

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

ROYAL COMMISSION INTO THE MANAGEMENT
OF POLICE INFORMANTS

Held in Melbourne, Victoria

On Thursday, 7 May 2020

Led by Commissioner: The Honourable Margaret McMurdo AC

Also Present

Counsel Assisting: Mr A. Woods

Counsel for Victoria Police Mr S. Holt QC

Counsel for State of Victoria Mr T. Kyriakou

Counsel for DPP/SPP Mr P. Doyle

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10:02:07 1 COMMISSIONER: Yes, I'll commence with taking appearances.
10:02:09 2 Mr Woods.
10:02:10 3
10:02:10 4 MR WOODS: Yes.
5
10:02:12 6 COMMISSIONER: You're counsel assisting, thank you.
10:02:15 7 Mr Holt for Victoria Police. Mr Doyle for the DPP. And
10:02:24 8 Mr Kyriakou for the State. Correct?
10:02:29 9
10:02:29 10 MR KYRIAKOU: Yes.
10:02:31 11
10:02:31 12 MR HOLT: Thank you, Commissioner.
13
10:02:32 14 COMMISSIONER: Thank you. The Commission has regularly
10:02:35 15 taken evidence remotely during its many months of hearing
10:02:38 16 so far, but thanks to Covid-19 restrictions today we are
10:02:44 17 having our first virtual hearing with participants in
10:02:49 18 Melbourne and Brisbane. I mention at the beginning that
10:02:55 19 it's unnecessary for the participants to stand, so they can
10:02:59 20 remain seated at all times, including the witness, who is
10:03:02 21 to give evidence shortly. And by way of housekeeping, it's
10:03:07 22 planned to take a break today at about 11.30 and then lunch
10:03:15 23 between 1 and 1.45 and another break at about 3.30,
10:03:21 24 assuming that we're still sitting at that time. That said,
10:03:26 25 if any of the participants require a break at any other
10:03:29 26 time please let me know.
10:03:31 27
10:03:32 28 This hearing, and the one to follow next Wednesday,
10:03:39 29 concern Terms of Reference 3 through to 6 and relate
10:03:44 30 largely to policy matters, including the current adequacy
10:03:49 31 and effectiveness of Victoria Police's processes for
10:03:53 32 recruitment, handling and management of human sources who
10:03:56 33 are subject to legal obligations of confidentiality and
10:04:00 34 privilege, whether those practices comply with the
10:04:03 35 recommendations of the Kellam report and are otherwise
10:04:06 36 appropriate, the current use of such human source
10:04:08 37 information in the criminal justice system, including
10:04:11 38 disclosure to prosecuting authorities and safeguards in
10:04:14 39 prosecutions, and recommended measures to address any
10:04:16 40 issues arising on related systemic failures.
10:04:20 41
10:04:20 42 It is important to note, however, that s.123 of the
10:04:24 43 Inquiries Act prevents the Royal Commission from inquiring
10:04:29 44 into or exercising any powers in relation to a number of
10:04:32 45 people or bodies, including the DPP of Victoria, a Crown
10:04:37 46 prosecutor, a Victorian court or a judicial officer.
10:04:39 47

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10:04:40 1 Over the past 18 months Commission lawyers and staff
10:04:44 2 having been busy researching and consulting widely on these
10:04:54 3 policy issues. For example, the Commission's discussion
10:04:56 4 paper on disclosure and the responses to it are available
10:05:00 5 on the Commission website. The Commission has also
10:05:05 6 conducted extensive focus groups with Victoria Police
10:05:08 7 officers currently working with human sources. That behind
10:05:13 8 the scenes work, as I say, has been extensive and very
10:05:17 9 valuable. But as I have often said, it is important that
10:05:20 10 this inquiry is conducted in public wherever feasible given
10:05:23 11 the High Court's stern criticism of Victoria Police's
10:05:28 12 conduct which led to this inquiry. But this hearing and
10:05:31 13 the one to follow next Wednesday afternoon is critical both
10:05:35 14 to the public understanding of the reasons for the High
10:05:39 15 Court's grave concerns about the actions of Nicola Gobbo
10:05:43 16 and Victoria Police, and also to rebuild public confidence
10:05:47 17 in Victoria's criminal justice system. The public needs to
10:05:52 18 know what should be improved and reassured that past
10:05:59 19 mistakes will not be repeated in the future.

10:06:02 20
10:06:02 21 With that in mind these hearings are being streamed to
10:06:06 22 the Commission website for public viewing and transcripts
10:06:10 23 will be published in due course.

10:06:14 24
10:06:14 25 As so often happens in this Inquiry, evidence may
10:06:19 26 sometimes touch on sensitive matters, including secretive
10:06:26 27 police methodology. It may therefore from time to time be
10:06:31 28 necessary to make non-publication orders but the Commission
10:06:34 29 will try to keep such orders, if made at all, to a minimum.
10:06:39 30 That is why there will be a 20 minute delay in streaming to
10:06:43 31 the website, although accredited media subject to
10:06:48 32 non-publication orders will watch the streaming live.

10:06:51 33
10:06:52 34 Accordingly, I order that Order 1 of the order dated
10:07:03 35 27 March 2019 is revoked. Pursuant to s.26 of the
10:07:10 36 Inquiries Act 2014 Victoria the public Internet streaming
10:07:13 37 and publication of evidence of all witnesses giving
10:07:16 38 evidence to the Commission will be subject to a 20 minute
10:07:19 39 delay so that if evidence is given that the Commissioner
10:07:27 40 determines should not be published then steps can be taken
10:07:30 41 to restrict the streaming of that evidence. Media
10:07:32 42 accredited by the Commission are permitted to view the
10:07:36 43 hearing in real time via an Internet protocol restricted
10:07:37 44 stream with additional password protection subject to any
10:07:41 45 further order. A copy of this order is to be published on
10:07:44 46 the Commission's website, www.rcmpi.vic.gov.au.

10:07:52 47

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10:07:53 1 We will shortly hear from Deputy Commissioner Special
 10:07:56 2 Operations Wendy Steendam who has Victoria Police
 10:08:00 3 responsibility currently for human source policy, but there
 10:08:04 4 are a number of administrative matters requiring attention.
 10:08:10 5
 10:08:10 6 Mr Woods, I understand, first, you are going to
 10:08:15 7 publicly list some exhibits which have been tendered out of
 10:08:19 8 session since the Commission hearings last adjourned.
 10:08:26 9
 10:08:27 10 MR WOODS: Yes, that's correct, Commissioner. It was on 8
 10:08:29 11 April that a number of documents were tendered in chambers
 10:08:33 12 and there's a list of them that can be circulated and
 10:08:38 13 they'll be available to the public shortly, subject to
 10:08:41 14 those that still require any issues to be determined
 10:08:45 15 regarding PII. I'll summarise them briefly if that's of
 10:08:48 16 assistance. The first is RC104C and D, which is a redacted
 10:08:55 17 and unredacted version of an interview between Ms Gobbo,
 10:09:00 18 Mr Bezzina and Mr Davey, which is undated.
 10:09:05 19
 10:08:56 20 #EXHIBIT RC104C - (Confidential) Undated unredacted version
 10:08:57 21 of interview between Ms Gobbo,
 10:09:00 22 Mr Bezzina and Mr Davey.
 23
 10:09:07 24 #EXHIBIT RC104D - (Unredacted version.)
 10:09:07 25
 10:09:08 26 The second has been given exhibit number RC1507A and B for
 10:09:13 27 unredacted and redacted, statement of Detective Acting
 10:09:23 28 Superintendent Damien Jackson, dated 2 March 2020.
 10:09:23 29
 10:09:17 30 #EXHIBIT RC1507A - (Confidential) Statement of Detective
 31 Acting Superintendent Damien Jackson
 32 dated 2/03/20.
 33
 34 #EXHIBIT RC1507B - (Unredacted version.)
 35
 10:09:24 36 The third, RC1508A and B being the statement of Gavan
 10:09:30 37 Silbert dated 1 April 2020.
 38
 10:09:29 39 #EXHIBIT RC1508A - (Confidential) Statement of Gavan.
 10:09:30 40 Silbert dated 1/04/20.
 41
 10:09:33 42 #EXHIBIT RC1508B - (Unredacted version.)
 10:09:33 43
 10:09:33 44 The next is RC1509A and B, redacted and unredacted versions
 10:09:41 45 of the statement of Mr George Brouwer of 24 February 2020.
 46
 47

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10:09:41 1 #EXHIBIT RC1509A - (Confidential) Statement of George
 10:09:42 2 Brouwer dated 20/02/20.
 3
 10:09:45 4 #EXHIBIT RC1509B - (Unredacted version.)
 10:09:45 5
 10:09:45 6 The next is RC1510A and B, affidavit of Mr Shane O'Connell,
 10:09:53 7 12 March 2010.
 8
 10:09:52 9 #EXHIBIT RC1510A - (Confidential) Affidavit of Shane
 10:09:52 10 O'Connell dated 12/03/20.
 11
 10:09:55 12 #EXHIBIT RC1510B - (Unredacted version.)
 10:09:55 13
 10:09:55 14 The next is RC1511A and B, supplementary statement of
 10:10:02 15 Mr Alan Swanwick dated 21 January 2008.
 16
 10:10:00 17 #EXHIBIT RC1511A - (Confidential) Supplementary statement.
 10:10:01 18 of Mr Alan Swanwick dated 21/01/08.
 19
 10:10:06 20 #EXHIBIT RC10511B - (Unredacted version.)
 10:10:06 21
 10:10:06 22 The next is RC1512A and B, supplementary statement from the
 10:10:12 23 Director of Public Prosecutions Ms Judd on 26 February
 10:10:16 24 2020.
 25
 10:10:10 26 #EXHIBIT RC1512A - (Confidential) Supplementary statement
 10:10:11 27 from the Director of Public
 10:10:13 28 Prosecutions Ms Judd dated 26/02/20.
 29
 10:10:16 30 #EXHIBIT RC1512B - (Unredacted version.)
 10:10:16 31
 10:10:18 32 The next is RC1513A and B, supplementary statement of
 10:10:26 33 Stephen Waddell, 20 February 2020.
 34
 10:10:23 35 #EXHIBIT RC1513A - (Confidential) Supplementary statement
 10:10:26 36 of Stephen Waddell 20/02/20.
 37
 10:10:28 38 #EXHIBIT RC1513B - (Unredacted version.)
 10:10:28 39
 10:10:28 40 The last is RC1514A and B, supplementary statement of
 10:10:34 41 Inspector Andrew Glow, being 21 February 2020.
 42
 10:10:32 43 #EXHIBIT RC1514A - (Confidential) Supplementary statement
 10:10:34 44 of Inspector Andrew Glow 21/02/20.
 45
 10:10:38 46 #EXHIBIT RC1514B - (Unredacted version.)
 10:10:38 47

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10:10:38 1 Each of those have the numbers for the relativity system,
10:10:42 2 but I won't read those out now, but they'll be published on
10:10:46 3 the web page, the ones that are able to be immediately, and
10:10:49 4 the other ones quite soon we expect.

5
10:10:52 6 COMMISSIONER: Right. The next exhibit will be 1515?
10:10:56 7

10:10:57 8 MR WOODS: Yes, that's correct. Commissioner, the next
10:10:59 9 item is in relation to some telephone intercept material
10:11:06 10 that's been produced to the Commission - we'll identify it
10:11:11 11 - and then produced to the Commission relatively recently.

12
10:11:16 13 COMMISSIONER: Ten days ago, Mr Woods.
10:11:18 14

10:11:18 15 MR WOODS: Yes, that's right. It's obviously concerning, a
10:11:22 16 proportion of it concerning Ms Gobbo and a very significant
10:11:25 17 player in the proceedings before you. I won't, unless it's
10:11:31 18 of assistance to you, Commissioner, go through the back and
10:11:35 19 forth of the correspondence concerning that, however it's a
10:11:38 20 matter of concern, obviously, that this material has been
10:11:42 21 identified so late in the piece. We're told by Victoria
10:11:46 22 Police that of the large number, I think it was 38 hours or
10:11:50 23 so of material and 2159 calls, that there are 90 of those
10:11:57 24 calls or texts were linked to Ms Gobbo's phone and 34 calls
10:12:02 25 may concern Ms Gobbo, so they're at pains to point out not
10:12:08 26 all of it is necessarily relevant. We've had production -
10:12:13 27 we've immediately asked for statements to be provided by
10:12:17 28 relevant individuals who were investigators at the time to
10:12:22 29 explain how it came about, firstly, that the material was
10:12:27 30 obtained and, secondly, how it is that it's only been
10:12:31 31 brought to the Commission's attention ten days ago. We're
10:12:35 32 still waiting on some material - just briefly I'll say what
10:12:42 33 it is - which is statement from a member of the Special
10:12:46 34 Projects Unit. There's a statement from a Ms Pucar which
10:12:49 35 is, we were told last night I think that that's ready. I'm
10:12:53 36 not sure whether we've received it. There's work being
10:12:55 37 carried out by Victoria Police, we're told, in relation to
10:13:00 38 disclosure and whether or not information has been provided
10:13:02 39 to the Office of Public Prosecutions. We said there'd be
10:13:08 40 an update in relation to that given next Wednesday.

10:13:12 41
10:13:14 42 Relevant to that, Commissioner, I won't go through
10:13:16 43 them now but there will be a number of document that I'll
10:13:19 44 seek to tender which is the relevant correspondence, the
10:13:22 45 statements that have been provided and some of the
10:13:25 46 information, summary of calls and transcript of calls and
10:13:29 47 things like that. So if it's convenient, Commissioner, I

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10:13:32 1 can go through those in a moment.
2

10:13:34 3 COMMISSIONER: Yes. If you want to tender that material
10:13:37 4 now that's probably sensible.
10:13:39 5

10:13:39 6 MR WOODS: I might do that. Each of these will have an A
10:13:42 7 and B. Firstly, there's a letter from Corrs, the
10:13:46 8 solicitors for Victoria Police, dated 28 April 2020. Next
10:13:52 9 is a 1 May 2020 letter from Corrs - so I should read those
10:13:57 10 numbers, Commissioner, if it assists. The first will be,
10:14:01 11 as I understand it, Exhibit 1515.
12

10:14:04 13 COMMISSIONER: A and B, yes.
10:14:06 14

10:14:06 15 MR WOODS: Would you like these as a bundle or as separate
10:14:10 16 exhibits? It might be better to do these first ones as
10:14:18 17 single - in fact all of them as single exhibits, I think,
10:14:23 18 Commissioner, if that's all right.
19

10:13:44 20 #EXHIBIT RC1515A - (Confidential) Letter from Corrs
10:13:47 21 28/04/20.
22

23 #EXHIBIT RC1515B - (Unredacted version.)
24

10:14:25 25 COMMISSIONER: Yes.
10:14:26 26

10:14:26 27 MR WOODS: The second was a 1 May 2020 letter from Corrs
10:14:30 28 Chambers Westgarth and the third is a letter from Corrs
10:14:36 29 dated 5 May 2020. As I understand it respectively they'll
10:14:41 30 be 1515, 1516 and 1517.
10:14:45 31

10:14:28 32 #EXHIBIT RC1516A - (Confidential) Letter from Corrs
33 1/05/20.
34

35 #EXHIBIT RC1516B - (Unredacted version.)
36

10:14:35 37 #EXHIBIT RC1517A - (Confidential) Letter from Corrs.
10:14:37 38 5/05/20.
39

10:14:47 40 #EXHIBIT RC1517B - (Unredacted version.)
10:14:47 41

10:14:48 42 COMMISSIONER: A and B, that's right.
10:14:49 43

10:14:50 44 MR WOODS: Yes. Then the next is a summary of calls
10:14:52 45 concerning Nicola Gobbo. Again, these are to be tendered
10:14:55 46 but not published. There are some issues with the
10:14:59 47 publication of these concerning a Commonwealth Act. The

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10:15:04 1 number of the summary of calls, the document number is
 10:15:08 2 VPL.0005.0289.0002.
 3
 10:15:15 4 COMMISSIONER: 1518A and B.
 10:15:16 5
 10:14:51 6 #EXHIBIT RC1518A - (Confidential) Summary of calls
 10:14:52 7 concerning Nicola Gobbo,
 10:15:07 8 VPL.0005.0289.0002.
 9
 10:15:18 10 #EXHIBIT RC1518B - (Unredacted version.)
 10:15:18 11
 10:15:18 12 MR WOODS: Next is a summary of calls - - -
 13
 10:15:21 14 COMMISSIONER: With the 1518, A and B, it can't be
 10:15:26 15 published because of statutory limitations, all right.
 10:15:30 16
 10:15:30 17 MR WOODS: That's correct. The next is a summary of calls
 10:15:34 18 with Ms Gobbo being VPL.0005.0289.0005.
 10:15:44 19
 10:15:45 20 #EXHIBIT RC1519A - (Confidential) Summary of calls with
 10:15:34 21 Ms Gobbo, VPL.0005.0289.0005.
 22
 10:15:46 23 #EXHIBIT RC1519B - (Unredacted version.)
 10:15:46 24
 10:15:47 25 MR WOODS: The next is a transcript of three calls between
 10:15:49 26 Ms Gobbo and the individual I mentioned before, her client,
 10:15:53 27 that were quarantined on the basis of legal professional
 10:15:57 28 privilege, again to be tendered but not published. I'll
 10:16:00 29 just read the number of those. They each start with
 10:16:03 30 VPL.0005.0289, the first of them is 0008, the next is 0007
 10:16:10 31 and the next is 0006. There's three.
 32
 10:16:19 33 COMMISSIONER: Can they all be one exhibit?
 10:16:21 34
 10:16:22 35 MR WOODS: They can be.
 10:16:23 36
 10:16:24 37 #EXHIBIT RC1520 - (Confidential) VPL.0005.0289.0006,
 10:16:26 38 VPL,0005.0289.0007, VPL.0005.0289.0008.
 10:16:26 39
 10:16:26 40 MR WOODS: The next is audio files themselves, again for
 10:16:28 41 tender but not publication. There's a large number of them
 10:16:30 42 but I'd seek to tender those as a bundle, as 1521,
 10:16:37 43 Commissioner.
 44
 10:16:38 45 COMMISSIONER: Yes.
 46
 10:16:26 47 #EXHIBIT RC1521 - Bundle of audio files.

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10:16:39 1
 10:16:39 2 MR WOODS: Next is the statements that the Commission
 10:16:41 3 requested as a result of the disclosure of the existence of
 10:16:45 4 these materials. The first of them is a statement of Paul
 10:16:49 5 Rowe dated 5 May 2020. They'll each need separate - - -
 6
 10:17:00 7 COMMISSIONER: Sorry, what date?
 10:17:02 8
 10:17:03 9 MR WOODS: 5 May 2020.
 10
 10:17:04 11 COMMISSIONER: Yes. 1522A and B.
 12
 10:16:55 13 #EXHIBIT RC1522A - (Confidential) Statement of Paul Rowe
 10:16:49 14 dated 5/05/20.
 15
 10:17:08 16 #EXHIBIT RC1522B - (Unredacted version.)
 10:17:08 17
 10:17:08 18 MR WOODS: The next is a statement of Mr Dale Flynn dated 6
 10:17:12 19 May 2020.
 20
 10:17:19 21 COMMISSIONER: Yes.
 22
 10:17:09 23 #EXHIBIT RC1523A - (Confidential) Statement of Mr Dale
 10:17:10 24 Flynn dated 6/05/20.
 25
 10:17:20 26 #EXHIBIT RC1523B - (Unredacted version.)
 10:17:20 27
 10:17:20 28 MR WOODS: The next is a statement of Mr James O'Brien
 10:17:26 29 dated 4 May 2020, which I think will be 1524A and B.
 30
 10:17:33 31 COMMISSIONER: Yes.
 32
 10:17:24 33 #EXHIBIT 1524A - (Confidential) Statement of Mr James
 10:17:26 34 O'Brien dated 4/05/20.
 35
 10:17:33 36 #EXHIBIT 1524B - (Unredacted version.)
 10:17:33 37
 10:17:34 38 MR WOODS: The next is statement of Acting Commander Paul
 10:17:36 39 Millet of 6 May 2020.
 40
 10:17:43 41 COMMISSIONER: Yes.
 42
 10:17:35 43 #EXHIBIT RC1525A - (Confidential) Statement of Acting
 10:17:36 44 Commander Paul Millet of 6/05/20.
 45
 10:17:44 46 #EXHIBIT RC1525B - (Unredacted version.)
 10:17:44 47

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10:17:45 1 MR WOODS: The next is a statement of Mr Russell Fletcher
 10:17:47 2 dated 5 May 2020, which I think is 1526A and B.
 3
 10:17:55 4 COMMISSIONER: That's right. C.
 5
 10:17:46 6 #EXHIBIT RC1526A - (Confidential) Statement of Mr Russell
 10:17:47 7 Fletcher dated 5/05/20.
 8
 10:17:59 9 #EXHIBIT RC1526B - (Unredacted version.)
 10:17:59 10
 10:17:59 11 MR WOODS: Finally there's a further supplementary of
 10:18:02 12 Mr Tim Johns dated 5 May 2020, which is 1527A and B.
 10:18:08 13
 10:18:09 14 #EXHIBIT RC1527A - (Confidential) Supplementary of Mr Tim
 10:18:03 15 Johns dated 5/05/20.
 10:18:11 16
 10:18:12 17 #EXHIBIT RC1527B - (Unredacted version.)
 10:18:13 18
 10:18:14 19 COMMISSIONER: We're waiting for some further material?
 10:18:17 20
 10:18:17 21 MR WOODS: Yes, we are. So we're still waiting on a
 10:18:20 22 statement from the member of the Special Projects Unit
 10:18:24 23 concerning the obtaining and then the production to the
 10:18:28 24 Commission of these telephone intercept materials. There's
 10:18:34 25 a Ms Pucar, which we're told is ready and I think we should
 10:18:42 26 receive that quite soon by the sound of things. Then
 10:18:44 27 there's some updating to be done in relation to disclosure
 10:18:48 28 of these materials and, as I say, I'd ask through you,
 10:18:53 29 Commissioner, that perhaps we're updated about the
 10:18:55 30 situation regarding disclosure at the next hearing on
 10:18:59 31 Wednesday next week.
 32
 10:19:02 33 COMMISSIONER: Yes. Of course this is very concerning
 10:19:07 34 because this is highly relevant material which should have
 10:19:13 35 been produced under the Notice to Produce issued in
 10:19:18 36 February last year and no doubt Mr Holt will have something
 10:19:29 37 to say about this, but it does, from my perspective, leave
 10:19:32 38 the Commission very concerned as to whether this Commission
 10:19:37 39 can have any confidence and whether the Victorian public
 10:19:40 40 can have any confidence that all relevant material has been
 10:19:43 41 produced to the Royal Commission. No doubt Mr Holt will
 10:19:51 42 have something to say on that.
 10:19:53 43
 10:19:54 44 MR WOODS: Commissioner, if I might just add to that too, I
 10:19:57 45 think - and one of the real concerns in my submission is
 10:20:00 46 that a number, in fact a large number of investigators from
 10:20:04 47 the time have been in the witness box and given evidence

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10:20:08 1 about the particular individual. We're told that there was
 10:20:13 2 some reference in written materials to the existence of
 10:20:17 3 telephone intercept material, but of course it was only ten
 10:20:21 4 days ago that it was properly identified to the Commission
 10:20:26 5 and that's the very reason why it's been requested that
 10:20:29 6 each of those individuals who have given statements and the
 10:20:33 7 ones we're still waiting on have been asked to explain the
 10:20:37 8 situation now in May 2020.

9
 10:20:39 10 COMMISSIONER: Yes, thank you. Yes, Mr Holt, did you want
 10:20:43 11 to say something about this?

10:20:45 12
 10:20:45 13 MR HOLT: Yes, Commissioner. With your leave I would like
 10:20:48 14 to make a response on behalf of Victoria Police.

15
 10:20:51 16 COMMISSIONER: Yes.

10:20:51 17
 10:20:52 18 MR HOLT: Commissioner, Victoria Police, as you've noted
 10:20:54 19 and counsel assisting has correctly noted, advised the
 10:20:57 20 Royal Commission about ten days ago of the existence of
 10:21:02 21 telephone intercepted material that we absolutely accept is
 10:21:06 22 responsive to a category of Notice to Produce to and also a
 10:21:11 23 category of Notice to Produce for. And counsel assisting
 10:21:14 24 has also accurately described that that material includes
 10:21:19 25 conversations and text messages between Ms Gobbo and a
 10:21:21 26 significant person in respect of this Royal Commission.
 10:21:23 27 It's hard to know the words to use but we accept entirely
 10:21:27 28 that identifying the existence of that material at this
 10:21:30 29 point in time is at best deeply unfortunate. It emerged,
 10:21:35 30 as is clear from the correspondence that's now been
 10:21:38 31 tendered and will be in the public domain as the result of
 10:21:42 32 a direct request being made by an appellant in an appeal in
 10:21:47 33 relation to matters relating to Ms Gobbo which is presently
 10:21:50 34 on foot, and it was that request which caused these
 10:21:53 35 inquiries to be made and caused this material to be
 10:21:55 36 identified as still being held.

37
 10:21:58 38 The statement of Acting Commander Millet has been
 10:22:00 39 produced and tendered as an exhibit, with respect,
 10:22:04 40 appropriately so. That contains at length an explanation
 10:22:08 41 as to how, without being an excuse, as to how this
 10:22:12 42 occurred. That statement includes, but I will repeat on
 10:22:15 43 the public record, Commissioner, that Victoria Police
 10:22:19 44 apologises to the Royal Commission that the material was
 10:22:21 45 not produced earlier and I can assure the Royal Commission
 10:22:24 46 as to the same, Acting Commander Millet does, that it has
 10:22:28 47 not been and is not and remains no intention to

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10:22:32 1 deliberately withhold any relevant material from this Royal
 10:22:36 2 Commission.
 3
 10:22:36 4 COMMISSIONER: It would be unlawful, of course, for that to
 10:22:41 5 be done. It's Victoria Police's obligation to provide that
 10:22:46 6 material.
 10:22:48 7
 10:22:48 8 MR HOLT: In light of circumstances, Commissioner, we wish
 10:22:51 9 to make that abundantly clear. Counsel assisting is, with
 10:22:56 10 respect, correct when he notes that these matters have at
 10:22:59 11 least obtusely been referred to in the course of hearings.
 10:23:05 12 There has been known documents through material has been
 10:23:07 13 provided and that telephones of many of the relevant
 10:23:10 14 targets, including the person we're discussing of various
 10:23:14 15 operations were being intercepted at relevant times and in
 10:23:17 16 consequence, by necessary inference, that there would have
 10:23:21 17 been telephone intercept material obtained at the relevant
 10:23:23 18 time. In fact the warrant and affidavit that led to this
 10:23:27 19 telephone intercept product being intercepted and
 10:23:31 20 ultimately still being retained is able now to be produced,
 10:23:33 21 were produced in August last year in response to a Notice
 10:23:37 22 to Produce requesting those specific warrants and
 10:23:38 23 affidavits. Acting Commander Millet explains there was a
 10:23:46 24 not unreasonable assumption that this material in light of
 10:23:49 25 the statutory regime which prevented publication here, it
 10:23:53 26 would seem, would have been destroyed, or later had been
 10:23:56 27 destroyed I should say under that relevant statutory regime
 10:23:59 28 which had destruction provisions. I say immediately that
 10:24:02 29 assumption should not have been made and it should have
 10:24:06 30 been tested and it wasn't and that was a failure.
 31
 10:24:08 32 The statement of Acting Commander Millet also
 10:24:11 33 describes, Commissioner, the approach as was requested by
 10:24:16 34 those assisting you, the approach that Task Force Landow
 10:24:23 35 has taken to production and how it was in his, what we
 10:24:24 36 respectfully submit that the Commissioner would accept, is
 10:24:26 37 a very concerned and thoughtful assessment as to why this
 10:24:29 38 material was missed and the way in which the approach to
 10:24:32 39 production was done. The statement describes the ongoing
 10:24:36 40 efforts made by the Task Force to locate, identify and
 10:24:39 41 produce material responsive to the requests and Notices to
 10:24:43 42 Produce. But we cannot understate, Commissioner, the size
 10:24:46 43 and complexity of the task. And as the Commissioner will
 44 well appreciate, having seen the results of that material
 45 at the other end, the challenging timeframes under which
 10:24:57 46 this Commission has had to operate and which Victoria
 10:24:58 47 Police has had to be responsive to. The statement also

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10:25:01 1 refers to the ongoing engagement between Victoria Police
10:25:03 2 and the solicitors assisting you in an attempt to
10:25:06 3 prioritise and focus both efforts, but it has been and is
10:25:09 4 a, continues to be an enormous job.

5
10:25:13 6 In terms of the statements that have been produced,
10:25:17 7 the only outstanding statement from SPU, that was confirmed
10:25:20 8 in terms of its content yesterday. That witness is not as
10:25:24 9 a result of Covid-19 issues in a current position, or
10:25:29 10 wasn't last night, to sign it but we have, as I understand
10:25:30 11 it, either requested or will immediately request a Notice
10:25:34 12 to Produce that statement as complete. What emerges, in
10:25:38 13 our respectful submission, from the statement of Acting
10:25:40 14 Commander Millet and is important to be said publicly,
10:25:44 15 Commissioner, are that Task Force Landow has taken it's job
10:25:49 16 of assisting this Commission seriously. This has included
10:25:54 17 inducting, and the Acting Commander notes, all staff into a
10:25:56 18 philosophy that the job of Task Force Landow is to assist
10:25:59 19 the Royal Commission as transparently and comprehensively
10:26:02 20 as it can, notwithstanding any impact that that material
10:26:06 21 might have on the organisation reputationally or indeed on
10:26:11 22 anybody else.

10:26:12 23
10:26:12 24 Commissioner, whilst there have unquestionably been
10:26:15 25 mistakes made, that's been borne out by experience. For
10:26:20 26 example, the corrupted audio file which contained material
10:26:20 27 very damaging to those who were implicated at the time,
10:26:25 28 that corrupted audio was sent overseas, having initially
10:26:31 29 been sent interstate in order to complete it. And a
10:26:33 30 finding of Mr Overland's diaries at the most unfortunate
10:26:36 31 point which they were found, were as a result of a team
10:26:38 32 searching an unidentified area of an archive facility
10:26:43 33 through unlabelled boxes. There are other examples but in
10:26:50 34 our submission Task Force Landow has demonstrated a
10:26:51 35 commitment to attempting to find material in very
10:26:54 36 challenging circumstances.

37
10:26:56 38 As well as the 26 years over which a very difficult
10:26:56 39 document management system has gone, and in addition,
10:27:00 40 Commissioner, as you know, new issues arise understandably
10:27:05 41 all the time during the course of hearings and the team,
10:27:09 42 large as it is, has had to prioritise and deal with those
10:27:14 43 issues. None of that is to say that looking back this
44 material should not have been identified by Victoria
10:27:15 45 Police. It should have. It is clear that the right
10:27:17 46 questions were not asked or answered at the right time and
10:27:21 47 Victoria Police absolutely accepts responsibility for

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10:27:23 1 failing to identify that material. There were (indistinct)
 10:27:28 2 file matters on this topic. It does appear, and I put it
 10:27:31 3 advisedly in that way, that that material which has been
 10:27:34 4 produced, whilst one would immediately expect it to be
 10:27:38 5 extremely relevant and potentially of very great
 10:27:41 6 significance, does not, at least on its review, appear to
 10:27:45 7 be of that much significance simply because it is obvious
 10:27:48 8 from the very first of those calls that Ms Gobbo and the
 10:27:51 9 relevant person were at least aware of the likelihood of
 10:27:54 10 those calls being recorded. That's a matter of fortune,
 10:27:57 11 it's not a matter of planning by Victoria Police. But
 10:27:59 12 nonetheless we hope that it will mean that it's less
 10:28:04 13 destructive than it might otherwise have been.

10:28:08 14
 10:28:09 15 The other issue is that of course as a result of this
 10:28:10 16 Victoria Police is not limiting the work that it is now
 10:28:12 17 doing in response to the discovery of this issue to that
 10:28:16 18 warrant and that person, material, or in respect of other
 10:28:19 19 persons of interest has already been provided in the last
 10:28:21 20 few days to the Royal Commission on the same kind of basis,
 10:28:23 21 that is that material has been searched for and looked for
 10:28:26 22 and that process is continuing. As the Commission will
 10:28:29 23 know, will anticipate I imagine, there would be millions of
 10:28:33 24 calls, or at least hundreds of thousands of calls, which
 10:28:36 25 need to be searched over a database which is difficult to
 10:28:40 26 search over, but which enormous efforts I can say are being
 10:28:43 27 done at present in order to do that. We want to balance
 10:28:46 28 and provide relevant material to the Royal Commission but
 10:28:50 29 also material which is also genuinely responsive so that
 30 we're not overwhelming the Commission with millions of
 10:28:55 31 calls. That task is being taken seriously, Commissioner.
 10:28:57 32 And, again, in conclusion of these submissions I simply
 10:29:00 33 extend our apology to the Royal Commission for the timing
 10:29:05 34 and circumstances in which this has occurred.

35
 10:29:08 36 COMMISSIONER: Thanks, Mr Holt. Certainly this incident
 10:29:11 37 has highlighted the need for Operation Landow to continue
 10:29:15 38 to think laterally and search material to make sure that
 10:29:26 39 its ongoing obligations to produce to the Royal Commission
 10:29:30 40 continue to be met.

10:29:32 41
 10:29:34 42 MR HOLT: We certainly agree with that, Commissioner.

43
 10:29:36 44 COMMISSIONER: Thank you. All right then. Some other more
 10:29:40 45 mundane matters I think follow from that.

10:29:44 46
 10:29:44 47 There was, of course, the audit I requested which

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10:29:49 1 really was something like we're now talking about, an
 10:29:55 2 ongoing obligation of review to make sure that all - that
 10:30:02 3 witnesses have included everything in the statements that
 10:30:05 4 should be included and whether there were additional
 10:30:08 5 statements to receive, to be received, and the Commission's
 10:30:14 6 solicitors have been following that up with Victoria
 10:30:18 7 Police.

10:30:18 8
 10:30:19 9 Mr Woods, you're going to deal with that now?

10:30:21 10
 10:30:21 11 MR WOODS: I am, Commissioner. We've received, in relation
 10:30:24 12 to that request, a further statement from Mr Gavan Ryan,
 10:30:30 13 being 5 May 2020. On 6 May the solicitors - - -

14
 10:30:36 15 COMMISSIONER: Did you want to tender that one?

10:30:38 16
 10:30:39 17 MR WOODS: Yes, I will tender that as an A and B,
 10:30:41 18 Commissioner. So it's 5 May 2020, Gavan Ryan.

10:30:45 19
 10:30:45 20 #EXHIBIT RC128A - (Confidential) Further statement from
 10:30:27 21 Mr Gavan Ryan dated 5/05/20.

10:30:46 22
 10:30:48 23 #EXHIBIT RC128B - (Unredacted version.)

10:30:50 24
 10:30:58 25 We were told on 6 May by the solicitors for Victoria Police
 10:31:01 26 that there are a further four to five, what we expect to be
 10:31:06 27 short supplementary statements provided, one from Mr Buick,
 10:31:10 28 a separate statement addressing how the informer
 10:31:14 29 registration documents were located and two to three more
 10:31:19 30 supplementary statements, but they're not progressed to a
 10:31:23 31 stage where they can be finalised this week as we
 10:31:26 32 understand it. What we'd like to know, and we can
 10:31:29 33 certainly mention again next week, hopefully they'll be
 10:31:36 34 provided by the next hearing, but what the timing is
 10:31:38 35 expected to be for the provision of those supplementary
 10:31:42 36 statements or those further statements to the Commission.

37
 10:31:44 38 COMMISSIONER: Yes. Mr Holt, can we expect them before the
 10:31:47 39 next hearing?

10:31:48 40
 10:31:49 41 MR HOLT: Commissioner, you can expect certainly the
 10:31:53 42 supplementary statement of Mr Buick and the statement
 10:31:57 43 relating to the informer registration documents, we would
 10:31:59 44 expect well before then. The remaining two, and possibly
 10:32:02 45 three supplementary statements, we will do our very best to
 10:32:06 46 provide by then. Can I be frank and simply indicate that
 10:32:09 47 the task of preparing the statements that were necessary to

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10:32:12 1 respond to the intercepted material issue that we've just
10:32:14 2 been dealing necessitated the counsel and solicitors who
10:32:19 3 have been involved in those matters, because they related
10:32:22 4 to similar witnesses, being diverted from that task and
10:32:26 5 that's delayed us. I will certainly be in a position at
10:32:28 6 least to give an update by next week and we would hope to
10:32:32 7 have provided statements, or to indicate that they will not
10:32:34 8 be necessary, depending on the review of the material.
10:32:37 9 Obviously a further update, we'll provide that in the
10:32:40 10 meantime to those assisting you, Commissioner.

11

10:32:43 12 COMMISSIONER: Yes. All right then.

10:32:44 13

10:32:44 14 MR WOODS: Commissioner, there's a separate issue of
10:32:46 15 outstanding exhibits. There's somewhere in the vicinity of
10:32:52 16 260 exhibits which have been tendered but haven't undergone
10:32:58 17 PII review. We were told on 21 February, on the last day
10:33:04 18 of hearings, that that might take two to three weeks to
10:33:07 19 occur. The Commission wrote on 2 May to follow this up and
10:33:12 20 on 6 May we received a response that breaks down
10:33:20 21 essentially what those are and what the progress of them
10:33:23 22 is. Again we'd like to know - I won't go through what that
10:33:27 23 response says but we'd like to know what the timing for the
10:33:30 24 provision of the review of these outstanding exhibits is.

25

10:33:36 26 COMMISSIONER: Mr Holt?

10:33:37 27

10:33:37 28 MR HOLT: Yes, Commissioner. So since that - well, no, I'm
10:33:41 29 sorry, in total I think 1241 exhibits have been concluded
10:33:46 30 in terms of review. It is necessary to refer to the
10:33:51 31 categories of outstanding exhibits at least in general
10:33:55 32 terms. There are 45 approximately exhibits upon which we
10:33:58 33 are still awaiting details from the Commission as to the
10:34:01 34 document or the nature of the document, so those will be
10:34:04 35 advanced as soon as we receive that material. There is
10:34:07 36 then a category of remaining exhibits, approximately 80,
10:34:11 37 which deal with the same issues that are raised in what I
10:34:15 38 might describe, and the Commissioner would know as the
10:34:19 39 sample claims that relate to pseudonyms or identification
10:34:22 40 of certain persons, which is also intimately connected to
10:34:27 41 applications the Commission is making in respect of
10:34:31 42 suppression orders and it would seem, with respect, to make
10:34:31 43 sense that those 80 exhibits, rather than being finalised
10:34:33 44 now to await that conclusion which we expect will be
10:34:38 45 imminent in light of some communication that we've made to
10:34:41 46 those assisting you, which on various bases remove a lot of
10:34:45 47 those claims. There is a category of 50 exhibits which

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10:34:48 1 raise issues of legal professional privilege and upon which
 10:34:54 2 instructions to waive that privilege are being undertaken.
 10:34:57 3 Again, I would expect that to be concluded in a matter of
 10:34:59 4 days.

5
 10:34:59 6 There are then two categories which remain. One are
 10:35:03 7 exhibits which are impacted by the re-review which Victoria
 10:35:08 8 Police has done of the ICRs and also of some associated
 10:35:11 9 documents. That ICR review has been completed on 17 April
 10:35:19 10 but it did take three weeks of dedicated time, I'm
 10:35:23 11 instructed, of effectively all those who would otherwise
 10:35:26 12 have been engaged in those other matters. Those exhibits
 10:35:29 13 are now being progressed. There are about 40 of those and
 10:35:33 14 again we would expect that to be completed within a week.
 10:35:37 15 The final category was 85 miscellaneous matters, that is
 10:35:42 16 matters that are simply sitting on a to-do list but that's
 10:35:44 17 now reduced, even as of yesterday, because 39 of those were
 10:35:47 18 provided yesterday and we would expect similar numbers of
 10:35:51 19 production.

