

**IN THE ROYAL COMMISSION
INTO THE MANAGEMENT OF POLICE INFORMANTS**

REPLY SUBMISSIONS ON BEHALF OF MR SIMON OVERLAND APM

- 1 These submissions are responsive to those filed by parties in August 2020, directed to matters not otherwise addressed in Mr Overland’s earlier submissions.¹ For convenience, submissions are grouped under each relevant party’s name.

Former SDU members

- 2 In their submission, Messrs Black, Fox, Green, Smith, White and Wolf acknowledge that it was Mr Overland’s understanding that Ms Gobbo would not act for people she informed on.² They do not submit that Mr Overland was disabused of this understanding at any stage.
- 3 This is a further critical fact that – individually and collectively with the facts identified in Mr Overland’s earlier submissions³ at [20] – is fatal to the proposition that Mr Overland knew or believed that he was involved in any improper conduct in respect of Ms Gobbo’s role as a human source, and in particular that Mr Overland knew that Ms Gobbo was informing on persons for whom she was acting.

Ms Gobbo

- 4 Ms Gobbo’s submission – under a heading “*The Role of Victoria Police and Simon Overland*” – singles out Mr Overland in a peculiar fashion. It is peculiar for the one police officer singled out to be one she has never met nor spoken to. It is also peculiar given the submissions made under this heading do not seek to attribute responsibility primarily to Mr Overland, instead for example referring to “*the knowledge and responsibility of Mr Overland and other senior decision-makers at the Victoria Police*” (at [740], emphasis added).

¹ For example, the former SDU officers’ submission that Mr Overland knew of the proposed use of Ms Gobbo on 12 September 2005, prior to her registration, because this issue is already addressed by Mr Overland in his submissions of 18 August 2020 at [70].

² Submissions of Messrs Black, Fox, Green, Smith, White and Wolf dated 7 August 2020 at [241].

³ A reference to **Mr Overland’s earlier submissions** means his submissions of 18 August 2020.

- 5 The motivation for this singling out of Mr Overland is unclear. It may have been an anticipatory attack, based on the expectation Ms Gobbo signposts (at [65]) that Mr Overland would “*seek negative findings/adverse comment against Ms Gobbo*” (when Mr Overland has not done so). It may be a consequence of Mr Overland’s cross-examination of Ms Gobbo, which she views as deflecting attention to her and apportioning “*a degree of blame upon [her]*” (at [740]) and which cross-examination she comes back to a number of times in this part of her submission.⁴ It may simply be a deep seated animus – which has led to her describing a person she has never met “*evil, corrupt and dishonest*” on three separate occasions, and incorrectly repeating, for public broadcast, to ABC’s 7.30 that “*Simon Overland... assured me that there would be a level of unprecedented, never before um flexibility in terms of protection and assistance that on behalf of Victoria Police would be provided* [in relation to Ms Gobbo becoming a witness and entering ██████████ ██████████].⁵ This statement was made by Ms Gobbo even after Mr Winneke had pointed out to her, some months prior, that her basis for this allegation (“*Mr O’Connell said to me [in December 2008], ‘I have the imprimatur of the Chief Commissioner to be able to say to you... there’s no limit to our financial or other commitment to you in terms of you assisting us by giving evidence’*”) meant the imprimatur Mr O’Connell referred to had come from Ms Nixon, not Mr Overland.⁶
- 6 Mr Overland accepts ultimate responsibility for the use of Ms Gobbo as a human source in the investigations for which he had responsibility (although he did not understand she was informing in breach of her personal obligations).⁷ But Ms Gobbo’s ad hominem attack on Mr Overland is not justifiable on the evidence, particularly in light of five key matters.
- 7 First, Ms Gobbo’s broad guesses (or assumptions) about what Mr Overland must have known – because he was so senior, and others with involvement reported up to him or briefed him – entirely misunderstands the organisational structure of the Victoria Police, the policies in place, and the role of Mr Overland:
- a) The SDU formed part of the Intelligence and Covert Support Department, not the Crime Department (for which Mr Overland was responsible). The SDU not only

⁴ See eg at [746], [747], [754], [765].

