

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

1 PROCEEDINGS IN CAMERA:

2
10:41:12 3 MR HOLT: Sorry, Commissioner, I don't understand precisely
10:41:15 4 what's being played but I understand it is going to contain
10:41:18 5 a whole lot of material which we have previously worked
10:41:24 6 very hard, even in private hearings, to not to say, given
10:41:27 7 the nature of the private hearings. In the absence of
10:41:28 8 being able to see it I'm very concerned about us suddenly
10:41:32 9 simply playing something which is going to broadcasts those
10:41:36 10 names, even in this context. I'm happy to look at the
11 pages of transcript, if my friend's able to go to a
10:41:39 12 different topic, and see if there's a way around it. But
10:41:41 13 otherwise if it's simply the playing of something it might
10:41:44 14 be that there's a way of doing it and it could be played at
10:41:45 15 a later point in the hearings rather than holding things up
10:41:48 16 now, in a way that was appropriately amended. I'm just not
10:41:51 17 sure we can do this now.

18
10:41:52 19 COMMISSIONER: Given the orders in place and all these
10:41:56 20 people that you've got in Witsec, et cetera, we better not
10:41:58 21 - - -

22
10:42:00 23 MR CHETTLE: No, it's not a Witsec issue. The only reason
10:42:03 24 I'm concerned about it - - -

25
10:42:05 26 COMMISSIONER: The names are, aren't they?

10:42:07 27
10:42:07 28 MR HOLT: I don't know, Commissioner, I don't know what's
10:42:09 29 in the pages.

10:42:10 30
10:42:10 31 MR CHETTLE: Look at pp.109 to 119 of that transcript.

32
10:42:14 33 MR HOLT: Not that quick.

10:42:14 34
10:42:14 35 MR WOODS: Commissioner, can I throw my hat in the ring?

10:42:17 36
10:42:17 37 COMMISSIONER: The transcript is up now.

10:42:18 38
10:42:18 39 MR WOODS: The transcript's up. I would trust that
10:42:19 40 Mr Chettle knows the things to avoid, one would hope, or,
10:42:22 41 if not, can quickly discuss that with Mr Holt. But if the
10:42:26 42 process is followed then counsel assisting and solicitors
10:42:31 43 assisting get a chance to see which bits want to be played,
10:42:34 44 show that to Victoria Police, Victoria Police will get to
10:42:38 45 PII review it if that's needs to be done. I just wasn't on
10:42:44 46 notice that there was a recording to be played today.

47

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

10:42:44 1 COMMISSIONER: It's ten pages of transcript. The
10:42:46 2 transcript is up now. Why don't we just have a quick flick
10:42:49 3 through and see what it's about.
10:42:50 4
10:42:51 5 MR CHETTLE: This is the conversation that Mr Woods
10:42:52 6 cross-examined Mr Fox about and the transcript, and the
10:42:56 7 conversation obviously speaks for itself. But the
10:42:58 8 proposition was put that it was going one way. We say it's
10:43:02 9 something else and that's why I want it to be played.
10
10:43:05 11 COMMISSIONER: All that Mr Holt has asked is that he has an
10:43:09 12 opportunity to look at it to make sure it doesn't offend
10:43:12 13 orders in closed hearings and risk people's safety,
10:43:18 14 including some of your clients, Mr Chettle. If we can just
10:43:26 15 flick through that at a slow reading pace, please. Yes,
10:43:42 16 keep going. What page are we going to?
10:45:06 17
10:45:07 18 MR CHETTLE: To 67 at the top, Commissioner.
19
10:45:09 20 COMMISSIONER: Thank you. Yes, keep going. One more
10:45:25 21 please. That's it, is it? That's it. Yes.
10:45:35 22
10:45:35 23 MR HOLT: I see one first name which can be managed by
10:45:38 24 orders, Commissioner. I saw no other issues.
25
10:45:42 26 COMMISSIONER: The current orders would already cover that.
10:45:45 27
10:45:46 28 MR HOLT: They will, and it's no different from the slips
10:45:48 29 that we all make at times.
30
10:45:51 31 COMMISSIONER: Yes. The audio won't refer to the names I
10:45:53 32 shouldn't imagine.
10:45:54 33
10:45:54 34 MR HOLT: No. The only issue is if there's something which
10:45:57 35 is noted as inaudible but I think we can manage that,
10:46:00 36 Commissioner, if it comes to it. Thank you.
37
10:46:01 38 COMMISSIONER: All right then. Mr Woods, you're content?
10:46:05 39
10:46:06 40 MR WOODS: Yes, if Victoria Police don't have PII concerns,
10:46:09 41 subject to what's been said - - -
42
10:46:10 43 COMMISSIONER: Yes. Thanks Mr Chettle. Continue.
10:46:14 44
10:46:15 45 MR CHETTLE: Yes, would you play that, please.
10:46:22 46
10:52:35 47 (Audio recording played to hearing.)

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

10:52:35 1
10:52:35 2 I'll tender that extract, Commissioner.
3
10:52:37 4 COMMISSIONER: Was this witness present for that?
10:52:39 5
10:52:39 6 MR CHETTLE: No, he wasn't, but he was asked about it by
10:52:42 7 Mr Woods.
10:52:43 8
10:52:44 9 MR WOODS: Commissioner, I put the ICR that this was put in
10:52:47 10 to to the witness.
11
10:52:47 12 COMMISSIONER: All right then.
10:52:48 13
10:52:49 14 MR CHETTLE: He expressed an opinion about what it was
10:52:53 15 about and obviously it speaks for itself.
10:52:56 16
10:52:57 17 #EXHIBIT RC509A - Audio.
18
10:53:13 19 COMMISSIONER: I don't think there was anything that needed
10:53:15 20 to come out of that, was there?
10:53:17 21
10:53:18 22 MR HOLT: Just the one first name, Commissioner.
10:53:20 23
10:53:23 24 #EXHIBIT RC509B - (Redacted version.)
10:53:28 25
10:53:29 26 #EXHIBIT RC509C - Transcript of audio.
10:53:32 27
10:53:33 28 #EXHIBIT RC509D - (Redacted version.)
10:53:34 29
10:53:35 30 MR CHETTLE: Moving to a different topic. At p.6319 the
10:53:37 31 Zaharoula Mokbel position was put to you. You were asked
10:53:41 32 about the ICRs at p.639. Could I have that brought up,
10:53:47 33 please. 656. 3838. This was not one of yours, this is
10:54:01 34 one of Mr Anderson's ICRs, do you understand?---I do.
35
10:54:08 36 You were taken to the entry that you can see there under
10:54:12 37 Zaharoula Mokbel with the comments about the brief of
10:54:15 38 evidence and the fact that Mr Anderson has recorded,
10:54:21 39 "Information provided to Purana via DDI O'Brien for
10:54:26 40 information", do you see that?---Yes.
41
10:54:28 42 You said to Mr Woods that you wanted - before you would
10:54:33 43 concede that that information was in fact disseminated to
10:54:36 44 Mr O'Brien you'd want to check the diaries of the
10:54:40 45 particular handler?---That's correct.
46
10:54:44 47 Could you have Exhibit 636 brought up, please. I am

.18/09/19

6415

FOX RE-XN - IN CAMERA

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

10:54:58 1 dyslexic, I apologise. 366. You've had access to or have
10:55:06 2 got access to Mr Anderson's diary, do you not?---Not with
10:55:13 3 me at the moment but I can, yes.
4
10:55:15 5 All right. This is one - have you found it? You don't
10:55:20 6 have it. I tendered it, Commissioner, through - - -
7
10:55:28 8 COMMISSIONER: You did, you did tender it. It's there but
10:55:30 9 it may not be up electronically yet.
10:55:35 10
10:55:36 11 MR CHETTLE: From where you are you have Mr Anderson's
10:55:40 12 diary available, it's p.84 of his diary I think?---I need
10:55:45 13 to leave the room to get that.
14
10:55:47 15 COMMISSIONER: It's the diary entry of 24 February 07 if
10:55:52 16 that helps.
10:55:56 17
10:55:59 18 MR CHETTLE: We need to have the diary. It is in fact
10:56:01 19 reproduced in the transcript when I read it previously but
10:56:04 20 I want the witness to see it and you to see it,
10:56:08 21 Commissioner. It's in a locked storeroom there somewhere,
10:56:14 22 is it, Mr Fox?---That's correct.
23
10:56:16 24 COMMISSIONER: Do we have it electronically or not? Has it
10:56:19 25 been put on the system? It hasn't been on the system yet.
10:56:23 26
10:56:23 27 MR CHETTLE: Commissioner, I know it's early but can we
10:56:26 28 have the break now and can you get it out of the safe while
10:56:29 29 we're waiting, Mr Fox?---I can. Yes, I can.
10:56:33 30
10:56:33 31 MR WOODS: We'd certainly like a copy of that too.
10:56:36 32
10:56:36 33 MR CHETTLE: I tendered it some time ago but I'll get him
10:56:39 34 to get the diary.
10:56:41 35
10:56:41 36 MR WOODS: If it's been tendered it should be on our
10:56:44 37 system. Do you have an exhibit number?
10:56:46 38
10:56:46 39 MR CHETTLE: I did.
40
10:56:47 41 COMMISSIONER: 366 and it's Anderson's diary, 24 February
10:56:51 42 07.
10:56:51 43
10:56:51 44 MR HOLT: I think the VPL might be 2000.0001.6757. I can't
10:57:00 45 guarantee that, Commissioner, but I think it's worth - - -
46
10:57:03 47 COMMISSIONER: It's worth a shot, yes.

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

10:57:09 1
10:57:09 2 WITNESS: I can view one on mine but it's very, very slow.
10:57:20 3
10:57:21 4 MR CHETTLE: We might be able to put one for you hopefully
10:57:24 5 on the screen, save you going to look for it.
10:57:50 6 Commissioner, you may remember that this was in
10:57:52 7 re-examination of Mr White. I tendered not only that entry
10:57:55 8 but I tendered two portions of transcript and you commented
10:57:59 9 at that time that it was as clear as mud. It's in relation
10:58:03 10 to this issue that I'm now going and I will be asking the
10:58:07 11 operator to play some tapes. So could I - - -
12
10:58:09 13 COMMISSIONER: Is that 367?
10:58:12 14
10:58:12 15 MR CHETTLE: 367 will be where we go after this, yes.
10:58:18 16 That's why I say can we - - -
17
10:58:21 18 COMMISSIONER: Maybe we should have the break.
10:58:23 19
10:58:23 20 MR CHETTLE: If we do I'll give him the information over
10:58:27 21 the break.
22
23 COMMISSIONER: The one I have for that if VPL.0354 to 0356
10:58:30 24 and 0518 to 0516 is what I've written in for the next
10:58:36 25 exhibit, 367, if that helps. We'll take the mid-morning
10:58:40 26 break then, thank you.
27
28 (Short adjournment.)
29
11:24:20 30 COMMISSIONER: Yes. Mr Fox, you can hear me?---Yes, I can,
11:24:25 31 Commissioner.
11:24:25 32
11:24:26 33 Yes Mr Chettle.
11:24:27 34
11:24:27 35 MR CHETTLE: Right, Mr Fox, we've managed to find the
11:24:31 36 relevant entries in the diary of Mr Anderson. If they
11:24:35 37 could be brought up on the screen, please. This is the
11:24:42 38 entry for p.84 of his diary. Do you see that, firstly it's
11:24:46 39 got the heading, "Head on fire", do you see that?---Yes, I
11:24:50 40 can.
11:24:50 41
11:24:50 42 And is that the name that Ms Gobbo gave Zaharoula Mokbel
11:24:59 43 for red hair?---I believe so, yes.
11:25:01 44
11:25:01 45 This is the note that Mr Anderson made in his diary of the
11:25:06 46 conversation with her. You've seen this before, have you
11:25:09 47 not?---I have.