20
 10:35:51 21 Subject to those matters we think we're pretty close,
 10:35:55 22 Commissioner. The delays in the last week or two haven't
 10:36:00 23 been affected by the need for PII review in relation to
 10:36:05 24 documents relevant to the policy hearings, and also of
 10:36:06 25 course the need to juggle public interest immunity review
 10:36:09 26 for the Court of Appeal matters, I'm bound to say also the
 10:36:14 27 ICR re-review was an enormous exercise but is now
 10:36:18 28 completely and will drive much of that additional work.

29
 10:36:20 30 COMMISSIONER: Hopefully that list will be much shorter by
 10:36:23 31 the time we mention these matters again next week.

10:36:26 32
 10:36:27 33 MR HOLT: That's my absolute expectation, Commissioner, and
 10:36:29 34 I will be appearing and in a position to update you.

35
 10:36:31 36 COMMISSIONER: Thank you.

10:36:31 37
 10:36:31 38 MR WOODS: Commissioner, not to go through each of those
 10:36:35 39 categories but just one as an example, the documents, 50 or
 10:36:39 40 so where there's a potential claim of legal professional
 10:36:43 41 privilege, I should say they have to be produced to the
 10:36:46 42 Commission in any event. Whether or not privilege is
 10:36:48 43 waived is a separate issue and we'd seek that they be
 10:36:53 44 provided and that certainly Victoria Police can simply say,
 10:36:57 45 "We're not in a position yet to say whether or not we waive
 10:37:02 46 privilege in relation to these documents but here they
 10:37:06 47 are". It would be our intention to publish them prior to

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10:37:12 1 that being properly considered and the position being put
10:37:14 2 by Victoria Police.
10:37:15 3
10:37:16 4 MR HOLT: Sorry, Commissioner, I wasn't clear about that.
10:37:19 5 Those are not documents that the Commission doesn't already
10:37:22 6 have, it already has them, of course, because they've been
10:37:23 7 tendered as exhibits. We're doing that
10:37:25 8 process (indistinct) - - -
10:37:26 9
10:37:26 10 MR WOODS: So it's whether or not they'll be published.
10:37:29 11 The claim is being considered on the basis of whether or
10:37:32 12 not privilege is waived so that they can then be - - -
13
10:37:37 14 COMMISSIONER: Published on the website.
10:37:39 15
10:37:40 16 MR WOODS: Yes.
10:37:40 17
10:37:41 18 MR HOLT: Yes, sorry, Commissioner.
10:37:42 19
10:37:42 20 MR WOODS: So we'll hear more about those next week,
10:37:45 21 Commissioner. There's another issue of a group of
10:37:48 22 individuals known as, at least colloquially as the IBAC 12.
10:37:55 23 These are people who have the potential to owe duties of
10:37:59 24 confidentiality or privilege. Without going through the
10:38:01 25 history of it in great detail, there was a disclosure - - -
26
10:38:05 27 COMMISSIONER: Can I just say, Mr Woods, that Term of
10:38:11 28 Reference 5A requires the Commission to inquire into the
10:38:16 29 use of any human sources other than Ms Gobbo who are or
10:38:20 30 have been subject to legal obligations of confidentiality
10:38:23 31 or privilege.
10:38:24 32
10:38:24 33 MR WOODS: Yes.
34
10:38:25 35 COMMISSIONER: That's the relevance of these matters to
10:38:29 36 this Commission.
10:38:30 37
10:38:30 38 MR WOODS: Yes. I think that's right, and also 5B, talking
10:38:33 39 about any systemic failures, it would obviously be
10:38:39 40 centrally relevant for the Commissioner to understand as
10:38:41 41 much as possible about these individuals and essentially
10:38:45 42 what the situation is, as I understand it, Commissioner, is
10:38:49 43 you would like to assure yourself that these individuals
10:38:55 44 haven't supplied information in breach of such obligations
10:38:58 45 to acquit Term of Reference 5.
46
47 COMMISSIONER: Victoria Police has assured us that that's

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1 the position and given us material which isn't sufficient
10:39:16 2 to enable me to be assured of that and I need to have
10:39:17 3 sufficient access to this material. I don't want names and
10:39:20 4 addresses, I just want sufficient access to the material so
10:39:23 5 I can understand the nature of the information given and
10:39:25 6 where it came from to assure myself of that. Yes,
10:39:30 7 Mr Woods.
10:39:30 8
10:39:31 9 MR WOODS: It's not clear on my reading of the
10:39:33 10 correspondence that that assurance has yet been made by
10:39:36 11 Victoria Police that that access would be provided, so I
10:39:39 12 raise it for that reason.
13
10:39:40 14 COMMISSIONER: Yes. It seems to - Mr Holt, there's been a
10:39:44 15 long attempt to get this sorted and it seems to have
10:39:51 16 stalled. Can you assist?
10:39:54 17
10:39:54 18 MR HOLT: I can, Commissioner. I can at least assist to
10:39:57 19 some extent. Commissioner, as you've noted, material has
10:40:02 20 been provided in respect of those persons, and I should say
10:40:05 21 at the outset we accept without reservation the assessment
10:40:09 22 that you and counsel assisting make of the relevance of the
10:40:11 23 material in terms of Term of Reference 5. I think about -
10:40:15 24 I'm instructed that about 2500 pages of those files, of
10:40:20 25 those reconstructed human source files have been provided
10:40:24 26 and the issue relates to the redactions in terms of the
10:40:27 27 Commission's capacity to review the material in a way that
10:40:31 28 permits the conclusions that you wish to make. Without
10:40:34 29 again going through the detail of the correspondence but
10:40:36 30 just the recent detail is this: my instructors wrote
10:40:42 31 explaining that to provide the material without redacted
10:40:46 32 names was the request that was made - I'm sorry, with only
10:40:51 33 the names redacted - would necessarily mean that we were
10:40:53 34 providing information that would identify those human
10:40:56 35 sources. There was no response to that response and a
10:40:59 36 Notice to Produce was then issued which simply required the
10:41:03 37 provision of the documents with a scheduled set of
10:41:06 38 redactions removed from certain pages. The problem with
10:41:11 39 that Notice to Produce and the reason why we respectfully
10:41:12 40 haven't complied with it, is because a large number of
10:41:16 41 those redactions - I withdraw that - a number of those
10:41:18 42 redactions would in fact name the people or name, for
10:41:23 43 example, the firms. In response to that we provided a
10:41:26 44 table to those assisting you which proposed two things.
10:41:29 45 Firstly, it listed with precision which redactions would
10:41:32 46 necessarily lead to identification and offered to remove
10:41:36 47 the rest. But the offer that is made is for physical

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10:41:40 1 inspection of those files or electronic inspection of those
10:41:44 2 files with a person able to remove the redactions. My
10:41:48 3 instructions, Commissioner, are that we would facilitate
10:41:52 4 that in any way that assisted the Commission and the
10:41:55 5 Commissioner to do that, but a reasonable excuse is
10:41:59 6 maintained (a) in relation to the Notice to Produce in its
10:42:03 7 present form because it would necessarily require naming
10:42:06 8 those persons, or at least (indistinct) sufficient
10:42:08 9 information to do so, and (b) the production of that
10:42:10 10 material, even with the redactions that we are absolutely
10:42:13 11 willing to remove to show to the Commission again in simple
10:42:16 12 production form, our submission is and my instructions are
10:42:19 13 that that wouldn't provide sufficient security in relation
10:42:22 14 to the risk to safety of those 12 persons. So we remain
10:42:26 15 ready, willing and able to provide the Commissioner with
10:42:29 16 access to what is behind that redacted material, we simply
10:42:33 17 seek to do in a way that will protect safety.

18
10:42:36 19 COMMISSIONER: I'm in Brisbane and the material's in
10:42:38 20 Melbourne. Are they prepared to give access to officers or
10:42:41 21 lawyers from the Commission to do this?

10:42:44 22
10:42:45 23 MR HOLT: I would expect so, Commissioner, and we can make
10:42:47 24 that arrangement. It may even be, Commissioner, that an
10:42:51 25 arrangement can be made to assist you in Brisbane if that
10:42:54 26 was required and I can make those inquiries.

27
10:42:56 28 COMMISSIONER: Yes. Let's find out some more about it and
10:43:00 29 if necessary we'll deal with it again next week. It's
10:43:06 30 taken a very long time to get to this point.

10:43:08 31
10:43:09 32 MR HOLT: Commissioner, I'm happy to take responsibility
10:43:14 33 for that and liaise with Mr Woods about it to make an
10:43:16 34 appropriate arrangement.

35
10:43:19 36 COMMISSIONER: Thank you.

10:43:19 37
10:43:20 38 MR WOODS: Commissioner, a related issue is that when the
10:43:22 39 12 names and details of those names were provided, details
10:43:26 40 of the file, some details of the files were provided
10:43:30 41 somewhere in the middle of last year, the Commission issued
10:43:33 42 a Notice to Produce concerning legal advice that Victoria
10:43:41 43 Police had obtained in relation to any disclosure
10:43:44 44 obligations and related issues arising out of those files.
10:43:48 45 There's been partial compliance with that Notice to
10:43:51 46 Produce. It's Notice to Produce 312. We're still waiting
10:43:56 47 on two advices, one from three counsel dated 21 May 2019

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10:44:01 1 and a supplementary advice from two counsel dated 11 June
10:44:06 2 2019. We've written on 4 May 2020 requesting the advices
10:44:10 3 but we haven't received a response, so again, that's
10:44:13 4 something we might chase up before next Wednesday and
10:44:16 5 mention it again then.
6
10:44:19 7 COMMISSIONER: Yes, all right then. Are you content with
10:44:21 8 that, Mr Holt?
9
10:44:23 10 MR HOLT: Commissioner, my learned friend gave me notice of
10:44:24 11 a number of issues today. That wasn't one of them. If I
10:44:28 12 may take that on notice and I'll ensure that a response is
10:44:31 13 available by the time we next convene.
14
10:44:33 15 COMMISSIONER: It would be even better if the response is
10:44:36 16 received before then because then we won't have to mention
10:44:39 17 it if it's a satisfactory response.
18
10:44:43 19 MR HOLT: Of course, Commissioner.
20
10:44:45 21 MR WOODS: I can send a message with the dates of the two
10:44:48 22 advices through to Mr Holt during the break today and we
10:44:51 23 might receive them before Wednesday.
24
10:44:53 25 COMMISSIONER: Yes.
26
10:44:54 27 MR WOODS: Finally, Commissioner, during the course of the
10:44:57 28 substantive evidence during last year and earlier this year
10:45:01 29 there were a number of, or many occasions on which there
10:45:06 30 was a claim for public interest immunity made during a
10:45:10 31 hearing, quite understandably, because Victoria Police
10:45:13 32 weren't able to get instructions on the run about that
10:45:16 33 issue, so the claim was made, the ruling was often made on
10:45:21 34 an interim basis. The intention, as I understand it, is
10:45:27 35 that each of those interim orders is being reviewed with a
10:45:32 36 view to revoking those that can be revoked and any that
10:45:36 37 require further justification, the justification needs to
10:45:40 38 have been received and considered but, as I understand it,
10:45:44 39 it'll be 4 pm on Monday 11 May that those remaining orders
10:45:49 40 will be vacated if there's no further justification of
10:45:52 41 those interim orders made along the way.
42
10:45:57 43 COMMISSIONER: That's right. If I'm not satisfied with
10:45:59 44 whatever justification is given it can be mentioned next
10:46:05 45 Wednesday for submissions if needs be.
46
10:46:10 47 MR HOLT: Thank you, Commissioner. I have that table and

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10:46:14 1 we might liaise with Mr Woods about it. There are a number
10:46:18 2 of claims which obviously require evidence to sustain.
10:46:21 3 There are a number of others that on the face of it would
10:46:23 4 lead to the identification of a human source and we
10:46:25 5 certainly don't want to waste the Commissioner's time
6 providing anything in respect of those matters if they're
10:46:32 7 accepted so I might liaise with Mr Woods about that.
8
10:46:33 9 COMMISSIONER: Thank you, that would be useful. All right
10:46:37 10 then. I think that's the end of the housekeeping matters,
10:46:42 11 Mr Woods, is that correct?
12
10:46:44 13 MR WOODS: Yes, that's correct. If it's convenient to you,
10:46:46 14 Commissioner, we might commence with the witness, Deputy
10:46:50 15 Commissioner Steendam.
16
10:46:52 17 COMMISSIONER: Yes. Are you calling her, Mr Holt?
18
10:46:55 19 MR HOLT: Yes, I'll just deal with a small number of very
10:46:59 20 preliminary matters, Commissioner. Call Deputy
10:47:02 21 Commissioner Steendam, who in this world will appear on the
10:47:06 22 screen.
23
10:47:07 24 COMMISSIONER: Hopefully she will appear shortly. I
10:47:11 25 understand she'll take the oath, is that correct?
26
10:47:14 27 MR HOLT: Yes, Commissioner, and I understand there's a
10:47:16 28 Bible in the room.
29
10:47:17 30 COMMISSIONER: Yes.
31
10:47:44 32 MR HOLT: I'm told, Commissioner, that it's on. Perhaps if
10:47:45 33 Deputy Commissioner Steendam can speak so that it is caught
34 by the video.
35
10:47:50 36 COMMISSIONER: Yes. Can you hear me Deputy Commissioner
10:47:53 37 Steendam?---I can. Good morning, Commissioner.
38
10:47:57 39 Good morning. I understand you're going to take the oath.
10:47:59 40 Excellent, we've now got your image up. If you can take
10:48:04 41 the Bible in your right hand and it'll be administered
10:48:07 42 now?---Yes.
43
10:48:13 44 <WENDY STEENDAM, sworn and examined:
45
10:48:31 46 COMMISSIONER: Thanks Ms Steendam. If at any time you need
10:48:34 47 a break let me know. We'll actually be having a break

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10:48:38 1 around about half past eleven, lunch from about 1 until
 10:48:45 2 quarter to two and another break about 3.30. If you need a
 10:48:49 3 break in between let me know?---Thank you.
 10:48:51 4
 10:48:51 5 MR HOLT: Yes, thank you, Commissioner. Your full name is
 10:48:53 6 Wendy Marie Steendam?---That's correct.
 7
 10:48:56 8 You are a Deputy Commissioner of Victoria Police presently
 10:48:59 9 in charge of specialist operations?---Correct.
 10
 10:49:01 11 For the purposes of this hearing, Deputy Commissioner, have
 10:49:06 12 you prepared and signed a 101 page statement dated 16 April
 10:49:11 13 2020?---Yes, that's correct.
 14
 10:49:15 15 Is that statement true and correct to the best of your
 10:49:18 16 knowledge and belief?---Yes, it is.
 17
 10:49:21 18 That statement responded, did it not, to 27 questions about
 10:49:25 19 policy and practice that were asked by the Royal Commission
 10:49:29 20 and to which the statement is addressed?---That's correct,
 10:49:31 21 yes.
 22
 10:49:32 23 And Deputy Commissioner Steendam, were you indeed, as was
 10:49:37 24 noted in the request by the Royal Commission, able to get
 10:49:41 25 assistance from subject matter experts within Victoria
 10:49:44 26 Police on various of the topics which are covered by those
 10:49:47 27 questions?---Yes, that's correct. It was named and it's
 10:49:52 28 documented through the statement.
 29
 10:49:54 30 Thank you. Just briefly then, your role as Deputy
 10:49:59 31 Commissioner in terms of how you get to that stage, could
 10:50:04 32 you just walk us briefly through your policing career,
 10:50:07 33 please, how long you've been a police officer for and all
 10:50:12 34 the categories of that career?---Yes. This is my 36th year
 10:50:15 35 of policing, so I joined in 1984. I've held various and
 10:50:20 36 many roles across the organisation as a detective, as a
 10:50:24 37 supervisor, as a detective working in general duties and
 10:50:28 38 also managing and running Sexual Offence and Child Abuse
 10:50:32 39 Units. The most recent probably relevant roles have been
 10:50:39 40 as a Deputy Superintendent at the Crime Department, then as
 10:50:45 41 an Assistant Commissioner Eastern Region, so running the
 10:50:49 42 policing services for one of the police regions across the
 10:50:53 43 State, and post that as the Chief Information Officer for
 10:50:57 44 the organisation for a number of years as an Assistant
 10:51:00 45 Commissioner looking after all the ICT systems and the
 10:51:05 46 reform work related to those systems. I moved into the
 10:51:07 47 role of Deputy Commissioner capability in 2015 and was in

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10:51:12 1 that role up until November 2018 when I moved into the
 10:51:18 2 specialist operations portfolio. In terms of I suppose
 10:51:24 3 policing careers, there have been roles that I've held
 10:51:27 4 where I have not only been operational, but also in terms
 10:51:35 5 of policy reform, project implementation and strategy
 10:51:37 6 development for the organisation.
 7

10:51:38 8 Thank you. In terms of formal qualifications, would you
 10:51:42 9 tell the Commissioner what formal qualifications you
 10:51:44 10 hold?---I have a Graduate Diploma in Applied Police
 10:51:48 11 Management and an Executive Masters of Public
 10:51:52 12 Administration, as well as numerous policing courses
 10:51:56 13 throughout my whole career.
 14

10:51:58 15 I think given the seniority of your role do you sit on
 10:52:02 16 committees that might be relevant to your expertise and the
 10:52:06 17 insight that you can bring to these issues today?---In
 10:52:10 18 terms of the governance of the organisation I obviously sit
 10:52:13 19 on numerous internal committees for Victoria Police.
 10:52:16 20 Externally the most relevant committees, I am the Victoria
 10:52:23 21 Police representative on the Australian and New Zealand
 10:52:24 22 Counterterrorism Committee for Victoria Police. I am the
 10:52:30 23 representative for the Australian Transnational and Serious
 10:52:35 24 Organised Crime Committee and I hold a number of other
 10:52:40 25 positions in external committees such as the Coronial
 10:52:44 26 Council of Victoria and also the Sentencing Advisory
 10:52:47 27 Council.
 28

10:52:47 29 Yes, thank you, Deputy Commissioner. Would you just remain
 10:52:50 30 there and answer any questions that counsel assisting has
 10:52:53 31 for you?---Sure.
 10:52:57 32

33 <CROSS-EXAMINED BY MR WOODS:
 34

10:52:58 35 Thank you, Deputy Commissioner. Can you see me and hear
 10:53:00 36 me?---Yes, I can.
 37

10:53:01 38 Great. There was a discussion just before you were called
 10:53:06 39 about some significant documents or significant recordings
 10:53:11 40 and summaries of those recordings that have been recently
 10:53:14 41 produced to the Commission concerning Ms Gobbo and a
 10:53:19 42 significant figure in the Commission's deliberations. Did
 10:53:23 43 you hear any of that back and forth?---I had heard that and
 10:53:28 44 I am aware of the issue.
 45

10:53:30 46 Obviously with the position you have it's separate to
 10:53:35 47 Landow and, as I understand it, Landow don't sit under you;

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10:53:40 1 is that correct?---Actually, one of the areas under my
 10:53:42 2 portfolio is our Legal Services Division and I have
 10:53:47 3 responsibility as part of that role for the response to the
 10:53:50 4 Royal Commission and so Task Force Landow reports to the
 10:53:55 5 Executive Director of Legal Services, or the Director of
 10:53:59 6 Legal Services, so it is part of my portfolio.

7
 10:54:05 8 Are you in a position then to give, given this significant
 10:54:09 9 issue coming up so late, or these significant documents
 10:54:12 10 being produced so late in the piece, are you able to give
 10:54:16 11 the Commissioner some confidence that all of the relevant
 10:54:20 12 materials have now been discovered, reviewed and produced
 10:54:24 13 or will be soon? I know that's a big question and a
 10:54:27 14 difficult question to answer but you can understand our
 10:54:30 15 apprehension of the situation?---Absolutely. And I can
 10:54:33 16 give confidence and I have indicated this to the Commission
 10:54:35 17 from the beginning of the Commission, Victoria Police is
 10:54:38 18 absolutely committed to providing all of the relevant
 10:54:41 19 documents in the Notices to Produce to the Commission. As
 10:54:46 20 indicated, it is an enormous task to find that material and
 10:54:51 21 to ensure that we have provided everything that is relevant
 10:54:55 22 and I've certainly been briefed by Landow in relation to
 10:54:59 23 the particular matters. I am confident in the processes
 10:55:03 24 that are in place that they are and have identified the
 10:55:07 25 material that is required and they will continue under
 10:55:11 26 those Notices to Produce, if they find any relevant
 10:55:15 27 material, to provide that. But they are and have been on a
 10:55:18 28 seek and find mission on behalf of Victoria Police to
 10:55:21 29 service the Commission's requirements since their inception
 10:55:24 30 and will continue to do that. You have our assurances.

31
 10:55:28 32 Thank you. Can we also understand that given the discovery
 10:55:32 33 of these important recordings quite recently, I assume
 10:55:37 34 that's meant a redoubling of efforts or that there's
 10:55:41 35 particular effort being directed towards looking for other
 10:55:45 36 relevant materials; is that right?---There's a continuous
 10:55:47 37 effort around relevant materials which is how this was also
 10:55:51 38 identified, but absolutely there is, and there's work
 10:55:54 39 underway to ensure that if there is any other material that
 10:55:57 40 is responsive that it is identified and provided.

41
 10:55:59 42 Yes, thank you.

43
 10:56:01 44 COMMISSIONER: Just before we leave that topic, Deputy
 10:56:04 45 Commissioner. Accepting that the leadership under you
 10:56:11 46 flows down and everyone is trying to produce, and has tried
 10:56:17 47 to produce material relevant to the Commission to it, the

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10:56:21 1 fact that this material, highly relevant, was only
 10:56:28 2 discovered at this late stage, regardless of your best
 10:56:33 3 intentions and efforts how can the Commission actually have
 10:56:39 4 confidence that all relevant material has been
 10:56:44 5 supplied?--Commissioner, I think it's detailed in the
 10:56:46 6 statement that's been provided by Acting Commander Millet
 10:56:49 7 who's heading up the Task Force, it details the level of
 10:56:52 8 effort. We have put an enormous amount of resource from,
 10:56:57 9 and reprioritised resources from within Victoria Police to
 10:57:02 10 service those requirements. As has been indicated, the
 10:57:04 11 systems and the time span that we're talking about that the
 10:57:08 12 Commission is looking at, over 26 years, has made it a very
 10:57:13 13 challenging task. However, they have manually searched,
 10:57:18 14 they're searching across our systems and I have every
 10:57:21 15 confidence that they're searching in the areas that they
 10:57:24 16 need to to provide all the material that's relevant, and if
 10:57:26 17 there is any information that's provided that takes them on
 10:57:29 18 a different pathway they are pursuing that to the nth
 10:57:39 19 degree to ensure that they're providing the relevant
 10:57:41 20 material.
 21
 10:57:42 22 That is a comfort but the fact remains, doesn't it, Deputy
 10:57:46 23 Commissioner, that the system, document management and some
 10:57:47 24 of the systems within Victoria Police, make it very
 10:57:50 25 difficult to actually give an assurance to the Commission
 10:57:53 26 that all relevant documents have been provided?---I think I
 10:57:58 27 can (indistinct) the systems across and in place in
 10:58:03 28 Victoria Police over that 26 year time horizon has made it
 10:58:07 29 quite challenging and I've documented it in my statement,
 10:58:09 30 some of the challenges with our document management
 10:58:12 31 systems, and we are doing and pursuing every avenue that we
 10:58:18 32 can to identify relevant material and we are - the efforts
 10:58:26 33 being applied are significant and I'm not sure that we can
 10:58:30 34 do any more than we can within the systems that we actually
 10:58:34 35 have to service the requirements and to find the documents
 10:58:38 36 that are relevant. That's not to say an avenue of inquiry
 10:58:42 37 might not be identified and when it is we are pursuing that
 10:58:48 38 and making sure that we're providing that material if there
 10:58:49 39 is anything identified.
 40
 10:58:50 41 Understood. But really having said that is the answer to
 10:58:53 42 my question still that despite the best efforts of the
 10:58:56 43 leadership and Victoria Police officers to produce
 10:59:00 44 everything relevant to the Commission, the time frames that
 10:59:05 45 you're looking at and the systems or lack of systems that
 10:59:10 46 have been in place over the years mean that it is really
 10:59:13 47 impossible for you to assure the Commission that every

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10:59:16 1 relevant document has been produced?---It won't be from
10:59:21 2 lack of trying, Commissioner. We have put in place every
10:59:26 3 effort.

4
10:59:26 5 I understand, and you've already said that, Deputy
10:59:29 6 Commissioner, but I'm still looking for an answer to my
10:59:33 7 question?---Sure. It is difficult to give an absolute
10:59:37 8 assurance that every single document has been identified
10:59:40 9 and produced but every effort is being made to do that.

10
10:59:46 11 So is the answer to my question you cannot give that
10:59:51 12 assurance?---I cannot give 100 per cent guarantee that we
10:59:55 13 have produced every single document but our best efforts
10:59:58 14 and endeavours have been, and our efforts have been as much
11:00:01 15 as we can do in the time frame and the systems that
11:00:04 16 actually exist.

17
11:00:05 18 I understand. Thank you. Yes Mr Woods.

11:00:08 19
11:00:08 20 MR WOODS: Deputy Commissioner, I take it that that
11:00:11 21 includes Landow simply sitting down and talking to the
11:00:15 22 relevant officers from the time and saying to them, "Let's
11:00:21 23 test whether or not we've produced everything. What do you
11:00:26 24 recall? What was there at the time? What was relied on?
11:00:29 25 What notes do you recall being taken? What documents
11:00:32 26 produced?" The reason I ask the question obviously is
11:00:35 27 because simply searching for documents blindly, which
11:00:39 28 obviously has to happen to some degree, is useful and
11:00:42 29 productive but the example that we've just seen about these
11:00:47 30 intercepted materials, one might think they might have come
11:00:51 31 to the fore a little bit earlier had a discussion of that
11:00:54 32 kind happened with people who gave evidence before the
11:00:56 33 Commission. That's part of Landow's task, is it?---It is
11:01:00 34 part of the process to talk to relevant witnesses,
11:01:03 35 understand what they're storage practices were and where
11:01:07 36 they were working and the area that they were working in
11:01:11 37 and seeking and attempting to find all that relevant
11:01:14 38 material.

39
11:01:14 40 Indeed, asking what they recall was produced at the time as
11:01:21 41 well, what documents there were, what recordings there
11:01:24 42 were?---I can't, and I'm unaware if that specific question
11:01:28 43 was asked of individual witnesses. Certainly briefs of
11:01:30 44 evidence, any other archive material relevant to
11:01:34 45 operations, they would have been asked questions in
11:01:36 46 relation to those materials.

47

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11:01:37 1 And because of the nature of the relationship between
 11:01:40 2 Nicola Gobbo and Victoria Police it's the case, I assume
 11:01:45 3 you would accept, that simply asking about briefs of
 11:01:49 4 evidence might not bring up all of the documents that are
 11:01:53 5 needed?---It won't just have been about briefs of evidence,
 11:01:57 6 there's the whole operation and investigations that sit and
 11:02:01 7 form part of those briefs of evidence. So there will have
 11:02:05 8 been conversations about that material. Most of that is
 11:02:07 9 not held by individuals, it's stored in our system or
 11:02:10 10 archived, or in certain cases there's time frames where
 11:02:14 11 material will be destroyed. So there has been
 11:02:16 12 conversations with individuals that I'm aware of and
 11:02:18 13 witnesses and then also the searching of all the systems
 11:02:23 14 and the areas where material would have and could have been
 11:02:26 15 stored.

16
 11:02:27 17 Yes, thank you. I don't think we tendered your statement
 11:02:33 18 and we can do that now. That is - I'll just find the date
 11:02:40 19 of it, Deputy Commissioner - 16 April 2020, statement of
 11:02:45 20 Deputy Commissioner Wendy Steendam. Commissioner, I think
 11:02:52 21 we're up to 1529A and B.

22
 11:02:55 23 COMMISSIONER: Yes, correct.

11:02:56 24
 11:02:57 25 #EXHIBIT RC1529A - (Confidential) Statement of Deputy
 11:02:46 26 Commissioner Wendy Steendam 16/04/20.

11:02:58 27
 11:03:00 28 #EXHIBIT RC1529B - (Unredacted version.)

11:03:02 29
 11:03:02 30 MR WOODS: Thank you. Deputy Commissioner, we're going to
 11:03:05 31 go through in due course some of the development about
 11:03:08 32 policy and some of the focuses of the statement and the
 11:03:14 33 policy documents that it refers to but on reading the
 11:03:16 34 statement it's clear that on at least three occasions you
 11:03:20 35 talk about, correctly, the events regarding, between Nicola
 11:03:23 36 Gobbo and Victoria Police being ten to 15 years ago and in
 11:03:27 37 doing so you make the point that policies and practices
 11:03:32 38 have changed substantially since that time. You're aware
 11:03:35 39 that that's something that's said in your
 11:03:37 40 statement?---That's correct. And I think I mentioned a
 11:03:39 41 time horizon of up to 26 years.

42
 11:03:41 43 Yes, yes. The reason I ask the question is because what's
 11:03:47 44 become apparent or what is apparent in the evidence before
 11:03:50 45 the Commission is that the lead time in a failure to
 11:03:55 46 properly engage with and manage human sources and a failure
 11:04:00 47 to disclose is very, very long. We have Mr Orman, his

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11:04:10 1 appeal was conceded and then ordered, his release was
 11:04:15 2 ordered last year after a 20 year sentence and it turns on
 11:04:21 3 really a conversation that occurred between Nicola Gobbo
 11:04:23 4 and her handlers quite a long time ago, back during her
 11:04:28 5 time of registration I think in November 2007. We also
 11:04:33 6 have a large number of individuals who have appeals on foot
 11:04:39 7 and individuals who claim to be potentially affected people
 11:04:45 8 who don't yet have appeals on foot. You would agree that
 11:04:48 9 despite this being a long time ago, the time it takes for
 11:04:52 10 these issues to come to the fore is indeed a very long
 11:04:56 11 time?---It spanned since, I suppose, over a 26 year period,
 11:05:03 12 but probably the most relevant period is that 10 to 15 year
 11:05:09 13 period, correct. I would just like to say though, Victoria
 11:05:12 14 Police have been working diligently on system reforms in
 11:05:18 15 relation to the issues that led to some of the matters that
 11:05:19 16 are before the Commission since 2012 when this matter was
 11:05:22 17 identified by Victoria Police and have continued to
 11:05:24 18 implement reform to our systems to ensure that this won't
 11:05:28 19 occur again.
 20
 11:05:29 21 You understand too that one of the Commissioner's Terms of
 11:05:32 22 Reference is indeed to look at that process of reform since
 11:05:35 23 that stage and that's one of the things that we'll spend a
 11:05:38 24 bit of time looking at today?---Yes.
 25
 11:05:43 26 But you accept, though, that the effects of failures in
 11:05:48 27 human source management and failures to disclose back in
 11:05:52 28 those times are very much alive in Victoria today?---Yes, I
 11:05:58 29 specifically reference this at paragraph 407 of my
 11:06:03 30 statement where I talk about the issues that have occurred
 11:06:07 31 and the systemic issues that have occurred in relation to
 11:06:11 32 Ms Gobbo, and the disclosure requirements and the process
 11:06:15 33 and some of the staff there attached to Landow are still
 11:06:19 34 working through a significant amount of disclosure
 11:06:21 35 requirements.
 36
 11:06:22 37 Yes. I want to take you through some elements of your
 11:06:30 38 statement where you talk about both the current policy
 11:06:33 39 framework and the development of that framework. It's the
 11:06:38 40 case, isn't it, that the Victoria Police Manual Human
 11:06:42 41 Sources is the primary policy document governing Victoria
 11:06:46 42 Police's use of human sources?---That's correct.
 43
 11:06:48 44 And it sets out a process for registering and managing
 11:06:56 45 human sources?---That's correct.
 46
 11:06:59 47 It also sets out the roles and responsibilities of each of

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11:07:02 1 the people in the structure involved in the registration
 11:07:09 2 and management of human sources?---It sets out elements of
 11:07:12 3 the structure, that's correct.
 4
 11:07:16 5 Just for those who are watching the stream who aren't
 11:07:20 6 necessarily as au fait with these issues, does the document
 11:07:25 7 deal only with these high risk human sources and some
 11:07:30 8 categories we'll talk about later on, or does it in fact -
 11:07:34 9 is it a one size fits all document for all human sources
 11:07:38 10 across Victoria?---It is the policy that governs all of our
 11:07:42 11 human source management.
 12
 11:07:44 13 In fact there's particular human sources who are handled by
 11:07:50 14 a division of professionals who that's their job and there
 11:07:54 15 are a second category of human sources who can be
 11:08:00 16 registered and managed by local police; is that
 11:08:04 17 right?---That's correct.
 18
 11:08:09 19 Is it expected that all of those officers, in fact putting
 11:08:14 20 to one side the specialist unit, that all of the officers
 11:08:18 21 involved in human source management at the ground level, so
 11:08:22 22 not the specialists, will have access to and training in
 11:08:28 23 and have to understand the requirements of the
 11:08:32 24 manual?---Yes, that's correct. There is a requirement that
 11:08:37 25 no one as a handler can register a human source without
 11:08:42 26 having undertaken a level of training.
 27
 11:08:46 28 There's two versions that we'll be spending a bit of time
 11:08:50 29 on, more on the current version I should say, but there's a
 11:08:53 30 version that was issued in May 2018. I'm not sure whether
 11:09:01 31 that's been tendered or not but just in case I'll tender it
 11:09:05 32 now, it's VPL.0002.0001.1776. That is the May - issued in
 11:09:18 33 May 2018. You're aware of that policy that's now been
 11:09:21 34 superseded?---Yes.
 35
 11:09:23 36 And the second policy - - -
 37
 38 COMMISSIONER: What's the date of that one again, please?
 39
 11:09:26 40 MR WOODS: May 2018, Commissioner.
 11:09:26 41
 11:09:27 42 #EXHIBIT RC1530A - (Confidential) VPL.0002.0001.1776.
 11:09:28 43
 11:09:29 44 #EXHIBIT RC1530B - (Redacted version.)
 11:09:30 45
 11:09:33 46 COMMISSIONER: Yes.
 11:09:33 47

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11:09:38 1 MR WOODS: It's been pointed out to me that that is
 11:09:41 2 separately exhibited as an annexure to RC008, which I think
 11:09:46 3 will be Mr Paterson's statement of March last year. I
 11:09:50 4 think it's useful to have it at this end of the exhibits as
 11:09:53 5 a separate exhibit.

11:09:54 6
 11:09:56 7 Secondly, Deputy Commissioner, is the current version
 11:09:58 8 of that document. If you'd bear with me for a moment, I'll
 11:10:02 9 tender that as well. The actual issue date, Deputy
 11:10:12 10 Commissioner - I know it was to come into effect of Monday
 11:10:15 11 of this week?---That's correct.

11:10:18 12
 11:10:18 13 Do you know the issue date of that document?---4 May 2020.
 11:10:18 14

11:10:21 15 I see. So it's issued on the day that it comes into
 11:10:24 16 effect. Commissioner, that is VPL.0005.0285.0001. Again,
 11:10:34 17 it's Victoria Police Manual Human Sources.

11:10:37 18
 11:10:38 19 #EXHIBIT RC1531A - (Confidential) VPL.0005.0285.0001.

11:10:39 20
 11:10:40 21 #EXHIBIT RC1531B - (Redacted version.)

11:10:42 22
 11:10:42 23 You say at paragraph 6 on the first page of your statement,
 11:10:49 24 Deputy Commissioner, that the transition to this new
 11:10:54 25 manual, the second document that I just tendered, "is
 11:10:57 26 consistent with our commitment to continuous improvement".
 11:11:01 27 That's the position of Victoria Police?---That's correct.

11:11:01 28
 11:11:09 29 A cynical person might say that a manual that comes into
 11:11:16 30 effect on the Monday of the week that there's hearings into
 11:11:21 31 Victoria Police's policy, a new policy is enacted on that
 11:11:25 32 day, those number of days before the hearing, might be a
 11:11:32 33 purely reactive move and as a result of attention from a
 11:11:37 34 Royal Commission with the remit that this Royal Commission
 11:11:40 35 has. Would you understand that that's what people might
 11:11:43 36 understand to be the situation in relation to the timing of
 11:11:47 37 the policy?---I can understand that's a perspective and a
 11:11:53 38 view that could be expressed.

11:11:53 39
 11:11:54 40 And what would your response to that view be?---It's not
 11:11:59 41 correct. Victoria Police has a, I suppose a commitment to
 11:12:03 42 continuous improvement on all of its policies, not just
 11:12:06 43 human source management. The work that's gone into this
 11:12:09 44 particular policy and the new policy has been undertaken
 11:12:12 45 over a significant period of time. It's been informed by
 11:12:16 46 training and attendance that people that work, like subject
 11:12:25 47 matter experts, have undertaken overseas, a scan of

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11:12:28 1 international best practice working within a subject matter
 11:12:30 2 experts and also looking at where there are gaps and
 11:12:33 3 opportunities. Certainly some of the work of the
 11:12:36 4 Commission has highlighted some areas for us. In the
 11:12:39 5 policy that's assisted in some of the reform work that's
 11:12:44 6 undertaken. But we have a continuous improvement process
 11:12:47 7 to all policy development and will continue to actually
 11:12:51 8 evolve this policy when we find opportunity or gaps in
 11:12:55 9 policy.

10
 11:12:57 11 And on that note, it's not unusual for legislation and,
 11:13:03 12 separately, policy to have time in which, say, a ten year
 11:13:09 13 sunset clause for regulatory régimes is often the case,
 11:13:16 14 policies themselves have mandatory review stages and
 11:13:20 15 mandatory finish dates. Is the situation with this
 11:13:23 16 particular manual that it has any of those enshrined in it,
 11:13:27 17 a sunset clause or mandatory review dates?---No, in terms
 11:13:32 18 of all policy development, if there's legislative change,
 11:13:36 19 issues identified, rifts identified or gaps in the policy
 11:13:41 20 then it's open and we do continuously improve those
 11:13:45 21 policies. There are general review processes that are in
 11:13:50 22 place on an annual or biannual basis on most policies, but
 11:13:58 23 we reserve the right and do actually adjust policy when we
 11:13:58 24 find opportunity to improve or better practice that we
 11:14:02 25 think we want to actually evolve to.

26
 11:14:05 27 I understand that, but sometimes despite those realisations
 11:14:09 28 and things being understood and learned about by the
 11:14:13 29 subject matter experts, it might not be filter into the
 11:14:17 30 policy unless there's a mandatory time when those who are
 11:14:22 31 responsible for it need to sit down and need to critically
 11:14:26 32 consider its contents. Do you think that might be
 11:14:31 33 something that should be enshrined in the document?---I
 11:14:35 34 think we're quite open to that. The reality is this policy
 11:14:38 35 will be reviewed post the Royal Commission and any
 11:14:41 36 recommendations that are made and adjustments made in the
 11:14:42 37 context of those recommendations, so it will have
 11:14:46 38 continuous review requirements, but we're quite open to
 11:14:50 39 having a period of time where we constantly review that.
 11:14:53 40 Noting that we would also make adjustments earlier than
 11:14:58 41 that if they were identified and needed.

42
 11:15:00 43 Yes, I see. You talk about some of the factors, this is at
 11:15:03 44 paragraph - - -

11:15:03 45
 11:15:04 46 COMMISSIONER: Just before you leave that. Your legal team
 11:15:11 47 appearing for you at the Royal Commission did have some

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11:15:14 1 input into this latest document that was issued
 11:15:17 2 yesterday?---I'll have to check just with those that we
 11:15:23 3 actually had primacy with development. They may have
 11:15:26 4 actually shared that with our legal team and we actually
 11:15:31 5 have an Executive Director of Legal Services and our
 11:15:34 6 Director of Legal Services who had significant input into
 11:15:37 7 the policy. So we have the legal lens that's required to
 11:15:43 8 be, I suppose, inputted into the policy. Can I take that
 11:15:47 9 on notice, Commissioner?

