

Not to be disseminated until LPP issues resolved (including with OPP)

## **Royal Commission**

### **into the Management of Police Informants**

#### **STATEMENT OF FINDLAY GERARD MCRAE**

##### **1 Introduction**

- 1.1 My full name is Findlay Gerard McRae. I currently hold the role of Executive Director of Legal Services with Victoria Police. Annexure A to this statement contains my curriculum vitae.
- 1.2 I make this statement in response to a request from the Royal Commission dated 1 March 2019. It is produced in response to a Notice to Produce.
- 1.3 For the purposes of preparing my witness statement, I have reviewed my relevant litigation holdings and other relevant documents relating to my involvement in matters which concerned Nicola Gobbo, including hard copy files that I have compiled. My hard copy files have been produced in full.

##### *Summary of this statement*

- 1.4 My statement is divided into eight parts, which I summarise below:
- 1.5 Parts 1 and 2 set out my professional background and explain the workings of the Victoria Police Legal Services. I have been employed by Victoria Police as Director/Executive Director of Legal Services since 2006. The Director/Executive Director position is non-operational. In my position, I have oversight of around 600 police employees and provide a general counsel type function to Victoria Police. Given the size of the organisation, it is not possible for me to have personal involvement in every legal matter involving Victoria Police.
- 1.6 As a non-operational member of Victoria Police, I am not involved in police investigations other than to facilitate legal advice. As such, I have not had any involvement in any investigation that had dealings in any way with Ms Gobbo.
- 1.7 Victoria Police has a number of internal lawyers and frequently briefs external lawyers - predominantly the Victorian Government Solicitor's Office (VGSO) - to provide advice. As I explain in Part 2 of my statement, the Victoria Police Legal Services Department has changed in the 13 years that I have been Director/Executive Director.
- 1.8 In 2011, a change was implemented to the way in which Victoria Police engages external legal services, so as to ensure that the Legal Services Department has some degree of visibility into all matters in which the VGSO is engaged.
- 1.9 Part 3 sets out my role in negotiations with Ms Gobbo about [REDACTED] in the period from June 2009 to March 2010. It was in June 2009 that I learned that Ms Gobbo had provided information or assistance to Victoria Police. However, as I set out in Part 3 of my statement, I knew only that she had

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- agreed to give evidence against Paul Dale and that she had assisted Victoria Police by wearing a recording device to record a conversation with Mr Dale.
- 1.10 At the time of my initial briefing with Assistant Commissioner Luke Cornelius – which occurred in June 2009 – I knew Ms Gobbo was a barrister. I was told that Ms Gobbo had been in an intimate relationship with Mr Dale. I also knew that the DPP required Ms Gobbo as a witness in the Dale committal. Accordingly, while I was alive to the potential for there to be an argument about admissibility on legal professional privilege grounds, it was not something that was of concern to me. Based on what I had been told, I understood that the relationship between Ms Gobbo and Mr Dale was not one of lawyer and client, and the DPP – being aware of these issues – had decided it was appropriate for her to be a witness.
- 1.11 I met Ms Gobbo on one occasion – 5 June 2009– in relation to these negotiations. This is the only personal contact that I have had with Ms Gobbo.
- 1.12 In Part 3 of my statement, I also describe how the Queensland Supreme Court decision of *R v Moli* [2009] QSC 207 impacted on negotiations with Ms Gobbo about [REDACTED]. In light of advice obtained from counsel and the DPP, I formed the view that Victoria Police could not progress discussions with Ms Gobbo about compensation for loss of income until after she had given evidence.
- 1.13 **Part 4** sets out my role in the Victoria Police response to the civil proceedings commenced by Ms Gobbo on 29 April 2010. Consistent with the usual practice within Victoria Police, the Superintendent in charge of civil litigation had personal carriage of the civil litigation. Due to the public interest in the matter, along with existing concerns as to Ms Gobbo's safety and the fact that I had some personal knowledge of the events that led to the litigation (through my role in the [REDACTED] negotiations), I played a greater role in Victoria Police's response to the civil litigation than would normally be the case.
- 1.14 In or around May 2010, I learned that Ms Gobbo had been a registered police human source and that she had also provided information or assistance to Victoria Police in the context of the Petra, Briars and Purana Taskforces. The civil litigation team investigated these matters further in the context of preparations for mediation. However, I was not informed of the true level of information and assistance that Ms Gobbo had provided to Victoria Police.
- 1.15 While there is no question that I thought it extraordinary that a practising barrister would be registered as a human source, I would never have imagined that she would provide information about her own clients. It is simply not something that I contemplated in the context of the civil litigation.
- 1.16 On 12 August 2010, the civil litigation settled at mediation. I did not attend.
- 1.17 **Part 5** of my statement sets out interactions between Victoria Police and the Commonwealth Director of Public Prosecutions in connection with ACC charges that were laid against Mr Dale in the period from January to November 2011. It was at the end of this period that I learned that the assistance that Ms Gobbo provided to Victoria Police went back as far as March 2006 and that

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there may be some matters that require disclosure to potentially affected persons.

- 1.18 **Part 6** sets out my role in the commissioning of the Comrie Review and the initial steps taken by Victoria Police to make disclosure of matters related to Ms Gobbo to the Director of Public Prosecutions. I nominated Superintendent Stephen Gleeson to assist Neil Comrie AO APM in the preparation of his report. It was Superintendent Gleeson who first reported to me the extent of the SDU holdings in relation to Ms Gobbo.
- 1.19 In Part 6, I also set out the circumstances surrounding a meeting that Acting Assistant Commissioner Doug Fryer and I attended with the DPP on 1 June 2012 in which we discussed, amongst other things, Ms Gobbo's history of providing information to Victoria Police. During this meeting, I was told by the DPP that a potential conflict of interest involving Ms Gobbo had been raised in the trial of Zlate Cvetanovski. The Cvetanovski trial had taken place around a year earlier. In the six months after this meeting, I attended numerous meetings with the DPP.
- 1.20 The Comrie Review was completed on 30 July 2012. After it was completed, I attended a number of meetings, including meetings with the Director of Legal Services of the OPI and with the DPP. The DPP's position was that he would await the outcome of Victoria Police's review of its intelligence holdings – which was being conducted in line with the recommendations of the Comrie Review – before considering whether to make disclosure.
- 1.21 **Part 7** of my statement sets out my role in Operation Loricated and Operation Bendigo.
- 1.22 Operation Loricated commenced in January 2013 in response to recommendation 1 of the Comrie Review, and involved a reconstruction of the full interpose file in relation to Human Source 3838. It was a significant undertaking. During the course of Operation Loricated, a number of potential legal issues were identified and were reported to me, however, the form in which they were reported was incomprehensible. After receiving advice from the VGSO, an investigation group was set up within Operation Bendigo to prepare five case studies involving potential legal conflict.
- 1.23 Operation Bendigo commenced in April 2014 in response to threats made to Ms Gobbo as a result of increased media reporting. The threats were credible and were extremely serious. Throughout this period, Ms Gobbo's safety remained Victoria Police's number one concern.
- 1.24 The case studies were completed by mid-2014. As I explain in part 7 of my statement, once the case studies were completed, I had formed the view that the material in the Operation Loricated database needed to be reviewed in order to determine whether the DPP had a duty to disclose to potentially affected persons. I continued to meet with the DPP to update him on the case studies that were being prepared. The DPP did not request access. I made a number of attempts to refer the case studies to IBAC but it declined to accept them.

*BETWEEN SEPTEMBER AND NOVEMBER 2014*  
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- 1.25 **Part 8** sets out the Victoria Police response to the recommendations made in the Kellam Report, which was received by Victoria Police on 6 February 2015. In accordance with the recommendations, Victoria Police provided a copy to the DPP on 12 February 2015. The initial response from the DPP was to the effect that he would take no further steps in relation to the matter other than an internal review. However, in August 2015, I attended a meeting with the DPP in which I was told that he was providing the Kellam report to senior counsel for independent review.
- 1.26 **Part 9** sets out the events that led to the *AB v CD* proceeding being commenced.
- 1.27 On 3 February 2016, I attended a meeting with the DPP in which I was told that the DPP intended to make disclosure of the content of the Kellam report to potentially affected persons. The Victoria Police position was that disclosure should not take place in this form because by doing so, it was inevitable that the identity of Ms Gobbo would be revealed, which would have potentially catastrophic consequences for the safety of her and her family.
- 1.28 The Victoria Police position was that the DPP should review the whole of the Project Loricated database in order to determine whether there had been any miscarriage of justice before making a decision whether to disclose.
- 1.29 This was a complicated issue. On the one hand, the State (through Victoria Police) had a duty to protect the safety of Ms Gobbo, who had acted as a human source. On the other hand, the State (through the DPP) had an ongoing duty of disclosure. Ultimately, Victoria Police and the DPP determined that the only way to resolve the conflict between these two duties was to seek declarations from the Court.

## 2 Victoria Police Legal Services Department

- 2.1 I joined Victoria Police in April 2006 as Director of Legal Services.
- 2.2 As Director of Legal Services, I reported to the Chief Commissioner and had responsibility for the oversight of approximately 200 staff members, comprising:
- (a) a small civil litigation team;
  - (b) a team responsible for Victoria Police's response to FOI and privacy requests; and
  - (c) the metropolitan criminal prosecutions branch (metropolitan prosecutions comprising 80% of the volume of the summary prosecutions for the whole State).
- 2.3 The criminal prosecution branch is responsible for the prosecution of summary offences and indictable offences triable summarily only. Unlike some other States, Victoria Police Prosecutors have responsibility for the prosecution of summary offences only. In Victoria, the OPP has responsibility for all committal proceedings.
- 2.4 When I started at Victoria Police, I was the only permanent lawyer in the Legal Services Department. I was aware that there were usually seven lawyers

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embedded in the Crime Department dealing predominantly with Major Fraud investigations. In order to centralise the delivery of legal services, I set up legal teams and endeavoured to bring all lawyers into the Legal Services Department.

- 2.5 Victoria Police has access to lawyers employed by the VGSO. The Legal Services Department has an arrangement with the VGSO pursuant to which 10-12 lawyers employed by the VGSO work exclusively on Victoria Police matters, including almost all public interest immunity matters and on matters involving the use of coercive powers. The manner in which Victoria Police engages external lawyers (including the VGSO) has changed in the time that I have been employed by Victoria Police, as set out in paragraphs 2.17 to 2.21 below.
- 2.6 In the first few years I was employed by Victoria Police, I focused on the recruitment of additional sworn prosecutors to ensure that summary prosecutions were adequately resourced.
- 2.7 From about 2010, I expanded the role of the Legal Services Department through numerous business cases, and recruited lawyers to support new initiatives including the establishment of the drug court, hoon driving reforms, automatic numberplate recognition reforms, the establishment of a specialist children's court, the establishment of a counterterrorism legal unit, the establishment of a night court and the establishment of a specialist family violence team, which we initially called the civil advocates. Victoria Police now has 123 lawyers in the Legal Services Department with practising certificates.
- 2.8 I also encouraged sworn prosecutors to study law and to obtain legal qualifications. As at today, there are approximately 80 sworn prosecutors who either have legal qualifications or who are studying law.
- 2.9 In 2010, given the increase in size to the Legal Services Department and my additional responsibilities, my title changed to Executive Director of Legal Services. As Executive Director of Legal Services, I am now responsible for managing Victoria Police's Legal Services Department which encompass Prosecutions, Civil Litigation and Legal Advisory. There are a number of units and divisions that now report to me, including:
- (a) the State-wide prosecutions division, including the specialist children's and coronial court units;
  - (b) the Legal and Prosecutions Specialist Branch, which includes:
    - (i) the Prosecutions Frontline Support Unit;
    - (ii) liquor licencing
    - (iii) research and training
    - (iv) subpoena management unit
    - (v) the Senior Advocacy Unit;

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- (vi) higher court advocacy unit (which includes Supreme Court bail reviews)
  - (c) the civil litigation division, which includes employment law, licencing, admin law, and counter terrorism units);
  - (d) the Legal Business Operations Division, which includes HR, Finance and special projects, including e-brief); and
  - (e) the Legal Practice division, which includes
    - (i) Discipline Inquiry Office;
    - (ii) Counterterrorism;
    - (iii) Crime Lawyers Group;
    - (iv) Chief Examiner's Legal Office; and
    - (v) Taskforce Landow; and
  - (f) the Civil Law Division, which comprises the civil & compliance branch.
- 2.10 **Annexure C** to this statement contains an organisational chart for the Legal Services Department.
- 2.11 As a departmental head, I am a member of Police Command. Part of my role could be described as a general counsel type function. By this I mean that I am the most senior legal officer advising the Chief Commissioner on legal issues across all areas of Victoria Police.
- 2.12 Since 2011, I have had two distinct reporting lines. I report to the Chief Commissioner on legal issues as general counsel and the Deputy Commissioner, Specialist Operations on departmental issues (for example, HR, Finance and Planning). I regularly meet with the Chief Commissioner.
- 2.13 Given my role at Victoria Police, the nature of my involvement in any Victoria Police investigation differs from that of a sworn officer. I am not and have not been a member of any investigation team or task force. From time to time, I have sat on steering committees as a legal advisor to facilitate the provision of legal advice to the steering committee, as needed.
- 2.14 Since I started at Victoria Police, the number of staff I am responsible for has increased to approximately 600 staff members, both sworn and unsworn.

*Victoria Police and the OPP/DPP*

- 2.15 In Victoria, the Police Prosecution Service provides legal services for all matters dealt with summarily, whereas the DPP has responsibility for all indictable cases from the filing hearing in the Magistrates Court, through committal, trial and appeal. This division has existed since the early 1980s. As a result of this division, the Legal Services Department has very little (if any) visibility of indictable proceedings dealt with by the OPP. In my observation, investigators in indictable cases have close working relationships with the OPP and take advice and direction on legal issues associated with an indictable case once it is before the court from the OPP or the Crown Prosecutor.

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*Changes in the Legal Services Department**since 2006*

- 2.16 I set out below the key changes to the manner in which the Legal Services Department operates that are relevant to the Royal Commission:

External legal advice

- 2.17 Since I started at Victoria Police, the policies pursuant to which VGSO is engaged have changed in order to ensure that the Legal Services Department has better visibility of the matters in which the VGSO has been engaged.
- 2.18 Generally, the VGSO would be engaged in a criminal matter when a subpoena to the Chief Commissioner was served or when a PII issue arose in any other way. Instructions to the VGSO would be provided by the relevant investigator. If it was necessary to brief counsel, then the cost of that engagement would be borne by the relevant department budget, not the Legal Services Department. The Legal Services Department would have no visibility of such matters.
- 2.19 In around 2011, the Victoria Police Manual was updated to require that the Legal Services Department be involved where the VGSO (or another firm of solicitors) is engaged to provide legal advice.
- 2.20 Given the size of Victoria Police and the number of legal matters in which Victoria Police is involved, it is not possible for me to have personal knowledge of all matters in which Victoria Police has engaged external lawyers. However, I do attempt to be involved in significant matters and staff within the Legal Services Department keep me apprised of important matters.
- 2.21 Investigators still go to the police branch of VGSO for advice and representation in relation to PII and subpoena issues through my staff officer or the subpoena management unit.

Summary crime

- 2.22 Shortly after I started at Victoria Police, it became clear to me that the manner in which Victoria Police made disclosure required improvement in the summary stream. This was not a problem unique to Victoria Police. I identified a number of issues.
- 2.23 *First*, the manner in which Victoria Police recorded information was inadequate. There was no easily searchable repository of information, which meant that only those officers who had involvement in an investigation were aware of what information was held by Victoria Police. This created problems when files were handed over (for example, if an officer went on leave).
- 2.24 *Secondly*, disclosure was taking too long. There was a backlog of cases and on average, it was taking six months to prepare a brief for authorisation. It was my view that there existed a process issue, which required the preparation of full briefs for every matter, even if this wasn't necessarily required in a given case.

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- 2.25 *Thirdly*, disclosure was heavily dependent on the specific informant. In part, this related to the first issue that I had identified. But there was also an inconsistency in approach amongst informants, which I regarded as an area which could be improved.
- 2.26 From 2008-2010, the Legal Services Department participated in the Summary Crime Steering Committee, chaired by the Chief Magistrate. The purpose of the committee was to facilitate new arrangements for early disclosure and resolution of summary matters provided for in the *Criminal Procedure Act 2009*. Earlier, the Legal Services Department had embarked on a joint project with Victoria Legal Aid, DOJ and the Courts to implement a regime of progressive disclosure (preliminary brief), with the view to settling most matters at an early case conference. The procedure included service of the brief with the charges, standard forms for remand briefs, and eventually an electronic brief storage capacity to enable delivery of an electronic brief. Early disclosure was considered to be essential to enable negotiations between the parties to commence at the earliest possible time.
- 2.27 In May 2009, the Legal Services Department proposed that Victoria Police implement and rollout "Brief and Investigation Support Centres (BISC)" throughout the State. The proposal included the establishment of 72 Sergeant positions to assist with brief preparation, quality of the brief and disclosure matters. The BISC was to be an independent authorisation service separate from the investigators. The BISC was approved by the Executive of Victoria Police, however, due to insufficient resources at Sergeant level, Victoria Police rolled out the Prosecution Frontline Service Unit (with 18 Sergeants), which performs an advisory service. I continue to support the BISC model to ensure the quality and accountability of disclosure.
- 2.28 In 2014, the Legal Services Department implemented a "fast track" approach for family violence matters in the Magistrates' Court after a trial at Dandenong Magistrates' Court. Disclosure in these matters has specified time frames in order to ensure that these matters make it to Court as quickly as possible.

