

Royal Commission into the Management of Police Informants

TRANCHE 1 CLOSING SUBMISSIONS PRODUCED ON BEHALF OF SOME FORMER AND CURRENT MEMBERS OF VICTORIA POLICE

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A. Overview

- 1.1 These submissions are made on behalf of seven current and former members of Victoria Police (**Members**) who are the subject of proposed findings by Counsel Assisting ^{Relevance} [REDACTED]
^{Relevance} [REDACTED]
^{Relevance} [REDACTED]
- 1.2 This part of the submissions provides a concise overview of the key issues that are covered in this first tranche of responsive submissions.
- 1.3 Counsel Assisting's submissions are based on an incomplete and, at times, fundamentally inaccurate view of the evidence that has been led. They are focussed on attributing individual liability for events, rather than identifying the root causes.
- 1.4 The approach taken by Counsel Assisting took the Members by surprise. The Members were each in a position to assist this Commission to discharge its duties by providing considered submissions about what went wrong, and why. They voluntarily provided thorough witness statements and they attended for cross-examination over many days. They gave thoughtful evidence, reflected on their conduct and, when appropriate, made concessions. The Members stood ready to make written submissions that were intended to assist the Commission to identify what went wrong, and why – aggregating their collective experience to assist the Commission.
- 1.5 Regrettably, the Members have been diverted from that task by the approach of Counsel Assisting, which has been to make submissions directed to the attribution of individual liability.
- 1.6 As will be made clear in the submissions that are to be filed on behalf of the organisation in tranche 2, Victoria Police accepts primary responsibility for failings in relation to Ms Gobbo, without reservation or excuse.
- 1.7 In those submissions, Victoria Police will address the key systemic deficiencies in the recruitment, handling and management of Ms Gobbo as a human source. The submissions to be made on behalf of Victoria Police address what has been done to address those deficiencies, and what remains to be done.

The failings are primarily organisational

- 1.8 In the submissions that follow, the Members, where appropriate, take responsibility for the decisions that they made which they would make differently now with the benefit of hindsight and with the benefit of the information they now have. It has not been possible in the time available to address all of the allegations made by Counsel Assisting. The Members have focussed on the findings of fact with which they disagree and the facts that, in their view, will assist the Commissioner to identify the root causes of what occurred.
- 1.9 The acknowledgment of wrong decisions by some Members should not obscure that the failings are primarily organisational. While wrong decisions are acknowledged, it is not accepted that any of the Members had any intention to act with impropriety. ^{Relev} [REDACTED]
^{Relevance} [REDACTED]
- 1.10 Mr Murray Kellam AO QC, who conducted one of the earlier inquiries into Ms Gobbo's use, found negligence. He had the key documentary material before him and he heard from key witnesses, including some of the Members. He concluded that there was no intention to act with impropriety. ^{Relevance} [REDACTED]

- Relevance [REDACTED]
- 1.11 Further, much of the conduct that is relied on by Counsel Assisting [REDACTED] was in fact motivated by a genuine fear of the consequences for Ms Gobbo if her role as a human source was revealed. The risk to Ms Gobbo's life has been stated so often that it is easy to forget how real it was and remains. The risk was the risk of death. That risk resonated most acutely with those Members who lived with the legacy of the execution of Terrence and Christine Hodson.
- 1.12 None of this is to say that the issues surrounding Ms Gobbo's registration, management and use as a human source ought not to have been handled differently. They should have been. However, the reality is that the decision making on the ground – without governance structures adapted for this extraordinary situation – were heavily influenced by the real risk to Ms Gobbo's safety and the obligation felt by members to keep her safe.
- 1.13 Counsel Assisting do not engage with these issues. Their focus [REDACTED] completely ignores both the operational environment in which decisions were being made and the ever-present risk of compromise. Their analysis of the conduct of individuals makes no allowance at all for these known facts.
- 1.14 The reality is that at the time, Victoria Police did not have a human source management system that was capable of dealing with a person as complex as Ms Gobbo and the issues that her recruitment raised. This left individual police officers to deal with an extremely difficult situation often with only some of the relevant information. That a number of them could and should have done better is a given.

The approach of Counsel Assisting has obscured the real issues

- 1.15 Counsel Assisting have approached Terms of Reference 1 and 2 by seeking to attribute blame to individual members and employees of Victoria Police. [REDACTED]
- 1.16 The task facing Counsel Assisting – as with all participants in this Commission – was complicated by the passage of time, failing memories and incomplete documentary records. The practical consequence of these realities is that the fact-finding task is complex, difficult and, inevitably, will remain incomplete. It is not possible to reach a conclusion about all factual aspects of what occurred. The fact finding task must inevitably conclude that, in some cases, the true facts can no longer be ascertained.
- 1.17 However, these difficulties have been compounded by the approach of Counsel Assisting. Counsel Assisting have not approached their task by assembling, to the greatest extent possible, all relevant facts and then analysing them and expressing a conclusion. Instead, the approach has been to present only the evidence that they consider supports their conclusion.
- 1.18 This approach has resulted in substantial amounts of time being spent analysing the evidence and presenting the true facts. That has been a large and complex task in a short period of time. Inevitably, it is incomplete. In the time available, it has not been possible for the Members to assess every factual allegation made against them. They have focussed on the most serious.
- 1.19 In some cases, Counsel Assisting have made grave factual errors and, on the basis of those factual errors, proposed findings [REDACTED] that cannot, on any view, be maintained.

- 1.20 One significant example is Counsel Assisting's treatment of Commander Stuart Bateson. Counsel Assisting allege that Com. Bateson concealed from the defence the court daybook entries which revealed that Ms Gobbo had advised Mr McGrath in the course of his statement process. Counsel Assisting then make the emotive submission that it was after Com. Bateson did this that the "rot set in" allowing for the "calamitous events which have followed".
- 1.21 The difficulty with that submission is that it is wrong. The evidence puts beyond doubt that Com. Bateson disclosed all relevant material from his diaries and daybooks and that the Chief Magistrate presiding over the committal process upheld a claim of privilege over the pages in question.
- 1.22 The consequence of Counsel Assisting's error is twofold. First, Com. Bateson has been the subject of grossly unfair accusation. Second, Counsel Assisting's attention has been diverted from the real issue – which is how Victoria Police as an organisation approached the question of disclosure.
- 1.23 What is most concerning about the allegations against Com. Bateson is that the truth was ascertainable by an assessment of the evidence.
- 1.24 In other cases, Counsel Assisting have submitted that it is open to this Commission to Relevance relevance without affording procedural fairness.
- 1.25 Relevance
- 1.26 In other cases, Counsel Assisting have asked this Commission to find that it is probable that a decorated former officer Relevance without having any evidence at all for central elements of the allegation.
- 1.27 That fate has befallen Tony Biggin. Counsel Assisting submit that it is open to the Commissioner to find that Mr Biggin knew that information provided by Ms Gobbo had led Victoria Police to locate Mr Cooper's drug laboratory and to his eventual arrest. This allegation forms part of the conduct relied upon by Counsel Assisting in support of their submission that Mr Biggin Relevance However, despite making this allegation, Counsel Assisting identified no evidence in support of this submission and ignored his unchallenged sworn evidence to the contrary.
- 1.28 In other instances, Counsel Assisting have proposed serious adverse findings founded on manifestly inadequate evidence. An example is Counsel Assisting's treatment of former Detective Inspector Jim O'Brien. Counsel Assisting submit that it is open to the Commissioner to find that Mr O'Brien knew that Ms Gobbo had, as Mr McGrath's legal representative, assisted in Mr McGrath's statement-making process. The evidence offered in support of that allegation – which is a cornerstone of the adverse findings proposed against Mr O'Brien – is nothing more than the fact that Mr O'Brien was head of the Purana Taskforce. What Counsel Assisting fail to point out is that Mr O'Brien was not the head of the Purana Taskforce when the relevant events occurred – in fact, he would not take up in the position for more than 12 months.

- 1.29 In other cases, Counsel Assisting have proposed findings of fact without the relevant Member being cross-examined about key material facts. For example, Counsel Assisting submit that it is open to the Commissioner to find that DS Kelly knew that Ms Gobbo had a conflict of interest between her role as an informer for Victoria Police and legal representative of Mr Cooper. DS Kelly was not asked a single question about the alleged conflict of interest.
- 1.30 The ability to analyse the root causes of these events is the real power and value of this Royal Commission and is where the focus of this Royal Commission should be.
- 1.31 The divergence between Counsel Assisting and the Members as to the facts is so significant that it is not possible in the time given for this Royal Commission for the Commissioner to consider all the submissions on each disputed fact, closely analyse the evidence and make a finding on each. Nor does she need to do so given where the focus should be.

The approach of Counsel Assisting invites the Commissioner to trespass beyond the Terms of Reference

- 1.32 Counsel Assisting's submissions focus heavily on conflicts of interest. The submissions are difficult to engage with because Counsel Assisting do not identify the relevant conflicts with precision.
- 1.33 One consequence of the imprecision is that Counsel Assisting propose findings that go beyond the Terms of Reference. In particular, they devote large parts of their submissions to a discussion of Ms Gobbo's professional obligation not to act for multiple clients with conflicting interests. These matters do not fall within the Terms of Reference of this Royal Commission.
- 1.34 An example is the question of whether Ms Gobbo was entitled to act for Mr Thomas, having previously acted for Mr McGrath. That issue (leaving to one side her conduct in speaking to the SDU about Mr Thomas) was addressed by Ms Gobbo and the legal profession.
- 1.35 Counsel Assisting also propose findings about the statement-taking practices of Victoria Police. That too is a matter that does not fall within the Terms of Reference of this Commission.

Commissioner has no jurisdiction

Relevance

Relevance

- 1.36 In **Part B** of these submissions, the Members identify that the Commissioner has no jurisdiction to make the conduct findings.
- 1.37 The Royal Commission's first and second terms of reference do not require or authorise the making of such findings. Unlike the terms of reference for other Royal Commissions, there is no express requirement that the Commissioner inquire into or report on the
- 1.38 **Part B** also touches on further reasons why, even if the Commissioner were seized of jurisdiction, the conduct findings should not be made.

Procedural fairness

- 1.39 As is set out in **Part C** of these submissions, the Commissioner must ensure that the Members are afforded the procedural fairness that is required by the *Inquiries Act 2014* (Vic) (***Inquiries Act***).

- 1.40 In Part C the Members draw a number of concerns to the attention of the Commissioner.

The Members did not intend to act with impropriety

- 1.41 **Part D** explores the evidence about whether the Members, and other officers, intended to act with impropriety. It examines the wealth of evidence that there was no intention on the part of any officer to knowingly act contrary to law.
- 1.42 A key feature of the engagement between Victoria Police and Ms Gobbo was the extent to which it was documented. Each of Ms Gobbo's registrations as a human source was formally processed and approved in accordance with the prevailing policy and procedure. Each of Ms Gobbo's thousands of interactions with Victoria Police were documented, many of them in great detail.
- 1.43 A further matter that tells against impropriety is the number of individuals within Victoria Police who came to have knowledge of Ms Gobbo's status as a human source for different purposes associated with their roles within the organisation, and the paths by which that knowledge flowed. That evidence weighs heavily against any intention to act with impropriety.
- 1.44 There is also important organisational context. The evolution of the Dedicated Source Unit occurred against a background of police corruption and a deliberate effort by the then Chief Commissioner of Police to ensure that Victoria Police was utilising best practice in human source management. The key features of the system within which Ms Gobbo was managed – including the DSU and the 'sterile corridor' - were derived from what was then regarded as international best practice. Thus, some of the key structural deficiencies that allowed the situation to develop and persist originated from a deliberate effort on the part of Victoria Police to operate according to best practice.
- 1.45 These matters are considered in detail in Part D.

Individual responses

- 1.46 The individual submissions principally address the key factual matters in relation to the Thomas and Cooper case studies.
- 1.47 Those submissions are lengthy because the Members were required to identify and set out the relevant evidence that is not found in Counsel Assisting's submissions.
- 1.48 A section follows the individual responses which addresses the application of the law in Relevance The Members have sought to address such matters the best they can in circumstances where the Relevance is wholly unparticularised.

Relevance

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

Relevance



B. Absence of jurisdiction to make findings ^{Relevance} [REDACTED] ^{Relevance} [REDACTED] and other reasons not to make such findings

2 Introduction

- 2.1 Counsel Assisting submit in their final submissions that certain current and former members of Victoria Police (**relevant members**) ^{Relevance} [REDACTED] ^{Relevance} [REDACTED] That submission is made in the context of the Commission's first and second terms of reference.²
- 2.2 Those terms of reference require the Commissioner to examine whether, and to what extent, cases may have been affected by Ms Gobbo as a human source and the conduct of members of Victoria Police in their disclosures about and recruitment, handling and management of Ms Gobbo as a human source.
- 2.3 It is submitted by the relevant members and Victoria Police that the Commissioner both cannot and should not make the conduct findings.
- 2.4 The Royal Commission's first and second terms of reference do not require or authorise the making of such findings. Unlike the terms of reference for other Royal Commissions, there is no express requirement that the Commissioner inquire into or report ^{Relevance} [REDACTED] ^{Relevance} [REDACTED] Such a reference should not be read into the terms of reference.
- 2.5 A line of authority beginning with the High Court's decision in ^{Relevance} [REDACTED] ^{Relevance} [REDACTED] establishes that the principle of legality means that it is necessary to construe the Commissioner's fact-finding and reporting powers in a way that protects rights of reputation ^{Relevance} [REDACTED] This authority is also consistent with international jurisprudence.
- 2.6 Even if the Commissioner can make the conduct findings, they should not be made for the reasons:
- (a) explained by the relevant members throughout this tranche of submissions;
 - (b) set out in the submissions of each of the seven relevant members; and
 - (c) set out in these submissions.
- 2.7 ^{Relevance} [REDACTED] ^{Relevance} [REDACTED] Those views properly reflect the particular investigative role of Royal Commissions, the limited procedural protections available to those examined by Royal Commissions, and the prejudice that can flow from such findings. There is no reason for a different view to be taken in this Royal Commission.
- 2.8 The question of whether or not the Commissioner is authorised at law to make the conduct findings will only arise for determination if, after considering all of the submissions, the Commissioner is minded to make those findings.

^{Relevance} [REDACTED]

² See CA's Submissions Volume 1 at 3 [4].

^{Relevance} [REDACTED]

- 2.9 If ultimately the Commissioner decides to make the conduct findings, then the question of law as to the Commissioner's authority to make the findings, either:
- (a) should first be determined by the Commissioner and reasons provided before she provides her final report so that the relevant members may consider whether they wish to seek review of the decision on that question of law; or
 - (b) the question of law should be referred to the Supreme Court for determination under s.41 of the *Inquiries Act*.

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3 The terms of reference and the legal position

3.1 A Royal Commissioner is empowered to inquire and report under the provisions of the *Inquiries Act* and the Governor's letters patent incorporate the terms of reference. Accordingly, terms of reference in the letters patent delimit the scope of the matters into which a Royal Commissioner is empowered to inquire and the findings that they are empowered to make.

3.2 Relevantly, in this Royal Commission, the Commissioner was appointed to inquire and report on the terms of reference listed in the letters patent dated 13 December 2018 as amended on 7 February 2019. There are five terms of reference. None ask or require the Commissioner to inquire into, or report on, ^{Relevance}  ^{Relevance}  At best, this jurisdiction is to be implied.

3.3


Relevance

3.4

Relevance

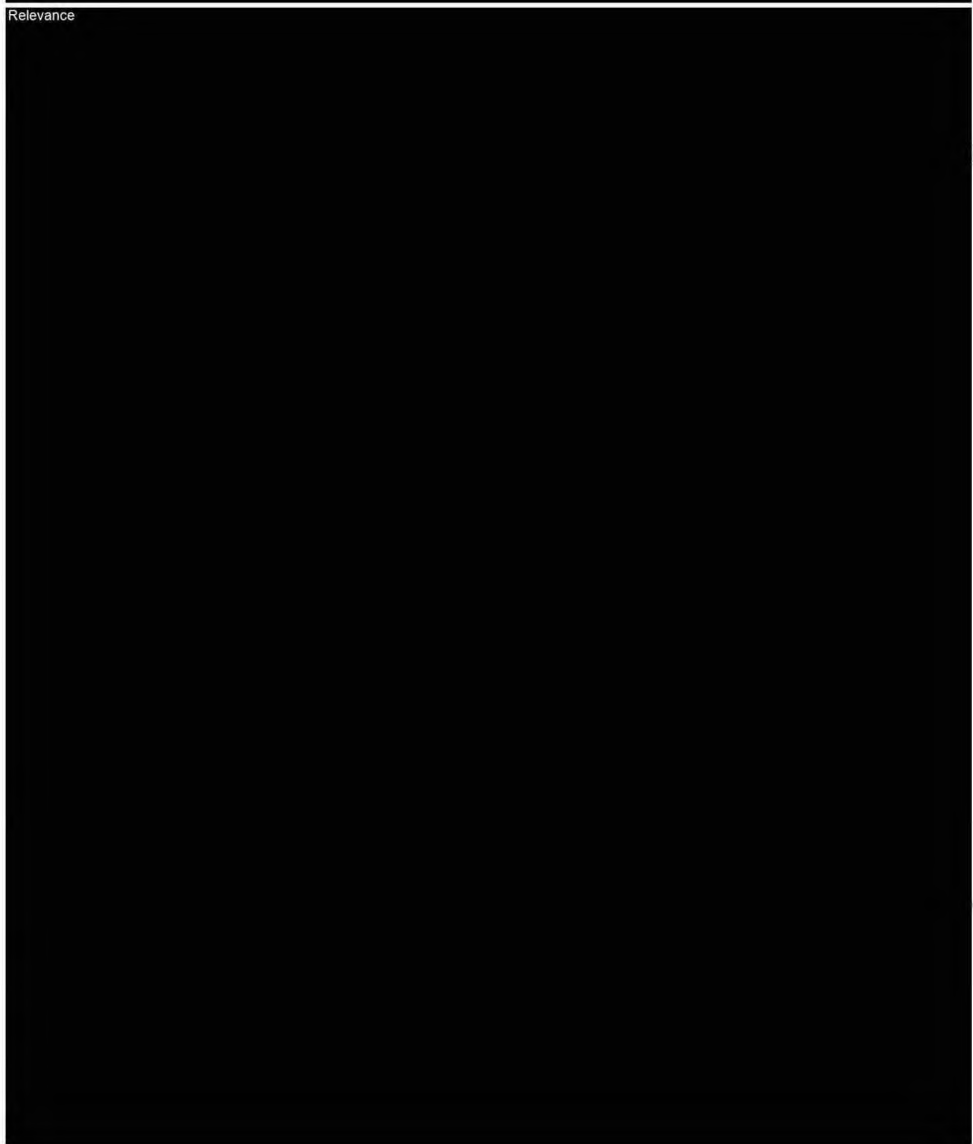
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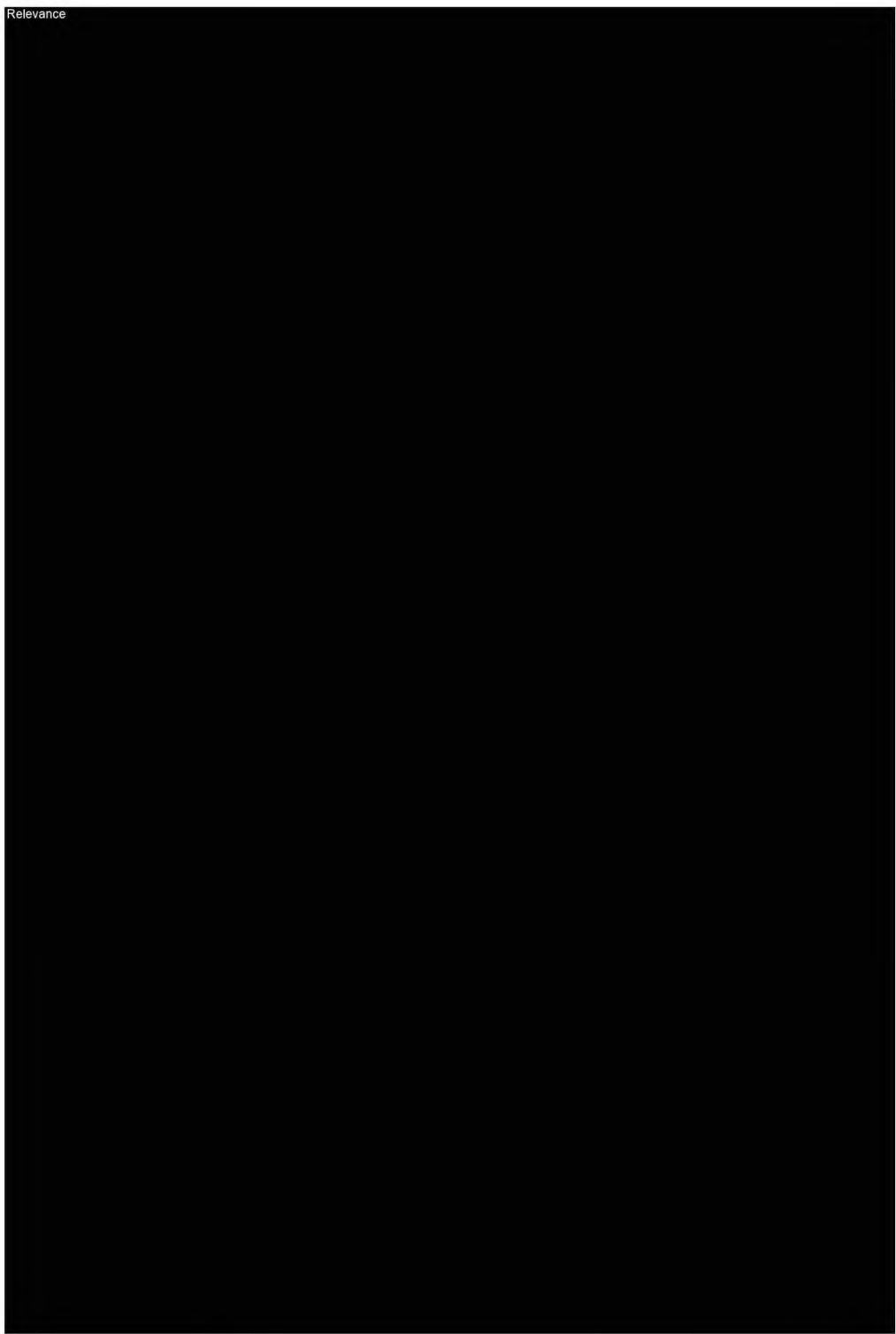
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3.16 A plain reading of the terms of reference, consistent with the principle of legality, is that it is directed to making factual findings as to what the conduct was .Relevance

Relevance

3.17 Further, the responsibility of the Commissioner to make narrative findings and, if considered appropriate, to make robust criticisms of organisational or individual conduct, would in no way be constrained .Relevance

Relevance There is a clear conceptual distinction that should be drawn between description, analysis and critique of conduct, on the one hand, and .Relevance

Relevance

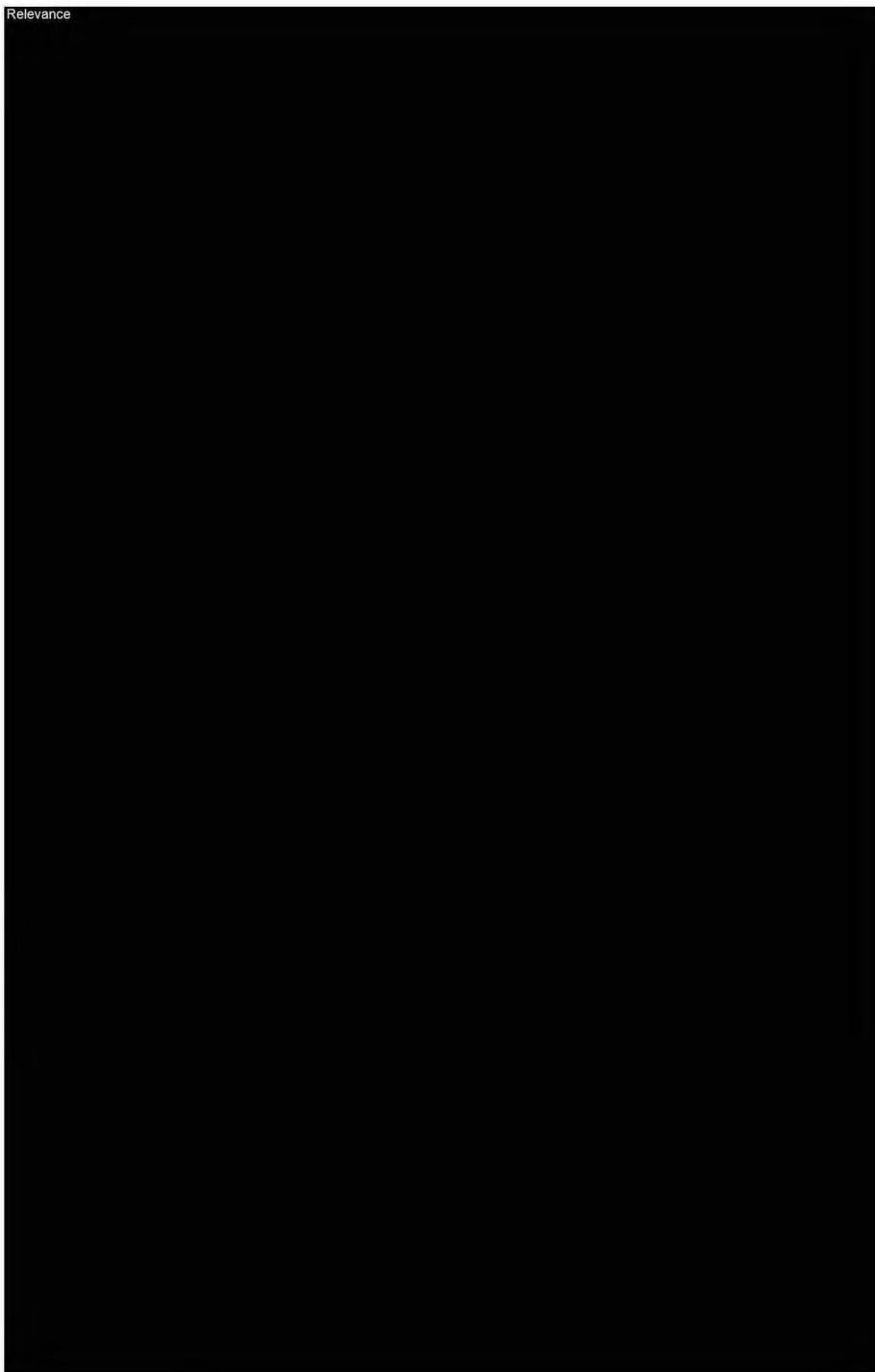
4 The approach adopted by previous Royal Commissions

4.1 Relevance

4.2

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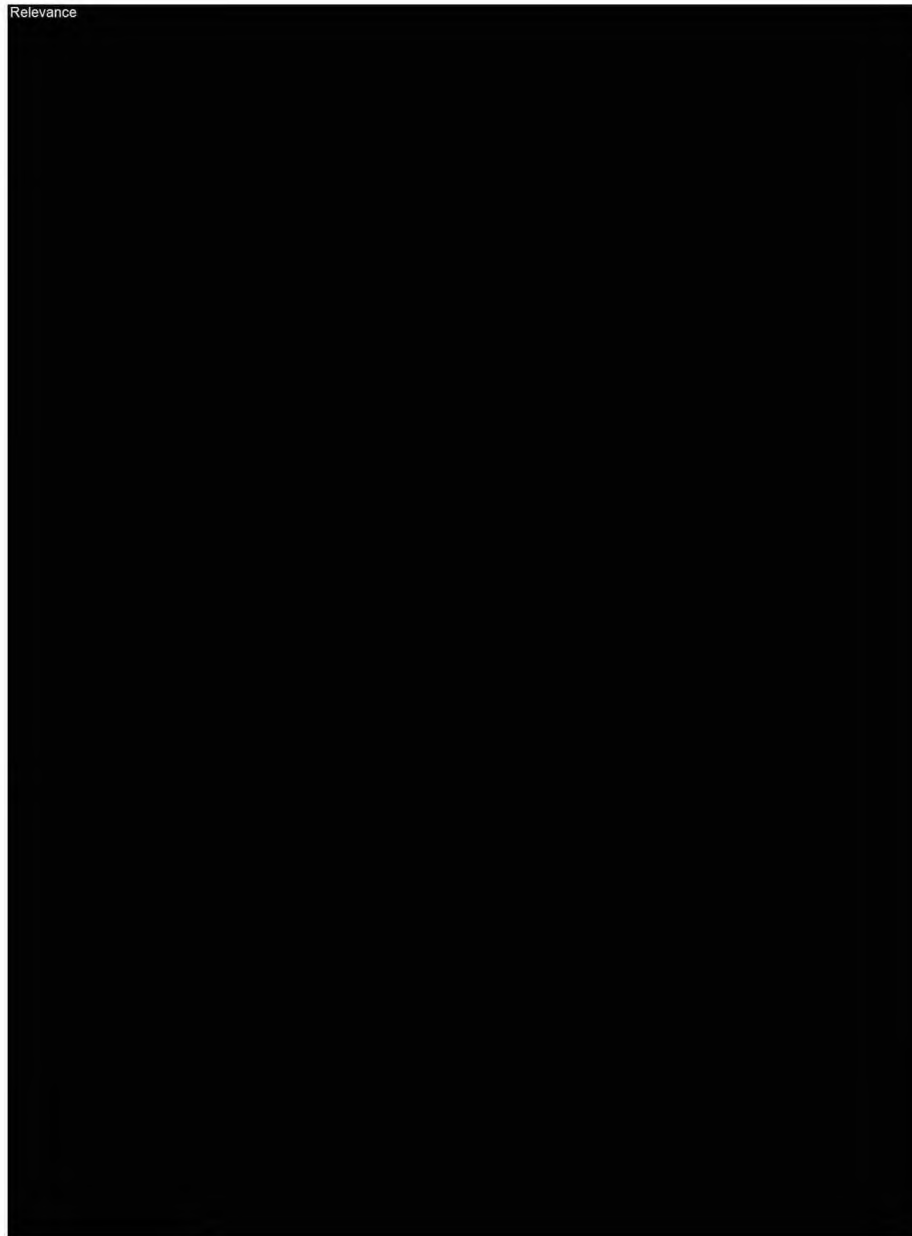


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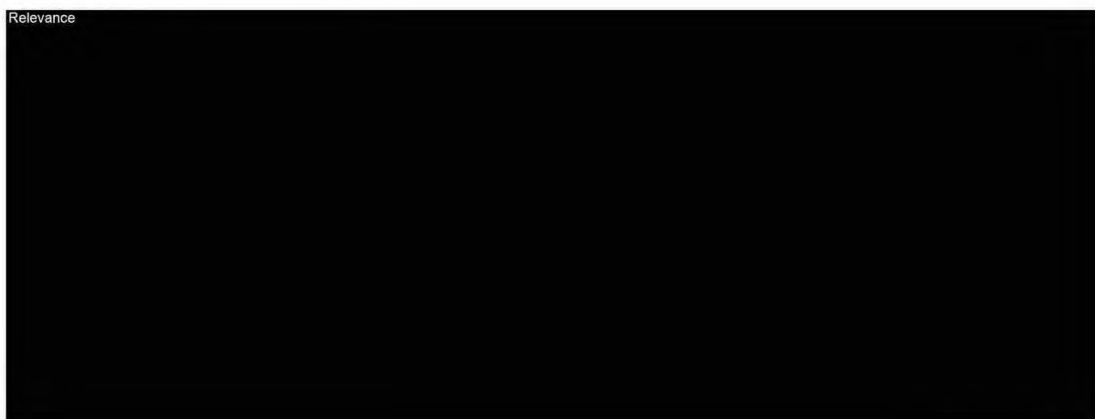
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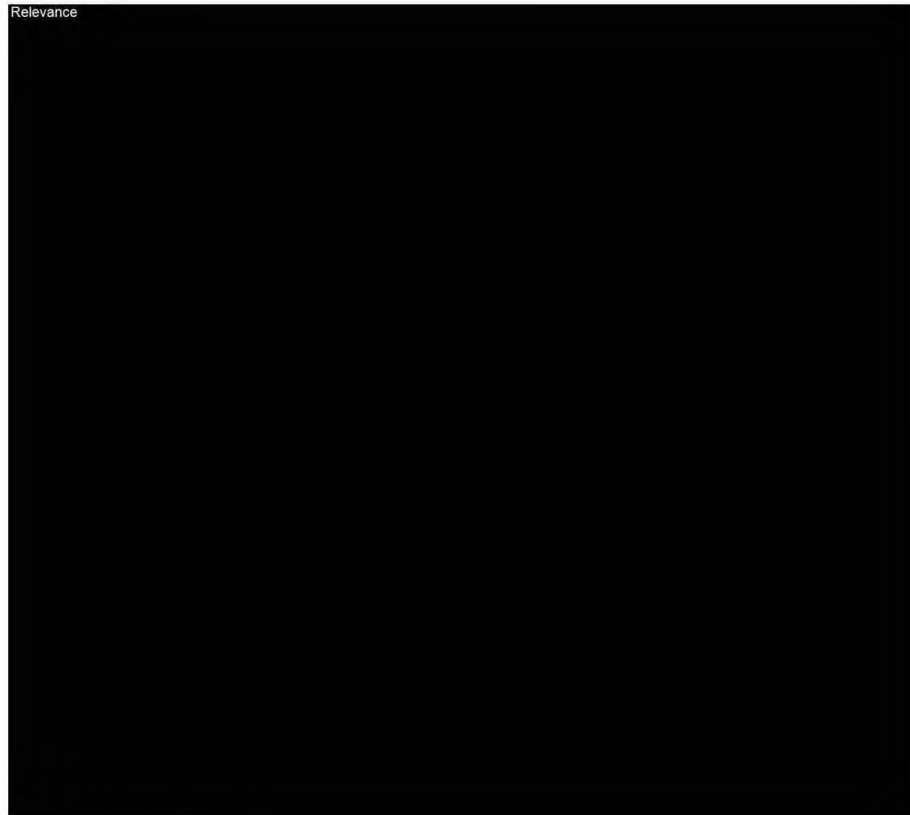


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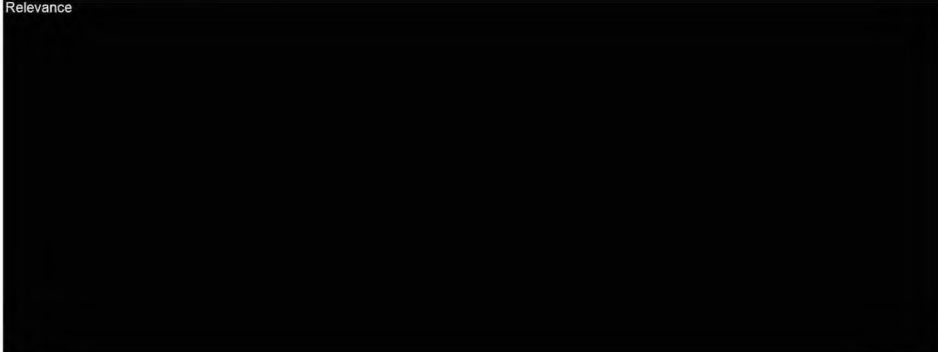


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Relevance



(e) Relevance



4.3 Relevance



Relevance



4.4 Relevance


5 Confidential appendix

5.1 Relevance

Relevance


6 Summary

6.1 Relevance


6.2

6.3 Should the Commissioner contemplate making such findings, after considering the submissions before her, it is submitted that as a matter of procedural fairness she should either:

- (a) determine the question of law and provide reasons before the completion of the final report so that there is a right of review; or
- (b) refer the question of law to the Supreme Court under s 41 of the *Inquiries Act*.

Relevance

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

6.4



C. Procedural fairness and the role of Counsel Assisting

7 Introduction

- 7.1 The Royal Commissioner has an obligation to ensure that this inquiry is conducted in a way that affords procedural fairness.⁴¹
- 7.2 As raised in the overview and as set out in more detail in the submissions included in this tranche of submissions, it would be contrary to principles of procedural fairness to make many of the findings proposed by Counsel Assisting.
- 7.3 The reasons include:
- (a) Counsel Assisting invite the Commissioner to make findings about matters that were never put to the members during their evidence before the Commission or afterwards;
 - (b) as such, members were taken by surprise by many of the matters raised and have had insufficient time to address the content of Counsel Assisting's submissions in full;
 - (c) further, had members known that such matters were to be put in final submissions then they would have had an opportunity to consider the evidence that they wished to put before the Royal Commission on those issues;
 - (d) further, Counsel Assisting propose findings in circumstances where they did not adduce available evidence likely to lead to the correct ascertainment of facts and which may, and in some cases would likely, have shown some of the proposed findings to be wrong;
 - (e) the proposed findings Relevance are wholly unparticularised;
 - (f) the submissions made by Counsel Assisting referred to hundreds of documents that had not been tendered or disclosed and which were, therefore, only recently provided; and
 - (g) in addition to the documents referred to above, thousands of relevant documents obtained by those assisting the Royal Commission are only now being disclosed to the seven members and those documents are presently being reviewed.
- 7.4 These submissions set out below the provisions of the *Inquiries Act* which are directed to procedural fairness.
- 7.5 They also address the role of Counsel Assisting which is an important and unique one.
- 7.6 As raised in the overview and in the individual submissions in this tranche, the submissions made by Counsel Assisting do not, in many respects, adopt an orthodox approach to the analysis of the evidence before the Commission. As a result of the approach taken by Counsel Assisting, the seven members have had to seek to identify for themselves the evidence relevant to issues and to set that out in their own submissions so that the Commissioner has the full body of evidence set out in relation to the many issues. As is evident from the length of the individual submissions, that has

⁴¹ *Mahon v Air New Zealand Ltd* [1984] 1 AC 808, *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564[24]ff and, in the coronial inquiry context, *Annetts v McCann* (1990) 170 CLR 597.

been a significant task and one that could not be comprehensively undertaken in the time that was available for final responsive submissions. This also raises procedural fairness considerations.

- 7.7 When the Commissioner approaches her important task of determining the findings to be made about the seven members, careful and thoughtful consideration must be given to the principles set out below and the way in which those assisting the Commission have approached the evidence and their final submissions.

8 The Inquiries Act

- 8.1 Royal Commissions are empowered by the *Inquiries Act* to conduct inquiries in any manner they consider appropriate but this is *subject to* the requirements of procedural fairness, the letters patent and the Act: (s12).
- 8.2 In addition, the Act contains specific provisions aimed at providing fairness to those who are the subject of adverse findings: s.36. If the Commissioner proposes to make a finding that is adverse, she must first be satisfied that the subject of the finding:
- (a) is aware of the matters on which the proposed finding is based (s36(1)(a)); and
 - (b) has had an opportunity to respond (s36(1)(b)).
- 8.3 The Commissioner must also consider the response before making a finding that is adverse (s36(2)). If, after considering the response, the Commissioner decides that it is appropriate to include an adverse finding in the final report, the report must fairly set out the response: (s36(3)).

9 The role of Counsel Assisting

- 9.1 The Royal Commission exercised its power under the Act to engage legal practitioners to assist as counsel.
- 9.2 The role of Counsel Assisting is an important and unique one. It is not a role that legal counsel ordinarily has in that it does not involve advancing or putting forward a case as counsel would in civil or criminal proceedings.⁴²
- 9.3 Counsel Assisting are required to perform their duties in a fair and even-handed way,⁴³ with a view to establishing the truth of the matters the Commission is tasked with investigating.⁴⁴
- 9.4 Counsel Assisting has no client, does not act on instructions and, in terms of evidence, is limited only by what is relevant to the letters patent establishing the Royal Commission.⁴⁵
- 9.5 Due to the nature of Counsel Assisting's role as an objective truth-seeker, it is critical that care be exercised in seeking and evaluating evidence both for and against any possible finding and in providing a fair opportunity for those who may be the subject of adverse findings to be heard and to deal with the possible findings against them.⁴⁶

Adducing and using evidence

⁴² Peter M. Hall, *Investigating Corruption and Misconduct in Public Office: Commissions of Inquiry — Powers and Procedures* (Lawbook Co., 2nd ed, 2019) (Hall) at [8.235]; *Royal Commission into the Building and Construction Industry: Final Report, Volume 2: Conduct of the Commission – Principles and Procedures* (February 2003) (Cole Report, Vol 2), 49 at [13].

⁴³ Hall at [8.250].

⁴⁴ *Ibid* [8.245].

⁴⁵ *Ibid* [8.265].

⁴⁶ *Ibid* [8.245].

- 9.6 It is the role of Counsel Assisting a Royal Commission to determine the evidence that will be put before the Commission, including determining the witnesses and in what order they will be called and examined.⁴⁷ Relevance, cogency and overall fairness are all factors that must bear upon the decision to use evidence in a particular way.⁴⁸
- 9.7 In determining how to use evidence, Counsel Assisting have the following obligations:
- 9.8 First, they are required to obtain and call probative evidence, relevant to the Commission's terms of reference, including, where adverse findings are contemplated, exculpatory evidence.
- 9.9 They must:
- (a) call evidence that is likely to lead to the correct ascertainment of facts;⁴⁹
 - (b) exercise control in assessing all evidence to be placed before the inquiry and provide timely submissions at the conclusion of the hearing;⁵⁰ and
 - (c) particularly where a Commission is investigating allegations of corruption or other unlawful activity or serious impropriety, adduce both inculpatory and exculpatory evidence.⁵¹
- 9.10 Second, where evidence which will cause a person to be subjected to a damaging allegation, Counsel Assisting must evaluate whether the evidence has sufficient materiality to the inquiry and sufficient probative value to warrant it being called in proceedings. Mere relevance will not necessarily meet the standard of sufficient materiality.⁵²
- 9.11 Third, in order to balance the rights of an individual with the need to conduct a full, fair and proper inquiry, Counsel Assisting are required to have regard to matters including:
- (a) The need to strike the correct balance between probative and unreliable evidence. Counsel Assisting is bound by their professional rules of conduct, which require standards of fairness to be adhered to and inhibit the use of scurrilous or irrelevant material.⁵³
 - (b) Those rules expressly provide that counsel: (a) must fairly assist the tribunal to arrive at the truth and must seek to assist the tribunal with adequate submissions of law and fact; (b) must not by language or other conduct, seek to inflame or bias the tribunal against any person appearing before the tribunal; and (c) must not argue any proposition of fact or law which the barrister does not believe on reasonable grounds to be capable of contributing to a finding made to the requisite standard.⁵⁴
 - (c) Whether suppression orders or pseudonyms would be sufficient or appropriate to protect individuals against whom adverse findings are urged, particularly in circumstances where:
 - (i) proposed findings are based on speculative inferences drawn from insufficient evidence;

⁴⁷ Ibid [8.235].

⁴⁸ Ibid [8.260].

⁴⁹ Ibid [8.240].

⁵⁰ Ibid [8.235]; The Hon. Morris Ireland QC, *Report on the Practices and Procedures of the Police Integrity Commission by the Inspector of the Police Integrity Commission* (June 2003), 71 at [4.71].

⁵¹ Hall at [8.275].

⁵² Ibid [8.260].

⁵³ Ibid [8.260].

⁵⁴ *Legal Profession Uniform Conduct (Barristers) Rules 2015*, rr 97-100.

- (ii) evidence does not meet the standard of sufficient materiality;
 - (iii) evidence is shown to be no more than suspicion or rumour and/or is unassociated with the terms of reference;⁵⁵ and
 - (iv) evidence is of a purely hearsay nature.⁵⁶
- (d) Whether it is fair to the individual to use evidence in a particular way. That is, if a Commission is to make adverse findings against a person, Relevance Relevance that as a matter of fairness, the Commission has, so far as is reasonably possible, sought out evidentiary material of the highest quality.⁵⁷

9.12 Fourth, for the purpose of affording procedural fairness, the Commission and Counsel Assisting must be, and appear to be, objective and without a preconceived or concluded view on central or substantive matters which require full and proper consideration.⁵⁸

Making final submissions

9.13 At the conclusion of evidentiary hearings, Counsel Assisting's final submissions must have regard to the following matters:

9.14 First, submissions must be made consistently with Counsel Assisting's obligations to consider and assess all relevant evidence, including exculpatory evidence, in accordance with the matters set out above.

9.15 Second, submissions must identify the possible findings of fact that could be made by the Commission, supported by references to:

- (a) evidence in support of those findings; and
- (b) all contrary evidence.⁵⁹

9.16 It is critical, for the purpose of procedural fairness, that Counsel Assisting's submissions to a Commission identify all relevant matters that have been established by the evidence.⁶⁰

9.17 Counsel Assisting must have regard to the Commission's obligation to only make findings of fact where satisfied there is a proper basis to do so. The failure to put a matter or to cross-examine in respect of a matter may not necessarily require a finding to be rejected, but it ought, at the very least, affect the weight attached to that evidence.⁶¹

9.18 Third, care must be taken before individuals or organisations are criticised and subjected to adverse public comment damaging their reputations.⁶²

9.19 Fourth, possible findings should be drawn, having regard to the terms of reference and should not go beyond those terms.⁶³

9.20 Fifth, Counsel Assisting must provide notice of possible adverse findings to all persons and organisations who might be adversely affected.⁶⁴

⁵⁵ Hall at [8.260].

⁵⁶ Ibid [8.260].

⁵⁷ Ibid [8.285].

⁵⁸ Ibid [8.245].

⁵⁹ Ibid [8.245].

⁶⁰ Ibid [8.270].

⁶¹ Cole Report, Vol 2, 51 at [18].

⁶² Ibid [39], citing *Kelson v Forward* (1995) 60 FCR 39, 52.

⁶³ Hall at [8.245].

⁶⁴ Ibid [8.245].

- 9.21 In doing so, Counsel Assisting must raise all relevant matters upon which adverse findings could be made against individuals and clearly identify all evidence relevant to such suggested findings. This is critical not just for the purpose of ensuring findings are safe and proper to make, but also in order that individuals have an opportunity to address those matters before the Commission.⁶⁵

The final report

- 9.22 The role of Counsel Assisting is to participate in all stages of the inquiry up until the report writing stage.⁶⁶

- 9.23 It is recognised that Counsel Assisting should not be involved in the compilation and preparation of the Commission's final report in inquiries Relevance

Relevance

- 9.24 The New Zealand Court of Appeal observed in relation to an inquiry about police officers against whom very serious allegations of impropriety had been made:

*When a commission is inquiring into allegations of misconduct, the role of Counsel Assisting becomes inevitably to some extent that of prosecutor. It is not right that they should participate in the preparation of the report.*⁶⁸

- 9.25

Relevance

- 9.26 It is the Commissioner's role to consider the submissions made by Counsel Assisting and those made by every other person, and to decide, independently, whether the findings proposed by Counsel Assisting are open and appropriate to make or whether findings of a different kind are open and more appropriate to make.

⁶⁵ Ibid [8.270].

⁶⁶ Ibid.

Relevance

⁶⁸ *Re Royal Commission on Thomas' Case* [1982] 1 NZLR 252 at 273.

⁶⁹ Justice Peter M Hall, "The role of Counsel Assisting in commissions of inquiry", *Bar News* (Winter 2005), 34-35.

D. No intention to act with impropriety

10 Introduction

- 10.1 The tranche 2 submissions to be produced to the Royal Commission shortly will address the reasons why serious failures occurred in Victoria Police's use and management of Ms Gobbo as a human source. Those submissions will explain the combination of complex reasons for the failures.
- 10.2 As Counsel Assisting submit, a primary reason why these things occurred can be attributed to the human source management framework that existed at the time which had key structural deficiencies.
- 10.3 As Mr Murray Kellam AO QC found, it was negligence and not criminal intent. Individual members did not intend to act with impropriety in connection with Ms Gobbo's role as a human source or otherwise.
- 10.4 Relevance
- 10.5 These submissions make more general observations about matters that strongly indicate that members did not intend to act with impropriety.
- 10.6 The use of Ms Gobbo as a human source has been the subject of inquiry twice prior to this Royal Commission. There was no finding in either inquiry that members had an intention to act with impropriety.
- 10.7 The inquiry conducted by former CCP Neil Comrie AO APM (the Comrie Review) found, inter alia, that Ms Gobbo's handlers had not appreciated the legal and ethical complexities involved in using a legal practitioner as a human source.⁷⁰
- 10.8 The subsequent inquiry undertaken by Mr Kellam into the conduct of individual members, reached the same conclusion.⁷¹
- 10.9 Mr Kellam further concluded that the conduct resulted from negligence⁷² and he described the events as "serious systemic failure" by Victoria Police.
- 10.10 Mr Kellam stated that he did not consider that the conduct by individual police members resulted from any personal intention to act with impropriety.⁷³
- 10.11 While there is a larger body of evidence before the Royal Commission, Counsel Assisting have not pointed to evidence which was not before Mr Kellam and submitted that that evidence puts a different complexion on what occurred.
- 10.12 The events involving Mr Cooper – which are addressed in some of the individual submissions in this tranche – are the pinnacle of the problems created by the source relationship with Ms Gobbo and the mismanagement of the issues that arose. Mr Kellam had before him ICR 28,⁷⁴ being the ICR that records in detail the events involving Mr Cooper and Ms Gobbo. Mr Kellam specifically addressed the contents of

⁷⁰ Exhibit RC0510B – Neil Comrie, Victoria Police Human Source 3838: A Case Review Report, 30 July 2012 at p 15 (VPL.0005.0001.0001 at .0016); Exhibit RC0113B – Kellam Report, 6 February 2015 at p 39 [2], p 43 [11] (VPL.0007.0001.0001 at .0042, 0046)

⁷¹ Exhibit RC0113B – Kellam Report, 6 February 2015 at p 43 [11] (VPL.0007.0001.0001 at .0046).

⁷² Exhibit RC0113B – Kellam Report, 6 February 2015 at p 43 [11] (VPL.0007.0001.0001 at .0046).

⁷³ Exhibit RC0113B – Kellam Report, 6 February 2015 at pp 80-81 [1] (VPL.0007.0001.0001 at .0083-0084).

⁷⁴ ICR 28 is described in Mr Kellam's report as ICR 610. See Exhibit RC0281 – ICR3838 (028) (VPL.2000.0003.1835).

the ICR in his report.⁷⁵ Mr Overland, Mr Biggin, Mr O'Brien, Mr Flynn and SDU handlers were all examined on oath before Mr Kellam about the events, including the arrests that followed Mr Cooper's arrest. There was also questioning about the non-disclosure of her role as a source in subsequent prosecutions.

10.13

Relevance

11 Features of the evidence

- 11.1 The evidence considered in its entirety serves to strengthen and underscore that members had no intention to act with impropriety at any stage.
- 11.2 **First**, in each of 1995, 1999 and 2005, Ms Gobbo was formally registered as a human source. The very act of deciding to register Ms Gobbo through a sanctioned process speaks to an intention by the officers involved to subject Victoria Police's engagement with her to the structures of such registration and to the associated supervision and scrutiny. By registering Ms Gobbo using the sanctioned process, those involved knew, and understood, that her registration would pass into the official records of the organisation.
- 11.3 The decision by the officers involved not to run Ms Gobbo 'off the books', at any stage, is powerful evidence that they did not regard their engagement with her from the outset or thereafter as improper.
- 11.4 Members Mansell and Rowe, in consultation with (then) Senior Sergeant O'Brien, referred Ms Gobbo to the SDU for assessment. They did not seek to use her as a source within their own unit. They followed policy and procedure in referring her to the expert unit created for human source assessment and management.
- 11.5 The conduct of members in first registering Ms Gobbo and then documenting her use and involvement in formal records is wholly inconsistent with any intention to act improperly and to avoid scrutiny. The same can be said about the handlers' process of electronically recording their conversations with Ms Gobbo.
- 11.6 In addition, it should not be overlooked that the decision to formally register Ms Gobbo as a source was made against the background of significant organisational attention to, and reform of, Victoria Police's management of human sources. Among other things, Victoria Police was emerging from the Purton Review, which had exposed links between the management of human sources and corruption. CCP Christine Nixon commissioned that review and embarked on a process of organisational reform to ensure that Victoria Police was using best practice in human source management.⁷⁶ The review led directly to the trial, and subsequent implementation, of the SDU⁷⁷ - the principal purpose of which was to better manage the organisational risks arising from the use of human sources. It led also to the overhaul of Victoria Police's processes and procedures for the registration and management of human sources and the promulgation of the Chief Commissioner's Instruction on Human Source Management.⁷⁸

⁷⁵ Exhibit RC0113B – Kellam Report, 6 February 2015 at p 34 (VPL.0007.0001.0001 at .0037).

⁷⁶ Exhibit RC920B – Statement of Ms Christine Nixon, 30 October 2019, at [35] (VPL.0014.0071.0001 at 0007); T11605.36-37 (C Nixon).

⁷⁷ Exhibit RC920B – Statement of Ms Christine Nixon, 30 October 2019, at [35] (VPL.0014.0071.0001 at 0007).

⁷⁸ T11595.42-44; C Nixon); Exhibit RC0008 – Statement of Assistant Commissioner Neil Paterson, 22 March 2019, Annexure 36: Chief Commissioner's Instruction 3/05 – Informer Management Policy, 20 September 2005, (VPL.0002.0001.2232).

- 11.7 Further, after conducting international research, it was decided that the SDU would operate on a 'sterile corridor' principle, the effect of which was that the management of Ms Gobbo as a human source would be undertaken wholly separately from the investigative task. The practical consequence was that the investigators who referred Ms Gobbo to the SDU understood that doing so would mean ceding control of their relationship with her.
- 11.8 Thus, the decision by investigators to refer Ms Gobbo to the SDU was made in the context of the greater rigour that Victoria Police was applying to the registration, management and use of human sources.⁷⁹ It was also made with knowledge that they would cede control of Victoria Police's relationship with her to the SDU and with the knowledge that her management and use would be subject to the processes and procedures governing the SDU's operation.
- 11.9 To refer Ms Gobbo to the SDU, and for her to be registered, in the circumstances described above is a powerful indicator that those involved did not intend to act improperly. Indeed, it is a powerful indicator that they intended her registration, use and management to be conducted in conformity with Victoria Police's processes and subject to whatever scrutiny might follow. As is now evident, those processes were flawed and inadequate to manage Ms Gobbo.
- 11.10 **Second**, as noted above, once Ms Gobbo was registered, the SDU generated, and retained, detailed documentary records of the interactions with Ms Gobbo. Those records run to many hundreds or thousands of pages.⁸⁰ That is true also of the SDU's interactions with investigators in relation to information provided by Ms Gobbo. The SDU kept detailed records of these interactions, including both seemingly incidental or inconsequential interactions and substantial contacts. As a result, there is a detailed record of Victoria Police's conduct in relation to Ms Gobbo that is capable of being, and has been, scrutinised internally and externally. Those records include audio recordings.
- 11.11 Importantly, the SDU made those records understanding that, as official Victoria Police records, they would be retained. Public officers, including police officers, who know that they are acting improperly, or who are acquiescing in the impropriety of others, do not create a detailed, permanent, record of their conduct. Nor do they create audio recordings of their conduct. That the SDU created such records (and investigators, through their diaries) is further evidence that members acted in the genuine belief that what they were recording was not any wrongdoing by them, colleagues or Victoria Police.
- 11.12 Indeed, the records were a key source of evidence from which the adverse finding of negligence in the Comrie Report and the Kellam Report was drawn, with Mr Kellam observing that the records "provided all evidence necessary for me to reach my findings and recommendation".⁸¹ So too the records have been extensively used as an evidentiary source in the course of this Royal Commission.
- 11.13 Equally importantly, and as mentioned earlier, there is no evidence that the SDU selectively recorded its interactions with Ms Gobbo or with investigators or that they revised or destroyed any records at a later point. The same can be said about investigators' notes.

⁷⁹ Exhibit RC0278 – Report on the Findings of Dedicated Source Unit Pilot, 1 November 2004 – 30 April 2005, undated (VPL.0005.0108.0001).

⁸⁰ Exhibit RC0284B – SML3838, various dates (VPL.2000.0001.9447).

⁸¹ Exhibit RC0113B – Kellam Report, 6 February 2015 at [9] (VPL.0007.0001.0001 at .0007).

- 11.14 The diligence with which the SDU recorded the interactions with Ms Gobbo and with investigators stands against any suggestion that members knew that they were acting improperly or that others were doing so. Persons acting with malintent do not create a detailed record of their impropriety, or create audio recordings of it, and people seeking to cover or disguise the wrongful acts of colleagues do not commit the conduct of those colleagues to writing and then say nothing.
- 11.15 The diligence with which the SDU kept records underscores that it was not impropriety at work, but rather, as Mr Comrie and Mr Kellam found, a lack of knowledge and the failures of systems and policies to cope with an unprecedented and unique set of circumstances. The SDU members had never handled a human source who was a lawyer, let alone someone like Ms Gobbo who was a criminal associate and a lawyer and, as time went on, someone who disregarded her professional obligations and the directions of her handlers. The training they received was not, unsurprisingly, directed at circumstances of that kind and they made the mistake of not getting legal advice at the outset.
- 11.16 **Third**, much of the above also applies to the investigators. They recorded in their diaries: (a) information they received from the SDU which they knew, or inferred, had been provided by Ms Gobbo; (b) meetings and other interactions with the SDU about Ms Gobbo; and (c) Ms Gobbo's involvement as a lawyer acting for people. They also knew that the SDU was keeping a separate record of the interactions described in (a) and (b).
- 11.17 The investigators' widespread practice of reducing to writing such matters is also entirely inconsistent with them knowing that their behaviour or the behaviour of their colleagues was wrong, and entirely consistent with a failure to appreciate all the issues and an assumption that the SDU was managing her appropriately. As was the situation with the SDU handlers, the investigators had never had involvement with a human source like Ms Gobbo or received information from a source like her. Nor were they trained to deal with a source of her kind.
- 11.18 **Fourth**, decisions were taken in the knowledge that a consequence was the potential disclosure of Ms Gobbo's role as a human source. A key example is the decision to call Ms Gobbo as a witness in the prosecution of Paul Dale for the murder of Terrence Hodson. Mr Overland gave evidence that, at the time that decision was made, he was aware of the risk of Ms Gobbo's role as a human source being revealed.⁸² Notwithstanding that risk and the risk of Victoria Police being criticised and scrutinised, the decision was made to use Ms Gobbo as a witness.
- 11.19 That decision is wholly inconsistent with the suggestion of knowing improper conduct. Mr Overland was accepting of the fact that Ms Gobbo's role as a source would be scrutinised. The question of whether to use Ms Gobbo as a witness in the prosecution of Mr Dale was a vexed and difficult question. No person apprised of all the relevant facts and circumstances could reasonably have condemned Victoria Police for not using her. As such, there was ample opportunity for Victoria Police to conclude that Ms Gobbo ought not to be used as a witness without attracting any adverse comment or scrutiny of its decision. Despite that, a decision was made based on the best interests of the investigation and with a view to obtaining a conviction in a grievous homicide and exposing corruption. If it was considered necessary to cover up Ms Gobbo's role as a

⁸² Exhibit RC0915B – Statement of Mr Simon Overland, 19 September 2019 at [138] (VPL.0014.0067.0039 at .0064).

source because her use had been unlawful then it is most unlikely that members would have taken a path that risked exposing such conduct.

- 11.20 **Fifth**, many people within Victoria Police knew that Ms Gobbo was a registered human source. It was not a secret tightly held by a small group of members within a single unit or crew as would be expected if members believed that what they were doing was wrong.
- 11.21 Between 2005 and 2009 more than 100 Victoria Police personnel knew that Ms Gobbo was a source. It was known by officers ranking from senior constables through to assistant commissioners. It was obviously known within the SDU and across investigative taskforces and specialised units.
- 11.22 In addition, there is no evidence that any of the 100 plus personnel who knew she was a source reported or raised concerns about the appropriateness of her use with ESD or an external body.
- 11.23 The disjunction between the number of personnel with knowledge of Ms Gobbo's use as a source and the absence of alarm is telling. These facts are consistent with the findings of Mr Comrie and Mr Kellam that members did not appreciate the unique issues that might arise from using a source who was both a criminal associate and a lawyer. Many officers could not remember the circumstances in which they came to learn of Ms Gobbo's role which indicates that they were not taken aback by it.
- 11.24 There were at least four critical factors informing this widespread failure to recognise the risks.
- 11.25 The first was substantial confidence in the expert unit set up to manage high risk sources. A common feature of the evidence before the Royal Commission was the assumption by those who came to have knowledge that those who had gone before acted with a full appreciation of the risks and had taken appropriate steps. Several members expressed surprise on learning of Ms Gobbo's registration. But the near universal reaction was to take comfort in the belief that those responsible for the decision to register Ms Gobbo and those responsible for her management were specialists in the management of high risk human sources and who, it was assumed, were best placed to assess and manage the risks.
- 11.26 The second was the knowledge of Ms Gobbo's use by Executive Command. DC Overland knew of Ms Gobbo's registration. Within a short period, other members of Executive Command also knew. Each of these officers reported, at the time or shortly thereafter, directly to CCP Nixon. To the many officers at ranks below who came to know of Ms Gobbo's registration, gave them confidence in relation to Ms Gobbo's registration and the propriety of her use as a human resource.
- 11.27 Equally, the knowledge by senior officers of Ms Gobbo's use stands against any suggestion that members were knowingly engaged in wrongful conduct.
- 11.28 The third is that members were not trained about the broader professional obligations of lawyers because it is not something that ordinarily arises in policing. This is addressed in the witness statement of Assistant Commissioner Kevin Casey.
- 11.29 The fourth element was that those involved did not contemplate that Ms Gobbo would, over time, disregard her professional obligations in the way that she did at times. Many officers proceeded on the basis that it was for Ms Gobbo to consider her professional obligations. They thought that it was for her to determine what her professional obligations permitted and did not permit and some members thought that if she got that wrong then that had consequences only for her.

- 11.30 It was not an unreasonable assumption for many members to make that Ms Gobbo would not disregard her professional obligations in the way she did at times. People outside of Victoria Police seem to have made the same assumption –
- (a) A barrister briefed by Victoria Police was, by 2005, aware that Ms Gobbo was providing information to police about criminals (without being directly aware of her status as a registered human source).⁸³
 - (b) Later, in the period between 2009 and 2011, a number of lawyers at the VGSO – professionals attuned to the obligations of lawyers - became aware of Ms Gobbo's use as a human source.⁸⁴
 - (c) Jeff Pope became aware that Victoria Police was using Ms Gobbo as a human source while holding the position of National Director of Intelligence at the Australian Crime Commission.⁸⁵
 - (d) Graham Ashton was informed when he was at the OPI.⁸⁶
 - (e) The DPP was informed, the detail of which will be addressed in the tranche 2 submissions.
- 11.31 The explanation for the lack of action is illustrated by Mr Fin McRae who observed that while he thought it "extraordinary" that a practising barrister would be registered as a human source, he "would never have imagined that she would provide information about her own clients. It is simply not something that I contemplated...".⁸⁷ Mr McRae said that it "did not even enter my mind" that Ms Gobbo was giving information about her clients.⁸⁸
- 11.32 So too in 2010, members of the VGSO had a muted reaction to being informed that Ms Gobbo had been a registered human source. One legal adviser gave frank evidence that he was "not concerned" about the potential disclosure of confidential or privileged information.⁸⁹ Consistent with the muted response, none of the advice given by the VGSO about legal issues connected with Ms Gobbo raised concerns about Ms Gobbo's status as a human source.⁹⁰
- 11.33 The assumption that Ms Gobbo would not disregard her professional obligations in the way that she did at times extended throughout the Victoria Police ranks and travelled well beyond the organisation. Police officers, public officers and lawyers all failed to substantively respond to the knowledge of Ms Gobbo's registration. There is no single reason why that was so – but faith and trust that members of the legal profession know their obligations and do not disregard them in significant ways is chief among them, as was the lack of proper understanding of those obligations by police members involved at the time
- 11.34 These conclusions are powerfully reinforced by the absence of a category of evidence before the Royal Commission. No witness gave any evidence that officers had spoken

⁸³ Exhibit RC962B, Statement of Mr Gerard MacGuire 8 August 2019 at [32], (COM.0063.0001.0001 at .0013).

⁸⁴ See, for example, Exhibit RC0955B – Statement of Mr David Ryan, 19 September 2019 at [23] (COM.0080.0001.0002 at .0006).

⁸⁵ T14404.40-T14405.16 (J Pope).

⁸⁶ Exhibit RC0856B – Statement of Mr Graham Ashton, 30 August 2019 (VPL.0014.0058.0001 at [72] (VPL.0014.0058.0001 at .0008).

⁸⁷ Exhibit RC1067B, Statement of Mr Findlay McRae, 13 November 2019 (VPL.0014.0089.0003) [1.15].

⁸⁸ Exhibit RC1067B, Statement of Mr Findlay McRae, 13 November 2019 (VPL.0014.0089.0003) [4.13].

⁸⁹ Exhibit RC955, Statement of Mr David Ryan, 19 September 2019 (COM.0080.0001.0002) at [8].

⁹⁰ Exhibit RC954B, Statement of Mr Mario Baragwanath, 13 June 2019 at [56.3] (RCMPI.0035.0001.0001 at .0022).

about the use of Ms Gobbo in a way which evidenced that they knew that the use of her at any time was wrong.

- 11.35 It is most unlikely that an officer would deal with Ms Gobbo or information provided by her in a way that they knew to be wrong in circumstances where so many people knew she was a source, including members of Executive Command, and, therefore, that her use could be scrutinised at any time and where dealings with her and her information were being documented. It would be extraordinarily foolish for a member to engage in conduct that they know to be wrong and then record their wrongful conduct in an ICR, or know that someone else is recording it in an ICR, in circumstances where at any point in time a senior officer could audit the ICRs.

12 Knowledge of Ms Gobbo's human source role

- 12.1 As submitted earlier, the spread of knowledge of Ms Gobbo's role throughout Victoria Police is a strong indicator of an absence of intent on the part of members to act improperly.
- 12.2 An analysis of the evidence before the Royal Commission permits the following general conclusions to be drawn.
- 12.3 First, each of Ms Gobbo's three registrations involved a different group of Victoria Police members. There is no commonality between those directly involved in seeking to register Ms Gobbo as a source, nor those who authorised the registration, on each occasion. That three separate groups of Victoria Police members independently reached the conclusion that it was appropriate to seek to register Ms Gobbo and, separately, to approve her registration tells against an intention to act with impropriety. At the time of both the 1999 and 2005 registrations, Ms Gobbo was a practising legal practitioner. Instead of impropriety, consistent with the findings of Mr Comrie and Mr Kellam, these facts point to a widespread unawareness of the risks associated with registration of a practising lawyer as a human source.
- 12.4 Second, Ms Gobbo's 2005 registration was known to a substantial number of senior officers contemporaneously with, or shortly following, that registration. The AC Crime, Mr Overland, was aware of the registration contemporaneously, or almost immediately thereafter.⁹¹ Commander Purton was aware of the proposal to register Ms Gobbo shortly prior to the registration being approved,⁹² and Commander Moloney was advised after registration.⁹³ At the time of Ms Gobbo's registration, AC Overland reported directly to CCP Nixon. Commanders Purton and Moloney came to report directly to her shortly thereafter. On the evidence as a whole, it is clear that Mr Overland did not brief CCP Nixon about the registration.⁹⁴ Nor did Mr Purton or Mr Moloney brief CCP Nixon about it. There was no reason for them not to do so: they were not involved in the decision to register Ms Gobbo and had no personal interest in keeping the fact of registration from the Chief Commissioner. It is evidence of members not having a full appreciation of the risks.
- 12.5 Superintendents, Inspectors and Senior Sergeants knew of Ms Gobbo's registration when, or shortly after, it occurred. The theme of their evidence was not that they were troubled by her registration or that steps were taken to draw any concerns about her registration higher up the chain of command.

⁹¹ Exhibit RC915B, Statement of Mr Simon Overland 19 September 2009 at [80] – [84] (VPL.0014.0067.0039 at .0053-4).

⁹² Exhibit RC107, Statement of Mr Terry Francis Purton (21 August 2019 at [9], (VPL.0014.0017.0005 at .0007).

⁹³ T14537.35-T14538.1 (D Moloney); See also T11325.33-T11326.2 (S Overland).

⁹⁴ This evidence is discussed in detail at Counsel Assisting's submissions at Vol 2, [197].

- 12.6 Later, between 2008 and 2011, a further cohort of senior officers came to know of Ms Gobbo's role as a source. They did not all then immediately identify and take steps to check that the potential legal and ethical complexities of Ms Gobbo's use as a human source were being managed. This reinforces the near universal unawareness of the potential complexities of Ms Gobbo's registration and management.
- 12.7 Relatedly, knowledge of Ms Gobbo's role was not kept within the circle of the SDU and between select investigators.
- 12.8 The spread of knowledge was generally consistent with the 'need to know rule'. Nonetheless, when a circumstance arose in which the information needed to be passed on, it was.
- 12.9 For example, three of the four senior officers involved in the Petra Taskforce knew.⁹⁵ The fourth officer did not become aware until much later, and then in a different capacity and context. The lead Petra Taskforce investigator, Shane O'Connell, knew, but his two key investigators did not. Despite the difficulties that this posed for the Petra Taskforce, which was actively investigating Ms Gobbo as a person of interest in connection with the murders of the Hodsons, the two investigators were not told and did not come to know until much later. So too within a single crew within the Purana Taskforce, some had knowledge, and some did not.
- 12.10 Nonetheless, where there was a need to know, the information was provided:
- (a) In 2005, her role was known to officers in the Covert Services Division, the Purana Taskforce, the MDID and officers in Executive Command.⁹⁶
 - (b) By 2006, the information was with the Commander (Intelligence and Covert Support) and the Ethical Standards Department.⁹⁷
 - (c) By 2007, it was known by members of the Petra Taskforce and the Briars Taskforce.⁹⁸
 - (d) In 2009, officers within a specialised unit at Victoria Police knew.⁹⁹
 - (e) Outside of Victoria Police, in 2007 and 2011 her role was known to the OPI.¹⁰⁰
 - (f) In 2006, it was known to the Australian Crime Commission.¹⁰¹

⁹⁵ Ryan, Overland and Ashton knew, but Luke Cornelius did not.

⁹⁶ See, for example, Exhibit RC0275B – Statement of Officer Sandy White, undated at [79] - [80] (COM.0019.0004.0001 at .0020); Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [69], [72] (VPL.0014.0040.0001 at .0016); Exhibit RC0981B – Supplementary Statement of Mr Simon Overland, 17 January 2020 at [41] (VPL.0014.0067.0077 at .0086).

⁹⁷ Exhibit RC1325B – Statement of Mr Dannye Moloney, 5 October 2019 at [51] – [54], [64] – [65] (VPL.0014.0070.0001 at .0009, .0011); Exhibit RC1325D – Supplementary Statement of Mr Dannye Moloney, 19 February 2020 at [4] (VPL.0014.0070.0049 at .0049).

⁹⁸ See, for example, Exhibit RC0310B – Statement of Mr Gavan Ryan, 13 June 2019 at [78] (VPL.0014.0039.0001 at .0013); Exhibit RC0310B – Supplementary Statement of Mr Gavan Ryan, 31 July 2019 at [10] – [11] (VPL.0014.0039.0021 at .0023 - .0024); Exhibit RC0825B – Statement of Mr Rodney (Rod) Wilson, 19 November 2019 at [30] – [32] (VPL.0014.0094.0001 at .0005 - .0006).

⁹⁹ Exhibit RC0008 – Statement of Assistant Commissioner Neil Paterson, 22 March 2019 at [3.107] (VPL.0014.0005.0001 at .0023).

¹⁰⁰ Exhibit RC0310B – Statement of Mr Gavan Ryan, 13 June 2019 at [80] (VPL.0014.0039.0001 at .0013); Exhibit RC1257B – Statement of Mr Emmett Dunne, 26 November 2019 at [31] (VPL.0014.0100.0001 at .0008).

¹⁰¹ Untendered diary of Mr Anthony Biggin, 10 November 2006 (VPL.0005.0268.0656 at .0656); Exhibit RC0577 Second Statement of Mr Anthony Biggin (VPL.0014.0041.0008 at [72], [146]); Untendered summary of diaries of Mr Anthony Biggin, 10 November 2006 (VPL.0005.0154.0001 at .1113). Mr Biggin's evidence, including his statement and diaries, indicated that there were discussions with the ACC on at least 10 and 17 November 2006 regarding transitioning Ms Gobbo to another agency

- (g) Between 2009 and 2011, it was conveyed to a number of external legal providers, including the VGSO and members of the Victorian Bar.¹⁰²
- (h) In 2010, Mr McRae became aware of her role through his involvement in Ms Gobbo's civil claim. The VGSO knew of her role before Mr McRae because they needed to be told for the purpose of providing the advice that had been sought.¹⁰³
- (i) In late 2011, it was conveyed to the CDPP and, in 2012, to the DPP.¹⁰⁴
- 12.11 Next, the path by which knowledge of her role spread is inconsistent with impropriety, which tends to be accompanied by concealment and disguise, and wholly consistent with a belief of propriety, which tends to be accompanied by candour (to the degree allowed by the 'need to know' principle) and a degree of informal transmission of the information.
- 12.12 For example, the SDU did not limit the knowledge of Ms Gobbo's identity to a small circle of members in the unit. Instead, the knowledge was shared among the SDU members based on whether the member needed to know the information to properly discharge their duties. Consequently, Ms Gobbo's status as a human source was known to more than ten members working in this area. Many officers recalled being informed of Ms Gobbo's identity in the course of being briefed into the SDU, and one SDU officer recalled that the SDU was informed as a group of Ms Gobbo's registration.¹⁰⁵
- 12.13 None of these officers gave any evidence that they were told Ms Gobbo's identity for any purpose other than their official duties, and none of these officers gave any evidence that they were asked, encouraged or directed to hide, disguise or obscure Ms Gobbo's registration (other than for the proper purpose of protecting her safety).
- 12.14 Tellingly, Ms Gobbo's identity was shared with Victoria Police officers who were seconded to the SDU for only short periods of time. Thus, for example, Ms Gobbo's identity became known to Officer Street,¹⁰⁶ who undertook temporary TIO duties at the SDU for a short period in 2007 and Officer McWhirter, who undertook temporary duties at the SDU in 2006. This ordinary and uninhibited sharing of Ms Gobbo's identity with SDU officers who needed to know to perform their duties, irrespective of the temporary and transitory nature of their deployment to the SDU, speaks strongly against an intention on the part of any person specifically to act improperly.
- 12.15 If officers within the SDU believed that Ms Gobbo's use was wrong in any respect, then it would be expected that knowledge of Ms Gobbo's identity would be kept within a tight circle. It wasn't. It was shared with those who needed to know to do their job.
- 12.16 Further, the knowledge was passed to Victoria Police officers who were likely to take action if they detected, or suspected, impropriety. Thus, for example, DC Overland briefed Superintendent Wilson about Ms Gobbo's identity in 2006 when he was based at the Ethical Standards Department (**ESD**). Detective Inspector Attrill was also based at the ESD when he learned of Ms Gobbo's registration in 2006. In 2007, Inspector

¹⁰² Exhibit RC0955B – Statement of Mr David Ryan, 19 September 2019 at [23] (COM.0080.0001.0002 at _0006); Exhibit RC0956B – Statement of Ms Monika Pekevka, 2 October 2019 at [21] (COM.0085.0001.0001 at _0003); Exhibit RC1231B – Statement of Detective Superintendent Peter Lardner, 27 November 2019 at [17] (VPL.0014.0102.0001 at .0003-0004).

¹⁰³ Exhibit RC0955B – Statement of Mr David Ryan, 19 September 2019 at [23] (COM.0080.0001.0002 at _0006).

¹⁰⁴ Vol 2, [197] – [198].

¹⁰⁵ Exhibit RC1209, Statement of Ray Collins at [16] (VPL.0014.0088.0001 at [insert]).

¹⁰⁶ Exhibit RC1226, Statement of Ms Street (a pseudonym) at [4] (COM.0071.0001.0002).

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

Ryan informed former CCP Graham Ashton, then of the OPI, that Ms Gobbo was a registered human source.

- 12.17 In each of these instances, the information was shared out of concern for Ms Gobbo's safety and, in some cases, concern for her relationship with Victoria Police. The willingness of officers to reveal Ms Gobbo's registration to officers within the ESD and the OPI is inconsistent with officers acting with malintent.

E. Submission of Commander Stuart Bateson

13 Introduction

- 13.1 In Chapter 7 (the Thomas case study) Counsel Assisting submit that, on the evidence, it is open to the Commissioner to make serious adverse findings against Commander Stuart Bateson relating to his conduct 15 years ago when he was a Detective Sergeant in the Purana Taskforce, ^{Relevance} [REDACTED]
^{Relevance} [REDACTED]
- 13.2 Chapter 7 must be read with care because it: (a) entirely overlooks critical evidence, (b) glosses over other important evidence and (c) misstates or mischaracterises evidence. It also contains serious allegations about critical matters of fact that are not supported by any evidence at all and is otherwise littered with factual errors.
- 13.3 The approach taken to many of the issues in relation to Com. Bateson suggests an over eagerness to criticise him.
- 13.4 By way of example, one of the complaints at the centre of the submissions made by Counsel Assisting, and which was the subject of lengthy cross-examination, is that Com. Bateson failed to take steps to prevent Ms Gobbo representing Mr Thomas in circumstances where she had previously acted for Mr McGrath (who had implicated Mr Thomas in murders).¹⁰⁷ It was persistently put to Com. Bateson in cross-examination that Ms Gobbo had a conflict of interest in acting for Mr Thomas in those circumstances and that he should have stepped in. The criticism is maintained in the submissions.
- 13.5 However, the submissions made by Counsel Assisting make no mention of Mr Thomas' own important evidence to the Commission on this issue.
- 13.6 His evidence was that when he retained Ms Gobbo he *knew* that Ms Gobbo had acted for Mr McGrath when McGrath had implicated him.¹⁰⁸ According to Mr Thomas, Ms Gobbo had, in fact, been reporting back to him when she was acting for Mr McGrath.¹⁰⁹ It may be that Mr Thomas chose to retain Ms Gobbo for the very reason postulated in an exchange between the Commissioner and Detective Inspector Gavan Ryan when he gave evidence – “*a tactic of the defence to hire the person to put pressure on the witness (Mr McGrath) because that person knows everything about the witness and it could intimidate the witness*”, particularly “*where the credit of the witness is in issue*”.¹¹⁰
- 13.7 Counsel Assisting did not ask Mr Thomas why he retained Ms Gobbo when she had acted for Mr McGrath.
- 13.8 On this issue, the submissions made by Counsel Assisting also gloss over the evidence that Mr Thomas' own solicitor and Queens Counsel also *knew* that Ms Gobbo had acted for Mr McGrath and that she proposed to retain her brief generally for Mr Thomas.¹¹¹ Counsel Assisting did not ask the solicitor or the Queens Counsel why they considered that Ms Gobbo was able to do so.¹¹² It may be that they were comfortable with her acting for Mr Thomas because Mr McGrath also knew she was acting for Mr Thomas.

¹⁰⁷ Eg, Counsel Assisting Submissions at pp.104-105 [452]-[457], Vol 1; Counsel Assisting Submissions at p. 221 [1020], Vol 2; Counsel Assisting Submissions at p. 244 [1074.2], Vol 2.

¹⁰⁸ Exhibit RC1175 – Statement of Mr Thomas, 20 September 2019 at [31] (RCMPI.0131.0001.0001 at .0008); T13581.20-25, 36-37; T13582.27 (Thomas).

¹⁰⁹ Exhibit RC1175 – Statement of Mr Thomas, 20 September 2019 at [31] (RCMPI.0131.0001.0001 at .0008).

¹¹⁰ T4505.42-4506.23 (Ryan).

¹¹¹ Counsel Assisting Submissions at p. 155 [738], Vol 2.

¹¹² Untendered – Email from the solicitors assisting the Royal Commission to Corrs Chambers Westgarth dated 8 July 2020 (VPL.0005.0306.0001).

Mr McGrath may have consented to her acting or Ms Gobbo may have told her solicitor and leader that he had. We do not know because these important matters were not explored by Counsel Assisting before they submitted in their closing submissions that it is Mr Bateson's fault that she continued to act for Mr Thomas. As an important aside, Counsel Assisting have also not explained how the issue of Ms Gobbo potentially having a professional conflict of interest in acting for two people is relevant to the Commission's terms of reference 1 and 2 which require the Commission to inquire into Ms Gobbo's use as a human source.

- 13.9 Mr Thomas' evidence was that the police dealt with him "*by the book*",¹¹³
- 13.10 He said that Com. Bateson was an "*honest copper*".¹¹⁴ He gave that evidence after Counsel Assisting had read to him transcripts of conversations that they considered to be provocative.¹¹⁵
- 13.11 Ms Gobbo's evidence to the Commission was also that Commander Bateson conducted himself with "*unquestionable integrity*".¹¹⁶
- 13.12 None of this evidence is referred to in the submissions made by Counsel Assisting.
- 13.13 Further, Counsel Assisting's submissions about Com. Bateson proceed on seven false premises. The details of that falsity are explored below.
- 13.14 In summary:
- (a) the premise that Ms Gobbo, to Mr Bateson's knowledge, 'edited' Mr McGrath's statements or that her conduct in connection with advising Mr McGrath about his statements was somehow improper is false, because the evidence is clear that she did no such thing and her conduct in reviewing Mr McGrath's statements, at his request and on his instructions, was not improper;
 - (b) the premise that Com. Bateson concealed daybook entries from Mr Thomas and the Court to disguise Ms Gobbo's involvement in representing Mr McGrath and advising him about his statements is false, because the daybook entries were disclosed;
 - (c) the premise that Com. Bateson concealed from Mr Thomas the fact that Ms Gobbo apparently had a conflict of interest because she had acted for Mr McGrath when Mr McGrath implicated him is false because Mr Thomas knew that fact – his evidence was that he was paying Ms Gobbo a cash retainer and Ms Gobbo was passing information about Mr McGrath and his plea to Mr Thomas (including the likely timing of Mr Thomas' arrest);
 - (d) the premise that, by reasons of (b) and (c), Mr Thomas was not aware that Mr McGrath had initially told police that he did not know that Mr Marshall was going to be murdered and that he thought it was just a debt collection, but later signed a statement saying he believed that it was to be a murder is false, because the transcripts of Mr McGrath's initial discussions with Com. Bateson in which Mr McGrath gave his initial version of events were disclosed to the defence and Mr McGrath was cross-examined about them;
 - (e) the premise that Com. Bateson should have stepped in and addressed Ms Gobbo's possible conflicts of interest in acting for multiple people is false,

¹¹³ T13595.23-24 (Thomas).

¹¹⁴ T13647.45-7 (Thomas).

¹¹⁵ T13593.20-13600.4 (Thomas).

¹¹⁶ T13748.4-6 (Gobbo).

because they were known to Ms Gobbo herself, Mr Thomas, Mr Valos, Mr Lovitt QC, Mr Coghlan QC, Mr Horgan SC, Mr Tinney, Mr Heliotis QC, Mr Faris QC, the OPP, the court and, possibly, Mr McGrath;

- (f) the premise that Com. Bateson knew that Ms Gobbo was informing on Mr Thomas while acting for him is false, because there is no evidence that Ms Gobbo was informing on Mr Thomas and, even if she was, Com. Bateson had no knowledge of it; and
- (g) the premise that Com. Bateson was involved in tasking Ms Gobbo as a human source against Mr Thomas is false, because the overwhelming weight of evidence is that, in connection with the relevant events, Com. Bateson dealt with Ms Gobbo as Mr Thomas' legal representative.
- 13.15 Once the falsity of these propositions is understood, the basis for Counsel Assisting's submissions in connection with Com. Bateson falls away.
- 13.16 Just as importantly, the underlying basis for Counsel Assisting's approach to their submissions – which has been to attempt to attribute individual liability - falls away.
- 13.17 A central plank of Counsel Assisting's submissions is that Com. Bateson deliberately withheld certain pages of his daybooks relevant to the prosecution of Mr Williams and Mr Thomas for the purpose of hiding from them and the Court that Ms Gobbo had acted for Mr McGrath and had been involved in advising him about his witness statements.
- 13.18 Counsel Assisting make the emotive submission that it was that event that let the “*rot set in, allowing for the calamitous events which have followed*”.¹¹⁷
- 13.19 The difficulty with that submission is that it is wrong.
- 13.20 Com. Bateson *did* disclose the daybook entries. The consequence is that the entire approach of Counsel Assisting is misconceived.
- 13.21 That error has distracted Counsel Assisting and caused them to view Com. Bateson in a way that is not justified on the material before the Commission. The personal and pejorative comment about Com. Bateson is of no assistance to the Commission.¹¹⁸ Such language risks creating a perception that the Commissioner has been inflamed against Mr Bateson or incited to hold a biased view.
- 13.22 Equally, the error has obscured the real issue – being the absence of structures capable of coping with the highly unusual circumstances involving Ms Gobbo.
- 13.23 When a disciplined and considered approach is taken to the analysis of all relevant evidence before the Royal Commission, it is evident that there is no sound basis to find [REDACTED] in his involvement with Mr Thomas. The approach taken in the submissions made by Counsel Assisting does not seem to recognise the seriousness of what they have put or the personal and professional consequences that could follow.
- 13.24 This submission should be read with the submissions in Part B to Part D above as to why the Commissioner does not have the power [REDACTED] [REDACTED] and should decline to make such findings.

¹¹⁷ Counsel Assisting Submissions at p. 169 [770], Vol 2.

¹¹⁸ Eg, Counsel Assisting Submissions at p. 169 [770]-[771], Vol 2; Counsel Assisting Submissions at p. 199 [915], Vol 2; Counsel Assisting Submissions at p. 221 [1020], Vol 2.

- 13.25 Section A of these submissions addresses key facts and evidence.
- 13.26 Section B addresses Counsel Assisting's submissions in Chapter 7.
- 13.27 Section C addresses Counsel Assisting's other submissions about Com. Bateson.

14 Section A - Key Facts and Evidence

- 14.1 In 2003, Com. Bateson was a Detective Sergeant in the Homicide Squad.¹¹⁹ He moved to the Purana Taskforce in October 2003, where he worked as a Detective Sergeant until 2007.¹²⁰
- 14.2 Com. Bateson joined the Purana Taskforce at a challenging time. Members of rival drug gangs were executing each other and doing it in public. The taskforce had the responsibility of investigating over 14 gangland murders.
- 14.3 This period was 'the most intense period' of his time in the police force.¹²¹ 16-hour days were common. The little time not spent at work was spent thinking about work.¹²²
- 14.4 Com. Bateson was in charge of a crew of police members investigating four murders in particular: (a) Jason Moran and Pasquale Barbaro; (b) Jason Moran's brother, Mark; and (c) Michael Marshall.
- 14.5 On 21 June 2003, Jason Moran and Pasquale Barbaro were shot dead at a children's Auskick football clinic.¹²³ Carl Williams had ordered the murder of Mr Moran. Mr Thomas helped organise the murder by sourcing the gun and their location at the Auskick clinic. Mr McGrath was the driver. Mr Andrews shot them.
- 14.6 On 25 October 2003, Michael Marshall was shot dead in the street in front of his young child.¹²⁴ Carl Williams ordered the murder. Again, Mr McGrath was the driver and Mr Andrews shot him.
- 14.7 The murder of Mr Marshall was captured on a listening device in the car. The device also captured the men informing Mr Williams that they had committed the murder ('you know that horse you tipped us - it has been just been scratched').¹²⁵ Mr McGrath and Mr Andrews were arrested the same day. The execution of search warrants located the murder weapon and the clothing worn by Mr Andrews and Mr McGrath during the murder.¹²⁶ The case against them was, self-evidently, very strong. Mr McGrath immediately implicated Mr Williams as the person who had ordered the murder.¹²⁷
- 14.8 At the time of these murders, Carl Williams, Mr Thomas, Mr McGrath and Mr Andrews were part of a criminal crew. Ms Gobbo was also part of their crew.¹²⁸ There is evidence that members of the crew, including Ms Gobbo, knew that Carl Williams wanted Jason Moran murdered.¹²⁹ There is also evidence that Carl Williams and Mr Thomas used Ms Gobbo as part of their alibi for the murders – a matter which Ms Gobbo realised after the fact.¹³⁰ Whilst Com. Bateson was suspicious of Ms Gobbo,¹³¹ there is no evidence

¹¹⁹ Exhibit RC0269 – Statement of Commander Stuart Bateson at [3] (VPL.0014.0027.0001 at .0001).

¹²⁰ Exhibit RC0269 – Statement of Commander Stuart Bateson at [3] (VPL.0014.0027.0001 at .0001).

¹²¹ T10104.46.

¹²² T10104.42-46.

¹²³ Exhibit RC0269 – Statement of Commander Stuart Bateson at [21] (VPL.0014.0027.0001 at .0005).

¹²⁴ Exhibit RC0269 – Statement of Commander Stuart Bateson at [30] (VPL.0014.0027.0001 at .0006).

¹²⁵ Exhibit RC0269 – Statement of Commander Stuart Bateson at [30] (VPL.0014.0027.0001 at .0006).

¹²⁶ T10084.32-36 (Bateson).

¹²⁷ Exhibit RC0269 – Statement of Commander Stuart Bateson at [32] (VPL.0014.0027.0001 at .0007).

¹²⁸ See the Appendix to the tranche 1 submissions.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ T3438.28-3439.22; T9537.45 – T9538.26.

- that he knew the true extent of her involvement in the crew, which was exposed in this Royal Commission.
- 14.9 One month after Mr McGrath and Mr Andrews were charged with the murder of Mr Marshall, Mr McGrath continued to speak to police.¹³² There is no evidence that Ms Gobbo was involved at that stage.
- 14.10 Mr McGrath went on to plead guilty to the murder of Mr Marshall. He received a significantly reduced sentence in return for becoming a Crown witness against his crew. Ms Gobbo was one of his legal representatives when his statements were being taken.
- 14.11 The overwhelming evidence against Mr McGrath and Mr Andrews is important to understanding the action taken by Com. Bateson, and his perception of subsequent events. He believed that the overwhelming case was the impetus for Mr McGrath 'coming on board' as the 'the case against him was undeniable'.¹³³ Additionally, McGrath and Andrews had extensive criminal histories, and, therefore, they were facing significant terms of imprisonment should they contest their charges and get convicted.¹³⁴ Mr McGrath co-operated with police before Ms Gobbo was acting for him. Mr Andrews co-operated with police without any involvement from Ms Gobbo.
- 14.12 Counsel Assisting have submitted that Ms Gobbo was responsible for 'having' Mr McGrath give statements which implicated Mr Thomas in the Moran and Barbaro murders and that she had 'assisted and/or encouraged' Mr McGrath to make statements implicating him: at [452.5] and [1038]. It is not clear what evidence Counsel Assisting rely upon in making those submissions.
- 14.13 The uncontroverted evidence is that Mr McGrath was talking to police *before* Ms Gobbo acted for him.¹³⁵
- 14.14 Further, according to Mr Thomas, Ms Gobbo did the very opposite to that submitted by Counsel Assisting. Mr Thomas told the Commission that Ms Gobbo told him that she had tried to persuade Mr McGrath *not* to co-operate with police.¹³⁶
- 14.15 Mr McGrath was *not* called to give evidence before the Royal Commission.
- 14.16 Therefore, the Commission did not hear from the very person who Counsel Assisting say was influenced to assist police by Ms Gobbo. The Commission did not get to hear from Mr McGrath as to:
- (a) the reasons why he chose to assist police;
 - (b) the reasons why he chose to implicate Mr Thomas and his crew;
 - (c) any legal advice that Ms Gobbo gave him;
 - (d) whether Ms Gobbo did, in fact, 'have' him give statements implicating Mr Thomas and others; and
 - (e) whether Ms Gobbo did, in fact, 'assist or encourage' him to make statements implicating Mr Thomas and others.
- 14.17 However, importantly, the Commission does have the evidence that Mr McGrath gave during his committal hearing about his reasons for assisting police. This evidence is not referred to by Counsel Assisting. It directly contradicts their submission that it was Ms

¹³² Exhibit RC0269 – Statement of Commander Stuart Bateson at [36] (VPL.0014.0027.0001 at .0007).

¹³³ T10084.34-36.

¹³⁴ T10110.20-21.

¹³⁵ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [32], [36] (VPL.0014.0027.0001 at .0007).

¹³⁶ T3439.17-30.

Gobbo who had Mr McGrath co-operate with police and who assisted or encouraged him to do so. Mr McGrath told the court that he assisted police for these reasons:

Oh, probably a lot of things. My own position, state of mind, lots of visits from the police, wanting to do the right thing.¹³⁷

I was interested in helping the police right from the start.¹³⁸

- 14.18 If Mr McGrath had been called to give evidence before the Commission, his evidence may have corroborated the evidence of Mr Thomas that Ms Gobbo had, in fact, tried to persuade Mr McGrath not to assist police and not to implicate the crew (of which she was part). Given what is now known about the extent of Ms Gobbo's personal involvement in the crew (see appendix A), Mr Thomas' evidence cannot be dismissed.
- 14.19 In addition, Mr McGrath's solicitor, who was actively involved in acting for Mr McGrath and present at meetings with his client and Ms Gobbo,¹³⁹ was not called to give evidence about any advice that she gave Mr McGrath or about any advice that Ms Gobbo gave him. Ms Gobbo may have been instructed by Mr McGrath and/or her instructing solicitor that Mr McGrath would be co-operating with police and that she was briefed to represent him in negotiating with the OPP to achieve the best possible outcome.
- 14.20 It is not apparent from the submissions made by Counsel Assisting as to why Mr McGrath and his solicitor were not asked to provide witness statements or called to give evidence before the Commission.
- 14.21 Accordingly, by reason of:
- (a) the evidence of Mr Thomas that Ms Gobbo told Mr McGrath *not* to co-operate with police;
 - (b) the evidence that Mr McGrath had been caught red handed in relation to the murder of Mr Marshall and was facing life imprisonment;
 - (c) the evidence that Mr McGrath was co-operating with police *before* Ms Gobbo started acting for him;
 - (d) the evidence of Mr McGrath given during the committal hearing as to his reasons for co-operating with police; and
 - (e) the lacuna in the evidence before the Commission,
- the Commissioner would fall into error if findings were made to the effect of those at [452.5] and [1038] of the submissions made by Counsel Assisting. Findings of fact to that effect are not supported by the evidence.
- 14.22 It is also important to recognise that Ms Gobbo was *not* a human source at any time when she was acting for Mr McGrath.
- 14.23 After Mr McGrath had signed his statements implicating his crew in the murders, charges were laid against others on 16 August 2004.
- 14.24 One of Mr McGrath's statements implicated Mr Thomas as the organiser of the murder of Jason Moran.¹⁴⁰ Mr Thomas was then charged.¹⁴¹

¹³⁷ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at T282.10-13.

¹³⁸ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at T284.30-285.1.

¹³⁹ Eg, Counsel Assisting Submissions at p. 117 [555], Vol 2, Counsel Assisting Submissions pp. 118-119 [559]-[563], Vol 2, T3395.39-46.

¹⁴¹ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [63] (VPL.0014.0027.0001 at .0011).

- 14.25 In his evidence to the Royal Commission, Mr Thomas admitted that he was involved in the murder.¹⁴²
- 14.26 Mr McGrath's witness statements also implicated Carl Williams as the person who ordered the murder and Mr Andrews as the shooter,¹⁴³ conduct which both later admitted in the Supreme Court.
- 14.27 The same day that Mr Thomas was charged, Mr Williams and Mr Andrews were also served with direct presentments in relation to the murders of Marshall, Moran and Barbaro.¹⁴⁴
- 14.28 There is evidence before the Royal Commission that, from the outset, Mr Thomas indicated an interest in adopting the same course as Mr McGrath – plead guilty, become a Crown witness and receive a reduction in his prison sentence.¹⁴⁵ Such a course is not unusual. As was also the case with Mr McGrath, Mr Thomas indicated an interest in taking that course well *before* Ms Gobbo became one of his legal representatives in relation to these murders.¹⁴⁶
- 14.29 By December 2004, Mr Thomas had Ms Gobbo acting as one of his legal representatives in relation to the Moran and Barbaro charges. Ms Gobbo was not a human source at this time.
- 14.30 The evidence before the Royal Commission – which is not addressed at all in the submissions made by Counsel Assisting – is that Mr Thomas retained Ms Gobbo *knowing* that she had acted for Mr McGrath when he provided statements to police implicating him and the crew in the murders.
- 14.31 In his evidence to the Royal Commission, Mr Thomas explained that:
- At the time [McGrath] and [Andrews] were charged with the Marshall murder, I was aware that Gobbo was acting as a legal representative on their behalf. She would go and see them and then would report back to me and Carl [Williams]. She would keep us posted on the Marshall murder and provide updates in relation to the likelihood of whether [McGrath] was going to assist police.¹⁴⁷*
- 14.32 Mr Thomas also explained in evidence that:
- In the lead up to my arrest [with the Moran and Barbaro murders], I was provided with updates from Gobbo following the arrest of [McGrath]. She was representing him. I was made aware by Gobbo that police would be coming for me. She said the delay in them arresting me was because McGrath was still working out his deal.¹⁴⁸*
- 14.33 Mr Thomas also gave evidence that Ms Gobbo had acted for Williams and that she had continued to act for Williams "off the books" through the committal proceeding.¹⁴⁹
- (a) Accordingly, Mr Thomas told the Royal Commission that he retained Ms Gobbo to act for him in defending the Moran and Barbaro murder charges, knowing that:

¹⁴² T13656.38-41 (Thomas).

¹⁴³ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [36] (VPL.0014.0027.0001 at .0007).

¹⁴⁴ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [64] (VPL.0014.0027.0001 at .0011).

¹⁴⁵ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [61] (VPL.0014.0027.0001 at .0010); Exhibit 269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [65] (VPL.0014.0027.0001 at .0011). Mr Thomas denies that he was interested in co-operating with police.

¹⁴⁶ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [66] (VPL.0014.0027.0001 at .0011).

¹⁴⁷ Exhibit RC1175 – Statement of Mr Thomas dated 20 September 2019 at [31] (RCMPI.0131.0001.0001 at .0008); T13581.20-T13582.28, T13637.5-7.

¹⁴⁸ Exhibit RC1175 – Statement of Mr Thomas dated 20 September 2019 at [28] (RCMPI.0131.0001.0001 at .0007).

¹⁴⁹ Exhibit RC1175 – Statement of Mr Thomas dated 20 September 2019 at [34] (RCMPI.0131.0001.0001 at .0008).

- (b) Ms Gobbo had acted for Mr McGrath when he became a Crown witness against Mr Thomas in relation to the murders;
 - (c) Ms Gobbo had acted for Mr Andrews in relation to the murder of Mr Marshall; and
 - (d) Ms Gobbo had acted for Mr Williams in relation to the murders of Marshall, Moran and Barbaro.
- 14.34 Counsel Assisting did not ask Mr Thomas, in cross-examination, why he retained Ms Gobbo to act for him in the above circumstances.
- 14.35 Accordingly, the Commission is left in the position of not having Mr Thomas' evidence on that important issue.
- 14.36 The Commissioner cannot infer why Mr Thomas retained Ms Gobbo, in those circumstances, when direct evidence could have been adduced from him.
- 14.37 However, if the reason why he did so is to be inferred, then the only inference open to the Commissioner is that Mr Thomas retained Ms Gobbo because he thought it would be advantageous.
- 14.38 There were several possible advantages:
- (a) Ms Gobbo could try to get Mr Thomas the same outcome as Mr McGrath – a significantly reduced jail sentence.
 - (b) If Mr Thomas was to contest the charges, Ms Gobbo could provide him with information relevant to Mr McGrath who was to give evidence against him.
 - (c) Mr Thomas was attempting to intimidate Mr McGrath into not giving evidence against him by having Mr McGrath's lawyer in his camp.
- 14.39 The third advantage above was the subject of evidence given by DI Ryan. He gave evidence before Mr Thomas was called to give evidence. DI Ryan's evidence was as follows:
- Mr Ryan:* ...It would be a tactic of the defence to hire that person [Ms Gobbo] to put pressure on the witness because that person knows everything about the witness and it could intimidate the witness. Do you see what I'm saying?
- Mr Woods:* In that situation the witness could obviously put their hand up and say, "Hang on, there is a conflict here?"
- Mr Ryan:* Yeah, they could. It goes back to the – I've said it a few times, you know, the self-regulation.
- Mr Woods:* But sometimes, and as we've seen here, the self-regulation fails, doesn't it?
- Mr Ryan:* Yes.
- Commissioner:* Your point is well made, particularly where the credit of the witness is in issue?
- Mr Ryan:* Yes.
- Commissioner:* Very well made, yes.¹⁵⁰

¹⁵⁰ T4506.4-23 (Ryan).

- 14.40 In addition to not asking Mr Thomas why he retained Ms Gobbo, Counsel Assisting also did not ask him what information Ms Gobbo gave him about Mr McGrath.
- 14.41 Accordingly, the Commission is left in the position of not having Mr Thomas' evidence on what information was given to him, and most importantly, whether Ms Gobbo had shared with him the very piece of information relevant to Mr McGrath's credit which Counsel Assisting have alleged that Com. Bateson withheld from him.
- 14.42 That piece of information was this - that Mr McGrath had first told police that he thought the Marshall job was to be a debt collection and not a murder but then later stated in his witness statement that he knew it was to be a murder.¹⁵¹
- 14.43 Counsel Assisting submit that that change in the information that Mr McGrath provided should have been disclosed to Mr Thomas because it would have provided him with a line of cross-examination as to Mr McGrath's credit generally. That is, Mr Thomas' counsel could have put to Mr McGrath that he had lied to police about his belief in relation to the Marshall murder and that, therefore, what he had told police about Mr Thomas' involvement in separate murders - the Moran and Barbaro murders - was also a lie.
- 14.44 As noted above, Mr Thomas told the Commission that he was involved in the execution of Moran and Barbaro. Therefore, Counsel Assisting should not be understood to be submitting that Mr McGrath was not, in fact, a witness of truth in relation to Mr Thomas' involvement in those murders or that Mr Thomas may have been convicted of an offence that he did not commit.
- 14.45 There are two matters that must now be drawn to the Commission's attention about the above. They are critical.
- 14.46 They go to the unfairness of the submissions that have been made about Com. Bateson on this issue and identify documentary evidence before the Commission (not tendered or referred to in submissions) that makes the submissions of Counsel Assisting unsustainable.
- 14.47 First, Com. Bateson was called to give evidence before the Commission, for the second time, in late November 2019. He was cross-examined on that occasion over 5 days. Counsel Assisting spent a significant period of time putting to Com. Bateson that he had failed to disclose to Mr Thomas that Mr McGrath had changed what he had told police about his belief in relation to the Marshall murder which was relevant to Mr McGrath's credit generally. Counsel Assisting submit that Com. Bateson 'deliberately concealed' from Mr Thomas this so-called weakness in the case against him.
- 14.48 Ten weeks later, Counsel Assisting then called Mr Thomas to give evidence.
- 14.49 For reasons that are not apparent, Counsel Assisting did *not* ask Mr Thomas whether he knew that Mr McGrath had changed what he had told police about his belief in relation to the Marshall murder. That topic was not explored with him, despite:
- (a) him, obviously, being the key witness on the issue;
 - (b) him volunteering in evidence that Ms Gobbo *had* given him information about Mr McGrath;

¹⁵¹ Exhibit RC0785 – Statement of McGrath dated 13 July 2004 at [9], [31], [38], [52] (COM.0103.0001.0002_HA).

- (c) the fact that Com. Bateson had, only ten weeks earlier, been cross-examined, extensively, about Mr Thomas having, apparently, been deprived of the information;
- (d) Mr Bateson repeatedly stating in evidence that he believed that the information had been disclosed to Mr Thomas;¹⁵² and
- (e) Mr Bateson stating in evidence that he had a memory of Mr McGrath being cross-examined about the matter.¹⁵³
- 14.50 If Mr Thomas had the information – because it was given to him by Ms Gobbo or it was disclosed to him in the proceeding – then the submission made by Counsel Assisting that Com. Bateson deliberately withheld the information from Mr Thomas Relevance Relevance is obviously unsustainable.
- 14.51 It is submitted that procedural fairness principles alone compel the Commission not to make a finding that Com. Bateson failed to disclose the information to Mr Thomas in circumstances where Counsel Assisting declined to ask Mr Thomas in cross-examination whether he had the information. To make the finding in those circumstances would be manifestly unfair.
- 14.52 In any event, if Counsel Assisting had asked Mr Thomas the pertinent question, then, in our submission, he would have answered ‘yes’. This leads to the second critical matter that must be brought to the Commission’s attention.
- 14.53 In the preparation of these submissions, we have identified documentary evidence not tendered before the Commission (but which the Commission obtained from the OPP and which Counsel Assisting had reference to during the evidence of Com. Bateson and Mr Thomas) which unequivocally shows that Mr Thomas *did* know the information and that it was used to attack Mr McGrath’s credit.
- 14.54 Mr McGrath gave evidence for the Crown in the committal proceeding in relation to the charges against Thomas, Williams and Andrews for the murders of Moran and Barbaro. He was cross-examined as to credit by senior counsel for both Mr Thomas and Mr Williams. The transcript of the cross-examination, and the depositions, reveal what follows below.
- 14.55 First, Mr Bateson disclosed to Mr Thomas and his two co-accused complete transcripts of the conversations between Mr McGrath, Com. Bateson and three other police members when he was in custody after the s 464B application (being the conversations referred to in paragraph [36] of Com. Bateson’s first statement).¹⁵⁴
- 14.56 Second, and significantly, the transcripts of the conversations contain the *very information* that Counsel Assisting have alleged Com. Bateson deliberately concealed from Mr Thomas, namely that Mr McGrath initially told police that he did not know that Mr Marshall was to be murdered and he thought it was only a debt collection. After Mr McGrath was cautioned, the relevant parts of the transcript of the first conversation are as follows:¹⁵⁵

Bateson: *What were you surprised at [Andrews’] personality?*

McGrath: *Well...he pointed the thing [gun] at me...*

¹⁵² T3367.16-40.

¹⁵³ *Ibid.*

¹⁵⁴ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at 3089-3106.

¹⁵⁵ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at 2725-2739.

Bateson: What do you mean he pointed a thing at you?

McGrath: In the Vectra...[the car used to drive to the Marshall murder]

...

McGrath: He pointed the thing at me and suggested well you're fuckin coming with me sort of thing.

Bateson: What he. What you weren't aware of it [that Marshall was to be murdered] up until that point?

McGrath: Nah.

Bateson: Well what point did you become aware of it?

McGrath: Well it's a bit hard to say that on your tape. Well after he pointed the thing I thought this is going to be more serious than I fuckin thought.

Buick: When did he do that?

McGrath: In the car on the way there. You've got it on tape...

...

McGrath: Yeah, after he did what he did [Andrews shot and killed Marshall] and yeah I can tell you other things too...

Bateson: Yeah well I'd be, I'd be always keen.

...

Bateson: I mean we're here primarily to talk about Jason's death.

...

Bateson: But if you wanted to tell me these things then I'll listen to them.

Bateson: So he [Andrews] actually told you that he'd shot him [Marshall]? And what was his exact wording?

McGrath: Well there was whispering but he pointed with his finger towards his [head].

Bateson: And was this the first time you were aware of it?

McGrath: Yeah.

Bateson: You must have heard the shots surely?

McGrath: That's yeah.

Bateson: But prior to that were you aware of what was going to happen?

McGrath: No.

Bateson: You never spoke about it.

McGrath: No, I thought it was always going to be a debt collection.

Bateson: When you were in here last time, um, you indicated to my Senior Sergeant the initials CW. What was all that about?

McGrath: Oh, he was suggesting, ah, I can't remember what question he asked but that person may, ah, know a few things I'm not sure.

But I've suggested to him on the phone, ah, I may be able to find out things.

...

Bateson: Well, how did this, how did this debt collection that you talk about come up?

McGrath: Well he approached me about it. And that's the sort of thing I'm sorted of interested in. It's sort of low profile, you take the money off one crook, cause he owes money and no one's going to report it to the police and it's half pie legitimate.

Bateson: Yeah, how much money did he owe?

...

McGrath: ...Um, I think it was 200 grand and we were supposed to get half and it was divided between me and [Andrews]. I said look I don't give a fuck about it. That's why originally I didn't want to have a huge amount to do with it because, oh, that's why I originally organised another car for him. That little blue wagon, the one you put the tracker in.

...

Buick: Who did he, who did he owe the money to? Who did Marshall owe the money to?

McGrath: Ah, I am only guessing but that same person, Carl.

Buick: Which sorry, which same person?

McGrath: The one I gave you the initials for.

...

Bateson: So when [Andrews] raised this issue with you what did he say?

McGrath: About a collection and we're going to get him ya know. As in a collection and it was always referred to as approach him or confront him or get him and that sort of thing.

Bateson: Yeah, and what happened then?

McGrath: Well normally with a debt collection, as you know, if you approach a person you're going to put the heavy on him, you have a piece [gun] on you but you leave it in the front of your trousers and you just show it.

...

McGrath: And it was, we spoke about it over a period of like, I was pretty slack about it, ya know. Over a period of at least a month maybe more, ah, one of the maybe once a week or something.

...

McGrath: I wasn't sort of super keen on it, that's why I arranged the car cause I was going to leave the car and let him fuckin do it.

...

Bateson: Did he discuss how he was going to approach him, or how he was going to do it?

...

McGrath: And that's the normal way to do it, you approach him, get the heavy on him. Like I'm not terrific at that sort of thing and ah just.

...

Bateson: Okay, well how much were you going to get for the debt collection?

McGrath: Well, it was, from, what I understood, it was 200 grand to be collected and the usual case, I mean it wasn't discussed in detail but the usual case is that whoever organised the debt gets half.

...

McGrath: And the other half gets split between us.

...

McGrath: Well those things I've just told you sort of tees up pretty well.

Bateson: Well, look, there's certainly some things that ring true and some perhaps that don't...

...

Bateson: But we are willing to listen to whatever you've got to say. So if you want to tell us things, tell us things. You know what I mean? So it's up to you.

14.57 The relevant parts of the transcript of the second conversation on the way back to the custody centre are:¹⁵⁶

Bateson: When did you first see the gun or the guns that [Andrews] had?

McGrath: Ah, one of them he pointed at me, he was playing with it in his car. That was, I'm pretty sure that was the automatic. He was playing with it in the car and I said in the car, you've probably got it on tape, and I said something to the effect of, ooh careful where you're pointing that and he was sorted of pointed it at me 'cause I'm fuck it's the first time I'd seen it.

...

Bateson: So at that point it, what are you thinking to yourself?

McGrath: Oh, and a lot of things are going on in me head that it might be a bit more serious than just a fuckin a standover.

Bateson: Mm. And did you express those feelings to [Andrews]?

McGrath: Well, just my reaction oh fuck. Like normally when you go and do one of those things you have one in the front of your pants but you don't have it loaded or anything.

¹⁵⁶ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at 3679 – 3697.

Bateson: Mm. But you didn't say anything to [Andrews]?

McGrath: Oh, I can't remember. I sort of, from that point on I sort of started to be really, I tried to play the co-operative sort of friend sort of thing.

...

Bateson: And what you've told us so far today that's the truth?

McGrath: Yep, well most of it anyway.

...

Bateson: ...But everything in relation to, ah, what you've told us about Marshall and what you've told us about Jason Moran, that's the truth?

McGrath: Yes...

...

Bateson: It's your position now and whether you want to help yourself or you don't. And you wonder whether you want to help us or you don't.

McGrath: I mean by discretion what I've already mentioned to you this morning.

...

McGrath: About the Marshall one and what [Andrews] did and everything.

Bateson: Well look, ya know, I listen to what you say about [Andrews] and how you say that it was all, that, ya know, you had no idea about what was going on and at this stage I don't think I believe you...

...

Bateson: I make no judgment on who Jason Moran or anyone else is. But as I've tried to get across to you I'm about the truth.

...

McGrath: Well I may have known he'd fuckin want him.

Bateson: Yeah.

McGrath: I didn't know he was going to kill him. That's fuckin. I may have thought he might, he was going to be a bit more heavier than just a fuckin debt collection but, ah, I didn't know he was going to kill him.

...

Bateson: Well what did you think was going to happen?

McGrath: Well I thought it was a debt collection but I, when the gun appears I thought it was going to be a bit more heavier.

Bateson: Well what, what, what degree did you think?

McGrath: Oh, maybe scare the shit out of him or put one in the knee caps or something like that.

- 14.58 Third, the transcripts of the conversations were used to attack Mr McGrath's credit during the committal hearing. The transcripts were used in that way by senior counsel for both Mr Thomas and Mr Williams. The cross-examination was lengthy and, therefore, is not set out here. However, it is important that the Commission have regard to it.¹⁵⁷
- 14.59 In particular, the Commission should have regard to those passages in which Mr McGrath is extensively cross-examined about:
- (a) when he realised that there was an intention to kill Mr Marshall;
 - (b) why he initially told police (in the conversations extracted above) he thought it was only a debt collection; and
 - (c) why he pleaded guilty on the basis that he knew in advance that there was to be a murder when he had told police that he did not know.
- 14.60 These were not minor matters in the committal proceeding. They were front and centre.
- 14.61 Fourth, the information that Mr McGrath gave to police in his conversations set out above was reflected in his draft witness statement that Detective Senior Constable Mark Hatt subsequently took from Mr McGrath and which Counsel Assisting have alleged Com. Bateson deliberately withheld from Mr Thomas.¹⁵⁸ While Mr Thomas did not have the draft statement that DSC Hatt had prepared (which Mr Bateson did not know existed until his lawyers made enquiries and it was found on a computer system at Victoria Police during the Commission),¹⁵⁹ Mr Thomas *had* the information that was in it and he *used* it to attack Mr McGrath's credit. He had the information in the form of a complete transcript of his conversations with police, rather than in the form of a statement.
- 14.62 In summary, the transcripts of the conversations and the transcript of the committal hearing is incontrovertible evidence that:
- (a) Com. Bateson's insistence in his evidence to the Commission that he had not withheld from Mr Thomas what Mr McGrath had first told police about his knowledge of the Marshall murder was accurate and honest;
 - (b) in fact, Mr Thomas had been given the best evidence of what Mr McGrath had told police, namely complete transcripts of his actual conversations with police;
 - (c) Com. Bateson's evidence that he had a memory of Mr McGrath being cross-examined about the change in his belief about the Marshall murder was honest and accurate. When he gave that evidence, in response to a question asked by Counsel Assisting, counsel did not then explore it with him to seek to ascertain further detail;¹⁶⁰ and
 - (d) the lengthy submissions made by Counsel Assisting that Com. Bateson had withheld the above information from Mr Thomas and, therefore, 'deliberately concealed from Mr Thomas the weaknesses in the case against him' (being that Mr McGrath's credit could be attacked on the basis that he had changed what he had told police about his belief in relation to a separate murder – the Marshall murder) are wrong. It follows that the Commission must reject them.

¹⁵⁷ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at T548-560, T583-586, T150.21-151.9, T170.13-22, T174.21-31, T244-280. Time has not permitted a full review of the entire transcript of the committal hearing and, therefore, other parts of the transcript may also be relevant.

¹⁵⁸ Exhibit RC0785 – Statement of Mr McGrath dated 13 July 2004 at [9], [31], [38], [52] (COM.0103.0001.0002_HA).

¹⁵⁹ Exhibit RC1429 – Statement of Timothy James McKinney dated 22 November 2019 (VPL.0005.0260.0008 at .0008-0009).

¹⁶⁰ T3385.21-22; T3386.25-30.

- 14.63 Now, returning to the topic of Ms Gobbo apparently having a conflict in acting for Mr Thomas.
- 14.64 Not only is there evidence before the Commission that Mr Thomas retained Ms Gobbo knowing that she had acted for Mr McGrath, there is also documentary evidence that both Mr Thomas' solicitor and Queens Counsel also *knew* that she had acted for Mr McGrath.
- 14.65 Neither the solicitor nor the Queens Counsel were asked by Counsel Assisting whether, and why, they considered it appropriate for Ms Gobbo to act for Mr Thomas. Nor were they asked about the topic just addressed above.
- 14.66 It may be that the solicitor and/or Queens Counsel raised the potential conflict with Mr Thomas and that he told them that he wanted Ms Gobbo to act for him. We do not know because they were not asked those questions. Mr Thomas was not asked either. It may be that they discussed the potential conflict with Ms Gobbo who told them that both clients consented to her acting. We do not know because those questions were not asked.
- 14.67 There is also uncontested evidence that many other legal practitioners involved and a judicial officer knew that Ms Gobbo acted for Mr Thomas in circumstances where she had previously acted for Mr McGrath when he became a Crown witness against Mr Thomas.
- 14.68 Despite this evidence – much of which is either ignored or glossed over in the submissions made by Counsel Assisting – Com. Bateson is severely criticised for not preventing Ms Gobbo from acting for Mr Thomas.
- 14.69 How a police member could have prevented Mr Thomas from retaining his lawyer of choice, especially in circumstances where he and his legal team were aware of the potential conflict, is not explained by Counsel Assisting. Nor do they explain why they consider it to have been part of Com. Bateson's job as a police officer, especially when Mr Thomas' own legal team, other legal practitioners and the court were aware of her representation of both Thomas and McGrath.
- 14.70 Williams, Thomas and Andrews were committed to stand trial in relation to their murder charges.
- 14.71 On 14 November 2005, Mr Williams was convicted at trial of murdering Mr Marshall. Mr McGrath had given evidence for the Crown.¹⁶¹
- 14.72 The conviction of Mr Williams gave confidence that convictions against the other members of the crew would follow. Com. Bateson believed that it would place pressure on Mr Thomas and Mr Andrews to make a decision about their plea.¹⁶² Given what happened next, it is likely that he was right.
- 14.73 By 3 February 2006, Mr Andrews had written to the Senior Crown Prosecutor indicating that he wished to plead guilty and co-operate.¹⁶³
- 14.74 Ten days later, from 13 February 2006, the process of taking statements from Mr Andrews began.¹⁶⁴
- 14.75 This development left Mr Thomas very vulnerable. Two of his crew members, Mr McGrath and Mr Andrews, were implicating him. He also knew that a third, Carl

¹⁶¹ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [73] (VPL.0014.0027.0001 at .0012).

¹⁶² Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [73] (VPL.0014.0027.0001 at .0012).

¹⁶³ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [75] (VPL.0014.0027.0001 at .0013).

¹⁶⁴ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [77] (VPL.0014.0027.0001 at .0013).

- Williams, was considering doing so.¹⁶⁵ Com. Bateson thought that Mr Thomas would know Mr Andrews had decided to co-operate because he and Mr Andrews were in the same part of the prison together and Mr Andrews was taken out of prison to make his statements.¹⁶⁶ Again, it seems Com. Bateson was right.
- 14.76 Within a week, Com. Bateson had been asked to attend a meeting with Ms Gobbo and her instructing solicitor to discuss Mr Thomas' interest in following the same course as his crew members.¹⁶⁷ Com. Bateson then met with the OPP and with Mr Thomas to discuss his interest.¹⁶⁸
- 14.77 In the meantime, Mr Andrews completed his statements, and, on 10 March 2006, he pleaded guilty to executing Mr Marshall and Jason Moran and Pasquale Barbaro. On 14 March 2006, he was sentenced to life imprisonment with a minimum of 23 years.¹⁶⁹
- 14.78 The next day, 15 March 2006, Com. Bateson met with Mr Thomas about his desire to also plead guilty and to co-operate with police in return for a reduced sentence.¹⁷⁰
- 14.79 On 29 June 2006, *before* he had started making his statements, Mr Thomas pleaded guilty to the murder of Jason Moran. Com. Bateson explained in evidence that Ms Gobbo and Mr Horgan SC had likely spoken before the plea about Mr Thomas wanting a sentence reduction by providing assistance.¹⁷¹
- 14.80 After he entered his plea, Com. Bateson visited him in the cells. Mr Thomas said that he wished to assist police. He said that to Com. Bateson in the presence of both Ms Gobbo and his solicitor.¹⁷²
- 14.81 Thereafter, Com. Bateson "*co-ordinated*" the taking of Mr Thomas' statements. He had "*limited involvement*" in taking the statements.¹⁷³
- 14.82 On 7 September 2006, evidence was given before the Honourable Justice King about the assistance that Mr Thomas had provided, and, on 27 September 2006, he was sentenced to a term of imprisonment of 23 years with a minimum of 12 years for the murder of Jason Moran.¹⁷⁴
- 14.83 Early the following year, on 28 February 2007, the head of the crew, Carl Williams, pleaded guilty to murdering Jason Moran and his father, Lewis, and Mark Malia. He also pleaded guilty to conspiracy to murder a lawyer known to the Commission. In exchange for his guilty plea, the murder charges in relation to Pasquale Barbaro and Mark Moran, and drug charges, were withdrawn.¹⁷⁵ He was later sentenced to life imprisonment with 35 years non-parole.¹⁷⁶
- 14.84 The underworld war was at an end.
- 14.85 Com. Bateson left the Purana Taskforce and later returned to the Homicide Squad.¹⁷⁷

¹⁶⁵ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [87] (VPL.0014.0027.0001 at .0014); T3402.10-18, T9756.27-30, T9759.41-43 (Bateson).

¹⁶⁶ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [77] (VPL.0014.0027.0001 at .0013).

¹⁶⁷ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [78] (VPL.0014.0027.0001 at .0013).

¹⁶⁸ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [79], [80] (VPL.0014.0027.0001 at .0013).

¹⁶⁹ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [82] (VPL.0014.0027.0001 at .0014).

¹⁷⁰ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [83] (VPL.0014.0027.0001 at .0014).
¹⁷¹ T9744.3-9.

¹⁷² Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [92] (VPL.0014.0027.0001 at .0015).

¹⁷³ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [95] (VPL.0014.0027.0001 at .0016).

¹⁷⁴ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [99] (VPL.0014.0027.0001 at .0016).

¹⁷⁵ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [104] (VPL.0014.0027.0001 at .0017).

¹⁷⁶ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [108] (VPL.0014.0027.0001 at .0017).

¹⁷⁷ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [3] (VPL.0014.0027.0001 at .0001-0002);

Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [110] (VPL.0014.0027.0001 at .0018).

- 14.86 Early in the period covered above, Com. Bateson had concerns about Ms Gobbo. To him and his crew, Ms Gobbo 'wasn't just a barrister'.¹⁷⁸ She was part of Williams' criminal crew – the legal arm.¹⁷⁹ Com. Bateson was initially concerned Ms Gobbo would feed information back to the crew when she was acting for Mr McGrath which would create serious safety risks for him. Similar concerns about Ms Gobbo were held by his boss, DI Ryan.¹⁸⁰ Com. Bateson's evidence was that Ms Gobbo had been at pains to convince him that she would not feed information back to Williams and the crew about her client, Mr McGrath.¹⁸¹
- 14.87 Over time, Com. Bateson came to the view that she was acting in the best interests of Mr McGrath and not feeding information back to the crew.¹⁸² Mr McGrath had been caught red handed in relation to the murder of Mr Marshall and, with his criminal history, he was facing a significant term of imprisonment.¹⁸³ He received 18 years imprisonment with a non-parole period of 10 years.¹⁸⁴ While he admitted also murdering three other people, brothers Mark and Jason Moran and Pasquale Barbaro, Ms Gobbo and her instructing solicitor negotiated with the OPP for him to get an indemnity in relation to those three murders. Therefore, he received a minimum of only 10 years imprisonment for four execution murders.¹⁸⁵
- 14.88 As it now turns out, Com. Bateson's initial concern about Ms Gobbo, which she convinced him was not well founded, was, in fact, well founded. As set out above, Mr Thomas' evidence to the Royal Commission was that Ms Gobbo was doing exactly what Com. Bateson initially feared – she was acting for Mr McGrath and reporting back to crew members, Thomas and Williams, about his co-operation with police.
- 14.89 The submissions made by Counsel Assisting do not refer to this evidence or to the further evidence given by Mr Thomas that up until his arrest he had paid Ms Gobbo a monthly cash retainer to keep him informed as to whether any of his associates were to be charged or were likely to make statements against him. He said that Mr Williams had a similar retainer with Ms Gobbo.¹⁸⁶ Ms Gobbo denied that.
- 14.90 When regard is had to this evidence and the detailed evidence about Ms Gobbo set out in Appendix A, it is plain that, contrary to the submissions put by Counsel Assisting, Com. Bateson did not have Ms Gobbo wrapped around his little finger.¹⁸⁷ Nor did she feel ' beholden to him' for not telling Mr Thomas that she had acted for Mr McGrath when he co-operated with police.¹⁸⁸ Mr Thomas already knew. She had told him herself.
- 14.91 Lastly, in 2005, when Ms Gobbo was having contact with Com. Bateson in her role as one of Mr Thomas' lawyers, she told him that other lawyers who were acting for underworld figures in Melbourne were engaging in criminal conduct.¹⁸⁹ He reported this to his superior officers on each occasion it occurred.¹⁹⁰

¹⁷⁸ T3415.41.

¹⁷⁹ T3415.20-44.

¹⁸⁰ T3430.24-40; Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [36] (VPL.0014.0039.0001 at .0007).

¹⁸¹ Counsel Assisting Submissions at p. 116 [545], Vol 2.

¹⁸² T3368.44-3369.15; T3371.14-3372.25.

¹⁸³ T10110.23-26; T9747.34 – 38.

¹⁸⁴ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [62] (VPL.0014.0027.0001 at .0011).

¹⁸⁵ *R v [McGrath]* [2005] VSC 6.

¹⁸⁶ Exhibit RC01175 – Statement of Mr Thomas at [18]-[21] (RCMPI.0131.0001.0001_0001 at _0005-_0006); Exhibit RC1175 – Statement of Mr Thomas at [20] (RCMPI.0131.0001.0001_0001 at _0005-_0006); Exhibit RC1161B – Telephone intercept logs, 2 August 2004 (VPL.0099.0113.2919 at .0036).

¹⁸⁷ T10074.36-37.

¹⁸⁸ Counsel Assisting Submission at p. 225 [1038], Vol 2.

¹⁸⁹ Exhibit RC0269 – Statement of Commander Stuart Bateson 7 May 2019 at [69] (VPL.0014.0027.0001 at .0011).

¹⁹⁰ 3424.3-8; 3428.4-13; 9634.1-17.

14.92 Com. Bateson explained that if Ms Gobbo was a regular legal practitioner then he would have found this conduct unusual. However, she was not. She was a criminal associate and there was nothing unusual about such people talking to police.¹⁹¹ This matter is addressed in detail below.

15 Section B – Counsel Assisting’s allegations in Chapter 7

16 The first false premise: Ms Gobbo ‘edited’ Mr McGrath’s statements or otherwise acted improperly

- 16.1 The first false premise is that Ms Gobbo was improperly involved in ‘editing’ Mr McGrath’s statements.
- 16.2 Mr McGrath’s statements were taken between 22 and 30 June 2004. Ms Gobbo had no involvement. She also had no involvement in the investigative process that preceded it.
- 16.3 There were three statements - a statement in relation to the Marshall murder, a statement in relation to the Mark Moran murder, and a statement in relation to the Jason Moran and Pasquale Barbaro murders. Significantly, DSC Hatt had taken the first two statements and Com. Bateson the latter statement.¹⁹²
- 16.4 On 9 July 2004, Com. Bateson and DSC Hatt attended on Mr McGrath in prison for him to read his unsigned statements about the Marshall murder and the Moran/Pasquale murders. The Mark Moran statement was still being drafted. Com. Bateson could not recall whether Mr McGrath was given the statements in hard copy to read in their presence or allowed to read them on one or more laptop computers.¹⁹³
- 16.5 After Mr McGrath had read his two unsigned statements, he asked for minor amendments, which Com. Bateson and/or DSC Hatt made in Mr McGrath’s presence on the laptop computer(s).¹⁹⁴ Mr McGrath then said he wanted his lawyer Ms Gobbo to review his statements prior to signing them.¹⁹⁵ There is nothing unusual about an accused person making such a request. It is common.
- 16.6 On 10 July 2004, DSC Hatt then took Mr McGrath’s unsigned statements to Ms Gobbo in her chambers and she reviewed them.¹⁹⁶
- 16.7 Ms Gobbo did not mark up the unsigned statements, nor did she suggest changes. She wrote notes about matters that she intended to speak to Mr McGrath about.¹⁹⁷ Ms Gobbo identified some of those matters to DSC Hatt, and he noted them in his diary.¹⁹⁸
- 16.8 Com. Bateson assumed that the unsigned statements that DSC Hatt had shown to Ms Gobbo had not been retained, because he understood that to be usual practice.¹⁹⁹

¹⁹¹ T9652.17-21.

¹⁹² T3377.8-30; Exhibit RC0785 – Statement of McGrath in relation to the Marshall murder (COM.0103.0001.0002_HA – see DSC Hatt’s details on the final page). Untendered – Statement of McGrath in relation to the Moran and Barbaro murders (VPL.0100.0025.4283 – see Com. Bateson’s details on the final page).

¹⁹³ T3378.44-3379.1; Exhibit RC0262 – Statement of Mark Hatt dated 17 June 2019 at [18] (VPL.0014.0043.0001 at .0003).

¹⁹⁴ T3378.36-38.40-42; T3380.44-3381-4; T9809.45-9810.1.

¹⁹⁵ T3378.32-34.

¹⁹⁶ Exhibit RC0776 – Diary of Mark Hatt, 10 July 2004 (VPL.0005.0114.0001 at .0030); Exhibit RC0273 – Diary and Court Book of Ms Gobbo, 10 July 2004 p 5 (MIN.0001.0014.0002 at .0065).

¹⁹⁷ Exhibit RC0273 – Diary and Court Book of Ms Gobbo, 10 July 2004 p 5 (MIN.0001.0014.0002 at .0065).

¹⁹⁸ Exhibit RC0776 – Diary of Mark Hatt, 10 July 2004 (VPL.0005.0114.0001 at .0030).

¹⁹⁹ T9600.15-19.

- However, as matters became clear, it was DSC Hatt and not Com. Bateson who had possession of the unsigned statements.²⁰⁰
- 16.9 Nonetheless, Com. Bateson's assumption that the unsigned statements had not been retained was consistent with his understanding of usual practice, which was that signed statements were treated as the exhibit while any unsigned and redundant versions were not retained.²⁰¹
- 16.10 After Ms Gobbo had read her client's statements, she contacted Com. Bateson and asked him to arrange for her to be able to see her client at the prison the following day.²⁰² In the course of that conversation, Ms Gobbo told Com. Bateson her view that certain parts of the statement taken by DSC Hatt about the Marshall murder were not true, including Mr McGrath's statement that he did not know that Mr Marshall was to be murdered and that he thought it was only a debt collection.²⁰³ That was indiscreet. She should not have shared her view, but it was a view common amongst those involved in the investigation and prosecution, including Com. Bateson. Ms Gobbo was, in that sense, stating the obvious. Ms Gobbo was not revealing to investigators anything they did not already know. Ms Gobbo should not have done it, but in circumstances where Mr McGrath's lack of candour was obvious, it was hardly a significant event.
- 16.11 In any event, as requested, Com. Bateson arranged for Ms Gobbo to confer with her client, Mr McGrath, at the prison on 11 July 2004.
- 16.12 On 11 July 2004, Ms Gobbo conferred with Mr McGrath in prison. She took instructions from him which are recorded in her court book.²⁰⁴
- 16.13 Following that visit, she called Com. Bateson and told him that Mr McGrath would be "honest". There was nothing unusual about that. It is common for defence lawyers to advise their clients, who have become Crown witnesses, to be honest in their witness statements so that they receive the largest possible sentencing discount.
- 16.14 On 12 July 2004, Com. Bateson and DSC Hatt attended on Mr McGrath in prison.²⁰⁵ Mr McGrath asked for changes to be made to his two statements, including, in relation to Mr Marshall, that he believed it was going to be a murder, not a debt collection.²⁰⁶
- 16.15 DSC Hatt made the changes to the Marshall statement on a laptop computer.²⁰⁷ Com. Bateson made the requested changes to the Moran and Barbaro statement on a laptop computer.²⁰⁸ Com. Bateson made a note of changes having been made to the statements in his diary. Mr McGrath again said that he wanted his lawyer, Ms Gobbo, to consider the changes before he signed his statements. Accordingly, Com. Bateson contacted Ms Gobbo about the changes that afternoon.
- 16.16 On 13 July 2004, Com. Bateson and DSC Hatt attended on Mr McGrath in prison with copies of the two statements. After some further minor changes were made, Mr McGrath signed his two statements following a readback.

²⁰⁰ T3387.25-27.

²⁰¹ T10128.29-30.

²⁰² T9815.16-44.

²⁰³ T3384.26-33; T3387.8-12; T3388.36-41; T3388.47-3389.3; T9819.29-33.

²⁰⁴ T3391.36-47.

²⁰⁵ Exhibit RC0262 – Statement of Mark Hatt dated 17 June 2019 at [19] (VPL.0014.0043.0001 at .0003).

²⁰⁶ T3387.35-37.

²⁰⁷ T3378.36 – 42; T3380.44 – T3381.4; T3382.44-3383.23; T9953.37-9554.14; T9703.12-23.

²⁰⁸ T3377.32-47.

- 16.17 Counsel Assisting characterise these events as Ms Gobbo 'editing' Mr McGrath's statements and proceeded on the unstated but pervasive assumption that Ms Gobbo's conduct was improper.
- 16.18 As to the first, Ms Gobbo did not edit Mr McGrath's statements. She did not mark up the documents. She did not direct police to make changes.
- 16.19 She took instructions from her client. Ms Gobbo recalled that her advice to Mr McGrath was that he was not going to get the most significant sentencing discount because Victoria Police would consider aspects of his statement to be "*a bunch of lies*".²⁰⁹ Having advised Mr McGrath and taken instructions, Ms Gobbo informed Com. Bateson that Mr McGrath would be "*more truthful*" with police.²¹⁰
- 16.20 Ms Gobbo said also that she would have advised Mr McGrath to be "*open and frank with the police so that he would ... be entitled to the maximum benefit*".²¹¹ That was precisely the advice that any competent lawyer would have given Mr McGrath. It is advice that is commonly given.
- 16.21 When Com. Bateson and DSC Hatt attended on Mr McGrath, Mr McGrath said that he wanted to make changes and they amended the unsigned statements in accordance with his wishes. Ms Gobbo had no role in that meeting, nor as to the form of the amendments. It seems that she did not see Mr McGrath's final statements.²¹²
- 16.22 Mr McGrath was not asked why he made the changes, nor whether he had done so on Ms Gobbo's advice. Counsel Assisting did not obtain a statement or call him to give evidence about those matters.
- 16.23 As such, the repeated assertion by Counsel Assisting that Ms Gobbo 'edited' Mr McGrath's statements must be rejected. Ms Gobbo did what any competent lawyer would do – she identified issues in the statements, advised Mr McGrath to be honest and took instructions.
- 16.24 As to Ms Gobbo having reviewed Mr McGrath's statements at all, that was perfectly proper. As Com. Bateson observed, this was a 'pretty common procedure for criminal Crown witnesses'.²¹³ Consistently:
- (a) Mr Andrews asked his solicitor, Mr Duggan, to review his statements before he signed them;²¹⁴ and
 - (b) Mr Williams asked his counsel, Ms Cure, to review his statement before he signed it.²¹⁵
- 16.25 Not only is this a common practice, it is a lawful and ethical practice. There are many reasons why an accused person who has agreed to cooperate with police, or is considering doing so, might want their legal representative to review a draft statement before they sign it.
- 16.26 The accused might want advice about:
- (a) whether the information provided will be sufficient to secure a sentence within the proposed range;

²⁰⁸ T13161.30-34 (Gobbo).

²¹⁰ T3392.19-28; T9553.31-35.

²¹¹ T13270.1-6 (Gobbo).

²¹² T13267.43-46 (Gobbo).

²¹³ T10097.35-36; Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson dated 7 May 2019 at [48] (VPL.0014.0027.0020 at .0033).

²¹⁴ T10095.32-35.

²¹⁵ T10097.29-33.

- (b) whether the statement accurately reflects his instructions noting the constraints associated with giving a statement in the prison environment and personal considerations such as literacy difficulties; and
 - (c) the personal consequences of signing the statement, having regard to its subject matter and the considerations such as personal safety.
- 16.27 In relation to the second of those reasons, it was the standard practice of the OPP to ask an accused person who was considering cooperating with police to provide a true, accurate and complete statement of the evidence they can give to enable the Crown to make an assessment of its veracity and value.²¹⁶
- 16.28 A legal practitioner who is asked by their client to review a statement and who identifies content that, in the view of the legal practitioner, may not be true and correct is obliged to take instructions about those matters. Among other things, an accused person who gives false or misleading evidence in contravention of a cooperation agreement is subject to the potential prejudice of being resentenced. This process of review is entirely orthodox.

Proposed findings at [622]

- 16.29 At paragraph [622] Counsel Assisting submit that Com. Bateson was disingenuous when he gave evidence about the point at which Mr McGrath's statements were in "draft".
- 16.30 There are several reasons why this finding should not be made.
- 16.31 First, it is of no assistance to this Commission to make a finding that Com. Bateson's answer to any specific question was 'disingenuous'. A finding of that kind cannot aid the Commissioner's task of inquiring into and reporting on the matters set out in the terms of reference. The issue underlying the proposed finding in paragraph [622], being the question of whether Victoria Police had adequate systems in place regulating the methodology for taking statements, including the circumstances in which unsigned statements are to be retained and disclosed, is significant. If that issue is considered to be covered by the Commission's terms of reference (which we do not say it is), then it is that issue to which the Commission's attention should be directed.
- 16.32 Second, and in any event, the answer was not disingenuous.
- 16.33 As at 2 July 2019, when Com. Bateson gave the answer in question, he did not know that a significant issue for consideration by the Commission was whether he had failed to disclose in criminal proceedings unsigned statements of Mr McGrath. He was not asked to address that question in his written statement, it was not put to him in the course of his cross-examination and he was not asked to file a supplementary statement addressing it. There is no basis at all to say that, on 2 July 2019, Com. Bateson understood, or ought reasonably to have understood, that this was a significant issue for consideration in this inquiry. The Commission's terms of reference direct an inquiry into the use of human sources, and not into police preparation and disclosure of witness statements. It is not explained at all by Counsel Assisting as to how Com. Bateson knew that the latter was an issue for the Commission to consider, let alone a significant issue. Much later when it did become apparent through hearings that Counsel Assisting considered the latter issue to be a relevant matter for the Commission to consider, Com. Bateson, without being asked to do so, provided a

²¹⁶ Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson dated 17 November 2019 (VPL.0014.0027.0020 at .0020-0021).

- supplementary statement addressing the issue of unsigned statements. He did that on 17 November 2019.²¹⁷
- 16.34 Third, Counsel Assisting mischaracterise Com. Bateson's evidence. The question that Com. Bateson was answering in the passage extracted at paragraph [621] was this:
- What you say is between 22 and 30 June 2004 you attend [a prison] to take statements from [McGrath]. One assumes that you would have had statements, at least in draft form, by then?*
- 16.35 Com. Bateson's answer was directed to "then" – being the period between 22 and 30 June 2004 when Mr McGrath's statements were initially taken.
- 16.36 Com. Bateson's answer was consistent with his understanding of general practice.
- 16.37 Com. Bateson's evidence was that his statement taking practice was:
- (a) to follow the PEACE model;
 - (b) to create a word document and type the witnesses account of the incident as the witness is relaying it;
 - (c) to try not to interrupt the witness in the early phase, but to prompt them, if required, using open ended questions;
 - (d) to add further details or make changes in accordance with the witness's recollections and clarifications; and
 - (e) to introduce new topics using open questions for material not covered by the witness.²¹⁸
- 16.38 Where Com. Bateson was not able to take a statement in one sitting, he simply accessed the document on the computer and continued on.²¹⁹ Com. Bateson did not create different electronic versions of a statement. He commented that it would also be unfair to the witness to do so. That is because, until they moved to the "closure" phase of the PEACE model, the witness did not review the document or its contents.²²⁰ It was commonplace for a witness to make significant changes to a working draft on the basis that it did not accurately capture what they said, or what they meant.²²¹ If a statement was printed for a witness to read and the witness wanted to make changes then he retained the signed statement as an exhibit but not unsigned versions.²²² His practice was to record in his diary that changes had been made.²²³
- 16.39 Fourth, and following, Com. Bateson's evidence is reasonable, logical and consistent with common experience. It is common practice for statements that are taken on a computer to be revised and amended until they are sufficiently advanced so as to be considered a complete 'draft' of the intended final work produced. This is particularly so when statements are lengthy, address complex subject matter or call for precision.

²¹⁷ Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson dated 17 November 2019 at [46]-[52] (VPL.0014.0027.0020 at .0032-.0034).

²¹⁸ Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson 17 November 2019 at [47] (VPL.0014.0027.0020 at .0032).

²¹⁹ Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson 17 November 2019 at [47] (VPL.0014.0027.0020 at .0032).

²²⁰ Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson 17 November 2019 at [47]-[48] (VPL.0014.0027.0020 at .0032-.0033).

²²¹ Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson 17 November 2019 at [47]-[48] (VPL.0014.0027.0020 at .0032-.0033).

²²² Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson 17 November 2019 at [47]-[48] (VPL.0014.0027.0020 at .0032-.0033).

²²³ T9856.4-8.

- 16.40 As such, there is nothing surprising about Com. Bateson's view that, in the period between 22 and 30 June 2004, the statements were not in 'draft' form, in the sense that they were being worked on intensively over a period of days and did not yet represent a draft of the final work product.
- 16.41 When similar issues were raised at a mention hearing in the prosecution of Carl Williams on 30 March 2006, Justice King said that her practice was to "*sit there and type and change it as I go and I delete and more forward, that's how people do it who are computer literate and can type*".²²⁴ That description is entirely consistent with the process described by Com. Bateson.
- 16.42 Fifth, Com. Bateson accepted that by 9 July 2004, Mr McGrath's statements were in draft.²²⁵ He believed that the draft statement in relation to the Marshall murder as it stood on 9 July 2004 would have been overwritten with the changes Mr McGrath asked for on 12 July 2004.²²⁶ However, an electronic copy of the draft as it stood at 9 July 2006 was located on a computer at Victoria Police and produced to the Commission in the course of Com. Bateson's evidence.²²⁷ It is likely that this is the version that was given to Ms Gobbo on 10 July 2004. It is not surprising that Com. Bateson did not know that draft existed on a computer. He did *not* prepare that statement. DSC Hatt prepared it.²²⁸
- 16.43 Finally, Com. Bateson's answer must be seen in the context of the absence of any policy or standard operating procedure for taking witness statements. Com. Bateson had never received any training or directions about creating and retaining drafts.²²⁹ Victoria Police did not mandate the procedure for taking statements. There was no directive as to 'drafts' nor the circumstances in which drafts were to be kept and disclosed. Accordingly, each officer developed their own practice. Com. Bateson's practice was consistent with other officers who gave evidence to the Commission and with the process described by Justice King.
- 16.44 Com. Bateson said that in the future he would retain unsigned versions of statements.²³⁰ That is despite Victoria Police policy not containing any direction to do so. That was not a concession that he had done anything improper. It reveals a willingness to improve processes so that such documents are available to the defence in the future if they are relevant and it will avoid any criticism in the future.
- 16.45 On the evidence, it is open to the Commissioner to find that:
- (a) Mr McGrath's statement about the Marshall murder was taken by DSC Hatt typing into a computer and he made the changes requested by Mr McGrath on his computer;
 - (b) Com. Bateson made a note in his diary that he and DSC Hatt had attended on Mr McGrath who made changes to his statements and he described the nature of the changes;
 - (c) Com. Bateson assumed when he was giving evidence, based on his own processes, that unsigned versions of the Marshall statement did not exist. On request from the lawyers for Mr Bateson and Victoria Police, Victoria Police

²²⁴ Untendered – Transcript of Hearing 30 March 2006 T35.6-9 (VPL.0099.0025.0504 at .0539).

²²⁵ T3378.16-20.

²²⁶ T10131.2-24; T3389.39-44.

²²⁷ T9726.37-9727.24.

²²⁸ T10126.39-T10127.6; Exhibit RC1429 – Statement of Timothy James McKinney dated 22 November 2019 (VPL.0005.0260.0008).

²²⁹ T9857.6-8.

²³⁰ T9856.41-45.

searched its computer systems and found an earlier electronic version of the Marshall statement. The metadata showed that it had been created by an analyst, Scott Elliott, and printed by DSC Hatt.²³¹ As soon as the electronic draft was found, it was provided to Counsel Assisting during Mr Bateson's cross-examination;

- (d) Mr McGrath's witness statements were printed when it was necessary for Mr McGrath to read and possibly sign them (the first occasion being 9 July 2004);
- (e) in the development phase, iterative drafts were not kept by DS Bateson, with revisions to the statement that he took being made in the usual way described by Justice King; and
- (f) Com. Bateson's standard practice was not to retain printed unsigned statements.

16.46 It is also open to the Commissioner to find that:

- (a) Victoria Police had no policy in place detailing the procedure to be followed in taking statements over multiple days and no policy governing the creation, retention and disclosure of draft statements; and
- (b) it was common practice for statements to be taken in the way described by Justice King - on a computer without iterative drafts being kept and with revisions to the statement being made in a single electronic document, with members making a note in their diary of any substantive changes having been requested by the witness and made after they had read their statement and before they then signed it.

17 The second false premise: concealing daybook entries

- 17.1 The second false premise is that Com. Bateson was involved in concealing from the defence and the court daybook entries that showed Ms Gobbo's involvement in Mr McGrath's representation and advising him about his statements.
- 17.2 This allegation is very serious and demonstrably false. It is evident from the submissions made by Counsel Assisting that they are not alive to the matters set out below. The matters are not analysed or even mentioned. The consequence of the analysis below is that the allegation must be withdrawn.
- 17.3 After charges were laid against Thomas, Williams and Andrews, Com. Bateson was involved in preparing the material that was to be disclosed to the defence, both in accordance with Victoria Police's general obligation and pursuant to a number of requests made by the defence, including a number of subpoenas.
- 17.4 On 23 September 2004, a mention hearing took place before the Honourable Justice Teague in the Supreme Court about various matters, including subpoenas issued by the defence. The hearing was in the Supreme Court because the accused persons had been directly presented. The charges were later referred back to the Magistrates Court for a committal hearing.
- 17.5 Mr Faris QC appeared for Mr Williams. Ms Gobbo appeared for Mr Thomas.

²³¹ Exhibit RC1429 – Statement of Timothy James McKinney dated 22 November 2019 (VPL.0005.0260.0008).

- 17.6 Com. Bateson was cross-examined by Mr Faris QC, acting for Mr Williams, about Victoria Police's holdings by reference to categories set out in a letter to the OPP dated 13 September 2004.²³²
- 17.7 Many documents responsive to the categories in the letter had already been produced,²³³ including police notes with Ms Gobbo's name redacted.²³⁴ In response to the subpoenas, more police diary notes and daybook entries were produced with black redactions.²³⁵
- 17.8 One category of documents was "*any other statements of Mr McGrath whether signed or unsigned*".²³⁶ Com. Bateson responded that there were no such statements relevant to the charges in that proceeding. He was asked about other statements made by Mr McGrath. In response, he said Victoria Police claimed PII and he stated that he needed legal advice.²³⁷
- 17.9 On 1 March 2005, after the charges had been referred back to the Magistrates Court, the committal hearing commenced.
- 17.10 Whilst it is unclear, it appears that Ms Gobbo did not appear in court for Mr Thomas during the committal hearing. This issue is addressed in more detail later in the submissions.
- 17.11 Shortly after 2 pm, the Court dealt with a subpoena that had been issued by Mr Williams.
- 17.12 Mr Silbert QC appeared for the Chief Commissioner of Victoria Police (CCP) in relation to the production of documents.²³⁸
- 17.13 In relation to police diary and daybook notes that had been supplied, Mr Silbert QC noted that the defence 'wanted to query some of the editing', that about 25 pages were in contention and Mr Bateson was available to address the Court about them.²³⁹
- 17.14 Mr Silbert QC told the court that:
- The way we have resolved it is to have them excerpted and have Your Honour look at the edited form against the **unedited form** so that Your Honour can then satisfy yourself that they don't bear any relevance or don't advance the defence position in any material effect.*²⁴⁰
- 17.15 The following morning, Chief Magistrate Gray was duly provided with a folder of documents setting out the "*edits*".²⁴¹ Mr Silbert QC was not available and so Mr Sanelli appeared. Chief Magistrate Gray examined Com. Bateson in a closed session about the edits/redactions.²⁴² We understand that the Commission has not been able to locate a copy of the transcript of the hearing.

