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ROYAL COMMISSION INTO THE MANAGEMENT OF POLICE INFORMERS
TERMS OF REFERENCE 1 AND 2

**SUBMISSIONS OF FORMER MEMBERS OF THE SOURCE DEVELOPMENT
UNIT MESSRS BLACK, FOX, GREEN, SMITH, WHITE AND WOLF**

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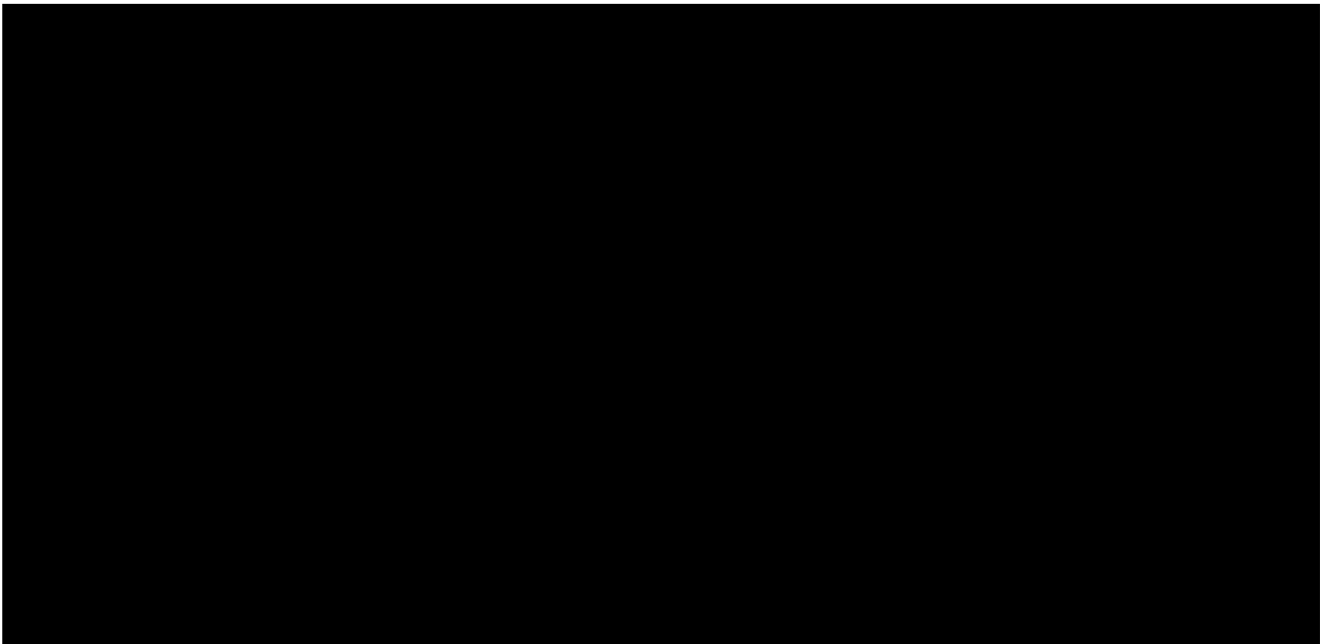
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A. INTRODUCTION

1. These submissions are made on behalf of Messrs Black, Green, Peter Smith and Sandy White to demonstrate that there is no basis to suggest that they may have  engaged in misconduct. Submissions will also be made to address some of the factual errors asserted by Counsel Assisting the Commission.



The High Court's criticisms and genesis of the same

3. The Commission was established in response to the High Court of Australia's judgement in *AB (a pseudonym) v CD (a pseudonym); EF (a pseudonym) v CD (a pseudonym)* (2018) 93 ALJR 59 (*AB v CD*). In that judgment, the High Court (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ) strongly criticised the conduct of Victoria Police.

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4. It must be remembered that members of the Source Development Unit who handled Ms Gobbo (the SDU¹) had no input in the proceedings leading to the High Court's judgment and were not consulted about the facts agreed to before Ginnane J.² SDU members disagree strongly with the findings of the Comrie Review and parts of the Kellam Report tendered in those proceedings. At pages 16 and 17 of Ginnane J's judgment, his Honour sets out as background to the proceedings extracts from those reports. Those extracts focus on the alleged receipt and dissemination of legally privileged and confidential information from Ms Gobbo. Ginnane J also noted Comrie's criticism of 'incomplete' and 'unreliable' SDU documentation.³ Ginnane J's judgment and the subsequent decisions of the Victorian Court of Appeal and High Court clearly rely substantially upon the findings of the Comrie Review and the Kellam Report, as they repeat and adopt those findings.

5. It is submitted that the evidence before the Commission establishes that:
 - a. The Comrie Review was in fact written by Stephen Gleeson.⁴
 - b. The Comrie Review was based on documents gathered by Mr Gleeson which were not the records maintained by the SDU. Mr Gleeson viewed copy documents which had been dumped by someone unknown onto the Police Interpose System on 6 Feb 2009—after Ms Gobbo had been deregistered.⁵ Mr Black gave unchallenged evidence in his statement to the Commission that had Mr Gleeson spoken to any of the SDU members who handled Ms Gobbo, he would have been informed that all records were stored in proper order on the SDU 'Z drive'.⁶
 - c. The Comrie Review's criticisms of the SDU's records are at least grossly negligent given Mr Biggin's unchallenged evidence that he explained to Mr Gleeson that the SDU's records on Interpose were not in sequence or date order.

¹ 'SDU' in these submissions should be taken as referring to Messrs Black, Fox, Green, Peter Smith, Sandy White and Wolf.

² Transcript of Mr Findlay McRae, 4 February 2020, 13101.29.

³ *AB (a pseudonym) EF (a pseudonym) v CD (a pseudonym)* [2017] VSC 350, [40].

⁴ Exhibit RC1.5, Transcript of IBAC examination of Stephen Gleeson, 10 November 2014, page 6 line 32.

⁵ Exhibit RC1157, Email from Steve Gleeson to Christopher Corbel dated 12 June 2012 Subject: Query, VPL.6072.0004.3829;

⁶ Exhibit RC622, Statement of Officer Black dated 5 June 2019, 51[132]; Transcript of Mr Black, 24 October 2019, 8331.20; Mr Biggin also confirmed that all SDU records were stored in a central location, transcript of Anthony Biggin, 9 October 2019, 7771, as did Mr Richards, transcript of Mr Richards, 8065, 23 October 2019.

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Mr Biggin explained that this was because the SDU changed systems and when old data was integrated with the new data, it ‘threw all the dating and recording systems around’.⁷ Mr Gleeson was aware that the ‘jumbled mess’ he describes in the Comrie Review, which was relied upon in Ginnane J’s judgment, was a system error and not the fault of the SDU, but did not refer to that fact in his report.

- d. Mr Gleeson did not locate or listen to any of the tape recorded SDU conversations with Ms Gobbo.
- e. Mr Gleeson reported ‘out of scope’ issues to Mr Pope. Some of these issues nonetheless found their way into the Comrie Review and were cited by Ginnane J as relevant background.⁸ The accuracy of the paragraphs cited is critical, in that they were relied upon in litigation that ultimately went to the High Court.
- f. The Comrie Review was said to be a 2012 ‘desktop review’ of existing policies and guidelines for handling human sources.⁹ It clearly was not. 2012 policies were applied incorrectly to 2005-2008 events. It was intended to appear independent from Victoria Police but it was not.¹⁰
- g. The Comrie Review made no reference to the significant involvement of senior police officers in the recruitment, handling and management of Ms Gobbo. The evidence is that Mr Pope and Mr McRae ‘identified the central issues’ for Mr Gleeson’s review.¹¹ Mr Pope had his own concerns about enquiries into Ms Gobbo’s use as an informer.
- h. Mr Gleeson was involved in 2010 in Ms Gobbo’s civil case, working with Mr McRae.¹² In the second meeting Mr Gleeson attended on 9 June 2010, Ms Gobbo was described as ‘the most significant informer in Australian legal history. Significant legal professional privilege issues were identified.’ It can be rhetorically asked, where were the concerns he raised in 2012 then? Mr Gleeson would have been aware that the Petra steering committee deployed Ms Gobbo as a

⁷ Transcript of Anthony Biggin, 10 October 2019, 7715-6.

⁸ *AB (a pseudonym) EF (a pseudonym) v CD (a pseudonym)* [2017] VSC 350, [32].

⁹ Exhibit RC1067, Statement of Findlay McRae, 13 November 2019, 31 [6.2]; Transcript of Jeff Pope, 19 February 2020, 14477.12.

¹⁰ Exhibit RC1.5, Transcript of IBAC examination of Stephen Gleeson, 10 November 2014, page 7 line 3.

¹¹ Exhibit RC1407, Statement of Stephen Gleeson, 6 November 2019, 4 [19].

¹² See Counsel Assisting submissions Volume 2, [4059] and [4066].

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witness against Mr Dale. Further, there is no evidence of him raising ‘out of scope’ issues then.

- i. The Comrie Review has strongly influenced the Kellam Report. On 10 June 2014, Mr Gleeson was requested to brief Messrs Kellam and Kirkham before IBAC commenced hearings.¹³ During this Commission, concerns were raised by Counsel Assisting as to the appropriateness of Victoria Police being involved in IBAC investigations. It is evident that the Kellam Report has been influenced by Mr Gleeson’s views as to what occurred in relation to the management of Ms Gobbo. We requested that Counsel Assisting call Mr Gleeson so that the real issues as to the way the High Court came to its determination could be explored, but were denied the opportunity to cross-examine him.
- j. If Mr Gleeson were objective, he would have acknowledged that the SDU were following directions from and reporting to more senior members including Superintendent Thomas, Superintendent Biggin, Superintendent Porter, Commander Moloney and Assistant Commissioner Overland (as they then were). Mr Gleeson either did not know of or ignored the central role Simon Overland played in the use of Ms Gobbo. Similarly, the roles and knowledge of Commander Moloney, Superintendent Porter, Assistance Commissioner Cornelius, Messrs Fitzgerald and Ashton of the OPI, Commander Purton and Superintendent Wilson were not explored.
- k. The Comrie Review makes serious allegations about the SDU’s conduct in managing Ms Gobbo. For some unexplained reason, the SDU handlers were not given the opportunity to respond to these allegations. As Assistant Commissioner Paterson said, ‘I am very aware of the principals of procedural fairness and natural justice. Those principals haven’t applied to the Comrie process, and I am not in a position to understand or say why he was given the terms of reference he was.’¹⁴ Chief Commissioner Ashton said it would have been ‘good’ if the author of the Comrie Review had spoken to the handlers. ‘You would think you would want to know their thoughts and views.’¹⁵

¹³ Exhibit RC1149, Email from Robert Sutton to Stephen Leane dated 10 June 2014 Subject Lawyer x, VPL.0100.0058.0154.

¹⁴ Transcript of Assistant Commissioner Neil Paterson, 29 March 2019, 489.

¹⁵ Transcript of Chief Commissioner Graeme Ashton, 11 December 2019, 10956.

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- l. The Comrie Review gives the clear impression that the SDU operated as a rogue unit, keeping risk from management and deliberately targeting legally privileged information. It speculated that the SDU deliberately underreported risk in order to avoid derailing Ms Gobbo's registration as an informer.¹⁶ In his report, Mr Kellam adopted this suggestion.¹⁷ It is submitted that this suggestion either deliberately or inadvertently had the effect of distancing police command from involvement in and knowledge of Ms Gobbo's use as an informer. The Commission now knows this to be untrue.¹⁸
- m. As a result, the comments made by the High Court in 2018 were made without the Court having the benefit of the statements and evidence of our clients. The evidence given at IBAC to Mr Kellam was given without notice or proper preparation.¹⁹ The High Court did not have the benefit of clear evidence that the SDU were aware of issues of legal privilege and repeatedly informed Ms Gobbo that they did not want to receive such information, and that the SDU regularly directed Ms Gobbo not to act for people she informed upon and she regularly indicated that she would not so act. As Mr Green said in his evidence, 'I absolutely understand why [the High Court] came to that – to make that statement. ... [but] I don't believe that the matters have been explained fairly right at the very beginning when I've only just recently found out what, for example, what the Comrie Review said that we were doing, and I believe that ... a completely unbalanced view was started for other purposes, rather than court matters, and then these reports have been taken out of their context and then used in areas where the people that wrote the reports probably never believed they would end up.'²⁰

¹⁶ Exhibit RC8, Statement of Neil Paterson, Attachment 27, Comrie Review, 27.

¹⁷ Exhibit RC8, Statement of Neil Paterson, Attachment 61, Kellam Report, 48.

¹⁸ Transcript of Mark Porter, 20 September 2019, 6636:

Mr Chettle: There was some sort of plan or conspiracy to not pass up the line all the risks associated with her?

Mr Porter: That is not the case.

Mr Chettle: As far as you can see they attempted to ... be totally transparent in what they were doing and reported up the line?

Mr Porter: Yes;

Transcript of Anthony Biggin, 11 October 2019, 7774-5.

¹⁹ Mr Peter Smith, for example, told the Commission that when he appeared before IBAC he had 'had zero chance to review any documents. It was some years later. I in fact had just resigned from Victoria Police. I was not even really clear on the purpose of this process. I was not allowed to discuss it with anybody else before these things were said. As I say, I didn't have any chance to look at documents and I hadn't turned my mind to it.' 11 September 2019, 6076.23.

²⁰ Transcript of Mr Green, 8 October 2019, 7355.4.

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6. The High Court upheld Ginnane J's judgement. His Honour had to balance two conflicting public policy issues, namely disclosure to an accused and protection of the identity of an informer. Victoria Police was clearly of the view that the risk to Ms Gobbo's life meant that her identity should not be disclosed. It was only when the High Court upheld the need to disclose Ms Gobbo's identity that the long-established policy that a source's identity must be protected was displaced. Prior to that decision, it is clear that Victoria Police and the SDU specifically believed that there was a real risk to Ms Gobbo's life if her role as an informer was revealed. The role of the SDU included ensuring that her identity was not so revealed. That was their job. It was the same for all high risk informers, not just Ms Gobbo.
7. On several occasions during the Commission's hearings, the Commissioner interjected during Mr Chettle's cross-examination to raise the High Court's judgment. These interjections tend to indicate that the Commission is of the view that the comments of the High Court as to the conduct of Victoria Police had determined the facts insofar as the Commission was concerned.
8. Mr Chettle was cross-examining Inspector Dale Flynn about an entry he made in Mr Sandy White's Professional Development Assessment:²¹

Mr Chettle: Subsequently at the end in relation to Mr White it says this: "Sandy White models the highest ethical behaviour and is a fine example of what an ethical investigator/manager should be. He is a natural leader who pushes himself hard to achieve results and pushes the boundary in terms of his tactics and strategies but everything he does is underpinned by a strong moral compass and adherence to all ethical values and behaviours the organisation expects". ... Would you agree with that?

Mr Flynn: Yes.

²¹ Transcript of Dale Flynn, 4 October 2019, 7294.

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[...]

Commissioner: What was the date of that PDA?

Mr Chettle: That was June 2012, Commissioner.

Commissioner: Well before the High Court decision.

9. Mr Chettle was asking Mr Biggin about the issue of conflict of interest when the Commissioner asked:²²

Commissioner: Have you read the High Court judgement, Mr Chettle?

Mr Chettle: I have, Commissioner.

Commissioner: That's alright, I was just checking.

10. Whilst Mr Chettle was cross-examining Mr Overland about the contents of the first risk assessment for Ms Gobbo:²³

Commissioner: I don't know that you can say that, given what the High Court had to say?

Mr Chettle: Sorry?

Commissioner: About her risk to the public. I don't know that you can say that, and I think the witness was referring to that in his answer, earlier. Not in the sense of a criminal physical harm.

Mr Chettle: I was reading the line from the report, Commissioner.

²² Transcript of Anthony Biggin, 11 October 2019, 7742.

²³ Transcript of Simon Overland, 23 January 2020, 12221.

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11. It is submitted that the High Court judgement does not settle or determine issues as to the conduct of the SDU. Term of reference 2 requires the Royal Commission to investigate this topic. The much-quoted criticisms are *obiter dicta* in a civil case about which of two compelling public policy principles should prevail. The SDU were not a party to the case and did not contribute to it.
12. There were other occasions where the Commission appears to have expressed a pre-determined view about the subject matter of the Commission. When Mr Holt QC was explaining a technological issue, the following exchange occurred:²⁴

Mr Holt: *I ought just make clear that the reason for the delay, and why matters have been raised today, is that that was the corrupted audio in a technological sense, that was referred to some months ago.*

Commissioner: *Yes, it's perhaps a rather apt term.*

13. Exchanges of this nature cause great concern to our clients.

Limitations to this response

14. Counsel Assisting's closing submissions comprise some 2060 pages. The Commission invites the SDU to respond to those submissions within six weeks. The SDU requested an extension of one week to complete submissions. That request was not granted. Accordingly, it has not been possible to cover all issues and respond to all submissions made.
15. Throughout Commission hearings and during the drafting of these submissions, counsel for the SDU's access to critical source materials including Information Contact Reports and members' diaries has been extremely limited. ICR's have only been made accessible from a police location with prior notice or during hearings in the hearing room only. Counsel for the SDU requested electronic access to the SDU's

²⁴ Transcript of Jim O'Brien, 9 September 2019, 5917.

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diaries from the Commission and Victoria Police while preparing these submissions but received no response. This necessarily limited counsel's ability to prepare for hearings and ultimately respond to Counsel Assisting's submissions. Regrettably, it is not possible to assist the Commission with pinpoint references for all documents as counsel for the SDU do not have access to those documents. These problems are exacerbated by the current COVID-19 crisis.

16. Given the limited time frame, these submissions will largely deal with the main themes emerging from the Commission's hearings insofar as they concern the SDU. In the course of doing so, the proposed adverse findings of Counsel Assisting will be addressed and some of the material evidence which has been overlooked, disregarded or misinterpreted will be highlighted. Ultimately, it will be suggested that it is not open to find that members of the SDU may have [REDACTED] engaged in improper conduct, [REDACTED]
[REDACTED]
17. These submissions do not descend into the contents of Volume 3 of Counsel Assisting's closing submissions, save that to the extent Counsel Assisting submit that there was an obligation on members of the SDU to disclose the identity of Ms Gobbo, and that assertion is disputed. Further, insofar as any impropriety is alleged against members of the SDU, that impropriety is denied.
18. In summary, the SDU submit the evidence shows that:
 - a. Messrs Black, Fox, Green, Peter Smith, Sandy White and Wolf were extraordinarily hard working and dedicated to developing best practice in the management of high risk human sources, including Ms Gobbo.
 - b. At the time of Ms Gobbo's registration, the SDU was a newly created unit in which policies and procedures were evolving to meet demands as they arose.
 - c. The SDU were accountable and fully transparent in their dealings with Ms Gobbo. Extensive records were kept of all interactions with Ms Gobbo. It must be remembered that SDU handlers had no discretion as to what they recorded. Whatever Ms Gobbo said had to be noted. Handlers could not be selective or editorialise. In this regard, their role was essentially the same as that of the Special Projects Unit (SPU). That is, all telephone calls are recorded and listened

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to, but those involving legally professionally privileged information are not disseminated.

- d. Mr Sandy White made most, if not all of the operational decisions on behalf of the SDU.²⁵ However, he properly and regularly reported to his Inspectors, Messrs Cowlshaw, McWhirter, Hardie and Glow. When Mr Thomas was the relevant Superintendent, he was also briefed.²⁶ During the period when the SDU had no Superintendent (that is, from February to June 2006), Mr Sandy White fully briefed Commander Moloney directly. When Mr Biggin assumed responsibility for the SDU in mid-2006, Mr Sandy White regularly reported to and updated him in relation to issues concerning Ms Gobbo. When required, Mr Sandy White briefed Mr Overland.
- e. The murders of Terrence and Christine Hodson were of extreme and unprecedented concern for Victoria Police. Mr Hodson was a human source. Police believed he was killed by someone involved in his management. That history made the protection of Ms Gobbo an even more acute issue. It also highlighted for the SDU issues of corruption within Victoria Police. Messrs Overland and Biggin expressed appropriately strong anti-corruption sentiments. Intelligence relevant to corruption was required to be reported to ESD whether it was legally privileged or not.²⁷
- f. At all times, the SDU's greatest concern was ensuring the safety of Ms Gobbo.²⁸ Protecting her from exposure in order to avoid placing her at risk of death was their main priority. Mr Overland gave explicit direction in this regard.²⁹
- g. The SDU endeavoured to comprehend and manage complex legal issues in a proper and ethical manner, and on many occasions succeeded in their endeavours.

²⁵ Transcript of Sandy White, 23 August 2019, 5237.40.

²⁶ Transcript of Sandy White, 1 August 2019, 3766.4.

²⁷ Exhibit RC623, Standard Operating Procedures that applied during the course of Ms Gobbo's registration dated 28 January 2005, p31: 'Reports of Corruption: Where a source makes an allegation of corruption or provides intelligence which suggests a member of the Victoria Police is corrupt, this intelligence shall be immediately documented by way of an information report and forwarded through the Dedicated Source Unit chain of command to the Commander Ethical Standards Division for investigation.'

²⁸ Exhibit RC275C, Second statement of Sandy White, 58 [251]; Transcript of Sandy White, 2 August 2019, 3812.38.

²⁹ Transcript of Anthony Biggin, 9 October 2019, 7477, 7479.

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- h. At no times did members of the SDU believe they were acting improperly. Had they held such a belief, they would have immediately ceased what they were doing and reported their conduct to a superior.
- i. It was the SDU's desire to deregister Ms Gobbo after April 2006, but this was not able to occur due to the duty of care they owed to her and subsequent directions from Command to continue to use her to combat serious criminal activity and corruption.

The perception of a pre-determined narrative

19. Notwithstanding the extensive detail contained in Volume 2 of Counsel Assisting's closing submissions, significant and compelling evidence available to the Commission which would assist it to arrive at the truth has either been overlooked or ignored. At times, a single line or phrase contained in the SDU's records of their interactions with Ms Gobbo has been taken out of context or misstated, giving the impression that Counsel Assisting has been particularly selective with evidence in order to fit a pre-determined narrative. It is instructive that the only excerpts of evidence from Commission hearings relied upon by Counsel Assisting are those from Counsel Assisting's own cross-examination.

Errors in Counsel Assisting's interpretation of what is said at face to face meetings

20. Counsel Assisting's pre-determined views are evidenced by a number of errors contained in their interpretation and/or transcription of conversations between the SDU and Ms Gobbo. These conversations were tape recorded contemporaneously by the SDU and subsequently transcribed for the Commission, although due to poor sound quality large portions of the recordings were not transcribed. As a result, Counsel Assisting inserted into the transcripts what they believed they heard when listening to the recordings into the transcripts where they felt the word was 'very clear to [them].'³⁰ This was initially done without advising other parties and only came to light when raised as a potential issue with Counsel Assisting. This is concerning given that one of the focuses of this Commission has been disclosure and whether

³⁰ This became apparent during the evidence of Mr Green, 8 October 2019, 7370.

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practices such as altering transcripts, said to have been done ‘surreptitiously’ by police and Ms Gobbo, were concealed from the defence.

21. On one occasion when Counsel Assisting inserted what they could hear into the transcripts, the words said to have been attributed to Mr Green had the effect of making the conversation more sinister. Counsel Assisting questioned Mr Green about a transcript of a conversation in which he was said to comment (in reference to what occurred with Mr Cooper) that the ‘whole act has been played out brilliantly. Brilliantly.’³¹ It was subsequently disclosed that the words ‘brilliantly’ had been inserted by Counsel Assisting, who was ‘confident’ that the word inserted was the correct one.³² This prompted Mr Green (who at that stage had finished his evidence) to listen to the audio recording. Despite Counsel Assisting’s assurances to the Commission that he was confident of the correctness of the transcription, Counsel Assisting was wrong. Mr Green confirmed through his counsel that he had not used the word ‘brilliantly’, but had in fact said ‘legitimately’. This substantially changes the effect of the conversation. The Commission was advised of this error and it was noted that the best evidence would be the tape.³³ However, one is left with the impression that Counsel Assisting’s approach to considering the evidence has not always been objective.

28 October 2006 conversation

22. Another example relates to a conversation Ms Gobbo had with her handlers on 28 October 2005. The ‘gist’ of this conversation was said by Counsel Assisting to be ‘Look, you can tell us information which is privileged information.’³⁴ It is now submitted by Counsel Assisting that the cited passage clearly reveals that Messrs White, Smith and Black knew Ms Gobbo could not act in Mr Cooper’s best interests and it would be legally problematic for her to continue to act for Mr Cooper while informing on him. This passage is also relied on by Counsel Assisting as an example of the SDU leaving the issue of legal professional privilege to Ms Gobbo.³⁵

³¹ Transcript of Mr Green, 8 August 2019, 7353.18.

³² Transcript of Mr Green, 8 August 2019, 7370.25.

³³ Transcript of Mr Richards, 11 October 2019, 7870.

³⁴ Transcript of Nicola Gobbo, 6 February 2020, 13320.36.

³⁵ Counsel Assisting submissions Volume 2, [4755.4].

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23. It is submitted that an objective review of the conversation reveals there was general discussion about whether Mr Mokbel would waive privilege so that Ms Gobbo could make a statement to the Federal Police. Ms Gobbo stated she could not ethically advise him in that regard. She said that Solicitor 2 was going to pervert the source of justice to assist Mr Mokbel. Mr Sandy White told Ms Gobbo that he was not interested in matters relating to Tony Mokbel's defence, but that 'the issue is whether Solicitor 2 is on the edge of committing an attempt to pervert.'³⁶ There is an extensive discussion as to what Solicitor 2 will do. The issue of WITSEC and tasking is discussed, and the SDU flag money laundering as a topic of interest. Ms Gobbo discusses an SOG member tipping off Tony Mokbel, and says she was told this by Mr Cooper. She describes Mr Cooper's gambling and his being banned at Crown Casino. The conversation then turns to Adam Ahmed's sentence and [REDACTED]. [REDACTED] The SDU make it clear that reporting police corruption should be encouraged. Against that background, the conversation set out at [1780] of Volume 2 arises.

24. The effect of this conversation has been misinterpreted by Counsel Assisting the Commission. All those who participated in the conversation challenged Counsel Assisting's interpretation.³⁷ It is not Mr Peter Smith seeking privileged information. It is Mr Peter Smith telling Ms Gobbo to pass on second hand hearsay material as it might fit into the puzzle somewhere. As he says, he has 'no issue' with the fact that she can't pass on information that is privileged. He then puts the privilege issue to one side. 'You can make that call on your own without any assistance from us. ... But if you're happy to tell us something that was hearsay from someone ... I'd suggest you should tell us and let us worry about it' is him saying she would know herself what is and isn't privileged, but she wouldn't know what small piece of

³⁶ RC282, Conversation between Ms Gobbo, Mr Sandy White, Mr Peter Smith and Mr Black 28 October 2005, VPL.0005.0051.0336 at .0438.

³⁷ Transcript of Sandy White, 5 August 2019, 3889.30; Transcript of Nicola Gobbo, 11 February 2019, 13700.27. Mr Peter Smith relied on this extract as an example of him not being interested in privilege issues: Exhibit RC485, Second statement of Peter Smith, 1. Mr Peter Smith was not given an opportunity to respond to the proposition by Counsel Assisting that this was another example of the SDU indicating they were 'prepared to accept anything, whatever she said as information whether or not it was privileged in the first instance' but agreed the passage indicated the SDU were leaving it to Ms Gobbo to consider what was and wasn't information with privilege issues: Transcript of Peter Smith, 11 September 2019, 6083.31. He said this was because he felt Ms Gobbo knew far more about privilege issues than he did (6083.22).

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hearsay material might fit into the puzzle somewhere and so she should tell the SDU hearsay material and let them decide whether it is relevant or helpful.

25. Thereafter, Ms Gobbo's discussion about 'the Cooper thing' causing her 'big drama' is a reference to Mr Cooper telling her about the crimes he is committing, making her task at his upcoming plea more difficult. She makes it clear that lawyers don't ask their clients things like this as it makes it difficult to put propositions on their behalf in court. During her evidence, Ms Gobbo explained as follows:³⁸

I think I mean here I don't want to know, um, I don't want to put myself in a position where like, for example, he told me he's um, doing some particular crime, then I've got a problem with standing up – I know it sounds ridiculous considering all of the conflicts that are obvious – that in my mind I'm thinking, well, I don't want him, I don't want him to know, I don't want him to be telling me he's done some other crime because then how do I stand up in front of a judge and say, "There's no evidence that he's committed another offence ... he's got some prospects for rehabilitation or reform."

26. The conversation then returns from this small aside to a further discussion about corrupt police officers, during which Sandy White makes it clear that the SDU's attitude is that no police corruption issues are acceptable, and there is zero tolerance for that activity. Mr Peter Smith says, 'If you've got privilege issues with that, that's fine, but we say to you, get 'em recorded [reported].'³⁹ Mr Peter Smith is telling Ms Gobbo to have her clients report corruption issues.
27. During this exchange Mr Sandy White might have misunderstood what Ms Gobbo was telling him about instructions from Mr Cooper putting her in an embarrassing position. However, there is nothing in the passage cited at [1780] of Volume 2 about acting in Mr Cooper's best interests, nor anything about Ms Gobbo informing on him or that it was legally problematic. It is simply not open to conclude from this passage that Messrs Sandy White, Peter Smith and Black clearly held the state of mind Counsel Assisting wish them to hold. Further, there is no evidence to support the

³⁸ Transcript of Nicola Gobbo, 6 February 2020, 13320.45.

³⁹ Exhibit RC282, Conversation between Ms Gobbo, Mr Sandy White, Mr Peter Smith and Mr Black, 28 October 2005, VPL.0005.0051.0336 at .0482.

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assertion by Counsel Assisting that ‘Ms Gobbo made it very clear during this conversation that she would continue to act on Mr Cooper’s behalf.’

28. The Source Management Log entry relating to this meeting sets out what Mr Sandy White saw as the significant pieces of intelligence received. ‘Intelligence re Mokbel arrests. Cooper’s illness. Solicitor 2 attempt to pervert.’⁴⁰
29. Counsel Assisting misrepresented this conversation during his cross-examination of Mr Black,⁴¹ and of Ms Gobbo.⁴² It was only when Ms Gobbo gave evidence that the true meaning was clearly established.⁴³

Mr Chettle: It’s quite clear that that call is saying the opposite of what Mr Winneke suggests – or that transcript is saying the opposite of what Mr Winneke suggested, they’re making it clear, “Don’t tell us privilege but tell us all the hearsay” and “hearsay upon hearsay that you’re getting”?

Ms Gobbo: Yes. ... Because their position was that you don’t, that I couldn’t know, and even though I would have loved to know, that I couldn’t know and couldn’t be told that, you know, some tiny little piece of what I might think is irrelevant information could turn out to be of great assistance to them. So they were very patient in listening to a whole lot of rubbish. Um, a whole lot of – I don’t mean rubbish, but a whole lot of stuff that’s probably irrelevant and with some gold nuggets inside it.

General errors in transcribed conversations

30. There are other errors in the transcripts of conversations between the SDU and Ms Gobbo. Some of these are significant and entirely change the meaning of the conversation.⁴⁴ The following transcript is relied on by Counsel Assisting as

⁴⁰ Exhibit RC284, Source Management Log, 28 October 2005.

⁴¹ Transcript of Mr Black, 23 October 2019, 8120 to 8122.

⁴² Transcript of Nicola Gobbo, 6 February 2019, 13320.36.

⁴³ Transcript of Nicola Gobbo, 11 February 2020, 13700.27.

⁴⁴ Exhibit RC275C, Statement of Sandy White, 1 [4].

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evidencing the fact that both Ms Gobbo and the SDU acknowledged that ‘lines were being crossed’ in relation to information being provided:⁴⁵

Ms Gobbo: *And I’ve got instructions on this. I do remember also telling Bezzina – you know when we first started talking and we used to say, “I can’t talk about that stuff,” you know, I used to draw the line with some ethical, now there’s no ethical standards any more, it’s just all out the window, Sandy. But I remember with Bezzina ---*

Mr Sandy White: *But that’s the stuff we love listening.*

31. When one listens to the audio recording of the above conversation, what Mr White says in response to Ms Gobbo is not ‘But that’s the stuff *we love listening*,’ but ‘But that’s the stuff *we won’t listen to*.’ Rather than a sinister interpretation—that the SDU were targeting legally privileged information—this conversation is an example of Mr White telling Ms Gobbo that the SDU did not wish to receive such information and would not disseminate it.

Ms Gobbo’s having looked around Sharon Cure’s chambers – a ‘burglary’

32. Counsel Assisting attribute weight to various sentences uttered by Ms Gobbo and infer that such comments warranted further scrutiny by the SDU. For example, Counsel Assisting refer to a diary entry and subsequent ICR by Mr Fox on 25 June 2007. The diary entry reads, ‘HS has looked around other council [sic] offices yesterday. She found in Sharon Cura’s office subpoenaed documents from Barwon Prison. Cura did Carl’s plea. She had a copy of Carl’s statement when it was made and was going around gossiping about it.’ It was put to Mr Fox that the entry suggested Ms Gobbo had entered Ms Cure’s offices unlawfully, and that she would have been committing burglary.⁴⁶ Counsel Assisting submit that by failing to recognise this was a possibility, the SDU had ‘lost their way’.⁴⁷

⁴⁵ Transcript of meeting between Ms Nicola Gobbo, Mr Anderson and Mr Sandy White, 21 May 2007, VPL.0005.0137.0001 at .0194.

⁴⁶ Transcript of Mr Fox, 13 September 2019, 6368.46.

⁴⁷ Counsel Assisting submissions Volume 2, [2366].

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33. First, it is disputed that these comments by Ms Gobbo ought to have alerted Mr Fox to the possibility Ms Gobbo was acting unlawfully. Mr Fox gave evidence that the way Ms Gobbo told him about this incident meant he had no reason to believe she was doing anything wrong.⁴⁸
34. Secondly, even if there were such oversights (which is disputed in the example given above), they must be considered in the context of the sheer volume of information SDU members were recording from Ms Gobbo (as well as other sources they were handling simultaneously) and fact they had repeatedly requested additional support to help them fulfil their role.

Untendered material relied on to draw adverse inferences

35. It is also worth noting that more than 350 documents have been tendered since hearings in relation to terms of reference 1 and 2 concluded. A number of these documents are relied on by Counsel Assisting to draw inferences adverse to the SDU,⁴⁹ although they were not put to SDU members who gave evidence nor were they provided so that instructions could be taken, and a further statement made if necessary.
36. For example, Counsel Assisting refer to a 23-page untendered document containing a table of ICR references said to be prepared by the SDU for Petra, entitled '2958 SCR Reference to Paul Dale Petra Edit.'⁵⁰ Counsel Assisting refer to an earlier version of this document, entitled '2958 References to Paul Dale SDU Raw', which spans 45 pages. It is noted by Counsel Assisting that significant relevant material was removed from the 'raw' version, the inference being that the SDU improperly removed such

⁴⁸ Transcript of Mr Fox, 13 September 2019, 6369.26.

⁴⁹ See, for example, Counsel Assisting submissions, Volume 2, [1653]-[1656] which refers to an untendered email from Mr Buick to Messrs O'Brien and White and concludes Mr White was not concerned to prevent Ms Gobbo's involvement with Milad Mokbel; Counsel Assisting submissions, Volume 2, [3226]-[3239] in relation to documents regarding the matter of Tan Hai Nguyen and Hong Em Nguyen; Counsel Assisting submissions, Volume 2, [3987]-[3988] in relation to a 'table of documents' relating to the Paul Dale investigation which is said to have been edited to remove significant information; Counsel Assisting submissions, Volume 2, [4046]-[4047] which refers to untendered portions of Sandy White's diary and concludes that Mr White was considering suppressing the SDU's management of Ms Gobbo to avoid scrutiny by the OPI and putting convictions in jeopardy.

⁵⁰ Counsel Assisting submissions, Volume 2, [3987].

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material. Counsel Assisting further note that a table relating to the period when Ms Gobbo was known as 3838 has not been located by the Commission and assert that this is either because it hasn't been located 'or Mr Sandy White was not intending to provide such a table to lawyers for assessment for PII.' In relation to these submissions, the following points are made:

- a. Neither of the two documents referred to were put to any of the SDU members. Thus, they were denied the opportunity to assist the Commission with evidence in relation to who created the documents, what they were asked to include, who was involved in editing the 'raw' version, and whether material edited from the 'raw' version was removed for a legitimate reason, such as the removal of police methodology.
- b. The submission that 'significant relevant material' was removed cannot be tested without sighting the documents and questioning the author.
- c. It is not known where these documents were produced from or had previously been saved. That is, it is entirely possible that the earlier 'SDU Raw' version was stored on the SDU's standalone hard drive and the subsequent 'Petra edit' version produced from files kept by others.
- d. It is entirely speculative that Mr Sandy White was 'not intending to provide such a table' to lawyers for PII assessment. It is illogical that he would have such an intention, for if he were concerned about lawyers finding out about Ms Gobbo's role, as is implied by Counsel Assisting, her role and the nature and extent of the information she provided would have been exposed by the provision of the 2958 document. Further, it appears that by 9 March 2010 her role as a source was already known to lawyers acting in the Dale committal (or at least Mr Sandy White believed this to be the case).⁵¹
- e. Notwithstanding the fact that Mr Sandy White spent 18 days giving evidence, he was not asked about whether he recalled material relating to 3838 being withheld from the lawyers during the Dale murder committal, and if so, who was responsible and whether there was any reason for doing so.

⁵¹ Exhibit RC305, Sandy White diary 9 March 2010: 'Call from [Richards]. Shane O'Connell has told a solicitor that 3838 was a source. He had first meeting transcribed where she declared she was a source who put away Mokbel. Solicitor name is BELL. He is representing Vic Pol in case against Dale. The committal is underway.'

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- f. The evidence demonstrates Mr Sandy White was willing to comply with any requests by Petra to provide documents to Mr Gipp of counsel to consider for PII, subject to proper procedure being followed (that is, via a written request by the investigators to Mr Porter of the HSMU).⁵² This is contrary to the suggestion that he would withhold material relating to Ms Gobbo's period as human source 3838.
37. It is therefore not open for the Commissioner to find that an explanation for the Commission not having located a table relating to Ms Gobbo's information about Mr Dale when she was known as 3838 is that Mr Sandy White was not intending to provide such a table to lawyers for PII assessment, nor would it be fair to do so.
38. Yet another example of Counsel Assisting's desire to draw adverse inferences from documents which were not put to Mr Sandy White is at [1656] of Volume 2, where it is asserted that an email dated 26 July 2006 demonstrates that Mr Sandy White was not concerned to prevent Ms Gobbo's involvement with Milad Mokbel in circumstances where he knew she had a conflict of interest and would likely be called upon to offer him professional advice. More than 150 documents were shown to Mr Sandy White over the 18 days of his evidence. He was not asked about or shown this particular email and the proposition was not put to him.
39. Further, Mr Sandy White gave unchallenged evidence that he had been concerned about Ms Gobbo acting for Milad Mokbel.⁵³ If Counsel Assisting wish to rely on an email which is said to contradict that evidence, it should have been put to Mr Sandy White during hearings consistent with principles of natural justice and procedural fairness.

Other adverse inferences drawn without basis

40. Counsel Assisting demonstrate both bias and misstatement of the evidence in [2021] and [2022] of Volume 2. At [2021], it is asserted that Mr Peter Smith told Ms Gobbo, 'perhaps to calm her', that 'there are very few people that know about your situation.' At [2022], Counsel Assisting submit that Mr Peter Smith deliberately deceived Ms Gobbo and set out the reason why that is said to be so. Firstly, the proposition that Mr

⁵² Diary of Sandy White, 10 March 2010.

⁵³ Transcript of Sandy White, 7 August 2019, 4018.12.

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Peter Smith deceived Ms Gobbo as alleged was not put to Mr Peter Smith during his cross-examination by Mr Woods. If it had been put to Mr Peter Smith, it would have become readily apparent that the words ‘there are very few people that know about your situation’ are words Ms Gobbo relayed to Mr Peter Smith. They are recorded in Mr Peter Smith’s diary in quotation marks. Mr Attrill had said those words to Ms Gobbo during his meeting with her, earlier that morning. Ms Gobbo was furious because she believed Mr Attrill knew she was an informer because Mr Attrill used that expression.

41. At 11.11am, Ms Gobbo telephoned Mr Peter Smith and relayed the conversation she had just had with Mr Attrill. Mr Peter Smith returned to the SDU source management meeting and reported to Mr Sandy White what she had said. Mr Sandy White recorded in his diary:

*** “There are very few people who know about your situation.”*

42. Mr Sandy White complained later that day to Mr Wilson about Mr Attrill’s comments. The entry in Mr Peter Smith’s diary is at p.236, not p.234 as described in footnote 2960.
43. Therefore, Counsel Assisting:
- a. Cannot get the correct diary reference;
 - b. Misstate the effect of the diary entry;
 - c. Draw a conclusion that is tenuous in any event;
 - d. Attribute a motive to Mr Peter Smith;
 - e. Get it totally wrong;
 - f. Criticise Mr Peter Smith for something he did not say, as they knew or should have known had they read the diary properly; and
 - g. Make an adverse submission about Mr Peter Smith that they did not put to him.
44. Unfortunately, this typifies Counsel Assisting’s approach throughout the hearings and their submissions. Establishing themes was apparently more important than a search for the truth.

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Errors made by the SDU

45. It is conceded that there were failings and errors made by the SDU in their management of Ms Gobbo.⁵⁴ Mr Sandy White accepted that with the benefit of hindsight, the policies and procedures he developed could have been better crafted to consider and deal with human sources with obligations of confidentiality and privilege.⁵⁵ Legal advice should have been sought from an early stage, though it was not considered necessary at the time.⁵⁶ Mr Sandy White regretted that this had not occurred.⁵⁷
46. Members of the SDU, including Messrs Sandy White and Black willingly made other concessions. The ‘acknowledgement of responsibilities’ (AOR) form should have been a flexible document able to be amended to accommodate important boundaries peculiar to a particular source.⁵⁸ For someone like Ms Gobbo, these could have included a prohibition on acting for people about whom she had informed, and a promise not to provide information that was confidential or legally privileged.⁵⁹ Instead, the acknowledgement of responsibilities form in 2005 was a pro-forma document containing fixed dot point rules. As Mr Sandy White commented, it was frequently the case that human sources had a criminal background and so the AOR focused on concerns a source might commit criminal offences.⁶⁰ At the time these concerns seemed not to apply to Ms Gobbo, a lawyer already subject to obligations to be a ‘fit and proper’ person and officer of the Court.⁶¹ In any event, the terms of the AOR were reinforced to Ms Gobbo.⁶² It is submitted that as policy dictated that the AOR was a proforma document, ill-suited as it was to Ms Gobbo, whether she signed it or not represents a distraction from more significant issues to be determined by this

⁵⁴ Transcript of Sandy White, 2 August 2019, 3846.6.

⁵⁵ Transcript of Sandy White, 31 July 2019, 3598.4.

⁵⁶ Exhibit RC275C, Second statement of Sandy White, 58[250]; Transcript of Peter Smith, 10 September 2019, 6030.35; Transcript of Mr Black, 23 October 2019, 8137.16.

⁵⁷ Transcript of Sandy White, 6 August 2019, 3982.43.

⁵⁸ Exhibit RC275C, Second statement of Sandy White, 52[221]; Transcript of Mr Black, 23 October 2019, 8128.17.

⁵⁹ Transcript of Sandy White, 2 August 2019, 3830.1.

⁶⁰ Transcript of Sandy White, 6 August 2019, 4035.23.

⁶¹ Transcript of Peter Smith, 10 September 2019, 6036.28; Transcript of Mr Black, 23 October 2019, 8128.37.

⁶² Transcript of Mr Black, 25 October 2019, 8343.28; Conversation with Ms Gobbo, Mr Peter Smith and Mr Green, 15 February 2006, VPL.0005.0051.1059 at .1101.

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Commission. Both the Comrie Review and the Kellam Report assume that the AOR was a document that could be modified to suit unique risks. In 2005 it could not be.

47. With the benefit of knowing how matters ultimately unfolded, it is acknowledged that the risk assessment should have expressly identified the risk that Ms Gobbo would act for people on whom she informed, the risk of Ms Gobbo breaching her ethical obligations insofar as disclosing legally privileged information,⁶³ the risk that others would believe the SDU deliberately targeted information that was legally privileged⁶⁴ and the risk to the fair trials of individuals who were represented by a barrister who was not independent.⁶⁵ Mr Sandy White also gave evidence that he wished the SDU had kept an updated list of people for whom Ms Gobbo was acting.⁶⁶ Indeed, this was something the SDU did seek to implement in the latter part of Ms Gobbo's registration.⁶⁷ It is important to note that the SDU was a newly created unit, attempting to dramatically change Victoria Police's informer culture.
48. The SDU's concerns to ensure Ms Gobbo's safety by protecting her identity as a source overrode considerations of what now can be seen was required by way of proper disclosure. The accused's entitlement to information relevant to their defence was not front of mind at times when it arguably should have been.⁶⁸ As the High Court held, the public interest favouring disclosure of Ms Gobbo's role was compelling, such that it overrode the public interest in preserving Ms Gobbo's anonymity. Though they were not alone, the SDU evidently did not fully appreciate this at the time of managing Ms Gobbo. Until the High Court's decision, it is clear that all of Victoria Police believed that protection of a human source's identity was essential and the proper subject of a claim for public interest immunity.
49. Mr Sandy White ultimately took the view that it would be highly unlikely that he would take on Ms Gobbo as a source knowing what he does now, and that he would

⁶³ Transcript of Sandy White, 5 August 2019, 3902.41.

⁶⁴ Transcript of Sandy White, 5 August 2019, 3902.1.

⁶⁵ Transcript of Sandy White, 5 August 2019, 3902.33.

⁶⁶ Transcript of Sandy White, 1 August 2019, 3735.26.

⁶⁷ Exhibit RC0281, ICR2958 (030), 4 August 2008, 539.

⁶⁸ Transcript of Sandy White, 2 August 2019, 3813.16; 2 August 2019, 3846.20.

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not do so without significant legal support.⁶⁹ He conceded that Ms Gobbo's relationship with Victoria Police had been a 'disaster' for her.⁷⁰

50. Notwithstanding the above, the evidence shows that the SDU acted honestly, ethically and lawfully at all times,⁷¹ in accordance with their sworn duty. As former Chief Commissioner Christine Nixon observed during her evidence, 'it certainly isn't about malice. It certainly isn't about ill-will. And it certainly isn't about them not behaving as best they could.'⁷²

B. HUMAN SOURCE MANAGEMENT IN THE WAKE OF THE HODSON MURDERS

51. On 16 May 2004 Terrence and Christine Hodson were murdered in their Kew home. At the time, Mr Hodson was a registered informer who had provided a significant amount of information to Victoria Police.⁷³ Some felt that not enough was done to protect him.⁷⁴ Police believed he was murdered by someone involved in his management as a source. That history made the protection of Ms Gobbo an even more acute issue for the SDU.

52. The deaths of the Hodsons and related corruption issues prompted significant reform within Victoria Police in relation to the management of human sources, as set out in Counsel Assisting's submissions.⁷⁵ This included the initiation of a new project to review and develop a best practice human source management policy. Mr Sandy White was selected as team leader of the project, under the supervision of Mr Tony Biggin. The project report, prepared by Mr Sandy White, recommended, *inter alia*, that a dedicated source unit be trialled as a pilot project for a period of six months. This recommendation was implemented and on 1 November 2004 the 'Dedicated Source Unit' (as the SDU then was) six-month pilot program commenced. As detailed in Counsel Assisting's submissions, the pilot program was received

⁶⁹ Transcript of Sandy White, 2 September 2019, 5361.32.

⁷⁰ Transcript of Sandy White, 1 August 2019, 3751.23.

⁷¹ Transcript of Sandy White, 6 August 2019, 3983.11.

⁷² Transcript of Christine Nixon, 18 December 2019, 11672.17.

⁷³ Exhibit RC464A, Longer statement of Jim O'Brien, 14 June 2019, 9[39].

⁷⁴ Exhibit RC464A, Longer statement of Jim O'Brien, 14 June 2019, 9[39].

⁷⁵ Volume 2, [213]-[299].

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positively and at its conclusion, the SDU became a permanent unit of Victoria Police. Ms Nixon described the proposed model as the best Victoria Police could find at that point in time, although she recognised that it was not appropriately resourced.⁷⁶

53. A critical concept of the new SDU was the implementation of a ‘sterile corridor’. This meant nothing more than the ability to separate the management of an investigation from the management of the human source that provides intelligence relevant to that investigation.⁷⁷
54. One of the key advantages of implementing a sterile corridor was that it allowed source handlers to focus on the safety of a source, that is, by taking all reasonable steps to ensure a source’s identity wasn’t compromised.⁷⁸ In other words, the SDU’s priority was the duty of care owed to human sources,⁷⁹ and they saw issues relating to disclosure as matters for the investigators.⁸⁰ The importance of protecting a source’s identity and consequences for failing to do so were all the more apparent to the SDU in the wake of the Hodson murders, and remained front of mind during their management of Ms Gobbo. Victoria Police’s well-established policy [REDACTED] [REDACTED] would have fortified their view that protection of a source’s identity was paramount.
55. Three matters of significance arise from the manner in which the SDU developed:
- a. First, the SDU was still in its infancy in September 2005 when Ms Gobbo was assessed for registration. Policies and procedures were being developed and improved in an organic fashion.⁸¹ They were not perfect. The risk assessment process, for example, was entirely new to Victoria Police.
 - b. Secondly, prior to the establishment of the SDU, investigators had managed their own human sources. Senior investigators were now being asked to ‘hand over’ their most valuable high-risk sources to the SDU for management. Many were

⁷⁶ Transcript of Christine Nixon, 18 December 2019, 11612.33.

