

ROYAL COMMISSION INTO THE MANAGEMENT OF POLICE INFORMANTS

1 Reply Submissions on Behalf Of Christine Nixon APM

- 1.1 In April 2001, Christine Nixon was appointed Chief Commissioner of Victoria Police, a position she held until March 2009, following a 29-year career with the NSW Police Force.¹
- 1.2 Ms Nixon's evidence to the Royal Commission was that she first became aware that Ms Gobbo had been a human source when it became public in 2019.² She was surprised when she learned of it,³ in part because she had assumed that the person who had been styled by the media as "Lawyer X" was in fact a different female lawyer.⁴
- 1.3 Counsel Assisting do not submit in their final submissions that Ms Nixon knew that Ms Gobbo was a human source before it became public.
- 1.4 Further, Counsel Assisting have specifically addressed in their final submissions the issue of whether Simon Overland told Ms Nixon at a meeting on 29 September 2005 that Ms Gobbo was a human source. Counsel Assisting submit that it is open on the evidence to find that Mr Overland did **not** tell her.⁵ That submission must be accepted. That finding is not only open on the evidence, it is the only rational conclusion available.
- 1.5 Further, Mr Overland does not submit that it is open on the evidence to find that he did tell Ms Nixon that Ms Gobbo was a human source.
- 1.6 Contrary to Counsel Assisting's submissions and these submissions, Mr Overland submits that the **only** finding open on the evidence is that there was a discussion between him and Ms Nixon about human source 3838 on 29 September 2005 and it is likely it was a discussion of some substance, but it is not possible to determine from the evidence what was said.⁶
- 1.7 For the three reasons identified by Counsel Assisting and for the further reasons set out in these submissions, the overwhelming conclusion on the evidence is that:
- (a) what was **not** said at the meeting on 29 September 2005 was that Ms Gobbo was a human source; and
 - (b) Ms Nixon was not told during her tenure as Chief Commissioner that Ms Gobbo was a human source and that she first learned of Ms Gobbo's role when it became public.
- 1.8 Significantly, Ms Nixon has no recollection whatsoever of being told by anyone that Ms Gobbo was a human source.⁷ Her recollection was tested and her evidence remained

¹ Exhibit RC0920B – Statement of Christine Nixon at [4] (VPL.0014.0071.0001 at 0001).

² Exhibit RC0920B – Statement of Christine Nixon at [2] (VPL.0014.0071.0001 at 0005).

³ Exhibit RC0920C – Supplementary statement of Christine Nixon at [10] (VPL.0014.0071.0008 at 0008). Also see Ms T11609.45-T11610.12 (Nixon).

⁴ T11610.10-12 (Nixon).

⁵ Counsel Assisting Submissions, Volume 2 at [200].

⁶ Submission of Simon Overland dated 18 August 2020, [80], p28 (COM.0120.0001.0001_0001 at .0029).

⁷ Exhibit RC0920C – Supplementary statement of Christine Nixon at [9] (VPL.0014.0071.0008 at 0008). Also see Ms Nixon's oral evidence at T11609.45-T11610.22.

firm and consistent.⁸ There are a number of powerful reasons, in addition to common sense, that compel the conclusion that, had CCP Nixon been told that Ms Gobbo was a human source, she would remember it.