⁵ T.13478.26-13479.21 (7/2/20); RCMP.0132.0001.0039_0005.

⁶ Exhibit RC787b (transcript of conversation with Ms Gobbo on 20 May 2019) at T.176.20-38; T.12476 (7/2/20), T.13477.35-T.13479.28. Further, Ms Gobbo repeats this error in her submissions, when she refers to “*assurances made by Mr O’Connell on behalf of Mr Overland*” at [743].

⁷ See Mr Overland’s earlier submissions at [183].

fell outside Mr Overland's responsibility, but the "sterile corridor" that had been implemented by Chief Commissioner's Instruction required the separation of management of an investigation from management of the human source.⁸ This policy of a "sterile corridor" was one Mr Overland took very seriously and adhered to, as he was required to do. When Mr Overland joined the Victoria Police in 2003, he was aware that *"there had been recent and well documented incidents of corruption within the Crime Department"*, which *"all ... had related in some way to the management of human sources"*,⁹ and Mr Overland had initially wanted the SDU to be in the Crime Department, but had been persuaded that if a sterile corridor were to be introduced *"it needed to go all the way to the top"*.¹⁰

- b) Ms Gobbo's submissions mistakenly assume Mr Overland's role as one of a "beefed up Senior Sergeant", when in fact so much of his time was spent on *"doing things that other senior executives would do in other organisations"*.¹¹ Ms Gobbo's submissions are predicated on Mr Overland being kept "abreast" of the minutiae of matters known to his investigators (and the SDU) which would have made his job impossible. For example, Ms Gobbo suggests that Ms Gobbo's own "conflicts" *"would and should have been in the forefront of Mr Overland's mind"* in June 2006, even though to piece together any potential conflict required Mr Overland to know Ms Gobbo had acted for Mr McGrath over two years earlier.¹²
- 8 Secondly, many of Ms Gobbo's criticisms of Mr Overland ignore the reality that Ms Gobbo was (in Ms Gobbo's words, by 2003-2004) *"so far off the right track and out of my depth ... and out of control"*,¹³ and could not *"see my way out of the forest"*.¹⁴ Ms Gobbo *"knew so much about criminal activity in the State of Victoria"* that it reflected *"how compromised she was"*.¹⁵ For example, Ms Gobbo's submission that Mr Overland's decision to use Ms Gobbo as a witness against Mr Dale undermined his instruction that Ms Gobbo not inform

⁸ See Mr Overland's earlier submissions at [62]-[66].

⁹ First Overland Statement at [151].

¹⁰ T.11336.22-25 (16/12/19).

¹¹ See Mr Overland's earlier submissions at [56]-[60].

¹² See Mr Overland's earlier submissions at [121], [123], [127]. To the extent Ms Gobbo's submission regarding "conflict" is a reference to the conflict between acting as Mr Thomas' lawyer while informing on him, Mr Overland repeats his earlier submissions that he was not aware Ms Gobbo was informing on Mr Thomas: see Mr Overland's earlier submissions, Section F.

¹³ T.13134.18-21 (5/2/20).

¹⁴ T.13136.36-40 (5/2/20).

¹⁵ T.12113.24-29 (22/01/20).

