

ROYAL COMMISSION INTO THE MANAGEMENT
OF POLICE INFORMANTS

Held in Melbourne, Victoria

On Friday, 2 August 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 Ms K. Argiropoulos
Counsel for State of Victoria	Mr T. Goodwin
Counsel for Nicola Gobbo	Mr P. Collinson QC Mr R. Nathwani
Counsel for DPP/SPP	Mr P. Doyle
Counsel for Handlers	Mr G. Chettle Ms L. Theis
Counsel for Faruk Orman	Ms S. Wallace
Counsel for Pasquale Barbaro	Mr C. Wareham
Counsel for John Higgs	Ms C. Dwyer

09:51:43 1 COMMISSIONER: Yes. I'm sorry about the delay. Apparently
09:51:46 2 there are technical issues with the equipment, doing the
09:51:52 3 link with the witness so that's holding us up but I think
09:51:55 4 it's appreciated we can deal with some other matters and so
09:51:58 5 we're dealing with those now in a public session. As I
09:52:01 6 understand it there's no problem dealing with these matters
09:52:05 7 in public session?
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09:52:06 9 MR HOLT: No, Commissioner. One of them has the potential
09:52:09 10 for that but I hope to avoid that.
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09:52:13 12 COMMISSIONER: The appearances are largely the same as
09:52:15 13 yesterday save that I see Ms Enbom is with you, Mr Holt.
09:52:23 14 Ms Argiropoulos is present as well. And the State,
09:52:27 15 Mr Goodwin for the State.
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09:52:28 17 MR GOODWIN: Yes, Commissioner.
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09:52:38 19 COMMISSIONER: And then Mr Orman is represented by
09:52:40 20 Ms Wallace.
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09:52:42 22 MS WALLACE: Yes, Commissioner.
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09:52:43 24 COMMISSIONER: Ms Wallace, I understand your legal team has
09:52:46 25 already taken undertakings here.
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09:52:50 27 MS WALLACE: Yes, Commissioner.
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09:52:51 29 COMMISSIONER: You accept you're bound by those
09:52:53 30 undertakings?
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09:52:56 32 MS WALLACE: Yes, Commissioner, I give the same
09:52:56 33 undertaking.
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09:52:56 35 COMMISSIONER: Yes, thank you. I don't think there is any
09:52:58 36 representation for Mr Higgs this morning? No. All right.
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09:53:02 38 So what's the first procedural matter we need to deal
09:53:07 39 with?
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09:53:08 41 MR HOLT: Perhaps I can take that up if I may,
09:53:12 42 Commissioner. There are four matters but the first, if I
09:53:16 43 can begin with this with the Commissioner's position would
09:53:18 44 be to deal with the issue that the Commissioner raised on
09:53:22 45 Wednesday morning, which I indicated yesterday that I would
09:53:24 46 deal with today.
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1 COMMISSIONER: Thank you.
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09:53:26 3 MR HOLT: On Wednesday, Commissioner, you raised concerns
09:53:27 4 about the late provision of material to the Royal
09:53:30 5 Commission by Victoria Police and the fact that documents
09:53:33 6 provided recently, a significant number of documents are
09:53:37 7 shown in the metadata to those documents to have been
09:53:39 8 marked as responsive to Notices to Produce as early as
09:53:42 9 April of 2019 and, Commissioner, as you noted this calls
09:53:48 10 for an explanation which I'm now in a position to provide,
09:53:52 11 acknowledging that there may well be further queries or
09:53:55 12 inquiries from those assisting you about these matters
13 which we are happy to deal with in whichever form is
09:53:59 14 thought appropriate.

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09:53:59 16 Commissioner, since the establishment of Task Force
09:54:01 17 Landow, the Task Force established to assist in the
09:54:05 18 preparation for the Royal Commission, the primary task was
09:54:08 19 assigning members to source documents relating to Nicola
09:54:11 20 Gobbo and obviously to the other Terms of Reference for
09:54:14 21 production to the Royal Commission. This has been a
09:54:17 22 challenging task from day one, as the Commission knows
09:54:20 23 because I have indicated previously, there is no central
09:54:24 24 repository for this material in Victoria Police. It has
09:54:27 25 had to be searched for right across the organisation in
09:54:30 26 various locations and has required speaking to a large
09:54:34 27 number of people to seek direction as to where to find some
09:54:37 28 items. Finding some material has been particularly
09:54:40 29 challenging and we do continue to search for that. Some
09:54:41 30 material involved searching the entire contents, for
09:54:44 31 example, of unmarked archive boxes or a dump of data from a
09:54:49 32 computer drive. Once the documents came into Task Force
09:54:51 33 Landow, particularly in that early period, Commissioner,
09:54:55 34 they were reviewed for relevance and identified as being
09:54:55 35 either responsive or not to one of those early Notices to
09:54:58 36 Produce, in particular the general notices, if I can call
09:55:02 37 them that, Notice to Produce to and Notice to Produce for.
09:55:06 38 They were identified as such and queued for the process
09:55:10 39 leading to production.