²³² Exhibit RC0773 Transcript of proceedings, R v Carl Anthony Williams, Andrews and Thomas (Supreme Court of Victoria, Teague J, 23 September 2004) RCMP1.0108.0002.0006 at .0015.

²³³ Exhibit RC0773 Transcript of proceedings, R v Carl Anthony Williams, Andrews and Thomas (Supreme Court of Victoria, Teague J, 23 September 2004) RCMP1.0108.0002.0006 at .0015.

²³⁴ T3414.32-43.

²³⁵ Exhibit RC01163 – Memorandum from Valos Black (Nicola Gobbo) to Colin Lovitt QC dated Friday 18 February 2005 (MIN.5000.0002.4504 at .4507).

²³⁶ Exhibit RC0773 Transcript of proceedings, R v Carl Anthony Williams, Andrews and Thomas (Supreme Court of Victoria, Teague J, 23 September 2004) RCMP1.0108.0002.0006 at .0015.

²³⁷ Exhibit RC0773 Transcript of proceedings, R v Carl Anthony Williams, Andrews and Thomas (Supreme Court of Victoria, Teague J, 23 September 2004) RCMP1.0108.0002.0006 at .0015.

²³⁸ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at T39.2-14.

²³⁹ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at T40.24-30.

²⁴⁰ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at T41.1-6.

²⁴¹ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at T84.12-14.

²⁴² T9582.30-42.

17.16 On the Court re-opening, the following exchange took place:

Mr Lovitt QC: Your Honour, I've been concerned on behalf of my client to obtain the police notes in particular of Mr Bateson and perhaps Mr Hatt concerning conversations that they had with [Mr McGrath] at the time prior to June 12, when according to Bateson's notes there's a statement taken in relation to the – 13 June last year - 2004 - a statement taken in relation from [Mr McGrath] in relation to the Jason Moran/Barbaro shooting.

Chief Magistrate Gray: I can indicate that having conducted the exercise I just have part of it did involve me questioning, to some extent cross-examining, but certainly questioning, the informant and the very point you just made that was taken up I took up at one point and there will be in fact a ruling that I make in a minute which will result in partial disclosure of some material along the lines of what you're indicating would be of legitimate forensic interest and use to you and your client, so I understand the point.

17.17 It is apparent from this exchange that the Chief Magistrate understood the concern of the defence in relation to Mr McGrath's statement process and made his ruling with regard to it.

17.18 His Honour then delivered a ruling. The ruling is not in the depositions (despite a direction from his Honour that the ruling be reproduced in the transcript of proceedings). We understand that the Commission has not been able to locate the ruling.

17.19 Later in the committal proceeding, an exhibit – exhibit 32 - said to contain all police diary notes and daybook entries served outside the hand up brief was tendered into evidence. Clearly, where redactions had been upheld, the unredacted notes were not included.

17.20 It is exhibit 32 on which Counsel Assisting relies to assert that Com. Bateson deliberately concealed daybook entries for 10 and 11 July 2004 from the defence and the court. As will be seen, the daybook entries were produced, but were not included in exhibit 32.

17.21 It is clear from the transcript that exhibit 32 was created *after* the Chief Magistrate ruled on Com. Bateson's redactions.²⁴³

17.22 What is known, therefore, is that the Chief Magistrate upheld the redactions of, for example:

- (a) Com. Bateson's discussion with Mr McGrath on 12 July 2004; and
- (b) Com. Bateson's discussion with Ms Gobbo on 12 July 2004.

17.23 This is known because those pages appear in partly redacted form in exhibit 32.

17.24 Counsel Assisting submit that Com. Bateson failed to disclose to the court two dates from his daybooks – 10 and 11 July 2004. These pages contain a record of Ms Gobbo's involvement in the events described under Issue 1 above.

²⁴³ Exhibit RC0747 – Depositions of Committal, R v Carl Williams, Thomas and Andrews (OPP.0041.0001.0002 at T803.17-804.1).

- 17.25 Counsel Assisting's submission rests on the absence of the daybook entries for these days from exhibit 32.
- 17.26 Counsel Assisting's submission is wrong.
- 17.27 A careful review of the evidence demonstrates that Com. Bateson's daybook entries were disclosed. They were not, however, put into exhibit 32 which is explained below.
- 17.28 Counsel Assisting's contention rests on the following propositions:
- (a) that exhibit 32, handed up by Mr Lovitt QC, contained all daybook and diary entries produced by Victoria Police;
 - (b) that Com. Bateson's entries for 10 July 2004 and 11 July 2004 do not appear in exhibit 32;
 - (c) exhibit 32 is consecutively paginated; and
 - (d) with the consequences that the entries for 10 July 2004 and 11 July 2004 cannot have been produced.²⁴⁴
- 17.29 As will be seen, only propositions (b) and (c) are correct. Exhibit 32 is consecutively paginated in large black text in the bottom right hand corner. The entries for 10 and 11 July 2004 do not appear in exhibit 32, and there is no gap in the pagination.
- 17.30 Proposition (a) is wrong. Mr Lovitt QC did not say that exhibit 32 contained all daybook and diary entries disclosed by Victoria Police. He said that the exhibit contained all police notes outside the hand up brief.²⁴⁵
- 17.31 That is consistent with Com. Bateson's evidence that notes were provided at various intervals, including with the hand up brief and in response to subpoenas, continuing throughout the proceeding.²⁴⁶
- 17.32 However, despite the description given by Mr Lovitt QC, exhibit 32 did *not* contain all police notes not included with the hand up brief. There are at least two categories of notes not included in exhibit 32, being:
- (a) notes disclosed on the morning of the committal hearing (including, for example, those of Mr Iddles); and
 - (b) some pages of police notes that were "*extracted*" from the bundle disclosed to the defence.
- 17.33 It is evident that the notes described in (a) above were not included because at the commencement of the committal hearing, Mr Heliotis QC, on behalf of Mr Williams, stated that he had been provided with notes of Mr Iddles and Mr Colbert that morning²⁴⁷ and exhibit 32 does *not* include Mr Iddles' notes.
- 17.34 Proposition (d) above is also wrong. The police notes produced were paginated. The Victoria Police pagination appears on the bottom right hand corner of each page of the police notes, underneath the pagination of exhibit 32. For example, on deposition page 1766, the underlying pagination is 1286:²⁴⁸

— 1766

²⁴⁴ CA764 (V

²⁴⁵ Exhibit RC... Depositions of Committal, R v Carl Williams, Thomas and Andrews (OPP.0041.0001.0002 at T804.3).

²⁴⁶ T10123.24-29.

²⁴⁷ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at T18.7-9.

²⁴⁸ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at .1777. It appears this number is likely 1286, but the 'X' is used as a placeholder for numbers that are obscured.

17.35 On the next deposition page, 1767, the underlying pagination is 1287:

17.36 There is no doubt that the underlying pagination is Victoria Police pagination applied to police notes being produced to the court because:

- (a) Com. Bateson gave evidence that it was;²⁴⁹
- (b) the underlying pagination is only on Victoria Police notes;
- (c) no documents in exhibit 32 apart from police notes have that pagination;
- (d) daybooks did not have any original pagination; and
- (e) the police note pagination runs in consecutive order beginning at exhibit 32 page 1529, Victoria Police pagination 10X5, and end at exhibit 32 page 2372, Victoria Police pagination 18X8, as shown below.

17.37 Counsel Assisting do not engage with the above facts at all. They make no attempt to explain the pagination described above, and Com. Bateson's evidence about the pagination is not drawn to the attention of the Commission.

17.38 Instead, Counsel Assisting point to the pagination in the top right hand corner of these pages, consecutively numbered '7' and '8'. Counsel Assisting assert that this consecutive numbering means that the pages in question were not produced.²⁵⁰

17.39 Com. Bateson explained this in his re-examination – again, evidence not drawn to the Commissioner's attention. The explanation is this:

- (a) The pagination in the upper right-hand corner is only present on Com. Bateson's notes;
- (b) Com. Bateson's diaries record that he was on rest days on both 10 and 11 July 2004;²⁵¹
- (c) Com. Bateson's notes for 10 and 11 July 2004 were in his daybook, not his diary;
- (d) It is likely that, on first preparing his notes for disclosure, Com. Bateson did not arrange for his notes for 10 and 11 July 2004 to be copied as he was recorded as being on rest days;²⁵²
- (e) The bundle of notes then collated was paginated on the top right corner;

²⁴⁹ T9591.16-18.

²⁵⁰ Counsel Assisting Submissions at p167 [764], Vol 2.(see footnote 979).

²⁵¹ T10121.34-47; Untendered – Diary of Stuart Bateson, 10-11 July 2004 (VPL.0005.0058.0706 at .0801).

²⁵² T10122.2-6.

- (f) Prior to the collation of the primary police note bundle, Com. Bateson's daybooks were reviewed and added to the bundle to be produced;
- (g) That larger bundle was then paginated using the Victoria Police pagination on the bottom right corner.
- 17.40 This is the only explanation that accounts for all of the facts, including all three forms of pagination appearing on Exhibit 32. It is also consistent with Com. Bateson's evidence.
- 17.41 In the course of Com. Bateson's cross-examination, the following exchange took place:
- Counsel Assisting: What do you say the numbers at the top are? Because if you have a look at the number on the top right corner you'll see 7, that's on 12 July. If you then go back to the previous page in your diary you see the number 8 there. So that appears to be consecutive. Do you know what those ones are?---*
- Mr Bateson: **What about the ones underneath?** I would have thought the ones underneath - I don't know how the 7 and 8 got in. It doesn't - I don't know why there's two numbers there. I just can't recall how that would have happened. **See there's more significant numbering under the 2289.***
- Counsel Assisting: Is that right? Have you looked at these, have you?*
- Mr Bateson: I can just see underneath that there's another number underneath there that is not a single digit number.*
- Counsel Assisting: Right?*
- Mr Bateson: So, you know, I remember thinking well this will be helpful for everyone if we page number these things, these additional documents that we served not forming part of the hand-up brief.²⁵³*
- 17.42 It appears that in preparing their closing submissions, Counsel Assisting did not consider Mr Bateson's observations and examine the underlying pagination. Had they done so, the grave and damaging allegation that Com. Bateson concealed (deliberately) daybook entries would never have been made.
- 17.43 Examination of the exhibit 32 pagination and the underlying Victoria Police pagination unequivocally reveals that there are pages in which exhibit 32 is consecutively numbered, but which the underlying Victoria Police pages are not consecutive – identifying that exhibit 32 left out certain pages of the notes produced by Victoria Police, including, as will be seen, Com Bateson's daybook entries for 10 July 2004 and 11 July 2004. They are the entries that Counsel Assisting accuse Mr Bateson of concealing.
- 17.44 Exhibit 32 contains Com. Bateson's daybook entries for part of 9 July 2004 (Com. Bateson's daybook entries for 9 July 2004 extended over three pages) and 12 July 2004. It does not include Com. Bateson's daybook entries for the latter part of 9 July 2004, 10 July 2004 or 11 July 2004.
- 17.45 The deposition pages are consecutively numbered - 2289 to 2290 - over the notes from 9 July 2004 to 12 July 2004, indicating that the daybook entries for 11 July 2004 and 12 July 2004 did not ever form part of exhibit 32.

²⁵³ T9591.30-9592.1 (emphasis added).

- 17.46 However, the Victoria Police pagination underneath the deposition number is not consecutive. It proceeds from (as it is numbered in reverse order), 15X5²⁵⁴ to 15X2:

2289
3452*

2290

- 17.47 It is evident from the above that paginated pages 15X4 and 15X3 of the police daybook entries produced to the court were not included in exhibit 32.
- 17.48 They are the two pages of the daybook that Counsel Assisting accuse Com. Bateson of concealing. They comprise the third page for Friday 9 July 2004 and the single page covering 10 and 11 July 2004.
- 17.49 This clearly demonstrates the truth of Com. Bateson's evidence that his daybook notes for 10 and 11 July 2004 were part of the material compiled and produced to the court.
- 17.50 An examination of the underlying pagination shows that another page that Counsel Assisting asserts was not produced – 22 March 2004 – was produced.
- 17.51 Whilst it does not matter, the most likely explanation for these daybook entries not being included in exhibit 32 is that the pages were wholly redacted and the redactions were upheld by the Chief Magistrate and, therefore, the wholly redacted pages were extracted from the paginated bundle and not included in exhibit 32. Certainly, Mr Silbert QC referred to some pages being "extracted" from the bundle of police notes before exhibit 32 was created.
- 17.52 It is evident from the content of the pages for 22 March 2004, 9 July 2004 (third page) and 10 and 11 July 2004 that those pages would have been wholly redacted in the folder provided to the Chief Magistrate and that, consistent with his Honour's ruling in relation to the notes for 12 July 2004, the redactions would have been upheld.
- 17.53 The other possible explanation is that the daybook entries were not included in exhibit 32 by error of the court officer who created the exhibit. As was demonstrated during the re-examination of Mr Bateson, the depositions were a mess.²⁵⁵ They were not an accurate record of the committal proceeding.
- 17.54 In any event, the most relevant aspect of this analysis is that Victoria Police's pagination on the daybook entries shows that the daybook entries that Counsel Assisting accuse Com. Bateson of concealing were, in fact, part of the paginated bundle of police notes compiled and produced to the Court.
- 17.55 Lastly, after Mr Bateson finished giving his evidence to the Commission, for reasons that are not apparent, those assisting the Commission asked only Mr Silbert QC, but not Mr Lovitt QC or Mr Valos, whether they could recall seeing, 14 years ago, the daybook

²⁵⁴ The number represented by X cannot be clearly seen under the deposition pagination.

²⁵⁵ T9827. 24-26.

- entries (in unredacted or redacted form) that Counsel Assisting say Mr Bateson concealed.
- 17.56 Unsurprisingly, Mr Silbert QC had no memory whatsoever of acting for the CCP in the committal hearing 14 years ago and had no relevant notes. Mr Silbert states at [10] that having read part of the transcript, he is satisfied that he never saw Mr Bateson's daybook entries in unredacted form. He has not explained what it is in the transcript that satisfies him of that matter. It is not apparent to us either. It is not explained by Counsel Assisting.
- 17.57 Mr Silbert also states at [11] that he was not aware that Victoria Police were seeking to exclude Ms Gobbo's name from disclosure to the defence. It is apparent from the committal transcript²⁵⁶ that that is either wrong or he did not know because he did not ultimately appear to argue the redactions. On the first day of the committal, Mr Silbert informed the Court that the process of photocopying the diary and daybook entries in contention was continuing, and accordingly the edited and *unedited* copies would be provided to the Court the following morning. Mr Silbert QC did not then appear the following morning – he was not available.²⁵⁷ Mr Sanelli appeared. His Honour then closed the Court to deal with the notes in contention.²⁵⁸
- 17.58 Curiously, at [12], Mr Silbert states that at the time he was briefed by the CCP he was not provided with the daybook entries for 10 and 11 July 2004. It is not apparent how Mr Silbert is able to say that in circumstances where he has no memory whatsoever of acting for the CCP in the matter.
- 17.59 In any event, the analysis of the pagination set out above shows that those daybook entries were part of the paginated bundle of notes produced and were likely the subject of argument before the Chief Magistrate with the redactions being upheld and, therefore, the notes not provided to the defence or included in exhibit 32.
- 17.60 In our submission, even if the analysis had not shown Mr Silbert's evidence to lack probative value, his evidence should not be relied upon in light of the severely critical public comments that he made about police²⁵⁹ at around the time he provided his witness statement to the Commission and where he was not called for cross-examination.

Proposed findings at [690]

- 17.61 Counsel Assisting submit at paragraph [690.2] that Com. Bateson "*knew*" that Mr Thomas would not be told of Ms Gobbo's role in advising Mr McGrath about his statements because of a claim of "*public interest*" and therefore may have contributed to a potential injustice.
- 17.62 In light of the evidence detailed above, the entire basis for this proposed finding has fallen away. The Chief Magistrate upheld the PII claims over the 10 and 11 July 2004 notes.
- 17.63 As a preliminary matter, paragraph [690.2] asserts that the conduct of Com. Bateson "*may have contributed to a potential injustice*". The potential injustice is not identified. Com. Bateson should not be left to guess as to the existence of a 'potential injustice' to

²⁵⁶ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at T844.29-T845.25.

²⁵⁷ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at T84.4-6.

²⁵⁸ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at T87.27-88.10.

²⁵⁹ ABC News 'Lawyer X scandal has rocked the justice system. What did the top cops know?', 21 October 2019
<https://www.abc.net.au/news/2019-10-21/lawyer-x-scandal-prosecutor-questions-top-police-officers/11608176>

which he is said to have possibly contributed. Procedural fairness requires it to be identified by Counsel Assisting.

- 17.64 If the “*potential injustice*” is that Mr Thomas and his other legal representatives were not aware that Mr McGrath initially informed police that he did not know that Mr Marshall was to be murdered and he thought it was only a debt collection, but said in his signed statement that he did believe that Mr Marshall was to be murdered, then Mr Bateson responds as follows.
- 17.65 There was no potential injustice because, as is set out in detail above:
- (a) Victoria Police had disclosed to Mr Thomas and his two co-accused the transcripts of the conversations between Mr McGrath, Com. Bateson and three other members when Mr McGrath was in custody after the s 464B application;²⁶⁰
 - (b) the transcripts of the conversations record that Mr McGrath initially told police that he did not know that Mr Marshall was to be murdered and he thought it was only a debt collection;
 - (c) these transcripts were used to attack Mr McGrath’s credit during the committal hearing by senior counsel for both Mr Thomas and Mr Williams – including on the *change of belief* that is apparent from comparing the transcripts of Mr McGrath’s conversations with Com. Bateson with Mr McGrath’s statement and the facts underpinning his guilty plea;²⁶¹ and
 - (d) while Mr Thomas did not have the draft statement, he had the information that was in it and he used it to attack Mr McGrath’s credit.
- 17.66 Further, documents disclosed to the defence, including Com. Bateson’s daybooks and diaries, disclosed that:
- (a) on 9 July 2004, Mr McGrath said that he would not sign his statements until his legal representative was shown them; and
 - (b) on 12 July 2004, Mr McGrath asked for changes to be made to his statements and said again that he would not sign them until his legal representative had reviewed them.
- 17.67 In the course of the committal hearing, Com. Bateson was cross-examined about the events between 9 July 2004 and 12 July 2004. The following exchange took place:
- Mr Lovitt: So, once he agreed to make a statement, you start on 22 June and it was completed in two days?*
- Mr Bateson: Yes. Well, when I say that, there some - I think there was some minor alterations that you’ll see later, but, yes, it was completed.*
- Mr Lovitt: When did he sign that?*
- Mr Bateson: 13 July*
- Mr Lovitt: What happened to it in between those two dates?*
- Mr Bateson: During that time, we continued with the Moran statement. We also had a start on the - the Mark Moran statement and it was*

²⁶⁰ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at 3089-3106.
²⁶¹ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at T548-560, T583-586, T150.21-151.9, T170.13-22, T174.21-31, T244-280. Time has not permitted a full review of the entire transcript of the committal hearing and, therefore, other parts of the transcript may also be relevant.

reviewed by his legal representative on his wishes and then it was signed.

Mr Lovitt: So basically the delay between June and when it was signed is because his legal representatives wanted an input?

Mr Bateson: Well, he wanted them to review it.

*Mr Lovitt: There was no alterations made by you or by Purana, it was **basically alterations at his request or at the request of his lawyers?***

Mr Bateson: Correct.

- 17.68 It was clear from this cross-examination that Mr McGrath had:
- (a) asked his legal representatives to review his statements before they were signed; and
 - (b) made changes to his statements.
- 17.69 Com. Bateson was not asked what changes were made to the statements, or which lawyer advised him.
- 17.70 All of this occurred in an environment in which there is documentary evidence that senior counsel for Mr Thomas and his instructing solicitor knew that Ms Gobbo had acted for Mr McGrath.
- 17.71 There was no “*potential injustice*”: the defence was well aware of the information that Counsel Assisting allege that Com. Bateson was not going to tell Mr Thomas.
- 17.72 In any event, the proposed finding in paragraph [690] cannot be made for other reasons. The proposed finding rests on three premises:
- (a) that ‘Ms Gobbo was aware of the circumstances in which Mr McGrath’s statements had been made, and therefore the potential weakness in his evidence’;
 - (b) that Ms Gobbo had a personal interest in Mr Thomas not finding out about her role; and
 - (c) that Mr Bateson was aware that Ms Gobbo had advised Mr McGrath about his statements and he was aware that Mr Thomas would not be told because of a claim of public interest immunity.
- 17.73 As to the first, it is true that Ms Gobbo was aware that Mr McGrath initially told police that he did not know that Mr Marshall was to be murdered and he thought it was only a debt collection. All other legal representatives of Mr Thomas and his co-accused knew this as well. This is apparent from the transcripts that were disclosed to Mr Thomas and his two co-accused and the cross-examination of Mr McGrath.
- 17.74 As to the second, the falsity of this premise has been comprehensively demonstrated. Mr Thomas knew that Ms Gobbo had acted for Mr McGrath when he became a Crown witness. Accordingly, Ms Gobbo had no “*personal interest*” in Mr Thomas not finding out: he already knew. Indeed, she kept him informed about Mr McGrath’s decision to cooperate, the progress of his statements and the likely time at which Mr Thomas would be arrested.
- 17.75 The proposition that Ms Gobbo had a personal interest in Mr Thomas not finding out something which he already knew cannot be maintained.

- 17.76 The third premise is also false. There is no evidence at all that Com. Bateson knew that Mr Thomas would not be told about Ms Gobbo's "role" on the basis of public interest immunity.
- 17.77 Among other things:
- (a) Com. Bateson produced his notes – including his daybook entries for 10 and 11 July 2004;
 - (b) Com. Bateson redacted Ms Gobbo's name in those notes because of a concern that her safety would be imperilled if Carl Williams and other members of the crew found out that she had acted for Mr McGrath;
 - (c) Com. Bateson made other redactions to his daybooks and diaries on the basis of relevance and other PII claims;
 - (d) Magistrate Gray was given copies of the redacted and *unredacted* notes containing Ms Gobbo's name; and
 - (e) Magistrate Gray ruled on each of the redactions, including the redactions of Ms Gobbo's name.
- 17.78 The submission at paragraph [690] appears to proceed on the basis of the unstated premise that Ms Gobbo's "role" in reviewing Mr McGrath's statements and advising him was improper. For the reasons set out earlier, it was not.
- 17.79 Mr McGrath was entitled to instruct his legal representative to review his statements before he signed them, and Ms Gobbo was entitled to take instructions from Mr McGrath about their content and she was obliged to advise him.
- 17.80 Finally, it should not be overlooked that:
- (a) these events occurred well before Ms Gobbo was registered by the SDU as a human source;
 - (b) Ms Gobbo had no involvement in the investigative process;²⁶²
 - (c) Victoria Police had expected that Mr McGrath would sign his statements on 9 July 2004;
 - (d) Mr McGrath's unsigned statements were shown to Ms Gobbo on 10 July 2004 because Mr McGrath asked for them to be shown to her;
 - (e) it is not unusual for a criminal Crown witness to ask his legal representative to review his statements before they are signed and to provide advice;
 - (f) Ms Gobbo did not mark up the unsigned statements or ask Victoria Police to make any changes to them;
 - (g) Ms Gobbo made notes about matters she wished to speak to Mr McGrath about – conduct that is entirely consistent with his request that she review the statements;
 - (h) Ms Gobbo visited Mr McGrath on 11 July 2004 and took instructions from him;
 - (i) there is no evidence that Victoria Police asked Ms Gobbo to say anything to Mr McGrath about his statements or their contents;
 - (j) Ms Gobbo's evidence was that she would have told Mr McGrath to be "*open and frank*" to ensure that he obtained the maximum sentencing benefit;

²⁶² T3414.30.

- (k) as far as we know, the Commission does not know what Mr McGrath's evidence would be about the advice Ms Gobbo and/or his other lawyers gave him, because he was not asked and his solicitor was not asked either by those assisting the Commission;
- (l) Ms Gobbo did not, after speaking to Mr McGrath, communicate to Victoria Police any particular changes that Mr McGrath wanted to make to his statements – saying only that he would be “*honest*”; and
- (m) the changes were made by Mr McGrath at a meeting with Com. Bateson and DSC Hatt, without Ms Gobbo being present.

Proposed findings at [731]

- 17.81 At paragraph [731], Counsel Assisting assert that Mr Bateson knew that, in the course of the 23 September 2004 mention hearing:
- (a) that Ms Gobbo could not properly fulfil her duties to Mr Thomas without disclosing confidential information concerning Mr McGrath; and
 - (b) that if Ms Gobbo disclosed that confidential information concerning Mr McGrath, it would have exposed her role in the negotiations with the OPP and in advising him about his statements.
- 17.82 Counsel Assisting then contend that, having this knowledge, Mr Bateson:
- (a) would have been “*comfortable*” in the knowledge that Ms Gobbo would not cross-examine him; and
 - (b) knew that Mr Faris QC would have wanted to know the two matters set out in paragraphs (a) and (b) above.
- 17.83 Findings of this kind cannot possibly assist this inquiry. Whether Com. Bateson was or was not “*comfortable*” that he would not be cross-examined is entirely irrelevant to the terms of reference and cannot assist the Commission in the discharge of its task. They also operate to obscure the real issue, which is whether there was a failure by Victoria Police to provide adequate disclosure in the committal proceedings against Mr Thomas.
- 17.84 Com. Bateson was not cross-examined before the Commission about whether he was “*comfortable*” in the knowledge that he would not be cross-examined at a mention hearing on 23 September 2004.
- 17.85 The premise of a finding that Com. Bateson would have been “*comfortable*” in the knowledge that Ms Gobbo would not cross-examine him implies that Com. Bateson was being dishonest when he told Mr Faris QC that there was no “*statement made by McGrath signed or unsigned*” or that Com. Bateson otherwise wanted to withhold information from the defence about Ms Gobbo's involvement for reasons not connected to her safety. There is no basis for any such findings.
- 17.86 It was not put to Com. Bateson that he deliberately withheld information from Mr Faris QC. The context of Com. Bateson's answer was “statements relevant to the charge”. He was not asked why he did not tell Mr Faris about the unsigned statement that Ms Gobbo reviewed on 9 July 2004. Had he been asked he would have said that he did not know that any unsigned statements still existed.
- 17.87 Further, Com. Bateson was not asked any questions about the statement-taking process. That was not the purpose of the hearing. Mr Faris QC was examining Com. Bateson about categories of documents called for in a subpoena. He was not exploring with Com. Bateson the statement taking process— that was a matter that fell to be

- pursued at the committal hearing, and the transcript of the committal reveals that it was explored in detail.
- 17.88 In circumstances where Com. Bateson was not cross-examined about his answer to Mr Faris QC, there is no basis for this Commission to do anything other than act on Com. Bateson's evidence. As such, there was nothing for Com. Bateson to be "comfortable" about.
- 17.89 Further, there is no basis for the Commission to approach Com. Bateson's evidence on 23 September 2004 from the position that he wanted to withhold any information about Ms Gobbo's involvement in advising Mr McGrath about his statements other than her name.
- 17.90 As the above shows, Com. Bateson produced all diary and daybook entries, including entries that referred to Ms Gobbo. The Chief Magistrate ruled that the redactions were appropriate. Mr Lovitt QC expressly queried why the name of a member of the 'legal fraternity' had been redacted. The Chief Magistrate noted the query but reiterated that he had considered, and ruled upon, the redaction.²⁶³
- 17.91 Lastly, contrary to the impression created by Counsel Assisting, this was not a mention hearing at which Ms Gobbo and Mr Bateson shared a secret about her having acted for Mr McGrath when he became a Crown witness. Importantly, the Crown knew. Mr Horgan SC, who appeared at the mention hearing, had resolved with Ms Gobbo the terms on which Mr McGrath would plead guilty and assist police.
- 17.92 There is evidence before the Commission that Mr Horgan SC spoke to Ms Gobbo about her conflicts. That was the appropriate thing to do. While there is no direct evidence about the outcome of those discussions, it can be inferred that Mr Horgan SC received satisfactory responses from Ms Gobbo. That is so because there is no evidence that any further steps were taken to enjoin Ms Gobbo from acting for Mr Thomas. If Mr Horgan SC continued to believe that Ms Gobbo was in a position of conflict, it is improbable that nothing further would have been done.
- 17.93 It may be that Ms Gobbo had obtained the consent of Mr McGrath to appear at the mention hearing for Mr Thomas or that she told Mr Horgan SC that.
- 17.94 In any event, the proposed finding at [731] falls well outside of the Commission's terms of reference and, for that reason, cannot be made. At the time of the mention hearing, Ms Gobbo was not a human source. The hearing occurred about 12 months before her registration as a source.

Proposed finding at [765]

- 17.95 There is not, and never has been, an evidentiary basis for the finding in paragraph [765].
- 17.96 Mr Thomas gave evidence that both he and Mr Williams *knew* that Ms Gobbo was acting for Mr McGrath when he decided to cooperate and implicate them.²⁶⁴
- 17.97 Mr Thomas' evidence was that he paid Ms Gobbo a retainer.²⁶⁵ In exchange, he said that Ms Gobbo "*would report back*" to him and Carl Williams about the police investigations into the murders and provided updates "*in relation to the likelihood of*

²⁶³ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 T844.28-845.25.

²⁶⁴ Exhibit RC1175 – Statement of Mr Thomas dated 20 September 2019 at [28], [31] (RCMPI.0131.0001.0001 at .0007-.0008).

²⁶⁵ Exhibit RC1175 – Statement of Mr Thomas dated 20 September 2019 at [18], [19] (RCMPI.0131.0001.0001 at .0005).

whether Mr McGrath was going to assist police".²⁶⁶ Ms Gobbo denied these allegations.²⁶⁷

- 17.98 It is true that both Mr Thomas and Ms Gobbo have significant credibility issues. However, on this point, Mr Thomas' evidence should be accepted. That Ms Gobbo was reporting back to Mr Thomas and Carl Williams is likely, when Ms Gobbo's status as a member of the crew is considered. Mr Thomas said that she told them that she was trying to stop Mr McGrath co-operating.
- 17.99 On Mr Thomas' evidence, he and Carl Williams continued to engage Ms Gobbo knowing that she had acted for Mr McGrath.
- 17.100 In any event, whether Mr Thomas' evidence is accepted or not, Counsel Assisting cannot, as they have done, completely ignore it as if the evidence was never given. It is evidence before the Commission and there is no compelling evidence which reveals it to be untrue. Counsel Assisting also did not put to Mr Thomas in cross-examination that his evidence was untrue. Nor do they say that in their closing submissions.
- 17.101 Lastly, there is evidence that Mr Thomas' other lawyers knew that Ms Gobbo had acted for Mr McGrath.

Proposed finding at [769]

- 17.102 Paragraph [769] is another example of a proposed finding that does not assist this inquiry. Counsel Assisting submit that it is open to the Commissioner to find that:
- ... the fact that Mr Bateson considered that Ms Gobbo's role would need to be kept secret for fear of her being harmed, was sufficient reason alone, for Mr Bateson, and any superior officer who was aware, to take steps to ensure she did not continue to represent Mr McGrath, or remain in any way involved with the investigation of these murders.*
- 17.103 The first thing to note about this proposed finding is that Ms Gobbo was not ever involved in the investigation of the murders. Counsel Assisting do not point to any evidence that Ms Gobbo was "involved" in the investigation, and there is no evidence before the Commission to that effect. To the extent that the proposed finding refers to involvement in the investigation of these murders, it must be rejected.
- 17.104 Among other things, the finding in paragraph [769] is not an evidentiary finding. It is the expression of an opinion by Counsel Assisting about what Com. Bateson and Victoria Police should have done when he, and it, became aware that Ms Gobbo was concerned that her personal safety was at risk from Carl Williams and others as a consequence of her having acted for Mr McGrath.
- 17.105 There is a striking feature of this issue that is not addressed by Counsel Assisting: which is that Mr Williams *knew* that Ms Gobbo was acting for Mr McGrath and, therefore, there was in fact no basis for the concern that Ms Gobbo expressed to Mr Bateson. On Mr Thomas' evidence, she lied to Mr Bateson.
- 17.106 It was PII June 2004, following Mr McGrath's plea in an unrelated matter, that Ms Gobbo first told Com. Bateson that she was concerned about possible retribution by Carl Williams as a consequence of acting for Mr McGrath.²⁶⁸ Com. Bateson saw this as a risk arising not from a legal conflict, but because Carl Williams and others saw Ms

²⁶⁶ Exhibit RC1175 – Statement of Mr Thomas dated 20 September 2019 at [31] (RCMPI.0131.0001.0001 at .0008).
²⁶⁷ T13436.29-37 (Gobbo).
²⁶⁸ T3371.20-27.

Gobbo as part of their network and that Ms Gobbo acting for Mr McGrath when he turned on the crew would be regarded as disloyal.²⁶⁹

- 17.107 However, on Mr Thomas' evidence, he and Carl Williams already knew that fact. In the coming weeks and months, Ms Gobbo continued to report back to them about Mr McGrath's plea.²⁷⁰
- 17.108 What motivated Ms Gobbo to lie to Com. Bateson is not known. Com. Bateson did not know that she had lied to him until he was told about Mr Thomas' evidence to the Commission.
- 17.109 On one view, the lie provided a foundation for Ms Gobbo to attempt to build a relationship with Com. Bateson. While the Commission does not know what motivated her to lie to Com. Bateson, it is highly probable that Ms Gobbo saw an advantage to her or her criminal associates in trying to build such a relationship.
- 17.110 That is underscored by Ms Gobbo's conduct over the coming weeks and month, which saw her providing information to Com. Bateson about Solicitor 2 – conduct which Com. Bateson believed at the time was motivated by Ms Gobbo's personal dislike of Solicitor 2.
- 17.111 As to the substantive issue, insofar as Com. Bateson was concerned:
- (a) the risk had already arisen by the time Ms Gobbo expressed it to him, because Ms Gobbo had acted for Mr McGrath at a plea hearing in an unrelated matter;²⁷¹
 - (b) he had no solid information about any threat to Ms Gobbo;
 - (c) Mr McGrath was entitled to the legal counsel of his choice;
 - (d) there was no basis for Com. Bateson to deny Mr McGrath the legal counsel of his choice;
 - (e) Ms Gobbo had chosen to join Carl Williams' crew, was capable of identifying the risks and was readily capable of identifying the options available to her to reduce or remove the risk; and
 - (f) she chose to act for Mr McGrath despite her apparent safety concerns.
- 17.112 The real question is whether it was appropriate for Com. Bateson to claim public interest immunity over Ms Gobbo's name in his notes on the basis of a generalised concern about her safety. The answer to that is simple: the Chief Magistrate was provided with copies of the material in redacted and unredacted form, heard oral evidence from Com. Bateson and upheld the PII claim.²⁷²
- 17.113 Lastly, the proposed finding at [769] falls well outside of the Commission's terms of reference and, for that reason, cannot be made.

²⁶⁹ T3371.41-3372.3.

²⁷⁰ Exhibit RC1175 – Statement of Mr Thomas dated 20 September 2019 at [28], [31] (RCMPI.0131.0001.0001 at .0007-.0008).

²⁷¹ T3317.14-18.

²⁷² T10118.30-10119.4; T10120.5-12.

18 The third false premise: Mr Thomas did not know that Ms Gobbo was in a position of conflict

- 18.1 The third false premise has been comprehensively addressed above. On Mr Thomas' evidence, he knew that Ms Gobbo had acted for Mr McGrath when he implicated Mr Thomas. There is also evidence that Mr Thomas' other lawyers knew that fact.
- 18.2 Mr Thomas was entitled to choose to retain Ms Gobbo.
- 18.3 Whether or not Mr McGrath was agreeable to Ms Gobbo acting for Mr Thomas is not known to us, because he was not examined by the Commission.

19 The fourth false premise: Mr Thomas did not know that Mr McGrath gave police two different accounts of his 'belief' about whether Mr Marshall was to be murdered

- 19.1 The false premise is that by reason of Com. Bateson's conduct in concealing the daybook entries from the Court (demonstrated above to be false) Mr Thomas did not know that Mr McGrath gave police two different accounts of his 'belief' about whether Mr Marshall was to be murdered.
- 19.2 This issue has also been addressed in detail above.
- 19.3 In summary, there are two critical points.
- 19.4 The first is that the substance of this information was known to Mr Thomas and his counsel, because, as set out earlier:
 - (a) Victoria Police had disclosed to Mr Thomas and his two co-accused the transcripts of the conversations between Mr McGrath, Com. Bateson and three other members when Mr McGrath was in custody after the s 464B application;²⁷³
 - (b) the transcripts of the conversations record that Mr McGrath initially told police that he did not know that Mr Marshall was to be murdered and he thought it was only a debt collection;
 - (c) these transcripts were used to attack Mr McGrath's credit during the committal hearing by senior counsel for both Mr Thomas and Mr Williams;²⁷⁴ and
 - (d) while Mr Thomas did not have the information in the form of an unsigned statement, he had the information that was in it in the form of transcripts and he used those to attack Mr McGrath's credit.
- 19.5 The second is that, in addition to the above matters, Mr Thomas and his senior counsel knew that:
 - (a) on 9 July 2004, Mr McGrath read his unsigned statements;
 - (b) after reading the statements and asking for minor changes, Mr McGrath asked for his legal counsel to review them;
 - (c) Ms Gobbo was Mr McGrath's legal counsel;

²⁷³ Untendered Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at 3089-3106.

²⁷⁴ Untendered – Depositions of Committal, R v Carl Williams, Thomas and Andrews, OPP.0041.0001.0002 at T548-560, T583-586, T150.21-151.9, T170.13-22, T174.21-31, T244-280. Time has not permitted a full review of the entire transcript of the committal hearing and, therefore, other parts of the transcript may also be relevant.

- (d) on 12 July 2004, Mr McGrath read his statements again and made changes to them;
 - (e) Mr McGrath again asked for his legal counsel to review the statements;
 - (f) this occurred;
 - (g) on 13 July 2004, Mr McGrath signed his statements following a read back; and
 - (h) Com. Bateson said that the changes that were made were made at the "*request of Mr Thomas or his legal representatives*".
- 19.6 Mr Thomas' senior counsel, knowing all of this, did not cross-examine Mr McGrath about what changes he made to his statement and when.

20 The fifth false premise: Com. Bateson was responsible for responding to Ms Gobbo's possible conflicts of interest

- 20.1 A substantial part of Counsel Assisting's submissions, insofar as they concern Com. Bateson, are connected to the identification and management of Ms Gobbo's possible professional conflicts of interest.
- 20.2 Counsel Assisting's submissions on the question of conflict are difficult to engage with. That is principally because Counsel Assisting do not identify with clarity and precision the conflicts that they say arose, nor do they assemble a complete and accurate statement of the evidence relevant to each potential conflict, including the evidence of Com. Bateson's state of mind about those conflicts.
- 20.3 As Com. Bateson understands the submissions, Counsel Assisting submit that he ought to have intervened to address:
- (a) Ms Gobbo's potential conflict of interest in acting for Mr Thomas after she had acted for Mr McGrath; and
 - (b) Ms Gobbo's potential conflict of interest as a potential witness in the murders of Jason Moran and Pasquale Barbaro; and
 - (c) an alleged conflict of interest in Ms Gobbo providing information about Mr Thomas to Victoria Police while representing him.
- 20.4 If they are the submissions, they should not be accepted because:
- (a) the first and second potential conflicts fall well outside the terms of reference and, therefore, the Commissioner has no power to make findings in relation to them;
 - (b) second, and in any event, as to the first conflict:
 - (i) it cannot be said that merely by reason that Ms Gobbo had acted for Mr McGrath she was unable to act for Mr Thomas in any part of the proceeding against him – those involved in the proceeding appear to have assessed the conflict issue by reference to the scope of Ms Gobbo's retainer on each occasion. This is what occurred in relation to the bail application discussed later in these submissions and, seemingly, in relation to the committal hearing;
 - (ii) both Ms Gobbo and the profession took steps to address the potential conflicts and, it seems, were satisfied that they had been resolved;

- (iii) there are serious deficiencies in the evidence before the Commission about these matters, which leaves the Commission with an incomplete picture of how the potential conflicts were managed; and
- (c) as to the second conflict, there was no conflict because there was no reasonable prospect that Ms Gobbo would be called as a witness;
- (d) as to the third conflict:
 - (i) Ms Gobbo was not "*informing*" on Mr Thomas; and
 - (ii) to the extent that she spoke about him to the SDU (in a way that was not informing on him), she ought not to have done so, but Com. Bateson had no knowledge of those matters.

Conflicts outside the terms of reference

- 20.5 Ms Gobbo was not a human source when she represented Mr McGrath. She was not providing information to Victoria Police about him.
- 20.6 The potential conflict of interest that arose in connection with Mr Thomas by reason of Ms Gobbo's previous representation of Mr McGrath is not a matter that informs the Commission's inquiry into Terms of Reference 1 or 2. That conflict did not arise by reason of any conduct of Ms Gobbo or Victoria Police falling within Terms of Reference 1 or 2. The Commissioner is not authorised to make those findings because they fall outside of the terms of reference.
- 20.7 To the extent that there were potential conflicts of interest, it is apparent that both Ms Gobbo and the profession took steps to address those conflicts.

The first conflict

- 20.8 Counsel Assisting proceed on the basis that, merely because Ms Gobbo had acted for Mr McGrath, she could not act for Mr Thomas in any circumstances. The position is more complex than that.
- 20.9 It is clear on the evidence that legal practitioners involved in Mr Thomas' proceeding, considered that Ms Gobbo was only conflicted if Mr Thomas' interests and Mr McGrath's interests diverged. She was also obligated not to use confidential information belonging to Mr McGrath without his consent.
- 20.10 Thus, while Ms Gobbo considered that she could not appear at the committal hearing or at trial because Mr McGrath would be a Crown witness against her client, she, and other legal practitioners in the proceeding, took the view that she was not conflicted out of appearing in procedural applications, bail applications or on Mr Thomas' plea.
- 20.11 It is clear from a review of the evidence that there is insufficient evidence before the Commission about these issues for any findings to be made. That is because critical matters of fact are unknown, including whether Mr McGrath was agreeable to Ms Gobbo acting for Mr Thomas and using information that she had obtained from acting for him.
- 20.12 What the evidence does show is Ms Gobbo considering whether she was in a position of conflict and taking steps to address the conflict, and members of the legal profession and the judiciary doing likewise.
- 20.13 Before considering the findings said by Counsel Assisting to be open in connection with Com. Bateson and this issue, it is useful to review:
 - (a) Com. Bateson's evidence about conflict; and

- (b) the legal practitioners who knew that Ms Gobbo had acted for Mr McGrath and went on to act for Mr Thomas.
- 20.14 A review of this evidence on this question reveals critical matters.
- 20.15 First, there are significant issues of procedural fairness for Com. Bateson and Victoria Police by reason of the manner in which Counsel Assisting have chosen to adduce, or elected to accept, evidence from key individuals and organisations about the question of conflict.
- 20.16 Second, it lays bare the irrational notion that a detective sergeant should be held to account for failing to address Ms Gobbo's possible conflicts of interest given the knowledge held by Mr Thomas' own legal team, other legal practitioners and the Court.
- 20.17 The approach taken to this issue in particular suggests an over eagerness to criticise Com. Bateson, which is an impression that runs throughout many parts of the submissions made by Counsel Assisting about him.

Commander Bateson's evidence about conflicts

- 20.18 Com. Bateson's evidence was that, once charges had been laid and the OPP took carriage of the prosecution, his role, and that of his crew, was as informants and investigators.²⁷⁵
- 20.19 Com. Bateson was clear in his statements and oral evidence to the Commission that issues of lawyers' conflicts 'are not matters that police officers generally get involved in' and are matters to be raised and addressed between lawyers – as occurred in the case of Mr Williams (see below).²⁷⁶
- 20.20 It has never been a duty of a police officer to police defence counsel's conflicts of interest,²⁷⁷ nor did Com. Bateson:
- (a) receive any training or instruction that he was required to identify such conflicts; or
- (b) receive any training on what to do if he spotted a potential conflict.²⁷⁸
- 20.21 Com. Bateson also made the frank concession that he found the conflict of interest issue for lawyers to be a "*confusing one*" and said that his knowledge about it was quite limited during the relevant period and that he looked to others, including the OPP and its legal officers, to deal with any such issue.²⁷⁹ Counsel Assisting does not refer to this evidence.
- 20.22 Com. Bateson identified a key part of the issue when he said:
- Legal professional privilege is, in my understanding, confined to the dominant purpose test. You can obtain information outside of that, of course. The complexity of that is what we're seeing play out here.*²⁸⁰
- 20.23 Com. Bateson said also that:
- (a) he didn't care who was representing who;²⁸¹

²⁷⁵ T10110.42-10111.4.

²⁷⁶ Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson dated 17 November 2019 at [43] (VPL.0014.0027.0020 at .0031-.0032).

²⁷⁷ T10115.2-7.

²⁷⁸ T10115.9-13.

²⁷⁹ T9576.22-29.

²⁸⁰ T3452.17-21.

²⁸¹ T3364.30-31.

- (b) there was a small cadre of barristers who represented individuals involved in organised crime;²⁸²
 - (c) one barrister was the same as the next in organised crime cases;²⁸³
 - (d) potential conflicts of interest were pretty common and well known at the time;²⁸⁴
 - (e) he did not think, as a Detective Sergeant, that a lawyer's conflicts of interest were something for him to resolve;²⁸⁵
 - (f) Ms Gobbo's potential conflicts were known to "*very senior people in the legal world*";²⁸⁶ and
 - (g) Ms Gobbo's potential conflicts of interest were for the courts, the OPP and the legal fraternity.²⁸⁷
- 20.24 Com. Bateson's evidence that potential conflicts were "*pretty common*" is corroborated by the fact that, on 21 April 2006, Justice King called a special mention hearing and required Ms Gobbo and Solicitor 2 to personally appear before her to explain their apparent conflicts. Justice King told Ms Gobbo that she could not act for Mr Thomas because she had acted for Mr McGrath. Ms Gobbo agreed but confined her agreement to not appearing at any contested trial. Her Honour told Solicitor 2 that she could not act for Mr Williams because she had acted for Mr Andrews.²⁸⁸
- 20.25 Com. Bateson had no recollection of any concerns regarding conflicts being raised directly with him by counsel for the Crown, because he was not, and would not have expected to have been, involved in such discussions.²⁸⁹
- 20.26 Com. Bateson believed that lawyers' conflicts would be managed by the profession,²⁹⁰ and he would expect it to occur in conversations between counsel.²⁹¹ Had concerns regarding potential conflicts been raised directly with Ms Gobbo by the prosecution, Mr Bateson thought there was nothing for him to then do.²⁹² Nor was Com. Bateson ever asked by the prosecution to take any steps in relation to Ms Gobbo's potential conflicts.²⁹³
- 20.27 Com. Bateson considered it to be the responsibility of those lawyers with carriage of the proceeding, rather than police officers, to deal with issues directly related to the conduct of the proceeding.²⁹⁴
- 20.28 That also seems to have been the view of Mr Horgan SC, who had carriage of the prosecution of Mr Thomas. He did not raise the issue of conflict with Com. Bateson but he raised conflicts with Ms Gobbo directly.

Legal practitioners involved in the proceeding

²⁸² T3365.9-11.

²⁸³ T3365.12-13.

²⁸⁴ T3399.17.

²⁸⁵ T3399.35-36; T3400.27-32.

²⁸⁶ T3416.32-34.

²⁸⁷ T3399.44-46.

²⁸⁸ Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson dated 17 November 2019 at [24]-[28] (VPL.0014.0027.0020 at .0026-.0028).

²⁸⁹ Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson dated 17 November 2019 at [43] (VPL.0014.0027.0020 at .0031-.0032).

²⁹⁰ T3416.23-24.

²⁹¹ T10114.6-10.

²⁹² T10114.19-24.

²⁹³ T10114.42-47.

²⁹⁴ T10112.23-27.

- 20.29 The legal practitioners involved in Mr Thomas' proceeding knew, when Ms Gobbo was acting for Mr Thomas, that she had previously acted for Mr McGrath when he became a Crown witness against Mr Thomas.
- 20.30 This can be seen from the chronology below:

Date	Event
25 Mar 04	<p>Meeting at the OPP between Mr Bateson and other police and Mr Horgan SC and Ms Vaille Anscombe of the OPP.</p> <p>The meeting was informed that Mr McGrath's lawyer, Ms Gobbo, had indicated that Mr McGrath was contemplating a plea and co-operation in return for a reduced sentence.²⁹⁵</p> <p>Telephone call between Mr Bateson and Ms Anscombe in which Ms Anscombe asked Mr Bateson to tell Ms Gobbo to begin preparing a can-say statement for Mr McGrath.²⁹⁶ This is not unusual. Defence lawyers often prepare can-say statements.</p>
17 May 04	Meeting at the OPP at which it was noted that Ms Gobbo was yet to contact Mr Horgan SC regarding Mr McGrath. ²⁹⁷
18 May 04	Meeting between Mr Horgan SC and Ms Gobbo regarding Mr McGrath. ²⁹⁸
18 June 04	Plea hearing for Mr McGrath at which Ms Gobbo represented Mr McGrath and Mr Coghlan DPP QC and Mr Horgan SC appeared for the prosecution. ²⁹⁹
8 July 04	Mr Bateson spoke to Mr Horgan SC about Mr McGrath's plea. Mr Horgan SC said that he would speak to Ms Gobbo. ³⁰⁰
14 July 04	OPP was provided with Mr McGrath's signed statements, one of which implicated Mr Thomas in the Moran and Barbaro murders. ³⁰¹
6 Sep 04	Coercive examination of Mr Thomas, represented by Ms Gobbo. ³⁰² Mr Horgan SC appeared as Counsel Assisting.

²⁹⁵ Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson dated 17 November 2019 at [4] (VPL.0014.0027.0020 at .0020); T2950.41-2951.42 (Allen); T3041.33-3042.1 (Swindells); T3366.1-13 (Bateson).

²⁹⁶ T9580.13-29; T10087.27-32.

²⁹⁷ Exhibit RC0252 – Chronology of Stuart Bateson (VPL.0015.0001.0409 at .0414); T2966.3-2968.8 (Allen); T3049.7-30 (Swindells).

²⁹⁸ Exhibit RC0252 – Chronology of Stuart Bateson (VPL.0015.0001.0409 at .0414).

²⁹⁹ Untendered – OPP Prism records (OPP.0001.0004.0025 at .0070); Exhibit RC1096 – DPP response to the Commission's inquiries 8 November 2019 (RCMP1.0104.0001.0001 at .0001_0025). The DPP states that Ms Coghlan QC did not appear on 18 June 2004. However, the source relied on for this statement, *R v [McGrath]* [2005] VSC 6 relates to a separate plea hearing in the Supreme Court.

³⁰⁰ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 17 November 2019 at [53] (VPL.0014.0027.0001 at .0010).

³⁰¹ Exhibit RC0252 – Chronology of Stuart Bateson (VPL.0015.0001.0409 at .0417); T4447.23-4448.2 (Ryan).

³⁰² Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson dated 17 November 2019 at [10(a)] (VPL.0014.0027.0020 at .0021).

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

Date	Event
1 Dec 04	Coercive examination of Mr Thomas, represented by Ms Gobbo. ³⁰³ Mr Horgan SC appeared as Counsel Assisting.
7 Dec 04	Application in relation to Mr Thomas, represented by Ms Gobbo. ³⁰⁴ Mr Coghlan QC appeared for the prosecution.
14 Dec 04	Application in relation to Mr Thomas, represented by Ms Gobbo. ³⁰⁵ Mr Coghlan QC appeared for the prosecution.
1 Mar 05	Committal Hearing for Mr Thomas, Williams and Andrews. ³⁰⁶ Mr Horgan SC and Mr Tinney appeared for the prosecution. Mr Lovitt QC appeared for Mr Thomas. It is unclear if Ms Gobbo appeared with Mr Lovitt QC on the first day but it seems more probable on the whole of the evidence that she did not. Chief Magistrate Gray upheld redactions over notes that referred to Ms Gobbo having acted for McGrath when he made a statement implicating Mr Thomas.
30 Jun 05	Bail application by Mr Thomas, represented by Ms Gobbo. ³⁰⁷ Mr Horgan SC and Mr Tinney appeared for the prosecution. ³⁰⁸
8 Sep 05	Bail application by Mr Thomas, represented by Ms Gobbo. ³⁰⁹ Mr Tinney appeared for the prosecution. ³¹⁰
20 Feb 06	Meeting between Mr Coghlan QC and Mr Horgan SC ³¹¹ and police regarding the prosecution of Mr Thomas, at which they discussed the indication from Ms Gobbo that Mr Thomas would plead guilty. ³¹²

³⁰³ Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson dated 17 November 2019 at [10(a)] (VPL.0014.0027.0020 at .0021).

³⁰⁴ Exhibit RC1096 – DPP response to the Commission's inquiries 8 November 2019 (RCMPI.0104.0001.0001 at .0001_0030).

³⁰⁵ Exhibit RC1096 – DPP response to the Commission's inquiries 8 November 2019 (RCMPI.0104.0001.0001 at .0001_0030).

³⁰⁶ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [68] (VPL.0014.0027.0001 at .0011).

³⁰⁷ Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson dated 17 November 2019 at [18] (VPL.0014.0027.0020 at .0025); Exhibit RC1096 – DPP response to the Commission's inquiries 8 November 2019 (RCMPI.0104.0001.0001 at .0200).

³⁰⁸ Untendered – OPP Prism records (OPP.0001.0004.0025 at .0079).

³⁰⁹ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [72] (VPL.0014.0027.0001 at .0012); Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson dated 17 November 2019 at [19] (VPL.0014.0027.0020 at .0026); Exhibit RC1096 – DPP response to the Commission's inquiries 8 November 2019 (RCMPI.0104.0001.0001 at .0001_0037).

³¹⁰ Exhibit RC0252 – Chronology of Stuart Bateson (VPL.0015.0001.0409 at .0435); Untendered – Diary of Stuart Bateson, 8 September 2005 (VPL.0005.0058.0233 at .0286).

³¹¹ Exhibit RC0252 – Chronology of Stuart Bateson (VPL.0015.0001.0409 at .0435).

³¹² Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson dated 17 November 2019 at [21] (VPL.0014.0027.0020 at .0026).

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

Date	Event
21 Apr 06	<ul style="list-style-type: none"> Special Mention Hearing listed by Justice King at which she required Ms Gobbo and Solicitor 2 to appear personally to explain their potential professional conflicts.³¹³ Ms Gobbo's potential conflict was in acting for Mr Thomas when she had acted for Mr McGrath. Ms Gobbo indicated that there was no conflict if there was no trial. Mr Horgan SC and Mr Tinney appeared for the prosecution. Ms Gobbo spoke with Ms Anscombe regarding Mr Thomas.³¹⁴
23 Jun 06	Meeting between Mr Horgan QC, Mr Tinney and Mr Bateson regarding Mr Thomas' cooperation. ³¹⁵ The meeting was left on the basis that Mr Bateson would call Ms Gobbo and invite her to call Mr Horgan SC if she wished to discuss the plea.
29 Jun 06	Mr Thomas pleaded guilty to the murder of Jason Moran, represented by Ms Gobbo. ³¹⁶ Mr Horgan SC and Mr Tinney appeared for the prosecution.
7 Jul 06	Mention Hearing, ³¹⁷ at which Justice King was informed that Ms Gobbo was acting for Mr Thomas. Mr Horgan SC and Mr Tinney appeared. ³¹⁸
7 Aug 06	<p>Mention Hearing at which Mr Faris QC raises Ms Gobbo's potential conflict in acting for Mr Thomas because she had previously acted for Mr Williams and Mr Mokbel.³¹⁹ Mr Horgan SC and Mr Tinney appeared.</p> <p>Justice King stated that she had been assured that there was no conflict and she could not 'run that for counsel'.³²⁰</p>
8 Aug 06	Mention Hearing at which Mr Faris QC informed Justice King that Ms Gobbo had received a ruling from the Ethics Committee permitting her to act for Mr Thomas at his plea. ³²¹ Mr Horgan SC and Mr Tinney appeared.

³¹³ Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson dated 17 November 2019 at [24] (VPL.0014.0027.0020 at .0026).

³¹⁴ T4784.45-4785.34 (White XXN); T5671.28-5672.5 (O'Brien XXN); T9743.1-9744.20.

³¹⁵ Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson dated 17 November 2019 at [32] (VPL.0014.0027.0020 at .0029).

³¹⁶ Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson dated 17 November 2019 at [33] (VPL.0014.0027.0020 at .0029); Exhibit RC1096 – DPP response to the Commission's inquiries 8 November 2019 (RCMPL0104.0001.0001 at _0201).

³¹⁷ Exhibit RC0269 – Supplementary Commander Statement of Stuart Bateson dated 17 November 2019 at [36] (VPL.0014.0027.0020).

³¹⁸ Ibid.

³¹⁹ Exhibit RC0269 – Supplementary Commander Statement of Stuart Bateson dated 17 November 2019 at [37] (VPL.0014.0027.0020 at .0035).

³²⁰ Ibid.

³²¹ Exhibit RC0269 – Supplementary Commander Statement of Stuart Bateson dated 17 November 2019 at [40] (VPL.0014.0027.0020 at .0030-0031).

Date	Event
7 Sept 06	<p>Mr Thomas' plea.</p> <p>After Mr Faris QC had sent a memorandum to Ms Gobbo stating that his client would seek to restrain her from appearing despite the Ethics Committee ruling, she did not appear. Mr Duncan Allen QC appeared.³²² Mr Valos told Justice King that he disagreed that Ms Gobbo was not able to appear but he had asked Ms Gobbo to return her brief to avoid the injunction application.³²³</p>

Response to the conflict

- 20.31 On 16 August 2004, Mr Thomas was arrested and charged with the murders of Jason Moran and Pasquale Barbaro. Ms Gobbo acted for Mr Thomas on the day of his arrest.
- 20.32 Prior to the committal hearing, Ms Gobbo acted for Mr Thomas in various disclosure hearings in the Supreme Court. Mr Horgan SC appeared for the Crown in those applications. There is no evidence that he took steps to enjoin Ms Gobbo from appearing for Mr Thomas, even though he had dealt with her in connection with Mr McGrath's plea only months earlier, including at the plea hearing.
- 20.33 Ms Gobbo also appeared for Mr Thomas in an application to stay the direct presentment, pending the hearing and resolution of committal proceedings in the Magistrates Court. Mr Coghlan QC appeared for the Crown. Again, there is no evidence that Mr Coghlan objected to Ms Gobbo appearing for Mr Thomas, despite Mr Coghlan QC appearing for the Crown at Mr McGrath's plea hearing only months earlier.
- 20.34 Both Mr Horgan SC and Mr Coghlan QC were at the time very experienced legal practitioners. Presumably, they formed the view that Ms Gobbo was able to act for Mr Thomas on these applications because his interests did not, in that phase of Mr Thomas' proceeding, conflict with those of Mr McGrath. Further or alternatively, they may have understood that both Mr McGrath and Mr Thomas were agreeable to Ms Gobbo appearing on those applications. In the absence of any direct evidence of these matters, the Commission cannot make any finding of fact as to whether Ms Gobbo was conflicted out of appearing on those applications. However, it is unlikely that two members of senior counsel would have failed to recognise that Ms Gobbo was appearing for Mr Thomas in circumstances where they had dealt with her only months before in connection with Mr McGrath or that they would have observed the potential conflict and done nothing.
- 20.35 The position changed for the committal hearing. Ms Gobbo was obviously aware of the conflict between Mr Thomas and Mr McGrath in that hearing. The memorandum of February 2005, authored by her and addressed to Mr Lovitt QC, indicated that she would not appear at the committal hearing because of the conflict. It is obvious that Ms Gobbo turned her mind to the question of conflict and, on that occasion, properly concluded that she could not be involved in the committal hearing.
- 20.36 Ms Gobbo prepared the memorandum, dated 18 February 2005, on behalf of Mr Valos,³²⁴ and it was addressed to Mr Lovitt QC. The memorandum states:

³²² Exhibit RC0269 – Supplementary Commander Statement of Stuart Bateson dated 17 November 2019 at [42] (VPL.0014.0027.0020 at .0031).

³²³ *Ibid.*

³²⁴ T13280.26-35 (Gobbo).

Given her [Ms Gobbo] previous involvement in acting for McGrath up until the time that he became a Crown witness we do not view it as appropriate if she appears at the Committal although she maintains a brief in this matter.³²⁵

- 20.37 By reason of that memorandum, by at least February 2005, Mr Thomas' legal team, including his solicitor and his senior counsel, were aware that Ms Gobbo had acted for Mr McGrath when he implicated Mr Thomas.
- 20.38 Ms Gobbo also told the Commission that she spoke to Mr Valos specifically about the fact that she was involved in Mr McGrath's plea discussions with the OPP and had advised Mr McGrath in relation to his statements.³²⁶
- 20.39 We do not know what, if any, steps Mr Valos and Mr Lovitt QC took in relation to this issue. They may have raised the issue with Mr Thomas who told them that he knew that Ms Gobbo had acted for Mr McGrath and wanted to retain her generally. They may have raised it with Ms Gobbo who told them that both of her clients – Mr McGrath and Mr Thomas – were agreeable to her acting for Mr Thomas generally, but that she could not appear at the committal hearing. We do not know because Counsel Assisting did not ask Mr Lovitt QC or Mr Valos about the matter and, therefore, it is not addressed in their witness statements.
- 20.40 Further, Mr Thomas was not asked during his cross-examination whether his legal team had informed him that Ms Gobbo had acted for Mr McGrath.
- 20.41 It is not apparent why direct evidence was not adduced from the people involved – Mr Thomas, his solicitor and his senior counsel – in circumstances where Counsel Assisting assert that Com. Bateson should have stopped Ms Gobbo from acting for Mr Thomas.
- 20.42 There is some uncertainty about whether Ms Gobbo in fact appeared at the committal hearing.³²⁷ The better view, on the whole of the evidence, is that she did not appear. Mr Thomas' evidence was that she acted for him in the committal proceeding.³²⁸ He may have confused the committal proceeding with other applications in which she appeared for him or she may have undertaken some work outside of court in relation to committal proceeding. This issue was not explored in any detail by Counsel Assisting and, therefore, we do not know.
- 20.43 After Mr Thomas was committed to stand trial, Ms Gobbo was briefed by Mr Valos to appear for him at his bail application in September 2005. The circumstances of that bail application are addressed in detail below. For present purposes, Ms Gobbo believed, at the time, that she was able to appear on the bail application (having not appeared at the committal hearing due to conflict), Mr Valos took no issue with it and Mr Tinney, appearing for the Crown, did not raise any objection at the Court. A few days after the bail application, Justice King became aware that Ms Gobbo had acted for Mr McGrath. There is no evidence that her Honour considered that Ms Gobbo had been in a position of conflict when she appeared at the bail application.
- 20.44 More than a year after the memorandum, Mr Valos and Ms Gobbo continued to attend meetings together regarding Mr Thomas' case.³²⁹

³²⁵ Counsel Assisting Submission at p 155 [736], Vol 2; Exhibit RC1163 – Memorandum from Valos Black (Nicola Gobbo) to Colin Lovitt QC dated Friday 18 February 2005 (MIN.5000.0002.4504 at .4513).

³²⁶ T13282.13-31 (Gobbo).

³²⁷ T13281.40-46 (Gobbo).

³²⁸ Exhibit RC0330 – Statement of Mr Thomas at [8] (OPP.0002.0007.0200 at _0003); T13586.21 (Thomas).

³²⁹ Counsel Assisting Submission at p 179-180 [826], [829], Vol 2.

- 20.45 There is evidence before the Commission that Mr Horgan SC raised the question of potential conflicts of interest directly with Ms Gobbo.³³⁰ That is the appropriate thing for counsel to do. There is no evidence that he took any further steps. While there is no direct evidence, the best inference to be drawn is that Mr Horgan SC was satisfied with the response he received from Ms Gobbo. It is improbable that, having been moved to raise the issue of conflict with Ms Gobbo he would have not taken further steps if he believed that the conflict persisted.
- 20.46 It is evident from the above that Mr Coghlan QC, Mr Tinney and Ms Anscombe knew, when Ms Gobbo was acting for Mr Thomas, that she had previously acted for Mr McGrath when he became a Crown witness against him. As they did not give evidence to the Commission, their view of any conflict and what steps, if any, they took to prevent it are, therefore, not known.
- 20.47 There is no evidence that any of the prosecutors told Ms Gobbo that they would not deal with her on behalf of Mr Thomas in circumstances where she had acted for Mr McGrath.
- 20.48 It may be that they spoke to Ms Gobbo about the potential conflict and that she told them that both of her clients – Mr McGrath and Mr Thomas – were agreeable to her acting and that they, therefore, took no further steps. We do not know.
- 20.49 However, given the number of people identified above that knew when Ms Gobbo was acting for Mr Thomas, that she had previously acted for Mr McGrath when he implicated Mr Thomas in the Moran and Barbaro murders, it seems that there are relevant facts unknown to the Commission about this apparent conflict.
- 20.50 It is highly unlikely that each of the very experienced legal practitioners mentioned above – Mr Coghlan QC, Mr Tinney and Ms Anscombe – failed to identify the possible conflict or, that they did identify it, but did nothing.
- 20.51 Mr Horgan SC may have raised this specific conflict with Ms Gobbo but, seemingly, took no further steps.
- 20.52 This all indicates that there are facts that the Commission does not have about this potential conflict which explain why Ms Gobbo was able to act for Mr Thomas for certain aspects of his proceeding. It underscores the key proposition that this conflict was not a matter for which Com. Bateson had any responsibility. It was an issue for Ms Gobbo and other legal practitioners in the proceeding and, seemingly, Ms Gobbo and those practitioners managed it.
- 20.53 In summary, it can be seen that:
- (a) Com. Bateson is a police officer who had not, unsurprisingly, been trained to police legal practitioner's conflicts of interest;
 - (b) Com. Bateson did not have the knowledge or experience that legal practitioners have to identify and respond to such conflicts;
 - (c) Mr Thomas knew that Ms Gobbo had acted for Mr McGrath and there is no evidence that he objected – indeed, it was one of his stated reasons for retaining her;

³³⁰ Exhibit RC 1096 – DPP response to the Commission's inquiries 8 November 2019 (RCMP1.0104.0001.0001 at _00024; _0042; _0049)

- (d) Mr Thomas' legal team, including his senior counsel, knew that she had acted for Mr McGrath at the time he implicated Mr Thomas, and, at least, the solicitor had detailed knowledge of the work she did for Mr McGrath;
- (e) the DPP knew that she had acted for Mr McGrath at the time he implicated Mr Thomas;
- (f) two senior prosecutors and an OPP lawyer knew the above;
- (g) Ms Gobbo considered the conflict, and, it seems, did not appear at the committal hearing; and
- (h) Ms Gobbo believed she could appear at the 5 September 2005 bail application and no objection was taken by Mr Valos (who briefed her), Mr Tinney for the Crown, Mr Heliotis QC or (later) Justice King;
- (i) Ms Gobbo believed that she could appear on the plea, while Mr Faris QC believed she could not – the issue was raised and resolved; and
- (j) Mr Horgan SC raised conflicts with Ms Gobbo and was apparently satisfied with the response.

20.54 Another example of an apparent conflict involved Mr Sean Grant. On 27 October 2003 at a filing hearing, Mr Grant appeared for Mr Andrews in relation to the Moran and Barbaro murders.³³¹ At a subsequent mention, Mr Grant appeared not for Mr Andrews, but for Carl and George Williams.³³² Despite the known fact that Mr Andrews had implicated Carl Williams, there is no evidence that anyone raised the possible conflict. It is not suggested by Counsel Assisting, nor could it be, that Com. Bateson should have intervened regarding Mr Grant's possible conflict.

20.55 When consideration is given to all of the evidence, which has been glossed over by Counsel Assisting, the irrational submission that it is Com. Bateson's fault for not preventing Ms Gobbo from acting for Mr Thomas is even clearer.

The second potential conflict

20.56 The second potential conflict is that Ms Gobbo might have been a witness in the proceeding against Carl Williams and Mr Thomas. That was not a conflict because there was no real prospect that Ms Gobbo would be a witness. This matter is addressed in detail below in response to paragraph [469] of Counsel Assisting's submissions.

Third potential conflict

20.57 Counsel Assisting appear to submit that Ms Gobbo had a conflict because she was providing information to Victoria Police about Mr Thomas while representing him.

20.58 Again, Counsel Assisting's lack of precision obscures the issues. Ms Gobbo was not "*informing*" on Mr Thomas, in the sense that Victoria Police was not obtaining information from her about Mr Thomas to be utilised in its investigations. Ms Gobbo gave her handlers very little information about Mr Thomas, and almost none of it was disseminated to investigators.

20.59 Ms Gobbo should not have been speaking to the SDU about Mr Thomas while simultaneously acting for him. Ms Gobbo should have ceased acting for Mr Thomas.

³³¹ Exhibit RC0269 – Supplementary Statement of Commander Statement of Stuart Bateson dated 17 November 2019 at [10] (VPL.0014.0027.0020 at .0021).

³³² Exhibit RC0269 – Supplementary Statement of Commander Statement of Stuart Bateson dated 17 November 2019 at [18] (VPL.0014.0027.0020 at .0025).

That is exactly what the SDU, including at Mr O'Brien's direction, told her to do. Ms Gobbo did not listen.

- 20.60 However, none of that was known to Com. Bateson. Com. Bateson did not know that Ms Gobbo was speaking to the SDU about Mr Thomas. Consequently, that fact cannot have informed his thinking.

Proposed finding at [469]

- 20.61 As noted earlier, at [469], Counsel Assisting submit that Com. Bateson knew that it was inappropriate, if not unethical, for Ms Gobbo to continue representing Mr Thomas in circumstances where it was reasonable to suppose that she might at some stage be required to testify about her part in Mr Thomas' alibi, namely her phone calls with Mr Thomas on the morning that Jason Moran and Pasquale Barbaro were murdered.
- 20.62 This proposed finding is further indicative of the over eagerness to criticise Com. Bateson.
- 20.63 First, Counsel Assisting have ignored the key piece of evidence. The evidence is that Ms Gobbo *told* both Mr Valos, and Mr Lovitt QC, in writing, that she was part of Mr Thomas' alibi for the murders.³³³ They knew. Again, Counsel Assisting did not ask either of them about this matter and why they considered that she could still act for Mr Thomas. If they had been asked then they would have likely said in evidence that she was never going to be a witness because the telephone calls were not a material fact and were never going to involve oral evidence.
- 20.64 We expect that others involved in the proceeding, and possibly the Court, also knew because it appears from Ms Gobbo's memorandum that the telephone records were part of the brief of evidence or they were produced subsequently.³³⁴ Time has not permitted us to look into this issue in more detail.
- 20.65 Second, the underlying premise to the submission at [469] is contrary to the evidence. Com. Bateson explained that the telephone call was not seen as a 'material fact' at that stage, as it was 'pretty straightforward'.³³⁵ Victoria Police did not believe that Carl Williams or Mr Thomas had been present at the time of the murders. They were not concerned with proving their whereabouts. Consistently, the telephone call was also not relied on by Mr Thomas' counsel at the committal hearing. There was never any real prospect that Ms Gobbo would be called as a witness.
- 20.66 Accordingly, there is no basis in the evidence to submit that Ms Gobbo might have been called as a witness to give evidence about the telephone call.
- 20.67 Third, the memorandum of February 2005 informed Mr Valos and Mr Lovitt QC about the telephone call.³³⁶
- 20.68 This is significant. It is also significant that it is not mentioned in Counsel Assisting's submissions. It plainly should have been given the allegation that they make at [469] that Ms Gobbo and Com. Bateson knew that it was inappropriate or unethical for Ms Gobbo to act for Mr Thomas in circumstances where she may be called to give evidence about the telephone call.

³³³ Exhibit RC1163 – Memorandum from Valos Black (Nicola Gobbo) to Colin Lovitt QC dated Friday 18 February 2005, 8 (MIN.5000.0002.4504 at .4511).

³³⁴ Exhibit RC1163 – Memorandum from Valos Black (Nicola Gobbo) to Colin Lovitt QC dated Friday 18 February 2005, 7 (MIN.5000.0002.4504 at .4508, .4510).

³³⁵ T9537.9-10, 15-16, 40-43.

³³⁶ Exhibit RC1163 – Memorandum from Valos Black (Nicola Gobbo) to Colin Lovitt QC dated Friday 18 February 2005 (MIN.5000.0002.4504 at .4511).

- 20.69 Again, Counsel Assisting did not ask Mr Valos or Mr Lovitt QC about their knowledge of the telephone call or why they considered that she was still able to act for Mr Thomas.
- 20.70 Finally, it was not put to Com. Bateson, during his cross-examination over many days, that:
- (a) it was inappropriate or unethical for Ms Gobbo to continue to act for Mr Thomas when she might be called as a witness; or
 - (b) that he knew it was inappropriate or unethical.
- 20.71 On the contrary, Counsel Assisting said to Mr Bateson 'I'm not being critical'.³³⁷ Com. Bateson was then confronted with Counsel Assisting's closing submissions which, without explanation, now criticise him.
- 20.72 It is not open to the Commissioner to make the finding at [469].

Proposed finding at [772]

- 20.73 At [772], Counsel Assisting submit that it is open to find that if Ms Gobbo's involvement in the representation of certain people had not been to Victoria Police's advantage, Victoria Police would have taken steps to prevent it from occurring.
- 20.74 Counsel Assisting have not explained why it was for Victoria Police to intervene in this issue. Nor have they explained why Victoria Police would consider this to be its role when the OPP had carriage of the proceedings in which Ms Gobbo had potential conflicts.
- 20.75 The evidence before the Commission is that the Senior Crown Prosecutor, Mr Horgan SC, who was prosecuting the proceedings in which Ms Gobbo had her potential conflicts was dealing with the issue. Mr Horgan SC addressed conflicts with her.
- 20.76 In circumstances where:
- (a) the OPP had carriage of the prosecutions;
 - (b) a member of senior counsel, Mr Horgan SC, was appearing in those prosecutions;
 - (c) Mr Horgan SC had resolved the terms on which Mr McGrath would plead guilty and assist police with Ms Gobbo and then he appeared many times opposed to Ms Gobbo when she started acting for Mr Thomas and he went on to resolve the terms on which Mr Thomas would plead guilty and assist police with Ms Gobbo;
 - (d) Mr Horgan SC directly raised conflicts with Ms Gobbo;
 - (e) others at the OPP knew the matters in sub-paragraph (c) above;
 - (f) Mr Thomas knew that Ms Gobbo had acted for Mr McGrath when he implicated Mr Thomas;
 - (g) Ms Gobbo's leader (a member of senior counsel) knew that Ms Gobbo had acted for Mr McGrath when he pleaded guilty and became a Crown witness against Mr Thomas;
 - (h) Ms Gobbo's instructing solicitor knew the matters in sub-paragraph (g) and, according to Ms Gobbo, she specifically told him that she had negotiated with the OPP and advised Mr McGrath about his statements; and

³³⁷ T9537.9.

- (i) there is no evidence that Mr McGrath raised any concern about Ms Gobbo acting for Mr Thomas (which is not surprising given that they were all part of the same crew),

there is no basis whatsoever for Counsel Assisting placing responsibility on members of Victoria Police for not trying to prevent Ms Gobbo from acting for Mr Thomas.

- 20.77 Nor is there any evidence from which it can be properly inferred that members of Victoria Police did not try to prevent Ms Gobbo from acting because it was to Victoria Police's advantage to have her act. Mr Bateson's evidence was that he could not have cared less if it was not Ms Gobbo who acted for Mr Thomas.³³⁸ Com. Bateson not raising the possible conflict is consistent with him also not raising the fact that Mr Grant appeared for both Mr Andrews and Carl Williams on different occasions in the same matter when they had conflicting interests. Counsel Assisting do not say that there was any advantage to Victoria Police in Mr Grant so acting.
- 20.78 The submission that members of Victoria Police did not prevent Ms Gobbo from acting because it was to Victoria Police's advantage for her to act is nothing more than cynical speculation that is of no assistance to the Commission.
- 20.79 In circumstance where there is no evidence that Mr McGrath complained about Ms Gobbo acting for Mr Thomas and where Mr McGrath, Mr Thomas and Ms Gobbo had all been part of the same crew, Mr McGrath may not have cared less that Ms Gobbo was acting for Mr Thomas after she had negotiated him a very good outcome – 10 years for 4 execution murders. All that he had to do was give his evidence in order to get his discount. It is not clear why it would have mattered to Mr McGrath whether his credit was attacked and Mr Thomas was not convicted. He would still get his discount.

Proposed finding at [898]

- 20.80 It is clear on the evidence set out above – much of which has been ignored or glossed over by Counsel Assisting - that the finding in paragraph [898] is not open.
- 20.81 First, it assumes that Ms Gobbo was conflicted out of acting for Mr Thomas altogether. That is not accepted for the reasons set out above.
- 20.82 Second, the lawyers prosecuting already knew each of the matters in 898.1 to 898.3 (that Ms Gobbo was acting for Mr Thomas when she had previously acted for Mr McGrath and the Court's concern about Solicitor 2) and there is evidence that Mr Horgan SC raised conflicts with Ms Gobbo.
- 20.83 Third, there is no evidence that Com. Bateson was 'well aware of the impropriety of Ms Gobbo acting for Mr Thomas due to her previous representation of Mr McGrath'.
- 20.84 His evidence was that:
- (a) he didn't care who was representing who;³³⁹
 - (b) there was a small cadre of barrister who represented individuals involved in organised crime;³⁴⁰
 - (c) one barrister was the same as the next in organised crime cases;³⁴¹
 - (d) potential conflicts of interest were pretty common and well known at the time;³⁴²

³³⁸ T3400.39-2301.05; T3401.30-3402-08.

³³⁹ T3364.30-31.

³⁴⁰ T3365.9-11.

³⁴¹ T3365.12-13.

³⁴² T3399.17.

- (e) he did not think, as a Detective Sergeant, that conflicts of interest were something for him to resolve;³⁴³
 - (f) Ms Gobbo's potential conflicts were known to "very senior people in the legal world";³⁴⁴ and
 - (g) Ms Gobbo's potential conflicts of interest were for the courts, the DPP and the legal fraternity.³⁴⁵
- 20.85 Com. Bateson also made the frank concession that he found the conflict of interest issue a "confusing one" and said that his knowledge about it was quite limited during the relevant period and that he relied on others, including the OPP and its officers, to identify and address such issues.³⁴⁶

Proposed finding at [1008] and [1020]

- 20.86 These paragraphs of Counsel Assisting's submissions seem to be directed to a different conflict, namely the alleged conflict between Ms Gobbo acting for Mr Thomas and being a registered human source at Victoria Police at the same time.
- 20.87 At paragraph [1020], Counsel Assisting submit that if Com. Bateson had acted appropriately, Ms Gobbo would not have been in a position of conflict in relation to Mr Thomas.
- 20.88 It is self-evident that Com. Bateson would never have told the Victorian Bar Ethics Committee – or indeed anyone else – that Ms Gobbo was a registered human source.
- 20.89 Com. Bateson was not authorised to do that and it would have been a breach of policy to do so. The situation that arose following Carl Williams' letter calling Ms Gobbo a 'dog' is a neat example of the complexities of Ms Gobbo's use as a human source and the inadequacy of Victoria Police's systems to respond to those complexities. It is not the case that there were individuals failing within an otherwise appropriate and effective system. The reality is that the systems were deficient, and individuals were not equipped to manage the issues that arose.
- 20.90 Paragraph [1020] of Counsel Assisting's submissions contains comment that Mr Williams' concerns about Ms Gobbo's conflict was 'another point at which they [Mr O'Brien and Mr Bateson] should have reflected on their obligations to the criminal justice system'.³⁴⁷ Counsel Assisting do not specify what it is that they ought to have done at this point, asserting only that they should have 'acted appropriately'. In circumstances where Counsel Assisting conclude that the evidence supports the making of Relevance serious findings against both men, the vague comment 'acted appropriately' is entirely unsatisfactory. Where a matter is put against a person then procedural fairness requires that it be put with sufficient specificity to enable the person to meet the allegation. The matter put against Mr Bateson at [1020] should be disregarded.

³⁴³ T3399.35-36; T3400.27-32.

³⁴⁴ T3416.32-34.

³⁴⁵ T3399.44-46.

³⁴⁶ T9576.23-29.

³⁴⁷ Counsel Assisting Submissions at p 221 [1020], Vol 2.

21 The sixth false premise: Com. Bateson misled Mr Thomas as to Ms Gobbo's honesty

- 21.1 Counsel Assisting submit that Com. Bateson, in the course of discussions with Mr Thomas in March 2006, misled Mr Thomas by failing to tell him that Ms Gobbo was a human source, failing to discourage him from retaining Ms Gobbo and telling him that Ms Gobbo was honest when Com. Bateson knew that Ms Gobbo's conduct was incompatible with honesty.
- 21.2 In February 2006, Ms Gobbo told Com. Bateson that Mr Thomas was considering cooperating with Victoria Police.
- 21.3 On three occasions in the following weeks, Com. Bateson, in the company of DAI O'Brien met with Mr Thomas in prison. The substance of those discussions is set out in the submissions of Mr O'Brien. Com. Bateson adopts those submissions.
- 21.4 For present purposes, there are three critical facts:
- (a) the discussions with Mr Thomas occurred at Mr Thomas' request;
 - (b) Ms Gobbo was not being tasked at all in connection with Mr Thomas; and
 - (c) Com. Bateson did not know that Ms Gobbo was talking to the SDU about Mr Thomas.

The proposed findings at [864] and [887]

- 21.5 The proposed findings in paragraphs [864] and [887] can be dealt with together. They proceed on the basis of a common false premise. When the falsity of the premise is exposed, the basis for the finding falls away.
- 21.6 First, the basis for the submissions in paragraphs [864] and [887] is that Com. Bateson knew, or ought to have known, that Ms Gobbo was not honest at relevant times. That premise falls away because there was nothing in Com. Bateson's interactions with Ms Gobbo as at either *15 March 2006* (paragraph [864]) or *23 March 2006* (paragraph [887]) that could reasonably be said to have made it "*clear*" to Com. Bateson that Ms Gobbo's actions "*necessarily excluded her from being honest*".
- 21.7 That is so because:
- (a) to Mr Bateson's knowledge at the time, there was nothing improper about Ms Gobbo's conduct in connection with Mr McGrath, and no reason for Mr Bateson to have formed the view that her conduct was dishonest;
 - (b) Mr Bateson as a matter of fact held the view, at the time, that Ms Gobbo had acted in Mr McGrath's best interests, and in an honest fashion;³⁴⁸
 - (c) Mr Bateson as a matter of fact held the view, at the time, that Ms Gobbo acted honestly when representing Mr McGrath and Mr Thomas;³⁴⁹
 - (d) Mr Bateson did not know that Ms Gobbo was providing information to the SDU about people that she was acting for;
 - (e) at its highest, Mr Bateson knew that Ms Gobbo told him about Solicitor 2's criminal conduct in relation to Tony Mokbel and that she had, at various times, represented them in unrelated proceedings; and

³⁴⁸ T9563.43-44.

³⁴⁹ T9775.12-16.

- (f) Mr Bateson did not know that Ms Gobbo was talking to the SDU about Mr Thomas.
- 21.8 Second, Mr Bateson said, quite sensibly, that he did not believe that the fact of being a registered human source was incompatible with a person being honest.³⁵⁰
- 21.9 Third, Com. Bateson did not know, and could not have known, as at 15 March 2006 or 23 March 2006 that Ms Gobbo would put herself in a position of conflict by accepting instructions to act on behalf of individuals about whom she was providing information to the SDU.
- 21.10 As such, there is no basis at all to conclude that, at either 15 March 2006 or 23 March 2006, Com. Bateson:
- (a) had any reason to form the view that, by reason of Ms Gobbo's role as a human source, she was dishonest; and
 - (b) had knowledge of matters that would have "*necessarily excluded her from being honest*".
- 21.11 That is sufficient reason not to make the proposed findings in paragraphs [864] and [887].
- 21.12 In relation to paragraph [864] specifically, the extract of the discussion of 15 March 2006 is incomplete and does not fairly represent what happened.
- 21.13 Mr O'Brien and Com. Bateson attended on Mr Thomas at his request. This was the first discussion of substance between them about his potential cooperation. Com. Bateson and Mr O'Brien explained to Mr Thomas the process of cooperation. Then the following exchange occurred:
- Mr Thomas: Do I keep the solicitors?*
- Mr Bateson: Hey?*
- Mr Thomas: Do I keep the solicitors?*
- Mr Bateson: Well look I'm not sure, it's up to you.*
- Mr Thomas: Jim's [Valos], I've got heaps of confidence in Jim. Nicola's good but she has to give something, I can't, you know what I mean?*
- Mr Bateson: I personally think that you're better off with independent um legal representation.*
- Mr Thomas: That's what I mean.*
- Mr Bateson: That's what I personally think. Now I can't tell you to change solicitors, um, or anything because as far as I know they're both very good. But what I'm saying is that they're involved with a lot of other people.*³⁵¹
- 21.14 Later in the discussion, the following exchange took place about Mr Valos:
- Mr Bateson: You make the assessment yourself [Thomas].*
- Mr Thomas: Jim's good.*

³⁵⁰ T9776.43-45.

³⁵¹ Exhibit RC0772 – Taped conversation between Bateson, O'Brien and Mr Thomas at [REDACTED] Prison, 15 March 2006, 11 (VPL.0005.0062.0176 at .0186).

Mr Bateson: Jim is good. Jim's a good solicitor.

Mr Thomas: Jim's fair. Jim's been telling me.

Mr Bateson: I'll tell you one thing – I truly believe Jim's a good solicitor, I believe he's an honest solicitor.

Mr Thomas: Yeah, he is.

Mr Bateson: But you are putting him between a rock and a hard place. You are putting him where he's in a potential conflict of interest. That's something for you and him to work out.

- 21.15 There was no other discussion about Mr Thomas' legal representation in the course of the meeting.
- 21.16 As a matter of common sense, if Com. Bateson wanted Mr Thomas to continue to be represented by Ms Gobbo because it would benefit Victoria Police then it would be counterproductive to tell Mr Thomas that he would be better off replacing Ms Gobbo because she was involved with a lot of other people. There was no need for Com. Bateson to say that and he would not have said it if he did not want Mr Thomas to replace Ms Gobbo.
- 21.17 At this time:
- (a) Com. Bateson had no reason to believe that Ms Gobbo would not represent Mr Thomas to the best of her ability (and Com. Bateson positively said that he believed she would after the outcome she achieved for Mr McGrath which was plainly in his best interests); and
 - (b) Com. Bateson did not know, or have any reason to believe, that Ms Gobbo was speaking about Mr Thomas to the SDU.
- 21.18 It is *not* the case that Com. Bateson knew that Ms Gobbo was informing on Mr Thomas and was thereby conflicted.
- 21.19 Com. Bateson knew only that Ms Gobbo had acted for Mr McGrath (a matter that Mr Thomas also knew) and that, as a human source, her identity was not to be disclosed in order to protect her from harm, in the same way that Victoria Police has always protected the identity of its human sources.
- 21.20 In relation to paragraph [887], there are also further evidentiary reasons why the findings in that paragraph should not be made.
- 21.21 The proposed finding in paragraph [887.2] rests on the evidence in paragraph [886] (point 2) of Counsel Assisting's submission. That evidence was given by Com. Bateson about an answer he gave to a particular question asked by Mr Thomas on a different day entirely – 22 June 2006.
- 21.22 The manner in which Counsel Assisting have extracted the evidence at paragraph [886] is misleading. It gives the impression that this was the explanation offered by Com. Bateson for the exchange with Mr Thomas extracted at paragraph [885]. It was not.
- 21.23 Finally, contrary to what is put at paragraph [887.3], Com. Bateson's unshakeable evidence was that he believed that Ms Gobbo would give Mr Thomas good advice.³⁵² For the reasons given above, there was no reason for Com. Bateson to have formed a contrary view.

³⁵² T9777.21-23.

- 21.24 Mr Thomas admitted before this Commission that he was involved in the murder of Jason Moran.³⁵³ Despite knowing he was involved, had he pleaded not guilty and got convicted on the evidence of, *inter alia*, at least two of his crew, he would have spent far longer in prison than the discounted sentence that Ms Gobbo achieved for him with a guilty plea and assistance.

22 The seventh false premise: Com. Bateson did not task Ms Gobbo in connection with Mr Thomas

- 22.1 The seventh false premise is that Com. Bateson was involved in tasking Ms Gobbo in connection with Mr Thomas. This allegation arises from events on 21 March 2006 and 19-20 April 2006.

21 March 2006

- 22.2 On 19 February 2006, Com. Bateson received a telephone call from Ms Gobbo indicating that Mr Thomas may wish to cooperate with police in relation to his charges.³⁵⁴ This was not the first time that Mr Thomas had expressed such interest. As set out earlier, Mr Thomas expressed the same interest back in July 2004, well before Ms Gobbo acted for him.
- 22.3 That afternoon, (then) DS Bateson and DSC Hatt met with Ms Gobbo and her instructing solicitor, Mr Valos, to discuss Mr Thomas' renewed interest in co-operating. Afterwards, DS Bateson briefed DI Ryan about the meeting.³⁵⁵
- 22.4 The following day, 20 February 2006, DI Ryan met with DAI O'Brien and DS Bateson to discuss resourcing in relation to Mr Thomas.³⁵⁶ Later that day, DI Ryan, DS Bateson and DSC Kerley met with Mr Horgan SC.³⁵⁷ Mr Ryan's diary records that they discussed "*options re [Mr Thomas]*" and that they would "*proceed on Wednesday at this stage*".³⁵⁸
- 22.5 On 22 February 2006, DS Bateson and DAI O'Brien met with Mr Thomas.
- 22.6 On 15 March 2006, DS Bateson and DAI O'Brien met with Mr Thomas again. In the course of the discussion, Mr Thomas said that he wanted to cooperate, but that he was having difficulty explaining his decision and the consequences to his wife. The following exchange then took place:

Mr Thomas: Got to sort out ^{Mr Thomas' Personal Partner}

Mr O'Brien: All right. Well do you want us to speak to her or not?

Mr Thomas: Can you talk to her for me?

Mr Bateson: I can talk to her.

Mr Thomas: All you do is ring her up and say I've told you to come and see her.

Mr Bateson: Yeah.

Mr Thomas: Say look I want to say the truth, just lay it out.

³⁵³ T13656.38-41 (Thomas).

³⁵⁴ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [51] (VPL.0014.0039.0001 at .0009).

³⁵⁵ Exhibit RC0312 – Diary of Gavan Ryan dated 19 February 2006 (VPL.0005.0120.0020 at .0022).

³⁵⁶ Exhibit RC0312 – Diary of Gavan Ryan dated 19 February 2006 (VPL.0005.0120.0020 at .0022).

³⁵⁷ Exhibit RC0312 – Diary of Gavan Ryan dated 20 February 2006, 3, (VPL.0005.0120.0107 at .0109).

³⁵⁸ Exhibit RC0312 – Diary of Gavan Ryan dated 20 February 2006, 3, (VPL.0005.0120.0107 at .0109).

Mr Bateson: *The truth is that you're going to be involving yourself in a whole lot more than what you've been charged with, right?*

Mr Thomas: *I'm gunna tell youse mate.*

Mr Bateson: *Yeah.*

Mr Thomas: *Whatever I know, I'll just tell it straight, whatever you know, I just, fuck I'm over it.*

Mr Bateson: *All right well I'll go see her, no worries.*³⁵⁹

22.7 The reason Mr Thomas wanted Com. Bateson to speak to ^{Mr Thomas' Pe} was that she was not comfortable talking to him in a box visit.³⁶⁰

22.8 Com. Bateson did as Mr Thomas had asked and he spoke to ^{Mr Thomas' Personal P} the next day.³⁶¹

22.9 On 21 March 2006, Com. Bateson then met with ^{Pii} and discussed ^{Pii} ^{Mr Thomas' Personal P}. Immediately following that meeting, Com. Bateson again spoke to ^{Mr Thomas' Personal P}. She said that Mr Thomas would maintain his innocence – the discussion was, therefore, a short one and did not touch on ^{Pii} ^{Pii} Mrs Thomas.

22.10 Later that day, Com. Bateson *received* a telephone call from Ms Gobbo, who said that she had been contacted by ^{Mr Thomas' Personal Partner} and was to visit her the following day. It is reasonable to infer that ^{Mr Thomas' Personal P} contacted Ms Gobbo – ^{Mr Thomas}'s legal representative – following the meeting with Com. Bateson that morning.

22.11 Com. Bateson told Ms Gobbo what had happened at that morning's meeting with ^{Pii} ^{Mr Thomas' Pers}. There was nothing improper about that. Mr Thomas had instructed Ms Gobbo that he wanted to plead guilty and assist police. Mr Thomas had told Com. Bateson that he wanted to plead guilty and assist police. Mr Thomas expressed concern about ^{Mr Thomas' Personal Partner} ^{Pii} and his inability to tell her his decision and asked Com. Bateson to do it for him. Com. Bateson was doing just that.

22.12 After ^{Mr Thomas' Personal P} seemingly called Ms Gobbo, they met up. Ms Gobbo's account of the meeting was that ^{Mr Thomas' Personal P} had many questions for Ms Gobbo about ^{Mr Thomas}'s likely decision to plead guilty and make statements. ^{Mr Thomas' Personal P} told her that she had met with DS Bateson but was not happy about the lack of detail in relation to ^{Pii} ^{Pii}³⁶²

22.13 The following day, Com. Bateson received a telephone call from ^{Mr Thomas' Personal Pa} saying that Mr Thomas wished to plead guilty and would "*tell all*".

22.14 Com. Bateson then met with Mr Thomas again on 23 March 2006. In the course of that discussion, Mr Thomas confirmed that he wanted to assist police.³⁶³

22.15 The only evidence that Counsel Assisting point to as indicating that Ms Gobbo's contact with ^{Mr Thomas' Personal P} was a "*tasking*" is that Com. Bateson referred to her in his diary as "3838". If that was the only evidence it would be insufficient. When the evidence as a

³⁵⁹ Exhibit RC0772 – Taped conversation between Bateson, O'Brien and Mr Thomas on 15 March 2006 at ^{Pii} Prison, 15 March 2006, 23 (VPL.0005.0062.0176 at .0198).

³⁶⁰ Exhibit RC0772 – Taped conversation between Bateson, O'Brien and Mr Thomas on 15 March 2006 at ^{Pii} Prison, 15 March 2006, 23 (VPL.0005.0062.0176 at .0198).

³⁶¹ Exhibit RC0272 Commander Stuart Bateson diary, 16 March 2006, 99-100 (VPL.0005.0058.0233 at .0331-.0332).

³⁶² Exhibit RC0281 – ICR3838 (023), 23 March 2005 (VPL.2000.0003.1776 at .1790).

³⁶³ Exhibit RC0476 – Transcript of meeting between Thomas, James (Jim) O'Brien and Stuart Bateson, 23 March 2006, 76-79, VPL.0005.0062.0609 at .0684-.0687.

whole is considered, it is clear that Ms Gobbo speaking to ^{Mr Thomas' Personal Pa} was not a tasking:

- (a) Com. Bateson did not have a consistent approach to the use of “*Ms Gobbo*” and “3838”;
- (b) Com. Bateson had, not long before, met with Ms Gobbo to discuss her unhappiness about Mr Andrews’ statement at the request of the SDU during which he referred to her as “3838”;
- (c) Com. Bateson understood his clear instructions not to deal with Ms Gobbo as a human source, unless expressly instructed to and he knew that he was not authorised to task her;
- (d) the ICRs record taskings, and there is no record of any tasking in connection with ^{Mr Thomas' Personal Pa}
- (e) it was Ms Gobbo who contacted Com. Bateson about her call from ^{Mr Thomas' Personal P_} Com. Bateson did *not* make contact with Ms Gobbo;
- (f) Mr Thomas had instructed Ms Gobbo that he wanted to assist;
- (g) Mr Thomas had told Com. Bateson that he wanted to assist;
- (h) Com. Bateson only spoke to ^{Mr Thomas' Personal Pe} because Mr Thomas asked him to do so; and
- (i) there is no evidence at all that Com. Bateson asked Ms Gobbo to do or say anything to ^{Mr Thomas' Personal F.}

22.16 Further, there is no evidence before the Commission about what Ms Gobbo said to ^{Mr Thomas' Personal Partner} [REDACTED] As far as we know, those assisting the Commission did not request a statement from her. They did not call her to give evidence.

22.17 Ms Gobbo had no real recollection of this event and confused this discussion with later events connected to charges ^{Mr Thomas' Personal Pt} was facing.³⁶⁴ Further, in the course of her cross-examination by Counsel Assisting, it was put to Ms Gobbo that she had “*heard from Mr Bateson that there could be a spanner in the works and ^{Mr Thomas' Personal Partner} might not be prepared to go along and you communicated with her and smoothed things over and got things back on track*”. Ms Gobbo answered “*yeah, probably*”. She had no actual recollection of the event. Further, this is not evidence of a tasking. Ms Gobbo’s client, Mr Thomas, wanted to plead guilty and assist police and ^{Mr Thomas' Pe} did not like that decision. There is nothing wrong with Ms Gobbo speaking to ^{Mr Thomas' Personal Partner} about what her client wanted to do.

22.18 Importantly, the premise of Counsel Assisting’s question was wrong. Mr Thomas had asked Com. Bateson to speak to ^{Mr Thomas' Pe} about his decision. Com. Bateson then relayed to Ms Gobbo – as Mr Thomas’ lawyer and only after Ms Gobbo had contacted him – the content of his discussion with ^{Mr Thomas' Personal Pt} There is no evidence at all that Com. Bateson asked Ms Gobbo to do anything. It was for Ms Gobbo to decide how best to represent her client’s interests.

22.19 The overwhelming weight of evidence is that this event was not Ms Gobbo being “*tasked*” to assist the Purana Taskforce.

19 and 20 April 2006

³⁶⁴ T13366.8-46 (Gobbo).

- 22.20 The events of 19 and 20 April 2006 (the provision of transcripts to Ms Gobbo) are considered in detail in the submissions of Gavan Ryan. Com. Bateson adopts those submissions.
- 22.21 These events are a false issue, inadvertently created by counsel for Ms Gobbo, which is explained in Mr Ryan's submissions.
- 22.22 For present purposes, it suffices to recall that:
- (a) in March and April 2006, DAI O'Brien and DS Bateson met with Mr Thomas on three occasions;
 - (b) these meetings were at the request of Mr Thomas, who had communicated through his lawyer, Ms Gobbo, his interest in assisting police in relation to his charges;
 - (c) Victoria Police had not tasked Ms Gobbo in connection with Mr Thomas;
 - (d) DAI O'Brien, DI Ryan and DS Bateson decided that Victoria Police would not further approach Mr Thomas about assisting police;³⁶⁵
 - (e) this decision had been communicated to the OPP³⁶⁶ and Com. Bateson had told the OPP "*we don't need him, let's push ahead*";³⁶⁷
 - (f) that decision was made in part because Mr Thomas' assistance was not needed and in part because Mr O'Brien and Mr Bateson believed that Mr Thomas was not being honest with them in their discussions with him;
 - (g) on 19 April 2006, Com. Bateson, Mr Ryan and Mr O'Brien had a meeting to discuss Mr Thomas' matter generally and it was decided that the transcripts of the information that Mr Thomas had already provided to police would be given to his lawyer, Ms Gobbo;
 - (h) Com. Bateson recalled the meeting, and gave clear evidence that the transcripts were being given to Ms Gobbo as Mr Thomas' lawyer for the purpose explained in Mr Ryan's submissions;
 - (i) Com. Bateson initially objected, because he was no longer interested in a plea and assistance and preferred to see Mr Thomas go to trial;
 - (j) Mr Ryan's evidence was that Ms Gobbo was not being given the transcripts in her capacity as a human source;³⁶⁸
 - (k) Mr O'Brien had no recollection of the meeting, or of any tasking of Ms Gobbo;³⁶⁹
 - (l) on the evening of 19 April 2006, Ms Gobbo mentioned reviewing the transcripts to her handlers – an event that cannot be coincidence and suggests that one of the investigators had told her that she was to be given the transcripts should Mr Thomas decide to plead guilty and assist;
 - (m) Sandy White, who was present when the transcripts were given to Ms Gobbo, had no memory of Ms Gobbo being tasked in connection with the transcripts;³⁷⁰

³⁶⁵ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [87] (VPL.0014.0027.0001 at .0014).

³⁶⁶ T9780.28-31.

³⁶⁷ T9780.28-31; Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [91] (VPL.0014.0027.0001 at .0015).

³⁶⁸ T4532.36-39 (Ryan).

³⁶⁹ T5659.13 (O'Brien).

³⁷⁰ T4773.1-2 (White).

- (n) Peter Smith and Mr Green were present when the transcripts were given to Ms Gobbo, but were not cross-examined about the matter;
- (o) the transcript of the meeting in which the transcripts were given to Ms Gobbo does not record or indicate that Ms Gobbo was being tasked;
- (p) there is evidence suggesting that Ms Gobbo was given the transcripts (as opposed to only being shown them), which would be consistent with Com. Bateson's evidence that they were being provided to Ms Gobbo as Mr Thomas' lawyer;
- (q) Ms Gobbo's evidence, under cross-examination by Counsel Assisting, was that she had some recollection of reading the transcripts but *no* memory of:
- (r) reading them in her informer capacity;³⁷¹ and
- (s) reading them, in her informer capacity, as part of a tasking to use the content to then encourage Mr Thomas to make admissions, plead guilty and implicate his associates.³⁷²

Proposed finding at [923]

22.23 In light of the above, and the submissions of Mr Ryan, the proposed finding at paragraph [923] is to be rejected. The transcripts were provided to Ms Gobbo as Mr Thomas' lawyer, and not as part of a human source tasking, as was initially suggested by counsel for Ms Gobbo but which was not made good by Ms Gobbo in evidence.

22.24 In relation to the matters in paragraph [923] specifically:

- (a) the reference to '3838' is explained in Mr Ryan's submissions. It is not indicative of Ms Gobbo's use as a source;³⁷³
- (b) providing the transcripts to Ms Gobbo through her handlers is explained in Mr Ryan's submissions. It was because Mr O'Brien was off to see the SDU about another matter;
- (c) Com. Bateson said that he was not sure if Mr Valos was still representing Mr Thomas³⁷⁴ and Ms Gobbo was approached because it was Ms Gobbo that was making contact with Victoria Police on Mr Thomas' behalf. She was their contact which is precisely the reason why the transcripts were being given to her;³⁷⁵
- (d) Mr Thomas had, in fact, told Com. Bateson that Mr Valos said that he could not act because he had a conflict;³⁷⁶
- (e) there is evidence that Ms Gobbo was given (rather than only shown) the transcripts;³⁷⁷ and
- (f) Mr Valos was not asked whether he got the transcripts from Ms Gobbo or whether he was told about them. He may have had them or known about them but we do not know because he was not asked by Counsel Assisting.

³⁷¹ T13368.16-46 (Gobbo).

³⁷² *Ibid.*

³⁷³ T9735.36-37.

³⁷⁴ T9738.9-10.

³⁷⁵ T9738.9-11.

³⁷⁶ Exhibit RC0476 – Transcript of meeting between Thomas, James (Jim) O'Brien and Stuart Bateson, 23 March 2006, 83, VPL.0005.0062.0609 at .0691.

³⁷⁷ This is set out in Mr Ryan's submissions.

22.25 The proposed finding in paragraph [923] is not open on the evidence. Nor is the finding at [1039].

Proposed finding at [935]

- 22.26 Relatedly, at paragraph [935], Counsel Assisting submit that, it is open to the Commissioner to reject Mr Bateson's evidence that he referred to Ms Gobbo by her human source number on a number of occasions by mistake.
- 22.27 While not included in the proposed finding in paragraph [935], Counsel Assisting repeatedly assert that Com. Bateson used the term '3838' for the purpose of avoiding his disclosure obligations (see [871], [876]).
- 22.28 The allegations are not supported by the evidence. They are also nonsensical for the reasons below.
- 22.29 The springboard for Counsel Assisting's submission is the assertion, in paragraph [871], that Com. Bateson "was involved in concealing from the defence diary entries which indicated Ms Gobbo's involvement in Mr McGrath's representation and statement process".
- 22.30 For the reasons developed in detail earlier, the documentary evidence before the Commission unequivocally shows that Com. Bateson did no such thing.
- 22.31 Counsel Assisting identified the following occasions on which Com. Bateson referred to Ms Gobbo as "3838" when he ought properly to have referred to her by name:
- (a) 21 March 2006;
 - (b) 19 April 2006; and
 - (c) 20 April 2006.
- 22.32 On 21 March 2006, Com. Bateson spoke to Ms Gobbo by telephone. Ms Gobbo told him that she had received a telephone call from ^{Mr Thomas' Personal Partner} and would be meeting her the following morning. Com. Bateson recorded that the call was from '3838'.
- 22.33 Com. Bateson said this was an error. He said:
- ...It was probably just the conversation I'd had with Jim a few days before, that that was in my mind when I was writing my notes quite quickly. But I certainly don't oscillate between talking to her as a barrister and a human source. I was talking to her as a barrister.³⁷⁸*
- 22.34 There is no reason to doubt that it was a mistake because:
- (a) Com. Bateson understood that he was not permitted to have contact with Ms Gobbo in her role as a human source, other than as instructed;³⁷⁹
 - (b) it is not suggested that the telephone call Ms Gobbo made to him was made in her capacity as a human source (and there is nothing in the ICRs which suggest that any such tasking occurred);
 - (c) Com. Bateson had recently met with Ms Gobbo, at the request of DAI O'Brien, in connection with the statement of Mr Andrews and had, properly, referred to her as '3838' in his note of that meeting;³⁸⁰ and

³⁷⁸ T9721.16-20.

³⁷⁹ T9722.10-11; T9722.16-19.

³⁸⁰ T9721.27-31.

- (d) Mr O'Brien had referred to Ms Gobbo as "3838" when he asked Mr Bateson to meet with her about Mr Andrews.³⁸¹
- 22.35 Counsel Assisting assert, at [876], that calling Ms Gobbo '3838' in this entry "meant that in any prosecution in which Mr Bateson was called upon to produce his contemporaneous notes, he could claim that he was not obliged to do so on the basis of PII, or alternatively claim that he was not obliged to identify the person as he/she was an informer".
- 22.36 There is no basis for that submission and Counsel Assisting have not sought to support it by reference to evidence. It has been made by an overly suspicious mind.
- 22.37 It is unrealistic that when Ms Gobbo called DS Bateson, without warning, that he quickly decided to refer to her as "3838" so that he could later claim PII over that note.
- 22.38 If he did not want to disclose his note of the telephone call then it would have been far easier not to make a note at all.
- 22.39 Further, referring to her as "3838" was obviously no guarantee that he would not have to disclose the note. If he claimed PII over the note then in all likelihood he would have to explain it to a Court and the Court would decide.
- 22.40 In addition, the use of a human source number did not determine whether a PII claim could be made.
- 22.41 Lastly, Com. Bateson had no reason to want to conceal that Ms Gobbo had called him about Mr Thomas or ^{Mr Thomas' Personal Partner}
- 22.42 Critically, Com. Bateson referred to Ms Gobbo by name in connection with Mr Thomas many times in his diary.³⁸² The consequence of him failing to do so on 21 March 2006 was that, if the diary entries were ever disclosed, he had created a risk of compromise. He clearly would not do that deliberately. The reference to '3838' was, self-evidently, made without any thought.³⁸³
- 22.43 Counsel Assisting did not put the allegation now made to Com. Bateson in cross-examination. He was cross-examined about his diary entry of 21 March 2006, but it was not put to him that he had used the designation '3838' for the reason alleged.
- 22.44 The absence of procedural fairness is reason enough for the submission in [876] not to be made.
- 22.45 As to the diary entry of 19 April 2006, that has been addressed earlier.
- 22.46 As to the diary entry of 20 April 2006, Com. Bateson spoke to Ms Gobbo about the possibility of Mr Thomas pleading guilty. He recorded in his diary "s/t 3838 re [Mr Thomas] possibly pleading guilty and giving evidence".³⁸⁴ In the entry immediately preceding this one, Com. Bateson referred to Ms Gobbo by name in connection with the proceedings before Justice King.

³⁸¹ Ibid.

³⁸² Untendered – Diary of Stuart Bateson, 21 April 2006 (VPL.0005.0058.0233 at .0346); Untendered – Diary of Stuart Bateson, dated 23 June 2006 (VPL.0005.0058.0233 at .0361); Untendered – Diary of Stuart Bateson, dated 29 June 2006 (VPL.0005.0058.0233 at .0363); Untendered – Diary of Stuart Bateson, dated 4 July 2006 (VPL.0005.0058.0233 at .0365); Untendered – Diary of Stuart Bateson, dated 7 July 2006 (VPL.0005.0058.0233 at .0366); Untendered – Diary of Stuart Bateson, dated 13 July 2006 (VPL.0005.0058.0233 at .0369); Untendered – Diary of Stuart Bateson, dated 15 January 2007 (VPL.0005.0058.0404 at .0407); Untendered – Diary of Stuart Bateson, dated 2 October 2007 (VPL.0005.0058.0404 at .0473); Untendered – Diary of Stuart Bateson, dated 17 October 2007 (VPL.0005.0058.0404 at .0478).

³⁸³ T9722.4-5.

³⁸⁴ Untendered – Diary of Stuart Bateson, 21 April 2006, 114 (VPL.0005.0058.0233 at .0346).

- 22.47 Com. Bateson explained that he did not refer to Ms Gobbo as '3838' deliberately. He said:
- I don't think I'm willing to accept there's any deep and meaning in that. I don't recall any complicated system of recording her name that ever existed in my mind or indeed in an instruction from anyone else.*³⁸⁵
- 22.48 It was put to Com. Bateson that he had referred to Ms Gobbo in that entry as '3838' because "what she does behind the scenes when it comes to assisting Victoria Police as a human source, as an informer, she does it as '3838'".³⁸⁶
- 22.49 That allegation – that Ms Gobbo called Com. Bateson in her capacity as a human source to tell him that Mr Thomas wanted to cooperate – did not make it into Counsel Assisting's submissions. Presumably, that is because there was no factual basis for the question - there is no evidence at all that she made the call in her capacity as a human source.
- 22.50 However, inexplicably, the allegation that Com. Bateson deliberately referred to her as '3838' has survived. Without the underlying allegation, the allegation that Com. Bateson was making a forensic choice about when to use "Ms Gobbo" and "3838" makes no sense, because there is no evidence that Ms Gobbo was, as a matter of fact, acting in her capacity as a human source or that Com. Bateson, subjectively, believed that she was.
- 22.51 Com. Bateson's evidence was that he did not always consciously think about how he would refer to Ms Gobbo in his diary. Often it would depend on how she was being referred to in the conversation he was recording - for example, if his superior, DAI O'Brien, happened to refer to her as '3838', he would jot that down during the course of their conversation.³⁸⁷
- 22.52 There is no reason for Com. Bateson's evidence about the diary entries to be disbelieved. It is consistent with:
- (a) his evidence that he had been clearly told that he was not to have contact with Ms Gobbo's as a human source,³⁸⁸ and that Victoria Police had experts doing that;³⁸⁹
 - (b) his evidence that he did not oscillate between contact with Ms Gobbo as a human source and contact with Ms Gobbo as a barrister – all of his contact with her was as a barrister, save where expressly directed by Mr O'Brien;
 - (c) his diaries, which reveal that he used the terms without any precision, and inconsistently; and
 - (d) his use of the term '3838' in some entries that, if ultimately produced in a court, had the potential to compromise Ms Gobbo.
- 22.53 Lastly, if Com. Bateson was the type of police officer that Counsel Assisting have tried to portray him as, then it would have been far more sensible to not make any note at all of conversations that he did not want to disclose.

³⁸⁵ T9783.25-29.

³⁸⁶ T9749.30-35.

³⁸⁷ T9735.35-40.

³⁸⁸ T9722.7.

³⁸⁹ T9722.4-8.

23 Section C: Other matters

PII issues in the Williams Trial

- 23.1 In August 2006, PII issues arose in the course of Mr Williams' trial. The issues related to whether Victoria Police was required to disclose statements made by Mr Andrews and Mr Thomas that did not directly implicate Mr Williams.
- 23.2 Counsel Assisting submit that Mr Bateson failed to disclose material held by the SDU that was relevant to the Williams' prosecution, or at the very least failed to get advice about such disclosure. This criticism is misplaced.
- 23.3 The PII issues that arose in the trial were specific to additional statements of Mr Andrews and Mr Thomas that had not been disclosed. There were PII issues connected to the disclosure of those statements because the statements were relevant to ongoing investigations.³⁹⁰
- 23.4 First, as is apparent from Mr Bateson's evidence,³⁹¹ and the in-camera hearing before Justice King on 7 August 2006,³⁹² the primary focus in those hearings were the statements of Mr Andrews and Mr Thomas and protecting the integrity of ongoing investigations. The integrity of ongoing investigations is an issue entirely separate to protecting Ms Gobbo's status as human source from disclosure. Justice King accepted the PII claims relating to ongoing investigations.³⁹³
- 23.5 Second, Mr Bateson was not aware that there was material in the nature of ICRs that may have been responsive to the subpoena.³⁹⁴ He had 'no idea what she's doing with her handlers'.³⁹⁵
- 23.6 Third, Mr Bateson did not consider ICRs to be an intel product, which he understood to be an intelligence assessment or brief containing analysis.³⁹⁶
- 23.7 The issues raised in August 2006 were managed by the OPP, which liaised with Victoria Police – principally through DAI O'Brien.
- 23.8 At paragraph [1004], Counsel Assisting use this specific, discrete, issue to level an allegation that "*knowing what [he] knew*" Com. Bateson was, at the very least, required to ensure that legal advice was obtained as to the need for disclosure of police holdings in relation to Ms Gobbo in the trial of Mr Williams.
- 23.9 As a preliminary matter, a proposed finding of this kind in relation to, as he then was, a sergeant, cannot assist the Commission. The disclosure issue is a significant one for this Commission, and one in relation to which Victoria Police accepts that there were significant structural deficiencies that led to relevant materials not being disclosed to people whose criminal proceedings may have been affected. The organisational submissions of Victoria Police address these issues, and the steps that Victoria Police has taken to address those deficiencies.
- 23.10 It is those submissions that should form the basis of any findings that might be made in relation to the question of disclosure of Ms Gobbo's role as a human source.

³⁹⁰ Exhibit RC0812 – In camera transcript before Justice King on 7 August 2006, T1.18-21 (VPL.0005.0141.0039 at .0040).

³⁹¹ T10077.18-21.

³⁹² See Exhibit RC0812 – In camera transcript before Justice King on 7 August 2006 (VPL.0005.0141.0039).

³⁹³ Exhibit RC0812 – In camera transcript before Justice King on 7 August 2006, T1.18-21 (VPL.0005.0141.0039 at .0040).

³⁹⁴ T10078.20-23.

³⁹⁵ T10078.37-38.

³⁹⁶ T10079.8-16.

- 23.11 It cannot possibly aid the Commissioner's task to make a finding that a sergeant was obliged to seek advice about whether or not to disclose certain matters in a particular trial.
- 23.12 Further, the phrase "*knowing what [he] knew*" is of no assistance to anyone. What Com. Bateson allegedly knew that should have compelled him to seek disclosure of Victoria Police holdings about Ms Gobbo is not identified.
- 23.13 In any case, the finding should not be made in circumstances where:
- (a) Com. Bateson produced all of his diaries and daybook entries, including those relevant to Ms Gobbo, with redactions reflecting claims of PII;
 - (b) Chief Magistrate Gray ruled on the PII claims that Com. Bateson made;
 - (c) contrary to the proposition at [1002], Com. Bateson had not tasked Ms Gobbo in relation to Mr Thomas;
 - (d) the issue that arose in August 2006 was a specific and discrete issue connected to the disclosure of additional statements of Mr Andrews and Mr Thomas.
- 23.14 To the extent that the submission is directed to the SDU holdings about Ms Gobbo, the finding should not be made because:
- (a) Com. Bateson did not know that Ms Gobbo was speaking to the SDU about Mr Thomas;
 - (b) Com. Bateson was not involved in any tasking of Ms Gobbo in connection with Mr Thomas; and
 - (c) Com. Bateson had produced his notes about Ms Gobbo (subject to claims of PII).
- 23.15 Com. Bateson was not asked:
- (a) whether he knew that the SDU holdings would contain information relevant to Mr Williams' prosecution; and
 - (b) why, if he did have some knowledge of the SDU holdings and formed the view that they were relevant, he did not seek, or recommend that a more senior officer seek, legal advice about whether those holdings needed to be disclosed.
- 23.16 This denial of procedural fairness is reason enough for this finding not to be made.
- 23.17 Com. Bateson's evidence was that:
- (a) he did not know about any ICRs; Ms Gobbo's communications with her handlers; or the regularity of such contact;³⁹⁷ and
 - (b) his knowledge was limited to Ms Gobbo status as registered human source and that she had provided information in relation to Operation Posse.³⁹⁸
- 23.18 It should not be forgotten that Com. Bateson was a Detective Sergeant running a crew in Purana that was trying to solve many murders. He is a Detective. That was his focus. He worked entirely independently of the SDU, and from a different location, and it was the SDU that dealt with Ms Gobbo as a source.

³⁹⁷ T10078.32, 37-38, 41.

³⁹⁸ T10078.43-47.

Mr Thomas' bail application, [788]-[796]

- 23.19 On 8 September 2005, Ms Gobbo appeared for Mr Thomas at his bail application before Justice King.
- 23.20 Counsel Assisting's submissions about this bail application are a distraction from the Commission's inquiry into Terms of Reference 1 and 2. The submissions concern events, and a type of potential conflict, falling well outside those terms of reference. Ms Gobbo was not a human source – whether registered or unregistered – at the date of the bail application. She was not providing Victoria Police with information about Mr Thomas. Her conduct at the bail application has no bearing on the subject matter of Terms of Reference 1 or 2.
- 23.21 That is true also of the proposed findings. The Commissioner is not authorised to make those findings because they fall outside of the terms of reference. Straying outside of the terms of reference also denies procedural fairness to Mr Bateson.
- 23.22 If the Commissioner decides that Terms of Reference 1 and/or 2 authorise the findings proposed by Counsel Assisting, then they should not be made because they are misconceived and not supported by the evidence.
- 23.23 Counsel Assisting's submissions about the bail application:
- (a) fail to identify with precision the specific conflict issues that they say have arisen;
 - (b) proceed on the false premise that Ms Gobbo's earlier role in advising Mr McGrath about his statements was improper; and
 - (c) falsely attribute to Com. Bateson responsibility for managing any professional conflict that Ms Gobbo had in appearing at the bail application for Mr Thomas.
- 23.24 As to the alleged conflict in Ms Gobbo appearing for Mr Thomas at the bail application after having acted for Mr McGrath, it is submitted that it is evident from the evidence below that those involved in the bail application did not consider Ms Gobbo to be professionally conflicted out of appearing.
- 23.25 The key matters are as follows:
- (a) On 16 August 2004, Mr Thomas was arrested and charged with the murders of Jason Moran and Pasquale Barbaro;
 - (b) Ms Gobbo was retained to act for Mr Thomas in relation to those charges;
 - (c) Mr Thomas retained Ms Gobbo knowing that she had previously acted for Mr McGrath, including when Mr McGrath made a statement implicating him in the Moran and Barbaro murders;
 - (d) prior to Mr Thomas' committal hearing, Ms Gobbo informed her instructing solicitor, Mr Valos, and her leader, Mr Lovitt QC, that she would not appear at the committal hearing given that she had previously acted for Mr McGrath and that he was to be a Crown witness called at the committal hearing, but that she would otherwise retain her brief for Mr Thomas generally;³⁸⁹
 - (e) Mr Thomas' committal hearing commenced on 1 March 2005 and Mr McGrath was called;

³⁸⁹ Exhibit RC1163 – Memorandum from Valos Black (Nicola Gobbo) to Colin Lovitt QC dated Friday 18 February 2005 (MIN.5000.0002.4504 at .4507).

- (f) Mr Lovitt QC appeared for Mr Thomas at the committal hearing. It is not entirely clear whether or not Ms Gobbo appeared as Mr Lovitt's junior on one of the days of the committal hearing. It seems more probable on the evidence that she did not;
- (g) Mr Thomas was committed to trial; and
- (h) On 8 September 2005, Mr Thomas then made an application for bail before Justice King.

23.26 At the bail application, Ms Gobbo appeared for Mr Thomas. Mr Tinney appeared for the Crown.

The alleged conflicts of interest

23.27 First, as the bail application pre-dated Ms Gobbo's role as a human source with Victoria Police, there was no conflict in her appearing at the bail application for that reason.

23.28 Second, it appears from the evidence set out below, which has not been referred to by Counsel Assisting, that Ms Gobbo, her instructing solicitor Mr Valos, Mr Tinney and the presiding judge did not consider Ms Gobbo to be conflicted out of appearing at the bail application on behalf of Mr Thomas by reason of her having previously acted for Mr McGrath. That is because the issues on the bail application were confined.

23.29 The evidence is that, at the time of the bail application, Mr Valos and Mr Tinney knew that Ms Gobbo had previously acted for Mr McGrath when he became a Crown witness against Mr Thomas.

23.30 A review of the transcript of the later trial of Carl Williams for the murder of Michael Marshall, records a discussion about Ms Gobbo's appearance for Mr Thomas on his bail application. Mr Heliotis QC, senior counsel for Mr Williams, told Justice King that Ms Gobbo had appeared at the bail application before her Honour on the basis that it "didn't involve any attacks on [Mr McGrath] or any of that knowledge".⁴⁰⁰

23.31 A review of the transcript of the bail application confirms that Mr McGrath's credibility was not an issue in dispute on the bail application.

23.32 As to the issues on the bail application, her Honour said the following:

The problem that you face in respect of this is that these are exceptionally serious charges in that this is, on any interpretation, an execution - execution murders related to gangland wars which have a basis that it would appear, from what I have been able to read, a drug basis; they are conducted in public, they are conducted around children and many, many children, many adults, incredibly dangerous situation. It brings it to a very high level of a charge of murder. It's not a situation where someone has been provoked, has lost their temper, or someone has reacted to something within a short space of time. If the Crown version is accepted then your client has, with 4 others, basically conspired to execute a man and two died as a result, in a very public place as part of an ongoing war. Now, I think there have to be truly exceptional circumstances for bail to exist in that particular situation.

...

⁴⁰⁰ Untendered - Transcript of Carl Williams Trial, 29 September 2005, T48.25-32 (VPL.6024.0200.4233).

People just kept killing each other. It was a war of some sort. Now, equally, if [Mr Thomas] is in custody he has to be protected and others have to be protected potentially from him who are on the other side of whatever war.

...

On the Crown version of there being two - I don't think anyone can dispute that there were two sides. There was a war going on with two sides. Whether [Mr Thomas] is part of one side is the issue that really is what a jury is going to have to determine. Was he part of that or was he a person who may well have known Mr Williams but had no involvement? That may well be the real issue that they have to come up with, but on the basis of the charges that are laid against him, that puts him on one side of the war, so his time in custody is like all of those who have been held in relation to these matters. It is an unusual way that they are held.⁴⁰¹

- 23.33 Ms Gobbo accepted that the issue on the bail application was whether there were truly exceptional circumstances to justify bail. Her brief was to persuade Justice King of that matter.
- 23.34 It is evident from the transcript that Justice King did not consider Mr McGrath's credit to be a relevant factor in determining whether there were truly exceptional circumstances to grant bail. Her Honour accepted that Mr McGrath was an uncorroborated accomplice who would be subject to the usual warnings to the jury. Her Honour said that Ms Gobbo was welcome to address her on the evidence against Mr Thomas, but that she accepted that it was an uncorroborated accomplice who comprised the bulk of the evidence. Her Honour made it clear that the likelihood of Mr McGrath's evidence being accepted by the jury was not the issue on the bail application. Her Honour said that if the jury acquits Mr Williams of the Marshall murder after hearing Mr McGrath's evidence, then Mr Thomas would have a stronger basis to seek bail at that time.⁴⁰²
- 23.35 Mr Tinney did not dispute any of the above. Nor did he submit that a relevant matter on the application was the likelihood of Mr McGrath being believed at Mr Thomas' trial.
- 23.36 Ms Gobbo submitted to her Honour that the exceptional circumstances justifying bail were:
- (a) that Mr Thomas' involvement was said only to be his presence at two informal gatherings where there was a conversation that allegedly included Mr Thomas volunteering information about the movements of Jason Moran and the detail about that conversation was very limited;
 - (b) that the case rested solely upon the evidence of an uncorroborated accomplice, and where the alleged involvement of Mr Thomas was at a lower level than the other accused;
 - (c) that Mr Thomas did not have a trial date, had not been in custody before and was housed in an area of the prison that did not permit certain privileges;
 - (d) delays in Mr Thomas' trial which were not caused by him; and
 - (e) health matters.

⁴⁰¹ Untendered – Transcript of Bail Application by Mr Thomas, 8 September 2005, T32.23-33.8, T35.16-20 and T35.22-36.2, (VPL.0005.0302.0001 at .0064, .0065, .0070).

⁴⁰² Untendered – Transcript of Bail Application by Mr Thomas, 8 September 2005, T36.20-38.20, (VPL.0005.0302.0001 at .0072).

- 23.37 It appears from what Mr Heliotis QC said to Justice King, that, at the time of the bail application, Ms Gobbo did not consider that she was conflicted out of appearing for Mr Thomas given the confined issues on the bail application. She would not be attacking Mr McGrath's credit because Justice King already accepted that there were significant credit issues and that a live issue was whether a jury would accept his evidence. Mr McGrath had admitted being involved in murdering four people, he was an uncorroborated accomplice and his evidence had not yet been accepted by any jury.
- 23.38 In response to Mr Heliotis QC explaining why Ms Gobbo was able to appear on the bail application, Justice King did not disagree. Her Honour had, only days earlier, heard that bail application and she did not express any concern about Ms Gobbo having appeared in the circumstances described by Mr Heliotis QC. Nor is there any evidence that her Honour took steps afterwards because she considered that it had been inappropriate for Ms Gobbo to have appeared.
- 23.39 At the bail application, Ms Gobbo relied upon an affidavit sworn by Mr Valos. Accordingly, it appears that he briefed her to appear. As noted earlier and elsewhere in these submissions, Mr Valos knew, well before the bail application, that Ms Gobbo had acted for Mr McGrath when he became a Crown witness against Mr Thomas and, according to Ms Gobbo, he knew that Ms Gobbo had advised Mr McGrath about his statements. It should, therefore, be inferred that Mr Valos did not consider Ms Gobbo to be conflicted out of appearing for Mr Thomas on the bail application.
- 23.40 As the evidence is that Mr Tinney had this same knowledge as Mr Valos, it can also be inferred that he did not consider Ms Gobbo to be conflicted out of appearing for Mr Thomas on the bail application. The transcript does not record any objection by him to Ms Gobbo appearing and there is no evidence that he raised an objection outside of court.
- 23.41 It is clear from the above analysis, that those involved in the bail application, who were aware of the confined issues on that application, did not consider that Ms Gobbo was conflicted out of appearing because of her previous involvement with Mr McGrath.
- 23.42 Further, irrespective of all of the above, it must not be overlooked that:
- (a) Mr Thomas retained Ms Gobbo to appear at the bail application knowing that Ms Gobbo had acted for Mr McGrath when he became a Crown witness against him;
 - (b) Mr McGrath may have been agreeable to Ms Gobbo appearing for Mr Thomas. The Commission does not know because Counsel Assisting did not seek to adduce any evidence from him; and
 - (c) the Commission does not know all of the information that Ms Gobbo shared with Mr Thomas, obtained through representing Mr McGrath, with or without Mr McGrath's consent, because Counsel Assisting did not ask Mr Thomas or adduce any evidence from Mr McGrath. There is every likelihood that Mr McGrath agreed to Ms Gobbo acting for Mr Thomas and sharing with him whatever information she liked because it did not matter to Mr McGrath whether he was accepted as a witness of truth or whether his crew member, Mr Thomas, got convicted. All that Mr McGrath needed to do was give his evidence for the Crown and he would receive his sentence reduction.
- 23.43 We now respond to the matters put by Counsel Assisting.
- 23.44 First, at [789], Counsel Assisting submit that Com. Bateson might have expected to be cross-examined on his affidavit by Ms Gobbo at the bail application. That is wrong for two reasons:

- (a) The first is that Com. Bateson did not file an affidavit on the application. Mr L'Estrange filed an affidavit.⁴⁰³ Peter Atkinson also filed an affidavit with many exhibits and one of the exhibits was a statement of Mr Bateson.⁴⁰⁴ We do not have Mr Atkinson's affidavit, or the exhibited statement of Mr Bateson, and we do not know what was in them. Therefore, there is no basis to submit that Com. Bateson might have expected to be cross-examined on his affidavit (which did not exist) or his statement.
- (b) The second is that, given the confined issues on the bail application, there was no reason for Ms Gobbo to cross-examine Com. Bateson.
- 23.45 The confined issues on the bail application are also reflected in the fact that Ms Gobbo did not seek to cross-examine any witnesses other than Elizabeth Penter, the Acting Director of Statewide Services at Corrections Victoria.⁴⁰⁵
- 23.46 Second, at [794], Counsel Assisting submit that 'it is clear that Ms Gobbo was hopelessly conflicted' on the bail application because she had information that would strengthen Mr Thomas' bail to be granted but could not use the information.
- 23.47 The information is said to be that Mr McGrath had changed his statement on the question of his belief in relation to an *entirely different* murder. That is, Mr McGrath first told police that he did not believe that Mr Marshall was to be murdered, which was captured in the evolving draft statement, and that he later said that he did know it was to be a murder, which was reflected in his evolving statement before it was signed. Mr Thomas was not charged with that murder. He was charged with different murders – the murders of Jason Moran and Mr Barbaro.
- 23.48 The effect of Counsel Assisting's submission is that it would have strengthened Mr Thomas' application for bail in relation to his charges for murdering Moran and Barbaro, that Mr McGrath, a Crown witness against him, had told police different information about a different murder not involving Mr Thomas.
- 23.49 As to that submission:
- (a) it is clear from the matters set out above (including that Justice King *accepted* that Mr McGrath's credit, generally, would be a central issue at trial) that that information was not a relevant matter on the bail application and certainly would *not* have strengthened Mr Thomas' prospects of getting bail one iota;
- (b) in any event, the submission also assumes that Ms Gobbo had not told Mr Thomas about that information. There is no credible evidence of that. Ms Gobbo accepted the general proposition put to her that she had not told him, but she had no actual recollection.⁴⁰⁶ Mr Thomas was not asked whether he had the information. He may very well have;
- (c) the submission also assumes that Mr McGrath did not agree to Ms Gobbo appearing on the bail application or to her sharing that information with Mr Thomas. There is no evidence of that. Ms Gobbo was not asked. Mr McGrath was not called to give evidence; and
- (d) lastly, the fact that Mr McGrath had first told police that he did not believe that Mr Marshall was to be murdered but later told them that he did know that it was to be

⁴⁰³ Untendered – OPP Prism records (OPP.0001.0004.0025 at .0079)

⁴⁰⁴ Untendered – OPP Prism records (OPP.0001.0004.0025 at .0079)

⁴⁰⁵ Untendered – Transcript of Bail Application by Mr Thomas, 8 September 2005, 8 [30]-[31], 18 [15]-[17] (VPL.0005.0302.0001 at .0008, .0018),

⁴⁰⁶ T13360.14-16, 33-36 (Gobbo).

a murder, was information before Justice King on the bail application. It was in the depositions which were before her Honour. Ms Gobbo could have taken her Honour to the parts of the depositions containing that information if it had been relevant on the application. It was not. Therefore, Ms Gobbo did not go to it.

- 23.50 Third, at [795], Counsel Assisting submit that Com. Bateson did not seek legal advice regarding whether Ms Gobbo was in a position of conflict in appearing at the bail application. That is true - he did not. However, it is not clear, in the circumstances set out above, why he would do so. There was certainly no obvious conflict calling out for legal advice. He had never previously obtained legal advice on whether a lawyer had a professional conflict. He did not think it was for him to identify and address such matters. He was a police officer. His job was to investigate murders.
- 23.51 Further, prior to the bail application, Ms Gobbo had also appeared for Mr Thomas in various preliminary hearings about the Moran and Barbaro murders. Mr Coghlan QC and Mr Horgan SC appeared for the Crown on some of those occasions. They both knew, on those occasions, that Ms Gobbo had acted for Mr McGrath when he became a Crown witness against Mr Thomas. They did not raise with Com. Bateson any conflict in Ms Gobbo appearing. Given that they were very experienced legal practitioners who were able to assess conflict, they presumably did not consider Ms Gobbo to be conflicted out of appearing at those hearings given the issues before the court, whatever they might have been.
- 23.52 What all of this demonstrates is that:
- (a) principal responsibility for deciding whether a conflict exists rests with the practitioner;
 - (b) the Victorian Bar has established processes for the management of conflicts including:
 - (i) counsel to counsel conferrals;
 - (ii) the Victorian Bar Ethics Committee;
 - (iii) invocation of the inherent jurisdiction of the Courts;
 - (c) questions of conflict can be complex and reasonable minds can differ about them;
 - (d) questions of conflict require a careful consideration of what the brief requires and cannot be properly assessed without all the relevant facts; and
 - (e) in the case of the bail application, Mr Tinney and Mr Valos did not object to Ms Gobbo appearing.
- 23.53 Lastly, at [796], Counsel Assisting state that the bail application was refused.
- 23.54 That is of no significance.
- 23.55 Mr Thomas was on remand awaiting trial for a brutal, broad daylight double-execution that put the lives of children in grave danger and no doubt caused them severe trauma.
- 23.56 As Justice King said, "*there have to be truly exceptional circumstances for bail to exist in that particular situation*".⁴⁰⁷
- 23.57 It is clear from a review of the transcript of the application that, had Ms Gobbo put forward the most persuasive submission about Mr McGrath's credit, it would not have made any difference whatsoever to the outcome of the application. His credit was *not*

⁴⁰⁷ Untendered – Transcript of Bail Application by Mr Thomas, 8 September 2005, 33 [6]-[8] (VPL.0005.0302.0001 at .0086).

disputed on the application and so there was no need for submissions to be made about it.

Summary of evidence in [1070]

- 23.58 Paragraph [1070] of Counsel Assisting's submissions, which purports to set out evidence relevant to an analysis of Com. Bateson's knowledge and conduct in relation to the use, management and disclosure of Ms Gobbo's role as a human source concerning Mr Thomas, variously:
- (a) fails to set out all relevant evidence;
 - (b) fails to distinguish between established facts and inferences;
 - (c) submits that certain inferences should be drawn without a proper evidentiary foundation; and
 - (d) submits that certain inferences should be drawn in circumstances where the relevant material or proposition was not put to Mr Bateson in cross-examination.
- 23.59 A disciplined and careful approach to the evidence reveals that many of the factual matters asserted by Counsel Assisting in [1070] fall away.
- 23.60 The evidence that Com. Bateson was, during the relevant period, a public official ([1070.1]), held the positions described ([1070.2]) and, while at the Purana Taskforce, led a crew of detectives investigating the murders described (1070.3) is not controversial. Com. Bateson also agrees that he knew that Ms Gobbo was a registered human source ([1070.13]) from a time between late September and early October 2005, and that he had interactions with Ms Gobbo in connection with her representation of Mr McGrath and Mr Thomas.
- 23.61 In relation to paragraphs [1070.2] and [1070.3], it is important to note that Mr Bateson left the Purana Taskforce in 2007 on being promoted to the position of Senior Sergeant and to work in the Crime Strategy Group.⁴⁰⁸ In 2008, Mr Bateson returned to the Homicide Squad as a Detective Senior Sergeant. Between October 2010 and May 2014, Mr Bateson was a Detective Inspector at the Security and Organised Crime Intelligence Unit. In 2014, Mr Bateson was promoted to Superintendent in the North West Metropolitan Region. In 2017, Mr Bateson was promoted to the rank of Commander. Consequently, Mr Bateson was principally involved in Purana Phase One, and had minimal involvement in Purana Phase Two (Operation Posse).⁴⁰⁹
- 23.62 Com. Bateson disputes the balance of the stated facts.
- 23.63 As to paragraph [1070.4], the transcript reference to which Counsel Assisting refers does not support the fact stated. Com. Bateson's evidence in the referenced passages bears little resemblance to the proposition in paragraph [1070.4]. He was not asked about his understanding of disclosure obligations generally but was asked about his understanding of disclosure obligations in fact specific contexts.
- 23.64 As to paragraph [1070.5], this paragraph does not capture the whole of Mr Bateson's evidence on this topic and, therefore, does not fairly reflect Mr Bateson's understanding of these issues.
- 23.65 As to the matters in paragraphs [1070.5], points 1 and 3, the evidence pointed to by Counsel Assisting does not support the propositions. However, Mr Bateson takes no

⁴⁰⁸ Exhibit RC0269B – Statement of Commander Stuart Bateson dated 7 May 2019 at [3] (VPL.0014.0027.0001 at .0001-.0002).

⁴⁰⁹ Exhibit RC0269B – Statement of Commander Stuart Bateson dated 7 May 2019 at [28]-[29] (VPL.0014.0027.0001 at .0006).

issue with his knowledge of point 3. Mr Bateson also accepts the matters in paragraph [1070.5], point 2.

- 23.66 As to paragraph [1070.5], point 4, Counsel Assisting has described only part of Mr Bateson's evidence. The aspects that have not been included are critical to a fair assessment of his understanding of PII claims. The exclusion of important aspects of his evidence creates a misleading impression of the process that Mr Bateson adopted in relation to PII. Critically, that process did not stop with the redactions described by Counsel Assisting.
- 23.67 As to the process for claiming PII, Com. Bateson said that, after redacting his notes as described at [1070.5 point 4]:
- (a) where he was not the informant, he:
 - (i) gave both his redacted and unredacted notes to the informant (if he was not the informant himself);
 - (ii) generally, did not hear anything further unless he was required to give evidence about the redactions;
 - (b) where he was the informant and his redactions were challenged (which was common) he:
 - (i) often engaged the VGSO to handle the matter;
 - (ii) the VGSO received the redacted and unredacted notes;
 - (iii) the VGSO would sometimes prepare affidavit material setting out the reasons for the redactions but more often he gave oral evidence in a closed hearing about the redactions; and
 - (iv) the VGSO briefed counsel for these applications and counsel was given his unredacted notes.⁴¹⁰
- 23.68 In addition, and critical to the Commission's task of assessing how the disclosure issue (as described earlier in these submissions) arose, was Mr Bateson's evidence about the training he received in connection with PII.
- 23.69 Com. Bateson said that he thought he had received some formal training in Detective Training School about PII but that he could not remember it clearly.⁴¹¹ His evidence was that he understood that PII claims could be made in relation to covert methodology, ongoing investigations and situations where a person's identity needed to be protected for safety reasons, including human sources.⁴¹² It is clear on the evidence that the training that police received about PII and disclosure was inadequate. That issue is being addressed by Victoria Police in its submissions to the Commission.
- 23.70 Despite the inadequate training, there is no evidence that Com. Bateson ever failed to disclose relevant material from his own diaries or daybooks.

⁴¹⁰ Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson dated 17 November 2019 at [54]-[55] (VPL.0014.0027.0020 at .0035).

⁴¹¹ Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson dated 17 November 2019 at [53] (VPL.0014.0027.0020 at .0034).

⁴¹² Exhibit RC0269 – Supplementary Statement of Commander Stuart Bateson dated 17 November 2019 at [53] (VPL.0014.0027.0020 at .0034).

- 23.71 If the proposition at paragraph [1070.6] is that he knew that a person could not be a barrister and a human source at the same time then the proposition is wrong. He said the opposite in the transcript referred to by Counsel Assisting.⁴¹³
- 23.72 As to paragraph [1070.7], not one of the footnotes referred to supports the propositions put. That is because Com. Bateson was not cross-examined about his general understanding of matters of conflict. The evidence he did give, not referred to by Counsel Assisting in paragraph [1070.7], can be summarised as follows:
- (a) it has never been a duty of a police officer to police defence counsel's conflicts of interest;⁴¹⁴
 - (b) Com. Bateson did not receive any training or instruction that he was required to identify such conflicts or receive training on what to do if he identified a potential conflict;⁴¹⁵
 - (c) he found the conflict of interest issue a "*confusing one*" and said that his knowledge about it was quite limited during the relevant period and that he looked to others, including the OPP and its officers, to identify and address the issue;⁴¹⁶
 - (d) the use of information obtained outside of legal professional privilege was complex;⁴¹⁷
 - (e) at the time these events were unfolding, potential conflicts of interest were pretty common and well known at the time;⁴¹⁸
 - (f) he did not think, as a Detective Sergeant, that conflicts of interest were something for him to resolve;⁴¹⁹
 - (g) Ms Gobbo's potential conflicts were known to "*very senior people in the legal world*";⁴²⁰ and
 - (h) Ms Gobbo's potential conflicts of interest were for the courts, the DPP and the legal fraternity.⁴²¹
- 23.73 Further, Mr Bateson's evidence was that he did not think that Victoria Police had a role to play in policing independence by ensuring that someone received independent counsel.⁴²² Mr Bateson said that he understood that there might not be a conflict where one person had pleaded and the other was also pleading.⁴²³ Finally, Mr Bateson said that where the conflict is known to the OPP and "*renowned legal minds*" he understood that the conflict had abated or otherwise been managed.⁴²⁴
- 23.74 The import of Mr Bateson's evidence was that:
- (a) an accused is entitled to the legal counsel of their choice;
 - (b) the principal responsibility for managing conflicts rests with legal counsel;

⁴¹³ T9774.12-15.

⁴¹⁴ T10115.2-7.

⁴¹⁵ T10115.9-13.

⁴¹⁶ T9576.23-29.

⁴¹⁷ T3452.17-21.

⁴¹⁸ T3399.17.

⁴¹⁹ T3399.35-36; T3400.27-32.

⁴²⁰ T3416.32-34.

⁴²¹ T3399.44-46.

⁴²² T9774.1-4.

⁴²³ T9775.28-35.

⁴²⁴ T9775.28-35, 37-42.

- (c) Victoria Police officers are not equipped to make a judgment about whether a conflict exists or has been waived or otherwise resolved by legal counsel;
 - (d) where other lawyers, including the OPP or the presiding judge, are aware of the conflict, there is even less reason for Victoria Police to intervene; and
 - (e) that in the case of Ms Gobbo specifically, he would not direct Mr Thomas to seek alternative representation because:
 - (i) it was not his role or responsibility to tell Mr Thomas who to engage; and
 - (ii) telling Mr Thomas that Ms Gobbo was not independent, or to consider not using her, may have created suspicion and placed her at risk.
- 23.75 As to paragraph [1070.8], Com. Bateson agrees that he did not seek legal advice about Ms Gobbo appearing at Mr Thomas' bail application. However, this fact alone does not accurately or fairly represent the situation. In his mind, there was nothing to get legal advice about. Reference is otherwise made to the submissions above about this issue.
- 23.76 As to paragraph [1070.10], Com. Bateson does not accept that Ms Gobbo was informing to him as an unregistered human source between March and September 2005, or at all. Characterising Ms Gobbo's conduct as 'informing' is not accurate.
- 23.77 Counsel Assisting did not even put this proposition to Com. Bateson. It was put to him for the first time in his examination by counsel for Ms Gobbo, who suggested that he had become "*akin to a handler*" – a proposition he denied.⁴²⁵
- 23.78 The term 'informing' goes beyond the mere provision of information by a member of the public to the police about knowledge of criminal conduct. That is all that Ms Gobbo did.
- 23.79 Ms Gobbo's conversations with Com. Bateson were irregular, and were, in Com. Bateson's view, substantially motivated by her personal dislike of Solicitor 2.
- 23.80 Com. Bateson did not see himself as Ms Gobbo's handler – his subjective experience was that he was simply meeting with someone who had information for police.⁴²⁶ On one occasion Com. Bateson asked Ms Gobbo to find out more about the car that Solicitor 2 was driving, and a loan taken out by George Williams.⁴²⁷
- 23.81 Once Ms Gobbo expressed interest in assisting police beyond providing information in the ordinary way that citizens assist police, she was referred to the SDU where she was assessed, registered and managed there.⁴²⁸ Ms Gobbo's registration was unrelated to Com. Bateson's contact with her. After she was registered, Com. Bateson did not have contact with Ms Gobbo other than at the request of his commanding officer and as a lawyer for accused persons.
- 23.82 As to paragraph [1070.11], the matters stated in that paragraph are true, but do not present the full picture. Mr Bateson said that he knew that Ms Gobbo had acted for Mr Mokbel in the past but was not conscious of her acting for him at the time that Ms Gobbo spoke to Mr Bateson about him.⁴²⁹ He also said that the matters that Ms Gobbo had raised with him came from Solicitor 2, not Tony Mokbel.⁴³⁰ Further, Mr Bateson suspected that he knew that Ms Gobbo was socialising with Tony Mokbel at the time.⁴³¹

⁴²⁵ T10098.1-3.

⁴²⁶ Ibid.

⁴²⁷ T10098.10-13.

⁴²⁸ T9722.5-8.

⁴²⁹ T3435.19-21; T9641.40-41.

⁴³⁰ T3435.23-25; T9642.2-4.

⁴³¹ T3354.11-15.