- 1.9 CCP Nixon had a particular interest in human source management issues and, on appointment as Chief Commissioner, set out to ensure that Victoria Police used best practice in its management of human sources.⁹ In furtherance of that aim, she commissioned a review that led to the creation of the Source Development Unit.¹⁰
- 1.10 The commissioning of that review, and the ultimate creation of the SDU, reflected the intersection between Ms Nixon's belief that obtaining intelligence from citizens was a critical and necessary part of solving crime and her understanding that the use of human sources carried risks.¹¹
- 1.11 CCP Nixon was also acutely aware of the relationship between corruption and human sources, having taken up as Chief Commissioner in the final stages of Operation Hemi and subsequently commissioning the Purton Review into the Drug Squad – a central feature of which was the corrupt relationships that had formed between Drug Squad officers and human sources.¹²
- 1.12 The novelty of the information itself, in the context of the Crime Department's briefing practices, also strongly points to Ms Nixon's recollection of not having been told that Ms Gobbo was a source, being correct. In relation to operational risks, DC Overland "*didn't brief the Chief Commissioner about ongoing operations very much at all*" and the occasions on which CCP Nixon attended the Crime Department to be briefed on a specific matter were "*more the exception rather than the rule*".¹³ Consistent with that evidence, CCP Nixon received high level briefings from DC Overland about investigations being conducted by the Crime Department, including the investigative work being undertaken by the Purana Taskforce.¹⁴ The matters that CCP Nixon was briefed on included significant arrests and any intersection between crime and corruption identified in an investigation.¹⁵ But CCP Nixon was not briefed on the details of investigations,¹⁶ and it was rare for her to ever be briefed about human sources.¹⁷
- 1.13 In relation to organisational risks, it was DC Overland's practice not to brief up about organisational risks unless he assessed that they were likely to crystallise. Thus, for example, DC Overland did not brief CCP Nixon about significant organisational risks arising from matters connected to Operation Briars, because he did not believe that those risks would materialise.¹⁸
- 1.14 For Ms Nixon, Ms Gobbo's role as a source was a matter for "*surprise and concern*"¹⁹ and she would have been "*extraordinarily surprised*" and "*shocked*" to learn of it (this was, in fact, her reaction when she found out through the media in 2019),²⁰ not least because Ms Nixon knew of Ms Gobbo through media reporting and it would not have

⁸ T11609.45-47 (Nixon); 11610.1-8; T11610.20-22 (Nixon); T11637.1 (Nixon); T11643.36-37 (Nixon); 11654.36.37 (Nixon); T11657.25-26 (Nixon).

⁹ Exhibit RC0920B – Statement of Christine Nixon at [35] (VPL.0014.0071.0001 at 0007); T11605.36-37 (Nixon).

¹⁰ Exhibit RC0920B – Statement of Christine Nixon at [35] (VPL.0014.0071.0001 at 0007).

¹¹ Ibid.

¹² Exhibit RC0108 - Review of the Victoria Police Drug Squad August/September 2001 (VPL.0005.0028.0001).

¹³ T11382.44-47 (Nixon).

¹⁴ Exhibit RC0920B – Statement of Christine Nixon at [18] (VPL.0014.0071.0001 at 0004).

¹⁵ Ibid.

¹⁶ Exhibit RC0920B – Statement of Christine Nixon at [22] (VPL.0014.0071.0001 at 0005).

¹⁷ Exhibit RC0920C – Supplementary statement of Christine Nixon at [11] (VPL.0014.0071.0008 at 0008).

¹⁸ T11868.32 (Overland).

¹⁹ T11636.40-41 (Nixon).

²⁰ T11642.41-42 (Nixon).

occurred to her that a high profile barrister known for representing elements of the criminal underworld was assisting police.²¹

- 1.15 The evidence of Mr Overland bears directly on this question. While accepting that he did not “*have a recollection either way*” of whether he informed CCP Nixon about the use of Ms Gobbo as a human source,²² Mr Overland was “*sure*” that if he had informed CCP Nixon of Ms Gobbo’s identity he would have informed her of the potential organisational risk associated with Ms Gobbo’s use.²³ That evidence is particularly important, because it compels the conclusion that if DC Overland informed CCP Nixon of Ms Gobbo’s identity, he also briefed her on the substantial organisational risk that Victoria Police was assuming.
- 1.16 Taking these matters together, it is improbable that Ms Nixon has simply forgotten being briefed on the use of a practising criminal barrister as a human source and the attendant risk to Victoria Police in circumstances where: she was not, as a matter of general practice, briefed on the registration of human sources; where the registration in question was a matter of “*extraordinary*” surprise; and where the registration created significant organisational risk in areas of particular interest to her.
- 1.17 That improbability is compounded by the absence of any evidence, written or oral, that CCP Nixon took any steps in relation to Ms Gobbo’s registration as a source. Accepting that the registration created “*obvious risks*”²⁴ which, if they eventuated, were “*potentially catastrophic for the organisation*”,²⁵ Ms Nixon’s clear and uncontroverted oral evidence was that if she had been made aware of the identity of human source 3838 she would have inquired into the nature of the risk Victoria Police was assuming, the implications of the registration and the potential impact on prosecutions.²⁶ It was an inquiry that would have involved “*some consideration*” and was likely to have involved the commissioning of advice.²⁷ There is no evidence that any such inquiry was undertaken.
- 1.18 The sole piece of evidence establishing any possible link at all between CCP Nixon and human source 3838 is found in DC Overland’s diary for 29 September 2005. His diary records a meeting between DC Overland and CCP Nixon at 8:45am.
- 1.19 The meeting was scheduled to discuss Operation Lorcha²⁸ and Mr Overland’s diary records the notes that he made about his discussion with CCP Nixon on that topic. Mr Overland frankly conceded that he has no recollection of the meeting, while Ms Nixon has no recollection of meeting DC Overland on that date and no written record of what they discussed.²⁹
- 1.20 Two lines after his notes on Operation Lorcha, DC Overland has written “*Purana re 3838*”.³⁰ Mr Overland’s interpretation of the relevant note is that it relates to the meeting with CCP Nixon. However, by reason of the inconsistencies in DC Overland’s note taking practices,³¹ explored with him in cross-examination, it cannot be concluded that Mr Overland is correct. It is equally possible that the note reflects a later discussion or interaction with Purana, consistent with the way he made diary notes on other occasions.

