

- 46.4 *First*, Mr McRae does not recall when he received the letter. It is possible that he received it on 7 or 8 September 2009.⁶⁸⁶ However, it is more likely that the letter was given to him for the first time on 9 September 2009, when he met with AC Cornelius, Inspector Smith and David Ryan and Isabel Parsons of the VGSO to discuss the letter and how Victoria Police should respond to it. Mr McRae's oral evidence was that he read the letter for the first time during the meeting and that he focussed on those parts that he was taken to by the VGSO. Mr McRae said:⁶⁸⁷

MR WINNEKE: You say, "Look, where there are notes, there we can see that I have read", at least that much, "We can know that I've read that part of the letter where there are notes"?

MR McRAE: More importantly, I think it's probably what we discussed. So I would have been - they would have been taking me through the letter and going to the points that they needed my input.

- 46.5 Regardless of whether Mr McRae read the letter before or during the 9 September meeting, Mr McRae's clear evidence is that he scanned the letter and that he did not read the letter word for word.⁶⁸⁸ Mr McRae's said:⁶⁸⁹

MR WINNEKE: And can I suggest that you must have read this document?

⁶⁸² Counsel Assisting's Submissions at p 849 [3594], Vol 2; p 864-867 [3683]-[3695], Vol 2; p 879-882 [3744]-[3752], Vol 2.

⁶⁸³ Counsel Assisting's Submissions at p 866 [3694], Vol 2.

⁶⁸⁴ Counsel Assisting's Submissions at p 867-868 [3700]-[3705], Vol 2; p 874-875 [3724]-[3725], Vol 2.

⁶⁸⁵ Victoria Police Tranche 2 Submissions Parts 85, 89.

⁶⁸⁶ T12672.12-28 (McRae).

⁶⁸⁷ T12676.5-11 (McRae).

⁶⁸⁸ Counsel Assisting's Submissions at p 887-999 [3779]-[3780], Vol 2.

⁶⁸⁹ T12674.42-T12676.2 (McRae).

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MR McRAE: No.

MR WINNEKE: You say - - - ?

MR McRAE: Keep going through the letter to see where I've taken the notes.

MR WINNEKE: You've made notes at various times throughout the document?

MR McRAE: Yes.

MR WINNEKE: And you say, on the basis of the notes you've taken, that indicates the issues that you've regarded as - - - ?

MR McRAE: Well if I have had turned my mind to that I would have taken a note.

MR WINNEKE: If we then go through the document. Just before we do, if you are going - you've got a letter from someone who's written to the Chief Commissioner of Police, correct?

MR McRAE: Yes.

MR WINNEKE: The letter is, in effect, a demand made by her of the Chief Commissioner of Police?

MR McRAE: Yes.

MR WINNEKE: Litigation is at least on the horizon?

MR McRAE: Yes.

MR WINNEKE: You're the Chief Legal Officer of Victoria Police?

MR McRAE: Yes.

MR WINNEKE: Isn't it incumbent upon you to read letters of this sort?

MR McRAE: I would have scanned the letter.

MR WINNEKE: Does scan mean not read?

MR McRAE: No, it means peruse the letter. I may have missed that.

MR WINNEKE: Well, how can you determine whether or not aspects of a letter are significant or not significant if you don't read the words in the letter?

MR McRAE: It would have culminated from the way the meeting was run.

MR WINNEKE: Right?

MR McRAE: Whether we were focused on the second part of the letter. I'm not running the file.

MR WINNEKE: No, I follow that. But this is a person who is now quite apparently in a disagreement with your organisation and is in effect writing to the Chief Commissioner and threatening to sue him?

MR McRAE: It depends what the other people in the meeting room said to me about what I needed to focus on.

MR WINNEKE: Right. Well even though they might have been focused on particular aspects of it, would you not have wanted to take the letter away, sit down and read it?

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MR McRAE: *Well they took the letter away to sit down and read it and take instructions and go through it. I would have moved on to whatever I was working on on that day.*

MR WINNEKE: *Right. Well - - - ?*

MR McRAE: *So I'm not doing the deep dive on the letter.*

- 46.6 *Secondly*, Mr McRae's oral evidence should be accepted because it is supported by all of the contemporaneous documents. The sections of the letter on which Mr McRae has taken handwritten notes all relate to the [PII] and what Ms Gobbo alleges Victoria Police had represented about her safety. Mr McRae recorded the outcomes of the meeting in a file note.⁶⁹⁰ It is clear from Mr McRae's file note that the meeting was focused on Ms Gobbo's safety and getting her [PII]. Mr McRae's notes state as follows:⁶⁹¹

Note that the witness continues to appear not to be concerned about her own personal safety but rather the evidence protection provided by the [PII]

- 46.7 Mr McRae's handwritten notes demonstrate that he did not ascribe significance to the parts of the letter that are now emphasised by counsel assisting, particularly paragraph 11, which refers to the "previous unprecedented assistance (2005-2009)" which Ms Gobbo said that she had provided.⁶⁹²
- 46.8 The contemporaneous records of the 9 September 2009, being the file notes of the various attendees, are also consistent with Mr McRae's oral evidence which was to the effect that the focus of the meeting was on preparing a response to the letter and understanding why Ms Gobbo was resistant to [PII].⁶⁹³ None of the file notes refer to Ms Gobbo's previous assistance to Victoria Police. There is nothing in those file notes to suggest that Mr McRae or any other attendees gave any significance to Ms Gobbo's reference to her "previous unprecedented assistance" or identified the potential issues that this might cause.
- 46.9 *Thirdly*, Mr McRae's evidence should be accepted because no other attendee at the 9 September 2009 meeting gave evidence about it. AC Cornelius and Inspector Smith were not asked about what was discussed at the 9 September 2009 meeting. And neither of Mr Ryan or Ms Parsons were called to give evidence at all. It would be unfair to make findings against Mr McRae in circumstances where the Royal Commission did not call witnesses that would have corroborated Mr McRae's own evidence.
- 46.10 *Fourthly*, counsel assisting have not identified any evidence that would support their contention. Instead, counsel assisting invite the Commissioner to reject Mr McRae's evidence that he did not read the 7 September letter "word for word" and to instead find that he read and understood the letter, including the significance of the reference to Ms Gobbo's "previous unprecedented assistance" based only on inferences that they say should be drawn.⁶⁹⁴ Respectfully, those inferences – even if available – are insufficient to displace the weight of the evidence that supports Mr McRae's recollection. Specifically, Mr McRae makes the following observations in response to paragraphs 3798 of the submissions of counsel assisting:
- (a) With regard to paragraph 3798.1, the fact that Mr McRae was the most senior lawyer for Victoria Police does not make it any more or less probable that he would have read the 7 September letter. At best, this is a neutral factor.
 - (b) With regard to paragraph 3798.2, Mr McRae's involvement in the matter to this point supports Mr McRae's evidence that he did not read the letter word for word. As the submissions of counsel assisting show, Mr McRae had limited involvement

⁶⁹⁰ Exhibit 1076 – File note and letters to and from 'Witness F', multiple dates (VPL.0005.0003.3385).

⁶⁹¹ Exhibit 1076 – File note and letters to and from 'Witness F', multiple dates (VPL.0005.0003.3385 at 3385).

⁶⁹² Exhibit 1076 – File note and letters to and from 'Witness F', multiple dates (VPL.0005.0003.3385 at 3388).

⁶⁹³ Victoria Police Tranche 2 Submissions Part 89.

⁶⁹⁴ Counsel Assisting's Submissions at p 892 [3798], Vol 2.

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in the ^{P11} negotiations to this point. He had met with Ms Gobbo just once. In contrast, all of the negotiations with Ms Gobbo had been conducted by the VGSO. It is logical that Mr McRae would have deferred to the VGSO to prepare a response to the letter as well.

- (c) With regard to paragraph 3798.3, Mr McRae's handwritten notations on his copy of the 7 September letter also support his evidence that he did not read the letter word for word. Most significantly, Mr McRae made no handwritten annotation against paragraph 11 of the letter. This strongly supports his evidence that he did not read that paragraph.
- (d) With regard to paragraph 3798.4, that Mr McRae was seeking to understand why Ms Gobbo was threatening to sue Victoria Police is – at best – a neutral factor and the explanation given in paragraph 3798.4 of the submissions of counsel assisting as to why this makes it more likely that Mr McRae would have read the letter is circular. It cannot be suggested that Mr McRae would have read the letter to understand a specific phrase in the letter when his clear evidence was that he did not read that part of the letter.

46.11 In assessing Mr McRae's evidence surrounding the 7 September letter, the Royal Commission must apply the *Briginshaw* principle.⁶⁹⁵ In doing so, it must apply the evidence in a logically probative way and in a way that is fair to not only Mr McRae, but also to the other witnesses who gave evidence and to those people who received the 7 September letter but who were not given the opportunity to give evidence about it.

46.12 Simply put, there is no logically probative evidence that would support the Royal Commission making a finding that Mr McRae read and understood the 7 September letter when his clear evidence was that he did not.

46.13 Similarly, it is not open to the Royal Commission to find that Mr McRae should have read the 7 September 2009 letter, as is contended for by counsel assisting in paragraph 3800 of the submissions of counsel assisting. That submission demonstrates hindsight bias because it focusses on the significance of the 7 September 2009 letter, rather than on the process that Victoria Police put in place to respond to the letter and to negotiate with Ms Gobbo in relation to ^{P11}.

46.14 What the evidence shows is that the VGSO was engaged to consider the 7 September letter, that it did so diligently and that a detailed response was provided to Ms Gobbo in a timely manner.⁶⁹⁶

46.15 In summary, Mr McRae should not be criticised for not reading the letter at the time. Mr McRae was only brought into the matter at times of crisis. Meanwhile, the VGSO lawyers and the Petra Taskforce had daily involvement in this matter. In his oral evidence, Mr McRae explained this in the following way:⁶⁹⁷

I'm the head of the department, I'm getting pulled in, parachuted in from time to time, I'm not going through the detail. They're taking me through the high level key issues.

And those issues weren't discussed at that meeting.

46.16 While it may appear to be with the benefit of hindsight, it is clear from Mr McRae's evidence that he did not consider the concerns Ms Gobbo raised in her letter in the way that he would consider them with the information that is available to him now. His oral evidence was that he did not know what Ms Gobbo's concerns were. Rather, Mr McRae's evidence was that he wanted her to be disabused of the idea that ^{P11} would provide some sort of protection against disclosure.⁶⁹⁸

⁶⁹⁵ Counsel Assisting's Submissions at p 9-11 [41]-[51], Vol 1.

⁶⁹⁶ Victoria Police Tranche 2 Submissions Parts 85, 89.

⁶⁹⁷ T12678.38-43 (McRae).

⁶⁹⁸ T12674.1-19 (McRae).

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- 46.17 Mr McRae's evidence as to what he would have done, if he had read the letter in full was as follows:⁶⁹⁹

MR WINNEKE: *If you had read paragraph 11 what would you have done?*

MR McRAE: *If I had – with hindsight.*

MR WINNEKE: *Yes?*

MR McRAE: *And that's why [we're] where we are today, and I know this more than anyone because I'm the one who has exposed this over the years, relentlessly. So what I would have done is referred that to the lawyers to make further inquiries. I would have asked the question.*

MR WINNEKE: *Which lawyers?*

MR McRAE: *The VGSO lawyers.*

- 46.18 If Mr McRae had read the 7 September letter in full and had appreciated the significance of it, then it is likely that he would also have raised it with the DPP. It is likely that Mr McRae would have done so because it was not long after this letter that Mr McRae briefed the DPP about payments made to Ms Gobbo in the context of the decision in *R v Moti*. In anticipation of that briefing, the DPP was provided with copies of:

- (a) the memorandum of agreement prepared by or on behalf of Ms Gobbo;
- (b) a copy of the without prejudice memorandum of agreement prepared by the VGSO; and
- (c) a copy of the decision in *R v Moti*.⁷⁰⁰

- 46.19 Mr McRae's evidence was that he wanted to ensure that the DPP was fully appraised of the issue, in the context of the upcoming committal of Paul Dale.⁷⁰¹ If Mr McRae had appreciated the significance of the 7 September letter, then there is no question that he would have raised those issues with the DPP too.

- 46.20 Mr McRae adopts the position advanced by Victoria Police in relation to the 7 September 2009 letter.⁷⁰² With the benefit of hindsight, it is clear that the 7 September letter could have prompted questions that may have led to a review of Ms Gobbo's handling at an earlier stage. In that sense, it is an opportunity missed. However, the significance was not appreciated at the time and it is not open to the Royal Commission to make findings to the effect that it was.

47 Committal of Rodney Collins and Paul Dale

- 47.1 On 27 January 2010, Mr Dale served a subpoena on the Chief Commissioner requiring production of certain documents concerning Ms Gobbo.⁷⁰³ By this time, the VGSO had already been engaged by the Petra Taskforce to advise in relation to the subpoenas issued by Collins and Dale. Specific advice was sought in relation to this subpoena and Mr McRae received an email from David Ryan in relation to it, although Mr McRae was not providing instructions on this issue and had very little to do with Mr Dale's committal.⁷⁰⁴

- 47.2 As Mr McRae was not providing instructions on the response to the subpoena, he was not provided with copies of any of the documents to be produced and had no role in that process, save than to facilitate contact between the VGSO and the investigator. The discussion referred to in the file note taken by David Ryan on 12 February 2010 is an

⁶⁹⁹ T12679.13-22 (McRae).

⁷⁰⁰ Exhibit 1067 – Statement of Findlay McRae at [3.34]-[3.35] (VPL.0014.0089.0003 at .0017-.0018).

⁷⁰¹ Exhibit 1067 – Statement of Findlay McRae at [3.36] (VPL.0014.0089.0003 at .0018).

⁷⁰² Victoria Police Tranche 2 Submissions Parts 85, 89.

⁷⁰³ Counsel Assisting's Submissions at p 906 [3878], Vol 2.

⁷⁰⁴ Counsel Assisting's Submissions at p 907 [3880], Vol 2; Exhibit 954 – Statement of Marlo Baragwanath at [34] (RCMPI.0035.0001.0001 at p 11-12); T12706.41-T12707.6 (McRae).

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example of Mr McRae facilitating such contact.⁷⁰⁵ Contrary to the submissions of Counsel Assisting (at [3893]), it was not Mr McRae providing instructions as to which documents would be objected to. That was a matter for the VGSO and counsel briefed by the Petra Taskforce to advise on, based on instructions provided by the investigators directly.

47.3 According to the diary of Inspector Smith, a meeting took place at 11.45am on 12 March 2010 between Inspector Smith, AC Cornelius and Mr McRae.⁷⁰⁶ However, contrary to paragraph 3967, it is not open to the Commissioner to make any findings about what was discussed at the 12 March 2010 meeting for the following reasons:

47.4 *First*, none of the attendees at the 12 March 2010 meeting were asked questions about it during their oral evidence. Accordingly, there is no evidence before the Royal Commission about what was discussed, save for the diary note of Inspector Smith.

47.5 *Secondly*, Inspector Smith's diary note contains no detail of the content of the discussion. It simply recites the matters set out in paragraph 3959 of the submissions of counsel assisting:⁷⁰⁷

11.45 no JPC. Discuss with AC BSD as per AC Rae - Update to Counsel at Committal and Issues re Subpoenas, Suppression and I.

47.6 As paragraph 3959 of the submissions of counsel assisting says, according to the diary entry of Inspector Smith, it was Inspector Smith who was providing an update to AC Cornelius and Mr McRae. There is nothing in Inspector Smith's diary to suggest that AC Cornelius or Mr McRae discussed any concerns with Inspector Smith at all.

47.7 *Thirdly*, Mr McRae evidence was that he played only a minor role in Taskforce Petra's response to the subpoenas served by Rodney Collins and Paul Dale in the lead up to the committal in March 2010.

47.8 Mr McRae gave oral evidence about his role in the response to the subpoenas. The whole of his evidence on this topic is set out below:⁷⁰⁸

MR WINNEKE: And then on 27 January you refer to subpoenas, or a subpoena served on the Chief Commissioner?

MR McRAE: I've been copied into an email, yeah.

MR WINNEKE: Okay. I don't need to go through the details of that. Do you say that the management of that subpoena was overseen by you at all?

MR McRAE: No.

MR WINNEKE: Did you have any knowledge of what was going on with respect to that subpoena?

MR McRAE: I can't recall.

MR WINNEKE: All right?

MR McRAE: It's not something I would have been providing instructions on.

MR WINNEKE: No, all right. Now, on 29 April Ms Gobbo filed civil proceedings?

MR McRAE: Yes.

⁷⁰⁵ Counsel Assisting's Submissions at p 910 [3893], Vol 2.

⁷⁰⁶ Counsel Assisting's Submissions at p 925 [3958], Vol 2.

⁷⁰⁷ Untendered diary of Detective Inspector Steve Smith, multiple dates, VPL.0005.0162.0020 at .0143.

⁷⁰⁸ T12706.41-T12707.12 (McRae).

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MR WINNEKE: What you say is that at the time the writ was issued you were not aware that Ms Gobbo had been a human source?

MR McRAE: No.

- 47.9 It is clear from Mr McRae's oral evidence that counsel assisting accepted that Mr McRae did not oversee the management of the subpoenas, had no recollection of them and that it was not a topic on which Mr McRae was providing instructions. In light of Mr McRae's oral evidence, it is not open to the Commissioner to find that Mr McRae discussed any concerns with Inspector Smith about the committal of Dale and Collins.
- 47.10 *Fourthly*, Mr McRae's evidence, which should be accepted, is that he did not know Ms Gobbo was a human source until around May 2010, after the civil litigation commenced. For the reasons set out in paragraph 29 to 29.10. above, it is not open to find that Mr McRae knew that Ms Gobbo was a human source after Ms Gobbo's letter dated 7 September 2009 was received because Mr McRae did not read the letter word for word. As a matter of logic, Mr McRae cannot have been concerned about Ms Gobbo's role as a human source being exposed, let alone the extent of her role as a human source being exposed, in circumstances where he was not aware that she was a human source at all.
- 47.11 *Fifthly*, there is no evidence that Mr McRae was aware of the content of the advice that barrister Gerard Maguire gave to the Petra or Briars Taskforces. During his oral evidence, Mr McRae was not asked whether he was aware of any specific advice given by Mr Maguire. In fact, Mr McRae's evidence was that he would not have been involved in such matters. In response to questioning about the engagement of Mr Maguire by the Briars Taskforce, Mr McRae said, "*I was the Director of a department doing other things. I couldn't get involved in individual cases*".⁷⁰⁹

48 The civil proceeding (April-August 2010)

- 48.1 On 30 April 2010, Ms Gobbo commenced proceedings against the State of Victoria, Simon Overland, in his capacity as Chief Commissioner of Victoria Police and Christine Nixon, in her capacity as the former Chief Commissioner of Victoria Police.⁷¹⁰ At this time, the Superintendent in Charge of Civil Litigation was Superintendent Peter Lardner. As he describes in his witness statement, it was his role to facilitate the Victoria Police response to the writ. Mr McRae attended a number of "*high level*" meetings in relation to the civil litigation, however, it was Superintendent Lardner who provided instructions to the VGSO and to counsel.⁷¹¹
- 48.2 Superintendent Lardner was not called to give oral evidence by counsel assisting the Royal Commission.
- 48.3 In his oral evidence, Mr McRae described the Victoria Police approach to the civil litigation in the following way:⁷¹²
- We had an outsourced legal civil litigation branch at that time. We ran on a skeleton staff of very good people, Peter Lardner's an excellent investigator and excellent police officer. Previously it was Steve Gleeson who ran the area. We had a very close relationship with the VGSO and we engaged excellent barristers, but it was very much outsourced.*
- 48.4 Mr McRae's evidence as to when he learned that Ms Gobbo was a human source should be accepted. Contrary to the paragraph 4026 of the submissions of counsel assisting, as at the date the civil litigation was commenced, Mr McRae was not aware that:

⁷⁰⁹ T12662.31-32 (McRae).

⁷¹⁰ Counsel Assisting's Submissions at p 940 [4019], Vol 2.

⁷¹¹ T12719.33-34 (McRae).

⁷¹² T12720.39-46 (McRae).

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- (a) Ms Gobbo had provided significant assistance to Victoria Police between 2005 and 2009, which related to the prosecution of organised crime figures and the suggestion of her assisting the Purana Taskforce; or
 - (b) Ms Gobbo had concerns that disclosure of her prior assistance to Victoria Police would, amongst other matters, jeopardise the Dale prosecution and cause issues for Victoria Police.
- 48.5 As explained in 29.1 to 29.20 above, Mr McRae accepts that he **could** have been aware that Ms Gobbo had provided significant assistance to Victoria Police if he had read the 7 September letter word for word. However, the Royal Commission should not find that Mr McRae **should** have read the letter because to do so would demonstrate hindsight bias. What the Royal Commission should focus on is the processes that Mr McRae and the Legal Services Department put in place to deal with the 7 September letter and the civil litigation that followed. In the circumstances as they were understood at the time, it was appropriate for Mr McRae and the Legal Services Department to engage the VGSO to prepare Victoria Police's response to Ms Gobbo's letter and as the evidence in paragraph 29.14 shows, Ms Gobbo's letter was diligently considered by the VGSO in preparing Victoria Police's response.
- 48.6 With regard to paragraph [4026] there is no evidence before the Royal Commission which would suggest that Mr McRae could have known whether Ms Gobbo was concerned about her prior assistance jeopardising the Dale prosecution or causing other issues. There is no evidence before the Royal Commission from which Mr McRae could have learned of these matters and accordingly, this is not something he could have known by the time Ms Gobbo commenced the civil proceeding.
- 48.7 Mr McRae's evidence, which was not challenged, was that at the time the writ was filed, he understood that the assistance provided by Ms Gobbo was limited to her role as a witness against Paul Dale.⁷¹³ It is for this reason that Mr McRae's first reaction to the writ was to seek advice as to whether it could be struck out.⁷¹⁴ Mr McRae did so because his initial impression was that the claim was a contract matter. However, he quickly came to the view that this was not the case.⁷¹⁵
- 48.8 On 13 May 2010, Mr McRae attended a steering committee meeting for the Victoria Police response to the civil litigation. While Mr McRae has no clear recollection, he believes that it was during or around this meeting that he became aware that Ms Gobbo had been a human source.
- 48.9 Mr McRae made handwritten notes on the agenda under the heading "Other items".⁷¹⁶
- Witness contact – Steve Smith*
 - Ongoing payments*
 - Registered informer statements (prior to 2009)*
- 48.10 Mr McRae's handwritten notes can be juxtaposed with Superintendent Lardner's notes:⁷¹⁷
- Prior police Jan 2009*
 - Registered*
 - Fin's office has copy of Human Source Process*
 - P.L → S/T Sandy White*
 - Protocol in place re same*

⁷¹³ Exhibit 1067 – Statement of Findlay McRae at [4.5] (VPL.0014.0089.0003 at .0022).

⁷¹⁴ Untendered email chain ending in email from Findlay McRae to Steve Smith dated 11 May 2010 (VPL.6023.0070.4214).

⁷¹⁵ T12707.8-30 (McRae).

⁷¹⁶ Notes of meeting re Gobbo v State of Victoria and Ors by Mr Findlay McRae dated 13 May 2010 (VPL.0005.0003.3053 at .3054).

⁷¹⁷ Untendered diary of Superintendent Peter Lardner, multiple dates (VPL.0005.0229.0269 at .0399-4000).

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Fin indicated policy is Steve Smith has been appointed as the contact point for Gobbo if she requests some. No one else to speak to her.

(Jeff Pope) policy Info only.

Seek advice for Petra Steering Committee re payment of ongoing costs (is she on a contract re same?)

→ Is she on the informer register?

48.11 In his statement, Mr McRae said:⁷¹⁸

Based on my handwritten notes, I believe that it was during or around the time of this meeting that I became aware that the assistance Ms Gobbo had provided to Victoria Police went beyond her role as a witness against Paul Dale. I have no specific recollection of what I was told. However, I was not informed of the extent of assistance Ms Gobbo had provided and I was not told that she had provided information in relation to her clients. She was a barrister. It did not even enter my mind that she would have been giving information about her clients.

48.12 Mr McRae confirmed this in oral evidence:⁷¹⁹

MR WINNEKE: Effectively what you say is that that was the date where you discovered she was an informer?

Mr McRAE: Well that's the date that I've got a note of it.

MR WINNEKE: And is that the day that you effectively said, "Righto, well look, I want to find out exactly what's going on, as much as I can, about this situation whereby we've got a criminal barrister as an informer", is that right?

Mr McRAE: It was in the civil litigation process, so I was awaiting to see what the civil team would uncover in their normal process of gathering the materials.

MR WINNEKE: Right. But as I understand what you were saying yesterday, this was in effect the commencement of your relentless or determined effort to expose what had gone on by Victoria Police?

Mr McRAE: No, I'm not saying that at all. I'm saying it's part of the jigsaw puzzle that was unfolding over time. At this point I was dealing with the civil litigation matter and we were in a document gathering exercise.

48.13 In the context of this examination, it is extraordinary that counsel assisting would suggest that it is open to the Commissioner to find that Mr McRae discovered that Ms Gobbo was an informer earlier than this. As a matter of fairness, if counsel assisting wanted to suggest that it was open to make such a finding, then it should have been put to Mr McRae so that he could have responded to it.

48.14 On 20 May 2010, Mr Lardner attended a conference with Mr Ryan and Ms Pekevskas of the VGSO and Mr Michael Wheelahan QC and Dr Michael Rush of counsel.⁷²⁰ On 21 May 2010, Mr Ryan sent a letter of advice to Superintendent Lardner. Paragraphs 19-21 of the letter state:

Another issue in relation to the Defence ... is the history of [Ms Gobbo's] relationship with Victoria Police. We understand that [Ms Gobbo] has provided information to Victoria Police in matters other than the Dale prosecution and that she may still be providing information to Victoria Police. Clearly, the plaintiff's

⁷¹⁸ Exhibit 1067 – Statement of Findlay McRae at [4.13] (VPL.0014.0089.0003 at .0024).

⁷¹⁹ T12712.33-T12713.6 (McRae).

⁷²⁰ Counsel Assisting's Submissions at p 942 [4032], Vol 2.

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status as a police informer is highly confidential and sensitive and its disclosure is likely to further increase the risk to her safety.

[Ms Gobbo] claims that she has suffered injury as a result of being referred to as an "informer" by counsel for the Chief Commissioner in the Dale committal hearing. In order to properly respond to this claim, the defendants need to consider whether it is appropriate to plead in their Defence that the plaintiff was and is in fact a police informer. If it were to be pleaded, a suppression order would need to be obtained in relation to the defence of the Defendants. However, it may be that a suppression order does not provide sufficient protection in relation to this information.

Confidential briefing for counsel

Counsel have requested that Victoria Police arrange a confidential briefing at which they can be advised of the extent of the plaintiff's relationship with Victoria Police and how it may impact on the way the Defence is drafted. Counsel are also concerned to ascertain whether the information provided to Victoria Police in matters other than the Dale prosecution may be protected by legal professional privilege.⁷²¹

- 48.15 There are three relevant points to note from this advice:
- 48.16 *First*, the VGSO and counsel were aware that Ms Gobbo was a police informer and that she had provided information to police other than in relation to Paul Dale. This is not surprising. Mr Ryan had received instructions from Victoria Police about Ms Gobbo since 2009. Documents produced by the VGSO demonstrate that Mr Ryan was aware that Ms Gobbo had provided information to Victoria Police in relation to the Purana Taskforce.⁷²²
- 48.17 The VGSO and counsel were considering whether to plead that Ms Gobbo's was a police informer. In order to decide whether or not to do so, counsel requested further information in relation to Ms Gobbo's informing.
- 48.18 *Secondly*, the VGSO had not raised any concerns about Ms Gobbo's informing. If the VGSO had concerns about Ms Gobbo's informing (such as whether she had received privileged information from her clients and then passed such information on to her handlers), then it would have been raised in a much more direct way. The writer of the letter – in spite of having much greater knowledge of the information and assistance provided by Ms Gobbo – had no such concerns. The letter is simply a request for further information to be provided for the purposes of the defence.
- 48.19 For example, David Ryan said in his statement to the Royal Commission that: ⁷²³
- I recall attending [a confidential briefing with counsel, Ms Pekevskia and members of Victoria Police] to assist in the preparation of the defence to the civil proceedings. I believe the briefing took place in mid-2010. The briefing provided background in relation to Ms Gobbo and her involvement with Victoria Police but I do not recall it being particularly relevant to the defence. Although I cannot be entirely sure, I believe that we were told during this briefing that Ms Gobbo's involvement in providing information to Victoria Police was greater than the Dale matter. I don't recall being told or being concerned that Ms Gobbo may have been providing privileged information. Certainly, we were not told any particular details about the information Ms Gobbo was providing or whether it was privileged. I do not believe the VGSO raised any concerns about Ms Gobbo's involvement with Victoria Police at the time. For my part, I was focussed on defending the civil proceeding and I did not give any further thought to the issue.*

⁷²¹ Exhibit 1085 – Letter from Mr David Ryan to Detective Superintendent Peter Lardner dated 21 May 2010 (VPL.0005.0010.2514 at 2518).

⁷²² Untendered Memorandum of Agreement (VGSO.2000.0142.0386).

⁷²³ Exhibit 955 – Statement of David Ryan at [11] (COM.0080.0001.0002 at _0003).

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- 48.20 *Thirdly*, concerns about Ms Gobbo's safety remained a significant factor in Victoria Police's decision making.
- 48.21 Counsel and the VGSO were provided with the information sought in the 21 May letter. It was facilitated by Superintendent Lardner, following the processes that Victoria Police had in place at the time.⁷²⁴ In his oral evidence, Mr McRae said:
- I awaited the advice of three very experienced counsel, all of whom I trust, and the VGSO lawyers, who were proposing to look at the issue.*⁷²⁵
- ***
- I would have expected that if they thought there was a miscarriage of justice they would have raised it with me.*⁷²⁶
- 48.22 It was appropriate for these processes to be followed and Mr McRae should not be criticised for not taking any additional steps to inquire into Ms Gobbo's role as an informer. If counsel or the VGSO had concerns about Ms Gobbo's informing at this time, then those concerns would have been raised with Mr McRae.
- 48.23 While Mr McRae had limited involvement in the Victoria Police response to the civil litigation:
- (a) On 27 May 2010, Mr McRae was copied to an email from Mr O'Connor in relation to Ms Gobbo's source management log.⁷²⁷
 - (b) On 1 June 2010, Mr McRae attended a conference with Superintendent Lardner, Superintendent Gleeson, Mr Ryan and John Cain of the VGSO in relation to the civil litigation.⁷²⁸
 - (c) On 3 June 2010, Mr McRae and Superintendent Lardner briefed Chief Commissioner Overland and Deputy Commissioner Ken Jones on the civil litigation. Ms Gobbo's status as a police informer was discussed at the briefing.⁷²⁹
 - (d) On 21 June 2010, Mr McRae attended a briefing with representatives of Petra, Briars and Purana Taskforces.⁷³⁰
 - (e) On 27 July 2010, Mr McRae attended a conference with Superintendent Lardner, Senior Sergeant Bona, Mr Ryan, Mr Wheelahan SC and Dr Rush of counsel in relation to the civil litigation.⁷³¹
 - (f) On 5 August 2010, Mr McRae attended a meeting with John Cain (VGSO), Michael Strong (OPI), Paul Jektovic (Deputy Director of the OPI) to brief them about the civil litigation. This was an unusual briefing. Mr McRae wanted the OPI to have an awareness of Ms Gobbo's status as a lawyer and as a human source.⁷³²
- 48.24 The 5 August meeting is significant in that it is the first time that Mr McRae (or anyone from Victoria Police) had briefed an independent body about Ms Gobbo's role. The OPI was briefed with a copy of the advice provided by the VGSO, which clearly identified that Ms Gobbo had been a human source. During the briefing, Ms Gobbo's status as a police informer was discussed openly.⁷³³ From the nature of the discussion, it appeared to Mr McRae that all those present already knew that Ms Gobbo had been a police informer. As he walked into the room, Mr Jektovic stated that Ms Gobbo had "prevented

⁷²⁴ Exhibit 1231 – Statement of Peter Lardner at [17]-[25] (VPL.0014.0102.0001 at .0003- .0005).

⁷²⁵ T12720.19-21 (McRae).

⁷²⁶ T12720.27-29 (McRae).

⁷²⁷ Counsel Assisting's Submissions at p 946 [4049], Vol 2.

⁷²⁸ Counsel Assisting's Submissions at p 947 [4058], Vol 2.

⁷²⁹ Counsel Assisting's Submissions at p 948-949 [4060]-[4065], Vol 2.

⁷³⁰ Counsel Assisting's Submissions at p 950-951 [4069]-[4073], Vol 2.

⁷³¹ Exhibit 1067 – Statement of Findlay McRae at [4.32] (VPL.0014.0089.0003 at .0028).

⁷³² Counsel Assisting's Submissions at p 954 [4089]-[4091], Vol 2.

⁷³³ T12759.12-13 (McRae).

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a lot of harm to the community.⁷³⁴ Evidently, the OPI had far greater knowledge of Ms Gobbo's informing because it had oversight of the Petra and Briars Taskforces.

- 48.25 Of the attendees at the 5 August meeting, only Mr McRae was called to give evidence. His account should be accepted.
- 48.26 For the reasons advanced in the Victoria Police submission, the Royal Commission should not accept the summary of the 5 August 2010 briefing as set out in paragraphs 4089-4095 of the submissions of counsel assisting. Mr McRae adopts the submissions of Victoria Police in relation to the 5 August 2010 meeting.⁷³⁵ Specifically, it was Mr McRae's evidence that the OPI was briefed with a copy of the writ, defence and VGSO advice and that all of those documents were provided to the OPI.⁷³⁶ For the reasons advanced in the Victoria Police submission, it is not open to the Royal Commission to draw an inference that only the writ and defence were retained by the OPI. As the Victoria Police submission shows, the evidence suggests that in fact all documents that Mr McRae took to the meeting were retained by the OPI.⁷³⁷
- 48.27 It is factually inaccurate for counsel assisting to suggest – as they do in paragraph 4094 – that Mr McRae had indicated that he would read the source management log. Mr McRae did no more than acknowledge receipt of the email. Paragraph 4094 also mischaracterises the briefing given by Mr McRae and Mr Cain. It was not intended to be a comprehensive briefing about all aspects of Ms Gobbo's history as a human source. Neither Mr McRae nor Mr Cain had anywhere near the level of knowledge required to provide such a briefing. Nor was it simply a briefing about the civil litigation. Mr McRae had never before and has never since briefed the OPI about civil litigation to which Victoria Police was a party. It was a briefing given because Ms Gobbo's status was highly irregular and Mr McRae and Mr Cain wanted the OPI to be aware of this. Mr McRae said:

"I wanted the OPI to have an awareness of Ms Gobbo's status as a lawyer and a source, of the claims and of Victoria Police's response. And I was interested in hearing back from the OPI if there were matters that they wanted to raise with us... I wanted there to be full transparency with our oversight body".⁷³⁸

- 48.28 Evidently, even if the legal advice was not retained, the whole purpose of the briefing was to discuss those documents. The reason why the Victorian Government Solicitor attended the meeting was so that he could speak to the advice given by the VGSO. There is no other reason for his attendance. Based on the evidence before the Royal Commission there can be no doubt that Mr Strong and Mr Jektovic were aware of their contents.
- 48.29 On 12 August 2010, the civil litigation settled at mediation. It was settled on model litigant principles, and in line with advice from Senior Counsel and the VGSO. Ministerial approval was sought and obtained prior to settlement.⁷³⁹

49 Taskforce Driver (September-November 2011)

- 49.1 Mr McRae had little further to do with Ms Gobbo until 21 September 2011, when he attended two conferences in connection with Taskforce Driver.
- 49.2 As occurred with the [REDACTED] issue, Mr McRae was brought in at the last minute to assist Victoria Police to confront a potential crisis. Mr Fryer – who was at that time the Detective Superintendent overseeing the Driver Taskforce – says that on 15 September 2011, he received a briefing from Detective Inspector Frewen and Detective Senior Sergeant Buick about the potential for Ms Gobbo to be "fully exposed" if she was

⁷³⁴ Exhibit 1067 - Statement of Findlay McRae at [4.37] (VPL.0014.0089.0003 at .0029).

⁷³⁵ Victoria Police Tranche 2 Submissions Part 100.

⁷³⁶ T12752.45-T12753.16 (McRae).

⁷³⁷ Victoria Police Tranche 2 Submissions Part 100.

⁷³⁸ Exhibit 1067 - Statement of Findlay McRae at [4.36] (VPL.0014.0089.0003 at .0028-.0029).

⁷³⁹ Untendered Instrument of Authorisation - Ex Gratia Payment (VPL.0005.0036.0253); Victoria Police Tranche 2 Submissions [92.16], Part 100.

required to give evidence against Paul Dale in the Commonwealth prosecution. This caused significant concerns within the Driver Taskforce about Ms Gobbo's safety.