- 23.83 Mr Bateson also said that he did not believe that Ms Gobbo knew the matters by reason of her occupation.⁴³²
- 23.84 Mr Bateson's evidence was that he did not know that, in 2006, Ms Gobbo was providing information to the SDU about Tony Mokbel while representing him.⁴³³
- 23.85 As to paragraph [1070.12], the fact is, once again, overstated and selective and therefore does not present a fair picture of Com. Bateson's evidence. Com. Bateson said that he was not sure whether or not he knew that Ms Gobbo had acted for Solicitor 2 after she was charged in May 2005 with firearm offences.⁴³⁴ He did not accept that it was "*likely*" that he knew because he did not think that anyone would have had any reason to tell him.⁴³⁵
- 23.86 Mr Bateson believed that Ms Gobbo was talking to him about Solicitor 2 as a result of personal animosity towards her,⁴³⁶ and that there was a professional and personal rivalry between them.⁴³⁷ Com. Bateson did not believe that Ms Gobbo knew the information as a result of her occupation.⁴³⁸ He explained that:
- But you can receive information in the aspect of a personal relationship that doesn't prohibit that and doesn't prohibit it just because you're a lawyer, doesn't prohibit you giving that information. It's not protected by legal professional privilege, in my view and understanding, if you obtain that information in the midst of your personal relationship or your association or you overhear it in a bar or you're talking about it over coffee. If the dominant purpose of that information that's provided to you is seeking legal advice, then yes, that is an issue, but there's two different things there, I think that can coexist.*⁴³⁹
- 23.87 Com. Bateson said that he "always formed the view that the information she was providing me about Solicitor 2 came from casual conversations I expect either around the courts, their chambers or indeed over a glass of wine".⁴⁴⁰
- 23.88 Mr Bateson frankly conceded that, 16 years after the relevant events, Victoria Police processes had evolved and were more sophisticated and that events would not occur again in the same way.⁴⁴¹
- 23.89 The submission of Counsel Assisting at paragraph [1070.14] that Mr Bateson knew that Ms Gobbo was 'acting for Mr Thomas at the relevant time' lacks precision in that it fails to identify what the 'relevant time' is. However, Com. Bateson accepts that he knew that Ms Gobbo was acting for Mr Thomas as set out in these submissions.
- 23.90 As to the matter in paragraph [1070.15], there is no evidence at all that Mr Bateson knew that Ms Gobbo, in her capacity as a registered human source, was speaking to the SDU about Mr Thomas. The single diary entry referred to by Counsel Assisting provides no support at all for the proposition. It records a meeting between Mr Bateson and Ms Gobbo about matters entirely unconnected to Mr Thomas. There is nothing in the note that, on any view, could support the proposition that Mr Bateson knew that Ms

⁴³² T9642.19-21.

⁴³³ T9776.17-19; T9795.1-3.

⁴³⁴ T3434.28-30; T9630.14.

⁴³⁵ T9630.37-41.

⁴³⁶ T3433.37-39.

⁴³⁷ T3433.38-39; T9631.7-9.

⁴³⁸ T9642.19-21.

⁴³⁹ T3451.20-31.

⁴⁴⁰ T9631.3-7.

⁴⁴¹ T3452.10-13.

Gobbo was providing information to Victoria Police about Mr Thomas. The footnote must be an error.

- 23.91 As such, there is not a skerrick of evidence that Mr Bateson knew that Ms Gobbo, in her capacity as a human source, was speaking to the SDU about Mr Thomas.
- 23.92 Consistently, as set out in detail in the submissions of Jim O'Brien, there was only one occasion between September 2005 and February 2006 that the SDU disseminated information about Mr Thomas to investigators that had come from Ms Gobbo. That single piece of insignificant information is unlikely to have been noted, much less remembered. Critically, there is no evidence that Mr Bateson knew that this had occurred or that the information was passed on to him. Counsel Assisting do not allege otherwise.
- 23.93 In the period after February 2006, there were a small number of occasions on which the SDU disseminated information to Mr O'Brien about Mr Thomas that came from Ms Gobbo. There is no evidence at all that Mr Bateson knew that this had occurred. Counsel Assisting do not allege otherwise.
- 23.94 Accordingly, there is no evidence of the matter alleged in paragraph [1070.15]. Counsel Assisting are invited to withdraw the submission. An allegation of that kind should not be maintained in the absence of any evidence to support it. In any event, the finding cannot be made.
- 23.95 As to paragraph [1070.16], not one of the references provided by Counsel Assisting in support of the contention has anything to do with the allegation that Mr Bateson sanitised his notes in a manner designed to avoid disclosure of some communications with Ms Gobbo. Presumably the footnote is another error. Mr Bateson does not know what, if any, evidence Counsel Assisting intended to rely on. In any event, Counsel Assisting's sanitising theory is nonsensical for the reasons explained earlier.
- 23.96 In any case, there is no evidence to support the contention. The contention has two elements, being (a) that Mr Bateson sanitised his daybook and diary entries and (b) that he did so for the relevant purpose. There is no evidence in support of either proposition.
- 23.97 As to the first, Mr Bateson did not consistently refer to "Ms Gobbo" and "3838" depending on the capacity in which he was dealing with her. It was put to Com. Bateson, and he denied, that wherever he used the term '3838' it recorded an interaction with Ms Gobbo in which she was acting as a human source.
- 23.98 The lack of consistency with which the terms were used corroborates Com. Bateson's evidence. He was generally imprecise about the means he used to describe her. At times, Mr Bateson used the wrong description. That is what occurred in connection with the meeting of 19 April 2006⁴⁴² and which is explored in detail above.
- 23.99 As to the second, there is no evidence at all that Com. Bateson deliberately used the term "3838" to avoid disclosure of his communications with Ms Gobbo, or to somehow identify for himself diary or daybooks entries that were to be withheld from production. The proposition was not put to Com. Bateson.
- 23.100 The lack of precision in Com. Bateson's note carried the risk that, if notes describing interactions with Ms Gobbo in her capacity as a lawyer but referring to her as '3838' were required to be produced, her status as human source would be compromised. It

⁴⁴² T9735.35-40.

cannot have been to Com. Bateson's advantage for that to have occurred. In fact, it would have been a serious breach of policy.

- 23.101 That contention is not answered by the implication in Counsel Assisting's submissions that Com. Bateson used the notation '3838' to identify diary entries that he wanted or intended to conceal or avoid disclosing.
- 23.102 Mr Bateson's diary entries were disclosable whether he wrote "3838" or "Ms Gobbo". Irrespective of how he referred to Ms Gobbo, Com. Bateson could not have protected his notes from disclosure (and there is no evidence that he ever did so).
- 23.103 In fact, the use of the term '3838' was more likely to identify the need for a PII claim.
- 23.104 In any case, as Mr Bateson explained, whenever a claim of PII over his notes was made, he made the unredacted version of his diaries available to the court. There is no evidence at all that Com. Bateson ever withheld his diaries or day books from production. The evidence demonstrates that, whenever a claim of PII was challenged (an almost certainty in serious criminal trials) Com. Bateson produced his diaries and day books in both redacted and unredacted form to permit the court to rule on whatever claims of privilege were made. As has been established above in detail, this is true of his daybooks for 11 July 2004 and 12 July 2004.
- 23.105 Finally, no support for this submission can be drawn from Sandy White's diary entry of 20 February 2006, which referred to Jim O'Brien monitoring Com. Bateson's diaries to ensure they were appropriately 'sanitised'.⁴⁴³
- 23.106 For the reasons set out in detail in the submissions of Jim O'Brien, that entry does nothing more than record Sandy White asking Mr O'Brien to ensure that Com. Bateson was not recording his interactions with Ms Gobbo in a manner that would identify her as a human source. That concern was reasonable and appropriate. Mr White knew that Mr Bateson and Ms Gobbo had interacted across the course of 2005. In circumstances where the SDU assessed Ms Gobbo as "high risk", Mr White's concern was responsible, reasonable and appropriate, and reflects nothing more than his diligence in ensuring that Victoria Police policy was being adhered to.
- 23.107 At paragraph [1070.17], Counsel Assisting correctly state that Mr Bateson was at the meeting of 19 April 2006. However, that fact alone does not assist the Commission. The meeting of 19 April 2006 is discussed in detail in the submissions of Mr Ryan and summarised earlier in these submissions. It is necessary to consider the whole of the evidence about that meeting. It was not a tasking of Ms Gobbo.
- 23.108 Paragraphs [1070.18] and [1070.19] rest on the premise that the events of 19 April 2006 constituted Victoria Police tasking Ms Gobbo as a human source in connection with Mr Thomas. The previous paragraph is repeated.

Counsel Assisting's proposed findings at [1071]

- 23.109 Com. Bateson agrees that the findings at paragraphs [1071.1], [1071.4] (with the addition that she was doing so by providing information to the SDU as a source) and [1071.5] are open to the Commissioner.
- 23.110 The balance of the proposed findings in that paragraph are not open.
- 23.111 As to paragraph [1071.2], Ms Gobbo was one of Mr McGrath's lawyers and advised him in relation to the statements that he provided as a Crown witness.

⁴⁴³ See Exhibit RC0474 – Diary of Sandy White dated 20 February 2006 (VPL.0100.0096.0001 at .0125).

- 23.112 As to paragraph [1071.3], there is no evidence at all that Com. Bateson knew that Ms Gobbo was informing on Mr Thomas while purporting to act for him.
- 23.113 This is not a case in which the evidence is not sufficient to permit the Commissioner to reach this conclusion. There is no evidence *at all* to support this proposed finding. It should not be pressed.
- 23.114 Further, Ms Gobbo was not "*informing*" on Mr Thomas while acting for him.
- 23.115 As to paragraph [1071.6], Mr Bateson's evidence about this matter is set out in detail above.
- 23.116 As to paragraph [1071.7], there being *no* evidence that Mr Bateson knew that Ms Gobbo was informing to Victoria Police about Mr Thomas while acting for him, there is no basis to assert, or find, that Mr Bateson knew that Ms Gobbo had a conflict of interest by reason of her doing so. Counsel Assisting are invited not to press this finding. Further, Mr Bateson's evidence was that at a general level a person could be both a barrister and a human source. This should not be understood as Mr Bateson saying that a human source could inform on a client while acting for the client.
- 23.117 As to paragraphs [1071.8] and [1071.9], there is no basis for these findings because the underpinning premises have not been established and, indeed, have comprehensively been disproved.
- 23.118 As to the premise that Victoria Police was "*using*" Ms Gobbo to encourage Mr Thomas to make admissions, enter a plea of guilty and implicate his associates:
- (a) As set out in further detail below, Victoria Police had already been directly in contact with Mr Thomas about him co-operating in July 2004, instigated by police in October 2004, instigated by Mr Thomas; there was no need for Victoria Police to "*use*" Ms Gobbo in the discussions with Mr Thomas;
 - (b) After Mr Thomas' arrest in August 2004, ^{Mr Thomas' Personal Partner} informed DSC L'Estrange that Mr Thomas wanted to meet with him 'on the quiet'.⁴⁴⁴ DSC L'Estrange met with Mr Thomas a couple of days later and Mr Thomas alluded to the possibility of assisting police;⁴⁴⁵
 - (c) Counsel Assisting have identified no evidence of further contact in relation to Mr Thomas' assistance until February 2006. Counsel Assisting's submission at [1070.9] that DS Bateson had "*dealt with Ms Gobbo in 2005*" in relation to Mr Thomas assisting police is simply not supported by the evidence cited at that paragraph, which relates only to interactions in 2006;
 - (d) Rather, once Mr Thomas decided again that he wished to cooperate he had Ms Gobbo approach Victoria Police about cooperating. Mr Thomas was in prison at the time, and Victoria Police engaged with him pursuant to that approach;
 - (e) Victoria Police did not want Ms Gobbo involved with Mr Thomas - she continued to act for him despite repeated requests from Victoria Police that she refrain from doing so;
 - (f) Ms Gobbo was not provided with the transcripts of the information that Mr Thomas had provided to police for the purpose of her being tasked to speak with

⁴⁴⁴ Exhibit RC0252 –Chronology of Stuart Bateson (VPL.0015.0001.0409 at .0421).

⁴⁴⁵ Exhibit RC0252 – Chronology of Stuart Bateson (VPL.0015.0001.0409 at .0421); Exhibit RC0264 – Statement of Nigel L'Estrange, 3, [14] (VPL.0014.0036.0001 at .0003); Exhibit RC0269A – Statement of Commander Stuart Bateson dated 7 May 2019 at [53] (VPL.0014.0027.0001 at 0011).

Mr Thomas on behalf of Victoria Police, but rather she was given them in her capacity as his lawyer;

- (g) Victoria Police had no interest in securing Mr Thomas' cooperation and Com. Bateson preferred that the matter proceed to trial.— Com. Bateson refers to the detailed submissions above on this issue and Mr Ryan's submissions;
 - (h) Victoria Police did not ever task Ms Gobbo in connection with Mr Thomas;
 - (i) Ms Gobbo was not "*informing*" on Mr Thomas while acting for him; and
 - (j) Com. Bateson did not know that Ms Gobbo was talking to the SDU about Mr Thomas while simultaneously representing him.
- 23.119 Further, there is insufficient evidence that Com. Bateson knew that Ms Gobbo was encouraging Mr Thomas in the manner described – if indeed she was.
- 23.120 On 23 March 2006, Mr Thomas told (then) DS Bateson and DDI O'Brien that Ms Gobbo and her instructing solicitor, Jim Valos, had "*convinced*" him to cooperate with Victoria Police. That appears to be the whole of the evidence identified by Counsel Assisting about Com. Bateson's knowledge of what advice Ms Gobbo was giving Mr Thomas. There is nothing in that advice itself that ought to have indicated to DS Bateson or DAI O'Brien that Ms Gobbo's advice may have constituted anything other than proper legal advice.
- 23.121 Further, whether what Mr Thomas told DS Bateson and DAI O'Brien was true or not:
- (a) the Commission has heard that by April 2006, Mr Thomas had again waived in his resolve to assist police; and
 - (b) Mr Thomas did not ultimately commit to assisting police until some months later in June 2006.
- 23.122 There is, in fact, no credible evidence on which a finding can be made that Ms Gobbo advised Mr Thomas to plead guilty, make admissions and implicate his associates or that it was *Ms Gobbo's* advice alone, or at all, that caused him to take such steps. We draw the Commission's attention to the following:
- (a) Purana Taskforce detectives first began communicating with Mr Thomas in relation to his possible cooperation in 2004, well prior to Ms Gobbo acting;
 - (b) By June 2004, police were already taking statements from Mr McGrath. DS Bateson's crew then began talking to Mr Thomas, suspected of involvement in the Moran and Barbaro murders, to seek his cooperation;
 - (c) On 28 July 2004, DS Bateson met with Mr Thomas at a McDonald's restaurant and Mr Thomas indicated an openness to assisting police;⁴⁴⁶
 - (d) On 18 October 2004, Mr Thomas, who was then in prison having been arrested for the Moran and Barbaro murders, enlisted ^{Mr Thomas' Per} to contact DSC L'Estrange to arrange to meet "*on the quiet*";⁴⁴⁷

⁴⁴⁶ Exhibit RC0269A – Statement of Commander Stuart Bateson dated 7 May 2019 at [61] (VPL.0014.0027.0001 at 0010).

⁴⁴⁷ Exhibit RC0252 – Purana member chronology (VPL.0015.0001.0409 at 0421); Exhibit RC0264 – Statement of Nigel L'Estrange, 3, [14] (VPL.0014.0036.0001 at .0003); Exhibit RC0269A – Statement of Commander Stuart Bateson dated 7 May 2019 at [63] (VPL.0014.0027.0001 at 0011).

- (e) By February 2006, Mr Thomas, who was still in prison awaiting trial, decided to cooperate with police and, this time, instructed Ms Gobbo to approach police on his behalf;⁴⁴⁸
- (f) On 19 February 2006, both Ms Gobbo and Mr Thomas' solicitor, Mr Valos, met with Com. Bateson and told him that Mr Thomas had instructed them that he wished to co-operate. This was just after Mr Andrews had written to the relevant Senior Crown Prosecutor informing him that he wished to co-operate. It also followed Mr McGrath's evidence at the trial of Carl Williams for the murder of Mr Marshall being accepted (a matter that Justice King observed would, if it came to pass, dramatically change the strength of the Crown case against Mr Thomas because it would mean that Mr McGrath was accepted as a witness of truth);⁴⁴⁹
- (g) A few days later, on 22 February 2006, Mr Thomas told DS Bateson to speak to his solicitor about him making statements which Mr Bateson did;⁴⁵⁰
- (h) Mr Bateson and Mr O'Brien met with Mr Thomas on three occasions in the weeks that followed;
- (i) The transcripts were provided to Ms Gobbo on 20 April 2006;
- (j) It was not until 29 June 2006 that Mr Thomas entered his guilty plea and he did that without, to Com. Bateson's knowledge, having committed to assisting police. Com. Bateson's evidence was that Ms Gobbo had likely spoken to Mr Horgan SC before the plea about Mr Thomas co-operating. After Mr Thomas had entered his plea, Mr Bateson met with Mr Thomas together with Ms Gobbo and Mr Valos in the cells at which time Mr Thomas said that he now wished to assist police by making statements;⁴⁵¹
- (k) Mr Thomas' solicitor was asked to provide a witness statement to the Commission addressing three questions.⁴⁵² He was not asked whether Ms Gobbo gave advice to Mr Thomas about pleading guilty, making admissions and implicating his associates and, if she did, about the circumstances in which it was given and the content of the advice. He was not asked if Ms Gobbo had encouraged Mr Thomas to make admissions, enter a plea of guilty and to implicate his associates. He was not asked if he *himself* had given such advice to Mr Thomas and, if he had, when he gave the advice and the reasons why he gave that advice. Mr Valos co-operated with the Commission in providing a witness statement but, because he was not asked, his statement does not address these critical matters. He was not called for cross-examination;
- (l) Mr Thomas' evidence was that Ms Gobbo encouraged him to plead guilty and to become a prosecution witness.⁴⁵³ However, given Mr Thomas' credibility issues and that it was plainly in his interests to give that evidence, his evidence alone is insufficient to find that Ms Gobbo encouraged him to make admissions, enter a plea of guilty and to implicate his associates, especially given that Counsel Assisting chose not to adduce evidence from a key witness, Mr Valos, on the issue;

⁴⁴⁸ Exhibit RC0269A – Statement of Commander Stuart Bateson dated 7 May 2019 at [77]-[78] (VPL.0014.0027.0001 at 0013).

⁴⁴⁹ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [78] (VPL.0014.0027.0001 at 0013).

⁴⁵⁰ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [80] (VPL.0014.0027.0001 at 0013).

⁴⁵¹ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [92] (VPL.0014.0027.0001 at 0015).

⁴⁵² Untendered – Email from the solicitors assisting the Royal Commission to Corrs Chambers Westgarth dated 8 July 2020 (VPL.0005.0306.0001).

⁴⁵³ Exhibit RC1175 – Statement of Mr Thomas at [37]-[38] (RCMPI.0131.0001.0001 at 0001_0010).

- (m) Further, even if Mr Thomas' evidence on this issue is accepted, his evidence is that Ms Gobbo encouraged him to plead guilty in the lead up to Mr Andrews pleading guilty. Mr Thomas said that Ms Gobbo told him that Mr Andrews 'might be pleading and might roll' and she urged Mr Thomas to get in first. If Ms Gobbo gave that advice then she likely gave it in February 2006,⁴⁵⁴ which was well before Ms Gobbo had been shown the transcripts. If she gave that advice, then there is no causal link between police and the advice she gave. That is, there is no evidence that police asked Ms Gobbo to advise Mr Thomas to get in before Mr Andrews and plead guilty and co-operate with police. It is also not evident why police would want her to give such advice;
- (n) Mr Thomas gave evidence that Mr Valos was shocked when he got back from holidays to discover that he had pleaded guilty. Mr Thomas said that Ms Gobbo had kept Mr Valos away from it all and away from him.⁴⁵⁵ Mr Valos' statement to the Commission does not address these issues and he was not called to give evidence or asked for a supplementary statement. However, the evidence before the Commission shows that Mr Thomas' evidence was false because:
- (i) On 19 February 2006, Mr Valos met with Com. Bateson and Ms Gobbo, after Mr Thomas said he wanted to plead guilty;
 - (ii) On 23 March 2006, Mr Thomas told Mr O'Brien and Mr Bateson that Mr Valos had advised him to plead guilty and assist police;⁴⁵⁶ and
 - (iii) On 29 June 2006, when Mr Thomas entered his guilty plea, Mr Valos was present. He met with Mr Bateson, Mr Thomas and Ms Gobbo afterwards to discuss Mr Thomas' desire to become a prosecution witness in return for a reduced sentence;⁴⁵⁷
- (o) To the extent that Mr Thomas gave the self-serving evidence that Ms Gobbo had pressured or persuaded him to plead guilty and to give evidence, Ms Gobbo unequivocally denied that before the Commission:⁴⁵⁸
- I want to ask you about some matters that Mr Thomas has raised in his statement. One of the things that he will suggest or he has suggested is that you pressured and persuaded him to plead guilty and to give evidence. What do you say to that? That's not consistent with my recollection.*
- Do you say that you didn't pressure or persuade him; is that right?*
Correct.
- (p) Ms Gobbo was unable to say with certainty whether she had advised Mr Thomas that it could be in his interests to plead guilty and give evidence.⁴⁵⁹ She suggested she may have done so *once* Mr Thomas reached the point of wishing to cooperate with police;⁴⁶⁰

⁴⁵⁴ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [75]-[78] (VPL.0014.0027.0001 at .0013).

⁴⁵⁵ T13592.38-43 (Thomas).

⁴⁵⁶ Exhibit RC0476 – Transcript of conversation between Stuart Bateson and Mr Thomas at [redacted] Prison (VPL.0005.0062.0609 at .0689).

⁴⁵⁷ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [92] (VPL.0014.0027.0001 at .0015).

⁴⁵⁸ T13402.34-43 (Gobbo).

⁴⁵⁹ T13402.45-13403.30 (Gobbo).

⁴⁶⁰ T13402.45-13403.1 (Gobbo).

- (q) Ms Gobbo recalled occasions when Mr Thomas had vacillated in his intention to assist police;⁴⁶¹
- (r) It was put to Ms Gobbo that she may have heard from DS Bateson that by around April 2006, Mr Thomas was considering not assisting police because ^{Mr Thomas' Per} may have objected. It was put that Ms Gobbo then communicated with ^{Mr Thomas' Personal Partner} and reassured her, so that Mr Thomas was convinced to cooperate.⁴⁶²
- (s) Ms Gobbo's recollection of these matters was vague, at best.⁴⁶³ As in the example below, the cross-examination on this point consisted of assertions or propositions being put by Counsel Assisting, without a proper foundation, and Ms Gobbo's vague agreement:

*Is the effect of the evidence this: you heard from Mr Bateson that there could be a spanner in the works and ^{Mr Thomas' Personal Partner} might not be prepared to go along and you communicated with her and smoothed things over and got things back on track. That's the essence of what I'm putting? Yeah, quite probably. As I said, my recollection is the issue was about her charges being withdrawn and her being able to keep the property and not face the loss of it.*⁴⁶⁴

- (t) Contrastingly, Com. Bateson's evidence was clear and detailed around his interactions with Mr Thomas and ^{Mr Thomas' Personal Partner}
- (u) Com. Bateson told the Commission that ^{Mr Thomas' Personal Partner} had resisted any move by Mr Thomas to assist police while she believed ^{Mr Thomas} was innocent of murder;
- (v) The shift identified by Com. Bateson was that, at that time, Mr Thomas had started telling police that he wanted to tell the truth. Com. Bateson articulated that the most logical scenario was that Mr Thomas had made a similar revelation to ^{Mr Thomas' Per} as to the truth of his role in murders in relation to which he was charged;
- (w) It was likely for this reason that ^{Mr Thomas' Personal Partner} relented, and Mr Thomas eventually agreed to admit the murder of Moran and assist. Com. Bateson denied that Ms Gobbo was tasked by him to speak to Mr Thomas;⁴⁶⁵
- (x) When asked again whether she had pressured or persuaded Mr Thomas to sign his statement about the Moran and Barbaro murders, Ms Gobbo responded:

I would be lying if I said I've got a specific recollection of even reading that statement.

23.123 On that evidence, the Commission cannot be satisfied that Ms Gobbo advised Mr Thomas to plead guilty, make admissions and implicate his associates and no basis to find that she was encouraged by police to give such advice.

23.124 If Ms Gobbo did advise Mr Thomas to plead guilty, make admissions and implicate his associates, the state of the evidence does not enable findings to be made that:

- (a) such advice was the sole, dominant or even a persuasive factor in Mr Thomas' decision;

⁴⁶¹ T13403.3-10 (Gobbo).

⁴⁶² T13367.19-27 (Gobbo).

⁴⁶³ Ibid.

⁴⁶⁴ Ibid; see also T13366.18-46 (Gobbo).

⁴⁶⁵ T9722.29-9723.28.

- (b) any advice from Ms Gobbo (or Mr Valos) to assist police amounted to unreasonable pressure or was contrary to a desire expressed by him to explore the possibility of obtaining a benefit by assisting police; or
 - (c) Ms Gobbo gave that advice to Mr Thomas in order to assist Victoria Police.
- 23.125 If Ms Gobbo did give such advice, she is likely to have had more plausible motivations for giving it, such as because she considered it to be in Mr Thomas' best interests in circumstances where the case against him was growing in strength and, if convicted, he was facing life imprisonment. Mr Valos seems to have given that advice.
- 23.126 The vice in the proposed finding at [1060.10] is that it oversimplifies the evidence and thereby is apt to obscure the real issues. There is no evidence at all that Com. Bateson knew any such thing. The evidence is that Com. Bateson disclosed his notes about Ms Gobbo and made claims of immunity, which were upheld.
- 23.127 However, Com. Bateson accepts that the Commissioner should find that he was inadequately trained about Victoria Police's obligation of disclosure and did not adequately understand Victoria Police's obligation of disclosure.

Proposed findings at [1072]

- 23.128 The proposed finding at paragraph [1072] is vague and unclear. Counsel Assisting invite the Commission to find that Mr Bateson Relevance
Relevance It is unsatisfactory to leave Mr Bateson to guess as to what Counsel Assisting are referring to in paragraph [1072]. Procedural fairness requires that adverse matters be put with specificity to enable a response.
- 23.129 First, it is not clear what 'involvement' in the prosecution of people Mr Thomas implicated that Counsel Assisting is referring to. In the absence of this being made clear, Mr Bateson cannot meaningfully respond.
- 23.130 Second, it is not clear how any such involvement had the consequence that Mr Bateson was aware of the *'continued'* use of Ms Gobbo' against Mr Thomas. Among other things, it is not clear what is meant by Victoria Police using Mr Gobbo *'against'* Mr Thomas. If that is a reference to Ms Gobbo's involvement in the statement taking process, there is no evidence that this constituted the use by Victoria Police of Ms Gobbo *"against"* Mr Thomas. Indeed, it was done for Mr Thomas' benefit and would have been done with any accused person in Mr Thomas' position.
- 23.131 Third, the finding does not follow from the matters set out in the applicable part of Counsel Assisting's submissions.
- 23.132 Accordingly, the proposed finding at paragraph [1072] is oppressive and unreasonable. It is not supported by the known facts. There is no apparent basis to advance it. The ambiguity in its formulation means that Mr Bateson is unable to meaningfully engage with it and he is, therefore, not provided procedural fairness. Counsel Assisting are invited not to press paragraph [1072], or to, at least, clarify it so that Mr Bateson may respond.
- 23.133 If paragraph [1072] relates to the 9 November 2007 event, then that matter is addressed in detail in Mr Ryan's submissions and Mr Bateson adopts those submissions.

Proposed finding at [1073]

- 23.134 The proposed finding in paragraph [1073] should not be made because, first, much of the alleged evidentiary basis for it has been shown to be unsound and, second, it

- operates on the false premise that Com. Bateson had an entitlement, power or authority to “allow” Ms Gobbo to act for Mr Thomas or to “prevent” her from doing so.
- 23.135 In relation to the evidentiary matters in paragraphs [1071.1]-[1071.10], they have already been addressed above.
- 23.136 As to the additional factual matters alleged at paragraphs [1073.1] and [1073.2], the alleged “sanitising” of Com. Bateson’s notes in connection with Mr Thomas’ statements has been addressed earlier. In the absence of either the person who made the notes, or the person who had the conversation about which the notes were made, the Commission cannot determine the real meaning of the diary note. An inference should not be made when the person who made the note gave evidence, but was not asked about it.
- 23.137 Further, there is no evidence at all that Com. Bateson’s notes about his communications with Ms Gobbo on behalf of Mr Thomas were to be “sanitised” generally. And, indeed, it can be seen that they were not. Com. Bateson’s notes of his communications with Ms Gobbo in the period from 9 July 2004 to 12 July 2004 used her name.
- 23.138 As to paragraph [1073.3], there is no evidence that Ms Gobbo had “influence” over ^{Mr Thomas’ Personal Partner} [redacted]. The evidence is that ^{Mr Thomas’ Personal Pa} [redacted] asked Ms Gobbo to visit her after Com. Bateson had spoken to ^{Mr Thomas’ Personal Pa} [redacted] at ^{Mr Thomas} [redacted]’s request about his potential guilty plea and the consequences for ^{Pil} [redacted]. Following that meeting, ^{Mr Thomas’ Personal Pa} [redacted] spoke to Com. Bateson and confirmed ^{Mr Thomas} [redacted]’s decision to plead guilty. This Commission does not know what Ms Gobbo said to ^{Mr Thomas’ Personal F} [redacted], nor why ^{Mr Thomas’ Personal Par} [redacted] changed her attitude. Ms Gobbo could not recall the discussion, and ^{Mr Thomas’ Personal Pa} [redacted] was not called to give evidence.
- 23.139 It was Mr Thomas’ decision to talk to Victoria Police. He asked Com. Bateson to visit his wife to explain the situation for him. There is no evidence to suggest that Ms Gobbo did anything other than confirm to Mrs Thomas that her husband’s instructions were that he wanted to plead guilty and he wanted a reduced sentence. There is no evidence at all that Ms Gobbo had some form of “influence” over Mrs Thomas. If Counsel Assisting wanted to submit such a matter then they needed to call the person said to be influenced to give evidence before this Commission as to whether she was influenced or not.
- 23.140 The asserted finding in paragraph [1073.4] mischaracterises the situation. Com. Bateson and Mr O’Brien did not give Mr Thomas an assurance of Ms Gobbo’s honesty in the meeting of 23 March 2006. Rather, Com. Bateson expressed his opinion that Ms Gobbo was honest, and he explained in his oral evidence to the Commission what he was referring to. The transcript needs to be read by the Commission in its entirety.
- 23.141 Equally, the proposition that Mr Thomas was ‘encouraged’ or ‘not dissuaded’ from using Ms Gobbo is contrary to the overwhelming weight of evidence. As is set out above, both Mr Bateson and Mr O’Brien did what they could to discourage Mr Thomas from continuing to engage Ms Gobbo without compromising her safety. They told Mr Thomas that Ms Gobbo was not independent because she had represented others, and Mr Thomas agreed with them. Mr O’Brien took the additional step of recommending alternative legal representation.
- 23.142 In relation to the proposition embedded in paragraph [1073] itself, Com. Bateson was not “allowing” Ms Gobbo to act for Mr Thomas, nor did he “fail to prevent” it. Mr Thomas engaged Ms Gobbo to act for him, and Ms Gobbo accepted the retainer. That was not an act that Mr Bateson was capable of “allowing” or “preventing”, in the sense that he

had no entitlement, power or authority to do either of those things. There is evidence that the Senior Crown Prosecutor raised conflicts with Ms Gobbo.

Proposed finding at [1074]

- 23.143 The proposed finding at paragraph [1074] arises from Mr Thomas' bail application on 8 September 2005. That matter has been comprehensively addressed earlier in these submissions.
- 23.144 The proposed findings cannot, and should not, be made. They relate to matters that fall outside the terms of reference of this Commission. On 8 September 2005, Ms Gobbo was not a registered source and was not providing Victoria Police with any information about Mr Thomas. Accordingly, the events of 8 September 2005 can have no bearing on Terms or Reference 1 or 2. Making those findings would constitute a denial of procedural fairness.
- 23.145 In any case, the evidence does not support the findings for the reasons set out earlier.
- 23.146 The finding in paragraph [1074.2] goes too far. The Commissioner is not able to conclude, on the material before the Commission, that Ms Gobbo was conflicted out of appearing at the bail application because:
- (a) the issues on the bail application were very confined;
 - (b) Mr Tinney, Mr Valos and the presiding judge did not express any concern about Ms Gobbo appearing at the bail application in circumstances where she had previously represented Mr McGrath and that was known;
 - (c) Mr Thomas knew that Ms Gobbo had previously represented Mr McGrath when he implicated Mr Thomas;
 - (d) it is unknown whether Mr McGrath agreed to Ms Gobbo appearing for Mr Thomas on the bail application because no evidence was adduced from him;
 - (e) it is unknown whether Ms Gobbo had shared all the information that she had from her representation of Mr McGrath with Mr Thomas, with or without consent, because Mr Thomas was not asked and no evidence was adduced from Mr McGrath.
- 23.147 As to paragraph [1074.3], there is no evidence of this at all. Ms Gobbo was *not* a human source at this date. She had not given Com. Bateson any information about Mr Thomas. Ms Gobbo did not have a conflict of this kind merely because she provided Com. Bateson with some information about Solicitor 2 out of personal spite. There is no evidence that Ms Gobbo had a conflict at this time, much less that Com. Bateson knew that she had such a conflict.
- 23.148 Paragraph [1074.4] cannot be maintained. There is no evidence at all that he had any such knowledge. That is at least in part because Counsel Assisting did not ask him. Absent direct evidence, there is no proper basis to infer that Com. Bateson had any knowledge of what Ms Gobbo did and did not conceal from Mr Thomas. Further, paragraph [1074.4] is misconceived for the reasons above and for those reasons set out earlier in these submissions on the bail application issue.
- 23.149 As to paragraphs [1074.5], [1074.6] and [1074.7], these matters have been comprehensively addressed above and in the submissions about the bail application.
- 23.150 As to the proposed finding in paragraph [1074.8], there is no evidence of this at all.
- 23.151 The unstated inference is that Com. Bateson acted improperly. If such an implication is intended, it is rejected. If the implication is that Com. Bateson did not object to Ms

Gobbo appearing at the bail application because he thought it would advantage him in that Ms Gobbo would not try her best to get him bail, then that is no more than cynical speculation.

- 23.152 There can be no reasonable criticism of Com. Bateson in connection with Ms Gobbo's appearance at the 5 September 2005 bail application.

Proposed finding at [1075]

- 23.153 The proposed finding in paragraph [1075] is not open on the broad basis proposed by Counsel Assisting. In particular, the attribution of intention and motivation cannot be sustained and must be rejected.
- 23.154 Com. Bateson agrees that the proposed findings in paragraphs [1075.1] to [1075.3] are open on the evidence.
- 23.155 The matter in paragraph [1063.4] is not open on the evidence. Mr Bateson's state of mind was not that Ms Gobbo was not able to independently represent Mr Thomas. In fact, his evidence was that he believed that she would represent him well. Mr Bateson knew that Ms Gobbo had acted for Mr McGrath and went on to act for Mr Thomas. However, that is not the same thing as saying that he knew that Ms Gobbo could not independently represent Mr Thomas. It was widely known that she was representing Mr Thomas after having represented Mr McGrath.
- 23.156 The fact asserted in paragraph [1075.5] is an oversimplification which is vague, ambiguous and likely to mislead. As at 23 March 2006, Com. Bateson did not know that Ms Gobbo was speaking to the SDU about Mr Thomas. As such, there is no basis to say that Com. Bateson knew that Ms Gobbo was "*servicing the interests*" of Victoria Police in connection with Mr Thomas.
- 23.157 In any case, there is no evidence that Ms Gobbo was serving the interests of Victoria Police in connection with Mr Thomas and certainly no evidence that Com. Bateson knew that she was doing so.
- 23.158 Com. Bateson did not know what advice Ms Gobbo was providing to Mr Thomas, save that on 23 March 2006 Mr Thomas said that Ms Gobbo and her instructing solicitor had told him that he should cooperate in relation to his charges. Com. Bateson also did not know what Ms Gobbo's motivations were when, according to Mr Thomas, she provided that advice to him. There was no reason for Mr Bateson to believe that Ms Gobbo was not serving Mr Thomas' interests when she advised him. Mr Thomas told Com. Bateson in their discussion on 23 March 2006 that his solicitor had given him the *same advice*.
- 23.159 Com. Bateson accepts that Ms Gobbo should not have provided any advice to Mr Thomas (assuming that she did) – irrespective of the content of that advice – if she was speaking to the SDU about him.
- 23.160 For all of the reasons identified, the proposed finding at paragraph [1075.5] is not open to be made.
- 23.161 As to the facts asserted in paragraphs [1075.6] and [1075.7], Com. Bateson has responded to those matters above. They are contrary to the evidence.
- 23.162 As to paragraph [1075.8], Mr Bateson agrees that Mr Thomas would not have been told that Ms Gobbo was a human source.

- 23.163 It is not open to the Commissioner to make the finding in paragraph [1075.9]. The contention there is a serious matter and a finding to that effect should not be lightly made. It should not be made other than on the basis of direct and compelling evidence.
- 23.164 There is no direct evidence that supports the proposed finding. The weight of evidence – much of which has not been referred to by Counsel Assisting in their submissions – is to the contrary. As with so many of Counsel Assisting’s submissions, it falls to Com. Bateson to identify what precisely is being alleged and then to attempt to respond to it. That is unsatisfactory.
- 23.165 If the relevant “*deception*” is that Ms Gobbo was speaking to the SDU about Mr Thomas while representing him, that was not known to Com. Bateson on 23 March 2006. There is not a skerrick of evidence that suggests otherwise.
- 23.166 If the relevant “*deception*” is that Mr Thomas was not told that Ms Gobbo had acted for Mr McGrath then, as a matter of fact, Mr Thomas knew that information and was not deceived.
- 23.167 If the relevant “*deception*” is Mr Thomas not being told about Ms Gobbo acting for Mr McGrath in relation to his statements, insofar as Com. Bateson is concerned:
- (a) that fact was revealed to the Court, and a claim of PII over his daybooks was upheld;
 - (b) Com. Bateson was cross-examined by Mr Thomas’ senior counsel about Mr McGrath’s statement process, including the involvement of Mr McGrath’s legal representative;
 - (c) Com. Bateson was not asked by Mr Thomas’ senior counsel whether Mr McGrath’s legal representative had in fact reviewed the statements or what changes were subsequently made; and
 - (d) Com. Bateson confirmed that all changes to the statements had been made at the request of Mr McGrath.
- 23.168 While there was no “*deception*” there was also no intention to deprive Mr Thomas of independent legal representation.
- 23.169 First, Victoria Police – both through detectives and the SDU – were encouraging Mr Thomas to obtain new representation. All of the evidence supports the conclusion that Victoria Police’s strong preference was that Ms Gobbo not act for Mr Thomas.
- 23.170 Second, Com. Bateson and Mr O’Brien encouraged Mr Thomas to obtain independent representation and to take advice from Mr Valos.
- 23.171 Third, Mr O’Brien went as far as asking for Ms Gobbo to suggest alternative representation for Mr Thomas – a suggestion she refused on the basis that she could think of no other barrister who could represent him.
- 23.172 Further, Com. Bateson did not encourage Mr Thomas to engage Ms Gobbo, or to continue to engage Ms Gobbo. There is no evidence that he told Ms Gobbo what advice she should give Mr Thomas or attempted to influence her about that advice.
- 23.173 Consequently, there is no evidentiary basis for a finding that Com. Bateson’s conduct was calculated to deprive Mr Thomas of independent legal representation. The weight of evidence, which supports the opposite conclusion, has not been addressed by Counsel Assisting. Once they have regard to it, it is submitted that it will be evident that there is no proper basis to continue to press the finding in 1075.9.

- 23.174 As a consequence of the finding at 1075.9 not being open, the proposed finding at 1075.10 is also not open. Com. Bateson did not want or need Mr Thomas to be deprived of independent legal representation in order to secure his cooperation with Victoria Police, or at all. Further, if Mr Thomas' evidence is to be accepted, Mr Thomas got independent legal advice from his solicitor that he should plead guilty and cooperate with police in order to avoid spending the rest of his life in prison.

Proposed finding at [1076]

- 23.175 The finding at paragraph [1076] is not open when the true facts are understood.
- 23.176 The evidence does not support a finding that Ms Gobbo was provided the transcripts as a human source for the purpose of encouraging Mr Thomas to take any particular course of action. She was provided the transcripts as Mr Thomas' barrister. This event has been addressed in detail in Mr Ryan's submissions and Mr Bateson adopts them.

Proposed findings at [1279]

- 23.177 Between May and September 2005, Ms Gobbo spoke to Com. Bateson about Barrister 1 and Solicitor 2. She mainly spoke about money laundering by Solicitor 2, and the manner in which criminal lawyers were being paid by their clients.⁴⁶⁶
- 23.178 From about 6 October 2005, Ms Gobbo acted for Solicitor 2 in connection with a summons issued to Solicitor 2 to attend and give evidence at the trial of two men charged with murdering her de facto partner on 8 May 2004.
- 23.179 On 7 October 2005, Ms Gobbo appeared for Solicitor 2 when the subpoena was called on.
- 23.180 Com. Bateson was present in Court for part of that day.
- 23.181 At paragraph [1279], Counsel Assisting submit that it is open to the Commissioner to find that Com. Bateson knew that Ms Gobbo had appeared for Solicitor 2 that day. Counsel Assisting point to several factual matters said to support the contention. It is not necessary for Com. Bateson to address those matters individually. He accepts that, by reason of his presence in Court that day, it is likely that he knew that Ms Gobbo acted for Solicitor 2. He accepts that he knew that Ms Gobbo had previously given him information adverse to Solicitor 2's interests.
- 23.182 Counsel Assisting's proposed finding stops with Com. Bateson's knowledge. It does not address the findings open to the Commission about why Com. Bateson did not take any further steps.
- 23.183 There are three relevant points.
- 23.184 First, Com. Bateson distinguished between information provided by a legal practitioner that had been obtained in the course of their occupation, and information that was obtained outside of their work. As set out above, Com Bateson believed that Ms Gobbo was speaking to him about information from social and incidental interactions.⁴⁶⁷
- 23.185 Put another way, Com. Bateson did not identify the relevant conflict. His evidence on this point was consistent with many other witnesses who appeared before this Commission.

⁴⁶⁶ See T11410.6, 9-13, 20-32 (Overland); T13285.33-44, T13285.9-10, T13301-3 (Gobbo).

⁴⁶⁷ T10064.33-43.

- 23.186 Second, the failure of Com. Bateson and others to identify this form of conflict occurred in circumstances where he had received no training at all from Victoria Police about the identification and management of conflicts of this kind.
- 23.187 Third, Com. Bateson, then a Detective Sergeant, was entitled to reasonably believe that Ms Gobbo would respect her professional obligations.

Proposed finding at [1675]

- 23.188 The finding proposed at paragraph [1675] is a further example of how Counsel Assisting's decision to approach their submissions with a view to attributing individual responsibility risks obscuring the real issues and pays scant regard to the practical and operational realities of Victoria Police.
- 23.189 First, it is not clear what "use" of Ms Gobbo is being referred to. If that is a reference to the meeting of 19 April 2006, then for the reasons set out above, it did not constitute the "use" of Ms Gobbo.
- 23.190 Outside of that event, there is no evidence at all that Com. Bateson knew that the SDU was likely to have holdings about Ms Gobbo that needed to be disclosed in the trial of Carl Williams.
- 23.191 The issues that arose in August 2006 related to certain claims for PII in the trial of Williams. The issues were connected to claims of PII that had been made in relation to the statements of three witnesses including Mr Andrews and Mr Thomas.
- 23.192 The Court was aware of the dispute about whether these materials should be disclosed, and it was being dealt with through the Court processes. The VGSO was retained.
- 23.193 Com. Bateson disclosed his diary notes and daybooks, and Chief Magistrate Gray upheld the PII claims relating to Ms Gobbo.
- 23.194 Second, Com. Bateson was not responsible for managing the PII issues that arose in connection with Carl Williams' trial. His diary and daybooks for the following week do not show any involvement at all in connection with the resolution of the PII issues.
- 23.195 Third, the broader issue of whether the SDU holdings contained disclosable material was not a matter that Com. Bateson had any responsibility for. Even if Com. Bateson had known that there was material in the SDU holdings that might have been relevant (which is denied), the SDU was the specialised unit set up to manage human sources. Com. Bateson was entitled to rely on that unit to have systems in place to address such matters.
- 23.196 Fourth, Com. Bateson did not engage with Ms Gobbo in her capacity as a human source, did not have any oversight of the SDU in connection with her handling, did not know how often they engaged with her or about what nor what records they kept.
- 23.197 Fifth, Com. Bateson's superior, DAI O'Brien was involved in the issue and was the point of contact between the SDU and the Purana Taskforce. Com. Bateson was entitled to trust that superior officers were managing the issue. The inclusion of Com. Bateson in the proposed finding at paragraph [1675] does not pay sufficient regard to Com. Bateson's rank at the time of these events, the complete absence of any training on these issues and the direct involvement of his commanding officer in the issue.
- 23.198 Com. Bateson accepts that it is open to the Commissioner to find that Victoria Police should have obtained legal advice in relation to its disclosure obligations arising from the use of Ms Gobbo as a human source and that a system should have been put in place to address disclosure.

23.199 Com. Bateson says that it is open to the Commissioner to find that this did not occur because Victoria Police officers did not receive adequate training about the duty of disclosure. Com. Bateson says that it is also open to the Commissioner to find that if officers had received adequate training about the duty of disclosure and had there been sufficient emphasis on the obligation within Victoria Police at the time, such legal advice would have been obtained.

Proposed finding at [2882]

- 23.200 In November 2007, Dominic Gatto was served with a notice to attend a coercive examination. That examination took place on 20 and 21 November 2007. Ms Gobbo appeared for Mr Gatto as junior counsel to Robert Richter QC. Com. Bateson had no direct involvement in these events. The investigation was being managed by Mr Buick.
- 23.201 On 22 November 2007, following the second day of the hearing, Ms Gobbo gave information to her handlers about Mr Gatto.⁴⁶⁸ Counsel Assisting assert that this information was disseminated to Com. Bateson.
- 23.202 As with countless allegations before it, Counsel Assisting does not set out Com. Bateson's evidence about whether this information was disseminated to him or not.
- 23.203 Com. Bateson's evidence was that:
- (a) as at 22 November 2007, he was still in his position at the Crime Strategy Group;
 - (b) he then travelled interstate;
 - (c) he did not start at Purana until 26 November 2007; and
 - (d) he had no note of receiving the information.⁴⁶⁹
- 23.204 It is improbable that this information was disseminated to Com. Bateson before he commenced with Purana on 26 November 2007. As such, the information was either disseminated to Com. Bateson later in time, or not at all.
- 23.205 Certainly, Com. Bateson's diary records parts, but not the whole, of this information being disseminated to him on 6 December 2007. As such, the best evidence of what was disseminated and when is that of Com. Bateson. There is nothing in Com. Bateson's notes that suggest he was told that Ms Gobbo appeared for Mr Gatto at the examination.
- 23.206 On 26 November 2007, Com. Bateson was upgraded into the position of Acting Detective Inspector at the Purana Taskforce for a period of only two weeks.⁴⁷⁰ In this period, Com. Bateson received information from the SDU about Mr Gatto and it was "*clear enough*" to him that the information was coming from Ms Gobbo.⁴⁷¹ Mr Bateson did not get across the detail of the work being undertaken in the taskforce during his two week period of upgrading. That was not his role in that period.
- 23.207 Com. Bateson did not accept that he knew that Ms Gobbo was acting for Mr Gatto at the time.⁴⁷² He had no record in his notes of that information and observed that Mr Gatto had not been charged with anything at that time.⁴⁷³

⁴⁶⁸ Exhibit RC0281 – ICR3838 (111), 22 November 2007 (VPL.2000.0003.5486 at .5493).

⁴⁶⁹ T9915.25-32, 34-37, 39-44, 46-47; T9915.46-47-9916.1-4.

⁴⁷⁰ T9896.35-36.

⁴⁷¹ T9896.38-42.

⁴⁷² T9897.7-8, 10, 12; T9914.17-18, 20-21.

⁴⁷³ T9897.3-5; T9914.20-21.

- 23.208 When it was put to Com. Bateson that he knew that Ms Gobbo was providing information about a person that she was acting for, Com. Bateson said:
- I'm just not willing to accept that at this point. Absolutely she's providing information about Mick Gatto, I accept that. I'm not quite sure that I knew she was acting for him because I don't think we had him charged with anything at that point.*⁴⁷⁴
- 23.209 It was also put to Com. Bateson that he should have identified that some of the information passed to him included information about the advice given to Mr Gatto by Mr Richter. Com. Bateson explained that he thought the information was coming from Mr Gatto, not from Mr Richter himself.⁴⁷⁵
- 23.210 Com. Bateson was asked whether this was of concern, and he responded that he did not find it earthshattering.⁴⁷⁶ The cross-examination ended there, and Counsel Assisting did not return to the topic. What Com. Bateson thought about the potential conflict was not explored.
- 23.211 From this insufficient evidentiary foundation, Counsel Assisting submit at [2882] that it is open to the Commissioner to find that Mr Bateson either knew that Ms Gobbo was acting for Mr Gatto, or alternatively had cause to make inquiries as to whether Ms Gobbo was acting for Mr Gatto.
- 23.212 As to the first proposition:
- (a) Com. Bateson's evidence was that he did not believe that he knew that Ms Gobbo was acting for Mr Gatto because, at that time, Mr Gatto had not been charged with anything;
 - (b) Com. Bateson's diaries do not show that he had this knowledge;
 - (c) Com. Bateson's position at the time was Detective Senior Sergeant at the Crime Strategy Group;
 - (d) Com. Bateson was upgraded to Acting Inspector at the Purana Taskforce after Mr Gatto's examination (at which Ms Gobbo had acted for him);
 - (e) Com. Bateson was upgraded for only two weeks – which is hardly sufficient time to absorb the details of the many investigations being conducted by Purana;
 - (f) the information given by Ms Gobbo about the hearing to the SDU and which was marked as “disseminated” to Com. Bateson:
 - (i) was almost certainly not disseminated to him contemporaneously (because Com. Bateson was at the Crime Strategy Group at the time); and
 - (ii) was almost certainly disseminated to him in part only on 6 December 2007, with no indication that he was informed that Ms Gobbo had appeared for Mr Gatto at the examination;
 - (g) Mr Buick did not give evidence that Com. Bateson knew that Ms Gobbo had acted for him.
- 23.213 As to the second proposition, it is not supported by the evidentiary matters referred to by Counsel Assisting in paragraph [2882]. Com. Bateson accepts that he knew that Ms Gobbo was a barrister and registered human source. However, the proposition that he

⁴⁷⁴ T9916.26-30.

⁴⁷⁵ T9916.43-44.

⁴⁷⁶ T9917.2-4.

had experience “with Ms Gobbo and knowledge of her role with Victoria Police and in particular her assistance to the Purana Taskforce” is so vague and imprecise as to be meaningless. If Counsel Assisting submit that by November 2007 Com. Bateson had particular knowledge that should have alerted him to the probability that Ms Gobbo would act for Mr Gatto in breach of her professional obligations, it should be clearly stated. Com. Bateson should not be left to guess what “experience” Counsel Assisting refer to.

- 23.214 Counsel Assisting’s reference to Mr Thomas in the next dot point underscores this point. Counsel Assisting refer to Com. Bateson’s awareness “of Ms Gobbo’s previous and ongoing involvement with Mr Thomas ... and his own dealing with her in that respect”. It is obvious that Com. Bateson was not aware of all of Ms Gobbo’s interactions with Victoria Police concerning Mr Thomas, including her communications with the SDU. Precisely what of Ms Gobbo’s interaction with Victoria Police is said to support this allegation is unknown.
- 23.215 That same observation can be made in relation to the allegation that Com. Bateson “was aware of Ms Gobbo’s involvement with Mr Gatto”. That formulation is so vague as to be meaningless. Com. Bateson cannot respond to it.
- 23.216 Finally, and in any case, this is a further example of a proposed finding that suggests an eagerness to criticise Com. Bateson. The essence of the finding is that Com. Bateson should have inferred from his knowledge of Ms Gobbo, the likelihood that Mr Gatto required legal advice and because he was receiving information from the SDU about Mr Gatto, that Ms Gobbo was likely to place herself in a position of conflict with Mr Gatto and should then have taken steps to prevent it. That is not sound analysis.
- 23.217 The reasons why Com. Bateson was not responsible for managing Ms Gobbo’s conflicts of interest are explored in detail above. For present purposes it suffices to observe that:
- (a) primary responsibility for managing Ms Gobbo’s engagement with Victoria Police rested with the SDU;
 - (b) it was the responsibility of the SDU to filter out information that was subject to legal professional privilege and Com. Bateson was entitled to act on the basis that the SDU had discharged that responsibility;
 - (c) Com. Bateson believed that the information about Mr Richter QC’s advice had come from Mr Gatto – not from Ms Gobbo being part of privileged conversations;
 - (d) Com. Bateson’s position at this time was at the Crime Strategy Group;
 - (e) Com. Bateson was upgraded to Acting DI in charge of Purana Taskforce for a period of two weeks only; and
 - (f) there is no evidence that Com. Bateson knew that Ms Gobbo was acting for Mr Gatto.
- 23.218 The finding at [2882] is not open on the evidence.

F. Submission of Detective Inspector Gavan Ryan

24 Introduction

- 24.1 These submissions address the findings that Counsel Assisting submit are open in relation to former Detective Inspector Gavan Ryan. They are structured as follows:
- (a) Section A contains an executive summary;
 - (b) Section B provides contextual information about Mr Ryan and his history with Victoria Police;
 - (c) Section C identifies key evidence about Mr Ryan's involvement with Ms Gobbo, including his awareness that Ms Gobbo had been registered as a human source and his knowledge of her involvement with Mr McGrath;
 - (d) Section D addresses the findings that Counsel Assisting submit are open in relation to the Thomas case study (Chapter 7);
 - (e) Section E addresses Relevance [REDACTED]
 - (f) Section F addresses other criticisms made by Counsel Assisting of Mr Ryan.

25 Section A: Summary

- 25.1 Gavan Ryan is a highly decorated former member of Victoria Police. He devoted his career, both with Victoria Police and, later, the Australian Federal Police, to public service.
- 25.2 In his time at Victoria Police, Mr Ryan was in charge of demanding, dangerous and complex investigations, including at the Purana Taskforce, which was responsible for investigating homicides and drug crimes in Victoria's organised criminal underworld, and the Petra Taskforce, which investigated the execution of Terrence and Christine Hodson. Mr Ryan gave his all to those investigations, to the crews who worked under his leadership and to the public. He retired from Victoria Police proud of his service, but exhausted.
- 25.3 Mr Ryan fully cooperated with this Commission. He voluntarily provided three detailed witness statements and was thoughtful, considered and frank in his evidence. Mr Ryan assisted this Commission in the spirit of public service. He gave his willing assistance to aid the Commission to discharge its duty to identify what went wrong, why, and how things could be done better.
- 25.4 Having done so, Mr Ryan has been confronted with the submissions of Counsel Assisting which, littered with factual errors, present selective and incomplete evidence in support of allegations about which Mr Ryan was not cross-examined nor otherwise put on notice.
- 25.5 The nature and extent of the resulting denial of procedural fairness is significant and consequential.
- 25.6 To take one example, Counsel Assisting submit that Mr Ryan knew that Relevance [REDACTED]
Relevance [REDACTED]

April 2006. That allegation is the cornerstone for a finding Relevance

Relevance

Relevance

- 25.7 Counsel Assisting offer not one shred of evidence in support of that allegation.
- 25.8 There isn't any.
- 25.9 Mr Ryan was not asked a single question by Counsel Assisting about Relevance in the course of his four day cross-examination. He was not asked whether he knew Relevance
Relevance There is not a single document that suggests he knew.
- 25.10 Without a single piece of evidence, and without affording Mr Ryan procedural fairness, Counsel Assisting invite this Commission to find that a highly decorated former officer Relevance
- 25.11 The personal and professional prejudice to Mr Ryan is obvious. He should not have been called on to answer the allegation.
- 25.12 The balance of Counsel Assisting's submissions suffers from similar problems. When a disciplined approach is taken to the analysis of the evidence, it can be seen that there is no basis for the adverse findings said to be open in relation to Mr Ryan.
- 25.13 Mr Ryan does not address the proposed findings in paragraphs [1081] Relevance Relevance
Relevance. He refers to and relies on the submissions at Part B to Part D above.

26 Section B: Gavan Ryan

- 26.1 Gavan Ryan joined Victoria Police in 1979⁴⁷⁷ and went on to have a distinguished career with both Victoria Police and, later, the Australian Federal Police. The police force was his life.
- 26.2 In 2003, Mr Ryan joined the Purana Taskforce as a Detective Senior Sergeant.⁴⁷⁸ In December 2005, Mr Ryan was promoted to the position of Detective Inspector and took up in that position with the Major Drug Investigation Division. He held that position until August 2007 when, following Detective Inspector Jim O'Brien's retirement, he returned to the Purana Taskforce as officer in charge.⁴⁷⁹
- 26.3 Mr Ryan retired from Victoria Police in April 2008.⁴⁸⁰ He then took up as a Superintendent with the Australian Federal Police.⁴⁸¹
- 26.4 In 2008 and 2009, he was deployed to the Solomon Islands, where he mentored detectives in the National Criminal Investigation Department.⁴⁸²
- 26.5 In 2009 and 2010, he was deployed to Kabul, Afghanistan, where he trained members of the Afghan National Police Force.⁴⁸³

⁴⁷⁷ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [3] (VPL.0014.0039.0001 at .0001).

⁴⁷⁸ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [3] (VPL.0014.0039.0001 at .0001).

⁴⁷⁹ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [88] (VPL.0014.0039.0001 at .0014).

⁴⁸⁰ Ibid.

⁴⁸¹ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [4] (VPL.0014.0039.0001 at .0002).

⁴⁸² Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [5] (VPL.0014.0039.0001 at .0002).

⁴⁸³ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [6] (VPL.0014.0039.0001 at .0002).

- 26.6 In December 2010, he was deployed to Christmas Island as the Police Forward Commander responding to the sinking of SIEV221 and the resulting deaths of 50 asylum seekers.⁴⁸⁴
- 26.7 In February 2011, Mr Ryan was deployed to Christchurch in New Zealand as the AFP Forward Commander following an earthquake in which 185 people were killed.
- 26.8 In July 2011, Mr Ryan returned to Afghanistan as the AFP Contingent Commander and was stationed at Tarin Kowt as Commander until February 2012.⁴⁸⁵
- 26.9 Mr Ryan's distinguished service to Victoria Police, the AFP and the community is reflected in the many professional awards and commendations he has received.⁴⁸⁶ Mr Ryan holds an Australian Police Medal, the Police Overseas Service Medal, the National Police Service Medal, the National Medal and the NATO medal.⁴⁸⁷
- 26.10 The pride with which Mr Ryan served as a member of Victoria Police is captured in his evidence to the Commission. He told the Commission that he was proud to have "*led a team of wonderful men and women who gave everything for each other and the people of Australia*" and that he "*gave everything to Purana and the members gave [him] everything in return*".⁴⁸⁸
- 26.11 Mr Ryan described the work of the Purana Taskforce as "*immensely stressful, with life and death decisions made on a continuous basis*". On his last day at Purana, Mr Ryan not only had "*no petrol in the tank*" but he had no "*fumes left in the tank either*".⁴⁸⁹
- 26.12 The submissions that Counsel Assisting have made about Mr Ryan are profoundly wrong and deeply offensive. The lack of care with which allegations Relevance [REDACTED] Relevance [REDACTED] have been made about Mr Ryan is set out below.
- 26.13 Mr Ryan's service history and evident good reputation must be taken into account by the Commission in considering the likelihood of him Relevance [REDACTED] Relevance [REDACTED]

27 Section C: Relevant facts

- 27.1 It was in 2003 that (then) Detective Senior Sergeant Ryan first heard of Nicola Gobbo. At the time, he was at the Purana Taskforce.
- 27.2 Shortly after he started at Purana, he heard Ms Gobbo's name mentioned from time to time around the Taskforce in the context of her acting for accused persons aligned to Carl Williams.⁴⁹⁰ He heard it said that Ms Gobbo's relationship with clients went beyond that of a normal barrister and client.⁴⁹¹ Ms Gobbo had also been observed in multiple organised crime surveillance operations, which made Mr Ryan suspect that she was passing information between different persons of interest.⁴⁹² Mr Ryan's suspicions of Ms Gobbo led to her being placed under surveillance,⁴⁹³ and she continued to show up when Purana had surveillance on others.⁴⁹⁴

⁴⁸⁴ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [7] (VPL.0014.0039.0001 at .0002).

⁴⁸⁵ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [9] (VPL.0014.0039.0001 at .0002).

⁴⁸⁶ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [13] (VPL.0014.0039.0001 at .0002-.0003).

⁴⁸⁷ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [13] (VPL.0014.0039.0001 at .0002-.0003).

⁴⁸⁸ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [117] (VPL.0014.0039.0001 at .0020).

⁴⁸⁹ Ibid.

⁴⁹⁰ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [20] (VPL.0014.0039.0001 at .0004).

⁴⁹¹ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [21] (VPL.0014.0039.0001 at .0004).

⁴⁹² Ibid.

⁴⁹³ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [21] (VPL.0014.0039.0001 at .0004-.0005).

⁴⁹⁴ Ibid.

- 27.3 Mr Ryan also remembered discussions among the Purana Taskforce about possible conflicts arising from Ms Gobbo acting for multiple people involved in the same suspected criminal offending.⁴⁹⁵ It had been observed that Ms Gobbo was visiting multiple people,⁴⁹⁶ "seemed to be a rule unto herself in that she was visiting people in gaol"⁴⁹⁷ and would "bob up at meetings and go for a walk and talk" (being a conversation outdoors without the risk of it being captured on a listening device).⁴⁹⁸ Mr Ryan said that these types of conflicts were "just accepted" at the time and that he was not aware of any discussions within Victoria Police about how they could be addressed by police officers.⁴⁹⁹ Mr Ryan believed that conflicts of this kind were matters for lawyers to consider.
- 27.4 This was a regrettable time for the legal profession in Melbourne with other lawyers also associating with underworld figures. Carl Williams was charged with conspiring to kill a lawyer known to the Commission. Lawyers Mario Condello and George Defferos were charged with conspiracy to murder and incitement to murder Mr Williams, his father and their bodyguard. Mr Condello was ultimately murdered himself. There was also Solicitor 2, whose de facto partner was murdered during the gangland war. These matters are addressed in paragraphs [28]-[30] of Mr Ryan's first statement.
- 27.5 By March 2004, Ms Gobbo was acting for gangland figure, Mr McGrath. He had been charged with murdering Michael Marshall. Mr McGrath had driven Mr Andrews to South Yarra where Mr Andrews executed Mr Marshall with shots to his head at close range in the street in front of his young child. Mr McGrath then drove him from the scene.
- 27.6 (Then) Detective Sergeant Stuart Bateson and his crew were investigating this murder. DSS Ryan was DS Bateson's superior officer.
- 27.7 Given their respective roles, DSS Ryan was not involved in the detail of the investigation into the Marshall murder.⁵⁰⁰ He was, at a high level, aware of the work of DS Bateson and his crew.⁵⁰¹
- 27.8 On 22 March 2004, Ms Gobbo informed DS Bateson that her client, Mr McGrath, was considering cooperating with police in relation to his murder charges. DS Bateson briefed DSS Ryan about that development.⁵⁰²
- 27.9 On 25 March 2004, DSS Ryan, along with Superintendent Andy Allen, DS Bateson and Mr Buick, attended a meeting with Senior Crown Prosecutor, Geoff Horgan QC. Mr Ryan could not, 16 years on, recall this meeting.⁵⁰³
- 27.10 However, Com Bateson told the Commission that, to the best of his recollection, the purpose of the meeting was for him to inform the OPP that Mr McGrath's lawyer, Ms Gobbo, had indicated a few days earlier that Mr McGrath was contemplating a plea and assisting police in return for a reduced sentence. Mr McGrath had expressed interest in assisting police at various times since the day of his arrest and before Ms Gobbo had acted for him.⁵⁰⁴

⁴⁹⁵ T4431.26-29.

⁴⁹⁶ T4431.34-35.

⁴⁹⁷ T4432.7-9.

⁴⁹⁸ T4432.9-10.

⁴⁹⁹ T4432.12-14.

⁵⁰⁰ Exhibit RC0269 – Statement of Commander Stuart Bateson dated 7 May 2019 at [27] (VPL.0014.0027.0001 at .0006); Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [23], [31] (VPL.0014.0039.0001 at .0005, .0006).

⁵⁰¹ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [23], [31] (VPL.0014.0039.0001 at .0005, .0006).

⁵⁰² T4432.35-38.

⁵⁰³ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [25] (VPL.0014.0039.0001 at .0005).

⁵⁰⁴ Exhibit RC0269 – Statement of Stuart Bateson dated 7 May 2009 at [44] (VPL.0014.0027.0001 at .0008); Exhibit RC0269 – Supplementary Statement of Stuart Bateson dated 17 November 2009 at [4] (VPL.0014.0027.0020 at .0020).

- 27.11 Shortly thereafter, DS Bateson and Mr Buick met with Mr McGrath in prison to discuss the information that he could provide.⁵⁰⁵ DSS Ryan was not involved in work at that level.
- 27.12 The events that followed are, appropriately, the subject of DS Bateson's evidence and they are addressed in detail in his submissions. There is no value in repeating them here, especially given the evidence that Mr Ryan had limited involvement in them. We address below the specific matters raised by Counsel Assisting about Mr Ryan's involvement in this period.
- 27.13 On 7 April 2004, DSS Ryan and Supt Allen spoke to Ms Gobbo at the County Court.⁵⁰⁶ Mr Ryan has a note of the conversation but no independent recollection of it.⁵⁰⁷ He gave evidence that his note indicates that Ms Gobbo raised with them a conflict of interest concerning her representation of Mr McGrath and/or Carl Williams and that the discussion was 'a handover of sorts' in that Ms Gobbo introduced them to Mr McGrath's new legal representative, Karen Ingleton, who was also present.⁵⁰⁸
- 27.14 Counsel Assisting have addressed this meeting at [559]-[562] of their submissions. Their summary of Mr Ryan's evidence creates a false impression of his evidence. They have left out the key evidence that Mr Ryan thought that Ms Gobbo must have been handing the McGrath matter over to Ms Ingleton due to the conflict issue.
- 27.15 The following day, on 8 April 2004, there was a meeting of senior officers in the Crime Department. They discussed various matters. DSS Ryan raised the discussion that he had had the previous day with Ms Gobbo and Ms Ingleton.
- 27.16 The participants at that meeting also discussed whether a Crimestoppers board member had a conflict by reason of his vocation as a journalist in circumstances where he would, by virtue of his position on the Board, have access to information related to the Purana Taskforce.
- 27.17 The submission made by Counsel Assisting, at [565], about this conflict is overly simplistic. That conflict was of an entirely different kind to the conflicts of interest that this Commission is considering (and which, it is submitted, are outside of the terms of reference in any event).
- 27.18 As such, the discussion of that conflict is not evidence of senior officers being 'attuned' to the types of conflicts raised in Counsel Assisting's submissions. Further, Counsel Assisting have already acknowledged in the hearings⁵⁰⁹ and in their submissions⁵¹⁰ that police did not have an adequate understanding of the professional obligation on lawyers not to act for two clients whose interests are in conflict.
- 27.19 Mr McGrath's statements were taken in late June 2004. They were finalised between 9 and 12 July 2004, and provided to the OPP on 14 July 2004.⁵¹¹ DS Bateson and Detective Senior Constable Mark Hatt had the carriage of the work in relation to his statements.
- 27.20 Paragraphs [619]-[637] of Counsel Assisting's submissions address Ms Gobbo's involvement in advising Mr McGrath about his statements between 9 and 12 July 2004.

⁵⁰⁵ Exhibit RC0269 – Statement of Stuart Bateson dated 7 May 2009 at [46] (VPL.0014.0027.0001 at .0008).

⁵⁰⁶ Exhibit RC0310B – Supplementary Statement of Gavan Ryan dated 31 July 2019 at [3(c)] (VPL.0014.0039.0021 at .0021).

⁵⁰⁷ Exhibit RC0310B – Supplementary Statement of Gavan Ryan dated 31 July 2019 at [3(c)] (VPL.0014.0039.0021 at .0021).

⁵⁰⁸ Exhibit RC0310B – Supplementary Statement of Gavan Ryan dated 31 July 2019 at [3(c)] (VPL.0014.0039.0021 at .0021).

⁵⁰⁹ T14952.20-23, T14955.14-17 and T15031.14-23 (Counsel Assisting).

⁵¹⁰ Counsel Assisting Submissions at p. 1095 [4675], Vol 2; Counsel Assisting's Submissions at p. 299 [1343.2], Vol 2 (see footnote 1748).

⁵¹¹ Exhibit RC0269 – Statement of Stuart Bateson dated 7 May 2009 at [54]-[58] (VPL.0014.0027.0001 at .0010).

That matter was, appropriately, the subject of the evidence of DS Bateson and DSC Hatt and is addressed in detail in their submissions.

- 27.21 The relevance of the above events to Mr Ryan is addressed in [628] and [638]-[642] of Counsel Assisting's submissions.
- 27.22 At [628], Counsel Assisting assert that Ms Gobbo telephoned Mr Ryan on 10 July 2004 and updated him following her review of Mr McGrath's statements. As to this assertion:
- (a) Counsel Assisting do not refer to any evidence, but rather make a bare assertion;
 - (b) there is *no* evidence of such a telephone call;
 - (c) Mr Ryan's diary shows that he was on a rostered day off and there is no note of a telephone call with Ms Gobbo;⁵¹² and
 - (d) Counsel Assisting did not ask Mr Ryan in cross-examination about any such call and it was not put to him that it had occurred.
- 27.23 Accordingly, the submission at [628] must be rejected.
- 27.24 At [638]-[642], Counsel Assisting address a Purana Taskforce meeting that occurred on 12 July 2004 at which Mr McGrath was discussed.
- 27.25 Those who are recorded as attending that meeting did not, 16 years on, have a recollection of it.⁵¹³ However, given the people apparently in attendance at the meeting and the notes made by Commander Purton, it seems that it was a briefing about the finalisation of Mr McGrath's statements. The notes seem to record that the briefing included a comment that Mr McGrath's lawyer, Ms Gobbo, had reviewed her client's statements and that she thought that the statement that he did not know that Mr Marshall was to be murdered was 'ridiculous'.⁵¹⁴ That was a view shared by the investigators. The meeting was, presumably, told that the statements were close to finalisation.
- 27.26 At [641], Counsel Assisting submit that, as a consequence, Mr Ryan and the others at the meeting came to know of Ms Gobbo's 'preparedness to share with police, matters, which quite obviously should have remained confidential as between her and her client'.
- 27.27 As to that submission:
- (a) while Counsel Assisting cross-examined Mr Purton (called before Mr Ryan) and Mr Overland (called after Mr Ryan) about the meeting, they did not cross-examine Mr Ryan about it;
 - (b) it follows that Mr Ryan was deprived of the opportunity to address the submission now put against him at [641];
 - (c) those assisting the Commission wrote to Mr Ryan as recently as 6 April 2020 requesting that he respond to a series of questions not put to him in cross-examination. He agreed to do so. Those questions did not include the matter at [641]; and

⁵¹² Untendered – Diary of Gavan Ryan, 10 July 2004 (VPL.0005.0120.0396).

⁵¹³ Supplementary Statement of Terry Francis Purton dated 21 August 2019 at [22]-[23] (VPL.0014.0017.0009 at .0013); T11393.1-11398.39 (Overland).

⁵¹⁴ T1704.5-T1707.13 (Purton).

- (d) for these procedural fairness reasons alone, the Commissioner is compelled not to accept the submission at [641] to the extent that it relates to Mr Ryan.
- 27.28 Further, in the context of being asked about events before the meeting on 12 July 2004, Mr Ryan told the Commission that he had no recollection of any scepticism about the content of Mr McGrath's statement.⁵¹⁵
- 27.29 Lastly, the submission at [641] ignores the relevant evidence given by DS Bateson and others.
- 27.30 DS Bateson's evidence included this:
- Counsel for Ms Gobbo: Do you think there is anything unusual in that process with the barrister, in effect, saying I question these - - - ?*
- Bateson: I don't because, you know, as I've said earlier, when I've worked with Crown witnesses, accomplices, in the past, nearly on every occasion without exception the accomplice will try and lessen their involvement to get a better deal. It is up to us, as investigators, to make sure that they're aware that sometimes that's just a load of crap. But ultimately when they put their signature on that statement, that's their evidence that they have to give and it will be their credibility in the witness box that will be important when they're giving that evidence.*
- Commissioner: What is a bit unusual is the lawyer reporting to the police officer about the statement and what she considers is not - - -?*
- Bateson: It's happened to me before, Commissioner, where lawyers have said to me, "Come on, is he really expecting us to believe this?" That's the circumstances. It's not unusual and for her to express scepticism in the way she did, it was certainly scepticism that we all shared.*
- 27.31 Com. Bateson's evidence is realistic and frank. As he said, legal practitioners are not always discreet. Sometimes they express a view that they should keep to themselves. That is what happened on this occasion. Com. Bateson said that it was not the first time that a lawyer had been indiscreet in that way.
- 27.32 If Counsel Assisting had asked Mr Ryan, Mr Purton and Mr Overland the question that the Commissioner asked Com. Bateson, then the answer may well have been the same. It is unlikely that Com. Bateson is the only police officer to have observed defence counsel being indiscreet. In fact, there is evidence that one of the reasons that some members of Victoria Police were reluctant to go to external counsel for advice was because they had experienced similar indiscretion.⁵¹⁶

⁵¹⁵ T4437.32-39 (Ryan).

⁵¹⁶ For example, T6071.25-31 (Smith); T12358.35-12359.21 (Cornelius).

- 27.33 If those at the meeting on 12 July 2004 had similar experiences to DS Bateson and others at Victoria Police, then Ms Gobbo being indiscreet with her view about an aspect of her client's statement would have hardly been of any moment.
- 27.34 Even without that experience, Ms Gobbo's comment was likely to have been of no real significance in the context of the work that these officers were doing at the time and in the context of their focus, which was finalising Mr McGrath's statements.
- 27.35 This meeting occurred around the time that DSS Ryan was focussed on Operation Lemma. That was the operation focussed on the two lawyers mentioned earlier. As Mr Ryan's statement explains, the intelligence was that lawyers Condello and Deferos were conspiring to murder Carl Williams and others and, at the same time, Williams was himself conspiring to kill [REDACTED]. Mr Ryan explains in his statement that investigating the competing conspiracies required significant resources and attention.⁵¹⁷
- 27.36 Lastly, the submission at [641] engages in hindsight reasoning. It is easy to observe now that Ms Gobbo's remark was an early and subtle sign of what was to happen years later. To expect officers to have taken sufficient notice of a remark by a lawyer (which did nothing more than express a view they independently held) and to have then been sufficiently conscious of it into the future to appreciate it was a harbinger of what was to come is entirely unrealistic. It does not recognise all that the relevant officers were doing at the time. They were focussed on solving and preventing murders and other serious crime. They were not parsing loose remarks by defence counsel in a search for signs of impropriety.
- 27.37 Moving now to 2005, as set out in Com. Bateson's submissions, on an occasion when Ms Gobbo was speaking to DS Bateson about the McGrath matter, she volunteered information that certain lawyers in Melbourne, who were acting for underworld figures, were engaging in criminal conduct. DS Bateson received further information of this kind from Ms Gobbo on subsequent occasions between May and August 2005. He briefed DSS Ryan about the information.⁵¹⁸
- 27.38 On the basis of Com. Bateson's notes, Mr Ryan accepts that it is likely that Com. Bateson told him about the general subject matter of the discussions, including as they related to Solicitor 2 and Tony Mokbel.
- 27.39 At some point in this period, DS Bateson said to DSS Ryan that he thought Ms Gobbo might want to provide information to Victoria Police about "the underworld".⁵¹⁹ Mr Ryan was sceptical.⁵²⁰ In light of her relationship with Carl Williams and Tony Mokbel, Mr Ryan was "dubious" and recommended that DS Bateson refer Ms Gobbo to the Dedicated Source Unit (the DSU).⁵²¹ Mr Ryan took that step because, as he understood it, the DSU was responsible for assessing the suitability of people as sources and registering them if deemed suitable.⁵²² Mr Ryan also considered that, while it might have been possible for Purana to register Ms Gobbo, the DSU had been set up to

⁵¹⁷ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [28]-[30] (VPL.0014.0039.0001 at .0006).

⁵¹⁸ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [35] (VPL.0014.0039.0001 at .0006), Exhibit RC0272B – Diary of Commander Stuart Bateson, 19 May 2005, VPL.0005.0058.0233 at .0249-0250, Exhibit RC0272B – Diary of Commander Stuart Bateson, 19 May 2005, VPL.0005.0058.0233 at .0250, Exhibit RC0272B – Diary of Commander Stuart Bateson, 19 May 2005, VPL.0005.0058.0233 at .0249-0250, Exhibit RC0272B – Diary of Commander Stuart Bateson, 19 May 2005, VPL.0005.0058.0233 at .0250, Exhibit RC0272B – Diary of Commander Stuart Bateson, 23 May 2005, 19, VPL.0005.0058.0233 at .0251; ; Exhibit RC0272B – Diary of Commander Stuart Bateson, 23 August 2005, 47, (VPL.0005.0058.0233_R20190516 at .0261); and Untendered – Diary of Gavan Ryan, dated 4 June 2005 (VPL.0005.0120.0395).

⁵¹⁹ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [36] (VPL.0014.0039.0001 at .0007).

⁵²⁰ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [36] (VPL.0014.0039.0001 at .0007).

⁵²¹ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [36] (VPL.0014.0039.0001 at .0007).

⁵²² Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [36] (VPL.0014.0039.0001 at .0007).

- manage high risk informers and, therefore, she should be referred there.⁵²³ Mr Ryan believed that Ms Gobbo would be “*risking death at every meeting*” if she was to inform and that Purana was not equipped to provide handlers or controllers for her.⁵²⁴
- 27.40 Up until this Royal Commission, Mr Ryan thought that it was those discussions that led to Ms Gobbo becoming a registered human source with the DSU.⁵²⁵ He now knows that was not the case.
- 27.41 Around this same time, Ms Gobbo also approached DSC Rowe and DC Mansell with information. Mr O'Brien's diary records that, on 31 August 2005, he spoke with Mr Ryan about that.⁵²⁶ While the content of this discussion is not the subject of direct evidence, it is reasonable to infer, from the evidence as a whole, that they agreed that any approach by Ms Gobbo should be referred to the DSU.
- 27.42 Consistently, immediately after the discussion, on 31 August 2005, Mr O'Brien referred Ms Gobbo to the DSU.
- 27.43 Counsel Assisting submit, at [1162], that Mr Ryan gave evidence that he knew that Ms Gobbo was acting for Tony Mokbel from 2002 until early 2006. Counsel Assisting submit that, accordingly, when DS Bateson briefed him about the information that Ms Gobbo had told him, Mr Ryan must have been aware that Ms Gobbo was informing against her client.
- 27.44 Counsel Assisting then submit that it is open to the Commissioner to find that, by 12 September 2005, Mr Ryan knew that Ms Gobbo was acting for Tony Mokbel and that her use as a human source against Mr Mokbel was being considered.
- 27.45 There are five difficulties with those submissions.
- 27.46 First, it overstates the position to say that Ms Gobbo was “*informing*” on Tony Mokbel. Mr Ryan did not, and does not, accept that characterisation.
- 27.47 Ms Gobbo was speaking to (then) DS Bateson about criminal conduct by lawyers. That was the focus of the discussions. Those lawyers acted for Mr Mokbel, which is why he was also raised in the discussion.
- 27.48 Ms Gobbo's conversations with Com. Bateson were irregular, and were, in Com. Bateson's view, substantially motivated by her personal dislike of Solicitor 2.
- 27.49 Com. Bateson did not see himself as Ms Gobbo's handler – his subjective experience was that he was simply meeting with someone who had information for police.
- 27.50 Once Ms Gobbo expressed interest in assisting police beyond providing information in the ordinary way that citizens assist police, she was referred to the SDU where she was assessed, registered and managed.
- 27.51 Second, contrary to Counsel Assisting's submissions, Mr Ryan did not say in evidence that he knew that Ms Gobbo was acting for Tony Mokbel in the relevant period.
- 27.52 In the transcript passages on which Counsel Assisting rely, Mr Ryan said that:
- (a) Ms Gobbo “*would have been*” acting for Mr Mokbel in March 2006;⁵²⁷
and

⁵²³ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [38] (VPL.0014.0039.0001 at .0007).

⁵²⁴ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [39] (VPL.0014.0039.0001 at .0007).

⁵²⁵ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [36]-[37] (VPL.0014.0039.0001 at .0007).

⁵²⁶ Untendered – Mr Jim O'Brien diary, 31 August 2005 (VPL.0099.0099.0001 at .0001); Exhibit RC0468B – Diary Summary of Jim O'Brien, 31 August 2005 (VPL.0005.0126.0001 at .0003).

⁵²⁷ T4346.6-8.

- (b) he did not know if she was acting for Mr Mokbel in September 2005, because he knew that the Purana Taskforce was investigating him at that time, but he did not know if it had yet charged Mr Mokbel with anything.⁵²⁸
- 27.53 Mr Ryan then indicated that he was confused about the timeline. The hearing then adjourned for the day, and Counsel Assisting did not return to the matter.
- 27.54 As such, Mr Ryan's evidence was that he did not know whether or not Ms Gobbo was acting for Mr Mokbel when DS Bateson briefed him about the information provided by Ms Gobbo or when she was registered as a human source in September 2005.
- 27.55 Third, the cross-examination of Mr Ryan highlights an important matter that is obscured by Counsel Assisting's failure to identify the relevant conflicts of interest with precision.
- 27.56 It is apparent from Mr Ryan's evidence that he did not consider that it was a conflict of interest for Ms Gobbo to provide information about a former client. In the passages referred to above, Mr Ryan distinguishes between criminal charges for which Ms Gobbo had been retained in 2006 and ongoing criminal offending for which no charges had been laid and in relation to which Ms Gobbo had not been retained. This distinction is a feature of the evidence of several witnesses before this Commission. It is consistent with the evidence that Victoria Police officers received no training about the professional obligations of legal practitioners, outside of legal professional privilege.
- 27.57 Fourth, there is no evidence that Mr Ryan knew that Victoria Police was considering whether Ms Gobbo could assist with Operation Quills, being an operation concerning Tony Mokbel. He gave no evidence about it, was asked no questions about it and there are no contemporaneous documents linking him to it. Mr Ryan was not part of the discussions on 8 September 2005⁵²⁹ or 12 September 2005.⁵³⁰
- 27.58 Fifth, Mr Ryan had no involvement in the decision to register Ms Gobbo as a human source, and no involvement in her debriefing process. Indeed, he did not come to know that she had been registered as a human source until December 2005. Accordingly, he did not know the purposes for which the DSU was considering using her as a human source.
- 27.59 Consequently, it is not open to the Commissioner to find that Mr Ryan either knew that Ms Gobbo was acting for Tony Mokbel and informing to DS Bateson about him or that her use as a human source against Tony Mokbel was being considered when she was acting for him.
- 27.60 Further, even if Mr Ryan did know that Ms Gobbo was informing on Mr Mokbel when she was acting for him or after she had acted for him, Mr Ryan did not know that to be problematic. That is, Mr Ryan did not identify this as a conflict. He approached the information on the basis that it was not subject to legal professional privilege and could therefore be used in the investigation of serious criminal offending. He did not appreciate that Ms Gobbo had a conflict because she was acting for Tony Mokbel in relation to separate matters.
- 27.61 In December 2005, Mr Ryan was promoted to Inspector at the MDID.⁵³¹ He left Purana and took up the role of Detective Inspector in that unit. He commenced work there on 8 January 2006.

⁵²⁸ T4346.10-16.

⁵²⁹ Counsel Assisting Submissions at p. 296 [1329], Vol 2.

⁵³⁰ Counsel Assisting Submissions at p. 298 [1331], Vol 2.

⁵³¹ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [40] (VPL.0014.0039.0001 at .0007).

- 27.62 To the best of Mr Ryan's recollection, he became aware of Ms Gobbo's registration as a human source shortly before he left Purana in about December 2005.⁵³²
- 27.63 DI Ryan returned to the Purana Taskforce to relieve DAI O'Brien from time to time.⁵³³ As he was acting in DAI O'Brien's role, he was the nominated point of contact for dissemination of information from the SDU to Purana.⁵³⁴
- 27.64 In February 2006, DI Ryan was informed that Mr Andrews had written to the Office of Public Prosecutions stating that he wanted to cooperate with police in relation to his murder charges.⁵³⁵
- 27.65 On 13 February 2006, DI Ryan returned to the Purana Taskforce to manage Mr Andrews' matter.⁵³⁶ The same day, Mr Andrews was taken out of prison and signed into the custody of DI Ryan.⁵³⁷ Mr Andrews remained in DI Ryan's custody for 28 days, while Purana investigators took his statements.⁵³⁸ Mr Andrews subsequently pleaded guilty and became a Crown witness in return for a reduced jail sentence.

28 Section D: The Thomas case study

- 28.1 On 16 August 2004, Mr Thomas was arrested and charged with murdering Jason Moran and Pasquale Barbaro at a children's Auskick football clinic on 21 June 2003.
- 28.2 The evidence against Mr Thomas included information contained in a witness statement made by Mr McGrath.
- 28.3 As set out earlier, Ms Gobbo had acted for Mr McGrath when he became a Crown witness. She then acted for Mr Thomas. Ms Gobbo was part of their crew, which explains why she was their lawyer of choice. That is now evident from the analysis of the evidence before the Commission about Ms Gobbo which is set out in the Appendix to the tranche 1 submissions.
- 28.4 At paragraphs [697]-[716], Counsel Assisting address what they describe as the understanding of certain officers of "*Ms Gobbo's conflicted position when acting for Mr Thomas*". Counsel Assisting's submission about Mr Ryan is at paragraph [712].
- 28.5 These paragraphs highlight the difficulty that attends Counsel Assisting's failure to identify the conflicts of interest. These issues are comprehensively addressed in Com. Bateson's submissions, which Mr Ryan adopts.
- 28.6 In summary, Mr Ryan understands that Counsel Assisting submit that members of Victoria Police ought to have intervened to address:
- (a) Ms Gobbo's potential conflict of interest in acting for Mr Thomas after she had acted for Mr McGrath; and
 - (b) Ms Gobbo's potential conflict of interest as a potential witness in the murders of Jason Moran and Pasquale Barbaro; and
 - (c) an alleged conflict of interest in Ms Gobbo providing information about Mr Thomas to Victoria Police while representing him.

⁵³² Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [41] (VPL.0014.0039.0001 at .0007).

⁵³³ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [40] (VPL.0014.0039.0001 at .0007).

⁵³⁴ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [42] (VPL.0014.0039.0001 at .0007 - .0008).

⁵³⁵ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [47] (VPL.0014.0039.0001 at .0008).

⁵³⁶ Ibid.

⁵³⁷ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [49] (VPL.0014.0039.0001 at .0008-.0009).

⁵³⁸ Ibid.

- 28.7 If they are the submissions, they should not be accepted because:
- (a) the first and second potential conflicts fall well outside the terms of reference and, therefore, the Commissioner has no power to make findings in relation to them;
 - (b) second, and in any event, as to the first conflict:
 - (i) it cannot be said that merely by reason that Ms Gobbo had acted for Mr McGrath she was unable to act for Mr Thomas in any part of the proceeding against him – those involved in the proceeding appear to have assessed the conflict issue by reference to the scope of Ms Gobbo's retainer on each occasion. This is what occurred in relation to the bail application discussed later in these submissions and, seemingly, in relation to the committal hearing;
 - (ii) Mr Thomas knew that Ms Gobbo had acted for Mr McGrath and, with that knowledge, retained her;
 - (iii) Mr Thomas' solicitor and Queens Counsel were also aware that Ms Gobbo had acted for Mr McGrath and, it seems, addressed her potential conflict accordingly;
 - (iv) it is not known whether the potential conflict was raised with Mr McGrath because Counsel Assisting did not call him to give evidence. Ms Gobbo was not asked whether she asked for Mr McGrath's consent. The Commission therefore does not know whether consent was given. It is unsatisfactory that submissions are made about this conflict, without the Commission having evidence of this critical fact from the key people;
 - (v) both Ms Gobbo and the profession took steps to address the potential conflicts and, it seems, were satisfied that they had been resolved; and
 - (vi) there are serious deficiencies in the evidence before the Commission about these matters, which leaves the Commission with an incomplete picture of how the potential conflicts were managed; and
 - (c) as to the second conflict, there was no conflict because there was no reasonable prospect that Ms Gobbo would be called as a witness;
 - (d) as to the third conflict:
 - (i) Ms Gobbo was not "*informing*" on Mr Thomas; and
 - (ii) to the extent that she spoke about him to the SDU (in a way that was not informing on him), she ought not to have done so and steps should have been taken to prevent her from doing so and to ensure that no information that she provided to the SDU was disseminated to investigators.
- 28.8 Despite those matters, Mr Ryan's evidence on the question of conflict, including the matters highlighted by Counsel Assisting at paragraph [712] is important because it evidences the systemic deficiencies that led to the failure of Victoria Police to identify and properly respond to conflicts when they arose. Mr Ryan's evidence provides support for the submissions to be made by Victoria Police in Tranche 2 as to those deficiencies, and the steps that have been taken, and continue to be taken, to address them.

- 28.9 First, Mr Ryan knew that Ms Gobbo was acting for Mr Thomas from "early on".⁵³⁹ Mr Ryan's evidence was that he would have felt some "discomfort" at Ms Gobbo acting for Mr Thomas given that she had represented Mr McGrath.⁵⁴⁰ He did not know whether Ms Gobbo had told Mr Thomas that she had represented Mr McGrath.⁵⁴¹
- 28.10 However, he believed that it was for the OPP to work out any conflict issues in the proceeding.⁵⁴² Consistently, DI Ryan did not ever discuss the issue with the OPP and the OPP did not approach DI Ryan about it.⁵⁴³ Mr Ryan went on to say "... I don't tell Geoff Horgan [SC] what to do".⁵⁴⁴ Mr Ryan also explained his view that the OPP was better placed to identify potential conflicts of interest because "they go to court and they see how the opposition are",⁵⁴⁵ and know which legal representatives have been involved with which accused.⁵⁴⁶
- 28.11 Mr Ryan agreed that a person charged with a criminal offence can expect the lawyer representing them in relation to that offence not to have assisted a person who implicated them.⁵⁴⁷ However, he also said that "we just don't get involved in telling lawyers who to represent".⁵⁴⁸ Mr Ryan could not recall any occasion on which he had taken an interest in lawyers' potential conflicts of interest arising by reason of an accused person's chosen representation.⁵⁴⁹
- 28.12 Mr Ryan also said that he was not aware of any situation in which Victoria Police had taken active steps to make sure that lawyers were not acting while in a position of potential conflict.⁵⁵⁰ Mr Ryan explained that, as he understood it "... lawyers know if they've got a conflict or not and they self-police as I understand it".⁵⁵¹
- 28.13 What Mr Ryan's evidence makes clear is that he did not believe that Victoria Police had any role in managing legal practitioner's conflicts of interest. While it will almost always be the case that such conflicts are a matter for the practitioner and the profession, it can be seen that this commonly held view meant that officers did not turn their minds to the questions of conflict that arose.
- 28.14 Second, Mr Ryan said that police would not tell the OPP that Ms Gobbo was a human source, saying "... you just don't declare it to anyone. As few people as possible".⁵⁵² He explained that there was no "decision" not to tell the OPP, but rather "It's taught to you ... you never declare to anyone who's an informer because then it places that person in jeopardy".⁵⁵³ He had no recollection of ever discussing whether the OPP should be informed of Ms Gobbo's status.⁵⁵⁴ Mr Ryan also said that he had no recollection of discussions with more senior officers about whether the OPP should be informed,⁵⁵⁵ again explaining that "It's how you're taught. You're taught not to disclose, ever disclose a human source's identity".⁵⁵⁶ When it was put to Mr Ryan that Ms Gobbo

⁵³⁹ T4449.20-38.

⁵⁴⁰ T4450.37-43.

⁵⁴¹ T4453.19-23.

⁵⁴² T4450.45-46.

⁵⁴³ T4451.1-5.

⁵⁴⁴ T4451.7-9.

⁵⁴⁵ T4524.18-19.

⁵⁴⁶ T4524.21-22.

⁵⁴⁷ T4451.14-19.

⁵⁴⁸ T4451.23-26.

⁵⁴⁹ T4452.34-37.

⁵⁵⁰ T4344.26-29.

⁵⁵¹ T4344.42-44.

⁵⁵² T4524.27-30.

⁵⁵³ T4524.33-35.

⁵⁵⁴ T4524.37-40.

⁵⁵⁵ T4535.43-45.

⁵⁵⁶ T4525.45-47.

was “a pretty different human source”, he said that the rule applied to her just as it did anyone else.⁵⁵⁷

- 28.15 Mr Ryan’s evidence on this point emphasises just how deeply entrenched the ‘golden rule’ was at the time.

Proposed finding at [772]

- 28.16 At [772], Counsel Assisting submit that it is open to find that if Ms Gobbo’s involvement in the representation of people had not been to Victoria Police’s advantage, Victoria Police would have taken steps to prevent it from occurring.

- 28.17 If that submission is directed at Mr Ryan, then it is not supported by the evidence. Mr Ryan’s evidence, as outlined above, is directly inconsistent with it.

- 28.18 Further, Counsel Assisting have not explained why it was for Victoria Police to prevent Ms Gobbo from acting for multiple accused persons whose interests were in conflict. Nor have they explained why Victoria Police would consider that to be its role when the OPP had carriage of the proceedings in which Ms Gobbo had potential conflicts.

- 28.19 There is evidence before the Commission that the Senior Crown Prosecutor who was prosecuting the proceedings in which Ms Gobbo had her potential conflicts raised the conflicts with her. It is not known whether any further steps were taken by the OPP and, if not, why not.

- 28.20 In circumstances where:

- (a) the OPP had carriage of the prosecutions;
- (b) senior counsel was appearing in those prosecutions;
- (c) Ms Gobbo had acted for Mr McGrath when he became a Crown witness against Mr Thomas and then went on to act for Mr Thomas;
- (d) senior counsel appearing in the prosecutions knew the matters in sub-paragraph (c) and directly raised the question of conflict with Ms Gobbo;
- (e) others at the OPP knew the matters in sub-paragraph (c) above;
- (f) Mr Thomas knew the matters in sub-paragraph (c);
- (g) Ms Gobbo’s leader (Senior Counsel) knew the matters in sub-paragraph (c);
- (h) Ms Gobbo’s instructing solicitor knew the matters in sub-paragraph (c); and
- (i) there is no evidence that Mr McGrath raised any concern about Ms Gobbo acting for Mr Thomas,

there is no basis whatsoever for Counsel Assisting to submit that responsibility for preventing Ms Gobbo from acting for Mr Thomas lay with Victoria Police. Nor is there any evidence from which it can be inferred that Victoria Police did not prevent Ms Gobbo from acting because it was to Victoria Police’s advantage to have her act. That is nothing more than cynical speculation that is of no assistance to the Commission.

- 28.21 In circumstance where there is no evidence that Mr McGrath complained about Ms Gobbo acting for Mr Thomas and where Mr McGrath, Mr Thomas and Ms Gobbo had all been part of the same criminal crew, Mr McGrath may not have cared less that Ms Gobbo was acting for Mr Thomas after she had negotiated a very good outcome for him

⁵⁵⁷ T4526.2-6.

- 10 years for 4 execution murders. He may have been agreeable to her acting. But we do not know, because he was not asked.
- 28.22 The above circumstances are addressed in more detail in Com. Bateson's submissions. Mr Ryan adopts those submissions.
- 28.23 On 1 March 2005, Mr Thomas' committal hearing for the murders of Moran and Barbaro commenced. Mr McGrath gave evidence for the Crown.
- 28.24 On 19 February 2006, DI Ryan was informed by DS Bateson that he had received a telephone call from Ms Gobbo who had indicated that Mr Thomas might be willing to cooperate with police.⁵⁵⁸ This was not the first time that Mr Thomas had expressed such interest. As set out in Com. Bateson's submissions, he expressed the same interest back in July 2004, well before Ms Gobbo acted for him.
- 28.25 DI Ryan informed his superior officer, DC Overland, and the officer in charge of Purana, DAI O'Brien. He also informed Senior Crown Prosecutor Mr Horgan SC.⁵⁵⁹
- 28.26 DS Bateson and DSC Hatt met with Ms Gobbo and her instructing solicitor, Mr Valos, to discuss Mr Thomas' renewed interest in co-operating. Afterwards, DS Bateson briefed DI Ryan about the meeting.⁵⁶⁰ DI Ryan's evidence was that, as at this date, he knew that Mr Thomas was considering cooperating and that Ms Gobbo was one of his lawyers.⁵⁶¹
- 28.27 The following day, 20 February 2006, DI Ryan met with DAI O'Brien and DS Bateson to discuss resourcing in relation to Mr Thomas.⁵⁶² Later that day, DI Ryan, DS Bateson and DSC Kerley met with Mr Horgan SC.⁵⁶³ Mr Ryan's diary records that they discussed "*options re [Mr Thomas]*" and that they would "*proceed on Wednesday at this stage*".⁵⁶⁴
- 28.28 There is no evidence that, at this time, DI Ryan knew that Ms Gobbo was talking to the SDU about Mr Thomas.
- 28.29 As at 19 February 2006, there had been only one occasion on which the SDU had disseminated information to Purana about Mr Thomas where the information came from Ms Gobbo. That occurred in September 2005 when information was disseminated to DAI O'Brien.⁵⁶⁵ The information was that Ms Gobbo believed that Mr Thomas had "*more involvement*" in a particular event than Tony Mokbel thought he had.⁵⁶⁶ Mr O'Brien was not given any detail of Mr Thomas' involvement. That occasion aside, there is no evidence at all that the SDU had disseminated any information that Ms Gobbo gave them about Mr Thomas (of a kind that could be described as her informing on him) to Purana detectives, including DI Ryan.
- 28.30 Consequently, there is no evidentiary basis to conclude that, when Mr Thomas indicated his willingness to cooperate with police, that Mr Ryan knew that Ms Gobbo was providing information about him to police. Mr Ryan was aware that Ms Gobbo had a potential conflict by reason of having previously acted for Mr McGrath but, as set out above, he did not see that conflict as being an issue for Victoria Police to manage. As is

⁵⁵⁸ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [51] (VPL.0014.0039.0001 at .0009).

⁵⁵⁹ Exhibit RC0312 – Diary of Gavan Ryan, 19 February 2006 (VPL.0005.0120.0020 at .0022).

⁵⁶⁰ Exhibit RC0312 – Diary of Gavan Ryan, 19 February 2006 (VPL.0005.0120.0020 at .0022).

⁵⁶¹ T4455.31-36.

⁵⁶² Exhibit RC0312 – Diary of Gavan Ryan, 19 February 2006 (VPL.0005.0120.0020 at .0022).

⁵⁶³ Exhibit RC0312 – Diary of Gavan Ryan, 20 February 2006, 3, (VPL.0005.0120.0107 at .0109).

⁵⁶⁴ Exhibit RC0312 – Diary of Gavan Ryan, 20 February 2006, 3, (VPL.0005.0120.0107 at .0109).

⁵⁶⁵ Exhibit RC0468B – Jim O'Brien Diary Summary, 29 September 2005 (VPL.0005.0126.0001 at 0005).

⁵⁶⁶ Exhibit RC0468B – Jim O'Brien Diary Summary, 29 September 2005 (VPL.0005.0126.0001 at 0005).

- clear from Com. Bateson's submissions, the legal practitioners were responding to that potential conflict issue.
- 28.31 On 22 February 2006, 15 March 2006 and 23 March 2006, Purana detectives met with Mr Thomas to discuss his interest in co-operating with police in relation to his charges. Mr Ryan was not involved in these meetings.
- 28.32 The next relevant event is on 19 April 2006.
- 28.33 On that day, DI Ryan, DAI O'Brien and DS Bateson met to discuss the status of Mr Thomas' charges.
- 28.34 The meeting came at a time when:
- (a) Mr Andrews had just pleaded guilty and was a Crown witness against Mr Thomas;
 - (b) Carl Williams was considering pleading guilty to his murder charges and assisting police; and
 - (c) Mr Thomas had been continuing to talk to police about pleading guilty and assisting police.⁵⁶⁷
- 28.35 The three members at the meeting discussed Mr Thomas' charges generally, in the context of the above circumstances. Mr Ryan's notes of the meeting record that there was to be a discussion with the OPP – 'what is status with defence plea'. It is unclear whether that is a reference to obtaining an update on the status of discussions between the OPP and Mr Williams' lawyers about his possible plea or between the OPP and Mr Thomas' lawyers about his possible plea.
- 28.36 In any event, Com. Bateson, who had some memory of the meeting, recalled expressing the view at the meeting that he did not want to keep spending his time speaking to Mr Thomas about a possible plea because the case against him had strengthened considerably, with his two accomplices (Mr McGrath and Mr Andrews) agreeing to give evidence against him, and Carl Williams considering doing the same.⁵⁶⁸ Com. Bateson recalls that DAI O'Brien and DI Ryan accepted that view, but that DAI O'Brien thought it appropriate to inform Mr Thomas' lawyer of that position and to give her material relevant to any plea in case Mr Thomas decided that he wished to take that course. DAI O'Brien agreed police would otherwise have no further contact with Mr Thomas about a possible plea.
- 28.37 Accordingly, Ms Gobbo was given the transcripts of the information that Mr Thomas had provided to police up to that point.
- 28.38 It appears that the above is exactly how Counsel Assisting had initially understood the event – as nothing more than police giving relevant material to Mr Thomas' lawyer, Ms Gobbo.
- 28.39 Com. Bateson was called to give evidence before the Commission in July 2019. The meeting of 19 April 2006 was addressed in his witness statement. He was not cross-examined about it by Counsel Assisting, Mr Winneke.
- 28.40 The following month, Mr Ryan was called to give evidence before the Commission. Counsel Assisting, Mr Woods, did not cross-examine Mr Ryan about the meeting either. Mr Ryan was asked, in a general way, whether he had any memory of there being a

⁵⁶⁷ Exhibit RC0269 – Statement of Stuart Bateson dated 7 May 2019 at [82]-[86] (VPL.0014.0027.0001 at .0014).

⁵⁶⁸ Exhibit RC0269 – Statement of Stuart Bateson dated 7 May 2019 at [87] (VPL.0014.0027.0001 at .0014); T3402.10-18, T9756.27-30, T9759.41-43 (Bateson)

moment where it was decided that Purana would not deal with Mr Thomas directly but would contact him 'through his lawyer Nicola Gobbo'.⁵⁶⁹ He said 'no, because we dealt with him'.⁵⁷⁰

- 28.41 The next part of what happened is important. It reveals that Counsel Assisting were, regrettably, led down the wrong path in relation to this event.
- 28.42 After Counsel Assisting had finished cross-examining Mr Ryan, he was then cross-examined by Ms Gobbo's junior counsel.
- 28.43 Junior counsel for Ms Gobbo took Mr Ryan through the chronology that had been prepared by Com. Bateson which referred to Mr Ryan being at the meeting on 19 April 2006. Counsel then put to him 'you're using 3838 as a conduit' and 'you're using her in her informer capacity'. Counsel was putting, based, seemingly, on the chronology, that it was agreed at the meeting that Ms Gobbo would be given the transcripts of the conversations and tasked to use the content, in a way that has never been explained, to encourage Mr Thomas to make admissions, plead guilty and implicate his associates. Mr Ryan answered 'no'.⁵⁷¹
- 28.44 The cross-examination by Ms Gobbo's junior counsel then moved to a different topic.
- 28.45 After other parties had cross-examined Mr Ryan, Counsel Assisting, Mr Woods, then further cross-examined Mr Ryan. Counsel Assisting did not pursue the matter raised by Ms Gobbo's counsel. That is, Mr Woods did not ask Mr Ryan whether, contrary to what Mr Woods had earlier put to Mr Ryan, the transcripts had actually been provided to Ms Gobbo in her capacity as a source and as part of a tasking against her client, Mr Thomas. It was appropriate for Mr Woods not to put that matter because it is clear, on the documentary evidence alone, that the event was no such thing.
- 28.46 However, when Mr O'Brien and Com. Bateson were later called to give evidence before the Commission, different Counsel Assisting adopted Ms Gobbo's counsel's characterisation of the provision of the transcripts to Ms Gobbo – namely, that it was evidence of her being tasked. They presumably did that on the reasonable assumption that what was put by Ms Gobbo's counsel was to be Ms Gobbo's evidence to the Commission when she was later called.
- 28.47 However, that assumption, whilst reasonably based given the puttage by Ms Gobbo's counsel, turned out to be wrong.
- 28.48 When Ms Gobbo was eventually called to give evidence before the Commission, her evidence was not what her counsel had put to Mr Ryan or what Counsel Assisting had put to Mr O'Brien and Com. Bateson.
- 28.49 Ms Gobbo's evidence, under cross-examination by Counsel Assisting, was that she had some recollection of reading the transcripts but *no* memory of:
- (a) reading them in her informer capacity;⁵⁷²
 - (b) reading them, in her informer capacity, as part of a tasking to use the content to then encourage Mr Thomas to make admissions, plead guilty and implicate his associates;⁵⁷³ and

⁵⁶⁹ T4456.5-24-40.

⁵⁷⁰ T4456.26-28.

⁵⁷¹ T4532.15-39.

⁵⁷² T13368.18-46 (Gobbo).

⁵⁷³ T13368.18-46 (Gobbo).

- (c) whether or not she had told Mr Thomas that she had read the transcripts.⁵⁷⁴
- 28.50 Accordingly, it was apparent when Ms Gobbo gave that evidence, that a false issue had, inadvertently, been created by her counsel. Her evidence should have been the end of it.
- 28.51 However, Counsel Assisting have now adopted in their closing submissions the theory that Ms Gobbo's counsel introduced and which was not even supported Ms Gobbo's own evidence.
- 28.52 At paragraph [1069], Counsel Assisting have submitted that on 19 April 2006, Mr Ryan was aware of, and party to, a plan devised at a meeting that day that the Purana Taskforce would no longer directly encourage Mr Thomas to make admissions, plead guilty and implicate his associates, rather, the transcripts of discussions between DAI O'Brien, DS Bateson and Mr Thomas would be provided to Ms Gobbo so that she could use them in her role as a human source to encourage Mr Thomas in that regard.
- 28.53 That submission must be rejected on both procedural fairness grounds and because it is not supported by any evidence.
- 28.54 Mr Ryan was not afforded procedural fairness in relation to this issue in that:
- (a) Counsel Assisting did not cross-examine him about the meeting on 19 April 2006;
 - (b) as such, he was not asked about his diary entry for the meeting or the diary entries made by DAI O'Brien or DS Bateson about the meeting;
 - (c) the serious allegation now put against him at [1069] was not put to him by Counsel Assisting;
 - (d) to the contrary, Counsel Assisting suggested to Mr Ryan in cross-examination that it was *not* being put that he was part of any decision to give the transcripts to Ms Gobbo;⁵⁷⁵
 - (e) further, Counsel Assisting asked Mr Ryan, contrary to the way the event is now characterised at [1069], whether he had any memory of there being a moment where it was decided that Purana would not deal with Mr Thomas directly but would contact him "through his *lawyer* Nicola Gobbo";⁵⁷⁶
 - (f) even after Ms Gobbo's counsel had raised with Mr Ryan the theory that is now captured in [1069], Counsel Assisting did not ask Mr Ryan about that theory in his further cross-examination;
 - (g) those assisting the Commission wrote to Mr Ryan as recently as 6 April 2020 requesting that he respond to a series of questions not put to him in cross-examination. He agreed to do so. He was not asked about the meeting or about the conduct at [1069]; and
 - (h) the first time that Mr Ryan learned that Counsel Assisting considered that he had engaged in the conduct at [1069] was when he received their submissions.
- 28.55 For those procedural fairness reasons alone, the Commissioner is compelled not to make the finding at [1069].
- 28.56 In any event, the finding at [1069] is not supported by any evidence.

⁵⁷⁴ T13369.1-14; T13369.28-39 (Gobbo).

⁵⁷⁵ T4456.15-40.

⁵⁷⁶ T4456.15-40.

- 28.57 First, there is Ms Gobbo's evidence that she had no memory of doing what is described in [1069].⁵⁷⁷
- 28.58 Second, there is Mr Ryan's evidence, given under cross-examination by Ms Gobbo's counsel, that Ms Gobbo was not given the transcripts in her informer capacity.
- 28.59 Third, there is Com. Bateson's evidence which is consistent with the evidence of Ms Gobbo and Mr Ryan. He said that what is described in [1069] did not happen. He said that if it was intended to give Ms Gobbo the transcripts as part of a tasking then he was not aware of that.⁵⁷⁸
- 28.60 Fourth, there is the evidence of Sandy White who was one of the SDU members who gave the transcripts to Ms Gobbo. He had no memory of Ms Gobbo being tasked as alleged in [1069]. Two handlers, Peter Smith and Mr Green, were also present when the transcripts were given to Ms Gobbo but, for reasons that are not apparent, Counsel Assisting did not cross-examine them about the matter.
- 28.61 Fifth, Mr O'Brien had no memory of the meeting or of doing what is alleged in [1069].
- 28.62 Sixth, there is a transcript of the conversation between Ms Gobbo and Mr White and others when she is given the transcripts. That transcript corroborates the evidence of Ms Gobbo, Mr Ryan, Com. Bateson, Mr O'Brien and Mr White. There is simply no indication in that transcript that Ms Gobbo was being tasked as alleged in [1069] or that she was not to tell Mr Thomas that she had read the transcripts.
- 28.63 Seventh, Counsel Assisting put to witnesses that the tasking involved allowing Ms Gobbo to read the transcripts only rather than take them away (and to keep them secret from Mr Thomas). However, Ms Gobbo's counsel told the Commission that Ms Gobbo had copies of the transcripts. After discussion at the Bar table, Counsel Assisting told the Commission that it was now not known whether Ms Gobbo had received the transcripts from the SDU and had retained them (as Com. Bateson told the Commission was to occur) or that she got them later in a different context altogether.⁵⁷⁹ When Ms Gobbo was called to give evidence before the Commission, Counsel Assisting did not ask her when or how she got them. Accordingly, it may be that the SDU did, in fact, pass on the transcripts to Ms Gobbo, which is consistent with Com. Bateson's evidence and inconsistent with Counsel Assisting's theory.
- 28.64 Eighth, there is no evidence about how Counsel Assisting say Ms Gobbo was to, or did, secretly use the transcripts of Mr Thomas' own conversations against him to encourage him to make admissions, plead guilty and implicate his associates, nor is that aspect the subject of submissions.
- 28.65 Ninth, the relevant ICR⁵⁸⁰ records that, after the morning meeting between DI Ryan, DS Bateson and DAI O'Brien, and after the scheduled meeting between DAI O'Brien and Mr White at which DAI O'Brien gave the transcripts to Mr White, Ms Gobbo raised with her handler the proposal to read the transcripts. That cannot be a coincidence. The only explanation is that one of the detectives called Ms Gobbo after the morning meeting to let her know that they had transcripts for her which they had given to the SDU to pass onto her when they saw her. That is consistent with Com. Bateson's evidence.
- 28.66 Tenth, when Ms Gobbo was given a task by the SDU, the relevant ICR described the event under the heading 'Tasking'. The provision of the transcripts to Ms Gobbo is not

⁵⁷⁷ T13368.16-46; T13369.1-14; T13369.28-39 (Gobbo).

⁵⁷⁸ T9738.28-36; T9739.20-23 (Bateson).

⁵⁷⁹ T4771.45-4772.43 (White).

⁵⁸⁰ Exhibit RC0281 – ICR2828 (028) 18 April 2006 (VPL.2000.0003.1835 at .1838).

- described in the ICR under the heading 'Tasking'. Rather, the provision of the transcripts is recorded as 'shown to HS (at investigator request)'. That is consistent with Com. Bateson's evidence.
- 28.67 Lastly, Com. Bateson's evidence that Ms Gobbo was simply to be given the transcripts as Mr Thomas' lawyer is corroborated by a series of diary entries that are not referred to in the submissions made by Counsel Assisting.
- 28.68 Diary entries show that DAI O'Brien had a meeting scheduled with the SDU after the morning meeting with DS Bateson and DI Ryan.⁵⁸¹ As the SDU was in daily contact with Ms Gobbo, it made sense (though it should not have been done) for Mr O'Brien to give the transcripts to the SDU at his scheduled meeting to pass on to Ms Gobbo, rather than Com. Bateson having to arrange a meeting with Ms Gobbo to provide them.⁵⁸² This is supported by contemporaneous documentary evidence.⁵⁸³ Com. Bateson touched on this in his oral evidence but Counsel Assisting did not explore it with him.⁵⁸⁴ This explains why Com. Bateson's diary entry for the morning meeting refers to Ms Gobbo as '3838'. Ms Bateson told the Commission that he probably referred to Ms Gobbo in that way because Mr O'Brien referred to her as '3838'.⁵⁸⁵ There is no doubt that he would have done so because the morning meeting was in a café and they discussed giving the transcripts to the SDU to pass onto her. It would have been irresponsible for DAI O'Brien to mention Ms Gobbo's name in a discussion about the SDU. It would have risked identifying her as a human source.
- 28.69 In summary, a very plain event has been turned into something that it is not. It is a false issue first raised by Ms Gobbo's counsel and which was not made good by Ms Gobbo's own evidence.
- 28.70 Apart from the fact that it was Ms Gobbo's handlers rather than an investigator who handed Ms Gobbo the transcripts, there was nothing unorthodox about the event. Had Mr O'Brien not been heading off to meet with the SDU, then Com. Bateson would have arranged to attend Ms Gobbo's chambers with the transcripts. In doing so, he would have told her, just like he would have told any other lawyer acting, that police were comfortable running the case against her client with the growing number of Crown witnesses and that he no longer proposed to reach out to Mr Thomas about him co-operating with police. Further, that she could see from the transcripts the type of assistance that Mr Thomas was able to give and, therefore, the extent to which his assistance could reduce his sentence. It was a matter for her as to the advice she gave him and up to Mr Thomas as to whether he wished to co-operate.
- 28.71 Moving forward a few months to June 2006.
- 28.72 On 15 June 2006, DI Ryan informed DS Bateson that Mr Thomas wanted to see him to provide assistance to police.⁵⁸⁶ The note in Com. Bateson's diary states that this information came from within the "prison system",⁵⁸⁷ and that was confirmed by Mr Ryan in his evidence.⁵⁸⁸ It did not come from Ms Gobbo, a matter which Counsel Assisting do not mention at [946]. Counsel Assisting did not ask Mr Thomas in his

⁵⁸¹ Counsel Assisting Submissions at p. 198 [911], Vol 2; relying on T5659-5661 (O'Brien).

⁵⁸² T9738.38-9739.9 (Bateson).

⁵⁸³ Exhibit RC0281 – ICR3838 (028), 20 April 2006 (VPL.2000.0003.1835 at .1841).

⁵⁸⁴ T9738.38-44 (Bateson).

⁵⁸⁵ T9735.31-37 (Bateson).

⁵⁸⁶ Exhibit RC0272 – Diary of Stuart Bateson, 15 June 2006 (VPL.0005.0058.0233 at .0356).

⁵⁸⁷ Exhibit RC0272 – Diary of Stuart Bateson, 15 June 2006 (VPL.0005.0058.0233 at .0356).

⁵⁸⁸ T4533.15.

cross-examination whether, after he had met with police, he discussed it with Mr Valos and/or Ms Gobbo. Mr Valos was not asked either.

- 28.73 On 16 June 2006, in response to the information received by Victoria Police through the prison system, DS Bateson and DSC Kerley met with Mr Thomas. The information received from the prison system was accurate.
- 28.74 On 19 June 2006, DI Ryan was acting officer in charge of Purana while DAI O'Brien was absent.⁵⁸⁹ On that day, he received information from the SDU about Mr Thomas. This is the first recorded dissemination of information by the SDU to Mr Ryan about Mr Thomas. The relevant ICR (036) records:
- [Mr Thomas] has lost faith in Barrister LOVITT, he has no money and can't get legal aid funding, he wants to plead guilty, HS wanting investigators to speak to him before he goes to Court next week.*
- (D/I RYAN Op PURANA adv re THOMAS – was spoken to last Friday and aware of P.G. Also adv re sale of [redacted] house)*
- 28.75 DI Ryan responded that investigators were already aware that Mr Thomas wanted to plead guilty and had already spoken to Mr Thomas.⁵⁹⁰
- 28.76 In the period between 16 and 26 June 2006, Victoria Police discussed with Mr Thomas his potential plea. Ms Gobbo acted for Mr Thomas throughout this period. It appears from the ICRs that Ms Gobbo was talking to her handlers about those discussions. However, there is no evidence that any of that information was disseminated to DI Ryan. The ICRs do not show any dissemination of this information, and DI Ryan's diaries do not record any receipt of it.
- 28.77 On 27 June 2006, Ms Gobbo and solicitor Mr Valos met with Senior Crown Prosecutor Mr Horgan SC and Mr Tinney to discuss the terms of a plea arrangement for Mr Thomas.
- 28.78 Consequently, with the exception of the single piece of information that Mr Ryan received on 19 June 2006 (which he did not use or provide to investigators), there is no evidence that Mr Ryan knew that Ms Gobbo was talking to the SDU about Mr Thomas.
- 28.79 Significantly, Mr Ryan was not asked in cross-examination about whether he knew that Ms Gobbo was talking to the SDU about Mr Thomas in the period leading up to his plea.
- 28.80 It is not open to conclude that Mr Ryan was conscious of Ms Gobbo talking to the SDU about Mr Thomas in this period on the basis of the single piece of information that was disseminated to him on 19 June 2006. That information was confirmatory of what Mr Ryan already knew. It was not intelligence. In those circumstances, it is unsurprising that Mr Ryan gave it no thought.
- 28.81 As to Ms Gobbo's potential conflict of interest in relation to Mr Thomas, the evidence is that Mr Thomas was, at all times, aware of the potential conflict.⁵⁹¹ Mr Thomas' evidence to the Commission was that Ms Gobbo provided him with updates in the lead up to his arrest, following the arrest of Mr McGrath.⁵⁹² He said that he knew that Ms Gobbo was acting for Mr McGrath and that she would "go and see" him and then "report back to me and Carl".⁵⁹³ Mr Thomas' evidence was that Ms Gobbo provided "updates in

⁵⁸⁹ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [52] (VPL.0014.0039.0001 at .0009).

⁵⁹⁰ Exhibit RC0281 – ICR3838 (036), 19 June 2006 (VPL.2000.0003.1922).

⁵⁹¹ Exhibit RC1175 – Statement of Mr Thomas dated 20 September 2019 at [28] (RCMPI.0131.0001.0001 at .0007).

⁵⁹² Exhibit RC1175 – Statement of Mr Thomas dated 20 September 2019 at [31] (RCMPI.0131.0001.0001 at .0008).

⁵⁹³ Exhibit RC1175 – Statement of Mr Thomas dated 20 September 2019 at [31] (RCMPI.0131.0001.0001 at .0008).

relation to the likelihood of whether [McGrath] was going to assist police".⁵⁹⁴ Among other things, Ms Gobbo informed Mr Thomas that he would be arrested, that the police were "coming for him" and that the delay in him being arrested "was because Mr McGrath was still working out his deal".⁵⁹⁵ In those circumstances, Mr Thomas then chose to retain Ms Gobbo after he was arrested with the murders. Mr Ryan refers to and adopts Com. Bateson's more detailed submissions on this issue.

- 28.82 Mr Thomas gave evidence that Victoria Police did not make any representations to him about his choice of legal counsel.⁵⁹⁶ Mr Thomas also said that he was "repeatedly" told by Victoria Police not to discuss his statements with Ms Gobbo.⁵⁹⁷
- 28.83 None of the above evidence given by Mr Thomas – which is highly relevant – is referred to by Counsel Assisting in their submissions about Mr Thomas.
- 28.84 Mr Ryan also refers to the comprehensive submissions about the conflict issues set out in Com. Bateson's submissions, on which he relies.
- 28.85 On 28 June 2006, the day after the terms of Mr Thomas' plea had been agreed between him and the OPP, Mr Ryan received information from the SDU that referred to Mr Thomas.⁵⁹⁸ The ICR records the following interaction with Ms Gobbo:
- [Mr Thomas] rang this morning said for HS to watch self, was a bit teary, said in a coded fashion that had heard from Carl WILLIAMS that HS needs to be careful, does not think they will harm HS.*
- 28.86 This information would have been disseminated to Purana because it concerned threats made by Mr Williams.
- 28.87 On 29 June 2006, Mr Thomas entered his guilty plea to the murder of Jason Moran.
- 28.88 At his request, DS Bateson and DSC Kerley met with him and his legal team, Mr Valos and Ms Gobbo, afterwards to discuss the assistance that he wished to provide to police in order to receive a reduction in his sentence. DI Ryan was not present.⁵⁹⁹
- 28.89 From 6 July 2006, police started taking statements from Mr Thomas. DI Ryan was not involved.
- 28.90 At paragraph [969], Counsel Assisting refer to various pieces of information that Ms Gobbo gave her handlers about Mr Thomas, including information provided on 7, 9 and 10 July 2006. Counsel Assisting then submit that "this" was reported to Mr Ryan.⁶⁰⁰ The imprecision in that paragraph leaves the impression that Mr Ryan was updated about all of the information to which the paragraph refers. That is not so. The information given to the SDU by Ms Gobbo on 7 and 9 July 2006 was not disseminated to Mr Ryan.
- 28.91 On 10 July 2006, Ms Gobbo informed the SDU that Mr Thomas would "know about money and be able to explain finances of Carl Williams if i/v'ing member mentions appropriately". The relevant ICR records dissemination to Mr Ryan.⁶⁰¹

⁵⁹⁴ Exhibit RC1175 – Statement of Mr Thomas dated 20 September 2019 at [31] (RCMPI.0131.0001.0001 at .0008).

⁵⁹⁵ Exhibit RC1175 – Statement of Mr Thomas dated 20 September 2019, [28] (RCMPI.0131.0001.0001 at .0007).

⁵⁹⁶ Exhibit RC1175 – Statement of Mr Thomas dated 20 September 2019, [45] (RCMPI.0131.0001.0001 at .0012).

⁵⁹⁷ Exhibit RC1175 – Statement of Mr Thomas dated 20 September 2019, [46] (RCMPI.0131.0001.0001 at .0012).

⁵⁹⁸ Exhibit RC0281 – ICR3838 (036), 19 June 2006 (VPL.2000.0003.4370 at .4380).

⁵⁹⁹ T9830.25-28 (Bateson).

⁶⁰⁰ Counsel Assisting Submissions at 210 [969], Vol 2.

⁶⁰¹ Exhibit RC0281 – ICR3838 (037), 20 July 2006 (VPL.2000.0003.4384 at .4387).

- 28.92 However, Mr Ryan's diaries do not reflect receipt of that information, though they do record receipt of other general information during this period (in particular, on 21, 27, 28 and 30 June 2006 and 12 July 2006).
- 28.93 On 20 July 2006, an ICR records that Ms Gobbo reported:
- Mr Cooper and Mr Thomas are together in [redacted] prison, HS doesn't think that this is a good idea b/c all they will do is talk re HS and about evidence in respective statements. Found out when was talking to Mr Cooper and he handed the ph to Mr Thomas.⁶⁰²*
- 28.94 The ICR records that this information was disseminated to Mr Ryan who indicated that he was already aware of it.
- 28.95 On 18 July 2006, Ms Gobbo went to the Victoria Police Centre to read the witness statements of her client, Mr Thomas.⁶⁰³ There is nothing unusual about a lawyer reading her client's witness statements before they are signed. It is common practice.
- 28.96 In any event, the evidence is that Mr Thomas asked that Ms Gobbo read his statements and advise him before he signed them.
- 28.97 Ms Gobbo's review of Mr Thomas' statements is the subject of evidence given by DSC Kerley who was present when Ms Gobbo read them.
- 28.98 There is no evidence that DI Ryan knew that Ms Gobbo was reviewing Mr Thomas' statements. Counsel Assisting rely on DSC Kerley's evidence that she *assumed* that Mr Ryan knew.⁶⁰⁴ Plainly, that does not provide an evidentiary basis to find that he did in fact know.
- 28.99 That is particularly so because Mr Ryan gave no evidence about the matter and he was not cross-examined about it, nor was he asked about it in the Commission's recent letter of 6 April 2020.
- 28.100 Accordingly, if Counsel Assisting are inviting the Commissioner to infer that Mr Ryan knew, that inference is not open on the evidence, particularly when Mr Ryan was not cross-examined about it. To make the finding without it first being put to Mr Ryan would also be a denial of procedural fairness. On that basis alone the finding cannot be made.
- 28.101 On 20 July 2006, DI Ryan left the Purana Taskforce.
- 28.102 Between 21 July 2006 and 27 August 2006, Mr Ryan was absent from work on accumulated rest days.
- 28.103 Between late August 2006 and the start of 2007, DI Ryan was back and forth between Taskforce 400 and Purana, as follows:⁶⁰⁵
- (a) on 28 August 2006, he commenced as officer in charge of Taskforce 400;
 - (b) from 29 September to 13 October 2006, DI Ryan was acting officer in charge of Purana while DAI O'Brien was on leave;
 - (c) between 14 and 19 November 2006, Mr Ryan was on leave himself;
 - (d) on 20 November 2006, Mr Ryan returned to Taskforce 400;

⁶⁰² Exhibit RC0281 – ICR3838 (038), 20 July 2006 (VPL.2000.0003.4390 at .4399).

⁶⁰³ Exhibit RC1417 - Statement of Michelle Kerley dated 26 September 2019 at [7] (VPL.0014.0062.0001 at .0002); Untendered – Diary of Michelle Kerley, 18 July 2006 (VPL.0005.0134.0001 at .0053).

⁶⁰⁴ Counsel Assisting Submissions at p. 215 [990], Vol 2.

⁶⁰⁵ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [56]-[59] (VPL.0014.0039.0001 at .0009-.0010). T4458.33-4459.6.

- (e) in December 2006, DI Ryan was again acting officer in charge of Purana in DAI O'Brien's absence; and
 - (f) on 8 January 2007, Mr Ryan returned to Taskforce 400.
- 28.104 On 22 March 2007, Mr Ryan commenced as officer in charge of the Petra Taskforce.
- 28.105 On 23 July 2007, DI Ryan returned as officer in charge of the Purana Taskforce following Mr O'Brien's retirement.
- 28.106 By this time, Mr Ryan was burnt out. He remained at Purana for less than 12 months until he retired from Victoria Police in April 2008.
- 28.107 There is no evidence that Mr Ryan had any involvement with Mr Thomas in the period from July 2006 to July 2007, when he returned to the Purana Taskforce.
- 28.108 In the period from July 2007 to April 2008 (when Mr Ryan was back in charge of Purana), the ICRs record information provided to the SDU by Ms Gobbo about Mr Thomas on five occasions.⁶⁰⁶ The ICRs record that the information was disseminated to Mr Ryan on only one occasion. That one occasion is addressed in the section below.

Proposed findings at [1065]

- 28.109 Mr Ryan accepts that the proposed evidentiary findings at [1065.1], [1065.4], [1065.11], [1065.12], [1065.15], [1065.17], [1065.19] and [1065.20] are open on the evidence.
- 28.110 As to paragraph [1065.2], Mr Ryan agrees that he joined the Purana Taskforce in 2003 as a Detective Senior Sergeant and was later promoted to Detective Inspector but says that these facts alone present an incomplete and inaccurate picture. In December 2005, Mr Ryan was appointed Detective Inspector in charge of the MDID and left the Purana Taskforce. Mr Ryan then returned to the Purana Taskforce in February 2006 for the purpose of 'taking charge' of Mr Andrews who was becoming a Crown witness.⁶⁰⁷ Later, he was responsible for managing Mr Thomas becoming a Crown witness.⁶⁰⁸ The evidence that was obtained, which mostly related to murders, was given to the appropriate Purana Taskforce crew.⁶⁰⁹ Mr Ryan remained with Purana until July 2006.⁶¹⁰ During this period (February 2006 to July 2006) the Purana Taskforce remained under the command of DAI O'Brien (though Mr Ryan held the higher rank of Detective Inspector).⁶¹¹
- 28.111 From July 2006, Mr Ryan was officer in charge of Taskforce 400. In April 2007, Mr Ryan took up as the head of the Petra Taskforce.⁶¹² When Mr O'Brien retired in August 2007, Mr Ryan returned to the Purana Taskforce as the officer in charge, and remained in that position until he retired from Victoria Police in April 2008.⁶¹³
- 28.112 As to paragraph [1065.3], Mr Ryan placed Ms Gobbo under surveillance once,⁶¹⁴ and he otherwise accepts the accuracy of the paragraph and refers to the further evidence in Part C above and this Part D for the complete and accurate picture.

⁶⁰⁶ Exhibit RC0281 – ICR3838 (088), 8 July 2007 (VPL.2000.0003.5030), ICR3838 (093), 12 August 2007 (VPL.2000.0003.5126), ICR3838 (102), 8 October 2007 (VPL.2000.0003.5309), ICR3838 (105)18 October 2007 (VPL.2000.0003.5347) and ICR3838 (108), 9 November 2007 (VPL.2000.0003.5417).

⁶⁰⁷ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [47] (VPL.0014.0039.0001 at .0008).

⁶⁰⁸ Ibid.

⁶⁰⁹ Ibid.

⁶¹⁰ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [52] (VPL.0014.0039.0001 at .0009).

⁶¹¹ T4458.44-4459.2.

⁶¹² T4231.47-4232.2.

⁶¹³ T4231.37-41.

⁶¹⁴ T4236.32-34.

- 28.113 In relation to paragraph [1065.5], and as set out in Part C above, Mr Ryan accepts that diary notes indicate that Ms Gobbo and solicitor Karen Ingleton raised with him the matter of a conflict of interest concerning Ms Gobbo's representation of Mr McGrath and/or Carl Williams and that the discussion was 'a handover of sorts' in that Ms Gobbo was introducing him to Mr McGrath's new lawyer, Ms Ingleton. He had no independent memory of the conversation. Counsel Assisting did not request a witness statement from Mr Ingleton and, therefore, the Commission is left without her evidence as to what she and Ms Gobbo told Mr Ryan. There is no evidence that they explained to Mr Ryan that the conflict was of the type described in [1065.5]. In any event, the effect of Mr Ryan's evidence is that they raised a conflict and indicated they were addressing it.
- 28.114 In relation to paragraph [1065.6], the submission by Counsel Assisting that Mr Ryan knew of Ms Gobbo's role relating to Mr McGrath's statements is vague and imprecise and does not assist the Commission or afford Mr Ryan procedural fairness. Counsel Assisting do not identify Mr Ryan's knowledge with any precision or the nature of Ms Gobbo's role.
- 28.115 The fact stated at [1065.6] is relied upon by Counsel Assisting to submit that it is open to find that it is probable that ^{Relevance} [REDACTED] ^{Relevance} [REDACTED]. Procedural fairness principles require that facts be stated with sufficiently specificity to enable Mr Ryan to understand the case put against him and to respond.
- 28.116 For those reasons, the Commissioner should not make the finding in [1065.6]. Alternatively, Counsel Assisting should reformulate it and provide Mr Ryan with an opportunity to respond.
- 28.117 If paragraph [1065.6] is directed to Ms Gobbo advising Mr McGrath in relation to his witness statements about the Marshall and Moran and Barbaro murders, we refer to the submissions in Part C above.
- 28.118 As to paragraph [1065.7], a finding should not be made in those terms because it fails to identify the precise conflicts of interest and Mr Ryan's differential knowledge in relation to them and is, in any event, not open on the evidence.
- 28.119 First, Mr Ryan's evidence was that he felt some 'discomfort' about Ms Gobbo acting for Mr Thomas when she had previously acted for Mr McGrath. It was clear from his evidence that he did not have an understanding of a lawyer's professional obligation not to act for a person when that person's interests were in direct conflict with a former client. He had received no training about that issue and he had never dealt with it in his police career.⁶¹⁵ Lawyers' conflicts of interest are not straight forward issues.
- 28.120 Further, the submissions made by Counsel Assisting entirely overlook Mr Thomas' own evidence about the conflict. He retained Ms Gobbo knowing that she had acted for Mr McGrath. His solicitor and Queens Counsel also knew.⁶¹⁶ There is no evidence that Mr McGrath did not consent to Ms Gobbo acting for Mr Thomas. If both Mr Thomas and Mr McGrath consented to her acting then she may have been able to act.
- 28.121 The above matter is addressed in detail in Com. Bateson's submissions and, therefore, not repeated here.
- 28.122 Second, as to any conflict in Ms Gobbo speaking to the SDU and acting for Mr Thomas, the issue needs to be considered at two distinct periods of time.

⁶¹⁵ T4343 31-4344.45.

⁶¹⁶ See Com. Bateson's submissions.

- 28.123 As set out earlier, prior to Mr Thomas becoming a Crown witness, Mr Ryan had only once received information from the SDU about Mr Thomas that had been provided by Ms Gobbo. That information, provided on 19 June 2006, was that Mr Thomas wanted to plead guilty to his charges. That was not informing on her client. It was not acting contrary to her client's interests. It was simply Ms Gobbo telling the SDU what was occurring between Mr Thomas and Purana detectives at the time. Three days earlier, on 16 June 2006, DS Bateson had met with Mr Thomas in prison to discuss his charges and the assistance that Mr Thomas wanted to provide to reduce his jail sentence.⁶¹⁷
- 28.124 It cannot reasonably be said that receipt of this information would have put Mr Ryan on notice that Ms Gobbo was talking to the SDU about her client, Mr Thomas, and that, accordingly, she was in a position of conflict. She was not informing on Mr Thomas, and the information that was passed on was information that Mr Ryan already knew. He did nothing with it.
- 28.125 The position is similar in 2007 and 2008. Mr Ryan received very little information from the SDU about Mr Thomas. There is no evidence that:
- (a) Mr Ryan had any knowledge of Ms Gobbo informing on her client, Mr Thomas, to the SDU (if she was, which is denied);
 - (b) Mr Ryan used any information provided by Ms Gobbo against Mr Thomas;
 - (c) Mr Ryan had any knowledge of Ms Gobbo being tasked against her client, Mr Thomas.
- 28.126 Ms Gobbo spoke to the SDU about Mr Thomas but a review of the ICRs shows that she did not inform on him and she was never tasked in relation to him. We refer to the submissions in Part C above.
- 28.127 As to paragraph [1065.8], it overstates the evidence by asserting that DS Bateson reported to DI Ryan Ms Gobbo's "*willingness*" to assist Victoria Police in relation to underworld figures.
- 28.128 Mr Ryan's evidence was that between May and August 2005, he was told by DS Bateson about conversations he had with Ms Gobbo.⁶¹⁸ He recalled a specific discussion in which DS Bateson stated that Ms Gobbo "*seemed* to want to provide information" about the underworld and dishonest defence lawyers representing them.⁶¹⁹
- 28.129 In place of the finding at [1065.8], Mr Ryan accepts that it is open to the Commission to find that between May and August 2005, Com. Bateson reported having discussions with Ms Gobbo and that Com. Bateson expressed the view that Ms Gobbo seemed to want to provide information about the underworld and the defence lawyers representing them.
- 28.130 As to paragraph [1065.9], the evidence does not support a finding that on 31 August 2005 Mr O'Brien told Mr Ryan about Ms Gobbo's willingness to assist Victoria Police in relation to Tony Mokbel, as follows:
- (a) that was not the evidence given;
 - (b) the evidence cited in the footnote does not support the proposition;

⁶¹⁷ Exhibit RC0269 – Statement of Stuart Bateson dated 7 May 2019 at [89] (VPL.0014.0027.0001 at .0015).

⁶¹⁸ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [35] (VPL.0014.0039.0001 at .0006).

⁶¹⁹ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [36] (VPL.0014.0039.0001 at .0007).

- (c) the evidence cited is that of Mr O'Brien. Mr O'Brien's evidence was that his diary recorded that, on 31 August 2005, he spoke to Mr Ryan about issues relating to Ms Gobbo but that he could not recall the details of the conversation;⁶²⁰
- (d) Mr Ryan was not asked about the conversation and gave no evidence about it; and
- (e) Mr Ryan's diary does not record the discussion.⁶²¹
- 28.131 As to paragraph [1065.10], the finding that is open is that Mr Ryan became aware that Ms Gobbo was a registered human source in around December 2005.⁶²²
- 28.132 As to paragraph [1065.13], Mr Ryan accepts that he was placed in charge of Mr Thomas when he decided to assist police, with the qualification that he assumed responsibility for Mr Thomas in late April 2006 after Mr Thomas had (again) indicated an intention to assist. Mr Thomas' earlier discussions with police, which took place in February and March 2006, were managed by DS Bateson and DAI O'Brien. At that time, Mr Ryan was focussed on the charges against Mr Andrews.
- 28.133 As to paragraph [1065.14], Mr Ryan agrees that he was at a meeting at which it was decided that Ms Gobbo would be given transcripts of meetings between Mr O'Brien, Com. Bateson and Mr Thomas. We refer to Part C above for the submissions on that topic.
- 28.134 As to paragraph [1065.16], it is vague and imprecise and, in that form, does not assist the Commission or afford Mr Ryan procedural fairness. In particular, the "involvement" of Ms Gobbo, of which Mr Ryan is said to have been aware, is not identified. Counsel Assisting are invited to provide particulars and Mr Ryan will respond.
- 28.135 As to the first part of [1065.16], Mr Ryan knew *before* 19 June 2006 that Mr Thomas wanted to plead guilty and assist police. On 15 June 2016, he told DS Bateson that Mr Thomas wished to see him to provide assistance.⁶²³ The following day, DS Bateson met with Mr Thomas and he provided information.⁶²⁴
- 28.136 As to paragraph [1065.18], it misstates Mr Ryan's evidence.
- 28.137 First, Mr Ryan said that he "*quite often*" spoke to Mr Overland and expressed the view that Ms Gobbo should have been deregistered and moved overseas.⁶²⁵ His concern was Ms Gobbo's safety.⁶²⁶ In that sense, Mr Ryan considered that the propriety of Ms Gobbo's use was an issue for Senior Command.
- 28.138 Second, in relation to the propriety of using information provided by a legal practitioner, Mr Ryan's evidence was "*as long as it wasn't privileged, I had no problem*".⁶²⁷ On the question of legal professional privilege, Mr Ryan said that he asked Ms Gobbo's handlers whether information they disseminated was privileged, and they said that it wasn't.⁶²⁸ Mr Ryan was not aware that Ms Gobbo provided privileged information, or that it was used.⁶²⁹

⁶²⁰ Exhibit RC0464 – Statement of Jim O'Brien dated 14 June 2019 at [47] (VPL.0014.0040.0001 at .0010).

⁶²¹ Untendered – Diary of Gavan Ryan, 31 August 2005 (VPL.0005.0120.0187 at .0221).

⁶²² Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [41] VPL.0014.0039.0001 at .0007).

⁶²³ Exhibit RC0269 – Statement of Stuart Bateson dated 7 May 2019 at [89] (VPL.0014.0027.0001 at .0015).

⁶²⁴ *Ibid.*

⁶²⁵ T4304.9-11.

⁶²⁶ T4304.13-17.

⁶²⁷ T4304.32-33.

⁶²⁸ T4304.35-41.

⁶²⁹ T4304.47-4305.4.

- 28.139 Immediately after being asked about the provision and use of information subject to legal professional privilege, Mr Ryan was asked whether he knew if any of Ms Gobbo's handlers had training about legal professional privilege.⁶³⁰ He replied that they only received training at detective training school, and that the training was "very small".⁶³¹ He was then asked whether he ever suggested that they get advice "in relation to those issues at that stage".⁶³² Mr Ryan replied "I don't think I suggested legal advice for them, it's a matter for them".⁶³³ It is clear that Mr Ryan understood that he was being asked about legal professional privilege only.
- 28.140 Consequently, Mr Ryan did not give evidence that concerns about the propriety of the use of Ms Gobbo as a human source given her occupation were a matter for the SDU and not for him.
- 28.141 His evidence was that:
- (a) provided information that was subject to legal professional privilege was not used, he was not aware of any issues with obtaining and using information provided by a legal practitioner;
 - (b) he asked Ms Gobbo's handlers whether they were disseminating information subject to legal professional privilege and was told that they were not; and
 - (c) he did not suggest that the SDU get legal advice in relation to legal professional privilege because it was a matter for them.
- 28.142 As to paragraph [1065.21], Mr Ryan accepts that he had some discomfort about Ms Gobbo acting for multiple people and he otherwise refers to the complete summary of his evidence on the matters the subject of [1065.21] in Part C above. Counsel Assisting's summary in [1065.21] is incomplete.
- 28.143 Lastly, paragraph [1065.22], in part, misstates the evidence. Mr Ryan accepts the evidence detailed in paragraphs [1065.22.2] and [1065.22.3].
- 28.144 However, as to paragraph [1065.22.1], Mr Ryan was asked about the situation of a lawyer actively and secretly informing on their client to police. In response to the question then asked, he gave his view that the SDU would have an obligation to do something about that situation.⁶³⁴
- 28.145 Paragraph [1065.22.4] is misleading and contains commentary that cannot assist this Commission. In the course of being asked about his observations of Ms Gobbo in 2003 and whether he was concerned that she was in a position of conflict in relation to the many criminal associates she represented, Mr Ryan said that Ms Gobbo "seemed to be a rule unto herself in that she was visiting people in gaol. She would *"bob up at meetings and go for a walk and talk"*".⁶³⁵
- 28.146 The "*congratulations*" to which Counsel Assisting refer is an event that occurred in February 2007. Mr Ryan observed Ms Gobbo at the Metropolitan Hotel on 28 February 2007. Purana Taskforce members were having a drink there (which is across the road from the Court) following Carl Williams' guilty plea to multiple murders. Afterwards, Mr Ryan told the SDU to tell Ms Gobbo that he had been unable to approach her at the

⁶³⁰ T4305.12-14.

⁶³¹ T4305.13-14.

⁶³² T4305.16-18.

⁶³³ T4305.18-20.

⁶³⁴ T4345.35-38.

⁶³⁵ T4432.7-10.

hotel but that he wanted to include her in the success of the Williams result.⁶³⁶ Mr Ryan explained that she was “*part of it*”⁶³⁷ (i.e. acted for Crown witnesses) and that “*you’ve got to be able to – you’re human ... - thank someone*”.⁶³⁸ That simple, human, act of acknowledgement had nothing to do with Mr Ryan’s observation in 2003.⁶³⁹

Proposed findings at [1066]

- 28.147 As to paragraph [1066], Mr Ryan agrees that it is open to the Commissioner to make the findings in paragraphs [1066.1], [1066.2], [1066.4], [1066.5] and [1066.6].
- 28.148 As to paragraph [1066.2], it is open to the Commissioner to make findings about Mr Ryan’s knowledge of Ms Gobbo’s role in relation to Mr McGrath in accordance with the facts set out in this submission and not otherwise. In particular, it is not open to the Commission to find that Ms Gobbo made changes to Mr McGrath’s statements and, accordingly, it is not open to find that Mr Ryan knew that she had done so.
- 28.149 In summary, it appears on the evidence that all that Ms Gobbo did was to review her client’s draft witness statements and advise her client to tell the full truth in his witness statements in order to maximise his sentencing discount. That is sensible advice given in his best interests. It is commonly given by defence counsel to accused persons who decide to plead guilty and become Crown witnesses. It is not uncommon for defence counsel to draft their client’s ‘can say’ statements. Viewed objectively, the event was unexceptional, save that Ms Gobbo was indiscreet with her thoughts about an aspect of the statement.
- 28.150 As to paragraph [1066.3], if Ms Gobbo was informing on her client, Mr Thomas, while acting for him (which is denied), then Mr Ryan did not know.
- 28.151 In the period from 16 September 2005 to about June 2007, the ICRs record that information about Mr Thomas that came from Ms Gobbo was disseminated by the SDU to Mr Ryan on these four occasions:
- (a) 19 June 2006;⁶⁴⁰
 - (b) 28 June 2006;⁶⁴¹
 - (c) 10 July 2006;⁶⁴²
 - (d) 19 July 2006.⁶⁴³
- 28.152 The Commission cannot be certain that information about Mr Thomas was disseminated to Mr Ryan on those days because it is not recorded in his diaries. Mr Ryan’s diaries do record the receipt of other information unrelated to Mr Thomas during this period (in particular, on 21, 27, 28 and 30 June 2006 and 12 July 2006). It is clear from the evidence before the Commission that the ICRs do contain errors. Mr Ryan also gave frank evidence that he did not always write down information that he received from the SDU because he was concerned about security⁶⁴⁴ and he knew that the SDU was keeping a record of the information it disseminated to him.⁶⁴⁵

⁶³⁶ Exhibit RC0281 – ICR3838 (068), 28 February 2007 (VPL.2000.0003.4692).

⁶³⁷ T4535.30-32.

⁶³⁸ T4536.13-14.

⁶³⁹ Counsel Assisting Submission at p. 239 [1065.22], Vol 2.

⁶⁴⁰ Exhibit RC0281 – ICR3838 (036), 19 June 2006 (VPL.2000.0003.4370).

⁶⁴¹ Exhibit RC0281 – ICR3838 (036), 28 June 2006 (VPL.2000.0003.4370).

⁶⁴² Exhibit RC0281 – ICR3838 (037), 10 July 2006 (VPL.2000.0003.4384).

⁶⁴³ Exhibit RC0281 – ICR3838 (038), 19 July 2006 (VPL.2000.0003.4390).

⁶⁴⁴ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [45] (VPL.0014.0039.0001 at .0008).

⁶⁴⁵ Exhibit RC0310B – Statement of Gavan Ryan dated 13 June 2009 at [46] (VPL.0014.0039.0001 at .0008).

- 28.153 As such, the totality of the information that Mr Ryan may have received from the SDU about Mr Thomas that had been provided by Ms Gobbo was in substance:
- (a) 19 June 2006 - Mr Thomas wanted to plead guilty;⁶⁴⁶
 - (b) 28 June 2006 - Mr Thomas had told Ms Gobbo that Carl Williams had made a threat against her but that he did not think that she would be harmed;
 - (c) 10 July 2006 – Mr Thomas will be able to tell police about Carl Williams' finances;⁶⁴⁷
 - (d) 20 July 2006 - Mr Thomas is with Mr Cooper in prison which created safety risks for Ms Gobbo.⁶⁴⁸
- 28.154 The above cannot be characterised as Ms Gobbo informing on Mr Thomas while purporting to act for him.
- 28.155 As to the information on 19 June 2006, Mr Ryan immediately responded that he was aware of the information and that detectives were already speaking to Mr Thomas.⁶⁴⁹ We refer to the earlier submissions about this matter.
- 28.156 As to the information on 28 June 2006 and 20 July 2006, that information concerned Ms Gobbo, not Mr Thomas. It concerned her safety.
- 28.157 As to the information on 10 July 2006, it was disseminated to Mr Ryan after Mr Thomas had pleaded guilty and was assisting police. She was not informing on Mr Thomas. She was telling Mr Ryan, via the SDU, about the assistance that her client could provide, which was in his interests. She should and could have just told detectives directly. There is no evidence that Mr Thomas' instructions to Ms Gobbo prevented her from speaking to police about the assistance he could provide. Counsel Assisting did not ask Mr Thomas about this.
- 28.158 Mr Ryan did not otherwise, in the nominated period, receive information from the SDU about Mr Thomas that was sourced from Ms Gobbo.
- 28.159 There is no evidence that Mr Ryan was aware that Ms Gobbo was providing information to the SDU about Mr Thomas of a kind that meant that Ms Gobbo was not able to act independently or in Mr Thomas' best interests.
- 28.160 It should also be recognised that Mr Ryan was at the Purana Taskforce for only a small fraction of this period of time and did not have continuity of knowledge in relation to all events concerning Mr Thomas or Ms Gobbo's representation of him.
- 28.161 For the reasons set out above, it is not open on the evidence to make the serious finding in paragraph [1066.3].
- 28.162 Further, Mr Ryan was not cross-examined about these matters. Nor was he asked about them in the recent letter from the Commission dated 6 April 2020. The Commission should not make serious findings about matters that were never put to Mr Ryan, especially in circumstances where no explanation is provided as to why the matters were not put and are raised for the first time in closing submissions. That would be a denial of procedural fairness.