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09:55:11 41 The PII protocol which has, as the Commissioner knows,
09:55:15 42 had two forms in the course of this Commission, in both
09:55:18 43 forms permitted an initial PII review for the identities of
09:55:22 44 human sources and for witness protection issues, what I'll
09:55:24 45 call for these purposes preliminary PII review. This was
09:55:29 46 seen by Victoria Police as being essential given the high
09:55:33 47 sensitivity of those issues. So material advised as

09:55:37 1 relevant, identified as relevant and responsive was put
09:55:38 2 into the queue for that preliminary PII review at that
09:55:41 3 stage.
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09:55:41 5 Commissioner, as hearings approached and commenced
09:55:44 6 priority public interest immunity review, and indeed other
09:55:47 7 forms of review, focused on review of documents tendered at
09:55:52 8 hearings, transcripts, statements, documents produced by
09:55:53 9 other parties and documents requested in close proximity to
09:55:57 10 upcoming hearings. These tasks have been constant and time
09:56:00 11 consuming. Documents queued for review, therefore the
09:56:02 12 documents that have recently been provided but not relevant
09:56:05 13 to any particular hearing at that point in time, were, of
09:56:09 14 necessity, pushed down the priority list and essentially,
09:56:13 15 if I can put it in as simple terms as I can, did not make
09:56:16 16 it to the front of the queue.
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09:56:17 18 A major change was made earlier in this year to shift
09:56:21 19 Victoria Police on to the Ringtail system which is operated
09:56:24 20 by my instructing solicitors because that was seen as being
09:56:27 21 a significant issue. This has significantly improved the
09:56:32 22 efficiency of the process but it did not do enough,
09:56:36 23 Commissioner, to permit the clearing of the backlog of
09:56:36 24 those documents and extra resources continue to be deployed
09:56:41 25 to that preliminary public interest immunity review. By
09:56:44 26 the end of June, but certainly in terms of a decision in
09:56:47 27 the beginning of July, it became absolutely clear that
09:56:50 28 further increasing resources was not improving that
09:56:54 29 situation and a significant decision was made to produce
09:56:57 30 documents from that point forward to the Royal Commission
09:56:59 31 without even a preliminary public interest immunity review
09:57:01 32 for human sources.
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09:57:02 34 COMMISSIONER: That was what was happening originally.
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09:57:06 36 MR HOLT: I'm sorry, Commissioner?
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09:57:06 38 COMMISSIONER: That's what happened originally. The
09:57:07 39 documents were produced to the Commission on the basis that
09:57:09 40 they wouldn't be used or distributed until there was an
09:57:13 41 opportunity for PII.
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09:57:14 43 MR HOLT: But that was done with some documents initially,
09:57:17 44 Commissioner, related to Loricated but the agreement
09:57:19 45 initially, and indeed the more recent public interest
09:57:22 46 immunity protocol, confirms that at least the names of
09:57:26 47 human sources and witness protection issues were able to be

09:57:30 1 dealt with on a preliminary PII basis. It has become
09:57:35 2 clear, Commissioner, and that significant decision in terms
09:57:37 3 of the sensitivity of those issues was taken by Victoria
09:57:43 4 Police at the beginning of July that regardless of those
09:57:44 5 sensitivities material would be provided instead in
09:57:51 6 un-reviewed form for PII and with water marks on them
09:57:53 7 making clear that that was the basis for it.