- 49.3 It was Mr McRae's evidence that these concerns about Ms Gobbo's safety were conveyed to him by DS Fryer.⁷⁴⁰ Contrary to the submissions of Counsel Assisting (at [4244]), there is no evidence that matters other than concerns about Ms Gobbo's safety were discussed with Mr McRae in the lead up to the conferences he attended on 21 September 2011. There is no evidence that Mr McRae had anything to do with this matter until he attended a conference on 16 September 2011,⁷⁴¹ and the two subsequent meetings that took place on 21 September 2011.
- 49.4 On 21 September 2011, Mr McRae attended two conferences.
- 49.5 First, he attended a conference with Greg Elms (VGSO), Louise Jarrett (VGSO) and Gerard Maguire of counsel. After the first meeting, a second meeting was held, which was attended by investigators of Taskforce Driver and Taskforce Briars and the CDP.⁷⁴²
- 49.6 As Mr McRae says in his statement, he was not involved in the decision to brief Mr Maguire to provide advice as the Crime Department had engaged the VGSO and Mr Maguire directly and that the Crime Department was concerned about the prospect of a subpoena being issued if Ms Gobbo was called to give evidence and had sought advice from Mr Maguire in that context.⁷⁴³ When giving oral evidence, Mr McRae said that he could recall receiving instructions from Superintendent Fryer to the effect that there was real risk of death to Ms Gobbo if she was called as a witness.⁷⁴⁴
- 49.7 Mr McRae's evidence of the meeting is that Gerard Maguire attempted to persuade the CDP not to call Ms Gobbo because there was a real risk of death if she was called as a witness.⁷⁴⁵ In his oral evidence, Mr McRae explained that he was asked to assist Mr Maguire in persuading the CDP to withdraw Ms Gobbo as a witness.⁷⁴⁶
- 49.8 Mr McRae's recollection of this meeting is consistent with that of Gerard Maguire, who says in his statement:
- I have no detailed recollection of the discussion which occurred during the meeting on 21 September 2011 save that I and others expressed concern about the transmutation of GOBBO from a source to a witness and the potential consequences which this might lead to in the context of PII claims and disclosure generally. There was also a deal of discussion about the extreme risk to GOBBO, the danger she was in and the need to have her called as a witness at all.*⁷⁴⁷
- 49.9 On 4 October 2011, Mr Maguire provided advice in relation to the Dale matter. On the same day, there was a further conference at the VGSO to discuss the advice.⁷⁴⁸ Mr McRae was not present at this meeting and there is no evidence to suggest that he was briefed about this meeting after it took place.
- 49.10 The advice itself was received by the Office of the Director of Legal Services on 5 October 2011, however, as Mr McRae describes in his statement and in his oral evidence, he does not recall reading it until he met with Deputy Commissioner Cartwright and Assistant Commissioner Ashton on 3 November 2011.⁷⁴⁹
- 49.11 It is regrettable that the advice was not given to Mr McRae sooner. Mr McRae's evidence was that would have expected that advice of this nature would have come to

⁷⁴⁰ Exhibit 1067 – Statement of Findlay McRae at [5.5] (VPL.0014.0089.0003 at .0030); T12617.19-34 (McRae).

⁷⁴¹ Counsel Assisting's Submissions at p 989 [4246], Vol 2.

⁷⁴² Counsel Assisting's Submissions at p 990 [4247], Vol 2.

⁷⁴³ Exhibit 1067 – Statement of Findlay McRae at [5.7] (VPL.0014.0089.0003 at .0031).

⁷⁴⁴ T12617.27-34 (McRae); T12798.15-20 (McRae).

⁷⁴⁵ Exhibit 1067 – Statement of Findlay McRae at [5.6] (VPL.0014.0089.0003 at .0030).

⁷⁴⁶ T12808.33-35 (McRae).

⁷⁴⁷ Exhibit 962 – Statement of Gerard Maguire at [67] (COM.0063.0001.0001 at _0029).

⁷⁴⁸ Exhibit 962 – Statement of Gerard Maguire at [74] (COM.0063.0001.0001 at _0031).

⁷⁴⁹ T12817.9-11 (McRae).

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him directly from the VGSO with a proper briefing on what the issues were.⁷⁵⁰ He described it as “irregular”. The advice was not addressed to him – it was addressed to DSS Boris Buick – and was given to him by AC Ashton on 3 November 2011.⁷⁵¹ What occurred was consistent with the usual practice that was prevalent within Crime Command at this time, which was for the matter to be dealt with by the criminal investigators directly and not through the Legal Services Department.⁷⁵²

50 Ombudsman investigation into the settlement of the civil litigation

- 50.1 On 24 October 2011, Mr McRae was interviewed by the Victorian Ombudsman about the settlement of the civil litigation brought by Ms Gobbo.⁷⁵³
- 50.2 As the submissions of counsel assisting say, Mr McRae did not advise those interviewing him of concerns that Ms Gobbo may have been providing information about her own clients. The reason that Mr McRae did not advise those interviewing him of such matters is because – as at 24 October 2011 – he was unaware of concerns that Ms Gobbo may have done so. Further, Counsel Assisting did not ask Mr McRae why those matters were not raised⁷⁵⁴ and – as a matter of fairness – no adverse inference should follow.

51 3 November 2011 meeting

- 51.1 At 11.30am on 3 November 2011, Mr McRae attended a meeting with Deputy Commissioner Cartwright and Assistant Commissioner Ashton. All three of the attendees received the 4 October 2011 advice from Gerard Maguire at around the time of the meeting.
- 51.2 Contrary to paragraph 4321 of the submissions of counsel assisting, there is no evidence to suggest that Mr McRae was aware, prior to this meeting, of concerns that Ms Gobbo had acted for clients at the same time that she provided police with information about them, or that her exposure as a human source might put other criminal cases and prosecutions in jeopardy. Mr McRae was aware that Tony Mokbel had sought to change his plea, however, this had nothing to do with Ms Gobbo. Rather, Mr Mokbel’s application to change his plea arose as a result of the affidavit issue, which is set out in Mr McRae’s statement.⁷⁵⁵
- 51.3 Each of the attendees at the 3 November meeting made their own notes. Paragraph 4325 of the submissions of counsel assisting attempts to synthesise all three sets of notes in order to determine precisely what was discussed at the meeting. This is not the correct approach. At the time of the meeting, all three attendees had varying degrees of knowledge of Ms Gobbo’s involvement with Victoria Police, including in relation to Tony Mokbel and the AFP “tomato tins” prosecution. As became clear in oral evidence, all three attendees diverge in terms of what was agreed at the meeting. Evidently, matters that were significant to one attendee did not necessarily carry the same significance to the others.
- 51.4 DC Cartwright recalls that he was tasked with discussing appropriate governance with AC Pope while Mr McRae was to consider the Inca prosecution. AC Ashton says that it was agreed that Mr McRae would discuss the Mokbel matter with the OPP.⁷⁵⁶ Mr McRae does not recall being tasked to do either of those things.⁷⁵⁷

⁷⁵⁰ T12818.27-31 (McRae).

⁷⁵¹ T12818.39-T12819.42 (McRae).

⁷⁵² T12819.36-38 (McRae).

⁷⁵³ Counsel Assisting’s Submissions at p 1002 [4305], Vol 2.

⁷⁵⁴ T12837-T12838 (McRae).

⁷⁵⁵ Exhibit 1067 – Statement of Findlay McRae at [5.2]-[5.4] (VPL.0014.0089.0003 at .0029-.0030).

⁷⁵⁶ Exhibit 856 – Statement of Graham Ashton at [163] (VPL.0014.0058.0001 at .0018).

⁷⁵⁷ T12830.37-T12832.15 (McRae).

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- 51.5 Mr McRae's evidence was that if someone had contacted him and asked him to consider the requirement to disclose in the Inca matter, then he would have actioned it immediately, however, he has no recollection of being so tasked. In fact, Mr McRae did not know what Inca was.⁷⁵⁸ DC Cartwright's evidence was that there was a "failure of communication".⁷⁵⁹ He said that:

*[Mr McRae] is an extremely efficient person. I've had dealings with him for years. ... If I'd said Fin, "do it," and Fin understood that, Fin would do it, or come back to me and say, "I can't" and why.*⁷⁶⁰

- 51.6 With regard to the Mokbel matter, Mr McRae's file note records that:

Legal Advice "F" re Mokbel

*Disclosure to Prosecutors to occur today (logs) and Maguire advice.*⁷⁶¹

- 51.7 Former Chief Commissioner Ashton agreed with the proposition that it is likely that Mr McRae understood the former Chief Commissioner's instruction in relation to Mokbel to relate to the Commonwealth prosecutors in relation to Dale, rather than as something related to Mokbel generally. The former Chief Commissioner also agreed that if Mr McRae had understood that he had been directed to discuss the Mokbel matter with the OPP, then he would have done so.⁷⁶² Former Chief Commissioner Ashton said that:

*I've got a great deal of confidence in Fin, he's a very professional person.*⁷⁶³

- 51.8 In considering the proposed findings in paragraphs 4328 to 4331, 4375, 4381 and 4389 of the submissions of counsel assisting, the Commissioner should take into account the following matters:

- (a) In his oral evidence, Mr McRae accepted that with the benefit of hindsight, the concerns regarding Tony Mokbel should have been brought to the attention of the DPP after the meeting.⁷⁶⁴ He described it as a "sliding door moment" and agreed that it was an opportunity missed.⁷⁶⁵ However, in relation to Inca, Mr McRae's evidence, was that he did not know anything about that matter. Accordingly, he was not on notice that the prosecution of that matter by the DPP may have been impacted by the conduct of Ms Gobbo as a human source and/or by the conduct of Victoria Police in handling and managing her.
- (b) Disclosure to the DPP and CDPP would have required DC Cartwright, AC Ashton and Mr McRae to have had specific knowledge of the matters to be disclosed. As at the time of the 3 November meeting, none of them had sufficient knowledge to have made disclosure. As the evidence shows, the DPP required further information, even after he was briefed with the content of Superintendent Gleeson's "out of scope" document in September 2012.
- (c) The attendees at the 3 November meeting had differing levels of knowledge of the matters that were discussed and differing levels of involvement in the matters that immediately followed the meeting. For example, Mr McRae did not receive the O'Connor document referred to in paragraph 4340 of the submissions of Counsel Assisting.⁷⁶⁶ Nor was Mr McRae instructed to assist in the disclosure to the CDPP which occurred immediately after the meeting.
- (d) As explained in paragraphs 35.13 and 35.31 below, Mr McRae did make disclosure the DPP on 1 June 2012 and again on 4 September 2012, after Superintendent Gleeson had completed his out of scope document that he

⁷⁵⁸ T12831.20-45 (McRae).

⁷⁵⁹ T14239.46-T14240.3 (Cartwright).

⁷⁶⁰ T14240.1-5 (Cartwright).

⁷⁶¹ Exhibit 896 – File note by Mr Findlay McRae dated 3 November 2011 (VPL.0005.0003.2945).

⁷⁶² T11008.16-28 (Ashton).

⁷⁶³ T11008.27-28 (Ashton).

⁷⁶⁴ T12827.38-40 (McRae).

⁷⁶⁵ T12836.3-11 (McRae).

⁷⁶⁶ Counsel Assisting's Submissions at p 1010 [4340], Vol 2.

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prepared while assisting with the Comrie Report. Even after disclosure was made, it took the DPP over three years to identify the potential for there to have been a miscarriage of justice.

- (e) The fact that each attendee has a different recollection of what occurred at the meeting (and contemporaneous notes that, while consistent with their own recollection, are inconsistent with each other) supports the conclusion that DC Cartwright's assessment of their being a "failure of communication" is correct. What is more important, however, is that:
 - (i) following the meeting, Krista Breckweg of the CDPD and Mr Christopher Beale of counsel were provided with immediate access to the Source Management Log; and
 - (ii) the meeting led to the Comrie Review.
- (f) The Maguire advice was followed up through the Comrie Review. Based on the circumstances as they were understood by Mr McRae and indeed the circumstances as they are now known, commissioning an independent review was an appropriate next step to take. There is no question that the complexity and magnitude of the issue required external and forensic examination.

52 Comrie Review and initial disclosure to the DPP and OPI in 2012

- 52.1 Mr McRae describes the 3 November 2011 meeting as the "catalyst"⁷⁶⁷ or "impetus"⁷⁶⁸ for the Comrie Review.⁷⁶⁹
- 52.2 Drawing on Victoria Police's experience in responding to the affidavit issue, it was intended to be a largely desktop review and to provide an independent assessment of, amongst other things, the adequacy of Victoria Police policy, procedures and guidelines and relevant processes that relate to all aspects of the recruitment and tasking of human sources, such as Ms Gobbo.⁷⁷⁰
- 52.3 The Terms of Reference for the Comrie Review are comprehensive. They were developed primarily by Assistant Commissioner Pope and Superintendent Stephen Gleeson.⁷⁷¹ Mr McRae had some involvement in the development of the Terms of Reference but "took a step back" once Inspector Gleeson became involved because he had "complete faith" in him to get the Terms of Reference done.⁷⁷²
- 52.4 Mr McRae received a number of updates from Superintendent Gleeson on the progress of the Comrie Review.
- 52.5 In March or April 2012, Superintendent Gleeson provided an update to Deputy Commissioner Ashton (as he then was) and Mr McRae in which he provided his initial observations of concern with what appeared to be significant breaches of solicitor / client confidentiality, together with the assessment of briefs and critiquing of same by Ms Gobbo. Shortly after this briefing, Superintendent Gleeson identified that DC Ashton himself had prior involvement with Ms Gobbo on the Petra steering group and formed the view that it would be inappropriate for him to brief DC Ashton further.⁷⁷³
- 52.6 On 15 March 2012, Superintendent Gleeson sent an email to AC Pope and Mr McRae, stating that:

⁷⁶⁷ Exhibit 1067 – Statement of Findlay McRae at [6.1] (VPL.0014.0089.0003 at .0033).

⁷⁶⁸ T12870.27 (McRae).

⁷⁶⁹ Exhibit 1067 – Statement of Findlay McRae at [6.3] (VPL.0014.0089.0003 at .0033).

⁷⁷⁰ Counsel Assisting's Submissions at p 1019 [4388], Vol 2.

⁷⁷¹ Exhibit 1306 – Statement of Jeffrey Pope at [89]-[97] (VPL.0014.0013.0004 at .0030-.0031); Exhibit 1407 – Statement of Stephen Gleeson at [18]-[23] (VPL.0014.0084.0001 at .0004-.0005).

⁷⁷² T12869.42-45 (McRae).

⁷⁷³ Exhibit 1407 – Statement of Stephen Gleeson at [37] (VPL.0014.0084.0001 at .0009).

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In terms of progress through this file - What a slog. As much as I did not want to I am now reading this entire thing from front to back and cannot see any alternative to this. Interpose records daily conversations with this source (sometimes 6 or more separate and lengthy calls per day) 7 days per week. To date I have reduced thousands of pages of contact report to a summarised account of significant issues of about 60 pages and am about half way through the file. This summarised account identifies matters consistent with the terms of reference and also other (out of scope) matters that should perhaps be followed up in other environments (as it is unclear if such issues have been appropriately dealt with).⁷⁷⁴

- 52.7 On 17 April 2012, Superintendent Gleeson provided a further update:

In terms of developments, I have almost completed the interpose review and now need to again consider the policies, procedures and controls in place and speak to some key personnel both from HSMU and [REDACTED] I am presently settling a letter to VGSO to secure the particular advice needed and they are on notice in regard to this. I have identified certain preliminary concerns and these will become clearer when I complete my consultations.⁷⁷⁵

- 52.8 On 30 April 2012, Superintendent Gleeson sent a confidential update to AC Pope and Mr McRae, which set out the "preliminary concerns" that he identified in his email update of 17 April 2012.⁷⁷⁶

- 52.9 On 24 May 2012, Mr McRae received a copy of a letter that Ms Gobbo had sent to Acting Deputy Commissioner Kieran Walshe on 20 May 2012.⁷⁷⁷ The 20 May 2012 letter was also copied to the DPP. It states, amongst other things, that:

[In] response to the final comments in your letter regarding the accuracy of my references to the history of my dealings with Victoria Police, I remind you that the facts will speak for themselves and they can be referenced in hundreds of hours of covert recordings made by your members each time they met with me and, acting on behalf of the Chief Commissioner, lied and deceived me. I commend you to those secret recordings.⁷⁷⁸

- 52.10 On the same day, Mr McRae and DC Walshe met to discuss the letter. Ms Gobbo's safety remained the paramount consideration. It was agreed at this meeting that Mr McRae would brief the DPP in relation to Ms Gobbo. Mr McRae's file note says:

Briefed DC Walsh on safety concerns regarding the witness if secret tapes became public. Safety of witness is a paramount consideration.⁷⁷⁹

- 52.11 As a police lawyer, Mr McRae is not in a position to brief the OPP without instructions. Rather, Mr McRae's role was to facilitate such briefings, which are to be given by a sworn member. Mr McRae acted to ensure that this did in fact take place. Mr McRae described Ms Gobbo's letter as being the "perfect conduit" to have AC Fryer brief the DPP. And during the meeting, DC Walsh gave Mr McRae permission to go to the OPP.⁷⁸⁰

- 52.12 As Mr McRae's oral evidence makes clear, it is at this time that all of the information began to fall into place. Those pieces of information included Ms Gobbo's status as a witness and the risks to her safety that were associated with that, the fact that she had been a long time informer and was a defence barrister and the concerns that

⁷⁷⁴ Untendered email from Superintendent Stephen Gleeson to Messrs Jeff Pope and Findlay McRae dated 15 March 2012 (VPL.0100.0040.0596 at .0596-.0597).

⁷⁷⁵ Untendered email from Superintendent Stephen Gleeson to Mr Jeff Pope (VPL.0100.0040.0596 at .0596).

⁷⁷⁶ Exhibit 1108 – Human Source Review from Superintendent Stephen Gleeson dated 30 April 2012 (VPL.6023.0003.0751).

⁷⁷⁷ Exhibit 1109 – Letter from Ms Nicola Gobbo to Mr Kieran Walshe dated 20 May 2012 (VPL.0002.0001.1194).

⁷⁷⁸ Exhibit 1109 – Letter from Ms Nicola Gobbo to Mr Kieran Walshe dated 20 May 2012 (VPL.0002.0001.1194 at .1194).

⁷⁷⁹ Exhibit 1111 – File note of Mr Findlay McRae dated 24 May 2012 (VPL.0005.0195.0953 at .1088).

⁷⁸⁰ T12880.22-25 (McRae).

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Superintendent Gleeson had, having reviewed the materials for the purpose of the Comrie Review.⁷⁸¹

- 52.13 The first briefing with the OPP took place on 1 June 2012. It was attended by Acting Assistant Commissioner Fryer, Mr McRae, the Director of Public Prosecutions (who at that time was John Champion SC) and Bruce Gardiner, who was a senior lawyer within the Office of Public Prosecutions.⁷⁸²
- 52.14 As he described in his statement, Mr McRae's recollection of the meeting is that Acting Assistant Commissioner Fryer explained that Ms Gobbo had been a source for a long time and that she needed to be protected.⁷⁸³ Acting Assistant Commissioner Fryer also said that she had given information to Victoria Police about Tony Mokbel and his associates and the existence of potential conflicts of interest was also raised.⁷⁸⁴
- 52.15 Mr Fryer's recollection of the meeting is as follows:
- The purpose of the meeting was to inform the OPP that Ms Gobbo had been a human source while she was a practising criminal barrister.*
- Going into the meeting, I believed that Ms Gobbo's role would be a surprise to the DPP, but it was not. Mr Champion advised me that he was already aware of this because he had prosecuted a trial in 2011 where Ms Gobbo's role had been revealed and discussed in court with the trial judge. He said the accused was Cvetanovski.⁷⁸⁵*
- 52.16 Mr Gardiner also took notes of the meeting. Specifically, his notes make reference to Mr McRae raising an "ethical question re F and [Mr Cooper]" and the "Cvetanovski transcript re F".⁷⁸⁶
- 52.17 The submissions of Counsel Assisting convey an impression that it was Mr McRae that raised the Cvetanovski matter.⁷⁸⁷ This is not correct. As Mr Fryer's evidence makes clear, it was the DPP who raised the Cvetanovski matter. In fact, Mr McRae did not even know who Cvetanovski was prior to this briefing. In the months following this briefing Mr McRae frequently sought further information from the DPP about this very issue.⁷⁸⁸

Case Study – Access to the Cvetanovski transcript

On 7 June 2012, Mr McRae sent an email to Mr Gardner to follow up on the 1 June meeting. In his email, Mr McRae said, "Do you have the transcript for the case that was mentioned at the last meeting relating to Gobbo?". In a follow up email sent on the same day, Mr McRae said, "John mentioned that evidence was given in a matter he was prosecuting [that] had little relevance to the case but went to Gobbo's behaviour. Apparently it was suppressed."⁷⁸⁹

Mr Gardner responded by stating "Perhaps Cvetanovski?" and confirming that he would track it down.⁷⁹⁰

By August 2012, Mr McRae had not received the transcript. On 23 August 2012 at 12.12pm, Mr McRae sent a further email to Mr Gardner stating, "Any luck with the double jeopardy cases and the transcript regarding Cvetanovski".⁷⁹¹

⁷⁸¹ T12876.24-T12879.4 (McRae).

⁷⁸² Counsel Assisting's Submissions at p 1035 [4474], Vol 2.

⁷⁸³ Counsel Assisting's Submissions at p 1035 [4475], Vol 2.

⁷⁸⁴ Exhibit 1067 – Statement of Findlay McRae at [6.16] (VPL.0014.0089.0003 at .0035).

⁷⁸⁵ Exhibit 1255 – Statement of Douglas John Fryer at [125]-[126] (VPL.0014.0073.0001 at .0022).

⁷⁸⁶ Exhibit 1113 – Attachment 11 to the DPP Statement (RCMPI.0104.0001.0001 at .0116 - .0125).

⁷⁸⁷ Counsel Assisting's Submissions at p 1036 [4477], Vol 2.

⁷⁸⁸ Exhibit 1067 – Statement of Findlay McRae at [6.18] (VPL.0014.0089.0003 at .0036).

⁷⁸⁹ Untendered email from Mr Findlay McRae to Mr Bruce Gardner dated 7 June 2012 (VPL.6023.0101.6281).

⁷⁹⁰ Untendered email from Mr Bruce Gardner to Mr Findlay McRae dated 7 June 2012 (VPL.6023.0101.6281).

⁷⁹¹ Untendered email from Mr Findlay McRae to Mr Bruce Gardner dated 23 August 2012 (VPL.6023.0062.6279 at .6279-.6280).

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At 12.32pm, Mr Gardner responded to the email by forwarding the content of an internal email which advised that there was a non-publication order in respect of Mr Cvetanovski's sentence and that given the non-publication order, there were concerns about forwarding the transcript to an outside agency.⁷⁹²

At 1.40pm, Mr McRae responded, stating, "*An indication as to the nature of the evidence would be helpful.*"⁷⁹³

On 30 August 2012, Mr Gardner confirmed that the OPP was unable to provide the transcript because of suppression orders, but that the suppression order may be lifted in October. Mr McRae confirmed that the matter could wait until then.⁷⁹⁴

The Cvetanovski transcript was discussed at the 4 September 2012 briefing that was attended by the DPP, Bruce Gardner, Superintendent Gleeson and Mr McRae. Under the heading "Transcript", Mr McRae's notes state, "*evidence regarding potential conflict of interest when representing co-accused*".⁷⁹⁵

- 52.18 It should also be emphasised that it was AC Fryer, not Mr McRae who gave the 1 June briefing. The Royal Commission should not find that Mr McRae did not inform the DPP that both Mr Cvetanovski and Mr Cooper had been subjects of Ms Gobbo's informing because Mr McRae was not asked about this. If Mr McRae had been asked about this, then it is likely that given his evidence that he knew little about the Cvetanovski matter, he would have said that he did not know. In contrast, the DPP had detailed knowledge of Ms Gobbo's alleged relationship with Mr Cooper at least from the Cvetanovski trial. These matters were the subject of discussion between the DPP and the relevant investigators during the trial of Cvetanovski on 11 April 2011.⁷⁹⁶

The Cvetanovski trial

The Cvetanovski trial took place in 2011. During the trial, Mr Champion for the prosecution (but before he was DPP) said in argument about the cross examination of Mr Cooper:

MR CHAMPION: I'm struggling to see the relevance of much of the cross-examination that's been going on about ... the involvement of Ms Gobbo and various other people like the Karams and so on at parties at Wheat and the like.

...

MR PENA-REES: The question will be asked of Mr Cooper that he knew that Ms Gobbo was working with the police in relation to certain matters involving the Mokbels.

...

HIS HONOUR: Apart from the fact that she's a barrister and she seems to be, on the evidence in this trial, one of dubious ethical standards in relation to conflicts of interest, she seems to be acting for everyone. And she's a friend of his and she goes to his party. Now barristers don't normally do that but she chose to run her practice that way, there's no ethical rule against that but how does that then lead to or form the foundation for an inference, a proper inference, that they were putting their heads together to concoct false statements?

...

⁷⁹² Untendered email from Mr Bruce Gardner to Mr Findlay McRae dated 23 August 2012 (VPL.6023.0062.6279 at .6279)

⁷⁹³ Untendered email from Mr Findlay McRae to Mr Bruce Gardner dated 23 August 2012 (VPL.6023.0062.6600 at .6600)

⁷⁹⁴ Exhibit 1116 – Emails between Mr Findlay McRae and Mr Bruce Gardner dated 7 June to 30 August 2012 (VPL.6023.0102.1915 at .1915).

⁷⁹⁵ Exhibit 1067 – Statement of Findlay McRae at [6.27] (VPL.0014.0089.0003 at .0038).

⁷⁹⁶ Exhibit 853 – Email from Officer Pearce to Superintendent John O'Connor dated 12 April 2011 (VPL.0005.0013.1295).

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Mr CHAMPION: I just wanted to be clear about what was happening here and as I understand it, my learned friend is going to put to this witness that he and Nicola Gobbo, in effect, conspired to concoct false statements, in order to better place Mr Cooper in a plea position, should he plead guilty and that, in effect, the extension of this is that this was done with the concurrence of members of the Purana Task Force...

Mr CHAMPION: Your honour I can only act on the basis that my learned friend is acting responsibly in putting instructions that have been properly put to him by his client and his instructing solicitor, and if he assures the court that in those circumstances what he is doing he is instructed to do with proper material, then there is little I can say about it.

...

HIS HONOUR: All right. And you give that assurance do you Mr Pena-Rees?

Mr PENA-REES: I [do] Your Honour I've already highlighted, it comes from transcript of previous proceedings involving [Mr Cooper] where he gave evidence.

The trial judge said that he was not sure whether the cross examination was relevant but that he was "redefining the phrase conflict of interest as we go along."⁷⁹⁷

- 52.19 In early August 2012, the Comrie Review was completed. Following its completion, Mr McRae arranged to brief Vanessa Twigg (Director of Legal Services at the OPI) in relation to the legal conflict issues. Mr McRae arranged this briefing because Superintendent Gleeson had formed the view that he was required to report in more detail the out of scope issues that he had set out in his out of scope document. This briefing took place on 31 August 2012.

- 52.20 Mr Gleeson's recollection of the meeting is as follows:

On 31 August 2012, Mr McRae and I met with Vanessa Twigg from the OPI. I do not have access to a record of this meeting, as it would be in my official diary that is missing. However, I recall that at that meeting, I gave an overview of the Comrie Review and the out of scope issues covered in my letter to AC Pope. I believe that as an example, I mentioned that Tony Mokbel's extradition process was one matter that may be affected, and that Ms Gobbo may have reviewed and critiqued briefs of evidence relating to her clients. I believe that I gave a version of the out of scope issues letter to Ms Twigg, but I cannot be certain. I am not aware of what OPI then went on to do with this information.⁷⁹⁸

- 52.21 The briefing with Vanessa Twigg took place around a month after Chief Commissioner Lay met with the Acting Director of the OPI, Ron Bonighton to brief him on the concerns raised by Superintendent Gleeson, as set out in the Victoria Police submission.⁷⁹⁹
- 52.22 On 4 September 2012, Mr McRae attended a second and more detailed briefing with the DPP. This briefing was attended by the DPP, Mr Gardiner and Superintendent Gleeson.⁸⁰⁰
- 52.23 The meeting was convened at Mr McRae's request. Its importance is evident from the fact that Mr McRae asked that a file note be taken of it.⁸⁰¹ Mr McRae's recollection is that the DPP and Mr Gardner were updated on the Comrie Report and Victoria Police's review of its human source materials. Mr McRae recalls that Mr Gleeson said that Victoria Police had uncovered evidence of potential conflicts of interest and that it had

⁷⁹⁷ Untendered DPP v [Redacted] Transcript (VPL.0206.0950.0013 at .0266).

⁷⁹⁸ Exhibit 1407 – Statement of Stephen Gleeson at [65]-[67] (VPL.0014.0084.0001 at .0015-.0016).

⁷⁹⁹ Exhibit 1171 – Statement of Ken Lay at [24]-[25] (VPL.0014.0119.0001 at .0005); Victoria Police Tranche 2 Submissions [121.11].

⁸⁰⁰ Counsel Assisting's Submissions at p 1039 [4484], Vol 2.

⁸⁰¹ Exhibit 1096 – DPP Statement at [28] (RCMPI.0104.0001.0001 at .0005).

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been alleged that potentially privileged materials had been used in relation to the Tony Mokbel extradition, which had been identified in source holdings.⁸⁰²

52.24 Mr Gleeson's recollection of the meeting is as follows:

*I recall that I briefed them about the overall findings of the Comrie Review **as well as the out of scope issues**. Again, I believe I also mentioned that Tony Mokbel's extradition process was one matter that may be affected, and that Ms Gobbo may have reviewed and critiqued briefs of evidence relating to her clients.*

I recall that Mr Champion and Mr Gardner wanted to receive further material only once Victoria Police understood whether or how individual cases might be affected. I was aware at this time that Victoria Police were doing further works to gather, assess and analyse all relevant material, as recommended in the Comrie Report (emphasis added).⁸⁰³

52.25 Mr Gleeson was not called to give evidence and his note of this meeting is unchallenged and should be accepted. The significance of the reference to "out of scope" issues would not be lost on the Royal Commission.

52.26 It is necessarily a reference to the issues raised in the "out of scope" document that Mr Gleeson wrote. Those issues went directly to the miscarriage of justice issues that are at the centre of this Royal Commission. The document identified:

- (a) that Ms Gobbo had advised her handlers about who would provide evidence at her client's forthcoming bail application and what that evidence would be;
- (b) that Ms Gobbo advised her handlers about technical defences that were open to her client;
- (c) that Ms Gobbo engaged in discussions with her handlers about the conduct of an adjournment with an objective of securing bail seemingly to enable other offences to continue, thereby providing for the arrests of others;
- (d) that Ms Gobbo appeared as counsel in a bail application for a criminal that had been the subject of her informing;
- (e) that Ms Gobbo told her handlers about shortcomings in criminal briefs about her clients;
- (f) that Ms Gobbo gave advice to her handlers about the best approach for the police to adopt when interviewing one of her clients;
- (g) that Ms Gobbo alerted her handlers to legal tactics to be employed to challenge a court procedure;
- (h) that Ms Gobbo reviewed and identified deficiencies in a criminal brief against her client. Handlers then relayed that information to those who were responsible for submitting the brief;
- (i) that Ms Gobbo was shown transcripts of interviews with certain criminals and then Ms Gobbo provided an assessment about the truthfulness of their responses;
- (j) that Ms Gobbo engaged with a fugitive abroad (Tony Mokbel) and relayed defence tactics that were likely to be used back to police handlers;
- (k) that Ms Gobbo suggested to police that a search warrant be taken out on her chambers to boost her credibility. Such a warrant was later exercised.⁸⁰⁴

⁸⁰² Exhibit 1067 – Statement of Findlay McRae at [6.28] (VPL.0014.0089.0003 .0038 - .0039).

⁸⁰³ Exhibit 1407 – Statement of Stephen Gleeson at [66]-[67] (VPL.0014.0084.0001 at .0015- .0016).

⁸⁰⁴ Exhibit 897 – Letter from Superintendent Stephen Gleeson to Mr Jeff Pope dated 22 June 2012 (VPL.0100.0105.0001 at .0006 - .0007).

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- 52.27 In accordance with Mr McRae's request, Mr Gardiner also took a file note of the meeting.⁸⁰⁵ Mr Gardiner's file note is consistent with that taken by Mr McRae. It records that:

Fin advised us today that upon a review of internal Vicpol intelligence material/HSMU material etc, there may be a suggestion that NG was providing information to Vicpol about persons she then professionally represented, including T Mokbel.'

'Possibly suggested that NG provided information to Vicpol which enabled Vicpol to detect and then arrest TM in Greece, which then led to his extradition.

Query whether NG in fact acted for TM.

Query whether NG provided data to Vicpol re her own client (in breach of LPP).'

'Issue – does OPP have duty of disclosure now, to TM, re NG "information"??'

- 52.28 As is evident from Mr Gardner's file note, the duty of disclosure was discussed in the 4 September meeting in the context of the Supreme Court of Victoria decision in *R v Farquharson* (2009) 26 VR 410 and the report of the Hon Frank Vincent SC into the wrongful conviction of Mr Farah Jama.⁸⁰⁶

- 52.29 The duty of disclosure is that of the prosecution. In *Farquharson*, the Court held (at [210]-[211]) that:

It is axiomatic that there must be full disclosure in criminal trials. The prosecution has a duty to disclose all relevant material. A failure of proper disclosure can result in a miscarriage of justice.

The precondition for prosecution disclosure is, of course, that the material is in the possession of, or the information is known by, the prosecution.

- 52.30 As the Court said in *Farquharson*, the DPP cannot disclose that which he did not know. As at 2 September 2012, the DPP did not have information to disclose to potentially affected persons and was content to await the outcome of Victoria Police's internal review of the materials.

Case Study – The Director's Committee

On 17 October 2012, an internal meeting was held between the DPP, Mr Gardner and Mr Tom Gyorffy SC, who was senior counsel appearing on behalf of the DPP in Mokbel's appeal proceedings in the High Court. The meeting was called to discuss the "*Fin information*".

The specific "*Fin information*" that the DPP, Mr Gardner and Mr Gyorffy were meeting to discuss was that information as recorded in Mr Gardner's file notes of 4 September 2012, namely that Victoria Police intelligence material may suggest that Ms Gobbo was providing information to Victoria Police about persons that she then professionally represented.

Mr Gardner's file note records as follows:⁸⁰⁷

17-10-12

12.30pm

BG [Bruce Gardner] + JC [John Champion] + Tom G [Gyorffy] met discussed Fin Information

All agree – even if true, could not affect appeal issues

Nor is it clear or certain enough to require disclosure

⁸⁰⁵ Exhibit 1113 – Attachment 12 to the DPP Statement (RCMPI.0104.0001.0001 at _0126).

⁸⁰⁶ Exhibit 1096 – DPP Statement at [31]-[33] (RCMPI.0104.0001.0001 at _0005-_0006).

⁸⁰⁷ Exhibit 1113 – Attachment 13 to the DPP Statement (RCMPI.0104.0001.0001 at _0128-_0129).

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+ may not involve breach of LPP anyway.

BG

- 52.31 Counsel Assisting chose not to call Mr Gardner to give evidence. The written statement provided by the DPP says that Mr Gardner recalls that where he says that the information is *"not clear or certain enough to require disclosure"* is a reference to the lack of clarity and specificity in the information that Victoria Police had provided to the DPP about what Ms Gobbo may have said about Mr Mokbel's matter. Mr Gardner's recollection is that the reference to legal professional privilege was a reference to the fact that, on the information that Victoria Police had provided to the DPP, it was not clear that Ms Gobbo had provided any information to Victoria Police that was subject to the legal professional privilege of any of her clients.
- 52.32 There is no question that no specific information about Mr Mokbel's matter had been provided to the DPP by 17 October 2012, however, it was known to the DPP that:
- (a) Ms Gobbo had acted for Tony Mokbel; and
 - (b) there was a possibility that Ms Gobbo had provided information to Victoria Police which enabled Victoria Police to detect Tony Mokbel in Greece.
- 52.33 It was open to the DPP to seek further information from Mr McRae but he did not do so. The reasons why the DPP did not seek further information prior to deciding that it was not necessary to make disclosure to Tony Mokbel are unexplained.
- 52.34 Contrary to the submissions of counsel assisting,⁸⁰⁸ Victoria Police continued to brief the DPP about disclosure related issues on an ongoing basis throughout 2013. For example, on 28 August 2013, Mr McRae attended a meeting with the DPP, in which a number of matters were discussed, including Ms Gobbo.⁸⁰⁹

53 Further disclosure - 2014

- 53.1 On 1 April 2014, after the "Lawyer X" story broke, AC Leane and Mr McRae attended a briefing with the DPP and Mr Gardner.
- 53.2 This briefing is referred to in the submissions of Counsel Assisting under the heading *"DPP is told that no information demonstrates Gobbo informed on clients"*.⁸¹⁰ The heading is misleading because, as is clear from the contemporaneous file notes set out below, there was discussion at the meeting that there were **18 matters** which were potentially affected.
- 53.3 Presumably, Counsel Assisting have taken the heading to paragraphs 4570 to 4576 from the file note of Mr Gardner. However, Mr Gardner's file note does not record Victoria Police telling the DPP that there was no information demonstrating that Ms Gobbo informed on her own clients. Rather, Mr Gardner's file note records **that Ms Gobbo told Mr McRae** that she did not inform on her own clients. It is a reference to a statement made by Ms Gobbo when she met with Mr McRae some five years earlier in the context of **P¹¹** negotiations.⁸¹¹
- 53.4 Contrary to the heading to paragraphs 4570 to 4576, the prospect of Ms Gobbo having informed on her clients was the very thing that that Mr McRae and Mr Leane discussed with the DPP and Mr Gardner at the 1 April 2014 conference.
- 53.5 The prospect of miscarriages of justice was discussed, as were at least two specific cases, which have been examined by the Royal Commission. Mr McRae's file note records that:⁸¹²

⁸⁰⁸ Counsel Assisting's Submissions at p 1038 [4494], Vol 2.

