

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

ROYAL COMMISSION INTO THE MANAGEMENT  
OF POLICE INFORMANTS

Held in Melbourne, Victoria

On Monday, 5 August 2019

Led by Commissioner: The Honourable Margaret McMurdo AC

Also Present

Counsel Assisting:	Mr C. Winneke QC Mr A. Woods Ms M. Tittensor Mr M. Allen
Counsel for Victoria Police	Mr S. Holt QC Ms R. Enbom Ms K. Argiropoulos
Counsel for State of Victoria	Mr C. McDermott
Counsel for Nicola Gobbo	Mr P. Collinson QC Mr R. Nathwani
Counsel for DPP/SPP	Mr C. Carr
Counsel for Police Handlers	Mr G. Chettle Ms L. Thies
Counsel for John Higgs	Ms C. Dwyer
Counsel for Faruk Orman	Ms C. Lloyd
Counsel for Pasquale Barbaro	Mr C. Wareham

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01:30:59 1 COMMISSIONER: Yes, Mr Winneke. I note your appearances.  
2  
01:31:02 3 MR WINNEKE: Yes, thanks very much, Commissioner.  
4  
01:31:04 5 COMMISSIONER: Mr Collinson. Mr Holt with Ms Enbom and  
01:31:08 6 Ms Argiropoulos. Mr McDermott for the State. Mr Chettle  
01:31:12 7 and Ms Thies for the SDU handlers. Mr Carr for the  
01:31:17 8 DPP/SPP. Ms Fitzgerald. And the appearances for the  
01:31:24 9 affected persons are as already on the record. Thank you.  
01:31:29 10  
01:31:29 11 Yes, Mr Chettle.  
01:31:30 12  
01:31:30 13 MR CHETTLE: Commissioner, can I raise a matter with some  
01:31:33 14 trepidation. I return to - an exchange took place between  
01:31:37 15 yourself and me at p.3793 of the transcript last week, on  
01:31:44 16 Friday. Commissioner - - -  
17  
01:31:48 18 COMMISSIONER: Yes, I just mention we are still in closed  
01:31:50 19 hearing. The orders extant are still there. I don't have  
01:31:56 20 a copy of the transcript with me.  
01:31:58 21  
01:31:58 22 MR CHETTLE: I can remind you, Commissioner, you gave me a  
01:32:01 23 short sharp judicial rebuke for giving evidence from the  
01:32:05 24 Bar table, you might recall, which concerned me because I  
01:32:08 25 wasn't. And I need to now explain to you, Commissioner,  
01:32:12 26 what's happened with this document. It's in relation to  
01:32:15 27 the manual which can't be mentioned. You'll recall that  
01:32:19 28 Mr Winneke was about to cross-examine this witness in  
01:32:21 29 relation to that document and I indicated to you that he  
01:32:26 30 had in his possession the original document with a whole  
01:32:30 31 lot of markings and tags. The significance of that, is  
01:32:33 32 this, Commissioner: he gives - in his statement at  
01:32:37 33 paragraph 64, he outlines how that document came into his  
01:32:43 34 possession recently. In essence he was looking for the  
01:32:46 35 missing diary and he found this document in storage. He  
01:32:48 36 produced it to us and it was obvious that it had tags and  
01:32:53 37 markings that would be of relevance to the Commission;  
01:32:57 38 you'd be interested in the original document. But your  
01:33:01 39 document management policy requires us to provide an  
01:33:03 40 electronic form. What happened is the document was given  
01:33:06 41 to my instructing solicitor. It bound up with those  
01:33:09 42 plastic bindings that come and you'll be able to see it  
01:33:13 43 from the original. They were removed. The document was  
01:33:17 44 copied as it was, put back in the folder with the original  
01:33:21 45 cover and I rang Mr Winneke. I explained to Mr Winneke  
01:33:25 46 that we had the document, that it had markings on it, and  
01:33:28 47 we wanted to get it before the Commission. It's been in

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01:33:33 1 police headquarters since - until this morning and as a  
01:33:37 2 result of what occurred on Friday I had - Ms Thies picked  
01:33:41 3 it up from the witness. I've given it to Mr Winneke this  
01:33:44 4 morning. Now, the suggestion - I was somewhat taken aback  
01:33:49 5 by the suggestion I was giving evidence from the Bar table.  
01:33:51 6 I wasn't trying to word him up the all. What I was trying  
01:33:55 7 to do was get before you, what we've always wanted to do,  
01:33:59 8 the original document with its tags and markings and you  
01:34:04 9 can draw whatever inferences you like from them. That was  
01:34:07 10 what was occurring. Mr Winneke now has it and I understand  
01:34:09 11 he's going to tender it as a hard copy exhibit. Thank you.  
12  
01:34:12 13 COMMISSIONER: Thanks Mr Chettle. Are you happy with that,  
01:34:14 14 Mr Winneke?  
15  
01:34:15 16 MR WINNEKE: Absolutely, Commissioner. I understand what  
01:34:17 17 my learned friend says and I certainly was aware that he  
01:34:19 18 had the original which I've now got. I hadn't seen it.  
01:34:23 19 That's why I asked him about whether there were any tabs or  
01:34:26 20 highlights for the most part against the sections that I  
01:34:31 21 took him to. But obviously this is the best evidence and  
01:34:34 22 I'll tender it when we get Mr [REDACTED] on the television.  
23  
01:34:38 24 COMMISSIONER: That will have to be a confidential exhibit  
01:34:40 25 I understand.  
26  
01:34:42 27 MR WINNEKE: It's been exhibited already as a confidential  
01:34:45 28 exhibit and this will be it effectively, so whatever's been  
01:34:49 29 tendered this is it. This will replace it.  
30  
01:34:52 31 COMMISSIONER: I see.  
32  
01:34:54 33 MR WINNEKE: I assume what has been tendered is the VPL  
01:34:56 34 document which is an electronic document. It should be  
01:34:59 35 replaced with this one which is the original and best  
01:35:01 36 exhibit.  
37  
01:35:02 38 COMMISSIONER: Yes. I understand all necessary redactions  
01:35:20 39 have been sorted out with the publishable copy of that  
01:35:27 40 document and that can go up on the website now.  
41  
01:35:33 42 MR WINNEKE: No, Commissioner, this document won't go on  
01:35:35 43 the website.  
44  
01:35:36 45 COMMISSIONER: No, this one won't. This one won't, but I  
01:35:38 46 understand the one can go on the website, now all  
01:35:41 47 redactions have been sorted out and it is now able to go on

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01:35:44 1 the website as of this morning. That is not this document  
01:35:47 2 but the electronic one that was tendered was tendered in  
01:35:49 3 two forms.  
4  
01:35:50 5 MR WINNEKE: Yes.  
6  
01:35:51 7 COMMISSIONER: A confidential exhibit and one to be  
01:35:53 8 published on the website.  
9  
01:35:55 10 MR WINNEKE: No, I don't think that was ever the situation,  
01:35:57 11 Commissioner. This document, we've got clear - I had  
01:36:00 12 discussions with the authorities and my instructor had a  
01:36:06 13 discussion with the authorities in the United Kingdom.  
01:36:07 14 It's been made - - -  
15  
01:36:08 16 COMMISSIONER: I'm sorry, I'm with you. I'm with you.  
17  
01:36:12 18 MR WINNEKE: Commissioner, it might be appropriate - - -  
19  
01:36:14 20 COMMISSIONER: Sorry, we're talking about different things,  
01:36:16 21 yes.  
22  
01:36:19 23 MR WINNEKE: - - - the electronic version be tendered and  
01:36:22 24 this can be tendered in addition to it. That's probably  
01:36:25 25 the best way to go rather than simply replacing it. This  
26 can be whatever the exhibit is, and I don't have a number,  
01:36:30 27 but this perhaps could be the B version of it.  
28  
01:36:34 29 COMMISSIONER: Yes, okay.  
30  
01:36:36 31 MR WINNEKE: It's still confidential.  
32  
01:36:38 33 COMMISSIONER: Right. I'll just find which one that is.  
01:36:54 34  
01:36:55 35 MR CHETTLE: 280.  
36  
01:36:57 37 COMMISSIONER: 280 it is, yes. The electronic version will  
01:37:01 38 be 280A and the original hard copy will be 280B. Perhaps  
01:37:12 39 you'll want to tender that through the witness.  
40  
01:37:16 41 MR WINNEKE: I will, Commissioner.  
42  
01:37:17 43 COMMISSIONER: The point I was making was a different one  
01:37:19 44 and that is that Sandy [REDACTED] - now I've done it too. Just  
01:37:28 45 remove that from the record, thank you. Mr [REDACTED]  
01:37:34 46 statement in its redacted form is now able to be published  
01:37:40 47 on the website I understand.

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1  
01:37:41 2 MR WINNEKE: Correct, and obviously any reference to the  
01:37:44 3 name of this document and to the contents of it will need  
01:37:47 4 to be removed because that was the basis of the  
01:37:49 5 understanding - - -  
6  
01:37:49 7 COMMISSIONER: I think that's already covered in the  
01:37:51 8 redactions, yes.  
9  
01:37:52 10 MR WINNEKE: That's been done.  
11  
01:37:58 12 COMMISSIONER: I should also correct, Mr Holt, that I was  
01:38:03 13 wrong about Mr Paterson's statement which has been on the  
01:38:09 14 website since May, apparently.  
15  
01:38:12 16 MR HOLT: Yes, Commissioner, I had understood that but I  
01:38:15 17 think there might still be some issues, and I have those,  
01:38:16 18 which we're dealing with. So that's where I got to over  
01:38:19 19 the weekend.  
20  
21 COMMISSIONER: There are some exhibits - it's the exhibits  
22 to the statements which haven't yet been published, yes.  
23  
01:38:19 24 MR HOLT: I think I understand where that is now, and over  
01:38:22 25 the weekend, and we'll make sure that gets resolved,  
01:38:25 26 Commissioner.  
01:38:25 27  
01:38:25 28 COMMISSIONER: Thank you. We'll get the witness back on  
01:38:32 29 line.  
01:38:36 30  
01:38:36 31 MR HOLT: Commissioner, just while that's occurring, the  
01:38:38 32 transcript of the first conversation between Ms Gobbo and  
01:38:43 33 this witness is now, as we understand it, able to go up on  
01:38:48 34 the website.  
35  
01:38:49 36 COMMISSIONER: Thank you.  
01:38:49 37  
01:38:49 38 MR HOLT: Thank you.  
01:38:52 39  
01:38:53 40 <SANDY WHITE, recalled:  
41  
01:39:01 42 COMMISSIONER: Yes, good morning, Mr [REDACTED] can you  
01:39:03 43 hear?---Good morning, Commissioner.  
44  
01:39:04 45 I think it's operating. Mr Winneke, I'll hand over to you.  
46  
01:39:09 47 MR WINNEKE: Thanks, Commissioner. Mr [REDACTED] last week I

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01:39:11 1 took you through a guide that you had considerable recourse  
01:39:18 2 to during the period that you were involved in the SDU and  
01:39:24 3 I asked you about it and you indicated as we went through  
01:39:28 4 the evidence that you had highlighted certain aspects of it  
01:39:32 5 and put tabs against certain sections in the document, is  
01:39:37 6 that right?---Yes.  
7  
01:39:40 8 That document I gather has been photocopied and the  
01:39:47 9 highlight hasn't necessarily come through on the photocopy  
01:39:51 10 on the document that's been tendered. And equally, one  
01:39:53 11 assumes there were tabs which were removed for the purposes  
01:39:57 12 of photocopying, one would assume that those tabs have been  
01:40:02 13 put back in the same spot more or less to where they were  
01:40:05 14 before, would that be fair to say?---I think you could  
01:40:09 15 assume that. I had nothing to do with that.  
16  
01:40:11 17 All right then. In any event, I've got the document. You  
01:40:15 18 can see me. If I can hold it up. Can you see that?---Yes.  
19  
01:40:21 20 I tender that, Commissioner.  
21  
01:40:23 22 COMMISSIONER: Yes.  
01:40:24 23  
01:40:24 24 #EXHIBIT 280B - Original hard copy of document.  
01:40:29 25  
01:40:30 26 #EXHIBIT 280A - Electronic copy of document.  
27  
01:40:35 28 MR WINNEKE: Thanks Commissioner.  
29  
01:40:36 30 COMMISSIONER: Can I have a look at the document, please?  
01:40:39 31 Thank you. Yes, Mr Winneke.  
32  
01:40:48 33 MR WINNEKE: I want to ask you about some entries in the  
01:40:51 34 source management log. Do you have that there with  
01:40:53 35 you?---Yes.  
36  
01:40:55 37 In the early stages of the registration process you had  
01:41:03 38 obviously the debriefs that we've taken you through to date  
01:41:07 39 on the 19th and 21st of September. September 2005, so  
01:41:23 40 3838. You then had a meeting on 26 September which I've  
01:41:27 41 asked you about. Then you have a meeting on 27 September.  
01:41:35 42 This is after three debriefings with Ms Gobbo, 21, 19 and  
01:41:40 43 26 September. You have a meeting then with Commander  
01:41:48 44 Thomas on 27 September; is that correct?---Yes.  
45  
01:41:52 46 If you look at p.2 of the SML. By that stage you'd spoken  
01:41:56 47 at length with Ms Gobbo, you were aware that this was a

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01:41:59 1 most unusual circumstance, correct?---Yes.  
2  
01:42:01 3 You were aware obviously the source was an active  
01:42:05 4 barrister?---Yes.  
5  
01:42:06 6 She acted for Mokbel and his family members and some of his  
01:42:10 7 associates?---Yes.  
8  
01:42:13 9 You're aware that she'd had acted for him for a number of  
01:42:18 10 years, that is Mokbel?---Yes.  
11  
01:42:20 12 She was then currently appearing in Supreme Court  
01:42:23 13 proceedings for him?---I'm not sure about that one.  
14  
01:42:32 15 Well I suggest you were and that was made apparent in the  
01:42:35 16 transcript. If it was in the transcript you'd accept it, I  
01:42:43 17 take it? If there'd been discussions - you may have  
01:42:47 18 forgotten - but if there'd been discussions about her  
01:42:50 19 currently appearing in the Supreme Court you'd accept that,  
01:42:54 20 wouldn't you?---Yes.  
21  
01:42:55 22 You were aware that she was keen to get rid of him and his  
01:42:58 23 associates and family members from her life?---Yes.  
24  
01:43:03 25 You're aware that it was intended she would provide  
01:43:07 26 assistance to the police to cause that to occur by  
01:43:15 27 providing information against him?---Yes.  
28  
01:43:17 29 You were aware of all of those matters. Can we assume that  
01:43:21 30 you would have made those matters plain to Commander  
01:43:25 31 Thomas?---Yes.  
32  
01:43:28 33 You say that in that meeting there was a discussion about  
01:43:35 34 security measures for intelligence that she  
01:43:39 35 provided?---Yes.  
36  
01:43:42 37 And you say in that SML that it was agreed that there was a  
01:43:48 38 higher level of protection required and all documents were  
01:43:51 39 to be delivered to the, Deputy Registrar McLean, "who will  
01:43:57 40 record the same in a partitioned IMU database", is that  
01:44:04 41 right?---Yes.  
42  
01:44:05 43 What documents would you have been referring to  
01:44:07 44 there?---That would have been the - I think it would have  
01:44:14 45 been the entire file. At the very least it would have had  
01:44:19 46 to have been the registration application and the risk  
01:44:24 47 assessments.

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1  
2 At the very least?---They probably - at the very least,  
3 yes.  
4  
01:44:25 5 But all documents, one assumes, would include ICRs and  
01:44:35 6 audits and various other documents which are produced  
01:44:38 7 relevant to her file?---I think you could assume that, yes.  
8  
01:44:45 9 You then have another meeting on that same day and you  
01:44:51 10 briefed, it seems, Commander Purton, correct?---Yes.  
11  
01:44:59 12 DDI Hill, he was the head of the MDID, is that right, at  
01:45:08 13 that stage?---Yes.  
14  
01:45:08 15 And Detective Senior Sergeant O'Brien who was at the  
01:45:12 16 MDID?---Yes.  
17  
01:45:16 18 Detective Senior Constables Rowe and Burrows?---Yes.  
19  
01:45:22 20 And one assumes, again, that you provided them with a run  
01:45:26 21 down of the information that I've referred to already with  
01:45:32 22 respect to the previous meeting, would that be fair to  
01:45:36 23 say?---I think so.  
24  
01:45:42 25 These are in effect your clients, these are the people who  
01:45:48 26 you will be closely working with for the purposes of this  
01:45:51 27 investigation that's being proposed?---Yes.  
28  
01:45:53 29 It was determined during the course of that meeting that a  
01:45:56 30 Task Force would be formed?---Yes.  
31  
01:46:04 32 According to Detective O'Brien's diary notes he records  
01:46:10 33 that there was discussion which referred to a number of  
01:46:12 34 people, including [REDACTED] a person called [REDACTED]  
01:46:17 35 a person called [REDACTED] another person by the name of  
01:46:25 36 [REDACTED], a person called [REDACTED]. The  
01:46:32 37 names, including [REDACTED] and  
01:46:40 38 there were references to Kayak tapes and a corruption  
01:46:43 39 scenario and a money laundering option were discussed.  
01:46:47 40 That's what Mr O'Brien has noted in his diary. Would you  
01:46:54 41 agree that those sorts of issues were discussed?---I think  
01:46:58 42 so.  
43  
01:47:03 44 It was set out certainly in the source management log that  
01:47:09 45 there would be an - it was agreed that Mokbel would be  
01:47:12 46 offered a bribe and there was, or money laundering issues  
01:47:18 47 would be looked into and [REDACTED] was to be pursued. So



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01:47:24 1 those were matters that were discussed?---I just want to  
01:47:30 2 correct you on one thing.  
3  
01:47:31 4 Yes?---You said Mokbel would be offered a bribe.  
5  
01:47:34 6 I withdraw that. [REDACTED] to offer a bribe  
01:47:39 7 to [REDACTED] ---Well the information was  
01:47:44 8 that he was seeking to do that and, yes, [REDACTED]  
01:47:46 9 [REDACTED]  
10  
01:47:48 11 In any event, it was [REDACTED] the [REDACTED]  
01:47:52 12 [REDACTED] that those things were being considered,  
01:47:57 13 correct?---Yes.  
14  
01:47:58 15 Right. If we can accept from the source management log it  
01:48:04 16 appears that on 27 September, and indeed 28 September, it  
01:48:10 17 appears that the information starts to come in?---Yes.  
18  
01:48:18 19 Intelligence regarding an 'intended meet with Tony and  
01:48:22 20 Milad Mokbel this evening'. There was intel about Milad  
01:48:28 21 being interviewed by police with respect to a motor vehicle  
01:48:31 22 accident?---Yes.  
23  
01:48:31 24 According to the SML there was another meeting planned or a  
01:48:36 25 planning meeting which occurred on 30 September 2005,  
01:48:42 26 right? If we go to p.3?---Yes.  
27  
01:48:45 28 Again, that appears to be a meeting between your  
01:48:54 29 organisation and again your clients because Commander  
01:48:59 30 Purton is there, Hill is there, another person by the name  
01:49:03 31 of DDI Hardy is there. Do you know who he is or  
01:49:08 32 was?---Yes.  
33  
01:49:08 34 Who's he?---He was the Inspector, Detective Inspector in  
01:49:15 35 charge of the covert unit at the time, the Undercover Unit.  
36  
01:49:22 37 O'Brien's there, Flynn's there; he's a Detective Acting  
01:49:28 38 Senior Sergeant involved in the MDID?---Yes.  
39  
01:49:35 40 Or was he at Purana at that stage?---I think he was at the  
01:49:38 41 MDID.  
42  
01:49:39 43 Righto. And Rowe and Burrows were again also?---Yes.  
44  
01:49:45 45 And there was further discussion about the set up of a Task  
01:49:49 46 Force and is it the case that you updated Mr Flynn on what  
01:49:53 47 had been going on?---Yes.

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1  
01:50:01 2 Also on that day, as we can see in the source management  
01:50:04 3 log, there was - immediately below that there was an  
01:50:13 4 arrangement to meet Ms Gobbo again, that is for the fourth  
01:50:18 5 occasion, that is the following day, 1 October, do you see  
01:50:21 6 that?---Yes.  
7  
01:50:23 8 During the course of that meeting I suggest to you that  
01:50:28 9 Ms Gobbo suggested that she - well at least it was  
01:50:35 10 suggested in the course of that meeting that Ms Gobbo could  
01:50:39 11 help orchestrate a mechanism to in effect get ██████████ to  
01:50:45 12 plead and ultimately give evidence against people such as  
01:50:51 13 Mokbel and other associates of ██████████ do you agree with  
01:50:59 14 that?---I'm sorry, where are you getting that information  
01:51:03 15 from? Is that in the log? Are you referring to the log or  
01:51:08 16 are you referring to the transcript of the meeting?  
17  
01:51:10 18 I'm referring to the ICR and I'm also referring to the  
01:51:16 19 contents of the discussion which occurred. I can take you  
01:51:20 20 to it if I wish. What I'm suggesting to you is that there  
01:51:24 21 was a discussion about orchestrating a mechanism for  
01:51:27 22 ██████████ in effect to roll and give evidence?---There  
01:51:30 23 might have been. I don't recall it.  
24  
01:51:36 25 Do you accept that, if you go to p.9 - have you got the  
01:51:42 26 ICRs there in hard form?---Yes.  
27  
01:51:44 28 If you go to p.9 of that.  
29  
01:51:46 30 COMMISSIONER: Sorry, what page was that?  
31  
01:51:50 32 MR WINNEKE: Page 18 of the first ICR bundle document. ICR  
01:51:56 33 number 4. This is on 1 October 2005 at p.19?---Can you  
01:52:38 34 help me with the paragraph, Mr Winneke?  
35  
01:52:42 36 Firstly, do you have a paginated folder with you?---Yes, I  
01:52:45 37 have.  
01:52:45 38  
01:52:45 39 If you go to p.18, you'll note there's an ICR date range  
01:52:49 40 starting from 27 September 2005?---Yes.  
41  
01:52:52 42 There doesn't appear to be an end date on the document but  
01:53:00 43 it seems to be a seven page document and the last entry  
01:53:03 44 relates to this meeting in fact?---Yes.  
45  
01:53:21 46 Then if you go over the page you can see that there was a  
01:53:24 47 meeting between you, Smith and Ms Gobbo at 10 am or

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01:53:31 1 commencing at 10 am, do you see that?---Yes.  
2  
01:53:41 3 What you say is that - what's noted rather in the ICR is  
01:53:47 4 that there was a - that "Gobbo was warned re privilege,  
01:53:54 5 ethics and advised if privilege issues arise she is to  
01:54:01 6 advise handlers of this and this will not be a problem", do  
01:54:05 7 you see that?---I don't but could you just excuse me while  
01:54:09 8 I get my glasses.  
9  
01:54:11 10 Yes. About four paragraphs - - -  
11  
01:54:11 12 COMMISSIONER: He just needs his glasses, Mr Winneke.  
13  
01:54:14 14 MR WINNEKE: Yes?---The fourth paragraph.  
15  
01:54:23 16 The fourth paragraph down, "Human source warned re  
01:54:27 17 privilege, ethics and advised if privilege issues arise  
01:54:30 18 she's to advise handlers and this won't be a  
01:54:33 19 problem"?---Yes.  
20  
01:54:34 21 Do you see that?---Yes.  
22  
01:54:37 23 Clearly that's a reference to a conversation which occurred  
01:54:41 24 in the discussion between the three of you?---I don't know  
01:54:48 25 how that's arisen. She was warned on a number of occasions  
01:54:52 26 about not talking about privileged matters.  
27  
01:54:58 28 No, I understand that. The point I'm making is that in  
01:55:00 29 effect this is a note of something which occurred in the  
01:55:03 30 conversation. Would you agree with that?---I just don't  
01:55:08 31 know, Mr Winneke. This may have been a housekeeping matter  
01:55:12 32 that Mr Smith has raised before we start to talk about the  
01:55:19 33 actual intelligence. I've clearly got no recollection.  
34  
01:55:23 35 No, I understand that. What we'll do perhaps is go to the  
01:55:26 36 transcript so as we can see exactly what was said. If we  
01:55:30 37 go to VPL.0005.0087.0137  
01:55:36 38  
01:55:37 39 MR HOLT: Sorry, can I have that number again?  
40  
01:55:41 41 MR WINNEKE: Yes. VPL.0005.0087.0137. That may not be the  
01:55:54 42 first page of the document. 1 October.  
01:56:12 43  
01:56:12 44 If we go to - perhaps if we go to 141.  
01:56:25 45  
01:56:25 46 MR HOLT: Sorry, Commissioner. Can we just have a moment.  
01:56:28 47 I think for some reason the numbers are different and I

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01:56:35 1 just want to make sure.  
2  
01:56:37 3 COMMISSIONER: Yes.  
4  
01:56:38 5 MR WINNEKE: 68 is the first page. 0087.0068. Is there  
01:56:59 6 any reason this can't be put up on the screen?  
01:57:03 7  
01:57:03 8 MR HOLT: Yes.  
9  
01:57:25 10 MR WINNEKE: It's on the screen if you want it.  
01:57:27 11  
01:57:27 12 MR HOLT: Thank you.  
13  
01:57:31 14 MR WINNEKE: That's clearly a transcript of a discussion  
01:57:36 15 that you're having and Gobbo says at one point, "And he's  
01:57:41 16 still absolutely obsessed with the admissibility of the  
01:57:44 17 tapes. Now on Thursday there was a subpoena and then ...  
01:57:49 18 subpoena was issued". What that clearly seems to be is  
01:57:53 19 Ms Gobbo telling you about an obsession that Tony Mokbel  
01:58:02 20 has with the admissibility of tapes, do you agree with  
01:58:06 21 that?---Yes.  
22  
01:58:07 23 Then there's a discussion about a particular hearing. She  
01:58:11 24 says, "4 July was not there, but unfortunately it got  
01:58:14 25 adjourned to till Thursday so I will be there". It's quite  
01:58:17 26 clear that there's a reference to Ms Gobbo appearing, you  
01:58:20 27 accept that?---Yes.  
28  
01:58:21 29 The offers of the OPI represented and ESD are represented  
01:58:26 30 and it's the usual kind of response, "Well, you can have  
01:58:30 31 this, you can have that, we're not going to tell you about  
01:58:33 32 this, we're claiming ... ." She says, "And there's a  
01:58:38 33 paragraph in the OPI affidavit in my possession which is  
01:58:42 34 not confidential but it says something along the lines of,  
01:58:47 35 'It may well be the deponent believes that the only reason  
01:58:50 36 for subpoena argument and all this is a stunt for an  
01:58:53 37 adjournment'." Over the page, "To delay the trial, blah  
01:58:58 38 blah blah. On the basis of how it's written the QC  
01:59:01 39 appearing for Tony Mokbel thinks that there's  
01:59:03 40 somebody" - - -  
01:59:05 41  
01:59:06 42 MR HOLT: Sorry, Commissioner, I know they were put up on  
01:59:10 43 the screens for ease of reference but I wonder if they can  
01:59:13 44 be taken down? They include original names present. Just  
45 left on those screens where they need to be.  
46  
47 COMMISSIONER: Yes, all right.

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1  
2 MR WINNEKE: Commissioner, there are non-publication  
01:59:19 3 orders. The people here are the subject of those  
01:59:21 4 non-publication orders. In any event - - -  
01:59:26 5  
01:59:28 6 MR HOLT: Sorry, Commissioner, it's just that they have all  
01:59:30 7 the original names and some of them haven't been the  
01:59:33 8 subject of inadvertent disclosure, some have. Just for the  
01:59:38 9 sake of safety I'd be grateful if they weren't up.  
10  
01:59:42 11 COMMISSIONER: All right.  
01:59:42 12  
01:59:43 13 MR HOLT: Obviously my friend's screen and the  
01:59:46 14 Commissioner's screen, there's no difficulty. But other  
01:59:51 15 than that people have them on their own device.  
16  
01:59:54 17 COMMISSIONER: Mr Collinson, are you wanting to see this?  
01:59:58 18  
01:59:59 19 MR COLLINSON: I'd much prefer it, yes.  
20  
02:00:01 21 COMMISSIONER: Can we do it on Mr Collinson's screen?  
02:00:01 22  
02:00:02 23 MR HOLT: I think if it was just on Mr Collinson's screen  
24 that wouldn't be a difficulty. It's one of the smaller  
02:00:05 25 ones and it's - - -  
26  
02:00:06 27 COMMISSIONER: Can we do it on Mr Collinson's screen?  
28  
02:00:10 29 MR WINNEKE: Commissioner, I don't see why it shouldn't be  
02:00:13 30 on Mr Chettle's screen, the State's and OPP's screen.  
02:00:19 31  
02:00:20 32 MR HOLT: They have transcript, Commissioner. That is  
02:00:22 33 Mr Chettle has that with a capacity to access it. It's  
02:00:26 34 just even with my poor eyes those names are just visible  
02:00:30 35 all over the hearing room and I think it's just a step too  
02:00:33 36 far with respect. It hasn't been a difficulty so far. If  
02:00:36 37 there are particular transcripts, as I've said from the  
02:00:39 38 outset, we're happy to look at them in advance and ensure  
02:00:48 39 that there are pseudonymised versions.  
40  
02:00:49 41 MR WINNEKE: Commissioner, I don't know whether anyone at  
02:00:50 42 the back of the room can possibly see those names. In any  
02:00:53 43 event there are non-publication orders. Nothing can be  
02:00:57 44 published which would lead to the identification of these  
02:00:59 45 people. In any event, our submission is that it's  
02:01:01 46 appropriate for people at the Bar table to be able to see  
02:01:04 47 these screens.

