

26 June 2020

Solicitors Assisting the Royal Commission into the Management of
Police Informants

**Royal Commission into the Management of Police
Informants — Terms of Reference (TORs) 3 and 4**

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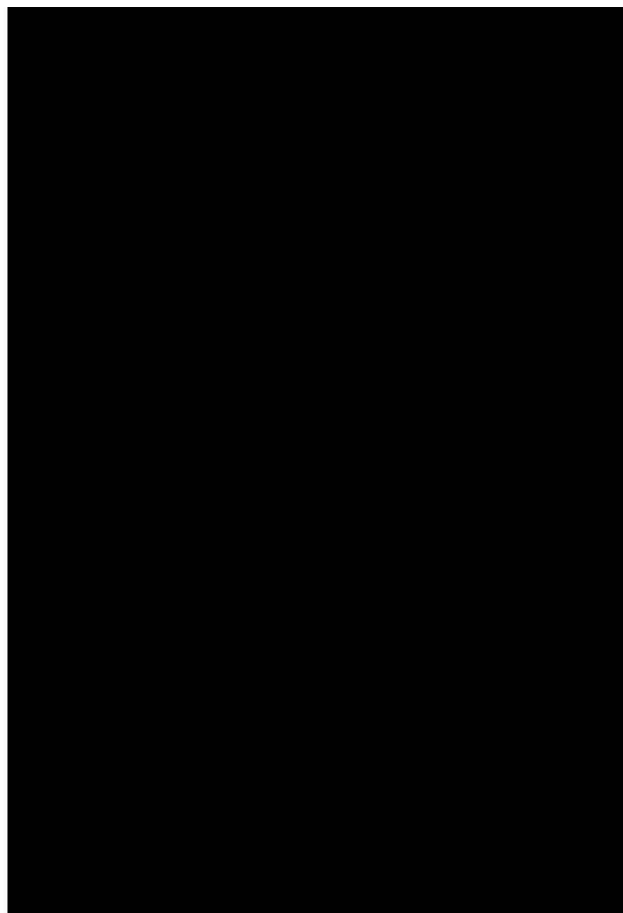
Confidential Annexure B

Victoria Police confidential responses to Royal Commission
questions

Responses to 11 June 2020 letter

Question 8

- 38 Source Contact Reports are wholly contained within Interpose, and there is no 'blank' version of a Source Contact Report. The fields that comprise a Source Contact Report are:



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- 39 The word “approach”, as used in sections 8.3 and 8.10 of the New VPM Human Sources Policy, is not a reference to the process for [REDACTED]
- 40 Approval is required from the HSEC prior to approaching a human source who is subject to legal obligations of privilege or confidentiality or proceeding with the registration of a human source subject to those obligations. The HSEC would ordinarily approve an approach to a potential human source who is subject to legal obligations of privilege or confidentiality for the purpose of obtaining further information in order to make an informed decision as to whether the potential human source should be approved for registration. The approach may be approved for the limited purpose of obtaining intelligence relevant to the decision whether or not to approve registration, such as the kind of information that could be provided by the human source, or information relevant to the Human Source Risk Assessment. In order for the matter to be considered by the HSEC, the approach must be reviewed by the OIC, LSR, CSR and HSMU and appropriate.

Question 10(a)

- 41 Following an approach authorised by the HSEC to a potential human source subject to legal obligations of privilege or confidentiality, the registration application would be required to proceed through the layers of review outlined in section 4.2 of the New VPM Human Sources Policy.
- 42 Registration of a potential human source subject to legal obligations of confidentiality or privilege must be approved by the HSEC. The HSEC may approve more than one approach to a potential human source prior to making a decision as to whether the source should be registered.

Question 17 (continued)

Question	Victoria Police response
Question 17	The application of human rights and the Charter is a component of all [REDACTED] of the [REDACTED] Human rights has been expressly referred to in the [REDACTED] since August 2019, although human rights had been referred to in earlier versions of the [REDACTED] Human rights are currently discussed in the [REDACTED] and will be incorporated into the next [REDACTED]

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- 43 Members in the [REDACTED]
[REDACTED] (which has a dedicated source team) are subject to the following
maximum time in position requirements:

Position	Maximum time in position
[REDACTED]	[REDACTED]
[REDACTED]	
Handler	[REDACTED], with two options of [REDACTED] each
Senior handler	[REDACTED] with one option of [REDACTED]
Controller	[REDACTED] with one option of [REDACTED]

Response to 15 June 2020 letter**Question 1**

- 44 Victoria Police's response to Notice to Produce NP-296 was accurate as at the date of the response (15 August 2019), however since that date, the HSEC has considered some issues relating to confidentiality or privilege associated with the use of human sources. In order to assist the Commission, Victoria Police has prepared a table outlining details of the HSEC's consideration of these matters, which can be produced upon receipt of a Notice to Produce.
- 45 A number of the relevant matters considered by the HSEC involve live and ongoing investigations, which are subject to a PII claim by Victoria Police. Some matters have not been resolved by the HSEC.