⁶⁴⁶ Exhibit RC0281 – ICR3838 (036), 19 June 2006 (VPL.2000.0003.4370).

⁶⁴⁷ Exhibit RC0281 – ICR3838 (037), 10 July 2006 (VPL.2000.0003.4384).

⁶⁴⁸ Exhibit RC0281 – ICR3838 (038), 20 July 2006 (VPL.2000.0003.4390).

⁶⁴⁹ Exhibit RC0281 – ICR3838 (036), 19 June 2006 (VPL.2000.0003.4370).

- 28.163 For similar reasons, the finding in paragraph [1066.7] should also not be made.
- 28.164 First, for the reasons set out above, there is no evidence that Ms Gobbo was in fact informing on Mr Thomas while acting for him. To the extent that she was providing Victoria Police with information about him, she obviously ought not to have done so and should have followed the SDU instruction to cease doing so. However, that is not the same as informing on Mr Thomas. Counsel Assisting do not state with any precision the nature of the “*conflict*” they allege.
- 28.165 Second, such a finding is serious and should not be made other than on the basis of substantive and cogent proof, which does not exist. As set out above, the sporadic information that was passed on to Mr Ryan by the SDU was not information that could reasonably be characterised as Ms Gobbo informing on Mr Thomas (in the sense of providing information adverse to Mr Thomas’ interests). It is not reasonable to submit that on the basis of sporadic pieces of uncontroversial information Mr Ryan should have formed the view that Ms Gobbo was informing on Mr Thomas.
- 28.166 Third, the matter at [1066.7] was not put to Mr Ryan in cross-examination or raised in the Commission’s recent letter of 6 April 2020. To make such a serious finding now would be a denial of procedural fairness, especially in the absence of an explanation as to why it has been raised for the first time in closing submissions.
- 28.167 As to paragraphs [1066.8] and [1066.9], there is no basis for these findings because the underpinning premises have not been established and, indeed, have comprehensively been disproved.
- 28.168 As to the premise that Victoria Police was “*using*” Ms Gobbo to encourage Mr Thomas to make admissions, enter a plea of guilty and implicate his associates:
- (a) As set out in further detail below, Victoria Police had already been directly in contact with Mr Thomas about him co-operating in July 2004, instigated by police in October 2004, instigated by Mr Thomas; there was no need for Victoria Police to “*use*” Ms Gobbo in the discussions with Mr Thomas;
 - (b) After Mr Thomas’ arrest in August 2004, ^{Mr Thomas’ Personal Partner} informed DSC L’Estrange that Mr Thomas wanted to meet with him ‘on the quiet’.⁶⁵⁰ DSC L’Estrange met with Mr Thomas a couple of days later and Mr Thomas alluded to the possibility of assisting police;⁶⁵¹
 - (c) Counsel Assisting have identified no evidence of further contact in relation to Mr Thomas’ assistance until February 2006. Counsel Assisting’s submission at [1070.9] that DS Bateson had “*dealt with Ms Gobbo in 2005*” in relation to Mr Thomas assisting police is simply not supported by the evidence cited at that paragraph, which relates only to interactions in 2006;
 - (d) Rather, once Mr Thomas decided again that he wished to cooperate he had Ms Gobbo approach Victoria Police about cooperating. Mr Thomas was in prison at the time, and Victoria Police engaged with him pursuant to that approach;
 - (e) Victoria Police did not want Ms Gobbo involved with Mr Thomas - she continued to act for him despite repeated requests from Victoria Police that she refrain from doing so;

⁶⁵⁰ Exhibit RC0252 – Chronology of Stuart Bateson (VPL.0015.0001.0409 at .0421).

⁶⁵¹ Exhibit RC0264 – Statement of Nigel L’Estrange dated 11 June 2019, 3, [14] (VPL.0014.0036.0001 at .0003).

- (f) Ms Gobbo was not provided with the transcripts of the information that Mr Thomas had provided to police for the purpose of her being tasked to speak with Mr Thomas on behalf of Victoria Police, but rather she was given them in her capacity as his lawyer;
 - (g) Victoria Police had no interest in securing Mr Thomas' cooperation and Com. Bateson preferred that the matter proceed to trial;
 - (h) Victoria Police did not ever task Ms Gobbo in connection with Mr Thomas; and
 - (i) Ms Gobbo was not "*informing*" on Mr Thomas while acting for him.
- 28.169 Further, there is insufficient evidence that Mr Ryan knew that Ms Gobbo was encouraging Mr Thomas in the manner described – if indeed she was.
- 28.170 There is, in fact, no credible evidence on which a finding can be made that Ms Gobbo advised Mr Thomas to plead guilty, make admissions and implicate his associates or that it was Ms Gobbo's advice alone, or at all, that caused him to take such steps. We draw the Commission's attention to the following:
- (a) Purana Taskforce detectives first began communicating with Mr Thomas in relation to his possible cooperation in 2004, well prior to Ms Gobbo acting;
 - (b) By June 2004, police were already taking statements from Mr McGrath. DS Bateson's crew then began talking to Mr Thomas, suspected of involvement in the Moran and Barbaro murders, to seek his cooperation;
 - (c) On 28 July 2004, DS Bateson met with Mr Thomas at a McDonald's restaurant and Mr Thomas indicated an openness to assisting police;⁶⁵²
 - (d) On 18 October 2004, Mr Thomas, who was then in prison having been arrested for the Moran and Barbaro murders, enlisted ^{Mr Thomas' P} to contact DSC L'Estrange to arrange to meet "*on the quiet*";⁶⁵³
 - (e) By February 2006, Mr Thomas, who was still in prison awaiting trial, decided to cooperate with police and, this time, instructed Ms Gobbo to approach police on his behalf;⁶⁵⁴
 - (f) On 19 February 2006, both Ms Gobbo and Mr Thomas' solicitor, Mr Valos met with Com. Bateson and told him that Mr Thomas had instructed them that he wished to co-operate. This was just after Mr Andrews had written to the relevant Senior Crown Prosecutor informing him that he wished to co-operate. It also followed Mr McGrath's evidence at the trial of Carl Williams for the murder of Mr Marshall being accepted (a matter that Justice King observed would, if it came to pass, dramatically change the strength of the Crown case against Mr Thomas because it would mean that Mr McGrath was accepted as a witness of truth);⁶⁵⁵
 - (g) A few days later, on 22 February 2006, Mr Thomas told DS Bateson to speak to his solicitor about him making statements which DS Bateson did;⁶⁵⁶
 - (h) DS Bateson and Mr O'Brien met with Mr Thomas on three occasions in the weeks that followed;

⁶⁵² Exhibit RC0269A – Statement of Commander Stuart Bateson dated 7 May 2019 at [61] (VPL.0014.0027.0001 at 0010).

⁶⁵³ Exhibit RC0252 – Chronology of Stuart Bateson (VPL.0015.0001.0409 at 0421); Exhibit RC0264 – Statement of Nigel L'Estrange dated 11 June 2019, 3, [14] (VPL.0014.0036.0001 at .0003); Exhibit RC0269A – Statement of Commander Stuart Bateson dated 7 May 2019 at [63] (VPL.0014.0027.0001 at 0011).

⁶⁵⁴ Exhibit RC0269A – Statement of Commander Stuart Bateson dated 7 May 2019 at [77]-[78] (VPL.0014.0027.0001 at 0013).

⁶⁵⁵ Exhibit RC0269 – Statement of Stuart Bateson dated 7 May 2019 at [78] (VPL.0014.0027.0001 at .0013).

⁶⁵⁶ Exhibit RC0269 – Statement of Stuart Bateson dated 7 May 2019 at [80] (VPL.0014.0027.0001 at .0013).

- (i) The transcripts were provided to Ms Gobbo on 20 April 2006;
- (j) It was not until 29 June 2006 that Mr Thomas entered his guilty plea and he did that without, to Com. Bateson's knowledge, having committed to assisting police. Com. Bateson's evidence was that Ms Gobbo had likely spoken to Mr Horgan SC before the plea about Mr Thomas co-operating. After Mr Thomas had entered his plea, Com. Bateson met with Mr Thomas together with Ms Gobbo and Mr Valos in the cells at which time Mr Thomas said that he now wished to assist police by making statements;⁶⁵⁷
- (k) Mr Thomas' solicitor was asked to provide a witness statement to the Commission addressing three questions.⁶⁵⁸ He was not asked whether Ms Gobbo gave advice to Mr Thomas about pleading guilty, making admissions and implicating his associates and, if she did, about the circumstances in which it was given and the content of the advice. He was not asked if Ms Gobbo had encouraged Mr Thomas to make admissions, enter a plea of guilty and to implicate his associates. He was not asked if he himself had given such advice to Mr Thomas and, if he had, when he gave the advice and the reasons why he gave that advice. Mr Valos co-operated with the Commission in providing a witness statement but, because he was not asked, his statement does not address these critical matters. He was not called for cross-examination;
- (l) Mr Thomas' evidence was that Ms Gobbo encouraged him to plead guilty and to become a prosecution witness.⁶⁵⁹ However, given Mr Thomas' credibility issues and that it was plainly in his interests to give that evidence, his evidence alone is insufficient to find that Ms Gobbo encouraged him to make admissions, enter a plea of guilty and to implicate his associates, especially given that Counsel Assisting chose not to adduce evidence from a key witness, Mr Valos, on the issue;
- (m) Further, even if Mr Thomas' evidence on this issue is accepted, his evidence is that Ms Gobbo encouraged him to plead guilty in the lead up to Mr Andrews pleading guilty. Mr Thomas said that Ms Gobbo told him that Mr Andrews 'might be pleading and might roll' and she urged Mr Thomas to get in first. If Ms Gobbo gave that advice then she likely gave it in February 2006,⁶⁶⁰ which was well before Ms Gobbo had been shown the transcripts. If she gave that advice, then there is no causal link between police and the advice she gave. That is, there is no evidence that police asked Ms Gobbo to advise Mr Thomas to get in before Mr Andrews and plead guilty and co-operate with police. It is also not evident why police would want her to give such advice;
- (n) Mr Thomas gave evidence that Mr Valos was shocked when he got back from holidays to discover that he had pleaded guilty. Mr Thomas said that Ms Gobbo had kept Mr Valos away from it all and away from him.⁶⁶¹ Mr Valos' statement to the Commission does not address these issues and he was not called to give evidence or asked for a supplementary statement. However, the evidence before the Commission shows that Mr Thomas' evidence was false because:

⁶⁵⁷ Exhibit RC0269 – Statement of Stuart Bateson dated 7 May 2019 at [92] (VPL.0014.0027.0001 at .0015).

⁶⁵⁸ Untendered – Email from the solicitors assisting the Commission to Corrs Chambers Westgarth dated 8 July 2020 (VPL.0005.0306.0001).

⁶⁵⁹ Exhibit RC1175 – Statement of Mr Thomas dated 20 September 2019 at [37]-[38] (RCMPI.0131.0001.0001 at .0001_0010).

⁶⁶⁰ Exhibit RC0269 – Statement of Stuart Bateson dated 7 May 2019 at [75]-[78] (VPL.0014.0027.0001 at .0013).

⁶⁶¹ T13592.38-43 (Thomas).

- (i) On 19 February 2006, Mr Valos met with Com. Bateson and Ms Gobbo, after Mr Thomas said he wanted to plead guilty;
 - (ii) On 23 March 2006, Mr Thomas told Mr O'Brien and Com. Bateson that Mr Valos had advised him to plead guilty and assist police;⁶⁶² and
 - (iii) On 29 June 2006, when Mr Thomas entered his guilty plea, Mr Valos was present. He met with Com. Bateson, Mr Thomas and Ms Gobbo afterwards to discuss Mr Thomas' desire to become a prosecution witness in return for a reduced sentence;⁶⁶³
- (o) To the extent that Mr Thomas gave the self-serving evidence that Ms Gobbo had pressured or persuaded him to plead guilty and to give evidence, Ms Gobbo unequivocally denied that before the Commission:⁶⁶⁴

I want to ask you about some matters that Mr Thomas has raised in his statement. One of the things that he will suggest or he has suggested is that you pressured and persuaded him to plead guilty and to give evidence. What do you say to that? That's not consistent with my recollection.

*Do you say that you didn't pressure or persuade him; is that right?
Correct.*

- (p) Ms Gobbo was unable to say with certainty whether she had advised Mr Thomas that it could be in his interests to plead guilty and give evidence.⁶⁶⁵ She suggested she may have done so once Mr Thomas reached the point of wishing to cooperate with police;⁶⁶⁶
- (q) Ms Gobbo recalled occasions when Mr Thomas had vacillated in his intention to assist police;⁶⁶⁷
- (r) It was put to Ms Gobbo that she may have heard from DS Bateson that by around April 2006, Mr Thomas was considering not assisting police because ^{Mr Thomas' Pt} may have objected. It was put that Ms Gobbo then communicated with ^{Mr Thomas' Personal Partner} and reassured her, so that Mr Thomas was convinced to cooperate.⁶⁶⁸ These matters are not put against Mr Ryan specifically, but are further reason to reject to proposed findings at [1066.8] and [1066.9].
- (s) Ms Gobbo's recollection of these matters was vague, at best.⁶⁶⁹ As in the example below, the cross-examination on this point consisted of assertions or propositions being put by Counsel Assisting, without a proper foundation, and Ms Gobbo's vague agreement:

Is the effect of the evidence this: you heard from Mr Bateson that there could be a spanner in the works and ^{Mr Thomas' Personal Partner} might not be prepared to go along and you communicated with her and smoothed things over and got things back on track. That's the essence of what I'm putting? Yeah, quite probably. As I said, my recollection is the issue was

⁶⁶² Exhibit RC0476 – Transcript of conversation between Stuart Bateson and Mr Thomas at ^{Pt} Prison (VPL.0005.0062.0609 at .0689).

⁶⁶³ Exhibit RC0269 – Statement of Stuart Bateson dated 7 May 2019 at [92] (VPL.0014.0027.0001 at .0015).

⁶⁶⁴ T13402.34-43 (Gobbo).

⁶⁶⁵ T13402.45-13403.30 (Gobbo).

⁶⁶⁶ T13402.45-13403.1 (Gobbo).

⁶⁶⁷ T13403.3-10 (Gobbo).

⁶⁶⁸ T13367.19-27 (Gobbo).

⁶⁶⁹ Ibid.

about her charges being withdrawn and her being able to keep the property and not face the loss of it.⁶⁷⁰

- (t) Contrastingly, Com. Bateson's evidence was clear and detailed around his interactions with Mr Thomas and ^{Mr Thomas' Personal Pa}
- (u) Com. Bateson told the Commission that ^{Mr Thomas' Personal Partner} had resisted any move by Mr Thomas to assist police while she believed ^{Mr Thomas} was innocent of murder;
- (v) The shift identified by Com. Bateson was that, at that time, Mr Thomas had started telling police that he wanted to tell the truth. Com. Bateson articulated that the most logical scenario was that Mr Thomas had made a similar revelation to ^{Mr Thomas' Pet} as to the truth of his role in murders in relation to which he was charged;
- (w) It was likely for this reason that ^{Mr Thomas' Personal Partner} relented, and Mr Thomas eventually agreed to admit the murder of Moran and assist. Com. Bateson denied that Ms Gobbo was tasked by him to speak to Mr Thomas;⁶⁷¹
- (x) When asked again whether she had pressured or persuaded Mr Thomas to sign his statement about the Moran and Barbaro murders, Ms Gobbo responded:

I would be lying if I said I've got a specific recollection of even reading that statement.

28.171 On that evidence, the Commission cannot be satisfied that Ms Gobbo advised Mr Thomas to plead guilty, make admissions and implicate his associates and no basis to find that she was encouraged by police to give such advice.

28.172 If Ms Gobbo did advise Mr Thomas to plead guilty, make admissions and implicate his associates, the state of the evidence does not enable findings to be made that:

- (a) such advice was the sole, dominant or even a persuasive factor in Mr Thomas' decision;
- (b) any advice from Ms Gobbo (or Mr Valos) to assist police amounted to unreasonable pressure or was contrary to a desire expressed by him to explore the possibility of obtaining a benefit by assisting police; or
- (c) Ms Gobbo gave that advice to Mr Thomas in order to assist Victoria Police.

28.173 If Ms Gobbo did give such advice, she is likely to have had more plausible motivations for giving it, such as because she considered it to be in Mr Thomas' best interests in circumstances where the case against him was growing in strength and, if convicted, he was facing life imprisonment. Mr Valos seems to have given that advice.

28.174 Lastly, the finding at paragraph [1066.10] is also not open. Mr Ryan gave no evidence about his understanding of Victoria Police's intentions. Mr Ryan gave some limited evidence about why the OPP was not informed about Ms Gobbo's status as a registered human source.⁶⁷² That evidence is described above. In relation to disclosure more generally, Mr Ryan's evidence was that he understood that there was an obligation on the police to:

⁶⁷⁰ Ibid; see also T13366.18-46 (Gobbo).

⁶⁷¹ T9722.29-9723.28.

⁶⁷² T4524.27-35; T4525.45-47.

- (a) provide all of the documents that will assist the prosecution in securing a conviction; and
- (b) disclose all of the things that might assist an accused person in finding a defence that's available to them.⁶⁷³

- 28.175 Mr Ryan also gave some limited evidence about his understanding of public interest immunity.⁶⁷⁴ His evidence was that such claims were typically made where human sources were involved.⁶⁷⁵ He said also that the source of information was kept from the prosecution and that this was because "*it's how you are taught. You're taught not to disclose, ever disclose, a human source's identity*".⁶⁷⁶ He was not asked, and otherwise gave no evidence, about his understanding of disclosure obligations more broadly.
- 28.176 The vice in the proposed finding at [1066.10] is that it oversimplifies the evidence and thereby is apt to obscure the real issues. Mr Ryan accepts that he had an inadequate understanding of what was required to be disclosed to an accused. The explanation for that inadequacy lies in the inadequate training that he received, which resulted in his failure to properly identify and address disclosure issues.

Proposed finding at [1067]

- 28.177 The proposed finding at paragraph [1067] is vague and unclear. Counsel Assisting invite the Commission to find that ^{Relevance} [REDACTED] ^{Relevance} [REDACTED]. It is unsatisfactory to leave Mr Ryan to guess as to what Counsel Assisting are referring. Procedural fairness requires that adverse matters be put with specificity to enable a response.
- 28.178 First, it is not clear what 'involvement' in the prosecution of people Mr Thomas implicated that Counsel Assisting is referring to. In the absence of this being made clear, Mr Ryan cannot meaningfully respond. It is to be recalled that Mr Ryan was absent from the Purana Taskforce for a substantial period of time after Mr Thomas cooperated, returning in a relieving capacity from time to time. As such, the "*involvement*" that Counsel Assisting refer to is not at all obvious.
- 28.179 Second, it is not clear how any such involvement had the consequence that Mr Ryan was aware of the 'continued use of Ms Gobbo *against* Mr Thomas'. Among other things, it is not clear what is meant by Victoria Police using Mr Gobbo 'against' Mr Thomas. If that is a reference to Ms Gobbo's involvement in the statement taking process, there is no evidence that this constituted the use by Victoria Police of Ms Gobbo "*against*" Mr Thomas. Indeed, it was done for Mr Thomas' benefit and would have been done with any accused person in Mr Thomas' position. If it is a reference to the events of November 2007, Mr Ryan addresses the issue below, and identifies that Ms Gobbo was not being "*used*" against Mr Thomas in that period, or at all.
- 28.180 Third, the finding does not follow from the matters set out in paragraph [1065].
- 28.181 Accordingly, the proposed finding at paragraph [1067] is oppressive and unreasonable. It is not supported by the known facts. There is no apparent basis to advance it. The ambiguity in its formulation means that Mr Ryan is unable to meaningfully engage with it and he is, therefore, not provided procedural fairness. Counsel Assisting are invited not to press paragraph [1067], or to, at least, clarify it so that Mr Ryan may respond.

⁶⁷³ T4254.37-46.

⁶⁷⁴ T4525.

⁶⁷⁵ T4525.15-16.

⁶⁷⁶ T4525.45-47.

- 28.182 If paragraph [1067] relates to the 9 November 2007 event, then Mr Ryan responds as follows.
- 28.183 On 9 November 2007, Ms Gobbo told the SDU that she had heard that Mr Thomas was 'really down' and 'seriously contemplating' not going ahead with his evidence for the Crown at all, in the upcoming committal hearing against Mr Orman. Among other things, she said that he was unhappy about the treatment of ^{Mr Thomas' Pe} and she thought that Mr Thomas needed a visit from Purana detectives to reassure him.
- 28.184 Plainly, Ms Gobbo should not have conveyed that information to the SDU because she was acting for Mr Orman at the time. Whilst Ms Gobbo was seemingly seeking to protect the interests of Mr Thomas - a client and associate of hers - the provision of the information was obviously not in the interests of her client, Mr Orman.
- 28.185 The ICR records that the handler disseminated the information to DI Ryan.
- 28.186 If the SDU disseminated the information to DI Ryan then it should not have done so.
- 28.187 However, it is not possible for the Commission to be satisfied to the requisite standard that the information provided by Ms Gobbo on 9 November 2007 was disseminated by the SDU to Mr Ryan. Mr Ryan has no recollection of receiving the information⁶⁷⁷ and no diary entry recording receipt of it.⁶⁷⁸ The only documentary evidence is the ICR, and there is plenty of evidence of errors in the ICRs. As the Commissioner observed, the ICRs were not contemporaneous records because the relevant handler was many months behind in completing his diaries and ICRs.⁶⁷⁹
- 28.188 In any event, even if the information was disseminated to Mr Ryan, there is no evidence that he did anything other than answer a telephone call from the handler and hear the information. Counsel Assisting have not submitted otherwise. They do *not* submit that Mr Ryan received the information and shared it or directed detectives to visit Mr Thomas. That is appropriate because, on the whole of the evidence (not set out in Counsel Assisting's submissions) it is likely that Mr Ryan reacted to the information in the same way that he had reacted to previous information about Mr Thomas. That is, he paid no attention to it and did nothing with it because he already knew that Mr Thomas was hesitating about giving his evidence and that police had been continually visiting him to address this welfare issue. Mr Ryan told the Commission that "*it's something that's been going on for many months*"⁶⁸⁰ and said it was "*an ongoing process*".⁶⁸¹ That was clearly correct.
- 28.189 From late July 2007, Mr Thomas often expressed discontent and told police that he would not be going ahead with giving evidence. This is common behaviour for an accused person who has become a Crown witness against criminal associates or accomplices. They, rightly, fear retribution.
- 28.190 The evidence in relation to Mr Thomas includes the following:
- (a) on 31 July 2007, Mr Hatt was dealing with Mr Thomas' welfare;⁶⁸²
 - (b) on 15 August 2007, DS Bateson and DSC Hatt visited Mr Thomas in prison to discuss welfare issues;⁶⁸³

⁶⁷⁷ Exhibit RC0310B – Supplementary Statement of Gavan Ryan dated 31 July 2019 at [11] (VPL.0014.0039.0021 at .0024).

⁶⁷⁸ Mr Ryan's diary covering this period has not been located by Victoria Police.

⁶⁷⁹ T8360.26-6361.31 (Fox).

⁶⁸⁰ T4516.39-45.

⁶⁸¹ T4517.13-15; T4519.6-14.

⁶⁸² Exhibit RC0252 – Chronology of Stuart Bateson (VPL.0015.0001.0409 at .0454).

⁶⁸³ Exhibit RC0252 – Chronology of Stuart Bateson (VPL.0015.0001.0409 at .0454).

- (c) 7 September 2007, DS Bateson and DSC Hatt visited Mr Thomas at prison to discuss welfare issues;⁶⁸⁴
- (d) on 12 September 2007, DSC Hatt received a call from Mr Thomas about welfare issues;⁶⁸⁵
- (e) on 25 September 2007, DS Bateson received a call from Corrections relaying Mr Thomas' desire to withdraw his cooperation with police;
- (f) on 27 September 2007, DI Ryan and DS Bateson attended prison where they spoke to Mr Thomas about welfare issues;⁶⁸⁶
- (g) on 2 October 2007, DS Bateson received a call from Mr Thomas who raised welfare issues. DS Bateson briefed DI Ryan about this;⁶⁸⁷
- (h) on 8 October 2007, Ms Gobbo told her handlers that Mr Thomas keeps calling her about his welfare issues and she criticised the way Purana detectives were treating ^{Mr Thomas' Pe} in relation to her charges.⁶⁸⁸ Ms Gobbo was repeatedly told not to get involved and to tell Mr Thomas that he would need to speak directly to DS Bateson;⁶⁸⁹
- (i) on the same day, DS Bateson received a call from Mr Thomas who complained about a paucity of contact visits and ^{Mr Thomas' Pe}s treatment. DS Bateson informed DI Ryan about the call;⁶⁹⁰
- (j) on 12 October 2007, officers Hatt and L'Estrange visited Mr Thomas at prison to address welfare issues;⁶⁹¹
- (k) on 26 October 2007, officers Hatt and L'Estrange visited Mr Thomas at prison to discuss welfare issues and the situation concerning ^{Mr Thomas' Personal Partner} ⁶⁹²
- (l) on 14 November 2007, DS Bateson and DSC Hatt visited Mr Thomas at prison to discuss welfare issues;⁶⁹³
- (m) on 16 November 2007, Mr Thomas contacted DS Bateson and threatened to "withdraw all evidence" due to the treatment to which he was subjected in prison. After the call, DS Bateson informed DI Ryan;⁶⁹⁴
- (n) on 26 November 2007, DS Bateson and DSC Hatt attended a meeting at "Corrections HQ" about Mr Thomas' concerns.⁶⁹⁵ The matters were then discussed with Mr Thomas three days later when DS Bateson and DSC Hatt visited Mr Thomas at ^{PII} Prison.⁶⁹⁶
- (o) on 20 December 2007, DS Bateson and DSC L'Estrange visited Mr Thomas again at prison about his prison spending account;⁶⁹⁷

⁶⁸⁴ Untendered – Diary of Stuart Bateson, 7 September 2007 (VPL.0005.0058.0404 at .0463); Exhibit 252 – Chronology prepared by Stuart Bateson (VPL.0015.0001.0409 at .0454).

⁶⁸⁵ Exhibit RC0252 – Chronology of Stuart Bateson (VPL.0015.0001.0409 at .0455).

⁶⁸⁶ Untendered – Diary of Stuart Bateson, 27 September 2007 (VPL.0005.0058.0404 at .0471); Untendered – Diary of Gavan Ryan, 27 September 2007 (VPL.0005.0120.0187 at .0339).

⁶⁸⁷ Untendered – Diary of Stuart Bateson, 2 October 2007 (VPL.0005.0058.0404 at .0472-.0473).

⁶⁸⁸ Exhibit RC0281 – ICR3838 (102) (VPL.2000.0003.5309 at .5328).

⁶⁸⁹ Exhibit RC0281 – ICR3838 (102) (VPL.2000.0003.5309 at .5330).

⁶⁹⁰ Untendered – Diary of DS Bateson, 8 October 2007 (VPL.0005.0058.0404 at .0474).

⁶⁹¹ Exhibit RC0252 – Chronology of Stuart Bateson (VPL.0015.0001.0409 at .0455).

⁶⁹² Exhibit RC0252 – Chronology of Stuart Bateson (VPL.0015.0001.0409 at .0456).

⁶⁹³ Ibid.

⁶⁹⁴ Untendered – Diary of DS Bateson, 16 November 2007 (VPL.0005.0058.0404 at .0484).

⁶⁹⁵ Untendered – Diary of DS Bateson, 26 November 2007 (VPL.0005.0058.0404 at .0487).

⁶⁹⁶ Untendered – Diary of DS Bateson, 29 November 2007 (VPL.0005.0058.0404 at .0489).

⁶⁹⁷ Untendered – Diary of DS Bateson, dated 20 December 2007 (VPL.0005.0058.0404 at .0496).

- (p) on ^{PII} December 2007, Mr Thomas' family was targeted ^{PII} [REDACTED]
^{PII} [REDACTED] DSC Hatt telephoned Mr Thomas to advise him of the incident.⁶⁹⁸ Mr Thomas expressed concern that the attack was designed to intimidate him ahead of Mr Orman's impending committal hearing;⁶⁹⁹ and
- (q) on 2 January 2008, DSC Hatt and McWilliam visited Mr Thomas at prison to discuss welfare issues.⁷⁰⁰

28.191 Further, Com. Bateson's evidence to the Commission was as follows:⁷⁰¹

I don't know that I ever felt that he wasn't going to assist. I think there was times when he was emotional, or he was always emotional, but there were times when he'd say, "Bugger it" and you could quickly turn him round again if you spent some time with him. But he was that type of personality...Look, basically all I felt is that he just needed some attention every now and then.

- 28.192 The diaries of DS Bateson and DSC Hatt do *not* record Mr Ryan passing on the 9 November 2007 information to them or directing them to visit Mr Thomas. DS Bateson was not at work between 10 and 12 November 2007. DSC Hatt was on duty in the days after 9 November 2007 but his diary does not record any discussion with DI Ryan about Mr Thomas.
- 28.193 Counsel Assisting did *not* cross-examine Com. Bateson or Mr Hatt as to whether Mr Ryan had passed on the 9 November 2007 to them or directed them to visit Mr Thomas.
- 28.194 Counsel Assisting did cross-examine Mr Thomas about the matter. He had no memory of whether Purana detectives had visited him around this time.⁷⁰² It was certainly *not* his evidence that he received an unexpected visit from them. Nor that he received a visit from them which coincided with him telling people or Ms Gobbo that he was contemplating not giving evidence.
- 28.195 The ICRs do *not* record DI Ryan informing the SDU that he had directed members to visit Mr Thomas.
- 28.196 Lastly, if paragraph [1067] is directed to the 9 November 2007 event, and if the information was used by Mr Ryan (which is not open on the evidence), it is not apparent how she was being used as a source 'against' Mr Thomas.⁷⁰³ On the face of it, she was acting in his interests, namely wanting him to be reassured about going ahead with his evidence because if he did not go ahead then he would lose his sentence reduction and be resentenced to a longer period of imprisonment. Counsel Assisting did not cross-examine Ms Gobbo about this event and, therefore, there is no evidence from her to the contrary.

Proposed finding at [1068]

- 28.197 There are two key reasons why the proposed finding in paragraph [1068] should not be made in its existing form.
- 28.198 First, much of the alleged evidentiary basis for it has been shown to be unsound in the submissions above.

⁶⁹⁸ Exhibit RC0252 – Chronology of Stuart Bateson (VPL.0015.0001.0409 at .0457).

⁶⁹⁹ Exhibit RC0262 – Statement of Mark Hatt dated 17 June 2019 at [61] (VPL.0014.0043.0001 at .0010).

⁷⁰⁰ Exhibit RC0252 – Chronology of Stuart Bateson dated 7 May 2019 (VPL.0015.0001.0409 at .0457).

⁷⁰¹ T9904.34-9905.3 (Bateson).

⁷⁰² T13614.7-21 (Thomas).

⁷⁰³ The consequences of Ms Gobbo's conduct on 5 November 2007 for other individuals, including Mr Orman, is a different question. This paragraph is not a comment on those matters.

- 28.199 Second, it operates on the false premise that Mr Ryan had an entitlement, power or authority to “allow” Ms Gobbo to act for Mr Thomas or to “prevent” her from doing so.
- 28.200 Mr Ryan did not “allow” Ms Gobbo to act for Mr Thomas, nor did he “fail to prevent” it. Mr Thomas engaged Ms Gobbo to act for him, and Ms Gobbo accepted the retainer. That was not an act that Mr Ryan was capable of “allowing” or “preventing”, in the sense that he had no entitlement, power or authority to do either of those things. Further, the evidence that the Senior Crown Prosecutor raised Ms Gobbo’s conflicts with her and was not able to prevent her from continuing to act must be recalled. That could be because Ms Gobbo told him that both clients consented to her acting. We do not know because the issues were not explored with all relevant witnesses.
- 28.201 Mr Ryan gave evidence about the “pecking order”, especially when a member of Senior Counsel has carriage of the prosecution.⁷⁰⁴ He explained that issues in relation to the conduct of the prosecution were handled by the prosecutor. He did not tell them how to do their job. Mr Ryan had received no training about lawyers’ conflicts of interest, and it was not an issue that arose for police in the performance of their duties. Senior counsel prosecuting the matter obviously had the requisite knowledge and understanding of the issues.
- 28.202 In relation to any conflict by reason of Ms Gobbo informing on Mr Thomas, if that did occur, Mr Ryan did not know of, and was not alive to, any such conflict.

Proposed finding at [1069]

- 28.203 The finding at paragraph [1069] is not open when the true facts are understood.
- 28.204 This issue has been addressed in detail in Section C above.

29 Section E:

Relevance

Relevance

- 29.2 Those submissions are not supported by any evidence at all.
- 29.3 This is not a case in which the adequacy of the evidence in support of such findings is arguable. This is not a case in which fine judgments are called for or about which reasonable minds might differ.
- 29.4 On no view of the facts are these findings open to the Commissioner.
- 29.5 The submissions should, with respect, have never been made. It is hard not to conclude that a mistake has been made in the preparation of the submissions.

Relevance

⁷⁰⁴ T4452.19-22.

⁷⁰⁵ Counsel Assisting Submissions at pp. 465-466 [1909]-[1910], Vol 2.

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

Relevance



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Relevance



Relevance

30 Section F: Other matters

24 July 2007 meeting

- 30.1 The events connected to the meeting of 24 July 2007 are set out in the submissions of Tony Biggin, Jim O'Brien and Shane O'Connell. There is no value in repeating them again here.
- 30.2 If the Commission finds that Mr Ryan was at the meeting then he adopts their submissions about the meeting.
- 30.3 However, it is not clear that Mr Ryan was at the meeting. Mr Ryan's diary shows that he was on leave on 24 July 2007. Mr Ryan's lead investigator, Shane O'Connell, attended the meeting. It is at least possible that Mr O'Connell attended in Mr Ryan's place.
- 30.4 Some attendees noted Mr Ryan's attendance in their diaries. However, no one gave evidence that they saw DI Ryan at the meeting or that they recall him speaking. He may have been recorded as an attendee because the meeting was told that he would be present. It is also possible that he attended for a short period and left Mr O'Connell there (who had just been notified that he was to take over from Mr Ryan as Acting Inspector in charge of the Taskforce).
- 30.5 Mr Ryan was not asked about the meeting in cross-examination (despite being asked about the meeting of 23 July 2007 that preceded it). Nor was he asked about it in the Commission's recent letter of 6 April 2020.
- 30.6 In all of the circumstances above, the presence of his name in some diary entries is not a sufficient basis to conclude that he was in fact present or present for the whole meeting. Accordingly, it would be unsafe to make a finding that he was at the meeting.

Andrew Hodson

- 30.7 At paragraph [3172], Counsel Assisting submit that the contemporaneous evidence suggests that Mr Ryan was involved in the tasking of Ms Gobbo in relation to Andrew Hodson, in circumstances where it was known that Mr Hodson would regard her as a legal advisor.
- 30.8 That submission must be rejected because:
- (a) once a disciplined approach is taken to the evidence, it can be seen that there was no tasking of Ms Gobbo in relation to Mr Hodson; and
 - (b) there is no evidence that Mr Ryan was aware of the circumstances relating to Mr Hodson.
- 30.9 Mr Ryan has no clear memory of the events.⁷⁴⁶ Mr Ryan speculated that references to him being an intermediary in connection with Andrew Hodson may have been "*that the SDU and/or Mr O'Connell said to others that I was to be the contact because they wanted others to stop contacting her*".⁷⁴⁷ As will be seen, Mr Ryan's speculation was correct.
- 30.10 The events connected to Andrew Hodson are set out in detail in Mr O'Connell's submissions and Mr Ryan adopts the factual submissions therein.
- 30.11 In relation to Mr Ryan, there is no evidence at all that he knew anything about any plan to use Ms Gobbo to encourage Andrew Hodson to participate in a polygraph. There is not a single piece of evidence that supports that contention. Instead, the evidence shows only this:
- (a) Mr Ryan was, when these events unfolded, the head of the Purana Taskforce;
 - (b) on 5 February 2008, Mr Ryan informed the SDU that the Petra Taskforce investigators wanted to speak to Ms Gobbo;
 - (c) Mr Ryan and the SDU liaised about Ms Gobbo's interviews with Mr Solomon and Mr Davey;
 - (d) on 29 February 2008, Mr Ryan had a conversation with Mr White in which it was agreed that investigators were to be told that any contact concerning Ms Gobbo's involvement with the Petra Taskforce would go through Mr Ryan;
 - (e) Mr Ryan was utilised for the purposes of the plan to create a break between Ms Gobbo and Mr Solomon and Mr Davey; and
 - (f) on 8 March 2008, Mr Ryan was contacted by Mr Wolf for the purpose of him being forewarned about potential direct contact from Ms Gobbo.
- 30.12 There is no evidence at all that Mr Ryan:
- (a) had any discussion with any person about tasking Ms Gobbo;
 - (b) had any discussion with any person about using Ms Gobbo to encourage Andrew Hodson to submit to a polygraph; and
 - (c) had any discussion with any person in which he discussed Ms Gobbo being involved in any way in connection with the plan to ask Andrew Hodson to submit to a polygraph.

⁷⁴⁶ Untendered – Further Supplementary Statement of Gavan Ryan dated 5 May 2020 [16] (VPL.00014.0039.0025 at .0028-.0029).

⁷⁴⁷ *Ibid.*

Paul Dale Notes

- 30.13 Counsel Assisting submit that Mr Ryan was aware that the Petra Taskforce was seeking to obtain a copy of notes given to Ms Gobbo by Paul Dale and retained by her in circumstances where Mr Ryan knew, or ought to have known, that the notes might have been subject to legal professional privilege.⁷⁴⁸ As will be seen, the evidence does not support that submission and it is to be rejected.
- 30.14 In the course of the interview on 5 March 2008 between Ms Gobbo, Mr Davey and Mr Solomon, she informed them that she was in possession of notes given to her by Mr Dale.⁷⁴⁹ It is likely that this information was elicited in response to questioning by investigators about whether Mr Dale had ever given her documents relating to informers. While there is no direct evidence about those matters, it is reasonable to infer that investigators were trying to establish whether or not Mr Dale had in his possession the leaked information reports that identified Terrence Hodson as a police informer. There is no evidence that the investigators were looking to obtain information that was subject to legal professional privilege.
- 30.15 At this time, Mr Ryan was the head of the Purana Taskforce. Mr O'Connell was the Acting Inspector in charge of the Petra Taskforce. Mr Ryan had announced that he was retiring and he was taking a substantial amount of accrued recreation leave prior to his retirement.
- 30.16 It is to be recalled that Ms Gobbo had provided the relevant notes to the SDU in 2007. On 21 May 2007, SDU officers met with Ms Gobbo and spoke to her about the matters of interest to the Petra Taskforce.⁷⁵⁰ Among other things, Ms Gobbo informed those officers that she had retained a copy of notes given to her by Mr Dale.⁷⁵¹ On 22 May 2007, Mr Ryan was briefed about this discussion.⁷⁵² On 29 May 2007, Ms Gobbo had arranged for the SDU to obtain a copy of the notes.⁷⁵³ Thus, by the time that Ms Gobbo was interviewed by Mr Solomon and Mr Davey, the notes had been in the possession of the SDU for 10 months.
- 30.17 In her evidence to the Commission, Ms Gobbo claimed to have been "*reluctant*" to provide Mr Solomon and Mr Davey with the notes and said that she had been "*convinced*" by one of them to do so.⁷⁵⁴ The contemporaneous documents demonstrate that this is not true.
- 30.18 Following her interview with Mr Solomon and Mr Davey on 5 March 2008, Ms Gobbo told Mr Wolf that she had given a copy of the notes to the SDU and wanted this "*followed up*".⁷⁵⁵ Accordingly, Mr Wolf took steps to locate the document.
- 30.19 On 9 March 2008, Mr Wolf has a diary entry which records that he spoke to Mr Ryan (in the course of a longer conversation) and Mr Ryan undertook to confirm whether or not the Petra Taskforce had a copy of the notes.⁷⁵⁶ The difficulty with that diary entry is that

⁷⁴⁸ Counsel Assisting Submissions at p. 772 [3193], Vol 2.

⁷⁴⁹ Exhibit RC0281 – ICR2958 (07), 5 March 2008, 6 (VPL.2000.0003.0812 at .0817).

⁷⁵⁰ Exhibit RC0282 – Transcript of meeting between Ms Nicola Gobbo, Mr Anderson and Mr Sandy White, 21 May 2007, 228-231, 234 (VPL.0005.0137.0001 at .0149-.0150, .0156).

⁷⁵¹ Exhibit RC0282 – Transcript of meeting between Ms Nicola Gobbo, [Mr Luxmore] and Mr Sandy White, 21 May 2007, 228-231, 234 (VPL.0005.0137.0001 at .0149-.0150, .0156).

⁷⁵² Exhibit RC0292 – Diary of Sandy White, 22 May 2007, 21 (VPL.0100.0096.0621 at .0641)

⁷⁵³ Exhibit RC0281 – ICR3838 (081), 29 May 2007, 865 (VPL.2000.0003.2451).

⁷⁵⁴ T13141.28-36; T13142.3-11.

⁷⁵⁵ Exhibit RC0882 – Diary of Mr Wolf, 5 March 2008, 6 (VPL.2000.0001.0098 at .0104).

⁷⁵⁶ Exhibit RC0882 – Diary of Mr Wolf, 9 March 2008, 16 (VPL.2000.0001.0098 at .0113).

- Mr Ryan was on leave on that day.⁷⁵⁷ Mr Ryan was on leave in March on 1, 2, 6-11 inclusive, 13-25 inclusive and 27-31 inclusive.
- 30.20 On 10 March 2008, Ms Gobbo told Mr Wolf that she recalled having given the notes to Mr Fox and said that they could be given to the Petra Taskforce.⁷⁵⁸
- 30.21 If Ms Gobbo was reluctant to provide the notes to Mr Solomon and Mr Davey, she had ample opportunity not to do so. Ms Gobbo did not have to press her handlers to locate the notes. She did not have to take any steps to locate them herself. She could have told Mr Solomon and Mr Davey that the notes could not be located. She could also have told them that the notes were privileged and that she was bound not to provide them. She could have asked her handlers for advice about how to avoid handing the notes over. Ms Gobbo did none of these things. Instead, she pressed her handlers to locate them and gave instructions that they could be provided to the investigators, all without any follow up from anyone at the Petra Taskforce.
- 30.22 On 19 March 2008, Mr Davey called Ms Gobbo looking to obtain a copy of the documents.⁷⁵⁹ Ms Gobbo told him that she had given the notes to DI Ryan.⁷⁶⁰ Ms Gobbo had, of course, not done so. Ms Gobbo said this to avoid having to tell Mr Davey that the notes were with the SDU. Ms Gobbo claimed that Mr Davey had been 'indifferent' to this, and wanted her to call him back with the document by 4 pm.⁷⁶¹ According to Mr Davey, he had called Ms Gobbo only because she had volunteered to provide him with the document and had said that she would call by 4 pm.⁷⁶² He had simply called to follow up how she had gone locating the notes.⁷⁶³
- 30.23 Later that same day, Mr Fox spoke to Mr O'Connell.⁷⁶⁴ Mr Fox's diary records that Mr O'Connell confirmed that Mr Davey had been told that Mr Ryan had the documents.⁷⁶⁵ It is clear, however, that Mr Ryan did not have them. The documents did not ever leave the custody of the SDU.⁷⁶⁶ Consistently, Mr Ryan's evidence to this Commission was that he had never seen the documents before.⁷⁶⁷ Mr Fox noted "*Shane is away until after Easter. He will speak to me then re: the Paul Dale documents and have a read of same then*".⁷⁶⁸ It is to be noted that Mr Ryan was also on leave on this day.⁷⁶⁹
- 30.24 Mr O'Connell could not recall seeing the notes.⁷⁷⁰ However, it appears from contemporaneous documents that he did view them. Mr Fox recorded in his diary that he met Mr O'Connell on 26 March 2008 and that Mr O'Connell read the document.⁷⁷¹
- 30.25 At paragraph [3194], Counsel Assisting submit that the decision to seek out these notes should have been internally scrutinised, as they were from an individual whose occupation usually imposes obligations of confidence and they were possibly protected privileged communications. To the extent that this implies criticism of Mr Ryan, there is no basis for criticism because:

⁷⁵⁷ Untendered – Further supplementary statement of Gavan Ryan dated 5 May 2020, [7]-[11] (VPL.0014.0039.0025 at .0027).

⁷⁵⁸ Exhibit RC0882 Mr Wolf diary, 10 March 2008, 20 (VPL.2000.0001.0098 at .0116-0117); Exhibit RC0281 – ICR2958 (008), 10 March 2008, 88 (VPL.2000.0003.0828).

⁷⁵⁹ Exhibit RC0507 – Diary of Mr Fox, 19 March 2008, 9 (VPL.2000.0001.3534 at .3542).

⁷⁶⁰ Ibid.

⁷⁶¹ Ibid; Exhibit RC0281 – ICR2958 (010), 19 March 2008, 107 (VPL.2000.0003.0847).

⁷⁶² Exhibit RC0507 Mr Fox diary, 19 March 2008, 19 (VPL.2000.0001.3534 at .3542).

⁷⁶³ Ibid.

⁷⁶⁴ Exhibit RC0507 – Diary of Mr Fox, 19 March 2008, 19 (VPL.2000.0001.3534 at .3543).

⁷⁶⁵ Ibid.

⁷⁶⁶ Exhibit RC0507 – Diary of Mr Fox, 19 March 2008, 19 (VPL.2000.0001.3534 at .3549, .3560-3561).

⁷⁶⁷ Untendered – Further Supplementary Statement of Gavan Ryan dated 5 May 2020, [7]-[11] (VPL.0014.0039.0025 at .0027).

⁷⁶⁸ Exhibit RC0507 – Diary of Mr Fox, 19 March 2008, 19 (VPL.2000.0001.3534 at .3543).

⁷⁶⁹ Untendered – Further Supplementary Statement of Gavan Ryan dated 5 May 2020, [7]-[11] (VPL.0014.0039.0025 at .0027).

⁷⁷⁰ T14751.46.

⁷⁷¹ Exhibit RC0507 – Diary of Mr Fox, 26 March 2008 (VPL.2000.0001.3534 at .3561).

- (a) at the relevant time, Mr O'Connell was managing the Petra Taskforce;
- (b) there is no evidence that Mr Ryan knew what the notes were or the circumstances in which Ms Gobbo obtained them;
- (c) at its highest, the evidence is that Mr Ryan undertook to identify whether the Petra Taskforce had a copy of the notes – but even this is doubtful given that Mr Ryan was leave on the date this is said to have occurred;
- (d) Mr Ryan was not asked under cross-examination whether he had read the notes, and there is no direct evidence that he did so;
- (e) in the relevant period, Mr Ryan had announced his retirement from Victoria Police and was winding down with the consequence that he was on leave for much of the relevant period and, specifically, on the two days on which it is suggested that he spoke to the SDU about the notes;⁷⁷² and
- (f) in Mr Ryan's further statement to the Commission, provided in response to the Commission's letter of 6 April 2020, Mr Ryan stated that he has no recollection of ever seeing the notes.⁷⁷³

⁷⁷² Untendered – Further Supplementary Statement of Gavan Ryan dated 5 May 2020, [7]-[11] (VPL.0014.0039.0025 at .0027).

⁷⁷³ Ibid.

G. Submission of Superintendent Jason Kelly

31 Introduction

- 31.1 Counsel Assisting submit that it is open to the Commissioner to find that Superintendent Jason Kelly ^{Relevance} [REDACTED] 14 years ago in relation to the arrest of Mr Cooper, while Supt Kelly was a Detective Sergeant in the Purana Task Force. This submission is not supported by the evidence and there is no sound basis upon which the Commissioner can find that Supt Kelly acted improperly, ^{Relevance} [REDACTED]
- 31.2 Put shortly, Supt Kelly did not have anything like the knowledge or involvement that Counsel Assisting allege in paragraphs [1921] to [1923] of their submissions. Counsel Assisting's submissions ignore reams of critical relevant evidence establishing then-DS Kelly's peripheral involvement in the investigation into and arrest of Mr Cooper. Many of the matters Counsel Assisting rely upon are either distortions of the evidence, involve implausible and illogical inferences or are simply wrong.
- 31.3 When properly presented and understood, the evidence demonstrates that DS Kelly knew very little about Mr Cooper and his relationship with Ms Gobbo. In particular, there is no evidence to indicate that DS Kelly:
- (a) knew that Ms Gobbo had acted for Mr Cooper before the day of his arrest;
 - (b) was aware of the details of any proposed ^{PII} [REDACTED] conversation to convince Mr Cooper to cooperate with police before or even after it occurred;
 - (c) had substantive contact with SDU members about Mr Cooper or Ms Gobbo before or at the time of Mr Cooper's arrest; or
 - (d) was involved in any discussions or events on the day of Mr Cooper's arrest beyond simple, menial process tasks.
- 31.4 Nor is there any evidence to indicate that DS Kelly had any contact with Ms Gobbo or involvement with Mr Cooper's charges in the period from his arrest to his plea.
- 31.5 DS Kelly did learn that Ms Gobbo was a source while at Purana. However, the evidence indicates this was not until 14 March 2006 at the earliest. When DS Kelly learned Ms Gobbo was a source it was by happenstance. He learned nothing more about the information and intelligence she was providing, contrary to the assumptions underlying Counsel Assisting's submissions.
- 31.6 Moreover, Counsel Assisting fail to refer to important evidence about DS Kelly's brief period at Purana before Mr Cooper's arrest. DS Kelly was at Purana for only two months prior to Mr Cooper's arrest. He was not responsible for the investigation into Mr Cooper. DS Kelly had his own complex and important investigations and was responsible for running his own Purana crew, which was pursuing targets other than Mr Cooper. In the weeks and days leading up to Mr Cooper's arrest, DS Kelly was preoccupied with those separate investigations.
- 31.7 When DS Kelly did assist with the investigation into Mr Cooper, it was merely to lend assistance with discrete tasks like routine physical surveillance. On the day of Mr Cooper's arrest, DS Kelly was given menial tasks that – to put it bluntly – could equally have been assigned to a first-year Constable.

- 31.8 Furthermore, it is wrong to say that DS Kelly had reason to believe other officers had engaged in serious misconduct.⁷⁷⁴ Rather, the evidence indicates that DS Kelly properly believed that any issues concerning Ms Gobbo's role as a source were being appropriately managed by those responsible.
- 31.9 In those circumstances, Counsel Assisting's summary of the evidence in paragraph [1921] is incomplete and incorrect and the proposed findings as to DS Kelly's knowledge in paragraph [1922] and [1923] are not supported by the evidence.
- 31.10 Moreover, Counsel Assisting's assertion in paragraphs [1935]-[Relevance] that DS Kelly may have engaged in breaches of discipline [Relevance] is an unacceptable overreach and contrary to any reasonable and proper assessment of the evidence. That very serious and damaging assertion must be rejected.
- 31.11 Given the seriousness of the incorrect assertions made by Counsel Assisting, it is necessary for the Commissioner to set out an accurate summary of the evidence and make appropriate findings of fact that reflect the true state of the evidence. That accurate summary of the evidence and those appropriate findings of fact are set out at paragraphs 38.1 and 38.2 below.
- 31.12 These submissions address these matters in the following sections:
- (a) Section 32 addresses the state of DS Kelly's knowledge while at the MDID;
 - (b) Section 33 addresses DS Kelly's position and responsibilities at Purana;
 - (c) Section 34 considers when and how DS Kelly learned that Ms Gobbo was a human source and why he learned nothing more about her role;
 - (d) Section 35 sets out why the meeting on 18 April 2006 did not extend DS Kelly's knowledge any further;
 - (e) Section 36 sets out DS Kelly's limited role in the events surrounding Mr Cooper's arrest, demonstrating his peripheral role;
 - (f) Section 37 addresses three further factual inaccuracies and unsustainable inferences in Counsel Assisting's submissions; and
 - (g) Section 38 presents a marked-up version of Counsel Assisting's proposed factual findings and conclusions about DS Kelly's knowledge, showing the true and complete position that ought to be accepted by the Commissioner.
- 31.13 This submission should be read with the submission in Part B above as to why the Commissioner does not have the power to make [Relevance] findings at paragraphs [1935]-[Relevance]. This submission should also be read with the submission in Part G as to why, if the Commissioner did have that power, the applicable law means those findings are not open in any case.

32 DS Kelly at the Major Drug Investigation Division (MDID)

- 32.1 There is no basis to find that DS Kelly knew or learned that Ms Gobbo was acting for Mr Cooper when DS Kelly was at the MDID. He had no involvement in Mr Cooper's investigations. He was responsible for running his own separate crew in a separate unit within the MDID with its own separate investigations.

⁷⁷⁴ Counsel Assisting's Submissions at p 475 [1921.9], Vol 2 at 475.

- 32.2 DS Kelly was at the MDID from mid-2004 until February 2006.⁷⁷⁵ The other members of his crew were Detective Senior Constables Haydn Beale, Sean Martin and Tim Johns.⁷⁷⁶ DS Kelly had been recently promoted to Sergeant. He had only six months of uniform duties as a Sergeant before transferring to the MDID.⁷⁷⁷
- 32.3 Mr Cooper was a person of interest to the MDID, but DS Kelly was not involved in investigating or prosecuting him. Rather, it was DS Flynn's crew that charged Mr Cooper with drug manufacturing offences in two separate investigations – Operation Landslip and Operation Matchless.
- 32.4 Critically, these investigations took place before DS Kelly ever worked at the MDID. The Landslip charges were brought in February 2002,⁷⁷⁸ when DS Kelly was a Detective Senior Constable seconded to another law enforcement agency.⁷⁷⁹ The Matchless charges were brought in April 2003,⁷⁸⁰ when DS Kelly was a Detective Senior Constable at the Missing Persons Unit (Homicide Squad).⁷⁸¹
- 32.5 Even once he arrived at the MDID, DS Kelly did not work in the unit responsible for investigating clandestine laboratories. Throughout that period, Detective Sergeants at the MDID ran separate crews within separate units of the MDID. During the period that DS Kelly was at the MDID, it was divided into three units:
- (a) Unit 1 – Cannabis;
 - (b) Unit 2 – Clandestine Laboratories; and
 - (c) Unit 3 – Heroin.⁷⁸²
- 32.6 The Units operated separately, to the extent that the officers in Units 1 and 3 reported up through one Inspector, while officers in Unit 2 reported up through a different Inspector.⁷⁸³
- 32.7 DS Kelly worked in Unit 1 investigating cannabis cultivation and trafficking and he reported to the Senior Sergeant responsible for Unit 1.⁷⁸⁴ DS Flynn investigated clandestine laboratories, including Mr Cooper's.⁷⁸⁵ DS Flynn reported to DAI O'Brien, who was the Senior Sergeant for Unit 2.⁷⁸⁶
- 32.8 When it came to Ms Gobbo herself, DS Kelly has no recollection of meeting Ms Gobbo at any point before he started at Purana.⁷⁸⁷ DS Kelly was generally aware that she was from the legal fraternity, but he had no recollection of meeting her before 2006.⁷⁸⁸ DS Kelly did not deal with Ms Gobbo when she represented clients charged by the MDID. Other officers at the MDID had done so, including when Ms Gobbo appeared for Mr Cooper at multiple bail applications and at his Landslip and Matchless committals.⁷⁸⁹

⁷⁷⁵ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [7]-[8] (VPL.0014.0038.0001 at .0001).

⁷⁷⁶ T2568.13-16 (J Kelly).

⁷⁷⁷ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [7] (VPL.0014.0038.0001 at .0001).

⁷⁷⁸ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [10] (VPL.0014.0042.0001 at .0002).

⁷⁷⁹ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [5] (VPL.0014.0038.0001 at .0001).

⁷⁸⁰ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [18] (VPL.0014.0042.0001 at .0003).

⁷⁸¹ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [6] (VPL.0014.0038.0001 at .0001).

⁷⁸² Exhibit RC0114 – Statement of Assistant Commissioner Robert Hill, 9 May 2019 at [5] (VPL.0014.0028.0001 at .0001).

⁷⁸³ T1777.22-34 (R Hill).

⁷⁸⁴ T1777.31-32 (R Hill).

⁷⁸⁵ See, eg. Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [18] (VPL.0014.0042.0001 at .0003).

⁷⁸⁶ T1777.32-34 (R Hill).

⁷⁸⁷ T2569.4-7 (J Kelly).

⁷⁸⁸ T2569.14-15 (J Kelly).

⁷⁸⁹ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [21]-[22], [24] (VPL.0014.0042.0001 at .0003-0004).

- 32.9 DS Kelly did not know about Ms Gobbo's referral to the SDU following her discussions with MDID members on 31 August 2005, or her registration as a human source. This can be readily inferred from DS Kelly's unchallenged evidence that he did not know about Ms Gobbo's role as a human source until mid-March 2006.⁷⁹⁰

33 DS Kelly at the Purana Task Force

- 33.1 When DS Kelly arrived at Purana, he and his crew were immediately occupied with their own investigations into their own targets. As set out below, DS Kelly and his crew were preoccupied with gathering their own intelligence and pursuing those targets.
- 33.2 It was DS Flynn's crew that was responsible for investigating Mr Cooper. When it came to Mr Cooper, DS Kelly and his crew had a peripheral role as officers who pitched in to help when extra resources were needed for discrete tasks.
- 33.3 DS Kelly also had little knowledge of Ms Gobbo's role as a human source and little to no knowledge of her involvement with Mr Cooper. As explained below, DS Kelly learned Ms Gobbo was a human source essentially by accident while performing supporting physical surveillance duties.
- 33.4 Nothing that occurred at the 18 April 2006 meeting changed that situation. Counsel Assisting rely entirely on a vague description of this meeting being about the "strategy" of Mr Cooper's arrest to suggest by implication that DS Kelly was aware of some alleged plan to use Ms Gobbo to convince Mr Cooper to assist. As explained below, this submission completely ignores evidence from those who were at the meeting, including DSS Michael O'Connor from the State Surveillance Unit and Officer Highway from the Technical Support Unit. Counsel Assisting's submissions about the 18 April 2006 meeting imply a picture that is contrary to a proper understanding of the evidence.

DS Kelly had limited involvement in investigating Mr Cooper

- 33.5 DS Kelly began at Purana on 20 February 2006.⁷⁹¹ He transferred from the MDID with his crew – Detective Senior Constables Sean Martin, Haydn Beale and Tim Johns.⁷⁹²
- 33.6 The critical planning work, briefings and initial investigations into Mr Cooper as a target of Operation Posse were done months before DS Kelly's crew transferred to Purana. For example, the following events all occurred prior to DS Kelly and his crew commencing at Purana:
- (a) On 13 September 2005, DAI Jim O'Brien commenced at Purana and became the officer in charge on a permanent basis around then.⁷⁹³
 - (b) On 21 October 2005, DAI O'Brien prepared terms of reference and a risk assessment in relation to Operation Posse. On that same day, Commander Terry Purton advised DAI O'Brien that Operation Posse was to proceed.⁷⁹⁴
 - (c) On 21 November 2005, DS Flynn's crew transferred to Purana.⁷⁹⁵
 - (d) On 22 November 2005, DAI O'Brien delivered a briefing to DS Flynn and others, which detailed the objectives of the Taskforce.⁷⁹⁶ DAI O'Brien prepared a briefing

⁷⁹⁰ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [16] (VPL.0014.0038.0001 at .0002).

⁷⁹¹ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [28] (VPL.0014.0038.0001 at .0005).

⁷⁹² Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [28] (VPL.0014.0038.0001 at .0005).

⁷⁹³ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [49] (VPL.0014.0040.0001 at .0011).

⁷⁹⁴ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [77] (VPL.0014.0040.0001 at .0017).

⁷⁹⁵ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [37] (VPL.0014.0042.0001 at .0007).

⁷⁹⁶ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [83] (VPL.0014.0040.0001 at .0018).

document⁷⁹⁷ about the broad range of targets and investigations that would come under the overall umbrella of "Operation Posse". As explained below, DS Kelly did not receive a detailed briefing when he commenced at Purana.

- 33.7 As DAI O'Brien's briefing note indicates, Operation Posse was a multifaceted investigation into a number of targets. Even at the early stage of November 2005, Mr Cooper was but one of a number of targets and projects listed in the briefing note:
- Op Posse – [Mr Luxmore] and Geoffrey Jamou*
 - Op Posse – [Mr Cooper] and Steven Cvetanovski*
 - Op Posse – Mokbels – Kaban, Horty and Milad*
 - Op Posse – Property Location investigations eg Peninsula and Heathcote – Navarolli, Coercive Hearings*
- 33.8 DS Kelly's crew did not transfer to Purana until three months after this briefing. As DS Kelly noted in his evidence, he was "not part of the development of the investigation plan or the approval process" for Operation Posse, so his views on its development would be no more than assumptions.⁷⁹⁸
- 33.9 Given DS Flynn's previous experience with Mr Cooper, his crew naturally took responsibility for investigating him. DS Flynn himself was part of the MDID crew who had investigated, arrested and charged Mr Cooper twice before.⁷⁹⁹
- 33.10 Furthermore, DS Flynn had both experience with clandestine laboratories and a close working relationship with DAI O'Brien. DS Flynn had directly reported to DAI O'Brien since DS Flynn began at the MDID in 2002,⁸⁰⁰ where DAI O'Brien had been the Senior Sergeant in charge of the Clandestine Laboratories area (Unit 2).⁸⁰¹ In his evidence to the Commission, DS Flynn said he had had a close working relationship with DAI O'Brien.⁸⁰²
- 33.11 In contrast, DS Kelly had not investigated clandestine laboratories and had not worked in the Clandestine Laboratory Unit with DS Flynn and DAI O'Brien. DS Kelly had worked in the Cannabis Unit, which reported to a different Senior Sergeant.⁸⁰³ The Cannabis Unit and the Clandestine Laboratory Unit did not cross over and reported up through different Inspectors.⁸⁰⁴
- 33.12 DS Kelly was also a relatively inexperienced supervisor of the kind of serious organised crime that Purana dealt with. He had arrived at the MDID in mid-2004 with only six months experience as a Sergeant, all of which was in uniform duties.⁸⁰⁵ The MDID was DS Kelly's first posting as a Detective Sergeant and Purana was his second.
- 33.13 The direct evidence indicates that DS Kelly's briefing about Operation Posse was high level, even cursory. As DS Kelly identified in oral evidence, DAI O'Brien explained to him the overall purpose of the operation as dismantling the established Mokbel criminal network.⁸⁰⁶ However, it was not a detailed briefing:

⁷⁹⁷ Exhibit RC0470B – Operation Posse commencement briefing, 22 November 2005 (VPL.0005.0096.0001).

⁷⁹⁸ T2587.8-14 (J Kelly).

⁷⁹⁹ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [10], [18] (VPL.0014.0042.0001 at .0002).

⁸⁰⁰ T6648.15-19 (D Flynn).

⁸⁰¹ T1777.32-33 (R Hill).

⁸⁰² T6648.35-36 (D Flynn).

⁸⁰³ T1777.31-32 (R Hill).

⁸⁰⁴ T1777.27-30 (R Hill).

⁸⁰⁵ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [7] (VPL.0014.0038.0001 at .0001).

⁸⁰⁶ T2568.33-36 (J Kelly).

Mr Woods: I take it that that was something that was explained to you upon the request for you to come over and join the Purana Task Force?

Supt Kelly: It certainly wasn't a detailed briefing but it was a briefing enough to be told that it was the dismantling of the Mokbel established criminal network.⁸⁰⁷

33.14 This is confirmed by DS Kelly's diary. His diary for 20 February 2006 indicates that DAI O'Brien's briefing to DS Kelly about his Purana work lasted no more than 30 minutes. It did not involve any mention of Ms Gobbo's role as a source. Later that day, DS Flynn gave DS Kelly a 20-minute briefing about DS Flynn's Operation Posse targets – Lanteri, Cvetanovski, Karam and Mr Cooper.⁸⁰⁸

33.15 The crews within Purana operated separately, only assisting other crews when they needed extra resources. Notwithstanding DAI O'Brien's wish for Purana to be more collaborative,⁸⁰⁹ evidence from the investigators indicates that the teams worked independently and provided ad hoc assistance to other crews only when needed. For example, DSC Johns gave the following evidence.⁸¹⁰

Once I moved to Purana, DS Kelly's crew and DS Flynn's crew generally worked separately on different operations and targets. But at times, members of each crew would assist the other crew when the other crew needed extra assistance.

33.16 In summary, the position concerning Mr Cooper when DS Kelly arrived at Purana in February 2006 was that:

- (a) There were a number of different targets under the banner of Operation Posse, with Mr Cooper merely being one of those targets;
- (b) The Detective Sergeant (DS Flynn) who had twice investigated, arrested and charged Mr Cooper for drug manufacturing offences had already commenced at Purana;
- (c) That same Detective Sergeant had worked closely with the officer in charge of Purana (DAI O'Brien) for more than three years. They had a close working relationship. In contrast, DS Kelly was a newly promoted Detective Sergeant who had not worked in the same Unit as DAI O'Brien or DS Flynn before;
- (d) The investigation planning for Operation Posse had been prepared by DAI O'Brien in September 2005 and the key briefing about Operation Posse had been delivered three months earlier, in November 2005. DS Kelly's briefing was more high-level and certainly did not involve discussion of Ms Gobbo's role as a source; and
- (e) The crews at Purana operated separately on different operations and targets, although the crews lent support to other Purana crews when additional resources were necessary.

33.17 It is therefore understandable that DS Kelly and his crew were assigned their own separate targets and only ever had a secondary role supporting the investigation into Mr Cooper. DS Kelly made this point in his statement:⁸¹¹

⁸⁰⁷ T2568.38-42 (J Kelly).

⁸⁰⁸ Untendered exhibit – Diary of Superintendent Jason Kelly, 20 February 2006 (VPL.0005.0144.0112 at .0113).

⁸⁰⁹ See the briefing document prepared by DAI O'Brien: Exhibit RC0470B – Operation Posse commencement briefing, 22 November 2005 (VPL.0005.0096.0001 at .0002).

⁸¹⁰ Exhibit RC1332B – Statement of Sergeant Tim Johns, 11 December 2019 at [10] (VPL.0014.0118.0001 at .0002).

⁸¹¹ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [31] (VPL.0014.0038.0001 at .0005).

Detective Sergeant Dale Flynn's crew had been tasked with directly targeting [Mr Cooper] and locating his lab. However, due to time pressures, my crew supported DS Flynn's crew as needed, including by conducting physical surveillance.

- 33.18 DS Kelly's diary bears this point out. It records that his duties relating to Mr Cooper were only ever supporting duties:
- (a) On 11 March 2006, DS Kelly and DSC Martin were tasked with conducting surveillance on Mr Cooper in Melbourne's CBD.⁸¹² As considered below, it was as a result of this surveillance that DS Kelly, by happenstance, came to learn that Ms Gobbo was a source the following week.
 - (b) On 21 March 2006, DS Kelly along with at least six other Purana officers, conducted a full day of surveillance on a variety of addresses across Melbourne's inner north.⁸¹³ Tellingly, DS Kelly's diary indicates that when he eventually saw Mr Cooper, he notified DS Flynn.⁸¹⁴
 - (c) On 9 April 2006, DS Flynn himself briefed DS Kelly and his crew about surveillance to be undertaken to try and locate Mr Cooper's lab site. DS Kelly in turn briefed his own crew members – DSC Beale and DSC Johns – and they conducted overnight surveillance into the early hours of the morning. At the end of the shift, DS Kelly de-briefed with DS Flynn and his crew.⁸¹⁵

DS Kelly was occupied with other work at Purana

- 33.19 DS Kelly was only peripherally involved in investigating Mr Cooper because, as soon as DS Kelly arrived at Purana, his substantive investigative efforts were directed elsewhere. His diary records for his first week at Purana give an accurate picture of how DS Kelly had to hit the ground running on his own investigations:
- (a) By 22 February 2006, his third day at Purana, DS Kelly had been assigned his targets – Emidio Navaroli, Simon Khoury, Kamel Khoder and Carmelo Menotti – and was developing profiles for them.⁸¹⁶
 - (b) The next day, 23 February 2006, DS Kelly began considering what was needed for that investigation, such as surveillance and telephone intercepts and then briefed his crew about their proposed work.⁸¹⁷
 - (c) By 24 February 2006, DS Kelly began the intensive intelligence gathering necessary to pursue these targets, including reaching out to other law enforcement agencies for information to build the profiles of his crew's targets.⁸¹⁸
- 33.20 This period of intelligence gathering continued through March 2006 and into April 2006. Throughout that time, DS Kelly was pursuing and developing his own intelligence about large scale drug manufacturing as well as [redacted] from independent non-SDU avenues – namely, the ACC, AFP and Customs.⁸¹⁹

⁸¹² Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [17] (VPL.0014.0038.0001 at .0003).

⁸¹³ Exhibit RC0235 – Diary of Superintendent Jason Kelly, 21 March 2006 (VPL.0005.0123.0001 at .0006-0008).

⁸¹⁴ Exhibit RC0235 – Diary of Superintendent Jason Kelly, 21 March 2006 (VPL.0005.0123.0001 at .0008).

⁸¹⁵ Exhibit RC0235 – Diary of Superintendent Jason Kelly, 9 April 2006 (VPL.0005.0123.0001 at .0010-0011).

⁸¹⁶ Untendered diary of Superintendent Jason Kelly, 22 February 2006 (VPL.0005.0144.0112 at .0115-0116).

⁸¹⁷ Untendered diary of Superintendent Jason Kelly, 23 February 2006 (VPL.0005.0144.0112 at .0116-0117).

⁸¹⁸ Untendered diary of Superintendent Jason Kelly, 24 February 2006 (VPL.0005.0144.0112 at .0117).

⁸¹⁹ See, eg, information recorded in Exhibit RC0235 – Diary of Superintendent Jason Kelly, 16 March 2006, 20 March 2006, 22 March 2006 and 6 April 2006 (VPL.0005.0123.0001 at .0005-0006, 0008-0009).

- 33.21 As a result of that intelligence, the scope of DS Kelly's own investigations expanded beyond his initial targets. By early ^{PII} 2006, DS Kelly's crew was pursuing ^{PII} and ^{PII} who were then in possession of chemicals and drug-manufacturing equipment. ^{PII} was arrested by DS Kelly's crew in ^{PII} 2006. A member of DS Kelly's crew, ^{PII} became the informant in the subsequent prosecutions.⁸²⁰ ^{PII} gave evidence that this investigation was separate to investigations by DS Flynn's crew and based on different intelligence:

^{PII}

- 33.22 As considered below, DS Kelly remained occupied with these ongoing investigations right up until the time of Mr Cooper's arrest. In particular, the events of 21 April 2006, involving DS Kelly meeting with a suspect in what was essentially an evidence gathering operation,⁸²² meant he was occupied with his own substantive investigative work while the Cooper investigation was properly left to DS Flynn and his crew.
- 33.23 To add to this workload, DS Kelly also had to manage a number of ongoing MDID investigations and prosecutions that were reaching critical stages. This continued throughout March and April 2006. As one example, DS Kelly and his team continued with an MDID cannabis investigation called Operation Goopy throughout March and April 2006. DS Kelly's diary records that he continued to prepare statements,⁸²³ gather further information,⁸²⁴ prepare detailed reports,⁸²⁵ and even execute a number of search warrants and make arrests.⁸²⁶ With this intense workload, DS Kelly never had time to become closely acquainted with the investigation into Mr Cooper.

34 DS Kelly had limited information about Ms Gobbo's role even after learning she was a source

- 34.1 As detailed in his statement, DS Kelly learned Ms Gobbo was a human source in the week following Saturday 11 March 2006.
- 34.2 Without specifying how, Counsel Assisting's submissions assume that DS Kelly learned more about Ms Gobbo and her role as a source. This is incorrect. DS Kelly found out Ms Gobbo was a source essentially by accident. He neither sought, nor was given, any further information about her role as a human source.
- 34.3 Contrary to Counsel Assisting's asserted findings, there is **no evidence** to indicate that:
- (a) DS Kelly knew Ms Gobbo was acting for Mr Cooper prior to her attending St Kilda Road on the day of his arrest,⁸²⁷ or
 - (b) DS Kelly knew in advance that Ms Gobbo might attend to advise Mr Cooper on the day of his arrest.⁸²⁸

⁸²⁰ ^{PII}

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⁸²² See Untendered diary of Superintendent Jason Kelly, 21 April 2006 (VPL.0005.0144.0127 at .0128).

⁸²³ Untendered diary of Superintendent Jason Kelly, 21 February 2006 (VPL.0005.0144.0112 at .0114).

⁸²⁴ Untendered diary of Superintendent Jason Kelly, 21 February 2006 (VPL.0005.0144.0112 at .0114).

⁸²⁵ Untendered diary of Superintendent Jason Kelly, 22-23 February 2006 (VPL.0005.0144.0112 at .0115-0116).

⁸²⁶ Untendered diary of Superintendent Jason Kelly, 2 March 2006 (VPL.0005.0144.0118 at .0118-0119); Untendered diary of Superintendent Jason Kelly, 4 April 2006 (VPL.0005.0144.0124 at .0124-0125).

⁸²⁷ See Counsel Assisting's Submissions at p 476 [1922.2], Vol 2.

⁸²⁸ See Counsel Assisting's Submissions at p 476 [1922.5], Vol 2.

- 34.4 There is no direct evidence available to the Commission on these matters because DS Kelly was never asked about these matters. Neither the request for information directed to DS Kelly nor his questioning before the Commission raised these issues.
- 34.5 In the absence of that direct evidence, Counsel Assisting ask the Commissioner to make serious findings of fact based on a series of assumptions. As explained below, those assumptions are contrary to the evidence. There is no proper basis for these findings of fact pressed by Counsel Assisting.
- 34.6 However, DS Kelly's peripheral role and limited knowledge is apparent once the other evidence available to the Commission is properly presented and analysed. DS Kelly did not learn Ms Gobbo was a source because of some operational need. The identity of human sources is always closely held information, and this was particularly so with the identity of any sources providing information to Purana by way of the SDU. So much is clear from the notes that DAI O'Brien prepared for his Operation Posse briefing on 22 November 2005:⁸²⁹
- I probably don't need to mention this topic in this environment it should be understood. If you don't know who the ^{PII} in this operation are then you probably don't need to know. Rest assured nothing is being kept from you. RHS issues in this operation are so critical that the risk has been assessed as extreme.*
- 34.7 Although this briefing occurred well before DS Kelly arrived at Purana, it highlights the secrecy that DAI O'Brien intended to maintain over the involvement of human sources.
- 34.8 So, to adapt the words of DAI O'Brien, despite being a member of Purana, DS Kelly didn't know Ms Gobbo was a source because he didn't need to know. The likelihood is that if DS Kelly had not found out by accident, then he would not have learned Ms Gobbo was a source until much later – if ever.
- 34.9 On the night of Saturday 11 March 2006, DS Kelly and DSC Martin were on an unremarkable surveillance assignment on Mr Cooper in Melbourne's CBD. During that assignment, Officer Sandy White called DS Kelly and said that the surveillance was unnecessary as there was a human source with Mr Cooper.⁸³⁰
- 34.10 Officer White did not tell DS Kelly the identity of the source. DS Kelly gave evidence that it was most likely an SDU member would not identify a human source over a phone call.⁸³¹ Further, DS Kelly did not know Officer White well at that point,⁸³² meaning it is even more unlikely that Officer White would tell DS Kelly that information.
- 34.11 Rather, DS Kelly learned that Ms Gobbo was a source sometime in the days following, when DS Kelly reported his observations of the surveillance to DAI O'Brien. At that point, DAI O'Brien told DS Kelly that Ms Gobbo was providing information to the SDU.⁸³³
- 34.12 The earliest day that DS Kelly could have learned Ms Gobbo was a source was Tuesday 14 March 2006. DS Kelly did not record his conversation with DAI O'Brien about Ms Gobbo's status as a source in his diary for safety and security reasons.⁸³⁴

⁸²⁹ Exhibit RC0470B – Operation Posse commencement briefing, 22 November 2005 (VPL.0005.0096.0001 at .0002) (emphasis added).

⁸³⁰ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [17] (VPL.0014.0038.0001 at .0003).

⁸³¹ T2570.41-43 (J Kelly).

⁸³² T2640.8-10 (J Kelly).

⁸³³ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [18] (VPL.0014.0038.0001 at .0003).

⁸³⁴ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [20] (VPL.0014.0038.0001 at .0003).

However, DS Kelly's diary does indicate that he was on leave on 12 and 13 March 2006,⁸³⁵ making Tuesday 14 March the first day the discussion could have taken place.

- 34.13 Importantly, during that conversation, DAI O'Brien explained to DS Kelly the "safeguards and processes" that were in place to manage concerns that might arise because Ms Gobbo was a barrister.⁸³⁶ The safeguards were not only about Ms Gobbo's safety, but also about the information she was providing.⁸³⁷ DAI O'Brien explained that the SDU would provide information to DAI O'Brien where appropriate to do so, and from there, DAI O'Brien would, where appropriate, provide that information to Purana investigators.⁸³⁸
- 34.14 Following his conversation with DAI O'Brien, DS Kelly had no positive reason to inquire further about Ms Gobbo's informing. As explained in Victoria Police's submissions, source information was understood to be strictly "need to know". In this case, DS Kelly had no operational need to know because:
- (a) DS Kelly had no indication that information Ms Gobbo had supplied was relevant to the investigations he was responsible for. Rather, DS Kelly was actively cultivating his own avenues of investigation and sources of information for those investigations.
 - (b) DS Kelly did not know that Ms Gobbo had been acting for Mr Cooper, so no issue concerning privileged information or conflict could have occurred to him. In any case, he was not responsible for the investigation into Mr Cooper.
- 34.15 Absent an operational need for DS Kelly to know anything further about Ms Gobbo's actual or anticipated use as a human source, it would have been inappropriate and contrary to the "need to know" principle for DS Kelly to ask questions of DAI O'Brien or, indeed, for DAI O'Brien to have volunteered further information to DS Kelly.
- 34.16 Further, DS Kelly had a number of positive reasons not to inquire further about Ms Gobbo's informing:
- (a) At a general level, DS Kelly knew about the detailed registration process for human sources – namely, that registration required subject matter expert advice, thorough risk assessments and approval from senior members of Victoria Police.⁸³⁹ He relied, as he was entitled to do, upon the strength of those processes and policies.
 - (b) In this particular case, DAI O'Brien assured him that Ms Gobbo's use had been sanctioned and approved at the highest level of Victoria Police.⁸⁴⁰ DAI O'Brien did not identify who had given that approval,⁸⁴¹ but DS Kelly understood that "certainly at the lowest level it would have been at the rank of Superintendent".⁸⁴²
 - (c) DS Kelly knew that the SDU was a specialist unit that operated on internationally identified best practice of deliberately separating investigators from having hands-on contact with human sources.⁸⁴³ In other words, he knew that the processes

⁸³⁵ Exhibit RC0236 – Diary of Superintendent Jason Kelly, 12-13 March 2006 (VPL.0005.0123.0001 at .0004).

⁸³⁶ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [18] (VPL.0014.0038.0001 at .0003).

⁸³⁷ T2572.24-32 (J Kelly).

⁸³⁸ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [18](c)-(f) (VPL.0014.0038.0001 at .0003).

⁸³⁹ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [23] (VPL.0014.0038.0001 at .0004).

⁸⁴⁰ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [19] (VPL.0014.0038.0001 at .0003).

⁸⁴¹ T2577.30-32 (J Kelly).

⁸⁴² T2577.20-22 (J Kelly).

⁸⁴³ T2572.34-40 (J Kelly).

had been put in place to deliberately exclude him (as an investigator) from the management of high risk sources.

- (d) DS Kelly knew that matters to do with sources had to remain strictly confidential because of the safety risks if they were identified as human sources.⁸⁴⁴ This strict need for confidentiality meant that if DS Kelly did not need to know certain information, he had no reason to know it and so should not ask about it. Source information was “need to know” information and it would have been seen as thoroughly inappropriate for DS Kelly to be asking about sources relevant to other people’s investigations, particularly high-risk sources being managed by the SDU.

- 34.17 There were numerous critical reasons why DS Kelly would not have sought further information about Ms Gobbo’s informing. There is no basis for an inference that DS Kelly learned more than the mere fact that Ms Gobbo was acting as a human source.

35 DS Kelly did not learn more on 18 April 2006

- 35.1 Counsel Assisting rely on a meeting that occurred on 18 April 2006 as a further matter proving DS Kelly’s knowledge at the time of Mr Cooper’s arrest.⁸⁴⁵ In their submissions, Counsel Assisting assert the following about that meeting, relying on only DS Flynn’s statement:⁸⁴⁶

On 18 April 2006, Messrs Flynn, Kelly, and O’Brien, along with Ms Gobbo’s controller, Mr Sandy White, participated in a briefing in relation to Operation Posse in which they discussed “a strategy” for the approach to the interview of Mr Cooper upon his forthcoming arrest.⁸⁴⁷

- 35.2 Although the connection is unstated, it appears that Counsel Assisting are inviting the Commissioner to infer that what happened at this meeting supports their allegation that the investigators present were part of a plan to use Ms Gobbo to encourage Mr Cooper to implicate his associates once he was arrested.⁸⁴⁸
- 35.3 Counsel Assisting’s explicit assertion about this meeting and the inference they urge the Commissioner to make are unacceptable distortions of the available evidence. Counsel Assisting not only omit the fact that other officers from other specialist support units were present at the meeting, but ignore important evidence given by those officers that they had no knowledge of Ms Gobbo’s role. Counsel Assisting fail to refer to relevant diary records, statements and even oral evidence, all of which demonstrate what was actually discussed at this meeting.
- 35.4 Moreover, in respect of DS Kelly personally, Counsel Assisting ignore the content of DS Kelly’s diary, which indicates that he was only present for part of this meeting. The officers from the specialist units were present the entire time DS Kelly was at the meeting. As explained below, this makes it extremely unlikely that DS Kelly was present for any discussion about Ms Gobbo’s role as a human source – if there indeed was any such discussion at that meeting.
- 35.5 The available evidence indicates that the meeting on 18 April 2006 was for the proper investigative purpose of coordinating the various specialist teams and resources needed to gather evidence against Mr Cooper and conduct his arrest. Any discussion

⁸⁴⁴ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [20] (VPL.0014.0038.0001 at .0003).

⁸⁴⁵ Counsel Assisting’s Submissions at pp 474-475 [1921.6], Vol 2.

⁸⁴⁶ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [42]-[43] (VPL.0014.0042.0001 at .0007-0008).

⁸⁴⁷ Counsel Assisting’s Submissions at p 420 [1821], Vol 2.

⁸⁴⁸ See, eg, in respect of DS Kelly, Counsel Assisting’s Submissions at p 476 [1922.5], Vol 2.

about Mr Cooper's interview following his arrest was in general terms only and could not have involved any discussion of using Ms Gobbo to convince him to cooperate.

Attendees at the 18 April 2006 meeting and their significance

- 35.6 First, Counsel Assisting omit the highly significant fact that DSS Michael O'Connor from the State Surveillance Unit and Officer Highway from the Technical Support Unit attended the meeting on 18 April 2006. Their presence cannot have been overlooked, as they are mentioned in the only source of evidence relied upon by Counsel Assisting – DS Flynn's statement.⁸⁴⁹
- 35.7 This fact is significant on a general level because it is extremely unlikely (to the point of being inconceivable) that Officer White and the investigators would discuss Ms Gobbo's role as a source in front of these officers. And it would be impossible to have any conversation about using Ms Gobbo to convince Mr Cooper to assist without disclosing the fact she was a source.
- 35.8 However, the evidence before the Commission goes further – it demonstrates that neither Officer Highway nor DSS O'Connor knew Ms Gobbo was a source at the time of this meeting.
- 35.9 Officer Highway's statement records that he did not know Ms Gobbo was a source while at Victoria Police, and that he first became aware of this through media reporting.⁸⁵⁰
- 35.10 DSS O'Connor's statement addresses this meeting in particular, stating that while he assumed a human source was involved because of Officer Sandy White's presence, he did not recall being told the identity of any sources and that there was no reason for him to ask.⁸⁵¹ DSS O'Connor believed he learned Ms Gobbo was a source in around June 2006, in the context of separate discussions around unauthorised disclosure of information about surveillance targets.⁸⁵²

Evidence about discussions at the 18 April 2006 meeting

- 35.11 Counsel Assisting's submissions also ignore other evidence available about what was discussed at the meeting on 18 April 2006. Those sources of evidence indicate that the discussion centred on the complex range of surveillance, technical and investigation resources needed to gather evidence about Mr Cooper's clandestine laboratory:
- (a) Diary notes from DAI O'Brien,⁸⁵³ Officer Sandy White⁸⁵⁴ and Officer Highway⁸⁵⁵ record discussion about the precise locations in which to place surveillance cameras.
 - (b) DSS O'Connor's statement and diary record that he had repeated discussions with DAI O'Brien and DS Flynn that week concerning the surveillance necessary to follow Mr Cooper and gather evidence about the drugs he was manufacturing.⁸⁵⁶ DSS O'Connor's evidence was that Mr Cooper was "particularly aware of possible surveillance and often took fairly drastic anti-

⁸⁴⁹ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [42] (VPL.0014.0042.0001 at .0007). See also Exhibit RC0560B – Diary of Inspector Dale Flynn, 18 April 2006 (VPL.0098.0059.0057 at .0057).

⁸⁵⁰ Exhibit RC1223B – Statement of Officer 'Highway', 10 October 2019 at [14] (VPL.0014.0074.0001 at .0003).

⁸⁵¹ Exhibit RC1243B – Statement of Mr Michael O'Connor, 26 November 2019 at [20](b) (VPL.0014.0099.0001 at .0003).

⁸⁵² Exhibit RC1243B – Statement of Mr Michael O'Connor, 26 November 2019 at [29]-[30] (VPL.0014.0099.0001 at .0005).

⁸⁵³ T5732.18-19 (J O'Brien).

⁸⁵⁴ Exhibit RC0391B – Diary of Officer 'White', 18 April 2006 (VPL.2000.0001.0677 at .0713-0714); see also T5732.39-42 (J O'Brien).

⁸⁵⁵ Untendered diary of Officer 'Highway', 18 April 2006 (VPL.0098.0157.0001 at .0002).

⁸⁵⁶ Exhibit RC1243B – Statement of Mr Michael O'Connor, 26 November 2019 at [19] (VPL.0014.0099.0001 at .0003).

surveillance measures”, which meant significant surveillance resources were needed to locate him and gather evidence.⁸⁵⁷

- (c) Diary notes taken by both DAI O’Brien⁸⁵⁸ and DS Flynn⁸⁵⁹ record that the discussion descended even to the detail of the direction from which DS Flynn would approach the lab when the arrest took place.

- 35.12 There was discussion about Mr Cooper cooperating with police, but the evidence indicates it was general discussion about convincing someone who was caught red-handed to cooperate with police. This is entirely orthodox policing and part of the standard approach to interviewing someone who has been arrested. As DS Flynn’s statement records, this discussion likely centred on plans to put it to Mr Cooper “that he would get a significantly reduced jail sentence for assisting” and so would spend less time away from his family.⁸⁶⁰
- 35.13 In short, the evidence that Counsel Assisting omitted from their submissions demonstrates that the meeting on 18 April 2006 was primarily a discussion about the specialist nitty-gritty of resources and capability needed to gather evidence against and arrest Mr Cooper. There is simply no evidence to indicate the discussion was part of some plan to use Ms Gobbo to encourage Mr Cooper to implicate his associates.

DS Kelly only present for part of 18 April 2006 meeting

- 35.14 Taken together, diary records for DAI O’Brien,⁸⁶¹ Officer Sandy White,⁸⁶² DS Flynn⁸⁶³ and DSS O’Connor⁸⁶⁴ all indicate that the meeting on 18 April 2006 lasted from around 10:00 am until around 12:00 noon or 12:15 pm. Officer Highway’s diary note indicates he left the meeting at 11:00 am.⁸⁶⁵
- 35.15 DS Kelly’s diary indicates that he was present at the meeting for, at most, the first hour. Instead, DS Kelly has detailed records for another meeting he attended from 11:00 am until 12:30 pm with members of the AFP and Australian Customs.⁸⁶⁶ That meeting concerned Operation Posse but focused on one of DS Kelly’s targets – Simon “Speedy” Khoury.
- 35.16 This fact is important because it means that the specialist unit officers were present for the entire time that DS Kelly was at the meeting. Accordingly, even if there was any discussion about Ms Gobbo’s role, DS Kelly could not have been there for it.
- 35.17 It makes complete sense that DS Kelly was not present for the entire meeting. After all, the investigation into Mr Cooper was not his investigation. He was generally kept apprised of planning for Mr Cooper’s arrest because it was a complex operation that needed significant support from a large number of officers from outside the investigation – of which DS Kelly was but one.
- 35.18 It makes even more sense that DS Kelly left that meeting to receive information about his own targets from other law enforcement agencies. As it stands, the meetings on 18 April 2006 are a powerful example of how DS Kelly had his own separate targets to

⁸⁵⁷ Exhibit RC1243B – Statement of Mr Michael O’Connor, 26 November 2019 at [19] (VPL.0014.0099.0001 at .0003).

⁸⁵⁸ T5732.21-23 (J O’Brien).

⁸⁵⁹ Exhibit RC0560B – Diary of Inspector Dale Flynn, 18 April 2006 (VPL.0098.0059.0057 at .0057).

⁸⁶⁰ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [42] (VPL.0014.0042.0001 at .0008).

⁸⁶¹ Untendered diary of Mr James (Jim) O’Brien, 18 April 2006 (VPL.0005.0126.0116 at .0116).

⁸⁶² Exhibit RC0391B – Diary of Officer ‘White’, 18 April 2006 (VPL.2000.0001.0877 at .0713-0714).

⁸⁶³ Exhibit RC0560B – Diary of Inspector Dale Flynn, 18 April 2006 (VPL.0098.0059.0057 at .0057).

⁸⁶⁴ Untendered diary of Mr Michael O’Connor, 18 April 2006 (VPL.0005.0228.0025 at .0030).

⁸⁶⁵ Untendered diary of Officer ‘Highway’, 18 April 2006 (VPL.0098.0157.0001 at .0002).

⁸⁶⁶ Untendered diary of Superintendent Jason Kelly, 18 April 2006 (VPL.0005.0144.0126 at .0126).

pursue and how Mr Cooper's investigation was clearly a secondary priority for him and his team.

DS Kelly not at other meetings leading up to Mr Cooper's arrest

- 35.19 An additional relevant factor is that DS Kelly was not present at other meetings to which Counsel Assisting attach significance. In the lead up to Mr Cooper's arrest, other Purana investigators and the SDU members had other meetings related to Mr Cooper's arrest:
- (a) On the morning of 19 April 2006, other Purana investigators met with SDU members in the morning and discussed Mr Cooper's impending arrest.
 - (b) In the evening of 19 April 2006, Officers White, Smith and Green from the SDU met and discussed again discussed Mr Cooper's arrest.⁸⁶⁷
 - (c) On 20 April 2006, Officers White and Green met with Ms Gobbo and discussed Mr Cooper's impending arrest, among other matters. Counsel Assisting attach particular significance to this meeting, to the extent they allege that the transcript of this meeting demonstrates that the SDU members were "knowingly engaged in an improper deception" of Mr Cooper.⁸⁶⁸
- 35.20 DS Kelly was not present at any of these meetings. Nor is there any evidence to indicate that DS Kelly was ever briefed about what took place.
- 35.21 Indeed, it is unlikely that DS Kelly would have been briefed about them, given that he was occupied with crucial steps in his own investigations – in particular, urgent preparation for his meeting with Mr Bayeh on 21 April 2006, considered in detail below.

36 DS Kelly's limited role in the arrest of Mr Cooper

- 36.1 The events of 22 April 2006 confirm that DS Kelly continued in his secondary and merely functionary role in relation to Mr Cooper. Understood correctly, DS Kelly's role involved only assisting with menial tasks. Doing so was a continuation of the merely functionary role that DS Kelly had played when occasionally assisting with routine surveillance.
- 36.2 There are three important points of context to understand when considering DS Kelly's limited role in Mr Cooper's arrest. First, the detailed Operation Order for Mr Cooper's arrest did not assign any command role or responsibilities to DS Kelly.⁸⁶⁹ That Operation Order identified a command team made up of a Detective Superintendent, a Detective Inspector, a Detective Acting Inspector and a Detective Acting Senior Sergeant.⁸⁷⁰ DAI O'Brien had been an Acting Inspector for the entire period that DS Kelly had been at Purana and DASS Flynn had been an Acting Senior Sergeant since at least mid-March 2006.⁸⁷¹ This meant that, in the chain of command, DS Kelly reported to DASS Flynn who in turn reported to DAI O'Brien.
- 36.3 DS Kelly had no role in the command team. DS Kelly did not even have a specified role in charge of one of the 12 teams of officers assigned to assist. Rather, DS Kelly is

⁸⁶⁷ Counsel Assisting Submissions at p 420 [1822], Vol 2.

⁸⁶⁸ Counsel Assisting Submissions at pp 423-424 [1825], Vol 2.

⁸⁶⁹ Untendered Operation Posse, Phase One, Operation Order, execution date to be determined (VPL.0099.0117.0289).

⁸⁷⁰ Untendered Operation Posse, Phase One, Operation Order, execution date to be determined at [14] (VPL.0099.0117.0289 at .0305).

⁸⁷¹ Exhibit RC0560B – Diary of Inspector Dale Flynn, 12 March 2006 (VPL.0010.0007.0001 at .0054).

merely listed as one of eight Detective Sergeants to whom the Operation Order was distributed.⁸⁷²

- 36.4 Second, on the days leading up to Mr Cooper's arrest, DS Kelly was in the midst of complex and sensitive aspects of his own investigations. Leading up to Mr Cooper's arrest, DS Kelly's crew had made their own arrests, acting on information received from an independent external law enforcement agency [PII] in arresting [PII].⁸⁷³
- 36.5 Further, as his diary records,⁸⁷⁴ the day before Mr Cooper's arrest, DS Kelly met one-on-one with Tony Bayeh to discuss ongoing offending in an effort to gather further incriminating evidence against him. As DS Kelly's detailed diary notes record, there were a number of complex aspects to manage in that meeting – including physical surveillance, coordination of a standby arrest crew, other surveillance and an unpredictable suspect who was deeply involved in organised crime. The following "To Do" list recorded in DS Kelly's diary for 20 April 2006 gives some sense of the numerous moving parts necessary to cover the meeting the next day.⁸⁷⁵

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Date / Time	Particulars of Duties	Claims
Apr 06	To do * collect equipment (Techs) - OJK/BEAL	✓
	* email update surveillance (BAYEH)	✓
21/4.	* SPU - update phones (complete).	
	* email CCR'S - AFP [redacted] AFP Name	✓
	* Check [redacted] [address] St. Pascoe vale.	✓
	* CCR'S (BAYEH) - [redacted] [mobile number]	
	* Ring crew 705 (ring 1pm).	

- 36.6 Evidence gathered at the meeting was used in convicting Tony Bayeh for offences relating to the chemicals seized the week before.
- 36.7 Importantly, DS Kelly and his crew continued to work on this matter up to and beyond the day of Mr Cooper's arrest. On 26 April 2006, DS Kelly and his crew arrested Mr Bayeh due to the evidence that had been independently gathered against him.⁸⁷⁶
- 36.8 Third, on the day of the arrest, DS Kelly was one of numerous officers recalled to duty on short notice to assist with the arrest. He was simply one officer in an all-hands-on-deck situation. The decision to move to the arrest phase was taken on the morning of 22 April, with the arrest taking place at 2:20 pm.⁸⁷⁷ However, DS Kelly was not recalled to duty until 1:00 pm and did not even leave the Purana office until around 2:15 pm.⁸⁷⁸ Many other officers from Purana were similarly hauled in to assist – including officers were recalled to duty despite having finished a night shift,⁸⁷⁹ despite being on periods of

⁸⁷² Untendered Operation Posse, Phase One, Operation Order, execution date to be determined at p 24 (VPL.0099.0117.0289 at .0312).

⁸⁷³ Exhibit RC1332B – Statement of Sergeant Tim Johns, 11 December 2019 at [11]-[12] (VPL.0014.0118.0001 at .0002).

⁸⁷⁴ Untendered diary of Superintendent Jason Kelly, 21 April 2006 (VPL.0005.0144.0127 at .0128-0129).

⁸⁷⁵ Untendered diary of Superintendent Jason Kelly, 21 April 2006 (VPL.0005.0144.0127 at .0128).

⁸⁷⁶ Exhibit RC1332B – Statement of Sergeant Tim Johns, 11 December 2019 at [34] (VPL.0014.0118.0001 at .0006).

⁸⁷⁷ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [48] (VPL.0014.0042.0001 at .0009).

⁸⁷⁸ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [33](a)-(b) (VPL.0014.0038.0001 at .0006).

⁸⁷⁹ Exhibit RC0266B – Statement of Detective Sergeant Paul Rowe, 25 June 2019 at [69] (VPL.0014.0035.0028 at .0037).

- scheduled leave,⁸⁸⁰ and despite working in completely different areas of Purana, such as the asset confiscation team.⁸⁸¹
- 36.9 In that context, Counsel Assisting point to the following tasks as the high-water mark of DS Kelly's involvement in the events of 22 April 2006:
- (a) DS Kelly administered a caution and rights to **Mr Agrum** at the arrest location,⁸⁸²
 - (b) DS Kelly and DASS Flynn together facilitated telephone contact between Ms Gobbo and **Mr Agrum**⁸⁸³ and
 - (c) At 7:10 pm, five hours after the arrest, DS Kelly escorted Ms Gobbo from the foyer of the St Kilda Road police station up to the Purana Operations room on the 16th floor.⁸⁸⁴
- 36.10 Three brief comments are necessary. First, the second of these facts is incorrect. Ms Gobbo's phone number appears in DS Kelly's diary notes for the day of the arrest and his diary notes that she has been contacted. However, it appears from DASS Flynn's statement that it was DASS Flynn who facilitated the telephone calls between Ms Gobbo, **Mr Agrum** and Mr Cooper.⁸⁸⁵
- 36.11 It makes sense that DASS Flynn would be the one to do this. The decision to allow someone to contact a lawyer or other person after arrest is a substantive decision that requires knowledge of the investigation, as there may be concerns about destruction of evidence especially if there are outstanding search warrants to execute.⁸⁸⁶ Indeed, in this case, Mr Cooper and **Mr Agrum** had earlier (properly) been denied the opportunity to contact others because of such concerns.⁸⁸⁷ Also, one would expect that a lawyer would have questions to ask the investigator – such as why has the person been arrested, what are the proposed charges and what evidence does the investigator rely on. DASS Flynn could answer these questions, DS Kelly could not.
- 36.12 Second, the evidence cited by Counsel Assisting (DS Kelly's diary) indicates only that DS Kelly took Ms Gobbo to the 16th floor, not the Purana Operations Room. To the extent that Counsel Assisting imply that DS Kelly may have taken Ms Gobbo to a secure or confidential area, that implication is not correct.
- 36.13 Third, the two remaining tasks prove nothing other than DS Kelly was responsible for menial process tasks that – to put it bluntly – could have been assigned to a first year Constable. DS Kelly's diary also indicates he moved onto other matters not involving Mr Cooper shortly after arriving at back at St Kilda Road. For the remainder of the afternoon and evening, when other investigators and the SDU members were speaking to Mr Cooper and Ms Gobbo, DS Kelly was occupied with other procedural tasks – such as making inquiries about another individual, Dominic Barbaro, conducting LEAP checks, allocating firearms to the incoming night shift crew officers and following up the Special Projects Unit to confirm that an SPU officer would be available for the next day.⁸⁸⁸

⁸⁸⁰ Exhibit RC1332B – Statement of Sergeant Tim Johns, 11 December 2019 at [17] (VPL.0014.0118.0001 at .0003).

⁸⁸¹ For example, DSC Tim Robinson was brought in to assist with the arrest despite working on asset confiscation matters at Purana: see Exhibit RC1332B – Statement of Sergeant Tim Johns, 11 December 2019 at [17] (VPL.0014.0118.0001 at .0003).

⁸⁸² Counsel Assisting's Submissions at p 425 [1831.1], Vol 2.

⁸⁸³ Counsel Assisting's Submissions at p 427 [1831.9], Vol 2.

⁸⁸⁴ Counsel Assisting's Submissions at p 429 [1831.17], Vol 2.

⁸⁸⁵ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [49] (VPL.0014.0042.0001 at .0009).

⁸⁸⁶ See *Crimes Act 1958* (Vic), s 464C(1)(c).

⁸⁸⁷ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [48] (VPL.0014.0042.0001 at .0009).

⁸⁸⁸ Exhibit RC0236 – Diary of Superintendent Jason Kelly, 22 April 2006 (VPL.0005.0144.0001 at .0005).

- 36.14 To further illustrate the point, the following is a list of events from 22 April 2006 that Counsel Assisting identify in which DS Kelly played no part and had no knowledge of:⁸⁸⁹
- (a) An SDU member speaking to Ms Gobbo on the morning of 22 April 2006;⁸⁹⁰
 - (b) Ms Gobbo being given instructions by her handlers about what to do if she saw them after the arrest;⁸⁹¹
 - (c) Information being passed from Ms Gobbo to an SDU member about her discussions with Mr Cooper;⁸⁹²
 - (d) The alleged discussions between Supt Biggin, DSS O'Connor, DASS Flynn and DAI O'Brien about the progress of the investigation;⁸⁹³
 - (e) An SDU member, Officer Smith, being present at St Kilda Road;⁸⁹⁴
 - (f) The PII conversation with Mr Cooper about why he should cooperate;⁸⁹⁵
 - (g) Any alleged conversation between Ms Gobbo and Mr Cooper and any of DAI O'Brien, DASS Flynn and the SDU member were present⁸⁹⁶ or when only DASS Flynn was present;⁸⁹⁷ and
 - (h) Ms Gobbo leaving St Kilda Road and meeting up with SDU members at a nearby location.⁸⁹⁸

DS Kelly's knowledge that Ms Gobbo had provided information leading to Mr Cooper's arrest

- 36.15 The final matter that Counsel Assisting rely upon is DS Kelly's awareness that Ms Gobbo had supplied information that led to Mr Cooper's laboratory being located.
- 36.16 DS Kelly knew that sources other than Ms Gobbo were providing relevant information about Mr Cooper's activities. DS Kelly had himself received information about Mr Cooper from a contact at the ACC. Each time, as Mr Cooper was not one of DS Kelly's targets, DS Kelly passed this information on to those who were investigating him.⁸⁹⁹ As DS Kelly's diary indicates, DS Kelly was seeking information on his own targets when his ACC contact told him information about Mr Cooper:
- (a) On 17 March 2006, DS Kelly was told that Mr Cooper was manufacturing drugs for Horty Mokbel.⁹⁰⁰
 - (b) On 20 March 2006, DS Kelly was again told that Mr Cooper was cooking for "Mokbel & Co".⁹⁰¹
- 36.17 DS Kelly also knew there was ongoing physical surveillance and other surveillance on Mr Cooper, as he and his crew had assisted with that surveillance on a few occasions.⁹⁰²

⁸⁸⁹ These matters are listed without accepting that they occurred in the way Counsel Assisting allege.

⁸⁹⁰ Counsel Assisting Submissions at p 424 [1829], Vol 2.

⁸⁹¹ Counsel Assisting Submissions at p 425 [1831.4], Vol 2.

⁸⁹² Counsel Assisting Submissions at p 427 [1831.12], Vol 2.

⁸⁹³ Counsel Assisting Submissions at p 427 [1831.13], Vol 2.

⁸⁹⁴ Counsel Assisting Submissions at p 428 [1831.15], Vol 2.

⁸⁹⁵ Counsel Assisting Submissions at pp 428-429 [1831.16], Vol 2.

⁸⁹⁶ Counsel Assisting Submissions at pp 429-430 [1831.19.2], Vol 2.

⁸⁹⁷ Counsel Assisting Submissions at pp 430-431 [1831.19.4], Vol 2.

⁸⁹⁸ Counsel Assisting Submissions at p 432 [1831.23], Vol 2.

⁸⁹⁹ Exhibit RC0235 – Diary of Superintendent Jason Kelly, 20 March 2006 (VPL.0005.0123.0001 at .0006).

⁹⁰⁰ Untendered diary of Superintendent Jason Kelly, 17 March 2006 (VPL.0005.0144.0120 at .0120).

⁹⁰¹ Untendered diary of Superintendent Jason Kelly, 20 March 2006 (VPL.0005.0144.0121 at .0123).

⁹⁰² See above at 34.9.

- 36.18 These facts are important because, from outside of the investigation, DS Kelly did not know to what extent Ms Gobbo's information had assisted. In fact, he knew there was also other available sources of information about Mr Cooper.
- 36.19 Despite this, Counsel Assisting draw the inference that because DS Kelly knew Ms Gobbo had supplied information about Mr Cooper and DS Kelly took comfort from assurances given to him, that he understood the risks to the proper administration of justice created by Ms Gobbo's role as a human source and Mr Cooper's lawyer.⁹⁰³
- 36.20 On the basis of that asserted inference, Counsel Assisting indirectly insinuate that DS Kelly failed to discharge his duties under s 86L(2A) of the *Police Regulation Act*, because he failed to complain about DAI O'Brien's conduct to a more senior officer.
- 36.21 As a first matter, this allegation cannot be accepted because Counsel Assisting's asserted inference is contrary to the evidence. The proper inference to be drawn is that DS Kelly never understood or appreciated any risk to the proper administration of justice. Rather, he was confident that any issues to do with Ms Gobbo's role were being appropriately managed by those who were in charge and had full knowledge of the facts.
- 36.22 In his statement, DS Kelly explained that while he was not completely comfortable with Ms Gobbo attending as Mr Cooper's lawyer, he was confident that those in charge would have appropriate strategies in place.⁹⁰⁴ In his oral evidence, DS Kelly further explained that the "scenario was unique"⁹⁰⁵ and that it was something he had never seen or been involved with before.⁹⁰⁶
- 36.23 As established above, DS Kelly was merely on the periphery of Mr Cooper's arrest. He had little knowledge of the history of the investigation. He had little, if any, knowledge of Ms Gobbo's interactions with the SDU. He has never listened to the tapes of their meetings or read the ICRs detailing their conversations.⁹⁰⁷
- 36.24 There is no other direct evidence about whether DS Kelly understood that Ms Gobbo's role might affect the administration of justice. Again, this is because Counsel Assisting never put such an allegation to DS Kelly. Rather, Counsel Assisting's questions were limited to the effect of Ms Gobbo providing information that was subject to legal professional privilege.⁹⁰⁸
- 36.25 In fact, Counsel Assisting never asked DS Kelly a single question about conflict or the potential impact of conflict.
- 36.26 There is, however, general evidence that, in circumstances where he was not the primary investigator, DS Kelly believed that any conflict created by Ms Gobbo's dual role as a human source was being properly managed. Counsel for Ms Gobbo, Mr Collinson, asked DS Kelly a number of questions about whether he had concerns about Ms Gobbo acting as a human source.⁹⁰⁹ DS Kelly's response to one of those questions brings together his understanding on the subject completely and precisely:

If I was directly involved, then perhaps I would have thought about it in greater depth, but the fact that it was being managed by another unit outside of my area

⁹⁰³ Counsel Assisting Submissions at p 475 [1921.9]. Vol 2.

⁹⁰⁴ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [34] (VPL.0014.0038.0001 at 0006).

⁹⁰⁵ T2608.24-28 (J Kelly).

⁹⁰⁶ T2623.12-15 (J Kelly).

⁹⁰⁷ T2596.11-12 (J Kelly).

⁹⁰⁸ See, eg, T2608.14-28 (J Kelly).

⁹⁰⁹ See T2621-T2623 (J Kelly).

*of responsibility and I was the recipient of the information through that sterile corridor, I was comfortable that appropriate safeguards and processes would have been put in place by the organisation.*⁹¹⁰

- 36.27 Had Counsel Assisting asked DS Kelly if he appreciated that Ms Gobbo's role might affect the administration of justice, then he almost certainly would have answered in the same way he answered Mr Collinson's question. But Counsel did not ask him. Instead, they now seek to construct findings out of a loosely drawn inference.
- 36.28 DS Kelly's evidence was that he positively believed that appropriate steps had been taken to manage issues arising from Ms Gobbo's position. DS Kelly was confident that DAI O'Brien would have put in place appropriate safeguards to deal with those issues.⁹¹¹
- 36.29 DAI O'Brien was himself subject to oversight, both generally and on the day of Mr Cooper's arrest. The Operation Order for Mr Cooper's arrest identified both an Acting Superintendent and Inspector as responsible for aspects of the operation.⁹¹² On the evening following Mr Cooper's arrest, Superintendent Tony Biggin was present at St Kilda Road.⁹¹³ And, as set out in his statement, DS Kelly knew that DAI O'Brien was also reporting to the Executive Management Team of Victoria Police's Crime Command.⁹¹⁴ There is other evidence that confirms DAI O'Brien was reporting to Superintendent Richard Grant about Mr Cooper's arrest, who was in turn updating Assistant Commissioner Simon Overland.⁹¹⁵
- 36.30 As it stands, the proper inference from the evidence is that DS Kelly never understood or appreciated any risk to the proper administration of justice, as he was not involved in managing the issue and he was entitled to rely upon those who were dealing with it.

No legal basis to find breach of obligation to complain to senior officer

- 36.31 As a matter of law, DS Kelly's belief that there were appropriate safeguards in place to manage Ms Gobbo's position is necessarily and conclusively fatal to Counsel Assisting's insinuation that DS Kelly breached his duties under the *Police Regulation Act*.
- 36.32 As Counsel Assisting identify in Volume 1 of their submissions,⁹¹⁶ at the time of Mr Cooper's arrest, Victoria Police officers were obliged under s 86L(2A) of the *Police Regulation Act* to complain to a more senior officer where that officer "has reason to believe" that another member is guilty of serious misconduct:

A member of the force must make a complaint to a member of the force of a more senior rank to that member, or to the Director, about the conduct of another member of the force if he or she has reason to believe that the other member is guilty of serious misconduct.

- 36.33 Serious misconduct is defined in s 86A:
"serious misconduct", in relation to a member of the force, means—

⁹¹⁰ T2622.45-T2623.4 (J Kelly).

⁹¹¹ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [22] (VPL.0014.0038.0001 at .0004).

⁹¹² Untendered Operation Posse, Phase One, Operation Order, execution date to be determined at [14] (VPL.0099.0117.0289 at .0305).

⁹¹³ Exhibit RC0577C – Statement of Mr Anthony (Tony) Biggin, 25 July 2019 at [46] (VPL.0014.0041.0008 at .0016).

⁹¹⁴ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [21] (VPL.0014.0038.0001 at .0003).

⁹¹⁵ Exhibit RC1256B – Statement of Mr Richard Grant, 28 November 2019 at [58]-[59] (VPL.0014.01013.0001 at .0009-0010).

⁹¹⁶ See above.

- (a) conduct which constitutes an offence punishable by imprisonment; or
 - (b) conduct which is likely to bring the force into disrepute or diminish public confidence in it; or
 - (c) disgraceful or improper conduct (whether in the member's official capacity or otherwise).
- 36.34 The trigger for the obligation to complain is the officer having "reason to believe" that another member has engaged in serious misconduct. Unanimous High Court authority demonstrates that "reason to believe" requires, first and foremost, actual belief on the part of the decision-maker. In *Boucaut Bay Co Ltd (in liq) v The Commonwealth*, the High Court unanimously held that actual belief was required where the decision-maker needed "reason to believe" before terminating certain rights.⁹¹⁷
- In my opinion, if at any time the Minister in the natural and ordinary course of his official duties acted on information of his trusted officers and formed a belief in the general terms mentioned in the latter part of the first paragraph of clause 15 that the contract was not being fairly carried out, he had power to terminate the contract without the formality of an inquiry. The one condition of his action is that he had reason to believe, and that implies actual belief.*
- 36.35 Subsequent authority confirms that "reason to believe" requires both actual belief and that the actual belief be based on reasonable grounds.⁹¹⁸
- 36.36 The particular formulation "reason to believe" was evidently chosen for s 86L(2A) specifically and deliberately. There are numerous statutory powers and duties in the *Police Regulation Act 1958* (Vic) but none of them are conditioned on "reason to believe". Instead, they expressly refer to "reasonable grounds to believe"⁹¹⁹ or where it "appears ... that there *may be grounds*".⁹²⁰ This includes mandatory obligations, such as the Chief Commissioner's mandatory obligation in s 82(1) to inquire into whether an officer is fit for duty, which is enlivened when the Chief Commissioner "reasonably believes".
- 36.37 The consequence of this is that the obligation to complain in s 86L(2A) is triggered only in circumstances where an officer actually believes that another officer is guilty of serious misconduct. If the officer forms that belief, then it must be on reasonable grounds. But if they do not form that belief, then the obligation is not triggered.
- 36.38 Put in its bald terms, DS Kelly's obligation to complain only arose where he actually believed that DAI O'Brien had acted criminally, disgracefully, improperly or in a way that would bring Victoria Police into disrepute or diminish public confidence in it. Given DS Kelly's evidence that he was positively satisfied that DAI O'Brien and those supervising him had taken appropriate steps,⁹²¹ the obligation to complain never arose.

⁹¹⁷ *Boucaut Bay Co Ltd (in liq) v The Commonwealth* (1927) 40 CLR 98, 106 (Isaacs ACJ, Gavan Duffy, Powers and Rich JJ agreeing) (emphasis added). Senior Counsel for the Commonwealth was Owen Dixon KC.

⁹¹⁸ *WA Pines Pty Ltd v Bannerman* (1980) 41 FLR 175 at 186 (Lockhart J; Bowen CJ agreeing); *Hammond v Power* [2006] VSCA 25 [105] (Chernov JA; Maxwell P agreeing).

⁹¹⁹ *Police Regulation Act 1958* (Vic), s 86KB(5).

⁹²⁰ *Police Regulation Act 1958* (Vic), s 86P(2).

⁹²¹ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [34] (VPL.0014.0038.0001 at .0006).

37 Other errors and unsustainable inferences in Counsel Assisting's submissions

- 37.1 There are also four further aspects of Counsel Assisting's summary of evidence concerning DS Kelly at paragraph [1921] and the proposed findings at paragraph [1922] that are unsustainable based on the evidence before the Commission.

Ms Gobbo was never identified as source of specific information before Mr Cooper's arrest

- 37.2 The evidence establishes that members of the SDU did at times pass on information to DS Kelly and sometimes identified Ms Gobbo as the source.⁹²² However, the evidence also establishes that this could not have occurred until June 2006 at the earliest, well after Mr Cooper's arrest.
- 37.3 In his statement, DS Kelly stated that he was "sometimes aware that Ms Gobbo was the source of information" that he received from SDU members.⁹²³ His statement was not specific about when this occurred, other than stating it occurred "[w]hile I was a member of the Purana Task Force".⁹²⁴ That was a three year period between 2006 and 2009.⁹²⁵
- 37.4 When questioned by Counsel Assisting, DS Kelly somewhat narrowed the timeframe by noting that the handlers were more careful not to identify Ms Gobbo "in the early days".⁹²⁶
- 37.5 On DS Kelly's evidence alone, it should be inferred that SDU members did not identify Ms Gobbo as the source of information given to DS Kelly before Mr Cooper's arrest. That arrest took place just two months after DS Kelly arrived at Purana and one month after DS Kelly became of Ms Gobbo's role as a human source. In the context of DS Kelly's three years at Purana, Mr Cooper's arrest certainly falls within the "early days" when SDU members were closely guarded with DS Kelly about Ms Gobbo's identity.
- 37.6 This inference is corroborated by the SDU's records. The ICRs maintained by the SDU do not record any contact between SDU handlers and DS Kelly until 16 June 2006. The first instance of an SDU handler speaking to DS Kelly about Ms Gobbo is recorded in ICR 35, where Officer Green contacts DS Kelly about a person who had been arrested that day.⁹²⁷
- 37.7 Accordingly, any instance of an SDU handler telling DS Kelly that Ms Gobbo was the source of information must have occurred after Mr Cooper's arrest. Any contact between DS Kelly and members of the SDU therefore cannot be relevant to DS Kelly's state of knowledge at the time of Mr Cooper's arrest.

Unlikely that DAI O'Brien identified Ms Gobbo as source of information before Mr Cooper's arrest

- 37.8 Counsel Assisting rely on evidence that DAI O'Brien would verbally pass on information to DS Kelly, identifying that it came from Ms Gobbo.⁹²⁸

⁹²² Counsel Assisting Submissions at p 474 [1921.4]. Vol 2.

⁹²³ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [24] (VPL.0014.0038.0001 at .0004).

⁹²⁴ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [24] (VPL.0014.0038.0001 at .0004).

⁹²⁵ Exhibit RC0234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [8] (VPL.0014.0038.0001 at .0001).

⁹²⁶ T2581.23-36 (J Kelly).

⁹²⁷ Exhibit RC0281 – ICR3838 (035), 16 June 2006 (VPL.2000.0003.1913 at .1918).

⁹²⁸ Counsel Assisting Submissions at p 474 [1921.3]. Vol 2.

- 37.9 There is no evidence that this happened before Mr Cooper's arrest. DS Kelly accepted the general proposition that DAI O'Brien would "sometimes say" that Ms Gobbo was the source of information supplied by the SDU.⁹²⁹ Neither the context nor other evidence clarified the time period when this occurred. It could have been any time within the three years that DS Kelly was at Purana.
- 37.10 Other evidence indicates it is highly unlikely that DAI O'Brien mentioned to DS Kelly that Ms Gobbo was the source of information before Mr Cooper's arrest:
- (a) DAI O'Brien had no reason to do so, as information Ms Gobbo was supplying about Mr Cooper was not relevant to DS Kelly's investigations. DS Kelly was pursuing separate targets based on information he had himself obtained from other avenues.
 - (b) DAI O'Brien adopted a strict need-to-know approach to sources at Purana, as explicitly set out in his November 2005 Operation Posse briefing.⁹³⁰ DS Kelly was only told of Ms Gobbo's role by happenstance on a routine surveillance operation.
 - (c) DS Kelly was also a new member of the Purana team, having only started there on 20 February 2006. DS Kelly did not yet have a close working relationship with DAI O'Brien. Unlike others at Purana, DS Kelly had not worked within the same clandestine laboratory unit as DAI O'Brien at the MDID.
- 37.11 Taken together, this evidence means that DAI O'Brien telling DS Kelly that Ms Gobbo was the source of information in this early period would have involved DAI O'Brien gratuitously disclosing high-risk source information for no operational purpose to an officer he had worked with for a matter of weeks. This proposition need only be stated to be rejected.
- 37.12 On that basis, paragraph [1921.3] must be excluded from the summary of evidence relevant to Mr Kelly's knowledge and conduct concerning Mr Cooper's arrest.

No evidential basis for finding that DS Kelly knew of an intention not to disclose

- 37.13 There is no evidential basis for Counsel Assisting's assertion that DS Kelly knew Victoria Police had no intention to disclose Ms Gobbo's role.⁹³¹ There are three points to make about this.
- 37.14 First, Counsel Assisting never put it to Mr Kelly that he personally should have disclosed Ms Gobbo's role as a source to Mr Cooper or others. The question of whether DS Kelly ought to have disclosed Ms Gobbo's role was only ever posed in the abstract as a hypothetical question. Indeed, referring to Mr Cooper's prosecution, Counsel Assisting's questioning clearly proceeded on the basis that DS Kelly was not responsible for disclosure:⁹³²

And you would accept if you were the person who was putting that brief of evidence together that it would be something that should be disclosed to the accused person, that the source of the information that led to their arrest was their own barrister. That's the sort of thing that should be included in a prosecution brief in that peculiar situation?

⁹²⁹ T2576.30-33 (J Kelly).

⁹³⁰ Exhibit RC0470B – Operation Posse commencement briefing, 22 November 2005 (VPL.0005.0096.0001 at .0002) (emphasis added).

⁹³¹ Counsel Assisting Submissions at p 476 [1922.6], Vol 2.

⁹³² T2608.30-36 (J Kelly).

- 37.15 Second, even when considered in the hypothetical, DS Kelly's evidence is wholly inconsistent with Counsel Assisting's assertion that he knew in 2006 that Victoria Police (as a whole) had no intention to disclose Ms Gobbo's role.
- 37.16 DS Kelly said he did not "necessarily agree" with the broad proposition that, if he was responsible for disclosure, he should have disclosed that a person's barrister had supplied information leading to their arrest.⁹³³ His reasoning was that such disclosure was contrary to all of Victoria Police's training, policy and practices in the protection of human sources.⁹³⁴ Because of that collision of disclosure and human source policy, DS Kelly's said he would obtain legal advice if faced with that situation.⁹³⁵ Evidence concerning the limited training available to investigators at this time is detailed in the statement of Assistant Commissioner Kevin Casey⁹³⁶ and Victoria Police's submissions.
- 37.17 Moreover, DS Kelly then squarely rejected Counsel Assisting's blunt attempt to mischaracterise his evidence as being that the "relationship of human source would trump any disclosure obligations";⁹³⁷
- Mr Woods: But your evidence a moment ago is that that relationship of the human source would trump any disclosure obligations anyway?
- DS Kelly: My position is we would not, or I would not put a human source's name on the front of a brief of evidence in relation to disclosure because it goes against our training and our practices and processes.
- Mr Woods: Even if the information they were providing was in clear breach of their obligations to their client, you still wouldn't do it?
- DS Kelly: No. As I said, if the scenario presented itself I'd suggest I'd be seeking advice.
- 37.18 The clear inference from DS Kelly's evidence is that if disclosure ever became an issue, he would have obtained legal advice and followed it. That advice might properly have been that Victoria Police should claim public interest immunity, that a prosecution should be discontinued, or even that disclosure was not necessary in the circumstances. The advice would not necessarily have been that the human source's identity had to be disclosed in the brief, as Counsel Assisting's questioning appears to assume.
- 37.19 The effect of Counsel Assisting's submission is that DS Kelly would have deliberately ignored any such advice. No such allegation was ever put to DS Kelly and there is no basis for a finding that DS Kelly would have done so.
- 37.20 Third, there is simply no evidence to indicate that DS Kelly knew of anyone else's intentions regarding disclosure of Ms Gobbo's role. Counsel Assisting never asked DS Kelly whether he knew of others' intentions to disclose Ms Gobbo's role. Even then, Counsel Assisting have made no attempt whatsoever in their submissions to identify facts from which such knowledge might be inferred.

No identified basis for inference of knowledge based on "involvement in the investigation and prosecution of people Mr Cooper implicated"

⁹³³ T2608.30-36 (J Kelly).

⁹³⁴ T2608.41-45 (J Kelly).

⁹³⁵ T2609.3-4 (J Kelly).

⁹³⁶ Untendered – Statement of Assistant Commissioner Kevin Casey dated 15 August 2020 (VPL.0014.0134.0001).

⁹³⁷ T2609.29-39 (J Kelly).

- 37.21 The evidence identified by Counsel Assisting as “relevant to an analysis of Mr Kelly’s knowledge and conduct” relates to Mr Cooper’s arrest and the period leading up to it.⁹³⁸ That evidence is dealt with in detail above.
- 37.22 However, from there, Counsel Assisting in paragraph [1923] invite the Commissioner to make a series of further findings concerning the period from May 2006 until February 2007 without identifying any further evidence.
- 37.23 The sole basis for those additional findings is an unparticularised, non-specific and rolled up allegation that DS Kelly somehow had knowledge of a series of matters in the period from May 2006 until February 2007 “due to his involvement in the investigation and prosecution of people Mr Cooper implicated”.⁹³⁹
- 37.24 Even if Counsel Assisting had sought to identify a basis for this allegation, there would not have been one available. As it stands, there is no evidence before the Commission that suggests DS Kelly was ever aware that Ms Gobbo remained involved in advising Mr Cooper or remained in ongoing contact with him up to his plea.
- 37.25 Put simply, this is an example of baseless overreach. The proposed additional findings in paragraph [1923] of the submissions amount to nothing more than a series of conclusions stated without any identified factual basis. They must be rejected.

38 Mark-up of Counsel Assisting’s proposed findings

- 38.1 Based on the above submissions, the following is a marked-up version of paragraphs [1921] and [1922] from Counsel Assisting’s submissions. This mark-up provides a complete, correct and preferable understanding of the evidence. The footnote references cross reference the section of the submissions above that substantiate that mark-up.
- 1921 The following evidence is relevant to an analysis of Mr Kelly’s knowledge and conduct in relation to the use, management and disclosure of Ms Gobbo’s role as a human source concerning Mr Cooper:
- 1921.1 during the relevant period, as a police member, Mr Kelly was a public official
- 1921.2 Mr Kelly became aware that Ms Gobbo was acting as a human source on 14 March 2006 at the earliest, ~~in around early March 2006, shortly~~ three weeks after he commenced at the Purana Taskforce and just over one month before Mr Cooper was arrested.⁹⁴⁰
- 1921.2A Mr Kelly was not responsible for the investigation into Mr Cooper. He and his crew only assisted with minor tasks, such as routine surveillance.⁹⁴¹ While at Purana, Mr Kelly was primarily responsible for investigating other targets and offenders and continuing MDID prosecutions.⁹⁴²
- 1921.3 ~~Mr O’Brien would verbally pass on information to him, identifying that it came from Ms Gobbo~~⁹⁴³

⁹³⁸ Counsel Assisting Submissions at pp 474-475 [1921], Vol 2.

⁹³⁹ Counsel Assisting Submissions at p 476 [1923], Vol 2.

⁹⁴⁰ See above at 34.9 to 34.12.

⁹⁴¹ See above at 33.18.

⁹⁴² See above at 33.19 to 33.23.

⁹⁴³ See above at 37.8 to 37.12.

- 1921.4 at times, members of the SDU would tell him that particular information had come from Ms Gobbo⁹⁴⁴
- 1921.5 he conducted surveillance on Mr Cooper's PII party on PII PII 2006
- 1921.6 on 18 April 2006, he attended for one hour of a two-hour participated in a briefing in relation to Operation Posse in which investigators and officers from specialist units discussed the extensive resources needed to gather evidence against and arrest Mr Cooper. Ms Gobbo's role as a source was not discussed. Even if it was, DS Kelly was not present.⁹⁴⁵ they discussed "a strategy" for the approach to the interview of Mr Cooper upon his forthcoming arrest
- 1921.7 he attended the Strathmore lab on 22 April 2006 and was aware that Mr Cooper and Mr Agrum both asked for Ms Gobbo to represent them at that time
- 1921.8 on the day of Mr Cooper's arrest, he was one of numerous Purana officers who were assigned menial tasks to support DS Flynn's crew. He had no command role and no assigned responsibilities under the Operation Order.⁹⁴⁶ He was at St Kilda Road Police Station when Ms Gobbo attended to purportedly represent Mr Cooper and Mr Agrum. He facilitated calls between the men and Ms Gobbo.⁹⁴⁷ He collected Ms Gobbo from reception and took her to the Purana Operations room on the 16th floor of the St Kilda Road building. He was not present for any other significant events on the night of Mr Cooper's arrest.⁹⁴⁸
- 1921.9. He was "not completely comfortable with Ms Gobbo attending as [Mr Cooper's] lawyer". He knew Ms Gobbo had been the source of relevant information concerning Mr Cooper. There is no direct evidence about Mr Kelly's appreciation or understanding of any conflict concerning Mr Cooper.⁹⁴⁹ However, his other His evidence, and the comfort he says he took from assurances from Mr O'Brien, indicate that DS Kelly properly believed that any issues concerning Ms Gobbo's role as a source were being properly managed by those senior officers responsible and present on the day. DS Kelly therefore had no reason to complain about other officers' conduct.⁹⁵⁰ demonstrates that he well-understood the risks to the proper administration of justice which the relationship between Ms Gobbo and Victoria Police posed. As a sergeant, Mr Kelly was a supervisor of others, and he in turn was supervised by his Detective Inspector, Mr O'Brien. His discomfort and the assurances of Mr O'Brien make it readily apparent why Parliament established the obligation to report a reasonable belief of serious misconduct to a different senior officer.

⁹⁴⁴ See above at 37.2 to 37.7.

⁹⁴⁵ See above at 35.1 to 35.18.

⁹⁴⁶ See above at 36.2.

⁹⁴⁷ See above at 36.10 to 36.11.

⁹⁴⁸ See above at 36.9 to 36.14.

⁹⁴⁹ See above at 36.24 to 36.28.

⁹⁵⁰ See above at 36.31 to 36.38.

- 38.2 From there, the effect on the proposed findings in respect of DS Kelly is as follows:
- 1922 On the evidence, it is open to the Commissioner to find that ~~between early March 2006 and 22 April 2006~~ Mr Kelly knew that:
- 1922.1 Mr Kelly knew that Ms Gobbo was a barrister and human source from 14 March 2006 at the earliest.⁹⁵¹ He learned nothing more than the fact she was a human source.⁹⁵²
- 1922.2 Mr Kelly did not know that Ms Gobbo was acting for Mr Cooper prior to the day of his arrest and so could not be aware of any alleged conflict between her role as a human source and as Mr Cooper's lawyer. Ms Gobbo was informing on Mr Cooper while purporting to act for him
- 1922.3 Ms Gobbo had a conflict of interest between her role as an informer for Victoria Police and legal representative of Mr Cooper. There is no evidence to indicate Mr Kelly appreciated this conflict. Rather, Mr Kelly believed that appropriate safeguards had been put in place, and that steps had been taken, by those responsible to manage issues arising from Ms Gobbo's position, including by senior and experienced officers responsible for her management.⁹⁵³
- 1922.4 Mr Kelly had been briefed that Mr Cooper was a target of Operation Posse due to his alleged previous involvement in drug manufacturing operations, and knew that it was a combination of Ms Gobbo's informing on Mr Cooper and information supplied by ^{PII} [REDACTED] that led to the obtaining of incriminating evidence against Mr Cooper and led to his arrest on 22 April 2006.⁹⁵⁴
- 1922.5 Mr Kelly did not know in advance that Ms Gobbo planned to attend to advise Mr Cooper after his arrest. Mr Kelly was not present for any other significant events on the night of Mr Cooper's arrest after delivering Ms Gobbo to the 16th floor at 7:10pm. 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
- 1922.6 ~~Victoria Police had no intention to disclose Ms Gobbo's role to Mr Cooper or anyone Mr Cooper made statements against.⁹⁵⁵~~
- 38.3 For the reasons stated at 37.21 to 58.68 above, the proposed findings in paragraph [1923] should be rejected out of hand.
- 38.4 Once the proper state of the evidence is understood, it is manifestly clear that there is no basis for the alleged submission that ^{Relevance} [REDACTED]
^{Relevance} [REDACTED]
^{Relevance} [REDACTED]

⁹⁵¹ See above at 34.9 to 34.12.

⁹⁵² See above at 34.14 to 34.16.

⁹⁵³ See above at 36.21 to 36.28.

⁹⁵⁴ See above at 36.16 to 36.18.

⁹⁵⁵ See above at 37.13 to 37.20.

H. Submission of Anthony (Tony) Biggin

39 Introduction

- 39.1 Counsel Assisting submit that it is open to the Commissioner to find that former Superintendent Biggin ^{Relevance} in relation to the arrest of Mr Cooper 14 years ago, when Mr Biggin was a Superintendent in charge of the Covert Support Division. There is no evidentiary nor legal basis for the Commission to make such findings.
- 39.2 Counsel Assisting's submissions in relation to Mr Biggin's role with respect to Mr Cooper must be approached with caution. At times, the evidence relied on is misstated, exaggerated, or simply wrong. Critical evidence has not been addressed. In some cases, assumptions have been made and inferences drawn by Counsel Assisting without a proper evidentiary basis. The Commissioner would fall into error if that summary of the evidence or the proposed findings that follow were accepted.
- 39.3 For example, one of the submissions made by Counsel Assisting is that on the evidence, it is open to the Commissioner to find that Mr Biggin knew that it was Ms Gobbo's informing on Mr Cooper that led to the obtaining of information against Mr Cooper and led to his arrest.⁹⁵⁶ This allegation forms part of the conduct relied upon by Counsel Assisting in support of their submission that Mr Biggin ^{Relevance} ^{Relevance} However, ^{Relevance} ^{Relevance} Counsel Assisting have identified no evidence in support of this submission.
- 39.4 What is more, Counsel Assisting's submissions fail to mention at all Mr Biggin's unchallenged sworn evidence to the contrary – that is, that he was **not** aware at the time of Mr Cooper's arrest that Ms Gobbo had provided any information about the crime in relation to which Mr Cooper was arrested, and did not know until recently that Ms Gobbo had provided information that led to investigators locating the Strathmore laboratory associated with Mr Cooper's drug manufacturing.⁹⁵⁷ The omission of this critical evidence is extraordinary given Counsel Assisting's recognition that the provision of information by Ms Gobbo to her handlers concerning the location of the Strathmore premises was "particularly significant"⁹⁵⁸ and allowed police to discover the location of the lab.
- 39.5 When a disciplined and objective approach is taken to evidence before the Royal Commission, it is evident that there is no sound basis for the assertion that Mr Biggin might have acted ^{Relevance} improperly.
- 39.6 Furthermore, the making of the findings urged by Counsel Assisting would require the Commission to reject Mr Biggin's honest and candid evidence before the Commission, without any identified basis for doing so. Mr Biggin was a credible witness who gave reliable evidence. He accepted his own failings and responsibilities with respect to Ms Gobbo's management as a human source⁹⁵⁹ during the period in which the SDU were under his command, and expressed genuine regret for the mistakes that were made.⁹⁶⁰ However, at the time of these events, Mr Biggin did not appreciate that anything improper was occurring. This is despite Mr Biggin performing his role diligently and to the best of his abilities.⁹⁶¹ In particular, Mr Biggin did not possess the knowledge

⁹⁵⁶ Counsel Assisting Submissions at [1916.4] and [1917.4], Vol 2. A similar submission is made at [1546.6], Vol 2.

⁹⁵⁷ This evidence is detailed at paragraphs 42.45 to 42.46 below.

⁹⁵⁸ Counsel Assisting Submissions at [1802], Vol 2.

⁹⁵⁹ T7796.

⁹⁶⁰ T7625.28.

⁹⁶¹ T7820.18.

nor engage in the conduct Counsel Assisting seek to attribute to him in relation to Mr Cooper.

- 39.7 The evidence demonstrates that Mr Biggin knew very little about Ms Gobbo's conduct in relation to Mr Cooper. He did not know that Ms Gobbo was acting for Mr Cooper prior to his arrest or that she had been providing information to police which led to his arrest. He therefore had no appreciation of the conflict of interest that crystallised when Ms Gobbo attended to provide advice to Mr Cooper on 22 April 2006. Mr Biggin was no better informed about this conflict at the time he conducted his audit.
- 39.8 At no time did Mr Biggin intend to act with impropriety. That was also the finding made by the Honourable Murray Kellam AO QC after he conducted his inquiry for the Independent Broad-Based Anti-Corruption Commission. Mr Biggin was cross-examined before Mr Kellam without notice as to why he was being required to attend. ^{Relevance} [REDACTED]
- 39.9 This submission should be read with the submission in Section B to Section D above as to why the Commissioner does not have the power ^{Relevance} [REDACTED] ^{Relevance} [REDACTED] at paragraphs [1935] ^{Relevance} [REDACTED] and should decline to make such findings.
- 39.10 These submissions are organised as follows:
- (a) Section 40 addresses aspects of Mr Biggin's work history and professional reputation, which are relevant to the Commission's assessment of his credit and the improbability of him having engaged in improper ^{Relevance} [REDACTED] conduct. Part 2 also addresses Mr Biggin's honesty and credibility when giving evidence before the Royal Commission and the dangers of hindsight reasoning;
 - (b) Section 41 addresses Mr Biggin's role and the role of the Covert Support Division he was responsible for overseeing. These are important contextual considerations in assessing Mr Biggin's knowledge and conduct in relation to Ms Gobbo and Mr Cooper;
 - (c) Section 42 addresses Mr Biggin's limited knowledge of Ms Gobbo's informing and of Operation Posse;
 - (d) Section 43 addresses Mr Biggin's limited role in Mr Cooper's arrest and the events that followed;
 - (e) Section 44 addresses Mr Biggin's audit;
 - (f) Section 45 responds to the specific adverse findings Counsel Assisting submit are open to the Commissioner to make in relation to Mr Cooper, ^{Relevance} [REDACTED] ^{Relevance} [REDACTED];
 - (g) Section 46 addresses Mr Biggin's role from 1 July 2006, when the SDU came within his operational and functional command;
 - (h) Section 47 addresses other adverse findings Counsel Assisting submit are open to the Commissioner to make.

40 Mr Biggin's honesty, good reputation and work history

- 40.1 The Commission has before it evidence of Mr Biggin's honesty, good reputation and exemplary work history. This evidence is relevant to the Commission's assessment of

Mr Biggin's credibility and the improbability that he engaged in the Relevance Relevance conduct alleged by Counsel Assisting.

Mr Biggin's work history and professional reputation

- 40.2 Mr Biggin was a hardworking and well-respected police officer throughout his over 45 years of service. During his career, he was entrusted with some of the most challenging and critically important roles within Victoria Police, including those which commanded the highest levels of capability and integrity.
- 40.3 Mr Biggin joined Victoria Police in 1973, soon after completing high school, and progressed to the rank of Superintendent prior to his retirement in 2018.
- 40.4 Between 1990 and 1995, as an inspector, Mr Biggin performed investigative duties at the Internal Security Unit, Investigations Department, which was the unit now known as Professional Standards Command. In 1996 he was promoted to Chief Inspector of that Unit.
- 40.5 As part of this role, Mr Biggin was responsible for Operation Bart, an internal police investigation oversighted by the Victorian Ombudsman. Operation Bart investigated allegations that a number of police had bypassed Victoria Police's shutter allocation system and referred shutter jobs to other companies who paid police members for such referrals.⁹⁶²
- 40.6 The police investigation was described by the Ombudsman as "one of the largest internal investigations ever conducted by the Victoria Police Force".⁹⁶³ As a result of the investigation, some 550 police were charged with a total of 1,290 disciplinary offences.⁹⁶⁴ In addition, two police and a number of shutter services operators were charged with criminal offences.⁹⁶⁵ In his final report to parliament, the Ombudsman commended Mr Biggin for his dedication to duty in performing a difficult but ultimately successful task.⁹⁶⁶
- 40.7 In January 2002, Mr Biggin was requested to lead the newly formed Major Drug Investigation Division (**MDID**), following the disbandment of the Drug Squad due to corruption and related management and structural issues. The creation of a Detective Superintendent position in charge of the Drug Squad was one of the recommendations made by the Purton review,⁹⁶⁷ and Mr Biggin was the first incumbent of the position. Like other members of the MDID, Mr Biggin felt betrayed by the events surrounding the Dublin Street burglary, which compromised the dedicated and professional efforts of Mr Biggin and the team he led.⁹⁶⁸
- 40.8 In August 2005, Mr Biggin was appointed the Superintendent in charge of the Covert Support Division, as described in Part 3 below. This was an incredibly onerous role, overseeing the entire covert capability of Victoria Police, involving high risk and complex issues.
- 40.9 Mr Biggin's good reputation was confirmed by the evidence of several witnesses who gave evidence before the Commission. For example, during cross examination of former Assistant Commission Moloney, Counsel Assisting described Mr Biggin as a

⁹⁶² Operation Bart: Investigation of allegations against police in relation to the Shutter Allocation System: Final Report of the Ombudsman (May 1998). Available at www.parliament.vic.gov.au.

⁹⁶³ Ibid 1.

⁹⁶⁴ Ibid 25.

⁹⁶⁵ Ibid 25-26.

⁹⁶⁶ Ibid 55.

⁹⁶⁷ Exhibit RC0108 – Review of the Victoria Police Drug Squad, November 2001 at p 25 (VPL.0005.0050.0001 at .0026).

⁹⁶⁸ Untendered Ceja Task Force Drug Related Corruption, Second interim report of Ombudsman Victoria (June 2004), p 7 (VPL.0015.0002.0001 at .0008).

"very considered man", which Mr Moloney agreed with.⁹⁶⁹ Former Assistant Commissioner Pope described Mr Biggin as having "very high capability" and said he held Mr Biggin "in high regard and respect". In evidence, Mr Pope added that he "took his hat off" to the "extraordinary job" he did as Superintendent in charge of the Covert Services Division "in immensely challenging circumstances over a long period of time".⁹⁷⁰ Detective Superintendent Sheridan agreed with Mr Chettle's description of Mr Biggin as "an incredibly competent and efficient police officer".⁹⁷¹

- 40.10 Given his excellent professional reputation and work history, the Commissioner should regard Mr Biggin as a trustworthy witness and be less willing to accept Counsel Assisting's assertions that Mr Biggin engaged in improper or unlawful conduct with respect to the management of Ms Gobbo.

Mr Biggin gave honest and candid evidence before the Commission

- 40.11 When he appeared before the Royal Commission, Mr Biggin gave honest, thoughtful and reliable evidence. He unreservedly accepted his own failings and responsibilities with respect to Ms Gobbo's management as a human source during the period in which the SDU were under his operational and functional control⁹⁷² and expressed genuine regret for the mistakes that were made.⁹⁷³ He made no attempt to deflect blame to others.
- 40.12 To his credit, with the benefit of hindsight, Mr Biggin accepted responsibility for the mistakes that were made in the handling of Ms Gobbo from 1 July 2006 onwards. In his own words, Mr Biggin frankly conceded, "*the buck stops with me... I accept my failings and my responsibilities... I don't step away from that and never will*".⁹⁷⁴
- 40.13 His candour is acknowledged in Counsel Assisting's submissions at [4779.4] where, in urging the Commissioner to find that many former and current Victoria Police members failed to take responsibilities for their part in the misuse of Ms Gobbo as a source, Counsel Assisting state that "*Mr Biggin candidly accepted some responsibility for his role in Victoria Police's use of Ms Gobbo as a human source*".⁹⁷⁵
- 40.14 Mr Biggin's concessions are to his credit and demonstrate the honest reflection he has undertaken since these events, possessed with the knowledge he now has of what occurred while Ms Gobbo was a registered human source. At the time these events occurred, however, Mr Biggin did not appreciate that anything improper was occurring (or had occurred). This is despite Mr Biggin performing his role diligently and to the best of his abilities.⁹⁷⁶
- 40.15 In particular, Mr Biggin did not know the circumstances surrounding Mr Cooper's arrest, contrary to the assumptions made in Counsel Assisting's submissions.
- 40.16 The Commissioner should not judge Mr Biggin's actions according to his current state of knowledge and understanding. To do so would involve an impermissible application of hindsight bias. As explained in Victoria Police's submission on hindsight reasoning, hindsight allows us to:

⁹⁶⁹ T14615.11 (Moloney).

⁹⁷⁰ Exhibit RC1306 – Second Statement of Jeff Pope at [53] (VPL.0014.0013.0004 at .0015); T14482.3 (Pope).

⁹⁷¹ T13493.16 (Sheridan).

⁹⁷² T7796.

⁹⁷³ T7625.28.

⁹⁷⁴ T7796.

⁹⁷⁵ Counsel Assisting Submissions at [4779.4], Vol 2.

⁹⁷⁶ T7820.18.

*exaggerate how much certainty there is. Because after the fact, everything is explained. Everything is obvious. And the presence of hindsight in a way mitigates against the careful design of decision making under conditions of uncertainty.*⁹⁷⁷

- 40.17 Courts have long accepted the dangers of hindsight reasoning and emphasised the need for an individual's conduct to be assessed prospectively rather than retrospectively. For instance, in *Macks v Viscariello*, the Full Court of the Supreme Court of South Australia held that:

*Self-evidently, judicial reasoning ought not to be founded on hindsight reasoning. Hindsight bias has harmful effects on an evaluation by a decision maker. It can lead to an assessment of the quality of the decision not by whether the process was sound but by whether its outcome was good or bad. There is a limit to the ability of a person to forecast; everything makes sense in hindsight. It is a trap to think that what makes sense in hindsight was predictable. A judge should always bear in mind that actions that seemed acceptable in foresight can look irresponsibly negligent in hindsight.*⁹⁷⁸

- 40.18 Mr Biggin refers to Victoria Police's submission on hindsight reasoning.

41 Mr Biggin's role as the Superintendent, Covert Support Division

- 41.1 Mr Biggin's knowledge and conduct in relation to the use, management and disclosure of Ms Gobbo's role as a human source concerning Mr Cooper were necessarily limited given his role, and the role of the Covert Support Division which he oversaw, throughout the period relevant to Mr Cooper. These contextual considerations are important in assessing Mr Biggin's knowledge and conduct yet have been largely overlooked or misconstrued in Counsel Assisting's submissions.

- 41.2 **First**, prior to 1 July 2006 Mr Biggin did not have any responsibility or control over the DSU (other than his role as a member of the Dedicated Human Source Management Team Pilot Steering Committee, which oversaw the DSU pilot which ran between November 2004 until May 2005).⁹⁷⁹ Once the DSU was implemented as an operational unit, the DSU was part of the State Intelligence Unit and reported through their inspector to Supt Ian Thomas and, from March 2006, to Supt Mark Porter.⁹⁸⁰ Accordingly, it was Supt Mark Porter who had operational and functional control of the DSU when Ms Gobbo was registered as a human source and at the time of Mr Cooper's arrest. This remained the case until 1 July 2006, when the renamed SDU moved from the State Intelligence Division to the Covert Support Division and came within Mr Biggin's chain of command. From 1 July 2006 the SDU handlers and controllers commenced reporting through their inspector (initially Rob Hardie and, from February 2008, Andrew Glow) to Mr Biggin.

- 41.3 The management and reporting structure relevant to the DSU prior to 1 July 2006 is illustrated in Mr Biggin's statement as follows:⁹⁸¹

⁹⁷⁷ Unknown, 'Daniel Kahneman on the Danger of Hindsight', Wall Street Journal (Article, 21 November 2006) <<https://www.wsj.com/articles/daniel-kahneman-on-the-danger-of-hindsight-1479783901>>.

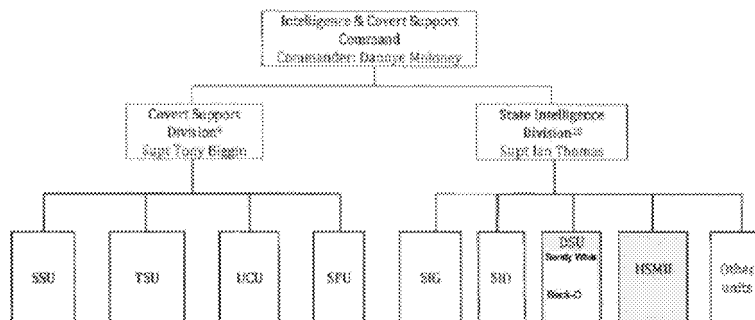
⁹⁷⁸ *Macks v Viscariello* (2017) 130 SASR 1 [538].

⁹⁷⁹ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [29] (VPL.0014.0041.0008 at .0013).

⁹⁸⁰ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [34] (VPL.0014.0041.0008 at .0013); Exhibit RC0512 - Statement of Mark Stephen Porter at [5] (VPL.0014.0048.0001 at .0001).

⁹⁸¹ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [36] (VPL.0014.0041.0008 at .0014).