²¹ Ibid.

²² T11318.47 (Overland).

²³ T11319.13 (Overland).

²⁴ T11631.5-7 (Nixon).

²⁵ T11631.16-17 (Nixon).

²⁶ T11642.41-47; 11643.1-11 (Nixon).

²⁷ Ibid.

²⁸ T12014.1-4 (Overland).

²⁹ Exhibit RC0920C – Supplementary statement of Christine Nixon at [5] (VPL.0014.0071.0008 at 0008).

³⁰ VPL.0014.0067.0077 at 0086.

³¹ T12161.1-13 (Overland).

- 1.21 In any case, with the benefit of having seen that entry, Mr Overland formed the belief that, contrary to his earlier evidence to the Commission, he did inform CCP Nixon that human source 3838 was Ms Gobbo. That belief is not informed by actual recollection arising from a refreshed memory, but by the inference that there was a purpose to him informing CCP Nixon about human source 3838, being a step he would not ordinarily have taken, and that the purpose must have been to inform CCP Nixon that, Ms Gobbo, a practising barrister, had been registered as a human source.³² Mr Overland said in evidence that this diary entry evidenced that “*from the outset*” he “*appreciated the sensitivities*” of Ms Gobbo’s use as a human source and “*notified his commanding officer of the issue*”.
- 1.22 Mr Overland’s interpretation of the three relevant words in his diary (“*Purana re 3838*”) cannot be the correct interpretation.³³ As Mr Overland himself emphasised in his later oral evidence, given after the filing of his supplementary statement, he has no recollection of the meeting and his belief that he had briefed CCP Nixon about the recruitment of Ms Gobbo³⁴ was a “*reconstruction*”³⁵ based on the sequence of events, the relevant entry read with a number of earlier entries,³⁶ and his general practice.³⁷ In his words, his evidence was “*in the realm of conjecture*”.³⁸
- 1.23 Mr Overland’s conjecture about the meeting of 29 September 2005 was inconsistent with his earlier evidence that the decision about whether to brief up was a “*judgment call*” and that matters connected to Ms Gobbo were “*operational matters best dealt with at my level and below*”.³⁹ In that earlier evidence, Mr Overland “*stood by*” his decision **not** to inform CCP Nixon that Ms Gobbo had been registered as a human source.⁴⁰ For Mr Overland, Ms Gobbo’s recruitment was a “*significant issue*” but it was “*being managed*”.⁴¹
- 1.24 Mr Overland’s later evidence was also inconsistent with his earlier evidence, from which he did not resile, about his general practices in relation to briefing up operational and organisational risks. Consistent with that earlier evidence, Mr Overland took the view that the organisational risks attending Ms Gobbo’s registration would be dealt with “*as they materialised*”⁴² and not before.
- 1.25 Consequently, there is no basis to conclude that the three words “*Purana re 3838*” establishes any more than the **possibility** that DC Overland informed CCP Nixon that the Purana Taskforce had a new source of intelligence. DC Overland’s decision to take a step that he would not ordinarily have taken (if in fact he took that step) is explained, not as DC Overland notifying “*his commanding officer*” of the “*sensitivities*” of the registration,⁴³ but by the context. Ms Gobbo’s registration came during a time of sustained media interest in the work of the Purana Taskforce and amid discussions about the direction of the investigation into Mr Mokbel and DC Overland’s decision, taken in the days leading up to the meeting with CCP Nixon, to approve Operation Posse.⁴⁴ If indeed DC Overland told CCP Nixon about human source 3838, the likely explanation is that he did so because she was an important new source of intelligence

³² T12015.44-47 – T12016.1 (Overland).