Development of the Legal Services Department

- 2.29 Over time, I have sought to improve the capability of the Legal Services Department by bringing lawyers in house. Victoria Police now has in house lawyers to provide for general counsel type matters such as employment, commercial, licencing, administrative law, counter terrorism, family law, children's court, civil litigation, coronial and advocacy in the higher courts. In terms of size, Victoria Police would have one of the largest teams of in house lawyers of any government department or Australian police force.
- 2.30 In 2015, the Crime Command, Office of Chief Examiner and Licencing Lawyers were brought into the Legal Services Department. This was primarily to ensure independence from the investigators and as a result of this change, all lawyers within Victoria Police now ultimately report to the position of Executive Director, Legal.

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- 2.31 By increasing the internal legal capability of Victoria Police, I have not sought to replicate the skillset offered by the VGSO. Rather, I have attempted to ensure that Victoria Police has specialist portfolio responsibility led by senior lawyers in each team and that all lawyers within Victoria Police are properly supported.
- 3 [REDACTED] (June 2009 to March 2010)
- 3.1 The first discussions that I can recall in which I was told that Ms Gobbo had provided information or assistance to Victoria Police occurred in early June 2009 between AC Cornelius and myself.
- 3.2 AC Cornelius first approached me about Ms Gobbo in a conversation that took place on the airbridge at the Victoria Police Centre, although he did not mention her by name. As we walked across the airbridge, AC Cornelius said to me that, "I need to speak with you about one of your own" but nothing further.
- 3.3 Shortly after that initial discussion, I attended a meeting with AC Cornelius, Commander Jim Hart and Superintendent Geoff Alway [REDACTED]. During the meeting, AC Cornelius told me that Ms Gobbo was to be a Crown witness in the prosecution of Mr Dale and that since February 2009, Victoria Police and Ms Gobbo had been in discussions about her ongoing protection. I recall from this discussion that AC Cornelius had serious concerns about Ms Gobbo's safety. Victoria Police wanted her to enter into witness protection but she was reluctant to do so. AC Cornelius requested that I assist [REDACTED].
- 3.4 Prior to this meeting, I was aware of Ms Gobbo as a defence barrister who had acted for a number of high profile criminals. However, until this discussion I did not know that she had provided information or assistance to Victoria Police or indeed had any relationship with the organisation.
- 3.5 I recall that during this meeting, AC Cornelius gave me an overview of the evidence that Ms Gobbo was to give and told me that she had been wearing a recording device to record a conversation between Mr Dale and her. At the time, I thought that it was incredibly brave of her to have done so. I considered that the risks to her safety were obvious.
- 3.6 I do not recall asking AC Cornelius for any further details about Ms Gobbo's evidence or the circumstances in which she agreed to assist Victoria Police in this prosecution. I did not do so because I had been told that she was a witness required by the Crown. The fact that the OPP required her to give evidence gave me comfort that it was appropriate for her to be a witness and that issues such as whether her evidence was admissible had been properly considered.
- 3.7 During my initial discussions with AC Cornelius, I was also told that the VGSO had been engaged to provide assistance in relation to the negotiations with Ms Gobbo. As the VGSO had been engaged directly by the Crime Department (in accordance with the processes in place at the time, as I describe in paragraphs

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2.17 to 2.21, above), I do not believe that anyone in the Legal Services Department was aware that this advice had been sought.

- 3.8 At this point in time, my knowledge of the information or assistance that Ms Gobbo had provided to Victoria Police was limited to what I was told in this meeting.
- 3.9 On 3 June 2009, I attended a meeting with Isabel Parsons (Special Counsel within the Commercial and Property Branch of the VGSO), David Ryan (Managing Principal Solicitor, VGSO), Detective Inspector Steven Smith, Superintendent Alway, and Superintendent Rod Wilson (Ethical Standards Department). The purpose of this meeting was to discuss Ms Gobbo's [REDACTED] in anticipation of a meeting that Superintendent Wilson and I were to attend with her. I made a file note of this meeting.<sup>1</sup>
- 3.10 On 4 June 2009, I received an email from Mr Ryan which set out some background to the negotiations to date with Ms Gobbo and attached a summary of issues to be resolved.<sup>2</sup>
- 3.11 On 5 June 2009, Superintendent Wilson and I met with Ms Gobbo to discuss her [REDACTED] the [REDACTED]. From memory, the meeting lasted for around an hour. My recollection is that Ms Gobbo spoke for a large part of the meeting. She was philosophical and spoke of the impact that the decision to give evidence had on her life. For example she told us about an occasion where she had collapsed, unconscious and was found by a criminal associate.
- 3.12 Ms Gobbo mentioned the names of some of her criminal associates, however, I do not now recall the names of the associates that she mentioned. I also have a specific recollection of her saying that she had never breached client legal privilege, however, this was not something that was discussed in detail. Nor was there any discussion of the evidence that she was to give in the Dale committal.
- 3.13 Ms Gobbo discussed her poor health, including her previous stroke and the fact that she was currently taking a lot of medication due to ongoing health issues. As she spoke, Superintendent Wilson would reassure her and encourage her to continue. After a period of time, Ms Gobbo got to the point where she started to discuss the things that she would require [REDACTED]. As she spoke, I was thinking of the kinds of things that would go into [REDACTED]. I took some notes of what she said,<sup>3</sup> which I have set out in full, below:

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<sup>1</sup> VPL.0005.0003.3482

<sup>2</sup> VPL.0005.0003.3472; VPL.0005.0003.3488; VPL.0005.0003.3476.

<sup>3</sup> VPL.0005.0003.3473

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[REDACTED]

[REDACTED]

(3) [REDACTED]

(4) [REDACTED]

(5) [REDACTED]

(6) [REDACTED]

3.14 I recall leaving the meeting with the impression that Ms Gobbo would agree to [REDACTED]

3.15 I am aware that following this meeting, discussions continued in relation to Ms Gobbo's [REDACTED]. For example, my records include a file [REDACTED]

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note dated 9 July 2009 which appears to relate to Ms Gobbo's [REDACTED]  
[REDACTED] I have no independent recollection of this file note.

*Advice in connection with Briars Taskforce*

- 3.16 In June and July 2009, I received a number of emails from AC Cornelius about Taskforce Briars and a subpoena that had been served by Tony Mokbel.<sup>5</sup> As AC Cornelius had previously been the head of the Legal Services Department, it was his practice to seek my permission to engage counsel, but he was the exception rather than the rule.
- 3.17 I observe that some of these emails refer to "3838". At this time, I did not know that Ms Gobbo had been a registered human source or that she had been designated as registered human source 3838.

*Request for advice from Mr Hanks QC*

- 3.18 In July 2009, the VGSO briefed Peter Hanks QC to advise on a series of questions relating to the basis on which the Chief Commissioner of Police can pay financial assistance to witnesses [REDACTED]  
[REDACTED] The advice was sought by [REDACTED] of the [REDACTED] not the Legal Services Department. However, I was aware the advice had been sought.
- 3.19 On 5 August 2009, I was copied to an email from Ms Parsons of the VGSO that attached a copy of Mr Hanks QC's advice.<sup>6</sup>
- 3.20 On the same day, I met with Superintendent Alway, AC Cornelius and Commander Hart to discuss the advice. I made a file note of what was discussed,<sup>7</sup> which I have set out in full below:

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<sup>4</sup> VPL.0005.0003.3459

<sup>5</sup> VPL.6023.0165.4530.

<sup>6</sup> VPL.0005.0003.3412;

<sup>7</sup> VPL.0005.0003.3412

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5/8/09 H.C. G.A. J.H.

considering

⇒ witness is a same with

⇒ [REDACTED]

⇒ witness does not agree that security was assets.

⇒ Continuation of [REDACTED]

⇒ [REDACTED]

⇒ [REDACTED]

⇒ [REDACTED] for legal advice on potential litigation.

93rd 998, - option of all having

Other comments

- ① [REDACTED]
- ② [REDACTED]
- ③ [REDACTED] to be drafted.
- ④ legal advice on [REDACTED] without [REDACTED]
- ⑤ 998 meeting → legal services → arrange.  
→ Michelle Willis

3.21 As I had not been personally involved in discussions with Ms Gobbo since early June 2009, I did not have personal knowledge of the matters discussed at the meeting.

Further negotiations with Ms Gobbo in relation to [REDACTED]

3.22 Throughout the latter half of 2009, negotiations continued between Victoria Police and Ms Gobbo. While I was not involved in those negotiations, I was generally aware that they were not going well and that the relationship with Ms Gobbo continued to deteriorate.

3.23 On 9 September 2009, I attended a meeting with DI Smith, AC Cornelius, Ms Parsons and Mr Ryan in relation to a letter received from Ms Gobbo dated 7 September 2009, in which she threatened to commence proceedings against Victoria Police.<sup>6</sup> Ms Gobbo's letter was sent in response to a letter dated 4 June 2009 and a letter dated 26 August 2009, which implored Ms Gobbo to [REDACTED] and stated that the [REDACTED] Ms

<sup>6</sup> VPL 0002.0001.1508

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Gobbo and others. I made a file note of this meeting,<sup>9</sup> which attached copies of the 7 September letter, [REDACTED] and the 26 August letter.

- 3.24 The version of the 7 September letter that is attached to my file note includes handwritten notes that I made as I read it. Looking at those annotations for the purpose of preparing this statement, I believe that I scanned this letter and that I did not read it word for word. My annotations are consistent with my recollection that as I reviewed the letter, I was trying to understand why Ms Gobbo was threatening to sue Victoria Police.
- 3.25 In reviewing this letter for the purpose of this statement, I observe that in paragraph 11, Ms Gobbo referred to "*the previous unprecedented assistance (2005 – 2009)*" which she provided to Victoria Police. I do not believe that I read this paragraph at the time I reviewed the letter, nor do I believe that the extent of Ms Gobbo's assistance was a matter that was discussed during the 9 September 2009 meeting. If I did read that paragraph at the time I first received the letter, then I did not ascribe any significance to it, as it is not notated. At this time, I still understood that the assistance that Ms Gobbo had provided to Victoria Police was limited to her role as a witness in the Dale committal. I had also been told that Ms Gobbo had a tendency to exaggerate and so I expect that I would not have paid much attention to the detail of her account save to the extent that it was directly relevant to the question of what cause of action she might pursue.
- 3.26 At the 9 September 2009 meeting, it was agreed that VGSO would prepare a response to Ms Gobbo's letter. A response was prepared and was hand delivered on 14 September 2009.<sup>10</sup>
- 3.27 In the period from September to December 2009, discussions continued with Ms Gobbo and her legal representatives. Further correspondence was also exchanged, including a letter from Ms Gobbo to Chief Commissioner Overland dated 28 September 2009.<sup>11</sup> I did not attend any further meetings with Ms Gobbo in this period, but was forwarded or was copied to email correspondence from time to time. I also met with AC Cornelius on a number of occasions in this period.
- 3.28 While I had no direct involvement in discussions with Ms Gobbo, my recollection is that I was perplexed by the threat of legal action. From the material I had been provided with, I could not identify a cause of action. In none of the discussions I had with AC Cornelius and others since I was first informed that Ms Gobbo was to be a witness had anything been raised which would have suggested to me that Victoria Police may have had any liability to Ms Gobbo at all.

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<sup>9</sup> VPL.0005.0003.3385

<sup>10</sup> VPL.0005.0003.0866

<sup>11</sup> VPL.0002.0001.1397

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*R v Moti [2009] QSC 207*

- 3.29 In December 2009, the VGSO engaged Danny Masel to advise on the appropriate approach to calculating Ms Gobbo's potential loss of earnings in order to assess the structure of any financial assistance to be provided to her as a witness. It was intended that this information would be used to calculate an appropriate payment to a witness (Gobbo) [REDACTED]
- 3.30 On 16 December 2009, Mr Ryan provided me with a copy of *R v Moti* [2009] QSC 207, a Queensland Supreme Court decision in connection with former Solomon Islands attorney-general Julian Moti, which had been brought to Mr Ryan's attention by Mr Masel.<sup>12</sup> In that case, Justice Mullins granted a permanent stay of charges against Mr Moti on the basis that AFP payments to the alleged victim's family, who would have been witnesses at the trial, had brought the administration of justice into disrepute. Mr Ryan alerted me to the potential similarities between this matter and the quantum of the payment proposed to be made to Ms Gobbo [REDACTED]
- 3.31 The decision in *Moti* was of concern to me. I wanted to make sure that the Chief Commissioner and AC Cornelius were aware of the decision and its ramifications. Its relevance extended beyond the contemplated arrangements with Ms Gobbo because another witness in the Dale committal – Carl Williams – had also received benefits that I considered may be impermissible in light of *Moti*.
- 3.32 By this time, Ms Gobbo was threatening to commence legal proceedings against Victoria Police imminently.
- 3.33 On 21 December 2009, Mr Ryan sent a letter to Mark Waters of Piper Alderman (who was acting for Ms Gobbo), which invited Mr Waters to attend a meeting at Victoria Police with AC Cornelius, Ms Parsons and me to attempt to reach agreement on outstanding issues.<sup>13</sup> It was agreed that a meeting would occur at Piper Alderman on 4 January 2010.
- 3.34 On 23 December 2009, I telephoned Jeremy Rapke QC, who was then Director of Public Prosecutions (DPP). I outlined my concerns about the quantum of the proposed payment to Ms Gobbo, noting the decision in *R v Moti*, and informed him that Piper Alderman may be issuing proceedings on behalf of Ms Gobbo. I took a file note of this discussion.<sup>14</sup> We also discussed the need for a suppression order and/or the need to ensure that the file was closed by the Prothonotary in the event that proceedings were commenced.<sup>15</sup>

<sup>12</sup> VPL.0005.0003.6728

<sup>13</sup> VPL.0005.0003.6719.

<sup>14</sup> VPL.0005.0003.6708

<sup>15</sup> VPL.0005.0003.6708

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The DPP said that he would consider the impact of *Moti* on the proceeding and would get back to me.

- 3.35 After the discussion, I arranged for a letter to be hand delivered to the DPP, which set out the assistance Victoria Police had been providing to Ms Gobbo since February 2009,<sup>16</sup> enclosing copies of:
- (a) a memorandum of agreement prepared by or on behalf of Ms Gobbo (which was intended to be a [REDACTED] the [REDACTED])
  - (b) a copy of an memorandum of agreement prepared by the VGSO on a without prejudice basis; and
  - (c) a copy of the decision in *R v Moti*.
- 3.36 The reason that I provided the DPP with these documents was so that he could consider the current (and proposed) arrangement in the context of the upcoming committal of Dale. I wanted to ensure that the DPP was fully appraised of this issue so that he could consider if what was being contemplated would adversely affect the committal.
- 3.37 On 24 December 2009, I participated in a teleconference with Peter Hanks QC, Mr Masel, Mr Ryan, Ms Parsons, Georgette Apostolopoulos and Acting Inspector Shane O'Connell in which Peter Hanks QC and Mr Masel gave advice about proposed payments to a witness in light of the decision in *R v Moti*. The advice was recorded in a file note prepared by Ms Parsons, which was sent to me by email on 3 January 2010.<sup>17</sup>
- 3.38 On 31 December 2009, the VGSO sent a letter to Mr Waters replying to Ms Gobbo's proposed terms of the Agreement to assist with the without prejudice meeting that was scheduled for 4 January 2010.<sup>18</sup>
- 3.39 Prior to the without prejudice meeting with Ms Gobbo, I had a discussion with the DPP in relation to the proposed terms upon which Ms Gobbo would [REDACTED] [REDACTED] act as a Crown witness and the amount of any financial assistance to be paid to her.
- 3.40 In light of the decision in *R v Moti*, it was my view that Victoria Police could not agree to provide Ms Gobbo with what she sought. During my discussion with the DPP, he made it clear that he agreed with my view. The DPP said to me words to the effect that it was appropriate to maintain reasonable support for Ms Gobbo and to continue to offer her the opportunity of a [REDACTED] [REDACTED] but that Victoria Police should cease negotiating with Ms Gobbo about financial arrangements until after the committal and that in the short term, subsistence payments only should be made. The DPP told me that it was important to provide this support so that

<sup>16</sup> VPL.0005.0003.6634.

