

ROYAL COMMISSION INTO THE MANAGEMENT
OF POLICE INFORMANTS

Held in Melbourne, Victoria

On Thursday, 5 September 2019

Led by Commissioner: The Honourable Margaret McMurdo AC

Also Present

Counsel Assisting:	Mr C. Winneke QC Mr A. Woods Ms M. Tittensor
Counsel for Victoria Police	Mr S. Holt QC Ms R. Enbom
Counsel for State of Victoria	Mr C. McDermott
Counsel for Nicola Gobbo	Mr P. Collinson QC Mr R. Nathwani
Counsel for DPP/SPP	Ms K. O'Gorman
Counsel for CDPP	Ms R. Avis
Counsel for Police Handlers	Mr G. Chettle Ms L. Thies
Counsel for John Higgs	Ms C. Dwyer
Counsel for Faruk Orman	Ms S. Wallace
Counsel for Pasquale Barbaro	Mr C. Wareham
Counsel for AFP	Ms I. Minnett

10:55:05 1 UPON RESUMING IN OPEN HEARING:

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10:55:05 3 MR HOLT: We were provided yesterday by those instructing
10:55:07 4 you with a copy of the letter which had been sent by
10:55:10 5 Mr Overland's legal representatives to the Commission so
10:55:15 6 I'm in a position to deal with those issues if I may,
10:55:18 7 Commissioner.

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10:55:18 9 COMMISSIONER: If you could, yes.

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10:55:19 11 MR HOLT: Can I indicate at the outset just by way of
10:55:22 12 context, the approach that Victoria Police has been taking
10:55:25 13 to ex-members and members who are separately represented,
10:55:32 14 which obviously includes Mr Overland, is to attempt to put
10:55:34 15 them into no worse or better position than they would be
10:55:37 16 otherwise in terms of access to material. There's an
10:55:40 17 obviously inevitable tension which we've been conscious of
10:55:44 18 between the need to ensure that witnesses have proper
10:55:48 19 access to their own materials in order to be able to
10:55:51 20 prepare statements that assist the Commission and on the
10:55:52 21 other hand there not being any perception or reality of
10:55:56 22 anyone being given a forensic advantage that might
10:56:00 23 disadvantage the Commission in terms of the work that it
10:56:02 24 wishes to do. So that's the approach that's been taken.
10:56:03 25 With Mr Overland's material, there has been an amount of
10:56:09 26 material provided to Mr Overland already. Can I deal with
10:56:13 27 those things each in turn with as much particularity as I
10:56:18 28 can.

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10:56:19 30 COMMISSIONER: Just putting this in context, so we'd
10:56:21 31 originally requested a statement from Mr Overland to be
10:56:27 32 provided by 12 March.

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10:56:29 34 MR HOLT: Yes.

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10:56:30 36 COMMISSIONER: Then we extended that till 20 March and then
10:56:33 37 nothing much happened. There was a follow up in August and
10:56:40 38 on 20 August his lawyers, who are I understand a separate
10:56:48 39 branch of your instructors, wrote to the Royal Commission
10:56:52 40 and advised that they couldn't provide the statement on the
10:56:57 41 latest requested date of 21 August and one of the reasons
10:57:01 42 given was that they were awaiting material from Victoria
10:57:06 43 Police.

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10:57:06 45 MR HOLT: Yes, I understand that, Commissioner. There's
10:57:09 46 obviously, there's an information barrier protocol which
10:57:14 47 the Commission has in respect of that, in respect of those