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02:01:06 1  
02:01:06 2 MR COLLINSON: That's also our submission, Commissioner.  
02:01:08 3 It's very inefficient to be able to catch up looking at  
02:01:11 4 transcripts later on, particularly in our position because  
02:01:14 5 we don't have access to material other than at this  
02:01:18 6 particular police location.  
7  
02:01:20 8 COMMISSIONER: Yes. Is there a suggestion as to - we can  
02:01:29 9 spin a screen around so you can see it, Mr Collinson. I  
02:01:34 10 take it no one else is asking to see it? No one else at  
02:01:39 11 the Bar table is asking to see it. Mr Collinson is.  
02:01:39 12  
02:01:39 13 MR HOLT: I think Mr Collinson can be helped and we have no  
02:01:42 14 difficulty with that, with respect.  
15  
02:01:44 16 COMMISSIONER: All right. We'll proceed on that basis.  
17  
02:01:48 18 MR WINNEKE: Thanks Commissioner.  
02:01:49 19  
02:01:50 20 In effect she is telling you about, in effect, what  
02:02:05 21 the QC appearing for Tony thinks and that somebody's  
02:02:10 22 phone's off, et cetera, et cetera. "His very strong advice  
02:02:15 23 yesterday to Tony was stop talking about this case on the  
02:02:18 24 phone". You obviously had to interrupt her at that point,  
02:02:25 25 didn't you?---Yes.  
26  
02:02:28 27 You said, "Well look, I suppose for me too, I suppose  
02:02:33 28 discuss with you, because you're acting for Tony in that  
02:02:37 29 client matter. Yeah. What we sort of steered clear of  
02:02:41 30 talking to you about that specifically and we've never  
02:02:45 31 asked you what your views are about that but we'll just  
02:02:48 32 operate on the assumption that there's an ethical issue for  
02:02:51 33 you to talk about". She says, "Yeah, yeah, there are,  
02:02:55 34 yep." "In your client's case." She says, "Well, there's  
02:03:00 35 no ethical issues in terms of talking about someone, the  
02:03:03 36 instructions, yeah, but not in terms of talking about the  
02:03:06 37 case. You can read the brief yourself and there's no  
02:03:11 38 reason you can't talk about it". You say, "Well I meant  
02:03:15 39 more is his defence case, his instructions to you". She  
02:03:19 40 says, "What instructions". Obviously the transcript  
02:03:22 41 appears not to capture everything that's being said. But  
02:03:25 42 you seem to be cautioning her about not talking about  
02:03:32 43 matters which were relevant to the defence. That's, I  
02:03:35 44 assume, what you're saying?---That's right.  
45  
02:03:39 46 You say, "But in any event the way we see it, that's Tony's  
02:03:42 47 privilege". She says, "Yeah, that's right". You say,

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02:03:45 1 "Probably doesn't make any difference to us but we don't  
02:03:48 2 want to put you in the position where you might breach some  
02:03:53 3 confidentiality so I guess I'm saying to you that you're  
02:03:59 4 going to take your own counsel about what's a problem,  
02:04:03 5 what's not a problem, and don't feel that we would try and  
02:04:05 6 question you about those sorts of matters. Where it gets  
02:04:09 7 to that point, where you don't want to talk about it, well  
02:04:12 8 cool". It's not clear exactly what the next line is but,  
02:04:20 9 "You'd tell us anyway". So clearly there's that discussion  
02:04:25 10 about, in effect, the ground rules. But effectively what  
02:04:31 11 you're saying is, "Well look, we're going to leave that  
02:04:35 12 with you, you take your own counsel about it. If you think  
02:04:38 13 there's a problem we'll accept that, we won't hear anything  
02:04:42 14 about it from you", that sort of information. Do you  
02:04:45 15 accept that?---I don't accept the proposition that we've  
02:04:48 16 just left it with her. You can see through the context of  
02:04:51 17 this discussion we've already had this discussion previous  
02:04:56 18 about not wanting that type of information.

19  
02:04:59 20 Yes?---I think what I was trying to reinforce there was to  
02:05:02 21 say to her "you also feel free to make your own judgments  
02:05:06 22 about this".

23  
02:05:07 24 Yes. Clearly that's what you have said to her and  
02:05:11 25 ultimately whilst you may not want it, you're effectively  
02:05:16 26 saying to her you've got to make your own judgment about  
02:05:19 27 it, and if you regard it as appropriate we're satisfied  
02:05:23 28 that it's appropriate - I'm sorry, we've had a flood.

29  
02:05:29 30 COMMISSIONER: We have had a flood. That's all right.  
02:05:31 31 It's all under control.

02:05:38 32  
02:05:38 33 MR CHETTLE: The new definition of watermark, Commissioner.

34  
02:05:48 35 COMMISSIONER: Yes. All under control.

36  
02:05:50 37 MR WINNEKE: Good. So what you say is that whilst you were  
02:05:56 38 prepared to say to her, "Look, you've got to take your own  
02:05:59 39 counsel about what's a problem and what isn't", you were  
02:06:03 40 also making a judgment about what was appropriate and what  
02:06:06 41 was not appropriate information to receive; is that  
02:06:11 42 right?---Yes.

43  
02:06:11 44 You were exercising your own judgment?---Yes.

45  
02:06:14 46 All right. Anyway, so at the bottom of that page, having  
02:06:22 47 cleared all that up, she says, "Righto, well anyway, so he

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02:06:26 1 was being - he has been advised not to discuss his case at  
02:06:31 2 any length on the phone, which I don't really, I don't  
02:06:34 3 necessarily think that's the way the affidavit's raised.  
02:06:38 4 Means something's heard, him someone, somebody's heard him  
02:06:39 5 say that on the phone". So immediately after that she just  
02:06:43 6 launches off again with, "He's been advised not to  
02:06:47 7 discuss", do you accept that?---Yes.  
8  
02:06:49 9 And Mr Smith says, "Ah-ha". And away she goes. I mean on  
02:06:56 10 one view, having had that discussion she simply launches in  
02:06:59 11 again to what he's been advised, do you accept that?---Yes.  
12  
02:07:11 13 Clearly she wasn't pulled up again on that occasion. Are  
02:07:15 14 you saying that she was pulled up on every occasion she  
02:07:18 15 provided material which might conceivably have been  
02:07:22 16 confidential communications?---No, and if you see in my  
02:07:25 17 statement I make a reference to that, that we were  
02:07:28 18 constantly advising her but it didn't stop her.  
19  
02:07:31 20 But it didn't stop her, did it?---No.  
21  
02:07:35 22 And it didn't stop you from receiving information from her,  
02:07:38 23 did it?---Well, my approach to this was very simple. If  
02:07:46 24 she provided it we didn't want it and she was made well  
02:07:50 25 aware of that, which she was. But if she did provide it  
02:07:53 26 and we didn't stop her then it was not to be disseminated.  
02:07:59 27 That was the general rule.  
28  
02:08:00 29 That's the general rule, is it?---Yes, it is.  
30  
02:08:02 31 So effectively that sort of discussion that you've just had  
02:08:07 32 with her is an example, you say, of the sorts of  
02:08:11 33 discussions which you would say you had repeatedly?---Yes.  
34  
02:08:20 35 But ultimately it didn't stop her from providing  
02:08:24 36 information to you?---The specific - well not specific, but  
02:08:30 37 there could be potentially privilege.  
38  
02:08:35 39 Yes?---Yes. Yes, we constantly told her about it and yet  
02:08:39 40 she would still talk about it, usually when she was  
02:08:42 41 venting, but in any event she was told quite a number of  
02:08:48 42 times and it didn't stop her.  
43  
02:08:49 44 You say constantly. Have you - I mean obviously in your  
02:08:53 45 statement you refer to a number of occasions. Have you  
02:08:56 46 listened to lots of these tapes to find all of the  
02:09:00 47 occasions where it was told to her?---No, Mr Winneke. I



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02:09:04 1 had about four weeks to prepare for this matter and I've  
02:09:08 2 barely scratched the surface.  
3  
02:09:10 4 Had you listened to that tape before you made your  
02:09:13 5 statement?---No.  
6  
02:09:14 7 You hadn't?---No. I've looked at the transcripts, flicked  
02:09:18 8 through some of the transcripts trying to find information  
02:09:21 9 that is relevant to the issues that you're discussing but  
02:09:25 10 I'm woefully unprepared.  
11  
02:09:29 12 You're woefully unprepared to give evidence; is that  
02:09:33 13 right?---Well ideally I would like to listen to all the  
02:09:36 14 conversations that I was a party to, I would like to check  
02:09:40 15 all the diaries and the contact reports but that just  
02:09:46 16 hasn't been possible.  
17  
02:09:46 18 Right. Did you listen to any of these or read any of the  
02:09:50 19 transcripts over the weekend?---I started to read one  
02:09:53 20 transcript over the weekend but it was not this particular  
02:09:55 21 one.  
22  
02:09:56 23 Which one was it?---It was one of the ones involving [REDACTED]  
02:09:59 24 [REDACTED] oh.  
25  
02:10:01 26 COMMISSIONER: Just remove that name from the record.  
02:10:02 27 That's all right. There's non-publication orders in place.  
02:10:06 28 It's not a drama. I know you do your best,  
02:10:09 29 Mr [REDACTED]-Thanks Commissioner.  
30  
02:10:12 31 MR WINNEKE: Also during this meeting there was a  
02:10:17 32 discussion about the ways in which a situation could be  
02:10:22 33 engineered whereby [REDACTED] could potentially be put into  
02:10:31 34 a situation whereby he ended up assisting police, do you  
02:10:36 35 agree with that?---Yes.  
36  
02:10:39 37 If we go to ICR number 4 at p.21. Have you got  
02:10:51 38 that?---Yes, I do.  
39  
02:10:55 40 "Human source believes that [REDACTED] has respect for  
02:10:58 41 Detective Sergeant [REDACTED] and he would  
02:11:04 42 speak to him in the right environment. Human source cannot  
02:11:07 43 [REDACTED] to speak to [REDACTED] but if they [REDACTED]  
02:11:10 44 in [REDACTED] human source could support him  
02:11:14 45 talking to [REDACTED]. Human source thinks that [REDACTED] will not  
02:11:18 46 meet [REDACTED] in a [REDACTED] manner because he will suspect that  
02:11:23 47 the meeting will be recorded. Human source suggests that

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02:11:26 1 [REDACTED] into her and [REDACTED] whilst  
02:11:31 2 at dinner at a place like the Emerald Hotel in South  
02:11:36 3 Melbourne after [REDACTED] has had a couple of [REDACTED]. She  
02:11:43 4 believes that in that relaxed environment [REDACTED] could talk to  
02:11:47 5 [REDACTED] and if that occurred the next day she could recommend  
02:11:51 6 to [REDACTED] that he talk to [REDACTED] about an [REDACTED] to enable  
02:11:57 7 him to stay out until after Christmas", right?---Yes.

8  
02:12:03 9 And she suggests that the courtyard area of the Emerald  
02:12:08 10 Hotel would be a suitable place because that's where the  
02:12:10 11 human source often does business. So that would fit with  
02:12:14 12 her in effect in a situation, in a business type scenario  
02:12:19 13 with [REDACTED] and this type of scenario could be arranged  
02:12:24 14 for next Wednesday, 5 October". Do you agree with  
02:12:30 15 that?---Yes.

16  
02:12:33 17 And then that [REDACTED] was considered  
02:12:39 18 further. If we go to page - what I was reading through was  
02:12:53 19 on p.4 of 7, 1607 for the benefit of anyone who wants it.  
02:13:04 20 If we just move down the page a bit. Here we are. You see  
02:13:08 21 there the bottom few paragraphs, do you see that? In  
02:13:21 22 effect that was a scenario which was being suggested by  
02:13:25 23 Ms Gobbo as a means by which her client, [REDACTED] could  
02:13:32 24 be encouraged in effect to roll, to help the police?---Yes.

25  
02:13:38 26 That's a fairly unusual way to behave for a barrister,  
02:13:41 27 isn't it, to make those suggestions?---Yes.

28  
02:13:50 29 That scenario was still being worked away with Ms Gobbo in  
02:13:57 30 December. So if we go to p.88 of the record, the ICR  
02:14:05 31 records, you'll see on 13 December there's a discussion  
02:14:08 32 about that. If you go to p.88. That's at  
02:14:19 33 VPL.2000.0003.1674. The first page of it is 1666, ICR  
02:14:36 34 number 12, encompassing the period from 10 December  
02:14:42 35 to - - -

02:14:43 36  
02:14:43 37 MR HOLT: It's p.80.

38  
02:14:45 39 MR WINNEKE: 88?

02:14:46 40  
02:14:47 41 MR HOLT: Page 80.

42  
02:14:49 43 MR WINNEKE: Yes, 80. You see that. If we go to p.9 of  
02:15:13 44 that document on 1674 we can see that insofar as  
02:15:31 45 [REDACTED] concerned it says that he may assist, "Continue  
02:15:35 46 to work on [REDACTED] with [REDACTED] and he's  
02:15:41 47 disappeared twice in the last week for four or five days at

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02:15:45 1 a time, usually has daily contact with the source. Was to  
02:15:49 2 meet the source on [REDACTED] December but failed to show.  
02:15:52 3 Reappeared on the [REDACTED]. Disappeared again and hasn't made  
02:15:55 4 contact since. Tried to text him in the presence of  
02:16:00 5 handlers but no reply". That occurs during the course of a  
02:16:04 6 meeting which you were at on [REDACTED] December, do you accept  
02:16:09 7 that? If you go back to p.83 you'll see that that's the  
02:16:23 8 commencement of the meeting. Do you see that?---I do. I'm  
02:16:34 9 just trying to see who were the participants.  
10  
02:16:38 11 Well at least you and Ms Gobbo?---Yes.  
12  
02:16:49 13 Again, that scenario's still being considered as time went  
02:16:53 14 by. Do you agree with that proposition?---Yes.  
15  
02:17:03 16 At this stage is it correct that, going back to our earlier  
02:17:09 17 discussions of the meeting on 1 October, she's still not  
02:17:14 18 formally registered, is that correct, on 1 October?---I'm  
02:17:21 19 not sure. We would have to look at that when the  
02:17:24 20 registration was accepted. I know we discussed this date  
02:17:32 21 last week but I can't recall what it was.  
22  
02:17:35 23 One assumes then until the risk assessment process has been  
02:17:38 24 completed, would that mean that she wouldn't be formally  
02:17:41 25 registered until that document's been provided to the  
02:17:44 26 registry?---The formal registration doesn't start until the  
02:17:50 27 Central Source Registrar accepts the risk assessment and  
02:17:52 28 the registration form.  
29  
02:17:54 30 Right. So if the formal risk assessment hasn't been  
02:17:58 31 provided until 11 November, one assumes that she's not  
02:18:04 32 formally registered at that stage?---Yes.  
33  
02:18:08 34 Do we take it from what you said last week until that  
02:18:12 35 occurs then she wouldn't be tasked to do anything, it would  
02:18:16 36 be simply a case of receiving information from  
02:18:17 37 her?---That's how it should work.  
38  
02:18:19 39 All right. If we just go back to the source management  
02:18:24 40 log. On 3 October, a couple of days thereafter there's a  
02:18:30 41 reference to intelligence from Mr Bickley [REDACTED] - I'm sorry,  
02:18:36 42 regarding Mr Bickley [REDACTED] correct?---Yes.  
43  
02:18:41 44 And then it says this, "Human source tasked to obtain more  
02:18:45 45 intelligence about that information concerning  
02:18:51 46 Mr Bickley [REDACTED] do you agree with that?---Yes.  
47

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02:18:54 1 I suppose in reality that shouldn't have occurred if she  
02:18:58 2 hadn't been formally registered and risk assessed at that  
02:19:02 3 stage, would that be fair to say?---Yes, it would. But,  
02:19:06 4 please, remind me, this was 15 years ago, it was the first  
02:19:10 5 year of operations of the SDU and we were still working out  
02:19:14 6 a lot of things. I think the policy today would be pretty  
02:19:18 7 clear on that point.

8  
02:19:19 9 Well as I understand it it's a fairly simple proposition,  
02:19:22 10 isn't it, if a person isn't registered they shouldn't be  
02:19:25 11 tasked. That's not a difficult concept?---It's a little  
02:19:29 12 bit more - I said last week, tasking is a little bit - was  
02:19:32 13 a little bit vague back then. Tasking could include just  
02:19:35 14 keeping your eyes and ears open and it's debatable whether  
02:19:40 15 that's actually a tasking or not.

16  
02:19:42 17 It says here, "Human source tasked to obtain more  
02:19:46 18 intelligence about the matter that has just been  
02:19:50 19 discussed". Do you - I mean, do you - - - ?---What I'm  
02:19:54 20 saying to you, Mr Winneke, is that that could just simply  
02:19:57 21 be, "Keep your eyes and ears open for any more about that".

22  
02:20:03 23 Right. But in any event she was tasked to do that?---Yes.

24  
02:20:12 25 On ■ October it appears that there's a further meeting with  
02:20:18 26 the clients, if I can put it that way, because we see  
02:20:23 27 ■ obviously Mr Hardy who you've mentioned, and another  
02:20:30 28 person - perhaps we don't want to mention that name  
02:20:34 29 because he may be a covert operative, would that be fair to  
02:20:37 30 say?---Yes.

31  
02:20:39 32 And ■, do you agree?---Yes.

33  
02:20:47 34 There's a discussion about how Ms Gobbo could be involved  
02:20:57 35 in a process whereby ■ was ■ and obviously  
02:21:08 36 we're being a bit careful about what we say?---Yes.

37  
02:21:11 38 But do you see where I'm getting to?---I do.

39  
02:21:15 40 It all related to a decision to ■ ■ being  
02:21:25 41 the client of Ms Gobbo, correct?---There was a number of  
02:21:34 42 strategies discussed there and that was one of them.

43  
02:21:42 44 The expectation was that Ms Gobbo would meet with ■  
02:21:51 45 and in effect convince him to assist police, do you agree  
02:21:57 46 with that?---I think the strategy was that ■ would have  
02:22:07 47 that ■ with ■ and if there was a

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02:22:14 1 positive meeting then if [REDACTED] wanted to pursue that  
02:22:18 2 matter then she could encourage him to do that.  
3  
02:22:22 4 That was a - there were two different issues. One was to  
02:22:25 5 do it in a way in which we're being sensitive about,  
02:22:29 6 right?---Yes.  
7  
02:22:30 8 But that was going to be postponed until the previous  
02:22:37 9 [REDACTED] do you agree with that?---Yes, I do.  
10  
02:22:41 11 The [REDACTED] was in effect - - -  
02:22:41 12  
02:22:44 13 COMMISSIONER: The name will have to be removed from the  
02:22:46 14 record.  
15  
02:22:57 16 MR WINNEKE: With a view to [REDACTED] there was a meeting  
02:23:01 17 that had been arranged between Ms Gobbo and [REDACTED] and  
02:23:08 18 if you have a look at the SML on [REDACTED] October you were advised  
02:23:15 19 by Mr Smith who'd had a phone call with Gobbo that the  
02:23:19 20 meeting with [REDACTED] and Gobbo had been postponed to [REDACTED] October,  
02:23:23 21 do you see that?---Yes.  
22  
02:23:26 23 So therefore that was going to go first and if that didn't  
02:23:30 24 work then the other method that we've been discussing could  
02:23:35 25 be kicked into action, correct?---It could be considered.  
26  
02:23:39 27 Could be considered, yeah, okay. Then there's the  
02:23:46 28 reference on [REDACTED] October to the fact that the meeting - it  
02:23:53 29 couldn't occur because [REDACTED] had been sent to [REDACTED] in  
02:23:56 30 [REDACTED] and wouldn't be available, right?---Yes.  
31  
02:24:03 32 And then if we have a look at - there's a later phone call  
02:24:06 33 and she'd again spoken to him and he'll be available for a  
02:24:10 34 meeting the next day, the [REDACTED] correct?---Yes.  
35  
02:24:16 36 But that didn't occur because she hadn't heard from him and  
02:24:21 37 therefore the meeting was postponed again, do you agree  
02:24:24 38 with that?---Yes.  
39  
02:24:30 40 Things in effect were put on ice because there was no  
02:24:33 41 meeting between Gobbo and [REDACTED] and finally on [REDACTED] October it  
02:24:40 42 became apparent that [REDACTED] was [REDACTED], do you see that?  
02:24:52 43 If you have a look at p.4 of the SML?---Yes, I see that.  
44  
02:24:55 45 Okay. Now then on the next day, on [REDACTED] October, you had a  
02:25:04 46 meeting with Detective Senior Sergeant O'Brien and you  
02:25:08 47 received a copy of an investigation plan and risk

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02:25:15 1 assessment for Operation Posse and on that day a Task Force  
02:25:20 2 plan was to be submitted to Mr Overland; is that  
02:25:27 3 right?---Yes.  
4

02:25:29 5 So you were provided with the investigation plan; is that  
02:25:35 6 correct?---Yes.  
7

02:25:36 8 And the risk assessment with respect to that plan?---Yes.  
9

02:25:47 10 It's quite apparent looking at that investigation plan that  
02:25:50 11 there had been input and there had been discussions between  
02:25:54 12 the SDU and Mr O'Brien about how the plan, the  
02:26:01 13 investigation plan was going to proceed and how Ms Gobbo  
02:26:03 14 was going to play a role in that investigation, do you see  
02:26:07 15 that or do you accept that proposition?---I accept that.  
16

02:26:10 17 All right. If I can have put up on the screen - - -  
02:26:41 18

02:26:42 19 MR HOLT: Commissioner, I should indicate this is a  
02:26:45 20 document that's been raised with me in advance by our  
02:26:49 21 learned friends but relatively recently, and I'll just work  
02:26:52 22 with our learned friend to ensure that we don't delay  
02:26:55 23 matters if I can - there is a VPL number.  
24

02:26:58 25 MR WINNEKE: There's a VPL number .0100.0009.0001. That's  
02:27:08 26 a shaded copy. Alternatively - do you have that document  
02:27:25 27 in front of you, Mr [REDACTED] No.  
28

02:27:29 29 COMMISSIONER: Is it an ICR?  
30

02:27:34 31 MR WINNEKE: No, it's described as an investigation plan  
02:27:38 32 for Operation Posse.  
33

02:27:41 34 COMMISSIONER: That will be coming up electronically, will  
02:27:44 35 it?  
36

02:28:43 37 MR HOLT: I apologise, Commissioner.  
38

02:28:51 39 MR WINNEKE: It's been emailed. I'm sorry, Commissioner,  
02:28:55 40 for the delay. There's an underscore with an R1S, which is  
02:30:09 41 a shaded version of that document. My learned junior has  
02:30:16 42 emailed it to Mr Skim. Do you have that in front of you,  
02:31:41 43 Mr [REDACTED] Yes.  
44

02:31:45 45 That's the document that you were provided with, is that  
02:31:50 46 fair to say?---I can't recall it but I think it's probably  
02:31:56 47 fair to say.

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1  
02:31:58 2 To be clear, there appear to be a couple of versions of it.  
02:32:02 3 That's a draft which is dated 17 November 2005, there's  
02:32:08 4 another - - -  
5  
02:32:09 6 COMMISSIONER: 17 October.  
7  
02:32:11 8 MR WINNEKE: 17 November 2005 - right down the bottom.  
9  
02:32:17 10 COMMISSIONER: Okay, I can't see that.  
11  
02:32:19 12 MR WINNEKE: If you go right down the bottom. You'll see  
02:32:22 13 17 November 2005. What I'm suggesting to you is there's  
02:32:30 14 another draft which is dated 11 August. In any event the  
02:32:41 15 assigned date is 17 October 2005. What I'm suggesting to  
02:32:45 16 you is that the effect of this document, the contents of  
02:32:47 17 this document were to all intents and purposes the document  
02:32:52 18 that was shown to you on 21 October 2005?---I - - -  
19  
02:33:03 20 Yes?---I'd like to help you, Mr Winneke, but of course I  
02:33:09 21 can't remember the document so I'm not sure if this is the  
02:33:12 22 one I was provided.  
23  
02:33:13 24 Right. In any event what I suggest to you is that it  
02:33:20 25 appears to be consistent at the very least with what's  
02:33:25 26 recorded in the SML to the effect that you received a copy  
02:33:35 27 of the investigation plan and a risk assessment document.  
02:33:37 28 You certainly received those two documents because it's  
02:33:40 29 recorded in your log. Now what you're saying is you can't  
02:33:45 30 be absolutely certain that the document that you see now in  
02:33:48 31 front of you was the exact same version as the one that you  
02:33:53 32 were shown, that's effectively what you're saying; is that  
02:33:55 33 right?---Yes.  
34  
02:33:58 35 Can I suggest to you though that if we take you through the  
02:34:01 36 material within the document, there's a background series  
02:34:06 37 of pieces of information which concern the background of  
02:34:10 38 the investigation, do you see that?---Yes.  
39  
02:34:15 40 It talks about an operation which had commenced in January  
02:34:18 41 of 2003, being Operation Matchless, do you see that at the  
02:34:25 42 bottom?---Yes.  
43  
02:34:27 44 Then over the page there's reference to information  
02:34:34 45 concerning Milad and Kabalan Mokbel, do you see that?---No.  
46  
02:34:44 47 Top - - - ?---Which paragraph?

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1  
02:34:46 2 In the shaded area?---Is it paragraph 1?  
3  
02:34:51 4 Yes, first paragraph?---There's a reference to Kabalan,  
02:34:54 5 yes. I can't see - - -  
6  
02:34:58 7 It may well be if we go back to the bottom of the previous  
02:35:01 8 page. I apologise. Do you see that at the very bottom of  
02:35:04 9 the previous page?---Yes.  
10  
02:35:06 11 Then if you go down the page you'll see again shading, I'm  
02:35:12 12 not going to go to it in detail, but April 2005 Operation  
02:35:17 13 Quills and targets of that operation including [REDACTED]  
02:35:21 14 [REDACTED] You were certainly aware of that information at  
02:35:24 15 that time?---Yes.  
16  
02:35:26 17 And then if we go further down we see, "Since the arrest of  
02:35:31 18 [REDACTED] a registered human source has been established.  
02:35:36 19 This indicates that Tony Mokbel is very concerned about the  
02:35:38 20 ramification of [REDACTED] talking to police",  
02:35:42 21 correct?---Yes.  
22  
02:35:43 23 And that's information that you had from Gobbo?---Yes.  
24  
02:35:49 25 And then if we go further down we see that the information  
02:35:57 26 had been corroborated through surveillance, do you see  
02:36:04 27 that?---Yes.  
28  
02:36:06 29 And further source information is that Jamou and Lanteri  
02:36:11 30 were currently manufacturing methamphetamine for Mokbel and  
02:36:16 31 that's information which you'd received from Gobbo?---Yes,  
02:36:20 32 I think it was.  
33  
02:36:23 34 "And the source has further stated that Mokbel is  
02:36:26 35 attempting to source a corrupt detective within Victoria  
02:36:32 36 Police in an attempt to gain access to tape material from  
02:36:32 37 Operations Kayak and Quills", do you see that?---Yes.  
38  
02:36:36 39 Again, that's information which you had received from Gobbo  
02:36:39 40 and which had in turn been provided to the investigators  
02:36:44 41 who put together this plan, do you accept that?---Yes.  
42  
02:36:49 43 Then there's reference further down to the fact that  
02:36:51 44 [REDACTED] had been observed [REDACTED] and we've already  
02:36:58 45 been to - there's been reference to [REDACTED] going off to the  
02:37:05 46 [REDACTED] - I withdraw that. I've done it again.  
02:37:09 47 [REDACTED] right.

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1  
02:37:10 2 COMMISSIONER: That name will have to be removed from the  
02:37:15 3 record.  
4  
02:37:19 5 MR WINNEKE: Do you accept that? Right. And there'd been  
02:37:23 6 observation of another male by the name of Cvetanovski, do  
02:37:28 7 you see that?---Yes.  
8  
02:37:30 9 That information - do you know whether that information had  
02:37:34 10 come from Gobbo or not?---I don't know.  
11  
02:37:36 12 All right. Then if we go over to - you can see off the  
02:38:10 13 screen there, "Antonios Mokbel is also the subject of an  
02:38:15 14 Australian Federal Police investigation involving  
02:38:18 15 incitement to import drugs into Australia. The AFP case on  
02:38:23 16 its own appears to be reasonably weak and is dependent upon  
02:38:27 17 the MDID Operation Quills for further circumstantial  
02:38:31 18 evidence to support the prosecution". Do you understand  
02:38:36 19 that Mr Mokbel was arrested in relation to that matter in  
02:38:39 20 October of 2005 and Ms Gobbo was involved in making  
02:38:43 21 application for bail on his behalf in relation to that  
02:38:49 22 operation?---Not specifically but I did know that she was  
02:38:54 23 representing him.  
24  
02:38:57 25 If it's apparent from documents that were in the possession  
02:38:59 26 of the SDU well then one assumes you would have made  
02:39:03 27 yourself aware of all those important matters at the time,  
02:39:05 28 I assume?---Yes, it would, and I know I'm being pedantic  
02:39:11 29 but I'm not sure that this is the document that I saw. But  
02:39:14 30 what I would say to you is that I was clearly provided with  
02:39:19 31 an investigation plan and that should be found on the SDU  
02:39:22 32 database.  
33  
02:39:22 34 Yes, all right. In any event, the investigation  
02:39:26 35 objectives, if we can move to the bottom of p.3,  
02:39:37 36 "Investigation objectives". Do you see that?---Yes.  
37  
02:39:50 38 You'll see that the objectives include utilising the  
02:39:55 39 continued information provided by registered - well  
02:40:01 40 certainly Ms Gobbo at least, do you agree with that?---At  
02:40:06 41 least, yes.  
42  
02:40:08 43 And to investigate and locate clandestine drug laboratories  
02:40:14 44 operated by Jamou, Lanteri establishing an evidentiary link  
02:40:20 45 between them and the Mokbel family. Do you see  
02:40:39 46 that?---Yes.  
47

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02:40:41 1 That's part of the plan?---Yes.  
2  
02:40:45 3 Utilise various procedures that are set out there in the  
02:40:50 4 document?---Yes.  
5  
02:40:54 6 Those matters had been discussed with Ms Gobbo, those  
02:40:57 7 possible procedures?---Some, yes.  
8  
02:41:01 9 Some. Certainly procedures whereby a pro-active [REDACTED]  
02:41:11 10 [REDACTED] scenario was discussed with Ms Gobbo?---Yes.  
11  
02:41:16 12 The utilisation of [REDACTED] processes, that was  
02:41:22 13 part of the investigation plan as you understood it I take  
02:41:24 14 it?---Yes.  
15  
02:41:28 16 And, "Seeking to undermine the Mokbel family level of  
02:41:34 17 control and influence over co-offenders at every  
02:41:35 18 opportunity and also recruit human sources", right?---Yes.  
19  
02:41:41 20 And identification of assets, et cetera, with a view to  
02:41:44 21 seizing proceeds. So they are the investigation objectives  
02:41:50 22 and they include the utilisation of information provided by  
02:41:53 23 Ms Gobbo amongst other sources of information, do you  
02:41:58 24 accept that?---Yes.  
25  
02:42:02 26 It says under the next heading that, "Human source  
02:42:10 27 management would be a major consideration outside the scope  
02:42:13 28 of the investigation but would obviously need the highest  
02:42:18 29 level of consideration in order to protect human sources  
02:42:23 30 during and post the process, investigative process", do you  
02:42:26 31 agree with that?---Yes  
32  
02:42:28 32  
02:42:28 33 MR HOLT: Excuse me, Commissioner.  
34  
02:42:51 35 MR WINNEKE: Effectively what the investigators are saying  
02:42:55 36 is that the risk assessments with respect to the use of  
02:42:59 37 Ms Gobbo as a human source would not be conducted by the  
02:43:03 38 investigator but would be conducted by the SDU, that would  
02:43:08 39 be your responsibility?---Yes.  
40  
02:43:24 41 But there would be, a strategy development would be  
02:43:27 42 assessed constantly between all participants in the  
02:43:35 43 investigation, that is the Task Force manager, in  
02:43:40 44 consultation with you effectively, amongst other  
02:43:40 45 people?---Yes.  
46  
02:43:41 47 Other units involved but I'm talking about your unit. That

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02:43:44 1 certainly was one of the units which would be involved in  
02:43:46 2 the strategy development?---Yes.  
3  
02:43:49 4 Do you follow that? All right. What you say, what they've  
02:43:57 5 suggested is that "all necessary steps will be taken to  
02:43:59 6 protect the identity of any human source involved in the  
02:44:06 7 investigation'?---Yes.  
8  
02:44:11 9 Effectively the protection would mean that certainly the  
02:44:19 10 idea would be that people would not come to know that, for  
02:44:23 11 example, Ms Gobbo was involved in this  
02:44:26 12 investigation?---Yes.  
13  
02:44:29 14 And that would mean that steps would need to be taken to  
02:44:33 15 hide her involvement from the subjects of the  
02:44:38 16 investigation?---Yes.  
17  
02:44:41 18 And continue to hide that involvement once those people  
02:44:44 19 were charged?---To make sure she was not compromised, yes.  
20  
02:44:51 21 To hide - prevent them from knowing that she was involved  
02:44:57 22 in providing information against them, correct?---Yes.  
23  
02:45:02 24 And to use what measures were available to prevent that  
02:45:06 25 knowledge from ever coming out, whether it be to defendants  
02:45:13 26 in hand-up briefs, correct?---Yes.  
27  
02:45:17 28 To defendants if there was the possibility of  
02:45:25 29 subpoenas?---Yes, but bear in mind there's a process for  
02:45:33 30 that.  
31  
02:45:35 32 And steps would be taken to, as far as possible, remove  
02:45:42 33 that information from areas where it might easily be  
02:45:46 34 obtained under subpoena?---Well, in line with the policy,  
02:45:55 35 yes. As far as any human source goes.  
36  
02:46:00 37 Which policy are you talking about?---The HSMU has policies  
02:46:07 38 about issues such as PII, matters that are relevant to  
02:46:13 39 informers being involved in investigations.  
40  
02:46:18 41 Have you seen those policies?---I don't know whether I  
02:46:26 42 have. It was just a process. I knew very well that any  
02:46:30 43 subpoenas that related to source information had to be  
02:46:33 44 managed by the HSMU.  
45  
02:46:35 46 All right. In any event as we discussed last week, and  
02:46:39 47 whilst you say, look, this wasn't done to prevent

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02:46:43 1 barristers, defence barristers or defence counsel from  
02:46:46 2 getting hold of material, one way of ensuring that could  
02:46:49 3 happen would be to have a sterile corridor process, if you  
02:46:52 4 like, whereby information such as notes, diaries, et  
02:46:58 5 cetera, weren't in the possession of investigators but they  
02:47:01 6 were in the possession of the SDU, that was one way that  
02:47:05 7 that could be achieved and that was a benefit of the  
02:47:08 8 SDU?---It was. More to control the information.