<sup>17</sup> VPL.0005.0003.6613.

<sup>18</sup> VPL.6023.0028.9724

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she was able to give evidence. I told the DPP that I would inform Ms Gobbo's representatives of this position at the without prejudice meeting.

- 3.41 On 4 January 2010, Ms Parsons and I attended a without prejudice meeting with Mr Waters and Ms Catherine Gobbo to discuss Ms Gobbo's evidence and to [REDACTED] Ms Parsons made a file note of the meeting, which she emailed to me at 6.30pm on 4 January 2010.<sup>19</sup> In the meeting, I conveyed the DPP's position and advised that while Ms Gobbo was a witness, we would not progress discussions regarding financial compensation for Ms Gobbo's loss of income. I also said that Victoria Police would provide a retainer and continue to provide security arrangements to protect her safety.
- 3.42 Mr Waters and Catherine Gobbo were unhappy with this position. I invited them to contact the DPP and discuss it directly with him, which they did.
- 3.43 On 5 January 2010 I received an email from the DPP advising that he was meeting with Mr Waters and Catherine Gobbo on Monday afternoon and that Mr Waters had advised that he did not want me to attend. The DPP stated he would update me about the outcome of the meeting.<sup>20</sup>
- 3.44 While I thought that the circumstances were extraordinary, I was dealing with Ms Gobbo on the basis that she was to be a witness. I was dealing with issues surrounding her capacity to give evidence. At this time, I understood that she was required as a witness. I had made the DPP aware that she was being paid, the scope of assistance provided to her and by her (as set out in the document). In this context, the DPP indicated that Ms Gobbo was a required witness.
- 3.45 On 5 January 2010, I instructed the VGSO to write to the Prothonotary of the Supreme Court of Victoria to request that the Prothonotary exercise his discretion to order that any documents filed by Ms Gobbo not be inspected or obtained by any person other than the parties or their lawyers without the leave of the Court or notice to the parties.<sup>21</sup> I instructed the VGSO to send this letter because I had been advised that Ms Gobbo intended to commence proceedings on that day and I was concerned about the impact that publicity of the proceeding may have on her safety.
- 3.46 On 18 January 2010, the VGSO received another letter from Piper Alderman in relation to Ms Gobbo, which was forwarded to me by email at 6.09 pm on 18 January 2010.<sup>22</sup>

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<sup>19</sup> VPL.0005.0003.6497

<sup>20</sup> VPL.6023.0028.2504

<sup>21</sup> VPL.0005.0191.0017

<sup>22</sup> VPL.0005.0003.6446; VPL.0005.0003.6448

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- 3.47 I have reviewed notes taken by AC Cornelius of meetings that I attended on 20 January 2010 and 22 January 2010.<sup>23</sup> Having reviewed those notes, I recall that:
- (a) On 20 January 2010, AC Cornelius and I met with the DPP to update him on the letter received from Piper Alderman. The DPP reiterated his concerns about making payments to Ms Gobbo in light of the decision in *Moti*. During this meeting, I raised for the first time that a similar issue existed with Carl Williams – who was also a witness for the Dale committal – because Victoria Police was paying school fees for his daughter. The DPP agreed that this also clearly raised the *Moti* question.
- (b) On 22 January 2010, I attended a meeting with AC Cornelius, AC Ashton, DI Smith, Paul Jevtovic (OPI) and Dannye Moloney in which it was agreed that in light of *Moti*, Victoria Police would no longer provide assistance to Carl Williams.
- 3.48 On 27 January 2010, Dale served a subpoena on the Chief Commissioner, requiring production of documents concerning Ms Gobbo and any agreement with Victoria Police to provide inducements to her to give evidence. I received an email from Mr Ryan of VGSO about the subpoena.<sup>24</sup> The email said

It is our view and counsel's view (consistent with the *Moti* decision) that the scope of the Subpoena requires the CCP to produce documents which record what payments have been made to F to date (ie living expenses, accommodation, transport and medicals). We confirm your instructions to Ron Gipp to disclose to the defence in general terms that subsistence payments have been made to F and a rough estimate of these payments (based upon the spreadsheet provided by ██████████). Further, we consider that the financial details contained in any concluded agreement reached with F would also be required to be produced.

It is our view and the view of counsel that all documents in the CCP's possession relating to without prejudice negotiations conducted with a view to reaching an agreement with F concerning ██████████ and assistance to be provided (eg draft agreements ██████████ and F's responses to these documents including the response containing the exorbitant figure) do not strictly come within the scope of the Subpoena. However, we consider that the existence of these documents are likely to come to the defence's attention during the committal in the course of the cross-examination of F. In our view, the DPP should be requested by you (when you meet with him next week) to consider whether it would be appropriate for him to disclose to the defence the existence of these documents as it may be that he considers in incumbent upon him to do so consistent with the prosecution's duty of disclosure. In the event that the DPP decided to disclose the existence of

<sup>23</sup> VPL.0005.0012.3029; VPL.0005.0012.2981.

<sup>24</sup> VPL.0005.0003.6391

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these documents, then we are of the view that the CCP ought to claim that they ought not be produced to the Court on the ground of Public Interest Immunity. We have not yet clearly articulated the basis of the claim at this stage but it would relate to the public interest in maintaining the integrity of the administration of justice through the prosecution of crime and obtaining and ensuring witness co-operation. An affidavit would need to be sworn on behalf of the CCP in support of the PII claim.

- 3.49 As I have said above, the financial arrangements with Ms Gobbo were not the only such arrangements with which I had concerns, in light of the *R v Moti* decision. Similar arrangements existed with Carl and George Williams. In light of the decision and the advice received from the DPP, I took steps to unwind those arrangements. For example, on 2 February 2010, I sent a letter, to Rob Stary in relation to his client George Williams which stated that in light of the decision in *R v Moti*, we could no longer provide assistance that had previously been agreed on the basis that those arrangements were an abuse of process.<sup>25</sup> This is the letter that was discussed in the 22 January meeting, which I refer to in paragraph 3.47, above.
- 3.50 In the period from February to April 2010, the VGSO and Piper Alderman continued to exchange correspondence. I was provided with copies of the correspondence and continued to stay apprised of the matter, however, I did not have the same level of involvement that I had in the period from December 2009 to the end of January 2010.
- 3.51 On 26 February 2010, the VGSO received a letter from Piper Alderman, advising Ms Gobbo was no longer interested [REDACTED] and requiring that Victoria Police provide her with the compensation that was promised to her.<sup>26</sup> As a result of that letter, AC Cornelius sent an email to the DPP, requesting an urgent meeting, due to concerns that Ms Gobbo's demands may impact on her credit as a witness in the Dale committal.<sup>27</sup>
- 3.52 On 1 March 2010, the VGSO wrote to Piper Alderman to confirm that members of the Petra taskforce would make no further direct contact with Ms Gobbo unless it is necessary to ensure her safety.<sup>28</sup>
- 3.53 Dale's committal commenced on 10 March 2010.
- 3.54 On 19 April 2010, Carl Williams was murdered. The murder of Williams ultimately led to charges against Dale being withdrawn.

<sup>25</sup> VPL.0005.0191.0028

<sup>26</sup> VPL.0005.0003.1000; VPL.0005.0003.1014

<sup>27</sup> VPL.6023.0069.2388

<sup>28</sup> VPL.6077.0014.9492

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#### **4 Civil proceedings (April 2010 to August 2010)**

- 4.1 On 29 April 2010, Ms Gobbo filed civil proceedings against Victoria Police, Christine Nixon and Chief Commissioner Simon Overland, alleging a cause of action in contract, breach of fiduciary duty and negligence.<sup>29</sup>
- 4.2 In her statement of claim, Ms Gobbo claimed that in December 2008, the defendants (the State of Victoria, Chief Commissioner Overland and former Chief Commissioner Christine Nixon) made assurances to her in exchange for making a statement against Paul Dale, which included that:
- (a) Victoria Police would [REDACTED] and particular needs;
  - (b) she would receive financial compensation to ensure she would be 'no worse off financially or otherwise' as a consequence of making a statement against Mr Dale, including financial compensation for the loss of her practise as a barrister and ability to practise as a barrister in future; and
  - (c) her safety, security, wellbeing and identity would be protected, including by seeking and maintaining suppression and non-publication orders for the duration of the Dale prosecution.
- 4.3 Through the events I refer to in Part 3 of my statement, I met Ms Gobbo and learnt that she had provided assistance to Victoria Police. However, at the time she served her writ, I did not know that she had been a human source. As the statement of claim focused solely on the period from December 2008 onwards, it did not refer to her dealings with Victoria Police prior to her becoming a witness.
- 4.4 As Executive Director of the Legal Services Department, I do not take personal carriage of advisory or litigation files. Civil proceedings were managed by the Superintendent in charge of civil litigation, who at the time was Superintendent Lardner, reporting to me. Accordingly, Superintendent Lardner had daily carriage of the proceeding. He obtained instructions from internal stakeholders and was responsible for instructing VGSO.
- 4.5 On 4 May 2010 I attended a conference with Mr Ryan and Stephen Lee, Superintendent Lardner and Mark Galliot in relation to the civil litigation. I made a file note of the meeting.<sup>30</sup> The meeting was the first meeting with VGSO in relation to the proceeding and was called to plan our initial response to the writ. At the time, I still understood that the assistance provided by Ms Gobbo was limited to her role as a witness against Paul Dale, which is consistent with the allegations made in the statement of claim.

<sup>29</sup> VPL.0002.0001.1138;VPL.0002.0001.1139

<sup>30</sup> VPL.0005.0191.0014

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- 4.6 On 5 May 2010 at 7.44am, I received an email from DI Smith stating that Ms Gobbo had contacted him and she wished to make another statement concerning Paul Dale's committal. The email was copied to AC Cornelius and AC Dunne. I responded by email indicating no action should be taken until I had confirmed the position with the DPP.<sup>31</sup>
- 4.7 Later that day, I received an email from Detective Inspector David Jones, Officer-in-Charge of the Purana Taskforce, in which he requested my advice in relation to a draft instruction he proposed to provide to the current and former Purana Task Force members concerning contact with Ms Gobbo.<sup>32</sup> The instruction referred to the fact that members of the Purana Taskforce had previous involvement with Ms Gobbo and instructed that moving forward, only DI Smith should have contact with Ms Gobbo. It also stated that if Ms Gobbo contacted Purana members directly, she should *'not be engaged, entertained or tasked'*.
- 4.8 I observe that on 5 May 2010 at 3.49pm, I sent an email to Inspector Jones, stating that I was *"OK with the document"*.<sup>33</sup> Given that civil litigation had been commenced, I wanted Victoria Police to cease any unnecessary contact with Ms Gobbo.
- 4.9 On 6 May 2010, I spoke with the DPP and informed him that Ms Gobbo wished to prepare another statement. He advised me it would not be appropriate to obtain another statement regarding Dale at this stage and indicated that he was considering the status of the prosecution. He also advised Victoria Police to exercise caution in dealings with Ms Gobbo, given her status as a plaintiff in the civil litigation.<sup>34</sup> While I have no recollection of doing so, I would have updated DI Smith on the advice received from the DPP.
- 4.10 On 13 May 2010, I attended a steering committee meeting for the civil litigation. It was unusual to have a steering committee for civil litigation and while the term "steering committee" was used, it was more akin to a project team meeting. As it transpired, this was the only steering committee meeting that was held.
- 4.11 In the course of preparing this statement, I have also been shown a document titled *"Meeting re Gobbo v State of Victoria and Ors – Minutes"*.<sup>35</sup> This document records minutes of a different meeting on 13 May 2010. I am not recorded as an attendee of that meeting and do not believe that I attended it.

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<sup>31</sup> VPL.0005.0003.3069

<sup>32</sup> VPL.6023.0030.9463

<sup>33</sup> VPL.6023.0030.9463

<sup>34</sup> VPL.0005.0003.3060

<sup>35</sup> VPL.0005.0003.3053

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- 4.12 An agenda was prepared for the steering committee meeting.<sup>36</sup> I made some handwritten notes on the agenda under the heading 'Other items':<sup>37</sup>

*Witness contact – Steve Smith*

*Ongoing payments*

*Registered informer statements (prior to 2009)*

- 4.13 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.
- 4.14 Other contemporaneous documents from around this period, including emails to which I was copied,<sup>38</sup> show that I was aware that Ms Gobbo had some involvement with investigations undertaken by the Petra, Briars and Purana Taskforces. However, the extent of her involvement was unclear to me and Superintendent Lardner. In the course of preparing to respond to the writ, Superintendent Lardner made attempts to learn more about the extent of Ms Gobbo's involvement.
- 4.15 The fact that Ms Gobbo had provided assistance that went beyond her role as a witness against Mr Dale was also a matter that the VGSO was aware of. On 20 May 2010 at 6.09pm, Superintendent Lardner sent an email to Mr Ryan, instructing him to prepare a briefing summary so that we could brief the CCP on the writ and key issues.<sup>39</sup> One of the key risk issues on which Superintendent Lardner sought advice was, '*Discovery exposing other involvement with Police (that VGSO is aware of) and very brief summary of same*'.
- 4.16 On 21 May 2010, Victoria Police received preliminary advice from the VGSO about Ms Gobbo's claim, which attached a note from Michael Wheelahan QC, Rowena Orr and Michael Rush.<sup>40</sup> The VGSO advice noted:
- (a) Petra taskforce had the recorded conversations that Ms Gobbo referred to in her claim and that they were in the process of being transcribed.

<sup>36</sup> VPL.0005.0003.3053 at .3054

<sup>37</sup> VPL.0005.0003.3053 at .3054

<sup>38</sup> For example, VPL.6023.0031.2342

<sup>39</sup> VPL.0005.0003.3052

<sup>40</sup> VPL.0005.0010.2514; VPL.0005.0010.2520

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- (b) A trial would involve scrutiny of procedures adopted by Victoria Police in dealing with informers, obtaining cooperation of witnesses and limitations of [REDACTED]
  - (c) Ms Gobbo's relationship with Victoria Police would be an issue in the proceeding. VGSO understood she had provided information to Victoria Police in matters other than the Dale prosecution, and may still be providing information.
  - (d) Counsel requested that Victoria Police arrange a confidential briefing on the extent of Ms Gobbo's relationship with Victoria Police, and how it may impact the way the Defence is drafted. Counsel also wanted to ascertain whether information provided to Victoria Police in matters other than the Dale prosecution may be protected by legal professional privilege.
- 4.17 The note prepared by Mr Wheelahan QC, Ms Orr and Dr Rush suggested a confidential briefing take place, noting that instructing solicitors had identified the need for counsel to be briefed with a "complete history of the matter". I do not recall attending a confidential briefing, or whether such a briefing in fact occurred. As Superintendent Lardner had carriage of the file, it would have been his role to arrange and attend any such briefing.
- 4.18 On 27 May 2010 at 9.01am, Superintendent Lardner and I received an email from Detective Inspector O'Connor, in relation to a *"Highly Protected Document re witness F"*.<sup>41</sup> The email stated that that the *"management chronology of 'F' dealing with the Source Development Unit is comprehensive and gives a real insight into the use of 'F' as a Human Source"* and that *"Once you have read the document you will realise the position that 'F' is in if members of these criminal networks are able to join the dots."*
- 4.19 There was no attachment to this email, however, I believe that the document referred to in it is the Source Management Log. I do not recall receiving the document but I expect that the civil litigation team would have reviewed it.
- 4.20 On 1 June 2010, I attended a conference with Superintendent Lardner, Superintendent Gleeson, and Mr Ryan and John Cain of the VGSO in relation to the civil litigation.
- 4.21 On 3 June 2010, Superintendent Lardner and I briefed Chief Commissioner Overland and Deputy Commissioner Jones. My recollection of the meeting is that Chief Commissioner Overland wanted to defend the proceeding and that there was no pressure from Victoria Police Command to settle the case. I drew some notes on the whiteboard to explain the status of the proceeding.<sup>42</sup>
- 4.22 On 21 June 2010, I attended a meeting in relation to Ms Gobbo. The purpose of that meeting was to bring together the relevant commanders of the operations that may have received assistance from her to obtain an update as

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<sup>41</sup> VPL.0005.0013.1182

<sup>42</sup> VPL.0005.0195.0953 at .0966

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to her current status and make decisions as to future contact with Ms Gobbo in light of the ongoing civil litigation. By this time, I was aware that Ms Gobbo had provided assistance to Victoria Police through the Purana, Petra and Briars Taskforces, but the extent of that assistance remained unknown to me.