Our reference
DANM/VICT20952-9143050

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26 June 2020

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Contact
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Dear Mr Rapke

Royal Commission into the Management of Police Informants — Terms of Reference (TORs) 3 and 4

We refer to your letters dated 11 June and 15 June 2020 requesting the provision of documents and information in relation to TOR 3.

We are writing to:

- provide the further information requested by the Commission in relation to TOR3;
- confirm production of documents relating to TORs 3 and 4; and
- enquire into the process by which Victoria Police will be afforded sufficient opportunity to comment on and/or respond to the draft report or submissions of Counsel Assisting in relation to TORs 3 and 4.

TOR 3 further information and request for Notice to Produce

Victoria Police's responses to the matters raised in your letters are set out in **Open Annexure A** and **Confidential Annexure B**. Victoria Police makes a public interest immunity (PII) claim over the contents of Confidential Annexure B, on the basis that disclosure of the information in that Annexure would reveal secret covert policing methodologies and prejudice the conduct of ongoing investigations.

Victoria Police considers that some documents which may be relevant to the Commission's questions are not currently the subject of a Notice to Produce. Accordingly, Victoria Police requests that the Commission issue it a Notice to Produce in respect of the document referred to in paragraph 44 of Confidential Annexure B.

Production of New VPM Human Sources Policy and statement of Deputy Commissioner Steendam

Victoria Police has reviewed and amended the redactions to the statement of DC Steendam in relation to TORs 3 and 4 (VPL.0014.0113.0019) and the New VPM Human Sources Policy (as that term is used in the statement of DC Steendam: VPL.0005.0285.0001) in accordance with the Commissioner's PII determinations dated 15

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May 2020. As requested in the Commission's correspondence dated 15 May 2020, we take this opportunity to produce versions of these documents with amended redactions.

Potential findings concerning Victoria Police in relation to TORs 3 to 6

The scope of the Commission's request to produce further documents in relation to TOR 3 indicates to us that some or all of those documents, together with the evidence of Deputy Commissioner Steendam, may receive scrutiny from the Commissioner in her final report.

We note the Commissioner's earlier indication that the process concerning TORs 3 to 6 will be managed separately from TORs 1 and 2, as set out in her letter to Deputy Commissioner Steendam dated 3 March 2020.

As you are aware, section 36 of the *Inquiries Act 2014* (Vic) requires that, in the event a Royal Commission proposes to make a finding that is adverse to a person, the Royal Commission must (1) be satisfied that the person is aware of the matters on which the proposed finding is based has had an opportunity to respond to those matters and (2) the Royal Commission considers a person's response before making any adverse finding.

Accordingly, we ask that you explain the process by which Victoria Police, our clients or any other person in relation to whom the Commission is considering making an adverse finding in relation to TORs 3 to 6 will be heard, including but not limited to the following:

- whether Counsel Assisting intends to make submissions in relation to TORs 3 to 6 and, if so, whether these will include submissions in relation Victoria Police's response to the Royal Commission;
- how Victoria Police will be afforded the opportunity to provide responsive submissions, either to Counsel Assisting's submissions or to findings contemplated by the Commissioner before the publication of the final report;
- the timeframe for conducting any necessary PII review and for resolving any disputes over PII claims made by Victoria Police before the publication of the final report; and
- the timetable for the steps above, or any other steps contemplated by the Commissioner in relation to TORs 3 to 6.

Furthermore, as TORs 3 to 5 traverse matters relating to Victoria Police's current human source management framework, it is anticipated that Counsel Assisting's submissions or findings proposed by the Commissioner may carry significant resourcing and organisational implications for Victoria Police. To the extent that the Commissioner or Counsel Assisting intend to propose reform to the human source management framework, Victoria Police considers that, as a matter of fairness, it should be afforded an opportunity to provide submissions in response. The importance of procedural fairness in these circumstances is acknowledged in paragraph 64 of the submissions of Counsel Assisting in relation to TORs 1 and 2.