10

11:15:49 11 Yes?---And just check and confirm that that was actually
 11:15:53 12 the case.

13

11:15:54 14 If you check that over the break or the lunchtime break
 11:15:57 15 that would be good, thank you?---Yes.

16

11:15:58 17 Yes Mr Woods.

11:15:59 18

11:16:00 19 MR WOODS: The next question I had to ask in fact arose out
 11:16:03 20 of that, which was whether or not there were individuals
 11:16:06 21 outside Victoria Police, other than perhaps potentially
 11:16:13 22 those legal representatives who were consulted about the
 11:16:18 23 policy specifically. I'm drawing a distinction there
 11:16:22 24 between study tours and learning from people overseas and
 11:16:28 25 other subject matter experts, rather people who had input
 11:16:33 26 to or were consulted in relation to the draft of the policy
 11:16:35 27 itself. So we'd be assisted by understanding whether there
 11:16:39 28 were outside eyes in that regard as well, not just
 11:16:42 29 lawyers?---Not that I'm aware of.

30

11:16:44 31 Right. On a similar vein, at paragraph 13 you talk about
 11:16:52 32 factors that were considered in making the changes to the
 11:16:56 33 manual. There was a study tour by Mr Paterson and
 11:17:02 34 Mr Mahoney in February of 2019. I won't go through all of
 11:17:08 35 them. There were at sub-paragraph (e) learnings from
 11:17:10 36 issues explored with the Royal Commission hearings and
 11:17:13 37 you've identified that a moment ago, and otherwise
 11:17:15 38 consulting with subject matter experts. Are you able to
 11:17:22 39 tell the Commission who the subject matter experts that
 11:17:25 40 were consulted were?---So there are a number of subject
 11:17:29 41 matter experts within Victoria Police, obviously. This is
 11:17:31 42 a very specific capability that is mostly held within law
 11:17:39 43 enforcement. So the current Superintendent who has
 11:17:42 44 responsibility for human source management within Victoria
 11:17:45 45 Police, the Human Source Management Unit that also has
 11:17:49 46 responsibility within Victoria Police, and equally across
 11:17:54 47 our police regions, those that actually practice and apply

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11:17:58 1 the policies in relation to human sources, not only at the
 11:18:02 2 practitioner level but also at the management level were
 11:18:05 3 consulted through the process.
 4
 11:18:07 5 I see. Who had the running of consulting each of those
 11:18:13 6 people in the drafting of the manual?---The policy owner is
 11:18:20 7 the Assistant Commissioner from Intelligence and Covert
 11:18:21 8 Support Command who has ultimate - well, who is the owner
 11:18:22 9 of this particular policy, so he, along with the
 11:18:25 10 Superintendent that has and is our subject matter expert in
 11:18:29 11 relation to human source management, had primacy on
 11:18:33 12 development of this policy, in conjunction with our
 11:18:37 13 capability area that develops and writes policy for
 11:18:40 14 Victoria Police.
 15
 11:18:41 16 Yes, I see. Just comparing this policy to other policies,
 11:18:50 17 is it standard practice in Victoria Police, I should say it
 11:18:52 18 makes sense to do so, but is it standard practice to
 11:18:58 19 consult people on the ground when it comes to changes and
 11:19:02 20 amendments to policies?---It depends on the issue. What we
 11:19:08 21 have set up across the organisation is a policy liaison
 11:19:11 22 process and there are people that perform that role across
 11:19:15 23 every part of the organisation. So it depends on what
 11:19:18 24 policy, what the changes specifically are as to whether
 11:19:23 25 consultation will occur, and for particular documents or
 11:19:27 26 policy documents that will go out to that liaison network
 11:19:31 27 and have input and for specific more specialist
 11:19:35 28 capabilities, the consultation will be with those that
 11:19:40 29 actually practice and work in that particular field or
 11:19:42 30 capability.
 31
 11:19:43 32 And this falls into that latter group; is that
 11:19:45 33 right?---That's correct.
 34
 11:19:48 35 Are you able to set out some of, perhaps not all of but
 11:19:53 36 some of the gaps or issues or deficiencies that prompted
 11:19:57 37 the most recent changes to the manual from the 2018 to the
 11:20:01 38 May 2020 version?---The document has predominantly been, I
 11:20:07 39 suppose, redrafted in terms of the user, so that the format
 11:20:12 40 of the document has changed substantially. There is
 11:20:16 41 clarification around the terminology associated with human
 11:20:21 42 sources. In the previous policy the term "community
 11:20:24 43 source" is used and that is no longer used in this new
 11:20:28 44 policy. There is clarification around roles and
 11:20:32 45 responsibilities for each of the individuals that perform a
 11:20:35 46 role in the management of human sources and the governance
 11:20:40 47 and accountability requirements within the policy, as well

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11:20:45 1 as some changes to specific governance and in particular in
 11:20:49 2 relation to our Ethics Committee and the role of that
 11:20:56 3 Ethics Committee. It also specifically pulls out and
 11:20:59 4 highlights what we're calling category 1 to 4 classes of
 11:21:06 5 human sources or information from those sources that needs
 11:21:09 6 to - - -
 7
 11:21:10 8 Just pausing there, those four categories for those
 11:21:14 9 following the feed, those are the higher risk categories,
 11:21:18 10 not your regular human sources?---That's correct.
 11
 11:21:20 12 Sorry, go ahead?---There's clarification around those
 11:21:23 13 categories and specific policy requirements and practice
 11:21:26 14 requirements as it relates to those four classes of human
 11:21:31 15 sources or the information that they're providing. It also
 11:21:35 16 resets some review and processes and risk assessment
 11:21:42 17 requirements so that there's quite substantial change that
 11:21:46 18 is included in this policy and some of that is taken from
 11:21:50 19 lessons learnt from other jurisdictions, but equally in
 11:21:54 20 terms of where it had been identified through practice or
 11:21:59 21 current policy that there needed to be some reform.
 22
 11:22:03 23 All right. What about the recommendations of the Kellam
 11:22:08 24 report, was there any consideration between the 2018
 11:22:13 25 version and the inception of the 2020 version that further
 11:22:18 26 changes needed to be made to more fully address His
 11:22:26 27 Honour's recommendations from the IBAC report?---Yes,
 11:22:30 28 there's two aspects to it. The category 1 people, which
 11:22:33 29 are the Kellam occupations that are mentioned by Justice
 11:22:39 30 Kellam, which are six specific occupations, so they are
 11:22:42 31 quite explicit and are named, and not just those
 11:22:46 32 occupations, but individuals that might come across
 11:22:49 33 information because they're connected to those occupations.
 34
 11:22:51 35 Yes?---And requirements for that, that any request around
 11:22:56 36 registration or use of information from an individual that
 11:22:59 37 might be connected to those occupations must be progressed
 11:23:03 38 to the Human Source Ethics Committee for approval. There's
 11:23:07 39 an escalation point in terms of not just the approach and
 11:23:11 40 registration but if there was to be any use of information
 11:23:15 41 that may be considered privileged or confidential and an
 11:23:21 42 escalation point associated with that. The other specific
 11:23:25 43 thing that was changed from, I'm not sure if it was Kellam
 11:23:28 44 or the Comrie Review, is the term "positive obligation".
 11:23:33 45 And the feedback was that that was confusing for our
 11:23:45 46 members. So that's been reframed and picked up in the
 11:23:47 47 category 1 to 4 classes and articulated in a different way

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11:23:52 1 in this policy.
2

11:23:54 3 There are a couple of areas that really do arise out of
11:23:57 4 Kellam's recommendations and simply to more fully address
11:24:03 5 those recommendations in the 2020 version; is that
11:24:04 6 right?---Yes, so each iteration of the document is to
11:24:08 7 improve and enhance our management of high risk sources and
11:24:12 8 those that may pose higher or greater risk than our general
11:24:18 9 human source management and those that we engage with.
10

11:24:23 11 There was an internal high level draft document that I
11:24:27 12 won't go through in detail that was the human source
11:24:31 13 management strategy in 2018 to 2022 document. That's
11:24:38 14 VPL.0098.0037.0001. I'll tender that, Commissioner.
11:24:45 15

11:24:46 16 #EXHIBIT RC1532A - (Confidential) VPL.0098.0037.0001.
11:24:47 17

11:24:48 18 #EXHIBIT RC1532B - (Redacted version.)
11:24:49 19

11:24:50 20 Thank you. Deputy Commissioner, as I understand it this
11:24:52 21 was a fairly high level and internal working document; is
11:24:58 22 that right?---That's my understanding of the document's
11:25:01 23 draft and doesn't have status.
24

11:25:05 25 Sure. But in any event what it does in part is to outline
11:25:11 26 a range of issues and problems with the current state of
11:25:15 27 affairs as they stood at the time of this document, which
11:25:18 28 as I understand it must be just prior to the 2018 policy
11:25:25 29 being prepared, is that your understanding?---It's
11:25:28 30 possible. I was not in the portfolio when this document
11:25:32 31 was produced so I'm not in a position to know the date of
11:25:35 32 the signing of the other policy and the development of this
11:25:38 33 particular document. I can give a little bit of clarity to
11:25:45 34 the document.
35

11:25:45 36 Yes, go ahead?---My understanding of the document, it was
11:25:48 37 work that was being undertaken by or within our
11:25:52 38 intelligence Covert Support Command to actually work
11:25:56 39 through what might be some of the future state of that
11:26:00 40 capability. This document has been and is superseded by
11:26:06 41 the work that's been undertaken in relation to our human
11:26:10 42 source governance framework and that has picked up elements
11:26:12 43 of issues that are identified in that document, but the
11:26:15 44 formative document, and that is our directing the maturing
11:26:20 45 of our capability and any changes we'd make to practise or
11:26:24 46 policy is that Human Source Management Governance Framework
11:26:28 47 document that I believed has been provided to the Royal

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11:26:31 1 Commission that was discussed at Executive Command last
 11:26:34 2 year.
 3
 11:26:35 4 Yes, I see. Just to explain why I'm referring to the
 11:26:38 5 document, the Terms of Reference require the Commission not
 11:26:41 6 to look simply at the state of affairs as they are in May
 11:26:45 7 2020 but as things progressed, well, during the time of
 11:26:50 8 Ms Gobbo's registration and policy as it's developed since
 11:26:54 9 that time and this is a document that appears to predate
 11:26:58 10 the 2018 manual and sets out in the person who prepared
 11:27:06 11 that document's point of view some of the deficiencies as
 11:27:10 12 they stood in 2018. So the reason that I'm tendering it,
 11:27:14 13 bringing it to the Commission's attention, is for that
 11:27:16 14 reason, because it's relevant to the Terms of Reference in
 11:27:19 15 that way as a policy issue that arose at the time. Some of
 11:27:25 16 the things that the policy talked about - now bear in mind
 11:27:30 17 this is a 2018 document so it's not talking about the
 11:27:33 18 period of Ms Gobbo's registration of 2005 to 2009, this is
 11:27:39 19 in fact a decade later - it talks about the ineffective
 11:27:43 20 governance framework leading to failures to identify and
 11:27:46 21 manage risk. It talks about competing priorities for
 11:27:49 22 source while handlers leading to a lack of consistent
 11:27:54 23 supervision and governance. It talks of a bureaucratic
 11:27:59 24 registration process leading to failure to follow and
 11:28:02 25 comply with policy and resulting in sources being run off
 11:28:06 26 the books. It talks about a poor IT system support leading
 11:28:10 27 to lack of visibility for file issues and poor levels of
 11:28:12 28 governance, and inconsistent human source management
 11:28:15 29 practice resulting in a lack of alignment between
 11:28:18 30 divisional, regional and organisational priorities and
 11:28:21 31 resources. You weren't in your current position at the
 11:28:25 32 time but when you came into your role, are those some of
 11:28:29 33 the issues you that you understood to still persist in
 11:28:33 34 relation to human source management?---I think some of the
 11:28:35 35 issues that you've talked about have been expressed as
 11:28:39 36 potential risks and issues that are articulated in the
 11:28:44 37 current framework and are still live issues. In terms of
 11:28:49 38 the issue associated with running sources off the book, my
 11:28:53 39 understanding, and I haven't looked at that document in
 11:28:56 40 full because it was in draft and never formally signed off
 11:28:59 41 or progressed at the executive level, it talks about the
 11:29:03 42 risk of that occurring, not that there's been
 11:29:06 43 identification that that's actually occurred. And, again,
 11:29:10 44 in terms of the issues of governance consistency and focus,
 11:29:18 45 it's talking about the current operating model and
 11:29:21 46 opportunities to have dedicated capability, dedicated
 11:29:26 47 focus, and some of the work that I talk about in my

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11:29:29 1 statement about a change to the operating model and the
 11:29:33 2 desired future state of our operating model in relation to
 11:29:37 3 human sources.
 4
 11:29:37 5 I understand it's not your document, it's not a document
 11:29:40 6 that had any - it didn't go through any formal approval
 11:29:47 7 process, but just to make sure that it's clear, the drafter
 11:29:51 8 of the document is in fact talking about the state of
 11:29:54 9 things as they stood rather than risks. It says at p.6,
 11:29:58 10 "The current state of human source management in Victoria
 11:30:02 11 is poor and represents an ongoing risk to the organisation.
 11:30:05 12 Current policy and processes are seen by some members as
 11:30:08 13 cumbersome and they choose not to register human sources
 11:30:12 14 rather than run sources off the books which creates ethical
 11:30:17 15 risks". What I'm suggesting is that the person who
 11:30:19 16 prepared the document was seeing these things in reality,
 11:30:24 17 rather than simply as risks. You understand at least that
 11:30:27 18 that's that person's understanding of the things when they
 11:30:31 19 prepared that document in 2018?--Well, they were reading
 11:30:36 20 it from their perspective, yes.
 21
 11:30:39 22 Yes. Just out of interest, who is the drafter of that
 11:30:42 23 document?--My understanding is that it is a strategic
 11:30:46 24 advisor Intelligence and Covert Support Command and almost
 11:30:52 25 Superintendent Mahoney who was, he was one of the subject
 11:30:55 26 matter experts.
 27
 11:30:58 28 Both of those people are people who would know the true
 11:31:01 29 situation in 2018 I suggest?---Yes.
 30
 11:31:08 31 Is it your understanding that issues such as those that
 11:31:11 32 we've talked about, the ineffective governance framework
 11:31:15 33 leading to failures to identify and manage risk as an
 11:31:18 34 example, have been addressed in the May 2020 version of the
 11:31:22 35 manual?---I think many of the issues that are identified
 11:31:27 36 have been addressed. Many of the other issues that are
 11:31:33 37 talked about are and can only be addressed through some
 11:31:36 38 other reforms that I've articulated in my statement in
 11:31:42 39 relation to dedicated capability and operating model and a
 11:31:46 40 more centralised operating model. As you would appreciate
 11:31:51 41 our current model does not have across the State dedicated
 11:31:55 42 resources to human source management and my understanding
 11:31:58 43 is that was some of the issues being identified in that
 11:32:02 44 document that you've been talking about, the fact that
 11:32:04 45 there are dual roles for some that work within human source
 11:32:08 46 management across the State and a view that obviously a
 11:32:13 47 dedicated capability is much more focused and would improve

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11:32:16 1 management of human sources.
2

11:32:18 3 And in due course we'll go through some of that strategic
11:32:23 4 change that's being looked at the moment that you
11:32:28 5 identified in your statement.
6

11:32:29 7 Commissioner, it's 11.30. I'm about to take the
11:32:34 8 Deputy Commissioner through the main category of human
11:32:37 9 sources. Is it convenient to take that time now?
10

11:32:41 11 COMMISSIONER: Yes, it is. Deputy Commissioner Steendam
11:32:44 12 hasn't been in the box long but the rest of us have been
11:32:47 13 sitting down for a while so I think it's time for a break.
11:32:49 14 We'll have a 15 minute break, thank you.
11:32:58 15
16 (Short adjournment.)
17

11:47:38 18 COMMISSIONER: The hearing of the Royal Commission is
11:47:40 19 resumed. Yes, Mr Woods.
11:47:45 20

11:47:45 21 MR WOODS: I'm just checking to see if things are up and
11:47:48 22 running, Commissioner, I won't be a moment. They are.
11:47:52 23 Yes, they are, I'm sorry.
24

11:47:54 25 Thank you. Deputy Commissioner, we were talking just
11:47:58 26 before the break, I was about to move on and I will, to the
11:48:02 27 various categories of these high risk human sources,
11:48:09 28 obviously with a focus on category 1 in the manual. Before
11:48:13 29 I do so, I was asking you some questions about the
11:48:16 30 commencement of the policy and the fact that in your
11:48:19 31 statement, which was obviously completed before Monday, 4
11:48:24 32 May, that the expectation was the policy would come into
11:48:28 33 effect on Monday, 4 May. Did that in fact happen?---Yes,
11:48:32 34 it has.
11:48:32 35

11:48:33 36 And what's entailed in a policy coming into effect, are
11:48:38 37 people read into it beforehand who need to be or does the
11:48:42 38 training start on 4 May?---There's multiple aspects to how
11:48:46 39 we implement a policy such as this. Those that perform a
11:48:51 40 role, such as an LSR, have been and work through the policy
11:48:58 41 and have had some dedicated training, as well as those that
11:49:02 42 actually have, I suppose, sign off responsibility. In
11:49:07 43 terms of those that might work at the handler level and the
11:49:11 44 controller level, the training that they've previously
11:49:17 45 undertaken has been refreshed and many have already
11:49:19 46 undertaken the new training and we have given a two week
11:49:23 47 period for those that haven't undertaken that training to

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11:49:26 1 retrain to support the policy. The policy has been
 11:49:30 2 promulgated and is available to those that work in this
 11:49:34 3 area and who currently have any qualifications in relation
 11:49:38 4 to human source management and there has been a number of
 11:49:42 5 sessions and forums prior to the Monday where people have
 11:49:48 6 been brought together and worked through aspects of the
 11:49:51 7 policy. In a much broader sense, for the whole of the
 11:49:54 8 organisation to be aware of the policy there is a planned
 11:49:58 9 communication and there is a communication on our intranet
 11:50:02 10 that alerts members to the new policy and, equally,
 11:50:07 11 specifically to those that perform a role within the policy
 11:50:10 12 it's promulgated and copies of the policy are provided to
 11:50:14 13 them and access to that in the system. And in terms of the
 11:50:20 14 overall awareness for the organisation, we have a way of
 11:50:25 15 communicating that's actually called the Police Gazette and
 11:50:29 16 there's an article planned in the next Gazette to alert all
 11:50:34 17 of Victoria Police and our practitioners or general duties
 11:50:38 18 to the existence of the policy. No one can register a new
 11:50:42 19 human source without having retrained, and the system won't
 11:50:45 20 allow them to do that, and those that have current human
 11:50:51 21 sources that they manage have that two week transition
 11:50:53 22 period to re-qualify under the training program.

11:50:56 23
 11:50:57 24 You talked about a communication and a planned
 11:51:02 25 communication. Has there been a Force wide communication
 11:51:04 26 about the inception of this new manual?---There's what we
 11:51:07 27 call on our intranet, it's called What's New or What's
 11:51:10 28 Occurring, that's our general way that we alert our
 11:51:13 29 workforce to new policies and practice and through the
 11:51:17 30 Gazette. Then it's targeted depending on - because this is
 11:51:20 31 a specialist capability, it's quite targeted promulgation
 11:51:25 32 and dissemination of the policy.

11:51:27 33
 11:51:27 34 If I was, just taking a hypothetical, a police member in a
 11:51:32 35 large rural city in Victoria who had maybe a source or two,
 11:51:36 36 I wouldn't be able to, as of 4 May, register a new source
 11:51:41 37 without being caught by the restrictions that are on the
 11:51:44 38 system that you talk about in your statement that are in
 11:51:46 39 the policy, that's right?---That's correct, and you
 11:51:50 40 wouldn't be able to register or attempt to register a new
 11:51:56 41 source without having undertaken the new training that's
 11:52:00 42 attached to this policy.

11:52:03 43
 11:52:03 44 If I was that hypothetical regional officer, how would I
 11:52:10 45 know, or would I know as of 7 May, albeit human source
 11:52:17 46 management is only a very small part of what I do, would I
 11:52:21 47 know by now that there is a new policy? Was there some

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11:52:24 1 requirement that I would have been told about that?---Yes,
 11:52:27 2 everybody that is currently trained and who is able to
 11:52:32 3 register human sources, because of their qualification, has
 11:52:35 4 been communicated with about the new policy, the retraining
 11:52:40 5 requirements.
 11:52:40 6
 11:52:40 7 Okay. And those retraining requirements will be ongoing
 11:52:44 8 now but you say will need to be completed quite soon, is
 11:52:48 9 that the situation?---Yes.
 11:52:51 10
 11:52:51 11 Now, peculiar to, or particular to the Terms of Reference
 11:52:56 12 of this Royal Commission is the human source who has
 11:53:02 13 obligations of confidentiality or privilege and the new
 11:53:06 14 manual has quite significant detail and a significant
 11:53:10 15 course that has to be taken in relation to people who have
 11:53:14 16 or might have those obligations, is that right?---That's
 11:53:18 17 correct.
 11:53:18 18
 11:53:21 19 And they're described as category 1 human sources?---That's
 11:53:25 20 correct.
 11:53:25 21
 11:53:27 22 All right. And there's some scenarios that are set out in
 11:53:30 23 the manual. The first of them is the most obvious within
 11:53:35 24 those categories, which is a potential human source who
 11:53:38 25 themselves is bound by obligations of confidentiality or
 11:53:42 26 privilege and again those categories or those particular
 11:53:46 27 occupations or callings are listed, being lawyers, doctors,
 11:53:51 28 parliamentarians, court officials, journalists and priests,
 11:53:55 29 and they're the Kellam occupations I think you refer to
 11:53:58 30 them as, is that right?---That's correct.
 11:54:01 31
 11:54:01 32 The second group within that category are sources who might
 11:54:06 33 have a connection to one of those first level of human
 11:54:11 34 sources, so someone who might, say, for example, have
 11:54:15 35 worked in the office of one of those people or perhaps be
 11:54:19 36 married to one of those people, is that the situation with
 11:54:23 37 the second group?---That's correct. And it can be as broad
 11:54:26 38 as someone who might incidentally come across that
 11:54:30 39 information, say a cleaner who is at perhaps a legal
 11:54:33 40 practice, who might overhear something or find something
 11:54:37 41 inadvertently.
 11:54:39 42
 11:54:40 43 And indeed people who might have previously been engaged in
 11:54:45 44 one of those professions but no longer are would fall into
 11:54:50 45 that second group?---That's correct.
 11:54:52 46
 11:54:53 47 What guidance or support is provided to the relevant

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11:54:58 1 members regarding obligations of privilege or
 11:55:02 2 confidentiality held by a potential source who is or was in
 11:55:06 3 one of those category 1 occupations so that they can
 11:55:10 4 understand what these concepts of privilege and
 11:55:14 5 confidentiality are?---It's quite explicit and clear in the
 11:55:18 6 policy who falls within those categories of what we call
 11:55:23 7 category 1. So first and foremost there's a policy. This
 11:55:27 8 issue is also addressed through the training requirements
 11:55:31 9 for the new policy where it explicitly talks about the
 11:55:36 10 category 1 to 4 requirements. And the reality is with
 11:55:43 11 category 1 individuals, whether it's related to their work
 11:55:48 12 or otherwise, they cannot, no one can be approached and/or
 11:55:54 13 authorised without the approval of the Human Source Ethics
 11:55:58 14 Committee and that's quite clear in the policy. And then
 11:56:01 15 there's an escalation point for a specific type of, I
 11:56:06 16 suppose class of those category 1 people that pushes up to
 11:56:12 17 the Deputy Commissioner for approval.

11:56:14 18
 11:56:15 19 The example you gave a moment ago is an interesting one
 11:56:19 20 about the person who might clean the office of a person
 11:56:23 21 with these sorts of obligations. The manual talks about
 11:56:28 22 people who are likely to receive confidential or privileged
 11:56:33 23 information from one of those category 1 occupations. What
 11:56:36 24 sort of individuals, other than say, for example, cleaners,
 11:56:40 25 what are some of the other positions or relationships that
 11:56:44 26 these people might have where it's envisaged they might be
 11:56:48 27 likely to receive information of that nature?---So the
 11:56:53 28 reality is it could be anyone who lives in a household with
 11:57:01 29 someone who works in those occupations, for instance a
 11:57:02 30 spouse or a sibling or a child of those in that occupation,
 11:57:05 31 and it is broad enough, and it's articulated in the policy,
 11:57:09 32 the information, and the way in which they are aware of the
 11:57:13 33 information, could, and the source of that and provenance
 11:57:19 34 of that information is from those that have a legal
 11:57:23 35 obligation of confidentiality or privilege, that that needs
 11:57:28 36 to be identified and if that is the case, it's not just
 11:57:30 37 about the occupations, it's about the provenance of that
 11:57:33 38 information and members, if that was to be the case, would
 11:57:36 39 not be able to accept that information and would in fact,
 11:57:41 40 if they wanted to use that information, would need to refer
 11:57:44 41 that to the Human Source Ethics Committee.

11:57:46 42
 11:57:46 43 And does the policy or the manual itself give examples such
 11:57:52 44 as that, you know, a cleaner at a law firm, a medical
 11:57:55 45 receptionist, a prison officer, a partner of a doctor,
 11:57:59 46 those sorts of things, are those examples set out?---There
 11:58:02 47 are some examples in the policy. I'd need to bring up the

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11:58:05 1 policy and look at it explicitly as to what, which examples
11:58:09 2 are actually contained within the policy.
11:58:13 3
11:58:13 4 Sure. We might go through some of those in due
11:58:15 5 course?---Sure.
11:58:16 6
11:58:17 7 At paragraph 112 of your statement, at p.23, you talk about
11:58:26 8 people with a connection to a category 1 occupation would
11:58:31 9 include people who have a close relationship with a person
11:58:34 10 working in 1. Just for those who will be reading and
11:58:39 11 needing to understand their obligations under this
11:58:42 12 document, what's meant by close relationship with a person
11:58:46 13 working in a category 1 occupation?---Well it can be quite
11:58:49 14 broad, as I indicated it could be someone that's living
11:58:53 15 with someone that meets that occupation or with that
11:58:57 16 occupation. It could be someone who is also working in
11:59:01 17 that area, so a receptionist, and it also could be someone
11:59:09 18 that's a neighbour or a friend that has a connection and a
11:59:12 19 relationship.
11:59:13 20
11:59:15 21 And again, I mean are you able to say without reference to
11:59:18 22 the manual, it's not a test on your knowledge of the
11:59:21 23 manual, but whether it's articulated in that way in the
11:59:24 24 manual?---My statement expresses how it's actually
11:59:33 25 articulated in the manual, and again, without going to the
11:59:37 26 manual and looking at the examples or examples that we're
11:59:41 27 giving in training, I can't give greater clarity to that.
11:59:45 28
11:59:45 29 One of the things that we've seen in relation or arising
11:59:51 30 from the evidence of some of the police members relevant to
11:59:54 31 the interactions between 2005 and 2009 and onwards with
11:59:59 32 Ms Gobbo, on one view a number of those witnesses have
12:00:05 33 struggled to understand issues of confidentiality - less so
12:00:11 34 privilege, but obligations of confidentiality. What are
12:00:20 35 the requirements in place to train members who are involved
12:00:26 36 in these sorts of activities to have a good understanding
12:00:31 37 of what obligations of confidentiality or privilege
12:00:35 38 are?---In the context of confidentiality, and I'll come
12:00:40 39 back, circle back to your question as it specifically
12:00:43 40 relates to the classes of people that are contained in
12:00:45 41 category 1, but the very nature of human source management
12:00:48 42 is in fact, and those that are human sources, are that they
12:00:53 43 are breaching a confidence because they're providing us
12:00:57 44 with information that is, has been provided to them
12:01:01 45 potentially in confidence, so it exists, that issue about
12:01:05 46 confidentiality in the very nature of the practice of human
12:01:09 47 source management. As it relates to category 1 classes of

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12:01:12 1 people, there's explicit articulation in our training about
 12:01:19 2 those points and it's, I suppose, a general understanding
 12:01:23 3 and concept that is known within Victoria Police through
 12:01:27 4 some of our training, so through - those that are
 12:01:31 5 detectives who work and have been through our crime courses
 12:01:36 6 and our advanced diploma of investigation will have been
 12:01:40 7 exposed to the concept of legal professional privilege and
 12:01:45 8 confidentiality, as is anyone that actually is through
 12:01:48 9 recruit training, and I detail in my statement some of the
 12:01:51 10 exposure that occurs for Victoria Police members in
 12:01:55 11 relation to this concept. But particularly I mean this
 12:01:57 12 issue arises even in the execution of warrants when we
 12:02:02 13 execute warrants at legal firms or other locations, so
 12:02:06 14 members need to be mindful of this. And in our prosecution
 12:02:08 15 courses, our brief authorisation courses, there is I
 12:02:14 16 suppose some exposure of members to the concept of legal
 12:02:20 17 professional privilege and confidentiality.

12:02:20 18
 12:02:20 19 And the reason for the question, of course, is that when
 12:02:24 20 asked questions about some of these concepts, as I say,
 12:02:29 21 there were varying levels of understanding and varying
 12:02:32 22 levels of members being able to go back to their police
 12:02:35 23 training and remember what they were or weren't taught.
 12:02:38 24 Some seemed to have a pretty intuitive correct view of what
 12:02:43 25 these principles were and others just didn't seem to
 12:02:46 26 understand much about them at all it might be said.
 12:02:50 27 Obviously they're important issues for the people on the
 12:02:53 28 ground to understand, you'd agree with that?---Yes.

12:02:55 29
 12:02:58 30 A related issue, again some of the handler evidence touched
 12:03:03 31 on this, was a lack of comprehension about what a conflict
 12:03:12 32 of interest was and a real focus on privilege and what may
 12:03:16 33 or may not be privileged, and a good example was a
 12:03:20 34 particular bill of lading that Ms Gobbo handed to her
 12:03:24 35 handlers while representing the particular individual in a
 12:03:28 36 County Court trial. The police witness, the handler, under
 12:03:34 37 cross-examination was at pains to say that it wasn't
 12:03:37 38 privileged and had, on one view of the transcript,
 12:03:42 39 difficulty understanding that there was a separate and
 12:03:45 40 distinct problem which was how could that barrister then
 12:03:49 41 continue to act on that individual when in fact they were
 12:03:51 42 acting as an agent of police and giving the police material
 12:03:55 43 against that client's interests, putting privilege to one
 12:03:59 44 side. What about issues of conflict of interest, is that
 12:04:04 45 something that it's expected or that is named in the manual
 12:04:09 46 and it's expected that these members on the ground will
 12:04:11 47 have an awareness of?---Yes, it is. And without obviously

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12:04:18 1 talking to that issue that you've just used as an example,
 12:04:26 2 the issue of registration of lawyers, as I say, cannot - as
 12:04:32 3 a human source - cannot and will not, unless it's actually
 12:04:37 4 considered by the Human Source Ethics Committee as part of
 12:04:40 5 that process, if there was to be an application or even an
 12:04:44 6 approach, there are requirements that would be put in
 12:04:47 7 place, not only for that individual in the acknowledgement
 12:04:52 8 of documents that are actually produced, Acknowledgement of
 12:04:55 9 Responsibilities, but the Human Source Ethics Committee
 12:04:58 10 will put specific criteria if they were to approve anyone
 12:05:02 11 that falls within those category 1 occupations about how
 12:05:04 12 that relationship will be managed. Conflict of interest,
 12:05:08 13 legal professional privilege is clearly an area that will
 12:05:11 14 be a focus of those conditions in which they can engage.
 12:05:16 15 They would be time limited and for specific purpose. They
 12:05:20 16 would also be talking and reminding those individuals that
 12:05:24 17 if they were to be approved and it was not connected to
 12:05:28 18 their work environment, that any engagement that they have
 12:05:31 19 with that handler, they cannot, and they would be reminded
 12:05:34 20 and required to be reminding them that they are not able to
 12:05:36 21 provide any information that is subject to legal
 12:05:42 22 confidentiality or privilege.
 12:05:43 23
 12:05:43 24 And you may or may not be aware that again there's
 12:05:47 25 reference in the ICRs and the transcripts early on of,
 12:05:52 26 certainly Sandy White and Peter Smith and I think Mr Black
 12:05:57 27 might have been involved as well, in discussions with
 12:06:01 28 Ms Gobbo about privilege and Mr Smith certainly said she
 12:06:10 29 could take her own counsel in relation to those things and
 12:06:14 30 I think, understanding as I do the transcript, it appears
 12:06:19 31 that they were really leaving the matter for her, at least
 12:06:22 32 at that stage, and that would be inappropriate only to rely
 12:06:27 33 on the source themselves in that regard, you would agree
 12:06:30 34 with that?---First and foremost can I say the circumstances
 12:06:33 35 that led to the registration of Ms Gobbo, in the current
 12:06:36 36 policy and practice and the governance (indistinct) policy
 12:06:40 37 that could not and would not happen, and in fact any
 12:06:45 38 application for anyone that sits in those category 1
 12:06:48 39 occupations or associated with those and use of that
 12:06:52 40 information has to be escalated to the Human Source Ethics
 12:06:56 41 Committee. That Human Source Ethics Committee has a
 12:06:59 42 legally qualified person on that Ethics Committee and
 12:07:03 43 certainly if there's specific legal advice required to help
 12:07:08 44 inform a decision about whether or not there be an approach
 12:07:12 45 or registration, there would be specific advice that would
 12:07:15 46 be provided to the committee to make that decision and
 12:07:19 47 certainly the terms and conditions that would be put in

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12:07:21 1 place if in fact there was any approval for registration.
 12:07:24 2 As I indicate, the circumstances for Ms Gobbo are, in my
 12:07:28 3 view, unique and would not occur in the current policy and
 12:07:31 4 practice that we have.
 12:07:32 5
 12:07:32 6 Yes, I understand. All right. Now, at paragraph 139 of
 12:07:39 7 your statement you touch on this Acknowledgement of
 12:07:44 8 Responsibility issue and it says to the effect that if a
 12:07:49 9 person subject to a legal obligation of privilege or
 12:07:52 10 confidentiality were registered as a human source, the AOR
 12:07:57 11 would contain a clause to ensure the human source
 12:07:59 12 acknowledged they were not to provide information subject
 12:08:02 13 to legal obligations of privilege or confidentiality and
 12:08:06 14 that's the substance of that paragraph?---That's correct.
 12:08:08 15
 12:08:10 16 And there's an example that's given in the manual itself at
 12:08:16 17 p.8 that I'm just going to turn to. Actually, I won't
 12:08:39 18 bring that up now. Would it be beneficial in your view for
 12:08:43 19 the Acknowledgement of Responsibility or for the manual,
 12:08:46 20 sorry, to include an express requirement that a clause,
 12:08:50 21 such as the one you're talking about in your statement, is
 12:08:54 22 included in any Acknowledgement of Responsibility relating
 12:08:58 23 to a category 1 source? Firstly, is there a requirement
 12:09:03 24 that such a clause is in the AOR?---So first and foremost I
 12:09:08 25 suppose the process before there's any approach, if it was
 12:09:12 26 anyone that falls within those occupations or is associated
 12:09:15 27 with those occupations, the process is that it would work
 12:09:18 28 through up to the Human Source Ethics Committee, the
 12:09:23 29 request to approach in the first instance. That would be
 12:09:26 30 considered by the Human Source Ethics Committee. They will
 12:09:30 31 get and obtain specific legal advice if it's required for
 12:09:34 32 more complex matters. For simple matters where it's a
 12:09:37 33 class of, or category of people that it's not related to
 12:09:42 34 their occupation, then they may just use the in-house legal
 12:09:46 35 advice that is attached to that committee, but certainly
 12:09:49 36 they will prescribe the specific requirements within the
 12:09:55 37 AOR, or the Acknowledgement of Responsibilities, that are
 12:10:00 38 specific to the individual and the circumstances that are
 12:10:04 39 presenting for that case. It is an expectation, and my
 12:10:07 40 understanding is will be an (indistinct) in instances where
 12:10:13 41 if there was to be someone approved that would be a
 12:10:16 42 requirement in that Acknowledgement of Responsibility.
 12:10:18 43 It's not articulated in the document but it's well
 12:10:22 44 understood by those that chair and participate in the Human
 12:10:28 45 Source Ethics Committee.
 12:10:28 46
 12:10:28 47 I think that not being articulated in the document is the

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12:10:32 1 point that I'm wanting to draw out a bit. Do you think it
 12:10:35 2 might be something that should be included in the document
 12:10:37 3 given what's fallen out of what happened between 2005 and
 12:10:41 4 2009?---I have confidence in those that are participating
 12:10:45 5 in the Human Source Ethics Committee and the terms and
 12:10:49 6 conditions I think need to be tailored specifically for the
 12:10:53 7 circumstances that are presenting. Can I just indicate the
 12:10:56 8 overwhelming majority of the people that we actually deal
 12:11:00 9 with from the human source management perspective are
 12:11:04 10 actually from the criminal fraternity, not actually the
 12:11:06 11 class of people that we're talking about. It is very few,
 12:11:09 12 the number that would be actually within even category 1 to
 12:11:13 13 4 classes of people that we're talking about that would be
 12:11:17 14 coming up to the Human Source Ethics Committee and I'm
 12:11:21 15 confident in those that are on that committee that they
 12:11:24 16 understand the requirements and the obligations. So I'm
 12:11:26 17 not sure if it's useful to have it in the policy because
 12:11:30 18 they won't be going back to the policy, they'll have their
 12:11:33 19 practice and the legal advice and the specific
 12:11:35 20 circumstances and they'll tailor the AOR and the
 12:11:41 21 conditions, the terms and conditions and terms of that
 12:11:41 22 engagement if it's approved, to that particular
 12:11:46 23 circumstance.
 12:11:46 24
 12:11:46 25 On the issues of the proportion of sources that might have
 12:11:48 26 these obligations and the fact that most are involved in
 12:11:52 27 criminal activity or close to criminal activity themselves,
 12:11:56 28 I should say that's a proportion that's well understood by
 12:11:59 29 the Commission. I think the point rather is that when they
 12:12:02 30 do have those obligations the things that can go wrong are
 12:12:07 31 far more severe when it comes to the administration of
 12:12:11 32 justice. No doubt the risks to the individual are the same
 12:12:16 33 either way from those that they're informing on or close
 12:12:20 34 to, but you would accept that despite them being small in
 12:12:23 35 number the risks that they pose to the proper
 12:12:26 36 administration of justice are very, very
 12:12:29 37 significant?---Absolutely, which is why we have put in
 12:12:32 38 place the controls that we have and the safeguards that no
 12:12:35 39 one can ever be approached or registered without it going
 12:12:37 40 through to the Human Source Ethics Committee and the legal
 12:12:44 41 advice that's required to support that decision making.
 12:12:44 42
 12:12:44 43 The legal advice that you identify that they can get, you
 12:12:48 44 use the phrase that it can be internal advice or external
 12:12:52 45 advice. Do you see any force in the suggestion that any
 12:12:59 46 advice in relation to an issue as sensitive as this, given
 12:13:03 47 what's gone before, really should be external legal advice

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12:13:08 1 rather than from someone internal on the Ethics
 12:13:10 2 Committee?---So there's I think two aspects to this. There
 12:13:13 3 will be some matters that are quite simple and
 12:13:16 4 straightforward, for instance, an example would be a lawyer
 12:13:20 5 that is wanting to provide information in relation to their
 12:13:24 6 neighbour or a member of their family that's unconnected to
 12:13:28 7 their work responsibilities. And then there's a much more
 12:13:33 8 complex, obviously, scenario that might present. In the
 12:13:36 9 more complex scenarios I think it's absolutely appropriate,
 12:13:39 10 and we do this on a regular basis, we outsource either to
 12:13:42 11 the Victorian Government Solicitor's Office or to external
 12:13:46 12 QCs to get advice to inform our decision making and the
 12:13:51 13 complex issues that we might need to consider. But for
 12:13:53 14 those that are what I would call relatively
 12:13:56 15 straightforward, the Executive Director of Legal Services
 12:13:58 16 and/or their staff that might participate in the Ethics
 12:14:04 17 Committee are all legally qualified, are independent of the
 12:14:07 18 work units and are able to provide that advice. I mean the
 12:14:11 19 other issue that we need to consider is obviously efficient
 12:14:15 20 use of public resources. So I think it's appropriate in
 12:14:19 21 certain circumstances but I wouldn't want to have it as a
 12:14:21 22 requirement for every single matter that's considered.
 12:14:23 23
 12:14:24 24 And something that I was going to address with you later on
 12:14:28 25 but it might be a good time to do it now, we'll talk about
 12:14:31 26 the structure and how things get to the Ethics Committee in
 12:14:37 27 due course, but one of things I was going to ask you at
 12:14:40 28 that stage is it might be seen as a no-brainer that you
 12:14:43 29 need individuals who are not members of Victoria Police and
 12:14:45 30 not employees of Victoria Police, whether wholly or just
 12:14:50 31 one of them, and in particular the legal member, who is not
 12:14:54 32 from, who is not employed by Victoria Police, who is not
 12:14:59 33 part of the culture of Victoria Police, who has their own
 12:15:02 34 independent obligations as a lawyer and duties that they
 12:15:08 35 don't owe to Victoria Police or the Ethics Committee, to be
 12:15:12 36 a member of the decision making body. What do you say
 12:15:17 37 about that, the suggestion that there should be an external
 12:15:20 38 legally qualified independent set of eyes sitting at the
 12:15:24 39 top of this tree?---I suppose there's two aspects to this.
 12:15:30 40 I would first and foremost, I think those that work in my
 12:15:34 41 Legal Services Division who have a legal qualification
 12:15:37 42 would say that they do give frank, fearless and independent
 12:15:40 43 advice and appropriately meet their duty and their
 12:15:43 44 requirements as a legal practitioner. And the second
 12:15:46 45 aspect to that is appropriate advice can be provided by
 12:15:53 46 utilisation of the Victorian Government Solicitors, as we
 12:15:56 47 do quite regularly. That doesn't mean they necessarily

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12:15:59 1 have to be on the committee, it can be outsourced where
 12:16:02 2 it's appropriate. The management of human sources,
 12:16:05 3 obviously, and the sensitivity around the need to know and
 12:16:07 4 who needs to know about who may be considered as a human
 12:16:11 5 source obviously is a consideration for Victoria Police, so
 12:16:13 6 who those representatives are and I suppose who is on that
 12:16:17 7 committee becomes important to us by making sure that it's
 12:16:21 8 limited to those that should know. I'm of the view that it
 12:16:26 9 can be serviced through the arrangements that have actually
 12:16:30 10 been put in place, but obviously the Commission will have a
 12:16:33 11 view as to whether they think that's sufficient or not. I
 12:16:36 12 do make a reference in my statement to other potential
 12:16:40 13 individuals that might participate in that Human Source
 12:16:45 14 Ethics Committee and that is a public interest monitor, and
 12:16:48 15 in fact they could and we are open to them performing a
 12:16:55 16 role, particularly as it relates to the public interest and
 12:16:58 17 considerations. We can't obviously do that without some
 12:17:04 18 statutory or regulatory reform to actually support them
 12:17:09 19 participating, but we work with them in other covert and
 12:17:13 20 specific, under specific legislation that they perform that
 12:17:16 21 role and we are open to having someone such as the PIM on
 12:17:22 22 the committee.