9  
02:47:15 10 That possibility of exposure of a human source by  
02:47:19 11 disclosure, by lawful disclosure, was that part of the risk  
02:47:26 12 assessment that you made concerning the use of  
02:47:33 13 Ms Gobbo?---You would have to look at the documents  
02:47:39 14 themselves.

15  
02:47:40 16 Yes. Because clearly the risk of exposure by disclosure,  
02:47:46 17 by court disclosure would be a serious risk which could  
02:47:50 18 lead to the exposure of Ms Gobbo as a human source?---Yes,  
02:47:57 19 as it is with any informer/human source operation.

20  
02:48:01 21 Clearly it was a risk for the SDU?---Well, as you're aware  
02:48:08 22 she was - well, all the sources at the SDU were high risk  
02:48:13 23 and that pretty much meant if they were compromised they  
02:48:15 24 were going to get hurt or killed. So she was (indistinct)  
25 in that respect.

26  
02:48:19 27 We'll come to your risk assessment in due course. In any  
02:48:22 28 event, if we go further down the page in that document,  
02:48:29 29 we'll see that there's a section entitled "the main  
30 investigative steps - fully profiled all Mokbel family  
31 members, drawing upon all past investigations and  
02:48:57 32 intelligence and updates such profiles", et cetera.

02:48:57 33  
02:48:57 34 MR HOLT: Excuse me, Commissioner.

02:49:11 35  
02:49:14 36 MR WINNEKE: If we see point 2 in the investigative steps  
02:49:18 37 we see that there's this line: "In line with reliable  
02:49:21 38 source information attempt to [REDACTED] [REDACTED] - all  
02:49:37 39 right.

40  
02:50:20 41 Can I ask you this: at the very least it was your  
02:50:23 42 desire to have Ms Gobbo assist in [REDACTED] [REDACTED] as a  
02:50:36 43 person who would provide information, at least in witness  
02:50:43 44 statements, if not otherwise, against the Mokbels, in  
02:50:48 45 effect to use him against the Mokbels?---Yes.

02:50:51 46  
02:50:53 47 And to investigate, sorry, to increase the motivation of [REDACTED]

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02:51:01 1 to do that, to provide information against the Mokbels, to  
02:51:05 2 assist in the conviction of the Mokbels, by further  
02:51:09 3 investigation of current criminal activities of him and his  
02:51:14 4 associates to encourage him to do so, effectively to ensure  
02:51:24 5 he will be left with no opportunity but to give evidence  
02:51:27 6 against the Mokbels, correct?---I think that's what the  
02:51:34 7 investigators wanted, yes.

02:51:35 8  
02:51:35 9 The so reality is he was already on [REDACTED]  
02:51:40 10 [REDACTED]  
02:51:45 11 [REDACTED] correct?---Correct.

02:51:47 12  
02:51:49 13 He was obviously going to have to be dealt with those for  
02:51:53 14 matters and at various stages Ms Gobbo said to you, told  
02:51:56 15 you that he was going to plead guilty to those matters,  
02:52:01 16 correct?---Yes.

02:52:02 17  
02:52:02 18 And indeed his plea had been listed to be dealt with [REDACTED]  
02:52:07 19 [REDACTED], do you accept that?---I don't know, but I'll  
02:52:13 20 accept. I'll accept it.

02:52:15 21  
02:52:15 22 We've been through it just recently. The fact is his plea  
02:52:19 23 was listed and his desire was to stay out of custody. His  
02:52:24 24 plea hearing was adjourned [REDACTED]  
02:52:28 25 [REDACTED] and the idea was, I suggest, that if he could be found  
02:52:35 26 to be committing further very serious offences whilst he  
02:52:39 27 was actually on bail and found in circumstances where he  
02:52:48 28 would have absolutely no defence, he would be facing the  
02:52:52 29 prospect of a very lengthy period of incarceration because  
02:52:57 30 he'd been committing offences whilst on bail. That was  
02:53:00 31 part of the idea, wasn't it?---Yes.

02:53:03 32  
02:53:04 33 And he would be then able to be in effect softened up and  
02:53:10 34 it would be relatively, well it would be easier to get him  
02:53:14 35 to roll because he would thereby avoid significant prospect  
02:53:19 36 of increased incarceration?---Yes, that was an option.

02:53:24 37  
02:53:25 38 And that was the plan, that's what that investigative step  
02:53:29 39 says right there?---Yes.

02:53:31 40  
02:53:33 41 You were going to use Ms Gobbo to assist you in that  
02:53:36 42 plan?---At this time he's [REDACTED] He's  
02:53:43 43 out on [REDACTED] he's out on bail for [REDACTED]  
02:53:50 44 [REDACTED] and he's told Ms Gobbo that he's [REDACTED] or  
02:53:53 45 other people had told her.

02:53:54 46  
02:53:54 47 You're getting information from her about it?---Yes.

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02:53:57 1  
02:53:57 2 In effect she's assisting you in that investigative  
02:54:01 3 end?---Yes.  
02:54:02 4  
02:54:02 5 By telling you that information about her client,  
02:54:05 6 correct?---Yes.  
02:54:06 7  
02:54:15 8 Can I suggest this to you, that initially Ms Gobbo was  
02:54:23 9 saying to you he wasn't telling her anything about what he  
02:54:27 10 was currently up to but she in effect softened him up and  
02:54:31 11 got that information from him and then passed that  
02:54:33 12 information on to you. I suggest to you that's what a  
02:54:36 13 close analysis of the materials would show?---No. I think  
02:54:41 14 in the early meeting or meetings she wasn't aware that he  
02:54:46 15 was [REDACTED] but then he started to tell her that he was  
02:54:51 16 [REDACTED] and other people were telling her that he was  
02:54:54 17 [REDACTED]  
02:54:55 18  
02:54:55 19 All right?---But I wouldn't say that she softened him up,  
02:54:59 20 no, I think he volunteered that information because he  
02:55:02 21 wanted to have a social relationship with her.  
02:55:04 22  
02:55:04 23 Be that as it may, what you are, you do accept the  
02:55:08 24 proposition that initially she wasn't being told that  
02:55:12 25 information and subsequently she started to get that  
02:55:14 26 information?---Yes.  
02:55:16 27  
02:55:16 28 As to the exact circumstances of how she gets it, that's a  
02:55:20 29 matter, I suppose, between Ms Gobbo and [REDACTED] --It is  
02:55:28 30 to a certain extent but as I said to you there's other  
02:55:33 31 people who also told her he was [REDACTED] and provided her  
02:55:36 32 with information about his access [REDACTED]  
02:55:40 33 Actually there's one individual got her to pass a message  
02:55:44 34 on to um Mr - what's his name, [REDACTED] to get a  
02:55:53 35 [REDACTED] So she was receiving intelligence about [REDACTED]  
02:55:58 36 [REDACTED] activities from a number of different sources.  
02:56:04 37  
02:56:04 38 [REDACTED] was another person who she had been engaged to  
02:56:07 39 act for, is that correct?---No, I don't think she had  
02:56:14 40 because I think she felt there was a conflict of interest  
02:56:17 41 there with Tony Mokbel.  
02:56:18 42  
02:56:19 43 She had been engaged to attend, she went to court. You're  
02:56:22 44 aware of all that because that's how this whole thing comes  
02:56:26 45 about?---That's true, I think she went to the bail  
02:56:30 46 application or remand application.  
02:56:32 47

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02:56:32 1 Yes, she had been briefed to appear for him?---But she'd  
02:56:36 2 removed herself straight after that.  
02:56:38 3  
02:56:45 4 Would it be fair to say then she has assisted co-accused,  
02:56:49 5 ██████████ to then make a statement against that person  
02:56:52 6 we've just been talking about? I withdraw that. I  
02:56:56 7 withdraw that. All right, I'll move on. I've just been  
02:57:17 8 asking you questions about the investigative plan with  
02:57:21 9 respect to ██████████ and the attempt to manipulate a  
02:57:27 10 circumstance where he would be pressured to give evidence,  
02:57:30 11 do you agree with that?---Are you talking about if he was  
02:57:37 12 to be caught - - -  
02:57:39 13  
02:57:39 14 Yes?---- - - and charged with something new, yes.  
02:57:42 15  
02:57:43 16 To increase motivation of ██████████ by further  
02:57:46 17 investigation, do you agree?---Yes.  
02:57:47 18  
02:57:47 19 Very similar steps were taken with respect to  
02:57:53 20 ██████████ --No, I don't know anything about that.  
02:58:01 21  
02:58:03 22 Just read .3 at the bottom of p.4 over to p.5 and I suggest  
02:58:12 23 to you virtually identical steps were taken?---You would  
02:58:23 24 have to talk to the investigators about that. I can see  
02:58:27 25 it's the same plan.  
02:58:31 26  
02:58:32 27 Yes?---I'm not sure that ██████████ was continuing to  
02:58:35 28 commit crime after he had actually been arrested for that  
02:58:39 29 particular operation that he was arrested for.  
02:58:43 30  
02:58:43 31 Yes. Wasn't there a reference to a ██████████ ---Yes,  
02:58:50 32 there was a reference to a ██████████ that he apparently  
02:58:52 33 had access to.  
02:58:53 34  
02:58:54 35 That would suggest that he was potentially engaging in  
02:58:59 36 ongoing criminal activity, wouldn't it?---Yes, it would.  
02:59:02 37  
02:59:08 38 If we go down the page we can see that - just excuse me.  
02:59:41 39 Do you accept this proposition, that Ms Gobbo was tasked to  
02:59:58 40 obtain information with respect to ██████████? I think I  
03:00:04 41 went through this with you before. If we go to page - can  
03:00:16 42 we go to ICR number - just excuse me. Go to  
03:00:30 43 VPL.2000.0003.1635 and go to p.4 of that document, which is  
03:00:46 44 1638. Page 52. Do you see that under the heading  
03:01:06 45 "tasking"? Do you see above it?---Yes.  
03:01:16 46  
03:01:17 47 There's a reference to a conversation between Ms Gobbo and

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03:01:23 1 [REDACTED], do you see that?---Yes.  
03:01:27 2  
03:01:28 3 She provides information about him?---Yes.  
03:01:33 4  
03:01:34 5 He's coming in to see her. She's unsure why he wants to  
03:01:39 6 see her as she doesn't act for him. Do you see that?---I  
03:01:59 7 don't see the sentence that you've just said that she's  
03:02:03 8 unsure - - -  
03:02:04 9  
03:02:04 10 We'll just highlight it for you?---Yes.  
03:02:08 11  
03:02:15 12 That information's passed on to Senior Detective Craig  
03:02:21 13 Hayes at Purana?---Yes.  
03:02:22 14  
03:02:22 15 Then there's an information report submitted in relation to  
03:02:25 16 the phone number?---Yes.  
03:02:27 17  
03:02:28 18 Then she's tasked to do what's set out there?---Yes.  
03:02:32 19  
03:02:38 20 Can I ask you about what Mr Hayes was told?---You would  
03:02:46 21 have to - I think you'd have to look at the ICR, sorry, the  
03:02:54 22 IR in relation to intelligence which I think you've just  
03:02:57 23 said was the phone number and it was probably just limited  
03:03:00 24 to that phone number. As you can see, this is also - this  
03:03:07 25 information in relation to [REDACTED] is all about him  
03:03:10 26 and an alleged corrupt policeman who was asking for money  
03:03:15 27 to make his charges go away.  
03:03:17 28  
03:03:18 29 Right?---So there might be - - -  
03:03:21 30  
03:03:21 31 Sorry, go on?---There might be further information on the  
03:03:26 32 IR about that.  
03:03:26 33  
03:03:27 34 So your understanding was that she didn't act for  
03:03:32 35 [REDACTED] because that's what she apparently has said in  
03:03:37 36 that telephone interaction?---Yes.  
03:03:41 37  
03:03:47 38 Would you say that Mr Hayes gets the same sanitised  
03:03:53 39 information which is set out in the IR?---Yes, he should  
03:03:59 40 have.  
03:03:59 41  
03:04:00 42 He should have. How do you know that?---Well I think the  
03:04:06 43 sentence there tells you what he was advised of, it's right  
03:04:10 44 underneath the piece of information about the phone number.  
03:04:13 45  
03:04:16 46 What appears to be the case there, and I'll come to this in  
03:04:19 47 due course, that information is conveyed to Purana on 22

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03:04:25 1 November 2005, is that right?---Well that's what it says,  
03:04:37 2 yes.  
03:04:37 3  
03:04:38 4 Who would have conveyed that information?---Whoever  
03:04:41 5 prepared this particular contact report.  
03:04:44 6  
03:04:44 7 So it appears to be, if we go to p.14 of the contact report  
03:04:48 8 at 1648, it appears to be Mr Smith?---Yes, that's correct.  
03:04:59 9  
03:05:00 10 And again, this is a contact report where it's not  
03:05:04 11 apparent, certainly on this version of the contact report,  
03:05:09 12 whether the controller saw it and if so, when?---That seems  
03:05:14 13 to be the case on this contact report. There seems to be a  
03:05:22 14 bit missing from this, the document I'm looking at.  
03:05:24 15  
03:05:24 16 And what's missing from it?---If you have a look at p.57,  
03:05:29 17 58, 59 and 60, even 61, they seem to be half pages.  
03:05:36 18  
03:05:38 19 Yes. This is, are you talking about ICR number 8? Just  
03:05:44 20 excuse us, we'll put up the other version of it. Can we  
03:06:07 21 put up VPL.2000.0003.4084. 2000.0003.0084. It's loading I  
03:07:03 22 gather. Okay. As we understand it this is the original  
03:08:45 23 document. Can we go through it.  
03:08:49 24  
03:08:49 25 MR CHETTLE: Can this document be put up on our screen so  
03:08:52 26 we know what we're talking about?  
03:08:55 27  
03:09:05 28 MR WINNEKE: As we understand it this is the original  
03:09:07 29 document which came off the hard drive of the SDU. So we  
03:09:13 30 see at the top of the page there's a couple of boxes which  
03:09:17 31 are unticked, but there's no suggestion of controller  
03:09:22 32 advised prior to contact, "has the informer been tasked",  
03:09:26 33 it's not ticked off, but if we go through that document.  
03:09:48 34 Stop there. That appears to be the page that we were  
03:09:56 35 looking at previously on the electronic document. It seems  
03:09:59 36 to be the same information, doesn't it?---It seems to be.  
03:10:04 37  
03:10:04 38 Keep going.  
03:10:34 39  
03:10:34 40 MR HOLT: Commissioner, I wonder if these could be taken  
03:10:38 41 down from as many screens as they can be. They are  
03:10:41 42 unredacted ICRs at this point, so they contain not just  
43 information that's known to the persons in the room but  
03:10:44 44 also - - -  
03:10:44 45  
03:10:45 46 COMMISSIONER: Mr Chettle just asked to see his - - -  
03:10:47 47

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03:10:47 1 MR CHETTLE: And now I'm happy for it to go now that I know  
03:10:50 2 what it is, Commissioner. I didn't know what the document  
03:10:53 3 was.  
03:10:53 4  
03:10:53 5 MR HOLT: I think it's just a comparison to ensure they're  
03:10:58 6 identical, which they appear to be.  
03:11:00 7  
03:11:03 8 MR WINNEKE: If we can just move to back page so as we can  
03:11:04 9 see the last page. Again, that appears to be a document  
03:11:07 10 with the same information on the last page, the box with  
03:11:10 11 the name of Smith, the date, but no reference at all to any  
03:11:16 12 controller involvement, do you agree with that?---It  
03:11:19 13 appears to be, yes.  
03:11:21 14  
03:11:21 15 What does that indicate about whether or not a controller  
03:11:25 16 signed off on that document?---Well, can I just say to you  
03:11:32 17 there seems to be a lot of confusion about the contact  
03:11:36 18 reports, which is the original, and I don't know where  
03:11:39 19 these reports have come from. What the handlers would do,  
03:11:42 20 is they would type their reports and then forward them to  
03:11:48 21 me but they may keep a copy of that report under their  
03:11:53 22 drive, and of course that wouldn't have my sign off on it.  
03:11:56 23 And I really can't assist in relation to these reports and  
03:12:01 24 the formatting because, as I said, the formatting, it  
03:12:04 25 doesn't look right, either version that you've showed me.  
03:12:08 26 And I know that Mr Black has done quite an analysis on the  
03:12:16 27 contact reports and he has a much better idea of perhaps  
03:12:19 28 why these reports are the way they are.  
03:12:24 29  
03:12:24 30 Right?---But I think if you are asking me you're really  
03:12:31 31 just asking me to guess.  
03:12:34 32  
03:12:35 33 Yes, all right. The answer is you simply don't know?---No.  
03:12:41 34  
03:12:41 35 Okay, all right?---Well I suspect this is a part finished  
03:12:45 36 contact report that was probably sitting in Mr Smith's  
03:12:48 37 directory before it made its way to me.  
03:12:51 38  
03:12:51 39 All right. On the question of whether she was or wasn't  
03:12:57 40 acting for **Mr Bickley** or providing advice to him, it would  
03:13:04 41 be a matter of some significance because like other cases  
03:13:07 42 in which she's acting for people and providing information,  
03:13:11 43 it would be a matter of concern if subsequently it became  
03:13:15 44 apparent that in fact she was providing legal advice to a  
03:13:20 45 person in relation to whom she had given information, do  
03:13:25 46 you accept that?---Well, as I said to you I don't think she  
03:13:30 47 was acting for him.

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03:13:31 1  
03:13:31 2 All right. Do you believe that if it did appear at some  
03:13:35 3 stage in the future that she was acting for him, then that  
03:13:38 4 would be a matter of concern?--Well that would be a  
03:13:42 5 conflict of interest for her to deal with.  
03:13:45 6  
03:13:46 7 For her to deal with, right, okay. If we go to p.84 of the  
03:13:50 8 ICRs which is ICR no.12 at VPL.2000.0003.1666 at p.1670.  
03:14:22 9 We can see under there, under the heading of Mr Bickley that  
03:14:26 10 the source has been speaking with him about his brief of  
03:14:29 11 evidence and is scheduled to meet with him soon to review  
03:14:33 12 the evidence.  
03:14:35 13  
03:14:35 14 COMMISSIONER: This date is 13 December?  
03:14:43 15  
03:14:43 16 MR WINNEKE: 13 December 2005. Do you see that?--Yes.  
03:14:46 17  
03:14:47 18 She's providing information about his telephone number,  
03:14:51 19 current mobile phone number?--Yes.  
03:14:55 20  
03:14:57 21 Sorry - yes, you're right.  
03:15:00 22  
03:15:01 23 And that information's submitted as an IR?--Yes.  
03:15:06 24  
03:15:07 25 In relation to a person who she quite clearly at that stage  
03:15:12 26 is advising?--Yes.  
03:15:18 27  
03:15:21 28 And that would be, you accept, a quite clear conflict of  
03:15:25 29 interest that she's got?--Yes.  
03:15:28 30  
03:15:29 31 Which the SDU was clearly cognisant of?--If she's taking  
03:15:34 32 him on as a client that would be a conflict of interest I  
03:15:38 33 would think.  
03:15:38 34  
03:15:39 35 It would have been apparent to you?--Yes.  
03:15:42 36  
03:15:42 37 Do you know whether any steps were taken to suggest that  
03:15:47 38 she shouldn't act for this person?--If you, if you have a  
03:15:57 39 look through the record of the relationship with Ms Gobbo  
03:16:01 40 you'll find quite a number of occasions where we've told  
03:16:04 41 her not to represent certain clients, even [REDACTED] she  
03:16:09 42 was told she could withdraw from him, make life easier, so  
03:16:15 43 - sorry, can I answer the question?  
03:16:17 44  
03:16:17 45 Yes?--You're specifically asking about Mr Bickley She  
03:16:20 46 may well have been told not to represent him because it's a  
03:16:23 47 conflict of interest. I just don't have complete knowledge

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03:16:31 1 of the record at this point in time 15 years later.  
03:16:34 2  
03:16:34 3 What I do want to suggest, and this will appear time and  
03:16:37 4 time again, despite what might be regarded as suggestions  
03:16:40 5 that she not, it was repeatedly the case that she ignored  
03:16:45 6 those suggestions?---Well, I take issue with the  
03:16:52 7 suggestion. She was directly told on a number of occasions  
03:16:55 8 in relation to certain people, I know that for a fact, and,  
03:16:59 9 yes, you're quite right she did ignore that clear  
03:17:03 10 instruction on a number of occasions. Sometimes she did  
03:17:06 11 comply, other times she didn't and I can't tell you what  
03:17:09 12 would be the ratio of those she did compared to those she  
03:17:14 13 didn't.  
03:17:14 14  
03:17:14 15 Yes. Did you ever get to the bottom of why she did comply  
03:17:18 16 and why she didn't comply on occasions?---I think, with the  
03:17:24 17 benefit of hindsight, I think her greatest concern was that  
03:17:28 18 she would be outed as a human source and she would be  
03:17:32 19 killed and I think she made a lot of decisions about who  
03:17:35 20 she would represent or not represent based on that  
03:17:42 21 particular fact.  
03:17:45 22  
03:17:48 23 But she'd already made it plain in the initial stages that  
03:17:52 24 she wasn't going to act for Mr Bickley she told you that  
03:17:56 25 and that she was the reason that she came to see you yet it  
03:17:59 26 appears that she's going back and acting for him, doesn't  
03:18:02 27 it?---It does, yes.  
03:18:03 28  
03:18:03 29 That wouldn't be consistent with the proposition that  
03:18:06 30 you've just put?---I think it would be consistent. She's,  
03:18:12 31 she didn't initially act for him because she felt there was  
03:18:15 32 a conflict of interest with Tony Mokbel. That's changed  
03:18:19 33 over time and as I said, mostly, my recollection was that  
03:18:25 34 mostly when she did get involved in representing people it  
03:18:28 35 was to protect herself, which that was her view.  
03:18:32 36  
03:18:33 37 The reality is, the situation was exactly the same as it  
03:18:36 38 was previously, there was a conflict with Mokbel and yet  
03:18:39 39 she was apparently ignoring it and advising him  
03:18:44 40 subsequently?---But that's - you might be right,  
03:18:47 41 Mr Winneke, but surely that's her, her ethical  
03:18:52 42 responsibility.  
03:18:53 43  
03:18:53 44 Right, okay. So in effect you were prepared to allow her  
03:18:56 45 to make that decision?---Well, isn't that a barrister's  
03:19:03 46 decision to make that in relation to conflicts of interest?  
03:19:06 47

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03:19:06 1 If the barrister is acting ethically, yes?---I'm no expert  
 03:19:12 2 on conflict of interest but it seems quite a tricky concept  
 03:19:16 3 and we did try and understand it. I mean, I can see  
 03:19:20 4 Ms Tittensor there today, she's been there for a week  
 03:19:24 5 advising you, but she represented one of the men from the  
 03:19:27 6 SDU and that I imagine is a conflict of interest but it's  
 03:19:32 7 hers.

03:19:32 8  
 03:19:32 9 And in the case, if a person advises the other person what  
 03:19:37 10 the situation is and receives, let's just assume this for  
 03:19:41 11 an example. If, for example, Mr [REDACTED] [REDACTED] was told  
 03:19:49 12 what the situation was, it wasn't kept from [REDACTED] and  
 03:19:55 13 Mr [REDACTED] said, "Yep, that's not a problem as far as I was  
 03:19:59 14 concerned", that would solve the problem, wouldn't  
 03:20:01 15 it?---Well - - -

03:20:03 16  
 03:20:03 17 To a significant degree, do you accept that?---I take it  
 03:20:07 18 from, that, that the information is coming from yourself  
 03:20:12 19 and you have a much greater understanding, that that must  
 03:20:15 20 be the case. But what I'm telling you is at the time what  
 03:20:19 21 we believed.

03:20:22 22  
 03:20:22 23 Did you - - - ?---We believed that - - -

03:20:25 24  
 03:20:27 25 - - - ever satisfy yourself that the clients were aware of  
 03:20:32 26 the conflict of Ms Gobbo? Did you ever satisfy yourself  
 03:20:39 27 about that?---No.

03:20:43 28  
 03:20:51 29 COMMISSIONER: Just in respect of the matter you've just  
 03:20:54 30 raised. Ms Tittensor is not, will not be appearing in any  
 03:21:00 31 matters involving the witness that she once appeared for on  
 03:21:04 32 a completely different matter and that was discussed with  
 03:21:08 33 that particular handler and the handler had no objection to  
 03:21:12 34 that course?---Thank you, Commissioner.

03:21:15 35  
 03:21:16 36 MR WINNEKE: Are you aware of that, Mr [REDACTED]-No.

03:21:19 37  
 03:21:24 38 That might change your view, mightn't it?---I think if that  
 03:21:31 39 particular member was consulted it would change my view.

03:21:34 40  
 03:21:41 41 Because that's a significant matter, the person has to have  
 03:21:44 42 an opportunity to understand what is going on,  
 03:21:47 43 correct?---Mr Winneke, I don't know. As I said to you a  
 03:21:54 44 number of times now, we believed that the conflict of  
 03:21:58 45 interest issue, it was for Ms Gobbo to sort out.

03:22:01 46  
 03:22:02 47 Yes. And what you do understand is that it was never made

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03:22:05 1 known to any of her clients?---That's correct.  
03:22:09 2  
03:22:11 3 And steps were taken by you, by Ms Gobbo, to, I suggest,  
03:22:17 4 conceal it from her clients?---I think, as I said to you,  
03:22:24 5 we, we tried to intervene when we could and sometimes it  
03:22:28 6 worked and sometimes it didn't.  
03:22:34 7  
03:22:35 8 All right. Now, on 28 October of 2005 you had a  
03:22:57 9 conversation with Ms Gobbo and Mr Smith? 28 October  
03:23:11 10 2005?---Yes, there was one other party there at that  
03:23:21 11 meeting.  
03:23:22 12  
03:23:22 13 Actually, just before I do that, Mr [REDACTED] just before we  
03:23:32 14 go there, there was another matter I wanted to deal with.  
03:23:36 15 On that day that you had the meeting on 21 October you were  
03:23:40 16 shown, according to the source management log, a risk  
03:23:43 17 assessment, do you agree with that?---Yes.  
03:23:47 18  
03:23:49 19 And that was a risk assessment which had been prepared by  
03:23:52 20 Mr O'Brien?---Yes.  
03:23:56 21  
03:23:58 22 And I wonder if this document could be put up,  
03:24:04 23 COM.0030.0001.0003. I think Mr Skim has had that document  
03:24:16 24 emailed to him already. Do you have that document  
03:26:02 25 there?---No, I don't.  
03:26:04 26  
03:27:00 27 I'm sorry, Commissioner, it just takes some time for these  
03:27:05 28 things to download unfortunately.  
29  
03:27:10 30 All right. Now do you see, if we can go to - that's  
03:27:14 31 the first page, it's a risk assessment. The operation name  
03:27:18 32 is Posse, it's prepared by Mr O'Brien. I suggest that's  
03:27:21 33 the document that was put to you or shown to you and is  
03:27:24 34 referred to in the source management log, do you accept  
03:27:28 35 that proposition?---Yes.  
03:27:29 36  
03:27:29 37 It sets out various risks, likelihoods, consequences,  
03:27:33 38 levels of risk and mitigatory plans, do you see  
03:27:37 39 that?---Yes.  
03:27:38 40  
03:27:38 41 If we go to the second page of the document there's a  
03:27:41 42 reference to human source intelligence report  
03:27:45 43 material?---Yes.  
03:27:46 44  
03:27:49 45 The risks are said to be rare but the consequences are  
03:27:55 46 catastrophic and the level of risk is high. Do you see  
03:28:02 47 that?---Yes.

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03:28:02 1  
03:28:03 2 It says that, "All human source material is to be sanitised  
03:28:07 3 by the DSU or the SDU", do you agree with that?---Yes.  
03:28:11 4  
03:28:12 5 "Actioning of intelligence will only occur after  
03:28:15 6 consultation between the Task Force manager and the DSU  
03:28:21 7 upon considering risks to any source"?---Yes.  
03:28:24 8  
03:28:25 9 "Where possible all human source intelligence to be  
03:28:27 10 disseminated to the Task Force via the Dedicated Source  
03:28:31 11 Unit by hand", do you see that?---Yes.  
03:28:34 12  
03:28:34 13 And, "All intelligence reports involving human source  
03:28:38 14 information to be scrutinised by Task Force manager for  
03:28:43 15 material likely to result in later identification of source  
03:28:43 16 by association or timing related to police action or event  
03:28:47 17 occurrence. All human source generated information to be  
18 handled and filed in accordance with Victoria Police  
03:28:54 19 informer management policy and DSU SOPs, including the  
03:28:57 20 application of monthly risk assessments". Right?---Yes.  
03:29:02 21  
03:29:06 22 Was this risk assessment developed in consultation with the  
03:29:12 23 SDU?---I'm not sure. Mr O'Brien had dealings with the SDU  
03:29:23 24 probably prior to this so this might be a generic type of  
03:29:28 25 response.  
03:29:29 26  
03:29:29 27 The expectation is nonetheless that he would have been  
03:29:31 28 aware of SDU policies, SOPs, et cetera?---To a limited  
03:29:40 29 extent.  
03:29:41 30  
03:29:41 31 In any event he had been able to put this risk assessment  
03:29:44 32 together, correct?---Yes.  
03:29:47 33  
03:29:47 34 And he provided it to you?---Yes.  
03:29:51 35  
03:29:53 36 Do you accept that the actioning of intelligence would only  
03:30:00 37 occur after consultation between the Task Force manager and  
03:30:03 38 the DSU?---Yes.  
03:30:07 39  
03:30:07 40 And was that in fact what occurred?---Well as I said to you  
03:30:12 41 last week, we developed a point of liaison protocol which  
03:30:20 42 would have been developed subsequent to this risk  
03:30:22 43 assessment.  
03:30:23 44  
03:30:23 45 All right?---But that meant that all the information that  
03:30:26 46 was disseminated generally flowed through the Task Force  
03:30:31 47 manager.