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09:57:54 9 Commissioner, as with all system changes that created
09:57:56 10 its own pinch point in effect at the production phase
09:58:00 11 because of the significant number of documents that were
09:58:02 12 backed up in that process. That is the production phase
09:58:06 13 via Ringtail, because those responsible over that period of
09:58:11 14 four or five weeks since that decision was made have also
09:58:14 15 been dealing with the disclosure task in relation to the
09:58:17 16 Court of Appeal cases, Term of Reference 1 materials. I
09:58:20 17 should say, Commissioner, and this is, I should be clear,
09:58:22 18 by way of explanation, not intended to be by way of excuse
09:58:27 19 but I'm attempting to provide the explanation.

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09:58:27 21 Over the same period the relevant people with the
09:58:30 22 relevant technical expertise have been attempting to deal
09:58:35 23 with what I have previously and accurately described as the
09:58:36 24 nightmare of emails. I can now indicate that in terms of
09:58:39 25 the body of emails unsorted until we are able to do so,
09:58:44 26 we're dealing with something in the order of 50 million
09:58:47 27 emails. The process of attempting to organise them has
09:58:50 28 regularly crashed the system, and access to the back up
09:58:54 29 tapes and the capacity to retrieve material from those has
09:58:57 30 occurred relatively recently.

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09:58:58 32 Commissioner, the block of materials received
09:59:01 33 recently, the block which we understand has given rise to a
09:59:05 34 legitimate and understandable concern from the Commission,
09:59:09 35 but which metadata shows were marked as responsive some
09:59:11 36 months ago, is a product of that delay process sitting in
09:59:15 37 effectively behind by a queue that could not be made
09:59:18 38 shorter, and it's released now as a product of the policy
09:59:19 39 changes made in early July and the improvements that
09:59:22 40 continue to be made to the very challenging technical
09:59:26 41 process of production. The late provision of emails for
09:59:28 42 Sandy White is a function of that same issue. I think
09:59:32 43 it's, Commissioner, indicated about 2,500 materials is a
09:59:36 44 significant portion of that backlog but in the interests of
09:59:39 45 complete transparency I need to advise that there is a
09:59:43 46 second block of material as part of that catch up process.
09:59:47 47 I am instructed that it is presently about 4,000 documents

09:59:49 1 relating though mainly to later periods of time, that is
09:59:52 2 periods of time post in the main 2010, relating to issues
09:59:56 3 such as the litigation and so on which the Commission will
10:00:00 4 be familiar with.
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10:00:00 6 Again, the expectation is that those can now, subject
10:00:05 7 to just the physical requirements for production and
10:00:08 8 watermarking and so on, be provided to the Commission
10:00:11 9 shortly. That will represent an end of that catch up
10:00:14 10 process, Commissioner, I'm instructed in terms of the
10:00:17 11 materials that have been queued for some time but where our
10:00:22 12 systems simply were not capable of getting them toward the
10:00:25 13 top of the list.
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10:00:27 15 Victoria Police understands, Commissioner, that the
10:00:28 16 late production of material and that material is more than
10:00:31 17 frustrating for the Royal Commission, and I again apologise
10:00:35 18 on behalf of Victoria Police for those impacts on the work
10:00:37 19 of the Royal Commission.
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10:00:37 21 Can I ensure you, Commissioner, that what has occurred
10:00:39 22 is not driven by any desire to slow the work of the Royal
23 Commission. Indeed, slowing the work of this Royal
10:00:46 24 Commission is in fact not in Victoria Police's interests,
10:00:49 25 nor in the interests of the community, nor in the interests
10:00:52 26 of course of the Royal Commission.
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10:00:52 28 What we are engaged in is a massive job with
10:00:54 29 unpredictable complications and our capacity to be
10:00:57 30 responsive continues to improve. We are, for example,
10:01:00 31 presently adding additional technical people in order to
10:01:04 32 deal with what has now been identified as the new pinch
10:01:07 33 point, if I can put it that way.
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10:01:08 35 Can we also acknowledge, Commissioner, though - I'm
10:01:09 36 not sure it was specifically referred to - that at times
10:01:14 37 our naming protocols on documents have not been done well
10:01:17 38 when documents have been produced in haste, and steps are
10:01:17 39 being taken to improve that because we are sure that that
10:01:20 40 is a matter which creates problems for the Commission when
10:01:23 41 they're attempting to look at material.
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10:01:25 43 I do need to note, Commissioner, that the provision of
10:01:30 44 entirely un-reviewed material makes it of course even more
10:01:31 45 critical that we receive it notice where we can of
10:01:36 46 documents to be referred to in hearings and witnesses to be
10:01:36 47 called. That is the basis upon which un-reviewed material