.18/09/19

6417

FOX RE-XN - IN CAMERA

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

11:25:11 1
11:25:11 2 "Brief of evidence is not up to standard. Can't prove
11:25:16 3 deception. No statement from relevant person involved in
11:25:20 4 alleged deception. Can't just photocopy application form,
11:25:20 5 need proof of decep. Charlie Manotti completed the
11:25:25 6 application form on behalf of head on fire. Wants to
11:25:29 7 discuss further after face-to-face. This is the type of
11:25:33 8 thing that 3838 questions why she is doing it", right?
11:25:39 9 Have I got that right?---Yes, correct.
11:25:41 10
11:25:41 11 There's a reference there to a face-to-face. Then if you
11:25:44 12 go to the next entry in his diary, which is Monday 26
11:25:48 13 February 07. He has a briefing with Mr White re 3838 and
11:25:54 14 what she told him on Friday about the points
11:25:59 15 discussed?---Yes, it says, "Since Friday all parts
11:26:02 16 discussed".
11:26:02 17
11:26:02 18 And then, "To speak to Jim O'Brien re Coghlan brief of
11:26:08 19 evidence, Manotti filling in the application form for
11:26:11 20 Zaharoula and Cvetanovski selling an SEL Mercedes",
11:26:19 21 right?---That's correct.
11:26:20 22
11:26:21 23 Subsequent to that briefing with Mr White there were -
11:26:29 24 perhaps I should, before we go to where I - on 1 March 07,
11:26:38 25 and this is p.119 of his diary and I don't think that's
11:26:43 26 going to be there. But if I just put it in sequence so
11:26:47 27 that it can be got up. Mr Anderson's diary records a call
11:26:53 28 to Mr Jim O'Brien, lists seven things he updated Mr O'Brien
11:26:58 29 about but Roula is not one of them. Do you remember that
11:27:01 30 being the position?---Yes.
11:27:03 31
11:27:05 32 And then on 5 March there is the face-to-face meeting that
11:27:12 33 follows between Mr Anderson, Mr White and Ms Gobbo, all
11:27:25 34 right?---Yes, correct.
11:27:25 35
11:27:26 36 And indeed you have pulled out these references in the
11:27:31 37 transcript for me some time ago, is that right?---Yes,
11:27:35 38 correct.
11:27:35 39
11:27:36 40 We can't play it, Commissioner, because I haven't given
11:27:39 41 sufficient notice to the operator but we can run through
11:27:44 42 it. Early in the meeting at p.47, towards the bottom of
11:27:50 43 the page, does she say, "I can't imagine why because
11:27:54 44 Coghlan would have charged her without considering someone
11:27:57 45 like me, really I was there, I witnessed the whole thing
11:28:02 46 and I haven't mentioned". Mr Anderson says, "I haven't
11:28:06 47 mentioned that to Jim too, you know, about the quality of

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

11:28:07 1 the brief and the standard of it, so". She says, "To Jim
11:28:11 2 Coghlan? No, Jim O'Brien, yeah. They ought to be
11:28:14 3 embarrassed, fancy putting to prove an American card using
11:28:20 4 - it's not clear but she's talking about the lack of proof
11:28:23 5 of deception by saying she worked at Equiticorp, one would
11:28:30 6 have thought you'd need a little bit more than the
11:28:32 7 application form itself. No proof of handwriting, when it
11:28:36 8 was filled in. Who signed it. Whether she signed it,
11:28:38 9 whether it was signed, who submitted it. The proof relied
11:28:41 10 upon that she didn't work at Equiticorp is an assertion in
11:28:45 11 the summary that Karl Khoder says that in his record of
11:28:47 12 interview. Yeah, not even admissible. It's no wonder
11:28:50 13 Lewenberg was laughing. Gave it to me. He said 'I'm
11:28:58 14 giving it to you on the one condition, don't laugh'."
11:29:02 15 Mr White, "This is the hand-up brief. What am I doing?
11:29:05 16 What am I supposed to do? Tell (blank) evidence that
11:29:10 17 Coghlan's crew needs to go and get to fix up or do what
11:29:14 18 I've done in the past, destroy the police case and she'll
11:29:19 19 walk. What am I doing? Anyway, we can get to her" and
11:29:22 20 then she goes on to talk about another man, do you see
11:29:25 21 that?---Yes, I can.

11:29:26 22
11:29:28 23 You then isolate for me the second passage. They come back
11:29:32 24 to this topic on p.211 of the transcript, 0518 at the top.
11:29:43 25 And if we go down to - - -

11:29:46 26
11:29:46 27 COMMISSIONER: Is it still the same day?

11:29:48 28
11:29:48 29 MR CHETTLE: It's the same day but it's just a little bit
11:29:51 30 further on in the tape-recording. If you start in the
11:29:54 31 middle of the page. "No", where Mr White says, "We've
11:30:00 32 found, maybe that's the worst situation. Anyway the
11:30:03 33 position you're in now, whether you take the brief on or
11:30:06 34 not that has to be a matter for you". She says, "No, no,
11:30:10 35 it doesn't matter to us at all, no". Mr White says, "No,
11:30:13 36 hear me out. Look, you could take it on. You could
11:30:17 37 perhaps find some holes in it and maybe help them
38 dramatically get away with whatever it is they want to get
11:30:22 39 away with, and you could tell them to go elsewhere but no
11:30:25 40 in between, you know, sort of taking it on and pointing out
11:30:28 41 the defects to us, that's the point. H'mm. So I haven't
11:30:33 42 done anything. H'mm. Just waiting to talk to you about
11:30:36 43 it. Well if you want to take it on, do you think it gives
11:30:39 44 a little bit more credibility, you a bit more credibility
11:30:44 45 with them? Whereas you say, 'No, I don't want to do
11:30:47 46 anything about it, I can't help you', how are you going to
11:30:50 47 explain that to him? I don't have to explain it to him,

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

11:30:55 1 it's pretty simple. He owes me three and a half grand from
11:30:56 2 a few years ago. H'mm. He hasn't got the money to pay
11:31:01 3 because at the moment apparently. M'mm. But I got the
11:31:04 4 bigger issue from my point of view. When I started in
11:31:04 5 relation to instructions, everybody that I can tell
11:31:08 6 anything about".
11:31:09 7
11:31:10 8 COMMISSIONER: "I can tell you anything about."
11:31:11 9
11:31:12 10 MR CHETTLE: "Tell you about", a reference presumably to
11:31:14 11 the very first meeting. "The other thing is that now I'm
11:31:17 12 in possession of her brief. There are a million holes in
11:31:22 13 it. H'mm. Horthy clearly needs help in working out his
11:31:26 14 evidence". Mr White, "I've got a real issue with you
11:31:29 15 getting involved in this, that type of thing, that we
11:31:33 16 should be an example looking at it from - that would be an
11:31:37 17 example looking at it from the outsider's point of view,
11:31:43 18 when we're actually undermining someone's defence by adding
19 information that we wouldn't have got until the defence was
11:31:48 20 run in court and we shouldn't get. That's the way the
11:31:51 21 system's set up. Yeah. I don't really want to go down
11:31:55 22 that track with you and convince you to go down that track.
11:31:59 23 At the end of it, but if you work with them, you work with
11:32:02 24 them full on like you normally would, that buys you some
11:32:05 25 credibility and at the end of the day that's probably a
26 good thing if it's come out that people were starting to
11:32:12 27 say you were assisting the police. There's a clear example
11:32:14 28 where you've done the exact opposite and you've fucked over
11:32:17 29 the police. Do I really want to do that? Well again, that
11:32:23 30 has to be your decision". And then it goes on. That's the
11:32:29 31 start of where it's discussed on the second occasion, is
11:32:32 32 that right?---Correct.
11:32:34 33
11:32:35 34 And have you checked Mr Anderson's diary as to whether or
11:32:41 35 not the defects in the brief were ever disseminated to
11:32:45 36 Mr O'Brien or Mr Coghlan?---Yes, I can see no entry in
11:32:50 37 Mr Anderson's diaries.
11:32:51 38
11:32:52 39 Thank you. All right, I'll move on to something else now,
11:32:58 40 a different topic. That was Exhibit 367, the transcripts,
11:33:04 41 Commissioner.
11:33:05 42
11:33:05 43 COMMISSIONER: Thank you.
11:33:06 44
11:33:09 45 MR CHETTLE: You were asked on Friday at p.6325 about a
11:33:16 46 similar entry where you are recorded as saying, "She told
11:33:24 47 you that you need a statement from the NAB" and that was

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

11:33:28 1 disseminated to Jim Coghlan. I'm just trying to find the
11:33:35 2 ICR page reference. 6325 of the transcript. ICR 100.
11:33:54 3 This is the topic - I'm taking you to the debate that took
11:33:59 4 place between you and Mr Woods in relation to the entry you
11:34:02 5 made in the ICR as compared to the entry in your diary.
11:34:05 6 You recall that discussion?---Yes, I do.
11:34:08 7
11:34:10 8 By way of background, in your statement to the Commission
11:34:13 9 you set out at paragraphs 98 and 99, I think they are, your
11:34:18 10 experience at IBAC when you were asked questions about
11:34:22 11 whether or not privileged information had been disseminated
11:34:25 12 and you say in your statement you were pushed into making
11:34:30 13 an admission which you subsequently recant, do you remember
11:34:33 14 that?---Yeah, I don't think I made an admission, but yes,
11:34:38 15 I've since found entries in my diary.
11:34:42 16
11:34:42 17 Sorry, you conceded that privileged information had been
11:34:45 18 disseminated, when as you set out in your statement you'd
11:34:51 19 made inquiries, in your diary, to show that it hadn't done
11:34:58 20 disseminated?---That's correct.
11:34:59 21
22 So when you come along here and the very first thing you
11:35:03 23 say to Mr Woods on the very first questions he asked you on
11:35:03 24 Friday, is you pointed out that there were anomalies in the
11:35:07 25 ICRs and your diaries, remember that?---Correct.
11:35:10 26
11:35:10 27 It was this very topic the topic you were raising with
11:35:14 28 him?---Yes.
11:35:15 29
11:35:16 30 You'll remember he said he might give you some homework to
11:35:19 31 sort that out but he didn't give you that. Do you remember
11:35:25 32 that comment?---Yes.
11:35:26 33
11:35:26 34 It's p.1215 of the ICRs we're going to now, Commissioner.
11:35:32 35 Perhaps that can be put up. In the centre of the page
11:35:45 36 you've written down, "She mentions that the Zaharoula brief
11:35:50 37 is lacking a statement from Darren Barclay from NAB that
11:35:55 38 would well and truly convict Roula for these deceptions. I
11:35:56 39 will tell Jim Coghlan" and then after that you have written
11:35:59 40 in there, or you've put in that ICR, "Verbally disseminated
11:36:03 41 above information to Jim Coghlan"?---Correct.
11:36:06 42
11:36:07 43 When you went to your diary you said that could be a cut
11:36:11 44 and paste error, remember saying that at p.6328?---Correct.
11:36:16 45
11:36:16 46 What do you mean by cut and paste error, and I'm not
11:36:18 47 talking about cutting and pasting the contents of your

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

11:36:22 1 diary into an ICR, you've told everyone about that. What
11:36:23 2 about the dissemination entry?---So in my diary I would
11:36:29 3 record dissemination in that column on the right-hand side
11:36:35 4 but during ICRs it would be a cut and paste of the
11:36:38 5 information from the diary but then I would add in those
11:36:43 6 actions and verbally disseminated or any IRs that were
11:36:48 7 generated or if my controller had been updated. So that
11:36:52 8 was, that was a section that I added to the ICRs from the
11:37:00 9 diaries.

11:37:01 10
11:37:02 11 You were asked - when you explained that Mr Woods put
11:37:05 12 propositions to you along the lines of, "Well you just made
11:37:08 13 it up then, did you, to put in your ICR", do you remember
11:37:12 14 that proposition?---Yes.

11:37:14 15
11:37:15 16 And that you invented it for the purposes of putting it in
11:37:18 17 your ICR?---Yes.

11:37:19 18
11:37:19 19 Did any of that sort of conduct or behaviour occur?---No,
11:37:25 20 definitely not.

11:37:27 21
11:37:27 22 When you look at your diary, and the action, "Verbally
11:37:30 23 disseminated above information to Jim Coghlan Purana", is
11:37:34 24 that one of the cut and paste dissemination items that you
11:37:38 25 kept, as it were, a stockpile?---Yes, I would have an
11:37:46 26 automatic type within the Word document. For example I
11:37:54 27 might, if I typed VD, it would spit out "verbally
11:38:00 28 disseminated above information to" and I would just have to
11:38:03 29 add whoever that went to.

11:38:04 30
11:38:05 31 The name?---I had shortcuts to write things like that.

11:38:08 32
11:38:09 33 Can I summarise your position in relation to this: rather
11:38:12 34 than being a lie or something you made up for the purposes
11:38:14 35 of putting in the ICR, you conceded to Mr Woods that it is
11:38:19 36 possible that that entry is in fact correct, that you did
11:38:23 37 disseminate it to Jim Coghlan, that's one of the
11:38:26 38 possibilities. That is one. On reading it again over the
11:38:29 39 weekend I think it's very unlikely.

11:38:32 40
11:38:32 41 But the other possibility is that there was no
11:38:35 42 dissemination and you simply made a mistake when you
11:38:38 43 recorded the verbal dissemination in the ICR?---That's
11:38:43 44 correct.

11:38:43 45
11:38:46 46 Is there any reference to contact with Jim Coghlan in your
11:38:50 47 diary in relation to this matter?---No, there's not that I

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

11:39:00 1 recorded calling, Mr Coghlan calling me before that entry
11:39:03 2 to me.
11:39:04 3
11:39:04 4 As to this there's nothing in your diary about
11:39:07 5 dissemination?---On that matter, no.
11:39:10 6
11:39:12 7 COMMISSIONER: So you recall that now, you say? You recall
11:39:15 8 that now, you actually recall Jim Coghlan ringing you
11:39:19 9 before you made this entry? Is that what you
11:39:22 10 said?---That's written in my diary, Commissioner.
11:39:25 11
11:39:26 12 MR CHETTLE: It's not a recollection, it's in your diary,
11:39:31 13 is it not?
11:39:31 14
11:39:32 15 COMMISSIONER: He said he recalls it. That's what I'm
16 clarifying.
17
11:39:37 18 MR CHETTLE: He recorded it.
11:39:37 19
11:39:37 20 COMMISSIONER: That's what he said. Recalled. Did you say
11:39:39 21 records or recalls?---No, recorded it.
22
11:39:53 23 Yes, go on.
11:39:54 24
11:39:55 25 MR CHETTLE: All right. Have you got the diary entry -
11:39:57 26 simply put, there's no diary entry of a conversation with
11:40:01 27 Mr Coghlan after this conversation with Ms Gobbo but there
11:40:05 28 is one recorded in your diary at an earlier date, earlier
11:40:08 29 time?---Yeah, in fact I don't speak with Mr Coghlan again
11:40:15 30 for some six weeks after that entry.
11:40:17 31
11:40:23 32 The proposition was put to you at p.6326, "I suggest to you
11:40:29 33 that you are being dishonest in that answer. It's
11:40:32 34 perfectly clear from this document that you intended to
11:40:35 35 tell Jim Coghlan, firstly, and secondly, you did tell Jim
11:40:39 36 Coghlan, what do you say about that?" What do you say as
11:40:42 37 to the proposition that you were dishonest or telling
11:40:46 38 lies?---I utterly reject that.
11:40:49 39
11:40:53 40 What is the best record, as far as you're concerned, of
11:40:56 41 contemporaneous contact by yourself and other police
11:41:01 42 officers, is it the ICRs or your diary?
11:41:03 43
11:41:04 44 COMMISSIONER: He can't talk for every other police
11:41:08 45 officer, he can talk for himself.
11:41:10 46
11:41:11 47 MR CHETTLE: That's what I'm asking about, Commissioner.