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03:30:32 1  
03:30:34 2 Is that because of the volume of information that was  
03:30:37 3 flowing in?---No, no, it was, as I discussed last week,  
03:30:42 4 there was good reasons for that. It meant that there was  
03:30:45 5 one central point to go to in relation to how that  
03:30:49 6 information was managed.  
03:30:50 7  
03:30:51 8 Yes. It says, "Where possible all human source  
03:30:54 9 intelligence to be disseminated to the Task Force via the  
03:30:58 10 DSU by hand". That's what was suggested in the risk  
03:31:02 11 assessment, wasn't it?---Yes.  
03:31:04 12  
03:31:04 13 That didn't occur, did it?---Well, I think this particular  
03:31:10 14 row, if you like, on Mr O'Brien's risk assessment is  
03:31:15 15 talking about human source intelligence report material. I  
03:31:18 16 think he's talking about information reports, the actual  
03:31:22 17 documents.  
03:31:22 18  
03:31:22 19 Right. Where is there a reference to direct provision of  
03:31:29 20 information fresh hot off the press, if you like - is there  
03:31:35 21 any reference to that, verbal disseminations or hot  
03:31:38 22 debriefs?---I haven't read the whole risk assessment but I  
03:31:43 23 think probably the section that you provided to me here is  
03:31:49 24 probably the only reference in that document to the SDU.  
03:31:53 25 There might be more.  
03:31:54 26  
03:31:54 27 In any event if there was a process whereby a handler  
03:31:59 28 simply picked up the telephone and immediately disseminated  
03:32:02 29 information to Purana, there would be a greater risk to the  
03:32:05 30 human source because there hadn't been a considered and  
03:32:08 31 careful process of sanitising information, do you accept  
03:32:10 32 that proposition?---Sorry, your proposition is if it's done  
03:32:23 33 verbally via telephone there's a greater risk to the  
03:32:27 34 information because it's not sanitised?  
03:32:29 35  
03:32:30 36 A greater risk to the source, a greater risk to the  
03:32:34 37 information, amongst other things?---Yes.  
03:32:37 38  
03:32:39 39 Indeed, what Mr O'Brien says is that the information that  
03:32:43 40 he received from the SDU was almost invariably verbally  
03:32:50 41 provided, hot debriefs he's described them as?---Yes,  
03:32:53 42 that's correct.  
03:32:54 43  
03:32:56 44 Can I suggest to you that within the SDU Standard Operating  
03:33:02 45 Procedures there is no reference at all to verbal  
03:33:08 46 dissemination of information?---Yes.  
03:33:10 47



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03:33:10 1 You agree with that proposition?---Not having them in front  
03:33:17 2 of me to look through them, I'll accept that proposition.  
03:33:20 3  
03:33:21 4 If there were regular and frequent disseminations of  
03:33:26 5 information verbally, that would not be consistent with the  
03:33:29 6 Standard Operating Procedures of the SDU?---Again, without  
03:33:36 7 looking at the SOPs and the various versions I can't really  
03:33:41 8 tell you, but I can tell you that it was standard practice  
03:33:45 9 to do hot debriefs with investigators right throughout my  
03:33:51 10 time in the SDU.  
03:33:52 11  
03:33:54 12 No doubt you'll examine the SOPs when you get an  
03:33:57 13 opportunity and point out where it's referred to as being a  
03:34:01 14 standard practice. You'll undertake to do that, will  
03:34:05 15 you?---No, I'll accept from you, Mr Winneke, you've been  
03:34:08 16 through that document and you say it's not there. I'm  
03:34:12 17 happy to say that that will be true.  
03:34:14 18  
03:34:15 19 On 28 October you had a conversation with Ms Gobbo and  
03:34:20 20 Mr Smith and you say there was another person  
03:34:24 21 present?---Yes.  
03:34:25 22  
03:34:37 23 Who was that?---Mr Black.  
03:34:40 24  
03:34:44 25 Now, do you say that in that conversation there was a  
03:34:55 26 conversation which related to the potential conflict of  
03:34:58 27 interest that she may have in regard to her relationship  
03:35:02 28 with [REDACTED] Paragraph 190 of your statement?---Thank  
03:35:09 29 you. Yes.  
03:35:29 30  
03:35:30 31 In effect you say, "Well look, Ms Gobbo says the [REDACTED]  
03:35:38 32 thing is going to cause me big dramas because you can ask  
03:35:42 33 him anything and he'll tell me but I don't want to know his  
03:35:48 34 stuff. I mean it might be useful to you but I don't want  
03:35:49 35 to know it from the point of view of" - - -  
03:35:49 36  
03:35:50 37 MR HOLT: The name was used again, Commissioner, if that  
03:35:52 38 can just be taken from the transcript.  
03:35:54 39  
03:35:54 40 COMMISSIONER: Yes, remove the name.  
03:35:56 41  
03:35:56 42 MR WINNEKE: Yes, I see. And you say, "Well, you could  
03:36:01 43 ..." She says, "Pardon? You could withdraw from  
03:36:04 44 representing him because", and then there's some words that  
03:36:07 45 can't be heard but effectively saying, "For the greater  
03:36:11 46 good of telling us", do you accept that?---Yes.  
03:36:14 47

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03:36:15 1 Effectively what you were saying to her is that there was a  
03:36:19 2 difficulty that she had, she couldn't do two things.  
03:36:23 3 There's one, the greater good of telling the police about  
03:36:28 4 ongoing illegal activity, do you accept that?---Yes.  
03:36:31 5  
03:36:32 6 The alternative is she can't represent him, do you accept  
03:36:36 7 that?---Yes.  
03:36:38 8  
03:36:44 9 I just want to take you to the actual transcript, if I may.  
03:36:50 10 If we can go to VPL.0005.0051.0466. That may not be the  
03:37:17 11 first page. If we then move on, if we go to p.474. It  
03:37:47 12 commences a discussion about privileged matters because  
03:37:50 13 Mr Smith says at about the middle of the page, "I think I  
03:37:53 14 said to you last time if you wish to talk ... we're more  
03:37:57 15 than happy to listen but we're here in your own interests  
03:38:00 16 as well so you can ..." She says, "I know but I can say  
03:38:03 17 when that stuff gets privileged I can't" and he says,  
03:38:07 18 "That's right, that's fine, I've got no problem with that".  
03:38:10 19 Then she talks about things which are hearsay upon hearsay,  
03:38:15 20 et cetera. And he says at the top of the following page,  
03:38:19 21 "But if you're happy regardless of the privilege issues,  
03:38:22 22 you can make that call on your own without the assistance  
03:38:25 23 from us, no problems". So effectively it's being put on to  
03:38:28 24 her, do you agree with that?---No, I'm not sure that that's  
03:38:34 25 what Mr Smith was saying.  
03:38:36 26  
03:38:36 27 All right. In any event the transcript speaks for itself I  
03:38:39 28 suppose?---I think - - -  
03:38:41 29  
03:38:42 30 Go on?---I think you probably have to listen to it. I  
03:38:45 31 think he's trying to put that side.  
03:38:47 32  
03:38:47 33 Yes?---When he says regardless of privilege issues I think  
03:38:50 34 he's trying to put that aside and then he's talking about  
03:38:54 35 the hearsay issue and the other information.  
03:38:56 36  
03:38:56 37 In any event if we go on to the next page. You're talking  
03:38:59 38 about, and again I mean there's obviously a limit to this  
03:39:02 39 but it can't be heard. "Apparently you", about the middle  
03:39:06 40 of the page, "Talk about what you want to talk about" and  
03:39:10 41 she says, "No, the privilege". At the bottom of the page,  
03:39:14 42 "But I don't want to put you in a situation where you might  
03:39:17 43 ..." She says, "Well I raised this the other day because  
03:39:20 44 the whole [REDACTED] stuff is going to cause a big problem,  
03:39:23 45 you know, I wouldn't ever ask anyone like him what they're  
03:39:30 46 doing ever, I'd never be exposed to it, he never tell me  
03:39:34 47 about it". That's what in effect you refer to in your

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03:39:38 1 quote in your statement, right?---Yes.

03:39:41 2

03:39:42 3 And she says, "So that's why you don't ask a lawyer. I

03:39:46 4 know you might say it's turning a blind eye to it but you

03:39:49 5 don't ask and you specifically don't let them tell you" but

03:39:53 6 the [REDACTED] thing is going to cause her big dramas, "But I,

03:39:58 7 because I can ask him anything and he'll tell me". And you

03:40:02 8 say, "Well you could, you could withdraw from representing

03:40:05 9 him because, for the greater good of telling us" and she

03:40:09 10 says "Well that's right. I mean that's what I'd do". And

03:40:15 11 then Mr Smith says, "Does he pay?" And she says, "Well

03:40:19 12 actually he does pay, yeah, his solicitor does". Did you

03:40:24 13 ever ask her whether she did put in fees with respect to

03:40:32 14 [REDACTED] or any of the other clients that she was

03:40:36 15 representing in respect of whom you were getting

03:40:39 16 information?---I don't know.

03:40:42 17

03:40:42 18 And in respect of whom she had a clear conflict, which she

03:40:46 19 did in this case?---I don't know.

03:40:50 20

03:40:51 21 It would have occurred to you clearly that if you were

03:40:53 22 receiving information from Ms Gobbo to enable you to put

03:40:58 23 someone, effectively put them behind bars you'd want to

03:41:03 24 know whether she was charging them, wouldn't you?---Not

03:41:08 25 necessarily.

03:41:08 26

03:41:09 27 No? You wouldn't want to ask her?---Well, I just said to

03:41:12 28 you I don't know whether we did ask her, and I suspect we

03:41:17 29 probably did at various points, but I couldn't point you to

03:41:21 30 it.

03:41:21 31

03:41:21 32 Indeed, the Commission has evidence that on 17 October, a

03:41:26 33 few days prior to this, she had in fact rendered a bill to

03:41:31 34 [REDACTED] instructing solicitors asking for payment of

03:41:34 35 about \$1100 by way of bills, by way of fees, do you accept

03:41:44 36 that proposition?---Yes.

03:41:46 37

03:41:46 38 Would that cause you some concern if she was in effect

03:41:50 39 providing information to you about him and at the same time

03:41:54 40 was charging him money for the privilege of providing that

03:41:58 41 information to the police?---I think we already established

03:42:01 42 that he was a client.

03:42:02 43

03:42:02 44 Yes?---And my view was privileged information was off the

03:42:09 45 table, if you like, and information about other persons was

03:42:15 46 on the table.

03:42:17 47

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03:42:17 1 Right?---And then when information started coming out about  
03:42:20 2 ongoing crimes, or future crimes, that was not privileged  
03:42:24 3 and that was also on the table.

03:42:25 4  
03:42:25 5 All right. So you had no problem with her charging money  
03:42:29 6 to persons such as [REDACTED] whilst she was actively  
03:42:33 7 providing information?---I didn't view it like that,  
03:42:37 8 Mr Winneke.

03:42:38 9  
03:42:38 10 Well, did you have an issue with it?---I didn't view it  
03:42:41 11 like that, I don't think I thought about it.

03:42:44 12  
03:42:45 13 All right, okay. It's clear that despite you telling her  
03:42:54 14 that she could withdraw from representing him because of  
03:42:56 15 the greater good of providing information, it was clear to  
03:43:00 16 you that she didn't stop representing him following that  
03:43:02 17 conversation, correct?---Yes.

03:43:04 18  
03:43:05 19 Certainly you didn't stop receiving information from  
03:43:08 20 Ms Gobbo about [REDACTED] following that conversation?---No.

03:43:12 21  
03:43:13 22 Did you ever say to her, "I want to set the ground rules up  
03:43:17 23 and make it absolutely clear, if you're going to provide us  
03:43:21 24 information about him, you cannot act for him"?---At one  
03:43:25 25 point I did tell her she couldn't act for him.

03:43:28 26  
03:43:28 27 And when was that?---That was around the time when it was  
03:43:31 28 clear she was going to probably turn up at the police  
03:43:35 29 station when [REDACTED]

03:43:40 30 [REDACTED]  
03:43:40 31  
03:43:40 32 It would be a relationship ending event if she continued to  
03:43:45 33 disobey and she continued to put herself in this situation,  
03:43:50 34 wouldn't it?---The difficulty with that is I couldn't just  
03:43:56 35 terminate the relationship with Ms Gobbo. It got to a  
03:44:01 36 certain point where there was a lot of duty of care issues  
03:44:06 37 surrounding her. And I couldn't just cut her off and say,  
03:44:09 38 "That's it, the police department has nothing more to do  
03:44:12 39 with you" because there was still those issues around the  
03:44:16 40 assistance she provided and what would happen to her if  
03:44:20 41 somebody found out. So the relationship ending event is a  
03:44:23 42 good term and I think I might have actually used it with  
03:44:27 43 her at some point.

03:44:28 44  
03:44:28 45 It might have been useful in some sort of Acknowledgement  
03:44:34 46 of Responsibility, to make it clear to her that if she  
03:44:37 47 continued to act she couldn't continue to be an

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03:44:39 1 informer?---Yes. Yes, I think so.  
03:44:41 2  
03:44:41 3 It was never suggested, for example, by you that she should  
03:44:45 4 not act for Mr Mokbel in his ongoing proceedings if she  
03:44:49 5 continued to participate in a venture with the police to  
03:44:53 6 have him put away, you never said that to her, did  
03:44:58 7 you?---No.  
03:44:58 8  
03:44:59 9 Is it the case that on 21 November Mr O'Brien and his crew  
03:45:03 10 effectively moved from the MDID into the Purana  
03:45:09 11 offices?---I'm not sure of the date but, yes, the  
03:45:16 12 investigation was put under the command of the Purana Task  
03:45:19 13 Force.  
03:45:19 14  
03:45:23 15 Is it correct to say that - just excuse me. You had an  
03:45:47 16 obligation to complete monthly reviews as the controller,  
03:45:53 17 is that right?---Yes.  
03:45:54 18  
03:45:56 19 That's something that you attended to at the end of each  
03:45:59 20 month, is that right?---We reviewed those files for all our  
03:46:07 21 sources every fortnight.  
03:46:08 22  
03:46:09 23 On 30 October, just going back, you indicated in the source  
03:46:12 24 management log that the risk remains high. There was  
03:46:17 25 ongoing complete debriefing required. Task Force Operation  
03:46:23 26 Posse was to commence in the near future regarding the  
03:46:25 27 Mokbel cartel and the source is well placed to provide  
03:46:29 28 ongoing intelligence and the risk assessment was still  
03:46:32 29 pending but the ongoing involvement of the SDU was  
03:46:36 30 essential?---Well, yes, and again, not to be pedantic but  
03:46:44 31 it was the Dedicated Source Unit then because it was still  
03:46:49 32 the trial phase.  
03:46:50 33  
03:46:50 34 I thought the trial phase finished in May of 2005?---I'm  
03:46:56 35 not sure off the top of my head, I'm just looking at the  
03:46:59 36 entry in the source management log.  
03:47:01 37  
03:47:01 38 I think the evidence is that the trial proceeded from  
03:47:03 39 November 2004 into May of 2005. In any event that's  
03:47:07 40 perhaps neither here nor there?---Yes.  
03:47:09 41  
03:47:10 42 Ultimately a risk assessment was completed on 15 November  
03:47:16 43 2005, do you accept that? If we can put up this document  
03:47:28 44 VPL.2000.0003.8288?---I'm not sure of the date it was  
03:47:45 45 completed but I can see it was handed to Detective Acting  
03:47:49 46 Superintendent Calishaw on 23 November 05.  
03:47:52 47

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03:47:53 1 All right. So the date on the front of the document is the  
03:47:58 2 15th but it was handed to Calishaw about a week later, is  
03:48:03 3 that right?---Yes, yes.  
03:48:04 4  
03:48:04 5 I want to ask you a few questions about the risk  
03:48:07 6 assessment. That doesn't appear to be - 8288, I apologise  
03:48:19 7 if I read the wrong number out. Do you have it in front of  
03:48:24 8 you there, Mr [REDACTED]-No.  
03:48:25 9  
03:48:27 10 Effectively what it says, I'll just read aspects to you on  
03:48:31 11 the first page, "The source is also a very well-known  
03:48:33 12 person within the police and criminal community"?---Yes.  
03:48:43 13  
03:48:44 14 That's in the first part of the document. "Her physical  
03:48:51 15 appearance is easily identifiable and this is the risk to  
03:48:57 16 the source of compromise", do you agree with that?---What  
03:49:00 17 paragraph are you reading?  
03:49:02 18  
03:49:02 19 Top paragraph. Then the second paragraph, "She's currently  
03:49:09 20 acting for several members of the Mokbel criminal cartel,  
03:49:14 21 including Tony Mokbel"?---Yes.  
03:49:17 22  
03:49:17 23 And so obviously it was apparent that she was acting for  
03:49:21 24 others?---Yes.  
03:49:21 25  
03:49:23 26 "Group has been known to employ extreme violence." Now, in  
03:49:28 27 the third paragraph it says this, "Over the past 12 months  
03:49:32 28 the source has had conversations with several police  
03:49:35 29 members, including members of Operation Purana and the  
03:49:39 30 Major Drug Investigation Division regarding the possibility  
03:49:43 31 of the source assisting police". See that?---Yes.  
03:49:47 32  
03:49:48 33 Was it your understanding that the source had had  
03:49:51 34 conversations with Mr Bateson at Purana?---I'm not sure at  
03:50:00 35 this time. She did tell us that she'd been talking to  
03:50:04 36 Mr Bateson.  
03:50:06 37  
03:50:06 38 Yes?---Or had spoken to him about Mr - - -  
03:50:10 39 [REDACTED]  
03:50:11 40 [REDACTED]?---Yeah, I'm not sure of the number, sorry.  
03:50:15 41  
03:50:15 42 Yes. That suggests that the information or what she was  
03:50:20 43 talking about wasn't in the nature of a barrister  
03:50:22 44 representing a client, it was the possibility of the source  
03:50:26 45 assisting police. So that would be distinct from simply  
03:50:32 46 representing [REDACTED] in a criminal proceeding, wouldn't  
03:50:37 47 it, at face value?---At this point - sorry?

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03:50:42 1  
03:50:43 2 At face value that sentence isn't acting about a barrister  
03:50:47 3 acting for a client?---I don't know, you may be reading too  
03:50:55 4 much into that. I think if the only information we had was  
03:50:58 5 that she had spoken to Mr Bateson about [REDACTED] statements, I  
03:51:01 6 think that paragraph probably catches that.  
03:51:03 7  
03:51:03 8 Right. But in any event you were content for that to be  
03:51:06 9 read under, a phrase which says, "Regarding the possibility  
03:51:12 10 of the source assisting police"?---Yes.  
03:51:15 11  
03:51:27 12 So did you have any view about what that assistance was  
03:51:30 13 that she was continuing or suggesting that she'd continue  
03:51:34 14 to provide to Purana?---I'm just guessing when I say what I  
03:51:40 15 told you a couple of minutes ago I think that might have  
03:51:43 16 been a reference to [REDACTED]  
03:51:46 17  
03:51:47 18 But certainly assisting police in that regard?---Yes.  
03:51:51 19  
03:51:54 20 The point is made though that the expectation was, or the  
03:51:59 21 information that you had was that there was going to be  
03:52:03 22 continued assistance to Purana. It's not something  
03:52:06 23 historical. What I'm suggesting to you is it's quite plain  
03:52:11 24 from that sentence that there was discussions that she'd  
03:52:14 25 had, information that you had received that she was going  
03:52:16 26 to continue to provide assistance to Purana?---No, I don't  
03:52:21 27 agree with that.  
03:52:22 28  
03:52:22 29 You disagree with that proposition?---Yes.  
03:52:24 30  
03:52:25 31 Okay. Insofar as the MDID is concerned, do you say that  
03:52:29 32 that information or that sentence is confined to the  
03:52:32 33 approach made to Mansell and Rowe?---I would expect so.  
03:52:38 34  
03:52:39 35 But that certainly was with respect to providing assistance  
03:52:42 36 to the police?---Yes.  
03:52:43 37  
03:52:47 38 And there's concerns or there's information also that,  
03:52:56 39 "Current members of the Australian Federal Police and the  
03:53:00 40 Australian Crimes Commission may also be aware that the  
03:53:03 41 source was considering the possibility of covertly  
03:53:06 42 assisting police", do you see that?---Yes.  
03:53:09 43  
03:53:10 44 What information was there in that regard?---I don't know.  
03:53:15 45  
03:53:16 46 It can't have been just plucked out of the air, one assumes  
03:53:19 47 there must have been some information that the SDU had that

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03:53:22 1 there was evidence that she was considering the possibility  
03:53:24 2 of assisting AFP and the ACC, that's how that reads?---Yes.  
03:53:29 3  
03:53:29 4 You agree with that?---There had to be something behind it.  
03:53:32 5  
03:53:32 6 You're not in a position to assist the Commission in that  
03:53:35 7 regard, is that right?---No.  
03:53:37 8  
03:53:38 9 Who prepared this document?---Mr Smith.  
03:53:43 10  
03:53:49 11 It appears to have been completed by the controller  
03:53:51 12 Mr Black, at least his name is there on 23 November. Do  
03:54:00 13 you say that you wouldn't have had any knowledge of what  
03:54:03 14 was in this document?---I may not have seen this document.  
03:54:09 15 I certainly - if Mr Black has his name, you know, in the  
03:54:14 16 controller's section at the end of the document.  
03:54:16 17  
03:54:17 18 Yes?---Then he obviously checked it and approved it.  
03:54:20 19  
03:54:21 20 Right?---I wouldn't have had any input into it.  
03:54:25 21  
03:54:25 22 Right?---Most probably, Mr Winneke, it was most probably a  
03:54:30 23 situation that I was on leave.  
03:54:31 24  
03:54:31 25 Would you have wanted to see this document given you that  
03:54:35 26 were obviously fairly heavily involved in the management of  
03:54:38 27 Ms Gobbo?---I would think so.  
03:54:40 28  
03:54:40 29 Yes, okay. You would have asked him, I assume, about all  
03:54:44 30 of these matters, wouldn't you, surely?---I would think so.  
03:54:46 31  
03:54:47 32 So if there was any evidence to suggest that she was  
03:54:50 33 wanting to provide assistance to other organisations,  
03:54:52 34 that's something which was very much within your remit, you  
03:54:56 35 would want to know what that was about?---Yes.  
03:54:58 36  
03:55:01 37 What you say is you simply can't assist the Commission in  
03:55:04 38 that regard, is that right?---That's right.  
03:55:05 39  
03:55:09 40 If we go through the document, I'm not going to go through  
03:55:12 41 it in detail, there's a number of references to risks to  
03:55:17 42 her. It says here that, "It's believed that the source has  
03:55:22 43 had intimate relationships with some police members. It's  
03:55:25 44 not known if any of those are ongoing. She appears to  
03:55:29 45 enjoy the company of male police members". What  
03:55:32 46 information did you have at that stage about her intimacies  
03:55:37 47 with police officers?---I have no idea at this point in

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03:55:41 1 time.  
03:55:42 2  
03:55:42 3 Save to say that you would have been told from someone that  
03:55:46 4 she, there was a suggestion that she had had intimate  
03:55:49 5 relationships?---That's right. It may have even come from  
03:55:54 6 her.  
03:55:55 7  
03:55:56 8 In any event if it came from her it would be revealed  
03:55:59 9 certainly in conversations that had been had, I assume, is  
03:56:03 10 that right?---That's right.  
03:56:05 11  
03:56:06 12 And we can look to those conversations?---Yes.  
03:56:08 13  
03:56:11 14 It says that she's particularly close to her family on the  
03:56:19 15 following page?---I'm sorry, are you on the last paragraph?  
03:56:22 16  
03:56:22 17 I've gone over the page, I apologise, Mr [REDACTED] She was  
03:56:28 18 close to her family, I'm well aware of that.  
03:56:29 19  
03:56:30 20 Did you ever tell her specifically not to tell any members  
03:56:34 21 of her family what was being proposed with respect to her  
03:56:38 22 role as a source?---I think I had a discussion with her in  
03:56:41 23 relation to her sister. I think she was quite close to her  
03:56:44 24 sister.  
03:56:45 25  
03:56:45 26 Yes?---And said to her if she had to talk to somebody about  
03:56:49 27 it, then as long as we knew, she could talk to her sister.  
03:56:53 28  
03:56:54 29 If she had to, if she felt as if she had to she could talk  
03:56:58 30 to her sister but you would want to know, is that  
03:57:01 31 right?---That's right.  
03:57:02 32  
03:57:02 33 Did she ever tell you whether she had or not?---I can't  
03:57:06 34 remember.  
03:57:07 35  
03:57:10 36 There's a reference to the fact that she'd suffered a  
03:57:12 37 stroke at the age of 31 years, right?---Yes.  
03:57:16 38  
03:57:16 39 And that had, she believed, been caused by stress emanating  
03:57:24 40 from an extremely hectic work schedule involving long  
03:57:28 41 hours, et cetera?---Yes.  
03:57:28 42  
03:57:29 43 Did you ever think it appropriate to ask her for some sort  
03:57:32 44 of medical assessment at all?---No.  
03:57:35 45  
03:57:35 46 "The source may possess other motivations and agendas not  
03:57:42 47 yet known to handlers." That's a one liner there?---Yes.

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03:57:49 1  
03:58:02 2 It was considered that as the relationship continued  
03:58:08 3 information supplied by the source may be passed on to  
03:58:12 4 other law enforcement satisfaction involving the Federal  
03:58:17 5 agencies involving drugs investigations and that may cause  
03:58:20 6 further potential compromise?---Yes.  
03:58:23 7  
03:58:36 8 The next page there is a reference to control measures to  
03:58:39 9 be put in place. Then risks to handlers are set out there,  
03:58:49 10 do you see that?---Yes.  
03:58:50 11  
03:58:52 12 At the bottom it says, "The source has represented many  
03:58:55 13 individuals who have made allegations against police and  
03:58:57 14 the source has expressed a personal view that she has been  
03:59:00 15 involved in defending a number of matters involving corrupt  
03:59:04 16 police in recent times"?---Yes.  
03:59:13 17  
03:59:28 18 I think I asked you before about the possibility that  
03:59:31 19 verbal disseminations of information might increase the  
03:59:34 20 risk to the source of being compromised and you accept that  
03:59:41 21 proposition?---Yes.  
03:59:43 22  
03:59:43 23 That doesn't find its way into your risk assessment?---No.  
03:59:46 24  
03:59:49 25 Then there's a section, if we go over the page, which deals  
03:59:54 26 with the risk to integrity of information. Do you see  
03:59:59 27 that?---Yes.  
04:00:00 28  
04:00:01 29 And it says that, "Within a short time the source has  
04:00:04 30 provided credible and valuable intelligence to police. She  
04:00:08 31 is well positioned to obtain tactically viable intelligence  
04:00:14 32 in relation to the criminal activities of the Mokbel  
04:00:17 33 cartel". Further down, "She has a brief history of  
04:00:21 34 providing credible and valuable intelligence to the  
04:00:25 35 police". In the last paragraph on that page, "She has  
04:00:27 36 expressed pity regarding the personal plight of certain  
04:00:31 37 criminals who are currently pending trial for major drug  
04:00:35 38 trafficking matters and it's not known if the source would  
04:00:38 39 fail to report or minimise the reported involvement of such  
04:00:41 40 persons". Was that a reference to [REDACTED]-I don't  
04:00:45 41 know.  
04:00:45 42  
04:00:47 43 You don't know now, you would have known then?---Maybe.  
04:00:52 44  
04:00:53 45 Now then if we go over the page to 5 of 7, there's risks  
04:00:59 46 with respect to Victoria Police of exposure, do you see  
04:01:02 47 that?---Yes.