⁸⁰⁹ Exhibit 1067 – Statement of Findlay McRae at [7.7] (VPL.0014.0089.0003 at .0040); T12927.14-18 (McRae).

⁸¹⁰ Counsel Assisting's Submissions at p 1051 [4570], Vol 2.

⁸¹¹ Exhibit 1067 – Statement of Findlay McRae at [3.12] (VPL.0014.0089.0003 at .0012).

⁸¹² Untendered file note by Mr Findlay McRae for meeting with Messrs John Champion, Bruce Gardner and Stephen Leane dated 1 April 2014 (VPL.0005.0003.0459)

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It is noted that on the radio and in some newspapers there has been a call for Royal Commissions given the discussion by various lawyers on unsafe verdicts if those matters were impacted by a breach of own client legal privilege by the person referred to Barrister X.

Fin McRae provided background on the work done by Victoria Police in this area including the Comrie Report that recommended re-organisational restructure of the human source area that resulted in a state wide model as opposed to a centralised model and further work being done on intelligence holdings related to Barrister X. There was reference to an external review conducted of [REDACTED] that made recommendations that are consistent with [REDACTED] at present [REDACTED] to enhance the safety of witnesses. There was general discussion about the progress of Operation Loricated that is working through intelligence holdings related to Barrister X to identify any further follow up items.

There was general discussion about the theme of information relating to own clients arising out of Operation Loricated and the best way to analyse information moving forward. It was resolved that Shaun LeGrand of the VGSO and Fin McRae would have a look at the package of materials that has been identified by the analysts working for Operation Loricated and further discussion with the DPP would ensue after that.

It was noted that Fin McRae and Stephen Leane will update the Commissioner at IBAC on the same issues later in the day. The DPP declined to attend that meeting.

Bruce Gardner provided feedback on the issues relating to the Mokbel extradition discussed on 4 September 2012. In that matter the DPP looked at whether the information holdings of the lease were relevant to the conduct of the Mokbel extradition and found they were not relevant.

There was discussion of the cross examination of [Mr Cooper] where disclosure was made of the activities of Barrister X in a prosecution run by John Champion prior to becoming the DPP. This case provides an example of behaviours that have been raised in open court.

Next Steps

There was discussion about procedures for defence lawyers who feel that they want to raise miscarriage of justice issues with the DPP. It was noted that at present there is no information that indicates there has been a miscarriage of justice and there are a number of avenues open for these issues to be raised. There was discussion about the procedures adopted in the affidavit matters that allow practitioners to contact the DPP and the DPP to make further enquiries with police to ascertain whether there were matters that needed to be disclosed.

53.6 In his witness statement, AC Leane says that:

During the briefing, the DPP made clear that the OPP had policies for miscarriage of justice and that disclosure would depend on the nature of the information. We outlined the steps that we were taking, particularly with regard to reporting to IBAC which was to occur later in the day. The DPP said that he would consider the briefing that we had given and would speak to members of the OPP Executive and come back to us.⁸¹³

53.7 Mr Gardner's file note of the meeting records, amongst other things that:

⁸¹³ Exhibit 1276 – Statement of Stephen Frederick Leane at [28] (VPL.0014.0112.0001 at .0006).

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- Fin [McRae] don't yet know if NG [Nicola Gobbo] did give police data re a person who was then a client.
- Query if she informed on own client.
- NG [Nicola Gobbo] told Fin [McRae] she didn't.
- IBAC isn't looking at that question at present.
- But could be examples of NG [Nicola Gobbo] doing so – not (yet) clear.
- NG sees herself as hero/informer who has helped prevent crimes.

- ...
- Fin [McRae] 18 matters? Possibly affected
 - How to assess?
 - Refer to IBAC
 - DPP/Fin looks [?]
 - Brief out

- 53.8 On 3 April 2014, the Director's Committee (which comprised the DPP, Mr Silbert QC, Mr Craig Hyland and Mr Gardiner) met to discuss whether the DPP had any disclosure obligations in respect of Ms Gobbo's activities as an informer. Mr Gardner's file note of the 3 April 2014 meeting states:

3/4/2014

JC [John Champion] / GS [Gavin Silbert] / BG [Bruce Gardner] / CH [Craig Hyland]

Discussed if post Fin meeting, VPPS has any disclosure obligations?

Answer: No present obligation because cannot identify how to find affected files of matters.

- Our files wouldn't contain any NG [Nicola Gobbo] data anyway
- Await any IBAC moves.
- Not appropriate to ask VicPol for data.

- 53.9 The statement provided by the DPP says that Mr Gardner recalls that the reference to it being "not appropriate for to ask VicPol for data" was made because it was clear that Victoria Police were in possession of a very large volume of raw material, much of which would be difficult for the DPP to interpret which Victoria Police and IBAC were already attempting to analyse.

- 53.10 Evidently, the Director's Committee was content with the process adopted by Victoria Police.

- 53.11 On 7 April 2014, Mr McRae wrote to the DPP, stating that:

Further to our discussions on 1 April 2014 attended by Bruce Gardner and Stephen Leane (Professional Standards Command), I confirm that Victoria Police is continuing its assessment of the materials relating to Lawyer X. We are about to commence a triage of matters that are related to potential prosecutions undertaken by your office. As indicated at our previous meeting we will provide any information that arises that may warrant consideration of your office in regard to the running of criminal prosecutions. I can confirm that at this time I have not received information that has necessitated your consideration.

As you are aware our focus has been on safety issues in regard to the risk of the identification of this person. That safety risk is our primary concern at present.

- 53.12 The statement in the letter that Mr McRae had not received information that has necessitated the DPP's consideration must be understood in the context of the meeting held on 1 April 2014 and the DPP's stated preference to wait until Victoria Police had completed its review. If the DPP had said that he wanted to review the information the Victoria Police had identified at this point, then it would have been made available.

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- 53.13 Ultimately, Victoria Police conducted its “triage of matters” through the five case studies prepared by the Operation Bendigo Investigations Group.
- 53.14 The submissions of counsel assisting⁸¹⁴ do not fairly characterise Mr McRae’s evidence in relation to the five case studies prepared by the Operation Bendigo Investigations Group because they fail to take into account the following evidence.
- 53.15 Mr McRae and AC Leane sought advice as to how to conduct the “triage of matters” from the VGSO. The VGSO was provided with a 353 page extract of raw data from Operation Loricated. Mr Le Grand’s advice states as follows:
- We were instructed to review this material with a view to advising how Victoria Police may determine whether there may have been information obtained from the source that could have prejudiced a fair trial.*
- Having perused a number of the log entries it is apparent they are generally summaries of the source’s own conversations with and opinions about the past and contemporaneous criminal activities and criminal proceedings of a large number of persons.*
- We consider that only a person with a thorough understanding of the persons and information the subject of the log entries and of the criminal proceedings to which those persons were subject could possibly make an adequate assessment of whether the information disclosed to police by the source deserves any specific attention or justifies any specific treatment. For these reasons it is neither possible nor functionally appropriate the VGSO to attempt to perform that task.*
- 53.16 Having been advised by the VGSO that it was unable to assist Victoria Police to determine whether the information from the Loricated Database may have prejudiced trials, Victoria Police set up the Operation Bendigo Investigation Group. It is important to emphasise that the Operation Bendigo Investigation Group was established **in accordance with advice from the VGSO**. In addition, the VGSO and Brian Dennis of counsel were engaged to advise the Operation Bendigo Investigation Group, where necessary.⁸¹⁵ As Mr McRae said in his oral evidence, at least one member of the Operation Bendigo Working Group was an Australian Lawyer.⁸¹⁶ However, the extent to which the Operation Bendigo Investigation Group relied on advice is unknown because no member of the Operation Bendigo Working Group was called to give evidence.
- 53.17 The case study documents are comprehensive. While it is true that in all but one case, the case studies found that there was “*no clear evidence that Ms Gobbo’s involvement had impacted on the outcome of the Court process*” the comprehensive analysis set out in them was sufficient to raise a number of questions that warranted a further briefing with the DPP.⁸¹⁷
- 53.18 On 28 October 2014, Mr McRae attended a conference with the DPP.⁸¹⁸ The characterisation of the evidence surrounding this conference in the submissions of counsel assisting is unfair, both in terms of the context in which the briefing took place and the circumstances surrounding the briefing.⁸¹⁹
- 53.19 It is to be observed from Mr McRae’s file note that the 28 October 2014 briefing was very short, lasting for just five minutes, in which Mr McRae told the DPP that the case studies had been completed and that IBAC was to be informed.⁸²⁰ The evidence does not explain **why** the briefing was so short. However, the briefing was obviously too short for Mr McRae to have provided any detail as to the content of the case studies.

⁸¹⁴ Counsel Assisting’s Submissions at p 1058 [4604]-[4605], Vol 2.

⁸¹⁵ Exhibit 1067 – Statement of Findlay McRae at [7.29]-[7.30] (VPL.0014.0089.0003 at .0045).

⁸¹⁶ T12934.3-15 (McRae).

⁸¹⁷ Exhibit 1067 – Statement of Findlay McRae at [7.36] (VPL.0014.0089.0003 at .0049).

⁸¹⁸ Counsel Assisting’s Submissions at p 1063 [4635], Vol 2.

⁸¹⁹ Counsel Assisting’s Submissions at p 1063-1064 [4635]-[4640], Vol 2.

⁸²⁰ Exhibit 1132 – File note by Mr Findlay McRae dated 28 October 2014 (VPL.0005.0003.2694).

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- 53.20 Mr McRae's evidence to the Royal Commission was that he did not recall whether he had read the case studies prior to the meeting.⁸²¹ Mr McRae also made the observation that the date on the Case Study is not necessarily the date on which he received them.⁸²²
- 53.21 It is also important to emphasise that at the time this briefing took place, Victoria Police had been informed that IBAC had commenced its investigation. It was understood by Victoria Police that IBAC's investigation included an investigation into the matters set out in the case studies.
- 53.22 The 5 minute conference with the DPP on 28 October 2014 took place in this context. The purpose of the meeting was not to brief the DPP on them. The purpose of the meeting, as set out in Mr McRae's file note, was to inform the DPP that:
- (a) the case studies had been completed; and
 - (b) IBAC was to be informed.
- 53.23 Mr McRae's note that there were "*no matters of substance to report as yet*" must be understood in this context. As Mr McRae said in his statement, it was a reference to the fact that he had not formed a view that there had been a miscarriage of justice, as distinct from an obligation to disclose.⁸²³ And in any event, as at 28 October 2014, Mr McRae understood that IBAC was to conduct an investigation into these matters. Any suggestion that Mr McRae was not being truthful in his discussion with the DPP⁸²⁴ should be rejected.
- 53.24 It is also important to observe that the DPP was not a passive participant in these briefings. While this particular briefing was very short and high level, it should be understood in the context of the communications between IBAC and the DPP, which had just taken place. Those communications indicate that the DPP had concerns of his own about Ms Gobbo's informing. However, these concerns were not raised with Mr McRae. Nor did the DPP raised concerns with Mr McRae about the process being taken by Victoria Police.

Case Study – The Director of Public Prosecutions and IBAC

In October 2014, the DPP had a series of communications with IBAC.

On 17 October 2014, Mr Andrew Kirkham visited the DPP to explain that he was appointed to assist Mr Kellam QC in the IBAC investigation and to say that IBAC may require the DPP to give evidence. The DPP's notes of the meeting record as follows:⁸²⁵

Kirkham informed me of some background, some of which I was already aware of. The whole conversation was quite cryptic, during the course of which he mentioned the Comrie Report into the issue. I did not read any of it, but simply sighted its existence. I do not recall being aware of its existence prior to this. In essence, the allegation being examined is the extent to which Witness X may have been informing on her own clients, at the active behest of the police, since around 2005(?). he went into a little detail about the role she seems to have played in police investigation, and at one point referred to the possibility that she reviewed briefs of clients for the police and reported matters to them. He referred to one occasion where a court case might have been adjourned so that police could be put at some advantage in an investigation

He highlighted the extremely serious nature of the circumstances, and the possibility that both Witness X and some members of Victoria Police may have

⁸²¹ T12939.34-T12940.26 (McRae).

⁸²² T12938.29-31 (McRae).

⁸²³ Exhibit 1067 – Statement of Findlay McRae at [7.39] (VPL.0014.0089.0003 at .0050).

⁸²⁴ Counsel Assisting's Submissions at p 1064 [4639], Vol 2.

⁸²⁵ Exhibit 1096 – Attachment 19 to the DPP Statement (RCMPI.0104.0001.0001 at _0151-_0152). The Postscript to the memorandum makes clear that the DPP was in fact aware of the Comrie Review since 1 April 2014.

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committed offences in the course of the handling of the witness. He highlighted a clear safety risk to Witness X in the event that the extent of her activities became public.

I mentioned the serious concern I had for the integrity of some criminal trials and proceedings that had been held in the past decade.

On 22 October 2014, the DPP wrote a letter to Mr Kirkham QC, setting out some queries about the matters on which he might be required to give evidence.⁸²⁶

On 23 October 2014, the DPP had a telephone conversation with Mr Kirkham QC and Mr Kellam QC. The DPP's notes of the conversation record as follows.⁸²⁷

So far in this investigation they have identified one criminal trial that might be "iffey". It was not explained to me why or which trial this was. According to them, at present there do not seem to be a large series of trials that might be adversely affected by the role of Witness "X". However, there may be a series of pleas of guilty that could be affected. I remarked on the fact that my knowledge of Witness X was that she did not have a trial practice, but rather specialised in bail applications and pleas. They agreed, and seemed to have knowledge of this aspect.

They indicated that at some stage an independent member of Counsel may need to be appointed to examine any case that might be suspected of being compromised. I did not remark on how this could play out but my own feeling is that if there was a compromise found this might lead to a petition of mercy, or something similar, involving the Court of Appeal. I did indicate my concern that pleas of guilty may also be compromised if the plea had been entered on the basis of false information being provided to an accused, or something similar.

Murray Kellam made the remark that even if one trial was compromised, that would be a "disaster".

I indicated I was concerned about a comment by Kirkham made to me in our initial conversation that a court matter involving the role of Witness X may have been adjourned improperly, meaning that a false reason may have been given to the court for the adjournment, the application being made for a collateral reason. Kellam indicated this may have been the trial of Mr Cooper. I assume this meant Mr Cooper. I indicated I was concerned whether a member of this organisation could have been involved in that event - either wittingly, or unwittingly. Kellam said that this was an issue they were looking at.

- 53.25 On 25 November 2014, AC Leane and Mr McRae attended a further briefing with the DPP and Mr Gardner. This briefing took place after IBAC had told Victoria Police that it did not have jurisdiction to accept a referral to consider potential miscarriage of justice issues. Prior to the briefing, Mr McRae provided to Mr Gardner a list of the five case studies completed by Victoria Police, namely:⁸²⁸

Example 1	Milad Mokbel, Mr Agrum Dominic Barbaro
Example 2	Zaharoula MOKBEL
Example 3	Rabie KARAM relevant to operations AGAMAS and INCA
Example 4	Mr Cooper
Example 5	Extradition in the matter of Antonios MOKBEL

- 53.26 During the meeting, Mr McRae discussed the Comrie Review and the five case studies, which Mr McRae said had been completed three weeks earlier. Mr McRae read parts of the case studies to the DPP and Mr Gardner, and they had a general conversation about them.⁸²⁹ With regard to the case studies, Mr Gardner's notes state that they

⁸²⁶ Exhibit 1096 – Attachment 20 to the DPP Statement (RCMPI.0104.0001.0001 at _0153).

⁸²⁷ Exhibit 1096 – Attachment 21 to the DPP Statement (RCMPI.0104.0001.0001 at _0154).

⁸²⁸ Counsel Assisting's Submissions at p 1064 [4642], Vol 2.

⁸²⁹ T12950.36-39 (McRae).

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concluded that they "raised privilege questions" and "affected trials". Mr Gardner's notes go on to say:⁸³⁰

Did X breach privilege? (LPP)

- Yes, when she did, it was controlled, but sometimes no notes so not sure
- E.g. phone intercepts; need to quarantine depending who is on the phone.
- Question: is concept of a defence practitioner, continuing to act as such, OK? (she had been a registered source 2005-2009)
- Two examples where she told police re crimes, re her client, but not in the matter she is briefed in i.e. re pending commission of crime – re own client (UEA [Uniform Evidence Act] s.125?)

53.27 At the time of this meeting, the DPP already had serious concerns about the integrity of some criminal trials and proceedings that had been held in the past decade. Specifically, the DPP was concerned about the trial of Mr Cooper. As is set out in the case study, the DPP also had personal knowledge that these matters were being considered by IBAC.

53.28 The evidence before the Royal Commission – which should be accepted – is that Mr McRae had the case studies with him at the meeting, he read from them and he offered the case studies to the DPP, but that the DPP declined to accept them.⁸³¹ In his statement, AC Leane says:

On 25 November 2014, Mr McRae and I met with the DPP and Mr Gardner. We met to discuss the progress of Victoria Police's response relating to Ms Gobbo. We attended the meeting with the five case studies, which we intended to offer to the DPP. During the meeting, the DPP declined to accept the case studies and told us that he wanted to consider the matter further and to take it to the DPP executive committee.

53.29 AC Leane expanded on this in his oral evidence:⁸³²

In my diary towards the bottom of the note I make the dot point one case study two question marks, which for me is would you like one case study? That's my diary note, that's my recollection.

...

I say that's my note and then I recall the, "Thanks but no thanks, I've got other things I'm thinking about", which is where they were at.

...

[I]f you look through my notes, the two question marks - there's an issue around privilege, so there were questions around privilege. So that means there was a discussion around - the issues around privilege were considered. The DPP talked about process. I've got two question marks, which means the DPP obviously said some issues around process and was thinking through out loud, and whether Bruce was offering assistance or not, it may have happened while we were sitting there. So that means that. The one case study means offered one case study, there was a consideration, a discussion around the one case study, and I know that we didn't leave a case study with the DPP when we left.

That was the purpose of doing the case studies, was to crystallise this. Apart from that it had been hearsay and denial and assurances that everything was fine.

53.30 The only two attendees at this meeting to give evidence before the Royal Commission are Mr McRae and Mr Leane. Their evidence was consistent and should be accepted.

⁸³⁰ Exhibit 1096 – Attachment 23 to the DPP Statement (RCMPI.0104.0001.0001 at _0158 - _0171).

⁸³¹ T12950.27-42 (McRae); T14284.40-T14288.21 (Leane); Exhibit 1276 – Statement of Stephen Frederick Leane at [55] (VPL.0014.0112.0001 at .0013).

⁸³² T14287.30-T14288.19 (Leane).

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- 53.31 Paragraph 4643 of the submissions of counsel assisting incorrectly summarises the evidence of AC Leane. AC Leane's evidence was entirely consistent with the evidence of Mr McRae. AC Leane did not say that the DPP gestured with this hand in a manner that suggested he was being thoughtful "**before accepting**".⁸³³ Consistent with Mr McRae, AC Leane recalled that the DPP declined the case studies and that he gestured to indicate that he did not want to receive them, as if to say "*no, not at this time*".⁸³⁴
- 53.32 The submissions of counsel assisting incorrectly create an impression that the case studies were not provided because Victoria Police did not push the issue. This impression gives a wrong account of the evidence. Both Mr McRae⁸³⁵ and Mr Leane⁸³⁶ gave consistent evidence that the case studies were offered to the DPP but that he declined to accept them. What occurred is that Mr McRae and AC Leane attended the DPP's office to brief him about the case studies. The briefing took place by Mr McRae reading parts of the case studies to the DPP and having a general discussion. Mr McRae had the case studies with him during the briefing. He did not read the case studies in full. Rather, he read a portion of them so that the DPP could get "*a flavour of what the behaviours were*" and then they had a general discussion.⁸³⁷
- 53.33 The fact that the case studies were discussed at the 25 November 2014 meeting is also obvious from the follow up email that Mr McRae sent to Mr Gardner on 8 December 2014. In the email, Mr McRae asked Mr Gardner when Victoria Police could expect to hear from the DPP about the case studies that were discussed in the meeting.⁸³⁸

Case Study – The Director's Committee

On 9 December 2014, the Director's Committee of the DPP (comprising the DPP, Gavin Silbert QC, Craig Hyland and Mr Gardner) met to discuss Ms Gobbo and the recent meeting with Mr McRae and AC Leane.

Mr Gardner's file note of the meeting states:⁸³⁹

Discussed recent meeting with FM & SL [Fin McRae and Steve Leane].

How to respond to recent email

Note – IBAC Report may be out soon – within two weeks?

Agreed;

- Presently, no duty of disclosure by DPP to defence because unclear information – may alter if/when DPP gets IBAC report
- No point inspecting our files, because X won't be mentioned, and no way of identifying her involvement if any.
- Me [Bruce Gardner] to draft reply to FM [Fin McRae] and settle with JC [John Champion].

It is difficult to reconcile the discussion at the 9 December meeting with the DPP's "serious concerns" about the integrity of some criminal trials and proceedings that had been held in the past decade, as expressed to Mr Kirkham QC on 17 October 2014.

- 53.34 On 11 December 2014, Mr McRae received an email from Mr Gardner, which stated as follows:⁸⁴⁰

⁸³³ Counsel Assisting's Submissions at p 1065 [4643], Vol 2.

⁸³⁴ T14286.24-44 (Leane).

⁸³⁵ T12950.41-42 (McRae).

⁸³⁶ T12950.27-42 (McRae); T14284.40-T14288.21 (Leane); Exhibit 1276 – Statement of Stephen Frederick Leane at [55] (VPL.0014.0112.0001 at .0013).

⁸³⁷ T12950.20-39 (McRae).

⁸³⁸ Exhibit 1096 – Attachment 24 to the DPP Statement (RCMPI.0104.0001.0001 at _0172 - _0178).

⁸³⁹ Exhibit 1096 – Attachment 25 to the DPP Statement (RCMPI.0104.0001.0001 at _0179 - _0181).

⁸⁴⁰ Exhibit 1137 – Email from Bruce Gardner to Mr Findlay McRae dated 11 December 2014 (VPL.0100.0001.0848 at .0864).

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Hi Fin

This matter was discussed earlier this week by the Director's Committee.

In brief, the Director believes that at present the PPS has no duty of disclosure to the defence in any of the 5 "case studies" you sent us, largely as a consequence of the uncertainty about the nature, extent or timing of X's behaviour in those matters.

We don't yet have sufficient information to invoke the processes in our Miscarriage of Justice Policy.

The position may change depending on the outcome of the IBAC investigation and whatever findings or recommendations it may make.

For the same reason, the Director sees no purpose in us undertaking a review of files in issue at this stage – it is almost certain that nothing of relevance would exist on the prosecution file.

Please let me know if you are awaiting anything further from us at this stage.

I would be interested to hear what the [Legal Services Commissioner] thinks about the Client Privilege issue, if you raise that with him.

- 53.35 It is important to emphasise that as at 11 December 2014, the DPP was not requesting further information from Victoria Police. To the contrary, Mr Gardner is asking Mr McRae whether Victoria Police requires anything further from the OPP. In its briefings, Victoria Police had been transparent with the DPP and the DPP's position was to await the outcome of the IBAC review.
- 53.36 In the circumstances, it would have been reasonable for Mr McRae to also await the outcome of the IBAC review, however, he did not do so, as outlined below.
- 53.37 On 21 January 2015 and on 3 February 2015, Mr McRae and AC Leane attended briefings with Jennifer Bryant and Mr Shane Kirne of the Commonwealth DPP. And on 30 January 2015, Mr McRae attended a meeting with the Legal Services Commissioner. At those meetings, Mr McRae made disclosure of the relevant matters related to Ms Gobbo as he knew them.⁸⁴¹ At the same time, the DPP and CDPP were meeting to discuss the very same issues.

Case Study – The Director of Public Prosecutions

On 22 January 2015, the DPP, Mr Gardner and the Commonwealth DPP met to discuss Ms Gobbo. Mr Gardner's file note records the following question:⁸⁴²

Question re: Can DPP assume veracity of police evidence? Or assume its sourced from a lawful source or the source was not breaching e.g. client privilege?

- 53.38 As at 6 February 2015, the Bendigo Steering Committee was considering closing off the standing agenda item relating to the use of evidence/material provided by Ms Gobbo. The minutes record that the Committee was considering doing so because:
- (a) the 5 detailed case studies had been prepared to brief the Victorian DPP;
 - (b) the DPP gave a verbal response that he was satisfied and has also forwarded written confirmation;
 - (c) Mr McRae had also briefed the Commonwealth DPP with five case studies, one of which (Karam) related to a joint prosecution that is currently under appeal;
 - (d) the Commonwealth DPP was not concerned regarding the appeal;

⁸⁴¹ Exhibit 1067 – Statement of Findlay McRae at [7.52]-[7.56] (VPL.0014.0089.0003 at .0055- .0057).

⁸⁴² Exhibit 1096 – Attachment 25 to the DPP Statement (RCMPI.0104.0001.0001 at _0187 - _0188).

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- (e) the Commonwealth DPP was now aware of "all info at law and have the same opinion as the DPP – both comfortable";
- (f) Victoria Police had written to IBAC seeking advice, detailing the five case studies;
- (g) IBAC returned correspondence and did not accept referral because it would not get involved in police operations;
- (h) Victoria Police considered briefing a senior lawyer/ex-judge but any recommendations would still require opinion of current DPP. The Victoria Police position was that this was not required as both Directors agree.⁸⁴³

53.39 In light of the communications it had received from IBAC, the Victorian DPP and the Commonwealth DPP, the Victoria Police position as at 6 February 2015 is entirely understandable. In its actions over the past 12 months, Victoria Police had been fully transparent with each of these bodies and the consistent message it was receiving in response was that there was no further action required.

54 Conclusion

54.1 The evidence in relation to Mr McRae demonstrates that there was no attempted cover-up of Ms Gobbo's role as a human source. As Mr McRae said in his oral evidence, once he was aware of the possibility that Ms Gobbo had acted as a human source against her own clients, he was relentless in ensuring that these matters were investigated and relevant organisations were briefed.

Saul Holt QC
Adam Purton

⁸⁴³ Untendered Operation Loricated / Operation Bendigo (VPL.0100.0001.1355 at 1581)

O Submission of former Assistant Commissioner Danye Moloney

55 Introduction

55.1 This submission responds to submissions made by Counsel Assisting about former Assistant Commissioner Danye Moloney at paragraphs [1482], [1525]-[1527], [3225], [3485] and [3540]-[3542] of Volume 2. It also refers to relevant evidence before the Commission concerning Mr Moloney's roles at Victoria Police and his limited knowledge about Ms Gobbo's use as a human source at the relevant times. This evidence provides the important context through which Counsel Assisting's submissions about Mr Moloney must be viewed.

56 Knowledge and responsibilities of Mr Moloney as the Commander, Intelligence and Covert Support Department

Mr Moloney's role as the Commander, Intelligence and Covert Support Department

56.1 At paragraph [1525], Counsel Assisting refer to Mr Moloney's role as the Commander of the Intelligence and Covert Support (**I&CS**) Department. Mr Moloney performed this role from 11 July 2005 until November 2008.

56.2 It is not open to the Commissioner, on the evidence, to find that in this role Mr Moloney was responsible for, or had responsibilities that included oversight of, the recruitment of Ms Gobbo as a human source. Mr Moloney's unchallenged evidence is that he played no part in, and had no knowledge of, the recruitment and registration of Ms Gobbo in September 2005.⁸⁴⁴ Ms Gobbo's recruitment and registration is described in Part 17 of Victoria Police's submissions. There is no evidence that Mr Moloney had any responsibility for, or oversight of, these events.

56.3 Mr Moloney's lack of knowledge and involvement in Ms Gobbo's registration is consistent with Victoria Police's Informer Management Policy in existence at that time. *Chief Commissioner's Instruction 6/04* made no provision for the Commander of the I&CS Department to play any part in the registration of human sources.⁸⁴⁵

56.4 As the Commander of the I&CS Department Mr Moloney had management responsibility for the Covert Support Division and State Intelligence Division, which included the Source Development Unit (**SDU**) and the Human Source Management Unit (**HSMU**) respectively. Accordingly, both the SDU and HSMU reported through their Inspectors and Superintendents through to Mr Moloney. To this extent, Mr Moloney accepts that is open to the Commissioner to find that he had responsibilities that included oversight of those units, each having responsibility for the handling and management of Ms Gobbo as a human source. However, as explained below, Mr Moloney's ability to effectively oversight these units was severely restricted by his limited knowledge of Ms Gobbo's handling and management.

Mr Moloney had limited knowledge of Ms Gobbo's handling and management as a source

56.5 Chapter 10 of Counsel Assisting's submissions overstate Mr Moloney's awareness of Ms Gobbo's registration and use as a human source and overlook key evidence which demonstrates and explains his lack of knowledge.

56.6 There are three contextual factors which are pertinent to any assessment of Mr Moloney's knowledge of Ms Gobbo's management and use as a human source.

56.7 First, although Mr Moloney commenced as Commander, I&CS Department on 11 July 2005, he also retained complete management responsibility for the Ceja Taskforce until

⁸⁴⁴ T14573.6-23 (D Moloney).

⁸⁴⁵ Exhibit RC008, Annexure 35 – Chief Commissioner's Instruction 6/04 (VPL.0002.0001.2214 at .2221-.2225).

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December 2006.⁸⁴⁶ This significantly limited his capacity to oversee the work of the I&CS Department. The Ceja investigations and prosecutions that followed were the “*biggest corruption investigations in Victoria’s history*” and Mr Moloney’s focus was, understandably, on the management and pursuit of those matters.⁸⁴⁷ A review of his diaries from late 2005 and throughout 2006 confirms that Ceja matters continued to regularly occupy his time. During this period, Mr Moloney also performed duties in relation to various steering committees, projects and reviews, which are also reflected in his diaries.⁸⁴⁸

56.8 Secondly, on 11 July 2005, shortly after commencing at the I&CS Department, Mr Moloney attended a meeting with then Assistant Commissioner Overland, which he describes as a “*setting of the standards*”.⁸⁴⁹ During that meeting, Mr Overland directed Mr Moloney that he would not be briefed on the operational elements of two “*complex and sensitive*” investigations that I&CS were providing services to, and that the superintendents and other members under Mr Moloney’s command would instead brief Mr Overland directly in relation to the operational aspects of these investigations. Mr Moloney inferred that one of these investigations was Purana.⁸⁵⁰ Mr Moloney’s unchallenged evidence was that this instruction remained in place throughout his tenure as Commander, I&CS Department.⁸⁵¹

56.9 Mr Moloney did not question nor challenge the appropriateness of this instruction from his superior officer. To the contrary, his evidence was:

*I considered this a completely appropriate direction because I understood the “need to know” principle. I had put together a similar arrangement for an operation I had been involved with previously.*⁸⁵²

56.10 The effect of Mr Overland’s instruction meant that Mr Moloney was prevented from learning the true extent of Ms Gobbo’s role as a human source, especially in relation to the Purana Taskforce. This made it impossible for him to ensure that Ms Gobbo was being appropriately managed within the I&CS Department. The Overland instruction, combined with his respect for the “*need to know*” principle also meant that Mr Moloney did not feel that he could appropriately make positive inquiries about operational matters relevant to Ms Gobbo.⁸⁵³ As Mr Moloney described it, the practical effect of Mr Overland’s instruction was that “*the Superintendents that were supplying resources from my department, operationally couldn’t brief me. Yes, they briefed me in regard to administration, resources.*”⁸⁵⁴

56.11 Thirdly, once Mr Moloney became aware of Ms Gobbo’s registration (in October 2005), he met with his line managers, Superintendents Tony Biggin and Ian Thomas, and Officer Sandy White. During these meetings, Mr Moloney took steps to ensure that the lead handler had put the appropriate checks and balances in place to appropriately manage Ms Gobbo and that the superintendents were monitoring her use. He asked that he be briefed about any issues that arose.⁸⁵⁵ Thereafter, Mr Moloney relied upon his superintendents and Officer White to “*do [their] jobs*” and bring to his attention any issues that he should be aware of. If issues were not raised with him, Mr Moloney expected that his line managers had the situation under control.⁸⁵⁶ This was an entirely reasonable position for a Commander to have adopted. Mr Moloney regarded Officer White as “*one of the top handlers and experienced trained handlers in the nation*” at that

⁸⁴⁶ Exhibit RC1325B – Statement of Mr Dannye Moloney at [12]-[13] (VPL.0014.0070.0025 at .0027); T14640.1-17 (D Moloney).

⁸⁴⁷ T14546.37-41 (D Moloney).

⁸⁴⁸ Exhibit RC1325D – Supplementary statement of Mr Dannye Moloney, Annexure A (VPL.0014.0070.0049 at .0055-0056).

⁸⁴⁹ T14562.6 (D Moloney).

⁸⁵⁰ Exhibit RC1325B – Statement of Mr Dannye Moloney at [41]-[44] (VPL.0014.0070.0025 at .0031-.0032) NB: Mr Moloney’s statement incorrectly suggests that this meeting took place on 12 July 2005; Exhibit RC1327B – Diary entries of Mr Dannye Moloney, 11 July 2005 (VPL.0005.0169.0090 at .0107); T14562.1-29 (D Moloney).

⁸⁵¹ T14559.6-19 (D Moloney); T14561.22-26; T14563.6-9; T14565.23-45.

⁸⁵² Exhibit RC1325B – Statement of Mr Dannye Moloney at [44] (VPL.0014.0070.0025 at .0032).

⁸⁵³ T14565.36-38 (D Moloney).

⁸⁵⁴ T14562.27-29 (D Moloney).

⁸⁵⁵ T14562.41-T14563.9 (D Moloney).

⁸⁵⁶ T14562.47-T14563.2; T14576.19-T14577.43 (D Moloney).

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time. He also had confidence in Messrs Biggin and Thomas who had "vast experience, one in covert and one in intelligence".⁸⁵⁷ Mr Moloney was therefore entitled to rely on their abilities and expertise.

- 56.12 In addition to relying on his superintendents and Officer White, Mr Moloney expected that any potential issues arising from Ms Gobbo's use as a human source were being managed by those within the Crime Department with the responsibility for management of the investigations that the I&CS Department were providing services to. This is consistent with the role of the I&CS Department, which was to provide support services to investigations - namely, to collect intelligence, information and evidence on request from investigations. The I&CS Department was not tasked with the management of investigations.⁸⁵⁸ Mr Moloney understood that there were officers at senior levels within Crime Command who were being briefed about what was occurring with respect to Ms Gobbo,⁸⁵⁹ including Mr Overland who he understood was the head of the Purana investigations.

Evidence of Mr Moloney's limited knowledge

- 56.13 At paragraph [1482], Counsel Assisting rely on four meetings and other events to purportedly demonstrate Mr Moloney's "significant awareness of the relationship between Ms Gobbo and Victoria Police" in the period to 26 April 2006. However, the evidence before the Commission shows the contrary – that Mr Moloney's knowledge of Ms Gobbo was extremely limited during this period.
- 56.14 Mr Moloney first became aware of Ms Gobbo's registration in October 2005 when Mr Overland informed him that Ms Gobbo had been registered as a human source and that her registration needed to be managed "carefully" or "closely".⁸⁶⁰ As a result of Mr Overland's earlier instruction (as described above), Mr Moloney understood his role in overseeing Ms Gobbo's registration "carefully" or "closely", related to her welfare but not her tasking.⁸⁶¹
- 56.15 On 4 October 2005, Mr Moloney met with Officer White. Counsel Assisting's submissions at paragraph [1482] refer to Officer White's diary note of this meeting but make no reference to Mr Moloney's evidence about it. Mr Moloney's diary records that he met with Officer White for 30 minutes "re DSU ops. Briefed re 3838".⁸⁶² When it was suggested to Mr Moloney by Counsel Assisting that he would have been briefed about the four lengthy meetings Ms Gobbo had participated in with the SDU by that stage, Mr Moloney responded, "Well, you're telling me stuff I don't know about".⁸⁶³ In particular, Mr Moloney's unchallenged evidence was that he had not been briefed by Officer White about the information the SDU were receiving from Ms Gobbo about Tony Mokbel and the tactical scenarios the SDU were exploring as a result.⁸⁶⁴
- 56.16 On 5 October 2005 Mr Moloney met with Messrs Purton, Biggin and Thomas. Mr Moloney's evidence about this meeting is that his advice was sought specifically in relation to a proposed plan to [REDACTED].⁸⁶⁵ He said that this was the type of plan that he expected would be brought to his attention. He denied that he was briefed generally in relation to tactical plans involving Ms Gobbo.⁸⁶⁵
- 56.17 On 22 October 2005 Mr Moloney met with Messrs Wilson and Taylor of the ESD. Mr Moloney's evidence is that the purpose of this meeting was to establish a protocol whereby Information Reports (IRs) emanating from the SDU and relevant to the ESD could be passed directly between superintendents of the I&CS Department and ESD,

⁸⁵⁷ T14592.37-43 (D Moloney).