Management structure relevant to SDU as at August 2005



- 41.4 Mr Biggin's role as the officer in charge of the Covert Support Division involved responsibility for the State Surveillance Unit, Technical Surveillance Unit, Undercover Unit and Special Projects Unit. This was a busy role, overseeing four high-risk covert units, and with responsibilities for allocating covert resources across Victoria Police. It was not Mr Biggin's role to involve himself in, or second guess, decisions made within the specialist units within Supt Thomas's (and then Supt Porter's) command, including the DSU. Nor could it be expected that, as a Superintendent, Mr Biggin would know the granular details of operational matters within his command.
- 41.5 **Secondly**, in his role as officer in charge of the Covert Support Division, Mr Biggin did not have access to any of the records of the SDU's dealings with Ms Gobbo, including the ICRs and the recorded conversations between Ms Gobbo and her handlers. Nor was he briefed about the information and the intelligence that Ms Gobbo was providing to the SDU. To the contrary, Mr Biggin was aware, from his role in the establishment of the SDU and overseeing its pilot, that its records were kept securely and that information about human sources who the unit was managing were strictly guarded.
- 41.6 Moreover, Mr Biggin was aware of the SDU's reporting structure through to Supt Thomas and of the critical role of the HSMU in overseeing the SDU's management of all registered human sources, including Ms Gobbo. Mr Biggin knew that, unlike him, the HSMU had access to all of the records held by the SDU regarding their communications with Ms Gobbo, disseminations of intelligence and information provided by her, and the SDU's management of any risks associated with Ms Gobbo's use as a human source. He expected, reasonably and consistently with his experience overseeing the SDU pilot, that the HSMU were in regular communications with the SDU controllers about their dealings with Ms Gobbo.⁹⁸²
- 41.7 **Thirdly**, Mr Biggin did not have any involvement in Ms Gobbo's registration as a human source or the risk assessment processes undertaken by those responsible for approving registration.⁹⁸³ This is consistent with Victoria Police's Informer Management Policy in existence at that time. *Chief Commissioner's Instruction 6/04* made no provision for a Superintendent in Mr Biggin's role to be informed of, or involved in, the registration process.⁹⁸⁴
- 41.8 **Fourthly**, Mr Biggin's role as Supt of the Covert Support Division involved the delivery of specialist services to investigations in response to requests from investigators. Those services included surveillance, undercover operations and other technical and covert services. Although his Division provided specialist services to investigations, Mr Biggin

⁹⁸² Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [67] (VPL.0014.0041.0008 at .0020).

⁹⁸³ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [13] (VPL.0014.0041.0008 at .0010).

⁹⁸⁴ Exhibit RC0008, Annexure 35 – Chief Commissioner's Instruction 6/04 (VPL.0002.0001.2214).

was not involved in strategic or tactical decisions in relation to investigations.⁹⁸⁵ Nor would it have been appropriate for Mr Biggin to involve himself in, or second guess, investigative decisions made by the Purana Taskforce. As Mr Biggin put in response to questions asked by Counsel Assisting about Mr Cooper's arrest:

*Let 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 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.*⁹⁸⁶

- 41.9 Consistent with his role as a Superintendent in charge of service providers, Mr Biggin did not play any part in the compilation of briefs of evidence, court proceedings, decisions around disclosure to accused persons or the making of public interest immunity claims - these were the responsibilities of the investigators and those who managed the investigations. To the extent that investigators sought advice from the SDU in relation to redactions or disclosure, Mr Biggin was generally unaware of this and was not involved in such matters. Even after 1 July 2006, when the SDU came within his operational and functional control, as the Superintendent, Mr Biggin was not across these details. As he stated:

I knew nothing about any court cases at all and in fact I deliberately kept myself away from court cases because, as I said this morning, my role was a service provider, I'd previously been a manager in investigations, I wasn't going to get back and involve myself in investigations when there were other Superintendents doing that role...

*I had nothing to do with any of the court proceedings. I didn't know whether they were still on foot, whether they were still alive, whether they'd been completed, whether they'd been discontinued, I had no idea.*⁹⁸⁷

- 41.10 **Fifthly**, the need to know principle prevented Mr Biggin from knowing details concerning Ms Gobbo's use as a human source and discouraged him from asking questions about the information and intelligence that she was providing. As explained in Victoria Police's submissions, the operation of this principle - which is an essential doctrine in covert environments - meant that members of Victoria Police, including Mr Biggin, trusted that information would be shared with them when and if they needed to have the information. Although he was a senior officer, Mr Biggin was not entrusted with sufficient information about Ms Gobbo's use to enable him to appropriately assess or respond to the risks associated with the events involving Ms Gobbo and Mr Cooper.

42 Mr Biggin's limited knowledge of Ms Gobbo's informing and of Operation Posse

- 42.1 Prior to 1 July 2006, Mr Biggin knew very little about Ms Gobbo's informing⁹⁸⁸ and about Operation Posse. Counsel Assisting's submissions assume that Mr Biggin knew more than he actually did and overlook evidence which demonstrates Mr Biggin's limited knowledge. In particular, Counsel Assisting submissions entirely ignore Mr Biggin's unchallenged evidence that he did not know until recently that Ms Gobbo had provided

⁹⁸⁵ T7500.26-37.

⁹⁸⁶ T7517.42-T7518.3.

⁹⁸⁷ T7591.10-16; T7591.45-T7592.2.

⁹⁸⁸ T7745.36-44; T7746.28-29.

the SDU with information that enabled investigators to locate the premises used by Mr Cooper in connection with drug manufacturing and led to Mr Cooper's arrest.

- 42.2 Mr Biggin's evidence was that he first learned of Ms Gobbo's registration on 7 October 2005, when Officer White told him she had been registered. Accordingly, any knowledge that Mr Biggin possessed regarding Ms Gobbo's role could only have been informed by the limited discussions he was involved on 7 October 2005, 9 December 2005 and 16 February 2006 and during his attendance, on 22 April 2006, at the St Kilda Road police station following Mr Cooper's arrest.
- 42.3 Despite being told that Ms Gobbo had been registered as a source, he learned nothing further about her informing from the conversation with Officer White on 7 October 2005. His lack of knowledge regarding the information that Ms Gobbo was providing was not advanced by his subsequent discussions, nor during his attendance at the St Kilda Road police station after Mr Cooper's arrest.

5 October 2005 meetings

- 42.4 On 5 October 2005 at 3.50 pm, Mr Biggin's diary records that he met with Commanders Danye Moloney and Terry Purton, Officer Sandy White, Detective Senior Sergeant Cruze and others. Counsel Assisting's submissions make two assertions about this meeting, each of which is contrary to the evidence:
- First, Counsel Assisting's submissions wrongly assert that "Mr Biggin's diary records that Ms Gobbo's value as a source was discussed" at this meeting.⁹⁸⁹
 - Secondly, the assertion is made that there was a discussion about a potential covert operation at the commencement of the meeting, following which management was excused.⁹⁹⁰ While it is not made explicit in Counsel Assisting's submissions, the inference Counsel Assisting appear to be inviting is that Mr Biggin's presence at this meeting demonstrates his knowledge around potential strategies or operations involving Ms Gobbo's use.
- 42.5 As to the first proposition, Mr Biggin's diary, extracted below, does not record that "Ms Gobbo's value as a source was discussed". Instead, his diary states "re new job & source issues - TF Purana to be established - under S/Sgt O'Brien - 3 x teams". Further, Mr Biggin's diary records that he attended this meeting for merely 15 minutes at the most, as his next meeting commenced at 4.05 pm.⁹⁹¹

Date / Time	Particulars of Duties
1550	Meeting
	Commander Moloney / Purton
	Top three / Hardie
	Sgt Thomas
	Sandy White-O / Cruze
	Peter Smith-O / Flynn
	S/C Lisa Burrows
	re new job & source issues
	TF to be established
	Under S/Sgt O'Brien
	3 x teams
1605	MOID

- 42.6 Mr Biggin's evidence was that, while he did not specifically recall this meeting and whether he was informed of Ms Gobbo's registration at this time, he believed he was

⁹⁸⁹ Counsel Assisting Submissions at [1772] and [1914.4], Vol 2.

⁹⁹⁰ Counsel Assisting Submissions at [1772], Vol 2.

⁹⁹¹ Untendered Diary of Anthony Biggin, 5 October 2006 (VPL.0005.0155.0659 at .0679).

subsequently informed of Ms Gobbo's registration by Officer White several days later on 7 October 2005.⁹⁹²

- 42.7 There is simply no evidence upon which the Commissioner can find that Ms Gobbo's use as a human source was discussed at all during the 15 minutes that Mr Biggin was present at this meeting.
- 42.8 As to the second assertion, there is no evidence to support the assertion that Mr Biggin was present during any discussion about the proposal to use Ms Gobbo to [redacted] (the covert operation). Mr Hill's diary, which is cited by Counsel Assisting as the source of this evidence, provides no such evidence. Rather, Mr Hill's diary indicates that there was a discussion regarding the operational plan and that a tactical meeting was to occur between the services and investigators.⁹⁹³
- 42.9 Mr Hill's evidence before the Royal Commission was that he could not elaborate any further on what occurred at the meeting, beyond what is recorded in his diary. He conceded it was "possible" the covert operation was discussed at the meeting, based only on the presence of DSS Cruze at the meeting.⁹⁹⁴ Mr Hill also conceded that it was "possible" this topic had been discussed at previous meetings that he had attended.⁹⁹⁵
- 42.10 The available evidence suggests the discussions about the potential covert operation occurred at the subsequent meeting between Officer Sandy White and Purana investigators, as described in Counsel Assisting's submissions at [1772]. This meeting continued until at least 5.00 pm. Tellingly, the diaries of Officer White and Mr Flynn do not record Mr Biggin as being present during discussions when the potential covert operation was discussed.⁹⁹⁶
- 42.11 Counsel Assisting's submissions also assume that Mr Biggin had knowledge of the proposed use of Ms Gobbo in relation to the covert operation because a member of the [redacted] met with Ms Gobbo and the SDU on 2 February 2006 and because Mr Biggin's diary records that he met with Officer White on 14 February 2006 for ten minutes about "DSU Ops".⁹⁹⁷
- 42.12 The assumptions made by Counsel Assisting are simply not supported by the available evidence and are inconsistent with the operation of the "need to know" principle in covert environments, which meant that information was only shared between members when there was an operational requirement to do so.⁹⁹⁸ There is no evidence upon which the Commission can find that Mr Biggin had any knowledge of the consideration being given to using Ms Gobbo in a potential covert operation, despite a member of the [redacted] having this knowledge.

7 October 2005 – Mr Biggin learned Ms Gobbo had been registered as a source

- 42.13 On 7 October 2005 Mr Biggin's diary records he spoke to Officer Sandy White "*re HS issues*". Mr Biggin believes that he was first informed of Ms Gobbo's registration during

⁹⁹² T7475.11-17; Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [14] (VPL.0014.0041.0008 at .0010).

⁹⁹³ Exhibit RC0177 - Diary of Robert Hill, 5 October 2006 (VPL.0005.0013.0892 at .0902-.0903).

⁹⁹⁴ T1816.23-43 (Hill).

⁹⁹⁵ T1816.45-46 (Hill).

⁹⁹⁶ Untendered Diary of Sandy White (VPL.2000.0001.0440 at .0446-.0447); Exhibit RC0543 – Diary of Dale Flynn (VPL.0010.0007.0001 at [0045]).

⁹⁹⁷ Counsel Assisting Submissions at [1509]-[1510], Vol 2; Exhibit RC0577 – Diary of Anthony Biggin, 14 February 2006 (VPL.0005.0155.0659 at .0712).

⁹⁹⁸ See, eg, T12547.31-36 (Cornelius).

this conversation.⁹⁹⁹ However, despite being told that Ms Gobbo had been registered as a source, he learned nothing further about her informing.

42.14 Mr Biggin's recollection of the conversation was as follows:

*Sandy White had told me she was providing, that she had been registered as a source and was providing information. It was a by the way conversation, it wasn't a briefing conversation at all.*¹⁰⁰⁰

42.15 During this conversation, Mr Biggin learned nothing about Ms Gobbo's actual or anticipated use as a human source, or the information she was providing. There was no operational need for Mr Biggin to know such details. It would therefore have been improper, and contrary to the "need to know" principle, for Mr Biggin to ask questions or for Officer White to provide him with further details.¹⁰⁰¹

42.16 Mr Biggin's initial reaction was that he thought it "*unusual*" for a practicing barrister to be registered as a human source.¹⁰⁰² However, he didn't at that time consider her registration as a human source to be "*problematic*" or as raising any legal issue.¹⁰⁰³

42.17 Counsel Assisting's submissions misstate Mr Biggin's evidence when they assert that he gave evidence that he was "*alive to the potential for issues of conflict of interest and legal professional privilege*".¹⁰⁰⁴ Mr Biggin's evidence was as follows:

*I was aware that Ms Gobbo was a barrister, however, as far as I knew at the time, her practice was concentrated on bail applications. I did not think that she represented clients beyond their bail applications. I was also aware that she had a personal relationship with a large number of criminals. I was not provided with details about how Ms Gobbo's status as a barrister would be managed during her use as a human source, but I assumed this had been considered by those involved in approving her registration.*¹⁰⁰⁵

42.18 In cross examination by Counsel Assisting, Mr Biggin confirmed that he assumed that Ms Gobbo's "*status as a barrister*" would be managed during her use as a human source. He agreed with Counsel Assisting's suggestion that by "*status as a barrister*" he meant issues that might arise by way of there being conflicts of interest or issues to do with legal professional privilege.¹⁰⁰⁶ No further questions were asked to clarify his understanding of these concepts. Nor is there any evidence that Mr Biggin understood in any detail what these concepts meant.

42.19 It is significant that, at this early stage Mr Biggin had no insight whatsoever into the complex issues the SDU were already grappling with regarding Ms Gobbo's use as a human source, including issues relating to conflict of interest and legal professional privilege.¹⁰⁰⁷ To the contrary, Mr Biggin understood that the SDU controllers and handlers were experts in human source management. He trusted their expertise and their integrity. He knew that they had undergone "*the most extensive probity check of anyone in Victoria Police*".¹⁰⁰⁸

⁹⁹⁹ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [14] (VPL.0014.0041.0008 at .0010).

¹⁰⁰⁰ T7507.32-36.

¹⁰⁰¹ T7746.12-14.

¹⁰⁰² Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [15] (VPL.0014.0041.0008 at .0010); T7474.6-9.

¹⁰⁰³ T7474.6-13; T7474.34-37.

¹⁰⁰⁴ Counsel Assisting Submissions at [1507] & [1546.2], Vol 2.

¹⁰⁰⁵ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [15] (VPL.0014.0041.0008 at .0010).

¹⁰⁰⁶ T7475.33-40.

¹⁰⁰⁷ T7474.42-T7475.8.

¹⁰⁰⁸ T7782.14-24.

42.20 Mr Biggin also appreciated that it was a significant decision to register any human source.¹⁰⁰⁹ He had an understanding of the rigorous assessment processes that would be undertaken prior to any registration being approved.¹⁰¹⁰ It was therefore reasonable for him to assume that those responsible for approving Ms Gobbo registration would have identified any potential risks arising from her profession and implemented methods to manage those risks.¹⁰¹¹ He knew that Ms Gobbo had a personal relationship with a large number of criminals and believed that she would be providing information to police about information she had obtained in this way. However, Mr Biggin did not interrogate these assumptions or ask questions of the decision makers as he had no functional control of the SDU at that time and he had no role in approving or managing her registration.¹⁰¹² This was an entirely appropriate position for Mr Biggin to have adopted given his role and his understanding of Ms Gobbo's personal relationships and professional practice at that time.

9 December 2005

42.21 Counsel Assisting's submissions refer, at paragraph [1787], to Mr Biggin being spoken to by Mr O'Brien on 9 December 2005 about resourcing. This discussion is not referred to in Mr Biggin's diary. Moreover, there is no evidence that this discussion involved anything to do with Ms Gobbo.

16 February 2006 – Meeting with AC Overland

42.22 On 16 February 2006 Mr Biggin met with then Assistant Commissioner Simon Overland. Mr Biggin's diary record of the meeting states, *A/C Overland re HS – to be protected – re Op Posse a priority – discuss possible tactics to manage*.¹⁰¹³

1210	Clear
	St Alc Overland
	re HS - to be protected re
	Op. Posse a priority - discuss
	possible tactics to manage
1220	Clear

42.23 Counsel Assisting's submissions make several assertions about this meeting that are not supported by the evidence.

42.24 First, Counsel Assisting's submissions state that "Mr Biggin said in evidence that Mr Overland told him that Ms Gobbo was an incredibly significant source being used by Victoria Police in relation to Operation Posse and he understood Mr Overland wanted to maintain her anonymity".¹⁰¹⁴ This overstates Mr Biggin's evidence which was as follows:¹⁰¹⁵

MR WOODS: When the note records that Ms Gobbo was to be protected, what are we to take that to mean? We understand from all the evidence we've heard that the protection of human sources and their identity is a very important thing. Why was

¹⁰⁰⁹ T7502.10.

¹⁰¹⁰ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [17] (VPL.0014.0041.0008 at .0011).

¹⁰¹¹ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [15] (VPL.0014.0041.0008 at .0010); T7475.33-40.

¹⁰¹² Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [15] (VPL.0014.0041.0008 at .0010); T7476.19-31.

¹⁰¹³ Untendered Diary of Anthony Biggin, 16 February 2006 (VPL.0005.0155.0659 at .0716).

¹⁰¹⁴ Counsel Assisting Submissions at [1512], Vol 2.

¹⁰¹⁵ T7479.20-34.

there a particular focus on Ms Gobbo at this stage in February 2006?

MR BIGGIN: I'm not quite sure but my well-educated guess would be is that like all human sources, Mr Overland is telling me that the human source was to be looked after, or Ms Gobbo was to be looked after, to maintain her anonymity.

MR WOODS: Can I suggest one of the reasons was that she was an incredibly significant source in relation to Operation Posse?

MR BIGGIN: Correct.

- 42.25 Mr Biggin expressly denied that AC Overland had told him that Ms Gobbo had to be protected because she was integral to Operation Posse.¹⁰¹⁶
- 42.26 Secondly, Counsel Assisting's submissions assert that "*Mr Overland directed Mr Biggin that Ms Gobbo was to be protected at all costs*".¹⁰¹⁷ There is simply no evidence to support this proposition. To the contrary, puttage to this effect was expressly denied by Mr Biggin.¹⁰¹⁸
- 42.27 AC Overland has no diary notes of the 16 February 2006 conversation and could not recall it in evidence.¹⁰¹⁹ He explained that the meeting would have been about "*appropriate information handling, information recording*", so as to ensure that information coming from Ms Gobbo as a source was kept confidential within the Purana Taskforce.¹⁰²⁰ Counsel Assisting never asked Mr Overland whether he had directed Mr Biggin that Ms Gobbo was to be "*protected at all costs*".
- 42.28 Nor is there any reference in any diary notes to the phrase "*at all costs*", as was acknowledged by Counsel Assisting during Mr Biggin's cross examination.¹⁰²¹ There is no evidence at all that the phrase "*at all costs*" was used during this conversation. The only use of that phrase was in questions asked by Counsel Assisting during cross examination, and submissions now made.
- 42.29 Mr Biggin's sworn evidence to the Royal Commission was that, while he does not specifically remember this meeting,¹⁰²² he understood that AC Overland was telling him that Ms Gobbo had been registered as a human source; that she was going to be utilised in relation to Operation Posse which he understood to be about Mr Cooper; that her identity as a source was to be protected; and that Operation Posse was a priority in terms of resources.¹⁰²³
- 42.30 As Mr Biggin explained, Operation Posse was a significant investigation which utilised many Covert Support Division resources which meant they were not available for other Victoria Police investigations.¹⁰²⁴ Given Mr Biggin's role involved responsibility for allocating or refusing to allocate covert resources across Victoria Police, this is the most likely explanation for AC Overland's direction to Mr Biggin about Operation Posse being a priority.

¹⁰¹⁶ T7505.2.

¹⁰¹⁷ Counsel Assisting Submissions at [1800.3] and [1914.5], Vol. 2.

¹⁰¹⁸ T7504.45-T7505.3.

¹⁰¹⁹ T11472.15-16 (Overland).

¹⁰²⁰ T11472.26-27 (Overland).

¹⁰²¹ T7508.42-44.

¹⁰²² T7509.41.

¹⁰²³ T7503.45-T7504.3; T7479.26-30.

¹⁰²⁴ T7478.40-T7479.4.

42.31 Mr Biggin agreed in evidence that it was “*unusual*” for an Assistant Commissioner to approach Mr Biggin, in his role, and tell him that one particular source needed to be protected.¹⁰²⁵ He agreed that the Assistant Commissioner did not tell Mr Biggin that other sources needed to be protected. However, Mr Biggin denied that it would be strange for an Assistant Commissioner to have had a conversation like this without telling Mr Biggin about the reasons for such a direction.¹⁰²⁶ Mr Biggin’s evidence was AC Overland did not tell him why Ms Gobbo needed to be protected. He also explained, “*You clearly haven’t spoken to Assistant Commissioner’s before, that’s exactly how they speak*”.¹⁰²⁷

Lack of knowledge about Operation Posse, the information Ms Gobbo was providing and that she was acting for Mr Cooper

42.32 Contrary to Counsel Assisting’s submissions there is no evidence that Mr Biggin knew Victoria Police were using Ms Gobbo *specifically* for information concerning Operation Posse or, in early 2006, suspected that Ms Gobbo was providing information against Mr Cooper.¹⁰²⁸

42.33 Nor is there any evidence that Mr Biggin knew, prior to Mr Cooper’s arrest, that Ms Gobbo was acting for Mr Cooper. Accordingly, therefore, there is no basis for Counsel Assisting’s assertions that:

- (a) Mr Biggin knew that Ms Gobbo was informing on Mr Cooper while purporting to act for him;¹⁰²⁹ and
- (b) Mr Biggin knew that Ms Gobbo had a conflict of interest between her role as an informer for Victoria Police and legal representative of Mr Cooper.¹⁰³⁰

42.34 Mr Biggin’s knowledge of Operation Posse was extremely limited and, in some respects, was incorrect. It is apparent that he had never been briefed in relation to the objectives of the Purana Taskforce or the broad range of targets and investigations that would come within the Operation Posse umbrella. His lack of knowledge about the Posse investigative strategy is consistent with his role as a service provider to the Purana Taskforce, rather than someone involved in the investigation itself.

42.35 Mr Biggin’s evidence was that he thought that Operation Posse was only about Mr Cooper.¹⁰³¹ He knew that Mr Cooper was a cook and had previously cooked for the Mokbels but did not know whether he was currently cooking for the Mokbels or for some other group. Mr Biggin believed the aim of Operation Posse was to first determine the extent of Mr Cooper’s criminality “*then the second part was to identify the other players in the drug trafficking with him*”.¹⁰³²

42.36 Mr Biggin was not aware that Operation Posse was directed towards dismantling the Mokbel cartel¹⁰³³ and did not know that Purana investigators planned to target Mr Cooper to encourage him to co-operate with police and implicate Tony Mokbel.¹⁰³⁴

42.37 Mr Biggin did not know that Ms Gobbo was providing information to assist Operation Posse, although he conceded that “*it crossed my mind that she may have*”. He was not

¹⁰²⁵ T7508.27-34.

¹⁰²⁶ T7508.34-T7509.39.

¹⁰²⁷ T7509.33-39.

¹⁰²⁸ Counsel Assisting Submissions at [1914.6] & [1914.8], Vol 2.

¹⁰²⁹ Counsel Assisting Submissions at [1916.2] & [1917.2], Vol 2.

¹⁰³⁰ Counsel Assisting Submissions at [1916.3] & [1917.3], Vol 2.

¹⁰³¹ T7504.25-26; T7505.11.

¹⁰³² T7504.34-36.

¹⁰³³ T7479.12-14; T7504.45-T7505.33.

¹⁰³⁴ T7504.11-13; T7505.24-33.

aware of the details.¹⁰³⁵ In particular, he did not know that Ms Gobbo was providing information about Mr Cooper.¹⁰³⁶

- 42.38 At its highest, the state of Mr Biggin's knowledge that Ms Gobbo may have been providing information to police about Mr Cooper was that "*in the back of my mind I had thought that perhaps that could be the case*".¹⁰³⁷
- 42.39 Critically, Mr Biggin did not know prior to Mr Cooper's arrest that Ms Gobbo was acting for Mr Cooper.¹⁰³⁸ He had no idea who she was representing.¹⁰³⁹ There is simply no evidence capable of demonstrating that Mr Biggin knew, or could have known, Ms Gobbo was acting for Mr Cooper.
- 42.40 In the months prior to Mr Cooper's arrest, Ms Gobbo provided her handlers with extensive information regarding Mr Cooper.¹⁰⁴⁰ However, there is no evidence that any of this information was communicated to Mr Biggin – nor would there be any need for him to know such information.
- 42.41 Further, there is no evidence that Mr Biggin had any involvement in or awareness of the meetings between Ms Gobbo and her handlers, and between the handlers and investigators, in preparation for Mr Cooper's arrest.¹⁰⁴¹
- 42.42 Accordingly, it would be unreasonable for the Commission to find that Mr Biggin knew that Ms Gobbo was informing on Mr Cooper while purporting to act for him. Nor can the Commission find that Mr Biggin appreciated that there was a conflict of interest between Ms Gobbo's dual roles.

Mr Biggin did not know Ms Gobbo had provided information which led to Mr Cooper's arrest

- 42.43 In particular, there is no evidentiary basis for Counsel Assisting's assertion that Mr Biggin knew that it was Ms Gobbo's informing on Mr Cooper that led to Mr Cooper's arrest.¹⁰⁴² Counsel Assisting's submissions do not identify any evidence that could be relied upon to establish such knowledge.
- 42.44 Moreover, Counsel Assisting's submissions completely ignore Mr Biggin's unchallenged sworn evidence to the contrary.
- 42.45 In his statement Mr Biggin said:

*At the time of [Mr Cooper's] arrest, and while he remained in custody, I was not aware that Ms Gobbo had provided Victoria Police with any information about the crime in relation to which [Mr Cooper] was arrested.*¹⁰⁴³

- 42.46 In cross examination by Counsel Assisting, Mr Biggin further explained as follows:

MR WOODS: But you were also aware that the information identifying the Strathmore lab had come from Ms Gobbo?

MR BIGGIN: Didn't know that.

¹⁰³⁵ T7503.31-36.

¹⁰³⁶ T7508.5-9.

¹⁰³⁷ T7508.15.

¹⁰³⁸ T7508.17-19.

¹⁰³⁹ T7522.22.

¹⁰⁴⁰ As described in Counsel Assisting Submissions at [1764]-[1823], Vol 2.

¹⁰⁴¹ As described in Counsel Assisting Submissions at [1824]-[1826], Vol 2.

¹⁰⁴² Counsel Assisting Submissions at [1916.4] & [1917.4], Vol 2.

¹⁰⁴³ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [46] (VPL.0014.0041.0008 at .0016).

- MR WOODS: So what were you told about how it came to pass that the Strathmore lab was identified?
- MR BIGGIN: Certainly I was told that Dale Flynn had been given a rough location, I don't know where he got that from, and he drove round [redacted] one evening and found the lab site or what he suspected to be the lab site on a specific evening [redacted].
- MR WOODS: Yes
- MR BIGGIN: And that was my understanding until just recently.
- MR WOODS: So the first you were aware of Ms Gobbo's involvement in identifying the site was recently, is that right?
- MR BIGGIN: Yes, it was confirmed with me recently. It was put to me by IBAC. I didn't really understand what they were saying to me at the time. It was only just recently that it was confirmed to me that Ms Gobbo had actually given the information that led to Flynn finding the lab site.
- MR WOODS: All right.¹⁰⁴⁴

- 42.47 Despite this unchallenged evidence - which is not referred to in Counsel Assisting's submissions - Counsel Assisting urge the Commissioner to find that "Mr Biggin knew that it was Ms Gobbo's informing on Mr Cooper that led to the obtaining of incriminating evidence against Mr Cooper and led to his arrest on 22 April 2006".¹⁰⁴⁵ This submission must be rejected.

43 Mr Cooper's arrest and the events that followed

- 43.1 The events of 22 April 2006 and the days that followed confirm Mr Biggin's lack of knowledge about the role Ms Gobbo played with respect to Mr Cooper, and the peripheral part that Mr Biggin played in Mr Cooper's arrest and subsequent events which culminated in Mr Cooper assisting police. The evidence as to Mr Biggin's limited role in these events is consistent with his responsibilities as a Superintendent overseeing a division that provided covert services to the Purana investigation, rather than someone who was directly involved in the investigation.

22 April 2006

- 43.2 On 22 April 2006 Mr Biggin attended the St Kilda Road police station for reasons unrelated to Ms Gobbo. While he was there, no-one informed him of their concerns regarding the conflict of interest that had crystallised when Ms Gobbo attended and advised Mr Cooper.
- 43.3 During the arrest of Mr Cooper, Mr Biggin was present at the Purana operations room to monitor the involvement of covert units that reported to him during the arrest process. Mr Biggin subsequently attended the laboratory to view the set-up of the site, due to its sophistication and for his own interest.¹⁰⁴⁶
- 43.4 At 5.30 pm, he returned to the Purana Taskforce offices at the St Kilda Road police station. Mr Biggin's evidence was that he attended the Purana offices because he

¹⁰⁴⁴ T7507.2-24.

¹⁰⁴⁵ Counsel Assisting Submissions at [1916.4] & [1917.4], Vol 2.

¹⁰⁴⁶ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [44]-[46] (VPL.0014.0041.0008 at .0016); T7511.35-T7512.9.

believed there would be further covert services to be deployed in the next phases of the operation and he “*was there to actually get a feel for what the next steps were to be from a service provision point of view*”.¹⁰⁴⁷ Any deployment of [REDACTED] also had to be approved by him before it could commence.

43.5 Mr Biggin’s diary records that whilst he was at St Kilda Road, he met Senior Sergeant O’Connor (of the State Surveillance Unit) and was briefed by Inspector Gavan Ryan and then Detective Acting Inspector Jim O’Brien. He remained at the offices on “*standby*” until 11.10 pm.¹⁰⁴⁸

43.6 There is no evidence as to what Messrs Ryan and O’Brien briefed Mr Biggin about, but it is likely to have been about future covert service requirements. This is apparent from Mr O’Connor’s evidence, where he recalls,

*we were discussing how [Mr Cooper] might gather evidence against others and what surveillance resources would be needed for that. I recall understanding by this time that [Mr Cooper] was cooperating and that I needed to make a lot of arrangements to pull together surveillance resources for that.*¹⁰⁴⁹

43.7 Counsel Assisting’s submissions assert that “*as Mr Biggin was the most senior officer of Victoria Police available for Mr Flynn to speak to that evening, Mr Flynn briefed him as to the progress of events*”.¹⁰⁵⁰ This assertion cannot be accepted for two reasons.

43.8 First, Mr Flynn’s evidence was that he briefed Mr Biggin as to the “*progress of the investigation*”.¹⁰⁵¹ There is no evidence that he briefed Mr Biggin about the conflict of interest associated with Ms Gobbo’s attendance to advise Mr Cooper. To the contrary, Mr Flynn’s evidence to the Commission was that he believed his update to Mr Biggin was no more than, “*Yes, we’ve located the lab, we’ve found this, we’ve arrested him and brought him back here and then spoken to them*”.¹⁰⁵² When asked by Counsel Assisting whether he had discussed with Mr Biggin the complexities involved in Ms Gobbo’s attendance, Mr Flynn’s evidence was, “*I don’t know if I discussed the complexities with him. I think it was just a short update in relation to what had occurred*”.¹⁰⁵³

43.9 Secondly, the suggestion that Mr Biggin was the most senior officer of Victoria Police available for Mr Flynn to speak to is not consistent with the evidence before the Commission and ignores the command structure in existence at Victoria Police. Mr Flynn’s evidence was that if he had any concerns about the complicated situation which had arisen, he would brief his direct report, which was Mr O’Brien.¹⁰⁵⁴ It would then be for Mr O’Brien to brief his direct report, which was Superintendent Richard Grant. Supt Grant’s statement to the Commission confirms that he was kept updated by DAI O’Brien with regards to Mr Cooper’s arrest, and that he, in turn, kept AC Overland updated over the course of the weekend.¹⁰⁵⁵ As Mr Biggin put it,

I go back to the point I make, is that my role there that night was as a service provider. Crime Command have their own line of management. If they have

¹⁰⁴⁷ T7517.27-38.

¹⁰⁴⁸ Exhibit RC0578 – Diary of Anthony Biggin (VPL.0005.0155.0005 at .0016).

¹⁰⁴⁹ Exhibit RC1243b – Statement of Michael O’Connor at [23] (VPL.0014.0099.0001 at .0004).

¹⁰⁵⁰ Counsel Assisting Submissions at [1914.9], Vol 2.

¹⁰⁵¹ T6814.37-44 (Flynn).

¹⁰⁵² T6808.13-17 (Flynn).

¹⁰⁵³ T6808.22-26 (Flynn).

¹⁰⁵⁴ T6815.45 (Flynn); T6896.47-T6897.3 (Flynn).

¹⁰⁵⁵ Exhibit RC1256 – Statement of Richard Grant at [58]-[68] (VPL.0014.0103.0001 at .0009-.0010).

*concerns about it, this is a role for investigators, not for service providers, to resolve.*¹⁰⁵⁶

- 43.10 It would be highly unusual for an investigator in Mr Flynn's position to bypass his own direct report and brief a Superintendent who was not across the investigation and sat wholly outside of his chain of command. There is no evidence upon which the Commission could find that that Mr Flynn did so on 22 April 2006.
- 43.11 While he was at the Purana offices, Mr Biggin observed Ms Gobbo assisting Mr Cooper and understood she was there in her capacity as a barrister. He thought it was a "normal lawyer/client relationship".¹⁰⁵⁷ Mr Biggin was not shocked or concerned to see Ms Gobbo. This is entirely explicable given Mr Biggin's lack of knowledge of the information that Ms Gobbo had been providing to her handlers about Mr Cooper and his unawareness of her conflict of interest. While Mr Biggin acknowledged, with the benefit of hindsight, that his view as to it being a normal relationship was naïve, his mindset at the time of these events was that nothing untoward was occurring.¹⁰⁵⁸
- 43.12 Mr Biggin also observed from a distance Ms Gobbo interacting with two SDU handlers, which he also thought was "quite normal". He did not hear what they said. Mr Biggin assumed the handlers were there to support the investigators in dealing with Mr Cooper,¹⁰⁵⁹ given their expertise in persuading people to co-operate. His evidence was that "it wasn't uncommon for the source handlers to be present during major arrests"^{FII} [REDACTED] *It was a common practice.*¹⁰⁶⁰ Again, this is entirely explicable given Mr Biggin's lack of knowledge of Ms Gobbo's conflict of interest.
- 43.13 With the benefit of hindsight and knowing what he now knows, Mr Biggin accepts that there was a potential for conflict associated with the use as a human source of a practicing barrister with the clients and personal contacts that Ms Gobbo had.¹⁰⁶¹ However, there is no evidence that Mr Biggin appreciated the potential for conflict at the time of Mr Cooper's arrest.
- 43.14 In part, Mr Biggin's lack of appreciation of the potential for conflict arises due to structural deficiencies within Victoria Police, which were outside of Mr Biggin's control. In particular, as explained in Victoria Police's submissions and the evidence of Assistant Commissioner Kevin Casey,¹⁰⁶² there was an absence of training provided to Victoria Police members in relation to conflicts of interests and legal practitioners' ethical obligations. In addition, there had not been legal advice obtained in relation to these complex issues upon Ms Gobbo's initial registration, which would have assisted the SDU and investigators to understand and manage the risks associated with the use of a practicing barrister as a human source.
- 43.15 The Commission cannot use Mr Biggin's concessions, made with the benefit of hindsight, as a basis for establishing Mr Biggin's knowledge and assessing his conduct at the time these events occurred.¹⁰⁶³

¹⁰⁵⁶ T7520.6-10.

¹⁰⁵⁷ T7516.10-11 (Biggin).

¹⁰⁵⁸ T7516.22-40.

¹⁰⁵⁹ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [47] (VPL.0014.0041.0008 at .0016); T7512.15.

¹⁰⁶⁰ T7537.1-24.

¹⁰⁶¹ T7501.46-T7502.4.

¹⁰⁶² Untendered, Statement of Assistant Commissioner Kevin Casey dated 15 August 2020.

¹⁰⁶³ Counsel Assisting appear to invite the Commission to do so at [1914.9]-[1914.10], Vol 2.

Mr Biggin remained ignorant as to Ms Gobbo's conflict of interest in the days following Mr Cooper's arrest

- 43.16 In the days following Mr Cooper's arrest, Mr Biggin remained ignorant as to Ms Gobbo's role in providing information that led to Mr Cooper's arrest and the conflict of interest that therefore crystallised when she attended to advise Mr Cooper. Despite his involvement in several briefings during this period, he was not advised of this conflict.
- 43.17 On 23 April 2006, Mr Biggin's diary records that he attended a meeting with DAI O'Brien, DASS Flynn and Officer White. Officer White's diary shows that the meeting concerned future plans regarding Mr Cooper's cooperation with investigators.¹⁰⁶⁴ There is no evidence that anyone raised in Mr Biggin's presence any concerns regarding Ms Gobbo's attendance to advise Mr Cooper.
- 43.18 On 24 April 2006, Mr Biggin's diary records he attended a briefing in relation to Operation Posse Phases 4 and 5 at 6.50 pm. Counsel Assisting's submissions at [1520] detail a number of matters which are said to have been included in the Operation Order for Phase 5, including background information concerning the information provided by Ms Gobbo in the lead up to Mr Cooper's arrest. The inference that Counsel Assisting appear to be inviting is that Mr Biggin must therefore have been aware of these matters. However, there is no evidence that Mr Biggin ever saw the Operation Order or was briefed as to the background information it contained. Mr Biggin was not examined about this meeting and did not discuss it in his statements. However, it is apparent from Mr Biggin's diary that the briefing was about planning the covert resource requirements for the next phase of the operation, which was to involve the State Surveillance Unit, Technical Surveillance Unit (units which reported to Mr Biggin) and the Special Operations Group¹⁰⁶⁵:

1850	TF Purwa
	briefing Insp Ryan
	All Insp O'Brien
	Insp Elliott
	briefing re op. posse
	phase 4 & 5
	as per op. order & notes
	tactics & planning
	monitor SSU / TSU / SOG

- 43.19 Also, the fact that Mr Biggin is not listed on the distribution list for Operation Order Phase 5 makes it unlikely that he ever received a copy of the Order.
- 43.20 A further briefing occurred at approximately 9.15 pm on 24 April 2006 at which Superintendents Grant and Steendam were present. Mr Biggin does not have a diary record of this meeting and was not examined about it. However, the evidence of Mr Grant and DC Steendam is that the meeting involved discussions about whether to conclude the operation that night by arresting Milad Mokbel or to wait until the following day.¹⁰⁶⁶ Counsel Assisting's submissions refer to Mr Flynn's evidence that it was possible but unlikely that Ms Gobbo's role was discussed at this meeting.¹⁰⁶⁷ Given Mr Grant and DC Steendam's unchallenged evidence that they did not know Ms Gobbo

¹⁰⁶⁴ Untendered Diary of Sandy White, 23 April 2006 (VPL.2000.0001.0677 at .0728).

¹⁰⁶⁵ Exhibit RC0578 – Diary of Anthony Biggin (VPL.0005.0155.0005 at .0021).

¹⁰⁶⁶ Exhibit RC1256 – Statement of Richard Grant at [73] (VPL.0014.0103.0001 at .0010); Exhibit RC1244 – First statement of DC Wendy Steendam at [23]-[24] (VPL.0014.0113.0001 at .0004).

¹⁰⁶⁷ Counsel Assisting Submissions at [1840], Vol 2.

was a human source,¹⁰⁶⁸ Ms Gobbo's role in relation to Mr Cooper must not have been discussed at this meeting.

- 43.21 Accordingly, Mr Biggin remained of the belief that Ms Gobbo's role on the night of Mr Cooper's arrest was confined to acting as his barrister.¹⁰⁶⁹ He therefore remained ignorant of the conflict of interest between her dual roles in relation to Mr Cooper.

Post April 2006

- 43.22 There is no evidence that Mr Biggin played any role in anything to do with Mr Cooper after late April 2006. There was no operational need for him to do so as the Covert Support Division played no role in the taking of statements, preparation of briefs of evidence or court proceedings.
- 43.23 Mr Biggin had his own work to undertake overseeing the units that reported to him, as well as other duties that were entrusted to him at this time. From 4 May 2006, Mr Biggin together with Superintendent Tim Cartwright, were appointed to the ESD investigation into the Police Association bullying allegations relating to Paul Mullet. This investigation took 12 months and was undertaken over and above Mr Biggin's usual duties.¹⁰⁷⁰ In addition, on 2 June 2006, Mr Biggin was notified of a possible corruption issue within the State Surveillance Unit, being one of the units that reported to him. The matter was investigated by Victoria Police and the Office of Police Integrity and Mr Biggin devoted a lot of his time to providing the OPI with the information they required to properly investigate this matter.¹⁰⁷¹

44 Mr Biggin's Audit

- 44.1 On 27 April 2006, Mr Biggin attended the SDU premises and conducted an audit of Ms Gobbo's human source file. He prepared an Issue Cover Sheet, dated 28 April 2006, recording the findings of his audit.¹⁰⁷² Counsel Assisting's submissions make four allegations in relation to Mr Biggin's audit.
- 44.2 **First**, Counsel Assisting submit at paragraph [1546] that it is open to the Commission to find that, *"despite his evidence to the contrary, when conducting his audit, Mr Biggin did turn his mind to the risk of impropriety in the use of Ms Gobbo as a human source"*. **Secondly**, in the alternative, Counsel Assisting submit at paragraph [1547] that Mr Biggin *"should have turned his mind to the risk of such impropriety"*. Neither of these findings are open to the Commission on the evidence for the reasons that follow, as summarised at 44.28 to 44.34 below. Alternative findings to those made by Counsel Assisting at [1546] and [1547] are set out at 44.35 to 44.37 below.
- 44.3 In particular, there is no evidence that, at the time of conducting his audit, Mr Biggin:
- (a) was "alive to" issues associated with the use of a defence barrister as a human source;¹⁰⁷³
 - (b) knew Ms Gobbo was providing information that was being used by Operation Posse;¹⁰⁷⁴

¹⁰⁶⁸ Exhibit RC1256 – Statement of Richard Grant at [94] (VPL.0014.0103.0001 at .0013); Exhibit RC1244 – First statement of DC Wendy Steendam at [132] (VPL.0014.0113.0001 at .0016).

¹⁰⁶⁹ T7594.33-36.

¹⁰⁷⁰ T7818.34-37; Untendered Diary of Anthony Biggin, 4 May 2006 (VPL.0005.0155.0005 at .0029-30).

¹⁰⁷¹ T7819.30-36; Untendered Diary of Anthony Biggin, 2 June 2006 (VPL.0005.0155.0005 at .0041 & .0044).

¹⁰⁷² Exhibit RC0277 – Issue Cover Sheet re DSU – audit (VPL.2000.0002.0017).

¹⁰⁷³ Counsel Assisting Submissions at [1546.2], Vol 2.

¹⁰⁷⁴ Counsel Assisting Submissions at [1546.3], Vol 2.

- (c) knew that Ms Gobbo had provided the information which led to Mr Cooper's arrest.¹⁰⁷⁵
- 44.4 Further, Mr Biggin's acceptance, with the benefit of hindsight, that he should have recommended that legal advice be sought does not provide any evidentiary basis for an assumption that he considered this at the time of conducting his audit and it ignores Mr Biggin's direct evidence on this topic.
- 44.5 **Thirdly**, Counsel Assisting rely on Mr Biggin's audit in support of the submission that it is open to the Commission to find that between May 2006 and February 2007 Mr Biggin was aware of the continued use of Ms Gobbo as a human source against Mr Cooper "*in order to ensure that Mr Cooper would implicate his criminal associates*".¹⁰⁷⁶ However, there is no evidence that Mr Biggin knew at any time, including when conducting his audit, that Ms Gobbo was being used to ensure that Mr Cooper would implicate his criminal associates. Counsel Assisting assert at [1917.5] that Mr Biggin was aware of this without referring to any evidence in support of this assertion. No such evidence exists and this assertion must be rejected.
- 44.6 **Fourthly**, Counsel Assisting assert at [1914.11] that Mr Biggin's audit "*provided him with significant details as to Ms Gobbo's informing on Mr Cooper*" and refer to his concession, made with the benefit of hindsight, that legal advice should have been obtained. These assertions, which underlie Counsel Assisting's submissions that Mr Biggin's conduct might have constituted misconduct Relevance are not supported by the evidence.

Mr Biggin did not turn his mind to the risk of impropriety in the use of Ms Gobbo as a human source when conducting his audit and should not be criticised for failing to do so

- 44.7 With the benefit of hindsight and knowing what he now knows about Ms Gobbo's use as a human source, Mr Biggin accepts that his audit was inadequate in that it failed to identify the risks associated with Ms Gobbo's role as a practicing barrister. As Mr Biggin frankly conceded before the Royal Commission, "*This was clearly an opportunity to identify that there's a big flashing red light here and I've missed it.*"¹⁰⁷⁷
- 44.8 Mr Biggin's concessions as to his failings when undertaking the audit are to his credit. They are consistent with the honesty and candour with which Mr Biggin gave evidence before the Commission and his demonstrated willingness to accept responsibility for his mistakes. As Counsel Assisting acknowledge elsewhere in their submissions, while many police officers were reluctant to concede responsibility for their role in the events the subject of this Royal Commission, "*Mr Biggin candidly accepted some responsibility for his role in Victoria Police's use of Ms Gobbo as a human source*".¹⁰⁷⁸ Counsel Assisting have offered no reason why his evidence regarding the audit should be rejected, despite otherwise acknowledging the candour of his evidence.
- 44.9 The Commissioner should accept Mr Biggin's evidence as to his state of mind when undertaking the audit. Mr Biggin strongly rejected the suggestion by Counsel Assisting that he knew by the time he conducted his audit that the situation was ethically repugnant.¹⁰⁷⁹ He equally rejected the suggestion that he knew that the SDU was doing the wrong thing and he did simply nothing about it.¹⁰⁸⁰ Mr Biggin also rejected any

¹⁰⁷⁵ Counsel Assisting Submissions at [1546.6], Vol 2.

¹⁰⁷⁶ Counsel Assisting Submissions at [1917], Vol 2.

¹⁰⁷⁷ T7540.3-4.

¹⁰⁷⁸ Counsel Assisting Submissions at [4779.4], Vol 2.

¹⁰⁷⁹ T7817.38-43.

¹⁰⁸⁰ T7817.45-47.

imputation that he was a “patsy” doing his audit.¹⁰⁸¹ Further, Mr Biggin gave unchallenged evidence to the Commission that, had he known about the issues that had arisen in relation to Mr Cooper, he would have ensured that they were reported as part of his audit.¹⁰⁸² Mr Biggin’s evidence should be accepted.

- 44.10 Mr Biggin should not be criticised for failing to miss what he now appreciates was a “*big flashing red light*”. Mr Biggin undertook the audit diligently and made an honest mistake.
- 44.11 His failure to turn his mind to the risk of impropriety in the use of Ms Gobbo as a human source is explicable for the following reasons:
- (a) First, he was asked to conduct a high level, overview audit, rather than a more extensive analysis of the file. He therefore read only 5-10% of the documents available to him and did not review any documents held by the Informer Management Unit.
 - (b) Secondly, Mr Biggin’s knowledge of Ms Gobbo’s informing and of Operation Posse was limited.
 - (c) Thirdly, he did not know that Ms Gobbo had provided the information which led to Mr Cooper’s arrest and therefore he did not appreciate Ms Gobbo’s conflict of interest in providing legal advice to Mr Cooper after his arrest.
 - (d) Fourthly, in conducting his audit, Mr Biggin relied upon the records and information that were made available to him, including what he was told by the controller and handlers during their discussions on 27 April 2006.
 - (e) Fourthly, Mr Biggin’s understanding of Ms Gobbo’s practice and the information she could provide gave him no reason to expect she would have been providing information that may have been privileged, confidential and/or came from her clients.
 - (f) Fifthly, although Mr Biggin conceded with the benefit of hindsight that legal advice should have been obtained, his unchallenged evidence was that this did not occur to him at the time of undertaking his audit.
 - (g) Sixthly, as explained in Victoria Police’s submissions and the evidence of Assistant Commissioner Kevin Casey,¹⁰⁸³ there was an absence of training provided to Victoria Police members in relation to conflicts of interests and legal practitioners’ ethical obligations. Mr Biggin could therefore not be expected to have had a sufficient understanding of these issues to enable him to identify, let alone respond to, the issues that arose in relation to the use of Ms Gobbo as a human source, particularly in light of the limited information he was privy to about her use.

An overview audit

- 44.12 Commander Moloney directed Mr Biggin to conduct a high level overview or oversight audit of Ms Gobbo’s human source file. It was intended to be a “*broad over-viewing audit, not an in-depth line-to-line place-to-place audit*”.¹⁰⁸⁴ Counsel Assisting refer to Officer White’s evidence as to the purpose of the audit,¹⁰⁸⁵ however, there is no

¹⁰⁸¹ T7535.8-11.

¹⁰⁸² T7670.33-T7671.40.

¹⁰⁸³ Untendered, Statement of Assistant Commissioner Kevin Casey dated 15 August 2020

¹⁰⁸⁴ T7523.10-40.

¹⁰⁸⁵ Counsel Assisting Submissions at [1534], Vol 2.

evidence that this was consistent with Mr Biggin's understanding of the purpose of the audit.

- 44.13 Mr Biggin conducted the audit by attending the SDU premises on 27 April 2006, where he spoke to Officers Sandy White, Peter Smith, Green and Black¹⁰⁸⁶ and inspected a very small sample of the available records. Mr Biggin explained:

*The process of any audit at Victoria Police at that particular time was to look at between 5 and 10 percent of all of the documents, not to read every document, not to read from front to back. As I explained to you earlier, this wasn't a start at the start, finish at the finish, read every document in between audit.*¹⁰⁸⁷

- 44.14 Had he been asked to conduct a full audit, Mr Biggin explained that he would have started at the Informer Management Unit and inspected the files there before attending the SDU. By only going to the SDU he had "*specifically only done half the job*".¹⁰⁸⁸

Mr Biggin's knowledge of Ms Gobbo's informing and of Operation Posse was limited

- 44.15 As detailed in Part 42 above, Mr Biggin knew very little about Ms Gobbo's informing and about Operation Posse. His state of knowledge had not significantly improved between the time of Mr Cooper's arrest and the conduct of the audit.
- 44.16 Counsel Assisting's submissions assert at [1543] and [1914.11] that Mr Biggin became aware that Ms Gobbo was providing information about Mr Cooper when conducting his audit. That assertion is not supported by the evidence, and certainly not by the transcript reference that is cited by Counsel Assisting in the relevant footnotes. Mr Biggin's evidence was that he was not aware until his audit that there had been 147 contacts between the SDU and Ms Gobbo, and that their interactions were therefore broader than he had assumed.¹⁰⁸⁹
- 44.17 Counsel Assisting's assertion at [1546.2] that Mr Biggin "*had earlier given evidence that he had been alive to associated issues*" is also incorrect, for the reasons explained in paragraphs 42.17 to 42.20 above.

He did not know that Ms Gobbo had provided the information which led to Mr Cooper's arrest

- 44.18 Counsel Assisting wrongly assert at [1546.6] that at least by the time of his audit, if not well before, Mr Biggin knew that Ms Gobbo had provided the information which led to Mr Cooper's arrest. There is no evidentiary basis for this submission. The evidence cited in footnote 1929 does not support the facts asserted in Counsel Assisting's submissions.
- 44.19 Moreover, Counsel Assisting's submissions ignore Mr Biggin's direct and unchallenged evidence to the contrary. As set out in 42.43 to 42.47 above, Mr Biggin's evidence was that he did not know until recently that Ms Gobbo had provided the information which led to Mr Cooper's arrest.

Mr Biggin relied on the information and records available to him

- 44.20 In conducting his audit, Mr Biggin discussed the handling of Ms Gobbo with Officers White, Peter Smith, Green and Black in their respective roles of controller and

¹⁰⁸⁶ Exhibit RC0277 – Issue Cover Sheet re DSU - audit (VPL.2000.0002.0017 at .0017).

¹⁰⁸⁷ T7548.29-35.

¹⁰⁸⁸ T7524.8-13.

¹⁰⁸⁹ T7525.13-18.

handlers.¹⁰⁹⁰ Mr Biggin expected Officer Sandy White to be frank with him about any significant issues that he perceived in relation to the use of Ms Gobbo.¹⁰⁹¹

- 44.21 However, despite the arrest of Mr Cooper having already occurred, Mr Biggin was not informed of any concerns around Ms Gobbo's attendance that evening. Nor was he advised of the recent conversations between Ms Gobbo and her handlers in which Ms Gobbo had described the general ethics of the whole situation as "*fucked*".¹⁰⁹²
- 44.22 As for the records available to Mr Biggin, his issue cover sheet indicates that the last informer contact report he perused was ICR 021 which was dated from 3 to 9 March 2006.¹⁰⁹³ Although that document mentioned Mr Cooper, it did not reveal the most significant information that Ms Gobbo had provided about Mr Cooper, including information as to the location of the laboratory. Mr Biggin did not have available to him the subsequent informer contact reports which included this information.
- 44.23 As part of his audit, Mr Biggin scanned the two risk assessments that had been prepared.¹⁰⁹⁴ These were deficient in that they did not identify any risks arising from Ms Gobbo's profession, and would therefore have not been of assistance to Mr Biggin in assessing whether the risks arising from Ms Gobbo's use as a human source were being appropriately managed. Similarly, the lack of a written Acknowledgment of Responsibility deprived Mr Biggin of the ability to assess the SDU's handling of Ms Gobbo against a set of pre-determined boundaries,¹⁰⁹⁵ despite Mr Biggin being advised that a verbal Acknowledgment of Responsibility had been done.¹⁰⁹⁶

Mr Biggin's understanding of Ms Gobbo's practice and the information she could provide

- 44.24 With the benefit of hindsight, Mr Biggin offered the following further explanations to the Commission for his failure to appreciate the risks associated with Ms Gobbo's profession as a barrister when undertaking his audit in April 2006:
- (a) First, at the time of undertaking the audit, Mr Biggin did not recall thinking that any of the information being provided by Ms Gobbo was information which was, or was likely to be, subject to legal professional privilege or otherwise confidential.
 - (b) Secondly, Mr Biggin's understanding at the time of conducting the audit was that, as a barrister, Ms Gobbo should not be providing any information to Victoria Police in relation to any person who she was actively representing. While he did not know who her clients were, Mr Biggin understood that she socialised extensively with criminals.
 - (c) Thirdly, Mr Biggin believed that Ms Gobbo's practice entirely or almost entirely involved appearing for clients in bail applications and that she did not act for clients beyond that point. In his mind, this was significant because bail applications generally occurred at a very early stage of criminal proceedings when briefs of evidence had not yet been served. Also, Mr Biggin understood that limited instructions would be provided to Ms Gobbo by her clients for the purposes of their bail applications because, in his experience, bail applications focused on the strength of the prosecution case rather than the defence case.¹⁰⁹⁷

¹⁰⁹⁰ Exhibit RC0277 – Issue Cover Sheet re DSU - audit (VPL.2000.0002.0017 at .0017).

¹⁰⁹¹ T7670.29-31.

¹⁰⁹² Exhibit RC0496 – Transcript of discussion between Peter Smith, Sandy White, Officer Green, an unknown male and Ms Gobbo, 20 April 2006 at p 273 (VPL.0005.0097.0011 at .0283).

¹⁰⁹³ Exhibit RC0277 – Issue Cover Sheet re DSU - audit (VPL.2000.0002.0017 at .0017).

¹⁰⁹⁴ T7551.37-39.

¹⁰⁹⁵ T7795.13-T7796.19.

¹⁰⁹⁶ T7542.14-17.

¹⁰⁹⁷ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [62] (VPL.0014.0041.0008 at .0019-.0020).

Hindsight concessions regarding legal advice

- 44.25 Mr Biggin conceded, with the benefit of hindsight and all that he now knows, that legal advice should have been obtained in relation to the use of Ms Gobbo as a source.¹⁰⁹⁸ However, his acceptance, in hindsight, that this should have occurred does not provide an evidentiary basis for an assumption that he considered this at the time of conducting his audit.
- 44.26 Moreover, Mr Biggin's direct and unchallenged evidence was that the obtaining of legal advice did not occur to him at the time of conducting his audit.¹⁰⁹⁹
- 44.27 Although Mr Biggin now accepts responsibility for the fact that the audit missed the issue that now concerns this Royal Commission, he undertook the task diligently and did not deliberately close his mind to the risks of impropriety in the use of Ms Gobbo as a human source. His failure to appreciate the risks associated with Ms Gobbo's profession as a practicing barrister are explicable in the circumstances and he should not be criticised for missing what he now appreciates was a "*big flashing red light*".

Proposed adverse findings at [1546] and [1547]

- 44.28 Mr Biggin submits that the proposed adverse findings at [1546] and [1547] of Counsel Assisting's submissions are not open to the Commission on the evidence for the reasons advanced in these submissions and particularly in this Part (Part 6).
- 44.29 The Commission should accept Mr Biggin's evidence as to his state of mind when conducting the audit for the reasons explained in this Part (Part 6).
- 44.30 In relation to the reasons advanced by Counsel Assisting at [1546], Mr Biggin accepts that the proposed findings at paragraphs [1546.1], [1546.4] and [1546.5] are open on the evidence. In relation to paragraph [1546.5], Mr Biggin notes that he did not know that Ms Gobbo had a conflict of interest in attending to provide legal representation to Mr Cooper, for the reasons explained in Part 42.
- 44.31 In relation to paragraph [1546.2], Mr Biggin accepts that his initial reaction upon learning that Ms Gobbo had been registered was that he thought it was "unusual" given she was a practicing barrister. However, he did not consider her registration to be problematic or raise any legal issues as explained in paragraphs 42.16 to 42.20 above. It is not correct to state that Mr Biggin "*had earlier given evidence that he had been alive to associated issues*". Mr Biggin's evidence in this regard is accurately set out at 42.17.
- 44.32 In relation to paragraph [1546.3], Mr Biggin knew Ms Gobbo to be a human source. As explained in Part 42 above, he did not know she was providing information being used by Operation Posse although it crossed his mind that she may have been. He was not aware of the details of any such information. Nor did he have a detailed knowledge of Operation Posse.
- 44.33 The proposed finding at [1546.6] is not open on the evidence and is contrary to Mr Biggin's sworn evidence which has been overlooked in Counsel Assisting's submissions. As explained in paragraphs 44.18 to 44.19 and 42.43 to 42.47. Mr Biggin's unchallenged evidence was that he did not know until recently that Ms Gobbo had provided the information which led to Mr Cooper's arrest. The Commission should accept Mr Biggin's evidence.

¹⁰⁹⁸ T7560.39-T7561.7.

¹⁰⁹⁹ T7561.4-5.

- 44.34 In relation to the second sentence in paragraph [1547], Mr Biggin accepts with the benefit of hindsight and knowing what he now knows about Ms Gobbo's use as a human source that legal advice should have been obtained. However, his hindsight concession does not provide an evidentiary basis for an assumption that he should have considered this at the time. Moreover, Mr Biggin's unchallenged sworn evidence was that the obtaining of legal advice did not occur to him at the time of conducting his audit. Mr Biggin refers to paragraphs 44.24 to 44.27.
- 44.35 On the basis that Counsel Assisting's proposed findings at paragraphs [1546] and [1547] are not open on the evidence, Mr Biggin submits that the following findings ought to be made in their place.
- 44.36 When conducting his audit Mr Biggin did not turn his mind to the risk of impropriety. That is so because:
- (a) He was an extremely experienced detective including in relation to human source management who conducted his audit diligently. However, he had only been asked to conduct a high-level, overview audit, and therefore only reviewed five to ten per cent of the documents available to him at the SDU and did not review any documents held by the Informer Management Unit. His knowledge of Ms Gobbo's use as a source, and undertaking of the difficulties this posed, was therefore limited.
 - (b) Mr Biggin thought the use of a defence barrister as a human source was "*unusual*" but did not consider it to be "*problematic*" or raise any legal issues. He trusted that any issues associated with Ms Gobbo's use as a human source had been considered by those involved in approving her registration and those who were managing her use as a source.
 - (c) He did not know Ms Gobbo was providing information being used by Operation Posse although it crossed his mind that she may have been. He was not aware of the details of any such information. His knowledge of Operation Posse was also limited.
 - (d) He knew Mr Cooper was a target of and arrested as part of Operation Posse. Mr Biggin wrongly thought that Operation Posse was only about Mr Cooper.
 - (e) He knew Ms Gobbo attended to provide legal representation to Mr Cooper when he was arrested. He did not know that Ms Gobbo had a conflict of interest in doing so. Nor was he aware that Ms Gobbo had acted as Mr Cooper's legal representative prior to her attending when he was arrested.
 - (f) He did not know at the time of conducting his audit that Ms Gobbo had provided the information which led to Mr Cooper's arrest.
 - (g) Had he known about the issues that had arisen in relation to Mr Cooper, Mr Biggin's unchallenged evidence was that he would have ensured that they were reported as part of his audit.¹¹⁰⁰
- 44.37 It is regrettable that Mr Biggin did not turn his mind to the risk of such impropriety, however, his failure to do so is understandable for the reasons set out in paragraphs (a) to (g) above. Further, although Mr Biggin recognised with the benefit of hindsight that legal advice should have been obtained, this did not occur to him when undertaking his audit.

¹¹⁰⁰ T7670.33-T7671.40.

With the benefit of hindsight Mr Biggin also recognised that his audit provided an opportunity to identify a “*big flashing red light*” which he missed.

45 Counsel Assisting’s proposed findings in relation to Mr Cooper

- 45.1 For the reasons advanced in these submissions the Commission cannot find that Mr Biggin acted improperly Relevance in relation to the use, management and disclosure of Ms Gobbo’s role as a human source concerning Mr Cooper.
- 45.2 At paragraph [1914], Counsel Assisting set out a summary of the evidence about Mr Biggin’s knowledge and conduct in relation to Ms Gobbo which is relied upon in order to substantiate their proposed adverse findings at paragraphs [1915], [1916] and [1917], and their ultimate submissions at paragraphs [1935]. Relevance
- 45.3 As pointed out below, not all of the evidence listed in paragraph [1914] is correct. At times, the evidence relied on is misstated, exaggerated, or simply wrong. Critical evidence has not been addressed. In some cases, assumptions have been made and inferences drawn by Counsel Assisting without a proper basis. The Commissioner would fall into error if that summary of the evidence or the proposed findings that follow were accepted.
- 45.4 Given the seriousness of the allegations made in Counsel Assisting’s submissions, it is necessary and appropriate for the Commissioner to set out an accurate summary of the evidence and make findings of fact that reflect that summary. That summary is set out at 45.15 below. Submissions in response to paragraphs [1915] to [1917] and [1935] Rel Relevance are set out below.

Counsel Assisting’s summary of the evidence at paragraph [1914]

- 45.5 In relation to the summary of the evidence at paragraphs [1914], Mr Biggin accepts that the proposed findings at [1914.1], [1914.2] and [1914.3] are open on the evidence.
- 45.6 In relation to paragraph [1914.3], Mr Biggin refers to the submissions made at paragraphs 42.13 to 42.20 in relation to the circumstances in which he was informed of Ms Gobbo’s use as a human source, and his thoughts about this.
- 45.7 The proposed evidentiary finding at paragraph [1914.4] is not open. Mr Biggin’s diary shows that he attended the meeting on 5 October 2005 for 15 minutes. There is no evidence that Ms Gobbo’s value as a human source was discussed in his presence, as explained in paragraphs 42.4 to 42.12 above. In response to paragraph [1914.5], Mr Biggin accepts that on 16 February 2006 Mr Overland told him that Ms Gobbo was to be protected. There is no evidence that Mr Overland used the phrase “at all costs”. Mr Biggin refers to the submissions at paragraphs 42.22 to 42.31 in relation to this conversation.
- 45.8 The proposed evidentiary finding at paragraph [1914.6] is not open. The evidence does not establish that Mr Biggin knew Victoria Police were using Ms Gobbo specifically for information concerning Operation Posse. Mr Biggin refers to Part 4 and particularly paragraphs 42.32 to 42.47.
- 45.9 In response to paragraph [1914.7], Mr Biggin accepts that he knew Mr Cooper was a significant target of Operation Posse. As explained in paragraph 42.35, Mr Biggin thought that Operation Posse was only about Mr Cooper.
- 45.10 In response to paragraph [1914.8], as explained in paragraph 42.38, Mr Biggin states that at its highest, the state of Mr Biggin’s knowledge that Ms Gobbo may have been

providing information to police about Mr Cooper was that *"in the back of my mind I had thought that perhaps that could be the case"*.¹¹⁰¹

- 45.11 In response to paragraph [1914.9], Mr Biggin refers to Part 5 of these submissions. In summary,
- (a) Mr Biggin accepts that he attended the lab and was present at the St Kilda Road police station following Mr Cooper's arrest.
 - (b) Mr Biggin was briefed by Mr Ryan and Mr O'Brien, most likely in relation to future covert service requirements.
 - (c) Mr Biggin was not the most senior officer of Victoria Police available for Mr Flynn to speak to. Mr Flynn briefed Mr Biggin as to the progress of the investigation but this did not include a briefing about Ms Gobbo's conflict of interest in attending to advise Mr Cooper.
 - (d) Mr Biggin observed Ms Gobbo assisting Mr Cooper. He thought this was a normal lawyer/client interaction and was not aware of Ms Gobbo's conflict of interest.
 - (e) Mr Biggin observed Ms Gobbo interacting with two SDU handlers. He thought this was quite normal and assumed that they were present to support the investigators in dealing with Mr Cooper given their expertise in persuading people to co-operate. There is no evidence that Mr Biggin knew, at that time, that Officer Smith was involved in Ms Gobbo's use as a human source.
 - (f) In hindsight, Mr Biggin acknowledged the naivety of his view that Ms Gobbo's interactions with Mr Cooper was a normal lawyer/client relationship, but that was not his view of the situation at the time.¹¹⁰²
- 45.12 In response to paragraph [1914.10], Mr Biggin refers to paragraphs 43.13 to 43.15. His concessions, made with the benefit of hindsight, cannot be relied upon to establish his knowledge and assess his conduct 14 years ago. There is no evidence that Mr Biggin appreciated the potential for conflict at the time of these events.
- 45.13 The proposed evidentiary finding at paragraph [1914.11] is not open. As explained in Part 44 of this submission, there is no evidence to support the assertion that his audit provided Mr Biggin with *"significant details as to Ms Gobbo's informing on Mr Cooper"*. Mr Biggin's evidence was that he was not aware until his audit that there had been 147 contacts between the SDU and Ms Gobbo, and that their interactions were therefore broader than he had assumed.¹¹⁰³
- 45.14 In relation to the second sentence in paragraph [1914.11], Mr Biggin accepts with the benefit of hindsight and knowing what he now knows about Ms Gobbo's use as a human source that legal advice should have been obtained. However, this hindsight concession does not provide an evidentiary basis for an assumption that he should have considered this at the time. Moreover, Mr Biggin's unchallenged sworn evidence was that the obtaining of legal advice did not occur to him at the time of conducting his audit. Mr Biggin refers to paragraphs 44.24 to 44.27.
- 45.15 Given that Counsel Assisting's proposed evidentiary findings at paragraph [1914] are only partially available on the evidence, Mr Biggin submits that the Commissioner should rely instead upon the following summary of evidence:

¹¹⁰¹ T7508.14-15.

¹¹⁰² T7516.4-40.

¹¹⁰³ T7525.13-18.

- (a) During the relevant period, as a police member, Mr Biggin was a public official.
- (b) In the period between 16 September 2005 and 22 April 2006, Mr Biggin was Superintendent in the Covert Support Division of the Intelligence and Covert Support Command. On 1 July 2006, the SDU came within his functional control and began reporting to him through their Inspector - initially Rob Hardie and, from February 2008, Andrew Glow.
- (c) Mr Biggin was first informed that Ms Gobbo was a human source during a conversation with Officer White on 7 October 2005. He was not informed of any detail about her informing other that the fact that Ms Gobbo had been registered. He thought the use of a defence barrister as a human source was "unusual" but did not consider it to be "problematic" or raise any legal issue. He trusted that any issues associated with her use as a human source had been considered by those involved in approving her registration and those who were managing her use as a source.
- (d) Mr Biggin attended a meeting on 5 October 2005 for 15 minutes. There is no evidence that Ms Gobbo's value as a human source was discussed in his presence at this meeting.
- (e) On 16 February 2006, Mr Overland told Mr Biggin that Ms Gobbo was to be protected. There is no evidence that Mr Overland used the phrase "*at all costs*". While Mr Biggin agreed that it was "*unusual*" for an Assistant Commissioner to tell him that one particular source needed to be protected, he said it was not unusual for an Assistant Commissioner to have a conversation like this without explaining the reasons why Ms Gobbo needed protection.
- (f) Mr Biggin did not know that Victoria Police were using Ms Gobbo specifically for information concerning Operation Posse, although crossed his mind that she may have been providing information used by Operation Posse. He was not aware of the details of any such information. Nor did he have a detailed knowledge of Operation Posse.
- (g) He knew Mr Cooper was a significant target of Operation Posse. Mr Biggin wrongly thought that Operation Posse was only about Mr Cooper.
- (h) He did not know that Ms Gobbo was providing information about Mr Cooper. At its highest, the state of Mr Biggin's knowledge about this was that "*in the back of my mind I had thought that perhaps that could be the case*".¹¹⁰⁴
- (i) Mr Biggin did not know prior to Mr Cooper's arrest that Ms Gobbo was acting for Mr Cooper. He had no idea who she was representing.
- (j) On 22 April 2006, following Mr Cooper's arrest, Mr Biggin attended the laboratory and the St Kilda Road police station. Mr Biggin:
 - (i) was briefed by Mr Ryan and Mr O'Brien, most likely in relation to future covert service requirements.
 - (ii) was not the most senior officer of Victoria Police available for Mr Flynn to speak to but was briefed by Mr Flynn as to the "progress of the investigation". This did not include a briefing about Ms Gobbo's conflict of interest in attending to advise Mr Cooper.

¹¹⁰⁴ T7508.15.

- (iii) observed Ms Gobbo assisting Mr Cooper. He thought this was a normal lawyer/client interaction and was not aware of Ms Gobbo's conflict of interest.
- (iv) observed Ms Gobbo interacting with two SDU handlers. He thought this was quite normal and assumed that they were present to support the investigators in dealing with Mr Cooper given their expertise in persuading people to co-operate. There is no evidence that Mr Biggin knew, at that time, that Officer Smith was involved in managing Ms Gobbo as a human source.
- (v) In hindsight, Mr Biggin acknowledged the naivety of his view that Ms Gobbo's interactions with Mr Cooper was a normal lawyer/client relationship, but at the time he was ignorant to her dual role.
- (k) With the benefit of hindsight Mr Biggin now accepts that there was a potential for conflict associated with the use as a human source of a practicing barrister with the clients and personal contacts that Ms Gobbo had. However, Mr Biggin had not appreciated the potential for conflict at the time of Mr Cooper's arrest.
- (l) Mr Biggin's audit did not provide him with significant details as to Ms Gobbo's informing on Mr Cooper. His knowledge of these matters remained limited. In particular:
 - (i) He did not know at the time of conducting his audit that Ms Gobbo had provided the information which led to the laboratory being located and led to Mr Cooper's arrest;
 - (ii) He did not appreciate at the time of conducting his audit that Ms Gobbo had a conflict of interest in providing advice to Mr Cooper following his arrest; and
 - (iii) Had he known about the issues that had arisen in relation to Mr Cooper, Mr Biggin's unchallenged evidence was that he would have ensured that they were reported as part of his audit.¹¹⁰⁵
 - (iv) Further, although Mr Biggin recognised with the benefit of hindsight that legal advice should have been obtained, this did not occur to him when undertaking his audit.

Proposed adverse finding at paragraph [1915] of Counsel Assisting's submissions

- 45.16 There is no evidentiary basis for the proposed finding at paragraph [1915] for the reasons explained in Parts 3, 4 and 5 of these submissions.
- 45.17 First, as described in Part 4, in early 2006 Mr Biggin knew very little about Ms Gobbo's informing other than the fact that she had been registered as a human source.
- 45.18 Mr Biggin did not know that Ms Gobbo was providing information about Mr Cooper. At its highest, the state of Mr Biggin's knowledge that Ms Gobbo may have been providing information to police about Mr Cooper was that "*in the back of my mind I had thought that perhaps that could be the case*".¹¹⁰⁶ He was not aware of the details.

¹¹⁰⁵ T7670.33-T7671.40.

¹¹⁰⁶ T7508.14-15.

- 45.19 Moreover, Mr Biggin did not know prior to Mr Cooper's arrest that Ms Gobbo was acting for Mr Cooper.¹¹⁰⁷ He had no idea who she was representing.¹¹⁰⁸ There is simply no evidence capable of demonstrating that Mr Biggin knew, or could have known, Ms Gobbo was acting for Mr Cooper.
- 45.20 Accordingly, there is no rational basis upon which Mr Biggin could have known that there was anything untoward in Ms Gobbo's use as a human source at this time.
- 45.21 Secondly, even if Mr Biggin suspected that Ms Gobbo was providing information against her client (which is not established on the evidence), his failure to investigate the matter is entirely explicable given the role he occupied in early 2006 and his understanding of the policies and processes that were in place at Victoria Police at the time.
- 45.22 As explained in Part 3, Mr Biggin understood that the SDU controllers and handlers were experts in human source management. He trusted their expertise and their integrity. He knew that they had undergone "*the most extensive probity check of anyone in Victoria Police*".¹¹⁰⁹ It is significant that, at this early stage, Mr Biggin had no insight whatsoever into the complex issues the SDU were already grappling with associated with Ms Gobbo's use as a human source, including issues relating to conflict of interest and legal professional privilege.¹¹¹⁰
- 45.23 Mr Biggin was also aware of the critical role of the HSMU in overseeing the SDU's management of registered human sources, including Ms Gobbo.
- 45.24 Moreover, Mr Biggin understood that it was a significant decision to register any human source,¹¹¹¹ and he'd had no involvement in the decision to register Ms Gobbo. He appreciated the rigorous assessment processes that would be undertaken prior to any registration being approved.¹¹¹² It was therefore reasonable for him to assume that those responsible for approving Ms Gobbo registration would have identified any potential risks arising from her profession and implemented methods to manage those risks.¹¹¹³ He knew Ms Gobbo had a personal relationship with a large number of criminals and believed that she would be providing information to police about information she had obtained in this way. However, Mr Biggin did not interrogate these assumptions or ask questions of the decision makers as he had no functional control of the SDU at that time and no role in approving or managing her registration.¹¹¹⁴ This was an entirely appropriate position for Mr Biggin to have adopted given his role and understanding of Ms Gobbo's personal relationships and professional practice at that time.
- 45.25 Thirdly, the suggestion that Mr Biggin should have nonetheless investigated these matters "*given his senior rank and despite not having operational control over the SDU*" misapprehends the nature of Mr Biggin's role, the rank structure, the "need to know" principle and the way in which covert environments operated at Victoria Police. As explained in Part 3 of these submissions, Mr Biggin's role in early 2006 did not involve any responsibility or control over the DSU/SDU, who had their own reporting structure through to Supt Thomas. The work of the SDU was highly specialised and strictly confidential. It was not for Mr Biggin to involve himself in, or second guess, decisions made within units outside of his control. Moreover, it was not appropriate for Mr Biggin

¹¹⁰⁷ T7508.19.

¹¹⁰⁸ T7522.22.

¹¹⁰⁹ T7782.14-24.

¹¹¹⁰ T7474.42-T7475.9.

¹¹¹¹ T7502.10.

¹¹¹² Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [17] (VPL.0014.0041.0008 at .0011).

¹¹¹³ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [15] (VPL.0014.0041.0008 at .0010); T7475.33-40.

¹¹¹⁴ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [15] (VPL.0014.0041.0008 at .0010); T7476.19-31.

to “investigate” these matters. Mr Biggin had not been told of the details regarding Ms Gobbo’s informing or her clients because there was no operational need for Mr Biggin to know such details. He therefore had no reason to ask questions about these matters, nor to demand answers to any such questions, despite his senior rank.

- 45.26 Accordingly, the proposed finding at paragraph [1915] of Counsel Assisting’s submission should not be made. There is no reason or cause to make any alternative finding about the matters referred to in that proposed finding.

Proposed adverse finding at paragraph [1916] of Counsel Assisting’s submissions

- 45.27 There is no evidentiary basis for the proposed finding at paragraph [1916] for the reasons explained in Parts 2 to 5 of these submissions.
- 45.28 Mr Biggin accepts that the proposed finding at [1916.1] is open on the evidence. He submits that the proposed findings at [1916.2] to [1916.6] are not open on the evidence.
- 45.29 In relation to paragraph [1916.2], there is no evidence that Mr Biggin knew on 22 April 2006 that Ms Gobbo was informing on Mr Cooper while purporting to act for him. The evidence establishes that:
- (a) Mr Biggin did not know that Ms Gobbo was providing information about Mr Cooper. At its highest, the state of Mr Biggin’s knowledge that Ms Gobbo may have been providing information to police about Mr Cooper was that “*in the back of my mind I had thought that perhaps that could be the case*”.¹¹¹⁵ He was not aware of the details.
 - (b) Mr Biggin did not know that Ms Gobbo was acting for Mr Cooper.¹¹¹⁶ He had no idea who she was representing.¹¹¹⁷
 - (c) Mr Biggin observed Ms Gobbo assisting Mr Cooper following his arrest on 22 April 2006. He thought this was a normal lawyer/client interaction and was not aware of Ms Gobbo’s conflict of interest.
- 45.30 As to paragraph [1916.3], there is no evidence that Mr Biggin knew that Ms Gobbo had a conflict of interest. The evidence, as described in Parts 3 and 4, establishes that Mr Biggin was not aware of the wider conflict of interest, whereby Ms Gobbo supplied information to Victoria Police against Mr Cooper’s interest, nor the narrower conflict of interest that arose when Ms Gobbo purported to advise Mr Cooper following his arrest despite having provided information that led to it.
- 45.31 The proposed finding at [1916.4] is not supported by any evidence and is contrary to Mr Biggin’s sworn evidence, which has been overlooked in Counsel Assisting’s submissions. As explained in paragraphs 44.18 to 44.19 and 42.43 to 42.47, Mr Biggin’s unchallenged evidence was that he did not know until recently that Ms Gobbo had provided the information which led to Mr Cooper’s arrest.
- 45.32 As to paragraph [1916.5], there is no evidence that Mr Biggin knew what advice Ms Gobbo gave Mr Cooper on the night of his arrest, nor that she provided any encouragement to Mr Cooper to co-operate with police. Nor is there any evidence that Mr Biggin knew Mr Cooper had contact with Ms Gobbo during the days that followed.
- 45.33 As to paragraph [1916.6], there is simply no evidence to support this proposition. There is no evidence that Mr Biggin had any knowledge of Victoria Police’s intentions in

¹¹¹⁵ T7508.14-15.

¹¹¹⁶ T7508.19.

¹¹¹⁷ T7522.22.

relation to disclosure. Nor was he responsible for decisions in relation to disclosure; these were the responsibilities of the investigators. Mr Biggin refers to 41.9.

- 45.34 Given that Counsel Assisting's proposed findings at paragraph [1916] are not supported by the evidence, Mr Biggin submits that the Commissioner should make the following alternative findings.
- 45.35 It is open to the Commissioner to find that on 22 April 2006:
- (a) Mr Biggin knew that Ms Gobbo was a barrister and a human source.
 - (b) He did not know that Ms Gobbo was informing on Mr Cooper while purporting to act for him because:
 - (i) He did not know that Ms Gobbo was providing information about Mr Cooper. At its highest, the state of Mr Biggin's knowledge about this was that "*in the back of my mind I had thought that perhaps that could be the case*",¹¹¹⁸
 - (ii) Mr Biggin did not know prior to Mr Cooper's arrest that Ms Gobbo was acting for Mr Cooper. He had no idea who she was representing; and
 - (iii) When he observed Ms Gobbo assisting Mr Cooper following his arrest on 22 April 2006. He thought this was a normal lawyer/client interaction and was not aware of Ms Gobbo's conflict of interest.
 - (c) Mr Biggin was not aware that Ms Gobbo had a conflict of interest between her role as an informer for Victoria Police and legal representative of Mr Cooper.
 - (d) He did not know that Ms Gobbo's informing on Mr Cooper that led to discovery of the location of the laboratory and led to his arrest.
 - (e) Mr Biggin did not know of, nor did he play any part in, Ms Gobbo encouraging Mr Cooper to implicate his associates.
 - (f) There is no evidence that Mr Biggin had any knowledge of Victoria Police's intentions in relation to disclosure. Nor was he responsible for decisions about disclosure.

Proposed adverse finding at paragraph [1917] of Counsel Assisting's submissions

- 45.36 There is no evidentiary basis for the proposed finding at paragraph [1917] for the reasons explained in Parts 2 to 5 of these submissions.
- 45.37 Mr Biggin accepts that the proposed finding at [1917.1] is open on the evidence. He submits that the proposed findings at [1917.2] to [1917.6] are not open on the evidence for the same reasons as outlined in relation to paragraphs [1916.2] to [1916.6].
- 45.38 Mr Biggin accepts that he became operationally and functionally responsible for the SDU from 1 July 2006 when the SDU moved from the State Intelligence Division to the Covert Support Division. However, there is no evidence that Mr Biggin's knowledge of the matters set out at [1917.2] to [1917.6] improved between 1 July 2006 and February 2007 (when Mr Cooper was sentenced) and Counsel Assisting have not sought to identify any such evidence.
- 45.39 Given that Counsel Assisting's proposed findings at paragraph [1917] are not supported by the evidence, Mr Biggin submits that the Commissioner should not make the findings

¹¹¹⁸ T7508.15.

proposed. There is no reason or cause to make any alternative finding about the matters referred to in paragraph [1917].

Proposed findings at paragraphs [1935] Relevance

- 45.40 Finally and most importantly, the proposed findings at [1935] Relevance are not open on the evidence. There are myriad reasons why these submissions cannot be accepted – including a lack of any specified factual basis and no evidence establishing Relev
Relevance In so far as the proposed findings depend upon the proposed findings at paragraphs [1915] to [1917] of Counsel Assisting's submissions, they are simply not supported by the evidence and should not be made for the reasons explained above.
- 45.41 Mr Biggin otherwise refers to the legal submissions made by Mr Biggin and the six other former and current members as to why these findings should not be made.

46 Functional responsibility for the SDU (from 1 July 2006)

- 46.1 From 1 July 2006 the SDU moved from the State Intelligence Division to the Covert Support Division and came within the functional responsibility of Mr Biggin. The SDU handlers and controllers then reported through their inspector (initially Rob Hardie and, from February 2008, Andrew Glow) to Mr Biggin.
- 46.2 As submitted above, there is no evidence that Mr Biggin's knowledge of Ms Gobbo's conflict of interest in relation to Mr Cooper was advanced in any way post 1 July 2006.
- 46.3 With the benefit of hindsight and knowing what he now knows, Mr Biggin candidly accepted some responsibility for his role in Victoria Police's use of Ms Gobbo as a human source from 1 July 2006 onwards, as described in paragraphs 40.11 to 40.18.
- 46.4 Mr Biggin should not be criticised for missing the mistakes that were made by the SDU during this time for the following reasons.

Mr Biggin was "spread too thin": his role was onerous and the SDU lacked a full time inspector

- 46.5 Mr Biggin's role as Superintendent, Covert Support Division was extremely onerous and made it impossible for him to closely supervise the work of the SDU. Compounding these difficulties was the lack of a full time inspector dedicated to the SDU. These factors are recognised in Counsel Assisting's submissions.¹¹¹⁹
- 46.6 As the superintendent in charge of the Covert Support Division Mr Biggin was responsible for five high risk covert units (the SDU, Special Projects Unit, State Surveillance Unit, Technical Surveillance Unit and Undercover Unit) and managed a staff of about 250 people and a budget of \$30 million, without a personal assistant or staff officer.¹¹²⁰
- 46.7 Adding to these difficulties was the lack of a full time inspector dedicated to the SDU.
- 46.8 Mr Biggin believed it was necessary for the SDU to have a dedicated, full time inspector with direct responsibility for the unit.¹¹²¹ This was the usual hierarchical structure that existed at Victoria Police, and it was especially important given the high-risk work undertaken by the SDU.

¹¹¹⁹ Counsel Assisting Submissions at [4768], Vol 2.

¹¹²⁰ T7819.46-T7820.4.

¹¹²¹ T7494.13-T7495.31.

- 46.9 Jeff Pope, who was the Assistant Commissioner, Intelligence and Covert Support, from September 2009, described the situation Mr Biggin faced as follows:

After having been in the Assistant Commissioner role for a few months, I became concerned about the structure that was in place managing the high-risk covert capabilities for Victoria Police, including the SDU. At that time, and for many years prior to my arrival, the entire covert capability for Victoria Police was being managed by Superintendent Biggin. In my view, despite the very high capability of Superintendent Biggin - who I hold in high regard and respect – and the enormous hours and effort he committed to this role, given the role required oversight of a significant amount of activity in a high risk and dynamic environment, it was too much for one individual. Superintendent Biggin – and any Superintendent in my view – would have been stretched too thin and would not have had enough hours in the day to effectively manage the risk and activities of what was then a very large Covert Support Division. Moreover, to compound the problem, there was one Detective Inspector in charge of both the SDU and the Under Cover Unit, both of which carry risk.... The structure in my view was flawed and presented too much organisational risk, and risk to the staff of both units and it was inconsistent with the principle of intrusive supervision that is required in these areas.¹¹²²

- 46.10 These issues were addressed by Victoria Police Command after Ms Gobbo's deregistration by the creation of a second superintendent division, effective February 2010, under the command of Detective Superintendent Paul Sheridan, and the appointment of inspector John O'Connor to the SDU full time from May 2010.¹¹²³ Six additional staff resources were also allocated to the SDU to help manage their workplace and further enhance their effectiveness.¹¹²⁴
- 46.11 In addition to his role as Superintendent, Covert Support Division, Mr Biggin held various other important responsibilities during the period of Ms Gobbo's registration. These included holding the Victoria Police portfolio for illicit drugs,¹¹²⁵ chairing the occupational health and safety committee, acting as the asset lead for Victoria Police, sitting on various Victoria Police and national committees and the various other commitments he described in evidence to the Royal Commission.¹¹²⁶

Mr Biggin was not aware of the full picture concerning Ms Gobbo

- 46.12 It is now apparent that the inspector, controller and handlers did not advise Mr Biggin of key issues that arose during Ms Gobbo's registration, and that these had not been addressed by those involved in approving the registration.
- 46.13 With the benefit of hindsight, Mr Biggin regrets that he did not ask further questions about these matters.¹¹²⁷ However, it was not part of Mr Biggin's role to be across the detailed information and intelligence that Ms Gobbo was providing. He relied on the SDU inspector to report to him matters that he should be aware of concerning Ms Gobbo. As Mr Biggin put it:

The day-to-day management of the SDU fell with the Inspector. Now whilst not ideal, we had a part time Inspector and I expected the Inspector to be across

¹¹²² Exhibit RC1306 – Second Statement of Jeff Pope at [53] (VPL.0014.0013.0004 at .0015).

¹¹²³ Exhibit RC0835 – Statement of Paul Sheridan at [7] (VPL.0014.0087.0001 at .0001).

¹¹²⁴ Exhibit RC1306 – Second Statement of Jeff Pope at [54]-[55] (VPL.0014.0013.0004 at .0015-.0016).

¹¹²⁵ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [41] (VPL.0014.0041.0008 at .0015).

¹¹²⁶ T7818.7-T7820.4.

¹¹²⁷ T7502.18.

*everything and then keep me in the loop in relation to issues that that person thought I should know.*¹¹²⁸

- 46.14 Mr Biggin also expected that the SDU members would inform him and their inspector of significant matters they perceived.
- 46.15 Mr Biggin's expectations of the inspector, controllers and handlers were consistent with the requirements of Victoria Police's Informer Management Policies in existence at the time. *Chief Commissioner's Instruction 6/04* and *VPM Instruction 111-3* required a controller to "actively supervise" the informer-handler relationship and conduct monthly reviews of the relationship. *Chief Commissioner's Instruction 6/04* made the inspector (the officer in charge of the controller) responsible for supervision of the controller and handlers and required the officer in charge to evaluate information to be provided to the LIR and act as a point of contact between the LIR and handler and controller.¹¹²⁹
- 46.16 When Mr Biggin became aware of issues, he took appropriate action to deal with them. For instance, in 2007 or 2008 Inspector Hardie raised concerns with Mr Biggin that Ms Gobbo may be providing privileged information. Mr Biggin directed the SDU to inform Ms Gobbo that that she was not to provide any information that may be subject to legal professional privilege and directed the SDU not to disseminate any such information.¹¹³⁰
- 46.17 However, Mr Biggin was not informed of key issues that arose during the SDU's handling of Ms Gobbo. For example, he was not advised that Ms Gobbo had told her handlers on 28 July 2006 that she had "*chucked ethics out the window and chucked legal professional privilege out the window*".¹¹³¹ He was not informed that Ms Gobbo had obtained the bill of lading used within Operation Agamas from Mr Karam and provided it to her handlers.¹¹³² Nor was he informed that Ms Gobbo had reviewed a brief of evidence and draft witness statements.¹¹³³ This is despite Mr Biggin regularly meeting and speaking with the inspector, controllers and handlers, including during his regular audit and review processes.
- 46.18 The Commission should be satisfied that, had Mr Biggin been aware of the issues concerning Ms Gobbo's use as a human source, he would have dealt with them.

Reviews and audits conducted by Mr Biggin

- 46.19 A small part of Mr Biggin's role was to regularly review all human sources currently being handled by the SDU. Mr Biggin took this role seriously,¹¹³⁴ although, with the benefit of hindsight, he acknowledges that he failed to identify the critical issues that arose during Ms Gobbo's use as a human source.
- 46.20 Every month Mr Biggin conducted a review of all current human sources with the controllers and handlers and occasionally he conducted a more formal audit or review.¹¹³⁵ This exceeded the requirements of the Victoria Police's Informer Management Policies in existence at that time. *Chief Commissioner's Instruction 6/04* and *VPM Instruction 111-3* required the controller to conduct a monthly review of the

¹¹²⁸ T7683.8-12.

¹¹²⁹ Exhibit RC0008, Annexure 35 – Chief Commissioner's Instruction 6/04 (VPL.0002.0001.2214 at .2218) and Exhibit RC0008, Annexure 37 – VPM Instruction 111-3 Human Sources (VPL.0002.0001.1662 at .1674).

¹¹³⁰ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [80] & [161] (VPL.0014.0041.0008 at .0024 & .0035); T7589.16-39.

¹¹³¹ Exhibit RC0298 – Transcript of discussion between Peter Smith, Sandy White and Ms Gobbo, 28 July 2006 at p 81 (VPL.0005.0104.0440 at .0520); T7674.2-14.

¹¹³² T7571.30-T7572.45.

¹¹³³ T7813.21-T7814.7.

¹¹³⁴ T7607.38-40.

¹¹³⁵ T7554.44-45.

source relationship, but only required the LIR/LSR to conduct quarterly “inspections/reviews” of source management files (which in 2007 became reviews on an “identified as needs basis”) as well as an annual audit.¹¹³⁶

46.21 Mr Biggin’s monthly reviews were conducted by way of informal conversation with the source controllers. These conversations were brief and Mr Biggin would review “12-16 sources during a conversation of approximately 30 minutes”.¹¹³⁷ He therefore relied upon the controllers to brief him during these reviews as to any issues he should be aware of. His normal practice was to document these reviews.¹¹³⁸

46.22 As Mr Biggin explained, the nature of his reviews were necessarily high-level:

*The way that I managed and the way that I continued to manage is that I was very busy, whilst that’s not an excuse I was doing a large number of things so I necessarily had to step back and take a broader oversight review rather than a hands on getting information review.*¹¹³⁹

46.23 Mr Biggin was aware that the SDU inspector would conduct more regular reviews of all human sources.¹¹⁴⁰

46.24 He also understood that the Human Source Management Unit (HSMU) oversaw the management of all human sources. Mr Biggin stated:

*The HSMU also performed a critical role in overseeing the use of Ms Gobbo as a human source. I expected that there would have been regular communication between DSS Owen and Officer White or Officer Black about the SDU’s dealings with Ms Gobbo. In addition, the HSMU were provided with and could request access to ICRs and IRs in relation to Ms Gobbo. When we took up the use of Interpose, HSMU could access all file material relating to the SDU’s dealings with Ms Gobbo.*¹¹⁴¹

Limiting Ms Gobbo’s use as a human source and moves towards deactivation

46.25 From around November 2006, Mr Biggin commenced discussions with the SDU about deactivating Ms Gobbo. Mr Biggin’s view at that time was that Victoria Police should end its relationship with Ms Gobbo. Ms Gobbo could not simply be deregistered, however, due to the duty of care Victoria Police owed Ms Gobbo and ongoing concerns about her safety.¹¹⁴²

46.26 Mr Biggin took active steps to try to limit Ms Gobbo’s use and ultimately end the human source relationship with Ms Gobbo. Initially, he attempted to transition Ms Gobbo to another law enforcement agency, but this was not successful.¹¹⁴³ Over a period of time, Mr Biggin also attempted to prevent Ms Gobbo from being tasked and stop information provided by her from being disseminated.¹¹⁴⁴ However, Ms Gobbo had a real desire to continue to engage with the SDU and therefore ending the human source relationship with her presented unique difficulties.¹¹⁴⁵

¹¹³⁶ Exhibit RC0008, Annexure 35 – Chief Commissioner’s Instruction 6/04 (VPL.0002.0001.2214 at .2230) and Exhibit RC0008, Annexure 37 – VPM Instruction 111-3 Human Sources (VPL.0002.0001.1662 at .1674).

¹¹³⁷ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [64] (VPL.0014.0041.0008 at .0020).

¹¹³⁸ T7564.3-4.

¹¹³⁹ T7501.40-44.

¹¹⁴⁰ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [65] (VPL.0014.0041.0008 at .0020).

¹¹⁴¹ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [67] (VPL.0014.0041.0008 at .0020).

¹¹⁴² Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [71]-[78] (VPL.0014.0041.0008 at .0022-.0024).

¹¹⁴³ T7583.23-29.

¹¹⁴⁴ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [71]-[78] & [103]-[104] (VPL.0014.0041.0008 at .0022-.0024 & .0027-.0028).

¹¹⁴⁵ T7587.15-17.

- 46.27 Ultimately, Mr Biggin's plans to deactivate Ms Gobbo were overtaken by Victoria Police's desire to use Ms Gobbo as a witness, which Mr Biggin was opposed to. Ms Gobbo was eventually deregistered only after signing a witness statement.

Opposition to Ms Gobbo becoming a witness communicated to Senior Command

- 46.28 Mr Biggin was strongly opposed to Ms Gobbo becoming a witness, as were the SDU controllers and handlers. Over many months Mr Biggin professionally yet persistently voiced these concerns to his superior officers.¹¹⁴⁶
- 46.29 On 31 December 2008, after being informed by Assistant Commissioner Moloney that Ms Gobbo was due to sign a witness statement, Mr Biggin arranged for Officer Black to prepare a SWOT analysis regarding the consequences of Ms Gobbo becoming a witness. He took this unusual step to ensure that his superiors and the Petra Steering Committee were aware of the implications of the decision and so that his and the SDU's concerns were recorded for future reference.¹¹⁴⁷
- 46.30 At the time of sighting Officer Black's SWOT analysis, Mr Biggin was aware of some of the concerns documented in the SWOT analysis, but not all of them. In particular, Mr Biggin had not appreciated that there were persons who had been convicted in circumstances where they may not have received a fair trial due to Ms Gobbo's involvement as a human source.¹¹⁴⁸

47 Other proposed findings not supported by the evidence

Meeting of 24 July 2007

- 47.1 Counsel Assisting submit at paragraph [2484] that the Commissioner should find that at a meeting on 24 July 2007 the attendees, including Mr Biggin, discussed the potential of obtaining a legal advice from a judge "*specifically addressing Ms Gobbo's use as a human source*" and made a decision not to obtain such advice. Counsel Assisting further submit that had members, including Mr Biggin, wanted to get legal advice, they could easily have done so, and that the reason no advice was sought is because they chose not to obtain it.
- 47.2 The proposed findings are not supported by the evidence and should be rejected.
- 47.3 Mr Biggin referred to the 24 July 2007 meeting in his statement to the Commission¹¹⁴⁹ and was asked questions about it by Counsel Assisting. Most of this evidence has been overlooked in Counsel Assisting's submissions.
- 47.4 In his statement, Mr Biggin refers to this meeting and said he recalled there was some suggestion that legal advice would be sought.¹¹⁵⁰ In his statement, Mr Biggin said:

*I did not turn my mind to the possibility of seeking legal advice in relation to the use of Ms Gobbo as a human source. However, as referred to above, I do recall that around the time that Victoria Police was contemplating using Ms Gobbo as a witness there were discussions within Victoria Police about seeking the views of a lawyer about Ms Gobbo's potential use as a prosecution witness.*¹¹⁵¹

¹¹⁴⁶ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [84]-[93] & [105]-[110] (VPL.0014.0041.0008 at.0025.0026 & .0028).

¹¹⁴⁷ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [112] (VPL.0014.0041.0008 at .0029); T7636.1-13.

¹¹⁴⁸ T7636.30-37; T7639.1-11.

¹¹⁴⁹ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [84]-[88] & [163] (VPL.0014.0041.0008 at .0025 & .0035).

¹¹⁵⁰ *Ibid* at [86] (VPL.0014.0041.0008 at .0025).

¹¹⁵¹ *Ibid* at [163] (VPL.0014.0041.0008 at .0035).

- 47.5 Mr Biggin's evidence, together with his diary entries for 24 July 2007, indicate that he was informed of this meeting by Superintendent Blayney at 2.50 pm, less than two hours before the meeting was to occur. Mr Biggin then spoke to Officer White about the meeting and ensured he was attending. During this discussion, Officer White informed Mr Biggin that there was a proposal for Ms Gobbo to transition from a human source to a witness for the Petra Taskforce. Mr Biggin's diary note of his conversation with Officer White states, "*HS 3838 Witness/WitSec/future deployment*". At 4.30 pm Mr Biggin attended the meeting.¹¹⁵²
- 47.6 While he could not precisely recall the meeting, Mr Biggin's recollection was that the meeting was about the proposal being floated at that time that Ms Gobbo become a witness for Petra or Briars (Mr Biggin could not recall which of the two Taskforces).¹¹⁵³
- 47.7 Officer White's diary is consistent with Mr Biggin's recollection and confirms the purpose of the meeting was to discuss the potential use of Ms Gobbo as a witness. Mr White's diary records that at 3 pm he received a call from Mr O'Brien requesting a meeting with DC Overland "*re future viability of 3838 as witness. 4.30pm at Purana*". Mr White's diary confirms he called Mr Biggin to discuss the issues prior to the 4.30 pm meeting.¹¹⁵⁴
- 47.8 The attendance of Mr O'Connell at the meeting is consistent with the discussion being about Petra's interest in using Ms Gobbo as a witness. It would otherwise be unusual for Mr O'Connell to attend.¹¹⁵⁵
- 47.9 Mr Biggin's evidence was that it was within the context of the possible transition of Ms Gobbo to a witness that the discussion about legal advice occurred, including the option of potentially seeking advice from a judge.¹¹⁵⁶ As Mr Biggin said:
- I don't have any independent recollection of it other than to say that it was one of the proposals discussed, that if Ms Gobbo was to become a witness, then perhaps it might be prudent to get some advice from a judge to actually work out the parameters in relation to the statement, statements to be obtained.*¹¹⁵⁷
- 47.10 When it was put to Mr Biggin that the reason the participants were talking about a legal opinion was because of the risks to the justice system because of the relationship Ms Gobbo had with the SDU, Mr Biggin said that he did not recall that aspect of the conversation.¹¹⁵⁸
- 47.11 Officer White's note of the meeting reads:
- Crime Dept. meet with [Superintendent Tony Biggin, Detective Inspectors Jim O'Brien and Gavan Ryan, Senior Sergeant O'Connell, Superintendents Jack Blayney and Graham Brown]. Update re 3838. Agreed value of HS as source is outweighed by repercussions and risk to same. Agreed to continue deployment with no tasking, intel received to be assessed on individual basis and risk determination prior to any dissemination. Agreed [Tony Biggin], [myself] and [Jack Blayney] to brief D/C Overland re issues.*¹¹⁵⁹
- 47.12 In evidence before the Commission, Officer White indicated that the entry may have been intended to read "*agreed value of source as a witness is outweighed by*

¹¹⁵² Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [84] (VPL.0014.0041.0008 at .0025); Untendered Diary of Anthony Biggin, 24 July 2007 (VPL.0005.0155.0588 at 0643); T7603.22-7604.5.

¹¹⁵³ T7568.46-T7569.24.

¹¹⁵⁴ Exhibit RC0435 – Diary of Sandy White, 24 July 2007 (VPL.2000.0001.0869 at .0870).

¹¹⁵⁵ T5420.16-18; T5420.46-47 (White).

¹¹⁵⁶ T7614.26-35.

¹¹⁵⁷ T7611.34-40.

¹¹⁵⁸ T7612.10-11.

¹¹⁵⁹ Exhibit RC0435 – Diary of Sandy White, 24 July 2007 (VPL.2000.0001.0869 at .0870).

repercussions and risk to same".¹¹⁶⁰ It is likely that this is correct. Given that the purpose of the meeting was to discuss Ms Gobbo being used a witness and that an agreement was reached that her deployment as a source would be continued, it is probable that the note was intended to say that those present had agreed that her value as a *witness* was outweighed by the repercussions and risk to her. Further, as explained by Officer White, the fact that the entry reads "agreed to continue deployment with no taskings" means that Ms Gobbo was still to continue as a source.¹¹⁶¹ Accordingly, the note does not make sense if it is read as "*value of source as a source*".

- 47.13 Mr Biggin's evidence was that he did not know the details of any such legal advice nor whether any legal advice was obtained. He indicated that this would have been a matter for the investigators¹¹⁶² who were desirous of using Ms Gobbo as a witness.¹¹⁶³ This is because any decision to use Ms Gobbo as a witness was an investigative decision and outside of the SDU's control.¹¹⁶⁴
- 47.14 Mr Blayney does not specifically recall the meeting.¹¹⁶⁵ In that context, he said in evidence that he did not recall the participants discussing "*particular issues that might arise in relation to the legal system in connection with matters that Ms Gobbo had been involved in*".¹¹⁶⁶ Mr Blayney's notes of that meeting include the notation "*legal issues considered not appropriate at this stage*". He told the Commission that after careful reflection he did not know what those words meant.¹¹⁶⁷
- 47.15 Counsel Assisting rely heavily on Mr Blayney's evidence to IBAC about this meeting to support the proposition that wide questions of the risk to the administration of justice were discussed. However, a fair reading of Mr Blayney's evidence to IBAC¹¹⁶⁸ reveals that Mr Blayney's concern was not wider issues of conflict or the potential risk to the administration of justice, but the specific issue of legal professional privilege and, in particular, how the SDU was ensuring that information the subject of legal professional privilege was not disseminated to investigators.
- 47.16 Mr Blayney's evidence to IBAC was that the "*key thing*" for him was "*the legality or ethical consideration of the source learning things within a privilege situation and passing that on as information to the police*".¹¹⁶⁹ He went on to say that "*I was assured that that was being managed and they had a legal advice that if it was outside the legal privilege binding then it was lawful*".¹¹⁷⁰ Mr Blayney also told IBAC that he understood the legal and ethical considerations relating to Informant 3838 required resolution and was "*assured that those matters were being managed and that [the SDU] held relevant legal advice to the effect that if the [information] was outside the bounds of legal privilege, then it was lawful to use*".¹¹⁷¹
- 47.17 It is understandable that concerns around legal professional privilege might arise within the context of a discussion about Ms Gobbo's potential use as a witness against Paul Dale.

¹¹⁶⁰ T5420.46-47; T5421.1-3 (White).

¹¹⁶¹ T5421.7-9 (White).

¹¹⁶² Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [86] (VPL.0014.0041.0008 at .0025).

¹¹⁶³ T7615.6-27.

¹¹⁶⁴ Exhibit RC0577C – Further Statement of Anthony Michael Biggin at [106] (VPL.0014.0041.0008 at .0028).

¹¹⁶⁵ T10193.38 (Blayney).

¹¹⁶⁶ T10242.24-29 (Blayney).

¹¹⁶⁷ T10242.40-41, 43-44, 46-47; T10243.1 (Blayney).

¹¹⁶⁸ See Exhibit RC0001.8 Transcript of IBAC examination of Jack Blayney 17 November 2014 (IBAC.0002.0001.0001).

¹¹⁶⁹ See Exhibit RC0001.8 Transcript of IBAC examination of Jack Blayney 17 November 2014 (IBAC.0002.0001.0001).

¹¹⁷⁰ See Exhibit RC0001.8 Transcript of IBAC examination of Jack Blayney 17 November 2014 (IBAC.0002.0001.0001).

¹¹⁷¹ See Exhibit RC0001.8 Transcript of IBAC examination of Jack Blayney 17 November 2014 (IBAC.0002.0001.0001).

- 47.18 Had Mr Blayney raised concerns about legal professional privilege at the meeting, then it is highly likely that he would have been reassured by other attendees that measures were in place to prevent the dissemination of information that was subject to legal professional privilege. That is so because, as set out elsewhere in Victoria Police's submissions, such measures were in place and were generally (though not completely) effective.
- 47.19 Further, to the extent that those present in fact canvassed the potential need for legal advice, that potential need was predicated on the possibility that Ms Gobbo would be used as a witness. The meeting resolved that she would not be used. As such, the premise for needing the legal advice (as the participants understood it) fell away.
- 47.20 It is improbable that, if Mr Blayney had raised wider concerns of the kind suggested by Counsel Assisting, he would not have pursued them following the meeting of 24 July 2007.

Proposed finding at paragraph [2484]

- 47.21 There is no evidentiary basis for the proposed finding at paragraph [2484].
- 47.22 As to paragraph [2484.1], there is no evidence that the attendees at the meeting of 24 July 2007 discussed obtaining legal advice about Ms Gobbo's ongoing use as a human source. The matters set out above support the conclusion that the meeting was to discuss the possibility of using Ms Gobbo as a witness for the Petra taskforce. As such, it is likely that the subject of the mooted legal advice was Ms Gobbo's possible transition from source to witness.
- 47.23 As to paragraph [2482.2], the evidence does not permit the conclusion that Mr Blayney raised concerns about the "*ethical propriety and legality of the use of Ms Gobbo as a human source*". Mr Blayney's best evidence is the evidence he gave to IBAC in 2014 (which, it must be remembered, was already seven years after the relevant meeting). Mr Blayney's evidence to IBAC, extracted by Counsel Assisting at [2479] is that what was concerning him was the question of legal professional privilege. It is improbable that, if Mr Blayney had raised wider concerns of the kind suggested by Counsel Assisting, he would not have pursued them following the meeting of 24 July 2007.
- 47.24 The findings at [2484.3] to [2484.7] should not be made as the evidentiary basis for paragraphs [2484.1] and [2484.2] has fallen away.
- 47.25 Further, in response to [2484.3], with the benefit of hindsight Mr Biggin accepts that legal advice should have been obtained in relation to the use of Ms Gobbo as a human source. However, there is no evidence that Mr Biggin appreciated the need for legal advice at or around the time of the 24 July 2007 meeting.
- 47.26 As to paragraph [2484.4], Mr Biggin accepts generally that legal advice could be obtained within Victoria Police or through the VGSO.
- 47.27 As to paragraphs [2484.5], Mr Biggin accepts that no steps were taken by him following the meeting of 24 July 2007 to obtain legal advice. As indicated at 47.13, Mr Biggin's evidence was that he did not know whether any legal advice was obtained by investigators.
- 47.28 In relation to paragraph [2484.6], there is no evidence that Mr Biggin could "easily" obtain legal advice within the context of the 24 July 2007 meeting. To the contrary, as explained above, Mr Biggin understood the discussion about legal advice occurred within the context of the proposal to transition Ms Gobbo from a source to a witness. Accordingly, as indicated at 47.13, Mr Biggin's evidence was that the obtaining of such

advice was a matter for the Petra investigators, who were seeking to use Ms Gobbo as a witness.

- 47.29 There is no evidentiary basis for the assertion in [2484.7]. There is no simply evidence that Mr Biggin appreciated the need for legal advice to be obtained during the meeting of 24 July 2007 and yet decided not to.
- 47.30 The proposed finding at paragraph [2484] of Counsel Assisting's submissions should not be made.

The 1 September 2008 subpoena issued on behalf of Horty Mokbel

- 47.31 On 1 September 2008 a subpoena was issued to Victoria Police seeking 16 information reports (IRs) relating to Mr Cooper. The subpoena was dealt with by the informant, DSC Tim Johns, who sought legal advice from the VGSO and barrister, Ron Gipp. It is apparent that Mr Johns communicated with Officer Fox of the SDU in relation to redactions to the IRs, and that Officer White briefed Mr Biggin by email on 3 and 4 September 2008.
- 47.32 Counsel Assisting submit at paragraph [3031] that it is open to the Commissioner to find that, given his knowledge of the manner in which the SDU and Purana had utilised Ms Gobbo, and the potential impropriety thereof, that it is a matter Mr Biggin should have insisted that Mr Fox instruct Mr Johns to apprise Mr Gipp about, so that the lawfulness and propriety of Victoria Police's conduct, which was potentially relevant to a case then being heard, could properly be considered.
- 47.33 This finding is not open on the evidence and should not be made for three reasons.
- 47.34 First, the submission asserts that Mr Biggin was aware of "the manner in which the SDU and Purana had utilised Ms Gobbo, and the potential impropriety thereof". As explained elsewhere in these submissions, the evidence does not support those assertions.
- 47.35 Secondly, Counsel Assisting's submission assumes that Mr Biggin was sufficiently aware of Victoria Police's response to the subpoena to provide such instruction. That assumption is not supported by the evidence.
- 47.36 The only evidence of Mr Biggin's knowledge of the subpoena are the two emails from Officer White referred to in Counsel Assisting's submissions.
- 47.37 The first email, sent by Officer White to Mr Biggin and Inspector Glow on 3 September 2008 is extracted at paragraph [3023] of Counsel Assisting's submissions, except for the last line of the email, which states "FYI". It is clear from the content of the email, including the "FYI", that Officer White was informing Mr Biggin and Officer Glow that Purana had briefed counsel, that the matter was "*under control*", and that they would be advised of the result. In those circumstances, there was no need for Mr Biggin to take any action in response to the email or become actively involved in the matter, which was being handled by others.¹¹⁷²
- 47.38 The second email, sent the following day, stated "we had a win re the PII issue for 3838 IR's re [Mr Cooper]. They have been appropriately sanitised and defence are satisfied".¹¹⁷³
- 47.39 There is no evidence that Mr Biggin had any knowledge of:
- (a) the content of the IRs the subject of the subpoena;

¹¹⁷² Exhibit RC0296 – Email exchange involving White, Biggin and Glow, 3-4 September 2008 (VPL.6029.0001.0016).

¹¹⁷³ *Ibid.*

- (b) the communications between DSC Johns and Officer Fox in relation to those IRs;
- (c) whether or not Counsel had been briefed by Purana as to the identity of the human source or Ms Gobbo's role as Mr Cooper's legal representative; and
- (d) whether or not disclosure of Ms Gobbo's identity was relevant to the determination of the PII claim.

47.40 It is most probable that Mr Biggin had no knowledge of these matters, given he was not involved in the PII claim made and had no reason to become involved.

47.41 Thirdly, it must be recalled, as explained above, that Mr Biggin was a Superintendent in charge of an extremely busy Division. He had an inspector, albeit part time, with direct responsibility for the SDU and Officer White effectively running the unit. In circumstances where Officer White informed his superiors of the PII hearing for their information only and assured them that the matter was under control, it is entirely understandable that Mr Biggin did not involve himself in this process. This is particularly so given that Mr Biggin did not appreciate at that time that there had been anything improper in the use of Ms Gobbo in relation to Mr Cooper.

47.42 The proposed finding at paragraph [3031] of Counsel Assisting's submissions should therefore not be made.

I. Submission of Jim O'Brien

48 Introduction and summary

- 48.1 Former Detective Inspector Jim O'Brien was a hard-working and loyal police officer throughout more than 30 years of service with Victoria Police. As the officer in charge of the Purana Taskforce when Ms Gobbo was registered as a human source (for the third time) and for the following two years, he acted according to his best judgment, informed by his knowledge, skills, training and experience.
- 48.2 Mr O'Brien gave evidence to this Commission to assist it in its work. He voluntarily transcribed many of his diary entries, provided a detailed statement and he attended to give evidence and was cross-examined over many days. He gave thoughtful and considered evidence to assist this Commission to identify what happened, why it happened and what could have been done differently.
- 48.3 For that purpose, Mr O'Brien made frank and open concessions about mistakes that were made and decisions that, with the benefit of hindsight and all the information that is before this Commission, should have been made differently.
- 48.4 In doing so, he trusted that all of the relevant evidence would then be presented in an accurate and complete way in the closing submissions. That was not to be. After reading Counsel Assisting's submissions, he was confronted with the extensive task, to be undertaken in little time, of setting out in these submissions as much of the missing relevant evidence that he could. He has also corrected the errors and mischaracterisations of the evidence found in Counsel Assisting's submissions in the time available.
- 48.5 In some cases, Counsel Assisting submit that it is open to the Commissioner to make findings about critical, foundational, facts that are not supported by any evidence at all. A key example is Counsel Assisting's submission that it is open to the Commissioner to find that Mr O'Brien knew about Ms Gobbo's representation of Mr McGrath and her involvement in advising him about his statements. The entirety of the evidence offered in support of that proposition is that Mr O'Brien was the head of the Purana Taskforce. How that fact proves the allegation is unknown, given that Mr McGrath made his statements in 2004 and Mr O'Brien did not take up at Purana until September 2005. The only conclusion available is that Counsel Assisting have made a mistake. It is not a small one. The mistake provides the whole basis for their submission that the Commissioner should find that it is probable that Mr O'Brien ^{Relevance} [REDACTED]
[REDACTED] ^{Relevance}
- 48.6 In other cases, Mr O'Brien has had to identify relevant evidence, given by him, that does not support the submissions of Counsel Assisting and to which Counsel Assisting has not referred.
- 48.7 In the time available, it has not been possible for Mr O'Brien to respond to every factual matter or identify every piece of evidence that contradicts or is otherwise relevant to the submissions put against him. Counsel Assisting's submissions need to be read with this in mind together with the knowledge that many errors have been identified so far. It is likely that there are more.
- 48.8 Counsel Assisting submit that it is open to the Commissioner to make certain findings about Mr O'Brien's conduct. In some instances, making those findings would require the Commissioner to reject Mr O'Brien's evidence before this Commission and, in others, to

ascribe to him an intention to act improperly or for an improper purpose in the conduct of his policing duties. Mr O'Brien had no such intention.

- 48.9 Mr O'Brien's willingness to make concessions and to reflect on the decisions that were made, is consistent with the overwhelming weight of evidence that he did not intend to act with impropriety. That was also the finding made by the Honourable Murray Kellam AO QC after he conducted his inquiry. Mr O'Brien was cross-examined before Mr Kellam without notice as to why he was being required to attend. Mr Kellam's conclusion was that Mr O'Brien did not have any improper motive or intention.

48.10

Relevance

- 48.11 In circumstances where Counsel Assisting submit that it is open to the Commissioner to make findings ^{Relevance} against Mr O'Brien, a disciplined and precise approach to the evidence must be taken. It is submitted that when the Commissioner reviews the submissions made by Counsel Assisting together with these submissions and Victoria Police's submissions and reviews the primary evidence where it is the subject of competing submissions, there is no proper basis to make findings which go beyond those identified in these submissions.

- 48.12 As it has not been possible for Mr O'Brien to address every factual matter identified in Counsel Assisting's submissions, in these submissions, Mr O'Brien principally addresses those factual findings urged by Counsel Assisting which are not open on the evidence or should not otherwise be made and draws to the Commissioner's attention additional facts, not addressed by Counsel Assisting, which are relevant to an assessment of Mr O'Brien's conduct.

- 48.13 These submissions are organised as follows:

- (a) Section A addresses relevant aspects of Mr O'Brien's work history, and his general character and conduct as a police officer;
- (b) Section B addresses Mr O'Brien's knowledge of Ms Gobbo, the extent of his involvement in her recruitment as a human source, his appointment as officer in charge of the Purana Taskforce and general matters relevant to that Taskforce;
- (c) Section C addresses why the Commissioner cannot be satisfied that Mr O'Brien intended to act with impropriety in connection with Ms Gobbo; and
- (d) Section D addresses Mr O'Brien's involvement with Mr Thomas and Mr Cooper; and
- (e) Section E addresses Mr O'Brien's involvement with other individuals including Mr Bickley and Milad Mokbel.

- 48.14 Mr O'Brien does not address paragraph [1081]-^{Relevance} or [1935]-^{Relevance} of Counsel Assisting's submission, but instead relies on the submissions at Part B of Tranche 1.

- 48.15 **Section A** identifies important matters of context, without which it is not possible to fairly assess Mr O'Brien's conduct or the probability that he engaged in certain conduct for an improper reason or purpose. Mr O'Brien's work history is detailed, including the effect on him of corruption in the Drug Squad and the deaths of Terrence and Christine Hodson. It is explained that these events gave Mr O'Brien a unique perspective on the damaging consequences of police corruption and the very real risks that attach to the management of registered human sources. It is further explained that these events and

their consequences for Victoria Police cemented Mr O'Brien's firm belief that it was the specialist unit, the SDU, that was to assume the management, and risk, of high risk registered human sources. The unit was established with the express purpose of separating source management from the investigative work undertaken by detectives.

- 48.16 Section A also discusses Mr O'Brien's belief that taskforce policing is the most effective means of disrupting organised crime and his belief that the Victorian gangland killings were inextricably linked to the manufacture and sale of illicit drugs. It describes Mr O'Brien's belief that if the manufacture and sale of illicit drugs was interrupted, the gangland killings would cease.
- 48.17 **Section B** addresses Mr O'Brien's knowledge of Ms Gobbo at the time of her registration as a human source in September 2005. It explains that, from Mr O'Brien's perspective, Ms Gobbo was not a person of any real significance to him or the MDID when she approached DSC Rowe and DC Mansell on 31 August 2005 indicating that she had information to provide to police.
- 48.18 Section B details Mr O'Brien's ethical and responsible decision-making in connection with Ms Gobbo's approach to Victoria Police in August 2005 and explains why Mr O'Brien's particular experiences, discussed in Part A, led him to immediately refer Ms Gobbo to the specialists in the SDU and to report her approach to his superior officers.
- 48.19 Section B also addresses Mr O'Brien's appointment as officer in charge of the Purana Taskforce and why his experience at the Drug Squad and his extensive knowledge and belief in taskforce policing made him the logical choice to lead Purana. Key aspects of Mr O'Brien's role as the officer in charge of the Purana Taskforce are discussed, including the size and complexity of the role and that, for the first time in taskforce policing, dedicated resources from different disciplines had been co-located and placed under Mr O'Brien's command.
- 48.20 Section B describes the origins of Operation Posse. Mr O'Brien identifies that the Operation Posse Investigation Plan, which he authored in October 2005, provides contemporaneous and independent verification of key aspects of his evidence to the Commissioner. The Investigation Plan:
- (a) identifies that the use of human sources was only one of seven investigative techniques that the Operation would deploy;
 - (b) identifies that the management of human sources, including in relation to the assessment of risk, was the responsibility of the SDU;
 - (c) identifies that protection of the identity of registered human sources is of the highest priority; and
 - (d) explains that Operation Posse's first key performance indicator was its success in protecting identities of registered human sources.
- 48.21 Section B emphasises that Ms Gobbo was not recruited to inform on her clients.
- 48.22 **Section C** addresses why the Commissioner cannot be satisfied that Mr O'Brien intended to act with impropriety. Mr O'Brien candidly accepts that he made some wrong decisions in unusual circumstances. Structural deficiencies within Victoria Police contributed to that decision-making. They were:
- (a) inadequate training in relation to Victoria Police's common law obligation of disclosure;

- (b) the absence of any training in relation to the identification and management of conflicts of interest; and
 - (c) inadequate use of legal advisers.
- 48.23 Mr O'Brien points to several key factors that support the conclusion that he did his best at the time, having regard to his contemporaneous knowledge, skills and experiences. He immediately briefed his superior officers about Ms Gobbo's approach to Victoria Police. He details that he approached Ms Gobbo's use as a human source primarily through the lens of her personal safety and that, influenced by the executions of Terrence and Christine Hodson, ensuring Ms Gobbo's safety was his principal concern and the principal factor influencing his decision-making.
- 48.24 Relatedly, Mr O'Brien makes the frank concession that he referred Ms Gobbo to the SDU to remove from the MDID the risks that attach to the police-informant relationship and because of the serious risk to Ms Gobbo's safety. Mr O'Brien wanted these risks to be managed by specialists outside of the MDID. Having done so, Mr O'Brien believed that the SDU would manage the risks associated with Ms Gobbo's registration (if the unit decided, after a risk assessment, to register her), including in relation to matters of legal conflict and legal professional privilege.
- 48.25 Mr O'Brien explains that a consequence of his referral of Ms Gobbo to the SDU was that he did not consider whether the SDU was disseminating to him material that might have been subject to legal professional privilege. He explains his understanding that the SDU was responsible for filtering any privileged information out of the intelligence it disseminated to him and that, accordingly, he understood that he was entitled to use all of the information provided to him for the purpose of investigating serious criminal conduct. Mr O'Brien candidly explains that he did not adequately understand the broader professional obligations of lawyers in relation to legal conflicts of interest. Mr O'Brien identifies that he distinguished between offences where a person had been charged and Ms Gobbo had been retained as a barrister for that person, and new criminal offending that she came to know of in the course of her extensive association with known criminals. He explains that, consequently, he did not identify, and therefore did not properly respond, to conflicts of this kind.
- 48.26 Relatedly, Mr O'Brien explains that he presumed Ms Gobbo would conduct herself in accordance with her legal and professional obligations. Mr O'Brien submits that because he did not then know all that is known now about Ms Gobbo, his expectation that a high profile barrister would abide by her professional obligations was entirely reasonable.
- 48.27 These submissions then explain why there is no evidence to support a conclusion that Mr O'Brien directed members of Purana to deal with information concerning Ms Gobbo in a way that would protect it from disclosure to an accused person, or in court proceedings. Mr O'Brien identifies that a review of his prolific work notes, does not disclose any direction to his crews about how to record information concerning Ms Gobbo and discloses the absence of any instruction about discarding draft witness statements. Nor did one witness give evidence that Mr O'Brien had given instructions about these matters.
- 48.28 **Section D** addresses the specific submissions of Counsel Assisting in relation to certain individuals – Mr Thomas and Mr Cooper – along with certain other specific submissions of Counsel Assisting.
- 48.29 Section D emphasises a number of matters. First, it emphasises that Counsel Assisting has not drawn to the attention of the Commissioner to key, relevant, evidence relating to

Mr O'Brien. It identifies that, when all relevant evidence is taken into account, some of the conclusions urged by the Counsel Assisting this Commission are not open. Mr O'Brien has, within the time available, identified other relevant evidence that must be taken into account.

- 48.30 Second, Mr O'Brien identifies that Counsel Assisting submit certain findings are open to the Commissioner in circumstances where there is no proper basis for the submission. For example, Counsel Assisting submit that Mr O'Brien knew that Ms Gobbo had been assisting in Mr McGrath's statement taking process as his legal representative.¹¹⁷⁴ That is a key allegation of fact relevant to the Thomas case study. The only evidence cited in support of that allegation of fact is that Mr O'Brien was the officer in charge of the Purana Taskforce. Leaving aside that Mr O'Brien was not part of the Purana Taskforce when Ms Gobbo acted for Mr McGrath, Counsel Assisting have not drawn to the Commissioner's attention Mr O'Brien's direct evidence on this question that he was unaware that Ms Gobbo had acted for Mr McGrath or been involved with his witness statements. Mr O'Brien's direct evidence on this point is not contradicted by any documentary or oral evidence. In such circumstances, the recommendation of this proposed finding is inexplicable. Counsel Assisting have either overlooked Mr O'Brien's evidence or, without saying so, are submitting that the Commissioner should reject Mr O'Brien's evidence. If it is the latter, then there is no basis to reject his evidence.
- 48.31 Third, Mr O'Brien emphasises that many of the proposed findings that relate to him embed the assumption that he intended to act improperly. The assumption is wrong and any findings and recommendations which are made based on that assumption will not assist because they will fail to identify the causal factors. These submissions identify findings about Mr O'Brien that are supported by the evidence and which assist the Commissioner to properly identify the key structural deficiencies that contributed to the relevant events and to report on any changes that the Commissioner considers still need to be made at Victoria Police to address the deficiencies.
- 48.32 **Section E** addresses the specific submissions of Counsel Assisting in relation to other individuals – Mr Bickley, ^{Mr Irons} Mr Milad Mokbel, and Mr Pilarinos – to the extent they are considered in Volume 2 of Counsel Assisting's submissions.

49 Section A Former Detective Inspector Jim O'Brien

- 49.1 To make an informed assessment of Mr O'Brien's credit and his conduct in relation to the subject matter of this Royal Commission, it is necessary to know something about him.
- 49.2 Mr O'Brien was a "very straight, up and down, matter of fact, get on with business" police officer.¹¹⁷⁵ That is how his colleagues perceived him,¹¹⁷⁶ and it is how he presented during his evidence before the Royal Commission – as a frank, honest and no-nonsense person.
- 49.3 Mr O'Brien grew up in the small country town of Korumburra. In 1977, at 23 years old, joined the Police Academy in Glen Waverley. He dedicated the next 30 years of his working life to Victoria Police. For much of that time, Mr O'Brien was a frontline officer, dealing with challenging situations and complex investigations. As a senior constable

¹¹⁷⁴ Counsel Assisting Submissions at p 234 [1060.2], Vol 2.

¹¹⁷⁵ T3255.29-30 (P Rowe).

¹¹⁷⁶ T3255.29-30 (P Rowe).

and then sergeant, he investigated the murders of his young colleagues - Constables Damian Eyre and Steven Tynan.¹¹⁷⁷

- 49.4 In 2001, (and by then a senior sergeant), he was asked to take over Unit 2 of the Drug Squad at a difficult time in its history. Two members of that squad, DS Rosenes and DSC Paton, had just been charged with corruption related offences¹¹⁷⁸ stemming, in part, from corrupt relationships with police informants.¹¹⁷⁹ The whole of the squad was under review and upon commencing his command, Mr O'Brien was confronted with poor morale and a complete lack of trust among the members of the squad.¹¹⁸⁰ At the same time he was faced with the rise of the Mokbel drug enterprise, which had become a large and powerful illicit drug business in Victoria. Despite feeling like the 'babysitter for the executioner',¹¹⁸¹ he set about rebuilding trust among the team and navigating the transition to the Major Drug Investigation Division (**MDID**).
- 49.5 Three events had a profound effect on DSS O'Brien's time at the MDID. The first was the charging of David Miechel and Paul Dale over the Dublin Street burglary.¹¹⁸² The measure of Mr O'Brien is found in his frank description of the impact that the arrest of Miechel and Dale had on the MDID. He describes the devastation these arrests caused,¹¹⁸³ the profound effect on morale and the profound effect on the MDID's professional relationship with other law enforcement agencies.¹¹⁸⁴ He recalls seeing officers under his command in tears and admits that the 'betrayal' by Miechel and Dale made him contemplate walking away.¹¹⁸⁵ That he persevered was a result of his fortitude and his attitude that the 'best way to answer your critics is to get back up and keep working'.¹¹⁸⁶ He tried to convey this attitude to the squad and to rebuild the MDID.¹¹⁸⁷
- 49.6 The second event was a meeting that took place between MDID officers and Tony Mokbel in April 2004.¹¹⁸⁸ The arrogance displayed by Mr Mokbel in that meeting hardened Mr O'Brien's resolve to put a coordinated investigation plan together to unravel Mr Mokbel's criminal enterprise.¹¹⁸⁹
- 49.7 The third was the execution of Terrence and Christine Hodson. During his time at the MDID, DSS O'Brien had come to know Terrence Hodson, the 'likeable rogue'¹¹⁹⁰ who provided 'invaluable' information that led to many arrests,¹¹⁹¹ and his wife Christine. Among other things, Mr Hodson provided DSS O'Brien with a chart setting out his knowledge of Melbourne's drug dealers.¹¹⁹² Mr O'Brien recognised the valuable role that Terrence Hodson had played as a human source, had been responsible for terminating his relationship with Victoria Police in the wake of the Dublin Street burglary,

¹¹⁷⁷ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [4] (VPL.0014.0040.0001 at .0002).

¹¹⁷⁸ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [13] (VPL.0014.0040.0001 at .0005); T5440.44-47 (J O'Brien); T5441.8-13 (J O'Brien).

¹¹⁷⁹ T5441.19-21 (J O'Brien).

¹¹⁸⁰ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [14] (VPL.0014.0040.0001 at .0005).

¹¹⁸¹ T5441.27-30 (J O'Brien).

¹¹⁸² Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [29] (VPL.0014.0040.0001 at .0007).

¹¹⁸³ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [30] (VPL.0014.0040.0001 at .0008).

¹¹⁸⁴ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [31] (VPL.0014.0040.0001 at .0008); T5452.27-30 (J O'Brien).

¹¹⁸⁵ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [32] (VPL.0014.0040.0001 at .0008); T5452.27-30 (J O'Brien).

¹¹⁸⁶ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [32] (VPL.0014.0040.0001 at .0008).

¹¹⁸⁷ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [32] (VPL.0014.0040.0001 at .0008).

¹¹⁸⁸ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [35] (VPL.0014.0040.0001 at .0008).

¹¹⁸⁹ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [37] (VPL.0014.0040.0001 at .0009).

¹¹⁹⁰ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [39] (VPL.0014.0040.0001 at .0009).

¹¹⁹¹ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [16] (VPL.0014.0040.0001 at .0005).

¹¹⁹² Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [19] (VPL.0014.0040.0001 at .0006).

and felt that not enough had been done to protect Mr Hodson.¹¹⁹³ Such was the impact of their deaths on Mr O'Brien that he took issue with Counsel Assisting using the term 'murdered' in connection with their deaths, preferring the term 'executed'.¹¹⁹⁴

49.8 These events, and Mr O'Brien's response to them, reveal a decent, tough, diligent, honest officer who took his obligations seriously, led by example and acted ethically. The execution of Terrence and Christine Hodson indelibly impressed on Mr O'Brien the consequences of not so doing.

49.9 Further, they explain Mr O'Brien's firm belief in the role of the SDU and his resolve that the SDU, and not the MDID, would be responsible for the management of human sources, including Ms Gobbo (discussed in further detail below).¹¹⁹⁵ Mr O'Brien explained his understanding of the essential function and benefit of the SDU as follows:

*The creation of the SDU meant that the MDID played no role in risk assessment, source registration or source handling. To my mind, this was a significant improvement over the old system, as it meant that specialist officers were able to manage the safety of the human source as well as the flow of the information. This outsourced significant risk from the MDID to the SDU. To my mind, this was why the SDU was set up.*¹¹⁹⁶

49.10 That belief was borne of Mr O'Brien's first-hand experience of the propensity for corruption between human sources and their handlers, the devastation that such corruption wrought among the force, and the very real consequences for human sources whose identities were compromised.

49.11 They are also instructive of Mr O'Brien's firm belief in task force policing. Throughout 2004 and 2005 Mr O'Brien attended a number of training courses in Australia and the USA relating to anti-money laundering and task force policing.¹¹⁹⁷ In February 2005 he wrote a widely distributed paper on task force policing as part of the Management of Serious Crime Course conducted by the Australian Federal Police and sponsored by the Australian Crime Commission.¹¹⁹⁸ A key recommendation from his paper was that Victoria Police should establish a standing task force on organised crime.¹¹⁹⁹

49.12 Among other things, Mr O'Brien believed that the gangland killings were intimately connected to the drug trade. His view, reinforced by the meeting with Tony Mokbel in 2004,¹²⁰⁰ was that to get to the bottom of the gangland murders it was necessary to get to the bottom of the drugs and money.¹²⁰¹ For that purpose, a standing taskforce was needed.

49.13 Finally, they explain why, in combination with his experience at the MDID, Mr O'Brien was the logical choice to be upgraded from time to time to Acting Detective Inspector in charge of the Purana Taskforce (the position substantively held by DI Ryan),¹²⁰² and ultimately appointed as officer in charge.

49.14 This necessarily brief portrait of Mr O'Brien is relevant to the Commission's assessment of his credit as a witness and the likelihood that he held any improper motivation or

¹¹⁹³ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [39] (VPL.0014.0040.0001 at .0009).

¹¹⁹⁴ T5471.39 (J O'Brien).

¹¹⁹⁵ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [46] (VPL.0014.0040.0001 at .0010-.0011).

¹¹⁹⁶ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [48] (VPL.0014.0040.0001 at .0010-.0011).

¹¹⁹⁷ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [42] (VPL.0014.0040.0001 at .0010).

¹¹⁹⁸ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [42] (VPL.0014.0040.0001 at .0010).

¹¹⁹⁹ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [42] (VPL.0014.0040.0001 at .0010); T5487.13-32 (J O'Brien).

¹²⁰⁰ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [36]-[37] (VPL.0014.0040.0001 at .0009).

¹²⁰¹ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [37] (VPL.0014.0040.0001 at .0009).

¹²⁰² Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [43] (VPL.0014.0040.0001 at .0010).

intention of the kind alleged by Counsel Assisting. The submission by Counsel Assisting that Mr O'Brien^{Relevance} is utterly repugnant to Mr O'Brien and is wholly inconsistent with his work history over 30 years and the commendations that he received.¹²⁰³

50 Section B Mr O'Brien's knowledge of Ms Gobbo, the extent of his involvement in her recruitment as a human source, his appointment as officer in charge of the Purana Taskforce and general matters relevant to the Purana Taskforce

- 50.1 On 31 August 2005, while officer in charge of the MDID, Mr O'Brien became aware that Ms Gobbo had expressed some anxiety to members of the MDID (DS Mansell and DSC Rowe) about a professional conflict that had arisen between her representation of Mr Bickley and her relationship with Tony Mokbel and that she had indicated a willingness to assist police with information about Mr Mokbel's criminal offending.¹²⁰⁴ DSC Rowe informed DSS O'Brien that he and DS Mansell had offered to meet at court to discuss the matter further.¹²⁰⁵ DSS O'Brien directed DSC Rowe to tape any further discussions with Ms Gobbo.¹²⁰⁶ As Mr Rowe observed,^{PII} there was nothing unusual about DSS O'Brien's direction.¹²⁰⁷ The detail of the interactions that followed is described in detail at 50.17 – 50.21 of these submissions.
- 50.2 The contact between Ms Gobbo and police on 31 August 2005 was "unbelievably unexpected".¹²⁰⁸ It was not the result of any strategy by Victoria Police to target Ms Gobbo for recruitment as a human source.¹²⁰⁹ There is no evidence that DS Mansell or DSC Rowe had any knowledge of Ms Gobbo's earlier registrations as a human source in the 1990s.
- 50.3 Certainly, DSS O'Brien had no strategy to target Ms Gobbo for recruitment as a human source. At this time, he did not have a detailed knowledge of Ms Gobbo's relationships with her criminal associates and clients, nor did he view Ms Gobbo as a person likely to cooperate with Victoria Police.¹²¹⁰ To Mr O'Brien, Ms Gobbo was a barrister to the criminal underworld suspected of being too close to her clients. Members had told Mr O'Brien that they suspected that whilst Ms Gobbo was representing individuals charged with offences, she was retained by Tony Mokbel to represent those people and was, therefore, protecting his interests.¹²¹¹ To an experienced officer like DSS O'Brien, who had dealt with the worst of human behaviour for 28 years, that was nothing remarkable. It was a time when lawyers were implicated in the underworld. Two other lawyers, Mario Condello and George Deferos, were facing charges of conspiracy to murder and incitement to murder Carl Williams, his father and another man. Ms Gobbo was just another member of the crew.
- 50.4 More significant is what Mr O'Brien did not know about Ms Gobbo. Mr O'Brien did not know that Ms Gobbo had been convicted of using methamphetamine in 1993 and had

¹²⁰³ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [7]-[8] (VPL.0014.0040.0001 at .0003).

¹²⁰⁴ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [44] (VPL.0014.0040.0001 at .0010).

¹²⁰⁵ Exhibit RC1381B – Diary entries of Detective Sergeant Paul Rowe, 31 August 2005 (VPL.0010.0003.0002 at .0026).

¹²⁰⁶ Exhibit RC1381B – Diary entries of Detective Sergeant Paul Rowe, 31 August 2005 (VPL.0010.0003.0002 at .0026).

¹²⁰⁷ T3251.35-37 (P Rowe).

¹²⁰⁸ T3254.1 (P Rowe).

¹²⁰⁹ See paragraphs 49.10 to 49.16 of these submissions.

¹²¹⁰ T5453.29-30 (J O'Brien).

¹²¹¹ T5507.37-38 (J O'Brien).

- owned a house, and lived with, a drug trafficker, nor that she had been considered a 'significant supplier' of methamphetamine at Melbourne University.¹²¹² He did not know that Ms Gobbo had been previously registered as a human source by Mr Pope¹²¹³ or by Mr Segrave.¹²¹⁴ He was not aware of communications between Ms Gobbo and Mr De Santo during the course of the Operation Kayak proceedings.¹²¹⁵
- 50.5 DSS O'Brien did not know that Ms Gobbo had been a person of interest in 2003,¹²¹⁶ or the details of her involvement with her criminal clients,¹²¹⁷ nor did he become aware of this information on taking up as the officer in charge of the Purana Taskforce.¹²¹⁸ Mr O'Brien was not aware of a conversation between Mr Swindells and Ms Gobbo in September 2003 in which Mr Swindells indicated to her that the "door was always open for her to speak to police".¹²¹⁹ As Mr O'Brien explained, most areas of Victoria Police "acted within silos", and officers "didn't openly communicate what we were doing to everybody else".¹²²⁰ And, as Mr O'Brien further observed, Mr Swindells was a Detective Inspector or Senior Sergeant at the time and "our work level related issues would stay at that level".¹²²¹ For example, Mr O'Brien's evidence was that he did not recall any interaction at all between Purana and the MDID about Tony Mokbel and his associates from late 2004 into 2005.¹²²²
- 50.6 It was rare for Mr O'Brien to attend court and the management of briefs and prosecutions was handled by sergeants and their crews.¹²²³ Thus, in April 2004, when Mr O'Brien met with Tony Mokbel, Mr O'Brien knew that Ms Gobbo had represented Tony Mokbel¹²²⁴ but was not aware that Ms Gobbo had represented the other individuals Mr Mokbel had mentioned in the meeting.¹²²⁵ Mr O'Brien was not aware of Ms Gobbo's earlier employment at Solicitor 1's firm,¹²²⁶ her involvement with Person 2 and Wayne Strawhorn,¹²²⁷ nor was he aware of Victoria Police's interest in Solicitor 1's firm¹²²⁸ or any suggestion that Ms Gobbo might provide evidence against Solicitor 1's firm.¹²²⁹
- 50.7 Mr O'Brien was not aware that Ms Gobbo had been providing information to the National Crime Authority.¹²³⁰ He was not aware of comments made by Ms Gobbo to those tasked with investigating the murder of Terrence and Christine Hodson about her dissatisfaction with her clients.¹²³¹ Mr O'Brien was also not aware that Ms Gobbo was interviewed by Charlie Bezzina and Cameron Davey in relation to the leak of IR44.¹²³²
- 50.8 When this context is understood, it is clear that Ms Gobbo was not a person of significant interest to Mr O'Brien, nor someone that he targeted for recruitment.

¹²¹² T5562.13-29 (J O'Brien).

¹²¹³ T5997.32-33 (J O'Brien).

¹²¹⁴ T5997.35 (J O'Brien).

¹²¹⁵ T5446.29-33 (J O'Brien).

¹²¹⁶ T5460.42 (J O'Brien); T5461.33 (J O'Brien).

¹²¹⁷ T5562.28-29 (J O'Brien).

¹²¹⁸ T5562.28-29 (J O'Brien).

¹²¹⁹ T5460.40-42 (J O'Brien).

¹²²⁰ T5460.44 – T5461.3 (J O'Brien).

¹²²¹ T5461.15-18 (J O'Brien).

¹²²² T5494.36-38 (J O'Brien).

¹²²³ T5471.30-33 (J O'Brien).

¹²²⁴ T5469.47 – T5470.1 (J O'Brien).

¹²²⁵ T5470.3-5 (J O'Brien).

¹²²⁶ T5436.31-37 (J O'Brien).

¹²²⁷ T5438.39-47 (J O'Brien); T5441.43 – T5442.4 (J O'Brien).

¹²²⁸ T5439.7-8 (J O'Brien).

¹²²⁹ T5439.10-13 (J O'Brien).

¹²³⁰ T5439.33-37 (J O'Brien).

¹²³¹ T5474.22-44 (J O'Brien); T5475.17-20 (J O'Brien).

¹²³² T5473.36-40 (J O'Brien).

50.9 Had Mr O'Brien, DS Mansell, DSC Rowe or the SDU known what is set out in the Appendix to the tranche 1 submissions about Ms Gobbo then, her approach to police in August 2005 would have been received and managed very differently. When analysing what did happen, Mr O'Brien's state of knowledge – outlined above – must be kept in mind. It would be an error, and would distract this Commission from its duties, to view the events that followed through the prism of a person invested with all of the knowledge in the Appendix, rather than through the prism of what Mr O'Brien in fact knew.

Ms Gobbo comes to Mr O'Brien's attention

50.10 Ms Gobbo first came to Mr O'Brien's attention in a significant way in early August 2004 when, in the wake of the Hodson murders, Mr O'Brien was receiving feedback 'from the floor' that Ms Gobbo's involvement with her clients went beyond that of a professional relationship, and beyond that of a usual 'lawyer-client' relationship.¹²³³ On 10 August 2004, Mr O'Brien asked members of the MDID to submit IRs regarding contact with Ms Gobbo in support of a possible telephone intercept application.¹²³⁴

50.11 Counsel Assisting submit that Mr O'Brien's evidence was that this request "would likely have been an intelligence gathering exercise in relation to drug offences".¹²³⁵ The submission is wrong. That was not Mr O'Brien's evidence. His evidence was that it was "only an intel gathering exercise"¹²³⁶ and that, at the time, he had no evidence of Ms Gobbo being involved in drug offending and did not know whether she could have been involved such offending.¹²³⁷ As Mr O'Brien explained, a lot of criminal intelligence gathering occurs well prior to investigators having any evidence of a specific offence.¹²³⁸

50.12 Counsel Assisting also relied on a conversation that Sandy White recalled having with Mr O'Brien at some time after Ms Gobbo was hospitalised in July 2004, in which the possible recruitment of Ms Gobbo was discussed.¹²³⁹ Mr White recalls that the idea was not pursued because he and Mr O'Brien did not think Ms Gobbo would be interested.¹²⁴⁰ Mr White could not recall when or where the conversation took place,¹²⁴¹ while Mr O'Brien did not recall this discussion at all.¹²⁴² That is credible given Mr White's evidence that it was a "short" and "very general conversation".¹²⁴³ It may have simply been Mr White raising the possibility that Ms Gobbo could have information of assistance to police and that the conversation moved on because they did not believe she would ever provide it. Neither officer made a diary note of the conversation which indicates that it was of no moment.

50.13 Counsel Assisting rely on this evidence in support of the submission that Ms Gobbo was on the MDID "radar as a person of interest" and was "viewed with suspicion by the

¹²³³ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [40] (VPL.0014.0040.0001 at .0009); T5435.19-23 (J O'Brien).

¹²³⁴ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [40] (VPL.0014.0040.0001 at .0009); T5435.29-36 (J O'Brien); T5475.47 – T5476.3 (J O'Brien); see also Exhibit RC0465B – Diary of Mr James (Jim) O'Brien (10 August 2004) (VPL.0100.0073.0076 at .0144); T5476.33-36 (J O'Brien).

¹²³⁵ Counsel Assisting Submissions at p 140 [669], Vol 2.

¹²³⁶ T5478.14-17 (J O'Brien).

¹²³⁷ T5478.31-34 (J O'Brien).

¹²³⁸ T5478.23-26 (J O'Brien).

¹²³⁹ Counsel Assisting Submissions at pp 289-290 [1299-1300], Vol 2.

¹²⁴⁰ T3642.30-32 (S White).

¹²⁴¹ T3645.29-30 (S White); T3646.2.4 (S White).

¹²⁴² T5485.17-39 (J O'Brien).

¹²⁴³ T3647.1-4 (S White).

MDID".¹²⁴⁴ Insofar as Mr O'Brien is concerned, that submission overlooks five pieces of evidence.

- 50.14 First, the feedback that Mr O'Brien was receiving was at the level of "general dissatisfaction" with Ms Gobbo,¹²⁴⁵ it did not arise out of a specific event¹²⁴⁶ and was "nothing specific".¹²⁴⁷ What Mr O'Brien "was saying to the people on the floor was to start gathering information, start putting stuff together, build a bit of a picture" because all he had was "a lot of whinging and moaning".¹²⁴⁸ Second, Mr O'Brien was not, at that stage, looking to investigate Ms Gobbo in relation to potential criminal activity.¹²⁴⁹ Third, to the best of Mr O'Brien's recollection, no IRs were ever submitted.¹²⁵⁰ Fourth, Mr O'Brien was not aware of an application for a telephone intercept being made.¹²⁵¹ Fifth, Mr O'Brien did not accept Counsel Assisting's proposition that it was a "pretty significant" thing to consider investigating a lawyer.¹²⁵² Mr O'Brien pointed to examples of other lawyers who became involved in police investigations.¹²⁵³ Counsel Assisting were viewing the potential investigation of a lawyer through their eyes, and not through the eyes of police. Lawyers do commit crime and police do investigate them, just like they investigate other people with respected qualifications. And, as noted above, these events occurred at a time when other lawyers were facing charges connected to serious criminal offending.
- 50.15 Counsel Assisting also engages in hindsight reasoning. Mr O'Brien, in his time at the MDID, oversaw complex and difficult investigations. A great many people, of whom Ms Gobbo was but one, orbited on the periphery of these investigations, coming into focus from time to time. To conclude from an aggregation of interactions between the MDID and Ms Gobbo that, in 2005, she was a person of particular interest to Mr O'Brien or his team is to elevate Ms Gobbo to a position of greater significance than she occupied at the time. In engaging in hindsight reasoning, Counsel Assisting fail to engage with the fact that officers such as Mr O'Brien were making decisions in the context of complex and difficult work and without having all of the information that is now available.
- 50.16 Counsel Assisting also assert that Mr O'Brien knew about discussions between Mr Bateson and Ms Gobbo during the course of 2005. But, when Ms Gobbo approached DSC Rowe, DSS O'Brien was entirely unaware of the fact, or content, of Ms Gobbo's interactions with Mr Bateson.¹²⁵⁴

Mr O'Brien responds to Ms Gobbo's offer to assist police

- 50.17 Consequently, on 31 August 2005, when DSC Mansell and DSC Rowe reported Ms Gobbo's call to DC Rowe, DSS O'Brien's response was muted: he simply directed them to covertly record any further discussions with her.¹²⁵⁵ Mr O'Brien did not seize on Ms Gobbo's contact with DSC Rowe as a means of giving effect to a plan to register Ms Gobbo as a human source, because no such plan existed.