Victoria Police has allocated considerable resources in order to meet the Commission's compressed timeframe for the review and preparation of responsive submissions to Counsel Assisting's submissions in relation to TORs 1 and 2 and its PII review. We ask

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that you please urgently provide a response to the questions above to enable Victoria
Police to plan for and ensure that there are adequate resources and time available to
respond to matters raised by the Commission in relation to TORs 3 to 6.

We look forward to hearing from you.

Yours faithfully

Corrs Chambers Westgarth



Daniel Marquet

Partner

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Open Annexure A

Victoria Police open responses to Royal Commission questions

Responses to 11 June 2020 letter

Question 1

- 1 Version 1 of the Human Source Management Ethics Committee (**HSEC**) Terms of Reference has been produced with document ID VPL.0097.0015.0001.

Question 2

- 2 There was no meeting of the HSEC on 23 July 2015. There was, however, a meeting of the HSEC on 27 March 2015 attended and chaired by then Assistant Commissioner Linford, which was the inaugural meeting of the HSEC. There is a version of the HSEC Terms of Reference that refers to there being a meeting of the HSEC on 23 July 2015,¹ however this is a typographical error.
- 3 A copy of the minutes of the 27 March 2015 HSEC meeting, containing redactions for relevance, has been produced with document ID VPL.0097.0016.0001.

Question 3

- 4 The statement of Inspector Ilena Pucar (VPL.0014.0132.0007) concerns Victoria Police covert powers. Inspector Pucar's statement also covers Victoria Police powers and practices in applying for and obtaining telephone intercept warrants under the *Telecommunications (Interception and Access) Act 1979* (Cth) and the handling and dissemination of information obtained in the course of executing a telephone intercept. This statement was produced on a confidential basis on 8 May 2020. Victoria Police does not intend to provide any further statements on covert powers.

Question 4

- 5 On 3 March 2020 Victoria Police produced an organisational chart (VPL.0098.0045.0008) outlining the current organisational structure for human source management, including the number of members based in each central and regional dedicated source unit. Page 1 (VPL.0098.0045.0008 at .0008) outlines the current organisational structure, and page 2 (VPL.0098.0045.0008 at .0009) outlines a potential centralised human source management structure.

¹ IBAC.0014.0001.0001_0062 to _0064.

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- 6 In response to the Royal Commission's request for the numbers and locations of Officers in Charge, Local Source Registrars and Central Source Registrars, we confirm that:
- (a) there is one Central Source Registrar within Victoria Police, currently Superintendent Scott Mahony;²
 - (b) each Division in a Region (there are 4 Regions across the State) has a Local Source Registrar, and a number of other Divisions in Commands also have a Local Source Registrar (as per VPL.0098.0045.0008 at .0008); and
 - (c) in a Region each work unit has an Officer in Charge at the rank of Senior Sergeant, however in a Command each work unit has an Officer in Charge at the rank of Inspector.

Question 5

- 7 Victoria Police responded to this request in Annexure B to the letter from Corrs Chambers Westgarth to the Solicitors Assisting the Royal Commission dated 27 April 2020.
- 8 Victoria Police has produced monthly spreadsheets outlining the number of human source registrations, broken down with the details requested by the Royal Commission. The spreadsheets were produced on 8 February 2020 and have documents IDs VPL.0098.0045.0001 to .0038.

Question 6

- 9 Victoria Police responded to this request in Annexure B to the letter from Corrs Chambers Westgarth to the Solicitors Assisting the Royal Commission dated 27 April 2020.
- 10 The relevant information was produced on 28 February 2020 and is set out in the documents at VPL.0098.0043.0001 to .0027.

Question 7

- 11 Given the responses to Questions 4 to 6, no response to Question 7 is required.

Question 8

- 12 See Confidential Annexure B.

Question 9

- 13 Redacted and shaded copies of the documents requested in questions 9(a) to (d) will be produced to the Commission.
- 14 It is noted that Victoria Police objects to publication of documents 9(a) and (d) on the bases that:

² See statement of Deputy Commissioner Steendam, [247]: VPL.0014.0113.0019 at .0072.