⁸⁵⁸ Exhibit RC1325D – Supplementary statement of Mr Danyne Moloney at [14] (VPL.0014.0070.0049 at .0050); T14580.19 - T14581.33 (D Moloney); T14591.23-43 (D Moloney); T14594.9-21 (D Moloney).

⁸⁵⁹ T14632.9-12 (D Moloney).

⁸⁶⁰ T14537.35-47 (D Moloney). See also T11325.38-45 (S Overland).

⁸⁶¹ T14572.24-26 (D Moloney).

⁸⁶² Untendered diary entries of Mr Danyne Moloney, 4 October 2005 (VPL.0005.0169.0001 at .0026).

⁸⁶³ T14568.23-24 (D Moloney).

⁸⁶⁴ T14569.47-T14570.4 (D Moloney).

⁸⁶⁵ T14569.15-42 (D Moloney).

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rather than via higher ranking officers. This is reflected in his diary note of the meeting. Mr Moloney's evidence was that he did not bring the IRs to the meeting, or otherwise supply them to the ESD.⁸⁶⁶

- 56.18 Mr Moloney's evidence about this meeting is supported by the contemporaneous records made in the Source Management Log (SML). The SML records that, prior to 22 October 2005, there were two IRs disseminated to the ESD via the Local Informer Registrar⁸⁶⁷ and one IR disseminated to Acting Commander Ian Thomas for referral to ESD⁸⁶⁸. Subsequent to 22 October 2005, IRs and intelligence were disseminated by the SDU to Supt Biggin for direct communication to the ESD.⁸⁶⁹ These records are consistent with the protocol described by Mr Moloney having been established on 22 October 2005.
- 56.19 Mr Moloney's diary indicates that he had no involvement with any matter concerning Ms Gobbo between 22 October 2005 and 14 February 2006.⁸⁷⁰
- 56.20 On 14 February 2006, Mr Moloney attended the SDU premises. Counsel Assisting's submissions refer to the monthly source review completed by Officer White that day, apparently implying that Mr Moloney was aware of these matters. However, when asked by Counsel Assisting whether he had been briefed by Officer White about the monthly source review completed by that day, Mr Moloney gave the following evidence:
- I can't remember it because it was a visit to the Unit to say hello and have a cup of coffee and all that type of thing, from memory, because if I attended their premises I turned it into a sit down talk and a bit of a discussion of how morale was and any other issues relevant to the business, rather than the tasking, the nature of the tasking.⁸⁷¹*
- 56.21 Mr Moloney said that if Officer White had discussed 3838 with him on this occasion, he would have talked about her still being a high risk.⁸⁷² A briefing along those lines would not have advanced Mr Moloney's understanding of Ms Gobbo's use, or the information she was supplying, and was consistent with the parameters of Mr Moloney's responsibilities in relation to the Ms Gobbo's safety and welfare
- 56.22 From 17 April 2006, Counsel Assisting's submissions assert that, following the discovery of the location of the clandestine laboratory, various units under the command of Mr Moloney including the SDU and two surveillance units were being used in Operation Posse. However, Counsel Assisting point to no evidence to demonstrate that Mr Moloney had any knowledge of these matters. There is no such evidence. To the contrary, Mr Moloney's evidence, as described in paragraphs 56.8 - 56.10 above, was that he was not briefed in relation to operations that fell under the Purana Taskforce umbrella. Further, he was never told that information Ms Gobbo provided led to the arrest of Mr Cooper, nor that, following his arrest, she attended the police station to advise him.⁸⁷³ This was not something Mr Moloney would have expected to be briefed about because it was an operational matter that fell within the responsibility of the Crime Department.⁸⁷⁴
- 56.23 Counsel Assisting's submissions also refer to Mr Moloney's request, made around 19 April 2006, that former Superintendent Biggin conduct an audit of Ms Gobbo's human source file as evidencing Mr Moloney's significant awareness of the relationship between Ms Gobbo and Victoria Police. Counsel Assisting link the audit to the discovery of the clandestine laboratory and the arrests made shortly thereafter, the implication

⁸⁶⁶ Exhibit RC1325B - Statement of Mr Dannye Moloney at [62] (VPL.0014.0070.0025 at .0034); T14570.12-22 (D Moloney).

⁸⁶⁷ Exhibit RC0111B - SML3838 (VPL.2000.0001.9447 at .9447 (re IR 278) and .9448 (re IR 274)).

⁸⁶⁸ Exhibit RC0111B - SML3838 (VPL.2000.0001.9447 at .9449 re IR 276).

⁸⁶⁹ Exhibit RC0577C - Second Statement of Anthony (Tony) Biggin at [69]-[70] (VPL.0014.0041.0008 at .0020-.0021), including extracts of the SML referred to therein.

⁸⁷⁰ Exhibit RC1325B - Statement of Mr Dannye Moloney at [63] (VPL.0014.0070.0025 at .0034).

⁸⁷¹ T14574.6-23 (D Moloney).

⁸⁷² T14574.25-31 (D Moloney).

⁸⁷³ T14580.24-28 (D Moloney).

⁸⁷⁴ T14580.32-33 D Moloney.

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being that these matters provided the reason for the conduct of the audit. No evidence is cited about this and no such evidence exists. Moreover, Counsel Assisting's submissions ignore Mr Biggin's evidence about his audit. As explained in the submission filed on behalf of Mr Biggin, his evidence was that Mr Moloney had asked him to conduct a high level overview or oversight of Ms Gobbo's file, which involved him looking at between 5 and 10 percent of the documents available at the SDU. Critically, at the time of conducting his audit, Mr Biggin was not aware that Ms Gobbo had provided information that led to investigators locating the clandestine laboratory, and was therefore unaware of the conflict of interest that crystallised when Ms Gobbo attended to provide advice to Mr Cooper following his arrest.⁸⁷⁵ Accordingly, the link between the audit and Mr Cooper's arrest which Counsel Assisting appear to be inviting the Commissioner to infer is not supported by the evidence about Mr Biggin's audit.

- 56.24 Mr Moloney does not believe that he saw the written audit prepared by Mr Biggin, as his name does not appear on the distribution list, although he expects that Mr Biggin would have verbally briefed him on its contents.⁸⁷⁶ However, the Biggin audit was deficient in that it did not identify the issues that had already become apparent in relation to Ms Gobbo's use as a human source, including her conflict of interest in informing on and then advising Mr Cooper. Nor did the audit raise any concerns relating to the use of a practicing barrister as a source. Therefore, any verbal briefing Mr Moloney may have received from Mr Biggin about the audit would not have advanced his knowledge or understanding of the issues surrounding Ms Gobbo's role.
- 56.25 Counsel Assisting further assert that "between 24 and 26 April 2006, Mr Biggin was involved in and receiving briefings on Operation Posse and was in turn briefing Mr Moloney". Neither Mr Biggin nor Mr Moloney were questioned by Counsel Assisting about the content of these briefings. However, it is relevant to recall Mr Moloney's evidence that he was not aware of, and had not been briefed about, Operation Posse.⁸⁷⁷ Moreover, as explained in the submission filed on behalf of Mr Biggin, Mr Biggin's knowledge of Operation Posse was extremely limited. In particular, he was not aware of Ms Gobbo's conflict of interest with respect to Mr Cooper. Any briefings between Mr Biggin and Mr Moloney would therefore not have been about the operational details of Operational Posse – rather, they would have been about planning the covert resource requirements for the next phase of the operation, which was to involve a number of units which reported through Mr Biggin to Mr Moloney.⁸⁷⁸
- 56.26 On 26 April 2006, Mr Moloney attended a meeting of the Human Source Payment Committee which dealt with a Reward Application concerning Ms Gobbo. As acknowledged by Counsel Assisting at paragraph [1492], Mr Moloney's evidence was that he relied upon a verbal summary of the application and could not recall reading the documents comprising the Reward Application, which contained details concerning Ms Gobbo's assistance.⁸⁷⁹ In these circumstances, there is no evidence that Mr Moloney learned anything about Ms Gobbo's management as a human source during this meeting.
- 56.27 The assertion by Counsel Assisting that Mr Moloney had "*significant awareness of the relationship between Ms Gobbo and Victoria Police*" in the period to 26 April 2006 is simply not supported by the evidence. There is in fact no evidence that Mr Moloney was briefed in relation to Ms Gobbo's use as a human source during this period – either by senior members of the Crime Command or by anyone within the I&CS Department.

Counsel Assisting's proposed findings at paragraphs [1525]-[1527]

- 56.28 In response to paragraph [1525], as explained in paragraph 56.1 above:

⁸⁷⁵ Victoria Police Tranche 1 Submissions, Submission of Mr Anthony (Tony) Biggin Part 44.

⁸⁷⁶ T14576.1-6 (D Moloney).

⁸⁷⁷ T14574.33-T14575.2 (D Moloney).

⁸⁷⁸ Victoria Police Tranche 1 Submissions, Submission of Mr Anthony (Tony) Biggin Parts 42 and 43.

⁸⁷⁹ Exhibit RC1325B – Statement of Mr Dannye Moloney at [66]-[70] (VPL.0014.0070.0025 at .0035).

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- 56.29 It is not open to the Commissioner, on the evidence, to find that as the Commander, I&CS Department, Mr Moloney was responsible for, or had responsibilities that included oversight of, the recruitment of Ms Gobbo as a human source.
- 56.30 Mr Moloney accepts that is open to the Commissioner find that he had responsibilities that included oversight of those units with responsibility for the handling and management of Ms Gobbo as a human source because the SDU and HSMU came within Mr Moloney's operational command. However, as explained above, Mr Moloney's ability to effectively oversight these units was severely restricted by Mr Overland's instruction, which resulted in him having limited knowledge of Ms Gobbo's handling and management.
- 56.31 In response to paragraph [1526], Mr Moloney submits:
- (a) On the evidence, it is open to the Commissioner to find that by 26 April 2006 Mr Moloney was aware that Ms Gobbo was a criminal barrister who Victoria Police had registered as a human source, and who was being managed by the SDU.
 - (b) It is not open to the Commissioner to find that Mr Moloney was aware of the matters in paragraph [1526.2] as there is no evidence before the Commission as to Mr Moloney's knowledge of who Ms Gobbo acted for as of 26 April 2006. To the contrary, the available evidence suggests that Mr Moloney did not know who Ms Gobbo's clients were as these were operational matters that he was not briefed on.⁸⁸⁰ In particular, Mr Moloney did not know that Ms Gobbo was providing information against her client, Tony Mokbel.⁸⁸¹ Nor was he aware that Mr Cooper was a client of Ms Gobbo's.⁸⁸²
 - (c) It is not open to the Commissioner to find that Mr Moloney was aware of the matters in paragraph [1526.3]. There is simply no evidence before the Commission to demonstrate such awareness on the part of Mr Moloney. Instead, as explained above, Mr Moloney's evidence was that he was not briefed in relation to operational matters relating to the Purana Taskforce and Operation Posse, consistently with Mr Overland's instruction to him.
 - (d) It is not open to the Commissioner to find that Mr Moloney was aware of the matters in paragraph [1526.4]. To the contrary, Mr Moloney's unchallenged evidence was that he did not know that Ms Gobbo was "*signed up*" to provide information about Tony Mokbel.⁸⁸³ Further, Mr Moloney's evidence was that he was not briefed in relation to operational matters relating to the Purana Taskforce and Operation Posse, consistently with Mr Overland's instruction.
 - (e) In relation to paragraph [1426.5], it is open to the Commissioner to find that, at some stage, Mr Moloney became aware that Ms Gobbo had acted for Tony Mokbel. However, the Commissioner cannot be satisfied that Mr Moloney knew this by 26 April 2006. Mr Moloney's evidence was that he found out about this through newspaper reports, although he couldn't say when. He did not pay attention to who was representing Mr Mokbel at the time he absconded during his trial.⁸⁸⁴ In any event, knowledge of this fact (whenever he became aware of it) would not have been of any significance to Mr Moloney given he did not know Ms Gobbo was providing information to the SDU about Tony Mokbel.
 - (f) It is not open to the Commissioner to find that Mr Moloney was aware of the matters in paragraph [1526.6]. To the contrary, Mr Moloney's unchallenged evidence was that he was not aware of the role Ms Gobbo played in the lead up to Mr Cooper's arrest and her subsequent provision of advice to him.⁸⁸⁵

⁸⁸⁰ T14580.30-33 (D Moloney).⁸⁸¹ T14632.1-3 (D Moloney).⁸⁸² T14580.24-28 (D Moloney).⁸⁸³ T14632.1-3 (D Moloney).⁸⁸⁴ T14546.16-T14547.10 (D Moloney).⁸⁸⁵ T14580.10-T14581.45 (D Moloney); T14605.40-T14606.3 (D Moloney).

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- (g) Mr Moloney understood that all high risk human sources being managed by the SDU were at high risk of being harmed if their role became known. On that basis, it is open to the Commissioner to find that Mr Moloney had knowledge of the matters set out in paragraph [1526.7].
 - (h) In relation to paragraph [1526.8], Mr Moloney accepts that it was unusual to have legal practitioners registered as human sources.⁸⁸⁶ However, it is not open to the Commissioner to find that Mr Moloney was aware of the matters in paragraph [1526.8] as of 26 April 2006. There is simply no evidence upon which such a finding could be made given Mr Moloney's limited knowledge of Ms Gobbo's informing.
- 56.32 Mr Moloney submits that, as the Commissioner cannot find that Mr Moloney was aware of the matters listed in paragraph [1526], the proposed findings in paragraph [1527] fall away.
- 56.33 There is no basis for the making of these findings given Mr Moloney's limited knowledge of Ms Gobbo's use as a human source by 26 April 2006. Of particular importance is Mr Moloney's evidence that he was unaware of the following:
- (a) Ms Gobbo's continuing to act for clients while providing information to her handlers about them;⁸⁸⁷
 - (b) Ms Gobbo's role in providing information in the lead up to Mr Cooper's arrest and her subsequent provision of advice to him;⁸⁸⁸ and
 - (c) Redactions made to disclosure materials by investigators to prevent Ms Gobbo's role as a legal representative being revealed.⁸⁸⁹
- 56.34 With the benefit of hindsight and knowing what he now knows about some of the issues that arose during Ms Gobbo's use as a human source, Mr Moloney accepts that there were "*major problems*" with aspects of Ms Gobbo's management.⁸⁹⁰ However, he was not aware of these issues at the time they were occurring and could not, in the circumstances, have reasonably have taken steps to find out. Mr Moloney's evidence was that he had not been briefed about any issues arising from Ms Gobbo's occupation as a criminal barrister until he received the SWOT analysis file in 2009.⁸⁹¹
- 56.35 Mr Moloney now accepts that legal advice should have been sought at various stages.⁸⁹² However, his failure to seek legal advice, or ask whether any had been obtained, was reasonable in the circumstances described in this submission, particularly given the contextual considerations explained at paragraphs 56.5 – 56.12 above.
- ## 57 Mr Moloney's reaction to Ms Gobbo's car fire
- 57.1 At paragraph [3225], Counsel Assisting submit that Mr Moloney's reaction to Ms Gobbo's car being set alight was "*inadequate*". This submission is not open on the evidence, which demonstrates that Mr Moloney's response to the car fire was adequate and appropriate in the circumstances.
- 57.2 Mr Moloney's evidence is that Mr Biggin briefed him about the car fire and that he was "*very satisfied with his briefing*".⁸⁹³ Mr Moloney could not recall whether or not he raised the matter with his superiors but considered that this was "*not essential*" in the circumstances.⁸⁹⁴

⁸⁸⁶ Exhibit RC1325B – Statement of Mr Danyne Moloney, 28 November 2019 at [55] (VPL.0014.0070.0025 at .0033).

⁸⁸⁷ T14564.12-14565.34 (D Moloney).

⁸⁸⁸ T14580.10-T14581.45 (D Moloney); T14605.40-14607.3 (D Moloney).

⁸⁸⁹ T14582.3-29 (D Moloney).

⁸⁹⁰ T14581.29 (D Moloney).

⁸⁹¹ T14576.8-15 (D Moloney).

⁸⁹² T14590.18 (D Moloney); T14631.33-34 (D Moloney).

⁸⁹³ T14594.20-21 (D Moloney).

⁸⁹⁴ T14594.23-26 (D Moloney).

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- 57.3 Mr Moloney said that Mr Biggin was by this time familiar with his reporting requirements such that when Mr Biggin briefed him about issues, he would also have a resolution to the situation ready.⁸⁹⁵ On this occasion, Mr Biggin *"briefed me, told me it was being handled and told me [SDU]⁸⁹⁶ had been, were advised, but as for any action, I left it up – it was just a normal process... there would have been a review of the risk assessment"*.⁸⁹⁷
- 57.4 It was entirely reasonable for Mr Moloney have trusted that Mr Biggin would have ensured that necessary steps had been taken by the SDU to review Ms Gobbo's risk assessment and protect her safety.
- 57.5 Mr Moloney was not aware of the previous threats that had been received by Ms Gobbo, which were being investigated as part of Operation Gosford. However, there was no need for Mr Moloney to know this, given that the SDU and the investigators (including Mr Overland) were aware of and handling these matters.⁸⁹⁸
- 57.6 In cross-examination by Mr Chettle, parts of the SML entry dated 16 April 2008 were put to Mr Moloney, which detailed the response of the SDU and investigators to Ms Gobbo's car fire. The response included:
- (a) an investigation into the fire (conducted by a Purana member);
 - (b) confirmation that Ms Gobbo would no longer be tasked and that she was aware any intelligence provided by her would not be passed on unless it was crucially important and did not jeopardise her safety; and
 - (c) discussion with Ms Gobbo of an exit strategy.
- 57.7 Mr Moloney's evidence was that the information contained in the SML confirmed to him the adequacy of the steps that were taken in response to the car fire.⁸⁹⁹
- 57.8 Accordingly, there is no evidentiary basis for the Commissioner to find that Mr Moloney's response to the car fire was inadequate.

58 The SWOT analysis

- 58.1 The evidence before the Commission about the preparation and circulation of the Biggin memo and SDU SWOT analysis (**the SWOT analysis file**) is set out in Victoria Police's Tranche 2 submission at paragraphs 84.4 to 84.15. Mr Moloney accepts this analysis.
- 58.2 The evidence shows that Mr Moloney had physical possession of the SWOT analysis file for a short time and only on Monday, 5 January 2009. As a *"Protected"* document, Mr Moloney did not retain a copy of it.⁹⁰⁰
- 58.3 The following evidence is relevant to any assessment of Mr Moloney's conduct with respect to the SWOT analysis file:
- (a) Contemporaneous notes recorded on the SWOT analysis file show that Mr Porter and Mr Moloney each signed the document on 5 January 2009.⁹⁰¹
 - (b) It is not clear from the available records what time on 5 January 2009 Mr Moloney received the SWOT analysis file. An entry in Mr Biggin's diary suggests that he personally collected the file from Mr Porter at 8.50am and delivered it to Mr

⁸⁹⁵ T14591.27-38 (D Moloney).

⁸⁹⁶ The transcript records "TSU" but this appears to be an error and should read "SDU". This is consistent with Mr Biggin's email to Mr Moloney about the car fire: Untendered email from Mr Tony Biggin to Mr Dannye Moloney, 16 April 2008 (VPL.6051.0004.6412 at .6412).

⁸⁹⁷ T14591.36-42 (D Moloney).

⁸⁹⁸ T14592.7-32 (D Moloney); T14594.1-18 (D Moloney).

⁸⁹⁹ T14638.14-T14639.37 (D Moloney).

⁹⁰⁰ Exhibit RC1325D – Supplementary statement of Mr Dannye Moloney, 19 February 2020 at [19]-[20] (VPL.0014.0070.0049 at .0051).

⁹⁰¹ Exhibit RC0518B – Distribution list and issue cover sheets dated 31 December 2008 and 2 January 2009 (VPL.0100.0035.0001 at .0001, .0003). Mr Moloney confirmed in evidence that the handwriting and signature on the cover sheet were his own: T14607.29.

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Moloney's Staff Officer, Mr Buick, at 9.10am.⁹⁰² Mr Moloney's diaries from this period are missing⁹⁰³ so it is not known what his commitments were that day, except that he was in a meeting with Messrs Hollowood and Smith from 9am. It is otherwise not known what opportunity Mr Moloney might have had review the SWOT analysis file upon receiving it. It may be that Mr Moloney had not read it until shortly prior to 3.30pm, when the file was entered into the correspondence register, as described below.

- (c) Mr Moloney endorsed the cover page in his handwriting to indicate that it was to be provided to Mr Overland for "*Petra Steering Committee – Consideration*".⁹⁰⁴ It was Mr Moloney's evidence that he "*elevated*" the file to the Petra Steering Committee because the briefing note made it clear that the SDU had concerns about the transition, and he "*considered it was appropriate for the Steering Committee to be informed of, and to consider, those views*".⁹⁰⁵
- (d) An extract of Victoria Police's electronic correspondence register show that the SWOT analysis file was received by Mr Moloney's office and forwarded "*to DC Overland by hand by AC Moloney*" on 5 January 2009.⁹⁰⁶ These entries were created in the correspondence register by Mr Moloney's Staff Officer, Mr Buick, at approximately 3.30pm on 5 January 2009.⁹⁰⁷
- (e) Mr Moloney's evidence was that, having reviewed the correspondence register entries, he believed that he delivered the SWOT analysis file personally to Mr Overland shortly prior to the Petra Steering Committee meeting which was to take place at 4pm that afternoon. Mr Moloney believes that the 3.30pm entry in the correspondence register would have been made by Mr Buick as Mr Moloney was leaving his office at St Kilda Road to attend the Steering Committee meeting with Mr Overland at the Victoria Police Centre in Flinders Street, which was a 10-15 minute drive away. Mr Moloney is "*confident*" that he delivered the SWOT analysis file to Mr Overland by hand prior to the meeting and that was his "*usual practice*".⁹⁰⁸
- (f) Mr Moloney recalls that Mr Overland read the SWOT analysis file to himself and then said words to the effect of "*these matters have all been considered*" and "*these are issues from their perspective*".⁹⁰⁹
- (g) Mr Moloney believes that the SWOT analysis file was produced and tabled during the Petra Steering Committee held on 5 January 2009, although he cannot now be completely sure of this. There are no records available which conclusively resolve the question of whether the SWOT analysis file was in fact tabled at the meeting.

⁹⁰² Exhibit RC0578 – Diary of Mr Anthony (Tony) Biggin, 5 January 2009 (VPL.0005.0155.0375 at .0389).

⁹⁰³ Exhibit RC1325B – Statement of Mr Dannye Moloney, 28 November 2019 at [5] (VPL.0014.0070.0025 at .0025).

⁹⁰⁴ Exhibit RC0518B – Distribution list and issue cover sheets dated 31 December 2008 and 2 January 2009 (VPL.0100.0035.0001 at .0001).

⁹⁰⁵ Exhibit RC1325B – Statement of Mr Dannye Moloney, 28 November 2019 at [101] (VPL.0014.0070.0025 at .0040).

⁹⁰⁶ Exhibit RC1328A – Victoria Police correspondence report, 5 January 2009 (VPL.0098.0026.0001 at .0001).

⁹⁰⁷ Untendered Victoria Police correspondence report, 5 January 2009 (VPL.0098.0026.0002 at .0002).

⁹⁰⁸ Exhibit RC1325D – Supplementary statement of Mr Dannye Moloney, 19 February 2020 at [19]-[20] (VPL.0014.0070.0049 at .0051); T14607.17-T14608.42 (D Moloney).

⁹⁰⁹ Exhibit RC1325D – Supplementary statement of Mr Dannye Moloney, 19 February 2020 at [24] (VPL.0014.0070.0049 at .0052); T14611.6-T14611.27 (D Moloney); T14612.27-42 (D Moloney); T14613.12-17 (D Moloney); T14617.12-16 (D Moloney).

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Proposed finding at paragraph [3485]

- 58.4 The proposed finding at paragraph [3485] is not open on the evidence with respect to Mr Moloney for three reasons. First, as explained above, the evidence shows that Mr Moloney had possession of the SWOT analysis file for a short time and only on Monday, 5 January 2009. In those circumstances, it cannot be inferred that Mr Moloney had adequate time to consider the contents of the SWOT analysis file in the level of detail Counsel Assisting's submissions assume. Instead, the evidence is consistent with Mr Moloney reviewing the SWOT analysis file in sufficient detail only to recognise it contained sufficient concerns about the proposed transition of Ms Gobbo to a witness to warrant it being urgently elevated to the Petra Steering Committee via Mr Overland.
- 58.5 Secondly, at the time of receiving the SWOT analysis file, Mr Moloney had been a member of the Petra Steering Committee for less than two months, having joined only after his appointment as Assistant Commissioner, Crime. Although the Petra Steering Committee had been established in April 2007, Mr Moloney attended his first meeting on 11 November 2008.⁹¹⁰ He then came to learn that Petra Taskforce investigators were considering using Ms Gobbo as a witness and that discussions on this topic were already underway at the Steering Committee level. However, he did not possess a detailed knowledge of the Petra investigation. For example, Mr Moloney was not aware of any steps being taken to have Ms Gobbo deployed by Petra rather than the SDU in an attempt to protect her historical relationship with the SDU from being discovered during subsequent court proceedings.⁹¹¹ Nor had he been involved in any discussions about Ms Gobbo's history as a human source not being disclosed. To the contrary, Mr Moloney believed that her history with the SDU would need to be disclosed and that this was one of the risks to be considered in deciding whether to use Ms Gobbo as a witness.⁹¹²
- 58.6 Thirdly, Mr Moloney had only a limited knowledge of Ms Gobbo's informing and no knowledge of the use of her information and intelligence by the Purana Taskforce, as explained in the first section of this submission. In particular, there is no evidence that Mr Moloney had any knowledge of anything to do with disclosure during court proceedings.
- 58.7 Accordingly, there is no evidentiary basis upon which the Commissioner could find that Mr Moloney would have known from reading the SWOT analysis that Ms Gobbo's role as a human source had not previously been disclosed in any court proceeding. The proposed finding at paragraph [3485] should not be made with respect to Mr Moloney.

Proposed findings at paragraphs [3540] to [3542]

- 58.8 In response to Counsel Assisting's submission at paragraph [3540], Mr Moloney accepts that it is open to the Commissioner to find that Mr Moloney was provided with the SWOT analysis file on 5 January 2009. This is because of the matters set out at paragraph 58.3 above.
- 58.9 In response to Counsel Assisting's submissions at paragraph [3541], Mr Moloney accepts that he did not seek legal advice, follow up the matters raised in the SWOT analysis file with Mr Biggin or the SDU, raise matters with the OPI or report the matter to the Chief Commissioner. However, it is not open on the evidence for the Commissioner to find that Mr Moloney's failure to take any of these actions constitutes a very serious failing on his part, for the reasons set out in relation to the proposed finding at paragraph [3485] and the additional reasons that follow.
- 58.10 First, it must be recalled that Mr Moloney was in a vastly different position to Mr Overland. Mr Moloney knew very little about Ms Gobbo's use as a human source and about the Purana and Petra investigations and understood that Mr Overland knew this to be the case, given his instruction that Mr Moloney not be briefed on the operational

⁹¹⁰ Exhibit RC1325B – Statement of Mr Danyye Moloney, 28 November 2019 at [94] (VPL.0014.0070.0025 at .0039).

⁹¹¹ T14596.10-26 (D Moloney).

⁹¹² T14597.26-T14598.17 (D Moloney).

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aspects of the Purana investigation, and given the recency of Mr Moloney's role on the Petra Steering Committee. By contrast, Mr Moloney understood that Mr Overland, as the head of both the Petra and Purana investigations, possessed a far greater operational knowledge of those investigations, the Purana prosecutions and the utilisation of Ms Gobbo as a human source. As Mr Moloney put it, "*my responsibilities in regard to this had been handed over, right from the start, to Mr Overland*".⁹¹³

- 58.11 Mr Moloney's evidence was that he trusted and expected Mr Overland, as the ultimate decision maker with respect to the decision to use Ms Gobbo as a witness, to have considered the SWOT analysis file appropriately and followed up on any issues arising from it. This was a reasonable position given Mr Overland's rank and role as the head of the Petra investigation. As Mr Moloney stated in evidence:

*The head of the investigation is responsible for decision making.... He chose not to advance the discussion and there's only one other member of the steering committee, plus the OPI representative being present, and that was his decision. He had the right to make that decision. Me personally had very limited knowledge of anything relating to the prosecution of Dale and for me to make a comment it would have taken – well, it was inappropriate if the Deputy Commissioner has decided that he's taken it on board and he'll make the decision.*⁹¹⁴

- 58.12 It was ultimately for Mr Overland, as the head of the Petra investigation to make the decision to transition Ms Gobbo from a human source to a witness, and not for the steering committee, although the steering committee contributed to that process.⁹¹⁵ If he'd had any evidence or information that would have caused him any concern about the approach taken by Mr Overland to the SWOT analysis file, Mr Moloney's evidence is that he would have raised such concerns.⁹¹⁶ However, he was reassured by Mr Overland's comments to the effect that, "*I know all this, I've considered all of this*", and accepted them.⁹¹⁷ This was a reasonable response by Mr Moloney in all of the circumstances that then existed.

- 58.13 Likewise, it was reasonable for Mr Moloney to expect Mr Overland to have followed up the issues raised by the SWOT analysis file, given Mr Overland's rank, his superior knowledge of both the Petra and Purana investigations and his greater knowledge of Victoria Police's use of Ms Gobbo as a human source. As Mr Moloney said:

*I expected ... Mr Overland to take it on board and progress anything from his knowledge, which was the start of the operation right through to this stage, was there anything substantial behind it and speak to the senior investigating officers and get them to respond to it. That's what I would have been, suggested the path that should have been taken.*⁹¹⁸

- 58.14 Given the chain of command in place at Victoria Police, it was entirely reasonable for Mr Moloney to expect that for Mr Overland would report to the Chief Commissioner, as his direct report, any concerns arising from the SWOT analysis if that was considered necessary or desirable. Mr Moloney acted appropriately in hand delivering the SWOT analysis file to Mr Overland who was his direct report and Chair of the Petra Steering Committee.

- 58.15 Secondly, Counsel Assisting's assertion that Mr Moloney took no steps to follow up with Mr Biggin is factually incorrect. Mr Moloney's evidence was that he notified Mr Biggin that the SWOT analysis had been given to Mr Overland and had been discussed.⁹¹⁹ This occurred within the context of Mr Biggin having spoken directly to Mr Overland

⁹¹³ T14614.16 (D Moloney).

⁹¹⁴ T14614.31-43 (D Moloney).

⁹¹⁵ Exhibit RC1325B – Statement of Mr Danyne Moloney, 28 November 2019 at [104] (VPL.0014.0070.0025 at .0041); T14609.31-35 (D Moloney); T14614.24-43 (D Moloney); T14617.7-16 (D Moloney).

⁹¹⁶ T14615.3-6 (D Moloney).

⁹¹⁷ T14615.32-36 (D Moloney).

⁹¹⁸ T14616.44-T14617.3 (D Moloney).

⁹¹⁹ T14620.16-17 (D Moloney).

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about the risks associated with Ms Gobbo becoming a witness.⁹²⁰ With the benefit of hindsight, Mr Moloney accepted that he could have asked Mr Biggin further questions about the issues referred to in the SWOT analysis. However, he did not do so at the time because he entrusted those matters to Mr Overland.⁹²¹

- 58.16 Thirdly, Mr Moloney could not recall whether the OPI were informed of the issues in the SWOT analysis file and stated that there was nothing in the document that would have caused him to refer the use of Ms Gobbo to the OPI for review, bearing in mind the purpose of the document:⁹²²

*The document is a think tank in regard to the threats and the weaknesses, opportunities, right, in regard to what could happen, right. Everything. Everything. You just have a think tank about it, all the positives, all the negatives and you balance it all up, and then that is given to the decision maker.*⁹²³

- 58.17 There is no evidence that Mr Moloney was complicit in, or aware of, any deliberate decision to not provide the SWOT analysis file to Mr Ashton. Mr Moloney's evidence was that he did not know whether or not Mr Ashton saw the SWOT analysis file, as he left this in the hands of Mr Overland.⁹²⁴ Moreover, any deliberate decision to keep the SWOT analysis file from Mr Ashton would be entirely inconsistent with Mr Moloney's decision to elevate the file to the Petra Steering Committee, which he knew Mr Ashton was a member of, and Mr Moloney's evidence that there was nothing in the document that would have caused him to refer the use of Ms Gobbo to the OPI for review.

Karen Argiropoulos
Susanna Locke

⁹²⁰ T7634.14-16 (T Biggin).

⁹²¹ T14616.8-T14617.18 (D Moloney).

⁹²² T14619.15-T14620.1 (D Moloney).

⁹²³ T14619.43-T14620.1 (D Moloney).

⁹²⁴ T14619.8-10 (D Moloney).

P Submission of former Detective Senior Sergeant Shane O'Connell

59 Introduction

- 59.1 No adverse findings by the Commissioner are warranted in relation to Mr O'Connell.
- 59.2 In relation to the submissions of Counsel Assisting that certain adverse findings are open with respect to Mr O'Connell:
- (a) An adverse finding about Mr O'Connell choosing not to obtain legal advice in relation to the meeting of 24 July 2007 is unsupported by the evidence and the Commissioner should not make it.
 - (b) The evidence does not support the Commissioner making the serious finding that Mr O'Connell lied to Mr Gipp in connection with a subpoena issued by Paul Dale in 2010 at all, let alone on the *Briginshaw* standard.
- 59.3 In addition, it is respectfully submitted that adverse observations advanced by Counsel Assisting in respect of Mr O'Connell in relation to issues around Andrew Hodson's polygraph test and the Paul Dale notes are gratuitous, not open on the evidence, and have no place in the Commissioner's ultimate report.

60 Mr O'Connell has cooperated with the Commission in accordance with all reasonable expectations

- 60.1 Mr O'Connell retired from Victoria Police in June 2017 and took up alternative employment. This Commission was the first time he was asked to recall the events of 2007, 2009 and 2010. Mr O'Connell has little independent memory of many of the relevant events.⁹²⁵ Mr O'Connell's lack of memory impeded his capacity to respond to the allegations against him.
- 60.2 However, Mr O'Connell provided the Commission with a detailed account of the events he could recall. His original statement is noteworthy for the detail provided and the care taken with its preparation. When it was drawn to Mr O'Connell's attention that some relevant events were not dealt with in that first statement, he provided a supplementary statement addressing those to the best of his ability allowing for his lack of recollection. Mr O'Connell spent many days reviewing transcripts of hundreds of hours of his conversations with Ms Gobbo in order to provide evidence to the Commission.
- 60.3 Mr O'Connell was a cooperative witness in the Commission. His evidence assisted the Commissioner to elucidate facts concerning past events. Participating as a witness dredged up unwelcome memories of investigating serious crimes at a dark time of gangland violence in Victoria and the stressful experience of dealing with Ms Gobbo – who is evidently a difficult and manipulative person. Mr O'Connell should bear no further criticism.

61 Contextual facts

- 61.1 The Petra Taskforce was established after Carl Williams provided Victoria Police with new information about the execution of Terrence and Christine Hodson.⁹²⁶ Headed by DI Ryan,⁹²⁷ the Petra Taskforce, investigated information provided by Mr Williams and reviewed the original Homicide Squad investigation into the Hodson murders.⁹²⁸ Mr O'Connell became lead investigator of the Petra Taskforce on 23 March 2007.⁹²⁹

⁹²⁵ Exhibit RC01305B – Statement of Mr Shane O'Connell, 5 December 2019 at [23], [25]–[28], [31]–[32], [35], [54], [59], [62], [65], [67], [97]–[101], [104], [162], [177], [192], [194] (VPL.0014.0115.0001 at .0004–0006, .0009–0011, .0016–0017, .0026, .0028–0030); Exhibit RC01305D – Supplementary Statement of Mr Shane O'Connell, 18 February 2020 at [15], [26], [33], [37], [42]–[45], [47]–[48] (VPL.0014.0115.0039 at .0041–0045).

⁹²⁶ Exhibit RC1305B – Statement of Mr Shane O'Connell, 5 December 2019 at [13] (VPL.0014.0115.0001 at .0002).

⁹²⁷ Exhibit RC0310B – Statement of Mr Gavan Ryan, 13 June 2019 at [72] (VPL.0014.0039.0001 at .0012).

⁹²⁸ Exhibit RC1305B – Statement of Mr Shane O'Connell, 5 December 2019 at [13] (VPL.0014.0115.0001 at .0002).