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

11:41:12 1
11:41:12 2 COMMISSIONER: You asked about himself and other police
11:41:15 3 officers.
11:41:15 4
5 MR CHETTLE: No, with other police officers.
6
7 COMMISSIONER: Okay.
8
11:41:16 9 MR CHETTLE: I apologise, Commissioner, if I'm annoying
11:41:18 10 you.
11:41:19 11
11:41:19 12 COMMISSIONER: No, no, I just didn't hear you say that.
11:41:23 13
11:41:23 14 MR CHETTLE: What is the best record, contemporaneous
11:41:26 15 record of conversations or dealings between yourself - - -
11:41:26 16
11:41:26 17 COMMISSIONER: "What is the best record, as far as you're
11:41:29 18 concerned, of contemporaneous contact by yourself and other
19 police officers."
20
21 MR CHETTLE: With other police officers.
22
11:41:33 23 COMMISSIONER: You meant to say "with other police
11:41:36 24 officers", all right. Thank you.
11:41:37 25
11:41:37 26 MR CHETTLE: Do you understand what I'm asking you,
11:41:40 27 Mr Fox?---If you could ask again, thanks.
11:41:42 28
11:41:42 29 What's the best contemporaneous record of contact that you
11:41:48 30 had with other police officers, the ICRs or the
11:41:50 31 diaries?---My diaries.
11:41:51 32
11:41:54 33 I want to move on to another topic which is you were taken
11:41:59 34 through 6337 onwards a number of entries in relation to the
11:42:04 35 ICRs and the tomato cans, do you remember that
11:42:08 36 entry?---Yes.
11:42:08 37
11:42:08 38 You said during the course of that the history of the
11:42:12 39 tomato cans was set out in a document that you had
11:42:17 40 prepared?---Correct.
11:42:17 41
11:42:17 42 And that's Exhibit 505 which you tendered when you gave
11:42:23 43 your evidence-in-chief, which is the 15 million pills, the
11:42:27 44 complete story document, that one?---Yes, correct.
11:42:32 45
11:42:32 46 That document, and I know Mr Woods probably hasn't had a
11:42:36 47 chance to digest it, but not only does it deal with the

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

11:42:40 1 ICRs but you've set out in there the relevant diary entries
11:42:45 2 that you've been able to look at to ascertain the complete
11:42:49 3 picture of who was told what and when?---Correct.

11:42:52 4
11:42:52 5 During the course of those discussions did it become
11:42:57 6 apparent that the crew, I want to call them that, Manella,
11:43:02 7 Higgs, Karam and others, would meet regularly for
11:43:06 8 dinners?---Yes.

11:43:06 9
11:43:07 10 During the course of discussing the importation that they
11:43:10 11 were doing did they also discuss a plan to murder Anton
11:43:22 12 Clait?---Yes.

11:43:22 13
11:43:23 14 Without again having to go to the document, the details of
11:43:25 15 those conversations are effectively an offshoot of the
11:43:29 16 tomato tins conversation set out in Exhibit 506, the
11:43:33 17 summary that you produced to the Commissioner when you
11:43:36 18 commenced your evidence?---That's correct.

11:43:37 19
11:43:39 20 I'm not going to go through that in any great detail, but
11:43:45 21 does it relate to Matthew Johnson attempting to kill Anton
11:43:52 22 Clait on behalf of Manella?---That's the intelligence I
11:43:56 23 received, yes.

11:43:56 24
11:43:57 25 And thereafter an attempt by Mr Higgs to nobble the jury
11:44:05 26 that's currently sitting in the Supreme Court?---Yes,
11:44:09 27 that's the intelligence I received.

11:44:11 28
11:44:13 29 As a result of receiving of those, steps were taken in
11:44:16 30 relation to the protection of Mr Clait and the protection
11:44:22 31 of the integrity of the court process in the Supreme
11:44:23 32 Court?---That's correct.

11:44:24 33
11:44:24 34 Again, the contents of that document speak for itself.
11:44:31 35 Commissioner, we are in closed hearing, are we not?

11:44:36 36
11:44:37 37 COMMISSIONER: Correct.

11:44:38 38
11:44:39 39 MR CHETTLE: I want to take you to [REDACTED]. Can you go
11:44:39 40 to p.938 of the 3838 ICRs please. You've probably seen
11:44:57 41 this a few times. You were asked about it by Mr Woods.
11:45:02 42 This was the discussion about - heading under Mr Orman's
11:45:16 43 name that you can see there at the bottom of the page, can
11:45:19 44 you see that?---Yes.

11:45:19 45
11:45:20 46 That reads, somebody might read that as saying that there's
11:45:25 47 some suggestion that you might be wanting to torture

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

11:45:29 1 [REDACTED] or put pressure on him to obtain a particular
11:45:33 2 result, do you understand that?---Yes, I do.
11:45:36 3
11:45:37 4 Can you go to your diary entry in relation to what actually
11:45:40 5 was disseminated to Mr O'Brien in relation to that entry,
11:45:44 6 please?---What was the date again, sorry?
11:45:46 7
11:45:47 8 Good question.
11:45:49 9
11:45:50 10 COMMISSIONER: 22 June 07.
11:45:52 11
11:46:15 12 MR CHETTLE: Firstly, do you have an entry about
11:46:20 13 disseminating the information to Mr O'Brien?---Just bear
11:46:29 14 with me. The 22nd did you say?
11:47:09 15
11:47:09 16 I'm told it's 22 June. Can we go to the top of the page.
11:47:18 17 23:00, 22 June 07 it starts?---Yes, 23:00, I've found that.
11:47:33 18
11:47:33 19 Keep going down to the bottom, there's a second entry in
11:47:36 20 relation to Faruk Orman?---Yes.
11:47:38 21
11:47:38 22 After the entry involving Mr Kaya. Have you got one there
11:47:47 23 that says something about him not coping in gaol? It
11:48:04 24 should be the last entry bar one in your diary?---For that
11:48:11 25 day?
11:48:12 26
11:48:12 27 Yes, for that day, on that day. Immediately before a
11:48:36 28 dissemination to Jim O'Brien. It's actually, it's not
11:49:10 29 going to be the last entry, I apologise. Looking down it
11:49:13 30 keeps going for a lot on the next page. Can we go back up.
11:49:18 31 It's prior to a mention of Mr Benji Veniamin?---Yes, I've
11:49:40 32 found an entry, yes.
11:49:41 33
11:49:42 34 This is the torture entry, have you got that in your
11:49:46 35 diary?---Yes.
11:49:49 36
11:49:51 37 Can you read your entry, please, in your diary?---"Kaya is
11:50:02 38 beside himself how Faruk has been charged. Human source
11:50:07 39 saying lately people are being charged on one statement and
11:50:10 40 a bit of corroboration. Human source knows Faruk will not
11:50:18 41 cope in gaol. Opinion of Gatto and Kaya and human source
11:50:22 42 agrees. Faruk is obsessive compulsive re cleanliness, has
11:50:29 43 a short temper therefore if isolated and in shitty
11:50:33 44 conditions he won't cope. Kaya wants to know why police
11:50:38 45 seized computer", et cetera.
11:50:40 46
11:50:43 47 Can you go on to what you disseminated to Mr O'Brien. What

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

11:50:46 1 does it say in your diary?---I've got a red entry on the
11:50:50 2 side of the diary, "Jim 23/6/07".
11:50:55 3
11:50:57 4 Does that indicate you told him that on 23 June, the next
11:51:01 5 day?---Yes.
11:51:01 6
11:51:05 7 Were you - - - ?---I have an entry - - -
11:51:08 8
11:51:09 9 Yes, go on?---I have an entry in that diary.
11:51:12 10
11:51:12 11 What does that entry say?---"Update Jim re meeting
11:51:18 12 overnight with human source and Gatto and Kaya. Lewenberg
11:51:25 13 has sent a letter to Dale Flynn re waive committal and
11:51:29 14 plead for all charges re the entry charges" - that's not
11:51:39 15 it. It says with Gatto and Kaya, but then I go on to a
11:51:45 16 different topic.
11:51:46 17
11:51:46 18 Were you in any way expressing a suggestion as to the way
11:51:50 19 in which [REDACTED] should be treated?---No, I'm expressing
11:51:54 20 the opinion of what Mr Gatto and Mr Kaya were fearful of.
11:52:02 21
11:52:03 22 They're worried about what he might do in gaol if he's kept
11:52:09 23 in those conditions?---Yes, exactly.
11:52:12 24
11:52:21 25 You were asked some questions about the Faruk Orman
11:52:26 26 conflict and how she was going to deal with it and you said
11:52:29 27 to Mr Woods that Mr Brian Rolfe, his solicitor, was aware
11:52:35 28 of the conflict and you were taken to one entry that
11:52:38 29 related to that, do you recall that?---Yes.
11:52:41 30
11:52:41 31 I want to take you to an entry, to ICR 103 on 3 October
11:52:48 32 2007. Can you go to 3 October 07, please. I'll just get
11:53:12 33 you a page number.
11:53:14 34
11:53:15 35 COMMISSIONER: VPL.2000.0003.2844. 116 will be 2846.
11:53:31 36 2000.0003.2846.
11:53:31 37
11:53:36 38 MR CHETTLE: I think the relevant entry is 2848,
11:53:49 39 Commissioner, at p.1264 of the - all right. Have you got
11:53:52 40 1262 up on the screen now in front of you?---Yes, I have.
11:53:52 41
11:53:52 42 Is this one of your entries?---Yes.
11:53:55 43
11:53:56 44 And that is her telling you that she's spoken to Brian
11:53:59 45 Rolfe who is Orman's solicitor?---Yes.
11:54:01 46
11:54:02 47 And they want her to act as junior to Robert Richter in the

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

11:54:09 1 Orman case?---Yes.
11:54:10 2
11:54:11 3 She says they think she's the best to do it?---Yes.
11:54:16 4
11:54:16 5 She has told Brian Rolfe that she acted for [REDACTED] in
11:54:22 6 the past and can't act?---Yes.
11:54:24 7
11:54:25 8 "Rolfe doesn't seem to worry about it and he says he will
11:54:29 9 check with the financier, Mick Gatto"?---Yes.
11:54:33 10
11:54:33 11 "The truth of the matter is that [REDACTED] would not have a
11:54:37 12 problem with her representing Orman. Furthermore, all
11:54:37 13 Rolfe has said was that she could be excused for [REDACTED]
11:54:40 14 [REDACTED] only and then still do the rest of
11:54:46 15 the trial. Committal is in March next year and subpoena
11:54:50 16 argument begins. She says that normally she can get out of
11:54:55 17 these things by saying, 'Either I'm in conflict' but Rolfe
11:54:58 18 says no problem and he's right, according to her." Do you
11:55:02 19 see that? That's another entry of the type that you
11:55:05 20 referred to when Mr Woods took you to one?---Yes, that's
11:55:14 21 correct, and it demonstrates how confusing it is to us on
11:55:18 22 the conflict matter.
11:55:19 23
11:55:21 24 As far as you were concerned whose responsibility was it to
11:55:25 25 deal with the issue of conflict?---It was the barrister's
11:55:30 26 and solicitor's responsibility.
11:55:32 27
11:55:34 28 Indeed, can I take you now to ICR 119 at 14 January 08. At
11:56:13 29 p.1572 of the transcript, please - of the ICRs. In the
11:56:24 30 middle of the page, "Orman visited Barwon today", do you
11:56:27 31 see an entry there in relation to that?---Yes.
11:56:30 32
11:56:31 33 Did she report - is this one of your ICRs?---14/1/08,
11:56:39 34 unlikely. No.
11:56:48 35
11:56:49 36 This is Mr Smith, is it? Yes, okay?---Yes.
11:56:52 37
11:56:53 38 It simply records that she visited Mr Orman today, told him
11:56:57 39 that she couldn't act for him because of conflict and he
11:57:00 40 was happy and not suspicious, do you see that?---Yes.
11:57:04 41
11:57:06 42 I've finished those, thank you. There was an exchange took
11:57:22 43 place between you and Mr Woods in relation to the contents
11:57:26 44 of the court decisions in the Supreme Court and the Court
11:57:29 45 of Appeal and the High Court and you indicated that the
11:57:32 46 Supreme Court in your view wasn't given all the relevant
11:57:35 47 facts. That's at p.6371 of the transcript?---Yes.