12:17:23 23
 12:17:23 24 I mean the PIM though, the role of this Ethics Committee
 12:17:28 25 though is in fact a decision making role?---Yes.

12:17:32 26
 12:17:32 27 Sometimes about operational measures. Do you see that it
 12:17:36 28 might be problematic if it was the PIM who had that role on
 12:17:39 29 the committee, given the fact that they're a monitor?---I
 12:17:42 30 think, and we navigate this issue quite explicitly
 12:17:48 31 obviously in the context of witness protection and they
 12:17:51 32 perform a function with Victoria Police in relation to
 12:17:54 33 witness protection and other processes, and they bring the
 12:17:58 34 public interest perspective to the discussion, so it's - I
 12:18:04 35 articulate in my statement obviously if they're
 12:18:07 36 participating in the process they're not truly independent
 12:18:11 37 in terms of oversight, but their perspective is valuable in
 12:18:15 38 the context of the things that will be considered by that
 12:18:19 39 Human Source Ethics Committee.

12:18:20 40
 12:18:21 41 And you identify somewhere in your statement that the UK
 12:18:26 42 model of the Investigatory Powers Commissioner's Office,
 12:18:35 43 IPCO, having a role there, an independent role in the
 12:18:39 44 registration process of human sources. That's been
 12:18:43 45 something that's been considered by Victoria Police,
 12:18:46 46 something of a similar nature to that, is that
 12:18:50 47 correct?---Yes, that's correct. And I talk in my statement

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12:18:52 1 about the possibility of having something similar to that
 12:18:57 2 as it relates to human sources with respect to legal
 12:19:01 3 obligations of confidentiality or privilege, and we think
 12:19:07 4 the Victorian Inspectorate has and performs a role
 12:19:11 5 currently in relation to some of our other covert
 12:19:15 6 capabilities. They're used to working in the operating
 12:19:18 7 environment that we have and navigating those sensitivities
 12:19:20 8 and the issues that associate with that.
 12:19:24 9
 12:19:25 10 Are you aware that in the UK model under the relevant
 12:19:29 11 orders that are made under the regulation and investigatory
 12:19:33 12 powers, or under the RAPI Act, that it's in fact a judicial
 12:19:42 13 Commissioner within IPCO who has to approve the use of a
 12:19:46 14 human source to obtain particularly sensitive information,
 12:19:49 15 are you aware that that's actually a judicial commissioner
 12:19:52 16 and that that's a box that has to be ticked before it can
 12:19:57 17 be done?---Yes, I understand that.
 12:19:59 18
 12:20:00 19 And again, you don't see that that's something that would
 12:20:06 20 be of benefit to Victoria Police, having that independent
 12:20:10 21 judicial commissioner type position overseeing these
 12:20:15 22 decisions?---So I think in my statement I talk, and in the
 12:20:20 23 policy we have made reforms and escalation points for
 12:20:24 24 particular classes of individuals, for instance, with any
 12:20:31 25 person that is subject to legal confidentiality or
 12:20:38 26 privilege, to want to register someone that's tasked or
 12:20:47 27 willing to use and the legal professional privilege, which
 12:20:51 28 as I say would be very unique and in exceptional and
 12:20:56 29 compelling circumstances. We have mirrored some of the
 12:20:58 30 requirements within the UK legislation which is it can only
 12:21:03 31 be done for exceptional and compelling reasons, it can only
 12:21:08 32 be done, and it's escalated to the Human Source Ethics
 12:21:12 33 Committee, to the Deputy Commissioner Specialist
 12:21:14 34 Operations, which is myself, and it can only be in the
 12:21:17 35 interests of national security to prevent serious injury or
 12:21:21 36 life threatening scenarios and there is no other reasonable
 12:21:25 37 way in which to actually obtain that information and needs
 12:21:29 38 to, obviously, a range of considerations before we would
 12:21:33 39 make that decision. Those changes in the policy have been
 12:21:36 40 within the policy controls and levers that we currently
 12:21:43 41 have. I understand the UK scenario is those types of
 12:21:47 42 matters get escalated outside of the organisation and we
 12:21:51 43 are open to consideration of that, but the changes that
 12:21:54 44 we've made to our policy are certainly within the controls
 12:21:57 45 that we currently have organisationally and the legal
 12:22:03 46 frameworks that we currently have.
 12:22:05 47

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12:22:05 1 For those following the webcast what I might do is get a
 12:22:10 2 display - there's an organisational structure, just so we
 12:22:14 3 can talk through how the decision-making process works, and
 12:22:18 4 you might have seen this in the last 24 hours or so. This
 12:22:23 5 is a diagram of an organisational structure, it's a
 12:22:27 6 document produced by the Commission, I think there might be
 12:22:29 7 some exceptions taken to some of its contents on subsequent
 12:22:34 8 pages, but this is RCMPI.0173.0001.0002. And if that could
 12:22:43 9 be brought up publicly. It's a diagram of organisational
 12:22:48 10 structure and I tender that, Commissioner.
 12:22:50 11
 12:22:52 12 #EXHIBIT RC1533A - (Confidential) Diagram of organisational
 12:22:54 13 structure.
 12:22:54 14
 12:22:55 15 #EXHIBIT RC1533B - (Redacted version.)
 12:22:59 16
 12:23:00 17 Let's just start at the bottom. You will see on the
 12:23:04 18 left-hand side, I was talking earlier, in probably not the
 12:23:09 19 right terms, about "normal human sources". We put them on
 12:23:14 20 the left-hand side, and on the right-hand side we have
 12:23:18 21 these four categories, and we've been focusing on the first
 12:23:21 22 and second, of high risk human sources, is that
 12:23:25 23 right?---Yes.
 12:23:25 24
 12:23:26 25 In those four categories we have people in those
 12:23:29 26 occupations that we spoke of earlier and we have people
 12:23:34 27 associated with people in those occupations, we also
 12:23:39 28 identified those. What are the other categories of high
 12:23:42 29 risk human source?---So there's those that are juveniles or
 12:23:47 30 under 18, individuals that might have a serious mental
 12:23:52 31 health condition or serious medical condition, and classes
 12:23:56 32 of human sources that because of their risk profile we
 12:24:00 33 would not ordinarily consider.
 12:24:03 34
 12:24:04 35 The risk profile is probably well and truly within the
 12:24:08 36 remit of Victoria Police, those that are of extreme risk.
 12:24:13 37 Just in relation to those others, juveniles and those with
 12:24:16 38 mental health problems, has there been any consideration
 12:24:20 39 given to part of that decision-making process being,
 12:24:25 40 incorporating advice from child psychologists or mental
 12:24:29 41 health experts or those sorts of people, external to
 12:24:34 42 Victoria Police?---So there is provision within the policy
 12:24:37 43 and a requirement obviously for those that have a serious
 12:24:41 44 mental health or medical condition for the advice of either
 12:24:47 45 a psychiatrist, psychologist or a medical practitioner to
 12:24:51 46 be used to inform the decision making of the Ethics
 12:24:56 47 Committee. And in relation to juveniles, obviously, can I

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12:25:02 1 indicate it's quite rare that that would ever occur but if
 12:25:06 2 that's required it also needs to be done with, with the
 12:25:13 3 approval of either their parents and/or their guardians,
 12:25:18 4 and certainly if specific advice is required then that
 12:25:24 5 would be obtained by the Human Source Ethics Committee, as
 12:25:26 6 well as any legal advice in relation to juveniles, and
 12:25:31 7 there are specific prohibitions in relation to juveniles.

12:25:36 8
 12:25:36 9 So really the ultimate faith and trust is put in the Ethics
 12:25:40 10 Committee rather than in the manual to require this sort of
 12:25:43 11 external advice in relation to the individuals, that's
 12:25:46 12 essentially the structure?---Well the Ethics Committee is a
 12:25:50 13 decision making body and it's within their requirements to
 12:25:54 14 actually get that advice to inform their decision making,
 12:25:57 15 yes.

12:25:57 16
 12:25:58 17 But only if they determine to do so, there's no manual or
 12:26:01 18 policy requiring them to do so?---No, it's not written into
 12:26:05 19 this current policy and certainly - it's probably something
 12:26:09 20 more appropriate in the Terms of Reference and a
 12:26:11 21 requirements, rather than articulating within the policy,
 12:26:14 22 but again open if there's a view that that needs to be
 12:26:17 23 explicit. It is my expectation, and I certainly know
 12:26:21 24 through those that participate on the Ethics Committee,
 12:26:24 25 that that is the intent of what they would do, they will
 12:26:29 26 get appropriate legal advice and are required to do so and
 12:26:33 27 other advice depending on the nature of the issue that is
 12:26:36 28 actually presenting.

12:26:37 29
 12:26:40 30 The reason for the questions, of course, is that we know
 12:26:43 31 that it wasn't until external counsel was engaged in 2011,
 12:26:51 32 I think it was, in the prosecution of Mr Dale, that an
 12:26:56 33 external lawyer gave Victoria Police advice about this
 12:27:02 34 relationship and the disclosure obligations that came out
 12:27:06 35 of it, which obviously is a pretty problematic situation.
 12:27:10 36 I take what you say on board which is that they were very
 12:27:14 37 different days under a very different policy and it
 12:27:16 38 wouldn't happen now, but it's clear from what we've seen
 12:27:19 39 that those external eyes were incredibly important in
 12:27:24 40 bringing this situation out when it eventually came out and
 12:27:29 41 the realisation within the Force that there was a very
 12:27:31 42 significant problem. So the reason for the questions is it
 12:27:36 43 might be said that external advice, whether it's legal
 12:27:42 44 advice where those category 1 people, psychological, child
 12:27:46 45 psychological advice for the others, is a very beneficial
 12:27:50 46 thing for Victoria Police to receive at the time of
 12:27:52 47 registration and use of human sources. You would

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12:27:54 1 understand that approach?---Yes, I understand the position
 12:27:58 2 and my view is that the requirements of the Human Source
 12:28:04 3 Ethics Committee is that they have a legal practitioner as
 12:28:08 4 part of the composition, specifically for this issue, where
 12:28:12 5 required they can outsource for that legal advice,
 12:28:16 6 particularly in the complex matters, and equally in terms
 12:28:20 7 of the medical requirements, as a matter of course they
 12:28:25 8 will be doing that because these are complex legal and
 12:28:28 9 medical issues that need to be, I suppose, proper guidance
 12:28:32 10 given to the Human Source Ethics Committee. The
 12:28:34 11 composition of the Human Source Ethics Committee I think
 12:28:38 12 becomes important as well. It's at the Assistant
 12:28:41 13 Commissioner level. These are very experienced and
 12:28:45 14 individuals that have significant, I suppose, experience in
 12:28:49 15 governance and accountability and equally it also has the
 12:28:54 16 Assistant Commissioner from our Professional Standards
 12:28:57 17 Command as a core participant on the Human Source Ethics
 12:29:01 18 Committee to ensure that the practices and processes and
 12:29:04 19 the decisions that are made by that committee are
 12:29:08 20 appropriate and there's a whole range of criteria that that
 12:29:12 21 committee needs to consider when determining any of the
 12:29:16 22 matters that are raised to them under those category 1 to 4
 12:29:20 23 registrations.
 12:29:21 24
 12:29:21 25 And to be clear, I'm not suggesting for a moment that
 12:29:25 26 they're not very experienced police officers. The focus of
 12:29:27 27 my questions is in fact that there should be, it might be
 12:29:32 28 said there should be some external voices on that committee
 12:29:38 29 because - I mean if you take it simply from the public's
 12:29:41 30 perception, you would accept, I suppose, that the public
 12:29:46 31 trust in police decision making has in some degree been
 12:29:50 32 adversely affected by the circumstances that we're looking
 12:29:53 33 at in the Commission, you'd agree with that?---I understand
 12:29:56 34 that issue and as I say the changes that Victoria Police
 12:29:59 35 has been making since 2012 to its policies and practices
 12:30:03 36 are to address those systemic issues that occurred back
 12:30:07 37 then and I'm confident in the current policy that, and
 12:30:11 38 because no one that falls within that category, lawyers or
 12:30:16 39 other classes of individuals that fall within the Kellam
 12:30:20 40 occupations, could actually be authorised or, and/or
 12:30:25 41 registered as a human source without the Human Source
 12:30:28 42 Ethics consideration. It does talk in the policy about
 12:30:31 43 getting external advice where appropriate, and my
 12:30:36 44 expectation is for all of those, depending on the issue
 12:30:39 45 that's presenting, that appropriate advice will be given to
 12:30:42 46 the committee and they'll be sourcing that.
 12:30:45 47

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12:30:45 1 And the two propositions that I'm putting first are that
 12:30:49 2 there be a mandatory requirement for external advice is one
 3 option, or another option being that there's a mandatory
 12:30:57 4 requirement that one of the participants in that ultimate
 12:30:59 5 decision making body is someone from outside Victoria
 12:31:03 6 Police, so you understand they are two other
 12:31:07 7 potentials?---Yes, and I've said we're open obviously to
 12:31:08 8 and we do actually get external advice. I think there are
 12:31:12 9 issues about who would sit on that committee, who would
 12:31:15 10 actually deal with the confidentiality requirements around
 12:31:19 11 the identity of individuals and the protection of those
 12:31:21 12 that would have to be worked through, but we are very open
 12:31:25 13 to external advice.
 12:31:26 14
 12:31:27 15 And of course it would also, one would assume, have an
 12:31:30 16 effect on the speed at which these things can occur and
 12:31:34 17 there's a tension between having a robust system I assume
 12:31:39 18 where you've got very tightly held decision making and very
 12:31:43 19 robust decision making and being able to get the
 12:31:47 20 information from a source as quickly as possible so that it
 12:31:50 21 can be utilised effectively?---I think that's right. With
 12:31:53 22 these classes of individuals we'd see obviously they're
 12:31:57 23 high risk and the right advice needs to be provided in
 12:32:00 24 order to progress matters, but there may be circumstances
 12:32:03 25 that prevent where there is an urgent need to progress
 12:32:07 26 through that process and you're right, there needs to be a
 12:32:10 27 process that can expedite that if it's appropriate to do
 12:32:14 28 so.
 12:32:14 29
 12:32:14 30 And the committee has flexibility in that regard, doesn't
 12:32:17 31 it? It can have, I think it's monthly meetings are the
 12:32:21 32 general course but it can have urgent meetings in between,
 12:32:25 33 is that right?---That's correct, it can deal with issues as
 12:32:28 34 it needs to but there is a requirement for at least a
 12:32:32 35 monthly meeting.
 12:32:33 36
 12:32:33 37 I did threaten to go to that slide that's now been taken
 12:32:36 38 off the screen, we'll just quickly go through it now. We
 12:32:39 39 can put to one side those on the left-hand side that go up
 12:32:43 40 to the handling team, they're your normal human source.
 12:32:49 41 There is oversight from the bodies that sit above it but
 12:32:53 42 not mandated in the same way as high risk human sources
 12:32:57 43 where you have to go through fairly rigorous steps to have
 12:33:01 44 them registered, is that right?---There are still rigorous
 12:33:06 45 steps for them to be registered but there are additional
 12:33:09 46 requirements obviously for those category 1 to 4
 12:33:12 47 individuals, but I wouldn't, I suppose, support the

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12:33:16 1 proposition that there aren't rigorous steps in actually
 12:33:19 2 registering any human source.
 12:33:21 3
 12:33:21 4 Sure, I might not have phrased that as eloquently as I
 12:33:25 5 should have. I was suggesting that there's more rigour
 12:33:29 6 understandably in relation to high risk human sources and
 12:33:33 7 far more steps to go through. So you have the high risk
 12:33:37 8 human source down the bottom on the right-hand side. They
 12:33:40 9 have a handler, who is generally the face-to-face person
 12:33:45 10 who deals with the source. Above them is the controller.
 12:33:48 11 What's the controller's role?---The controller's role is to
 12:33:53 12 obviously oversight the handler and it's quite detailed in
 12:33:58 13 the policy document but also in my statement, but they're
 12:34:03 14 effectively managing the handler, ensuring that they're
 12:34:07 15 meeting the requirements within the policy. They also have
 12:34:11 16 a specific role in relation to the Acknowledgement of
 12:34:17 17 Responsibility process and what's required with that and
 12:34:19 18 they need to [REDACTED] as part
 12:34:23 19 of that process [REDACTED] the Acknowledgement of
 12:34:27 20 Responsibilities and they have ongoing requirements in
 12:34:29 21 relation to risk assessment, the process of [REDACTED]
 12:34:34 22 [REDACTED] and a whole range of other, I suppose,
 12:34:38 23 governance requirements that are articulated in the policy.
 12:34:41 24
 12:34:42 25 We might flip between them, because while we're talking
 12:34:46 26 about these levels we're also talking about what the role
 12:34:51 27 of each of them are. On the next slide down, which should
 12:34:55 28 be p.0002, if we can go down to the next slide, there's -
 12:35:04 29 it's not quite fitting on. I just want to go through the
 12:35:08 30 process of decision making. Keep going - it's slide 3,
 12:35:14 31 sorry, so the next one down. Here we go. All right, so
 12:35:21 32 there's the handler, controller and you talked about what
 12:35:26 33 their role is. You've talked about the controller's role.
 12:35:30 34 We then go to the officer-in-charge. Can you explain what
 12:35:34 35 that role is?---So that will be the person that runs the
 12:35:39 36 area or is accountable and responsible for the specific
 12:35:42 37 area that is attempting to either approach or register the
 12:35:47 38 human source and their role and responsibility is to - and
 12:35:52 39 again there's quite a detailed obligation, but
 12:35:55 40 predominantly is around assessing the risk assessment
 12:36:02 41 document and the registration process, ensuring that that
 12:36:05 42 has been complied with, that the risk mitigations that are
 12:36:09 43 articulated in that risk assessment are robust, that in
 12:36:14 44 fact the issues - well there's an issue for all of, every,
 12:36:19 45 I suppose, part of the process first and that is the
 12:36:22 46 decision about whether or not it's necessary and
 12:36:26 47 proportionate to actually register the source in the first

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12:36:29 1 instance, so that's I suppose the first step. The handler,
 12:36:33 2 the controller and also the officer-in-charge. Having
 12:36:36 3 satisfied that, then it's the risk assessment process and
 12:36:40 4 the Acknowledgement of Responsibilities, ensuring that the
 12:36:45 5 terms and conditions in those and the risk mitigations are
 12:36:49 6 appropriate. If they're satisfied with that process, then
 12:36:54 7 they will make a recommendation obviously to the Local
 12:36:59 8 Source Registrar to support progression of the
 12:37:02 9 registration.

12:37:03 10
 12:37:03 11 So the handler, just bringing it down to the example, the
 12:37:09 12 way it would play out if a handler had contact with a
 12:37:12 13 person with some of these obligations, they would
 12:37:17 14 presumably meet them, they would find out how they might be
 12:37:21 15 able to assist the police in relation to whatever activity
 12:37:25 16 it was that they might be able to assist with, that person,
 12:37:28 17 the handler, would prepare a draft registration application
 12:37:32 18 which would then be provided to the controller, is that
 12:37:35 19 right?---If you're talking about individuals that fit that
 12:37:39 20 category 1 process, there's a requirement in the policy
 12:37:43 21 before any approach is made that there actually has to be
 12:37:46 22 an application to the Human Source Ethic Committee for even
 12:37:50 23 the approach to anyone that sits in those classes and
 12:37:53 24 categories of people. So there wouldn't be a meeting. If
 12:37:56 25 for some reason the approach is made to the handler, then
 12:38:00 26 there's a requirement obviously to not engage in that, I
 12:38:06 27 suppose, taking of any information, to understand what the
 12:38:09 28 individual wants, and then to raise that matter up through
 12:38:12 29 that process and to the Human Source Ethics Committee. It
 12:38:16 30 will work its way up through all the stage gates directly
 12:38:20 31 to the Central Source Registrar who would then progress
 12:38:24 32 that matter to the Human Source Ethics Committee for
 12:38:27 33 consideration. It is possible that it gets stopped at each
 12:38:30 34 stage gate, so the controller may decide that that's not
 12:38:33 35 appropriate. The officer-in-charge may decide that's not
 12:38:36 36 appropriate and they don't even put the application
 12:38:40 37 forward, and there are those stage gates before it gets to
 12:38:42 38 the Central Source Registrar, who again could decide that
 12:38:47 39 that's inappropriate and not something that they would want
 12:38:49 40 to progress before it gets to the Human Source Ethics
 12:38:50 41 Committee.

12:38:50 42
 12:38:51 43 What's the method of resolving disagreements if, for
 12:38:55 44 example, the controller and the officer in charge or the
 12:38:57 45 officer-in-charge and the Local Source Registrar don't
 12:39:01 46 agree?---So those would be escalated in the first instance
 12:39:03 47 to the Central Source Registrar and the human source - if

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12:39:07 1 it's a class of people, category 1, then obviously Central
 12:39:14 2 Source Registrar and to the Human Source Ethics Committee
 12:39:17 3 and through the line, obviously to then there's issues that
 12:39:22 4 then are unresolved even at the Human Source Ethics
 12:39:26 5 Committee, then the Assistant Commissioner for Intel and
 12:39:31 6 Covert Support Command would escalate the matter to myself.
 12:39:33 7
 12:39:34 8 So at the end of the day if it's proposed to obtain or use
 12:39:38 9 information of any sort from one of these category 1
 12:39:43 10 people, that must go to the Ethics Committee before
 12:39:46 11 anything happens, before any registration of the source, is
 12:39:50 12 that right?---That's correct.
 12:39:52 13
 12:39:53 14 And then in relation to, let's say they are registered, the
 12:39:58 15 committee pursuant to its Terms of Reference make a
 12:40:02 16 decision that the person should be registered for whatever
 12:40:07 17 reason, what about the day-to-day information that the
 12:40:11 18 person provides to the police, what structures are there in
 12:40:16 19 place to ensure that that's not going to breach obligations
 12:40:20 20 of confidentiality or privilege?---Can I just clarify
 12:40:24 21 you're talking about someone that fits into the class of
 12:40:27 22 those categories?
 12:40:28 23
 12:40:29 24 Yes, a category 1 person provides information that may be
 12:40:33 25 privileged or confidential, they've been registered because
 12:40:36 26 the Ethics Committee has for its own reasons said they
 12:40:40 27 should be registered, but then throughout the management
 12:40:44 28 and the interactions with that source they provide
 12:40:49 29 information that may be subject to obligations of privilege
 12:40:52 30 or confidentiality, how is that managed?---So first and
 12:40:56 31 foremost, in terms of the engagement, they should have and
 12:41:00 32 would have been reminded with the terms and conditions in
 12:41:03 33 the Acknowledgement of Responsibilities that they're not to
 12:41:06 34 provide that information. If in fact they did, the first
 12:41:09 35 step is the individual would record that contact in our
 12:41:15 36 source contact reporting. That would be quarantined and it
 12:41:20 37 would be, they need to contact the Source Management Unit
 12:41:27 38 and the CSI and that information is quarantined until it
 12:41:31 39 can be considered by the Human Source Ethics Committee and
 12:41:35 40 in fact that registration would be suspended. In the
 12:41:39 41 context of those individuals, depending on what the
 12:41:41 42 information is, more likely than not the Human Source
 12:41:45 43 Ethics Committee will deregister and recommend
 12:41:47 44 deregistration and not using that information. If there
 12:41:51 45 was a view from the Human Source Ethics Committee that that
 12:41:55 46 information was of such significant importance that they
 12:41:59 47 wanted to use that information, that's when it falls into

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12:42:04 1 one of the escalation points where it has to come to the
 12:42:08 2 Deputy Commissioner Specialist Operations. The only time
 12:42:12 3 that information could be considered is when it meets the
 12:42:14 4 criteria, it needs to be exceptional in its circumstances,
 12:42:19 5 in the interests of national security or to prevent a life
 12:42:24 6 threatening or serious injury matter and there is no other
 12:42:28 7 reasonable way of actually obtaining that information. The
 12:42:32 8 likelihood of that and those sorts of scenarios presenting
 12:42:36 9 are very few and the likelihood of that being approved is
 12:42:42 10 very low.

12:42:43 11
 12:42:43 12 I understand. And in fact - it's not an exam on legal
 12:42:49 13 principle but the law of privilege often would provide an
 12:42:54 14 exception in some of those circumstances - - -?---Yes.

12:42:56 15
 12:42:56 16 - - - that you've spoken about anyway, not necessarily the
 12:42:59 17 issue of conflict of interest. Is there a way of managing
 12:43:04 18 in an extreme situation like that what, if anything,
 12:43:08 19 Victoria Police would do about the consequent conflict of
 12:43:12 20 interest that arises between the source and their
 12:43:15 21 clients?---In the context of the scenario that you've
 12:43:20 22 presented, for the Human Source Ethics Committee to
 12:43:23 23 actually progress that matter they would have to have the
 12:43:26 24 legal advice. There's a whole range of considerations that
 12:43:29 25 would be worked through in terms of the risk assessment,
 12:43:32 26 the type of content, the risk that it presents and they're
 12:43:37 27 articulated in the policy but also in my statement in quite
 12:43:40 28 significant detail. Nothing would be progressed or
 12:43:43 29 approved without quite specific consideration to all of the
 12:43:48 30 risks, the disclosure requirements that would attach to
 12:43:54 31 that information and those obligations, and working through
 12:43:57 32 all of those issues. As I say it would be quite a rare and
 12:44:01 33 unique, I suppose, scenario where that would actually be
 12:44:04 34 approved.

12:44:05 35
 12:44:06 36 All right. We can see that there are these many layers of
 12:44:13 37 approval that are required for even the approach to be
 12:44:18 38 authorised and then the use being authorised and the
 12:44:24 39 receipt of particular material being authorised. I suppose
 12:44:29 40 Victoria Police might feel damned if it does and damned if
 12:44:33 41 it doesn't in relation to this question, but there's an
 12:44:37 42 awful lot, there are many, many layers that one has to go
 12:44:41 43 through and obviously consequent delays. I'm not
 12:44:45 44 necessarily being critical in asking the question but can I
 12:44:48 45 assume there's a tension between wanting to get information
 12:44:52 46 from sources as quickly and efficiently as possible and
 12:44:56 47 having a robust system in place to manage the risks that

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12:45:00 1 that information might pose?---Yes, of course. But the
 12:45:06 2 layers and I suppose the roles and responsibilities that
 12:45:09 3 are in place are for very good reasons. You can, if all of
 12:45:14 4 the documentation is progressed and complied with do that
 12:45:19 5 quite quickly, if required, if there's an imminency issue
 12:45:26 6 attached to potential information on any human source. The
 12:45:29 7 approach and obviously anything to do with the category 1
 12:45:33 8 classes of people need specific advice and there shouldn't
 12:45:37 9 be any approach, so there shouldn't be any information
 12:45:41 10 known or provided at that point for us to have to consider
 12:45:44 11 necessarily, however there is a natural tension between
 12:45:48 12 appropriate governance, controls and making sure that we
 12:45:51 13 are careful in the way in which we manage these issues.
 12:45:55 14
 12:45:57 15 COMMISSIONER: Can I ask - do you have the flexibility to
 12:46:06 16 make urgent decisions in what seems to be a pretty clunky
 12:46:11 17 hierarchy of decision making here, and if so how quickly
 12:46:15 18 can urgent decisions be made?---So there are processes for
 12:46:20 19 after hours and for urgent matters. That still puts some
 12:46:25 20 of the controls and the requirements in place, there's
 12:46:28 21 still some documentation that needs to be developed. We
 12:46:31 22 deal with I suppose organisationally on a daily basis
 12:46:35 23 urgent pressing operational issues on a whole raft of
 12:46:39 24 things, not just in this environment, so we have ways in
 12:46:42 25 which we can escalate and progress decisions after hours
 12:46:47 26 and still meet the requirements and the intent of the
 12:46:50 27 policy, and there are provisions built within the policy
 12:46:54 28 and the framework to allow for that.
 12:46:57 29
 12:46:57 30 How quickly could it be done in an urgent
 12:47:01 31 situation?---Well, it depends on what the actual issue is.
 12:47:05 32 It can be done on the day if all of the requirements are
 12:47:09 33 actually met, there can be after hours phone calls,
 12:47:13 34 provision of documentation analysis and work that's
 12:47:16 35 actually undertaken depending on what the issue is that is
 12:47:21 36 presenting.
 12:47:21 37
 12:47:21 38 Say it's a very delicate finely balanced issue involving a
 12:47:26 39 lawyer who wants to give information about a pending
 12:47:32 40 killing, for example?---Yep.
 12:47:37 41
 12:47:37 42 A pending killing that they have heard about from a client
 12:47:42 43 and how quickly would that be able to escalate, how would
 12:47:50 44 Victoria Police deal with that?---There's two aspects to
 12:47:54 45 it, whether the individual is approaching us and wanting to
 12:47:56 46 provide that, I suppose, as a confidential and not as a
 12:48:03 47 witness, so there's two different ways. If it was provided

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12:48:07 1 and that individual was prepared to be a witness then
 12:48:10 2 there's a particular process that would be applied. If
 12:48:13 3 it's as a, and wanting to be registered as a human source,
 12:48:20 4 then we need to obviously work through those processes.
 12:48:23 5 There are ways in which we can get legal advice quickly
 12:48:27 6 organisationally, fortunately we're a 24-7 organisation,
 12:48:31 7 those who work in those areas can provide immediate advice
 12:48:35 8 if required after hours and so you can progress these
 12:48:39 9 matters quite quickly.

12:48:42 10
 12:48:42 11 And in that situation would it go to the Ethics Committee
 12:48:45 12 or would it go to a truncated version of the Ethics
 12:48:49 13 Committee, what would happen?---There are after hours
 12:48:53 14 provisions. It would go up through the Central Source
 12:48:56 15 Registrar and through the Local Source Registrar would also
 12:49:00 16 be made aware, The after hours I suppose superintendents
 12:49:02 17 that we have working in those areas, and equally there's
 12:49:05 18 after hours call out and ability to convene, I suppose,
 12:49:14 19 virtually the Ethics Committee if it's necessary to do so.

12:49:18 20
 12:49:18 21 On average how long would it take for a decision to be made
 12:49:23 22 by the Ethics Committee, going up from the handler to a
 12:49:28 23 decision from the Ethics Committee, because one of the
 12:49:34 24 complaints made by the focus groups were that it was a very
 12:49:39 25 time consuming process?---Yes, and it can take up to, you
 12:49:43 26 know, 14 days or longer depending on the issue and the
 12:49:47 27 individual and the risk assessment. So the process where
 12:49:50 28 the handler and the controller progress their paperwork
 12:49:53 29 quickly, it can be done quite quickly. So it is a bit
 12:49:58 30 contingent upon how quickly those within and with
 12:50:05 31 responsibilities actually complete the paperwork and the
 12:50:07 32 requirements. So it will vary and it will depend on the
 12:50:10 33 issue and the advice that's required to inform the decision
 12:50:13 34 making. But as I say, in urgent and pressing issues it can
 12:50:17 35 be done quite quickly.

12:50:19 36
 12:50:20 37 All right then, thank you. Yes Mr Woods.

12:50:23 38
 12:50:23 39 MR WOODS: Have any of those frustrations from members
 12:50:26 40 about the time that it takes been brought to your
 12:50:31 41 attention?---I'm well aware obviously some of the key
 12:50:36 42 themes that came from the focus groups and the Commission
 12:50:39 43 wrote just recently to myself and the Commissioner just to
 12:50:44 44 make us aware of some of the high level issues that came
 12:50:48 45 from the focus groups, and it's clear in that there are
 12:50:51 46 some frustrations with the process and certainly this is
 12:50:55 47 not unique just to this process, it's unique to - it's

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12:50:59 1 quite an issue across many parts of our processes within
 12:51:06 2 Victoria Police. People would like to have them much more
 12:51:09 3 efficient, much more stream lined and in some cases that's
 12:51:12 4 appropriate to do so, in high risk matters it's important
 12:51:15 5 to have the right level of governance and risk assessment
 12:51:19 6 across particular types of, I suppose, processes and
 12:51:23 7 responses. And we always looked for efficiencies, we have
 12:51:27 8 dealt with some of those in this new policy with the one
 12:51:30 9 off registration process, it's more, and the issue with
 12:51:35 10 these individuals that we're talking about and why we have
 12:51:38 11 the governance arrangements that we do, because generally
 12:51:41 12 speaking it's going to be an ongoing relationship and may
 12:51:45 13 involve tasking and a whole range of other requirements,
 12:51:48 14 and certainly those things need to be considered very
 12:51:52 15 carefully and all of the risks assessed, not only for
 12:51:56 16 Victoria Police and the management of that source, but also
 12:51:58 17 for the protection of the person that actually wants to be
 12:52:01 18 the human source.
 12:52:03 19
 12:52:04 20 And just a couple of issues about that structure. The
 12:52:09 21 people sitting above, so we're just dealing with these
 12:52:12 22 category 1 individuals at the moment, the people sitting
 12:52:15 23 above the dedicated unit, each of those roles, they are
 12:52:21 24 people with at least one other or probably many other
 12:52:25 25 significant roles, they're not just doing that role that's
 12:52:28 26 assigned to them here, is that right?---That's correct. It
 12:52:32 27 will depend, there are some dedicated teams across the
 12:52:36 28 State, a small number, and those, their function and role
 12:52:42 29 is for, specifically for that purpose, but for many others,
 12:52:47 30 given the size of the State, it will be in amongst other
 12:52:51 31 roles.
 12:52:52 32
 12:52:52 33 And so an officer-in-charge or a Local Source Registrar, if
 12:52:57 34 it's a dedicated team, that's all they're doing or have
 12:53:00 35 they got other roles as well?---For a Local Source
 12:53:05 36 Registrar it's at Superintendent level and they will have
 12:53:07 37 other responsibilities and accountabilities.
 12:53:09 38
 12:53:10 39 As will a Central Source Registrar and obviously the people
 12:53:14 40 who are making up the Ethics Committee, and the Deputy
 12:53:19 41 Commissioner as you would know well have a lot of other
 12:53:21 42 things to do as well other than these roles?---Of course.
 12:53:22 43 The Central Source Registrar, that is their prime
 12:53:28 44 responsibility is actually management of the human source
 12:53:34 45 capability.
 12:53:34 46
 12:53:34 47 I want to ask a couple of things about the role of the

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12:53:38 1 Local Source - before I do that, when we get to the top of
 12:53:41 2 the decision making, just under the Deputy Commissioner
 12:53:45 3 level at the Ethics Committee, one of the criticisms that
 12:53:49 4 might be open is that a decision of this significance by a
 12:53:56 5 committee means that there's not an individual in
 12:54:01 6 particular who owns the decision. Why is it that the
 12:54:05 7 decision's been taken that it needs to be a committee
 12:54:09 8 rather than individuals owning the particular or making the
 12:54:13 9 particular decision?---It will ultimately be signed off by
 12:54:17 10 the Assistant Commissioner of Intelligence and Covert
 12:54:22 11 Support Command informed by obviously the decision of the
 12:54:24 12 committee, so there will be an individual who has to
 12:54:27 13 actually sign the documentation and the authorisation but
 12:54:29 14 it's informed obviously by the committee decision. And I
 12:54:34 15 think the reason that we have, have a committee, because
 12:54:38 16 often these will be complex and difficult scenarios that
 12:54:43 17 are presenting. It needs to have many perspectives brought
 12:54:48 18 to that discussion and the decision making and we're of the
 12:54:52 19 view that the collective perspective actually, and
 12:54:56 20 particularly with the legal advice and professional
 12:54:59 21 standards input, we think that that will assist in better
 12:55:03 22 decision making.

12:55:04 23
 12:55:05 24 And is it the situation, as you articulated, that in fact
 12:55:09 25 the Assistant Commissioner is simply informed by the
 12:55:13 26 committee decision but not bound by the committee
 12:55:17 27 decision?---No, that's not correct. Obviously the
 12:55:19 28 committee will make a decision. If there's not a complete
 12:55:26 29 agreement then there's obviously escalation points that can
 12:55:29 30 occur and that would be from the committee or the Assistant
 12:55:34 31 Commissioner to myself in that decision making if there
 12:55:37 32 wasn't an agreement around that decision. Generally
 12:55:40 33 speaking they will work through and try and resolve the
 12:55:43 34 issue.

12:55:44 35
 12:55:44 36 Do you know whether the decisions, subject to the Terms of
 12:55:47 37 Reference, have to be unanimous decisions or majority
 12:55:51 38 decisions? How does that work in the Ethics Committee?---I
 12:55:55 39 think you'll find it's unanimous there needs to be an
 12:55:59 40 agreement by the committee, if there's not agreement it
 12:56:04 41 would need to be escalated.