- on her current clients¹⁶ would only have weight if Ms Gobbo's relationship with Mr Dale were truly a lawyer-client one; it does not align with the fact that Mr Overland (and the Crime Department) believed that Ms Gobbo may have been a conduit between Messrs Mokbel, Williams and Dale in relation to the Information Report that was leaked and led to the killing of the Hodsons,¹⁷ nor with the fact that Ms Gobbo and Mr Dale had been in an intimate relationship.¹⁸
- 9 Thirdly, from the time of her registration, Mr Overland was aware of the grave risks faced by Ms Gobbo – Ms Gobbo was in a role, with Mr Mokbel and his associates, that she couldn't simply resign from or walk away: *"it's a death sentence to try to do so"*.¹⁹ He considered her becoming a source to be the *"least worst decision"*,²⁰ with the alternate courses of action probably of higher risk to her than becoming a source. He *"saw no other way out for her: she either stayed in that environment, continuing to do the things she was doing, which put her at risk. She tried to walk away, which put her (at) really great risk, or we worked with her for what [Mr Overland] thought [would] be a limited period of time to try and remove that risk so she could then get on with her life"*.²¹ On the decision to transition Ms Gobbo from source to witness, Mr Overland stated that he considered *"the most sensible [thing] to do at that point in time in all the circumstances was to transition Ms Gobbo from a source to a witness and to get her into [REDACTED] so that she was protected"*.²² The decision was not one lightly made, and was made from a viewpoint that *"if her role as a source had not already been discovered, ... it almost certainly would be. So she was compromised anyway"*.²³ Ms Gobbo mischaracterises Mr Overland's decisions as ones made *"irrespective of the serious risk it caused to her"*,²⁴ when in fact Ms Gobbo had placed herself in a position where Mr Overland was weighing up what would pose the *"least worst"* risk for Ms Gobbo. It is also noteworthy that Ms Gobbo does not herself identify a way should could have otherwise safely been extricated from the seriously risky position in which she found herself.

¹⁶ Ms Gobbo's submissions at [764(i)].

¹⁷ T.11555.26-33 (17/12/19).

¹⁸ T.13138.30-35 (5/2/20).

¹⁹ T.11339.7-19 (16/12/19).

²⁰ T.11428.30-44 (16/12/19).

²¹ T.12092 (22/01/20).

²² T.11862.44-46 (19/12/19).

²³ T.11858.34-41 (19/12/19).

²⁴ Ms Gobbo's submissions at [744]; see also at [773]-[774].

10 Fourthly, many of Ms Gobbo's contentions in her submissions are inconsistent with her evidence before this Commission:

- a) Ms Gobbo submits that Mr Overland decided to transition Ms Gobbo into a witness "*because he wanted to take the accolades for prosecuting Mr Dale for the Hodson murders and associated corruption*",²⁵ even though in evidence she accepted that "*it was a rational conclusion*" for her to give evidence so as to get into [REDACTED] PII [REDACTED] and she further elaborated: "*I don't fault Mr Overland for having [decided to transition Ms Gobbo to being a witness], um, because I read that recently... that that was a proposed way out*".²⁶
- b) Her submissions describe Mr Overland as "*encouraging*" and "*fostering*" her conduct,²⁷ and Ms Gobbo being a "*victim of deceit at the hands of ... Mr Overland*",²⁸ even though she gave evidence that:
 - (i) she has never met Mr Overland and has had "*no communication directly, at all, ever*" with him;²⁹
 - (ii) she "*assumed*" Mr Overland did **not** get the details of the privileged information she was passing on: "*I don't know, but I assume he didn't, he was too, um, he was too senior*"³⁰ – an assumption inconsistent with him "*encouraging*" and "*fostering*" the conduct;
 - (iii) no one said to her anything like "*Simon Overland knows exactly what going on, the details you're giving, who you're acting for and who you're informing on*"³¹;
 - (iv) she could not be confident that the impression that she earlier said her handlers left her with (including "*my involvement in assisting them went all the way to the top*",³² and Mr Overland being a "*huge supporter and*

²⁵ At[764(h)].

²⁶ T.13482.22-24 (7/2/20).

²⁷ Ms Gobbo's submissions at [747].

²⁸ Ibid at [752].

²⁹ T.13474.10-11 (7/2/20).

³⁰ T.13475 (7/2/20)

³¹ T.13477.18-26.

³² Ex RC787b at p 177.

encourager”³³) was the truth: “*Of course I don’t know. I don’t know whether they were or weren’t telling me specifics or whether they were doing their job and carrying out someone’s orders or apportioning blame everywhere*”.