⁷⁷ Exhibit RC276, Review & Develop Best Practice HS Management Police 2004, p20.

⁷⁸ Transcript of Mr Black, 23 October 2019, 8161.22.

⁷⁹ Exhibit RC276, Review & Develop Best Practice HS Management Police 2004, p20; Transcript of Peter Smith, 10 September 2019, 6053.30.

⁸⁰ Transcript of Mr Black, 23 October 2019, 8161.22.

⁸¹ Transcript of Terry Purton, 14 May 2019, 1759.10.

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sceptical or resistant to doing so.⁸² There would have been pressure on the SDU as a service provider to ensure that high risk sources were accepted into and well managed by the unit, and that valuable intelligence was being passed on in a timely manner to investigators. This was necessary to ensure the unit was well received so that investigators complied with directions to pass on high risk sources for assessment and management, rather than continue to run them in the informal and problematic manner that had preceded the SDU's creation.

- c. Thirdly, members of the SDU had a very recent memory of what would happen to a human source should their identity be revealed. As Counsel Assisting recognise, the ramifications to Victoria Police in the event of Ms Gobbo's murder would have been catastrophic.⁸³ As a result, concerns about the risk of Ms Gobbo's exposure drove the SDU's every decision. In that regard, the SDU were clearly very successful.

The relevance of good character

56. Prospective members of the SDU were subject to the highest-level probity checks in Victoria Police.⁸⁴ Members were selected for the unit based on their significant previous experience in human source management⁸⁵ and their integrity.⁸⁶ They came from a range of different areas within Victoria Police so that they could promote the concept of dedicated source management to their respective previous squads.⁸⁷
57. Messrs Black, Green, Fox, Peter Smith, Sandy White and Wolf are men of impeccable character. Those who know them described them to the Commission as people of the utmost integrity,⁸⁸ who were exceptionally professional, competent and dedicated.⁸⁹ As Mr McWhirter said of his observations as the SDU's Inspector:⁹⁰

⁸² Exhibit RC1784, Evaluation of the SDU Pilot April 2005 CMRD p12; Transcript of Doug Cowlshaw, 3 December 2019, 10306.19; Transcript of Doug Cowlshaw 3 December 2019, 10336.8.

⁸³ Counsel Assisting submissions Volume 2, [2146] - [2147].

⁸⁴ Transcript of Anthony Biggin, 9 October 2019, 7492.

⁸⁵ Transcript of Anthony Biggin, 9 October 2019, 7492.

⁸⁶ Transcript of Sandy White, 31 July 2019, 3655.8.

⁸⁷ Transcript of Sandy White, 31 July 2019, 3655.8.

⁸⁸ Transcript of Neil Paterson, 28 March 2019, 448.11; Transcript of Terry Purton, 14 May 2019, 1755.14.

⁸⁹ Transcript of Terry Purton, 1755.14; Transcript of Dean McWhirter, 2 December 2019, 10186.39; Transcript of Rod Wilson, 5 December 2019, 10538.24.

⁹⁰ Transcript of Dean McWhirter, 2 December 2019, 10186.39.

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The SDU were exceptionally professional, exceptionally dedicated and selected for the purpose of the role, exceptionally challenging and brand new role into Victoria Police. The way they performed their task under exceptionally challenging circumstances, as are highlighted in terms of my responses in terms of the monthly report, they did an amazing amount of work on behalf of the organisation under really, really challenging circumstances and with what I would say, you know, if we look back on it now, which is alluded to, is insufficient support.

58. Mr Sandy White's citation set out in his statement refers to his ethics, integrity, dedication and professionalism.⁹¹ As a unit, the SDU was described as extremely professional, experienced and comprising dedicated members of Victoria Police.⁹²
59. Mr Porter agreed with Mr Sandy White's assessment that, 'the team of source handlers at the SDU are the most dedicated and motivated group of police officers I have worked with. Each believed they were setting the bar for best practice in source practice nationally. Each of those members worked extraordinarily long hours and were completely dependable at any hour of the day both to the office and the sources they managed.'⁹³
60. These attributes are also manifest in the Professional Development Assessment records (PDA's⁹⁴) of Messrs Black, Fox, Green, Peter Smith and Sandy White,⁹⁵ all of which contain only favourable comments in relation to each respective member's professional performance.
61. A handful of examples from each officer's PDA demonstrates the character and calibre of each man:

⁹¹ Exhibit RC275C, Statement of Sandy White dated 22 May 2019, 3 [9].

⁹² Transcript of Jason Kelly, 20 June 2019, 2629.

⁹³ Transcript of Mark Porter, 20 September 2019, 6627.

⁹⁴ PDA's are a human resource management tool used by Victoria Police to document performance feedback.

⁹⁵ Exhibit RC562, professional development assessment (PDA) of Officer Green; RC563, professional development assessment (PDA) of Officer Sandy White; Exhibit RC564, professional development assessment (PDA) of Officer Fox; Exhibit RC565, professional development assessment (PDA) of Peter Smith; Exhibit RC566, professional development assessment (PDA) of Officer Black.

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Officer Green

- a. On 20 August 2010, Inspector O'Connor wrote, 'during this PDA cycle, Green was a role player at the [REDACTED] HSM Course. During these courses, Green used his experience to assist the development of students in the practical realities of handling human sources. This instruction was provided in a realistic environment where students were provided with all available resources to operate as a crew [REDACTED] Green assisted student development by attending meetings as well as providing ongoing, honest feedback. This course aims to improve the confidence and competence of students. It is hoped they will then use this experience in their workplaces and support the organisation. Without Green's contribution, the successful learning outcomes would not have been achieved. Green's participation is evidence of his commitment to achieving high quality results and sharing his wealth of experience to teach others.'⁹⁶

It is difficult to reconcile these comments by Inspector O'Connor with his later description of the SDU. This also demonstrates that Counsel Assisting's suggestions that Mr O'Connor regarded the courses as 'downright dangerous' were untrue.⁹⁷

- b. On 15 December 2010, Inspector O'Connor wrote, 'Green is performing well in delivering service to investigators at the Crime Department. He is held in high regard and investigators regularly seek his advice as to how best to utilise human sources in criminal investigations. Green performed a major role at the [REDACTED] HSMC whilst still managing his human sources to a high level. This was evidence of his commitment to Victoria Police and the SDU.'⁹⁸

⁹⁶ Exhibit RC562, professional development assessment (PDA) of Officer Green VPL.0100.0254.0406.

⁹⁷ Transcript of Paul Sheridan, 5 December 2019, 10590.25; Transcript of Paul Sheridan, 12 February 2020, 13837.9.

⁹⁸ Exhibit RC562, professional development assessment (PDA) of Officer Green VPL.0100.0254.0411.

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Sandy White

- c. On 23 January 2011, Inspector O'Connor comments, 'Sandy White is performing well in his role as a controller at the SDU. He has a wealth of experience in criminal investigation and the management of organised crime investigations, particularly in the drug field. He is very operationally focussed and the [REDACTED] [REDACTED] and TIO's at the SDU benefit from his ability to think outside the square, especially in relation to tasking of human sources. His skills and experience could easily be transferred into an [REDACTED] role at the Crime Department, Detective Training School or regional areas. During this PDA cycle, he coordinated the [REDACTED] Human Source Management Course, which was run over a [REDACTED] period. He worked very hard to ensure that the course was of great benefit to the [REDACTED] students from [REDACTED] and [REDACTED] that attended the course.'⁹⁹
- d. On 19 June 2012, Detective Inspector Waddell comments, 'Sandy White models the highest ethical behaviour and is a fine example of what an effective investigator manager should be. He is a natural leader who pushes himself hard to achieve results and pushes the boundaries in terms of his tactics and strategies. But everything he does is underpinned by a strong moral compass and adherence to all the ethical values and behaviours the organisation expects. He is a fine role model to others and is always prepared to be accountable and accept responsibility for his actions and decisions. He puts in very long hours and has shown a commitment to the organisation over many years. That is a credit to himself and his sense of professionalism.'¹⁰⁰
- e. On 26 January 2013, Detective Inspector Waddell further commented, 'Sandy White is a very effective supervisor. He garners the respect of subordinates through his breadth and depth of policing knowledge and his friendly, open and engaging personality. He is very adept and creating the right balance between

⁹⁹ RC563, professional development assessment (PDA) of Officer Sandy White, VPL.0100.0254.0180.

¹⁰⁰ RC563, professional development assessment (PDA) of Officer Sandy White, VPL.0100.0254.0200.

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supervision and personal growth. He ensures that personnel are accountable and is unafraid to give frank and constructive feedback. His communication and interpersonal skills are well developed and he is an excellent role model.¹⁰¹ On the same day, Mr Waddell further wrote, ‘Sandy White is someone who has character and absolute integrity. He gives his personal responsibility but also expects a high level of accountability. He is quite open, upfront, and will always challenge views, opinions or attitudes that he doesn’t agree with or feels are inappropriate. ... He is trustworthy.’¹⁰²

Officer Fox

- f. On 30 January 2009, Mr Fox’s PDA records, ‘discussed successful completion of the 2008 PDA and the assessment ratings made. Fox is a reliable and trustworthy member of the office who performs at a consistent high standard.’¹⁰³
- g. In 2008/9, Mr Fox’s PDA records, ‘enthusiastic member to deliver training in a professional manner and Fox is one of the most ethical members I have ever supervised and is trusted to manage high risk human sources at the SDU.’¹⁰⁴
- h. On 16 March 2012, an inspector notes, ‘Fox is performing well above a member of his experience at [his rank]. His attention to leadership, management, administration and development of his staff is outstanding. The quality of his monthly reports and reports to senior management are of the highest standard.’¹⁰⁵ Mr Fox’s PDA also recorded that he was performing consistently above level for ‘personal, model, drive and integrity’.
- i. On 19 November 2014, another inspector comments, ‘Fox leads from the front when planning and executing resolution strategies. He has a passion for his work and staff and it shows when applying traditional enforcement methods. His active

¹⁰¹ RC563, professional development assessment (PDA) of Officer Sandy White, VPL.0100.0254.0187.

¹⁰² RC563, professional development assessment (PDA) of Officer Sandy White, VPL.0100.0254.0190.

¹⁰³ Exhibit RC564, professional development assessment (PDA) of Officer Fox, VPL.0100.0254.0214.

¹⁰⁴ Exhibit RC564, professional development assessment (PDA) of Officer Fox, VPL.0100.0254.0225.

¹⁰⁵ Exhibit RC564, professional development assessment (PDA) of Officer Fox, VPL.0100.0254.0251.

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involvement in the planning processes has led to risk being effectively managed.’¹⁰⁶ On that same day, the inspector noted, ‘Fox is a highly ethical manager leader ... He embeds his high standards on his workplace. ... The standard he writes and investigates to is exemplary.’¹⁰⁷

Peter Smith

- j. On 14 June 2006, Mr Peter Smith’s PDA records, ‘Peter Smith has been specifically selected from the Crime Department to participate in the dedicated human source team’s project. He has been advised that he was selected as a consequence of his reputation, integrity and experience as an investigator, informer handler and communicator. He has displayed an enthusiastic approach to his new duties.’¹⁰⁸
- k. On 4 April 2011, **Officer Hotham** wrote, ‘between 27 March and 1 April 2011, Peter Smith was a syndicate leader at the HSMU [REDACTED] Course. This Course involves instruction around advanced handling and controlling techniques. Peter led a team through a series of challenging practical scenarios which had a rolling theme around control. Peter drew on his own extensive experience to provide honest feedback and direction. He challenged the students to identify and resolve issues arising out of their source’s behaviour and to balance this around trying to advance an investigation. Peter’s mentoring ensured that students achieved the set learning outcomes. The course relies heavily on the expertise of members such as Peter to be successful. The students gave a very favourable response to his participation.’¹⁰⁹
- l. On 3 August 2012, Mr Peter Smith’s PDA records a meeting with Divisional Detective Inspector O’Connor and states that ‘I am performing well in my role as a human source handler at the SDU. Is happy with my continuing enthusiasm in

¹⁰⁶ Exhibit RC564, professional development assessment (PDA) of Officer Fox, VPL.0100.0254.0282.

¹⁰⁷ Exhibit RC564, professional development assessment (PDA) of Officer Fox, VPL.0100.0254.0289.

¹⁰⁸ Exhibit RC565, professional development assessment (PDA) of Peter Smith, VPL.0100.0254.0436.

¹⁰⁹ Exhibit RC565, professional development assessment (PDA) of Peter Smith, VPL.0100.0254.0474.

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all source related issues as well as contributing at a high level to the overall function of the SDU.’¹¹⁰

It is difficult to reconcile this entry with Mr O’Connor’s evidence about the SDU’s attitudes in 2012.

- m. On 17 May 2013, **Officer Hotham** wrote, ‘Peter Smith was a directing staff member on the [REDACTED] HSM Course conducted over a [REDACTED] period in March 2013. His role included the preparation of aspects of the course and coaching and mentoring a team of [REDACTED] students over the entire period of the course. He also complimented the management team with numerous tasks as required. The Course involves Peter Smith residing away from home for the duration. The working days were long and intensive. Peter Smith demonstrated his worth by teaching other members highly specialised skills and the ethical, policy and legal parameters that guide the nature of source work. Without Peter Smith’s contribution, the Course simply could not be delivered in such a professional and efficient manner. This is the fourth occasion Peter Smith has performed this demanding role.’¹¹¹

Officer Black

- n. On 28 November 2008, Detective Inspector Glow discussed ‘successful completion of 2008/2009 PDA and consistently high performance as a controller at the Source Development Unit. Tasks undertaken were of high risk for Victoria Police and those efforts directly contributed to numerous arrests of individuals for assorted major crime. Officer Black encouraged to seek promotion.’¹¹²

¹¹⁰ Exhibit RC565, professional development assessment (PDA) of Peter Smith, VPL.0100.0254.0477.

¹¹¹ Exhibit RC565, professional development assessment (PDA) of Peter Smith, VPL.0100.0254.0488.

¹¹² Exhibit RC566, professional development assessment (PDA) of Officer Black, VPL.0100.0254.0301.

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- o. On 3 May 2010, a detective inspector notes that Black has ‘taken a lead role in progressing the crime management model. The leadership displayed by Black provided a critical foundation for the success of this change.’¹¹³
- p. On 17 October 2011, the detective inspector wrote, ‘Black has shown strong leadership and performed the role of [REDACTED] CIU to a high standard during the assessment period, a period of ongoing and significant change. He provided unwavering visible and vocal support for the change reform agenda, a commitment to building the capability and capacity of the unit, and ongoing commitment to a safer Victoria by reducing the footprint of organised crime within the area.’¹¹⁴
- q. On 7 June 2013, the detective inspector noted that Officer Black was a high performing [REDACTED] for the CIU. He is passionate and committed to improving the investigative outcomes. He has maintained a strong focus on governance. Black is capable of performing at the level of [REDACTED] should he wish to pursue his career option. ‘It has been a privilege working with Black in my role as Inspector. I thank him for his work and commitment.’¹¹⁵
- r. On 8 September 2013, another detective inspector noted, ‘Perhaps the highest compliment a police leader can be given is when a colleague describes him as the most complete policeman and leader I have ever worked with. This completely unsolicited statement was recently said to me by Black’s sub-charge. A similar telling comment was made by the Crime Superintendent when he became aware that Black was supervising an investigation into the activities of a major organised crime group. The Superintendent said, “With an investigation like this, that’s who you’d want in charge, isn’t it?”’¹¹⁶

¹¹³ Exhibit RC566, professional development assessment (PDA) of Officer Black, VPL.0100.0254.0318.

¹¹⁴ Exhibit RC566, professional development assessment (PDA) of Officer Black, VPL.0100.0254.0328.

¹¹⁵ Exhibit RC566, professional development assessment (PDA) of Officer Black, VPL.0100.0254.0351.

¹¹⁶ Exhibit RC566, professional development assessment (PDA) of Officer Black, VPL.0100.0254.0373.

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62. The SDU's good character has been ignored by Counsel Assisting, though its significance cannot be overstated. [REDACTED]
[REDACTED] can be used to support their credibility.¹¹⁷ It should be reasoned that our clients as men of good character were truthful and frank in giving their evidence to the Commission and in the statements they have made previously.

C. REGISTRATION OF MS GOBBO

Ms Gobbo: Impressions v reality

63. Mr Sandy White warns of the duplicitous nature of human sources in all of his texts relating to human source management.¹¹⁸ In 2005, he wrote that 'by their very nature, some [high risk] sources will undermine investigations, lie to handlers and manipulate events to their own advantage. Despite best possible management these sources will succeed on occasions in making the handler appear inadequate.'¹¹⁹
64. In his evidence before the Commission, Mr Sandy White expressed his belief that he had 'dropped his guard' in managing Ms Gobbo. Due to her position as a barrister, he had expectations that she would act honestly, and he did not treat her with the same level of suspicion that he would other sources.¹²⁰
65. Ms Gobbo clearly was not the person Mr Sandy White perceived her to be. Prior to her registration with the SDU, she had been involved in political scandal and fraud, used drugs including amphetamines, misled police and the Board of Examiners about her level of involvement in drugs located in her home and engaged in duplicitous behaviour with police by informing on her boyfriend and employer respectively. None of this was made known to the SDU. Evidence before the Commission demonstrates she had a perpetual desire to involve herself in police investigations and the activities of criminals. At the Bar, she gravitated towards serious high-level crime

¹¹⁷ *Melbourne v R* (1999) 198 CLR 1.

¹¹⁸ Transcript of Sandy White, 2 September 2019, 5355.40.

¹¹⁹ Exhibit RC110, Findings of the Dedicated Source Unit Pilot, 1 November 2004 to 30 April 2005, 27.

¹²⁰ Transcript of Sandy White, 2 September 2019, 5356.26.

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figures. It appears as though she blurred the lines in her interactions with police officers and criminals, and had personal intimate relationships with both.

66. By 2005, Ms Gobbo was increasingly distressed at the position her failure to adhere to professional values had placed her in. She was informing to various police officers, including Messrs De Santo and Bateson. She must have been aware that issues relating to the distribution of IR44 and connections between Paul Dale and Carl Williams would bring focus to her potential role in the Hodson murders.
67. It is against this background that Ms Gobbo was introduced to the SDU by Messrs Mansell and Rowe of the MDID, though at the time, Mr Sandy White did not believe there were any issues in relation to her integrity.¹²¹ He did not know that Ms Gobbo had been providing information to Mr De Santo¹²² or Mr Bateson.¹²³ None at the SDU were told of her two previous registrations.¹²⁴ Ms Gobbo assured Messrs Sandy White and Peter Smith during their first and second meetings that she didn't take money from the Mokbels and wasn't involved in drugs.¹²⁵ In January 2006 she was still reminding the SDU that she was a 'different category of informer' in that she wasn't committing crime.¹²⁶ As is reflected in the risk assessment prepared by Mr Peter Smith, the SDU believed Ms Gobbo felt a high degree of moral duty to uphold the law.¹²⁷ As it transpired, she was less than honest on occasions with her dealings with the SDU:
- a. In relation to her sexual relationship with Paul Dale;
 - b. In relation to her use of 'bodgey' phones supplied by Adam Ahmed; and
 - c. That she wasn't acting for and charging fees to certain clients.

¹²¹ Transcript of Sandy White, 31 July 2019, 3605.1, 3606.4.

¹²² Transcript of Sandy White, 30 July 2019, 3571.7.

¹²³ Transcript of Sandy White, 31 July 2019, 3657.8.

¹²⁴ Transcript of Sandy White, 23 August 2019, 5207.30; Transcript of Peter Smith, 10 September 2019, 6027.28.

¹²⁵ Exhibit RC268A, Transcript of meeting with Paul Rowe, members of the SDU and Mr Mansell dated 16 September 2005, VPL.0005.0051.0002 at 0103; RC297, Transcript of meeting with Nicola Gobbo, Sandy White and Peter Smith dated 21 September 2005, VPL.0316.0005.0051.0136 at .0316.

¹²⁶ Conversation between Ms Gobbo, Mr Sandy White and Mr Peter Smith, 12 January 2006, VPL.0005.0051.0548 at .0638.

¹²⁷ Exhibit RC0285B Risk assessment relation to Ms Nicola Gobbo, 15 November 2005, which notes it 'appears unlikely that the Source would be openly involved in activities that would have a negative impact on her position, and thus the general community.'

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68. Prior to meeting with her on 16 September 2005, Mr Sandy White had an existing awareness of Ms Gobbo, but had not had any prior dealings with her. He had once had a very brief conversation with Mr O'Brien about potentially recruiting her, but this was no more than a passing thought brought on by her high profile association with major criminals.
69. Messrs Green, Black and Fox had not had any prior involvement with Ms Gobbo.¹²⁸ Mr Peter Smith recalled her once acting for an accused in a matter in which he had given evidence several years prior to her registration, but otherwise had not had any other dealings with her.¹²⁹ None of them were aware of her history and her continual desire to accumulate information and provide it to police.

Request for assistance and assessment phase

70. Ms Gobbo was not 'recruited' by the SDU. Mr Sandy White was requested by Acting Superintendent Robert Hill at the MDID to meet with Ms Gobbo and assess her for registration.¹³⁰ At the time, there was no prohibition on the recruitment of a practising lawyer as a human source. The SDU was required to assess all potential sources referred to them. Thus, Messrs Sandy White and Peter Smith met Ms Gobbo as required. Put simply by Mr Black, 'we did our job. [Ms Gobbo] was brought to us by the upper levels of Victoria Police Command, by the MDID. We conducted an assessment over I think about five meetings, [a] six-week period. We completed all the checks and balances we possibly could. We completed a risk assessment, completed a registration, handed it to at least a Detective Superintendent who accepted the risk, and off we went.'¹³¹
71. The meetings during that assessment phase were [REDACTED] tape recorded. In relation to the first assessment meeting, Counsel Assisting at [1352] of Volume 2 submit that all members present would have understood that the involvement of a lawyer in the manner described by Ms Gobbo—that is, her involvement with Mr McGrath—would

¹²⁸ Transcript of Mr Black, 23 October 2019, 8111.3

¹²⁹ Transcript of Peter Smith, 10 September 2019, 6028.27.

¹³⁰ Transcript of Robert Hill, 15 May 2019, 1829.36.

¹³¹ Transcript of Mr Black, 23 October 2019, 8137.33.

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be relevant and disclosable to defence. This submission cannot be sustained when one looks at the detail that Ms Gobbo tells members present at that meeting.

72. Ms Gobbo says, in relation to her involvement, that:¹³²
- a. There is a ‘little fellow’ that she was acting for who ultimately is one of the most important Crown witnesses in the state ... [who] turned on half the underworld. It was ‘through [Ms Gobbo] that he’d gone down that path’.
 - b. Police diary notes would reveal it was Ms Gobbo who they were speaking to, and it was her editing the statements before they get sworn and served, ‘that sort of stuff’; and
 - c. ‘Police protected [Ms Gobbo] in the Magistrates’ Court with the first round of subpoenas, but now we’re at Supreme Court stage and a judge might rule differently to a magistrate.’
73. There is nothing unusual about the role that Ms Gobbo describes. Lawyers are regularly involved in the process of their clients making a statement to police. It is not uncommon or improper for a lawyer to draft a client’s ‘can say’ statement in the course of negotiating with the prosecution.
74. Ms Gobbo’s concern as stated relates to the fact that it was her (and not someone else) involved in assisting Mr McGrath to cooperate. That is, it is her identity being exposed that she is concerned about – not the fact that a lawyer assisted Mr McGrath. Ms Gobbo says, ‘I still live in fear of that coming out because all it’s gonna take is for some Supreme Court judge to release police diary notes where *it’s me* that they’re meeting and *it’s me* that they’re speaking to, *it’s me* editing, like, the statements before they get sworn and served, that sort of stuff’ (emphasis added).¹³³ Messrs Sandy White and Peter Smith did not believe that Ms Gobbo was a human source at the time of her involvement as Mr McGrath’s lawyer. She was Mr McGrath’s barrister. There is no reason why the fact that *Ms Gobbo* was his lawyer would so obviously have been relevant and disclosable to defence. She is talking to them about the risk she has incurred by properly doing her job as a lawyer.

¹³² Transcript of conversation between Ms Gobbo, Mr Sandy White, Mr Peter Smith, Mr Mansell and Mr Rowe, 16 September 2005, VPL.0005.0037.0014 at .0032.

¹³³ Transcript of conversation with Ms Gobbo, Mr Sandy White, Mr Peter Smith, Mr Mansell and Mr Rowe, 16 September 2005, VPL.0005.0037.0014 at .0032.

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75. In any event, Ms Gobbo implies that the issue has already been argued before and ruled on by a magistrate, who took the view that for whatever reason (such as a successful claim of public interest immunity) the diary notes that would reveal the identity of the ‘little fellow’s’ lawyer was not relevant and disclosable.
76. Finally, when asked about this conversation, Mr Sandy White said he couldn’t say whether he understood what Ms Gobbo was telling him and didn’t know of her involvement with [Mr McGrath] at that point in time. He described the conversation as a ‘free flowing narrative’ coming from Ms Gobbo.¹³⁴ He later said, when asked about his level of knowledge of Mr McGrath’s matter as at April 2006, that he didn’t know enough about Ms Gobbo’s conduct and that he thought it was a legitimate process that she was involved in.¹³⁵ He suspected the issue was one that had ‘gone straight through to the keeper’, because he always believed these were issues relating to Mr Bateson.¹³⁶
77. It is submitted that her expressed concern in her first meeting was that police would expose her, rather than any discussion about ethics in relation to her conduct. The concern she expressed was about exposure in the context of talking to the SDU, and in the course of that explained her other concern about her role as a barrister and assisting her client to give evidence against others for their own benefit. All of the conversation at this meeting relates to her concerns about talking to the SDU. There is nothing in the conversation to suggest that Messrs Sandy White and Peter Smith had any appreciation of her role in relation to Messrs McGrath and Andrews, nor that it may be relevant and disclosable to defence.

Risk assessment

78. On 15 November 2005, having conducted five meetings with Ms Gobbo as part of the assessment phase, Mr Peter Smith completed a risk assessment document to submit to his superiors for consideration. It was subsequently endorsed by Mr Black as the acting controller on 23 November 2005, before being handed to Doug Cowlshaw,

¹³⁴ Transcript of Sandy White, 1 August 2019, 3723.34.

¹³⁵ Transcript of Sandy White, 3 September 2019, 5426.1.

¹³⁶ Transcript of Sandy White, 3 September 2019, 5427.12.

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who at the time had been upgraded to Acting Superintendent and was the Central Source Registrar (CSR).¹³⁷

79. It was the ultimate responsibility of the CSR to evaluate the identified risks, endorse the assessment and formally accept the risk on behalf of Victoria Police.¹³⁸ It was open to the CSR to reject the proposed registration, or to return the risk assessment to Mr Peter Smith for further work. At the time, Mr Cowlshaw's knowledge of the SDU's involvement with Ms Gobbo exceeded that which was contained in the risk assessment. He had previously attended a three-hour meeting with Mr Sandy White on 26 October 2005, during which he was briefed about the use of Ms Gobbo.¹³⁹
80. Although Mr Cowlshaw no longer had a memory of receiving the risk assessment, he indicated that he probably would have read it and conferred with Superintendent Ian Thomas.¹⁴⁰ Commander Danye Moloney also had oversight of the SDU at that time. He attended the SDU [REDACTED] with Mr Cowlshaw on 24 November 2005, the day after Mr Cowlshaw received the risk assessment. It is probable that the assessment was also discussed with Commander Moloney. In any event, senior members of the Intelligence and Covert Support division were aware of the proposal to use Ms Gobbo as a source and ultimately approved the risk assessment as drafted, thus accepting Ms Gobbo's registration.
81. At that time, risk assessment as a human source management tool was a new concept. There had been no formal risk assessment process prior to the establishment of the SDU.¹⁴¹ In time, the risk assessment process would evolve and become more sophisticated.¹⁴² Mr Peter Smith said that it took him some time to understand and appreciate what the risk assessment form required.¹⁴³ Notwithstanding this, the

¹³⁷ Exhibit RC0591, Officer Black diary, 23 November 2005, VPL.0016.0001.0057; Transcript of Mr Black, 24 October 2019, 8330.14; Transcript of Mr Black, 25 October 2019, 8392.40.

¹³⁸ Transcript of Sandy White, 2 August 2019, 3832.15; Transcript of Doug Cowlshaw, 3 December 2019, 10332.

¹³⁹ Exhibit RC819, Statement of Doug Cowlshaw, 26 July 2019 [16]; RC822, Doug Cowlshaw's day book entry 26 October 2005; Transcript of Doug Cowlshaw, 3 December 2019, 10309.28.

¹⁴⁰ Transcript of Doug Cowlshaw, 3 December 2019, 10315.28.2.

¹⁴¹ Transcript of Peter Smith, 11 September 2019, 6058.44; Transcript of Mr Black, 23 October 2019, 8117.41.

¹⁴² Transcript of Mr Black, 29 October 2019, 8474.5; Transcript of Doug Cowlshaw, 3 December 2019, 10326.7.

¹⁴³ Transcript of Peter Smith, 11 September 2019, 6059.1.

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document he produced in relation to Ms Gobbo was carefully considered and detailed.¹⁴⁴ It took him several weeks to prepare¹⁴⁵ and it ultimately comprised seven pages addressing each of the main risk categories. It was the most comprehensive risk assessment the SDU had produced to that date. Indeed, as Mr Black said in unchallenged evidence, it was ‘probably the most comprehensive risk assessment on a human source Victoria Police [had] ever produced’.¹⁴⁶ Mr Cowlshaw described it as thorough, comprehensive, and ‘very good’.¹⁴⁷ Mr Overland agreed that it represented a ‘high-grade example of an appropriate risk assessment for a source.’¹⁴⁸

82. The assessment contained sufficient detail to alert those reading it to potential issues which might arise in the event registration of Ms Gobbo went ahead.¹⁴⁹ The very first line of the assessment noted the fact that Ms Gobbo was a ‘criminal barrister, who is extremely well known within the legal fraternity.’¹⁵⁰ The second paragraph began by indicating Ms Gobbo was ‘currently acting for several members of the Mokbel criminal cartel, including Tony Mokbel.’ It also noted that:

- a. Ms Gobbo was ‘well positioned to obtain tactically viable intelligence in relation to the criminal activities of the Mokbel cartel’;
- b. Because of her occupation, if compromised, the handling of Ms Gobbo ‘would come under extreme scrutiny. This could cause embarrassment and criticism of the Force’; and
- c. One of the proposed control measures was to ensure Ms Gobbo was not deployed in a manner which would breach legislation without [REDACTED]

83. Whether it was expressly stated or not, the risk assessment alerted anyone who read it to each of the objective factors that ultimately led to the issues which arose with the management of Ms Gobbo. This is not to say it could not have been better. As all SDU members said, they did the best they could in the circumstances that existed.

¹⁴⁴ Transcript of Mr Black, 23 October 2019, 8114.29; Transcript of Doug Cowlshaw, 3 December 2019, 10331.11.

¹⁴⁵ Transcript of Mr Black, 23 October 2019, 8114.29.

¹⁴⁶ Transcript of Mr Black, 23 October 2019, 8117.41.

¹⁴⁷ Transcript of Doug Cowlshaw, 3 December 2019, 10331.11.

¹⁴⁸ Transcript of Simon Overland, 23 January 2020, 12221.37.

¹⁴⁹ Transcript of Doug Cowlshaw, 3 December 2019, 10330.29.

¹⁵⁰ Exhibit RC0285B, Risk assessment relation to Ms Nicola Gobbo, 15 November 2005.

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84. Superintendent Porter from the HSMU was aware of the risks associated with the use of a lawyer as an informer.¹⁵¹ He gave evidence that the risk assessment document was just the beginning of the risk assessment process. He said the risk assessment was just a document. It was a continuous ongoing process. The SDU continually assessed the risk to a source on an interaction by interaction basis.¹⁵²
85. As can be seen from the SDU's records, the risks to Ms Gobbo were recorded on each ICR and then discussed extensively at monthly source management meetings. Summaries of those discussions are set out in the source management log, which as Mr Biggin described, complimented the risk assessment.¹⁵³ The risks associated with the use of Ms Gobbo remained high. As Mr Biggin said, if the risks remained current, there was no need to re-write the risk assessment each month.¹⁵⁴
86. Counsel Assisting at [2142] of Volume 2 submit that the circumstances in which Ms Gobbo was recruited, handled and managed by Victoria Police:
- a. Resulted in her being placed in grave danger of being murdered or seriously injured; and
 - b. The approach of the SDU to risk assessment and risk mitigation was lamentably inadequate.
87. These submissions are not supported by the evidence. In relation to the submission that the management of Ms Gobbo resulted in her being placed in grave danger, the following points are made:
- a. It was not Ms Gobbo's registration that placed her in grave danger of being murdered or seriously injured. When Ms Gobbo first met with the SDU on 16 September 2005, she was already in that position because of her criminal associations and the assistance she had given clients such as Mr McGrath, who wished to cooperate with police.
 - b. If the thrust of Counsel Assisting's submission is that human sources should not be utilised if they would be placed in grave danger, then Counsel Assisting fail to

¹⁵¹ Exhibit RC512, Statement of Mark Porter dated 15 August 2019, [32].

¹⁵² Transcript of Mark Porter, 20 September 2019, 6628.

¹⁵³ Transcript of Anthony Biggin, 9 October 2019, 7554.9.

¹⁵⁴ Transcript of Anthony Biggin, 9 October 2019, 7553.36.

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consider the complexities of human source management. Those who choose to inform, by the very act of informing, place themselves in danger of death or serious injury. The SDU managed many sources who, like Ms Gobbo, were in grave danger, including sources who were members of outlaw motorbike gangs.¹⁵⁵

That was the reason the unit was established.

- c. The SDU evidently believed intelligence derived from human sources could play a very valuable part of the investigative process. The unit sought to recognise human sources for the assistance they gave to police.¹⁵⁶ The value of human sources in the prosecution of offenders was recognised by the High Court.¹⁵⁷
- d. It is conceded that registering Ms Gobbo and utilising her as a source did not resolve the fact that Ms Gobbo was in danger. Such is the role of human sources. As Mr Sandy White said:¹⁵⁸

I'm not her priest, Mr Winneke. I'm a policeman. ... I do have the best interests – I have a duty of care to her and that's to make sure she doesn't get hurt, there's no doubt about that. But also I have a role as a policeman to see whether she's got access to information that could be useful to try and – well, back then, it was to try and stop the gangland killings which was the major focus for the Crime Department. So, you know, if I was her priest I probably would have said run away, go and live in some other place and get away from it all. She said that she didn't think that was going to solve her problems. So what I'm saying is doing no more or less than agreeing with her.

- e. Ms Gobbo's actions as a criminal lawyer, and the fact that she failed to follow instructions aimed at ensuring her own protection contributed to the dangerous position she was in. A major issue arose because Ms Gobbo lied to Horty Mokbel about her involvement in Mr Cooper's arrest. Mr Sandy White said that locking herself into a position that she was not present when Mr Cooper was interviewed created a lot of risk.¹⁵⁹

¹⁵⁵ Transcript of Peter Smith, 12 September 2019, 6255.30.

¹⁵⁶ Transcript of Sandy White, 3 September 2019, 5393.44.

¹⁵⁷ *AB (a pseudonym) v CD (a pseudonym); EF (a pseudonym) v CD (a pseudonym)* (2018) 93 ALJR 59, 62 [12].

¹⁵⁸ Transcript of Sandy White, 1 August 2019, 3759.36.

¹⁵⁹ Transcript of Sandy White, 22 August 2019, 5090.12.

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88. Counsel Assisting's submission that the risk assessment and risk mitigation was lamentably inadequate is contrary to the evidence of Messrs Sandy White, Black, Biggin, Superintendent Porter, Superintendent Cowlshaw and Mr Overland.¹⁶⁰ Every significant incident relevant to risk was documented in the ICR's, summarised in the Source Management Log and was discussed at management meetings. When Ms Gobbo received threats, additional measures were put in place to monitor her safety. Ms Gobbo was provided with a [REDACTED] and panic alarm, which meant the SDU could see [REDACTED] her location. The SDU set up a [REDACTED] [REDACTED] so that if any member of [REDACTED] for her [REDACTED] or [REDACTED] [REDACTED] then the SDU would be notified. That the SDU kept Ms Gobbo alive throughout her management is evidence of itself that the SDU's risk mitigation was not 'lamentably inadequate'.
89. Counsel Assisting's submission in this regard has apparently been taken from Mr Gleeson's Comrie Review. Mr Biggin gave evidence that any criticism in the Comrie Review that there was not ongoing risk assessment conducted was ill-founded and inaccurate. The risk assessment process was not 'grossly inadequate'.¹⁶¹ He told the Commission that there was no downplaying of risk, nor a plan to keep him and Mr Overland in the dark so that Ms Gobbo could be registered as a source.¹⁶²
90. Mr Gleeson, during his evidence before Mr Kellam's IBAC enquiry, referred to the risk assessment as a 'tick and flick exercise'.¹⁶³ His recollection was that the risk assessment process did not even mention Ms Gobbo was a legal practitioner.¹⁶⁴ That evidence was obviously incorrect, but demonstrates Mr Gleeson's lack of appreciation of key issues. It should concern the Commission that these inaccuracies and misstatements are likely to have formed part of Mr Gleeson's extensive background briefing to Messrs Kellam and Kirkham.

¹⁶⁰ Transcript of Mr Black, 25 October 2019, 8355; Transcript of Mr Biggin, 11 October 2019, 7774; Transcript of Mr Cowlshaw, 3 December 2019, 10331; Transcript of Mr Overland, 23 January 2020, 12216 and 12221.

¹⁶¹ Transcript of Anthony Biggin, 11 October 2019, 7774.

¹⁶² Transcript of Anthony Biggin, 11 October 2019, 7775.

¹⁶³ Exhibit RC1.5, Transcript of IBAC examination of Stephen Gleeson, 10 November 2014, page 11 line 38.

¹⁶⁴ Exhibit RC1.5, Transcript of IBAC examination of Stephen Gleeson, 10 November 2014, page 12 line 15.

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91. Counsel Assisting at [1381] of Volume 2 submit that it was a failure by Messrs Peter Smith and Black to identify and/or record the risk that using Ms Gobbo against persons who were previously her clients could be improper/unlawful, had the potential to interfere with the administration of justice and should be the subject of legal advice.¹⁶⁵ Whilst both members conceded the risk assessment could have been better, Counsel Assisting's submission does not afford sufficient weight to the fact that the risk assessment was one of the first of its kind and the most comprehensive document in existence. It also fails to recognise that the main factors contributing to those risks (that is, that Ms Gobbo was a criminal barrister acting for the Mokbel cartel, that she was providing valuable information in relation to the Mokbel cartel, and that her use would come under extreme scrutiny and cause embarrassment and criticism to the Force) were duly recorded. Anyone reading the risk assessment would appreciate that such risks were present.¹⁶⁶
92. In relation to Counsel Assisting's submissions at [1532] of Volume 2, although it is conceded that Messrs Sandy White, Smith and Green were aware that Ms Gobbo had attended upon Mr Cooper when he was arrested against their wishes, the SDU members believed her involvement with Mr Cooper ceased after the inconsequential filing hearing. They did not appreciate or believe that Ms Gobbo's involvement represented a risk to the proper administration of justice. If they did, it would have been included in the updated risk assessment. The absence of such an identified risk evidences the lack of awareness by the SDU of any such risk. Further submissions in relation to this issue are set out in the subsequent section relating to Mr Cooper.

D. RESOURCE ISSUES

93. Right from its inception, the SDU suffered a lack of sufficient resources. This was an issue that continued to impact the SDU's ability to perform their role throughout Ms Gobbo's registration.
94. Mr Biggin recalled that when he was overseeing the SDU (from July 2006 onwards), although day to day operations were being funded as best they could, the unit was

¹⁶⁵ Counsel Assisting submissions Volume 2, [1381].

¹⁶⁶ Transcript of Mr Black, 23 October 2019, 8122.33.

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‘running on the smell of an oily rag.’¹⁶⁷ He saw lack of funding as a risk,¹⁶⁸ as increased funding would have meant additional oversight due to the funding accountability that would have come with it.¹⁶⁹

Lack of a dedicated inspector was ‘detrimental’

95. One of Mr Sandy White’s recommendations following the pilot project was that the unit have a dedicated full-time inspector. In ‘Findings of the Dedicated Source Pilot’, he noted that not having a full-time inspector had been ‘detrimental’ to the pilot and that as a result, the controller’s duties were impeded.¹⁷⁰ He noted the Inspector’s role was to set the ethical benchmark and drive the innovation and change necessary for source management practices to advance, as well as be responsible for the day to day management and administration of a high risk and highly accountable office.¹⁷¹ Mr Cowlshaw had recommended the SDU have not one but two inspectors; one as a dedicated full time inspector and the other as an independent inspector to ensure the sterile corridor was being implemented.¹⁷²
96. From the beginning of the pilot, Mr Sandy White had recognised the importance of implementing ‘intrusive supervision’ as a management tool to deal with high risk sources. As controller, he was to be involved in day to day operations, and was responsible for overseeing the relationship between handlers and all sources. This should have been his primary role and main responsibility. Instead, in the absence of a full-time inspector, much of the work of an OIC fell on him to undertake as well.¹⁷³
97. Requests for a full-time inspector continued throughout the period of Ms Gobbo’s registration with the SDU, but were unsuccessful.

¹⁶⁷ Transcript of Anthony Biggin, 9 October 2019, 7496.22.

¹⁶⁸ Transcript of Anthony Biggin, 9 October 2019, 7494.20.

¹⁶⁹ Transcript of Anthony Biggin, 9 October 2019, 7496.22.

¹⁷⁰ Exhibit RC278, Report on the Findings of the Dedicated Source Unit Pilot 1 November 2014 – 30 April 2005, 11.

¹⁷¹ Exhibit RC278, Report on the Findings of the Dedicated Source Unit Pilot 1 November 2014 – 30 April 2005, 11.

¹⁷² Transcript of Doug Cowlshaw, 3 December 219, 10336.23.

¹⁷³ Exhibit RC279, SDU: The value and the future? 33; Transcript of Sandy White, 31 July 2019, 3626.40; Transcript of Sandy White, 3 September 2019, 5363.34.

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98. The absence of a dedicated inspector did not mean the SDU were free from oversight from an inspector. Detective Inspectors Doug Cowlshaw, Dean McWhirter, Rob Hardie and Andrew Glow were variously appointed as Inspector/OIC of the SDU over the course of Ms Gobbo's registration. Although all had responsibilities additional to supervising the SDU, the SDU ensured their Inspector was briefed in relation to Ms Gobbo's management, as evidenced by the Source Management Log and members' diaries. An examination of Inspector Hardie's diaries demonstrate that he was briefed by and conferred with the SDU members as to issues involved in Ms Gobbo's management. He appropriately reported to Mr Biggin. Mr Black outlined Mr Hardie's involvement in his evidence to the Commission.¹⁷⁴ He referred to a management meeting on 17 April 2007 and said this was a clear example of ethical issues being discussed with higher ranking officers.¹⁷⁵ He said the diaries show general and ongoing contact between the SDU and Inspector Hardie.¹⁷⁶ The diaries support that evidence.¹⁷⁷

Lack of administrative support

99. Another issue for the SDU was the lack of administrative support. In December 2005, Mr Sandy White requested administrative support to assist in the preparation of ICR's.¹⁷⁸ He recalled struggling with paperwork, working 'horrendous' hours both in the operational setting and in administration, and that the issue only got worse as time progressed.¹⁷⁹ In February 2006, Mr White again requested administrative support during a briefing with Commander Moloney.¹⁸⁰

100. In March 2006, Mr McWhirter, who was acting as the SDU's Inspector at the time completed his monthly inspection report and wrote that the unit was 'critically understaffed' and that the unit's members were having to spend 'an inordinate amount of time on the computer converting documented human source involvements into

¹⁷⁴ Transcript of Mr Black, 25 October 2019, 8355 to 8376.

¹⁷⁵ Transcript of Mr Black, 25 October 2019, 8369.29.

¹⁷⁶ Transcript of Mr Black, 25 October 2019, 8375.46.

¹⁷⁷ Exhibit RC620, Diaries of Rob Hardie.

¹⁷⁸ Exhibit RC372, Sandy White diary, 19 December 2005.

¹⁷⁹ Transcript of Sandy White, 23 August 2019, 5244.12.

¹⁸⁰ RC381, Sandy White diary, 14 February 2006.

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contact reports’, which was ‘reducing [their] effectiveness’.¹⁸¹ These concerns were repeated in monthly inspection reports in April, May and June of 2006, and continued to be a problem that was never satisfactorily resolved.¹⁸²

101. Mr McWhirter agreed that one of the issues arising from the lack of administrative support was that handlers were so engaged in ensuring all of their contacts were recorded that their ability to reflect on every piece of information a source had told them was hampered.¹⁸³ It is submitted that this would be particularly true in Ms Gobbo’s case, given the enormous volume of material provided over many, many hours of conversation.

102. Superintendent Mark Porter said in his statement:¹⁸⁴

I recall that I spoke to Officer Black and Officer Sandy White that day about Ms Gobbo, but that I did not speak directly to her handlers. I recall that the discussions centred on the fact the SDU had to rotate those who were handling Ms Gobbo because she was contacting the handlers very often and at all hours of the day and night. I also recall that they told me the volume and length of her contact with handlers made it difficult for the SDU members to keep the contact reports up to date.

E. ACCOUNTABILITY DURING THE SDU’S MANAGEMENT OF MS GOBBO

103. This part of these submissions deals with the following:

- a. The SDU’s record keeping practices;
- b. Regular briefings by the SDU to more senior officers;
- c. Audits undertaken in relation to Ms Gobbo and the SDU’s files generally; and
- d. The knowledge (or perceived knowledge) of others in relation to Ms Gobbo’s management.

¹⁸¹ RC816, Four SDU monthly inspection reports from March to June 2006.

¹⁸² Transcript of Sandy White, 3 September 2019, 5405.22; Transcript of Anthony Biggin, 9 October 2019, 7496.40.

¹⁸³ Transcript of Dean McWhirter, 2 December 2019, 10185.1.

¹⁸⁴ Exhibit RC512, Statement of Mark Porter dated 15 August 2019, [31].

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104. Ultimately, it is submitted that the level of transparency with which the SDU conducted itself (as demonstrated by their conduct in relation to these four topics) is entirely inconsistent with Counsel Assisting's various assertions that the SDU's members knew Ms Gobbo's registration represented serious impropriety and took steps to improperly prevent disclosure.¹⁸⁵

The SDU's record keeping practices

105. The SDU kept complete and accurate records of every interaction with Ms Gobbo. Handlers were required to record everything they were told. They could not leave out anything or editorialise. This was part of the process of ensuring that their conduct was transparent and accountable.¹⁸⁶ Such measures were new within Victoria Police and aimed to ensure total transparency and accountability for source managers.¹⁸⁷
106. Every face to face meeting with Ms Gobbo was tape recorded. The contents of every conversation with Ms Gobbo was recorded contemporaneously in the relevant handler's diary (or when their diary wasn't readily available, whatever was at hand, and later recorded in the diary). Diaries were maintained in a timely manner.¹⁸⁸ Those diary entries were subsequently transcribed into an informer contact report (ICR) which was ultimately checked by the controller and submitted to the Human Source Management Unit. All informer management files held at the HSMU were the subject of quarterly inspections.¹⁸⁹
107. As has been seen, members of the SDU kept extensive diary entries of conversations and meetings with other members within Victoria Police. Counsel Assisting refer to the fact Command was not 'slavishly recording' their conduct in diaries.¹⁹⁰ It is fortunate that the SDU were. Without their extensive notes and ICR's, there would be little or no record of what took place during Ms Gobbo's registration.

¹⁸⁵ Counsel Assisting submissions Volume 2, [1646], [2029], [2976], [3027], [4755.7], [4758].

¹⁸⁶ Transcript of Mark Porter, 20 September 2019, 6636.

¹⁸⁷ Transcript of Christine Nixon, 18 December 2019, 11674.34.

¹⁸⁸ Transcript of Dean McWhirter, 2 December 2019, 10185.

¹⁸⁹ Transcript of Sandy White, 2 August 2019, 3836.24.

¹⁹⁰ Counsel Assisting submissions Volume 2, [2047].

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108. The Corporate Management and Review Division (CMRD) had visibility over all of these records, as the independent governance division and policy auditors of Victoria Police.¹⁹¹ The CMRD conducted audits of the SDU from time to time, as evidenced by Mr Black's diary on 14 December 2005 which has been 'signed off' by Bruce Thompson. As can be seen from the diary page, Mr Thompson's signature block stamp records, 'Bruce Thompson BA LLB LLM, Inspector' of CMRD. Relevant entries in relation to Ms Gobbo on that particular day include:¹⁹²

1909: Called 3838 on mobile

- *Going to Waterfront Hotel, Port Melb tonight with Rob Karam + Soli Dan. K (soli) CAUSOVSKI – Thank you dinner.*
- *Still no response from Cooper*
- *Cooper reporting on bail at Avondale Heights*
- *Bickley never turned up re brief served*
- *Must see specialist tomorrow @ [REDACTED]*

109. Entries from the day before include:

Possible avenues against T.MOKBEL

- *Adam AHMED = after losing appeal*
- *Bickley = after reads brief*
> 17-01-06 committal hearing
- ...
- *Danielle MAGUIRE = TM seen Zarah then relationship over*
= Acted for her in past
- *Solicitor 2 = ACC Hearing issues*
= Prepared to go to gaol
= Contempt
- **Mr Noble** = *Launders money for T.M*
= Been to ACC + Question ...

¹⁹¹ Transcript of Sandy White, 23 August 2019, 5211.40; Transcript of Anthony Biggin, 9 October 2019, 7493.22.