10:57:17 1 teams so they're dealt with at arm's length. The position
10:57:20 2 is this, as it is with all people who are otherwise
10:57:23 3 represented, is that requests are made and subject to those
10:57:26 4 overarching considerations that I've indicated this morning
10:57:31 5 they're complied with. A very broad request, a request for
10:57:35 6 very broad categories of information was made to Victoria
10:57:37 7 Police by those representing Mr Overland on 14 June.
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10:57:41 9 COMMISSIONER: Yes.
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10:57:42 11 MR HOLT: 2019.
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10:57:43 13 COMMISSIONER: I think I read that out yesterday.
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10:57:43 15 MR HOLT: Yes.
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10:57:45 17 COMMISSIONER: And it was extremely broad.
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10:57:48 19 MR HOLT: It was even broader I think than is indicated.
10:57:50 20 There are in fact 20 categories, many we've in fact managed
10:57:53 21 to deal with.
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10:57:54 23 COMMISSIONER: Yes. It almost had the breadth of a Notice
10:57:56 24 to Produce from the Royal Commission.
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10:57:57 26 MR HOLT: I may have commented that myself, Commissioner,
10:57:58 27 at one point. And obviously our priority is answering and
10:58:02 28 continuing to answer the requests that the Commission has,
10:58:04 29 which are (a) more important and (b) have the force of law.
10:58:07 30 So that's the position. It doesn't mean we've sat on our
10:58:11 31 hands in respect of Mr Overland. One of the critical
10:58:14 32 issues, as you'd appreciate, for Mr Overland is emails.
10:58:16 33 The process that's been gone through with him, as has been
10:58:21 34 done otherwise with emails, is that all of his, his entire
10:58:25 35 email inbox was made available to those representing him
10:58:28 36 many weeks ago. They then reviewed those with a view to
10:58:33 37 providing us with agreed search times terms, which we
10:58:37 38 understand just by reading the correspondence they may have
10:58:38 39 also discussed with the Royal Commission. That process was
10:58:41 40 then done, has gone back to them and we've been provided
10:58:43 41 with indications from them as to which emails are relevant.
10:58:47 42 On the basis of advice and instructions given this morning,
10:58:51 43 I understand that those emails are now we consider to be in
10:58:54 44 a position to be produced to the Royal Commission. They
10:58:56 45 ought not wait for any statement of course. I think there
10:59:00 46 may have been some misapprehensions about that at some
10:59:04 47 point, but they are responsive to a Notice to Produce and

10:59:07 1 they will be provided. In addition, obviously
10:59:09 2 Mr Overland's team, as the transcript has been reviewed,
10:59:13 3 have been making specific requests for information. Those
10:59:13 4 specific requests have been able to be complied with
10:59:21 5 effectively in their entirety. There has been a
10:59:22 6 complication recently which is that as the recent
10:59:23 7 correspondence from Mr Overland's team indicates, we had
10:59:26 8 indicated that material would be provided on 30 August
10:59:30 9 2019. As a result of technical issues associated as much
10:59:34 10 as anything else with the burden of technical production,
10:59:37 11 those were provided yesterday. There are a very large
10:59:41 12 number of documents that have been provided to
10:59:44 13 Mr Overland's team. The reason for that is simply because
10:59:46 14 of the breadth of the requests that have been made, and in
10:59:49 15 light of the fact that that seems to be holding up the
10:59:52 16 provision of a statement or at least requests coming to the
10:59:55 17 Commissioner, we took the view it was better just to give
10:59:57 18 it to them so that there could be no further complaint
11:00:00 19 about that.

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11:00:00 21 Can I respond to a couple of the specific issues
11:00:04 22 though because they're important. One of the requests is
11:00:05 23 to be provided with the other people's diary entries. We
11:00:10 24 have not been providing our own witnesses with other
11:00:13 25 people's diary entries. We don't consider that to be a
11:00:15 26 proper approach and so we have declined to do that. And
11:00:18 27 plainly enough if the Royal Commission wishes us to take a
11:00:23 28 different approach we will but we haven't done that.

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11:00:24 30 COMMISSIONER: I don't see why there should be any
11:00:28 31 different - - -

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11:00:29 33 MR HOLT: Look, it's always a balance, Commissioner.

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35 COMMISSIONER: Yes.

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11:00:31 37 MR HOLT: On the one hand the Commissioner wants witnesses
38 to have seen things that mean their statements are
11:00:34 39 meaningful but that's where we've drawn the line with our
11:00:37 40 own witnesses, and if the Commissioner wishes us to draw a
11:00:41 41 different line we can do. In terms of the correspondence
11:00:45 42 to and from the office of the Director of Public
11:00:47 43 Prosecutions, we consider anything like that is likely to
11:00:49 44 have been picked up in the material that's now recently
11:00:52 45 been provided and we would expect all of that would already
11:00:54 46 have been provided or will be provided by the email process
11:00:58 47 to the Royal Commission upon the production that I've just