4.23 I made handwritten notes on the agenda to the meeting, which are set out below:

Meeting re Witness F Status  
21 June 2010  
Agenda

NOT FOR RELEASE  
LEGAL PROFESSIONAL PRIVILEGE  
DOCUMENTS OBTAINED FOR PURPOSE OF LEGAL ADVICE

Invites:  
 Fir McBae  
 Danye Moloney  
 Luke Cornelius  
 Peter Lardner

Sir Ken Jones - On leave  
 Erment Duane - Unavailable  
 Jeff Pope - On leave  
 Doug Fryer - Unavailable

HIGHLY PROTECTED

HIGHLY PROTECTED

1. Update on Civil Proceedings Status (Lardner)
  - a. Witness F is no longer registered to practice
2. Confirmation of status of Gobbo in each investigation:
  - a. Petra (Cornelius) *any potential witness of fresh evidence*
  - b. Briars (?) *" (same Waddell) Allen*
  - c. Purana (Moloney) *Middleman - not a witness or source*
3. Responsibility for operational strategic management of Witness F *any witness in ongoing proceedings*
4. Future as witness or intelligence in any capacity at all from here on in *any witness for ongoing proceedings*
5. Access to Petra Steering Committee minutes *any witness in ongoing proceedings*
6. Access to Human Source Unit summary document *offsite reference*
7. Going forward issues
  - a. [REDACTED] issues *your Petra*
  - b. Appropriate mediator options *RC*

*Fir McBae*

Findlay McRae  
 BALLB  
 Director of Legal Services  
 21/6/10

4.24 During the meeting, we discussed Ms Gobbo's status in relation to each investigation:

- (a) In relation to Taskforce Petra, Ms Gobbo's status was said to be as a "potential witness".
- (b) In relation to Taskforce Briars, Inspector Waddell was identified as the relevant person. Ms Gobbo was also referred to as a "potential

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witness" in relation to an alibi. I do not now recall what was discussed about Ms Gobbo's evidence in relation to Taskforce Briars.

- (c) In relation to Taskforce Purana, Danye Moloney said that Ms Gobbo was not a witness or a human source. He described her as a "middle person" and said that she was of no value to ongoing investigations.

4.25 I also noted that:

- (a) Acting Assistant Commissioner Fryer and Superintendent Lardner were to be provided with access to the Petra Steering Committee minutes.
- (b) Senior counsel was to be provided with access to the Human Source Unit summary document. I believe this to be a reference to the Source Management Log.
- (c) Ian Callinan QC would be an appropriate mediator.

4.26 I understand that Counsel did attend the SDU to review the relevant materials, although I was not present when that occurred and am not aware of the extent to which they reviewed the SDU holdings.

4.27 On 23 June 2010, I attended a conference with Mr Wheelahan SC and Dr Rush and Mr Ryan and Ms Pekevka from VGSO, with Superintendent Lardner. I made a file note that reflects the discussion as I recall it.<sup>43</sup>

4.28 On 25 June 2010, the defendants filed a defence in the proceedings.<sup>44</sup>

4.29 On 28 June 2010, then AC Ashton provided me with a copy of a letter from then Detective Sargent Sol Solomon to Chief Commissioner Overland.<sup>45</sup> The letter detailed concerns of Detective Sargent Solomon and Detective Senior Constable Cameron Davey about Ms Gobbo's health and welfare and about the impact Ms Gobbo's poor health and management was having on the Dale committal. The letter stated that Ms Gobbo believed Chief Commissioner Overland was the only person able to address her problems and she had asked Detective Sergeant Solomon to deliver her letter accordingly.

4.30 I would have given this letter to Superintendent Lardner for consideration of next steps in regards to the welfare of Detective Sergeant Solomon.

4.31 On 27 July 2010 I was present at a meeting with AC Jeff Pope, Superintendent Alway and [REDACTED] in relation to Ms Gobbo. While I do not specifically recall, having reviewed my file note,<sup>46</sup> I believe that we met to discuss [REDACTED] arrangements for Ms Gobbo in the context of the upcoming mediation. My file note records that Ms Gobbo wanted to [REDACTED]

<sup>43</sup> VPL.0005.0036.0083 at .0086

<sup>44</sup> VPL.0005.0036.0513

<sup>45</sup> VPL.0005.0003.3042

<sup>46</sup> VPL.0005.0010.2095

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- ██████████ for the purpose of the ██████████  
 ██████████ but that she had ██████████
- 4.32 On 27 July 2010, I attended a conference with Superintendent Lardner, Senior Sergeant Bona, Mr Ryan from VGSO and Mr Wheelahan SC and Dr Rush of counsel.<sup>47</sup> Counsel advised the likelihood that Ms Gobbo would succeed in her claim was assessed as 'very high' due to a representation to her that she would be 'no worse off financially'.
- 4.33 On 28 July 2010, Mr Ryan provided written advice to Superintendent Lardner on liability and quantum.<sup>48</sup> While the advice is addressed to Superintendent Lardner, I would have received a copy of the advice and would have perused it. Both counsel and the VGSO recommended that the claim be settled and the advice set out a number of factors supporting settlement of the claim.
- 4.34 The written advice was consistent with the advice that counsel had provided in conference. As there was no merit to the defence, on a model litigant basis I formed the view that liability should be conceded and that the issue of quantum be dealt with at mediation before a mediator of the highest standing. I observe that the advice stated that the case will involve scrutiny of the procedures adopted by Victoria Police in dealing with informers and in obtaining the cooperation of witnesses in criminal proceedings. This was a secondary issue that was not given prominence in the internal meetings that I attended, or in conferences with the VGSO and counsel.
- 4.35 On 28 July 2010, after I had reviewed the advice, I attended a meeting with Chief Commissioner Overland, Superintendent Stephen Leane and AC Cornelius. While Chief Commissioner Overland had previously expressed that he did not want to settle the proceeding, he accepted the advice that had been received and it was agreed at the meeting that Scenario 2 described in the VGSO advice would be an acceptable settlement figure and that a recommendation would be made to the Minister via the Department of Justice to settle the claim.<sup>49</sup>
- 4.36 On 5 August 2010, I attended a meeting with Mr Cain (VGSO), Michael Strong (OPI), Paul Jektovic (Deputy Director of the OPI) and briefed them with a copy of the writ, defence and the VGSO advice.<sup>50</sup> It was not my usual practice to brief the OPI in relation to civil litigation involving Victoria Police and I have not done so since this case. The reason that I did so in this instance was because of the comparatively high value of the settlement and the fact that a barrister was involved. I wanted the OPI to have an awareness of Ms Gobbo's status as a lawyer and a source, of the claims and of the Victoria Police response. And I was interested in hearing back from the OPI if there were any matters which they wanted to raise with us. Plainly, it was for Victoria Police to manage the

<sup>47</sup> VPL.0005.0010.2089

<sup>48</sup> VPL.0005.0003.3024

<sup>49</sup> VPL.0005.0003.3022.

<sup>50</sup> VPL.0005.0003.3020

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litigation, not the OPI. However, I wanted there to be full transparency with our oversight body.

- 4.37 Although not recorded in the file note, I recall that as we walked into the meeting Paul Jektovic stated to me that Ms Gobbo had prevented a lot of harm to the community. I took it from this comment that the OPI was aware of Ms Gobbo's role in providing information to police.
- 4.38 On 9 August 2010, Peter Hanks QC provided separate and independent advice on whether Ministerial approval should be given to negotiate a settlement in the proceeding.<sup>51</sup> Mr Hanks QC was briefed to provide a second opinion to the Minister. Mr Hanks' opinion was consistent with that of Mr Wheelahan QC and Dr Rush.
- 4.39 On or around 12 August 2010, the mediation took place. Ms Gobbo and Victoria Police reached a confidential settlement and the civil proceedings were discontinued.<sup>52</sup> I did not attend the mediation.
- 4.40 Following settlement, I was copied into a number of emails in which arrangements were put in place to implement the settlement between Victoria Police and Ms Gobbo. For example, on 8 September 2010 at 8.43am, Superintendent Lardner sent an email to Detective Superintendent Paul Sheridan in relation to how any future contact between Ms Gobbo and Victoria Police was to occur, and the [REDACTED] of a [REDACTED] that Ms Gobbo had been using.<sup>53</sup>

## **5 ACC charges against Paul Dale and Ombudsman Investigation (January 2011 – November 2011)**

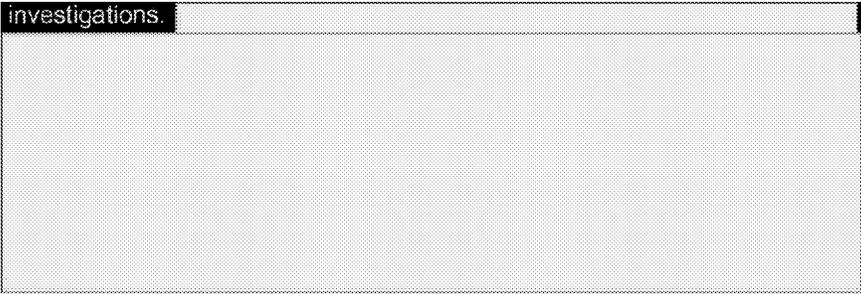
- 5.1 On 28 January 2011, Paul Dale was charged with 12 offences in relation to evidence he gave before the Australian Crime Commission in 2007 and 2008. By August 2011, I was aware that the Commonwealth Director of Public Prosecutions intended to call Ms Gobbo as a witness. While I do not recall the circumstances in which the issue emerged, Victoria Police had concerns that Dale would issue a subpoena with a similar scope to the subpoena served by him in his committal for the murder of the Hodsons.
- 5.2 At around the same time, I was attending to a significant issue that had emerged in light of a County Court ruling that evidence obtained under a search warrant was inadmissible because the affidavit in support of the search warrant had not been sworn or affirmed. As we investigated the issue, it emerged that a practice within Victoria Police had developed whereby deponents would sign affidavits, which would then be "witnessed" later, without the deponent having given an oath or affirmation. This practice was widespread.

<sup>51</sup> VPL.0005.0010.2706

<sup>52</sup> VPL.0002.0001.0967

<sup>53</sup> VPL.0005.0013.1038

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- 5.3 Having identified this issue, the Head of Ethical Standards Department and I were concerned that there may potentially have been people convicted based on evidence that was inadmissible. These concerns led to a sequence of events, which included:
- (a) 
  - (b) disclosing this issue to potentially affected persons;
  - (c) liaising with government in connection with legislative reform in order to overcome the issue; and
  - (d) formulating an appropriate response to prosecutions that were presently before the Courts.
- 5.4 The affidavit issue raised conflicting duties in that the failure to properly make an affidavit might have constituted an offence and at the same time, there may have been a duty to disclose to potentially affected persons. It was my view that the right to a fair trial took primacy over the criminal or disciplinary investigations.
- 
- 5.5 On 21 September 2011, I attended a conference with Greg Elms (VGSO solicitor) and Mr Gerard Maguire of Counsel regarding the use of Ms Gobbo as a witness in the Commonwealth prosecution of Paul Dale. The VGSO and Mr Maguire had already been engaged by the Crime Department to advise on PII issues in the manner that I describe in paragraphs 2.17 to 2.21, above. As VGSO was receiving instructions directly from the investigators, I did not have any visibility on this matter until this point. I took a file note of this discussion.<sup>54</sup> During the discussion, Detective Superintendent Fryer said words to the effect that there was a real risk of her death if Ms Gobbo was called as a witness. Accordingly, it was the Victoria Police position that she should not be called.
- 5.6 A second conference was held after the initial conference, in which we were joined by the relevant investigators from Taskforce Driver and Taskforce Briars and Krista Breckweg of the CDPP.<sup>55</sup> The conversation at the second conference was largely between Mr Maguire and Ms Breckweg. During the discussion, Mr Maguire attempted to persuade the CDPP to not call Ms Gobbo.

<sup>54</sup> VPL.0005.0003.2995

<sup>55</sup> VPL.0005.0003.2997

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Ms Breckweg made it clear that in spite of what Mr Maguire had said, the CDPD intended to call Ms Gobbo as a witness.

- 5.7 I attended a number of meetings and was copied to a number of emails in September and October 2011 in relation to this issue. Based on our past experience, there was a view within Victoria Police that it was unlikely that Ms Gobbo would give evidence due to her poor health. However, the Crime Department was sufficiently concerned about the prospect of a subpoena being issued if Ms Gobbo was to give evidence that it sought advice from Mr Maguire on document disclosure and potential public interest immunity claims arising from documents the subject of any subpoena from the defence. I was not involved in the decision to brief Mr Maguire to provide this advice, as the Crime Department had engaged the VGSO and Mr Maguire directly.
- 5.8 On 4 October 2011, the VGSO received written advice from Mr Maguire in relation to document disclosure and potential public interest immunity claims arising in relation to documents the subject of any subpoena from the defence.<sup>56</sup> A receipt stamp indicates that my staff officer received the advice on 5 October 2011, however, I do not recall reading this advice until after I attended the meeting on 3 November 2011 that I refer to in paragraph 5.13, below.
- 5.9 On 6 October 2011, I received advice from Greg Elms of the VGSO as to whether the *Witness Protection Act 1991 (Vic)* could be invoked to protect a witness in a criminal trial.<sup>57</sup> Again, this advice was requested by the Crime Department in the manner I describe in paragraph 2.18 above.
- 5.10 On 24 October 2011, I gave evidence before the Victorian Ombudsman about Ms Gobbo. I had no part to play in Victoria Police's institutional response.
- 5.11 On 27 October 2011, a copy of a letter from Ms Gobbo to Detective Senior Sergeant Buick dated 17 October 2011 was forwarded to me.<sup>58</sup> In the letter, Ms Gobbo expressed concerns about her health and safety in the context of the Dale committal. I referred the matter to civil litigation to open a file.
- 5.12 On 27 October 2011, I attended a meeting with AC Ashton and AC Pope in which AC Pope gave his response to an allegation made by Ms Gobbo that they had previously been in a sexual relationship. AC Pope denied any such relationship.<sup>59</sup> AC Pope subsequently swore an affidavit setting out his interactions with Ms Gobbo since the 1990s and denying that he had ever had a sexual relationship with Ms Gobbo. Even though AC Pope had denied having a sexual relationship with Ms Gobbo, I referred the issue to the VGSO for advice.

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<sup>56</sup> VPL.0005.0003.2968

<sup>57</sup> VPL.0005.0003.2962

<sup>58</sup> VPL.6023.0039.6756

<sup>59</sup> VPL.0005.0003.2949

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- 5.13 On 3 November 2011, I met with A/DC Tim Cartwright and AC Ashton. My recollection is that I was called to the meeting because AC Ashton and A/DC Cartwright had received Mr Maguire's advice of 4 October 2011 and I was called to discuss it. I took a handwritten file note of this meeting,<sup>60</sup> which I have set out below:

→ Maguire's advice is recalled  
 → Problems to Prosecution to occur  
 today (Maguire's advice)  
 → Some of these were passed on  
 to other  
 → Advice given  
 → Advice given  
 → Advice given - 9/11 evidence  
 → Advice given - [redacted]  
 → Advice given

- 5.14 My recollection of the meeting is that AC Ashton brought paragraphs 52-56 of Mr Maguire's advice to my attention in which he recommended that urgent consideration be given to providing a copy of the relevant log entries to the prosecutor for the purpose of determining what if any disclosure was required in the interests of fairness. I was not involved in the decision to make disclosure to the CDPP.
- 5.15 We also discussed the need to make further enquiries, which led to the Comrie Review, as I set out below.
- 5.16 On 8 November 2011, I met with A/DC Cartwright and AC Ashton and was advised that the CDPP had been informed that there was an unacceptable safety risk in calling Ms Gobbo as a witness. Later that day, I was informed that Ms Gobbo was not going to be called as a witness. I made a file note of these discussions.<sup>61</sup>
- 5.17 On 9 November 2011, Graham Ashton and I received an email from Shaun Le Grand of the VGSO.<sup>62</sup> The CDPP wanted to file an affidavit in the Dale committal to explain why Ms Gobbo was no longer to be called as a witness.

<sup>60</sup> VPL.0005.0003.2945

<sup>61</sup> VPL.0005.0003.2934

<sup>62</sup> VPL.0005.0003.2926

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Mr Le Grand sought instructions to consent to the CDPD including in an affidavit a letter from Graham Ashton to the CDPD.