¹⁹² Exhibit RC591, Diaries of Officer Black, 14 and 15 December 2005, VPL.0005.0013.1108.

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110. It would have been obvious to anyone reading Mr Black's diary that the source to whom he was speaking was a practising lawyer. This would have been particularly obvious to Mr Thompson, who had a law degree. No issues were raised by the CMRD.
111. Each member's diary was checked and signed off on a fortnightly basis by their immediate superior.¹⁹³ For example, Mr Black's diary is replete with references to Inspector Rob Hardie as the Officer in Charge of the SDU having 'signed off' the diary, indicating he had checked the details and attested to the duties, claims and other business undertaken.¹⁹⁴
112. Additional practices were developed by the SDU to further improve record keeping and accountability:
- a. The keeping of a Source Management Log (SML) was not required by any policy.¹⁹⁵ It was a document created by Mr Sandy White as an aid-memoire and recorded contacts with Ms Gobbo, management issues and decisions, ICR's generated from each meeting, Information Reports (IR's) generated if any, who information was disseminated to, and what was discussed at each source management meeting. Anyone reading the SML would see that risks such as issues with Ms Gobbo's health and threats made against her were recorded and discussed at each monthly management meeting. This complemented the formal risk assessment process.¹⁹⁶
 - b. The SDU maintained a list of people they believed knew the identity of Ms Gobbo and recorded how it was that each person came to know she was a source.
 - c. An 'IR Matrix' was created in order to track, monitor and record information that was being disseminated from the SDU.¹⁹⁷
 - d. Initially unit meetings were recorded in Mr Sandy White's diary. From 6 August 2007, when the unit switched to electronic diaries, these fortnightly meetings were minuted and retained.

¹⁹³ Transcript of Dean McWhirter, 2 December 2019, 10185.35.

¹⁹⁴ Transcript of Mr Black, 29 October 2019, 8417.30.

¹⁹⁵ Transcript of Sandy White, 6 August 2019, 3994.33; Transcript of Mr Black, 23 October 2019, 8109.24.

¹⁹⁶ Transcript of Anthony Biggin, 7554.9.

¹⁹⁷ Transcript of Mr Black, 29 October 2019, 8475.5.

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- e. The SDU commenced a process by which information relating to a human source which was to be used in affidavits for telephone intercept was first checked by the SDU to validate its accuracy.¹⁹⁸
- f. On 7 July 2006, Mr Sandy White directed all staff at the SDU to ensure ICR's were capable of being understood by a 'non-interested' party and that IR's were to include detail as to who the intelligence had been verbally disseminated to.¹⁹⁹

113. The SDU's readiness firstly to implement, but then to embrace and improve record keeping practices over time is inconsistent with assertions by Counsel Assisting that members knew they were acting improperly. The level of detail contained in the SDU records is demonstrative of conscientious members of Victoria Police who were transparent in their dealings with Ms Gobbo and mindful of the importance of maintaining a full and accurate record of decisions made in relation to her registration and management. Members believed they were acting properly and with the imprimatur of senior police command. They were alert to the fact that as a high risk unit, their actions may one day come under scrutiny. Mr Black during his evidence said as follows:²⁰⁰

We were acutely aware from the moment we set up this unit that we would have to justify what we did or, more importantly, what we didn't do. And the amount of documented material we have compiled is probably unprecedented, considering the fact we started as a group of five. The amount of material we gathered and level of scrutiny we're prepared to put ourselves through ... here we are today. I think that speaks volumes of what our objectives were.

The SDU regularly 'briefed up'

114. Despite the absence of a fulltime inspector, the SDU regularly and fully briefed their line superiors and other senior officers in relation to their management of Ms Gobbo and the various issues as they arose. The SDU's actions were overseen by various

¹⁹⁸ Transcript of Mr Black, 25 October 2019, 8408.26.

¹⁹⁹ Exhibit RC403, Sandy White diary, 7 July 2006.

²⁰⁰ Transcript of Mr Black, 23 October 2019, 8130.30.

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levels of management and by the HSMU, which audited SDU compliance with policies and processes.²⁰¹

115. Counsel Assisting at [1343] of Volume 2 submit that as at 16 September 2005:
- a. Each of Mr Sandy White, Mr Peter Smith, Mr Rowe and Mr Mansell knew that Ms Gobbo was acting for Mr Tony Mokbel;
 - b. Each of Mr Sandy White, Mr Peter Smith, Mr Rowe and Mr Mansell well-understood that a barrister could not act in conflict between duties owed to their clients and a role as a human source;
 - c. Each of Mr Sandy White, Mr Peter Smith, Mr Rowe and Mr Mansell should have reported Victoria Police's proposed use of Ms Gobbo as a human source to superior officers other than those who were concerned in or aware of that proposed use, or alternatively to the Director of the Office of Police Integrity;
 - d. Should have insisted that Victoria Police obtain legal advice as to the proposed use of Ms Gobbo as a human source, or satisfied themselves that such advice had been obtained.
116. Save for the first submission, and insofar as they relate to Messrs Sandy White and Peter Smith, the above submissions are disputed by the SDU. Point (b) is addressed later in these submissions. In relation to point (c), implicit in its assertion is that Messrs Sandy White and Peter Smith recognised that the proposed use of Ms Gobbo as a human source represented misconduct. This is unsupported by the evidence and explicitly denied by Messrs Sandy White and Peter Smith. Further, the evidence shows that the SDU did report the proposed use of Ms Gobbo to superior officers other than those concerned in or aware of her proposed use. Acting Superintendent Hill requested the SDU to assess Ms Gobbo on 7 September 2005. On 19 September 2005, he met Messrs Sandy White, O'Brien and Mansell to discuss Ms Gobbo's security issues. Mr Biggin recalled being informed of her registration by Mr Sandy White sometime in October 2005.²⁰² Mr Biggin, at that stage, was a Superintendent with oversight of the Covert Support Division (which did not have line control of the SDU). He played a mentor role to Mr Sandy White.²⁰³ Whilst Mr Biggin recalled

²⁰¹ Exhibit RC512, Statement of Mark Porter dated 15 August 2019, [11] and [17].

²⁰² Transcript of Anthony Biggin, 9 October 2019, 7473.24.

²⁰³ Transcript of Anthony Biggin, 9 October 2019, 7469.38.

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thinking that the registration of a practising barrister was unusual, he did not specifically think that it would be problematic.²⁰⁴

117. In the assessment and early phases of Ms Gobbo's registration, Mr Sandy White briefed his immediate superior, Mr Cowlshaw and, in his absence, others above him. The evidence establishes that:
- a. Assistant Commissioner Simon Overland was briefed on the proposed use of Ms Gobbo on 12 September 2005.
 - b. On 27 September Mr Sandy White met with Acting Commander Ian Thomas to discuss security measures for Ms Gobbo's intelligence. Mr Sandy White believed he had spoken to Mr Thomas about the potential risks of registering a barrister, and was confident he would have given a fulsome briefing. Mr Sandy White discussed Ms Gobbo with Mr Thomas again on 5 October 2005;²⁰⁵
 - c. On 4 October 2005 Mr Sandy White met with Mr McLean of IMU in relation to the secure storage of Ms Gobbo's informer management file. By 7 October 2005 Mr McLean had already received ICR's 1 and 2 as well as IR's 269 and 270;²⁰⁶
 - d. On 4 October 2005 Mr Sandy White provided a 'full briefing' to Commander Moloney in relation to Ms Gobbo; and
 - e. On 26 October 2005 Mr Sandy White briefed his Officer in Charge, Mr Cowlshaw, in relation to the use of Ms Gobbo as a human source.
118. Mr Sandy White also briefed senior members outside of his direct line of command. He kept Acting Superintendent Bob Hill and Commander Purton informed about Ms Gobbo's assessment for registration.²⁰⁷ Commander Purton was briefed on 27 September 2005.
119. Over the period of Ms Gobbo's registration, the SDU knew that Messrs Overland, Cornelius, Masters, Wilson, Moloney, Porter and Purton—all senior officers—were aware of Ms Gobbo's role. The SDU noted that Messrs Brouwer, Ashton and

²⁰⁴ Transcript of Anthony Biggin, 9 October 2019, 7474.6.

²⁰⁵ Transcript of Sandy White, 1 August 2019, 3766.14.

²⁰⁶ Exhibit RC0370, Diary of Sandy White, 4 October 2019; Transcript of Sandy White, 19 August 2019, 4825.21.

²⁰⁷ See, eg, Exhibit RC284, Source Management Log; Exhibit RC305, Diary of Sandy White, 19 September 2005 27 September 2005 and 30 September 2005.

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Fitzgerald of the OPI were also aware of her role.²⁰⁸ High level steering committees for Petra and Briars were aware of her use and indeed sought to use Ms Gobbo themselves. These steering committees had their own legal teams. At no stage did any of these senior officers raise with the SDU any concerns about the propriety of the SDU's conduct.

The role of HSMU

120. The HSMU were the owners of human source policy and practice. The Source Development Unit were the handlers of human sources. The HSMU were the 'gatekeepers' of good practice, policy and policy adherence. They were superior to the SDU in the hierarchical structure.²⁰⁹ Superintendent Porter said that if there were a breach of policy or something was being done the wrong way, it was his job as the Central Source Registrar (CSR) to deal with it.²¹⁰ HSMU received copies of everything that the SDU prepared in relation to a source. Sources were not registered until the acceptance of risk was signed off by the CSR. Mr Porter discussed with Messrs Sandy White and Black that the SDU would not receive lawyer/client information.

Audits undertaken

121. The SDU's management of Ms Gobbo was independently reviewed by Mr Biggin in April 2006. Mr Sandy White was advised of this audit on 19 April 2006—three days before Mr Cooper's arrest. That day, he requested independent oversight of Ms Gobbo's management. In reference to Mr Biggin's review, Mr Sandy White noted in his diary, 'independent review to deal with process being complied with. Consideration [to be given as to] whether [Ms Gobbo] too high risk'.²¹¹

²⁰⁸ See, eg., diary of Mr Fox, 16 August 2007 at 1725. Gavan Ryan tells Mr Fox that Mr Brouwer knows 're 3838'.

²⁰⁹ Exhibit RC586, Biggin response to questions raised by Superintendent Gleeson, 9 May 2012.

²¹⁰ Transcript of Mark Porter, 20 September 2019, 6602.

²¹¹ Transcript of Sandy White, 2 September 2019, 5272.38.

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122. The audit was conducted by Superintendent Biggin at the request of Commander Moloney. The circumstances surrounding Mr Biggin's audit are detailed in Counsel Assisting's submissions.²¹²
123. Mr Biggin was very well respected by the SDU. He was a mentor to Mr Sandy White.²¹³ He was known as someone who had zero tolerance for corruption.²¹⁴ Mr Black described him as 'no shrinking violet'.²¹⁵ Had there been shortfalls in the conduct of SDU members, he would have identified them and briefed Commander Moloney. Mr Moloney as the Central Source Registrar, and the HSMU would then have made a decision as to whether to continue the relationship with Ms Gobbo or not.²¹⁶ It was not a matter for the SDU to decide whether that relationship should continue or cease.
124. Mr Biggin's audit report 'Issue Cover Sheet' to Superintendent Porter dated 28 April 2006 includes the following conclusions:²¹⁷

It is clear within the file that the handlers and controllers have been mindful to risks associated with this human source. These considerations are regularly considered in documentation perused and the risk assessment documentation has been updated as required. It is clear that risks associated with the source continue to remain high, but the risk is being managed at an appropriate level by the right people with the necessary training and attributes. ... The source has a high personal profile ... This is a potential risk to the source & Victoria Police.

125. On 27 April 2006, Mr Biggin met with Mr Sandy White to discuss the audit. Mr Sandy White's diary noted as follows:²¹⁸

*Meet with Supt Biggin re 3838 audit / review.
No issues with file.*

²¹² Counsel Assisting submissions Volume 2, [1500].

²¹³ Transcript of Anthony Biggin, 10 October 2019, 7638.1.

²¹⁴ Transcript of Mr Black, 24 October 2019, 8256.35.

²¹⁵ Transcript of Mr Black, 23 October 2019, 8213.9.

²¹⁶ Transcript of Anthony Biggin, 9 October 2019, 7543.21.

²¹⁷ Exhibit RC277, Audit conducted by Superintendent Biggin re ICS – DSU records.

²¹⁸ Exhibit RC395, Diary of Sandy White, 27 April 2006.

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Should continue with Mokbels via Horthy if HS feels secure and DSU happy.

Discussed reward for HS. Recommend acknowledge appreciation by A/C

Overland.

126. Mr Biggin's report reinforced the SDU's beliefs that they were managing Ms Gobbo in an appropriate manner.
127. In February 2008, Mr Glow became Inspector in Charge of the SDU and Undercover Unit.²¹⁹ Around that time, Mr Biggin recalled that members of the SDU had raised concerns that they were not sure about the source of some of the information being received by Ms Gobbo.²²⁰ Mr Biggin was of the view that Mr Glow—new to the role and with 'fresh eyes'—was in a good position to conduct an audit of Ms Gobbo's relationship with the SDU and make any recommendations.²²¹ In an email from Mr Glow to Messrs Sandy White and Black, he described this process as a 'procedural, ethical and value audit on all human sources, especially [Ms Gobbo].'²²² Although Mr Biggin did not recall whether the requested audit went ahead, he assumed that it had.²²³ Mr Glow did not raise any concerns with the SDU, nor Mr Biggin or other more senior members, about Ms Gobbo's file.
128. In addition to the two audits specific to Ms Gobbo, the practices of the SDU were otherwise reviewed by Superintendent Lucinda Nolan in June 2006. In her audit report,²²⁴ after noting a number of issues to be assessed, Ms Nolan concluded that:²²⁵

The audit revealed that the current management of human sources at the SDU is being conducted at a high level – in all three audit areas of procedural, ethical and value for money. Risk management of issues is exceptional and documentation professional and concise. However, the appropriate

²¹⁹ Exhibit RC1217, Statement of Andrew Glow 1 [1].

²²⁰ Transcript of Anthony Biggin, 9 October 2019, 7565.6.

²²¹ Transcript of Anthony Biggin, 9 October 2019, 7566.7.

²²² Exhibit RC350, Email from Andrew Glow to Officer Sandy White and Officer Black dated 13 February 2008 re: Audit of Human Source, VPL.6025.0002.0533.

²²³ Transcript of Anthony Biggin, 9 October 2019, 7567.40.

²²⁴ Exhibit RC349, Memo to Commander Moloney from Lucinda Nolan, dated 15 June 2006 re: Audit of Human Source Holdings at the Source Development Unit, Victoria Police – June 2006.

²²⁵ Counsel Assisting submissions Volume 2, [1601]-[1603].

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management of files is clearly affected by the lack of administrative assistance.

Counsel Assisting's submissions do not refer to the paragraph set out above when analysing the outcome of the 2006 audit report.

129. Finally, in 2008 the OPI conducted an 'extensive investigation into Victoria Police's human source management'.²²⁶ Mr Sandy White quoted its findings in his document, Source Development Unit – The Value and the Future, as follows:²²⁷

The OPI investigation found that the regime in place for managing high-risk relationships was working well and acknowledged in policing circles as consistent with international best practice.

130. These reports evidence the ethics and professionalism of the SDU generally. They have clear relevance to members' credibility and honesty and the way they believed they were properly managing Ms Gobbo's file.

Others' knowledge of Ms Gobbo's management

131. Members of the SDU became aware or at least believed that others within Victoria Police—and indeed outside the police force—knew of Ms Gobbo's role. A number of these people were in a position to investigate and/or report police misconduct. That they did not, despite their knowledge or perceived knowledge of Ms Gobbo's registration, further reinforced to the SDU that their handling of Ms Gobbo was appropriate. No senior officer raised concerns with the SDU as to the fact that they were obtaining intelligence from a practising barrister.²²⁸
132. Individuals in this category include Messrs Cornelius and Wilson, respectively the Assistance Commissioner and Superintendent of the Ethical Standards Division at the relevant time, and Messrs Ashton and Fitzgerald, then of the Office of Police Integrity.

²²⁶ Exhibit RC587, Annual report of the Office of Police Integrity.

²²⁷ Exhibit RC527, Source Development Unit – The Value and the Future? November 2009, p 53.

²²⁸ Transcript of Rod Wilson, 5 December 2019, 10538.44.

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

F. CONFUSION OVER MS GOBBO'S DUAL ROLES

133. Separate and distinct to her informing, Ms Gobbo's conduct as a barrister assisting clients to cooperate with police jeopardised her safety. This was already an issue when the SDU registered Ms Gobbo in 2005 in light of her involvement with Mr McGrath.
134. Many of the clients Ms Gobbo acted for were part of the same criminal circle. As Mr Bateson described, she was one of a 'small cadre of lawyers who seemed to pop up all the time' in relation to the group of criminals that Purana was targeting.²²⁹ Being part of the cadre came with certain expectations from the group. There was an expectation that if anyone got arrested, the others would be immediately informed or 'tipped off'.²³⁰ There was also an expectation that Ms Gobbo would act in the interests of those higher up in the group over and above any other individual, which meant ensuring that no one 'rolled'.²³¹ This was once characterised in Carl Williams' case as orchestrating a defence by arranging for legal representation.²³² This kind of conduct can be contrasted to what a lawyer should and would advise a client in the normal course of acting in their best interests about the benefits of cooperating with police. It is common for lawyers to persuade their clients to assist police to obtain a sentencing benefit.²³³
135. Lawyers who failed to meet the expectations of significant criminals placed themselves in danger. Counsel Assisting submit that, had Ms Gobbo's role in acting for Mr McGrath been made transparent, it is likely that her clients such as Carl Williams and Tony Mokbel would no longer have regarded her as part of their 'crew'. The ramifications, had her role been made transparent, would have been much graver than simply being ousted from the crew. Ms Gobbo was fearful of retribution by the Mokbels and Carl Williams. She described to her handlers in relation to her

²²⁹ Transcript of Stuart Bateson, 19 November 2019, 9538.8.

²³⁰ An example of this is outlined in Counsel Assisting submissions Volume 2, [534] where Ms Gobbo appears to have 'tipped off' Mr Thomas that Mr Hutchison had been found in possession of drugs supplied by Mr Thomas.

²³¹ See, eg, conversation with Ms Gobbo, Mr Sandy White and Mr Peter Smith, 26 September 2005, VPL.0005.0076.0004 at .0231; RC0787 Transcript of Ms Nicola Gobbo, 20 March 2019, 194-195.

²³² Counsel Assisting submissions Volume 2, [500].

²³³ Transcript of Gavan Ryan, 14 August 2019, 4594.

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involvement with Mr McGrath, 'I'm as bad as the witness if ... anyone finds out. I – I am as good as dead walking but so far no-one's found that out.'²³⁴ These sentiments were not specific to Ms Gobbo because she was a human source. Any lawyer who became involved in the process of their client giving evidence against serious criminals would have held these concerns. As Mr Hatt told the Commission, 'the people that were involved in these matters were extremely dangerous. ... [A]nyone that was assisting the persons who have provided evidence against them was in danger.'²³⁵ An example of this is referred to in Counsel Assisting's submissions in relation to solicitor Mr Jim Valos, when he expressed to police that he felt happy that a statement made by his client against a co-accused had been shredded as he 'did not want his name to appear on same'.²³⁶

136. Ms Gobbo told the SDU about her involvement with Mr McGrath during her first few meetings with Messrs Sandy White and Peter Smith. The issue arose in the context of her fear that Tony Mokbel would find out that she had assisted Mr McGrath to cooperate with police, as opposed to acting in accordance with how his 'cadre of lawyers' should behave. Further, she had not advised Tony Mokbel about the same.²³⁷ She did not go into detail in those meetings about her involvement in editing statements. If she had, the SDU would have been entitled to interpret these events as a client ensuring that his lawyer had checked his statements before he signed them. This was not uncommon. During these conversations, the focus by Ms Gobbo related to concerns about the ramifications from Tony Mokbel and Carl Williams for what in any view was Ms Gobbo acting in the best interests of her client, Mr McGrath.
137. In early 2006 when Ms Gobbo spoke to the SDU about Mr Thomas' desire to assist police,²³⁸ the SDU facilitated this process by advising Mr O'Brien. However, it is evident that the SDU felt Ms Gobbo's involvement with Mr Thomas related to her acting as his lawyer, and that her intention was to assist him to get the best possible discount for his assistance.

²³⁴ Conversation with Ms Gobbo, Mr Sandy White and Mr Peter Smith, 26 September 2005, VPL.0005.0076.0004 at .0231.

²³⁵ Transcript of Mark Hatt, 28 June 2019, 3172.15.

²³⁶ Counsel Assisting submissions Volume 2, [3237].

²³⁷ Exhibit RC0281 ICR3838 (003) 26 September 2005, 14, VPL.2000.0003.1600.

²³⁸ See, eg., exhibit RC0281 ICR3838 (018), 13 February 2006, 151-153, VPL.2000.0003.1737-1739.

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138. There was no ‘conniving’ on the part of the SDU to encourage Mr Thomas to plead guilty and assist police,²³⁹ nor was there a decision to allow Ms Gobbo to abuse her position as an officer of the Court.²⁴⁰ Ms Gobbo had acted as Mr Thomas’ lawyer well before she met the SDU.²⁴¹ Mr Bateson’s evidence was that Mr Thomas continued to express an interest in cooperating police at least from 31 August 2004.²⁴² By 16 September 2005, Mr Thomas was still in custody and had been refused bail, Ms Gobbo having appeared at the application on 5 September 2005. Her involvement during the course of Mr Thomas’ cooperation with police was a continuation of her role as his barrister, trying to get the best possible discount for her client, and it was seen as such by the SDU. Ms Gobbo was not informing on Mr Thomas. Ms Gobbo was informing the SDU of her movements and activities. The SDU were required to monitor her safety and the risks associated with her activities.
139. Mr Sandy White’s recollection was that Ms Gobbo was ‘simply acting as [Mr Thomas’] barrister,’²⁴³ that matters relating to Mr Thomas were referred to Stuart Bateson as the officer in charge of the investigation²⁴⁴ and that the SDU did not want to have any involvement in matters relating to Messrs McGrath, Andrews and Thomas.²⁴⁵ This belief would have been fortified by the fact that Ms Gobbo was reportedly involving her instructing solicitor, Mr Valos, in much of the process.²⁴⁶ Ms Gobbo clearly believed she was acting in Mr Thomas’ best interests, which is what she told the SDU. An ICR on 19 February 2006 records that ‘Ms Gobbo has been asked by Mokbel not to talk to Mr Thomas in the past. She feels that she’d be killed if Mokbel found out that she’d done so. She would still like to talk to Thomas as it would be the right thing to do for Thomas.’ The SDU were concerned that Ms Gobbo’s activities as Mr Thomas’ lawyer helping him to make statements, assist police and receive a significant sentencing discount were placing her life at risk.

²³⁹ Counsel Assisting submissions Volume 2, [452.6].

²⁴⁰ Counsel Assisting submissions Volume 2, [997].

²⁴¹ A summary of her involvement is set out at Counsel Assisting submissions Volume 2, [443]-[448].

²⁴² Exhibit RC0269A Statement of Stuart Bateson, 7 May 2019, 11 [65].

²⁴³ Transcript of Sandy White, 16 August 2019, 4758.26.

²⁴⁴ Transcript of Sandy White, 16 August 2019, 4758.16.

²⁴⁵ Transcript of Sandy White, 6 August 2019, 3958.22.

²⁴⁶ See, eg., Exhibit RC281, ICR3838 (018) 16 February 2006, HS will go see Thomas with Jim Valos; ICR3838 (020) 24 February 2006, HS and Valos cannot think who could represent Thomas; ICR3838 (020) 27 February 2006, Valos does not understand Thomas.

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140. Contrary to Counsel Assisting's assertion that Victoria Police took no steps to prevent Ms Gobbo from acting for Mr Thomas,²⁴⁷ the SDU did the following:
- a. Mr Sandy White recorded speaking to Mr O'Brien in relation to 'minimising [Ms Gobbo's] involvement in process from point of view of compromising self at later court hearings,' which Mr Sandy White said reflected his concern about her role as a source becoming known.²⁴⁸
 - b. On 19 February, Ms Gobbo was advised 'not to get too close to [Mr Thomas] if he starts cooperating with police as it would be an unnecessary risk at this stage.'²⁴⁹ Mr Sandy White took this to mean that if she involved herself in assisting Mr Thomas to cooperate, the Mokbel crew would think she was working with police.²⁵⁰
 - c. On 23 February 2006, Mr Green told Ms Gobbo to 'stay away from Thomas and him assisting police as it will draw attention to her in current position with Tony Mokbel trial etc, etc. Previously acting for McGrath.'²⁵¹ Discussion was also had in relation to finding a different barrister to negotiate for Mr Thomas.²⁵²
 - d. On 27 February 2006 Mr Green advised Ms Gobbo that she should 'not go and see Thomas for police sake. If Thomas asks for her help and in the normal course of her duty she would help then she should do so as she normally ethically would do. This advice was based on discussions with Jim O'BRIEN from Purana. Purana do not care if Thomas rolls over or not but if he does he must go all the way'. Mr Sandy White also noted in his diary that, 'HS to be told "back off" re Thomas'.
 - e. On 21 March 2006 Mr Peter Smith advised Ms Gobbo that her situation would be better if she were not involved with Mr Thomas making statements if possible. Ms Gobbo said she knew this but felt obliged to do so.²⁵³
 - f. On 23 March 2006 Mr Peter Smith discussed with Mr O'Brien the need to recommend another barrister to Mr Thomas very soon.²⁵⁴

²⁴⁷ Counsel Assisting submissions Volume 2, [454].

²⁴⁸ Transcript of Sandy White, 16 August 2019, 4744.28.

²⁴⁹ Exhibit RC0281 ICR3838 (019), 19 February 2006, 159, VPL.2000.0003.1745.

²⁵⁰ Transcript of Sandy White, 16 August 2019, 4745.14.

²⁵¹ Exhibit RC0281 ICR3838 (019), 23 February 2006, 159, VPL.2000.0003.1749.

²⁵² Exhibit RC305, Diary of Sandy White, 23 February 2006.

²⁵³ RC0281 ICR3838 (023), 21 March 2006.

²⁵⁴ Exhibit RC0281 ICR3838 (023), 23 March 2006.

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141. Counsel Assisting misconstrue the purpose of these advices. These matters were raised with Ms Gobbo due to a serious concern by the SDU that Ms Gobbo should not be seen to be involved with someone who was cooperating with police, as it may place her in danger and raise suspicions as to her own role vis-à-vis Victoria Police.²⁵⁵
142. There is no evidence to support the proposition that the above demonstrated an ‘understanding [by Mr Green] of the hopelessly conflicted position Ms Gobbo was in given that she had acted for Mr McGrath.’²⁵⁶ There was no mention of Ms Gobbo’s involvement with Mr McGrath in the excerpts at all.
143. Further, Mr Green was not asked about the passages now relied on by Counsel Assisting to infer such an understanding. Indeed, he was not asked a question about the perceived conflict that arose in relation to Messrs Thomas and McGrath. When asked questions about his state of mind regarding the conflict that arose in relation to Mr Cooper, he noted he had paid attention not to manipulate matters before the Court²⁵⁷ and didn’t feel at the time that what occurred was a corruption of the criminal justice system.²⁵⁸ Mr Green’s advice does not demonstrate an understanding of the ‘hopelessly conflicted position Ms Gobbo was in.’ The Commission should reject Counsel Assisting’s submission at [824] of Volume 2.
144. The SDU did involve themselves in concerns about Ms Gobbo’s safety as a result of her role as Mr Thomas’ barrister. Mr Sandy White held the view that if she involved herself in the statement taking of any clients who turned into prosecution witnesses then this had the potential to compromise her as a source.²⁵⁹ This led to confusion as to how to best protect Ms Gobbo, for example in relation to how she should be referred to in police notes and subsequently, the basis upon which her name would be redacted. The SDU were attempting to limit Ms Gobbo’s dealings with other police officers, but at the same time recognised she had been dealing with Mr Bateson—as a barrister and not a human source—in relation to her representation of Mr Thomas. The sterile corridor principal meant that only the SDU were supposed to be in contact

²⁵⁵ Transcript of Sandy White, 16 August 2019, 4744.28.

²⁵⁶ Counsel Assisting submissions Volume 2, [824].

²⁵⁷ Transcript of Mr Green, 7339.40.

²⁵⁸ Transcript of Mr Green, 8 October 2019, 7355.23.

²⁵⁹ Transcript of Sandy White, 16 August 2019, 4782.17.

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with a human source. Due to Ms Gobbo's dual roles (a human source and a barrister briefed for Mr Thomas), the SDU became involved in issues that should have been dealt with by investigators, and the investigators had the SDU assist with issues they should have dealt with themselves as part of their normal dealings with Mr Thomas' lawyer. Mr Overland acknowledged the difficulties for investigators to recognise the capacity in which Ms Gobbo was acting at any particular time.²⁶⁰ It seems many were confused as to the 'hat' that Ms Gobbo was wearing at various times.

145. An example of the confusion of Ms Gobbo's role can be seen in Mr Green's cross-examination by Counsel Assisting:

Mr Woods: Because of this process playing out between the SDU and Ms Gobbo, it's the case, you would assume, that those people that Cooper was implicating would have no knowledge that this conversation had happened between Gobbo and the handlers. That's correct, isn't it?

Mr Green: Yep, that's correct, yep.

Mr Woods: So they wouldn't be in a position to ask questions about where these various parts of the statements came from should they have filtered through to the statements that were ultimately signed?

Mr Green: No, in the normal circumstances I guess the legal representation would deal with the informant directly if there was something they thought would assist their client in normal circumstances.

Mr Woods: Sorry, can you say that again, I didn't follow that?

Mr Green: If this was to happen without a source angle to it, if this was to happen and a barrister was able to assist their client by sitting down with the informant and saying, "Listen, he's forgotten to include this in his statement and this in his statement and that will make him look better",

²⁶⁰ Transcript of Simon Overland, 22 January 2020, 12190.

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I imagine that would be directly between the informant and the barrister representing the client, ultimately signed off by the client. So, yeah, this is unusual, correct, by the fact that the barrister in this case is also a source.

Ms Gobbo being shown transcripts

146. In light of the SDU's extensive note keeping practices, it seems highly unlikely that there was some sinister motive behind using the SDU to relay to Ms Gobbo the contents of Mr Thomas' transcripts. As the Commission has seen, the SDU documented and recorded everything extensively. A dishonest investigator would simply give Ms Gobbo the transcripts and choose not to record that fact in his notes, rather than provide them to a unit certain to document it. The sterile corridor required the SDU to deal with a source—not the investigators. It is probable that this requirement saw the SDU involved in something that they need not have been. Mr O'Brien provided the transcripts to Mr Sandy White to pass on to Ms Gobbo. He would have been wiser to have had the investigators give the transcripts to her, rather than take a shortcut through the SDU.
147. In Mr Sandy White's report on the findings of the DSU Pilot, he wrote of the SDU's role as a service provider:²⁶¹

A DSU acts as a support service for investigators and as such has a responsibility to ensure that investigators are fully aware of the actions being taken by the DSU on their behalf.

148. Mr Biggin also gave evidence of the role of service providers such as the SDU. He drew a clear distinction as to whose responsibility it was to make decisions in relation to conduct that may affect the course of an investigation, noting as follows:²⁶²

[L]et me be very, very clear, I'm a service provider. I'm a Superintendent in charge of service providers. Task Force Purana belonged to Crime, which is a

²⁶¹ Exhibit RC278, Report on the Findings of Dedicated Source Unit Pilot 1 November 2004 – 30 April 2005, 27.

²⁶² Transcript of Anthony Biggin, 9 October 2019, 7517.43; 7520.7.

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separate command to me. I have no functional control over them, nor would I ever step into the investigative function as a Superintendent over and above Jim O'Brien or Gavan Ryan. That is a role for another Superintendent, it is not for me.

...

Crime Command have their own line of management. If they have concerns ... this is a role for investigators, not for service providers, to resolve.

149. The SDU was a service provider for Purana. When asked by Purana to give Ms Gobbo transcripts in relation to Mr Thomas (and later, material relating to Mr Cooper), the SDU complied with those requests. Because they interacted with Ms Gobbo about the transcripts, the contact was properly and fully recorded.
150. Mr Sandy White told the Commission on a number of occasions that he could not understand why Mr Bateson did not show Ms Gobbo the transcripts himself.²⁶³ He denied that the purpose would have been to conceal the fact that it was done.²⁶⁴ Whatever Mr Bateson's purpose, the overall effect of Mr Sandy White's evidence is that the SDU did not have an understanding that there was anything untoward about what they had been asked to do by Purana, and were responding to investigators' requests in accordance with their role as service providers. Counsel Assisting assume, again, a sinister or improper motive on behalf of Victoria Police. It was clearly, simply a matter of convenience.

Counsel Assisting's submissions as to Mr Sandy White's involvement in relation to Mr Thomas

151. Counsel Assisting at [1078] submit that it is open to find that between approximately 16 September 2005 and June 2007, Mr Sandy White knew that:
- a. Ms Gobbo was a barrister and human source.
 - b. Ms Gobbo had, as his legal representative, assisted in Mr McGraths's statement making process.
 - c. Ms Gobbo was informing on Mr Thomas while purporting to act for him.
 - d. Ms Gobbo was actively assisting the Purana Taskforce at the relevant time.

²⁶³ Transcript of Sandy White, 16 August 2019, 4769.6; 4728.38; 4783.29.

²⁶⁴ Transcript of Sandy White, 16 August 2019, 4769.6.

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- e. Mr Thomas was charged with a double murder and was facing a potential sentence of life imprisonment.
 - f. Mr Thomas was entitled to independent legal representation.
 - g. Ms Gobbo had a conflict of interest between her role as an informer for Victoria Police and legal representative of Mr Thomas.
 - h. Victoria Police was using Ms Gobbo to encourage Mr Thomas to make admissions, enter a plea of guilty and to implicate his associates, or alternatively that Victoria Police was allowing Ms Gobbo to do so.
 - i. Ms Gobbo encouraged Mr Thomas to make admissions, enter a plea of guilty and to implicate his associates in circumstances where she was assisting Victoria Police; and
 - j. Victoria Police had no intention to disclose Ms Gobbo's role to Mr Thomas or anyone Mr Thomas made statements against.
152. To support these submissions, Counsel Assisting claim:
- a. 'Mr Sandy White was personally involved in meetings with his superiors and members of the Purana Taskforce concerning Ms Gobbo and Mr Thomas, set out above.' The meetings are not identified and it is unclear what meetings are referred to.
 - b. Mr Sandy White understood that 'Ms Gobbo had various conflicts of interest.' The footnote to that claim relates to Mr Sandy White's evidence about Mr Cooper, not Mr Thomas.
153. The following further points are made:
- a. Mr Sandy White is said have known that Ms Gobbo had, as his legal representative, assisted in Mr McGrath's statement-making process 'due to his role as Officer in Charge of the Purana taskforce'.²⁶⁵ This proposition has no basis.
 - b. The evidence does not support the proposition that Mr Sandy White knew that Ms Gobbo was 'informing' on Mr Thomas while 'purporting' to act for him. Mr Thomas was already arrested and in custody by the time of Ms Gobbo's registration. He was not committing offences about which Ms Gobbo could

²⁶⁵ Counsel Assisting submissions Volume 2, [1078.2] footnote 1418.

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inform. Although Ms Gobbo kept the SDU apprised of her dealings with Mr Thomas, it is evident that the SDU saw her conduct as consistent with her role as Mr Thomas' barrister. For example, the Source Management Log on 24 July 2006 records that, 'The source is now under suspicion of assisting police, not as a source but in helping an associate become a crown witness.'²⁶⁶

- c. There is no evidence that Mr Sandy White understood that Ms Gobbo had a conflict of interest between her role as an informer and as legal representative of Mr Thomas. Mr Sandy White gave consistent evidence that he believed Ms Gobbo was acting as Mr Thomas' barrister, and that he had no interest in Mr Thomas. As he told the Commission, 'Mr Thomas had nothing to do with me or my guys'.²⁶⁷
- d. The evidence contradicts the assertion that Mr Sandy White knew that Victoria Police was using Ms Gobbo to encourage Mr Thomas to make admissions ... or alternatively, allowing her to do so. As set out above, Mr Sandy White was concerned for Ms Gobbo's safety if she had any involvement with Mr Thomas. He told her that she should stay away from Mr Thomas all together. There is no evidence of any encouragement by the SDU to Ms Gobbo to have Mr Thomas assist police.
- e. There is no evidence to establish that Mr Sandy White knew that Ms Gobbo encouraged Mr Thomas to make admissions, enter a plea of guilty and implicate his associates when she was assisting Victoria Police. Ms Gobbo made clear to the SDU that her conduct in relation to Mr Thomas was 'what was best for him'. Given his consistent desire to assist police, it is likely that any barrister acting in Mr Thomas' best interests would have assisted him as Ms Gobbo did to ensure he received the maximum benefit for his assistance.

154. Counsel Assisting at [1079] of Volume 2 further submit that it is open to the Commission to find that between about September 2005 and June 2007, Mr Sandy White allowed, or alternatively did not prevent, Ms Gobbo representing Mr Thomas, in circumstances where he knew the matters set out above. There are many examples

²⁶⁶ Exhibit RC284, Source Management Log, 24 July 2006.

²⁶⁷ Transcript of Sandy White, 6 August 2019, 4014.2.

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of Mr Sandy White and the SDU attempting to prevent Ms Gobbo from representing Mr Thomas. It is submitted that Counsel Assisting's submission at [1079] is baseless.

155. Counsel Assisting at [1080] of Volume 2 submit that it is open to find that on 19 and 20 April 2006, Mr Sandy White was aware of, and party to, a plan that the Purana Taskforce would no longer directly encourage Mr Thomas to make admissions, enter a plea of guilty and to implicate his associates, rather, confidential transcripts of the discussions between Mr O'Brien, Mr Bateson and Mr Thomas would be provided to Ms Gobbo, a human source who Mr Thomas believed to be his lawyer, in order for Ms Gobbo to encourage Mr Thomas in that regard.
156. There is no evidence that Mr Sandy White was involved in or aware of any such plan. Had he been, it would have been documented in his diary. As previously stated, Mr Sandy White complied with a request from Purana to give Ms Gobbo transcripts, as she was Mr Thomas' lawyer.
157. Counsel Assisting submit that Mr Sandy White's conduct may have constituted a breach of discipline or misconduct under the *Victoria Police Act 2013* (Vic). That legislation was not in existence between 2005 and 2007. It is submitted that the Commission should reject Counsel Assisting's submission at [1081] of Volume 2.

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G. THE HANDLING OF LEGALLY PRIVILEGED AND CONFIDENTIAL INFORMATION

159. Throughout Ms Gobbo's registration, the SDU were alert to the issue of legally privileged information and the need to ensure it was not disseminated.²⁶⁸ Mr Sandy White relied on the definition of legal professional privilege and confidentiality from a manual he had obtained from the United Kingdom.²⁶⁹ The hard copy that he produced to the Commission was marked up and well worn. He had referred to it throughout his time at the SDU.²⁷⁰ Although he conceded that his view on whether information was legally privileged was 'maybe an over simplistic one',²⁷¹ it is submitted that when one looks at what information was ultimately disseminated to investigators, the SDU were largely successful in 'quarantining' information that was the subject of legal privilege to ensure it was never utilised. Counsel Assisting appear to have recognised this to be true when focus shifted from legal professional privilege to conflict of interest, mid-way though the hearings.
160. Superintendent Mark Porter was both CSR and LIR from March to July 2006. He was aware of Ms Gobbo's role as a human source and the risks associated with her use. He said, 'I saw the key risk was the serious risk to her safety. I also understood that there was a risk in a lawyer being a source as it could potentially compromise prosecutions if she provided information that breached confidentiality or legal privilege. Therefore, time would need to be spent by the SDU handlers and controllers ensuring that such information was not received or disseminated.'²⁷²
161. This part of these submissions considers the nature and source of the information Ms Gobbo provided and how that information was handled by the SDU. It also considers some specific examples that have been explored by the Commission throughout its hearings, namely, information relating to Officer Brown, information about Zaharoula Mokbel's matter and the 'Paul Dale notes'.

²⁶⁸ Transcript of Anthony Biggin, 11 October 2019, 7773. Mr Biggin said that Inspector Hardie reported to him that the SDU were telling Ms Gobbo not to provide legally privileged information.

²⁶⁹ Transcript of Sandy White, 2 August 2019, 3792.46.

²⁷⁰ Transcript of Sandy White, 2 August 2019, 3790.20.

²⁷¹ Transcript of Sandy White, 2 August 2019, 3825.43.

²⁷² Exhibit RC512, Statement of Mark Porter dated 15 August 2019, [32].

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The nature of Ms Gobbo's relationship with the Mokbel cartel

162. It was immediately apparent to Messrs Sandy White and Peter Smith during their assessment of Ms Gobbo that she had a large social circle of people who were involved in serious crimes.²⁷³ The targets of Victoria Police may have at times been her clients, but they were also people she saw socially. They included her in conversations about serious criminal activity in a manner that was completely at odds with a professional client/lawyer relationship. They invited her to their children's christenings and birthdays.²⁷⁴ They discussed multiple pending drug importations. They discussed plans to murder their co-accused and otherwise pervert the course of justice. They talked to her about current drug manufacturing. They discussed extensive money laundering activities. As Mr Thomas said in his statement:²⁷⁵

The nature of discussions [with Ms Gobbo] was unusual. They were not normal client-lawyer conversations, based on my experience of what you discuss with your lawyer and what you discuss with others in the presence of your lawyer.

163. Mr Thomas said that Ms Gobbo had been present during discussions about 'whatever crimes we were doing at the time'.²⁷⁶ He said that Tony Mokbel 'always discussed things in front of Gobbo,' as did 'blokes like Jacques El-Hage or Milad, Horty ... Jason ... anyone involved in the Mokbel drug syndicate.'²⁷⁷ He recalled that '[Milad] Mokbel was talking about drug dealings ... and that's when Milad said - I said, "Youse are talking too openly in front of her" and he said she could be guaranteed.'²⁷⁸

164. This is consistent with what Ms Gobbo told the SDU about the first night she had met Mr Thomas. She said:²⁷⁹

²⁷³ Transcript of Sandy White, 31 July 2019, 3604.2.

²⁷⁴ Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Peter Smith, 2 February 2006, VPL.0005.0051.0871 at .0972.

²⁷⁵ Exhibit RC1178, Statement of Mr Thomas, 1 [2].

²⁷⁶ Transcript of Mr Thomas, 10 February 2020, 13627.18.

²⁷⁷ Transcript of Mr Thomas, 10 February 2020, 13627.42.

²⁷⁸ Transcript of Mr Thomas, 10 February 2020, 13627.31.

²⁷⁹ Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Peter Smith, 2 February 2006, VPL.0005.0051.0871 at .0911.

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I vividly remember the night I was introduced to Thomas because Milad introduced me. Thomas had a bag of at least two or three ounces of powder on him, openly he pulled it out in front of me and said, "What are you fuckin' looking at? He's introduced you so you're alright but you know what happens to you if you ever talk."

165. It is acknowledged that Ms Gobbo gave information she had clearly gleaned from her role as Tony Mokbel's barrister during her first meeting with Messrs Sandy White, Peter Smith, Mansell and Rowe on 16 September 2005. However, much of this information that related to ongoing criminal activity. She spoke of Tony Mokbel's desire to bribe a police officer to destroy tapes incriminating him in relation to drug charges,²⁸⁰ that he had tried to blackmail Ms Gobbo by threatening to reveal explicit video tapes of her,²⁸¹ and that he had been buying properties in others' names to avoid the effect of restraining orders.²⁸² She also said that **Mr Luxmore** was presently manufacturing amphetamines for the Mokbels.²⁸³ Mr Sandy White formed the view that there was information she could give that did not relate to her clients, as well as non-privileged information that was relevant to her clients. Provided the latter related to her clients' ongoing criminal activity then it could be acted upon.²⁸⁴
166. There was no plan to obtain evidence from Ms Gobbo against those she represented as is submitted by Counsel Assisting at [1292] of Volume 2. As Mr Biggin explained, a source should never be used to obtain evidence.²⁸⁵ The SDU was an intelligence gathering unit and service provider. In their first meeting with Ms Gobbo, Messrs Peter Smith and Sandy White's first substantive question was '...tell me everything you know about Tony Mokbel.'²⁸⁶ This type of broad question was [REDACTED]

²⁸⁰ RC0267, Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Peter Smith, 16 September 2005, VPL.0005.0037.0014 at .0061.

²⁸¹ RC0267, Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Peter Smith, 16 September 2005, VPL.0005.0037.0014 at .0098.

²⁸² RC0267, Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Peter Smith, 16 September 2005, VPL.0005.0037.0014 at .0103.

²⁸³ RC0267, Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Peter Smith, 16 September 2005, VPL.0005.0037.0014 at .0064.

²⁸⁴ Transcript of Sandy White, 3731.2.

²⁸⁵ Transcript of Anthony Biggin, 9 October 2019, 7480.11.

²⁸⁶ RC0267, Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Peter Smith, 16 September 2005, VPL.0005.0037.0014 at .0028.

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The response telling of what kind of things the particular source [REDACTED] and whether they would [REDACTED] their knowledge of and role in relation to any given subject.²⁸⁷ Of less interest to the SDU was [REDACTED] contained in [REDACTED]

[REDACTED] It is instructive that nothing from the first meeting with Ms Gobbo was disseminated.

167. It is submitted that Messrs Gleeson, Kellam and Ginnane J did not understand the assessment process for a high risk human source. As Assistant Commissioner Paterson, Messrs Sandy White, Black and Superintendent Porter all explained, a potential source is given a number *ab initio*, but several meetings are required to properly assess the source's suitability for registration. Registration only occurs when the resultant risk assessment is accepted by police command.
168. During her second meeting with Messrs Sandy White and Peter Smith on 21 September 2005, Ms Gobbo said that she used to attend the same gym as Tony Mokbel, and that because she had seen him so regularly 'in that capacity', he used to 'talk about a lot of things' with her.²⁸⁸ She was later called by Tony Mokbel and invited to meet a 'whole bunch' of his associates down on Hardware Lane. During the following meeting on 28 October 2005, she recounted what had occurred at a dinner with the Mokbel cartel the night before at Shark Fin Inn. As a result of these social connections, Mr Sandy White did not initially consider there was any risk of receiving legally privileged information.²⁸⁹
169. Ms Gobbo maintained personal relationships with Purana targets during the period of her registration. Ms Gobbo told the Commission that the information she gave the SDU was predominantly information she had gained from these kinds of social interactions.²⁹⁰ The ICR's support this evidence. Some examples that demonstrate the extent of her relationships are set out below:

²⁸⁷ Transcript of Peter Smith, 10 September 2019, 6029.46.

²⁸⁸ Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Peter Smith, 21 September 2005, VPL.0005.0051.0283.

²⁸⁹ Transcript of Sandy White, 31 July 2019, 3612.18.

²⁹⁰ Transcript of Nicola Gobbo, 13677.37.

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Mr Cooper

- a. On 21 September 2005, Ms Gobbo reported that she had been for dinner with Mr Cooper at 'R Bar' in Port Melbourne, where they had bumped into Mr Luxmore and Solicitor 2.²⁹¹
- b. On 3 December 2005—a Saturday—Ms Gobbo mentioned that Mr Cooper had attended her office to repair her printer, and that he had attempted to kiss her.²⁹²
- c. On 25 February 2006, Ms Gobbo told the SDU that she was at Chadstone Shopping Centre with Mr Cooper's Family member [REDACTED].²⁹³

Rob Karam

- d. On 25 November 2005 Ms Gobbo told the SDU that she had had a late night as she ended up at 'Crystal T's' nightclub with Mr Karam and his brother.²⁹⁴
- e. On numerous occasions, Ms Gobbo was invited to travel interstate and overseas with Rob Karam, namely to Queensland, Sydney and Hong Kong.²⁹⁵
- f. On 29 November 2005, Ms Gobbo told the SDU that she was having almost daily contact with Mr Karam for no reason, and that he was calling, sending text messages and wanting to take Ms Gobbo for dinner.²⁹⁶
- g. On 13 March 2006, Ms Gobbo told her handlers that Mr Karam had invited her to the movies.²⁹⁷
- h. On 25 February 2007, Ms Gobbo said that she was going to dinner with Messrs Karam, Mannella and Dayger as Mr Karam had 'something important' to discuss.²⁹⁸

²⁹¹ Exhibit RC0281, ICR3838 (002), 21 September 2005.

²⁹² Exhibit RC0281, ICR3838 (010), 3 December 2005.

²⁹³ Exhibit RC0281, ICR3838 (020), 25 February 2006.

²⁹⁴ Exhibit RC0281, ICR3838 (009), 25 November 2005.

²⁹⁵ Exhibit RC0281, ICR2958 (017), 3 May 2008; Exhibit RC0281, ICR2958 (028), 17 July 2008; Exhibit RC0281, ICR3838 (115), 6 December 2007; Exhibit RC0281, ICR2958 (001), 24 January 2008; Exhibit RC0281, ICR3838 (019) 19-23 February 2006; Exhibit RC0281, ICR3838 (030) 27 April 2006; Exhibit RC0281, ICR3838 (040) 4 August 2006; Exhibit RC0281, ICR3838 (053) 19 November 2006; Exhibit RC0281, ICR3838 (070) 17 March 2007; Exhibit RC0281, ICR3838 (084) 21 June 2007; Exhibit RC0281, ICR3838 (118) 7 January 2008; Exhibit RC0281, ICR3838 (118) 9 January 2008; Exhibit RC0281, ICR3838 (118) 10 January 2008; Exhibit RC0281, ICR2958 (012) 4 April 2008; Exhibit RC0281, ICR2958 (014) 14 April 2008; Exhibit RC0281, ICR2958 (016) 24 April 2008; Exhibit RC0281, ICR2958 (028) 15 July 2008; Exhibit RC0281, ICR3838 (117) 31 December 2017.