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04:01:03 1  
04:01:05 2 "It is possible that the source enjoys acting as a police  
04:01:08 3 agent", do you see that?---Yes.  
04:01:10 4  
04:01:10 5 That would be a risk, I assume, would it?---That's a stock  
04:01:16 6 standard risk for all high risk sources.  
04:01:18 7  
04:01:19 8 Right. Why would that be a risk?---There seems to develop  
04:01:23 9 as the relationship goes along. People are differently  
04:01:29 10 motivated of course as to why they come to the police in  
04:01:31 11 the first place and agree to perform this role. But they  
04:01:35 12 do tend to form a relationship with the handlers and you  
04:01:38 13 notice over time that they start to enjoy the role, often  
04:01:42 14 times, not in every case.  
04:01:43 15  
04:01:44 16 In this case it would appear to be the situation that she  
04:01:47 17 did enjoy acting as a police agent?---Yes.  
04:01:51 18  
04:01:51 19 That's what she was, a police agent?---Well, she, she was a  
04:01:58 20 human source. In terms of the vocabulary we would  
04:02:04 21 generally use, I don't like that term, police agent.  
04:02:07 22  
04:02:08 23 It's what it says, it says she was a - - - ?---All I'm  
04:02:11 24 saying to you, Mr Winneke, is we were changing, if you  
04:02:15 25 like, the policy and how we did business and trying to get  
04:02:22 26 people to use the right sort of, at least consistent  
04:02:25 27 terminology. She was acting as a human source and that's  
04:02:29 28 how the policy was created. I think I pointed out to you  
04:02:33 29 last week that there were members still using the term RS,  
04:02:37 30 registered source.  
04:02:38 31  
04:02:38 32 In any event whichever way you cook it, she was an agent of  
04:02:42 33 Victoria Police, wasn't she?---Yes.  
04:02:44 34  
04:02:44 35 "The source has been involved as a defence barrister in  
04:02:47 36 numerous County and Supreme Court trials involving  
04:02:50 37 well-known criminals and as a result is extremely  
04:02:54 38 well-versed in police procedures, although perhaps not  
04:02:58 39 totally au fait", correct?---Don't know.  
04:03:02 40  
04:03:02 41 And the expectation was - - - ?---I don't know what your  
04:03:05 42 reference is to "not totally au fait".  
04:03:08 43  
04:03:09 44 Because the next sentence is, "However it is likely the  
04:03:11 45 source is extremely au fait with the intricate nature",  
04:03:16 46 et cetera?---Okay, I didn't see that.  
04:03:17 47

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04:03:19 1 Then it says this over the page, "Because of the source's  
04:03:26 2 occupation and particular position if compromised the  
04:03:32 3 handling of this source would come under extreme scrutiny.  
04:03:40 4 This could cause embarrassment and criticism of the force".  
04:03:44 5 Do you see that?---Yes.  
04:03:46 6  
04:03:46 7 And why do you think it would come under extreme  
04:03:51 8 scrutiny?---There's two reasons. Firstly, she was  
04:03:53 9 compromised. We felt she would be murdered. And secondly  
04:03:57 10 the fact that she was a lawyer.  
04:04:00 11  
04:04:00 12 Why would it cause embarrassment and criticism of the  
04:04:04 13 force?---Well, if she was murdered there'd definitely be  
04:04:08 14 both of those. Secondly, if she was a lawyer, this is what  
04:04:12 15 I tried to say last week, there would be a perception that  
04:04:16 16 we used her to seek privileged information about her  
04:04:19 17 clients and I think, I think that's come to pass. I think  
04:04:24 18 that's exactly what people have thought.  
04:04:25 19  
04:04:26 20 Might there also be the perception that for a barrister to  
04:04:29 21 be engaged to act against the interests of her clients  
04:04:31 22 might be an unusual thing?---Well she was not initially  
04:04:37 23 engaged to act against the interests of her clients. That  
04:04:41 24 only came about when they started telling her about crimes  
04:04:44 25 they were committing.  
04:04:45 26  
04:04:46 27 Can I just ask you, wasn't the whole purpose of this  
04:04:48 28 exercise to bring down her major client Mr Mokbel?---No,  
04:04:53 29 the paperwork, as you read it is consistent in the fact  
04:04:57 30 that the investigation was all about the Mokbel organised  
04:05:02 31 crime group.  
04:05:03 32  
04:05:03 33 Right. And the head of which she acted for?---Well she  
04:05:08 34 didn't act for the crime group. There was a much bigger  
04:05:11 35 picture and I said yesterday that she was, unlike any other  
04:05:15 36 lawyers that I've known, she had a very big circle of  
04:05:19 37 social, a very big social circle of people who were  
04:05:25 38 gangland identities and other types of criminals. Some of  
04:05:32 39 those were definitely clients, but the vast majority were  
04:05:37 40 social contacts who, as I said last week, were using her.  
04:05:40 41  
04:05:40 42 You would say, as far as you were concerned, she was never  
04:05:43 43 engaged against Mr Mokbel?---She was never - no, that was  
04:05:51 44 never the intention to engage her against Mr Mokbel  
04:05:55 45 specifically.  
04:05:55 46  
04:05:55 47 Not specifically?---Yes, that's right.

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04:05:58 1  
04:05:58 2 Are you happy with that position?---Yes, I am.  
04:06:00 3  
04:06:03 4 She would be instructed in regards to the parameters of her  
04:06:07 5 relationship with Victoria Police in line with the  
04:06:09 6 Acknowledgement of Responsibilities and DSU protocols,  
04:06:13 7 correct?---Yes.  
04:06:16 8  
04:06:16 9 And those instructions we can see and we've discussed some  
04:06:21 10 of those in the context of some of the transcripts that  
04:06:25 11 we've gone through already?---Yes.  
04:06:27 12  
04:06:34 13 She would not be deployed in a manner which will breach  
04:06:38 14 legislation without appropriate authorisation and  
04:06:40 15 indemnity, right?---Yes.  
04:06:42 16  
04:06:58 17 Can I just ask you about rewards other than - - -  
04:07:05 18  
04:07:05 19 MR HOLT: Excuse me.  
04:07:14 20  
04:07:22 21 MR WINNEKE: Can I ask you outside of the SDU which persons  
04:07:33 22 within Victoria Police would have been provided with this  
04:07:36 23 document?---That document should have gone nowhere but to  
04:07:46 24 the Human Source Management Unit and from there - actually  
04:07:54 25 let me rephrase this. That document went to Detective  
04:07:58 26 Inspector Calishaw who was also the head of HSMU. So it  
04:08:03 27 would then go through the HSMU process.  
04:08:07 28  
04:08:07 29 Yes?---And it would then, I think it went from there to, it  
04:08:13 30 might have been Superintendent Ian Thomas.  
04:08:17 31  
04:08:18 32 Yes?---And I think from there to Mr - Commander Danye  
04:08:26 33 Moloney. And I stand to be corrected on this in terms of  
04:08:28 34 who was in what role at the time, but the process for  
04:08:33 35 receiving registration documents and risk assessment  
04:08:38 36 documents was one rank higher than it was for the rest of  
04:08:42 37 the organisation.  
04:08:42 38  
04:08:42 39 I understand that?---When it came to the SDU.  
04:08:45 40  
04:08:45 41 I follow that. Would it have been provided, for example,  
04:08:48 42 if the Assistant Commissioner of Crime wanted to look at  
04:08:53 43 it, would it have been made available?---I don't know but  
04:08:57 44 he's got a lot of authority so I would imagine yes.  
04:09:01 45  
04:09:02 46 I mean it's something that perhaps anyone who was aware,  
04:09:07 47 certainly anyone in very high echelons of Victoria Police

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04:09:11 1 who was aware that Ms Gobbo was a human source could have  
04:09:15 2 had access to?---In the higher ranks are you saying?  
04:09:22 3  
04:09:22 4 Yes?---Yep. I don't know, you'd have to ask the Human  
04:09:29 5 Source Management Unit. They are very protective of their  
04:09:34 6 role for obvious reasons so I would only be speculating.  
04:09:38 7  
04:09:38 8 Would it have been discussed with Mr O'Brien to ensure that  
04:09:43 9 all risks were covered?---Mr O'Brien wouldn't have seen the  
04:09:48 10 risk assessment, I doubt it very much. It was not a part  
04:09:52 11 of our process to show a completed risk assessment to an  
04:09:56 12 investigator. He certainly would have had input, we had  
04:10:00 13 discussions obviously with Mr O'Brien and the investigators  
04:10:03 14 about a whole range of things, so we would have taken their  
04:10:06 15 input and that would have been factored into that document.  
04:10:09 16  
04:10:10 17 Just before I leave this part of the document, what you  
04:10:13 18 said in response to my question about the compromise of the  
04:10:17 19 source, you referred to her murder, in effect. So you were  
04:10:24 20 equating compromise with murder, do you accept that?---Yes,  
04:10:27 21 I do.  
04:10:28 22  
04:10:28 23 There are obviously other ways in which she could be  
04:10:30 24 compromised, that is if her role was simply found out. If  
04:10:36 25 she was exposed?---That is what I am referring to as a  
04:10:39 26 compromise.  
04:10:39 27  
04:10:39 28 That compromise conceivably could lead to harm coming to  
04:10:44 29 Ms Gobbo?---Yes.  
04:10:46 30  
04:10:46 31 But it could also simply be the fact that Victoria Police's  
04:10:50 32 use of her would be made known and that would cause  
04:10:54 33 embarrassment and criticism of the force, do you accept  
04:10:57 34 that proposition?---Well, I accept that that could cause a  
04:11:04 35 perception that would definitely embarrass Victoria Police.  
04:11:07 36  
04:11:08 37 The perception that you would say would only be the  
04:11:10 38 suggestion that it might be that it could be perceived that  
04:11:14 39 she was providing information in the nature of legally  
04:11:19 40 privileged information and that's only, that's the only  
04:11:22 41 matter that you would be concerned about?---Well that's  
04:11:25 42 what's, exactly what has come to pass and I wasn't  
04:11:31 43 concerned so much from the point of view of the fact that  
04:11:34 44 the police had registered a lawyer. I didn't have an issue  
04:11:41 45 with that insofar as lawyers weren't in a different - there  
04:11:45 46 was nothing prohibiting it from what I was aware, but I  
04:11:49 47 think I should have recognised the fact that people, even

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04:11:53 1 within my own organisation, came to the belief that we used  
04:12:00 2 her deliberately against her clients and deliberately  
04:12:03 3 targeted information that was professionally privileged.  
04:12:07 4  
04:12:07 5 Yes?---I think that's, that's the essence of the Comrie  
04:12:12 6 report which then went on to become the essence of IBAC and  
04:12:16 7 the subsequent judgments.  
04:12:17 8  
04:12:17 9 Have you still not read the judgments?---No, sir.  
04:12:21 10  
04:12:22 11 Do you understand that the judgments don't concern  
04:12:25 12 targeting of confidential information, privileged  
04:12:28 13 information rather?---I have got one page of the Ginnane  
04:12:34 14 judgment where it specifically makes reference to  
04:12:38 15 privileged information. It's a direct excerpt from  
04:12:41 16 Mr Comrie's report.  
04:12:42 17  
04:12:42 18 You haven't read the findings of the Supreme Court  
04:12:46 19 decision, have you?---No.  
04:12:47 20  
04:12:47 21 And you haven't read the findings of the Court of Appeal,  
04:12:50 22 have you?---No.  
04:12:51 23  
04:12:51 24 So you don't know what evidence they relied upon, do  
04:12:55 25 you?---Well I can tell you that I know they relied on the  
04:12:59 26 Comrie report because I've got a section of it.  
04:13:01 27  
04:13:01 28 Can I suggest you read it. That report, that risk  
04:13:10 29 assessment doesn't contain anything about the risks of  
04:13:14 30 exposure to the source by appropriate disclosure to the  
04:13:17 31 defence to ensure a fair trial, does it?---No.  
04:13:20 32  
04:13:20 33 It doesn't include anything to the risk to the fair trials  
04:13:24 34 of individuals who were represented by a barrister who was  
04:13:27 35 in fact in effect an agent of the State rather than an  
04:13:31 36 independent barrister, do you accept that?---Yes.  
04:13:34 37  
04:13:35 38 Do you accept it should have been in that risk  
04:13:37 39 assessment?---Yes, I do.  
04:13:38 40  
04:13:40 41 Okay. You point out in your statement that you have been  
04:13:44 42 criticised for failing to document the risk of Ms Gobbo  
04:13:48 43 breaching the ethical barrier concerning LPP, do you accept  
04:13:52 44 that, that's what you say?---Yes.  
04:13:53 45  
04:13:53 46 Indeed that's the issue that you are particularly concerned  
04:13:59 47 about, right?---Yes, yes.

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04:14:05 1  
04:14:05 2 And you say it wasn't - do you say it wasn't identified  
04:14:09 3 when the original risk assessment was prepared, you didn't  
04:14:14 4 consider that?---No, I didn't.  
04:14:15 5  
04:14:16 6 All right?---And I don't - I don't think any of us thought  
04:14:19 7 that a lawyer would be talking about privileged  
04:14:21 8 information. It never occurred to us that that would  
04:14:24 9 happen.  
04:14:24 10  
04:14:29 11 Do you accept that even in your very first conversation  
04:14:32 12 that you had with Ms Gobbo she provided you with privileged  
04:14:35 13 information?---Yes.  
04:14:36 14  
04:14:37 15 And that was well prior to you preparing this risk  
04:14:40 16 assessment, or at least the risk assessment being  
04:14:43 17 prepared?---Yes.  
04:14:45 18  
04:14:45 19 You say that you had used the guideline which we've  
04:14:49 20 referred to, the English guideline. It refers to  
04:14:53 21 confidential information, do you accept that?---Yes.  
04:14:55 22  
04:14:55 23 And do you accept that even now you're not all together  
04:15:00 24 certain what confidential information is all about?---Yes.  
04:15:03 25  
04:15:09 26 What you say quite reasonably at paragraph 2126 I suggest  
04:15:13 27 of your statement is that there were senior officers within  
04:15:16 28 the HSMU who had oversight of Ms Gobbo's  
04:15:19 29 registration?---Yes.  
04:15:22 30  
04:15:22 31 And they had total access to all source legislations,  
04:15:28 32 information reports, ICRs, risk assessments and source  
04:15:32 33 profiles, is that correct?---Yes, it is.  
04:15:34 34  
04:15:34 35 What's a source profile?---This goes directly to what I  
04:15:43 36 think would be PII material.  
04:15:48 37  
04:15:48 38 Right. Okay. So far Mr - he's now got to his feet.  
04:15:59 39  
04:15:59 40 MR HOLT: I have to respect the seniority of the person  
04:16:02 41 who's giving the information. It's not something that had  
04:16:05 42 come to me previously. I note the time, I can sensibly  
04:16:10 43 take some instructions over lunch.  
04:16:12 44  
04:16:12 45 COMMISSIONER: All right. Is this a convenient time for  
04:16:14 46 you, Mr Winneke?  
04:16:46 47

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04:16:46 1 MR WINNEKE: Yes, Commissioner.  
04:16:48 2  
04:16:49 3 COMMISSIONER: We'll adjourn until 2 o'clock, thank you.  
4  
04:16:55 5 <(THE WITNESS WITHDREW)  
04:16:55 6  
04:16:55 7 LUNCHEON ADJOURNMENT  
8  
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04:16:55 1 UPON RESUMING AT 2.00 PM:  
05:14:34 2  
05:18:40 3 COMMISSIONER: Mr Winneke.  
4  
05:18:41 5 MR WINNEKE: Commissioner, I understand that the police  
05:18:43 6 have an application to make with respect to the clips which  
05:18:47 7 have been provided to the media and there is an application  
05:18:54 8 that there be prevention of those matters being put into  
05:18:59 9 the public domain. I appear with Mr Sandip Mukerjea who  
05:19:03 10 will assist the Commission with respect to this  
05:19:06 11 application.  
12  
05:19:07 13 COMMISSIONER: Yes, thank you. It's your application,  
05:19:10 14 Mr Holt?  
05:19:11 15  
05:19:11 16 MR HOLT: It is Commissioner.  
05:19:12 17  
05:19:13 18 MR HOYNE: Commissioner, just before they start, my name is  
05:19:16 19 Hoyne.  
20  
05:19:17 21 COMMISSIONER: Yes.  
05:19:18 22  
05:19:18 23 MR HOYNE: I seek leave to appear on behalf of the ABC,  
05:19:21 24 Seven Network Operations and Nine Network Australia Pty  
05:19:25 25 Ltd.  
26  
05:19:26 27 COMMISSIONER: Yes, I was going to come to you, Mr Hoyne.  
05:19:29 28 Is there room for you at the Bar table?  
05:19:31 29  
05:19:31 30 MR HOYNE: Yes, thank you.  
05:19:31 31  
05:19:32 32 COMMISSIONER: Yes, I was going to come to you. It's  
05:19:34 33 Victoria Police's application so I'm going to take their  
05:19:37 34 appearance first. Yes, sorry, Mr Holt, you're appearing.  
05:19:42 35  
05:19:42 36 MR HOLT: Yes, Commissioner, I appear with Ms Enbom on this  
05:19:45 37 application.  
05:19:46 38  
05:19:47 39 MR CHETTLE: Strictly speaking, Commissioner, I appear for  
05:19:49 40 the subject of the application. Other than to support  
05:19:51 41 Mr Holt I will not be participating.  
42  
05:19:53 43 COMMISSIONER: Mr Chettle, you're supporting Victoria  
05:19:56 44 Police's application?  
05:19:57 45  
05:19:57 46 MR CHETTLE: I am.  
47

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05:19:58 1 COMMISSIONER: Does anybody else want to be heard on this  
05:20:01 2 application?  
05:20:01 3  
05:20:02 4 MR McDERMOTT: Commissioner, the State is here but doesn't  
05:20:04 5 wish to be heard.  
6  
05:20:05 7 COMMISSIONER: Thank you. Mr Hoyne, you are for the media  
05:20:08 8 interests, namely?  
05:20:11 9  
05:20:12 10 MR HOYNE: ABC, Seven Network Operations Pty Ltd and Nine  
05:20:16 11 Network Australia Pty Ltd.  
12  
05:20:18 13 COMMISSIONER: Thanks Mr Hoyne.  
05:20:19 14  
05:20:19 15 MR HOYNE: Thank you.  
16  
05:20:20 17 COMMISSIONER: Yes, Mr Holt.  
05:20:21 18  
05:20:22 19 MR HOLT: Commissioner, I understand at present the persons  
05:20:26 20 present in the hearing are those who are present for  
05:20:29 21 private hearings. Obviously I wish to go into some matters  
05:20:32 22 in the affidavit which might otherwise be seen as  
05:20:34 23 confidential. There's probably only really one or two  
05:20:38 24 matters. I don't need to express them in a way that would  
05:20:43 25 require orders, I don't think. I simply say that to the  
05:20:45 26 Commission so that those others who are making submissions  
05:20:48 27 understand that that's the basis upon which we're  
05:20:50 28 attempting to proceed and otherwise I would seek to go into  
05:20:52 29 private hearing. As you know, Commissioner, we try to  
05:20:55 30 avoid that as much as we can.  
31  
05:20:58 32 COMMISSIONER: Yes. I'm just trying to think. What are  
05:20:59 33 the issues that they shouldn't hear?  
05:21:02 34  
05:21:02 35 MR HOLT: It's really, Commissioner, only that which is in  
05:21:06 36 - excuse me a moment. Yes, it's really the matters  
05:21:18 37 contained in paragraphs 9 to 11, Commissioner. I'm sorry,  
05:21:23 38 does the Commissioner have a copy of the affidavit?  
05:21:24 39  
05:21:25 40 COMMISSIONER: I had thought I'd organised it.  
05:21:26 41  
05:21:27 42 MR HOLT: There's one being provided by those assisting  
05:21:33 43 you.  
44  
05:21:33 45 COMMISSIONER: Thank you.  
05:21:34 46  
05:21:34 47 MR HOLT: Commissioner, it's really the matters in terms of

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05:21:37 1 the technique that might be used that are set out in - - -  
2  
05:21:40 3 COMMISSIONER: There probably will be some discussion about  
05:21:42 4 that.  
05:21:43 5  
05:21:43 6 MR HOLT: I think I'd need to seek non-publication orders  
05:21:46 7 in respect of that, those aspects, Commissioner, otherwise  
05:21:49 8 it might defeat the purpose.  
9  
05:21:50 10 COMMISSIONER: I have to make some new orders so I can add  
05:21:55 11 that into the orders I make now. Apparently the orders  
05:21:58 12 extant only apply to the evidence of Mr [REDACTED] so they  
05:22:02 13 don't cover this application.  
05:22:03 14  
05:22:04 15 MR HOLT: I see. Thank you, Commissioner. Before the  
05:22:06 16 Commissioner makes those orders, if we're going to be  
05:22:08 17 dealing with those matters of technique then, Commissioner,  
05:22:14 18 would you make orders preventing the publication of those  
05:22:18 19 matters also?  
20  
05:22:22 21 COMMISSIONER: So what else needs to not be published?  
05:22:25 22  
05:22:27 23 MR HOLT: The matters contained in paragraphs 9 to 11,  
05:22:30 24 Commissioner.  
25  
05:22:31 26 COMMISSIONER: Yes. They're already subject to  
05:22:34 27 non-publication orders arising out of the particular Act.  
05:22:39 28 They'll obviously remain, so they won't be able to publish  
05:22:42 29 anything in respect of, that could lead to the identity of  
05:22:48 30 those persons.  
05:22:49 31  
05:22:49 32 MR HOLT: No, it's more the technique, Commissioner.  
33  
05:22:51 34 COMMISSIONER: Yes, yes, but I'm saying that order will  
05:22:52 35 still apply even though we're no longer - - -  
05:22:56 36  
05:22:56 37 MR HOLT: I understand. I'm sorry, yes.  
38  
05:22:57 39 COMMISSIONER: That's a general order.  
05:22:58 40  
05:22:59 41 MR HOLT: Yes, thank you, Commissioner. The concern  
05:22:59 42 obviously is that if we're unsuccessful with the  
43 application - - -  
44  
05:23:01 45 COMMISSIONER: You need that extended to a non-publication  
05:23:04 46 order in respect of matters of police methodology, is that  
05:23:06 47 right?

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05:23:07 1  
05:23:07 2 MR HOLT: In 8 to 10, yes, but the reason is simply because  
05:23:09 3 if we're unsuccessful in the application we don't want to  
05:23:12 4 give anyone ideas is the short form, Commissioner.  
5  
05:23:28 6 COMMISSIONER: If I said there'll be no publication of any  
05:23:34 7 matter relating to [REDACTED]  
05:23:56 8  
05:23:58 9 MR HOLT: Perhaps simply the use that might be made of  
05:24:00 10 voice recordings.  
11  
05:24:01 12 COMMISSIONER: That might be a bit too wide.  
05:24:03 13  
05:24:04 14 MR HOLT: It might, Commissioner. Perhaps the way the  
05:24:06 15 Commissioner put it is better.  
16  
05:24:08 17 COMMISSIONER: Pursuant to s.24 of the Inquiries Act access  
05:24:11 18 to the Inquiry during this application by Victoria Police  
05:24:14 19 is limited to legal representatives and staff assisting the  
05:24:18 20 Royal Commission and the following parties with leave to  
05:24:23 21 appear in the private hearing and their legal  
05:24:24 22 representatives, namely the State of Victoria, Victoria  
05:24:27 23 Police, DPP and the OPP, Commonwealth DPP, Ms Gobbo, the  
05:24:36 24 SDU handlers, [REDACTED] Faruk Orman, William Higgs and  
05:24:43 25 counsel for the media interests, namely ABC, Seven Network,  
05:24:54 26 Nine Australia, together with accredited media  
05:25:01 27 representatives.  
05:25:07 28  
05:25:07 29 MR WAREHAM: Excuse me, Commissioner.  
30  
05:25:09 31 COMMISSIONER: Hang on, I haven't finished yet. The  
05:25:11 32 hearing is to be recorded by transcription staff but not  
05:25:14 33 streamed or broadcast. Publication of matters relating to  
05:25:19 34 [REDACTED] is prohibited, as, of course,  
05:25:24 35 is anything that could lead to the identity of those  
05:25:32 36 persons named in the penultimate order of this court. A  
05:25:39 37 copy of this order is to be posted on the door of the  
05:25:42 38 hearing room.  
05:25:45 39  
05:25:45 40 MR WAREHAM: Sorry, Commissioner, I didn't hear Your Honour  
05:25:53 41 say counsel for Mr Barbaro.  
42  
05:25:55 43 COMMISSIONER: You're right, it wasn't on my list. I'm  
05:25:58 44 sorry about that. I'll add to that Mr Barbaro.  
05:26:03 45  
05:26:03 46 MR WAREHAM: Thank you.  
47

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05:26:07 1 COMMISSIONER: Yes Mr Holt.

05:26:08 2

05:26:08 3 MR HOLT: May it please the Commissioner. Can I start with  
05:26:11 4 what we're actually seeking, which has refined as a result  
05:26:15 5 of what the Commissioner said on Friday. As the  
05:26:18 6 Commissioner knows there are, we're talking here  
05:26:21 7 effectively about clips which include audio and have  
05:26:23 8 associated with them then a transcript of the relevant clip  
05:26:29 9 being provided publicly and therefore able to be published  
05:26:33 10 by the media.

05:26:34 11

05:26:34 12 On Friday, Commissioner, you indicated that the  
05:26:37 13 Commission had the capacity and had indeed done so applying  
05:26:41 14 a form of masking or ██████████ ██████████ to the actual  
05:26:46 15 voice which is able to be published. Our respectful  
05:26:50 16 submission, having taken instructions now over the course  
05:26:53 17 of the weekend, is that is sufficient to deal with any  
05:26:56 18 concerns of the kind that are raised in the affidavit, that  
05:26:58 19 is if the voices are altered in the way which the  
05:27:01 20 Commission has available to it to alter, then that deals  
05:27:05 21 entirely with the concerns which Victoria Police has and  
05:27:08 22 which are set out in the affidavit of Assistant  
05:27:13 23 Commissioner Paterson. We understand though - I'll leave  
05:27:17 24 this, of course, until we hear something from our learned  
05:27:19 25 friend about it - but we understand the concern may be that  
05:27:23 26 that has some impact on quality. Our respectful submission  
05:27:26 27 is that having - the Commission will have access to that  
05:27:30 28 material, but having, listening to that audio even in its  
05:27:35 29 masked form, with the benefit of the transcript which we  
05:27:38 30 accept should be published as well, provides in fact a  
05:27:41 31 pretty good ability to listen to the voice and the terms  
05:27:43 32 recognising, of course, that the audio itself is not, even  
05:27:47 33 in its original form, is not of particularly high quality,  
05:27:50 34 as the transcripts would tend to indicate.

05:27:50 34

05:27:52 35

05:27:52 36 Ultimately, Commissioner, and as the Commissioner  
05:27:55 37 will well know, what the Commission is dealing with here is  
05:27:58 38 a balancing of two interests, both of which are recognised  
05:28:02 39 in the Inquiries Act and recognised generally in the law.  
05:28:05 40 The first is the interest in non-identification of the  
05:28:09 41 particular handlers and so on who are involved and the  
05:28:12 42 Commissioner has accepted, with respect, properly that  
43 there ought not be anything which identifies those person  
05:28:16 44 and that is a safety issue. So on the one hand we have an  
05:28:18 45 issue which is genuinely related to the issue of safety.

05:28:18 45

05:28:20 46

05:28:20 47

The concern on which affidavit evidence has been

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05:28:24 1 provided is that the actual voice of a person being made  
05:28:28 2 available in a permanent form by way of publication on the  
05:28:33 3 Internet creates, for the reasons that are set out in the  
05:28:36 4 affidavit, a capacity presently, but also as technology  
05:28:42 5 improves, an increasingly capacity, one reasonably expects,  
05:28:48 6 to be able to use that kind of biometric data, together  
05:28:49 7 with other biometric data, to be able to identify the  
05:28:51 8 people who are involved.

9

05:28:52 10 COMMISSIONER: Mr Holt, would that not require an audio of  
05:28:56 11 the witness's voice existing as a - - -

05:29:04 12

05:29:04 13 MR HOLT: As a comparator?

14

15

16 COMMISSIONER: Yes, yes.

17

05:29:05 18 MR HOLT: Absolutely it would, yes. But the circumstances  
05:29:07 19 in which something like that might become available or be  
05:29:11 20 recorded by a person who might suspect that, for example,  
05:29:15 21 in the modern world of recording is something which can't  
05:29:19 22 be dismissed in our submission as being unlikely or remote.  
05:29:24 23 If a person was interested in learning the identities of  
05:29:27 24 these persons, then they have - if these clips are able to  
05:29:30 25 be published online, a piece of significant biometric data  
05:29:35 26 which can then be used in the sort of ways which are  
05:29:37 27 discussed in the affidavit of Assistant Commissioner  
05:29:40 28 Paterson, which are presently being used and are cutting  
05:29:43 29 edge and are likely to get better and better given  
05:29:46 30 improving technologies in these areas.

31

05:29:49 32 So our respectful submission is on the one hand what  
05:29:52 33 we have is a genuine issue of safety with a genuine risk  
05:29:55 34 that this information in its present form without masking  
05:29:58 35 will lead to the capacity to identify people where everyone  
05:30:02 36 has accepted there is an acute safety interest in ensuring  
05:30:05 37 that they're not identified. On the other hand, we have  
05:30:08 38 the legitimate interest of the media in reporting these  
05:30:11 39 matters as publicly and as openly as they can. But the  
05:30:15 40 departure from the capacity of the media to do that that we  
05:30:19 41 are asking for thanks to the Commission staff and their  
05:30:22 42 capacity to apply the [REDACTED] is very limited in  
05:30:25 43 our respectful submission. They have the transcript and  
05:30:26 44 they will in fact have an audio, albeit masked. They have  
05:30:30 45 another techniques available to them to ensure fair and  
05:30:34 46 accurate reporting such as the use of actors and  
47 voice-overs which we see all the time in these sorts of

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05:30:36 1 settings. So the departure from the capacity of the media  
05:30:43 2 to report that we are seeking in this instance is in fact a  
05:30:44 3 really limited one and for good reason in our respectful  
05:30:46 4 submission. I'm not sure, Commissioner, unless I can  
05:30:50 5 assist, that I can really put it beyond that.  
6  
05:30:51 7 COMMISSIONER: Could you tell me exactly what order you're  
05:30:54 8 seeking?  
9  
05:30:55 10 MR HOLT: Yes, we seek an order, Commissioner, that voice  
05:30:56 11 recordings of handlers and controllers from the SDU only be  
05:31:03 12 made available for publication with voice [REDACTED]  
05:31:08 13 having been applied to it.  
14  
05:31:11 15 COMMISSIONER: What about the ones that are already out  
05:31:13 16 there? There are two I think already out there.  
17  
05:31:17 18 MR HOLT: Commissioner, we would ask that the order  
05:31:19 19 encompass the publication of those, that is that it include  
05:31:23 20 all of them. Then of course it would be incumbent on the  
05:31:26 21 media organisations to take those down and we would expect  
05:31:29 22 that they would do so because subject to a reasonable time  
05:31:32 23 period the continued use of them would then be a breach of  
05:31:34 24 the Commissioner's order and we're certain they wouldn't do  
05:31:37 25 that, so we ask that it include all matters.  
26  
05:31:39 27 COMMISSIONER: The voice recordings of the SDU handlers and  
05:31:42 28 controllers only be made available after those voices are  
05:31:48 29 masked and that all existing unmasked recordings be removed  
05:32:15 30 from - - -  
31  
05:32:22 32 MR HOLT: Perhaps not be further published, Commissioner,  
05:32:24 33 might be sufficient for those purposes.  
34  
05:32:28 35 COMMISSIONER: Will that cover - I suppose that would cover  
05:32:31 36 those that are on the Internet now?  
37  
05:32:34 38 MR HOLT: It will be a continuous publication,  
05:32:36 39 Commissioner. So if it were not to be further published  
05:32:39 40 then that ought be sufficient. We think that will be  
05:32:48 41 sufficient, Commissioner. If the Commissioner has ordered  
05:32:51 42 non-publication of them in those terms, we would expect to  
05:32:53 43 hear from our learned friend if the media contended that  
05:32:59 44 that allowed them to keep the current recordings up. And  
05:33:01 45 if it doesn't, then we would perhaps need to be more  
05:33:04 46 specific, but our submission is that would be sufficient  
05:33:06 47 for present purposes.



