

ROYAL COMMISSION INTO THE MANAGEMENT
OF POLICE INFORMANTS

Held in Melbourne, Victoria
On Wednesday, 11 December 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
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	Mr D. Holding Mr A. Haban-Beer
Counsel for Police Handlers	Mr G. Chettle Ms L. Thies
Counsel for John Higgs	Ms C. Dwyer
Counsel for AFP	Ms I. Minnett
Counsel for Chief Commissioner of Police	Mr A. Coleman SC Mr P. Silver
Counsel for Paul Mullett and Noel Ashby	Ms J. Condon SC
Counsel for ACIC	Ms R. Curnow

09:38:21 1 COMMISSIONER: The appearances are as they were yesterday.
09:38:23 2 Before we recommence, there are a couple of matters,
09:38:28 3 Mr Collinson, Mr Nathwani, I want to raise arising out of
09:38:32 4 the 7.30 program with Nicola Gobbo last night. The first
09:38:38 5 is when can the Commission expect to receive this statement
09:38:43 6 for the Royal Commission that she spoke of in the
09:38:48 7 interview?
09:38:48 8
09:38:48 9 MR NATHWANI: I can't give you a definitive answer as far
09:38:52 10 as that's concerned. All I can say is we are in the
09:38:55 11 process of obtaining some instructions and we will report
09:38:58 12 back once they're received.
09:39:00 13
09:39:00 14 COMMISSIONER: Well I expect a better answer than that
09:39:04 15 tomorrow morning, thank you. And the next matter is, it
09:39:08 16 was clear from the interview that this interview was
09:39:11 17 recorded last week. Now you made submissions last week
09:39:15 18 about her providing reasonable excuse to the Commission for
09:39:20 19 her non-attendance. I would like to know why the
09:39:26 20 Commission was not informed that at or about that very time
09:39:31 21 she was flying to an international destination and giving a
09:39:40 22 lengthy interview to Nationwide Media and that was not
09:39:47 23 disclosed to the Commission when I was being told, instead
09:39:51 24 the Commission was being told that she was too unwell to
09:39:54 25 give evidence.
09:39:55 26
09:39:56 27 MR NATHWANI: At the time I made the submission before you
09:39:58 28 last week, I hope you accept, having me appear before you,
09:40:02 29 and Mr Collinson, for the last 10 months, that you were not
09:40:05 30 misled at all. It was not within my knowledge at all. And
09:40:12 31 as to the dates, or otherwise, you say it's obvious it was
09:40:18 32 last week, I don't accept - I can't tell you when it was
09:40:21 33 recorded. All I can say is it was recorded as the program
09:40:25 34 suggests, prior to the submissions made to you. I can't
09:40:29 35 help you beyond that.
09:40:30 36
09:40:30 37 COMMISSIONER: So you tell me you weren't aware of that?
09:40:33 38
09:40:33 39 MR NATHWANI: Unequivocally.
09:40:36 40
09:40:36 41 COMMISSIONER: That's something then that you will need to
09:40:38 42 discuss with your client.
09:40:40 43
09:40:40 44 MR NATHWANI: Yes.
09:40:40 45
09:40:40 46 COMMISSIONER: Thank you for that, Mr Nathwani. I'll
09:40:43 47 expect a report tomorrow morning and when the statement

09:40:47 1 will be provided to the Commission. Yes Mr Winneke.
09:40:50 2
09:40:51 3 <GRAHAM LEONARD ASHTON, recalled:
09:40:53 4
09:40:53 5 MR WINNEKE: Thanks Commissioner. Now, Mr Ashton, I was
09:40:57 6 dealing with, and I'm going to deal this morning with some
09:41:01 7 of the matters that arose during the course of the time
09:41:04 8 that you were, have been a member of Victoria Police, sworn
09:41:09 9 member, and your understanding of the matters concerning
09:41:16 10 Ms Gobbo and the extent to which she had provided
09:41:20 11 information to Victoria Police over the years about various
09:41:32 12 underworld gangland type matters. Now what you've
09:41:36 13 effectively, your position is, look, you had general
09:41:39 14 knowledge that Ms Gobbo was a human source from around the
09:41:44 15 middle of 2007?---Yes.
09:41:48 16
09:41:48 17 As to the extent of which and the parameters of that
09:41:51 18 information, you're generally unaware?---Yes, quite limited
09:41:56 19 compared to what I found out in 2011, yes.
09:41:59 20
09:42:01 21 As I understand it, what you say is as a result of the
09:42:06 22 report that was provided to you by Mr Sheridan and John
09:42:10 23 O'Connor on 7 November, that's when it became apparent to
09:42:16 24 you that the information which she had provided was quite
09:42:19 25 extensive, or related to an extensive number of
09:42:24 26 people?---Yeah, there was two really. There was the
09:42:26 27 Maguire advice, that was ringing I think significant alarm
09:42:34 28 bells, and then ultimately that document that O'Connor
09:42:38 29 prepared, yes.
09:42:39 30
09:42:39 31 Can I suggest to you that since you first started to learn
09:42:44 32 about Ms Gobbo's involvement in these matters way back in
09:42:48 33 sort of 2005, 2006, your knowledge of Ms Gobbo and what she
09:42:54 34 was doing and what she had the capacity to do was gradually
09:42:59 35 increasing over time and can I suggest that certainly by
09:43:03 36 the end of the period that you were at the OPI, you would
09:43:07 37 have had a significant degree of knowledge about Ms Gobbo's
09:43:13 38 potential to provide information which could well have a
09:43:19 39 deleterious effect on the course of the criminal justice
09:43:23 40 process?---Well my knowledge around that earlier period was
09:43:28 41 really around that Petra and Briars and then really in 2011
09:43:33 42 I certainly come to understand a lot more about the breadth
09:43:38 43 of her assistance to the police, yes.
09:43:39 44
09:43:40 45 Okay. In 2011 you, in your position of Assistant
09:43:53 46 Commissioner of Crime, had oversight, as we established
09:43:56 47 yesterday, on a number of investigations. You were

09:44:01 1 provided, I suggest, with a letter which had been written
09:44:06 2 by Mr Solomon to Simon Overland and you received that
09:44:12 3 letter I think around the end of June of 2011. Do you
09:44:17 4 recall receiving a letter from Mr Solomon?---Do you have a
09:44:21 5 copy of it, or at least tell me about it?
6
09:44:28 7 VPL.0005.0003.3042. If we have a look at that. I think
09:44:35 8 it's Mr McRae's handwriting but you'll see in the top
09:44:39 9 right-hand corner he received that letter from you on 28
09:44:43 10 June of 2011 at 11.30. I've got no objection. Mr Solomon
09:44:57 11 was involved in the investigation of matters concerning the
09:45:03 12 murders of the Hodsons, amongst other matters?---Yes, I'll
09:45:09 13 just have a quick read of it. Yes. Is there a second
09:45:41 14 page?
09:45:42 15
09:45:42 16 And he says he finds himself in the unusual uncomfortable
09:45:47 17 situation of delivering a letter to you, that is to the
09:45:50 18 Chief Commissioner, from Petra Witness F at the request of
09:45:55 19 the witness however I consider - to Simon Overland, then
09:46:04 20 Simon Overland?---Yes, this is about her, her physical
09:46:08 21 condition and everything, yes.
09:46:09 22
09:46:10 23 Correct?---Yeah.
09:46:10 24
09:46:12 25 And he considers the situation serious and he thought that
09:46:16 26 he must take action by putting his views in writing to the
09:46:20 27 Chief Commissioner Simon Overland. Now I take it you would
09:46:23 28 have read the letter?---Yes, certainly I don't have a
09:46:29 29 specific recollection of reading the letter, but I think I
09:46:32 30 would have because I did know there were concerns about
09:46:35 31 her, this issue he's talking about, the holes, walnut size
09:46:43 32 openings and this sort of stuff.
33
09:46:44 34 Yes?---I remember being aware of that.
09:46:49 35
09:46:49 36 It's something fairly graphic and it's not something you'd
09:46:55 37 forget. If we go to p.2 of the document, you'll see the
09:46:56 38 paragraph commencing, "We're 48 days away from a committal
09:47:00 39 hearing". That's the committal proceeding in relation to
09:47:02 40 the alleged perjury before the Australian Crime Commission.
09:47:05 41 And what he says is this, "Instead, the one witness whose
09:47:11 42 testimony holds up the prosecution case against Dale is so
09:47:16 43 physically and psychologically sick, not to mention
09:47:19 44 deranged with anger, that I can't even get her to a
09:47:20 45 conference let alone into the witness box. And I can
09:47:26 46 assure you that without her testimony the case against Dale
09:47:30 47 will collapse". If we then go further down she says this,

09:47:35 1 that she wants to enter the Witness Protection Program so
09:47:40 2 the prosecution will receive the legislative protection
09:47:44 3 against discovery relating to materials called for via
09:47:48 4 defence subpoena. If I stop there. You are and were aware
09:47:53 5 that there were issues in relation to a defence subpoena
09:47:56 6 and the possibility that that subpoena might attach to
09:48:00 7 records, including her records previously?---Yes.
09:48:04 8
09:48:05 9 Her conduct previously with the SDU?---Yes.
09:48:06 10
09:48:07 11 You were very cognisant of those issues?---Yes.
09:48:10 12
09:48:10 13 And certainly would have been aware of those issues at this
09:48:14 14 time?---Yes, as part of the Driver work, yes.
09:48:17 15
09:48:17 16 Admittedly you had recently in the previous weeks taken
09:48:23 17 over that program?---Yeah, I was learning a lot about it at
09:48:28 18 that time.
09:48:29 19
09:48:29 20 Nonetheless you came with the background knowledge that
09:48:33 21 you'd brought with you from your previous
09:48:37 22 involvement?---Yes.
09:48:37 23
09:48:37 24 Then she says this, "She alludes to her cooperation with
09:48:42 25 other major organised crime investigations in the past but
09:48:42 26 does not give me specifics. She pleads for flexibility and
09:48:46 27 for Witsec to allow her in". So what that letter suggests
09:48:52 28 is that Ms Gobbo's saying to Solomon, "Look, I've
09:48:58 29 cooperated with police with respect to other major
09:49:03 30 organised crime investigations in the past" and she wasn't
09:49:07 31 giving Solomon specifics, but you were getting that
09:49:10 32 information then and I take it that would have led you to
09:49:14 33 wonder, if you didn't know already, what she was talking
09:49:19 34 about?---Yes, I agree. There was a process certainly that
09:49:23 35 went over a period of this few months leading up to that
09:49:26 36 final decision to pull her as a witness in that matter
09:49:30 37 where I would see things that would say, "What's that a
09:49:34 38 reference to, this broader piece?" Yes, and they were
09:49:38 39 concerns, I think, that Doug Fryer had as well in the same
09:49:42 40 context.
09:49:42 41
09:49:42 42 I take it you would have asked questions of various other
09:49:49 43 officers who had a more detailed knowledge than yours about
09:49:54 44 what that was all about, what assistance she had provided
09:49:57 45 in other major organised crime investigations in the
09:50:02 46 past?---Yes, in the context with Doug Fryer, you know, it
09:50:06 47 was conversations over a period of time that would be, that

09:50:10 1 would allude to this issue, yes.

09:50:14 2

09:50:14 3 The point I'm making is this, when you say in your
09:50:17 4 statement that you were shocked when you learnt in November
09:50:21 5 of 2007, you can't have been that shocked?---Oh yeah, I
09:50:26 6 mean when I - - -

09:50:27 7

09:50:28 8 2011, I'm sorry, 7 November 2011 you said?---Yeah, yeah,
09:50:33 9 you mean when I got that list I was shocked.

09:50:37 10

09:50:37 11 It might have been more extensive, but in terms of shock,
09:50:42 12 falling off your chair, I suggest that it's unlikely, you
09:50:45 13 were aware going back to your knowledge of Petra, Briars,
09:50:48 14 this sort of information that, that this person has been
09:50:52 15 providing information to Victoria Police in relation to
09:50:54 16 major organised crime investigations in the past, and it
09:50:57 17 was really just a question of who?---No, I mean I agree I'm
09:51:03 18 not the sort of person who gets shocked that they fall off
09:51:08 19 their chair, or the back of their chair or something, but
09:51:11 20 certainly this was a long list, and it was a - you know,
09:51:14 21 anyone you can think of apart from, you know, Asian
09:51:18 22 organised crime, this sort of stuff, as far as the whole
09:51:23 23 criminal milieu, organised crime, it was hard to think of
09:51:28 24 anybody who wasn't on that list.

09:51:30 25

09:51:30 26 The letter that you got, I assume you would have spoken to
09:51:32 27 Simon Overland about this letter and the letter that Gobbo
09:51:34 28 sent to him?---I think the reference on the top there, I've
09:51:38 29 obviously sent it up, up the chain, by the look of that.

09:51:42 30

09:51:42 31 It seems that it's come to you, one assumes it was sent to
09:51:46 32 Simon Overland and he's given it to you, I assume, because
09:51:52 33 it's addressed to him, Sol Solomon writes it to him and
09:51:56 34 Finn McRae gets it from you, can we assume you've had a
09:52:01 35 discussion with Mr Overland about the contents of the
09:52:03 36 letter?---Can we go back to the first page? I'm not sure
09:52:13 37 whose writing that is.

09:52:14 38

09:52:15 39 I think you'll find that it's Mr McRae's, I'll be correct
09:52:20 40 if I'm wrong, and he's got it from you on 28 November - -
09:52:23 41 -?---Yeah, I don't remember whether I've got it from - I
09:52:26 42 would have got that from Simon or Doug Fryer.

09:52:30 43

09:52:31 44 Yeah?---Yeah, I'm not sure.

09:52:33 45

09:52:33 46 You had a reasonably good relationship with Simon Overland,
09:52:36 47 would it be reasonable for you to pick up the phone and

09:52:40 1 asked him about it if you had any questions about it?---I'm
09:52:44 2 not sure if he was even in his role at that time. I think
09:52:48 3 he may have been out of the Chairperson role.
09:52:52 4
09:52:52 5 He might have been out of the position, you might be right.
09:52:56 6 In any event, if we go to the bottom of the letter it might
09:53:00 7 have a date on it. No. In any event regardless, whether
09:53:15 8 or not he was the Chief Commissioner at that stage, you
09:53:17 9 would have been in a position to speak to him, wouldn't
09:53:21 10 you, by picking up the phone if you had any concerns about
09:53:24 11 it?---You mean if he was no longer - no way.
12
09:53:28 13 No?---No, if he wasn't at Victoria Police. In fact I
09:53:31 14 haven't spoken to Simon, I think - I certainly haven't
09:53:36 15 spoken to him about any police matters since the day he
09:53:39 16 left.
09:53:39 17
09:53:40 18 In any event there would have been people within the
09:53:42 19 organisation who you could ask and you could say, "What's
09:53:46 20 this, what's the cooperation in relation to other organised
09:53:49 21 crime investigations?" There certainly would have been
09:53:51 22 people you could ask?---I reckon, yeah, we would have had
09:53:55 23 conversations about, particularly Doug Fryer who was my
09:53:58 24 main conduit on all of this stuff.
09:54:00 25
09:54:00 26 You say that you haven't spoken to Simon Overland, or you
09:54:04 27 wouldn't have spoken to him about this, even if he wasn't
09:54:08 28 there?---No, I think if - after Simon left, I think I had a
09:54:21 29 coffee with him in Hawthorn area, like a welfare check to
09:54:28 30 see how he was going because, you know, he was getting a
09:54:32 31 lot of media attention and all that.
09:54:34 32
09:54:34 33 Yep, yep?---That was just, "How you going? Are you holding
09:54:38 34 up all right?" That sort of stuff. Which he seemed to be.
09:54:41 35 And then I saw him a couple of years later, I think it
09:54:45 36 would have been at a Government, inter-Government
09:54:51 37 conference, because he was in the role of Department of
09:54:56 38 Justice in Tasmania.
09:54:57 39
09:54:57 40 Yes?---And I think there might have even been two of those
09:55:01 41 forums where we saw each other and we literally just sort
09:55:05 42 of said hello, that was it.
09:55:07 43
09:55:07 44 Have you had more discussions with him in more recent times
09:55:11 45 about any of these matters?---No, not at all, no.
09:55:15 46
09:55:15 47 Actually if you have a look at your diary on 24 June 2006,

09:55:20 1 this might assist. "Handed Witness F document by Shane
09:55:23 2 Paton, I need to discuss with Finn", do you think that
09:55:26 3 might be a reference to this document?---What is the date
09:55:31 4 of this document?
09:55:32 5
09:55:33 6 24 June 2011, "General notes, handed Witness F document by
09:55:38 7 Shane Paton. I need to discuss with Finn"?---Yes, that
09:55:44 8 might make sense in terms of that reference. If that's
09:55:49 9 Finn's writing I would have given it to him then, or may
09:55:53 10 have conveyed it to him through Doug.
09:55:55 11
09:55:55 12 In any event we don't have any diary notes suggesting a
09:56:00 13 meeting with Mr McRae between 24 June?---It might have come
09:56:05 14 to him via Doug, he often, him and Doug would meet.
09:56:09 15
09:56:09 16 We understand that Mr Overland resigned as at 16 June 2011.
09:56:14 17 So just before the letter?---I think it was May. I think
09:56:20 18 it might have been like May that he left, yeah, but anyway.
09:56:24 19
09:56:25 20 Okay. We also understand, you recall I put to you earlier
09:56:39 21 on your contribution to a meeting of the Driver Task Force
09:56:47 22 on 3 November where there was a suggestion that Ms Gobbo
09:56:51 23 may have been involved in the Operation Inca matter, do you
09:56:54 24 recall that?---Yes, yes.
09:56:55 25
09:56:56 26 The Commission has evidence that Ms Gobbo had discussions
09:56:58 27 with Mr Buick - - -
09:57:03 28
09:57:03 29 COMMISSIONER: Did you want to tender - - -
09:57:05 30
09:57:06 31 MR WINNEKE: Yes, Commissioner, I do, I tender that.
09:57:08 32
09:57:08 33 COMMISSIONER: The letter. The diaries are already
09:57:11 34 tendered, are they?
09:57:12 35
09:57:13 36 MR WINNEKE: The diaries are tendered I think?---Yes, they
09:57:16 37 should be.
09:57:17 38
09:57:17 39 COMMISSIONER: Yes, they are.
09:57:17 40
09:57:20 41 #EXHIBIT RC887A - (Confidential) Letter 24/6/11 to
09:57:26 42 Overland from Sol Solomon.
09:57:39 43
09:57:39 44 #EXHIBIT RC887B - (Redacted version.)
09:57:44 45
09:57:44 46 Just by way of background, the issues around Mr Dale's
09:57:51 47 prosecution, disclosure, et cetera, were being discussed in

09:57:54 1 September of 2011, but prior to that Ms Gobbo and Mr Buick
09:58:02 2 spoke to the Commonwealth Office of Public Prosecutions on
09:58:08 3 about, in August I think, around 14 August. Would you have
09:58:19 4 been aware of that, that discussions were being had with
09:58:25 5 the Commonwealth OPP?---Well, yeah, I expect there would
09:58:28 6 have been a number of meetings going on with the
09:58:30 7 Commonwealth OPP.
09:58:31 8
09:58:31 9 During the course of that meeting Ms Gobbo alluded to the
09:58:36 10 fact that there may well be consequences for a current
09:58:40 11 prosecution that the OPP were then pursuing and it seems
09:58:45 12 reasonably plain that what she was alluding to was the
09:58:49 13 Operation Inca prosecutions. Do you follow that?---Yes.
09:58:52 14
09:58:53 15 And she then had discussions with Mr Buick in the days
09:58:59 16 after that, and indeed after that meeting had discussions
09:59:04 17 with Mr Buick about that prosecution and she told him that
09:59:10 18 the prosecution that may well be affected if there was a
09:59:14 19 full disclosure was a prosecution against Higgs, Karam,
09:59:19 20 Barbaro, the highest level of organised crime dealers. She
09:59:23 21 said to Mr Buick, "The AFP didn't have a clue about that.
09:59:27 22 I had the shipping documents. I got my hands on them and
09:59:29 23 that's how you found the world's biggest ever single
09:59:30 24 seizure of ecstasy in the world. Now you think I'm going
09:59:34 25 to risk those people finding out, no fucking way", she says
09:59:38 26 to Mr Buick?---This is a conversation that's diarised or
09:59:42 27 something?
09:59:43 28
09:59:43 29 It's a conversation which the Royal Commission has heard
09:59:45 30 about?---Okay.
09:59:46 31
09:59:46 32 Audio recorded?---I see, yep.
09:59:48 33
09:59:49 34 And then on 26 August 2011 there was further discussion
09:59:54 35 between Mr Buick and Ms Gobbo wherein there was, in effect
10:00:02 36 she was telling him information about her involvement as
10:00:06 37 the source of information leading to the tomato tins case
10:00:10 38 arrests. Can I suggest to you this: your contribution to
10:00:16 39 the meeting in November, on 3 November, about your concern
10:00:24 40 or the potential that that may be an issue that arises if
10:00:29 41 there's disclosure, may well have been as a result of that
10:00:33 42 information coming to Mr Buick, filtering through to you,
10:00:37 43 that would be reasonable, wouldn't it?---Yeah, there's
10:00:40 44 potential for that certainly. I think that subsequently
10:00:43 45 come up at the meeting and then I've sought to find out,
10:00:46 46 look, is, it's come up in the meeting. I think I said the
10:00:52 47 day before yesterday it was, I had a sort of broad

10:00:55 1 knowledge of Inca in terms of it being a big job.
10:00:58 2
10:00:58 3 Yes?---And then, and then asking what's the story with that
10:01:04 4 in terms of this whole thing with her and then there's
10:01:06 5 obviously been conversation at that meeting about Inca.
10:01:09 6
10:01:09 7 There clearly has been and it does suggest, I'll take you
10:01:13 8 to the note in due course, but it does suggest that
10:01:16 9 information has certainly got to you about it, it's not a
10:01:20 10 matter of great moment, but it does suggest that
10:01:25 11 information's got from Buick, filtered through to you and
10:01:28 12 then there's discussion at the meeting on 3
10:01:28 13 November?---Yes, because Mr Buick would talk to Mr Fryer
10:01:30 14 and, you know, there'd be a number of occasions when he's
10:01:32 15 in my office he'd be updating me.
10:01:36 16
17 It stands to reason. I mean if Buick gets that information
18 he's hardly going to keep it to himself. He's going to
10:01:37 19 speak to Mr Fryer about it. It's not significant
10:01:39 20 information I assume?---No, no, I'm not contesting that.
10:01:43 21
10:01:44 22 And if Mr Fryer hears about it he is going to speak to you
10:01:48 23 about it?---Could well.
10:01:49 24
10:01:49 25 So that may well be the explanation. If you're making that
10:01:52 26 contribution to the meeting it may well be that that's how
10:01:56 27 it comes about?---Could be.
10:01:57 28
10:01:58 29 Mr Fryer gets an email and if we can perhaps have a look at
10:02:08 30 this, it's VPL.6071.0073.6622. This is an email around 19
10:02:19 31 October 2011 where Ms Breckweg of the Commonwealth DPP
10:02:26 32 makes it plain what the Commonwealth DPP disclosure policy
10:02:31 33 means. If we go down the bottom of the email chain. I
10:02:35 34 think this can be put up, Commissioner. If we go to the
10:02:43 35 first part of it. There are discussions going on between
10:02:49 36 Mr Buick and Louise Jarrett, who is a VGSO officer, about
10:02:59 37 disclosure and do you see that there's an email from Louise
10:03:07 38 Jarrett to Boris Buick, 5 October 2007, "Hi Boris, Tony
10:03:12 39 Hargreaves has requested all investigators' notes relating
10:03:16 40 to this matter, not just yours. Are you able to give me an
10:03:19 41 indication of whether these notes exist and if so how long
10:03:22 42 it will take for you to source and review them?" Then the
10:03:26 43 next email in the chain is, "Dear Louise" - so we've got an
10:03:41 44 email, "Dear Louise, I wanted to let you know that intend
10:03:55 45 sending the first lot of disclosure documents to Tony
10:03:58 46 Hargreaves shortly. They are redacted diary notes of Boris
10:04:04 47 Buick, redacted diary notes of Lebusque, prior convictions

10:04:06 1 of all witnesses. Are you happy for me to proceed with
10:04:07 2 these?" The next note, if we can have a look, is, "Morning
3 Krista, yes, happy for you to receive disclosure of
10:04:15 4 remaining notes occurring on 11 October 2011. I'll
10:04:18 5 forwarded the letter to Tony Hargreaves attaching the notes
10:04:22 6 to you now". If we move on. And then the letter is
10:04:28 7 attached with copies of redacted police notes, okay.
10:04:32 8 That's from the VGS0. Now, that prompts this response, if
10:04:39 9 we can go - this is an email, and I suggest it's a
10:04:44 10 significant email of 19 October 2011 and it's the
10:04:51 11 Commonwealth DPP are responding to what had effectively
10:04:57 12 been agreed as between the VGS0 and Mr Buick as to the
10:05:01 13 provision of notes by way of disclosure. And she says
10:05:05 14 this, "Dear Boris, Louise, I note your agreement with
10:05:09 15 Hargreaves that he will not issue a subpoena in relation to
10:05:12 16 certain documents in this matter if he's able to use the
10:05:16 17 previously subpoenaed and redacted documents from the
10:05:18 18 murder committal and the notes of the investigating police
10:05:20 19 officers in the present ACC prosecution". As you're aware
10:05:24 20 Mr Hargreaves had subpoenaed material in the Dale murder
10:05:28 21 prosecution. He had various documents and there had been a
10:05:33 22 suggestion of an agreement that he would retain, or use
10:05:37 23 those documents, plus whatever investigators' notes there
10:05:40 24 were, which Mr Buick was then providing. Do you follow
10:05:44 25 that?---Yes.
10:05:44 26
10:05:46 27 "The agreement reached between the defence and Victoria
10:05:49 28 Police as to the documents to be provided to the defence
10:05:52 29 does not override this office's disclosure obligation under
10:05:58 30 our prosecution disclosure policy." Effectively she's
10:06:00 31 saying, "Well look, regardless of any agreement you might
10:06:03 32 have we've got a disclosure policy" and I suggest to you
10:06:07 33 that the disclosure policy is a policy which is absolutely
10:06:11 34 in accordance with the common law and the law regarding
10:06:14 35 disclosure. And it applies to Victoria, as well, Victorian
10:06:22 36 prosecutions as well and it's this, in effect, you've got
10:06:28 37 to provide - "Material should be disclosed to the defence,
10:06:32 38 includes documents that inform the defence of the
10:06:35 39 prosecution's case against him or her. Any information
10:06:38 40 affecting the credibility of any prosecution witnesses and
10:06:42 41 any unused material, that is material not used in the
10:06:46 42 prosecution case, but which may run counter to the
10:06:49 43 prosecution case or may assist the accused in advancing a
10:06:53 44 defence". Do you see that?---Yes.
10:06:56 45
10:06:58 46 "She'd be grateful if you'd read over the disclosure policy
10:07:01 47 document and ensure any documents in the possession of

10:07:04 1 VicPol that fall within this policy are identified and a
10:07:07 2 list of the documents and a copy of the documents are
10:07:08 3 provided to this office as a matter of urgency." And then
10:07:13 4 it says, "Please note that a copy of a list of these
10:07:16 5 documents and a copy of the documents, save where a claim
10:07:18 6 of PII or LPP has been made in respect of the entire
10:07:22 7 document, must be made available to be provided to the
10:07:25 8 defence. The list of documents should identify those
10:07:29 9 documents over which claims of PII or LPP are made in
10:07:32 10 respect of part or all of the document with particulars as
10:07:36 11 to the nature of the claim, that is whether it's PII or
10:07:40 12 LPP. Where a claim of PII or LPP is made in respect of
10:07:44 13 part of a document, the part of the document over which
10:07:47 14 that claim is made should be redacted/ where claims of PII
10:07:51 15 or LPP have been made this office may seek clarification".
10:07:56 16 Now, does that seem to you to be a sensible policy of
10:07:59 17 disclosure?---Yes, that's the general work around it.

10:08:05 18
10:08:05 19 The point is, if Victoria Police through its police
10:08:09 20 officers or Command say, "Well look, we don't want to
10:08:12 21 disclose a particular document because we say that it may
10:08:16 22 be injurious to the public because it might disclose the
10:08:20 23 identity of an informer, that part of the document must be
10:08:25 24 redacted but it's got to be identified, that is that part
10:08:28 25 of the document which is redacted, it will be plain to
10:08:34 26 whoever is reading it that that part of the document is
10:08:36 27 redacted because of a claim for public interest immunity,
10:08:38 28 do you follow that?---Yes.

10:08:39 29
10:08:40 30 Now that would be the appropriate way of going about it,
10:08:43 31 would you accept that?---Yes.

10:08:43 32
10:08:44 33 And as far as you're aware, has that always been the way a
10:08:51 34 claim for public interest immunity has been made?---Yeah,
10:08:54 35 there's also, I think as is sort of the case here, there's
10:08:58 36 always meeting about, on those sorts of larger cases about,
10:09:03 37 more significant cases, about how disclosure is to go, the
10:09:08 38 lawyers work with each other working their way through that
10:09:12 39 as part of that process.

10:09:13 40
10:09:13 41 That may be right. But the appropriate way of going about
10:09:17 42 it is for you to say, "Look, here's a document which
10:09:20 43 contains relevant material. I cannot tell you what's
10:09:24 44 written here because a claim for public interest immunity
10:09:26 45 is going to be made". Any document which is relevant and
10:09:29 46 contains material which might be relevant to a particular
10:09:33 47 prosecution must be provided, do you accept that?---Yes.

10:09:36 1
10:09:36 2 It would not be appropriate simply for someone to blackout
10:09:40 3 parts of their notes, for example, because the view is
10:09:43 4 taken by that particular police officer that they don't
10:09:46 5 want to disclose that material because it might identify an
10:09:48 6 informer, without more?---Yes, well if that sort of thing
10:09:52 7 was to happen then the prosecuting agency would then want
10:09:56 8 to have meetings with the police to work out what's this
10:09:58 9 about, where has this come from? This is something that
10:10:02 10 should be redacted. And I think that happens fairly
10:10:05 11 regularly.
10:10:06 12
10:10:06 13 And it seems, certainly this Commission has heard that
10:10:09 14 evidence of processes whereby if, for example, there are
10:10:14 15 relevant notes or relevant documents which contain material
10:10:18 16 which is the subject of an assertion of PII, those pages
10:10:23 17 would simply not even be handed over, so no one would know
10:10:28 18 that there's relevant material out. Do you follow what I'm
10:10:31 19 saying?---I follow what you're saying.
10:10:33 20
10:10:33 21 That would not be appropriate, do you accept that?---No,
10:10:36 22 there should be a dialogue with the prosecutors and the
10:10:39 23 investigators, or those involved in the investigation as to
10:10:42 24 what the disclosure needs to be, so the prosecution can
10:10:46 25 make those assessments. I think that's what's happened
10:10:49 26 here.
10:10:49 27
10:10:52 28 If there is to be a redaction or a claim for public
10:11:01 29 interest immunity, it's not sufficient that there simply be
10:11:05 30 an agreement between the prosecutors and the police and
10:11:11 31 that being sorted out by way of an agreement between the
10:11:14 32 prosecutors and the police. If there is a claim it's got
10:11:19 33 to be determined by the court, doesn't it?---Well the
10:11:21 34 prosecutors have to go through that responsibility of what,
10:11:24 35 of working out what, in discussions with the police what
10:11:27 36 the disclosure needs to look like and then the prosecution
10:11:31 37 gives us advice as to what has to be disclosed.
10:11:35 38
10:11:35 39 If there is a question as to relevance, that's a matter for
10:11:40 40 the police to decide, do you say?---Well, the prosecution,
10:11:46 41 the legal team that's prosecuting, or whichever agency,
10:11:51 42 really has to be hand in glove with the investigators as to
10:11:54 43 being across the material.
10:11:55 44
10:11:55 45 And if the view is that there's material which is relevant
10:12:00 46 but subject to the claim of public interest immunity, then
10:12:03 47 that's a matter which needs to be notified to the defence,

10:12:09 1 do you accept that?---Yes, and the prosecution, that the
10:12:12 2 prosecution would, the legal team would be talking about
10:12:15 3 that with the defence and notifying defence.
10:12:17 4
10:12:17 5 Albeit the material wouldn't be handed over but there'd be
10:12:22 6 an indication to the defence that there's material over
10:12:26 7 which a claim is made, and then there'd be an argument
10:12:28 8 before the court and the court would finally determine it.
10:12:30 9 Is that your understanding of the way in which it should
10:12:35 10 proceed?---It normally is.
10:12:36 11
10:12:37 12 All right. If we move down. Then we see an email from
10:12:42 13 Michael Frewen to Doug Fryer, "Please read below mentioned
10:12:48 14 email. I've spoken with Krista Breckweg re this and the
10:12:52 15 bottom line is as follows, "We need to provide all material
10:12:55 16 regarding Witness F and Dale and all material pertaining to
10:12:59 17 her credibility based on everything I would assert. To
10:12:59 18 that end Krista recommends at this point to get the
10:13:03 19 decision makers in one spot at one time in order to resolve
10:13:09 20 this, what we hand over if anything and the future
21 directions re this matter. She's spoken with senior
10:13:13 22 counsel Chris Beale. And outstanding matters she is
10:13:20 23 seeking clarification on will be resolved next week", and
10:13:23 24 then there's a list of people, including yourself, who it's
10:13:29 25 anticipated were the major decision, or the people who
10:13:32 26 needed to be present at the meeting, do you see
10:13:34 27 that?---Yes.
10:13:34 28
10:13:35 29 Then Doug Fryer sends it on to you. He says, "Graham, the
10:13:41 30 Gobbo witness issues are heating up with the DPP. If the
10:13:44 31 below is correct it would appear ALL" - in all caps -
10:13:50 32 "Needs to be declared re her history. This is a problem.
10:13:54 33 For discussion please. Doug". If we move up, and you say,
10:13:57 34 "Noted. Please get the meeting set up with the CDPP. We
10:14:01 35 would like to ensure that Shane Kirne is at the meeting.
10:14:05 36 Regards Graham". So do you see that?---Yes.
10:14:09 37
10:14:09 38 Can we take it that when Doug Fryer says to you, "If the
10:14:16 39 below is correct it would appear ALL" - in all caps -
10:14:21 40 "needs to be handed over", that's regarding her history,
10:14:25 41 "This is a problem"?---Yes.
10:14:25 42
10:14:26 43 He's alluding to the fact about all of the material which
10:14:30 44 is held by Victoria Police which includes all of the
10:14:33 45 material that's held by the SDU?---Yeah, well at that stage
10:14:37 46 we were having concerns about, about how she was being
10:14:41 47 managed in terms of the breadth of information she was

10:14:45 1 providing, being there's something more going on than we
10:14:51 2 knew.
3
10:14:52 4 Yes?---And I'd certainly started to develop concerns at
10:14:54 5 that time about her safety in that context, if she is going
10:14:57 6 to be a witness how that is done safely.
10:15:00 7
10:15:01 8 Can I suggest to you the all caps "ALL" is inferentially
10:15:06 9 suggesting that you know what he's talking about, and that
10:15:09 10 means there's a whole lot of material which needs to be
10:15:12 11 disclosed which could be significantly problematic, not
10:15:16 12 just for Ms Gobbo in terms of her safety but also for
10:15:21 13 Victoria Police?---Yeah, we had concerns at that time, both
10:15:24 14 Doug and I, I think, and I don't speak for Doug, there was
10:15:29 15 a lot we didn't know about, what she was doing with
10:15:32 16 Victoria Police and it was worrying us in the context of,
10:15:35 17 yeah, her safety and the matter connected with her, then
10:15:40 18 giving evidence in the matter when we don't know what we're
10:15:44 19 dealing with.
10:15:45 20
10:15:45 21 This is an email not about Ms Gobbo's safety particularly,
10:15:49 22 this is an email about disclosure?---Yes.
10:15:52 23
10:15:52 24 And the likelihood that disclosure in this case meant that
10:15:55 25 all's going to come out?---Yes.
10:15:57 26
10:15:57 27 And whilst we accept that your position is that that leads
10:16:02 28 to concerns about Nicola Gobbo, it also leads to concerns
10:16:07 29 for Victoria Police because it will become apparent that
10:16:11 30 Victoria Police has engaged this person as a barrister and
10:16:14 31 there is a whole raft of material which is potentially very
10:16:16 32 damaging to Victoria Police?---I wasn't thinking of it
10:16:22 33 through that context, no.
10:16:23 34
10:16:23 35 All right. You were looking at it in terms of the notion
10:16:28 36 of disclosure, I take it?---Yeah, and there was concern
10:16:31 37 that, as I say, certainly concerns at that time about what
10:16:34 38 we were dealing with here, not knowing everything.
10:16:37 39
10:16:38 40 Well, can I suggest to you that if you say you didn't know
10:16:42 41 anything, you would have - - -
10:16:46 42
10:16:46 43 MR COLEMAN: He didn't say he didn't know anything.
10:16:49 44
10:16:49 45 MR WINNEKE: You would have said, "What do you mean all,
10:16:53 46 what's all mean"?---In the context of our previous
10:16:56 47 discussions we didn't know all of her, we didn't know all

10:16:59 1 of her history and her background. Obviously we started to
10:17:04 2 have those concerns around that time because through this
10:17:07 3 possession of this prosecution, you know, when Doug was
10:17:10 4 working on it, it's become apparent to him that there was
10:17:14 5 more to her than we knew and he was expressing those
10:17:17 6 concerns to me and we both would have shared those
10:17:20 7 concerns, yes.
10:17:21 8
10:17:21 9 And so you arranged the meeting with the CDPP. And
10:17:27 10 Mr Kirne's present. You say that on, I think it's 20
10:17:40 11 October, is it, Detective Superintendent Fryer sent you a
10:17:44 12 letter that Ms Gobbo had sent to Mr Buick on 17 October
10:17:47 13 2011. Is that right? If we have a look at this. I'll
10:17:59 14 tender that email chain if it hasn't already been.
10:18:02 15
10:18:02 16 COMMISSIONER: It has already been tendered.
10:18:04 17
10:18:04 18 MR WINNEKE: Can we have a look at this document.
10:18:05 19
10:18:06 20 COMMISSIONER: 694 for the record.
10:18:08 21
10:18:08 22 MR WINNEKE: 6027.0015.3744. And that's the covering
10:18:22 23 letter. Then we have a look at VPL.0010.0001.0001 at
10:18:31 24 pp.72-73. Now that's the letter, is it, that you received,
10:20:23 25 that you refer to in your statement, is that right?---Yes.
10:20:31 26
10:20:34 27 And she refers to a meeting that she's had with the
10:20:37 28 Commonwealth DPP and that's a letter which you read and
10:20:47 29 took note of, is that correct?---Yes.
10:20:49 30
10:20:49 31 That was to be discussed in the next meeting?---Yes.
10:20:52 32
10:20:52 33 All right. I tender that, Commissioner.
34
10:20:56 35 COMMISSIONER: That's a letter of 17 October 2011, Ashton
10:21:02 36 to Buick, is it?
10:21:05 37
10:21:05 38 WITNESS: No, it's Gobbo to Buick.
10:21:07 39
10:21:08 40 COMMISSIONER: Sorry, who is it from?---It's Nicola Gobbo
10:21:12 41 writing to Boris Buick.
10:21:14 42
10:21:14 43 It's already tendered. We're just finding a number. Yes,
10:21:33 44 693 it is. Yes, that's it.
10:21:39 45
10:21:40 46 MR WINNEKE: Thanks Commissioner.
10:21:41 47

10:21:41 1 COMMISSIONER: Yes, that's it.
10:21:42 2
10:21:43 3 MR WINNEKE: Now, Commissioner, there's evidence before the
10:21:47 4 Commission that on 28 September of 2011 there was a meeting
10:21:54 5 which included barrister Gerard Maguire who'd provided the
10:21:59 6 advice which you ultimately received, various lawyers from
10:22:04 7 the VGSO and also the Commonwealth, VGSO and Victoria
10:22:12 8 Police I think, Mr Sheridan, Mr Frewen, Mr Buick.
10:22:18 9 Mr Maguire prepared a draft memorandum which was more or
10:22:25 10 less in terms, in the same terms of the advice that he
10:22:31 11 ultimately provided and signed on 4 October. And it was
10:22:39 12 noted by Mr Buick that Mr Frewen was to speak to AC Pope
10:22:48 13 and Ashton with respect to the memorandum. Now, do you
10:22:53 14 recall having a discussion about the draft memo that
10:22:58 15 Mr Maguire had prepared?---I certainly remember seeing the
10:23:02 16 ultimate memo but I don't have a recollection of seeing any
10:23:07 17 drafts of the memo.
10:23:08 18
10:23:09 19 Yes. There was a VGSO file note of the advice of the
10:23:17 20 meeting which referred to the need to disclose and the
10:23:21 21 possible effect on Mokbel court proceedings. And
10:23:28 22 Mr Maguire suggested referring this issue to Pope and
10:23:33 23 Ashton. Now, do you have a recollection of, prior to
10:23:39 24 receiving the written advice on 2 November, being briefed
10:23:45 25 as to the content of the advice and the possibility that it
10:23:50 26 may, the information that Victoria Police held may have an
10:23:55 27 effect on Mokbel proceedings?---No, I think that refers to
10:24:01 28 me seeing the actual final advice. I don't have a
10:24:05 29 recollection of seeing any preliminary advice. There
10:24:11 30 certainly is final advice mentioning Mokbel.
10:24:12 31
10:24:13 32 What I'm suggesting though is that it might be said that
10:24:18 33 even prior to you receiving the final advice on 2 November
10:24:21 34 there had been discussions with you about the meeting that
10:24:24 35 had occurred and the suggestion in the meeting, which had
10:24:29 36 been, or found its way into the draft memo. What I'm
10:24:37 37 suggesting to you is there's a realistic chance that that
10:24:40 38 was brought to your attention before 2 November?---It's
10:24:43 39 certainly possible. I don't remember it but it certainly
10:24:46 40 is possible.
10:24:47 41
10:24:47 42 It's possible?---Because there were developing concerns
10:24:49 43 right through that period about her, for sure.
10:24:51 44
10:24:51 45 Would you go so far as to say that it's likely if those
10:24:56 46 sorts of issues had been discussed in barrister's chambers
10:25:00 47 and a draft memo prepared, given your earlier interest in

10:25:03 1 matters concerning Mr Mokbel, that it might well have been
10:25:06 2 brought to your attention?---It could have been. I don't
10:25:09 3 say probably, it could have been. Mr Fryer could well have
10:25:13 4 brought it to my attention. I don't have a recollection of
10:25:15 5 that.
10:25:15 6
10:25:16 7 I follow that?---Certainly only the final one.
10:25:19 8
10:25:19 9 You can't think of a reason why he wouldn't bring that sort
10:25:26 10 of information to your attention, can you?---Oh no, in fact
10:25:28 11 he was - Doug was keen to get as much out of it because I
10:25:28 12 think he felt - at that stage he wanted to work out what
13 the hell was going on because he was - - -
14
10:25:38 15 You're all trying to work out - - -?---He was trying to dig
10:25:39 16 into it as much as he could.
10:25:41 17
10:25:42 18 So then the next thing is that I want to ask you about, you
10:25:45 19 say that there's a meeting on 2 November, you attend a
10:25:49 20 Driver Task Force steering committee. There was an issue
10:25:53 21 as to whether the prosecution could proceed against Mr Dale
10:25:56 22 without using Ms Gobbo as a witness and that was discussed,
10:25:59 23 is that right?---Yes.
10:26:00 24
10:26:03 25 Do you recall who was at that meeting?---Well the, the
10:26:08 26 actual Driver Task Force update may have that information
10:26:13 27 but the usual attendees were Mr Fryer, Mr Pope, sometimes I
10:26:20 28 think Mr Frewen would come to those as well, and sometimes
10:26:25 29 someone would be there in support of Mr Pope as well.
10:26:29 30
10:26:30 31 Okay. In any event - - - ?---Sorry, also someone from
10:26:35 32 professional standards or what was then ESD would come
10:26:39 33 along.
10:26:39 34
10:26:40 35 Who would that have been, do you recall?---Mr Rust.
10:26:45 36
10:26:46 37 Clive Rust?---If I have to guess.
10:26:50 38
10:27:09 39 Can I put this to you, that there was a discussion between
10:27:12 40 Ms Gobbo and Mr Buick on 21 October, there's a transcript
10:27:18 41 of it. At p.5 it was suggested that there was, that they
10:27:25 42 were still waiting on written advice from the Commonwealth
10:27:27 43 as to whether or not Ms Gobbo was going to be called. At
10:27:31 44 p.6, "Irrespective of what their position is going to be,
10:27:34 45 it's possible that Victoria Police will ask the CDPP not to
10:27:38 46 proceed". Ms Gobbo asks why and Mr Buick says, "Haven't
10:27:44 47 been fully briefed and haven't read all the material. The

10:27:47 1 examination of you or the production of documents by us
10:27:50 2 relating to you has the potential to jeopardise other
10:27:53 3 prosecutions". Now that's a transcript of a discussion
10:27:58 4 between Mr Buick and Ms Gobbo on 21 October 2011. Now, do
10:28:05 5 you think that that reflects Victoria Police's position
10:28:08 6 that there was concern that other prosecutions might be
10:28:11 7 affected if there was disclosure as a result of Ms Gobbo
10:28:15 8 being called?---Certainly at that time - what was the date
10:28:19 9 of that, sorry?
10:28:19 10
10:28:20 11 21 October 2011?---Yeah, I'd say at that stage, Boris,
10:28:24 12 Mr Buick was probably starting to have concerns of that
10:28:26 13 nature I imagine.
10:28:27 14
10:28:28 15 That other prosecutions may be affected?---Yes, because he
10:28:31 16 was - - -
10:28:31 17
10:28:31 18 If he had those concerns they would have found their way to
10:28:35 19 you?---They did through this Maguire advice and through
10:28:38 20 conversations with Mr Fryer. As I say, there was this
10:28:42 21 escalating concern we had, other things we didn't know
10:28:45 22 about.
10:28:46 23
10:28:47 24 The point I'm making is it's not merely a concern for
10:28:50 25 Ms Gobbo, it's a concern for other prosecutions, that's
10:28:52 26 what I'm suggesting to you?---Certainly there were
10:28:55 27 developing concerns at that stage, I agree. My presiding
10:28:59 28 concern at that point was really around her appearing as a
10:29:02 29 witness in that ACC matter and her safety around that.
10:29:05 30
10:29:05 31 All right. Then on 2 November you get in your hand the
10:29:10 32 advice which is signed by Mr Maguire and in that advice are
10:29:14 33 the paragraphs which talk about the potential for
10:29:22 34 prosecutions of Mokbel and associates being
10:29:25 35 affected?---Yes.
10:29:25 36
10:29:26 37 And I think, if we go to the advice itself, if we can have
10:29:39 38 a look at this, VPL.0005.0005.0015. Obviously you've seen
10:29:57 39 this document?---Yes.
10:29:58 40
10:30:18 41 And whilst it's coming up at paragraph - - - ?---You can
10:30:26 42 just read it out loud, that's fine, I don't need to see it.
10:30:30 43
10:30:31 44 There's reference obviously to the potential that Mr Dale
10:30:35 45 may seek to claim that any discussions that he had were the
10:30:38 46 subject of LPP, do you accept that?---Yes.
10:30:40 47

10:30:50 1 If we go to paragraph 55. Ultimately Mr Maguire is of the
10:30:57 2 view that such a claim wouldn't fly but nonetheless it was
10:31:01 3 likely the claim was going to be made and it would need to
10:31:04 4 be the subject of disclosure, do you accept that
10:31:06 5 proposition?---Yes.
10:31:07 6
10:31:08 7 At 53, "A further complication is the professional role
10:31:14 8 undertaken by the source. Once identified as acting as an
10:31:19 9 informer from February 2007 it's likely that the defence
10:31:23 10 will press to obtain documents in relation to all other
10:31:25 11 dealings between the police and the source on the basis
10:31:27 12 that it will show that the source was providing legal
10:31:31 13 services and advice to other targets at the same time as
10:31:34 14 information was being provided to police. This would form
10:31:37 15 the basis of a credit attack as well as bolstering the
10:31:41 16 proposition that the recorded conversation with Dale was an
10:31:45 17 occasion which attracted legal professional privilege".
10:31:49 18 Paragraph 54, "If the role of the source were to be fully
10:31:53 19 exposed there is also a possibility that persons such as
10:31:56 20 Mokbel, who was convicted in absentia in March of 2006,
10:32:03 21 would seek to challenge the convictions on the basis that
10:32:07 22 it was improperly obtained. It's difficult to predict how
10:32:10 23 such an issue might be raised or play out but there might
10:32:14 24 be an attempt to raise the issue in a venue such as the
10:32:18 25 Court of Appeal. It might also have a collateral effect in
10:32:22 26 relation to the current sentencing of Mokbel for drug
10:32:25 27 trafficking offences after he fled the jurisdiction. I
10:32:30 28 suggest that these issues be raised with senior management
10:32:33 29 within Victoria Police for their consideration in the
10:32:35 30 context of the current committal which is due to commence
10:32:38 31 in November 2011". So that refers to the committal of Dale
10:32:43 32 but what he's also talking about is the current sentencing
10:32:47 33 process of Mokbel for drug trafficking which we spoke about
10:32:52 34 before?---Yes.
10:32:52 35
10:32:53 36 Is that correct?---Correct.
10:32:54 37
10:32:54 38 Which also, as I suggested to you, was before the courts
10:32:58 39 because Mr Mokbel at that stage was trying to change his
10:33:00 40 plea, right?---Yes.
10:33:03 41
10:33:03 42 Now, that advice, I suggest, do you accept was
10:33:14 43 significant?---Yes.
10:33:14 44
10:33:17 45 And in the course of the meeting, if we can have a look at
10:33:22 46 the meeting, on the following day, on 3 November 2011,
10:33:30 47 there was another Driver Task Force meeting, is that

10:33:33 1 correct?---Yeah, 2011, yes, correct.