11:01:00 1 indicated. In terms of the personnel file, I'm instructed
11:01:04 2 that a significant proportion of that has in fact already
11:01:07 3 been provided on an earlier date and an invitation has been
11:01:11 4 made to Mr Overland's team to make an appointment to view
11:01:13 5 anything else that's in that personnel file, which is in
11:01:17 6 fact the way in which personnel files will be dealt with,
11:01:20 7 subject of course to any contrary notice or otherwise from
11:01:23 8 the Commission to deal with them in a different way.
11:01:25 9 Documents in respect to the civil case have been I'm
11:01:28 10 instructed fully provided to Mr Overland's team and that
11:01:32 11 was done some time ago. So it may just be that they
12 haven't picked that up.
13

11:01:35 14 So a large quantity of material has just been given
11:01:38 15 but I do not want that to be thought of as meaning that we
11:01:42 16 have sat on our hands. Our response is so as to ensure
11:01:44 17 that there is no delay. My expectation is that anything
11:01:46 18 which is of relevance in that material has already been
11:01:49 19 provided to the Royal Commission. We haven't always been
11:01:51 20 perfect in that regard as the Commissioner will know, and
11:01:53 21 so we're ensuring that double-checking is going on as that
11:01:56 22 proceeds.
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11:01:57 24 COMMISSIONER: Yes, thank you. In that respect of course
11:01:58 25 you're referring to the fact that material that was
11:02:02 26 referred to in Mr Ashton's statement when he provided it to
11:02:04 27 the Royal Commission, some of that material the Royal
11:02:07 28 Commission didn't have.
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11:02:08 30 MR HOLT: And should have had.
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11:02:09 32 COMMISSIONER: And should have had.
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11:02:11 34 MR HOLT: There were eight documents, Commissioner.
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11:02:13 36 COMMISSIONER: You've remedied that now.
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11:02:15 38 MR HOLT: That's been remedied and I apologise that that
11:02:16 39 occurred. It occurred in large measure because of the
11:02:20 40 information barrier, as a result left hand legitimately not
11:02:24 41 knowing what right hand was doing in respect of that and
11:02:26 42 the way in which documents were coded. That problem has
11:02:28 43 becomes obvious. We think we've fixed it for future and
44 apologise that occurred, Commissioner.
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46 COMMISSIONER: Thank you.
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11:02:29 1 MR HOLT: They have been provided now.
11:02:30 2
11:02:30 3 COMMISSIONER: So any of the documents that you have
11:02:32 4 provided to Mr Overland will have already been provided to
11:02:37 5 the Royal Commission?
11:02:38 6
11:02:38 7 MR HOLT: That's my expectation, Commissioner, but in light
11:02:40 8 of what occurred with Mr Ashton's matters we will ensure
11:02:44 9 that that's the position.
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11 COMMISSIONER: Thank you.
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11:02:46 13 MR HOLT: The obvious category that doesn't fit that is the
11:02:48 14 emails because of the process I discussed but they will be
11:02:51 15 provided. I know those assisting you hate the phrase
11:02:52 16 shortly, but shortly is intended to mean a decision has
11:02:56 17 made to produce them and there is a technical process to go
11:02:59 18 through and that will occur. It is subject to other things
11:03:04 19 that are going through the system which are of great
11:03:06 20 priority to the Commission, Commissioner.
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22 COMMISSIONER: Yes.
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11:03:06 24 MR HOLT: As I say, we're more than happy to deal either
11:03:08 25 with the Commission in open hearing or with those assisting
11:03:12 26 the Commission in terms of the respect requests that are
11:03:15 27 made by any other witnesses and are in a position to do so
11:03:19 28 at any time.
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11:03:20 30 COMMISSIONER: I greatly appreciate the information you've
11:03:23 31 provided. I wanted that assistance simply because it was
11:03:24 32 being given as the reason for the late production of the
11:03:27 33 statement.
11:03:28 34
11:03:28 35 MR HOLT: Commissioner, we well understand, acting for
11:03:31 36 people as we do, that people wish to have access to the
11:03:34 37 material from a very long time ago that they want to see,
11:03:37 38 and there's obviously a balance in all of that, but we are
11:03:38 39 doing our best to assist.
11:03:40 40
11:03:40 41 COMMISSIONER: Yes, thank you.
11:03:41 42
11:03:42 43 MR HOLT: Thank you Commissioner.
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11:03:43 45 COMMISSIONER: Yes, Mr Winneke.
11:03:43 46
11:03:43 47 MR WINNEKE: Just a couple of comments. In terms of the