- 5.18 On 11 November 2011, I received legal advice from Mr Le Grand regarding the Pope accusation and whether A/DC Cartwright was required to take action under 86L of the *Police Regulation Act 1958 (Vic)* on the basis that that he had reason to believe that AC Pope was guilty of serious misconduct.<sup>63</sup> The advice was prepared without identifying the relevant complainant or police officer and in essence, was to the effect that even if Ms Gobbo's allegations were believed, it was not enough to support a belief that AC Pope was guilty of serious misconduct. Mr Le Grand's advice also stated that the allegation of sexual relations created a potential or perceived conflict of interest and recommended that the conflict issue be managed.
- 5.19 I provided the advice to A/DC Cartwright because he was managing this issue.<sup>64</sup>

## **6 Human Source 3838 Case Review (Comrie Review) (November 2011-August 2012)**

- 6.1 The 3 November 2011 meeting between AC Ashton, A/DC Cartwright and me was the catalyst that led to the commission an independent case review of Victoria Police's involvement with Ms Gobbo.
- 6.2 The review was not commissioned for disciplinary purposes. Rather, it was intended to be a largely desktop review and to provide an independent assessment of, amongst other things, 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.
- 6.3 Early in our planning, former Chief Commissioner Neil Comrie AO, APM was identified as an appropriate person to conduct the review. I nominated Superintendent Gleeson to support Mr Comrie in the review. I chose Superintendent Gleeson because he had experience with reviews and had prosecution experience. I considered that he was a suitably qualified person to assist Mr Comrie.
- 6.4 The Terms of Reference for the Comrie Review were developed over the period from November 2011 to February 2012 and the review commenced immediately thereafter. I was copied to emails between AC Pope and Superintendent Gleeson and various others in relation to the Terms of Reference.
- 6.5 The focus of the review was the application of policies, control measures and managerial and supervisory practices relevant to the handling of Ms Gobbo during the period of September 2005 to January 2009.

<sup>63</sup> VPL.0005.0003.2910

<sup>64</sup> VPL.0005.0003.2904

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- 6.6 On 21 February 2012, Ms Gobbo wrote to A/DC Walsh Victoria Police in relation to her health and safety.<sup>65</sup> Following receipt of this letter, I instructed VGSO to advise on this issue and prepare a response, which they did.<sup>66</sup>
- 6.7 At around the same time, Superintendent Gleeson started reviewing the Victoria Police human source records in relation to Ms Gobbo. As he reviewed the materials, he would brief me as to his findings.
- 6.8 On 15 March 2012, AC Pope and I received an update from Superintendent Gleeson as to his progress on the review.<sup>67</sup> His email said that the interpose database records daily conversations with the source (sometimes 6 or more separate and lengthy calls per day, 7 days per week) and that to date, he had reduced thousands of pages of contact to a summarised account of about 60 pages.
- 6.9 On 17 April 2012, Superintendent Gleeson sent another email update as to his progress.<sup>68</sup> The email exchanges notes AC Pope had just returned from 5 weeks leave and the Agreement for the Comrie Review had received final sign off from Detective Superintendent Neil Patterson during his 5 weeks absence. In his email, he advised that he was settling a letter to VGSO to secure the particular advice relevant to the review.
- 6.10 On 30 April 2012, I received a note from Superintendent Gleeson in relation to his review of the human source material.<sup>69</sup>
- 6.11 On 24 May 2012, I received a copy of a letter that Ms Gobbo sent to Kieran Walshe dated 20 May 2012.<sup>70</sup> In the letter, Ms Gobbo asserted that Victoria Police had a responsibility with respect to her safety, irrespective of whether she had entered witness protection or was currently a witness. Ms Gobbo also referred to the hundreds of hours of covert recordings made by Victoria Police members each time they met with her.
- 6.12 Having read this letter, I went back and re-read the 21 February letter from Ms Gobbo and having read them together, I arranged a series of meetings:
- 6.13 On 24 May 2012, I met with DC Walshe. We discussed Ms Gobbo's reference to hundreds of hours of materials and the concerns that had been raised by Mr Maguire at the time of the Commonwealth DPP case against Daie. The gravity of the information was so significant that I was of the view that there was a problem and that we needed to go to the DPP and to discuss it with him. I decided I could no longer wait for the formal Comrie Report findings to arrange

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<sup>65</sup> VPL.0005.0013.1437

<sup>66</sup> VPL.0005.0010.2732

<sup>67</sup> VPL.6072.0004.2104

<sup>68</sup> VPL.0100.0040.0596

<sup>69</sup> VPL.6023.0003.0750

<sup>70</sup> VPL.0002.0001.1194

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for a senior police officer to brief the DPP. I made a file note of this discussion.<sup>71</sup>

- 6.14 On 1 June 2012, Acting Assistant Commissioner Fryer and I met with John Champion, who was now the Director of Public Prosecutions, and Bruce Gardiner of the OPP, regarding this letter. I took a file note of this meeting.<sup>72</sup> The purpose of this meeting was to discuss the letter to D/C Walshe dated 20 May 2012 and to brief the DPP regarding Ms Gobbo's history of providing information to Victoria Police.
- 6.15 The conversation was almost entirely between the DPP and Acting Assistant Commissioner Fryer. I have set out a copy of my file note below:

DPP aware of allegations of breach of ethics with respect to [redacted] in [redacted] of [redacted].

Human Rights

Glen [redacted] - Army for 3 weeks

Prosecution

DPP aware of allegations of breach of ethics with respect to [redacted] in [redacted] of [redacted]. Apparently the court ordered the evidence be suppressed & evidence given in regard to [redacted] and informant to [redacted] and other details

- 6.16 My 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. Acting Assistant Commissioner Fryer also said that she given information to Victoria Police about Tony Mokbel and his associates and we raised the fact that conflicts of interest may have existed.
- 6.17 I made a reference in my note to "human rights". This is a reference to how I was thinking about the issue at the time. There were two aspects to this. On the one hand, I was concerned about Ms Gobbo's safety and the right to life. And on the other hand, I was concerned about the right to a fair trial.

<sup>71</sup> VPL.0005.0195.0953 at 1088.

<sup>72</sup> VPL.0005.0003.2535

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- 6.18 The DPP did not indicate any awareness that Ms Gobbo was a human source, however, he did raise a serious conflict of interest involving Ms Gobbo that had been raised in the context of the prosecution of Zlate Cvetanovski. The Cvetanovski matter formed the basis of the rest of the conversation. At the time, I knew little about Cvetanovski matter but over the next few months, I sought further information, including a copy of the transcript.<sup>73</sup>
- 6.19 On 6 June 2012, Superintendent Gleeson received legal advice that he had requested as part of the Comrie Review.<sup>74</sup> The advice was to the effect that:
- (a) the duties that a lawyer owes to the Court and to their clients are likely to impose significant limitations on the use that could be made by Victoria Police of a human source that is a member of the legal profession;
  - (b) subject to some limited exceptions, a lawyer who has been recruited as a human source would be under a duty not to disclose to Victoria Police information that is subject to legal professional privilege; and
  - (c) it would be morally repugnant for:
    - (i) a human source who was a lawyer to provide Victoria Police confidential information they had obtained from a client in the course of providing legal advice related to criminal charges to assist Victoria Police in securing a conviction
    - (ii) a human source who was a lawyer to critically review a police brief of evidence to support criminal charges against their client for the forensic benefit of Victoria Police; or
    - (iii) Victoria Police to receive any information from a human source which they were aware was subject to LPP.
- 6.20 On 6 June 2012, I attended a meeting with Mr Ryan, Stephen Lee and Superintendent Gleeson where the VGSO advice was being discussed. It was suggested I needed to tell the DPP about Ms Gobbo's role as an informant. I told them that I had met with the DPP just days earlier with Acting Assistant Commissioner Fryer and that the status of Ms Gobbo was discussed.
- 6.21 In early August 2012, I received a copy of the Comrie Review, which was completed on 30 July 2012. As part of his review, Mr Comrie made 27 recommendations. At around the time I received it, I was aware that Chief Commissioner Lay had provided a copy of the Comrie Review to Ron Bonighton, then Acting Director of the Office of Police Integrity.
- 6.22 On 22 August 2012, I had a discussion with Superintendent Gleeson and AC Pope regarding whether Victoria Police was required to make further disclosure to the DPP regarding Tony Mokbel in which we agreed that AC Pope and I

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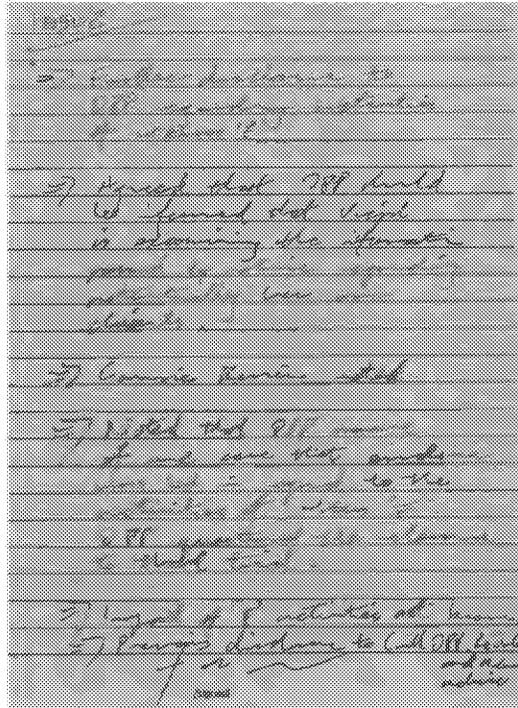
<sup>73</sup> VPL.0206.0950.0013

<sup>74</sup> VPL.0005.0014.0002

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would discuss the issue with Chief Commissioner Ashton. I made a file note of this discussion.<sup>75</sup>

- 6.23 On 23 August 2012, I had a discussion with Graham Ashton and Jeff Pope regarding further disclosure to the DPP. I made a file note of this discussion,<sup>76</sup> which I have set out below:



- 6.24 In light of what he had learned in preparing the Comrie Report, Superintendent Gleeson had formed the view that as a member of police, he was required to report in more detail the legal conflict issues apparent from the investigation. He informed me of this, and I arranged a meeting with the Director of Legal Services at the Office of Police Integrity.
- 6.25 I arranged to brief the Director of Legal Services at the OPI because it was not appropriate in the circumstances to provide this through ESD or otherwise through Police Command because I was aware that senior members of Victoria Police may have been involved in the history of the matter. The Director of Legal Services at the OPI was my equivalent and I considered that she was an appropriate person to report the issues to.
- 6.26 On 31 August 2012, Superintendent Gleeson and I briefed Vanessa Twigg of the OPI on the legal conflict issues. My recollection is that we provided the OPI with copies of legal advice received from the VGSO and interpose

<sup>75</sup> VPL.0005.0003.2820

<sup>76</sup> VPL.0005.0003.2800

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information in relation to the conflict issues that Superintendent Gleeson had identified through the review process.

- 6.27 On 4 September 2012, I attended a briefing with the DPP and Bruce Gardiner (OPP) regarding Victoria Police's review of intelligence holdings in relation to Ms Gobbo.<sup>77</sup> My file note does not indicate that Superintendent Gleeson attended but I believe he did because it was my usual practice to facilitate briefing with the DPP by a sworn officer who had line responsibility for the area. I have set out my file note below:

37. Insights

- Evidence regarding potential conflict of interest when respecting confidential (CP)
- Review of human source procedures
- Review of some other procedures
- Alleged use of LSP materials by 'R' relating to related activities  
Viggo does not have details of specific panel on (if any) as this is part of intelligence holdings
- Viggo is preparing to review the intelligence holdings over a period of some months in regard to 'R'
- Viggo to consider whether disclosure is required or specific to 'R'

for name  
initials & on CP

- 6.28 During this meeting, I asked the DPP about the Cvetanovski matter. I still did not have a copy of the transcript but I knew that a conflict had been raised in that matter and I was concerned about it. The DPP and Mr Gardiner were updated on the Comrie Report and Victoria Police's review of its human source materials. We said that we had uncovered evidence of potential conflicts of interest and that it had been alleged that potentially privileged material had

<sup>77</sup> VPL.0005.0003.2555

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been used in relation to the Tony Mokbel extradition, which had been identified in source holdings.

6.29 Superintendent Gleeson and I said that Victoria Police was preparing to review intelligence holdings and identify whether disclosure is required, but that this would take some time.

6.30 My recollection of the meeting is that the DPP said that he would wait the outcome of the review. The DPP made it clear that he needed more certainty that Ms Gobbo's conduct may have impacted on prosecutions. He did not want to receive any documentation at that point.

## 7 Operation Loricated and Operation Bendigo (2013-2014)

7.1 On 29 January 2013, Victoria Police commenced a project in response to recommendation 1 of the Comrie Report. Recommendation 1 was:

That Victoria Police reconstruct the full interpose file for 3838 so that to the fullest extent possible it presents as a complete, factual, sequential and accountable record of the utilisation of this human source. This should also include linking of all available records and corroborative media so that all material related to this file is securely and accountably retained in the one location on Interpose.

7.2 The reconstruction of the files in relation to Ms Gobbo was a significant piece of work. I recall general discussion in the planning phase in which it was estimated that it would take many months to complete the reconstruction. This project came to be known as Project Loricated.

7.3 The Project Sponsor of Operation Loricated was DC Cartwright. I was a member of the Steering Committee, which was chaired by AC Fontana. In the period from January 2013 to May 2014, I attended a number of Steering Committee meetings for Project Loricated. Minutes were taken of each of these meetings.

7.4 In the first six months of 2013, the Operation Loricated team commenced the process of reconstructing source materials in relation to Ms Gobbo.

7.5 The Steering Committee minutes for 6 June 2013, state as follows:

Discussion re risks of material. Agreed that legal issues (eg; past trials conducted unfairly) currently represents the greatest risk. (FM) & (DF) have briefed the DPP on the issue. Discussion and agreement by the Steering Committee that the project team should complete their objectives in accordance with the terms of reference, this material should then be analysed and then any relevant matters would be presented to the DPP or IBAC. In this way, a complete picture of events will be revealed at the one time. However, an exception to this would be if a clear and serious issue arose that required immediate intervention / notification to a relevant individual / organisation

7.6 The reference to the fact that Acting Assistant Commissioner Fryer and I had briefed the DPP is a reference to the discussions that we had with the DPP in

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August and September 2012, which I refer to in paragraph 6.27 above. The discussion at the Steering Committee meeting was consistent with the approach that I had discussed with the DPP in the June 2012 meeting. In the September meeting, the DPP had indicated that he would await the completion of our review.

- 7.7 On 28 August 2013, I attended a meeting with the DPP and Mr Gardiner, Pat Ferdinands and Vaile Anscombe of the OPP. I typed a file note of the meeting.<sup>78</sup> It was a general meeting in which we discussed a number of issues, including Paul Dale and comments regarding Dale's assertion that Ms Gobbo was passing on client information, and that a risk assessment was conducted regarding safety issues.
- 7.8 On 2 September 2013, a Project Loricated Steering Committee meeting was held.<sup>79</sup> The minutes of the steering committee meeting record that:
- F/M discussed a meeting he had with the Director of Public Prosecutions on 28/8/13 where then issue of Conflict of interest re issues with Witness F were canvassed. Advice from the director was where clear conflict of interest in role of F and clients identified by project team to report back.
- 7.9 At the same meeting, I clarified what was meant by a "clear conflict of interest", which is recorded in the minutes in the following way:
- F/M provided advice to Damian Jackson of project team re Conflict of Interest cover when "Witness F was clearly acting for person/client XXX".
- 7.10 Damian Jackson was leading the Project Loricated Project Team. What I had explained to him was that he should identify instances where Ms Gobbo was acting for a particular person while at the same time providing information to Victoria Police about them.
- 7.11 On 21 March 2014, the dissemination plan was discussed at the Steering Committee meeting for Operation Loricated. It was decided that I be provided with a hard drive of IRs data relating to the courts / legal conflict / legal profession themes and that each item be independently assessed to determine if further action/investigation/referral was required.
- 7.12 At around this time, there was increased media interest in Ms Gobbo.
- 7.13 On Sunday 30 March 2014, Victoria Police sought an injunction against the Herald Sun to restrain it from publishing an article that had a risk of exposing Ms Gobbo as a human source. I attended the Supreme Court that evening on the instruction of AC Fontana. Ultimately the application was withdrawn after the Herald Sun agreed not to publish certain paragraphs over which Victoria Police was most concerned.

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<sup>78</sup> VPL.0005.0003.2556

<sup>79</sup> VPL.0002.0001.0263

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- 7.14 On 1 April 2014 at 10am, I attended a meeting with the DPP, Mr Gardiner and AC Leane. After the meeting, I dictated a file note, which was typed by my EA, which I have set out below.<sup>80</sup>

## FILE NOTE

Meeting with DPP Aola Chappin, Bruce Gardner, Assistant Commissioner Stephen Leane (PSC) and Fladlay McRae, Director Legal Services

Meeting held at 10am on 1 April 2014.

## Background

This meeting is follow up meeting from a meeting held on 4 September 2012 attended by Finlay McRae and Doug Fryer to update the DPP on the progress of analysing materials provided to Victoria Police by Witness F. That witness has been referred to as Witness X in the Herald Sun today.

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 whether whether if these matters were protected by a breach of qualified legal privilege by the person referred to as Witness X.

Fin McRae provided background on the work done by Victoria Police in this area including the Corvick Report that recommended re-organisational structure 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 Witness X. There was reference to an external review conducted of [REDACTED] that made recommendations that are consistent with legislation before the parliament at present [REDACTED] to address the [REDACTED]. There was general discussion about the progress of Operation Loricent that is working through intelligence holdings related to Witness 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 Loricent and the best way to analyse information moving forward. It was resolved that Shaun Lefrand of the VCSB and Fin McRae would have a look at the package of materials that has been identified by the analysts working for Operation Loricent and further discussion with the DPP would ensue after that.