10:33:37 2

10:33:40 3 If we go to VPL.0002.0002.0065. Perhaps just before we do,
10:34:00 4 if we go to the recommendations. Just move up the page.
10:34:11 5 It says, "I suggest that urgent consideration be given to
10:34:15 6 providing a copy of the relevant log entries to the
10:34:17 7 prosecutor for the purposes of determining what, if any,
10:34:18 8 disclosure is required in the interests of fairness. This
10:34:21 9 may require relevant information reports or members' diary
10:34:25 10 entries to also be obtained and reviewed". That was what
10:34:28 11 Mr Maguire was recommending?---Yes.

10:34:30 12

10:34:30 13 Thanks very much. If we can look at the next document,
10:34:34 14 VPL.0002.0002.0065. This is a note of the meeting on 3
10:34:49 15 November and it says, "The meeting was at 11.30 hours,
10:34:55 16 notes compiled 16:00 from handwritten"?---Yes, it should
10:35:00 17 have the people's diary entries of who was there as well I
10:35:03 18 would imagine.

10:35:03 19

10:35:03 20 I wonder if we can put this up on the large screen so it
10:35:07 21 can be seen. If there's any issue with that Mr Holt could
10:35:10 22 mention it to me.

23

10:35:20 24 COMMISSIONER: Yes.

10:35:20 25

10:35:20 26 MR HOLT: No issues, Commissioner. May I just raise
10:35:23 27 something with my learned friend?

10:35:24 28

10:35:24 29 COMMISSIONER: Yes.

10:35:51 30

10:35:53 31 MR WINNEKE: Now, can I suggest to you that these are
10:36:02 32 minutes of Mr Cartwright taken at a meeting between you,
10:36:06 33 Mr Cartwright and Mr McRae on 3 November 2011?---On - - -

10:36:21 34

10:36:22 35 Sorry, diary notes, diary notes taken by Tim Cartwright, I
10:36:26 36 apologise. I've misdescribed them. Do you accept that
10:36:29 37 proposition?---Could have been.

10:36:35 38

10:36:35 39 If we have a look at your diary we see that 11.30 hours
10:36:40 40 you've got, "Met Tim Cartwright and Finn McRae on Witness
10:36:45 41 F. Discussion on Gerard Maguire advice"?---Yes.

10:36:48 42

10:36:48 43 "Indicated that Tim should discuss with Pope to initiate an
10:36:53 44 independent review of Witness F source handling in IC&S.
10:36:59 45 Also advised him he did not need to speak with Tim re Pope
10:37:06 46 complaint." That's in your diary. I took you to that note
10:37:09 47 previously. So that suggests that there was a meeting,

10:37:12 1 perhaps it's not a Task Force meeting but it's a meeting
10:37:15 2 between the three of you, and it's at that meeting that
10:37:18 3 these matters are discussed. Can I suggest to you that
10:37:21 4 Mr Cartwright took handwritten notes of the meeting at
10:37:26 5 11.30 hours and then he compiled - whether it's a Driver
10:37:30 6 meeting or a Task Force meeting, but he compiled those
10:37:34 7 notes and they'd been written out, sorry, hand - I withdraw
10:37:39 8 that. Typed out at 4 pm, do you accept that
10:37:44 9 proposition?---Yes. Well I'm not disputing it could well
10:37:49 10 be Mr Cartwright's notes, yeah, or whatever it is, yes.
10:37:56 11
10:37:57 12 Do you accept that, Mr Ashton, or not?
10:38:02 13
10:38:02 14 MR COLEMAN: How would he know?
10:38:04 15
10:38:04 16 WITNESS: I'm not disputing it.
10:38:06 17
10:38:06 18 COMMISSIONER: I think he's able to say if he doesn't know.
10:38:12 19 Mr Ashton's very capable of giving an answer, so he'll say
10:38:16 20 if he doesn't know I'm sure. Or if he can't say he'll say
10:38:18 21 he can't say?---Yes, I don't know for sure, Commissioner,
10:38:24 22 they may well be his notes.
10:38:26 23
24 That's all you can say.
25
10:38:27 26 MR WINNEKE: In any event, what your note suggests is at
10:38:29 27 11.30 hours on 3 November you have a meeting with
10:38:33 28 Cartwright and McRae on Witness F. "Discussion on Gerard
10:38:38 29 Maguire's advice." So it's pretty clear there was a
10:38:41 30 meeting between the three of you at 11.30 hours, there we
10:38:45 31 are there, do you see that? They're your notes. Do you
10:38:52 32 see that?---Yes.
10:39:04 33
10:39:07 34 It seems that someone else has taken notes of the same
10:39:11 35 meeting. I'm informed, reliably, that it's Mr Cartwright.
10:39:15 36 If turns out not to be the case we'll let you know as soon
10:39:20 37 as we can?---That's fine.
38
10:39:21 39 But can I suggest to you that Mr Cartwright took
10:39:23 40 handwritten notes which were then typed up at 4 pm on the
10:39:27 41 day?---Okay.
10:39:28 42
10:39:28 43 If we can go back to those notes. Whilst they're coming
10:39:59 44 back on the screen, can I suggest that those notes appear
10:40:02 45 to be a more fulsome record of the notes that, of the
10:40:08 46 meeting that you were at at 11.30?---Yeah, well they've got
10:40:15 47 more detail in them, yes. Yes.

10:40:19 1
10:40:25 2 That seems to be another version of it. In any event,
10:40:30 3 "Committal for Dale due to start Monday. To proceed
10:40:33 4 without F's evidence subject to final DPP decision.
10:40:37 5 Necessitating withdrawal of several charges. Discussion
10:40:41 6 about Maguire's legal advice". It says the 4th of the
10:40:45 7 11th, in fact it's the 4th of the 10th, "Received by me on
10:40:48 8 the 2nd of the 11th". Was it your understanding that
10:40:51 9 Mr Cartwright also received the advice at the same time as
10:40:54 10 you did?---I imagine he would have.
10:40:57 11
10:40:58 12 "Provided at request of the VGS0. Maguire briefed to
10:41:01 13 appear at committal if required to claim public interest
10:41:05 14 immunity. Maguire's advice raises the issue of governance
10:41:10 15 of human sources when the human source is a legal
10:41:13 16 practitioner. Action: Cartwright to discuss with Pope as
10:41:22 17 to how we can ensure appropriate governance". And then,
10:41:33 18 "GA concerns around Inca, a pending AFP matter for large
10:41:39 19 scale drug importation after a joint operation. F was the
10:41:42 20 originating human source. AFP although aware of the
10:41:47 21 importance of the human source are not aware that it was F.
10:41:51 22 Some concern that F was acting as legal advisor to one of
10:41:54 23 the accused at the time. Consequently a requirement to
10:41:59 24 disclose or at the least make the prosecution aware of F's
10:42:04 25 involvement and the potential that she was a legal advisor.
10:42:08 26 Action: Finn to consider the requirements". And comments
10:42:15 27 by Finn around a relationship with obviously Pope. Sorry,
10:42:22 28 comments by Witness F probably around a relationship with
10:42:26 29 Pope. "Finn to consider legal advice around 'reason to
10:42:32 30 believe' and Pope to remain recused from the Driver
10:42:36 31 committee until further determination around the need for
10:42:39 32 investigation or until any investigation is completed", do
10:42:42 33 you see that?---Yes.
10:42:42 34
10:42:43 35 Do you now accept that you raised your concerns about Inca,
10:42:51 36 as are set out there in that note?---Yeah, I'm just trying
10:42:58 37 to work out, like if this is the meeting, if this is the
10:43:07 38 11.30 meeting was this the one I had with - - -
10:43:11 39
10:43:12 40 Cartwright?---Cartwright and McRae.
10:43:13 41
10:43:14 42 Finn McRae?---Yeah.
10:43:15 43
10:43:15 44 Subsequent to the meeting on 2 November where you received
10:43:19 45 the Maguire advice?---Subsequent to receiving that advice,
10:43:23 46 yeah, I went to see them.
10:43:24 47

10:43:24 1 Yes?---Yes.

10:43:25 2

10:43:25 3 What I suggest is by that stage you'd had discussions with
10:43:29 4 either Buick or Fryer, it had been relayed to you that
10:43:33 5 there was a concern about Operation Inca?---Oh yeah.

10:43:38 6

10:43:39 7 Do you accept that?---I thought that, I thought that
10:43:44 8 reference to concerns about Inca was a reference to one of
10:43:46 9 the Driver meetings not this meeting, so that's where I was
10:43:53 10 confused about that.

10:43:54 11

10:43:54 12 I follow. In any event I think you're now accepting
10:43:58 13 certainly by this stage, outside of any advice that
10:44:00 14 Mr Maguire has provided, you've been informed that there
10:44:03 15 were issues around Inca and the problems involving
10:44:07 16 Ms Gobbo's involvement in that, the possibility that she
10:44:09 17 was acting for one of the accused, and consequently there
10:44:13 18 was a requirement of disclosure?---Yes, and I think I would
10:44:19 19 have, in terms of it being raised at that meeting, I think
10:44:22 20 that was probably from conversation I had with Doug Fryer.

10:44:27 21

10:44:27 22 It would have been quite easy for you to ask the
10:44:31 23 appropriate person to find out immediately if in fact
10:44:34 24 Ms Gobbo was a legal advisor to any of the accused people
10:44:39 25 in Inca, wouldn't it?---Yeah, I could have asked Doug to go
10:44:44 26 and work that out.

10:44:45 27

10:44:45 28 And do you accept that it would have been entirely
10:44:50 29 appropriate to follow that up and to ensure that the trials
10:44:55 30 in the Inca proceedings did not go ahead until there had
10:45:00 31 been appropriate disclosure made?---Well, that would have
10:45:04 32 been something that the Deputy Commissioner would have had
10:45:07 33 to consider in the context of her safety as well, because
10:45:11 34 that's what was acting on my mind as well.

10:45:13 35

10:45:13 36 Yes, but, Mr Ashton, I've just taken you to the disclosure
10:45:18 37 policy of the Commonwealth DPP, which you're aware
10:45:22 38 of?---Yes.

10:45:22 39

10:45:23 40 And you understand the significance of that policy, the
10:45:27 41 necessity for that policy?---Yes.

10:45:29 42

10:45:29 43 You have information which is significant information which
10:45:32 44 you accept should have been disclosed to the Commonwealth
10:45:36 45 prosecutors prior to that trial proceeding, do you accept
10:45:39 46 that?---In accordance with that sort of policy, yes.

10:45:42 47

10:45:42 1 You were the head of the Criminal Department, the Assistant
10:45:48 2 Commissioner of Crime?---Yes.
10:45:48 3
10:45:48 4 Correct? Do you accept that you had a responsibility with
10:45:56 5 other police officers to ensure that the appropriate
10:45:59 6 disclosure was made?---And I believe I made, I did the
10:46:04 7 correct things in terms of what was required of me at that
10:46:07 8 time.
10:46:07 9
10:46:07 10 Do you accept that it was necessary for the prosecution in
10:46:12 11 the Inca matter to know of this information?---Along with
10:46:18 12 the need to keep her safe, yes.
10:46:20 13
10:46:21 14 We take that for granted, but do you accept that the
10:46:24 15 prosecution should have been aware of that
10:46:26 16 information?---In the ordinary course of events, yes.
10:46:28 17
10:46:28 18 Do you accept that the prosecutor was not made aware of
10:46:32 19 that information prior to those trials proceeding?---Well
10:46:34 20 at the time I brought that to the attention of the Deputy
10:46:38 21 Commissioner and the head of the legal services for
10:46:40 22 Victoria Police.
10:46:40 23
10:46:41 24 Do you accept that it was not brought to the attention of
10:46:43 25 the prosecution?---No, I don't know what Luke, what Finn
10:46:51 26 ultimately disclosed to the OPP in the matter, so I don't
10:46:55 27 know 100 per cent.
10:46:56 28
10:46:56 29 Did you ensure, did you take any steps at all to ensure
10:46:59 30 that that information had got to where it should have got
10:47:02 31 to?---Yes, I spoke to the Deputy Commissioner, my officer I
10:47:07 32 report to. I flagged my concerns, which are reflected
10:47:10 33 there, and I've also spoken at the meeting about the need
10:47:14 34 to make sure, as is reflected in that note, about action
10:47:20 35 Finn to consider the requirement to disclose, that was
10:47:26 36 discussed at that meeting, that was my obligation to do
10:47:29 37 that. I did that.
10:47:30 38
10:47:30 39 Did you follow it up with Mr McRae to make sure he had
10:47:33 40 disclosed to the Commonwealth Director of Public
10:47:37 41 Prosecutions that information?---Only in conversational
10:47:39 42 terms, not at the meeting.
10:47:40 43
10:47:42 44 Well, in conversational terms or otherwise do you say that
10:47:42 45 you asked him whether he made the disclosure?---Yes, in
10:47:45 46 terms of we met, I don't know whether it was exactly which
10:47:50 47 day, but in the days following, I think it might have been

10:47:54 1 a few days following, I think from memory it might have
10:47:57 2 been in the context, even like a corridor type of
10:48:00 3 conversation, "Did you let them know" and he said yes.
10:48:04 4
10:48:05 5 Let's just get this right. You saw Finn McRae in the
10:48:09 6 corridor, you said to him, "Did you let the Commonwealth
10:48:13 7 prosecution know about the fact that Ms Gobbo was
10:48:15 8 potentially acting as a legal advisor to one of the accused
10:48:19 9 in the Inca proceeding"?---No, it wasn't as precise as
10:48:24 10 that, no.
10:48:24 11
10:48:24 12 At the same time as she was providing the information did
10:48:28 13 you say to Mr McRae, "Did you let the Commonwealth
10:48:32 14 prosecutor know that"?---No, not in those precise terms,
10:48:35 15 no.
10:48:36 16
10:48:36 17 Can you describe the nature of the conversation that you
10:48:38 18 had, please, in the corridor?---Well I don't know if it was
10:48:41 19 definitely in the corridor, I'm just trying to give you a
10:48:46 20 flavour of the type of conversation I think from my
10:48:47 21 recollection it was. It wasn't sort of sitting in a formal
10:48:50 22 meeting, like a Driver Task Force meeting or a meeting with
10:48:53 23 Tim Cartwright and that. There may even have been another
10:48:55 24 meeting going on about something entirely different and
10:48:57 25 after the meeting it was just like, "Could you let the OPP
10:49:01 26 know", and he said yes, and that's consistent with these
10:49:05 27 notes from this meeting because my intention at that point,
10:49:10 28 because I felt that I was conflicted because of the 07
10:49:16 29 information involvement, that I report it to the Deputy
10:49:19 30 Commissioner and Finn McRae and then I step away from it,
10:49:23 31 which is what I did.
10:49:23 32
10:49:24 33 Did you ever have a discussion with Mr Cartwright about
10:49:26 34 this matter and say to him, "Look, we've got this
10:49:30 35 information which is very significant information
10:49:32 36 concerning one of the major importations of ecstasy, a
10:49:36 37 trial concerning that trial. We've got this very
10:49:39 38 significant information. Has it been provided? Has the
10:49:44 39 information been provided to the Commonwealth?" Did you
10:49:46 40 ever have that discussion with Mr Cartwright?---I've
10:49:49 41 clearly disclosed that to Mr Cartwright, some of the
10:49:53 42 information which is reflected in his notes which you've
10:49:56 43 shown me there, and I didn't follow up with him later on
10:49:59 44 that I can recall to say did you or didn't you take action,
10:50:02 45 because I was just removing myself from it at that point.
10:50:05 46
10:50:05 47 Why did you need to remove yourself from it?---Well because

10:50:09 1 when we saw the Maguire advice, and we had concerns that
10:50:12 2 were increasing at that time about the way that she'd been
10:50:15 3 used in terms of as a human source, and I had previously
10:50:20 4 involvement in Task Force Petra, and in Briars I guess for
10:50:26 5 that matter too, therefore I thought it appropriate I not
10:50:29 6 be involved in any of that, and I think the Deputy agreed
10:50:33 7 with that.
10:50:33 8
10:50:34 9 Effectively you say, "Look, it wasn't my responsibility to
10:50:37 10 ensure that the information had been passed on, that was
10:50:40 11 responsibility fell with Mr Cartwright and Mr McRae and I
10:50:43 12 did all I could do", is that what you say?---I discharged
10:50:46 13 what I needed to do I think in those circumstances, yes.
10:50:48 14
10:50:49 15 Are you surprised now to know that the information, that
10:50:53 16 those trials went ahead without that information coming to
10:50:56 17 light?---Well, it's - I don't know exactly what Finn would
10:51:05 18 have said to prosecuting agencies, but certainly it would
10:51:07 19 have been helpful for - depending, because it would have
10:51:11 20 been helpful for them to know obviously, obviously they
10:51:14 21 were still dealing with, as I was at the time leading up to
10:51:17 22 that time, this concern about her safety and everything we
10:51:20 23 didn't know. You had what was essentially just a gigantic
10:51:26 24 sort of mess going on with her management. Didn't know
10:51:30 25 what was being passed, what was happening, if any
10:51:32 26 information had been passed that was inappropriate in
10:51:34 27 relation to prosecutions. There needed to be a big review
10:51:38 28 so I would have understood if it wasn't disclosed, the
10:51:41 29 reasons why.
10:51:42 30
10:51:42 31 On Monday you said in evidence you weren't aware at that
10:51:45 32 time that Ms Gobbo had passed on the bill of lading. Are
10:51:48 33 you now accepting in fact at that time you were aware of
10:51:51 34 that information?---I don't know if I was aware of that, I
10:51:54 35 don't recall being aware of that specific information about
10:51:57 36 this bill of lading. I don't have a specific recollection
10:52:00 37 of that, no.
10:52:00 38
10:52:09 39 Do you think that it would have been reasonable at this
10:52:13 40 stage to obtain further advice from Mr Maguire, or another
10:52:19 41 barrister, about this issue, this specific issue of
10:52:25 42 Operation Inca?---Well I've - not for me, no.
10:52:33 43
10:52:33 44 I'm talking about Victoria Police. Would it have been
10:52:35 45 appropriate for Victoria Police to get a further and a
10:52:38 46 specific advice about these matters that you've raised in
10:52:43 47 this meeting?---Well I think he's sought to do that by

10:52:47 1 getting a whole review done of the whole thing.
10:52:49 2
10:52:49 3 No, no. At this time would it have been appropriate, given
10:52:52 4 that you were concerned about it, to engage the VGS0 to
10:52:57 5 engage a barrister to provide you with a legal advice,
10:53:04 6 provide Victoria Police with a legal advice as to the
10:53:07 7 ramifications of those matters?---Well I think that's what
10:53:11 8 they've sought to do.
10:53:13 9
10:53:13 10 Well, what do you mean by saying that's what was sought to
10:53:19 11 be done?---Well I think they've sought to, at that time,
10:53:22 12 Victoria Police sought to do a full review, which was what
10:53:27 13 I was keen to happen as well, was a full review done to
10:53:30 14 understand all of those risks, not just in relation to
10:53:33 15 Mokbel but all the matters that she was obviously assisting
10:53:35 16 with.
10:53:36 17
10:53:36 18 And this is the Comrie review?---Yes.
10:53:39 19
10:53:39 20 Right. Can I suggest to you that it would have been
10:53:42 21 appropriate at this stage to absolutely nail down the
10:53:47 22 situation with respect to Mokbel and others that had been
10:53:50 23 referred to by Mr Maguire in his advice, to get legal
10:53:54 24 advice which focused on that particularly, do you accept
10:53:56 25 that or do you reject that proposition?---I don't know
10:53:58 26 whether it would have required VGS0 advice but certainly
10:54:02 27 conversations with the prosecutors.
10:54:04 28
10:54:05 29 Do you accept that it would have been appropriate at this
10:54:08 30 time to get, to nail down the situation with respect to
10:54:11 31 Operation Inca and get a clear legal position with respect
10:54:18 32 to that matter?---In relation to that and all the matters.
10:54:20 33
10:54:21 34 And all of the matters, you agree?---H'mm.
10:54:23 35
10:54:23 36 Do you accept that that wasn't done?---I think they've
10:54:26 37 sought to do that through the process that they put in
10:54:29 38 place.
10:54:29 39
10:54:30 40 What occurred was you set up an internal review which
10:54:38 41 became the Comrie review, correct?---Victoria Police did,
10:54:42 42 yes.
10:54:42 43
10:54:42 44 Can we have a look at this document, VPL.0005.0013.1429.
10:54:54 45 What I'm going to ask you to have a look at are the Terms
10:54:59 46 of Reference for what's described as an independent case
10:55:01 47 review. Whilst that is coming up, I gather what you did

10:55:05 1 was to engage Mr Comrie, or Victoria Police engaged
10:55:09 2 Mr Comrie?---Yes.
10:55:10 3
10:55:11 4 With the able assistance of Mr Gleeson, is that right,
10:55:14 5 Steve Gleeson?---I believe so, yes, Mr Gleeson was
10:55:17 6 assisting.
10:55:17 7
10:55:18 8 Mr Gleeson was in effect briefed to conduct a thorough
10:55:22 9 review of the files that were held by the SDU to see
10:55:27 10 certain things, which are set out in the Terms of
10:55:30 11 Reference, is that the situation?---I believe so, yes.
10:55:32 12
10:55:45 13 Commissioner, can I tender that diary entry, that note
10:55:51 14 which is - - -
10:55:51 15
10:55:52 16 COMMISSIONER: It's already tendered.
10:55:53 17
10:55:54 18 MR WINNEKE: 3 November 2011, which I understand is - - -
10:55:58 19
10:55:58 20 COMMISSIONER: It's been tendered, Exhibit 844, I think.
10:56:01 21
10:56:02 22 MR WINNEKE: I've done that, okay.
10:56:03 23
10:56:04 24 COMMISSIONER: Yes.
10:56:05 25
10:56:05 26 MR WINNEKE: These are the Terms of Reference for the
10:56:07 27 Comrie case review. Now, there's some preamble there, do
10:56:16 28 you see that?---Yes.
10:56:17 29
10:56:19 30 There's a reference to human source 3838. "High risk
10:56:24 31 source being utilised by Victoria Police." It talks about
10:56:28 32 the necessity to transition from human source to that of a
10:56:32 33 protected witness, do you see that?---Yes.
10:56:35 34
10:56:35 35 "Outcomes envisaged were not achieved due to various
10:56:39 36 reasons. Complexities also arose as a consequence of
10:56:43 37 particular professional, the standing of 3838." There's
10:56:47 38 talk about disentangling from her, "It was complicated and
10:56:52 39 costly, there was civil proceedings and Victoria Police now
10:56:55 40 seeks an independent review to consider and provide advice
10:56:59 41 upon specific aspects of this 3838 matter. The review is
10:57:02 42 to focus upon, one, the process and associated issues
10:57:06 43 whereby a human source may transition to become a witness,
10:57:10 44 including the adequacy of controls and risk recognition
10:57:14 45 arrangements", et cetera. "The adequacy of existing human
10:57:18 46 source policies, procedures, instructions and control
10:57:21 47 measures, including actual management and operational

10:57:24 1 practices utilised having regard to the particular
10:57:27 2 professional standing of Ms Gobbo. Whilst the review is
10:57:30 3 primarily focused on 3838, and in order to provide a
10:57:33 4 balanced and objective assessment of a usual process, it
10:57:36 5 may also entail consideration of sampling of other high
10:57:41 6 risk human source files", do you see that?---Yes.
10:57:44 7
10:57:44 8 I think there's no reason this can't be put on the big
10:57:47 9 screen, Commissioner. "This review may also involving
10:57:52 10 consideration of specific human source management
10:57:52 11 arrangements in place in other jurisdictions with a view to
10:57:56 12 determining best practice for such aspects for Victoria
10:57:59 13 Police". Do you see that?---Yes.
10:58:00 14
10:58:01 15 And do you accept that they're the Terms of
10:58:04 16 Reference?---Yes.
10:58:05 17
10:58:05 18 I tender that, Commissioner, if they haven't been.
10:58:13 19
10:58:14 20 #EXHIBIT RC888A - (Confidential) Terms of Reference for
10:58:16 21 Independent Case Review.
10:58:16 22
10:58:16 23 #EXHIBIT RC888B - (Redacted version.)
10:58:17 24
10:58:18 25 Can I suggest to you that those Terms of Reference do not
10:58:22 26 include tasking Mr Comrie to look into the potential that
10:58:28 27 cases such as the Inca cases and the Mokbel cases have been
10:58:34 28 affected, or that there had been miscarriages of justice,
10:58:39 29 do you accept that?---Yeah, it doesn't make specific
10:58:42 30 reference to that.
10:58:43 31
10:58:46 32 You say that what you put in train was a process whereby it
10:58:54 33 could be established the extent to which the use of
10:58:59 34 Ms Gobbo may have resulted in miscarriages of justice. Can
10:59:04 35 I suggest to you that simply didn't occur at all at this
10:59:07 36 stage?---I didn't prepare these Terms of Reference but
10:59:09 37 certainly it was my expectation that the Comrie review and
10:59:13 38 conversations would be occurring with the OPP, and that
10:59:17 39 would be a process that would be ongoing in understanding
10:59:19 40 the risks that were being created, that had been created in
10:59:23 41 relation to her, particularly around, particularly around
10:59:28 42 her safety but also around the matters that she's been
10:59:32 43 talking about.
10:59:32 44
10:59:33 45 Yes. Did you have any involvement in the establishment of
10:59:37 46 the Terms of Reference?---I don't believe so, no.
10:59:40 47

10:59:40 1 Do you know who did?---I can only imagine the legal area of
10:59:45 2 Victoria Police and Deputy Commissioner's office. I'm not
10:59:50 3 sure entirely.
10:59:52 4
10:59:53 5 When you look at those Terms of Reference do you accept
10:59:55 6 that they aren't really adequate to cover off the concerns
11:00:01 7 that you were expressing in the meeting of 3 November 2011,
11:00:06 8 do you accept that?---They don't make - - -
11:00:09 9
11:00:10 10 MR COLEMAN: Sorry, what concern specifically is my learned
11:00:13 11 friend referring to? It's a very general broad question.
11:00:16 12
11:00:16 13 COMMISSIONER: Yes, all right then. Be more specific,
11:00:21 14 please.
11:00:21 15
11:00:22 16 MR WINNEKE: "GA concerns around Inca, a pending AFP matter
11:00:27 17 for a large scale drug operation after joint operations.
11:00:29 18 Consequent a requirement to disclose or at the least make
11:00:34 19 the prosecution aware of F's involvement and the potential
11:00:34 20 that she was a legal advisor". They were the concerns that
11:00:37 21 you expressed in the meeting, do you accept that?---I think
11:00:40 22 your question was really, as I interpreted it, does this
11:00:44 23 convey sort of that, this laser-like review that needed to
11:00:49 24 go into all these matters, yes, I agree.
11:00:52 25
11:00:52 26 It doesn't, does it?---No, it doesn't go into those sorts
11:00:55 27 of specifics, no.
11:00:56 28
11:00:56 29 What really was required at that stage was a proper and a
11:00:59 30 close analysis as to the extent to which cases may have
11:01:03 31 been affected by the conduct of Victoria Police and
11:01:05 32 Ms Gobbo, do you accept that?---Yes.
11:01:07 33
11:01:07 34 Can you accept the proposition that at that stage it simply
11:01:10 35 wasn't, that sort of review wasn't put in train?---I think
11:01:13 36 that was the intent of that review but I don't think it's
11:01:17 37 reflected in those Terms of Reference terribly well.
11:01:26 38
11:01:26 39 All right, thanks very much. Ultimately what you did do
11:01:39 40 was to, on 4 November, have discussions regarding
11:01:46 41 Ms Gobbo's appearance at the Dale committal. You spoke to
11:01:49 42 Mr Buick and I'm taking you to your statement at paragraph
11:01:53 43 168. And you said that you didn't want Ms Gobbo called
11:01:57 44 because of your concerns about her safety if she appeared
11:02:00 45 as a witness, correct?---Yes.
11:02:01 46
11:02:03 47 And you sent an email to Assistant Commissioner Pope on

11:02:07 1 that day and, including the Commonwealth Director, or
11:02:15 2 Office of Public Prosecutions, stating your position that
11:02:18 3 the committal proceedings should only proceed on the counts
11:02:21 4 that did not require Ms Gobbo to be a witness,
11:02:24 5 correct?---Yes.
11:02:25 6
11:02:25 7 You had a discussion later in the day with Mr Kirne and
11:02:28 8 Ms Breckweg?---Breckweg, yes. I'm not sure if that's -
11:02:34 9 anyway, the spelling I'm not sure about, but that's the
11:02:38 10 person, yes.
11:02:38 11
11:02:40 12 You could have mentioned in that meeting your concerns
11:02:42 13 about the Inca prosecutions, I take it, in that
11:02:48 14 discussion?---Yeah, I could have, I didn't. That was
11:02:51 15 focused on the - I just still had to deal with cleaning up
11:02:55 16 this issue around the ACC prosecution with, in relation to
11:02:59 17 her appearance.
11:03:00 18
11:03:00 19 All right, I follow that. You say it was dealing with
11:03:04 20 Dale. Nonetheless it's a matter that could have been
11:03:09 21 raised?---Could have been but I'd already sort of put that
11:03:12 22 in train with the Deputy Commissioner and legal services
11:03:15 23 and looked to step away from that and then I was just
11:03:18 24 trying to deal with this issue around the ACC.
11:03:21 25
11:03:23 26 You knew Mr Kirne?---Yes.
11:03:25 27
11:03:26 28 Indeed, you were the one who said you wanted Mr Kirne to
11:03:29 29 come to the meeting that had been set up previously?---Yes,
11:03:35 30 I'd known Mr Kirne for many years, yes.
11:03:37 31
11:03:37 32 It would have been quite easy for you to say to Mr Kirne,
11:03:43 33 knowing him as you had, "Look, I should put you on notice
11:03:49 34 that there is an issue with respect to Inca"?---I could
11:03:52 35 have done but there's no point stepping away from something
11:03:55 36 and then re-involving myself.
11:03:57 37
11:03:57 38 All right. Then what you did was to ask that a list of
11:04:10 39 material be prepared over the weekend to enable you to
11:04:14 40 consider what the effect or what disclosure might look
11:04:18 41 like, is that correct?---Yes.
11:04:20 42
11:04:20 43 And that was done over the weekend and you got the document
11:04:25 44 that you said shocked you, is that right?---Correct.
11:04:29 45
11:04:29 46 If we can put that document up, I think it's an exhibit, in
11:04:33 47 any event if we can have a look at - 701, Commissioner. It

11:04:38 1 shouldn't go on the screens. It was addressed to you from
11:04:57 2 Sheridan?---Yes.
11:05:00 3
11:05:01 4 And indicates that it's highly protected, "Material
11:05:05 5 contained herein is an analytical summary pertaining to
11:05:10 6 Witness F as requested by the Commonwealth DPP pertaining
11:05:13 7 to a pending prosecution", do you see that?---Yes.
11:05:16 8
11:05:17 9 It's signed by Paul Sheridan. If we go to the next page.
11:05:27 10 Keep going. There's a description, it's a brief
11:05:32 11 description of her activities as a human source from 16
11:05:37 12 September 05, 14 January 09, "Three years four months. An
11:05:41 13 analysis of intelligence holdings by the SDU pertaining to
14 Witness F indicate that there are 319 information reports
11:05:49 15 that have been disseminated to various investigators that
11:05:51 16 come from information she'd supplied to handlers. 172
11:05:56 17 source contact reports, average - varying in length from
11:06:02 18 two pages to in excess of 30 pages. Each source contact
11:06:06 19 report relates to a week long period where contact was
11:06:09 20 made", do you see that?---Yes.
11:06:12 21
11:06:12 22 "The majority of these two documents pertain to Witness F
11:06:17 23 contact with the following 164 criminals, solicitors and
11:06:21 24 former members of Victoria Police", and then there's the
11:06:24 25 list of people and obviously within that list there are
11:06:29 26 names of significant criminals who had been prosecuted, do
11:06:34 27 you accept that?---Yes.
11:06:36 28
11:06:37 29 And were then currently being - - -
11:06:41 30
11:06:42 31 MR HOLT: Can we seek to have this document not on the
11:06:47 32 screens.
11:06:47 33
11:06:48 34 MR WINNEKE: Yes. Indeed that list, it wouldn't have
11:06:51 35 surprised you at that stage, contained the names of the
11:06:53 36 people who were then being prosecuted by the Commonwealth
11:06:57 37 DPP in the Inca proceedings, do you accept that?---Yes.
11:07:00 38
11:07:01 39 Including Karam, Higgs, Barbaro, et cetera?---Yes.
11:07:03 40
11:07:04 41 Now, did you send that document to Finn McRae and
11:07:09 42 Mr Cartwright?---Yeah, well, that was included in material
11:07:13 43 that went off to legal services about, about this matter.
11:07:17 44
11:07:18 45 COMMISSIONER: Just remind me of the date, what was the
11:07:21 46 date of that document?
11:07:21 47

11:07:22 1 MR WINNEKE: I think it's 7 November, Commissioner.
11:07:29 2
11:07:29 3 COMMISSIONER: 7 November, yes.
11:07:30 4
11:07:31 5 MR WINNEKE: 7 November. And it had been prepared at your
11:07:35 6 request over the weekend by Mr Sheridan, or on behalf of
11:07:41 7 Mr Sheridan, correct?---Correct.
11:07:42 8
11:07:42 9 If we can just go back to the last page of the document.
11:07:53 10 It says that, "It's difficult to assess the clear intention
11:07:55 11 of the contact between the parties, however the SDU
11:07:58 12 believes that in the main the contact between the parties
11:08:00 13 is driven by the fact that Witness F was practising as a
11:08:03 14 solicitor at the time of the contacts and that her counsel
11:08:07 15 sought formally or informally pertaining to the legal
11:08:11 16 status of the persons involved, eg pending charges,
11:08:15 17 negotiations with investigating police, plea opportunities,
11:08:16 18 receiving, passing on of information", et cetera. "She was
11:08:21 19 suspected of being on the periphery of criminal matters.
11:08:27 20 Throughout her time as a human source nothing was ever
11:08:30 21 proven. She was deceptive with SDU unit holders and that
11:08:33 22 during the time of activation as a human source she failed
11:08:33 23 to disclose that she'd previously acted as a conduit for
11:08:39 24 communications and messages between Paul Dale and Carl
11:08:42 25 Williams, who were using false mobile phones prior to the
11:08:45 26 murder of the Hodsons", and it points out that, "In
11:08:49 27 November 2008 Witness F admitted she had knowledge of those
11:08:55 28 false mobile phone numbers when spoken to Task Force Petra
11:09:00 29 investigators", do you see that?---Yes.
11:09:01 30
11:09:01 31 That information you would have been well aware of already,
11:09:04 32 certainly that last bit of information I take it?---That
11:09:08 33 she was deceptive with source handlers?
34
11:09:11 35 Yes?---I certainly knew she was involved with Petra, yes.
11:09:15 36
11:09:16 37 Clearly that was a significant document and caused a great
11:09:19 38 deal of concern as far as you were concerned?---Yes.
11:09:24 39
11:09:25 40 Correct? Right. Now, are you able to say when you passed
11:09:30 41 that document on to the legal department?---I think Doug
11:09:36 42 Fryer dealt with that aspect of passing it on, but it was
11:09:40 43 included in the materials that was available to the review
11:09:44 44 people, yes.
11:09:44 45
11:09:44 46 Do you know when that was?---Not precisely, no. It would
11:09:48 47 have been around the same time though.

11:09:51 1
11:09:51 2 Around the same time that the, the Comrie review was being
11:09:57 3 set up?---Around the same time as we received this.
11:09:59 4
11:10:00 5 I follow, righto. Then there were discussions that you had
11:10:06 6 following that, receipt of that document with Mr Kirne and
11:10:14 7 Ms Breckweg of the CDPP?---Yes.
11:10:18 8
11:10:19 9 You officially advised the CDPP at 10 am on 8 November 2011
11:10:25 10 that Victoria Police wanted Ms Gobbo withdrawn as a witness
11:10:28 11 from the Dale prosecution due to concerns about her safety,
11:10:30 12 correct?---Yes.
11:10:31 13
11:10:34 14 And nonetheless it appeared the CDPP position was they
11:10:38 15 wanted the committal to proceed with Ms Gobbo?---Well,
11:10:44 16 yeah, Ms Breckweg wanted it to go ahead.
11:10:47 17
11:10:47 18 And it took quite some convincing during the course of the
11:10:52 19 8 November to have charges pertaining to Ms Gobbo
11:11:03 20 withdrawn, didn't it?---Yes.
11:11:04 21
11:11:05 22 And you had to make telephone calls elsewhere to see if you
11:11:11 23 could put in train some pressure to ensure that the CDPP
11:11:16 24 were prepared to withdraw those charges and withdraw
11:11:19 25 Ms Gobbo?---I wouldn't couch it those terms at all, no. I
11:11:24 26 didn't want her to appear as a witness and I wanted her
11:11:27 27 withdrawn and they could proceed on other charges that
11:11:30 28 didn't relate to her and I conveyed that to them and then
11:11:33 29 there was a subsequent communication that suggested that
11:11:38 30 their understanding was different to what I thought had
11:11:41 31 been agreed and then I had to go back and have a meeting
11:11:44 32 with them to reinforce it with them and so I was, I wanted
11:11:49 33 to make sure Shane Kirne was there as well.
11:11:51 34
11:11:52 35 And what was it that you were conveying to them, was it the
11:11:55 36 concern about Ms Gobbo or was it the concern that there may
11:11:58 37 be other proceedings affected?---Her safety was the concern
11:12:02 38 I was talking to them about. I didn't know what we were
11:12:05 39 dealing with because we had this long list of people, I
11:12:09 40 couldn't possibly assess, or have assessed the risk to her
11:12:17 41 safety with that sort of immediacy. It was much safer for
11:12:20 42 her not to give evidence, or for that matter to proceed.
11:12:23 43
11:12:23 44 You say in your statement on the day you also had
11:12:26 45 telephone, or you had telephone calls with [REDACTED]
11:12:29 46 from the ACC?---Yes.
11:12:31 47

11:12:31 1 What was that about, why did you need to speak to
11:12:36 2 him?---The operational end of all that, [REDACTED] runs the
11:12:41 3 operations at the ACC, he was one of our operational
11:12:45 4 stakeholders at that time. So it was a matter of making
11:12:49 5 sure that he was, that we weren't going ahead with her.
11:12:52 6
11:12:54 7 Was he a person you had known for some time?---Many years,
11:13:00 8 yes.
11:13:00 9
11:13:00 10 Did you feel the need in effect to go around the DPP and go
11:13:04 11 to someone you knew at the ACC to see if he could exert a
11:13:10 12 bit of the influence on the independent public prosecution
11:13:15 13 division in the Commonwealth?---No, I didn't need to do
11:13:18 14 that.
11:13:18 15
11:13:18 16 Why did you feel the need to speak to [REDACTED]?---I've
11:13:24 17 explained to you about that. He was one of our key
11:13:25 18 stakeholders that we work operationally with.
11:13:25 19
11:13:27 20 Yes?---I didn't want something coming back to him from the
11:13:32 21 DPP saying, "The cops are not being helpful over there. We
11:13:34 22 want this matter to go ahead and they don't", so I was
11:13:37 23 explaining to him more.
11:13:38 24
11:13:39 25 Did you tell him your concerns about Operation Inca and
11:13:42 26 Ms Gobbo's involvement in that?---No.
11:13:44 27
11:13:48 28 And then I think you instructed Superintendent Fryer to
11:13:52 29 prepare a letter to, when you finally found out later on in
11:13:56 30 the day that Mr Kirne had changed his mind - by the way do
11:14:03 31 you know what it was, it seemed that Mr Kirne was holding
11:14:09 32 fast to his position and made it clear to you that he
11:14:12 33 wasn't going to change his view and then about half an hour
11:14:15 34 later contacted you and said that they were prepared to
11:14:18 35 withdraw the charges. Do you know what brought about his
11:14:21 36 change of mind?---I don't know that it was his change of
11:14:24 37 mind, I think it was more Ms Breckweg was very keen for it
11:14:28 38 to go ahead because she had been involved with it obviously
11:14:31 39 from the start.
11:14:31 40
11:14:33 41 Yes?---And had some investment in it and I think he was a
11:14:33 42 bit more apart from it than that.
11:14:33 43
11:14:37 44 Yes?---And then after the meeting we had, I just said for
11:14:40 45 safety reasons we didn't want to call her, the matter to go
11:14:44 46 ahead on those charges. I assume they had some sort of
11:14:48 47 meeting after that and conversation about it and he's

11:14:49 1 expressed his view to her.
11:14:51 2
11:14:52 3 All right. Thanks very much. Now, Commissioner, I'm just
11:15:05 4 about - I haven't got a great deal more to go but I just
11:15:09 5 wonder if we could have the morning break at this stage.
11:15:13 6
11:15:13 7 COMMISSIONER: All right, we'll have the morning break now,
11:15:33 8 a little earlier than usual.
11:15:34 9
11:15:37 10 (Short adjournment.)
11:15:37 11
11:39:30 12 COMMISSIONER: Yes. Ms Curnow, did you have an
11:39:32 13 application?
11:39:33 14
11:39:33 15 MS CURNOW: I do, thank you, Commissioner. I appear on
11:39:36 16 behalf of the Australian Criminal Intelligence Commission.
11:39:39 17 It's come to my attention that there were some mentions of
11:39:41 18 an ACIC officer's name at p.10899 at lines 5, 9 and 23,
11:39:53 19 just before the break. That's made on an interim basis
11:39:59 20 until, if we could have until Friday afternoon if possible
11:40:02 21 to confirm that officer's status.
22
11:40:04 23 COMMISSIONER: Yes. Does anybody want to be heard about
11:40:06 24 that? Are you content to an interim order?
25
11:40:12 26 MR WINNEKE: Yes.
27
11:40:14 28 COMMISSIONER: Until when did you say?
11:40:16 29
11:40:16 30 MS CURNOW: If we could have until Friday afternoon, if
11:40:21 31 that would be convenient.
32
11:40:22 33 COMMISSIONER: All right then. The name of the person
11:40:25 34 mentioned at transcript 10899 at lines 5, 9 and 23 is to be
11:40:30 35 removed from the transcript. It's too late for the
11:40:35 36 streaming, but removed from the transcript, and is not to
11:40:39 37 be published until 2 pm on Friday, 13 December. Then
11:40:55 38 you'll inform us then what the position is, thank you.
11:40:59 39
11:41:00 40 MS CURNOW: Thank you, Commissioner.
41
11:41:00 42 COMMISSIONER: Yes. Yes, Mr Winneke.
43
11:41:03 44 MR WINNEKE: Thanks Commissioner. Can I just ask you to
11:41:07 45 have a look at your notes of 22 November 2011. If you've
11:41:16 46 got your handwritten notes there it might be easier. 22
11:41:19 47 November 2011?---Is it possible, as it was yesterday, for

11:41:25 1 that to be on the screen? I don't have the - I'd have to
11:41:26 2 go and get them.
11:41:28 3
11:41:29 4 It's the diary entry of Mr Ashton, VPL.6132.0041.4622.
11:41:52 5 What the diary entry says is that on that day you make a
11:41:56 6 note, "Mokbel 23 warrants, five sworn correctly. All rest
11:42:07 7 in question". Does that refer to the concerns that you had
11:42:16 8 at that time about whether or not warrants had been
11:42:20 9 properly sworn in the Mokbel proceeding to ensure that the
11:42:27 10 evidence that was obtained pursuant to those warrants could
11:42:31 11 be admissible?---Yes. What was the date of that?
12
11:42:38 13 That's 22 November 2011?---Yes, at that time it could well
11:42:42 14 have been.
15
11:42:43 16 You bear in mind that there are proceedings then going on
11:42:47 17 before Justice Whelan. I referred that proceeding to you
11:42:50 18 yesterday?---Yes.
19
11:42:51 20 Or the day before, about Mokbel changing his plea?---Yes,
11:42:53 21 that may well be something that Fryer, Mr Fryer may have
11:42:58 22 told me, yes.
23
11:42:59 24 Yes. In any event, what we do know is that there were
11:43:03 25 hearings from 18 October through November, December and
11:43:07 26 January and February and March and the decision was finally
11:43:11 27 made on 1 March 2012 and the reasons published on 13 March
11:43:16 28 2012. Ultimately the decision was that Mr Mokbel was not
11:43:21 29 able to change his plea, do you accept that?---Yes, that
11:43:26 30 could well be the case.
31
11:43:29 32 If we have a look at your note, it's quite apparent that
11:43:36 33 you were alive to that issue. Do you see that, on 22
11:43:39 34 November?---Yes.
35
11:43:41 36 And there's a note that - a reference to Gerry I from the
11:43:47 37 OPP, "Peter Kidd OPP suggests we get represented and
11:43:52 38 Coghlan, Director, will call". Do you have a recollection
11:43:55 39 of what those notes refer to?---No, not in relation to what
11:44:03 40 aspect that referred to, no, I don't.
11:44:04 41
11:44:05 42 You know that Mr Peter Kidd SC, now the Chief Judge of the
11:44:09 43 County Court, was representing the prosecution in that
11:44:12 44 matter in which Mokbel was seeking to change his plea?---He
11:44:18 45 may well have been. I think he was at the OPP maybe at
11:44:20 46 that time or - - -
11:44:21 47