11:03:45 1 emails, it's not clear to us who is making the
11:03:50 2 determination of relevance. It would be concerning if
11:03:53 3 Mr Overland - - -
11:03:54 4
11:03:55 5 COMMISSIONER: This would be the request from Mr Overland
11:03:57 6 for, from Victoria Police for correspondence between he and
11:04:02 7 the OPP during the relevant period.
11:04:05 8
11:04:05 9 MR WINNEKE: Or any of the emails that Mr Overland has
11:04:09 10 received or been involved in.
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11:04:12 12 COMMISSIONER: Is that right, it's all emails involving
11:04:14 13 Mr Overland, is it? Do you know?
11:04:16 14
11:04:16 15 MR HOLT: I think the vast majority is likely to be,
16 Commissioner, from what I've seen. Can I assist with the
11:04:19 17 process for emails because I understand the concern our
11:04:21 18 learned friend has. Obviously each person like Mr Overland
11:04:25 19 or Mr Ashton or any of the other senior staff in particular
11:04:28 20 of Victoria Police have an extraordinarily large number of
11:04:31 21 emails within their inbox, the vast majority of which will
11:04:36 22 be irrelevant to these matters and highly confidential.
11:04:40 23 Our experience is that there are two ways of attempting in
11:04:42 24 some realistic and timely fashion to get those down to what
11:04:46 25 matter. The first is to run key word searches, which I
11:04:50 26 know there's been communication with the Commission about
11:04:53 27 what those key word searches should be. Plainly to look
11:04:55 28 for specific date periods and times that matter or
11:04:58 29 relationships or interactions that matter. And the second
11:05:00 30 is to get the person themselves to assist in that process.
11:05:03 31 Both of those things are being done. There will also
11:05:07 32 inevitably be, Commissioner, I don't want to be shy about
11:05:09 33 saying this, inevitably that process will not be perfect
11:05:14 34 and things will then be picked up as statements are
11:05:16 35 provided by witnesses and as statements are prepared. And
11:05:19 36 indeed as cross-examination on documents we're not aware of
11:05:20 37 occurs, and we then go back and look at those things. So
11:05:24 38 it's a difficult process. We think that's the best way of
11:05:27 39 working through it and if there are any other ways in which
11:05:30 40 we can work through it better we're happy to deal with it
11:05:32 41 in those ways, Commissioner.
11:05:33 42
11:05:33 43 COMMISSIONER: Thank you. Yes Mr Winneke.
11:05:33 44
11:05:34 45 MR WINNEKE: I follow that. Obviously we'll wait and see
11:05:37 46 when we get the emails and we'd certainly hope to be
11:05:41 47 provided with them very soon. The other concern is this:

11:05:44 1 and this really arises because it appears that there are,
11:05:49 2 that Corrs is acting for both Mr Overland and Victoria
11:05:54 3 Police there's clearly communication.
11:05:56 4
11:05:56 5 COMMISSIONER: And indeed Mr Ashton.
11:05:58 6
11:05:58 7 MR WINNEKE: Yes, there are communications going between
11:06:00 8 one arm of the firm and another, we're assuming there are
11:06:06 9 appropriate barriers in place. The problem is we're not a
11:06:08 10 party to those discussions as we ordinarily would be,
11:06:12 11 probably, if Mr Overland was represented by a separate firm
11:06:18 12 of solicitors. One assumes that there would be CCed
11:06:22 13 communications if there was discussions about provision of
11:06:25 14 materials.
11:06:25 15
11:06:25 16 COMMISSIONER: I don't know whether that, for example, has
11:06:27 17 happened in Mr Chettle's case, Mr Chettle's clients' case,
11:06:35 18 has it? There's been some direct communication, hasn't
11:06:37 19 there, between Victoria Police and them?
11:06:39 20
11:06:40 21 MR WINNEKE: There has. There's been copied in
11:06:42 22 communications.
11:06:42 23
11:06:42 24 COMMISSIONER: Sorry, have you always been copied into
11:06:45 25 those communications?
11:06:46 26
11:06:47 27 MR WINNEKE: We understand that we have been at times
11:06:48 28 copied in on communications.
11:06:51 29
11:06:51 30 COMMISSIONER: At times I think might be - - -
11:06:53 31
11:06:53 32 MR WINNEKE: Insofar as the Commission's requests for
11:06:56 33 materials. If there's tension going on between two arms of
11:07:00 34 Corrs we don't know what's going on and whether there's
11:07:04 35 issues arising as to what they should and shouldn't be
11:07:06 36 provided with.
11:07:07 37
11:07:08 38 COMMISSIONER: Just assuming they had a completely
11:07:11 39 different firm of solicitors acting, there could still be a
11:07:14 40 request directly from them to Victoria Police for material,
41 couldn't there?
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43 MR WINNEKE: There could be.
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11:07:18 45 COMMISSIONER: Without the Commission being informed about
11:07:20 46 it.
11:07:20 47