³³ Exhibit RC915B – Supplementary Statement of Simon Overland at [82] (VPL.0014.0067.0077 at 0095).

³⁴ T12015.8-12; T12015.15-16 (Overland).

³⁵ T12162.39-41; T12162.7 (Overland).

³⁶ T12162.39-41 (Overland).

³⁷ T12015.29-34 (Overland).

³⁸ T12015.42 (Overland).

³⁹ T11796.43-46 (Overland).

⁴⁰ T11797.33-44 (Overland).

⁴¹ T11798.12-14 (Overland).

⁴² T11869.7-9 (Overland).

⁴³ Exhibit RC915B – Supplementary Statement of Simon Overland at [82] (VPL.0014.0067.0077 at 0095).

⁴⁴ T12014.22-30; 12028.35-39 (Overland).

that might lead to a breakthrough in a public, difficult and complex investigation that had not yielded the expected results.

- 1.26 That explanation of the diary note is entirely consistent with there being **no** action item at all assigned to the diary entry, unlike other entries in DC Overland's diary.
- 1.27 This likely explanation is reinforced by the nature of the meeting. It would seem an unusual step for DC Overland to inform the Chief Commissioner of a matter as sensitive and significant as Ms Gobbo's registration, including the organisational risks attending it, by mentioning it at a meeting established to discuss Operation Lorcha and which, by reason that DC Overland was in attendance at the Police Remembrance Day ceremony by 9:30am that day,⁴⁵ would not have occupied more than about 30 minutes.
- 1.28 Further, had DC Overland thought it appropriate to brief CCP Nixon about Ms Gobbo's registration then it is likely that he would have first raised it with the area that was actually responsible for Ms Gobbo's registration and management (Intelligence and Covert Support Command), and that a meeting would have then been scheduled to brief CCP Nixon on the registration, the risks and how the risks were to be managed. There is no evidence that that occurred. Mr Overland's submissions emphasise throughout that Ms Gobbo's registration and management was not his responsibility. In those circumstances, it is most unlikely that he would take on the responsibility, alone and without the facts, of briefing the Chief Commissioner about Ms Gobbo's registration and the risks.
- 1.29 No member of Intelligence and Covert Support Command gave evidence that they believed that CCP Nixon knew of Ms Gobbo's registration and use as a source.
- 1.30 At its highest, the evidence goes no further than holding open the possibility that CCP Nixon was informed that the Purana Taskforce had a new source of intelligence. Ms Nixon readily conceded that those briefing her could have referred to Ms Gobbo by her source number.⁴⁶ But as Ms Nixon noted, even if that occurred, she would not have known the source's identity or occupation.⁴⁷ Mr Overland could not exclude the possibility that he briefed CCP Nixon about human source 3838 without informing her of Ms Gobbo's identity.⁴⁸
- 1.31 In light of the contextual matters described above, the diary entry of 29 September 2005 falls well short of establishing that CCP Nixon was informed that Ms Gobbo was a human source. Mr Overland's submissions accept that because he does not submit that it is open on the evidence to find that he told CCP Nixon that Ms Gobbo was a source.
- 1.32 In addition, Mr Overland's diaries contain no further reference at all to human source 3838 in connection with CCP Nixon⁴⁹ and despite extensive searches no other contemporaneous documents have been identified which evidence any communication with or to CCP Nixon about human source 3838 at all.
- 1.33 It is implausible that DC Overland informed CCP Nixon of such a significant matter as an adjunct to a scheduled meeting addressing different, unrelated, subject matter, that CCP Nixon took no action when so informed, that CCP Nixon was never again briefed about the matter by anyone and that she has now forgotten that she knew Ms Gobbo was a source.