10:01:39 1 is provided and will limit the need to deal with complex
10:01:40 2 and sensitive issues in running.
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10:01:41 4 Commissioner, I have no desire to continue to get to
10:01:44 5 my feet and speak to our learned friend and the more we can
10:01:47 6 work with those assisting you to achieve notice of those
10:01:50 7 things, as recent experience has shown, the better we are
10:01:53 8 at allowing the Commission's proceedings to proceed without
10:01:57 9 me interrupting them. We are of course, Commissioner,
10:01:59 10 willing and able to brief those assisting you at any stage
10:02:02 11 about the process of production, as has been done often,
10:02:04 12 and to prioritise work that continues to be consistent with
10:02:09 13 the Royal Commission's priorities. That's the explanation,
10:02:12 14 Commissioner. I'm certain there'll be questions arising
10:02:15 15 out of that and we're prepared to deal with those as the
10:02:19 16 Commissioner sees fit.

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10:02:19 18 COMMISSIONER: Can I just ask, does that all mean that the
10:02:21 19 reason why the emails which were apparently opened and read
10:02:24 20 by someone at Victoria Police and who must have seen it was
10:02:28 21 relevant to the work of the Commission in April, weren't
10:02:31 22 given to the Commission because they had to be PIIed for
10:02:36 23 informer and public interest immunity, or operational
10:02:40 24 methods, is that right?
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10:02:42 26 MR HOLT: I'm sorry, Commissioner, I hadn't understood that
10:02:43 27 that issue related to emails, I had thought it related to
10:02:45 28 other documents. I'm happy to answer that question if
10:02:48 29 possible. Probably the most accurate way that I can deal
10:02:51 30 with that is if we could work with those assisting you to
10:02:54 31 get an example of that kind of a document and then I can
10:02:56 32 make a specific inquiry, because that is not as I
10:02:58 33 understood it and I apologise if I misunderstood. I simply
10:03:03 34 need to check that question, Commissioner. I had not
10:03:07 35 thought that applied to emails. If it does then I will
10:03:08 36 need to go and make some further inquiries.
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10:03:08 38 COMMISSIONER: That's what I thought I said on Monday.
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10:03:13 40 MR HOLT: If I had misunderstood that as including emails,
10:03:16 41 Commissioner, then I apologise but I can have that inquiry
10:03:19 42 made quickly.
10:03:20 43

10:03:20 44 COMMISSIONER: All right. Mr Winneke.
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10:03:24 46 MR WINNEKE: Commissioner, we hear what our learned friend
10:03:26 47 says. We don't at this stage seek any evidence about this.

10:03:31 1 However there are ramifications which arise because of the
10:03:38 2 late provision of materials and they're of a practical
10:03:40 3 nature. Obviously it means that we're receiving materials
10:03:43 4 at a very late stage, late at night, time to prepare
10:03:48 5 cross-examination of witnesses and obviously our learned
10:03:51 6 friends are seeking from us notice as to which documents we
10:03:55 7 propose to put to witnesses. That makes it very difficult
10:03:57 8 for us to give that notice, and obviously both of us are
10:04:00 9 trying to do things in such a way that the public's
10:04:05 10 interests are not put at risk and I think we're doing that
10:04:08 11 reasonably well. It has to be noted that does cause real
10:04:12 12 difficulties for the Commission but we're trying to get on
10:04:14 13 with it as well as we can.

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10:04:17 15 Secondly, whilst we do not wish to recall witnesses,
10:04:21 16 it almost inevitably means that some consideration is going
10:04:24 17 to have to be made to having witnesses called back if at
10:04:28 18 times we discover that documents which have been provided
10:04:31 19 at a very late stage haven't been able to be assessed in
10:04:35 20 time. It will inevitably mean that other witnesses may
10:04:39 21 need to be called back. We obviously don't want that to
10:04:42 22 occur and we will do our best to prevent that, but that may
10:04:45 23 not be able to be helped.

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10:04:48 25 The other problem is that we received statements
10:04:51 26 without documents referred to them. Where documents are
10:04:53 27 referred to they need to be produced, it seems, in an
10:04:58 28 appropriately PIIed state so as cross-examination of
10:05:07 29 witnesses can proceed smoothly. Save for that,
10:05:14 30 Commissioner, we hear what our friends say. We don't seek
10:05:18 31 evidence but there are serious ramifications arising from
10:05:22 32 that.