11:44:21 1 Yes, he was the Chief Crown Prosecutor at that stage and
11:44:25 2 was also representing the Crown in the application of
11:44:28 3 Mr Mokbel's?---Yes.
4
11:44:35 5 Were you in communication with him at that stage?---This is
11:44:38 6 - no, not myself, no. This would have been something I
11:44:41 7 would have been told by probably Fryer.
8
11:44:45 9 In any event, "Peter Kidd suggests we get represented.
11:44:48 10 Coghlan, Director, will call". Did you have a discussion
11:44:53 11 with the Director, did he call you, that's Mr Coghlan, Paul
11:44:58 12 Coghlan we're talking about, Justice Coghlan?---No, I don't
13 remember talking with Mr Coghlan about it. No, I don't
11:45:02 14 remember having a conversation with him about it.
15
11:45:04 16 You don't recall. Do you think it might have been
11:45:06 17 worthwhile picking up the telephone and communicating with
11:45:09 18 him or Mr Kidd about your concern about the information
11:45:13 19 which you were then in possession of which may well have
11:45:17 20 been relevant to the question of Mokbel's application to
11:45:20 21 change his plea?---I'm just going back through when - so
11:45:32 22 that's post my meeting with Mr Cartwright and Mr McRae.
23
11:45:38 24 Yeah, clearly. It occurred on 3 November and we're now a
11:45:42 25 couple of weeks later?---So, no, I wouldn't have at that
11:45:45 26 stage.
27
11:45:46 28 And you then get the document which causes you great
11:45:48 29 concern on 7 November 2011?---Yes.
30
11:45:51 31 And so by that stage you're in possession of a significant
11:45:54 32 amount of information, including Mr Maguire's advice, which
11:45:58 33 talks very specifically about Mokbel?---Yes, that's - and
11:46:04 34 this is probably something that I've been told, I imagine,
11:46:07 35 by Mr Fryer, but no, I didn't pass that on because I'd
11:46:11 36 already been to see the Deputy at that stage.
37
11:46:15 38 Did you not think between yourself and Mr Cartwright that
11:46:19 39 something should be done ASAP about that given the then
11:46:23 40 state of proceedings before the Supreme Court?---I think
11:46:25 41 that was a matter that was going to be left with
11:46:28 42 Mr Cartwright and Mr McRae.
43
11:46:30 44 Quite apparently it wasn't. No one brought it to the
11:46:33 45 attention of the OPP that Ms Gobbo was a human source and
11:46:37 46 that she had potentially been involved in providing
11:46:39 47 information against Mr Mokbel?---Yes, I haven't spoken with

11:46:41 1 - - -
11:46:41 2
11:46:44 3 That wasn't brought to the attention of the OPP?---I
11:46:46 4 haven't spoken to Mr McRae about that so I'm not sure.
5
11:46:51 6 Do I take it that the Maguire advice which contained those
11:46:59 7 references, the possibility of Mokbel's conviction being
11:47:05 8 affected, that wasn't provided to the OPP?---I don't know.
9
11:47:09 10 Well as far as we know, certainly the information the
11:47:13 11 Commission has, it certainly is that as at 8 November of
11:47:19 12 this year it wasn't and hadn't been provided to the OPP,
11:47:23 13 that is the Maguire advice, do have any issue with
11:47:26 14 that?---I don't know.
15
11:47:27 16 Did you ever direct that the Maguire advice be provided to
11:47:30 17 the OPP?---No.
18
11:47:37 19 Can I just ask you about the evidence that you gave prior
11:47:40 20 to the break to the effect that you had spoken to Mr McRae
11:47:44 21 and asked him to speak to the Commonwealth Office of Public
11:47:48 22 Prosecutions about your concerns around Inca. Can I put to
11:47:55 23 that Mr McRae in his statement doesn't say anything about
11:47:58 24 being directed by you to speak to the Commonwealth Office
11:48:02 25 of Public Prosecutions about your concerns with respect to
11:48:05 26 Inca. Does that surprise you?---Well the notes that
11:48:08 27 Mr Cartwright has evidently taken do suggest that, in line
11:48:12 28 with my recollection, that that was a discussion at that
11:48:15 29 meeting.
30
11:48:16 31 Yes?---So I'm not sure why Mr - I mean I'm not sure, I
11:48:21 32 haven't spoken with Mr McRae about his evidence.
33
11:48:24 34 No, well I follow that. But it was suggested by you prior
11:48:32 35 to the break that you had collared Mr McRae and asked him
11:48:41 36 whether he'd spoken to the Commonwealth OPP about
11:48:41 37 Inca?---Yes, I had a recollection of that which is why it
11:48:43 38 was in my statement.
39
11:48:45 40 It appears that Mr McRae - certainly it's not referred to
11:48:47 41 in his statement at all, does that surprise you?---No, I
11:48:48 42 don't know. I haven't seen his statement, so.
43
11:48:50 44 Is it possible that you didn't direct Mr McRae or ask
11:48:53 45 Mr McRae to pass on your concerns to the Commonwealth OPP
11:48:58 46 about the Inca prosecutions?---Well, the OPP, certainly
11:49:01 47 it's evident in the reading from the notes Mr Cartwright

11:49:04 1 took, that I did. But the reason I've got that subsequent
11:49:10 2 paragraph relating to Mr McRae is because I just had this
11:49:15 3 recollection of this sort of side bar conversation some
11:49:19 4 days later and I wanted to make sure I included it.
5
11:49:22 6 But you don't say in your statement that you spoke to
11:49:26 7 Mr McRae and asked him to contact the Commonwealth OPP and
11:49:30 8 mention to them about your concerns about the Inca
11:49:33 9 proceedings specifically, do you?---That's covered in the
11:49:35 10 statement in terms of the meeting with Mr Cartwright and
11:49:37 11 Mr McRae.
12
11:49:38 13 So you say insofar as your concerns specifically about
11:49:45 14 Inca, that's covered in what you've said in the
11:49:48 15 statement?---All the matters about the prosecutions.
16
11:49:51 17 But you accept the proposition that there's no reference to
11:49:55 18 specific requests to speak to the OPP Commonwealth about
11:50:00 19 Inca?---Specifically, no.
20
11:50:08 21 Did you follow it up to ensure that Mr McRae had spoken to
11:50:11 22 the Commonwealth OPP about your concerns with respect to
11:50:14 23 Inca?
11:50:15 24
11:50:15 25 MR COLEMAN: I think we've dealt with this.
11:50:18 26
11:50:19 27 WITNESS: Only in terms, as I've explained, about the, that
11:50:20 28 subsequent chat.
29
11:50:29 30 MR WINNEKE: All right. As you understand it the Comrie
11:50:31 31 review proceeded. Were you aware that it was being carried
11:50:53 32 out by Mr Gleeson?---I think I was aware that Mr Gleeson
11:50:58 33 was assisting Mr Comrie, yep.
34
11:51:00 35 Right. Were you aware that - was it your understanding
11:51:07 36 that members of the SDU would be spoken to about their
11:51:12 37 involvement with Ms Gobbo during the course of the time
11:51:15 38 that she was a registered human source?---I think as part
11:51:18 39 of that review I think - you'd expect people to be spoken
11:51:25 40 about it.
41
11:51:26 42 Did you have any discussions with anyone about whether or
11:51:29 43 not they were or were not to speak to the members of the
11:51:31 44 SDU?---No, I didn't have any involvement in that because,
11:51:33 45 as I said, I stepped away from that after I spoke to the
11:51:38 46 Deputy Commissioner, so I never had any sort of involvement
11:51:40 47 in that.

1

11:51:41 2 Can I ask you to have a look at your diary as at 31 January
11:51:47 3 2012. You'll see there's an entry, I think it's number 10,
11:51:55 4 do you see at the bottom there at 10?---31 January.

5

11:52:02 6 31 January, there's a meeting at 13:00, a Purana briefing,
11:52:09 7 do you see that?---Yes.

8

11:52:10 9 There's a reference to, "Higgs currently using Gobbo as
11:52:17 10 Higgs' go-between because Inca bail restrictions", do you
11:52:23 11 see that?---Yes.

12

11:52:29 13 At that stage you had possession of all of the information
11:52:33 14 that we've now gone through. Can I suggest to you that
11:52:37 15 that would have concerned you significantly, given your
11:52:40 16 integrity background, that Ms Gobbo apparently was still
11:52:49 17 being retained by a person who was the subject of Inca
11:52:53 18 charges to deal with him around Inca bail
11:53:02 19 restrictions?---Yeah, potentially, that's right. This is
11:53:04 20 what - I think the reason that they set up Loricated
11:53:10 21 originally was to try and work through all this stuff.

22

11:53:13 23 Did you draw to anyone's attention the fact that Mr Higgs
11:53:18 24 was potentially still being represented by a person who
11:53:22 25 was, and had a history of being a police informer, and
11:53:27 26 providing information against him which ultimately led, it
11:53:31 27 seems, to him being charged, did you have any concerns
11:53:34 28 about that?---I had concerns about it but I didn't notify
11:53:39 29 anyone.

30

11:53:39 31 You didn't notify anyone?---No.

32

11:53:42 33 No, okay. If we go over the page to 15. It seems that on
11:54:03 34 22 February there's a note to this effect, "Grounds are not
11:54:10 35 to brief OPI yet as there is an ongoing investigation" and
11:54:15 36 there's a reference to Finn McRae. Do you know what that
11:54:20 37 entry refers to, Mr Ashton?---That would have been a
11:54:25 38 meeting where Finn was obviously present. There's
11:54:31 39 obviously different matters being discussed there.

40

11:54:33 41 Yes?---I don't know - that would have been Finn reporting
11:54:41 42 there'd been some decision taken not to brief OPI yet about
11:54:45 43 a matter. I'm not sure if it's relating to this matter or
11:54:48 44 not.

45

11:54:54 46 It seems that the Comrie review was completed by Mr Comrie
11:55:02 47 and Mr Gleeson on 30 July 2012. Did you ultimately receive

11:55:06 1 a copy of the Comrie review?---I think I read it at some
11:55:10 2 point. I don't think I got a copy of it because I wasn't
11:55:13 3 sort of involved in that at that stage. What was the date
11:55:15 4 again, sorry?
5
11:55:16 6 30 July 2012?---Yeah, that was - I wouldn't have ordinarily
11:55:24 7 received a copy of that. I certainly read it at some
11:55:27 8 point.
9
11:55:33 10 Did you have any discussions with Mr McRae subsequent to
11:55:35 11 the provision of the Comrie report about any disclosures
11:55:39 12 that should be made which arose from the information
11:55:43 13 contained in the Comrie review?---No.
14
11:55:48 15 Prior to that did you have any discussions with him about
11:55:50 16 potential obligations to disclose?---I don't believe I did.
11:55:55 17 I think it was being handled by, as I said, Loricated,
11:55:58 18 which I wasn't a part of. There were meetings, because
11:56:02 19 Finn reported to me in terms of that Legal Services
11:56:04 20 reporting line and over a few years I do remember there'd
11:56:11 21 be an occasion I'd say with Finn, "Look, on that Loricated
11:56:16 22 stuff is there the OPP having concerns, are they going to -
11:56:23 23 do they want us to take specific action", that sort of
11:56:26 24 stuff. And he would say, "No, Mr Champion said that he
11:56:29 25 doesn't think there's any issue".
26
11:56:31 27 Right. Ultimately there'll be evidence about that. But
11:56:34 28 can I suggest to you that you did have a meeting with
11:56:40 29 Mr McRae on 23 August 2012. Can I suggest to you that on
11:56:48 30 22 August 2012 that Mr McRae had a discussion with
11:56:52 31 Superintendent Gleeson and Assistant Commissioner Pope
11:57:00 32 regarding "whether Victoria Police was required to make
11:57:04 33 further disclosure to the DPP regarding Tony Mokbel in
11:57:08 34 which we agreed that we would discuss the issue with Chief
11:57:14 35 Commissioner Ashton" and a file note was made of the
11:57:18 36 discussion. That is dated 23 August?---23 August, yes.
37
11:57:28 38 2012. At that stage you were Chief Commissioner; is that
11:57:33 39 right?---No. No, Ken Lay was the - - -
40
11:57:39 41 In any event - - - ?--- - - - Chief Commissioner at that
11:57:41 42 time. This is in this period - - -
43
11:57:43 44 You're referring to your now position. At that stage you
11:57:48 45 were still Assistant Commissioner Crime, weren't you?---No,
11:57:51 46 at that stage I was I think I was Deputy Commissioner
11:57:55 47 Specialist Operations.

1
11:57:58 2 In any event - - - ?---And so - sorry.
3
11:58:00 4 In any event it seems that they decided to speak to you
11:58:03 5 about this and there was a discussion that you had with
11:58:06 6 them on 23 August 2012, do you accept that?---Yes, so the
11:58:12 7 note reflects, yes.
11:58:13 8
11:58:15 9 It's a governance meeting with direct reports, "including
11:58:21 10 one-on-one with Jeff Pope re general intel issues and SDU
11:58:25 11 information discussion", right? So effectively you were
11:58:30 12 then in the position that Mr Cartwright was in previously
11:58:33 13 with respect to you; is that correct?---Yes.
14
11:58:39 15 So insofar as you were suggesting previously that
11:58:42 16 Mr Cartwright had obligations of disclosure, those sorts of
11:58:47 17 obligations then rested with you, correct?---No.
18
11:58:53 19 Correct?---Incorrect. No, incorrect.
20
11:58:55 21 Incorrect?---Yes.
22
11:58:56 23 Why do you say that?---Because that was being handled as
11:58:59 24 part of Loricated at that time and I wasn't involved with
11:59:05 25 that. This has obviously been brought to my attention in
11:59:08 26 relation to one of the governance meetings we would have
11:59:12 27 had because Finn reported to me there and so did Jeff, and
11:59:15 28 I've - the Comrie report's come up and according to that we
11:59:20 29 brought it to the attention of Ken, make sure we brief the
11:59:26 30 OPP.
31
11:59:27 32 Yeah, right. Do you accept that there was a meeting and
11:59:32 33 that the issue was discussed?---Yes, as the note reflects,
11:59:37 34 I accept there would have been a meeting, yes.
35
11:59:39 36 If we have a look at this document, VPL.0005.0003.2800.
11:59:57 37 Can we have this on the screen?
11:59:59 38
12:00:00 39 MR HOLT: I don't know.
40
12:00:05 41 MR WINNEKE: It seems that in the course of this discussion
12:00:08 42 there were - the issues were further disclosure to the DPP
12:00:14 43 regarding activities of Witness F. Agreed that the DPP
12:00:23 44 should be informed - can we just focus on that, please.
12:00:32 45 "That VicPol is examining the information passed to police.
12:00:46 46 Regarding potentially her own clients. Comrie review
12:00:51 47 noted. Noted that DPP aware of one case that evidence was

12:00:55 1 led in regard to the activities of Witness F. DPP
12:01:02 2 questioned the relevance to that trial. Impact of F
12:01:08 3 activities not known. Previous disclosure to Commonwealth
12:01:13 4 DPP re Dale and Maguire advice". That seems to refer to
12:01:21 5 previous disclosure with respect to the prosecution of Paul
12:01:24 6 Dale and the withdrawal of charges because of the Maguire
12:01:28 7 advice, do you accept that?---Yeah, amongst other things,
12:01:31 8 yeah.
9
12:01:41 10 At that stage you had in possession - or you had the
12:01:45 11 completed Comrie review, would that be fair to say?---Would
12:01:51 12 have had access to it, yes.
13
12:01:52 14 You would have been in a position to direct the provision
12:01:57 15 of the Comrie review to - direct that it be provided to the
12:02:03 16 OPP, that could have occurred, could it not?---Yeah, that
12:02:07 17 was Tim Cartwright's role but, again, that's something that
12:02:13 18 he was dealing with as part of his role, not mine.
19
12:02:15 20 Not yours. It seems that they've come to see you and
12:02:20 21 they're discussing the Comrie review. It was noted in the
12:02:23 22 discussion. Had you read the Comrie review?---I'm not sure
12:02:27 23 if I'd read it at that stage, no, I'm not sure.
24
12:02:30 25 Had you been briefed about the Comrie review?---I think I
12:02:34 26 had a view that it was raising further concerns and that,
12:02:41 27 you know, as that note reflects, you know, the DPP needed
12:02:46 28 to be told about it.
29
12:02:49 30 What the note reflects is that they should be informed that
12:02:52 31 VicPol is examining the information passed, do you see
12:02:56 32 that?---Yes, I'm talking about the previous diary entry,
12:03:00 33 the conversation with Ken Lay.
34
12:03:01 35 Can I suggest that it would have been reasonable - firstly,
12:03:05 36 it would have been reasonable for you to read the Comrie
12:03:08 37 review, wouldn't it, do you accept that?---I did read it at
12:03:12 38 some point, yes.
12:03:12 39
12:03:13 40 When do you think you read it?---Well I'm not sure exactly
12:03:15 41 when I read it.
42
12:03:16 43 Surely you would have read it when it came off the press,
12:03:20 44 wouldn't you?---Again, that was Tim Cartwright was dealing
12:03:23 45 with it, so I may not have read it when it came off the
12:03:26 46 press, as you say, but I certainly would have read it at
12:03:29 47 some point.

1
12:03:30 2 Was it suggested by you that, for example, it should be
12:03:38 3 passed on to the DPP so they could examine it?---Well yes,
12:03:43 4 that's what that earlier note reflects.
5
12:03:45 6 Do you say that you did ask or you directed that the Comrie
12:03:49 7 review be passed on to the DPP?---Yes, even though it
12:03:53 8 wasn't in my remit, I urged the new Chief Commissioner to
12:03:59 9 make sure that happened.
10
12:04:01 11 So you urged the Chief Commissioner of Victoria Police to
12:04:04 12 provide, to make a direction that it be provided to the
12:04:07 13 OPP?---Well that's what that note reflects, that previous
12:04:10 14 note, yes.
15
12:04:14 16 It seems that the Comrie review wasn't provided to the OPP
12:04:20 17 until after the Kellam report was done, the IBAC Kellam
12:04:26 18 report was done in February 2015, and only then was it
12:04:31 19 passed on to the OPP as an annexure to the Kellam report,
12:04:36 20 are you aware of that?---No.
21
12:04:38 22 Do you think it would have been appropriate that the Comrie
12:04:41 23 review be passed directly to the OPP as soon as it was
12:04:47 24 available to Victoria Police?---I wouldn't have any issue
12:04:50 25 with it being provided, absolutely.
26
12:04:52 27 Do you know - are you able to say why it wasn't
12:04:55 28 provided?---No, I wasn't - as I say, I wasn't dealing with
12:04:58 29 it.
30
12:04:59 31 All right.
32
12:05:02 33 COMMISSIONER: Do you want to tender this document?
34
12:05:05 35 MR WINNEKE: Yes, Commissioner, I tender that document.
36
12:05:06 37 COMMISSIONER: What's the date of it, please?
38
12:05:08 39 MR WINNEKE: That's a note of a conversation, a diary entry
12:05:11 40 on 23 August 2012.
41
12:05:15 42 COMMISSIONER: Thank you.
43
12:05:19 44 MR WINNEKE: It's a file note of a conversation. It's
12:05:20 45 made by Finn McRae.
12:05:23 46
12:05:23 47 #EXHIBIT RC895A - (Confidential) File note made by Finn

McRae 23/08/12.

#EXHIBIT RC895B - (Redacted version.

COMMISSIONER: At some point if you could tell me,
Mr Holt, if legal privilege is still claimed on that.

MR HOLT: I will, Commissioner. I think I know the answer
but I just need to confirm instructions on that.

MR WINNEKE: It appears that there was a meeting between
the OPP, Office of Public Prosecutions, that is the
Director and Mr Gardner and Finn McRae on 4 September 2012,
are you aware of that?---Sorry, can you repeat the
question?

Yes. On 4 September 2012 Mr McRae met with the Director of
Public Prosecutions, then John Champion, and Mr Gardner.
Were you aware of that meeting?---We had lots of meetings
with the OPP, I'm not sure I remember that specific
meeting.

Were you briefed about that - and Gleeson, Steven Gleeson.
Were you briefed, getting briefed about those matters or
not?---Well no, I think if it was with Mr Gleeson it
probably was in relation to the Comrie review I'd suggest,
so no.

Did you ever speak to Mr Gleeson about the Comrie
review?---I don't know I had sort of specific meetings with
him about the Comrie review. I think I remember there may
have been a meeting one day where he was in the room where
I remember him, sort of - I don't even remember what he
would have said about it but I've just got this memory in
my mind of him sitting in the room at a meeting on one
occasion. I'm not even sure what that would have been
related to.

In any event, do you accept it would have been a good
opportunity at that meeting to provide to the OPP the
Comrie review?---It would have been an opportunity, yes.

There'll be evidence in due course about what took place at
the meeting, but if I can perhaps summarise it. It may
well be Mr Holt will go into more detail. There was a
degree of uncertainty expressed by all the participants in
the meeting as to whether there had in fact been conduct on

12:07:45 1 the part of Ms Gobbo and Victoria Police which may have
12:07:48 2 affected the outcome of trials. That appears to be the
12:07:52 3 situation as at 4 September 2012. Would that reflect your
12:08:00 4 view at that stage? Were you aware of - - - ?---What was
12:08:10 5 the date of that one?
6
12:08:11 7 4 September 2012.
12:08:18 8
12:08:18 9 MR COLEMAN: It's not suggested that Mr Ashton - - -
10
12:08:22 11 MR WINNEKE: I'm not suggesting he was there. Were you
12:08:24 12 briefed, do you believe that you were briefed about the
12:08:26 13 meeting which had taken place?---No, I don't believe I was.
14
12:08:30 15 Okay. Were you keeping up with any - the process of
12:08:39 16 disclosure?---No.
17
12:08:41 18 At all?---No.
19
12:08:48 20 Your notes reflect that on 23 August 2012 - perhaps I
12:08:52 21 should complete your diary entry. Your notes indicate that
12:08:57 22 you met with Finn McRae and Jeff Pope to discuss the Comrie
12:09:01 23 report. "Agreed we must inform the DPP"?---Yep.
12:09:06 24
12:09:06 25 "I met with Ken Lay after this and advised him of the
12:09:10 26 result of the meeting with Finn and Jeff. I informed Ken
12:09:12 27 of the fact that we would be providing a briefing on the
12:09:15 28 Comrie report to the DPP. Ken understood this and asked
12:09:19 29 for advice, how it might play out. I provided advice of
12:09:23 30 the various possible consequences. Ken agreed we needed to
12:09:27 31 brief the OPP. This is likely to occur in the next week".
12:09:31 32 Do you see that?---Yes.
33
12:09:33 34 You have a meeting with Finn McRae on 5 September 2012.
12:09:38 35 "Finn advised he disclosed Witness F issue to the
12:09:43 36 DPP"?---Yes.
37
12:09:44 38 "Stated that the DPP were looking to appeal grounds for
12:09:47 39 Mokbel before taking forward"?---Yes.
40
12:09:51 41 That was your understanding of what had occurred on 4
12:09:59 42 September; is that right?---I'm not sure about 4 September
12:10:04 43 but certainly I've made a note there that he's told me
12:10:07 44 that. I don't specifically remember him telling me that,
12:10:09 45 but the note's there, I assume he has, yes.
46
12:10:11 47 Perhaps what we might do, Commissioner, just at this stage

12:10:14 1 is put on the screen a note of a meeting of 4 September
12:10:22 2 2012 between Bruce Gardner, the DPP and Finn McRae.
12:10:29 3 VPL.0005.0003.2555. As I say, there'll be evidence about
12:10:41 4 this in due course. It appears that there was a discussion
12:10:52 5 with respect to a transcript which I think may concern
12:10:56 6 transcript of a proceeding involving a person by the name
12:10:58 7 of Cvetanovski, were you aware of that issue at all?---I
12:11:04 8 certainly know that name, yep.
9
12:11:06 10 Evidence regarding, it seems, material, conflict of
12:11:11 11 interest when representing accused. That was a trial in
12:11:20 12 which Mr Champion was prosecuting Mr Cvetanovski?---Yes,
12:11:27 13 I'm having trouble following his handwriting. Where's it
12:11:30 14 saying that, sorry?
15
12:11:31 16 That's a matter which is now before the Court of Appeal,
12:11:34 17 are you aware of that?
12:11:35 18
12:11:35 19 MR COLEMAN: I think Mr Ashton wanted to know what kind of
12:11:38 20 a notes - - - ?---No, it's all right. I've found it.
21
12:11:41 22 COMMISSIONER: Mr Ashton is asking for a translation of the
12:11:44 23 handwriting?---It's all right. The fellow with the cursor
12:11:50 24 has directed me to it. Thank you for that.
25
12:11:51 26 MR WINNEKE: Then it seems that there's a discussion about
12:11:53 27 a review of human source procedures?---Yes.
28
12:11:56 29 And then review of Witsec procedures. Then there's a
12:12:02 30 discussion about alleged use of LPP materials by F relating
12:12:08 31 to Mokbel extradition, "VicPol does not have details of
12:12:14 32 information passed on, if any, as this is part of
12:12:20 33 intelligence holdings. VicPol is preparing to review the
12:12:25 34 intelligence holdings over a period of some months in
12:12:28 35 regard to F. VicPol to consider whether disclosure is
12:12:33 36 required on specific items". That seems to be the note
12:12:38 37 taken by Mr McRae?---Yes.
38
12:12:43 39 Do you think that accords with your discussion with
12:12:47 40 Mr McRae as to what he disclosed to the Director of Public
12:12:51 41 Prosecutions in that meeting?---Going off my diary entry is
12:12:56 42 that he's disclosed the Comrie report, the existence of the
12:13:01 43 report, and then there's this disclosure that's occurred.
44
12:13:07 45 It appears that there are no further substantive
12:13:10 46 communications between VicPol and the OPP until about 2014
12:13:16 47 about these matters, would you accept that

12:13:18 1 proposition?---I'm not sure - I think that's but I don't
12:13:23 2 know for sure, that's what I've understood to be the case.
3
12:13:27 4 In the interim period of time it was - it appears that
12:13:33 5 operation - or Loricated was commenced and carried out, do
12:13:38 6 you understand that?---Yes.
7
12:13:41 8 Then it appears that on 30 March 2014 there was the threat
12:13:52 9 of publication of newspaper articles concerning Lawyer X,
12:13:56 10 do you recall that?---Yeah. Sorry, when did you say that
12:13:58 11 was?
12
12:13:59 13 30 March 2014, an injunction was sought against the Herald
12:14:03 14 Sun to restrain the publication of an article that risked
12:14:07 15 exposing Ms Gobbo, are you aware of that?---Right. Yes.
16
12:14:12 17 Can I suggest that if you have a look at your note there
12:14:19 18 you'll see that you were called by Charlie Morton at 7 pm
12:14:24 19 advising that "Anthony Dowsley was going to print an
12:14:30 20 article tomorrow with respect to Witness F. Several
12:14:33 21 discussions then ensued between myself, Finn, Steve Fontana
12:14:40 22 about whether to obtain a suppression order. Steve rang
12:14:49 23 back and said that he'd instructed Finn to take out an
12:14:53 24 injunction to protect the identity of Witness F. I would
12:14:57 25 have preferred he rang me first before he spoke with Finn
12:15:00 26 but he said that it was time critical". Do you see
12:15:02 27 that?---Yes.
28
12:15:03 29 Can I suggest to you that things started to move a little
12:15:05 30 bit more quickly after this article, or at least this
12:15:07 31 Herald Sun activity, and it was at that stage that Victoria
12:15:14 32 Police started to move to make further disclosures, would
12:15:19 33 that be fair to say?---I'm not sure about the sequence of
12:15:23 34 disclosures. As I say, I wasn't involved in Loricated.
35
12:15:27 36 Yes?---But Steve Fontana reported to me at that time,
12:15:32 37 because he was Assistant Commissioner Crime, and he was
12:15:34 38 obviously suddenly rung by the Media Unit about some
12:15:39 39 pending media article and so there was obviously concern
12:15:43 40 about disclosing her identity.
41
12:15:45 42 Yes?---I'm not sure about that sequence of disclosure, I
12:15:49 43 don't know.
44
12:15:49 45 Can I suggest that what your concerns were at that stage
12:15:56 46 was to, if possible, damp things down and prevent further
12:16:03 47 publicity and further potential exposure of Victoria

12:16:08 1 Police, would you accept that or not?---No.
2
12:16:11 3 You know that at about this time there were calls for a
12:16:14 4 Royal Commission?---There could well have been, yes,
12:16:20 5 through that time.
6
12:16:21 7 Right. I wonder if you have a look at this document,
12:16:31 8 GLA.0005.0003.0146. If we go to the bottom of that you'll
12:17:19 9 see that there's an email from, it seems, Charlie Morton.
12:17:37 10 He's the Assistant Director of Media and Corporate
12:17:40 11 Communications in Victoria Police; is that right?---Yes.
12
12:17:42 13 And then there's a - if we have a look at that, there's
12:17:45 14 reference to - if we can go up to 149, that's it. Keep
12:17:51 15 going up. That's it. I take it obviously that your media
12:18:02 16 unit monitors what's going on in the press?---Yes.
17
12:18:05 18 See that? If we see there that there's 3AW Me1 mornings
12:18:12 19 and there's reference to what Mr Mitchell had said. Neil
12:18:17 20 Mitchell, says, "Victoria could be on the verge of one of
21 the biggest law and order scandals in its history". He
12:18:22 22 says, "I could result in crooks walking out of gaol, police
12:18:23 23 going to gaol, lawyers being thrown out of their
12:18:27 24 professions and potentially killers free and not being
12:18:30 25 pursued when they should be pursued. We need a Royal
12:18:33 26 Commission", see that, "into what happened and why and who
12:18:38 27 was in it"?---Someone in Miaz or something, yes.
28
12:18:44 29 And eventually this gets up to you. If we go up the train.
12:18:47 30 There's a reference as to how to deal with it. There's a
12:18:51 31 Charles Morton email to you, Cartwright, Chief
12:18:59 32 Commissioner, "And in case you didn't hear it, a very
12:19:04 33 strong editorial from Neil Mitchell this morning advocating
12:19:07 34 for a Royal Commission into the Lawyer X situation". "He
12:19:10 35 said, and I quote, that Victoria could", et cetera. Do you
12:19:12 36 see that?---Yes.
37
12:19:13 38 Then, "Should we be going on his show tomorrow?", you say,
12:19:16 39 "he thinks Simon's done something wrong". That's your
12:19:20 40 response, correct?---Just come back again, sorry. Yes.
41
12:19:28 42 Then Morton back to you, "Happy to discuss but I think for
12:19:32 43 the next 24 hours we don't", et cetera. "Pell stuff's
12:19:40 44 coming tomorrow and will knock this off, way off the front
12:19:49 45 page", do you see that? "Unless there's some serious
46 appeals from convicted crims we might get up as a result of
12:19:51 47 this and I can't see this continuing with the same level of

12:19:52 1 profile". Then you say - then there's further discussion
12:20:01 2 about it?---Yes, they're always sort of proffering views
12:20:04 3 about this sort of stuff in the media area.
4
12:20:07 5 Those sorts of things. Can I suggest to you that it was
12:20:10 6 only when this got out that Victoria Police decided to move
12:20:15 7 a little bit more quickly, would that be fair to
12:20:19 8 say?---Well I don't know the sequence of the disclosure so
12:20:22 9 I don't think I can answer your question.
10
12:20:24 11 I tender that email chain, Commissioner.
12:20:27 12
12:20:28 13 #EXHIBIT RC890A - (Confidential) Email chain about the
12:20:29 14 media response to a call for a Royal
12:20:33 15 Commission 1/4/14.
12:20:37 16
12:20:38 17 #EXHIBIT RC890B - (Redacted version.)
18
12:20:50 19 Apparently I haven't tendered the Finn McRae handwritten
12:20:55 20 note. I tender that, Commissioner, 4 September 2012.
21
12:20:58 22 COMMISSIONER: That's right, the file note for 4 September
12:21:00 23 2012.
12:21:01 24
12:21:14 25 #EXHIBIT RC891A - (Confidential) Finn McRae file note
12:21:15 26 4/09/12.
12:21:15 27
12:21:15 28 #EXHIBIT RC891B - (Redacted version.)
12:21:18 29
12:21:18 30 Also, Mr Holt, you'll let us know in due course if
12:21:22 31 privilege is still being claimed on that document.
12:21:24 32
12:21:25 33 MR HOLT: Commissioner, I should be able to deal with both
12:21:27 34 of those documents over lunch and the category they're to
12:21:30 35 be referred to.
36
12:21:30 37 COMMISSIONER: Yes.
38
12:21:32 39 MR WINNEKE: You have a meeting on 7 April 2014, it's in
12:21:37 40 your notes, and you describe a Witness F meeting, "CCP
12:21:41 41 conference room, strategy and Witness F welfare and
12:21:44 42 security discussions". Do you see that?---Just a moment.
43
12:21:51 44 I'm sorry, if that can be put up. This is at
12:22:00 45 6132.0041.4631?---Yes, this was obviously a meeting
12:22:12 46 involving Ken Lay, I'd suggest, that I've been at, yes.
47

12:22:19 1 I take it you would have been aware at that stage that
12:22:21 2 there'd been meetings with the DPP and Mr McRae. Can I
12:22:27 3 suggest to you that the Commission's aware that on 1 April
12:22:30 4 there was a meeting with the DPP and Mr McRae which was
12:22:34 5 described by Mr McRae as being a follow-up meeting to that
12:22:38 6 which had occurred on 4 September 2012. Are you aware of
12:22:43 7 that?---I don't recall it, no.
8
12:22:46 9 And further, in that meeting with the DPP, between the DPP
12:22:50 10 and Mr McRae, it was noted that there'd been public calls
12:22:55 11 for a Royal Commission, were you aware of that?---I don't
12:23:00 12 have a recollection of knowing about that meeting, no,
12:23:02 13 being told about it.
14
12:23:05 15 And it seems that on 1 April 2014 Mr McRae attended at
12:23:10 16 IBAC. Were you aware that at that stage Victoria Police
12:23:18 17 was concerned to have IBAC investigate the possible leaks
12:23:25 18 of information from Victoria Police to the media?---Yeah,
12:23:32 19 that would have been highly likely to have happened, yes,
12:23:35 20 because ultimately IBAC did an investigation of this
12:23:40 21 matter.
22
12:23:42 23 Can I suggest to you that at that point the emphasis still
12:23:50 24 by Victoria Police with respect to IBAC was the conduct of
12:23:55 25 police officers leaking, but not focusing on the conduct of
12:24:00 26 Victoria Police in engaging in the conduct which brings us
12:24:03 27 before this Royal Commission?---I don't know because I
12:24:04 28 wasn't part of that sort of Loricated area, so I really
12:24:08 29 don't - I really couldn't comment on it.
30
12:24:09 31 Do you understand that on 8 April Operation Bendigo
12:24:12 32 commenced and it was commenced in response to the media
12:24:15 33 reporting into Lawyer X at the time? Do you accept
12:24:20 34 that?---Yeah, I think Bendigo was around that time.
35
12:24:24 36 And that Bendigo was a process whereby particular cases
12:24:30 37 were examined in order to determine whether in fact there
12:24:36 38 had been miscarriages of justice?---Yeah, well I wasn't on
12:24:42 39 Bendigo but, yes, I'm aware of it.
40
12:24:44 41 Can I suggest to you that what appears to be the case is
12:24:47 42 this, that it wasn't really until April of 2014 that
12:24:53 43 Victoria Police started to directly focus upon whether or
12:24:58 44 not there had been miscarriages of justice?---I think
12:25:01 45 that's - not having been involved in all of the Loricated
12:25:05 46 stuff I don't think I can properly answer that question.
47

12:25:17 1 Is it surprising, if that is the case, that it wasn't until
12:25:24 2 that stage that Victoria Police actually started to focus
12:25:28 3 on whether or not cases had been affected by the conduct of
12:25:31 4 Victoria Police and Ms Gobbo?---As I say, I wasn't involved
12:25:36 5 but I was, I guess, expecting there would be regular
12:25:41 6 dialogue with the OPP through it.
7
12:25:43 8 As Chief Commissioner of Police now is it disappointing to
12:25:47 9 know if that is the case, that it took so long for Victoria
12:25:50 10 Police to start to focus specifically on whether or not
12:25:52 11 cases had been affected?---Well I don't know whether that's
12:25:54 12 correct or not, but if it was, speculating that if it was
12:25:58 13 correct, you'd like it to be fast.
14
12:26:01 15 Yeah, all right. Can I just deal with briefly the SDU.
12:26:08 16 You're aware that in 2012 there were moves afoot to close
12:26:29 17 down the SDU, is that your understanding?---Yes.
18
12:26:35 19 When do you believe it was first considered that the SDU
12:26:39 20 should be closed down?---I'm not sure I can recall that
12:26:45 21 exactly. Jeff Pope had a view that he wanted to
12:26:49 22 restructure it.
23
12:26:50 24 Yes?---And I had a view that if that's what Jeff Pope saw
12:26:56 25 as appropriate, that that would be okay.
26
12:26:59 27 Did you have any involvement in the process of the
12:27:04 28 restructuring of the Human Source Unit and the closure, if
12:27:09 29 you like, of the SDU?---No, I don't believe I did. I think
12:27:12 30 there was occasions, because Jeff Pope and I worked in the
12:27:15 31 same building.
32
12:27:16 33 Yes?---And, you know, he'd come to my office occasionally
12:27:22 34 and just, we were just even having a coffee because we
12:27:24 35 were the only two Assistant Commissioners in the building.
36
12:27:28 37 Yes?---So I think from time to time he would sort of
12:27:30 38 mention that he was wanting to restructure it and he
12:27:34 39 thought that the model needed to be improved around
12:27:37 40 informer management. I think also that he was having
12:27:42 41 resistance to that.
42
12:27:44 43 If we can just have a look at this email chain. It's
12:27:50 44 GLA.0003.0006.0119. This appears to be an email which
12:28:15 45 starts off from Jeff Pope to Chief Commissioner Lay, CCing
12:28:26 46 to you, subject's the SDU, importance is high. Pope writes
12:28:31 47 a fairly lengthy email starting, "Ken, grateful if you

12:28:36 1 could please convey the following regarding the Source
12:28:39 2 Development Unit to Greg Davies in your meeting tomorrow.
12:28:43 3 Objective: close down the SDU by mid-September with minimal
12:28:49 4 fuss, risk and impact on the members, the organisation and
12:28:53 5 the community". And then there follows his relevant
12:28:56 6 background "but not all for disclosure to the TPA". Then
12:28:59 7 if you go through it all you'll see over the second page he
12:29:06 8 says, "Over the past few years since Paul and John have
12:29:10 9 been" - a reference to Paul Sheridan and John O'Connor, I
12:29:17 10 assume, would that be fair to say?---Yes, I think that's
12:29:18 11 what that is.
12
13 "Have been providing much stronger leadership than the
14 previous regime, there have been a number of instances of
12:29:22 15 poor judgment, eg wanting to register the wrong sort of
12:29:24 16 people as a source, who present significant organisation
12:29:28 17 risk", et cetera. Do you see that?---Yes.
18
12:29:35 19 Then further down, "We've spent a lot of money over the
12:29:40 20 years training people to become handlers of high risk human
12:29:43 21 sources but they rarely get the chance to apply for
12:29:46 22 positions at the SDU as there's very little turn over", do
12:29:51 23 you see that?---Yes.
24
12:29:52 25 Then there's reference to the Comrie review: "Parallel to
12:29:58 26 the organisational review of the SDU we've commissioned and
12:30:00 27 in late July and received the Comrie review. One of the
12:30:04 28 reasons for commissioning the Comrie review was to utilise
12:30:09 29 the learning to inform the review process and shape the
12:30:09 30 next evolution of the SDU". Do you see that?---Yes.
31
12:30:12 32 "The Comrie review focused on what policies and practices
12:30:15 33 were in place to recruit legal practitioners as human
12:30:19 34 sources. The review looked at the case of a previous legal
12:30:23 35 practitioner that was recruited and managed by the SDU for
12:30:27 36 a number of years during difficult times and identified a
12:30:31 37 lack of policies and processes. Very poor practice by the
12:30:36 38 SDU in this particular case", et cetera. Then talks about
12:30:40 39 very poor leadership, total lack of judgment and governance
12:30:44 40 by the Senior Sergeant and Inspector of the SDU at the
12:30:46 41 time. "Outcome of the Comrie review is far worse than
12:30:54 42 anyone expected and has highlighted significant issues.
43 Two or more significant issues is that most of the people
12:30:58 44 involved in the case examined by Comrie still work at the
12:31:02 45 SDU". Did you know at that stage that the members of the
12:31:09 46 SDU by and large hadn't been consulted during the course of
12:31:13 47 the Comrie review?---No.

1

12:31:16 2 No, okay. He sets out his strong view that the retention
12:31:22 3 of the SDU Unit in its current form is incongruous and
12:31:26 4 brings significant organisational risk to the reputation of
12:31:30 5 Victoria Police. "Could not publicly justify why we would
12:31:33 6 keep going with the current arrangements based on what we
12:31:36 7 know." Then he sets out a plan. "As a consequence of the
12:31:38 8 Comrie review we will close the SDU by mid-September, move
12:31:43 9 all SDU staff with their position to other work" - I can't
12:31:49 10 read that word - "locations that we will negotiate with
12:31:53 11 them. They will be an additional resource". Do you see
12:31:59 12 that?---Other work locations, yes.

13

12:32:01 14 Then key messages to the TPA, "We're unable to share the
12:32:06 15 Comrie review because of its sensitivities but they need to
12:32:08 16 trust us that it contains significant issues. Having
12:32:11 17 regard to recent experiences and in particular the outcomes
12:32:14 18 of the Comrie review we cannot justify and defend
12:32:18 19 continuing with the SDU in its current form". There's
12:32:23 20 obviously reference to the sensitivities of human source
12:32:27 21 management, et cetera, do you see that?---Yes.

22

12:32:32 23 You obviously received that and you comment I think later
12:32:42 24 on in the day of - sorry, on 30 August, do you see that?
12:32:48 25 You say, "Have discussed below email with Ken. Rather than
12:32:51 26 just referring to shutting down the SDU, we would prefer it
12:32:56 27 to be referred to as a transitioning of SDU into HSMU". Do
12:33:00 28 you see that, that was your response?---Yes.

29

12:33:02 30 Right. If we then go over the page, there's a reference,
12:33:13 31 the Chief Commissioner writes to you and thanks you and
12:33:17 32 Jeff and says that he'd spoken to Greg "and this is not on
12:33:20 33 his radar at all, which is a good sign", et cetera. Do you
12:33:24 34 see that?---Yeah, Greg - - -

35

12:33:30 36 Then finally Jeff Pope sends an email to Ken Lay and to you
12:33:34 37 and there's a reference to, "Liz has been involved along
12:33:38 38 the way but has no knowledge of the Comrie review. I'll
12:33:41 39 convene a meeting with her and Paul Sheridan to discuss,
12:33:44 40 ensure we're acting within the IR laws", et cetera, do you
12:33:50 41 see that?---Yes.

42

12:33:51 43 I take you agreed with the matters in the email and you
12:33:54 44 agreed with the course that had been suggested; is that
12:33:56 45 right?---Yes.

46

12:33:57 47 I tender that, Commissioner.

1

12:34:03 2 COMMISSIONER: It's already tendered I'm told, 847.

3

12:34:07 4 MR WINNEKE: Okay, thanks Commissioner. Did you continue
12:34:23 5 to follow the restructuring, if you like, of the
12:34:30 6 SDU?---Yeah, well it wasn't my area, it was Jeff's, but as
12:34:34 7 I say, in the context of being in the same building and,
12:34:41 8 you know, the contact Jeff and I would have, yeah, I was
12:34:44 9 broadly aware of how it was running, that he was wanting to
12:34:48 10 do it, that there was resistance to it.

11

12:34:50 12 All right. Chief Commissioner, I've asked you lots of
12:34:55 13 questions. Is there anything that you wish to say before I
12:34:59 14 sit down about the processes on behalf of Victoria
12:35:03 15 Police?---In terms of you mean as Chief Commissioner now?

16

12:35:09 17 Yes?---Yeah, well obviously it's important that we're doing
12:35:13 18 everything we can to support the Royal Commission and being
12:35:17 19 along here today is an example of being keen to be here to
12:35:21 20 answer questions and for Victoria Police to be accountable
12:35:25 21 and certainly I don't know if I'll be Chief Commissioner
12:35:29 22 when the Royal Commission ultimately makes its report. I
12:35:34 23 finish on 30 June. But I'm certain that if it's not me
12:35:40 24 whoever the Chief Commissioner of the day will obviously be
12:35:42 25 giving close inspection to the report and doing everything
12:35:46 26 we can to improve informer management of Victoria Police.

27

12:35:51 28 Are you able to say that as far as you as Chief
12:35:55 29 Commissioner of Police is concerned, that you believe that
12:36:00 30 there should be put in place appropriate policies and
12:36:03 31 procedures within Victoria Police to ensure that if there
12:36:09 32 are matters that ought be disclosed to prosecutors, to the
12:36:14 33 courts and to defence, that those policies will be
12:36:18 34 supported by you to ensure that we don't have these sorts
12:36:22 35 of issues in the future?---Yes, I've been seeking to do
12:36:26 36 that, exactly that.

37

12:36:27 38 Yes, all right. Thanks very much.

39

12:36:29 40 COMMISSIONER: Thank you. Yes Mr Nathwani.

