

## Filenote

### Victorian Government Solicitor's Office

|                             |   |
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| <b>File details</b>         | 'Without Prejudice' meeting with Fin McRae of Victoria Police, Mark Waters of Piper Alderman and witness representative |
| <b>Name/initials</b>        | Isabel Parsons  |
| <b>Date/time</b>            | 4 January 2010  |
| <b>Duration (if approp)</b> |   |

|                     |                          |                      |                          |                        |                          |
|---------------------|--------------------------|----------------------|--------------------------|------------------------|--------------------------|
| Telephone (in)      | <input type="checkbox"/> | Telephone (out)      | <input type="checkbox"/> | Drafting advice        | <input type="checkbox"/> |
| Drafting documents  | <input type="checkbox"/> | Instructing in court | <input type="checkbox"/> | Interviewing witnesses | <input type="checkbox"/> |
| Drafting statements | <input type="checkbox"/> | Conference call      | <input type="checkbox"/> | Research               | <input type="checkbox"/> |
| Meeting client (in) | <input type="checkbox"/> | Meeting client (out) | <input type="checkbox"/> | Other                  | <input type="checkbox"/> |

NB reference to witness representative in this file note is to the relative of the witness at the meeting – name not used here for security reasons.

#### Advice from DPP

1. Prior to this meeting, Fin McRae advised IAP that the DPP had expressed concerns.
2. DPP had given the following guidance:
  - Short term payments to be subsistence model only – no computation by reference to witness' [REDACTED]
  - No extraordinary expenses e.g. current car
  - Essential that witness be included in Witness Protection Program to provide a framework for any payments, especially final lump sum payment.

#### Meeting with Mark Waters and witness representative

##### *Without prejudice*

3. Mark Waters confirmed that the meeting was proceeding 'without prejudice' from all parties' points of view and that witness representative had full authority to speak for the witness.
4. Mark Waters indicated that the response to the witness's proposal did not in his view advance the matter in terms what might lead to a resolution of the extant issues between the parties. There were he said a number of 'critical starting points' that he wished to cover in the meeting.

#### *Is the witness giving evidence?*

5. The first issue was the status of the witness. Reference was made to the letter of 14 December 2009 from VGSO to Piper Alderman asserting there was no agreement in relation to the witness.
6. Fin MacRae advised that DPP will be calling the witness and the issue of the attitude of the witness to giving evidence was a matter for them.

- 2 -

***Witness prefers to participate in the WP Program***

7. Mark Waters then advised that the witness was happy to participate in the Witness Protection Program.
8. The witness' representative stated the witness had repeatedly stressed to Victoria Police that this would assist in ensuring that all correspondence in relation to this matter would not be required to be produced to the Court.
9. Fin MacRae advised that there would need to be full participation by the witness in the requirements of the WP Program. The witness representative indicated that the witness was seeking to enter the program [REDACTED] allegedly promised to the witness by O'Connell in 2008.

***Basis of participation in the Witness Protection Program***

10. There was then discussion of a number of aspects of the witness's requirements that would have a bearing on the term of any MOU under the Witness Protection Program.  
[REDACTED]
11. The witness continues to refuse [REDACTED]  
[REDACTED]
12. [REDACTED] witness needs to be in Melbourne. Witness is currently in hospital. Witness needs to regularly visit [REDACTED] Due to current illness and medications, is incapable of driving long distances. Not acceptable for Victoria Police to take the witness to these appointments.
13. Witness is currently suffering from 2 conditions – a physical condition (caused by stress) in which her skin erupts into wounds that are quite deep and need to be dressed – she had had 19 of these – and a non-physical stress related condition.
14. Witness representative advises that when discharged from hospital, the witness will need:
  - Daily home nursing for physical ailment
  - Regular follow up by surgeon treating that ailment
  - Access to health services including [REDACTED] at the [REDACTED] physiotherapy, myotherapy
  - On average hospital visits will be more than once per week
  - Could be a need for urgent surgical treatment at short notice
15. Witness representative said that she had suggested [REDACTED] at Docklands [REDACTED] but this had been rejected. Fin McRae advised that Docklands was not appropriate and would continue to be objected to.
16. No resolution at the meeting [REDACTED]