⁴⁵ T12158.13-14 (Overland).

⁴⁶ Exhibit RC0920B – Statement of Christine Nixon at [22] (VPL.0014.0071.0001 at 0005).

⁴⁷ Ibid.

⁴⁸ T12156.6-8 (Overland).

⁴⁹ T12166.32-34 (Overland).

- 1.34 Ms Nixon was a frank, honest, reliable and helpful witness.
- 1.35 For all of the reasons set out above, the only rational conclusion available on the evidence is that Ms Nixon did not know that Ms Gobbo was a human source when she was Chief Commissioner and that she first learned of Ms Gobbo's role when it became public.
- 1.36 Lastly, we must briefly mention the supplementary submission filed on behalf of Mr Overland only days ago.⁵⁰ The submission chastises the solicitors assisting the Royal Commission for not providing Mr Overland with a copy of Ms Nixon's supplementary witness statement dated 21 February 2020 which Mr Overland says has never been publicly available and that, therefore, he was deprived of an opportunity to seek to cross-examine Ms Nixon on the content.⁵¹ Ms Nixon's supplementary witness statement is an exhibit. It is publicly available on the Royal Commission's website and, to the best of our knowledge, has been publicly available for about the last 6 months.⁵²
- 1.37 In any event, Mr Overland's submission elevates Ms Nixon's two page supplementary statement to a level of importance that it simply does not have.
- 1.38 Counsel Assisting's submission that it is open to find that DC Overland did **not** tell CCP Nixon that Ms Gobbo was a source is expressly based on three pieces of evidence, none of which is in Ms Nixon's supplementary statement. That is undoubtedly why Counsel Assisting do not refer to it in their submissions. Therefore, the fact that Ms Nixon was not tested on the content of her supplementary statement has no bearing whatsoever on Counsel Assisting's submission. As an aside, Mr Overland also submits that one of the three pieces of evidence – that Ms Nixon was chastened by her experience with Mr Milte – is *"not supported by any evidence"*.⁵³ That is incorrect. That was Ms Nixon's direct oral evidence to the Commission.⁵⁴
- 1.39 Further, the most relevant part of Ms Nixon's supplementary statement is that she had no memory of the 29 September 2005 meeting with Mr Overland and that the diary note did not refresh her memory.⁵⁵ Mr Overland does not submit that he would have sought to test Ms Nixon's memory of the meeting, which is not surprising.
- 1.40 Lastly, almost all of the evidence in Ms Nixon's supplementary statement that Mr Overland submits he would have sought to cross-examine her about was given by Ms Nixon orally last year.⁵⁶ The relevant parts of her supplementary statement simply summarise her oral evidence. The transcript of her evidence has been available since she gave her evidence last year and Mr Overland did not ask that Ms Nixon be recalled for cross-examination about any of that evidence.
- 1.41 Even if the Commissioner disregarded Ms Nixon's supplementary statement altogether (which is unnecessary), there is ample evidence before the Commission – as identified by Counsel Assisting and in these submissions – which compels the conclusion that Ms Nixon did not know that Ms Gobbo was a human source until it became public.

⁵⁰ Supplementary Submission of Simon Overland dated 28 August 2020 (COM.0127.0001.0001).

⁵¹ Ibid at [4] and [7].

⁵² It is understood that it was tendered at the end of the main hearings in February 2020, and that it was put on the website shortly thereafter. It appears to also have been re-published on the website this week in response to Mr Overland's primary submissions.

⁵³ Supplementary Submission of Simon Overland dated 28 August 2020, [7](c), (COM.0127.0001.0001 at .0003).

⁵⁴ T11587.43-T11588.17 (Nixon), T11590.28-32 (Nixon), T11591.20-T11593.27 and T11610.27-35 (Nixon).

⁵⁵ Exhibit RC0920C – Supplementary statement of Christine Nixon at [5] (VPL.0014.0071.0008 at 0008).

⁵⁶ As to Ms Nixon knowing Ms Gobbo through media reporting, see T11621.9-23 (Nixon). As to the steps Ms Nixon would have taken had she been told Ms Gobbo was a source, see T11642.39-11643.37 (Nixon).

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