<sup>80</sup> VPL.0005.0003.0456

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It was noted that Fin McLean and Stephen Leane will update the Commissioners 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 [REDACTED] where disclosure was made of the activities of Barister X in a prosecution run by John Clappison 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 those 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.

Further discussions to be arranged after the meeting with IBAC.

Friday McRae  
RA 116  
Director of Legal Services

- 7.15 The reference in my note under "Next Steps" to the "affidavit matters" is a reference to me raising the possibility of creating a process whereby practitioners are notified that they can contact the DPP and Victoria Police if they have concerns about their matters. I raised this possibility because it was similar to the approach that the DPP and Victoria Police had jointly adopted in response to the affidavit crisis that I referred to in paragraph 5.2 to 5.4 above.
- 7.16 On 1 April 2014 at 4.30pm, I attended a meeting at IBAC with Stephen O'Bryan (Commissioner), Rob Sutton (Operations Manager of IBAC), Alistair MacLean (CEO of IBAC), AC Leane and AC Fontana.<sup>81</sup> I dictated a file note of this meeting, which I have set out below:

<sup>81</sup> VPL.0005.0003.0440

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**Background**

Fin McRae provided background regarding the Witness F issues currently appearing in the Herald Sun and other news outlets. The chronologies of events including the OFI Report into Witnessess are the Corrie Report, the [REDACTED] Report, and Operation Loricated was discussed.

Some background on the current articles was discussed.

The existence of the Corrie file which was provided to OFI was noted and it was noted that OFI had left the matter with Victoria Police to progress through Operation Loricated.

It was noted that the analysis of the data sets was continuing for a number of months.

There are handwritten notes of the meeting prepared by Steve Postone on the file. It was noted that IBAC does not consider that it is overlooking the investigation nor has a review function at this point.

**Next Steps**

The Chief Commissioner to consider whether to write to IBAC to be provided with the final report or to consider whether to request some review function.

7.17 On 3 April 2014, IBAC wrote to Acting Chief Commissioner Cartwright to follow up on the 1 April meeting and to request clarification of a number of matters that had been discussed, specifically with regard to the Operation Loricated review.<sup>82</sup>

7.18 On 7 April 2014, I wrote a letter to the DPP.<sup>83</sup> The letter stated that:

Further to our discussions on 1 April 2014 attended by Bruce Gardaer 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.

Please do not hesitate to contact me if you require further information in the meantime.

7.19 At the time I sent this letter, I had not reviewed the IRs. Where I said in the letter that I had not received information that necessitated the DPP's consideration, I was referring to the fact that I had not reviewed this material and therefore, had nothing to provide to the DPP. In addition, I had not formed a view at this point that there had been a miscarriage.

7.20 On 8 April 2014, Operation Bendigo commenced. It was commenced in response to the media reporting into "Lawyer X" at the time, which had – in the view of Victoria Police – greatly increased the risks to Ms Gobbo.

<sup>82</sup> VPL.0100.0001.0848 at 1218.

<sup>83</sup> VPL.0005.0003.0145

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- 7.21 In light of the content of the reports, there were concerns held within Victoria Police that the source of media leaks was coming from within Victoria Police. That was a matter that Victoria Police considered required investigation as the risks to Ms Gobbo's safety continued to rise as the leaks continued.
- 7.22 In addition, Operation Bendigo was tasked with considering issues of potential legal conflict that had been identified through Operation Loricated but that were considered beyond the scope of that operation and therefore, still required investigation. As I refer to above, Operation Loricated had identified instances of potential conflict between Ms Gobbo and people she may have been acting for. However, those potential conflicts had not, to this point, been adequately investigated. In light of the response of the DPP and IBAC, it was my view that we needed to prepare case studies that identified specific instances of conflict and if necessary, to then provide those case studies to the DPP and/or IBAC for further consideration and action.
- 7.23 On 10 April 2014, the Chief Commissioner wrote a letter to Mr O'Bryan in response to the 3 April 2014 letter that I refer to above.<sup>84</sup> The letter set out a brief chronology of Ms Gobbo's role with Victoria Police and broader issues of informer management. In the letter, the Chief Commissioner also undertook to provide copies of each of the documents referred to in the letter, including the Comrie Review. The Chief Commissioner stated that:
- There are a number of aspects of this investigation and peripheral issues that cause me significant concerns. I am of the view that the allegations require an investigation independent of Victoria Police. This view was formed after considering:
- i. the very real potential of a witness being murdered as a result of possible leaks from Victoria Police.
  - ii. the extraordinarily high level of media and public interest in this matter, and;
  - iii. the additional investigative tools that are open to IBAC, specifically, coercive hearings
- 7.24 In the letter, the Chief Commissioner requested that:
- (a) IBAC take primacy of the investigation into the media leaks that relate to Witness "F" a registered Victoria Police Human Source, and;
  - (b) IBAC conduct a post implementation review of the recommendations contained in the Comrie Report.
- 7.25 Victoria Police considered that IBAC was the appropriate authority to undertake further investigations into police conduct. The investigations contemplated by the Chief Commissioner in the 10 April letter focused on the media leaks. We continued to progress the case study work and it was my view that the issues being investigated as part of the case studies might also be appropriately investigated by IBAC because of its coercive hearings powers. This was a

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<sup>84</sup> VPL.0100.0001.0848 at .1208.

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view that I had held since 31 August 2012, when Superintendent Gleeson and I met with OPI, as I set out in paragraph 6.26 above.

- 7.26 In April 2014, I received the raw data extracts from Operation Loricated, as referred to in the 23 March 2014 Steering Committee minutes. Because the material was in extract form, it was out of context in the sense that the extracts were not aligned to particular investigations and were largely written in police shorthand. In the form it was presented, it made little sense to me.
- 7.27 On around 15 April 2014, I met with AC Leane and Mr Le Grand to peruse the extracts provided by Operation Loricated together. AC Leane and I decided to seek advice from VGSO in relation to them. On 23 April 2014, I received a memorandum from VGSO, which was to the effect that police members with adequate knowledge of the matters discussed in the log entries should review the materials, with the assistance of counsel.<sup>65</sup>
- 7.28 While these investigations were ongoing, Victoria Police continued to negotiate with Ms Gobbo about her security [REDACTED]. The media reporting had heightened the safety concerns within Victoria Police. There was genuine concern within Victoria Police that Ms Gobbo would be killed. From time to time, I was involved in further risk assessments of Ms Gobbo.
- 7.29 On 29 April 2014, an Operation Bendigo Investigation Group was set up to continue with analysis of five specific case studies involving legal conflict. The Operation Bendigo Investigation Group was set up in response to the memorandum from the VGSO dated 23 April 2014. The five identified case studies involved the following people:
- (a) Case study 1 – Milad Mokbel, Frank Ahec, Dominic Barbaro;
  - (b) Case study 2 – Zaharoula Mokbel;
  - (c) Case study 3 – Rabi Karam (Agamas and Inca);
  - (d) Case study 4 – [REDACTED] and
  - (e) Case study 5 – Tony Mokbel (extradition proceeding).
- 7.30 The preparation of the case studies was led by Inspector Swain. Inspector Swain was an ex-prosecutor who had been promoted into the Crime Department. She led a cross disciplinary group, who were authorised to review the Loricated material and to interview investigating officers, as necessary. The Operation Bendigo Investigation Group were allowed to access whatever materials they required and speak to police members. For example, the Investigation Group had access to the Purana and Petra shared drives. In accordance with VGSO advice, Brian Dennis of counsel was engaged to advise the Operation Bendigo Investigation Group, where necessary.
- 7.31 On 12 May 2014, a meeting of the Operation Bendigo Investigation Group was held. During the meeting, I explained the purpose of the investigation, which

<sup>65</sup> VPL.0005.0003.5877

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was to identify instances of legal conflict which may reflect potential miscarriages of justice. I took a file note of the meeting,<sup>86</sup> which I have set out below:

TRANSICORD TEST

- ⇒ Potential miscarriage of Justice
- ⇒ Review - how done
- (1) ⇒ Information provided to police regarding the own identity?
- (2) ⇒ How was the information used? Was it given to an investigator?
- (3) ⇒ Did the informant have an impact on or cause offence?

ACCUSATIONS

- ⇒ Verbatim extract of the interview with the witness
- ⇒ Conclude research - V650
- ⇒ Meet with Brian Thomas again when the information has been collected in each case example
- How do we know whether this was a child victim relationship at the time.

<sup>86</sup> VPL.0005.0018.0797

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Definition of direct

→ Acting for person at the time

Documentation

→ Should the full document  
be provided to Brian Penning

→ RPT recommended.

Issues

→ Misstatements of Justice

→ L.P.P.

→ Bread of responsibility

by should get or Vigil

approach the interest to test

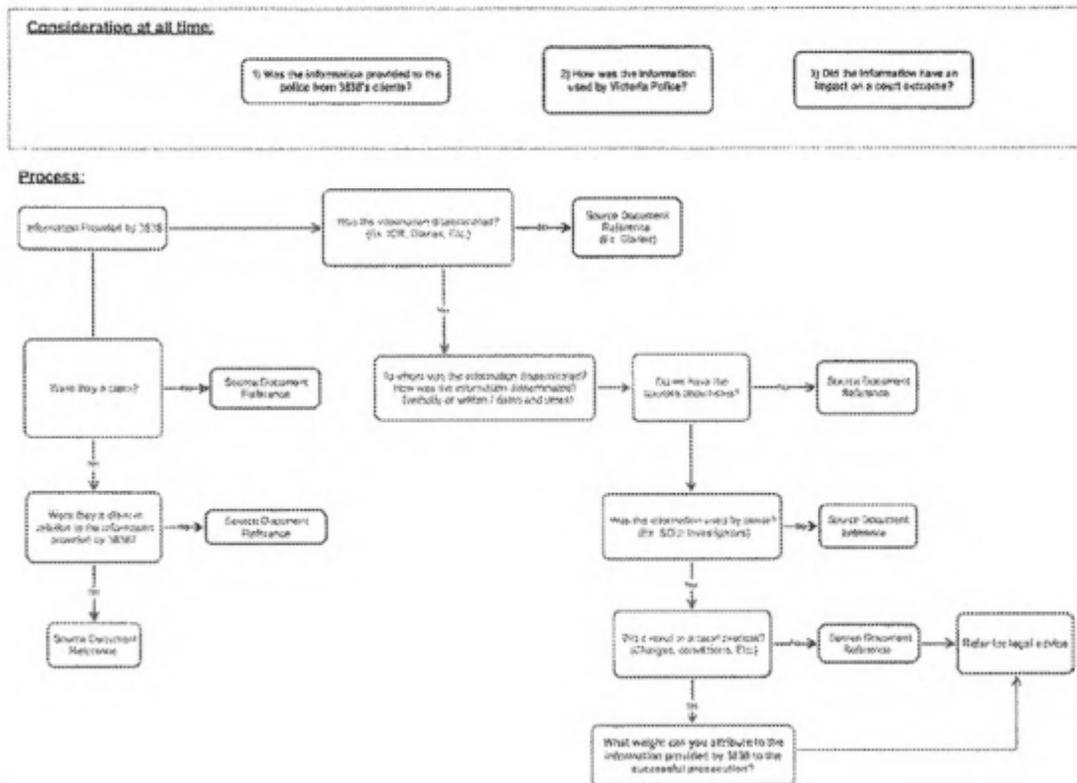
whether LPP handled, etc.

- 7.32 After the meeting, Inspector Swain sent me an email setting out her initial progress on the case studies. Her email also attached a number of documents, including a Terms of Reference, Project Plan and a flowchart setting out the investigation process.<sup>87</sup> The flowchart is set out below and is an accurate summary of the investigation process that was undertaken by the Operation Bendigo Investigation Group:

<sup>87</sup> VPL.6023.0142.1671

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Op BENDIGO: Investigation Flow Chart



7.33 On 14 May 2014, the Chief Commissioner sent a letter to Mr O'Bryan in relation to access to the Loricated database.<sup>66</sup> The letter stated:

<sup>66</sup> VPL.0005.0016.0076

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I am writing in response to your letter dated 15 April 2014. I note the Professional Standards Command (PSC) is to continue the investigation into the leaks of confidential information and that matter has been referred back to myself pursuant to section 73 of the *Independent Broad-based Anti-corruption Commission Act 2011* "to the extent necessary for that to occur". I continue to be concerned that the people responsible for the leaks causing the heightened risk to witness F have not been identified.

I have attached a detailed chronology and "Guide to Victoria Police/3838 Involvements" setting out the key interaction between Victoria Police and Witness F. The chronology references source documents. I also understand that my officers have been in discussion with your staff in relation to the location of and the provision of documents as may be requested relating to Witness F.

I should clarify the extent of the intelligence materials analysed by Operation Loricated. You will recall that Operation Loricated addressed recommendation one of the Comrie Review that provided for the reconstruction of the file relating to 3838. At this point the database contains all holdings relating to the Source Development Unit (SDU). I am now aware there are further materials contained on the Interpose database and other files that may relate to Witness F (3838). In any event, the 'Loricated' database may now be made available to IBAC by arrangement with Assistant Commissioner Stephen Leane.

The Operation Loricated Steering Committee will continue to address outstanding information reports dealing with crime themes, corruption, "legal issues" and other matters identified by the Committee for further action. If any matter raises concerns regarding a prosecution, it is intended that Victoria Police will notify the Director of Public Prosecutions.

I have asked Assistant Commissioner Stephen Leane to brief Mr Rob Sutton on the detail contained in this chronology.

- 7.34 On 21 May 2014, Mr O'Bryan sent a letter advising that he had delegated his powers to the Hon Murray Keilam AO QC because Mr O'Bryan had an inability to act due to his previous role with the OPI.<sup>89</sup> I saw the delegation of authority and the willingness of IBAC to potentially conduct an investigation, as set out in this letter, as a positive development. There was an opportunity for IBAC to deal with the miscarriage issues that had been identified post the Comrie Report.
- 7.35 In the period from September to November 2014, each of the five Operation Bendigo case studies were completed. One by one, they were provided to me under cover of Issue Cover Sheets, which summarised the known facts in relation to each case. There were some notations in the conclusion that attempted to answer the three questions posed to the team in regard to possible impact on prosecutions.
- 7.36 The case studies were comprehensive. They were each presented to me in a folder with supporting documents. Save than for [REDACTED] each of the case studies, the conclusion reached by the investigator who prepared it was to the effect that there was no clear evidence that Ms Gobbo's involvement had impacted on the outcome of the Court process. I did not accept those findings because the information in the case studies left open unanswered questions and were inconclusive.
- 7.37 As the case studies developed, I formed the view that IBAC was the most appropriate forum to consider the potential miscarriage issues. I formed this view for the following reasons:
- (a) Victoria Police still had serious safety concerns about Ms Gobbo;
  - (b) IBAC had the ability to conduct *in camera* hearings, which would enable it to examine witnesses in private and to make findings of fact

<sup>89</sup> VPL.0005.0015.0002.

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that would assist in determining whether prosecutions were tainted;  
and

- (c) because of the ongoing duty of disclosure, I considered that the DPP as the relevant prosecution authority was the appropriate body to refer the case studies to, however:
- (i) after numerous conferences with the DPP, it was apparent to me that while the DPP was aware of the existence of documents, he had not required access to those documents; and
  - (ii) if the DPP had required access to those documents, it was probable that there would be lengthy PII arguments.

7.38 On 28 October 2014, I attended a conference with the DPP. I made a file note of our discussion,<sup>50</sup> which I have set out below:

*UPDATE ON CASE STUDIES*

*→ COMPLETED BY INVESTIGATORS*

*→ Timoristan evidence yet  
obtained*

*→ IBAC to be informed*

*→ No matters of substance to  
report as yet*

7.39 The final point in my note – that there were no matters of substance to report as yet – is something that I said on a number of occasions to the DPP. The point that I was making was that I had not identified any matters that would suggest that there had been a miscarriage of justice, as distinct from an obligation to disclose.

7.40 On 5 November 2014, a letter was written to IBAC to request that the Commission accept a referral of legal issues identified in Operation Loricated.