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- 61.2 Before his appointment to the Petra Taskforce, Mr O'Connell had little knowledge or involvement with Ms Gobbo⁹³⁰ – he did not know she was a registered human source, and was not aware of her involvement with Mr McGrath, Mr Thomas or Mr Cooper.⁹³¹ He learned that Ms Gobbo was registered human source 3838 in April 2007, shortly after he joined the Petra Taskforce.⁹³²
- 61.3 Ms Gobbo became a person of interest to the Petra Taskforce in the investigation into the murders of Terrence and Christine Hodson after Carl Williams provided Victoria Police with information that, between January and March 2004, he received a telephone call from Ms Gobbo who then passed the telephone to Mr Dale. Corroborating that information was a high priority for the Petra Taskforce. On 1 April 2007, the Petra Taskforce identified the telephone call on an intercepted Purana line.⁹³³ On 24 April 2007, shortly before his plea hearing, Mr Williams signed a statement describing his telephone call with Ms Gobbo and another time she asked him to contact Mr Dale.⁹³⁴
- 61.4 Mr Hodson was also person of interest to Mr O'Connell and his team of Petra investigators. They did not consider him to be a suspect in the execution of his parents,⁹³⁵ but believed he had information that might assist the investigation.⁹³⁶
- 62 No finding should be made that Mr O'Connell chose not to obtain legal advice**
- 62.1 In the context of a meeting on 24 July 2007, at [2484.6] Counsel Assisting ask the Commissioner to find that if SDU members/investigators including Mr O'Connell had wanted to get legal advice, they could easily have arranged it and at [2484.7] that Mr O'Connell and others chose not to obtain legal advice.
- 62.2 No such finding should be made. There is no direct evidence in support of such a finding. No inference should be drawn to that effect from the evidence.
- 62.3 On 23 July 2007, Mr O'Connell was informed that Mr Ryan was returning to the Purana Taskforce for three months, following the resignation of Mr O'Brien.⁹³⁷ Mr O'Connell was then upgraded to the position of Acting Inspector in charge of the Petra Taskforce while Mr Ryan was away. The next day, on 24 July 2007, Mr O'Connell attended a meeting with Mr Blayney, Mr Brown, Mr Biggin, Mr Ryan, Mr O'Brien and Sandy White. As at 24 July 2007, Mr O'Connell did not know about the issues arising from Ms Gobbo's long and complex engagement with Victoria Police as a registered human source.
- 62.4 Contrary to the submissions of Counsel Assisting, the purpose of the meeting on 24 July 2007 was not to consider Ms Gobbo's ongoing use as a human source. Instead, it was to consider whether Ms Gobbo could be used as a witness in either the Petra Taskforce investigation (into the Hodson investigation) or a Purana Taskforce investigation (into an importation matter). Mr O'Connell had no involvement in the importation matter.
- 62.5 Counsel Assisting did not cross-examine Mr O'Connell about the meeting on 24 July 2007 or whether he even thought about whether to seek legal advice, or his role in any such decision.

⁹²⁹ Exhibit RC1305B – Statement of Mr Shane O'Connell, 5 December 2019 at [12] (VPL.0014.0115.0001 at .0002).

⁹³⁰ Exhibit RC1305B – Statement of Mr Shane O'Connell, 5 December 2019 [6]-[11] (VPL.0014.0115.0001 at .0001-0002); Exhibit RC1305D – Supplementary Statement of Mr Shane O'Connell, 18 February 2020 at [7]-[9], [10]-[11], [12]-[18], [19]-[21], [22]-[25], [26]-[35], [36]-[39] (VPL.0014.0115.0039 at .0040-0044).

⁹³¹ Exhibit RC1305D – Supplementary statement of Mr Shane O'Connell, 18 February 2020 at [26]-[35] (VPL.0014.0115.0039 at .0042-0043).

⁹³² Exhibit RC1305D – Supplementary statement of Mr Shane O'Connell, 18 February 2020 at [41] (VPL.0014.0115.0039 at .0044).

⁹³³ Exhibit RC0312 – Diary of Mr Gavan Ryan, 1 April 2007 (VPL.0005.0120.0187 at .0304).

⁹³⁴ Exhibit RC0247B – Statement of Mr Carl Williams, undated at p 8 (VPL.0005.0012.2497 at .02511).

⁹³⁵ Exhibit RC1545A – Supplementary statement of Mr Cameron Davey, 4 March 2020 at [6] (COM.0051.0002.0001 at .0001).

⁹³⁶ T14763.14-17 (S O'Connell); Exhibit RC1545A – Supplementary statement of Mr Cameron Davey, 4 March 2020 [6] (COM.0051.0002.0001 at .0001).

⁹³⁷ Untendered Petra Taskforce Weekly Update, 23 July 2007 (VPL.0100.0013.0846 at .1211-1214).

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- 62.6 In any case, a finding that he chose not to seek legal advice is not open in relation to Mr O'Connell for the reasons that follow.
- 62.7 First, it is likely Mr O'Connell attended the meeting as an observer.⁹³⁸ He was the most junior investigative officer in the room. His immediate superior, DI Ryan, was present. Mr O'Brien, who at that time was officer in charge of the Purana Taskforce and who outranked Mr O'Connell, was also present. The other investigative attendees comprised the Superintendents of the Crime Department and the Intelligence and Covert Support Department.
- 62.8 Secondly, as Sandy White observed, it was unusual that Mr O'Connell was there.⁹³⁹ He was the most junior officer in the room and was not yet acting as the head of the Petra Taskforce. Mr O'Connell's presence at the meeting of 24 July 2007 is explicable only if the matters being discussed were relevant to the Petra Taskforce. The only interest the Petra Taskforce had in Ms Gobbo was as a witness in connection with the Hodson murder investigation. Consistently, Mr O'Connell's diary note of the meeting reads "*Meeting re HS matter for Purana/Petra*".⁹⁴⁰ There was also interest in using Ms Gobbo as a witness in connection with investigations being conducted by other areas of Victoria Police, including in relation to the importation matter. As such, the decision about whether to use Ms Gobbo as a witness was not made solely by reference to the investigative interests of the Petra Taskforce. The considerations were wider than that.
- 62.9 Thirdly, the Petra Taskforce had only been operational for three months. That is how long Mr O'Connell had known Ms Gobbo was a registered human source. He did not know the details of her lengthy and complex engagement with Victoria Police. He was not aware of her involvement with Mr McGrath, Mr Thomas or Mr Cooper. He had not been briefed about Victoria Police's intention to reach an amicable end to its relationship with Ms Gobbo or the complexities facing the SDU in its attempts to end the relationship. Mr O'Connell was not equipped to decide on the need for legal advice as to the ongoing use of Ms Gobbo as a human source. He simply did not have the knowledge, expertise, responsibility or authority to do so.
- 62.10 Fourthly, the meeting concluded that the value of Ms Gobbo as a source (or witness) was outweighed by the repercussions and risks, ie. that Ms Gobbo should not be used as a witness. As such, in connection with the Petra Taskforce, there was no need for legal advice. Management of Ms Gobbo was a matter for Sandy White and the SDU. As far as the Petra Taskforce was concerned, a decision had been made that Ms Gobbo could not be used as a witness, and there was nothing left to seek advice about.
- 62.11 In such circumstances, there is no basis to conclude that Mr O'Connell, the most junior investigative officer in the room, could "*easily*" have obtained legal advice in relation to the ongoing use of Ms Gobbo as a human source. Her use as a human source was not a matter for which he had responsibility. Mr O'Connell's two immediate superior officers, and two other outranking officers, were in the room. The person with direct responsibility for the management and use of Ms Gobbo – Sandy White – was also in the room.
- 62.12 In circumstances where there is no evidence Mr O'Connell knew the essential facts underpinning the need for legal advice, it is not open to conclude that he made a decision not to obtain such advice.

63 No adverse observations about Mr O'Connell regarding the Andrew Hodson polygraph are warranted

- 63.1 At paragraphs [3056]-[3172] Counsel Assisting refer to Ms Gobbo's work with police in relation to Andrew Hodson. At [3168] Counsel Assisting submit that "*it appears that*" Mr Ryan and Mr O'Connell "*were not being transparent with*" investigators leading the

⁹³⁸ Exhibit RC1305B – Statement of Mr Shane O'Connell, 5 December 2019 at [22]-[23] (VPL.0014.0115.0001 at .0004).

⁹³⁹ T5420.16-18 (S White).

⁹⁴⁰ Untendered Diary of Mr Shane O'Connell, 24 July 2007 (VPL.0005.0240.0013 at .0015).

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investigation and "were in effect", along with the SDU and Ms Gobbo, running a "parallel strategy" to ensure Mr Hodson participated in a polygraph test.

63.2 Counsel Assisting's submission should be rejected:

- (a) Mr Solomon and Mr Davey did not know Ms Gobbo was a human source and it was appropriate and consistent with Victoria Police policy, for Mr O'Connell to keep her status confidential;
- (b) Mr O'Connell and the SDU did not task Ms Gobbo to assist with ensuring that Mr Hodson participated in the polygraph but instead developed a management plan to restrain her from continuing to press on investigators her offers of assistance.

63.3 On its proper construction, the evidence shows that Mr O'Connell was trying to manage Ms Gobbo's unwanted interference in the conduct of an investigation being conducted by the Petra Taskforce and was not "tasking" Ms Gobbo to do anything. Mr O'Connell's engagement with Ms Gobbo was conducted through the SDU and Mr O'Connell reasonably believed he was entitled to act on the information it provided him.

63.4 Mr O'Connell's knowledge of the scale of Ms Gobbo's involvement as a human source should not be imputed based on an aggregated mosaic of unreliable inferences from documents. Much information in the possession of the SDU was simply not known to investigators. In the period in question, Ms Gobbo called her handlers multiple times a day, and the cumulative length of their conversations ran into many hours. Much of the information contained in these wide-ranging discussions was not disseminated to Mr O'Connell or other investigators. Information was disseminated to Mr O'Connell on an ad hoc basis where deemed necessary.

63.5 The contemporaneous documents, particularly the ICRs, contain extensive notes of Ms Gobbo's contact with her handlers. Extracting isolated passages from the ICRs risks losing the context in which things were said and making unavailable inferential leaps. The ICRs are not verbatim records of discussions or transcripts. They are notes of conversations that were often long and disordered.

63.6 Accordingly, upon a proper evaluation of the evidence in accordance with *Briginshaw* principles, it is clear there is no warrant for adverse comments or conclusions regarding Mr O'Connell in respect of Mr Hodson's polygraph test.

63.7 On 29 February 2008, the day after Ms Gobbo's second interview with Mr Solomon and Mr Davey, Sandy White spoke to Mr O'Connell.⁹⁴¹ Mr White's diary entry of a discussion with Mr O'Connell reads as follows:

Andrew HODSON rang Cam [DAVEY] had heard [REDACTED] Very distressed, crying. 3838 had offered to assist and investigators want to use her. Every time he needs advice he seeks her out. If we put pressure on him he will ring her. Am considering putting AH on polygraph.

63.8 Mr O'Connell could not recall the conversation.⁹⁴² When pressed as to whether he accepted the contents of Mr White's diary, Mr O'Connell replied "... it's difficult for me to accept a document that I didn't create, notes that I didn't make, relating to a conversation that I can't recall. I do apologise for that".⁹⁴³ In response, the Commissioner determined that Mr O'Connell's evidence would proceed on the basis that, owing to his lack of memory, it was understood that he had no recollection and could not accept or deny the accuracy of propositions and documents put to him by Counsel Assisting.⁹⁴⁴

63.9 Counsel Assisting asked Mr O'Connell whether there was a reason he was "blocking out" any memory of this period. Mr O'Connell responded that he resented the

⁹⁴¹ Untendered diary of Officer 'White', 29 February 2008 (VPL.2000.0001.1361 at 1373).

⁹⁴² T14746.21-22 (S O'Connell).

⁹⁴³ T14746.27-30 (S O'Connell).

⁹⁴⁴ T14746.36-43 (S O'Connell).

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connotation that he was not being truthful.⁹⁴⁵ Mr O'Connell rightly identified that the events had occurred a long time ago, and that until the week in which he gave his evidence he had no occasion to recall them.⁹⁴⁶

- 63.10 Counsel Assisting's submission at [3103] is overstated. There is no evidence that Mr White or Mr O'Connell proposed to use Ms Gobbo to encourage Mr Hodson to submit to a polygraph. The contemporaneous documents do not reflect discussion to that effect and no witness gave evidence that any such discussions occurred. It appears that Counsel Assisting infer that such a discussion occurred based on Mr White's diary entry of 29 February 2008 alone. If so, that single entry, ambiguous and lacking detail and precision, cannot support the inference. That diary entry merely reveals that Ms Gobbo had told investigators that Andrew Hodson was likely to call Ms Gobbo once pressure was applied to him and the (understandable) desire of the investigators to accept her offer of assistance.⁹⁴⁷
- 63.11 In any event, Mr White's diary entry of 29 February 2008 – Exhibit RC0305 – does not bear the meaning inferred by Counsel Assisting. It does not record Mr O'Connell *"taking up"* Ms Gobbo's offer to assist and does nothing more than record Mr O'Connell telling Mr White that Ms Gobbo had offered to assist and that his investigators *"want to use her"*. That is, Mr O'Connell was reporting to Mr White (Ms Gobbo's controller) that Mr Solomon and Mr Davey wanted to accept Ms Gobbo's offer of assistance. In doing so, Mr O'Connell was acting wholly appropriately. He knew Ms Gobbo's status as a human source and, having attended the meeting of 24 July 2007, was aware that Ms Gobbo was not to be used as a witness. Mr White's diary states *"every time he needs advice, he seeks her out. If we put pressure on him, he will ring her"*. That information can only have come from Ms Gobbo. The overwhelming probability is that this reflects what Ms Gobbo had told the investigators.
- 63.12 Rather than evidencing a *"taking up"* of Ms Gobbo's offer regarding Mr Hodson, the diary entry does nothing more than record Mr O'Connell reporting the situation to Mr White – a situation that plainly needed management.
- 63.13 Furthermore, if Ms Gobbo was to be tasked in relation to Mr Hodson, Mr Solomon and Mr Davey would have known that (even if they were not told that she was a human source).
- 63.14 What occurred after the telephone call between Mr White and Mr O'Connell is consistent with there being a plan to manage Ms Gobbo's conduct, and inconsistent with there being a plan to task Ms Gobbo in connection with Mr Hodson. Ms Gobbo was told to cease offering assistance and that any request for assistance would come through Mr Ryan. No actual request for assistance was made. The polygraph was not mentioned. Instead, Ms Gobbo was placated by telling her a more senior Victoria Police officer would be involved in any request for assistance.
- 63.15 At [3108], Counsel Assisting observed that Mr Cornelius denied knowing a plan to use Ms Gobbo in her capacity as a lawyer. His denial supports the conclusion that no such plan existed.
- 63.16 Ms Gobbo was not *"tasked"*, rather she offered her assistance to Mr Solomon and Mr Davey. Mr Solomon and Mr Davey never planned, and had no need, to use Ms Gobbo to assist with Andrew Hodson.⁹⁴⁸ Mr Solomon and Mr Davey were not aware of Ms Gobbo's status as a human source.⁹⁴⁹ They were interviewing her as a person of interest in connection with the execution of the Hodsons. They believed she had

⁹⁴⁵ T14747.7-9 (S O'Connell).

⁹⁴⁶ T14747.11-13 (S O'Connell).

⁹⁴⁷ Untendered diary of Officer 'White', 29 February 2008 (VPL.2000.0001.1361 at .1373).

⁹⁴⁸ Exhibit RC1547B – Supplementary statement of Detective Sergeant Solon (Sol) Solomon, 2 March 2020 at [14] (COM.0060.0001.0005 at _0002); Exhibit RC1545A – Supplementary statement of Mr Cameron Davey, 4 March 2009 at [6] (COM.0051.0002.0001).

⁹⁴⁹ Exhibit RC1547B – Supplementary statement of Detective Sergeant Solon (Sol) Solomon, 2 March 2020 at [2] (COM.0060.0001.0005); Exhibit RC1545A – Supplementary statement of Mr Cameron Davey, 4 March 2009 at [9] (COM.0051.0002.0001).

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information that could assist the investigation. They both emphatically denied that they ever wanted to use Ms Gobbo to assist with Andrew Hodson.⁹⁵⁰ At this time, they were only part way through Ms Gobbo's interview process. Mr Solomon and Mr Davey also categorically denied any knowledge of Ms Gobbo being used in connection with Mr Hodson. Mr Solomon's emphatic evidence is that Ms Gobbo's assistance was not needed and that he and Mr Davey had Mr Hodson's "*full cooperation*".⁹⁵¹

- 63.17 Mr O'Connell did not know much of the details of Ms Gobbo's history with Victoria Police and there is no evidence that he was aware of Ms Gobbo's erratic behaviour, her desire to be included in investigations, or her propensity to place herself in positions of conflict. Accordingly, Mr O'Connell and his investigators might reasonably have taken Ms Gobbo's offers of assistance at face value, understanding that as a qualified barrister she was best placed to determine whether she was able to assist them in the way she was proposing. Mr O'Connell (and his investigators) had no reason to believe that Ms Gobbo's offers of assistance might involve conduct contrary to law or inconsistent with her professional obligations.
- 63.18 Mr O'Connell knew that Ms Gobbo was being managed by the SDU which had been set up for the express purpose of managing high risk sources. As such, he would have expected that if there were any concerns about Ms Gobbo offering to assist from a legal or ethical perspective, these concerns would have been identified and managed by the SDU. Consistently, when his investigators told him Ms Gobbo had offered to assist, he called Mr White and explained the situation.
- 63.19 The contemporaneous documents identify that rather than the investigators asking Ms Gobbo for assistance, it was Ms Gobbo who pressed her willingness to assist on the investigators. Her attempts to involve herself in the investigation served the purposes of allowing her to be involved in an investigation, giving her ongoing direct contact with investigators whose approval she was seeking, and access to information about the investigation.
- 63.20 Following his discussion with Mr O'Connell on 29 February 2008, Mr White spoke to Mr Wolf.⁹⁵² Mr Wolf recorded that Ms Gobbo would be told to stop suggesting ideas and offering assistance.⁹⁵³ Mr Wolf recorded that Ms Gobbo was to be told that pressure was to be applied to Mr Hodson and this might result in him approaching her and if this occurred, it would be coordinated by the SDU and Mr Ryan.⁹⁵⁴ Mr Wolf then received a call from Ms Gobbo.⁹⁵⁵ He told her to "*cease suggesting ideas of how to help*".⁹⁵⁶ In response Ms Gobbo claimed it was hard because the investigators had suggested it and she wanted to look "*compliant*".⁹⁵⁷ Mr Wolf noted that Ms Gobbo had joked about wearing a tape recorder and observed "*RS is interested in direction of investigation as well and this may be an underlying theme in mentioning the recorder*".⁹⁵⁸ Mr Wolf did not say anything to Ms Gobbo about being tasked in relation to Mr Hodson. If Mr O'Connell had "*taken up*" the offer of assistance, Mr Wolf would have conveyed this to Ms Gobbo. But he did not. He merely conveyed that Ms Gobbo was to cease offering assistance. Ms Gobbo volunteered that having dinner with Mr Hodson would be all it took to obtain information from him.⁹⁵⁹ Only then did Mr Wolf tell Ms Gobbo that Mr Hodson "*may*

⁹⁵⁰ Exhibit RC1547B – Supplementary statement of Detective Sergeant Solon (Sol) Solomon, 2 March 2020 at [9]-[10] (COM.0060.0001.0005 at .0001); Exhibit RC1545A – Supplementary statement of Mr Cameron Davey, 4 March 2009 at [6] (COM.0051.0002.0001).

⁹⁵¹ Exhibit RC1547B – Supplementary statement of Detective Sergeant Solon (Sol) Solomon, 2 March 2020 at [9]-[10] (COM.0060.0001.0005 at .0001); Exhibit RC1545A – Supplementary statement of Cameron Davey, 4 March 2009 at [5] (COM.0051.0002.0001 at .0002).

⁹⁵² Untendered diary of Officer 'Wolf', 29 February 2008 (VPL.2000.0001.0066 at .0095).

⁹⁵³ Untendered diary of Officer 'Wolf', 29 February 2008 (VPL.2000.0001.0066 at .0095).

⁹⁵⁴ Untendered diary of Officer 'Wolf', 29 February 2008 (VPL.2000.0001.0066 at .0095).

⁹⁵⁵ Exhibit RC0281 – ICR2958 (006), 29 February 2008 (VPL.2000.0003.0801 at .0809).

⁹⁵⁶ Exhibit RC0281 – ICR2958 (006), 29 February 2008 (VPL.2000.0003.0801 at .0809).

⁹⁵⁷ Exhibit RC0281 – ICR2958 (006), 29 February 2008 (VPL.2000.0003.0801 at .0809-0810).

⁹⁵⁸ Exhibit RC0281 – ICR2958 (006), 29 February 2008 (VPL.2000.0003.0801 at .0810).

⁹⁵⁹ Exhibit RC0281 – ICR2958 (006), 29 February 2008 (VPL.2000.0003.0801 at .0810).

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approach RS after certain events or pressure was applied but that it would be controlled by SDU/Ryan". He then observed that Ms Gobbo was "very excited by this".⁹⁶⁰

- 63.21 Thus, contrary to Counsel Assisting's submissions at [3103], this was not a plan to use Ms Gobbo, it was a plan to manage Ms Gobbo by inserting a "break" between her and investigators. This strategy served several purposes. First, to the extent investigators were interested in taking up Ms Gobbo's offer of help, they were prevented from exploring those offers with her directly. That was necessary because the investigators were not aware that Ms Gobbo was a registered human source.
- 63.22 Secondly, it was intended to prevent Ms Gobbo from making further offers of assistance to the investigators. Ms Gobbo's offers of assistance created a difficulty for Mr O'Connell. He could not plausibly explain to his investigators why Ms Gobbo's offers of assistance could not be taken up without revealing her status as a human source or raising suspicions about her relationship with Victoria Police. However, given Ms Gobbo's erratic behaviour and anger at being excluded from the Purana Taskforce, it is likely that the SDU foresaw that a simple instruction to her to cease offering assistance to the Petra Taskforce investigators would have no effect. Consistently, when Ms Gobbo was told that any request for assistance would come through Mr Ryan, she was "very excited".⁹⁶¹
- 63.23 Thirdly, the asserted involvement of Mr Ryan, a more senior officer, meant that investigators would respect the structure that had been imposed and would not seek to take up any of Ms Gobbo's offers of assistance, and provided the scaffolding for the explanation given to Mr Solomon and Mr Davey about why they could not take up Ms Gobbo's offer of assistance.
- 63.24 On 4 March 2008, Mr Wolf telephoned Mr O'Connell.⁹⁶² The call was about "*Petra next instalment*". The "*instalment*" that Mr Wolf was referring to was Ms Gobbo's next interview with Mr Davey and Mr Solomon. That is made clear by Mr Wolf's notes which go on to record that he told Mr O'Connell that Ms Gobbo was concerned about the amount of time she was spending in the Petra Taskforce office and her preference for a later interview time to avoid compromise.⁹⁶³ The "*instalment*" was not a reference to anything connected to Andrew Hodson.
- 63.25 Mr Wolf's notes then record Mr O'Connell advising him about what the investigators had been told.⁹⁶⁴ The investigators had been instructed to tell Ms Gobbo that Mr Ryan would speak to her about helping out with Mr Hodson.⁹⁶⁵ Mr Wolf was told that Mr Ryan had explained this to the investigators on the basis that "*this is a difficult situation which needs to be managed properly*" and that Ms Gobbo "*was an eminent figure in the community and legal fraternity and things had to be done properly to avoid raising suspicion*".⁹⁶⁶ This communication does not reveal a "*plan*" to task Ms Gobbo in relation to Mr Hodson. Rather, it records Mr O'Connell informing Mr Wolf of the steps taken to implement the plan to manage Ms Gobbo's interactions with the investigators and to prevent them from acting on her offers of assistance. As such, contrary to Counsel Assisting's submissions at [3115], it was not the case that the Petra Taskforce investigators were to tell Ms Gobbo that Mr Ryan would be in touch in relation to "*helping out*". It was not intended that Mr Ryan would do any such thing. Rather, it was being communicated that this was what the investigators were to be told.
- 63.26 Mr Wolf's diary records that he and Mr O'Connell discussed the proposal that Mr Hodson would undergo a polygraph test.⁹⁶⁷ Mr Wolf wrote "*the RS may ask the POI why he would not take the test*". That notation has been construed as a "*plan*" to task

⁹⁶⁰ Exhibit RC0281 – ICR2958 (006), 29 February 2008 (VPL.2000.0003.0801 at .0810).

⁹⁶¹ Exhibit RC0281 – ICR2958 (006), 29 February 2008 (VPL.2000.0003.0801 at .0810).

⁹⁶² Untendered diary of Officer 'Wolf', 4 March 2008 (VPL.2000.0001.0098 at .0099).

⁹⁶³ Untendered diary of Officer 'Wolf', 4 March 2008 (VPL.2000.0001.0098 at .0099).

⁹⁶⁴ Untendered diary of Officer 'Wolf', 4 March 2008 (VPL.2000.0001.0098 at .0099).

⁹⁶⁵ Untendered diary of Officer 'Wolf', 4 March 2008 (VPL.2000.0001.0098 at .0099).

⁹⁶⁶ Untendered diary of Officer 'Wolf', 4 March 2008 (VPL.2000.0001.0098 at .0099).

⁹⁶⁷ Untendered diary of Officer 'Wolf', 4 March 2008 (VPL.2000.0001.0098 at .0099).

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Ms Gobbo in relation to Mr Hodson. However, that notation is ambiguous and is capable of bearing more than one meaning. That it was not a "plan" is confirmed by what did, and did not, happen next. The SDU did not tell Ms Gobbo that Andrew Hodson was to be asked to submit to a polygraph. If the plan was to task her to encourage, or at least not dissuade him, from submitting to the polygraph, it was necessary that she be told what investigators intended to do and what her role was. But that did not occur.

- 63.27 Instead, Ms Gobbo called Mr Wolf three times on 4 March 2008, speaking to him at length on each occasion.⁹⁶⁸ Mr Wolf did not tell Ms Gobbo about the planned polygraph request or ask her to do anything at all in connection with Andrew Hodson. Instead, in the third of these calls, which commenced at 7:17pm, and which traversed a wide range of subjects before it reached Andrew Hodson, Mr Wolf and Ms Gobbo had a discussion in which Ms Gobbo talked about tape recording a meeting with Mr Hodson.⁹⁶⁹ Mr Wolf's diary notes that it was Ms Gobbo who raised the subject and proposed taping Andrew Hodson.
- 63.28 The following day, 5 March 2008, Ms Gobbo attended her next interview with Mr Solomon and Mr Davey. She again reported to Mr Wolf.⁹⁷⁰ Consistent with the management plan that had been developed, Mr Wolf recorded that Mr Davey told Ms Gobbo that any assistance they might seek from her would come directly from Mr Ryan.⁹⁷¹ Ms Gobbo reported that Mr Davey had told her investigators were likely to speak to Mr Hodson later that week or early the following week.⁹⁷² Despite having been told by investigators that any approach to her for assistance would come from Mr Ryan, Ms Gobbo reported having a long and detailed conversation with investigators about assisting with Mr Hodson and proceeded to have a long and detailed conversation with the SDU about manufacturing a meeting with Andrew Hodson and taping it. Among other things, Mr Wolf recorded:
- RS believes that HODSON would talk openly to RS over dinner and that he would either call RS or barrister Jim VALOS but that if the pressure was applied after business hours VALOS would not answer his phone and naturally HODSON would call RS and RS could suggest dinner. RS was concerned that HODSON may say something crucial or even confesses which would be hard not to act upon.*⁹⁷³
- 63.29 Mr O'Connell had not suggested manufacturing a meeting with Mr Hodson or asking Ms Gobbo to tape it. It was Ms Gobbo who made, and persisting in making, that suggestion. When Ms Gobbo was told not to tape her discussions with Mr Hodson, she became explosively angry.
- 63.30 In the course of this conversation with Mr Wolf, he told her Mr Ryan was leaving Petra, and that this was an opportunity for her to have a clean break from Victoria Police.⁹⁷⁴ Ms Gobbo said she would think about it.⁹⁷⁵
- 63.31 The following day, 6 March 2008, Ms Gobbo was informed that the new head of the Purana Taskforce was Bernie Edwards and was given the opportunity of "calling it time with relationship" before Mr Edwards was informed of her status as a registered human source.⁹⁷⁶ Ms Gobbo said it was not in her best interests to leave and consented to Mr Edwards being told about her status.⁹⁷⁷
- 63.32 A critical conversation occurred on 7 March 2008. The previous day, Ms Gobbo had been interviewed by Petra investigators for the third time. On 7 March 2008, Mr Wolf

⁹⁶⁸ Untendered diary of Officer 'Wolf', 4 March 2008 (VPL.2000.0001.0098 at .0099-0103).

⁹⁶⁹ Untendered diary of Officer 'Wolf', 4 March 2008 (VPL.2000.0001.0098 at .0099-0103).

⁹⁷⁰ Untendered diary of Officer 'Wolf', 5 March 2008 (VPL.2000.0001.0098 at .0103).

⁹⁷¹ Untendered diary of Officer 'Wolf', 5 March 2008 (VPL.2000.0001.0098 at .0103).

⁹⁷² Untendered diary of Officer 'Wolf', 5 March 2008 (VPL.2000.0001.0098 at .0103).

⁹⁷³ Untendered diary of Officer 'Wolf', 5 March 2008 (VPL.2000.0001.0098 at .0105).

⁹⁷⁴ Untendered diary of Officer 'Wolf', 5 March 2008 (VPL.2000.0001.0098 at .0104).

⁹⁷⁵ Untendered diary of Officer 'Wolf', 5 March 2008 (VPL.2000.0001.0098 at .0104).

⁹⁷⁶ Untendered diary of Officer 'Wolf', 6 March 2008 (VPL.2000.0001.0098 at .0107).

⁹⁷⁷ Untendered diary of Officer 'Wolf', 6 March 2008 (VPL.2000.0001.0098 at .0107).

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was asked to call Mr O'Connell.⁹⁷⁸ Mr Wolf noted that Mr O'Connell reported that Ms Gobbo had "overreacted to conversing with Mr Ryan and asked why investigators could not be spoken to directly".⁹⁷⁹ Ms Gobbo's reaction to being informed that she would be dealing directly with Mr Ryan is inexplicable. She had been told days earlier that Mr Solomon and Mr Davey would tell her this and had been "excited" at the prospect of Mr Ryan's involvement. There is no reasonable explanation for her "overreaction".

63.33 Mr O'Connell also reported that Ms Gobbo had "played the policeman", suggesting the option of recording Mr Hodson and mentioning that investigators could use a listening device.⁹⁸⁰ This is entirely consistent with the records of Ms Gobbo's discussions with her handlers in which she discussed at length how she could manufacture a meeting with Mr Hodson and the methods by which she could record it. The only person talking about taking such steps was Ms Gobbo. If that was a plan being entertained by the Petra Taskforce, Mr O'Connell is hardly likely to have referred to Ms Gobbo as "playing the policeman".

63.34 Mr Wolf's diary for 7 March 2008 then records:

*Advised O'CONNELL that a call after hours or on the weekend would be better as HODSON may call barrister Jim VALOS during business hours if he could not get through to RS if RS was in Court. Advised O'CONNELL that RS would be in court today.*⁹⁸¹

63.35 That reflected the information given to Mr Wolf by Ms Gobbo on 5 March 2008 (referred to above at paragraph 63.28). Far from establishing a plan, that entry reveals the disconnect between Ms Gobbo's attempts to insert herself into the process, and Mr O'Connell's dealings with Mr Hodson. By the time the 7 March conversation took place, Mr Hodson had already been contacted and asked to attend the Petra Taskforce office on 10 March 2008. If Mr O'Connell intended to "task" Ms Gobbo in connection with Mr Hodson, it is likely the SDU would have been informed in advance that the Petra Taskforce was intending to contact him and given Ms Gobbo instructions about what to say or do.

63.36 Mr Wolf's 7 March diary entry reveals that he passed this information to Mr O'Connell unasked. There was no request by Mr O'Connell for information. The purpose of the call was for Mr O'Connell to notify Mr Wolf of Ms Gobbo's "overreaction" to being informed that she would be dealing with Mr Ryan in relation to any requests for assistance. Put another way, the information was passed to Mr O'Connell incidentally. That tells against a "plan" being in place.

63.37 Finally, Mr Wolf did not record Mr O'Connell asking him to tell Ms Gobbo about the plan to meet with Andrew Hodson on 10 March 2008. There is no other evidence that suggests that Mr O'Connell asked Mr Wolf, or any other handler, to inform Ms Gobbo of the planned interview or to ask her to say or do anything in connection with it. Notwithstanding that, later on 7 March, Mr Wolf informed Ms Gobbo that Andrew Hodson had been asked to attend the Petra office for an interview the following Monday.⁹⁸² Mr Wolf's notes record:

RS not happy with Petra detectives not listening to RS suggestions and that everything they did was wrong, the call to come in was wrong, the time was wrong and there would not be enough time for a recording device to get to RS.

*RS told that there would be no recording. RS was outraged and wanted to know why, wants the recording. RS told that it was too dangerous and that if a recording was made it would be eventually called for and reveal RS.*⁹⁸³

⁹⁷⁸ Exhibit RC0882B – Diary of Officer 'Wolf', 7 March 2008 (VPL.2000.0001.0098 at .0107).

⁹⁷⁹ Exhibit RC0882B – Diary of Officer 'Wolf', 7 March 2008 (VPL.2000.0001.0098 at .0107).

⁹⁸⁰ Exhibit RC0882B – Diary of Officer 'Wolf', 7 March 2008 (VPL.2000.0001.0098 at .0107).

⁹⁸¹ Exhibit RC0882B – Diary of Officer 'Wolf', 7 March 2008 (VPL.2000.0001.0098 at .0107).

⁹⁸² Exhibit RC0882B – Diary of Officer 'Wolf', 7 March 2008 (VPL.2000.0001.0098 at .0109).

⁹⁸³ Exhibit RC0882B – Diary of Officer 'Wolf', 7 March 2008 (VPL.2000.0001.0098 at .0109).

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- 63.38 Mr Wolf's diary entry records Ms Gobbo complaining at length about the direction that she not record the meeting and threatening to buy her own recording device. At the end, Mr Wolf wrote "*SDU issue: RS could not be talked around and there must be a reason for it. If the transcript was made and members became aware of it, it would be called for and RS exposed*".⁹⁸⁴
- 63.39 On Sunday 9 March 2008, Mr Hodson called Ms Gobbo. Ms Gobbo reported the call to her handlers.⁹⁸⁵ Mr Wolf's diary records that:
- (a) Ms Gobbo said that she had called Mr Davey eleven times and that he had not answered;
 - (b) Ms Gobbo said she was angry with Mr Davey for not answering;
 - (c) Ms Gobbo was reminded that she had been instructed that all communication was to occur through Mr Ryan;
 - (d) Ms Gobbo denied that and said that she had specific instructions to call Mr Davey when Andrew Hodson made contact;
 - (e) Ms Gobbo was reminded that all contact with Petra was to be managed through Mr Ryan;
 - (f) Ms Gobbo said she was not happy and wanted to be directly involved in the communication process;
 - (g) he explained to Ms Gobbo why she was not to have direct involvement with investigators; and
 - (h) Ms Gobbo was reminded not to tape her discussions with Andrew Hodson.⁹⁸⁶
- 63.40 Later that day, Mr Wolf updated Mr O'Connell about Ms Gobbo's discussion with Mr Hodson, including that he had concerns and wanted to meet with Ms Gobbo before and after attending the Petra Taskforce office.⁹⁸⁷ Mr Wolf's diary note of that discussion is important. The polygraph was not mentioned. Mr O'Connell did not ask Mr Wolf to do anything, or to pass any information or instruction to Ms Gobbo. Mr O'Connell simply received the information from Mr Wolf.
- 63.41 Later that day, Ms Gobbo called Mr Wolf again.⁹⁸⁸ Another long conversation ensued in which Ms Gobbo asked Mr Wolf for guidance about what to say to Mr Hodson and what not to say to Mr Hodson.⁹⁸⁹ Mr Wolf told her that she did not need any guidance.⁹⁹⁰ Ms Gobbo disagreed.⁹⁹¹
- 63.42 Later still, Ms Gobbo called Mr Wolf and again complained Mr Davey was not returning her calls.⁹⁹² Ms Gobbo was again reminded she was not to speak to Mr Davey and that all communication had to come through the handler. Ms Gobbo wanted to be specifically briefed on what it was Petra was going to say to Mr Hodson or what they were going to show him.⁹⁹³ Mr Wolf recorded that Ms Gobbo was told this was not necessary and that she was "*more than capable of carrying out this task*".⁹⁹⁴ Ms Gobbo became angry and hung up on Mr Wolf.⁹⁹⁵
- 63.43 These events underscore the disconnect between the investigators and Ms Gobbo. The Petra Taskforce investigators saw no place for Ms Gobbo in their investigation. They were conducting it without reference to her. Ms Gobbo's belief she was to somehow be

⁹⁸⁴ Exhibit RC0882B – Diary of Officer 'Wolf', 7 March 2008 (VPL.2000.0001.0098 at .0110).

⁹⁸⁵ Untendered diary of Officer 'Wolf', 9 March 2008 (VPL.2000.0001.0098 at .0113).