¹²⁴⁴ See Counsel Assisting Submissions at p 140 [666-670], Vol 2.

¹²⁴⁵ T5435.45 – T5436.3 (J O'Brien).

¹²⁴⁶ T5476.5-6 (J O'Brien).

¹²⁴⁷ T5436.1-3 (J O'Brien).

¹²⁴⁸ T5478.8-12(J O'Brien).

¹²⁴⁹ T5478.14-16 (J O'Brien).

¹²⁵⁰ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [41] (VPL.0014.0040.0001 at .0009).

¹²⁵¹ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [41] (VPL.0014.0040.0001 at .0009).

¹²⁵² T5478.36-37 (J O'Brien).

¹²⁵³ T5478.39-40 (J O'Brien).

¹²⁵⁴ T5501.27-30 (J O'Brien); T5503.20-22 (J O'Brien).

¹²⁵⁵ Exhibit RC1381B – Diary of Detective Sergeant Paul Rowe, 31 August 2005 (VPL.0010.0003.0002 at .0026).

- 50.18 Later that day, DSC Mansell and DSC Rowe reported to DSS O'Brien that Ms Gobbo was open to assisting Victoria Police in relation to Tony Mokbel and that she might be prepared to speak with DS Flynn, whom she trusted.¹²⁵⁶
- 50.19 What DSS O'Brien did, and what he did not do, in response to this information is important. DSS O'Brien did not direct DS Mansell or DSC Rowe to arrange a meeting between Ms Gobbo and DS Flynn. Nor did he seek to register and manage Ms Gobbo as a human source within the MDID.
- 50.20 Instead, DSS O'Brien did three things.
- 50.21 First, he arranged contact with the SDU: either he directed DS Mansell and DSC Rowe to contact the SDU, or he contacted the unit himself.¹²⁵⁷ From that point onwards, it was the SDU that would determine whether Ms Gobbo was recruited and what, if any, information was passed to Mr O'Brien. In that context, Mr O'Brien accepted that the idea to register Ms Gobbo as a human source may well have been his, responsive to the information he had received from DSC Rowe and DS Mansell.¹²⁵⁸ However, Mr O'Brien did not make the decision to register Ms Gobbo. He did nothing more than follow Victoria Police procedure by referring the matter to the SDU. If he had ignored a citizen who indicated that she had information of assistance to police, he would have been breaching his sworn oath.
- 50.22 Second, Mr O'Brien informed the head of the Purana Taskforce, DI Ryan, of Ms Gobbo's approach.¹²⁵⁹ Mr O'Brien refuted Counsel Assisting's speculative suggestion that he told Mr Ryan of Ms Gobbo's approach for the purpose of asking his permission to take over Ms Gobbo as a source.¹²⁶⁰ That suggestion made no sense – if he was to ask anyone for permission, it would have been the SDU. Further, DI Ryan was not asked about this issue. Thus, there is no evidence that supports Counsel Assisting's theory. Indeed, all the available evidence is to the contrary. As noted above, on learning of her potential interest in assisting Victoria Police, Mr O'Brien referred Ms Gobbo to the SDU and took no steps to debrief her before doing so. Having referred her, Mr O'Brien had no further involvement in the decision to register Ms Gobbo, and took no part in her debriefing.¹²⁶¹ That conduct is wholly inconsistent with Mr O'Brien having any intention to utilise Ms Gobbo as an MDID source, and is wholly consistent with Mr O'Brien's respect for the role of the SDU and its role in managing the risk that attended the interactions between Victoria Police and its human sources.¹²⁶²
- 50.23 Third, he informed a member of Victoria Police's Executive Command, Assistant Commissioner Simon Overland, of the events during their regular weekly meeting.¹²⁶³
- 50.24 These actions are important because they evidence that, at the very outset, Mr O'Brien:
- (a) responded in an honest and ethical way to the prospect of Ms Gobbo assisting police by referring her to the SDU;
 - (b) followed Victoria Police policy by referring the matter to the SDU; and

¹²⁵⁶ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [44] (VPL.0014.0040.0001 at .0010).

¹²⁵⁷ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [45] (VPL.0014.0040.0001 at .0010); T5512.5-7 (J O'Brien).

¹²⁵⁸ T5513.19-22 (J O'Brien).

¹²⁵⁹ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [47] (VPL.0014.0040.0001 at .0011); T5511.12-13 (J O'Brien).

¹²⁶⁰ T5511.40-41 (J O'Brien).

¹²⁶¹ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [55] (VPL.0014.0040.0001 at .0013).

¹²⁶² Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [46] (VPL.0014.0040.0001 at .0010-0011).

¹²⁶³ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [48] (VPL.0014.0040.0001 at .0011).

- (c) acted transparently by promptly informing both the officer in charge of the Purana Taskforce, DI Ryan, and the Assistant Commissioner of Crime, AC Overland.
- 50.25 Mr O'Brien's decision making, up to this point, cannot reasonably be criticised.
- 50.26 And, it should be emphasised that his decision-making was entirely consistent with his previous conduct as an officer. Three years earlier, while at the MDID, DSS O'Brien returned from leave to be informed of a concern that DSC Miechel was too close to his source, Terrence Hodson.¹²⁶⁴ Mr O'Brien acted immediately - counselling DSC Miechel that same day, and initiating a full debrief of Mr Hodson.¹²⁶⁵ A few months later, in response to the Dublin Street burglary, he and a superintendent met with Mr Hodson to end his source relationship with Victoria Police.¹²⁶⁶ He took that necessary action despite Mr Hodson being a valuable source of information to Victoria Police.¹²⁶⁷ When Mr O'Brien became suspicious of Mr Dale in the aftermath of the Dublin Street burglary, he immediately reported his concerns to the Ethical Standards Department.¹²⁶⁸
- 50.27 Moreover, his actions were consistent with the behaviour of an honest and ethical officer who had lived through the aftermath of the charging of DS Rosenes and DSC Paton in 2001 and of David Miechel and Paul Dale in 2003. For Mr O'Brien, the creation of the SDU was "a significant improvement" over the old system, because it meant that "specialist officers were able to manage the safety of the human source as well as the flow of information"¹²⁶⁹ and it "outsourced significant risk from the MDID to the SDU".¹²⁷⁰ Faced with a high risk potential human source, he did not hesitate to transfer the decision as to whether she should be registered and, if registered, her management, to the specialists at the SDU.
- 50.28 Mr O'Brien's honest and ethical decision-making at the outset must be considered when the Commissioner assesses whether he intended to act, thereafter, in the manner alleged by Counsel Assisting.

Mr O'Brien's appointment to Purana

- 50.29 On about 12 September 2005, AC Overland asked Mr O'Brien to assume formal management of the Purana Taskforce, and he did so the following day.¹²⁷¹ On arrival at Purana, Mr O'Brien reported directly to AC Overland.¹²⁷² That was the structure in place when Mr O'Brien arrived, and he 'inherited what there was'.¹²⁷³ Not long after, the structure changed, and he reported through a superintendent.¹²⁷⁴
- 50.30 Counsel Assisting attempted to link Mr O'Brien's appointment as head of the Purana Taskforce to his involvement in Ms Gobbo's recruitment as a human source.¹²⁷⁵ There is no evidence to support their speculation, and there is substantial evidence to the contrary. At a practical level, Mr O'Brien had already commenced as the officer in charge of the Purana Taskforce before Ms Gobbo first met the SDU.¹²⁷⁶ Thus, at the time of his appointment, Mr O'Brien had no control over whether Ms Gobbo would in

¹²⁶⁴ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [18] (VPL.0014.0040.0001 at .0005-0006).

¹²⁶⁵ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [18] (VPL.0014.0040.0001 at .0005-0006).

¹²⁶⁶ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [28] (VPL.0014.0040.0001 at .0007).

¹²⁶⁷ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [16] (VPL.0014.0040.0001 at .0005); T5446.42-46 (J O'Brien).

¹²⁶⁸ T5451.25-30 (J O'Brien).

¹²⁶⁹ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [46] (VPL.0014.0040.0001 at .0010).

¹²⁷⁰ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [46] (VPL.0014.0040.0001 at .0011).

¹²⁷¹ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [48] (VPL.0014.0040.0001 at .0011).

¹²⁷² T5490.45-47 (J O'Brien).

¹²⁷³ T5491.9-12 (J O'Brien).

¹²⁷⁴ T5491.30-34 (J O'Brien).

¹²⁷⁵ T5515.10-12 (J O'Brien).

¹²⁷⁶ T5515.27 (J O'Brien)

fact be registered as a human source, and it was not known whether Ms Gobbo would provide any information or any information of substance. It was not until 19 September 2005 – after his appointment – that Mr O'Brien was briefed about that meeting and the SDU's decision to conduct a full debrief with Ms Gobbo over the course of a week.¹²⁷⁷ Indeed, at 12 September 2005, Mr O'Brien anticipated only that Ms Gobbo's registration might present opportunities for *Operation Quills* – there is nothing to suggest that he anticipated the wide ranging information she would ultimately provide.¹²⁷⁸

- 50.31 More significantly, Mr O'Brien had been acting in the position for some time and, as set out above, had a firm commitment to task force policing. His experience at the MDID, coupled with his belief in the need for a standing taskforce into organised crime, made him the logical choice to lead Purana when DI Ryan moved on.
- 50.32 A number of features of Mr O'Brien's position as officer in charge of Purana are relevant to the Commission's assessment of his conduct. The position was a 'very big, very busy, very challenging, very complex' role.¹²⁷⁹ Mr O'Brien had to oversee a team of about 100 officers undertaking complex, difficult and important work. In particular, *Operation Posse* was significant because it was the first time that dedicated resources from different disciplines had been co-located¹²⁸⁰ and Mr O'Brien consequently had teams from those disciplines to assist.¹²⁸¹ The demands on Mr O'Brien's time were significant and he frequently worked long days.¹²⁸² Mr O'Brien described his job in 2006 as keeping '55 balls in the air at once'.¹²⁸³
- 50.33 The workload of the Purana Taskforce was relentless.¹²⁸⁴ As Mr Overland explained in his evidence, 'the murders kept happening so the scope of the investigations being covered by Purana grew'.¹²⁸⁵
- 50.34 When Mr O'Brien commenced full-time at Purana as Acting Inspector, it was an upgraded position from his former role as a Senior Sergeant.¹²⁸⁶ He oversaw Purana's massive operations in an Acting role. Immediately below him were six or seven crews of detectives, each running their own investigations.¹²⁸⁷
- 50.35 Mr O'Brien's responsibilities were broad. For example, he had four or five full time telephone intercept monitors constantly receiving intelligence. He oversaw them and directed covert support as needed in response. He also oversaw a team from the non-compliance area of the tax office, an element of the asset disruption approach to organised crime.¹²⁸⁸
- 50.36 Mr O'Brien's superior officer, Mr Overland, explained in his evidence that it was 'quite a struggle' to get task forces of the size of Purana properly resourced.¹²⁸⁹ Getting new resources was 'very difficult' and a 'contest'.¹²⁹⁰

¹²⁷⁷ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [53] (VPL.0014.0040.0001 at .0012).

¹²⁷⁸ Exhibit RC0933B – Diary of Mr James (Jim) O'Brien, 12 September 2005 (VPL.0100.0073.0076 at .0151).

¹²⁷⁹ T12138.45-47 (S Overland).

¹²⁸⁰ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [86] (VPL.0014.0040.0001 at .0019).

¹²⁸¹ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [86] (VPL.0014.0040.0001 at .0019).

¹²⁸² T5675.10-11 (J O'Brien).

¹²⁸³ T5546.14 (J O'Brien).

¹²⁸⁴ T12125.37 (S Overland).

¹²⁸⁵ T12125.40-41 (S Overland).

¹²⁸⁶ T121126.24-36 (S Overland).

¹²⁸⁷ T12131.28-35 (S Overland).

¹²⁸⁸ T12132.19-29 (S Overland).

¹²⁸⁹ T12125.21-23 (S Overland).

¹²⁹⁰ T12135.24-28 (S Overland).

- 50.37 Whilst the Purana Taskforce was better resourced after the murders of Jason Moran and Pasquale Barbaro,¹²⁹¹ Mr Overland acknowledged in evidence that, in hindsight, the resources 'may not have been sufficient'.¹²⁹² The evidence indicates that consideration was once given to placing a legal practitioner within the Purana Taskforce so that detectives had sufficient legal support available.¹²⁹³ That did not occur and, in hindsight, it would have been of great benefit.
- 50.38 As noted above, Mr O'Brien's responsibility of overseeing Purana involved overseeing the work of up to 100 individual members.¹²⁹⁴ There was no Superintendent above him who was closely focussed on the Purana Taskforce.
- 50.39 There was also confusion within command about reporting lines. While Mr Overland thought that Mr O'Brien was reporting to Commander Purton,¹²⁹⁵ Mr O'Brien did not understand that to be his reporting line. It was clear from Com. Purton's evidence that his role was fairly limited.
- 50.40 Mr Overland said in evidence that, with the benefit of hindsight, formal processes and resources dedicated solely to monitoring and managing the issues that arose as a result of the use of Ms Gobbo as a human source were required in both the SDU and within Crime Command.¹²⁹⁶ Without such systems, Mr O'Brien was left vulnerable. He was receiving constant intelligence from the SDU without there being adequate systems in place. Further, with adequate systems in place, Mr O'Brien would never have been put in the most unfortunate position of Ms Gobbo attending at St Kilda Road to advise Mr Cooper and him having to deal with it.
- 50.41 Mr Overland said in evidence that, in hindsight, there should have been embedded legal support in place in relation to Ms Gobbo's use as a human source.¹²⁹⁷
- 50.42 A feature of the size and complexity of the officer in charge role was that Mr O'Brien was not involved in the details of the investigations being conducted by the crews. That responsibility sat with the crew sergeants,¹²⁹⁸ and they had significant autonomy. Mr O'Brien received high level briefings about the status of investigations and relied on his crew sergeants to 'brief up' issues that required his particular attention. Accordingly, Mr O'Brien did not know, and could not have known, the intricate details of each investigation that was being undertaken.
- 50.43 Further, Victoria Police was heavily siloed. There was little information sharing between areas and people, including between the MDID and Purana.¹²⁹⁹ As Mr O'Brien observed "rarely would different disciplines from within the Crime Department communicate anything to do with their investigations between each other".¹³⁰⁰ This entrenched feature of Victoria Police resulted in its officers working in their specific areas of responsibility and trusting that their colleagues in different disciplines were discharging their responsibilities. There was a high degree of trust between disciplines, and it was rare for an officer to question the decision-making or work of another discipline. As will be seen, the heavy stratification of Victoria Police and the entrenched culture of trust

¹²⁹¹ T11622.21-34 (C Nixon).

¹²⁹² T12135.29-30 (S Overland).

¹²⁹³ Exhibit RC0314 – Operation Posse Operational Assessment, April 2005 at p 66 (VPL.0100.0010.1743 at .1808); T5497.16-29 (J O'Brien).

¹²⁹⁴ T12128.16-18 (S Overland).

¹²⁹⁵ T12131.1-3 (S Overland).

¹²⁹⁶ T12138.9-15 (S Overland).

¹²⁹⁷ T12143.1-2 (S Overland).

¹²⁹⁸ T5448.44 – T5449.1 (J O'Brien).

¹²⁹⁹ T5467.37-39 (J O'Brien).

¹³⁰⁰ T5474.41-44 (J O'Brien).

among disciplines was to lead to a particular consequence for the interactions between the SDU and the Purana Taskforce.

Proposed finding at [1334] of Counsel Assisting's submissions

- 50.44 Counsel Assisting submit, at [1334], that it is open for the Commissioner to find that, by 12 September 2005, Mr O'Brien knew that Ms Gobbo was acting for Tony Mokbel and that her use as a human source against him, as her client, was being considered. On the evidence, that finding is not open.
- 50.45 Mr O'Brien acknowledged that, when he referred Ms Gobbo to the SDU, he knew that she had acted for Tony Mokbel **in the past**, and that, if she had information of assistance to police that she could provide about Tony Mokbel, police would want such information.¹³⁰¹ Mr O'Brien did not know that there could be difficulties in her providing such information by reason of her **previous** representation of Tony Mokbel. That was, first, because any conflict was a "conflict for her" to sort out,¹³⁰² and, second, because Mr O'Brien was interested in 'what was still going on and what criminal acts were being committed'¹³⁰³ and, third, Mr O'Brien believed that the information he was receiving from the SDU was being picked up by Ms Gobbo in the course of her socialisation with a 'team of crooks'.¹³⁰⁴
- 50.46 As a consequence, Mr O'Brien had no awareness of the potential for conflict because he distinguished between past offending, for which Ms Gobbo had represented Tony Mokbel, and ongoing offending, which had not been charged and, consequently, in relation to which Ms Gobbo did not act for him. Thus, there is no basis for the Commissioner to find that Mr O'Brien knew that Tony Mokbel was an **existing** client of Ms Gobbo's in late 2005 and no basis to find that Mr O'Brien knew that she was being considered for use against Tony Mokbel as a client.
- 50.47 Instead, while understanding that Ms Gobbo had acted for Tony Mokbel in the past, he did not believe that she was offering to provide information about Tony Mokbel in relation to matters for which she was briefed to act for him or had been briefed to act for him in the past. This is an important distinction. Many other officers gave similar evidence. It is clear evidence that officers did not understand the conflict that had arisen. It also underscores the importance of this Commission identifying with precision the exact conflicts that arose and the reasons why they were not adequately addressed. In the case of conflicts of the kind that arose in relation to Tony Mokbel as a **past** client of Ms Gobbo, the conflict was not identified because of the complete absence of any training on such issues.

Operation Posse and the Operation Posse Investigation Plan

- 50.48 The origins of *Operation Posse* are dealt with elsewhere in these submissions. As those submissions reveal, *Operation Posse* was not established in response to Ms Gobbo's registration as a human source: it pre-dated that event by almost twelve months. Insofar as Mr O'Brien was concerned, the opportunity to drive *Operation Posse* vindicated his conviction that Victoria Police needed a standing taskforce on organised crime. It also reflected Mr O'Brien's strong view that the gangland killings were inextricably linked to drug trafficking and that disrupting drug trafficking in Victoria would end, or reduce, the killings.¹³⁰⁵

¹³⁰¹ T5513.27-29 (J O'Brien).

¹³⁰² T5513.34-35 (J O'Brien).

¹³⁰³ T5513.35-36 (J O'Brien).

¹³⁰⁴ T5639.23-26 (J O'Brien).

¹³⁰⁵ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [86]-[87] (VPL.0014.0040.0001 at .0019).

- 50.49 While *Operation Posse* pre-dated Mr O'Brien's appointment as officer in charge of the Purana Taskforce, it was an opportunity for Mr O'Brien to give effect to his views on how to bring the gangland killings to an end. Mr O'Brien was clear and firm in his evidence that *Operation Posse* did not "kick off with Ms Gobbo's recruitment".¹³⁰⁶ *Operation Posse* kicked off with the intelligence assessment that Purana Phase I had undertaken in 2004 (the **Posse Intelligence Assessment**).¹³⁰⁷
- 50.50 In October 2005, Mr O'Brien authored the *Operation Posse* Investigation Plan.¹³⁰⁸ The Investigation Plan included as one of its objectives the utilisation of 'continuing information provided by registered human sources'.¹³⁰⁹
- 50.51 That *Operation Posse* would use information from registered human sources is not remarkable. The use of human source information was a central feature of the work of the Purana Taskforce and policing more generally, especially drug policing. Within that context, Mr O'Brien acknowledged that the objectives included receiving information of assistance from Ms Gobbo.¹³¹⁰ However, it is important to acknowledge that when the Investigation Plan was formulated Mr O'Brien did not know, and could not have known, the volume of information that Ms Gobbo would provide. Nor was Ms Gobbo the only human source that *Operation Posse* would utilise.
- 50.52 There are several noteworthy features of the Investigation Plan. First, it had seven investigative objectives, of which the use of registered human sources was but one.¹³¹¹ The seven investigative objectives identify that Mr O'Brien intended to achieve the aims of *Operation Posse* through the use of a wide range of policing methods. Thus, descriptions of the Investigation Plan, such as found at paragraph [1767] of Counsel Assisting's submissions, are misleading. Ms Gobbo was not at the centre of the Plan.
- 50.53 Second, the Investigation Plan identified that human source handling and management was a major issue outside the scope of the investigation, and that, where possible, all human sources were to be handed by the DSU (as it then was).¹³¹² The out of scope provisions also identified that all relevant risk assessments would be conducted by the DSU. As is described elsewhere in the submissions, this separation of responsibilities contributed to the failure of Victoria Police to properly identify and respond to Ms Gobbo's conflicts of interest. However, for present purposes, it is cogent corroboration of Mr O'Brien's evidence that he believed that the DSU (later the SDU) would be responsible for all aspects of the management of human sources, including the necessary risk assessments, and that he trusted that the DSU/SDU would manage these risks appropriately.
- 50.54 Third, the Investigation Plan prescribed that all necessary steps would be taken to protect the identity of human sources in the investigation.¹³¹³ That statement was consistent with the Victoria Police direction that officers were to maintain the utmost confidentiality in relation to the identity of informants and were not permitted to disclose the name of an informant in written reports unless directed to do so by an officer (see the Training section in Part 1 of these submissions). In line with this direction, the Investigation Plan's first key performance indicator was "identities of human sources

¹³⁰⁶ T5949.42-44 (J O'Brien).

¹³⁰⁷ T5949.42-44 (J O'Brien).

¹³⁰⁸ Exhibit RC0467B – Operation Posse Investigation Plan, 17 November 2005 (VPL.0100.0009.0001).

¹³⁰⁹ Exhibit RC0467B – Operation Posse Investigation Plan, 17 November 2005 at p 3 (VPL.0100.0009.0001 at .0003).

¹³¹⁰ T5522.18-19 (J O'Brien).

¹³¹¹ Exhibit RC0467B – Operation Posse Investigation Plan, 17 November 2005 at pp 3-4 (VPL.0100.0009.0001 at .0003-0004).

¹³¹² Exhibit RC0467B – Operation Posse Investigation Plan, 17 November 2005 at p 4 (VPL.0100.0009.0001 at .0004).

¹³¹³ Exhibit RC0467 – Operation Posse Investigation Plan, 17 November 2005 at p 4 (VPL.0100.0009.0001 at .0004).

- protected”.¹³¹⁴ The terms of the Investigation Plan are wholly consistent with Mr O’Brien’s evidence that, in relation to Ms Gobbo, his overriding concern was to protect her safety and that his conduct in relation to matters that had the potential to compromise her identity was motivated by his desire to protect her safety and not from any desire to interfere with the administration of justice.
- 50.55 Counsel Assisting submit, at [1101], that the desired “‘flexibility’, thinking ‘outside the box’ and developing ‘innovative and perhaps novel ways’ for the investigation to continue, called for in the Posse Operational Assessment, were very much realised in the registration of a practising barrister to inform against her clients”.¹³¹⁵ That submission is a cogent example of the caution with which the whole of Counsel Assisting’s submissions about Mr O’Brien should be received. The proposition that Ms Gobbo was recruited as a human source to inform on her existing clients is wrong. There is no evidence to that effect. Certainly, Mr O’Brien did not refer her to the SDU for that purpose and there is no evidence that he intended she would be used in this way.
- 50.56 Further, any assessment of *Operation Posse* that is founded on this incorrect premise is unlikely to correctly identify what went wrong, and why. Insofar as Mr O’Brien is concerned, starting from the premise that he led an operation that had this objective will result in a failure to accurately identify why Mr O’Brien acted as he did, and the inadequate governance and regulation arrangements and the organisational dynamics that contributed to his conduct.
- 50.57 In addition to inferring intention on the part of relevant Victoria Police officers, including Mr O’Brien, to act improperly, (which in at least Mr O’Brien’s case is not an inference that is open to be made on the evidence) Counsel Assisting’s submission at [1101] is overly simplistic and fails to grapple with the fact that the size and complexity of the task Mr O’Brien was charged with undertaking and the innovative and novel ways he was employing to achieve it – not least being the creation of a multi-disciplinary taskforce that was unique in Victoria Police.
- 50.58 The Investigation Plan is powerful evidence of the absence of any intention on the part of Mr O’Brien to act improperly or to allow those under his command to do so. It is also important contemporaneous corroboration of Mr O’Brien’s evidence on key matters and provides an independent and reliable source of evidence about the key structural deficiencies that Victoria Police submits contributed to Ms Gobbo’s involvement with Victoria Police. If Ms Gobbo was to be at the centre of *Operation Posse* and Mr O’Brien knew that it was wrong to use her as a human source, then the purpose of Mr O’Brien preparing a detailed Investigation Plan for *Operation Posse* that says otherwise is inexplicable.
- 50.59 Throughout October and November 2005, Mr O’Brien had regular discussions within the Crime Department about sourcing staff and equipment to properly staff the intelligence cell of *Operation Posse*.¹³¹⁶ The need for additional resourcing did not arise because of the volume of information that Ms Gobbo was providing,¹³¹⁷ but rather because of the work that needed to be done to build a ‘full picture’ of Mokbel and his associates.¹³¹⁸
- 50.60 On 3 November 2005, Mr O’Brien attended a meeting with Commander Purton and DI White to discuss staffing and resources for *Operation Posse* and Mr O’Brien then convened a sub-officers meeting and advised the team about “personnel and resource

¹³¹⁴ Exhibit RC0467 – Operation Posse Investigation Plan, 17 November 2005 at p 4 (VPL.0100.0009.0001 at .0004).

¹³¹⁵ Counsel Assisting Submissions at p 257 [1101], Vol 2.

¹³¹⁶ Exhibit RC0464B – Statement of Mr James (Jim) O’Brien, 14 June 2019 at [52] (VPL.0014.0040.0001 at .0012).

¹³¹⁷ T5540.40-43 (J O’Brien).

¹³¹⁸ T5540.45 – T5541.2 (J O’Brien).

issues re Op Posse...".¹³¹⁹ In mid-November 2005, *Operation Posse* formally commenced.

Receipt of information from the SDU

- 50.61 DSS O'Brien was the single point of contact for the SDU to disseminate intelligence provided by Ms Gobbo to the Purana Taskforce.¹³²⁰ Critically (and in further evidence of his focus on safety) Mr O'Brien refused to receive information reports from the SDU until a secure directory had been established.¹³²¹
- 50.62 The dissemination of information to a single point of contact was part of the "sterile corridor" principle on which the SDU operated.¹³²² Reports from the SDU to Mr O'Brien were 'hot debriefs'—verbal briefings about important or time critical intelligence obtained from Ms Gobbo.¹³²³
- 50.63 These 'hot debriefs' were not a "back and forth conversation" in which Mr O'Brien sought clarification, but a case of "they'd ring, and I'd get my pen out and start writing".¹³²⁴ Mr O'Brien did not filter the information he received during these 'hot debriefs': he wrote exactly what he was told and the majority of the time it was word for word.¹³²⁵
- 50.64 Sometimes, the information was of marginal relevance and DSS O'Brien did nothing more than record it.¹³²⁶ At other times the information was useful background that allowed investigators to draw links between persons of interest.¹³²⁷ At other times still, the information was useful intelligence that led to telephone intercepts, surveillance or other inquiries.¹³²⁸ Where information was used in that way, DSS O'Brien made a note of it in his diary.¹³²⁹

51 Section C No intention to act with impropriety

- 51.1 Mr O'Brien's involvement in the events connected to Ms Gobbo is dealt with in further detail below. However, it is important to understand the context in which that involvement occurred. Mr O'Brien did not embark on a course of action pursuant to which he and his team procured Ms Gobbo to act in breach of her professional obligations for the purpose of persuading accused persons to cooperate with police, nor did he utilise the SDU to ensure that evidence of Ms Gobbo's use was protected from disclosure to accused persons and the courts. Instead, the evidence reveals that Mr O'Brien utilised information provided to him by the SDU in the belief that he was lawfully entitled to use that information for the purposes of complying with his oath of investigating serious criminal offending and apprehending those suspected of serious criminal offending. In so doing, Mr O'Brien failed to identify and/or respond to the conflict of interest and disclosure issues when they arose.
- 51.2 In relation to the position that Mr O'Brien occupied as head of the Purana Taskforce, the key structural deficiencies that contributed to Mr O'Brien's failure to identify and respond to the conflict of interest issue and the disclosure issue are described earlier in these

¹³¹⁹ Exhibit RC0468B – Mr James (Jim) O'Brien Diary Summary, 3 November 2005 at p 6 (VPL.0005.0126.0001 at 0006).

¹³²⁰ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [56] (VPL.0014.0040.0001 at .0013); T3638.42 – T3639.1 (S White).

¹³²¹ Exhibit RC0292 – Diary of Mr Sandy White, 11 October 2005 at pp 18-20 (VPL.2000.0001.0440 at .0457-0459).

¹³²² Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [57]-[58] (VPL.0014.0040.0001 at .0013).

¹³²³ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [60] (VPL.0014.0040.0001 at .0013).

¹³²⁴ T5534.19-22 (J O'Brien).

¹³²⁵ T5534.25-26, 30-31 (J O'Brien).

¹³²⁶ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [66(a)] (VPL.0014.0040.0001 at .0015).

¹³²⁷ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [66(b)] (VPL.0014.0040.0001 at .0015).

¹³²⁸ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [66(c)] (VPL.0014.0040.0001 at .0015).

¹³²⁹ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [66(c)] (VPL.0014.0040.0001 at .0015).

submissions. In relation to Mr O'Brien personally, the key deficiencies that contributed to that failure were:

- (a) inadequate training in relation to Victoria Police's obligation of disclosure;
- (b) the absence of any training in relation to the identification and management of legal practitioners' conflicts of interest; and
- (c) inadequate use of legal advisers.

- 51.3 Consequently, Mr O'Brien did not take the steps that he now accepts he should have taken to respond to these issues.
- 51.4 There are several central features of Mr O'Brien's evidence that informed his response to Ms Gobbo's breach of her professional obligations and which must be given appropriate weight when considering whether Mr O'Brien acted with the intent alleged by Counsel Assisting.
- 51.5 First, Mr O'Brien briefed his superior officers about Ms Gobbo's approach to Victoria Police and potential registration as a human source. If there was a concern about the risk to the administration of justice arising from a matter as fundamental as Ms Gobbo's occupation as a barrister, it was reasonable for Mr O'Brien to expect that his superior officers (who were part of Executive Command and reported directly to the Chief Commissioner) would either direct him to address it, or to take steps to address it themselves, at the point of registration. They did not do so and, accordingly, it was not unreasonable for Mr O'Brien to proceed on the basis that there was nothing inherently improper about Victoria Police using Ms Gobbo as a human source.
- 51.6 Second, Mr O'Brien saw the risks attaching to Ms Gobbo's human source role principally through the lens of her personal safety.¹³³⁰ That was understandable in light of Mr O'Brien's experience with Terrence and Christine Hodson who had moved in similar dangerous drug circles to Ms Gobbo. Mr O'Brien saw her as a "high risk" informer and he wanted that risk "out of the MDID".¹³³¹ His "full focus was her personal safety".¹³³² As he vividly and compellingly put it "... my whole focus in this matter was in relation to the deaths of the two Hodsons. There were two people that were dead, shot in the back of the head in their own house who were police informers. My first and foremost consideration always was the life of the informer and the protection of their identity".¹³³³ Mr O'Brien did not turn his mind to criticism of, or embarrassment to, Victoria Police as a risk.¹³³⁴ What he considered was that if Ms Gobbo's use became known "she'd be dead".¹³³⁵
- 51.7 Third, and following, Mr O'Brien frankly conceded that the purpose of him referring Ms Gobbo to the SDU was to "outsource the whole situation".¹³³⁶ Accordingly, when asked what he would have done if a member of his crew had raised concerns, he replied that he would have said that the issue was being handled by the SDU.¹³³⁷ It was only if the suggestion was put that the SDU was not adequately managing a risk that he would have sought advice from a senior officer.¹³³⁸ Mr O'Brien intended that the SDU would manage Ms Gobbo and the risks attached to her use, while he and his crews would

¹³³⁰ T5513.44-45 (J O'Brien).

¹³³¹ T5508.27-30 (J O'Brien).

¹³³² T5514.4-6 (J O'Brien).

¹³³³ T5837.1-8 (J O'Brien).

¹³³⁴ T5529.1-6 (J O'Brien).

¹³³⁵ T5529.5 (J O'Brien).

¹³³⁶ T5515.40 (J O'Brien).

¹³³⁷ T5530.3-5 (J O'Brien).

¹³³⁸ T5530.11-14 (J O'Brien).

focus on investigating serious criminal offending using information that the SDU considered appropriate to disseminate to him through the sterile corridor.

- 51.8 It is apparent from the discussion below in relation to particular individuals that the consequence of the key structural deficiencies in the management of the SDU was that information was disseminated to investigators that was impacted by the conflict of interest issue and the LPP issue and that investigators, including Mr O'Brien, utilised that information trusting that they could lawfully use it in their investigations. They received the information in good faith. Further, the key structural deficiencies referred to led to a situation where investigators, including Mr O'Brien, did not act on these issues when they did identify them because of their understanding and expectation that the SDU was responsible for managing them.
- 51.9 Mr O'Brien's understanding and expectation was reasonable in light of the prevailing circumstances. Victoria Police operated on the basis of a clear delineation between disciplines and according to a strict chain of command. The SDU was set up for the specific purpose of managing high risk human sources, relieving the operational disciplines – such as MDID and Purana - from that specialist work. Further, the member of Executive Command responsible for the SDU, and who was a much higher-ranking officer than Mr O'Brien, knew Ms Gobbo was a source. Understood in the context of what Mr O'Brien had confronted in the Drug Squad and the MDID, Mr O'Brien's understanding and expectation that the SDU would be managing the risks attached to Ms Gobbo's registration and use is understandable. There was no reason for him to think otherwise.
- 51.10 Fourth, and consequently, Mr O'Brien did not turn his mind to the question of whether the information he received from the SDU was subject to legal professional privilege.¹³³⁹ His job was to investigate criminal offences, and the information he received from the SDU was considered for its value in such investigations.¹³⁴⁰ Mr O'Brien understood that it was the function of the SDU to filter out information that was subject to legal professional privilege before it was disseminated to him. That was a reasonable expectation. Removing privileged information was the SDU's responsibility. It was also not an uncommon process within Victoria Police. The [REDACTED] operated in that same way – it removed privileged information before disseminating information captured using telephone intercepts. The issue also arose in the context of executing search warrants – privileged information needed to be quarantined.
- 51.11 Fifth, independent of the LPP issue, Mr O'Brien did not appreciate the extent of Ms Gobbo's professional obligations in relation to situations of conflict. Mr O'Brien, who received no training on the topic or direction from superior officers, understood the concept of a conflict of interest¹³⁴¹ "in a commercial sense",¹³⁴² but did not entirely understand how it applied to lawyers.¹³⁴³ He made the pertinent observation that he had seen lawyers represent multiple people involved in the one matter, and that without knowing the actual facts of the case it was not possible to say whether there was a conflict or not.¹³⁴⁴ That underscores the point, discussed elsewhere in these submissions, that police officers will rarely be in possession of enough information to

¹³³⁹ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [67] (VPL.0014.0040.0001 at .0015).

¹³⁴⁰ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [67] (VPL.0014.0040.0001 at .0015).

¹³⁴¹ T5464.27-28 (J O'Brien).

¹³⁴² T5464.1-2 (J O'Brien).

¹³⁴³ T5464.30-31 (J O'Brien).

¹³⁴⁴ T5464.33-38 (J O'Brien).

determine whether or not a conflict exists where a lawyer acts for two or more people in the same matter.

- 51.12 Mr O'Brien frankly conceded that he did not ever turn his mind to the prospect that the receipt of information from Ms Gobbo might be considered by others to be wrong,¹³⁴⁵ that the courts might have some concern about what was going on with Ms Gobbo¹³⁴⁶ or that there was a need for legal advice.¹³⁴⁷ Mr O'Brien had no recollection of any member of his crew expressing concern about Ms Gobbo being a human source, and maintained that such discussions did not happen.¹³⁴⁸ Mr O'Brien had no recollection of having any discussion with Sandy White about the possibility of convictions being impacted if Ms Gobbo's status as a human source became known,¹³⁴⁹ and, despite Mr Overland's evidence, had no recollection of having any such discussions with Mr Overland.¹³⁵⁰ Mr O'Brien was not alone in not turning his mind to the above issues. As set out in Part 1 of these submissions, dozens of officers at Victoria Police knew that Ms Gobbo was a source and not one person was sufficiently concerned to elevate the issue up the chain of command.
- 51.13 One critical aspect of Mr O'Brien's lack of understanding was the heavy emphasis he placed on the nature of the information that Ms Gobbo was providing – namely, information about extant criminal offending that came to her attention in the course of her social relationships with persons involved in organised crime. Thus, for example, when he referred Ms Gobbo to the SDU, he knew that she had acted for Tony Mokbel and that Tony Mokbel was a person of interest.¹³⁵¹ Mr O'Brien did not turn his mind to the potential difficulties that might arise because of Ms Gobbo's previous representation of Tony Mokbel. That was, first, because the conflict was a "conflict for her" to assess,¹³⁵² and, second, because Mr O'Brien was interested in "what was still going on and what criminal acts were being committed".¹³⁵³ In short, Mr O'Brien failed to identify the conflict.
- 51.14 Sixth, and following, Mr O'Brien had a reasonable expectation that Ms Gobbo would act in accordance with her professional obligations. Mr O'Brien accepted that, with hindsight, Victoria Police should not have allowed Ms Gobbo to act for individuals where there was a conflict of interest.¹³⁵⁴ But it was clear from his evidence that he principally regarded that as an issue for Ms Gobbo to assess and sort out.¹³⁵⁵
- 51.15 This is not to say that Mr O'Brien did not think he had a responsibility to act when he became aware of unethical or unlawful behaviour. Indeed, he firmly refuted that suggestion.¹³⁵⁶ When he saw unlawful or unethical behaviour, he acted on it.¹³⁵⁷ Rather, it is to say that Mr O'Brien saw no issue with Ms Gobbo providing information about ongoing criminal activity, and he did not ever form the view that Victoria Police's use of Ms Gobbo was impacting on any person's right to receive a fair trial.¹³⁵⁸

¹³⁴⁵ T5529.15-21 (J O'Brien).

¹³⁴⁶ T5529.23-25 (J O'Brien).

¹³⁴⁷ T5529.35-36 (J O'Brien).

¹³⁴⁸ T5529.46-47 (J O'Brien).

¹³⁴⁹ T5933.2-15 (J O'Brien).

¹³⁵⁰ See T5951.27-29, T5962.9-17 (J O'Brien); T12122.8-15, 23-30 (S Overland).

¹³⁵¹ T5513.27-32 (J O'Brien).

¹³⁵² T5513.34-35 (J O'Brien).

¹³⁵³ T5513.35-36 (J O'Brien).

¹³⁵⁴ T5805.8-9 (J O'Brien).

¹³⁵⁵ T5805.20-21 (J O'Brien).

¹³⁵⁶ T5531.16-24 (J O'Brien).

¹³⁵⁷ T5531.16-24 (J O'Brien).

¹³⁵⁸ T5531.8-14 (J O'Brien).

- 51.16 Seventh, and critically, there is no evidence to support a conclusion that Mr O'Brien directed members of Purana to deal with information concerning Ms Gobbo in a way that would protect it from disclosure to an accused person, or in court proceedings. There is also no evidence at all that Mr O'Brien directed his crews about how to record information relating to Ms Gobbo (whether in her capacity as a barrister or a human source) nor that he took any steps to enforce such a direction.
- 51.17 On 30 January 2006, approval was given for Mr O'Brien to run two diaries.¹³⁵⁹ Counsel Assisting submit that this proposal (which was not implemented) was "approved specifically relating to Ms Gobbo's role as a human source".¹³⁶⁰ The implication in Counsel Assisting's submissions is that the idea was connected to Ms Gobbo specifically, and that she was to be treated differently to other human sources. However, Mr O'Brien's evidence was that it was specific to Ms Gobbo "at the start of this operation"¹³⁶¹ and that it was not something Victoria Police had done before and was "just a bit of a thought".¹³⁶² The idea was seen as a potential mechanism for the "protection of the informer".¹³⁶³ That is, it was a new idea, motivated by a desire to protect the safety of human sources in the operation, of which Ms Gobbo was the first. Mr O'Brien was motivated to protect Ms Gobbo, not to hide disclosable material. In any event, this new mechanism to protect her safety was not implemented.
- 51.18 Mr O'Brien emphatically denied that Purana Taskforce members who knew Ms Gobbo's identity would have been instructed to be careful about what they wrote in their notes about matters in which Ms Gobbo was involved.¹³⁶⁴ Obviously enough, crews needed to be careful not to identify Ms Gobbo as a human source. But that is a consideration that applied to all human sources and was reflected in Victoria Police policy. Crews were required by policy to be careful not to do anything that might reveal the identity of a source in this way.
- 51.19 The absence of instructions not to refer to Ms Gobbo (by name or registration number) in members' diaries is a powerful indication that there was no coordinated plan in place and no dishonest intent.
- 51.20 DSS O'Brien himself was a diligent and prolific note-taker – his diaries provide a detailed history of the contact he received from the SDU and the information it provided him. Mr O'Brien was challenged about whether he deliberately refrained from recording in his diary certain information given to him by the SDU. Mr O'Brien rejected that allegation,¹³⁶⁵ and there is no basis for the Commission to conclude that he did so. The suggestion does not make sense in light of how Mr O'Brien received information from the SDU. He received 'hot debriefs' – that is, a handler would call him and give him a download of information while Mr O'Brien wrote it all down. It would be most difficult in those circumstances to try to make a quick assessment of whether he should or should not have a piece of information and then decide whether to write it down.
- 51.21 Mr O'Brien had "no reason"¹³⁶⁶ not to take notes of what the SDU told him. While accepting that it was possible that an entry had been missed, he could not recall a single conversation with the SDU that he had not recorded in his diary.¹³⁶⁷ Mr O'Brien

¹³⁵⁹ T5546.30-39 (J O'Brien).

¹³⁶⁰ Counsel Assisting Submissions at p 408 [1799], Vol 2.

¹³⁶¹ T5547.5-6 (J O'Brien).

¹³⁶² T5547.6-7 (J O'Brien).

¹³⁶³ T5546.33-36 (J O'Brien).

¹³⁶⁴ T5655.37-39 (J O'Brien).

¹³⁶⁵ T5535.41-43 (J O'Brien).

¹³⁶⁶ T5535.41-43 (J O'Brien).

¹³⁶⁷ T5534.43-45 (J O'Brien).

took “note after note after note” and had “no reason not to take notes when somebody rang him with information”.¹³⁶⁸ Mr O'Brien did not “intentionally leave anything out of” his diary.¹³⁶⁹ In the course of a busy day it was possible that information that was ‘fairly unimportant’ might not have been written down.¹³⁷⁰ Mr O'Brien rejected the suggestion that his diaries were “not touchable” for the purposes of disclosure in court proceedings, giving firm and clear evidence that they were “always available” to informants and other members involved in prosecutions.¹³⁷¹ There is no evidence that his diaries were not accessible.

- 51.22 If Mr O'Brien and the SDU knew that information was being disseminated to Mr O'Brien that he should not have been given, there were easy ways to get it to him without any record. Instead, the SDU officers and Mr O'Brien wrote it all down.
- 51.23 Nor was there any evidence to support the suggestion that Mr O'Brien had instituted a practice in the Purana Taskforce of not keeping draft witness statements so that they would not be disclosable in court proceedings, or that there was such a practice in the Taskforce more generally.¹³⁷² In fact, Mr O'Brien was not aware of **any** practice in relation to draft statements being retained or otherwise.¹³⁷³ Mr O'Brien was not aware of any occasion on which drafts were discarded to prevent them from being disclosed.¹³⁷⁴ Mr O'Brien's expectation was that any amendments to a draft statement, whether by the maker or otherwise, would be retained.¹³⁷⁵ This is reflective of Mr O'Brien's diligent work practices, in that Victoria Police policy did not include any requirement of that kind and there was no force wide practice (see the Training section in Tranche 2 of these submissions).
- 51.24 Consistently, Mr O'Brien's evidence was that issues of disclosure in relation to matters before the courts would be “dealt with in the normal manner”.¹³⁷⁶ To the best of his knowledge, briefs were “... put together with everything in them, not put together selectively”.¹³⁷⁷ To the extent that this led to concerns about material identifying Ms Gobbo that concern was not about a “secret” process being discovered.¹³⁷⁸ Rather, it was a concern for Ms Gobbo's safety in the event that her role became known.¹³⁷⁹ It is important to recognise that Mr O'Brien was at Inspector rank and Inspectors did not prepare briefs, respond to subpoenas, make disclosure or otherwise involve themselves in court proceedings. His evidence was based on his expectations and the absence of any observable conduct to the contrary.
- 51.25 Further, Mr O'Brien did not have any discussions with anyone about what police members should say if confronted with questions about Ms Gobbo in the course of a proceeding,¹³⁸⁰ nor was he aware of the SDU having such discussions.¹³⁸¹ Victoria Police policy contained instructions in relation to that issue (see the Training section in Tranche 1 of these submissions). Equally, Mr O'Brien did not have any discussions with

¹³⁶⁸ T5535.38-43 (J O'Brien).

¹³⁶⁹ T5659.17-20 (J O'Brien).

¹³⁷⁰ T5659.17-20 (J O'Brien).

¹³⁷¹ T5548.1-4 (J O'Brien).

¹³⁷² T5682.46 – T5683.1 (J O'Brien).

¹³⁷³ T5682.38-40 (J O'Brien).

¹³⁷⁴ T5683.3-4 (J O'Brien).

¹³⁷⁵ T5687.15 (J O'Brien).

¹³⁷⁶ T5938.42-46 (J O'Brien).

¹³⁷⁷ T5939.5-7 (J O'Brien).

¹³⁷⁸ T5571.33-36 (J O'Brien).

¹³⁷⁹ T5571.7-13 (J O'Brien).

¹³⁸⁰ T5803.20 (J O'Brien).

¹³⁸¹ T5803.35-36 (J O'Brien).

Mr Cooper or Mr Thomas about them not revealing Ms Gobbo's role in advising them.¹³⁸²

51.26 Mr O'Brien's frank, direct and honest evidence was that, as he saw it, he "never had an issue like that arise" in connection with Ms Gobbo.¹³⁸³ That was because, first, he was "hiding nothing" and recording everything,¹³⁸⁴ second, everyone up to Assistant Commissioners knew what was going on¹³⁸⁵ and, third, he briefed up and recorded everything in his diary,¹³⁸⁶ which went everywhere with him.¹³⁸⁷

51.27 Finally, that there was no scheme in place is evidenced by the discussions that took place from time to time among the crew members. The position was eloquently expressed by DSC Rowe, who recalls discussions among the team in the early days, as follows:

I remember talking about it and I think on probably a couple of occasions. Despite everything, you know, there's no point doing any of this if we thought it was all going to fall over. What would be the point? All those hours, all that effort, all that time away from home, lose it at court, whatever it is, like what is the point?¹³⁸⁸

51.28 Discussions of this kind belie the suggestion that Mr O'Brien was overseeing a concerted plan. If such a plan was in place, the crews would not have speculated about the potential consequences of the conflicts that were arising. They would have known and understood the scheme that was in place and acted accordingly.

51.29 Accordingly, there is no basis for this Commission to conclude that Mr O'Brien was acting to disguise Ms Gobbo's improper conduct, or improper conduct on the part of Victoria Police. Instead, the truth is that Mr O'Brien failed to identify and/or respond to the unique conflict of interest issue when it arose. Mr O'Brien accepted that, with the passage of time and hindsight, the Purana Taskforce should have done more than it did.¹³⁸⁹ He accepted that it would have been better for legal advice to have been obtained on day one.¹³⁹⁰ But nothing, as Mr O'Brien put it, nothing could be "further from the truth" than the suggestion that Purana intended to engage in conduct that would hide information to deny the courts the ability to determine whether accused persons would receive a fair trial.¹³⁹¹ Nor was there a view within Purana, the SDU or Victoria Police that it was acceptable for the police to bend or break rules to achieve a desirable outcome.¹³⁹²

51.30 The position in which Mr O'Brien found himself is a graphic illustration of the practical consequences of the key structural deficiencies identified elsewhere in these submissions.

51.31 The absence of any embedded risk management oversight allowed Ms Gobbo to be registered without a proper appreciation, at an organisational level, of the risks inherent in her registration. Victoria Police officers, acting in good faith but without the necessary training and knowledge, allowed Ms Gobbo to be registered and used without analysing

¹³⁸² T5803.41 (J O'Brien).

¹³⁸³ T5548.20-22 (J O'Brien).

¹³⁸⁴ T5548.29-31 (J O'Brien).

¹³⁸⁵ T5548.32-34 (J O'Brien).

¹³⁸⁶ T5548.33-34 (J O'Brien).

¹³⁸⁷ T5999.37-38 (J O'Brien).

¹³⁸⁸ T9199.26-32 (P Rowe).

¹³⁸⁹ T5914.12-14 (J O'Brien).

¹³⁹⁰ T5934.26-28 (J O'Brien).

¹³⁹¹ T5524.17-22 (J O'Brien).

¹³⁹² T5705.16 (J O'Brien).

the risks to the administration of justice that would arise, and without any organisational plan for how to manage the potential for conflict.

- 51.32 That foundational failure was able to occur because Victoria Police had no embedded risk management, including legal risk management, oversight. Victoria Police officers could only act on the risks they were able to identify. Consequently, the very real risk to the administration of justice that arose from the use of Ms Gobbo as a human source was neither appreciated, nor addressed. Critical among those failures was the failure to identify the risk that persons apprehended on the basis of information supplied by Ms Gobbo would seek legal advice from her and the failure to identify the risk that Ms Gobbo might actually provide such advice.
- 51.33 If a robust risk assessment had been made by persons trained in risk management and had appropriate risk management systems put in place, it is difficult not to conclude that officers such as Mr O'Brien would not have been placed in the position in which they found themselves. It is impossible to see how Mr O'Brien would have been put in the position he was if the new systems now in place at Victoria Police had been in force.¹³⁹³
- 51.34 The foundational failures were compounded by the rigidity of Victoria Police's structure. Operational officers, including Mr O'Brien, embraced the SDU to relieve their units from the risks attaching to the use of human sources. Questions connected to the propriety of Ms Gobbo's use were assumed to be the province and responsibility of the SDU and the rigidity of the structure had the effect that it was assumed that the SDU was properly discharging that responsibility. Consequently, Mr O'Brien, and his crews, got on with their investigative work and understood that they were entitled to, and did, use the information they were given to discharge their core responsibility of investigating organised crime in Victoria.
- 51.35 A further consequence was that when Ms Gobbo deliberately and knowingly placed herself in a position of conflict by acting for individuals she had provided information to Victoria Police about, Mr O'Brien and his crews were left to manage the conflict without a complete understanding of the nature and extent of the conflicts, nor their potential consequences. The evidence before this Commission has made clear that the training provided to officers, including Mr O'Brien, about the professional obligations of legal representatives was addressed to the narrow subject matter of legal professional privilege. It did not address the broader legal and ethical obligations attaching to legal practitioners, such as their obligations of confidence and their obligation not to act for people in certain circumstances. Consequently, Ms Gobbo's registration having been approved by the SDU and sanctioned by Executive Command, Mr O'Brien, and others, were left to navigate the use of information she provided without being properly equipped to identify and respond to the conflicts that arose. As discussed above, it is obvious that in Mr O'Brien's case he placed significant emphasis on the nature of the information that Ms Gobbo was providing – which pertained to serious, ongoing, criminal conduct.
- 51.36 If the use of Ms Gobbo as a human source had been closely and properly overseen by people with a comprehensive understanding of the issues and expertise in risk management, including legal risk management, the conflicts that arose would have been identified and immediately addressed. To leave the complex issues that could arise to people not trained or experienced to deal with them carried real risks.

¹³⁹³ Exhibit RC1529B – Statement of Deputy Commissioner Wendy Steendam, 16 April 2020 at [85] (VPL.0014.0113.0019 at .0035).

52 Section D: Submissions in relation to Mr Thomas and Mr Cooper

Mr Thomas

- 52.1 Counsel Assisting submit that it is open to the Commissioner to make certain findings against Mr O'Brien arising from his conduct in relation to Mr Thomas (a pseudonym).

Relevance

As will be seen in this section, Counsel Assisting have failed to identify with precision the: (a) nature of the conflicts of interest that are said to have arisen by reason of Ms Gobbo acting for Mr Thomas; (b) point in time at which each of those conflicts arose; and (c) facts relevant Mr O'Brien's knowledge of, and response to, those conflicts.

- 52.2 When a disciplined approach is taken to the identification of the alleged conflicts and the evidence of Mr O'Brien's knowledge of those conflicts, it is seen that:
- (a) Mr O'Brien did not know that Ms Gobbo had any conflict of interest in relation to Mr Thomas by reason of her earlier representation of Mr McGrath;
 - (b) it is not the case that Ms Gobbo was necessarily prevented from acting for Mr Thomas in any aspect of his proceeding – it was at least possible that Ms Gobbo could have acted for Mr Thomas in parts of the proceeding;
 - (c) Ms Gobbo and legal practitioners involved in the proceedings took steps to address the potential conflict of interest that arose when she acted for Mr Thomas having acted for Mr McGrath and, it seems, those conflicts were satisfactorily resolved;
 - (d) Mr Thomas did know that Ms Gobbo had acted for Mr McGrath, and, with that knowledge, he retained her;
 - (e) Mr Thomas' solicitor and Queens Counsel knew that Ms Gobbo had earlier represented Mr McGrath;¹³⁹⁴
 - (f) when Mr Thomas indicated his willingness to cooperate with Victoria Police, Mr O'Brien was not aware, and could not reasonably have been aware, that Ms Gobbo was talking to the SDU about Mr Thomas;
 - (g) Mr O'Brien did not want Ms Gobbo to be involved with Mr Thomas and encouraged Mr Thomas to seek independent legal advice because he was concerned that Ms Gobbo's involvement with Mr Thomas was a risk to her safety;
 - (h) from time to time, Ms Gobbo spoke to her handlers about Mr Thomas;
 - (i) when Mr O'Brien became aware that Ms Gobbo was both acting for Mr Thomas and speaking to the SDU about him, he asked the SDU to arrange for Ms Gobbo to refer Mr Thomas to another barrister; and
 - (j) Mr O'Brien had little involvement with Mr Thomas after he chose to cooperate and was not aware that Ms Gobbo continued to act for Mr Thomas.
- 52.3 Consequently, the basis for the findings that Counsel Assisting have submitted should be made against Mr O'Brien falls away. Findings that reflect the true facts are set out below.

¹³⁹⁴ Exhibit RC1163B – Memorandum to Counsel from Valos Black to Colin Lovitt QC, 18 February 2005 at p 10 (MIN.5000.0002.4504 at .4513).

Relevant facts

- 52.4 When Mr O'Brien joined Purana, Mr Thomas, along with his co-accused, Carl Williams, had a pending trial for the murders of Jason Moran and Pasquale Barbaro on 21 June 2003. This was one of a number of trials pending when Mr O'Brien arrived at Purana.¹³⁹⁵ Mr O'Brien did not familiarise himself with these trials or their underpinning investigations in detail – they were mainly looked after, in the usual way, by the crew sergeants.¹³⁹⁶ In the case of Mr Thomas, the investigation was being handled by Com. Bateson, who reported to DI Ryan.
- 52.5 The evidence against Mr Thomas and Mr Williams included information contained in a witness statement made by Mr McGrath in 2004. The circumstances in which that statement was obtained are set out in Com. Bateson's submissions.
- 52.6 As is set out in detail in the submission of Com. Bateson, Ms Gobbo had acted for Mr McGrath when he became a Crown witness. She then acted for Mr Thomas on occasions. Ms Gobbo was part of their crew, which explains why she was their lawyer of choice. Mr O'Brien refers to the evidence about Ms Gobbo in the Appendix to the tranche 1 submissions.
- 52.7 Counsel Assisting's submissions proceed on the basis that, because Ms Gobbo had acted for Mr McGrath when he implicated Mr Thomas, there was no circumstance in which Ms Gobbo was able to act for Mr Thomas without breaching her professional obligations. That is not so.
- 52.8 This issue is explored in detail in the submissions of Com. Bateson. Mr O'Brien refers to those submissions. Mr O'Brien's submissions must be read with Com. Bateson's submissions on this issue.
- 52.9 As Mr O'Brien understands the submissions, Counsel Assisting submit that members of Victoria Police ought to have intervened to address:
- (a) Ms Gobbo's potential conflict of interest in acting for Mr Thomas after she had acted for Mr McGrath; and
 - (b) Ms Gobbo's potential conflict of interest as a potential witness in the murders of Jason Moran and Pasquale Barbaro; and
 - (c) an alleged conflict of interest in Ms Gobbo providing information about Mr Thomas to Victoria Police while representing him.
- 52.10 If they are the submissions, they should not be accepted because:
- (a) the first and second potential conflicts fall well outside the terms of reference and, therefore, the Commissioner has no power to make findings in relation to them;
 - (b) second, and in any event, as to the first conflict:
 - (i) it cannot be said that merely by reason that Ms Gobbo had acted for Mr McGrath she was unable to act for Mr Thomas in any part of the proceeding against him – those involved in the proceeding appear to have assessed the conflict issue by reference to the scope of Ms Gobbo's retainer on each occasion. This is what occurred in relation to the bail application discussed later in these submissions and, seemingly, in relation to the committal hearing;

¹³⁹⁵ T5552.5-7 (J O'Brien).

¹³⁹⁶ T5552.9-12 (J O'Brien).

- (ii) Mr Thomas knew that Ms Gobbo had acted for Mr McGrath and, with that knowledge, retained her;
 - (iii) Mr Thomas' solicitor and Queens Counsel were also aware that Ms Gobbo had acted for Mr McGrath and, it seems, addressed her potential conflict accordingly;
 - (iv) it is not known whether the potential conflict was raised with Mr McGrath because Counsel Assisting did not call him to give evidence. Ms Gobbo was not asked whether she asked for Mr McGrath's consent. The Commission therefore does not know whether consent was given. It is unsatisfactory that submissions are made about this conflict, without the Commission having evidence of this critical fact from the key people;
 - (v) both Ms Gobbo and the profession took steps to address the potential conflicts and, it seems, were satisfied that they had been resolved; and
 - (vi) there are serious deficiencies in the evidence before the Commission about these matters, which leaves the Commission with an incomplete picture of how the potential conflicts were managed; and
- (c) as to the second conflict, there was no conflict because there was no reasonable prospect that Ms Gobbo would be called as a witness;
- (d) as to the third conflict:
- (i) Ms Gobbo was not "informing" on Mr Thomas; and
 - (ii) to the extent that she spoke about him to the SDU (in a way that was not informing on him), she ought not to have done so and steps should have been taken to prevent her from doing so and to ensure that no information that she provided to the SDU was disseminated to investigations, including Mr O'Brien.

Proposed finding at paragraph [722] of Counsel Assisting's submissions

- 52.11 At [772], Counsel Assisting submit that it is open to find that if Ms Gobbo's involvement in the representation of certain people had not been to Victoria Police's advantage, Victoria Police would have taken steps to prevent it from occurring.
- 52.12 Counsel Assisting have not explained why it was for Victoria Police to intervene in this issue. Nor have they explained why Victoria Police would consider this to be its role when the OPP had carriage of the proceedings in which Ms Gobbo had potential conflicts.
- 52.13 The evidence before the Commission is that the Senior Crown Prosecutor, Mr Horgan SC, who was prosecuting the proceedings in which Ms Gobbo had her potential conflicts was dealing with the issue. Mr Horgan SC addressed conflicts with her.
- 52.14 In circumstances where:
- (a) the OPP had carriage of the prosecutions;
 - (b) a member of senior counsel, Mr Horgan SC, was appearing in those prosecutions;
 - (c) Mr Horgan SC had resolved the terms on which Mr McGrath would plead guilty and assist police with Ms Gobbo and then he appeared many times opposed to Ms Gobbo when she started acting for Mr Thomas and he went on to resolve the terms on which Mr Thomas would plead guilty and assist police with Ms Gobbo;

- (d) Mr Horgan SC directly raised conflicts with Ms Gobbo;
- (e) others at the OPP knew the matters in sub-paragraph (c) above;
- (f) Mr Thomas knew that Ms Gobbo had acted for Mr McGrath when he implicated Mr Thomas;
- (g) Ms Gobbo's leader (a member of senior counsel) knew that Ms Gobbo had acted for Mr McGrath when he pleaded guilty and became a Crown witness against Mr Thomas;
- (h) Ms Gobbo's instructing solicitor knew the matters in sub-paragraph (g) and, according to Ms Gobbo, she specifically told him that she had negotiated with the OPP and advised Mr McGrath about his statements; and
- (i) there is no evidence that Mr McGrath raised any concern about Ms Gobbo acting for Mr Thomas (which is not surprising given that they were all part of the same crew),

there is no basis whatsoever for Counsel Assisting placing responsibility on members of Victoria Police for not trying to prevent Ms Gobbo from acting for Mr Thomas.

- 52.15 Nor is there any evidence from which it can be properly inferred that members of Victoria Police did not try to prevent Ms Gobbo from acting because it was to Victoria Police's advantage to have her act. Mr Bateson's evidence was that he could not have cared less if it was not Ms Gobbo who acted for Mr Thomas.¹³⁹⁷ Com. Bateson not raising the possible conflict is consistent with him also not raising the fact that Mr Grant appeared for both Mr Andrews and Carl Williams on different occasions in the same matter when they had conflicting interests. Counsel Assisting do not say that there was any advantage to Victoria Police in Mr Grant so acting.
- 52.16 The submission that members of Victoria Police did not prevent Ms Gobbo from acting because it was to Victoria Police's advantage for her to act is nothing more than cynical speculation that is of no assistance to the Commission.
- 52.17 In circumstance where there is no evidence that Mr McGrath complained about Ms Gobbo acting for Mr Thomas and where Mr McGrath, Mr Thomas and Ms Gobbo had all been part of the same crew, Mr McGrath may not have cared less that Ms Gobbo was acting for Mr Thomas after she had negotiated him a very good outcome – 10 years for 4 execution murders. All that he had to do was give his evidence in order to get his discount. It is not clear why it would have mattered to Mr McGrath whether his credit was attacked and Mr Thomas was not convicted. He would still get his discount.
- 52.18 The above circumstances are addressed in more detail in Commander Bateson's submissions.

Mr Thomas indicates his willingness to cooperate

- 52.19 On 1 March 2005, Mr Thomas' committal hearing for the murders of Jason Moran and Pasquale Barbaro commenced. Mr McGrath gave evidence for the Crown. While the position is not entirely certain, the better view is that Ms Gobbo did not appear at the committal hearing. Mr Thomas was committed to stand trial. These matters are addressed in Commander Bateson's submissions.

¹³⁹⁷ T3400.39 – T3401.5 (S Bateson); T3401.30 – T3402-08 (S Bateson).

- 52.20 In February 2006, Mr Thomas indicated that he wished to assist police (after having given earlier indications in July and August 2004).¹³⁹⁸ For reasons developed in these submissions at 52.62, Mr Thomas had good reasons for doing so.
- 52.21 When Mr Thomas approached Victoria Police in February 2006, he was represented by a solicitor. That solicitor briefed Ms Gobbo to act for Mr Thomas knowing that she had previously acted for Mr McGrath when he elected to become a Crown witness against Mr Thomas.¹³⁹⁹
- 52.22 Between September 2005 (when Ms Gobbo was registered as a human source) and 16 February 2006 (when Mr Thomas indicated for the third time that he wished to cooperate with Victoria Police), there was only one occasion on which the SDU had disseminated information to Mr O'Brien about Mr Thomas that had been sourced from Ms Gobbo. That instance took place on 27 September 2005.¹⁴⁰⁰ There is no evidence that, at that date, Mr O'Brien knew that Ms Gobbo was acting for Mr Thomas. The information was that Ms Gobbo believed that Mr Thomas had "more involvement" in a particular event than Tony Mokbel thought he had.¹⁴⁰¹ Mr O'Brien was not given any detail about what Mr Thomas' involvement might have been.
- 52.23 Between 27 September 2005 and 16 February 2006, Ms Gobbo provided the SDU with a modest amount of information about Mr Thomas – but it was not disseminated to Mr O'Brien.¹⁴⁰² There is no evidence that, in February 2006, Mr O'Brien recalled the single piece of vague information that had been disseminated to him almost five months earlier. In the context of the large volume of information that Mr O'Brien had received from the SDU in that period and Operation Posse's focus on Mr Cooper, it would seem most unlikely that Mr O'Brien would have recalled it. It was one piece of vague information of no apparent significance. It was not the type of information that would have captured and held Mr O'Brien's attention for 5 months.
- 52.24 No other information was disseminated to Mr O'Brien about Mr Thomas in the period between 27 September 2005 and 16 February 2006. Mr O'Brien was not asked in cross-examination if he knew, in this period, that Ms Gobbo was providing information to Victoria Police about Mr Thomas. Consequently, there is no basis to conclude that, when Mr Thomas told police that he wished to cooperate, Mr O'Brien knew that Ms Gobbo was conflicted in relation to Mr Thomas by reason that she was talking to the SDU about him.
- 52.25 Mr O'Brien accepted that, by reason of Ms Gobbo's involvement with Mr McGrath, Ms Gobbo had a conflict in relation to Mr Thomas.¹⁴⁰³ As with much of Counsel Assisting's cross-examination on this topic, it proceeded on the basis that there was no circumstance in which Ms Gobbo could act for Mr Thomas having acted for Mr McGrath. For the reasons given above, and in the submissions of Com. Bateson, that is not so. Accordingly, Mr O'Brien was accepting a false premise.
- 52.26 In any case, Mr O'Brien did not have contemporaneous knowledge of any potential conflict.

¹³⁹⁸ Exhibit RC0269B – Statement of Commander Stuart Bateson, 7 May 2019 at [61], [65] and [78] (VPL.0014.0027.0001 at .0010-0011 and .0013).

¹³⁹⁹ Exhibit RC1163B – Memorandum to Counsel from Valos Black to Colin Lovitt QC, 18 February 2005 at p 10 (MIN.5000.0002.4504 at .4513).

¹⁴⁰⁰ Exhibit RC0468B – Mr James (Jim) O'Brien Diary Summaries, 27 September 2005 (VPL.0005.0126.0001 at .0005).

¹⁴⁰¹ Exhibit RC0468B – Mr James (Jim) O'Brien Diary Summaries, 27 September 2005 (VPL.0005.0126.0001 at .0005).

¹⁴⁰² Exhibit RC0281 – ICR3838 (017), 2 February 2006 (VPL.2000.0003.1722 at .1728); Exhibit RC0281 – ICR3838 (018), 16 February 2006 (VPL.2000.0003.1735 at .1741); Exhibit RC0468B – Mr James (Jim) O'Brien Diary Summaries, 19 February 2006, 27 February 2006 (VPL.0005.0126.0001 at .0011, .0013).

¹⁴⁰³ T5558.29-30 (J O'Brien); T5559.24-28 (J O'Brien).

- 52.27 Mr O'Brien had no direct involvement with Mr McGrath.¹⁴⁰⁴ He did not know Ms Gobbo represented Mr McGrath when he became a witness,¹⁴⁰⁵ and did not recall whether or not he later came to have that knowledge.¹⁴⁰⁶ He was unaware that Ms Gobbo had spoken to Mr Bateson, Mr Allen and Mr Swindells about Mr McGrath cooperating.¹⁴⁰⁷ He was not aware that Mr McGrath had asked for Ms Gobbo to review drafts of his statements, or that she had expressed scepticism about aspects of his statement about Michael Marshall (events which took place in 2004, while he was based at the MDID and prior to his appointment to Purana).¹⁴⁰⁸
- 52.28 Consequently, when Mr Thomas told police that he wished to co-operate in February 2006, the weight of evidence supports the following conclusions:
- (a) Mr O'Brien was not responsible for the investigation, which was being run by Com. Bateson;
 - (b) Mr O'Brien was unaware of Ms Gobbo's previous representation of Mr McGrath, or her involvement in advising him about his statements;
 - (c) Ms Gobbo had provided the SDU with a modest amount of information about Mr Thomas;
 - (d) the SDU had only disseminated to Mr O'Brien a single piece of vague information about Mr Thomas that had been sourced from Ms Gobbo 5 months before Mr Thomas told police that he wished to co-operate and before Ms Gobbo was acting for him; and
 - (e) Mr O'Brien was not aware that Ms Gobbo had any conflict of interest in relation to Mr Thomas by reason that she had been providing information about him to Victoria Police.
- 52.29 Counsel Assisting submit that, on 16 February 2006, Peter Smith informed Mr O'Brien that Ms Gobbo and her instructing solicitor would be seeing Mr Thomas on the weekend and that it was likely that Mr Thomas would be told to do what was in his best interests.¹⁴⁰⁹ The evidence in support of that submission is said to be a diary entry of Mr O'Brien.¹⁴¹⁰ However, Counsel Assisting seem to have misread the diary entry because it relates not to Mr Thomas but to [PII].¹⁴¹¹ The underlying ICR (018) records a conversation between Peter Smith and Ms Gobbo in which Ms Gobbo states that she and her instructing solicitor will be seeing Mr Thomas on the weekend, but makes no mention of the suggestion that it was likely that Mr Thomas would be told to do what was in his best interests. That same ICR makes extensive reference to [PII]. Consequently, there is no evidence that Mr O'Brien was informed that Ms Gobbo and her instructing solicitor would be visiting Mr Thomas.
- 52.30 On 17 February 2006, there were communications between Ms Gobbo and Mr Green about Mr Thomas, among a wide range of other matters.¹⁴¹² The relevant ICR contains a notation that Ms Gobbo intended to talk to Mr Thomas on the basis that it would be

¹⁴⁰⁴ T5556.11-15 (J O'Brien).

¹⁴⁰⁵ T5554.47 – T5555.1 (J O'Brien).

¹⁴⁰⁶ T5555.3 (J O'Brien).

¹⁴⁰⁷ T5555.6-7 (J O'Brien).

¹⁴⁰⁸ T5555.11, 17-19 (J O'Brien).

¹⁴⁰⁹ Counsel Assisting Submissions at p 177 [815], Vol 2.

¹⁴¹⁰ Counsel Assisting Submissions at p 177 [815] (footnote 1038), Vol 2.

¹⁴¹¹ Exhibit RC0933B – Diary of Mr James (Jim) O'Brien, 17 February 2006 (VPL.0100.0073.0076 at .0210).

¹⁴¹² Exhibit RC0281 – ICR3838 (019), 17 February 2006 (VPL.2000.0003.1743 at .1743).

- the 'right thing to do' despite her having been told by Tony Mokbel not to be involved with Mr Thomas.¹⁴¹³
- 52.31 Counsel Assisting state that this particular piece of information was reported to Mr O'Brien.¹⁴¹⁴ That submission mischaracterises the evidence. The ICR entry in question was long and covered a wide range of subject matter.¹⁴¹⁵ It contains a notation that Mr O'Brien was updated "re above".¹⁴¹⁶ There is no note of the specific information given to Mr O'Brien. Mr Green was asked about this entry in cross-examination but was not asked whether or not the information was disseminated.¹⁴¹⁷ Consequently, it cannot be concluded that the update included this information.
- 52.32 More importantly, Counsel Assisting have not drawn the Commissioner's attention to Mr O'Brien's express denial that he received this information. Mr O'Brien expressly denied receiving this specific information under cross-examination and, responsive to a direct question from the Commissioner, confirmed that his evidence was that the ICR was wrong if it was seeking to convey that all of the information in the ICR had been disseminated.¹⁴¹⁸ Consistently, Mr O'Brien's diary has a detailed note of his discussion with the SDU on that day which records the receipt of other information contained in that ICR, but which does not record the information in question.¹⁴¹⁹ Counsel Assisting does not refer to this evidence. Consequently, when all of the documentary and oral evidence on this issue is considered, rather than just a selection of it, the evidence does not permit a finding that Mr O'Brien was given the Mr Thomas information.
- 52.33 In any case, even if the information was passed on, there is nothing to suggest that Mr O'Brien was given privileged information in this discussion, or that Mr O'Brien was made aware that Ms Gobbo was providing information to the SDU *about* Mr Thomas. The information had obvious implications for Ms Gobbo's safety which is presumably why it was passed on.
- 52.34 On 19 February 2006, Mr Bateson and DSC Hatt met with Ms Gobbo and her instructing solicitor to discuss Mr Thomas' interest in cooperating with Victoria Police.¹⁴²⁰ Mr Bateson then briefed Mr O'Brien and DI Ryan about that meeting.¹⁴²¹
- 52.35 As at 19 February 2006, there had been only one occasion on which the SDU had disseminated information to Purana concerning Mr Thomas where the information came from Ms Gobbo. That occurred on 27 September 2005 when information was disseminated to DAI O'Brien.¹⁴²² The information was that Ms Gobbo believed that Mr Thomas had "more involvement" in a particular event than Tony Mokbel thought he had.¹⁴²³ Mr O'Brien was not given any detail, and that single, vague, piece of information was imparted as part of a much larger debrief. That occasion aside, there is no evidence at all that the SDU had disseminated any information that Ms Gobbo gave them concerning Mr Thomas to Purana detectives, including Mr O'Brien.
- 52.36 Consequently, there is no evidentiary basis to conclude that, when Mr Thomas indicated his willingness to cooperate with police, Mr O'Brien knew that Ms Gobbo was

¹⁴¹³ Exhibit RC0281 – ICR3838 (019), 17 February 2006 (VPL.2000.0003.1743 at .1743).

¹⁴¹⁴ Counsel Assisting Submissions at p 178 [818], Vol 2.

¹⁴¹⁵ Exhibit RC0281 – ICR3838 (019), 19 February 2006 (VPL.2000.0003.1743 at .1744-1745).

¹⁴¹⁶ Exhibit RC0281 – ICR3838 (019), 19 February 2006 (VPL.2000.0003.1743 at .1744-1745).

¹⁴¹⁷ T7326.15 – T7328.18 (Green).

¹⁴¹⁸ T5567.30-39 (J O'Brien).

¹⁴¹⁹ Exhibit RC0933B – Diary of Mr James (Jim) O'Brien, 17 February 2006 (VPL.0100.0073.0076 at .0214-0215).

¹⁴²⁰ Exhibit RC0468B – Mr James (Jim) O'Brien Diary Summaries, 19 February 2006 (VPL.0005.0126.0001 at .0011).

¹⁴²¹ Untendered Diary of Mr James (Jim) O'Brien, 19 February 2006 (VPL.0005.0126.0127 at .0127).

¹⁴²² Exhibit RC0468B – Mr James (Jim) O'Brien Diary Summaries, 27 September 2005 (VPL.0005.0126.0001 at .0005).

¹⁴²³ Exhibit RC0468B – Mr James (Jim) O'Brien Diary Summaries, 27 September 2005 (VPL.0005.0126.0001 at .0005).

- conflicted in relation to Mr Thomas by reason that she was talking to the SDU about him.
- 52.37 The following day, 20 February 2006, DAI O'Brien met with DI Ryan and DS Bateson to discuss resourcing in relation to Mr Thomas.¹⁴²⁴ Later that day, DI Ryan, DS Bateson and DSC Kerley met with Mr Horgan SC.¹⁴²⁵
- 52.38 At about this time, the SDU raised concerns that Mr Bateson's diary notes might compromise Ms Gobbo¹⁴²⁶ and about the need for Ms Gobbo to minimise her involvement with Mr Thomas because of concerns about Tony Mokbel finding out that Ms Gobbo was acting for Mr Thomas.¹⁴²⁷
- 52.39 Mr O'Brien did not recall these discussions. However, he was adamant that the concerns were not about a "secret" process being discovered.¹⁴²⁸ Mr O'Brien thought they were probably discussions about a concern for Ms Gobbo's safety in the event that other criminal figures became aware that she was representing Mr Thomas.¹⁴²⁹ That is entirely consistent with the notes made by Ms Gobbo's handlers.
- 52.40 In relation to Mr Bateson's diary notes, Sandy White has recorded a discussion with Officer Green that took place on 20 February 2006.¹⁴³⁰ Relevantly, Sandy White's diary reads 'Updated by [Officer Green]. JOB to monitor Bateson notes re sanitising his involvement in [Thomas] statement'. It appears that Sandy White was recording Officer Green's description of a conversation that Officer Green said that he had with Mr O'Brien. The precise origin and meaning of this diary note are unknown: neither Sandy White nor Officer Green were asked about it in cross-examination.
- 52.41 Counsel Assisting place emphasis on this notation. It is entirely unsatisfactory that neither person who participated in the conversation about which the note was made were asked about it. Both of them gave evidence and were extensively cross-examined. There is no obvious reason why they were not asked. This departure from the ordinary principles of procedural fairness is reason enough for the Commission not to draw the inference sought by Counsel Assisting. An inference should not be drawn when direct evidence could have been adduced.
- 52.42 However, and in any case, the note does not have the meaning or effect that Counsel Assisting urge.
- 52.43 Mr White said that the concern was that Mr Bateson's notes about his discussions with the DSU would identify Ms Gobbo.¹⁴³¹ That is logical, and consistent with the evidence. The notation was made on 20 February 2006, four days after Mr Thomas indicated an interest in cooperating with Victoria Police and two days before Mr O'Brien and Mr Bateson's first substantive meeting with him. It also came shortly after Mr Gobbo informed her handlers that she had spoken directly to Mr Bateson about Mr Thomas' potential cooperation,¹⁴³² and the day after Mr O'Brien and Mr Bateson met with Ms Gobbo and her instructing solicitor in relation to Mr Thomas' potential cooperation. The SDU was, therefore, aware that Ms Gobbo was speaking to Mr Bateson about Mr Thomas.

¹⁴²⁴Exhibit RC0312 – Diary of Mr Gavan Ryan, 19 February 2006 (VPL.0005.0120.0020 at .0022).

¹⁴²⁵ Exhibit RC0312 – Diary of Mr Gavan Ryan, 20 February 2006, 3, (VPL.0005.0120.0107 at .0109).

¹⁴²⁶ T5569.2-8 (J O'Brien).

¹⁴²⁷ T5570.39-44 (J O'Brien).

¹⁴²⁸ T5571.33-41 (J O'Brien).

¹⁴²⁹ T5571.7-13 (J O'Brien).

¹⁴³⁰ Untendered Diary of Mr Sandy White, 20 February 2006 (VPL.0100.0096.0001 at .0125).

¹⁴³¹ T4747.38-T4747.2 (S White).

¹⁴³² Exhibit RC0281 – ICR3838 (019), 19 February 2006 (VPL.2000.0003.1743 at .1744).

- 52.44 Further, the term 'sanitising' had a particular meaning within the SDU. Mr White's evidence was that 'sanitising' described the process by which the handler would take sufficient steps to ensure that the source of the intelligence would not be identified.¹⁴³³ In that regard, it is likely that 'sanitise' was the language used by Sandy White to capture what he understood the practical effect of the discussion to be, or it was language used by Officer Green.
- 52.45 And, while the phrase used by Sandy White is 'involvement in [Thomas] statement' there was, at that time, no 'Thomas statement'. Mr O'Brien and Mr Bateson had not yet met with Mr Thomas to determine whether, and to what extent, Mr Thomas was prepared to make statements.
- 52.46 Finally, as Mr O'Brien pointed out, it was not a question of asking officers to refrain from taking notes – he took hundreds of pages of notes concerning Ms Gobbo.¹⁴³⁴ Nor was it the case that Mr Bateson was being told not to use Ms Gobbo's name at all. Mr O'Brien himself recorded Ms Gobbo by name, rather than informer number, when he dealt with her as a barrister, including in relation to the meeting of 19 February 2006. Mr O'Brien continued that practice after that time.
- 52.47 Seen in light of the above, the concern was likely to be that, in circumstances where Mr Bateson was having direct contact with Ms Gobbo in her capacity as a barrister, and knew that Ms Gobbo was a registered human source, he might have inadvertently taken notes in a manner that breached operational policy not to record the identity of a human source in writing. Seen this way, the notation in Sandy White's diary does not bear a sinister meaning. It simply reflects diligence in ensuring the safety of a registered human source.
- 52.48 As to the potential for compromise, as Counsel Assisting observe, the SDU repeatedly asked Ms Gobbo not to be involved with Mr Thomas because of the potential risk to her safety if Tony Mokbel and other members of the crew became aware that she was doing so. Ms Gobbo repeatedly ignored that advice. Ms Gobbo deliberately placed herself in harm's way, and Victoria Police had no choice but to take steps to protect her.

Proposed finding at [839] of Counsel Assisting's submissions

- 52.49 Counsel Assisting describe as "noteworthy" that Mr O'Brien made contact with a solicitor engaged by Victoria Police in relation to legal professional privilege issues arising in the course of Operation Primi.¹⁴³⁵ There is nothing noteworthy about it. Mr O'Brien did not believe he was receiving information from the SDU that was subject to legal professional privilege.¹⁴³⁶ As is discussed elsewhere in these submissions, the issues that arose in connection with Ms Gobbo were principally issues of conflict, rather than legal professional privilege.
- 52.50 The observation of Counsel Assisting referred to in the preceding paragraph is intended to support the proposed finding at paragraph [839]. In fact, it serves to underscore one of the principal difficulties with Counsel Assisting's submissions – that being the failure to identify the precise nature of each conflict and Mr O'Brien's knowledge of that conflict. That failure obscures the issues, their causes and, consequently, what must be done to address them.

¹⁴³³ T3582.9-14 (S White); T3582.25-28 (S White).

¹⁴³⁴ T5571.39-41 (J O'Brien).

¹⁴³⁵ Counsel Assisting Submissions at p 181 [838], Vol 2.

¹⁴³⁶ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [68] (VPL.0014.0040.0001 at .0015).

- 52.51 Paragraph [839] itself is an oversimplification. It fails to distinguish between legal advice that Victoria Police officers routinely sought in connection with prosecutions, which was principally concerned with public interest immunity claims, and legal advice sought in relation to operational matters, which was rare.
- 52.52 Mr O'Brien did not give evidence that he had ready access to legal advice for operational matters. When asked if he had the ability to go and seek legal advice if in doubt about a course of action, he said "no" and that he would "generally go and see a more senior officer".¹⁴³⁷ He agreed that if he needed to seek legal advice he could do so.¹⁴³⁸ However, he did not have "a place he would ordinarily go" to get legal advice.¹⁴³⁹ Mr O'Brien's evidence was that if he was in doubt about a particular course of action he would generally go and speak to a more senior officer.¹⁴⁴⁰ He also gave evidence that while he sought legal advice about PII issues, he did not ever seek legal advice about disclosure.¹⁴⁴¹
- 52.53 Mr Flynn's evidence was that while it was possible to ask for legal advice he would usually just "raise it up" to a superior officer and that "most of my legal issues that would have come in around those days would have been with prosecutors, either with police prosecutors or with the OPP".¹⁴⁴² To the best of his recollection, Mr Flynn did not ever speak to an in house legal adviser about a Purana matter.¹⁴⁴³
- 52.54 The import of this evidence is that:
- (a) officers sourced legal advice for PII and privilege;
 - (b) officers rarely sought legal advice for operational matters;
 - (c) the general practice was that an officer would brief up an issue and rely on their superior officer to obtain advice if he or she considered it necessary.
- 52.55 Consistently, the VPM did not contain guidance to officers about when legal advice should have been obtained, and in what circumstances. The evidence given by members about access to and use of legal advice is corroborated by the evidence of Assistant Commissioner Kevin Casey.¹⁴⁴⁴
- 52.56 Mr O'Brien said that in hindsight it would have been a great thing to have a legal advisor attached to Operation Posse, but he "certainly didn't" turn his mind to it at the time.¹⁴⁴⁵ The Operation Posse Intelligence Assessment had proposed that a dedicated legal adviser be attached to the operation. Presumably that was because whatever access to legal advice was available was considered inadequate. The proposal to have a dedicated legal adviser did not proceed, and Mr O'Brien did not know why.¹⁴⁴⁶ Obviously enough then, Purana did not have legal advice "readily available to it" for operational matters in the sense of having a legal adviser embedded in its operations, ready to provide advice on a day to day basis.
- 52.57 The unfortunate formulation in paragraph [839] "when it suited or was uncontroversial" is irrelevant comment not soundly based on evidence. Commentary like that risks creating an apprehension of bias because it conveys a cynical mind. The single

¹⁴³⁷ T5490.18-21 (J O'Brien).

¹⁴³⁸ T5490.23-24 (J O'Brien).

¹⁴³⁹ T5695.17-19 (J O'Brien).

¹⁴⁴⁰ T5490.18-21 (J O'Brien).

¹⁴⁴¹ T5490.29.31 (J O'Brien).

¹⁴⁴² T6717.31 – T6718.42 (D Flynn).

¹⁴⁴³ T6718.5-10 (D Flynn).

¹⁴⁴⁴ Untendered Statement of Assistant Commissions Kevin Casey, 15 August 2020 at [112] (VPL.0014.0134.0001 at .0016)

¹⁴⁴⁵ T5498.7-9 (J O'Brien).

¹⁴⁴⁶ T5497.31 (J O'Brien).

example pointed to by Counsel Assisting in support of the proposed finding at [839] underscores that point. One example is not a sufficient basis for the Commission to adopt the inference that the phrase invites – which is that members of Purana Taskforce only sought advice where it “suited” or was “uncontroversial” and deliberately refrained from doing so when it did not suit or was likely to be controversial.

- 52.58 The proposed finding also fails to engage with the reality that seeking legal advice first requires the identification of the issue requiring advice. As Mr O'Brien's evidence makes clear, in some cases Mr O'Brien did not identify the relevant issue and, in others, he understood and expected that the SDU would manage it. Consistently, Mr O'Brien did not ever have a discussion with anyone about the need for legal advice about the use Ms Gobbo.¹⁴⁴⁷ There is no evidence that any other member of Purana did either.
- 52.59 Accordingly, there is no basis for the Commissioner to responsibly find that the Purana Taskforce had legal advice readily available to it as a matter of generality but that they only sought it when it would suit them.
- 52.60 Instead, it is open to the Commissioner to find that:
- (a) Mr O'Brien did not have a legal resource attached to the Purana Taskforce; and
 - (b) Mr O'Brien, and members generally, did not ordinarily seek legal advice about operational matters.

22 February 2006 – Purana's first PII to Mr Thomas PII to discuss his co-operation

- 52.61 On 22 February 2006, Mr O'Brien accompanied Mr Bateson to a meeting with Mr Thomas.¹⁴⁴⁸ PII¹⁴⁴⁹ Counsel Assisting use passages of the transcript of that recording to advance the proposition that Mr Thomas expressed concern about the conversation being used against him and had made clear his desire for independent legal advice.¹⁴⁵⁰ The passages extracted by Counsel Assisting, taken out of context, leave the impression that Mr Thomas was not a willing participant in the discussion or was not fairly treated by Mr Bateson and Mr O'Brien. Taken as a whole, and viewed in its context, the transcript reveals a different picture.
- 52.62 First, the conversation was taking place at the request of Mr Thomas and had been organised with the knowledge and encouragement of his solicitor.¹⁴⁵¹ Further, the transcript makes clear that Mr Thomas' motivation for meeting with Victoria Police was his anxiety to understand the position he was in as a result of Mr Andrews co-operating with police.¹⁴⁵² Mr Thomas' motivations for requesting the meeting are detailed in Mr Bateson's submissions. For present purposes, it is enough to observe that Mr Thomas was concerned about the growing number of people who would give evidence against him.
- 52.63 Second, Mr O'Brien and Mr Bateson explained the process of cooperation to Mr Thomas at the beginning of the discussion and a number of times thereafter,¹⁴⁵³ were

¹⁴⁴⁷ T5529.35-36 (J O'Brien).

¹⁴⁴⁸ Exhibit RC0475B – Transcript of meeting between Mr Thomas, Mr James (Jim) O'Brien and Commander Stuart Bateson, 22 February 2006 (VPL.0005.0062.0079).

¹⁴⁴⁹ Exhibit RC0475B – Transcript of meeting between Mr Thomas, Mr James (Jim) O'Brien and Commander Stuart Bateson, 22 February 2006 (VPL.0005.0062.0079).

¹⁴⁵⁰ Counsel Assisting Submissions at p 182 [840], Vol 2.

¹⁴⁵¹ Exhibit RC0475B – Transcript of meeting between Mr Thomas, Mr James (Jim) O'Brien and Commander Stuart Bateson, 22 February 2006 at p 3 (VPL.0005.0062.0079 at .0081); T9666.24-27 (S Bateson); T9670.18-22 (S Bateson).

¹⁴⁵² Exhibit RC0475B – Transcript of meeting between Mr Thomas, Mr James (Jim) O'Brien and Commander Stuart Bateson, 22 February 2006 at pp 3, 6 (VPL.0005.0062.0079 at .0081, .0084).

¹⁴⁵³ Exhibit RC0475B – Transcript of meeting between Mr Thomas, Mr James (Jim) O'Brien and Commander Stuart Bateson, 22 February 2006 at pp 4, 9, 21 (VPL.0005.0062.0079 at .0082, .0087, .0099).

clear that they could not give Mr Thomas any indication of what sentence he might receive if he cooperated¹⁴⁵⁴ and emphasised that the decision about whether to cooperate or not was his.¹⁴⁵⁵

- 52.64 Third, Mr Bateson and Mr O'Brien repeatedly emphasised that Mr Thomas' solicitor would be involved in the process of discussing a sentence recommendation with the OPP in the event that Mr Thomas cooperated¹⁴⁵⁶ and repeatedly encouraged him to take advice from his solicitor.¹⁴⁵⁷ Finally, Mr Bateson agreed to get in touch with the solicitor on Mr Thomas' behalf.¹⁴⁵⁸
- 52.65 The discussion of 22 February 2006 occurred at Mr Thomas' request. Ms Gobbo was not present, and Mr O'Brien did not make any attempt to involve her in it. As Counsel Assisting observe during this period Ms Gobbo was repeatedly advised by the SDU not to involve herself with Mr Thomas.¹⁴⁵⁹ Mr Thomas had good reason for wanting to talk to police. Mr O'Brien and Mr Bateson patiently explained the process, were clear and direct about Mr Thomas' options and encouraged him to talk to his solicitor. Their decision to tape record the meeting and to retain the recording is inconsistent with Mr O'Brien and Mr Bateson knowing that they had said things in that meeting that they should not have said.
- 52.66 On 26 February 2006, it was reported to Mr O'Brien that Ms Gobbo had said that Mr Thomas did not like him.¹⁴⁶⁰ Such information would have been entirely inconsequential to Mr O'Brien.
- 52.67 On 27 February 2006, the SDU advised Ms Gobbo, following discussions with Mr O'Brien, that if Mr Thomas asked for her help "and in the normal course of her duty she would help then she should do **as she normally ethically would**".¹⁴⁶¹ Ms Gobbo was also advised that the Purana investigators did not care if Mr Thomas co-operated or not but that if he did, he needed to go all the way (i.e provide all of the relevant information that he had).¹⁴⁶²
- 52.68 On 1 March 2006, Officer Green informed Mr O'Brien – as part of a report – 'Adv OPP prepared to settle for less than police wanting re [Mr Thomas] – Parameters agreed were stepped over [Mr Thomas] is now desperate to get some assistance.'¹⁴⁶³ Mr O'Brien could not recall the discussion,¹⁴⁶⁴ and Mr Green was not asked about it.

7 March 2006 – Mr Andrews signs his statements

- 52.69 On 7 March 2006, Mr Andrews signed a statement implicating Ms Gobbo in the passing of messages in relation to payment for the murder of Michael Marshall.¹⁴⁶⁵ Mr O'Brien was unaware of the content of Mr Andrews' statement, and did not become aware of it

¹⁴⁵⁴ Exhibit RC0475B – Transcript of meeting between Mr Thomas, Mr James (Jim) O'Brien and Commander Stuart Bateson, 22 February 2006 at pp 33, 35 (VPL.0005.0062.0079 at .0111, .0113).

¹⁴⁵⁵ Exhibit RC0475B – Transcript of meeting between Mr Thomas, Mr James (Jim) O'Brien and Commander Stuart Bateson, 22 February 2006 at pp 32-33 (VPL.0005.0062.0079 at .0110-0111).

¹⁴⁵⁶ Exhibit RC0475B – Transcript of meeting between Mr Thomas, Mr James (Jim) O'Brien and Commander Stuart Bateson, 22 February 2006 at p 34 (VPL.0005.0062.0079 at .0112).

¹⁴⁵⁷ Exhibit RC0475B – Transcript of meeting between Mr Thomas, Mr James (Jim) O'Brien and Commander Stuart Bateson, 22 February 2006 at pp 32-34 (VPL.0005.0062.0079 at .0110-0112).

¹⁴⁵⁸ Exhibit RC0475B – Transcript of meeting between Mr Thomas, Mr James (Jim) O'Brien and Commander Stuart Bateson, 22 February 2006 at pp 34-35 (VPL.0005.0062.0079 at .0112-0113).

¹⁴⁵⁹ Counsel Assisting Submissions at p 178 [820-821], Vol 2.

¹⁴⁶⁰ Exhibit RC0468B – Mr James (Jim) O'Brien Diary Summaries, 26 February 2006 (VPL.0005.0126.0001 at .0013).

¹⁴⁶¹ Exhibit RC0281 – ICR3838 (020), 27 February 2006 (VPL.2000.0003.1751 at .1757).

¹⁴⁶² Exhibit RC0281 – ICR3838 (020), 27 February 2006 (VPL.2000.0003.1751 at .1757).

¹⁴⁶³ Exhibit RC0468B – Mr James (Jim) O'Brien Diary Summaries, 3 March 2006 (VPL.0005.0126.0001 at .0013).

¹⁴⁶⁴ T5581.5-44 (J. O'Brien).

¹⁴⁶⁵ T5582.44-47 (J. O'Brien).

during his time with Victoria Police.¹⁴⁶⁶ That investigation was being conducted by Mr Bateson, who was reporting to DI Ryan.¹⁴⁶⁷

- 52.70 Under cross-examination, Mr O'Brien agreed that, if Ms Gobbo had acted in the manner alleged by Mr Andrews, she might have been either a witness or a suspect in a crime (accessory after the fact to the murder of Mr Marshall)¹⁴⁶⁸ and that this would place her in a particularly difficult position representing anyone involved in those matters.¹⁴⁶⁹ But that evidence was about his present understanding and does not reflect his actual knowledge at the time.
- 52.71 Further, it cannot be overlooked that the OPP had Mr Andrews' statement and continued to have discussions with Ms Gobbo as the legal representative for Mr Thomas.¹⁴⁷⁰

14 March 2006 – Ms Gobbo's complaint about Mr Andrews' statement

- 52.72 On 14 March 2006, Mr Andrews pleaded guilty to the murders of Mr Marshall, Jason Moran and Pasquale Barbaro. As noted above, a statement made by Mr Andrews made reference to Ms Gobbo.¹⁴⁷¹ There is evidence that Ms Gobbo was unhappy with the content of Mr Andrews' statement as it related to her.¹⁴⁷² Mr O'Brien's evidence was that he was generally aware that the unhappiness was connected to a statement made by Mr Andrews.¹⁴⁷³ He could not recall whether he was aware of the specific content that had upset her.¹⁴⁷⁴ An ICR generated in relation to this issue reads, in part

Spoke to JOB at Purana. Much of the details was already lead (sic) at the committal should be no surprises. Not of any significance to Purana investigators. Arrange for Stuart BATESON to talk to source and explain actions taken.

- 52.73 The ICR suggests that Mr O'Brien had some awareness of the subject matter and could not understand Ms Gobbo's concern because much of the detail in Mr Andrews' statement had been led at the committal hearing. It appears that he asked Mr Bateson to speak to Ms Gobbo about her concerns.
- 52.74 Mr Bateson met with Ms Gobbo and the matter is addressed below.

15 March 2006 – Purana's second PII to Mr Thomas

- 52.75 Mr O'Brien attended a second discussion with Mr Thomas on 15 March 2006, in the company of Mr Bateson.PII
PII¹⁴⁷⁵ That recording, along with the earlier discussion of 22 February 2006 and the following discussion on 23 March 2006, was retained and produced to the Commission. The conduct of Mr O'Brien and Mr Bateson in recording the discussions, and retaining them, weighs heavily against a finding that they intended to act improperly – people with malintent rarely electronically record their wrongdoing.

¹⁴⁶⁶ T5583.2-5 (J O'Brien).

¹⁴⁶⁷ T5644.22-26 (J O'Brien).

¹⁴⁶⁸ T5583.11-17 (J O'Brien).

¹⁴⁶⁹ T5583.30-32 (J O'Brien).

¹⁴⁷⁰ See Mr Bateson's submissions.

¹⁴⁷¹ Exhibit RC0637B – Unsigned statement of Mr Andrews, 7 March 2006 at [68] (VPL.0100.0001.4784 at .4862).

¹⁴⁷² Exhibit RC0281 – ICR3838 (022), 14 March 2006 (VPL.2000.0003.1769 at .1774).

¹⁴⁷³ T5589.22-28 (J O'Brien).

¹⁴⁷⁴ T5589.26-28 (J O'Brien).

¹⁴⁷⁵ Exhibit RC0772B – Transcript of meeting between Mr Thomas, Mr James (Jim) O'Brien and Commander Stuart Bateson, 15 March 2006 (VPL.0005.0062.0176).

- 52.76 In the course of that second interview, Mr Bateson explained the statement taking process.¹⁴⁷⁶ In response, Mr Thomas asked whether he should retain his legal representation. Mr Bateson encouraged Mr Thomas to give it consideration and identified that both Ms Gobbo and her instructing solicitor had represented many other people and suggested that Mr Thomas might be better off with independent representation.¹⁴⁷⁷ Mr Thomas agreed with Mr Bateson but stated his intention to retain her in any event.¹⁴⁷⁸
- 52.77 Counsel Assisting's submissions in relation to Mr Thomas fail to engage with this key point: Mr Thomas' evidence was that he knew that Ms Gobbo had acted for Mr McGrath when Mr McGrath implicated him.¹⁴⁷⁹ He proposed to retain her anyway. Indeed, it is possible that Mr Thomas retained Ms Gobbo precisely because she had acted for Mr McGrath. That is one of several reasons why Mr Thomas might have concluded that his interests were best served by Ms Gobbo acting for him. These possibilities are canvassed in the submissions by Mr Bateson. Counsel Assisting did not explore these issues with Mr Thomas and, consequently, his state of mind when deciding to retain Ms Gobbo and his motivations for doing so are not known. For present purposes, it suffices to note that Mr Thomas was aware that Ms Gobbo had acted for Mr McGrath and he retained Ms Gobbo anyway. Mr Thomas' solicitor and Queens Counsel were also aware.¹⁴⁸⁰
- 52.78 Independently of that possible conflict, Mr O'Brien's concern was not that Ms Gobbo was conflicted in relation to Mr Thomas by reason of her involvement with Mr McGrath (about which he did not know), but the potential for Ms Gobbo to be compromised. Mr O'Brien and Mr Bateson went as far as they could to encourage Mr Thomas to seek alternative representation, without risking Mr Thomas becoming suspicious of Ms Gobbo. They did so in circumstances where Mr Thomas himself had indicated his intention to be represented by Ms Gobbo notwithstanding that she had acted for Mr McGrath.

18 March 2006 – Bateson meets Ms Gobbo to discuss her concern about Mr Andrews' statement

- 52.79 On 18 March 2006, Mr Bateson met with Ms Gobbo to discuss her unhappiness with Mr Andrews' statement. Mr O'Brien noted in his diary that Mr Bateson 'had met with 3838 re smooth things over'.¹⁴⁸¹
- 52.80 The inclusion of this entry confirms Mr O'Brien's evidence that he had no improper motive for not making a diary note of Sandy White informing him of Ms Gobbo's unhappiness over Mr Andrews' statement, or their subsequent discussion that Mr Bateson would speak with her about that matter. If Mr O'Brien was trying to hide these activities, he would not have recorded Mr Bateson's report of having spoken to Ms Gobbo, nor would he have identified Ms Gobbo as the subject of Mr Bateson's meeting by reference to her informer number.

Using 'HS3838' to claim public interest immunity

¹⁴⁷⁶ Exhibit RC0772B – Transcript of meeting between Mr Thomas, Mr James (Jim) O'Brien and Commander Stuart Bateson, 15 March 2006 at pp 10-11 (VPL.0005.0062.0176 at .0185-0186).

¹⁴⁷⁷ Exhibit RC0772B – Transcript of meeting between Mr Thomas, Mr James (Jim) O'Brien and Commander Stuart Bateson, 15 March 2006 at p 11 (VPL.0005.0062.0176 at .0186).

¹⁴⁷⁸ Exhibit RC0772B – Transcript of meeting between Mr Thomas, Mr James (Jim) O'Brien and Commander Stuart Bateson, 15 March 2006 at p 11 (VPL.0005.0062.0176 at .0186).

¹⁴⁷⁹ Exhibit RC1175B – Statement of Mr Thomas, 20 September 2019 at [31] (RCMP1.0131.0001.0001 at _0008).

¹⁴⁸⁰ See Mr Bateson's submissions.

¹⁴⁸¹ Exhibit RC0933B – Diary of Mr James (Jim) O'Brien, 15 March 2006 (VPL.0100.0073.0076 at .0241).

- 52.81 In connection with these events, Counsel Assisting submit that the consequence of Mr O'Brien and Mr Bateson referring to Ms Gobbo in their notes by reference to her human source number enabled the claiming of public interest immunity, without the likely call for any explanation.¹⁴⁸² The implication of that submission is that the practice of referring to Ms Gobbo by her source number was implemented for this purpose. But that is not why Ms Gobbo was referred to as HS3838 in Mr O'Brien's diary.
- 52.82 Victoria Police officers were under a force wide direction to maintain the utmost confidentiality in relation to the identity of human sources and were not permitted to disclose the name of a human source in writing unless directed to do so by an officer. Thus, Mr O'Brien was bound – when dealing with Ms Gobbo in her capacity as a source – not to use Ms Gobbo's name. It is this, and nothing more, that explains his use of her informer number to identify her.
- 52.83 Obviously, this practice had consequences for what might happen when material was required to be produced in the course of court proceedings. But that was not unique to Ms Gobbo. It was true of all information provided by human sources and all diary entries made of events connected with human sources. Indeed, the use of informer numbers made it more likely that public interest immunity issues would be identified, and the appropriate application made. These issues were then dealt with in accordance with the prevailing legal framework (including the making of PII claims and the use of confidential affidavits, for example).
- 52.84 There is nothing surprising about Mr O'Brien using Ms Gobbo's registration number in his diary in the context of the above events. And, while it is possible that Mr O'Brien may have mistakenly referred to Ms Gobbo as '3838' when he should have used her name (or the other way around) from time to time, no instances of such a mistake have been identified.
- 52.85 For example, in connection with the events of 18 March 2006, Ms Gobbo's controller, Mr White, had contacted Mr O'Brien to inform him that Mr White's source was concerned about the content of a witness statement taken by the Purana Taskforce. Mr O'Brien then arranged for Mr Bateson to speak to the source about her concerns and he recorded in his diary that Mr Bateson had met with the source, who he described as '3838', to discuss the concerns. That was perfectly appropriate. Indeed, it would have been a breach of Victoria Police policy to refer to Ms Gobbo by name.

22 and 23 March 2006 – ^{Mr Thomas' Personal Partner}

- 52.86 On 22¹⁴⁸³ and 23¹⁴⁸⁴ March 2006, Ms Gobbo provided information to the SDU about Mr Thomas, specifically a meeting she attended with ^{Mr Thomas' P}. That information was passed to Mr O'Brien.¹⁴⁸⁵
- 52.87 In response to learning that Ms Gobbo had provided such information to the SDU, Mr O'Brien immediately asked that Ms Gobbo recommend a new barrister to Mr Thomas and that she, therefore, cease to act for him.¹⁴⁸⁶
- 52.88 Counsel Assisting do not refer to the evidence of Mr O'Brien's request. They have not considered this evidence in making the submissions about Mr O'Brien at [1060] to [1064] and [1081]. ^{Relevance} It is important evidence that contradicts those submissions, ^{Relevance} It is important evidence that Mr O'Brien ^{Relevance}

¹⁴⁸² Counsel Assisting Submissions at pp 188-189 [871], Vol 2.

¹⁴⁸³ Exhibit RC0281 – ICR3838 (023), 22 March 2006 (VPL.2000.0003.1776 at .1788-1790).

¹⁴⁸⁴ Exhibit RC0281 – ICR3838 (023), 23 March 2006 (VPL.2000.0003.1776 at .1790-1791).

¹⁴⁸⁵ Exhibit RC0281 – ICR3838 (023), 22 March 2006 (VPL.2000.0003.1776 at .1790).

¹⁴⁸⁶ Exhibit RC0281 – ICR3838 (023), 23 March 2006 (VPL.2000.0003.1776 at .1790-1791).

Relevance [redacted] by allowing Ms Gobbo to act for Mr Thomas. He asked the SDU, the unit managing her, to direct her not to act for Mr Thomas. Mr O'Brien asked that Ms Gobbo *not* do the very thing that Counsel Assisting have submitted he allowed her to do, or did not prevent her from doing, because he wanted her to act for Mr Thomas. If Mr O'Brien wanted her to act for Mr Thomas, then he would not have asked the SDU to direct her *not* to act for him.

- 52.89 The evidence reveals that the SDU asked Ms Gobbo to find an alternative barrister for Mr Thomas, and Ms Gobbo claimed that she and her instructing solicitor could not think of anyone.¹⁴⁸⁷ There is no evidence that Mr O'Brien was informed of this.

23 March 2006 – Purana's PII [redacted] to Thomas PII [redacted]

- 52.90 On 23 March 2006, Mr O'Brien and Mr Bateson PII [redacted] Mr Thomas again in relation to his interest in co-operating with police.¹⁴⁸⁸ In the course of the discussion, Mr O'Brien encouraged Mr Thomas to retain independent counsel.¹⁴⁸⁹ Mr Thomas said that he understood Mr O'Brien's advice, but wanted to retain Ms Gobbo on the basis that: (a) Ms Gobbo knew the 'ins and outs' of his situation; and (b) that Ms Gobbo had said she wanted to fight for him.¹⁴⁹⁰
- 52.91 This is further evidence of Mr O'Brien's desire that Ms Gobbo not act for Mr Thomas. If he had wanted Ms Gobbo to represent Mr Thomas, it is improbable that he would have told Mr Thomas to retain independent counsel.

Summary of Mr O'Brien's evidence - paragraph 888 of Counsel Assisting's submissions

- 52.92 At paragraph [888], Counsel Assisting purport to draw together relevant evidence about Mr O'Brien's engagement with Mr Thomas. The paragraph is selective, does not fairly state the evidence to which it refers and excludes relevant evidence (without which, it is not possible to obtain a fair understanding of Mr O'Brien's evidence). It also obscures the key points that:
- (a) neither Ms Gobbo nor Victoria Police behaved improperly in connection with Mr McGrath's statements, save that Ms Gobbo was indiscreet with a remark she made about them;
 - (b) consequently, the question of whether Ms Gobbo was able to act for Mr Thomas, and under what conditions, given her previous representation of Mr McGrath, was entirely a matter for Ms Gobbo and the legal profession;
 - (c) Ms Gobbo did not have a conflict in relation to Mr Thomas merely because she was a registered human source (which is not to say that it was good practice – only that her status alone did not **necessarily** give rise to conflict);
 - (d) Ms Gobbo was not informing *on* Mr Thomas – but instead talked about him to her handlers from time to time; and
 - (e) Ms Gobbo should not have done so, and Victoria Police should have taken further steps to prevent her from doing so or ceased to deal with her in connection with Mr Thomas.

¹⁴⁸⁷ Exhibit RC0281 – ICR3838 (023), 23 March 2006 (VPL.2000.0003.1776 at .1790-1791).

¹⁴⁸⁸ Exhibit RC0476B – Transcript of meeting between Mr Thomas, Mr Jim O'Brien and Commander Stuart Bateson, 23 March 2006 (VPL.0005.0062.0609).

¹⁴⁸⁹ Exhibit RC0476B – Transcript of meeting between Mr Thomas, Mr Jim O'Brien and Commander Stuart Bateson, 23 March 2006 at pp 81-84 (VPL.0005.0062.0609 at .0689-0692).

¹⁴⁹⁰ Exhibit RC0476 – Transcript of meeting between Mr Thomas, Mr Jim O'Brien and Commander Stuart Bateson, 23 March 2006 at p 84 (VPL.0005.0062.0609 at .0692).

- 52.93 First, Counsel Assisting have failed to identify the precise nature of the potential conflicts of interest that existed as between Ms Gobbo and Mr Thomas. They have also failed to identify with discipline and rigour the evidence about Mr O'Brien's knowledge of those potential conflicts. In large part, that failure has resulted from Counsel Assisting not distinguishing between information that Ms Gobbo gave her handlers and information that the SDU disseminated to Mr O'Brien. The former is irrelevant to the matters put against Mr O'Brien.
- 52.94 Second, Counsel Assisting note Mr O'Brien's evidence that neither he, nor anyone else from Victoria Police, made Mr Thomas aware of information relating to Ms Gobbo's conflict of interest in relation to him.¹⁴⁹¹ If that is a reference to Ms Gobbo's status as a human source, then, implicit in that observation is the suggestion that Mr O'Brien had decisional freedom about whether or not to do so.
- 52.95 The observation fails to engage with the legal and practical reality of the situation. Insofar as Ms Gobbo was providing Victoria Police with information about Mr Thomas while representing him then (which, for the reasons set out above, is not accepted until 22 February 2006), Mr O'Brien was not aware that this was occurring until 23 March 2006. As a matter of law and Victoria Police policy, Mr O'Brien was bound not to reveal Ms Gobbo's status as a human source.¹⁴⁹² That obligation extended beyond simply refraining from telling Mr Thomas of her status. It extended to any conduct that might have led to her compromise. Thus, Mr O'Brien's blunt evidence was that he did not tell Mr Thomas that Ms Gobbo was not independent or impartial and could not act for him because "... if I had done that, she'd probably be dead".¹⁴⁹³
- 52.96 Third, the suggestion that Ms Gobbo was acting in the interests of Victoria Police and not Mr Thomas must be rejected, and any question put to Mr O'Brien in which this proposition was embedded must be disregarded. That is because, as is set out above:
- (a) Ms Gobbo was not informing on Mr Thomas;
 - (b) Victoria Police did not task Ms Gobbo in relation to Mr Thomas;
 - (c) there is no evidence that Ms Gobbo gave any advice to Mr Thomas to advance the interests of Victoria Police.
- 52.97 These issues are dealt with in detail below.
- 52.98 Fourth, Counsel Assisting submit that Mr O'Brien attempted to 'justify' Ms Gobbo's continued involvement in advising Mr Thomas on the basis that Mr Thomas appeared 'hell bent on having her'.¹⁴⁹⁴ That submission has no evidentiary basis and cannot be accepted. Mr O'Brien was asked whether he knew that Mr Thomas was not getting independent, impartial representation.¹⁴⁹⁵ He answered 'No, he appeared to be hellbent on having her, reading that transcript'.¹⁴⁹⁶ On no fair reading of that passage of his evidence could it be said that Mr O'Brien was 'attempting to justify' Ms Gobbo's continued involvement. He was reflecting on the situation that had arisen, having just been taken in detail through the transcript of the meeting with Mr Thomas on 23 March 2006.
- 52.99 Fifth, Counsel Assisting have not referred to Mr O'Brien's evidence that:

¹⁴⁹¹ Counsel Assisting Submissions at p 194 [888] (point 1), Vol 2.

¹⁴⁹² See paragraph 52.137 of the submissions.

¹⁴⁹³ T5651.17-20 (J O'Brien).

¹⁴⁹⁴ Counsel Assisting Submissions at p 194 [888] (point 8), Vol 2, relying on T5651.39-40 (J O'Brien).

¹⁴⁹⁵ T5651.39 (J O'Brien).

¹⁴⁹⁶ T5651.39-40 (J O'Brien).

- (a) he did not know about Ms Gobbo's involvement with Mr McGrath's statement;
 - (b) the investigation into Mr Thomas was principally being run by DDI Ryan and Mr Bateson;
 - (c) it was not in Victoria Police's interests for Ms Gobbo to be involved in the matter; and
 - (d) he did not contemplate speaking to the Office of Public Prosecutions about Ms Gobbo's determination to act for Mr Thomas and that, if he had contemplated that, he would have done so.¹⁴⁹⁷
- 52.100 Counsel Assisting's submissions do not address Mr O'Brien's evidence that, outside of the three visits to Mr Thomas described above, Mr O'Brien had limited involvement in Mr Thomas' matter. Consequently, Mr O'Brien did not become aware of the detail of Ms Gobbo's ongoing involvement with Mr Thomas. For example, Mr O'Brien was not aware of Ms Gobbo's involvement in the process of police speaking to Mr Thomas following his guilty plea and in the taking of his statements.¹⁴⁹⁸
- 52.101 Further, Counsel Assisting's submission (at [889]) that Mr Thomas was 'making very clear his concern to obtain legal advice from someone who was independent and would be acting in his best interests'¹⁴⁹⁹ fails to recognise that Mr Thomas understood that Ms Gobbo was not independent and expressed his clear intention to continue to use her anyway. In fact, Mr Thomas was aware of the precise conflict that was in issue – namely, that Ms Gobbo had acted for Mr McGrath. Indeed, as is set out earlier in these submissions, Ms Gobbo reported to Mr Thomas on her engagement with Mr McGrath when it occurred. The effect of Mr Thomas' evidence to the Commission was that he knew that the barrister he was using was not an independent one. In fact, that is likely the reason why he retained her. He told the Commission that he paid her a monthly retainer to provide him with information obtained from her clients that was relevant to him.¹⁵⁰⁰
- 52.102 Counsel Assisting submit that 'even if' Mr O'Brien 'was determined not to reveal Ms Gobbo's status as human source to Mr Thomas, or even to the DPP or Victoria Police's own lawyers' he could at least have taken specified steps.¹⁵⁰¹
- 52.103 As to the steps that Counsel Assisting suggest that Mr O'Brien should have taken,¹⁵⁰² it was not part of Mr O'Brien's duties to contact Ms Gobbo and tell her that she could not act for Mr Thomas. It was not for Mr O'Brien to have any contact with Ms Gobbo at all in her capacity as a human source. That was the function of the SDU.
- 52.104 Consistently, as soon as Mr O'Brien became aware that Ms Gobbo was speaking to the SDU about Mr Thomas, he asked the SDU to direct Ms Gobbo to recommend alternative representation for Mr Thomas and to cease to act. The SDU repeatedly asked Ms Gobbo not to be involved with Mr Thomas. Ms Gobbo repeatedly declined to comply with those requests. And Mr Thomas continued to retain her knowing that she was the type of barrister who he could apparently buy confidential and privileged information from and who had acted for Mr McGrath when he became a Crown witness against him.

¹⁴⁹⁷ T5651.24-26 (J O'Brien).

¹⁴⁹⁸ T5682.22-30 (J O'Brien).

¹⁴⁹⁹ Counsel Assisting Submissions at pp 194-195 [889], Vol 2.

¹⁵⁰⁰ T13619.34-36 (Thomas).

¹⁵⁰¹ Counsel Assisting Submissions at p 195 [890], Vol 2.

¹⁵⁰² Counsel Assisting Submissions at p 195 [890], Vol 2.

- 52.105 Further, it is to be remembered that Mr O'Brien did not know about Ms Gobbo having acted for Mr McGrath.¹⁵⁰³ He could hardly have taken steps to address a conflict he did not know existed. In any case, as the submissions of Com. Bateson set out, the question of that conflict, and whether Ms Gobbo could act for Mr Thomas in discrete parts of the proceeding, was complex and was managed by Ms Gobbo and other members of the profession – as it should have been.
- 52.106 Further, there would have been little value in him seeking advice from the DPP about that potential conflict when the OPP already knew about it and the evidence is that the Senior Crown Prosecutor raised conflicts with Ms Gobbo.¹⁵⁰⁴ The further submission that Mr O'Brien should have sought advice from the DPP about the potential that Ms Gobbo was a witness in the investigation and thereby conflicted and unable to act for Mr Thomas is to be rejected.¹⁵⁰⁵ Ms Gobbo was not being treated as a witness in the investigation.

Meeting of 19 April 2006 and provision of transcripts to Ms Gobbo

- 52.107 On 19 April 2006, DAI O'Brien, DI Ryan, and DS Bateson met to discuss the status of Mr Thomas' charges.
- 52.108 The meeting came at a time when:
- (a) Mr Andrews had just pleaded guilty and was a Crown witness against Mr Thomas;
 - (b) Mr Williams was considering pleading guilty to his murder charges and assisting police; and
 - (c) Mr Thomas had been continuing to talk to police about pleading guilty and assisting police.¹⁵⁰⁶
- 52.109 The three members at the meeting discussed Mr Thomas' charges generally, in the context of the above circumstances.
- 52.110 Mr O'Brien had no recollection of the meeting.¹⁵⁰⁷
- 52.111 When repeatedly asked about it, his evidence was, *based on what Counsel Assisting were putting to him*, that he thought the transcript was to be provided to Ms Gobbo in her capacity as a police informer,¹⁵⁰⁸ evidence seized upon in paragraphs [911] – [912] of CA's Submissions.
- 52.112 That speculation was incorrect.
- 52.113 The event is addressed in detail in Mr Ryan's submissions and those submissions are adopted.
- 52.114 In summary, the event is a false issue inadvertently created by counsel for Ms Gobbo. The transcripts were provided to Ms Gobbo as the lawyer for Mr Thomas.
- 52.115 Counsel Assisting submit that Mr O'Brien accepted that the inference to be drawn from the transcripts not being given to Mr Valos, the solicitor on the record, was that the Purana Taskforce wanted Ms Gobbo to influence Mr Thomas to cooperate and change his story in some way.¹⁵⁰⁹ Mr O'Brien did not accept that proposition, and the evidence

¹⁵⁰³ See above at 52.27.

¹⁵⁰⁴ Exhibit RC1096B – DPP Response to the Commission's Inquiries, 08 November 2019 (RCMPI.0104.0001.0001 at _0024).

¹⁵⁰⁵ Counsel Assisting Submissions at p 195 [890], Vol 2.

¹⁵⁰⁶ Exhibit RC0269B – Statement of Commander Stuart Bateson, 7 May 2019 at [82]-[86] (VPL.0014.0027.0001 at .0014).

¹⁵⁰⁷ See Exhibit RC0933B – Diary of Mr James (Jim) O'Brien, 19 April 2006 (VPL.0100.0073.0076 at .0273).

¹⁵⁰⁸ T5662.1-2 (J O'Brien).

¹⁵⁰⁹ Counsel Assisting Submissions at p 198 [911], Vol 2, relying on T5659-5661 (J O'Brien).

cited in support of that suggestion is to the contrary. Mr O'Brien's evidence when this proposition was put to him – in the very passage on which Counsel Assisting rely – was “That may have been the case, I'm not sure”.¹⁵¹⁰ When pressed, Mr O'Brien said “from what you're saying here, without me examining documents further, yes”.¹⁵¹¹ Mr O'Brien's concession was heavily qualified and fell well short of “accepting the inference to be drawn”. Indeed, as Mr Ryan's submissions show, Mr O'Brien's caution was prescient – the real explanation is something far more prosaic than that urged by Counsel Assisting.

- 52.116 That explanation also explains why the submissions at paragraph 912 should not be accepted. In particular, the submission that Mr O'Brien would simply not have provided the notes should not be accepted. That is comment. It is unexplained by reference to the evidence and, therefore, must be ignored.

July 2006 – Ms Gobbo's involvement in Mr Thomas' statement process

- 52.117 Mr O'Brien had minimal involvement with Mr Thomas when he was assisting police. Mr O'Brien was extensively cross-examined about events connected to Mr Thomas. Mr O'Brien's steadfast evidence was that he did not have carriage of the investigation connected to Mr Thomas,¹⁵¹² that the work had been split off and given to Mr Bateson reporting to Mr Ryan.¹⁵¹³ Mr O'Brien was not briefed on the detail of the operation, but rather given a general update on where it was at.¹⁵¹⁴ Thus, while Mr O'Brien is likely to have had some oversight of the matter, it was principally dealt with by DI Ryan and Mr Bateson.
- 52.118 Consistently, Mr O'Brien firmly and emphatically denied having any knowledge of any scheme pursuant to which, according to Counsel Assisting, Ms Gobbo secretly attended the Purana Taskforce offices and reviewed Mr Thomas' statements.¹⁵¹⁵ Mr O'Brien was, at that time, interstate attending a course and adamant that he was not contacted.¹⁵¹⁶ Mr Bateson did not discuss with Mr O'Brien the process by which he intended to take statements from Mr Thomas and he had no need to: he was an experienced investigator and he was reporting to DI Ryan in any event.¹⁵¹⁷

Mid-August 2006 – PII Issues in Carl Williams trial

- 52.119 In August 2006, issues concerning certain claims for public interest immunity arose in the trial of Carl Williams. The issues were connected to claims of public interest immunity that had been made in relation to the statements of three witnesses, including Mr Andrews and Mr Thomas.
- 52.120 On 14 August 2006, Mr O'Brien spoke to Mr Overland “re PII issues re Williams”.¹⁵¹⁸ On 15 August 2006, Mr Overland and Mr O'Brien attended a meeting with the OPP at which these issues were discussed and it was agreed that the OPP would seek an adjournment so that the relevance of the statements could be considered.¹⁵¹⁹
- 52.121 Mr O'Brien was clear that the SDU was not used as a vehicle to allow Victoria Police to employ public interest immunity claims to shield Ms Gobbo's role from scrutiny.¹⁵²⁰ That

¹⁵¹⁰ T5661.27-30 (J O'Brien).

¹⁵¹¹ T5661.32-33 (J O'Brien).

¹⁵¹² T5672.35-36 (J O'Brien); T5885.47 – T5886.6 (J O'Brien).

¹⁵¹³ T5885.47 – T5886.6 (J O'Brien); T3331.4-9 (S Bateson).

¹⁵¹⁴ T5680.17-20 (J O'Brien).

¹⁵¹⁵ T5888.19-21 (J O'Brien).

¹⁵¹⁶ T5685.46 – T5686.04 (J O'Brien).

¹⁵¹⁷ T5889.18-20 (J O'Brien).

¹⁵¹⁸ Untendered Diary of Mr James (Jim) O'Brien, 14 August 2006 (VPL.0005.0126.0108 at .0108).

¹⁵¹⁹ Untendered Diary of Mr James (Jim) O'Brien, 15 August 2006 (VPL.0005.0126.0108 at .0109).

¹⁵²⁰ T5661.38-39 (J O'Brien); T5662.18-22 (J O'Brien).

was not his intention.¹⁵²¹ As he explained in evidence, the material was recorded and subject to disclosure.¹⁵²² Mr O'Brien also accepted that PII was not absolute, and that it was possible for a Court to order disclosure of material over which PII had been claimed where to do so was necessary to ensure a fair trial.¹⁵²³

- 52.122 When asked about the PII issues in Mr Williams' trial specifically, Mr O'Brien said that he understood that "it was going through the process in the normal course of events".¹⁵²⁴ The disconnect between Counsel Assisting and Mr O'Brien in relation to that answer is that Mr O'Brien distinguished between the statements that were the subject of the PII claims, and the SDU holdings. Mr O'Brien gave evidence that it did not occur to him that the SDU holdings contained information of a kind that needed to be disclosed to Mr Williams.¹⁵²⁵ He did not turn his mind to it.¹⁵²⁶ Contrary to Counsel Assisting's submissions at [1002], Ms Gobbo was not tasked as a human source in relation to Mr Thomas and so that was not a matter needing to be disclosed. As such, the position in relation to the PII issues in Mr Williams' trial, insofar as Mr O'Brien understood them, was that claims of PII had been made over certain material (the statements of Mr Andrew and Mr Thomas) and the legal process was taking its course.
- 52.123 The transcript of the mention hearing at which the issues were first ventilated is instructive. Counsel for Mr Williams sought disclosure of both the statements of Mr Andrews and Mr Thomas, along with the police investigating material relevant to those statements.¹⁵²⁷ Justice King's initial response was that Mr Williams' barrister would have to "argue long and hard" before she would even consider ordering disclosure of the police investigating material.¹⁵²⁸ Mr Williams' barrister then explained that the material ought to be disclosed because a fact in issue in the proceeding was whether the three witnesses conspired together, and agreed with the police, to give false accounts about Mr Williams.¹⁵²⁹ Obviously enough, if an order was made for the police to disclose the investigating material related to those statements, police would have been required to provide whatever relevant material they had.
- 52.124 Seen in this context, the proposed finding at paragraph [1004] ought not be made. However, it is accepted by Mr O'Brien that legal advice should have been obtained from the outset about Victoria Police's disclosure obligations in relation to Ms Gobbo's role as a human source and that there should have been a system in place for disclosure which included legal advisors.
- 52.125 However, as the transcript of the hearing before Justice King makes clear, it was not ordinarily the case during this period that Victoria Police was required to disclose details of the investigative processes leading to the making of inculpatory statements that are to be used in a criminal prosecution.¹⁵³⁰ Consequently, the real issue is that Mr O'Brien did not identify that Ms Gobbo's involvement in advising Mr Thomas when he was

¹⁵²¹ T5662.13-14 (J O'Brien).

¹⁵²² T5662.19-22 (J O'Brien).

¹⁵²³ T5711.47 – T5712.13 (J O'Brien).

¹⁵²⁴ T5711.40-41 (J O'Brien).

¹⁵²⁵ T5548.24-27 (J O'Brien).

¹⁵²⁶ T5548.29 (J O'Brien).

¹⁵²⁷ Untended Transcript of Proceeding – *The Queen v Carl Anthony Williams*, 14 August 2006, (VPL.0099.0027.0694 at .0700, .0706).

¹⁵²⁸ Untended Transcript of Proceeding – *The Queen v Carl Anthony Williams*, 14 August 2006, (VPL.0099.0027.0694 at .0700, .0706).

¹⁵²⁹ Untended Transcript of Proceeding – *The Queen v Carl Anthony Williams*, 14 August 2006, (VPL.0099.0027.0694 at .0700, .0707).

¹⁵³⁰ Untended Transcript of Proceeding – *The Queen v Carl Anthony Williams*, 14 August 2006, (VPL.0099.0027.0694 at .0700).

making his statements meant that Victoria Police might have had an obligation to disclose some or all of the SDU holdings.

- 52.126 For similar reasons, the finding proposed at paragraph [1675] should not be made. It is cast in terms that imply a decision on the part of Mr O'Brien, when the true position is that Mr O'Brien did not recognise that other Victoria Police holdings were potentially disclosable.
- 52.127 Mr O'Brien accepts that the finding that is open to the Commissioner is that, at the outset, he should have recommended to his superior officer, AC Overland, that Victoria Police obtain legal advice in relation to its disclosure obligations in relation to the use of Ms Gobbo as a human source and that a system be put in place to address disclosure.
- 52.128 It is submitted that if Mr O'Brien and other officers had received adequate training about the duty of disclosure and had there been sufficient emphasis on the obligation within Victoria Police at the time and had there been sufficient policies, structure and systems in place to support officers to comply with their obligations, then Mr O'Brien would have likely taken the above step. Alternatively, it would have been unnecessary for him to do so because the SDU or those officers superior to him who knew that Ms Gobbo was a human source would have done so themselves.

August to September 2006 - Complaints by Mr Williams

- 52.129 At about this time, Ms Gobbo told the SDU that she had a copy of a letter written by Mr Williams in which he referred to her as a 'dog'.¹⁵³¹ On 13 August 2006, Mr White had a conversation with Mr Green about that letter. Mr White's record of that conversation contains the following notation:

R. O. F. E. 27.05.06 (1)	
elk	Green-O - 3838
HS has copy of letter written by KW calling her a 'dog'. Is concerned about it. Has been sent to no. of ministers. ie UNSURE.	
Got letter from Adnan AHMED.	
Will collect 7:50 - will be left at car by HS. Will take straight to HQ.	
HS to meet R. K. & R. K. tonight.	
KW has ant. case tomorrow. Is going to subpoena everything to try to find out if HS helped. letter could be helpful to stop street.	

- 52.130 It is not clear whether the notation that the letter could be helpful to stop Mr Williams from subpoenaing "everything to try to find out if h/s helped" records a discussion

¹⁵³¹ Exhibit RC0292 – Diary of Mr Sandy White, 13 August 2006 (VPL.0100.0096.0311 at .0353).

between Mr White and Mr Green, or records Mr Green informing Mr White of something said by Ms Gobbo.

- 52.131 In any case, Counsel Assisting submit that Mr O'Brien agreed with Mr White that Mr Williams' letter might be useful to prevent disclosure of Ms Gobbo's involvement in Mr Williams' matter.¹⁵³² That submission cannot be accepted. The weight of the evidence is to the contrary and the evidence relied on by Counsel Assisting does not support the proposition. Counsel Assisting refer to a single piece of evidence, being a diary entry of Sandy White. That entry states:

1905	OK	Green-O	
			got to see JOB re letter. This is
			it may be very useful.

- 52.132 Mr O'Brien's evidence was that, on the day in question, he was off duty, he had no memory of the discussion¹⁵³³ and did not have a diary note of it.¹⁵³⁴ Mr White's diary entry does not record why Mr O'Brien said the letter would be "very useful" (if indeed he said that). There is no evidence that permits the conclusion to be drawn that it was for the reason referred to in the preceding entry in Mr White's diary (which records a discussion between Mr White and Mr Green about a discussion between Mr Green and Ms Gobbo).¹⁵³⁵
- 52.133 There is, however, evidence that Mr O'Brien was concerned about threats that had been made against Ms Gobbo. On 6 August 2006, Mr O'Brien had a discussion with Peter Smith about "threats against 3838".¹⁵³⁶ Consistently, his evidence was that the PII issues were unconnected to Mr Williams' letter, and that the investigation into Mr Williams was about Ms Gobbo's "safety overall, given Carl Williams' propensity for violence organising others to do his dirty work".¹⁵³⁷ Later, Mr O'Brien rejected the suggestion that Victoria Police hoped that Mr Williams' threats would mean that his claims about Ms Gobbo would not be taken seriously¹⁵³⁸ or that Mr Williams' threats would assist in any argument to resist disclosure of materials.¹⁵³⁹ His evidence was that his discussion with Sandy White was "probably more about the safety" of Ms Gobbo.¹⁵⁴⁰
- 52.134 It cannot be forgotten that it was part of Mr O'Brien's job to ensure that threats against Ms Gobbo were investigated. It was acknowledged that her status as a human source placed her at high risk and it was, therefore, incumbent upon Mr O'Brien's area to investigate the threats. Mr Williams' letter in which he referred to Ms Gobbo as a dog formed part of that investigation. There can be no suggestion that Mr O'Brien acted other than appropriately in deciding that it was necessary to investigate the threats against Ms Gobbo. There can also be no suggestion that Mr O'Brien acted other than

¹⁵³² Counsel Assisting Submissions at p 220 [1013], Vol 2; Counsel Assisting's Submissions at p 373 [1669], Vol 2.

¹⁵³³ T5703.39 – T5704.3 (J O'Brien).

¹⁵³⁴ T5703.39-43 (J O'Brien).

¹⁵³⁵ Exhibit RC0292 – Diary of Mr Sandy White, 13 August 2006 (VPL.0100.0096.0311 at .0353).

¹⁵³⁶ Exhibit RC0933B – Diary of Mr James (Jim) O'Brien, 6 August 2006 (VPL.0100.0073.0076 at .0301).

¹⁵³⁷ T5707.15-18 (J O'Brien).

¹⁵³⁸ T5707.26-28 (J O'Brien).

¹⁵³⁹ T5707.30-32 (J O'Brien).

¹⁵⁴⁰ T5707.26-28 (J O'Brien).

appropriately in deciding that Mr Williams' letter and its potential links to the threat to Ms Gobbo also needed to be investigated.

- 52.135 Consistently, as noted by Counsel Assisting at [1016], Mr O'Brien expressed his willingness to confirm, if contacted by the Victorian Bar Ethics Committee, certain uncontroversial facts, being that there was an investigation into known threats against Ms Gobbo and that he believed that Mr Williams had the propensity for carrying out threats and the potential capacity to do so from jail.
- 52.136 The available inference to be drawn from the evidence is that, if Mr O'Brien made the comment attributed to him in Mr White's diary, it was a reference to the letter being useful for the purposes of investigating threats against Ms Gobbo and protecting her from Carl Williams - not as a means of preventing disclosure. Mr Williams' propensity for murder was notorious. The fact that he had made a threat would have added little to a PII claim. There would have been no doubt that if it was disclosed to Mr Williams that Ms Gobbo was a human source that he would have wanted her harmed.
- 52.137 Counsel Assisting's submission that Ms Gobbo was confident that Mr O'Brien would not reveal the 'true nature of her conflict' to the Victorian Bar Ethics Committee,¹⁵⁴¹ both states the obvious and obscures the point. Ms Gobbo may well have had such confidence. But that was not because of any special status attaching to her, or to any special treatment afforded to her by Mr O'Brien. Rather, it was because Mr O'Brien was duty bound not to reveal Ms Gobbo's status as a human source (or indeed, the status of any other human source) to the Victorian Bar Ethics Committee.
- 52.138 Paragraph [1020] of CA's Submissions contains comment that Mr Williams' concerns about Ms Gobbo's conflict was 'another point at which they [Mr O'Brien and Mr Bateson] should have reflected on their obligations to the criminal justice system'.¹⁵⁴² Counsel Assisting do not specify what it is that Mr O'Brien ought to have done at this point, asserting only that he should have 'acted appropriately'. In circumstances where Counsel Assisting conclude that the evidence supports the making of the most serious findings against Mr O'Brien, the vague comment 'acted appropriately' is entirely unsatisfactory. Where a matter is put against Mr O'Brien then procedural fairness requires that it be put with sufficient specificity to enable him to meet the allegation. The matter put against him in [1020] should be disregarded.

Counsel Assisting's proposed findings and proposed recommendations relating to Mr Thomas

Proposed evidentiary findings at paragraph [1059] – [1064] of Counsel Assisting's submissions

- 52.139 Paragraph [1059] of Counsel Assisting's submissions, which purport to set out evidence relevant to an analysis of Mr O'Brien's knowledge and conduct in relation to the use, management and disclosure of Ms Gobbo's role as a human source concerning Mr Thomas, variously:
- (a) fails to set out all relevant evidence;
 - (b) fails to distinguish between established facts and inferences;
 - (c) submits that certain inferences should be drawn without a proper evidentiary foundation; and

¹⁵⁴¹ Counsel Assisting Submissions at p 221 [1019], Vol 2.

¹⁵⁴² Counsel Assisting Submissions at p 221 [1020], Vol 2.

- (d) submits that certain inferences should be drawn in circumstances where the relevant material or proposition was not put Mr O'Brien in his evidence.
- 52.140 The evidence that Mr O'Brien was, during the relevant period, a public official ([1059.1]) and that he held the positions described ([1059.2]) is not controversial. It is also not controversial that Mr O'Brien understood that it was appropriate to get advice about PII claims when they were proposed to be made ([1059.4]) and the right of an accused to be represented by a legal representative who was independent of police ([1059.6]).
- 52.141 Counsel Assisting's submission that the evidence establishes that Mr O'Brien understood the obligation upon police to disclose relevant material, including exculpatory material, to an accused ([1059.03]) overstates Mr O'Brien's evidence and fails to engage with its complexity. Mr O'Brien's evidence was that the only training he had received about Victoria Police's obligation of disclosure was to the effect that if there was evidence found during the course of an investigation that was exculpatory of the accused, Victoria Police was duty-bound to produce it.¹⁵⁴³ That understanding is correct, but not complete. It is obvious that Mr O'Brien perceived the obligation as relating to "evidence" that was "exculpatory". Plainly, the obligation of disclosure is wider than that. The evidence of AC Casey, together with evidence given by other members, corroborates Mr O'Brien's evidence about the limited training that he received about disclosure.
- 52.142 Mr O'Brien also gave evidence that while he understood that the obligation was also to disclose something if it assisted an accused, he had "never had an issue like that arise".¹⁵⁴⁴ Consistent with that evidence, Mr O'Brien said that he did not think that any of the information that he received about Ms Gobbo from the SDU or that the information that the SDU held about Ms Gobbo was relevant "in assisting an accused in their defence".¹⁵⁴⁵ When pressed, Mr O'Brien maintained that evidence, highlighting that the extent to which he and others recorded information pointed against a consciousness of the difficulties that would be created if the information was disclosed and therefore against any intention to knowingly hide the material.¹⁵⁴⁶ He also rejected the suggestion that his diary was, for disclosure purposes 'not touchable'. He gave evidence that they were always available and that if "it had become an issue" he would have produced his diaries, the same as he would have in any case.¹⁵⁴⁷
- 52.143 Mr O'Brien's frank evidence on this point identifies that, contrary to the submission of Counsel Assisting, he did not have a complete understanding of Victoria Police's duty of disclosure. That lack of understanding arises not from any failing on the part of Mr O'Brien, but from the lack of adequate training and emphasis on disclosure at Victoria Police, and the key structural deficiencies, addressed earlier in these submissions.
- 52.144 Consequently, the evidence does not support the finding at paragraph [1059.03].
- 52.145 Moreover, it is critical to the proper discharge of terms of reference 1 and 2 that the Commissioner not make recommendations based on findings of the kind proposed at paragraph [1059.03]. For the reasons given above, the lack of training and emphasis on matters such as the duty of disclosure, coupled with the absence of embedded legal oversight, was a principal cause of the disclosure issue. Recommendations must be directed to the real cause of failings to help guide improvements.

¹⁵⁴³ T5548.14-18 (J O'Brien).

¹⁵⁴⁴ T5548.20-22 (J O'Brien).

¹⁵⁴⁵ T5548.24-27 (J O'Brien).

¹⁵⁴⁶ T5548.29-34 (J O'Brien).

¹⁵⁴⁷ T5548.1-4 (J O'Brien).

- 52.146 Counsel Assisting's submissions at [1059.5] are wrong. Mr O'Brien agreed in his evidence with the proposition that, if he was in doubt about a particular course of action, he had the ability to go and seek legal advice.¹⁵⁴⁸ He was not asked about disclosure, which was not an obligation that he, as an Inspector, had the job of discharging. Moreover, Mr O'Brien's evidence on this question was more nuanced than Counsel Assisting identify. Mr O'Brien's evidence was that if he was in doubt about a particular course of action he would generally go and speak to a more senior officer before seeking legal advice.¹⁵⁴⁹ He also gave evidence that he did not ever seek legal advice about disclosure (as opposed to PII claims).¹⁵⁵⁰
- 52.147 Paragraph [1059.7] is a further misstatement of Mr O'Brien's evidence. The three dot points relied on by Counsel Assisting are taken out of context and do not accurately state Mr O'Brien's evidence. The subparagraph also fails to engage with Mr O'Brien's evidence as a whole.
- 52.148 In relation to the three matters, first, while the footnote in question does not point to evidence supporting the proposition, Mr O'Brien accepts that he understood at a general level that a barrister had a conflict of interest if they could not provide independent advice. Second, the submission that it was Mr O'Brien's evidence that it was "appropriate to seek advice from the OPP about Ms Gobbo appearing for various people in positions of conflict"¹⁵⁵¹ misrepresents the evidence. Mr O'Brien was asked this question in the context of the specific conflict that arose as a result of Ms Gobbo representing both Terrence Hodson and Paul Dale.¹⁵⁵² In the context of that specific example, Mr O'Brien's evidence was that seeking advice from the OPP about the conflict was "one place you'd go".¹⁵⁵³ Mr O'Brien was not expressing a general understanding that it was appropriate, in all instances, to seek advice from the OPP in relation to potential questions of conflict. In indictable matters, OPP prosecutors had the carriage of proceedings and could and did raise conflicts with counsel in the proceedings. The evidence before the Commission is that the Senior Crown Prosecutor prosecuting the relevant matters raised with Ms Gobbo her potential conflicts in acting for various people.¹⁵⁵⁴
- 52.149 Third, Mr O'Brien did not say that it was a conflict for Ms Gobbo to represent a client and to provide information in relation to him,¹⁵⁵⁵ and the evidence pointed to by Counsel Assisting was not to that effect.¹⁵⁵⁶ In the evidence relied on by Counsel Assisting, Mr O'Brien was being asked about Mr Gobbo's representation of Tony Mokbel. He gave evidence that he knew that Ms Gobbo had previously represented Tony Mokbel.¹⁵⁵⁷ He then said this:
- It was a conflict for her. I was more interested in what was still going on and what criminal acts were being committed.*¹⁵⁵⁸
- 52.150 Mr O'Brien consistently distinguished between Ms Gobbo acting for a person in relation to historical offending for which they had been charged and in relation to which she had

¹⁵⁴⁸ T5490.23-24 (J O'Brien).

¹⁵⁴⁹ T5490.18-21 (J O'Brien).

¹⁵⁵⁰ T5490.29.31 (J O'Brien).

¹⁵⁵¹ Counsel Assisting Submissions at pp 233-234 [1059.7] (Point 2), Vol 2.

¹⁵⁵² See T5464.40 – T5465.01 (J O'Brien).

¹⁵⁵³ T5465.3-5 (J O'Brien).

¹⁵⁵⁴ Exhibit RC1096B – DPP Response to the Commission's Inquiries, 08 November 2019 (RCMPI.0104.0001.0001 at _0024).

¹⁵⁵⁵ Counsel Assisting Submissions at pp 233-234 [1059.7] (Point 3), Vol 2.

¹⁵⁵⁶ Counsel Assisting Submissions at p 234 [1059.7] (Point 3 at footnote 1338), Vol 2, referring to T5513 (J O'Brien); see also T5513.34-36 (J O'Brien).

¹⁵⁵⁷ T5513.31-32 (J O'Brien).

¹⁵⁵⁸ T5513.34-36 (J O'Brien).

been retained and current and ongoing criminal activity in relation to which Ms Gobbo had not been retained. Mr O'Brien did not give evidence that he understood that it was a conflict for Ms Gobbo to act for someone in relation to historical offending while providing information to police about their present criminal activity. This is a critical distinction, not least because it is cogent proof of the absence of training about such issues.

- 52.151 The subparagraph also fails to engage with the whole of Mr O'Brien's evidence on this topic. Mr O'Brien gave evidence that he understood the concept of a conflict of interest 'in a commercial sense' only,¹⁵⁵⁹ and that he received no training in relation to it.¹⁵⁶⁰ Mr O'Brien's evidence was that he did not entirely understand how conflict of interest rules applied to lawyers.¹⁵⁶¹ That is not surprising. Mr O'Brien received no training in relation to lawyers' obligations in relation to conflicts of interest. By comparison, the ethical obligations of legal practitioners are detailed in, among other things, the Uniform Law and the Good Conduct Guide. Legal practitioners undertake compulsory training and education about their professional obligations in the course of obtaining their law degrees and as part of the admissions process, and barristers undertake further training and education about their particular obligations as part of the Victorian Bar Readers' Course. Ethics is then a compulsory module for barristers and solicitors as part of their continuing professional development obligations. In addition, barristers and solicitors have access to a specialist committee that provide expert advice on ethical matters, including questions of conflict. This all reflects the complexity of the professional obligations that attach to legal practitioners and the issues that can arise in practice. In that context, it is hardly surprising that a police officer who had received no training in relation to legal conflicts of interest and who did not deal with the issue in undertaking his usual duties, would not appreciate the potential conflicts that arise from a lawyer telling police that their client or their former client was engaging in criminal activity.
- 52.152 Further, Mr O'Brien did not accept that a lawyer should not represent two parties where their interests might diverge, saying that in his view it "depend[ed]" and that he had seen lawyers representing multiple people (presumably in the same or related proceedings).¹⁵⁶²
- 52.153 It is also not accurate to say, as Counsel Assisting do at paragraph [1059.8], that Mr O'Brien said he could not prevent Ms Gobbo from acting in a position of conflict with respect to Mr Thomas as this would compromise her life. What Mr O'Brien said was that the reason he did not tell Mr Thomas "flat out" that Ms Gobbo could not act for him because she was not independent or impartial was that if he had "done that she'd probably be dead".¹⁵⁶³ That is not the same as saying that he "could not have prevented" her from acting for Mr Thomas for that reason. The reality of Mr O'Brien's position was more complex. As is set out above, Mr O'Brien took the view that: (a) primary responsibility for managing her conflict rested with Ms Gobbo; and (b) that to the extent that it was an issue for Victoria Police, it was an issue for the SDU to sort out.
- 52.154 As to paragraph [1059.9], Mr O'Brien knew, when he met with Mr Thomas as set out above, that Ms Gobbo was advising him.
- 52.155 However, contrary to paragraph [1059.10], Mr O'Brien did not know, when he first met with Mr Thomas, that Ms Gobbo was providing police with information about him. He

¹⁵⁵⁹ T5464.1-2 (J O'Brien); see also T5464.27-28 (J O'Brien).

¹⁵⁶⁰ T5464.8-9 (J O'Brien).

¹⁵⁶¹ T5464.30-31 (J O'Brien).

¹⁵⁶² T5464.33-38 (J O'Brien).

¹⁵⁶³ T5651.17-20 (J O'Brien).

only came to have that knowledge on 23 March 2006 (or shortly before then). And, it must be made clear that Ms Gobbo was not 'informing' on Mr Thomas – from time to time, she talked to her handlers about him. The SDU did not generally disseminate the things Ms Gobbo said about Mr Thomas. However, there were three occasions in March 2006 when information was passed on. It should not have been. Mr O'Brien accepts that Ms Gobbo should not have been talking to the SDU about Mr Thomas while acting for him. Mr O'Brien also accepts that it was inappropriate for any of the information that Ms Gobbo gave the SDU about Mr Thomas to have been disseminated to him.

- 52.156 Contrary to the submission at [1059.11], Mr O'Brien did not know or have oversight over Ms Gobbo's conduct in relation to Mr Thomas, including the extent to which she represented him, after about April 2006. The investigation was, in that period, principally managed by Mr Bateson who was reporting to DI Ryan. Consequently, there is a small window, between about 23 March 2006 and 19 April 2006 when Mr O'Brien knew that Ms Gobbo was acting for Mr Thomas and providing the SDU with information about him.
- 52.157 Further, there is no evidence that Ms Gobbo was "informing" on Mr Thomas in this period. As with the above, it is true that from time to time Ms Gobbo spoke to her handlers about Mr Thomas. But Mr Thomas was not a person that Victoria Police had ever sought information about from Ms Gobbo. He was not a person in relation to whom they ever tasked her. He was a client about whom she spoke to the SDU from time to time. Clearly, she should not have done so. To the extent that she provided the SDU with information that was confidential or privileged, she breached her professional obligations. But her discussions with the SDU about Mr Thomas did not constitute "informing" – hence, the information she gave them was rarely disseminated.
- 52.158 As to [1059.12], it is true that Mr O'Brien was at the relevant meeting. That fact alone does not present a complete picture. The circumstances surrounding the provision of the transcript of Victoria Police conferring with Mr Thomas to Ms Gobbo are set out earlier in these submissions. Seen in its proper context, the meeting of 19 April 2006 does not establish the fact in [1059.13]. Ms Gobbo was not tasked or otherwise used as a human source to encourage Mr Thomas to plead guilty and co-operate with police. The events of 19 April 2006 occurred because Victoria Police had decided that it no longer had an interest in Mr Thomas cooperating. A decision was made to cease engagement with him. Obviously, that left Mr Thomas in a vulnerable position, because he would lose the benefit of any potential sentence reduction that attached to his cooperation. The transcript was provided to Ms Gobbo as Mr Thomas' lawyer so that she could properly advise him about the position that he was in following Victoria Police deciding that it would no longer pursue his cooperation. That is a step that Victoria Police would have taken with any accused person in Mr Thomas' position. Mr O'Brien refers to the more detailed submissions on this issue above and in Mr Ryan's submissions.
- 52.159 Mr O'Brien accepts that Victoria Police should have done more to prevent her from acting for Mr Thomas, including by refraining from having anything to do with her. However, Mr O'Brien does not accept that Victoria Police was using Ms Gobbo as a source to persuade Mr Thomas to cooperate. Mr O'Brien's evidence is corroborated by Mr Bateson. Ms Gobbo could not recall these events.¹⁵⁶⁴ The point at which Mr Thomas committed to assisting police is explained by the surrounding events set out in Mr

¹⁵⁶⁴ T13368.17-39 (N Gobbo).