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10:05:22 34 COMMISSIONER: Yes, all right. Did I misstate the position
10:05:26 35 in terms of emails in April? Was it other documents rather
10:05:34 36 than emails?

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10:05:36 38 MR WINNEKE: Sorry, Commissioner, I'm not certain what the
10:05:41 39 situation was with respect to emails in April.

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10:05:44 41 COMMISSIONER: This is the statement I made to the court on
10:05:48 42 Monday to which Mr Holt is responding.

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10:05:53 44 MR WINNEKE: As we understand it the metadata indicated
10:05:56 45 that those emails had been opened in April.

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10:06:00 47 COMMISSIONER: That's what I understood.

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MR WINNEKE: The concern is if they were relevant it's something that should have been done months ago.

MR HOLT: I'm sorry, Commissioner, I've clearly misunderstood and I apologise. I'll have that inquiry made so I can update the Commission as soon as I'm able to. If we might be able to get an example of one of those I'd be grateful.

Commissioner, there are two perhaps more preliminary issues, given that I understand we're still not in a position to deal with the witness yet, that have been raised with us this morning. The first is in relation to ICR 45 which is the ICR, that was the electronic version of the ICR that was found yesterday. It has been indicated to us understandably by those assisting the Commission that an explanation as to why that ICR was effectively only provided yesterday, discovered very recently, ought be given. Can I give - - -

COMMISSIONER: I thought you explained that yesterday.

MR HOLT: I did. I had understood that perhaps there needed to be a greater level of explanation. Can I indicate, Commissioner, the explanation I gave yesterday is the explanation of what I have asked to be done and I'm sure will be done. It's just for a check to be made as to whether those kinds of inquiries might reveal other documents so that we can satisfy the Commission that that's not the case.

COMMISSIONER: They might find Mr White's missing diary.

MR HOLT: I doubt it will be in a drive on a computer, Commissioner, but if we find it anywhere we will continue to look. I can assure the Commissioner that that is something which very significant steps have been made in terms of speaking to people and searching the organisation and will continue to be made.

The second issue, Commissioner, is the transcript of the interview of the conversation, what we might call conversation 1, which was tendered when Mr Rowe gave evidence and was referred to in some detail yesterday. I understand the Commission is well understandably keen to see that document published. It has been reviewed for

10:07:45 1 public interest immunity and we're essentially in a
10:07:48 2 position to do so but yesterday, and I'll take
10:07:51 3 responsibility, Commissioner, I made assessments as the
10:07:56 4 evidence was given that more material could go in than was
10:08:01 5 made in the shaded document that I could see in front of
10:08:02 6 me. What's happening this morning quickly, my learned
10:08:02 7 junior Ms Argiropoulos is controlling that process, is just
10:08:07 8 making sure that we haven't over-redacted that document so
10:08:11 9 that it's consistent with the material that was given in
10:08:13 10 evidence yesterday. That's being done this morning,
10:08:13 11 Commissioner, and we understand the anxiety to make ensure
10:08:17 12 that that gets up onto the website.

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10:08:19 14 The final issue, Commissioner, and I'll do this
10:08:23 15 without making reference to the content so that we can
10:08:26 16 hopefully avoid a request by me to go into private hearing.

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10:08:31 18 COMMISSIONER: Yes.

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10:08:31 20 MR HOLT: Commissioner, we've provided to your staff the
10:08:36 21 original of a confidential affidavit of Assistant
10:08:40 22 Commissioner Neil John Paterson, affirmed today, and I seek
10:08:44 23 the Commissioner's leave to read and file that on a
10:08:48 24 confidential basis.

10:08:49 25
10:08:49 26 COMMISSIONER: Yes.

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10:08:51 28 #EXHIBIT 295 - Confidential exhibit.