.18/09/19

6428

FOX RE-XN - IN CAMERA

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

11:57:40 1
11:57:42 2 And you also went on to say that insofar as they relied on
11:57:46 3 Comrie he got that wrong virtually?---Yes.
11:57:50 4
11:57:55 5 I understand there's a link been provided in relation to an
11:58:00 6 Austlii judgment in relation to Justice Ginnane's judgment.
11:58:15 7 Can we go to p.16 of that, please. So at p.16 firstly,
11:58:31 8 paragraph 32, Justice Ginnane sets out an extract from the
11:58:36 9 Comrie report. Do you see that?---Yes.
11:58:38 10
11:58:43 11 The quote that he reproduces reads, "Entries in the ICRs
11:58:47 12 taken at face value indicate that on many occasions
11:58:51 13 Ms Gobbo in providing information to police handlers about
11:58:55 14 her clients has disregarded legal professional privilege.
11:58:59 15 Furthermore, in some incidents it's open to interpret that
11:59:03 16 such conduct may have potentially interfered with the right
11:59:06 17 to a fair trial for those concerned. In the absence of any
11:59:10 18 apparent active discouragement from the police handlers for
11:59:13 19 EF to desist with furnishing information on such matters,
11:59:17 20 the handlers remain vulnerable to the perception that they
11:59:20 21 may have actually been inducing or encouraging the
11:59:23 22 provision of such information. These concerns are
11:59:25 23 heightened in instances where the handlers have passed on
11:59:29 24 such information to other police case managers presumably
11:59:33 25 so they can make use of it", all right?---Yes.
11:59:36 26
11:59:36 27 There's a number of propositions in that. Do you agree
11:59:39 28 with the proposition that to your knowledge on many
11:59:43 29 occasions she provided you with legally professionally
11:59:47 30 privileged information?---Not on many occasions but on
11:59:50 31 occasions, yes, it was documented in the ICRs.
11:59:55 32
11:59:56 33 Did you encourage or discourage that sort of behaviour?---I
12:00:01 34 didn't encourage it and she was aware that we would not
12:00:08 35 pass that on.
12:00:09 36
12:00:09 37 To your knowledge did you pass on, so it could be used by
12:00:13 38 other agencies, such information?---No.
12:00:16 39
12:00:19 40 It goes on to pick up Comrie's assertion that, "Some
12:00:25 41 handlers were keen to take full advantage of her
12:00:28 42 capabilities by seeking tactical advice about the best way
12:00:34 43 to disrupt activities of certain clients and even
12:00:38 44 information about where points of vulnerability may lie for
12:00:42 45 prosecutions". Were you one of those handlers?---I don't
12:00:48 46 believe so, no.
12:00:48 47

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:00:53 1 If Mr Comrie was talking about the Zaharoula Mokbel
12:00:58 2 vulnerability for prosecutions, it's your opinion that that
12:01:02 3 wasn't passed on?---That's correct.
12:01:06 4
12:01:08 5 Can I then go to paragraph 30, just above that - go down a
12:01:19 6 little, thank you. Justice Ginnane set out some of the
12:01:26 7 findings of Mr Kellam in his inquiry. Do you see that?---I
12:01:33 8 can, yes.
12:01:33 9
12:01:36 10 Point C, "The information that she provided to police
12:01:40 11 included information obtained from clients which was prima
12:01:44 12 facie subject to legal professional privilege or otherwise
12:01:50 13 confidential and maintained daily contact with her handlers
12:01:52 14 who disseminated that information provided to her to
12:01:55 15 various Task Forces within Victoria Police". It's the same
12:01:58 16 point but the suggestion is that there was a focus on legal
12:02:03 17 professional privilege, do you see that?---I do, yes.
12:02:06 18
12:02:07 19 Can I take you to paragraph 40, please. Now, this is a
12:02:18 20 comment that Justice Ginnane makes, apparently picking up
12:02:22 21 what Mr Comrie has said, "The extract from police diaries
12:02:26 22 and ICRs on which the ICRs relied suffer from
12:02:29 23 incompleteness, a lack of context of the circumstances to
12:02:32 24 which they refer and unreliability. The probative value of
12:02:36 25 those documents in determining issues about EF's role was
12:02:39 26 in many instances unclear. The police diaries are
12:02:42 27 handwritten and in many instances are difficult to read and
12:02:46 28 therefore do not permit the drawing of a firm conclusion.
12:02:50 29 Mr Comrie noted the limitations in the ICRs or parts of the
12:02:54 30 ICRs that were available to him". Now you said they didn't
12:02:58 31 have all the facts, or Justice Ginnane didn't have all the
12:03:02 32 facts. Firstly, your diaries weren't only handwritten,
12:03:06 33 were they?---That's right, we also did electronic diaries.
12:03:10 34
12:03:11 35 And as to the ICRs that were provided to Mr Comrie, were
12:03:15 36 they your records or the records of the SDU?---I'm not sure
12:03:24 37 exactly what Mr Comrie got to see. He talks about seeing
12:03:29 38 records from the Interpose database and we did not manage
12:03:35 39 3838 on the Interpose database.
12:03:38 40
12:03:40 41 He describes it as a shuffle and dump I think on the
12:03:45 42 Interpose database?---He does.
12:03:46 43
12:03:46 44 In 2009. Was that anything to do with the SDU?---No, it
12:03:50 45 wasn't. It was all in one area and all set out logically
12:03:56 46 and chronologically.
12:03:57 47

.18/09/19

6430

FOX RE-XN - IN CAMERA

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:03:57 1 Can you go to paragraph 56, please. You'll see that what
12:04:21 2 Justice Ginnane sets out there is a letter written by the
12:04:25 3 Director of Public Prosecutions in relation to the
12:04:26 4 application that is brought before Justice Ginnane. You
12:04:30 5 see the disclosure of the role of Lawyer X?---I can.
12:04:34 6
12:04:35 7 The Director writes, "It appears to me highly likely on a
12:04:39 8 number of occasions EF acted improperly in informing
12:04:42 9 against her own clients. It appears highly likely there
12:04:46 10 were breaches of legal professional privilege and of
11 confidences between the lawyer and the client on multiple
12:04:50 12 occasions over a lengthy period of time. There were almost
12:04:54 13 certainly serious conflicts of interest occurring in her
12:04:57 14 actions. It may be that information was provided to police
12:05:02 15 that did not fall into those categories I have identified
12:05:05 16 above. The overall circumstances of the role and activity
12:05:08 17 of this person and associated legal implications may be
12:05:14 18 extremely difficult to unravel". But insofar as the
12:05:16 19 Director says that there were highly likely to be multiple
12:05:20 20 breaches of legal professional privilege, do you agree with
12:05:23 21 that?---No, I don't.
12:05:24 22
12:05:26 23 Thank you, you can take that down. Commissioner, in
12:05:32 24 preparing for this morning we were unable to ascertain
12:05:36 25 whether the Comrie report has been given an exhibit number.
12:05:41 26
12:05:41 27 COMMISSIONER: I don't know. We'll see if we can find that
12:05:46 28 out for you.
12:05:47 29
12:05:47 30 MR CHETTLE: The one I've got, the number is illegible in
12:05:52 31 relation to the VPL number anyway. It might have been
12:06:01 32 annexed to Mr Paterson's statement. I don't know, that's
12:06:05 33 the only possibility I can think of.
12:06:05 34
12:06:06 35 MR WOODS: I do have a recollection of tendering one that
12:06:09 36 was on the Supreme Court web page months ago.
12:06:11 37
12:06:11 38 COMMISSIONER: That seems to ring a bell with me too.
12:06:14 39
12:06:14 40 MR WOODS: Which wasn't the exhibit to the affidavit.
12:06:16 41
12:06:17 42 MR CHETTLE: Maybe we need a proper exhibit one,
12:06:19 43 Commissioner, because at the time we were last discussing
12:06:22 44 this it was the subject of orders that meant we couldn't
12:06:26 45 talk about it.
12:06:27 46
12:06:27 47 COMMISSIONER: Let's just see what we've got. If we can do

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:06:28 1 a search to find out if we've got it as an exhibit.
12:06:29 2 Nothing at all? There is an attachment to Mr Paterson's
12:07:22 3 statement of the Comrie review and that's exhibited to the
12:07:28 4 confidential affidavit of John Champion, the first Champion
12:07:33 5 affidavit. Perhaps it's as well to tender the Comrie
12:07:37 6 review now.
12:07:44 7
12:07:45 8 #EXHIBIT RC510A - (Confidential) Comrie review as exhibited
12:07:56 9 on the Supreme Court website.
12:07:49 10
12:07:50 11 #EXHIBIT RC510B - (Redacted version.)
12:08:05 12
12:08:05 13 The one we have up is the full review, is it? We think
12:08:10 14 it's the full review.
12:08:12 15
12:08:12 16 MR HOLT: Yes, that VPL represents the first page of the
12:08:15 17 full report, Commissioner.
12:08:16 18
12:08:16 19 MR CHETTLE: Yes, that looks like the one I've got. You've
12:08:19 20 got that on the screen, Mr Fox?---Not yet.
12:08:23 21
12:08:25 22 Not yet. It's coming?---Yes, I can see it now.
12:08:29 23
12:08:29 24 You were asked by Mr Woods whether you'd formulated any
12:08:35 25 response to this, because you were giving evidence as he
12:08:39 26 reminded you, in case you didn't know, at a Royal
12:08:43 27 Commission. Had you prepared a critique of the Comrie
12:08:48 28 report back in March of this year?---Yes, I did.
12:08:50 29
12:08:53 30 I want to take you to some of the Comrie report and perhaps
12:08:57 31 if we can start first at p.6 of the document. Under the
12:09:15 32 heading "the context of this review", in the second
12:09:19 33 paragraph of that does he say the following, "In keeping
12:09:24 34 with the Terms of Reference for this review", one assumes
12:09:28 35 that that's what he was told to do, "My considerations have
12:09:31 36 been based on existing March 2012 human source policies,
12:09:37 37 procedures, instructions and control measures albeit that
12:09:42 38 many of those have been enhanced since the registration of
12:09:45 39 3838 in September 2005. Such enhancements include the
12:09:53 40 provisional of additional managerial capacity, the SDU
12:09:54 41 where a dedicated Inspector position was created and
12:09:58 42 provided greater security for SDU operations and additional
12:10:03 43 human source capacity has been established at HSMU".
12:10:06 44 Firstly, what do you say about the application of March
12:10:10 45 2012 policies to what was happening in 2005 and 2006?---So
12:10:18 46 we were operating under different policies back then.
12:10:22 47 Those policies are documented in my statement and they are

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:10:27 1 quite different to the March 2012 Victoria Police human
12:10:31 2 source policy.
12:10:32 3
12:10:32 4 You made reference, and I'm not going to go to this, you
12:10:35 5 were asked about whether or not a lawyer would ever be
12:10:38 6 registered today if someone came along and Mr Woods put the
12:10:42 7 proposition that no way in the world would you ever
12:10:45 8 register one, you said you would comply with current
12:10:50 9 policy, do you remember giving that answer?---Yes, I did.
12:10:52 10
12:10:52 11 Without going into the details of it, is there a 2014
12:10:57 12 current police policy that would bind you as a serving
12:11:01 13 officer in relation to how you deal with applications for
12:11:04 14 people to be human sources?---I believe it's a 2018 policy.
12:11:13 15
12:11:15 16 Again, there's matters of PII in this, but does it prohibit
12:11:19 17 the use of a lawyer?---No, it doesn't.
12:11:22 18
12:11:22 19 And if you did, and as a police officer there are
12:11:26 20 procedures that you would be obliged to follow in the event
12:11:29 21 that there was a proposition to register anybody, including
12:11:34 22 a lawyer, as a registered human source?---That's correct.
12:11:38 23
12:11:39 24 Those would involve you, as you said, filling in relevant
12:11:43 25 application forms and others forming a decision about
12:11:46 26 whether to accept the risk or not?---That's right, with a
12:11:50 27 risk assessment.
12:11:51 28
12:11:51 29 And indeed that includes a committee which incorporates
12:11:57 30 legal advice, is that right?---Correct. You would no doubt
12:12:05 31 provide guidelines to the management if approved.
12:12:07 32
12:12:08 33 Commissioner, I don't propose to tender that. Mr Holt has
12:12:11 34 concerns about PII but I'm sure it's something you will be
12:12:17 35 addressed a bit later on with current policy. Can I then
12:12:22 36 take you to pp.7 and 8 of this document. Seven firstly.
12:12:26 37 Do you see down the bottom of the page, "The entire human
12:12:30 38 source file is constructed and maintained on an IT
12:12:33 39 application called Interpose which is utilised by VicPol
12:12:37 40 for investigating case management and intelligence
12:12:40 41 processes". If you turn over the page. "Computer system
12:12:45 42 encompasses the actual application and a database." It
12:12:49 43 goes on to talk about the history of it. As you just said
12:12:52 44 before, Interpose was not the file system maintained by the
12:12:56 45 SDU?---Not for 3838, no.
12:12:58 46
12:12:59 47 Indeed, is it the fact that it was only in 2009, after