12:36:33 41

42

<CROSS-EXAMINED BY MR NATHWANI:

43

12:36:42 44 Mr Ashton, the focus of my questions as a general theme
12:36:51 45 throughout a number of topics will be considering actions
12:36:55 46 taken by you and other senior officers and decision makers
12:36:57 47 within Victoria Police at the relevant time to consider the

12:37:00 1 mind-set and culture that existed, okay?---Yes.
2
12:37:03 3 With that in mind, very briefly, can we go to the issue of
12:37:06 4 your lack of taking notes. At IBAC you gave the following
12:37:10 5 evidence about your non-taking notes, and for those that
12:37:16 6 are following, there's no need to bring it up on the
12:37:18 7 screen, it's p.17. In the top paragraph you say this, "I
12:37:24 8 stopped really keeping a diary because I was, we had issues
12:37:27 9 with our powers, an affliction I'm sure you're well
12:37:34 10 familiar with, where we couldn't really secure that our
12:37:37 11 notes and diary working notes and pages were not going to
12:37:39 12 be, were going to be obtained by discovery and we were
12:37:41 13 trying to work with government on getting that legislation
12:37:43 14 fixed"?---Yes.
15
12:37:44 16 Okay. Again, correct me if I'm wrong, I'm sure you will,
12:37:48 17 but what you were in effect were saying was this: you had
12:37:53 18 taken the decision that you didn't want a court or a
12:37:57 19 judicial officer to consider your notes under the PII
12:38:01 20 process?---No.
21
12:38:04 22 Well, okay, let's go through the process then. You didn't
12:38:07 23 want the notes, had you taken them, to be discovered? You
12:38:14 24 agree discovery comes about when, let's say an accused,
12:38:19 25 where those notes that you've made, may be relevant to
12:38:23 26 their defence. And what you were in effect saying is well,
12:38:26 27 "As opposed to having to disclose them, I wouldn't take a
12:38:28 28 note", agree?---No, the OPI were dealing with a range of
12:38:32 29 sensitive issues around that time, lots of different cases
12:38:35 30 were running and there was, as is the case IBAC currently
12:38:40 31 has, because you use coercive powers you've got people that
12:38:45 32 are coercively questioned and provide information under
12:38:49 33 coercion in private hearings, and there was concern about
12:38:51 34 the fact that that information could not be protected by
12:38:54 35 the - at that time the OPI legislation.
36
12:38:58 37 So what you decided to do is rather than let the process,
12:39:02 38 that is the judge, say Fitzgerald, or any others dealing
12:39:07 39 with it, consider the issue of disclosure, you took it into
12:39:11 40 your own hands?
12:39:13 41
12:39:13 42 MR COLEMAN: I'm sorry, this is quite factually incorrect.
12:39:17 43 Mr Ashton was talking about disclosure by documents whilst
12:39:22 44 he was at the OPI. There's no issue about the judge being
12:39:25 45 Mr Fitzgerald having a role in disclosure, that's quite
12:39:28 46 factually incorrect and misunderstands the legislative
12:39:31 47 context.

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COMMISSIONER: Could you tighten the question and reframe it, thanks.

MR NATHWANI: Of course. As far as the OPI was concerned at the time, a person appearing before the OPI had a number of protections afforded to them?---Yes.

In fact, in the same way you were provided protections when you attended IBAC. And for the material to be released it would require an application made to whoever was governing the OPI, do you agree with that?---Yes.

Rather than let that person decide whether those diary notes would be disclosed, you made the decision to instead to withhold those notes yourself, agree?---Yes, I didn't want to be recording things that might not be protected by the legislation, which is what the legislation was intended to do.

Around the same time, because this was in 2006, February 2006, there's some material that the Commission will receive that other officers, such as the head of ESD at the time, also engaged in not making notes?---I don't know anything about that.

That's obviously, you say, a coincidence?---Yeah, I don't know anything about that.

Do you think it's ironic given that two corruption agencies, the ESD and IBAC, were involved in not taking notes?---I have no knowledge of - - -

COMMISSIONER: Do you mean the OPI rather than IBAC?

MR NATHWANI: Sorry, yes, the OPI rather than IBAC?---Yes.

MR COLEMAN: I object to the question anyway. What's the relevance of whether it's ironic or not? It's only the reference before - - -

COMMISSIONER: No, I'll allow the question to be asked, thank you.

WITNESS: Look, I have no knowledge about the notetaking over at Victoria Police. So it would have been a pure coincidence, yes.

12:41:26 1
12:41:27 2 MR NATHWANI: Right. How about the irony that you involved
12:41:30 3 at the OPI in investigating corruption yourself was
12:41:35 4 withholding notes?---There's no irony - - -
5
12:41:37 6 Sorry, not making notes, even worse?---There's no irony to
12:41:42 7 me wanting to make sure that what's told to an organisation
12:41:45 8 involved in coercive hearings and investigations of that
12:41:48 9 high risk nature as being as confidential as I can make it.
12:41:53 10 I think that's me being responsible.
11
12:41:55 12 Is that similar to the actions you took in 2011, we'll come
12:41:59 13 into more detail, when persuading the Commonwealth not use
12:42:05 14 Ms Gobbo as a witness in Dale?---Sorry, what's the question
12:42:07 15 there? I'm sorry.
16
12:42:08 17 I'll make it clearer. You said, and we'll come to it, that
12:42:13 18 your reasons for persuading the Commonwealth not to use
12:42:16 19 Ms Gobbo was in relation to her health?---Her safety
12:42:24 20 primarily, but her health as well.
21
12:42:28 22 Isn't your true purpose as far as persuading the
12:42:30 23 Commonwealth not to use her as a witness, was to protect
12:42:30 24 the fact that you were aware it would jeopardise a number
12:42:33 25 of prosecutions and convictions?---No.
26
12:42:38 27 We'll look at that in detail. Can we move to the issue of
12:42:41 28 the allegations made by Ms Gobbo about a sexual
12:42:47 29 relationship with Mr Pope. Because you were involved in
12:42:49 30 what you describe as the investigation into that,
12:42:52 31 okay?---Involved in the investigation into it, no, I
12:42:55 32 wasn't. I was involved in being told about it and then
12:42:58 33 bringing that to the attention of Deputy Commissioner
12:43:00 34 Cartwright.
35
12:43:01 36 Just to put this into context. In 2007, we've heard
12:43:05 37 evidence from you over two and a half days, when you were
12:43:09 38 at the OPI you were aware that part of the questions to be
12:43:12 39 asked of Ms Gobbo were in relation to sexual relationships
12:43:15 40 or inappropriate relationships with police officers,
12:43:18 41 including Argall, Paul Dale and the like?---Correct.
42
12:43:23 43 By the time you're made aware of the allegation that she
12:43:26 44 makes about Mr Pope it must have been something that you
12:43:30 45 thought, "Well hold on, there's a history here of questions
12:43:34 46 being asked about Ms Gobbo and inappropriate relationships
12:43:37 47 with police officers"?---I didn't make a judgment about it

12:43:40 1 but it was important that I reported it, yes.
2
12:43:43 3 Let's go to your statement and some other documents to see
12:43:46 4 what was happening and then I'll ask you whether you still
12:43:49 5 suggest this was an investigation. Paragraph 88 of your
12:43:53 6 statement, please?---Yes.
7
12:44:01 8 You see there you say - we know Task Force Driver relates
12:44:05 9 to Carl Williams, Petra and the like. Last line,
12:44:12 10 Assistant Commissioner Jeff Pope was at the time the Chair
12:44:16 11 of the steering committee, okay?---Correct.
12
12:44:17 13 To follow this sequence. Paragraph 89, "On around 24
12:44:21 14 October 2011 Detective Superintendent Doug Fryer told me
12:44:28 15 that Ms Gobbo had asserted she had had sex with Assistant
12:44:32 16 Commissioner Pope some years ago". You then informed him
12:44:35 17 of that and he denied it. Do you remember what you told
12:44:38 18 him about the allegation?---That it had been alleged that
12:44:42 19 he'd had sex with Ms Gobbo.
20
12:44:44 21 Did you provide any other information to him, do you
12:44:47 22 remember? Do you have a note of that?---Only that we had
12:44:50 23 to go and see the Deputy Commissioner about it. He said it
12:44:53 24 wasn't true. And I said we need to go and see the Deputy
12:44:55 25 Commissioner to inform him.
26
12:44:56 27 We then see paragraph 90. As you say, you go to Deputy
12:45:00 28 Commissioner Cartwright. "He informed us this matter would
12:45:02 29 be reported to the ESD for investigation. Until such time
12:45:07 30 as the matter had been properly examined Pope would not
12:45:11 31 participate in the Driver steering committee", okay?---Yes.
32
12:45:15 33 There was no ESD investigation, was there?---I don't know
12:45:18 34 ultimately.
35
12:45:19 36 So you can't help with why that never occurred?---No, that
12:45:21 37 was Mr Cartwright was dealing with that.
38
12:45:25 39 Because what appears to happen, it was dealt with
12:45:28 40 internally by Mr Cartwright, with your assistance and the
12:45:32 41 assistance of Mr Fryer, do you accept that?---With my
12:45:38 42 assistance? How do you mean?
43
12:45:40 44 Let's pull up VPL.0002.0002.0074. That's to you, do you
12:46:07 45 agree?---Yes.
46
12:46:09 47 From Mr Cartwright?---Yes.

1

12:46:12 2 If we go to the bottom it will give us the date. 24
12:46:16 3 October, allegation made 21 October. Let's just go through
12:46:21 4 some of the material on this. "Further to our conversation
12:46:24 5 today, I note that Witness F had conversations with Task
12:46:29 6 Force Driver members on the evening of 21 October and the
12:46:35 7 conversation's brought to your attention this morning". So
12:46:37 8 that confirms a conversation you had with him. "I note
12:46:41 9 that in that conversation Ms Gobbo apparently alleged that
12:46:45 10 Assistant Commissioner Pope had had a sexual relationship
12:46:48 11 with her a number of years ago and was accordingly not an
12:46:52 12 appropriate person to be in charge of (her witness
12:46:55 13 protection)" it says there?---Yes.

14

12:46:58 15 "On the current material there's nothing to indicate
12:47:04 16 additional risk." It sets out other issues in relation
12:47:05 17 witness protection and the like. Then this, "There is no
12:47:07 18 evidence or suggestion of any current personal or
12:47:12 19 professional relationship between Commissioner Pope and F".
12:47:15 20 Pausing there. We know, both looking at your statement and
12:47:18 21 other material, Pope was in fact intimately involved with
12:47:22 22 the decision as to whether or not she be used as a witness
12:47:25 23 in the Dale prosecutions. Did you do anything to correct
12:47:30 24 Mr Cartwright of his error in suggesting there was no
12:47:34 25 professional relationship at all?---I think there's
12:47:39 26 reference to this allegation of having a sexual
12:47:43 27 relationship, isn't there?

28

12:47:44 29 What, the professional relationship? This was an
12:47:50 30 allegation, and we'll come it, that she was in effect
12:47:54 31 saying, "It was inappropriate that Mr Pope be involved in
12:47:58 32 any real decision-making relating to me". And at this time
12:48:00 33 - I can go to other material, which we will. But at this
12:48:03 34 time did you not think it appropriate to say, "Hold on,
12:48:05 35 Pope's involved in the decision-making of whether or not we
12:48:08 36 call or we put pressure on the Commonwealth to use her as a
12:48:11 37 witness in the Dale prosecution"?---Well I was the one that
12:48:14 38 dealt with that aspect of the ACIC or the ACC prosecution,
12:48:18 39 not Pope.

40

12:48:20 41 Is that right? That he had no involvement?---Post the
12:48:25 42 allegation about him, bringing that to Mr Cartwright's
12:48:30 43 attention, he asked that I would - which was only briefly,
12:48:36 44 but that I take responsibility in terms of the Driver
12:48:40 45 steering committee and that was dealing with that issue at
12:48:43 46 the time. So once we had possession of that knowledge we
12:48:46 47 took steps to make sure that I was the one dealing with the

12:48:52 1 ACC on the Dale prosecution matter.
2
12:48:56 3 I want to come back to that, because I will come back to
12:48:59 4 that answer. I want to go through the chronology of a few
12:49:03 5 documents just to see what's happening as far as this
12:49:07 6 allegation was concerned. You on that - what he's advising
12:49:14 7 or tasking you to do is, "On the basis of this preliminary
12:49:17 8 material it is proposed that you, Mr Ashton will, as a
12:49:21 9 matter of urgency, obtain a transcript of the conversation,
12:49:24 10 advise me of the contents and advise the reporting members
12:49:27 11 from Task Force Driver that the matter is being considered
12:49:30 12 and that you have advised me accordingly", and then he sets
12:49:34 13 out what he intends to do?---Yes.
14
12:49:36 15 Do you see that?---Yes.
16
12:49:37 17 If we scroll down for completion. He just says, "Once we
12:49:43 18 have the transcript we can make a decision about what's
12:49:49 19 required to be done". If I could tender that document. I
12:49:52 20 don't think that one's been tendered.
21
12:49:54 22 COMMISSIONER: Yes.
12:49:54 23
12:49:55 24 #EXHIBIT RC892A - (Confidential) VPL.0002.0002.0074.
12:49:56 25
12:49:56 26 #EXHIBIT RC892B - (Redacted version.)
12:49:58 27
12:49:59 28 MR COLEMAN: I'm sorry, my learned friend said, "We will
12:50:01 29 further assess the outcome required". It says, "I will
12:50:06 30 further assess the outcome required", namely Deputy
12:50:10 31 Commissioner Cartwright will.
12:50:13 32
12:50:13 33 MR NATHWANI: I stand corrected. Can we then move to
12:50:17 34 VPL.0002.0002.0076. Having decided that Mr Pope, as you've
12:50:28 35 said, shouldn't be involved in Driver and the ACC matters,
12:50:33 36 we then get this from Mr Cartwright, noting that it copies
12:50:38 37 in Mr Pope and you, okay? So there's three people copied
12:50:44 38 in?---Yes.
12:50:44 39
12:50:45 40 The person who an allegation has been made against, the
12:50:48 41 person who's deciding whether the allegation is true, and
12:50:53 42 you, who have been tasked to a degree at least, to be
12:50:56 43 involved in obtaining some of the material?---Yes, it
12:50:59 44 needed to come through me because I needed to make sure, to
12:51:02 45 pass that on to Doug Fryer to get that material for him.
46
12:51:04 47 What we see from this email is there's a Driver agenda,

12:51:08 1 Witness F. So here we are post-allegation, discussion in
12:51:13 2 relation to Ms Gobbo, and it says, "In our routine catch up
12:51:17 3 this afternoon Jeff", which must be Pope, "suggested the
12:51:28 4 matter of the Witness F conversation should be tabled at
12:51:31 5 the next Driver meeting with a brief overview of the action
12:51:35 6 being taken. I think that is a good suggestion and would
7 demonstrate that the matter is being appropriately
8 considered. Can you ensure that it's also covered in the
12:51:36 9 routine briefing of the steering committee minutes that you
12:51:37 10 provide to me". At that point did you point out that
12:51:40 11 Mr Pope shouldn't be involved in these discussions or
12:51:44 12 appear to be involved in the investigation as it appears to
12:51:47 13 be from this email?---No, Tim's obviously had a
12:51:50 14 conversation in terms of his routine catch-up which is -
12:51:54 15 I'm not sure, he must catch-up with him on a routine basis
12:51:59 16 at that stage, which I guess would be consistent with his
12:52:01 17 role. And I'd say from that Jeff doesn't want this to be
12:52:07 18 kept some sort of secret, he wanted to make sure that it
12:52:10 19 tabled at the Driver meeting, so there'd be a record there
20 was an allegation made and action being taken was recorded.
21
12:52:15 22 As an investigator, as the head of Victoria Police at
12:52:17 23 present and involved as a senior member then, do you think
12:52:19 24 it was appropriate Mr Pope was being involved in the
12:52:22 25 progress of the investigation in relation to him?---I don't
12:52:25 26 think he is.
27
12:52:26 28 You don't think he is?---Well that's not suggesting that.
29
12:52:29 30 What, having meetings that aren't recorded and just saying
12:52:34 31 that, "Jeff has suggested this is how we deal with the
12:52:36 32 allegation made against me"?---Well it's a question you'd
12:52:40 33 have to ask Tim Cartwright, but I think that the - as I've
12:52:43 34 read that, he's had his regular meeting with Jeff and then
12:52:46 35 Jeff has said, "Look, in relation to this matter I think it
12:52:50 36 should all be officially recorded", so - and I think that
12:52:53 37 would be a good idea as well.
38
12:52:54 39 I'm sure you do. If we then can go to what you obtained.
12:52:58 40 You say you got Mr Fryer involved in obtaining the
12:53:01 41 transcript. Can we just have a look at the actual extract
12:53:04 42 that was obtained. I don't think this document has been
12:53:07 43 tendered either?
44
12:53:09 45 COMMISSIONER: This one?
12:53:11 46
12:53:11 47 MR NATHWANI: No.

12:53:12 1
12:53:13 2 #EXHIBIT RC893A - (Confidential) VPL.0002.0002.0076.
12:53:15 3
12:53:15 4 #EXHIBIT RC893B - (Redacted version.)
12:53:17 5
12:53:17 6 MR NATHWANI: If we can go to VPL.0002.0002.0772. If we
12:53:47 7 just scroll down to the next page just to check it's the
12:53:51 8 right one. We see Mr Fryer there. Were you involved in
12:53:56 9 why he selected that part of the transcript or did you
12:53:58 10 receive the extract without any direction to him?---No, I
12:54:04 11 don't know why he - if he has only produced part of it, I
12:54:08 12 don't know why. Maybe that's the only part that deals with
12:54:10 13 the allegation I guess.
14
12:54:12 15 Well that's not entirely accurate, you see, because what's
12:54:15 16 taken out, and we can get the other one put up if
12:54:19 17 necessary, is how this allegation comes about and
12:54:21 18 Ms Gobbo's asked about two pages before this by Mr Buick,
12:54:25 19 and for anyone who wants it the reference is
12:54:32 20 VPL.0100.0068.0545, she's asked by Mr Buick, and I
12:54:37 21 shorthand, "Is there any information you have on lawyers or
12:54:43 22 media personalities", I think it was, "or police officers
12:54:48 23 involved in any forms of corruption or the like?" Then
12:54:51 24 this allegation comes out and this is clipped, and then
12:54:55 25 what follows is her explaining some more details in
12:54:58 26 relation to it?---M'mm.
27
12:55:00 28 As far as your understanding is you tasked Mr Fryer to
12:55:03 29 obtain the extract and you don't know why he left out
12:55:08 30 certain bits and only clipped this bit?---No. I'm fairly
12:55:12 31 sure I would have asked Mr Fryer for it. It's not
12:55:15 32 impossible that I would have asked Mr Buick directly, but
12:55:18 33 more than likely I didn't used to do that so much, so I
12:55:21 34 would have gone through Mr Fryer normally.
35
12:55:25 36 Let's then go please to RC849.
37
12:55:31 38 COMMISSIONER: Are you wanting to tender that one?
12:55:34 39
12:55:34 40 MR NATHWANI: Yes, sorry, if it hasn't already. That was
12:55:36 41 the two page extract of the Nicola Gobbo conversation 21
12:55:42 42 October. It may have been tendered, the two page.
43
12:55:49 44 COMMISSIONER: We think it has been. We think it's 62.
12:55:52 45 We'll just check.
12:55:54 46
12:55:54 47 MR COLEMAN: Sorry, Commissioner, what number was that?

1
12:55:57 2 COMMISSIONER: 62.
12:55:58 3
12:55:58 4 MR COLEMAN: Thank you.
5
12:55:59 6 COMMISSIONER: We think.
12:56:02 7
12:56:02 8 MR NATHWANI: This is a letter from you, we're unclear if
12:56:06 9 it's 26 October or later, 2 November?---M'mm.
10
12:56:11 11 It's to Mr Cartwright and you say, "Please find attached
12:56:15 12 transcript of the conversation we've just seen between F
12:56:17 13 and Task Force Driver members". In accordance with the
12:56:22 14 direction you've advised relevant Task Force Driver members
12:56:25 15 you've been provided with a transcript. You then also
12:56:27 16 outline that a further allegation has been made by Ms Gobbo
12:56:31 17 to Mr Buick, and then you say the matter will be subject to
12:56:35 18 a notation and discussion at the next Task Force Driver
12:56:40 19 steering committee held on 27 October, and you will advise
12:56:42 20 further once that has occurred. Do you agree at this stage
12:56:46 21 it looks certainly that you're assisting, at the very
12:56:48 22 least, into the looking into the documents involved in this
12:56:52 23 allegation?---No, I'm just acting as the conveyor of the
12:56:56 24 information that he's asked me to get for him. It's the
12:56:58 25 Ethical Standards Department and Deputy Commissioner that
12:57:01 26 does that investigation, not me.
27
12:57:03 28 I ask do you accept you were involved in obtaining some of
12:57:06 29 the documentation?---No, you asked me whether I was
12:57:09 30 involved in the investigation.
31
12:57:09 32 I didn't use the word "investigation" because this was not
12:57:12 33 an investigation, okay. I used the words "looking into",
12:57:16 34 all right?---I thought you said investigation at the start.
35
12:57:19 36 Definitely not?---Either way, I don't believe I was
12:57:21 37 involved in doing anything other than I was tasked there by
12:57:24 38 Mr Cartwright. It wasn't my inquiry to make.
39
12:57:28 40 If we then go then please to the affidavit of Mr Pope, so
12:57:33 41 RC61. This will become relevant to some of the actions you
12:57:38 42 take later on in relation to the Dale prosecution. Now,
12:57:42 43 were you involved - aware that Mr Pope had provided this
12:57:45 44 affidavit.
45
12:57:45 46 COMMISSIONER: The last document was Exhibit 849.
12:57:48 47

12:57:48 1 MR NATHWANI: Yes.
12:57:52 2
12:57:53 3 WITNESS: Sorry, what's the date of this affidavit?
12:57:55 4
12:57:55 5 MR NATHWANI: If we scroll down, it's 2 November 2011. Do
12:58:00 6 you see that, countersigned by or witnessed by
12:58:06 7 Mr Cartwright who was investigating Mr Pope?---Okay, yep,
12:58:09 8 yep.
9
12:58:10 10 If we go up, please, to the contents. Paragraph 3, he
12:58:20 11 talks there of discussing - of when he - this is Mr Pope,
12:58:24 12 when he first met Ms Gobbo. Now as far as you were
12:58:28 13 concerned you'd given evidence that you were unaware that
12:58:32 14 he'd registered her as a human source, do you agree with
12:58:34 15 that?---Yeah, I didn't have a recollection of that, no.
16
12:58:38 17 Certainly it's nothing he declared at any of the meetings
12:58:41 18 you had or were involved with as far as Task Force Driver
12:58:44 19 was concerned?---Not that I can recall.
20
12:58:46 21 If we look at the bottom of paragraph 4 he says, "I would
12:58:49 22 have made notations in my official diary of all the
12:58:54 23 meetings. I do not know where they are. I believe also if
24 I had gathered any intelligence from the meeting, that I
12:58:58 25 would have submitted some IRs". As far as you were
12:59:01 26 concerned, were any attempts ever made to find or look to
12:59:05 27 his diaries or information reports to confirm what he was
12:59:09 28 saying?---I don't know.
29
12:59:11 30 You say ask Cartwright?---Of course, he was the one dealing
12:59:15 31 with it.
32
12:59:16 33 When you were involved with Driver did Mr Pope ever tell
12:59:23 34 you, in effect, what's contained at paragraph 4, that he'd
12:59:28 35 met Ms Gobbo on about six occasions, on each occasion he'd
12:59:33 36 meet with a supervisor or colleagues, he only met her in
12:59:37 37 public places, and there was an occasion where he attended
12:59:41 38 a meeting with Strawhorn, Drug Squad, and then on other
12:59:46 39 occasions that he'd meet her in effect over a coffee, a
12:59:52 40 further occasion where he met her outside Melbourne
12:59:54 41 Magistrates' Court where she had in effect made a pass of
13:00:00 42 some kind towards him or wanted to know if he wanted to go
13:00:04 43 on holiday abroad with her. All of that, had any of that
13:00:09 44 ever been told to you by Mr Pope?---No, I don't have a
13:00:12 45 recollection of him telling me something about that.
46
13:00:14 47 It's something, you agree, you would have been well aware

13:00:17 1 of or noted when he was sitting as Chair of the Driver
13:00:20 2 committee?---This bit about her wanting him to go overseas
13:00:28 3 or something.
4
13:00:29 5 Where is it? Yes, okay, paragraph 5 in the middle, "As I
13:00:31 6 recall she'd just booked or about to book a holiday to the
13:00:36 7 US and was travelling alone. She said she would pay for
8 all the expense of another person to have the right
13:00:39 9 companion go with her and she wasn't looking forward to
13:00:41 10 going on her own. I recall a conversation about my age and
13:00:46 11 she was curious as to whether the purpose of life became
13:00:49 12 more meaningful after you turn 30". Okay. And then at the
13 13 end she asks whether their relationship was ever going to
13:00:52 14 develop into something more personal. Obviously had he
13:00:54 15 told you that - - - ?---No, I don't remember him ever
13:00:58 16 telling me that.
17
13:01:00 18 And had he told you that what would your view been on him
13:01:02 19 being the Chair of Driver?---Well it would be a matter for
13:01:07 20 him to declare that and look at that from a conflict of
13:01:10 21 interest perspective and then decisions would then have to
13:01:12 22 be made about how that would be dealt with.
23
13:01:14 24 If we go to RC851. This is a legal advice obtained by
13:01:26 25 Mr Cartwright in relation to the allegation made.
26
13:01:32 27 COMMISSIONER: Can I just clarify that last question. So
13:01:34 28 you say if you'd known that, what was set out in paragraph
13:01:38 29 3, you would have expected him to have declared this as a
13:01:42 30 conflict of interest?---I think that's something you'd say,
13:01:45 31 Commissioner, about if I - if that was someone that I had
13:01:49 32 personal meetings with a person and - - -
33
13:01:50 34 I understand. And he hadn't done that?---No, I don't
13:01:53 35 believe he'd ever done that.
13:01:56 36
13:02:01 37 MR NATHWANI: Can I just have a quick chat with Mr Holt,
13:02:05 38 there's one section I wanted to ask about.
13:02:07 39
13:02:08 40 MR HOLT: Can this be taken down for a moment,
13:02:10 41 Commissioner?
42
13:02:12 43 COMMISSIONER: It can be on the witness's screen, can't it?
13:02:14 44
13:02:14 45 MR HOLT: It can, Commissioner.
46
13:02:15 47 COMMISSIONER: And my screen.

13:02:27 1
13:02:27 2 MR HOLT: Commissioner, I see the time, it's only just
13:02:30 3 after one, and if my friend's going to be going a little
13:02:36 4 longer can this just be left so I can take instructions
13:02:37 5 about that matter as well in terms of privilege? It's an
13:02:39 6 obviously privileged document. I wasn't aware it was going
13:02:42 7 to be referred to.
8
13:02:44 9 COMMISSIONER: Come back to that after lunch.
13:02:46 10
13:02:46 11 MR NATHWANI: I will. The next issue in this document
13:02:50 12 which I was allowed to refer to last week is at the bottom
13:02:54 13 of the document which isn't in yellow, so if we could bring
13:02:57 14 that up. I suggest to put this in context, no need to go
13:03:04 15 up for you, Mr Ashton, this was an email sent to
16 Mr Cartwright from Finn McRae and also involved Shaun Le
13:03:13 17 Grand, okay, so the VGS0?---Yes.
18
13:03:13 19 It's just the last paragraph, or the last three. We see
13:03:20 20 the first one is the potential conflict of interest you
13:03:23 21 were just discussing, Mr Pope and his disclosure, "But the
13:03:26 22 fact that the source has said that sexual relations
13:03:33 23 occurred does create a potential perceived conflict of
13:03:34 24 interest for member Pope's involving decision-making about
13:03:35 25 the source. This is so whether or not a personal
13:03:37 26 relationship existed between them and is made more acute by
13:03:41 27 the disagreement between them about the nature of their
13:03:43 28 relationship. Whether or not they were involved, the fact
13:03:46 29 that of their personal involvement is an issue at all and
13:03:51 30 the fact that there is disagreement about the matter
13:03:55 31 provides obvious scope for embarrassment, conflict and
13:04:00 32 resentment which can lead to a perception of a conflict of
13:04:03 33 interest. In the circumstances we recommend that the issue
13:04:06 34 of potential or possible conflict be managed. To that end,
13:04:10 35 it would be sufficient if member Pope had no further role
13:04:13 36 in the steering committee and any other decision-making
13:04:16 37 involving Ms Gobbo. It seems that has already occurred.
13:04:18 38 In addition, it would be worth discussing the matter with
13:04:22 39 Pope to advise that the fact of the allegation is
13:04:27 40 sufficient to justify his removal from decision-making
13:04:29 41 roles concerning the source to avoid the potential for any
42 perceived conflict of interest interfering in the proper
13:04:35 43 management of the source". Now, were you ever made aware
13:04:36 44 of that last paragraph?---No, I don't believe I've ever
13:04:39 45 seen that - - -
46
13:04:40 47 Don't worry about seeing it?--- - - - advice.

1

13:04:43 2 Did Mr Cartwright ever say to you, "Pope should not be
13:04:47 3 involved in any of the decision-making as far as Ms Gobbo
13:04:50 4 was concerned "?---No, he asked me to take over as the head
13:04:53 5 of the Driver steering committee, which I did for a brief
13:04:58 6 period, and that Jeff wouldn't be involved.

7

13:05:05 8 Whilst he wasn't involved in the Driver steering committee
13:05:09 9 you involved him, or certainly were involved with him
13:05:12 10 during this period in relation to the use of Ms Gobbo in
13:05:16 11 the ACC prosecution, do you agree with that?---No, I took
13:05:19 12 steps with Mr Fryer in relation to the ACC prosecution and
13:05:25 13 her involvement in that. I'm not sure how I would have
13:05:28 14 involved Jeff in that.

15

13:05:30 16 Paragraph 160, please, of your statement.

17

13:05:39 18 COMMISSIONER: What was the date of the previous document,
13:05:40 19 the document that was up just before?

13:05:42 20

13:05:43 21 MR NATHWANI: The legal advice was - if we can go to the
13:05:47 22 top, please. 11 November.

23

13:05:52 24 COMMISSIONER: Has that been tendered?

13:05:54 25

13:05:55 26 MR NATHWANI: It has, the legal advice is RC851.

27

13:06:08 28 COMMISSIONER: Thank you.

13:06:09 29

13:06:09 30 MR NATHWANI: We see paragraph 160, you met with Deputy
13:06:12 31 Commissioner Cartwright and Mr McRae on 3 November. You're
13:06:16 32 there indicating that Mr Cartwright should discuss with
13:06:19 33 Mr Pope the need for an independent review about how
13:06:22 34 Witness F has been handled and the risk presented. To put
13:06:25 35 that into context, if you look over the page at paragraphs
13:06:30 36 158 and 159, this is in the context of the Maguire
13:06:33 37 advice?---Yes.

38

13:06:34 39 So whilst he might not be on Driver, you're suggesting
13:06:38 40 there that Mr Pope be involved with Witness F, agree?---No,
13:06:44 41 I was saying to Cartwright, because Pope's in charge of
13:06:49 42 that area, so we need the whole thing to be reviewed and
13:06:53 43 that would happen through Mr Pope.

44

13:06:55 45 Hold on, you're saying you receive this allegation on 21
13:06:57 46 October and by the 24th moves are afoot to remove Pope from
13:07:03 47 Driver. The reality was he was still intimately involved,

13:07:06 1 as I said, with Witness F, do you agree with that?---This
13:07:08 2 is more general reference to the governance issues, the
13:07:11 3 fact it needed to be reviewed. It wasn't talking about the
13:07:14 4 management of her.
5
13:07:15 6 Hold on, can I read this again then, sorry, I want to
13:07:18 7 understand it. So when you write in your statement at 160,
13:07:22 8 "I indicated that Deputy Commissioner Cartwright should
13:07:26 9 discuss with Assistant Commissioner Pope the need for an
13:07:29 10 independent review about how Nicola Gobbo had been handled
13:07:35 11 and the risk presented", where's that about general other
13:07:39 12 issues?---No, that's about the fact that we needed to do a
13:07:42 13 full review into it all and Jeff Pope was in charge of that
13:07:46 14 area so that was my advice to Cartwright.
15
13:07:50 16 If we go on and go to paragraph 168 and 169. An email sent
13:08:03 17 relating to Mr Pope, Commonwealth and others stating that
13:08:10 18 you should only proceed on the ACC committal proceedings
13:08:14 19 absent Ms Gobbo, do you see that?---Yes.
20
13:08:16 21 What was the purpose of including Mr Pope if you were now
13:08:19 22 taking the forefront and not involving him?---Because he
13:08:22 23 was in charge of the whole of the HSMU stuff and it was an
13:08:26 24 email that was sent to a range of people, including him, so
13:08:29 25 I made sure that everybody knew that she wasn't going to be
13:08:34 26 appearing.
27
13:08:34 28 176, another example in your statement, 8 November.
13:08:45 29 7.30 am on 8 November 2011, "I met with Fryer, Boris Buick,
13:08:50 30 Frewen, Sheridan and Mr Pope attended by telephone", again
13:08:55 31 discussing Gobbo. This is in the height of the purported
13:09:01 32 investigation into whether or not she had had a sexual
13:09:06 33 relationship with Mr Pope and whether he should be involved
13:09:08 34 in anything to do with her. Again, do you stand by that he
13:09:13 35 wasn't involved in the decision-making process as far as
13:09:16 36 she was concerned?---No, I decided that, not him.
37
13:09:21 38 Why is he involved?---Because he was running that whole
13:09:24 39 area, it was just unavoidable.
40
13:09:26 41 If a decision had been made by Mr Cartwright, conveyed to
13:09:30 42 you, saying, "Because he's got a potential conflict of
13:09:33 43 interest, he should be stood aside until it's resolved",
13:09:35 44 can you help with why he doesn't look like he's been stood
13:09:38 45 aside at all?---I believe he was. I've just dealt with
13:09:41 46 this by way of making sure everyone knew what my decision
13:09:45 47 was in relation to her appearing as a witness.

1

13:09:47 2 And then following through, what then happens is that
13:09:51 3 Mr Pope, as we know - well, what happens at this time, and
13:09:58 4 we'll go to 3 November, you were asked questions by
13:10:02 5 Mr Winneke about the 3 November Task Force Driver note - I
13:10:08 6 don't need to take you to it - this is the reference where
13:10:10 7 you appear to be raising concerns about Inca. Do you
13:10:14 8 remember that notes?---Yes.

9

13:10:16 10 Mr Cartwright's note, where it certainly records that you
13:10:19 11 suggesting what's happening in Inca is a concern. And just
13:10:21 12 to put this in context, Mr Higgs and Mr Barbaro, who were
13:10:26 13 some of the main accused in that case, didn't enter guilty
13:10:29 14 pleas until January 2012 and they were then sentenced on
13:10:32 15 May 2012, so this was, I would say, a live issue which I
13:10:38 16 think at the time was considered the largest ecstasy haul
13:10:40 17 in the world. But on 3 November at about 2.50, just
13:10:48 18 looking at the SMLs, were you aware that Ms Breckweg and
13:10:51 19 Mr Beale were in fact given disclosure of the SMLs?---I
13:10:57 20 understood that at some stage they've gone through the
13:11:00 21 SMLs. I don't know that I knew it at that stage though
13:11:03 22 that she'd, Ms Breckweg had been through the SMLs. I
13:11:10 23 certainly came to know that.

24

13:11:12 25 It may put into context the contact you had with her after
13:11:15 26 that date. Just to go through a summary of the SMLs. The
13:11:19 27 evidence of Mr O'Connor last week was Ms Breckweg and
13:11:24 28 Mr Beale spent about three hours going through the SMLs.
13:11:27 29 If we can just have a cursory look at some of the entries.
13:11:32 30 So if we start at ICRs 3838. Bearing in mind - sorry, the
13:11:43 31 SMLs, my fault. Start again. They were provided the SMLs.
13:11:52 32 Not the ICRs. They were provided the SMLs

33

13:11:55 34 MR HOLT: Again, if these could, as they have been, not be
13:11:59 35 on the screens other than those that - - -

36

13:12:01 37 COMMISSIONER: Yes.

38

13:12:02 39 MR NATHWANI: Just to pause there, at that time Mr Mokbel
13:12:06 40 had been convicted of a Commonwealth offence by the time
13:12:11 41 they looked at the SMLs. The ACC case regarding Dale was
13:12:15 42 in full flow and Inca, Karam and the like was also in full
13:12:20 43 flow. We see entry 1, 7 September 05. You see there's a
13:12:24 44 direct reference to Mr Mokbel, do you see that, straight
13:12:30 45 off, the first entry, "Ms Gobbo wants to talk re
13:12:34 46 association with the Mokbel crew". 7 September 05, first
13:12:41 47 entry?---Yes, yep.

1
13:12:45 2 I just want to highlight just a few to see what these
13:12:50 3 documents show. The 16 September entry, assessment of
13:12:53 4 human source intel, all about Mokbel, do you see
13:12:58 5 that?---Yes.
6
13:13:00 7 If we go to 7 to 9 August 2006. Do you see there's an
13:13:26 8 entry there, 7 August 2006. It's the second entry.
13:13:32 9 Obviously don't read it out. But it relates to Mr Karam,
13:13:36 10 do you agree with that, do you see that?---Yes.
11
13:13:40 12 And the issue of an envelope being dropped off. Then 9
13:13:43 13 August, Customs seizure of cigarettes in Sydney?---Yes.
14
13:13:54 15 Then fast-forward to 27 April 2007. You see there's an
13:14:26 16 entry in relation to Karam?---Yes.
17
13:14:31 18 In fact there's then another one that wrongly says on my
13:14:34 19 copy 27 April 2008, but it's a further Karam entry, do you
13:14:38 20 see that?---Yes.
21
13:14:41 22 If we go then, please, to 30 May 2007, which is - you see
13:14:57 23 there's documents provided in relation to the import of
13:15:00 24 tomatoes from Italy?---Yes.
25
13:15:03 26 Which is Operation Inca. And also information in relation
13:15:05 27 to Mokbel, do you see that?---Yes.
28
13:15:09 29 15 June 2006, Karam, Dale, do you see that?---Yes.
30
13:15:27 31 28 June 2007, shipping container searched, bound to contain
13:15:40 32 what we know is Operation Inca?---Right.
33
13:15:43 34 You see the information there about who it implicates,
13:15:46 35 Karam, Higgs and others?---Yes.
36
13:15:48 37 I don't need to keep going through. There's numerous other
13:15:51 38 examples. But do you agree there was material contained
13:15:56 39 within - just from a cursory glance, that related to
13:15:59 40 Ms Gobbo's use in successful or ongoing prosecutions
13:16:03 41 involving the Commonwealth?---Yes, in those source
13:16:11 42 management logs there are, yes.
43
13:16:12 44 And in particular matters related to Inca which you had
13:16:16 45 raised that morning?---Yes.
46
13:16:17 47 And you discuss obviously the issue of disclosure. As far

13:16:20 1 as you were aware, were any disclosures made at that stage
13:16:23 2 by the Commonwealth to anybody in line with the policy that
13:16:27 3 Mr Winneke took you through this morning?---Not that I'm
13:16:33 4 aware of.

5
13:16:34 6 Commissioner, I note the time.

7
13:16:37 8 COMMISSIONER: All right, we'll adjourn until 2 o'clock,
13:16:40 9 thanks.

13:16:41 10
13:16:42 11 <(THE WITNESS WITHDREW)

13:16:43 12
13 LUNCHEON ADJOURNMENT

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13:57:27 1 UPON RESUMING AT 2.07 PM:
14:07:06 2
3 <GRAHAM LEONARD ASHTON, recalled:
4
14:07:06 5 COMMISSIONER: Yes Mr Nathwani.
14:07:07 6
14:07:10 7 MR NATHWANI: Mr Ashton, I didn't actually take you to the
14:07:12 8 findings of Mr Cartwright in relation to the allegation of
14:07:18 9 sex with Mr Pope. If I could just take you to that
14:07:22 10 document because it's relevant to the period we're looking
14:07:25 11 at, so RC852. Were you ever shown this document? If we
14:07:40 12 just scroll through it, this is the findings made by
14:07:42 13 Mr Cartwright as far as the allegations are
14:07:59 14 concerned?---Yes.
14:08:00 15
14:08:01 16 Were you aware of this document in November 2011?---I don't
14:08:07 17 believe so.
14:08:08 18
14:08:09 19 Just if we go to p.2 in the middle, we have a look at the
14:08:15 20 alleged or purported investigation. We see the nature and
14:08:19 21 circumstances. The core allegation is Commissioner Pope
14:08:21 22 had a sexual relationship with Ms Gobbo, no more than that,
14:08:26 23 although Gobbo then questions whether or not Pope should
14:08:29 24 have sat on a steering committee overseeing her handling.
14:08:31 25 She no allegations as to any other conduct that was
14:08:31 26 inappropriate. She makes no suggestion as to any other
14:08:34 27 behaviour at the time of the relationship or subsequently.
14:08:36 28 Refers to Mr Pope's affidavit. And then refers to the
14:08:40 29 material he obviously had before him, which was the two
14:08:44 30 page extract. The conversation's very brief but in that
14:08:47 31 Gobbo seems to suggest a lack of familiarity with Pope. As
14:08:50 32 you see, "I question whether an intelligent person of her
14:08:54 33 background would forget that. I'm of the view that the
34 material before me is not sufficient for a reasonable
14:08:59 35 person to believe that such a relationship existed". It
14:09:02 36 seems to be setting out, you agree, the material that was
14:09:04 37 before him, Pope's affidavit, and it looks like the
14:09:08 38 transcript or the extract of the transcript she had with
14:09:11 39 Boris Buick?---Yes.
14:09:12 40
14:09:13 41 And nothing more. Then it goes on, and if we go down to
14:09:17 42 p.3, in the middle, "There is no evidence or allegation of
14:09:22 43 any other inappropriate conduct. There's no suggestion of
44 favouritism, of any inappropriate exchange of information,
45 or of Pope making or influencing any decisions related to
14:09:35 46 Gobbo at that time". Then it goes the last sentence, "His
14:09:40 47 role on the Driver steering committee is as a member, not

14:09:43 1 as a chair". Obviously you say he was chair for a period.
14:09:47 2 "Again there was no suggestion Pope had done anything
14:09:49 3 inappropriate in this role". Then the comment, we see
14:09:51 4 again it says, "Assistant Commissioner Pope's involvement
14:09:55 5 in the Driver steering committee has been dealt with as a
14:09:59 6 separate matter and under separate correspondence".
14:10:01 7 Pausing there, am I right in saying that at no time was it
14:10:05 8 conveyed to you by Mr Cartwright that Mr Pope should not be
14:10:08 9 involved at all as far as Ms Gobbo was concerned in
14:10:11 10 relation to the ACC proceedings?---No.
14:10:13 11
14:10:16 12 So now going back to, before lunch I was asking you about 3
14:10:21 13 November, which is an important date in 2011 because we
14:10:25 14 know, we had the Driver Task Force minutes which you were
14:10:29 15 referring to Operation Inca and you were concerned as to
14:10:32 16 the disclosure that would be required as far as Gobbo's
14:10:36 17 involvement in that related, I can bring that document up
14:10:39 18 if it helps you?---Thank you.
14:10:41 19
14:10:41 20 If we could have then the Driver Task Force minutes which
14:10:44 21 are RC844. You remember this document, Mr Cartwright's
14:11:00 22 notes?---Yes, that document.
14:11:01 23
14:11:01 24 You have diary notes but his notes reads in the middle, "GA
14:11:07 25 concerns around Inca"?---Yes.
14:11:08 26
14:11:08 27 It looks as though you're raising a concern about the
14:11:12 28 large, world's largest ecstasy bust at the time, "A pending
14:11:18 29 AFP matter for drug, a large scale importation off joint
14:11:18 30 operations. Gobbo was the originating human source.
14:11:21 31 Federal Police, although aware of the importance of her,
14:11:24 32 are not aware that it was Ms Gobbo who in fact provided the
14:11:28 33 information. Some concern that Ms Gobbo's acting as a
14:11:31 34 legal advisor to one of the accused at the time.
14:11:33 35 Consequently requiring disclosure or at least make the
14:11:38 36 prosecution aware of F's involvement and the potential that
14:11:38 37 she was a legal advisor", okay?---Yes.
14:11:41 38
14:11:41 39 We know, because the notes are 11.30, that as it so happens
14:11:45 40 at 2.50 in the afternoon Commonwealth prosecutors, two of
14:11:50 41 them, attend at Mr Pope's direction and view the SMLs for
14:11:57 42 three hours, okay?---In relation to Mr Dale?
14:12:01 43
14:12:01 44 Dale's prosecution?---Yes.
14:12:02 45
14:12:02 46 But the evidence we have is they were provided unredacted
14:12:06 47 full access to the SMLs, okay?---Yes.