²⁹⁶ Exhibit RC0281, ICR3838 (010), 29 November 2005.

²⁹⁷ Exhibit RC0281, ICR3838 (004), 13 March 2006.

²⁹⁸ Exhibit RC0281, ICR3838 (017), 25 February 2007.

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- i. On 28 June 2007, Ms Gobbo went for dinner with Messrs Karam, Bugeja, Grizos and Higgs and discovered that a major drug importation would be moved with six to seven other containers where there was no surveillance.
- j. On 1 July 2007, Ms Gobbo attended a dinner at 'La Notte' with Messrs Karam, Higgs, 'Baldy Bob', Dagher and Sergi where an update was given in relation to the 'container import'.
- k. On 15 August 2007, Ms Gobbo attended dinner at the Waterfront with Messrs Karam, Sergi, Bugeja and others.²⁹⁹
- l. On 13 October 2007, Ms Gobbo was invited to the races with Mr Karam. She was told a 'few boys will be there', 'doing business' (ie., importing). She was told by the SDU not to go.³⁰⁰
- m. On 17 March 2008, Ms Gobbo told her handlers that she had been out with Rob Karam the night before until 2.00am, and that Mr Karam had been involved in an importation of ecstasy with heart logos on them.³⁰¹

The Mokbels

- n. On 1 October 2005, Ms Gobbo was asked to invest in Horty Mokbel's oil exploration company.³⁰²
- o. On 27 October 2005, Ms Gobbo attended a dinner at Shark Fin restaurant with seven of Tony Mokbel's associates, during which Milad Mokbel asked her what would happen if an informer witness 'disappeared.'³⁰³
- p. On New Years' Eve of 2005 she attended a party at Tony Mokbel's home.³⁰⁴

Jacques El Hage and Adriano Cendron

- q. On 26 June 2007, during a dinner that Ms Gobbo was at with Jacques El Hage and Adriano Cendron, Mr El Hage sold drugs to Mr Cendron.³⁰⁵

²⁹⁹ Exhibit RC0281, ICR3838 (095), 15 August 2007.

³⁰⁰ Exhibit RC0281, ICR3838 (104), 13 October 2007.

³⁰¹ Exhibit RC0281, ICR2958 (009), 17 March 2008.

³⁰² Exhibit RC0281, ICR3838 (004), 1 October 2005.

³⁰³ Exhibit RC0281, ICR3838 (007), 28 October 2005.


³⁰⁴ Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Peter Smith, 12 January 2006 at .0628; Exhibit RC0281, ICR3838 (014), 31 December 2005.

³⁰⁵ Exhibit RC0281, ICR3838 (085), 26 June 2007.

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- r. On 4 July 2007, Ms Gobbo attended another dinner with Messrs El Hage and Cendron. During the night, they went outside to traffick drugs.³⁰⁶
- s. On 23 July 2007, Ms Gobbo attended another dinner with Messrs El Hage and Cendron and noted the 'phone rang all night' with cocaine deals. She noted that Mr El Hage was the 'go between' between Horty Mokbel and 'Oggy'.
- t. On 2 September 2007, Ms Gobbo told the SDU that Mr Cendron's 40th birthday was coming up and that she did not want to go and needed an excuse to 'get out of it.' It was the same night as Rob Karam's birthday. She ultimately went out with Rob Karam to the Steakhouse in Carlton.³⁰⁷
- u. On 31 October 2007, Ms Gobbo met with Mr El Hage and someone from Hocking Stuart. Mr Cendron could not make it. There was discussion about Horty Mokbel's race horse.³⁰⁸

Mr Ketch

- v. On 14 September 2007, Ms Gobbo said she was having dinner with **Mr Ketch** in Carlton.³⁰⁹
- w. On 20 September 2007, Ms Gobbo said that **Mr Ketch** had invited her to the Melbourne Show with his kids.³¹⁰
- x. On 2 November 2007, Ms Gobbo indicated she was going to give Mr Karam her VRC pass for the Melbourne Cup the following week.³¹¹
- y. On 23 January 2008, Ms Gobbo was invited to Sydney for the weekend with **Mr Ketch**³¹² 

170. Often the source of Ms Gobbo's information was not the subject of the information itself. That is, it was obtained on a 'third hand' basis:

³⁰⁶ Exhibit RC0281, ICR3838 (088), 4 July 2007.

³⁰⁷ Exhibit RC0281, ICR3838 (098), 2 September 2007; Exhibit RC0281, ICR3838 (098) 5 September 2007.

³⁰⁸ Exhibit RC0281, ICR3838 (107), 31 October 2007.

³⁰⁹ Exhibit RC0281, ICR3838 (100), 14 September 2007.

³¹⁰ Exhibit RC0281, ICR3838 (101), 20 September 2007.

³¹¹ Exhibit RC0281, ICR3838 (107), 2 November 2007.

³¹² Exhibit RC0281, ICR3838 (119), 23 January 2008.

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- a. On 21 September 2005, Ms Gobbo said that Mr Cooper told her that Messrs Jamou, Younan and **Mr Luxmore** were cooking amphetamines for the Mokbels.³¹³
- b. On 26 September 2005, Ms Gobbo said Solicitor 1 had told her that there was a \$250,000 contract on Mr Cooper's life by the Mokbel brothers, because he could potentially implicate them.³¹⁴
- c. On 27 September 2007, Ms Gobbo said that during a dinner at Shark Fin Restaurant Milad Mokbel had told her that Mr Cooper was in [REDACTED].³¹⁵
- d. On 25 October 2005, Ms Gobbo said that Mr Cooper had told her that Horthy Mokbel had [REDACTED] of chemicals used to make amphetamines.³¹⁶
- e. On 27 October 2005, Ms Gobbo said that Horthy or Milad had told her that Tony had received a warning that he was going to be arrested as someone who was part of the SOG of Victoria Police had seen his name on a whiteboard.³¹⁷
- f. On 5 December 2005, Ms Gobbo said that during a meeting with Mr Karam he had told her information about 'Ronnie' from the Hells Angels and his connection with Tony Mokbel.³¹⁸
- g. On 9 December 2005, Ms Gobbo said that Mr Cooper confirmed it was Shane Moran who had supplied Milad Mokbel with [REDACTED] of ketone.³¹⁹
- h. On 21 June 2007, Ms Gobbo told the SDU that while with Messrs Bugeja and Zerna at court that day she had overheard that George Lipp had a speed lab and pill press and was currently cooking.³²⁰
- i. On 2 and 3 September 2007, Ms Gobbo said that **Mr Ketch** had told her that Tony Bayeh had been assaulted overnight in relation to a firearm that he discharged in the past. **Mr Ketch** told Ms Gobbo that Mr Bayeh had half an ear missing and that 'Karl Daboose' was responsible.³²¹
- j. On 9 September 2007, Ms Gobbo said she had seen [REDACTED] at the [REDACTED] [REDACTED] that morning. He told her that [REDACTED] had put a [REDACTED] on **Mr Saturn**.³²²

³¹³ Exhibit RC0281, ICR3838 (002), 21 September 2005.

³¹⁴ Exhibit RC0281, ICR3838 (003), 26 September 2005.

³¹⁵ Exhibit RC0281, ICR3838 (004), 27 September 2007.

³¹⁶ Exhibit RC0281, ICR3838 (007), 25 October 2005.

³¹⁷ Exhibit RC0281, ICR3838 (007), 27 October 2005.

³¹⁸ Exhibit RC0281, ICR3838 (011), 5 December 2005.

³¹⁹ Exhibit RC0281, ICR3838 (011), 9 December 2005.

³²⁰ Exhibit RC0281, ICR3838 (084), 21 June 2007.

³²¹ Exhibit RC0281, ICR3838 (098) 2 and 3 September 2007.

³²² Exhibit RC0281, ICR3838 (099), 9 September 2007.

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- k. On 3 October 2007, Ms Gobbo provided the SDU with information about ‘Tom Karas’, who had laundered money for the ‘Carlton Crew’. She noted that this information had come from **Mr Ketch**.³²³
- l. On 8 November 2007, Ms Gobbo said that she had been told by Rob Karam that **Mr Ketch** was in a lot of debt due to his horse racing.³²⁴
- m. On 7 January 2008, Ms Gobbo said that **Mr Ketch** had told her about a container arrival in Adelaide for Rob Karam, and that the drugs were ‘going like hotcakes.’³²⁵
- n. On 24 January 2008, Ms Gobbo said she had found out from Rob Karam that Mr Dagher was ‘running around town with three handguns trying to sell them.’³²⁶
171. These are just some examples of intelligence gathered in social circles. There are numerous examples in the ICR’s.
172. This information was not the subject of legal privilege and, if the SDU deemed it appropriate, when considered valuable, could be disseminated to investigators.
173. A striking example of such information is set out in Mr Fox’s summary of the ICR’s relating to Matthew Johnson and Anton Clait.³²⁷ In those ICR’s, Ms Gobbo told the SDU that Messrs Karam and Manella had discussed a failed attempted murder designed to abort a criminal trial. Mr John Higgs’ attempt to jury tamper was also discussed. It is submitted that Ms Gobbo should be commended for informing in relation to these matters. She may have saved Mr Clait’s life, as federal police acted on the intelligence supplied.
174. Ms Gobbo’s evidence in relation to this incident was as follows:

Mr Chettle: You provided information that came, as you’ve said before, from people you were predominantly socialising with?

³²³ Exhibit RC0281, ICR3838 (103), 3 October 2007.

³²⁴ Exhibit RC0281, ICR3838 (109), 8 November 2007.

³²⁵ Exhibit RC0281, ICR3838 (118), 7 January 2008.

³²⁶ Exhibit RC0281, ICR2958 (001), 24 January 2008.

³²⁷ Exhibit RC506, Matthew Johnson summary prepared by Officer Fox.

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Ms Gobbo: Yeah, I was – I basically was, became like a piece of furniture in the room and people spoke openly in front of me.

Mr Chettle: During the course of the trial that you acted for Robbie Karam there were several co-accused who – they'd all go out and have dinner together, wouldn't they, during the trial?

Ms Gobbo: Um, on – no, there was one co-accused who did and there was an accused in another trial for an importation that joined us.

Mr Chettle: I'm talking about Mannella. We can mention him. Was he one?

Ms Gobbo: Um, yes, but he wasn't in Mr Karam's trial. He was in a separate importation trial.

Mr Chettle: But he would be socialising with you?

Ms Gobbo: Yes.

Mr Chettle: Mr Higgs?

Ms Gobbo: Yes.

Mr Chettle: At those discussions – this is an example of the information that you provided – it became apparent that they wanted to do something to disrupt one of the trials that was being run?

Ms Gobbo: Yes, yes, yes.

Mr Chettle: And indeed they asked you for advice as to what would happen to a trial if one of the co-accused got killed?

Ms Gobbo: Yeah, there were all kinds of hypotheticals put about, not as in planning kind of conversations, but more along the lines of what would

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be the, um, consequences as in what would cause a retrial, what would cause the jury to be lost, those kinds of questions.

Mr Chettle: John Higgs, it became apparent to you that John Higgs was actively seeking a way to try and get to the jury in one of the trials?

Ms Gobbo: Um, I don't specifically recall that but I wouldn't dispute it if there's a note about it.

Mr Chettle: There is, and the police took steps to deal with that.

Ms Gobbo: Right.

Mr Chettle: I'll come to another – one of the men on trial was a man called Anton Clait, wasn't there?

Ms Gobbo: Yes, yes.

Mr Chettle: And it became apparent after the event that this group had been planning to have Mr Clait murdered?

Ms Gobbo: Correct.

Mr Chettle: You were told, in the course of these social gatherings, that a man called Matthew Johnson had been engaged to carry out the killing but he went to the wrong place.

Ms Gobbo: That's right. I was told, um, afterwards. They were kind of laughing about it.

Mr Chettle: They had discussions about who was going to pay for his fees and things of that sort?

Ms Gobbo: Yes, correct.

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175. From an intelligence gathering perspective, it was of benefit to Victoria Police that Ms Gobbo had these kinds of social connections with criminals. However, she was not ‘actively encouraged’ to build such relationships.³²⁸ Ideas including acting as ‘RSVP girl’ for Mr Cooper’s 40th [REDACTED] party and taking photos of guests at the party were Ms Gobbo’s own.³²⁹
176. Rather than actively encouraging Ms Gobbo to pursue relationships with criminals, Ms Gobbo was initially reminded that it was better to maintain the status-quo,³³⁰ and later in her registration she was actively discouraged from seeing the Mokbels and others including Mr Gatto.
177. On 15 February 2006 Ms Gobbo was told as follows:³³¹

Mr Peter Smith: Don’t extend yourself for our purposes. Don’t – don’t strain relationships, do – do things that are untoward and don’t – don’t put yourself out time-wise, waiting around for hours for someone who said they’re gonna turn up when they may not.

[...]

Don’t stuff up your personal life for us because ... I know sometimes it’s useful and we ... appreciate it but....

[...]

But if you remember, what I did say to you is you do what’s right with that relationship.

[...]

What I’m saying is if you think we want you to hang around for hours and that’s – you know, that stuffs your life up and – and it’s not in line with what the relationship is anyway, I’m saying don’t do it. You do what’s appropriate for the relationship.

³²⁸ Counsel Assisting submissions Volume 2, [1810].

³²⁹ Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Peter Smith, 6 February 2006, VPL.0005.0051.0871 at .1016.

³³⁰ Transcript of Mr Peter Smith, 11 September 2019, 6107.17.

³³¹ Transcript of conversation with Ms Gobbo, Mr Peter Smith and Mr Green, 15 February 2006, VPL.0005.0051.1059 at .1278.

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178. Counsel Assisting refer to the ‘cock tease approach’ as a strategy that Ms Gobbo was to employ with Mr Cooper.³³² This was Ms Gobbo’s terminology, not the SDU’s.³³³ The SDU did not encourage Ms Gobbo to have a semi-romantic or ‘cock tease’ type relationship with anyone.³³⁴ Indeed, on 9 March 2006 during a conversation about others thinking Mr Cooper was ‘in love’ with Ms Gobbo, the following exchange took place:³³⁵

Mr Sandy White: You can stop it if you want to stop it.

Ms Gobbo: How?

Mr Sandy White: What? Stop Mr Cooper.

Ms Gobbo: How? Listen. How? I can’t cut these people off tomorrow. I can’t do that.

Mr Sandy White: Why not with Mr Cooper, for example?

Ms Gobbo: One, because I’m supposed to do his plea. Secondly ---

Mr Sandy White: But you could still set – set him straight....

179. There is then conversation about how Ms Gobbo had already had a discussion with Mr Cooper in December 2005 about not being so dependent on her, and Ms Gobbo noted a difficulty in pulling back from Mr Cooper given he might be arrested and suspect it was her speaking to police. She then told the SDU that she couldn’t ‘pull back’ from Rob Karam, that she was worried she had gone ‘off track’ as the purpose of her informing was ‘supposed to be the Mokbels’, before noting that the Mokbels

³³² Counsel Assisting submissions Volume 2, [1810].

³³³ See also, conversation with Ms Gobbo, Mr Sandy White, Mr Peter Smith and Officer Malachite² February 2006, VPL.0005.0051.0871 at .1045, where Ms Gobbo also refers to a dinner with Mr Cooper as ‘an attempt to have sex dinner’.

³³⁴ Transcript of Mr Peter Smith, 11 September 2019, 6107.27; Transcript of Mr Green, 8 October 2019, 7446.6.

³³⁵ Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Peter Smith, 9 March 2006, VPL.0005.0051.1281 at .1323.

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had told her she had to get Mr Cooper's matter adjourned so that he could keep cooking for them. Ms Gobbo later returned to the subject of Rob Karam and said that she wasn't really speaking to him until she started speaking with the SDU and now feels she can't pull back without looking suspicious. Mr Sandy White then suggested ideas about how Ms Gobbo might be able to 'pull back':

Mr Sandy White: I'm just thinking, holding that point that you say it looks suspicious. Is there methods or angles that can be used to slowly back down? Perhaps not cut off but, you know, I don't know. Can something – well, like, look at it this way. If the pressure got so great you got sick, well, everything would have to stop tomorrow morning, wouldn't it?

Ms Gobbo: Nuh.

Mr Sandy White: You know, if you ---

Ms Gobbo: They'd turn up to whatever hospital like they did last time ...

180. There are countless other examples of the SDU's attempts to encourage and/or assist Ms Gobbo to distance herself from underworld figures:
- a. On 23 February 2006, Mr Green told Ms Gobbo to stay away from Mr Thomas and his assisting police;
 - b. On 18 October 2006, Mr Sandy White's diary records instructions given to Ms Gobbo's handlers that she is 'to be encouraged to withdraw from relationships with targets.'³³⁶
 - c. On 5 March 2007, Mr Sandy White reiterated to Ms Gobbo that he didn't think she should have had 'anything to do with Horty [Mokbel] after the way he's treated [her] over the last year.'³³⁷
 - d. On 13 October 2007, Ms Gobbo was told not to go to the races with Mr Karam.

³³⁶ Exhibit RC410, Diary of Sandy White, 18 October 2006.

³³⁷ Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Anderson, 5 March 2007, VPL.0005.0127.0308 at .0527.

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- e. On 14 October 2007, Ms Gobbo was that she should not feel as though she has to go to dinner with Mr Karam and that she should stay home.
- f. On 17 October 2007, Ms Gobbo was advised not to go to the Cox Plate with Docket Waters.
- g. On 21 November 2007, Ms Gobbo was encouraged to stay home and rest rather than go for dinner with Mr Karam who had invited her to Romantica's with Mr Higgs.
- h. On 6 April 2008, Ms Gobbo was told she was not tasked by the SDU in relation to Mr Gatto;
- i. On 26 April 2008, Ms Gobbo was told not to go to Hong Kong with Mr Karam;
- j. On 10 June 2008, the handlers discussed Ms Gobbo's health and the need to 'wind her up.' She was advised to take a three month break to 'cut ties with these people'.
- k. On 17 June 2008, Ms Gobbo was cautioned about getting too close to Mr Gatto and making the same mistake that she made with the Mokbels;
- l. On 16 September 2008, she was told that she was not tasked into Mr Gatto, that the intelligence gathering phase was over, that she should move on with her life,

181. These examples refute any suggestion that Ms Gobbo was encouraged to develop closer relationships with those about whom she was informing. They also demonstrate that much of the information Ms Gobbo was providing to Victoria Police was gained in the context of relationships that fell well outside that of a lawyer/client relationship.

Directions in relation to the provision of legally privileged information and the handling of same

182. The SDU did not actively seek information that was subject to legal privilege.³³⁸ Early on in Ms Gobbo's registration, in February 2006, Mr Sandy White noted that handlers should not encourage conversations in relation to Tony Mokbel's trial, as it could be taken out of context, for example, as an attempt to pervert the course of

³³⁸ Transcript of Mr Black, 23 October 2019, 8133.11.

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justice.³³⁹ Indeed, Ms Gobbo was told by the SDU on a number of occasions that they did not wish to receive intelligence that was legally privileged.³⁴⁰ An example of this is when Ms Gobbo approached the SDU with a statement from Dave Waters. Despite her assurances that she was not representing Mr Waters and that they had only spoken in a friendly capacity, the SDU told Ms Gobbo that they would not accept the statement in the event that it may ultimately be said to be part of his defence.³⁴¹

183. Notwithstanding these directions, Ms Gobbo did at times provide information which was legally privileged. When this occurred, the SDU were obliged to record what they had been told into their diary and subsequently an informer contact report.
184. Mr Blayney, who as Counsel Assisting recognised, has significant understanding of informer policy, was asked about this process as follows:³⁴²

Mr Woods: Do you think – given your significant understanding of informer policy, one of the issues that’s been identified by the human source managers is, “Well, whether or not it was information that we should or should not have been hearing from her or she should or should not have been sharing with us, our job was to write everything down in the ICRs”. You can see obviously Victoria Police got themselves into a tangle with Ms Gobbo once she was registered because it threw up all of these problems. Firstly, you accept that’s the case, there was a significant --- ?

Mr Blayney: Look I think the function of writing everything down or recording everything is sound.

Mr Woods: Yes?

³³⁹ Transcript of Sandy White, 4742.18.

³⁴⁰ Statement of Mr Peter Smith, 1; Transcript of Sandy White, 31 July 2019, 3604.2; Transcript of Nicola Gobbo, 11 February 2020, 13677.11.

³⁴¹ Exhibit 0281, ICR3838 (108), 5 November 2011.

³⁴² Transcript of Jack Blayney, 3 December 2019, 10250.45.

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Mr Blayney: It's what you do with it that's the challenge. ... And clearly if that discussion was closed down and nipped in the bud when it was occurring ... then this information would not be either written down or on tape. ... But simply if it does get itself into a situation where it is written down or is on tape, the decision-making then is what to do with it is the challenge.

185. Having recognised information provided by Ms Gobbo was legally privileged, the SDU ensured the information was not then disseminated. In this regard, the SDU operated in much the same way as the Special Projects Unit ('SPU'), who listen to and record all conversations over the telephone but only pass on those that are not the subject of client legal privilege. As Mr Black said, 'we can't control what comes out of [Ms Gobbo's] mouth and what she decides to discuss with us. Our job is to sit there and listen and set some parameters and that's exactly what was done. ... And the question I say is well, what can we do with that information? She told us. We wrote it down. We didn't action it. Nothing was disseminated.'³⁴³ Mr Overland also gave evidence that he did not see anything that suggested that the SDU targeted privileged information about Ms Gobbo's current clients.³⁴⁴
186. Individual handlers dealt with Ms Gobbo's preparedness to divulge privileged information in various ways, though all recognised that it was not to be disseminated. As Ms Gobbo told the Commission:³⁴⁵

If it were the case that, um, it was a particular client or someone else's specific plan about, or instructions about a defence or a trial matter, um, it just wasn't even a topic or it wasn't, as in they might say, "Well, what are you working on?" I'd say this topic but the detail of it just wasn't, it just wasn't relevant to all the other stuff we were talking about.

Ms Gobbo confirmed that the SDU were focussed on future and ongoing crime.³⁴⁶

³⁴³ Transcript of Mr Black, 23 October 2019, 8133.26.

³⁴⁴ Transcript of Simon Overland, 22 January 2020, 12191.

³⁴⁵ Transcript of Nicola Gobbo, 11 February 2020, 13677.42.

³⁴⁶ Transcript of Nicola Gobbo, 11 February 2020, 13677.42.

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187. Mr Peter Smith noted that it was usually his role as a handler to ask questions and obtain as much information as he could on all subjects from all sources, not just for intelligence gathering purposes, but as a means of assessing risks, assessing a source's motivations and ascertaining how much a source knew about other individuals. However, when Ms Gobbo moved onto a topic about her clients, Mr Peter Smith would 'shut down' that conversation by deliberately not asking any questions (something he found highly unusual and contrary to his training) or by changing the subject.³⁴⁷ Mr Green also said he would steer the conversation away from topics involving matters before the Courts.³⁴⁸ Mr Fox expressly recorded in his ICR's where information he considered to be legally privileged was 'not disseminated as info relates to defence legal issues,'³⁴⁹ or words to that effect.
188. Mr Fox in his second statement to the Commission listed many examples where legally privileged material was not disseminated. Mr Peter Smith also listed examples in his second statement.
189. There are numerous entries in the ICR's that demonstrate the SDU's 'quarantining' of legally privileged material. Some of these are:
- a. On 21 May 2007, Ms Gobbo provided handlers with a copy of Mr Karam's chronology that she had prepared for his current trial, which she had compiled from the police brief. The chronology was not taken by handlers and was left with Ms Gobbo. Nothing about this was disseminated;³⁵⁰
 - b. On 19 and 22 July 2007, Ms Gobbo discussed Tony Mokbel's extradition proceedings. It was noted that legal defence strategies for Tony Mokbel were not to be disseminated. On 23 July 2007 Ms Gobbo was told that material relating to Tony Mokbel's extradition (which had come to Ms Gobbo from his solicitor) would not be disseminated, but that matters relating to proceeds of crime would be.³⁵¹

³⁴⁷ Exhibit RC485, Second statement of Peter Smith, 1.

³⁴⁸ Exhibit RC561, Statement of Mr Green, 29 May 2019, 6 [16].

³⁴⁹ See, eg., ICR3838 (101) 20 September 2007; ICR3838 (101) 20 September 2007.

³⁵⁰ Exhibit RC0281, ICR3838 (080) 21 May 2007.

³⁵¹ Exhibit RC0281, ICR3838 (091), 19 and 22 July 2007; Exhibit RC0281, ICR3838 (092), 23 July 2007.

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- c. On 22 August 2007, Ms Gobbo told the SDU information about Mr Stumencovich's committal. It was noted that this was 'not disseminated re legal privilege issues'.³⁵²
- d. On 14 September 2007, Ms Gobbo told her handlers that she had been at a conference with Phil Priest in relation to defence strategy for Roula Mokbel's case. The ICR notes, 'Action: Not disseminated owing to info being defence legal strategy.'³⁵³
- e. On 20 September 2007, Ms Gobbo told her handlers that Mr Fezollari had been arrested by the Drug Squad and she gave him 'her normal legal advice.' This was not disseminated 'as information relates to defence legal issues.'³⁵⁴
- f. On 21 September 2007, Ms Gobbo discussed Faruk Orman's brief and noted that she could not see the relevance or how Mr Gatto and Roberta Williams' trial transcripts were admissible. She was told by the SDU that this was a matter for the investigators. Nothing was disseminated.³⁵⁵
- g. On 2 October 2007, Ms Gobbo told Ms Gobbo information about Tony Mokbel's extradition from Greece. The SDU recorded, 'Action: Not disseminated re defence council [sic] intel. SDU management only re ensuring HS avoids this case.'³⁵⁶
- h. On 5 November 2007, Ms Gobbo was given express instructions not to copy a statement of David Waters. The ICR noted, 'We do not want it and it will not be passed onto investigation.' Ms Gobbo told the SDU that she was not representing Mr Waters, but that he had only spoken to her in a friendly capacity. The ICR states, 'HS advised even though she is not representing Waters, handler does not want doc as could be said to be part of his defence ultimately.'³⁵⁷

190. It is ultimately submitted that the records show that the SDU were conscious of the issue of legal privilege and careful to ensure such information was never disseminated.

³⁵² Exhibit RC0281, ICR3838 (096), 22 August 2007, VPL.2000.0003.2716.

³⁵³ Exhibit RC0281, ICR3838 (100), 14 September 2007, VPL.2000.0003.2805.

³⁵⁴ Exhibit RC0281, ICR3838 (101), 20 September 2007, VPL.2000.0003.2823.

³⁵⁵ Exhibit RC0281, ICR3838 (101), 21 September 2007, VPL.2000.0003.2826.

³⁵⁶ Exhibit RC0281, ICR3838 (102), 2 October 2007, VPL.2000.0003.2841.

³⁵⁷ Exhibit RC0281, ICR3838 (108), 5 November 2007.

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Officer Brown, ‘throwing LPP out the window’ and the 24 July 2006 meeting

191. The SDU concede that intelligence as to Officer Brown’s alleged theft of money from Mr Ahmed was disseminated to ESD. This was done on instructions from Mr Biggin, and in accordance with the Standard Operating Procedures.³⁵⁸
192. Ms Gobbo’s reference to ‘throwing LPP out the window’ was an angry response to ESD approaching her in relation to Officer Brown.³⁵⁹ It was one of her rants. Mr Sandy White’s view was that she hadn’t ‘thrown the concept of legal privilege’ out the window, but rather that she was angry about the fact that he had spoken to ESD.³⁶⁰ Mr Peter Smith, when played this part of the conversation, thought it sounded like a ‘bit of a rant’. He said, ‘But does she really mean that? I don’t know ... because I don’t think that’s right.’³⁶¹ Ms Gobbo confirmed this sequence in her evidence before the Commission.³⁶²
193. Counsel Assisting submit at [1646] of Volume 2 that all SDU members knew that the use and management of Ms Gobbo as a source represented serious impropriety of a scale warranting a Royal Commission. This is clearly an extreme overreach. The proposition is absurd when notes, diaries and evidence are reviewed.
194. Ms Gobbo had informed the SDU of Mr Ahmed’s allegation that Officer Brown had stolen money from him at his second arrest. At Mr Biggin’s direction, that intelligence was passed to ESD. The Standard Operating Procedures mandated reporting of suspected corruption to ESD. Police officers have an ethical obligation to report serious corruption. There is also, obviously, an ethical obligation not to disseminate legally privileged material. This ethical conflict was resolved by Police Command, who directed the information to be passed to ESD.
195. On the morning of 24 July 2006, two ESD officers spoke to Ms Gobbo about the intelligence. She was extremely angry about the breach of legal professional privilege

³⁵⁸ Exhibit RC0623, Standard Operating Procedures that applied during the course of Ms Gobbo’s registration dated 28 January 2005, p31.

³⁵⁹ Transcript of Sandy White, 5 August 2019, 3948.25.

³⁶⁰ Transcript of Sandy White, 5 August 2019, 3948.25.

³⁶¹ Transcript of Peter Smith, 11 September 2019, 6089.18.

³⁶² Transcript of Nicola Gobbo, 11 February 2020, 13678.23.

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involved and the disclosure of her role as a source to ESD. She telephoned Mr Peter Smith, twice. According to Mr Peter Smith, she was crying uncontrollably. Mr Peter Smith was participating in an office monthly source review with other SDU members, Messrs Sandy White, Black, Green, Fox, Richards, Anderson and Haven. He left the meeting to speak to Ms Gobbo and reported what he was told to Mr Sandy White and the meeting. Mr Sandy White's diary for 24 July 2006 records what occurs at that meeting, including the following:

0845 at meeting

Operational summaries

Update on HS 3838

[...]

HS met SWINDELS [sic] and ATRILL this AM. ATRILL did all the talking

ATRILL S/A \$20,000 missing BROWN

*** S. "There's very few people who know about your situation"*

Wants statement from HS

** No guarantee would not be called to OPI hearing*

HS very upset

[...]

1540 Visited by D/I HARDIE at SDU

Hardie briefed on BROWN/ATRILL issue

Call to BIGGIN and update

- Need to find out how PSC documented file

Call to WILSON

- Criticised ATRILL for disclosing to HS that he (ATRILL) knows of HS assistance

- Suggestion OVERLAND approach ASHTON at OPI to brief and request info re HS3838

- Agree and need to meet with BIGGIN

Call BIGGIN and update. Arrange to meet 25-07-06.

Update PETER SMITH with arrangements.

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196. An examination of the diaries of others at this meeting shows that:

- a. Mr Peter Smith was at the meeting from 9.00am. At 11.11am he received a call from Ms Gobbo. His notes reveal that the issue raised by Ms Gobbo was that Mr Attrill knew of the \$20,000 theft and Ms Gobbo thought that the SDU had briefed ESD in relation to her role as a source. It was noted that ESD wanted a statement and there was no guarantee that Ms Gobbo would not be called to the OPI. Ms Gobbo wanted a meeting with Mr Sandy White and was 'very upset'. At 11.35am Mr Peter Smith received a second call from Ms Gobbo and noted that Ms Gobbo believed that Mr Sandy White had told ESD that she was a source. Mr Peter Smith updated Mr Sandy White. He does not note the end time of the meeting but 'clears the office' at 2.15pm.
- b. Mr Anderson was at the meeting from 8.55am. His notes are unrelated to Ms Gobbo and refer to [REDACTED] other human sources. According to his diary, the meeting broke at 12.45pm.
- c. Mr Green attended the meeting at 8.30am. His only notation is that the meeting related to 'job updates'. He notes the meeting broke at 12.35pm.
- d. Mr Richards was at the meeting from 9.00am. His notes do not contain any detail, save for that he received a call relating to an unrelated human source at 11.30am and again at 12.02pm.
- e. Mr Fox was at the meeting at 9.00am. He noted that it was planned for him to meet an unrelated human source that day. There are notes relating to a memorandum of understanding from Corrections Victoria, and he speaks with one of the SDU's analysts, before noting that a meeting had been planned for another unrelated human source. He noted that at 12.35pm he took a lunch break.
- f. Mr Haven was at the meeting from 9.00am. He noted that discussions took place in relation to three human sources in accordance with the operations' update.
- g. Mr Black was at the meeting at 8.55am. He noted that discussions took place in relation to operations and administration updates. His diary lists a number of points under 'My issues'. These include SDU technology issues, workload and recreational leave of members, before the notation 'Future 3838 ? v Royal Commission ?', [REDACTED] and SOP's. At 12.40pm he left the meeting.

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197. The only mention in any diary about a Royal Commission is Mr Black's notation.
198. Mr Richards was asked about the 24 July 2006 meeting by Counsel Assisting. He said that he couldn't recall there being any mention of the possibility of a Royal Commission arising out of Ms Gobbo's use.³⁶³ He also gave evidence that it was 'totally incorrect' to suggest that there was a consciousness amongst the SDU that they had been doing the wrong thing in the way in which Ms Gobbo had been managed, and that he never believed the SDU were doing the wrong thing.³⁶⁴
199. Mr Black was also asked about this meeting.³⁶⁵ He said, 'I don't know if I actually verbalised the words "Royal Commission" but I certainly said, "Listen, you know this will be the subject of a review"'³⁶⁶ (This seems especially likely given an OPI hearing was being raised in the meeting). Mr Black explained that the SDU were involved in high level thinking and that was his point of view. He added that they were 'high risk, high stakes, complicated issues and that's my note in my diary.'³⁶⁷ He expressly rejected Mr Winneke's suggestion that he had concerns about there having been improper conduct.³⁶⁸
200. Other SDU members were not asked about this meeting and Mr Black's note. What is clear is that it was during the unit meeting that the issues surrounding Officer Brown, ESD and a potential OPI hearing became acute. What happened is a clear example of the SDU efficiently and appropriately dealing with issues of risk to a human source. Before the ICR for that day is completed, Mr Sandy White's diary notes enable him to brief his Inspector, update his Superintendent and plan a meeting with the highest levels in police command. Mr Sandy White appropriately referred up the issues raised, and quickly. The suggestion that all SDU members were aware of improper behaviour that warranted a Royal Commission was expressly denied by Messrs Black and Richards. There is no basis to find otherwise.

³⁶³ Transcript of Mr Richards, 22 October 2019, 8083.14.

³⁶⁴ Transcript of Mr Richards, 22 October 2019, 8071.39.

³⁶⁵ Transcript of Mr Black, 23 October 2019, 8207.

³⁶⁶ Transcript of Mr Black, 23 October 2019, 8209.12.

³⁶⁷ Transcript of Mr Black, 23 October 2019, 8210.40.

³⁶⁸ Transcript of Mr Black, 23 October 2019, 8211.16.

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201. At paragraph [38] of these submissions, we demonstrated Counsel Assisting's biased and erroneous approach to Mr Peter Smith's diary note of this meeting. That approach by Counsel Assisting is the same in relation to Mr Black's diary note.
202. The evidence does not support Counsel Assisting's speculation in their submission at [1646] of Volume 2. We reiterate the evidence of good character and integrity in relation to all of our clients.

Information relating to Zaharoula Mokbel

203. Counsel Assisting assert that information relating to Zaharoula Mokbel, which is said to have been 'clearly legally privileged', appears to have been passed on to investigators.³⁶⁹ The SDU submit that when one considers the overall effect of the evidence before the Commission, and notwithstanding what 'appears' to be the case on the face of the ICR's, it is improbable that legally privileged information relating to Zaharoula Mokbel was passed on to investigators.
204. There are two occasions when issues relating to the quality of the police brief against Zaharoula Mokbel were raised by Ms Gobbo with the SDU. In February and March 2007, she spoke to Mr Anderson. In September 2007, she spoke to Mr Fox, who by that stage had taken over from Mr Anderson as Ms Gobbo's handler. Mr Fox was cross-examined by Counsel Assisting in relation to both of these occasions.

Intelligence provided to Mr Anderson

205. On 15 February 2007 Ms Gobbo told Mr Anderson that she had met with Horthy Mokbel, and that the brief against his wife was of a 'poor standard'.³⁷⁰
206. On 24 February 2007, Ms Gobbo again told Mr Anderson that the brief was of poor standard and that police cannot prove the deception as statements were missing. She said that she wanted to discuss this further after a face to face meeting.³⁷¹ The ICR from this date, which appears not to have been submitted until some months after 24

³⁶⁹ Counsel Assisting submissions Volume 2 [4755.4], [4765].

³⁷⁰ Exhibit RC0281, ICR3838 (066), 15 February 2007.

³⁷¹ Exhibit RC0281, ICR3838 (068), 27 February 2007.

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February 2007, also states ‘Various points regarding the poor standard of the brief discussed and information provided to Purana via D/Insp O’BRIEN for information.’

207. When Mr Fox was asked about this ICR entry, he said that given the nature of the information, he would not have expected it to have been passed on to Mr O’Brien.³⁷² He asked to see Mr Anderson’s diary for clarification as to whether the information had been passed to investigators.³⁷³
208. It should be noted that the first thing Mr Fox said during his cross-examination was that during his preparation for the Commission, he had discovered some anomalies between what was recorded in his diary as opposed to what was recorded in the ICR’s. He gave evidence that at times the ICR recorded that information had been passed on, when on close analysis of the diaries, it in fact had not been. He believed this was due to having compiled the ICR at a later date, and then having ‘cut and paste’ into the wrong area.³⁷⁴
209. Mr Fox was not taken to Mr Anderson’s diary by Counsel Assisting. Had he been, he would have seen that the diary does not refer to having spoken to Mr O’Brien after Mr Anderson’s conversation with Ms Gobbo on 24 February 2007. Mr O’Brien’s diary reflects the fact that he was on a rest day on 24 and 25 February 2007. There are no notes in relation to having received information from Mr Anderson on these days, nor the day when Mr O’Brien returned to work on 26 February 2007.
210. As foreshadowed during Ms Gobbo’s 24 February 2007 conversation with Mr Anderson, the Zaharoula Mokbel matter was raised again at the next face to face meeting on 5 March 2007. During the conversation, Ms Gobbo asked her handlers whether she should take on Zaharoula Mokbel’s brief. She noted that she had just started to ‘claw back’ credibility with the Mokbels. Mr Sandy White said he did not agree that this was necessarily a good thing. Ms Gobbo said that it was, as it deflected others from calling her a ‘dog’. The following exchange then took place:³⁷⁵

³⁷² Transcript of Mr Fox, 13 September 2019, 6218.12.

³⁷³ Transcript of Mr Fox, 13 September 2019, 6319.13.

³⁷⁴ Transcript of Mr Fox, 13 September 2019, 6290.5.

³⁷⁵ Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Anderson, 5 March 2007, VPL.0005.0127.0308 at .0518.

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Mr Sandy White: ... Look, you could take it on and you can perhaps find some holes in it and – and maybe help them dramatically get away with whatever it is they want to get away with, or you could tell ‘em to go elsewhere but no in between, you know, sort of taking it on and then pointing out the defects to us.

Ms Gobbo: That’s the point. ... So I haven’t done anything. ... Just waiting to talk to you about it.

Mr Sandy White: Well, if you want to take it on, do you think it gives you a bit more credibility with them? Whereas, you say, “No, I don’t want to do anything about it, I can’t help you,” what are you – how are you going to explain that to [Horty]?

Ms Gobbo: I don’t have to explain it to him. It’s pretty simple. He owes me three and a half grand from a few years ago.

[...]

The other thing is that now, why – I’m in possession of – of her brief. There’s a million holes in it. ... Horty clearly needs help in working out his evidence.

Mr Sandy White: I’ve got a real issue with you getting involved in – in that type of thing. That’s – that would be an example, looking at it from the outsider’s point of view, where we’re actually undermining somebody’s defence by adding information that we wouldn’t have got ... until that defence was run in court and we shouldn’t get. That’s the way the system’s set up.

Ms Gobbo: Yeah.

Mr Sandy White: I don’t really – I don’t want to go down that track with you and [inaudible] convince you to go down that track. At the end of it [inaudible] but if you work with them, you work with them full

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on like you normally would. That buys you some credibility and at the end of the day that's probably a good thing if it was to come out that people were starting to say you were assisting the police. Well, there's a clear example of where you've done the exact opposite and you've fucked over the police.

211. An examination of Mr Anderson's diary³⁷⁶ shows that after the 24 February 2007 conversation with Ms Gobbo, Mr Anderson 'warehoused' the issue, until he spoke to Mr Sandy White on 26 February 2007. Thereafter, Messrs Anderson and Sandy White discussed the issue with Ms Gobbo on 5 March 2007 as set out. The intelligence was not passed on.

Intelligence provided to Mr Fox on 13 September 2007

212. On 13 September 2007, Mr Fox returned a call from Ms Gobbo. The ICR from that date, which appears to have been compiled some time after September 2007, states as follows:

Return call to x 3838.

- *Horty has been abusing her on the phone.*
- *They just don't understand why she can't do it. He is very demanding and just thinks everything should happen his way.*
- *HS explained to him why it can't. She has told him that because she [REDACTED]*
[REDACTED]
- *This will continue at the 2.30pm meet with Roula and Horty on the phone.*
- *Milad then gets on the phone complaining nothing being done re his plea.*
- *She had an argument with him as he is under delusion that he can dictate what he will plea to. He believes that police will accept this as they do not want his case to go to court. She can't believe how arrogant he is and has had enough.*
- *She states this has resolved her even more that she will have nothing to do with Milad's case.*
- *Encouraged this attitude with HS.*

³⁷⁶ Exhibit RC366.

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- *She mentions that the Roula brief is lacking a statement from [REDACTED] from NAB. He would well and truly convict Roula for these deceptions.*
- *I will tell Jim Coughlin.*

Action: Verbally disseminated above information to Jim Coughlin – Purana.

213. This entry is relied on by Counsel Assisting as the example when ‘clearly privileged information appears to have been disseminated to investigators,’³⁷⁷ and an occasion when a police member ‘passed on information when it clearly should not have been.’³⁷⁸

214. Mr Fox was asked about this entry by Counsel Assisting. The following exchange took place:³⁷⁹

Mr Woods: She mentioned that the Roula brief is lacking. “A statement from [REDACTED] from NAB. He would well and truly convict Roula for these deceptions. I will tell Jim Coghlan. Action: verbally disseminated above information to Jim Coghlan at Purana.” That’s the information you received and that’s what you did?

Mr Fox: I’d have to look at my diary for that.

Mr Woods: You’ve written it in an ICR. You wouldn’t have made it up I take it.

Mr Fox: It could be – as I discussed, I’ve identified anomalies in the ICR’s to my diary. My diary is contemporaneous.

Mr Woods: Mr Fox, this was the formal document in which you recorded your dealings with Ms Gobbo and it was the formal document by which other handlers and people within the SDU would see the information that was obtained and see how the information was used. That’s the whole point of the ICR, isn’t it?

³⁷⁷ Counsel Assisting submissions Volume 2, [4755.4].

³⁷⁸ Counsel Assisting submissions Volume 2, [4765].

³⁷⁹ Transcript of Mr Fox, 13 September 2019, 6325.24.

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Mr Fox: That's correct.

Mr Woods: And you would have taken great care in recorded what occurred in the ICR, I suggest that to you?

Mr Fox: Yes, to the best of my ability.

Mr Woods: And the best of your ability would have included not recklessly saying that Roula's brief is lacking a statement from someone from the NAB, you wouldn't have written that in simply by accident, would you?

Mr Fox: No.

Mr Woods: That was something that Ms Gobbo told you, wasn't it?

Mr Fox: It would appear, yes.

Mr Woods: And your intention was to pass it on to Jim Coughlan, wasn't it?

Mr Fox: Not necessarily.

Mr Woods: So you wrote the words, "I will tell Jim Coughlan" for what reason?

Mr Fox: Sometimes to placate the source.

Mr Woods: So she was looking at the ICR, was she?

Mr Fox: No.

Mr Woods: So why would you write in the ICR that you would tell Jim Coughlan to keep Nicola Gobbo happy?

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Mr Fox: Because the conversation, like often these conversations went round and round in circles.

Mr Woods: I suggest to you that you are being dishonest in that answer. It is perfectly clear from this document that you intended to tell Jim Coghlan, firstly, and secondly, you did tell Jim Coghlan that information. What do you say to that?

Mr Fox: I'd have to look at my diary.

(Emphasis added)

215. Mr Fox subsequently explained his record keeping practices in re-examination. He said that he would record whether intelligence had been disseminated in the column on the right-hand side of his diary, and that he would cut and paste information from his diary into the ICR's, and then go back to paste in actions such as 'verballed disseminated', or 'controller updated'.³⁸⁰ To save time, he had the text of these actions pre-loaded into a word document as 'short cuts', so that he did not have to type out 'Verbally disseminated above information to Jim Coghlan Purana' each time this action needed to be entered into an ICR. In other words, he would copy and paste all diary entries relevant to Ms Gobbo into the ICR. He would then go back through the ICR's and click at the bottom of entries to paste in any notes about verbal dissemination.

216. Mr Fox also noted the following:

- a. The only reference in Mr Fox's diary to having spoken to Mr Coghlan on 13 September 2007 is an entry relating to a call that took place *before* Mr Fox's conversation with Ms Gobbo;³⁸¹
- b. There is no notation in the right-hand column suggesting the information was disseminated;³⁸²

³⁸⁰ Transcript of Mr Fox, 13 September 2019, 6422.2.

³⁸¹ Transcript of Mr Fox, 13 September 2019, 6422.46.

³⁸² Transcript of Mr Fox, 13 September 2019, 6423.4.

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- c. Mr Fox did not speak to Mr Coghlan for some six weeks *after* the conversation with Ms Gobbo on 13 September 2007;³⁸³
- d. The best contemporaneous record of contact that Mr Fox had with other police officers is his diary, not the ICR's;³⁸⁴ and
- e. Having reviewed some of his other entries, in which he writes that information relating to defence strategies is not disseminated, Mr Fox believed that he did not pass on information to Jim Coghlan from the conversation on 13 September 2007 and that this was an error in the ICR.³⁸⁵

217. Mr Sandy White was asked about the ICR entry on 13 September 2007. Having already noted that entries of this nature were 'very inconsistent with how we were operating at the time',³⁸⁶ he agreed that on its face, it was a troubling entry. He said, 'you'll have to check with Jim Coghlan as to whether he was told all of that material. It seems to suggest that he was. I'm just saying to you, you would want to know a bit more.'³⁸⁷ Mr Sandy White was then shown an ICR entry by Mr Fox the following day, on 14 September 2007, in which Mr Fox noted that information gleaned from Ms Mokbel's barrister, Mr Priest QC, was 'not disseminated owing to information being defence legal strategy.' Mr Sandy White said of the entry, 'That's exactly what I would expect of Mr Fox. The one that you mentioned to me earlier [from 13 September 2007], I told you that is a surprise and I questioned whether that was actually disseminated, that one particular piece of information as opposed to all the other information that preceded it.'³⁸⁸

218. In an unchallenged statement to the Commission, Mr Coghlan gives the following relevant evidence:³⁸⁹
- a. He was not aware that Ms Gobbo had seen the brief of evidence against Zaharoula Mokbel until he prepared his statement.
 - b. On 13 February 2007 he spoke to Mr Fox to update him in relation to a matter regarding **Mr Ketch**

³⁸³ Transcript of Mr Fox, 13 September 2019, 6423.25.

³⁸⁴ Transcript of Mr Fox, 13 September 2019, 6424.29.

³⁸⁵ Transcript of Mr Fox, 18 September 2019, 6478.26.

³⁸⁶ Transcript of Mr Sandy White, 7 August 2019, 4097.21.

³⁸⁷ Transcript of Sandy White, 7 August 2019, 4133.15.

³⁸⁸ Transcript of Sandy White, 7 August 2019, 4114.37.

³⁸⁹ Exhibit RC1232, Statement of Jim Coghlan, 12 November 2019, 13 [78] – [83].

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- c. He is aware that documents suggest that Mr Fox ‘verbally disseminated’ information around the time of this conversation. He has no recollection of having received information from the SDU at this time and has no record in his diary of having received information. Mr Coghlan’s diary records what he discussed with Mr Fox and on this particular occasion, Mr Coghlan was providing Mr Fox with information, not the other way around.
219. The foregoing evidence is not referred to in Counsel Assisting’s submissions at [4755.4] or [4765] of Volume 2, nor is Mr Fox’s explanation as to why he believed that the information had not been provided to Jim Coghlan.
220. The Operation Bendigo Investigation Group was established by Victoria Police in 2014 to review five examples identified and consider whether there were any possible legal conflict issues arising from information received by Ms Gobbo. Zaharoula Mokbel’s matter was one of the five examples identified. Operation Bendigo examined handlers and investigators’ diaries, archived briefs of evidence, investigation notes, court records, LEAP and Interpose records and spoke to investigators. It is worth noting that, in relation to information provided by Ms Gobbo as to the brief against Zaharoula Mokbel, Operation Bendigo concluded as follows:³⁹⁰

[The Zaharoula Mokbel example] does not raise any legal conflict issues as [Ms Gobbo] was entitled in her professional capacity to review the accused’s copy of the police brief of evidence. The information provided by [Ms Gobbo] was not passed onto the informant D/S/C CHIPPINDALL nor was it acted upon by any other member of Victoria Police. Ultimately [Ms Gobbo] did not represent the accused in relation to these charges and [Ms Gobbo’s] reviewing of the brief did not impact on the successful professional of Zaharoula MOKBEL.

221. It is ultimately submitted that taking into account Mr Fox’s explanation, Mr Coghlan’s unchallenged statement and the Operation Bendigo paper, the evidence overall establishes that Mr Fox did not pass on information he received from Ms

³⁹⁰ Exhibit RC1129, Issue Cover Sheet and Conflict Report Example Two concerning Zaharoula Mokbel dated 22 October 2014, p 1.