11:07:21 1 MR WINNEKE: That could be right. In any event it does
11:07:23 2 concern us if there are issues arising as between these two
11:07:27 3 arms. We're in the dark about it. Obviously we rely on
11:07:32 4 Mr Holt.
11:07:32 5
11:07:33 6 COMMISSIONER: That's true, but we do have to - I mean the
11:07:38 7 firm of solicitors has decided that it can do this and it
11:07:43 8 understands its professional obligations and we have to
11:07:47 9 assume they're being met until we find otherwise. But I
11:07:51 10 suppose it's a timely reminder to them as to how careful
11:07:55 11 they have to be to ensure that they do meet their
11:07:59 12 professional obligations.
11:08:00 13
11:08:01 14 MR WINNEKE: I understand, Commissioner.
11:08:02 15
11:08:02 16 COMMISSIONER: That's really all we can say I think.
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18 MR WINNEKE: Yes.
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11:08:04 20 COMMISSIONER: Yes.
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11:08:05 22 MR HOLT: Commissioner, I ought say one thing briefly about
11:08:08 23 that and it's this.
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25 COMMISSIONER: Yes.
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11:08:08 27 MR HOLT: The Commission has been provided with the
11:08:10 28 protocols which exist within the firm in order to manage
11:08:14 29 that issue. Can I say, Commissioner, certainly in light of
11:08:18 30 the inquiries that have been made in the last few days to
11:08:20 31 deal with this issue, it in fact appears that less
11:08:22 32 communication is going on than might otherwise go on
11:08:27 33 precisely because everyone sees the need for such
11:08:29 34 extraordinary care to be taken. And the example of the way
11:08:32 35 in which we've dealt with other witnesses, not just those
11:08:34 36 represented by Mr Chettle, is a classic one where there are
11:08:36 37 requests, indeed many have been referred to in open
38 hearings, we've been criticised at times for not responding
11:08:40 39 to them, which are happening outside the ambit of the
11:08:43 40 Commission. Can I indicate this, and I trust it will be
11:08:47 41 accepted, were any issues of "tension" arising which gave
11:08:52 42 rise to any issue of a sort that would lead to any change
11:08:55 43 of those circumstances, we would ensure, Commissioner, that
11:08:58 44 you were aware of them or that other arrangements were
11:09:01 45 made.
11:09:01 46
11:09:01 47 COMMISSIONER: Yes, I appreciate that, Mr Holt. It's ten

11:09:06 1 past 11, should we take the mid-morning break now perhaps
11:09:14 2 rather than starting for a few minutes and stopping again?
3 It probably makes more sense so we'll take the mid-morning
4 break now. Ten minutes, thanks.

11:10:29 5
11:10:29 6 (Short adjournment.)
11:10:29 7

11:27:25 8 COMMISSIONER: Yes, you're still on your oath, of course,
11:27:28 9 Mr O'Brien?---Yes, Commissioner.

11:27:31 10
11:27:34 11 <JAMES MICHAEL O'BRIEN, recalled:

11:27:36 12
13 COMMISSIONER: We're in closed hearing again, aren't we?

14
15 MS TITTENSOR: Yes.

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11:27:37 17 COMMISSIONER: Yes. We're in closed hearing with the
11:27:38 18 orders that were in place, when this witness was last
11:27:40 19 giving his evidence in place now.

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21 (IN CAMERA HEARING FOLLOWS)

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