<sup>50</sup> VPL.0005.0003.2694

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- 7.41 On 14 November 2019 I received an email from Assistant Commissioner Stephen Leane<sup>91</sup> attaching a response was received IBAC dated 13 November 2014<sup>92</sup> declining the referral.
- 7.42 On 27 October 2014, I was served with a summons to give evidence before IBAC<sup>93</sup>. The summons required me to produce certain documents prior to attending to give evidence.<sup>94</sup> As part of this process, I attempted to produce to IBAC the Operation Bendigo Investigation Group Case Studies. However, IBAC did not accept them.
- 7.43 On 12 November 2014, I was called to give evidence at IBAC. I went to IBAC with a large suitcase containing five folders, one for each of the case studies that had been prepared by the Operation Bendigo Investigation Group. During my evidence, I offered the case studies to Mr Kellam but he declined to take them.
- 7.44 On 13 November 2014, we received a letter from the Deputy Commissioner of IBAC, Andrew Kirkham QC.<sup>95</sup> The letter stated that:
- In response to your request that I consider the option of IBAC considering the legal issues relevant to Victoria Police's Operation Loricated, I advise that IBAC has serious doubts whether its governing legislation permits direct involvement in police operations, a concern shared by our oversight body, the Victorian Inspectorate. Our Mr Sutton already might have conveyed that doubt to you in the context of possible IBAC representation on police steering committees for operational matters.
- Accordingly, IBAC considers itself not to be in a position to accept a referral of this nature. It is otherwise too early to say whether upon its completion IBAC might wish to review the conduct of Operation Loricated as a whole, or one or more aspects of it.
- It remains possible that I may need to contact you for further relevant information as our inquiry progresses.
- 7.45 On 17 November, I had a meeting with AC Leane in which we discussed next steps for the case studies. I took a file note of that meeting, which I set out below:

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<sup>91</sup> VPL.0100.0001.0848 at 0957

<sup>92</sup> VPL.0100.0001.0848 at 0958

<sup>93</sup> VPL.0005.0018.0015

<sup>94</sup> VPL.0005.0018.0041

<sup>95</sup> VPL.0100.0001.0848 at .0958

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CASE STUDIES NEXT STEPS

⇒ BAC NOT AN OPTION FOR REFERRAL DUE TO JURISDICTION

⇒ MEET WITH VARIOUS BAC TO progress agreement plan RE: BAC OPTION

⇒ OPTIONS

- ① Refer to DPP (VACC & CURRY)
- ② Refer to RC or SC
- ③ Refer to DPP with SC/RC advice

⇒ Protection of the source arising from any further steps (engagement).

[NEXT STEPS]

⇒ AC WAIVE & FIVE TO MEET STATE DPP.

⇒ Brief call.

7.46 On 25 November 2014, I met with the DPP, Mr Gardiner and AC Leane. I made a file note of the meeting,<sup>96</sup> and later in the day I dictated a file note,<sup>97</sup> which I set out below:

<sup>96</sup> VPL.0005.0003.2559

<sup>97</sup> VPL.0100.0001.0848 at 0916



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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.

That position may change depending on the outcome of the IBAC investigation and whatever findings or recommendations it may make.

For the same reasons, the Director sees no purpose in us undertaking a review of the 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 LSC thinks about the Client Privilege issue, if you raise that with him.

- 7.49 I understand that the Director's Committee comprises the DPP, the Chief Crown Prosecutor, and Solicitor for the OPP. The position adopted by the Director's Committee and the Director is consistent with the position the Director adopted back when I first raised these issues in June 2012.
- 7.50 On 15 December 2014, I circulated an Issue Cover Sheet to the Operation Bendigo Steering Committee.<sup>99</sup> The purpose of the Issue Cover Sheet was to inform the steering committee on the progress of the case studies relating to Ms Gobbo for potential disclosure to the DPP. The Issue Cover Sheet reflected my discussion with the DPP on 25 November 2014 and the email I received from Mr Gardiner, above.
- 7.51 On 18 December 2014, I attended an Operation Bendigo Steering Committee meeting. I took notes of the meeting,<sup>100</sup> which I have set out below:

### Discussion

- General discussion addressing the response of the Director of Public Prosecutions to the Briefing provided by the Director of Legal and the AS PSC.
- Agreement that option of engaging a senior independent person should not occur given the feedback from the Director (as this is a matter for the Director).
- The director is the appropriate authority to consider miscarriage issues if they arise.
- DPP indicated that defence appeal is the appropriate action if an issue arises.

### Next Steps

1. AC PSC and Director Legal to consult with the Commonwealth DPP.
2. AC PSC and Director Legal to consult with the legal Services Commissioner.
3. AC PSC to inform IBAC of the status of the case studies.

<sup>99</sup> VPL.0100.0001.0848 at .0854

<sup>100</sup> VPL.0100.0001.0848 at .0852

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7.52 On 21 January 2015, AC Leane and I attended a meeting with Shane Kirne and Jenny Robinson of the Commonwealth DPP. I made a file note of the meeting,<sup>101</sup> which I have set out below:

21 January 2015

Issues discussed

1. Comrie Review – Case studies – Management of Client Privilege issues raised

Background provided.

2. Operation Loricated – Thematic approach – Court outcomes

Background provided. No miscarriage issues identified.

3. Position of the State DPP

Noted. Commonwealth DPP may discuss with State DPP at meeting tomorrow.

4. IBAC Own Motion Review Announced

Awaiting outcome.

5. Karam Case Study (DPP v Karam and ors [2013] VSC 133)

Indication that the Commonwealth DPP does not hold concerns at this stage. This matter is on appeal

6. Legal Services Commissioner

Proposed meeting noted

OUTCOME

1. Commonwealth DPP to consider whether further information required (Cardinia – AFP – [REDACTED])
2. Names of informants to be provided to Vicpol for follow up if required.

7.53 On 30 January 2015, I attended a meeting with the Legal Services Commissioner. I made a file note of the meeting,<sup>102</sup> which I have set out below:

<sup>101</sup> VPL.0100.0001.1355 at .1806

<sup>102</sup> VPL.0100.0001.1355 at .1782

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Trust of Fafus  
 → no longer must  
 come out.

by  
 → assist

→ Feeding information to OPR  
 Viegol.

Cases  
 28 cases.

Access  
 relating with AC Frontier

Report the Come of Testis  
 → Manage  
 → LPP  
 → Rules of a lawyer.

Reporting Case by Lawyer

LPP - Fetterance of a course.

Intelligence - Information - Evidence @  
 trial

Manage Privileged information @/roadwork

RISK: Errors Risk

Lack of support & guidance of the Bar.

Education for Viegol & Practitioners

7.54 On 3 February 2015, AC Leane and I attended a meeting with Jennifer Bryant and Shane Mr of the Commonwealth DPP. The meeting related to the

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investigation and prosecution of charges against Rob Karam. During the meeting, Ms Bryant said that the AFP had advised the CDPP that the investigation into the import of 15 million MDMA tablets in a container of canned tomatoes [REDACTED]

[REDACTED] Accordingly, the CDPP determined that it had no concerns regarding the proper management of the prosecution of those offences.

- 7.55 I do not have my own file note of this meeting, however, my Force File includes a copy of a file note prepared by Principal Federal Prosecutor Ms Bryant, which was provided to me after the meeting.<sup>103</sup> My recollection of the meeting accords with Ms Bryant's file note.
- 7.56 On 6 February 2015, I attended a Bendigo Steering Committee meeting in which the case studies were discussed. The minutes record that I updated the Steering Committee on the five case studies and informed the Steering Committee that the DPP and CDPP were "both comfortable".<sup>104</sup> The minutes also note that the Bendigo Steering Committee was considering closing the issue but would wait, pending review of the IBAC report, which was due on the same day.

## 8 Kellam Report

- 8.1 On 6 February 2015, Mr Kellam completed his report concerning Victoria Police handling of Human Source code name 3838 (**Kellam Report**). The Kellam Report made 16 recommendations.
- 8.2 In accordance with the recommendations, the Chief Commissioner provided a copy of the Kellam Report to the DPP on 12 February 2015. The DPP subsequently provided a copy of the report to the CDPP.
- 8.3 My discussions with representatives of the DPP were ongoing. Sometime after 12 February 2015, I met with the DPP along with the Chief Commissioner. During the meeting, the DPP said words to the effect that at this point, he would take no further steps in the matter.
- 8.4 On 28 April 2015, I had a discussion with Mr Kirne in relation to the Kellam Report. Mr Kirne confirmed that the CDPP did not require any further documents at that stage. I took a file note of this discussion.<sup>105</sup>
- 8.5 On 21 May 2015, A/DC Patton and I met with the DPP and Mr Gardiner. I made a file note during the meeting<sup>106</sup> and typed a file note when I returned to my office,<sup>107</sup> which I have set out below:

<sup>103</sup> VPL.0100.0001.1355 at .1752

<sup>104</sup> VPL.0100.0001.1355 at .1579

<sup>105</sup> VPL.0100.0001.1355 at .1538.

<sup>106</sup> VPL.0100.0001.1355 at .1519

<sup>107</sup> VPL.0005.0003.2612

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### *Operation Loricated*

1. FM provided some background of the operations of Loricated Taskforce and the progression of the analysis under each of the various themes:
  - Court Matters
  - Legal profession issues (39 pages) of general information
  - Legal Conflict (204pages) of general comment
  - Corruption issues (107 pages) The corruption issues have been dealt with by the Professional Standards Command.

### *Case Studies*

2. JC indicated that the Commonwealth DPP had completed their review of the Robbie Karam case and indicated that there were no further issues requiring review. There being no miscarriage of justice.
3. It was noted that the Commonwealth DPP had informed Vicpol that no Vicpol documents were required for the Commonwealth review.
4. JC indicated that the state case reviews were underway and due shortly. He said Sue McNichol SC would be conducting the review and he would await her advice before conducting providing final advice to the Attorney general.
5. At this stage there is no indication of a miscarriage of justice. JC was of the view that any further work by Victoria police for the DPP was not necessary. He indicated that he did not

require the chronologies or executive studies from the case studies at this time. Hence it is not proposed to engage two QC's as mentioned in the Kellam report to prepare any further materials for the DPP.

### *Next Steps*

6. Await outcome of State DPP review.

8.6 On 16 July 2015, I met with the VGSO to discuss the triage process of remaining legal conflict issues identified from Operation Loricated. I made a file note of this meeting.<sup>108</sup> To the best of my recollection, the remaining legal conflict issues were issues that went beyond those issues considered in the five case studies. It was agreed that a working party would be formed reporting to the Bendigo Steering Committee, via me.

8.7 By August 2015, most of the recommendations of the Kellam Report had been implemented. It had been provided to the DPP and the only issue of substance that had not been resolved was for the DPP to form a concluded view on whether any prosecutions conducted by the DPP in the past and based upon

<sup>108</sup> VPL.0100.0001.1355 at .1462

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evidence provided by Victoria Police, which evidence may have been obtained by reason of breach of legal professional privilege or release by the Source of other confidential material had resulted in a miscarriage of justice.

- 8.8 On 20 August 2015, I had a meeting with the DPP. It was a meeting in which a number of issues were discussed, many of which are not relevant to this Royal Commission. In relation to the Kellam Report, the DPP informed me that the report would be provided to Sue McNichol SC for review and to ensure that there were no miscarriage issues. I made handwritten notes of this meeting on the agenda.<sup>109</sup>
- 8.9 On 3 September 2015, the Project Loricated triage team reported to me.<sup>110</sup> Advice was obtained from the VGSO as to the adequacy of the steps taken by the triage team.<sup>111</sup> I did not accept this advice, however, the decision by the DPP to make disclosure of certain matters contained in the Kellam Report, as I describe below, overtook this issue.
- 8.10 In the second half of 2015, Operation Bendigo awaited the outcome of the DPP's independent review in to the Kellam Report. I continued to have contact with the DPP from time to time.
- 8.11 On 7 January 2016, I prepared a legal update to the Bendigo Steering Committee,<sup>112</sup> which I set out below:

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<sup>109</sup> VPL.0100.0001.1355 at .1475 (pg 121)

<sup>110</sup> VPL.0100.0001.1355 at .1402.

<sup>111</sup> VPL.0100.0001.1355 at .1379

<sup>112</sup> VPL.0100.0001.1817 at .2185

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Bendigo Steering CommitteeLegal Update

## DPP Reviews

1. It has previously been reported to this committee that the Commonwealth DPP has completed a review of the files and no further action is to be taken.
2. After feedback from an independent QC on the review process undertaken, the State DPP is finalising a report to the Attorney General. It is expected to be completed in late January 2016. At this stage there has been no further request to Victoria Police for information or documentation from the State DPP.

## Loricated Briefings

3. The Legal and Court Issues Review has been completed.
4. The PSC Review is ongoing (See Item 5).
5. The Crime Department Review has been completed.
6. It is proposed that on completion of the PSC review the Director of Legal Services prepare a brief closure report on the Loricated Action item for tabling at the Steering Committee.

## Rewards Application

7. Impact on settlement. Safety/future employment considerations were part of the settlement...
8. Otherwise, the reward application is a separate process.

## IBAC Meeting

9. Pending PSC completion of the remaining Loricated information reports.

**9 Disclosure to affected persons (August 2015 – November 2016)**

9.1 On 2 February 2016, I had a telephone conversation with Mr Gardiner in which he told me that the DPP report was almost complete and that it contained a recommendation that information be disclosed to the potentially affected persons disclosed in the Kellam Report. I told Mr Gardiner that Victoria Police needed to conduct an updated risk assessment in relation to any proposed disclosure process and that the safety of Ms Gobbo was paramount.<sup>113</sup> Following this call, I had a discussion with Mr Cain (who at this time was the solicitor for Public Prosecution) in relation to the risk to Ms Gobbo if there was disclosure. I made file notes of these conversations.<sup>114</sup>

9.2 On 3 February 2016, DC Patton and I attended a meeting with the DPP, Mr Gardiner and Mr Cain to discuss the DPP report and the method of disclosure. I took a file note of the meeting in an email,<sup>115</sup> which I set out below:

<sup>113</sup> VPL.0100.0001.1817 at .2141

<sup>114</sup> VPL.0100.0001.1817 at .2142

<sup>115</sup> VPL.0100.0001.1817 at .2129.

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DPP - Hodge - Kellam Report  
 DC Patton  
 Bruce Gardner  
 John Cain

### Provision

Brief the AG personally.  
 Copy of the report to SAC. Speak to Stephen O'Brien.  
 Commonwealth DPP

Can't determine that there has been a miscarriage of justice

The lawyers reviewed the files. All files are secured. Looked at the Kellam report details on their files. No record of informant

Concern about KF and disclosure. Person took of the files [redacted] and [redacted] representing [redacted] and informing info on [redacted] with a confidentiality [redacted]

### Confidential communications

No privilege in information about upcoming crimes.

Tony Mokbel and Miles, Representation

Information from clients used against others for press

Three year period.

Defence practitioners - would they run a s139 argument...

Three to Five inquiries by defence

Petition of mercy - refers to the court of appeal, Supreme Court.

Discussion of the Eastman inquiry

Discussion of the Kellam reference to two QC's in consultation with the DPP. DPP not sure what the QC's would achieve.

Procedure of disclosure has not been decided. Discussion of possible disclosure methods.

Actions.

Letter to DPP addressing the risk assessment.

- 9.3 On 5 February 2016, DC Patton wrote to the DPP in relation to the competing duties relating to potential disclosure requirements and the coexisting duty of the State to protect the identity of human sources.<sup>116</sup> DC Patton confirmed that Victoria Police risk assessments indicated that Ms Gobbo remained at the highest risk level and that Victoria Police requested that no step be taken to release information that would identify Ms Gobbo without appropriate risk assessments. The letter stated:

<sup>116</sup> VPL.0100.0001.1817 at .2125.

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At the outset, Victoria Police would like to reiterate that the outcomes of the documents relating to the Cornie Review and the analysis conducted post the Kellam Report are available for your assistance. Victoria Police also notes the complex discussion in regard to the competing duties relating to potential disclosure requirements in regard to prosecution matters and the coexisting duty arising for the state in protecting the identity of human sources. In this regard, it is important to note the warning placed on the Report concerning Victoria Police handling of a Human Source, prepared by the Honourable Murray Keilam AO QC (dated 6 February 2015) where it is stated that

"Consideration of the contents of this report may reasonably be expected to divulge the identity of police informer. Any release of this report (or any part of it) would be highly likely to endanger the life of the police informer concerned. Accordingly any application for release of the document should be subject of legal advice of the highest level and should be resisted strongly on the grounds of public interest immunity."

Victoria Police risk assessments indicate that the person referred to remains at the highest risk level and that the degree of harm or consequence of that risk relates to death. Victoria Police requests that no step be taken that releases information pertaining to the IBAC Report, particular information that would identify the human source, without appropriate risk assessments involving both IBAC and Victoria Police. Victoria Police will be writing separately to IBAC in regard to this matter.

- 9.4 On the same day, Chief Commissioner Ashton wrote to the Commissioner of IBAC to advise him of the ongoing discussions between Victoria Police and the DPP and to request that no decision be made to release any of the contents of the Kellam Report without consultation with Victoria Police.<sup>117</sup> The letter stated:

Victoria Police has offered assistance to the Director in consideration of this matter and has also made available the offer of access to Victoria Police files relating to the matter. I understand that the Director is considering his position in regard to prosecutorial duties relating to disclosure. Victoria Police has informed the Director of our concerns in regard to the ongoing risk assessment in regard to the human source. The risk assessment is still at a very high level and indicates that there is a risk of death and Victoria Police is concerned that any further exposure leading to the identity of this person may lead to serious injury or death.