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:13:03 1 Ms Gobbo had left being managed by the SDU, that Interpose
12:13:09 2 became used by it?--Correct, that was the management
12:13:15 3 instruction.
12:13:16 4
12:13:18 5 Go to p.10 if you would, please. Dealing with the computer
12:13:23 6 records, he says - I'm sorry, I'll go to my p.10. Excuse
12:13:45 7 me, Commissioner.
12:13:52 8
12:13:52 9 COMMISSIONER: That does suggest that interpose did deal
12:13:55 10 with 3838.
12:13:57 11
12:13:57 12 MR CHETTLE: That's our point, Commissioner. He says that
12:14:01 13 and it didn't. Comrie is not right about that is our
12:14:04 14 point. That's the summary of it, isn't it,
12:14:10 15 Mr Fox?--That's correct.
12:14:11 16
12:14:12 17 Interpose was introduced earlier but it wasn't used for
12:14:16 18 3838 until after 2009?--When management instructed that we
12:14:22 19 move to Interpose, correct.
12:14:24 20
12:14:25 21 Then in the centre of the page, in the second paragraph, it
12:14:29 22 starts, "I consider". Do you see after looking at the
12:14:34 23 records he says this, "I consider that ad hoc arrangements
12:14:37 24 for the storage of critical human source related material
12:14:41 25 in a variety of places presents unacceptable risks,
12:14:45 26 particularly in the case of high risk human sources.
12:14:48 27 Sufficient storage must be provided so that all human
12:14:52 28 source related data is secured on the respective Interpose
12:15:00 29 file managed by the HMSU to form a complete searchable and
12:15:06 30 accountable record". The criticism that the records were
12:15:10 31 kept in the wrong place, what do you say as to that?--I
12:15:14 32 say that's incorrect because in the Source Development Unit
12:15:18 33 3838's files were kept in one place including also,
12:15:26 34 including ICRs and including things like impress files and
12:15:36 35 claims that we'd had for that source, it was all in one
12:15:40 36 place.
12:15:40 37
12:15:40 38 COMMISSIONER: What about your diaries, were they all there
12:15:42 39 too in the one place?--Yes. Yes, they were.
12:15:46 40
12:15:46 41 So all the ICRs and the diaries were kept in the one place.
12:15:50 42 In what sense was it the one place?--We had our diaries on
12:15:55 43 what we call our G drive. They were also backed up on what
12:16:01 44 we call our stand alone Z drive and the 3838 files were
12:16:07 45 kept on the stand alone Z drive, together with audio. The
12:16:13 46 failing of Interpose is [REDACTED]
12:16:19 47

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:16:20 1 MR CHETTLE: You've since this Commission was called spent
12:16:23 2 hours looking at the Loricated system?---Yes, I have.
12:16:26 3
12:16:27 4 That is an attempt to recreate what was your original
12:16:31 5 records, is it not?---That's correct.
12:16:34 6
12:16:40 7 I'll leave that. Down the bottom of the page in the
12:16:56 8 second-last paragraph he says that, "There are indications
12:16:59 9 that it's been the subject of a number of audits,
12:17:02 10 notwithstanding this the 3838 files still appear to be
12:17:07 11 missing certain records. The file remains in dire need of
12:17:11 12 reconfiguration in order for it to make sense and present
12:17:14 13 as a sequential and accountable record of the management of
12:17:18 14 this human source". What do you say as to the records you
12:17:21 15 actually kept compared to the ones Mr Comrie was looking
12:17:26 16 at?---What I say is they were in a sequential and
12:17:31 17 accountable - at least sequential. They were in one area
12:17:33 18 and they were accountable when we were managing the file.
12:17:36 19
12:17:36 20 Did anyone ever come and ask you about your records?
12:17:41 21 Mr Comrie?---Not to me, no.
12:17:43 22
12:17:44 23 Had you been asked were you in a position to point them to
12:17:49 24 where the material was?---Yes, I was.
12:17:51 25
12:17:53 26 There are criticisms on the top of the next page about the
12:17:59 27 ICRs presenting as slabs of text with a whole lot of
12:18:06 28 different issues, variety of issues, do you see
12:18:09 29 that?---Yes.
12:18:09 30
12:18:09 31 Were the ICRs that were viewed the ICRs that you created as
12:18:14 32 far as you can ascertain?---Yes.
12:18:18 33
12:18:22 34 In that sense when he says his criticism of the ICRs, he's
12:18:28 35 criticising the ICRs that the Commissioner has been going
12:18:33 36 through now for some time?---Yes, he is.
12:18:35 37
12:18:35 38 At p.14 - I'll go back to p.12 for a moment, please.
12:18:58 39 You'll see in the paragraph that starts "despite
12:19:04 40 indications that a number of audits have been completed" -
12:19:07 41 yes, thank you?---Yes.
12:19:08 42
12:19:09 43 He says, "No records are still missing from this file
12:19:16 44 albeit there are no gaps in the ICR numbering to reflect
12:19:19 45 this. For example, there are no ICRs to account for the
12:19:21 46 period from 16 September 06 to 27 September 06 although
12:19:27 47 it's readily apparent from review of the other ICRs that

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:19:30 1 contact occurred during this period. It's reasonable to
12:19:33 2 conclude that ICRs to account for that contact within this
12:19:37 3 period have not been submitted". See that?---Yes, I do.
12:19:42 4
12:19:42 5 Was that a reasonable conclusion?---No, it's not.
12:19:46 6
12:19:46 7 Were they submitted?---Yes, they were.
12:19:48 8
12:19:49 9 And have they since been regenerated but they've been
12:19:54 10 overwritten by a process which the Commission has heard
12:19:56 11 about earlier in the Commission?---Yes, and they've since
12:20:02 12 been rewritten and inaccurately I might add.
12:20:05 13
12:20:05 14 The ones that were rewritten by Loricated do not accord
12:20:10 15 with what the original document was?---That's correct.
12:20:12 16
12:20:13 17 But the point I seek to make as far as Mr Comrie is
12:20:16 18 concerned, his reasonable conclusion is not true is what
12:20:21 19 you're saying?---That's correct.
12:20:23 20
12:20:23 21 Thank you. Can we now go to p.14. You'll see in the
12:20:37 22 centre of the page "the utilisation of a legal practitioner
12:20:40 23 as a human source". I just want to draw your attention to
12:20:43 24 the last sentence about that, "Some handlers keen to take
12:20:46 25 advantage", that's in fact the very quote that Justice
12:20:50 26 Ginnane picked up when he, the passage that I took you to
12:20:53 27 before, is it not?---That's correct.
12:20:55 28
12:20:56 29 And again if we go over to pp.15 and 16. At the top of the
12:21:12 30 page, I'm sorry, of p.15. "The absence of any challenge by
12:21:31 31 police to the initial statement may reflect that they too
12:21:34 32 may not have had fully appreciated the complexities
12:21:39 33 involved." For the life of me I don't know why I was going
12:21:44 34 to ask you about that so I'll simply withdraw it. I
12:21:48 35 apologise. At p.18. Sixteen is the page I was looking
12:22:10 36 for, I'm sorry, I now understand what I was doing. Where
12:22:13 37 you are there, in the bottom paragraph, "Entries contained
12:22:18 38 in the 3838 ICRs taken at face value indicate that on many
12:22:23 39 occasions 3838 in providing information to the police
12:22:25 40 handlers about a client has disregarded legal professional
12:22:29 41 privilege" and it goes on to set out the rest of the quote
12:22:32 42 that was adopted by Justice Ginnane that I took you to
12:22:37 43 before in the judgment. Do you remember?---Yes, I can, I
12:22:41 44 can see that.
12:22:42 45
12:22:42 46 Thank you. Now at p.18, I'm sorry to be jumping around.
12:22:52 47 Under the heading, "Other seemingly inappropriate

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:22:55 1 discussions and topics"?---Yes.
12:23:01 2
12:23:01 3 Mr Comrie makes the point that, "There are entries within
12:23:04 4 the ICRs reflecting that handlers and 3838 had discussed
12:23:08 5 coercive hearing processes that were either scheduled or
12:23:12 6 undertaken by entities such as the OPI and the ACC"?---Yes.
12:23:16 7
12:23:17 8 "It's difficult to decipher the precise context of some of
12:23:21 9 these discussions. It's presumed that 3838 as a practising
12:23:24 10 barrister would be well aware that such hearings are most
12:23:28 11 likely to involve confidentiality notices. Such notices
12:23:31 12 may make it an offence to disclose to anyone else, other
12:23:36 13 than the circumstances as specified within the notice, the
12:23:40 14 existence of the summons or the subject matter of the
12:23:43 15 investigation in relation to which the summons was issued,
12:23:45 16 unless the person has reasonable excuse". Do you see
12:23:48 17 that?---Yes, I do.
12:23:49 18
12:23:50 19 He goes on to criticise those discussions. Did you have
12:23:59 20 any conversations with Ms Gobbo about the ACC or the OPI
12:24:07 21 about anything other the risk of exposure to her by her
12:24:12 22 attendance at those hearings?---No, it was only about the
12:24:14 23 risk to her safety and we always reiterated to her that she
12:24:19 24 should go and tell the truth.
12:24:20 25
12:24:20 26 Did you ever discuss the content of what she was going to
12:24:24 27 say or what she should say?---Only that to tell the truth.
12:24:28 28
12:24:32 29 On p.21 of his report Mr Comrie criticises the risk
12:24:43 30 assessment process that was undertaken with Ms Gobbo, do
12:24:47 31 you see that?---Yes.
12:24:48 32
12:24:49 33 And he says that the risk assessment process had many
12:24:52 34 failings. In that regard is the policy that he was looking
12:24:56 35 at for applying to 2012 in relation to risk assessment
12:25:00 36 totally different to the risk assessment policy that
12:25:03 37 applied in 2005?---It was different, yes.
12:25:06 38
12:25:08 39 He goes on to say that the first of the risk assessments
12:25:12 40 dated 15/11/05 was compiled more than two months after they
12:25:17 41 commenced dealing with her, after her registration, do you
12:25:22 42 see that?---Yes, I can see that.
12:25:25 43
12:25:27 44 Do you understand the process of an assessment and
12:25:31 45 obtaining registration of a source, as at 2005?---Yes, I
12:25:40 46 do. There is an assessment period. You can't complete a
12:25:49 47 full risk assessment until you assess the source and

.18/09/19

6437

FOX RE-XN - IN CAMERA

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:25:52 1 discuss with the source their current issues, what they
12:25:56 2 have access to, where they can or may be tasked to, what
12:26:01 3 the risks around that are. And it's that assessment period
12:26:06 4 that forms the basis of creating the risk assessment. So
12:26:11 5 there was an assessment period before the risk assessment
12:26:15 6 was produced and the source can't be confirmed as a source
12:26:19 7 until that risk assessment is submitted.
12:26:22 8
12:26:22 9 And accepted by VicPol up the line?---Correct.
12:26:25 10
12:26:27 11 Mr White and indeed Mr Paterson have given evidence that
12:26:30 12 Mr Comrie's understanding of the risk assessment process
12:26:35 13 involved in registration is flawed and that the
12:26:39 14 registration is not complete until the risk assessment is
12:26:43 15 accepted by VicPol management. Is that your position as
12:26:47 16 well?---Yes, it is.
12:26:49 17
12:27:25 18 If I can go forward to p.26. Can I go to the bottom of the
12:27:42 19 page. Mr Comrie comes to this conclusion, "I consider that
12:27:46 20 the risk assessment processes utilised for 3838 were
12:27:50 21 grossly inadequate. Readily identifiable significant risks
12:27:56 22 were simply not documented and accordingly no controls were
12:27:59 23 developed or put in place. It's open to conjecture whether
12:28:04 24 such action were the consequences of naivety at the time of
12:28:07 25 initial engagement or were the consequence of more
12:28:13 26 considered action due to an underlying awareness that the
12:28:20 27 documentation of such matters as an inherent risk would in
12:28:25 28 all probability derail the sanctioning of the usage of 3838
12:28:29 29 as a police informer". Do you see that?---I do, yes.
12:28:32 30
12:28:32 31 Apart from saying he didn't like the risk assessments he
12:28:35 32 said one of the possibilities was that you deliberately
12:28:40 33 didn't document the risks in order to fool management into
12:28:44 34 registering her. Do you see that?---Yes, I do.
12:28:47 35
12:28:47 36 What do you say as to those propositions?---That would be
12:28:52 37 utter foolishness and I've recorder all dealings with the
12:28:56 38 source and all risks to my controller and higher.
12:29:01 39
12:29:01 40 Was there ever a plan by the SDU to hide risks in order to
12:29:06 41 get her registered and hide from management the true risks
12:29:09 42 of her?---No.
12:29:12 43
12:29:50 44 I'll leave that and move forward. At p.29 in the centre of
12:29:59 45 the page under "handlers dealing with 3838 would tag team
12:30:05 46 as part of a strategy to regulate workload and safeguard
12:30:12 47 handler welfare", do you see that?---Yes, I do.