⁹⁸⁶ Untendered diary of Officer 'Wolf', 9 March 2008 (VPL.2000.0001.0098 at .0113).

⁹⁸⁷ Untendered diary of Officer 'Wolf', 9 March 2008 (VPL.2000.0001.0098 at .0113).

⁹⁸⁸ Untendered diary of Officer 'Wolf', 9 March 2008 (VPL.2000.0001.0098 at .0114).

⁹⁸⁹ Untendered diary of Officer 'Wolf', 9 March 2008 (VPL.2000.0001.0098 at .0114).

⁹⁹⁰ Untendered diary of Officer 'Wolf', 9 March 2008 (VPL.2000.0001.0098 at .0114).

⁹⁹¹ Untendered diary of Officer 'Wolf', 9 March 2008 (VPL.2000.0001.0098 at .0114).

⁹⁹² Untendered diary of Officer 'Wolf', 9 March 2008 (VPL.2000.0001.0098 at .0115).

⁹⁹³ Untendered diary of Officer 'Wolf', 9 March 2008 (VPL.2000.0001.0098 at .0116).

⁹⁹⁴ Untendered diary of Officer 'Wolf', 9 March 2008 (VPL.2000.0001.0098 at .0116).

⁹⁹⁵ Untendered diary of Officer 'Wolf', 9 March 2008 (VPL.2000.0001.0098 at .0116).

OFFICIAL: Sensitive

involved with Mr Hodson did not reflect reality. Her anger that investigators had not listened to her suggestions about how to approach Mr Hodson was erratic and unreasonable.

63.44 Mr Wolf's diary reveals further erratic behaviour on Ms Gobbo's part. She called her handlers as many as seven times per day. In some instances, Ms Gobbo repeatedly called her handlers until they answered or called back. She expressed anger if her calls were not answered immediately. She complained that her handler attending to a family emergency was an insufficient reason for him not to take her calls.⁹⁹⁶

63.45 On Monday 10 March 2008, Mr Hodson attended the Petra offices. He was interviewed by investigators. He was asked to submit to a polygraph test. At 1200, Mr O'Connell called Mr Wolf and informed him that Mr Hodson had just left the Petra offices. Mr Wolf's diary recorded:

*ask RS not to talk HODSON out of it and allude to it being safe for HODSON to participate in it, any issues in him doing it etc.*⁹⁹⁷

63.46 What Mr Wolf did next reveals that he did not pass on a message to Ms Gobbo to do anything about Mr Hodson's polygraph. Mr Wolf called Ms Gobbo. His diary records:

*Informed HODSON out of Petra and above issues. Did not divulge polygraph being put to HODSON. RS asked what they did. Handler replied that they have done something which is not standard and different. RS wanted more information, not given any.*⁹⁹⁸

63.47 This entry reveals that Ms Gobbo was not tasked to do anything in relation to Mr Hodson. She was not told about the request that he submit to a polygraph. She was not asked to give him any particular advice. She was not asked to encourage him to behave in any particular way or to do any particular thing. She was not asked to allude to it being safe for Mr Hodson to participate in it. In short, she was given no instructions at all. That is entirely consistent with Mr O'Connell not tasking Ms Gobbo to do anything regarding Mr Hodson.

63.48 Ms Gobbo then met with Mr Hodson. She reported on the call to Mr Wolf. Mr Wolf in turn reported limited parts of the discussion to Mr O'Connell.⁹⁹⁹ Later that day, Ms Gobbo called Mr Wolf again.¹⁰⁰⁰ They talked about Ms Gobbo wanting to help solve the murders.¹⁰⁰¹ Mr Wolf recorded that Ms Gobbo said she had made a promise to help police two and a half years earlier, she looked up to Mr Ryan and she did not want to disappoint Mr Ryan or Victoria Police. Mr Wolf observed that she was emotional.¹⁰⁰² As such, as at 10 March 2008:

- (a) Ms Gobbo was not told in advance that Mr Hodson was to be called by investigators on 7 March 2008 and asked to attend an interview on 10 March 2008;
- (b) Ms Gobbo was not told by the SDU that Mr Hodson was to be asked to undergo a polygraph;
- (c) Ms Gobbo was not asked to provide Mr Hodson with any particular advice in relation to the polygraph; and
- (d) Ms Gobbo was not asked to do anything at all in connection with Mr Hodson.

63.49 There is nothing that suggests any further interaction between Petra and Ms Gobbo in relation to Mr Hodson in the weeks that followed.

⁹⁹⁶ Exhibit RC0882B – Diary of Officer 'Wolf', 7 March 2008 (VPL.2000.0001.0098 at .0109).

⁹⁹⁷ Untendered diary of Officer 'Wolf', 10 March 2008 (VPL.2000.0001.0098 at .0118).

⁹⁹⁸ Untendered diary of Officer 'Wolf', 10 March 2008 (VPL.2000.0001.0098 at .0118).

⁹⁹⁹ Untendered diary of Officer 'Wolf', 10 March 2008 (VPL.2000.0001.0098 at .0120).

¹⁰⁰⁰ Untendered diary of Officer 'Wolf', 10 March 2008 (VPL.2000.0001.0098 at .0120).

¹⁰⁰¹ Untendered diary of Officer 'Wolf', 10 March 2008 (VPL.2000.0001.0098 at .0120).

¹⁰⁰² Untendered diary of Officer 'Wolf', 10 March 2008 (VPL.2000.0001.0098 at .0120).

OFFICIAL: Sensitive

- 63.50 On 28 March 2008, Ms Gobbo was in Bali when Mr Hodson called the Petra office and spoke to Mr Davey and said that he was not prepared to undergo the lie detector test. Mr O'Connell informed Mr Fox "*for his information*".¹⁰⁰³ Again, there is no suggestion in the documents that Mr O'Connell wanted Ms Gobbo to be tasked to do anything. Instead, Mr O'Connell was informing Mr Fox "*for his information*" and, presumably, to assist with the management of Ms Gobbo. Ms Gobbo then reported to her handlers that Mr Hodson had sent her a text message asking her to call him as soon as possible.¹⁰⁰⁴
- 63.51 Mr O'Connell then informed Mr Fox that Mr Hodson had changed his mind and was about to be picked up by investigators and brought in.¹⁰⁰⁵ In response, Mr Fox told Mr O'Connell that Mr Hodson was trying to contact Ms Gobbo.¹⁰⁰⁶ Mr O'Connell replied that he did not want any contact that might change Andrew Hodson's mind.¹⁰⁰⁷ Mr Fox then sent a message to Ms Gobbo that there was no need to call Mr Hodson because she was "*too busy*".¹⁰⁰⁸ Again, this does not evidence a plan. Mr O'Connell knew, because Ms Gobbo had told his investigators and because of the call on 9 March 2008, that Mr Hodson would call Ms Gobbo. He expressed a preference that there be no contact that might change Mr Hodson's mind. But that does not constitute "*tasking*" Ms Gobbo. Ms Gobbo was simply told that, from the SDU's point of view, she did not need to return Mr Hodson's call. Put another way, she was told that the SDU did not require her to assist with Andrew Hodson.
- 63.52 The ICRs identify when Ms Gobbo was tasked by her handlers. The particular task and its details are recorded. No tasking of her in relation to Mr Hodson is recorded.
- 63.53 On 1 May 2008, Ms Gobbo reported that Mr Hodson had texted her saying he needed to see her urgently.¹⁰⁰⁹ Mr Fox advised her to arrange to see him to see what he wanted.¹⁰¹⁰ Mr Fox then called Mr O'Connell. Counsel Assisting fail to identify that this was the genesis of the contact between Mr Fox and Mr O'Connell described at paragraph [3160].¹⁰¹¹ In response to Mr Fox's query about Mr Hodson's contact with Ms Gobbo, Mr O'Connell informed him that investigators had spoken to Mr Hodson the previous evening and told him that he had failed the lie detector test.¹⁰¹² When the genesis of the phone call is understood, the phrase "*he will probably want to talk to HS about this*" takes on a different meaning. That phrase reflects either Mr Fox or Mr O'Connell expressing the self-evident conclusion that the contact between the Petra investigators and Mr Hodson was the likely explanation for Mr Hodson's message to Ms Gobbo. There is no evidence that, but for Mr Fox's call, Mr O'Connell would have passed this information on to him. There is no suggestion that Mr O'Connell (or anyone else from Petra) informed the SDU of their impending contact with Mr Hodson or sought to task Ms Gobbo in relation to it. The call recorded in paragraph [3160] of Counsel Assisting's submissions cannot be properly understood without appreciating why the call was made.
- 63.54 Later that day, Ms Gobbo had a conversation with Mr Hodson which ended when his phone battery died.¹⁰¹³ He did not call back.
- 63.55 On 23 May 2008, Mr O'Connell spoke to Mr Hodson.¹⁰¹⁴ It appears that Mr O'Connell informed Mr Fox of his intention to make this call. However, there is no evidence at all that Mr O'Connell asked Mr Fox to "*task*" Ms Gobbo to do anything in relation to his forthcoming discussion with Mr Hodson. There is no evidence that, following Mr O'Connell's call, Mr Fox told Ms Gobbo that Mr O'Connell intended to make contact

¹⁰⁰³ Exhibit RC0507 - Diary of Officer 'Fox', 28 March 2008 (VPL.2000.0001.3534 at .3563).¹⁰⁰⁴ Exhibit RC0507 - Diary of Officer 'Fox', 28 March 2008 (VPL.2000.0001.3534 at .3563).¹⁰⁰⁵ Exhibit RC0507 - Diary of Officer 'Fox', 28 March 2008 (VPL.2000.0001.3534 at .3563).¹⁰⁰⁶ Exhibit RC0507 - Diary of Officer 'Fox', 28 March 2008 (VPL.2000.0001.3534 at .3563).¹⁰⁰⁷ Exhibit RC0507 - Diary of Officer 'Fox', 28 March 2008 (VPL.2000.0001.3534 at .3563).¹⁰⁰⁸ Exhibit RC0507 - Diary of Officer 'Fox', 28 March 2008 (VPL.2000.0001.3534 at .3563).¹⁰⁰⁹ Exhibit RC0507 - Diary of Officer 'Fox', 1 May 2008 (VPL.2000.0001.3687 at .3709).¹⁰¹⁰ Exhibit RC0507 - Diary of Officer 'Fox', 1 May 2008 (VPL.2000.0001.3687 at .3709).¹⁰¹¹ Counsel Assisting's Submissions at p 769 [3160], Vol 2.¹⁰¹² Exhibit RC0507 - Diary of Officer 'Fox', 1 May 2008 (VPL.2000.0001.3687 at .3710).¹⁰¹³ Exhibit RC0507 - Diary of Officer 'Fox', 1 May 2008 (VPL.2000.0001.3687 at .3712).¹⁰¹⁴ Exhibit RC0507 - Diary of Officer 'Fox', 23 May 2008 (VPL.2000.0001.3752 at .3817).

OFFICIAL: Sensitive

with Andrew Hodson, much less asked her to do anything. Consistently, when Mr Hodson called Ms Gobbo both after receiving Mr O'Connell's call and after attending the station and speaking to Mr O'Connell, Ms Gobbo reported back to her handlers and some of that information was disseminated to Mr O'Connell. Ms Gobbo was given no instructions about what to say to Mr Hodson, nor was she asked to obtain any information from him. The SDU engagement with Ms Gobbo in this period was entirely passive.

63.56 What emerges from the above is:

- (a) there was no "plan" to task Ms Gobbo in relation to Mr Hodson;
- (b) Mr O'Connell developed a management strategy to address Ms Gobbo's persistent offers to assist his investigators in relation to Mr Hodson;
- (c) consistently, Ms Gobbo was:
 - (i) not informed in advance that Mr Hodson was to be asked to attend an interview with Victoria Police on 10 March 2008;
 - (ii) not told that Victoria Police intended to ask Mr Hodson to undergo a polygraph;
 - (iii) not ever asked to do anything in relation to Mr Hodson; and
 - (iv) firmly instructed not to record her interactions with Mr Hodson.

64 No criticism of Mr O'Connell is warranted in relation to the Paul Dale notes

64.1 From [3173] under the heading "Paul Dale notes", Counsel Assisting describe communications regarding notes Ms Gobbo obtained from Paul Dale and provided to police. At paragraph [3194], Counsel Assisting make at large criticisms about the failure to internally scrutinise the decision to seek out the Dale notes and refer back to the "*tasking of Ms Gobbo to Andrew Hodson*" (which itself is disputed for the reasons above).

64.2 To the extent that this vague submission implies criticism of Mr O'Connell, it is unwarranted including for the following reasons:

- (a) As Ms Gobbo was a practising barrister, Mr O'Connell and his investigators could reasonably assume she would act lawfully and in accordance with her ethical obligations.
- (b) Mr O'Connell was unaware of Ms Gobbo's conduct in relation to Mr McGrath, Mr Thomas, Mr Cooper and others, and had no reason to believe Ms Gobbo would provide him with information subject to legal professional privilege.
- (c) Ms Gobbo told investigators she was in possession of these notes in the course of being interviewed about her knowledge of matters connected to the execution of the Hodsons, including the leaking of information reports which disclosed Terrence Hodson's status as an informer.
- (d) Ms Gobbo told investigators she would provide them with a copy of the notes and, in the circumstances above, there was no reason for them, or Mr O'Connell, to believe that the notes were subject to legal professional privilege.
- (e) A central function of the SDU was to ensure that information that was subject to legal professional privilege was not disseminated to investigators.
- (f) Mr O'Connell's engagement with Ms Gobbo was conducted through the SDU, which facilitated the notes being provided to him (at Ms Gobbo's instruction) and it was reasonable for Mr O'Connell to conduct himself on the assumption that the SDU would ensure no privileged information was distributed to him.

OFFICIAL: Sensitive

- 64.3 In an interview on 5 March 2008, Ms Gobbo informed Mr Davey and Mr Solomon she had notes given to her by Mr Dale.¹⁰¹⁵ This information was probably elicited in response to questioning about whether Mr Dale had ever given her documents relating to informers. It is reasonable to infer that investigators were trying to establish whether Mr Dale received leaked information reports identifying Terrence Hodson as a police informer. There is no evidence that the investigators were looking to obtain information subject to legal professional privilege.
- 64.4 Mr O'Connell could not recall seeing the notes.¹⁰¹⁶ But it appears from contemporaneous documents that he did view them. Mr Fox recorded in his diary that he met Mr O'Connell on 26 March 2008 and that Mr O'Connell read the document.¹⁰¹⁷
- 64.5 Ms Gobbo had provided the notes to the SDU in 2007. On 21 May 2007, SDU officers met with Ms Gobbo and spoke to her about matters of interest to the Petra Taskforce.¹⁰¹⁸ Ms Gobbo said she had kept copy of notes given to her by Mr Dale.¹⁰¹⁹ On 22 May 2007, Mr Ryan was briefed about this discussion.¹⁰²⁰ On 29 May 2007, Ms Gobbo arranged for the SDU to obtain a copy of the notes.¹⁰²¹ By the time Mr Solomon and Mr Davey interviewed Ms Gobbo, the SDU had been in possession of the notes for 10 months.
- 64.6 In her evidence to the Commission, Ms Gobbo claimed to have been "*reluctant*" to provide Mr Solomon and Mr Davey with the notes and said she had been "*convinced*" by one of them to do so.¹⁰²² The contemporaneous documents demonstrate that this is not true. Following her interview with Mr Solomon and Mr Davey on 5 March 2008, Ms Gobbo told Mr Wolf that she had given a copy of the notes to the SDU and wanted this "*followed up*".¹⁰²³ Accordingly, Mr Wolf took steps to locate the document. On 9 March 2008, Mr Wolf spoke to Mr Ryan (in the course of a longer conversation) and Mr Ryan said he would confirm whether the Petra Taskforce had a copy of the notes.¹⁰²⁴ On 10 March 2008, Ms Gobbo told Mr Wolf that she recalled having given the notes to Mr Fox and said they could be given to the Petra Taskforce.¹⁰²⁵
- 64.7 If Ms Gobbo was reluctant to provide the notes to Mr Solomon and Mr Davey, she had ample opportunity not to do so. Ms Gobbo did not have to press her handlers to locate the notes. She did not have to take any steps to locate them herself. She could have told Mr Solomon and Mr Davey that the notes could not be located. She could also have told them the notes were privileged and that she was bound not to provide them. She could have asked her handlers for advice about how to avoid handing the notes over. Ms Gobbo did none of these things. Instead, she pressed her handlers to locate them and gave instructions that they could be provided to the investigators, all without any follow up from anyone at the Petra Taskforce.
- 64.8 On 19 March 2008, Mr Davey called Ms Gobbo looking to obtain a copy of the documents.¹⁰²⁶ Ms Gobbo told him she had given the notes to DI Ryan.¹⁰²⁷ Ms Gobbo had in fact not done so. Ms Gobbo said this to avoid telling him the notes were with the SDU. Ms Gobbo claimed Mr Davey had been "*indifferent*" to this and wanted her to call

¹⁰¹⁵ Untendered diary of Officer 'Wolf', 5 March 2008 (VPL.2000.0001.0098 at .0104).

¹⁰¹⁶ T14751.46 (S O'Connell).

¹⁰¹⁷ Exhibit RC0507 – Diary of Officer 'Fox', 26 March 2008 (VPL.2000.0001.3534 at .3561).

¹⁰¹⁸ Exhibit RC0282 – Transcript of meeting between Ms Nicola Gobbo, Mr Anderson and Mr Sandy White, 21 May 2007 at pp 228-231, 234 (VPL.0005.0137.0001 at .0228-0231, .0234).

¹⁰¹⁹ Exhibit RC0282 – Transcript of meeting between Ms Nicola Gobbo, Mr Anderson and Mr Sandy White, 21 May 2007 at pp 228-231, 234 (VPL.0005.0137.0001 at .0228-0231, .0234).

¹⁰²⁰ Exhibit RC0292 – Diary of Officer 'White', 22 May 2007 (VPL.0100.0096.0621 at .0641)

¹⁰²¹ Exhibit RC0281 – ICR3838 (081), 29 May 2007 (VPL.2000.0003.2447 at .2451)

¹⁰²² T13141.21-36; T13142.3-11 (N Gobbo).

¹⁰²³ Untendered diary of Officer 'Wolf', 5 March 2008 (VPL.2000.0001.0098 at .0103).

¹⁰²⁴ Untendered diary of Officer 'Wolf', 9 March 2008 (VPL.2000.0001.0098 at .0113).

¹⁰²⁵ Untendered diary of Officer 'Wolf', 10 March 2008 (VPL.2000.0001.0098 at .0117); Exhibit RC0281 – ICR2958 (008), 10 March 2008 (VPL.2000.0003.0825 at .0828).

¹⁰²⁶ Exhibit RC0507 – Diary of Officer 'Fox', 19 March 2008 (VPL.2000.0001.3534 at .3542).

¹⁰²⁷ Exhibit RC0507 – Diary of Officer 'Fox', 19 March 2008 (VPL.2000.0001.3534 at .3542).

OFFICIAL: Sensitive

him back with the document by 4pm.¹⁰²⁸ According to Mr Davey, he called Ms Gobbo only because she had volunteered to provide him with the document and had said she would call by 4pm.¹⁰²⁹ He simply called to follow up how she had gone locating the notes.¹⁰³⁰

64.9 Later on 19 March 2008, Mr Fox spoke to Mr O'Connell.¹⁰³¹ Mr Fox's diary records that Mr O'Connell confirmed that Mr Davey had been told Mr Ryan had the documents. It is clear, however, that Mr Ryan did not have them. Mr Fox noted "*Shane is away until after Easter. He will speak to me then re: the Paul Dale documents and have a read of same then*".¹⁰³²

64.10 The evidence shows that Mr O'Connell did not seek out notes he knew to be privileged, that Ms Gobbo was eager to volunteer the notes, and that investigators inquired about the notes for the proper purpose of seeing whether Mr Dale had ever (illegally) given Ms Gobbo documents relating to informers.

65 Mr O'Connell did not lie to Mr Gipp regarding the informer management file

65.1 Contrary to Counsel Assisting's submission at paragraph [3949], the Commissioner ought not find that Mr O'Connell lied to barrister Ron Gipp about the existence of an informer management file for Ms Gobbo.

65.2 The premise of Counsel Assisting's submission at [3949], is that:

- (a) Mr O'Connell knew an informer management file for Ms Gobbo existed; and
- (b) Mr O'Connell knew there was relevant material in Ms Gobbo's informer management file; and
- (c) with the knowledge set out in (a) and (b) above, Mr O'Connell told Mr Gipp instead that it was "*probable*" that there was an informer management file in existence, but that those matters were unrelated to the prosecution of Mr Dale

65.3 The premise of Counsel Assisting's submission is wrong and there is no evidentiary basis for the finding.

65.4 The key events preceding the discussion between Mr Gipp and Mr O'Connell were:

- (a) On 27 January 2010, Mr Dale (who had been charged with the murder of Terrence and Christine Hodson and was facing a committal hearing in March 2010) served a subpoena on Victoria Police.¹⁰³³ Among other things, that subpoena sought seven categories of documents relating to Ms Gobbo and her agreement to assist Victoria Police in relation to Mr Dale, including by wearing a wire.¹⁰³⁴
- (b) Mr O'Connell was on leave between 31 December 2009 and 2 February 2010.¹⁰³⁵ On return from leave Mr O'Connell was made aware of the subpoena filed on behalf of Mr Dale on 27 January 2010.¹⁰³⁶
- (c) Mr Davey and Mr Solomon had principal responsibility for responding to the subpoena on behalf of Victoria Police.¹⁰³⁷

¹⁰²⁸ Exhibit RC0507 – Diary of Officer 'Fox', 19 March 2008 (VPL.2000.0001.3534 at .3542); Exhibit RC0281 – ICR2958 (010), 19 March 2008 (VPL.2000.0003.0844 at .0847).

¹⁰²⁹ Exhibit RC0507 – Diary of Officer 'Fox', 19 March 2008 (VPL.2000.0001.3534 at .3542).

¹⁰³⁰ Exhibit RC0507 – Diary of Officer 'Fox', 19 March 2008 (VPL.2000.0001.3534 at .3542).

¹⁰³¹ Exhibit RC0507 – Diary of Officer 'Fox', 19 March 2008 (VPL.2000.0001.3534 at .3543).

¹⁰³² Exhibit RC0507 – Diary of Officer 'Fox', 19 March 2008 (VPL.2000.0001.3534 at .3543).

¹⁰³³ Untendered subpoena issued on behalf of Mr Paul Dale to the Chief Commissioner of Victoria Police, 27 January 2010, (VGSO.2000.1588.0181).

¹⁰³⁴ Untendered subpoena issued on behalf of Mr Paul Dale to the Chief Commissioner of Victoria Police, 27 January 2010, (VGSO.2000.1588.0181 at .0183).

¹⁰³⁵ Exhibit RC1305B – Statement of Mr Shane O'Connell, 5 December 2019 at [188] (VPL.0014.0115.0001 at .0029).

¹⁰³⁶ Exhibit RC1305D – Supplementary Statement of Mr Shane O'Connell, 18 February 2020 at [54] (VPL.0014.0115.0039 at .0046).

¹⁰³⁷ Exhibit RC1305D – Supplementary Statement of Mr Shane O'Connell, 18 February 2020 at [54] (VPL.0014.0115.0039 at .0046).

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- (d) Victoria Police had engaged external solicitors (the VGSO) and external counsel (Mr Gipp) for Mr Dale's committal, and Victoria Police's internal solicitors (principally through Mr McRae) were providing additional assistance.¹⁰³⁸
 - (e) Between 3 February 2010 and March 2010, Mr O'Connell worked on compiling documents responsive to the subpoena, attending meetings to discuss Victoria Police's response, and responding to queries from Mr Davey.¹⁰³⁹
 - (f) On 18 February 2010, Mr O'Connell helped prepare materials in response to the subpoena, including by reviewing the transcript of his conversation with Ms Gobbo on 7 January 2009 (the day she signed her statement in relation to Paul Dale).¹⁰⁴⁰
 - (g) On 1 March 2010¹⁰⁴¹ and 3 March 2010¹⁰⁴² Mr Hargreaves (acting for Mr Dale) wrote to the VGSO outlining concerns he had about the adequacy of Victoria Police's response to the subpoena or querying aspects of Victoria Police's response to the subpoena.
 - (h) On 10 March 2010,¹⁰⁴³ Mr Hargreaves called Mr Gipp and said he had been reading the Victoria Police Informer Management Policy. Mr Hargreaves said that, based on the policy and the claim of informer privilege, Ms Gobbo must have had an informer management file. Mr Gipp responded that he did not know but would make enquiries.
- 65.5 Mr Gipp then spoke with Mr O'Connell.¹⁰⁴⁴ Mr Gipp recorded that discussion in an email to his instructor at the VGSO.¹⁰⁴⁵ In relation to Mr O'Connell, Mr Gipp wrote:
- I have spoken with Shane. He advises F was a registered informer beforehand and it was probable there was an informer management file. However, these informer matters were unrelated to this case. I asked him to inquire of the Informer Management Unit and ascertain whether there is a file and if so did it fall within the scope of the subpoena, ie, is there anything in that file (if it exists) which identified items in 4(iii) and 4(vii) of the Dale subpoena, ie, assistance for being involved in the prosecution of Dale, conversation, discussions interview with F about her agreement to wear a wire when speaking with Dale, her agreement to become a witness and make a statement against Dale, being charged with a criminal offence or inducement, threats or benefit in relation to her becoming a witness against Dale.*
- O'Connell said that he would make the inquiries and get back to me later in the day.*¹⁰⁴⁶
- 65.6 Mr O'Connell's recollection is that he told Mr Gipp the file existed and he would make inquiries.¹⁰⁴⁷ Mr Gipp recorded that Mr O'Connell said the file "probably" existed. These are fine distinctions. It cannot be safely concluded that Mr O'Connell said the file "probably" existed.
- 65.7 Mr O'Connell did precisely what Mr Gipp asked of him.¹⁰⁴⁸ That same day he met with DI Smith and Sandy White.¹⁰⁴⁹ Mr White was told that the meeting request was urgent,

¹⁰³⁸ Exhibit RC1305D – Supplementary Statement of Mr Shane O'Connell, 18 February 2020 at [56] (VPL.0014.0115.0039 at .0047).

¹⁰³⁹ See Untendered diary of Mr Shane O'Connell, 9 February, 12 February, 15 February, 18 February, 24-26 February, 1-2 March, 5 March and 8 March 2010 (VPL.0005.0240.0111 at .0172-0173, .0176-0179).

¹⁰⁴⁰ Exhibit RC1305D – Supplementary Statement of Mr Shane O'Connell, 18 February 2020 at [56] (VPL.0014.0115.0039 at .0047).

¹⁰⁴¹ Exhibit RC1351B – Letter to Mr Greg Elms from Mr Tony Hargreaves, 1 March 2010 (VGSO.2000.1510.0193).

¹⁰⁴² Untendered letter from Mr Tony Hargreaves to Mr Greg Elms, 3 March 2010 (VGSO.2000.1510.0187).

¹⁰⁴³ Exhibit RC1355B – Email from Mr Ron Gipp to Phillip Dodgson, 10 March 2010 (VGSO.2000.1510.0149 at .0149).

¹⁰⁴⁴ Exhibit RC1355B – Email from Mr Ron Gipp to Phillip Dodgson, 10 March 2010 (VGSO.2000.1510.0149 at .0149).

¹⁰⁴⁵ Exhibit RC1355B – Email from Mr Ron Gipp to Phillip Dodgson, 10 March 2010 (VGSO.2000.1510.0149 at .0149).

¹⁰⁴⁶ Exhibit RC1355B – Email from Mr Ron Gipp to Phillip Dodgson, 10 March 2010 (VGSO.2000.1510.0149 at .0149).

¹⁰⁴⁷ Exhibit RC1305D – Supplementary Statement of Mr Shane O'Connell, 18 February 2020 at [57] (VPL.0014.0115.0039 at .0047).

¹⁰⁴⁸ Exhibit RC1305B – Statement of Mr Shane O'Connell, 5 December 2019 at [202] (VPL.0014.0115.0001 at .0031).

¹⁰⁴⁹ Exhibit RC1305B – Statement of Mr Shane O'Connell, 5 December 2019 at [202] (VPL.0014.0115.0001 at .0031).

OFFICIAL: Sensitive

- reflecting the seriousness with which Mr O'Connell treated Mr Gipp's request.¹⁰⁵⁰ Mr O'Connell's note of the discussion states "*IMF does exist*".¹⁰⁵¹ Plainly then, Mr O'Connell's first step in the discussion with Mr White was to confirm the existence of the file. It follows that if Mr O'Connell told Mr Gipp there "*probably*" was a file, he was accurately conveying his state of mind.
- 65.8 Mr O'Connell's note then records Mr White informing him that there were disclosures within the file relevant to the execution of the Hodsons.¹⁰⁵² Rather than hide from that situation, Mr O'Connell immediately told Mr Gipp and sought Mr Gipp's advice. In turn, Mr Gipp told Mr O'Connell that relevant parts of the file would likely need to be disclosed.¹⁰⁵³
- 65.9 On 11 March – the very next day – DI Smith asked the relevant Victoria Police officer for access to the informer management file so that relevant documents could be identified. In the course of doing so, DI Smith noted that he understood the ramifications of the request and had discussed them with Sandy White.¹⁰⁵⁴ DI Smith observed that once the documents were identified, any disclosure would be negotiated with Mr Gipp.¹⁰⁵⁵
- 65.10 Thus, it can be seen that Mr O'Connell responded to Mr Gipp's questions quickly and efficiently. Having identified that the file existed and contained relevant material, he immediately told Mr Gipp and sought his advice. On being informed that it was likely that the documents needed to be produced, steps were taken (through DI Smith) to ensure that the documents were collated. Mr O'Connell's conduct is entirely consistent with Mr O'Connell having spoken the truth.
- 65.11 There are other reasons why the Commission should not find Mr O'Connell lied.
- 65.12 First, Mr Gipp asked Mr O'Connell about the existence of an informer management file. His answer was that such a file existed (or probably existed). That is, he openly disclosed the likely existence of such a file. Having done so, Mr O'Connell opened himself up to whatever further inquiries Mr Gipp might make of him. It was overwhelmingly probable that Mr Gipp (who, by his earlier interactions with Victoria Police in connection with Mr Dale, had demonstrated himself to be a diligent barrister concerned to ensure that Victoria Police had properly discharged its disclosure obligations)¹⁰⁵⁶ would ask him to confirm whether the file existed or not.
- 65.13 Secondly, not only did Mr O'Connell identify the probable existence of the file, he disclosed that Ms Gobbo had been an informer "*beforehand*". In doing so, he opened himself up to whatever further inquiries Mr Gipp might have wished to make about that matter. The significance of Mr O'Connell's decision to inform Mr Gipp about Ms Gobbo's earlier status as a human source cannot be overstated. Mr O'Connell was bound not to disclose Ms Gobbo's status unless he considered it strictly necessary to do so. Implicitly, Mr O'Connell decided that Mr Gipp needed to know in order to give considered advice and informed him accordingly.
- 65.14 If Mr O'Connell had wanted to hide matters from Mr Gipp he could have denied the existence of the file on the basis that doing so would reveal to Mr Gipp that Ms Gobbo had been a registered human source in connection with matters other than the investigation into Mr Dale. Mr O'Connell did not take that course.
- 65.15 Thirdly, according to Mr Gipp, Mr O'Connell initially told Mr Gipp that the earlier informer matters were unrelated to Mr Dale's case. While Mr O'Connell had no direct recollection of the discussion, it is more probable than not that Mr O'Connell did not turn his mind to

¹⁰⁵⁰ Exhibit RC0461B – Diary of Sandy White, 10 March 2010 (VPL.2000.0001.2246 at .2280).

¹⁰⁵¹ Untendered diary of Mr Shane O'Connell, 10 March 2010 (VPL.0005.0240.0111 at .0180).

¹⁰⁵² Exhibit RC1305B – Statement of Mr Shane O'Connell, 5 December 2019 at [202] (VPL.0014.0115.0001 at .0031).

¹⁰⁵³ Untendered diary of Mr Shane O'Connell, 10 March 2010 (VPL.0005.0240.0111 at .0181).

¹⁰⁵⁴ Exhibit RC0522B – Email from Detective Inspector Steven Smith to Superintendent Mark Porter, 11 March 2020 (VPL.6118.0006.6806).

¹⁰⁵⁵ Exhibit RC0522B – Email from Detective Inspector Steven Smith to Superintendent Mark Porter, 11 March 2020 (VPL.6118.0006.6806).

¹⁰⁵⁶ See Exhibit RC1198B – Emails between Mr Cameron Davey, Detective Inspector Steven Smith and others, 2 March 2010 (VPL.6018.0008.7075).

OFFICIAL: Sensitive

the likelihood that Ms Gobbo's involvement with the Petra Taskforce was the subject of the informer management file. That is because the Petra Taskforce did not task Ms Gobbo (including, for the reasons given above in relation to Andrew Hodson). From the beginning, the Petra Taskforce engaged with Ms Gobbo as a potential witness (certainly, at least, this was Mr O'Connell's understanding of events). Mr O'Connell's engagement with Ms Gobbo in connection with the Petra Taskforce was managed through the SDU because of the complex relationship between Ms Gobbo and Victoria Police, not because Ms Gobbo was a source *per se*. Accordingly, it is probable that Mr O'Connell distinguished between Ms Gobbo's engagement with Victoria Police as a human source, and her engagement with the Petra Taskforce as a witness.

- 65.16 Fourthly, Mr Gipp's email reveals the likelihood that he and Mr O'Connell discussed the matter through the prism of the subpoena that had been issued, which sought a number of very specific things. As such, when Mr Gipp directed Mr O'Connell to identify whether the informer management file (if it existed) had relevant matters, he did so by explicit reference to the subject matter of the subpoena.¹⁰⁵⁷ Mr Gipp did not identify to Mr O'Connell the possibility that the informer management file might be relevant to Mr Dale's defence outside of the matters that were the subject of the subpoena. In the absence of Mr Gipp identifying this matter to him, it is unlikely that Mr O'Connell identified it himself.
- 65.17 Fifthly, Counsel Assisting wrongly assume that Mr O'Connell had knowledge of "*substantial SDU holdings*" concerning Ms Gobbo that were responsive to the subpoena. Mr O'Connell had not worked at the SDU. He did not know what holdings it had. There is no evidence Mr O'Connell ever saw the SDU records, which is unsurprising because he simply would never have had access to such records. Informer management files were securely held by the SDU. Investigators did not have access to them. Consistently, when it was established that Ms Gobbo's informer management file held relevant material, DI Smith had to apply for access to it in order to compile the relevant documents.
- 65.18 Sixthly, Counsel Assisting's reference to the recording of 7 January 2009 is misplaced. It assumes that Mr O'Connell understood that Ms Gobbo's history as an informer might be relevant to Mr Dale. There is no evidence to support that conclusion. The deficiencies in Victoria Police's disclosure practices may need to be addressed by the Commissioner, but do not lie at the feet of Mr O'Connell.
- 65.19 Relatedly, Mr Gipp was aware of the transcript of 7 January 2009 (though not its contents) and was made aware that Ms Gobbo had been a human source prior to the events connected to Mr Dale. Indeed, in circumstances where Mr Hargreaves had, in his letter of 1 March 2010 made clear that Ms Gobbo's credit was in issue,¹⁰⁵⁸ it was open to Mr Gipp to make further inquiries of Mr O'Connell about whether Ms Gobbo's previous assistance to Victoria Police was relevant to her credit as a witness in Mr Dale's case. Mr Gipp did not do so. He explicitly limited his query to material responsive to the subpoena. If Mr Gipp did not identify the potential significance of other material in the human source file, it is unsurprising that Mr O'Connell did not either.
- 65.20 Seventhly, Mr O'Connell was responsive to, and cooperative with, Mr McRae, the VGSO and Mr Gipp throughout the subpoena process. Mr O'Connell devoted substantial amounts of time to responding to issues connected to the subpoena and to the intervention by Ms Gobbo's lawyers in the process,¹⁰⁵⁹ including by reviewing materials,¹⁰⁶⁰ redacting transcripts for relevance and PII,¹⁰⁶¹ attending meetings with

¹⁰⁵⁷ Exhibit RC1355B – Email from Mr Ron Gipp to Phillip Dodgson, 10 March 2010 (VGSO.2000.1510.0149 at .0149).

¹⁰⁵⁸ Exhibit RC1351B – Letter to Mr Greg Elms from Mr Tony Hargreaves, 1 March 2010 (VGSO.2000.1510.0193 at .0193).

¹⁰⁵⁹ See Untendered diary of Mr Shane O'Connell, 26 February, 10 March 2010 (VPL.0005.0240.0111 at .0177, .0182).

¹⁰⁶⁰ See Untendered diary of Mr Shane O'Connell, 9 February, 12 February, 15 February, 18 February, 25-26 February, 1-2 March, 8 March 2010 (VPL.0005.0240.0111 at .0172-0173, .0175, .0177-0179).

¹⁰⁶¹ See Untendered diary of Mr Shane O'Connell, 24 February 2010 (VPL.0005.0240.0111 at .0176).