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1  
05:33:07 2 COMMISSIONER: Thank you.  
05:33:08 3  
05:33:08 4 MR HOLT: Thank you, Commissioner.  
5  
05:33:09 6 COMMISSIONER: Mr Hoyne.  
05:33:10 7  
05:33:18 8 MR HOYNE: Thank you, Commissioner. Just in relation to  
05:33:20 9 that last point, I actually at the moment - I know that  
05:33:24 10 it's been published on behalf of the ABC and on behalf of  
05:33:28 11 the Herald & Weekly Times. I'm not presently briefed on  
05:33:31 12 behalf of The Herald & Weekly Times. I'm not sure that I  
05:33:34 13 can say anything about what they may or may not do.  
05:33:38 14 Mr Holt is right in terms of his definition of what  
15 constitutes publication specifically in relation to  
16 defamation laws.  
17  
05:33:41 18 COMMISSIONER: I think it might be The Age.  
05:33:44 19  
05:33:44 20 MR HOYNE: I beg your pardon. It's The Age. Mr Holt's  
05:33:48 21 right in what he says about publication, certainly in terms  
05:33:53 22 of defamation law. But the question of what publication  
05:33:56 23 means in respect of a variety of other Acts has a variety  
05:34:07 24 of different meanings. I'm not suggesting that I'm trying  
25 to be difficult but it might be wise if Mr Holt's  
05:34:09 26 application is otherwise successful that there is some  
05:34:09 27 specific order about taking down those publications.  
28  
05:34:13 29 But to turn then to the substance of the application  
05:34:20 30 that's before us. As Mr Holt rightly says, there's a  
05:34:27 31 question of - the two issues are these: the risk to the  
05:34:30 32 witnesses and the need for as much public scrutiny of what  
05:34:35 33 goes on in this Commission as is consistent with the safety  
05:34:38 34 of those witnesses. Where we depart is that while Mr Holt  
05:34:42 35 and his client urge the Commission to fall on one side of  
05:34:45 36 the line, we say that you should go on the other. The  
05:34:48 37 reason we say that is because fundamentally there is a lack  
05:34:52 38 of evidence about what the risks actually are and at the  
05:34:58 39 moment it's put at a highly speculative level without any  
05:35:04 40 substantive evidence specific to this matter to support it.  
41  
05:35:10 42 Then on the other hand we say that in terms of the  
05:35:13 43 material this evidence is at the very heart of this  
05:35:17 44 Commission. This goes to the very discussions that led to  
05:35:22 45 this Commission being established. It is of critical  
05:35:26 46 importance to the way the story is told that the source  
05:35:30 47 information can be provided. I'll go through that and I'll

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05:35:33 1 explain that in some more detail in a moment, because in  
05:35:37 2 fact it impacts upon different media organisations  
05:35:40 3 differently. So you'll appreciate that a print newspaper,  
05:35:45 4 who don't brief me for obvious reasons, it just doesn't  
05:35:49 5 have an impact upon them, whereas it has a different  
05:35:52 6 impact, for example, on television and Internet  
05:35:54 7 publications and it has a critical - - -

8

05:35:56 9 COMMISSIONER: The print media, of course, have Internet  
05:35:58 10 publications these days too.

05:36:01 11  
05:36:01 12 MR HOYNE: They do, that's right.

13

05:36:02 14 COMMISSIONER: To that extent it has an impact but I take  
05:36:05 15 your point.

05:36:06 16

05:36:06 17 MR HOYNE: It has different impacts. Because the point  
05:36:08 18 that I was really going to come to was that when one deals  
05:36:12 19 with then radio and podcasts, that's where the proposed  
05:36:15 20 method loses a lot of its benefits and the problems become  
05:36:19 21 most acute. For example, the transcript can't be used in  
05:36:21 22 those circumstances. But if I take a step back.

05:36:25 23

05:36:25 24 The first point in my submission is that it's not  
05:36:32 25 sufficient simply to weigh up - to have a balancing  
05:36:35 26 exercise and to say, "Well, which way do we ultimately  
05:36:39 27 think would be better", although I appreciate that the  
05:36:42 28 orders under s.26 of the Inquiries Act are broader than the  
05:36:45 29 powers that exist under suppression orders, for example, in  
05:36:48 30 the courts. Nonetheless in my submission it really should  
05:36:51 31 be a case that orders should not be made unless they are  
05:36:56 32 necessary, which is the test that is adopted. I'm not  
05:36:59 33 saying that's necessarily the legal test that should be  
05:37:02 34 adopted, that needs to be adopted, because of course  
05:37:04 35 there's broader powers. But in my submission in this case,  
05:37:07 36 and in this Royal Commission, and in particular for this  
05:37:09 37 evidence, that is the position that should be taken.

05:37:12 38

05:37:12 39 The second point that I'd make is in respect of the  
05:37:16 40 suppression orders. It's not just this suppression order.  
05:37:18 41 It's this suppression order in conjunction with all the  
05:37:21 42 other suppression orders that have been made that creates  
05:37:24 43 the problem. As the Commission will appreciate in the case  
05:37:28 44 of Scott v Scott, which is where the principles of open  
05:37:33 45 justice were first enunciated back in 1913, what Lord Shaw  
05:37:37 46 said in that case is, "There is no greater danger of  
05:37:41 47 participation than which proceeds little by little under

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05:37:44 1 covers of rules of procedure and at the instances of  
05:37:45 2 judge's themselves". So, again, that's the second point  
05:37:48 3 that we make. It's not just about this issue, it's about  
05:37:51 4 this issue on top of all the others.

05:37:53 5  
05:37:54 6 The other point, just to repeat, there's the other  
05:37:56 7 point I want to make about this by way of introduction, is  
05:38:00 8 this critical evidence that goes to the heart of what this  
05:38:03 9 Commission is about.

05:38:03 10  
05:38:04 11 The other point that needs to be made is that the same  
05:38:08 12 application was in fact, as being made here - well not the  
05:38:12 13 same because it wasn't limited to masking, but the  
05:38:16 14 application was made to the Court of Appeal back in the  
05:38:18 15 February 2019 applications where what was sought to be  
05:38:25 16 suppressed in that circumstance was not just the name of  
05:38:31 17 Ms Gobbo, but also these very same audio recordings. Now,  
05:38:35 18 to be fair, the reason those audio recordings were sought  
05:38:38 19 to be suppressed on that occasion was because it was said  
05:38:44 20 they would lead to the identification of Ms Gobbo. But  
05:38:46 21 what the Court of Appeal, and I have the decision, I'm sure  
05:38:50 22 the Commission has the decision available to it, what the  
05:38:53 23 Court of Appeal said in that case was that no, they  
05:38:56 24 wouldn't make the orders preventing the disclosure of the  
05:39:01 25 audio tapes, recognising always that it was available to  
05:39:05 26 the Commission under s.26 if it wanted to make those orders  
05:39:09 27 itself. But one of the points that it made was that the  
05:39:12 28 evidence that was supplied was purely speculative, and that  
05:39:15 29 was at paragraph 85 of the Court of Appeal's decision,  
05:39:21 30 that's [2019] VSCA 28. As I say, if it's of assistance I  
05:39:25 31 have copies. But that was a fundamental point.

05:39:29 32  
05:39:29 33 The other fundamental point - - -

34  
05:39:31 35 COMMISSIONER: I wouldn't mind a copy of that, please. You  
05:39:35 36 can give it to me later perhaps when I'm hearing from  
05:39:39 37 Mr Nathwani.

05:39:44 38  
05:39:45 39 MR HOYNE: The other point that's relevant to that decision  
05:39:47 40 is that the Police Commissioner in that case did not raise  
05:39:52 41 this point. So this is a late thought of point and in my  
05:39:57 42 submission that gives some indication of its gravity.  
05:40:02 43 While they said it was a problem for the identification of  
05:40:04 44 Ms Gobbo, they never made the point that it's a problem for  
05:40:08 45 the identification of the police handlers. That was after  
05:40:14 46 - there's a reference to the decision from November 2018  
05:40:19 47 about the handlers and so that was already an issue that

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05:40:23 1 they had identified but didn't even bother to run it before  
05:40:26 2 the Court of Appeal.

05:40:27 3  
05:40:28 4 The next point is that it's difficult to see on the  
05:40:32 5 evidence that's currently available what precisely is said  
05:40:35 6 to be the risk by this publication. Nothing specific is  
05:40:38 7 identified in the affidavit. There's evidence given about  
05:40:42 8 [REDACTED] and [REDACTED] it's very  
05:40:45 9 general, and I think that there is a - I think what's been  
05:40:49 10 referred to is the [REDACTED] as distinct from  
05:40:52 11 [REDACTED] [REDACTED]. It says [REDACTED] [REDACTED] is  
05:40:56 12 widespread, which it's true, but it's a different point.  
05:40:59 13 [REDACTED] [REDACTED] is just [REDACTED] that turns the spoken  
05:41:03 14 word into written word. What we're trying to deal with  
05:41:08 15 here is the [REDACTED] which is a  
05:41:10 16 different issue, and I'm not sure it's nearly as  
05:41:13 17 widespread, but more important than that, as the Commission  
05:41:18 18 identified with Mr Holt, what it requires is the relevant  
05:41:21 19 comparator. Before they would be able to identify that  
05:41:25 20 this in fact is the [REDACTED] of a particular police officer,  
05:41:28 21 they would already have to have had that recorded so they  
05:41:33 22 can compare it to that police officer. That's the first  
05:41:35 23 thing they'd have to do.

05:41:37 24  
05:41:37 25 The second thing that they would need to do in that  
05:41:42 26 circumstance is - the second thing that would be relevant  
05:42:00 27 in that circumstance is that the tapes would have to be of  
05:42:03 28 sufficient quality to allow that comparison to be  
05:42:06 29 undertaken.

05:42:07 30  
05:42:07 31 The third thing that would be need to be undertaken in  
05:42:10 32 that case would be that organised crime figures, as is  
05:42:16 33 suggested, would get their hands on this material, having  
05:42:21 34 not got their hands on the material that's already on the  
05:42:24 35 Internet or having not already undertaken a comparison by  
05:42:28 36 reason of, for example, recording - taking a recording of  
05:42:31 37 the material that's on the Internet by reason of the live  
05:42:34 38 streaming, my point being there's already a lot of material  
05:42:37 39 already out there. And then they would have to wish harm  
05:42:41 40 to these police officers. It's just difficult to conceive  
05:42:45 41 that the actual circumstances in which there's actually -  
05:42:50 42 this is going to be utilised to create harm to one of these  
05:42:53 43 police handlers.

05:42:55 44  
05:42:56 45 The next point that seems to be made against us, and  
05:42:58 46 I'm not sure whether it is or it isn't. The way I read the  
05:43:02 47 affidavit, and in particular paragraph 15 of the affidavit,

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05:43:05 1 there seemed to be a suggestion that the order should be  
05:43:10 2 made simply by reason of handlers or some of them being the  
05:43:14 3 subject of a particular Act. I think it comes out of  
05:43:19 4 paragraph 15 of the affidavit. I'll just check. Yes.  
05:43:27 5 That is a misunderstanding of the Witness Protection Act.  
05:43:31 6 The Witness Protection Act provides that while the  
05:43:36 7 publication of the identity is prohibited there has to be a  
05:43:39 8 connection between the information in question and the  
05:43:44 9 person's status as a participant. Now I'm not sure whether  
05:43:48 10 in the past the Commission has been taken to the relevant  
05:43:53 11 legislation.

05:43:54 12  
05:43:54 13 MR HOLT: Commissioner, if it assists we don't press the  
05:43:56 14 point that relies on this ground. If that assists our  
05:44:01 15 learned friend.

05:44:01 16  
05:44:01 17 MR HOYNE: Thank you.

18  
05:44:01 19 COMMISSIONER: That's 10(5). I think it's 10A which is the  
05:44:07 20 relevant - - -

05:44:08 21  
05:44:08 22 MR HOLT: Our learned friend wasn't here when the exchange  
05:44:14 23 happened with the Commission previously be we accept the  
05:44:15 24 position the Commissioner took previously.

25  
05:44:16 26 COMMISSIONER: So 10A is the relevant provision, yes.

05:44:18 27  
05:44:18 28 MR HOYNE: Yes. If I then turn - so that deals in my  
05:44:30 29 submission with why we say that the evidence doesn't  
05:44:32 30 disclose the particular problem that is sought to be  
05:44:36 31 overcome.

32  
05:44:37 33 If I can then deal with the problems that this order  
05:44:40 34 will create for various media organisations. As I say, you  
05:44:44 35 can really put them into three different categories that I  
05:44:47 36 identified before, whether it be the print, the TV and the  
05:44:50 37 Internet and then the radio and the podcasts. There's  
05:44:52 38 another point which is that - or two important points by  
05:44:56 39 way of introduction to this issue. The quality of the  
05:45:00 40 recordings is very variable and as we understand it that  
05:45:02 41 will impact upon the masking. If you've got a reasonable  
05:45:06 42 quality recording to start with, the masking, it might  
05:45:10 43 still - you might still be able to understand it. But if  
05:45:13 44 you start with a poor quality and then mask it, it just  
05:45:16 45 makes it less and less playable as one goes along.

05:45:20 46  
05:45:20 47 The second point is that, as I say, there's already

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05:45:24 1 been publications here and there hasn't been any complaint  
05:45:28 2 until they went online.

05:45:30 3  
05:45:31 4 The issue in respect of the transcript and masking the  
05:45:36 5 transcript is that it destroys the tone, the nuance, the  
05:45:41 6 inflection, it reduces one's capacity to understand  
05:45:45 7 sarcasm, incredulity, scepticism or even concern. This,  
05:45:52 8 might I say, was a point that was put by the Commission to  
05:45:57 9 the Court of Appeal in that February decision. One can see  
05:46:04 10 from the media reports that have been published so far  
05:46:07 11 where what's been reported is that members lied to Ms Gobbo  
05:46:12 12 about the fact that she wasn't being recorded, and that -  
05:46:19 13 and one can appreciate the greater relevance and how that  
05:46:25 14 actually comes about when one listens to those recordings,  
05:46:28 15 as distinct from merely hearing it second or thirdhand.

05:46:30 16  
05:46:31 17 It means that the story is able to be told in a far  
05:46:35 18 more compelling, readable and understandable fashion.  
05:46:39 19 That's not just simply a matter of the commercial viability  
05:46:44 20 of my clients telling a story. If the Commission pleases,  
05:46:49 21 there is the decision - I'm sorry, I've now lost my - in  
05:47:02 22 this respect there is the Guardian Media decision, which I  
05:47:09 23 would like to hand up and take the Commission to some  
05:47:13 24 relevant passages. I can hand up the other case I referred  
05:47:16 25 to at the same time.

05:47:16 25  
05:47:26 27 COMMISSIONER: Yes, thanks Mr Hoyne.

05:47:28 28  
05:47:31 29 MR HOYNE: This is the decision of the Supreme Court of the  
05:47:36 30 United Kingdom in the case of Re Guardian News Media Ltd  
05:47:42 31 and Others. I accept it arose in a very, very different  
05:47:47 32 circumstance. It was a question of pseudonym orders that  
05:47:50 33 were being sought in respect of freezing orders. So they  
05:47:54 34 were - the question was being asked, well, what does it  
05:47:57 35 really matter? The Supreme Court, and in particular Lord  
05:48:02 36 Roger, dealt with these from paragraphs 63 through to 65.  
05:48:07 37 Fundamentally the point that was being made in that case is  
05:48:10 38 while they didn't get the names, they were saying it  
05:48:14 39 matters a lot when one decides how one goes about writing a  
05:48:18 40 story, how one goes about publishing it. It makes it more  
05:48:21 41 interesting to the public and that means, and this is the  
05:48:25 42 critical point, that if you're able to give a more vivid  
05:48:29 43 and compelling account, this is at 65, that will stimulate  
05:48:33 44 discussion about the - in that case it was about the  
05:48:36 45 freezing orders and their impact upon the communities and  
05:48:39 46 the individuals. I'm not saying that constitutes a point  
05:48:41 47 of law but what I am saying is that the same point of

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05:48:45 1 principle arises in this circumstance. Where you have the  
05:48:49 2 very evidence that is at the critical heart of this  
05:48:51 3 Commission, that is the type of thing that will stimulate  
05:48:54 4 discussion within the community about what exactly went on  
05:48:58 5 and how we came to be in the situation that we are  
05:49:00 6 currently in.

05:49:02 7  
05:49:07 8 Dealing then with the particular media organisations.  
05:49:10 9 As I say, there is - for a print media where it publishes  
05:49:14 10 its traditional form of newspaper it's not so much of an  
05:49:18 11 issue. It is an issue for online where they want to  
05:49:23 12 publish those, because as I say they can't tell a story in  
05:49:28 13 a compelling fashion. It is a real issue for radio. It is  
05:49:34 14 a real issue for podcast. The truth of the matter is that  
05:49:38 15 if one has a highly affected, by reason of the masking  
05:49:45 16 recording, it renders it much less likely that it will be  
05:49:51 17 published at all. I can't say it won't be published, I  
05:49:55 18 don't act for every media organisation. And it will depend  
05:49:58 19 upon the particular circumstances, so it might sometimes be  
05:50:01 20 published but it's much less likely it would be published  
05:50:05 21 at all. As I say, it also affects the ability to  
05:50:08 22 understand and appreciate the inflection and the nuance  
05:50:14 23 that arises in the material.

05:50:21 24  
05:50:21 25 Fundamentally, and just by way of conclusion then, we  
05:50:24 26 say that the nature of the evidence is not sufficient to  
05:50:27 27 disclose why it's necessary to protect safety. Conversely,  
05:50:31 28 these proceedings are not closed. There is a need to shine  
05:50:34 29 a light into what transpired and this is the most critical  
05:50:39 30 aspect, one of the most critical aspects in my submission  
05:50:43 31 of that.

05:50:45 32  
05:50:45 33 The masking of the voices of the tapes which are of  
05:50:50 34 variable quality to start with is likely in many  
05:50:53 35 circumstances to render that almost unusable and in certain  
05:50:57 36 circumstances is likely to render it completely unusable  
05:51:00 37 for a variety of media organisations.

05:51:03 38  
05:51:06 39 Unless I can be of further assistance they're the  
05:51:11 40 submissions.

41  
05:51:12 42 COMMISSIONER: Thanks very much Mr Hoyne. Yes Mr Mukerjea.

05:51:14 43  
05:51:15 44 MR MUKERJEA: If the Commissioner pleases. Commissioner,  
05:51:17 45 in my submission, consistent with the approach the  
05:51:20 46 Commission has taken with issues of this kind since the  
05:51:25 47 Commission's hearings began, it is open to the Commission

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05:51:29 1 to make exhibits such as these recordings available to  
05:51:34 2 accredited media for the purposes of publication and to  
05:51:39 3 conclude that the concerns raised by Victoria Police in  
05:51:43 4 Mr Paterson's affidavit do not rise to a level that  
05:51:50 5 warrants the making an order that in some way restricts the  
05:51:54 6 media's access to those exhibits, the restriction that is  
05:51:57 7 now sought being limited to, in effect, a distortion or  
05:52:00 8 masking of the relevant - of the voices of the relevant SDU  
05:52:05 9 handlers. So in that regard the submissions that I'll be  
05:52:08 10 making to the Commission are broadly consistent with what  
05:52:12 11 the Commission has just heard from Mr Hoyne.

05:52:14 12  
05:52:14 13 There are a couple of matters of general principle on  
05:52:18 14 which I do, however, depart from Mr Hoyne. They go to the  
05:52:23 15 nature of the Commission's discretion to grant the relief  
05:52:26 16 that is sought by Mr Holt's client. A submission was made  
05:52:31 17 to the Commission by Mr Hoyne to the effect that in  
05:52:35 18 approaching evidence of the kind contained in these  
05:52:38 19 recordings the test that the Commission ought to apply in  
05:52:42 20 determining whether to make an order under s.26 is a test  
05:52:46 21 of necessity. I'd invite the Commission to reject that  
05:52:53 22 submission on the basis that the clear language of s.26 and  
05:52:58 23 the surrounding sections of the Inquiries Act emits a clear  
05:53:03 24 intention, in my submission, to grant the Commission a far  
05:53:05 25 broader discretion as to the manner in which it conducts  
05:53:09 26 its proceedings and the manner in which it informs itself  
05:53:12 27 and specifically, when regard is had to s.14 of the  
05:53:16 28 Inquiries Act, draws a distinction between the rules of  
05:53:19 29 evidence and the practices or procedures which are  
05:53:22 30 applicable to courts of record. So I'd invite the  
05:53:26 31 Commission to approach the question on the basis of the  
05:53:28 32 ordinary language of s.26 of the Act, which in effect  
05:53:33 33 grants the Commission a fairly wide discretion to make  
05:53:38 34 non-publication orders if the circumstances are  
05:53:40 35 appropriate.

05:53:41 36  
05:53:41 37 Of course, as counsel assisting the Commission has  
05:53:47 38 previously brought to the Commissioner's attention, the  
05:53:50 39 principles of open justice which are the subject of much of  
05:53:53 40 the authorities, much of the discussion in the authorities,  
05:53:58 41 do not apply to the proceedings of this Commission, which  
05:54:00 42 is exercising an administrative function.

05:54:03 43  
05:54:03 44 Having said that, Commissioner, there is some guidance  
05:54:08 45 that the Commission may receive or may obtain from those  
05:54:13 46 authorities that deal with the interplay between the  
05:54:16 47 principles of open justice on the one hand and the ability



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05:54:19 1 or right of the media to seek access to and obtain evidence  
05:54:26 2 or other exhibits, be they documentary or, in this case,  
05:54:30 3 audiovisual, in order to aid fair and accurate reporting of  
05:54:34 4 proceedings.

05:54:36 5  
05:54:36 6 Can I hand up to the Commission by way of example two  
05:54:40 7 cases with copies for my friends. But it will only be  
05:54:46 8 necessary for me to take the Commission to the second case  
05:54:51 9 in the bundle I've just handed to the Commissioner.

10  
05:55:00 11 The second case is the decision of Justice  
05:55:02 12 Habersberger in the Supreme Court of Victoria in the case  
05:55:06 13 of R v Wayne Strawhorn. This was a criminal prosecution  
05:55:12 14 which included a prosecution in relation to a charge of  
05:55:16 15 making threats to kill. The relevant threat had been  
05:55:19 16 captured on a recorded phone conversation that had been  
05:55:24 17 intercepted by the police and an application was made by  
05:55:28 18 the press pending verdict in the trial for access to the  
05:55:34 19 recording for the purpose of publishing the recording as  
05:55:38 20 part of any fair and accurate reporting of the verdict.  
05:55:42 21 The application was ultimately unsuccessful on the basis  
05:55:45 22 that what the media had proposed to do was to publish only  
05:55:49 23 a very small part of the recording and there were concerns  
05:55:52 24 raised as to whether publishing only a small part of the  
05:55:57 25 recording, rather than the entirety of the exhibit, would  
05:56:00 26 give rise to some misleading of the public. That was the  
05:56:04 27 basis upon which the application failed. But the  
05:56:07 28 principles which His Honour applied may be of some  
05:56:10 29 assistance to you, Commissioner, in dealing with the  
05:56:13 30 current application.

05:56:14 31  
05:56:14 32 Could I draw the Commission's attention firstly to  
05:56:17 33 paragraph 30 of the decision, where Justice Habersberger  
05:56:21 34 made reference to an oft quoted passage in the decision of  
05:56:26 35 Justice Hedigan in *The Herald & Weekly Times v The Medical  
05:56:30 36 Practitioners Board*. I won't read it out in its entirety  
05:56:36 37 but I draw the Commission's attention to the last passage  
05:56:39 38 from the quote in particular where Justice Hedigan noted,  
05:56:42 39 "In an open and truly democratic society the right of  
05:56:45 40 various forms of the media, that is the media as a means of  
05:56:48 41 communication of the issues, parties in the hearing, to be  
05:56:52 42 present and to publish is generally regarded as being in  
05:56:55 43 the public interest so long as the reports are accurate and  
05:57:02 44 do not misrepresent by omission or unbalanced selection the  
05:57:02 45 evidence and its effect. The right to report is seen as an  
05:57:06 46 adjunct of the right to attend".

47

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05:57:09 1 In the next paragraph Justice Habersberger makes the  
05:57:12 2 comment: "Thus the entitlement of the media to report on  
05:57:18 3 the court proceedings is a corollary of the right of access  
05:57:19 4 to the court by members of the public because the media are  
05:57:21 5 the eyes and ears of the general public, not all of whom  
05:57:24 6 can attend court proceedings".  
05:57:27 7

05:57:27 8 Dealing specifically then with the question of access  
05:57:30 9 to the audiovisual exhibit, His Honour dealt with that  
05:57:39 10 firstly at paragraph 50. His Honour said: "I agree with  
05:57:43 11 the approach of Cummins J which is that generally exhibits  
05:57:46 12 ought to be released to the media for publication after  
05:57:50 13 verdict". And he then sets out a passage from a decision  
05:57:51 14 of Cummins J in the unreported case of DPP v Gatto. The  
05:57:54 15 passage reads: "Because the media have a fundamental and  
05:57:57 16 important and proper role in ensuring the courts are truly  
05:58:01 17 public in the modern community. That means in a practical  
05:58:04 18 sense the provision to the media for the electronic and  
05:58:07 19 printed dissemination of material published to the world  
05:58:11 20 but in fact seen or heard only by those few persons of the  
05:58:15 21 public who are in court".  
05:58:17 22

05:58:17 23 Lastly, at paragraph 52 His Honour dealt with the  
05:58:21 24 submission which the Commissioner has heard from Mr Hoyne  
05:58:25 25 today about the realism that the actual recording, as  
05:58:28 26 opposed to a transcript, can provide to the viewing public  
05:58:32 27 and His Honour accepted that submission in respect of the  
05:58:36 28 recording that was before His Honour in that case.  
05:58:40 29

05:58:41 30 So once again, Commissioner, I provide that case to  
05:58:48 31 the Commission by way of guidance but noting of course the  
05:58:51 32 important distinction between the court's requirement to  
05:58:53 33 give voice to the principle of open justice compared to  
05:58:56 34 this Commission's far broader discretion as to whether or  
05:59:01 35 not to make orders of the kind contemplated by s.26.  
05:59:09 36

05:59:09 37 Before I move off that case, can I address the  
05:59:13 38 Commission on this question of matters of tone, emphasis  
05:59:17 39 and inflection. With respect, we adopt what Mr Hoyne has  
05:59:22 40 submitted to the Commission on this topic and the  
05:59:27 41 difficulty that a distorted version of the recordings would  
05:59:32 42 therefore create in order to properly understand the  
05:59:38 43 matters of tone, emphasis and inflection.  
05:59:44 44

05:59:44 45 I couldn't put it as highly, Commissioner, to say that  
05:59:47 46 matters of tone, emphasis, inflection and the like are  
05:59:51 47 relevant to a proper understanding of the recordings that

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05:59:54 1 have been tendered to date in the proceedings of the  
05:59:57 2 Commission, but I anticipate that such matters will be  
06:00:01 3 relevant to a proper understanding and appreciation of  
06:00:05 4 recordings that are still to come. That might be  
06:00:09 5 particularly the case if, as I understand it, there are  
06:00:14 6 disputes or there will be disputes as to the accuracy of  
06:00:18 7 the transcriptions of those recordings. The recordings  
06:00:22 8 themselves will be, as they always are, the best evidence  
06:00:27 9 of what was and was not said and how it was said.

06:00:32 10  
06:00:35 11 I finally address the matters that are raised in  
06:00:38 12 Mr Paterson's affidavit and I will attempt to do so without  
06:00:43 13 seeking to repeat what Mr Hoyne has said.

06:00:48 14  
06:00:48 15 Commissioner, when regard is had to paragraphs 7 to 12  
06:00:52 16 of Mr Paterson's affidavit one discerns four broad  
06:00:56 17 propositions that are advanced in support of some  
06:00:59 18 restriction on the use of these audio recordings.

06:01:03 19  
06:01:03 20 The first proposition that's advanced is that it is  
06:01:05 21 said that there is a risk to the safety of Officer [REDACTED]  
06:01:14 22 and his family should he be identified. As Mr Hoyne has  
06:01:19 23 pointed out, that risk is unparticularised. There is no  
06:01:21 24 evidence of any specific risk of a specific kind from a  
06:01:25 25 particular person or category of persons. It is rather put  
06:01:28 26 on the basis, as we understand it, of a general risk to the  
06:01:31 27 safety of these handlers were they identified as having  
06:01:34 28 been involved in the Source Development Unit.

06:01:36 29  
06:01:38 30 Whatever that risk might be, in my submission it's  
06:01:42 31 important for the Commission to contrast that risk with the  
06:01:47 32 sorts of risks that this Commission, and recently the  
06:01:51 33 courts, have had to consider in the cases of people such as  
06:01:56 34 Ms Gobbo. That is to say unlike Ms Gobbo Officer [REDACTED] is  
06:02:01 35 not and was not a confidential police informer moving  
06:02:06 36 amongst the criminal fraternity. Nor was he an undercover  
06:02:11 37 police officer moving amongst those criminal elements which  
06:02:15 38 he was seeking to investigate and prosecute. Indeed, his  
06:02:20 39 evidence is that he is [REDACTED]  
06:02:24 40 [REDACTED] and so has [REDACTED] in the investigation of  
06:02:29 41 crime in Victoria [REDACTED] What that means in our  
06:02:34 42 submission is that the Commission needs to consider the  
06:02:37 43 positive risk at two levels. Firstly, what is the risk  
06:02:41 44 that the recordings might actually identify Officer [REDACTED]  
06:02:45 45 in circumstances where he is not actually moving amongst  
06:02:49 46 the people who are said to pose the risk.  
47

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1  
06:02:53 2           Secondly, if he is identified what is the risk that  
06:02:57 3 such persons would actually seek to do him any harm?  
06:03:01 4

06:03:05 5           The next assertion that's made by Mr Paterson is that  
06:03:09 6 if the recordings unmasked are put into the public domain  
06:03:14 7 there is a risk that persons who know Mr [REDACTED] and play the  
06:03:18 8 recording may be in a position to determine his true  
06:03:21 9 identity without knowing the significance of the risk to  
06:03:24 10 Mr [REDACTED] and his identity may become the subject of  
06:03:29 11 discussion between members of the public.  
06:03:33 12

06:03:34 13           I'd make four points in relation to that,  
06:03:36 14 Commissioner. The first is that there is no evidence that  
06:03:38 15 those who already know Officer [REDACTED]  
06:03:43 16 [REDACTED] do not know that he used to work  
06:03:51 17 within a branch of the police known as the Source  
06:03:54 18 Development Unit. And if those who know Officer [REDACTED]  
06:03:59 19 already know those matters or some of those matters,  
06:04:01 20 there's no reason for the Commission to think that by  
06:04:03 21 listening to these recordings they'll be learning anything  
06:04:06 22 new about what Officer [REDACTED] used to do in his [REDACTED]  
06:04:10 23 [REDACTED]  
06:04:14 24

06:04:14 25           The next point is that in my submission the Commission  
06:04:17 26 is entitled to take the view that the chance of persons  
06:04:21 27 recognising Mr [REDACTED] voice from small excerpts of what  
06:04:29 28 are fairly patchy audio recordings made some 15 years  
06:04:37 29 ago - - -  
30

06:04:42 31 COMMISSIONER: I don't think that's deliberate,  
06:04:44 32 Mr Mukerjea.  
06:04:46 33

06:04:47 34 MR MUKERJEA: Officer [REDACTED] ears are ringing. The  
06:04:50 35 recordings are 15 years old and the submission is that it  
06:04:56 36 is inherently unlikely that anyone would be able to  
06:04:59 37 recognise Officer [REDACTED] today from these old, rather patchy  
06:05:03 38 audio recordings.  
06:05:12 39

06:05:12 40           The assertion that people who know Officer [REDACTED] might  
06:05:15 41 recognise him and this might then feed into the broader  
06:05:18 42 community and ultimately to criminal elements within the  
06:05:21 43 community is also, with respect, a rather long bow to draw  
06:05:26 44 in circumstances where Officer [REDACTED] has the protection of  
06:05:30 45 a pseudonym order and a non-publication order that this  
06:05:35 46 Commission made on 30 July this year. The Commission might  
06:05:41 47 well think that persons who know Officer [REDACTED] might be

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06:05:45 1 minded to maintain his anonymity rather than seek to  
06:05:49 2 frustrate it.