12:56:06 42
 12:56:06 43 The Terms of Reference, I should say, which I'll tender as
 12:56:09 44 well, are VPL - I just want to make sure I have the current
 12:56:16 45 version of them. I'll tender both documents I have got.
 12:56:21 46 VPL.0005.0285.0045 and that's Human Source Ethics Committee
 12:56:29 47 Terms of Reference version 1, obviously containing

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12:56:35 1 redactions of sensitive material. And then there's a
 12:56:40 2 separate document that I want to tender,
 12:56:48 3 VPL.6079.0009.4491, which is entitled "ICSC Ethics
 12:56:52 4 Committee". Now you're familiar with those two
 12:56:55 5 documents?---Yes.
 12:56:56 6
 12:56:56 7 The first of those documents, being the Terms of Reference,
 12:57:01 8 that's the current Terms of Reference for the Ethics
 12:57:05 9 Committee?---I'm just trying to find the document so I can
 12:57:10 10 sight it.
 12:57:11 11
 12:57:11 12 We might bring up just its title page, this is the document
 12:57:15 13 ending in 0045.
 12:57:17 14
 12:57:17 15 COMMISSIONER: Are we going to tender that, are we?
 12:57:20 16
 12:57:21 17 MR WOODS: I will, I'm sorry, I didn't pause for a number
 12:57:24 18 for those, Commissioner. That's the first of the
 12:57:26 19 documents.
 12:57:27 20
 12:57:27 21 #EXHIBIT RC1534A - (Confidential) Terms of Reference
 12:56:21 22 document VPL.0005.0285.0045.
 12:57:29 23
 12:57:30 24 #EXHIBIT RC1534B - (Redacted version.)
 12:57:33 25
 12:57:34 26 Deputy Commissioner, is that the current Terms of
 12:57:36 27 Reference?---I believe so, yes.
 12:57:37 28
 12:57:38 29 And then the second document that I referred to that I want
 12:57:41 30 to tender, Commissioner, ends in 4491, it's a one page
 12:57:46 31 document entitled ICSC Ethics Committee. You're familiar
 12:57:52 32 with that document, Deputy Commissioner?---Yes. Not
 12:57:57 33 familiar but yes, that is the previous Terms of Reference
 12:58:03 34 as I understand it, yes.
 12:58:04 35
 12:58:04 36 That's what I wanted to understand. I tender those, they
 12:58:07 37 can now come off the screen. Just as we go up through -
 12:58:12 38 we've talked about the handler, we've talked about the
 12:58:16 39 controller. The Local Source Registrar you mentioned a
 12:58:20 40 moment ago is usually a Divisional Superintendent, is that
 12:58:23 41 right?---That's correct.
 12:58:23 42
 12:58:23 43 The officer-in-charge is the police officer with
 12:58:26 44 responsibility for a police serviced area or a particular
 12:58:31 45 unit?---It will be a particular work group or unit, so
 12:58:40 46 usually at Senior Sergeant.
 12:58:41 47

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12:58:42 1 COMMISSIONER: I'm not sure if that came through, did it,
 12:58:46 2 155A and B, which is the last document which is the ICSC
 12:58:53 3 Ethics Committee Terms of Reference, February 2015. That
 12:58:56 4 will be 155A and B.
 12:59:03 5
 12:59:04 6 MR WOODS: 1535A and B.
 12:59:07 7
 12:59:08 8 COMMISSIONER: 1535.
 9
 12:57:27 10 #EXHIBIT RC1535A - (Confidential) ICSC Ethics Committee
 12:57:29 11 Terms of Reference.
 12:57:29 12
 12:57:30 13 #EXHIBIT RC15345 - (Redacted version.)
 12:57:33 14
 12:59:11 15
 12:59:11 16 MR WOODS: If you said that, Commissioner, we didn't hear
 12:59:13 17 it.
 18
 12:59:14 19 COMMISSIONER: There's a problem, sometimes the sound with
 12:59:16 20 you on it is falling out and my assistant is able to then,
 12:59:20 21 with a delay, get some sound up on a computer, but it's
 12:59:25 22 been happening quite a bit in the last session. So I don't
 12:59:29 23 know what the issue is, but I'm managing but sometimes it
 12:59:35 24 does fall out. I'm just making you aware of that. I'll
 12:59:38 25 try and tell you when that happens. Usually it's remedied
 12:59:43 26 fairly quickly and I do have the live transcript, so I'm
 12:59:44 27 managing but it's not optimal.
 12:59:45 28
 12:59:46 29 MR WOODS: No, not ideal. Commissioner, as it's almost 1
 12:59:49 30 o'clock we might have a look at that issue and I might also
 12:59:53 31 try and go through some notes and see what we can avoid
 12:59:59 32 troubling the Deputy Commissioner with to speed things up a
 13:00:03 33 bit. I do know that counsel for the Office of Public
 13:00:09 34 Prosecutions has some questions concerning disclosure so I
 13:00:13 35 want to make sure there's time for that and for any
 13:00:16 36 re-examination that Mr Holt has.
 13:00:18 37
 13:00:18 38 COMMISSIONER: Yes, all right. I think I was told,
 13:00:21 39 Mr Doyle, you would likely to be half an hour or so.
 13:00:26 40
 13:00:27 41 MR DOYLE: Yes, possibly a little longer than that,
 13:00:31 42 Commissioner.
 13:00:31 43
 13:00:32 44 COMMISSIONER: Would you say an hour?
 13:00:34 45
 13:00:34 46 MR DOYLE: I think that's a more realistic estimate.
 13:00:37 47

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13:00:38 1 COMMISSIONER: All right, we might have to, whether we
13:00:40 2 actually are going to finish today or not I suppose, that
13:00:44 3 might have to be looked at. We might have a look at that
13:00:46 4 over lunchtime.
13:00:47 5
13:00:48 6 MR WOODS: We're pretty confident here, Commissioner. I
13:00:51 7 have a lot of things that I would in a perfect world want
13:00:54 8 to take the Deputy Commissioner through but there's some
13:00:58 9 things that we can probably go through a bit quicker
13:01:01 10 otherwise.
13:01:02 11
13:01:02 12 COMMISSIONER: All right then. We can always sit a little
13:01:06 13 later if needs be to finish. Mr Holt, you won't be long in
13:01:10 14 re-examination I take it?
13:01:11 15
13:01:12 16 MR HOLT: No, Commissioner, almost no time at all with
13:01:16 17 anything, but I would expect no more than five or ten
13:01:19 18 minutes. Nothing that would affect timing.
13:01:19 19
13:01:19 20 COMMISSIONER: All right, we will adjourn now. Should we
13:01:25 21 have a slightly shorter lunch, would that help?
13:01:25 22
13:01:25 23 MR WOODS: I'd have thought half an hour might be sensible.
13:01:27 24
13:01:28 25 COMMISSIONER: Yes, all right. Why don't we resume at
13:01:31 26 1.30, okay.
13:01:32 27
13:01:33 28 COUNSEL: Thanks Commissioner.
13:01:35 29
13:01:36 30 COMMISSIONER: We'll adjourn.
31
13:01:38 32 <(THE WITNESS WITHDREW)
13:01:39 33
13:01:39 34 LUNCHEON ADJOURNMENT

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1 UPON RESUMING AT 1.33 PM:

2

13:33:45 3 COMMISSIONER: Mr Woods.

13:33:46 4

13:33:46 5 MR WOODS: Thank you, Commissioner. Just before we go back
13:33:53 6 to the evidence there is a diagram that I tendered earlier,
13:33:57 7 the first of four pages. I simply want to tender that as a
13:34:00 8 bundle and make sure that it's clear that that is tendered
13:34:02 9 as a bundle. I think I said I was only tendering the first
13:34:06 10 page. It has four pages. I'm going to refer to a number
13:34:09 11 of them. That's an exhibit ending in 0003. That's the
13:34:13 12 number that was tendered earlier.

13

13:34:15 14 COMMISSIONER: Part of 1533A and B.

13:34:18 15

13:34:18 16 MR WOODS: To be clear, it's something produced by the
13:34:22 17 Commission, not by Victoria Police's illustration.

13:34:27 18

13:34:28 19 <WENDY STEENDAM, recalled:

13:34:33 20

13:34:33 21 MR WOODS: We were talking just before the break, Deputy
13:34:35 22 Commissioner, about some issues to do with the Local Source
13:34:38 23 Registrar and the officer-in-charge. They are fundamental,
13:34:45 24 I take it, parts of the process that we were going through
13:34:48 25 before about high risk sources, they're a step in the
13:34:55 26 process that can't simple be stepped over and they have a
13:35:00 27 fundamental role to play; is that right?---They do, yes.

28

13:35:05 29 What we understand is that there might be some reluctance
13:35:09 30 on the part of people who play that role to undertake the
13:35:15 31 role of reviewing registration applications with sufficient
13:35:20 32 rigour because it's an onerous process and they treat it
13:35:26 33 really as more of a tick and flick exercise. Is there
13:35:30 34 something in the processes to ensure that that doesn't
13:35:34 35 happen with people in those positions?---Certainly through
13:35:40 36 the promulgation of the new policy every Superintendent
13:35:46 37 that performs the Local Source Registrar role was and
13:35:53 38 participated in a familiarisation with the policy and
13:35:58 39 opportunity to raise any issues. There certainly weren't
13:36:02 40 any issues that I'm aware of formally raised around the
13:36:06 41 policy requirements and their obligations. I understand
13:36:09 42 obviously to deal with risk assessment and the management
13:36:11 43 of sources it necessarily requires a significant, I
13:36:17 44 suppose, contribution from those Superintendents. My
13:36:21 45 understanding of those that participated in the policy
13:36:27 46 discussion and in the training for their roles in this new
13:36:29 47 policy, they were committed and appropriate. That's not to

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13:36:34 1 say, because I raise this in my statement, that a dedicated
 13:36:38 2 capability with slightly different governance arrangements
 13:36:43 3 obviously where it's more - and part of their role in
 13:36:47 4 amongst, you know, outside of other responsibilities,
 13:36:50 5 that's obviously a more desired requirement than those that
 13:36:55 6 have multiple accountabilities, but at the level of really
 13:37:00 7 Inspector, Superintendent, Commander, Assistant
 13:37:06 8 Commissioner and Deputy Commissioner there is an
 13:37:08 9 expectation that you manage many and multiple issues on
 13:37:11 10 behalf of the organisation because it's the level of
 13:37:13 11 accountability that you actually have organisationally.

12
 13:37:17 13 And the Local Source Registrar, part of their role is to
 13:37:25 14 intrusively supervise or is that not part of that
 13:37:28 15 role?---No, intrusive supervision really starts, well it
 13:37:32 16 starts at every layer of the process, including with the
 13:37:35 17 Assistant Commissioner of Intel and Covert Support Command,
 13:37:36 18 I have an expectation that he has intrusive supervision
 13:37:40 19 over the areas that sit within his area of responsibility,
 13:37:43 20 as does the, you know, Local Source Registrar will have
 13:37:46 21 that expectation of his OIC, the OIC of the controller, and
 13:37:51 22 conversely that is quite explicit in the policy that that
 13:37:55 23 is a requirement.

24
 13:37:57 25 For those who are unfamiliar with the term, what does the
 13:38:01 26 term "intrusive supervision" actually mean when it comes
 13:38:07 27 to, for example, a Local Source Registrar?---It means that
 13:38:10 28 they are active, that it's not just a tick box, that they
 13:38:13 29 actually have active conversations, look at the risks that
 13:38:17 30 have been identified and make sure that the mitigations are
 13:38:21 31 appropriate. For high risk there's a requirement on a
 13:38:26 32 monthly basis to review any changes in relation to the
 13:38:29 33 circumstances of the source and the relationship. It's
 13:38:33 34 ensuring that the OIC and the controller are exercising the
 13:38:39 35 supervision requirements that they need to across the
 13:38:41 36 source and how they're managing that in a tactical sense.
 13:38:47 37 It's also to make sure that continuation of that
 13:38:50 38 relationship is appropriate. So it crosses over multiple
 13:38:53 39 and varied parts of their responsibility.

40
 13:38:55 41 And they have training on what is expected of them when it
 13:38:59 42 comes to intrusive supervision, people in this Local Source
 13:39:03 43 Registrar role?---They're Superintendents, there's
 13:39:07 44 intrusive supervision that required not just in human
 13:39:11 45 source management, but there are accountabilities and
 13:39:15 46 requirements they have been trained in. I have
 13:39:17 47 participated just recently in a refresher in relation to

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13:39:19 1 the policy requirements. But intrusive supervision is not
 13:39:22 2 just in human source management, it's actually a practice
 13:39:25 3 that's required in many parts of our operational responses.
 4
 13:39:29 5 One of the things that the handlers' evidence really seemed
 13:39:33 6 to be suggesting was, in fact explicitly at times, was that
 13:39:40 7 what they were doing had the imprimatur of those above
 13:39:46 8 them, and those above them would often say, "What I knew
 13:39:49 9 about the SDU were up to, my superiors knew about that as
 13:39:53 10 well". I suppose in any organisation there's a risk of
 13:39:56 11 this occurring but do you see any reluctance to intrusively
 13:40:04 12 supervise in any meaningful way because of the many layers
 13:40:08 13 that sit above the Local Source Registrar, they can assume
 13:40:12 14 things are being taken care of above their level?---I don't
 13:40:17 15 believe so. My understanding and the conversations that
 13:40:19 16 I've had with any Superintendents, they absolutely
 13:40:22 17 understand their obligations, the risks associated with
 13:40:27 18 human source management and the requirements that they
 13:40:30 19 actually have and the accountabilities that they have, and
 13:40:31 20 I think all of them take it quite seriously.
 21
 13:40:35 22 We might jump around topics a little bit, but I can assure
 13:40:38 23 you it's only to get you out of here in a timely
 13:40:41 24 manner?---Sure.
 25
 13:40:42 26 We were talking earlier about the Ethics Committee and the
 13:40:45 27 legal member of that committee. It's correct that that
 13:40:47 28 legal member didn't in fact become a voting member until
 13:40:50 29 this week when the new policy came into place; is that
 13:40:55 30 right?---I believe so, yes.
 31
 13:40:56 32 And up until then they were there simply in an advisory
 13:41:01 33 role; is that correct?---That's my understanding, yes.
 34
 13:41:04 35 Do you know why the change was made to give them that
 13:41:06 36 voting power?---Not explicitly but I suppose it's to
 13:41:13 37 ensure, and I can hypothesise around it, but my view would
 13:41:17 38 be it's to ensure that they not only are providing advice,
 13:41:22 39 but they're active in the decision-making.
 40
 13:41:25 41 And the Commissioner asked earlier, you may not have an
 13:41:28 42 answer to it yet, but asked earlier about advice that was
 13:41:32 43 taken externally from those assisting the police in
 13:41:35 44 relation to the Royal Commission about the new manual.
 13:41:38 45 Have you had an opportunity to find out what the situation
 13:41:41 46 was there?---Yes, I have, and I'm advised that it was
 13:41:44 47 provided to counsel assisting and also to Mr Holt and there

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13:41:52 1 was advice provided back to us.
2

13:41:54 3 Yes, I see. All right. But you weren't part of that
13:41:58 4 process?---I was part of the process of the policy
13:42:00 5 development, I in fact had to sign off on that policy and I
13:42:04 6 had input into that policy and provided feedback.
7

13:42:07 8 I'm sorry, I'm talking about the liaising with the external
13:42:11 9 advisors rather than - - - ?---No.
10

13:42:21 11 There's a category - the categories that we've been
13:42:26 12 focusing on, these high risk sources, are those in the
13:42:30 13 occupation or with links to the occupations we spoke about,
13:42:34 14 the Kellam occupations as they've been phrased. The ones
13:42:38 15 that sit under those that are, as I understand it, are also
13:42:44 16 identified as high risk are those under the age of 18,
13:42:47 17 those with mental health problems and those that are
13:42:52 18 essentially incredibly risky people to use as sources. Are
13:42:58 19 they all required to sit under the Dedicated Source Unit or
13:43:03 20 is it only those category 1 and people associated with
13:43:07 21 them?---Anyone that is classified as high risk is managed
13:43:10 22 by the dedicated capability. There is an exception in the
13:43:15 23 policy for that requirement to be reconsidered but only
13:43:23 24 under the support of the Central Source Registrar and the
13:43:32 25 Human Ethics Committee, sorry, Human Source Ethics
13:43:36 26 Committee. The type of scenario that might present, you
13:43:41 27 can have an individual that is initially assessed as, say,
13:43:42 28 a low or medium risk human source but circumstances may
13:43:46 29 change their risk profile for a period of time and they
13:43:49 30 might be deemed high risk in the additional risk assessment
13:43:53 31 that is done for that individual in the month that it's
13:43:57 32 redone, and if that was the case and if there had been a
13:44:02 33 long-term relationship, rather than disrupt that
13:44:05 34 relationship, and provided there was, I suppose, confidence
13:44:11 35 that the qualifications, the capability of the handling
13:44:16 36 team was sufficient, there could be an exception to that
13:44:18 37 policy of it being managed centrally by the high risk human
13:44:24 38 source area.
39

13:44:24 40 But otherwise people in these other categories, so we've
13:44:28 41 got those people with Kellam occupations and linked to
13:44:32 42 them, juveniles, those with severe mental illness or
13:44:38 43 serious mental illness and those who face severe danger,
13:44:42 44 they, as a matter of course, and if those triggers aren't
13:44:48 45 made later on, they are handled by a Dedicated Source Unit;
13:44:53 46 is that right?---That's correct. Can I just say just in
13:44:58 47 clarification, it's highly possible many of those wouldn't

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13:45:00 1 be approved as sources.
2

13:45:02 3 Of course?---Hence why they obviously go to the Human
13:45:07 4 Source Ethics Committee.
5

13:45:08 6 In that decision-making the value of the information -
13:45:13 7 well, there's that balancing exercise that happens, I
13:45:16 8 suppose, which is a difficult thing for those decision
13:45:19 9 makers at times?---Yes.
10

13:45:24 11 Is there a risk that given the fact that one of the sources
13:45:31 12 with each of these, in one of these categories that pushes
13:45:35 13 them straight towards a dedicated unit, that those who are
13:45:40 14 filling out a risk assessment might manipulate the risk
13:45:44 15 assessment so that the result is that the person comes, or
13:45:47 16 the potential source comes out as a low to medium risk
13:45:51 17 source when in fact they're a high risk source, is that
13:45:54 18 something that might occur from time to time?---Well I'm
13:45:57 19 not aware of it occurring but that's not to say it's not a
13:46:00 20 risk that could present. This is where the intrusive
13:46:03 21 supervision and the role of the controller and others that
13:46:07 22 are engaging in this process, where their analysis and
13:46:11 23 their input becomes important. There are certain processes
13:46:16 24 that, particularly as it relates to the category for those
13:46:19 25 with a significant health issue, that assist in informing
13:46:25 26 that decision-making and I mean the reality is with those
13:46:29 27 that are under 18 it's quite easy because their age is
13:46:33 28 their age. And the other classes of individuals, generally
13:46:36 29 speaking the information that will put them into that class
13:46:41 30 will be available to us, or it will be part of the risk
13:46:44 31 assessment process. The controller [REDACTED]
13:46:47 32 [REDACTED],
13:46:52 33 so there's an engagement with that individual, so there's
13:46:55 34 an expectation obviously that they undertake their own
13:47:00 35 assessment and the veracity of the information that's been
13:47:02 36 provided to them by the handler.
37

13:47:05 38 So another set of eyes is one of the reasons why that's
13:47:10 39 less likely to occur than what I was suggesting, is that
13:47:13 40 the case?---That's correct, it's one of the reasons, yes.
41

13:47:18 42 What about the sheer number of questions that the handler
13:47:21 43 is required to answer, there being I think it's 58 of
13:47:28 44 them?---Yes.
45

13:47:29 46 Is there a risk that that then becomes for the handler a
13:47:32 47 tick and flick exercise?---I think there's an

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13:47:36 1 acknowledgement, and I think I talk about this in my
13:47:40 2 statement - actually I do, sorry - around one of the
13:47:43 3 initial risk assessment registration form, there's been
13:47:47 4 some refinement to our risk assessment documentation. That
13:47:52 5 first risk assessment is quite lengthy, was and is seen as
13:47:58 6 fit for purpose for a point in time, and there's a review
13:48:02 7 process being undertaken because, to see if there's
13:48:07 8 opportunity to refine that process and make it more
13:48:10 9 specific. As it currently stands it asks questions
13:48:13 10 explicitly and they might be around the same sort of, I
13:48:18 11 suppose, outcome from a risk. It looks at it from multiple
13:48:22 12 lenses and there's ability, we believe, to potentially
13:48:25 13 adjust that risk assessment process and make it more
13:48:29 14 streamlined for this very reason, to assist our handlers in
13:48:32 15 the completion of that form.

16
13:48:34 17 So that's under consideration?---Yes, absolutely.

18
13:48:39 19 Just a couple of questions about training. There was some
13:48:43 20 evidence given, I should say not all accepted by the
13:48:46 21 handler witnesses, but from the senior officers who came
13:48:53 22 into the SDU from 2010 and 2011, so after Gobbo's
13:48:59 23 de-registration, where they observed the courses that were
13:49:04 24 being taught and the way those courses were being awarded
13:49:09 25 and had some significant reservations about those. Now
13:49:14 26 they weren't under your remit at the time so I'm not
13:49:19 27 seeking to foist blame on you, but one of the things that
13:49:23 28 appeared to be the case was that they were writing the
13:49:29 29 courses, presenting the courses and awarding the courses to
13:49:36 30 those within their group. As I say, not all of that is
13:49:42 31 accepted by the handler witnesses but it does become an
13:49:48 32 issue when you have a highly specialised area of any kind
13:49:51 33 that the experts are often from the very place where the
13:49:56 34 trainers are from. Is that something that you've
13:49:59 35 considered in relation to this manual and the training
13:50:03 36 that's required to be provided to the people in the
13:50:06 37 dedicated unit?---So there is an agreed future human source
13:50:17 38 governance and management framework, a commitment at the
13:50:20 39 executive level for a dedicated training capability to
13:50:25 40 exist within Intel and Support Command because at the
13:50:30 41 moment some of that training is provided for those that
13:50:32 42 actually are, also have other roles and I think with any
13:50:34 43 educational program it's really about having the right
13:50:40 44 frameworks in which that training is actually undertaken.
13:50:44 45 So you have the competencies that you train to, the
13:50:48 46 assessment processes that should already be articulated and
13:50:51 47 then obviously the exercise and the subject matter

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13:50:55 1 expertise that needs to be provided to a course. So there
 13:50:59 2 is opportunity to look at this issue and this area from
 13:51:06 3 Victoria Police's perspective. In fact it's an area that
 13:51:09 4 we've identified where there is potential for some further
 13:51:13 5 work. Part of the rationale of sending a number of our
 13:51:18 6 members across to the UK was to also compare and contrast
 13:51:22 7 their training compared to ours and understand if there's
 13:51:26 8 any gaps or issues that we might need to attend to. So
 13:51:31 9 there is work in progress around this issue. Any training
 13:51:34 10 that's done by Victoria Police should be informed by a
 13:51:37 11 training needs analysis and you develop then the training
 13:51:41 12 régime based on that training needs analysis. And we have
 13:51:46 13 an area of expertise within Victoria Police that undertakes
 13:51:50 14 that process, it's out of our People Development Command,
 13:51:53 15 and certainly they are able to act as a consultancy and to
 13:51:57 16 work with specialised areas in development of training
 13:52:01 17 content and material.
 18
 13:52:02 19 So there's some aspirations there and you've given a good
 13:52:06 20 description of how training is developed more broadly
 13:52:10 21 through the course, but I assume that at this stage that
 13:52:12 22 issue does persist at least to some degree, that it's the
 13:52:16 23 people within the DSU who are writing and training - well,
 13:52:22 24 perhaps it's not a problem but that does persist at the
 13:52:25 25 moment?---And I agree, I don't know if it is a problem.
 13:52:30 26 The reality is they're training towards competencies.
 13:52:35 27 Generally speaking anyone that's delivering training has to
 13:52:38 28 have a certificate, minimum Certificate IV qualification to
 13:52:43 29 deliver training internally and I don't know, I haven't
 13:52:46 30 assessed who has or hasn't got those qualifications. But
 13:52:50 31 there's also a subject matter expertise that's required to
 13:52:53 32 be imported into some of the covert training capabilities
 13:52:57 33 and that absolutely sits within those areas. So it can't
 13:53:00 34 be de-coupled from it.
 35
 13:53:03 36 Yes, I understand. There's just the final of those slides
 13:53:09 37 that I referred to a few moments ago is one that sets out
 13:53:16 38 the Commission's understanding from the manual and your
 13:53:19 39 statement about the training that each of the individuals
 13:53:24 40 along the line are required to have. I think there is some
 13:53:28 41 exception taken to the big red X?---Yes.
 42
 13:53:32 43 Next to those. We'll talk about why that is in a moment.
 13:53:35 44 But starting with those down the bottom, it's correct to
 13:53:39 45 say that the requirements for training match up there with
 13:53:45 46 the key on the left-hand side for the ones with the blue
 13:53:49 47 stars; is that right?---In terms of what's required, yes.

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1
13:53:53 2 It's a correct visual depiction of what they need,
13:53:57 3 yes?---Yes. You'll find many that in the handling teams
13:54:02 4 will have in addition to what's actually articulated as
13:54:05 5 minimum requirements.
6
13:54:06 7 Of course. But these are the minimum requirements?---Yes.
8
13:54:11 9 Those above, and you do make this point in your statement
13:54:15 10 somewhere in the 300s, I won't go to it now, but you say
13:54:19 11 that to hold these more senior roles it's not just expected
13:54:25 12 but it would be required that you would have significant
13:54:30 13 experience and a number of those people would probably have
13:54:34 14 training, would likely to have had training in any event,
13:54:37 15 is that the situation?---Many of those people performing in
13:54:40 16 the roles, in fact all of the Human Source Management Unit
13:54:44 17 that performed those roles would have had those levels of
13:54:49 18 training and participated in all of the training minimum
13:54:52 19 requirements that are articulated in the policy. They will
13:54:55 20 have been practitioners in that area. They will also have
13:54:58 21 other qualifications in relation to risk management and
13:55:01 22 specific courses that they've attended where they've
13:55:04 23 developed their capability, which is why I do take
13:55:11 24 exception to the cross saying they don't have formal
13:55:16 25 qualifications. They wouldn't be appointed to those roles
13:55:18 26 without the backgrounds, the skill sets and capability to
13:55:21 27 actually perform the roles.
28
13:55:22 29 I think the situation is that when you review the documents
13:55:25 30 it's not immediately apparent that such training is
13:55:30 31 required to have each of those roles and the point is
13:55:34 32 perhaps that it might be something that is found in the
13:55:39 33 policy rather than it just happens in reality that they
13:55:44 34 have that experience, that the people in those roles should
13:55:47 35 have mandatory training of a particular level. Do you
13:55:51 36 accept that as a criticism?---No, and I appreciate why you
13:55:54 37 would have that view. I would have thought, not
13:55:58 38 necessarily in the policy, more actually in their position
13:56:02 39 descriptions and the requirements that are actually for
13:56:05 40 particular positions, might be the more appropriate place
13:56:08 41 to actually articulate those requirements. But I can
13:56:11 42 assure you and the Commissioner those that perform those
13:56:15 43 roles, participate in any of those advisory committees,
13:56:19 44 have high levels of training across, and will have worked
13:56:22 45 as either practitioners or have had extensive experience
13:56:26 46 and/or other qualifications that make them eminently
13:56:30 47 qualified to perform the roles that they're actually

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13:56:34 1 undertaking within the organisation.
2

13:56:35 3 Yes, I see.
4

13:56:36 5 COMMISSIONER: I don't think anyone's suggesting that, that
13:56:38 6 they're not highly qualified and capable people. But what
13:56:43 7 it looks like, having read your statement, that they don't
13:56:46 8 have the specific training, as in having completed training
13:56:53 9 courses, on human sources. That's really what we're trying
13:56:59 10 to find out?---So the Central Source Registrar and I think
13:57:03 11 it's articulated in my statement, if it's not - I do
13:57:09 12 believe it is - he has quite significant qualifications and
13:57:12 13 has been a practitioner in the area of human source
13:57:16 14 management for a significant period of time and has all the
13:57:20 15 qualifications that are articulated in the blue stars.
16

13:57:30 17 How many blue stars should he or she have against
13:57:35 18 them?---That particular position at the moment has more
13:57:37 19 than three stars, has participated in overseas
13:57:41 20 qualifications and training and a range of other - and the
13:57:45 21 other requirements that are articulated for the roles that
13:57:48 22 are actually mentioned there. So it's more than three
13:57:53 23 stars.
24

13:57:54 25 Right. That makes sense but that's the particular person
13:58:01 26 in that role at the moment. Is it mandatory that that
13:58:09 27 person will have that high level of training on human
13:58:11 28 source management?---I haven't looked at the specific PD
13:58:15 29 and it may not be explicit there, but I know from our
13:58:16 30 practice who we appoint in to those roles. The role of
13:58:20 31 Superintendent is appointed from a Deputy Commissioner
13:58:22 32 panel and process and we explicitly look at skill sets, fit
13:58:29 33 for particular roles and the backgrounds that individuals
13:58:32 34 have before we match them to positions. So certainly the
13:58:36 35 current person undertaking that role has a wealth of
13:58:38 36 experience and training that they have participated in over
13:58:44 37 many, many years. If they were to move for any reason the
13:58:47 38 replacement, that would be one of the considerations but it
13:58:50 39 may not be explicitly stated and mandatory in the position
13:58:55 40 description.
41

13:58:56 42 Of course these people all take leave and RDOs and so
13:59:01 43 forth?---Yes.
44

13:59:01 45 And other people are acting in the role. Are you able to
13:59:05 46 ensure that anyone acting in the role also has those
13:59:09 47 qualifications?---So the requirements for anyone that does

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13:59:15 1 back-fill in the particular roles, that they're capable and
 13:59:18 2 able to do that. That's an assessment that will be
 13:59:20 3 undertaken in the first instance by the Assistant
 13:59:23 4 Commissioner responsible for the area. In the area of
 13:59:26 5 Intel and Covert Support Command there are a number of
 13:59:32 6 Superintendents who have a similar background and similar
 13:59:34 7 qualifications.
 8
 13:59:35 9 So the answer is?---Yes.
 10
 13:59:40 11 Try and do it but it doesn't always happen?---Without going
 13:59:43 12 back to see who's back-filled I can't with confidence say
 13:59:48 13 it hasn't happened, but I know some of the people that have
 13:59:52 14 back-filled those roles and I know they have qualifications
 13:59:55 15 but I couldn't give a 100 per cent guarantee without going
 14:00:01 16 back and checking out who has back-filled over whatever
 14:00:06 17 time horizons required.
 18
 14:00:07 19 As we move up to the next layer, again these would all be
 14:00:10 20 very highly qualified police officers with great
 14:00:15 21 experience, including in governance, but do they
 14:00:18 22 necessarily have the training, specialist training in human
 14:00:25 23 sources that would warrant the blue stars against
 14:00:30 24 them?---So I can say in relation to myself I have some
 14:00:33 25 qualifications and training. For all of those that are
 14:00:37 26 sitting, as is the Assistant Commissioner that chairs the
 14:00:42 27 Human Source Ethics Committee, absolutely and a background
 14:00:47 28 in human source management and performing some of the roles
 14:00:51 29 that are below. Professional standards, if any of them
 14:00:57 30 have worked as a detective or in that stream they will have
 14:01:01 31 been exposed to some of the training qualifications and if
 14:01:04 32 they have a formal role there is an expectation that they
 14:01:07 33 will undertake the new training requirements but I haven't
 14:01:12 34 done a skills audit across each of them to be able to
 14:01:15 35 confirm what specific skills they have. But as part of
 14:01:19 36 becoming a senior executive within Victoria Police or part
 14:01:24 37 of our Command group there's a whole range of different
 14:01:27 38 training courses and requirements that are undertaken
 14:01:30 39 throughout your, I suppose, each progression through
 14:01:37 40 different ranks. Much of that will be around risk
 14:01:40 41 assessment. Much of that will be about ethical leadership
 14:01:44 42 and requirements, human source - sorry, human rights
 14:01:47 43 requirements and a host of other, I suppose, specific skill
 14:01:53 44 sets that are relevant to the roles and responsibilities
 14:01:55 45 they have on that committee.
 14:01:58 46
 14:01:58 47 MR HOLT: I'm sorry, might I just interrupt for a moment?

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14:02:01 1 I apologise. I had understood that the documents were not
 14:02:04 2 going - this document was not going to go out on the public
 14:02:09 3 stream given that some of the content relating to training
 14:02:13 4 levels gives rise to the same public interest immunity
 14:02:17 5 issue that claims have been made on previously. Can I just
 6 confirm that this page is not going out on the public
 14:02:20 7 stream and if it is - it's been discussed in a perfectly
 14:02:23 8 appropriate way but if that could be taken from the public
 14:02:25 9 stream.

14:02:27 10
 14:02:27 11 MR WOODS: Can I respond by saying, Commissioner, it's been
 14:02:30 12 drafted in a way so as not to offend the claims. You'll
 14:02:34 13 see there's [REDACTED]

14:02:38 14
 14:02:38 15

14:02:39 16 MR HOLT: That's just the same thing, it's just a different
 14:02:41 17 way of describing the same issue that has been the subject
 14:02:44 18 of a PII claim.

14:02:48 19
 14:02:49 20

MR WOODS: That there is training [REDACTED]

14:02:51 21
 14:02:51 22

14:02:52 23 MR HOLT: This is a discussion that will now need to be
 14:02:53 24 taken from the live stream.

14:02:55 25
 14:02:56 26

14:02:59 27 MR WOODS: I don't support that submission, Commissioner.
 14:03:01 28 People of Victoria would want to know that there is
 14:03:05 29 training of these officers [REDACTED]

14:03:08 30
 31

we've agreed to that, or the Commissioner has.

14:03:10 32
 14:03:13 33

COMMISSIONER: Yes, that's always been my view, Mr Holt.

14:03:17 34
 14:03:21 35

Any sort of training [REDACTED] and obviously it's
 important to know that the higher up you go [REDACTED]

14:03:25 36
 14:03:30 37

[REDACTED] and we've tried to accommodate you by
 taking out specific references to how [REDACTED] there are
 in support.

14:03:32 38
 14:03:33 39

14:03:35 40
 14:03:38 41

MR HOLT: No, I understand. The document though just does
 the same thing through a different means. That's the
 submission I make, Commissioner. I can't say anything more
 about it, that's the submission I make.

14:03:42 42
 43

14:03:44 44
 14:03:46 45

COMMISSIONER: All right. I'm afraid on that one I'm
 ruling against you. I'm not satisfied that it's secret
 police methodology requiring redaction and the document can
 be displayed.

14:03:50 46
 14:03:59 47

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14:04:00 1
 14:04:01 2 MR WOODS: Deputy Commissioner, I'll obviously be cautious
 14:04:03 3 about [REDACTED] in asking the question I'm going to ask.
 14:04:10 4 Some of the evidence that was given about the SDU and those
 14:04:16 5 who were bought in to supervise the SDU after Ms Gobbo's
 14:04:20 6 de-registration, Mr O'Connor in particular, his evidence
 14:04:25 7 amounted to the fact that the members of the SDU were quite
 14:04:29 8 dismissive of him and they were quite clear, they used the
 14:04:37 9 term that he didn't have the trade craft and they used the
 14:04:41 10 term that he wasn't a subject matter expert and that in
 14:04:44 11 fact they were. When one looks at the table or the diagram
 14:04:49 12 that's in front of you at the moment, you can see that
 14:04:52 13 those who are obliged to intrusively supervise the
 14:04:58 14 controller and the handler have less qualification than the
 14:05:03 15 people that they're obliged to intrusively supervise.
 14:05:08 16 Given the evidence given by Mr O'Connor about his
 14:05:13 17 experience and the documentary record of that that's been
 14:05:19 18 tendered, do you see that as a potential problem, i.e. the
 14:05:22 19 lack of qualification of those above the controller and the
 14:05:24 20 handler?---Firstly, I suppose I just say I take issue with
 14:05:27 21 what's represented around the Human Source Unit and the
 14:05:31 22 Central Source Registrar because I've indicated they have
 14:05:34 23 high levels of experience and training. If you're talking
 14:05:39 24 about the Local Source Registrar, is that - or are you
 14:05:41 25 talking - - -
 26
 14:05:42 27 No, sorry, I think we have dealt with your views or your
 14:05:46 28 evidence on that issue and I do understand what you say
 14:05:47 29 about the job, the requirements to get into one of those
 14:05:53 30 roles and I think we've addressed that?---Yes.
 31
 14:05:57 32 What I'm asking now about is if you look at the blue stars
 14:06:00 33 next to the handler [REDACTED] and the controller [REDACTED] and then the
 14:06:03 34 officer-in-charge who supervises those people [REDACTED] and the
 14:06:07 35 Local Source Registrar [REDACTED] you can see immediately that they
 14:06:12 36 are expected or they are only required [REDACTED]
 14:06:14 37 training than those below them, speaking generally?---And
 14:06:17 38 without talking about the content of the training, the
 14:06:20 39 reality is [REDACTED] training is around, as you say,
 14:06:24 40 trade craft as you work with a specific individual, that's
 14:06:30 41 a human source. In terms of the requirements for someone
 14:06:33 42 that's supervising and actually has governance
 14:06:37 43 accountability, it's a very different [REDACTED] training.
 14:06:41 44 So the type of training you're talking about is not fit for
 14:06:44 45 purpose for those roles. It's the governance, the
 14:06:47 46 intrusive leadership and the, I suppose, risk assessment
 14:06:52 47 knowledge and the accountability in how they manage across

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14:06:56 1 those groups that's the important thing from my perspective
 14:07:00 2 about how you manage the risks that sit with human source
 14:07:05 3 management.
 4
 14:07:06 5 But there doesn't - - -
 14:07:07 6
 14:07:08 7 MR HOLT: Commissioner, I apologise for interrupting. I've
 14:07:11 8 received instructions which require me to ask,
 14:07:13 9 Commissioner, for a very short break which might require me
 14:07:16 10 also to speak briefly with the current witness, Deputy
 14:07:20 11 Commissioner Steendam. Might I have that liberty just for
 14:07:23 12 the few minutes in light of the ruling Your Honour just
 14:07:31 13 made? I apologise for interrupting.
 14
 14:07:32 15 COMMISSIONER: Yes, all right then. Let me know when
 14:07:34 16 you're ready to resume.
 14:07:36 17
 14:07:36 18 MR HOLT: Thank you, Commissioner. Is the live streaming
 14:07:40 19 being stopped at present?
 14:07:48 20
 14:07:48 21 (Short adjournment.)
 22
 14:13:34 23 MR HOLT: Thank you, Commissioner. If I can be heard
 14:13:36 24 briefly. I respectfully renew the application to have that
 14:13:42 25 diagram taken from the public stream. I've been reminded
 14:13:45 26 that the basis of the agreement that's previously been
 14:13:48 27 reached or the position that, Commissioner, you'd taken is
 14:13:52 28 that the way in which training issues will be referenced is
 14:13:58 29 by reference to training [REDACTED],
 14:14:01 30 and this goes significantly beyond that to the actual
 14:14:04 31 precision of matters which the PII claim relates to. It
 14:14:09 32 goes beyond training [REDACTED] which is
 14:14:10 33 the way it's got to be said in public, and so we maintain
 14:14:12 34 the PII claim and I respectfully renew my request that it
 14:14:18 35 be taken from the public stream.
 36
 14:14:21 37 COMMISSIONER: Mr Woods, do you want to be heard on this?
 14:14:23 38
 14:14:23 39 MR WOODS: No, Commissioner, I've said all I intend to say.
 14:14:27 40 The fact is there is nothing that I can see - putting the
 14:14:30 41 actual claim itself to one side which has been decided that
 14:14:34 42 there won't be particular descriptors used, that one might
 14:14:41 43 think was a pretty generous ruling in favour of Victoria
 14:14:44 44 Police. This doesn't offend anything. It's simply saying
 14:14:50 45 that [REDACTED] training. Anyone who knows
 14:14:56 46 anything about any kind of training would know that there
 14:14:59 47 [REDACTED] training.