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- (a) document 9(a) is subject to a LPP claim over the entirety of the document; and
- (b) document 9(d) contains information that is commercial in confidence, publication of which would likely cause harm to the commercial interests of the technology provider of the Interpose system. Prior to consideration of publication of document 9(d) Victoria Police requests that the Commission contact the provider and consider any relevant objections that may be made by the technology provider.

Question 10 and 10(a)

See Confidential Annexure B.

Question (a) relating to training (no question number)

- 15 The Commission has asked the following unnumbered question:

Is there a requirement of continuing professional development and/or ongoing training for people who do or might come in contact with human sources and might be managing human sources as handlers? If so, please outline the nature of this training, including the content it covers and how often and to whom it is delivered.

- 16 There is no current requirement for members involved in human source management to undertake ongoing training relating to human source management, however all members involved in human source management have recently been required to undertake some additional training relating to human source management.
- 17 An obstacle to the imposition of a requirement to undertake ongoing human source management training is the decentralised human source management model in Victoria. If there was a shift to a centralised system, Victoria Police would likely consider imposing ongoing training requirements.

Questions 11 to 15

- 18 The presentation entitled 'Privilege' (VPL.0098.0045.0010) is a presentation given by the Research and Training Unit to members undertaking the Prosecutor Training Course. The presentation is not given to members directly involved in human source management. For completeness, the Privilege training presentation in the Prosecutor Training Course was last recorded on 29 January 2018, and a similar version will be used in future delivery of the Prosecutor Training Course. A presentation in this form was first given in September 2015, and Privilege has been a topic on the Prosecutor Training Course since at least 2005 and likely much earlier.
- 19 As outlined in the statement of Deputy Commissioner Steendam,³ members who are actively involved in human source management have attended a training

³ Ibid [265]: VPL.0014.0113.0019 at .0076.

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presentation delivered by the Victorian Government Solicitors' Office (**VGSO**) on issues of privilege and disclosure. The VGSO training presentation has been delivered on two occasions: in November 2019 and March 2020. The November 2019 session was delivered to members of the HSMU and members of a dedicated team that manages high risk sources and the March 2020 session was delivered to members who work in dedicated source units and other members who are actively involved in human source management.

- 20 A copy of the VGSO training presentation has been produced with document ID VPL.0005.0298.0001. Victoria Police asserts a LPP claim over the entirety of the VGSO training presentation.

Questions 16 to 23

- 21 Questions 16 to 23 relate the Human Rights Risk Assessment (**HRRA**) (which is also known as the Human Rights Impact Assessment).
- 22 Completion of the HRRA, is a requirement for the development of Victoria Police policy documentation. The purpose of a HRRA is to consider potential human rights impacts in line with the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**) arising from the implementation of new or amended policies within Victoria Police.
- 23 The HRRA does not relate to and is not used in the process of registering or considering registration of any human sources.
- 24 By way of context, the file in which the HRRA is located (VPL.0098.0129.0001) is the Victoria Police internal Force File in relation to the implementation and approval of the New VPM Human Sources. At pinpoint .0002 it is noted that:
- In preparation for the policy launch, a human rights risk assessment was requested on 22 April. This assessment has been completed by Priority Communities Division and is attached at folio 52.*
- 25 Accordingly, the responses to Questions 16 to 23 are as follows:

Question	Victoria Police response
Question 16	<p>The HRRA is a requirement for development of Victoria Police policies that are likely to engage human rights considerations. Completion of an HRRA has been a requirement in these circumstances following the introduction of the Charter in Victoria (see response to Question 19). The HRRA may also be used to assess human rights implications of projects, plans or operations.</p> <p>Members involved in human source management receive training in relation to human rights (see response to Question 17) and their obligations under the Charter, but not specifically in relation to the HRRA.</p>

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Question	Victoria Police response
Question 17	All members undertake training in relation to human rights and are required to act consistently with the VPM – Policy Rules: Human Rights, Equity and Diversity Standards. ⁴ In fulfilling their duties, members must also apply and give consideration to human rights as set out in the Charter. See further Confidential Annexure B.
Question 18	Completion of a HRRA is a requirement for Victoria Police policy development, where the policy is likely to engage human rights considerations
Question 19	The requirement to complete a HRRA was introduced following the introduction of the Charter in Victoria.
Question 20	Completion of a HRRA does not relate to the registration of human sources, it relates to the implementation policies within Victoria Police.
Question 21	The HRRA is completed by the Priority Communities Division within Victoria Police. It is reviewed and approved by the Policy Owner and Accountable Officer, which, in the case of the New VPM Human Sources Policy is respectively AC Paterson and DC Steendam.
Question 22	The HRRA is not completed during the human source management process.
Question 23	The HRRA does not relate to or interact with the Human Source Risk Assessment or the Human Source Dynamic Risk Assessment.