06:05:52 3  
06:05:53 4 The third matter I wish to raise was in relation to  
06:05:57 5 the sorts of technology that are referred to in  
06:06:00 6 Mr Paterson's affidavit. Mr Hoyne has already addressed  
06:06:04 7 you on those matters, Commissioner, and I respectfully  
06:06:07 8 adopt his submissions in that regard.

06:06:11 9  
06:06:14 10 I would emphasise the fact that it is not explained  
06:06:17 11 how these old recordings might be used to identify Officer  
06:06:22 12 [REDACTED] without the existence of a known recording of his  
06:06:29 13 voice as it was 15 years ago and as it sounded 15 years ago  
06:06:34 14 for comparison purposes. There's no evidence from which  
06:06:39 15 the Commission could form any, in my respectful submission,  
06:06:44 16 sensible view that such a recording and known recording  
06:06:47 17 exists somewhere in the community. It might be different  
06:06:50 18 if Officer [REDACTED] was an undercover police officer where  
06:06:53 19 people might have formed suspicions about him and might  
06:06:57 20 have surreptitiously recorded him. That's not this case.

06:07:06 21  
06:07:06 22 The last matter Mr Paterson relies on is the Court of  
06:07:11 23 Appeal's ruling in the AB, CD and EF proceedings. I simply  
06:07:16 24 note that ruling related to redaction of Officer [REDACTED]  
06:07:22 25 name and that is a protection he is already afforded by  
06:07:24 26 this Commission both in the form of pseudonyms allocated  
06:07:28 27 and the non-publication order that the Commission made on  
06:07:33 28 30 July. In my submission the Court of Appeal's ruling  
06:07:37 29 doesn't advance the matters any further having regard to  
06:07:39 30 those protections that the Commission has already provided.

06:07:42 31  
06:07:42 32 So on balance, as I said at the outset, Commissioner,  
06:07:46 33 in my submission the Commission is entitled to come to the  
06:07:49 34 view that the material that's been provided in support of  
06:07:53 35 the application is not sufficiently compelling to warrant  
06:07:57 36 the making of any order that restricts the way in which  
06:08:02 37 these recordings are to be provided to the press.

06:08:05 38  
06:08:06 39 Those are the matters.

40  
06:08:07 41 COMMISSIONER: Thank you. Mr Holt.

06:08:09 42  
06:08:09 43 MR HOLT: May it please the Commissioner. There is of  
06:08:13 44 course no dispute as to the principles that apply nor of  
06:08:15 45 the importance of press reporting, although it must be  
06:08:19 46 noted, as I think both of our learned friends did, that the  
06:08:22 47 Court of Appeal in the various judgments that have been

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06:08:24 1 referred to under the Open Courts Act are applying a  
06:08:29 2 necessity standard rather than the standard which we agreed  
06:08:34 3 with our friend assisting the Commission lies here. The  
06:08:38 4 real issue here though, Commissioner, is the balance of  
06:08:40 5 that issue and the extent to which the imposition on press  
06:08:42 6 reporting, the minimal imposition on press reporting is to  
06:08:47 7 be balanced against the question of safety. I deal then  
06:08:49 8 with the points that have been made in this way.

06:08:51 9  
06:08:51 10 The submission was made against us that this is a sort  
06:08:55 11 of afterthought, a late application. Commissioner, you are  
06:08:58 12 of course aware of the change of circumstances that has  
06:09:02 13 occurred recently. There is a difference when we are  
06:09:05 14 dealing with clips which will be indelibly linked online,  
06:09:12 15 that is they will be available now and forever with the  
06:09:14 16 capacity to be able to be used in whatever way is seen fit.  
06:09:16 17 The submission is put against us that the question of risk  
06:09:16 18 is a speculative one. Well, the nature of risk assessment,  
06:09:20 19 Commissioner, as you would know generally but also  
06:09:26 20 specifically in relation to this proceeding to date, is  
06:09:28 21 that it is necessarily difficult. But can I say these  
06:09:30 22 things: the need for safety and the protection of this  
06:09:33 23 particular group of people has been recognised by this  
06:09:38 24 Commissioner, and it's been recognised at every level at  
06:09:38 25 which this issue has been dealt with from IBAC, through the  
06:09:41 26 court system and in to this Commission. So the question  
06:09:43 27 that there is a need for orders to ensure that these  
06:09:46 28 particular people don't be identified on the basis of  
06:09:48 29 safety is one which has now been well recognised. This is  
06:09:52 30 one of those positions, Commissioner, where even though it  
06:09:56 31 cannot be said that it is certain that someone would  
06:09:59 32 attempt to take this step, it may even be said that it's  
06:10:02 33 only a possibility that they might be able to take the step  
06:10:06 34 of looking to identify these persons voices, the point is  
06:10:11 35 that if it happens it will be catastrophic. So in terms of  
06:10:15 36 that risk matrix with which we're all familiar, we are  
06:10:16 37 dealing with something which is significant because of the  
06:10:18 38 risk that exists.

39  
06:10:19 40 There has been no challenge in our submission  
06:10:22 41 evidentially to the proposition that these kind of  
06:10:25 42 comparisons can in fact be done, nor from the logical  
06:10:28 43 proposition that they will be able to be done more  
06:10:32 44 effectively as time goes on. Nor with respect, for  
06:10:35 45 example, any evidential basis for the proposition that it  
06:10:38 46 might be hard to do that from small excerpts or from tapes  
47 that are fifteen years old. These are people who are

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06:10:47 1 genuinely of high risk. Whilst we accept, as I indicated  
06:10:50 2 before, that we're dealing here with s.10A, not with  
06:10:53 3 s.10(5), nonetheless it's relevant to the Commissioner's  
06:10:58 4 assessment that there exists a statutory regime in respect  
06:11:02 5 of these persons which takes the prospects of identifying  
06:11:05 6 them so seriously that it places, as the Commissioner has  
06:11:10 7 previously noted, a very significant penalty associated  
06:11:12 8 with it. This is unchallenged biometric data which will  
06:11:19 9 have a capacity in our respectful submission, in not absurd  
06:11:20 10 circumstances, the capacity to identify people. The notion  
06:11:21 11 that there needs to be someone who's specifically saying,  
06:11:26 12 "I'm going to do that", is a standard which will be  
06:11:29 13 impossible for the police to reach. Is it, given  
06:11:32 14 everything that's been heard in respect of this matter and  
06:11:37 15 others, in any sense fanciful that these people might -  
06:11:40 16 that people might seek to identify the very people who  
06:11:44 17 pseudonym orders have been made in respect of and that they  
06:11:47 18 may in fact use the kinds of techniques that are now  
06:11:50 19 available.

06:11:51 20  
06:11:51 21 The flip side, if I can deal with that, is the  
06:11:53 22 question of this evidence being critical primary evidence  
06:11:56 23 that goes to the heart of the matter, and that is true.  
06:11:59 24 And that is why we are attempting in the orders that we're  
06:12:01 25 proposing to the Commission to ensure that the imposition  
06:12:04 26 on that principle is as minimal as it conceivably possibly  
06:12:07 27 be. With the greatest of respect, the proposition that  
06:12:11 28 masking destroys tone or inflection, doesn't permit the  
06:12:16 29 identification, for example, of sarcasms, is, ironically  
06:12:20 30 given the submissions that have been put against us by  
06:12:24 31 Mr Hoyne, in itself speculative. Because there has been no  
06:12:27 32 evidence given that anyone who has listened to these  
06:12:30 33 recordings and said with the [REDACTED] you can't  
06:12:32 34 tell inflection. In fact, with respect, the opposite seems  
06:12:33 35 to be true, but I would then be giving evidence myself from  
06:12:37 36 the Bar table, which is a matter I'm now being critical of.  
06:12:42 37 The idea that it makes it less vivid and compelling is a  
06:12:42 38 submission, it's not evidence. We see masked voices used  
06:12:44 39 in extraordinarily vivid and compelling media articles and  
06:12:48 40 television programs and things all the time and there is  
06:12:51 41 absolutely no reason why the same couldn't be done here.  
42

06:12:54 43 Our respectful submission, Commissioner, is that there  
06:12:59 44 is a genuine risk which has already been recognised in  
06:13:03 45 multiple fora, including this one. There is unchallenged  
06:13:05 46 evidence that this is biometric data capable of identifying  
06:13:07 47 people who shouldn't be and we know that those risks are

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06:13:09 1 real by virtue of the very subject matter of this  
06:13:12 2 Commission. What we are seeking is the most, with respect,  
06:13:16 3 minor imposition on the capacity of the press to report and  
06:13:19 4 one which is legitimate in terms of the balancing of safety  
06:13:23 5 versus public reporting. Those are our submissions,  
06:13:25 6 Commissioner.  
7  
06:13:26 8 COMMISSIONER: Yes, thanks.  
9  
06:13:27 10 MR CHETTLE: Commissioner, I know I said I wasn't going to  
06:13:31 11 involve myself, but can I briefly say something in response  
06:13:34 12 to what was said from my learned friend at the other end of  
06:13:38 13 the Bar table?  
14  
06:13:38 15 COMMISSIONER: All right Mr Chettle.  
16  
06:13:39 17 MR CHETTLE: Can I refer you to the unredacted statement of  
06:13:42 18 Mr [REDACTED] on p.2, paragraph 7.  
19  
06:13:53 20 COMMISSIONER: Just a minute.  
21  
06:13:54 22 MR CHETTLE: If you come up five dot points from the  
06:13:57 23 bottom.  
24  
06:14:02 25 COMMISSIONER: Yes.  
26  
06:14:03 27 MR CHETTLE: Secondly, the confidential affidavit - - -  
28  
06:14:06 29 COMMISSIONER: That of course isn't in the public domain.  
30  
06:14:09 31 MR CHETTLE: I understand that. The reality is what was  
06:14:11 32 put from the other end of the Bar table was it might be  
06:14:14 33 different if he'd ever been in that role.  
34  
06:14:17 35 COMMISSIONER: I understand.  
36  
06:14:18 37 MR CHETTLE: And he has. If I then take you to paragraph 7  
06:14:21 38 of the confidential affidavit tendered by instructing  
06:14:23 39 solicitor on 30 May, that same point is repeated.  
40  
06:14:27 41 COMMISSIONER: Just a minute. 30 May.  
42  
06:14:29 43 MR CHETTLE: That was [REDACTED] ' affidavit.  
44  
06:14:32 45 COMMISSIONER: Yes.  
46  
06:14:33 47 MR CHETTLE: It's just - - -



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1  
06:14:34 2 COMMISSIONER: We just have to find that. I don't have it  
06:14:38 3 to hand at my fingertips exactly. Is it the same point or  
06:14:43 4 different point?  
06:14:45 5  
06:14:45 6 MR CHETTLE: It's the same point and extends it to one  
06:14:47 7 other member of the SDU and names them.  
8  
06:14:49 9 COMMISSIONER: All right then.  
10  
06:14:50 11 MR CHETTLE: There is one other matter that I need to,  
06:14:52 12 frankly, it is not the subject of evidence at the moment  
06:14:55 13 but it could be, but I need to just have a brief discussion  
06:14:58 14 with Mr Winneke because it is critical. It may in fact  
06:15:02 15 assist you, Commissioner. I only need, literally, a minute  
06:15:05 16 or two minutes.  
17  
06:15:08 18 COMMISSIONER: You just want to go and do it now?  
06:15:10 19  
06:15:11 20 MR CHETTLE: Yes, thank you.  
06:15:11 21  
06:15:11 22 COMMISSIONER: Thank you.  
06:15:17 23  
06:15:18 24 MR HOYNE: Just while Mr Chettle is doing that, can I just  
06:15:21 25 clarify one matter coming out of Mr Mukerjea's submissions,  
06:15:26 26 just so it's clear. I don't disagree with what Mr Mukerjea  
06:15:30 27 said about the requirement of necessity. I agree that it's  
06:15:35 28 not a requirement of necessity.  
29  
06:15:37 30 COMMISSIONER: I understood that.  
06:15:38 31  
06:15:39 32 MR HOYNE: The point that I was seeking to make was that in  
06:15:41 33 these circumstances about this type of evidence, unless you  
06:15:44 34 can demonstrate that it is necessary that's the approach  
06:15:48 35 that should be taken, not the legal test.  
36  
06:16:14 37 MR CHETTLE: Commissioner, Mr Winneke is aware of what I'm  
06:16:18 38 talking about. This is a circumstance which I cannot raise  
06:16:22 39 in open court. I just can't. But it's relevant to this  
06:16:25 40 particular order and I didn't - it only arises because of  
06:16:30 41 what I've heard put from the other end of the Bar table. I  
06:16:33 42 can, if the Commissioner would allow it, have sworn  
06:16:38 43 evidence given by Mr [REDACTED] that would bear on this issue.  
06:16:43 44 It would take literally two minutes of evidence from him.  
06:16:48 45 In order to do that I would seek to have everybody other  
06:16:52 46 than the members of the Bar table excluded from the court.  
06:16:59 47 Because to raise it in any other way will defeat the

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06:17:02 1 purpose of what we're trying to do here. I can't really be  
06:17:07 2 any more cryptic than that. Sorry, Mr Winneke wants me  
06:17:12 3 again.

06:17:33 4  
06:17:34 5 Mr Winneke hoped there was another way but I don't  
06:17:38 6 think there is.

06:17:39 7  
06:17:39 8 COMMISSIONER: Mr Winneke, can I ask you whether you  
06:17:41 9 support the receipt of - - -

10  
06:17:44 11 MR WINNEKE: Mr Chettle wishes to make a submission. His  
06:17:46 12 view is - I understand the point that he makes. It's a  
06:17:50 13 question of drawing connections. It may well be that - so  
06:17:58 14 long as it's confined to those at the Bar table Mr Chettle  
06:18:02 15 is happy to make the point and call the evidence. I don't  
06:18:05 16 know about the circumstances of the matter and I'm  
06:18:06 17 certainly not going to say he's not entitled to rely upon  
06:18:10 18 the evidence. But I accept what he says about the risks  
06:18:12 19 insofar as connection is concerned.

20  
06:18:14 21 COMMISSIONER: You accept that he's certainly entitled to  
06:18:19 22 call evidence.

23  
06:18:21 24 MR WINNEKE: I do.

25  
06:18:21 26 COMMISSIONER: You accept that that evidence would need to  
06:18:23 27 be given - - -

28  
06:18:24 29 MR WINNEKE: Yes, I do.

30  
06:18:25 31 COMMISSIONER: - - - in a more private hearing than this  
06:18:28 32 one?

33  
06:18:30 34 MR WINNEKE: A more private hearing than we have.

35  
06:18:31 36 COMMISSIONER: With only those - - -

37  
06:18:35 38 MR WINNEKE: At the Bar table, I understand.

39  
06:18:37 40 COMMISSIONER: Those presently at the Bar table.

41  
06:18:39 42 MR CHETTLE: And Royal Commission staff.

43  
06:18:40 44 COMMISSIONER: All right then. I'm satisfied in that case  
06:18:42 45 that under the Inquiries Act that this portion of the  
06:18:45 46 hearing will have to be in a more closed hearing with only  
06:18:54 47 the lawyers actually at the Bar table present and Royal

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06:18:59 1 Commission staff and a copy of that order will be published  
06:19:04 2 on the door and we'll receive evidence from Mr [REDACTED]

06:19:13 3  
06:19:13 4 Can we get Mr [REDACTED] on the video link now, please.

06:19:26 5  
06:19:28 6 (CONFIDENTIAL PROCEEDINGS FOLLOW)

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06:19:37 1 PROCEEDINGS IN CAMERA:

2  
06:29:27 3 COMMISSIONER: This is an application under s.26 of the  
06:29:31 4 *Inquiries Act* brought by Victoria Police and supported by  
06:29:39 5 counsel for the SDU handlers and controllers for orders  
06:29:50 6 that the voice recordings of the SDU handlers and  
06:29:55 7 controllers only be made publicly available after the  
06:30:02 8 voices of the handlers and controllers are masked and that  
06:30:08 9 all such existing unmasked recordings be not further  
06:30:14 10 published and that such recordings which are presently  
06:30:22 11 published be removed from publication as soon as possible.

12  
06:30:35 13 I have considered carefully the important points  
06:30:41 14 raised by counsel for Victoria Police and the evidence  
06:30:47 15 called by counsel for the handlers and controllers. But  
06:30:55 16 ultimately, for the reasons that I'm about to give, I am  
06:31:01 17 persuaded that those orders in this case are not  
06:31:05 18 appropriate.

19  
06:31:10 20 I have considered the approach that I must take in  
06:31:16 21 light of s.10A of the *Witness Protection Act* and in  
06:31:26 22 determining where the interests of justice lie in this case  
06:31:37 23 I again recognise that an important consideration for me as  
06:31:42 24 Royal Commissioner arises out of the High Court of  
06:31:45 25 Australia's decision in *AB v CD, EF v CD*. That decision  
06:31:55 26 places a considerable obligation on me to shine light on  
06:32:01 27 the conduct of current and former members of Victoria  
06:32:04 28 Police, particularly those members who worked closely with  
06:32:09 29 Nicola Gobbo as handlers in their disclosures about  
06:32:14 30 recruitment, handling and management of Nicola Gobbo as a  
06:32:18 31 human source, whilst identifying the cases which may have  
06:32:20 32 been affected by her conduct as a human source.

33  
06:32:24 34 It is imperative that the public be informed of as  
06:32:27 35 much as possible of what occurs in the hearings of this  
06:32:30 36 Commission on this topic so that community confidence in  
06:32:33 37 Victoria Police's practice in the handling and management  
06:32:36 38 of human sources who are subject to legal obligations of  
06:32:41 39 confidentiality or privilege is restored, together with  
06:32:43 40 public confidence in the administration of the criminal  
06:32:46 41 justice system in this State generally.

42  
06:32:49 43 It is true that the information could be disseminated  
06:32:54 44 into the public domain through transcripts of the  
06:33:02 45 recordings and through masking the voices of the various  
06:33:05 46 handlers and controllers. But as counsel for various media  
06:33:11 47 interests and counsel assisting the Commissioner

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06:33:28 1 Mr Mukerjea have identified, the public access to  
06:33:40 2 understanding the evidence before the Commission would be  
06:33:43 3 limited were this to occur.  
4

06:34:08 5 The nuances of the conversations which could be highly  
06:34:16 6 relevant to understanding the nature of the relationship at  
06:34:22 7 the time between Ms Gobbo and the various relevant officers  
06:34:28 8 of Victoria Police would not be as well understood by the  
06:34:36 9 public. That point, indeed, was recognised by the Court of  
06:35:00 10 Appeal in *AB v CD and EF, EF v CD and EF v CD and AB* [2019]  
06:35:18 11 VSCA 28 at paragraph 84.  
12

06:35:29 13 As it was, in *Re Guardian News and Media Ltd & Ors*  
06:35:38 14 [2010] UK SC1 paragraph 63-65 and in *R v Strawhorn* (No2)  
06:36:01 15 [2006] VSC 433 paragraphs 50 and 52, it is also consistent  
06:36:33 16 with the important role of the media in providing public  
06:36:43 17 scrutiny of the material before a Royal Commission such as  
06:36:49 18 this and, indeed, is of particular importance in this case  
06:36:55 19 for the reasons I have given  
20

06:37:24 20  
06:37:24 21 Ultimately I have therefore concluded, having  
06:37:28 22 considered the nature of any risk arising to the witness  
06:37:41 23 Mr ██████ and at this stage other like witnesses, through  
06:37:48 24 allowing the media access to the audio recordings, which of  
06:38:01 25 course would be redacted where necessary for public  
06:38:12 26 interest immunity and associated reasons, should not be  
06:38:22 27 prohibited in the way sought by Victoria Police.  
28

06:38:33 29 I think that means we can now return to Mr ██████  
06:38:38 30 evidence. We could get him back on the line.

06:38:42 31  
06:38:43 32 MR HOYNE: Thank you Commissioner. Might I be excused?  
33

06:38:46 34 COMMISSIONER: Yes, thanks Mr Hoyne.  
35

06:38:49 36 MR MUKERJEA: Likewise, Commissioner.  
37

06:38:50 37  
06:38:51 38 COMMISSIONER: Yes, thanks Mr Mukerjea.  
39

06:39:12 39  
06:39:14 40 <SANDY WHITE, recalled:  
41

06:39:41 41  
06:39:42 42 MR WINNEKE: Are you there, Mr ██████ Yes, Mr Winneke.  
43

06:39:44 43  
06:39:44 44 All right. Just before lunch I was asking you about one of  
06:39:54 45 the focuses of the investigation. I suggested to you that  
06:40:01 46 a primary focus of the investigation was Mr Tony Mokbel, do  
06:40:05 47 you accept that? That's what I asked you?---Yeah. Well,

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06:40:10 1 my reply was it was the Mokbel cartel.  
06:40:13 2  
06:40:13 3 Right?---That the investigation was all about. It was  
06:40:15 4 really all the brothers.  
06:40:16 5  
06:40:17 6 Yes, I follow?---And the underlings.  
06:40:21 7  
06:40:21 8 In any event you accept that one of the opening gambits  
06:40:24 9 that you made with respect to getting information was to  
06:40:27 10 the effect of, "Tell us everything you know about Tony  
06:40:30 11 Mokbel", you accept that proposition?---Yes, I do.  
06:40:32 12  
06:40:32 13 Which would suggest at the very least he was uppermost in  
06:40:36 14 your mind about, as to the sorts of information you  
06:40:39 15 wanted?---I think I said to you we were not that concerned  
06:40:47 16 about him, he already had ongoing matters, but he was  
06:40:52 17 involved in part of that overall group, yes.  
06:40:54 18  
06:40:54 19 One of the things that I also asked you about was whether  
06:40:59 20 or not it was of a concern to handlers at the SDU to make  
06:41:06 21 it absolutely clear to yourselves, firstly, as to who  
06:41:14 22 Ms Gobbo was acting for. Now you can see with the benefit  
06:41:17 23 of hindsight you should have had a list of people for whom  
06:41:22 24 she was acting, you agree with that proposition?---I do,  
06:41:25 25 yes.  
06:41:25 26  
06:41:26 27 In any event, list or otherwise it would have been plain to  
06:41:28 28 you that she was acting for Mokbel?---For Tony Mokbel, yes.  
06:41:34 29  
06:41:35 30 Tony Mokbel, yes. Another matter which is of concern to  
06:41:37 31 the Commission is the fact that whilst she was providing  
06:41:40 32 information in relation to certain persons, she was asking  
06:41:45 33 them for money. Now you accept that, that that is a matter  
06:41:50 34 of - that should have been of a concern to you?  
06:41:54 35  
06:41:54 36 COMMISSIONER: Asking for fees perhaps.  
06:41:56 37  
06:41:56 38 MR WINNEKE: For fees, for fees for work done?---I don't  
06:42:02 39 really think that was a concern for us. I do recall that  
06:42:08 40 she made comments along the lines of the fact that the  
06:42:10 41 Mokbels weren't paying her and she was trying to rectify  
06:42:15 42 that situation I think, but I don't think we really thought  
06:42:18 43 much about her fee issue.  
06:42:21 44  
06:42:21 45 Do you accept that - - - ?---If at all.  
06:42:24 46  
06:42:24 47 Do you think it might have been sensible in addition to

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06:42:27 1 making a list of people for whom she was acting to at least  
06:42:36 2 be cognisant of the people for whom she was charging  
06:42:42 3 fees?---I don't think we had a really good appreciation,  
06:42:45 4 with the benefit of knowledge that I've been exposed to in  
06:42:50 5 recent months, of the definition of client, whether it  
06:42:53 6 meant that fees had to be collected or were not necessary.  
06:42:57 7  
06:42:58 8 The Commission has evidence that between 1 September 2006  
06:43:06 9 and about 23 March 2006 Ms Gobbo billed Mr Mokbel somewhere  
06:43:13 10 in the region of \$84,000 whilst at the same time she was  
06:43:19 11 assisting you in, in effect, targeting him as a person the  
06:43:28 12 police - withdraw that - targeting him as a subject of  
06:43:32 13 police investigation. Were you aware of that?---No.  
06:43:35 14  
06:43:38 15 I take it you would have been assuming that she would have  
06:43:42 16 been charging Mr Mokbel?---I do. She had appeared for him  
06:43:48 17 and she did tell us that she hadn't been paid quite a  
06:43:52 18 number of times I think.  
06:43:53 19  
06:44:01 20 One of the points that she made very clear to you at the  
06:44:04 21 outset she was keen to be rid of Mr Mokbel and not to have  
06:44:08 22 to deal with him as a client in the future?---Yes.  
06:44:14 23  
06:44:15 24 And yet you know that after he was apprehended, having fled  
06:44:22 25 the jurisdiction, she was speaking to him when he was in  
06:44:36 26 Greece, are you aware of that?---No.  
06:44:37 27  
06:44:38 28 Do you say you're not aware of it now or you weren't aware  
06:44:41 29 of it then?---No, I'm not aware of it now.  
06:44:45 30  
06:44:45 31 Yes. We'll come to it in due course, but there's plenty of  
06:44:52 32 evidence that she was communicating with Mr Mokbel and was  
06:44:55 33 telling your handlers about it. Do you say if it's in the  
06:44:59 34 materials you would accept that you would have been aware  
06:45:01 35 of it?---Yes, I do.  
06:45:03 36  
06:45:10 37 There's evidence that after Mr Mokbel was apprehended and  
06:45:15 38 was fighting extradition to Australia, that on July 26 2007  
06:45:21 39 she billed Mr Mokbel \$1800 for advice conferring, for  
06:45:27 40 advice for conferencing, for examining extradition  
06:45:32 41 materials and briefing foreign lawyers. Did she tell you  
06:45:35 42 that?---No. Sorry, to be specific, I don't have a  
06:45:43 43 recollection of that.  
06:45:44 44  
06:45:45 45 Indeed, if we go to ICR 93 at p.1073, do you have those in  
06:45:57 46 front of you?---I'm just trying to find them now.  
06:46:01 47

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06:46:31 1 See at p.1073 under the heading, "Tony Mokbel". Have you  
06:46:39 2 got that? Have you got that in front of you?---No, sorry,  
06:46:47 3 I've got to change folders.  
06:46:52 4  
06:46:52 5 COMMISSIONER: I think it's up on the screen now.  
06:46:54 6  
06:46:54 7 MR WINNEKE: Have a look at the screen?---It's on the  
06:46:57 8 screen, yes.  
06:46:57 9  
06:46:59 10 A day after she, in fact the evidence is, will be, I can  
06:47:04 11 put this up, but on 26 July a clerk sent off a fee to  
06:47:10 12 Mr Mokbel in the amount of \$1800. She told your handlers  
06:47:14 13 that, "She won't do anything because he has no money. He  
06:47:19 14 rings for advice. When he asks her to do small jobs she  
06:47:23 15 has said no thus far". Do you see that?---Yes.  
06:47:28 16  
06:47:33 17 So if the evidence is to the effect that she had been not  
06:47:38 18 only doing, providing advice and conferring with him, and  
06:47:43 19 charging money for doing so, she certainly wasn't telling  
06:47:46 20 you the truth, or at least your handlers the  
06:47:48 21 truth?---That's what it seems, yes.  
06:47:51 22  
06:48:08 23 One of the issues obviously of concern was as time went by  
06:48:12 24 an increasing number of people became aware of Ms Gobbo's  
06:48:17 25 role as a human source?---Yes.  
06:48:19 26  
06:48:20 27 As an example, one of the early leaks, if you like, was a  
06:48:31 28 matter which arose in around 2 December 2005 when you were  
06:48:41 29 informed by Acting Superintendent Calishaw - if you go to 2  
06:48:46 30 December 2005?---On the source management log?  
06:48:50 31  
06:48:51 32 Yes.  
06:48:51 33  
06:48:51 34 COMMISSIONER: Was that December?  
06:48:52 35  
06:48:53 36 MR WINNEKE: December 2005, yes?---Yes, I have that.  
06:49:11 37  
06:49:12 38 You were informed by Calishaw that there was an Inspector  
06:49:17 39 at ESD, Carl Feltham, he'd inquired about the human  
06:49:24 40 source?---Yes.  
06:49:25 41  
06:49:25 42 Do you recall this matter?---No.  
06:49:30 43  
06:49:33 44 He wanted to do some background investigation on her  
06:49:38 45 regarding an inquiry and relationship with a police member,  
06:49:41 46 whose name I'm not going to mention, and was advised by  
06:49:49 47 Calishaw not to investigate the same. Do you see



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06:49:53 1 that?---Yes, I do.  
06:49:54 2  
06:49:55 3 And Calishaw believes that Feltham is aware of the human  
06:50:02 4 source, of Ms Gobbo's identity, right?---Yes.  
06:50:07 5  
06:50:10 6 Was there an investigation made as to how it came to be  
06:50:14 7 known that Mr Feltham was aware of her identity?---Not to  
06:50:20 8 my recollection but if I could look at my diary for that  
06:50:24 9 date I might have further detail.  
06:50:26 10  
06:50:26 11 Do you have your diary with you?---Yes, I do.  
06:50:29 12  
06:50:30 13 All right. Perhaps if you could do that. I don't know if  
06:50:43 14 Mr [REDACTED] diary is in court or copies of it. We don't  
06:50:47 15 have copies in court I assume. Have you got the original  
06:50:54 16 diaries, Mr [REDACTED] No, I've just got photocopies.  
06:51:00 17  
06:51:03 18 MR CHETTLE: Commissioner, you'll remember the evidence  
06:51:05 19 that the original diaries were provided to the Commission  
06:51:07 20 and he kept a copy of them.  
06:51:09 21  
06:51:10 22 MR WINNEKE: We don't have them.  
06:51:11 23  
06:51:12 24 MR CHETTLE: I know. That's what he gave evidence of.  
06:51:21 25  
06:51:21 26 MR WINNEKE: Does your diary assist, Mr [REDACTED] I can read  
06:51:26 27 you the entry if you would like.  
06:51:29 28  
06:51:29 29 Yes?---"Call from Acting Superintendent Calishaw."  
06:51:34 30  
06:51:35 31 Just don't mention the name of the police officer who was  
06:51:37 32 the subject of the investigation?---Okay. Point one, "Carl  
06:51:44 33 Feltham, Acting Superintendent ESD rang re 3838". The next  
06:51:51 34 bullet point, "Is aware we have interest, don't know how".  
06:51:56 35 This is what Calishaw's telling me. The next point is,  
06:52:03 36 "Doing off re that individual. Inappropriate relationship?  
06:52:09 37 Was considering investigating 3838. Advised not in SIO  
06:52:17 38 interest". The next bullet point, "Didn't declare human  
06:52:25 39 source as human source but believed Feltham realised". And  
06:52:31 40 the next point, "They were considering doing background  
06:52:35 41 investigation re 3838. Wait now. Will stay away from  
06:52:42 42 same".  
06:52:43 43  
06:52:43 44 Right. Is the situation that it was considered at least by  
06:52:50 45 ESD that there was an inappropriate relationship going on  
06:52:58 46 involving Ms Gobbo?---That's what that information  
06:53:03 47 suggests.