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14:15:01 1
14:15:02 2 MR HOLT: The agreement has been [REDACTED]
14:15:05 3 training, this goes beyond that and it's a matter we press,
14:15:07 4 Commissioner, and so I respectfully ask that it be taken
14:15:09 5 from the screen to protect our position.
6
7 MR WOODS: It's also a matter that - - -
8
14:15:11 9 COMMISSIONER: It's been streamed and gone. The horse has
14:15:15 10 bolted there. Look, these things are [REDACTED]
14:15:22 11 but I really cannot see with this methodology that there
14:15:27 12 are [REDACTED] and this perhaps goes beyond saying
14:15:30 13 there are [REDACTED] it refers to [REDACTED]
14:15:34 14 [REDACTED] as well as [REDACTED] but it still doesn't
14:15:37 15 [REDACTED] training there are, and it's
14:15:42 16 simply common sense that you have in any form of training
14:15:45 17 [REDACTED] and [REDACTED] and
14:15:50 18 [REDACTED] and so on. The point that we want
14:15:53 19 to make, what we want to give Ms Steendam the opportunity
14:15:58 20 to comment on is whether the fact that those who are
14:16:04 21 supposed to supervise intrusively have at least on one view
14:16:15 22 not as much training handling human sources as those that
14:16:21 23 they are supervising is a difficulty for them to
14:16:28 24 intrusively supervise adequately. That's really where the
14:16:33 25 comment on - - -
14:16:38 26
14:16:39 27 MR HOLT: Thank you, Commissioner. I've made the
14:16:41 28 submission and I'm grateful for that indication.
29
14:16:44 30 COMMISSIONER: Thank you.
14:16:45 31
14:16:45 32 MR WOODS: Just without going to those particular details
14:16:48 33 again, Deputy Commissioner, I want to ask some questions
14:16:50 34 just briefly about the requirement of ongoing training. If
14:16:54 35 I'm - - -
36
14:16:55 37 COMMISSIONER: Just before you do that, could I ask
14:16:59 38 Ms Steendam for a response to that or do you feel you've
14:17:02 39 already responded adequately?---I did feel that I had
14:17:05 40 responded, Commissioner, to it.
41
14:17:08 42 That's fine. As long as you've had the opportunity to
14:17:12 43 comment. I wanted to make sure you had that
14:17:15 44 opportunity?---Thank you.
45
14:17:16 46 Thanks Mr Woods.
14:17:21 47

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14:17:21 1 MR WOODS: The example of a member who goes through police
 14:17:24 2 training and then goes to, whether it's in or out of
 14:17:26 3 Melbourne or a regional station and is running sources from
 14:17:31 4 time to time, they obviously have their initial training at
 14:17:37 5 the Academy, is part of that in relation - I'm not talking
 14:17:42 6 about DSU members, I'm just talking about run of the mill
 14:17:46 7 pedestrian police officers who might run a source now and
 14:17:49 8 then. Do they have training when they're in the Academy on
 14:17:54 9 the trade craft of human source management?--No.

10
 14:17:59 11 Okay?--For general duties, you're talking about a
 14:18:02 12 Constable. If you're talking about detectives there's
 14:18:06 13 specific, obviously depending on when they become a
 14:18:09 14 detective, there will have been training at particular
 14:18:11 15 points in time.

16
 14:18:12 17 Is there a requirement as there is in many professions,
 14:18:16 18 mine for example, of continuing professional development
 14:18:19 19 for people who do or might come in contact with human
 14:18:25 20 sources and might be managing human sources as
 14:18:32 21 handlers?--So anyone who is a handler obviously has to
 14:18:35 22 undertake [REDACTED] training. That's specific in the
 14:18:38 23 policy. They cannot register or participate in that
 14:18:40 24 process without a level of accreditation and training and
 14:18:46 25 obviously others that aspire to be that, there will be
 14:18:52 26 requirements for them to undertake that training before
 14:18:55 27 they I suppose progress into any registration or process.
 14:18:59 28 So there is - it's a very unique and specific obviously
 14:19:03 29 capability. You could invest a lot of money and a lot of
 14:19:08 30 time and effort into training everybody, but the reality is
 14:19:12 31 only a few actually will register human sources and
 14:19:16 32 actually manage human sources. So it's a matter of being I
 14:19:19 33 suppose discerning about where appropriately you should
 14:19:22 34 train. If you don't use that skill set and you're not
 14:19:27 35 actually registering any human sources after that training
 14:19:30 36 it can be a diminishing skill set and capability. There's
 14:19:36 37 a proximity in terms of time and when you might be actually
 14:19:39 38 registering human sources that it is appropriate in terms
 14:19:42 39 of just building knowledge and capability, because it's
 14:19:45 40 fine to train but in terms of practice you actually need to
 14:19:49 41 be exercising that practice to actually build your
 14:19:51 42 capability in any policing and any training environment.

43
 14:19:57 44 In fact that sort of elicits the point a bit because if you
 14:20:03 45 have had some degree of training and have been involved in
 14:20:07 46 the use of human sources, say eight years prior but then
 14:20:11 47 you go into a different role and then you find yourself

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14:20:14 1 eight years later going back into a role that requires the
 14:20:18 2 use of human sources or the management of human sources,
 14:20:22 3 that skill set might be pretty blunt by then, is that
 14:20:25 4 something that's been considered from a training
 14:20:27 5 perspective for Victoria Police?---In the context of
 14:20:31 6 certain roles and responsibilities obviously with the
 14:20:34 7 change to the policy there's new training requirements that
 14:20:39 8 have been promulgated and most are participating in, either
 14:20:44 9 have done or over the next couple of weeks. In terms of
 14:20:49 10 other roles, I might need to take that on notice because
 14:20:54 11 I'm unaware and I can't give you clarity as to whether or
 14:20:59 12 not what the time frames are for any renewal. I'm not in a
 14:21:03 13 position to give you accurate information so I would prefer
 14:21:05 14 to get some advice and come back to you on that if that's
 14:21:08 15 okay.
 16
 14:21:09 17 I understand?---I can do that in a written format if that's
 14:21:14 18 helpful.
 19
 14:21:14 20 Sure. I want to ask a few questions about audit and
 14:21:21 21 monitoring. At paragraph 222 of your statement, this is
 14:21:29 22 p.47, you refer to an audit that was conducted in 2018 and
 14:21:39 23 that's an audit where it examined all of the active human
 14:21:45 24 source records and identified that 61 were noncompliant in
 14:21:48 25 at least one of the audit areas and I should say you go on
 14:21:51 26 to say they weren't necessarily very significant
 14:21:56 27 noncompliances all of them, I think one in particular might
 14:21:59 28 have been, but you've had an opportunity to review that
 14:22:05 29 situation?---I'm aware of it. I haven't looked at
 14:22:10 30 explicitly every single noncompliance record but I'm aware
 14:22:16 31 of the audit.
 32
 14:22:17 33 Sure. The outcome being that 61 per cent were noncompliant
 14:22:27 34 in at least one audit area, was that the outcome?---Yes,
 14:22:32 35 and mostly I'm advised related to administrative or
 14:22:37 36 technical noncompliance requirements. So that could be a
 14:22:39 37 time frame, a missing - there was ability prior to some
 14:22:42 38 changes we've made in our system to not have, say, an
 14:22:46 39 occupation documented. So it could be, yeah,
 14:22:50 40 administrative, predominantly administrative issues that
 14:22:56 41 actually caused that noncompliance.
 42
 14:22:57 43 I understand. In fact albeit that administrative issues
 14:23:02 44 will often not have any significant impact but an
 14:23:07 45 administrative issue like failing to identify the
 14:23:11 46 occupation could have a very significant impact?---Well it
 14:23:14 47 can which is why we've made a system change so that it's

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14:23:17 1 compulsory and mandatory and you can't actually register
 14:23:21 2 without that now being completed.
 3
 14:23:25 4 Yes. And you can go on to say that one that wasn't a
 14:23:30 5 technical noncompliance being when information reports were
 14:23:33 6 released prior to registration and then you go on to
 14:23:37 7 outline the steps taken to suspend the noncompliant files,
 14:23:43 8 that I assume is all of them and bring them into compliance
 14:23:46 9 or to deactivate the sources and that was as a result of
 14:23:51 10 the audit?---Yes, that's correct. Every file that was
 14:23:53 11 noncompliant was suspended until it was actually made
 14:23:58 12 compliant or deactivated.
 13
 14:24:00 14 And given the large percentage that were identified as
 14:24:04 15 noncompliant, albeit in minor ways many of them, did that
 14:24:10 16 bring to your attention or to Victoria Police's attention
 14:24:14 17 any systemic issues in relation to compliance with such
 14:24:19 18 files?---Well as I say it's back some time ago and I've
 14:24:26 19 only refreshed myself for preparation for this statement
 14:24:29 20 and it wasn't my portfolio at the time, but what it would
 14:24:33 21 indicate to me is obviously there were some systems issues
 14:24:36 22 that needed to be attended to and that was actually done
 14:24:39 23 with some changes to the module to ensure that, and these
 14:24:45 24 are technical fixes, certain dates or times are not met
 14:24:50 25 that the system automatically suspended now. It meant that
 14:24:55 26 we needed to develop some compliance tools and queries for
 14:25:00 27 those that actually have responsibility for the oversight
 14:25:03 28 of this to be able to get the information easily rather
 14:25:06 29 than having to do it manually on each particular record and
 14:25:10 30 it also meant that from a systems perspective that we
 14:25:14 31 needed to remind all of the managers of their
 14:25:18 32 accountabilities in that compliance regime and that was
 14:25:22 33 done as part of this process and communicated to by the
 14:25:27 34 Assistant Commissioner Intel and Covert Support Command to
 14:25:30 35 all of the Local Source Registrars. The fact that the
 14:25:37 36 registrations were suspended until they became compliant
 14:25:40 37 was also a way of paying and making people pay attention to
 14:25:45 38 this.
 39
 14:25:46 40 Sure. And there's another method of audit that's
 14:25:51 41 identified at paragraph 215 or p.45 of your statement which
 14:25:55 42 is the Compliance and Risk Management Unit?---Yes.
 43
 14:25:59 44 And their role in six monthly audits of human source
 14:26:03 45 registrations, you're aware of those?---Yes.
 46
 14:26:07 47 Do you know how they differ from the audits that are

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14:26:11 1 conducted by the HSMU, because the HSMU separately has to
 14:26:17 2 audit; is that right?---The HSMU, their whole role is
 14:26:24 3 around governance and compliance with policy and the
 14:26:27 4 practice requirements that we require under the policy
 14:26:31 5 arrangements. But the audit team is independent obviously
 14:26:35 6 of the work group. It is focused predominantly around high
 14:26:42 7 risk source management, or has been to date, and compliance
 14:26:46 8 and making sure that all of the requirements around high
 14:26:50 9 risk human source management are being complied with and
 14:26:53 10 the risks that sit with that.
 11
 14:26:54 12 And the results of those audits, is there a formal trail
 14:27:00 13 for where they're to be delivered to, do they go to the
 14:27:04 14 Ethics Committee, do they go somewhere else, do they go to
 14:27:07 15 the Human Source Advisory Committee so that action can be
 14:27:10 16 taken to address deficiencies?---It depends on the area of
 14:27:13 17 focus obviously, so it can be twofold. It would go to the
 14:27:17 18 Central Source Registrar and also to the Assistant
 14:27:22 19 Commissioner of Intel and Covert Support Command because
 14:27:26 20 there's a dedicated capability that is managed within that
 14:27:33 21 Command and some of the audit work will be relevant to
 14:27:36 22 that. It will also - - -
 23
 14:27:38 24 Just pausing there. You say it will go there, is that
 14:27:41 25 mandated in documents, do you know?---No, it's not but we
 14:27:45 26 conduct audits across multiple parts of our business, not
 14:27:49 27 just human source management, and the escalation point is
 14:27:52 28 up through the line of direct reporting requirements. So
 14:27:55 29 any audits that identify issues, you know, they go to the
 14:27:59 30 work group manager that's accountable, the supervisors and
 14:28:03 31 then obviously if there are significant issues up to the
 14:28:07 32 relevant Assistant Commissioner and Command and often even
 14:28:12 33 the whole leadership team to discuss those issues. I'm
 14:28:15 34 unaware whether those audit results have gone to the Ethics
 14:28:21 35 Committee.
 36
 14:28:23 37 You might have been identifying the role of this committee
 14:28:27 38 but does Victoria Police's Risk and Audit Committee have
 14:28:31 39 anything to do in this particular space with the results of
 14:28:34 40 these sorts of audits?---Not necessarily because of some of
 14:28:38 41 the other sensitivities. The Victoria Police Audit Risk
 14:28:43 42 Committee, and I've been a member of that committee
 14:28:49 43 previously so I'm well aware of the issues that they deal
 14:28:51 44 with, and they have a program of work where they conduct
 14:28:56 45 audit and risk assessments and often it will be at the
 14:29:00 46 strategic level not at the operational tactical level, but
 14:29:05 47 that's not to say that there isn't and sometimes pieces of

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14:29:09 1 work that are commissioned specifically around a risk area
 14:29:13 2 that we at Victoria Police as executive or the committee
 14:29:18 3 think is important to actually undertake some audit
 14:29:21 4 activities around. I don't believe this would have, these
 14:29:26 5 audits would have gone there and I don't know, without
 14:29:29 6 knowing the content explicitly of the audits, whether
 14:29:39 7 that's appropriate for that to occur. Certainly in terms
 14:29:41 8 of risk management each Command has and assesses the risk
 14:29:45 9 within their particular Command and is required at the
 14:29:48 10 organisational level to have risk management strategies
 14:29:52 11 around any risks that they believe they have across their
 14:29:55 12 Command and their responsibilities.
 13
 14:29:58 14 I did threaten to jump around. I just want to ask another
 14:30:03 15 question about the recommendations from Mr Comrie and
 14:30:08 16 Mr Kellam. The recent amendment or the recent version of
 14:30:15 17 the manual that came into force this week, it broadens the
 14:30:23 18 - so it doesn't just have the Kellam occupations but it
 14:30:27 19 also has reference to those who have some association with
 14:30:31 20 people with those occupations. It might be said that any
 14:30:36 21 reading of Comrie and Kellam it was quite clear that
 14:30:44 22 policies and procedures needed to be adapted to address
 14:30:47 23 people in that category as well, the people that might have
 14:30:52 24 had the risk of being associated with those category 1
 14:30:57 25 occupations. Do you accept the fact it was those people
 14:31:01 26 associated with those professions were included in the
 14:31:03 27 current manual, the current version because of some of the
 14:31:06 28 issues falling out of Comrie and Kellam?---I'm not sure of
 14:31:11 29 the genesis for that or if that's explicitly as a result of
 14:31:17 30 that. I think it's because we, or my understanding is it's
 14:31:19 31 because it was believed we wanted to go beyond what was
 14:31:22 32 actually recommended in the Kellam and Comrie Reports and
 14:31:25 33 that was to actually cover another area where there were
 14:31:29 34 potential risks where we felt it was important to lift up
 14:31:34 35 into that higher risk management area and it was an area
 14:31:37 36 that was potentially, I suppose an area that we felt was
 14:31:44 37 important to also put those controls around. I'm not sure
 14:31:47 38 on one read of the two reports that I had the same
 14:31:53 39 understanding as you, that that's what the recommendation
 14:31:55 40 was. I thought it was quite explicit around the occupation
 14:31:58 41 specifically.
 42
 14:31:59 43 All right, I understand. It's simply a reading of those
 14:32:02 44 reports and the fact that it wasn't contained, that
 14:32:08 45 category of people wasn't contained in the first version.
 14:32:11 46 It might be said that this more recent version containing
 14:32:14 47 that category is something directly referable to what

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14:32:17 1 Mr Kellam and Mr Comrie were both saying, but that's all
14:32:22 2 right, I understand your evidence on that point. Just a
14:32:25 3 question about the sterile corridor and obviously the
14:32:29 4 sterile corridor which we've heard a lot about throughout
14:32:33 5 the Commission. It's in place to protect the identity of
14:32:36 6 the source and the integrity of the information they
14:32:40 7 provide, that's a description of what the sterile corridor
14:32:45 8 brings about; is that correct?---Yes.
9
14:32:54 10 You have from the diagram we looked at earlier on the
14:32:58 11 left-hand side, we don't need to bring it up, but we had
14:33:01 12 our normal human sources on the left and we had our high
14:33:05 13 risk human sources on the right. Can I assume or do you
14:33:08 14 accept that it's more challenging to respect that sterile
14:33:13 15 corridor with a normal human source in say a regional area
14:33:18 16 than it might be with a Dedicated Source Unit, the far more
14:33:24 17 robust approach, I shouldn't say far more robust, that
14:33:29 18 formal and structured approach that you have in relation to
14:33:34 19 high risk human sources, that there's a risk that the
14:33:36 20 sterile corridor might fall down in relation to that first
14:33:39 21 category of sources?---I think it's much more challenging
14:33:42 22 in those environments, yes. You'll see our operating
14:33:46 23 model, because of the decentralised operating model we have
14:33:50 24 across the State some dedicated units and some not, it
14:33:54 25 means that we don't have full sterile corridors, we have
14:33:57 26 partial sterile corridors in the way in which we're
14:34:00 27 currently managing human sources, and I talk in my
14:34:03 28 statement and in the future state the models that actually
14:34:08 29 where a sterile corridor is the preferred model and a
14:34:11 30 dedicated capability that, you know, services the whole
14:34:17 31 State would actually allow for that.
32
14:34:23 33 The model that you're talking about which is something
14:34:25 34 that's being considered at this stage, would that mean that
14:34:32 35 anyone outside that dedicated model would be able to run a
14:34:35 36 source, a more pedestrian run of the mill type source, not
14:34:42 37 a high risk human source, but could sources still be run
14:34:45 38 outside that dedicated area under that model?---So that's
14:34:49 39 not the intention. The intention would be that that's how
14:34:52 40 that's managed. That's not to say, and you'll see in the
14:34:55 41 policy there's a requirement or an articulation of a
14:34:59 42 one-off information source and requirements around that.
14:35:05 43 That is quite natural that that might still occur
14:35:08 44 potentially, even in a dedicated capability where an
14:35:14 45 individual walks into a station or in the course of your
14:35:18 46 engagement with an individual they are desirous of
14:35:23 47 providing information in a one-off scenario. That is

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14:35:27 1 possible that that still exists and it's something that in
 14:35:29 2 how you operationalise the dedicated model that we've had
 14:35:33 3 to turn our minds to. I'm not sure that we'd want to
 14:35:36 4 completely exercise out the ability of someone in a rural
 14:35:42 5 regional area accepting a piece of important information in
 14:35:47 6 terms of community safety.
 7
 14:35:49 8 I wouldn't say it's proposed from the way that you've
 14:35:54 9 described it, but the model that's being looked at, the
 14:35:57 10 centralised model?---Yes.
 11
 14:36:00 12 Would that mean that all human sources in Victoria are
 14:36:03 13 managed through that centralised model, or could you still
 14:36:07 14 have human sources run at the grass roots station
 14:36:11 15 level?---The intention is for the models and the work
 14:36:15 16 that's been done, they will be located in the divisions and
 14:36:17 17 the areas where human sources, so they're working and
 14:36:21 18 available as a specialist capability to work with the local
 14:36:24 19 I suppose general duties detectives, whomever, and actually
 14:36:30 20 working actively in that area. They're not all sitting
 14:36:34 21 centrally and away from where I suppose the effort and the
 14:36:37 22 work might actually occur.
 23
 14:36:39 24 And under the centralised system would it be the case or is
 14:36:44 25 it proposed that the handler themselves would come from that
 14:36:50 26 centralised unit, or would you still have people on the
 14:36:54 27 ground who are handlers who aren't part of the centralised
 14:36:57 28 unit?---It does depend on the size and volume of how large
 14:37:01 29 we make those units and the demand for that, but the
 14:37:03 30 intention would be that the handlers are working within
 14:37:06 31 those dedicated areas. As I say, you may still have
 14:37:11 32 one-off information that may be provided at the, I suppose
 14:37:16 33 general duties or at a local station but that's not an
 14:37:21 34 ongoing requirement for the management of human sources.
 14:37:23 35 That's actually how you receive a particular piece of
 14:37:26 36 information.
 37
 14:37:26 38 Yes, I see. I want to ask you some questions about
 14:37:30 39 disclosure which you address towards the end of your
 14:37:34 40 statement. At paragraph 362, so I'm looking at p.85 of
 14:37:42 41 your statement where that heading "disclosure obligations"
 14:37:45 42 is found?---Yes.
 43
 14:37:47 44 You talk about a range of measures that have been and are
 14:37:53 45 being taken to improve disclosure practices, you see
 14:37:57 46 that?---Yes.
 47

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14:37:59 1 And some of the measures are also set out in the disclosure
 14:38:04 2 action plan that you identify; is that right?---That's
 14:38:07 3 correct.
 4
 14:38:08 5 I want to tender that document, Commissioner. That's
 14:38:11 6 disclosure action plan, its number is VPL.0005.0284.0001,
 14:38:25 7 which is 1536.
 8
 14:38:31 9 COMMISSIONER: 1536 or 1535?
 14:38:34 10
 14:38:34 11 MR WOODS: I'm told it's 1536.
 12
 14:38:37 13 COMMISSIONER: Okay, I'll take your word for it.
 14:38:39 14
 14:38:40 15 MR WOODS: By a reliable source.
 16
 14:38:41 17 COMMISSIONER: Yes, all right. A and B, that's right.
 18
 14:40:02 19 #EXHIBIT RC1536A - (Confidential) Disclosure action plan
 14:38:13 20 document VPL.0005.0284.0001.
 21
 14:40:03 22 #EXHIBIT RC1536B - (Redacted version.)
 14:38:46 23
 14:38:47 24 MR WOODS: Thank you. Also, that some of the measures are
 14:38:52 25 set out in response to the Commission's consultation paper,
 14:38:58 26 which is another document that I'll seek to tender, that is
 14:39:03 27 SUB.0144.0001.0001, which will be 1537.
 28
 14:39:17 29 COMMISSIONER: What's the name of this document, Mr Woods?
 14:39:20 30
 14:39:20 31 MR WOODS: That is a good question. I'm just looking for
 14:39:23 32 its formal name as we speak. I'll get that to you. I'm
 14:39:31 33 just getting a note on that at the moment. It is Victoria
 14:39:45 34 Police response to the Commission's consultation paper, our
 14:39:48 35 number for that is submission 144A and there's no claims of
 14:39:53 36 PII in relation to that document.
 37
 14:39:58 38 COMMISSIONER: So it can just be 1537. It hasn't already
 14:40:04 39 been tendered? I thought these documents were already on
 14:40:07 40 the website?
 14:40:08 41
 14:40:08 42 MR WOODS: No, my note is that it hasn't been tendered.
 14:40:16 43
 14:40:16 44 #EXHIBIT RC1537 - Document SUB.0144.0001.0001.
 45
 14:40:20 46 COMMISSIONER: Thank you.
 14:40:20 47

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14:40:21 1 MR WOODS: You talk about, Deputy Commissioner, the changes
 14:40:22 2 are a response to some challenges being experienced within
 14:40:26 3 the human source management framework and at paragraph 363
 14:40:31 4 you point out that there's an opportunity to enhance
 14:40:35 5 knowledge and consistency of approach to disclosure
 14:40:38 6 obligations across Victoria. It's a situation of course
 14:40:44 7 that Victoria Police understands well its disclosure
 14:40:50 8 obligations in relation to people that are accused of
 14:40:58 9 crimes, you'd agree with that?---Yes.
 10
 14:41:01 11 We've had some evidence from a former member some time ago
 14:41:06 12 who used the phrase to the effect "since disclosure became
 14:41:11 13 popular", that's not a view that you would share, that
 14:41:17 14 that's an appropriate phrase, disclosure always been a very
 14:41:21 15 important part of the criminal justice system, you
 14:41:24 16 agree?---Yes, I do.
 17
 14:41:25 18 What were the factors that drove or prompted Victoria
 14:41:30 19 Police to introduce these measures to improve its practices
 14:41:35 20 that you identify in your statement?---There's a range of
 14:41:42 21 probably drivers for this. There's been a number of, well
 14:41:46 22 there's some reform work that's been undertaken from the
 14:41:51 23 Victorian Law Reform Commission in relation to issues to do
 14:41:55 24 with committals that collides and works with the
 14:42:00 25 disclosure, I suppose the issues associated with
 14:42:03 26 disclosure. There is obviously the Commission and issues
 14:42:05 27 that have arisen within the Commission. There is also a
 14:42:09 28 range of other inquiries and public facing inquiries where
 14:42:15 29 issues around disclosure and practice have been
 14:42:19 30 highlighted. It is also an area where it is obvious that
 14:42:25 31 there is some room for improving the knowledge and
 14:42:28 32 understanding of Victoria Police members. But when I talk
 14:42:33 33 about disclosure you can't look at that in the context of
 14:42:39 34 just Victoria Police alone, it's a whole sort of system and
 14:42:41 35 prosecution process. So whilst there are things that I
 14:42:44 36 talk about that we need to do, it operates within the
 14:42:47 37 system of the criminal justice response and you can't deal
 14:42:51 38 with it just in isolation of obviously our capability,
 14:42:55 39 knowledge and requirements because we interface with many
 14:42:58 40 others who have and work with us in the court processes.
 41
 14:43:05 42 That's true, but when you look at each of those players,
 14:43:09 43 the fact that Victoria Police investigates crime and those
 14:43:13 44 other agencies who deal with the fruits of those
 14:43:17 45 investigations afterwards only know what Victoria Police
 14:43:21 46 tell them, Victoria Police's role is incredibly fundamental
 14:43:26 47 in the system, isn't it?---Absolutely.

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1
14:43:33 2 There's been a Disclosure Governance Committee convened or
14:43:39 3 established. Can you explain what its remit is?---So that
14:43:44 4 is proposed, although it has been working in informal sense
14:43:49 5 until obviously it's formalised, but the intention of that
14:43:55 6 is to bring together key areas across particular domains,
14:43:59 7 so headed up by our Legal Services Division, it works with
14:44:03 8 our Crime Command and also our Intel and Covert Support
14:44:09 9 Command and some other key individuals where we have
14:44:12 10 difficult or complex disclosure issues to assist those that
14:44:18 11 are required to work through those complexities in their
14:44:23 12 decision-making. It's an area to get guidance and advice
14:44:28 13 and to also interface with obviously our key partners in
14:44:33 14 our disclosure requirements and to work through some of the
14:44:37 15 complexities that actually arise in some of these
14:44:40 16 disclosure processes, particularly as it relates to complex
14:44:44 17 investigations with volumes of information that may or may
14:44:48 18 not be relevant.
19
14:44:50 20 And the proposed establishment of that committee, has it
14:44:55 21 been discussed with some of those external parties, or have
14:45:00 22 they been consulted, for example the Office of Public
14:45:04 23 Prosecutions?---There have been a number of issues we've
14:45:07 24 worked through this year with the Office of Public
14:45:10 25 Prosecutions. The executive director of Legal Services has
14:45:14 26 a regular I suppose stakeholder engagement conversation.
14:45:18 27 I'm unsure whether or not that this has been specifically
14:45:21 28 canvassed with them.
29
14:45:22 30 And the use of disclosure officers, two disclosure officers
14:45:28 31 as I understand it is part of a pilot program, that's
14:45:32 32 something else that's been used of late; is that
14:45:36 33 correct?---That's correct. There was a commitment in the
14:45:38 34 executive command decision late last year to, and the UK,
14:45:46 35 WA and I think in Canada as well use disclosure officers.
14:45:51 36 There was a desire to find a way to I suppose see the
14:45:56 37 applicability of those disclosure officers within Victoria
14:46:01 38 Police and a commitment to piloting two positions to then
14:46:06 39 understand the utility of those positions, how they might
14:46:11 40 work and then to think about a broader application of
14:46:18 41 disclosure officers. We see it as really important. If
14:46:21 42 you think about the two systems and the sterile corridor
14:46:24 43 that we have with high risk sources and obviously major
14:46:29 44 investigations which predominantly sit in some of my
14:46:36 45 commands, Crime Command, our Counterterrorism Command,
14:46:40 46 supporting the disclosure requirements and having someone
14:46:43 47 who can navigate and work across both those areas is seen

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14:46:47 1 as a key deliverable of the disclosure officers.
2

14:46:51 3 In a similar way to the officers under the UK model, they
14:46:56 4 are sworn officers of Victoria Police as well?---That's
14:46:58 5 correct. They're at the Senior Sergeant level.
6

14:47:05 7 They're lawyers as well?---Yes, they are lawyers and they
14:47:08 8 work and are currently attached to the Legal Services
14:47:09 9 Division, so they're independent of the two Commands and
14:47:13 10 under the auspices of the Legal Services Division Command.
11

14:47:19 12 At paragraph 369 you say, "Where a member becomes aware
14:47:24 13 that human source material may be disclosable they must
14:47:27 14 immediately advise the HSMU. If the matter is potentially
14:47:32 15 disclosable the HSMU will advise the CSR and the matter is
14:47:37 16 referred to the Legal Services Department and the VGSO for
14:47:40 17 advice", is it and/or or is it both of those?---Generally
14:47:45 18 speaking in the matters that we're talking about and if
14:47:49 19 there's a potential public interest immunity claim,
14:47:52 20 generally we'll get specific advice from the Victorian
14:47:57 21 Government Solicitor's as part of that process and for any
14:47:59 22 application that we make. It's generally an or - it is
14:48:08 23 generally an and.
24

14:48:09 25 Mr Doyle will no doubt ask you some questions about this in
14:48:12 26 a moment but what has been the experience of Victoria
14:48:14 27 Police in relation to engagement with the Office of Public
14:48:17 28 Prosecutions in relation to issues of PII claims and
14:48:21 29 disclosure of human source material?---There have been a
14:48:25 30 number of complex matters that we've worked our way through
14:48:30 31 over the course of certainly the last 12 months. Generally
14:48:33 32 the model is that the Commissioner makes the PII claim.
14:48:43 33 There is - so there's two parts to PII. The first is, is
14:48:51 34 the information relevant or might be relevant. Then
14:48:55 35 there's the issue about and then do we have a PII across
14:48:57 36 that material, if it's sensitive, you know, the risk to
14:49:01 37 life and a range of other issues associated with obviously
14:49:05 38 police methodology. So the first part of the is it
14:49:09 39 relevant, Victoria Police will often know the answer to
14:49:12 40 that and be able to understand that. In certain other
14:49:17 41 examples where we're not the prosecuting authority, there
14:49:22 42 may be defences or the way in which a prosecution is going
14:49:25 43 to be run that we're not aware of or that we, and we bring
14:49:28 44 a particular lens to I suppose our assessment of relevance.
14:49:32 45 And in the current environment that's done separate from
14:49:39 46 the DPP, sorry, the Office of Public Prosecutions who have
14:49:44 47 a view that they sit separate from any PII claim that the

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14:49:50 1 Commissioner may have. We're of the view, and I articulate
 14:49:58 2 in my statement and also in some of our responses to the
 14:50:01 3 consultation paper, and this would be in the more complex
 14:50:04 4 matters, some of the similar matters that we've had to work
 14:50:08 5 through this year, there is value in early engagement and
 14:50:13 6 dialogue about relevance and/or PII, in particular complex
 14:50:18 7 matters. We're not suggesting that that should happen in
 14:50:21 8 every case. It's a very, you know, those very difficult,
 14:50:25 9 complex, highly sensitive issues that need to be navigated
 14:50:29 10 and the current process and in practice is that this is
 14:50:36 11 done independent of the Office of Public Prosecutions at
 14:50:39 12 the moment.

13
 14:50:41 14 And is that your preference or is your preference to do it
 14:50:44 15 otherwise?---Our desire would be to have earlier engagement
 14:50:49 16 and work through some of the issues. Without giving an
 14:50:53 17 example, a specific example of some of the complexities
 14:50:57 18 that we've worked through this year, but some issues that
 14:51:02 19 can present are a matter that we have identified
 14:51:10 20 potentially should be disclosed. There's a significant
 14:51:14 21 public interest in terms of the safety associated with that
 14:51:18 22 disclosure for the individual or community and the matter
 14:51:24 23 needs to obviously be determined and brought before the
 14:51:27 24 court. The issue is if the court determines that that
 14:51:33 25 matter is, and the PII application is successful then the
 14:51:41 26 issue that needs to be raised with the prosecution can't
 14:51:45 27 be. If it's unsuccessful and there's a disclosure
 14:51:49 28 requirement, when that information is provided to the
 14:51:52 29 Office of Public Prosecutions they may in fact make a
 14:51:55 30 decision that they may no longer proceed with that
 14:51:57 31 prosecution. And I suppose the challenge in that scenario
 14:52:01 32 is we've made a disclosure that creates safety issues and
 14:52:06 33 then a matter's not proceeding. So the ability to have a
 14:52:12 34 much earlier conversation about that particular issue in a
 14:52:14 35 way that actually protects everybody, protects the PII
 14:52:19 36 interests and assists us to work through those complexities
 14:52:23 37 is where we're desirous of having perhaps some systems
 14:52:26 38 reformed to allow that to occur much earlier than at the
 14:52:31 39 point where we've had to go to the court, decisions are
 14:52:34 40 made and we create a risk that then has to be managed and
 14:52:37 41 the prosecution may not even proceed.

42
 14:52:39 43 Yes, I understand. To finish off about the disclosure
 14:52:46 44 issue, do Victoria Police have a projected timing on which
 14:52:53 45 the disclosure action plan will be implemented?---I don't
 14:53:00 46 at the moment and part of the discussion that obviously
 14:53:07 47 with my direct report around that disclosure plan is

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14:53:11 1 starting to put some timelines into those pieces of work.
 14:53:15 2 Some of them are quite substantive pieces of work, if I
 14:53:21 3 think about the training needs analysis that's well under
 14:53:23 4 way, and it's not so much the undertaking of the training
 14:53:27 5 needs analysis, it's then what does that tell us in terms
 14:53:30 6 of what training needs to be developed, how you implement
 14:53:33 7 that training and the process to do that and those things
 14:53:36 8 need a bit more detailed planning and work. They are and
 14:53:39 9 can be quite major projects some of them and some are much
 14:53:43 10 easier to deliver that will be done in a very short period
 14:53:46 11 of time. But in terms of actual timing, I don't have
 14:53:48 12 details of that at the moment. It's something I'm working
 14:53:51 13 through with those who have accountability for that work.
 14
 14:53:54 15 I see. Separately to the policies that we've been going
 14:54:00 16 through, or the particular policy we've been going through
 14:54:03 17 in quite a lot of detail, I just want to finish by asking
 14:54:06 18 you some questions that really go to some more fundamental
 14:54:11 19 issues because it's the case, as it is with any Police
 14:54:17 20 Force, that no matter what the policies say, a rogue member
 14:54:24 21 could always attempt to run someone off the books, that's a
 14:54:28 22 risk of any police agency, you'd agree with that?---Yes.
 23
 14:54:31 24 So really what's needed is a culture in which that would be
 14:54:37 25 quite unacceptable. You accept that culture is an
 14:54:40 26 important part of this?---I do.
 27
 14:54:43 28 Given that this Commission has been focusing in the last
 14:54:48 29 year on the events concerning Ms Gobbo's registration and
 14:54:54 30 use as a human source, you're aware that Ms Gobbo was
 14:55:00 31 informing on her clients to the SDU during the 2000, 2009
 14:55:06 32 period, is that something you're aware of?---Yeah, I'm
 14:55:08 33 certainly aware of the issues that have been discussed in
 14:55:11 34 the Commission.
 35
 14:55:12 36 So you're aware also that she was in fact tasked against
 14:55:15 37 her clients on occasions?---I believe so.
 38
 14:55:23 39 You would understand now that all of this disclosure is
 14:55:26 40 having to be dealt with, that her role wasn't disclosed to
 14:55:32 41 the people that it should have been at the time?---Yes, I'm
 14:55:37 42 aware. I talk, as I said earlier, in paragraph 407 of the
 14:55:43 43 key issues that from a systems perspective that I'm aware
 14:55:46 44 of the LPP, the conflict of interest, the dissemination and
 14:55:50 45 the disclosure issues.
 46
 14:55:51 47 And you talk around that part of your statement about the

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14:55:55 1 complexity and you uniqueness of the situation, there's
 14:56:02 2 certainly no doubt it was a unique situation?---Yes.
 3
 14:56:05 4 Can I suggest to you it wasn't particularly complex though
 14:56:08 5 because in their very first meeting with Ms Gobbo the SDU
 14:56:12 6 asked her to tell them everything she knew about Tony
 14:56:17 7 Mokbel, a known client of Ms Gobbo's. It really wasn't
 14:56:20 8 particularly complex in that regard at least, you'd accept
 14:56:23 9 that?---I haven't seen all of the evidence that's been
 14:56:29 10 presented so I'm not in a position to actually make comment
 14:56:34 11 around that particular issue.
 12
 14:56:36 13 Well, just accepting - - - ?---I think - - -
 14
 14:56:39 15 - - - just for a moment, accepting that that was the
 14:56:41 16 situation, accepting that on their first meeting with her
 14:56:43 17 that's what they said to her, that's not complex, it's
 14:56:49 18 simply something that just shouldn't have been done?---I
 14:56:51 19 think it's clear and we're on the record that there are
 14:56:54 20 many things in hindsight that should not have occurred and
 14:56:59 21 I articulate those in my statement at paragraph 407. I do
 14:57:04 22 think there were many complexities in the operating
 14:57:08 23 environment at the time around that this occurred and I
 14:57:19 24 detail some of those complexities. It wasn't just what was
 14:57:25 25 happening in the community safety environment, it was also
 14:57:28 26 around the establishment of some of the structures and the
 14:57:30 27 policies and practices and processes that were still very
 14:57:33 28 immature in the organisation, and a whole range of other I
 14:57:38 29 suppose issues that I articulate in my statement. In terms
 14:57:42 30 of an observation about individuals and their behaviours or
 14:57:47 31 not, I'm understanding that counsel assisting is for Terms
 14:57:53 32 of Reference 1 and 2 providing submissions and in terms of
 14:58:01 33 procedural fairness there'll be an opportunity for those
 14:58:04 34 individuals to respond. I don't think it's appropriate for
 14:58:07 35 me to talk about individual behaviours but in terms of the
 14:58:09 36 systems issues, I've clearly outlined what I think they are
 14:58:12 37 in my statement.
 38
 14:58:14 39 And one of the things you identified was, and in fact you
 14:58:18 40 just spoke a moment ago about the community safety aspect
 14:58:21 41 of it, in your statement you talk about many, many issues
 14:58:26 42 but one of them is the information Ms Gobbo was able to
 14:58:28 43 give was of a high value in relation to very serious and
 14:58:33 44 organised crime which represented an ongoing threat to
 14:58:36 45 community safety. I just want to be clear that you're not
 14:58:38 46 suggesting there that the ends justify the means in that
 14:58:45 47 the value of the information was so significant that the

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14:58:47 1 other breaches didn't matter?---No, absolutely not.
2

14:58:54 3 You sit in a very senior position of authority in Victoria
14:59:03 4 Police, in particular the area of Victoria Police that
14:59:05 5 deals with human source management. As you say, you have a
14:59:09 6 degree of understanding of what happened between 2005 and
14:59:13 7 2009 but perhaps not the minutiae of those events. You
14:59:19 8 understand though what the High Court said about the
14:59:23 9 conduct of those involved in that area of Victoria Police
14:59:28 10 at the relevant time, have you had an opportunity to
14:59:32 11 reflect on the High Court's description of Victoria
14:59:36 12 Police's conduct?---I've read the determination, yes.
13

14:59:41 14 And we've asked a number of people, of police members and
14:59:47 15 former members in some senior positions and it is really
14:59:50 16 relevant to that issue of culture and acceptance and the
14:59:56 17 ability to bring about positive change, what their views of
15:00:02 18 each of those findings of the High Court and comments of
15:00:05 19 the High Court were. You understand that the High Court
15:00:09 20 said that Victoria Police were guilty of reprehensible
15:00:13 21 conduct?---Yes.
22

15:00:14 23 And that's something that you would - do you have a view on
15:00:18 24 that?---I think Victoria Police is absolutely on the record
15:00:21 25 for indicating they respect and acknowledge the views of
15:00:30 26 the High Court and in my statement, as I say, at paragraph
15:00:34 27 407 I very clearly articulate that there are things that
15:00:38 28 did happen that should not have happened and everything
15:00:42 29 that we've been doing organisationally since 2012 has been
15:00:46 30 to make changes to our systems, our practice and our
15:00:49 31 processes to ensure that does not happen again. I think
15:00:52 32 the important thing to just indicate is it hasn't happened
15:00:58 33 again since that time period and it couldn't in the current
15:01:02 34 changes that we've made to our policies and practices.
35

15:01:06 36 I understand what you're saying about the systems, practice
15:01:09 37 and process changes but as you'll understand the reason
15:01:12 38 that I started these questions by talking about the fact
15:01:18 39 that despite policies contain various restrictions and
15:01:22 40 requirements, there is the risk that individuals might not
15:01:28 41 follow those in any organisation and what I'm trying to
15:01:31 42 understand is those senior police members, whether they
15:01:37 43 understand, firstly, what's been found against Victoria
15:01:41 44 Police and whether they accept each of those things that
15:01:44 45 have been found against Victoria Police, because it might
15:01:47 46 be said against Victoria Police that until there is an
15:01:50 47 understanding and acceptance of each of the elements of

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15:01:53 1 what the High Court said occurred and what each of those
 15:01:55 2 mean for the legal system, that there can't really ever be
 15:02:00 3 any systemic or real change within Victoria Police because
 15:02:02 4 the policies can say whatever they want to say, it's the
 15:02:06 5 individuals and the acceptance and the understanding that
 15:02:10 6 really matter, do you understand?---Yes, I do. I think
 15:02:12 7 there's two aspects to my response to the issue that you
 15:02:15 8 raise. One is, and I'm formally on the record on behalf of
 15:02:22 9 Victoria Police acknowledging and accepting that there are
 15:02:26 10 things, and I detail quite that explicitly in my statement,
 15:02:29 11 that did happen and should not have happened. Secondly, we
 15:02:32 12 have been undertaking a range of reforms and in fact
 15:02:36 13 initiated the Comrie Review, subsequently the Kellam
 15:02:39 14 Review, and a number of changes to ensure that that cannot
 15:02:43 15 and will not happen again. In the context of the culture
 15:02:46 16 of the organisation, particularly at the leadership, at the
 15:02:51 17 Command level and the Executive Command level, I can
 15:02:54 18 absolutely give confidence to the Commissioner there is a
 15:02:58 19 significant focus on ethical leadership by the Executive
 15:03:02 20 Command and the Command of Victoria Police and there are a
 15:03:06 21 range of ways in which we explicitly focus on the culture
 15:03:11 22 of the organisation. So I think about the terms of the
 15:03:15 23 Commissionership of the current Commissioner, there is, and
 15:03:18 24 when we talk about culture and this is articulated in our
 15:03:22 25 capability plan and in everything that we talk about
 15:03:24 26 organisationally, we are attempting to create a culture of
 15:03:29 27 confident humility, and that is a workforce that is capable
 15:03:33 28 and competent in the skills and professionalism that they
 15:03:38 29 actually have but they do that with humility and empathy
 15:03:44 30 and compassion in the way that they go about their business
 15:03:46 31 and policing. That has been a key focus over the last five
 15:03:50 32 years that I've been a Deputy Commissioner and working
 15:03:52 33 under this current Commissioner. There is a raft of work
 15:03:55 34 that we've been undertaking organisationally in relation to
 15:03:58 35 cultural reform and cultural change and I think the culture
 15:04:02 36 that is talked about in the context of the issues
 15:04:05 37 associated with Ms Gobbo, which as we talked about at the
 15:04:11 38 beginning of our discussions today, is ten to 26 years ago.
 15:04:17 39 The culture and my experience of the culture of Victoria
 15:04:20 40 Police is very different from that time period and we
 15:04:22 41 continue as a leadership group to make sure that we are
 15:04:26 42 actually creating an ethical culture and a culture that's
 15:04:32 43 committed to good service delivery.
 15:04:33 44
 15:04:33 45 Yes, and part of that bringing about of positive change
 15:04:36 46 what I'm suggesting to you is that it's a correct thing to
 15:04:38 47 say that members need to understand and accept that the

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15:04:44 1 behaviour that was described by Victoria Police was a
 15:04:48 2 correct description of their behaviour, that it was
 15:04:50 3 reprehensible, atrocious, the corruption of prosecutions,
 15:04:54 4 et cetera, that is a fundamental ingredient to bring about
 15:04:58 5 positive change in this particular environment that they
 15:05:00 6 understand and accept those findings of the High Court,
 15:05:03 7 would you agree?---And I have on the record on behalf of
 15:05:06 8 Victoria Police indicated that we respect and accept and
 15:05:09 9 acknowledge those findings.