Question 24

26 In responding to the recommendations in the Kellam Report, Victoria Police prioritised the implementation of amendments to relevant procedures and policy requirements. While it is acknowledged that some of the enhancements to the Interpose human source module could, on reflection, have been made at an earlier point in time, some of the obstacles were:

- (a) functionality and technological shortcomings of Interpose and other Victoria Police document and record management systems (as outlined

⁴ VPL.0005.0280.0267.

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in the responses to questions 13 and 14 in the statement of DC Steendam); and

- (b) the costs of implementing upgrades to Interpose, balanced against the expense of other required organisational system enhancements around the same time.

27 During the time that Victoria Police was implementing the recommendations of the Kellam Report, Victoria Police was also in the process of seeking funding for a new organisational case management system, which would replace Interpose. In the circumstances, it was considered that the investment required to upgrade the Interpose human source module would not have been an efficient use of resources if Interpose was going to be replaced. As the Interpose was not ultimately replaced, the human source module on Interpose was upgraded in October 2019.

Question 25

28 The process by which members apply to register a potential human source on Interpose is set out in paragraph 286 of the statement of DC Steendam.⁵ The following functionalities of Interpose assist members in ascertaining whether a potential human source has a connection to an occupation with legal obligations of confidentiality of privilege:

- (a) In applying to register a new source in Interpose, a pop-up window is displayed which asks members to consider whether the potential human source *could* be subject to legal obligations of privilege or confidentiality. If the member selects “yes”, the Human Source Management Unit (HSMU) is automatically notified.
- (b) Members must identify the potential human source’s occupation and employer in drop down menus in Interpose. Through this process, members are prompted to consider whether there circumstances where the potential human source is not personally subject to legal obligations of confidentiality or privilege, however their occupation or employment means that they are likely to receive confidential or privileged information. Input of Kellam Occupation into Interpose will automatically trigger a notification to the HSMU. Furthermore, members are also prompted to identify the potential human source’s previous occupations and employers. Input of a Kellam Occupation will automatically trigger a notification to the HSMU.
- (c) Members are prompted to identify certain [REDACTED] relating to potential human sources, such as [REDACTED]. In doing so, members will consider whether the potential sources relationships

⁵ VPL.0014.0113.0019 at .0080 to .0083.

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may mean that they are likely to receive privileges or confidential information from a person who is in a Kellam Occupation.

- 29 The Interpose human source registration application is subject to multiple layers of review by members of increasing seniority.
- 30 Further to the Interpose system requirements, in deciding whether to register or receive information from a human source, members are trained to critically assess the origin and accuracy of the information that the source will provide. In making this assessment, members will probe how the source knows the information that is to be provided, and will thereby consider whether the information may potentially be subject to legal obligations of confidentiality or privilege.

Question 26

- 31 The version of the Human Source Risk Assessment with document ID VPL.0005.0275.0001 is the current version.
- 32 As noted in paragraph 159 of the statement of DC Steendam, the Human Source Risk Assessment is currently being revised and will be replaced by a document to be known as an "Initial Human Source Risk Assessment". Victoria Police estimates that the process of implementing the Initial Human Source Risk Assessment will take around six months.

Question 27

- 33 As Victoria Police operates a hybrid human source management model incorporating both dedicated and regional human source management capabilities, there is no uniform maximum time in position standard for members involved in human source management. Members that are involved in the management of human sources in different regions do not have maximum time in position requirements.
- 34 In general, there is a Victoria Police policy that members at and above Inspector rank are subject to redeployment after spending between two to five years in any one role. Consequently, the CSR, LSRs and some OICs are likely to be subject to redeployment after between two to five years of continuous service in a position.
- 35 Members in the HSMU are subject to the following maximum time in position requirements:

Position	Maximum time in position
HSMU	██████████ with two options of ██████████ each

- 36 Options to extend time in positions relating to the positions identified in the preceding paragraph are exercisable at the discretion of the Assistant Commissioner, Intelligence and Covert Support Command.
- 37 Further details regarding maximum time in position are set out in Confidential Annexure B.