11 Fifthly, Ms Gobbo’s submissions often conflate hearsay from her handlers with fact, notwithstanding the inherent unreliability in such hearsay.

12 Attacks are made on Mr Overland’s credibility³⁴ which do not withstand scrutiny:

- a) Mr Overland’s evidence (prior to Victoria Police stumbling on his diaries) was not “*broadly stated that he had stopped taking notes in relation to Ms Gobbo (and other sensitive matters)*” (a submission made by Ms Gobbo without pointing to any transcript references). In fact, Mr Overland’s evidence was that he did not recall when he stopped keeping a diary in his career and, based on enquiries his solicitors had made of Victoria Police prior to giving evidence, he had proceeded on the basis that he had not kept a diary while at Victoria Police.³⁵ To prepare for giving evidence to this Royal Commission, Mr Overland made multiple requests of Victoria Police and was told they were unable to locate any diaries assigned to him.³⁶ Moreover, once the diaries were found, the evidence within them supported the evidence he had given earlier. For example, his diary record for 27 September 2005 refers him telling Mr Purton of a “*need to keep info... with audit trails*”.³⁷ His diary notes are also consistent with Mr Overland becoming aware Ms Gobbo was a source only after he had been registered (as referred to immediately below). The circumstances, and in particular the timing, of the discovery of Mr Overland’s diary establishes one thing that is beyond doubt: his witness statement and the first five days of his evidence were delivered unassisted by the contents of his diaries. It is noteworthy that when those diaries materialised, their content (which, while the level of detail understandably varied across the period, was frequently quite specific), revealed his memory to be accurate, did not reveal his evidence to have been inaccurate, and demonstrated that he was a witness of truth, who was candid about what he could remember and what he could not remember. In short, the

³³ Ex RC787b at p 176.

³⁴ In particular at [764].

³⁵ T.11958.25-47 (21/2/20).

³⁶ Ibid; Supplementary Overland Statement at [18].

³⁷ Supplementary Overland Statement at [68], [75]-[76].

contents of his diaries confirmed the accuracy and reliability of Mr Overland's evidence.

b) Ms Gobbo repeatedly refers to Mr Overland's "*denial that he became aware of Ms Gobbo's registration (sic) on 12 September 2005*".³⁸ Ms Gobbo was not registered by 12 September 2005. Mr Overland's evidence was that he does not recall with certainty when precisely he became aware Ms Gobbo was a human source, but that it was after she was registered.³⁹ On this topic, Ms Gobbo also refers to "*Mr O'Brien's notes and evidence*" as if they are conclusive proof that Mr Overland knew of Ms Gobbo's "registration" on 12 September 2005 and to be so obviously preferred over Mr Overland's own evidence. To unpack Ms Gobbo's submission:

(i) Ms Gobbo does not cite any transcript of Mr O'Brien in support of her submission, but his evidence was more equivocal than Ms Gobbo's submission suggests. First, Mr O'Brien's note of the meeting contains no more detail than: "*discussion re Solicitor Nicola Gobbo & Opportunities re Op Quills*". It is not proof that Mr Overland was told of steps being taken to register Ms Gobbo as an informer. (Further, nothing on this topic is recorded in Mr Overland's diary entry of his meeting with Mr O'Brien on 12 September 2005.) Mr O'Brien's evidence – unsurprisingly, given the passage of time – was a reconstruction of events based on his diary note, and equivocal as to whether he told Mr Overland about steps being taken to register Ms Gobbo (emphasis added):⁴⁰

You have a meeting with Mr Overland around about 2 o'clock on 12 September 2005?---Yes.

You speak to him about a Task Force Purana update "as per sheet"?---Yes.

You note discussion there, "Discussion re solicitor Nicola Gobbo and opportunities re Quills"?---Yes.

What did you discuss with him then?---I don't recall but it obviously would have been in relation to probably the cross over between Quills, as you mentioned earlier, and Operation Orbital at the AFP possibly.

³⁸ Eg Ms Gobbo's submissions at [762], [764(d)].