14:12:09 1
14:12:09 2 We went through some of the entries that are obvious in
14:12:12 3 that document?---Correct.
14:12:13 4
14:12:13 5 Does that put into context the conversations you then have
14:12:16 6 with those same prosecutors from 4 November onwards?---I
14:12:22 7 don't, I don't think I was aware at that time that they'd
14:12:25 8 been through the management logs themselves.
14:12:27 9
14:12:27 10 Because if we go to your statement, so just look at what's
14:12:30 11 happening at that time in your statement, let's go to
14:12:34 12 paragraph 165. We see there's an email that you were
14:12:49 13 copied into, okay, and it's the view of yourself "and I",
14:12:56 14 that's Fryer, that, "If the Director of Public
14:13:00 15 Prosecutions", I assume the Commonwealth Director, "Formed
14:13:02 16 the view any of the material was discoverable and relevant
14:13:06 17 and must be presented to the defence, then we request the
14:13:08 18 Commonwealth Director to proceed on the six charges only,
14:13:12 19 which don't require Gobbo as a witness. Our rationale
14:13:16 20 being any disclosure or even the potential of a disclosure
14:13:19 21 is an unacceptable risk to her and we have a duty of care",
14:13:22 22 okay?---Yes.
14:13:23 23
14:13:24 24 Obviously that was in your mind on 3 November, the fact
14:13:26 25 that she was a human source and all of the background. We
14:13:29 26 then, as I've taken you through the chronology, know that
14:13:33 27 you're raising those issues at the Driver Task Force
14:13:36 28 meeting?---What, the meeting with Mr Cartwright and
14:13:39 29 Mr McRae?
14:13:40 30
14:13:40 31 That's right. Then we then see, or as we know, the
14:13:44 32 Commonwealth prosecutors have a look at the SMLs and then
14:13:47 33 paragraph 168, this is the day after, "I had discussions
14:13:52 34 throughout the afternoon regarding Ms Gobbo's appearance at
14:13:55 35 the Dale committal proceedings on the ACC charges. I spoke
14:14:00 36 with Mr Beale and to him said I did not want her called
14:14:02 37 because I had concerns about her safety", okay?---Yes.
14:14:05 38
14:14:06 39 That coincides with what you said in evidence on the first
14:14:10 40 day here when you were asked by Mr Winneke about your
14:14:14 41 reasons for wanting her not to give evidence in that
14:14:20 42 prosecution and you say, and this is at p.10644, lines 24
14:14:26 43 to 28, you were asked about whether or not the charges
14:14:34 44 should proceed and there's mention made of Mr Beale, or
14:14:36 45 Mr Justice Beale as he now is, and you said, "The reason
14:14:39 46 you say is because, 'We didn't want to reveal Ms Gobbo's
14:14:43 47 role as a source'", question. Your response, "Well I was

14:14:47 1 concerned about her safety in terms of revealing her as a
14:14:50 2 human source to Dale at that stage and I was concerned
14:14:52 3 about her safety"?---Yes.
14:14:53 4
14:14:54 5 You stand by that?---Yes, of course.
14:14:55 6
14:14:55 7 Can we just consider this. Paul Dale already knew at that
14:15:01 8 stage that she'd worn a wire against him, about three years
14:15:08 9 before this date, so that doesn't hold the same weight as
14:15:11 10 you seem to be suggesting, do you agree?---Well that
14:15:14 11 concern about her safety at that stage, we started to have
14:15:17 12 concerns that we didn't know what we had with her, her
14:15:20 13 safety wasn't just in respect to Mr Dale.
14:15:22 14
14:15:22 15 But that was your response you see?---But the concern was
14:15:26 16 in relation to everyone. I think I've been consistent in
14:15:29 17 making that known.
14:15:30 18
14:15:30 19 Because by 4 November you and the Commonwealth were engaged
14:15:34 20 in discussions about the use of Ms Gobbo, and do you accept
14:15:39 21 your primary concern was not Ms Gobbo's health or safety,
14:15:42 22 that was collateral, it was not revealing she was a source
14:15:46 23 because of the impact it would have on Victoria Police, its
14:15:49 24 reputation and a number of convictions?---No, that's
14:15:52 25 complete rubbish.
14:15:53 26
14:15:54 27 Complete rubbish?---In my view, yes.
14:15:55 28
14:15:56 29 Ms Breckweg, as we see from the emails, seems to ignore
14:15:59 30 that position. Do you agree? Her view is that the
14:16:03 31 prosecution should continue, I don't need to go through
14:16:06 32 every paragraph?---Yes, she wanted it to continue at that
14:16:10 33 stage.
14:16:10 34
14:16:11 35 Those conversations with her and those above her must have
14:16:15 36 involved discussions about the contents of the SMLs?---No,
14:16:18 37 I don't recall them talking about the contents of the SMLs,
14:16:23 38 no.
14:16:24 39
14:16:26 40 So your evidence is despite them seeking access to it, that
14:16:30 41 it did not result in any further conversations or any
14:16:34 42 conversations about the contents of the SMLs?---I don't
14:16:37 43 think I knew at that stage that they'd actually been
14:16:41 44 through the SMLs.
14:16:42 45
14:16:42 46 On 4 November, the same day you're having these discussions
14:16:46 47 with Boris Buick and you send an email to Mr Pope and

14:16:50 1 Ms Breckweg, she is in fact making further attempts, this
14:16:53 2 is in Mr O'Connor's statement, on the 4th, to get access to
14:16:58 3 the SMLs again, okay, and you're really saying in the days
14:17:01 4 that followed there was no discussion whatsoever about the
14:17:05 5 impact of revealing that Ms Gobbo was a human
14:17:07 6 source?---Yeah, I'm pretty confident they weren't, that's
14:17:11 7 right.
14:17:11 8
14:17:12 9 Do you have any notes that relate to discussions with
14:17:15 10 Ms Breckweg or any other Commonwealth prosecutor, Mr Kirne,
14:17:20 11 about the discussions you had?---Just the notes that are in
14:17:23 12 my diary which are in the statement.
14:17:24 13
14:17:31 14 Your evidence is the only purpose behind having her
14:17:33 15 withdrawn from the Dale prosecution is purely because of
14:17:37 16 the risk to her safety?---Yes.
14:17:39 17
14:17:46 18 You had no concern whatsoever about the impact on
14:17:50 19 prosecutions and convictions that Victoria Police had
14:17:53 20 ongoing or had secured?---In relation to that prosecution,
14:17:59 21 I just had concerns for her safety because we didn't know
14:18:01 22 what we were dealing with at that stage around the breadth
14:18:05 23 of her reporting to police as a source, we didn't know how
14:18:09 24 much, what she conveyed about whom, other than this broad
14:18:13 25 sense. We needed to get to the bottom of it and we
14:18:16 26 couldn't possibly assess that risk at that stage, I just
14:18:19 27 felt it was too unsafe for her.
14:18:20 28
14:18:21 29 As I understand it in the background there was Mr Pope who
14:18:24 30 was copied into the emails on 4 November onwards, and
14:18:28 31 involved certainly in the background in the decision-making
14:18:31 32 process for her use. There was Ms Breckweg, Mr Sheridan.
14:18:35 33 All who had been involved in those Commonwealth prosecutors
14:18:38 34 looking at the SMLs, but you were just kept out of the
14:18:42 35 loop?---I don't think kept out of the loop, I don't
14:18:45 36 remember that coming up in discussions because I remember -
14:18:48 37 the reason I say that is because I don't think I knew that
14:18:50 38 they went through the logs at that stage.
14:18:52 39
14:18:52 40 It's common sense they would have been saying, "We've been
14:18:54 41 through the material you don't want discoverable and we
14:18:58 42 don't see there's a problem"?---No, because these were -
14:18:59 43 there were meetings happening between the investigators and
14:19:01 44 the DPP at that time and my purpose for being involved was
14:19:05 45 saying, "Look, I don't want her to appear because I think
14:19:08 46 there's risks to her safety" and so it wasn't a matter of
14:19:12 47 going into the logs and going through the logs and saying,

14:19:16 1 "Well there's this entry, there's that entry", it didn't
14:19:19 2 get into that sort of detail.
14:19:22 3
14:19:22 4 Can we move on to the Comrie Report. Obviously Ms Breckweg
14:19:31 5 seems to be keen for the Commonwealth to carry on with the
14:19:35 6 prosecution and this is early November 2011, okay?---H'mm.
14:19:40 7
14:19:40 8 Also at the time we see the allegation made against
14:19:44 9 Mr Pope, a conflict of interest, I think that's neutral way
14:19:50 10 of putting that, okay?---Yes.
14:19:52 11
14:19:52 12 You, Mr Cartwright, Mr Pope were involved in those
14:19:56 13 issues?---In the reporting of them, yes, I was. Yes.
14:19:59 14
14:20:00 15 Was there a concern that once the Commonwealth had been
14:20:03 16 made aware of the SMLs, that they would do something that
14:20:07 17 would reveal the fact that Ms Gobbo had been acting as a
14:20:10 18 human source for Victoria Police?---No, I didn't have any
14:20:15 19 concerns of that regard.
14:20:16 20
14:20:16 21 So you would say just pure coincidence that all of those
14:20:20 22 matters were happening and it's at that time you,
14:20:22 23 Mr Cartwright, and Mr Pope are involved in the initiation
14:20:25 24 of the Comrie Report?---I wasn't involved in the, I was the
14:20:29 25 one that recommended it to the Deputy Commissioner and then
14:20:32 26 him and Finn McRae were involved in the establishment of
14:20:35 27 the Comrie Review.
14:20:36 28
14:20:36 29 That wasn't the question. The question was is it just a
14:20:40 30 coincidence that all these matters that could potentially
14:20:42 31 embarrass senior decision makers of Victoria Police were
14:20:47 32 occurring and it just so happened those same people were
14:20:50 33 involved in the initiation of the Comrie Report?---I can't
14:20:54 34 provide you an answer to that question because the premise
14:20:55 35 of your question is incorrect.
14:20:57 36
14:20:57 37 Let's move on then. At paragraph 136 of your statement you
14:21:11 38 say, "Other than the matters I refer to in question 10
14:21:15 39 below", which relates, as we say, to the use of Ms Gobbo,
14:21:20 40 "I'm not aware of any concerns being raised by the AFP, the
14:21:23 41 Office of Public Prosecutions and the CDPP with respect to
14:21:30 42 the use of a legal practitioner as a human source". I just
14:21:32 43 want to deal with that as best we can. When do you say the
14:21:36 44 AFP first became aware that Ms Gobbo - or a legal
14:21:40 45 practitioner had been used as a human source?---The AFP?
14:21:43 46
14:21:44 47 Yes?---Gee, I would have no idea.

14:21:46 1
14:21:48 2 Pre or post 2011?---That she was a human source, sorry?
14:21:54 3
14:21:54 4 Just looking at your - you've drafted that answer, okay.
14:21:58 5 In your statement, paragraph 136?---Yes, I'm not - so,
14:22:05 6 sorry, what's the question then specifically?
14:22:07 7
14:22:07 8 You say there that there'd been no concerns raised by the
14:22:12 9 AFP with respect to the use of a legal practitioner,
14:22:15 10 okay?---More generally other than like - more generally in
14:22:19 11 relation to the use of a legal practitioner as a human
14:22:25 12 source, yes.
14:22:25 13
14:22:26 14 Okay. Now, to understand the issue of whether concerns are
14:22:31 15 being raised we have to look at when you say they became
14:22:35 16 aware or knew. That's the question, I'm going to go
14:22:38 17 through each of these institutions. The AFP to the best of
14:22:40 18 your recollection, when did they first become aware of the
14:22:43 19 use of Ms Gobbo as a human source?---Gee - - -
14:22:45 20
14:22:46 21 MR COLEMAN: I think the flaw in my learned friend's
14:22:48 22 approach is that this particular paragraph answers a
14:22:50 23 question that was asked of Mr Ashton for the purposes of
14:22:54 24 preparing his statement and it didn't specifically, as I
14:22:57 25 recall it at least, whilst it doesn't set it out, directly
14:23:00 26 deal with Ms Gobbo. It dealt with it on a more general
14:23:04 27 basis as to the awareness of the use of legal practitioners
14:23:09 28 as human sources, or concerns about legal practitioners as
14:23:13 29 human sources.
14:23:14 30
14:23:15 31 MR NATHWANI: We see above it, just for the avoidance of
14:23:17 32 doubt in bold it says, "Concerns in relation to the use of
14:23:21 33 Ms Gobbo as a human source, questions 9 and 10", and you
14:23:24 34 respond to question 9, "Other than the matters I've
14:23:27 35 referred to, in answer to question 10 below, I'm not aware
14:23:33 36 of any concerns being raised by the AFP, the OPP or the
14:23:36 37 CDPP with respect to the use of a legal practitioner as a
14:23:38 38 human source". That's in response to the question which is
14:23:43 39 use of Ms Gobbo as a human source, okay?---Well that's -
14:23:45 40 no. That's a response to that. I thought that was a
14:23:49 41 response to a question about the use of human sources as
14:23:51 42 legal practitioners more generally, because I've referred
14:23:54 43 above to my knowledge in relation to her.
14:23:54 44
14:23:54 45 COMMISSIONER: Perhaps we can clarify that if we can find
14:23:57 46 the letter and what question 9 relates to.
14:24:00 47

14:24:01 1 MR NATHWANI: Try and focus then, let's see if we can focus
14:24:02 2 upon Ms Gobbo?---Yes, happy to do that.
14:24:04 3
14:24:06 4 And if Mr Winneke or others want to pick up for general
14:24:10 5 legal practitioners of course they will. The AFP. As far
14:24:14 6 as you were concerned were the AFP ever aware that Ms Gobbo
14:24:18 7 was a human source that was involved in their
14:24:21 8 prosecutions?---I don't know. I don't know the answer to
14:24:27 9 that question.
14:24:27 10
14:24:28 11 Looking at just one of the documents we had earlier, 3
14:24:31 12 November Driver Task Force minutes meeting. You refer to
14:24:34 13 Operation Inca and then there's a reference to, "AFP are
14:24:37 14 aware that F is a" - sorry, "AFP are aware that there is a
14:24:44 15 human source involved but not sure, not aware that Gobbo is
14:24:47 16 that source"?---Or that there's a legal practitioner.
14:24:51 17
14:24:51 18 To the best of your knowledge did they ever become
14:24:54 19 aware?---I think eventually they did, yes. I don't know
14:24:59 20 when though.
14:24:59 21
14:25:00 22 The OPP, because we've already dealt with the CDPD from
14:25:05 23 some of the questions. When do you say the OPP became
14:25:08 24 aware of the use of Ms Gobbo as a human source?---Well I
14:25:11 25 think I was under a misapprehension initially in that
14:25:19 26 regard, but as far as I now know I think it was sometime in
14:25:24 27 that middle of 2008.
14:25:24 28
14:25:24 29 2008?---Yes.
14:25:25 30
14:25:26 31 Can you remember when in 2008?---Just when I think
14:25:29 32 ultimately Mr McRae says he spoke with the State OPP at
14:25:36 33 that stage.
14:25:36 34
14:25:36 35 I'm hearing it's 2012. Can we pull up the SMLs, 2958, 1
14:25:42 36 July 2009. We heard some evidence last week. I ask you
14:25:46 37 this obviously because of your role in 2011?---H'mm.
14:25:51 38
14:25:51 39 If we can pull up the SMLs, 2958.
14:25:54 40
14:25:55 41 MR HOLT: The SMLs ought not be on the screen but I'm very
14:25:59 42 conscious that our learned friend for the DPP may well want
14:26:03 43 to look at this and she should be given the opportunity to
14:26:04 44 do so.
14:26:04 45
14:26:05 46 MS O'GORMAN: It's only the SML of 1 July.
14:26:09 47

1 MR NATHWANI: It is and I know she's got a copy. If we
14:26:10 2 could pull up 1 July 2009. We heard some evidence last
14:26:12 3 week in relation to this, it involved Operation Briars
14:26:15 4 which of course you had an interest in. Do you see the
14:26:19 5 entry it says, "Meet with Inspector Waddell"?---Yes.
14:26:24 6

14:26:28 7 I'll read out what I'm allowed to read out. "Provide a
14:26:32 8 document re intelligence holdings in relation to Ms Gobbo",
14:26:35 9 do you see that? You were asked - just to put this into
14:26:42 10 context?---Sorry, I'm just - where is that section, sorry?
14:26:46 11

14:26:46 12 Okay, I can't see what you're looking at?---Sorry, just
14:26:51 13 repeat what you said then I'll try and find it.
14:26:52 14

14:26:53 15 1 September 2009?---Of September?
14:26:55 16

14:26:55 17 July. "Meet with Waddell, Op Briars", do you see
14:27:00 18 that?---Got that, yep, yep.
14:27:01 19

14:27:03 20 Just to put this into context, this was the time when there
14:27:07 21 were considerations of using Ms Gobbo as a witness for
14:27:11 22 Briars?---Yes.
14:27:13 23

14:27:13 24 Okay. And there was discussions about Mr Waddell being
14:27:19 25 provided the background as far as Ms Gobbo was concerned to
14:27:22 26 consider whether or not to use her, okay?---Yes.
14:27:24 27

14:27:24 28 And also at this time Mr Mokbel was charged with murder in
14:27:30 29 relation to Mr Moran, Lewis Moran?---Right.
14:27:34 30

14:27:34 31 And at that time he'd issued a subpoena, I think Mr Winneke
14:27:38 32 was asking you about yesterday?---Yes.
14:27:40 33

14:27:41 34 And just going through the entry, it says, "Provide a
14:27:44 35 document about the holding", so Mr Waddell's been provided
14:27:47 36 the documents. It reads, the handler's written, "Informed
14:27:52 37 by Mr Waddell that Rapke aware that Ms Gobbo is a witness",
14:27:57 38 okay. That's a reference to the former Director of Public
14:28:01 39 Prosecutions, all right. We can see when we carry on.
14:28:05 40 "Tony Mokbel defence team have subpoenaed VicPol re any
14:28:08 41 material that goes to the credit of a particular person
14:28:10 42 relating to the charge of murdering Lewis Moran", do you
14:28:14 43 see that?---Yes.
14:28:17 44

14:28:18 45 "Briars have attempted to fight the request which could
14:28:20 46 encompass these documents, the human source documents, and
14:28:24 47 have lodged a confidential affidavit before the judge", all

14:28:29 1 right? "Who will not entertain the same, insisting that he
14:28:33 2 runs a transparent court and no secrets will be kept from
14:28:37 3 the officers of the court", do you see that?---Yes.

14:28:39 4
14:28:40 5 It looks as though the police have submitted a confidential
14:28:43 6 affidavit to try and stop the disclosure of this
14:28:46 7 material?---Yes.

14:28:46 8
14:28:46 9 The judge has said, "No chance", okay?---Yep.

14:28:48 10
14:28:49 11 And then it says that, "Mr Rapke advised the matter may
14:28:56 12 have to go to appeal or be withdrawn", so in other words
14:28:58 13 appeal the decision of the judge or pull the murder charges
14:29:02 14 against Mr Mokbel. "Mr Waddell to meet with Cornelius
14:29:06 15 today. Advise Mr Waddell Ms Gobbo is not yet a witness and
14:29:10 16 the material from the SDU should be subject to a privilege
14:29:16 17 claim", okay?---Yes.

18
14:29:16 19 To the best of your knowledge considering that, was there
14:29:19 20 any suggestion that the OPP were aware that Ms Gobbo was a
14:29:23 21 human source back in 2009?---Yeah, I wasn't a party to any
14:29:29 22 conversations around them being informed, but in 09 we had
14:29:34 23 Briars running, like in the context I was at the OPI at
14:29:38 24 that stage, we had Briars running, we were trying to
14:29:42 25 prepare briefs of evidence and the investigators, I think
14:29:46 26 on both Briars and Petra, were liaising with prosecutors on
14:29:53 27 those sort of matters because they were putting the briefs
14:29:56 28 together on them at one point. So there would have been
14:29:58 29 meetings between investigators and the OPP as part of that,
14:30:04 30 but I don't know specifically what was provided across or
14:30:09 31 not, whether anything, that information was provided or
14:30:12 32 not.

14:30:12 33
14:30:13 34 Because you were part of Briars do you know who was
14:30:16 35 responsible for the confidential affidavit that was
14:30:18 36 provided to the judge trying to withhold this
14:30:20 37 disclosure?---It would have been one of the senior
14:30:22 38 investigators I should think.

14:30:23 39
14:30:24 40 Would that have been made with the knowledge and consent of
14:30:28 41 those on the management of Briars?---We wouldn't have
14:30:32 42 objected to trying to protect, because Briars was an
14:30:36 43 ongoing operation at that stage, we wouldn't have objected
14:30:39 44 to try to go through a process with a judge to try and
14:30:43 45 protect that information.

14:30:43 46
14:30:46 47 Just then discussing the change in your statement which you

14:30:49 1 dealt with on the first day, I just want to ask you a few
14:30:53 2 more questions about obviously Mr Champion because he was
14:30:56 3 involved as the Director when disclosures were made?---Yes.
14:30:59 4
14:31:01 5 Were you aware, you were asked about the Cvetanovski trial
14:31:05 6 and you said you had some knowledge of it, but in April
14:31:08 7 2011 Mr Cvetanovski made an allegation that in effect
14:31:16 8 Ms Gobbo, others and the police were involved in effect in
14:31:18 9 a conspiracy, so much so that Mr Champion asked for the
14:31:24 10 trial to be adjourned for a couple of days. He wasn't the
14:31:32 11 Director of Public Prosecutions at that stage. Were you
14:31:33 12 made aware that there were police officers who in effect
14:31:37 13 attended his chambers to discuss what to do in those
14:31:41 14 circumstances?---No, I don't remember that as being the
14:31:44 15 specifics of there being such a meeting, but certainly the
14:31:47 16 investigators would be up at the OPP a lot, particularly
14:31:50 17 around Purana because there was serious organised crime and
14:31:58 18 stuff, they would regularly be consulting with the OPP as
14:32:02 19 part of those processes.
14:32:02 20
14:32:02 21 By prosecutors, we know for example Mr Horgan and Mr Tinney
14:32:04 22 prosecuted a large number of the Purana matters?---That
14:32:07 23 sort of level, yeah.
14:32:08 24
14:32:08 25 As we know they were also involved in advising re Briars.
14:32:13 26 You said when asked about why the change in your statement
14:32:16 27 as to when Mr Champion became aware, and you said this, and
14:32:19 28 this is p.10628 lines 26-37. You were asked, "So is your
14:32:30 29 recollection based on his", that's Mr McRae's recollection,
14:32:33 30 "Or his statement" and you replied, "No, Mr McRae's
14:32:37 31 statement has caused me to think harder about that issue in
14:32:40 32 terms of trying to make sure I was given the best
14:32:42 33 recollection I could, and when I was doing that there were
14:32:44 34 a number of times in the following years when I would ask
14:32:47 35 Finn, 'What's the OPP position in relation to this matter
14:32:51 36 as to disclosure?', et cetera. And when I was asking him
14:32:54 37 about that we were making, you know, he was talking about
14:32:57 38 the fact that Mr Champion hadn't had concerns. And there
14:33:00 39 were a number of those conversations and that really led me
14:33:03 40 to then think, actually did I mention Champion on the first
14:33:07 41 occasion or was it subsequent conversations that took place
14:33:10 42 over a few years". Trying, as I'm sure you will and have,
14:33:14 43 when do you think was the first time you made Mr Champion
14:33:18 44 aware of the exact issues relating to Ms Gobbo's use as a
14:33:24 45 human source?---I didn't make him aware but there were
14:33:30 46 occasions, as I said, when Finn would come to see me, and
14:33:34 47 there's references even in my notes that we've gone to

14:33:38 1 today of occasions when Finn's been meeting with me in that
14:33:42 2 governance context around his role and different matters
14:33:45 3 that are afoot and I'd say to him, "What's the situation on
14:33:50 4 that other matter", because it wasn't a matter I was
14:33:52 5 dealing with, it was being dealt with under Loricated and
14:33:56 6 subsequently Bendigo, so I just went, "Are they still not
14:33:59 7 exercised about that", because I was a bit surprised that,
14:34:04 8 you know, the OPP weren't exercised about it, so I was, I
14:34:10 9 was sort of asking that and he would say, no, that he
14:34:13 10 doesn't, doesn't believe they are and with reference to
14:34:16 11 Mr Champion.

14:34:17 12
14:34:17 13 So basically the person to ask at that time is probably
14:34:21 14 Mr McRae, but the message you were getting back from
14:34:24 15 Mr McRae was the Director wasn't concerned?---Correct.

14:34:28 16
14:34:28 17 Last topic then from me is about the transition of Ms Gobbo
14:34:34 18 from a source to a witness and that's looking at Petra and
14:34:38 19 also Briars. Do you agree the decision to transition
14:34:49 20 Ms Gobbo from source to witness was fraught with
14:34:56 21 risk?---Yes, it had a risk to it.

14:34:58 22
14:34:58 23 It had risk not only to her but you the police were also
14:35:02 24 cognisant of the risk to the institution, to the
14:35:05 25 police?---I suppose we're cognisant of it. It wasn't so
14:35:08 26 much, that wasn't so much a concern, it was more, yeah, her
14:35:12 27 risk.

14:35:12 28
14:35:12 29 You say you never saw the SWOT analysis, is that right?---I
14:35:16 30 don't believe I have, no.

14:35:17 31
14:35:18 32 Can we go then please to paragraphs 138 and 139 of your
14:35:23 33 statement?---Yep.

14:35:30 34
14:35:31 35 In 138 you say, "In about November 2008 the Task Force
14:35:36 36 Petra steering committee considered whether Ms Gobbo should
14:35:39 37 be transitioned from her status as a registered human
14:35:43 38 source to a witness in the prosecution of Paul Dale for the
14:35:45 39 murder of the Hodsons", okay?---Yes.

14:35:47 40
14:35:47 41 You then say, "Deputy Commissioner Overland was in favour
14:35:50 42 of this" and you shared the view?---Yes.

14:35:53 43
14:35:53 44 The next thing you say is, "I was aware from discussions at
14:35:57 45 the Task Force Petra steering committee meetings that
14:35:59 46 members of the SDU were against using Ms Gobbo as a
14:36:02 47 witness"?---Correct.

14:36:02 1
14:36:04 2 "They all said they understood the SDU's concern was for
14:36:05 3 the safety of Ms Gobbo should she transition from human
14:36:08 4 source to a witness"?---Correct.
14:36:09 5
14:36:09 6 Where were you getting that information from during those
14:36:12 7 discussions?---They were from discussions actually at the
14:36:16 8 steering committee.
14:36:16 9
14:36:17 10 But who?---Because - sorry?
14:36:19 11
14:36:19 12 Who?---I think they were from the investigator that was
14:36:22 13 reporting at that time, I'd say it would probably be Ryan
14:36:27 14 because I think at that time he was reporting to the
14:36:29 15 committee. We didn't have the source people come to those
14:36:33 16 meetings so it would have been Ryan.
14:36:35 17
14:36:35 18 We know from evidence we've heard and from the SMLs and the
14:36:39 19 ICRs, that at this time material was being conveyed to
14:36:44 20 Mr Overland, the SWOT analysis, junior members of the
14:36:50 21 Police Force prepared to raise significant concerns with
14:36:54 22 him directly. Did Mr Overland ever during those meetings
14:37:01 23 say, in any detail, what the concerns of the SDU were
14:37:05 24 beyond her safety?---No, look, I've no recollection
14:37:12 25 whatsoever of seeing that SWOT analysis and my memory of it
14:37:18 26 is they were always around, because the issue was
14:37:23 27 transitioning her as a witness, and I thought well, she
14:37:26 28 goes into witness protection, she could be a witness, a
14:37:28 29 very useful witness in that matter, it's significantly
14:37:33 30 strengthened the brief in my view against Dale, and that
14:37:38 31 witness protection could look after her security as far as
14:37:41 32 her safety went, which she had more concerns about her
14:37:45 33 safety and, you know, and by way of disclosure the fact she
14:37:51 34 was assisting police all that would be out in the open
14:37:54 35 because it would be dealt with in disclosure.
14:37:55 36
14:37:56 37 Do you find it extraordinary that Mr Overland didn't share
14:37:58 38 the concerns of the SDU with you?---Well, I can't speak for
14:38:02 39 Mr Overland, I suppose, what was acting on his mind at the
14:38:05 40 time as to why he didn't. I don't know why he didn't.
14:38:07 41
14:38:08 42 Having seen what the SWOT analysis says for example, now,
14:38:12 43 are you not surprised that wasn't disclosed to you?---I'm
14:38:16 44 surprised.
14:38:16 45
14:38:19 46 Do you agree you and Mr Overland and other senior members
14:38:23 47 of the Police Force saw the solving of the Hodson murders

14:38:27 1 as a glittering prize?---The phrase glittering prize came
14:38:37 2 from a review of the Witness Protection Program which was
14:38:41 3 conducted by former Commissioner of the New Zealand Police
14:38:45 4 and then he, as part of his review of witness protection
14:38:49 5 matters he used this term glittering prize, and I mentioned
14:38:54 6 it in front of Mr Kellam.
14:38:57 7
14:38:57 8 You did?---Because it was, it was in my evidence there as
14:39:00 9 to what they may have viewed this as a sort of glittering
14:39:04 10 prize, yeah.
14:39:05 11
14:39:05 12 What you said was this, I'm jumping through bits of what
14:39:09 13 you said, but it's at p.36 of Kellam. Your first answer,
14:39:15 14 lines 1 to 5, you said, "Well there was significant, yeah,
14:39:18 15 certainly, there's no doubt many cons, but on the pro side
14:39:22 16 there was the opportunity that this witness was going to
14:39:25 17 provide evidence which would contribute to another, to a
14:39:27 18 body of evidence that could be led to the progress of a
14:39:30 19 number of high profile investigations. At the most I guess
14:39:34 20 the top of that tree in terms of my involvement was in
14:39:37 21 relation to the Petra side of things with the Hodson
14:39:40 22 murders, that murder struck at the heart of the justice
14:39:42 23 system because that person was a witness in a criminal
14:39:45 24 trial or what was about to be a criminal trial. That
14:39:48 25 witness was exposing high levels of police corruption as
14:39:51 26 well. So that was a very important case for Victoria
14:39:54 27 Police to try and solve for public confidence as well".
14:39:58 28 You then say, I don't read it all, "So there was certainly
14:40:02 29 large prize on offer in my view in terms of that, if it had
14:40:05 30 worked", okay. Do you accept that the primary motive and
14:40:14 31 concern in transitioning Ms Gobbo as a witness was the
14:40:19 32 glittering prize as opposed to anything in relation to her
14:40:22 33 safety?---Well the objectives of making her a witness was
14:40:26 34 to get her the brief of, a brief in relation to Dale and
14:40:31 35 then certainly in relation to her safety, making sure that
14:40:35 36 she is then protected because becoming a witness,
14:40:39 37 everything is disclosed, she would need to be protected and
14:40:43 38 that's where the witness protection came into it.
14:40:45 39
14:40:46 40 Do you accept that her health and her safety as a human
14:40:48 41 source was not a primary issue for you and was just a
14:40:51 42 collateral by-product?---No.
14:40:55 43
14:40:56 44 Finally this about Mr Overland. You were asked questions
14:40:59 45 about him before Mr Kellam and you said this, that, and
14:41:03 46 this is at p.35, line 13, "He wasn't the sort of guy I had
14:41:12 47 that relationship with where I'd say, 'Hey listen, you

14:41:15 1 know, you need to rethink that' or that sort of stuff. It
14:41:20 2 only be in the context of the meeting that I'd test
14:41:24 3 information or" and then you're unheard. We know that the
14:41:26 4 SDU gave Mr Overland significant advice not to use Ms Gobbo
14:41:31 5 for a number of reasons, okay. Does it surprise you at all
14:41:35 6 that he ignored that advice?---I find it surprising but he
14:41:43 7 may well have had reasons and I think you'll need to ask
14:41:47 8 him about as to why, what acted on his mind. I don't know
14:41:50 9 how much he knew, I don't know what his decision making was
14:41:53 10 and his judgment was. He was a very experienced officer.
14:41:59 11 And my experience of him was, you know, he was, there was,
14:42:05 12 he had a lot of integrity from my experience of him. So,
14:42:10 13 you know, as to what was playing on his mind, I just, I
14:42:13 14 don't know, I think you'd have to ask him.
14:42:15 15
14:42:15 16 Obviously, and this is the last topic, we are involved in
14:42:19 17 Victoria Police's interactions with Ms Gobbo. Since the
14:42:24 18 revelation that she was Lawyer X in December last year,
14:42:30 19 you'll be aware I'm sure, you commented on it last night,
14:42:34 20 of her allegation that attempts be made by you, the
14:42:37 21 Victoria Police, to prevent her return to Australia, okay.
14:42:43 22 Are you aware that your officers have threatened to use
14:42:49 23 DHHS against her should she ever consider returning to
14:42:51 24 Australia?---In relation to her children, Commissioner, we
14:42:55 25 have a responsibility under legislation to make sure that
14:42:58 26 if we believe children are at risk in this jurisdiction we
14:43:02 27 notify DHHS and they would have, if they need to discharge
14:43:07 28 that obligation they would do that and then it would be a
14:43:10 29 matter for DHHS to assess whether that risk necessitated in
14:43:14 30 them taking any protective action. So if there's been any
14:43:17 31 discussions about the safety of her children it is in
14:43:19 32 relation to that engagement with DHHS.
14:43:23 33
14:43:29 34 Are you aware that that was made in forceful, perhaps
14:43:33 35 threatening terms in 2008 by one of your female
14:43:37 36 officers?---No, I'm not aware of that, no.
14:43:40 37
14:43:40 38 And perpetuated in March of this year by email and
14:43:46 39 telephone correspondence from another male officer of
14:43:50 40 yours?---No.
14:43:50 41
14:43:51 42 And also included the variation of a suppression order to
14:43:53 43 allow you to discuss this case with DHHS?---If that
14:43:58 44 occurred, I'm not aware of that occurring, but if that
14:43:58 45 occurred it would have been consistent with their
14:44:00 46 obligations I would suggest to you.
14:44:01 47

14:44:02 1 You say you're not aware at all of that occurring?---I'm
14:44:06 2 aware previously that DHHS has been mentioned, certainly,
14:44:09 3 but it would have been in line with those disclosure
14:44:11 4 obligations.
14:44:12 5
14:44:12 6 Thank you.
14:44:14 7
14:44:15 8 MR HOLT: Commissioner, there's an agreement which we've
14:44:17 9 raised with counsel assisting that Mr Chettle cross-examine
14:44:23 10 first given institutional issues that may be raised.
11
14:44:25 12 COMMISSIONER: Yes.
14:44:25 13
14 14 <CROSS-EXAMINED BY MR CHETTLE:
15
14:44:26 16 Mr Ashton, on the second-last topic, Mr Overland was a man
14:44:29 17 of strong personality and strong will?---Yes, yes.
14:44:32 18
14:44:32 19 The evidence in this Commission is that in December, early
14:44:36 20 December of 2008 he made it clear to the Superintendent in
14:44:42 21 charge of the SDU, Mr Biggin, that Ms Gobbo was going to be
14:44:48 22 a witness in the Petra matter, do you follow, and that's
14:44:54 23 clear. Indeed he repeated it the following morning at a
14:44:58 24 breakfast meeting. That led to the SWOT analysis that
14:45:02 25 you've been taken through, do you follow?---(Witness nods.)
14:45:05 26
14:45:06 27 It's perfectly clear you haven't seen it because you'd
14:45:11 28 remember what's in it you say?---Yes, and the other
14:45:15 29 material that may have assisted me in that regard but I
14:45:17 30 haven't seen anything that is prompting a memory of me
14:45:21 31 having seen that, no.
14:45:21 32
14:45:22 33 I accept that, I'm not querying that at all. What follows
14:45:26 34 from it as a matter of absolute certainty is that
14:45:28 35 Mr Overland, having made the decision to make her witness,
36 determined he didn't need to trouble the committee with it
14:45:36 37 because he'd already made his mind up, that's the logical
14:45:38 38 conclusion, isn't it?---Yes, I'm not sure, as I said just
14:45:41 39 previously, I'm not sure what would have acted on his mind
14:45:45 40 in that regard.
14:45:46 41
14:45:46 42 I get that. As an experienced police officer the
14:45:49 43 conclusion is obvious, isn't it? He's made his mind up,
14:45:52 44 hasn't he?---He may have, yes.
14:45:53 45
14:45:53 46 "There's no issue to determine, I won't bother the Petra
14:45:56 47 steering committee with it"?---I think that's one

14:45:58 1 possibility, yes.

14:46:00 2

14:46:00 3 It's hard to think of any others, isn't it?---Off the top

14:46:03 4 of my head, no.

14:46:03 5

14:46:05 6 The Police Force, it is a heirarchical organisation?---Very

14:46:09 7 much so, yeah.

14:46:10 8

14:46:12 9 Have you read Mr Ken Jones' statement?---Yes, I did.

14:46:15 10

14:46:16 11 He makes some criticisms about that, doesn't he?---Yes.

14:46:18 12

14:46:21 13 The proper procedures are that matters are reported up

14:46:24 14 through the line of command?---Yes.

14:46:26 15

14:46:27 16 And orders are passed down through the line of

14:46:30 17 command?---Yes.

14:46:30 18

14:46:30 19 So where's Mr Fryer sit in all this, is he your 2IC at that

14:46:36 20 stage?---In 2000, in that period 2011, is that the period

14:46:42 21 you're talking about there?

14:46:44 22

14:46:44 23 Yes?---He was the Detective Superintendent - one of the

14:46:47 24 Detective Superintendents at the Crime Command at the time

14:46:50 25 I was there as the Assistant Commissioner of Crime, yes.

14:46:53 26

14:46:53 27 I assume he kept updating you about the things he was doing

14:46:57 28 and you would pass instructions for him to do things down

14:47:00 29 the line?---Yes.

14:47:01 30

14:47:04 31 Despite being a heirarchical organisation the Police Force

14:47:12 32 still adheres to principles of fairness and natural

14:47:15 33 justice?---Indeed, yes, we're required to do that.

14:47:15 34

14:47:16 35 You'd be appalled if they weren't, wouldn't you?---Yes.

14:47:19 36

14:47:19 37 Before you condemn somebody or make allegations of serious

14:47:23 38 misconduct the appropriate course is to ask the person

14:47:26 39 about it before you make a determination, isn't it?---Well

14:47:31 40 in relation to investigations the first you've got to do is

14:47:34 41 to report it and then someone may make a decision about how

14:47:39 42 the matter is dealt with. In terms of if it's something

14:47:42 43 that requires investigation, often, as is the practice, the

14:47:46 44 matter will be reported to the Ethical Standards Department

14:47:49 45 as it was then, or Professional Standards Command as it's

14:47:52 46 known now, and they may well undertake some investigations

14:47:55 47 prior to speaking to the person.

14:47:57 1
14:47:57 2 I'm not talking about the ordinary course, I'm talking
14:48:00 3 about the way in which the SDU were treated in this case.
14:48:05 4 Serious allegations were made in relation to their conduct,
14:48:09 5 weren't there?---By whom, I'm sorry?
14:48:16 6
14:48:17 7 By Mr Gleeson on behalf of purportedly Mr Comrie?---Yes, if
14:48:22 8 there's concerns about misconduct then they've got to
14:48:26 9 report that through the chain of command or they can go
14:48:30 10 directly to Professional Standards Command. Then it may be
14:48:35 11 put to them straight away depending on the allegation or
12 there could be - certainly at some point it needs to be put
14:48:38 13 to them.
14:48:38 14
14:48:39 15 You know not a word of this - go back to the High Court,
14:48:42 16 you started with Mr Winneke in his cross-examination of you
14:48:45 17 about your awareness of the High Court decision and your
14:48:50 18 statement that they had a basis for what they determined,
14:48:53 19 remember that at the start of your evidence?---Yeah, it was
14:48:55 20 about they were entitled to, the High Court's entitled to
14:49:00 21 make that assessment.
14:49:01 22
14:49:01 23 And the High Court made that assessment on the basis of the
14:49:04 24 evidence before them?---Yes.
14:49:05 25
14:49:05 26 Which was set out in Justice Ginnane's judgment?---That's
14:49:10 27 right.
14:49:10 28
14:49:10 29 And you know that the Comrie Report forms part of the
14:49:15 30 material that was relied upon by Justice Ginnane in his
14:49:19 31 judgment?---Yes.
14:49:20 32
14:49:20 33 The High Court didn't make any factual determinations, they
14:49:25 34 made judgments on what was provided to them on the
14:49:28 35 appeal?---That's my understanding, yes.
14:49:30 36
14:49:31 37 It would be of concern to you that the criticisms made of
14:49:36 38 the SDU were made in the absence of them never being given
14:49:41 39 an opportunity to talk to Mr Comrie?---Yeah, I would have,
14:49:45 40 whilst I wasn't involved in the Comrie Review it would have
14:49:48 41 been good if they were spoken to, I agree.
14:49:50 42
14:49:51 43 In fact it would appear there was a deliberate decision not
14:49:54 44 to speak to them, that would concern you if that was the
14:49:57 45 case, wouldn't it?---I think with something like that you
14:49:59 46 would want to know what the handlers thought about it all,
14:50:03 47 what their views were, what was acting on them.

14:50:05 1
14:50:06 2 If there were issues in relation to their professional
14:50:09 3 behaviour and conduct, they should appear in things called
14:50:17 4 PDAs, shouldn't they?---Yeah, well there's PDAs in relation
14:50:21 5 to managing the staff and their performance in that general
14:50:22 6 conduct of their work, yes.
14:50:23 7
14:50:23 8 And PDAs are there to record issues, if you've got an issue
14:50:26 9 with an officer he should be counselled or disciplined if
14:50:31 10 it's that serious?---Yes, and that would be on their PDA.
14:50:35 11
14:50:36 12 And that's where you'd expect to find it?---Yes, that's
14:50:38 13 right.
14:50:38 14
14:50:38 15 You understand that Mr Comrie found in summary that it
14:50:41 16 looked like the SDU had been targeting legally professional
14:50:45 17 privileged material?---Yeah, I remember reading that, yeah.
14:50:49 18
14:50:49 19 And that they had strategically involved themselves in
14:50:53 20 current court cases, things of that sort?---Yes.
14:50:56 21
14:50:56 22 Right. Now, insofar as that civil action - what happened
14:51:05 23 is you became a litigant in that action that ended up in
14:51:08 24 the High Court because of the application for a declaration
14:51:14 25 in relation to the competing public policy issues?---Yes,
14:51:18 26 correct.
14:51:18 27
14:51:18 28 Right. No one consulted the SDU in relation to that civil
14:51:24 29 action at all, did they?---Well that's - you mean the
14:51:31 30 action that was later on taken? No, that was some years
14:51:37 31 later.
14:51:37 32
14:51:37 33 COMMISSIONER: Do you mean the EF litigation or do you mean
14:51:39 34 the Gobbo civil claim?
14:51:42 35
14:51:42 36 MR CHETTLE: No, I don't mean the Gobbo civil claim. I
14:51:43 37 mean the AB, CD, the litigation that you were - - -
14:51:46 38
14:51:46 39 COMMISSIONER: That went to the High Court.
14:51:47 40
14:51:47 41 MR CHETTLE: That went to the High Court?---Yes, that was a
14:51:49 42 number of years later, yeah.
14:51:50 43
14:51:51 44 I act for some of the source handlers, do you
14:51:55 45 follow?---(Witness nods.)
14:51:55 46
14:51:56 47 Have you got Exhibit 81 there with you?

14:51:58 1
14:52:00 2 COMMISSIONER: That's a list of pseudonyms.
14:52:02 3
14:52:02 4 MR CHETTLE: The list of pseudonyms?---Yes.
14:52:04 5
14:52:04 6 I'll indicate to you, you'll see the name, the second
14:52:08 7 officer Mr Wolf?---Yes.
14:52:10 8
14:52:11 9 Do you know him?---I don't know him, no, I know the name
14:52:14 10 though.
14:52:14 11
14:52:15 12 The third, number 3, Officer Sandy White who we've heard so
14:52:19 13 much about in this Commission?---Yes, I don't think I know
14:52:24 14 him but I know of him.
14:52:25 15
14:52:25 16 You don't know him either?---No, I don't think I've ever
14:52:28 17 met him.
14:52:29 18
14:52:29 19 Mr Peter Smith?---Same.
14:52:30 20
14:52:31 21 Officer Green, I'm not suggesting you know him, because you
14:52:35 22 would remember him if you did. And Officer Fox. Do you
14:52:40 23 know him?---No, I don't think I do, no.
14:52:42 24
14:52:42 25 But they're the people - one more, no.9, Officer Black, the
14:52:47 26 man who wrote the SWOT analysis, do you follow?---Well I
14:52:52 27 don't know if - I may have seen him at different times
14:52:56 28 around the job. I don't think I sort of know him as such.
14:53:00 29 I may have seen him at functions or things potentially.
14:53:04 30
14:53:06 31 In general they're not people with whom you're
14:53:08 32 familiar?---No.
14:53:09 33
14:53:10 34 Now, on the topic of Mr Pope, as I understand your evidence
14:53:17 35 to Mr Winneke at no stage did he ever disclose to you his
14:53:22 36 prior involvement with Ms Gobbo?---Mr Pope, no, not until
14:53:27 37 this allegation was put.
14:53:30 38
14:53:30 39 And at that stage did he tell you that he'd had her
14:53:34 40 registered as a source?---No.
14:53:35 41
14:53:38 42 He has told this Commission that he told you on a couple of
14:53:40 43 occasions that he had run her as a registered source,
14:53:43 44 that's not your recollection?---No, I don't remember that.
14:53:46 45
14:53:51 46 Did you have anything, were you promoted at the time he
14:53:58 47 left the Force?---I think I was Deputy Commissioner when he

14:54:03 1 left the force, Ken Lay was the Commissioner.
14:54:06 2
14:54:06 3 Did you have any conversation with him that led to him
14:54:11 4 leaving the Force?---No. There was a meeting, there was a
14:54:17 5 meeting one day in Ken Lay's office with Jeff at the time
14:54:20 6 Jeff was wanting to leave and I attended that meeting, and
14:54:27 7 he was talking about leaving because of his health and I
14:54:35 8 was effectively trying to say, "Do you think you need to
14:54:38 9 leave because, you know, if it's about your health maybe we
14:54:42 10 could work around your health so you didn't need to leave
14:54:46 11 the job?" You know, "Was it absolutely critical that you
14:54:49 12 leave?" He was sort of insistent that he did want to
14:54:53 13 leave.
14:54:53 14
14:54:53 15 That was shortly before he left, was it, the
14:54:57 16 conversation?---Yeah, like just before.
14:54:58 17
14:54:58 18 And it was just after he'd signed another contract for an
14:55:03 19 extended period with the Force, wasn't it?---It may have
14:55:05 20 been, I don't remember the contract situation, I'm sorry.
14:55:08 21
14:55:09 22 In any event you say you didn't ask him to leave?---No, he
14:55:12 23 didn't leave at my instigation, no.
14:55:14 24
14:55:19 25 You had knowledge of Ms Gobbo and some knowledge of her
14:55:23 26 role when you were at the OPI?---Yes.
14:55:26 27
14:55:26 28 It was when you became the AC of Crime that the real risk
14:55:31 29 issues in relation to her came home to sit with you, didn't
14:55:34 30 they?---Yes.
14:55:35 31
14:55:35 32 In fact, it would be correct to say you owned the risk at
14:55:38 33 that stage, wouldn't it?---I was part of owning it, yeah.
14:55:41 34
14:55:42 35 Whereas prior to that it had been Mr Overland's problem,
14:55:47 36 not yours?---Yeah, well there another Assistant
14:55:51 37 Commissioner of Crime, and Mr Jones and Mr Overland.
14:55:55 38
14:55:55 39 All right. So the three of them you would say?---Yep.
14:55:58 40
14:55:58 41 Did you have any conversations with Mr Jones in relation to
14:56:02 42 Ms Gobbo?---I don't recall ever having a single
14:56:08 43 conversation with Ken Jones about Ms Gobbo.
14:56:10 44
14:56:10 45 In 2010, on your evidence, and your state of knowledge, you
14:56:16 46 didn't have a complete picture in relation to her
14:56:20 47 activities?---Correct.

14:56:21 1
14:56:22 2 And it's hard to understand where Mr Jones might have, as
14:56:26 3 he says, got a detailed knowledge of her history in 2010,
14:56:31 4 where that would come from?--Well he was the Deputy
14:56:36 5 Commissioner in 2010, he was the Deputy Commissioner with
14:56:38 6 responsibility that included the Crime Command so he could
14:56:43 7 have either I guess got that from within the Crime Command
14:56:46 8 or from Mr Overland I guess.
14:56:48 9
14:56:49 10 Okay. Is it your understanding that Mr Overland had a
14:56:53 11 pretty good oversight of what was happening in, under his
14:56:58 12 command?---Yeah, I think so, yeah.
14:57:01 13
14:57:02 14 I'm not going to take you through them all. He had
14:57:05 15 meetings with the SDU members themselves. He had meetings
14:57:08 16 with their Superintendent Mr Biggin?---Back in those, back
14:57:13 17 in like 7, 8, 9 through that period, there's lots of log
14:57:19 18 entries I think we've been shown.
14:57:21 19
14:57:21 20 You've seen those?---Yes, in here, yes.
14:57:23 21
14:57:24 22 Certainly he never expressed to you any concern about her
14:57:27 23 use as a human source?---No, not in terms of anything other
14:57:32 24 than her safety.
14:57:33 25
14:57:33 26 Obviously with the exposure of any high risk human source
14:57:38 27 there's a risk to their safety?---Yes.
14:57:40 28
14:57:41 29 As to the fact that she was a lawyer and she was being
14:57:45 30 used, was used as an informer, was never the subject of any
14:57:49 31 concern or criticism by Mr Overland in your presence?---No,
14:57:53 32 not other than what I explained, no.
14:57:55 33
14:57:56 34 So do you know Superintendent Biggin?---Yes, Tony Biggin,
14:58:04 35 yes.
14:58:05 36
14:58:05 37 He is a thorough and professional police officer, isn't
14:58:10 38 he?---Look, I hold him in very high regard. He's a - he
14:58:15 39 retired a little while ago but he was as reliable as you
14:58:21 40 could get.
14:58:21 41
14:58:22 42 And he was a man of utmost integrity?---I've always
14:58:28 43 believed so.
14:58:28 44
14:58:28 45 To suggest that he was slack or lying down on the job or
14:58:32 46 turning a blind eye to the activities of the SDU doesn't
14:58:35 47 sit with the man you know?---No.