10
 15:05:11 11 Yes, thank you. They're all the questions, Commissioner.
 12

15:05:15 13 COMMISSIONER: Thanks Mr Woods. Just a couple of questions
 15:05:17 14 from me before we hand over to Mr Doyle. You did mention
 15:05:21 15 earlier you've seen a summary of focus group outcomes from
 15:05:25 16 the Commission's work, police officer handlers and other
 15:05:32 17 higher up the chain of command, dealing with human sources.
 15:05:35 18 Is there anything you wanted to say in response to what
 15:05:39 19 arose out of those focus groups?---Just in terms of I have
 15:05:45 20 seen it, a very quick and cursory read and not a fulsome
 15:05:51 21 read, Commissioner, but I'm aware of the issues that have
 15:05:55 22 been raised. I'm probably unsurprised that many of the
 15:05:57 23 things that have been raised in the focus groups, many of
 15:06:01 24 the issues are issues that have been dealt with through
 15:06:04 25 some of the policy and practice changes. Many of them are
 15:06:08 26 I suppose in terms of individual's views about bureaucracy
 15:06:15 27 and burdensome processes is something that I hear not only
 15:06:21 28 just in relation, as I said, to human source management but
 15:06:22 29 also to other processes. So many of the things in there
 15:06:26 30 were unsurprising.

31
 15:06:28 32 All right then. The other thing, Ms Steendam, you said
 15:06:30 33 that you're very confident now that what happened in Nicola
 15:06:39 34 Gobbo's time could not be repeated?---Yes.

35
 15:06:41 36 That you'd worked very hard and your organisation has
 15:06:44 37 worked very hard to put systems in place to prevent that.
 15:06:49 38 Is it not the reality that no matter how good a system is
 15:06:52 39 in place, if individual police officers do the wrong thing
 15:06:58 40 then these things could be repeated?---Well, there's two
 15:07:02 41 parts to that. Of course you rely upon not only the system
 15:07:06 42 controls that you've put in place, and there are many and
 15:07:09 43 varied system controls that we've put in place in terms of
 15:07:13 44 the policy, the knowledge of our members, the ICT, I
 15:07:19 45 suppose safeguards are in place in terms of if anyone was
 15:07:24 46 to try and registry under a category 1 or 4 human source,
 15:07:29 47 well that would trigger so we'd be aware. If someone was

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15:07:33 1 trying to work outside of that system there are controls
15:07:36 2 within information management processes, how you use and
15:07:42 3 the provenance of information that has to be sourced back
15:07:45 4 to an individual. It cannot be sourced back to an
15:07:48 5 anonymous person and you cannot create an information
15:07:51 6 report without the providence of the information being
15:07:55 7 provided. So the systems and the controls are in place I'm
15:08:00 8 confident will prevent that from happening again. In terms
15:08:07 9 of individuals, that is about our ethical leadership and
15:08:09 10 frameworks and there are accountability requirements under
15:08:10 11 our Police Act to hold individuals accountable if they work
15:08:14 12 outside policy and arrangements. We're very clear and
15:08:17 13 explicit about our requirements, about adherence to policy
15:08:21 14 and also we're holding people to account if that's the
15:08:25 15 case. This is also about the management practices that sit
15:08:28 16 at every part of the organisation being aware of what their
15:08:31 17 people are doing, making sure they're doing the right thing
15:08:34 18 and the ethical I suppose leadership of individuals at that
15:08:37 19 supervisory level and all the way through the organisation.
15:08:41 20 I'm confident in the work that we've been doing and
15:08:44 21 undertaking organisationally and the culture that we've
15:08:46 22 been building for the organisation, that the systems are in
15:08:50 23 place if we have an aberrant individual that might try to
15:08:54 24 work outside those systems would be identified and in fact
15:08:59 25 we'd deal with that. We've reported I think just recently
15:09:03 26 an incident that was identified where an individual, not
15:09:10 27 intentionally but didn't and hadn't worked through a
15:09:14 28 registration process and the system picked up that issue
15:09:17 29 and then it was dealt with.

30

15:09:20 31 Yes, all right then. Mr Doyle, are you ready to start?

15:09:32 32

15:09:32 33 MR WOODS: I think he might need to be unmuted.

34

15:09:35 35 COMMISSIONER: Yes. We will have to unmute you.

36

15:09:37 37 <CROSS-EXAMINED BY MR DOYLE:

15:09:37 38

15:09:38 39 That was bound to happen. Can you hear me now,

15:09:40 40 Ms Steendam?---Yes, I can.

15:09:41 41

15:09:43 42 Can I start with a couple of general questions about what
15:09:45 43 it takes for police and indeed prosecutors to consistently
15:09:52 44 comply with the obligation of disclosure. Would you agree
15:09:58 45 that, firstly, it's to understand the nature of the
15:10:03 46 obligation?---Yes.

47

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15:10:09 1 That is the specific kinds of material which need to be
15:10:13 2 disclosed to an accused in a criminal proceeding?---Yes.
3
4 But secondly to have a culture or an organisational mindset
15:19:38 5 which requires compliance with that obligation?---Yes, I
15:19:38 6 think it's both, it's having the systems and processes to
15:19:38 7 support disclosure requirements, the knowledge, and also,
15:19:38 8 as we've discussed, the culture to actually be compliant.
15:19:38 9
15:19:38 10 Are you familiar with any of the reviews that have been
15:19:38 11 conducted in recent years of disclosure in the United
15:19:38 12 Kingdom?---I haven't read them in depth. I'm aware there's
15:19:38 13 been I think about, I think it's around seven reviews
15:19:38 14 around their disclosure requirements since 2017 but, as I
15:19:38 15 say, I haven't read in detail that information.
15:19:38 16
15:19:38 17 Are you aware broadly that both knowledge and culture were
15:19:38 18 key themes that emerged as areas for improvement as a
15:19:38 19 result of those reviews?---I haven't read that explicitly
15:19:38 20 but I'm unsurprised that that would be identified.
15:19:38 21
15:19:38 22 And by culture, there were a couple of aspects identified
15:19:38 23 in the United Kingdom. The first was not treating
15:19:38 24 disclosure as just a tedious administrative task to be
15:19:38 25 performed after charges laid. Are you familiar with that
15:19:38 26 concept?---I'm - I don't know how to respond to that to be
15:19:38 27 quite frank. I accept that you can say some people may
15:19:38 28 have that view.
15:19:38 29
15:19:38 30 And the second aspect of culture identified in the UK was a
15:19:38 31 tendency on behalf of investigators to resist exploring
15:19:38 32 materials which are exculpatory and providing them to the
15:19:38 33 defence when they've spent so much time building a case
15:19:38 34 based on materials which are wholly inculpatory?---As I
15:19:38 35 say, I haven't read in detail the UK review so I can't
15:19:38 36 comment on that, but I understand, and I understand our
15:19:38 37 obligations are to provide both, but I also understand that
15:19:38 38 there - well, the brief of evidence predominantly has the
15:19:38 39 evidence that actually is meeting the points of proof and
15:19:38 40 the requirements in the prosecution case. So conversely it
15:19:38 41 may not contain all of that other information but there is
15:19:38 42 an obligation to disclose that if there is anything that's
15:19:38 43 appropriate and relevant.
15:19:38 44
15:19:38 45 Do you agree that if those cultural tendencies exist within
15:19:38 46 the Police Force, or indeed the prosecution service,
15:19:38 47 they're things which need to be worked against?---Well, the

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15:19:38 1 system would need to ensure that individuals are meeting
15:19:38 2 the obligations and organisationally we have a process that
15:19:38 3 actually supports that.
15:19:38 4
15:19:38 5 Yes. It's not just a matter of having a process, as
15:19:38 6 Mr Woods' questions before just revealed, it's about
15:19:38 7 creating an organisational culture which is a lot more than
15:19:38 8 just a procedure?---Yes.
15:19:38 9
15:19:38 10 Because ultimately you would agree that much of the
15:19:38 11 material that needs to be disclosed to an accused begins in
15:19:38 12 the possession of police?---Yes.
15:19:38 13
15:19:38 14 And at least initially they're the ones who know what's
15:19:38 15 there or can find out?---Yes.
15:19:38 16
15:19:38 17 And other organisations then rely on them to produce
15:19:38 18 it?---Yes.
15:19:38 19
15:19:38 20 Now, before we get to how the system for disclosure might
15:19:38 21 be improved, can I run quickly through the procedure as it
15:19:38 22 is now. As soon as a person is arrested and charged with
15:19:38 23 an indictable offence there's what's known as a filing
15:19:38 24 hearing in the Magistrates' Court?---Yes.
15:19:38 25
15:19:38 26 And the informant is a person who normally would have laid
15:19:38 27 the charge?---Yes.
15:19:38 28
15:19:38 29 And that's a police member who would usually be there at
15:19:38 30 that hearing?---Yes.
15:19:38 31
15:19:38 32 And a magistrate at a filing hearing will set down a date
15:19:38 33 by which the informant must serve a brief of
15:19:38 34 evidence?---Yes.
15:19:38 35
15:19:38 36 Called a hand-up brief?---If you're talking about
15:19:38 37 indictable jurisdiction, yes.
15:19:38 38
15:19:38 39 And the Criminal Procedure Act specifies materials which
15:19:38 40 need to be included in that hand-up brief?---Yes.
15:19:38 41
15:19:38 42 And it includes the evidence on which the prosecution
15:19:38 43 rely?---Yes.
15:19:38 44
15:19:38 45 But there are also some requirements, aren't there, to
15:19:38 46 include materials which could be referred to as materials
15:19:38 47 required by way of disclosure?---Yes.

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15:19:38 1
15:19:38 2 That is, materials on which the prosecution doesn't rely,
15:19:38 3 but nonetheless the defendant needs to be informed
15:19:38 4 about?---Yes. If relevant or possibly relevant, yes.
15:19:38 5
15:19:38 6 Now, the Criminal Procedure Act sets out some of those
15:19:38 7 matters, do you agree with that?---Yes.
15:19:38 8
15:19:38 9 And informants who compile briefs of evidence need to
15:19:38 10 consult the Criminal Procedure Act?---Yes, and/or policy,
15:19:38 11 yes.
15:19:38 12
15:19:38 13 Yes, and there's a difficulty, isn't there, Ms Steendam,
15:19:38 14 because s.110 of the Criminal Procedure Act only sets out
15:19:38 15 some of the things which informants need to disclose, there
15:19:38 16 are actually more than that?---Yes. I don't know quite -
15:19:38 17 I'm not sure if that's a problem but, you're right, there
15:19:38 18 are more documents than is articulated currently and in
15:19:38 19 that Act.
15:19:38 20
15:19:38 21 So if I'm an informant wanting to know what to put in my
15:19:38 22 brief of evidence and I go to s.110 of the Criminal
15:19:38 23 Procedure Act, I'll find reference to some of the things I
15:19:38 24 need to include, but not all of them?---Yes.
15:19:38 25
15:19:38 26 So an example might be, if a witness against the accused is
15:19:38 27 themselves facing pending charges, I won't find in the
15:19:38 28 Criminal Procedure Act a reference to the need to inform
15:19:38 29 the accused of that?---Without looking at that Act
15:19:38 30 explicitly I can't tell you if that is or isn't in there
15:19:38 31 but I'll accept if you indicate it's not.
15:19:38 32
15:19:38 33 Do you agree that the principles of disclosure would
15:19:38 34 require an informant to let the accused know if a witness
15:19:38 35 against them was themselves facing charges?---I believe
15:19:38 36 that criminal charges and convictions are supplied on
15:19:38 37 witnesses and defendants (indistinct). As to pending
15:19:38 38 charges, I might have to take that on notice, it's a while
15:19:38 39 since I've prepared a brief of evidence so I'm unsure if
15:19:38 40 that's how that's being managed at the moment.
15:19:38 41
15:19:38 42 And there are other matters which need to be disclosed to
15:19:38 43 an accused, such as benefits that a witness against them
15:19:38 44 might previously have obtained as a result of their
15:19:38 45 cooperation?---Sorry, what's the question?
15:19:38 46
15:19:38 47 That is, something which might need to be disclosed to an

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15:19:38 1 accused?---It may be relevant, yes.
15:19:38 2
15:19:38 3 And that benefit might be, for example, recorded in a set
15:19:38 4 of sentencing remarks?---Possibly, yes.
15:19:38 5
15:19:38 6 And if the police have access to those sentencing remarks,
15:19:38 7 that is something which needs to be sent to an
15:19:38 8 accused?---Possibly, yes.
15:19:38 9
15:19:38 10 But again, if there's no reference to sentencing remarks of
15:19:38 11 that kind in s.110 of the Criminal Procedure Act, by
15:19:38 12 looking at the Act an informant wouldn't know to include
15:19:38 13 it?---No, but there is the VGS0 handbook and other guidance
15:19:38 14 material and other support for members, not just the Act.
15:19:38 15 In fact rarely will members go to the Act for their
15:19:38 16 guidance.
15:19:38 17
15:19:38 18 But you agree that it would be simpler for members who did
15:19:38 19 consult the Act to find all of the relevant categories of
15:19:38 20 material they need to disclose mentioned in the
15:19:38 21 section?---If you're asking me do I think there needs to be
15:19:38 22 amendments to the Act, without getting some further advice
15:19:38 23 I wouldn't want to offer an explicit position. Normally if
15:19:42 24 we're making and having a view about recommendations to
15:19:45 25 changes to legislation I'd get proper advice around that
15:19:50 26 issue and in fact, you know, consult more broadly and
15:19:55 27 widely across the organisation, so it may well be that
15:19:59 28 there needs to be some changes but I'm not in a position to
15:20:02 29 give a formal view on that at the moment and would need to
15:20:06 30 seek some guidance. I think it's clear to say I'm not sure
15:20:11 31 an Act can cover every circumstance, every document or all
15:20:17 32 material that may or may not be available in a particular
15:20:20 33 circumstance. If I think about the digital environment and
15:20:24 34 the changes, body worn video, CCTV, the volume and the
15:20:29 35 plethora of the types of material that may or may not be
15:20:32 36 available, and the classes of material, it's endless. So,
15:20:39 37 as I say, I would need to seek some advice as to what our
15:20:42 38 formal position would be on your proposition.
15:20:45 39
15:20:45 40 But it would be helpful, given that the Criminal Procedure
15:20:49 41 Act does specify some of the more important categories, to
15:20:53 42 have all of the important categories of material listed
15:20:57 43 there so informants are reminded of the most important ones
15:21:02 44 when they just look at the Act?---As I've indicated, in
15:21:05 45 terms of our process for when we give an opinion about what
15:21:11 46 legislation should be changed or not and any changes to
15:21:15 47 that, there's a formal process that I would undertake and I

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15:21:18 1 would seek explicit advice and so I don't want to offer a
15:21:22 2 formal position in relation to that issue at the moment
15:21:26 3 without appropriate consultation.

15:21:28 4
15:21:28 5 Would you agree that as a general principle related to
15:21:32 6 disclosure, letting the accused know that there is material
15:21:36 7 which is relevant, but which has been withheld, is
15:21:40 8 important?---Yes, and my understanding is that there are
15:21:45 9 and there is a process that is undertaken, particularly
15:21:51 10 through the hand-up brief, but also through some of the
15:21:57 11 committal hearings, mention hearings, where appropriate
15:22:01 12 disclosure discussions do actually occur.

15:22:04 13
15:22:04 14 But do you agree that in the past that category of material
15:22:09 15 has posed a problem where not all members have recognised
15:22:13 16 the need to list items which exist and are relevant but
15:22:18 17 over which there's a claim based on public interest
15:22:21 18 immunity or a statutory prohibition on disclosure?---I
15:22:25 19 can't comment on specific cases but I could see there may
15:22:28 20 be circumstances where that's occurred.

15:22:30 21
15:22:31 22 And it would assist members to avoid that problem to have
15:22:34 23 that obligation made explicit?---As I've indicated, most
15:22:43 24 members won't go to an Act, they go to the reference and
15:22:46 25 the guidance documents and materials that we provide for
15:22:48 26 them, so many of those things can be covered through
15:22:52 27 policy, through the guidelines that are developed, not
15:22:54 28 necessarily having to be in legislation.

15:22:58 29
15:22:59 30 Now, Victoria Police is open to one legislative measure and
15:23:04 31 that's the introduction of a certificate by which an
15:23:09 32 informant would certify compliance with the disclosure
15:23:11 33 obligation?---We've indicated that we are open to
15:23:15 34 consideration of the, something similar to the arrangements
15:23:19 35 that are in place in New South Wales, and my understanding
15:23:22 36 is there's some standing material and then there's a
15:23:26 37 sensitive material that classes of information are actually
15:23:31 38 documented, not necessarily all of the details, but we are
15:23:34 39 open to consideration of that, yes.

15:23:36 40
15:23:37 41 And that second category of materials, the category I've
15:23:40 42 just been talking about?---H'mm.

15:23:43 43
15:23:43 44 That is where there's a claim for public interest immunity
15:23:46 45 or statutory prohibition but nonetheless that material is
15:23:51 46 listed and an accused is made aware of it in that way?---At
15:23:57 47 the high level, yes, is my understanding. And there are -

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15:24:02 1 my understanding of, I think it's the UK model, there's a
15:24:06 2 third schedule that is highly sensitive material that
15:24:10 3 doesn't actually get disclosed to the defence but in fact
15:24:14 4 is still, you know, a process that's worked through to deal
15:24:18 5 with those issues and that might be the type of area where
15:24:21 6 issues associated with human source disclosure might need
15:24:26 7 to be worked through.
15:24:27 8
15:24:28 9 And the certificate certifies, doesn't it, that is the New
15:24:34 10 South Wales version, that an informant's statutory
15:24:37 11 obligations have been complied with?---That's my
15:24:40 12 understanding, yes.
15:24:40 13
15:24:42 14 So in order to sign off on that an informant would need to
15:24:46 15 go back to the statutory list of what's required to be
15:24:49 16 disclosed?---I don't know what the practice is in New South
15:24:58 17 Wales but in fulfilling those requirements the member would
15:25:02 18 need to satisfy themselves, however they do that, that
15:25:06 19 they've met those obligations, yes.
15:25:08 20
15:25:08 21 It would depend, wouldn't it, just on the terms in which
15:25:13 22 the certificate is expressed, that is exactly what they're
15:25:16 23 certifying to?---Yes.
15:25:18 24
15:25:23 25 Now, the obligation of disclosure is one that's owed to a
15:25:27 26 court?---Yes.
15:25:31 27
15:25:32 28 And consistently with that, the certificate itself could
15:25:39 29 certify to the court that the obligation's been discharged,
15:25:44 30 would you agree that that would be consistent?---Yes.
15:25:50 31
15:25:55 32 Now, that's a mechanism, that is the certificate, which
15:26:01 33 would ring home to police informants the importance of the
15:26:09 34 requirements of disclosure, do you agree that it would tend
15:26:13 35 to have that effect?---I think that there are, if I look at
15:26:17 36 our, and you're talking obviously in the indictable
15:26:20 37 environment, but there are, and there are schedules in our
15:26:25 38 current process around disclosure for summary jurisdiction
15:26:32 39 that is part of the ongoing disclosure process where
15:26:39 40 members fill out and comply and attest already to what
15:26:45 41 they've provided in their briefs of evidence and their
15:26:49 42 ongoing disclosure requirements and in the context of, I
15:26:55 43 suppose, summary matters, in the preparation of the brief
15:26:59 44 my understanding is, and hand-up briefs, I haven't, as I
15:27:03 45 say, I haven't done one for a while, I haven't looked at
15:27:06 46 the documents, but there are already commitments made
15:27:09 47 around disclosure as part of that process.

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15:27:14 1
15:27:14 2 Yes, but if a measure like a certificate, if one of the
15:27:17 3 reasons why Victoria Police is open to introducing it
15:27:22 4 because of the solemnity involved in an informant actually
15:27:29 5 signing it off?---I think there's a range of reasons, not
15:27:32 6 just that process, but it helps and assists having
15:27:39 7 different schedules to work through the complexities of
15:27:42 8 what's relevant and what's not, as well as obviously making
15:27:45 9 sure that they've considered the issues that need to be
15:27:50 10 disclosed appropriately.
15:27:52 11
15:27:52 12 Are you aware of external reviews having been conducted in
15:27:55 13 the United Kingdom of disclosure by the prosecuting
15:28:03 14 authorities in that jurisdiction?---I'm aware there's been
15:28:06 15 some reviews, I haven't read the full review documents in
15:28:11 16 detail, but I'm aware there have been a number of reviews.
15:28:16 17
15:28:19 18 Have you heard of a report called the "Making It Fair
15:28:23 19 Report", which was a joint report by the inspectorates of
15:28:24 20 the Crown prosecution service and of the police in the
15:28:27 21 UK?---As I've said, I'm aware there have been a number of
15:28:31 22 reviews, I haven't read those reviews, so I'm not in a
15:28:37 23 position to comment explicitly on the detail of those
15:28:41 24 reviews.
15:28:41 25
15:28:42 26 Are you aware that they involved a review of a large number
15:28:46 27 of de-identified prosecution files with a view to rating
15:28:50 28 the compliance of those files with the obligations of
15:28:54 29 disclosure and looking for systemic problems with
15:28:58 30 compliance, are you aware that they had that format?---No.
15:29:02 31
15:29:05 32 COMMISSIONER: We might have the afternoon adjournment now
15:29:10 33 if that's all right, Mr Doyle. We'll have a 15 minute
15:29:14 34 break now. Thank you.
15:29:18 35
15:29:18 36 (Short adjournment.)
15:43:48 37
15:46:14 38 COMMISSIONER: Yes Mr Doyle.
15:46:15 39
15:46:17 40 MR DOYLE: Ms Steendam, I was asking you about your
15:46:20 41 awareness of reviews in the UK of disclosure based on a
15:46:25 42 review of prosecution files?---Yes.
15:46:29 43
15:46:30 44 And I think your evidence was that you were aware that
15:46:33 45 reviews of that broad kind had taken place without having
15:46:37 46 read them or being familiar with their details, is that
15:46:40 47 right?---That's correct.

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15:46:42 1
15:46:43 2 Are you aware that as a result of the review I'm talking
15:46:46 3 about, that's the "Making It Fair" review from 2017, there
15:46:50 4 was a report to Parliament identifying what the systematic
15:46:56 5 problems with disclosure were?---No, as I said, I haven't
15:46:59 6 fully read those review documents. I'm aware there's been
15:47:03 7 seven reviews but I don't know the full detail of those
15:47:06 8 reviews, so I'm not in a position to engage in explicit
15:47:11 9 discussion about the content.
15:47:12 10
15:47:16 11 Have you read the submissions sent to the Commission by the
15:47:19 12 Director of Public Prosecutions about the question of
15:47:24 13 disclosure and suggested reforms to the system?---I haven't
15:47:30 14 read it fully but I'm aware there was, that there was a
15:47:33 15 consultation response, paper response, yes.
15:47:37 16
15:47:37 17 Are you aware that one of the Director's recommendations is
15:47:41 18 that a form of external oversight from a body independent
15:47:46 19 of both the OPP and police be introduced to review the
15:47:52 20 performance of the disclosure obligation and report to
15:47:55 21 Parliament?---I am aware that that's a recommendation, yes.
15:48:01 22
15:48:01 23 And that that same body could also provide education and
15:48:05 24 training to improve compliance with the disclosure
15:48:08 25 obligation?---Are you asking me to comment if that's part
15:48:16 26 of the recommendation?
15:48:17 27
15:48:18 28 Yes. Are you aware that that was part of the Director's
15:48:20 29 recommendation?---As I say, I haven't looked at the - I'm
15:48:22 30 aware there's a recommendation around that, yes, but not
15:48:26 31 the full detail of that recommendation.
15:48:28 32
15:48:29 33 Do you agree that the prospect of review of their
15:48:33 34 performance from an external body like that would help
15:48:37 35 create among police and prosecutors a culture which
15:48:42 36 required compliance with the obligation of disclosure?---My
15:48:44 37 view is around - well, my understanding, without having
15:48:51 38 read fully all the reviews, is the UK still haven't
15:48:55 39 actually resolved all of their issues and there's still a
15:48:58 40 significant program of work that's underway in the UK
15:49:01 41 around meeting their disclosure obligations, but in the
15:49:04 42 context of reform and change within organisations and
15:49:07 43 compliance, without making it explicitly about disclosure,
15:49:11 44 what I can say is that my experience of where you get the
15:49:14 45 best and the most significant change is where you actually
15:49:17 46 ask an organisation to be accountable and responsible for
15:49:20 47 delivering that change and, with appropriate monitoring and

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15:49:25 1 obviously governance around those requirements, and when an
 15:49:29 2 organisation takes responsibility for the change
 15:49:34 3 requirements, that you actually get better outcomes and
 15:49:37 4 quicker outcomes than if it's done externally to an
 15:49:41 5 organisation. And that's my experience over multiple years
 15:49:44 6 of change and reform programs across Victoria Police, you
 15:49:48 7 know, that that is when we get our best outcomes.

15:49:51 8
 15:49:51 9 Certainly you'd have to have a genuine internal commitment
 15:49:56 10 to improvement, but do you agree that external monitoring
 15:50:02 11 can itself be an effective mechanism for helping an
 15:50:06 12 organisation generate the kind of change that might be
 15:50:10 13 needed?---In certain scenarios, yes, and - as you would be
 15:50:17 14 aware, disclosure is a very complex issue and I'm not -
 15:50:23 15 well, I'm not sure how you could actually, and how you
 15:50:27 16 would monitor individual cases around disclosure that
 15:50:31 17 couldn't, and without - I think it would be a complex area
 15:50:36 18 to have a monitor working in if it's around individual
 15:50:41 19 cases. If it's about organisational general performance
 15:50:45 20 and key indicators around disclosure, that's probably a
 15:50:49 21 different proposition, but on individual case related
 15:50:52 22 matters I think it would be quite challenging.

15:50:54 23
 15:50:54 24 Yes. The review I referred to from 2017 involved the
 15:50:58 25 review of 146 files, so a fairly significant
 15:51:09 26 volume?---Sorry, is there a question?

15:51:10 27
 15:51:11 28 Yes. Is that the more comprehensive overview that you
 15:51:16 29 think might be more effective in identifying systemic
 15:51:21 30 problems?---I haven't read that review so I don't know.
 15:51:26 31 Any audit and identification of systemic issues needs an
 15:51:31 32 effective methodology and an effective sample size so
 15:51:36 33 that's true for any type of audit or review.

15:51:38 34
 15:51:39 35 It can help in conducting this kind of review to
 15:51:43 36 de-identify files, as they did in the UK, so that you're
 15:51:46 37 not necessarily looking into the performance of named
 15:51:49 38 individuals but a broad spectrum of cases, as I say,
 15:51:55 39 identifying systemic problems?---I haven't read the
 15:51:58 40 reviews, nor the methodologies, so I can't comment on the
 15:52:02 41 appropriateness or robustness because I haven't read the
 15:52:05 42 documents.

15:52:05 43
 15:52:06 44 You referred to ongoing problems in the UK identified in
 15:52:10 45 subsequent reviews. Are you aware of the results of the
 15:52:14 46 next review by Her Majesty's Crown Prosecution Service
 15:52:20 47 Inspectorate which was performed or reported on in January

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15:52:27 1 2020?---As I've indicated, I don't have the documents and I
 15:52:30 2 haven't fully read those documents. I've got a general
 15:52:33 3 understanding there have been reviews.
 15:52:35 4
 15:52:36 5 Just a moment ago you referred to your awareness of ongoing
 15:52:40 6 problems with the system of disclosure in the United
 15:52:44 7 Kingdom as revealed by subsequent reports. Was that one
 15:52:46 8 that you had in mind?---No. What I've indicated is I'm
 15:52:51 9 aware there's been, since 2017, approximately seven
 15:52:56 10 reviews, each of them actually still identifying issues
 15:53:00 11 that are being dealt with by the UK.
 15:53:03 12
 15:53:04 13 Are you aware - - -?---Not the detail of those reports, as
 15:53:07 14 I've indicated.
 15:53:08 15
 15:53:09 16 Are you aware that in the specific review I just referred
 15:53:12 17 to by the Inspectorate that it noted some significant
 15:53:17 18 improvements since it's last case file review three years
 15:53:21 19 earlier?---No. I've just indicated I haven't read that
 15:53:24 20 document.
 15:53:25 21
 15:53:25 22 If I can return for a moment to a fundamental topic, that
 15:53:31 23 of relevance. You'd agree that that's the key foundational
 15:53:36 24 concept defining the disclosure obligation?---Yes,
 15:53:39 25 relevance or possible relevance.
 15:53:42 26
 15:53:46 27 Initially when a prosecution for an indictable offence is
 15:53:50 28 launched in Victoria it's the police informant who
 15:53:53 29 generally lays the charge?---Yes.
 15:53:56 30
 15:53:58 31 And in the committal process the disclosure obligation
 15:54:00 32 rests initially primarily on that informant?---Yes.
 15:54:04 33
 15:54:06 34 Having laid the charge, that informant will generally
 15:54:10 35 understand the basis for the Crown case?---They'll be aware
 15:54:15 36 of the evidence that they are presenting in the context of
 15:54:20 37 the brief of evidence, yes.
 15:54:21 38
 15:54:22 39 And as part of the informant's preparation of the hand-up
 15:54:27 40 brief they're required to prepare a summary of facts on
 15:54:30 41 which the prosecution relies in its case against the
 15:54:33 42 accused?---Yes.
 15:54:34 43
 15:54:34 44 And the informant generally writes that document?---That's
 15:54:38 45 correct, they prepare the brief of evidence.
 15:54:40 46
 15:54:41 47 So an informant will generally be expected to have a good

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15:54:47 1 understanding of the way in which a prosecution case is
15:54:52 2 put?---They will have some awareness, yes.
15:54:54 3
15:54:56 4 And the disclosure manual which has recently been adopted
15:55:03 5 by Victoria Police encourages informants to start thinking
15:55:07 6 about their disclosure obligations from the moment a charge
15:55:09 7 is filed?---Yes, and just for point of clarification, that
15:55:15 8 piece of work was actually initiated by Victoria Police,
15:55:19 9 that VGSO document.
15:55:22 10
15:55:27 11 And an informant is prompted by that document to consider
15:55:31 12 from the moment of a charge what an accused's likely
15:55:36 13 defence might be?---Yes.
15:55:42 14
15:55:43 15 If an accused has given a record of interview, that would
15:55:46 16 generally be a good indication of what kind of defence they
15:55:50 17 might pursue?---Not necessarily. Often records of
15:55:53 18 interview will be no comment.
15:55:56 19
15:55:56 20 No, well it's one possible source for a line of
15:56:04 21 defence?---Yes, it's possible.
15:56:05 22
15:56:06 23 An informant will be aware of its contents?---Of course.
15:56:10 24
15:56:11 25 And they're encouraged by the disclosure manual to think
15:56:14 26 about other possible lines of defence?---Yes.
15:56:18 27
15:56:20 28 So being aware broadly of how the Crown case is put, having
15:56:23 29 to draft a summary, being aware of a record of interview
15:56:26 30 and then thinking about lines of defence, an informant is
15:56:30 31 usually well placed to assess for themselves what material
15:56:36 32 is relevant to the prosecution?---In simple cases, that -
15:56:43 33 my response to that would be yes. In much more complex
15:56:47 34 cases it gets much more difficult to actually answer that
15:56:51 35 question easily.
15:56:53 36
15:56:54 37 And in a more difficult case, putting aside questions for a
15:56:58 38 moment of documents over which public interest immunity is
15:57:02 39 claimed, there's generally no difficulty in discussing the
15:57:06 40 relevance of material with the Office of Public
15:57:11 41 Prosecutions?---I'm aware obviously there are some
15:57:15 42 discussions that occur. My experience of some matters that
15:57:18 43 are PII related over the last six to 12 months has, has
15:57:24 44 obviously highlighted where there are some of these
15:57:27 45 complexities and an opportunity where we have identified in
15:57:33 46 my statement and in our consultation paperwork, we think
15:57:38 47 there could be improvement and enhancement to the process.