³⁹ See Mr Overland's earlier submissions at [70]; Mr Overland's first statement at [80]; T.11426.26-38 (16/12/19).

⁴⁰ T.5514 (04/09/19).

By this stage you'd been making moves to have her registered as a informer?---Yes.

By this stage there moves afoot to deploy you to Purana on a full-time basis?---Yes. I was unaware of the conversations that Hill had with Shawyer.

Is it likely that during this conversation with Mr Overland you would have discussed the nature of the information that Ms Gobbo had passed on to Mansell and Rowe?---Quite possibly, yes.

That "she seems to be willing to come on board and tell us all about Tony Mokbel"?---Quite possibly, yes.

Would you put it higher than quite possibly?---I'd imagine that's what the discussion would have resolved around. It was discussing the informer.

Of course it would have, it necessarily would have, wouldn't it?---As I say, as I've noted there, I can't take it much further than that.

- (ii) Mr Overland's evidence was that he "*agree[d] that there's a discrepancy between what's in my diary and what's in Mr O'Brien's diary*" and that Mr O'Brien's evidence did not accord with Mr Overland's "*long-held recollection that I was told after she had been registered as an informer*",⁴¹ and that is consistent with his diary entries from that time.
- c) There are no inconsistencies between Mr Overland's evidence to IBAC and his evidence before this Royal Commission.
- d) Mr Overland stated, in his first witness statement, that he prepared it without the benefit of access to documents to assist and refresh his memory of events that were 10-14 years old at the time. It is unfair and unrealistic of Ms Gobbo to criticise his evidence as to his recollection of the commencement of the investigation of Operation Posse in October 2005.
- e) Ms Gobbo wrongly asserts that Mr Overland's evidence (that he had concerns about the use of a legal practitioner as a source and that "*he made that plain to those who managed her*") is "*contrary to the evidence and notes of the SDU, Mr O'Brien and*

⁴¹ T.12087.11-12 and 14-23 (22/01/20).

Mr Ryan...”. Her submission here cites Mr Overland’s own statement at [114] in purported support of this proposition – not any “evidence and notes” of SDU members or investigators. The submission is also inconsistent with the former SDU officers’ submission, summarised above at paragraph 2.

- f) Other submissions of Ms Gobbo made under the banner of her attack on Mr Overland’s focus on the decisions being made to use Ms Gobbo as a source apparently evincing “*a primary concern [for] the investigations – not Ms Gobbo’s health or safety*”. But the two were not mutually exclusive, and the issue far from one as simple as Ms Gobbo frames it: as set out above, Mr Overland considered Ms Gobbo to be in a job she couldn’t resign from without it being a death sentence. Ms Gobbo does not appear to advance a position to the contrary. She is staunchly critical of the plan to extricate her from her dangerous and compromised situation, and her pattern of continuing to inform on persons even after attempts were made by the SDU to wind down the relationship,⁴² without offering a realistic alternative.
- g) There are, patently, issues with both the reliability of Ms Gobbo’s evidence (as acknowledged in her own submissions⁴³) and her credibility (as she herself has admitted⁴⁴).

Mr Ashton

13 Mr Ashton submits that “*the evidence of Mr Maloney confirms it is likely that Mr Overland made the deliberate decision to keep the specifics of the SWOT Analysis, including the risks and concerns raised in it, from Mr Ashton at the 5 January meeting” (emphasis added).⁴⁵ The use of “confirms” suggests there may be other evidence to support the submissions of a “deliberate decision” by Mr Overland, but there is none:*

- a) As set out in Mr Overland’s primary submissions, the evidence supports a finding that the SWOT analysis may have found its way to Mr Overland’s office, but it was not brought to Mr Overland’s attention. In any event, Mr Overland was aware of

⁴² See for example T.13466.28-T.13469.8 (7/2/20).

⁴³ See for example at [251].

⁴⁴ T.13473 (7/2/20).