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:30:14 1
12:30:14 2 Then he says, "An objective observer when considering such
12:30:20 3 tactics could interpret that the welfare of 3838 was
12:30:24 4 considered a somewhat more secondary consideration", do you
12:30:28 5 see that assertion?---Yes, I do.
12:30:29 6
12:30:29 7 What do you say about that?---I reject that. My second
12:30:33 8 statement clearly shows it was our primary consideration.
12:30:40 9
12:30:40 10 Indeed, you set out in your second statement a table
12:30:43 11 listing all the entries that set out health issues that you
12:30:47 12 raised with Ms Gobbo?---That's correct.
12:30:50 13
12:30:52 14 Again, it's obvious you weren't asked about this before an
12:30:58 15 interpretation was drawn?---No.
12:31:02 16
12:31:08 17 At p.30, towards the bottom, at the very bottom paragraph,
12:31:25 18 Mr Comrie says in dealing with the late submissions of
12:31:30 19 ICRs, "May have contributed to managerial unawareness of
12:31:35 20 the emergence of many of these serious threats and risks.
12:31:39 21 It may also be possible that staff managing 3838 were
12:31:42 22 concerned about not keeping up with the daily contact
12:31:45 23 reporting processes and felt that they may fall even
12:31:50 24 further behind should they be required to compile a fresh
12:31:55 25 full risk assessment. The use of multiple handlers may
12:31:58 26 also have clouded the issue of individual responsibility
12:32:01 27 for composition of a new risk assessment, although the
12:32:05 28 commonality of handler should have overcome this". What do
12:32:09 29 you say about that, Mr Fox?---I was in contact with my
12:32:17 30 controller probably daily, if not every second day,
12:32:21 31 reporting what I'd spoken to the source about and
12:32:27 32 everything was a risk assessment from the information to
12:32:30 33 her health, to compromise. I reported everything to my
12:32:37 34 controller.
12:32:38 35
12:32:38 36 Do you believe that there was any managerial unawareness of
12:32:43 37 any of the risks associated with her?---No.
12:32:46 38
12:32:56 39 Under the next page, 31, under "focus on risk at monthly
12:33:01 40 management meetings", the Commission has been taken to
12:33:06 41 regular monthly meetings where you provided extensive
12:33:11 42 updates to the management in relation to what had occurred
12:33:15 43 in the past month. Do you remember those updates?---The
12:33:26 44 interim Fox updates, in the source log?
12:33:27 45
12:33:28 46 In the source management log?---Yes.
12:33:30 47

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:33:30 1 What do you say as to, firstly, the suggestion that your
12:33:33 2 focus was at best cursory and was a cut and paste of the
12:33:38 3 previous month's entry?---I disagree with that. The risk
12:33:45 4 was always high so that would be a recurring theme but
12:33:52 5 there was issues always that we sat as a group, I sat with
12:33:59 6 my controller, to risk assess how to manage the source
12:34:05 7 safely to prevent her from being compromised.
12:34:08 8
12:34:08 9 There's been evidence given that you of all the handlers
12:34:11 10 gave the most detailed and comprehensive updates. I know
12:34:16 11 it's hard to blow your own trumpet but would you argue with
12:34:21 12 that?---I felt that in order for my management and my
12:34:27 13 controller to know the risks then they needed a full
12:34:31 14 appraisal and I did my best to give them that full
12:34:34 15 appraisal.
12:34:35 16
12:34:35 17 Thank you?---It's better to have more lines considering the
12:34:38 18 risks than just one.
12:34:40 19
12:34:45 20 At p.38 - again I think that's probably a comment. I'll
12:35:11 21 leave it to a submission and push on. Page 42. He makes
12:35:31 22 the point under "the multiple handler approach" at p.42
12:35:36 23 that, "There would be deficiencies from that approach
12:35:41 24 because the people wouldn't be across subtleties in the
12:35:45 25 change of her demeanour, health and mental health".
12:35:49 26 Firstly, so far as changing of handlers was concerned, was
12:35:53 27 there always [REDACTED] involved in meeting her
12:35:57 28 face-to-face?---Yes.
12:36:00 29
12:36:01 30 So when a new handler came in there would still be the old
12:36:05 31 handler still there, or one of the old handlers?---Correct.
12:36:09 32
12:36:09 33 Or one of the old handlers?---Correct.
12:36:11 34
12:36:11 35 And the handler that had come back in after a period of
12:36:16 36 time obviously, after initially meeting her, are repeat
12:36:22 37 offenders as it were, people she's known in the past and
12:36:26 38 they were reacquainting herself with?---Correct.
12:36:29 39
12:36:29 40 Were the handlers across changes in her demeanour, health
12:36:33 41 and mental health?---Yes. Where we saw concerns we would
12:36:40 42 encourage her to get medical assistance.
12:36:44 43
12:36:45 44 He seems to be saying at the bottom of that paragraph, "The
12:36:48 45 failure to put in ICRs on time was an issue in that the
12:36:54 46 timeliness and submission of such records was an issue on
12:36:57 47 this matter and other records reflect that the controller

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

1 was often not checking and not validating the contact
12:37:02 2 reports that were eventually compiled". What do you say as
12:37:05 3 to that? Firstly that the controller wasn't checking what
12:37:09 4 you did?--The controllers, the controllers practised
12:37:19 5 intrusive supervision and they checked on us always and
12:37:23 6 often.

12:37:24 7
12:37:24 8 The Commission have in the ICRs that were prepared by you
12:37:29 9 hundreds of pages of ICRs prepared by you that do not
12:37:32 10 appear to have Mr White or Mr Black or any other
12:37:38 11 controller's signature in the checking box. You've seen
12:37:41 12 that in the course of your preparation?--Yes, I have seen
12:37:45 13 that.

12:37:45 14
12:37:46 15 Can the Commissioner accept at face value that those ICRs
12:37:50 16 were never checked by the controller?--No.

12:37:54 17
12:37:54 18 Can you explain why it is that we've got copies without
12:37:57 19 anything on them?--I can't really. Those copies seem to
12:38:05 20 come from the Loricated database which was compiled in
12:38:10 21 2013/2014, so that's a few, a few years after the end of
12:38:16 22 the source and I explain in my second statement some
12:38:22 23 anomalies I've seen in the recreation of those ICRs.

12:38:28 24
12:38:32 25 Did you keep on the G drive or some other computer storage
12:38:37 26 copies of the ICRs that you had submitted, that is copies
12:38:41 27 of what ultimately became your original ICR?--Yes, I would
12:38:48 28 have kept copies, yes.

12:38:50 29
12:38:50 30 Are you able to say whether the documents that have been
12:38:53 31 reproduced in Loricated as your documents are copies or
12:38:57 32 some other form of document?--They appear to be copies.
12:39:09 33 In some instances I've seen differences as to what's in my
12:39:15 34 diary, especially what's in the ICR.

12:39:22 35
12:39:22 36 COMMISSIONER: Sorry, I don't quite follow your answer to
12:39:25 37 that. You were asked if the ICRs that we have are the same
12:39:31 38 or different from the copies of the ICRs on your G drive,
12:39:35 39 the original ICRs and what's the answer?--I've found
12:39:41 40 anomalies in them which I point out in my second statement.

12:39:45 41
12:39:45 42 Yes. And we've gone through a lot of those anomalies with
12:39:49 43 the diaries. Do you say those anomalies weren't in the
12:39:53 44 original ICRs on your G drive?--Yes.

12:39:59 45
12:39:59 46 That's what your evidence is, is it?--Yes.

12:40:02 47

.18/09/19

6441

FOX RE-XN - IN CAMERA

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:40:02 1 Is that right?---Yes.
2
12:40:03 3 That your original ICRs on the G drive would not have any
12:40:06 4 of those anomalies, is that what you're saying?---I've seen
12:40:11 5 ICRs where the names have been deleted and I don't know
12:40:20 6 why. There are footnotes on diaries that weren't on the
12:40:24 7 originals, things like that. There's highlights, there's
12:40:29 8 yellow highlights on - - -
12:40:31 9
12:40:31 10 Yes, yes?---- - - documents I've seen that wouldn't have
12:40:35 11 been on the originals.
12:40:36 12
12:40:36 13 If we just take out where a name has been removed or
12:40:40 14 changed for PII reasons. Is your evidence that your ICRs
12:40:50 15 on your G drive were different to these ICRs? Obviously
12:40:54 16 there's been some PII changes to some of the ICRs and so
12:40:57 17 forth?---Yes, I understand that. Certainly by and large
12:41:02 18 they look the same but there are, I've seen differences.
12:41:10 19
12:41:10 20 Thank you. Yes Mr Chettle.
12:41:12 21
12:41:13 22 MR CHETTLE: Thank you. All right, I'll try and get
12:41:22 23 through this quicker than I am. At p.46 Mr Comrie goes
12:41:36 24 through what we've spent some time this morning talking
12:41:41 25 about the Zaharoula Mokbel brief and the differences
12:41:44 26 between what you now spell out between your diary and the
12:41:48 27 ICRs, do you see that?---Yes.
12:41:50 28
12:41:53 29 It's clear that he relied on what was in the ICR rather
12:41:57 30 than looking at what was in your diary, put it that
12:42:01 31 way?---Yes, that's Mr Anderson's ICR.
12:42:04 32
12:42:04 33 Sorry, Mr Anderson's ICR?---Yes.
12:42:07 34
12:42:07 35 The one that I took you to this morning?---Correct.
12:42:09 36
12:42:33 37 At p.53 - I'm sorry, before that, 52. Can I take you to
12:42:46 38 the second-last paragraph on that page, "I do not intend to
12:42:50 39 repeat", that one. He refers to the CMRD review of 2010,
12:42:58 40 are you familiar with that?---Yes.
12:43:01 41
12:43:02 42 Did that review have anything to do with Ms Gobbo for a
12:43:06 43 start off?---No.
12:43:08 44
12:43:09 45 Having referred to that he then goes on to say this, "I
12:43:13 46 feel compelled to add that I considered ongoing failures by
12:43:17 47 handlers and controllers in respect of ensuring timely

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:43:22 1 submission of checking and validating contact reports for
12:43:26 2 recognised high risk sources for which they are responsible
12:43:30 3 should cause Victoria Police to reconsider the capacity of
12:43:34 4 such persons to be entrusted to undertake these critical
12:43:37 5 roles". Do you see that?---Yes, I do.

12:43:40 6
12:43:41 7 Insofar as that is a recommendation to management to
12:43:45 8 consider sacking you, what do you say about that
12:43:49 9 criticism?---I say that we were under resourced for
12:43:56 10 administration help and the amount of sources we were
12:44:01 11 managing at that time on top of 3838, which was a very
12:44:08 12 intensive source to manage and record all risks and ICRs
12:44:13 13 and documents, the unit asked for more staff and admin
12:44:22 14 assistants and it was decided from above that we would not
12:44:26 15 get it. So we did the best we could with what we had.

12:44:32 16
12:44:33 17 And had all the handlers completed the [REDACTED]
12:44:38 18 course?---Yes.

12:44:38 19
12:44:43 20 Sorry, I've upset Mr Holt.

12:44:46 21
12:44:48 22 COMMISSIONER: We're in closed hearing.

12:44:49 23
12:44:50 24 MR CHETTLE: I've upset Mr Holt and I never want to do
12:44:52 25 that. At p.53 - - -

12:44:57 26
12:44:57 27 COMMISSIONER: How would more administrative resources
12:45:01 28 helped you get your ICRs in in a more timely
12:45:12 29 fashion?---When I started managing the source I was going
12:45:15 30 through a diary a month, so that's 300 pages a month which
12:45:19 31 I had to sit down and type manually and I'm not a very good
12:45:24 32 typist, Commissioner.

12:45:25 33
12:45:26 34 How would it have worked, would you have dictated to an
12:45:29 35 administrative person to do, is that what you would have
12:45:32 36 done?---It would have been very handy to have an
12:45:36 37 administrative person to assist in typing them, yes.

12:45:38 38
12:45:39 39 To type up the ICRs. You'd then dictate it from your diary
12:45:43 40 to them and get them to type it in, is that how it would
12:45:46 41 have worked if you had more admin assistance?---Correct.

12:45:49 42
12:45:49 43 Thank you.

12:45:50 44
12:45:50 45 MR CHETTLE: At p.53 in the centre of the page - sorry, go
12:46:04 46 down the page, I'm sorry. Yes, thank you. "Not
12:46:09 47 withstanding the enhanced audit capacity being developed at

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:46:12 1 the HSMU, the essence did not seem to be quite the
12:46:16 2 independent eyes that the CMRD audit recommended." So he's
12:46:21 3 there saying that HMSU is not the independent eyes auditing
12:46:25 4 you but then he goes on, "I consider it would be advisable
12:46:29 5 to establish a regime of independent case officers to
12:46:35 6 conduct reviews of human source files, particularly high
12:46:39 7 risk human source files". Do you see that?---Yes.
12:46:42 8
12:46:42 9 In fact did that happen with Ms Gobbo, was there an
12:46:44 10 independent review done of the management of her
12:46:48 11 file?---Yes, there was.
12:46:49 12
12:46:50 13 As to the rest of the files, did Superintendent Nolan
12:46:54 14 conduct an independent audit in relation to those, that is
12:46:57 15 the ones that didn't count for 3838?---Yes, she did.
12:47:03 16
12:47:14 17 At p.56 Mr Comrie comes to the point that in summary the
12:47:29 18 SDU tried to undermine Petra wanting to use 3838 as a
12:47:34 19 witness. Do you recall those criticisms?---Yes.
12:47:38 20
12:47:39 21 What do you say as to those criticisms?---I've documented
12:47:44 22 in my diary and it's in my second statement the assistance
12:47:49 23 that I provided for a smooth transition of the source into
12:47:55 24 the Witsec program.
12:48:00 25
12:48:01 26 Did you take part in the training of two people who were to
12:48:05 27 handle her when she went to Petra?---Yes, I did.
12:48:08 28
12:48:11 29 The decision to use her as a witness appears to be one that
12:48:14 30 everybody at SDU thought was a bad decision but went along
12:48:19 31 with when you were ordered to do so, is that your
12:48:23 32 position?---Once we were directed to do so, we did nothing
12:48:27 33 but to try and facilitate a smooth transition to Witsec and
12:48:34 34 Petra.
12:48:34 35
12:48:47 36 At p.58 Mr Comrie comes to this conclusion. He quotes
12:48:55 37 Mr Smith saying that, "With respect this handler doesn't
12:48:59 38 believe that Mr Overland is aware of the consequences of
12:49:02 39 making her a witness". Do you see that, a quote from the
12:49:07 40 ICRs completed by Mr Smith?---Yep.
12:49:10 41
12:49:12 42 Then he goes on, "This particular handler's belief does not
12:49:15 43 appear to have stimulated SDU's timely production of a
12:49:20 44 comprehensive transition focused risk assessment document
12:49:23 45 to ensure that DC Overland, given his perceived
12:49:27 46 unawareness, would clearly and unambiguously apprised of
12:49:32 47 all risks and consequences seemingly apparent to SDU".