14:58:36 1
14:58:45 2 When you go back and you become AC of Crime and the
14:58:48 3 ownership of the risk sits in part with you, you get a bit
14:58:52 4 of material that causes you a lot of concerns, you get the
14:58:56 5 list that you've been taken through from
14:58:59 6 Mr Sheridan?---Maguire advice.
14:59:00 7
14:59:00 8 The Maguire advice, you're finding out about the problems
14:59:04 9 with the Commonwealth DPP?---Yep.
14:59:06 10
14:59:06 11 Was it apparent to you that there was a real risk to
14:59:10 12 Victoria Police being severely embarrassed by the exposure
14:59:16 13 of the use of Ms Gobbo as a human source?---Yes, that risk
14:59:23 14 was present, yes.
14:59:24 15
14:59:24 16 And you know now that it was obvious to the Senior
14:59:29 17 Sergeants who were down there running it?---Yes.
14:59:32 18
14:59:34 19 And if you are a Senior Sergeant with an appropriate, with
14:59:37 20 a concern about the way things are going and what's
14:59:40 21 happening, it's appropriate to raise them with your
14:59:43 22 superiors?---Yes.
14:59:44 23
14:59:44 24 And what happened in this case, as we talk about linear
14:59:48 25 management, is Mr Black completed a SWOT analysis at the
14:59:53 26 request of Mr Biggin and provided it to him. That's what
14:59:56 27 he should have done?---Right.
14:59:58 28
14:59:58 29 Black is no.9 I think?---Yes, got that, thanks.
15:00:02 30
15:00:02 31 And he provided it to Biggin, Biggin provides it to
15:00:07 32 Moloney, Moloney provides it to Overland, that's the proper
15:00:13 33 chain of command?---Yes.
15:00:14 34
15:00:14 35 Was it Mr Buick who was working in one of the Task Forces,
15:00:19 36 Petra I think or was it Briars, I get them confused?---I
15:00:23 37 think it was Briars more than Petra, yeah.
15:00:26 38
15:00:27 39 He told this Commission that he could see, when I suggested
15:00:30 40 to him that there was a storm approaching Victoria Police,
15:00:33 41 I don't know if you heard him, he said it was a shit storm
15:00:37 42 approaching, did you hear him say that?---No, I didn't hear
15:00:40 43 him say that.
15:00:41 44
15:00:41 45 That's what he saw as coming over the horizon, right.
15:00:47 46 Mr Sheridan, and there's evidence that Mr Sheridan said to
15:00:50 47 the source handling unit, "There's a train coming straight

15:00:54 1 at Victoria Police which is going to cause major
15:00:57 2 embarrassment", all right?---(Witness nods.)
15:00:59 3
15:00:59 4 If it was obvious to members at that level that there was a
15:01:03 5 real problem for Victoria Police surely it would have been
15:01:05 6 obvious to you?---Yeah, you could see that there was, you
15:01:09 7 know, there was a problem with the way she was being
15:01:11 8 managed at that stage and of course that was going to be a
15:01:17 9 reputational issue for VicPol.
15:01:20 10
15:01:20 11 What you decided to do, and you were part of the decision,
15:01:24 12 was have what you described as an independent inquiry in
15:01:28 13 relation to the ways in which she was managed?---Correct.
15:01:33 14
15:01:35 15 Did you recommend Mr Comrie?---No.
15:01:37 16
15:01:38 17 So who did you make - what was your involvement in it, how
15:01:43 18 did you - - - ?---Yes, well in the evidence I've given in
15:01:45 19 the last couple of days and in the statement was that I
15:01:48 20 took the matter to Tim Cartwright, recommended that that
15:01:51 21 review take place, I made a note of that, and then I would
15:01:55 22 step away from it at that point because of my previous
15:01:58 23 knowledge of her and Petra and Briars. And it was then I
15:02:04 24 think from my knowledge of it he's tasked Finn to find
15:02:08 25 someone to do the review.
15:02:10 26
15:02:10 27 So all you've done is say to Cartwright, "I think this is
15:02:15 28 what we should do"?---Yes.
15:02:16 29
15:02:16 30 And that's it?---Yes.
15:02:17 31
15:02:19 32 Did you know that he engaged Steve Gleeson to do it?---That
15:02:24 33 he engaged, I'm sorry, who?
15:02:25 34
15:02:26 35 Steve Gleeson?---Yes, I came to understand that because
15:02:28 36 Mr Comrie needed someone to assist him.
15:02:31 37
15:02:31 38 In fact what Mr Gleeson says to IBAC is that he wrote it
15:02:36 39 and that Comrie effectively checked it over and signed off
15:02:39 40 on it?---Yeah, well he did a lot of that work for
15:02:43 41 Mr Comrie, yes.
15:02:43 42
15:02:44 43 In fact he says he did it all. He wrote the thing?---I'm
15:02:47 44 not sure exactly with Mr Comrie and Mr Gleeson about who
15:02:51 45 did what exactly.
15:02:52 46
15:02:52 47 Have you been told that Mr Gleeson told IBAC that Comrie's

15:02:59 1 name was used to give the illusion of independence from
15:03:02 2 Victoria Police. That's what he said. Page 7 of his
15:03:06 3 evidence?---No, not aware he said that.
15:03:09 4
15:03:14 5 I'll read it to you. You were asked, "For the purpose of
15:03:19 6 the transcript Mr Comrie was the ex-Chief Commissioner of
15:03:22 7 Police in Victoria, is that correct? Correct, he finished
15:03:25 8 in early 2000s, okay. But he was the former Chief
15:03:29 9 Commissioner of Victoria Police." Question, "With the
15:03:31 10 preparation of this particular report, you being
15:03:35 11 effectively the author of it, why is it necessary in police
15:03:38 12 protocol to have Comrie sign it rather than you as a
15:03:41 13 Superintendent?" To which Mr Gleeson said, "I suppose he
15:03:45 14 had great subject matter knowledge in those things too and
15:03:48 15 Mr Comrie has had extensive network of overseas contacts."
15:03:52 16 I'm sorry, I jumped it. Sorry, I missed that. "Why was it
15:03:57 17 necessary in police protocols to have Comrie sign it rather
15:04:00 18 than you as a Superintendent?" Do you follow? He says,
15:04:02 19 "Mr Comrie has great standing and I suppose a perception of
15:04:06 20 independence in Victoria Police." Do you follow?---Yes,
15:04:09 21 that's different to illusion I think, but I take the point.
15:04:15 22 I wasn't aware that he said that actually.
15:04:21 23
15:04:23 24 MR HOLT: To make it clear, there's an enormous difference
15:04:26 25 between a claim of evidence that's been given that
15:04:28 26 something was done to create an illusion and the evidence
15:04:32 27 that was actually given and ought be corrected.
15:04:34 28
15:04:34 29 COMMISSIONER: It is corrected now.
15:04:35 30
15:04:35 31 MR CHETTLE: Perception, illusion. Why isn't, Mr Gleeson
15:04:41 32 was asked by IBAC, "Why on earth didn't you sign it, you
15:04:45 33 wrote it?" He said, "We wanted to have a perception of
15:04:47 34 independence". It's not independent if it's written by a
15:04:48 35 policeman?---Well he had to have somebody to assist him to
15:04:51 36 do the review and they found obviously Gleeson to do that.
15:04:55 37 But at the end of the day Mr Comrie is accountable for
15:04:58 38 what's in that document and he signs it as being
15:05:02 39 accountable for that. It's not Gleeson's report, it is
15:05:05 40 Comrie's report.
15:05:05 41
15:05:06 42 He indicates that he spoke to you, he reported to you on
15:05:10 43 his findings early in the piece, do you have any
15:05:12 44 recollection of that?---Who says that?
15:05:14 45
15:05:14 46 Gleeson?---No. I don't remember that, no.
15:05:17 47

15:05:18 1 And at some stage he stopped going near you because it was
15:05:23 2 clear that you had a conflict of interest that you talked
15:05:24 3 about because of your involvement at the OPI?---My conflict
15:05:28 4 of interest of earlier than that, but yeah.
15:05:29 5
15:05:33 6 You put in paragraph 173 of your statement that not only
15:05:39 7 were you concerned to the extent of her involvement because
15:05:42 8 of that document that came up from Mr Sheridan, you know
15:05:44 9 the list of names, but at 173 you say your concern was
15:05:49 10 aggravated by the fact that the documents were stuffed in
15:05:53 11 drawers, do you remember that?---Yes, that's right.
15:05:55 12
15:05:55 13 Where did you get that from, do you know?---Mr Fryer told
15:05:58 14 me.
15:05:58 15
15:05:58 16 So Mr Fryer got it, presumably, from - - - ?---I can only
15:06:04 17 think Mr Sheridan or Mr O'Connor.
15:06:07 18
15:06:07 19 You've referred in the course of your evidence to Operation
15:06:12 20 Loricated on a number of occasions. Loricated was done to
15:06:16 21 put into order the mess that Mr Comrie described in the
15:06:21 22 report, isn't it?---Part of it, yeah.
15:06:23 23
15:06:23 24 And the idea was to get all the files together in one place
15:06:26 25 so there was a complete record of the actions?---Yeah.
15:06:31 26
15:06:32 27 Now, what Mr Gleeson, working for Mr Comrie if you like,
15:06:41 28 found, on the Interpose computer system was what he
15:06:44 29 described as a jumbled mess, do you follow? Firstly,
15:06:50 30 Interpose only became used at the SDU in 2009 at a time
15:06:57 31 after Ms Gobbo was no longer being managed, do you follow?
15:07:02 32 That's the evidence?---That would be right, 09-ish, yes.
15:07:06 33
15:07:06 34 It had problems, it didn't work very well for this type of
15:07:10 35 work, I don't want to get into that. It just wasn't being
15:07:14 36 used?---Yep.
15:07:15 37
15:07:15 38 Separately and maintained by the SDU was a complete timely,
15:07:19 39 accurate set of records in order, with tape recordings,
15:07:24 40 with all the ICRs, everything already there, do you
15:07:29 41 follow?---Yes.
15:07:30 42
15:07:31 43 Nobody asked the SDU about their records, nobody, which you
15:07:35 44 would find extraordinary, wouldn't you?---Well, Mr O'Connor
15:07:43 45 went through the records over that particular weekend prior
15:07:46 46 to that list being given to me and that was when, in
15:07:51 47 relation to seeing all the names on it, Fryer's told me

15:07:56 1 this is information just stuffed into cabinets in no
15:08:01 2 discernible order, so even then this list was hard to
15:08:04 3 compile and that worried me obviously, from what he told me
15:08:08 4 worried me about - - -
15:08:09 5
15:08:10 6 Let me get this right. Fryer told you at the time of the
15:08:13 7 delivery of the list from O'Connor that that was the state
15:08:17 8 of the records?---Yes. Around that time, yes.
15:08:21 9
15:08:24 10 We're now talking in 2011?---Correct.
15:08:28 11
15:08:28 12 Ms Gobbo left the unit - Ms Gobbo left management of the
15:08:34 13 unit in early 2009, do you follow?---Yes.
15:08:37 14
15:08:38 15 She was deregistered. At the time the SDU was shut, which
15:08:44 16 was early 2013, I'm suggesting to you that the SDU
15:08:49 17 maintained a complete, full electronic hard drive with all
15:08:54 18 the records on it?---I'm not disputing that, I don't know
15:08:57 19 how they were kept and I don't even know, I'm not saying
15:09:01 20 who's or whether these were stuffed into filing cabinets or
15:09:05 21 who would have stuffed them into filing cabinets.
15:09:07 22
15:09:08 23 This is what you were told?---This is what I was told.
15:09:10 24
15:09:10 25 Let me suggest it's just not right as far as the records
15:09:13 26 are concerned, but if the truth be the fact is, and the
15:09:18 27 evidence has been this, that there were properly kept and
15:09:21 28 maintained records by the SDU. Operation Loricated cost a
15:09:27 29 heck of a lot of money to recreate what was already there,
15:09:31 30 didn't it?---Yeah, we talked about what Loricated, part of
15:09:34 31 Loricated was to do, was to do that, yep.
15:09:37 32
15:09:37 33 And it would be a very expensive exercise, wouldn't
15:09:41 34 it?---Yes, it would have cost money for sure, yeah.
15:09:43 35
15:09:43 36 Doesn't it concern you as Chief Commissioner that if what
15:09:46 37 I'm saying to you is right, nobody bothered to ask the SDU
15:09:50 38 about their records in relation to Ms Gobbo?---It was part
15:09:54 39 of Loricated. As you say, it was some time since they were
15:10:00 40 involved in managing her but you'd have to ask Loricated.
15:10:04 41
15:10:04 42 Loricated was after the unit was shut down?---That's right.
15:10:07 43
15:10:07 44 The unit effectively was shut down because of the Comrie
15:10:10 45 Report, wasn't it?---Mr Fryer wanted to restructure that
15:10:15 46 whole unit. Mr Pope, sorry.
15:10:17 47

15:10:17 1 Do you agree with the proposition that it was because of
15:10:20 2 the Comrie Report that the unit was shut down?---Well
15:10:24 3 Mr Pope wanted to restructure it all and change the nature
15:10:27 4 of it.
15:10:28 5
15:10:28 6 So you disagree with that proposition, you say the reason
15:10:31 7 they were shut down was Mr Pope had a plan to restructure
15:10:34 8 it?---Yes, we've gone through some of that evidence today.
15:10:37 9
15:10:37 10 I'm trying to be a bit specific, Chief Commissioner. I'm
15:10:42 11 suggesting to you that it was directly as a result of the
15:10:45 12 Gobbo 3838 management that the unit was shut down, that is
15:10:48 13 the Comrie Report?---I don't know what the genesis of
15:10:51 14 really, what Jeff's reasons were for wanting to restructure
15:10:56 15 it, whether it was specifically to Gobbo or issues
15:11:01 16 associated with that.
15:11:02 17
15:11:02 18 I'll take you to some documents that will demonstrate that
15:11:05 19 in due course?---Sure.
15:11:06 20
15:11:10 21 You were concerned - did you ask Mr Sheridan to follow up
15:11:14 22 on some of the assertions in the Maguire advice in relation
15:11:19 23 to Ms Gobbo?---No, by the time the Maguire - sorry, the
15:11:25 24 Maguire advice?
15:11:28 25
15:11:28 26 Yes?---I think that's what led to me wanting to have these
15:11:31 27 files looked at, this list created.
15:11:33 28
15:11:33 29 Firstly, Mr Sheridan gets asked and somewhere around about
15:11:37 30 19 September - sorry, I might have the wrong date, 19
15:11:43 31 October, to go and see whether or not and ask Tony Biggin
15:11:47 32 whether or not there were any payments made to Ms Gobbo.
15:11:51 33 Does any of this ring any bells?---No, not payments, no.
15:11:54 34
15:11:55 35 If you've read - Mr Maguire's advice says that she
15:12:00 36 regularly received cash payments from the SDU?---Yeah, well
15:12:04 37 it's not unusual for human sources to receive payments for
15:12:07 38 different expenses and things like that.
15:12:10 39
15:12:10 40 Indeed he goes through, I don't want to go through it with
15:12:14 41 you, presumably you read it at some stage?---Which
15:12:17 42 document?
15:12:17 43
15:12:17 44 The Maguire advice?---Yes.
15:12:19 45
15:12:20 46 If you did, you'll note in several paragraphs it says she
15:12:24 47 was paid for services, that turns out to be untrue and

15:12:27 1 Mr Sheridan went and made inquiries about it. What I'm
15:12:30 2 asking you is whether he did that at your behest?---No, I
15:12:34 3 don't remember telling him to do that, no.
15:12:37 4
15:12:38 5 No one drew to your attention the fact that there are some
15:12:41 6 significant factual errors in the Maguire advice?---No.
15:12:44 7
15:12:44 8 Do you know who briefed Mr Maguire and what he was provided
15:12:47 9 with?---I think that was in connection with the - initially
15:12:55 10 in relation to the issues around the ACC matter, so it was
15:13:03 11 highly likely to be one of the Driver investigators.
15:13:09 12
15:13:09 13 It's called "Buick and Dale" is the heading, it's
15:13:12 14 presumably Mr Buick?---That was their sort of role, or
15:13:15 15 certainly Buick's, yeah.
15:13:17 16
15:13:17 17 You don't know, you didn't see the briefing paper or the
15:13:20 18 assertions that were made that led to the advice?---No.
15:13:23 19
15:13:23 20 All right. Now, can I take you to Exhibit 275A, please,
15:13:42 21 which is the statement of Officer White, Sandy White. On
15:13:54 22 paragraph 9 of that document, it can be just put on your
15:13:58 23 screen at this stage and the Commissioner's. You'll see
15:14:23 24 there if you look at, firstly, paragraph 8, there's a
15:14:26 25 listing of the various decorations and awards that that
15:14:31 26 officer has received, do you see that?---Yes, I can see
15:14:34 27 that, yep.
15:14:35 28
15:14:36 29 Then underneath it there's a citation set out in relation
15:14:40 30 to one of those particular awards?---Correct.
15:14:44 31
15:14:45 32 Can you read, I ask simply that you read the citation
15:14:50 33 yourself?---What, you mean out loud?
15:14:52 34
15:14:53 35 No, to yourself?---Okay. Yes.
15:15:27 36
15:15:28 37 Although you don't know him, they don't hand out that
15:15:34 38 decoration to everybody, do they?---No, and I think from my
15:15:38 39 own sort of knowledge within the Force, he was always
15:15:41 40 someone who was held in high regard in that context.
15:15:44 41
15:15:44 42 The significant thing is that was the citation and award he
15:15:48 43 received in 2010?---I'm not sure but I guess, I mean I
15:15:55 44 accept what you're saying.
15:15:55 45
15:15:56 46 If you go to paragraph 8 you'll see the third dot
15:15:59 47 point?---Yes, he got the [REDACTED] in 2010, correct.

15:16:03 1
15:16:04 2 Can we delete that from the - - -
15:16:08 3
15:16:09 4 COMMISSIONER: Yes, remove the expression [REDACTED] from the
15:16:14 5 transcript and the live streaming, thanks.
15:16:16 6
15:16:17 7 MR CHETTLE: Chief Commissioner, this is at a time, very
15:16:23 8 shortly prior to, expressions being made by Mr Pope in an
15:16:30 9 email that you saw, that this was some sort of rogue cowboy
15:16:35 10 unit out of control that were not obeying the rules, do you
15:16:38 11 follow?---Yes.
15:16:39 12
15:16:41 13 You don't award that decoration to people who behave like
15:16:45 14 cowboys, do you?---Well, as I said, I think he was always
15:16:51 15 regarded as someone who was of a good, yeah, good standing.
15:16:57 16 I've always thought that, like that decision around Jeff's
15:17:02 17 restructuring was what he thought would be the best model
15:17:06 18 and I knew there was resistance to that within that unit
15:17:09 19 because he basically told me that, around a restructure.
15:17:13 20
15:17:13 21 I don't want to go with you, you went through that email
15:17:17 22 with Mr Winneke?---Yes.
15:17:18 23
15:17:18 24 That was sent in August of 2012, that it set out a number
15:17:23 25 of things that Mr Pope asserted were wrong with the unit.
15:17:27 26 Do you remember going through it?---Yes, the way it was
15:17:30 27 managed.
15:17:31 28
15:17:31 29 You would be, if the case be that those allegations are
15:17:35 30 simply untrue, or some of them are untrue, you would be
15:17:38 31 concerned about that, wouldn't you?---Yes, because he's
15:17:41 32 advising the Deputy Commissioner in that email what his
15:17:46 33 grounds are for wanting to do the restructure, so you would
15:17:49 34 want the information to be true for sure, yes.
15:17:51 35
15:17:51 36 The true fact of the matter is that he and Sheridan had
15:17:54 37 agreed well before that email that the unit was going to be
15:17:57 38 wound up because of the Comrie Report?---Yeah, I'm not
15:18:02 39 aware that was the issue acting on him.
15:18:05 40
15:18:05 41 Mr Ashton, if that is the case, and I'm going to take you
15:18:09 42 to some documents that demonstrate that, it would be
15:18:12 43 extraordinary concerning if somebody like Mr Pope is
15:18:15 44 putting up a false story to the Chief Commissioner in order
15:18:18 45 to achieve a result?---Yeah, I'm not saying that it wasn't
15:18:22 46 the primary reason. I'm just, you know, you'd want his
15:18:27 47 email to, the Deputy Commissioner to be accurate as to why,

15:18:33 1 yes.
15:18:33 2
15:18:33 3 It would concern you if this was some sort of strategy or
15:18:37 4 tactic, wouldn't it?---Yes.
15:18:39 5
15:18:39 6 All right. Can I have, I'll take - Commissioner, would it
15:18:44 7 be appropriate to take the break now, I'm moving to some
15:18:48 8 documents. It's a matter for you.
15:18:49 9
15:18:50 10 COMMISSIONER: All right, we'll have a break now.
15:19:14 11
15:19:15 12 (Short adjournment.)
13
15:34:19 14 COMMISSIONER: Yes Mr Chettle.
15:34:19 15
15:34:20 16 MR CHETTLE: Thank you. Chief Commissioner, I'll ask that
15:34:23 17 Exhibit 847 be brought up. Just before we go through it in
15:34:26 18 some detail, the evidence of Mr Sheridan so far has been
15:34:34 19 that in June of 2012 he and Mr Pope were discussing
15:34:38 20 shutting the Unit, so that was before the Comrie report
15:34:40 21 came down, they were talking about shutting the
15:34:43 22 Unit?---Okay.
23
15:34:43 24 Then in July Mr Sheridan provided Mr Pope with a list of
15:34:48 25 points that would go to the conduct of the SDU, all
15:34:52 26 right?---This was prior to the Comrie are you saying?
27
15:34:56 28 Yes, prior to the Comrie report being done. The Comrie
15:35:01 29 report comes out in July, although there is some evidence
15:35:04 30 that Mr Pope had access to what it was going to say, or
15:35:07 31 excerpts of it before it was published, do you follow?---I
15:35:11 32 follow.
33
15:35:12 34 Indeed, did he draw to your attention that, or ever suggest
15:35:16 35 to you that the report was going to say there was an
15:35:21 36 attempt to pervert the course of justice or other criminal
15:35:24 37 offences had been committed?---No.
38
15:35:26 39 You wouldn't forget that, would you?---No, I don't think he
15:35:29 40 said that to me.
41
15:35:30 42 No. It would be something very significant if that were
15:35:32 43 the case, wouldn't it?---Yeah, I mean I don't remember him
15:35:36 44 saying that to me, no.
45
15:35:38 46 Mr Sheridan said that around about that time in June that's
15:35:43 47 what he was told by Mr Pope?---I see.

1
15:35:45 2 All right. Now, 847. I don't want to spend forever on it.
15:35:52 3 If we go right to the bottom of the chain, this is a
15:35:54 4 document that Mr Winneke took you through. This is
15:35:59 5 Mr Pope's letter to Ken Lay, do you follow?---Yes.
6
15:36:01 7 Or his email. That's the document I suggest to you is
15:36:04 8 misleading and untrue, but I'm not going to go through that
15:36:08 9 with you because you accepted at face value what it said, I
15:36:12 10 assume?---Yes.
11
15:36:13 12 All right. When you get it you respond, but you respond to
15:36:21 13 the plan which if you look at the - go down to the bottom
15:36:25 14 of the document, you'll come to a section marked the plan.
15:36:30 15 There it is. "In broad terms Paul Sheridan and I have
15:36:36 16 derived the following plan and I have broadly briefed
15:36:40 17 Graham", so that's you, isn't it?---Correct.
18
15:36:42 19 So it would mean there's been some conversation about this
15:36:45 20 plan with you?---Yes, there's been a couple of times he
15:36:48 21 mentioned these plans to restructure the Unit with me.
22
15:36:51 23 Think about it because have a look at what's underneath it.
15:36:53 24 "As a consequence of the Comrie review we will close the
15:36:56 25 SDU by mid-September"?---Yes.
26
15:37:00 27 That's unambiguous, isn't it?---Yes, that says as a
15:37:04 28 consequence of the Comrie review, correct.
29
15:37:06 30 That's what I was putting to you before. So he has
15:37:09 31 discussed that with you, I take it, and you don't remember
15:37:12 32 that conversation?---Oh no, but I accept that he probably
15:37:15 33 has if he's put that in that document.
34
15:37:18 35 I'm not going to go through each of the points that he
15:37:20 36 makes. I'll do with that Mr Sheridan. But I'll come back
15:37:24 37 to what you do. You say in response to that, "I have
15:37:27 38 discussed the below email with Ken. Rather than refer to
15:37:30 39 shutting down the SDU, we would prefer to be referring to
15:37:34 40 it as a transitioning of SDU into HSMU"?---Yes.
15:37:38 41
15:37:38 42 And a range of factors you have nominated?---Yes.
43
15:37:42 44 Have you got that? Sorry, you've got to go up?---Yeah, I
15:37:46 45 remember you put it up before. It was put up before.
46
15:37:48 47 Sorry, go up to the next part of the email?---Towards the

15:37:51 1 top of the document.
2
15:37:52 3 Go up the other way. Right. See it there, in blue, that's
15:37:59 4 yours?---Correct.
5
15:38:02 6 "Accordingly a transition plan allowing for this to occur
15:38:06 7 would be a principal document we use to socialise the
15:38:11 8 entire move within our stakeholders. Obviously under the
15:38:13 9 transition plans not all members of the current SDU will
15:38:16 10 need to be transitioned to HSMU and some therefore need to
15:38:19 11 go for redeployment. This approach may limit some of the
15:38:24 12 issues as under the present plan it could be argued you are
15:38:29 13 disbanding the Unit prior to you conducting your
15:38:33 14 wide-ranging review", see that?---Yes.
15
15:38:37 16 At the time, before you could shut the Unit, there needed
15:38:40 17 to be a review in order to justify shutting the Unit,
15:38:43 18 wouldn't it?---Well it was like he was shutting the Unit
15:38:48 19 before he'd even done the review.
20
15:38:51 21 Yes. And you'd need to have - - - ?---A bit hard to do it
15:38:55 22 till you've had the review.
23
15:38:56 24 Relationships with the union would be a tough if you didn't
25 have a review and you just shut it, wouldn't it ?---Well,
15:38:59 26 what would be the reason for it. If you had a review you
15:39:02 27 might be informed as to the way to go about it.
28
15:39:07 29 So you need to have a review to justify the closing
15:39:11 30 Unit?---Well to inform that intention, yes.
31
15:39:13 32 Then we go over the page, keep going up. Pope says to you,
15:39:18 33 "Graham, I think we can make this work providing there's an
15:39:21 34 understanding that only one or two of them will
15:39:24 35 transition", right, see that?---Correct.
36
15:39:27 37 And then Ken Lay writes back to Pope and yourself saying
15:39:33 38 this, "I've spoken to Greg and this is not on the radar".
15:39:37 39 Greg is the President or the Secretary of the Police
15:39:40 40 Association, Greg Davies?---Yeah, he would have been in
15:39:44 41 charge of the Police Association at the time.
42
15:39:48 43 This is all about industrial relations to some extent,
15:39:51 44 isn't it?---Yeah. If you do a restructure you obviously
15:39:53 45 have to have a high level of consultation with the Police
15:39:57 46 Association in our case.
15:39:58 47

15:39:58 1 "He was okay as long we followed the agreed processes of
15:40:02 2 review and redeployment." See that? Again, there's a need
15:40:05 3 for a review?---Yes.
15:40:06 4
15:40:09 5 "Jeff has rightly indicated this one could be very
15:40:12 6 difficult so it's important that we get the process right
15:40:14 7 and defensible", all right?---Yes, that's in line with that
15:40:18 8 long email that - yes.
9
15:40:20 10 "We need to have appropriate industrial relations steps
15:40:24 11 taken in order to carry out what we want to do"?---Yes.
12
15:40:29 13 "Jeff has outlined some really problematic behaviour." Now
15:40:32 14 they're the things that I took exception to that are set
15:40:36 15 out in his email, remember those?---Yes.
16
15:40:39 17 "I'm not sure if the recordings and actions to address
15:40:42 18 those shortcomings is sufficient to allow us to act
15:40:46 19 unilaterally", follow?---Yes.
20
15:40:49 21 What the Chief Commissioner is saying is that's not going
15:40:54 22 to justify shutting down the Unit. There's nothing in the
15:40:58 23 PDAs, for example, that would be a concern?---Yeah. I
15:41:03 24 think relating to my earlier email in that chain Ken had a
15:41:08 25 view it was just necessary to, you know, shut it all down.
15:41:13 26 When you do your review, like is there something for anyone
15:41:18 27 to make some moves, can they just be transitioned, what was
15:41:23 28 the need - you know was that actually necessary, he saw
15:41:26 29 that as a big step.
30
15:41:27 31 Then as a result of that there's a - Pope writes to you and
15:41:30 32 Mr Lay and says, "Thanks Ken. Liz has been involved along
15:41:36 33 the way but has no knowledge of the Comrie review. I will
15:41:40 34 convene a meeting with her and Paul Sheridan to discuss and
15:41:43 35 ensure we are acting within the IR rules and are defensible
15:41:47 36 in our actions", all right, see that?---Correct.
37
15:41:50 38 We go up. Jeff Pope sends the email chain in its entirety,
15:41:57 39 it would seem, to Mr Sheridan and then Mr Sheridan, and
15:42:03 40 we've got - ah-ha. There's another part of this chain,
15:42:09 41 Commissioner, which keeps going. Can we give
15:42:16 42 VPL.0100.0132.012. 0124, 24 at the end. Sorry, thank you.
15:42:47 43 Thank you, I'm sorry. Thank you. Now if you go to - go to
15:43:18 44 the top of it for a moment. That's it. Stop right there.
15:43:21 45 The next one in the chain is from Mr Sheridan, 30 August,
15:43:25 46 to Jeff Pope, you follow - have you got it there?---Yes.
47

15:43:31 1 "Will make contact with Liz or shall I? Remember I'm not
15:43:35 2 in until 1 pm Friday." He talks about another member being
15:43:39 3 advised that they could be declared a surplus, "re my
15:43:44 4 previous briefing note. If you wish to go the other way,
15:43:46 5 that is retain some staff, would it be possible to draw a
15:43:52 6 line through those that were involved in the 3838 process
15:43:55 7 and retain the others", see that?---Yes.
8
15:43:57 9 It's clearly at this stage, the reason this is happening is
15:43:59 10 because of the Comrie report and 3838, isn't it?---It's
15:44:02 11 clear it's a big influencer in this, yes.
12
15:44:05 13 At that stage - I won't - I'll leave that. He goes through
15:44:14 14 who's still left, et cetera, et cetera. "Clearance of the
15:44:18 15 3838 personnel would be in line with the CCP's comments",
15:44:22 16 "CCP's comments that this would be due to the Comrie
15:44:26 17 report's findings of serious practice", et cetera. See
15:44:29 18 that?---Yes.
19
15:44:33 20 "The word 'closure' doesn't have to be used, however we
15:44:38 21 should be firm with the staff as they know they will not
15:44:41 22 continue to function", all right?---Correct.
23
15:44:43 24 Then the last one in the chain at the top is Pope says to
15:44:48 25 Doug Fryer and Sheridan, "I'm providing this to you for
15:44:52 26 context. I've staked brief until we talk about more in the
15:44:56 27 hand over on Monday. I'd like you to meet with Liz and
15:45:00 28 Paul early next week. I'd like Graham and the CCP to have
15:45:06 29 updated information before the end of next week so we keep
15:45:09 30 the ball rolling", okay?---Yes.
31
15:45:12 32 Can I take you to, please - Commissioner, can I make that
15:45:18 33 extra page part of Exhibit 847 because it is the next two
15:45:22 34 emails in the chain that are 847.
35
15:45:25 36 COMMISSIONER: All right then. Just to be specific, the
15:45:29 37 email chain, so they're the ones on the screen now, are
15:45:31 38 they?
15:45:32 39
15:45:33 40 MR CHETTLE: Yes, there's two them.
41
15:45:35 42 COMMISSIONER: So we're adding to 31 August. So it was 29
15:45:38 43 to 30 August, so we'll make 29 to 31 August.
44
15:45:42 45 MR CHETTLE: Thank you, Commissioner. Go across. Can I
15:45:46 46 have Exhibit 360 please. There's a briefing note which
15:45:54 47 I'll come back to later on. We haven't got it yet. A

15:46:03 1 briefing note from Pope to Fryer. At this stage Mr Fryer's
15:46:07 2 been upgraded apparently, is he sitting in your
15:46:13 3 seat?---When's this?
4
15:46:16 5 No, this is 12 September 2012?---He must have been acting
15:46:19 6 in Tim's, Tim must have been on leave or something.
7
15:46:22 8 All right. The heading is "Closure of the Source
15:46:25 9 Development Unit - timings" dated 12 September 2012?---Yes.
10
15:46:29 11 At this stage the Covert Services Review is nowhere near
15:46:33 12 complete, is it?---I don't know when that was completed but
15:46:36 13 I take your advice that it wasn't yet completed, yes.
14
15:46:43 15 "Executive Command have previously reviewed the Comrie
15:46:45 16 inquiry and have endorsed the recommendation of ICSD that
15:46:53 17 the SDU cease practice." You note the word "closure" is
15:46:57 18 not used. But clearly Comrie is going to lead to the
15:47:01 19 closure of the SDU, isn't it?---Yes.
20
15:47:05 21 They've drafted letters and that, "Sheridan and I will
15:47:09 22 advise the staff on 18 September 2012 of the Chief
15:47:14 23 Commissioner's decision. Biggin and Paterson will be
15:47:19 24 advised on the 17th", do you follow that?---Yes.
25
15:47:24 26 Biggin and Paterson were both members of the so-called
15:47:29 27 steering committee that was overseeing the Covert Services
15:47:31 28 Review, do you follow that?---Right. I don't know - yep.
29
15:47:33 30 I'll ask you to accept that from me rather than go through
15:47:36 31 it?---Yes, of course.
32
15:47:37 33 There it is, what they're saying is, "We're going to shut
15:47:40 34 them down on 18 September, on the day before we'll tell the
15:47:45 35 two members of the committee of that decision but not
15:47:48 36 before", do you follow?---Right.
37
15:47:50 38 Again, it is clear, isn't it, that it's the Comrie report
15:47:54 39 that is leading to the closure of the SDU?---Yes, a number
15:47:57 40 of references to that being a key driver for them.
41
15:48:01 42 You couldn't make it any less ambiguous, could you, in the
15:48:04 43 last two I've shown you?---It's clearly stated in there,
15:48:07 44 yeah, particularly the other document.
45
15:48:08 46 Can I have VPL.0005.0182.0001 please. This is a document
15:48:38 47 that is not being tendered but it has some writing on the

15:48:43 1 top corner that has the 12th of the 10th to Assistant
15:48:48 2 Commissioner, it looks like written on the top in writing,
15:48:51 3 do you follow that?---Yes.
4
15:48:53 5 This is Mr Sheridan's draft of the CMRD report - sorry, I
15:49:04 6 keep getting that initial wrong?---The review, the
15:49:08 7 document.
8
15:49:08 9 The Covert Services Division Review?---Right.
10
15:49:10 11 In March 2000 Pope commissioned a review. I'm not going to
15:49:15 12 take you through all of it. He sets out the terms. See
15:49:20 13 the steering committee down the bottom was chaired by Pope,
15:49:24 14 comprised Biggin, Sheridan and Paterson?---Pope, Biggin,
15:49:30 15 Sheridan and Paterson, yes.
16
15:49:30 17 The names, including the two I showed you before?---Yes.
18
15:49:33 19 It talks about on the next page notifying the Police
15:49:38 20 Association and there was some - see towards the bottom
15:49:42 21 over the heading "Staff consultation", "On 14 September the
15:49:46 22 Police Association responded to the imposition of maximum
15:49:48 23 time in position. Acting Commissioner Fryer agreed not to
15:49:52 24 impose the clause during the review", all right, there was
15:49:55 25 an issue about maximum time in position?---Yes.
26
15:50:02 27 This division involved both the undercovers and the SDU, do
15:50:06 28 you follow what I'm putting, and the undercovers were not
15:50:10 29 happy about the imposition of maximum time in position, you
15:50:13 30 were aware of that?---That's always an issue with the
15:50:16 31 undercovers, yeah.
32
15:50:18 33 But the SDU had no problem with it, they were happy to
15:50:23 34 embrace it and in fact were looking for it, but I'll come
15:50:26 35 back to that later. You'll see that they set out that the
15:50:32 36 Source Development Unit provided a few emails which largely
15:50:36 37 dealt with the intelligence phase of the review and some
15:50:40 38 matters outside scope, such as staffing. They didn't kick
15:50:44 39 up about the MTIP issue?---Right.
40
15:50:48 41 Over the page, "The Source Development Unit", paragraph 3,
15:50:54 42 "were independently updated by Sheridan on 19 July. A
15:50:59 43 degree of tension has been reported by their Unit managers
15:51:02 44 within the personnel therein and this briefing was intended
15:51:05 45 to continue transparent communication and alleviate any
15:51:13 46 unnecessary concerns"?---Yeah, I was aware of this tension.
15:51:16 47 I have a memory of being aware of this tension.

1

15:51:19 2 I'm not going to take you to Mr Sheridan's diary but he did
15:51:22 3 go to the SDU on 19 July and talk to them about maximum
15:51:25 4 time in position full stop, do you follow, nothing about
15:51:30 5 closing the Unit. I just ask you to accept that for the
15:51:33 6 moment?---Yep.

7

15:51:37 8 They go on about how the source - Mr Sheridan goes on about
15:51:42 9 how the Source Development Unit was developed, long-term
15:51:45 10 deployment in covert environment, health of the co-workers,
15:51:51 11 duty of care to the covert human intelligence sources being
15:51:55 12 managed. The police psychologist is quoted. Did you ever
15:52:00 13 see material or a paper written by a particular police
15:52:05 14 psychologist in relation to maximum time in position?---In
15:52:08 15 relation specifically to here you mean ?

15:52:11 16

15:52:12 17 In relation to shutting down the SDU?---No, not in this
15:52:14 18 relation to this, no.

19

15:52:17 20 There is a document tendered but I won't waste time with
15:52:21 21 you. This outlines what, Mr Sheridan sets out what he says
15:52:26 22 is contained in the psychologist's opinion, do you
15:52:33 23 follow?---Yes.

24

15:52:34 25 You'll see the top paragraph there, the name's been
15:52:37 26 redacted?---That's on p.4 there.

27

15:52:40 28 Yes. The names are redacted but he refers to basically,
15:52:43 29 "Management have a better idea about those things than
15:52:46 30 maybe the psychologists and that they've got complacency
15:52:55 31 borne out of long-term exposure to covert policing". It's
15:52:57 32 not always evident to the psychology unit as it would be to
15:52:59 33 management, that is, "We've got a better view than perhaps
15:53:02 34 she has". Then there's an intelligence phase assessment
15:53:06 35 and a finding of the review was set out on p.6,
15:53:14 36 implementing maximum time in position, and there's a
15:53:19 37 conclusion, and not a word about shutting the SDU, do you
15:53:23 38 follow? That draft does not have anything about shutting
15:53:27 39 the SDU down?---Okay.

40

15:53:28 41 It talks really about the purposes of this review is to
15:53:32 42 look at health and safety and maximum time in position and
15:53:36 43 something to do with the intelligence phase of the
15:53:39 44 review?---Right.

45

15:53:40 46 Now, against that background can I take you to Exhibit 361
15:53:44 47 please. I'm not suggesting this is a letter that you've

15:53:50 1 seen, or it doesn't show that you have. This is an email
15:53:55 2 from Doug Fryer to Liz Chaligoy with a copy to Sheridan and
15:54:01 3 Pope. Were you shown this as part of your preparation for
15:54:06 4 this Royal Commission?---Can I have a quick read of it? I
15:54:10 5 don't think it was, no, but just let me have a quick read.
6
15:54:13 7 So what Mr Fryer writes is, "Hey Liz, a cut and paste with
15:54:18 8 your comments from previous emails. Your comments are in
15:54:22 9 blue. We're keen to progress the closure but for us it is
15:54:26 10 important for all to understand, it is not at all linked
15:54:33 11 with the CSD review and an attempt to use the review to
15:54:37 12 close the Unit would not be a true reflection of the
15:54:40 13 review, its intent or its outcome", follow?---Yes.
15:54:43 14
15:54:43 15 "We therefore believe there is enough in the Comrie review
15:54:50 16 alone to close the Unit and then that, coupled with a
15:54:56 17 couple of examples post the management of the source of
15:55:00 18 particular interest in the Comrie review, is enough to
15:55:02 19 demonstrate they continue to expose the organisation to an
15:55:05 20 unacceptable risk". Do you see that?---Yes.
21
15:55:09 22 "Please find below our explanation of the issues you've
15:55:11 23 previously raised. Once absorbed we'll be keen to again
15:55:15 24 meet and explore the options for closure. As the Chief
15:55:19 25 Commissioner of Police advised us in August/September, we
15:55:21 26 all need to be crystal clear on our rationale, et cetera,
15:55:24 27 for closure with all IR addressed. I think we got a bit
15:55:34 28 muddled last time around". See that? "Paul Sheridan has
15:55:39 29 put together the vast majority of the below. He has an
30 intimate knowledge of the Unit, the CSD review, the Comrie
15:55:47 31 review and the current exposure to the
15:55:50 32 organisation"?---Yes.
33
15:55:50 34 Going to the Covert Services Review, he talks about
15:55:53 35 notification of the Police Association. "The review is
15:55:56 36 scheduled to be completed in about a month from now". So
15:55:59 37 it hasn't been written at this stage?---Completed, yes.
38
15:56:02 39 You saw the draft of it that I showed you a moment
15:56:06 40 ago - - -
41
15:56:07 42 COMMISSIONER: Were you wanting to tender that, Mr Chettle,
15:56:09 43 the draft?
15:56:10 44
15:56:10 45 MR CHETTLE: I am, Commissioner, yes. I'm sorry, I should
15:56:13 46 have.
15:56:14 47

15:56:15 1 #EXHIBIT RC894A - (Confidential) SDU review 12/10/12.
15:56:29 2
15:56:29 3 #EXHIBIT RC894B - (Redacted version.)
15:56:33 4
15:56:40 5 Mr Fryer's email goes on. "The CSD review is some months
15:56:46 6 away from completion. It's been significantly delayed with
15:56:49 7 the change of direction in the intelligence phase. On 7
15:56:52 8 August 2000 and reiterated on 17 September when
15:56:56 9 Commissioner Pope rejected the submission for status quo
15:56:59 10 and requested further work to be undertaken on a
15:57:02 11 centralised model". Did you know that there'd been a
15:57:09 12 recommendation by Mr Sheridan that the Unit not be shut but
15:57:13 13 Pope rejected it and pushed on with it?---No.
14
15:57:16 15 But you see that's a reference to that?---Yes.
16
15:57:18 17 Mr Sheridan said that he gave that opinion?---Yep.
18
15:57:21 19 If I can flip you over to the next page where it's "Source
15:57:26 20 Development Unit closure". There it is. Top of the page.
15:57:31 21 "Also early in June Jeff, Paul, Brig, Satucci and I met to
15:57:39 22 discuss the review and the potential for using OHS or MTP,
15:57:43 23 maximum time in position, as drivers for closing down the
15:57:46 24 SDU. This was followed by further contact with the Police
15:57:50 25 Association and a request that we meet with Luke Oliver",
15:57:54 26 and there's some issue about LTP. But in June they were
15:57:58 27 looking for a different way to shut the Unit down, whether
15:58:02 28 or not it would be OHS or MTIP, do you see that?---Yes.
15:58:07 29
15:58:08 30 "A short pre meeting", the next two paragraphs down, "With
15:58:12 31 Pope, Chaligoy and Sheridan was held prior to the Police
15:58:17 32 Association meeting. This was to brief Chaligoy. At the
15:58:20 33 time the closure of the SDU was not a consideration. The
15:58:23 34 Comrie investigation had not commenced". You see that's
15:58:31 35 talking about a meeting that took place on 4 June 2012, the
15:58:36 36 meeting on 4 June with the Police Association?---Yes.
37
15:58:41 38 The evidence before the Commission is that in June of 2012,
15:58:45 39 despite the fact that the Comrie review hadn't been
15:58:48 40 finished, Mr Pope and Mr Sheridan had decided to shut the
15:58:54 41 Unit, do you follow?---Yeah, it seems to be two - - -
42
15:59:00 43 It's totally inconsistent to say - - - ?---Two motivations
15:59:05 44 going on in terms of what's recorded there.
45
15:59:06 46 There's a different version of the facts. At the time the
15:59:09 47 closure of the SDU was not a consideration is simply

15:59:15 1 untrue, isn't it, from the documentation?---Well that's not
15:59:16 2 what's reflected there, that's right.
3
15:59:18 4 If I can flip you over to the next page. There's some
15:59:29 5 issues about what we're going to do with the handlers, what
15:59:32 6 are we going to do with these highly skilled people. Then
15:59:37 7 Ms Chaligoy noted, "This could form part of your comm.
15:59:41 8 status". However, do you see the bit in the middle, "the
15:59:42 9 lack of evidence, i.e. proof of directions, discussions
15:59:45 10 being agreed between the manager and managed,
15:59:50 11 interventions, timeframes, results, is problematic". What
15:59:53 12 she's saying is there's nothing in the PDAs to justify
15:59:57 13 shutting them down, do you follow?---Yes.
14
16:00:01 15 Then Mr Fryer says, "Well there's no lack of evidence if we
16:00:04 16 wish to base the decision on the Comrie inquiry". I want
16:00:12 17 to get through this as quickly as I can. Can you see the
16:00:15 18 third-last paragraph from Mr Fryer, "In my view attempting
16:00:19 19 to use the CSD review manipulates the intent and outcome of
16:00:24 20 the review because in itself it doesn't require the closure
16:00:26 21 of the Unit". Closing work groups wasn't in the scope of
16:00:30 22 the review?---Yes, I see that.
23
16:00:34 24 Did you actually read the CMRD review when it came out
16:00:38 25 early the following year?---No. Could you go to the bottom
16:00:41 26 of this document? I'm just wondering in what context
16:00:44 27 Fryer's involved in it. Maybe he was acting - - -
28
16:00:48 29 Acting Assistant Commissioner it says?---Yeah. I was
16:00:53 30 wondering why he's involved in this.
31
16:00:57 32 That's what he signs it as?---Obviously when Pope was
16:01:01 33 acting as the Deputy Commissioner he's gone and acted in
16:01:05 34 the Intel Services role, in Jeff Pope's normal role.
35
16:01:15 36 At the bottom of the page, "The Comrie inquiry identified a
16:01:22 37 systemic course of behaviour pertaining to risk management
16:01:25 38 that had not been the subject of specific management
16:01:29 39 interventions. It is historical, which may detract from
16:01:35 40 using it to close the Unit after the fact. Had current
16:01:38 41 management known of the specifics of the deployment of 3838
16:01:42 42 and their lack of support to the Petra Task Force, current
16:01:47 43 management would have taken action", all right, you see
16:01:50 44 that? Can I suggest to you this, Mr Ashton, that everyone
16:01:56 45 at the high end of VicPol saw that there was a train coming
16:02:00 46 down the track, that there was, as Mr Buick said, a storm
16:02:04 47 coming, and that management sought to distance themselves

16:02:07 1 from what had occurred with Ms Gobbo by effectively drawing
16:02:11 2 a line between themselves and the handlers?---I think
16:02:15 3 Mr Lay in his correspondence, and then the email back to
16:02:21 4 Mr Pope, would suggest that we needed to be more
16:02:27 5 circumspect than that. But certainly there's documents
16:02:32 6 here which in some cases they rely on the Comrie review.
16:02:36 7 In others they're seeking to do the review, you can rely on
16:02:40 8 that. There does seem to be competing assertions.
9
16:02:45 10 Assertions of fact such as the lack of support to the Petra
16:02:48 11 Task Force, do you see that reference?---Yes, that's
16:02:51 12 something that obviously Doug's typed out.
13
16:02:54 14 Do you actually - you know that the SDU absolutely
16:02:59 15 cooperated with the transition from source to witness, they
16:03:03 16 expressed hostility, they said it's a bad idea, but then
16:03:08 17 they trained handlers, they did everything they could to
16:03:11 18 help you?---Yeah, I think they were against the idea but I
16:03:14 19 don't think I saw anything that would suggest they were, I
16:03:16 20 haven't seen anything that would suggest they were actively
16:03:20 21 doing something around stopping them.
22
16:03:22 23 It's a concern - what's being done here, I'll perhaps put
16:03:25 24 it - Mr White in his statement to the Commission said that
16:03:33 25 he's had plenty of examples where high level management do
16:03:36 26 what they can to protect the institution at the expense of
16:03:40 27 the troops, do you follow what I'm putting?---I think
16:03:42 28 that's a cultural perception you get in policing that has
16:03:48 29 always been there.
30
16:03:49 31 Look, Sir Ken Jones says that, doesn't he, there was a real
16:03:56 32 issue about that? He talks about people getting - lower
16:04:00 33 officers getting it when the higher officers conceal their
16:04:04 34 involvement?---I don't remember him actually saying that in
16:04:07 35 the statement but it may be there, yeah.
16:04:08 36
16:04:19 37 While I think of it, did you -in 2006, you would have been
16:04:25 38 at the OPI?---Yes.
39
16:04:30 40 Chief Commissioner Nixon, who was Chief Commissioner at
16:04:34 41 that stage, in October 2006 there was an Intelligence and
16:04:43 42 Covert Support Department's Comstat meeting. Do you know
16:04:51 43 what that is?---I know what a Comstat is, yes, I've been in
16:04:54 44 a number of Comstats.
45
16:04:55 46 There was on 26 October 06. I take it you wouldn't have
16:04:57 47 attended that, would you?---No memory of attending that,

16:04:59 1 no. I wasn't in Victoria Police at that stage.
2
16:05:02 3 Commissioner Nixon said this regarding the SDU and the
16:05:05 4 HSMU, "That they are one of the best risk manage tools for
16:05:11 5 the support of investigations. They need to be developed
16:05:14 6 further and grow. They are evidence that you can implement
16:05:17 7 cultural change", all right?---(Witness nods.)
8
16:05:22 9 Against that background Mr White says this, "I couldn't
16:05:28 10 understand if the staff were the issue why they weren't
16:05:32 11 simply replaced, allowing the Unit itself to continue
16:05:35 12 operating. Shutting down the capacity of Victoria Police
16:05:38 13 to recruit and manage designated high risk human sources
16:05:44 14 without an alternative option was akin to throwing out the
16:05:48 15 baby with the bath water". Does that make sense to
16:05:51 16 you?---Yes, I understand what he's saying.
17
16:05:53 18 What happened, virtually after the shut down a new Unit was
16:05:56 19 set up in fact to replace them, wasn't it?---Yeah, although
16:05:59 20 that model was more around, as I understood it, more of a
16:06:03 21 decentralised model.
22
16:06:05 23 Trying to run across the whole State?---Yeah, not just
16:06:08 24 having the one unit centrally, yeah.
25
16:06:10 26 But it was a Unit that operated under similar sort of
16:06:13 27 conditions doing the same job. I don't want to give too
16:06:16 28 much methodology away, but it still exists?---Yeah, I'm
16:06:23 29 just trying to think of - I have to be careful of my
16:06:28 30 answer, that's all. Yeah, look it's a different - it still
16:06:31 31 has a specialist approach with specialist knowledge in the
16:06:34 32 middle of it, but then a more decentralised management
16:06:38 33 generally of sources. That was as it was then. It's
16:06:42 34 different again now.
35
16:06:44 36 Going back to this Exhibit 361, if I can briefly. See in
16:06:59 37 the centre of the page at 137 - can you raise that up,
16:07:07 38 please. Thank you. "The completed CSD review", see that
16:07:11 39 paragraph in the middle?---Yes.
40
16:07:13 41 "Will at this point make no recommendation for SDU closure.
16:07:18 42 The only way this could occur is if the review steering
16:07:21 43 committee were asked to consider the Comrie investigation
16:07:24 44 findings, the recent history of managerial intervention,
16:07:29 45 resistance to intrusive supervision. Given the sensitive
16:07:33 46 nature of the Comrie investigation this is not envisaged as
16:07:37 47 a realistic option", you follow that?---Yes.