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Gobbo on 13 September 2007 to Jim Coghlan. It is probable that during the course of transferring a number of his diary entries into ICR's, he mistook the reference to his conversation with Jim Coghlan and telephone call to Ms Gobbo on the same date as suggesting that information had been disseminated to Jim Coghlan, without appreciating that his contact with Jim Coghlan had preceded the call to Ms Gobbo.

222. This Commission is aware that just because something is recorded in notes, it is not necessarily a fact or accurate. Mr Winneke is recorded as part of Operation Briars' legal team on 10 April 2007 and is said 'to be briefed' in the 16 April 2007 Briars steering committee meeting minutes. We unreservedly accept Mr Winneke's assertion that he was not so involved, yet the notes clearly say otherwise. Mr Fox's note does suggest that information was disseminated to Mr Coghlan, but the evidence establishes that it was not.

Further perception of a pre-determined narrative

223. The analysis by Operation Bendigo came to the same conclusion to that which Mr Fox expressed. Counsel for the SDU only received a copy of the Operation Bendigo report towards the end of hearings. Counsel Assisting no doubt had access to the exhibit at the time Mr Woods cross-examined Mr Fox. It is submitted that Mr Woods' suggestion that Mr Fox 'was being dishonest in that answer' demonstrates the bias and preconceived ideas we referred to earlier in these submissions. Mr Woods did not know and could not have had instructions that intelligence was disseminated to Jim Coghlan. A proper analysis demonstrates that it was not so disseminated.
224. Mr Woods clearly knew that Mr Fox's diary did not show dissemination to Jim Coghlan. Counsel Assisting do not make any submissions adverse to Mr Fox in relation to Zaharoula Mokbel. The suggestion that Mr Fox was dishonest should not have been made. Mr Fox is a current serving police member of impeccable character.
225. Counsel Assisting's approach to Mr Fox can be contrasted with his cross-examination of Mr Bickley. Mr Bickley was a convicted criminal and someone who, on his own

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admission, told lies.³⁹¹ Mr Bickley repeatedly and emphatically stated that he had never met or heard of Mr Cooper until Ms Gobbo arranged for them to meet on 24 April 2006.³⁹² When evidence emerged that directly contradicted Mr Bickley's evidence on this point, Counsel Assisting asked the following, apparently seeking to repair Mr Bickley's credit:³⁹³

Mr Woods: Mr Chettle just put to you that you were at, it seems a party for Mr Cooper on [REDACTED] and your photograph is taken and Ms Gobbo has later shown that to the police. What do you say about that?

Mr Bickley: I urge Mr Chettle to produce that because I never socialised with anyone to do with Mokbel.

Mr Woods: You agree that you, in fact you gave evidence about this meeting with Ms Gobbo at Wheat for discussions because that was next to her chambers?

Mr Bickley: Correct.

Mr Woods: Had you ever been to any parties at Wheat with her?

Mr Bickley: Never. Never been to any parties.

[...]

Mr Woods: Now the situation is this, one of the documents that was provided by Victoria Police over lunchtime is the audio transcript of the conversation between you and Mr Cooper on 24 April 2006. Do you understand that? Before we go to the detail of it, what it appears to disclose is that during the conversation there's an exchange between

³⁹¹ Transcript of Mr Bickley, 18 November 2019, 9385.24.

³⁹² Exhibit RC0741, Further statement of Mr Bickley (a pseudonym), 17 November 2019, 4; Transcript of Mr Bickley, 18 November 2019, 9316.44; 9379.10; 9380.38; 9392.6; 9397.6; 9399.25; 9400.34.

³⁹³ Transcript of Mr Bickley, 18 November 2019, 9404.32.

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you and Mr Cooper that indicates you were at his [REDACTED] party, which had occurred in the weeks or months beforehand before this conversation. Now, given, I understand there's a significant period of time that's gone from between that time until now, but given that's the case, and I'll take you to the precise wording of it, do you accept that you might well have been mistaken about whether or not you'd met Cooper before 24 April 2006?

Mr Bickley: No, I'm telling you, I never met the guy.

Mr Woods: You're quite certain?

Mr Bickley: Absolutely.

Mr Woods: Might you have been at his [REDACTED] party that happened before 24 April 2006 at Wheat Café on an evening?

Mr Bickley: I went there for drinks to Wheat Café.

Mr Woods: Yes. You've been to the Wheat Café for drinks at night-time at a party?

Mr Bickley: Yeah, I've been there for an evening for drinks.

226. The Commission should find that Mr Bickley was caught cold telling lies. Mr Woods suggested he was 'mistaken'. The stark contrast in approach further adds to the perception that Counsel Assisting have approached this Commission with a pre-determined narrative.

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The Paul Dale notes

227. Much has been made of the notes Mr Dale passed on to Ms Gobbo while he was in custody, a copy of which ultimately ended up with the SDU.³⁹⁴ However, the SDU's motivation for receiving these notes and then retaining them is clear, and their conduct in doing so was not improper. Rather, it serves as an example of the SDU 'quarantining' information they deemed to be legally privileged.
228. A focus of the investigation into the deaths of the Hodsons was how IR44 came to be distributed and who had a copy of it. On 20 May 2007 Ms Gobbo told the SDU that she had in 2003 obtained 'operational notes' from Paul Dale to pass on to his solicitor. The SDU were interested to see whether the 'operational notes' included a copy of, or related to IR44. On 27 May 2007, Ms Gobbo said she had found the notes and would consider the ethical implications of providing them before passing them onto the SDU.
229. On 29 May 2007, the notes were left by Ms Gobbo for Mr Anderson to collect. After collecting and reviewing the notes, it became clear to the SDU that they did not relate to or contain IR44 and contained legally privileged information. Consistent with their desire to ensure full accountability, rather than destroy the notes the SDU placed them in a secure hard copy file. The SDU took no further action in relation to the notes given the fact they contained legally privileged information.
230. In February 2008, Ms Gobbo was speaking to Petra and advised investigators about the notes, prompting Mr Shane O'Connell to approach the SDU to see them.
231. Subsequently, Messrs Cam Davey and Sol Solomon also became aware of the notes and wished to see a copy. In order to avoid handing over privileged information, the SDU told Messrs Davey and Solomon that the notes had already been shown to Mr Ryan and were of no value to the investigation. This was a 'cover story' to avoid the notes being seen by investigators.³⁹⁵

³⁹⁴ See, eg., Counsel Assisting submissions Volume 2, [2249], [2326], [2327], [2333].

³⁹⁵ Exhibit RC0281, ICR2958 (010), 19 March 2008.

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232. Mr O'Connell was also advised by Mr Fox that they contained legally privileged information and could not be used. Mr O'Connell nonetheless insisted on sighting the notes. Subsequently, on 26 March 2008 the notes were shown to Mr O'Connell.³⁹⁶ He saw them, satisfied himself that the notes were privileged, and the notes were retained by the SDU thereafter.

Confidential information

233. The SDU did not have a good understanding of what amounted to confidential information. Most of the SDU considered 'confidential information' to be the same thing as legally privileged information.³⁹⁷ It is conceded that personal information which was probably obtained in the course of Ms Gobbo's professional role was received and at times, disseminated. However, the SDU's focus was the dissemination of information relating to ongoing criminal activity. Where Ms Gobbo's associates were constantly changing numbers to avoid interception, and Ms Gobbo had access to those numbers, evidence demonstrates that the SDU's position was that they were able to pass them on to investigators as this related to ongoing criminal activity.

H. CONFLICTS OF INTEREST

234. Evidence reveals that the SDU had a narrow understanding of conflict of interest. However, they endeavoured to understand and deal with the issue as best they could. They recognised that Ms Gobbo should not act for people about whom she'd informed in relation to charges arising from intelligence she had provided. They told her not to do so.³⁹⁸ However, the evidence suggests they did not perceive a conflict arising from Ms Gobbo informing on current clients regarding unrelated ongoing criminal activity, nor did they see it as an issue that Ms Gobbo was providing information about ongoing serious criminal activity with an aim to dismantling the Mokbel cartel while being retained by Tony Mokbel in relation to his Commonwealth

³⁹⁶ Exhibit RC0281, ICR2956 (010), 26 March 2008; Transcript of Mr Fox, 12 September 2019, 6288.30.

³⁹⁷ See, eg., transcript of Sandy White, 2 August 2019, 3824.20.

³⁹⁸ Transcript of Nicola Gobbo, 11 February 2020, 13677.16.

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charges. The focus was more on legal professional privilege issues and avoiding that kind of intelligence.

The SDU's understanding of conflict of interest

235. Counsel Assisting assert that the SDU 'well understood' that Ms Gobbo could not act in conflict between duties owed to her clients and her role as a human source, that it would be 'legally problematic' for her to do so, and that the possible effects to the proper administration of justice were 'plain' to them.³⁹⁹ These submissions are unsupported on the evidence. The evidence reveals the SDU clearly missed the broader conflict of interest issue of a barrister acting for a client in relation to historical matters and informing on them in relation to unrelated crimes they were presently committing.

236. It is evident that the SDU did attempt to understand the conflict issue at the time.⁴⁰⁰ As Mr Sandy White said to Ms Gobbo on 20 April 2006:⁴⁰¹

...I'm trying to understand what – the conflict of interest area is not something that we ever deal with, all right, for you and it's – I mean, some people could put up an argument that a person who is a barrister perhaps could never help the police and still represent the person that she's helping the police with. So I'm just trying to get my head around this.

237. After Mr Cooper's arrest, he again asked Ms Gobbo about conflict:⁴⁰²

I was trying to understand this tonight ... if you're conflicted with Milad because of Cooper, does that mean you're conflicted with everybody that's arrested?

238. The limitations of the SDU's understanding of conflict is demonstrated by the following evidence before the Commission:

³⁹⁹ Counsel Assisting submissions Volume 2, [1343.2], [1368], [1405], [1781], [1820].

⁴⁰⁰ Transcript of Sandy White, 5 August 2019, 3883.37.

⁴⁰¹ Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Peter Smith, 20 April 2005, VPL.0005.0097.0011 at .0283.

⁴⁰² Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Green, 26 April 2006, VPL.0005.0111.0001 at .0036.

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- a. Mr Peter Smith was asked about the propriety of Ms Gobbo acting for Mr Karam during a trial for drug trafficking charges (of which he was fully acquitted), whilst providing to the SDU a bill of lading relating to a large-scale drug importation. Mr Karam had given Ms Gobbo the document from an associate (Mr Mannella), to hold in case Mr Mannella was remanded.⁴⁰³ In relation to this factual scenario, Mr Peter Smith said, ‘This is a separate case so the concept of conflict to me back then, and probably now, is not clear. [Ms Gobbo] was representing [Karam] on a separate case, so this had nothing to do with that ... [I]n my mind that was acting separately.’⁴⁰⁴ In other words, far from ‘well understanding’, Mr Peter Smith drew a distinction between Ms Gobbo acting and informing in relation to historical matters presently before the Courts and informing in relation to ongoing crime. The latter, in his mind, was acceptable. Mr Peter Smith appeared to believe that if the intelligence is not legally professionally privileged, there was no issue with passing it on.
- b. Mr Sandy White took comfort in the fact that Ms Gobbo would withdraw from acting for Mr Cooper following his remand hearing.⁴⁰⁵ That is, Mr Sandy White knew that Mr Cooper would ultimately receive independent legal advice in relation to the case against him and saw Ms Gobbo’s role in advising him on the night of his arrest and then appearing at the remand hearing as very limited, even though he had tried to stop her attending.

239. One can understand why the SDU might have had only a limited understanding of the concept of conflict of interest. It is a complex issue for police officers, but one that lawyers deal with regularly. The 2005 Victoria Bar Rules of Conduct and Practice, which applied to Ms Gobbo, make clear that it is the ethical responsibility of counsel to manage conflicts of interest. Under the obligations, counsel is required to determine whether a conflict arises and if it cannot be managed, return the brief. The ethics committee can be consulted.

⁴⁰³ Exhibit RC0281, ICR3838 (082), 5 June 2007.

⁴⁰⁴ Transcript of Mr Peter Smith, 11 September 2019, 6156.22.

⁴⁰⁵ Transcript of Sandy White, 6 August 2019, 3998.39.

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240. Lawyers regularly navigate their way around conflicts of interest to achieve an outcome they ultimately consider ethically satisfactory.⁴⁰⁶ Police officers observe this. Barristers might prosecute one day and defend the next. Various practices are implemented and deemed appropriate ways to deal with a lawyer's potential conflict. For example, King J of the Supreme Court did not have an issue with Ms Gobbo acting for Mr Thomas in relation to his plea, so long as she was not involved in his trial in which cross-examination of her previous client would be required. A lawyer acting otherwise in conflict may be absent from the court room during their previous client's cross-examination. Indeed, when Ms Gobbo explained to Mr Orman's solicitor, Mr Rolfe that she was conflicted from acting for Mr Orman due to her previous representation of Mr Thomas, Mr Rolfe's proposed solution was that she excuse herself from Mr Thomas' cross-examination.⁴⁰⁷
241. Ms Gobbo indicated to the SDU that she understood conflict issues and was dealing with them. She rationalised appearing for Mr Cooper when questioned by the SDU by dismissing such conduct with, 'what conflict? He'll be pleading guilty.' She told the SDU that she had clearance from the Ethics Committee to act for Mr Thomas and that any perceived issue relating to him was resolved if she appeared on his plea and not a trial. She told the SDU that King J and senior prosecutor Mr Horgan QC were aware of her position in relation to Mr Thomas. Therefore, it is no surprise that the SDU believed ethical issues in relation to conflict of interest were hers. Superior officers who knew of her roles voiced no concerns to the SDU in relation to conflict, although Mr Overland said he understood that Ms Gobbo would not act for people she informed on.⁴⁰⁸ The SDU repeatedly tried to direct her not to so act.
242. Evidence given by the SDU demonstrates that they took the view that on occasions when they were unsuccessful in dissuading Ms Gobbo from acting for various people, the conflict was ultimately a matter for her to manage:
- a. Mr Sandy White said that the conflict of interest was hers and that he always thought that it was her responsibility, not his.⁴⁰⁹ He conceded in hindsight that the

⁴⁰⁶ See, eg., transcript of Mr Cooper, 31 October 2019, 8762. Tony Hargreaves rang Mr Cooper and asked Mr Cooper if he had any objection to Mr Hargreaves acting for the SDU handlers and was told there was no issue.

⁴⁰⁷ Exhibit RC0281, ICR3838 (103), 3 October 2007.

⁴⁰⁸ Exhibit RC915, Statement of Simon Overland dated 19 September 2019, [86].

⁴⁰⁹ Transcript of Sandy White, 31 July 2019, 3614.44.

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SDU should have obtained a list of Ms Gobbo's clients,⁴¹⁰ though (as Ms Gobbo agreed in evidence), there would have been no means by which the SDU could find out information from Ms Gobbo's clerk without a warrant. That included who she charged fees and who paid.⁴¹¹

- b. Mr Peter Smith said he did not have a good grasp on the issue of conflict of interest at all.⁴¹²
- c. Mr Black said that conflict was a matter for a lawyer, primarily.⁴¹³
- d. Mr Fox said that he didn't understand conflict back then as it has been described to him subsequently, and that he had expected that Ms Gobbo was still working in the best interests of her client unless they were talking about future crimes, and if this occurred then Ms Gobbo could tell the SDU.⁴¹⁴

243. Ms Tittensor of Counsel Assisting this Commission advised and appeared for Mr Fox in relation to evidence he gave to Mr Kellam during IBAC's 2014 inquiry into Victoria Police's handling of Ms Gobbo.⁴¹⁵ This matter was raised by Mr Sandy White during his cross-examination.⁴¹⁶

Mr Winneke: The reality is, the situation was exactly the same as it was previously, there was a conflict with Mokbel and yet she was apparently ignoring it and advising him subsequently?

Mr Sandy White: But that's – you might be right, Mr Winneke, but surely that's her, her ethical responsibility.

Mr Winneke: Right, okay. So in effect you were prepared to allow her to make that decision?

Mr Sandy White: Well, isn't that a barrister's decision to make that in relation to conflicts of interest?

⁴¹⁰ Transcript of Sandy White, 1 August 2019, 3735.37.

⁴¹¹ Transcript of Nicola Gobbo, 11 February 2019, 13680.35.

⁴¹² Transcript of Peter Smith, 12 September 2019, 6273.44.

⁴¹³ Transcript of Mr Black, 23 October 2019, 8126.30.

⁴¹⁴ Transcript of Mr Fox, 13 September 2019, 6335.11.

⁴¹⁵ RC0504, Statement of Mr Fox dated 5 September 2019, 1 [5].

⁴¹⁶ Transcript of Sandy White, 5 August 2019, 3883.37.

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Mr Winneke: If the barrister is acting ethically, yes?

Mr Sandy White: I'm no expert on conflict of interest but it seems quite a tricky concept and we did try and understand it. I mean, I can see Ms Tittensor there today, she's been there for a week advising you, but she represented one of the men from the SDU and that I imagine is a conflict of interest but it's hers.

Mr Winneke: And in the case, if a person advises the other person what the situation is and receives, let's just assume this for an example. If, for example, Mr White, Mr Cooper was told what the situation was, it wasn't kept from Mr Cooper, and Mr Cooper said, "Yep, that's not a problem as far as I was concerned", that would solve the problem, wouldn't it?

Mr Sandy White: Well ---

Mr Winneke: To a significant degree, do you accept that?

Mr Sandy White: I take it from that, that the information is coming from yourself and you have a much greater understanding, that that must be the case. But what I'm telling you is at the time what we believed.

Mr Winneke: Did you ---?

Mr Sandy White: We believed that ---

Mr Winneke: ---ever satisfy yourself that the clients were aware of the conflict of Ms Gobbo? Did you ever satisfy yourself about that?

Mr Sandy White: No.

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Commissioner: Just in respect of the matter you've just raised. Ms Tittensor is not, will not be appearing in any matters involving the witness she once appeared for on a completely different matter and that was discussed with that particular handler and the handler had no objection to that course.

Mr Sandy White: Thank you, Commissioner.

Mr Winneke: Are you aware of that, Mr White?

Mr Sandy White: No.

Mr Winneke: That might change your view, mightn't it?

Mr Sandy White: I think if that particular member was consulted it would change by view.

Mr Winneke: Because that's a significant matter, the person has to have an opportunity to understand what is going on, correct?

Mr Sandy White: Mr Winneke, I don't know. As I said to you a number of times now, we believed that the conflict of interest issue, it was for Ms Gobbo to sort out.

Mr Winneke: Yes. And what you do understand is that it was never made known to any of her clients?

Mr Sandy White: That's correct.

Mr Winneke: And steps were taken by you, by Ms Gobbo, to, I suggest, conceal it from her clients?

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Mr Sandy White: I think, as I said to you, we, we tried to intervene when we could and sometimes it worked and sometimes it didn't.

244. As the Commission is now aware, Ms Tittensor did not appear for Mr Fox in relation to a 'completely different matter,' but in relation to his cross-examination at IBAC during which he was asked about his involvement at the SDU with Ms Gobbo, the procedures and policies that were applicable to the operation of the SDU, and whether the engagement of Ms Gobbo raised issues relating to breaches of legal privilege and the right to a fair trial.⁴¹⁷
245. Mr Fox was not consulted about Ms Tittensor's acceptance of the role of Counsel Assisting the Commission prior to her accepting that role. Indeed, the issue was not raised until Ms Tittensor's role as Mr Fox's barrister became known to his current lawyers by the release of his IBAC transcript, in March 2019.
246. Mr Fox did not object to Ms Tittensor appearing as Counsel Assisting. As correspondence to this Commission confirmed, there is no suggestion that Ms Tittensor has engaged in any unethical or improper behaviour. Mr Fox and the SDU's position is that conflict of interest is a matter that must be determined and dealt with by the lawyer. Just as it was for Ms Gobbo to manage her conflicts of interest, and not a matter for the SDU, it was a matter for Ms Tittensor to determine whether she had a conflict of interest in being one of the Counsel Assisting the Commission in circumstances where she had previously advised and appeared for Mr Fox in an IBAC examination on the identical matters that are currently before this Commission. Ms Tittensor managed her conflict by leaving the hearing room during Mr Fox's evidence, as Mr Rolfe suggested Ms Gobbo should do.
247. The passage relied on by Counsel Assisting from 9 March 2006 with Messrs Sandy White and Green which is said to demonstrate an awareness of the potential legal consequences of a barrister informing against their own client does not comfortably support the assertion that Counsel Assisting make.⁴¹⁸ It is submitted that this passage in fact demonstrates that Messrs Sandy White and Green were assured by Ms Gobbo

⁴¹⁷ Exhibit RC504, Statement of Mr Fox, 5 September 2019, 2 [7].

⁴¹⁸ Counsel Assisting submissions Volume 2, [1403]-[1405].

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that there would not be any conflict in relation to Mr Cooper as he would be pleading guilty and wouldn't be applying for bail, and in relation to Mr Karam, Ms Gobbo would suggest alternative counsel represent him. The relevant passage is as follows:⁴¹⁹

Mr Green: I have got a bit of a concern, though. If Cooper was to get arrested ---

Ms Gobbo: Yeah.

Mr Green: ---he's going to be calling you, isn't he?

Ms Gobbo: Yes. He will not call anyone else.

Mr Green: How's that going to work?

Ms Gobbo: What do you mean?

Mr Green: Well, how are you going to be able to represent him?

Ms Gobbo: What do you mean?

Mr Green: Well, won't there be a conflict of interest then?

Ms Gobbo: What conflict? He'll be pleading guilty. What difference does it make?

Mr Green: Well, what if it was Rob, then? 'Cause he probably wouldn't plead guilty.

Ms Gobbo: That's a different story.

⁴¹⁹ Conversation between Ms Gobbo, Mr Sandy White and Mr Green, 9 March 2006, VPL.0005.0051.1281 at .1386.

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Mr Green: Yeah. Would he ring you ---

Ms Gobbo: Yes.

Mr Green: --- if he was arrested?

Ms Gobbo: Yep. All of them will, they won't ---

Mr Green: Yeah.

Ms Gobbo: ---ring anyone else.

Mr Sandy White: And you can't ... exactly say you're going to Bali.

Ms Gobbo: We've had this discussion slightly – I've had it with Peter before.

Mr Sandy White: Had it with Peter, yeah.

Ms Gobbo: Yes. It's a horrifying thought but – but, I mean, it's hilarious in a way but it's not funny.

Mr Green: No, yeah.

Ms Gobbo: No. It is funny in a way.

Mr Green: It's weird but it's unprecedented I'd suggest.

Ms Gobbo: Probably is. I'm sitting now creating half – created half the or provided half the material and half the reason why they got arrested or maybe more than half. ... I didn't commit the crime. I've done nothing wrong. ... What am I – I can't not – I can't not ---

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Mr Sandy White: You can't not respond.

Ms Gobbo: I can't not be there, that looks even worse.

Mr Sandy White: But - but can you ---

Mr Green: Back away eventually?

Mr Sandy White: --- divert it to someone else or ---

Ms Gobbo: Yeah, but I can't – I can't do that until – look, it's easy for me to turn up and do what I've got to do, keep control of it to the extent of no-one with a brain reading every bit, because the last thing I want is some ludicrous bail application run where there are a million questions asked. ...

248. By the conclusion of this conversation, Ms Gobbo had assured the SDU that conflict of interest was not of concern in relation to Messrs Cooper and Karam.
249. It is disputed that Messrs Sandy White and Green should have taken steps to ensure legal advice was obtained by their unit, or had been obtained by their superior officers to make sure their management of Ms Gobbo was proper and lawful. Mr Sandy White conceded that with hindsight, legal advice should have been sought. But all SDU members gave evidence that they did not believe at the time that legal advice was necessary, nor that they had done anything improper [REDACTED]

The SDU's endeavours to prevent Ms Gobbo from acting

250. As noted above, the SDU recognised that a conflict of interest would arise if Ms Gobbo were to act for someone in relation to charges arising from intelligence she had provided to Victoria Police. However, on occasions, Ms Gobbo would indicate to her handlers that despite this being the case, she intended to so act and put the conflict of interest aside. When this occurred, the SDU counselled Ms Gobbo against taking such a course.

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251. At times, they were successful in dissuading Ms Gobbo from acting for those with whom she had a conflict.⁴²⁰ There are examples when they were not successful. There are also examples when they believed they were successful but discovered after the fact that contrary to that belief, Ms Gobbo had acted on a person's behalf. As Mr Black said, it was only during the course of the Commission that he discovered Ms Gobbo had been less than honest with the SDU about who she was acting for and the fact she was charging them money.⁴²¹ The Commission will recall Mr Sandy White's shock at being informed by Mr Winneke that Ms Gobbo charged substantial fees to people she told the SDU she was not representing.
252. It is submitted that it was made perfectly clear to Ms Gobbo that she could not act for Mr Karam or anyone charged in relation to the tomato tins importation.⁴²² She told the SDU that she understood that and did not intend to do so. In addition, she was told that the Federal Police had said she could not act, as she had a conflict of interest because of her involvement with Mr Karam. Some examples of these instructions are set out below:
- a. On 8 August 2008, Mr Sandy White's diary records, 'Call from Green. Spoke to HS. Has been at court re arrests of Mr Winters and Sergi and 2 x Mr Winters and Higgs. HS not representing same, possibly involved in bail. Understands conflict of interest issues.
 - b. On 12 August 2008, there was an SDU operations meeting. Mr Sandy White's diary records that, 'Biggest issue in last week has been AFP arrests of Agamas / INCA targets. HS will have to speak to AFP, was not concerned re arrest. Is conflicted and should not represent targets.'
 - c. On 15 August 2008, Mr Sandy White records a call from Mr Green. His diary notes, 'HS to be told SDU not interested in anything to do with AFP arrests and do not want to know. HS should not be involved in representing defendants.'

⁴²⁰ See., eg., Exhibit RC284, Source Management Log on 9 October 2006. Ms Gobbo is instructed not to become involved when Harty asks her to go to the police station to represent Mr Gavanas. On 10 October 2006, Ms Gobbo updated her handler that she had 'followed instructions' and did not attend St Kilda Road police station the previous night.

⁴²¹ Transcript of Mr Black, 25 October 2019, 8348.47.

⁴²² An extensive examination of what occurred in relation to the 'tomato tins' importation is set out in Mr Fox's summary, Exhibit RC0505.

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- d. On 1 September 2008, Mr Sandy White records a meeting with Messrs Fox and Green. His note includes, ‘Not to represent the Italians on the INCA job – conflict re what she has said on TI re Karam and perceived AFP relationship with same. On the same day, Mr Fox’s ICR states, ‘General talk about the pressures she is getting to represent everyone. She knows she is morally, ethically and legally conflicted and will not do any of them. So far she has been able to come up with excuses as to why she cannot represent people – she is just taking it one day at a time.’⁴²³
 - e. On 9 September 2008, ICR2958 (038) notes, ‘Rob Karam: He is not coming in today. Most likely tomorrow. She confirms she will be telling him she will not be acting for anyone as her name has been mentioned in court.’
253. That Ms Gobbo did subsequently act for some of those connected to that importation, in one way or another, is not something that is the responsibility of the SDU.
254. At [1405.2] of Volume 2, Counsel Assisting submit that Messrs Sandy White and Green were aware of the potential legal consequences of a barrister informing against their own client and in the circumstances should have, but did not take steps to prevent Ms Gobbo from continuing to act. This submission is not capable of being maintained on the evidence. Contrary to that assertion, the SDU did take steps to prevent Ms Gobbo from continuing to act as lawyer for Messrs Cooper and Karam. More detail in relation to Mr Cooper is set out subsequently in these submissions.
255. Counsel Assisting’s submission at [2349.(a)-(d)] of Volume 2 in relation to the conversation between Ms Gobbo and Messrs Fox and Anderson on 5 June 2007 is not supported by the evidence. Contrary to those submissions, it is submitted that:
- a. Mr Fox did not understand that Ms Gobbo continually acted for those with whom she had a conflict;
 - b. Mr Fox did not understand that Ms Gobbo’s conduct would not be condoned by a court;
 - c. Mr Fox did not understand that Ms Gobbo’s conduct deprived such people of a fair trial; and

⁴²³ ICR2958 (037), 1 September 2008.

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- d. Mr Fox did not acquiesce to, nor effectively condone Ms Gobbo's relevant conduct.
256. Firstly, it is noted that the conversation cited in proof of Counsel Assisting's submissions at [2349] was the first time Mr Fox had been introduced to Ms Gobbo.⁴²⁴ The conversation took place between Mr Anderson and Ms Gobbo. Save for Mr Fox's comment at the end about his laugh being a 'knowing laugh', he was observing the conversation take place rather than participating in it.
257. Mr Fox was not asked any questions about this passage by Counsel Assisting. He was not given an opportunity to explain to the Commission what his state of mind was at the time. He was not able to tell the Commission what he meant by laughing 'in a knowing way'. He was observing a robust discussion between Mr Anderson and Ms Gobbo on the first day he met Ms Gobbo in circumstances where he was about to take over as her handler. It is submitted that the Commission cannot be comfortably satisfied of his state of mind and level of understanding at the time.
258. It is otherwise submitted that the discussion quoted between Ms Gobbo and Mr Anderson supports the following propositions:
- a. That by this point, the SDU was aware that Ms Gobbo would divulge privileged information. When she did, they would record what she had said and subsequently reflect on whether there were ethical and/or privilege issues that may arise if the information was disseminated;
 - b. That Mr Anderson was being 'very vocal' about the fact that Ms Gobbo could not inform on people and then advise them, represent them and/or appear for them in court. He was not acquiescing to her acting in conflict and in doing so, effectively condoning it. The Oxford dictionary defines 'acquiesce' as 'to accept something *without arguing*, even if one does not really agree with it'. The quoted passage demonstrates lengthy argument by Mr Anderson. Counsel Assisting's submission at [2349(d)] of Volume 2 is an overreach; and

⁴²⁴ Transcript of Mr Fox, 13 September 2019, 6290.43.

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c. That the conflict of interest issue was ultimately a matter for Ms Gobbo to deal with. She recognised as much, in the same way that Ms Tittensor did with Mr Fox.

259. Although it is accepted that there were times when Ms Gobbo did not follow the SDU's instructions when they told her not to act for certain individuals,⁴²⁵ the evidence shows that there was never any intention on the SDU's part to allow Ms Gobbo to do so or to be seen as condoning that behaviour.⁴²⁶ Mr Sandy White denied the suggestion that the SDU had facilitated, acquiesced or encouraged Ms Gobbo to act in conflict.⁴²⁷ To find otherwise would involve the Commission finding that Mr Sandy White was lying during his evidence to the Commission. Clearly, such a conclusion cannot be drawn, especially given the evidence as to Mr Sandy White's integrity.

The submission that failing to give an ultimatum perpetuated the situation

260. Counsel Assisting rely on a conversation that Messrs Sandy White and Anderson had with Ms Gobbo on 5 March 2007 as an example when members should have told Ms Gobbo that she could not represent persons for whom she would be acting in conflict, and that if she did so, it would be necessary to disclose her role to such people, or alternatively make a claim for public interest immunity.⁴²⁸ It is further submitted by Counsel Assisting that the Commissioner should find that the effect of failing to give Ms Gobbo such ultimatums resulted in the perpetuation of a situation that resulted in clients of Ms Gobbo, including Ms Mokbel, not receiving independent legal representation.⁴²⁹

261. Firstly, Counsel Assisting understate the effect of advice given to Ms Gobbo by the SDU in relation to Zaharoula Mokbel. At [2270] of Volume 2, it is said that when Ms Gobbo sought advice about representing Ms Zaharoula Mokbel, 'she was told the decision was hers, the police could not be involved in undermining a person's

⁴²⁵ Transcript of Sandy White, 7 August 2019, 4084.3.

⁴²⁶ Transcript of Sandy White, 7 August 2019, 4083.19.

⁴²⁷ Transcript of Sandy White, 7 August 2019, 4083.44.

⁴²⁸ Counsel Assisting submissions Volume 2, [2271].

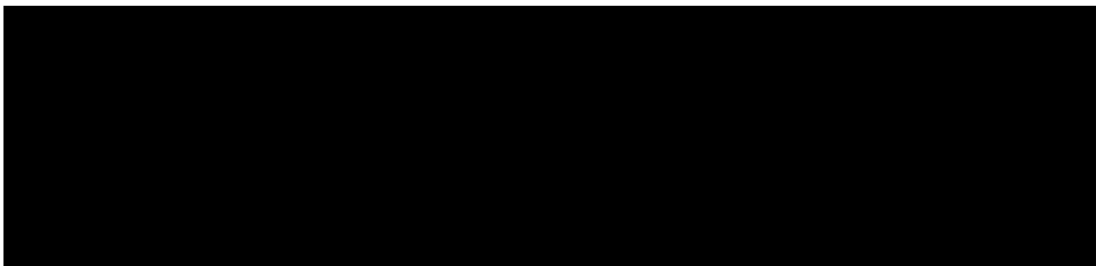
⁴²⁹ Counsel Assisting submissions Volume 2, [2272].

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defence'. Although this reflects the entry in the ICR's, when one looks at the transcript of that conversation, the SDU's position in relation to Ms Gobbo acting for Zaharoula Mokbel was stronger. The passage is set out and dealt with previously in these submissions.

262. Mr Sandy White told Ms Gobbo clearly that if she accepted Ms Mokbel's brief, she could not discuss it with the SDU.
263. In relation to the submission that Messrs Sandy White and Anderson should have told Ms Gobbo during this conversation that she could not represent persons for whom she would be acting in conflict, it is clear that there were occasions after this conversation when Mr Fox told Ms Gobbo that she should not act for Zaharoula Mokbel. As demonstrated by the ICR entries set out below, the SDU were ultimately successful in dissuading Ms Gobbo from appearing on Ms Mokbel's behalf:
- a. ICR3838 (094) on 8 August 2007 records that, 'Gen talk re her acting for Roula Mokbel – appears HS has not said no and is still actively getting them to think that she will do it. **She knows she should not represent them owing to the circs and that is our position re matter.**'
 - b. ICR3838 (094) on 14 August 2007 records that, 'HS does not want to represent [Roula] but can't see how to get out of this one. Horthy and Roula both want HS to do Roula's case. They believe she is the only one capable. **She is open to suggestions by us on how to avoid Roula's case.**'
 - c. ICR3838 (099) on 11 September 2007 records that, 'Roula has her 2 day committal starting on Monday ... **Re-iterated our position that we do not want her acting for Horthy or Roula. She knows this.** Talked about how she does not want to undo all the hard work she has done over the past two years by representing them and running risk of them getting off at court. She understands this. She has put up a list of alternate solicitors to Alistair Grigor. But does not know what he can do at such short notice.'

d.



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- e. ICR3838 (099) on 12 September 2007 records that, ‘She has spent the last hour dealing with the Roula / Horty / Milad issue. Steven Sheriffs (SC) is supposed to be doing Milad and Horty and Roula. But he is stuck at a trial in Perth. ... They are still asking for her to do it and she has to play the delicate game of looking like she wants to but coming up with excuses why she can’t. **She is also telling Alistair Grigor that she can’t represent Roula without trying to say actually why.**’
- f. ICR3838 (100) on 13 September 2007 records that, ‘According to HS there is no other barrister available to do [Roula’s committal on Monday] ... HS believes that no one else can help. ... The other barristers available she would never recommend to represent anyone. **Reiterated to HS that our position is that it is not appropriate for her to represent Roula on Monday.** She knows this but does not have any other solution. Suggested why can’t the defence make application for adjournment re the briefed barrister being unavailable.’ Later that day, the ICR records that, ‘Horty has been abusing her on the phone. They just don’t understand why she can’t do it. He is very demanding and just thinks everything should happen his way. HS explained to him why it can’t. **She** [REDACTED]

Finally, at 5.55pm on 13 September 2007, the ICR records a call from Ms Gobbo in which she tells the SDU, ‘Phil Priest has been briefed for this committal starting on Monday. There will be no junior. Horty is very pissed off that HS is not helping. She has had big fights on the phone today with him. She wishes to complain to us that this is hurting her financially by not representing these people. **She understands our stance on why she shouldn’t re conflict issues and is adhering to this.** But it is costing her money. Told – noted.’

264. The submission that the SDU should have gone a step further by indicating to Ms Gobbo that if she did place herself in a conflicted situation, her role would be exposed to her clients or a claim for PII would be made, was rejected by the SDU in evidence.
265. Mr Sandy White agreed that it would have been beneficial if the SDU had told Ms Gobbo that the ramifications of her representing Ms Mokbel in conflict would be that she could no longer provide information to Victoria Police.⁴³⁰ This type of ultimatum

⁴³⁰ Transcript of Sandy White, 7 August 2019, 4112.1.

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was used during the latter part of Ms Gobbo’s registration period, when Ms Gobbo was told that if she acted for certain people it would be a ‘relationship ending event’.⁴³¹

266. Mr Sandy White was searching for a solution to deal with the conflict issue. However, it did not occur to him to threaten to expose Ms Gobbo if she acted for someone about whom she had informed.⁴³² One can understand why. As Mr Sandy White said a number of times during his evidence, his overriding concern was to ensure Ms Gobbo was not compromised and therefore killed.⁴³³ Ms Gobbo was raising concerns that if she did not answer calls from some of these individuals upon their arrest then she would be compromised. Had she called Mr Sandy White’s bluff—which, it is submitted, she was likely to do given the concerns she was raising—Mr Sandy White would then have been put in the impossible position of having to expose her.
267. It was simply not a choice for the SDU to make to expose Ms Gobbo, or threaten to do so. As Mr Black said, ‘[I]t goes against every rule and policy we operate under. The Acknowledgement of Responsibilities is quite clear about that. It says that part of the arrangement is, it says, “Where Victoria Police will make every effort to protect my identity” ... Ultimately if we [exposed her] we’d get her killed.’⁴³⁴ Indeed, this reflects Victoria Police’s attitude at least until the High Court delivered its judgment.
268. The reality was, given the SDU’s role, they were limited as to what they could do to prevent Ms Gobbo from acting for those with whom she had a conflict.
269. The SDU make one final point in relation to the finding urged by Counsel Assisting at [2272] of Volume 2. Counsel Assisting submit that the effect of failing to give Ms Gobbo such ultimatums resulted in the perpetuation of a situation that resulted in clients of Ms Gobbo, including Ms Mokbel, not receiving independent legal representation. The submission assumes that clients of Ms Gobbo, including Ms

⁴³¹ RC0281, ICR3838 (083) 15 June 2007; Transcript of Sandy White, 6 August 2019, 4036.41; 4156.22.

⁴³² Transcript of Sandy White, 8 August 2019, 4192.22.

⁴³³ See, eg., transcript of Sandy White, 15 August 2019, 4700.1.

⁴³⁴ Transcript of Mr Black, 25 October 2019, 8377.22.

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Mokbel, did not receive independent legal representation. This was not the case. Zaharoula Mokbel was ultimately represented by Phil Priest QC. Mr Cooper was ultimately represented by Duncan Allen SC. Mr Bickley was represented by Philip Dunn QC. **Mr Ketch** was represented by Andrew McKenna. Mr Orman was represented by Robert Richter QC. Ms Gobbo was junior counsel in Mr Karam's trial in 2007 (for which he was acquitted), and Mr Karam was represented by Chris Dane QC during his trial for the tomato tin importation. These experienced members of counsel, as they then were, would have ensured their clients received independent legal representation of the highest quality.

I. DISCLOSURE

270. Over the course of its hearings, the Commission heard and received evidence in relation to how subpoenas were managed within Victoria Police, whose responsibility it was to ensure proper disclosure was made to the Courts and defence and what role the SDU played when subpoena and disclosure issues arose in relation to Ms Gobbo. The overall effect of this evidence establishes that:
- a. The SDU recognised and respected the need for proper disclosure to take place;
 - b. There were limitations in relation to the SDU's understanding of disclosure and ways in which their processes could have been improved;
 - c. The SDU's primary role and main concern was to manage Ms Gobbo's safety;
 - d. It was the primary role of others, namely investigators and the HSMU, to manage issues surrounding disclosure;
 - e. At times, the SDU were consulted about disclosure issues when they arose. That they were so consulted, does not shift organisational responsibility for disclosure to the SDU; and
 - f. When necessary, the SDU complied with requests for disclosure in a responsible and proper manner.

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The SDU's appreciation and understanding of disclosure

271. The SDU respected the importance of the court discovery process, notwithstanding the fact that it posed a real risk of exposing Ms Gobbo.⁴³⁵ In one of his early texts, Mr Sandy White wrote the following in relation to the potential for the SDU to fail to cope with disclosure:⁴³⁶

The criminal justice system presents significant hurdles to the effective use of human sources by law enforcement. The criminal justice system is based on the concept on [sic] justice being transparent and open. This is the antithesis of the requirements of a human source system which is based on the covert collection of evidence and intelligence in a manner which will protect the identity of the human source and limit exposure of police methodology.

There is a great temptation by handlers to be economical with the truth by failing to properly disclose the role played by sources in police operations. Managers which condone this course of action or turn a blind eye to its existence fail to develop strategies designed to meet the requirements of a human source system and the court system. This in turn leaves themselves and their organisations open to the risk of compromise of the source system and/or total corruption.

272. Mr Sandy White continued to recognise the tension between protecting human sources from exposure and ensuring compliance with disclosure throughout the period that Ms Gobbo was managed by the SDU.⁴³⁷ In November 2009, he wrote the following.⁴³⁸

The court process provides the greatest potential for sources to be compromised, simply because the justice system must be transparent and accountable. This works against the interest of human sources, whose involvement in police investigations must be kept secret in order to ensure their pending safety.

⁴³⁵ See, eg., exhibit RC279, Source Development Unit – The Value and the Future? 53: Case Study: 'The management of this source occurred over almost three and a half years, during which time the source was at great risk of being exposed via court discovery processes.'

⁴³⁶ Exhibit RC276, Review and Develop Best Practice Human Source Management Policy 2004, 18.

⁴³⁷ See, eg., transcript of Sandy White, 2 August 2019, 3804.33.

⁴³⁸ Exhibit RC279, Source Development Unit – The Value and the Future? 56.

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273. Members of the SDU understood the importance and gravity of disclosure.⁴³⁹ Their record keeping practices attest to the fact that they were accountable and transparent. SDU records, including human source registrations, contact reports, information reports and risk assessments—copies of which were all held by the HSMU—were not immune to subpoena. Mr Sandy White took the view that records such as ICR's were 'easily discoverable', albeit that they were not volunteered to defence as a matter of course.⁴⁴⁰ He noted that answers given by an investigator during cross-examination could well lead to a subpoena being issued, framed in terms that would, if pursued, capture SDU records.⁴⁴¹ If this occurred, a PII claim would need to be made and counsel would be briefed.
274. Notwithstanding this evidence, there were evidently limitations to members of the SDU's understanding of disclosure and relevance. Mr Sandy White's frank evidence was that he did not have anywhere near the level of appreciation for disclosure issues that Counsel Assisting, during cross-examination, suggested should have existed.⁴⁴² This, Mr Sandy White said, led to a failing on his part to give adequate consideration to matters of disclosure.⁴⁴³ He agreed that in retrospect, there were lessons to be learnt and additional roles that could have been applied to assist in the disclosure process.⁴⁴⁴ He considered that it would have been worthwhile if a prosecutor had been advised in advance if a human source was involved in any investigation.⁴⁴⁵
275. A significant premise of Counsel Assisting's submissions is that Mr Sandy White and others in the SDU understood that the manner in which they utilised Ms Gobbo, including by deploying her against Mr Cooper in order that he might be compelled to give evidence, was improper if not unlawful.⁴⁴⁶ This premise is relied upon by Counsel Assisting as supporting the proposition that the SDU should have recognised

⁴³⁹ See, eg., transcript of Mr Black, 25 October 2019, 8407.45.

⁴⁴⁰ Transcript of Sandy White, 8 August 2019, 3819.30; 19 August 2019, 4799.43

⁴⁴¹ Transcript of Sandy White, 19 August 2019, 4800.10.

⁴⁴² Transcript of Sandy White, 19 August 2019, 4800.10.

⁴⁴³ Transcript of Sandy White, 2 August 2019, 3846.20.

⁴⁴⁴ Transcript of Sandy White, DATE, 3813.23.

⁴⁴⁵ Transcript of Sandy White, DATE, 4071.12. This is at odds with Counsel Assisting's submissions at [3026] of Volume 2 that Mr Sandy White was not prepared to venture a view as to whether a barrister engaged to argue PII should have been briefed as to the identity of Ms Gobbo.

⁴⁴⁶ See, eg., Counsel Assisting submissions Volume 2, [2978], [3027].

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that information relating to Ms Gobbo's role on the night of Mr Cooper's arrest was relevant to the conduct of Horty Mokbel's trial (and the trial of others arrested as a result of Mr Cooper's assistance).⁴⁴⁷ As addressed elsewhere in these submissions, the premise itself is not open on the evidence.

276. It is unlikely that the SDU recognised the potential flow on effect that Ms Gobbo's role on the night of Mr Cooper's arrest had on the admissibility of his evidence against others. Evidence demonstrates the SDU believed that as a result of the third set of charges against him, Mr Cooper had received 'the best deal of the century in terms of his sentence', in that he went from a likely sentence of 20 years in relation to two sets of charges to a sentence of just seven years in relation to three sets of charges.⁴⁴⁸ Following his arrest, Mr Cooper was represented by an experienced solicitor and Queen's Counsel—both independent of Ms Gobbo. Mr Sandy White said that when disclosure issues arose in relation to Ms Gobbo's role with Mr Cooper (during the trials of Horty Mokbel and others), his greatest concern was that if Ms Gobbo was compromised she would be killed.⁴⁴⁹ He did not think to a significant degree about whether the information might jeopardise Mr Cooper's conviction.⁴⁵⁰ The evidence does not support a finding that he would have made the next step of considering whether Mr Cooper's evidence was fruit of the poisonous tree, given his belief that Mr Cooper would have pleaded guilty and assisted police whether Ms Gobbo was involved on the night or not.

277. Mr Black rejected the proposition that the SDU's focus on safety to Ms Gobbo overrode the importance of disclosure to ensure a fair trial, noting the SDU were 'alive to the [disclosure] issue' and that he had given due consideration to the criminal justice process.⁴⁵¹ He asked himself, 'Could we have done things better? No doubt. [But] we did a lot of things right.'⁴⁵²

278. The limitations of the SDU's appreciation of disclosure must be viewed in light of the context at the time, including the culture within Victoria Police. Ms Gobbo's case

⁴⁴⁷ See, eg., Counsel Assisting submissions Volume 2, [3007] and [3027].

⁴⁴⁸ Transcript of Sandy White, 2 August 2019, 3810.29; 3811.14.

⁴⁴⁹ Transcript of Sandy White, 3 September 2019, 5425.15.

⁴⁵⁰ Transcript of Mr Sandy White, 2 August 2019, 3810.19.

⁴⁵¹ Transcript of Mr Black, 23 October 2019, 8161.31.

⁴⁵² Transcript of Mr Black, 25 October 2019, 8408.40.

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may be the only example in which the identity of a human source of itself was recognised as a significant and disclosable piece of information. As Counsel Assisting submit, the evidence suggests that the SDU believed that the identity of a human source would never be revealed.⁴⁵³ They were not alone.⁴⁵⁴ This erroneous belief was corrected when the High Court's decision was made public. The decision of Ginnane J (the Victorian Court of Appeal and ultimately, the High Court of Australia) represented a significant shift in how a court might approach the balancing exercise of competing public interests. Beforehand, as Mr Sandy White acknowledged, defence would never be told that an informer was involved in an investigation, regardless of that informer's identity. He readily conceded that this was one difficulty with the sterile corridor and an issue he had not turned his mind to when creating human source policy.⁴⁵⁵

279. Notwithstanding these limitations, Mr Sandy White firmly denied any impropriety on the part of the SDU in relation to disclosure issues:⁴⁵⁶

The SDU handlers would not be making suggestions about redactions that were illegitimate. Firstly, I make that clear. ... I am confident in saying to you that none of the source handlers that worked at the SDU would be involved in doing anything illegitimate or improper in relation to this. ... What I'm saying to you, Mr Winneke, and I want to be very clear in this, I would not be instructing source handlers to be redacting material from a brief of evidence that has no legitimate or proper purpose.

280. It is not accepted that Mr Sandy White's awareness of the non-inviolable nature of informer privilege also makes clear his awareness that a court must be involved in any decision for such material to be withheld from the defence, as is submitted by Counsel Assisting.⁴⁵⁷ It is not clear to Counsel for the SDU what material Counsel Assisting refers to in paragraph [1353], but in any event, the premise of the submission is incorrect. That is, it is not the case that a court must invariably be involved in any

⁴⁵³ Counsel Assisting submissions Volume 2, [4776].

⁴⁵⁴ Transcript of Luke Cornelius, 23 January 2020, 12592.

⁴⁵⁵ Transcript of Sandy White, 8 August 2019, 4182.1.

⁴⁵⁶ Transcript of Sandy White, 7 August 2019, 4069.11.

⁴⁵⁷ Counsel Assisting submissions Volume 2 [1353].

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decision for material relating to an informer (if that is what is being referred to as ‘such material’) to be withheld from the defence. Other options are open, as was seen during the handling of Ms Gobbo by way of advice received from Mr Rapke QC.⁴⁵⁸ As the High Court of Australia recognised, ‘where a question of disclosure of a police informer’s identity arises before the trial of an accused, and the Crown is not prepared to disclose the identity of the informer, as is sometimes the case, the Crown may choose not to proceed with the prosecution or the trial may be stayed.’⁴⁵⁹ Counsel Assisting’s submission at [1353] of Volume 2 is not a finding that is open to the Commission.

The role of the SDU and others in the disclosure process

281. Counsel Assisting have afforded very little weight to the importance of maintaining the anonymity of a human source. On this topic, the High Court in *AB v CD* stated as follows:⁴⁶⁰

Generally speaking, it is of the utmost importance that assurances of anonymity of the kind that were given to [Ms Gobbo] are honoured. If they were not, informers could not be protected and persons would be unwilling to provide information to the police which may assist in the prosecution of offenders.