I ask that no decision to allow release of any of the contents of the Kellam Report be made without consultation with Victoria Police on management of ongoing risks arising from this matter.

- 9.5 On 12 February 2016, I prepared a file note for the Project Bendigo Steering Committee meeting, based on research that I had done.<sup>118</sup> The purpose of the file note was to set out the legal issues surrounding the competing duties: On the one hand, a duty relating to the safety of a human source and on the other, the prosecutor's duty of disclosure.
- 9.6 These issues were the subject of ongoing discussions internally and with representatives of the DPP and IBAC. By the beginning of March 2016,

<sup>117</sup> VPL.0100.0001.1817 at .2122.

<sup>118</sup> VPL.0100.0001.1817 at .1902

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Victoria Police had decided to instruct the VGSO to brief senior counsel to prepare a further submission to the DPP in relation to the disclosure issue. Victoria Police had also decided to update its risk assessment in relation to Ms Gobbo and her family.

- 9.7 On 10 March 2016, the DPP wrote to the Chief Commissioner of Police.<sup>119</sup> The letter stated, amongst other things, that:

Having received and considered the matters raised in the Kellam Report, and having formed my views of the seriousness of the behaviour carried out by source 3838, I am firmly of the opinion that I have an obligation to disclose at least some of the contents of the Kellam Report to those that may be affected by the matters discussed therein. That disclosure should occur expeditiously. It is not intended by me to provide a copy of the Kellam Report to any person, nor a copy of my review. However, it will be necessary to provide sufficient information in order for those people affected to embark on a rational and informed decision making process as to what steps they may wish to take from this point onwards.

I have very carefully considered the question of disclosure of what is highly sensitive and potentially dangerous information. I have formed the view that I am fulfilling my ongoing prosecutorial duty to disclose matters that come to my attention after the completion of all trial and appeal processes that might cast doubt on a conviction. Principles of common law, statutory obligations, and my DPP's Policy on Disclosure, together inform me that disclosure must take place as an ongoing obligation.

- 9.8 In his letter, the DPP also said that he was acutely conscious of the matters raised in the risk assessment provided to him by DC Patton dated 5 February 2016 and acknowledge that disclosure would require careful management, and would require full co-operation of relevant agencies. The letter went on to say that:

As a starting point, my opinion is that it is imperative that the ongoing safety of Lawyer X be the subject of discussions between Victoria Police, me and my office, before any further steps are taken. I will not take any steps of disclosure until such discussions take place.

- 9.9 Attached to the DPP's letter was the text of a draft letter that he proposed to send to the affected persons.
- 9.10 It was the view within Victoria Police that disclosure of the contents of the Kellam Report would lead to Ms Gobbo being identified, which would in turn have potentially catastrophic consequences for her safety and the safety of her family. For this reason, Victoria Police opposed disclosure in this form.

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<sup>119</sup> VPL.0100.0001.1817 at .1889

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- 9.11 On 17 March 2016, the Chief Commissioner received a letter from the Commissioner of IBAC that attached a copy of a letter from the Commissioner of IBAC to the DPP.<sup>120</sup> The letter from the Commissioner of IBAC stated:

I understand that you are still considering your response to the Kellam report, in particular how best to manage the possible disclosure of information derived from the report to former accused persons or their legal representatives.

I further understand that you are discussing these matters with Victoria Police, with a view to an assurance regarding the highest possible level of protection for the human source, before any parts or summaries of the Kellam report are disclosed.

I believe that there are strong grounds, in particular of public interest immunity, for not further disclosing or disseminating any parts or summaries of the Kellam report. In this respect, I note the warning by Mr Kellam that:

*Any release of this report (or any part of it) would be highly likely to endanger the life of the police informer concerned. Accordingly any ... release of the document should be ... resisted strongly on the grounds of public interest immunity.*

I also note that in your report you are unable to conclude that miscarriages of justice have occurred in the criminal proceedings relating to individuals discussed in the Kellam report. I further note that section 41 of the IBAC Act provides a possible basis for limiting further dissemination of the report.

Nonetheless, I appreciate that you have reached the conclusion, as set out in your report in relation to recommendation 12 of the Kellam report, that you are obliged to disclose the contents of that report to those that may be affected by the matters discussed therein.

It remains my view that any disclosure, even in conditions of the strictest confidence, would generate a risk that convicted persons, or their associates, would gain access to parts or summaries of the report. In those circumstances, as I appreciate you are already well aware, there would be a threat of the utmost gravity to the safety and wellbeing of the source.

For the record, I draw your attention to the fact that there is material in Kellam report and its annexures which clearly identifies Lawyer X, as well as the identities of Victoria Police and IBAC personnel. In the event of any disclosure I would urge that consideration be given to not disclosing, or redacting, those critically sensitive elements of the report.

Finally, and also for the record, I note that Victoria Police shares the above concerns in relation to disclosure of any part of the report, in part because they have assessed the current risk to the source (i.e. prior to any disclosure) as already at the highest level.

- 9.12 On 23 March 2016, DC Patton sent a letter to the DPP,<sup>121</sup> which stated as follows:

<sup>120</sup> VPL.0100.0001.1817 at .1863

<sup>121</sup> VPL.0100.0001.1817 at .1824.

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I note your concerns in regard to the ongoing safety of the person subject of the discussion and your assurance that you will not take any further steps of disclosure until discussion with Victoria Police has taken place. I have directed that a comprehensive and updated risk assessment take place giving consideration to the aspects of disclosure that you have proposed and further considering the risks posed by individuals who may become aware of the identity of the person. Given the complexity of this assessment it is anticipated that it may take a number of weeks to prepare.

The Director of Legal Services has previously indicated that Victoria Police will make a further submission addressing questions of duty and the public interest immunity considerations relating to disclosure. We propose to provide that submission prepared by Senior Counsel immediately upon receipt of the urgent risk assessment.

9.13 On 24 March 2016, the DPP responded to the 23 March 2016 letter,<sup>122</sup> stating:

I note the serious matters you raise in the letter. Please be assured that I will not take further action about disclosure until you have provided material to me, as envisaged in the final paragraph of your letter, and you have had an opportunity to address the matter further with me.

The only thing I would add is that having reached the decision I have, I am anxious to proceed with disclosure as soon as possible. I would envisage discussions taking place with Victoria Police, and to that end, I am available at any time.

9.14 On 8 April 2016, the DPP sent a further letter to DC Patton,<sup>123</sup> in which he reiterated his concern that the disclosure issues move forward as expeditiously as possible and proposed that some preliminary matters (including contact details of potentially affected persons and Ms Gobbo) could be provided independently of the substantive issues, which were to be addressed in the submission by counsel.

9.15 On 12 April 2016, a draft of the risk assessment of Ms Gobbo was completed. In light of the disclosure issues being contemplated, the updated risk to Ms Gobbo was assessed as "extreme" (being the highest category of risk). Stephen Lee and I attended a conference with the VGSO and counsel in which we briefed them on the risk assessment. I took a file note of this discussion.<sup>124</sup>

9.16 On 13 April 2016, I sent an email to the DPP to inform him that we expected to complete the updated risk assessment by the end of the week and that DC Patton would share the outcome of the assessment and Victoria Police's legal position urgently once the risk assessment was completed.<sup>125</sup>

9.17 On 20 April 2016, DC Patton sent a letter to the DPP that enclosed a submission prepared by counsel for Victoria Police dated 18 April 2016.<sup>126</sup> The letter stated, amongst other things, that:

<sup>122</sup> VPL.0100.0001.1817 at .1821

<sup>123</sup> VPL.0100.0001.2186 at .2424

<sup>124</sup> VPL.0100.0001.2186 at .2422

<sup>125</sup> VPL.0100.0001.2186 at .2383

<sup>126</sup> VPL.0100.0001.2186 at 2284

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You have proposed to disclose information about Source 3838 from the *Kellam Report* to Source 3838's former clients, including the fact that Source 3838 was providing information about those clients to Victoria Police.

Since my letter dated 5 February 2016, Victoria Police has conducted a further risk assessment. That risk assessment indicates that the proposed disclosure would increase the likelihood of Source 3838's death from "possible" to "almost certain" and the overall risk of death from "high" to "extreme". I note that Stephen O'Bryan, the IBAC Commissioner, holds a similar view, as set out in his letter to you dated 17 March 2016.

In those circumstances, you are not required to make any disclosure of the information, and it would be wrong to do so. That is the effect of the enclosed submission prepared by Peter Hanks QC and Emrys Nekvapil of counsel on behalf of the Chief Commissioner. They submit that, given the risk to the life of Source 3838 if disclosure were to occur, the information is protected from disclosure by public interest immunity. They describe the case for public interest immunity as "compelling".

Mr Hanks and Mr Nekvapil say, in effect, that you would breach several legal duties if you were to make the proposed disclosure without taking five further steps that they have identified.

They say that "it would be wrong to disclose information about Source 3838 only because you have reviewed insufficient material to exclude the possibility of a miscarriage of justice". In your letter, you wrote:

"I do not have knowledge of, or access to, all the evidence and information relating to the activities of source 3838. Such materials are likely to be in the possession of Victoria Police."

Please let me know what material you require, in order to give full and complete consideration to the question referred to in Recommendation 12 of the *Kellam Report*. The Chief Commissioner will promptly provide that material to you for that purpose.

Mr Hanks and Mr Nekvapil also submit that, if you remain unsure about whether the information can be withheld on the basis of public interest immunity, you should approach the Supreme Court on an *ex parte* basis, and seek a ruling. If it comes to that stage, we are open to discussion about what form the application should take and who should be the moving party. Whatever form be adopted, the Chief Commissioner would seek to call evidence and make submissions in support of a ruling that you are not under a duty to disclose any information derived from the *Kellam Report*.

- 9.18 After this, the parties formed the view that the only way to deal with the competing public interests was to seek a declaration from the Court. Consideration was given to jointly seeking advice from the Solicitor General, however, I was advised by the VGSO that the DPP had rejected that option. My view was that the balancing act should properly be put before the Court and I was mindful that Ms Gobbo would have a private right in breach of confidence that may be asserted. Victoria Police and the DPP also agreed that Victoria Police should be the moving party because it was Victoria Police asserting public interest immunity on the basis of informer privilege.
- 9.19 On 21 and 22 April 2016, the DPP sent two letters to DC Patton advising that he intended to seek his own legal advice about the matters raised in the memorandum and requesting further information in relation to the risk assessment.<sup>127</sup> In response, DC Patton suggested that the DPP attend a

<sup>127</sup> VPL.0100.0001.2186 at .2274; VPL.0100.0001.2186 at .2275

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meeting with the risk assessors and AC Fontana to provide background as to the risk assessment process.

- 9.20 After these letters were sent, Victoria Police instructed the VGSO and counsel to prepare Court documents so that declarations could be sought about the competing public duties. During this time, the safety risk to Ms Gobbo continued to be a significant concern. From time to time, I would receive updates on safety risks and copies of communications between Victoria Police and Ms Gobbo.
- 9.21 In this period, there was also heightened media interest and reporting. There were rumours that a journalist had a copy of the Kellam Report and was leaking parts of it. Within Victoria Police, the continued media reporting was considered problematic and made managing risks surrounding Ms Gobbo more difficult.
- 9.22 On 26 May 2016, the DPP wrote to the Chief Commissioner of Police advising that the DPP intended to write to the seven individuals outlined in the Kellam Report.<sup>128</sup> This letter was sent at the request of Victoria Police, in order to clearly define the controversy which the Chief Commissioner and the DPP would take to Court for declarations. The letter stated that:

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<sup>128</sup> VPL.0100.0001.2186 at 2210

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I refer to my letter of 10 March 2016, in which I stated my intention "to disclose at least some of the contents of the Kellam Report to those that may be affected by the matters discussed therein".

I noted in that letter that the continued personal safety of 3838 is a matter of immense and ongoing concern, and that disclosure of the contents of the Kellam Report will require careful management and the full cooperation of relevant agencies.

I now write to provide further information about the matters that I intend to disclose.

Consistent with my obligation of disclosure, it is my intention to disclose information about the Kellam Report to the following individuals:

1. Frank Ahec
2. **Mr Bickley**
3. Zlate Cvetanovski
4. **Mr Ketch**
5. Antonios Mokbel
6. Milad Mokbel

I explained in my letter of 10 March 2016 that it would be "necessary to provide sufficient information in order for those people to embark on a rational and informed decision making process as to what steps they may wish to take".

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I have drafted a separate letter to each of the seven individuals identified above. Each letter is slightly different, depending on the particular circumstances of the relevant individual.

Each letter explains that:

IBAC produced a confidential report (the "Kellam Report") last year, relating to the use by Victoria Police of a certain legal practitioner (to whom I will refer as "3838") as a registered human source — that is, a police informer.

Each letter contains the following paragraph:

The matter that I wish to disclose to you is that the material contained in the Kellam Report could be interpreted to mean that at or about a time when 3838 was your legal representative in relation to charges for which you were later convicted, 3838 was also providing information to Victoria Police about you, in possible breach of legal professional privilege and/or in breach of a duty of confidentiality.

In addition, the letters to Frank Ahec, Zlate Cvetanovski, Antonios Mokbel and Milad Mokbel contain the following paragraph:

Further, I wish to disclose to you that some material contained in the Kellam Report could also be interpreted to mean that certain persons who made statements against you, in the matters for which you were convicted, may have been legally represented by 3838 at or about the same time that 3838 was providing information to Victoria Police about those persons, in possible breach of legal professional privilege and/or in breach of a duty of confidentiality.

Absent any intervening event, I propose to send the letters to the identified individuals on 1 June 2016.

9.23 On 31 May 2016, DC Patton wrote to the DPP in response to the 26 May letter<sup>129</sup> stating, amongst other things that:

As you are aware from my previous letter dated 20 April 2016, the Chief Commissioner of Police's view is that you are not permitted to disclose this information unless a court decides that the information is not subject to public interest immunity. The Chief Commissioner is of the view that the Kellam report and its contents are subject to public interest immunity.

The Chief Commissioner is currently preparing to issue proceedings in the Supreme Court of Victoria to resolve the issue in respect of disclosure and public interest immunity. In these circumstances, please provide a written undertaking that you will not send the letters on 1 June 2016 and that you will give the Chief Commissioner 72 hours' notice if you do intend on sending the letters. Please provide us with a written undertaking by 4:00pm on Tuesday, 31 May 2016.

<sup>129</sup> VPL.0100.0001.2186 at 2191

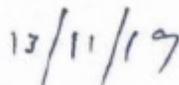
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- 9.24 By email sent on 31 May 2016 at 4.41pm, the DPP gave the undertaking sought in the letter.<sup>130</sup>
- 9.25 On 10 June 2016, Victoria Police commenced proceedings against the Victorian DPP seeking declarations that the proposed disclosure and other information in the IBAC Report was subject to public interest immunity claims and should not be provided as contemplated.<sup>131</sup>
- 9.26 At around the time that the *AB v CD* litigation was filed, Rob Karam's appeal against conviction was before the Court of Appeal. As part of his appeal, Mr Karam sought discovery of documents from Victoria Police and the Australian Federal Police in relation to Ms Gobbo. In this context, the CDPP sought access to Victoria Police records in relation to Ms Gobbo, which were made available. The Legal Services Department provided instructions to VGSO in relation to this issue, which was the subject of correspondence between the VGSO and the CDPP.
- 9.27 On 21 October 2016, a directions hearing was held in the *AB v CD* proceeding. It was listed for trial on 21 November 2016. Following the directions hearing, the DPP sent a letter to the VGSO in relation to the [REDACTED] case study.<sup>132</sup>
- 9.28 On 25 October 2016, the Legal Services Department instructed the VGSO to send a letter to the DPP, in which Victoria Police proposed that the Court focus on the [REDACTED] case study at the [REDACTED] hearing.<sup>133</sup> The [REDACTED] case study was chosen as it was, in the Chief Commissioner's view, the starkest example of the question before the Court. Ultimately, the DPP agreed that the [REDACTED] case study should be the focus of the hearing and the case was presented on this basis.
- 9.29 My role in relation to the disclosure issue became less significant at around this point because the file moved into the civil litigation team, under the supervision of the Assistant Director of Legal Services, which was a new role that was created at my request. While I continued to sit on the Operation Bendigo Steering Committee and had oversight of all major legal decisions, the day to day management of the litigation was performed within our civil litigation team.

Signed



Findlay Gerard McRae


<sup>130</sup> VPL.0100.0001.2186 at 2189<sup>131</sup> VPL.0012.0002.0312<sup>132</sup> VPL.0005.0003.2212<sup>133</sup> VPL.0005.0003.2177