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15:57:41 1
 15:57:42 2 My question was about cases that don't involve the more
 15:57:46 3 complex public interest immunity issues. I'll get to those
 15:57:49 4 in a moment. But where they're not present, there's no
 15:57:52 5 difficulty in discussing relevance with solicitors in the
 15:57:56 6 OPP?---I don't want to give a blanket absolutely not, but I
 15:58:02 7 think there will be some discussions during the course of
 15:58:05 8 that, but there are a range of issues that have to be
 15:58:08 9 worked through and an example of that would be, say, a cold
 15:58:12 10 case homicide where there might be years of investigation
 15:58:15 11 and work that has been undertaken to subsequent laying of
 15:58:20 12 charges and there can be reams of, I suppose, investigative
 15:58:27 13 files and data and some of that will be relevant and some
 15:58:30 14 of that will not be relevant and working your way through
 15:58:32 15 that would need guidance and support and engagement.
 15:58:36 16
 15:58:36 17 Aside from these more complex public interest immunity
 15:58:39 18 issues, solicitors from the OPP are available to
 15:58:46 19 assist?---They work with us, yes.
 15:58:48 20
 15:58:49 21 And are you aware that after a filing hearing there are
 15:58:53 22 pro forma communications that are sent out from the OPP to
 15:58:58 23 informants which, among other things, make reference to
 15:59:01 24 obligations of disclosure?---No, I'm not aware of the
 15:59:05 25 documentation sent out by the OPP.
 15:59:07 26
 15:59:09 27 If I suggest that there's a standing invitation in that
 15:59:13 28 documentation to discuss relevance with OPP solicitors, not
 15:59:18 29 being aware of it you wouldn't be able to dispute
 15:59:22 30 that?---No, I just indicated I haven't seen that
 15:59:24 31 documentation.
 15:59:25 32
 15:59:25 33 I don't imagine that yourself compiling a hand-up brief is
 15:59:30 34 a task that you've performed for some time, Ms Steendam, is
 15:59:34 35 that right?---Not for a while. I have developed and
 15:59:38 36 prepared hand-up briefs but not recently, yes.
 15:59:40 37
 15:59:41 38 Could I turn then to some practical issues which arise for
 15:59:46 39 disclosure obligations in the context of information
 15:59:50 40 provided by human sources. The current policy still
 15:59:57 41 requires the use of a sterile corridor?---We operate under
 16:00:07 42 sterile corridor and partial sterile corridor in our
 16:00:11 43 current operating model.
 16:00:12 44
 16:00:13 45 The way disclosure works, the officer with responsibility
 16:00:17 46 to disclose information to the defence which might actually
 16:00:22 47 have come from a human source will be on the other side of

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16:00:25 1 the sterile corridor and not privy to that information, is
 16:00:28 2 that right?---That can be the case depending on who's
 16:00:33 3 managing the source and - yeah, it can be the case, yes.
 16:00:38 4
 16:00:38 5 Generally will, is that right?---Not necessarily. As I
 16:00:44 6 indicated in the operating model that we talked about
 16:00:47 7 earlier, in the regional areas there is and can be
 16:00:55 8 investigators that may manage the source and also be privy
 16:01:00 9 to the information.
 16:01:02 10
 16:01:03 11 In the normal case in metropolitan Melbourne the informant
 16:01:09 12 will generally be an investigator insulated from the
 16:01:12 13 information provided by the source?---For more complex and
 16:01:17 14 the higher level briefs, yes.
 16:01:21 15
 16:01:22 16 And where that's the case and the informant is an
 16:01:27 17 investigator who's not privy to information that's come
 16:01:30 18 from a source, but that information is relevant and needs
 16:01:33 19 to be disclosed, how is it envisaged that the informant
 16:01:37 20 will be made aware of it?---So they would be aware of
 16:01:43 21 information because the process of a sterile corridor is
 16:01:48 22 that if information is provided there's information reports
 16:01:51 23 that are generated and [REDACTED]
 16:01:57 24 [REDACTED]
 16:02:00 25 [REDACTED]
 16:02:04 26 [REDACTED]
 16:02:08 27 [REDACTED]
 16:02:08 28 And so what's the process by which it's guaranteed that
 16:02:12 29 that information, if it's relevant, will come to the
 16:02:16 30 attention of an informant?---Well they'll be aware of
 16:02:24 31 whether or not they've used any source information in the
 16:02:27 32 process of their investigation, not the identity of the
 16:02:30 33 source but certainly how they've used that information, and
 16:02:35 34 equally the concept that we're trialling around disclosure
 16:02:41 35 officers is to navigate where there might be information
 16:02:45 36 that they're not privy to that may be relevant to their
 16:02:49 37 case.
 16:02:49 38
 16:02:50 39 Does that involve the disclosure officers - or how would
 16:02:56 40 the disclosure officer do that, that is identify
 16:02:59 41 information that's been recorded as having come from a
 16:03:02 42 human source that informants aren't aware of?---It's work
 16:03:08 43 in progress at the moment and I haven't looked at the
 16:03:12 44 specific operating model, but there's a disclosure officer
 16:03:15 45 that sits on either side of that sterile corridor, so there
 16:03:17 46 will be, they have access to the information system of
 16:03:23 47 human source management and our registrar. If there's a

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16:03:26 1 matter, say, for instance, that the other disclosure
 16:03:29 2 officer in a particular investigation believes might be
 16:03:34 3 relevant, there's a dialogue that happens for them to
 16:03:37 4 search those records and to understand whether there's
 16:03:40 5 anything of relevance that needs to be disclosed.
 16:03:43 6
 16:03:44 7 Now, that officer would need, wouldn't they, to be aware of
 16:03:48 8 the status of a prosecution?---In what context?
 16:03:57 9
 16:03:58 10 In order to have any idea about whether human source
 16:04:01 11 information is relevant to that prosecution?---Yes - well,
 16:04:09 12 it depends. So there might be an individual and they have
 16:04:12 13 a name that they need to check against the system who might
 16:04:15 14 be a witness and whether or not we've had a source
 16:04:18 15 relationship with them at any point. It might be about, it
 16:04:21 16 may well be about the information and some detail around a
 16:04:28 17 particular investigation. It could be a multitude of
 16:04:32 18 things.
 16:04:32 19
 16:04:33 20 So the question really is: how does the disclosure officer
 16:04:38 21 know when and where to look?---Guided by the questions that
 16:04:47 22 are asked on the other side of the sterile corridor.
 16:04:51 23
 16:04:51 24 By the informant?---No, it would be through the other
 16:04:56 25 disclosure officer who works with the informants and with
 16:04:58 26 the work groups.
 16:05:01 27
 16:05:01 28 So is it envisaged that whenever an informant is aware of a
 16:05:08 29 possibility of information stored on the human source
 16:05:14 30 management side, that they engage the disclosure officer on
 16:05:17 31 the investigation side, who in turn speaks to the
 16:05:21 32 disclosure officer on the human source management side to
 16:05:23 33 access the information, is that the procedure?---Yes, and
 16:05:27 34 they're still working through just the whole operating
 16:05:31 35 model, because it's a pilot and a trial but, yes, it would
 16:05:34 36 be discussed between the two, those two disclosure
 16:05:38 37 officers.
 16:05:38 38
 16:05:39 39 Your statement makes reference to active monitoring on the
 16:05:44 40 human source management side. That's at paragraph 375.
 16:05:58 41 The last sentence in that paragraph - - - ?---I'm just
 16:06:03 42 reading it, sorry. Yes.
 16:06:15 43
 16:06:17 44 Can you describe what sort of active monitoring of
 16:06:22 45 investigations and prosecutions is envisaged there?---Well
 16:06:28 46 it's still early days in terms of the full operating model,
 16:06:33 47 but if they're attached to the Crime Command and, which the

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16:06:37 1 current disclosure officer is on the investigative side, it
 16:06:40 2 is actually being aware of specific investigations, charges
 16:06:43 3 that are laid and any issues that might need to be checked
 16:06:48 4 and worked across on the human source side.
 16:06:53 5
 16:06:53 6 So what - is it just the disclosure officers who will have
 16:06:58 7 this role or is anyone else in the Human Source Management
 16:07:02 8 Unit going to have this role?--At the moment it's the two
 16:07:06 9 disclosure officers and they're working through what the
 16:07:08 10 model will look like, how that's actually achieved. In
 16:07:12 11 terms of any broader roll out, it depends how many people
 16:07:16 12 we need as to how many disclosure officers we might need
 16:07:20 13 and/or other functions that individuals might have to play.
 16:07:24 14
 16:07:25 15 So at the moment the pilot's based on a single disclosure
 16:07:29 16 officer on the human source management side monitoring - -
 16:07:35 17 -?---Correct.
 16:07:35 18
 16:07:36 19 - - - prosecutions?---Engaging with the disclosure officer
 16:07:39 20 in the Crime Command, yes.
 16:07:40 21
 16:07:45 22 Thanks, Ms Steendam. Has there been an assessment of the
 16:07:50 23 likely resources required to implement that model fully to
 16:07:56 24 ensure that any disclosable material will be detected and
 16:08:03 25 produced?---There's been some initial work that's been
 16:08:07 26 undertaken to try and understand what might be required,
 16:08:10 27 but the concept of the pilot is to understand the volume of
 16:08:14 28 work, the demand, and then to assist in actually developing
 16:08:18 29 what the size of the workforce might be to service that for
 16:08:22 30 the whole of the State.
 16:08:22 31
 16:08:26 32 Thanks, Ms Steendam. If I can move on to another topic.
 16:08:35 33 Generally a registered human source will need to complete
 16:08:39 34 an acknowledgement of risk form?---An Acknowledgement of
 16:08:47 35 Responsibilities, not risk.
 16:08:48 36
 16:08:45 37 Sorry, Acknowledgement of Responsibilities form. That form
 16:08:50 38 includes - does the form include an acknowledgement that
 16:08:55 39 any assistance that the source gives to police might be
 16:09:00 40 made public if they're given any benefit for it in any
 16:09:04 41 criminal proceedings in which they're involved?---Without
 16:09:08 42 pulling up that document and looking at it explicitly I
 16:09:12 43 can't give clarity to whether it does or doesn't. What I
 16:09:16 44 can say and what I know is that in our training, as it
 16:09:21 45 relates to the current policy, that's quite explicit with
 16:09:24 46 those handlers, that they are not able to give that
 16:09:28 47 assurance that - and there are certain circumstances where

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16:09:34 1 they may not be able to protect the confidentiality of the
16:09:37 2 source and there's explicit, I suppose, dialogue about that
16:09:42 3 in the training requirements, and in fact it's part of the
16:09:47 4 requirements of talking to the source, not giving those
16:09:50 5 guarantees.
16:09:51 6
16:09:54 7 And is a similar conversation had with one-off human
16:10:01 8 sources?---I have to take that on notice. I assume so. I
16:10:11 9 mean generally speaking I assume so but I would need to get
16:10:16 10 specific clarity on that.
16:10:17 11
16:10:18 12 Do you agree that it would be inappropriate to give one-off
16:10:22 13 human sources a guarantee that their identities will always
16:10:26 14 remain confidential?---I think our instruction to our
16:10:30 15 members through the training is that we can never give that
16:10:34 16 guarantee because there may well be disclosure requirements
16:10:36 17 or things that we're unaware of, so giving a guarantee is -
16:10:40 18 it's just - we're unable to do that.
16:10:43 19
16:10:43 20 Is that the same with the category of source described in
16:10:47 21 your statement as a confidential contact?---Confidential
16:10:50 22 contact and one-off sources are the same, same individuals.
16:10:56 23
16:10:57 24 One of the reasons why it would be unwise to give that
16:11:01 25 guarantee is that it may be necessary for a court to make
16:11:07 26 some reference to assistance given by that source if he's
16:11:13 27 ever sentenced for a crime?---There are many reasons why we
16:11:17 28 can't give that guarantee. That would be one of them.
16:11:19 29
16:11:21 30 And there are some specific reasons, aren't there, why a
16:11:25 31 sentencing court might need to do that and why their
16:11:29 32 identity might need to be revealed. For example, if they
16:11:32 33 get a discount and a co-accused wants to argue a point of
16:11:42 34 parity in sentencing the assistance may need to be
16:11:45 35 revealed?---Yes, and having said that there's also the
16:11:48 36 safety and security issues that would need to be dealt with
16:11:51 37 in that process.
16:11:52 38
16:11:52 39 Yes. These are competing interests that courts need to
16:11:55 40 weigh up, do you agree with that?---Yes.
16:11:58 41
16:11:58 42 The requirement of parity of sentencing is one reason why
16:12:03 43 cooperation might need to be referred to, even in broad
16:12:08 44 terms, in sentencing remarks?---Yes.
16:12:14 45
16:12:14 46 And, similarly, and this is purely a matter of policy, it
16:12:19 47 might be beneficial from the point of view of victims of

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16:12:23 1 crime who are otherwise looking at a sentence they might
16:12:27 2 regard as very lenient, to understand that one of the
16:12:31 3 important reasons a lenient sentence has been imposed is
16:12:35 4 due to cooperation with police. From their perspective it
16:12:40 5 would be beneficial to learn that?---I'm sure they would
16:12:47 6 want that information, yes.
16:12:48 7
16:12:49 8 And otherwise, purely from their point of view, it might be
16:12:53 9 very difficult to understand why a sentence is so
16:12:57 10 apparently low?---I can't speak on behalf of victims in
16:13:02 11 terms of what they, how they understand the sentencing
16:13:06 12 regime, but giving clarity and understanding how a sentence
16:13:10 13 is actually applied is clearly an important issue for not
16:13:13 14 only victims of crimes, but for others.
16:13:16 15
16:13:16 16 You would have had a long experience dealing with victims
16:13:19 17 of crime?---I have, yes.
16:13:21 18
16:13:21 19 And sometimes they need an explanation for why a sentence
16:13:26 20 is as it is?---Yes.
16:13:31 21
16:13:35 22 Now if I could move on to the next topic. On the question
16:13:44 23 of public interest immunity - are you familiar, I should
16:13:49 24 ask, with the content of Victoria Police's response to the
16:13:54 25 Commission's consultation paper?---Yes.
16:13:57 26
16:13:58 27 And one of the mechanisms that Victoria Police has
16:14:04 28 supported is the introduction of a statutory basis to bring
16:14:10 29 an application for dispensation from the disclosure
16:14:15 30 requirement to a court?---Can I just ask where you're
16:14:19 31 referring to that in the document so that I can just source
16:14:22 32 that?
16:14:22 33
16:14:22 34 Yes, if you wouldn't mind turning to paragraph 79 to 82 of
16:14:28 35 Victoria Police's response to the consultation paper?---I
16:14:32 36 just need to find that document. What page number was it?
16:14:49 37
16:14:54 38 I should identify this document, Commissioner. It's
16:15:01 39 SUB.0144.0001.0001_0001. This is p.16 and 17, Ms Steendam,
16:15:12 40 paragraphs 79 to 82?---Yes.
16:15:29 41
16:15:30 42 And do you see there paragraph 79 on the top of
16:15:36 43 p.17?---Yes.
16:15:36 44
16:15:36 45 "The Victoria Police considers it may be assisted by the
16:15:40 46 introduction of a statutory mechanism" and then it goes on
16:15:43 47 to discuss an example, that of Western Australia and s.138

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16:15:48 1 of their Criminal Procedure Act?---Yes.
 16:15:50 2
 16:15:51 3 I just want to go to some of the specific reasons why that
 16:15:55 4 might be beneficial. Firstly, you'd be aware that
 16:16:01 5 ordinarily questions of public interest immunity are only
 16:16:04 6 generally litigated after the defence serves a subpoena for
 16:16:14 7 the material?---Yes - not always, but yes.
 16:16:20 8
 16:16:20 9 No, I said generally.
 16:16:24 10
 16:16:25 11 COMMISSIONER: Yes, I think she's agreed with that. Thank
 16:16:27 12 you.
 16:16:28 13
 16:16:29 14 MR DOYLE: This procedure is more efficient in that sense,
 16:16:33 15 would you agree with that, that the application can be
 16:16:36 16 brought on at any time suitable to where the prosecution's
 16:16:42 17 at without the need for a subpoena to issue?---Yes.
 16:16:45 18
 16:16:47 19 The orders which the court can make are flexible and can be
 16:16:51 20 tailored to suit the case?---I assume so, yes.
 16:16:57 21
 16:17:01 22 And often in complex cases involving public interest
 16:17:06 23 immunity it's not just a question, is it, of whether all of
 16:17:09 24 the material or none of the material should be disclosed,
 16:17:12 25 in some instances it's better only to disclose a portion or
 16:17:16 26 even a summary. Are you aware of cases where portions or
 16:17:20 27 even summaries of material has been disclosed to the
 16:17:23 28 defence?---Yes.
 16:17:24 29
 16:17:26 30 Another advantage in this procedure is that it can proceed
 16:17:30 31 ex parte in cases where the material is highly sensitive,
 16:17:35 32 do you agree with that?---Yes.
 16:17:36 33
 16:17:36 34 In very complex cases, Ms Steendam, these issues are often
 16:17:41 35 best dealt with by the trial court, do you agree with
 16:17:45 36 that?---Can be because if it's dealt with initially at the
 16:17:50 37 Magistrates' Court through the committal process it has to
 16:17:53 38 be re-litigated at the trial court.
 16:17:56 39
 16:17:56 40 And it's better, isn't it, in cases involving highly
 16:17:59 41 sensitive material to avoid that kind of double handling
 16:18:03 42 and relitigation, do you agree?---It can be of benefit,
 16:18:07 43 yes.
 16:18:07 44
 16:18:12 45 And for that reason would you agree that a useful model for
 16:18:18 46 this kind of statutory procedure would be to give the
 16:18:23 47 parties the ability to apply to a court, which would be the

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16:18:28 1 trial court, even though the proceedings might at that
 16:18:32 2 stage be in the committal stage in the Magistrates'
 16:18:36 3 Court?---It would be a reasonable proposition but again I'd
 16:18:46 4 need to take some formal advice to see if that's the best
 16:18:51 5 model.
 16:18:51 6
 16:18:52 7 It would at least avoid, wouldn't it, that issue of
 16:18:54 8 relitigation or double handling that we just
 16:18:57 9 covered?---Yes.
 16:18:57 10
 16:19:05 11 COMMISSIONER: I'm just wondering, are you going to be very
 16:19:08 12 much longer, Mr Doyle?
 16:19:09 13
 16:19:09 14 MR DOYLE: Probably another 20 minutes or so, Commissioner.
 16:19:12 15
 16:19:13 16 COMMISSIONER: All right then.
 16:19:15 17
 16:19:16 18 MR DOYLE: If I could go briefly back to the handbook,
 16:19:20 19 Ms Steendam. Your disclosure handbook, have you got that
 16:19:27 20 to hand?---No, I don't.
 16:19:28 21
 16:19:31 22 For queries about the relevance of material it directs
 16:19:36 23 members to liaise with the Office of Public
 16:19:43 24 Prosecutions?---Yes.
 16:19:44 25
 16:19:45 26 And statutory prohibitions on disclosure and public
 16:19:50 27 interest immunity are treated differently and members are
 16:19:52 28 directed to seek advice from the Victorian Government
 16:19:55 29 Solicitor?---Yes.
 16:19:55 30
 16:19:59 31 And the VGSO is capable of giving people advice about
 16:20:06 32 public interest immunity and if need be briefing counsel to
 16:20:09 33 represent police to agitate the claim at court?---That's
 16:20:12 34 the current model, yes. However, as I've indicated, there
 16:20:17 35 are some complexities in that and benefits of earlier
 16:20:20 36 engagement and conversations that would assist.
 16:20:25 37
 16:20:25 38 It's also envisaged, isn't it, in Victoria Police's
 16:20:29 39 submission that public interest immunity cases will still
 16:20:33 40 be agitated by the Chief Commissioner?---Yes.
 16:20:39 41
 16:20:40 42 (Indistinct)?---That's correct, yes.
 16:20:41 43
 16:20:41 44 And historically VGSO has been on the record for the
 16:20:45 45 Commissioner in those kinds of cases?---In many cases, yes.
 16:20:48 46
 16:20:51 47 One particular category of documents that's dealt with in

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16:20:54 1 the disclosure manual are documents which Victoria Police
 16:20:58 2 might have obtained from another agency?---Yes, but if
 16:21:04 3 you're going to ask me specific questions I wouldn't mind
 16:21:07 4 if the page that you're referring to and the exhibit is
 16:21:09 5 actually put up on screen, please.
 16:21:13 6
 16:21:13 7 Yes, I'll do that if I need to, but other agencies that
 16:21:18 8 might send material to the Victoria Police include agencies
 16:21:22 9 with compulsory powers of examination?---Yes.
 16:21:26 10
 16:21:28 11 And are you aware of a line of authority which means that
 16:21:35 12 it could be prohibited for material generated through
 16:21:43 13 compulsory powers of examination to be sent to
 16:21:50 14 prosecutors?---I'm aware in a general sense that those
 16:21:55 15 documents are not normally produced, yes.
 16:21:57 16
 16:21:57 17 Not just not normally produced, but shouldn't be produced.
 16:22:01 18 If an accused has been compulsorily examined, generally
 16:22:06 19 speaking the results of that compulsory examination are not
 16:22:09 20 to be sent to prosecutors, are you aware of that?---Not
 16:22:15 21 explicitly but, yes, I accept that's the proposition and
 16:22:18 22 that's the reality, yes.
 16:22:19 23
 16:22:20 24 And in that particular kind of case that would constitute,
 16:22:25 25 wouldn't it, a good reason not to send certain categories
 16:22:28 26 of material to the OPP?---Possibly, yes.
 16:22:36 27
 16:22:39 28 Ultimately you endorse, don't you, the New South Wales
 16:22:42 29 model of the disclosure certificate?---We've indicated that
 16:22:47 30 we are open to that schedule, tailored obviously to the
 16:22:53 31 Victorian context, yes.
 16:22:54 32
 16:22:55 33 The second kind of schedule in the New South Wales model is
 16:22:59 34 a list of material that might be the subject of a public
 16:23:04 35 interest immunity claim without the details of that
 16:23:06 36 material being included?---Yes.
 16:23:08 37
 16:23:10 38 In the New South Wales model that material is not to be
 16:23:13 39 sent to the DPP unless the DPP requests it?---Yes.
 16:23:16 40
 16:23:18 41 Could I take you briefly to one particular section in your
 16:23:24 42 submission in response to the consultation paper at
 16:23:28 43 paragraph 88. Have you got that in front of you?---Yes.
 16:23:41 44
 16:23:42 45 Do you see there in the third sentence there's a reference
 16:23:45 46 to a possible perception of unfairness to the accused that
 16:23:49 47 may arise if prosecutors have access to materials that are

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16:23:53 1 not available to the accused?---Yes.

16:23:56 2

16:23:58 3 Do you agree that one example of a case where that

16:24:02 4 perception might arise is where a prosecutor's been sent a

16:24:06 5 large amount of material containing intelligence on an

16:24:10 6 accused and that accused subsequently gets in the witness

16:24:12 7 box and is cross-examined by a prosecutor?---Yes.

16:24:17 8

16:24:19 9 And if the accused hasn't seen that material because it's

16:24:24 10 subject to public interest immunity, that process might be

16:24:28 11 seen as unfair?---Yes.

16:24:31 12

16:24:33 13 And that is another circumstance in which it might be

16:24:38 14 unwise to send a prosecutor all of the material which is

16:24:43 15 subject to a public interest immunity claim?---I don't

16:24:47 16 think anything in our submission is suggesting that we send

16:24:51 17 that material explicitly. The prosecutor - we're talking

16:24:59 18 about specific matters where, and arrangements where, early

16:25:03 19 engagement where there are complex, difficult issues could

16:25:07 20 be worked through and supported by earlier engagement.

16:25:11 21

16:25:11 22 The solution proposed at paragraph 88 of the consultation

16:25:15 23 paper refers to the possible use of information barriers

16:25:20 24 between prosecutors who see the material and those actually

16:25:23 25 involved in the prosecution?---Yes. It's one (indistinct)

16:25:29 26 yes.

16:25:29 27

16:25:29 28 That would involve the use of a second set of lawyers who

16:25:34 29 need to be brought up to speed on how the Crown case is put

16:25:39 30 in order to understand relevance?---I assume there would be

16:25:50 31 some dialogue, yes.

16:25:51 32

16:25:51 33 That's something that is another team of lawyers who need

16:25:55 34 to be brought up to speed which can be done with VGS0 on

16:26:01 35 the record briefing counsel, do you agree with that?---VGS0

16:26:07 36 will still be required to assist with any PII claims the

16:26:15 37 Commissioner may progress. This is to understand the first

16:26:17 38 question which is around relevance and the possibility of

16:26:20 39 relevance to, as I indicated and I gave an example of,

16:26:27 40 where a matter that a PII process was applied to an earlier

16:26:35 41 conversation and whether or not a prosecution would proceed

16:26:37 42 would have assisted in some of the decision making for

16:26:41 43 Victoria Police.

16:26:42 44

16:26:42 45 Just going to those sorts of cases. Firstly, much of the

16:26:49 46 discussion about relevance can be had in broad terms, in

16:26:53 47 some cases at least, without a detailed review of the

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16:26:57 1 material subject to PII, do you agree with that?---In some
16:27:00 2 cases, yes, in much more complex cases I would suggest
16:27:04 3 that's not the case.
16:27:06 4
16:27:06 5 In those other cases, if the prosecution is itself not
16:27:10 6 involved in litigating the question of PII, one thing it
16:27:14 7 can do is inform the court deciding that question of how
16:27:19 8 the Crown case is put?---Yes.
16:27:23 9
16:27:25 10 And if the court rules that the claim for public interest
16:27:30 11 immunity is not upheld and therefore the material in
16:27:36 12 principle should be disclosed, there's then an opportunity,
16:27:41 13 isn't there, for the prosecution to review the material
16:27:43 14 prior to actually disclosing it to the defence?---Yes.
16:27:49 15
16:27:49 16 And there are a couple of examples in the last six months
16:27:53 17 where that's the ruling that's been given in a contested
16:27:56 18 case, that public interest immunity has not been
16:28:00 19 upheld?---Yes.
16:28:01 20
16:28:02 21 And in one of those cases, after reviewing the material,
16:28:05 22 the prosecution decided to discontinue the case and the
16:28:10 23 material was not disclosed?---Without knowing what matter
16:28:15 24 you're talking about it's possible that that's occurred,
16:28:18 25 yes.
16:28:19 26
16:28:19 27 I think you referred to a case earlier where it was too
16:28:22 28 late and the material was disclosed and I'm suggesting to
16:28:27 29 you that that didn't happen, there was one case in which
16:28:32 30 the material was not disclosed and another in which it was
16:28:37 31 and the prosecution went ahead?---And without knowing which
16:28:42 32 cases you're talking about and which one I'm talking about,
16:28:46 33 I don't know if we're aligned in the cases we're talking
16:28:50 34 about.
16:28:51 35
16:28:55 36 The point of the first example I gave, Ms Steendam, was
16:29:00 37 that once the court indicates that the claim won't be
16:29:04 38 upheld, the position at that point can be seen differently
16:29:10 39 and it may be that that's a time at which the prosecution
16:29:14 40 has the opportunity to review the material in detail
16:29:18 41 without the defence necessarily seeing it, that's a
16:29:21 42 circumstance which does arise?---It can arise, yes, and
16:29:24 43 there's also the possibility that earlier than that had the
16:29:29 44 material been viewed there might have been a view about
16:29:32 45 progression of the prosecution and an unnecessary
16:29:35 46 requirement to actually put that matter before the courts.
16:29:39 47

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16:29:39 1 And ultimately, having regard to the matters I've taken you
16:29:43 2 to, the merits of the different ways in which these things
16:29:49 3 could be done are to be debated and balanced out as a
16:29:55 4 matter of policy, do you agree with that?---Of course.

16:29:58 5
16:29:58 6 Thanks Ms Steendam, nothing further, Commissioner.

16:30:02 7
16:30:02 8 COMMISSIONER: Thanks Mr Doyle. Mr Holt.

16:30:04 9
10 <RE-EXAMINED BY MR HOLT:

11
16:30:07 12 Yes, I do have just a few brief matters, Commissioner, but
16:30:10 13 I'll try and be quick in light of the hour.

14
16:30:13 15 Deputy Commissioner Steendam, just starting with the
16:30:15 16 last questions that you were asked by my learned friend
16:30:19 17 Mr Doyle, they were all focused on the submission that
16:30:22 18 Victoria Police has made, that it would prefer there to be
16:30:25 19 a greater level of early cooperation between Victoria
16:30:28 20 Police and the OPP on what might be called wicked public
16:30:33 21 interest immunity problems; have I summarised that
16:30:35 22 fairly?---That's correct, yes.

16:30:36 23
16:30:37 24 Again, perhaps to pick up a theme that Mr Woods picked up
16:30:40 25 on, you may or may not be aware that during the course of
16:30:43 26 the Term of Reference 2 hearings one of the significant
16:30:48 27 criticisms, one of the significant things that has been
16:30:51 28 said about Victoria Police, was its failure to engage with
16:30:53 29 and discuss these matters with external agencies and, in
16:30:56 30 particular, with the Office of Public Prosecutions, are you
16:30:59 31 aware of that?---Yes.

16:31:00 32
16:31:01 33 And this idea of a cooperative work between a police
16:31:06 34 service and a public prosecution service about public
16:31:10 35 interest immunity issues early, and the benefits of that,
16:31:13 36 is that something that you're aware of existing in other
16:31:16 37 jurisdictions?---My understanding is that in some of the
16:31:20 38 Commonwealth jurisdictions there is earlier engagement. I
16:31:23 39 think they have different obviously regulatory and
16:31:27 40 statutory arrangements in place that allows for that to
16:31:30 41 occur and because we work sometimes, particularly in my
16:31:34 42 Command, across joint investigations with Commonwealth, I'm
16:31:37 43 well aware of some of their practices.

16:31:39 44
16:31:40 45 So in short does the CDPP not appear to identify the same
16:31:44 46 kinds of problems that the DPP does with an earlier level
16:31:48 47 of cooperation and a set of external prosecution eyes on

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16:31:52 1 these kinds of issues?---I think they're slightly different
 16:31:55 2 arrangements but my understanding is there can be earlier
 16:31:58 3 engagement and discussion in the Commonwealth arena.
 16:32:01 4
 16:32:02 5 You were asked some questions in this vein by Mr Doyle
 16:32:06 6 about the situation in the United Kingdom. Now, firstly,
 16:32:12 7 are you aware that in the United Kingdom the various
 16:32:16 8 reports that you've been referred to place a premium, in
 16:32:19 9 fact, on cooperative work between police and prosecution
 16:32:21 10 services on public interest immunity issues and unused
 16:32:26 11 material at an early stage?---As I've indicated, I haven't
 16:32:30 12 fully read those documents so I'm really not in a position
 16:32:33 13 to affirm that, but my understanding is there's active
 16:32:37 14 engagement and they do have slightly different arrangements
 16:32:40 15 to us in terms of their, I suppose, their operating models
 16:32:44 16 and the machinery of Government in terms of criminal
 16:32:46 17 matters.
 16:32:47 18
 16:32:48 19 Now, our learned friend asked you also some questions about
 16:32:52 20 some of the reviews that have gone on in the United Kingdom
 16:32:56 21 specifically in relation to the proposal for a standing
 16:32:59 22 body to review disclosure issues and, again, it might be
 16:33:03 23 questions I need to ask of Sir John next week, but are you
 16:33:07 24 aware that the reviews that Mr Doyle took you to are in
 16:33:11 25 fact reviews by general Inspectorates of prosecution
 16:33:16 26 service to the police, they don't represent a standing
 16:33:19 27 disclosure body as such?---I'm not aware of the detail and
 16:33:24 28 - yes, so I can't answer that, I'm sorry.
 16:33:26 29
 16:33:26 30 All right, thank you. Now, just turning then to a couple
 16:33:29 31 of points of clarification in relation to human source
 16:33:32 32 management. You were asked by our learned friend Mr Woods
 16:33:35 33 about the, particularly the category 1 people, which are
 16:33:39 34 the ones we're primarily concerned about here, and
 16:33:43 35 effectively the way in which those people get identified or
 16:33:45 36 the possibility that those people exist get identified and
 16:33:50 37 escalated to the Human Source Ethics Committee?---Yes.
 16:33:54 38
 16:33:54 39 Do you recall those questions?---Vaguely, yes.
 16:33:56 40
 16:33:56 41 It was a long time ago?---Yes.
 16:33:58 42
 16:33:58 43 But if you have that - could you have in front of you,
 16:34:02 44 please, the VPM, the new VPM, that is the one that came
 16:34:08 45 into force earlier this week. Can I ask you to go to p.29
 16:34:13 46 and to 8.4 in that document?---Yes.
 16:34:18 47

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16:34:19 1 Can we see there in dot point 1 the requirement for, that
 16:34:25 2 no person who falls into category 1 can be, no steps can be
 16:34:31 3 taken in relation to that person effectively until a
 16:34:34 4 decision is made by the Human Source Ethics
 16:34:38 5 Committee?---That's correct.

16:34:38 6
 16:34:39 7 And what I want to be clear about is that there's no
 16:34:41 8 assessment there that needs to be made of whether that
 16:34:44 9 person is likely or not likely to receive privileged or
 16:34:48 10 confidential information, the mere fact that they are a
 16:34:51 11 lawyer, doctor, parliamentarian, court official, journalist
 16:34:53 12 or priest is sufficient to put them into that
 16:34:56 13 process?---That's correct.

16:34:56 14
 16:34:58 15 And that's in fact clarified at dot point 2, but in
 16:35:02 16 addition then when we go to the connection question, so
 16:35:06 17 that's human sources with a connection to a category 1
 16:35:11 18 occupation, again, just to be clear so that the breadth of
 16:35:15 19 this regulatory regime can be appreciated, could you go to
 16:35:19 20 8.5 on p.30, and it notes there that effectively the same
 16:35:26 21 regime applies for a potential human source who doesn't
 16:35:31 22 fall into a category or an occupation but where they are,
 16:35:33 23 firstly, a person who previously worked in a category 1
 16:35:34 24 occupation, do you see that?---Yes.

16:35:36 25
 16:35:36 26 Now obviously that also doesn't require the member to make
 16:35:39 27 an assessment of privilege or confidentiality or those kind
 16:35:43 28 of tricky legal issues, that's just a separate forward
 16:35:47 29 categorisation issue?---Correct.

16:35:49 30
 16:35:49 31 The remaining two obviously can have that issue, the one
 16:35:53 32 that Mr Woods raised, that is - because the assessment is
 16:35:57 33 whether the person is likely to receive privileged or
 16:36:01 34 confidential information or they're in a similar occupation
 16:36:02 35 or role where they're likely to do so. Is that a matter
 16:36:04 36 then that's covered, to your knowledge, increasingly in the
 16:36:08 37 training that's provided to people who are handling human
 16:36:11 38 sources, as to how to make those initial
 16:36:16 39 assessments?---There are questions that are asked about
 16:36:19 40 secondary occupation, locations where they work and there
 16:36:23 41 is obviously some information that's provided and some
 16:36:27 42 examples in the training in relation to that particular
 16:36:29 43 issue, yes.

16:36:30 44
 16:36:31 45 And you were asked about examples, and I think Mr Woods was
 16:36:34 46 going to go back to them, but I note time got away, but
 16:36:38 47 just to confirm, at pp.30 and 31 of the manual there are in

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16:36:42 1 fact four very practical examples given of the kind of
 16:36:45 2 situations where you could have a connected person, in
 16:36:49 3 effect, and the examples are like a cleaner or a spouse,
 16:36:52 4 those sorts of issues?---Correct.
 16:36:54 5
 16:36:54 6 Was the basic proposition behind this structural approach
 16:36:58 7 to this document to create a low bar for people to get into
 16:37:02 8 this assessment process to make sure that effectively the
 16:37:07 9 net was cast wide?---That's correct.
 16:37:09 10
 16:37:10 11 You were asked by the Commissioner about the capacity of
 16:37:14 12 Victoria Police to respond to urgent situations where the
 16:37:18 13 kind of necessary length of the regulatory steps might not
 16:37:23 14 be appropriate, and you said that was possible, but can I
 16:37:26 15 just take you, please, to 8.14 in the manual, of the VPM
 16:37:33 16 that you have in front of you, the new one, that is on
 16:37:37 17 p.34, which expressly contemplates I think, with respect,
 16:37:44 18 what the Commissioner may have been thinking about, which
 16:37:47 19 is, "Nothing in the policy is intended to limit the
 16:37:49 20 capacity of Victoria Police to receive and use confidential
 16:37:54 21 information in a situation that is time critical and where
 16:37:55 22 there is an imminent threat of life or safety of a person
 16:37:56 23 or the community". Do you see that?---Yes, correct.
 16:37:59 24
 16:38:00 25 But the second dot point there makes clear that once that
 16:38:03 26 is done, if it is needed to be done, that it must then go
 16:38:06 27 into the process to be properly assessed and dealt
 16:38:09 28 with?---Yes.
 29
 16:38:11 30 (Indistinct words)?---Just for clarification, it would be
 16:38:15 31 assessed as part of the urgent process as well.
 16:38:20 32
 16:38:21 33 Now, finally, in terms of the issue of disclosure officers
 16:38:26 34 and some of the questions Mr Woods and Mr Doyle were asking
 16:38:29 35 you, firstly, just, I guess, to contextualise the questions
 16:38:33 36 Mr Doyle was asking you, are you aware that the DPP's
 16:38:39 37 submission to this Royal Commission starts with the
 16:38:41 38 proposition that disclosure in the State of Victoria is not
 16:38:44 39 fundamentally broken? Are you aware of that?---Yes.
 16:38:49 40
 16:38:49 41 What we then drill into is what I think we might agree is
 16:38:51 42 the wicked problem of how you deal with the impact of the
 16:38:55 43 sterile corridor and the fact that information that might
 16:38:58 44 be relevant for disclosure is on one side, and the people
 16:39:02 45 who have to make the disclosure are on the other side, and
 16:39:05 46 that I think is the problem that was being got at by
 16:39:09 47 Mr Doyle. Do you recall that?---Yes.

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16:39:11 1
 16:39:11 2 That problem, the disclosure officers, can you just explain
 16:39:15 3 how it is that the disclosure officers are intended to, as
 16:39:19 4 a matter of rank and as a matter of chain of command, have
 16:39:24 5 the authority and the ability to break down the doors, if I
 16:39:27 6 can put it that way, into covert areas where material is
 16:39:31 7 usually kept secret?---So they are (indistinct) they sit
 16:39:36 8 independent in terms of structure to the Commands that
 16:39:42 9 they're actually placed and working in in that sterile
 16:39:45 10 corridor and the investigators, so they report to the
 16:39:48 11 Executive Director of Legal Services department, and most
 16:39:52 12 informants are really at the Constable, Senior Constable
 16:39:56 13 level and so they're at a rank that's able to actually have
 16:40:01 14 authority. They have the guidance and the ability to
 16:40:04 15 escalate, where they need to, through the Legal Services
 16:40:09 16 area, but equally through the structure that sits within
 16:40:13 17 any of those Commands, and the governance committee that is
 16:40:19 18 intended to be established is also an area where they can
 16:40:22 19 raise issues and get support for anything that's required
 16:40:25 20 if they're having any difficulties, but the actual rank and
 16:40:28 21 the role gives them the authority to actually undertake the
 16:40:33 22 role that we've asked them to in that disclosure
 16:40:36 23 requirement. And there's always escalation points up
 16:40:40 24 through the direct lines.
 16:40:41 25
 16:40:41 26 And as I understand what you were saying earlier, that
 16:40:44 27 process, that is the use of disclosure officers, especially
 16:40:47 28 in this early pilot phase, is not intended to remove the
 16:40:52 29 general obligation on informants, investigators, handlers,
 16:40:55 30 controllers, people everywhere involved in this process, to
 16:40:58 31 look for and identify material that might properly be the
 16:41:01 32 subject of disclosure?---That's correct, that those
 16:41:04 33 obligations still exist for those individuals.
 16:41:07 34
 16:41:07 35 And if we go to, because one of the things that was said to
 16:41:12 36 you by Mr Doyle correctly was that the disclosure
 16:41:14 37 obligation is formally on the informant, if we could just
 16:41:17 38 go finally, please, to paragraph 9 or s.9 of the VPM on
 16:41:22 39 p.34, which is about disclosure obligations in the context
 16:41:29 40 of human sources?---Yes.
 16:41:30 41
 16:41:30 42 The first two dot points are descriptive, but then the last
 16:41:33 43 one, "There will be times when disclosable material is held
 16:41:37 44 on a human source file. This creates challenges because
 16:41:39 45 such material is, for good reason, highly confidential and
 16:41:41 46 is kept secure and is considered protected information.
 16:41:43 47 Informants and other investigators may well not know of the

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16:41:46 1 existence of the material or even the existence of the
16:41:50 2 human source. This means that it is critical that members
16:41:53 3 involved in the handling and management of human sources
16:41:53 4 and human source information are proactive about
16:41:56 5 identifying and considering potentially disclosable
16:41:59 6 material." Have I read that correctly?---That's correct,
16:42:01 7 yes.
16:42:01 8
16:42:02 9 And is that, I guess, just to cut things short, is that a
16:42:05 10 manifestation of the kind of disclosure culture that you're
16:42:10 11 looking to embed through the policy changed that you've
16:42:10 12 identified in the course of your statement?---Yes.
16:42:15 13
16:42:15 14 Thank you, that's the re-examination. May it please the
16:42:18 15 Commission.
16:42:18 16
16:42:18 17 COMMISSIONER: Thanks Mr Holt. Yes Mr Woods?
16:42:20 18
16:42:21 19 MR WOODS: I don't have anything further, Commissioner.
16:42:23 20
16:42:23 21 COMMISSIONER: No. Thanks very much, Ms Steendam, it's
16:42:25 22 been a very long day for you and you've had to traverse a
16:42:30 23 great deal of fairly complex and wide ranging policy
16:42:34 24 material. The Commission appreciates your assistance.
16:42:37 25 Thank you?---Thank you, Commissioner.
26
16:42:39 27 <(THE WITNESS WITHDREW)
16:42:39 28
16:42:39 29 COMMISSIONER: The next witness at the hearings next
16:42:42 30 Wednesday will be Sir Jonathan Murphy, the former Chief
16:42:51 31 Constable of Merseyside Police and Professor of Advanced
16:42:56 32 Policy Studies at Liverpool John Moores University.
16:42:58 33 Because of time differences he'll be giving his evidence
16:42:59 34 remotely from the United Kingdom. His evidence is going to
16:43:02 35 commence at about 4.30 pm.
36
16:43:04 37 We are going to have some directions hearings. We
16:43:07 38 don't really know at this stage how long they'll be, but
16:43:11 39 I'll adjourn until 3.30 at this stage on the basis that we
16:43:15 40 expect them to comfortably finish within the hour. If it
16:43:19 41 emerges that it's somewhat less, we might resume later. If
16:43:24 42 it's going to take longer, we'll resume a little earlier.
43
16:43:29 44 So I'll adjourn, I'd ask my associate to adjourn the
16:43:35 45 hearing until 3.30 on Wednesday 13 May. Thank you.
16:43:42 46
16:43:43 47 ADJOURNED UNTIL WEDNESDAY 13 MAY 2020