10:08:55 29
10:08:56 30 MR HOLT: Commissioner, the essence of the position is put
10:08:58 31 in the affidavit but the short point is we respectfully
10:09:02 32 seek a non-publication order in respect of the audio of the
10:09:06 33 conversations or any conversation that includes the voices
10:09:10 34 of the handlers and controllers. We understand that the
10:09:16 35 clips that were played, I don't think any were played
10:09:19 36 yesterday but perhaps the day before, but I anticipate more
10:09:21 37 will be played, that those clips are available publicly
10:09:24 38 presently, including the transcript. Can I indicate there
10:09:27 39 is no application made in respect of the transcript, so no
10:09:30 40 application made in respect of the content. It's the
10:09:33 41 actual voice which we seek not be published. Our
10:09:38 42 respectful submission is the limitation in terms of
10:09:41 43 reporting on that basis is a relatively small one, in the
10:09:45 44 sense that the content is available, and the reasons, which
10:09:47 45 I won't go into in a public hearing, Commissioner, which
10:09:51 46 are set out in the affidavit we respectfully submit - - -
10:09:53 47

10:09:53 1 COMMISSIONER: There are two matters, before I even hear
10:09:55 2 from Mr Winneke, that come to my mind. The first is that
10:09:59 3 when Victoria Police was pushing to maintain the
10:10:05 4 non-publication orders in respect of Ms Gobbo, ultimately,
10:10:10 5 as I recall it, they did not pursue the argument about the
10:10:15 6 audio, knowing that the audio would come up in transcript,
10:10:20 7 they only pursued image. That's the first thing.
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10:10:26 9 The second thing is that Mr White gave evidence
10:10:30 10 initially publicly and his voice was streamed publicly and
10:10:38 11 people in the hearing room could hear it.
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10:10:43 13 The third thing is that some transcript was provided
10:10:52 14 to the press yesterday of some conversations but because of
10:10:55 15 the email that had been sent to the Commission from your
10:10:59 16 instructors, perhaps foreshadowing an application such as
10:11:04 17 this, out of an abundance of caution I spoke to my
10:11:09 18 technological people who were able to mask the voice of the
10:11:15 19 speaker so it was provided to the media with the voice
10:11:19 20 masked and I'm assured that that cannot be unmasked by
10:11:25 21 anybody. So if - - -
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10:11:29 23 MR HOLT: If that can be done, Commissioner, that would
10:11:33 24 probably solve the problem.
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10:11:34 26 COMMISSIONER: It seems to solve the problem, doesn't it?
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10:11:34 28 MR HOLT: It may well do. The only thing we'd like to do,
10:11:39 29 Commissioner, is just at some point this morning have a
10:11:39 30 conversation with your technical staff, if we're permitted
10:11:42 31 to do that, just to identify how that's been done, but it
10:11:44 32 may well be a complete solution, Commissioner.
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10:11:46 34 COMMISSIONER: I heard the masked conversation online, I
10:11:52 35 think it's online with The Age and there was a link from
10:11:55 36 the ABC website to it as well.
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10:11:59 38 MR HOLT: It may well be a complete answer, Commissioner.
10:12:00 39 I'm very grateful those steps were taken. Can I leave the
10:12:04 40 matter there in that case and we'll have a conversation
10:12:05 41 with your technical staff and raise any issues that might
42 otherwise occur.
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10:12:12 44 COMMISSIONER: Yes. Mr Winneke.
10:12:12 45

10:12:12 46 MR WINNEKE: Just before that matter is left, Commissioner,
10:12:14 47 as I understand it there are issues with respect to masking

10:12:18 1 and, firstly, the point that you made, Commissioner, about
10:12:21 2 the public evidence, I think the first part of the evidence
10:12:24 3 of Mr White was held in public.
10:12:26 4
10:12:26 5 COMMISSIONER: Yes, it was heard in public.
10:12:27 6
10:12:28 7 MR WINNEKE: There was no application on behalf of Victoria
10:12:30 8 Police to do anything about that. This concern hadn't
10:12:34 9 raised then but it did raise itself when these clips were
10:12:38 10 put into the media.
10:12:39 11
10:12:39 12 COMMISSIONER: Have you had an opportunity to read the
10:12:42 13 affidavit?
10:12:42 14
10:12:43 15 MR WINNEKE: Yes, I have.
10:12:43 16
10:12:44 17 COMMISSIONER: Thank you. I just wanted to make sure you
10:12:45 18 had, Mr Winneke.
10:12:47 19
10:12:47 20 MR WINNEKE: Yes. I understand the points. The other
10:12:52 21 issue is this: I've been informed that there are
10:12:56 22 difficulties with respect to masking. Certainly if aspects
10:13:00 23 of the evidence of Mr White and other members of the SDU
10:13:06 24 unit is to be given live, provided in open hearing, it
10:13:10 25 would be not possible really to mask the voice, or the
10:13:15 26 voices, over the live stream and in our submission it
10:13:21 27 wouldn't be in the interests of - if there is material
10:13:25 28 which can be put into the public domain and live-streamed
10:13:29 29 it ought be done. If it can't be achieved through masking,
10:13:34 30 in my submission for the same basis, we assume, Victoria
10:13:37 31 Police concede it was appropriate that the initial part of
10:13:40 32 this evidence go out, well we'd say for the same reason it
10:13:44 33 ought continue to do so without being masked. If this is
10:13:50 34 simply about embarrassment because there's a particular
10:13:56 35 focus on a couple of these clips, that's not the point.
10:14:01 36 That's not a basis for - - -
10:14:01 37
10:14:01 38 COMMISSIONER: The confidential affidavit suggests or
10:14:06 39 states that it's more than that.
10:14:07 40
10:14:08 41 MR WINNEKE: Perhaps I haven't got down to that part in the
10:14:11 42 affidavit, Commissioner, whilst I've been listening to what
10:14:14 43 Mr Holt has to say and I assume - - -
10:14:16 44
10:14:16 45 COMMISSIONER: I think you know what it will say. I think
10:14:20 46 we've read material to that effect in other affidavits.
10:14:24 47