⁴⁵ Mr Ashton’s submissions at [161].

the risks as identified in the SWOT analysis (and that they had existed for some time).⁴⁶

- b) Mr Overland's evidence was that "[i]f it [the SWOT analysis] got to me it would have got to Mr Ashton and therefore it would have been disclosed to the OPI".⁴⁷ Mr Overland strongly rejected the idea that he might have gotten the document but made a determination not to provide it to Mr Ashton: Mr Overland was "not concerned ... in the slightest" about Mr Ashton or Mr Strong being made aware of the contents of the SWOT analysis.⁴⁸
- c) It was not put to Mr Overland that he deliberately concealed the risks and concerns set out in the SWOT analysis from Mr Ashton. Rather, senior counsel for Mr Ashton only asked:⁴⁹

You don't suggest, do you, that you gave it to Mr Ashton?---I don't recall receiving it. I don't think it got to me.

Quite. But I think you accepted that it was possible that you did and you might have a faulty recollection about that?---Yeah. Look, I can't categorically say it didn't, but I don't believe it did.

Would you accept that the only way it would have got to Mr Ashton was through the Petra steering committee?---Yes.

And again, you say you don't believe it went to the steering committee?---I don't believe so.

If the possibility that your recollection was faulty and that you did receive the document is in fact the position and it was received by you, but not the steering committee, it's more likely than not, therefore, isn't it, that Mr Ashton did not receive the document?---Yes. Well, it's possible. Yes, it's consistent. On that basis, yes, he wouldn't have seen it, unless it went to the steering committee.

- 14 Nor does Mr Maloney's evidence support a finding that Mr Overland deliberately kept the specifics of the SWOT analysis from Mr Ashton. Mr Maloney's evidence, as extracted by Mr Ashton in his submissions, was that he "*believed*" the document was "*tabled*" at the meeting and was "*spoken to*",⁵⁰ and also that Mr Overland "*read it to himself*". If the

⁴⁶ Mr Overland's submissions dated 18 August 2020, Annexure, items 18 and 21.

⁴⁷ T.11861.42-44 (19/12/19).

⁴⁸ T.11864.22-31 (19/12/19).

⁴⁹ T.12185.18-40 (22/1/20).

⁵⁰ See evidence given by Mr Maloney on 10 December 2019 extracted at [161] of Mr Ashton's submissions.

document were tabled, then it would have been available to Mr Ashton to review and consider. Evidence of the “tabling” of the document tells against a “*deliberate*” decision to conceal the specifics of the document from Mr Ashton. It is neither logical nor realistic to conclude that Mr Overland would have believed that Mr Ashton would have declined to read a SWOT analysis that was tabled at a meeting at which he was present. Put another way, what possible advantage could Mr Overland have thought he would have obtained from reading a tabled document to himself, instead of aloud, at a meeting where the document was available to all and, by reason of it being tabled, assumed to be read by all?

Messrs Mullett and Ashby

15 Submissions are made by Messrs Mullett and Ashby, seeking to impugn an affidavit sworn by Mr Overland in 2007, as part of OPI’s Operation Diana. First, the submissions made – relating to an OPI investigation and an affidavit Mr Overland swore – are irrelevant to matters the subject of the Terms of Reference and are patently made in respect of a private and misconceived agenda that is quite separate from the work of the Royal Commission. Secondly, the evidence does not support the serious findings sought by Messrs Mullett and Ashby:

- a) The ICR of 1 April 2007 records only that Mr Waters claimed to have a contact at Purana Task Force: “*Waters stated that he has a contact at Purana Task Force.*”⁵¹ While the implication sought by Messrs Mullett and Ashby (that Ms Gobbo was reporting that Waters had a corrupt relationship with someone at Purana who was giving him information about Briars) is an open one, there are (as Mr Overland put it under cross-examination) multiple interpretations of what is recorded. Mr Waters may have left it at a claim he had a contact. It is not clear that the contact was giving him information about Operation Briars. It is not clear that Mr Waters’ claim to have a contact is at all credible: no detail is recorded.
- b) Mr Overland has no independent recollection of the information recorded in the ICR of 1 April 2007 being reported to him – he is sure that he would have been told something to the following effect in relation to the ICR: ⁵²

⁵¹ Mr Overland does not have access to the ICR, but that is how it is described in the transcript of examination of Mr Sandy White at T4713 (15/8/19) and in the examination of Mr Overland at T11720 (19/12/19).