282. The balancing exercise in Ms Gobbo’s case ultimately fell in favour of disclosure of her identity. However, the SDU, given all that is known about the unit’s development and the background against which it was established, ought not be criticised for its endeavours to maintain Ms Gobbo’s anonymity. Contrary to Counsel Assisting’s position throughout hearings and closing submissions—that each step taken by the SDU to protect Ms Gobbo from exposure demonstrates the unit’s knowledge of its improper conduct and attempts to avoid scrutiny—the SDU plainly considered that their primary role was to ensure Ms Gobbo’s safety by maintaining her anonymity.⁴⁶¹ There was no sinister motive.

⁴⁵⁸ See., eg., Exhibit RC284, Source Management Log entry, 1 July 2009.

⁴⁵⁹ *AB (a pseudonym) v CD (a pseudonym); EF (a pseudonym) v CD (a pseudonym)* (2018) 93 ALJR 59, 62 [9].

⁴⁶⁰ At 62 [12].

⁴⁶¹ Transcript of Sandy White, 15 August 2019, 4667.25; Transcript of Mr Black, 23 October 2019, 8161.22.

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283. In relation to Ms Gobbo's attendance on the night of Mr Cooper's arrest (and fact she subsequently told the Mokbels she hadn't been there, for fear of retribution had they discovered she knew of the arrest and had not 'tipped them off'), Mr Sandy White said the following:⁴⁶²

Our greatest concern was that if she was compromised she would be killed ... and the greatest chance of her getting compromised was going to arise out of court processes. This one in particular was the biggest worry. She committed herself to a particular path, it wasn't true, and it was going to be very easily found out. In which case she would have been in trouble.

284. On the issue of disclosure, Mr Sandy White noted these concerns around court processes were the same for all high-risk sources. Sources that were compromised would be seriously hurt or killed.⁴⁶³ Mr Black unequivocally accepted that as a handler, the focus was on the safety of a human source.⁴⁶⁴ In relation to Ms Gobbo, he was mindful of disclosure but understood that the SDU's objective was to keep Ms Gobbo alive and not disclose her identity or assistance. On the other hand, ensuring proper disclosure took place was the responsibility of investigators.⁴⁶⁵

285. The SDU maintain the submission that it was the responsibility of investigators to deal with disclosure at first instance, and HSMU (via the Subpoena Management Unit) to manage matters involving subpoenas.⁴⁶⁶

286. Brief preparation and responding to Form 8A's were the duties of investigators. The Commission heard that the SDU was not involved in the redacting process in relation to hand up briefs,⁴⁶⁷ though they understood that investigators had a common practice

⁴⁶² Transcript of Sandy White, 3 September 2019, 5425.19.

⁴⁶³ Transcript of Sandy White, 2 August 2019, 3812.38.

⁴⁶⁴ Transcript of Mr Black, 25 October 2019, 8408.18.

⁴⁶⁵ Transcript of Mr Black, 23 October 2019, 8161.22.

⁴⁶⁶ Transcript of Sandy White, 19 August 2019, 4799.26; Transcript of Luke Cornelius, 29 January 2019, 12588-9.

⁴⁶⁷ Transcript of Sandy White, 7 August 2019, 4068.13.

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to black out anything that might identify an informer.⁴⁶⁸ Investigators such as Mr Flynn confirmed that his practice was to redact his own notes.⁴⁶⁹

287. It also fell to investigators to deal with prosecutors, including in relation to cases involving human sources.⁴⁷⁰ Mr Sandy White noted that it was not the practice for human source managers to approach a prosecutor and tell them that a source was involved in any given case.⁴⁷¹ He did believe, however, that when counsel was engaged to argue public interest immunity claims, they were 'briefed pretty fully.'⁴⁷²
288. An example of when this process took place is outlined in Counsel Assisting's submissions at [1652] of Volume 2. On this occasion, Mr O'Brien became aware via information from Mr Peter Smith that subpoenas were to be issued 're all witnesses + informers'. As a result, Mr O'Brien made arrangements to brief lawyers in relation to public interest immunity issues. That is, it was not the SDU's responsibility to make those arrangements.
289. It was the role of the HSMU to manage and respond to subpoenas which sought material relating to a human source. When this occurred, and as long as Ms Gobbo was a human source, public interest immunity could be relied on as an objection to producing material that would otherwise compromise her.⁴⁷³
290. Mr Sandy White said that if he had any concerns about disclosure issues, he would first speak to his Inspector.⁴⁷⁴ He also referred to the role of the HSMU. The HSMU had total responsibility for disclosure and public interest immunity claims and its own process for briefing counsel.⁴⁷⁵ The SDU was not authorised to release its own records. Any release of human source material had to be authorised by the HSMU.

⁴⁶⁸ Transcript of Sandy White, 15 August 2019, 4662.19.

⁴⁶⁹ Transcript of Dale Flynn, 1 October 2019, 6954.4.

⁴⁷⁰ Transcript of Sandy White, 15 August 2019, 4665.34.

⁴⁷¹ Transcript of Sandy White, 15 August 2019, 4666.3.

⁴⁷² Transcript of Sandy White, 4129.37.

⁴⁷³ Transcript of Anthony Biggin, 10 October 2019, 7621.16.

⁴⁷⁴ Transcript of Sandy White, 2 August 2019, 3847.1.

⁴⁷⁵ Transcript of Sandy White, 2 August 2019, 3847.1; Transcript of Mr Black, 25 October 2019, 8387.37.

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The SDU's involvement when disclosure issues arose

291. Notwithstanding that the SDU was not ultimately responsible for matters of disclosure, it was still necessary that they remain informed when issues arose that had the potential to compromise one of their sources. To this extent, Counsel Assisting's submission at [3025] of Volume 2 in relation to the SDU closely liaising with investigators is not disputed.
292. Mr Sandy White told the Commission that as a matter of course, he would be notified of disclosure issues if he was still managing the particular source concerned.⁴⁷⁶ The reasoning behind this was two-fold:
- a. Firstly, it was important for the SDU to know if one of their sources was about to be compromised. Mr Biggin referred to the fact Mr Gavan Ryan had contacted him around the time of Horty Mokbel's committal 'as a matter of courtesy' due to his concerns that Ms Gobbo would be exposed.⁴⁷⁷ In March 2008, during Mr Orman's matter, concerns were raised with the SDU that Ms Gobbo's role may be exposed during the court process. As a result, the SDU put in place a 'tactical extraction' plan in the event of Ms Gobbo's compromise.⁴⁷⁸
 - b. Secondly, the SDU were subject matter experts and had intimate knowledge of the surrounding circumstances of their sources. To that end, they had a greater appreciation than the investigators in relation to what information, if revealed, may compromise a source. Mr Black broadly referred to this as the risk of 'inadvertently' compromising Ms Gobbo.⁴⁷⁹ He emphasised that much of the SDU's focus when involved in the disclosure process was on preventing 'accidental disclosure'.⁴⁸⁰
293. This demonstrates the SDU were not resistant to complying with requests for proper disclosure (though as is conceded, their understanding of what matters were deemed 'proper' to disclose did not extend to Ms Gobbo's identity). There was no

⁴⁷⁶ Transcript of Sandy White, 2 August 2019, 3821.1.

⁴⁷⁷ Transcript of Anthony Biggin, 7577.30.

⁴⁷⁸ Exhibit RC338, Email dated 12 March 2008 from Officer Wolf to Officer Fox, Officer Peter Smith and Officer Green, VPL.6048.0001.0655; Transcript of Gavan Ryan, 15 August 2019, 4617.5;

⁴⁷⁹ Transcript of Mr Black, 23 October 2019, 8161.17.

⁴⁸⁰ Transcript of Mr Black, 23 October 2019, 8196.26.

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expectation that Ms Gobbo's role would never be disclosed to the Court. Indeed, they prepared themselves for the potential that it may be so disclosed and if so, the potential for her to be exposed and placed in serious danger. However, the SDU were mindful of ensuring Ms Gobbo was not unnecessarily exposed by fishing expeditions or broad subpoenas drafted by defence when seeking material other than information about Gobbo's role or identity.

294. Some examples of the SDU's involvement in the disclosure process are addressed below.

The 12 August 2008 subpoena

295. The subpoena issued on 12 August 2008 is dealt with in Counsel Assisting's submissions at [2956] to [2982] inclusive.
296. Paragraph [2962] of Volume 2 overstates the role played by Mr Green in the subpoena process, in that it asserts that on 13 August 2008 Mr Green seems to have offered Mr Flynn advice that 'care to be taken' in the provision of notes in relation to the first meeting [with Ms Gobbo], but there was no issue with the second meeting after the arrests. Mr Green's diary contains the following relevant entries for that day:

*1307hrs: Called by Flynn re subpoena from Grigor re Horty M trial. Want all conversations with Cooper. Two issues re source involvement: One on 22-6 [sic]. Day of Cooper arrest
Two – 1 or 2 weeks after arrests, Cooper met source at VPN briefly*

1320hrs: RTO. Discuss above. Care to be taken re first meeting. No issues re second meeting after arrests.

1445hrs: Called by Flynn. Matter re second date/meeting resolved after call to Grigor solicitor was made. They do not want every meet and greet details.

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

297. That is, the entries do not support the finding that Mr Green gave advice to Mr Flynn about how to deal with the subpoena. There is a discussion with other members of the SDU at the office (RTO meaning 'return to office') following Mr Green's telephone conversation with Mr Flynn. Mr Sandy White's diary entry for that meeting simply states '8A served on Flynn re Horty'. The Source Management Log of the same day states, 'advised by DSS Flynn that he has received a subpoena re Horty MOKBEL trial calling for all conversations with Cooper on day of arrest.' By the time Mr Flynn called Mr Green for a second time, it appears that the subpoena issue had already been resolved via negotiations between Mr Flynn and Messrs Shireffs and Grigor. Mr Green was not asked to expand on these entries. Nor was Mr Flynn. Therefore, there is no evidence that Mr Green offered advice to Mr Flynn in the manner alleged.
298. The remaining submissions of Counsel Assisting, from [2966] to [2974] of Volume 2 do not refer to any further involvement by the SDU in relation to the 12 August 2008 subpoena.
299. The submissions, insofar as they are accurate, support the points made by the SDU above. That is, that:
- a. The SDU was kept apprised of subpoena issues in the event Ms Gobbo was to be compromised;
 - b. The HSMU was involved in the process and prepared to brief a barrister to deal with 'PII issues'; and
 - c. The matter was otherwise dealt with by investigators.
300. In light of the above, it is not open for the Commission to find that investigators, 'with the assistance of the SDU', sought to improperly 'sanitise' notes and, without informing defence lawyers that there may be additional materials that might be relevant, improperly purported to reach an 'agreement' with them, in order to limit the production of materials, as is submitted by Counsel Assisting at [2976] of Volume 2. If this occurred, there is no evidence that the SDU provided any assistance in the process.

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1 September 2008 – the second subpoena

301. The second subpoena is dealt with in Counsel Assisting's submissions at [2983] to [3031] of Volume 2. A number of points about those submissions are made.
302. It should be noted that there is no evidence to suggest that the SDU were aware that on a strict reading of the terms of the subpoena issued by Grigor Lawyers, the SDU's ICR's would have been disclosable. There is no evidence that Mr Fox saw the original subpoena, or the affidavits of Mr Johns until he collected them from Mr Johns on 5 September 2008—after the Court had made its determination. If this subpoena did not make its way to the HSMU from the Subpoena Management Unit, the SDU is unable to assist the Commission as to why it did not.
303. Although Mr Fox was not asked about these matters, the evidence reveals that his knowledge of the 1 September 2008 subpoena came from Mr Johns directly and in the context of a request for assistance in relation to appropriate redactions to be made to a number of Information Reports.
304. Counsel Assisting at [2984] to [2985] and [2995] of Volume 2 refer to conversations between Messrs Johns and Fox about the redaction of 16 IR's. The evidence shows that during those conversations, Mr Fox was instructing Mr Johns that Mr Johns had, in effect, 'over redacted' the IR's and that relevant information was at risk of not being provided to defence. That is, although Mr Fox did not wish for Ms Gobbo's identity to be revealed, he was ensuring that the redactions made were as minor as possible.
305. Mr Fox's email to Mr Johns on 3 September 2008 attaching the IR's (summarised at [2995] of Volume 2) ought not be mistaken for a general invitation to further sanitise the IR's. The full message, when set out, reads as follows:⁴⁸¹

These have been re-edited purely on consideration of our our [sic] office.

⁴⁸¹ Exhibit RC1339, Email from Fox to Tim Johns, 3 September 2008, VPL.6048.0024.8711.

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You will need to quickly read the IR's again and maybe sanitise more in consideration to issues from your office or likelihood of compromise to ongoing investigations.

306. That is, the IR's were sanitised from a source management perspective. Mr Fox then drew Mr Johns' attention to the possibility that there may be issues that he is unaware of relating to Purana and ongoing investigations that require further sanitisation, which Mr Fox would be unaware of. It appears from Mr Johns' affidavits that this was necessary, as a number of persons identified in the IR's were targets of ongoing Purana investigations at the time.
307. Counsel Assisting set out some of the contents of Mr Johns' second affidavit. The information contained therein (including that Cooper 'only disclosed his personal thoughts to one person' and that Informer X 'had Cooper's confidence sufficiently for these types of personal thoughts') has the potential to reveal to those reading it that Informer X is Ms Gobbo. It is evident from the SDU's treatment of the affidavit that they believed the affidavit identified, or had the potential to identify Ms Gobbo, thus their concern that it be removed from Mr Gipp's computer and the only hard copy returned to the SDU for safe keeping. This is another example of the SDU acting professionally, to ensure the protection of Ms Gobbo.
308. Overall, the 1 September 2008 subpoena and the SDU's response to the same demonstrates that:
- a. It was the responsibility of others (here, the investigators) to interpret and respond to subpoenas;
 - b. The SDU complied with requests from others for documents;
 - c. It was the investigators, and not the SDU who were dealing with counsel briefed in relation to PII matters. The SDU gave no direction as to what counsel should or should not be told in relation to the use of Ms Gobbo;
 - d. The SDU's assistance was called upon because they were subject matter experts and able to explain why certain information would compromise a source. Mr Fox's involvement in assisting Mr Johns, as his diary reflects, relates to assisting him to expand on matters and reasons why the public interest immunity claim was relevant.

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- e. The SDU's main concern was the compromise of Ms Gobbo. This is supported by Mr Sandy White's email of 3 September 2008,⁴⁸²
 - f. The SDU briefed their superior officers when these issues arose. Mr Sandy White kept Messrs Biggin and Glow apprised of what was occurring; and
 - g. The SDU did not resist matters of PII being argued before a Court.
309. Counsel Assisting at [3027] of Volume 2 submit that Sandy White should have insisted that Mr Fox instruct Mr Johns to apprise Mr Gipp about the manner in which Ms Gobbo was utilised by the SDU and the potential impropriety thereof. As previously stated, Mr Sandy White did not believe there was any impropriety or potential impropriety in the manner in which the SDU had utilised Ms Gobbo as a source. As referred to above, he believed that when counsel was engaged to argue public interest immunity claims that they were 'briefed pretty fully'.⁴⁸³ Mr Sandy White kept Inspector Glow and Superintendent Biggin apprised of matters relating to the 1 September 2007 subpoena. His conduct was consistent with expectations of his role at the time.

Petra requests 'Witness F' informer management file

310. These matters, insofar as they relate to the SDU, are dealt with in Counsel Assisting's submissions from [3950] to [3997] of Volume 2.
311. At [3950] of Volume 2, Mr Sandy White's diary entry from 10 March 2010 is set out in full. It is said by Counsel Assisting to demonstrate that Mr Sandy White was 'cognisant of the desire to conceal Ms Gobbo's historic role as a human source, because it might have an impact upon convictions and prosecutions arising out of the 'Mokbel investigation', a reference to Operation Posse.' There is insufficient evidence to support this proposition.
312. It is submitted that a balanced reading of Mr Sandy White's diary entry reveals that he was cognisant of the following:

⁴⁸² Exhibit RC0296 Email exchange involving Sandy White, Tony Biggin and Andrew Glow, 3-4 September 2008, VPL.6029.0001.0016.

⁴⁸³ Transcript of Sandy White, 4129.37.

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- a. A desire to protect Ms Gobbo from unnecessary ('inadvertent') exposure. He writes, 'If witness is not going to give evidence, then would appear a waste of time discussing PII issues.'
 - b. That it was important to Mr Sandy White that Mr Gipp of counsel was properly briefed so that a PII claim could be made. To this end, he 'suggested that the SDU access SCR's for search of Dale references. This material could then be supplied to GIPP for assistance re PII argument'.
 - c. That the proper process needed to be followed if material was to be released. That is, that a written request was to be made to the HSMU. He writes, 'SS to make written request to Supt. PORTER as SCR for release of information relevant to DALE.'
 - d. A recognition that the 'defence [were] entitled to know whether prior inconsistent statements [exist].'
 - e. A concern that Ms Gobbo would be compromised in relation to her assistance at the time of the Mokbel investigation.
313. The propositions that the final line of Mr Sandy White's diary reflected a desire to conceal Ms Gobbo's historic role as a human source, because it might have impact on convictions arising out of the 'Mokbel investigation', and that the 'Mokbel investigation' was a reference to Operation Posse, were not put to Mr White over the course of his cross-examination. The particular diary entry that is relied upon was shown to Mr Sandy White and he confirmed its contents. He was asked whether he recalled any discussions about whether Mr Mokbel might well be entitled to information concerning Ms Gobbo's involvement and he said he could not.⁴⁸⁴
314. The proposed finding at [3952] is speculative. The final line of the diary entry is just as consistent with Mr Sandy White holding a concern that Ms Gobbo would be in grave danger if the Mokbels realised she had informed against them. They posed a far greater risk to Ms Gobbo's safety than Paul Dale.
315. In light of the foregoing, the proposed finding at [3952] of Volume 2 is not open on the evidence.

⁴⁸⁴ Transcript of Sandy White, 3 September 2019, 5403.46.

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Other submissions made by Counsel Assisting in relation to disclosure issues

316. Counsel Assisting submit at [1416] of Volume 2 that the conduct of members of Victoria Police including Mr Sandy White in relation to the risk that Ms Gobbo would be compromised by her calling herself on the telephone given to Mr Bickley demonstrates their forethought as to court disclosure requirements potentially compromising Ms Gobbo and methods to avoid such disclosure.
317. Mr Sandy White's evidence on this point, which is not referred to by Counsel Assisting, was that he did not believe it had ever occurred to him that Ms Gobbo's handing over of the phone would lead to difficulties in the future in relation to disclosure requests.⁴⁸⁵ These concerns are unrelated to court disclosure requirements and were aimed to ensure Ms Gobbo was not exposed as part of the investigative process, that is, by her number appearing on the CCR's. The ICR's also reveal that the SDU were concerned to pass on the telephone number to investigators as she was the only person aware of the numbers. Therefore, it was 'single source information' and could compromise her.⁴⁸⁶
318. Counsel Assisting at [4047] of Volume 2 assume that on 24 May 2010 Messrs Sandy White, Sheridan and O'Connor were considering a hypothetical scenario in which Ms Gobbo may call their bluff and force Victoria Police to disclose the Source Management Log to the Court, thus inviting scrutiny from the OPI and putting convictions in jeopardy. The following points are made in relation to this submission:
- a. This diary entry was not put to Mr Sandy White during the 18 days of his evidence. He was not given access to his May 2010 diaries. The entry remained untendered until after hearings in relation to terms of reference 1 and 2 had concluded;
 - b. The first proposition—that the diary entry reflected that consideration was being given as to a 'means by which to suppress the handling of Ms Gobbo from exposure'—was not put to him;
 - c. There is no evidence to support the proposition that the second part of the submission—that 'in effect, Ms Gobbo was calling the bluff of Victoria Police; to

⁴⁸⁵ Transcript of Sandy White, 3 September 2019, 5416.35.

⁴⁸⁶ Exhibit RC0281, ICR3838 (023) 16 March 2006, VPL.2000.0003.1778.

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defend the claim they would have to expose her, but it would be at their own peril if they did. They would expose themselves to scrutiny by the OPI, they would put in jeopardy convictions they had obtained and prosecutions that were outstanding’—was given any consideration by Mr Sandy White at this meeting;

- d. The submission itself is based on a hypothetical scenario;
- e. As the Commission has seen, the Source Management Log contains sensitive information over and above the identity of Ms Gobbo. There were clearly legitimate reasons as to why a discussion might take place about the basis of a public interest immunity claim to prevent disclosure of the Source Management Log.

319. There is no proper basis for Counsel Assisting’s assumption that the motive must have been ‘to suppress the handling of Ms Gobbo from exposure.’

J. MR COOPER

320. Counsel Assisting’s submissions at Chapter 11 of Volume 2 address the use of Ms Gobbo in relation to Mr Cooper and Operation Posse, and ultimately invite the Commission to make findings that members of the SDU (and others) may have engaged in [REDACTED] professional misconduct. These findings are said to be open based on the narrative set out in Chapter 11. That narrative, it is submitted, misinterprets and overlooks significant evidence before the Commission.

321. In summary, it is submitted:

- a. It was not improper for the SDU to receive and disseminate intelligence from Ms Gobbo in relation to Mr Cooper’s ongoing criminal activity.
- b. Messrs Sandy White, Peter Smith and Green did not want Ms Gobbo to attend to advise Mr Cooper on his arrest. They told her so. However, Ms Gobbo believed that if she failed to attend when Mr Cooper was arrested she would be the subject of extreme aggression from the Mokbel family. She made it clear that she was going to attend.
- c. Mr Sandy White did not believe there was any way to prevent Ms Gobbo from attending to advise Mr Cooper on his arrest.

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- d. Mr Sandy White was concerned that Ms Gobbo's attendance on Mr Cooper's arrest may affect the admissibility of any admissions Mr Cooper made. This concern was raised by the SDU with investigators. It was then a matter for the investigators to determine whether Ms Gobbo would be allowed to see Mr Cooper.
 - e. Messrs Sandy White, Peter Smith and Green's desire to prevent Ms Gobbo from advising Mr Cooper arose from their belief that she would be acting in conflict, and that this may leave the admissibility of any admissions made by Mr Cooper open to challenge. At the time, the SDU did not believe the implications of Ms Gobbo's attendance would have an irreparable effect on the course of justice. Mr Cooper was going to cooperate with police, whether Ms Gobbo attended or not. Mr Cooper did what was objectively in his best interests.
 - f. Mr Black's involvement in the management and handling of Ms Gobbo in relation to Mr Cooper was at most, peripheral. Although it is conceded that the SDU made errors in relation to allowing Ms Gobbo to attend on 22 April 2006 at St Kilda Road police station, that cannot be attached in any way to Mr Black. He did not know that Ms Gobbo was attending, and was only informed afterwards.
322. Ultimately, it will be submitted that the submissions of Counsel Assisting in Chapter 11, namely, that Messrs Sandy White, Peter Smith, Black and Green may have engaged in [REDACTED] professional misconduct in relation to Mr Cooper, should not be accepted.
323. Then Chief Commission Nixon was taken to the conversation between Mr Sandy White, Peter Smith, Green and Ms Gobbo on 20 April 2006, where ethical and legal implications were raised:

Ms Nixon: [He] says to her that in fact she has a conflict and shouldn't ---

Ms Tittensor: Raising with her, you know, "Up the track this might be inadmissible, what should we do?"

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Ms Nixon: Right. I guess he's also raising with her that she has a conflict, that if she's giving information it's inappropriate for her then to be appearing for this person.

Ms Tittensor: Yes, and what should he be doing though within the organisation? Aside from raising this fact with Ms Gobbo, who is currently also already representing that client that she's informing on?

Ms Nixon: Right.

Ms Tittensor: What should he be doing?

Ms Nixon: What steps should he take?

Ms Tittensor: Yes?

Ms Nixon: He has raised that issue with the barrister that he thinks there's a conflict involved. I think that's the first step. If she then refuses in the terms you've used to actually not appear, or not represent that particular client in that circumstance, he has a real dilemma, and he has a difficulty in both the client is asking for their lawyer and the lawyer is wanting to meet that person, I think the police officer is in a very difficult place. He can't tell the client, for instance, that the person has given information because that breaches a set of obligations that he has to protect a source and so then he's got, what do you do about the lawyer? Now if he could, and I don't know the circumstances, but if he could then one of the things would be to say to the detectives who are dealing with the matter, if they're around, is "You need to talk to her about not appearing for this person because there is a conflict involved". Do you want me to keep going?

Ms Tittensor: In terms of upping it up the line, in terms of---?

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Ms Nixon: So he's talking to the detectives involved. ... The detectives then have to decide about what action they're going to take and whether or not, you know, they're going to let this continue. I assume there's a series of steps they could have taken. One might be that they determine not to interview the person that day and, you know, call the Bail Justice in as to whether or not that's appropriate. So there is that kind of a step. In terms of who the source management people call, they may then look to talk to their more senior officer, the Superintendent or the Assistant Commissioner.

Ms Tittensor: You would be going straight to a senior officer, wouldn't you, and just discussing a dilemma like this?

Ms Nixon: It depends, it depends on many things. It depends on the time of day, it depends on the circumstances, it depends as to where they saw and how they might think about resolving the matter. I guess it's a hypothetical, or perhaps it's not a hypothetical, but they're in a very difficult position and would be looking to talk to the detectives involved or look to talk to their senior officers about what steps could be taken.

324. It is submitted that Ms Nixon properly appreciates the difficulties Mr Sandy White experienced in dealing with the circumstances around Mr Cooper's arrest.

The SDU's receipt of intelligence relating to Mr Cooper, and a plan for him to 'roll'

325. Ms Gobbo's relationship with Mr Cooper exceeded that of a lawyer client relationship. Mr Cooper in evidence before the Commission accepted that he had been involved in serious criminal activity in the months leading up to his arrest and that he and others talked about that criminal activity in front of Ms Gobbo at social events.⁴⁸⁷ This appeared to be the case from the very beginning of the SDU's registration of Ms Gobbo.

⁴⁸⁷ Transcript of Mr Cooper, 31 October 2019, 8765.4.

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326. On 21 September 2005, ICR3838 (002) records that that:

HS has heard that Jeffrey JAMOUR and Sam YOUNAN are cooking amphetamines for Mokbel. The source of this information was COOPER who is on bail and is a client of HS.

JAMOU has been given a class on how to manufacture speed by Cooper, this information also came from Cooper. Cooper says that Mr Luxmore is also cooking amphetamines for Mokbel.

...

In July 2005, Cooper rang and wanted to speak urgently with HS. He had just [REDACTED] with his [REDACTED] ... Cooper wanted to discuss these personal matters with HS. HS met Cooper at the R-Bar, Port Melbourne. ...

327. On 25 October 2005, ICR3838 (007) records that:

Cooper is at [REDACTED] Hospital ... HS visited him there 1900 to 2130 yesterday. ... Cooper states that the only people who know he is in that hospital are his [REDACTED] HS and u/k 'straight' friend, first name Steve. ... Cooper specifically told HS not to advise Mokbel's of his location. Milad and Tony Mokbel have asked HS re Cooper location, HS denied knowledge of same.

328. On 28 October 2005, ICR3838 (007) records that:

Cooper also told HS that horty Mokbel told him that he had [REDACTED] kilogram of chemical used for amphet cooking. ... HS went to see Cooper at 7.30pm yesterday and was there for about two and a half hours. Cooper did a lot of talking, gave many names.

329. On 16 November 2005, ICR3838 (008) records that:

Cooper had chocolates delivered to HS for birthday and is seeing him tonight at 2000hrs at Arrive (sic) Derci Restaurant again.

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330. The SDU handlers were aware that Ms Gobbo's relationship with Mr Cooper was more than professional and that Mr Cooper had valuable information about the Mokbel cartel's drug activities.
331. The SDU believed intelligence gleaned by Ms Gobbo as a result of her personal relationship with Mr Cooper could properly be disseminated. As Mr Sandy White said:⁴⁸⁸

Prior to [Mr Cooper's arrest, Ms Gobbo's] contact with him was social, very, very social and it was not in the context of a professional relationship and, as I said, I considered that intelligence was intelligence that we were entitled to get and act on.

332. Throughout the hearings before the Commission, Counsel Assisting suggested that it was the SDU's plan to have Mr Cooper arrested and put in a position where he had no choice but to cooperate. It was implied that the plan was to then send Ms Gobbo in to advise him as an agent of police. This was not the case. The plan was Purana's. Purana planned to arrest Mr Cooper manufacturing drugs. It was hoped that he would [REDACTED] others. The SDU were providing intelligence to Purana that focused on ascertaining if Mr Cooper was manufacturing drugs and where that activity was taking place. Ms Gobbo, of course, was the source of that intelligence. Because of the relationship between Ms Gobbo and Mr Cooper, Messrs Sandy White, Peter Smith and Green realised she would want to attend and assist Mr Cooper if he were arrested. They unsuccessfully sought to dissuade her from doing so. The investigators were told of the risk to admissibility of any confession by Mr Cooper if Ms Gobbo attended upon his arrest.

'Manufacturing' an adjournment

333. Counsel Assisting at [1814] of Volume 2 outline various conversations between Ms Gobbo and her handlers from 5 April 2006 to 18 April 2006 in relation to the possibility of 'manufacturing' an adjournment of Mr Cooper's plea.

⁴⁸⁸ Transcript of Sandy White, 31 July 2019, 3613.26.

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334. To the extent that Counsel Assisting's submissions suggest that the SDU had a desire to 'manufacture' an adjournment, the evidence demonstrates that it was primarily Mr Cooper and those for whom he was manufacturing methamphetamines (ie., the Mokbels) who drove the idea of an adjournment of Mr Cooper's plea to enable him to continue to manufacture drugs on a commercial scale to earn some money prior to being incarcerated.
335. Counsel Assisting assert at [1814.2] of Volume 2 that Mr Peter Smith accepted that the 'plan of attack', on the part of Victoria Police and Purana, was to obtain an adjournment in order to keep Mr Cooper on bail in the community so that he would 'be able to cook and then ... be caught by investigating police'. The evidence is that the SDU had no such plan.⁴⁸⁹

Mr Peter Smith: *[Ms Gobbo] was under pressure from I believe Milad Mokbel and perhaps others for this to occur.*

Mr Woods: *So is it your position --- ?*

Mr Peter Smith: *And I also understand Cooper also wanted that.*

Mr Woods: *Yes. Also the SDU wanted that, didn't they, because it would mean that it was going to bring about the possibility of implicating Cooper in a cook?*

Mr Peter Smith: *I think Purana wanted it.*

Mr Woods: *Yes, okay?*

Mr Peter Smith: *We were not getting involved in that sort of thing at all. That's an investigative matter.*

Mr Woods: *But it was a plan of attack, and I could take you back to the bits that we've already looked at before?*

⁴⁸⁹ Transcript of Peter Smith, 11 September 2019, 6106.3.

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Mr Peter Smith: No, it's okay.

Mr Woods: The plan of attack was that he'd be out in order to be able to cook and then in order to be able to be caught?

Mr Peter Smith: That's right. I think Purana somehow – I think they somehow facilitated it but that was in their hands.

336. The adjournment issue was raised with the SDU by Ms Gobbo in October 2005, when she told her handlers that Mr Cooper had wanted an adjournment of his matter so that he could spend Christmas at home with his family member⁴⁹⁰ The issue was raised again by Ms Gobbo on 9 March 2006, when she told her handlers that Rob Karam and others at dinner that night had 'openly said in front of her [that] "You've got to get Cooper an adjournment. He's going to be so busy [cooking drugs] for the next six months it's not funny."⁴⁹¹ Mr Sandy White responded that if Mr Cooper were to continue to manufacture amphetamines for a further six months, it would probably kill him.
337. On 5 April 2006 the adjournment proposal was discussed at a face to face meeting between Ms Gobbo and her handlers. Ms Gobbo noted that Milad Mokbel had been asked whether Mr Cooper was going to 'get his adjournment.'⁴⁹² Two days later, Mr Peter Smith updated Mr Sandy White about the adjournment issue. Ms Gobbo was told by the SDU that if the matter was adjourned then that would be advantageous to the investigation but that the SDU did not condone or request the deception of the Court.⁴⁹³ This was reiterated to Ms Gobbo on 20 April 2006.⁴⁹⁴
338. Messrs Sandy White, Peter Smith and Green recognised that an adjournment of Mr Cooper's plea would be advantageous to investigators (indeed, Messrs O'Brien and

⁴⁹⁰ Transcript of conversation with Ms Gobbo, Mr Sandy White, Mr Peter Smith and Mr Black, 28 October 2005, VPL.0005.0051.0336.

⁴⁹¹ Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Green, 9 March 2006, VPL.0005.0051.1281 at .1326.

⁴⁹² Transcript of conversation with Ms Gobbo, Mr Peter Smith and Mr Green, 5 April 2006, VPL.0005.0051.1119 at .1150.

⁴⁹³ Transcript of Sandy White, 2 September 2019, 5269.34; Exhibit RC390, diary of Sandy White dated 7 April 2006.

⁴⁹⁴ Transcript of conversation with Ms Gobbo, Mr Sandy White, Mr Peter Smith and Mr Green, 20 April 2006, VPL.0005.0097.0011 at .0237.

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Overland had sought advice from Mr Coghlan QC about the possibility of obtaining an adjournment for the sake of pursuing a ‘much bigger picture’). However, it was not their idea, and whilst they recognised the Court could not be told that an adjournment was needed due to an ongoing investigation, they did not condone any deception of the Court to obtain an adjournment.

339. As it turned out, there was no adjournment application made as the clandestine drug laboratory was discovered by police before the Court return date.

The SDU’s attempts to prevent Ms Gobbo from attending on Mr Cooper’s arrest and why she ultimately did so

340. Counsel Assisting’s submissions do not give due consideration to why Ms Gobbo attended on the night of Mr Cooper’s arrest. Given Counsel Assisting’s submissions [REDACTED] it is important to analyse the stated intentions of Ms Gobbo and the responses of Messrs Sandy White, Peter Smith and Green, who believed that she would attend to advise Mr Cooper upon his arrest.

341. Ms Gobbo attended because she believed that a failure to do so would have exposed her as a human source, putting her in danger of death.⁴⁹⁵ The Mokbels and their criminal associates would expect her to attend. Failure to do so could not be explained. When it was originally considered how Mr Cooper might come to assist police, ideas were floated as to the potential for a chance meeting with Mr Flynn. However, issues as to Ms Gobbo’s safety crystallised in the lead up to Mr Cooper’s arrest. By mid-April 2006, the SDU understood that Ms Gobbo intended to advise Mr Cooper upon his arrest and there was no practical way to prevent her from doing so.⁴⁹⁶

342. The SDU did not want Ms Gobbo to advise Mr Cooper⁴⁹⁷ and they told Ms Gobbo this.⁴⁹⁸ Prior to 22 April 2006, Messrs Sandy White, Peter Smith and Green spent time discussing with Ms Gobbo possible excuses that she could raise in order to avoid

⁴⁹⁵ Transcript of Nicola Gobbo, 6 February 2020, 13341-2.

⁴⁹⁶ Transcript of Peter Smith, 12 September 2019, 6203.5.

⁴⁹⁷ Transcript of Sandy White, 6 August 2019, 3980.43.

⁴⁹⁸ Transcript of Sandy White, 5 August 2019, 3891.22.

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advising Mr Cooper. She ultimately felt she had no other option but to advise him.⁴⁹⁹

Ms Gobbo recalled long discussions with the SDU about not attending at the police station upon Mr Cooper's arrest.⁵⁰⁰ Mr Sandy White recalled discussing whether it would be possible for Ms Gobbo to be in Bali at the time of Mr Cooper's arrest, or whether she could not answer her phone when he called her.⁵⁰¹

343. Notwithstanding these suggestions, Ms Gobbo wanted to be present at the arrest as she was concerned about how it would look if she was unavailable.⁵⁰² As she told the Commission, she went because she felt responsible and that not going would 'light her up'.⁵⁰³ Mr Sandy White had a clear recollection of Ms Gobbo saying to him, 'Sandy, I'm going to [go] whether you like it or not.'⁵⁰⁴ Mr Peter Smith recalled Mr Sandy White repeating Ms Gobbo's stated intentions to him, while he was still at the SDU. He said, 'It was like, "I don't care what you say, Mr White, I'm going" ... I even remember the gesture that he used with his hands, pumping one fist into a palm.'⁵⁰⁵ Mr O'Brien told the Commission he recalled Mr Sandy White telling him, 'it didn't matter what we did, we were unable to discourage her [from attending].'⁵⁰⁶ Mr Rowe also said that he understood that Ms Gobbo was repeatedly being told by the SDU not to act for Mr Cooper.⁵⁰⁷

344. There is no transcript of this conversation. It is likely this conversation took place on 23 February 2006, during a face to face meeting that was not recorded due to the unavailability of a tape recorder. Notes from that meeting reveal that topics discussed included Mr Cooper and whether it was possible to find an alternative barrister for Mr Cooper.⁵⁰⁸ Ms Gobbo also accepted that she had said to Mr Sandy White, words to the effect of, 'I don't care, Mr White, I will be there.' She said that this was because, despite the SDU's preference that she not go, she could not work out a way to avoid going but not to draw attention to herself.⁵⁰⁹

⁴⁹⁹ Transcript of Nicola Gobbo, 11 February 2020, 13701.7.

⁵⁰⁰ Transcript of Nicola Gobbo, 11 February 2020, 13701.2.

⁵⁰¹ Transcript of Sandy White, 6 August 2019, 3975.7.

⁵⁰² Transcript of Sandy White, 1 August 2019, 3692.16.

⁵⁰³ Transcript of Nicola Gobbo, 11 February 2020, 13701.17.

⁵⁰⁴ Transcript of Sandy White, 31 July 2019, 3615.11.

⁵⁰⁵ Transcript of Peter Smith, 12 September 2019, 6260.3.

⁵⁰⁶ Transcript of Jim O'Brien, 6 September 2019, 5747.43.

⁵⁰⁷ Transcript of Paul Rowe, 1 July 2019, 3320.23.

⁵⁰⁸ Transcript of Sandy White, 2 September 2019, 5260.45.

⁵⁰⁹ Transcript of Nicola Gobbo, 11 February 2020, 13701.29.

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345. Mr Sandy White's evidence is consistent with taped conversations between Ms Gobbo and her handlers in the lead up to Mr Cooper's arrest. On 9 March 2006, the following exchange took place after Mr Sandy White suggested Ms Gobbo advise the SDU as to when she intended to travel to Bali.⁵¹⁰

Ms Gobbo: Anyway, so the bottom line is I can't.

Mr Sandy White: You don't know when it's going to be.

Ms Gobbo: I don't know when it's going to be but I don't want to go at a time when ...

Mr Green: Cooper.

Ms Gobbo: Not so – I'm not so much saying it might be critical to acquiring some information about something. I'm really saying ... it wouldn't be a great idea to go if, for example, there was some operation that was coming to an end ...

Mr Sandy White: It's going to be imminent ---

Ms Gobbo: Where Cooper is concerned.

Mr Sandy White: --- and you're going to be away. Yep.

[...]

Mr Sandy White: [L]ook, I get your point. If something was imminent and – and it meant that it was going to cause you less grief then we'd be talking. ... The last thing we want to do is light you up, I can tell you, right – right now.

⁵¹⁰ Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Green, VPL.0005.0051.1281 at .1383.

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346. Mr Green then asked Ms Gobbo whether there would be a conflict of interest if Ms Gobbo were to represent Mr Cooper. Ms Gobbo told her handlers that there wouldn't be, as Mr Cooper would be pleading guilty and would not apply for bail, and so it wouldn't make any difference. She subsequently said that she couldn't 'not be there' when people such as Mr Cooper were arrested, as that would 'look even worse'. This prompted Mr Sandy White to ask if Ms Gobbo could 'back away from acting' after the initial remand hearing.⁵¹¹

347. On 20 March 2006 Messrs Peter Smith and Green encouraged Ms Gobbo to book a holiday to Bali.⁵¹²

Mr Peter Smith: So what I was saying about the situation, you can look ahead in the future, book a holiday and tell everybody, "In this 10-day period I am not available"

[...]

Lock it in, book it.

Ms Gobbo: Nuh. Hang on, hang on.

Mr Peter Smith: How long you go, and go.

Ms Gobbo: I can't do that ---

Mr Peter Smith: There's something to look forward to.

Ms Gobbo: --- until I adjourn Cooper's case.

Mr Green: Yeah, yep, good point.

⁵¹¹ Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Green, 9 March 2006, VPL.0005.0051.1281 at .1387.

⁵¹² Transcript of conversation with Ms Gobbo, Mr Peter Smith and Mr Green, 20 March 2006, VPL.0005.0076.0682 at .0934.

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Ms Gobbo: *Okay. There's – it's not quite as simply as ---*

Mr Peter Smith: *No, no. That's why we're asking.*

**The SDU's understanding of the ramifications of Ms Gobbo's attendance;
'Investigators to be warned'**

348. Counsel Assisting overstate the understanding of Messrs Sandy White, Peter Smith, Green and Black as to the potential ramifications of Ms Gobbo's attendance on the night of Mr Cooper's arrest.

28 October 2005 meeting

349. Counsel Assisting place significant weight on part of a lengthy conversation Ms Gobbo had with her handlers Messrs Sandy White, Peter Smith and Black on 28 October 2005.⁵¹³ It is said to be clear from the exchange set out at paragraph [1780] of Volume 2 that Messrs Sandy White, Peter Smith and Black 'well knew' that Ms Gobbo could not act in Mr Cooper's best interests and it would be 'legally problematic' for Ms Gobbo to continue to act for Mr Cooper while informing on him. Ms Gobbo is also said to have made it 'very clear' in the excerpt relied upon that she would continue to act on Mr Cooper's behalf.

350. As set out earlier in these submissions, Counsel Assisting misinterpret this conversation. Ms Gobbo's reference to 'the whole Cooper stuff thing' causing her 'a big problem' related to Mr Cooper telling her about the crimes he was committing. This was not a conversation about the legal implications of Ms Gobbo continuing to act for Mr Cooper. This was a conversation about whether it would put Ms Gobbo in a difficult position, were she to appear on Mr Cooper's plea and make submissions as to his prospects for rehabilitation. As the Commission is aware, Ms Gobbo did not ultimately appear for Mr Cooper at his plea hearing.

⁵¹³ See Counsel Assisting submissions Volume 2, [1780], [1924.3], [1927.4] and [1930.7].

352. If the Commission accepts that the 28 October 2005 meeting demonstrates knowledge as to the legal implications of Ms Gobbo informing on Mr Cooper while continuing to act for him (which we submit is not open), this meeting occurred almost six months prior to Ms Gobbo's attendance on the night of Mr Cooper's arrest. There is no evidence that anyone at this meeting had formed an intention for Ms Gobbo to advise Mr Cooper upon his arrest. Operation Posse had not then commenced. Options relating to Mr Cooper were being discussed around this time, including whether Mr Cooper would consider having an 'off record' conversation with the SDU,⁵¹⁴ whether an undercover operative could be introduced, or whether a 'chance meeting' with Mr Flynn could be set up.⁵¹⁵ The absence of any temporal connection between this conversation and Ms Gobbo's attendance at St Kilda Road to advise Mr Cooper on 22 April 2006 is significant.

19 April 2006: 'Investigators to be warned'

353. Counsel Assisting's chronological account of the use of Ms Gobbo in relation to Mr Cooper omits to mention the meeting that Mr Sandy White had with Messrs Peter Smith and Green about Mr Cooper on 19 April 2006. During that meeting, the SDU discussed the potential that Ms Gobbo's representation of Mr Cooper after his arrest may leave the admissibility of his admissions open to challenge. Mr Sandy White wrote in his diary as follows:⁵¹⁶

⁵¹⁴ See, eg., Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Peter Smith, 26 September 2005, VPL.0005.0076.0004 at .0196.

⁵¹⁵ Transcript of conversation with Ms Gobbo, Mr Sandy White, Mr Peter Smith and Mr Black, 28 October 2005, VPL.0005.0051.0336 at .0393

⁵¹⁶ Exhibit RC392, Diary of Sandy White, 19 April 2006.

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Issue with HS representing Cooper after arrest. Evidence from Cooper implicating self may not be admissible if counsel not impartial. Agreed: Invest to be warned. Intended Cooper be i/v prior [REDACTED]

Big picture is MOKBEL cartel. COOPER is one enq re same. Invest intend to use COOPER as witness if he agrees. [REDACTED] Milad, Horti, El Hage and Malkhoums. [REDACTED] ... Agreed tactical decisions re 3838 made in accordance with investigators.

354. It is evident that the SDU did speak to investigators about their concerns as to the potential admissibility of any admissions made by Mr Cooper.⁵¹⁷ In a conversation on 26 April 2006, the following exchange takes place:⁵¹⁸

Mr Sandy White: [We] actually spoke to Dale [Flynn] about whether you should be talking to anybody with a view that, what would be the evidentiary outcome if people started making confessions because you'd given them advice ... So that was a little bit murky, and we would have liked to have known the answer to that question.

Ms Gobbo: Yeah. Although I – and I said to Dale when I came out of seeing Steve, I said, “Look, you put a note in your diary that this is what I’ve said to him, because I don’t want anyone later on to be saying,” you know ... it all comes out that I didn’t give him his options and didn’t do this and didn’t do that.

355. In his evidence before the Commission, Mr Sandy White recalled that he had spoken to Mr O’Brien prior to Mr Cooper’s arrest about these issues.⁵¹⁹ Mr Rowe said that although he could not recall being ‘warned’ as such, he and everyone else understood the issues raised in Mr Sandy White’s diary entry as set out above.⁵²⁰

⁵¹⁷ Transcript of Jim O’Brien, 6 September 2019, 5739.20.

⁵¹⁸ Transcript of conversation between Ms Gobbo, Mr Sandy White and Mr Green, 26 April 2006, VPL.0005.0111.0001. at .0037.

⁵¹⁹ Transcript of Sandy White, 2 August 2019, 3826.27.

⁵²⁰ Transcript of Paul Rowe, 19 November 2019, 9511.45.

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356. It is submitted that Messrs Sandy White, Peter Smith and Green all believed that Ms Gobbo should not advise Mr Cooper on his arrest. They were concerned that her conflict of interest may be used to challenge the admissibility of any confession. All gave evidence that the issue was an ethical issue for Ms Gobbo. There was no way to stop her from attending. Any accused person has the right to a lawyer of their choice. They properly passed their concerns to investigators, as the SDU were not involved in or controlling the arrest of Mr Cooper.

20 April 2006 meeting

357. The much-quoted passage from a conversation between Ms Gobbo, Mr Sandy White Mr Peter Smith and Mr Green on 20 April 2006 must be put into context. It is apparent that Counsel Assisting place great weight on Ms Gobbo's comment that, 'The general ethics of all of this is fucked'. Counsel Assisting almost invariably asked each witness how they would react if Ms Gobbo had made such a comment in their presence. However, further to what is set out in [1824] of Volume 2 (and referred to at paragraphs [915] and [1440]), Ms Gobbo's conversation continued beyond her comment as to the 'general ethics of all of this':⁵²¹

Mr Sandy White: But wouldn't it be the case down the track that a defence barrister could argue, well, the advice that he got prior to participating in the record of interview was not impartial because it was done on behalf of police by a person that was acting for the police.

Ms Gobbo: Who in the fuck is gonna say that?

Mr Sandy White: It's a theoretical question, right. It's not – I'm trying to...

Ms Gobbo: Anybody say that? Why would anyone say that?

⁵²¹ Transcript of conversation with Ms Gobbo, Mr Sandy White, Mr Peter Smith and Mr Green, 20 April 2006, VPL.0005.0097.0011 at .0283.

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Mr Sandy White: Noone's gunna say that but I'm trying to understand what – the conflict of interest area is not something that we ever deal with, all right, for you and it's – I mean, some people could put up an argument that a person who is a barrister perhaps could never help the police and still represent the person that she's helping the police with. So I'm just trying to get my head around this. Could you – maybe it's even pointless talking about it because you might actually think I'm going ...

Ms Gobbo: Probably but what's the real point?

Mr Sandy White: Forget it. I'm just ---

Ms Gobbo: No, no, no, what's the real point?

Mr Peter Smith: Just the general ethics of the whole situation.

Ms Gobbo: The general ethics of all of this is fucked.

Mr Peter Smith: What about the general legality of it then?

Ms Gobbo: **It's not illegal. What's – what's unlawful about it?** Seriously, what – it's more unlawful having ---

Mr Peter Smith: Well, we can rationalise ---

Ms Gobbo: --- a conversation about drug trafficking with all these people every day.

Mr Peter Smith: We can rationalise ---

Ms Gobbo: That is potentially more ---

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Mr Sandy White: *The general ethics of – some people would say the ethics of using anybody to provide information is wrong. ... That's a point of view isn't it?*

Ms Gobbo: *Yeah, but that – look, ethically – there's a difference between ethically wrong, morally wrong and you're assisting police in whatever capacity therefore you're dead full stop because it's wrong. **It's not illegal or improper and I don't think – what would be unethical if I was [inaudible] entrapment anyway.***

Mr Peter Smith: *Yeah.*

Ms Gobbo: *Look, the reality is – I think the problem is that I have come to the conclusion that but for information from me from Cooper you wouldn't get him.*

[inaudible]

Mr Sandy White: *We wouldn't doubt that and – but **morally it's an easy question. Morally everything's right.** What – what you're doing and what we're trying to do ... [inaudible]*

Mr Peter Smith: *Yeah, we can see it ... we can see it with an unbiased view.*

Mr Sandy White: *Yeah, yeah that's true but just the whole lawyers' ethics is something that we're not familiar with and ---*

Mr Green: *How it impacts [inaudible]*

Mr Sandy White: *... generally we wouldn't have spoken about this until now because sort of, you know [inaudible] a much better understanding of what we all think now so we're asking these questions and won't seem to be spinning off the deep end*

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worrying about where the fuck are they coming from, why are they asking this sort of stuff for.