OFFICIAL: Sensitive

external solicitors and counsel¹⁰⁶² and responding to requests from Mr Davey for additional material.¹⁰⁶³

- 65.21 Further, when issues arose in relation to compliance with the subpoena, Mr O'Connell telephoned Mr Gipp to identify additional material that might have been responsive and acted in accordance with the instructions Mr Gipp gave him.¹⁰⁶⁴ Counsel Assisting characterise this as Mr O'Connell "*disclos[ing] a little bit more*".¹⁰⁶⁵ That description is entirely unfair. Victoria Police had engaged both internal and external solicitors along with external counsel to assist with the matter generally, including in relation to disclosure. There is nothing at all to suggest that Mr O'Connell deliberately failed to disclose relevant material.
- 65.22 Finally, Mr O'Connell recorded all of these matters in his diary. It is highly unlikely that Mr O'Connell would have kept a record of his own dishonest conduct.
- 65.23 There is nothing in Mr O'Connell's conduct to support the conclusion that he had any cause to lie to Mr Gipp or that he had a propensity to do so. To the contrary, Mr O'Connell was available, cooperative and responsive to Mr Gipp. It follows that there is no basis for the Commission to find that Mr O'Connell lied and, indeed, there is overwhelming evidence to the contrary.
- 65.24 As to the proposed finding at paragraph [3952], there is no evidence at all to support this finding. The meeting of 10 March 2010 took place in a very specific context: an urgent request to establish the existence of an informer management file and whether it contained information responsive to the subpoena issued by Paul Dale. Both Sandy White and Mr O'Connell took notes of the meeting. In relation to the potential repercussions of disclosing the material, Mr O'Connell recorded "*Disclosure of material would identify her*",¹⁰⁶⁶ while Sandy White recorded that "*Revealing fact that HS was a HS several years prior to involvement with Petra will compromise same and confirm her police assistance at the time of the MOKBEL investigation*".¹⁰⁶⁷ The notes do not directly disclose any discussion of the potential that disclosure of Ms Gobbo's historic role as a human source might impact upon convictions and prosecutions arising out of the investigation into Tony Mokbel (Operation Posse). On their face, the notes reveal a concern that the disclosure of the material would identify Ms Gobbo as a human source and compromise her safety. That interpretation of the notes is completely consistent with the reference to the "*Mokbel investigation*". It was Ms Gobbo's involvement in that investigation that created the greatest risk to her safety.
- 65.25 Further, there is no evidence that Mr O'Connell had any knowledge at all of Ms Gobbo's involvement with Mr McGrath, Mr Thomas or Mr Cooper. Counsel Assisting's submission assumes either that Mr O'Connell had such knowledge, or that such knowledge was imparted to him in the course of the meeting. There is no evidence of the first, and the contemporaneous notes do not bear out the second.
- 65.26 Accordingly, the Commission cannot be satisfied that the participants in the meeting discussed the potential consequences for convictions and prosecutions arising from the Mokbel investigation. On that basis, it is not open to the Commission to find that Mr O'Connell was cognisant of a desire to conceal Ms Gobbo's historic role as a human source, whether for the reasons given or otherwise.
- 65.27 Moreover, the finding is inconsistent with what happened next. Following that meeting, DI Smith made a formal request for access to the informer management file so that the relevant documents could be compiled. In making that request, he noted that he was aware of the ramifications of doing so. Taking that step is entirely inconsistent with a

¹⁰⁶² Exhibit RC1305D – Supplementary Statement of Mr Shane O'Connell, 18 February 2020 at [56] (VPL.0014.0115.0039 at .0047); See also Untendered diary of Mr Shane O'Connell, 2 March, 5 March, 8 March 2010 (VPL.0005.0240.0111 at .0178-.0179).

¹⁰⁶³ See Untendered diary of Mr Shane O'Connell, 10 March 2010 (VPL.0005.0240.0111 at .0180-181).

¹⁰⁶⁴ Untendered diary of Mr Shane O'Connell, 2 March 2010 (VPL.0005.0240.0111 at .0178).

¹⁰⁶⁵ Counsel Assisting's Submissions at p 918 [3919]-[3922], Vol 2.

¹⁰⁶⁶ Untendered diary of Mr Shane O'Connell, 10 March 2010 (VPL.0005.0240.0111 at .0180).

¹⁰⁶⁷ Exhibit RC0461B – Diary of Sandy White, 10 March 2010, 35 (VPL.2000.0001.2246 at .2280).

OFFICIAL: Sensitive

desire to conceal Ms Gobbo's historic role as a human source. It demonstrates that DI Smith was determined to ensure that Victoria Police complied with its legal obligations in relation to the subpoena, notwithstanding the possible ramifications of doing so.

- 65.28 It follows that there is no basis to conclude that Mr O'Connell was cognisant of the desire to conceal Ms Gobbo's historic role as a human source because it might impact on convictions and prosecution arising out of the "*Mokbel investigation*", because no such desire existed.

66 Conclusion

- 66.1 It is clear that regrettable conduct occurred in relation to the use of Ms Gobbo by Victoria Police as a human source in circumstances where she had important conflicting obligations as a lawyer. But nothing would be gained in righting this past wrong or deterring future misconduct by making adverse findings or observations about Mr O'Connell. They are not warranted by the evidence and would be gratuitous.
- 66.2 In addition to the submissions above, Mr O'Connell relies on the submissions of Victoria Police.

Georgina Costello
Siobhan Kelly

Q Submission of Superintendent John O'Connor

67 Overview

- 67.1 Superintendent John O'Connor became the Detective Inspector in charge of the Source Development Unit (**SDU**) on 3 May 2010. In the days immediately after he started, DI O'Connor became aware of Ms Gobbo's civil suit against Victoria Police, and that she had previously been registered as a human source.¹⁰⁶⁸ He facilitated the provision of material about Ms Gobbo's time as a human source to assist in the civil litigation.
- 67.2 Between August 2010 and November 2012, DI O'Connor was Ms Gobbo's point of contact if she needed to contact Victoria Police, a role he was given because he had not previously had any dealings with her.¹⁰⁶⁹ It is fair to say that he was the Victoria Police member who had the most success in managing Ms Gobbo in a way that avoided her providing information or intelligence.
- 67.3 This submission responds to Counsel Assisting's criticism of Superintendent O'Connor in relation to events that occurred during the trial of Zlate Cvetanovski.

68 Allegations made during the Cvetanovski trial

- 68.1 As a respected and experienced manager, DI O'Connor was appointed to the SDU as its first full time dedicated inspector.¹⁰⁷⁰ He gave evidence about the difficult cultural issues and resistance to change that he found in that unit.
- 68.2 At the same time, he became Victoria Police's sole point of contact with Ms Gobbo following her deregistration, which carried with it the pressure of managing the ever-present risks to her safety and seeking to avoid her providing information or intelligence.
- 68.3 The Royal Commission heard evidence about allegations made – in the absence of the jury – by Mr Cvetanovski's counsel Michael Pena-Rees during his County Court trial in April 2011.
- 68.4 Counsel Assisting submit that, on the evidence, it is open to the Commissioner to find that, given what they knew in April 2011, each of Dale Flynn, DI O'Connor, Craig Hayes, Paul Sheridan, Officer Pearce and Officer Richards should have:
- (a) ensured that Ms Gobbo and Victoria Police's conduct in relation to Mr Cooper's decision to assist police was disclosed to the prosecutor in Mr Cvetanovski's trial; or
 - (b) ensured that the relevant conduct was otherwise disclosed to the Court so that a claim of public interest immunity could have been heard and determined.¹⁰⁷¹
- 68.5 That submission is not open on the evidence, based only on speculation and ignores the actual role that DI O'Connor had at the time.
- 68.6 The extent of DI O'Connor's involvement in this matter is that he received two emails from Officer Pearce on 12 April 2011 regarding the issues that had arisen in Mr Cvetanovski's trial.¹⁰⁷² DI O'Connor's evidence, not challenged by Counsel Assisting, was that he was advised about those issues because – and only because – he was Ms Gobbo's point of contact and was concerned primarily for her safety.¹⁰⁷³

¹⁰⁶⁸ Exhibit RC0795 Statement of Superintendent John O'Connor, 11 October 2019, p 1-2 at [4], [14] and [17] (VPL.0014.0077.0001 @ .0001-2).

¹⁰⁶⁹ Exhibit RC0795 Statement of Superintendent John O'Connor, 11 October 2019, p 5 at [31] (VPL.0014.0077.0001 @ .0005).

¹⁰⁷⁰ CA's Submissions, p 1096-7 at [4770] (VPL.1500.0001.1155 @ .1229-30); Exhibit RC0795 Statement of Superintendent John O'Connor, 11 October 2019, p 24-28 at [137]-[157] (VPL.0014.0077.0001 @ .0024-28).

¹⁰⁷¹ CA's Submissions, p 983 at [4212] (VPL.1500.0001.1075 @ .1116).

¹⁰⁷² Exhibit RC0853, Email from Officer Pearce to John O'Connor forwarded to Paul Sheridan, subject "Witness F", 12 April 2011 (VPL.0005.0013.1295); Email from Officer Pearce to John O'Connor forwarded to Paul Sheridan, subject "Further re F matter", 12 April 2011 (VPL.0005.0013.1272).

¹⁰⁷³ Exhibit RC0795 Statement of Superintendent John O'Connor, 11 October 2019, p 17 at [100] (VPL.0014.0077.0001 @ .0017).

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- 68.7 Despite not questioning him on this, Counsel Assisting submit that Superintendent O'Connor's evidence "could not be correct". Counsel Assisting's submission is that the primary concern for all members involved with this issue was Ms Gobbo's exposure as a human source.¹⁰⁷⁴ The reality for DI O'Connor was that if the issue had developed further he would likely have been called upon to engage with Ms Gobbo. It was entirely appropriate that he was advised of the unfolding events.
- 68.8 DI O'Connor was not involved in any way in Mr Cvetanovski's prosecution. He was not even aware of the charges Mr Cvetanovski was facing.¹⁰⁷⁵ He had no disclosure obligation or responsibility in his role and none was put to him in cross examination. In this case, experienced police officers, outside DI O'Connor's chain of command, were managing the prosecution and there was no reason for DI O'Connor to do anything with the information that he received. It is to be recalled that DI O'Connor was not with the SDU at any point during Ms Gobbo's active registration period.
- 68.9 In accordance with Victoria Police practices, DI O'Connor raised this issue with his superior officer, Superintendent Sheridan and stood ready to be a point of liaison with Ms Gobbo if that was required.
- 68.10 Finally, Counsel Assisting advance an undeveloped submission that Officer Pearce's email on 12 April 2011 "indicated an appreciation that the exposure of Ms Gobbo's roles would have consequences for the trial of Mr Tony Mokbel, which was scheduled later that year."¹⁰⁷⁶
- 68.11 Such an interpretation is, at best, an overreach. A plain reading of the email is that Officer Pearce was noting that Mr Pena-Rees' comments about Tony Mokbel could engage a suppression order that was currently in force, nothing more and nothing less.

69 Conclusion

- 69.1 In relation to Mr Cvetanovski's trial, DI O'Connor took precisely the steps required of him in his role with the SDU, and as Ms Gobbo's sole point of contact at Victoria Police. He was not and is not responsible for disclosure issues that were never within his authority or responsibility. The submission by Counsel Assisting at [4212] should not be accepted.

Saul Holt QC
Susanna Locke

¹⁰⁷⁴ CA's Submissions, p 981 at [4200] (VPL.1500.0001.1075 @ .1114).

¹⁰⁷⁵ Exhibit RC0795 Statement of Superintendent John O'Connor, 11 October 2019, p 17 at [100] (VPL.0014.0077.0001 @ .0017).

¹⁰⁷⁶ CA's Submissions, p 983 at [4213] (VPL.1500.0001.1075 @ .1116); Exhibit RC0853, Email from Pearce to John O'Connor forwarded to Paul Sheridan, subject "Witness F", 12 April 2011 (VPL.0005.0013.1295).

R Submission of Superintendent Mark Porter

70 Introduction

- 70.1 This submission responds to assertions made by Counsel Assisting the Commission at [3485], [3722] and [3723] concerning Superintendent Mark Porter.
- 70.2 Before responding specifically to Counsel Assisting's assertions in those paragraphs, it is helpful to identify Mr Porter's role at Victoria Police between March 2006 and August 2010, and his knowledge about Ms Gobbo's use by Victoria Police in that period in order to contextualise the evidence relied on by Counsel Assisting in their submission.

Role at the State Intelligence Division

- 70.3 Mr Porter was the Superintendent in charge of the State Intelligence Division between March 2006 and August 2010.¹⁰⁷⁷ Because he held that role, he was the Central Source Registrar.¹⁰⁷⁸
- 70.4 At March 2006, both the DSU and the HSMU were units in Mr Porter's line control, forming part of the State Intelligence Division (SID). The SID in turn sat within the Intelligence and Covert Support Department. Because the DSU was in his line control, Mr Porter was also the Local Source Registrar.
- 70.5 Mr Porter recalls that a few weeks or months after he arrived at the SID, oversight of the DSU was moved from the State Intelligence Division to the Covert Support Division (CSD). The effect of the restructure was that Mr Biggin, as the Superintendent in charge of the CSD, took responsibility for the oversight of the DSU, with the restructure formally taking effect from 1 July 2006.¹⁰⁷⁹ Mr Porter's recollection is that the DSU became known as the SDU around this time.
- 70.6 The restructure was necessary because the function of the HSMU is to set human source policy and practice, and to be responsible for developing good practice, policy and policy adherence. The DSU was to handle sources directly, based on the policy decisions of the HSMU.¹⁰⁸⁰ With the HSMU and DSU within the SID, the Superintendent managing the DSU was also required to monitor compliance with the applicable policies (through the HSMU).
- 70.7 Following the restructure, the HSMU continued to exist within the SID, and continued to have responsibility for centrally recording all human source management activity. This included human source management activity undertaken by the SDU, and supporting and auditing the SDU.¹⁰⁸¹

Knowledge of Ms Gobbo's use as a human source, and access to SDU records

- 70.8 Mr Porter learned that Ms Gobbo was a human source around the time that he started at the SID. He had no role in the day to day management of Ms Gobbo as a human source: that was managed by Officer Sandy White.¹⁰⁸²
- 70.9 As a result of his ongoing oversight of the HSMU, Mr Porter did not (and was not required to) have a close understanding of information provided by Ms Gobbo to the SDU, or the nature of the information that was disseminated by the SDU to investigators. He was certainly not required to enquire about how that information was used by investigators. Indeed, part of the purpose of the sterile corridor was to prevent a person in Mr Porter's role from obtaining such knowledge.
- 70.10 Based on his evidence before the Commission:

¹⁰⁷⁷ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [5] (VPL.0014.0048.0001 at .0001).

¹⁰⁷⁸ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [6] (VPL.0014.0048.0001 at .0001).

¹⁰⁷⁹ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [15] (VPL.0014.0048.0001 at .0003).

¹⁰⁸⁰ Exhibit RC0577c, Second Statement of Mr Anthony (Tony) Biggin, 25 July 2019 at [37] (VPL.0014.0041.0008 at .0014).

¹⁰⁸¹ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [17] (VPL.0014.0048.0001 at .0003 - .0004).

¹⁰⁸² Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [14] (VPL.0014.0048.0001 at .0003).

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- (a) once Mr Porter commenced at the SID, he had no reason to review Ms Gobbo's registration documentation. He assumed that proper consideration had been given to all relevant matters (including that she was a lawyer) at the time of her registration.¹⁰⁸³ At this time, he was probably accessing the SML 'monthly or bimonthly';¹⁰⁸⁴
- (b) from mid-2006, he:
 - (i) was 'aware that there was ongoing contact' with Ms Gobbo but 'not what the content of the contact was';¹⁰⁸⁵
 - (ii) had 'access to everything that was lodged with the Human Source Management Unit';¹⁰⁸⁶
- (c) beyond mid-2006, he 'rarely' looked at the SML,¹⁰⁸⁷ noting that as the CSR, he 'only needed to see extraordinary things' because the HSMU carried out most of the functions.¹⁰⁸⁸

Information learned through file audits

- 70.11 Mr Porter discussed Ms Gobbo's management with Mr Biggin during the first few months he was at the SID. He audited the files held by the HSMU for which he was the LSR, including Ms Gobbo's, for the purpose of assessing whether reporting policies had been followed.¹⁰⁸⁹ Noting that the contact reports were late, he considered the processes were being followed.¹⁰⁹⁰
- 70.12 Mr Porter also audited Ms Gobbo's file after July 2006. He noted that the reporting continued to be delayed (as the contact reports were not up to date) but that procedure was being followed.¹⁰⁹¹ He also spoke with Ms Gobbo's handlers, in a discussion that focussed on the volume of contact with Ms Gobbo and the resulting workload.¹⁰⁹²
- 70.13 It was during this conversation (following the second audit) that he learned that Ms Gobbo was providing information that was very important to the Purana Taskforce's operations. He understood the justification for the resources that the SDU committed to managing her as a source, 'because those resources were necessary to address the risks that arose from her being a source'.¹⁰⁹³ In particular, he considered that 'time would need to be spent by the SDU handlers and controllers ensuring that [information that breached confidentiality or legal professional privilege] was not received or disseminated'.¹⁰⁹⁴
- 70.14 Mr Porter considered that:¹⁰⁹⁵
- Ms Gobbo was in contact with high-level criminals at all hours of the day and night and was interacting with them on a social level. I understood that the information that she was providing was gained from socialising and not from any client-lawyer relationship.*
- 70.15 This is consistent with the evidence he gave before the Commission.¹⁰⁹⁶
- 70.16 It is clear from Mr Porter's statement that he considered the SDU were receiving information from Ms Gobbo arising from her social interactions rather than from a lawyer-client relationship (including in the early hours of the morning); and that he

¹⁰⁸³ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [26] (VPL.0014.0048.0001 at .0005).

¹⁰⁸⁴ T6509.16-21 (M Porter).

¹⁰⁸⁵ T6508.41-43 (M Porter).

¹⁰⁸⁶ T6508.26-27 (M Porter).

¹⁰⁸⁷ T6509.23-25 (M Porter).

¹⁰⁸⁸ T6509.19-21 (M Porter).

¹⁰⁸⁹ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [27] (VPL.0014.0048.0001 at .0005).

¹⁰⁹⁰ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [28] (VPL.0014.0048.0001 at .0006).

¹⁰⁹¹ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [30] (VPL.0014.0048.0001 at .0006).

¹⁰⁹² Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [31] (VPL.0014.0048.0001 at .0006).

¹⁰⁹³ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [32] (VPL.0014.0048.0001 at .0007).

¹⁰⁹⁴ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [32] (VPL.0014.0048.0001 at .0006).

¹⁰⁹⁵ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [33] (VPL.0014.0048.0001 at .0007).

¹⁰⁹⁶ T6510.43-47 (M Porter); T6511.9-11 (M Porter).

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considered the SDU were managing the risk of receiving confidential or privileged information.

Witness transition: Petra and Briars

- 70.17 Mr Porter does not recall Mr Biggin's memo or the SWOT analysis, but believes he would have seen them at the time (that is, early 2009).¹⁰⁹⁷
- 70.18 His statement records that Ms Gobbo's transition to a witness:¹⁰⁹⁸
- would have been an important issue... because I understood there were risks in a human source becoming a witness as it might lead to their position as a human source being uncovered. The decision to transition Ms Gobbo to become a witness for Petra would have been made by members more senior than me.*
- 70.19 Mr Porter recognised that the SWOT analysis raised concerns about Ms Gobbo's use as a witness. He recognised that those issues were not his to resolve, and elevated them to Mr Moloney.
- 70.20 This is consistent with the notations on the issue cover sheet, which show that the document was provided to then-Commander Dannye Moloney after Mr Porter had seen it.¹⁰⁹⁹ It is also consistent with the explanation in Mr Biggin's memo, which itself provided that it was provided to Mr Porter 'for information, consideration & transmission to A/C Moloney please'.¹¹⁰⁰
- 70.21 Officer Black raised concerns with Mr Porter during mid-2009 about Taskforce Briars' use of Ms Gobbo's as a witness. As recorded in Mr Porter's diary, Officer Black spoke with him (and others) on 2 and 3 June 2009.¹¹⁰¹ Mr Porter's recollection of these discussions before he gave evidence was that they focussed on the risks to Ms Gobbo's wellbeing, because her use as a witness might lead to her identification as a human source.¹¹⁰² At the outset it is important to note that Mr Porter appropriately recognised during cross examination that his memory of these events 'is somewhat distorted'.¹¹⁰³
- 70.22 During cross examination, Mr Porter accepted that Mr Black's note contained a more detailed record of the meeting than his own, and that his diary did not indicate that his discussions with Officer Black were limited to her welfare or well-being (though that was his recollection of the meeting).¹¹⁰⁴ He also agreed that he 'would expect' that 'given the content of the issues that had been raised by [Officer] Black with, Mr Black with Mr Glow, that some very serious other issues would have been raised with [him] and those present at that meeting'.¹¹⁰⁵ That is, of course, a possibility. Later in Mr Porter's cross-examination, Counsel Assisting asked a series of leading questions and asserted that the issues noted in Officer Black's diary 'had been conveyed' to Mr Porter.¹¹⁰⁶ That those matters 'had been conveyed' (as opposed to being likely to have been conveyed) rises higher than Mr Porter's earlier explanation. There is no certainty from Mr Porter's evidence about what matters were discussed on 2 June 2009.
- 70.23 Following the discussion on 3 June 2009, Mr Porter made arrangements to discuss the concerns raised by the SDU (on his statement, the concerns for her wellbeing;¹¹⁰⁷ confirming in his evidence that the most serious risk was the fact that she would be revealed and her life in danger¹¹⁰⁸) with Mr Moloney. That discussion was held on 9

¹⁰⁹⁷ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [43] (VPL.0014.0048.0001 at .0008-.0009).

¹⁰⁹⁸ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [44] (VPL.0014.0048.0001 at .0009).

¹⁰⁹⁹ Exhibit RC1084, Folder 2 of the Blue Folder in Assistant Commissioner Crime Office, 2 January 2009, 530-535 (VPL.0100.0129.0001 at .0530-.0535).

¹¹⁰⁰ Exhibit RC0518 Issue Cover Sheet, 2 January 2009 (VPL.0002.0001.1608 at .1608).

¹¹⁰¹ Untendered, Diary entries of Superintendent Mark Porter, 2-3 June 2009 (VPL.0097.0028.0001 at .0001-.0002).

¹¹⁰² Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [49] (VPL.0014.0048.0001 at .0009).

¹¹⁰³ See T6580.37-41 (M Porter), a statement made specifically in the context of whether a document was referred to at the 10 June 2009 meeting.

¹¹⁰⁴ T6578.3-5 (M Porter).

¹¹⁰⁵ T6578.7-10 (M Porter).

¹¹⁰⁶ T6580.43-45 (M Porter).

¹¹⁰⁷ Untendered, Diary entries of Superintendent Mark Porter, 2-3 June 2009 (VPL.0097.0028.0001 at .0002).

¹¹⁰⁸ T6581.1-3 (M Porter).

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June 2010. At the meeting, Mr Porter raised concerns about Ms Gobbo being a witness.¹¹⁰⁹ The participants at the 9 June 2009 meeting agreed that the concerns should be raised with AC Cornelius.¹¹¹⁰

- 70.24 Mr Porter then attended a meeting on 10 June 2009 with AC Cornelius, Mr Moloney, Mr Jouning and Mr Waddell. His recollection is that at the meeting, attendees referred to a document which had been written by Officer Black: Mr Porter was not sure if this was the SWOT analysis or a new document.¹¹¹¹ That document has not been able to be located, and Officer Black was not asked in evidence about whether he had prepared such a document.
- 70.25 Mr Porter was unable to precisely recall the matters discussed at the 10 June 2009 meeting. Counsel Assisting directed Mr Porter to Officer Black's 2 and 3 June 2009 diary notes, and asked him whether he would have been concerned to convey the matters set out in those notes during the 10 June 2009 meeting. Counsel Assisting did not direct Mr Porter to AC Cornelius' note of the 10 June 2009 discussion with a view to asking him if the note accurately recorded the matters discussed in the meeting, to the best of his recollection. In his statement, Mr Porter explained that he was raising concerns about Ms Gobbo being a witness.¹¹¹² In his evidence, he reiterated that the most serious concern he had going into the meeting was that she 'would be revealed and that her life was in danger'.¹¹¹³
- 70.26 Mr Porter was clear in his evidence that at the conclusion of the 10 June 2009 meeting, he considered that senior management in charge of the Briars taskforce would decide whether or not Ms Gobbo would be used as a witness.¹¹¹⁴
- 70.27 Mr Porter's evidence is clear that he was not the ultimate decision maker about Ms Gobbo's potential use as a witness; and that he was cognisant of the need to report concerns raised by members of the SDU to Command. Mr Porter reiterated through his evidence that the most serious risk involved in Ms Gobbo being used as a witness was that she would be revealed (as a source) and that her life was in danger.¹¹¹⁵ He was disappointed when his recommendation that Ms Gobbo not be used as a witness was not accepted.¹¹¹⁶

Counsel Assisting's proposed finding at [3485]

- 70.28 Counsel Assisting contend at [3485] that it is open to the Commissioner to find that it would have been clear to anyone aware of the contents of this SWOT analysis, or who had knowledge of the concerns raised within it, that Ms Gobbo's role as a human source had not previously been disclosed in any court proceeding.
- 70.29 Mr Porter is captured by that finding, as he is a person who was aware of the content of the SWOT analysis: he received Mr Biggin's Issue Cover Sheet and SWOT analysis on 2 January 2009.¹¹¹⁷
- 70.30 As identified above, Mr Porter's involvement with the SWOT analysis is limited to receiving it and passing it up the chain of command to Mr Moloney. He did not have a detailed understanding of the information that Ms Gobbo had provided to Victoria Police (and nor was he required to). He was not well positioned to assess the likely eventuation of the hypothetical scenarios contained within the SWOT analysis. Mr Porter could not reasonably have been expected to take any further action in the circumstances.

¹¹⁰⁹ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [51] (VPL.0014.0048.0001 at .0010).

¹¹¹⁰ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [51] (VPL.0014.0048.0001 at .0010).

¹¹¹¹ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [52] (VPL.0014.0048.0001 at .0010).

¹¹¹² Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [51]-[52] (VPL.0014.0048.0001 at .0010).

¹¹¹³ T6581:103 (M Porter).

¹¹¹⁴ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [53] (VPL.0014.0048.0001 at .0010).

¹¹¹⁵ T6581.1-3 (M Porter).

¹¹¹⁶ T6582.2-5 (M Porter).

¹¹¹⁷ Exhibit RC1084, Folder 2 of the Blue Folder in Assistant Commissioner Crime Office, 2 January 2009, 530-535 (VPL.0100.0129.0001 at .0530-.0535).

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Counsel Assisting's proposed finding at [3722]

- 70.31 Counsel Assisting make a series of assertions as to Mr Porter's knowledge between March 2006 and June 2009 at [3722].
- 70.32 While Counsel Assisting assert that each of the bullet points apply to Mr Porter's knowledge 'between March 2006 and June 2009', that finding is not open on the evidence. Several of the events referred to in the bullet points following [3722] only occurred in January or June 2009: Mr Porter could not have known about those matters 'between March 2006 and June 2009', or have been 'aware' of those matters throughout that time period.
- 70.33 With those qualifications in mind, Mr Porter accepts the matters set out in bullet points 1, 2, 4¹¹¹⁸, 5, 7, 9 and 10.
- 70.34 Bullet point 3 states that Mr Porter was aware 'of risks associated with there being a lawyer who was a human source including the risk of compromised prosecutions if she provided information in breach of confidentiality or legal professional privilege'. Counsel Assisting have relied on Mr Porter's statement at paragraph 32 to support this statement. Counsel Assisting have not referred to any of the surrounding context or qualifications for Mr Porter's evidence in that regard. These are set out at a high level in paragraphs 70.8 to 70.15 above.
- 70.35 Most importantly, those paragraphs identify that Mr Porter understood that the SDU was receiving information from Ms Gobbo that she herself had received in a social (not professional) capacity, and that the SDU were managing the risk of receipt of any confidential or privileged information. As a result of those risks, Mr Porter expected that 'time would need to be spent by the SDU handlers and controllers ensuring that such information was not received or disseminated'.¹¹¹⁹ Mr Porter's awareness of the risks must be considered in those circumstances.
- 70.36 Bullet point 6 states that 'Ms Gobbo acted for Tony Mokbel'. In support of this assertion, said to be true of Mr Porter's knowledge between March 2006 and June 2009, Counsel Assisting refer to extracts of the transcript of Mr Porter's evidence.
- 70.37 Again, it is relevant to note that Mr Porter understood that Ms Gobbo was providing information to the SDU that she had gained through her social interactions,¹¹²⁰ and that he understood that Victoria Police had to be careful to 'act only on information provided in the context of her personal or social relationships with criminals'.¹¹²¹ Within that context, Ms Gobbo's current clients were not a relevant consideration. Of course, Victoria Police policy has developed substantially since 2006 and such a misapprehension would not be allowed to continue today.
- 70.38 Bullet point 8 states 'of the content of the SDU risk assessments relating to Ms Gobbo'. Mr Porter accepts that he would have read the risk assessment in relation to Ms Gobbo 'at some stage',¹¹²² though he certainly did not review the existing risk assessments upon commencing at the SID.¹¹²³ Importantly, if reading the risk assessments after mid-2006, Mr Porter was only doing so from the perspective of the Superintendent at the HSMU. Though he had scope to provide advice and guidance as to the management of human sources,¹¹²⁴ in practice, his role was limited to ensuring that policies and procedures had been followed. His primary responsibility was ensuring the efficient and secure management of the informer management unit.¹¹²⁵

¹¹¹⁸ Noting that Counsel Assisting's cross reference to evidence at this paragraph is incorrect. Mr Porter refers to the full effect of paragraph 32 of his statement, to the extent that is not what Counsel Assisting had intended to refer to.

¹¹¹⁹ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [32] (VPL.0014.0048.0001 at .0006 - .0007).

¹¹²⁰ T6510.43-47 (M Porter).

¹¹²¹ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [33] (VPL.0014.0048.0001 at .0007).

¹¹²² T6507.47 - T6508.2 (M Porter).

¹¹²³ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [26] (VPL.0014.0048.0001 at .0005).

¹¹²⁴ Untendered, Chief Commissioner's Instruction, March 2005 at [15] (VPL.0002.0001.2232 at .2236).

¹¹²⁵ Untendered, Chief Commissioner's Instruction, March 2005 at [15] (VPL.0002.0001.2232 at .2236).

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- 70.39 Bullet point 11 provides that Mr Porter was aware 'of the content of the SMLs'. The full extent of Mr Porter's knowledge of the SMLs was explained by Mr Porter in cross examination, as set out in paragraph 70.10 above. The effect of that evidence is that following mid-2006, Mr Porter was reviewing the SMLs 'rarely'. It is an overstatement to assert that Mr Porter was aware 'of the content of the SMLs'.
- 70.40 Bullet point 12 states that 'of the matters raised in the Biggin memo dated 2 January 2009 and the attached SWOT analysis, such as concerns that the use of Ms Gobbo as a witness for the Briars Taskforce would lead to a disclosure of her broader role as a human source, which could jeopardise prosecutions or convictions, and then lead to an inquiry'.
- 70.41 Mr Biggin's memo dated 2 January 2009 and the attached SWOT analysis had been prepared in the course of Ms Gobbo being considered as a witness for Petra, not for Briars.
- 70.42 Mr Porter's knowledge and understanding of the SWOT analysis is detailed at paragraphs 70.28 to 70.30 above. In short, Mr Porter received the document from his counterpart at the CSD, and provided it to his line superior, Mr Moloney. This was entirely appropriate in the circumstances.
- 70.43 Bullet point 13 states that Mr Porter was aware 'of the nature of the concerns being raised by the SDU, in particular by Mr Black during June 2009, such as concerns that the use of Ms Gobbo as a witness for the Briars Taskforce would lead to disclosure of her broader role as a human source, it could jeopardise prosecutions or convictions, and lead to an inquiry such as a Royal Commission'.
- 70.44 Counsel Assisting have referred to a series of references in support of this assertion, which do not appear to be correct. It is therefore difficult to respond with specificity to the assertions.
- 70.45 What is clear from Mr Porter's evidence before the Commission is that he:
- (a) was involved in discussions between 2 and 15 June 2009 regarding the prospect of Ms Gobbo giving a statement to the Briars taskforce;¹¹²⁶
 - (b) was concerned about Ms Gobbo being a witness (primarily because of risks to her safety) and he wanted to convey that to those making decisions about Briars;¹¹²⁷
 - (c) certainly briefed AC Cornelius, AC Moloney, Ag Commander Rod Jouning and DDI Waddell about his concerns for Ms Gobbo's safety;¹¹²⁸
 - (d) thought it was likely that the senior management in charge of the Briars Taskforce would ultimately make the decision about whether Ms Gobbo would give a statement;¹¹²⁹
 - (e) was disappointed that his recommendation was not accepted.¹¹³⁰
- 70.46 Counsel Assisting's submissions do not refer to the steps taken by Mr Porter to raise concerns with those involved in the decision making about Ms Gobbo being used as a witness by Briars, or his recommendation that she not be used as a witness.
- 70.47 Bullet point 15 asserts that 'necessarily based on the information he had been provided, convictions had been obtained where evidence had been gathered using information provided by Ms Gobbo as a human source', and that he knew that 'such evidence many have been determined to be inadmissible in court proceedings...'. Counsel Assisting have not sought to support this proposition by reference to any evidence provided by Mr Porter.

¹¹²⁶ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [48] – [55] (VPL.0014.0048.0001 at .0009 – .0010).

¹¹²⁷ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [51] (VPL.0014.0048.0001 at .0010).

¹¹²⁸ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [52] (VPL.0014.0048.0001 at .0010).

¹¹²⁹ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [53] (VPL.0014.0048.0001 at .0010).

¹¹³⁰ T65822-5 (M Porter).

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- 70.48 It is highly relevant that while Mr Porter reviewed documents held by the HSMU and spoke with the SDU about Ms Gobbo's use as a human source, he was not engaged in discussions with investigators about the way in which information provided by her was or was not used in securing criminal convictions. His role did not provide him with oversight of investigators. Further, when provided with information from Mr Biggin (through the SWOT analysis in early 2009) and Officer Black (in mid-2009), Mr Porter took steps to report concerns about Ms Gobbo's use as a witness to his management.
- 70.49 Bullet points 16 asserts that 'necessarily based upon the concerns being raised in early and mid 2009, such matters had not been put before a court for determination'. Again, Counsel Assisting have not identified the evidence on which they rely to support these assertions. Presumably it is based on Mr Porter's review of Mr Biggin's memo, the SWOT analysis and his later discussions with Officer Black. Insofar as that is the case, the totality of Mr Porter's evidence regarding these matters (as set out above) is relevant, including the subsequent briefings that Mr Porter arranged and attended in order to update Command.

Counsel Assisting's assertions at [3723]

- 70.50 Paragraph [3723] sets out a number of assertions that Counsel Assisting say are open on the evidence and concern matters that Mr Porter 'should have, but did not' do.
- 70.51 Those matters follow from the acceptance of the matters set out at [3722]. For the reasons set out above at paragraphs 70.31 to 70.49, the matters set out at [3722] cannot be accepted as put by Counsel Assisting. It follows that the assertions [3723] cannot be accepted.
- 70.52 In respect of the matters at [3723], Mr Porter says further that:
- (a) bullet point one: he was not aware of the specific information being provided by Ms Gobbo to the SDU.¹¹³¹ Further, he understood that Ms Gobbo was a lawyer and that there were risks associated with her providing information to the SDU. Mr Porter understood that the SDU were cognisant of and managing that risk;¹¹³²
 - (b) bullet point two: Mr Porter had no reason to reconsider Ms Gobbo's initial risk assessment to ensure that all risks had been appropriately accounted for. He had no reason to assume that due process had not been followed;¹¹³³
 - (c) bullet point three: it was not for Mr Porter to ensure that the SDU did not obtain information from Ms Gobbo about the people for whom she was acting or had acted. That was a risk for the SDU to identify and manage, and part of the reason that Mr Porter considered it necessary for the SDU to have sufficient resources to manage Ms Gobbo as a human source.¹¹³⁴ Further, Mr Porter had no context for the information that Ms Gobbo was providing;
 - (d) bullet point four: Mr Porter had no oversight of the investigations being conducted by Purana. The operation of the sterile corridor prevented him from obtaining this information; further, it was not a matter within his line control. To the extent Counsel Assisting mean to rely on the fact that Mr Porter had seen the SWOT analysis and had discussions in mid-2009 with Officer Black, Mr Porter refers to his explanation for his role in these events as set out above in these submissions;
 - (e) bullet point five: as for bullet point four.
- 70.53 It is simply not open, on a full examination of all relevant evidence, to make the findings that Counsel Assisting contend for.

Saul Holt QC

¹¹³¹ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [14] (VPL.0014.0048.0001 at .0003).

¹¹³² Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [32] (VPL.0014.0048.0001 at .0006).

¹¹³³ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [26] (VPL.0014.0048.0001 at .0005).

¹¹³⁴ Exhibit RC0512b, Statement of Superintendent Mark Porter, 15 August 2019 at [32] (VPL.0014.0048.0001 at .0005).