⁵² T.11746.46-11747.12 (19/12/19).

That there was a communication between Ms Gobbo and her handlers that she'd met Mr Waters at the angling club and there'd been a suggestion from him that Person 13 had something on him and it was connected with the vampire...

Well before the line of questioning by Counsel for Messrs Mullett and Ashby, Mr Overland had observed that he struggled to recall the precise detail of Ms Gobbo's role throughout all of Operation Briars.⁵³ This failure to recall Ms Gobbo's role tells against it ever being reported to Mr Overland that the SDU had received, through Ms Gobbo, credible intelligence that Mr Waters had a corrupt relationship with a Purana Taskforce member who was providing him with information on Operation Briars.

- c) It is unclear on the evidence what Mr Overland knew about Ms Gobbo's role in Operation Briars, and it is even more unclear whether Mr Overland passed what he did know to OPI investigators. As Mr Overland stated, he swore the affidavit Messrs Mullett and Ashby seek to impugn following an interview with an OPI investigator. It was drafted by an OPI officer following that interview. That is, the OPI chose what to include in the affidavit and what to omit, following an interview: "*Operation Diana was their investigation, it was a matter for them to run as they saw fit*".⁵⁴ If there are notes or a recording of that interview, Mr Overland has not been provided with it.
 - d) In any event, the OPI knew (through Mr Ashton) of Ms Gobbo's role as a human source at that time.
- 16 Messrs Mullett and Ashby also fall into the trap of assuming Mr Overland must have been responsible for matters (and failings) because he was so senior:
- a) He is criticised for taking "*no steps to ensure*" that Counsel assisting an OPI inquiry was aware of information Ms Gobbo had told the SDU – even though the OPI was separate to Mr Overland and was the responsibility of Mr Ashton, who was also aware that Ms Gobbo was a human source *and* was on the Operation Briars Taskforce Steering Committee;

⁵³ T.11720 (19/12/19).

⁵⁴ T.12061.

- b) They misleadingly state that Mr Overland gave evidence that disclosure to the OPP was “*simply not his responsibility*” (at [29]). This was not his evidence in the passage cited by Messrs Mullett and Ashby in their submissions, nor was it his evidence over the course of the other 7 days of cross-examination. Mr Overland was not specifically asked about disclosure in relation to the prosecution of Mr Mullett, but his evidence in relation to disclosure of Ms Gobbo’s role more generally was that he thought that investigators were making necessary disclosures to the OPP.⁵⁵ Further, contrary to the submission made at [26], Mr Overland accepted there were failings in relation to disclosure, and gave evidence that there needed to be guidance and training from the outset to make sure that everyone was on the same page about the obligations of disclosure and processes around disclosure to the prosecution.⁵⁶
- 17 Finally, there are also submissions made, without citing any evidence, that may have simply been meant as rhetorical flourishes, but in case they are put seriously and as part of the catch-all conclusion submitting that the Royal Commission should make all the findings set out in their outline (at [56]):
- a) There is no evidence to support a submission of Overland having an “*ends justify the means’ approach to hiding Gobbo from those accused of crimes*” (at [8]). It was not put to Mr Overland in cross-examination. It is entirely incompatible with, as set out in Mr Overland’s earlier submissions, the facts that:⁵⁷
- (i) Mr Overland, in his senior executive role, was not involved in the disclosure process.⁵⁸ He assumed that the investigators, who were “*very experienced investigators*”, were making appropriate disclosures to the prosecution of the fact that information had come from Ms Gobbo.⁵⁹
- (ii) Mr Overland had given an instruction of a need for “*audit trails*”, which reflected his expectation that the Police “*needed to be highly accountable for the manner in which information was obtained from Ms Gobbo and used in criminal investigations and prosecutions*”... [*he appreciated*] the

⁵⁵ See Mr Overland’s earlier submissions at [95]- [97].