Bateson's submissions. In short, the case against him had become overwhelming. It was not a coincidence that Mr Thomas committed to co-operating almost immediately after another co-accused, Mr Andrews, decided to become a Crown witness against him. He was faced with two of his crew being Crown witnesses against him, and one (Mr McGrath) had already given evidence against Mr Williams who had been convicted.

Findings proposed at paragraph [1060] of Counsel Assisting's submissions

- 52.160 For the reasons given above, much of the evidentiary foundation relied on by Counsel Assisting to support the conclusions urged in paragraph [1060] is unsound. It is not open on the evidence to make all of the proposed findings in that paragraph.
- 52.161 Mr O'Brien accepts that the proposed findings at paragraphs [1060.1], [1060.4], [1060.5], [1060.6] and, to a limited extent, [1060.7] of Counsel Assisting's submissions are open to the Commissioner.
- 52.162 It is not open to the Commissioner to make the finding at paragraph [1060.2]. There is no evidence to support that finding. The only evidence that Counsel Assisting rely on is Mr O'Brien's status as Officer in Charge of the Purana Taskforce.¹⁵⁶⁵ Self-evidently, that is a wholly inadequate basis for the proposed finding, not least because the events concerning Mr McGrath took place before Mr O'Brien took up in that position. Regrettably, Counsel Assisting did not draw to the Commissioner's attention Mr O'Brien's resolute evidence that he did not know about Ms Gobbo's involvement with Mr McGrath.¹⁵⁶⁶ In circumstances where the **only** relevant evidence before the Commissioner is Mr O'Brien's resolute denial, the finding proposed at paragraph [1060.2] is not open and there is no proper basis for Counsel Assisting to maintain their submission that it is open on the evidence. They are invited not to press paragraph [1060.2].
- 52.163 The finding proposed at paragraph [1060.3] is also not open to the Commissioner. The careful analysis set out above identifies that Mr O'Brien first knew that Ms Gobbo had spoken to the SDU about Mr Thomas on 23 March 2006. Mr O'Brien knew that Ms Gobbo was acting for Mr Thomas and had that knowledge until late April 2006. There is no evidence that Mr O'Brien knew that Ms Gobbo continued to represent Mr Thomas after that date. Further, for the reasons given above, Mr O'Brien does not accept that Ms Gobbo was "informing" on Mr Thomas, though he does accept that Ms Gobbo should not have been speaking to the SDU about Mr Thomas while representing him and that more should have been done to stop her doing so.
- 52.164 There is no evidentiary basis for the finding, as expressed, in paragraph 1060.7. If Counsel Assisting intend to submit that a lawyer who is a human source can never provide independent advice to anyone, Mr O'Brien did not know any such thing, and there is real doubt that such a proposition is correct. What he did know, in the short period set out above, was that Ms Gobbo had been speaking to the SDU about Mr Thomas, while representing him.
- 52.165 As to paragraphs [1060.8] and [1060.9], there is no basis for these findings because the underpinning premises have not been established and, indeed, have comprehensively been disproved.

¹⁵⁶⁵ Counsel Assisting Submissions at p 234 [1060.2] (footnote 1345), Voi 2.

¹⁵⁶⁶ See paragraph 52.27 above.

- 52.166 Ms Gobbo was *not* provided with the transcripts of the information that Mr Thomas had provided to police for the purpose of her being tasked to speak with Mr Thomas on behalf of Victoria Police.
- 52.167 As to the premise that Victoria Police was “using” Ms Gobbo to encourage Mr Thomas to make admissions, enter a plea of guilty and implicate his associates:
- (a) As set out in further detail below, Victoria Police had already been directly in contact with Mr Thomas about him co-operating in July 2004, instigated by police and October 2004, instigated by Mr Thomas; there was no need for Victoria Police to “use” Ms Gobbo in the discussions with Mr Thomas;
 - (b) After Mr Thomas’ arrest in August 2004, ^{Mr Thomas’ Personal Partner} informed DSC L’Estrange that Mr Thomas wanted to meet with him ‘on the quiet’.¹⁵⁶⁷ DSC L’Estrange met with Mr Thomas a couple of days later and Mr Thomas alluded to the possibility of assisting police.¹⁵⁶⁸
 - (c) Counsel Assisting have identified no evidence of further contact in relation to Mr Thomas’ assistance until February 2006;
 - (d) Rather, once Mr Thomas decided again that he wished to cooperate he had Ms Gobbo approach Victoria Police about cooperating. Mr Thomas was in prison at the time, and Victoria Police engaged with him pursuant to that approach;
 - (e) Victoria Police did not want Ms Gobbo involved with Mr Thomas - she continued to act for him despite repeated requests from Victoria Police that she refrain from doing so; and
 - (f) Victoria Police did not ever task Ms Gobbo in connection with Mr Thomas.
- 52.168 Further, there is insufficient evidence Mr O’Brien knew that Ms Gobbo was encouraging Mr Thomas in the manner described – if indeed she was.
- 52.169 On 23 March 2006, Mr Thomas told DDI O’Brien and (then) DS Bateson and that Ms Gobbo and her instructing solicitor, Jim Valos, had “convinced” him to cooperate with Victoria Police. That appears to be the whole of the evidence identified by Counsel Assisting about DI O’Brien’s knowledge of what advice Ms Gobbo was giving Mr Thomas. There is nothing in that advice itself that ought to have indicated to DAI O’Brien that Ms Gobbo’s advice may have constituted anything other than proper legal advice.
- 52.170 Further, whether what Mr Thomas told DAI O’Brien was true or not:
- (a) the Commission has heard that by April 2006, Mr Thomas had again waived in his resolve to assist police; and
 - (b) Mr Thomas did not ultimately commit to assisting police until some months later in June 2006.
- 52.171 There is, in fact, no credible evidence on which a finding can be made that Ms Gobbo advised Mr Thomas to plead guilty, make admissions and implicate his associates or that it was Ms Gobbo’s advice alone, or at all, that caused him to take such steps. We draw the Commission’s attention to the following:

¹⁵⁶⁷ Exhibit RC0252B –Chronologyn of Stuart Bateson, 18 October 2004 at p 13 (VPL.0015.0001.0409 at .0421).

¹⁵⁶⁸ Exhibit RC264 – Statement of Detective Senior Sergeant Nigel L’Estrange, 11 June 2019 at [14] (VPL.0014.0036.0001 at .0003).

- (a) Purana Taskforce detectives first began communicating with Mr Thomas in relation to his possible cooperation in 2004, well prior to Ms Gobbo acting;
- (b) By July 2004, police were already taking statements from Mr McGrath. DS Bateson's crew then began talking to Mr Thomas, suspected of involvement in the Moran and Barbaro murders, to cooperate with police and met with him to discuss;¹⁵⁶⁹
- (c) On 28 July 2004, DS Bateson met with Mr Thomas at a McDonald's restaurant and Mr Thomas indicated an openness to assisting police;¹⁵⁷⁰
- (d) On 18 October 2004, Mr Thomas, who was then in prison having been arrested for the Moran and Barbaro murders, enlisted ^{Mr Thomas' P} to contact DSC L'Estrange to arrange to meet "on the quiet";¹⁵⁷¹
- (e) By February 2006, Mr Thomas, who was still in prison awaiting trial, decided to cooperate with police and, this time, instructed Ms Gobbo to approach police on his behalf;¹⁵⁷²
- (f) On 19 February 2006, both Ms Gobbo and Mr Thomas' solicitor, Mr Valos, met with Com. Bateson and told him that Mr Thomas had instructed them that he wished to co-operate. This was just after Mr Andrews had written to the relevant Senior Crown Prosecutor informing him that he wished to co-operate;¹⁵⁷³
- (g) A few days later, on 22 February 2006, Mr Thomas told DS Bateson to speak to his solicitor about him making statements which Mr Bateson did;¹⁵⁷⁴
- (h) Mr Bateson and Mr O'Brien met with Mr Thomas on three occasions in the weeks that followed;
- (i) The transcripts were provided to Ms Gobbo on 20 April 2006;
- (j) It was not until 29 June 2006 that Mr Thomas entered his guilty plea and he did that without having committed to assisting police. After he had entered his plea, Mr Bateson met with Mr Thomas together with Ms Gobbo and Mr Valos in the cells at which time Mr Thomas said that he now wished to assist police by making statements;¹⁵⁷⁵
- (k) Mr Thomas' solicitor was asked to provide a witness statement to the Commission addressing three questions.¹⁵⁷⁶ He was not asked whether Ms Gobbo gave advice to Mr Thomas about pleading guilty, making admissions and implicating his associates and, if she did, about the circumstances in which it was given and the content of the advice. He was not asked if Ms Gobbo had encouraged Mr Thomas to make admissions, enter a plea of guilty and to implicate his associates. He was not asked if he himself had given such advice to Mr Thomas and, if he had, when he gave the advice and the reasons why he gave that advice. Mr Valos co-operated with the Commission in providing a

¹⁵⁶⁹ Exhibit RC0269B – Statement of Commander Stuart Bateson, 7 May 2019 at [60]-[61] (VPL.0014.0027.0001 at 0010).

¹⁵⁷⁰ Exhibit RC0269B – Statement of Commander Stuart Bateson, 7 May 2019 at [61] (VPL.0014.0027.0001 at 0010).

¹⁵⁷¹ Exhibit RC0252B – Chronology of Stuart Bateson, 18 October 2004 at p 13 (VPL.0015.0001.0409 at 0421); Exhibit RC0264B – Statement of Detective Senior Sergeant Nigel L'Estrange, 11 June 2019 at [14] (VPL.0014.0036.0001 at .0003); Exhibit RC0269B – Statement of Commander Stuart Bateson, 7 May 2019 at [63] (VPL.0014.0027.0001 at .0011).

¹⁵⁷² Exhibit RC0269B – Statement of Commander Stuart Bateson, 7 May 2019 at [78] (VPL.0014.0027.0001 at .0013).

¹⁵⁷³ Exhibit RC0269B – Statement of Commander Stuart Bateson, 7 May 2019 at [75]-[78] (VPL.0014.0027.0001 at .0013).

¹⁵⁷⁴ Exhibit RC0269B – Statement of Commander Stuart Bateson, 7 May 2019 at [80] (VPL.0014.0027.0001 at .0013).

¹⁵⁷⁵ Exhibit RC0269B – Statement of Commander Stuart Bateson, 7 May 2019 at [92] (VPL.0014.0027.0001 at .0015).

¹⁵⁷⁶ Untendered Email from the solicitors assisting the Commission to Corrs Chambers Westgarth dated 8 July 2020.

witness statement but, because he was not asked, his statement does not address these critical matters. He was not called for cross-examination;

- (j) Mr Thomas' evidence was that Ms Gobbo encouraged him to plead guilty and to become a prosecution witness.¹⁵⁷⁷ However, given Mr Thomas' credibility issues and that it was plainly in his interests to give that evidence, his evidence alone is insufficient to find that Ms Gobbo encouraged him to make admissions, enter a plea of guilty and to implicate his associates, especially given that Counsel Assisting chose not to adduce evidence from a relevant witness, Mr Valos, on the issue;
- (m) Further, even if Mr Thomas' evidence on this issue is accepted, his evidence is that Ms Gobbo encouraged him to plead guilty in the lead up to Mr Andrews pleading guilty. Mr Thomas said that Ms Gobbo told him that Mr Andrews 'might be pleading and might roll' and she urged Mr Thomas to get in first. If Ms Gobbo gave that advice then she likely gave it in February 2006,¹⁵⁷⁸ which was well before Ms Gobbo had been shown the transcripts. If she gave that advice, then there is no causal link between police and the advice she gave. That is, there is no evidence that police asked Ms Gobbo to advise Mr Thomas to get in before Mr Andrews and plead guilty and co-operate with police. It is also not evident why police would want her to give such advice;
- (n) Mr Thomas gave evidence that Mr Valos was shocked when he got back from holidays to discover that he had pleaded guilty. Mr Thomas said that Ms Gobbo had kept Mr Valos away from it all and away from him.¹⁵⁷⁹ Mr Valos' statement to the Commission does not address these issues and he was not called to give evidence or asked for a supplementary statement. However, the evidence before the Commission shows that Mr Thomas' evidence was false because:
 - (i) On 19 February 2006, Mr Valos met with Com. Bateson and Ms Gobbo, after Mr Thomas said he wanted to plead guilty;
 - (ii) On 23 March 2006, Mr Thomas told Mr O'Brien and Mr Bateson that Mr Valos had advised him to plead guilty and assist police,¹⁵⁸⁰ and
 - (iii) On 29 June 2006, when Mr Thomas entered his guilty plea, Mr Valos was present. He met with Mr Bateson, Mr Thomas and Ms Gobbo afterwards to discuss Mr Thomas' desire to become a prosecution witness in return for a reduced sentence;¹⁵⁸¹
- (o) To the extent that Mr Thomas gave the self-serving evidence that Ms Gobbo had pressured or persuaded him to plead guilty and to give evidence, Ms Gobbo unequivocally denied that before the Commission.¹⁵⁸²

I want to ask you about some matters that Mr Thomas has raised in his statement. One of the things that he will suggest or he has suggested is that you pressured and persuaded him to plead guilty and to give evidence. What do you say to that? That's not consistent with my recollection.

¹⁵⁷⁷ Exhibit RC1175B – Statement of Mr Thomas, 20 September 2019 at [37]-[38] (RCMPI.0131.0001.0001 at _0010).

¹⁵⁷⁸ Exhibit RC0269B – Statement of Commander Stuart Bateson, 7 May 2019 at [75]-[78] (VPL.0014.0027.0001 at .0013).

¹⁵⁷⁹ T13592.38-43 (Thomas).

¹⁵⁸⁰ Exhibit RC0476B – Transcript between S Bateson and Mr Thomas, 23 March 2006 at p 81 (VPL.0005.0062.0609 at .0689).

¹⁵⁸¹ Exhibit RC0269B – Statement of Commander Stuart Bateson, 7 May 2019 at [92] (VPL.0014.0027.0001 at .0015).

¹⁵⁸² T13402.35-43 (N Gobbo).

Do you say that you didn't pressure or persuade him; is that right?

Correct.

- (p) Ms Gobbo was unable to say with certainty whether she had advised Mr Thomas that it could be in his interests to plead guilty and give evidence.¹⁵⁸³ She suggested she may have done so once Mr Thomas reached the point of wishing to cooperate with police;¹⁵⁸⁴
- (q) Ms Gobbo recalled occasions when Mr Thomas had vacillated in his intention to assist police;¹⁵⁸⁵
- (r) It was put to Ms Gobbo that she may have heard from DS Bateson that by around April 2006, Mr Thomas was considering not assisting police because ^{Mr Thomas' P} may have objected. It was put that Ms Gobbo then communicated with ^{Mr Thomas' personal P} ^{Mr Tho} and reassured her, so that Mr Thomas was convinced to cooperate.¹⁵⁸⁶
- (s) Ms Gobbo's recollection of these matters appeared vague, at best.¹⁵⁸⁷ As in the example below, the cross-examination on this point consisted of assertions or propositions being put by Counsel Assisting, without a proper foundation, and Ms Gobbo's vague agreement:

Is the effect of the evidence this: you heard from Mr Bateson that there could be a spanner in the works and ^{Mr Thomas' Personal Partner} might not be prepared to go along and you communicated with her and smoothed things over and got things back on track. That's the essence of what I'm putting? Yeah, quite probably. As I said, my recollection is the issue was about her charges being withdrawn and her being able to keep the property and not face the loss of it.¹⁵⁸⁸

- (t) Contrastingly, Com. Bateson's evidence was clear and detailed around his interactions with Mr Thomas and ^{Mr Thomas' Perso}
- (i) Com. Bateson told the Commission that ^{Mr Thomas' Personal Partner} had resisted any move by Mr Thomas to assist police while she believed ^{Mr Thomas} was innocent of murder;
- (ii) The shift identified by Com. Bateson was that, at that time, Mr Thomas had started telling police that he wanted to tell the truth. Com. Bateson articulated that the most logical scenario was that Mr Thomas had made a similar revelation to ^{Mr Thomas' P} as to the truth of his role in murders in relation to which he was charged;
- (iii) It was likely for this reason that ^{Mr Thomas' Personal Partner} relented, and Mr Thomas eventually agreed to admit the murder of Moran and assist. Com. Bateson denied that Ms Gobbo was tasked by him to speak to Mr Thomas;¹⁵⁸⁹
- (u) When asked again whether she had pressured or persuaded Mr Thomas to sign his statement about the Moran and Barbaro murders, Ms Gobbo responded:

I would be lying if I said I've got a specific recollection of even reading that statement.

¹⁵⁸³ T13402.45 – T13403.30 (N Gobbo).

¹⁵⁸⁴ T13402.45 – T13403.1 (N Gobbo).

¹⁵⁸⁵ T13403.3-10 (N Gobbo).

¹⁵⁸⁶ T13367.19-27 (N Gobbo).

¹⁵⁸⁷ T13367.19-27 (N Gobbo).

¹⁵⁸⁸ T13367.19-27 (N Gobbo); see also T13366.18-46 (N Gobbo).

¹⁵⁸⁹ T9722.29 – T9723.28 (S Bateson).

- 52.172 On that evidence, the Commission cannot be satisfied that Ms Gobbo advised Mr Thomas to plead guilty, make admissions and implicate his associates and no basis to find that she was encouraged by police to give such advice.
- 52.173 If Ms Gobbo did advise Mr Thomas to plead guilty, make admissions and implicate his associates, the state of the evidence does enable findings to be made that:
- (a) such advice was the sole, dominant or even a persuasive factor in Mr Thomas' decision;
 - (b) any advice from Ms Gobbo (or Mr Valos) to assist police amounted to unreasonable pressure or was contrary to a desire expressed by him to explore the possibility of obtaining a benefit by assisting police; or
 - (c) Ms Gobbo gave that advice to Mr Thomas in order to assist Victoria Police.
- 52.174 If Ms Gobbo did give such advice, she is likely to have had more plausible motivations for giving it, such as because she considered it to be in Mr Thomas' best interests in circumstances where the case against him was growing in strength and, if convicted, he was facing life imprisonment. Mr Valos seems to have given that advice.
- 52.175 The finding proposed at paragraph [1060.10] is not open on the evidence. There is no evidence at all to support this proposed finding. Mr O'Brien's approach to the question of disclosure was that: (a) consistent with the Victoria Police directive, and as with all informers, all reasonable steps were to be taken to protect Ms Gobbo's identity; and (b) questions about disclosure were for the courts to decide and fell to be resolved in accordance with ordinary court processes.
- 52.176 Mr O'Brien was under an obligation (at law and under Victoria Police policy) to take all reasonable steps to protect Ms Gobbo's identity. He acted consistently with that obligation, observing that "in the normal course of events you wouldn't disclose an informer".¹⁵⁹⁰ However, Mr O'Brien did not intend that Ms Gobbo's role would never be disclosed to Mr Thomas or anyone Mr Thomas made statements against. He intended and understood that any disclosure of Ms Gobbo's role would occur in accordance with the ordinary legal processes that attended the disclosure of information that might tend to identify a human source. To the extent that this concerned SDU holdings, Mr O'Brien frankly and properly conceded that, based on his (admittedly inadequate) understanding of what material the police were required to disclose, he did not believe that the SDU holdings would contain such information.
- 52.177 Further, it should not be overlooked that making disclosure in criminal proceedings did not fall within the duties of Inspectors. Mr O'Brien's job, as an Inspector, was to oversee the Purana Taskforce which comprised at least 100 officers. He did not get involved in deciding what material did and did not need to be disclosed. However, that is not to say that he should not have recognised that Ms Gobbo's use as a source could raise difficult disclosure issues which he should have asked AC Overland to get legal advice about from the outset. If disclosure had been a focus at Victoria Police at the time and if he had received sufficient training about it, then he would have recognised the issue and briefed up if his superior officers were not already dealing with the issue.
- 52.178 The vice in the proposed finding at [1060.10] is that it oversimplifies the evidence and thereby is apt to obscure the real issues. Mr O'Brien accepts that he had an inadequate understanding of what was required to be disclosed to an accused. The explanation for

¹⁵⁹⁰ T5709.4-5 (J O'Brien).

that inadequacy lies in the inadequate training that he received, which resulted in his failure to properly identify and address the disclosure issues when they arose.

- 52.179 Mr O'Brien accepts that the Commissioner should find that he was inadequately trained about Victoria Police's obligation of disclosure and did not adequately understand Victoria Police's obligation of disclosure.

Proposed Findings at [1061] of Counsel Assisting's submissions

- 52.180 The proposed finding at paragraph [1061] is not open on the evidence. Further, it is vague, ambiguous and liable to mislead. For both of these reasons, it ought not to be made.
- 52.181 First, it is not clear what 'involvement' in the prosecution of people Mr Thomas implicated that Counsel Assisting is referring to. In the absence of the basis for this foundational fact being made clear, Mr O'Brien cannot meaningfully respond to the proposed finding. Procedural fairness requires that adverse matters be put with sufficient specificity to enable a response.
- 52.182 Second, it is not clear how any such involvement had the consequence that Mr O'Brien was aware of the **'continued'** use of Ms Gobbo against Mr Thomas'. Among other things, it is not clear what is meant by Victoria Police using Mr Gobbo 'against' Mr Thomas. If that is a reference to Ms Gobbo's involvement in the statement taking process (during which period she was also informing on Mr Thomas to Victoria Police, there is no evidence that Mr O'Brien was involved in any such use or had knowledge of such use, and Counsel Assisting do not identify any such evidence in the relevant passages (see [967]-[995]). If it is a reference to events that occurred after July 2006, then Counsel Assisting have failed to identify those events and the basis for submitting that Mr O'Brien had knowledge of them.
- 52.183 Third, the finding does not follow from the evidence set out in paragraph [1059] (to the extent that such evidence can be accepted, or at all).
- 52.184 Accordingly, the proposed finding at [1061] is oppressive and unreasonable. It is not supported by the known facts. There is no apparent basis to advance it. The ambiguity in its formulation means that Mr O'Brien is unable to meaningfully engage with it and he is, therefore, not provided procedural fairness. Counsel Assisting are invited not to press it, or to, at least, clarify it so that Mr O'Brien may respond.
- 52.185 If paragraph [1061] is directed to the 9 November 2007 event discussed in the submissions of Mr Ryan and Mr Bateson, then Counsel Assisting have raised that allegation against Mr O'Brien in error because he left Victoria Police in September 2007.

Proposed findings at [1062] of Counsel Assisting's submissions

- 52.186 There are three reasons why the proposed finding in paragraph [1062] should not be made in its existing form. First, much of the alleged evidentiary basis for it has been shown to be unsound. Second, it operates on the false premise that Mr O'Brien had an entitlement, power or authority to "allow" Ms Gobbo to act for Mr Thomas or to "prevent" her from doing so. Third, it fails to recognise the different conflicts that arose, and the appropriate mechanisms for resolving them.
- 52.187 In relation to the evidentiary matters in paragraphs [1060.1]-[1060.10], Mr O'Brien refers to paragraphs 52.160 to 52.185 above.
- 52.188 In relation to the fact asserted at paragraph [1062.1] (the alleged "sanitising" of Com. Bateson's notes in connection with Mr Thomas' statements) has been addressed at

paragraphs 52.40 and 52.44 above. In the absence of either the person who made the notes, or the person who had the conversation about which the notes were made, the Commission cannot determine the real meaning of the diary note. An inference should not be made when the person who made the note gave evidence, but was not asked about it.

- 52.189 Further, there is no evidence at all that Com. Bateson's notes about his communications with Ms Gobbo on behalf of Mr Thomas were to be "sanitised" generally. And, indeed, it can be seen that they were not. Com. Bateson's notes of his communications with Ms Gobbo in the period from 9 July 2006 to 12 July 2006 used her name.
- 52.190 As to paragraph [1062.2], there is no evidence that Ms Gobbo had "influence" over ^{Mr Tho} ~~Mr Thomas' Personal F~~. The evidence is that ^{Mr Thomas' Personal F} asked Ms Gobbo to visit her after Com. Bateson had spoken to ^{Mr Thomas' Personal F} at ^{Mr Thomas} 's request about his potential guilty plea and the consequences ^{PII} ~~PII~~. Following that meeting, ^{Mr Thomas' Personal F} spoke to Com. Bateson and confirmed ^{Mr Thomas} 's decision to plead guilty. This Commission does not know what Ms Gobbo said to ^{Mr Thomas' Personal F}, nor why ^{Mr Thomas' Personal P} changed her attitude. Ms Gobbo could not recall the discussion, and ^{Mr Thomas' Personal P} was not called to give evidence.
- 52.191 It was Mr Thomas' decision to talk to Victoria Police. He asked Com. Bateson to visit ^{Mr Thom} ~~Mr Thor~~ to explain the situation for him. There is no evidence to suggest that Ms Gobbo did anything other than confirm to ^{Mr Thomas' Personal I} that ^{Mr Thomas Personal} instructions were that he wanted to plead guilty and he wanted a reduced sentence. There is no evidence at all that Ms Gobbo had some form of "influence" over ^{Mr Thomas' Personal P}. If Counsel Assisting wanted to submit such a matter, then they needed to call the person said to be influenced to give evidence before this Commission as to whether she was influenced or not.
- 52.192 The asserted finding in paragraph [1062.3] mischaracterises the situation. Mr O'Brien and Mr Bateson did not give Mr Thomas an assurance of Mr Gobbo's honesty in the meeting of 23 March 2006. Rather, Mr Bateson expressed his opinion that Ms Gobbo was honest, and he explained in his oral evidence to the Commission what he was referring to. The transcript of that meeting needs to be read by the Commission in its entirety.
- 52.193 Equally, the proposition that Mr Thomas was 'encouraged' or 'not dissuaded' from using Ms Gobbo is contrary to the overwhelming weight of evidence. As is set out above, both Mr Bateson and Mr O'Brien did what they could to discourage Mr Thomas from continuing to engage Ms Gobbo without compromising Ms Gobbo's safety. They told Mr Thomas that Ms Gobbo was not independent because she had represented others, and Mr Thomas agreed with them. Mr O'Brien took the additional step of recommending alternative legal representation.
- 52.194 In relation to the false premise embedded in paragraph [1062] itself, Mr O'Brien was not "allowing" Ms Gobbo to act for Mr Thomas, nor did he "fail to prevent" it. Mr Thomas engaged Ms Gobbo to act for him, and Ms Gobbo accepted the retainer. That was not an act that Mr O'Brien was capable of "allowing" or "preventing", in the sense that he had no entitlement, power or authority to do either of those things.
- 52.195 As to the third matter, Mr O'Brien submits that the proposed finding fails to pay sufficient regard to the actual position of conflict.
- 52.196 As to the potential conflicts of interest that arose when Ms Gobbo decided to act for Mr Thomas having earlier acted for Mr McGrath, that is a form of conflict that is outside the

terms of reference of this Commission. No finding about conflicts of that kind can be made. Further, and in any case, it is not clear that Ms Gobbo could not have acted for Mr Thomas in relation in any circumstances. As Com. Bateson's submissions make clear, it is at least possible that Ms Gobbo was entitled to act for Mr Thomas in discrete aspects of his proceeding. Further, and in any case, that conflict was a matter for Ms Gobbo and the legal profession and, as can be seen, both Ms Gobbo and the legal profession managed it.

- 52.197 If the submission is directed to Ms Gobbo's status as a human source, then Mr O'Brien says that it cannot be said that Ms Gobbo had a conflict in relation to Mr Thomas merely because she was a human source. More was needed for a conflict to arise.
- 52.198 However, Mr O'Brien accepts that Ms Gobbo should not have been talking to the SDU about Mr Thomas while acting for him. Mr O'Brien accepts that the SDU should not have disseminated information that Ms Gobbo gave her handlers about Mr Thomas. Mr O'Brien accepts that, once Ms Gobbo starting provided information to her handlers about Mr Thomas, more should have been done to stop Ms Gobbo from doing so and to ensure that this information was not disseminated to investigators.
- 52.199 Mr O'Brien accepts that the findings that are open to the Commissioner are:
- (a) that from about 22 March 2006, Mr O'Brien was aware that Ms Gobbo had been talking to the SDU about Mr Thomas;
 - (b) that Ms Gobbo should not have been talking to the SDU about Mr Thomas, while simultaneously acting for him;
 - (c) on 23 March 2006, Mr Thomas told Mr O'Brien that both Ms Gobbo and her instructing solicitor had "convinced him to come in"; that is, to cooperate with Victoria Police;
 - (d) that Mr O'Brien responded to learning that Ms Gobbo had been talking to the SDU about Mr Thomas by asking the SDU to have Ms Gobbo recommend an alternative barrister to Mr Thomas and to, therefore, cease acting;
 - (e) that the SDU asked Ms Gobbo to recommend an alternative barrister for Mr Thomas and she claimed that she could not think of one; and
 - (f) that Mr O'Brien should have briefed the matter up to his superior officer, AC Overland, rather than leave the matter with the SDU and assume that it was being handled.

Proposed findings at [1063] of Counsel Assisting's submissions

- 52.200 The proposed finding in paragraph [1063] is not open on the broad basis proposed by Counsel Assisting. In particular, the attribution of intention and motivation cannot be sustained and must be rejected.
- 52.201 Mr O'Brien accepts that the proposed findings in paragraphs [1063.1] to [1063.3] are open on the evidence.
- 52.202 The fact in paragraph [1063.4] is not open on the evidence. As is set out above, Mr O'Brien was not aware of Ms Gobbo's potential conflict in relation to Mr McGrath. Mr O'Brien was not aware, before 22 March 2006, that Ms Gobbo was speaking to the SDU about Mr Thomas while acting for him. There is no evidence that Ms Gobbo was not "able to independently represent" Mr Thomas if that is intended to mean that she was not able to give him advice that was independent from her role as a human source. Mr Bateson's evidence was that he did not observe anything that indicated that Ms

Gobbo was not acting in Mr Thomas' best interests.¹⁵⁹¹ Ms Gobbo's instructing solicitor did not tell the Commission that he had any concerns about the way Ms Gobbo represented Mr Thomas, and he knew that she had previously acted for Mr McGrath. This is not to say that Ms Gobbo should have been acting for Mr Thomas, but only that there is no evidence that she was not able to act in his best interests and independently from her role as a human source.

- 52.203 The fact asserted in paragraph [1063.5] is an oversimplification which is vague, ambiguous and likely to mislead. Mr O'Brien was aware that Ms Gobbo had provided Victoria Police with information about Mr Thomas and should not have done so. That is not the same thing as saying that on 23 March 2006 Mr O'Brien knew that, in connection with her representation of Mr Thomas, Ms Gobbo was serving the interests of Victoria Police.
- 52.204 There is no evidence that Ms Gobbo was serving the interests of Victoria Police and certainly no evidence that Mr O'Brien knew that. Mr O'Brien did not know what advice Ms Gobbo was providing to Mr Thomas, save that on 23 March 2006 Mr Thomas said that Ms Gobbo and her instructing solicitor had told him that he should cooperate. Mr O'Brien also did not know what Ms Gobbo's motivations were when, according to Mr Thomas, she provided advice to him. It is entirely possible that Ms Gobbo believed that she was serving Mr Thomas' interests when she advised him to cooperate with Victoria Police. Mr Thomas told Mr O'Brien in their discussion on 23 March 2006 that his solicitor had given him the same advice.
- 52.205 Mr O'Brien accepts that Ms Gobbo should either have ceased acting for Mr Thomas or refrained from talking about him to the SDU. However, that is not the same as accepting that Ms Gobbo was serving the interests of Victoria Police in giving Mr Thomas advice. Reference is also made to the submissions above at paragraphs 52.121 and 52.122. For all of the reasons identified, the proposed finding at paragraph 1063.5 is not open to be made.
- 52.206 As to the facts asserted in paragraphs [1063.6] and [1063.7], Mr O'Brien refers to paragraph 52.193 above for the reasons why these paragraphs are contrary to the evidence.
- 52.207 It is also not open to the Commissioner to make the finding in paragraph [1063.9]. The contention in paragraph [1063.9] is a serious matter and a finding to that effect should not be lightly made. It should not be made other than on the basis direct and compelling evidence.
- 52.208 There is no direct evidence that supports the proposed finding. The weight of evidence – much of which has not been referred to by Counsel Assisting in their submissions – is to the contrary. As with so many of Counsel Assisting's submissions, it falls to Mr O'Brien to identify what precisely is being alleged and then to attempt to respond to it. That is unsatisfactory.
- 52.209 If the relevant "deception" is that Ms Gobbo was providing information to Victoria Police about Mr Thomas while representing him, that only became known to Mr O'Brien one day earlier – and he was taking steps to have Ms Gobbo recommend a new barrister to Mr Thomas.

¹⁵⁹¹ T9740.31-36 (S Bateson).

- 52.210 If the relevant “deception” is that Mr Thomas was not told that Ms Gobbo had acted for Mr McGrath then, as a matter of fact, Mr Thomas knew that information and was not deceived.
- 52.211 If the relevant “deception” is Mr Thomas not being told about Ms Gobbo acting for Mr McGrath in relation to his statements, insofar as Mr O’Brien is concerned:
- (a) that fact was revealed to the Court, and a claim of PII over Com. Bateson’s daybooks was upheld;
 - (b) Com. Bateson was cross-examined by Mr Thomas’ senior counsel about Mr McGrath’s statement process, including the involvement of Mr McGrath’s legal representative;
 - (c) Com. Bateson was not asked by Mr Thomas’ senior counsel whether Mr McGrath’s legal representative had in fact reviewed the statements or what changes were subsequently made; and
 - (d) Com. Bateson confirmed that all changes to the statements had been made at the request of Mr McGrath.
- 52.212 While there was no “deception”, there was also no intention to deprive Mr Thomas of independent legal representation.
- 52.213 First, Victoria Police – both through detectives and the SDU – were encouraging Mr Thomas to obtain new representation. All of the evidence supports the conclusion that Victoria Police’s strong preference was that Ms Gobbo not act for Mr Thomas.
- 52.214 Second, Mr O’Brien encouraged Mr Thomas to obtain independent representation and to take advice from Mr Valos.
- 52.215 Third, Mr O’Brien went as far as asking for Ms Gobbo to suggest alternative representation for Mr Thomas – a suggestion she refused on the basis that she could think of no other barrister who could represent him.
- 52.216 Further, Mr O’Brien did not encourage Mr Thomas to engage Ms Gobbo, or to continue to engage Ms Gobbo. There is no evidence that he told Ms Gobbo what advice she should give Mr Thomas or attempted to influence her about that advice.
- 52.217 As set out above, Mr O’Brien’s evidence was that he did not want Ms Gobbo to act for Mr Thomas. His preference was that Mr Thomas was represented by someone else. Mr O’Brien repeatedly encouraged Mr Thomas to retain alternative representation. When Mr O’Brien became aware of a direct conflict of interest because she was talking to the SDU, he asked that Ms Gobbo recommend alternative, independent, representation for Mr Thomas and that she cease to act. Mr O’Brien also asked the SDU to encourage Ms Gobbo not to act for Mr Thomas. Thus, all of Mr O’Brien’s active conduct was consistent with Mr O’Brien preferring Mr Thomas to be represented by someone else.
- 52.218 Further, Mr O’Brien did not encourage Mr Thomas to engage Ms Gobbo, or to continue to engage Ms Gobbo. There is no evidence that Mr O’Brien told Ms Gobbo what advice she should give Mr Thomas.
- 52.219 Consequently, there is no evidentiary basis for a finding that Mr O’Brien’s conduct was calculated to deprive Mr Thomas of independent legal representation. The weight of evidence, which supports the opposite conclusion, has not been addressed by Counsel Assisting. Once they have regard to it, it is submitted that it will be evident that there is no proper basis to continue to propose the finding in [1063.9].

- 52.220 As a consequence of the finding at [1063.9] not being open, the proposed finding at [1063.10] is also not open. Mr O'Brien did not want or need Mr Thomas to be deprived of independent legal representation in order to secure his cooperation with Victoria Police, or at all. Further, if Mr Thomas' evidence is to be accepted, Mr Thomas got independent legal advice from his solicitor that he should plead guilty and co-operate with police in order to avoid spending the rest of his life in prison.
- 52.221 In the alternative to paragraph [1063], Mr O'Brien accepts that it is open to the Commissioner to find that on 23 March 2006, Mr O'Brien was aware, by reason of the information disseminated to him on 22 March 2006, that Ms Gobbo had been speaking to the SDU about Mr Thomas while acting for him.

Proposed findings at paragraph [1064] of CA's Submissions

- 52.222 The finding at paragraph [1064] is not open when the true facts are understood. The evidence does not support a finding that Ms Gobbo was provided the transcript as a human source for the purpose of encouraging Mr Thomas to take any particular course of action. This issue has been addressed in detail earlier in these submissions and it is addressed in detail in Mr Ryan's submissions.
- 52.223 Mr O'Brien submits that it is open to the Commissioner to find that Victoria Police should not have had anything to do with Ms Gobbo in her capacity as Mr Thomas' lawyer when it became apparent that Ms Gobbo had a conflict acting for him because she was also talking to the SDU about him, and in circumstances where she had refused Victoria Police's requests that she cease acting for him.

Mr Cooper

- 52.224 On 22 April 2006, Mr Cooper was arrested at a clandestine drug laboratory in Strathmore. Ms Gobbo had provided information to Victoria Police that had led to the discovery of the laboratory, and Mr Cooper's arrest. Following his arrest, Ms Gobbo attended the St Kilda Road police station and advised him. She plainly should not have done so.
- 52.225 Counsel Assisting submit, at [1807], that Ms Gobbo's conduct in continuing to act for Mr Cooper while informing on him to Victoria Police did not deter those members of Victoria Police who knew of her ongoing role as Mr Cooper's lawyer, from using her as a source in relation to Mr Cooper.¹⁵⁹² The assumption implicit in that submission is that members of Victoria Police recognised the conflict and decided not to act on it. The better, and necessary, approach is to identify with precision the specific conflicts of interest that arose and what individual officers understood about those conflicts and then to inquire into why those conflicts were either not identified at all or were identified and allowed to persist.
- 52.226 Ms Gobbo's conflict of interest in relation to Mr Cooper had at least two distinct elements. First, she had a conflict of interest because she was acting for him in relation to earlier offending while informing on him in relation to new criminal offending. Second, she had a further conflict of interest that arose when she commenced acting for him in relation to the same criminal offending about which she had provided information to Victoria Police.
- 52.227 Mr O'Brien's frank evidence to the Commission was that he did not identify the first conflict. Mr O'Brien did not appreciate that Ms Gobbo could not tell Victoria Police that Mr Cooper was committing drug crimes because she was acting for him in relation to

¹⁵⁹² Counsel Assisting Submissions at pp 414-415 [1807], Vol 2.

earlier criminal offending with which he had been charged. Not unreasonably, Mr O'Brien believed there to be a difference between providing to police information about charges in relation to which a legal representative was acting and information about crimes being committed in relation to which the legal practitioner was obviously not retained. Thus, when Mr O'Brien was asked about his response to Ms Gobbo providing information about Mr Cooper, he replied that the information was "about his criminal activity".¹⁵⁹³ As Mr O'Brien put it, he understood that the information Ms Gobbo was providing was sourced through her social relationships with "a team of crooks".¹⁵⁹⁴ He did not appreciate that a legal practitioner's professional obligations might prevent them from telling police information about the ongoing commission of a serious criminal offence because, even though the information would not be protected by legal professional privilege, it would create a conflict of interest for the legal practitioner.

- 52.228 Mr O'Brien identified the second conflict of interest when it arose. He acknowledges that, in relation to that second conflict of interest, and with the benefit of now being able to stand back and consider the whole situation, different decisions should have been made.
- 52.229 Key organisational deficiencies, which will be addressed in the submissions filed on behalf of Victoria Police, contributed to the wrong decisions being made. This is expanded upon below.

Key facts

- 52.230 As early as September 2005, Ms Gobbo told her handlers that she could "convince" Mr Cooper to speak to officer Dale Flynn.¹⁵⁹⁵ DSS O'Brien did not believe that Ms Gobbo's assistance was required for that purpose: Mr Cooper was already on bail and facing a significant sentence in relation to two separate drug matters, and he had indicated a willingness to talk to Victoria Police when arrested on 13 February 2002.¹⁵⁹⁶ Accordingly, Mr O'Brien did not arrange for Mr Flynn to speak with Ms Gobbo or Mr Cooper.
- 52.231 The Investigation Plan prepared by DSS O'Brien in October 2005 (discussed earlier in these submissions) set out the broad range of investigations that the Purana Taskforce would undertake as part of *Operation Posse*.¹⁵⁹⁷ One of the investigative steps was to attempt to obtain assistance from Mr Cooper and that was to be achieved by investigating his ongoing criminal activity and, if possible, charging him.
- 52.232 Throughout November and December 2005 and into January 2006, Ms Gobbo provided general information about Mr Cooper and his associates to the SDU and much, though not all, of that information was passed to DSS O'Brien.¹⁵⁹⁸ The information was useful background, and DSS O'Brien recorded it as such. From time to time, Purana Taskforce investigators, including Mr O'Brien, asked the SDU to obtain specific information from Ms Gobbo about Mr Cooper.
- 52.233 Ms Gobbo was, during this period, acting for Mr Cooper in relation to charges stemming from earlier offending. Among other things, she was assisting him to prepare for an

¹⁵⁹³ T5721.40 (J O'Brien).

¹⁵⁹⁴ T5639.24-26 (J O'Brien).

¹⁵⁹⁵ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [73] (VPL.0014.0040.0001 at .0016).

¹⁵⁹⁶ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [73] (VPL.0014.0040.0001 at .0016).

¹⁵⁹⁷ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [83] (VPL.0014.0040.0001 at .0018).

¹⁵⁹⁸ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [88]-[89] and [96] (VPL.0014.0040.0001 at .0019-0020).

upcoming plea, listed for 1 May 2006, in relation to charges Mr Cooper was facing arising from Operations Matchless and Landslip and for which he was on bail.

On 5 January 2006, Ms Gobbo called DSS O'Brien, in her capacity as Mr Cooper's legal representative, to talk about a variation in bail conditions for Mr Cooper.¹⁵⁹⁹ Mr O'Brien's diary entry reads:

RTC from Solicitor Nicola Gobbo request for [Mr Cooper] Reporting on Bail early Wed and [name deleted] reporting on bail at PII PS each Wed not wanting to report B/W PII agreed to in principle. Both travelling to PII Gobbo to send email to PII Police service O/C PII and PII to be adv to be arranged by S/D Burrows.

- 52.234 Mr O'Brien received this telephone call from Ms Gobbo in her capacity as Mr Cooper's legal counsel. Mr O'Brien accepts that he knew, on the basis of that telephone call, that Ms Gobbo was acting for Mr Cooper in relation to his earlier charges.

Ms Gobbo's close relationship with Mr Cooper

- 52.235 Counsel Assisting detail, in paragraphs [1809]-[1813], what they describe as the manipulation of Mr Cooper by Victoria Police. Much of the activities described in those paragraphs represent ordinary tasking activities for human sources. In the present case, Ms Gobbo was in a position of conflict and ought to not have been both informing on Mr Cooper about matters relevant to current criminal activity and representing him in relation to pending criminal charges. But, absent that factor, many of the activities described in those paragraphs are legitimate intelligence gathering techniques and are not, of themselves, objectionable. Human sources usually need to be close to a person in order to have access to information about that person's criminal activities.
- 52.236 That is not to say that, in this specific case, the activities were appropriate. It is only to say that what Counsel Assisting characterise as 'manipulation' is standard in human source operations and, to that extent, unobjectionable. This is an important distinction that must be made. However distasteful some people may find it that human sources inform on the criminal activities of their friends and that Victoria Police tasks human sources in connection with their friends, that is the reality of using a human source in the investigation of serious criminal offending. As has been the subject of evidence before the Commission, human sources have an important role in preventing and solving crime and, therefore, they assist in protecting the community. Individual personal views must not obscure the discipline and diligent assessment of the evidence.

Alleged discussions about manufacturing an adjournment

- 52.237 Across the course of February and March 2006, the information Ms Gobbo provided about Mr Cooper became increasingly specific until, in April 2006, it led Victoria Police to locate the premises from which Mr Cooper was manufacturing a large quantity of drugs while he was on bail on two other sets of drug charges.¹⁶⁰⁰
- 52.238 Mr Cooper was due in court for a plea hearing on 1 May 2006. Prior to his arrest on 22 April 2006 in his drug lab, Ms Gobbo and her handlers had discussed options for adjourning the 1 May 2006 hearing date.¹⁶⁰¹ There is no evidence that DSS O'Brien

¹⁵⁹⁹ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [98] (VPL.0014.0040.0001 at .0020).

¹⁶⁰⁰ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [153] (VPL.0014.0040.0001 at .0030).

¹⁶⁰¹ Untendered Transcript of discussion between Peter Smith, Officer Green and Ms Gobbo, 5 April 2006 (VPL.0005.0076.1119).

was aware of those discussions,¹⁶⁰² with the possible exception of a discussion that took place on 18 April 2006.¹⁶⁰³

- 52.239 In evidence, Mr O'Brien had a vague recollection of discussions about a possible adjournment and had recorded in his diary that Mr Cooper wanted an adjournment.¹⁶⁰⁴ However, Mr O'Brien had no knowledge of the type of discussions that were taking place between Ms Gobbo and the SDU about an adjournment.¹⁶⁰⁵ Mr O'Brien's evidence was that he was not concerned about an adjournment. If Mr Cooper was not apprehended before the plea hearing on 1 May 2006, it was probable that he would be taken into custody on that day, following which an approach would be made to him about cooperating with Victoria Police in any event.¹⁶⁰⁶ Put another way, Mr O'Brien was confident that Mr Cooper could be persuaded to cooperate with Victoria Police whether by reason of the substantial custodial sentence that he was likely to receive on 1 May 2006 or by reason of his arrest for further offending prior to then and the prospect of a substantial custodial sentence.
- 52.240 Whatever discussions may have occurred, and whatever Mr O'Brien may have known of them, Ms Gobbo was informed that Victoria Police would not "condone or request deception of the Court".¹⁶⁰⁷ Counsel Assisting do not refer to this evidence in their submissions. It is important contextual evidence and is plainly relevant.
- 52.241 In any case, on 15 April 2006, the drug laboratory was located. At that point, the question of an adjournment for the purposes of the investigation became irrelevant because the arrest of Mr Cooper could not be left that long - "it was a dangerous situation that had limited opportunity" and a "use-by date"¹⁶⁰⁸ - and, once Mr Cooper was arrested, an adjournment would be needed in any event.¹⁶⁰⁹
- 52.242 On 19 April 2006, Mr O'Brien went to a meeting with his superior officer, Mr Overland, at the OPP. They spoke with the DPP, Mr Coghlan QC, about the possibility of an adjournment.¹⁶¹⁰ It appears from the structure of [1814] that Counsel Assisting invite the Commissioner to infer that these discussions were connected to Ms Gobbo's discussions with the SDU and, in particular, the discussion on 18 April 2006. There is no evidentiary basis to conclude that this is so. The discussion of 19 April 2006 was precipitated by a significant change in circumstance - being the location of the clandestine laboratory and Mr Cooper's imminent arrest. As is set out below, the discussion was principally about what sentencing indication could be given to Mr Cooper and what the terms of any cooperation would need to be.

Ms Gobbo's advice to Victoria Police about Mr Cooper cooperating – [1815] of Counsel Assisting's Submissions

- 52.243 As far as Mr O'Brien was concerned, the post-arrest interview strategy with Mr Cooper was straight forward, and he did not propose to involve Ms Gobbo.¹⁶¹¹ DSS O'Brien had no recollection of being informed that Ms Gobbo had her own views about how the arrest of, and the post arrest discussion with, Mr Cooper should have been conducted.¹⁶¹² Certainly, a post arrest approach was discussed and investigators

¹⁶⁰² T5729.34-35 (J O'Brien).

¹⁶⁰³ Exhibit RC0281 – ICRC3838 (028), 18 April 2006 (VPL.2000.0003.1835 at .1835-1837).

¹⁶⁰⁴ Exhibit RC0933 – Diary of Jim O'Brien, 6 March 2006 (VPL.0100.0073.0078 at .0232-0233).

¹⁶⁰⁵ T5730.34-35 (J O'Brien).

¹⁶⁰⁶ T5730.23-27 (J O'Brien).

¹⁶⁰⁷ Exhibit RC0292, Diary entries of Sandy White (7 April 2006) (VPL.0100.0096.0157 at .0170).

¹⁶⁰⁸ T5735.7-11 (J O'Brien).

¹⁶⁰⁹ T5734.37-41 (J O'Brien).

¹⁶¹⁰ Counsel Assisting Submissions at p 418 [1814.6], Vol 2.

¹⁶¹¹ T5721.1-7 (J O'Brien).

¹⁶¹² Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [163] (VPL.0014.0040.0001 at .0032).

utilised general information about Mr Cooper that had earlier been provided by Ms Gobbo. But the approach to Mr Cooper was developed by Purana Taskforce investigators using their own skills and experience. The approach to be used was a straightforward and orthodox one. The arrest team and the post arrest approach did not conform to whatever suggestions Ms Gobbo may have made.¹⁶¹³

- 52.244 Counsel Assisting's submissions at [1815]-[1818], under the heading "Provision of advice from Ms Gobbo to Victoria Police on how to get Ms Cooper 'to roll'" are a further example of the vice of placing Ms Gobbo at the centre of the narrative and failing to distinguish between information sought from her by Victoria Police and Ms Gobbo's practice of inserting herself into events where her presence was neither necessary nor desired. Victoria Police, and Mr O'Brien in particular, did not need or want Ms Gobbo's advice about how to persuade Mr Cooper to cooperate with Victoria Police. Mr O'Brien led a team of highly trained and dedicated officers who understood the methodologies that could be employed to persuade a person to cooperate. The background information that Ms Gobbo had provided about Mr Cooper was utilised. Her advice about how investigators could persuade Mr Cooper to cooperate was not.

Meetings involving members of Victoria Police in preparation for Mr Cooper's arrest

- 52.245 On 18 April 2006, Mr O'Brien met with Mr Flynn, Mr Kelly and Sandy White to discuss [PII] Mr Cooper following his impending arrest.¹⁶¹⁴ In their discussion of this meeting,¹⁶¹⁵ Counsel Assisting note that Sandy White was Ms Gobbo's controller. The unstated implication is that Sandy White was at the meeting in that capacity. However, they fail to note Mr Flynn's evidence (despite it being in the same paragraph of Mr Flynn's statement relied on by Counsel Assisting to establish that the meeting of 18 April 2006 occurred) that Sandy White was probably at the meeting "because of his expertise in [PII] and could, therefore, provide input on the [PII] [Mr Cooper] in persuading him to assist police and then on [excluded on PII grounds but the Commissioner is referred to the transcript which is important]".¹⁶¹⁶ Sandy White was not asked why he attended the meeting, and Mr O'Brien had no independent recollection of it.¹⁶¹⁷ On the basis of that evidence, the likelihood is that Sandy White was at this meeting not because he was Ms Gobbo's controller, but for the reasons explained by Mr Flynn. In any case, in circumstances where Sandy White was not asked why he attended the meeting, it is not open to the Commissioner to conclude that he attended for the reason implied by Counsel Assisting.
- 52.246 On 19 April 2006, Mr O'Brien attended a meeting with Sandy White, Peter Smith and Mr Flynn. Counsel Assisting refer, at [1822], to the notation in the relevant ICR of that meeting, but do not refer to Mr O'Brien's evidence about this meeting. Mr O'Brien's evidence was that the reference to discussion of tactics "post-arrest" was about the kind of sentencing offer that would be put to Mr Cooper in exchange for his cooperation.¹⁶¹⁸ Mr O'Brien said that this would have been about what Victoria Police knew of his personal circumstances, based on information that the SDU had received from Ms Gobbo over a period of time and on information that Victoria Police knew from Mr Cooper's previous arrests.¹⁶¹⁹ Among other things, Mr Cooper had previously indicated a willingness to possibly cooperate but that he would not talk because he was more

¹⁶¹³ T5735.39-44 (J O'Brien); T5737.4-6 (J O'Brien).

¹⁶¹⁴ Counsel Assisting Submissions at p 420 [1821], Vol 2.

¹⁶¹⁵ Counsel Assisting Submissions at p 420 [1821], Vol 2.

¹⁶¹⁶ [PII]

¹⁶¹⁷ T5731.26 – T5733.30 (J O'Brien).

¹⁶¹⁸ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [162] (VPL.0014.0040.0001 at .0032).

¹⁶¹⁹ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [162] (VPL.0014.0040.0001 at .0032).

scared of those he was working for than he was of Victoria Police. As Tony Mokbel had absconded on bail and was in hiding, Mr O'Brien considered that the threat level for Ms Cooper had diminished somewhat.¹⁶²⁰

- 52.247 As noted earlier, on 19 April 2006, Mr Overland and Mr O'Brien met with Mr Coghlan QC to discuss what sentence the DPP would be willing to recommend in the event that Mr Cooper cooperated.¹⁶²¹ The question of adjourning the plea hearing scheduled for 1 May 2006 was also discussed. Seeking the advice of the DPP was commonplace in such circumstances; there was nothing unusual, or improper, about Mr Overland and Mr O'Brien doing so in relation to Mr Cooper.

Meeting in preparation for Mr Cooper's arrest

- 52.248 Counsel Assisting submit that Mr O'Brien was informed of "what occurred" during a meeting between Ms Gobbo, Sandy White, Peter Smith and Mr Green on 20 April 2006.¹⁶²² The implication is that Mr O'Brien was informed of the details of the discussion extracted at [1824]. The sole piece of evidence relied on by Counsel Assisting is a diary entry of Peter Smith indicating that Mr O'Brien had been updated about the conversation of 20 April 2006.
- 52.249 Mr O'Brien's evidence was that he was not made aware of the discussion and he gave evidence that the SDU did not raise the issues with him more generally.¹⁶²³ Mr O'Brien's diary does not record him receiving this information. Mr O'Brien's evidence, and the absence of any diary entries to this effect, is consistent with the Source Management Log, which does not record this information being disseminated to Mr O'Brien or the issues being raised with him more generally.¹⁶²⁴ Further, if Mr O'Brien had been informed about the discussion, it is likely to have been a discussion he would remember.
- 52.250 The state of the evidence does not permit the Commission to be satisfied that, on the morning of 21 April 2006, Mr O'Brien was given the detail of the lengthy conversation that took place between Ms Gobbo and her handlers the previous evening. Indeed, it is highly unlikely that he did. The conversation between Ms Gobbo and her handlers was wide-ranging and general in nature. It lasted for more than six hours, concluding just after 1 am on 21 April 2006.¹⁶²⁵ Much of it did not constitute relevant intelligence of the kind that would be disseminated to Mr O'Brien in any event, much less in the context of the heavy workload that was confronting Mr O'Brien in the lead up to the arrests at Strathmore.
- 52.251 On the assumption that paragraph [1825] is intended to capture Mr O'Brien then he rejects what is put in that paragraph. He had no knowledge of any such deception. The evidence does not establish that he did. Even if Mr O'Brien was told that Ms Gobbo anticipated that Mr Cooper would ask for her upon his arrest and that the SDU members had raised with her their ethical concerns about that (which he does not accept), there is no evidence that Mr O'Brien believed that she would actually attend upon Mr Cooper's arrest or that he wanted her to attend. His evidence was to the opposite effect.

¹⁶²⁰ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [162] (VPL.0014.0040.0001 at .0032).

¹⁶²¹ Counsel Assisting Submissions at p 420 [1823], Vol 2.

¹⁶²² Counsel Assisting Submissions at p 424 [1826], Vol 2.

¹⁶²³ T5746.7-8 (J O'Brien); T5746.18-19 (J O'Brien).

¹⁶²⁴ Exhibit RC0281 – ICR3838 (028), 20 April 2006 (VPL.2000.0003.1835 at .1839-1842).

¹⁶²⁵ Exhibit RC0282 – Transcript of meeting between Ms Nicola Gobbo, Mr Peter Smith, Mr Green and Mr Sandy White, 20 April 2006 (VPL.0005.0097.0011 at .0283).

Chronology of circumstances surrounding Mr Cooper's arrest

- 52.252 Counsel Assisting submit¹⁶²⁶ that the Purana Taskforce Posse Phase One Operation Order¹⁶²⁷ "demonstrates the significance of information implicating Mr Cooper which was supplied by his lawyer Ms Gobbo". It does the opposite. The Operation Order is useful because it provides context as to the wide ranging intelligence gathering work that was being undertaken by the Purana Taskforce in connection with Mr Cooper outside of the information provided by Ms Gobbo.
- 52.253 A detailed response to the circumstances surrounding Mr Cooper's arrest is found elsewhere in Part 2 of these submissions. For present purposes, DSS O'Brien attended the scene after Mr Cooper's arrest inside the drug laboratory, spoke to him and arranged the ^{PII} [REDACTED] handover.¹⁶²⁸ Mr O'Brien then returned to St Kilda Road Police Station.
- 52.254 At approximately 4:25 pm, Ms Gobbo attended St Kilda Road Police Station and spoke with [Mr Agrum] (who had been arrested with Mr Cooper) and then with Mr Cooper. She left at approximately 5:45 pm. She had attended after both men requested her attendance.
- 52.255 At 6:50 pm, Mr O'Brien spoke to Mr Cooper at St Kilda Road in the presence of Mr Flynn and Peter Smith. Mr O'Brien told Mr Cooper that, if he were to plead guilty and fully cooperate, the DPP's position was that it would not oppose a total sentence of 8 years imprisonment in respect of his two sets of earlier charges and this matter.¹⁶²⁹ At some stage subsequent to these discussions, Mr Cooper asked to speak to Ms Gobbo again. Mr Flynn facilitated that call and Ms Gobbo returned to St Kilda Road. Shortly thereafter, Mr O'Brien had a discussion with Ms Gobbo.¹⁶³⁰
- 52.256 DSS O'Brien does not recall when he learned that Ms Gobbo was coming to St Kilda Road Police Station to advise Mr Cooper at his request.¹⁶³¹ He does not recall any discussion with Mr Flynn or anyone else prior to her arrival (on the second occasion).¹⁶³² Counsel Assisting's submission that it was likely that Mr Flynn had briefed Mr O'Brien on Ms Gobbo's first attendance at St Kilda Road should not be accepted.¹⁶³³ Mr Flynn's evidence was that he was "sure at one stage I would have alerted him to the fact",¹⁶³⁴ but he went on immediately to say that it was not normal for Mr O'Brien to be informed that an accused person had requested legal advice, who the legal adviser was and how the legal adviser had provided advice (that is, whether by phone or in person).¹⁶³⁵ Mr Flynn said that Mr O'Brien "wouldn't need to know" those details.¹⁶³⁶ Mr Flynn then clarified that he "suspect[ed]" that at some stage he had updated him.¹⁶³⁷ That is not evidence that Mr Flynn told Mr O'Brien that Ms Gobbo had attended and spoken to Mr Cooper (on the first occasion). Indeed, Mr Flynn's evidence reveals that he had no memory of doing so and that he could do no more than speculate about what had occurred. Further, on the first occasion, Ms Gobbo was there for a total of only about 90 minutes and saw both [Mr Agrum] and Mr Cooper in that period.

¹⁶²⁶ Counsel Assisting Submissions at p 424 [1827], Vol 2.

¹⁶²⁷ Untendered Purana Taskforce, Operation Posse, Phase One, Operation Order, execution date to be determined (VPL.0099.0117.0289).

¹⁶²⁸ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [170] (VPL.0014.0040.0001 at .0034).

¹⁶²⁹ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [172] (VPL.0014.0040.0001 at .0034).

¹⁶³⁰ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [174] (VPL.0014.0040.0001 at .0034).

¹⁶³¹ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [174] (VPL.0014.0040.0001 at .0034).

¹⁶³² T5751.37-41 (J O'Brien); T5755.20-24 (J O'Brien).

¹⁶³³ Counsel Assisting Submissions at p 427 [1831.13], Vol 2.

¹⁶³⁴ T7280.10-13 (D Flynn).

¹⁶³⁵ T7280.17-23 (D Flynn).

¹⁶³⁶ T7280.22-23 (D Flynn).

¹⁶³⁷ T7280.28 (D Flynn).

As the Inspector, Mr O'Brien was not involved in processing the two men. More junior officers did that work.

- 52.257 Counsel Assisting's submission¹⁶³⁶ that it is likely that Mr O'Brien was still in the interview room with Mr Cooper when he asked for Ms Gobbo to be called a second time should not be accepted.
- 52.258 Mr O'Brien's evidence was that he was shocked,¹⁶³⁹ annoyed¹⁶⁴⁰ and blind-sided by Ms Gobbo's attendance.¹⁶⁴¹ Consistently, Sandy White recalls that Mr O'Brien was "not happy" that Ms Gobbo turned up,¹⁶⁴² and Mr Flynn recalled hearing that Mr O'Brien was shocked.¹⁶⁴³ Mr O'Brien did not think Ms Gobbo should have represented Mr Cooper.¹⁶⁴⁴
- 52.259 Mr O'Brien had not taken advice about what to do if Ms Gobbo attended St Kilda Road because he did not anticipate that she would turn up.¹⁶⁴⁵ Mr O'Brien expected, on the basis of discussions he had with the SDU leading up to the arrest of Mr Cooper, that the SDU would have a cover story for her non-attendance and that Mr Cooper would need to call another lawyer.¹⁶⁴⁶ He accepted that it was likely that there were discussions about what reason could be given for her not attending St Kilda Road in the event that Mr Cooper asked for her.¹⁶⁴⁷ Consistently, Sandy White gave evidence that he contemplated arresting Ms Gobbo to prevent her from attending.¹⁶⁴⁸
- 52.260 Mr O'Brien had no recollection of the SDU warning him that Ms Gobbo had expressed a determination to be there.¹⁶⁴⁹ He was not aware of the plans the SDU had in place for how to manage Ms Gobbo's attendance.¹⁶⁵⁰ While Mr O'Brien accepted that it was "strange" that he was not told,¹⁶⁵¹ there was no evidence to the contrary.¹⁶⁵² Indeed, the ICR for 22 April 2006 is consistent with Mr O'Brien's recollection – it records him asking to be apprised of any contact between Mr Cooper and Ms Gobbo immediately.¹⁶⁵³ He would hardly have given that instruction if he knew that Ms Gobbo was going to attend St Kilda Road.
- 52.261 Counsel Assisting submit that Mr O'Brien was aware by this time that Ms Gobbo was prepared to act in conflict with her duties as a lawyer and so must have contemplated her attendance.¹⁶⁵⁴ Mr O'Brien's answer was 'going on the material you've been through – yes'.¹⁶⁵⁵ That answer underscores the grave difficulties that attend hindsight reasoning. At the time, Mr O'Brien did not know about Ms Gobbo's engagement with Mr McGrath and had limited knowledge of what had occurred with Mr Thomas. The question was asked on the basis of a false premise. There is no basis for the Commission to conclude that Mr O'Brien knew, at the time these events unfolded, that

¹⁶³⁸ Counsel Assisting Submissions at pp 428-429 [1831.16], Vol 2.

¹⁶³⁹ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [175] (VPL.0014.0040.0001 at .0034-0035).

¹⁶⁴⁰ T5755.10-11 (J O'Brien).

¹⁶⁴¹ T5759.27-29 (J O'Brien).

¹⁶⁴² T3994.4-7 (S White).

¹⁶⁴³ T7280.45-47 (J O'Brien).

¹⁶⁴⁴ T5739.22-24 (J O'Brien).

¹⁶⁴⁵ T5741.22-24 (J O'Brien).

¹⁶⁴⁶ T5720.42-46 (J O'Brien); T3826.42-47 (S White).

¹⁶⁴⁷ T5721.1-2 (J O'Brien).

¹⁶⁴⁸ T5748.17-22 (J O'Brien).

¹⁶⁴⁹ T5737.20-25 (J O'Brien); T5739.37-38 (J O'Brien).

¹⁶⁵⁰ T5753.46 – T5754.19 (J O'Brien).

¹⁶⁵¹ T5754.7-13 (J O'Brien).

¹⁶⁵² Other witnesses who were present at St Kilda Road could only speculate as to what Mr O'Brien knew; see, for example, T6801.19-21 (D Flynn); T6819.11-15 (D Flynn).

¹⁶⁵³ Exhibit RC0281 – ICR3838 (028), 22 April 2006 (VPL.2000.0003.1835 at .1844).

¹⁶⁵⁴ T5721.32-35 (J O'Brien).

¹⁶⁵⁵ T5721.32-35 (J O'Brien).

- Ms Gobbo was likely to attend and represent Mr Cooper. Her attendance was highly unusual behaviour that no one would have expected.
- 52.262 Whatever the precise circumstances in which Mr O'Brien came to know that Ms Gobbo was at St Kilda Road, or was on her way to St Kilda Road, he did not tell Ms Gobbo when he saw her that she should leave.¹⁶⁵⁶ He candidly admits that he should have.¹⁶⁵⁷ He was "blind-sided" by the situation, being one he had "never encountered anything like" before, and he was conscious of Mr Cooper's legal right to have his lawyer of choice.¹⁶⁵⁸ It was, as former Chief Commissioners Nixon, Overland and Lay observed in evidence, a difficult and unusual situation.¹⁶⁵⁹ Mr O'Brien, as the Inspector in charge, had the burden of deciding what to do and, with the benefit of hindsight, he accepts that he should have made different decisions.
- 52.263 Mr O'Brien was not surprised that, when Mr Cooper asked to speak to Ms Gobbo, Detective Flynn facilitated the call.¹⁶⁶⁰ Detective Flynn could hardly have done anything else. Mr Cooper had a right to a legal representative of his choice. Mr O'Brien believed that it was not for Detective Flynn or anyone else at the station that night to deny him the right to call the lawyer of his choice.¹⁶⁶¹ Numerous witnesses before the Commission appreciated the bind that Mr Flynn was in.¹⁶⁶²
- 52.264 Accordingly, after Ms Gobbo arrived, DSS O'Brien treated her as he would have any other lawyer who attended St Kilda Road in response to the arrest of a client. He informed her of Mr Cooper's situation and the DPP's position on sentence if Mr Cooper was to cooperate.¹⁶⁶³ He also informed Ms Gobbo about security measures for Mr Cooper.
- 52.265 Mr O'Brien was not present when Ms Gobbo spoke to Mr Cooper on the second occasion.¹⁶⁶⁴ Counsel Assisting submit that he was, relying on the transcript of a meeting between Ms Gobbo Peter Smith and Mr Green, and several passages of Mr Flynn's cross-examination.¹⁶⁶⁵ The cross-examination passages refer back to the transcript. Ms Gobbo had no recollection of the meeting,¹⁶⁶⁶ and Mr O'Brien said that he was not in the room with Ms Gobbo and Mr Cooper at any time.¹⁶⁶⁷ As such, the only evidence that Mr O'Brien was present arises from the transcript of the discussion between Ms Gobbo and her handlers. That transcript is not a sufficient basis to conclude that Mr O'Brien was present at the meeting.
- 52.266 In any case, even if Mr O'Brien was briefly present, he did not witness Mr Cooper crying, taking Ms Gobbo's hands in his, telling her he loved her and saying that he would not cooperate with police unless she told him to.¹⁶⁶⁸ Mr O'Brien also gave evidence that there was no agreement by those present not to speak of this event. Ms Gobbo's account of this event is not to be believed.¹⁶⁶⁹ Ms Gobbo's lack of credibility is addressed in Part 1 of these submissions. This version of the events is an

¹⁶⁵⁶ T5762.14-15 (J O'Brien).

¹⁶⁵⁷ T5762.17-19 (J O'Brien).

¹⁶⁵⁸ T5762.28-31 (J O'Brien).

¹⁶⁵⁹ T11614.31-40 (C Nixon).

¹⁶⁶⁰ T5752.44-46 (J O'Brien).

¹⁶⁶¹ T5753.2-4 (J O'Brien).

¹⁶⁶² See, for example, T11615.4-24 (C Nixon); T2976.33 – T2977.33 (A Allen).

¹⁶⁶³ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [174] (VPL.0014.0040.0001 at .0034).

¹⁶⁶⁴ Exhibit RC0281 – ICR3838 (028), 22 April 2006 (VPL.2000.0003.1835 at .0845); T5760.47 – T5761.34 (J O'Brien).

¹⁶⁶⁵ Counsel Assisting Submissions at pp 429-430 [1831.19.2], Vol 2.

¹⁶⁶⁶ T13348.13-32 (N Gobbo).

¹⁶⁶⁷ T5760.47 – T5761.34 (J O'Brien).

¹⁶⁶⁸ T5765.25 – T5766.3 (J O'Brien).

¹⁶⁶⁹ Exhibit RC0552B – Transcript of Discussion between Sandy White, Officer Green and Ms Gobbo, 9 June 2006 (VPL.0005.0097.0536 at .0714).

embellishment that Ms Gobbo likely intended would generate attention and sympathy from her SDU handlers.

- 52.267 More importantly, Mr Cooper did not give unprompted evidence about this event. When asked a leading question about these events, he said only that it was "possible" that it had occurred.¹⁶⁷⁰ Unled, his evidence was that he took Ms Gobbo's hands and comforted her when she arrived at St Kilda Road and that it was Ms Gobbo who was crying and professing distress at his predicament – but that event occurred in private.¹⁶⁷¹ Mr Cooper later agreed – in response to a leading question – that he had spoken the words alleged by Ms Gobbo, but the question of whether any police officers were present when that occurred was not clarified.¹⁶⁷² The way that Mr Cooper's evidence was adduced makes it very difficult for the Commission to determine what actually happened in the room between Ms Gobbo and Mr Cooper, especially given that neither witness can be approached as a witness of truth on an issue of this kind.
- 52.268 Counsel Assisting also submit that Mr O'Brien was part of a meeting with Ms Gobbo at the Purana Taskforce offices that took place at about 9 pm on the evening of the arrests.¹⁶⁷³ Counsel Assisting have not referred to Mr O'Brien's evidence that he had no recollection of attending the meeting.¹⁶⁷⁴ There is no clear evidence of his attendance. The relevant ICR records a "meeting" taking place at 9 pm, and that Mr O'Brien then left the room.¹⁶⁷⁵ The ICR does not record what, if anything was discussed. It is far from clear that this was a "meeting". The ICR may mean nothing more than that the relevant individuals "met" in the sense of seeing each other. Further, by 9:07 pm at the latest the "meeting" is over, and Ms Gobbo is on the telephone to one of her handlers.¹⁶⁷⁶
- 52.269 The others present, Green and Smith, did not give evidence regarding this second meeting with Gobbo.
- 52.270 Counsel Assisting also state that "after Mr O'Brien had advised them that Ms Gobbo was not required any further that night, the meeting between Ms Gobbo and the handlers ended".¹⁶⁷⁷ The unstated implication in that submission is that Mr O'Brien was tasking Ms Gobbo or was otherwise expecting to utilise her and that Ms Gobbo was awaiting instructions from him. That is not what occurred. The entries in the ICR are out of sequence. Ms Gobbo and her handlers parted at 0125. At 0225, Mr O'Brien is recorded as updating the SDU ^{PII} [REDACTED]. The Source Management Log bears the notation "no need for further from HS tonight". It is not clear whether this records something Mr O'Brien said, or is an additional notation made by the SDU. This entry was not put to Mr O'Brien in cross-examination and he did not have an opportunity to respond to it. As such, there is no basis to infer that Mr O'Brien was involved in tasking Ms Gobbo on 22 April 2020, or that Ms Gobbo was with her handlers awaiting instructions from him.
- 52.271 The following day, Mr O'Brien attended to various duties connected to Mr Cooper's arrest and his decision to cooperate with Victoria Police.¹⁶⁷⁸ Mr O'Brien's diary does not record the meeting described by Counsel Assisting at [1834]. Mr O'Brien's diary shows that at 0800 he met with inspector Wilson, Senior Sergeant Fletcher, Senior Sergeant

¹⁶⁷⁰ T8712.43 (Cooper).

¹⁶⁷¹ T8699.40 – T8700.9 (Cooper).

¹⁶⁷² T8713.44 – T8714.2 (Cooper).

¹⁶⁷³ Counsel Assisting Submissions at p 431 [1831.20], Vol 2.

¹⁶⁷⁴ T5767.38-40 (J O'Brien).

¹⁶⁷⁵ Exhibit RC0281 – ICR3838 (028), 22 April 2006 (VPL.2000.0003.1835 at .1845); T5767.43-44 (J O'Brien).

¹⁶⁷⁶ Exhibit RC0281 – ICR3838 (028), 22 April 2006 (VPL.2000.0003.1835 at .1845).

¹⁶⁷⁷ Counsel Assisting Submissions at p 433 [1831.27], Vol 2.

¹⁶⁷⁸ Untendered Diary of Mr James (Jim) O'Brien, 23 April 2006 (VPL.0005.0126.0107 at .0107).

- O'Connor, DS Biggin and Senior Sergeant O'Connell. His diary does not record any discussion about Ms Gobbo until 1340, when he received an update from Peter Smith.
- 52.272 Mr O'Brien was troubled by Ms Gobbo's attendance at St Kilda Road, and discussed his concerns with her controller, Sandy White.¹⁶⁷⁹ It did not occur to him that Ms Gobbo had potentially committed a criminal offence by attending at St Kilda Road at the request of Mr Cooper.¹⁶⁸⁰ As he saw it the "ethical issue was hers – she was the one that made that decision".¹⁶⁸¹ Mr O'Brien did not raise his concerns about Ms Gobbo having attended the station that night with his superiors,¹⁶⁸² with the possible exception of Tony Biggin.¹⁶⁸³ Mr O'Brien did not look ahead to what might happen in future court proceedings.¹⁶⁸⁴
- 52.273 Mr O'Brien was the Inspector in charge and, at that time, Inspectors were being given more and more responsibility and authority (see Part 1 of these submissions). He was an experienced and confident police officer who had joined the police force in the mid-1970s when officers were accustomed to making their own decisions. At the time of these events, it was for him to deal with the unfortunate situation that had arisen. It is not surprising that an Inspector like Mr O'Brien, working within the structure and culture at Victoria Police at the time, took that view and did not go to DC Overland with the issue. Had he gone to DC Overland then DC Overland's evidence suggests that he would have shared Mr O'Brien's view that they could not deprive Mr Cooper of his legal right to his lawyer of choice.¹⁶⁸⁵ In contrast, when Mr O'Brien recognised that he did not know the law on a different issue that had arisen that night, he briefed up.¹⁶⁸⁶
- 52.274 It is clear from the SDU records that Ms Gobbo knew that her conduct was unethical and was determined to proceed.¹⁶⁸⁷ Mr O'Brien readily accepted, having read that exchange, that it was essential for the SDU to have taken action before Mr Cooper's arrest.¹⁶⁸⁸ Mr O'Brien maintained that these issues were not raised with him¹⁶⁸⁹ – evidence that is supported by the ICR itself.¹⁶⁹⁰
- 52.275 ADI O'Brien's response to Ms Gobbo's attendance at St Kilda Road on the night, seen in the context in which it occurred, is explicable and understandable. It was not right, but nor was his conduct knowingly wrong.
- 52.276 The position that Mr O'Brien was put in when Ms Gobbo unexpectedly arrived at St Kilda Road was acknowledged by former Chief Commissioners of Police to be an unenviable one.
- 52.277 The effect of Mr Overland's evidence was that Mr O'Brien could not have told Mr Cooper that police would not contact his nominated lawyer, Ms Gobbo.¹⁶⁹¹
- 52.278 The effect of Ms Nixon's evidence was that she obviously was not in the position of the police members on the day and did not know all of the circumstances and that the members had to make a judgment call. She said they decided to proceed with Mr

¹⁶⁷⁹ T5748.14-15 (J O'Brien).

¹⁶⁸⁰ T5748.24-28 (J O'Brien).

¹⁶⁸¹ T5762.47 – T5763.2 (J O'Brien); T7230.33-34 (D Flynn).

¹⁶⁸² T5769.39-42 (J O'Brien).

¹⁶⁸³ T5769.45 – T5770.21 (J O'Brien).

¹⁶⁸⁴ T5638.23-24 (J O'Brien).

¹⁶⁸⁵ T12143.29-43 (S Overland).

¹⁶⁸⁶ T1152.2-18 (S Overland).

¹⁶⁸⁷ T5743 (J O'Brien); Exhibit RC0300 – Transcript of Discussion between Peter Smith, Sandy White, Officer Green, an unknown male and Ms Gobbo, 20 April 2006 at p 273 (VPL.0005.0097.0011 at .0283).

¹⁶⁸⁸ T5744.31-36 (J O'Brien).

¹⁶⁸⁹ T5747.18-19 (J O'Brien).

¹⁶⁹⁰ T5746.45-47 (J O'Brien).

¹⁶⁹¹ T12287.12-23 (S Overland).

Cooper, while other members might have exercised their judgment differently. Ms Nixon said that perhaps they should have stopped and taken whatever steps they could to find other legal representation and/or sought legal advice. Ms Nixon said that hindsight is a wonderful thing, but the members were there, they had to make a call and they did.¹⁶⁹² It was the wrong one.

- 52.279 There was also the added complexity raised by Ms Gobbo's evidence, which was that if she did not attend St Kilda Road and speak to Mr Cooper at his request then they could have become suspicious and, consequently, she felt compelled to go.
- 52.280 Victoria Police officers were trained in the fundamental rights of those under arrest – principal among which was the right to a lawyer of their choice. Mr Cooper had exercised that right and had requested Ms Gobbo. As Mr O'Brien rightly identified, he could not speak with Mr Cooper about Ms Gobbo's status as a human source.¹⁶⁹³ To do so would have violated the terms of Ms Gobbo's registration as a source and Victoria Police directions concerning the use of human sources. It would also have placed Ms Gobbo's life in real and immediate danger.
- 52.281 Mr O'Brien did not raise his concerns with Ms Gobbo.¹⁶⁹⁴ As he rightly identified, he had no control over what she was determined to do.¹⁶⁹⁵ As Mr O'Brien saw it, Ms Gobbo's use as a human source had been authorised by Executive Command and managed and documented by the SDU.¹⁶⁹⁶ SDU members were present on the night, albeit for a different purpose. Mr O'Brien assumed that those handling Ms Gobbo and those who had authorised her use had considered and dealt with such issues.¹⁶⁹⁷
- 52.282 It is also to be recalled that the arrest of Mr Cooper came shortly after Ms Gobbo's registration as a human source and long before the full picture became clear. Mr O'Brien understood that Ms Gobbo was a prolific source but cannot possibly be expected to have understood from the few short months in which she had been informing that she was the person described in the Appendix to these submissions and a person who had no respect for her professional obligations.
- 52.283 It is also relevant that Mr O'Brien did not believe that Ms Gobbo's assistance was needed in order to secure Mr Cooper's cooperation, or that Mr Cooper had any real choice but to cooperate. The arrest at Strathmore was Mr Cooper's third arrest and he was on bail at the time. His earlier charges related to large commercial quantities and would have attracted a substantial sentence. Mr Cooper was facing a lengthy jail term, which would separate him from his children and family. He had been caught red-handed. His fear of Tony Mokbel was likely to have reduced in light of Mokbel's departure from Australia. The deal that he was being offered – 8 years and full cooperation – was far better than the likely alternative.¹⁶⁹⁸ Seen through that prism, it is understandable that Mr O'Brien did not contemplate that Ms Gobbo's representation of Mr Cooper on the night of his arrest might have harmed his interests. As Mr O'Brien perceived it, Mr Cooper had no real alternative other than to take the very favourable terms that were being offered. Mr Cooper's evidence to the Commission was that if Ms Gobbo had not advised him to co-operate, he would have just pleaded guilty because

¹⁶⁹² T11618.43 – T11619.2 (C Nixon).

¹⁶⁹³ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [175] (VPL.0014.0040.0001 at .0034-0035).

¹⁶⁹⁴ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [175] (VPL.0014.0040.0001 at .0034-0035).

¹⁶⁹⁵ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [176] (VPL.0014.0040.0001 at .0035).

¹⁶⁹⁶ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [315] (VPL.0014.0040.0001 at .0058).

¹⁶⁹⁷ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [318] (VPL.0014.0040.0001 at .0059).

¹⁶⁹⁸ T5740.35-30 (J O'Brien); Exhibit RC0665 – Reasons for sentence, 23 February 2007 at [34]-[36] (RCMPI.0042.0004.0003 at _0009-0010).

he had been caught red-handed.¹⁶⁹⁹ Had he taken that course, he would likely still be in prison. That is not said to justify what occurred – Mr Cooper had the right to an independent lawyer. Mr O'Brien accepts that. But it explains, in part, Mr O'Brien's response to the situation.

Activities in late April 2006

- 52.284 Mr Cooper was in custody for the next 3 days, assisting Victoria Police.¹⁷⁰⁰ Mr O'Brien was not aware of any contact that Ms Gobbo had with Mr Cooper during that period.¹⁷⁰¹ Mr O'Brien was also not aware that she appeared for him at his filing hearing a few days after his arrest.¹⁷⁰²
- 52.285 On 24 April 2006, Mr O'Brien attended a briefing with Mr Flynn, DS Biggin, DS Grant and DS Steendam. Mr O'Brien was not cross-examined about this meeting. In circumstances where DS Grant and DS Steendam gave unchallenged evidence that they did not know that Ms Gobbo was a human source, the Commission cannot conclude that Ms Gobbo's identity, or issues about her representation of Mr Cooper, were discussed at this meeting. Accordingly, there is no evidentiary basis to conclude otherwise.
- 52.286 Mr O'Brien met with Mr Cooper on a number of occasions in the weeks and months that followed but he was not involved in the process of taking statements from him – the visits were welfare checks.¹⁷⁰³ Counsel Assisting describe an update that Mr O'Brien received from Mr Flynn on 21 May 2006 after he had a lengthy meeting with Ms Gobbo. Despite the way this meeting is presented in Counsel Assisting's submissions, Mr Flynn could not recall the meeting nor what was discussed.¹⁷⁰⁴ Mr O'Brien's diary does not record what Mr Flynn told him.
- 52.287 Mr O'Brien received very little information about Mr Cooper from the SDU that was sourced from Mr Gobbo. The information he did receive did not reveal Ms Gobbo's ongoing interactions with Mr Cooper in any detail. As is set out in Mr O'Brien's statement,¹⁷⁰⁵ the information he received principally related to the content of conversations Ms Gobbo had with third persons about Mr Cooper, rather than information about Mr Cooper specifically. Where Mr O'Brien was informed of contact between Ms Gobbo and Mr Cooper it was sporadic and general in nature. Otherwise, there is evidence that, on 3 August 2006, Mr O'Brien was informed, among other things, that Ms Gobbo had visited Mr Cooper and Mr Thomas in prison.¹⁷⁰⁶

Provision of Mr Cooper's statements and listening device transcripts to Ms Gobbo

- 52.288 Mr O'Brien was not involved in the process of taking statements from Mr Cooper.¹⁷⁰⁷ He was unaware that Mr Cooper had amended his statements.¹⁷⁰⁸ It is to be recognised however, that a witness amending a draft statement is not unusual, nor inherently sinister. Events and details are recalled over time, and memories refreshed. There would be very few police officers or lawyers who have taken statements of detail from start to finish without any changes being made in the process. In the context of a

¹⁶⁹⁹ T8717.2-6 (Cooper).

¹⁷⁰⁰ T5770.23-25 (J O'Brien).

¹⁷⁰¹ T5770.41-45 (J O'Brien).

¹⁷⁰² T5771.17-19, 24-25 (J O'Brien).

¹⁷⁰³ T5775.29-30 (J O'Brien).

¹⁷⁰⁴ T7008.39-45 (D Flynn).

¹⁷⁰⁵ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [184], [188] and [190] (VPL.0014.0040.0001 at .0036-0038).

¹⁷⁰⁶ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [196] (VPL.0014.0040.0001 at .0039).

¹⁷⁰⁷ T5682.11-15 (J O'Brien); T5775.27-30 (J O'Brien).

¹⁷⁰⁸ T5787.26-28 (J O'Brien).

witness such as Mr Cooper, there is a real likelihood that their willingness to give evidence about particular people or events might ebb and flow over time. And, as Mr O'Brien said, "part and parcel of taking witness statements is of course seeking to corroborate everything in their statements, particularly where it's a criminal witness".¹⁷⁰⁹ Mr Cooper's evidence was that Ms Gobbo did not influence the content of his statements.¹⁷¹⁰

- 52.289 Mr O'Brien did not recall being involved in discussions on about 8 June 2006 about Ms Gobbo being given access to Mr Cooper's draft statements and draft transcripts from listening devices.¹⁷¹¹ He did not recall being aware that Ms Gobbo was shown the statements.¹⁷¹² Mr O'Brien's evidence was that, while he did not recall this occurring, he believed "it would have been just about assuring herself about her not being outed in them, but certainly not making additions or deletions in relation to any statement made by a witness".¹⁷¹³ Mr O'Brien did not know why listening device transcripts might have been shown to her.¹⁷¹⁴
- 52.290 Mr O'Brien readily made concessions about this event. He accepted that a consequence of the way in which Ms Gobbo interacted with Mr Cooper in the course of his statements being prepared was that the defence might never get to explore whether the information was the truthful evidence of Mr Cooper or had been influenced by Ms Gobbo.¹⁷¹⁵ But he also did not accept the suggestion that Ms Gobbo was given information for the purpose of influencing Mr Cooper as to the content of his statements.¹⁷¹⁶ Critically, it was well known that the SDU recorded all of its interactions with Ms Gobbo and that, accordingly, the fact of transcripts being given to her would be recorded.¹⁷¹⁷
- 52.291 Mr O'Brien was aware that Ms Gobbo was shown some briefs of evidence.¹⁷¹⁸ Mr O'Brien understood that this was about assuring her that her position as a human source had not been exposed to people who would want to cause her harm.¹⁷¹⁹
- 52.292 Outside of these interactions, there is no evidence at all that Mr O'Brien had any knowledge of Ms Gobbo's ongoing interactions with Mr Cooper. Mr O'Brien gave no such evidence and the ICRs do not contain any notations that the information Ms Gobbo provided the SDU about her interactions with Mr Cooper was disseminated to Mr O'Brien.

Counsel Assisting's proposed findings and proposed recommendations relating to Mr Cooper

Proposed evidentiary findings at paragraph [1899] of Counsel Assisting's submissions

- 52.293 In relation to the proposed evidentiary findings at paragraphs [1899.1] to [1899.7], Mr O'Brien refers to paragraphs 52.140, to 52.146 above.

¹⁷⁰⁹ T5790.12-15 (J O'Brien).

¹⁷¹⁰ T8728.15-18 (Cooper)

¹⁷¹¹ T5778.18-19, 21-22 (J O'Brien).

¹⁷¹² T5779.30 (J O'Brien).

¹⁷¹³ T5779.33-37 (J O'Brien)

¹⁷¹⁴ T5780.28-31 (J O'Brien).

¹⁷¹⁵ T5791.15-38 (J O'Brien).

¹⁷¹⁶ T5784.8-15 (J O'Brien).

¹⁷¹⁷ T10129.9-14 (S Bateson).

¹⁷¹⁸ T5801.11 (J O'Brien).

¹⁷¹⁹ T5801.3-5, 19-20 (J O'Brien).

- 52.294 Mr O'Brien accepts that the proposed evidentiary findings at paragraphs [1899.8], [1899.9], [1899.10], [1899.11] and [1899.12], [1899.15], [1899.16], [1899.18], [1899.21] are open on the evidence.
- 52.295 In relation to paragraph [1899.13], Mr O'Brien accepted that he became officer in charge of the Purana Taskforce on about 13 September 2005. However, he does not accept the accuracy of the second sentence in that paragraph. As at 13 September 2005, Mr O'Brien did not know what information Ms Gobbo would provide in relation to Mr Cooper, or indeed any other person. Mr O'Brien accepts, however, at the time he prepared the Operational Plan in October 2005, one of the main investigative steps was to seek to obtain the assistance of Mr Cooper. Mr O'Brien also accepts that the completion of that step was assisted by information provided by Ms Gobbo to the extent that this information identified Mr Cooper as a person who was manufacturing drugs for Tony Mokbel and assisted Victoria Police to locate his laboratory.
- 52.296 In relation to paragraph [1899.14], Mr O'Brien accepts that he attended the meeting described. Among other things, he was told that there was to be a full debrief to be conducted with Ms Gobbo over the course of a week and that Ms Gobbo had told the SDU that Mr Luxmore was Tony Mokbel's current cook. At the meeting, strategies for the overall investigation were discussed, none of which were to involve Ms Gobbo.
- 52.297 In relation to paragraph [1899.17], Mr O'Brien does not accept that the matters in that paragraph, as a whole, are accurate and refers to paragraphs 52.234, 52.235 above. Mr O'Brien submits that the proposed finding that he was "concerned not to include in his diary that '3838' information which might indicate" that he knew that Ms Gobbo was acting for Mr Cooper is not open. Mr O'Brien was a diligent and detailed diarist. He made hundreds of diary notes recording information he received from the SDU that was sourced from Ms Gobbo. In relation to that information, he diligently, and in accordance with Victoria Police policy, referred to her by her registered human source number. Mr O'Brien also recorded interactions he had with Ms Gobbo in her capacity as a barrister. Where he did so, he referred to her by name. Consistently, Mr O'Brien diarised the telephone call with Ms Gobbo on 5 January 2006 and referred to Ms Gobbo by name.
- 52.298 Mr O'Brien adopted this practice in accordance with the Victoria Police directive as to the protection of human sources. Mr O'Brien was bound not to refer to Ms Gobbo by her informer number when recording intelligence disseminated to him by the SDU. Mr O'Brien was bound not to refer to Ms Gobbo by her informer number when recording her interactions with him in her capacity as a barrister. To do so would have created a real and obvious risk of compromise and would not have been an accurate record of the interaction.
- 52.299 It is submitted that the finding open to the Commissioner is that Mr O'Brien was aware that Ms Gobbo was acting for Mr Cooper in relation to earlier offending for which he had been charged and was on bail and was providing information to the SDU about his current criminal activity.
- 52.300 The proposed finding in paragraph [1899.19] is not open. Mr O'Brien accepts that he and Mr Overland attended the meeting referred to and otherwise refers to paragraphs 52.107 to 52.117 above. The meeting cannot be properly understood outside the context and purpose described in those paragraphs.
- 52.301 The proposed finding at paragraph [1899.20] is not open. There is insufficient evidence for the Commissioner to conclude that Mr O'Brien received the details of the discussion between Ms Gobbo and her handlers the previous evening. Indeed, for the reasons set out at paragraph 52.249 to 52.252 above, it is highly improbable that Mr O'Brien was

updated about the contents of the conversation, which was more than 6 hours in length and traversed a wide range of subject matter.

- 52.302 In relation to paragraph [1899.22], Mr O'Brien accepts that he attended at the scene of the arrests of Mr Cooper and Mr Agrum. He accepts that he was involved in some of the events of that evening as detailed in his statements and as set out above. He does not accept that he was involved in all events that occurred that evening, and to the extent that the word "intimately" is intended to suggest that he was, he says that the finding is not open. Mr O'Brien says that it is open to the Commissioner to conclude that he was involved in the events of 22 April 2006 as described in his statements and as set out above.
- 52.303 The proposed finding at [1899.23] is not open. Mr O'Brien accepts that ICR028 records that he told Peter Smith that Mr Cooper and "one other" were in custody and that the arrests were conducted [redacted] but that he believed they could be "kept quiet".¹⁷²⁰ His confidence that the arrests could be kept quiet was not because Ms Gobbo acting for Mr Cooper and Mr Agrum.
- 52.304 The ICR notation was read aloud to Mr O'Brien during his cross-examination, but he was not asked whether or not it was accurate, nor was he asked why he said that he believed the arrests could be kept quiet. The conversation in question took place at 1503, with the arrests having taken place at 2:21 pm. Mr O'Brien expressly denied that he knew, when he spoke to Peter Smith, that Mr Cooper and Mr Agrum had requested Ms Gobbo when Mr Flynn and Mr Kelly (respectively) had told them of their legal right to contact a lawyer,¹⁷²¹ and there is no evidence that he did know.
- 52.305 Moreover, as a matter of logic, the comment is likely to have been directed to the reality of a [redacted] raid taking place at 2:21 pm on a Saturday afternoon. Mr O'Brien's comment, as recorded by Peter Smith, was that the arrests had been "conducted [redacted] but that" Mr O'Brien believed that could be kept quiet. As a matter of common sense and logic, Mr O'Brien was communicating to Peter Smith that notwithstanding that the arrests had been conducted [redacted] in broad daylight, the discrete way in which the operation unfolded meant that they could be kept quiet.
- 52.306 The proposed finding at paragraph [1899.24] is not open. Mr O'Brien's diary records that he and Mr Ryan spoke to Mr Biggin about "464 implications". He does not accept that he briefed Mr Biggin and there is no evidence that he did.
- 52.307 The proposed finding in paragraph [1900] is not open. There is no evidentiary basis for it. As set out at paragraph 52.249 to 52.252 above, Mr O'Brien's diary contains no note of a discussion with Peter Smith on 21 April 2006 and he was not asked about their discussion under cross-examination. Peter Smith's diary simply reads "0701, 'On Duty @ office. Adv JOB re last night'".¹⁷²²
- 52.308 Further, for the reasons set out at paragraph 52.249 to 52.252 above, it is inherently unlikely that the communications between the SDU and Ms Gobbo were passed to Mr O'Brien not least because the conversation went for more than 6 hours. Further, Mr O'Brien evidence of his shock was corroborated by Sandy White and Mr Flynn, and he maintained his evidence under persistent cross-examination.

¹⁷²⁰ Exhibit RC0281 – ICR 3838 (028), 22 April 2006 (VPL.2000.0003.1835 at .1844-1845).

¹⁷²¹ T5751.23-25 (J O'Brien).

¹⁷²² Exhibit RC486 – Diary of Officer Peter Smith, 21 April 2006 (VPL.2000.0001.5454 at .5555).

52.309 However, Mr O'Brien accepts that it is open to the Commissioner to find that by attending on Mr Cooper on the day of his arrest in circumstances where she had been providing information about his criminal offending to Victoria Police, Ms Gobbo placed herself in a position of conflict. It is open to the Commissioner to find that Mr O'Brien knew that Ms Gobbo had a conflict of interest in relation to Mr Cooper by reason that she had provided information to police that led to his arrest. It is open to the Commissioner to find that Mr O'Brien did not take adequate steps to address the situation.

Proposed findings at paragraph [1901] of Counsel Assisting's submissions

- 52.310 As to paragraph [1901], Mr O'Brien accepts that between 16 September 2005 and 22 April 2006, Mr O'Brien knew the matters in paragraphs [1901.1]. As to paragraph [1901.2], Mr O'Brien knew that Ms Gobbo was acting for Mr Cooper in relation to charges arising from earlier offending for which he was on bail.
- 52.311 As to paragraph [1901.3], it is submitted that this finding is not open and that a greater degree of precision is required as to the terms of any finding directed to Mr O'Brien's knowledge of the conflicts of interest that arose.
- 52.312 As to the first conflict of interest, discussed above at 52.227, Mr O'Brien did not identify this conflict. For the reasons given above, Mr O'Brien did not appreciate that Ms Gobbo could not tell police that Mr Cooper was committing crimes if she was representing him in relation to earlier criminal offending. Therefore, the finding open to the Commissioner is that Mr O'Brien did not identify that Ms Gobbo was in a position of conflict when she provided such information to police in those circumstances.
- 52.313 As to the second conflict of interest, Mr O'Brien identified that conflict when it arose on 22 April 2006. Mr O'Brien accepts that it is open to the Commissioner to find that on that date, Ms Gobbo placed herself in a position of conflict by acting for Mr Cooper in circumstances where she had provided the information to Victoria Police which had led to his arrest. It is open to the Commissioner to find that Mr O'Brien identified this conflict when it arose.
- 52.314 In relation to paragraph [1901.4], Mr O'Brien accepts that Ms Gobbo's information about Ms Cooper assisted Victoria Police to locate his drug laboratory when it did.
- 52.315 The proposed finding in paragraph [1901.5] is not open on the evidence. Mr O'Brien did not know that Ms Gobbo intended to advise Mr Cooper on his arrest. Mr O'Brien did not task Ms Gobbo in relation to the advice that she might provide, nor was he aware of any other person doing so. There is no evidence that Mr O'Brien attempted to influence the advice that Ms Gobbo gave Mr Cooper. There is no evidence that Mr O'Brien knew what advice Ms Gobbo gave Mr Cooper on the evening of 22 April 2006. There is no credible evidence before the Commission as to what advice she gave. There is no basis for the Commissioner to find that Mr O'Brien knew that Ms Gobbo was being used to encourage Mr Cooper to implicate his associates.
- 52.316 In relation to paragraph [1901.6], there is no evidence at all to support this proposed finding and any recommendation based on such a finding would be unsafe. Mr O'Brien was under an obligation (at law and under Victoria Police policy) to take all reasonable steps to protect Ms Gobbo's identity. He acted consistent with that obligation. Mr O'Brien did not intend that Ms Gobbo's role would never be disclosed to Mr Cooper or anyone Mr Cooper made statements against. He intended and understood that any disclosure of Ms Gobbo's role would occur in accordance with the ordinary legal processes that attended the disclosure of information that might tend to identify a human source. To the extent that this concerned SDU holdings, Mr O'Brien frankly and

properly conceded that, based on his basic understanding of what material the police were required to disclose, he did not believe that the SDU holdings would contain such information. Nor was he responsible for making disclosure in legal proceedings. That is not one of the duties of an Inspector.

- 52.317 Mr O'Brien refers to Victoria Police's submissions about the disclosure issue in relation to Mr Cooper contained in Tranche 2.

Proposed finding at paragraph [1902] of Counsel Assisting's submissions

- 52.318 As to paragraph [1902], the proposed finding is vague, ambiguous and oppressive. It is also premised on incorrect and incomplete facts.
- 52.319 As to the factual matters in paragraphs [1902], they are addressed above.
- 52.320 As to the proposed finding itself, the imprecise nature of the finding makes it impossible for Mr O'Brien to meaningfully respond to it. First, it is not clear what 'involvement' in the prosecution of people Mr Cooper implicated that Counsel Assisting is referring to. Mr O'Brien must not be left to guess at such matters.
- 52.321 Second, it is not clear how any such involvement had the consequence that Mr O'Brien was aware of the 'continued use of Ms Gobbo against Mr Cooper'. Among other things, it is not clear what is meant by Victoria Police using Mr Gobbo "against" Mr Cooper.
- 52.322 Third, and in any case, there is no evidence that Mr O'Brien was involved in any such use or had knowledge of such use.
- 52.323 Fourth, the finding does not follow from the evidence set out in paragraph 1899 (to the extent that such evidence can be accepted, or at all).
- 52.324 Accordingly, the proposed finding at paragraph [1902] is oppressive and unreasonable. Counsel Assisting are invited to clarify the proposed finding or not to press it.

53 Section E Other Matters

- 53.1 Part E addresses other individuals in relation to whom Mr O'Brien is criticised in Volume 2 of Counsel Assisting's submissions. These submissions do not address the matters and other individuals raised in Volume 3 of Counsel Assisting's submissions. Counsel Assisting submit that it is open to the Commissioner to make certain findings against Mr O'Brien arising from his conduct in relation to Mr Bickley (a pseudonym),^{Mr Irons} Milad Mokbel, and Peter Pilarinos. For the reasons which follow, the recommended findings should not be made.

Mr Bickley

- 53.2 Mr Bickley was arrested on 15 August 2005 as part of Operation Quills. It was established in the course of that operation that Mr Bickley was working for Tony Mokbel.¹⁷²³ Ms Gobbo was briefed to represent Mr Bickley in his application for bail, which was heard on 31 August 2005. It was on this day that Ms Gobbo approached DSC Rowe and DS Mansell.
- 53.3 Ms Gobbo informed Victoria Police that Tony Mokbel was very concerned about the ramifications of Mr Bickley speaking to police.¹⁷²⁴ This was independently ascertained by Victoria Police surveillance activities.¹⁷²⁵ One of the main investigative steps of

¹⁷²³ Exhibit RC0467B – Investigation Plan for Operation Posse, 17 November 2005 at pp 4-5 (VPL.0100.0009.0001 at .0004-0005).

¹⁷²⁴ Exhibit RC0467B – Investigation Plan for Operation Posse, 17 November 2005 at p 2 (VPL.0100.0009.0001 at .0002).

¹⁷²⁵ Exhibit RC0467B – Investigation Plan for Operation Posse, 17 November 2005 at p 2 (VPL.0100.0009.0001 at .0002).

Operation Posse was to seek to obtain assistance from Mr Bickley. The Investigative Plan described the means by which this was to be achieved, which included increasing his motivation by the further investigation of his (then) current criminal activities and association with Tony Mokbel and by the use of ACC hearings.¹⁷²⁶

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- 53.4 In March 2006, Ms Gobbo passed a telephone from Mr Cooper to Mr Bickley.¹⁷²⁷ The SDU was aware that Mr Cooper had asked her to do so. Before handing the telephone to Mr Bickley, she sent a text message to herself, in order to obtain the number.¹⁷²⁸ Ms Gobbo was not tasked by Victoria Police with doing so; it was a decision she made herself. Her actions created a risk of compromise which was immediately identified by the SDU and drawn to the attention of Mr O'Brien.¹⁷²⁹
- 53.5 At [1416], Counsel Assisting state that, on the evidence, it is open to the Commissioner to find that the conduct of Victoria Police members in relation to the risk that Ms Gobbo would be compromised by her calling herself on the telephone she provided Mr Bickley demonstrates their forethought as to court disclosure potentially compromising Ms Gobbo and the method to avoid such disclosure. That finding is not open in relation to Mr O'Brien.
- 53.6 On 16 March 2006, the same day as Ms Gobbo sent the text to herself, the SDU recognised that her conduct had caused a risk of compromise “on CCR of this number, as well as being the only other person aware of both numbers at this time”.¹⁷³⁰ A decision was made not to submit IRs for those numbers, because of the potential for compromise. Evidently, the SDU was motivated by a concern for Ms Gobbo’s safety in the context of a specific piece of reckless conduct she had unilaterally engaged in and which deprived investigators of a valuable lead (though the information was later used). When it was made, the decision not to provide the numbers to the Purana Taskforce, confirmed in discussion with Mr O'Brien the following day,¹⁷³¹ prioritised Ms Gobbo’s safety over the operational value of the information. This does not evidence a broader measure of forethought about “court disclosure requirements” and how they might be avoided. It reflects a narrow and specific decision made in circumstances of reckless conduct by Ms Gobbo and having regard to a commonplace policing method (obtaining CCRs). It evidences nothing more than a necessary response to Ms Gobbo’s conduct and which was directed to ensuring her safety. It is not open to conclude that it is evidence of any wider forethought about court disclosure requirements and how they might be avoided. That is particularly so when this allegation was not put to Mr O'Brien at all in cross-examination. It came as a complete surprise in the submissions made by Counsel Assisting.

The second Mr Bickley arrest

- 53.7 Following his arrest on 22 April 2006, Mr Cooper^{PII} [REDACTED] implicated Mr Bickley^{PII} [REDACTED] subject to a public interest immunity claim but of which the Commissioner is aware. Mr Cooper’s^{PII} [REDACTED] evidence^{PII} [REDACTED], led to the further arrest of Mr Bickley.

¹⁷²⁶ Exhibit RC0467B – Investigation Plan for Operation Posse, 17 November 2005, pp 4-5 (VPL.0100.0009.0001 at .0004-0005).

¹⁷²⁷ Exhibit RC0281 – ICR3838 (023), 16 March 2006 (VPL.2000.0003.1776 at .1777-1778).

¹⁷²⁸ Exhibit RC0281 – ICR3838 (023), 16 March 2006 (VPL.2000.0003.1776 at .1777-1778).

¹⁷²⁹ Exhibit RC0281 – ICR3838 (023), 16 March 2006 (VPL.2000.0003.1776 at .1777-1778).

¹⁷³⁰ Exhibit RC0281 – ICR3838 (023), 16 March 2006 (VPL.2000.0003.1776 at .1778).

¹⁷³¹ Exhibit RC0281 – ICR3838 (023), 16 March 2006 (VPL.2000.0003.1776 at .1778-1779).

- 53.8 Mr O'Brien does not recall any conversation with the SDU about the likelihood that Mr Bickley would call Ms Gobbo if he was arrested.¹⁷³² Mr O'Brien has no recollection of asking the SDU to obtain information from Ms Gobbo about how to encourage Mr Bickley to co-operate with police.¹⁷³³ The information on which that suggestion by Counsel Assisting is based does not support the conclusion that Mr O'Brien was aware of these discussions and the contemporaneous documents point to the conclusion that Mr O'Brien did not know.¹⁷³⁴ Sandy White's diary for 7 June 2006 records a discussion with Mr O'Brien in which they discussed the arrest of Mr Bickley and his potential assistance, and agreed to meet the following day.¹⁷³⁵ The likely explanation for this meeting is that Mr O'Brien was seeking Sandy White's specialist assistance with the issue that the Commissioner is aware of but which is subject to public interest immunity – hence, the scheduling of a meeting for the following day. Mr O'Brien does not have an equivalent diary entry and Sandy White's diary does not record any suggestion or agreement that he would approach Ms Gobbo.
- 53.9 Sandy White's diary identifies that shortly after speaking to Mr O'Brien he called Ms Gobbo and tasked her with gathering intelligence in relation to Mr Bickley.¹⁷³⁶
- 53.10 The following morning, Sandy White records that he was PII PII¹⁷³⁷ before attending a strategy meeting with Mr O'Brien, Mr Flynn and Mr Rowe.¹⁷³⁸ Sandy White's diary entry of that meeting records that there was a discussion PII "as per whiteboard".¹⁷³⁹ A notation in the relevant ICR indicates that the information provided by Ms Gobbo on 7 June 2006 was given to Purana in the meeting of 8 June 2006.¹⁷⁴⁰
- 53.11 Further, Mr O'Brien's evidence is that Purana had no interest in Ms Gobbo's views about how to approach Mr Bickley.¹⁷⁴¹ In any case, Mr O'Brien's "loud and threatening"¹⁷⁴² approach with Mr Bickley (who said Mr O'Brien "came in like a storm")¹⁷⁴³ was the opposite of what Ms Gobbo had suggested. As such, there is no basis to conclude that Mr O'Brien was aware that Sandy White intended to seek Ms Gobbo's advice about the strategy to be used for Mr Bickley's arrest.
- 53.12 Mr O'Brien did not recall having any discussion with the SDU about the prospect that Ms Gobbo would attend on Mr Bickley after his arrest in the course of the meeting of 8 June 2006.¹⁷⁴⁴ Sandy White's diary entry for the meeting of 8 June 2006 records that an "issue" was Mr Bickley "ringing HS for advice on arrest". That entry records that the issue identified was that they did not want Ms Gobbo being accused of failing to advise "Horty etc". The entry is significant. It reveals that none of those present identified the complex legal conflict of interest that would arise if Ms Gobbo represented Mr Bickley. It emphasises that if Operation Posse had been oversights by a committee focussed on risk and with access to specialist legal advisers, it is likely that events would have unfolded very differently. There is also no evidence that Mr O'Brien was apprised of the

¹⁷³² T5855.19-21 (J O'Brien).

¹⁷³³ T5855.40-42 (J O'Brien).

¹⁷³⁴ T5855.29-42 (J O'Brien).

¹⁷³⁵ Exhibit RC0292 – Diary entries of Mr Sandy White, 7 June 2006 (VPL.0100.0096.0157 at .0262).

¹⁷³⁶ Exhibit RC0292 – Diary entries of Mr Sandy White, 7 June 2006 (VPL.0100.0096.0157 at .0262).

¹⁷³⁷ Exhibit RC0292 – Diary entries of Mr Sandy White, 8 June 2006 (VPL.0100.0096.0157 at .0263).

¹⁷³⁸ Exhibit RC0292 – Diary entries of Mr Sandy White, 8 June 2006 (VPL.0100.0096.0157 at .0263).

¹⁷³⁹ Exhibit RC0292 – Diary entries of Mr Sandy White, 8 June 2006 (VPL.0100.0096.0157 at .0263).

¹⁷⁴⁰ Exhibit RC0281 – ICR3838 (034), 7 June 2006 (VPL.2000.0003.1904 at .1906).

¹⁷⁴¹ T5855.47 - T5856.1-3 (J O'Brien).

¹⁷⁴² T9324.38 (Bickley).

¹⁷⁴³ T9324.27-28 (Bickley).

¹⁷⁴⁴ T5859.1-4 (J O'Brien).

contents of the discussion between Sandy White and Ms Gobbo on 9 June 2020 – neither Mr O'Brien nor Sandy White have a diary note that suggests this occurred.

- 53.13 Mr O'Brien spoke with Mr Bickley on the day of his arrest (13 June 2006), but does not recall being told that Mr Bickley asked for, and spoke to, Ms Gobbo.¹⁷⁴⁵ There is no evidence that Mr O'Brien was told. Counsel Assisting submit that there was "clearly an acceptance" by the SDU and investigators that Ms Gobbo would represent Mr Bickley following his arrest.¹⁷⁴⁶ That submission is contrary to the evidence. As set out above, one issue identified in the meeting of 8 June 2006 was Ms Gobbo representing Mr Bickley. The plan for managing that issue was for Ms Gobbo to be "unavailable".¹⁷⁴⁷ There is nothing that suggests that, between the meeting of 8 June 2006 and Mr Bickley's arrest on 13 June 2006, Mr O'Brien became aware of any change in that arrangement. Of course, investigators could not prevent Mr Bickley from asking for Ms Gobbo and, if he did so, were obliged at law to make contact with her on his behalf. It was then for Ms Gobbo to manage the conflict.
- 53.14 During the course of 13 June 2006, Mr Bickley agreed to assist Victoria Police. The following day Mr O'Brien commenced a period of recreational leave. There is no evidence that he knew that Ms Gobbo acted for Mr Bickley in the following weeks. There is also no evidence that discussions of the kind that took place between Ms Gobbo and Peter Smith and DS Anderson on 12 July 2006 were brought to Mr O'Brien's attention.
- 53.15 Mr O'Brien had no knowledge of any member of his crew attempting to task Ms Gobbo through the SDU in relation to Mr Bickley.¹⁷⁴⁸ He believed himself to be the single point of contact.¹⁷⁴⁹

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- 53.16 Mr O'Brien met with Mr Bickley on 9 January 2007. Counsel Assisting submit that on 17 January 2007, Mr O'Brien was involved in arranging a solicitor to advise Mr Bickley.¹⁷⁵⁰ On 18 January 2007¹⁷⁵¹ and 22 January 2007,¹⁷⁵² Mr O'Brien communicated with Margaret McCauley, a solicitor advising Mr Bickley. Thereafter, Mr O'Brien had little involvement in matters connected to Mr Bickley until his retirement in June 2007. Mr O'Brien had no knowledge of any concerns that Ms Gobbo might be subpoenaed to give evidence in Mr Bickley's matter.¹⁷⁵³ Mr O'Brien had no knowledge of matters being conceded in relation to Mr Bickley's plea that were favourable to the defence and which were conceded to protect Ms Gobbo.¹⁷⁵⁴

¹⁷⁴⁵ T5860.6-9 (J O'Brien).

¹⁷⁴⁶ Counsel Assisting Submissions [1612] (Vol 2), p 360.

¹⁷⁴⁷ Exhibit RC0292 – Diary entries of Sandy White, 8 June 2006 (VPL.0100.0096.0157 at .0263).

¹⁷⁴⁸ T5865.25-27 (J O'Brien).

¹⁷⁴⁹ T5865.25-27 (J O'Brien).

¹⁷⁵⁰ Counsel Assisting Submissions [2618] (Vol 2), p 643.

¹⁷⁵¹ Exhibit RC0933 – Diary of Jim O'Brien, 18 January 2007 (VPL.0100.0073.0076 at .0355).

¹⁷⁵² Un-tendered exhibit – Diary of Jim O'Brien, 22 January 2007 (VPL.0005.0126.0110 at .0110-0111).

¹⁷⁵³ T5867.24-25 (J O'Brien); T5868.31-32 (J O'Brien).

¹⁷⁵⁴ T5867.43-45 (J O'Brien).

Mr Irons

- 53.17 On [PII] 2006, [PII] Mr Irons was found in possession of [PII] and was arrested by Purana Taskforce detectives.¹⁷⁵⁵ He was released without charge.¹⁷⁵⁶ Shortly afterwards, Ms Gobbo provided information to the SDU about [PII] response to [PII] Mr Irons's arrest, and information that the chemicals were being [PII] on behalf of [PII] and were bound for [PII]
- 53.18 At paragraph [1557], Counsel Assisting assert that this information was disseminated to Mr O'Brien by the SDU. The evidence does not permit that conclusion. The relevant ICRs record that a wide range of information was given by Ms Gobbo to her handlers in this period, but they do not record how much of that information was disseminated to Mr O'Brien. They record only that, at various intervals on the relevant days, Mr O'Brien was "updated". The content of the update, on any given occasion, is not recorded. Given Mr O'Brien's diligence as a diarist, Mr O'Brien's diaries are the best evidence of what information was disseminated to him by the SDU. Mr O'Brien's diaries do not contain a record of him receiving the information that Counsel Assisting submit he received.
- 53.19 On about [PII] 2006, Ms Gobbo told her handlers that she was acting for Mr [PII] Mr Irons.¹⁷⁵⁷ There is no evidence that this information was given to Mr O'Brien, or that he otherwise knew that Ms Gobbo was representing [PII] Mr Irons.¹⁷⁵⁸ There is also no evidence that the detail of Ms Gobbo's discussions with the SDU about Mr [PII] Mr Irons in the period between [PII] 2006 and [PII] 2006 came to Mr O'Brien's attention.¹⁷⁵⁹
- 53.20 On [PII] 2006, Peter Smith told Ms Gobbo that it was possible that [PII] Mr Irons was to be arrested [PII].¹⁷⁶⁰ Counsel Assisting baldly assert that the "Purana Taskforce had clearly told this to the SDU in anticipation that Ms Gobbo would provide advice to [PII] Mr Irons upon that arrest".¹⁷⁶¹ No evidence at all is offered in support of that submission, and Mr O'Brien's evidence was that he did not know whether Purana investigators had told Peter Smith of the impending arrest, and had no note of doing so himself.¹⁷⁶² Mr O'Brien was not cross-examined about whether he anticipated that Ms Gobbo would provide advice to [PII] Mr Irons on his arrest. In the absence of any documentary evidence supporting the contention, and where Mr O'Brien was not asked about this matter in evidence, the submission by Counsel Assisting should not be accepted.
- 53.21 On [PII] 2006, [PII] Mr Irons was re-arrested and charged. He applied for bail. Ms Gobbo acted for him. There is no evidence that Mr O'Brien was informed that Ms Gobbo was acting for him and no evidence that Mr O'Brien was informed about Ms Gobbo's musings about [PII] Mr Irons's interest in [PII] Mr Irons's bail application.¹⁷⁶³
- 53.22 Counsel Assisting state that, in one of her discussions with her handlers, Ms Gobbo "also indicated that if investigators did not oppose bail and prepared a written summary for the court, there would be no need for cross-examination and, therefore, no questions

¹⁷⁵⁵ See Counsel Assisting Submissions [1556] (Vol 2), p 343.

¹⁷⁵⁶ See Counsel Assisting Submissions [1556] (Vol 2), p 343.

¹⁷⁵⁷ [PII]

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¹⁷⁶¹ Counsel Assisting Submission [1560] (Vol 2), p 344.

¹⁷⁶² [PII]

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about how the arrests had come about".¹⁷⁶⁴ The ICR itself does not record Ms Gobbo making this suggestion. It simply records that Ms Gobbo suggested to her handlers that a written summary be prepared for the court. The transcript of the conversation is more expansive. In it, Ms Gobbo says that an application by consent 'prevents there being any cross examination that no one wants'.¹⁷⁶⁵ There is nothing to suggest that Ms Gobbo's suggestion was passed on to Mr O'Brien – indeed, it did not even make it into the ICR.

- 53.23 On [PII] 2006, Mr O'Brien spoke with Peter Smith about Mr Irons's application for bail. Mr O'Brien could not recall the purpose of the discussion.¹⁷⁶⁶ All he could say after the passage of 14 years is that there must have been "a reason".¹⁷⁶⁷ In fact, the contemporaneous documents identify that it was Peter Smith who approached Mr O'Brien, following a request for information by Ms Gobbo.¹⁷⁶⁸ That call came **after** Mr O'Brien had already instructed the investigator, [PII] not to contest bail.¹⁷⁶⁹ Mr Irons was, at the relevant time, engaging with Mr Irons Family Memb about whether Mr Irons would make a bail application and what his bail arrangements would be.¹⁷⁷⁰
- 53.24 There is no evidence at all that, when Mr O'Brien communicated to Peter Smith that Victoria Police would consent to Mr Irons's bail application with reporting conditions, Mr O'Brien was affording Mr Irons any special treatment or that his decision was motivated by a desire to prevent Ms Gobbo's involvement with [PII] statement becoming known. The decision not to contest bail in Mr Irons's case had already been made, and there is nothing in the materials that suggests that the decision was connected to any desire to disguise Ms Gobbo's role with [PII]. Indeed, Ms Gobbo herself described Mr Irons as a [PII].¹⁷⁷¹
- 53.25 On [PII] 2006, Mr O'Brien informed Peter Smith that Mr Irons was considering making a statement and might approach Ms Gobbo. Mr O'Brien stated that Mr Irons's charges would not be withdrawn nor would he be indemnified.¹⁷⁷² Counsel Assisting submit, at [1571], that "it is clear" that Mr O'Brien intended to convey this information to Ms Gobbo through the SDU in order to influence the advice she would provide to Mr Irons should he contact her. There is no evidence at all to support that submission.
- 53.26 There is no evidence that Mr O'Brien engaged with the SDU at all in relation to Mr Irons prior to Peter Smith's call on [PII] 2006. The notation does not suggest that Mr O'Brien asked Peter Smith to inform Ms Gobbo of the information. On its face, Mr O'Brien did nothing more than convey to the SDU that Mr Irons was considering cooperating and that his charges would not be withdrawn, nor would he be indemnified. Consistently, Mr O'Brien's evidence was that, with the passage of time, he did not know why he called the SDU, or why the SDU called Ms Gobbo, but that it appeared to him that he was giving the SDU an update about Mr Irons.¹⁷⁷³ That is understandable

¹⁷⁶⁴ Counsel Assisting Submissions [1565] (Vol 2), p 344.

¹⁷⁶⁵ Un-tendered exhibit – Transcript of Discussion between Sandy White, Officer Peter Smith and Ms Gobbo 5 May 2006 (VPL.0005.0087.0397 at 0742-0743).

¹⁷⁶⁶ [PII]
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in circumstances where ^{Mr Irons} was considering assisting Victoria Police, and the SDU might become involved.

Milad Mokbel

- 53.27 Milad Mokbel was arrested in April 2006, in part as a result of the assistance provided by Mr Cooper.¹⁷⁷⁴ Ms Gobbo spoke to him on the night of his arrest. Mr O'Brien was not at the station on the night of Milad Mokbel's arrest and was not aware that Mr Mokbel had asked for Ms Gobbo.¹⁷⁷⁵ He accepts, however, that he would have found out about this "later on".¹⁷⁷⁶
- 53.28 On 25 July 2006, Mr O'Brien received a lengthy update from Peter Smith.¹⁷⁷⁷ In a detailed diary entry about that update, Mr O'Brien recorded that he was told that Milad Mokbel was to make a bail application and would issue a subpoena re "all witnesses and informers".¹⁷⁷⁸ Counsel Assisting link that entry to Mr O'Brien taking steps the following morning to brief counsel regarding "PII issues".¹⁷⁷⁹ There is no basis to conclude that the two actions were linked. Mr O'Brien's evidence was that the brief "may have been" connected to the information about Milad Mokbel issuing a subpoena.¹⁷⁸⁰ There were many ongoing matters in relation to which the Purana Taskforce may have required legal advice in relation to PII issues, including in connection with Carl Williams. Indeed, in circumstances where Mr O'Brien attended a meeting with the OPP on 27 July 2006 to discuss PII issues arising in Mr Williams' trial, it is probable that the discussion was connected to Mr Williams and not Milad Mokbel.

Late July 2006 – Opportunity to use Ms Gobbo with Milad Mokbel

- 53.29 On 26 July 2006, Mr O'Brien received an email from Boris Buick.¹⁷⁸¹ Among other things, that email suggested that the DSU be notified of information about Milad Mokbel so that their source is "alert to pick up on an opportunity re Milad". Mr O'Brien forwarded the email to Sandy White.
- 53.30 At [1656], Counsel Assisting submit that it is open to the Commissioner to find that, by reason of this, Mr O'Brien was not concerned to prevent Ms Gobbo's continued involvement with Milad Mokbel, in circumstances where he knew she had a conflict of interest, and she would likely be called upon to offer him professional advice. That finding is not open in relation to Mr O'Brien. First, Mr O'Brien was not asked about this email in evidence (and the email itself was not tendered). Second, the email is forwarded by Mr O'Brien to Sandy White "for information re 3838 handling". There is no suggestion that Mr O'Brien was asking Sandy White to task Ms Gobbo or apprise her of the information. Absent Mr O'Brien being asked about the email, there is no reason to conclude that it means anything other than what it states: that the information was being passed on for Sandy White's 'information' and to assist him in 'handling' Ms Gobbo.
- 53.31 The findings urged by Counsel Assisting in paragraph [1656] go to Mr O'Brien's state of mind and travel well beyond the content of the email. The text of the email alone does not support the proposed finding, and absent Mr O'Brien having been examined about

¹⁷⁷⁴ T5805.11-13 (J O'Brien).

¹⁷⁷⁵ T5804.13-14 (J O'Brien).

¹⁷⁷⁶ T5804.18-19 (J O'Brien).

¹⁷⁷⁷ Exhibit RC0933 – Diary of Jim O'Brien, 25 July 2006 (VPL.0100.0073.0076 at .0294-0296).

¹⁷⁷⁸ Exhibit RC0933 – Diary of Jim O'Brien, 25 July 2006 (VPL.0100.0073.0076 at .0295).

¹⁷⁷⁹ Counsel Assisting Submissions (Volume 2), [999], [1001], [1054.18], 217, 218, 230.

¹⁷⁸⁰ T5692.24-26 (J O'Brien).

¹⁷⁸¹ Un-tendered exhibit – Email from Boris Buick to Jim O'Brien 26 July 2006, sent to Sandy White and Peter Smith, 31 July 2006 (VPL.0099.0113.0567).

the email and his state of mind, the finding urged by Counsel Assisting should not be pressed.

Early August 2006 – PII advice being sought for Milad Mokbel and Carl Williams Cases

- 53.32 Milad Mokbel made an application for bail, which was listed for hearing on 8 August 2006. Mr O'Brien engaged lawyers to act for Victoria Police in relation to that application. Mr Mokbel was refused bail.

14 August 2006 – further consideration to use Ms Gobbo against Milad Mokbel

- 53.33 According to Sandy White's diary, on 14 August 2006, Mr O'Brien spoke to Sandy White and notified him that telephone intercepts suggested that Milad Mokbel was trying to get in touch with Ms Gobbo ^{PII} [REDACTED].¹⁷⁸² Mr O'Brien has no note of the discussion, but records a discussion with S/O Fitzgerald "re intel re Milad Mokbel".¹⁷⁸³ Counsel Assisting submit that, in the course of this conversation, Mr O'Brien and Sandy White discussed setting a trap to determine whether Ms Gobbo was "genuinely assisting the police".¹⁷⁸⁴
- 53.34 Counsel Assisting have misread the source material. The source document (Sandy White's diary) makes clear that what was discussed was whether Milad Mokbel's statements, detected through the telephone intercept, were a 'trap' set by Milad Mokbel to determine whether Ms Gobbo was assisting the police. Critically, the word "genuine" does not appear in the source document. To the extent that this is relied on by Counsel Assisting to suggest that Mr O'Brien was tasking Ms Gobbo in relation to Milad Mokbel, the suggestion must be rejected.
- 53.35 On 6 March 2007, Mr O'Brien attended a meeting with Sandy White, Mr Anderson, Mr Preston, Mr Flynn, Mr Kelly, Mr Hayes, Mr Hantsis and Mr Robertson.¹⁷⁸⁵ The meeting discussed a wide range of issues relating to human sources. In relation to Ms Gobbo, Mr O'Brien's diary entry simply reads "3838 – Milad Mokbel".¹⁷⁸⁶ Sandy White's diary entry of the meeting contains the note "JOB to s/t hs re Purana requirements for deal. ie. intel re killings & 10 year + trafficking".¹⁷⁸⁷
- 53.36 On 8 March 2007, Ms Gobbo told Mr O'Brien that Milad Mokbel wanted to discuss a plea.¹⁷⁸⁸ Subsequently, Mr O'Brien met with Ms Gobbo to ascertain the nature of ^{PII} [REDACTED].^{PII} [REDACTED] Mr O'Brien knew that Ms Gobbo was conflicted in relation to Mr Mokbel.¹⁷⁸⁹ However, Mr O'Brien gave compelling evidence that there was not "a plan" to deal with Ms Gobbo in relation to Milad Mokbel while knowing that she was conflicted.¹⁷⁹⁰ Mr O'Brien explained that, having received the information, what he did was to "merely follow it through in an attempt to resolve this issue ... and what I thought was required for him before I would bother to go to the Director of Public Prosecutions to seek an indication on sentence".¹⁷⁹¹
- 53.37 On 9 March 2007, Mr O'Brien met with the DPP to discuss ^{PII} [REDACTED] and the terms of any sentence indication. At paragraphs [2673]-[2674], Counsel Assisting ask the Commissioner to infer that, when Mr O'Brien met with Mr

¹⁷⁸² Exhibit RC0292 – Diary of Sandy White, 14 August 2006 (VPL.0100.0096.0311 at 0354).

¹⁷⁸³ Un-tendered exhibit – Diary of Jim O'Brien, 14 August 2006 (VPL.0005.0126.0108 at .0108).

¹⁷⁸⁴ Counsel Assisting Submissions [1664] (Vol 2), p 374.

¹⁷⁸⁵ Un-tendered exhibit – Diary of Jim O'Brien, 6 March 2007 (VPL.0005.0126 at .0090).

¹⁷⁸⁶ Un-tendered exhibit – Diary of Jim O'Brien, 6 March 2007 (VPL.0005.0126 at .0090).

¹⁷⁸⁷ Exhibit RC0292 – Diary of Sandy White, 6 March 2007 (VPL.0100.0096.0468 at .0572).

¹⁷⁸⁸ Un-tendered exhibit – Diary of Jim O'Brien, 7 March 2007 (VPL.0005.0126.0110 at .0113).

¹⁷⁸⁹ T5809.25 (J O'Brien).

¹⁷⁹⁰ T5816.27-31 (J O'Brien).

¹⁷⁹¹ T5817.22-29 (J O'Brien).

Overland shortly after his meeting with the DPP, it is likely that Mr O'Brien informed Mr Overland that he was dealing with Ms Gobbo in relation to the potential plea. There is insufficient evidence for that inference to be drawn. Mr O'Brien has no record of telling Mr Overland that Ms Gobbo had been the intermediary. More importantly, Mr O'Brien was to meet with Milad Mokbel and conduct any negotiations with him directly, rather than through Ms Gobbo. It is also clear that Mr O'Brien anticipated that nothing would come from the approach¹⁷⁹² and held a deep suspicion that Milad Mokbel was wasting his time.¹⁷⁹³ In such circumstances, it cannot be concluded that it is likely that Mr O'Brien informed Mr Overland that Ms Gobbo had been the intermediary chosen by Milad Mokbel. Instead, it is more likely that Mr O'Brien informed him of the discussions with the DPP and his intention to meet with Milad Mokbel in the coming days.

- 53.38 As to Ms Gobbo's comments to her handlers about how Mr O'Brien should approach Milad Mokbel, there is no evidence that Ms Gobbo's comments were ever passed on to Mr O'Brien.¹⁷⁹⁴ He would have given them "scant regard" even if they were.¹⁷⁹⁵ Consistently, when Mr O'Brien attended on Milad Mokbel on 13 March 2007 while he was in custody, the meeting was not productive.¹⁷⁹⁶ Mr O'Brien then informed Ms Gobbo that there would be no deal. Mr O'Brien did not see his early interactions with Ms Gobbo as a genuine indication that Mr Mokbel wanted to negotiate. For Mr O'Brien '... until there was pen on paper with what he was prepared to do or not do, there wasn't an indication'.¹⁷⁹⁷
- 53.39 On 18 April 2007, Ms Gobbo reported to the SDU that Milad Mokbel was "furious" about Mr Cooper and after reading Mr Cooper's evidence she was concerned that upcoming subpoenas would reveal the contact she had with Mr Cooper.¹⁷⁹⁸ The relevant ICR suggests that this was discussed with Mr O'Brien who advised that there was a process in place whereby the prison advised Victoria Police of all subpoenas.¹⁷⁹⁹ Mr O'Brien has no note of this conversation and no memory of it, but did not deny that it had occurred. Even if the discussion did occur, there was nothing untoward about it. Mr O'Brien did nothing more than provide information about a process that would be followed in the event that subpoenas were to be issued.
- 53.40 When asked about a further approach by Milad Mokbel – again made through Ms Gobbo – in late April 2007, Mr O'Brien's evidence was that he did not know about it.¹⁸⁰⁰ As Mr O'Brien put it, he would have wanted "a very good reason to drive all the way back to Barwon and see him again".¹⁸⁰¹ Mr O'Brien accepts that such an approach was in fact made, and that Mr Flynn attended on Milad Mokbel. Later, on 12 June 2007, Mr O'Brien met with Milad Mokbel's solicitor, Mr Lewenberg, to discuss the terms of a possible plea.¹⁸⁰²
- 53.41 There is material suggesting that, in this period, Ms Gobbo was concerned about the potential consequences for her if Milad Mokbel did not plead guilty and that she had discussions with the SDU about how to manage those risks.¹⁸⁰³ Mr O'Brien was not

¹⁷⁹² T5817.43-47 (J O'Brien).

¹⁷⁹³ T5834.32-34 (J O'Brien).

¹⁷⁹⁴ T5820.1 (J O'Brien); T4028.25-27 (S White).

¹⁷⁹⁵ T5820.4-5 (J O'Brien).

¹⁷⁹⁶ T5821.26-31 (J O'Brien).

¹⁷⁹⁷ T5817.38-41 (J O'Brien).

¹⁷⁹⁸ Exhibit RC0281 – ICR3838 (075), 18 April 2007 (VPL.2000.0003.2375 at .2385).

¹⁷⁹⁹ Un-tendered exhibit – Diary of Jim O'Brien, 18 April 2007 (VPL.0005.0126.0039 at .0096); Exhibit RC0281 – ICR3838 (075), 18 April 2007 (VPL.2000.0003.2375 at .2385).

¹⁸⁰⁰ T5834.30-34 (J O'Brien).

¹⁸⁰¹ T5834.41-43 (J O'Brien).

¹⁸⁰² Un-tendered exhibit – Diary of Jim O'Brien, 12 June 2007 (VPL.0005.0126.0115 at .0115).

¹⁸⁰³ See Counsel Assisting Submissions [2697]-[2698] (Vol 2), pp 663-664; [2731]-[2733] (Vol 2), p 670.

made aware of these issues and did not turn his mind to them.¹⁸⁰⁴ Mr O'Brien's frank evidence about these matters that they were "... the very sort of thing, materials and foibles why we outsourced this human source along with other human sources, dealing with all of this sort of material and their worries and their concerns. That wasn't of concern to me, I was about information, investigating criminality".¹⁸⁰⁵

- 53.42 There is no evidence at all that Mr O'Brien's conduct in relation to Milad Mokbel's plea was motivated by any concern held by Ms Gobbo that her role with Mr Cooper might have been exposed.
- 53.43 Counsel Assisting submit, at [2737], that Mr O'Brien attended a meeting of 29 June 2007, with Mr Flynn, Mr Rowe, Mr Kelly and Mr Johns. The Source Management Log records that one issue discussed at the meeting was that Mr Flynn's notes would reveal that Ms Gobbo had attended the station on the night of Mr Cooper's arrest. The SML also records that Mr Flynn's notes were to be redacted on this point and that, if he was cross-examined, he would reveal that Ms Gobbo had attended and gave Mr Cooper legal advice.¹⁸⁰⁶ Sandy White's diary notes record that the redactions were on the basis of relevance.¹⁸⁰⁷ Sandy White's diary also indicates that there was discussion about whether Ms Gobbo's identity could be protected on the basis of threats made against her by Carl Williams.¹⁸⁰⁸ Mr O'Brien was not asked about this meeting.
- 53.44 Counsel Assisting submit that Mr O'Brien's belief that the discussions with Milad Mokbel were likely to fail did not excuse his 'condonation' of Ms Gobbo's representation of Milad Mokbel. Mr O'Brien accepts that Ms Gobbo had a conflict of interest in relation to Milad Mokbel by reason of her involvement with Mr Cooper.¹⁸⁰⁹ He does not recall speaking to anyone at the SDU about that conflict,¹⁸¹⁰ nor does he recall raising it with DC Overland.¹⁸¹¹ However, that falls short of 'condonation'. Mr O'Brien's evidence was that he did not raise the conflict with the SDU because "they were well aware".¹⁸¹² Mr O'Brien's position was that it was for the SDU to manage Ms Gobbo's conflicts. Consistently, throughout April, May and June 2007, the SDU repeatedly told Ms Gobbo that she was not to be involved in representing Milad Mokbel.¹⁸¹³ Ms Gobbo persisted in being involved despite that advice.
- 53.45 That said, Mr O'Brien accepts that, with hindsight, the steps taken in relation Ms Gobbo's representation of Milad Mokbel were inadequate.¹⁸¹⁴

The meeting of 24 July 2007

- 53.46 Counsel Assisting submit, at [2484], that the Commissioner should find that, at a meeting on 24 July 2007, the attendees discussed the potential of obtaining legal advice from a judge "specifically addressing Ms Gobbo's use as a human source" and made a decision not to obtain such advice. Counsel Assisting further submit that had members, including Mr O'Brien, wanted to get legal advice, they could "easily have done so", and that the reason no advice was sought is because they chose not to obtain it.

¹⁸⁰⁴ T5853.7-8 (J O'Brien).

¹⁸⁰⁵ T5829.16-21 (J O'Brien).

¹⁸⁰⁶ Exhibit RC0284 – SML3838, 29 June 2007 (VPL.2000.0001.9447 at .9560).

¹⁸⁰⁷ Exhibit RC0292 – Diary of Sandy White, 29 June 2007 (VPL.0100.0096.0621 at .0697-0698).

¹⁸⁰⁸ Exhibit RC0292 – Diary of Sandy White, 29 June 2007 (VPL.0100.0096.0621 at .0697-0698).

¹⁸⁰⁹ T5809.23-25 (J O'Brien).

¹⁸¹⁰ T5809.32-34 (J O'Brien).

¹⁸¹¹ T5818.44-45 (J O'Brien).

¹⁸¹² T5809.29-30 (J O'Brien).

¹⁸¹³ See for example, Exhibit RC0281, ICR3838 (085), 22 June 2007, VPL.2000.0003.2512 at .2515.

¹⁸¹⁴ T5805.8-9 (J O'Brien).

- 53.47 To make findings about the purpose, content and outcome of the meeting on 24 July 2007, it is necessary to understand the events that led up to it.
- 53.48 The background facts are these:
- (a) In April and May 2007, the Purana Taskforce was looking to end its engagement with Ms Gobbo, while the Petra Taskforce was identifying her as a person of interest in relation to the execution of Terrence and Christine Hodson;
 - (b) These competing interests coalesced in a meeting that took place on 10 May 2007 between Mr White and Mr Ryan.¹⁸¹⁵ Following the meeting of 10 May 2007, Mr White noted in his diary that it was necessary to "delay exit strategy pending DC approval for conversation with HS re Dale etc".¹⁸¹⁶ Mr Overland gave that approval on 16 May 2007.¹⁸¹⁷
 - (c) On 21 May 2007, following Mr Overland's approval, the SDU met with Ms Gobbo and spoke to her about the matters of interest to the Petra Taskforce.¹⁸¹⁸ On 22 May 2007, Mr Ryan was briefed about this discussion.¹⁸¹⁹
 - (d) The situation was further complicated in June 2007, when Ms Gobbo began providing information to the SDU about the activities of Robert Karam and she provided information to the SDU that ultimately assisted the Australian Federal Police to identify a shipment of ecstasy.¹⁸²⁰
- 53.49 On 17 July 2007, Mr O'Brien provided a Purana Taskforce update to Mr Overland, Mr Blayney and Mr Brown.¹⁸²¹ Mr O'Brien's diary records that they discussed "Karam / 3838". Mr Blayney recorded "Purana Taskforce briefing to Simon Overland. 3838 – change of reg no. Hypothetical legal opinion".¹⁸²² Mr Brown simply recorded "Purana Update".¹⁸²³
- 53.50 Counsel Assisting submit that the "legal advice" discussed at the meeting of 17 July 2007 was legal advice about risks to the administration of justice connected to the use of Ms Gobbo as a human source. There is no evidence of that. Mr Blayney's evidence was that he did not recall the meeting other than what was in his notes.¹⁸²⁴ He did not recall who was present,¹⁸²⁵ and could not recall when, in relating to the meeting, he became aware that Ms Gobbo was HS3838.¹⁸²⁶ He had no specific recollection of speaking to individuals about his concerns leading up the meeting.¹⁸²⁷ Mr Blayney also could not recall whether he emphasised the need for legal advice at the meeting and clarified that while he thought he had, from his perspective it was something that was going to be discussed at a later meeting.¹⁸²⁸

¹⁸¹⁵ Exhibit RC0292 - Diary of Sandy White, 10 May 2007, 67 (VPL.0100.0096.0621 at .0627).

¹⁸¹⁶ Exhibit RC0292 – Diary of Sandy White diary, 10 May 2007, 7-8 (VPL.0100.0096.0621 at .0628).

¹⁸¹⁷ Exhibit RC0292 – Diary of Sandy White diary, 16 May 2007, 13-14 (VPL.0100.0096.0621 at .0633-.0634).

¹⁸¹⁸ Exhibit RC0282 - Transcript of meeting between Ms Nicola Gobbo, Mr Anderson and Mr Sandy White, 21 May 2007, 228-231, 234 (VPL.0005.0137.0001 at .0228-.0231, .0234).

¹⁸¹⁹ Exhibit RC0284 - SML3838, 22 May 2007, 111 (VPL.2000.0001.9447at .9557); Exhibit RC0292 - Diary of Sandy White, 22 May 2007, 21 (VPL.0100.0096.0621 at .0641).

¹⁸²⁰ JCR3838 (082) (VPL.2000.0003.2461 at .2462)

¹⁸²¹ Untendered Exhibit – Diary of Mr James (Jim) O'Brien, 17 July 2017 (VPL.0005.0153.0001 at .0010).

¹⁸²² Untendered Exhibit – Diary of Jack Blayney, 17 July 2017 (VPL.0005.0156.0029 at .0031).

¹⁸²³ Untendered Exhibit – Diary of Graham Brown, 17 July 2007, 30 (VPL.0005.0216.0001 at .0030).

¹⁸²⁴ T10239.36-37 (J Blayney).

¹⁸²⁵ T10127.2-8 (J Blayney).

¹⁸²⁶ T10233.31-32 (J Blayney).

¹⁸²⁷ T10233.46-47 (J Blayney).

¹⁸²⁸ T10239.2-5 (J Blayney).

- 53.51 Counsel Assisting also say that, as a consequence, Mr Overland directed that a team, including the SDU, meet and consider further Ms Gobbo's ongoing use as a human source given the concerns as to her safety.¹⁸²⁹
- 53.52 The only evidence to support the proposition that Mr Overland directed that a team, including the SDU, meet and consider Ms Gobbo's future, was the evidence of Mr Blayney.¹⁸³⁰ However, it is unlikely that, if Mr Overland had given such a directive, it would not have been recorded by at least one of the participants in the meeting. In particular, it is unlikely that Mr O'Brien – a generally detailed diarist and the person responsible for executing any such direction – would have failed to record it.
- 53.53 Late on the evening of 17 July 2007, in a long and wide ranging discussion with two of her handlers and Mr White, Ms Gobbo said that she might be willing to be a witness and to go into a program.¹⁸³¹ Her handlers said that if she was serious, they would raise the issue with Mr O'Brien.¹⁸³² They also discussed Ms Gobbo's potential compromise at upcoming coercive hearings, and agreed that the Chair of those hearings could be advised that Ms Gobbo had provided police with assistance.¹⁸³³
- 53.54 The following day, 18 July 2007, Mr White and Mr O'Brien met and discussed the possibility of Ms Gobbo being used as a witness.¹⁸³⁴
- 53.55 On 19 July 2007, Ms Gobbo attended the coercive hearing.¹⁸³⁵ The issues that arose in the course of Ms Gobbo's evidence are canvassed by Counsel Assisting at paragraphs [2446] to [2461].
- 53.56 On 23 July 2007, Mr Ryan briefed Mr Overland, Mr Cornelius, Mr Ashton and Mr Blayney "re Petra".¹⁸³⁶ Mr Ryan could not recall whether Ms Gobbo's appearance at the coercive hearing was the most important reason for this briefing, though he accepted that it is likely that it was discussed.¹⁸³⁷
- 53.57 On 24 July 2007, Mr Brown has recorded a 2 pm "Purana briefing".¹⁸³⁸ Mr Blayney has also recorded, at 2 pm, "Purana Taskforce briefing".¹⁸³⁹ His diary record entry for 2 pm makes no mention of legal advice.¹⁸⁴⁰ It does, however, note "risks", "alternatives" and "options".¹⁸⁴¹ Mr Blayney was not able to recall whether the 2 pm notation was a separate meeting, or recorded his preparations for the 4:30 pm meeting. Mr Brown's diary appears to confirm that it was a separate meeting.
- 53.58 That same day, Mr Biggin was informed by Mr Blayney that a meeting was to take place that afternoon.¹⁸⁴² At 3 pm that day Mr O'Brien called Mr White and asked him to attend a meeting "re future viability of 3838 as a witness".¹⁸⁴³ Mr White then spoke to Mr Biggin, who recorded that the purpose of the meeting was to discuss the potential use

¹⁸²⁹ Counsel Assisting Submissions at pp 605-606 [2422]-[2427], Vol 2.

¹⁸³⁰ T10239.11-19 (J Blayney).

¹⁸³¹ Untendered - Summary transcript of meeting between Nicola Gobbo, Peter Smith, Mr Fox, Sandy White, 17 July 2007, 3 [1:12:45], 5 [2:33:20, 2:36:43, 2:39:20] (VPL.2000.0003.0263 at .0002 - .0004).

¹⁸³² Untendered - Summary transcript of meeting between Nicola Gobbo, Peter Smith, Mr Fox, Sandy White, 17 July 2007, 3 [1:12:45], 5 [2:33:20, 2:36:43, 2:39:20] (VPL.2000.0003.0263 at .0002, .0004).

¹⁸³³ Exhibit RC0284B SML3838, 18 July 2007, 118 (VPL.2000.0006.0001 at 0118).

¹⁸³⁴ Untendered - Diary of Sandy White diary, 18 July 2007, 87 (VPL.0100.0096.0621 at .07067).

¹⁸³⁵ Exhibit RC0310 Statement of Mr Gavan Ryan, 13 June 2019, 13 [82] VPL.0014.0039.0001 at .0013; Exhibit RC0312 - Diary of Gavan Ryan, 19 July 2007, 131 (VPL.0005.0120.0187 at .0317).

¹⁸³⁶ Exhibit RC0312 - Diary of Mr Gavan Ryan, 23 July 2007, (VPL.0005.0120.0187 at .0323-0324).

¹⁸³⁷ T4325.41-43 (G Ryan).

¹⁸³⁸ Untendered Diary of Graham Brown, 24 July 2007, 32 (VPL.0005.0216.0001 at .0032).

¹⁸³⁹ Exhibit RC0817B - Diary of Assistant Commissioner John (Jack) Blayney, 24 July 2007, 76 (VPL.0005.0241.0385 at .0460).

¹⁸⁴⁰ Exhibit RC0817B - Diary of Assistant Commissioner John (Jack) Blayney, 24 July 2007 (VPL.0005.0156.0014 at .0019).

¹⁸⁴¹ Exhibit RC0817B - Diary of Assistant Commissioner John (Jack) Blayney, 24 July 2007 (VPL.0005.0156.0014 at .0019).

¹⁸⁴² Exhibit RC0557C - Supplementary Statement of Mr Tony Biggin [84] (VPL.0014.0041.0008).

¹⁸⁴³ Exhibit RC435B - Diary of Officer Sandy White, 24 July 2007 (VPL.2000.0001.0869 at .0870).

of Ms Gobbo as a witness, the potential involvement of a specialised unit and any future deployment.¹⁸⁴⁴ Mr White also informed Mr Biggin that there was a proposal that Ms Gobbo be transitioned from a human source to a witness for the Petra Taskforce.¹⁸⁴⁵

53.59 The meeting commenced at 4:30 pm. It is known that Mr Blayney, Mr Brown, Mr O'Brien, Mr White and Mr Biggin attended. There is real doubt about whether Mr Ryan attended. His diary indicates that he was on leave, but he is recorded as an attendee in the diary of others who were there. Mr Ryan was not asked about the meeting in cross-examination.¹⁸⁴⁶ One likely explanation is that Mr O'Connell attended in Mr Ryan's place, given that Mr Ryan was on leave and that Mr Ryan is recorded as there because those people had anticipated his attendance.

53.60 The weight of evidence is that the purpose of the meeting was to discuss whether Ms Gobbo should be transitioned from human source to witness. As such, the characterisation by Counsel Assisting of the meeting as a "high level discussion about legal advice"¹⁸⁴⁷ is misleading and wrong.

53.61 Mr Biggin, who had no independent recollection of the meeting, said that he believed it was connected to the risk to Ms Gobbo if she transitioned from being a human source to a witness.¹⁸⁴⁸ Mr Biggin recalled that "the investigators were very keen to convert her into a witness".¹⁸⁴⁹ He said also that "the SDU and myself were less than enthusiastic about that approach and so we identified that there were a number of repercussions to go down this particular route".¹⁸⁵⁰

53.62 Mr Biggin said:

*I don't have any independent recollection of it other than to say that it was one of the proposals discussed, that if Ms Gobbo was to become a witness, then perhaps it might be prudent to get some advice from a judge to actually work out the parameters in relation to the statement, statements to be obtained.*¹⁸⁵¹

53.63 When it was put to Mr Biggin that the reason the participants were talking about a legal opinion was because of the risks to the justice system because of the relationship Ms Gobbo had with the SDU, Mr Biggin said that he did not recall that aspect of the conversation.¹⁸⁵²

53.64 Mr White's note of the meeting reads:

Crime Dept. meet with Super [Tony Biggin], DDI's JO'B and GR, S/ Sgt O'Connell. Supts Jack Blayney and Graham Brown.