.18/09/19

6444

FOX RE-XN - IN CAMERA

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:49:38 1 What he's saying is you have deliberately kept Overland in
12:49:43 2 the dark, do you see that?---Yes.
12:49:45 3
12:49:46 4 Are you aware of a comprehensive analysis prepared by
12:49:50 5 Mr Black for exactly that purpose?---Yes, I am.
12:49:52 6
12:49:53 7 What do you say as to the proposition that's put by
12:49:57 8 Mr Comrie apparently to distance Mr Overland from
12:50:00 9 involvement in this management of Ms Gobbo, that you
12:50:05 10 didn't, deliberately didn't give him an assessment of the
12:50:09 11 risks and consequences?---That's incorrect. That document
12:50:16 12 was compiled specifically to brief up and Mr Overland, as I
12:50:23 13 understand, was also present at meetings to discuss the
12:50:28 14 issue prior to Christmas 08.
12:50:35 15
12:50:36 16 At p.59 he was critical of the absence of a transition
12:50:42 17 plan. Was there a transition plan to manage her movement
12:50:46 18 to Petra?---Yes, there was, and that's documented in my
12:50:52 19 diary, my statement and I assisted in Witsec in compiling a
12:51:00 20 threat assessment.
12:51:02 21
12:51:06 22 At p.59 I think it is - p.60, he's critical of the
12:51:17 23 transition process and says that there was a failure to
12:51:20 24 give comprehensive assessments and effectively that you
12:51:24 25 weren't assisting the transition. Now for reasons you've
12:51:29 26 given you say that's not correct?---That's not correct,
12:51:34 27 exactly.
12:51:35 28
12:51:36 29 I want to deal next a little bit more briefly, if I can,
12:51:41 30 with the decision of Justice Kellam, or the report of
12:51:46 31 Justice Kellam from IBAC. Again, I'm not sure that's been
12:51:51 32 tendered, Commissioner.
12:51:52 33
12:51:52 34 COMMISSIONER: I think it probably hasn't.
12:51:54 35
12:51:54 36 MR HOLT: I think it has.
12:51:55 37
12:51:55 38 MR WOODS: I think that might have been the one I was
12:51:59 39 referring to earlier that had been tendered by me some
12:52:03 40 months ago. We'll just look up the number for that.
12:52:17 41
12:52:17 42 COMMISSIONER: We'll just look it up, yes.
12:52:18 43
12:52:19 44 MR CHETTLE: 113 I'm told, Commissioner.
12:52:21 45
12:52:21 46 COMMISSIONER: With redactions but the full report should
12:52:25 47 also be tendered as a confidential exhibit. It's already

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:52:40 1 there as an attachment. The full report is the
12:52:42 2 confidential exhibit and it's there as an attachment to
12:52:46 3 Mr Paterson's statement.
12:52:48 4
12:52:49 5 MR CHETTLE: Thank you. What number will I refer to it as,
12:52:53 6 Commissioner?
12:52:54 7
12:52:54 8 COMMISSIONER: What is it? Attachment 61 to Mr Paterson's
12:52:59 9 statement.
12:53:00 10
12:53:00 11 MR CHETTLE: Before I go to that, on Friday you indicated
12:53:07 12 to Mr Woods that you'd seen two copies of the list of
12:53:12 13 people who knew of her identity, remember, and there was a
12:53:16 14 discussion about whether it was just a different format or
12:53:19 15 not?---Yes.
12:53:19 16
12:53:19 17 It's the one that the Commission have as Exhibit 112. Do
12:53:23 18 you have a link or a copy of a link that you can provide
12:53:26 19 the Commission to the second document of the list of people
12:53:29 20 who know, which is different to the one that is in fact
12:53:33 21 Exhibit 112?---No, I don't have a link.
12:53:38 22
12:53:43 23 All right. Commissioner, I have to mention a name to get
12:53:57 24 this right, the name I understand won't be published. You
12:54:01 25 have access to Loricated there, do you not?---Yes, I do.
12:54:04 26
12:54:05 27 If you go to the J drive, I'll just give you a reference, J
12:54:09 28 drive, SDU member?---Stand by.
12:54:14 29
12:54:15 30 MR HOLT: Commissioner, I'm sure we can find this document
12:54:18 31 and get a hard copy or electronic copy and produce it over
12:54:21 32 lunch I suspect rather than going through this process.
12:54:24 33
12:54:24 34 MR CHETTLE: I'm happy with that. They asked about it,
12:54:27 35 Commissioner, we found it so we're producing a second copy.
12:54:32 36
12:54:33 37 COMMISSIONER: Are you going to ask any questions about it
12:54:36 38 or are you just tendering the document?
12:54:38 39
12:54:39 40 MR CHETTLE: No.
41
42 COMMISSIONER: We'll just tender the document when it's
12:54:40 43 ready.
12:54:40 44
12:54:40 45 MR HOLT: We'll make the arrangement and see if we can find
12:54:41 46 some agreed facts as to where it was located.
12:54:43 47

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:54:44 1 MR CHETTLE: Thank you. We'll put up on the screen - have
12:54:46 2 you got a copy of Mr Kellam's report with you?---No, I
12:54:50 3 haven't.
12:54:50 4
12:54:50 5 We'll put it up on the screen, if you have it available.
12:54:54 6
12:54:55 7 COMMISSIONER: Do you want the unredacted one?
12:54:57 8
12:54:57 9 MR CHETTLE: It's going to have to be, Commissioner. I'm
12:55:00 10 not sure what is in fact redacted and what isn't because I
12:55:04 11 have an unredacted copy.
12:55:05 12
12:55:06 13 COMMISSIONER: It's attachment 61 to Mr Paterson's
12:55:09 14 statement.
12:55:13 15
12:55:19 16 MR HOLT: I think it's the 113 version which is the Supreme
17 Court redacted version, Commissioner.
18
12:55:21 19 COMMISSIONER: So we have got that one, yes.
12:55:21 20
12:55:22 21 MR WOODS: It's testing memory but I'm pretty sure when
12:55:24 22 this was tendered I tendered the version that was available
12:55:27 23 on the portal.
12:55:28 24
12:55:28 25 COMMISSIONER: That was Exhibit 113, but we understood that
12:55:31 26 the attachment to Mr Paterson's statement was the
12:55:33 27 unredacted version.
12:55:36 28
12:55:36 29 MR WOODS: Yes, I'm not sure which one is being asked to be
12:55:39 30 brought up.
12:55:40 31
12:55:40 32 COMMISSIONER: I think it was the attachment to
12:55:42 33 Mr Paterson's statement which we think is the unredacted
12:55:46 34 version.
12:55:46 35
12:55:46 36 MR HOLT: I'm sorry, Commissioner, I misunderstood.
12:55:50 37
12:55:50 38 MR CHETTLE: Can I go to p.6 of the - when it comes up,
12:55:58 39 Justice Kellam 's report. Yes, thank you. Sorry - it's
12:56:29 40 not coming up. That's it. The page numbers are hard to
12:56:37 41 read. Go back a little bit, it's headed "introduction" the
12:56:45 42 part I want to look at.
12:56:46 43
12:56:47 44 COMMISSIONER: This might also be a redacted copy, I don't
12:56:53 45 know. It does have some blackouts.
12:56:55 46
12:56:56 47 MR CHETTLE: I'll endeavour to survive with a redacted

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:57:02 1 copy. If I run into difficulties I'll deal with it. Can
12:57:03 2 we go to p.4, please. "The conduct inquired into is the
12:57:06 3 conduct of current and former members of VicPol which
12:57:09 4 conduct is identified on pp.14-17 of the case review
12:57:13 5 conducted by Comrie in relation to the management of 3838.
12:57:19 6 The examination of such conduct included reference to the
12:57:22 7 policies, processes and procedures used in relation to the
12:57:25 8 management of such source and the consequence of such use
12:57:28 9 during the period 16 September 2005 and the source was
12:57:33 10 registered until January 2009 when the source was
12:57:36 11 deactivated", do you see that?---Yes, I do.
12:57:40 12
12:57:40 13 You'll see in reference to the policies, processes and
12:57:46 14 procedures used in relation to the management of the
12:57:49 15 source, Justice Kellam has made the same assumption as
12:57:54 16 Mr Comrie did and applied 2012 policy to the activities of
12:57:59 17 what occurred in 2005 to 2009, what I might call the retro
12:58:05 18 scope?---That's correct, and Mr Comrie calls it a
12:58:08 19 hypothetical review.
12:58:10 20
12:58:11 21 So again, the point that you made before is the policies
12:58:14 22 were different in 2005 to what they were in
12:58:19 23 2012?---Correct.
12:58:19 24
12:58:19 25 And at paragraph 5 Justice Comrie makes the assertion that
12:58:29 26 the information that was acquired from the source was prima
12:58:33 27 facie the subject of legal professional privilege or
12:58:36 28 otherwise confidential?---Yes, I can see that. I don't
12:58:41 29 agree.
12:58:42 30
12:58:42 31 "Potentially affected the legal rights and legitimate
12:58:45 32 expectations of clients and had the potential to impair or
12:58:51 33 compromise the integrity trials and other judicial
12:58:52 34 proceedings in which the client of the source were or were
12:58:55 35 likely to be engaged." So insofar as the first of those
12:58:59 36 propositions you disagree, the other two I take it you
12:59:03 37 don't argue with?---Correct.
12:59:05 38
12:59:17 39 The next paragraph, if we go down to paragraph 7, in the
12:59:24 40 centre, point 2, "On that date the source offered to act as
12:59:28 41 an informant to VicPol in relation to certain clients and
12:59:31 42 was thereafter handled by members of the Source Development
12:59:37 43 Unit who failed to comply sufficiently or at all with the
12:59:39 44 standard operating procedure designed to identify and avoid
12:59:43 45 or minimise risk associated with human source handling".
12:59:47 46 Now, what do you say about any alleged failure to comply
12:59:53 47 with what were then your Standard Operating Procedures?---I

.18/09/19

6448

FOX RE-XN - IN CAMERA

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

12:59:57 1 disagree with that.
12:59:58 2
12:59:59 3 Can you amplify that?---The Standard Operating Procedures
13:00:05 4 were created by Mr Sandy White, so he was the controller of
13:00:11 5 the source so he complied with the procedures that he
13:00:18 6 wrote, the Standard Operating Procedures.
13:00:29 7
13:00:29 8 Over the page at p.3, this is point 6 at the top, "VicPol
13:00:45 9 records relating to the source indicate that the source
13:00:48 10 provided VicPol with information obtained from clients,
13:00:51 11 which information was prima facie the subject of legal
13:00:54 12 professional privilege or was otherwise confidential and
13:00:57 13 further provided legal and tactical advice to VicPol in
13:01:00 14 relation pending VicPol proceedings against the source's
13:01:06 15 clients and others", do you see that?---Yes, I do.
13:01:10 16
13:01:10 17 That's a direct quote really of what Mr Comrie said and
13:01:16 18 what ended up in Justice Ginnane's judgment?---Yes, it is.
13:01:20 19
13:01:20 20 Insofar as those assertions are made, you've obviously
13:01:23 21 stated your view already?---Yes, and to say it's prima
13:01:28 22 facie subject to legal professional privilege, I don't
13:01:31 23 agree with, or confidentiality. Legal professional
13:01:37 24 privilege has, what, 12 or 15 more arms before it can be
13:01:43 25 assessed and it needs to be for a dominant purpose.
13:01:48 26
13:01:49 27 Later on in paragraph 5 on that same page he refers to the
13:01:54 28 Covert Services Review. "Following an internal VicPol
13:01:57 29 Covert Services Review 2012", which was in fact dated
13:02:03 30 January 13, "The SDU was disbanded following the findings
13:02:07 31 of the review that SDU had failed to engage in proper risk
13:02:12 32 management procedures and developed a culture of risk
13:02:15 33 taking". Do you see that?---Yes, I do.
13:02:17 34
13:02:18 35 So far as that review is concerned, have you recently
13:02:23 36 received documents that relate to how that review came
13:02:29 37 about and how it came to be used to terminate the SDU
13:02:33 38 membership or the SDU unit?---Yes, I've seen documents,
13:02:37 39 yes.
13:02:37 40
13:02:38 41 What do you say as to the VAT review, that's a separate
13:02:44 42 topic to Mr Kellam, what do you say as to the accuracy and
13:02:49 43 integrity of the Covert Services Review?---Well, primarily
13:02:57 44 the, some of the examples that I've seen or referred to are
13:03:08 45 from 2010 onwards, well after the source had been
13:03:12 46 deactivated at the unit.
13:03:15 47