Ms Gobbo: I just don't think – I've got more concerns about having drug trafficking conversations ... than I do about the ethics of it. I mean, I feel extremely guilty where Cooper is concerned and I did on Sunday afternoon but that's partly because he was really – just laid it all on the table about how fucked everything was and how fucked his future was and I actually felt sorry for him when I walked away.

(Emphasis added)

358. Counsel Assisting submit that this conversation demonstrates, *inter alia*, that there was a common comprehension by all present on 20 April 2006 that the 'ethics of all of this was fucked'.⁵²² That is not the case when the rest of the conversation is considered. Taking one line out of context is misleading as to the true effect of the conversation.

360. As Ms Nixon said when asked by Counsel Assisting to put herself in the position of members of Victoria Police who were involved in or knew of Ms Gobbo's attendance on the night of Mr Cooper's arrest:⁵²³

⁵²² Counsel Assisting submissions Volume 2, [1825.3].

⁵²³ Transcript of Christine Nixon, 18 December 2019, 11618.41.

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[I]’m not in the circumstances of those police officers to know whether exactly they see it in the way you see it and whether they exactly knew the implications for the future or what the potential implications are. Hindsight’s a wonderful thing.

361. Messrs Sandy White, Peter Smith, Black and Green were questioned extensively about their views on the use of Ms Gobbo in relation to Mr Cooper and whether they knew of the implications or potential implications for the future. It is trite that this is relevant to an assessment of their state of mind at the time [REDACTED]
362. As dealt with elsewhere in these submissions, the SDU did not have a sound understanding of the broader conflict of interest that arose when Ms Gobbo was acting for clients in relation to one particular crime and informing to police in relation to another. In Mr Cooper’s case, there is no evidence to support the proposition that the SDU members understood that it was improper for Ms Gobbo to be involved in Mr Cooper’s Matchless and Landslip matters while simultaneously informing on him in relation to his continuing drug manufacturing. When the SDU questioned Ms Gobbo as to whether she had a conflict relating to Mr Cooper, she responded that there would be no conflict, given Mr Cooper would be pleading guilty and would not apply for bail.⁵²⁴
363. It is submitted that the Commission should find that the SDU did not want Ms Gobbo to attend to provide advice to Mr Cooper upon his arrest. Mr Sandy White said that his questions to Ms Gobbo during the conversation on 20 April 2006 were aimed to guide her to the decision that she should not be involved at all.⁵²⁵ However, there is insufficient evidence to support the proposition that Mr Sandy White believed at the time that Ms Gobbo’s conduct had the potential for serious implications on the criminal justice system. His concern was related to the admissibility of evidence [REDACTED]

⁵²⁴ Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Green, 9 March 2006, VPL.0005.0051.1281 at .1387.

⁵²⁵ Transcript of Sandy White, 6 August 2019, 3980.30; 3981.16.

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364. Notwithstanding Mr Cooper's evidence, it is submitted that the Commission cannot be satisfied that Ms Gobbo played a determinative role in Mr Cooper's decision to assist police on 22 April 2006. Investigators believed that Mr Cooper would 'roll', whether Ms Gobbo was present or not.⁵²⁶ In 2002, Mr Cooper had told Mr O'Brien that he would like to cooperate with police but was more scared of the people he was working with than he was of the police.⁵²⁷ In May 2005, Mr Flynn was told that Mr Cooper was considering assisting police as part of a plea deal.⁵²⁸
365. The conversations that Messrs Sandy White, Peter Smith and Green had with Ms Gobbo on 22 and 23 April 2006 demonstrate that all present believed that Mr Cooper had done what was objectively in his best interests, and that Ms Gobbo had given him the advice that a competent lawyer would give. For example:
- a. Ms Gobbo told Mr Sandy White that she had looked after Mr Cooper's interests to the exclusion of others, including herself because by looking after his interests Ms Gobbo had put her own life at risk.⁵²⁹
 - b. Ms Gobbo said that, '[Mr Cooper] knows. He understands this picture better than most people do and when you left he said – or when you all left he said – he said, "You know we're both victims of the same [Mokbel] disease."' ⁵³⁰
 - c. Ms Gobbo said, 'Cooper has that faith in me. I'm not gunna do the wrong thing by Cooper. I can't do the wrong thing by him.'⁵³¹
 - d. Ms Gobbo recalled that one of Mr Cooper's first questions to her was, 'You haven't rung anyone, have you?', suggesting he was already considering cooperating with police and was fearful of Ms Gobbo telling the Mokbels.⁵³²
 - e. Mr Sandy White noted that, 'One of the last things [Cooper] said ... was that he had absolutely – absolutely – absolutely made the right decision, "and Nicola was

⁵²⁶ Transcript of Jim O'Brien, 6 September 2019, 5754.15.

⁵²⁷ Exhibit RC464, Longer statement of Jim O'Brien, 5 [15].

⁵²⁸ Exhibit RC0538, Statement of Dale Flynn, 4 [26].

⁵²⁹ Transcript of conversation with Ms Gobbo, Mr Sandy White, Mr Peter Smith and Mr Green, 22 April 2006, VPL.0005.0104.0001 at .0017.

⁵³⁰ Transcript of conversation with Ms Gobbo, Mr Sandy White, Mr Peter Smith and Mr Green, 22 April 2006, VPL.0005.0104.0001 at .0035.

⁵³¹ Transcript of conversation with Ms Gobbo, Mr Sandy White, Mr Peter Smith and Mr Green, 22 April 2006, VPL.0005.0104.0001 at .0118.

⁵³² Transcript of conversation with Ms Gobbo, Mr Sandy White, Mr Peter Smith and Mr Green, 22 April 2006, VPL.0005.0104.0001 at .0221.

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110 per cent right.” He went on, ‘[Cooper’s] seen those people for what they are and hopefully he ... he knows he’s getting ripped off.’⁵³³

- f. Mr Sandy White also said, ‘The situation for Cooper now is three thousand times better than it was yesterday.’ (p32)

Counsel Assisting’s submissions in relation to each individual officer

Mr Sandy White

366. As already submitted, the extent of Mr Sandy White’s concerns related to the question of admissibility of Mr Cooper’s confessions against him in a trial. Mr Sandy White spoke to senior investigators about this issue.⁵³⁴ He considered conflict of interest a matter for Ms Gobbo to manage, and took comfort in the fact that Ms Gobbo ceased acting on Mr Cooper’s behalf following a remand hearing.⁵³⁵
367. Mr Sandy White evidently believed that Mr Cooper did what was objectively in his best interests. In addition to the contemporaneous comments he made on 22 and 23 April 2006 (set out above), he told the Commission he believed Mr Cooper’s outcome was the ‘best deal of the century’, and that it was well known that Mr Cooper was expecting to receive 20 years for two sets of charges, and was ultimately sentenced to less than half of that.⁵³⁶
368. The evidence relied on by Counsel Assisting as relevant to Mr Sandy White’s knowledge and conduct at the time is set out at paragraph [1924] of Volume 2. Save for the matters addressed in the following paragraphs, that evidence is not disputed.
369. At [1924.3] of Volume 2, Counsel Assisting submit that on 28 October 2005, Ms Gobbo told Mr Sandy White that it would be legally problematic for her to continue to act for Mr Cooper while covertly providing Victoria Police with information

⁵³³ Transcript of conversation with Ms Gobbo, Mr Sandy White, Mr Peter Smith and Mr Green, 23 April 2006, VPL.0005.0097.0372 at .0400.

⁵³⁴ Transcript of Sandy White, 6 August 2019, 4000.11.

⁵³⁵ Transcript of Sandy White, 6 August 2019, 3999.7.

⁵³⁶ Transcript of Sandy White, 2 August 2019, 3810.29.

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concerning him. For the reasons already set out, this misrepresents the conversation on 28 October 2005.

370. At [1924.6] of Volume 2, Counsel Assisting submit that on 20 April 2006, Mr Sandy White knew that upon Mr Cooper's impending arrest, Ms Gobbo would attend to represent Mr Cooper. This is not disputed on the evidence. However, it is disputed that Mr Sandy White knew that this fact posed serious risks to the proper administration of justice. As has been addressed, Counsel Assisting misstate the effect of the conversation on 20 April 2006.

371. At [1924.7] of Volume 2, Counsel Assisting submit that on 22 April 2006, when Ms Gobbo attended to advise Mr Cooper, Mr Sandy White was aware of that fact. He received updates regarding Mr Cooper considering whether he would assist Victoria Police. This is not disputed on the evidence. However, it is an overstatement of Mr Sandy White's evidence to assert that he was 'so concerned about Ms Gobbo's attendance that he considered arresting her.'⁵³⁷

372. Mr Sandy White's evidence on this point supports the proposition that he *did not* believe Ms Gobbo's conduct had the potential to pervert the course of justice. He was asked by Mr Winneke what mechanisms he had to stop Ms Gobbo from providing Mr Cooper advice on 22 April 2006:⁵³⁸

Mr Winneke: What mechanism did you have?

*Mr Sandy White: Well, what occurred to me was I could deactivate her, tell her the relationship is finished, but that wouldn't have been true because the relationship was not going to be finished for quite some time because we have duty of care duties to her so we were going to maintain that relationship until those issues were resolved. That wasn't an option to say, "That's it, we're finished with you, we'll never see you again". The other option was, was there any means to stop her by any power of arrest. **I***

⁵³⁷ Counsel Assisting submissions Volume 2, [1924.7]; [4752].

⁵³⁸ Transcript of Sandy White, 31 July 2019, 3615.36.

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certainly didn't think I had any sort of power to arrest in that situation and I think ---

Mr Winneke: Did you consider arresting her? Did you consider arresting her when she defied you and acted for Mr Cooper, or at least advised Mr Cooper?

[...]

Mr Sandy White: It did cross my mind that that might have been an option but there's no power to arrest for a conflict of interest and I didn't think that there would be sufficient to justify an arrest for a perversion of the course of justice.

Mr Winneke: So you did actively consider that what she was doing may have been an offence of perverting or doing an act with a tendency to pervert the course of justice, correct?

Mr Sandy White: That was an option. I considered all my options and I eliminated that one pretty quickly.

(Emphasis added)

373. Counsel Assisting further submit at [1924.7] that Mr Sandy White discussed his troubles with the situation with Mr O'Brien afterwards. This was not Mr Sandy White's evidence. Mr O'Brien's evidence has been misstated by Counsel Assisting and attributed to Mr Sandy White. Mr O'Brien said that after the fact, Mr Sandy White had told him that, 'it didn't matter what we did, we were unable to discourage her [from attending at the arrest].'⁵³⁹ Mr O'Brien said that both he and Mr Sandy White were troubled by what happened. [REDACTED]

⁵³⁹ Transcript of Jim O'Brien, 6 September 2019, 5747.43.

Mr Peter Smith

374. Mr Peter Smith said that he shared Mr Sandy White's concerns as to the potential for issues to arise in relation to the admissibility of Mr Cooper's confessions. He characterised his conversation with Ms Gobbo on 20 April 2006 as an example of attempting to 'workshop' the issue with her.⁵⁴¹ Although he tried to discourage Ms Gobbo from advising Mr Cooper well before the night of his arrest,⁵⁴² at least by the end of the meeting with Ms Gobbo on 20 April 2006, he felt it was inevitable that she would do so.⁵⁴³ He denied that the SDU's desires to prevent her from attending were ever abandoned, but conceded that in hindsight they didn't delve deeply enough into the issues.⁵⁴⁴
375. The evidence relied on by Counsel Assisting as relevant to Mr Peter Smith's knowledge and conduct at the time is set out at paragraph [1927] of Volume 2. Save for the matters addressed in the following paragraphs, that evidence is not disputed.
376. At [1927.4] of Volume 2, Counsel Assisting submit that on 28 October 2005, Ms Gobbo told Mr Peter Smith that it would be legally problematic for her to continue to act for Mr Cooper while covertly providing Victoria Police with information concerning him. For the reasons already set out, this misrepresents the conversation on 28 October 2005.
377. At [1924.7] of Volume 2, Counsel Assisting submit that on 20 April 2006, Mr Peter Smith knew that upon Mr Cooper's impending arrest, Ms Gobbo would attend to represent Mr Cooper. This is not disputed on the evidence. However, it is disputed that Mr Peter Smith knew that this fact posed serious risks to the proper administration of justice. As has been addressed, Counsel Assisting misstate the effect of the conversation on 20 April 2006.

⁵⁴⁰ Transcript of Jim O'Brien, 6 September 2019, 5748.17.

⁵⁴¹ Transcript of Peter Smith, 11 September 2019, 6117.10.

⁵⁴² Transcript of Peter Smith, 11 September 2019, 6109.10.

⁵⁴³ Transcript of Peter Smith, 12 September 2019, 6186.46

⁵⁴⁴ Transcript of Peter Smith, 12 September 2019, 6187.12.

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378. At [1924.9] of Volume 2, Counsel Assisting submit that Mr Peter Smith expected Ms Gobbo to attend the St Kilda Road Police Station as Mr Cooper's (ostensible) lawyer following his arrest. He told her to [REDACTED] when she attended. It is disputed that Mr Peter Smith characterised Ms Gobbo's role as 'ostensible'. As set out above, conversations around the time of Mr Cooper's arrest demonstrate Mr Peter Smith and others believed that Ms Gobbo was acting in Mr Cooper's best interests, not as his 'ostensible' lawyer.

379. At [1924.11] of Volume 2, Counsel Assisting submit that Mr Peter Smith was in attendance and intimately involved in many aspects of the 'rolling' of Mr Cooper, including the use of Ms Gobbo for that purpose. He covertly met with Ms Gobbo following the relevant events, during which Ms Gobbo told him that she had 'pushed' Mr Cooper to roll. It is disputed that Mr Peter Smith was 'intimately involved in many aspects of the rolling of Mr Cooper.' His attendance at St Kilda Road Police Station on 22 April 2006 was to assist with [REDACTED]

380. Mr Peter Smith told the Commission that he may have been present during a conversation between Mr Cooper and Mr O'Brien. However, he 'didn't say a word' to Mr Cooper. He saw his role as that of an observer, [REDACTED]

[REDACTED]⁵⁴⁵

381. Others present on the night of Mr Cooper's arrest gave consistent evidence in this regard:

- a. Mr Sandy White said he was unsure as to whether Mr Peter Smith was to be involved [REDACTED] to Mr Cooper—that was something that Messrs O'Brien and Flynn were taking care of. He believed Mr Peter Smith was present [REDACTED]

[REDACTED]⁵⁴⁶

⁵⁴⁵ Transcript of Peter Smith, 6091.22; 6094.44; 6120.7; 6120.42.

⁵⁴⁶ Transcript of Sandy White, 3990.20.

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- b. Mr O'Brien said that Mr Peter Smith was present to assist police [REDACTED] Mr Cooper to assist police and because of his intimate knowledge in relation to the same.⁵⁴⁷
- c. Mr Flynn said the reason Mr Peter Smith was present was because there was a real possibility [REDACTED]⁵⁴⁸
- d. Mr Cooper recalled that Mr O'Brien and the man Mr Cooper didn't know (ie., Peter Smith) left the room when Ms Gobbo attended, and that the conversation about assisting police took place after they had left the room.⁵⁴⁹

382. Mr Peter Smith was Ms Gobbo's primary handler in the lead up to 22 April 2006. He disseminated intelligence from Ms Gobbo to investigators. However, given the minimal role he played on the night of Mr Cooper's arrest, it is submitted that it is incorrect to characterise Mr Peter Smith as having been 'intimately involved' in the 'rolling' of Mr Cooper.

Mr Black

- 383. An examination of Mr Black's diaries demonstrates his limited contact with Ms Gobbo between 16 September 2005 and 22 April 2006, and especially in relation to Mr Cooper.
- 384. His first involvement with Ms Gobbo was on 28 October 2005, when he met Ms Gobbo with Messrs Sandy White and Peter Smith.
- 385. On 14 November 2005, he assumed acting controller duties and was supervising Ms Gobbo. At that time, he was also the handler of two other sources, simultaneously.
- 386. On 23 November 2005, he completed Ms Gobbo's risk assessment and provided it to Acting Superintendent Cowlshaw.
- 387. On 27 November 2005 he commenced handler duties for Ms Gobbo, while Mr Peter Smith was on four weeks' leave.

⁵⁴⁷ Transcript of Jim O'Brien, 6 September 2019, 5757.15.

⁵⁴⁸ Transcript of Dale Flynn, 4 October 2019, 7245.36.

⁵⁴⁹ Transcript of Mr Cooper, 31 October 2019, 8763.3.

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388. Set out below is a table of all references to Mr Cooper from Mr Black's diary, whilst he was Ms Gobbo's handler:

Date	Page	Time	Details
27 Nov 2005	16/159	1722	<p>Subject: COOPER and Albanian Male</p> <ul style="list-style-type: none"> - COOPER has passed on a quantity of either drugs or chemicals to this individual; - The transaction took place during week commencing Monday 21-11-05. <p>Dissemination: D/A/I O'BRIEN – Operation POSSE</p>
22 Nov 2005	16/159	1722	<p>Subject: COOPER – Profile Information</p> <ul style="list-style-type: none"> - COOPER believes that he is under police surveillance; - COOPER had been complaining that he had no money since Monday 21-11-05. <p>Dissemination: D/A/I O'BRIEN – Operation POSSE</p>
28 Nov 2005	19/159	2043	<p>Subject: Dispute between COOPER and Milad MOKBEL re [REDACTED]</p> <ul style="list-style-type: none"> - COOPER gave M. MOKBEL [REDACTED] to deposit in HELIOTIS trust account; - COOPER owes HELIOTIS \$ [REDACTED] in overdue fees; - COOPER won the [REDACTED] from recent gambling at an interstate casino; - Doubtful the [REDACTED] was ever deposited into the trust account. <p>Dissemination: D/A/I O'BRIEN – Operation POSSE</p>
28 Nov 2005	19/159	2043	<p>Subject: Debt owed to COOPER by Tony MOKBEL for past amphetamine manufacture</p> <ul style="list-style-type: none"> - T. MOKBEL owes COOPER thousands for past amphetamine productions; - COOPER manufactured high quality amphetamine for MOKBEL, but was never paid; - Been a long-standing dispute between the two and the entire MOKBEL family; - COOPER genuinely fears the MOKBEL family; - COOPER thinks he will be paid and remains in contact with the MOKBELS. <p>Dissemination: D/A/I O'BRIEN – Operation POSSE</p>
30 Nov 2005	24/159	2006	<p>Subject: Milad MOKBEL in possession of Ketone</p> <ul style="list-style-type: none"> - On 30-11-2005, Milad MOKBEL came into possession of [REDACTED] litres of Ketone; - Ketone will be used in the illegal manufacture of amphetamine; <p>Milad MOKBEL is organising a clandestine laboratory to manufacture; Milad MOKBEL has asked COOPER to manufacture the amphetamines; COOPER has manufactured amphetamines for Milad MOKBEL in the past; Shane MORAN supplied Milad MOKBEL with the Ketone.</p> <p>Dissemination: D/A/I O'BRIEN – Operation POSSE</p>
3 Dec 2005	30/159	1729	<p>Subject: \$250,000 Drug Debt owed by Milad MOKBEL</p> <ul style="list-style-type: none"> - On Sunday 04-12-05 at 1200 hours, a meeting is scheduled to discuss a drug debit; - The following individuals are expected to be present:- Tony MOKBEL Milad MOKBEL COOPER - A member of the Hells Angels Motorcycle Club (OMCG).

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			<ul style="list-style-type: none"> - Milad MOKBEL owing the member of the Hells Angels \$250,000; - The location of the meeting is not known; - The Hells Angels is a Melbourne person who is only known as "Ronnie" <p>Dissemination: D/A/I O'BRIEN – Operation POSSE</p>
3 Dec 2005	30/159	1729	<p>Subject: \$200,000 Drug Debt owed by the Hells Angels to COOPER</p> <ul style="list-style-type: none"> - A member of the Hells Angels owes \$200,000; - The debt relates to a drug transaction that COOPER has undertaken for the member - The member is planning on paying COOPER [REDACTED] debt from the \$250,000 the Hells Angels member is owed by Milad MOKBEL; - M. MOKBEL is unaware of the [REDACTED] debt owed to COOPER by the Hells Angels; - The Hells Angels member is a Melbourne person who is known as "Ronnie". <p>Dissemination: D/A/I O'BRIEN – Operation POSSE</p>
8 Dec 2005	37/159	2120	<p>Subject: New mobile for COOPER</p> <ul style="list-style-type: none"> - On 07-12-05 COOPER commenced to operate mobile [REDACTED] <p>Dissemination: D/A/I O'BRIEN – Operation POSSE</p>
13 Dec 2005	48/159	1925	<p>Subject: Car phone for COOPER</p> <ul style="list-style-type: none"> - [REDACTED] (car mobile service) - This number permanently stays in COOPER' motor vehicle. <p>Dissemination: D/A/I O'BRIEN – Operation POSSE</p>
26 Dec 2005	73/159	2225	<p>Subject: COOPER and Associate "Andrew"</p> <ul style="list-style-type: none"> - In December 2005, COOPER had a dispute with a male called Andrew; - Andrew has been known to be armed with a firearm; - Andrew lives in the Gladstone Park area and has a girlfriend called [REDACTED] - Andrew deals with COOPER regarding amphetamines; - Andrew is said to be a member of the Hells Angels Motor Cycle Club; - Andrew, COOPER and Milad MOKBEL [REDACTED] [REDACTED] are all arguing about money owed over drugs; - No specifics were discussed over the debt, other than the debt involved an amount of [REDACTED] <p>Dissemination: Verbally to S/D BURROWS, Task Force PURANA on 26/12/05</p> <p>Dissemination: D/A/I O'BRIEN – Operation POSSE</p>
26 Dec 2005	74/159	2225	<p>Subject: COOPER – Suspected of Manufacturing Amphetamine</p> <ul style="list-style-type: none"> - On 26th December 2005 COOPER has either manufactured amphetamine or is about to commence production; - No specifics are known. <p>Dissemination: Verbally to S/D BURROWS, Task Force PURANA on 27/12/05</p> <p>Dissemination: D/A/I O'BRIEN – Operation POSSE</p>
29 Dec 2005	80/159	1402	<p>Subject: Telephone being used between Milad MOKBEL and COOPER</p> <ul style="list-style-type: none"> - About 28th December 2005 Milad MOKBEL was communicating with COOPER on a "secure" mobile telephone; - The mobile was in a bogus name; - MOKBEL and COOPER are the only people who know the number of that mobile; - No further details are known.

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			Dissemination: Verbally to S/D BURROWS, Task Force PURANA on 29/12/05 Dissemination: D/A/I O'BRIEN – Operation POSSE
29 Dec 2005	83/159	2121	Subject: COOPER - Amphetamine Manufacturing in the Preston area - On 29-12-05 COOPER was about to commence manufacturing amphetamine; - COOPER planned to establish operations in the Preston area; - No further details are known. Dissemination: Verbally to S/D BURROWS, Task Force PURANA on 29/12/05 Dissemination: D/A/I O'BRIEN – Operation POSSE

389. On 3 January 2006, Mr Black ceased handler duties as Mr Peter Smith had returned from leave. Mr Black then returned to duties with other sources. Between 23 January and 17 March 2006, he was on leave. When he returned, he was involved in work with other sources.

390. On 12 April 2006 he commenced two days as Ms Gobbo's handler while Mr Peter Smith was on leave. Entries relevant to Mr Cooper on those days are set out in the table below.

Date	Page	Time	Details
12 April 2006	99/159	2314	Subject: COOPER – Establishment of a new amphetamine laboratory - In mid-April 2006, it is believed that COOPER will commence the establishment of an amphetamine manufacturing laboratory; - Believed to be within about [REDACTED] COOPER' [REDACTED] - COOPER has leased the new premises for about \$20,000; - No further details are known Dissemination: Verbally to D/A/I O'BRIEN on 12/04/06 Dissemination: D/A/I O'BRIEN – Operation POSSE
12 April 2006	99/159	2314	Subject: COOPER – Collection of Chemicals - On 13th April 2006 COOPER will meet Fred and a "MALKOUN / MALCOUN" at the Spearmint Rhino Club, King Street, Melbourne; - It is anticipated that COOPER will receive cash and [REDACTED] litres of chemicals from them to assist COOPER with amphetamine manufacturing; - It is believed that "Fred" is possibly Fedele D'AMICO; - The cash amount could be at least [REDACTED] - No further detail is known. Dissemination: Verbally to D/A/I O'BRIEN on 12/04/06 Dissemination: D/A/I O'BRIEN – Operation POSSE
13 April 2006	101/159	0955	Subject: COOPER – Location of Clandestine Amphetamine Laboratory - During the first few weeks of April 2006, COOPER was manufacturing amphetamine in the Preston area;

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			<ul style="list-style-type: none"> - The process occurred in a business premises associated with a coffee machine repair business in High Street, Preston; - No further details are known. Dissemination: Verbally to D/A/I O'BRIEN on 13/04/06 Dissemination: D/A/I O'BRIEN – Operation POSSE
13 April 2006	102/15 9	1105	Subject: COOPER – Involved in the Production of Amphetamine <ul style="list-style-type: none"> - On 14th April 2006 COOPER will commence manufacturing amphetamines; - The laboratory is said to be established in a building being renovated; - The premises is not a house; - No further details are known. Dissemination: Verbally to D/A/I O'BRIEN on 13/04/06 Dissemination: D/A/I O'BRIEN – Operation POSSE

391. Between 13 and 22 April 2006, Mr Black is not involved in any conversation in relation to Ms Gobbo attending at Mr Cooper's arrest.
392. Mr Black had no knowledge prior to Mr Cooper's arrest that Ms Gobbo told Mr Sandy White that the 'ethics of all of this were fucked', or made comments of that nature.⁵⁵⁰ The first he became aware of Ms Gobbo's attendance on Mr Cooper's arrest was after the fact, on 24 April 2006.⁵⁵¹ His diary records on that day, at 10.15am, 'briefing from Controller WHITE re Op POSSE arrest. Work on HS files.' At 6.45pm, his diary records, 'DSU Office meeting by Controller WHITE.'
393. The evidence relied on by Counsel Assisting as relevant to Mr Black's knowledge and conduct at the time is set out at paragraph [1930] of Volume 2. Save for the matters addressed in the following paragraphs, that evidence is not disputed.
394. At [1930.3] of Volume 2, Counsel Assisting submit that Mr Black was Ms Gobbo's handler and/or co-handler for periods of time between 16 September 2005 and 22 April 2006. Whilst this is not disputed on a strict reading of the evidence, as set out above, Mr Black's involvement with Ms Gobbo was very limited during this period.
395. At [1930.7] of Volume 2, Counsel Assisting submit that on 28 October 2005, Ms Gobbo told Mr Black that it would be legally problematic for her to continue to act for Mr Cooper while covertly providing Victoria Police with information concerning him.

⁵⁵⁰ Transcript of Mr Black, 23 October 2019, 8166.2.

⁵⁵¹ Transcript of Mr Black, 24 October 2019, 8238.1.

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For the reasons already set out, this misrepresents the conversation on 28 October 2005.

396. It is not open to conclude that Mr Black had any role whatsoever in Ms Gobbo's attendance upon Mr Cooper on 22 April 2006. As he did not know what was happening, it cannot be said that he could in any way be [REDACTED] involved. On 22 and 23 April 2006, Mr Black's diary records 'rest days' for each day. There is no evidence that he was aware of Mr Cooper's impending arrest or that Ms Gobbo was going to attend.

Mr Green

397. Mr Green believed that Ms Gobbo had put any conflicts aside and given Mr Cooper advice in accordance with his best interests. He said that he had no idea of what Ms Gobbo told Mr Cooper, 'other than [that it was] whatever the best legal advice [was that] she could give at the time.'⁵⁵²
398. As Mr Green explained to the Commission, his understanding prior to Mr Cooper's arrest was that Ms Gobbo wasn't going to get involved, but that she was 'insistent' that she wanted to attend.⁵⁵³ He said that it was 'not what we wanted to happen,'⁵⁵⁴ but he did not believe at the time that what occurred was a corruption of the criminal justice system.⁵⁵⁵ He recalled that the SDU's concern was about the conflict aspect, her safety, and what exit plan could be put in place to remove her from the situation.⁵⁵⁶
399. The evidence relied on by Counsel Assisting as relevant to Mr Green's knowledge and conduct at the time is set out at paragraph [1932] of Volume 2. Save for the matters addressed in the following paragraphs, that evidence is not disputed.

⁵⁵² Transcript of Mr Green, 8 October 2019, 7350.2.

⁵⁵³ Transcript of Mr Green, 8 October 2019, 7350.23.

⁵⁵⁴ Transcript of Mr Green, 8 October 2019, 7351.12.

⁵⁵⁵ Transcript of Mr Green, 8 October 2019, 7355.23.

⁵⁵⁶ Transcript of Mr Green, 8 October 2019, 7351.17.

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400. At [1932.5] of Volume 2, Counsel Assisting submit that on 20 April 2006, Mr Green knew that upon Mr Cooper's impending arrest, Ms Gobbo would attend to represent Mr Cooper. This is not disputed on the evidence. However, it is disputed that Mr Green knew that this fact posed serious risks to the proper administration of justice. As has been addressed, Counsel Assisting misstate the effect of the conversation on 20 April 2006.

Conclusion as to the conduct of Messrs Sandy White, Peter Smith, Green and Black in relation to Mr Cooper

401. Messrs Sandy White, Peter Smith, Black and Green respond as follows in relation to the submissions of Counsel Assisting at [1925], [1928], [1931] and [1933] of Volume 2:

- a. It is accepted that each of the abovenamed knew that Ms Gobbo was a barrister and human source.
- b. It is accepted that each of the abovenamed knew that Ms Gobbo was informing on Mr Cooper. However, that they saw her conduct as his barrister as 'purporting' to act is disputed. For the reasons set out above, it was believed that Ms Gobbo was acting in Mr Cooper's best interests (albeit that these were consistent with what was in the interests of Purana).
- c. It is accepted that each of the abovenamed knew that Ms Gobbo had a conflict of interest between her role as an informer for Victoria Police and legal representative of Mr Cooper. However, the evidence establishes that there were limitations as to the SDU's appreciation of the extent of Ms Gobbo's conflict. They saw conflict as an ethical matter for her to manage.
- d. It is accepted that each of the abovenamed knew that it was Ms Gobbo's informing that led to the obtaining of incriminating evidence against Mr Cooper and his arrest. However, Mr Black had a far less intimate understanding of developments at the time.
- e. It is not accepted that between 16 September 2005 and 22 April 2006 each of the abovenamed knew that Victoria Police had no intention to disclose Ms Gobbo's role to Mr Cooper or anyone Mr Cooper made statements against. There is no evidence that any of the abovenamed turned their mind to this possibility at the time.

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402. Counsel Assisting at [1926], [1929] and [1934] of Volume 2 submit that Messrs Sandy White, Peter Smith and Green respectively between May 2006 and February 2007 continued to use Ms Gobbo as a human source against Mr Cooper in order to ensure that he would implicate his criminal associates, in circumstances where they each knew that:
- a. Ms Gobbo was a barrister and human source;
 - b. Ms Gobbo was informing on Mr Cooper while purporting to act for him;
 - c. Ms Gobbo had a conflict of interest between her role as an informer for Victoria Police and legal representative of Mr Cooper;
 - d. It was Ms Gobbo's informing on Mr Cooper that led to the obtaining of incriminating evidence against Mr Cooper and his arrest on 22 April 2006;
 - e. Ms Gobbo was being used by Victoria Police to encourage Mr Cooper to implicate his associates, or alternatively that Victoria Police was allowing Ms Gobbo to do so; and
 - f. Victoria Police had no intention to disclose Ms Gobbo's role to Mr Cooper or anyone Mr Cooper made statements against.
403. Messrs Sandy White, Peter Smith and Green respond as follows:
- a. The evidence does not establish that Messrs Sandy White, Peter Smith and Green knew that Ms Gobbo was continuing to act (or 'purport' to act) for Mr Cooper between May 2006 and February 2007. Mr Sandy White believed that Ms Gobbo had no further involvement in representing Mr Cooper after his arrest.⁵⁵⁷ He took comfort in the fact that the 'extra piece of representation' after his arrest was a remand hearing, where he would never be granted bail.⁵⁵⁸ As the Commission is aware, Mr Cooper was represented by Mr Hargreaves and Mr Allen SC. Further, for reasons set out previously, Messrs Sandy White, Peter Smith and Green did not consider the assistance Ms Gobbo gave to Mr Cooper as her 'purporting' to act in his best interests. The evidence suggests they believed that when she was advising him, she was doing so to the best of her ability to do what was objectively in his best interests.

⁵⁵⁷ Transcript of Mr Sandy White, 4000.34.

⁵⁵⁸ Transcript of Mr Sandy White, 6 August 2019, 3999.7.

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b. The evidence does not establish that Messrs Sandy White, Peter Smith and Green knew that Ms Gobbo was being ‘used’ to encourage Mr Cooper to implicate his associates, or that she was being allowed to do so. Mr Cooper willingly assisted police following his arrest—or at least, the evidence shows that Messrs Sandy White, Peter Smith and Green believed that to be so. On 23 April 2006, Mr Sandy White told Ms Gobbo that [REDACTED] [Mr Cooper] couldn’t do it any more ... He seems to frame himself and do it wholeheartedly. ... [REDACTED]

[REDACTED].⁵⁵⁹ Mr Flynn repeated these sentiments on Mr Cooper’s plea, when he told the Court that following a frank discussion in the board room, Mr Cooper cooperated, and that his cooperation had been exceptional.

As Mr Sandy White told the Commission, ‘the relationship with Mr Cooper and the police department was a very healthy relationship. I don’t think it was necessary to keep [Ms Gobbo] involved. Having said that, I think from her point of view, I think she was keen to stay on the right side of him and make sure that [he did not tell others] that piece of information that she hadn’t told the Mokbels about his arrest...’⁵⁶⁰ In other words, Mr Sandy White did not believe Ms Gobbo was needed to encourage Mr Cooper to implicate his associates, nor was she doing so. He believed Ms Gobbo’s involvement with Mr Cooper after his arrest was for self-preservation purposes.

⁵⁵⁹ Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Peter Smith, 23 April 2006, VPL.0005.0097.0372 at .0403.

⁵⁶⁰ Transcript of Mr Sandy White, 6 August 2019, 4017.31.

⁵⁶¹ Transcript of Sandy White, 5 August 2019, 3891.10.

⁵⁶² Transcript of Sandy White, 3 September 2019, 5395.1.

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⁵⁶³ Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Peter Smith, VPL.0005.0097.0372 at .0400.

⁵⁶⁴ Transcript of Nicola Gobbo, 11 February 2020, 13680.35.

⁵⁶⁵ Transcript of Nicola Gobbo, 7 February 2020, 13454.

⁵⁶⁶ Exhibit RC1, Statement of Neil Paterson, attachment 61, IBAC – Report concerning Victoria Police handling of Human Source code name 3838 (Kellam Report), 1 April 2014, VPL.0008.0001.0127.

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407. It is submitted that Mr Black's involvement in relation to the handling of Ms Gobbo during the relevant period was so peripheral that the Commission could not be satisfied that his conduct may have constituted a breach of discipline [REDACTED]

K. ATTEMPTS TO CEASE MANAGEMENT OF MS GOBBO

408. It was the SDU's desire to cease managing Ms Gobbo and deregister her as a source following Mr Cooper's arrest. However, it was not possible for the SDU to simply cease contact with Ms Gobbo, as they owed her a duty of care and therefore needed to ensure her safety and protect her from being compromised.

409. This part of these submissions will set out chronologically some of the issues faced by the SDU following Mr Cooper's arrest that prevented the unit from deregistering Ms Gobbo. Counsel Assisting's submissions at [2484] of Volume 2 in relation to the meeting on 24 July 2007 will also be addressed.

410. It will be submitted that these issues demonstrate the following:

- a. After Mr Cooper's arrest, the SDU held the consistent desire to end the handler/source relationship with Ms Gobbo;
- b. Due to safety concerns, the SDU were not able to suddenly stop all contact with Ms Gobbo. Through no fault of the SDU, safety concerns relating to Ms Gobbo did not abate. Thus, the SDU were obliged to continue their contact with Ms Gobbo.
- c. Safety concerns and risks relating to Ms Gobbo were discussed extensively at source management meetings. Summaries of those discussions were set out in the Source Management Log. Contrary to Counsel Assisting's assertion, they were not 'perfunctory'.⁵⁶⁷
- d. Mr Sandy White raised his desire to end Ms Gobbo's registration with senior members of Victoria Police numerous times. When he did so, discussions were had as to how this could be achieved.

⁵⁶⁷ Counsel Assisting submissions Volume 2, [2142].

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- e. Ms Gobbo did not want to end her relationship with the SDU. She continued to provide intelligence to the SDU, despite being advised that any intelligence she provided would not be acted upon.
- f. The intelligence Ms Gobbo continued to provide related to very serious criminal activity and police corruption. The SDU consulted senior members of Victoria Police as to how to best approach the situation and were encouraged to continue to receive and disseminate information from Ms Gobbo, given its value. At times, the SDU were requested to specifically task Ms Gobbo. They did as they were directed.
- g. This situation was perpetuated throughout the remainder of Ms Gobbo's registration with the SDU.

Duty of care owed to Ms Gobbo

411. Victoria Police owed Ms Gobbo a duty of care upon the CSR accepting her registration as a human source. On 20 March 2006, Mr Peter Smith and Green spoke to Ms Gobbo about this very issue:⁵⁶⁸

Ms Gobbo: And so I know you say – I know you have said to me, Peter, you know, “Don’t do it at our expense,”---

Mr Peter Smith: I’m genuine about that, too.

Ms Gobbo: I know you are. But all I’m saying is – and you would’ve figured me out by now. I’m not going to do anything by halves. ... I will – I’m not going to do anything. I won’t do it unless I’m going to do it a hundred percent.

Mr Peter Smith: But your work – we’ve got – well, we call it a duty of care, would you believe, that we’ve got to look after you. And if you’re – you know, we – we worry about your health issues in

⁵⁶⁸ Transcript of conversation with Ms Gobbo, Mr Peter Smith and Mr Green, 20 March 2006, VPL.0005.0076.0682 at .0905.

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the past and ... you joke about how you're, you know, getting all stressed again and stuff ... and we think – we don't want to be any – any way a party to that happening again.

Ms Gobbo: Yeah, but you're not causing it. You're not creating it. You're ---

Mr Peter Smith: But ... if we see it and think it might happen, I've got to – I've got to say it to you.

[...]

Mr Green: And at some stage things will change and there's got to be periods in your life where the opportunity that's around, particularly right now, is not always going to be there.

Ms Gobbo: I couldn't agree with you more.

Mr Green: You know, like, I dunno, the way things are going, one month or six months, 12 months' time you ... you'd be quietening right down and back to working every day and maybe ringing us once a week ... instead of ringing us all day ---

Ms Gobbo: 25 times a day.

Mr Green: --- and then doing a little bit of work. ... So what we're concerned is when the balance goes.

412. As the Commission is aware, the SDU's contact with Ms Gobbo did not 'quieten right down' one, six or 12 months' after this conversation took place. The primary reason for this was because of the ongoing duty of care that the SDU, on behalf of Victoria Police, owed to Ms Gobbo, and the problems created by that duty.

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413. The difficulty faced by Mr Sandy White, in particular, was that he could not terminate the relationship with Ms Gobbo. As he explained to the Commission, ‘it got to a certain point where there was [sic] a lot of duty of care issues surrounding her. And I couldn’t just cut her off and say, “that’s it, the police department has nothing more to do with you” because there was [sic] still those issues around the assistance she provided and what would happen to her if somebody found out.’⁵⁶⁹ Mr Peter Smith explained that it was not possible for the SDU to ‘have nothing to do with Ms Gobbo’ after she turned up to advise Mr Cooper on the night of his arrest. He said, ‘You can’t just walk away from a high risk source and leave them high and dry, you have a duty of care about their safety so it’s quite difficult to do that.’⁵⁷⁰ It was particularly difficult to ‘do that’ in Ms Gobbo’s case, given the significant value of the intelligence she was providing.
414. The need for the SDU to continue its contact with Ms Gobbo to monitor her safety meant that she had to remain registered. The SDU were obliged to continue to record their conversations with Ms Gobbo and maintain her registration. A failure to do so would have meant that the SDU’s relationship with Ms Gobbo would have been seen as corrupt. The SDU could not have contact with Ms Gobbo unless she was registered.
415. The difficulty faced by the SDU was that Ms Gobbo continued to tell them valuable intelligence that could not be ignored. From around May 2006, steps were taken to minimise the intelligence Ms Gobbo was providing.⁵⁷¹ Mr Black referred to this as ‘caretaker mode’.⁵⁷² Both he and Mr Sandy White conceded that despite Ms Gobbo being placed into ‘caretaker mode’, the SDU continued to receive and disseminate information from Ms Gobbo, though the SDU avoided setting her specific tasks to achieve.⁵⁷³ Mr Black said, ‘When we had contact with [Ms Gobbo], if she decided to discuss something with us, share something with us, absolutely we would listen. But we weren’t actively tasking her to gain intelligence.’⁵⁷⁴

⁵⁶⁹ Transcript of Sandy White, 5 August 2019, 3891.32.

⁵⁷⁰ Transcript of Peter Smith, 11 September 2019, 6110.12.

⁵⁷¹ Transcript of Mr Black, 22 October 2019, 8107.2.

⁵⁷² Transcript of Mr Black, 22 October 2019, 8105.32.

⁵⁷³ Transcript of Mr Sandy White, 6111.189; Transcript of Mr Black, 22 October 2019, 8106.16.

⁵⁷⁴ Transcript of Mr Black, 22 October 2019, 8106.42.

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416. Mr Overland recalled that attempts to deregister Ms Gobbo were thwarted by her ‘coming up’ with more information. He recalled that she would do things that she was asked not to do, and act unilaterally, but that the ‘real difficulty’ was that it was not an option to cease contact. Further, when she then provided valuable information, it was information that could not be ignored.⁵⁷⁵

A chronological account of Mr Sandy White’s entries relating to ending the source relationship

417. It is submitted that entries from the Source Management Log (SML) and Mr Sandy White’s diary demonstrate a tension between the SDU’s desire to cease Ms Gobbo’s management post 22 April 2006, and senior members of Victoria Police’s desire to utilise her to obtain intelligence in relation to serious criminal activity. Intertwined with this tension was the issue of Ms Gobbo’s safety and the requirement that the SDU maintain contact with Ms Gobbo while threats to her safety were present. Some of these entries are set out below.

418. On 23 April 2006, Ms Gobbo met with Messrs Sandy White and Green. She raised concerns that Milad Mokbel would discover she was aware of Mr Cooper’s arrest and failed to warn other members of the cartel. Ms Gobbo described her actions as ‘unforgiveable’ to the Mokbels and said her life at become a ‘mitigated nightmare’.⁵⁷⁶ Mr Sandy White’s diary records that Ms Gobbo [REDACTED] was not interested. She was apparently ‘happy’ as the loss of the Mokbels and their associates as clients was the initial objective.⁵⁷⁷

419. On 25 April 2006, Mr Sandy White noted that Ms Gobbo was to ‘cut off ties’ with the Mokbels due to conflicts of interest. Two days later, the SML records that handlers did not believe Ms Gobbo should have anything further to do with the Mokbels. This was the same day that Mr Biggin spoke to Mr Sandy White about his audit. As set out above, Mr Sandy White’s diary records that:

⁵⁷⁵ Transcript of Simon Overland, 23 January 2020, 12218.41.

⁵⁷⁶ Transcript of conversation with Ms Gobbo, Mr Sandy White and Mr Green, 23 April 2006, VPL.0005.0097.0372 at .0389 and .0393.

⁵⁷⁷ Exhibit RC394, Diary of Sandy White, 23 April 2006.

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Meet with Supt Biggin re 3838 audit / review.

No issues with file.

Should continue with Mokbels via Horty if HS feels secure and DSU happy.

Discussed reward for HS. Recommend acknowledge appreciation by A/C Overland.

420. It is evident from his notes that both Mr Sandy White and Mr Biggin were considering deregistering Ms Gobbo at this stage. This is consistent with Mr Black's evidence, that 'caretaker mode' commenced when the SDU were told there had been a discussion between Messrs Biggin and White that the SDU were no longer to task Ms Gobbo, around April 2006.⁵⁷⁸
421. On 29 April 2006, Ms Gobbo reported that Mr Luxmore was saying she was 'as good as a dog' as she was looking after Mr Cooper. She also reported that she had told Horty Mokbel that she did not know when Mr Cooper was arrested. This lie 'created a real issue' for the SDU.⁵⁷⁹ Mr Sandy White was of the view that many of the risks to Ms Gobbo's safety stemmed from her having told Horty Mokbel this lie.⁵⁸⁰
422. On 30 April 2006, Ms Gobbo told the SDU that she wanted to keep in contact with persons of interest in order to monitor any threats to her. It was noted that this was 'contrary to handler instructions'.
423. On 2 May 2006, the SML records that Ms Gobbo had met with Horty Mokbel. According to Ms Gobbo, Horty Mokbel had grabbed her by the face and accused her of being an informer. Mr Sandy White updated Mr Biggin about this threat on 11 May 2006.⁵⁸¹
424. On 17 May 2006, Mr Sandy White met with Assistant Commissioner Overland. According to the SML, they discussed the termination process and a potential reward for Ms Gobbo. Mr Overland was to consider whether he would provide an acknowledgement of appreciation.

⁵⁷⁸ Transcript of Mr Black, 22 October 2019, 8105.32.

⁵⁷⁹ Transcript of Mr Sandy White, 15 August 2019, 4663.11; 22 August 2019, 5080.4.

⁵⁸⁰ Transcript of Mr Sandy White, 22 August 2019, 5090.29.

⁵⁸¹ Exhibit RC397, Diary of Sandy White, 11 May 2006.

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425. On 23 May 2006, Mr Sandy White received a message from Mr Biggin, via Mr Cowlshaw, that Mr Overland was willing to speak to Ms Gobbo in relation to the assistance she had given. Mr Sandy White noted that he was to discuss with Mr Biggin the possibility of Mr Overland meeting with Ms Gobbo.⁵⁸²
426. In June and July of 2006, information from Ms Gobbo in relation to allegedly corrupt activities of Officer Brown was reported to ESD. This led to Ms Gobbo speaking to Mr Attrill, and a number of discussions between Messrs Sandy White, Superintendent Biggin and Superintendent Wilson of ESD. In particular, during a meeting on 25 July 2006, it was agreed that Superintendent Biggin was to ask Mr Overland if he would speak to Mr Ashton of the OPI about Ms Gobbo's involvement.⁵⁸³
427. On 26 July 2006, members of the SDU met for a unit meeting. Issues discussed in relation to Ms Gobbo included the SDU's duty of care to her, the fact that they had ceased tasking her, and that she 'couldn't back away from suspects without creating suspicion'.⁵⁸⁴
428. On 27 July 2006, Mr Sandy White met with Messrs Biggin and Overland to further discuss the Officer Brown matter. Mr Sandy White's diary indicates that Mr Overland had met with Mr Ashton of the OPI and that the OPI had agreed to 'drop off' the Officer Brown issue. Ms Gobbo's suspected involvement in the Hodson murders was discussed. It was agreed that 'at a time in the future', Ms Gobbo could be prewarned that there would be an OPI hearing in relation to the Hodsons, and that Ms Gobbo may speak to her handlers about the same.
429. In August 2006, Ms Gobbo advised her handlers that she knew of a container of illegal tobacco which had been imported by Mr Karam. This intelligence could not be ignored. The container was seized.
430. Around this time, a number of safety concerns in relation to Ms Gobbo also arose. Ms Gobbo reported to her handlers that Milad Mokbel was asking Mr Agrum details about Mr Cooper's arrest. This had the potential to reveal Ms Gobbo's role on the

⁵⁸² Exhibit RC399, Diary of Sandy White, 23 May 2006.

⁵⁸³ Exhibit RC405, Diary of Sandy White, 25 July 2006.

⁵⁸⁴ Exhibit RC406, Diary of Sandy White, 26 July 2006.

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night.⁵⁸⁵ On 13 August 2006, Ms Gobbo advised that she had a copy of a letter from Carl Williams in which he called her a ‘dog’, due to her having assisted Mr Thomas cooperate with police.⁵⁸⁶ These risks are all set out in the SML.

431. The SML records that Ms Gobbo’s risk assessment was discussed at a source management meeting on 7 September 2006. Notes from the meeting record that there had been continual efforts by Solicitor 2 and Carl Williams to determine Ms Gobbo’s involvement with Thomas and Cooper and that this was a ‘significant risk issue’. It was also noted that the recent interception of the container in Sydney may have an impact on Ms Gobbo, if Rob Karam or Tony Mokbel established that she knew about the details and could have reported it to police. It was recommended that she continue to be managed by the SDU, that she was not to be tasked, but that contact was to be maintained in order to monitor threats and Ms Gobbo’s welfare. It is submitted that the notes from this meeting are not ‘perfunctory’.
432. On 15 September 2006, Mr Sandy White met with Messrs Green, Peter Smith and Anderson to discuss how to terminate the SDU’s relationship and the timing of the same. It was agreed that Ms Gobbo was to ‘remove self slowly from associates’, and thought that an alternative outlet to speaking to the SDU could be suggested, such as a priest or psychologist.⁵⁸⁷ This suggestion was not received well by Ms Gobbo, as on 28 September 2006 Mr Sandy White recorded that Ms Gobbo was not interested in speaking to anyone else. He noted that ‘need action to exit HS after arrest of Horty’.
433. On 18 October 2006 the SDU held its monthly source review meeting. Notes from that meeting record a number of risks. It was recommended that ‘should source be tasked or provide further intelligence that requires actioning, it is highly likely that this will lead to her compromise’ and that she was ‘to be reminded of this fact at next meeting’.⁵⁸⁸ On that same day, Mr Sandy White met with Messrs Peter Smith and Anderson to further discuss Ms Gobbo’s ‘exit strategy’. His diary records:⁵⁸⁹

⁵⁸⁵ Exhibit RC284, Source Management Log, 11 August 2006.