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06:53:04 1  
06:53:05 2 Did you follow that up yourself and make any inquiries  
06:53:09 3 about it?---I think, I don't know if it was me specifically  
06:53:16 4 but I think her relationship with that member was explored  
06:53:19 5 or - I'm pretty certain she spoke about it at some time.  
06:53:25 6  
06:53:25 7 Yes. Are you aware that there was an issue the following  
06:53:37 8 year that arose where an allegation was made that a  
06:53:56 9 complaint had been made about another member with whom  
06:54:00 10 Ms Gobbo was friendly about theft of money from a client  
06:54:04 11 during an arrest?---That happened on at least one occasion.  
06:54:11 12 I think it probably happened on more than one occasion  
06:54:16 13 there were allegations made that a policeman had stolen  
06:54:19 14 cash.  
06:54:19 15  
06:54:23 16 If we go to ICR 024, 2000.0003.1793. Page 207?---I have  
06:55:06 17 that.  
06:55:07 18  
06:55:12 19 There was an allegation, a complaint that another member  
06:55:18 20 who was associated, works at [REDACTED] uniform, the same  
06:55:24 21 member who was mentioned back the previous year, you recall  
06:55:28 22 that?---Yes.  
06:55:29 23  
06:55:31 24 Had stolen money from one of Ms Gobbo's clients, [REDACTED]  
06:55:39 25 I'm sorry, yes. A person by the name who's previously been  
06:55:50 26 given the pseudonym Brown, I think. Do you have - -  
06:55:59 27 -?---Can you help me - - -  
06:56:01 28  
06:56:02 29 Just read the screen in front of you so as you can refresh  
06:56:06 30 your memory?---Mr Brown, I don't know who that is.  
06:56:09 31  
06:56:10 32 COMMISSIONER: Have we got a flash card for that in which  
06:56:15 33 case I can show it to him?---Actually, I'm being shown.  
06:56:20 34 I'm being shown right now, Commissioner.  
06:56:22 35  
06:56:22 36 Thank you.  
06:56:35 37  
06:56:36 38 MR WINNEKE: The effect of it was that Brown's making  
06:56:39 39 complaints against Ms Gobbo's friend and - - - ?---Could  
06:56:45 40 you, are you able to give me just a minute just to read  
06:56:48 41 this?  
06:56:49 42  
06:56:50 43 By all means. By all means?---Yes, I've read that.  
06:58:54 44  
06:58:55 45 The effect of it was that there was a concern of police  
06:58:59 46 corruption, right?---Yes.  
06:59:01 47

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06:59:03 1 Ms Gobbo was friendly with a person in relation to who  
06:59:06 2 Mr Brown was making a complaint. Mr Brown, it had been  
06:59:12 3 alleged, had stolen money from [REDACTED] during the course  
06:59:15 4 of an arrest?---Yes.  
06:59:16 5  
06:59:19 6 And as a result of that, at the conclusion of that, that  
06:59:26 7 extract in the ICR it was - and he indicated there would be  
06:59:32 8 no information report because of the risk of HS  
06:59:36 9 compromise?---That's what's on the report, yes.  
06:59:39 10  
06:59:41 11 This particular allegation involved a suggestion that  
06:59:45 12 Mr Brown had stolen \$20,000 or a significant amount of  
06:59:50 13 money in any event during the course of the arrest of  
06:59:54 14 Ms Gobbo's client?---Yes.  
06:59:56 15  
06:59:59 16 It was a matter which was of significant concern to  
07:00:03 17 obviously ESD, which is the Ethical Standards  
07:00:08 18 Division?---Yes.  
07:00:08 19  
07:00:10 20 And nonetheless it was felt, certainly as far as you were  
07:00:13 21 concerned, that it wouldn't be appropriate for Ms Gobbo to  
07:00:16 22 participate in this inquiry because there was a risk of her  
07:00:20 23 compromise?---That's what's recorded.  
07:00:26 24  
07:00:27 25 Right?---I'm not sure how that could lead to compromise but  
07:00:33 26 anyhow.  
07:00:33 27  
07:00:34 28 That was in any event what was considered, is that right,  
07:00:37 29 by the SDU?---Yes.  
07:00:38 30  
07:00:39 31 Then on 6 June 2006 this investigation was continuing on.  
07:00:47 32 If you go to your source management log could you read that  
07:01:09 33 entry on 6 June. It becomes apparent that there are more  
07:01:16 34 people who are apparently aware of Ms Gobbo's identity  
07:01:29 35 because a management issue arose on 6 June and you were  
07:01:35 36 advised by Superintendent Wilson of ESD that he was aware  
07:01:39 37 of the source ID and he had been informed by Simon Overland  
07:01:42 38 after being referred to the same by Superintendent Biggin  
07:01:46 39 when inquiries had been made with respect to putting a  
07:01:49 40 telephone intercept on the source's phone, do you agree  
07:01:52 41 with that?---Yes.  
07:01:53 42  
07:01:54 43 And at that stage it appears that ESD were still pursuing  
07:01:59 44 this investigation with respect to Mr Brown and the other  
07:02:04 45 police officer and they were indeed working with the OPI in  
07:02:11 46 regard to that investigation, do you agree?---Yes.  
07:02:14 47

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07:02:14 1 It was felt appropriate that the human source should be  
07:02:21 2 subpoenaed to OPI hearings to compel her to answer  
07:02:26 3 questions and then see what occurred on the telephone  
07:02:32 4 intercept, do you agree?---That's - yes.  
07:02:34 5  
07:02:35 6 And advice was given to Mr Biggin by Mr Overland to contact  
07:02:41 7 the SDU regarding the same, do you agree with that  
07:02:45 8 proposition?---I think that's a reference to Mr Biggin.  
07:02:54 9  
07:02:54 10 Do you have any recollection yourself speaking directly to  
07:02:58 11 Mr Overland about this?---No.  
07:02:59 12  
07:03:00 13 Did you ever speak to Mr Overland directly about  
07:03:03 14 Ms Gobbo?---Yes.  
07:03:05 15  
07:03:05 16 When was that?---I spoke to him, I know I spoke to him when  
07:03:11 17 I was directed to see if she would become a witness in  
07:03:17 18 relation to that investigation, which I think you're aware  
07:03:22 19 of, and I'm pretty sure there was at least one other time.  
07:03:25 20  
07:03:26 21 It was apparent to you that Mr Overland knew very well  
07:03:29 22 about Ms Gobbo's involvement with the SDU and the fact that  
07:03:33 23 she was a human source?---Yes.  
07:03:35 24  
07:03:36 25 And you would expect that because as the Assistant  
07:03:41 26 Commissioner of Crime he would have been well aware of what  
07:03:42 27 was going on in Operation Purana?---Yes, and I also, I'm  
07:03:51 28 pretty certain that Senior Sergeant O'Brien had briefings  
07:03:55 29 with Mr Overland about the job direct.  
07:03:59 30  
07:04:00 31 Either you or Mr Biggin advised Superintendent Wilson, or  
07:04:08 32 you were advised, I withdraw that, that, "Mr Wilson will  
07:04:11 33 consider the appropriate course of action and meet with  
07:04:15 34 same". Now, is it the case that as at 6 June there was  
07:04:22 35 serious consideration being given to doing what was  
07:04:26 36 suggested, that is subpoenaing Ms Gobbo to the OPI?---Well  
07:04:33 37 that is certainly the advice I got, that she might be.  
07:04:38 38  
07:04:40 39 Were you informed by Mr Wilson that by now Luke Cornelius,  
07:04:51 40 or Mr Cornelius - what was his rank at that  
07:04:54 41 stage?---Mr Cornelius was an Australian Federal Policeman.  
07:05:00 42 I think he came in on a lateral transfer at Commissioner  
07:05:05 43 rank.  
07:05:05 44  
07:05:06 45 So he was a Commissioner?---I think so.  
07:05:08 46  
07:05:09 47 And a person by the name of Masters. Masters, do you know

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07:05:26 1 who that was?---No, I can't recall who Masters is.  
07:05:31 2  
07:05:31 3 We'll find out, but in any event those two people were in  
07:05:35 4 effect added to your list, the ever expanding list of  
07:05:39 5 people who knew who Ms Gobbo was and that she was an  
07:05:42 6 informer?---Yes. I think I actually - not long after this  
07:05:45 7 I had a meeting with Superintendents Wilson and Biggin  
07:05:50 8 about this very issue.  
07:05:51 9  
07:05:54 10 On 9 June 2006, if we go to ICR 34 at p.324?---Yes.  
07:06:23 11  
07:06:25 12 Ms Gobbo was asked questions about these matters and she  
07:06:34 13 made reference to her client having told her that the  
07:06:39 14 police officer in question had stolen \$20,000, do you agree  
07:06:43 15 with that?---I just need to read - you're referring to the  
07:06:48 16 last paragraph I take it on p.324?  
07:06:51 17  
07:06:51 18 Yes. It appears that she was asked questions about it and  
07:07:16 19 on 16 August 2004, the day that [REDACTED] was arrested, he  
07:07:24 20 offered [REDACTED] to the source who was acting for his  
07:07:28 21 father. "BA was acting for him, [REDACTED] was to meet the  
07:07:38 22 source and see [REDACTED] and pay for his dad's court case. He  
07:07:39 23 rang at 5 pm and then reported on bail. He met the source  
07:07:42 24 in the [REDACTED] area for tea. He arrived after dinner in  
07:07:47 25 [REDACTED] Street and tried to give the source money to take,  
07:07:50 26 \$20,000 to pay for the fees of [REDACTED]", one assumes that's a  
07:07:54 27 solicitor. "The source told him she could not accept the  
07:08:00 28 money and to drop it off in the city to her clerk". Then  
07:08:05 29 later, "After the meeting he goes to outside a particular  
07:08:08 30 house when he was pulled over by Mr Brown who would have  
07:08:11 31 ordinarily been back in the office so as to close at the  
07:08:16 32 end of the shift. He was arrested. He denied that they  
07:08:19 33 were his drugs. He threw his phone and keys away when the  
07:08:22 34 police stopped them. On the back seat of the car were  
07:08:26 35 medical sample jars and a quantity of [REDACTED] ecstasy tablets  
07:08:32 36 near the passenger seat in a brown paper bag". Then if we  
07:08:36 37 go over the page to 325 towards the bottom, "[REDACTED] has told  
07:08:55 38 the source the [REDACTED] was stolen by Brown", do you see  
07:09:01 39 that?---Yes.  
07:09:02 40  
07:09:03 41 That was the information that had been provided to the  
07:09:08 42 handlers about that particular event, do you accept  
07:09:13 43 that?---Yes.  
07:09:13 44  
07:09:14 45 Obviously that was a matter of significance to the ESD and  
07:09:19 46 obviously the OPI?---Yes.  
07:09:21 47

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07:09:24 1 In that particular ICR there is no reference to the  
07:09:31 2 dissemination of that information, do you accept that?  
07:09:33 3 Have a look at that?---Yes.  
07:09:37 4  
07:09:37 5 Do you agree with that proposition?---Yes.  
07:09:40 6  
07:09:44 7 Do you accept that that information was in fact  
07:09:47 8 disseminated?---Yes.  
07:09:48 9  
07:09:49 10 And you disseminated it?---I would imagine that I would  
07:09:57 11 have spoken to Detective Inspector Biggin about this  
07:10:01 12 directly.  
07:10:02 13  
07:10:02 14 Indeed in the diary of Mr Biggin there's a reference to him  
07:10:06 15 having spoken to you about this ESD/SDU issue?---Yes.  
07:10:11 16  
07:10:11 17 At least. He refers to a possible compromise of Ms Gobbo  
07:10:20 18 if the OPI conduct a hearing and there was a note that he  
07:10:30 19 would ring Superintendent Wilson re the proposal and  
07:10:33 20 identification of the same and various risk issues  
07:10:36 21 involved. Now, on 15 June there's reference in your  
07:10:48 22 management log to a meeting with Superintendent Wilson,  
07:10:54 23 Detective Attrill who is at ESD regarding Mr Brown, do you  
07:10:59 24 agree with that?---Yes.  
07:11:00 25  
07:11:02 26 And you briefed those people with respect to the matters  
07:11:10 27 that you had been told about, or at least you gleaned from  
07:11:16 28 Ms Gobbo in the ICR, do you accept that?---Yes.  
07:11:19 29  
07:11:21 30 They were both aware, that is Attrill and Wilson were both  
07:11:27 31 aware of the identity of Ms Gobbo, do you agree with  
07:11:33 32 that?---Yes.  
07:11:33 33  
07:11:35 34 And you indicated that you were concerned about  
07:11:37 35 this?---Yes.  
07:11:40 36  
07:11:41 37 And you agreed that the SDU would facilitate a meeting  
07:11:49 38 between Ms Gobbo and the ESD, do you agree with  
07:11:53 39 that?---Yes.  
07:11:54 40  
07:11:55 41 And it was accepted amongst you people in this meeting that  
07:11:59 42 an OPI hearing subpoena was not necessary, do you accept  
07:12:07 43 that?---Yes.  
07:12:08 44  
07:12:11 45 So whether or not the OPI considered it appropriate to  
07:12:15 46 subpoena Ms Gobbo to ask her questions about it, it was  
07:12:19 47 determined by certainly the people in that meeting that it

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07:12:25 1 wasn't necessary?---Sorry, it wasn't necessary to inform  
07:12:31 2 the OPI or to have - - -  
07:12:33 3  
07:12:33 4 No, the OPI hearing subpoena not necessary. How was that  
07:12:37 5 then, that information conveyed to those at the OPI who  
07:12:43 6 obviously did consider it necessary, do you know?---No.  
07:12:46 7  
07:12:52 8 It appears that the following day, if we go to ICR number  
07:12:58 9 35 in the source management log, Ms Gobbo spoke to you, or  
07:13:02 10 at least the controller and the handler about the OPI  
07:13:06 11 investigation into the police member, would that be fair to  
07:13:09 12 say?---Yes.  
07:13:11 13  
07:13:13 14 Because there's a meeting on 16 June 2006, a meeting  
07:13:18 15 between you, the human source and Mr Green?---Yes.  
07:13:34 16  
07:13:54 17 There was a discussion about the meeting with her about  
07:14:00 18 Mr Swindells' interest in Mr Brown and that investigation,  
07:14:06 19 correct?---Correct.  
07:14:07 20  
07:14:10 21 Later, if we follow this sequence through, we go to 27 June  
07:14:16 22 2006 and Ms Gobbo reported that Mr Swindells had  
07:14:25 23 communicated, had rung her and wanted to interview her and  
07:14:29 24 she checked with the SDU that Swindells didn't know  
07:14:36 25 anything about her involvement with the SDU. Page 344, if  
07:14:45 26 you go there you'll see an entry VPL.2000.0003.1930, ICR  
07:15:03 27 36. Do you see that?---I see the 1607 entry.  
07:15:20 28  
07:15:20 29 Then on 28 June she reported, Ms Gobbo reported that  
07:15:25 30 Swindells called and wanted to bring Mr Attrill, or  
07:15:29 31 Inspector Attrill to the meeting and she didn't know him.  
07:15:34 32 At 3.46, right?---I'm sorry, I'm not quite up to that.  
07:15:44 33  
07:15:45 34 Page 346 about a third of the way down?---Yes.  
07:15:58 35  
07:16:00 36 On 20 July 2006, if we go to ICR number 38, p.364, she  
07:16:14 37 reported to her handlers that Swindells had come to her  
07:16:18 38 office?---I have that in front of me.  
07:16:27 39  
07:16:28 40 Have you got that in front of you?---Yes, I do.  
07:16:30 41  
07:16:30 42 Didn't take a note so she made an assumption about whether  
07:16:35 43 or not she was being recorded. "He was making inquiries  
07:16:37 44 about Brown but he was non-specific and noncommittal and  
07:16:40 45 she believed that Brown is the focus of an investigation  
07:16:44 46 into missing money from a drug raid or similar". Do you  
07:16:46 47 see that?---Yes.

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07:16:48 1  
07:16:49 2 She called you on 21 July and arranged a further meeting, I  
07:16:56 3 suggest. On 24 July 2006?---On 24th of - - -  
07:17:13 4  
07:17:13 5 I withdraw that. According to Mr Swindells she called him  
07:17:17 6 to arrange a further meeting with Swindells. You may not  
07:17:21 7 have been aware of that. In any event on 24 July 2006  
07:17:26 8 there's a meeting that you have - sorry, she reports,  
07:17:42 9 24/7/06, p.366, there's an entry at 11.11, ICR 39 at the  
07:18:06 10 bottom?---Yes.  
07:18:07 11  
07:18:09 12 "Visited by ESD as arranged and she was very upset that  
07:18:15 13 Inspector Attrill knew about the \$20,000 that her client  
07:18:21 14 spoke about." She believes that you and the handler Green  
07:18:27 15 had spoken to this Inspector and therefore he is aware of  
07:18:31 16 your role - her role, or your role in respect of her.  
07:18:39 17 "They are going back to report to Commander Wilson, who  
07:18:42 18 Ms Gobbo knows. Ideally for them they want a statement  
07:18:46 19 from her regarding [REDACTED] They gave no guarantee that  
07:18:51 20 she wouldn't be called before the OPI. She was adamant  
07:18:56 21 that she can't be cross-examined in this type of forum  
07:19:00 22 because of her role and she was told that you and Green  
07:19:04 23 were trying to head off the OPI hearings for her.  
07:19:10 24 Swindells said nothing and the other Inspector did it all.  
07:19:17 25 She wants the handler Smith to advise you that upset is not  
07:19:26 26 the word. She believes she's now in a worse position  
07:19:31 27 because she's trying to do the right thing and she's  
07:19:35 28 obviously very upset and crying uncontrollably". Do you  
07:19:41 29 see that?---Yes.  
07:19:42 30  
07:19:43 31 And then there was a telephone call missed and she was  
07:19:47 32 called back and she asked how ESD knew about the [REDACTED]  
07:19:54 33 and she was adamant that you had to explain it to her, do  
07:20:00 34 you agree with that?---Yes.  
07:20:01 35  
07:20:32 36 There's been evidence in Mr Swindells' statement and his  
07:20:49 37 evidence in relation to facts, including in relation to her  
07:20:54 38 client [REDACTED] In his statement there's reference to - I  
07:21:05 39 withdraw that. There was a summary of the meeting between  
07:21:08 40 Gobbo and Attrill and it was suggested in - the transcript  
07:21:13 41 is that she has thrown privilege out the door. Now, have  
07:21:22 42 you heard her make such a comment?---No.  
07:21:26 43  
07:21:28 44 It would be concerning if that was her attitude, I take it,  
07:21:32 45 wouldn't it?---Yes.  
07:21:33 46  
07:21:43 47 Effectively it would be an acknowledgement by her that she



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07:21:46 1 was ignoring matters concerning legal professional  
07:21:51 2 privilege and were in effect discussing them to other  
07:21:54 3 people?---Yes.  
07:21:56 4  
07:21:57 5 With other people. Do you understand that there was an  
07:22:05 6 interest to obtain Ms Gobbo's views on whether [REDACTED]  
07:22:09 7 might be convinced to cooperate with the police?---In  
07:22:16 8 relation to this matter concerning Mr Brown?  
07:22:19 9  
07:22:20 10 Yes, this corruption matter?---No. Sorry, I'm sorry, could  
07:22:25 11 you repeat the question?  
07:22:26 12  
07:22:26 13 Yes. Did you understand that there was a police interest  
07:22:30 14 in obtaining Ms Gobbo's views about whether [REDACTED], her  
07:22:35 15 client, might be convinced to cooperate with police?---I  
07:22:40 16 can't remember whether that was the case. It would make  
07:22:48 17 sense.  
07:22:51 18  
07:22:52 19 So if it's the case that there was a discussion of this  
07:22:58 20 issue and there was a transcript of it, I can suggest to  
07:23:02 21 you this: that there was a discussion including this,  
07:23:07 22 included this summary, "Possible strategy re [REDACTED] Don't  
07:23:11 23 go into detail with him, just say that ESD have approached  
07:23:15 24 human source about alleged corruption. He'll say get  
07:23:18 25 fucked. Ms Gobbo giving advice about what might succeed in  
07:23:28 26 terms of an approach to her client". It goes on,  
07:23:34 27 "Technically human source should not have spoken to you  
07:23:36 28 about anything today because it's privileged. Human source  
07:23:40 29 said actually, 'I talked about privileged things with  
07:23:44 30 somebody else who I thought wouldn't be telling anybody but  
07:23:47 31 clearly they have'". So that's a reference to you?---I'm  
07:23:50 32 sorry, I'm not sure what transcript you're reading.  
07:23:55 33  
07:23:55 34 I'm suggesting that this is a transcript of a conversation  
07:23:57 35 or a summary of a transcript of a conversation between  
07:24:01 36 Attrill and Ms Gobbo and Swindells is present. Swindells  
07:24:06 37 has given evidence about it?---Okay.  
07:24:08 38  
07:24:09 39 Okay.  
07:24:09 40  
07:24:09 41 COMMISSIONER: Do we have the number or can we put it on  
07:24:12 42 the screen, is that possible?  
07:24:14 43  
07:24:14 44 MR WINNEKE: It's an exhibit and I'm not too sure what the  
07:24:17 45 number is, it's a statement of Mr Swindells.  
07:24:19 46  
07:24:20 47 COMMISSIONER: Mr Swindells' statement, okay.

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07:24:22 1  
07:24:22 2 MR WINNEKE: It's an exhibit, Commissioner, I apologise,  
07:24:26 3 it's an exhibit referred to in his statement. What I'm  
07:24:30 4 putting to you is in evidence it's a summary of a  
07:24:35 5 conversation, the conversation that I've referred to  
07:24:38 6 between Gobbo, Swindells and Attrill and effectively she's  
07:24:45 7 going crook at you and suggesting that she shouldn't have  
07:24:49 8 spoken to you about it but in any event you've passed it  
07:24:53 9 on. Do you follow that?---Yes.  
07:24:58 10  
07:25:00 11 I take it you did pass it on?---I certainly passed on the  
07:25:06 12 allegation of the money being stolen by the police.  
07:25:10 13  
07:25:10 14 Right. Even though they were instructions that had been  
07:25:15 15 given to Ms Gobbo by her client, [REDACTED]?---Yes.  
07:25:23 16  
07:25:29 17 And it was clear from what was being said during that  
07:25:32 18 conversation, at least, with Swindells and Attrill, that  
07:25:36 19 she accepted the boundaries of legal professional privilege  
07:25:39 20 were being crossed. She seemed to be quite prepared to  
07:25:43 21 tell you about it but she was very upset about you telling  
07:25:46 22 anyone else about it?---Well, I wasn't present for that  
07:25:50 23 conversation.  
07:25:50 24  
07:25:50 25 I understand that?---She didn't express her, that concern  
07:25:54 26 to me. The concern she expressed to me was that I had  
07:26:01 27 spoken to ESD members about the fact that she was a human  
07:26:05 28 source. That was what she was angry about.  
07:26:08 29  
07:26:08 30 In any event, as far as you were concerned she hadn't  
07:26:12 31 thrown concepts of privilege out the window?---No.  
07:26:16 32  
07:26:16 33 No, all right. On 27 July 2006 there was a Crime  
07:26:23 34 Department meeting with Mr Overland and Mr Biggin and in  
07:26:31 35 your diary at VPL.2000.0001.0892 there's a reference, this  
07:26:39 36 is at 27 July 2006, if you want to go to it you can but let  
07:26:44 37 me put this to you. There was a meeting with Overland,  
07:26:47 38 Biggin and yourself concerning ESD investigation with  
07:26:50 39 respect to Ms Gobbo's friend, Mr Brown, and [REDACTED]  
07:26:55 40 her client. And there's reference to her being approached  
07:26:59 41 to be spoken to by Attrill and Swindells and that's the  
07:27:03 42 conversation I've taken you to, do you accept that?---Yes.  
07:27:09 43 Are you referring to my diary?  
07:27:11 44  
07:27:11 45 Yes. Go to it by all means. It's 27 July 2006. Page 30  
07:27:43 46 of your diary?---Okay, I have that.  
07:27:58 47

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07:27:58 1 It seems that the Crime Department meeting, Overland's met  
07:28:07 2 with Graham Ashton, OPI happy to drop off Brown and the  
07:28:15 3 other police officer issue. Do you see that?---Yes.  
07:28:19 4  
07:28:22 5 "No" - what's that next word say?---Requirement.  
07:28:28 6  
07:28:28 7 "Requirement to examine 3838 re same." There's a reference  
07:28:35 8 to, "Human source and Paul Dale had a friendship", do you  
07:28:40 9 see that?---"Had a relationship."  
07:28:42 10  
07:28:43 11 Relationship. "Want to examine human source in the future  
07:28:47 12 i.e. to look into IR44." That's a matter which you were  
07:28:53 13 fully aware of, or at least came to be aware of, is that  
07:28:56 14 right?---Yes.  
07:28:57 15  
07:29:07 16 That is the leaked IR. "The belief that human source may  
07:29:12 17 have been conduit between Mokbel and Williams and Dale with  
07:29:15 18 respect to that IR", do you see that?---Yes.  
07:29:18 19  
07:29:19 20 "Leading to the killing of the Hodsons. Human source  
07:29:24 21 believes Dale would" - can you read that?---"Dale involved  
07:29:33 22 in burglary Oakleigh."  
07:29:36 23  
07:29:36 24 Yes?---That was the Dublin Street burglary.  
07:29:39 25  
07:29:40 26 Dublin Street burglary, you're aware of that?---Yes.  
07:29:42 27  
07:29:42 28 Over the page, "Belief that Mokbel and Williams ordered the  
07:29:47 29 killing", correct?---Yes.  
07:29:50 30  
07:29:50 31 And Fitzgerald, that's Tony Fitzgerald, a former, retired  
07:29:55 32 judge from Queensland, was to conduct an inquiry, do you  
07:30:01 33 agree with that?---Yes.  
07:30:02 34  
07:30:03 35 And it was agreed that human source would be told that an  
07:30:07 36 OPI hearing with respect to Brown, et cetera - no OPI  
07:30:13 37 hearing?---No OPI hearing, yes.  
07:30:15 38  
07:30:18 39 At some time in the future. Human source can be pre warned  
07:30:24 40 with respect to an OPI hearing concerning Dale, et cetera,  
07:30:29 41 do you see that?---Yes.  
07:30:30 42  
07:30:32 43 "Human source may speak to handlers re the same",  
07:30:37 44 correct?---Yes.  
07:30:38 45  
07:30:39 46 "A trust issue i.e. that" - can you read, "Re informing  
07:30:47 47 human source of the hearing", do you see that?---Yes.

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07:30:50 1  
07:30:51 2 In other words she would be in effect given forewarning  
07:30:55 3 that there would be a hearing in relation to her  
07:30:58 4 involvement in OPI hearings concerning these serious  
07:31:03 5 offences?---I'm not sure if that's a reference to actually  
07:31:11 6 being told that she would be told before it happens or it's  
07:31:15 7 me pointing out it would be a trust issue if she's suddenly  
07:31:19 8 dragged before it and we hadn't spoken to her.  
07:31:21 9  
07:31:21 10 Are you aware that ultimately she was told prior to the  
07:31:24 11 hearing or pre-warned she was going to be called before it,  
07:31:28 12 the following year?---Yeah, not to my recollection.  
07:31:32 13  
07:31:39 14 One of the things that you've referred to in your statement  
07:31:41 15 at paragraph 153, which led you to hold a question mark  
07:31:48 16 about her motivation, might be guilt over the death of the  
07:31:52 17 Hodsons, is that right?---That's right.  
07:31:54 18  
07:32:05 19 So effectively what you were being told is that there was  
07:32:07 20 at least concern on the part of crime investigators that  
07:32:12 21 she may indeed have been involved?---Yes.  
07:32:16 22  
07:32:19 23 I mean might that be a concern that you would have that she  
07:32:23 24 was very keen to be seen to provide assistance so that  
07:32:28 25 police might in effect leave her alone?---Potentially it  
07:32:39 26 could be seen as a possible motivator that by assisting  
07:32:43 27 police, if it turned out that she'd been involved, she  
07:32:46 28 might have got some credit for it or - - -  
07:32:51 29  
07:32:51 30 Yes. No, I'm suggesting something before that, but if she  
07:32:57 31 fell over herself to come to assist the police she might  
07:33:01 32 get some sort of benefit for doing so in the sense that  
07:33:05 33 she'd get protected from that sort of an  
07:33:08 34 investigation?---No.  
07:33:10 35  
07:33:13 36 It conceivably could be a motivation, couldn't it?---I  
07:33:19 37 think the more likely motivation is that if she had been  
07:33:24 38 involved, putting aside the fact, I think I speculate  
07:33:26 39 whether I thought she had a guilty conscious or not,  
07:33:30 40 potentially when you are considering motivation, it may  
07:33:33 41 have been the case that she thought by helping the police  
07:33:37 42 she'll earn sufficient credits or brownie points so that  
07:33:40 43 when this all comes out, as I say, she'll have some credit  
07:33:44 44 with the police. I don't know why she would think it would  
07:33:48 45 forestall an investigation into her. Sorry, do I get it  
07:33:53 46 right, is that what you're suggesting?  
07:33:55 47

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07:33:55 1 That's what I'm suggesting?---Yes.  
07:33:57 2  
07:33:57 3 You disagree with that?---I do.  
07:33:59 4  
07:33:59 5 Ultimately the following year when the OPI did come to  
07:34:02 6 investigate her, significant steps were put in train to  
07:34:06 7 ensure that in effect Mr Fitzgerald went softly on  
07:34:12 8 her?---I'm not aware of that.  
07:34:15 9  
07:34:19 10 We'll come back to that. You had a face-to-face meeting  
07:34:24 11 with Ms Gobbo the following day, that is the day after your  
07:34:28 12 meeting with Messrs Overland and Biggin, do you accept  
07:34:32 13 that?---Yes.  
07:34:36 14  
07:34:37 15 I just want to play a clip to you if I could. 28 July.  
16  
07:34:51 17 (Audio recording played to the hearing.)  
07:35:28 18  
07:35:28 19 Do you accept that that's a conversation, at least part of  
07:35:33 20 a conversation, which you had with Ms Gobbo on the day  
07:35:36 21 following?---Yes.  
07:35:37 22  
07:35:38 23 COMMISSIONER: What date is this, Mr Winneke?  
07:35:40 24  
07:35:40 25 MR WINNEKE: 28 July 2006. I wonder if that's a convenient  
07:35:50 26 time, Commissioner?  
07:35:51 27  
07:35:51 28 COMMISSIONER: Yes. Mr [REDACTED] could I just remind you that  
07:35:55 29 ordinarily you wouldn't be speaking to your legal  
07:35:58 30 representatives or the other SDU handlers or controllers  
07:36:02 31 whilst you're giving evidence. If you needed to talk to  
07:36:04 32 them about something you should inform me of that?---Yes,  
07:36:08 33 Commissioner.  
07:36:08 34  
07:36:08 35 Thank you. All right, we'll adjourn until tomorrow at 10  
07:36:12 36 am.  
37  
07:36:54 38 <(THE WITNESS WITHDREW)  
07:36:54 39  
07:36:54 40 ADJOURNED UNTIL TUESDAY 6 AUGUST 2019  
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