⁵⁶ T.12140.46-12141.5 (22/01/20).

⁵⁷ At [95]-[96].

⁵⁸ T.11536.20-30 (17/12/19).

⁵⁹ T.11332.15-20 (16/12/19).

*sensitivity of using Ms Gobbo as a human source and [expected] that full and appropriate disclosure would be made to prosecuting authorities when necessary”.*⁶⁰

- (iii) Mr Overland joined and supported the decision that Ms Gobbo should be transitioned from informer to witness, despite the vehement opposition of other members of Victoria Police, including the SDU,⁶¹ and despite knowing that it would likely expose her role as a source.
- b) There is no evidence to support the submission that in “*the second half of 2007*” Mr Overland was “*committed to hiding Gobbo’s role at any cost*” (at [27]). No SDU officer or investigator has given evidence to that effect. It is entirely contrary to the objective evidence before this commission, including the matters referred to in subparagraphs (i) to (iii) above, and his decision to call Gobbo as a witness.

Mr Lalor

18 Mr Lalor asserts Mr Overland gave evidence seeking to distance himself from Operation Briars.⁶² No transcript (or evidence) is cited to support this assertion. It is contrary to the evidence given: Mr Overland’s evidence was that at the end of 2006, early parts of 2007, he (and others in Victoria Police) had information that suggested a direct connection between homicides and police corruption, and he remembers “*going to the Chief Commissioner and I think Mr Cornelius and a number of others to make them aware of that and I think out that we decided we should go and tell the OPI and from that process I think it was agreed to conduct joint operations*”.⁶³ He “*struggled to recall why Ms Gobbo was involved in Operation Briars*”, and it was only because of additional material Victoria Police provided that he “*recalled that she had this association or contact with David Waters and another individual... Mr Lalor*”, but he struggled to recall the precise detail of her role throughout all of Operation Briars.⁶⁴

⁶⁰ Second Overland Statement at [75].

⁶¹ Exhibit RC09156; First Overland Statement at [175] to [178].

⁶² Submissions of Mr Lalor dated 21 July 2020 at [31].

⁶³ T.11716 (19/12/19).

⁶⁴ T.11720 (19/12/19).

Counsel Assisting

- 19 The Royal Commissioner’s reasons of 28 August 2020 refer to “contentions in Counsel Assisting’s submissions... of potential breaches of the *Victoria Police Act* or its predecessor” (at [4], emphasis added).
- 20 Respectfully, this statement contains an important error. It is important to record that Mr Overland has received no submissions from Counsel Assisting of any potential breach of any legislation preceding the *Victoria Police Act*.
- 21 The Royal Commissioner’s reasons of 28 August 2020 also refer to the possibility of this Royal Commission making findings under the predecessor legislation, the *Police Regulation Act* (at [21] and [23]). It is a fundamental aspect of natural justice that a person be provided an opportunity to respond to findings sought against him. In the absence of any submissions identifying the specific provisions of any legislation (other than the *Victoria Police Act*) which may form the basis of an adverse finding against Mr Overland, it is our respectful submission that it is not open to the Royal Commission to make any such findings against Mr Overland, without depriving him of procedural fairness.

Ms Nixon

- 22 For completeness, in relation to Ms Nixon’s submission of 30 August 2020 at [1.36], in which issue is taken with Mr Overland describing Ms Nixon’s witness statement of 21 February 2020 as not publicly available, Mr Overland refers to the email from the Solicitors Assisting the Royal Commission of 25 August 2020, in which Ms Tighe stated that as at 25 August 2020, Ms Nixon’s statement “*had not been published on the Commission’s website... which is in error*” (and it was made publicly available shortly thereafter).

Dated: 7 September 2020

J.J. GLEESON

G. COLEMAN

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CORRS CHAMBERS WESTGARTH

Solicitors for Mr Overland