██████████ lump sum

17. In relation to ██████████ Mark Waters began to refer to the terms of VGSO's 'without prejudice' letter of 31 January 2009 which distinguish between ██████████ and what he referred to 'compensation' once the arrangements were completed.
18. Fin McRae interrupted to advise that the DPP had indicated that Victoria Police could only supply reasonable living expenses as ongoing support (and that any lump sum would need to be documented as part of the Witness Protection Program and limited to ██████████ and ██████████ of the witness under the auspices of the program, with adequate substitution of any agreed amount).
19. There was then some discussion as to the change in position that this represented. Fin McRae advised that DPP had indicated that the witness' lawyer was welcome to call him directly to discuss this.
20. The witness' representative asked whether the DPP had seen the VGSO letter of 14 December 2009 – and if Victoria Police would have any objection to providing this to the DPP.
21. Mark Waters asked Fin MacRae to confirm that Victoria Police's position was now that there would be no payment on an ongoing basis to the witness representing ██████████ living expenses of the kind described and that this ██████████ would not be part of the computation of any final lump sum. Fin confirmed that this was the case.

*Substantiation of medical expenses*

22. There was then discussion concerning how the witness' expenses may be substantiated.
23. In relation to medical expenses, the witness's representative advised that Victoria Police holds, through O'Connell, copies of all medical bills of the witness since late 2008 up until 20 November 2009. Mark Waters asked us to indicate what we considered would be the parameters relevant to assessing whether these were 'reasonable' and he referred to the statement in the letter of 31 January 2009 which distinguished between payment of reasonable medical expenses and those with respect to pre-existing conditions.
24. IAP advised that the letter of 31 January 2009 distinguished between payment of actual reasonable medical expenses where Victoria Police was making payment in the nature of a contribution to living expense of the witness, and computation of these expenses on an alternative basis, designed to calculate the loss of the witness. IAP noted that we were no longer discussing the loss scenario and that under our current proposal, it would be actual medical expenses of the witness (where these were reasonably incurred) that would be included. The issue of pre-existing conditions would not be relevant.
25. On the issue of reasonableness, IAP confirmed that we would have to look at the nature of the expenses and assess whether these were consistent with information we had received about the condition of the witness and treating doctors.
26. The witness representative advised that any offer for Victoria Police to consult with the witness' doctors about the witness' medical condition was now 'off the table'. The witness' representative asserted that such an offer had been made a number of times and rejected by Victoria Police (NB VGSO file shows that on 7 October 2009

- 4 -

O'Connell informed Smith that in fact he sought to speak with the witness' doctor and was advised that the doctor did not want to speak to him – should this be corrected in our next letter to Piper Alderman?).

#### *Substantiation of living expenses*

27. With respect to actual living expenses, Victoria Police has apparently been provided, again through O'Connell, with expenses of the witness in relation to accommodation, car and transport – but it is not clear how much of these expenses have actually been paid by Victoria Police to date or whether they would be included in any final arrangements for payment.
28. There was some discussion about the lump sum of \$1,000 per week which has been paid to the witness. The witness' representative asserted that this was never offered or accepted on the basis that it was equivalent to the witness's income. Instead, it was asserted that the payment was made because the witness could not have [REDACTED] (this is probably irrelevant, as the money was required to cover living expenses under those circumstances in any case).
29. IAP advised that the lump sum approach cannot be used in this form – it needs to bear a relationship to substantiated likely costs of living.

#### **Witness management support**

30. During this conference, the witness's representative referred a number of times to a decision communicated by sms on 29 November 2009 to terminate witness' management support – and stated that Steve Smith has had no contact with the witness since this time.
31. This appears to be a reference to communications being restricted with the witness on 20 November 2009 on the basis that Victoria Police had become aware of a pending newspaper article about the witness's relationship with Victoria Police.

#### **Further steps**

32. Fin MacRae noted that the witness appeared to be requesting that we prepare an MOU on the basis that the witness seeks to participate in the WP Program. The witness's representative and Mark Waters indicated that they would have no objection to receiving one and that it ought to be made available as soon as possible.
33. Fin MacRae was asked when such a document could be provided. He indicated that he would need instructions to complete the document and that he would be in a position to get back to Mark Waters tomorrow about timing.

#### **Other issues**

34. Mark Waters advised that in view of the assertion in the VGSO letter that there was no agreement made between the witness and O'Connell or Smith on behalf of the CCP, the witness did not consider the witness to be bound to what is alleged to be the witness' other obligations in relation to those arrangements, and in particular, the obligation that the witness not speak to the media. He asked Fin MacRae to draw this to the attention of the relevant senior personnel at Victoria Police.
35. The witness' representative referred to the VGSO letter of 31 January 2009, and in particular the assertion that there was no resolution [REDACTED] In

- 5 -

view of this, the witness' representative asked whether as at today, we VGSO had any further instructions as to what should happen if the witness was discharged from hospital. IAP advised that we did not, but could obtain these.