10:14:24 1 MR WINNEKE: I can't say anything more than that which I've
10:14:29 2 already said, Commissioner. I'm instructed by members of
10:14:33 3 the press that, I'm told that the use of masking, if we do
10:14:40 4 place clips up, imposes a very significant difficulty as
10:14:46 5 far as the public actually hearing these clips. Can't hear
10:14:53 6 them clearly as I understand it. It may be, Commissioner,
10:14:56 7 that the press ought to be - - -
10:15:00 8
10:15:00 9 COMMISSIONER: Heard on the application.
10:15:01 10
10:15:02 11 MR WINNEKE: - - - entitled to be heard on this issue.
10:15:05 12 Clearly these are matters of some significance. It's quite
10:15:09 13 clear that the press find some use in these clips and if
10:15:17 14 that's the case, in our submission that's important.
10:15:21 15 Obviously if there's a downside to it those matters have to
10:15:26 16 be considered. In my submission perhaps we should stand
10:15:30 17 this down for the moment and give the press an opportunity
10:15:32 18 to be heard about it.
10:15:33 19
10:15:34 20 COMMISSIONER: Yes. That seems - - -
10:15:41 21
10:15:41 22 MR HOLT: Perhaps there are two things that can be done in
10:15:43 23 that period, Commissioner, which we'll assist with, which
10:15:45 24 is to actually understand how the masking's been done. I
10:15:48 25 know the original clips are themselves very difficult to
10:15:50 26 hear so it may not be a particular problem. As the
10:15:53 27 Commission will appreciate there are countervailing public
10:15:57 28 interest considerations here. We understand that. If that
10:15:59 29 solution is an available one, it may well represent the
10:16:02 30 appropriate balance. So if we could have an opportunity to
10:16:04 31 do that. Plainly the press should be heard if there is a
10:16:10 32 problem with hearing it. But we can deal with it on that
10:16:12 33 basis, Commissioner.
10:16:13 34
10:16:13 35 COMMISSIONER: Perhaps later in the day I can be informed
10:16:16 36 whether the media representatives want to be heard on this
10:16:19 37 issue, and if so we'll deal with it on Monday morning.
10:16:22 38
10:16:23 39 MR HOLT: I'm grateful, Commissioner, thank you. Those are
10:16:24 40 all the matters from our perspective though we're happy to
10:16:26 41 deal with any other concerns that the Commissioner has.
42
10:16:30 43 COMMISSIONER: Yes, thank you. Yes, anything, Mr Winneke,
10:16:31 44 any other procedural matters?
10:16:33 45
10:16:33 46 MR WINNEKE: No, Commissioner, not at this stage.
10:16:35 47

10:16:35 1 COMMISSIONER: Have we had any luck with - how far away are
10:16:40 2 we from - you don't know. There doesn't seem there to be
10:16:46 3 anything we can do except adjourn now until - I'm sure
10:16:50 4 everyone has plenty of work to get on with. We'll adjourn
10:16:55 5 now until we can resume. We'll resume in private hearing
10:17:00 6 hopefully with the witness on the line.

10:17:31 7
10:17:34 8 (Short adjournment.)

10:17:34 9
10 (IN CAMERA PROCEEDINGS FOLLOW)

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