1

16:07:40 2 Then down the page, three paragraphs. "The organisation
16:07:43 3 will be obliged to argue on the basis of the ongoing risk
16:07:47 4 that continuing the duties would expose it to further and
16:07:51 5 the greater risk including, in some cases, potential
16:07:54 6 criminality", see that?---Yes.

7

16:07:59 8 Did you have any suggestion ever made to you of any
16:08:02 9 criminality by the SDU?---No.

10

16:08:13 11 Go across to options that Mr Fryer sets out. "If Command
16:08:19 12 does not wish to rely upon the Comrie inquiry then I
16:08:23 13 recommend that the closure not be pursued through other
16:08:25 14 means". Have you got down - the next page, please, under
16:08:31 15 "Options". See the heading, "If Command do not wish to
16:08:36 16 rely on the Comrie inquiry"?---Yes, I see that.

16:08:39 17

16:08:39 18 "I recommend the closure not be pursued through other
16:08:45 19 means. To do so would compromise the integrity of the
20 Covert Service Review to elicit managerial examples of poor
16:08:45 21 work practice is self-defeating. As raised by Liz Chaligoy
16:08:45 22 it would open up management to criticism that they were not
16:08:55 23 documented appropriately within the PDA process", do you
16:08:59 24 see that?---Yes.

25

16:09:03 26 Under "Options", "Close the SDU. CSD review recommends it.
16:09:09 27 Not achievable without a re-write. At no stage did the CSD
28 review focus upon the relevant aspect of SDU function. I
16:09:17 29 recommend that we not employ this tactic", see that?---Yes.

30

16:09:21 31 That's in fact exactly what did happen, isn't it? What he
16:09:24 32 said he doesn't recommend is what did occur, the CMRD
16:09:31 33 review was published, rewritten as Exhibit 359, to close
16:09:37 34 down the Unit?---Yes.

35

16:09:40 36 I wish to put that in context. Would you agree from what
16:09:45 37 I've shown you the Comrie review was the driving motion
16:09:49 38 behind the reason to shut the SDU?---There was certainly
16:09:56 39 plenty of times that it's mentioned as being a key driver.

40

16:09:59 41 Yes?---And there were some other times in what you've taken
16:10:03 42 me to that talks about the review, but certainly Comrie's
16:10:06 43 there.

44

16:10:07 45 Can I take you to the letter of termination of the Unit
16:10:10 46 which I gave you the exhibit number this morning. The
16:10:15 47 letter terminating the SDU. Yes, that's it. Can you tell

16:10:22 1 me the exhibit number again, just for the record? 288.
16:10:27 2 This is the letter that the members were given when they
16:10:35 3 turned up and were sacked effectively?---Moved, yeah.
4
16:10:40 5 Moved. Well, yeah. The Unit was closed, put it that
16:10:45 6 way?---Yes.
7
16:10:45 8 "This letter is to confirm this morning's meeting to
16:10:49 9 communicate the following Covert Services Review, key
16:10:52 10 findings and recommendations regarding the Source
16:10:55 11 Development Unit which has been presented and endorsed by
16:10:56 12 the steering committee. A review of the SDU has identified
16:11:00 13 a number of significant issues such as disconnection from
16:11:02 14 police identity and organisation borne of long-term
16:11:07 15 exposure to covert policing. Consequently it's been
16:11:14 16 determined to disband. The SDU will be disbanded and the
16:11:14 17 closure of the Unit will take effect in two weeks", all
16:11:18 18 right?---Yes.
19
16:11:18 20 Then the rest of it is how that's going to play out?---Yes.
21
16:11:22 22 Not a word about the Comrie review, is there?---I can't see
16:11:27 23 any reference to it in that document.
24
16:11:30 25 In fact, what I want to suggest to you, Chief Commissioner,
16:11:33 26 is that the whole issue of the Comrie review and the
16:11:35 27 closure of the SDU was designed as a way for management to
16:11:38 28 be able to say, "We've dealt with the issue, the rogue unit
16:11:45 29 has been shut down. We didn't have anything to do with
16:11:48 30 running Ms Gobbo"?---Well I think - can I just ask,
16:11:54 31 firstly, before I answer that, had the review been
16:11:57 32 completed prior to this letter going?
33
16:11:59 34 Yes?---Right.
35
16:12:00 36 In between the time - what they did, I can take you to the
16:12:04 37 review if you like, but I'm trying to cut corners?---I
16:12:07 38 understand.
39
16:12:08 40 The draft review got amended and they put in the - they
16:12:12 41 rewrote it the way Mr Fryer said it couldn't be done, but
16:12:16 42 they did, and it came out recommending the closure on the
16:12:20 43 basis of Comrie and the behavioural issues?---Yes, I
16:12:22 44 understand what you're saying and I understand the basis
16:12:25 45 upon which you form that view. I think also I've seen some
16:12:32 46 material that suggests that Mr Pope did have concerns prior
16:12:36 47 to all of this about the structure, the way in which it

16:12:42 1 could be restructured as well. I guess there's two things
16:12:46 2 at play there.
3
16:12:49 4 You can understand why the members think that they've been
16:12:53 5 "thrown under the bus"?---I can understand the basis of
16:12:57 6 what you're saying your concern is in the flow of
16:13:01 7 information you've taken me to.
8
16:13:03 9 Let me give you a look at the other side from their
16:13:06 10 perception. The Commission now has evidence that Mr Biggin
16:13:09 11 was kept fully informed of what was occurring with the SDU,
16:13:12 12 he knew about Ms Gobbo's management and he participated in
16:13:16 13 the decisions about what was being done with her; that
16:13:21 14 officers of Purana, in particular Mr O'Brien and Mr Ryan,
16:13:25 15 knew about it and participated in discussions about
16:13:28 16 employing her and using her. Chief Commissioner Overland
16:13:32 17 knew about her involvement and in fact met with the Unit,
16:13:36 18 discussed her involvement on a number of occasions. And
16:13:40 19 Danye Moloney was the subject of repeated briefings in
16:13:43 20 relation to her involvement. Now in those circumstances
16:13:48 21 they know that you, they're told that you know and whether
16:13:52 22 it's 2006 or 2007 doesn't matter, but they're told that you
16:13:55 23 know, Luke Cornelius knows and he's the head of ESD, isn't
16:14:01 24 he?---Yes.
25
16:14:02 26 Mr Wilson knows and nobody has ever said to them, "Hey,
16:14:06 27 what are you doing?", or raised any issues with them. From
16:14:10 28 their point of view they then come in and get sacked. They
16:14:14 29 would want to know why, wouldn't they?---Moved, yes. They
16:14:17 30 would want to know why and they'd want that explained to
16:14:19 31 them, yes.
32
16:14:21 33 It would be a concern to you if nobody ever spoke to them
16:14:25 34 once in relation to those decisions?---They're being, I
16:14:29 35 guess, communicated with here, but I don't know what other
16:14:31 36 communications taken place. I accept what you're saying.
37
16:14:35 38 They are being communicated with there, "Come into the
16:14:37 39 office, cop this, and goodbye". That's what they
16:14:42 40 got?---Yeah, I don't know what communication took place
16:14:45 41 before that.
42
16:14:48 43 All right. If I can move to a couple of quicker matters I
16:14:51 44 hope. Perhaps if I can put this to you. Are you now aware
16:15:04 45 that the Comrie review was done effectively on the papers
16:15:09 46 without having evidence from witnesses?---Well, that
16:15:16 47 suggests that's something cursory. I didn't conduct the

16:15:21 1 review and I don't know the details of how in-depth it was
16:15:23 2 conducted. I don't know that it didn't include necessarily
16:15:26 3 anyone talking with the handlers but I accept what you're
16:15:29 4 saying, that they didn't.
5
16:15:31 6 All right. It applied 2010 policies to what had occurred
16:15:36 7 in 2005. The policies change over time, don't
16:15:46 8 they?---Yeah, I'm not aware of a change in the policy in
16:15:50 9 that period.
10
16:15:51 11 Let me assure you there was and different policies have
16:15:54 12 been tendered. I don't want to go through them but there
16:15:56 13 has been a dramatic change in things such as AORs and SOPs
16:16:01 14 and rules?---There have been since then for sure, yeah.
16:16:04 15
16:16:04 16 Certainly since then there's been a major review and the
16:16:07 17 policies have been rewritten, haven't they?---Yes.
18
16:16:12 19 You would have hoped that they would have been consulted
16:16:15 20 and afforded natural justice?---Yes.
21
16:16:41 22 Can I have VPL.0100.0098.0053 please. This is an email
16:17:00 23 from Steve Gleeson, who I've just been asking you about, to
16:17:08 24 someone called Gillian Wilson?---Gillian Wilson, yes.
25
16:17:17 26 Who's she, do you know?---She was - I'm not sure exactly at
16:17:20 27 that time but she was certainly a long-term staff officer
16:17:23 28 to Mr Pope.
29
16:17:24 30 Mr Gleeson, who conducted the Comrie review, writes this,
16:17:28 31 "Please see attached which is interesting. The below
16:17:31 32 report provided to me from Paul Sheridan is a briefing note
16:17:34 33 dated 12 September 12 from Fryer to AC DC Pope outlining
16:17:43 34 the SDU staff are to be advised that they are to cease
16:17:43 35 functioning on 18 September 12, well prior to 31 January 13
16:17:49 36 date for disbanding within your Covert Services Review",
16:17:52 37 right, do you see that?---Yes.
38
16:17:55 39 He attaches an email he got from Sheridan saying, "I'm
16:17:58 40 going through old mail and this is useful because it shows
16:18:02 41 that in mid-September the thinking of the then AC and
16:18:06 42 Commander Fryer". That's the document I took you to
16:18:09 43 earlier when I went through the documents with you?---Yes.
44
16:18:13 45 He's pointing out there that well prior to the arriving of
16:18:19 46 the review that led to the closure of the Unit, they were
16:18:22 47 already planning to shut it and looking for a way to do it,

16:18:26 1 isn't he?---Well this is - he's saying in there he was,
16:18:31 2 Mr Sheridan is saying in that middle section he's
16:18:37 3 supportive of the decision to terminate based on their
16:18:40 4 resistance to intrusive supervision, but didn't agree that
16:18:44 5 this review was the vehicle upon which to base that, yes.
6
16:18:47 7 I tender that email chain, Commissioner.
8
16:18:57 9 #EXHIBIT RC895A - (Confidential) Email chain 12/9/12 to
16:19:01 10 22/4/14 between Gleeson, Gillian Wilson
16:19:09 11 and Fryer.
16:19:14 12
16:19:14 13 #EXHIBIT RC895B - (Redacted version.)
16:19:17 14
16:19:18 15 To this day, Chief Commissioner, have you gained a
16:19:22 16 knowledge of what actually the SDU did with Ms Gobbo and
16:19:26 17 how they operated and handled her?---Well, only in that
16:19:32 18 sort of broad context, yes.
19
16:19:33 20 Have you been following what's emerged from the
16:19:36 21 Commission?---I have to say not everything but I've been
16:19:39 22 updated on a number of occasions as to how things are
16:19:43 23 going.
24
16:19:43 25 If the fact be that the SDU were conscious of the issue of
16:19:47 26 legal professional privilege and did what they could to
16:19:51 27 avoid to obtaining and disseminating that legal
16:19:56 28 professional privilege, that puts a different gloss on the
16:19:58 29 history that was being presented back then, doesn't
16:20:06 30 it?---If that's the case, you know, if they've attempted to
16:20:07 31 do that as established, it shows they have given attention
16:20:09 32 to try and avoid occurring what could have - well, what
16:20:12 33 seems to have occurred.
34
16:20:13 35 Secondly, they were alert to the issue of conflict of
16:20:16 36 interest and repeatedly told her not to act for particular
16:20:21 37 people she supplied information on and nonetheless she
16:20:24 38 would go and do that after telling them she wasn't, were
16:20:28 39 you made aware of that?---No.
40
16:20:38 41 On very small point too before I sit down. A polygraph is
16:20:44 42 something that's been used in Victoria policing from time
16:20:52 43 to time?---I'm not aware of it being used for a long period
16:20:55 44 of time. It was something I think going back many years
16:21:00 45 ago that was certainly used here and there.
46
16:21:02 47 I'm not going to - and finally this: on 24 April of 2007

16:21:09 1 Mr Waddell approached Mr Black. If you can look at
16:21:16 2 Mr Black on the - number 9, so you know who I'm talking
16:21:19 3 about?---Yes.
4
16:21:21 5 At a meeting at the Blue Train Café on Southbank where he
16:21:27 6 requested a discussion with Mr Black?---What year did you
16:21:31 7 say that was?
8
16:21:33 9 24 April 2007?---Yes.
10
16:21:34 11 What he wanted was Briars to have access to the use of the
16:21:39 12 source that SDU were running, do you follow?---Yes.
13
16:21:47 14 Mr Black has told this Commission there was no doubt that
16:21:50 15 he was there trying to get some approach or assistance from
16:21:53 16 3838?---Right.
17
16:21:57 18 It follows that at that stage Briars were aware that the
16:22:00 19 SDU had Ms Gobbo as a source, if that's the case?---Right.
20
16:22:06 21 You were certainly aware of it about that time, weren't
16:22:09 22 you?---Not in April 07, no.
23
16:22:12 24 Or shortly thereafter?---Yeah, it was later in the year,
16:22:15 25 yep.
26
16:22:16 27 I'm not going to go over the material that Mr Winneke said,
16:22:18 28 but certainly it would be strange if the Briars Task Force
16:22:23 29 sent Waddell off to try and get her as an assistance in
16:22:28 30 their investigation, that you didn't know about it?---I
16:22:32 31 didn't know about it. This is the first I've heard of that
16:22:35 32 now.
33
16:22:35 34 It would be unusual for you not to know, wouldn't it?---No,
16:22:39 35 not really. I think they'd be looking at different options
16:22:41 36 available to them, making a range of inquiries so I may not
16:22:45 37 necessarily know about it.
38
16:22:46 39 Thank you. No further questions.
40
16:22:48 41 COMMISSIONER: Yes Mr Holt.
16:22:49 42
16:22:50 43 MR HOLT: Commissioner, I understand we might be able to
16:22:52 44 sit a little later, is that the position?
45
16:22:55 46 COMMISSIONER: Yes, I'm prepared to sit a little later, and
16:22:57 47 the court reporters have indicated they can sit a little

16:23:01 1 later too.
16:23:02 2
16:23:03 3 MR HOLT: I'm not sure how long - - -
4
16:23:05 5 COMMISSIONER: Obviously the witness would like to finish
16:23:07 6 today, and I think we all would.
16:23:11 7
8 <CROSS-EXAMINED BY MR HOLT:
9
10 I'll do my very best in terms of timing, thank you. Chief
11 Commissioner, as you know my name is Saul Holt and I'm
16:23:12 12 counsel for Victoria Police. Just to walk very quickly
16:23:14 13 through your role so we can be clear about some of the
16:23:17 14 things you've been talking about before I ask you
16:23:19 15 questions, from December 04 to December 09 you were the
16:23:23 16 Assistant Director at the OPI?---Yeah, I think I had two
16:23:27 17 titles, Assistant Director and Deputy Director.
18
16:23:30 19 But essentially the same role?---Yes.
20
16:23:31 21 Then from December 2009 to early 2011 you were an unsworn
16:23:36 22 Director of Corporate Strategy and Governance at Victoria
16:23:42 23 Police as you've described?---Well, yeah, Director of
16:23:44 24 Forensic Services and also that role that you've just
16:23:47 25 described, yes.
26
16:23:48 27 It was during that period we know that the Nicola Gobbo
16:23:51 28 civil writ, settlement of that civil writ occurred. You
16:23:54 29 had nothing to do with that?---No.
30
16:23:56 31 Then from April 2011 to February 2012 you are the Assistant
16:23:59 32 Commissioner for Crime at Victoria Police?---Yes.
33
16:24:02 34 And it's during that period, obviously in November of 2011,
16:24:06 35 that this issue around the Maguire advice and the
16:24:16 36 commissioning of the Comrie review emerges which I'll talk
16:24:17 37 to you about in a moment?---Yes.
38
16:24:18 39 But then in February 2012 you move or you're promoted to
16:24:23 40 Deputy Commissioner of Specialist Operations?---Yes.
16:24:24 41
16:24:24 42 You hold that role until January 2015?---Yes, that's right.
43
16:24:27 44 In that role, that is Deputy Commissioner Specialist
16:24:31 45 Operations, you didn't have responsibility for crime?---I
16:24:35 46 had responsibility in a specialist operations role.
47

16:24:39 1 Yes, but there was a DC Crime as well, or a DC with a
16:24:46 2 responsibility for Crime?---There was another DC with
16:24:49 3 responsibility for all the Loricated and all that activity.
16:24:51 4 I think I had responsibility for the rest of Crime
16:24:53 5 operations.
6
16:24:54 7 But in any event you had Intel and Covert Services and you
16:24:56 8 had Legal during that period of time?---Yes.
9
16:24:59 10 Then from January 2015 to July 2015 for a short period
16:25:03 11 you're the Deputy Commissioner at the AFP?---Yes.
12
16:25:05 13 And then you come back to Victoria Police as the Chief
16:25:09 14 Commissioner, the role you now hold, in July of
16:25:12 15 2015?---Yes.
16
16:25:12 17 All right. Now, again, recognising that spread of dates
16:25:16 18 and roles, we've talked a lot and I'll come back to it,
16:25:21 19 about the November 2011 Maguire advice, Sheridan memo and
16:25:25 20 the commissioning of the Comrie review?---Yes.
21
16:25:30 22 You've talked about your involvement in that initial phase
16:25:33 23 of all of that and then you've indicated that you stepped
16:25:35 24 away because of the need to avoid any perception of
16:25:39 25 conflict in light of the previous roles you've held that
16:25:41 26 we've been through?---Yes.
27
16:25:43 28 That stepping away or keeping a level of distance has
16:25:47 29 maintained, hasn't it, Chief Commissioner, right throughout
16:25:50 30 including up to and through the Royal Commission?---Yes.
31
16:25:53 32 In order to maintain that level of distance for you in
16:25:57 33 terms of that historical involvement?---Yes.
34
16:25:59 35 That includes obviously the AB proceedings that we've heard
16:26:03 36 a little bit about?---Yes, only in terms of where I have
16:26:05 37 been after key decisions were made by the court, I would be
16:26:08 38 briefed by Finn, notwithstanding I wasn't, you know, the
16:26:13 39 Deputy Commissioner was dealing with it. I was
16:26:17 40 effectively, you know, the respondent, if you like, if
16:26:21 41 that's the - yeah, I think, and so I'd be briefed in
16:26:27 42 relation to that.
43
16:26:27 44 Those briefings you received from Mr McRae included at
16:26:31 45 essential stages, for example, of the AB litigation, they
16:26:35 46 were accompanied by advices from senior counsel on each
16:26:39 47 occasion?---Yes.

1

16:26:40 2 Now, just rolling back and dealing with things as quickly
16:26:43 3 as we can but also making sure we cover some important
16:26:47 4 points. Coming back to that Petra and Briars phase where
16:26:53 5 you were sitting on the management committees as the OPI
16:26:58 6 representative in effect in joint investigations?---Yes.

7

16:26:59 8 If we take Petra for a moment, and I won't take you through
16:27:02 9 all the documents because (a) it would be really boring and
16:27:06 10 (b) we'll run out of time, but in Petra, the Dale/Hodson
16:27:10 11 matter, if we look at the minutes for the steering
16:27:13 12 committees, Ms Gobbo is unsurprisingly referred to by name
16:27:16 13 throughout the course of those until she becomes a witness
16:27:19 14 and then she's given the monicker Witness F?---Witness F,
16:27:22 15 yes.

16

16:27:23 17 But 3838 is never used because her use in that is, from
16:27:25 18 investigators' side, to gain evidence against
16:27:28 19 Mr Dale?---Yes.

20

16:27:29 21 By contrast, Briars, which is obviously the Chartres-Abbott
16:27:34 22 case, the steering committee minutes refer to her as 3838
16:27:40 23 throughout again until she's converted to a witness and
16:27:43 24 takes a witness monicker?---Yes.

25

16:27:46 26 And is that in effect in terms of Briars, you are - Briars
16:27:53 27 investigation is concerned with 3838 in her role as a human
16:27:57 28 source insofar as information about Lalor and Waters is
16:28:01 29 concerned?---Yes.

30

16:28:02 31 Until then she's ultimately turned into a witness?---Yes.

32

16:28:05 33 One thing, Chief Commissioner, I think we can all be
16:28:08 34 completely agreed on here, is it has been and was at the
16:28:11 35 time a profound imperative of those within Victoria Police
16:28:14 36 not to name or identify human sources?---Yes.

37

16:28:17 38 And there was a commitment to the use of numbers and to
16:28:22 39 using the need to know principle to avoid any risk,
16:28:27 40 additional risk to a human source?---Yes.

41

16:28:30 42 That extended, that need to know principle, as we've heard,
16:28:34 43 extended right up even to very senior ranks. I'm sure
16:28:37 44 nothing's kept from you, but up to very senior ranks in
16:28:39 45 terms of need to know as between different
16:28:46 46 portfolios?---You mean more generally?

47

16:28:47 1 Yes?---Yeah, that's - certainly they'll be sources, I'm not
16:28:48 2 saying in terms of this sort of thing with lawyers, but
16:28:51 3 just generally with sources I won't know who the sources
16:28:53 4 are.
5
16:28:54 6 We've heard some evidence about, and you were asked some
16:28:56 7 questions about it, about when, in terms of Briars, when it
16:28:59 8 was clear that 3838 was going to become a witness, Steve
16:29:04 9 Waddell wanting to access source logs. SDU held material
16:29:10 10 about 3838, and am I right that your evidence - you were
16:29:14 11 aware at the time that there was some push back at least
16:29:17 12 from the Source Development Unit to providing that material
16:29:19 13 to the investigators?---In which matter?
14
16:29:21 15 In relation to Briars?---No, I wasn't really aware Steve
16:29:24 16 was - I don't have a specific memory of Steve drilling into
16:29:28 17 that. He may well have.
18
16:29:30 19 Right?---I don't have a clear memory of that.
20
16:29:32 21 In any event when, in respect - certainly of Briars at
16:29:36 22 least but also in terms of Petra, the decision to
16:29:39 23 transition a person from a human source to a witness, here
16:29:42 24 Ms Gobbo, was one that was taken by you, and to your
16:29:46 25 knowledge by Mr Overland, well and truly aware of the
16:29:49 26 knowledge that it would expose her role as a human source,
16:29:52 27 that is that that would need to be disclosed?---Yes.
28
16:29:56 29 In that process?---Yes.
30
16:29:57 31 As I understand your evidence, the way in which you deal
16:30:00 32 with the risk which emerges from that in terms of her
16:30:03 33 safety is through witness protection?---Yes.
34
16:30:05 35 The big wicked problem that's emerged throughout the course
16:30:08 36 of this matter is the fact that Nicola Gobbo has never gone
16:30:11 37 into witness protection in those circumstances?---Yes, yes.
38
16:30:20 39 In any event, because there seems to be some criticism
16:30:24 40 depending where we're at this in proceeding of the decision
16:30:28 41 to turn her into a witness, but can we be clear that from
16:30:31 42 your perspective at least the decision to turn her into a
16:30:34 43 witness was done with the knowledge that whatever had
16:30:38 44 happened with her as a human source, that would likely be
16:30:41 45 disclosed?---Yes.
46
16:30:42 47 Thank you. Now the SWOT analysis that's been referred to

16:30:45 1 which we know is dated 31 December 2008 and you were told
16:30:52 2 correctly in cross-examination that there was a meeting
16:30:55 3 with Mr Overland and members of the Source Development Unit
16:30:59 4 at a seaside town at some point in December about those
16:31:02 5 issues?---Right.
6
16:31:06 7 Your evidence, as we understand it, is that the SWOT
16:31:10 8 analysis did not come to you and did not come to the
16:31:14 9 steering committee?---That's my recollection of it, yes. I
16:31:18 10 don't have any memory of seeing that.
11
16:31:20 12 Now that you've seen it and you've seen the things that it
16:31:23 13 says about Royal Commissions and convictions at risk and so
16:31:26 14 on, had you seen it at the time we would expect - would we
16:31:30 15 reasonably expect you would have taken some steps to deal
16:31:33 16 with it?---It certainly would have caused me to ask some
16:31:37 17 questions.
18
16:31:38 19 All right. Now, just dealing with the meeting of the Task
16:31:41 20 Force that immediately or very shortly follows the date of
16:31:46 21 that SWOT analysis, so the SWOT analysis is dated 31
16:31:49 22 December 2008 and you were taken to information indicating
16:31:54 23 the SWOT analysis goes to Mr Overland on 5 January of 2009,
16:32:00 24 and you were then taken to a meeting which we know occurs
16:32:04 25 of the Task Force on 5 January, that is the Petra Task
16:32:09 26 Force, on 5 January 2009. Now, you were asked some
16:32:13 27 questions about Mr Hollowood's diary entry for that
16:32:18 28 meeting, and could we have up, please, VPL.0005.0215.0001.
16:32:28 29 That's his diary. Could we go to p.41, that is 41 in terms
16:32:33 30 of the VPL. If we could just - yes, if we could - the
16:32:42 31 16:00 reference. This is a reference in relation to the
16:32:45 32 Task Force. It was suggested to you by Mr Winneke, and no
16:32:49 33 doubt it's because of the issue of handwriting, that that
16:32:52 34 note suggested that it was four weekly update, but can you
16:32:57 35 see that it in fact reads "per weekly update", PER?---Yeah,
16:33:03 36 I think that says per weekly update.
37
16:33:05 38 And a weekly update was a thing, right, it was actually a
16:33:08 39 document provided to the steering committee on a weekly
16:33:10 40 basis?---Yes.
41
16:33:11 42 And if we could have a look, please, just on the witness
16:33:13 43 and counsel assisting and the Commissioner's screens at
16:33:17 44 those minutes, which are VPL.0100.0047.1712. As it's
16:33:43 45 coming up I'll try and shortcut matters given the time.
16:33:48 46 The various notes of the various people who attended that
16:33:51 47 meeting suggest that it occurs between about 16:00 hours

16:33:56 1 and 17:45 hours, that's about an hour and 45
16:34:00 2 minutes?---Right.
3
16:34:01 4 It was suggested, though not followed up, that that was a
16:34:05 5 long period of time, it was a lengthy meeting. As that
16:34:08 6 document comes up, it may not be in dispute, it's a seven
16:34:12 7 page document, was that about normal for a weekly
16:34:16 8 update?---Depends what period we're talking.
9
16:34:19 10 MR WINNEKE: Are we talking about minutes or are we talking
16:34:20 11 about the update?
16:34:23 12
16:34:23 13 MR HOLT: No, the update, the weekly update.
14
16:34:25 15 MR WINNEKE: I think it was put that there were minutes.
16:34:28 16
16:34:28 17 MR HOLT: A apologise. It's just late in the day, I'm
16:34:30 18 sorry. The weekly update, seven pages of detail. Seven
16:34:30 19 pages, would that be about normal for a weekly update?---It
16:34:33 20 could be because they'd grow in length and often the
16:34:35 21 investigators seemed to have the practice of just sort of
16:34:37 22 adding on to it rather than taking stuff out so it would
16:34:41 23 just grow in length.
24
16:34:42 25 And it dealt with seven operations in total, would that
16:34:45 26 surprise you at this point in time?---No, there was a lot
16:34:47 27 of operations being done.
28
16:34:50 29 No more than by my count, albeit my poor maths, more than
16:34:53 30 30 persons of interest named in the course of that?---Yes.
31
16:34:56 32 In light of that, and the significance of the Petra Task
16:35:01 33 Force at the time, does an hour and 45 seem a long time to
16:35:03 34 your mind for a Task Force steering committee meeting?---It
16:35:06 35 could certainly run that long, yeah.
36
16:35:10 37 I want to turn to a different topic. We can leave that. I
16:35:13 38 think the witness has accepted sufficient for these
16:35:15 39 purposes, Commissioner. I want to talk to you about the
16:35:19 40 things that occur in November of 2011 and effectively what
16:35:23 41 then happens past November 2011 in terms of the
16:35:27 42 investigation of this matter and the ultimate disclosure of
16:35:30 43 Ms Gobbo's role as a human source. What our learned friend
16:35:36 44 Mr Winneke put to you I think yesterday, or possibly the
16:35:38 45 day before was this: in relation to November 2011 and the
16:35:42 46 Maguire advice, he said, "The steps that were taken
16:35:46 47 subsequent in receipt of that information were not about

16:35:48 1 disclosing information to prosecutors or anyone else, it
16:35:51 2 was about keeping a lid on this and it was about making
16:35:54 3 sure people did not find out about Ms Gobbo's role". I was
16:35:57 4 going to say do you recall that question but I know you've
16:36:00 5 been asked a lot of questions. You can take it from me
16:36:03 6 that's what was put to you by counsel assisting over the
16:36:07 7 last couple of days. The suggestion there is that the
16:36:09 8 steps that were taken were not about disclosing information
16:36:12 9 to prosecutors and anything else (a), and (b), about
16:36:17 10 keeping a lid on this. They were the propositions.
16:36:21 11 Bearing those in mind, I just wanted to go through some
16:36:23 12 matters with you. Firstly, if we could deal with the
16:36:27 13 Maguire advice itself. You may recall, and it's
16:36:31 14 VPL.0005.0003.2968, you may recall being shown paragraph 55
16:36:39 15 of the Maguire advice today, which included a
16:36:43 16 recommendation that the prosecutors, that is the
16:36:46 17 prosecutors in respect of the Dale matter, be provided with
16:36:49 18 what Mr Maguire described as the logs?---Right.
19
16:36:57 20 You have also described in the course of answering
16:37:00 21 questions from both Mr Winneke and Mr Nathwani an
16:37:06 22 increasing concern that's been building up over the
16:37:09 23 previous few weeks which kind of culminates in the Maguire
16:37:13 24 advice?---Yes.
25
16:37:15 26 About, can I put it this way, that it's suddenly appearing
16:37:17 27 there's an awful lot you don't seem to know about the
16:37:20 28 handling of Nicola Gobbo and the kind of cases that are
16:37:23 29 involved and so on?---Yes.
30
16:37:25 31 Having been - and I should say as well, just so you're
16:37:31 32 aware, the evidence is that Mr Maguire wrote his advice
16:37:34 33 with the benefit of having access to the whole of the
16:37:38 34 source management log, the 250-odd pages of the source
16:37:41 35 management log?---Right.
36
16:37:42 37 And that he had been given access to that in a room with
16:37:45 38 Mr Sheridan to go through for the purposes of preparing his
16:37:49 39 advice?---Right.
40
16:37:50 41 In light of that, I then want to go through some of the
16:37:53 42 steps that were taken. So can we have a look, please, at
16:37:58 43 VPL.0005.0003.2945. As this is coming up, Chief
16:38:10 44 Commissioner, can I say this: you were taken to your own
16:38:14 45 notes of this meeting, of the meeting on 3 November 2011,
16:38:22 46 and to Mr Cartwright's notes. This is Mr McRae's
16:38:27 47 notes?---Yes.

1

16:38:28 2 And can you see there the second - I was going to say dot
16:38:32 3 point but it seems to be some form of arrow which says,
16:38:40 4 "Disclosure to prosecutors to occur today (logs) and
16:38:45 5 Maguire advice"?---Yes.

6

16:38:49 7 Again, I know it's a very long time ago but you'd accept,
16:38:54 8 I'm sure, that that was a decision based on the advice that
16:38:58 9 had been given by Maguire that was taken by the three very
16:39:03 10 senior people in the room on that occasion?---I'd assume
16:39:07 11 that's the case.

12

16:39:07 13 Right at the outset we can see, can't we, a decision being
16:39:11 14 taken with the benefit of the Maguire advice to disclose
16:39:15 15 matters to prosecutors which will necessarily reveal Nicola
16:39:18 16 Gobbo's role as a human source?---Yes.

17

16:39:19 18 And in particular the source management logs, known here as
16:39:24 19 the logs, which are, as you would have understood it, the
16:39:27 20 entire longitudinal history of the management of Nicola
16:39:30 21 Gobbo as a human source?---Yes.

22

16:39:33 23 I'm sorry?---That's right.

24

16:39:34 25 Does it give you some confidence, Chief Commissioner, to
16:39:37 26 know that in fact that decision having been taken it would
16:39:40 27 appear in the morning of the 3rd, that by 2.50 in the
16:39:43 28 afternoon, as you heard from Mr Nathwani, Krista Breckweg
16:39:48 29 and Mr Christopher Beale of counsel were with John O'Connor
16:39:51 30 in a room with access to the source management log and took
16:39:56 31 something in the order of two to three hours with
16:40:00 32 it?---Yes, I didn't know - I don't think I knew at the time
16:40:03 33 that was happening, but you know, it was probably a good
16:40:06 34 thing it happened, yes.

35

16:40:12 36 Again, the source management log, as we know, the entirety
16:40:14 37 of the history of 3838 and 2958, the two numbers that
16:40:19 38 Ms Gobbo was using over that period of time?---Right.

39

16:40:22 40 All right. So that's the first thing that happens. We
16:40:26 41 then go to the next thing which occurs, which is that the
16:40:30 42 SDU via John O'Connor are directed to review their holdings
16:40:37 43 and to provide a report by Monday to assist the
16:40:43 44 decision-making process?---Yes.

45

16:40:44 46 Again, we've heard evidence of some push back from that but
16:40:48 47 nonetheless, presumably because of the seniority of the

16:40:51 1 people who are making the request, it was done over the
16:40:53 2 course of the weekend?---Yes, it was done, yes.
3
16:40:56 4 And that long list you've been shown of names, together
16:40:59 5 with a description of what it was said occurred, was then
16:41:01 6 provided following that on the Monday morning?---Yes.
7
16:41:05 8 So again, against the proposition that this was about
16:41:11 9 keeping a lid on things, what seems to be happening over
16:41:14 10 the weekend is that you're getting, ensuring that there is
16:41:18 11 got, I should say, as much information as possible in that
16:41:21 12 short period of time to deal with this important
16:41:24 13 issue?---Yes, in relation to her being a witness in this
16:41:27 14 Dale matter.
15
16:41:28 16 And we can see even from the document that's on the screen,
16:41:31 17 Mr McRae's note, the file note, the title he puts on the
16:41:35 18 file at the top, I'm sorry, is, "Dale prosecution"?---Yes.
19
16:41:40 20 Clear enough what the meeting in fact relates to, even
16:41:45 21 though of course it raises much bigger issues?---Yes.
22
16:41:49 23 So that occurs. Then we know that the Comrie review is
16:41:55 24 initiated. Now the drafting of Terms of Reference for the
16:41:58 25 Comrie review takes a little time?---Yes.
26
16:42:02 27 This is the point at which, as I understand it, while
16:42:06 28 you're keeping effectively an eye or an overview on things,
16:42:08 29 you're ensuring that others are taking the lead, quite
16:42:11 30 properly, because of your historical involvement?---Yes.
31
16:42:13 32 But in any event the person who's chosen or nominated was
16:42:22 33 Superintendent Gleeson at that point?---Yes.
34
16:42:25 35 And Superintendent Gleeson, is that a person known to
16:42:29 36 you?---Yes.
37
16:42:30 38 Can I suggest that the reason, and Mr McRae will give
16:42:34 39 evidence of this, the reason why Superintendent Gleeson was
16:42:37 40 nominated and chosen was precisely because he was a person
16:42:40 41 who would be like a dog with a bone and wouldn't make
16:42:43 42 apologies for anybody. If he found something, he'd find it
16:42:50 43 and report it and deal with it appropriately?---Yeah, he
16:42:52 44 has a reputation and in my experience he's someone who's a
16:42:54 45 very thorough, detailed person, yes.
46
16:42:58 47 And the bringing in of Mr Comrie to deal with that, would

16:43:02 1 you agree, a highly regarded former Chief Commissioner of
16:43:04 2 Victoria Police?---Yes, he's done many reviews for
16:43:08 3 government and other people around government.
4
16:43:10 5 Not someone you'd ever call in to do a whitewash, quite the
16:43:15 6 opposite I want to suggest to you?---No, he's someone I
16:43:18 7 have high regard for.
8
16:43:20 9 Notwithstanding what was put to you by Mr Chettle, does it
16:43:22 10 give you some confidence to know that Mr Comrie and
16:43:26 11 Mr Gleeson were located together offsite from Victoria
16:43:29 12 Police at another premise?---Yes.
13
16:43:31 14 And that as Mr Gleeson in fact explains, he had almost
16:43:35 15 daily contact with Mr Comrie discussing both direction and
16:43:39 16 strategic issues as they arose?---Yes.
17
16:43:42 18 And also, as he has explained, that is Mr Gleeson, as he,
16:43:45 19 Mr Gleeson, drafted a chapter it would be provided in draft
16:43:48 20 to Mr Comrie for comments and things back?---Yes.
21
16:43:52 22 One might think an entirely orthodox process for the
16:43:55 23 provision of a report of a complex matter?---Right.
24
16:43:58 25 For that sort of a process. All right. That's done. Did
16:44:05 26 you have any sense that Mr Gleeson or Mr Comrie were not
16:44:09 27 given or not told to access the full range of material,
16:44:15 28 people that they needed to access?---No, not to my
16:44:18 29 knowledge.
30
16:44:18 31 Indeed, again it might give you some comfort to know that
16:44:21 32 in fact the Commission has seen a range of emails, for
16:44:23 33 example, from Mr Gleeson where contrary to the impression
16:44:25 34 you might have got from the questions earlier asked,
16:44:30 35 Mr Gleeson was asking the OIC of the SDU specific
16:44:33 36 questions, specific requests for documents, and those were
16:44:36 37 then being passed on to handlers and controllers and that
16:44:41 38 information was coming back to him?---Right.
39
16:44:43 40 Does that sound like a pretty good process to you?---Yeah,
16:44:45 41 well that sounds like Mr Gleeson. He's someone that I -
16:44:49 42 you know, he's a real thorough type of person, Steve.
43
16:44:54 44 We then suggest again, in light of the context of all of
16:44:57 45 this, what the evidence shows is that Mr Gleeson, in the
16:45:02 46 course of doing the Comrie review within the Terms of
16:45:04 47 Reference that our learned friend Mr Winneke took you to,

16:45:07 1 identified a number of issues that he considered to be out
16:45:10 2 of scope of the actual Terms of Reference, which, as
16:45:13 3 Mr Winneke pointed out to you, were comparatively
16:45:17 4 limited?---Yes.
5
16:45:17 6 Mr Gleeson identified matters which he considered went to,
16:45:20 7 for example, potential misconduct or other broader issues
16:45:24 8 which he considered important to raise but out of
16:45:28 9 scope?---Yes, I think this was ultimately where Bendigo
16:45:32 10 went.
11
16:45:34 12 Superintendent Gleeson, as indeed with any police officer,
16:45:39 13 if a police officers becomes aware of those kinds of
16:45:42 14 issues, they've (a) got an obligation to report it within
16:45:47 15 the hierarchy, but (b) a broader obligation to ensure that
16:45:51 16 it's properly reported and dealt with by an appropriate
16:45:53 17 body; that's right, isn't it?---Right.
18
16:45:55 19 One of the things that Mr Gleeson does during the course of
16:45:57 20 discovering the out of scope material was to seek legal
16:46:01 21 advice from the Victorian Government Solicitors Office.
16:46:02 22 Again, would that give you confidence in the thoroughness
16:46:05 23 of that review?---Yes.
24
16:46:07 25 He then drafted and provided a letter, and I'll give the
16:46:12 26 VPL.0100.0105.0005 dated 22 June 2012 which precisely dealt
16:46:25 27 with those out of scope issues to ensure that they were
16:46:28 28 being properly raised internally. We'll just wait for that
16:46:33 29 to come up. Have we got that one? Thank you.
30
16:46:47 31 COMMISSIONER: While we're doing that, did you want to
16:46:51 32 tender the file note from Finn McRae of 3 November 2011?
16:46:57 33
16:46:57 34 MR HOLT: I do, Commissioner, I'm sorry. I missed that in
16:46:57 35 my haste.
16:46:58 36
16:46:59 37 #EXHIBIT RC896A - (Confidential) File note from Finn McRae
16:46:55 38 3/11/11.
16:47:04 39
16:47:05 40 #EXHIBIT RC896B - (Redacted version.)
41
16:47:14 42 Whilst that's coming up, and in the interests of time, I'll
16:47:17 43 take you through a couple of matters and then come back to
16:47:21 44 that, Chief Commissioner?---Okay.
45
16:47:24 46 You know I think, and I'll come back to what you asked
16:47:29 47 Mr McRae - no, I don't think that's it. Yes, go to 0005 of

16:47:39 1 that. Yes, that's it. Thank you. This is a letter to
16:47:47 2 Assistant Commissioner Pope from Superintendent Gleeson.
16:47:51 3 If we can go to the last page just to confirm that, please.
16:47:55 4 If we can just scroll down, because I think it's part of a
16:47:57 5 much bigger document. Yes, you see that, Superintendent
16:48:00 6 Gleeson?---Yes.
7
16:48:01 8 26 June of 2012, so before the Comrie review is issued. Go
16:48:05 9 to the first page, please. Can we see that in this
16:48:10 10 document he describes the Terms of Reference and then in
16:48:16 11 the third paragraph, "In the course of reviewing available
16:48:19 12 material I've identified certain records that raise issues
16:48:21 13 of concern that are outside the Terms of Reference"?---Yes.
14
15 "But worthy of your further consideration. These concerns
16:48:30 16 relate to the manner in which 3838 was utilised as a human
16:48:32 17 source and the resultant impacts of this. Full
18 consideration of such matters would require substantial
16:48:36 19 further investigation and consultation with various other
16:48:41 20 parties well beyond the scope of the systems and process
16:48:42 21 focussed review". See that?---Yes.
22
16:48:43 23 I won't take you through the whole document because other
16:48:45 24 witnesses will be able to do that. Can we scroll down,
16:48:49 25 please. Pause there, please. There's a note there you can
16:48:55 26 see at the top where Superintendent Gleeson has discovered
16:48:59 27 what is ultimately the genesis of the SWOT analysis, in
16:49:02 28 fact probably the SWOT analysis itself?---Right.
29
16:49:04 30 The issue cover sheet from Superintendent Biggin
16:49:07 31 identifying witnesses, threats and Superintendent Gleeson
16:49:11 32 unsurprisingly latches on to the ones that have been
16:49:16 33 significant in the course of this Royal Commission?---Yes.
34
16:49:19 35 Then if we keep going down, please. We then see some
16:49:22 36 examples noted there, and again, without reading them all
16:49:26 37 out, they appear to be a number of examples of alleged
16:49:32 38 concerning aspects of Ms Gobbo's conduct or the handling of
16:49:36 39 Ms Gobbo which have become live in the Royal Commission.
16:49:39 40 By way of example, fourth down, sorry, third down,
16:49:49 41 "Engaging in discussions with handlers about the conduct of
16:49:52 42 an adjournment process with an objective of securing bail
16:49:56 43 seemingly to enable other offences to continue, thereby
16:49:57 44 providing for the arrest of others", those sorts of
16:50:00 45 things?---Right.
46
16:50:01 47 If I can tender that document, Commissioner, the letter