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

13:03:16 1 Were you consulted in relation to that review?---No.
13:03:21 2
13:03:21 3 To your knowledge any other member of the SDU?---No.
13:03:25 4
13:03:37 5 Justice Kellam at page - these have numbers on the top,
13:03:45 6 mine goes 0054 - yours haven't, I'm sorry. On the bottom
13:03:57 7 it's p.7. No, back one. Stop there, thank you. He sets
13:04:11 8 out at the top a quote from the UK code which he relied on,
13:04:17 9 the 2002 UK code that he refers to. You know the document
13:04:22 10 I mean?---Yes, I do.
13:04:23 11
13:04:23 12 "Where there is any doubt as to the handling and
13:04:26 13 dissemination of information which may be the subject of
13:04:29 14 legal professional privilege advice should be sought from a
13:04:34 15 legal advisor before any further dissemination of the
13:04:35 16 material takes place. Similar advice would also be sought
13:04:37 17 where there is doubt over whether information is not
13:04:40 18 subject to legal privilege due to the in furtherance of
13:04:44 19 criminal purpose exception", do you see that?---Yes, I do.
13:04:48 20
13:04:49 21 Firstly, you agree that with hindsight it would be a good
13:04:52 22 idea to have a lawyer to look at all this?---Yes.
13:04:56 23
13:04:57 24 Were you aware of a definition of legal professional
13:05:00 25 privilege that included that criminal purpose exception
13:05:05 26 that Mr White had as a result of a manual he obtained from
13:05:10 27 England?---I knew he had a manual but I don't think I read
13:05:16 28 it.
13:05:16 29
13:05:17 30 Then that was my question: did you discuss with him the
13:05:20 31 concept of legal professional privilege?---Yes.
13:05:23 32
13:05:25 33 And that quote - the proposition that conduct in
13:05:30 34 furtherance of criminal purpose is not covered by legal
13:05:33 35 professional privilege, is that a view you had in 2005 to
13:05:37 36 2009?---Yes, that's a view that I operated under dealing
13:05:44 37 with the source.
13:05:45 38
13:05:58 39 Two pages on at the bottom paragraph, "However he refers to
13:06:10 40 a standard operating procedure requiring SDU members
13:06:13 41 engaged in handling human sources prior to the management
13:06:16 42 of sources completing an AOR between VicPol and the human
13:06:21 43 source" and you accept that there was no written AOR
13:06:24 44 completed here?---I do, yes.
13:06:27 45
13:06:28 46 "In addition, and prior to management by SDU personnel,
13:06:32 47 such source would be the subject of a comprehensive risk

.18/09/19

6450

FOX RE-XN - IN CAMERA

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

13:06:35 1 assessment. Further, the SOP required that all SDU source
13:06:39 2 relationships were to be the subject of formal ongoing
13:06:43 3 monthly risk assessment. It's obvious that this required
13:06:47 4 procedure was designed to identify risk assessments with
13:06:50 5 utilisation of a human source and the means of avoiding or
13:06:53 6 minimising such risks prior to and continuing throughout
13:06:57 7 the use of such a source. As will be seen here the failure
13:07:01 8 on behalf of the SDU members to observe such procedures
13:07:04 9 sufficiently or at all was to have sufficient
13:07:08 10 consequences." What do you say as to the proposition that
13:07:10 11 there was not a comprehensive risk assessment done prior to
13:07:14 12 her registration in the way in which you outlined
13:07:18 13 before?---So there was a comprehensive process and Mr White
13:07:26 14 and Mr Smith met the source face-to-face four or five times
13:07:31 15 before that risk assessment was completed so they could
13:07:35 16 fully appreciate the risks surrounding her. There was also
13:07:42 17 monthly ongoing risk assessment done as documented in the
13:07:47 18 source management log.
13:07:48 19
13:07:50 20 Thank you. Page 0058. I'm sorry, that's a matter for
13:08:05 21 someone else, I'll leave that. Paragraph 2 on that page
13:08:13 22 and line 3, Justice Kellam opines that, "The source
13:08:27 23 suffered psychiatric or psychological and personality
13:08:32 24 dysfunction which was reflected in an aberrant lifestyle",
13:08:36 25 do you see that?---Yes.
13:08:37 26
13:08:40 27 What do you say as to any proposition that her - firstly,
13:08:46 28 was there any suggestion she had a psychiatric illness as
13:08:50 29 far as you were concerned?---No.
13:08:52 30
13:08:52 31 And any psychological issues she had, were attempts made to
13:08:57 32 manage those?---Yes, there were.
13:08:59 33
13:09:00 34 As far as you're concerned, from your knowledge of her, did
13:09:03 35 any of the psychological or behavioural problems that she
13:09:07 36 exhibited preclude her use as a human source?---No.
13:09:11 37
13:09:14 38 Human sources, do high risk human sources come in all
13:09:21 39 shapes and sizes?---Yes, they do, definitely.
13:09:24 40
13:09:25 41 Do other sources that you've managed exhibit psychological
13:09:28 42 and personality issues?---On occasion yes, probably all of
13:09:35 43 them on occasion, yes. To be a source to any law
13:09:40 44 enforcement is, you know, can be, have - what am I trying
13:09:52 45 to say - can be a personality issue borne out of
13:10:07 46 desperation by the person.
13:10:14 47

.18/09/19

6451

FOX RE-XN - IN CAMERA

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

13:10:37 1 At p.062 at the top - I'm sorry, I better go forward two
13:10:46 2 pages. It should be paragraph - go forward to paragraph
13:10:58 3 12, two pages to paragraph 12, that page. You'll see that
13:11:18 4 Justice Kellam - the point I'm trying to make, you'll see
13:11:23 5 he deals with the issue of legal professional privilege all
13:11:27 6 the way through that page about, "Had you got advice it
13:11:31 7 would have alerted you to the fact that legal professional
13:11:35 8 privilege would contaminate the justice system and that
13:11:39 9 legal professional privilege or confidential information
13:11:41 10 being disseminated would interfere with prosecutions". As
13:11:47 11 you've already told the Commissioner, is it your evidence
13:11:50 12 that the issue of legal professional privilege was
13:11:54 13 addressed by the police, that is the SDU?---To the best of
13:12:01 14 our ability, yes, and it's recorded in my statements how I
13:12:07 15 would try to address it and where we felt we had, and I
13:12:15 16 believe we erred on caution. Where we thought it was line
13:12:20 17 ball we probably assessed it as legal professional
13:12:25 18 privilege and we did not disseminate it.

13:12:27 19
13:12:32 20 At some subsequent stage Mr Kellam makes the observation
13:12:37 21 that Superintendent Biggin was removed from SDU activities
13:12:43 22 and that's at - I'll give you the paragraph number - the
13:12:55 23 VPL number is 098 but it's - it doesn't have a paragraph
13:13:07 24 number. Issue 2 - I apologise, Commissioner, the copy I've
13:13:24 25 got has got VPL numbers on it which enable page numbers to
13:13:28 26 be found. There must be copies somewhere.

13:13:28 27
13:13:28 28 COMMISSIONER: That might be the redacted copy, the Kellam
13:13:32 29 report with redactions, Exhibit 113.

13:13:34 30
13:13:35 31 MR CHETTLE: I don't believe I've got any redactions in
13:13:37 32 this document. VPL.0008.0001.0098 is the page I wanted to
13:13:46 33 go to. Not there. Can I sort this over lunch,
13:13:56 34 Commissioner? I'm nearly finished.

13:13:59 35
13:13:59 36 COMMISSIONER: Is there anything else we can do at the
13:14:01 37 moment?

13:14:02 38
13:14:02 39 MR CHETTLE: When I finish with the Kellam report I've
13:14:07 40 finished with what I want to re-examine.

13:14:09 41
13:14:27 42 COMMISSIONER: All right, we'll adjourn until 2 o'clock.

43
13:14:39 44 <(THE WITNESS WITHDREW)

13:14:40 45
13:14:40 46 LUNCHEON ADJOURNMENT

47

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

13:14:40 1 UPON RESUMING AT 2.04 PM:
2
14:04:43 3 COMMISSIONER: Yes Mr Chettle.
14:04:44 4
14:04:44 5 MR CHETTLE: Thank you. Can you hear me, Mr Fox?---Yes, I
14:04:47 6 can.
14:04:49 7
14:04:49 8 <OFFICER FOX, recalled:
14:04:52 9
14:04:52 10 MR CHETTLE: Pull up the next page, thank you. Yes, that's
14:04:55 11 the bit I want. I just want to take you to the middle
14:04:59 12 paragraph. "It's apparent from my investigation and that
14:05:02 13 of Mr Comrie about the two risk assessments." I don't want
14:05:06 14 to get repetitive but Mr Kellam repeats what Mr Comrie says
14:05:11 15 about the lateness of the risk assessments and the lack of
14:05:15 16 - and the fact that there are only two of them. You've
14:05:18 17 already made comment in relation, the same comments you
14:05:23 18 made in relation to Mr Comrie would apply to
14:05:26 19 this?---Correct.
20
14:05:26 21 I'll move quickly forward through most of this now. If I
14:05:29 22 can take you to the next page - we keep going. There we
14:05:35 23 are. You'll see there that Mr Kellam says, "Although
14:05:42 24 Superintendent Biggin had overall oversight of the
14:05:45 25 establishment of the SDU he was significantly removed from
14:05:48 26 the day-to-day activities in the unit in the chain of
14:05:51 27 command. In addition, like the Inspector he was tasked
14:05:55 28 with a number of other responsibilities unconnected with
14:05:57 29 the SDU. Specifically he provided no immediate and daily
14:06:01 30 oversight activities of the SDU. He did from time to time
14:06:05 31 conduct a random sample audit of 10 or 20 per cent of the
14:06:09 32 ICR reports but such audits cannot be said to be either
14:06:13 33 immediate or thorough". Do you see that?---I can, yes.
34
14:06:18 35 Firstly, what do you say as to Mr Biggin being effectively
14:06:24 36 separate from the activities of the SDU?---No, I don't
14:06:28 37 agree with that. It's my belief that the controller
14:06:34 38 updated Mr Biggin constantly and he always had interest in
14:06:40 39 what the Source Development Unit was doing.
40
14:06:44 41 The way it worked, the Inspector, if you had one, and the
14:06:48 42 Superintendent have access to the electronic records of the
14:06:52 43 SDU?---Yes.
44
14:06:57 45 So they are able, for example, to go in and see what it is
14:07:03 46 that's happening and where and when on the documents in the
14:07:07 47 Unit?---Yes, except for the Z drive which was stand alone

.18/09/19

6453

FOX RE-XN - IN CAMERA

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

14:07:14 1 in our office. They would have to come down to our office
14:07:17 2 to look at that.
3
14:07:19 4 But the G drive had the other documents?---That's right,
14:07:23 5 and our diaries.
6
14:07:26 7 Were you there when Mr Biggin did an audit of the 3838 file
14:07:30 8 in its entirety?---No, I wasn't.
9
14:07:33 10 That was before your time, was it?---Yes, it was.
11
14:07:36 12 Thank you. I want to go forward four pages. Thank you.
14:08:01 13 There you are, thank you. You'll see at the bottom of the
14:08:03 14 page, "The matters to which cried out for informed legal
14:08:09 15 advice", to use the term used by Mr Comrie, are as follows,
14:08:13 16 "The source was a lawyer. Much of the information provided
14:08:15 17 by the source was information apparently provided by
14:08:18 18 clients. On many occasions SDU members either did not or
14:08:23 19 were not able to determine the provenance of information".
14:08:26 20 Do you see that?---Yes.
21
14:08:27 22 It's that particular point. As far as you're concerned
14:08:30 23 what do you say as to whether you were aware of where she
14:08:35 24 got the information she conveyed to you?---I was always
14:08:39 25 aware, it's documented in my ICRs and I would always ask.
26
14:08:45 27 The suggestion that you, if that includes you, did not or
14:08:49 28 were not able to determine the provenance of information,
14:08:52 29 is that accurate as far as you're concerned?---No, it's
14:08:56 30 not. And determining where the information was sourced
14:09:00 31 from or come from was most important for any source.
32
14:09:08 33 Yes, okay. So far as your diary is concerned - I've
14:09:13 34 finished with that, thank you - your electronics diaries,
14:09:17 35 do you have entries in your diaries that indicate that they
14:09:20 36 were checked regularly by Inspector Glow?---Yes, I do.
37
14:09:25 38 How does that manifest itself?---At the end of my
14:09:29 39 electronic diary there'd be an entry in red from Mr Glow
14:09:37 40 saying he'd seen and checked it.
41
14:09:39 42 Have you got any examples of that there or will the
14:09:41 43 Commission be able to find those by searching your diary if
14:09:45 44 they need to?---Yeah, I'd need time to find specific
14:09:49 45 examples but they're on the Loricated database.
46
14:09:55 47 Thank you. I have no further questions, Commissioner.

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

1
14:10:02 2 COMMISSIONER: Thank you. Yes, Mr Woods. Open or closed
14:10:05 3 hearing?
14:10:07 4
14:10:07 5 MR WOODS: Open hearing.
6
14:10:08 7 COMMISSIONER: Yes, we'll now return to open hearing.
14:10:11 8 - - -
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47