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S Submission of Detective Superintendent Paul Sheridan

70.54 This submission relates to Detective Superintendent Sheridan role in the trial of Zlate Cvetanovski and his role in the closure of the SDU.

Mr Cvetanovski

70.55 Paragraph [4212] of the submissions of Counsel Assisting contend that it is open to make certain findings in connection with disclosure during the trial of Mr Cvetanovski against a group of Victoria Police members. The difficulty with paragraph [4212] is that it assumes that each of those Victoria Police members had the same degree of knowledge about Mr Cvetanovski, the issues relevant to his trial and Ms Gobbo's informing. It also assumes that each of those members had the same responsibilities for making disclosure during the trial. Neither of those assumptions are supported by the evidence. In fact, both of those assumptions are false.

70.56 For the reasons that follow, it is not open to the Commissioner to make the findings contended for in paragraph [4212] against Detective Superintendent Sheridan.

70.57 Detective Superintendent Sheridan had no role in that trial of Mr Cvetanovski. He did not know who Mr Cvetanovski was. He received two emails, but has no specific recollection of receiving them, or what he did in response.¹¹³⁵ However, Detective Superintendent Sheridan rejects any assertion that he did nothing in response to the emails. As indicated throughout his evidence, Detective Superintendent Sheridan's normal practice was always to report matters up for attention if required or to direct those officers subordinate to him to undertake the appropriate action.¹¹³⁶

70.58 At the time, Detective Superintendent Sheridan also knew little about Ms Gobbo. He had no personal knowledge of Ms Gobbo's informing or those persons whom Ms Gobbo may have acted for in any detail whatsoever.

70.59 At 3.39pm on 12 April 2011, Detective Superintendent Sheridan received an email from Detective Inspector O'Connor, which forwarded an email that Detective Inspector O'Connor had received from Officer Pearce at 2.03pm in relation to the trial of Mr Cvetanovski.¹¹³⁷ While Detective Superintendent Sheridan has no recollection of doing so,¹¹³⁸ the evidence suggests that at 4.00pm, Detective Inspector O'Connor and Detective Superintendent Sheridan had a discussion "*re Witness F + current court matter where Witness F may be called*".¹¹³⁹ Save than for Detective Inspector O'Connor's diary note, there is no evidence before the Royal Commission as to what was discussed.

70.60 Contrary to the submissions of Counsel Assisting,¹¹⁴⁰ it is not open to the Commissioner to make any findings about whether Detective Superintendent Sheridan was aware that Ms Gobbo's had acted as Mr Cooper's lawyer. It would be unfair for the Royal Commission to make such a finding because it is not a matter that was put to Detective Superintendent Sheridan. Further, the evidence of Detective Superintendent Sheridan strongly suggests that he was not aware that Ms Gobbo had acted for Mr Cooper and accordingly, could not have made the disclosure contended for in the submissions of Counsel Assisting at paragraph [4214]. In any event, Detective Superintendent Sheridan relied upon his reasonable expectation that those experienced police officers in charge of the disclosure process would appropriately discharge their disclosure obligations or seek legal representation to claim public interest immunity if applicable.

70.61 Specifically, Detective Superintendent Sheridan refers to the following evidence:

¹¹³⁵ Counsel Assisting Submissions at p 981 [4202]-[4203], Vol 2.

¹¹³⁶ See for example, T10587.33 - T10588.43 (Sheridan).

¹¹³⁷ Counsel Assisting Submissions at p 974-975 [4184]-[4185], Vol 2.

¹¹³⁸ Exhibit RC0835 - Statement of Paul Sheridan at [54] (VPL.0014.0087.0001 at .0010).

¹¹³⁹ Counsel Assisting Submissions at p 975 [4187], Vol 2.

¹¹⁴⁰ Ibid 982 [4207], Vol 2.

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- (a) In the period from 2010-2015, Detective Superintendent Sheridan was the Detective Superintendent of the Covert Support Division. Detective Superintendent Sheridan's evidence is that in this role, he had some involvement in arranging for Victoria Police's lawyers to access information relating to Ms Gobbo as a human source, and some limited involvement to do with Ms Gobbo potentially acting as a prosecution witness.¹¹⁴¹
- (b) Detective Superintendent Sheridan had no historic involvement with Ms Gobbo. At the time Ms Gobbo was a registered human source, Detective Superintendent Sheridan was performing other duties in departments completely unrelated to the Covert Support Division.¹¹⁴² He had no knowledge of Ms Gobbo's informing and no knowledge of who Ms Gobbo's clients were.
- (c) While Detective Superintendent Sheridan had access to materials including the Source Management Log, there is no evidence to suggest that he reviewed them. Detective Superintendent Sheridan does not recall reviewing the Source Management Log¹¹⁴³ and there is no reason why he would have done so. Accordingly, he was not aware of Ms Gobbo's "dual role"¹¹⁴⁴ and there is no reason to think that the content of the emails sent to him on 12 April 2011 would have raised disclosure issues in the mind of Detective Superintendent Sheridan.
- (d) In March 2012, AC Pope asked Detective Superintendent Sheridan to conduct a review into the workings of the Covert Support Division, including the SDU. Detective Superintendent Sheridan's evidence that it was through this review process that he began to understand that full details of the deficiencies in Ms Gobbo's management.¹¹⁴⁵ This evidence supports a finding that Detective Superintendent Sheridan was not aware at an earlier stage of issues, such as those related to Ms Gobbo's relationship with Mr Cooper. In an email to AC Pope on 24 June 2012, Detective Superintendent Sheridan said that he was in favour of winding up the SDU. The email states:¹¹⁴⁶

The current unit labours under the misapprehension that they are doing the right thing for the right reasons, regrettably the handling of F (and probably others!) has shown that in their current form they present as more of a liability than an asset to the professional representation of the organisation.

- 70.62 In light of the above matters, the submission of Counsel Assisting regarding Detective Superintendent Sheridan's knowledge of Ms Gobbo's "dual role"¹¹⁴⁷ should not be accepted and it is not open to make the findings about Detective Superintendent Sheridan contended for by Counsel Assisting in paragraph [4212].

¹¹⁴¹ Exhibit RC0835 – Statement of Paul Sheridan at [8] (VPL.0014.0087.0001).

¹¹⁴² Ibid Annexure A (VPL.0014.0087.0001 at .0012).

¹¹⁴³ Ibid [11] (VPL.0014.0087.0001 at .0002).

¹¹⁴⁴ Counsel Assisting Submissions at p 982 [4207], Vol 2.

¹¹⁴⁵ Exhibit RC0835 – Statement of Paul Sheridan at [46]-[48] (VPL.0014.0087.0001 at .0008-.0009).

¹¹⁴⁶ Exhibit RC0444 – Email from Mr Sheridan to AC Pope dated 24 June 2012 (VPL.0005.0013.1125).

¹¹⁴⁷ Counsel Assisting Submissions at p 982 [4207], Vol 2.

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Closure of the SDU

70.63 Detective Superintendent Sheridan accepts the submission of Counsel Assisting that the decision to close to the SDU was not wrong.¹¹⁴⁸ As Detective Superintendent Sheridan said in his evidence, he had formed the view that it was appropriate for the SDU to be disbanded,¹¹⁴⁹ however, the ultimate decision on the fate of the Unit was not his. In his evidence, Detective Superintendent Sheridan rejected the suggestion that the closure of the SDU was *"some kind of cover up to protect Command"*.¹¹⁵⁰ There is no evidence to support that suggestion and Sandy White's evidence to this effect should be rejected.¹¹⁵¹

Saul Holt QC
Adam Purton

¹¹⁴⁸ Ibid 1047 [4543], Vol 2.

¹¹⁴⁹ T13825.6-13 (Sheridan).

¹¹⁵⁰ T13828.14-21 (Sheridan).

¹¹⁵¹ Counsel Assisting Submissions at p 1047 [4542], Vol 2.

T Submission of Detective Inspector Steven Smith

71 Steven Smith

- 71.1 These submissions are made on behalf of Detective Inspector Steven Smith.
- 71.2 Mr Smith notes the position set out in Part 21, Chapter 84 of the organisational submissions concerning Ms Gobbo's transition to a witness and her relevance to both Taskforce Petra and Briars.
- 71.3 Mr Smith relies on those submissions to the extent that they demonstrate that Taskforce Petra investigators:
- (a) did not see the SWOT analysis;
 - (b) did not understand the full extent of Ms Gobbo's informing to Victoria Police (because it had not been explained by the SDU or by those on the Petra Steering Committee if they were aware of it). The necessary result is that Petra investigators 'did not know what they did not know': they did not have any reason to make further enquiries about risks associated with the use of Ms Gobbo as a witness;
 - (c) were given endorsement by then-DC Overland for Ms Gobbo to be used as a witness;
 - (d) always understood that if Ms Gobbo was to be called as a prosecution witness, then her informer management file would need to be disclosed (including in the disclosure process a review by legal practitioners for public interest immunity claims and any other relevant claims), and intended that it would be disclosed in that way;
 - (e) the appropriate time for Ms Gobbo's informer management file to be disclosed, in accordance with the disclosure process that Victoria Police was utilising at the time, was through response to the subpoenas issued by the defence.
- 71.4 Mr Smith further responds to discrete matters raised by Counsel Assisting's submissions below. The negative findings sought to be made about Mr Smith are based on an incomplete assessment of the evidence and, in any event, were not put to him. In some respects, they ignore contemporaneous email correspondence that shows the findings to be plainly wrong.
- 71.5 At [3568], Counsel Assisting assert that Mr Smith:
- (a) had an awareness of Ms Gobbo's status as a human source by 7 January 2009;
 - (b) was aware that Ms Gobbo had spoken to the SDU about Mr Dale previously;
 - (c) took no steps to find out what Ms Gobbo had previously told the SDU about Mr Dale.
- 71.6 That submission is accurate insofar as it summarises Mr Smith's evidence at T13931:43-13932:4. However, that evidence was given in the context of a series of questions about Ms Gobbo's proposed use as a witness more generally. In answering those questions:
- (a) Mr Smith identified that the SDU did not raise concerns with Mr Smith about the 'dangers involved in transitioning this particular source to a witness',¹¹⁵² including concerns about 'putting other prosecutions in jeopardy';¹¹⁵³
 - (b) Counsel Assisting appear to accept Mr Smith's evidence about his lack of involvement in discussions around consequences of Ms Gobbo's use as a witness, stating 'I won't take you right through [these documents] because you're

¹¹⁵² T13930:18-24 (S Smith).

¹¹⁵³ T13930:35-42 (S Smith).

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not necessarily involved in those communications at this stage, but there's been a determination that Gobbo would be deployed by Petra in order to isolate her activity from Dale and protect the historical relationship should she become a witness';¹¹⁵⁴

- (c) In spite of not being involved in the discussions, Mr Smith's evidence was that 'I don't think we ever thought that we would be able to hide [Ms Gobbo's involvement with the SDU] and I'm quite, quite clear in that we would have at some stage needed legal advice in relation to matters if she became a witness, if the brief was served, if she remained on the brief and subsequent discovery issues arose'.¹¹⁵⁵

71.7 Mr Smith relies on the full effect of his evidence before the Commission in respect of the summary provided by Counsel Assisting at [3568].

71.8 That evidence also provides a complete answer from Mr Smith's perspective as to the submitted finding by Counsel Assisting at [3569]. As is set out above, Mr Smith's view at the time that Ms Gobbo's potential as a witness was being discussed was 'quite clear' that Petra would *not* be hiding Ms Gobbo's involvement with the SDU from disclosure. Indeed, the later actions of the Petra taskforce in responding to subpoenas issued by Mr Dale's and Mr Collins' legal representatives demonstrate that they had no intention of not disclosing Ms Gobbo's involvement to the defence – quite the reverse. This was reiterated later in Mr Smith's evidence, when he stated that 'putting [Tony Hargreaves' subpoena] issue to one side, we would have sought for [the informer management file] to have been produced and disclosed'.¹¹⁵⁶

71.9 At [3952], Counsel Assisting assert that 'those present at the 10 March 2010 meeting, namely Messrs Sandy White, Stephen Smith and O'Connell, were cognisant of the desire to conceal Ms Gobbo's historic role as a human source, because it might have an impact upon convictions and prosecutions arising out of the 'Mokbel investigation', a reference to Operation Posse'.

71.10 In making that assertion, Counsel Assisting have referred only to Officer White's and Mr O'Connell's diary entries. There are differences between Officer White and Mr O'Connell's diary entries, and Mr O'Connell (as he could not recall the meeting) was not in a position to comment on those differences.¹¹⁵⁷ It is therefore not clear on the diary notes alone what was in fact discussed at the meeting and, as noted, Mr Smith was not asked about it.

71.11 With no additional evidence from Mr Smith, Counsel Assisting assert that he was 'cognisant of the desire to conceal Ms Gobbo's historic role as a human source', and seek to ascribe to him the view that that it 'might have an impact upon convictions...'. That finding simply is not open on the evidence: there is no evidence from Mr Smith about this meeting, let alone what he was 'cognisant of' at the time. It also ignores Mr Smith's consistent rejection of any assertion during cross examination that there was any thought 'from a very early stage that 'we're going to get away with this notion that we don't have to disclose Ms Gobbo's history in relation to this Petra investigation'''.¹¹⁵⁸

71.12 Further, Mr Smith does refer in his statement to his email of 11 March 2010 to Mr Porter, which provides in part:¹¹⁵⁹

Petra had a meeting yesterday with [Sandy White] in relation to RHS 3838 (or 2958). We mentioned to him that during the committal... Tony Hargreaves on behalf of Dale has requested production of any informer management files relating to this witness...

¹¹⁵⁴ T13931:1-9 (S Smith).

¹¹⁵⁵ T13931:34-41 (S Smith).

¹¹⁵⁶ T13981 (S Smith).

¹¹⁵⁷ T14808:12-16 (O'Connell).

¹¹⁵⁸ T13979:28-33 (S Smith).

¹¹⁵⁹ VPL.6025.0003.5194 at 5195.

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We have sought instruction from Ron Gipp Barrister representing the CCP and he has said that on the face of it, we are obliged to hand over any documents on this file that relate to the Hodson matter.

Petra requests that we be given permission to access this file and identify documents that may need to be produced. I understand the ramifications of this and discussed it at length with [White], I will also bring it to the attention of our Steering Committee. Once the documents have been accessed we will negotiate any production (redacted or otherwise) with Ron.

- 71.13 Mr Smith's email explicitly requests access to Ms Gobbo's informer management file for the purposes of proper consideration for disclosure on the basis of legal advice. It clearly contemplates that parts of the file will be produced, redacted or not. There is nothing in the email which suggests Mr Smith had a desire to conceal Ms Gobbo's role, or that he was concerned to do so because of the impact on any convictions.
- 71.14 At [3960], Counsel Assisting refer to Mr Smith's acceptance that there had been no effort prior to Mr Dale's committal to obtain documents in relation to Ms Gobbo from the SDU. Mr Smith agrees with that conclusion: as set out in the organisational submissions at Part 22, Chapter 91, and as referred above, it was always Petra's intention to disclose relevant materials concerning Ms Gobbo through response to subpoenas issued by Mr Dale and Mr Collins. That process arises following committal. While the process can be legitimately criticised, there can be no suggestion that Mr Smith was doing anything other than following the process that was in place at the time.
- 71.15 It follows that there is nothing about the timing of the disclosure that can properly be used to criticise Mr Smith.
- 71.16 As an additional matter, Mr Smith's evidence was clear that any disclosure would have been in accordance with legal advice received at the time, further underscoring the proper process that he (and the Petra investigators) intended to follow.
- 71.17 At [3967], Counsel Assisting assert that at a meeting on 12 March 2010, Mr Smith discussed with Mr Cornelius and Mr McRae 'concerns over what was at the time, a very real prospect that the extent of Ms Gobbo's role as a human source, dating back to the investigation of the Mokbels, would be exposed'.
- 71.18 It is highly unlikely that Mr Smith would have raised a concern to that effect, as there is no evidence that he had knowledge of Ms Gobbo's informing as it concerned the Mokbels, or had a concern about the extent of Ms Gobbo's role as a human source being exposed. Indeed, Mr Smith's consistent evidence is that the use of Ms Gobbo as a witness would require the disclosure of the informer management file, and that he was not troubled by that.
- 71.19 Further, no 12 March 2010 meeting was put to any of Mr Smith, Mr Cornelius or Mr McRae. Nor is a 12 March 2010 meeting referred to in any of their statements. The finding is simply not open on the evidence.

Saul Holt QC

U Submission of former Inspector Stephen Waddell

72 Stephen Waddell

- 72.1 Counsel Assisting submit, in respect of Mr Waddell, that by way of a confidential affidavit deposed to by Mr Waddell dated 24 June 2009 in the murder trial of Tony Mokbel,¹¹⁶⁰ that members of Victoria Police (including Mr Waddell) "proposed to conceal, even from the trial judge, the identity of Ms Gobbo" and two other witnesses.¹¹⁶¹ It is submitted on behalf of Mr Waddell that Counsel Assisting's submission is not supported by the evidence and should not be accepted by the Commissioner, for the following reasons.
- 72.2 Firstly, the confidential affidavit does not suggest that police proposed to conceal the identity of Ms Gobbo from Justice Kaye. In its terms, the confidential affidavit:¹¹⁶²
- (a) refers to the existence of three witnesses (one of whom would be Ms Gobbo) with whom Taskforce Briars had been negotiating with since December 2008;
 - (b) outlines one of those witness' (Ms Gobbo's) preparedness to assist investigators further and provides details of a proposed investigative strategy involving that witness;
 - (c) outlines the reasoning for the degree of sensitivity to disclosure of the identity of Ms Gobbo and the other two witnesses, being that the proposed investigative strategy involving Ms Gobbo would be nullified if it became known that Ms Gobbo was assisting police.
- 72.3 The confidential affidavit then outlines a proposed course by which police proposed to essentially make PII claims with respect to documents to be produced to the Court, if directed to do so. The level of detail proffered in the confidential affidavit in relation to Ms Gobbo's circumstances, and the rationale as to sensitivity of disclosure of Ms Gobbo's identity, is not consistent with Counsel Assisting's contention that police were attempting to conceal the identity of Ms Gobbo.
- 72.4 Furthermore, in outlining the proposed approach to disclosure in the confidential affidavit, the relevant police members were, in effect, proposing one method by which Justice Kaye could review materials and consider any relevant PII claims. Ultimately, if Justice Kaye had ordered that the documents be produced without edits or redactions for PII, then Victoria Police would have complied. This was consistent with the approach taken by police in the trial of Evangelos Goussis for the murder of Lewis Moran, in which Justice King had, in dealing with similar subpoena issues, received confidential affidavits and convened closed hearings to hear oral argument.
- 72.5 Secondly, the approach taken by Mr Waddell in preparing the confidential affidavit was consistent with, and based upon, legal advice that had been provided by Mr Maguire. Mr Maguire was himself involved in drafting the confidential affidavit.
- 72.6 Mr Waddell engaged in conferences with Mr Maguire on each of 22, 23 and 24 June 2009 for the purposes of preparing the response to the subpoena issued by Tony Mokbel. Mr Maguire had been engaged to "[consider] PII claims [regarding] information reports and witness statements".¹¹⁶³ Mr Maguire's memorandum of attendance for 23 and 24 June 2009 notes that Mr Maguire had been involved in "drawing and settling summary response and affidavits".¹¹⁶⁴
- 72.7 Engaging Mr Maguire to assist in the response to the Mokbel subpoena was consistent with Mr Waddell's cautious and prudent approach to disclosure. Throughout June to August 2009, which was around the time Mr Waddell had been provided with the SDU

¹¹⁶⁰ VPL.0098.0014.0014.

¹¹⁶¹ Counsel Assisting's Submissions, Volume 2, paragraph [3727].

¹¹⁶² VPL.0098.0014.0014 at .0027.

¹¹⁶³ VPL.0100.0001.6858 at .6859--.6860.

¹¹⁶⁴ Ibid.

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tapes regarding Ms Gobbo, Mr Waddell engaged in conferences seeking advice from Mr Maguire in relation to disclosure and PII on 26 occasions.¹¹⁶⁵ The submissions of Counsel Assisting also refer, on a number of occasions, to the steps taken by Mr Waddell to seek and obtain legal advice on disclosure and PII in relation to Ms Gobbo.¹¹⁶⁶ Those steps are not consistent with a person seeking to inappropriately conceal material from the court.

72.8 Thirdly, the allegation by Counsel Assisting that Mr Waddell had proposed to conceal, the identity of Ms Gobbo was not put to Mr Waddell, or any other member that was involved in preparing the confidential affidavits. It is a serious claim that is made, and procedural fairness required that it be put. No explanation is given by Counsel Assisting to the failure to cross examine Mr Waddell on this issue.

72.9 Accordingly, contrary to the submission of Counsel Assisting, a conclusion that the police proposed to conceal the identity of Ms Gobbo from Justice Kaye is not reasonably open. On the evidence it is in fact clear that Mr Waddell sought legal advice, and acted consistently with that advice in responding to the subpoena. For these reasons Counsel Assisting's submission in relation to Mr Waddell should be rejected.

Saul Holt QC

¹¹⁶⁵ VPL.0100.0001.6858

¹¹⁶⁶ See, eg, Counsel Assisting's Submissions, Volume 2, paragraphs [3700]–[3704]; [3738]–[3742].

V Submission of Former Superintendent Rodney Wilson

73 Introduction

- 73.1 This submission relates to Mr Wilson's role in Operation Khadi. Operation Khadi was a 2006 ESD investigation into allegations of serious misconduct by Victoria Police members stationed at Brighton Police Station.¹¹⁶⁷ At the time, Mr Wilson was the Superintendent at the Ethical Standards Department (ESD).
- 73.2 As this submission shows, during Operation Khadi, Mr Wilson learned that Ms Gobbo was a registered human source under the management of the SDU. He was told this by then Deputy Commissioner Overland. However, Mr Wilson did not know anything about Ms Gobbo's clients, or the information that Ms Gobbo was providing to the SDU.
- 73.3 For the reasons set out below, it is not open to the Commissioner to make the findings contended for by Counsel Assisting at paragraph [2016] because they are premised on Mr Wilson having knowledge about Ms Gobbo's informing that he simply did not have.
- 73.4 Further, the Commissioner should not make the findings contended for by Counsel Assisting at paragraph [2096]. The proposed findings at [2096] are not necessary and they fail to take into account that there were legitimate reasons for not calling Ms Gobbo as a potential witness. It would be wrong to make the findings contended for at paragraph [2096] because doing so would put undue emphasis on the outcome of not calling Ms Gobbo as a witness in Operation Khadi, as opposed to the process followed by those people responsible for making that decision. Such a finding would demonstrate hindsight bias.

74 The 6 June meeting

- 74.1 Mr Wilson's evidence to the Royal Commission was that his recollection is that Mr Overland told him that Ms Gobbo was a human source in private. Mr Wilson accepts Counsel Assisting's summary of his evidence about the 6 June meeting.¹¹⁶⁸ As the submissions of Counsel Assisting say, Mr Wilson readily accepted that his recollection could be wrong. However, it is his recollection – independent of his diary note – that when Mr Overland told him that Ms Gobbo was a human source, it was only Mr Wilson who was present.
- 74.2 Mr Wilson's oral evidence was as follows:
- All three - you were there at that meeting when Mr Overland spoke about those matters with Mr Cornelius and Mr Masters as well?---The only thing I've said to clarify that is my certainly that's what my diary indicates, but my recollection is that Simon told me that Ms Gobbo was a human source, only I was present when he said that.*
- That's certainly not what your diary indicates at all?---No, I'm only doing my best to recollect what happened on that occasion.*¹¹⁶⁹
- ...
- There was a discussion there, I take it, about the intention to conduct a coercive hearing with Ms Gobbo?---Yes.*
- Do you say that discussion was with all four of you?---Yes.*
- You're briefed by Mr Overland about Ms Gobbo being a human source?---That's correct.*
- Do you have any recollection of those other two men leaving the room?---I don't have a recollection of them leaving the room. All I'm saying is my recollection is*

¹¹⁶⁷ Exhibit RC825 – Statement of Rodney Graham Wilson dated 19 November 2019 at [7] (VPL.0014.0094.0001).

¹¹⁶⁸ Counsel Assisting's Submissions, Volume 2 at [1976]-[1979]

¹¹⁶⁹ T10421.3-12 (Wilson).

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that when I was briefed by Simon in relation to her it was one-on-one, and I accept that my diary doesn't record it that way, it's just my recollection is that he told me separately. He may not have wanted to divulge that information, for example, to Masters so - I mean --

Might your recollection be wrong about that?—It could be.

- 74.3 Whether Mr Cornelius and Mr Masters were present when Mr Overland told Mr Wilson that Ms Gobbo was a human source has no real bearing on Mr Wilson. In spite of that, Mr Wilson considers that when considering the proposed finding at paragraph 1990 of the submissions of Counsel Assisting, the Commissioner should take into account Mr Wilson's recollection that it was a private conversation, which was his independent recollection in spite of his contemporaneous note.

75 The events leading to Ms Gobbo's withdrawal as potential witness

- 75.1 Counsel Assisting contend that it is open to the Commissioner to make certain findings about Mr Wilson, which are premised on him becoming aware that Ms Gobbo may be passing on confidential or privileged information to her SDU handlers. Properly analysed, there is no basis for such a finding because there is no evidence that Mr Wilson – or the ESD investigators that reported to him – had such knowledge.

- 75.2 What the evidence shows is:

- (a) By June 2006, Operation Khadi investigators had devised a plan that involved summoning Ms Gobbo before the OPI to give evidence.¹¹⁷⁰
- (b) On 6 June 2006, Mr Overland told Mr Wilson that Ms Gobbo was a registered human source and directed that he speak with Sandy White.¹¹⁷¹
- (c) As at 6 June 2006 – when Mr Wilson spoke to Sandy White – the SDU was concerned about the growing number of people who knew that Ms Gobbo was a human source. Sandy White told Mr Wilson that he expected that Ms Gobbo would not answer questions unless forced to by the examiner.¹¹⁷²
- (d) Mr Wilson's evidence, which was not challenged, was that he was surprised to learn that Ms Gobbo was a human source. In his statement, he said:¹¹⁷³

I was very surprised that Ms Gobbo was a human source because I knew of her connections to significant criminal figures, including Tony Mokbel, and did not think she would be cooperating with police. I was not told about the information she was providing as a human source or who that information related to. I did not ask about this because there was no need for me to know about that for my ESD investigations. I did not know about the information she was to provide. I did not make further inquiries because if I did, then I would need to be fully briefed about all the circumstances of her role, which was not part of my role at ESD. I assumed that those managing her took necessary steps to properly manage a lawyer as a human source.
- (e) Mr Wilson reiterated his surprise at learning that Ms Gobbo was a human source in his oral evidence.¹¹⁷⁴
- (f) On 9 June 2006, Ms Gobbo told the SDU officers that she had met with Mr Ahmed for dinner in Brighton prior to his arrest on 16 August 2004 and that he had \$20,000 on him, which was stolen by John Brown when Mr Ahmed was arrested some hours later.¹¹⁷⁵

¹¹⁷⁰ Counsel Assistings' Submissions, Volume 2 at [1965]

¹¹⁷¹ Counsel Assistings' Submissions, Volume 2 [1970] (

¹¹⁷² Counsel Assistings' Submissions, Volume 2 at [2002].

¹¹⁷³ Exhibit RC824– Statement of Rodney Wilson dated 19 November 2019 at [14] (VPL.0014.0094.0001 at .0003).

¹¹⁷⁴ T10424.25-T10427.6 (Wilson).

¹¹⁷⁵ Counsel Assistings' s Submissions, Volume 2 at [2004]

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- (g) On 15 June 2006, Officer Sandy White, Mr Wilson and then Detective Inspector Attrill met to discuss intelligence received from Ms Gobbo.¹¹⁷⁶ Later that day, Ms Gobbo expressed to her handlers that she was upset at the prospect of having to speak to the OPI and that she would rather go to gaol.¹¹⁷⁷
- (h) On 16 June 2006, Mr Attrill submitted an IR, which referred to the fact that Mr Ahmed was in possession of \$20,000 shortly prior to his arrest and that Mr John Brown (a pseudonym) had stolen that sum from him.¹¹⁷⁸ In his statement, Mr Attrill does not say where the information set out in the IR came from.¹¹⁷⁹ However, it appears likely that the information was disseminated to Mr Attrill by the SDU (and most likely, by Officer Sandy White during the 15 June meeting).
- (i) On 16 June 2006, Mr Wilson attended a meeting with Officer Sandy White and John Kapetanovski of the OPI about whether Ms Gobbo could be compelled to provide confidential information at an OPI hearing.¹¹⁸⁰
- (j) On 21 July 2006, Mr Wilson and Mr Attrill met with members of the OPI and told them that the ESD were going to question Ms Gobbo informally. This caused frustration and disagreement on the part of the OPI.¹¹⁸¹
- (k) On 24 July 2006, Mr Swindells and Mr Attrill met with Ms Gobbo. Based on an unidentified and incomplete document that appears to be a partial transcript of the conversation, it appears that Ms Gobbo said that she should not have told Mr Swindells and Mr Attrill certain things because *"it is privileged"*.¹¹⁸²

75.3 As best as can be discerned, the information which Counsel Assisting contend is confidential or privileged is the information about the \$20,000 that was in the possession of Mr Ahmed at the time of his arrest on 16 August 2004 that she passed on to the SDU on 9 June 2006. There are two observations that can be made about that information:

75.4 *First*, the information was quite obviously not confidential. As the submissions of Counsel Assisting say, on 4 November 2004, Ms Gobbo raised the very same allegation outside Court in a discussion with Jack Vandersteen of the OPP after she had appeared for Mr Ahmed during his bail application.¹¹⁸³ The only significant difference between this information and the information Ms Gobbo provided to the SDU in 2006 was the amount.

75.5 This information was known to police at the time Operation Khadi was commenced and is specifically referred to in the Operation Khadi Final Report.¹¹⁸⁴ Mr Wilson also referred to it in his evidence.¹¹⁸⁵

MS TITTENSOR: *Do you know [what] information you had as to Ms Gobbo's involvement at that stage in your inquiries or how you came to understand that she was relevant to your inquiries?*

MR WILSON: *I think one of the main things we had a report that she had discussed the alleged theft of money from her client with an OPP prosecutor who obviously made that information available to us. So I was aware that she had made an allegation to Mr Vandersteen that Mr Brown had stolen money from her client, or had stolen money.*

MS TITTENSOR: *Are you aware of whether you got that information by virtue of Ms Gobbo having told her handlers that that's what*

¹¹⁷⁶ Counsel Assisting's Submissions, Volume 2 at [2005].

¹¹⁷⁷ Counsel Assisting's Submissions, Volume 2 at [2006].

¹¹⁷⁸ Counsel Assisting's Submissions, Volume 2 [2008].

¹¹⁷⁹ Exhibit RC1220 – Statement of Lindsay Frank Attrill dated 14 August 2019 at [12] (VPL.0014.0049.0001 at .0002).

¹¹⁸⁰ Counsel Assisting's Submissions, Volume 2 at [2009].

¹¹⁸¹ Counsel Assisting's Submissions, Volume 2 at [2012].

¹¹⁸² Exhibit RC0253A – unidentified undated document – VPL.2000.0002.0011 at .0015.

¹¹⁸³ Counsel Assisting's Submissions, Volume 2 at [1947].

¹¹⁸⁴ Exhibit RC826 – Operation Khadi Final Report dated 23 November 2006 – VPL.0005.0147.0001.

¹¹⁸⁵ T10419.10-27 (Wilson)

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happened and that that information filtered through to the ESD? Do you know how that came about?

MR WILSON: *No, I'm not sure. I assume that Mr Vandersteen had made a complaint in relation to that allegation, not a complaint but had reported that allegation, and it filtered its way through. I'm pretty confident it didn't come via her handlers.*

75.6 *Secondly, the information does not appear to be information that would necessarily attract a claim of legal professional privilege. It is information that Ms Gobbo has shared in circumstances where her client was the victim. While it is possible to imagine a scenario where that information may be privileged, a person receiving that information would not immediately reach that conclusion.*

75.7 *It is also important to emphasise that Mr Wilson did not attend the meeting with Ms Gobbo on 24 July 2006 and that the decision to withdraw her from the investigation was made based on the briefing that Mr Wilson received from Mr Attrill and Mr Swindells.*

75.8 *Contrary to the submissions of Counsel Assisting (at [2015]), there is no evidence – at all – that Mr Attrill raised concerns about legal professional privilege with Mr Wilson. Rather, the concerns raised by Mr Attrill and the reasons why the ESD decided to withdraw Ms Gobbo from the investigation are clearly stated in the IR submitted by Mr Attrill:*¹¹⁸⁶

Swindells and I returned to the office and discussed our concerns with Detective Superintendent Wilson. I firmly believe Gobbo has genuine concerns for her safety. I am of the view that if Gobbo is required to make a statement for this investigation or appear before any hearing and this becomes public knowledge or was conveyed in any way to persons having criminal connections it will have serious consequences for her (i.e. professionally and/or will result in harm coming to her).

A decision must be reached quickly at a senior level between Victoria Police and the OPI to ensure that the issues raised in this report are discussed fully before any further approach is made to Gobbo. There are other more serious issues to consider with this witness and in the context of this investigation I do not believe the potential risks for Gobbo, warrant compelling her to make a statement or appear before any hearing to give evidence in this investigation, providing she is able to assist in an alternative way.

75.9 *Mr Wilson also refers to his evidence about (a) whether, as Superintendent at ESD, he had any concerns about the use of a lawyer as a human source and (b) what he thought he was required to do about those concerns. Mr Wilson said:*¹¹⁸⁷

MS TITTENSOR: *In the course of your investigations as an ESD officer, if you become aware of other matters which might indicate that there might be some police perhaps engaging in inappropriate behaviour or behaviour that might be beyond the bounds, do you take that up?*

MR WILSON: *Yes.*

MS TITTENSOR: *Okay. Did it occur to you in this situation that we've got a lawyer informing on people that she may well be representing?*

MR WILSON: *I didn't know who she was informing on or what she was informing about.*

MS TITTENSOR: *Did it occur to you that that may well be a risk that that was going on, given you knew that she was representing*

¹¹⁸⁶ Untendered IR dated 25 July 2006 – VPL. 0005.0147.0119.

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significant criminal figures, you knew that she was informing and being handled by the SDU?

MR WILSON: *M'mm.*

MS TITTENSOR: *Did it occur to you that that was a possibility, that there might be some concern in this area?*

MR WILSON: *It didn't occur to me that she might be informing on her clients. All I could assume is that she's informing at a high level but I didn't know the nature or about whom she was informing on. So I couldn't make a judgment in relation to that without having that further information.*

MS TITTENSOR: *Was there any concern to just check that that wasn't the situation, that the bounds had been clearly set in terms of what Victoria Police is doing having a criminal lawyer who investigates - sorry, who represents very significant criminal figures?*

MR WILSON: *Yes.*

MS TITTENSOR: *Being handled by a unit that deals with people informing on very significant criminal figures, did it occur to you that there might need to be some look into whether there are clear boundaries going on?*

MR WILSON: ***I understand your question but I think for me to make a proper judgment about whether or not that was appropriate or not appropriate would mean that I'd have to be fully briefed (a) about what information she was providing, who it was from, were they her clients, were they not her clients, et cetera, et cetera, and I don't believe that I was in any position to drill into all those details as you've just described simply because I didn't need to know, and to be fully briefed on that it puts the organisation, to some degree, at risk because they're trying to keep this information as tight as possible.***

MS TITTENSOR: *What about just asking some general questions along those lines though? I understand - as I've just said to you, "I know Ms Gobbo, I know she represents significant criminal figures, she's being handled by a Unit that deals with information about significant criminal figures, I just want to make sure that there are boundaries here", you could do it at a general level without seeking that full briefing, just to be assured at least that there were boundaries in place?*

MR WILSON: ***I don't agree. I think I'd have to know more than just generalised information. And the second part of that question is that at some stage you've got to have the trust and faith in the people that are responsible for her management and registering her have looked at all those issues that you're talking about and made the appropriate calls and decisions in relation to that. I had faith that those matters would have been considered and should have been considered without having for me to query, you know, people like Simon about those issues. And secondly, I didn't need to know that level of detail.***

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- 75.10 In light of the above matters, it is not open to the Commissioner to make the findings contended for by Counsel Assisting at paragraph [2016] because:
- (a) there is no evidence that Mr Wilson was aware that Ms Gobbo might be passing on confidential or privileged information to her SDU handlers;
 - (b) there is no evidence that Mr Attrill or Mr Swindells were concerned that Ms Gobbo might have been passing on confidential or privileged information to her SDU handlers, or police members more generally; and
 - (c) based on what Mr Wilson learned in June and July 2006, there was no reason for him to second guess the decisions made by Mr Overland or the SDU.
- 75.11 Further, it is not open to the Commissioner to make the findings contended for by Counsel Assisting at paragraph [2096] because the decision to withdraw Ms Gobbo as a potential witness was a sound one based on all of the information available to those persons responsible for making that decision. Making a finding that withdrawing Ms Gobbo as a witness represented a "loss of opportunity" would demonstrate hindsight bias by focusing on the outcome of the decision, rather than on the reasonableness of the decision and the factors taken into account in reaching it.

Adam Purton