16:50:04 1 from Mr Gleeson to Mr Pope.
2
16:50:09 3 COMMISSIONER: 26 June 2012.
16:50:12 4
16:50:12 5 #EXHIBIT RC897A - (Confidential) Letter from Mr Gleeson to
16:50:07 6 Mr Pope 25/06/12.
16:50:13 7
16:50:14 8 #EXHIBIT RC897B - (Redacted version.)
16:50:16 9
16:50:18 10 MR HOLT: Can I just check that date. I apologise.
11
16:50:20 12 COMMISSIONER: It's just the one I got off the transcript.
16:50:24 13
16:50:25 14 MR HOLT: June it is, I'm sorry, Commissioner, that's
16:50:27 15 correct. Again, just running through the steps to see
16:50:30 16 whether they fit this description of keeping a lid on and
16:50:34 17 not disclosing information to prosecutors or anyone else.
16:50:38 18 On 1 June 2012 are you aware that Mr McRae, Mr Fryer in
16:50:42 19 fact go to the Office of the Director of Public
16:50:44 20 Prosecutions and tell the Director of Public Prosecutions
16:50:47 21 that Nicola Gobbo is a human source, that there are issues
16:50:50 22 and they, that is police are investigating them?---I
16:50:55 23 understand that was the case, yes.
24
16:50:56 25 The Comrie review, as we've heard from Mr Chettle, gets
16:51:01 26 formally finalised in July of 2012 and the evidence will be
16:51:06 27 that the Chief Commissioner of Police, then Mr Lay, gave a
16:51:08 28 copy, that is provided the Comrie review in its entirety,
16:51:13 29 to Ron Bonnington, who was then the Acting Director of the
16:51:17 30 Office of Police Integrity. Again, would you consider that
16:51:21 31 to be an appropriate thing to do with a document such as
16:51:23 32 the Comrie review?---Yes, I think that must have been the
16:51:26 33 start of the Kellam, what ultimately became Kellam I think.
34
16:51:30 35 Yes, but in July of 2012 it's provided to Mr Bonnington.
16:51:35 36 He was Acting Director at that stage because you might
16:51:38 37 recall that it was later that year that the OPI transitions
16:51:41 38 to becoming IBAC?---Right.
39
16:51:43 40 And Mr Bonnington became the first Acting Director?---Yes,
16:51:46 41 I remember Mr Bonnington, yes.
42
16:51:50 43 Yes. So within about six weeks the Director of Public
16:51:52 44 Prosecutions is told and the OPI, your then oversight body
16:51:58 45 are told, and also given the Comrie review.
16:52:03 46
16:52:04 47 MS O'GORMAN: Sorry, Commissioner, can my learned friend

16:52:05 1 clarify what he means by the OPP were told, particularly
2 given the context of the Comrie report which was earlier
16:52:11 3 put?
16:52:11 4
16:52:11 5 MR HOLT: Do you understand that Mr Fryer and Mr McRae will
16:52:15 6 give evidence that on 1 June 2012 Mr Champion and
16:52:17 7 Mr Gardner were advised that Nicola Gobbo was a human
16:52:21 8 source, that there were issues and they were being looked
16:52:25 9 into at that point in time?---I now understand that, yes.
10
16:52:29 11 All right. That's the Comrie review, but underlying all of
16:52:35 12 that is the out of scope letter from Mr Gleeson and
16:52:40 13 Mr Gleeson, as we'll hear, spoke with Mr McRae and with
16:52:45 14 Mr Pope about those issues and it was determined that they
16:52:48 15 were of such significance that they ought to be told to the
16:52:51 16 OPI, the Office of Police Integrity, the oversight body,
16:52:58 17 separately, and in addition to the Comrie review. Again,
16:53:00 18 would you consider that to be an appropriate step to take
16:53:02 19 at that point?---Yes.
20
16:53:04 21 Again, the evidence will be that that was done by way of a
16:53:06 22 briefing to the head of Legal at the OPI on 31 August
16:53:11 23 2012?---Right.
24
16:53:12 25 In terms of those out of scope issues. You were taken
16:53:17 26 earlier then, dealing with steps, and you were involved in
16:53:20 27 this one, a meeting that you had with Mr McRae on 23 August
16:53:26 28 2012 where there was then a discussion for a further
16:53:32 29 disclosure to the DPP with a specific reference to issues
16:53:34 30 relating to the extradition of Mr Mokbel and issues that
16:53:38 31 might have arisen from Nicola Gobbo in that sense?---There
16:53:38 32 was the one that led to the conversation with Mr Lay.
33
16:53:40 34 Yes. Can we have a look, please, at VPL.0005.0003.2555.
16:54:01 35 Following - just before we come to that, following a
16:54:04 36 conversation with you on 23 August, as this file note
16:54:09 37 demonstrates, on 4 September 2012 Mr McRae goes and sees
16:54:13 38 the DPP again and the evidence will be that Mr Gleeson went
16:54:19 39 with him, although I acknowledge that it's not noted in
16:54:22 40 this file note?---Right.
41
16:54:23 42 To brief the DPP on Comrie, but specifically also in
16:54:32 43 relation to Mr Mokbel will be the evidence?---Right.
44
16:54:38 45 We can see the fourth dot point down there, "Alleged use of
16:54:43 46 LPP, statements by F relating to Mokbel extradition.
16:54:49 47 VicPol does not have details of information passed on, if

16:54:52 1 any, as this is part of intelligence holdings". Again,
16:54:55 2 what we see here is a follow up with specific information
16:54:58 3 being conveyed to the DPP about the Mokbel extradition and
16:55:02 4 the potential issue of the use of privileged information in
16:55:05 5 that regard relating to Ms Gobbo?---Right.
6
16:55:12 7 I think it's a matter of public record that the extradition
16:55:15 8 appeal was heard in November of 2012. Are you also aware,
16:55:20 9 Chief Commissioner, that following from information
16:55:24 10 received in 2011 the Victorian Ombudsman in 2012 gave a
16:55:31 11 report about the propriety of the settlement of the civil
16:55:35 12 proceedings with Ms Gobbo?---Yes, I wasn't across that but
16:55:39 13 I understand that happened.
14
16:55:40 15 And clear enough, might I suggest from that material, that
16:55:45 16 the Victorian Ombudsman's office, as well as the OPI and
16:55:50 17 the DPP and CDPP by this stage were aware that Ms Gobbo was
16:55:55 18 a human source?---Yes.
19
16:55:57 20 Early 2013 you've given evidence Loricated is commissioned
16:56:03 21 and the intention of that is to reconstruct the
16:56:05 22 file?---Yes.
23
16:56:06 24 Whether that was necessary or not in terms of what
16:56:08 25 Mr Chettle says, nonetheless it was thought at least to be
16:56:11 26 necessary at the time?---Right.
27
16:56:12 28 And do you understand that was a significant undertaking,
16:56:16 29 major resources over a number of months at least?---Yes, it
16:56:20 30 was a large process.
31
16:56:22 32 With a goal to create an auditable record of the entire
33 history in accordance with the Comrie recommendations of
16:56:29 34 the handling of Nicola Gobbo?---Yes.
35
16:56:32 36 And then following that in 2014 part of Bendigo, which was
16:56:39 37 a separate operation, put together multidisciplinary teams
16:56:43 38 in order to identify potential miscarriages of justice,
16:56:47 39 legal issues where cases might have been affected?---As I
16:56:50 40 understand it, yes.
41
16:56:51 42 Now, let's just pause there for a moment. It was put to
16:56:54 43 you by Mr Winneke, with respect entirely properly, that
16:56:58 44 that's an awfully long time for it to have taken to get to
16:57:02 45 that point, and you appeared to accept that criticism, is
16:57:06 46 that a fair way of putting it?---Yeah, it's a long period
16:57:11 47 of time.

1

16:57:12 2 But in any event the evidence will be that the case studies
16:57:13 3 that were created in 2014, the five of them, included -
16:57:17 4 case study one was Milad Mokbel, Frank Ahec, Dominic
16:57:21 5 Barbaro, case study 2 was Zaharoula Mokbel, case study 3
16:57:30 6 Mr Karam, with particular focus Agamas and Inca, case study
16:57:36 7 4 a person we know as ██████████, case study 5 Tony Mokbel's
16:57:42 8 extradition proceedings. And you might take it from me
16:57:44 9 that those seemed to remain, with a couple of additions, at
16:57:49 10 least a core of some of the most significant matters that
16:57:50 11 have been examined in this Royal Commission?---Yes.

12

16:57:52 13 We know that those case studies were at least discussed
16:57:55 14 with the Director of Public Prosecutions by December of
16:58:00 15 2014?---Yes.

16

16:58:02 17 You think that would be appropriate?---Yes.

18

16:58:04 19 And that the government and the opposition, we've heard,
16:58:07 20 were both briefed in 2014?---Right.

21

16:58:11 22 And the Karam case study, given that it related to Inca,
16:58:15 23 the evidence will be was at least discussed with, if not
16:58:19 24 provided to, the Commonwealth Director of Public
16:58:23 25 Prosecutions in January 2015. Again all of this seems
16:58:26 26 appropriate to you?---Yes.

27

16:58:34 28 Entirely appropriate thing to do for Victoria
16:58:39 29 Police?---Yes, it would be appropriate.

30

16:58:42 31 The matter referred, given what it related to, also by the
16:58:45 32 Director of Police Legal to the Legal Services
16:58:49 33 Commissioner, in 2015, again another appropriate oversight
16:58:52 34 body to consider these issues?---Yes.

35

16:58:54 36 The Kellam report we know is released on 6 February 2015.
16:58:58 37 That report was given in accordance with the recommendation
16:59:01 38 by Victoria Police to the State DPP on 12 February 2015, so
16:59:06 39 six days later?---Right.

40

16:59:08 41 Again, you'd hope there'd be a quick turn around on that
16:59:11 42 kind of a - - - ?---Yes.

43

16:59:12 44 And then - so that was 12 February 2015. With some
16:59:19 45 meetings in between it's a year later, almost to the day,
16:59:25 46 ten days short on 2 February 2016, that the Director of
16:59:30 47 Public Prosecutions advises that he has an intention to

16:59:33 1 disclose in light of the content of the Kellam report.
16:59:36 2 Now, in between those times do you recall you in fact met
16:59:39 3 in your role as Chief Commissioner with Mr Champion and
16:59:42 4 Mr McRae following the issue of the Kellam report but
16:59:48 5 before the disclosure issue arose?---I may have. When I
16:59:52 6 was back as the Chief Commissioner?
7
16:59:55 8 Yes?---Yes.
9
17:00:00 10 Do you recall at that stage the query being what was the
17:00:03 11 DPP doing in response to the Kellam report?---What was the
17:00:05 12 intentions with it.
13
17:00:09 14 It was suggested, at least implicitly, that the AB
17:00:13 15 litigation was again part of this process of keeping a lid
17:00:19 16 on things. You're aware, I take it, from your involvement
17:00:26 17 in that litigation that the advice, and the position that
17:00:28 18 was ultimately accepted by the courts, variously was
17:00:31 19 something in the order of either absolutely certain or
17:00:34 20 close to certain that if her name was revealed Nicola Gobbo
17:00:37 21 would be killed?---Almost certain I think was the words.
22
17:00:41 23 And also there was a very high risk at least that her
17:00:44 24 children would be severely injured, if not killed?---Yes.
25
17:00:47 26 That risk assessment ultimately accepted by courts, was
17:00:51 27 that's what actually, from your perspective, drove
17:00:55 28 Victoria Police's response to those matters?---Yes.
29
17:00:57 30 Thank you. You're aware, I take it, that there are various
17:01:03 31 appeals going on at present in relation to these
17:01:05 32 matters?---Oh yes, in the appeal context, yes.
33
17:01:09 34 In fact one of the very early ones was an appeal still on
17:01:13 35 foot by Mr Karam in respect of matters prosecuted by the
17:01:17 36 Commonwealth Director of Public Prosecutions?---Right.
37
17:01:19 38 That were alive in 2016, at the very time that the AB
17:01:24 39 proceedings are going on?---Yes, they were both happening
17:01:27 40 then.
41
17:01:27 42 At the very time that it's suggested that Victoria Police
17:01:29 43 was somehow operating inappropriately by trying to prevent
17:01:34 44 Nicola Gobbo's name being known?---Right.
45
17:01:40 46 When that appeal was going on are you aware that the
17:01:43 47 Victoria Police, notwithstanding the AB litigation,

17:01:46 1 provided access to the Commonwealth Director of Public
17:01:50 2 Prosecutions to Victoria Police records in relation to
17:01:52 3 Ms Gobbo in order to allow it to conduct that appeal
17:01:55 4 appropriately?---Right.
5
17:01:56 6 And that there was at a later point an arrangement for
17:02:00 7 Mr Karam's legal representatives to see material related to
17:02:04 8 Ms Gobbo under strict confidentiality?---I see.
9
17:02:07 10 Right. Again, is all of that giving you some confidence
17:02:12 11 that Victoria Police was not trying to put these matters
17:02:15 12 under the rug in the time since your direction in November
17:02:18 13 of 2011?---They all sound like sensible steps.
14
17:02:22 15 I just want to deal briefly then with running back to
17:02:25 16 November of 2011 where you have the discussion on 3
17:02:31 17 November 2011 with Mr McRae, Mr Cartwright and
17:02:36 18 yourself?---Yep.
19
17:02:36 20 It's been referred to as a Driver Task Force meeting on a
17:02:39 21 number of occasions but it patently wasn't that, was it,
17:02:43 22 because you were the only person present who was a member
17:02:45 23 of the Driver Task Force?---Yes, it was me going to see
17:02:48 24 them, I'm pretty sure it was in Tim's office, not at Crime,
17:02:53 25 where these Driver Task Force meetings would happen.
26
17:02:56 27 No one else on the committee was there. You're talking
17:02:59 28 about a specific acute problem in relation to the
17:03:02 29 Commonwealth prosecution of Mr Dale?---Yes.
30
17:03:04 31 Can I - Commissioner, I think I'll be about another 15
17:03:09 32 minutes, even going as fast as I can. Do you want to
17:03:12 33 continue or shall we - - -
34
17:03:13 35 COMMISSIONER: If you're finished in 15 minutes then it's
17:03:16 36 just - how long will you be? You won't be long, Mr - - -
17:03:19 37
17:03:20 38 MR WINNEKE: I'd be probably 15 minutes, Commissioner.
39
17:03:23 40 COMMISSIONER: It's just getting a bit tough on the
17:03:25 41 reporters. I have been told they could manage until 5.30
17:03:29 42 but really - - -
17:03:30 43
17:03:30 44 MR HOLT: And I'm speaking even faster than I normally do,
17:03:33 45 Commissioner, to try and deal with the time, which I didn't
17:03:35 46 think was possible.
47

17:03:43 1 COMMISSIONER: I'm told they're bravely soldiering on.
17:03:49 2 Let's see how we go.
17:03:51 3
17:03:52 4 MR HOLT: Thank you, Commissioner. Rewinding from all of
17:03:54 5 that into November of 2011. We've already identified that
17:04:00 6 the history is the 11.30 meeting with Mr McRae and
17:04:06 7 Mr Cartwright. Then by 2.50 the log is being provided in
17:04:12 8 unedited form to Ms Breckweg and Mr Beale. Can we go,
17:04:20 9 please, to VPL.0005.0013.1152. Could we just zoom in on
17:04:41 10 the second and third paragraphs, please. Yes, thank you.
17:04:47 11 This is an email from - I'm sorry, can we just drop that
17:04:51 12 down so - yep. From Mr Fryer to Mr Frewen and Mr Buick and
17:04:59 13 copied to you and includes reference to you in it as well.
17:05:02 14 I think you were shown this email earlier?---Right.
15
17:05:06 16 This was about asking for select Driver staff to review the
17:05:10 17 SML, and I should be clear, this is occurring on 3 November
17:05:12 18 2011 at 10.22 am, so before that meeting occurs?---Yes.
19
17:05:18 20 So the Driver staff are being asked to review the SML and
17:05:21 21 the note here is that, "Paul is not in favour of this", and
17:05:25 22 the indication from Mr Fryer is, "I agree with his initial
17:05:29 23 decision. Investigators know in broad and sometimes
24 specific terms the historical involvement F has had with
17:05:34 25 police. We know where the threat would come from", et
17:05:38 26 cetera. "The police, unlike the DPP, may be questioned in
17:05:39 27 the box about her knowledge. Paul and I have an agreed
17:05:43 28 view. Mr Maguire has already viewed the SML. Attached is
17:05:43 29 a 13 page memo of advice. Whilst some of it is highly
17:05:50 30 speculative and worse case scenario, it is based on facts
31 gleaned from the SML. We propose the DPP be fully briefed
17:05:54 32 on the various statuses F has held in Victoria Police, be
17:05:54 33 permitted to fully read the Maguire memo, then, and only if
17:05:59 34 deemed necessary, be allowed to view specific or relevant
17:06:01 35 areas of the SML. Full exposure to the SML may place the
17:06:03 36 DPP in a difficult position in the future". So the point
17:06:06 37 was, the plan was, "Look, we keep it, if we can, from
17:06:11 38 investigators because of the sterile corridor, but as far
17:06:15 39 as the prosecuting authority is concerned, we're going to
17:06:18 40 give them preliminary access. Then if they want more we'll
17:06:23 41 deal with that in a sensible and step-wise fashion". Is
17:06:27 42 that a fair summary of that?---Yes. That's how I am
43 assessing that.
44
17:06:27 45 And as we know, that's then precisely what plays out over
17:06:30 46 the course of the remainder of the day. You were asked
17:06:34 47 about Inca, and in particular the note that's made by you -

17:06:39 1 I'm sorry, I withdraw that. The note that's made by
17:06:43 2 Mr Cartwright about what you say about Inca. Mr Nathwani
17:06:46 3 took you to some aspects of this before - - -
4
17:06:51 5 COMMISSIONER: The last document was 697.
17:06:53 6
17:06:54 7 MR HOLT: Thank you, Commissioner. Mr Nathwani took you to
17:06:56 8 the source management log and pointed you to various places
17:07:01 9 in the source management log which Mr Beale and Ms Breckweg
17:07:04 10 had had access to which indicated matters to do with the
17:07:08 11 Karam trial and those sorts of things. I just want to go
17:07:12 12 to two pages. Again, could this just be on witness and the
17:07:16 13 Commissioner and our learned friend's screen please. The
17:07:19 14 source management log firstly at p.113, 28 May 2007. Can I
17:07:54 15 just give a hard copy to our friends for the Commonwealth,
17:07:59 16 Commissioner. It's Mr Nathwani's, so they must ignore the
17:08:07 17 doodles he's done on it. 28 May 2007, do you see there an
17:08:13 18 entry, and I don't want you to read anything out, please,
17:08:16 19 but it's clear the source, here Nicola Gobbo, is involved
17:08:19 20 in the Karam trial?---Yes.
21
17:08:21 22 And then if you go over to p.114 on 30 May 2007, that
17:08:29 23 entry, "The source provides documents re imports of
17:08:32 24 tomatoes from Italy". Pretty clear what that relates
17:08:37 25 to?---Yes.
26
17:08:38 27 Then on 14 June 2007, but on the same page, an entry, "Has
17:08:43 28 provided intel re upcoming large importation of ecstasy".
17:08:50 29 Do you see that?---Yes.
30
17:08:50 31 In addition we know, and again I think Mr Winneke asked you
17:08:54 32 about this this morning, that on the 14th of August 2011
17:09:04 33 Mr Buick had, it appears inadvertently, recorded a meeting
17:09:08 34 that took place between Ms Gobbo and Commonwealth
17:09:12 35 prosecutors, Ms Breckweg, Mr Kirne and Ms Argitis I think,
17:09:22 36 wherein Ms Gobbo specifically talked about how one of their
17:09:27 37 prosecutions was in jeopardy. Now, final topic, Chief
17:09:34 38 Commissioner. Could we have back up, please, that file
17:09:37 39 note of Mr McRae's of the meeting of 3 November 2011 which
17:09:45 40 ends 2945 and has just been tendered I think as an exhibit.
41
17:09:52 42 COMMISSIONER: 896.
17:09:53 43
17:09:53 44 MR HOLT: 896, it's 0005.0003.2945?---Yes.
45
17:10:02 46 This can go on everyone's screens I think, Commissioner,
17:10:05 47 thank you. So there's the note here in terms of something

17:10:09 1 to be done, is that one I took you to before, "Disclosure
17:10:12 2 to prosecutors to occur today (logs) and Maguire advice",
17:10:18 3 do you see that?---Yes.
4

17:10:19 5 Whilst Mr Cartwright's notes note things in a different
17:10:23 6 way, obviously what we've got here are three sets of notes
17:10:27 7 of three people who are at the same meeting, which record
17:10:30 8 broadly the same things but unsurprisingly in different
17:10:34 9 ways and in different levels of detail, see that?---Yes.
10

17:10:37 11 Chief Commissioner, we know, and as I told you before,
17:10:43 12 unquestionably the DPP were not told anything about Nicola
17:10:47 13 Gobbo as a human source following this until 1 June 2012,
17:10:50 14 you understand that now?---Right.
15

17:10:53 16 Can I suggest to you that your recollection of telling
17:10:59 17 Mr McRae to advise prosecutors in fact relates to the, or
17:11:08 18 is likely at least, or could at least, relate to that
17:11:11 19 understanding, that it was the Commonwealth prosecutors in
17:11:13 20 respect of Dale, rather than anything broader than that at
17:11:17 21 this point?---I've taken it that Finn has interpreted my
17:11:23 22 comments to be in relation to this.
23

17:11:25 24 I understand. You know Finn McRae well enough to know that
17:11:29 25 if he had understood a direction in the way you recall it,
17:11:32 26 he'd have complied with that?---Yeah, look, I've got a
17:11:34 27 great deal of confidence in Finn, he's a very professional
17:11:38 28 person.
29

17:11:39 30 Yes, thank you, that's the cross-examination.
31

17:11:45 32 COMMISSIONER: Yes, Mr Winneke.
33

34 MR WINNEKE: I take it - - -
35

17:11:48 36 COMMISSIONER: No one else has any I presume, everyone's
17:11:52 37 very quiet.
38

39 <RE-EXAMINED BY MR WINNEKE:
40

41 MR WINNEKE: Mr Holt took you through various steps that
42 followed from November 2011 and I suppose if you say it
17:12:16 43 very quickly it sounds very quick, but can I suggest to you
17:12:16 44 that in fact the process was too slow, do you accept that
17:12:16 45 proposition?---It was a long period of time. I suppose at
17:12:19 46 the same time as Mr Holt was saying there's some complex
17:12:22 47 matters that had to be reviewed at the same time, I think

17:12:25 1 that was the point he was making, that they're not simple
17:12:28 2 matters to review but it was a long period of time.
17:12:31 3
17:12:31 4 In the meantime there were people sitting in gaol, do you
17:12:35 5 accept that?---Yes, that's why I didn't contest your view.
17:12:37 6
17:12:38 7 Okay. I just want to go through a few matters. We saw,
17:12:42 8 and I think Mr Nathwani took you to a legal advice which
17:12:46 9 was provided on 11 November 2011 concerning Mr Pope's
17:12:51 10 position, you remember that?---Yes.
17:12:54 11
17:12:54 12 And what you did was to suggest that an affidavit be made
17:12:58 13 by, be sworn by Mr Pope, that a transcript be obtained, do
17:13:04 14 you recall that?---That I suggested it?
17:13:06 15
17:13:06 16 That was done in any event?---Yes, that was, yes.
17:13:09 17
17:13:09 18 It was provided to the VGS0, Shaun Le Grand, do you
17:13:14 19 agree?---Yes.
17:13:14 20
17:13:14 21 Can I suggest to you that you had available to you legal
17:13:19 22 advisors who could provide you with legal advice about the
17:13:22 23 sort of things that you were seeking or being sought in
17:13:26 24 relation to Mr Pope, but equally there were legal advisors
17:13:29 25 who could provide you with the sort of advice that you
17:13:32 26 needed with respect to the matters that were concerning you
17:13:36 27 insofar as disclosure was concerned?---You're referring to
17:13:43 28 Mr Pope's, the allegation against Mr Pope, that he got his,
17:13:48 29 that he made a stat dec. or something?
17:13:50 30
17:13:51 31 Yes, you went off and you got legal advice from Mr Le Grand
17:13:54 32 which talked about what the position was with respect to
17:13:57 33 Mr Pope, whether he should remain, whether he should
17:14:01 34 stay?---I didn't know.
17:14:01 35
17:14:01 36 In any event that was done. That was done in very quick
17:14:05 37 time to deal with Mr Pope, do you accept that
17:14:07 38 proposition?---Yes, I'm assuming Mr Cartwright did that,
17:14:11 39 initiated that.
17:14:12 40
17:14:14 41 It could have been done, that is the legal advice could
17:14:15 42 have been done with respect to positions of people whose
17:14:19 43 convictions or whose trials could well be cast in doubt or
17:14:27 44 could be the subject of miscarriages of justice. Equally,
17:14:31 45 there could have been advice obtained very quickly, with as
17:14:34 46 much information as you had available to you even at that
17:14:37 47 stage, do you accept that proposition?---What I did was

17:14:41 1 bring it to the attention of Mr Cartwright and then he
17:14:43 2 undertook processes from there that led to the Comrie
17:14:48 3 Review, so he was starting to undertake all of those
17:14:50 4 processes. I guess it's a question for him.
17:14:53 5
17:14:53 6 You were asked questions about the source management log
17:14:58 7 which was provided to, I think, Mr Beale and Ms Breckweg
17:15:06 8 very shortly after the concerns that you had about the
17:15:12 9 position of Ms Gobbo and Mr Dale's trial, correct?---Yes.
17:15:15 10
17:15:16 11 It appears that they were shown the source management log
17:15:19 12 on or about I think 4 November, is that right - 3
17:15:23 13 November?---Yes.
17:15:23 14
17:15:23 15 That afternoon?---It would seem, yes.
17:15:25 16
17:15:25 17 Do I take it that they weren't provided with a copy of the
17:15:29 18 source management log to keep?---I'm not aware that they
17:15:34 19 were, no.
17:15:34 20
17:15:34 21 It's most unlikely that they were?---Yes, I agree.
17:15:38 22
17:15:38 23 Obviously they were looking at that document with a
17:15:40 24 particular trial in mind, that being the Dale trial which
17:15:43 25 was coming up and whether or not there were matters in it
17:15:47 26 which might well effect the trial of Mr Dale?---Yes, it was
17:15:50 27 about that case.
17:15:51 28
17:15:51 29 Insofar as it's been suggested by Mr Holt and Mr Nathwani
17:15:55 30 that as they went through that document, some 200-odd
17:15:59 31 pages, packed with information which we've been dealing
17:16:01 32 with over the last very many months, they might well have
17:16:07 33 seen references to other matters that might well have
17:16:11 34 sparked their interest about the possibility of other
17:16:14 35 trials being affected?---They may, yeah, I think they were
17:16:18 36 saying that those matters were referred to in them as they
17:16:22 37 were going through them they could have seen them. I don't
17:16:24 38 know whether they did or they didn't.
17:16:25 39
17:16:26 40 Then the document would have been ripped back off them and
17:16:28 41 they then wouldn't have it available to them to pore over
17:16:35 42 after they'd left?---No, the documents, I don't know about
17:16:38 43 being ripped back off them, but the documents, you wouldn't
17:16:43 44 have been allowed, they were told to come in to look at the
17:16:45 45 documents. It would be a very unusual practice for someone
17:16:48 46 to take away documents on that basis.
17:16:50 47

17:16:50 1 Do you know whether they were permitted to take notes at
17:16:53 2 all?---No, I don't know.
17:16:54 3
17:16:55 4 Insofar as it may be suggested that that was adequate
17:16:58 5 disclosure about all of the other matters that were
17:17:04 6 becoming concerning to you, you would certainly say, "No,
17:17:07 7 that wasn't adequate disclosure at all"?---That process was
17:17:10 8 in relation to the ACC matters.
17:17:14 9
17:17:14 10 Yes?---I think what they were saying was that they may have
17:17:19 11 become aware of it via that process, by the fact it was in
17:17:22 12 the logs. Certainly the purpose of their meeting was to
17:17:25 13 understand the risks that might be in the logs about her
17:17:28 14 cooperation in terms of how it might affect that case and
17:17:32 15 then to form an assessment about whether she should be
17:17:38 16 called or not from their perspective.
17:17:40 17
17:17:40 18 That was in respect of one trial only, one matter only when
17:17:43 19 there was a growing realisation that there were very many
17:17:47 20 other matters that could well have been affected, do you
17:17:49 21 accept that?---Yes, but at the same time they'd be looking
17:17:52 22 to understand as much of the document as they could, I
17:17:55 23 guess.
17:17:55 24
17:17:56 25 Bearing in mind they were focusing on the trial that was
17:17:58 26 relevant to them, I assume?---Yes.
17:18:00 27
17:18:00 28 And that matter was resolved by withdrawing charges?---Yes.
17:18:05 29
17:18:05 30 So it meant that the risk of Ms Gobbo being exposed, the
17:18:10 31 risk of Victoria Police being exposed was in effect limited
17:18:15 32 because the charges would be withdrawn?---The risk to her
17:18:18 33 safety, yes.
17:18:19 34
17:18:19 35 And I take it you understand that very often prosecuting
17:18:23 36 authorities, and/or particularly the police have to make a
17:18:28 37 decision either disclose material and put a source at risk
17:18:31 38 or withdraw charges?---Yes.
17:18:33 39
17:18:33 40 That's often the very major decision that has to be made by
17:18:38 41 Victoria Police, prosecuting authorities, do you accept
17:18:40 42 that?---Yes.
17:18:41 43
17:18:41 44 The same would apply, wouldn't it, to other cases where
17:18:44 45 people were being tried such as Mr Mokbel, Mr Karam,
17:18:51 46 et cetera?---Yes.
17:18:52 47

17:18:52 1 A decision has to be made as to whether or not to disclose
17:18:56 2 material or to pull charges?---Yes, in the ordinary context
17:19:01 3 of things, that's correct.
17:19:02 4
17:19:05 5 In relation to Karam, there'd be pretty significant
17:19:10 6 problems for Victoria Police saying, "Well look, you're
17:19:14 7 going to pull", saying to the Commonwealth, "You've got to
17:19:16 8 pull those charges, we've got a problem with an
17:19:20 9 informer"?---Yes. That wasn't a pre-charged thing, I think
17:19:23 10 in those cases they'd already been charged.
17:19:26 11
17:19:27 12 You accept that there should have been proper disclosure in
17:19:30 13 those cases before those trials went?---You'd want
17:19:37 14 disclosure to take place in the normal manner for all the
17:19:41 15 cases we do.
17:19:41 16
17:19:44 17 Now, you were asked questions about the Briars, sorry, the
17:19:53 18 Petra Task Force meetings and in particular on 5 January.
17:19:58 19 Now, it's, it was suggested by Mr Chettle that in effect
17:20:03 20 Mr Overland played a dictatorial role and once he makes the
17:20:09 21 decision that Ms Gobbo is going to be used as a witness,
17:20:12 22 that was it. Was that your understanding or that your
17:20:15 23 feeling when you became involved or you were involved in
17:20:18 24 meetings around the discussions of Ms Gobbo, that is
17:20:23 25 whether she would be a witness?---I think that was
17:20:27 26 something that was talked about, and I also had a view
17:20:30 27 about that, as well as Mr Overland, that she should be a
17:20:35 28 witness. I wouldn't have described him as dictatorial
17:20:39 29 about that.
17:20:40 30
17:20:42 31 Could I ask you about this. You were asked I think by
17:20:47 32 Mr Chettle about your relationship, or at least the way in
17:20:51 33 which you dealt with Mr Overland?---Yes.
17:20:55 34
17:21:05 35 Before we go here, I think you said Mr Overland may have
17:21:08 36 been a referee when you were appointed to your
17:21:12 37 position?---He could have been, I don't know. I'd have to
17:21:14 38 check all that.
17:21:14 39
17:21:14 40 Can I suggest to you that he was, do you accept that
17:21:17 41 proposition that he did provide a reference for you, at
17:21:20 42 least a verbal reference?---I'm not disputing that, I'd
17:21:23 43 have to check it. If you're saying it's a fact then I'm
17:21:26 44 happy to accept what you're saying.
17:21:28 45
17:21:28 46 That's the information that the Commission has?---All
17:21:31 47 right.

17:21:31 1
17:21:32 2 You were asked this about your relationship by Mr Hevey,
17:21:38 3 you said, "We had a professional relationship but we
17:21:41 4 weren't sort of friends or anything in the sense, in that
17:21:44 5 sense, you know". Is that correct, this is on 18 November
17:21:51 6 2014?---I would regard it as a professional relationship.
17:21:56 7
17:21:57 8 "We would, I'd just sort of come along to the meetings and
17:22:00 9 everyone would be there. There were some occasions when
17:22:03 10 he'd ask me to stay behind after the meetings but that
17:22:06 11 would invariably involve, you know, he'd want the
17:22:10 12 investigators, would have a problem with our dogs or we
17:22:15 13 weren't getting the phone off quick enough, or he wanted to
17:22:18 14 be sort of critical of OPI and get me to do something so
17:22:22 15 that we would lift our weight more, if you like, and he
17:22:26 16 didn't want to do that in front of the group so we'd have -
17:22:29 17 occasionally that would happen, but he wasn't the sort of
17:22:32 18 guy I had that sort of relationship where I'd say, 'Hey
17:22:36 19 listen, you know, you need to rethink that', or that sort
17:22:42 20 of stuff. It would only be in the context of meeting that
17:22:45 21 I'd test it, or" and then it's indistinct?---Yes.
17:22:49 22
17:22:52 23 Do you accept that kind of defined the relationship that
17:22:53 24 you had with Mr Overland in the steering committees both
17:22:56 25 with respect to Petra and Briars?---Yes.
17:22:58 26
17:22:58 27 Can I suggest to you that what you really needed to do,
17:23:01 28 your job as a regulator required you to be the sort of guy
17:23:05 29 who did say, 'You do need to rethink that', or, 'You do need
17:23:10 30 to tell me what's going on"', because you were the
17:23:12 31 regulator, do you accept that proposition?---Yes, well
17:23:14 32 certainly as I said in that evidence I did that in the
17:23:17 33 meeting. What I'm saying there was around what would
17:23:21 34 happen after the meetings. So if he asked me ever to stay,
17:23:26 35 to hang around for a minute, it would be if he wanted, you
17:23:28 36 know, say I think investigators expressing concerns or
17:23:31 37 frustrations about, you know, something that he thought we
17:23:34 38 weren't doing enough of or needed to do more, so he'd sort
17:23:38 39 of ask me to stay behind and mention that to me in that
17:23:41 40 context. That wasn't a broader reference to me contesting
17:23:44 41 things or doing that.
17:23:46 42
17:23:46 43 Yes, all right. Do you accept the proposition though that
17:23:49 44 if you were to conduct yourself as an appropriate oversight
17:23:53 45 organisation you've got to be in a position to say to this
17:23:56 46 person, "Listen, I want to know what's going on, you've got
17:24:02 47 tell us this"?---If you believe that you should contest

17:24:04 1 something, yes.
17:24:05 2
17:24:05 3 Can I put this to you. We've received a statement last
17:24:07 4 night from Mr John Nolan. I just want to put something to
17:24:11 5 you that he says?---Yes.
17:24:12 6
17:24:15 7 In his statement he says at paragraph 26 - I can put it up
17:24:21 8 or I can read it if you're prepared to accept this is what
17:24:24 9 it says.
17:24:25 10
17:24:26 11 MR COLEMAN: This is not re-examination, is it?
17:24:28 12
17:24:28 13 MR WINNEKE: This is new, yes. "I recall expressing
17:24:31 14 concerns to Assistant Director Ashton about how OPI could
17:24:36 15 maintain its statutory independence from Victoria Police
17:24:39 16 while having an active role in the investigation albeit in
17:24:42 17 a support role. It would be inappropriate for OPI to
17:24:44 18 investigate, for example, if a public complaint arose in
17:24:48 19 the course of the investigation it would pose significant
17:24:50 20 conflict of interest issues for the OPI should it have been
17:24:54 21 asked to investigate. Assistant Director Ashton expressed
17:24:59 22 the view to me that these concerns could be managed and the
17:25:01 23 priority was to ensure that Victoria Police had the
17:25:05 24 resources and support to conduct an effective
17:25:09 25 investigation. The allegations raised in both Operation
17:25:13 26 Petra and Briars involved the most serious allegations of
17:25:19 27 police corruption and I understood the imperative to ensure
17:25:22 28 the matters were resolved". Now, what do you say about
17:25:27 29 what he said there?---Well, he may well have put that to
17:25:32 30 me. I think there was a range of people, I think in the
17:25:36 31 material we've seen over the last couple of days like in
17:25:38 32 the legal area as well, canvassing those concerns, yes.
17:25:42 33
17:25:43 34 So to suggest, as you did, that the first time you heard
17:25:47 35 about this issue of perhaps a problematic
17:25:53 36 co-investigatorial relationship was when you saw Mr Jones'
17:25:58 37 statement, clearly isn't correct, is it? You'd heard these
17:26:01 38 issues before?---No, as I've already said in the last
17:26:04 39 couple of days, we saw that information from the legal
17:26:08 40 department. There's always that competing thing at that
17:26:11 41 time, but we had to face this reality about what we had to
17:26:15 42 do as an oversight body as well as trying to get to the
17:26:19 43 bottom of corruption and that involved having to have a
17:26:23 44 dual role at that time.
17:26:23 45
17:26:24 46 All right. He also says this, I'll invite your comment.
17:26:29 47 "I believe it would have been prudent for Victoria Police

17:26:31 1 to notify OPI of Ms Gobbo's status as a registered human
17:26:36 2 source, including the circumstances of her deployments,
17:26:39 3 before she was engaged by investigators from the Petra or
17:26:42 4 Briars Task Force. Human sources can pose a significant
17:26:45 5 risk to the integrity of police officers and police
17:26:48 6 investigations as was discussed in several OPI publications
17:26:54 7 including past patterns and future directions", I take it
17:26:57 8 you know about that report?---Yes.
17:26:59 9
17:26:59 10 "Ceja Task Force wrote a drug corruption and report on
17:27:04 11 investigation into Operation Clarendon, published June
17:27:08 12 2008. Ms Gobbo's status as a lawyer made the situation
17:27:11 13 even more complex given confidentiality requirements, that
17:27:16 14 is lawyer/client privilege and the potential for conflicts
17:27:19 15 of interest. If OPI had been notified that Ms Gobbo was a
17:27:23 16 human source it should have prompted a comprehensive
17:27:25 17 assessment of her activities by the OPI given that OPI was
17:27:28 18 engaged in a joint operation with Victoria Police and had
17:27:32 19 also undertaken to maintain oversight of those
17:27:35 20 investigations". What do you say as to those?---Certainly
17:27:38 21 from the OPI side of things you'd want to know as soon as
17:27:42 22 possible, you know, if she was a source in the matter, as
17:27:48 23 to that, yes.
17:27:49 24
17:27:49 25 Effectively it contains an implicit criticism of you
17:27:52 26 because he says, "If OPI had been notified it should have
17:27:56 27 prompted a comprehensive assessment of her activities by
17:27:58 28 the OPI given those various matters"?---Yes, I accept that
17:28:01 29 he said that.
17:28:02 30
17:28:03 31 I'm asking you questions about that?---Yes.
17:28:04 32
17:28:04 33 Do you accept his view about that or not?---I accept that's
17:28:07 34 his view.
17:28:07 35
17:28:08 36 You accept that's his view?---Yes.
17:28:09 37
17:28:10 38 You disagree with it, do you?---I think in the time I've
17:28:14 39 given you my reasons as to why and I think they're valid
17:28:18 40 reasons.
17:28:18 41
17:28:18 42 Did you I think in about 2006 or 2007 co-sign a joint
17:28:26 43 agency agreement with Luke Cornelius called Operation
17:28:31 44 Eagle?---Yeah, I don't - that was mentioned, it might have
17:28:34 45 been on Monday, but I don't remember specifically what that
17:28:37 46 operation was.
17:28:38 47

17:28:38 1 We might ask Mr Cornelius about that. You were asked
17:28:42 2 questions about legal advice that you got and at all times
17:28:47 3 you relied upon legal advice in running the litigation, the
17:28:52 4 AB litigation?---Yes, yes.

17:28:55 5
17:28:55 6 I don't want to go into particular legal advice but were
17:29:00 7 you at various stages of the game, in particular prior to
17:29:03 8 the commencement of litigation, were you of the view
17:29:06 9 insofar as your prospects of success with respect to at
17:29:11 10 least matters concerning ██████████ - do you know
17:29:16 11 ██████████?---No.

17:29:18 12
17:29:18 13 Have a look at the?---Sorry, on the list.

17:29:27 14
17:29:27 15 MR HOLT: Commissioner, I'll need to take some instructions
17:29:31 16 on the question of whether privilege is waived in relation
17:29:33 17 to these advices. We simply pointed to the fact that
17:29:36 18 advice was received, nothing further. That is orthodox,
17:29:40 19 not by way of privilege.

20
21 WITNESS: Oh yes.

22
17:29:41 23 MR HOLT: I will need the opportunity to take instructions
17:29:43 24 on that. It doesn't prevent the material being given but
17:29:46 25 it does prevent it potentially being published because the
17:29:49 26 privilege isn't extinguished.

17:29:52 27
17:29:52 28 COMMISSIONER: Yes, all right. Can you skirt around that?

17:29:53 29
17:29:54 30 MR WINNEKE: I'll tell my learned friend what I'm going to
17:29:56 31 do.

32
17:30:46 33 Can I suggest this to you: as a prudent litigant,
17:30:53 34 Chief Commissioner, you're the plaintiff, there was always
17:30:59 35 a prospect, and can I suggest as far as you were concerned
17:31:02 36 a significant prospect that you could lose this case, do
17:31:07 37 you accept that proposition?---Yes.

17:31:07 38
17:31:08 39 In that light would it have been prudent to get your people
17:31:13 40 together, given that people are in custody, and we're
17:31:16 41 talking about the commencement of litigation in 2016 and
17:31:19 42 say to them, "Look, there's a very real prospect we could
17:31:23 43 lose this litigation and be obliged to tell these people,
17:31:26 44 these seven people, that their barrister was in effect an
17:31:32 45 informer for Victoria Police", do you accept that
17:31:33 46 proposition?---I could have, yes.

17:31:37 47

17:31:37 1 And said to them, "Now look, in the event that we lose we
17:31:41 2 will have to make disclosure. There are people in custody,
17:31:43 3 some of these people. I want to be in a position to get
17:31:47 4 disclosure to them as soon as possible. So can we get it
17:31:51 5 ready in the event that we lose". Do you accept that, that
17:31:54 6 would have been a very prudent thing for a model litigant
17:31:58 7 to do?---Yes, well I wasn't, because of that separation, I
17:32:04 8 wasn't involved in the decision making around whether we
17:32:07 9 would be proceeding with matters, but I guess not in that
17:32:10 10 day-to-day decision making or the activity what was to be
17:32:15 11 done in preparation for it. Your broader point I
17:32:18 12 understand.
17:32:18 13
17:32:18 14 Chief Commissioner, you were the person who was seeking to
17:32:20 15 prevent the information from getting to the people who were
17:32:23 16 the convicted people?---Yes.
17:32:24 17
17:32:24 18 Do you accept that? It would have been prudent, I suggest,
17:32:27 19 to say to those people who were in control of the
17:32:31 20 information that was necessary to pass on by way of
17:32:34 21 disclosure, "Get it ready so we can be in a position to get
17:32:38 22 it out the door as soon as possible should we lose this
17:32:40 23 case"?---Yep.
17:32:41 24
17:32:41 25 You lost at the first instance before Justice Ginnane,
17:32:45 26 correct?---Yes.
17:32:46 27
17:32:46 28 You lost at the second instance in the Court of
17:32:49 29 Appeal?---Yes.
17:32:49 30
17:32:50 31 And you lost before the High Court, correct?---Yes.
17:32:52 32
17:32:53 33 Can I suggest to you, you have not been in a position to
17:32:56 34 get that disclosure out the door as quick as possible?---I
17:33:00 35 haven't made inquiries as to whether we have or haven't
17:33:03 36 there. We've always sought to provide the documentation
17:33:06 37 that's been requested in relation to those matters, that's
17:33:10 38 been, it's been an exhaustive process trying to find those
17:33:14 39 documents and prepare them but, you know, the Deputy
17:33:17 40 Commissioner has put in place a process to endeavour to do
17:33:20 41 that.
17:33:21 42
17:33:21 43 It may well be an exhaustive process, Chief Commissioner,
17:33:25 44 but if it started a lot earlier it might have been able to
17:33:28 45 be put in place a lot earlier?---I'd have to take advice as
17:33:33 46 to exactly when it started.
47

17:33:35 1 Thanks Commissioner.
17:33:35 2
17:33:36 3 MR COLEMAN: Can I just note that we haven't received the
17:33:38 4 statement of Mr Nolan that was - - -
17:33:39 5
17:33:39 6 COMMISSIONER: Yes, we've only just received it ourselves.
17:33:41 7 I think last night it came in.
17:33:43 8
17:33:44 9 MR COLEMAN: I want to also note that we still haven't
17:33:46 10 received the other statements that we have requested
17:33:49 11 through the solicitors to the Commission. It is not a
17:33:52 12 question now of order of witnesses it's a question of as a
17:33:55 13 matter of fairness we having access to this material so we
17:33:59 14 can take instructions on it.
17:33:59 15
17:33:59 16 COMMISSIONER: What statements are you wanting?
17:34:01 17
17:34:03 18 MR COLEMAN: The statements that were listed in the email
17:34:04 19 to the solicitors to the Commission last week and we would
17:34:06 20 request that we have those.
21
17:34:08 22 COMMISSIONER: We'll have a look at this in the morning I
17:34:10 23 think. You can mention it in the morning.
17:34:16 24
17:34:16 25 MR COLEMAN: In the meantime Mr Ashton will be excused I
17:34:19 26 assume, Commissioner?
17:34:19 27
17:34:19 28 COMMISSIONER: Yes, I will as soon as I get a chance to.
29
17:34:22 30 Thanks very much, Mr Ashton, you're excused and free
17:34:25 31 to go?---Thank you Commissioner.
17:34:27 32
17:34:27 33 We'll adjourn until 9.30 tomorrow, thank you.
17:35:10 34
35 (Witness excused.)
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37 <(THE WITNESS WITHDREW)
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39 ADJOURNED UNTIL THURSDAY 12 DECEMBER 2019
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