⁵⁸⁶ Exhibit RC284, Source Management Log, 13 August 2006.

⁵⁸⁷ Exhibit RC408, diary of Sandy White, 15 September 2006.

⁵⁸⁸ Exhibit RC284, Source Management Log, 18 October 2006.

⁵⁸⁹ Exhibit RC410, Diary of Sandy White, 18 October 2006.

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Discussed deactivation.

Need to continue contact for duty of care – threats against same and court discovery processes.

If contact to continue keep registered.

Discussed telling Purana that HS deactivated. Loose talk may become worse if members believe HS no longer active.

Agreed deactivation not possible until contact stops.

Exit strategy to revolve around arrest Horty.

Promote [REDACTED] make feel important.

Continue ban on 'no tasking' HS to be reminded.

Meet 4 tomorrow approved.

HS to be encouraged to withdraw from relationships with targets.

434. It is evident from this diary note that Mr Sandy White was searching for a way to terminate the SDU's relationship with Ms Gobbo.
435. This matter was raised with Superintendent Biggin. On 18 November 2006, Messrs Sandy White, Anderson and Peter Smith met with Mr Biggin to discuss Ms Gobbo's deactivation. It was noted in the SML that 'duty of care will always be present therefore must maintain contact therefore de-registering not possible at this time. HS to be advised that intel will not be acted upon/passed on. HS to be advised that contact will be ongoing, urgent issues (re info) will be addressed as they arise'. Notes from the monthly source review of that day reflect this agreement and set out the current risks.⁵⁹⁰ The following day, Ms Gobbo was reminded by Mr Anderson that intelligence was unlikely to be acted upon, due to the risk of her compromise.⁵⁹¹
436. Mr Sandy White met with Messrs O'Brien and Flynn on 20 November 2006 to advise them of the SDU's decision not to receive any intelligence from Ms Gobbo, due to concerns about her potential compromise.⁵⁹²

⁵⁹⁰ Exhibit RC284, Source Management Log, 18 November 2006.

⁵⁹¹ Exhibit RC284, Source Management Log, 19 November 2006.

⁵⁹² Exhibit RC284, Source Management Log, 20 November 2006.

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437. Mr Sandy White updated Superintendent Biggin about Ms Gobbo's 'exit strategy' again on 21 November 2006.⁵⁹³
438. On 11 December 2006 Mr Sandy White met with Inspector Gavan Ryan. Notes from that meeting reveal Mr Sandy White advised Mr Ryan that Ms Gobbo's 'exit strategy' was being implemented as a 'phased process', but that there were ongoing duty of care issues in relation to the discovery processes at court. Mr Ryan indicated he would update Assistant Commissioner Overland. Messrs Sandy White, Anderson and Green met with Ms Gobbo that day and discussed a proposal that Ms Gobbo was to meet with a psychologist. They discussed the change in her relationship with the SDU. There was to be no further tasking, no reception of intelligence by the SDU, she was to meet a psychologist and [REDACTED] for the SDU.⁵⁹⁴
439. On 18 December 2006, Ms Gobbo advised her handlers that Horthy Mokbel and Rob Karam were involved in a drug importation. Mr Sandy White's note states, 'agreed – not reacting / disseminating intel'. On 23 December 2006, Ms Gobbo said that the container importation was worth \$200m and was in quarantine on the docks. Mr Sandy White advised Mr O'Brien. It is submitted that it was not possible for Victoria Police to ignore information such as this.
440. On 24 January 2007, Mr Sandy White was advised by Mr Green that Mr O'Brien was prepared to meet Ms Gobbo and express his thanks for her assistance. It was agreed this would be timed with the exit strategy.⁵⁹⁵
441. The following day, Ms Gobbo received a threat via SMS text message: 'U Dog U die try me'. Mr Sandy White received an update by Mr Green. They discussed that Ms Gobbo was not to be tasked and that the SDU 'did not want [her] involved working on Cvetanovski'.
442. On 23 February 2007, Ms Gobbo received a further threatening SMS text message. Mr Sandy White met with Mr Biggin to update him in relation to the 'exit strategy'. It was agreed that the relationship with Ms Gobbo would have to continue because of

⁵⁹³ Exhibit RC284, Source Management Log, 21 November 2006.

⁵⁹⁴ Exhibit RC284, Source Management Log, 11 December 2006.

⁵⁹⁵ Exhibit RC415, diary of Sandy White, 24 January 2007.

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the duty of care, and that intelligence would keep flowing as a result of Ms Gobbo's lifestyle.

443. Mr Sandy White then met with Messrs Anderson and Green. They agreed Ms Gobbo was not to be tasked, but that intelligence could be gathered and disseminated if safe. Ms Gobbo was to be advised that she was not to meet with targets for Victoria Police, and that meetings (social or otherwise) were 'at her discretion'. By this stage, it was accepted that the SDU could not change Ms Gobbo's lifestyle, and that they 'should stop trying'.⁵⁹⁶
444. On 28 February 2007, Ms Gobbo told the SDU that she would assist in the prosecution of persons making threats to kill her by making statements and giving evidence. Around this time, Operation Gosford was established to investigate these threats. Mr Flynn was the point of contact.⁵⁹⁷
445. On 5 March 2007, at a monthly source review, it was noted that Ms Gobbo was maintaining a close relationship with targets of interest in the belief that she was more likely to learn of any problems relevant to her. It was further noted that Ms Gobbo was aware that Victoria Police would not task her with collecting intelligence and that she was frustrated by this. The upcoming committal of Milad Mokbel was recorded as a risk, given discovery processes may lead to suspicion as to Ms Gobbo's role in the recruitment of Mr Cooper.⁵⁹⁸
446. Ms Gobbo reported another threatening text message on 18 March 2007. This was reported to Mr Flynn.
447. On 21 March 2007, Ms Gobbo offered to gather intelligence in relation to suspected corrupt police officer, Mr Hafner. The SDU declined her offer.
448. On 28 March 2007, Ms Gobbo told the SDU that Mr Manella was trying to have his court matter adjourned, and had mentioned blowing up the court or murdering someone. He had importation 'en route' and did not want to go to jail yet.

⁵⁹⁶ Exhibit RC416, diary of Sandy White, 23 February 2007.

⁵⁹⁷ Exhibit RC284, Source Management Log, 28 February 2007.

⁵⁹⁸ Exhibit RC284, Source Management Log, 5 March 2007.

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449. On 1 May 2007, Mr Sandy White met with Mr Anderson to receive an update in relation to Ms Gobbo. His notes listed the following points:

Strategy re ongoing deployment wind down

Objectives achieved

Emotional stability

Thanks by Purana

2 meets: 1. Thanks, 2. Wind down

Deactivation not possible due to ongoing necessary contact

Psychologist value/opinion

Meeting approved 2/05 with DDI O'BRIEN

450. Mr Sandy White updated Superintendent Biggin in relation to the above on 3 May 2007. It was agreed that Ms Gobbo could not yet be deactivated, but was to 'wind down', not to be tasked and no intelligence was to be received. Mr Biggin also told Mr Sandy White at this meeting that Mr Brouwer of the OPI was aware of Ms Gobbo's identity, and had been advised of the same by D/C Overland.
451. Messrs Sandy White and Biggin's plan to 'wind down' Ms Gobbo was thwarted days later. On 10 May 2007, Mr Sandy White met with Gavan Ryan of Purana. Mr Sandy White advised Mr Ryan of the SDU's intention in relation to Ms Gobbo's 'exit strategy', and that the objective was to terminate the relationship without any bitterness or recriminations. Mr Sandy White advised Mr Ryan that Ms Gobbo was overly concerned about what Carl Williams might say in a statement. His diary note then states, 'Consideration to having [Gobbo] before compulsory hearings re WILLIAMS/DALE. Consideration to having SDU speak to her re same as oppose [sic] to hearings. GR to seek approve from D/C.' Mr Sandy White then updated Mr Anderson, advising him of the 'need to delay exit strategy pending approval from D/C' to interview Ms Gobbo in relation to Paul Dale and Carl Williams.
452. On 16 May 2007, Mr Sandy White was advised that A/C Overland had approved the SDU speaking to Ms Gobbo about her knowledge of the Hodson murders.
453. Ms Gobbo was asked about this topic on 21 May 2007. Mr Ryan was subsequently briefed and was to update Mr Overland.

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454. On 25 May 2007, Mr Sandy White met with Superintendent Biggin and Deputy Commissioner Overland to give them a briefing in relation to Ms Gobbo's knowledge of Paul Dale, the stolen IR's, the Dublin Street burglary and the Hodson murders. Mr Sandy White's diary reveals he outlined Ms Gobbo's exit strategy, noting that the SDU's intention was to end the relationship without bitter recriminations and Ms Gobbo's objective was to have the Mokbels out of her life. It was agreed that Ms Gobbo was 'viable' in relation to intelligence relating to Messrs Ahmed, Waters and Dale. Ongoing SDU management was necessary. Mr Overland was to monitor the OPI request for her to be subpoenaed. It was agreed it was unnecessary for Ms Gobbo to be subpoenaed to the OPI given her willingness to assist.⁵⁹⁹
455. In early June 2007, Ms Gobbo provided the SDU with the bill of lading which led to the seizure of the 'tomato tin importation'. Given it related to Australia's biggest ecstasy importation, and was clearly not the subject of legal privilege, it would not have been possible for the SDU to not act on this intelligence.
456. A monthly source review on 14 June 2007 noted that Ms Gobbo had been advised not to involve herself in Tony Mokbel's extradition proceedings. It was noted that Ms Gobbo was representing Mr Karam, and that she had provided intelligence relating to a large importation of ecstasy, which 'cannot be ignored'. Risks recorded in the SML included the potential that intelligence, if disseminated to the AFP, cannot be controlled, and risks arising from Tony Mokbel's efforts to employ Ms Gobbo. These entries, it is submitted, were not 'perfunctory', and would alert the reader to the risks faced by Ms Gobbo and the SDU at the time.
457. In July 2007, Ms Gobbo was summonsed to appear at the OPI. Concerns were raised by the SDU that certain questions would expose Ms Gobbo as a source, which posed a risk to Ms Gobbo if OPI staff became aware,⁶⁰⁰ or transcripts were leaked or subsequently circulated. This has previously occurred, with disastrous consequences.⁶⁰¹ Mr Sandy White made enquiries via Mr Overland about the

⁵⁹⁹ Exhibit RC423, Sandy White diary, 25 May 2007.

⁶⁰⁰ See, eg., Exhibit 405, diary of Sandy White, 25 July 2006. 'Gauge if info re HS ID can be limited to only Graham Ashton at OPI. What will staff think if invest or HS involvement in invest stopped.'

⁶⁰¹ See, eg. ██████████ matter, referred to in Exhibit 284, Source Management Log 2958, 24 October 2008, 13 November 2008.

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potential to prohibit certain questions of Ms Gobbo that would reveal her role as a source.⁶⁰² On 17 July 2007, Mr Sandy White was advised that Simon Overland had advised Mr Fitzgerald of the OPI that Ms Gobbo was a source.⁶⁰³

458. The following day, on 18 July 2007, Mr Sandy White met with Mr O'Brien to discuss the possibility of Ms Gobbo becoming a witness. Mr Sandy White advised against this course being taken. He believed Ms Gobbo was only of value as a witness in relation to Mr Karam. Mr O'Brien suggested that if it was inevitable that Ms Gobbo would be compromised then Victoria Police should use her as a witness. Mr Sandy White's note states that Ms Gobbo's value as a witness needed to be weighed against the 'political fallout from the legal fraternity. Ie., will it impact on Cooper conviction and others?' It was agreed that legal advice was needed in relation to the fallout. It is submitted that this meeting is what prompted Mr Sandy White's meeting with others on 24 July 2007, and that the need for legal advice was seen as necessary if Ms Gobbo were to be made a witness.

24 July 2007 meeting

459. Counsel Assisting submit at [2484] of Volume 2 that Mr Sandy White should have obtained legal advice in relation to the use of Ms Gobbo as a human source as a direct result of conversations that occurred at a meeting on 24 July 2007, and that he chose not to.
460. It is submitted that the evidence contradicts the assertion at [2484.1] that at the meeting, the attendees discussed the potential of obtaining a legal advice from a judge *specifically addressing Ms Gobbo's use as a human source*.
461. There may have been discussion about a legal opinion from a judge. That reference comes only from Mr Biggin's diary. No one else present refers to a judge in their diary notes. There is no note by Mr Biggin or anyone else as to what the advice, if sought, would relate to. There is no evidence that the advice was to 'specifically address Ms Gobbo's use as a human source'. Contrary to that suggestion, the

⁶⁰² Exhibit RC284, Source Management Log, 12 July 2007.

⁶⁰³ Exhibit 433, diary of Sandy White, 17 July 2007.

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evidence strongly suggests the conversation specifically related to Ms Gobbo's potential use as a witness:

- a. It is clear from the narrative in the lead up to 24 July 2007 that the meeting related to the possibility of Ms Gobbo becoming a witness for Petra.
- b. According to Mr Sandy White's diary, on 17 July 2007 a meeting had been requested with Mr Overland to discuss the 'future viability of [Mr Gobbo] as a witness'. Mr Biggin's diary note on 17 July 2007 records the meeting was to discuss the potential for Ms Gobbo to be a witness, [REDACTED] and her future deployment.
- c. On 18 July 2007, Messrs Sandy White and O'Brien discussed the possibility of Ms Gobbo becoming a witness.
- d. At 3.00pm on 24 July 2007, Mr Sandy White spoke to Jim O'Brien. Mr Sandy White's diary records that, 'Call from JOB, request meeting with D/C Overland re future viability of 3838 as witness.' This entry is not referred to by Counsel Assisting.
- e. At 3.40pm, Mr Sandy White called Superintendent Biggin and advised him of the meeting. As Counsel Assisting acknowledge, Mr Biggin noted that the meeting was to discuss the potential for Ms Gobbo to be a witness, [REDACTED] [REDACTED] and her future deployment.
- f. At 4.00pm Mr Sandy White called Inspector Rob Hardie and advised him of the meeting. Inspector Hardie was unable to attend.
- g. Mr O'Connell's attendance at the meeting on 24 July 2007 also indicates Petra's involvement.
- h. Mr Woods asked Mr Biggin about Mr Sandy White's entry in the Source Management Log for the meeting on 24 July 2007. It reads, *inter alia*, 'Agreed value of HS as source is outweighed by repercussions and risk to same.' Prior to Mr Biggin's cross-examination, Mr Sandy White had already given evidence to the Commission that this entry was likely a typo, and should have read 'Agreed value of HS *as witness*...' ⁶⁰⁴ Mr Biggin recalled that the meeting related to Ms Gobbo becoming a witness, for either Briars or Petra. ⁶⁰⁵ Mr Woods suggested to Mr Biggin that his answer 'came as a bit of a surprise' because there was no

⁶⁰⁴ Transcript of Sandy White, 3 September 2019, 5420.46.

⁶⁰⁵ Transcript of Anthony Biggin, 10 October 2019, 7568.

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suggestion that one of the things under discussion was the potential for Ms Gobbo becoming a witness for Briars or Petra. The evidence set out above demonstrates otherwise.

462. Given this meeting related to Ms Gobbo's potential use as a witness, it is probable that discussions around this time about the need for legal advice (including the discussion between Messrs Sandy White and O'Brien on 18 July 2007), related to the need for advice should Ms Gobbo be used as a witness. The Commission cannot be satisfied that it related to advice to 'specifically address Ms Gobbo's use as a source'.
463. In relation to Counsel Assisting's submission at [2484.2], it is submitted that it may not have been Mr Blayney who suggested that legal advice be obtained. It may have been Mr Sandy White, or Mr O'Brien, or anyone else at the meeting. It may have been Mr O'Connell, given Petra Taskforce had by that stage established their own legal team.⁶⁰⁶ Counsel Assisting reason that it was Mr Blayney because he had concerns about the issue. Messrs Sandy White and O'Brien also had concerns, which were discussed on 18 July 2007. As Mr Sandy White told the Commission, if he had considered potential upset to convictions, he would have raised it with his superior officers.⁶⁰⁷
464. In relation to Counsel Assisting's submission at [2484.5], it is open to find that no steps were taken to obtain legal advice, because she did not at that stage become a witness.
465. In relation to Counsel Assisting's submission at [2484.7], if legal advice were to be obtained, it would not have been obtained by the SDU. It would have been obtained by the investigators.⁶⁰⁸ There is no evidence that Mr Sandy White made a conscious decision not to seek legal advice—it was not his job to do so, particularly given that he was the most junior officer at the meeting.

⁶⁰⁶ Petra Taskforce meeting minutes, 14 and 15 May 2007, 'Engaged Brian Dennis and legal team via Luke Cornelius'.

⁶⁰⁷ Transcript of Sandy White, 3 September 2019, 5421.39.

⁶⁰⁸ Transcript of Anthony Biggin, 10 October 2019, 7646.30.

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466. Counsel Assisting at [2481] of Volume 2 note that Mr Blayney accepted he had been deliberately led to believe that legal advice had been obtained. An objective reading of Mr Woods' cross-examination of Mr Blayney demonstrates Mr Woods' attempt to have Mr Blayney give this evidence. However, in cross-examination by Mr Chettle, the following evidence was given:⁶⁰⁹

Mr Chettle: It was suggested to you by Mr Woods that [Mr Biggin] and Sandy White were being dishonest and deceitful or trying to mislead you. Did you see any evidence of that at all?

Mr Blayney: I've had long relationships with both those gentlemen and I would not think that that would be the case.

Other relevant diary and source management log entries

467. On 6 August 2007, Mr Sandy White met with Messrs Overland, Biggin, Blayney and Ryan to update them in relation to Ms Gobbo's management. Three options were discussed. Ms Gobbo could be deactivated, her management could continue but with no tasking, or she could become a witness. It was agreed that becoming a witness was not an option, as Ms Gobbo would be compromised. Deactivation was not an option by virtue of the fact that ongoing communication was required in relation to court issues and the Mokbels' trials. This related to the ongoing duty of care and concerns for Ms Gobbo's safety. It was agreed that Ms Gobbo was to be managed with no tasking, and intelligence was to be 'risk assessed' with Superintendent Biggin prior to its dissemination or actioning.⁶¹⁰ Despite this agreement, and, it is submitted, as a result of the desires of others to use Ms Gobbo to combat serious corruption, discussions were had in relation to the possibility of using Ms Gobbo to speak to Petra and Briars targets. Mr Sandy White updated those at the meeting in relation to threats against Ms Gobbo.

⁶⁰⁹ Transcript of Jack Blayney, 3 December 2019, 10268.32.

⁶¹⁰ Exhibit RC436, diary of Sandy White, 6 August 2007.

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468. Between 31 August and 6 September 2007, Mr Iddles discussed with Mr Sandy White the use of Ms Gobbo to pass on information to Mr Waters as part of the Briars investigation.⁶¹¹
469. The monthly source review on 7 November 2007 noted that Ms Gobbo had ‘potential’ in relation to the Waters’ investigation and Hodson investigation, Karam intelligence, Higgs intelligence and ongoing Mokbel intelligence. It was noted that the original risk factors remain, as well as Ms Gobbo’s involvement in corruption investigations and compulsory hearings adding to the risks.
470. In late November 2007, Horthy Mokbel’s committal took place. There were safety concerns for Ms Gobbo, should her presence on the night of Mr Cooper’s arrest become known as a result of cross-examination.
471. On 2 January 2008, the SDU held their monthly source review. Notes from the meeting were recorded in the SML as follows:⁶¹²

Monthly Source Review

Update: HS still receiving threats from unknown person/s. Language in threats is consistent indicating same person/s involved. Investigators have found phone records show subscribers to Purana invest. Prime suspect remains BAYEH who has denied same to source. The threats are an ongoing concern to source.

Source is spending significant amounts of time in the company of Mick GATTO. Source believes this is a person of interest to police and whilst she hasn’t been specifically tasked to work against this person she has taken it upon herself.

Source continues to strongly associate with Rob KARAM who continues to arrange the import of large quantities of drugs. Some of this intel has been disseminated however the dissemination is severely restricted unless the actioning of the intel can be controlled thereby ensuring the security of the

⁶¹¹ Exhibit RC284, Source Management Log, 6 September 2007.

⁶¹² Exhibit RC284, Source Management Log, 2 January 2008.

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source. Investigators have indicated that KARAM is currently the subject of an AFP investigation.

Risk:

Source remains high risk by virtue of:

- *Past association with gangland associates and assistance provided to police re same.*
- *The issue of the MOKBELS trials still has some capacity to expose source and ongoing association with the source will be necessary to manage these issues.*
- *Source current association with high value targets despite being advised not to. The intel being provided by same has high value.*
- *The source is still required to appear [REDACTED] and this continues to have the potential to expose her.*
- *Ongoing threats to source.*

Value: *Source remains high value, particularly in regard to corruption issues and murder investigation involving service and ex police. Current association with KARAM, HIGGS and GATTO also provides opportunities for the receipt of high value intelligence.*

Recommendation: *Continued management by SDU essential*

472. It is submitted that this entry is not 'perfunctory'. It sets out current risks faced by Ms Gobbo, and the surrounding entries in the SML provide significant information about how those risks arose and developed on an interaction by interaction basis.
473. On 23 January 2008, Mr Sandy White met with Superintendent Biggin to discuss intelligence from Ms Gobbo about a potentially corrupt member of Purana who had links to Mick Gatto. Mr Biggin was also updated in relation to the tomato tin importation. It was agreed that Ms Gobbo's registration number would be changed for her safety. It was also agreed that the SDU's relationship with Ms Gobbo would continue while Mokbel trials and disclosure issues remained, but that on the conclusion of the Mokbel trials, she would be deactivated.
474. On 30 January 2008, Ms Gobbo was given the option to end her relationship with the SDU. She was reminded that the intelligence she was providing was not being acted

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on, and that the communication between her and the SDU was only being maintained for her safety, in order to manage issues relating to her potential exposure. It was noted that Ms Gobbo was aware that no tasking was taking place, and that she was frustrated by the same but understood the reasoning. Ms Gobbo was introduced to a new handler, Mr Wolf, and advised that there was no need to call him every day in relation to her movements if she was not concerned for her own safety. She was given clear instructions not to associate with Messrs Karam and Gatto for the benefit of police and that intelligence could not be acted on. She told the SDU that she was associating with them in order to monitor potential threats, and because it was 'good for business re referrals'.⁶¹³

475. A monthly source review took place on 1 February 2008. Notes from the SML record that Ms Gobbo was frustrated at the recent change of handler, but that this was done to manage Ms Gobbo's dependence on handlers and to prevent overfamiliarity. It was noted that Ms Gobbo had been given the option to end the relationship with the SDU but had chosen not to. Some of the risks discussed were the upcoming court matters of Messrs Orman, Radi, Mr Ketch and the Mokbel brothers. It was noted that Tony Mokbel was expected to return from Greece, and that Ms Gobbo may become involved with this 'depending on management issues, conflict issues and privilege'. Ms Gobbo's ongoing relationship with Mr Waters was also considered useful. The ultimate recommendation was that, due to upcoming court matters and the risk arising from the same, ongoing communication with the source was necessary.
476. In mid-February 2008 Ms Gobbo provided the SDU with information relating to a potential leak of intelligence from Purana to Mick Gatto. This information was passed on to Mr O'Brien⁶¹⁴ and on 20 February 2008, Superintendent Biggin was updated.
477. On 25 February 2008 Ms Gobbo provided further information in relation to David Waters.⁶¹⁵ Around this time, the SDU was advised that Ms Gobbo had been

⁶¹³ Exhibit RC284, Source Management Log, 30 January 2008.

⁶¹⁴ Exhibit RC284, Source Management Log, 16 February 2008 and 18 February 2008.

⁶¹⁵ Exhibit RC284, Source Management Log, 25 February 2008; 26 February 2008.

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interviewed by Petra investigators and had offered to assist them in their investigation into the Hodson murders.⁶¹⁶

478. On 4 March 2008 Ms Gobbo reported a conversation with Tony Mokbel in which she received a veiled threat. She told the SDU that she was returning to Petra for a further interview the following day and was advised not to offer assistance in gathering evidence.⁶¹⁷
479. On 6 March 2008 Ms Gobbo received threatening telephone calls. She was directed by the SDU to report these matters to Mr Rowe.⁶¹⁸
480. On 20 March 2008, Ms Gobbo reported that during lunch with Mr Gatto, she was asked if she was a registered dog for Purana, as rumours had been circulating from Milad Mokbel and Carl Williams.⁶¹⁹
481. On 16 April 2008, Ms Gobbo's car was set alight. Notes from the monthly source review the following day set out a summarised chronology of the SDU's contact with Ms Gobbo from the previous month. It was noted that Ms Gobbo was aware that intelligence would not be passed on unless 'crucially important' and even then, 'only if it does not impact or jeopardise' her, and that she remained relatively calm, despite the arson, and had the support of the 'Carlton Crew'. It was decided that the arson attack presented the 'ideal opportunity' for Ms Gobbo to end her relationship with the Mokbels, and that she was to be instructed to tell them that she had 'had enough' and wanted 'nothing more to do with them.' It was noted that the SDU's relationship with Ms Gobbo would need to continue to monitor the possibility of her exposure during court discovery processes.⁶²⁰
482. The following day, Ms Gobbo told the SDU that she had been contacted by Tony Mokbel from Greece and had 'failed to initiate the exit strategy' because the call was unexpected and she was unprepared.⁶²¹

⁶¹⁶ Exhibit RC305, diary of Sandy White, 29 February 2008.

⁶¹⁷ Exhibit RC284, Source Management Log, 4 March 2008.

⁶¹⁸ Exhibit RC284, Source Management Log, 6 March 2008.

⁶¹⁹ Exhibit RC284, Source Management Log, 20 March 2008.

⁶²⁰ Exhibit RC284, Source Management Log, 17 April 2008.

⁶²¹ Exhibit RC284, Source Management Log, 17 April 2008.

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483. Mr Biggin was updated about the car fire and 'risk assessment' on 17 April 2008.⁶²²

484. On 5 May 2008, the SML records that an 'analysis of management of [Ms Gobbo]' took place by the SDU, including Superintendent Biggin and Inspector Glow. A number of matters appear to have been considered, including issues relating to handler workload and Ms Gobbo's reliance on the handler/source relationship and the threats she had been receiving. The 'future strategy' in relation to Ms Gobbo's management was as follows:⁶²³

*Source has been instructed to terminate her relationship with the Brunswick crew. She has been advised to go on the offensive with these persons, complaining about the ack of payment for services rendered, the malicious gossip, and attribute the threats against her life to them, etc. She has been provided with a list of persons to whom she must pass this message, knowing that it will make its way back to the MOKBELS. Source has embraced this strategy and already put it in place. Source is consistently reminded that her initial goal in assisting the police has been achieved, ie., MOKBELS out of her life. Tony MOKBEL is due to return to Australia in the near future and it is expected that he will attempt to contact the source. **Source is to be strongly directed not to speak to same. Source to be advised that if she does not follow these instructions, the relationship will have to be terminated because of the police inability to protect her.***

(Emphasis added)

485. Tony Mokbel returned to Australia on 18 May 2008. The SDU gave Ms Gobbo instructions not to contact him or allow her name to be put on his visitors' list. The following day Ms Gobbo sought the SDU's permission to speak to Tony Mokbel one last time to let him know that she could no longer assist him. She was told that if she did not follow instructions then the SDU could no longer assist her.⁶²⁴

⁶²² Exhibit RC305, diary of Sandy White, 17 April 2008; Exhibit RC284, Source Management Log, 18 April 2008.

⁶²³ Exhibit RC284, Source Management Log, 5 May 2008.

⁶²⁴ Exhibit RC449, diary of Sandy White, 19 May 2008.

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486. On 17 June 2008, Messrs Fox, Peter Smith and Sandy White met with Ms Gobbo. They had general discussion about the 'exit strategy', in which Mr Sandy White encouraged Ms Gobbo to change her lifestyle.⁶²⁵ Ms Gobbo said she was considering moving interstate. It was reinforced to her that the intelligence she was providing was not being used.⁶²⁶
487. Notes from the monthly source review on 18 June 2008 outline a number of risks and record that Ms Gobbo must continue to be managed by the SDU until all court matters that may compromise her are dealt with. It was noted that 'the handling team will continue to talk to the source in regards to an exit strategy, encouraging the source to consider seeking employment interstate which appears to be her desire currently.'⁶²⁷ Mr Biggin was updated on 19 June 2008.
488. On 22 July 2008, Mr Sandy White was briefed by Mr Black about a meeting with Mr Biggin relating to Petra's requests for intelligence and assistance from Ms Gobbo. Petra were interested to task Ms Gobbo in relation to a person of interest, Mr Hafner. Petra was told that the SDU were not tasking Ms Gobbo and that Command had sanctioned that decision. Concerns were raised with Messrs Fisher and O'Connell from Petra about a leaked profile document of Ms Gobbo's and fact that the duty of care relating to Ms Gobbo had apparently been 'ignored by investigators', given they had not advised the SDU of the leaked document until weeks after the fact.⁶²⁸
489. On 1 August 2008 Mr Sandy White was contacted by Mr Biggin and directed to provide details of Ms Gobbo to pass on to the OPI, in order to investigate the leaked document. This direction had come from Mr Overland. Mr Sandy White complied.⁶²⁹
490. On 2 August 2008, Ms Gobbo advised the SDU that [REDACTED] had said that [REDACTED] was [REDACTED] and would be killed. This information was passed on to

⁶²⁵ Transcript of conversation with Ms Gobbo, Mr Fox, Mr Peter Smith and Mr Sandy White, 17 June 2008, at VPL.0005.0115.1233 at .1510.

⁶²⁶ Exhibit RC284, Source Management Log, 17 June 2008.

⁶²⁷ Exhibit RC284, Source Management Log, 18 June 2008.

⁶²⁸ Exhibit RC450, diary of Sandy White, 22 July 2008.

⁶²⁹ Exhibit RC451, diary of Sandy White, 1 August 2008.

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Purana.⁶³⁰ This is a further example of intelligence provided by Ms Gobbo that could not be ignored.

491. On 5 August 2008 Mr Sandy White was advised by Mr Biggin that Ms Gobbo's details had been provided to Mr Ashton of the OPI, who was storing the same in a locked safe.⁶³¹
492. On 21 August 2008 Mr Sandy White was updated by Mr Green about a conversation with Ms Gobbo relating to Horty Mokbel's trial. Mr Green reminded Ms Gobbo not to speak to the SDU about potential defences and informed her that the SDU were only interested in issues affecting her safety in relation to the trial and nothing else.⁶³²
493. According to the SML, on or around 27 August 2008 Ms Gobbo advised her handlers that an affidavit was being circulated which disclosed information relevant to a number of people who had not yet been charged, and that those people were considering fleeing the jurisdiction as a result. Ms Gobbo had seen a copy of the affidavit from solicitor Joe Acquaro. This information was passed on.⁶³³
494. On 4 September 2008, Mr Sandy White was advised by Inspector Waddell at Briars that letters had been intercepted between Joe Mannella and Carl Williams which identify Ms Gobbo as a 'dog'.⁶³⁴
495. On 23 September 2008, notes in Mr Sandy White's diary record that Ms Gobbo had provided the SDU with Mr Karam's new phone number. It was decided the number would not be passed on. Ms Gobbo had 'tried to say working for us re Mick GATTO, told her no and corrected her. Training her to call only every second day.'⁶³⁵
496. On 25 September 2008, Mr Sandy White met with Mr O'Connell from Petra. Diary notes from that meeting confirm that Petra were 'keen to interview' Ms Gobbo.⁶³⁶

⁶³⁰ Exhibit RC305, diary of Sandy White, 2 August 2008.

⁶³¹ Exhibit RC452, diary of Sandy White, 5 August 2008.

⁶³² Exhibit RC454, diary of Sandy White, 21 August 2008.

⁶³³ Exhibit RC284, 27 August 2008.

⁶³⁴ Exhibit RC305, diary of Sandy White, 4 September 2008.

⁶³⁵ Exhibit RC457, diary of Sandy White, 23 September 2008.

⁶³⁶ Exhibit RC305, diary of Sandy White, 26 September 2008.

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497. Ms Gobbo's 'exit strategy' was discussed at the monthly source review on 30 September 2008,. The SML includes the following notes:

Exit strategy:

- *Reduce number of contacts*
- *Pending committals re MOKBELS in October – if COOPER does ok, then work to end relationship with contact option for problems*
- *Work to reward application to establish financial reward and compare to other options, ie [REDACTED] HS not to be told about reward application.*

498. On 14 October 2008 an email from Mr Cheesman was forwarded to Mr Green from Investigator 1 at the Australian Crime Commission, who made the comment, 'FYI. Interesting. Want to start again???' In the email, Mr Cheesman recounted having been 'pulled aside' by Ms Gobbo the day before. She had been keen to talk about Rob Karam and fact he was continuing with 'business as usual' to fund his defence. It was noted by the SDU that Ms Gobbo was to be advised not to give information to other members.⁶³⁷
499. On 3 November 2008 the SDU held its monthly source review. The SML records that Ms Gobbo was 'very low maintenance at the moment'. The exit strategy set out in the notes from 30 September 2008 was repeated.⁶³⁸
500. During November and December 2008, Ms Gobbo continued to have contact with Petra investigators about her relationship with Paul Dale and Carl Williams, culminating in Petra's desire to transition Ms Gobbo from a human source to a witness.
501. On 5 December 2008, a meeting took place between Messrs Sandy White, Black and Biggin. Mr Overland also attended. Prior to the meeting, Mr Sandy White had been briefed by Mr Peter Smith about potential risks, should Ms Gobbo become a witness.

⁶³⁷ Exhibit RC284, Source Management Log, 14 October 2008.

⁶³⁸ Exhibit RC284, Source Management Log, 3 November 2008.

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502. Counsel Assisting at [3398] of Volume 2 refer to those risks, and at [3399] state that Mr Sandy White accepted in evidence that the realisation of a ‘potential inquiry and to exposure and embarrassment of the SDU’ was something known from the outset. This misstates Mr Sandy White’s evidence. Mr Sandy White’s evidence was that it ‘might have been’ known from the outset.⁶³⁹ He did not accept the proposition unequivocally, and said that he did not recall anything relating to discussions about a Royal Commission, though that was something he would remember.⁶⁴⁰
503. As the Commission is aware, on 7 January 2009 Ms Gobbo signed a statement, which formally made her a witness in the Petra matter. On 8 January 2009, Mr Biggin emailed Messrs Black, Richards, Wilson and Glow about a request from Petra that the SDU continue to manage Ms Gobbo. He indicated that both he and Commander Porter intended to [REDACTED] He set out lengthy reasons as to why.
504. On 12 January 2009, Messrs Sandy White, Green and Fox met with Ms Gobbo to advise her that she was to have no further contact with the SDU, and that Petra was to be the liaison point. She was encouraged to engage with WITSEC. She was formally deactivated that day.
505. The entries set out above demonstrate that discussions about Ms Gobbo’s exit strategy were ongoing. Mr Sandy White evidently endeavoured to end Ms Gobbo’s registration with the SDU, but was struggling with the difficulties that arose due to concerns about her safety, the duty of care the SDU owed to her, and Ms Gobbo’s desire to continue to provide intelligence about serious crime and corruption issues that simply could not be ignored. As Mr Biggin accepted, breaking the relationship with Ms Gobbo was difficult because she had a desire to continue to engage with the SDU.⁶⁴¹ The above entries also demonstrate that at critical times, senior members of Victoria Police were consulted and had input into Ms Gobbo’s management. Superintendent Biggin, in particular, was a constant source of advice. Counsel Assisting’s submission that risk assessment was lamentably inadequate is rebutted by the careful and constant analysis of risk that is demonstrated by the entries above.

⁶³⁹ Transcript of Sandy White, 19 August 2019, 4853.23.

⁶⁴⁰ Transcript of Sandy White, 19 August 2019, 4866.1.

⁶⁴¹ Transcript of Anthony Biggin, 9 September 2019, 7587.15.

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L. CLOSURE OF THE SDU

506. Counsel for the SDU handlers spent considerable time exploring the circumstances surrounding the disbandment of the SDU in early 2013. It is conceded that whether or not the process adopted to effect that closure was legitimate, fair and honest is not of great relevance to the Commission. However, the role of Mr Gleeson and the deficiencies in the Comrie Review are of great significance given that the Comrie Review was used as evidence in Ginnane J's judgment and forms part of the agreed facts underpinning the High Court judgment.
507. As previously submitted, the portions of the Comrie Review, set out at pages 16 and 17 Ginnane J's judgment, are inaccurate. It is our submission that the High Court has been substantially misled as to the conduct of the SDU. It is for that reason that attention was focused on the role of Mr Gleeson and the work he carried out and the involvement of Mr Pope in both Mr Gleeson's project and the closure of the SDU.
508. It is for these reasons that we requested Counsel Assisting to call Mr Gleeson as a witness. The refusal to call Mr Gleeson has deprived us of the opportunity to expose the errors in the Comrie Review and to demonstrate the injustices the SDU suffered as a result.
509. Without descending to great detail, it is submitted that:
- a. In October 2011, Victoria Police obtained advice from Mr Maguire as to proper police disclosure in the prosecution of Paul Dale. Although there are several significant misstatements of fact in that advice, Mr Maguire noted that if the role of Ms Gobbo were to be further exposed, then this may provide grounds for challenges to convictions and open avenues of appeal. This advice raised concerns at high levels of police command. Mr Fryer emailed Mr Ashton on 19 October 2011, stating, 'The Gobbo witness issues are heating up with the DPP – if the below is correct, it will appear ALL need to be declared re her history – this is a problem. For discussion please.'⁶⁴²

⁶⁴² Exhibit RC694.

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- b. On 3 November 2011, Mr Ashton met with Mr Cartwright and Mr McRae and discussed Mr Maguire's advice. Mr Ashton asked Mr Cartwright to discuss with Mr Pope the initiation of an independent review of Ms Gobbo's handling as a human source.
- c. Mr Pope had been the subject of an allegation by Ms Gobbo that she had been involved in a sexual relationship with Mr Pope in 1999. Mr Pope denied the allegation. Mr Ashton was aware of the allegation. Further, Mr Pope had registered Ms Gobbo, then a barrister, as an informer in 1999.
- d. Superintendent Steve Gleeson was delegated the task of assisting Mr Comrie in conducting the review of Ms Gobbo's handling. The key issues to be addressed were 'clarified by Mr Pope and by Mr McRae'. Mr Gleeson asked Mr Pope whether he had any prior involvement with Ms Gobbo. Mr Pope did not disclose his prior registration of Ms Gobbo.⁶⁴³ Mr Pope claimed in evidence that he told others about his use of Ms Gobbo as an informer.⁶⁴⁴ All the people he nominated disputed his assertion.⁶⁴⁵
- e. Mr Pope commissioned Mr Sheridan to conduct a review of the Covert Services Division. Mr Pope, Mr Sheridan, Mr Paterson, Mr Biggin were said to comprise the 'Review Steering Committee'. Messrs Paterson and Biggin were not informed of the plan to wind up the SDU.

510. In June 2012, Superintendent Gleeson wrote what he described as 'out of scope' issues arising from the conduct of his review.⁶⁴⁶ He provided that document to Mr Pope. In that document Mr Gleeson:
- a. Contrasted the SWOT analysis prepared by Mr Black to an ICR dated 5 December 2008 listing issues compiled by Mr Peter Smith.
 - b. Refers to numerous examples of Ms Gobbo providing information about her criminal clients. He opines that 'such entries taken at face value suggest that 3838 has disregarded legal professional privilege. Further such conduct may have potentially compromised rights to a fair trial for those concerned.' He noted that

⁶⁴³ Exhibit RC1.5, transcript of IBAC examination of Stephen Gleeson 10 November 2014, p 16 and 17.

⁶⁴⁴ Transcript of Jeff Pope, 796.19; 802.32.

⁶⁴⁵ Transcript of Simon Overland, 20 December 2019, 11889.24; Transcript of Ken Jones, 13 December 2019, 11274.18; Exhibit RC577A, Statement of Anthony Biggin, [18] and [19]; Transcript of Paul Sheridan, 5 December 2019, 10599.42.

⁶⁴⁶ Exhibit RC879.

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there was no recorded discouragement on file to desist with furnishing such information, and that the handlers remain vulnerable to perceptions that they may have been inducing or encouraging such conduct. He claimed concerns are heightened in instances where handlers passed on such information to other police, presumably so they could make use of it.

511. Shortly thereafter, Mr Pope and Mr Sheridan considered shutting the SDU.⁶⁴⁷ Mr Sheridan provided Mr Pope with documents alleging problems as to SDU conduct.
512. On 30 July 2012, the Comrie Report is delivered to Command. It refers to some of the out of scope matters raised by Mr Gleeson.
513. On 13 August 2012, two Gobbo informer files and the ‘witness F’ catalogue were moved to AC Pope from the HSMU.⁶⁴⁸ No satisfactory reason or explanation has been provided to the Commission as to why this occurred.
514. Over the next five months, there are a series of emails where Messrs Fryer, Ashton, Pope and Sheridan discuss ways to close the SDU. It was planned to shut the unit in September 2012. The CSID draft report was provided by Mr Sheridan in October 2012.⁶⁴⁹ It made no reference to shutting the SDU. It was subsequently re-written by Mr Fryer and Mr Pope to advocate shutting the SDU.⁶⁵⁰
515. Mr Sheridan denied in evidence writing the email said to be substantially put together by him.⁶⁵¹ It is submitted he understandably did not want any part of the process illuminated by the various emails. Mr Pope emailed Chief Commissioner Lay setting out reasons why the SDU should be closed. There is dispute as to the accuracy of Mr Pope’s assertion. The evidence establishes that most of the reasons are untrue.⁶⁵²

⁶⁴⁷ Exhibit RC444.

⁶⁴⁸ Exhibit RC536.

⁶⁴⁹ Exhibit RC894.

⁶⁵⁰ Exhibit RC359.

⁶⁵¹ Exhibit RC361.

⁶⁵² Exhibit RC847.

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516. The SDU was shut down in March 2013. The termination letter listed ‘disconnection from police identity due to long-term exposure to covert policing’ as the reason for closure.⁶⁵³ It is submitted it is clear that the Comrie Review was the real reason that the SDU was closed. Mr Pope enlisted Messrs Fryer and Sheridan’s assistance to justify that plan. The Comrie Review was classified secret and concealed for some years.
517. Mr Biggin was told on the day that the SDU was closed that corruption had led to its closure.
518. Members of the SDU were denied procedural fairness and natural justice in the way Mr Pope effected the closure of the unit.
519. Mr Sheridan gave evidence that Mr Pope informed him that the SDU may have committed the offence of perverting the course of justice. If that were true, Mr Pope was obliged to refer the matter to ESD. He didn’t.

M. CONCLUSION

520. The overwhelming weight of evidence establishes that the SDU simply did the job that Victoria Police requested them to do. Mr Sandy White said the SDU were tasked by the Crime Department to task Ms Gobbo and ‘absolutely were acting on orders to continue to use her.’⁶⁵⁴ Mr Biggin said the issues surrounding Ms Gobbo’s profession were reported up by him to Mr Moloney, the CSR and onto the Informer Management Unit to determine if the relationship would continue. Mr Black said that the SDU did their job. Upper level police brought Ms Gobbo to the SDU and the SDU flagged their concerns.⁶⁵⁵ He said the SDU had acted according to law, followed procedures and did what Victoria Police Command ‘permitted’ (directed) SDU to do.⁶⁵⁶ He further said, ‘We weren’t acting corruptly and we were doing the best we possibly could with the sanctioning of Victoria Police and Victoria Police command.’⁶⁵⁷ Mr

⁶⁵³ Exhibit RC288.

⁶⁵⁴ Transcript of Mr Sandy White, 23 August 2019, 5114.

⁶⁵⁵ Transcript of Mr Black, 23 October 2019, 8137.

⁶⁵⁶ Transcript of Mr Black, 23 October 2019, 8163.

⁶⁵⁷ Transcript of Mr Black, 24 October 2019, 8258.8.

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Sandy White summed up the SDU's position in March 2014 in his email to Mr Iddles.⁶⁵⁸

I have been told that one of the major reasons for the closure of the SDU was because 3838 was mishandled and the handlers breached legal professional privilege by tasking her against clients or receiving information about her clients. There was a review conducted on the relationship between that source and Vicpol by Neil Comrie and others. This review apparently included her time as a source prior to becoming a witness.

It is entirely incorrect that the source was tasked in any way that would breach legal professional privilege [sic]. That source was repeatedly instructed not to provide that type of information and that we would not breach her professional privilege [sic]. Every single meeting with that source was recorded, literally hundreds of hours. No one ever listened to those recordings and neither I as the controller nor Peter Smith, Anderson or Green, who were the primary handlers, were ever spoken to during the review process.

I made every single management decision in relation to that file and specifically asked to be involved in the review and was told by John O'CONNOR that it was none of my business or the handlers. Peter SMITH also specifically asked to be consulted and was told the same thing. Interestingly O'CONNOR was interviewed by the review team even though he was not present at the SDU during that source's [sic] management and knew very little about it.

Neither I nor the team have ever been spoken to about what we did right or wrong with that source. A review that finds error should surely lead to some sort of discussion, counselling, [sic] advice or discipline to ensure the same mistakes are not made again. It seems the review was conducted with a pre determined outcome.

⁶⁵⁸ Exhibit RC0289, Email initially between Officer Sandy White and Ron Iddles 14 March 2014.

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I have put nearly a third of my career into developing what many believed was the most experienced and effective dedicated source team in Australia/New Zealand. Considering the amount of research, time and effort that went into developing the SDU it doesn't seem to me to be asking too much to be consulted about the future of the SDU when its existence is being questioned.

Furthermore, as a consequence of the completed [sic] lack of explanation organizationally as to the termination of the SDU, our reputations have suffered. I have long held the belief that as a professional law enforcement officer, one's reputation is something which should be preciously guarded. To be told that any document concerning source matters with my name on it is 'toxic' is beyond comprehension. This could only be the result of a campaign to destroy my reputation.

Finally I should add that the team of source handlers at the SDU are the most dedicated and motivated group of police officers I have worked with. Each truly believed they were setting the bar for 'best practice' in source management nationally. Each of those members worked extraordinarily long hours and were completely dependable at any hour of the day, both to the office and the sources they managed.

An example of this is the professional way they went about delivering the last [REDACTED] source course despite having been sacked two months earlier. As you know that course is a long live away from home course during which the instructing staff work very late into the night every night. Their only thanks for that from Paul SHERIDAN was a comment to the students at the final dinner that his advice to prospective source handlers was 'leave your manipulation skills at the door and there can only be one boss'. Clearly he believed the SDU members could not do that.

Paul Sheridan rigidly enforced the chain of command so that his only source of information about the SDU came from John O'CONNOR. He had no idea or care for any idea about how badly O'CONNOR was managing that workplace.

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O'CONNOR is a 'bully' and if it were not for the fact that good Detectives will never complain about such things, he might have been removed from the workplace.

I believe that as a consequence of the termination of the SDU, Victoria Police is now seriously exposed in the area of risk arising from source management. The system is now worse than it was ten years ago. Computer systems and reports will not manage risk by members who feel they are forced to take short cuts. These people work around the system believing it is a barrier to doing there [sic] job. Source management is a people business and needs competent, professional and highly trained people to mitigate the risk.

... as you can see I have got on a soapbox and I apologise for that. However if the rumour we discussed this morning is true, then those senior managers involved [sic] in the decision to sack honest hard working Detectives and analysts should hang their head in shame.... So much for integrity!

521. Messrs Sandy White and Black made significant concessions as to things they got wrong or could have done better. But, what is categorically denied is that they acted [REDACTED] improperly in their management of Ms Gobbo. They believed (accurately, it is submitted), that Messrs Brauwer, Fitzgerald and Ashton from the OPI were aware of Ms Gobbo's use. They knew that Messrs Overland, Cornelius, Moloney and Wilson knew of her use and indeed directed it. The Assistant Commissioner and the head of ESD, Mr Wilson both knew of her use. The SDU regularly and properly reported up to their inspectors and those above them including Messrs Biggin and Moloney. Nobody suggested that they were acting improperly in their management of Ms Gobbo. They were totally transparent as to the carrying out of their duties. If it were not for the comprehensive recordings made and kept by the SDU, there would be no Royal Commission. The SDU made no attempt to hide anything, other than Ms Gobbo's identity as a human source.
522. For the reasons set out in these submissions, it is not open for the Commission to find that members of the SDU were involved in potential misconduct, knew that their

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conduct was improper, or acted in pursuit of a 'noble cause'.⁶⁵⁹ The SDU were not involved in any of the matters asserted in [4761] of Volume 2 of Counsel Assisting's closing submissions. The observations made at [4780] of Volume 2 have no application to Mr Sandy White, as he made no attempt to shirk responsibility and frankly admitted his errors.

523. In Volume 1, Counsel Assisting referred to the judgement of Dixon J in *Briginshaw v Briginshaw*.⁶⁶⁰ His Honour said:⁶⁶¹

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters, 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

525. It is submitted that the Commission should be extremely reluctant to make adverse findings [REDACTED] against dedicated and hardworking police officers doing the job required of them by Victoria Police.

G CHETTLE

L THIES

7 August 2020

⁶⁵⁹ See Counsel Assisting submissions Volume 2, [4761.1].

⁶⁶⁰ (1938) 60 CLR 336.

⁶⁶¹ At 361-3.