Update re 3838.

*Agreed value of HS as source is outweighed by repercussions and risks to same. Agreed to continue deployment with no tasking, intel received to be assessed on individual basis and risk determination prior to any dissemination. Agreed TB, ^{Sandy v} and JB to brief D/C Overland re issues.*¹⁸⁵³

¹⁸⁴⁴ Exhibit RC578 – Diary of Tony Biggin, 24 July 2007, 175 (RCMPI.0075.0001.0001).

¹⁸⁴⁵ Exhibit RC057C – Supplementary Statement of Mr Anthony (Tony) Biggin, 25 July 2019 at [84] (VPL.0014.0041.0008 at .0025).

¹⁸⁴⁶ See T4325-T4326 (G Ryan).

¹⁸⁴⁷ Counsel Assisting Submissions at p 616 [2468], Vol 2.

¹⁸⁴⁸ T7568.46 – T7569.1 (T Biggin).

¹⁸⁴⁹ T7569.3-9 (T Biggin).

¹⁸⁵⁰ T7569.3-9 (T Biggin).

¹⁸⁵¹ T7611.34-40 (T Biggin).

¹⁸⁵² T7612.10-11 (T Biggin).

¹⁸⁵³ Exhibit RC435B – Diary of Sandy White, 24 July 2007 (VPL.2000.0001.0869 at .0870).

- 53.65 Mr White speculated that the entry may have been intended to read "agreed value of source as a witness is outweighed by repercussions and risk to same".¹⁸⁵⁴ It is likely that Mr White's speculation is correct. Given that the purpose of the meeting was to discuss Ms Gobbo being used as a witness and that an agreement was reached that her deployment as a source would be continued but without taskings, it is probable that the note was intended to say that those present had agreed that her value as a witness was outweighed by the repercussions and risk.
- 53.66 Mr O'Brien said that he did not know whether potential issues with convictions if Ms Gobbo's status as a human source became known were discussed at the meeting.¹⁸⁵⁵ He did not accept that the "repercussions" included the fact that her human source status might be exposed with the risk of convictions being impacted was discussed.¹⁸⁵⁶ He said that "it may have been down against the repercussions to her from a safety point of view".¹⁸⁵⁷ Mr O'Brien speculated that if Mr White had discussed the need for legal advice with him the week before "I imagine he would have brought it up again".¹⁸⁵⁸ However, Mr O'Brien had no actual recollection of that happening.¹⁸⁵⁹
- 53.67 Mr Blayney does not specifically recall the meeting.¹⁸⁶⁰ However, he said that he did not recall the participants discussing "particular issues that might arise in relation to the legal system in connection with matters that Ms Gobbo had been involved in."¹⁸⁶¹ Mr Blayney's notes of that meeting include the notation "legal issues considered not appropriate at this stage". He said that after "careful reflection" he did not know what those words meant.¹⁸⁶²
- 53.68 Counsel Assisting rely heavily on Mr Blayney's evidence to IBAC about this meeting to support the proposition that wide questions of the risk to the administration of justice were discussed. However, a fair reading of Mr Blayney's evidence to IBAC¹⁸⁶³ reveals that Mr Blayney's concern was not wider issues of conflict or the potential risk to the administration of justice, but the specific issue of legal professional privilege and, in particular, how the SDU was ensuring that information the subject of legal professional privilege was not disseminated to investigators. Mr Blayney's evidence to IBAC was that the "key thing" for him was "the legality or ethical consideration of the source learning things within a privilege situation and passing that on as information to the police".¹⁸⁶⁴ He went on to say that "I was assured that that was being managed and they had legal advice that if it was outside the legal privilege binding then it was lawful".¹⁸⁶⁵
- 53.69 Mr Blayney said also he understood the legal and ethical considerations relating to 3838 required resolution and was "assured that those matters were being managed and that [the SDU] held relevant legal advice to the effect that if the [information] was outside the bounds of legal privilege, then it was lawful to use".¹⁸⁶⁶
- 53.70 Mr Blayney gave evidence that his evidence to IBAC was true and correct.¹⁸⁶⁷

¹⁸⁵⁴ T5420.46-47 – T5421.1-3 (S White).

¹⁸⁵⁵ T5936.11-13 (J O'Brien).

¹⁸⁵⁶ T5936.20-22 (J O'Brien).

¹⁸⁵⁷ T5936.20-22 (J O'Brien).

¹⁸⁵⁸ T5936.28-30 (J O'Brien).

¹⁸⁵⁹ T5935.40 – T5936.33 (J O'Brien).

¹⁸⁶⁰ T10193.38-39 (J Blayney).

¹⁸⁶¹ T10242.29 (J Blayney).

¹⁸⁶² T10242.40 – T10243.1 (J Blayney).

¹⁸⁶³ See Exhibit RC0001. - Transcript of IBAC examination of Jack Blayney 17 November 2014 (IBAC.0002.0001.0001).

¹⁸⁶⁴ See Exhibit RC0001.8 - Transcript of IBAC examination of Jack Blayney 17 November 2014 (IBAC.0002.0001.0001).

¹⁸⁶⁵ See Exhibit RC0001.8 - Transcript of IBAC examination of Jack Blayney 17 November 2014 (IBAC.0002.0001.0001).

¹⁸⁶⁶ See Exhibit RC0001.8 - Transcript of IBAC examination of Jack Blayney 17 November 2014 (IBAC.0002.0001.0001).

¹⁸⁶⁷ T10291.40 (J Blayney).

- 53.71 Once the precise concern actuating Mr Blayney is understood, the absence of any notes about this issue in connection with the meeting of 24 July 2007 is explicable. Those in attendance at the meeting who were familiar with the operation of the SDU knew that there were mechanisms in place to prevent the dissemination of information that was potentially subject to legal professional privilege. Indeed, as is noted in these submissions, the dissemination of information that was subject to legal professional privilege was rare. It is highly likely that, if Mr Blayney raised his concern about legal professional privilege, he would have been reassured by the members responsible for that issue who were present that it was being managed appropriately. It is also highly likely that the question would have been of no moment to those in the room who understood that the mechanism was in place and had been from the outset.
- 53.72 Further, to the extent that those present in fact canvassed the potential need for legal advice, that potential need was predicated on the possibility that Ms Gobbo would be used as a witness. The meeting resolved that she would not be used. As such, the premise for needing the legal advice (as the participants understood it) fell away.
- 53.73 Mr Brown did not give evidence to the Commission. Mr Ryan was not asked about this meeting in oral evidence. Nor was Mr O'Connell.
- 53.74 Consistent with what is said above, Mr Overland recalled being briefed after the meeting of 24 July 2007. He recalls that three options were presented to him: deregistering Ms Gobbo, transitioning her from source to witness or continuing her registration but with no tasking.¹⁸⁶⁸

Proposed findings at Counsel Assisting at [2484]

- 53.75 Once the meeting of 24 July 2007 is seen in its proper context, the evidentiary basis for the proposed findings in paragraph [2484] falls away.
- 53.76 As to paragraph [2484.1], it is not open to the Commissioner to find that the attendees discussed the potential of obtaining legal advice from a judge specifically addressing Ms Gobbo's use as a human source.
- 53.77 Mr Biggin's note "legal opinion from judge" followed the earlier notation "witness/[redacted] future directions" and "Verbal briefing to DC Overland". The contextual matters set out above support the conclusion that the meeting was to discuss the possibility of using Ms Gobbo as a witness in the context of the risk that her identity as a source would be compromised at the coercive hearings. As such, it is likely that the subject of the mooted legal advice was Ms Gobbo's possible transition from source to witness.
- 53.78 In relation to paragraph [2484.2], the evidence does not permit the conclusion that Mr Blayney raised concerns about the "ethical propriety and legality of the use of Ms Gobbo as a human source". Mr Blayney's best evidence is the evidence he gave to IBAC in 2014 (which, it must be remembered, was already seven years after the relevant meeting). Mr Blayney's evidence to IBAC, extracted by Counsel Assisting at [2479] is that what was concerning him was the question of legal professional privilege. It is improbable that, if Mr Blayney had raised wider concerns of the kind suggested by Counsel Assisting, he would not have pursued them following the meeting of 24 July 2007.

¹⁸⁶⁸ T11773.19-31 (S Overland).

- 53.79 As to paragraphs [2484.3] and [2484.4], as the evidentiary basis for paragraphs [2428.1] and [2428.2] has fallen away, the finding should not be made in the context of the meeting of 24 July 2007.
- 53.80 As to paragraphs [2484.5] and [2484.6], there is no utility in making such findings in connection with the meeting of 24 July 2007. The participants were discussing the very specific issue of whether Ms Gobbo could be used as a witness. It was decided that she would not be used as a witness. As such, insofar as the meeting of 24 July 2007 is concerned, the premise on which the need for legal advice rested fell away.
- 53.81 Insofar as Mr Ryan is concerned, it cannot be concluded that he was at the meeting. In any event, it cannot be concluded that Mr Ryan, Mr O'Brien or Mr O'Connell could "easily" have arranged legal advice. They were detectives. The SDU was established to manage high risk human sources and, if anyone was to get advice, it would have been those at the meeting with line control of that part of Victoria Police. Mr Ryan, Mr O'Brien and Mr O'Connell did not have responsibility for, or oversight of, the SDU or its management of Ms Gobbo. To seek legal advice "specifically addressing Ms Gobbo's use as a human source" would have been to step outside of the chain of command and line control and into a completely distinct portfolio.
- 53.82 Further, Mr Ryan, Mr O'Brien and Mr O'Connell were not in possession of all relevant information and there is no evidence that any of them were aware of the details of the systems, processes and methodologies employed by the SDU, in connection with the management of Ms Gobbo, or any other human source. As such, there is no basis to conclude that any of them could "easily" have arranged legal advice "specifically addressing Ms Gobbo's use as a human source".
- 53.83 In relation to the finding at paragraph [2484.7], this finding is not open for two reasons. First, the implication of the proposed finding in paragraph [2484.7] is that the participants knew that it was appropriate to obtain legal advice "specifically addressing Ms Gobbo's use as a human source" and chose not to. For the reasons set out above, it cannot be concluded that legal advice of this kind was even discussed at the meeting.
- 53.84 Second, the premise of this proposed finding is that the participants actively considered whether to obtain legal advice and then decided not to. But there is no evidence of that. The evidence establishes that the participants decided that Ms Gobbo would not be used as a witness and, accordingly, the potential need for legal advice (insofar as it was understood by the participants) fell away.

Peter Pilarinos

- 53.85 On 19 July 2007, Peter Pilarinos was intercepted by police. A search of his vehicle located drugs and a firearm. He was arrested and remanded.
- 53.86 Mr O'Brien gave no evidence about Mr Pilarinos and was not cross-examined about the events described in paragraphs [2491]-[2500]. On the evidence that is before the Commission, there is no basis to conclude that Mr O'Brien knew that Ms Gobbo was acting for Mr Pilarinos. Mr O'Brien's diary entry does not record being informed that Ms Gobbo was acting for Mr Pilarinos. The ICR records:

Has HS a client, told HS that \$50 K is in car seized not located by arresting members. DDI O'BRIEN adv. (by DC) and will attend to next week, LEAP indicates vehicle concerned subject of fraud and unlikely to be released.¹⁸⁶⁹

¹⁸⁶⁹ Exhibit RC0281 – ICR3838 (93), 27 July 2007 (VPL.2000.0003.2659 at .265).

- 53.87 The entry does not make clear that Mr O'Brien was informed that Ms Gobbo came into possession of the information in her capacity as Mr Pilarinos' legal adviser. Absent Mr O'Brien having been asked about this matter in cross-examination, the ICR alone is not a sufficient basis for the Commissioner to conclude that he was informed and it would be manifestly unfair to making any findings about this matter. No explanation has been provided as to why the matter is advanced for the first time in Counsel Assisting's closing submissions.
- 53.88 There is no evidence that the discussion that took place between Sandy White and Peter Smith on 29 July 2007 was passed on to Mr O'Brien. He was off duty that day, and there is no record in the diary of him receiving the information in the following days.
- 53.89 For all of the reasons above, the submissions at paragraphs [2501] and [2502] insofar as they relate to Mr O'Brien are unsupported by any evidence at all and should not be pressed by Counsel Assisting.

J. Submission of Detective Sergeant Paul Rowe

54 Introduction

- 54.1 Detective Sergeant Paul Rowe joined Victoria Police in 1999 and is currently an investigator at the Homicide Squad. In 2005, he was a Detective Senior Constable at the Major Drug Investigation Division (MDID). In early 2006, he moved to the Purana Task Force.
- 54.2 In those two roles, DSC Rowe featured in some important aspects of Ms Gobbo's involvement with Victoria Police. Counsel Assisting's submissions propose various findings about what DSC Rowe knew and what he did while at the MDID and Purana.
- 54.3 The most ^{Relevance} [redacted] of those proposed findings is the allegation that DSC Rowe may have ^{Relevance} [redacted] in the investigation and arrest of Mr Cooper. When the evidence is analysed completely, rigorously and fairly, it is evident that any allegation ^{Relevance} [redacted] is not open on the evidence. That evidence can be summed up in two simple propositions:
- (a) DSC Rowe had no part in planning how to convince Mr Cooper to cooperate.
 - (b) DSC Rowe had no part in the process of convincing Mr Cooper to cooperate.
- 54.4 However, the analysis of the evidence in Counsel Assisting's submissions is not complete or rigorous and is therefore not fair. Counsel Assisting's submissions fail to consider relevant evidence about DSC Rowe's junior role at the Purana Task Force, where he was responsible for the investigative grunt work expected of a Senior Constable. DSC Rowe had no role in the discussions planning Mr Cooper's arrest and he had no role in convincing Mr Cooper to cooperate with police. Counsel Assisting's submissions misstate, overstate and unfairly present a summary of the evidence in support of findings that do not reflect DSC Rowe's role or his conduct.
- 54.5 As it stands, the Commissioner would fall into error if that summary of the evidence or the proposed findings that follow were accepted. Given the seriousness of Counsel Assisting's submissions, it is necessary and appropriate for the Commissioner to set out an accurate summary of the evidence and make findings of fact that reflect the true state of the evidence. That summary is at 58.64 below, while the findings of fact are set out at 58.66 below.
- 54.6 Counsel Assisting's submissions propose findings and make assertions on a number of other topics relevant to DSC Rowe:
- (a) Findings are made about what DSC Rowe knew and what he should have done following Ms Gobbo's first SDU meeting on 16 September 2005.
 - (b) Submissions are made that are critical of DSC Rowe's dealings with Mr Bickley. Those submissions relate to the circumstances of Mr Bickley's arrest in June 2006, DSC Rowe's dealings with the DPP and evidence given at a committal hearing in January 2008.
 - (c) Submissions are made that are critical of DSC Rowe's dealings with Milad Mokbel, both at the time of his arrest in April 2006 and around the time of a meeting with the DPP in March 2007.
- 54.7 For the reasons explained in detail below, these proposed findings and submissions are not open on the evidence.

- 54.8 Importantly, DSC Rowe does not submit that his conduct was flawless or perfect. Many of the matters that DSC Rowe dealt with concerning Ms Gobbo were complex and would have been difficult and highly stressful even for an officer with many more years' experience than DSC Rowe. DSC Rowe accepted in his evidence before the Commission that, with the benefit of hindsight, knowledge and experience, he would handle some of these matters differently.
- 54.9 But DSC Rowe does properly submit that he dealt with these complex and difficult matters honestly, diligently and as best he could. Contrary to Counsel Assisting's assertions, DSC Rowe never acted improperly, dishonestly ^{Relevance} [REDACTED]
- 54.10 This submission considers the following matters in the following sections:
- (a) As explained in section 55, DSC Rowe gave credible, candid and reliable evidence in an unvarnished way. In considering his evidence and judging his actions, the Commission must take proper account of then-DSC Rowe's relative inexperience.
 - (b) As explained in section 56, DSC Rowe conducted himself in a methodical, level-headed and careful way in response to the extraordinary events of 31 August 2005;
 - (c) As explained in section 57, Counsel Assisting's proposed findings about DSC Rowe's knowledge of conflicts and other matters following Ms Gobbo's first SDU meeting on 16 September 2005 are not open on the evidence. They fail to engage with relevant evidence about conflict and instead rely on tenuous inferences drawn from incorrect factual premises;
 - (d) As explained in section 58, Counsel Assisting's submissions do not take account of DSC Rowe's junior and limited role in investigation and arrest of Mr Cooper. Instead, at paragraph [1918], Counsel Assisting present a summary of the evidence that overstates, misstates and unfairly presents the evidence about DSC Rowe's involvement in the investigation and arrest. When the evidence is properly set and analysed, it is clear that neither the proposed findings at [1919]-[1920] nor the allegations ^{Relevance} [REDACTED] are open on the evidence.
 - (e) As explained in section 59, the submissions that are critical of DSC Rowe's dealings with Mr Bickley are not open on the evidence. The Commissioner ought to make positive findings of fact to dispel any prejudice caused by Counsel Assisting's submissions in relation to DSC Rowe's dealings with Mr Bickley.
 - (f) As explained in section 60, Counsel Assisting's adverse submission about Milad Mokbel's arrest is not open on the evidence, as DSC Rowe took appropriate steps and properly believed that Ms Gobbo had refused to advise Milad Mokbel. In particular, Counsel Assisting's proposed finding that, hypothetically, DSC Rowe "would have been aware [he] could have" raised certain issues with the DPP should not be made.
- 54.11 This submission should be read with the submission in Part B above as to why the Commissioner does not have the power to make ^{Relevance} [REDACTED] findings at paragraphs [1935]-^{Relevance} [REDACTED]. This submission should also be read with the submission in Part G below as to why, if the Commissioner did have that power, the applicable law means those findings are not open in any case.

55 Paul Rowe as a witness

- 55.1 When he appeared before the Commission, DS Rowe gave credible, candid and reliable evidence in an unvarnished fashion. He showed himself to be thoughtful and passionate about his work, as well as considered in his approach to giving evidence. While DSC Rowe was at times forthright in responding to challenges to his conduct and the conduct of Victoria Police, he was never evasive or untruthful.
- 55.2 Moreover, DS Rowe regularly made appropriate concessions. In particular, DSC Rowe properly observed a distinction between what he knows now and what he knew and understood while at the MDID and the Purana Task Force. For example, in respect of disclosure, DS Rowe accepted that while it is “probably not the reality now”, he believed at the time that he did everything he could.¹⁸⁷⁰ As stated in his evidence, DSC Rowe did not then foresee the perception of unfairness that he now understands.¹⁸⁷¹
- 55.3 The difference in experience and knowledge is particularly important given DSC Rowe's position when he was at the MDID and Purana. At the time, DSC Rowe was a relatively inexperienced Detective Senior Constable. He had completed Detective Training School only in 2005.¹⁸⁷² Since then, he has had a further 15 years' experience as an investigator, including nine years' experience at the Homicide Squad.
- 55.4 In short, the Commission must resist the temptation to assess the actions of DSC Paul Rowe, the young Detective Senior Constable, by the yardstick set by now Detective Sergeant Paul Rowe, the investigator with 20 years' experience as a police officer.

56 Initial meetings with Ms Gobbo and referral to the SDU

- 56.1 Ms Gobbo's registration in September 2005 was a spontaneous event set in train by Ms Gobbo, who had found herself in an unenviable position because of her perceived obligations to Tony Mokbel. This is considered in detail in Victoria Police's submission.
- 56.2 DSC Rowe had a limited role in Ms Gobbo's assessment as a source. The entire compass of DSC Rowe's role in Ms Gobbo becoming a source was:
- (a) handling Ms Gobbo's extraordinary initial approach on 31 August 2005;
 - (b) being present at a meeting on 8 September 2005 where senior officers from the MDID and officers from the SDU decided to meet with Ms Gobbo to assess her suitability as a human source; and
 - (c) attending an introductory meeting run by SDU members on 16 September 2005.
- 56.3 Throughout this time, DSC Rowe was not a senior officer. He was not a decision-maker. He was not a specialist source handler. Rather, DSC Rowe was a junior investigator in his first year as a detective who happened to receive Ms Gobbo's call on 31 August 2005.
- 56.4 During his evidence, DSC Rowe described his conversation with Ms Gobbo as “highly unusual”¹⁸⁷³ and accepted in evidence that it was “quite an extraordinary [conversation] to have had with a barrister”,¹⁸⁷⁴ Considering those events in their

¹⁸⁷⁰ T9183.31-34 (Rowe).

¹⁸⁷¹ T9183.28-31 (Rowe).

¹⁸⁷² Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, [5] (VPL.0014.0035.0028 at 0029).

¹⁸⁷³ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, [15] (VPL.0014.0035.0028 at 0030).

¹⁸⁷⁴ T3250.26-28 (Rowe).

complete context, even the terms “highly unusual” and “extraordinary” understate the situation.

- 56.5 This was the lay of the land on the morning of 31 August 2005:
- (a) DSC Rowe had completed Detective Training School earlier that same year.¹⁸⁷⁵ His role as a Detective Senior Constable at the MDID was his first role as a detective.¹⁸⁷⁶
 - (b) DSC Rowe had had very limited experience in dealing with human sources. He had not registered a human source himself and had not referred a potential source to the SDU.¹⁸⁷⁷
 - (c) DSC Rowe did not know Ms Gobbo.¹⁸⁷⁸ He believes he had never met her personally.¹⁸⁷⁹ He does not recall having anything at all to do with Ms Gobbo until around two weeks prior. Even then, DSC Rowe merely attempted to contact Ms Gobbo by phone so she could advise a person in custody.¹⁸⁸⁰
 - (d) DSC Rowe was not aware that Ms Gobbo had historically assisted police.¹⁸⁸¹ DSC Rowe was not aware of more recent discussions that others at Victoria Police might have had regarding possibly recruiting Ms Gobbo as a human source.¹⁸⁸²
 - (e) DSC Rowe was, however, aware of suspicions that Ms Gobbo had both a personal relationship and improper professional relationship with Tony Mokbel. DSC Rowe was aware of suspicions that Ms Gobbo was one of a number of lawyers who used their roles as lawyers to assist Tony Mokbel to improperly influence the criminal justice system so he could avoid prosecution.¹⁸⁸³ As Counsel Assisting put it, Ms Gobbo’s “reputation preceded her”.¹⁸⁸⁴
- 56.6 In those circumstances, at 8:30 am on 31 August 2005, a barrister aligned with one of Victoria’s most significant organised crime figures called an inexperienced detective she did not know. Unprompted, that barrister admitted to being used by that organised crime figure as part of his manipulation of the criminal justice system.

DSC Rowe’s awareness of Tony Mokbel as a client of Ms Gobbo

- 56.7 In the conversations on 31 August 2005, Ms Gobbo confirmed suspicions that DSC Rowe and others held that Tony Mokbel was using Ms Gobbo’s role as a lawyer to employ illegitimate methods to avoid prosecution.¹⁸⁸⁵ Ms Gobbo made clear that Tony Mokbel expected her to represent people in a way that protected Tony Mokbel’s interests, including feeding him her clients’ privileged information, disclosing to him the evidence against them and pressuring them to plead guilty against their own interests.¹⁸⁸⁶ To this extent, DSC knew that Tony Mokbel was a “client” of Ms Gobbo.

¹⁸⁷⁵ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0028 [4].

¹⁸⁷⁶ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0028 [4].

¹⁸⁷⁷ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0031 [24].

¹⁸⁷⁸ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0030 [15].

¹⁸⁷⁹ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0029 [10].

¹⁸⁸⁰ T3249.21-24 (Rowe).

¹⁸⁸¹ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0032 [33].

¹⁸⁸² T3265.1-4 (Rowe).

¹⁸⁸³ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0029 [10]-[11].

¹⁸⁸⁴ T3249.28 (Rowe).

¹⁸⁸⁵ T3250.37-38 (Rowe).

¹⁸⁸⁶ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0031 [28].

- Ms Gobbo also identified that Solicitor 2 had a similar arrangement with Tony Mokbel.¹⁸⁸⁷
- 56.8 DSC Rowe said in evidence that he could not recall the extent of any knowledge that he had of Ms Gobbo acting for Tony Mokbel in legal proceedings at this time. He was asked by Counsel Assisting about specific proceedings but he did not have any memory of what, if anything, he knew about Ms Gobbo's involvement in those matters, other than he knew that Ms Gobbo was representation Tony Mokbel when he fled Australia during his trial in March 2006.¹⁸⁸⁸
- 56.9 DSC Rowe was not interested in, and did not enquire about, information concerning current charges against Tony Mokbel that might have been subject to legal professional privilege. DSC Rowe's evidence was that he had "no interest ... whatsoever" in such information and that "[a]ll we cared about" was information Ms Gobbo might supply about ongoing criminal activity.¹⁸⁸⁹
- 56.10 Nor could DSC Rowe have appreciated the broad scope of other information that Ms Gobbo might provide. Indeed, his evidence was that he had "no concept" of the extent of criminal activity that Ms Gobbo was exposed to.¹⁸⁹⁰
- 56.11 The limited information that Ms Gobbo gave to DSC Rowe and DS Mansell that day was inextricably linked to her role as a barrister. It was information about ongoing criminal activity that arose *from the very fact* that she was a barrister. DSC Rowe was not in a position to simply ignore credible information about ongoing criminal activity.
- 56.12 In those circumstances, from DSC Rowe's perspective and based on the information available to him, the reason for Ms Gobbo's possible role as a source was to supply information to support a potential investigation into attempts by Tony Mokbel to pervert the course of justice.¹⁸⁹¹
- 56.13 Given that evidence, the finding proposed in Counsel Assisting's submissions at paragraph [1334] is not correct. By referring to the existing Operation Quills and Ms Gobbo's "use as a human source against her client, Tony Mokbel", the proposed finding is not subject to the proper qualifications that, first, DSC Rowe did not know Ms Gobbo was acting for Tony Mokbel in any current legal proceedings and secondly, DSC Rowe was not interested in privileged information about Tony Mokbel. However, the following finding is open on the evidence:
- (a) On the evidence, it is not open to the Commissioner to find that by 12 September 2005, DSC Rowe knew that Ms Gobbo was acting for Tony Mokbel in any current legal proceedings. It is open to the Commissioner to find that DSC Rowe knew that Ms Gobbo was purporting to act for Tony Mokbel in that he expected her to represent people in a way that protected Tony Mokbel's interests, including feeding him her clients' privileged information, disclosing to him the evidence against them and pressuring them to plead guilty against their own interests, and that Victoria Police was considering obtaining non-privileged information about Tony Mokbel's ongoing criminal activity from Ms Gobbo.

¹⁸⁸⁷ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0032 [28].

¹⁸⁸⁸ T3244.42-3246.38 (Rowe).

¹⁸⁸⁹ T3257.8-9 (Rowe).

¹⁸⁹⁰ T3256.25-29 (Rowe).

¹⁸⁹¹ T3256.36-39 (Rowe).

57 DSC Rowe's knowledge of conflicts following Ms Gobbo's first SDU meeting

- 57.1 On 16 September 2005, DSC Rowe and DS Mansell attended a meeting with Ms Gobbo with Officer Sandy White and Officer Peter Smith from the SDU. DS Mansell and DSC Rowe were present at this meeting to introduce Ms Gobbo to the SDU members, given their conversations with her on 31 August 2005.¹⁸⁹²
- 57.2 On the basis of what occurred at this meeting, Counsel Assisting propose findings about DSC Rowe on three separate topics – namely, that:
- (a) DSC Rowe understood that a conflict of interest arose where a barrister gave non-privileged information about her client's ongoing or future criminal activity – particularly Tony Mokbel;¹⁸⁹³
 - (b) DSC Rowe ought to have reported other officers involved for serious misconduct and ought to have insisted that legal advice be obtained;¹⁸⁹⁴
 - (c) DSC Rowe “would have understood” that certain matters would be relevant and disclosable in a separate prosecution involving Mr McGrath.¹⁸⁹⁵
- 57.3 As considered in this section, none of these proposed findings are open on the evidence. Counsel Assisting's submissions fail to engage with critical relevant evidence, draw tenuous inferences from incorrect assumptions and assert unreasonable expectations about what a Senior Constable in his first year as a detective ought to have done.
- 57.4 The position as to DS Mansell's knowledge and conduct is considered in a separate submission.

DSC Rowe did not have the knowledge asserted

- 57.5 Counsel Assisting's submissions propose two findings about DSC Rowe's knowledge following the 16 September 2005 meeting. Namely, that:
- (a) he was aware that Ms Gobbo was currently acting for Tony Mokbel; and
 - (b) he “well-understood” that a barrister could not act in conflict between duties owed to their clients and a role as a human source.
- 57.6 The first of these findings can be accepted, with a necessary addition. By the time of the 16 September 2005 meeting, DSC Rowe understood everyone present at that meeting knew Ms Gobbo was acting for Tony Mokbel.¹⁸⁹⁶ This is apparent from the transcript of the meeting, which shows that Ms Gobbo spoke extensively about Tony Mokbel, including cases in which she was acting for him.¹⁸⁹⁷ However, DSC Rowe knew there was no interest whatsoever in seeking information about matters where Ms Gobbo was acting as Tony Mokbel's lawyer.¹⁸⁹⁸ On that basis, the proposed finding is amended as set out at paragraph 57.26 below.
- 57.7 The second of these proposed findings is not open on the evidence. Counsel Assisting's submissions appear to be based solely on a broad inference drawn from an

¹⁸⁹² Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0033 [43].

¹⁸⁹³ Counsel Assisting Submissions Volume 2 at 298-299 [1343.1]-[1343.2].

¹⁸⁹⁴ Counsel Assisting Submissions Volume 2 at 299 [1343.3]-[1343.4].

¹⁸⁹⁵ Counsel Assisting Submissions Volume 2 at 301 [1352].

¹⁸⁹⁶ T3275.20-22 (Rowe).

¹⁸⁹⁷ Exhibit RC0267b – Transcript of conversation between Ms Gobbo, Officer Smith and Officer White, 16 September 2005.

¹⁸⁹⁸ T3278.9-15 (Rowe).

incorrect factual premise and fail to acknowledge relevant evidence before the Commission about both DSC Rowe's role in the assessment process and his knowledge and understanding of conflicts.

- 57.8 Counsel Assisting's submissions identify the basis for DSC Rowe's alleged knowledge of conflict as being "implicit given [his] training, role and seniority".¹⁸⁹⁹ This is not supported by the evidence:
- (a) **Training:** DSC Rowe gave explicit evidence that he has never had any training about dealing with lawyers' conflicts of interest – "No, not ever".¹⁹⁰⁰ Nor did DSC Rowe have any training in source handling at the time.¹⁹⁰¹ He certainly never had any training about the situation where a lawyer was acting as a human source. The statement of Assistant Commissioner Kevin Casey indicates that no such training was available to investigators at the time.¹⁹⁰²
 - (b) **Role:** DSC Rowe was not a specialist source handler. He was a junior investigator at the MDID, who had very limited experience with human sources before his dealings with Ms Gobbo.¹⁹⁰³ He had never registered a source himself and had never referred a source to be assessed by the SDU.¹⁹⁰⁴
 - (c) **Seniority:** DSC Rowe was a Senior Constable with less than a year's experience as a Detective. In no way can this be described as "seniority".

57.9 Moreover, a proper review of the evidence demonstrates that DSC Rowe was not responsible for assessing issues of conflict and that, even if he was, he did not understand that there was any relevant conflict.

57.10 **First**, it was the SDU's responsibility as a separate unit of specialist subject matter experts to consider and address risks to Ms Gobbo's safety and risks created by her profession. DSC Rowe relied on the SDU to deal with any such risks, as those risks were the "whole reason" that the experts from the SDU were assessing her:¹⁹⁰⁵

Ms Tittensor: Well, do you recall then, or at any other stage, there being any discussion? You might have had some discussion with members of the SDU prior to this or after this. Was there any discussion about Ms Gobbo having a conflict, in her discussions about these matters with you?

Mr Rowe: I don't recall ever talking directly with the SDU in relation to it. I think we'd met once, prior to this meeting, with the SDU, but I don't remember whether it was discussed or not - I mean, bearing in mind the whole reason that we're even there with the SDU is based on the fact - the risks associated with her, both to her safety but also the fact that she's a barrister, that's the whole reason we were there, so it wasn't - it's not like it was something that none of us were aware of or were blind to. We knew that was a risk associated with her and that's why we were there with the SDU.

¹⁸⁹⁹ Counsel Assisting Submissions Volume 2 at 299 [1343.2] FN 1748.

¹⁹⁰⁰ T9180.41-42 (Rowe).

¹⁹⁰¹ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0028 [6].

¹⁹⁰² Untendered – Statement of Assistant Commissioner Kevin Casey dated 15 August 2020. See also Victoria Police submissions on training.

¹⁹⁰³ Exhibit RC-0266 – Statement of Paul David Rowe dated 25/06/2019, VPL.0014.0035.0028 at 0031 [24].

¹⁹⁰⁴ Exhibit RC-0266 – Statement of Paul David Rowe dated 25/06/2019, VPL.0014.0035.0028 at 0031 [24].

¹⁹⁰⁵ T3276.20-35 (Rowe).

- 57.11 From the first day that Ms Gobbo's cooperation was on the cards, DSC Rowe knew that the SDU would manage Ms Gobbo.¹⁹⁰⁶ The transcript of the meeting confirms that this process was undoubtedly run by the SDU members. To put it bluntly, it was their show. In fact, the transcript shows DSC Rowe did not say a single word during the two-hour meeting.¹⁹⁰⁷
- 57.12 DSC Rowe properly relied on the processes and safeguards he knew to be in place. He knew the SDU were specialists in managing sources.¹⁹⁰⁸ He knew the SDU members went through a detailed assessment process, including assessing the information available and the risks.¹⁹⁰⁹ He believed that issues concerning Ms Gobbo's profession and the risks to her safety would be considered by the SDU in this assessment process.¹⁹¹⁰ When information ultimately was provided, he believed it was appropriate for him to use it because it had been scrutinised by both the SDU and DSC Rowe's senior officers.¹⁹¹¹
- 57.13 **Second**, the evidence establishes that DSC Rowe did not "well-understand" that any relevant conflict arose between Ms Gobbo's role as a barrister and her role as a human source.
- 57.14 In considering lawyers' conflicts, it is critically important to identify the relevant conflict with precision.¹⁹¹² Conflicts of duty and interest can arise in many circumstances. Understanding one type of conflict does not mean that a person understands or appreciate all other types of conflicts.
- 57.15 Counsel Assisting's submissions do not identify or explain the conflict asserted at [1343.2]. However, the conflict of interest that Counsel Assisting identify at [1343.2] of their submissions must be peculiar to the situation where a barrister acts as a human source. The asserted conflict must also concern the situation where the barrister provides information about ongoing crimes, which is not subject to legal professional privilege. This follows from the fact that information that Ms Gobbo divulged about Tony Mokbel was not subject to legal professional privilege, as it related to Tony Mokbel's ongoing crimes. Undoubtedly, the matters that Counsel Assisting refer to in their submissions would, if proven, amount to serious crimes:
- (a) Tony Mokbel wanted to bribe a Victoria Police member to try and undermine possible charges against him;
 - (b) Tony Mokbel wanted to steal tape recordings that were to be used in evidence against him;
 - (c) Tony Mokbel was interested in laundering money and so there might be opportunities to gather evidence against him.¹⁹¹³
- 57.16 Therefore, the relevant conflict at [1343.2] must be as follows – the conflict that may arise if Ms Gobbo supplied non-privileged information about a client's ongoing or future

¹⁹⁰⁶ T3261.18-24 (Rowe).

¹⁹⁰⁷ Exhibit RC-0267, Transcript of meeting between Ms Nicola Gobbo, Mr Sandy White and Mr Peter Smith, 16 September 2005 – VPL.0005.0037.0014.

¹⁹⁰⁸ Exhibit RC-0266 – Statement of Paul David Rowe dated 25/06/2019, VPL.0014.0035.0028 at 0034 [45].

¹⁹⁰⁹ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0034 [45].

¹⁹¹⁰ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0034 [46].

¹⁹¹¹ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0034 [50].

¹⁹¹² It is necessary to precisely identify the nature and effect of the conflict wherever it is alleged that a lawyer or other fiduciary is said to be acting in a position of conflict: *Pilmer v Duke Group Ltd (in liq)* (2001) 207 CLR 165 at 198-199 [77]-[78], 200-201 [83] (McHugh, Gummow, Hayne and Callinan JJ).

¹⁹¹³ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 299 [1344].

crimes. Once Ms Gobbo provided that information, Ms Gobbo might need to cease acting for those individuals.

57.17 DSC Rowe's evidence was that he did not understand that Ms Gobbo might be constrained in what non-privileged information she could provide. In fact, he strongly believed that Victoria Police was duty bound to seek out that information, so long as it was not privileged.

57.18 During the early parts of his oral evidence, DSC Rowe accepted it would be inappropriate if Ms Gobbo provided information subject to legal professional privilege. But DSC Rowe also made clear that he was never interested in such material – only information about ongoing crimes:¹⁹¹⁴

Ms Tittensor: If it went beyond that, where she might be breaching legal professional privilege or providing instructions in relation to other clients, you wouldn't understand - you would have viewed that as inappropriate?

Mr Rowe: Well, I think - the short answer is potentially, subject to what the circumstances are. I mean, we were, to a certain extent, just letting things unfold as they were. I mean, I think - I don't know. We had no interest in - Tony Mokbel was facing charges already. I had no interest in that, that was of no significance to us as investigators, it had nothing to do with us, he was already before the court, the investigations had been run and done or were in the process of getting done. Had no interest in that whatsoever. Never discussed it with her, never had any interest in it. All we cared about is criminal activity that was ongoing that was right there in front of our face.

57.19 Later in his evidence, he again accepted that Ms Gobbo might have privileged and confidential information, but that the focus was always on the information she had about ongoing offences, not about privileged material:¹⁹¹⁵

Ms Tittensor: And that she would have privileged and confidential information that she ought not be disclosing?

Mr Rowe: Yes, but as I said on Friday, at no point in time did I have any interest in, you know, the way she was defending clients, what she was doing for preparation of defence, any of that stuff, I had no interest in that. All we cared about - all we cared about was the offences that, I guess, she was privy to, aware of, that's all we cared about.

57.20 DSC Rowe then gave forthright and direct evidence that shows he believed that Ms Gobbo's obligations did not extend to concealing information about her client's crimes. Using the examples of both Tony Mokbel and Mr Cooper, DSC Rowe said that he "can't quite comprehend" there being any restriction on Ms Gobbo giving police information about ongoing crimes:¹⁹¹⁶

Ms Tittensor: At paragraph 46 of your statement you talk about the risks?

Mr Rowe: Yes.

¹⁹¹⁴ T3256.41 – T3257.9 (Rowe) (emphasis added).

¹⁹¹⁵ T3278.8-15 (Rowe).

¹⁹¹⁶ T3320.8-28 (Rowe) (emphasis added).

Ms Tittensor: Created by her profession and that was one of the reasons you considered her a prime candidate for referral to the SDU because of the complexities associated with her profession as a barrister?

Mr Rowe: Yes, but to me, and I can't talk for the SDU guys, but to me it wasn't a case of, "Oh, is she representing them" so therefore, you know, we totally ignore everything else. As I've said several times, I couldn't have cared less about the charges they were facing and their defence and whatever else, all we were interested in is criminal activity. Ms Gobbo is representing Tony Mokbel, but if he's then offering us a bribe, I can't quite comprehend how it would be expected that we would just ignore that. If I take that a step further to [Mr Cooper], okay, if she's representing him but he's on two counts of bail for large scale drug manufacture and sets up a third lab whilst on two counts of bail next to a primary school, that we would then ignore that because she's representing him.

- 57.21 This passage is particularly instructive. It alone shows that even in July 2019, DSC Rowe did not comprehend the duty that Counsel Assisting say he "well-understood" in September 2005. He believed that information about ongoing crimes was not privileged and that the information could be provided to Victoria Police. Issues of conflict are difficult legal issues and DSC Rowe had never been trained to deal with them.
- 57.22 It should not be suggested that because DSC Rowe understood another type of conflict, he necessarily understood the particular conflict alleged at paragraph [1343.2]. In his evidence, DSC Rowe accepted that he understood in 2005 that a lawyer acting ethically would not represent two clients whose interests conflicted.¹⁹¹⁷ It is entirely understandable that DSC Rowe would understand this kind of conflict. That is a kind of routine conflict that investigators would be faced with in the usual course of running a prosecution, as it arises wherever co-accused might run a "cut-throat defence" at trial – that is, reserving the option to seek exculpation by inculcating their co-accused.¹⁹¹⁸
- 57.23 But understanding that routine conflict does not mean that DSC Rowe also understood the conflict that arose in the peculiar and unprecedented circumstances of Ms Gobbo acting as a source. In fact, DSC Rowe powerfully rejected Counsel Assisting's suggestion that the same considerations applied to both a lawyer acting for two co-accused and Ms Gobbo providing information about ongoing crime.¹⁹¹⁹
- 57.24 **Third**, as considered in Victoria Police's submissions, the evidence establishes that even the specialist SDU source handlers did not appreciate the existence of this conflict. Victoria Police has made detailed separate submissions about the knowledge of Officer White and Officer Smith following the 16 September 2005 meeting with Ms Gobbo. For present purposes, it is most important to note that the SDU members honestly but mistakenly believed they could receive information about Ms Gobbo's clients, so long as it was not privileged.
- 57.25 At the time of the meeting, Officer White had been a police officer for 26 years.¹⁹²⁰ Officer Smith had been a police officer for around 25 years.¹⁹²¹ It is contrary to all

¹⁹¹⁷ T3248.43-47 (Rowe).

¹⁹¹⁸ See the description in *R v Hawi (No 3)* [2011] NSWSC 1649 [48] (R A Hulme J).

¹⁹¹⁹ T3303.39 – T3304.18 (Rowe).

¹⁹²⁰ Exhibit RC-0275, Statement of Officer Sandy White dated 22 May 2019 – COM.0019.0002.0001 at 0001

likelihood that a Senior Constable in his first year as a Detective would identify issues that were not apparent to officers with decades of experience and specialist training as source handlers.

- 57.26 On that basis, the proposed findings at [1343.1] and [1343.2] of Counsel Assisting submissions are not open on the evidence. However, the following findings are open on the evidence and should be made:
- (a) DSC Rowe knew that Ms Gobbo was acting for Tony Mokbel at the time of the 16 September 2005 meeting. DSC Rowe had no interest in any privileged information about Tony Mokbel and did not receive any.
 - (b) DSC Rowe did not appreciate that there might be legal constraints on police receiving non-privileged information about Ms Gobbo's current clients, including Tony Mokbel and Mr Cooper.

DSC Rowe not obliged to take steps alleged

- 57.27 On the basis of his alleged knowledge following the 16 September 2005 meeting, Counsel Assisting's submissions assert that DSC Rowe ought to have taken certain steps:
- (a) he ought to have reported Victoria Police's proposed use of Ms Gobbo as a human source to superior officers other than those involved in her proposed use; and
 - (b) he ought to have insisted that Victoria Police obtain legal advice about the proposed use of Ms Gobbo.¹⁹²²
- 57.28 As set out above, it is not open for the Commissioner to find that DSC Rowe had that knowledge. However, even if DSC Rowe did have that knowledge, these findings about what he ought to have done would not be open.
- 57.29 **First**, it is unrealistic and unfair to expect DSC Rowe to have second guessed the decision-making or demanded that legal advice be obtained. He had limited involvement in the assessment process and he knew that his superiors up to Superintendent level were personally involved in the decision to assess Ms Gobbo as a source.
- 57.30 DSC Rowe also knew that the decision to assess Ms Gobbo was taken by senior ranking officers overseeing his own investigating command. On 8 September 2005, about a week after DSC Rowe and DS Mansell spoke with Ms Gobbo about cooperating, DSC Rowe attended a meeting between members of the SDU and senior officers at the MDID. DSC Rowe's superiors from the MDID were all there – Detective Acting Superintendent Robert Hill, Detective Inspector Adrian White and DS Mansell. The decision was made for the SDU to meet with Ms Gobbo to assess her suitability as a source.¹⁹²³
- 57.31 DSC Rowe was not only the most junior officer present, but he also lacked the subject matter expertise of the SDU members. This was not a meeting at which DSC Rowe had any decision-making role. But being present, he knew that the matter was discussed and considered by both subject matter experts from the SDU and senior

¹⁹²¹ Exhibit RC-0485, Statement of Officer Peter Smith undated – COM.0026.0001.0001 at 0001.

¹⁹²² Counsel Assisting Submissions Volume 2 at 298-299 [1343].

¹⁹²³ T3264.26-33 (Rowe).

officers up to four ranks above him. This high-level approval would have set DSC Rowe's mindset and properly assured him that her assessment was appropriate.

- 57.32 DSC Rowe's only other involvement in the assessment process was attending the meeting with Ms Gobbo on 16 September 2005. He was not otherwise involved in assessing her suitability as a source or authorising her registration.¹⁹²⁴
- 57.33 Ultimately, it would have been sensible and desirable to obtain legal advice or reconsider Ms Gobbo's role in further detail. But requiring DSC Rowe to make that happen would be an unreasonable counsel of perfection, given he was the most junior officer involved, he was not a subject matter expert and he did not appreciate that the conflict of interest created any issue that needed reporting.
- 57.34 **Second**, as a matter of law, DSC Rowe's obligation under the *Police Regulation Act 1958* (Vic) to complain about another officer's conduct depended on DSC Rowe believing that the other officer had engaged in serious misconduct. DSC Rowe had no such belief, which is necessarily fatal to any suggestion that he breached his duties by not complaining to superiors.
- 57.35 As Counsel Assisting identify in Volume 1 of their submissions, at the time of the 16 September 2005 meeting, Victoria Police officers were obliged under s 86L(2A) of the *Police Regulation Act* to complain to a more senior officer where that officer "has reason to believe" that another member is guilty of serious misconduct:

A member of the force must make a complaint to a member of the force of a more senior rank to that member, or to the Director, about the conduct of another member of the force if he or she has reason to believe that the other member is guilty of serious misconduct.

- 57.36 Serious misconduct is defined in s 86A:
- "serious misconduct", in relation to a member of the force, mean -
- (a) conduct which constitutes an offence punishable by imprisonment; or
 - (b) conduct which is likely to bring the force into disrepute or diminish public confidence in it; or
 - (c) disgraceful or improper conduct (whether in the member's official capacity or otherwise).

- 57.37 The trigger for the obligation to complain is the officer having "reason to believe" that another member has engaged in serious misconduct. Unanimous High Court authority demonstrates that "reason to believe" requires, first and foremost, actual belief on the part of the decision-maker. In *Boucaut Bay Co Ltd (in liq) v The Commonwealth*, the High Court unanimously held that actual belief was required where the decision-maker needed "reason to believe" before terminating certain rights:¹⁹²⁵

In my opinion, if at any time the Minister in the natural and ordinary course of his official duties acted on information of his trusted officers and formed a belief in the general terms mentioned in the latter part of the first paragraph of clause 15 that the contract was not being fairly carried out, he had power to terminate the contract without the formality of an inquiry. The one condition of his action is that he had reason to believe, and that implies actual belief.

¹⁹²⁴ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0033-0034 [44].

¹⁹²⁵ *Boucaut Bay Co Ltd (in liq) v The Commonwealth* (1927) 40 CLR 98, 106 (Isaacs ACJ; Gavan Duffy, Powers and Rich JJ agreeing) (emphasis added). Senior Counsel for the Commonwealth was Owen Dixon KC.

- 57.38 Subsequent authority confirms that “reason to believe” requires both actual belief and that the actual belief be based on reasonable grounds.¹⁹²⁶
- 57.39 The particular formulation “reason to believe” was evidently chosen for s 86L(2A) specifically and deliberately. There are numerous statutory powers and duties in the *Police Regulation Act 1958* (Vic) but none of them are conditioned on “reason to believe”. Instead, they expressly refer to “reasonable grounds to believe”¹⁹²⁷ or where it “appears ... that there *may be grounds*”.¹⁹²⁸ This includes mandatory obligations, such as the Chief Commissioner’s mandatory obligation in s 82(1) to inquire into whether an officer is fit for duty, which is enlivened when the Chief Commissioner “reasonably believes”.
- 57.40 The consequence of this is that the obligation to complain in s 86L(2A) is triggered only in circumstances where an officer actually believes that another officer is guilty of serious misconduct. If the officer forms that belief, then it must be on reasonable grounds. But if they do not form that belief, then the obligation is not triggered.
- 57.41 As it stands, DSC Rowe believed that issues to do with Ms Gobbo’s profession were being managed by the SDU.¹⁹²⁹ He knew that his superiors, in consultation with the SDU, had signed off on Ms Gobbo being assessed.¹⁹³⁰ There is no indication that DSC Rowe believed others had acted improperly, let alone engaged in “serious misconduct”.
- 57.42 Accordingly, proposed findings at [1343.3] and [1343.4] of Counsel Assisting’s submissions ought not be made.

Proposed findings concerning disclosure following 16 September 2005 meeting

- 57.43 Counsel Assisting’s submissions propose a finding that the officers present at the 16 September 2005 meeting “would have [understood]” that police members’ notes of her involvement in advising Mr McGrath and assisting to draft his statements would be “relevant and disclosable to the defence”.¹⁹³¹ This proposed finding is based only on the conversation that the officers had with Ms Gobbo on 16 September 2005.¹⁹³²
- 57.44 This proposed finding is also considered in detail in Victoria Police’s submission concerning the alleged wrongdoing of the SDU members. Given that this submission considers the position of DSC Rowe in particular, this submission is reproduced below.
- 57.45 There are two reasons why this proposed finding is not open on the evidence and two separate reasons why no alternative finding should be made.
- 57.46 **First**, the officers at the meeting had nowhere near sufficient information to work out whether the information might be relevant and disclosable. Any assessment of potential relevance requires at least an understanding of the issues in a given prosecution.¹⁹³³ But none of the officers present had been involved in prosecutions involving Mr McGrath or in the process of taking his statement.
- 57.47 As Counsel Assisting identify in Chapter 7 of their submissions, these matters were being handled by members of the Purana Task Force. DS Mansell and DSC Rowe

¹⁹²⁶ *WA Pines Pty Ltd v Bannerman* (1980) 41 FLR 175, 186 (Lockhart J; Bowen CJ agreeing); *Hammond v Power* [2006] VSCA 25 [105] (Chernov JA; Maxwell P agreeing).

¹⁹²⁷ *Police Regulation Act 1958* (Vic), s 86KB(5).

¹⁹²⁸ *Police Regulation Act 1958* (Vic), s 86P(2).

¹⁹²⁹ T3305.39-46 (Rowe).

¹⁹³⁰ T3264.26-33 (Rowe).

¹⁹³¹ Counsel Assisting Submissions Volume 2 at 301 [1352].

¹⁹³² Counsel Assisting Submissions Volume 2 at 300-301 [1351].

¹⁹³³ *R v Spiteri* (2004) 61 NSWLR 369; *R v Farquharson* (2009) 26 VR 410, 464 [213].

investigated drug offences at the MDID. Neither Officer White nor Officer Smith had ever been at Purana.

- 57.48 Counsel Assisting's submissions create the impression that Ms Gobbo openly spoke about advising Mr McGrath. That impression is not correct. Ms Gobbo spoke in a deliberately cryptic fashion and never even identified Mr McGrath by name. Instead, she referred to Mr McGrath as "a little fellow that I was acting for who ultimately is one of the most important Crown witnesses".¹⁹³⁴
- 57.49 Other evidence suggests the SDU members did not know who Ms Gobbo was talking about. The ICR for that meeting records Ms Gobbo's story about the witness, but does not identify the witness by name.¹⁹³⁵ In contrast, the ICR for their third meeting includes Mr McGrath's name and records details of Ms Gobbo's involvement with him.¹⁹³⁶ But this would be because in a meeting earlier that day, Ms Gobbo told Officer White and Smith that the witness she had helped roll was Mr McGrath.¹⁹³⁷
- 57.50 Neither DSC Rowe nor DS Mansell were present at any subsequent SDU meetings with Ms Gobbo. Even if Ms Gobbo believed Mr McGrath's assistance was notorious, there is no basis to assume that two investigators at the MDID would have known about the progress of Purana's murder prosecutions. There is other evidence before the Commission that Purana's murder investigations were conducted entirely separately from any MDID drug-related investigations and that there was limited cross over.¹⁹³⁸
- 57.51 **Second**, the premise of Counsel Assisting's proposed finding is that, based on what Ms Gobbo said, it would appear to the officers that notes of her actions would be relevant and disclosable. The evidence demonstrates that premise is not correct. Ms Gobbo said the following about the notes:¹⁹³⁹
- I know the police protected me in the Magistrates' Court with the first round of subpoenas ... but now we're at the Supreme Court stage ... and a judge might rule differently to a magistrate. If that happens, I'm – I'm – I'm fucked".*
- 57.52 The most obvious interpretation of this comment is that police successfully claimed public interest immunity before the Magistrate, but Ms Gobbo was concerned that a Supreme Court judge might "rule differently" if more subpoenas were issued in the Supreme Court. As far as the officers knew, the notes had not been produced *because a claim of privilege had been made and upheld by a Magistrate*. As explained in Commander Bateson's submissions, this is precisely what occurred – Commander Bateson produced his notes subject to a public interest immunity claim, which was upheld by the presiding Magistrate.¹⁹⁴⁰ However, as explained above, these facts were not known to DSC Rowe who played no role in the Purana murder investigations.
- 57.53 With the proposed finding not open on the evidence, there is no reason or cause to make an alternative finding.
- 57.54 **First**, Counsel Assisting never asked any of the officers their views on whether these notes would need to be disclosed. Counsel Assisting had the opportunity to ask all

¹⁹³⁴ Exhibit RC-0267, Transcript of meeting between Nicola Gobbo, Sandy White and Peter Smith, 16 September 2005 – VPL.0005.0037.0014. at 0032.

¹⁹³⁵ Exhibit RC-0281, 3838 ICR 1 – VPL.2000.0003.1587 at 1588.

¹⁹³⁶ Exhibit RC-0281, 3838 ICR 3 – VPL.2000.0003.1599 at 1600.

¹⁹³⁷ Exhibit RC-0282 – Transcript of meeting between Nicola Gobbo, Officer White and Officer Smith, 26 September 2005 – VPL.0005.0076.0004 at 0231-0232.

¹⁹³⁸ T4359.34-47 (O'Brien).

¹⁹³⁹ Exhibit RC-0267, Transcript of meeting between Nicola Gobbo, Sandy White and Peter Smith, 16 September 2005 – VPL.0005.0037.0014 at 0033-34.

¹⁹⁴⁰ Submissions of Commander Stuart Bateson at 14.216.

available witnesses about this matter. While not strictly bound by the rule in *Browne v Dunn*, the Commissioner should as a matter of general fairness not make findings about individuals where those allegations were never put to the individuals concerned. If the officers had been asked about Ms Gobbo's comments, they could have explained their thoughts on the matter. But they were not asked.

- 57.55 **Second**, the proposed finding is irrelevant because there would never be a situation where any of the officers would be called on to decide whether Ms Gobbo's historic involvement with Mr McGrath was relevant and disclosable. None of the officers were involved in prosecutions where Mr McGrath was a witness. Ms Gobbo's comments indicated that any matters would be resolved by the Supreme Court. Ms Gobbo's fear stemmed from the Supreme Court's potential decision, which assumes that the relevant members would put those notes before the Court.
- 57.56 As it stands, Counsel Assisting's proposed finding demonstrates that this finding rises no higher than a mere hypothetical – that is, the officers “would have understood” certain matters. The proposed finding is not even that they did understand that to be the case.
- 57.57 It might be suggested that the proposed finding is relevant because it shows that these officers understood from an early stage that disclosure might be necessary. But it is manifestly unfair to draw such a broad inference from a scenario the officers knew nothing about, especially where those officers were never questioned about it. In any case, Counsel Assisting propose a merely hypothetical finding – namely, that these officers “would have understood” certain matters. That is not an acceptable basis for any useful inference about their knowledge.
- (a) It is not open on the evidence for the Commissioner to make the finding proposed at paragraph [1352] of Counsel Assisting's submissions.
- (b) There is no reason or cause to make any alternative finding about the matters referred to in that proposed finding.

58 Proposed findings concerning Mr Cooper

- 58.1 Counsel Assisting submit that it is open to the Commissioner that DSC Rowe may have Relevance in relation to the investigation and arrest of Mr Cooper.
- 58.2 Two simple propositions demonstrate why that proposed finding is not open:
- (a) DSC Rowe had no part in planning how to convince Mr Cooper to cooperate.
- (b) DSC Rowe had no part in the process of convincing Mr Cooper to cooperate.
- 58.3 It is necessary to set out the evidence that establishes these two central propositions because Counsel Assisting's submissions have not referred to evidence concerning DSC Rowe's actual role at the Purana Task Force. That evidence is critical to understanding how little DSC Rowe knew and why he was not involved in convincing Mr Cooper to cooperate.
- 58.4 During the initial investigation, DSC Rowe did discrete investigative tasks as and when directed by his superiors, DS Flynn and DSS O'Brien. His superiors were the ones who received and considered information supplied by the SDU. They formulated the directives that DSC Rowe and others carried out.
- 58.5 Once Mr Cooper's lab was located, DSC Rowe's superiors began to coordinate the resources necessary for his arrest. The SDU members also met with Ms Gobbo. However, DSC Rowe had no role in any of those meetings, as he was occupied with the

grunt work of investigation. DSC Rowe had had no contact with Ms Gobbo since attending the SDU's meeting with her in September 2005.

- 58.6 DSC Rowe's grunt work continued on the day of Mr Cooper's arrest. DSC Rowe was called into assist only after the arrest had taken place. He arrived after Ms Gobbo had already arrived at St Kilda Road. From there, DSC Rowe was not involved in any discussions with Mr Cooper and Ms Gobbo, which were handled by DASS Flynn and DAI O'Brien. DSC Rowe was only involved after all those discussions took place and Mr Cooper had agreed to cooperate with police. Even then, DSC Rowe merely sat in as corroborator on an interview that DS Flynn conducted. He asked one question to DS Flynn's more than 400 questions.
- 58.7 Counsel Assisting's submissions at paragraph [1918] do not engage with this evidence and instead misstate, overstate and unfairly present a selection of other evidence. Accordingly, they proposed a set of findings at paragraph [1919] that are simply not open. Accepting that summary of the evidence or those proposed findings would constitute an error on the part of the Commissioner.
- 58.8 This section sets out the evidence relevant to Mr Rowe's knowledge and conduct in relation to Mr Cooper's arrest and the lead up to it in four parts:
- (a) DSC Rowe's junior role in the Cooper investigation generally;
 - (b) DSC Rowe's ongoing investigative grunt work once Mr Cooper's lab was located;
 - (c) DSC Rowe's continuing with that "grunt work" on the day of Mr Cooper's arrest; and
 - (d) Why Counsel Assisting's presentation of the evidence at paragraph [1918] is not accurate, including an alternative summary that reflects the evidence about DSC Rowe's knowledge and conduct.
- 58.9 From there, this section sets out an alternative set of findings that, unlike Counsel Assisting's proposed findings at paragraph [1919], are open on the evidence.
- 58.10 Finally, this section considers the subsequent non-disclosure of Ms Gobbo's role as a human source. As considered below, it is submitted that, with the benefit of hindsight, DSC Rowe has accepted that there were shortcomings in his approach to disclosure. However, there was no element of deliberate or conscious wrongdoing in that approach.

DSC Rowe's junior role in the investigation into Mr Cooper

- 58.11 Properly understood, DSC Rowe's role in the Cooper investigation was to take direction and complete the discrete investigative tasks he was assigned by his superiors. He was not privy to the decision-making and planning about how the investigation unfolded.
- 58.12 DSC Rowe explained his role in his oral evidence, it was a case of his superiors saying "This is what's happened, this is what we know, we need to do this":¹⁸⁴¹
- Ms Tittensor: From early 2006 through to April 2006 you were undertaking various investigative tasks relating to Posse targets, including that person?
- Mr Rowe: Yes.
- Ms Tittensor: You're receiving regular briefings from Mr O'Brien and Mr Flynn in relation to those matters?

¹⁸⁴¹ T9184.12 – T9185.2 (Rowe).

- Mr Rowe: Yes.
- Ms Tittensor: They were receiving regular information through the SDU that was coming from Ms Gobbo?
- Mr Rowe: Yes.
- Ms Tittensor: How was that information being disseminated?
- Mr Rowe: Well, I think the majority of the time it came through either Jim O'Brien or Dale Flynn and to some extent, to varying degrees of detail it would come to us.
- Ms Tittensor: The majority of the time they would get the information from the SDU?
- Mr Rowe: Yes.
- Ms Tittensor: It gets conveyed to you. Is it conveyed to you verbally, a shout across the office, "Go and follow this up", or is it conveyed to you in an email or in a document or on a Post-it Note, how is that done?
- Mr Rowe: I think the vast majority of times just verbally. Just, you know, "This is what's happened, this is what we know, we need to do this".
- Ms Tittensor: They might get their hot debrief, we've heard about those from the SDU. Would they be yelling things across the office or verbally telling you what to do after the phone call or during the phone call?
- Mr Rowe: I don't know. If it was Jim, for example, he might call Flynn into his office, he might come out and talk to him. You know, there were times where we would have crew meetings, you know, office meetings or whatever, where things might be discussed. But, you know, as those events of Posse unfolded, particularly over those days, there was a lot going on. It was basically just a, "I need you to do this" and then you'd start it and if you had a question you would ask someone to fill in the gaps.

- 58.13 The detail in DSC Rowe's diary emphasises that when DSC Rowe did work on the Cooper investigation, he was doing the grunt work expected of a Senior Constable:
- (a) For almost all of February and into March 2006, DSC Rowe was tasked with conducting LEAP checks of individuals, reviewing surveillance product and preparing applications for further surveillance;¹⁹⁴²
 - (b) On 17 March 2006, DSC Rowe and others were instructed to patrol the Preston area to try and locate Mr Cooper's lab;¹⁹⁴³
 - (c) On 9 and 10 April 2006, DSC Rowe was tasked with a night shift of routine static surveillance and running inquiries of potential vehicles of interest;¹⁹⁴⁴
 - (d) On 14 April 2006, DSC Rowe and others were briefed about the possible location of Mr Cooper's lab, which turned out to be incorrect. DSC Rowe was tasked with

¹⁹⁴² Untendered Exhibit, Diary of Paul Rowe – VPL.0005.0107.0001 at 0071-0084.

¹⁹⁴³ Untendered Exhibit, Diary of Paul Rowe – VPL.0005.0107.0001 at 0087.

¹⁹⁴⁴ Untendered Exhibit, Diary of Paul Rowe – VPL.0005.0107.0001 at 0095.

retrieving and reviewing surveillance footage of an earlier meeting between Mr Cooper and an associate.¹⁹⁴⁵

- 58.14 In one respect, DSC Rowe was in a unique position for someone of his junior rank because he had been privy to Ms Gobbo's introduction to the SDU. But he had no further involvement in her management after the introduction meeting on 16 September 2005¹⁹⁴⁶ and believed that the SDU members were managing potential issues that might arise because of her profession.¹⁹⁴⁷
- 58.15 Because he knew Ms Gobbo had been assessed as a source, DSC Rowe at times suspected that information about Mr Cooper had been supplied by Ms Gobbo.¹⁹⁴⁸ But DSC Rowe believed it was appropriate for him to act on any such information because it had been "filter[ed] through the [SDU] and his superior officers" and so assessed as suitable to act on.¹⁹⁴⁹ DSC Rowe explained this and the other safeguards he relied on in his statement:¹⁹⁵⁰

When I received information which I suspected had come from Ms Gobbo, I believed that it was appropriate to act on this information because of the processes that were in place. These included the approval of Ms Gobbo's registration and the filtering through the DSU and my superior officers of information before it was provided to me. In addition, senior officers sitting above the investigative teams were regularly briefed on the direction of Purana investigations, including Assistant Commissioner (Crime) Simon Overland.

No involvement in planning once laboratory located

- 58.16 DSC Rowe was told on Monday 17 April 2006 that Mr Cooper's lab had been located over the weekend.¹⁹⁵¹ In the days that followed, there were a number of meetings between members of the Purana Task Force and the specialist units who would assist with the arrest – the SDU, the State Surveillance Unit and the Technical Support Unit – as well as a long meeting between the SDU and Ms Gobbo:
- (a) On 18 April 2006, DSS O'Brien, DS Flynn and DS Kelly from Purana met with members from the specialist units who would assist with the arrest – Officer White from the SDU, DSS Michael O'Connor from the State Surveillance Unit and Officer Highway from the Technical Support Unit.¹⁹⁵²
 - (b) On 19 April 2006, DSS O'Brien and DS Flynn met with Officer White from the SDU in the morning. In the evening, Officers White, Smith and Green from the SDU met and discussed the impending arrest.¹⁹⁵³
 - (c) On 20 April 2006, Officers White and Green from the SDU met with Ms Gobbo and discussed Mr Cooper's impending arrest, among other matters. Counsel Assisting ascribe particular significance to this meeting, alleging that the transcript of this meeting demonstrates that the SDU members were "knowingly concerned in an improper deception" of Mr Cooper.¹⁹⁵⁴

¹⁹⁴⁵ Untendered Exhibit, Diary of Paul Rowe – VPL.0005.0107.0001 at 0097.

¹⁹⁴⁶ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0034 [49].

¹⁹⁴⁷ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0034 [49].

¹⁹⁴⁸ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0036 [65].

¹⁹⁴⁹ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0035 [58].

¹⁹⁵⁰ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0035 [58].

¹⁹⁵¹ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0037 [67].

¹⁹⁵² See Counsel Assisting Submissions Volume 2 at 420 [1821].

¹⁹⁵³ See Counsel Assisting Submissions Volume 2 at 420 [1822].

¹⁹⁵⁴ Counsel Assisting Submissions Volume 2 at 423-424 [1825].

- 58.17 DSC Rowe attended none of these meetings. On these days, DSC Rowe continued with the grunt work of a Detective Senior Constable – extensive paperwork and routine surveillance:
- (a) On 17 April 2006, DSC Rowe conducted LEAP checks and drafted applications needed for surveillance.¹⁹⁵⁵
 - (b) On 18 April 2006, DSC Rowe reviewed surveillance footage and conducted physical surveillance – including searching a dumpster for items discarded by Mr Cooper.¹⁹⁵⁶
 - (c) From 19 to 21 April 2006, DSC Rowe continued with surveillance and drafted search warrant applications and an accompanying affidavit, which was ultimately sworn by DASS Flynn.¹⁹⁵⁷
 - (d) From midnight until he went off duty at 8:30 am on 22 April 2006, DSC Rowe conducted physical surveillance on Mr Cooper's lab.¹⁹⁵⁸
- 58.18 The days leading up to Mr Cooper's arrest could not show a starker contrast between those planning the arrest and DSC Rowe. For example, on 18 April 2006, DSC Rowe's superiors were coordinating the complex resources needed for Mr Cooper's arrest. DSC Rowe was sorting through a dumpster for items Mr Cooper had discarded.
- 58.19 However, this picture is entirely absent from Counsel Assisting's submissions because those submissions overlook the evidence about DSC Rowe's limited and junior role in the investigation.

Limited involvement on the day of Mr Cooper's arrest

- 58.20 As with the lead up to the arrest, Counsel Assisting's submissions do not engage with the evidence demonstrating DSC Rowe's limited involvement on the day of Mr Cooper's arrest. There are seven relevant matters in evidence about this:
- 58.21 **First**, DSC Rowe had no part in the decision to execute the arrest that day. As DASS Flynn's statement records, he and DAI O'Brien decided that morning to move to the arrest stage because Mr Cooper and his associates had been in the property overnight and so were likely to be manufacturing drugs.¹⁹⁵⁹
- 58.22 **Second**, DSC Rowe was not on duty at the time of Mr Cooper's and [Mr Agrum's] arrests and did not attend the address where the laboratory was located. DSC Rowe had gone off duty at 8:30 am, having conducted surveillance on the laboratory since midnight.¹⁹⁶⁰ At 9:00 am, DASS Flynn told him that it might be happening that day.¹⁹⁶¹ DSC Rowe first knew the arrest had happened when DASS Flynn contacted him at 3:30 pm and told him to return to duty.¹⁹⁶² This was an hour after the arrest occurred.¹⁹⁶³
- 58.23 **Third**, by the time DSC Rowe arrived for duty, Ms Gobbo was already present at St Kilda Road and had spoken to both Mr Cooper and [Mr Agrum]. DSC Rowe was briefed about these matters only after they had occurred.¹⁹⁶⁴

¹⁹⁵⁵ Untendered Exhibit, Diary of Paul Rowe – VPL.005.0107.0001 at 0098.

¹⁹⁵⁶ Untendered Exhibit, Diary of Paul Rowe – VPL.005.0107.0001 at 0098-099.

¹⁹⁵⁷ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0037 [68].

¹⁹⁵⁸ Untendered Exhibit, Diary of Paul Rowe – VPL.005.0107.0001 at 0102.

¹⁹⁵⁹ Exhibit RC-0536B, Statement of Dale Stephen Flynn – VPL.0014.0042.0001 at 0009 [48].

¹⁹⁶⁰ Untendered Exhibit, Diary of Paul Rowe – VPL.005.0107.0001 at 0102.

¹⁹⁶¹ Untendered Exhibit, Diary of Paul Rowe – VPL.005.0107.0001 at 0102.

¹⁹⁶² Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0037 [69].

¹⁹⁶³ Exhibit RC-0536B, Statement of Dale Stephen Flynn – VPL.0014.0042.0001 at 0009 [48].

¹⁹⁶⁴ T9192.17 (Rowe); Exhibit RC-0266 – Statement of Paul Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0037 [70].

- 58.24 **Fourth**, DSC Rowe did not know or suspect that Ms Gobbo would attend to advise Mr Cooper. In DSC Rowe's words, his evidence was that "I don't actually think I turned my mind to the fact that she was going to turn up".¹⁹⁶⁵ Given DSC Rowe had not been involved in any of the planning or other meetings leading up to the arrest, it is entirely understandable that this was not something he had considered beforehand. Indeed, on the day of the arrest, DSC Rowe had worked a night shift and was off duty at home when decisions about the arrest were being made.
- 58.25 **Fifth**, conversations with Ms Gobbo were outside DSC Rowe's limited role.¹⁹⁶⁶ DSC Rowe was responsible simply and only for formally processing the two offenders into custody and completing routine tasks such as taking buccal swabs and fingerprints.¹⁹⁶⁷ Larger issues and strategy were left to others more senior.¹⁹⁶⁸ In DSC Rowe's words, he was limited to "simply doing, you know, the grunt work".¹⁹⁶⁹
- 58.26 **Sixth**, all conversations with Ms Gobbo and Mr Cooper were handled by DSC Rowe's superior officers, DASS Flynn and DAI O'Brien, both of whom were aware that Ms Gobbo was a human source. DSC Rowe generally understood that Mr Cooper was being encouraged to cooperate with police, but DSC Rowe had "no idea" of what discussions Ms Gobbo, Mr Cooper, DASS Flynn and DAI O'Brien were having that night.¹⁹⁷⁰ While these discussions were happening, DSC Rowe was processing Mr Agum.¹⁹⁷¹
- 58.27 **Seventh**, by the time that DASS Flynn conducted his further interview with DSC Rowe present, Mr Cooper had already agreed to assist police. DSC Rowe learned that Mr Cooper was assisting police at 9:00 pm, when DASS Flynn told him.¹⁹⁷² The interview then began a few minutes later at 9:08 pm.¹⁹⁷³ During the interview, DASS Flynn asked more than 450 questions, while DSC Rowe asked only one.¹⁹⁷⁴
- 58.28 **Eighth**, DSC Rowe had "full confidence" in the superior officers he was working with and he had "no doubt" that issues about potential conflict were being addressed by his superiors.¹⁹⁷⁵
- 58.29 DSC Rowe accepted that he did not discuss or raise any concerns with his superiors about Ms Gobbo being there.¹⁹⁷⁶ However, once the evidence is properly and completely presented, it is understandable why he did not. He understood that the matter was being handled by his superior officers. DSC Rowe knew they had full knowledge of the facts and they were responsible for discussions with Ms Gobbo about Mr Cooper. DSC Rowe had full confidence that they would deal with the matter.
- 58.30 The following list of other events of 22 April 2006 that DSC Rowe was not involved in and not even aware of further demonstrate DSC Rowe's limited role on the day of Mr Cooper's arrest:¹⁹⁷⁷

¹⁹⁶⁵ T9201, 7-9 (Rowe).

¹⁹⁶⁶ T9200, 2-4 (Rowe).

¹⁹⁶⁷ T9193.29-30 (Rowe).

¹⁹⁶⁸ T9200.3-4 and 21-25 (Rowe).

¹⁹⁶⁹ T9200.22 (Rowe).

¹⁹⁷⁰ T9197.30-40 (Rowe).

¹⁹⁷¹ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0037 [73].

¹⁹⁷² Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0037 [74].

¹⁹⁷³ Untendered exhibit, Interview between Dale Flynn and Mr Cooper dated 22 April 2006 – VPL.0005.0011.1004 at 1009.

¹⁹⁷⁴ Untendered exhibit, Interview between Dale Flynn and Mr Cooper dated 22 April 2006 – VPL.0005.0011.1004 at 1071-1072.

¹⁹⁷⁵ T9199.46-9200.2 (Rowe).

¹⁹⁷⁶ T9197.21-22.

¹⁹⁷⁷ These matters are listed without accepting that they occurred in the way Counsel Assisting allege.

- (a) Officer Peter Smith speaking to Ms Gobbo on the morning of 22 April 2006;¹⁹⁷⁸
- (b) Ms Gobbo being given instructions by her handlers about what to do if she saw them after the arrest;¹⁹⁷⁹
- (c) Information being passed from Ms Gobbo to an SDU member about her discussions with Mr Cooper;¹⁹⁸⁰
- (d) The alleged discussions between Supt Biggin, DSS O'Connor, DASS Flynn and DAI O'Brien about the progress of the investigation;¹⁹⁸¹
- (e) Officer Smith arriving at St Kilda Road and the discussions that he may have then had with DAI O'Brien and DASS Flynn;¹⁹⁸²
- (f) Any detail of the [REDACTED] conversation with Mr Cooper about why he should cooperate;¹⁹⁸³
- (g) Any alleged conversation between Ms Gobbo and Mr Cooper when DAI O'Brien, DASS Flynn and the SDU member were present¹⁹⁸⁴ or when only DASS Flynn was present;¹⁹⁸⁵
- (h) Ms Gobbo leaving St Kilda Road and meeting up with SDU members nearby for a debrief meeting.¹⁹⁸⁶

58.31 It is evident that whatever transpired in the lead up to and on the night of Mr Cooper's arrest, DSC Rowe was not even aware of it, let alone a part of it.

Evidence presented in paragraph [1918] not accurate or reliable

- 58.32 In paragraph [1918] of their submissions, Counsel Assisting's submissions seek to catalogue the matters relevant to analysing DSC Rowe's knowledge and conduct concerning Mr Cooper.
- 58.33 That catalogue of alleged knowledge and conduct is not an accurate or reliable account of the evidence. In some instances, the submissions unfairly draw general inferences from specific evidence. In another instance, the submissions rely upon evidence that necessarily post-dated Mr Cooper's arrest. In other instances, the submissions state propositions that are simply not supported by the evidence cited (or otherwise available).
- 58.34 For the reasons set out below, the Commissioner cannot rely upon Counsel Assisting's submissions at paragraph [1918] and would fall into error if those submissions were accepted.
- 58.35 An alternative version of paragraph [1918] that is open on the evidence is set out at 58.64 below.

Paragraph [1918.3] – evidence presented unfairly

- 58.36 Sub-paragraph [1918.3] purports to contain a concession by DSC Rowe that any instance of a lawyer's undisclosed conflict would be a perversion of the course of

¹⁹⁷⁸ Counsel Assisting Submissions Volume 2 at 424 [1829].

¹⁹⁷⁹ Counsel Assisting Submissions Volume 2 at 425 [1831.4].

¹⁹⁸⁰ Counsel Assisting Submissions Volume 2 at 427 [1831.12].

¹⁹⁸¹ Counsel Assisting Submissions Volume 2 at 427 [1831.13].

¹⁹⁸² Counsel Assisting Submissions Volume 2 at 428 [1831.15].

¹⁹⁸³ Counsel Assisting Submissions Volume 2 at 428 [1831.16].

¹⁹⁸⁴ Counsel Assisting Submissions Volume 2 at 429 [1831.19.2].

¹⁹⁸⁵ Counsel Assisting Submissions Volume 2 at 430 [1831.19.4].

¹⁹⁸⁶ Counsel Assisting Submissions Volume 2 at 432 [1831.23].

justice. It would be unfair to rely upon this evidence in circumstances where Counsel Assisting have:

- (a) questioned DSC Rowe in the particular context of Tony Mokbel, Ms Gobbo and Solicitor 2 and their deliberate and calculated perversion of the course of justice;
- (b) then invited DSC Rowe to accept a broadly stated proposition that was wrong as a matter of law; and
- (c) now present that incorrect proposition of law as a broadly stated concession, entirely divorced from the particular context in which it was given.

58.37 The evidence cited in sub-paragraph [1918.3] was given in the context of questioning about Ms Gobbo, Solicitor 2 and Tony Mokbel. DSC Rowe gave evidence of Tony Mokbel paying Ms Gobbo and Solicitor 2 to represent members of his criminal enterprise on the understanding that Ms Gobbo and Solicitor 2 would provide him with other clients' privileged information and deliberately undermine other clients' cases in order to protect him from prosecution.¹⁹⁸⁷

58.38 Within that context, it is instructive to set out how the broadly stated evidence now relied upon by Counsel Assisting was presented to DSC Rowe:¹⁹⁸⁸

Ms Tittensor: That's what I'm asking you. You understood that to be one of the manipulations of the criminal justice system that was going on, that Mr Mokbel was wanting her to provide him with information that was privileged or confidential, it was information that belonged to other people?

Mr Rowe: Yes, but as I said, I understand why you're phrasing it the way you are.

Ms Tittensor: Was that one of your understandings of how the criminal justice system was being manipulated by Mr Mokbel?

Mr Rowe: It was. He was trying to look after himself. He was trying to look after himself and use her and Solicitor 2 for his own interest. Absolutely.

Ms Tittensor: Effectively she was working for him instead of working for her other clients?

Mr Rowe: Yes, she was.

Ms Tittensor: And a lawyer cannot represent two conflicting interests at once?

Mr Rowe: Well they're not supposed to, but it seems to happen a fair bit.

Ms Tittensor: Because that would be a perversion of the justice system?

Mr Rowe: Well I think in the context of Ms Gobbo, Solicitor 2 and Mr Mokbel I think it 100 per cent is a perversion of the criminal justice system.

Ms Tittensor: Well, would it not be in other cases if a lawyer was representing two conflicting interests at once and one person doesn't know it?

Mr Rowe: Yep, yep, I guess so.

¹⁹⁸⁷ T3247.19 – T3248.47; T3300.28 – T3301.35 (Rowe)

¹⁹⁸⁸ T3301.11-39 (Rowe).

- 58.39 It is important to note the two steps within this passage of evidence.
- 58.40 **First**, DSC Rowe deliberately and clearly limited his evidence to the context he was being questioned about – Ms Gobbo, Solicitor 2 and Tony Mokbel. His view was that the particular conduct he had been questioned about would be a perversion of the course of justice. That view is likely correct.
- 58.41 **Second**, Counsel Assisting then sought to generalise that evidence by presenting DSC Rowe with the broad proposition that in “other cases” a lawyer who was representing two conflicting interests without disclosing that would pervert the course of justice.
- 58.42 However, the generalised premise of Counsel Assisting's question is simply wrong. A lawyer who acts concurrently for opposing interests without disclosing that conflict does not, by that conduct alone, pervert the course of justice. That conduct would necessarily be a breach of fiduciary duty,¹⁹⁸⁹ with the relevant remedy for any conflict being an order restraining the lawyer from continuing to act¹⁹⁹⁰ or monetary award based on the losses sustained by reason of the lawyer's breach of their duties.¹⁹⁹¹
- 58.43 A lawyer acting concurrently for opposing interests would only pervert the course of justice in a small subset of instances where other critical conditions were met. For example, a lawyer in a position of conflict would only commit the offence where:
- (a) their conduct is serious enough to have the necessary tendency to impair the capacity of a court or competent judicial authority to do justice – that is, their conduct constitutes the actus reus of a perversion;¹⁹⁹² and/or
 - (b) their breach was intended to pervert the course of justice – that is, their conduct was accompanied by the necessary mens rea. In this respect, a lawyer would not commit an offence if their conduct was careless, negligent or done with the mistaken belief it was lawful.¹⁹⁹³
- 58.44 The broad proposition that Counsel Assisting invited DSC Rowe to accept lumped all instances of undisclosed conflict together. Counsel Assisting was wrong to do so. While Tony Mokbel's calculated and deliberate use of Ms Gobbo and Solicitor 2 might well have perverted the course of justice, it was wrong for Counsel Assisting to present the broad proposition that “other cases” of a lawyer's undisclosed conflict would similarly pervert the course of justice. As a matter of basic fairness, any evidence obtained based on such questioning cannot be relied upon in the way proposed.

Paragraph [1918.4] – Evidence wrongly presented as pre-dating Mr Cooper's arrest

- 58.45 In paragraph [1918.4], Counsel Assisting seek to rely on evidence that DSC Rowe knew Ms Gobbo should not have represented people she was informing on.
- 58.46 This misstates the evidence as DSC Rowe's evidence related to the specific context of Ms Gobbo acting for people after they had been arrested because of information she provided. This is readily apparent from the evidence cited by Counsel Assisting:¹⁹⁹⁴

Ms Tittensor: It was a constant that she was representing people that she was conflicted, she ought to have been conflicted from representing?

¹⁹⁸⁹ *Prince Jefri Bolkiah v KPMG* [1999] 2 AC 222, 234-235 (Millet LJ, Browne-Wilkinson, Hope, Clyde and Hutton LLJ agreeing).

¹⁹⁹⁰ See the form of order in *Grimwade v Meagher* [1995] 1 VR 446, 456.

¹⁹⁹¹ *Pilmer v Duke Group Ltd (in liq)* (2001) 207 CLR 165, 201 [85] (McHugh, Gummow, Hayne and Callinan JJ).

¹⁹⁹² *R v Rogerson* (1992) 174 CLR 268, 280 (Brennan and Toohey JJ).

¹⁹⁹³ *R v Freeman* (1985) 3 NSWLR 303, 310 (Bathurst CJ; Foster and McInerney JJ agreeing).

¹⁹⁹⁴ T9466, 15-29 (Rowe) (emphasis added).

Mr Rowe: The investigators or my point of view, you know, yep, we knew that she couldn't represent these people. We were of the understanding that, you know, there was significant attempts being made to prevent her from doing that, to discourage her from doing that and she kept pushing back and would, you know, continually become involved and as I said previously, you know, what I thought her motivations for doing that were back then and what I probably realise now are a little bit different.

Ms Tittensor: She's conflicted out of these matters because she's provided information which has led to various of these people being arrested?

Mr Rowe: Yes.

- 58.47 As DSC Rowe's statement sets out, Ms Gobbo's attempts to reinsert herself happened later in 2007, for example with Milad Mokbel.¹⁹⁸⁵ Indeed, very shortly after the passage above, Counsel Assisting identified the events concerning Milad Mokbel on 29 May 2007 as the example of Ms Gobbo reinserting herself when conflicted.¹⁹⁸⁶
- 58.48 This is an important matter of timing. When properly presented, is apparent that DSC Rowe's appreciation of Ms Gobbo's later conflicts in 2007 cannot be relevant to assessing his knowledge at the time of Mr Cooper's arrest in April 2006.
- 58.49 In contrast, Counsel Assisting present this evidence in paragraph [1918.4] in a way that suggests that DSC Rowe knew from the outset of her informing that Ms Gobbo could not provide information about her clients. This is incorrect. As considered above, DSC Rowe's evidence establishes that he did not appreciate that Ms Gobbo might have a conflict once she provided non-privileged information to police about her clients. He strongly believed that Victoria Police was duty bound to seek out that information, so long as it was not privileged.¹⁹⁹⁷

Paragraph [1918.6] – Overstates available evidence

- 58.50 In paragraph [1918.6], Counsel Assisting state that from 16 September 2005 until Mr Cooper's arrest, DSC Rowe "knew Ms Gobbo continued to inform on Mr Cooper". This overstates the effect of the evidence, as it wrongly implies that DSC Rowe had direct and continual confirmation that Ms Gobbo was providing information about Mr Cooper.
- 58.51 DSC Rowe's knowledge was far less conclusive than Counsel Assisting suggest. His evidence was:
- (a) After the 16 September 2005, DSC Rowe suspected at certain points that information came from Ms Gobbo. He suspected this because he knew she had been assessed as a source. One of those times was 27 September 2005.¹⁹⁹⁸
 - (b) In the period around February to April 2006, DSC Rowe again suspected that Ms Gobbo had provided information about Mr Cooper's clandestine laboratory, but he could not know what specific information she provided because there were various other sources of information about Mr Cooper, including surveillance and telephone intercepts.¹⁹⁹⁹

¹⁹⁸⁵ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0048 [150]-[151].

¹⁹⁸⁶ T9467.11-25 (Rowe).

¹⁹⁹⁷ See [57.17] to [57.23] above.

¹⁹⁸⁸ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0035 [53].

¹⁹⁹⁹ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0036 [64]-[65].

- (c) By the time of Mr Cooper's arrest, DSC Rowe knew that Ms Gobbo's information had been relevant to locating the laboratory. In the days leading up to Mr Cooper's arrest, DSC Rowe prepared an application for a search warrant and affidavit that contained information referring to Ms Gobbo's source number.²⁰⁰⁰
- 58.52 The oral evidence cited by Counsel Assisting²⁰⁰¹ does not support their summary of DSC Rowe's evidence. That oral evidence refers in general terms only to the SDU supplying information about Mr Cooper through DI O'Brien and DS Flynn.²⁰⁰² Even then, the oral evidence was that DSC Rowe's superiors would consider that information and then give him discrete tasks and orders.²⁰⁰³
- 58.53 As considered above, it is important that DSC Rowe received information through DI O'Brien and DS Flynn, who had in turn received that information from the SDU. As DSC Rowe set out in his statement, this process of information "filtering through the DSU and [his] superior officers" gave DSC Rowe confidence that it was appropriate to act on the information he suspected came from Ms Gobbo.²⁰⁰⁴
- 58.54 Given that evidence, Counsel Assisting's summary of the evidence at paragraph [1918.6] is not open. However, a more accurate summary that is open on the evidence is as follows (and is incorporated into the proposed summary set out below):
- (a) After he was present for Ms Gobbo's introduction to the SDU, DSC Rowe suspected that Ms Gobbo supplied information relevant to investigations into Mr Cooper.
- (b) He believed it was appropriate to act on that information because of the processes and safeguards that he knew were in place, including the process of approving Ms Gobbo's registration and the fact that information he received had been filtered through both the SDU and his superior officers.
- (c) By the time of Mr Cooper's arrest, DSC Rowe knew that Ms Gobbo had supplied information that assisted in locating Mr Cooper's lab.

Paragraph [1918.7] – Evidence selectively presented

- 58.55 Counsel Assisting's summation of the evidence at paragraph [1918.7] is not correct. The context in which this evidence was given indicates DSC Rowe was referring to general issues considered in 2005 about whether Ms Gobbo could supply information. DSC Rowe was not referring specifically to legal concerns about Mr Cooper's arrest.
- 58.56 The transcript cited for this evidence is a brief passage from Mr Chettle's cross examination of DSC Rowe. Mr Chettle, appearing on behalf of the SDU members, showed DSC Rowe a diary note of a meeting between SDU members on 19 April 2006, three days before Mr Cooper's arrest. DSC Rowe did not attend that meeting. Nor is there any evidence that he was briefed as to what had been discussed at the meeting.
- 58.57 Toward the end of the following passage of evidence, DSC Rowe refers to what was happening "at the end of 05".²⁰⁰⁵

²⁰⁰⁰ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0037 [68].

²⁰⁰¹ Namely, T9184.

²⁰⁰² T9184.12-25 (Rowe).

²⁰⁰³ T9184.30-47 (Rowe).

²⁰⁰⁴ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0035 [58].

²⁰⁰⁵ T9511.32 – T9512.14 (Rowe).

Mr Chettle: It's a meeting on the 19 April. I said the 20th, I apologise. Issue re HS representing a particular person after his arrest, do you see that?

Mr Rowe: Yes.

Mr Chettle: "Evidence from that person implicating himself may not be admissible if counsel not impartial". It's a reference to one of the issues that you've been asked about by Ms Tittensor this morning?

Mr Rowe: Yes.

Mr Chettle: Over the last few days. "Agreed investigators to be warned. Intended that the person be interviewed prior to [your discussion about cooperating with police]", do you see that?

Mr Rowe: Yes.

Mr Chettle: Were you warned about the issue that is set out there?

Mr Rowe: No. Like I know we discussed it but it wasn't a warning, it was a - you know, we all understood it.

Mr Chettle: Okay?---

Mr Rowe: We all understood it.

Mr Chettle: The reason I'm asking you, whether it came to you directly via O'Brien or whether they went to O'Brien first?

Mr Rowe: I don't know who they went to. They didn't come to me and say, "Hey, you're going to be the informant". I didn't know until the day he was arrested it was going to be me.

Mr Chettle: But clearly that issued filtered through to you?

Mr Rowe: Well we were aware of it. I mean we were aware of it you know at the end of 05 when she's, you know when people are turning their minds to can this even be done. They were all aware of it.

58.58 The fair and proper reading of DSC Rowe's evidence is that he is referring to more general issues about whether Ms Gobbo could provide information to Victoria Police, which are the issues that arose in 2005. He is not referring to the particular issues discussed at the 19 April 2006 meeting, which related specifically to Ms Gobbo advising Mr Cooper after his arrest. This is most apparent from DSC Rowe's statement "we were aware of it you know at the end of 05 when she's, *you know when people are turning their minds to can this even be done*",²⁰⁰⁶

58.59 This conclusion is supported by an earlier passage of DSC Rowe's evidence. In the context of asking questions about Mr Cooper's arrest, Counsel Assisting suggested that DSC Rowe had considered the risk that Ms Gobbo would turn up to advise Mr Cooper. DSC Rowe rejected Counsel Assisting's suggestion and clarified that his evidence about considering the risk was him "talking in a general sense".²⁰⁰⁷

Ms Tittensor: You considered the risk prior to the night. It might be an issue if she turns up?

²⁰⁰⁶ T9512.12-13 (Rowe) (emphasis added).

²⁰⁰⁷ T9201.6-15 (Rowe) (emphasis added).

DS Rowe: I don't actually think I turned my mind to the fact that she was going to turn up. I think once you get there and she's there, okay, well that - - -

Ms Tittensor: You've just given some evidence, "We'd discussed that risk and we thought it was being handled"?

DS Rowe: I'm talking in a general sense. I'm not talking specific to that night. Bearing in mind I didn't know they were going to get arrested until 9 o'clock that morning.

58.60 This passage is instructive as it shows DSC Rowe had only considered the risks of Ms Gobbo's position in a "general sense" and had not turned his mind to the situation of Ms Gobbo turning up to advise Mr Cooper.

58.61 This conclusion is further supported by DSC Rowe's other evidence that he knew little about Mr Cooper at the time he arrived at Purana in early 2006. Counsel Assisting asked DSC Rowe about his knowledge of Mr Cooper around that time. DSC Rowe's evidence was that he did not know Mr Cooper and had not thought in detail about whether Ms Gobbo was representing him:²⁰⁰⁶

Ms Tittensor: You're aware at that stage that that person had a plea hearing coming up in relation to some Matchless and Landslip charges?

Mr Rowe: I knew he was on two counts of bail.

Ms Tittensor: And that Ms Gobbo was due to conduct his plea?

Mr Rowe: I don't know. I knew he was on two counts of bail. I knew they were, you know, very tight. Logic says that she would have represented him, but whether I actually knew or had thought about it in detail. I could have passed him in the street and I wouldn't have known who he was. He was just a name at that point in time.

58.62 In those circumstances, it is highly unlikely that DSC Rowe would have turned his mind "at the end of 05" to the possibility that Ms Gobbo would advise Mr Cooper after an arrest that would not occur until April 2006. It is even more unlikely that DSC Rowe would have thought through the legal consequences that might flow from that future hypothetical scenario.

58.63 It is also relevant to consider Victoria Police's separate submissions concerning the alleged wrongdoing of the SDU members. Those submissions demonstrate that it was not until April 2006 that the SDU members appreciated the separate conflict created by Ms Gobbo advising Mr Cooper after this arrest. The SDU members therefore could not have raised or discussed this issue with investigators "at the end of 05".

Alternative summary in substitution for paragraph [1918]

58.64 Given the further relevant evidence above and the errors apparent in the summary of the evidence at paragraph [1918] of Counsel Submissions, it is necessary to summarise the evidence in a proper, complete and fair way. It is submitted that the following summary of the evidence should be accepted. The footnotes here cross reference to parts of the submissions above dealing with that proposition of evidence.

(a) During the relevant period, as a police member, DSC Rowe was a public official.

²⁰⁰⁶ T9185.11-21 (Rowe).

- (b) By 12 September 2005, DSC Rowe understood that Ms Gobbo might be willing to provide non-privileged information about ongoing and future criminal offending by her client, Tony Mokbel.²⁰⁰⁹
- (c) At all relevant times, DSC Rowe did not appreciate that Ms Gobbo might be in position of conflict if she provided non-privileged information about individuals she then continued to act for. In fact, DSC Rowe believed that Victoria Police was duty bound to seek out that information, so long as it was not privileged.
- (d) On 16 September 2005 in Mr Rowe's presence, Ms Gobbo said she was acting for Mr Cooper and provided information about him. DSC Rowe did not appreciate that Ms Gobbo was obliged to keep information about Mr Cooper's ongoing crimes confidential.²⁰¹⁰
- (e) After attending the introduction meeting on 16 September 2005, DSC Rowe had no further role in managing Ms Gobbo as a human source. He understood and expected that the SDU were responsible for managing issues potentially arising from Ms Gobbo's profession.²⁰¹¹
- (f) At certain points prior to Mr Cooper's arrest, DSC Rowe suspected that Ms Gobbo had supplied information relevant to investigations into Mr Cooper. DSC Rowe believed it was appropriate to act on that information because of the processes and safeguards that he knew were in place, including the process of approving Ms Gobbo's registration and the fact that information he received had been filtered through both the SDU and his superior officers.²⁰¹²
- (g) By the time of Mr Cooper's arrest, DSC Rowe knew that Ms Gobbo had supplied information that assisted in locating Mr Cooper's lab.²⁰¹³
- (h) Prior to Mr Cooper's arrest, DSC Rowe did not turn his mind to whether Ms Gobbo might attend to advise Mr Cooper. Prior to Mr Cooper's arrest, DSC Rowe did not appreciate the potential legal risks of Ms Gobbo attending to advise Mr Cooper.²⁰¹⁴
- (i) DSC Rowe was not part of any meetings where decisions were made about Mr Cooper's arrest.²⁰¹⁵ He was not present when Ms Gobbo was called, and he was not present when she arrived to advise Mr Cooper.²⁰¹⁶ DSC Rowe was not part of any discussion with Mr Cooper about cooperating with police.²⁰¹⁷ DSC Rowe's duties leading up to and on the day of Mr Cooper's arrest were the "grunt work" properly assigned to a Senior Constable.²⁰¹⁸

Conclusions drawn in paragraph [1919]-[1920] and [1935]-[1937] not open on the evidence

58.65 Counsel Assisting's proposed findings at paragraph [1919] are not open on the evidence, as they are not supported by the alternative summary of the evidence set out above.

²⁰⁰⁹ See above at [56.7] – [56.12]

²⁰¹⁰ See above at [57.8] – [57.26]

²⁰¹¹ See above at [57.29] – [57.33]

²⁰¹² See above at [58.11] – [58.15]

²⁰¹³ See above at [58.51].

²⁰¹⁴ See above at [58.55] – [58.63]

²⁰¹⁵ See above at [58.16] – [58.19]

²⁰¹⁶ See above at [58.22] – [58.23]

²⁰¹⁷ See above [58.25] – [58.27]

²⁰¹⁸ See above [58.12] to [58.13], [58.16] to [58.17], [58.24]

- 58.66 It is submitted, however, that the following set of findings is open on the evidence set out above. The evidence relevant to the finding about disclosure is set out at 58.71 to 58.82 below.
- (a) DSC Rowe knew that Ms Gobbo was a barrister and human source, but he was not involved in her management as a source.
 - (b) DSC Rowe suspected at certain times that Ms Gobbo was supplying information about Mr Cooper. DSC Rowe received that information indirectly through his superiors at the Purana Task Force. Based on the processes and safeguards he knew to be in place, DSC Rowe believed it was appropriate for him to act on that information.
 - (c) By the time of Mr Cooper's arrest, DSC Rowe knew that Ms Gobbo had provided information that assisted in locating Mr Cooper's clandestine laboratory.
 - (d) DSC Rowe was had no part in planning how to convince Mr Cooper to cooperate.
 - (e) DSC Rowe had no part in the process of convincing Mr Cooper to cooperate.
 - (f) In respect of disclosure, it did not occur to DSC Rowe that Ms Gobbo's role as a human source might need to be disclosed in Mr Cooper's prosecution. At the time, DSC Rowe understood that Ms Gobbo had pointed the investigations in a certain direction but all evidence was gathered separately and independently. It did not occur to him to disclose information that might identify any source because of DSC Rowe's understanding of the need to protect all human sources.
- 58.67 From there, Counsel Assisting in paragraph [1920] invite the Commissioner to make a series of further findings concerning DSC Rowe's knowledge and conduct in the period from May 2006 until February 2007. However, Counsel Assisting's submissions do not identify any further evidence relevant to that period.
- 58.68 The sole basis for those additional findings is an unparticularised, non-specific and rolled up allegation that DSC Rowe had "involvement in the investigation and prosecution of people Mr Cooper implicated". Counsel Assisting's submissions make no attempt to identify a factual basis for this further set of proposed findings. The proposed additional findings at [1920] of Counsel Assisting's submissions are simply a series of conclusions stated without any identified factual basis. These proposed findings must be rejected.
- 58.69 Finally and most importantly, the proposed findings at [1935]-[Relevance] are not open on the evidence. There are myriad reasons why these submissions cannot be accepted – including that they lack any specified factual basis and that there is no evidence [Relevance]
- 58.70 However, the clearest and most basic reason these findings are not open depends on two simple conclusions that are established by the evidence as detailed above:
- (a) DSC Rowe had no part in planning how to convince Mr Cooper to cooperate.
 - (b) DSC Rowe had no part in the process of convincing Mr Cooper to cooperate.

Disclosure in Cooper proceeding and others

- 58.71 Ms Gobbo's role as a human source was not disclosed in prosecutions where DSC Rowe was the informant. Counsel Assisting do not propose any adverse findings about DSC Rowe's particular role in disclosure.
- 58.72 DSC Rowe accepts, with the benefit of hindsight, that there were shortcomings in his approach to disclosure. However, there was no element of deliberate or conscious

wrongdoing in DSC Rowe's approach to disclosure. His evidence, considered below, was that because of the extreme risk to Ms Gobbo and his understanding of the need to protect all sources, it did not occur to him that Ms Gobbo's role as a source might be discloseable.

- 58.73 DSC Rowe understood that acting as a human source posed a serious risk to Ms Gobbo's safety. When the prospect of her cooperating was first raised on 31 August 2005, Ms Gobbo herself said that "If anyone finds out, I'd end up dead".²⁰¹⁹ DS Rowe agreed this was a fair statement.²⁰²⁰
- 58.74 For DSC Rowe, not identifying Ms Gobbo as a source was part and parcel of protecting any human source. It was not because of who she was or her role as a lawyer. When asked by Counsel Assisting if he was aware that efforts had been made not to disclose Ms Gobbo's role, DS Rowe answered as follows:²⁰²¹
- I don't know. There would have been efforts made to not identify her as a source – not because she's Nicola Gobbo but because she's a source. That happens in every case.*
- 58.75 With the benefit of hindsight, there are important considerations that mean Ms Gobbo's role might need to have been disclosed. In his evidence before the Commission, DS Rowe accepted on a number of occasions that, knowing what he does now, he appreciates that his understanding about disclosure at the time may have been incorrect.²⁰²² DS Rowe also accepted that if a fair trial depended on a human source's identity being disclosed, then that prosecution could only continue if the human source's identity was disclosed.²⁰²³
- 58.76 Critically, however, at the time he was at Purana, DSC Rowe did not understand or appreciate these considerations. He did not turn his mind to whether he should disclose information that could expose Ms Gobbo as a source simply because it did not occur to him to do so.²⁰²⁴ DS Rowe gave evidence of five matters relevant to why this was the case.
- 58.77 **First**, the reasons for disclosure did not occur to DSC Rowe. He did not appreciate that proceeding with certain prosecutions might have been unfair²⁰²⁵ and he never foresaw the perception of unfairness that is now apparent.²⁰²⁶
- 58.78 **Second**, DSC Rowe was not part of any discussions at Victoria Police about the need to disclose Ms Gobbo's identity.²⁰²⁷ DSC Rowe was a junior officer and relied on others for direction and guidance. Where they did not discuss disclosing that matter, it is understandable why it would not have occurred to DSC Rowe.
- 58.79 **Third**, DSC Rowe believed that the SDU were handling issues that arose from Ms Gobbo being a practising barrister.²⁰²⁸ DSC Rowe believed that he had his "defined

²⁰¹⁹ T3254.32-33 (Rowe).

²⁰²⁰ T3254.33 (Rowe).

²⁰²¹ T3308.16-23 (Rowe).

²⁰²² T9183.31-34; 9236.35-41; 9262.8-14 (Rowe).

²⁰²³ T9183.13-22 (Rowe).

²⁰²⁴ T9261.11-14 (Rowe).

²⁰²⁵ T9183.34-37 (Rowe).

²⁰²⁶ T9183.28-30 (Rowe).

²⁰²⁷ T9183.28-31 (Rowe).

²⁰²⁸ T3305.37-40 (Rowe).

role” as an investigator and that it was not his role to intervene and tell Ms Gobbo that her role might need to be disclosed if she continued acting.²⁰²⁹

- 58.80 **Fourth**, DSC Rowe had no training in relation to lawyers’ conflict.²⁰³⁰ If he had had such training, he might have been aware of the potential flow on effects of Ms Gobbo being in a position of conflict.
- 58.81 **Fifth**, issues of disclosure did not occur to him in the context of ensuring evidence was admissible. DSC Rowe believed there to be a “separation” in that Ms Gobbo pointed the investigations in a certain direction but all evidence was gathered separately²⁰³¹ and independently.²⁰³² While DS Rowe now accepts Ms Gobbo’s role might affect admissibility of evidence²⁰³³ or have repercussions on prosecutions,²⁰³⁴ he did not know this at the time.
- 58.82 Ultimately, DS Rowe accepted that his approach was “naïvely” focused on following the policy about identification of sources in a way that was “perhaps misguided”.²⁰³⁵ But equally, he said that there he had “no thought process” at the time that somehow the criminal justice process might be jeopardised.²⁰³⁶ Based on the evidence set out above, it should be accepted that there was no deliberate or conscious wrongdoing in DSC Rowe’s approach to disclosure.

59 DSC Rowe’s dealings with Mr Bickley

- 59.1 Counsel Assisting do not propose any express findings about DSC Rowe’s involvement with Mr Bickley. However, at a number of points in the submissions, Counsel Assisting make a number of submissions that are critical of how DSC Rowe dealt with Mr Bickley.
- 59.2 Counsel Assisting’s submissions cannot be accepted, as they rely upon incorrect and incomplete analysis of the evidence. The following section of submissions deals with four aspects of Counsel Assisting’s submissions about DSC Rowe’s interactions with Mr Bickley:
- (a) The first aspect is why it is necessary to resolve the conflict of evidence concerning Mr Bickley’s first arrest on 15 August 2005.²⁰³⁷
 - (b) The second aspect is Mr Bickley’s later arrest on 13 June 2006 and the circumstances surrounding it, including Counsel Assisting’s allegation that investigators knew or accepted that Ms Gobbo would call Mr Bickley following his arrest²⁰³⁸ and their separate allegation that the phone discussion between DSC Rowe and Ms Gobbo was a “ruse”.²⁰³⁹
 - (c) The third aspect is Counsel Assisting’s submission about a meeting between DS Flynn, DSC Rowe and the Director of Public Prosecutions, Mr Paul Coghlan QC, on 14 March 2007.²⁰⁴⁰

²⁰²⁹ T9181.46 – T9182.3 (Rowe).

²⁰³⁰ T9180.41-42 (Rowe).

²⁰³¹ T9236.31-41 (Rowe).

²⁰³² T9261.21-27 (Rowe).

²⁰³³ T9236.39-41 (Rowe).

²⁰³⁴ T9261.28-29 (Rowe).

²⁰³⁵ T9262.3-14 (Rowe).

²⁰³⁶ T9262.6-8 (Rowe).

²⁰³⁷ Counsel Assisting Submissions Volume 2 at 291 [1308].

²⁰³⁸ Counsel Assisting Submissions Volume 2 at 359 [1614].

²⁰³⁹ Counsel Assisting Submissions Volume 2 at 360 [1618].

²⁰⁴⁰ Counsel Assisting Submissions Volume 2 at 647 [2629].

- (d) The fourth aspect is evidence referred to in Counsel Assisting's submissions that, unless resolved with an express finding by the Commissioner, might wrongly suggest that DSC Rowe instructed Mr Bickley to conceal or obscure evidence during committal proceedings in January 2008.²⁰⁴¹

Contest of evidence concerning Mr Bickley's first arrest

- 59.3 On 15 August 2005, Mr Bickley was arrested on drug offences by members of the MDID. The next morning, DSC Rowe conducted his record of interview. DSC Rowe gave evidence that, during the interview, Mr Bickley asked to speak to Ms Gobbo and that DSC Rowe called Ms Gobbo's number and left a message for her to call back.²⁰⁴²
- 59.4 Mr Bickley gave conflicting evidence to the Commission. He alleged that it was DSC Rowe who dialled Ms Gobbo's number and then had Mr Bickley leave a message.²⁰⁴³ Mr Bickley persisted in this evidence despite being repeatedly tested on it,²⁰⁴⁴ being read DSC Rowe's diary entry that supported DSC Rowe's account²⁰⁴⁵ and being informed that Ms Gobbo was not a registered source until a month later.²⁰⁴⁶
- 59.5 When presented Mr Bickley's evidence, DSC Rowe rejected it in absolute terms, saying that Ms Gobbo was the "last person I would want to ring" because of her connections to Tony Mokbel.²⁰⁴⁷
- 59.6 Counsel Assisting submit at paragraph [1308] that it is not necessary for the Commissioner to resolve this conflict in the evidence.
- 59.7 It is submitted that it is necessary for the Commissioner to resolve this conflict because the conflict of evidence is highly relevant to Mr Bickley's credibility. It is important for the Commissioner to properly and completely assess Mr Bickley's credibility before relying upon the evidence he gave. In circumstances where Mr Bickley repeatedly insisted that DSC Rowe's evidence was incorrect, it is important to resolve that conflict of evidence.
- 59.8 This issue is considered in detail in Victoria Police's organisational submissions. As explained there, DSC Rowe's evidence must be preferred. In his evidence, Mr Bickley demonstrated a willingness to confidently state evidence that was demonstrably false where he believed that false evidence served his own purposes. For example, Mr Bickley consistently gave evidence that the first time he spoke to Mr Cooper was in the days following Mr Cooper's arrest. However, documentary evidence proved that Mr Bickley had at least attended Mr Cooper's party and met him there previously.

Allegations concerning Mr Bickley's arrest on 13 June 2006

- 59.9 DSC Rowe arrested Mr Bickley on 13 June 2006. This arrest concerned a conversation between Mr Bickley and Mr Cooper that occurred in the days after Mr Cooper was arrested.²⁰⁴⁸ The conversation was [REDACTED] while Mr Cooper was cooperating with police.²⁰⁴⁹

²⁰⁴¹ Counsel Assisting Submissions Volume 2 at 650 [2648]-[2649].

²⁰⁴² Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0029 [9].

²⁰⁴³ T9303.26-33 and T9304.5-11 (Mr Bickley).

²⁰⁴⁴ See T9332.4-23 and T9387.36-45 (Mr Bickley);

²⁰⁴⁵ T9303.40-47 (Mr Bickley).

²⁰⁴⁶ T9304.8-11 (Mr Bickley).

²⁰⁴⁷ T9504.16-22 (Rowe).

²⁰⁴⁸ T3323.37-39 (Rowe).

²⁰⁴⁹ Exhibit RC-0266 – Statement of Paul David Rowe dated 25 June 2019, VPL.0014.0035.0028 at 0038 [82](b).

59.10 Counsel Assisting make two allegations about Mr Bickley's arrest, neither of which are open on the evidence.

Investigators did not accept that Ms Gobbo was going to attend – paragraph [1614]

59.11 First, at paragraph [1618], Counsel Assisting allege that based on what occurred before and after Mr Bickley's arrest, there was "clearly an acceptance by the SDU and investigators" that Ms Gobbo would represent Mr Bickley following his arrest. The relevant investigators here are DI O'Brien, DS Flynn and DSC Rowe, all from the Purana Taskforce.

59.12 This allegation is not open on the evidence. Counsel Assisting's submissions fail to take account of important relevant evidence that demonstrates that the investigators from the Purana Task Force positively believed that Ms Gobbo would make herself unavailable for the time of Mr Bickley's arrest. They believed this because it had been agreed with SDU members at a meeting on 8 June 2006. Those investigators were not aware of the SDU's subsequent conversation with Ms Gobbo on 9 June 2006 about speaking to Mr Bickley by phone.

59.13 Significantly, Counsel Assisting's submissions fail to consider the important evidence about this arrest that was given by DSC Rowe both during his oral evidence in a supplementary statement.²⁰⁵⁰ There are three critical points to take from DSC Rowe's oral evidence his supplementary statement.

59.14 **First**, at the meeting on 8 June 2006, Officer White and Officer Green gave information to DSC Rowe and the other investigators about how they might go about convincing Mr Bickley to assist police. DSC Rowe accepts that this occurred.²⁰⁵¹

59.15 **Second**, Officer Sandy White's diary for the meeting on 8 June 2006²⁰⁵² indicates that Purana investigators and the SDU agreed that Ms Gobbo would make herself unavailable at the time of Mr Bickley's arrest. That entry reads as follows (underlining for emphasis):

0900 Meet JOB, Flynn & Rowe – Purana

- [Mr Bickley] arrest 13.06.06
- Intention to i/v then attempt to [to convince to assist]
- Want [Bickley] to assist re evidence gathering of RADI + Horti

Issues

- [Bickley] ringing HS for advice on arrest
- Agreed HS not to become involved. Unavailable.
- Do not want HS being accused of failing to advise Horti, etc
- Check with HS re what intel can be released
- HS to be asked re impact to her of [Bickley] arrest

Vulnerabilities

- As for Whyteboard (sic)

²⁰⁵⁰ Untendered exhibit, Further Supplementary Statement of Paul Rowe dated 25 May 2020 – VPL.0014.0035.0061.

²⁰⁵¹ Untendered exhibit, Further Supplementary Statement of Paul Rowe dated 25 May 2020 – VPL.0014.0035.0061 at 0061 [8](b).

²⁰⁵² Untendered exhibit, Diary of Officer Sandy White dated 08 June 2006 – VPL.0100.0096.0157 at 0263.

- 59.16 Counsel Assisting mention this diary note at paragraph [1608] of their submissions. However, they suggest the note merely records “discussion about the potential involvement of Ms Gobbo” in the arrest. The note says much more than that – it records both when Mr Bickley will be arrested (13.06.06) and then records the agreement that Ms Gobbo “not to be become involved” because she will be “unavailable”. To suggest otherwise is a distortion of the evidence.
- 59.17 Counsel Assisting did not show this entry to DSC Rowe when he was giving evidence before the Commission. As DSC Rowe’s statement confirms,²⁰⁵³ the position after the 8 June 2006 meeting was that Ms Gobbo would make herself unavailable at the time of Mr Bickley’s arrest.
- 59.18 **Third**, DSC Rowe was not aware of any further discussions on 9 June 2006 that Ms Gobbo had with the SDU about Ms Gobbo advising Mr Bickley by phone. During questioning, Counsel Assisting put to DS Rowe the content of ICR 34 for 9 June 2006, which recorded discussions between Ms Gobbo and the SDU about advising Mr Bickley by phone.²⁰⁵⁴ Counsel Assisting did not show him the ICR during that questioning.
- 59.19 As explained in his oral evidence and in his supplementary statement, DS Rowe did not know the content of the SDU’s conversations with Ms Gobbo on 9 June 2006. There were a number of reasons for this:
- (a) This information “flew in the face” of his understanding that a huge attempt had been made to keep Ms Gobbo away from Mr Bickley and that she was adamant she was not going to represent him.²⁰⁵⁵
 - (b) ICR 34 has no record of the information from 9 June 2006 being disseminated,²⁰⁵⁶ but the information from 7 June 2006 records that “Operation Purana advised in briefing re same”.²⁰⁵⁷
 - (c) It had been agreed at the 8 June 2006 meeting that Ms Gobbo would be unavailable to take Mr Bickley’s call and DS Rowe believes he was not told anything that went against this understanding.²⁰⁵⁸
- 59.20 Given this evidence, Counsel Assisting’s assertion that DSC Rowe or the Purana investigators “accepted” that Ms Gobbo would represent Mr Bickley after his arrest is not open on the evidence. Rather, DSC Rowe positively believed that Ms Gobbo would be unavailable at the time of Mr Bickley’s arrest. This belief is fundamentally and necessarily inconsistent with any accepting that Ms Gobbo would advise him.
- 59.21 In those circumstances, it is appropriate that the Commissioner make a finding in the terms set out at 59.35 below.

DSC Rowe’s discussion with Ms Gobbo was not a “ruse” – paragraph [1618]

- 59.22 In paragraph [1618], Counsel Assisting submit that a phone discussion between DSC Rowe and Ms Gobbo after Mr Bickley’s arrest was a “ruse”.
- 59.23 Counsel Assisting’s submission is not open on the evidence. It is wrong because it fails to take account of DSC Rowe’s evidence that he believed Ms Gobbo would be

²⁰⁵³ Untendered exhibit, Further Supplementary Statement of Paul Rowe dated 25 May 2020, VPL.0014.0035.0061 at 0063 [10]-[11].

²⁰⁵⁴ T9214.36-9215.1 and T9215.33-9216.22 (Rowe).

²⁰⁵⁵ T9216.11-22 (Rowe).

²⁰⁵⁶ Exhibit RC-0281, 3838 ICR 34 – VPL.2000.0003.1904 at 1910.

²⁰⁵⁷ Exhibit RC-0281, 3838 ICR 34 – VPL.2000.0003.1904 at 1906.

²⁰⁵⁸ Untendered exhibit, Further Supplementary Statement of Paul Rowe dated 25 May 2020 – VPL.0014.0035.0061 at 0063 [10]-[11].

unavailable that day and his evidence that DSC Rowe honestly believed he was obliged to allow Mr Bickley to contact his lawyer.

- 59.24 **First**, at the time of Mr Bickley's arrest, DSC Rowe still believed that arrangements had been made so that Ms Gobbo would not be available. For that reason, DSC Rowe did not expect Mr Bickley to be able to reach Ms Gobbo. However, DSC Rowe did not know that the SDU and Ms Gobbo had made their own further arrangements on 9 June 2006 for Ms Gobbo to be available by phone.²⁰⁵⁹
- 59.25 **Second**, DSC Rowe allowed Mr Bickley to attempt to contact Ms Gobbo because he was obliged to do so under s 464C of the *Crimes Act 1958* (Vic). He did not believe he could proactively prevent Mr Bickley from contacting Ms Gobbo because of any perceived conflict.
- 59.26 The obligation to allow a person arrested to contact a lawyer was well known to DSC Rowe. These rights and their importance were reinforced for DSC Rowe every time he cautioned a person upon arrest.²⁰⁶⁰ He had done many times in his career.²⁰⁶¹
- 59.27 Along with the right to remain silent, an accused person's right to a lawyer was covered in DSC Rowe's training at the Academy.²⁰⁶² At all relevant times, the *Crimes Act 1958* (Vic) has required that before a person in custody can be questioned, an investigating official must inform the person of their right to communicate with or attempt to communicate a lawyer.²⁰⁶³ The investigating official must then as soon as practicable afford reasonable facilities to enable the person to contact their lawyer and allow them to communicate with them in circumstances where the communication will not be overhead.²⁰⁶⁴ If this requirement is not complied with, evidence of confessions or admissions obtained during questioning may be inadmissible at trial.²⁰⁶⁵
- 59.28 There are exceptions to these obligations, but they are strict and expressly set out in the *Crimes Act* itself. None of the express exceptions concern the circumstance where a person's lawyer might be in conflict. Under s 464C(1)(c)-(d), an investigating official may delay a person's attempts to contact a relative or legal practitioner if the investigating official believes on reasonable grounds that doing so may lead to the escape of an accomplice, or the fabrication or destruction of evidence, or that the questioning is so urgent that it should not be delayed.²⁰⁶⁶
- 59.29 DSC Rowe was aware of the exceptions. This is demonstrated by DSC Rowe's notes from the evening of 25 April 2006, which indicate that he delayed Milad Mokbel's contact with a family member on the grounds of preventing escape of accomplices and destruction of evidence.²⁰⁶⁷

²⁰⁵⁹ Untendered exhibit, Further Supplementary Statement of Paul Rowe dated 25 May 2020 – VPL.0014.0035.0061 at 0063 [10]-[11].

²⁰⁶⁰ Exhibit RC-0266, Statement of Paul Rowe dated 25 June 2019 – VPL.0014.0035.0028 at 0054 [196] (b)-(c).

²⁰⁶¹ Exhibit RC-0266, Statement of Paul Rowe dated 25 June 2019 – VPL.0014.0035.0028 at 0054 [196] (b).

²⁰⁶² Exhibit RC-0266, Statement of Paul Rowe dated 25 June 2019 – VPL.0014.0035.0028 at 0054 [196] (b)-(c).

²⁰⁶³ *Crimes Act 1958* (Vic), s 464C(1).

²⁰⁶⁴ *Crimes Act 1958* (Vic), s 464C(2).

²⁰⁶⁵ *R v Percerep* [1993] 2 VR 109, 120 (Phillips CJ, Marks and Southwell JJ) and now under s 138 of the *Uniform Evidence Act 2008* (Vic).

²⁰⁶⁶ *Crimes Act 1958* (Vic), s 464C(1)(c)-(d).

²⁰⁶⁷ Untendered exhibit, Diary of Paul Rowe – VPL.0005.0107.0001 at 0117.

i/s	My name is Paul Rowe, you are under arrest & trafficking a large amount of drugs C & R
u/s	yes (awkward)
u/s	yes
u/s	I'd like to call my wife.
i/s	To prevent the escape of accomplices or destruction of evidence I will deny you those rights @ this time & allow you to contact her at the first opportunity
u/s	ok, I understand.

- 59.30 The requirement to provide access to a lawyer was understandably front of mind for DSC Rowe, especially given the consequences of failing to do so and how often it occurred in practice. In contrast, issues of criminal defence lawyers' potential conflicts were not familiar to DSC Rowe. In fact, DSC Rowe gave evidence that lawyers' potential ethical breaches were not a day-to-day consideration of Victoria Police.²⁰⁶⁸
- 59.31 As it stands, the countervailing considerations of the rights upon arrest and lawyers' conflict directly collided when DSC Rowe arrested Mr Bickley.
- 59.32 When Mr Bickley asked to speak with Ms Gobbo, DSC Rowe allowed him to try to contact her, as he was required to do under the *Crimes Act 1958* (Vic). As the following exchange with Counsel Assisting indicates, DSC Rowe understood that he had to allow Mr Bickley access to the lawyer of his choice and that he believed he had no power to prevent this.²⁰⁶⁹

Ms Tittensor: You were aware at the time that she was in a completely conflicted situation as regards any representation or advice she might give to [Mr Bickley]?

Mr Rowe: I think ultimately she was, but - - -

Ms Tittensor: And you're aware of that at the time?

Mr Rowe: He -- I have to allow him to ring who he wants to ring. I can't stop him ringing the solicitor he wants to. So - - -

Ms Tittensor: You say you have no power to stop him ringing her?---

Mr Rowe: No.

Ms Tittensor: Do you have a power to advise him that she's in a conflicted situation?

Mr Rowe: No.

Ms Tittensor: You don't have any power to do that?

²⁰⁶⁸ T3305.35-37 (Rowe).

²⁰⁶⁹ T3323.2-23 (Rowe).

Mr Rowe: No.

Ms Tittensor: Did you seek any advice as to what you could do in circumstances?

Mr Rowe: I think - I'd like to think my understanding of that section of the Crimes Act is pretty good. Ultimately if someone wants to ring a solicitor, we allow them to do it. There's very rare circumstances in which we deny it, and even then it's only temporarily.

59.33 The fact of the situation was that DSC Rowe focused on providing Mr Bickley the opportunity to contact a lawyer – just as he did whenever he arrested someone and just as he was required to do under the *Crimes Act*. He also had to take care not to do anything that might expose Ms Gobbo as a source.

59.34 When Ms Gobbo unexpectedly answered, DSC Rowe believed he had no power to stop the two talking, as that would likely have breached the *Crimes Act* and uncovered Ms Gobbo as a human source. Ultimately, he was put in an impossible position because of the SDU's discussion on 9 June 2006, which had not been disclosed to him. But in no way did DSC Rowe do anything to perpetrate a "ruse" on Mr Bickley.

59.35 In those circumstances, the submissions made by Counsel Assisting in paragraphs [1614] and [1618] should not be accepted. In their place, the following express factual findings should be made.

- (a) At the meeting between investigators from the Purana Task Force (DSS O'Brien, DS Flynn and DSC Rowe) and Officer White and Officer Green from the SDU, it was agreed that Ms Gobbo would make herself unavailable at the time of Mr Bickley's planned arrest on 13 June 2006.
- (b) On 9 June 2006, Officer White and Officer Green spoke with Ms Gobbo and discussed Ms Gobbo advising Mr Bickley by phone. The investigators including DSC Rowe were not made aware of this.
- (c) DSC Rowe arrested Mr Bickley on 13 June 2006. DSC Rowe allowed Mr Bickley to attempt to contact Ms Gobbo because DSC Rowe was obliged by s 464C of the *Crimes Act 1958* (Vic) to afford Mr Bickley the opportunity to contact a legal practitioner.
- (d) At the time of that arrest, DSC Rowe did not expect Mr Bickley to be able to reach Ms Gobbo as DSC Rowe still understood that Ms Gobbo would be unavailable to receive Mr Bickley's call.

Counsel Assisting's approach to fact finding at paragraph [1617]-[1618]

59.36 From a fact-finding perspective, the evidence set out above demonstrates Counsel Assisting's submissions about the call on 13 June 2006 are not open on the evidence. As noted above, Counsel Assisting's submissions did not refer to DSC Rowe's highly relevant oral evidence and his supplementary statement with respect to this call. Instead, Counsel Assisting's submissions rely upon a chain of inferences derived from their perception of attitudes and tones of voice in the recorded call.²⁰⁷⁰ It is submitted that this is not a responsible approach to the analysis of the evidence before the Commission in relation to the call on 13 June 2006.

²⁰⁷⁰ Counsel Assisting Submissions Volume 2 at 360 [1618].

- 59.37 In paragraph [1618], Counsel Assisting perceive three precise facts from the tones of voice used in the call:
- (a) Counsel Assisting submit that Ms Gobbo was tricking Mr Bickley by “feigning a healthy disrespect for the police” because she referred to DSC Rowe as “that copper”;
 - (b) Counsel Assisting observe that Ms Gobbo switches to a “personal, somewhat coquettish tone” of voice when speaking with DSC Rowe and submit this demonstrates that DSC Rowe was “clearly aware of [Ms Gobbo’s] loyalties”.
 - (c) Counsel Assisting refer to DSC Rowe having to “maintain the façade” of a policeman speaking with an independent lawyer, rather than someone who was part of a “conspiracy to have her client implicated in criminal activity and arrested”.
- 59.38 Even if one accepts that it might be appropriate to base such an allegation on tones of voice, there are exculpatory explanations that are equally as likely as the inculpatory ones that Counsel Assisting rely on. For example:
- 59.39 For a criminal barrister like Ms Gobbo who was used to dealing with organised crime figures who had just been arrested, a healthy – even performative – disrespect for police might be considered a routine part of the job.
- 59.40 Using a “personal, somewhat coquettish tone” is nothing out of the ordinary for Ms Gobbo. For example, there were no other witnesses in the Commission’s oral hearings who routinely referred to Mr Winneke QC as “Chris” when responding to questions put in cross examination.²⁰⁷¹ Further, DSC Rowe obviously had no control over what tone Ms Gobbo might have used.
- 59.41 DSC Rowe’s professional tone is equally consistent with the true situation – an officer frustrated because he knew Ms Gobbo was meant to be unavailable.
- 59.42 In order to dispel the potential prejudice caused by Counsel Assisting’s presentation of this evidence, it is necessary and appropriate for the Commissioner to make an express finding of fact consistent with the proper understanding of DSC Rowe’s conduct. That finding of fact is set out at 59.35 above.

Submissions about meeting with DPP on 14 March 2007

- 59.43 On 14 March 2007, DS Flynn and DSC Rowe met with the Director of Public Prosecutions, Mr Paul Coghlan QC, and Ms Tamara Heffernan, a solicitor from the Office of Public Prosecutions. A memorandum that Ms Heffernan prepared in advance of the meeting²⁰⁷² demonstrates that Victoria Police asked for the meeting to discuss sentencing and other issues in Mr Bickley’s prosecution.
- 59.44 One of those issues was Ms Gobbo’s potential conflict of interest in acting for Mr Bickley in circumstances where Mr Bickley’s statements implicated Tony Mokbel, another client of Ms Gobbo’s. As Counsel Assisting’s submissions record at paragraph [2627]-[2628], Mr Coghlan QC agreed that Ms Gobbo had a conflict.
- 59.45 Counsel Assisting’s submission do not refer to the further enquiries that DSC Rowe took in late March 2007 to follow up with Ms Heffernan and ensure that Ms Gobbo did

²⁰⁷¹ See T12998.18; T12998.26; T13005.21; T13007.18; T13007.42; T13010.14; T13011.11; T13016.31; T13019.23; T1302.40; T13022.37; T1303.1; T13033.30; T13041.12; T13044.19; T13052.44; T13063.34; T13149.43; T13176.16; T13200.9; T13289.28; T13305.24; T13440.26.

²⁰⁷² Exhibit RC-0737, Office of Public Prosecution Memorandum from Tamara Heffernan to Paul Coghlan dated 13 March 2007 – COR.1000.0001.0159.

not represent Mr Bickley. On 28 and 29 March 2007, DSC Rowe exchanged emails with Ms Heffernan regarding Ms Gobbo's conflict.²⁰⁷³ Ms Heffernan noted in her email on 28 March 2007 that she had spoken to Ms Macaulay, who was aware of Ms Gobbo's conflicts and so would brief a different counsel.

- 59.46 DSC Rowe was evidently not satisfied this would solve the problem, so asked Ms Heffernan a number of follow up questions in a further email:

Its my understanding that the onus would be on Nicola GOBBO to excuse herself, is this correct? And if she doesn't, is it the case that there would be very little we could do? The only reason I ask is [Bickley] has been very determined in wanting to use her.

- 59.47 Ms Heffernan's replied that Ms Gobbo would either need to withdraw from acting, or obtain the advice of the Ethics Committee, which was likely to advise her she could not act.
- 59.48 It is submitted that DSC Rowe acted properly in bringing Ms Gobbo's conflict to the attention of the OPP and taking further steps to ensure Ms Gobbo did not represent Mr Bickley in future hearings in his prosecution.
- 59.49 At paragraph [2629], Counsel Assisting submit that DS Flynn and DSC Rowe's conduct at the 14 March 2007 meeting was "of concern that two experienced Purana Task Force investigators" did not disclose Ms Gobbo's role as a human source to Mr Coghlan QC. This is unfair and unnecessary criticism in circumstances where DS Flynn and DSC Rowe were taking proactive steps to ensure that Ms Gobbo played no further part in Mr Bickley's prosecution.
- 59.50 In any case, Counsel Assisting are wrong to describe DSC Rowe as an "experienced Purana Task Force investigator". By March 2007, DSC Rowe had less than two years' experience as a Detective, with Purana being only his second detective role.

Evidence given at Radi committal in January 2008

- 59.51 In paragraphs [2644]-[2648] of their submissions, Counsel Assisting refer to evidence given by DSC Rowe before the Commission about a committal proceeding for Abdallah Radi, which took place in January 2008 and included Mr Bickley giving evidence against Mr Radi.
- 59.52 Counsel Assisting do not propose any express adverse finding about DSC Rowe's conduct. Nor do they overtly criticise that conduct. However, Counsel Assisting present facts that might suggest DSC Rowe was tasked by Officer Smith from the SDU to instruct Mr Bickley to conceal the fact that Ms Gobbo had attended to advise him after his arrest.²⁰⁷⁴ It should be noted that Counsel Assisting properly and fairly present DSC Rowe's evidence denying that this occurred.
- 59.53 However, DSC Rowe was challenged about his denial in a way that might suggest he was not forthright with the Commission. As set out in paragraph [2648], Counsel Assisting challenged DSC Rowe's denials on a number of bases – including suggestions that his denials did not "sit well" with other evidence.
- 59.54 Given the potential seriousness of the underlying allegation, it is appropriate that the Commissioner address this allegation and make a factual finding. Based on the following proper review of the evidence, it is open to the Commissioner to find that DSC

²⁰⁷³ Exhibit RC-0739, Email chain between Rowe, Flynn, and Heffernan re DB dated 28 March 2007 – VPL.6030.0200.3220.

²⁰⁷⁴ Counsel Assisting Submissions Volume 2 at 650 [2645]-[2646].

Rowe did not ask or instruct Mr Bickley to conceal or obscure the fact that Ms Gobbo had advised him after his arrest.

- 59.55 Counsel Assisting's submissions rely only the summary of events recorded by the SDU in the ICRs. Their questioning similarly proceeded only on the basis of the ICRs. However, the ICRs provide an incomplete and misleading picture of how the committal unfolded.
- 59.56 As it stands, the transcript of the Radi Committal was produced to the Commission in January 2020 (after DSC Rowe was questioned).²⁰⁷⁵ With the benefit of that transcript, there are two critical reasons why the evidence cannot support any conclusion that DSC Rowe instructed Mr Bickley not to mention Ms Gobbo's role as his lawyer at the Radi Committal.
- 59.57 **First**, the transcript of the Radi Committal demonstrates that there was no occasion for Mr Bickley to conceal Ms Gobbo's involvement, as he was never asked any questions that would have raised her involvement.
- 59.58 The ICR for 21 January 2008 indicates that DSC Rowe told Officer Smith that the defence had tried to ascertain who gave Mr Bickley legal advice. The ICR records that DSC Rowe said that Mr Bickley named Theo Magazis, Ms McCauley and Phil Dunn – but not Ms Gobbo.²⁰⁷⁶ This evidently gives rise to the suggestion that Mr Bickley concealed Ms Gobbo's involvement.
- 59.59 It is right to say that Mr Bickley was questioned about who gave him legal advice. It is right to say that Ms Gobbo is not mentioned in Mr Bickley's evidence. But critically, the details of the transcript indicate that the defence never asked any questions that might have raised Ms Gobbo's involvement. Therefore, there was never any occasion for Mr Bickley to conceal Ms Gobbo's involvement.
- 59.60 Counsel for Mr Radi, Mr Shireffs QC, questioned Mr Bickley about the 13 June 2006 arrest. Mr Shireffs' questions related to Mr Bickley's *solicitors*, not his barristers:²⁰⁷⁷
- Mr Shireffs QC: When you were arrested and charged by Dale Flynn, or shortly after that, did you agree to cooperate with police?
- Mr Bickley: Yes.
- Mr Shireffs QC: Was it that cooperation that led you to making the statement date 13 June 2006, which is Exhibit A in this proceeding?
- Mr Bickley: Yes.
- Mr Shireffs QC: At that time, who were your solicitors?
- Mr Bickley: It could have been Theo Magazis, I think.
- 59.61 When addressing the issue of Mr Bickley's plea, Mr Shirrefs' questions were only about Mr Bickley's solicitors. Mr Shireffs expressly told Mr Bickley he is not interested in who his barrister was:²⁰⁷⁸

²⁰⁷⁵ 21 January 2008 - VPL.0099.0023.0008; 22 January 2008 – VPL.0099.0023.0097; 23 January 2008 – VPL.0099.0023.0191; 24 January 2008 – VPL.0099.0023.0284.

²⁰⁷⁶ Exhibit RC-0281, 3838 ICR 119 – VPL.2000.0003.3166.

²⁰⁷⁷ Untendered exhibit, VPL.0099.0023.0008 at 0025.8-15.

²⁰⁷⁸ Untendered exhibit, VPL.0099.0023.0097 at 0029.23-31.

Mr Shireffs QC: Can you recall who the solicitors were who were acting for you at that time?

Mr Bickley: I had a QC acting for me.

Mr Shireffs QC: I'm asking about the solicitors, not the barrister?

Mr Bickley: Margaret McAuley.

Mr Shireffs QC: Of Campbell McAuley solicitors?

Mr Bickley: That's correct.

Mr Shireffs QC: You're representing [sic] by Mr Philip Dunn QC, is that right?

Mr Bickley: That's correct.

Mr Shireffs QC: Was he the same barrister that represented you on your bail application in 2005?

Mr Bickley: No.

59.62 It is readily apparent that Mr Shireffs' questions were focused on Mr Bickley's solicitors because he wanted to establish that Mr Bickley had been advised of the potentially dire consequences of conviction for the conspiracy offence. This would ground a submission that Mr Bickley was motivated to exaggerate his knowledge of offending (including alleged offending by Mr Shireffs' client, Abdullah Radi) so that Mr Bickley could make a deal with police to lessen his own punishment.

59.63 The significance of this is that the assumed premise of Counsel Assisting's questioning and their submissions is not correct. Counsel Assisting's questioning was premised on the assumption, read into ICR for 21 January 2008, that Mr Bickley was questioned about legal advice in a way that should have raised Ms Gobbo's involvement. The assumption is apparent from the concluding question that Counsel Assisting put to Mr Bickley on this issue:²⁰⁷⁹

Mr Woods: It seems that if this is a conversation that occurs while you're in the witness box, that it's not the whole truth given there's no mention of Gobbo being there, you accept, I mean you've said why that is, but you accept that's the situation?

Mr Bickley: Yes.

59.64 Put shortly, such a conversation did not occur while Mr Bickley was in the witness box at the committal hearing. The premise for the suggestion of untruthfulness falls away because there simply was no occasion for Mr Bickley to conceal Ms Gobbo's involvement.

59.65 **Second**, in addition to the above, DSC Rowe gave clear and cogent evidence that he never spoke to Mr Bickley about concealing Ms Gobbo's role as a lawyer. DSC Rowe's denial was absolute – "no way".²⁰⁸⁰

59.66 However, DSC Rowe's denial came with further explanation. He explained that it would be "crazy"²⁰⁸¹ to speak to witnesses about concealing Ms Gobbo's role because doing

²⁰⁷⁹ T9354.29-33 (Mr Bickley) (emphasis added).

²⁰⁸⁰ T9171.29 (Rowe).

²⁰⁸¹ T9172.17-22 (Rowe).

so immediately raises questions about why that was being concealed, which would in turn “raise more suspicion about her role as an informer”.²⁰⁸²

- 59.67 This means that a finding that DSC Rowe advised Mr Bickley to conceal Ms Gobbo’s involvement therefore would involve combining two acts that DSC Rowe would not do – interfere with witness testimony and risk disclosure of a human source. Even without considering the reasons above, such a finding is highly unlikely. But with those reasons, such a finding is utterly unsustainable.

60 DSC Rowe’s dealings with Milad Mokbel

- 60.1 Two aspects of Counsel Assisting’s submissions concerning Milad Mokbel should be addressed. First is the circumstances around his arrest on 25 April 2006. Second is the proposed finding at paragraph [2689] that DSC Rowe and DS Flynn “would have been aware they could have” raised issues concerning Ms Gobbo informally advising Milad Mokbel with the DPP, Paul Coghlan QC, in around March 2007.

Circumstances surrounding Milad Mokbel’s arrest

- 60.2 Milad Mokbel was arrested on 25 April 2006. He was arrested at his home on drug charges that followed from Mr Cooper delivering him a package.²⁰⁸³ That delivery had been arranged during conversations between Milad Mokbel and Mr Cooper at a café in Melbourne’s inner north. Those conversations had been [redacted] while Mr Cooper was cooperating with police.²⁰⁸⁴
- 60.3 The events following Milad Mokbel’s arrest are as follows:
- (a) After his arrest, Milad Mokbel asked to speak with Ms Gobbo and spoke with her on the phone. Milad Mokbel was then taken to the St Kilda Road Police Complex.²⁰⁸⁵
 - (b) At 1:05 am, DSC Rowe arrived back at St Kilda Road.²⁰⁸⁶
 - (c) At 1:09 am, Officer Sandy White met with Ms Gobbo at St Kilda Road to discuss the approach regarding Milad Mokbel. As Officer Sandy White’s diary records,²⁰⁸⁷ the plan regarding Mild Mokbel was “advice re conflict. rep [Mr Cooper]”. DSC Rowe was not aware that Ms Gobbo met with Officer White.²⁰⁸⁸
 - (d) At 2:28 am, Milad Mokbel’s initial interview began. Shortly after the interview began, Milad Mokbel asked to speak with Ms Gobbo. His interview was suspended to allow him to do so. Ms Gobbo spoke to Mr Mokbel privately for around 20 minutes.²⁰⁸⁹
 - (e) At 3:13 am, shortly after she had spoken privately with Milad Mokbel, Ms Gobbo told DS Flynn that Milad Mokbel wanted to plead guilty to charges against him. DS Flynn’s diary records that “Gobbo stated M Mokbel wants to plea to traffick LCQ DOD” – that is, he wanted to plead to a charge of trafficking a large commercial quantity of a drug of dependence.²⁰⁹⁰

²⁰⁸² T9172.38-41 (Rowe).

²⁰⁸³ Exhibit RC-0266, Statement of Paul Rowe dated 25 June 2019 – VPL.0014.0035.0028 at 0038 [82](d).

²⁰⁸⁴ Exhibit RC-0266, Statement of Paul Rowe dated 25 June 2019 – VPL.0014.0035.0028 at 0038 [82].

²⁰⁸⁵ Exhibit RC-0266, Statement of Paul Rowe dated 25 June 2019 – VPL.0014.0035.0028 at 0039 [84]-[85].

²⁰⁸⁶ Untendered exhibit, Diary of Paul Rowe – VPL.0005.0107.0001 at 0119.

²⁰⁸⁷ Exhibit RC-0391, SW diary entry of 18 April 06 – VPL.2000.0001.0677 at 0713-0714.

²⁰⁸⁸ T9207.38-40 (Rowe).

²⁰⁸⁹ Exhibit RC-0266, Statement of Paul Rowe dated 25 June 2019 – VPL.0014.0035.0028 at 0039 [84]-[87].

²⁰⁹⁰ Exhibit RC-0560, Diary of Dale Flynn – VPL.0098.0150.0001 at 0042.

- (f) At 3:15 am, Ms Gobbo told DSC Rowe that she would not be acting for Milad Mokbel. She said she had told Milad Mokbel this was because she was representing Mr Cooper. She told DSC Rowe that Milad Mokbel was unhappy about the situation.²⁰⁹¹
- (g) At 4:05 am, Milad Mokbel asked to speak with DS Flynn and DSC Rowe. As recorded in DSC Rowe's diary, Milad Mokbel said that he wanted to plead guilty at the first opportunity.²⁰⁹² DSC Rowe's evidence was that it seemed Milad Mokbel simply wanted to get his charges dealt with as quickly as possible.²⁰⁹³ Ultimately Milad Mokbel did plead guilty and Ms Gobbo did not represent him at his plea.²⁰⁹⁴
- 60.4 At paragraph [1460], Counsel Assisting assert that when Ms Gobbo spoke to Milad Mokbel, she did not simply explain to Milad Mokbel that she could not act for him. It is necessary to deal with this assertion because elsewhere in their submissions, Counsel Assisting repeat this assertion as fact.²⁰⁹⁵
- 60.5 That assertion is not open on the evidence and should be rejected. Counsel Assisting base this assertion on two facts. First, they rely on the fact that Ms Gobbo told DS Flynn that Milad Mokbel wanted to plead guilty to charges against him. Second, they rely on Milad Mokbel then repeating this intention to DS Flynn and DSC Rowe shortly after.
- 60.6 These facts alone do not demonstrate that Ms Gobbo gave legal advice to Milad Mokbel. It is just as likely that Milad Mokbel came to his own decision to plead guilty without any advice from Ms Gobbo. As DSC Rowe's evidence indicates, it seemed to DSC Rowe that Milad Mokbel simply wanted to be done with his charges as quickly as possible.²⁰⁹⁶
- 60.7 As it stands, Counsel Assisting's own submissions refer to a number of other instances where Milad Mokbel had been arrested, including in April 2003 in relation to a clandestine laboratory set up by Mr Cooper,²⁰⁹⁷ and other charges Milad Mokbel had faced in 2001 through 2004.²⁰⁹⁸ Given that previous experience, Milad Mokbel was more likely to be able to make decisions for himself about what he would do.
- 60.8 Other available evidence makes it more likely than not that Ms Gobbo did not advise Milad Mokbel. In particular, Ms Gobbo had discussed the matter specifically with Officer White, who recorded in his diary that Ms Gobbo was to tell Milad Mokbel of her conflict because she was representing Mr Cooper.²⁰⁹⁹ She then reported to DSC Rowe that she would not be representing Milad Mokbel, for the precise reason that she had discussed with Officer White.²¹⁰⁰
- 60.9 It cannot be inferred that Ms Gobbo advised Milad Mokbel because she spoke to him for around 20 minutes. Ms Gobbo may simply have used that time to explain to Milad Mokbel the nature and effect of her conflict. Or she may have spent that time trying to

²⁰⁹¹ Exhibit RC-0266, Statement of Paul Rowe dated 25 June 2019 – VPL.0014.0035.0028 at 0039 [88].

²⁰⁹² Untendered exhibit, Diary of Paul Rowe – VPL.0005.0107.0001 at 0119.

²⁰⁹³ Exhibit RC-0266, Statement of Paul Rowe dated 25 June 2019 – VPL.0014.0035.0028 at 0039 [90].

²⁰⁹⁴ Exhibit RC-0266, Statement of Paul Rowe dated 25 June 2019 – VPL.0014.0035.0028 at 0049 [150].

²⁰⁹⁵ Counsel Assisting Submissions Volume 2 at 436 [1841].

²⁰⁹⁶ Exhibit RC-0266, Statement of Paul Rowe dated 25 June 2019 – VPL.0014.0035.0028 at 0039 [90].

²⁰⁹⁷ Counsel Assisting Submissions Volume 3 at 472 [10].

²⁰⁹⁸ Counsel Assisting Submissions Volume 3 at 473 [13.1].

²⁰⁹⁹ Untendered Exhibit, Diary of Officer Sandy White – VPL.2000.0001.0677 at 0741.

²¹⁰⁰ Exhibit RC-0266, Statement of Paul Rowe dated 25 June 2019 – VPL.0014.0035.0028 at 0039 [88].

mollify Milad Mokbel because, as Ms Gobbo explained to DSC Rowe, Milad Mokbel was unhappy that she refused to represent him.²¹⁰¹

- 60.10 Ultimately, whatever Ms Gobbo did say to Milad Mokbel, it is clear that DSC Rowe took appropriate steps to manage any concerns about Ms Gobbo advising him in circumstances where she was conflicted. DSC Rowe believed at the time of Milad Mokbel's arrest that the SDU had told Ms Gobbo not to represent Milad Mokbel and to identify a conflict of interest as the reason why.²¹⁰²
- 60.11 From DSC Rowe's perspective, the events surrounding Milad Mokbel's arrest indicated that the process of the SDU managing Ms Gobbo was working as it should. DSC Rowe was not part of the conversation between Officer Sandy White and Ms Gobbo on the night of the arrest. But DSC Rowe did not need to be, as managing Ms Gobbo was not his role and he was not aware of all the facts relating to her position as a source. He had to trust that those arrangements had been made.
- 60.12 In a different and ideal situation, Ms Gobbo might not have spoken with Milad Mokbel at all. It is apparent that Ms Gobbo felt the need to explain her actions to Milad Mokbel, most likely to minimise the risk of Milad Mokbel and others seeing her as disloyal. But the effect of her actions was the same. She was not acting for Milad Mokbel.

Proposed finding about raising Ms Gobbo's conflict with DPP

- 60.13 On 14 March 2007, DS Flynn and DSC Rowe met with Ms Tamara Heffernan, a senior solicitor at the OPP and Mr Coghlan QC, the Director of Public Prosecutions (DPP). The meeting was to discuss Mr Bickley's prosecution, not Milad Mokbel's. This meeting and what DSC Rowe did in the weeks following are also considered above in relation to Mr Bickley.
- 60.14 At paragraph [2689], Counsel Assisting propose a finding that, based on what occurred at that meeting, that DS Flynn and DSC Rowe "would have been aware that they could have" also asked Mr Coghlan QC to take steps to ensure that Milad Mokbel had independent legal representation.
- 60.15 Neither DS Flynn nor DSC Rowe were asked whether they considered raising Milad Mokbel's position with Mr Coghlan.
- 60.16 There are three reasons why Counsel Assisting's proposed finding should not be made.
- 60.17 First, the proposed finding incorrectly assumes Victoria Police, rather than the Office of Public Prosecutions, was responsible for dealing with issues about defence lawyers' conflicts. DSC Rowe's evidence was that lawyers' conflicts and ethical breaches were not something that Victoria Police dealt with.²¹⁰³ Indeed, the memorandum prepared by a senior solicitor at the OPP for the Bickley meeting indicates that the Victoria Police went to the OPP for advice about what to do about an apparent conflict.²¹⁰⁴
- 60.18 Second, it is manifestly unfair to make a hypothetical finding about DSC Rowe's conduct in circumstances where Counsel Assisting failed to ask him about it. The proposed finding is a finding that DSC Rowe "would have been aware [he] could have" asked Mr Coghlan QC to address Ms Gobbo's conflict. To properly lead evidence on this matter, DSC Rowe should at least have been asked:

²¹⁰¹ Exhibit RC-0266, Statement of Paul Rowe dated 25 June 2019 – VPL.0014.0035.0028 at 0039 [88].

²¹⁰² Exhibit RC-0266, Statement of Paul Rowe dated 25 June 2019 – VPL.0014.0035.0028 at 0039 [89].

²¹⁰³ T3305.35-37 (Rowe).

²¹⁰⁴ Exhibit RC-0737, Office of Public Prosecution Memorandum from Tamara Heffernan to Paul Coghlan dated 13 March 2007 – COR.1000.0001.0159.

- (a) whether the meeting with the DPP prompted him to consider asking Mr Coghlan QC to assist with preventing Ms Gobbo's attempts to informally reinsert herself into Milad Mokbel's matters; and
- (b) if he considered that opportunity, why he did not take it.
- 60.19 The failure to lead this evidence cannot be covered up by couching findings as a vague hypothetical. It is entirely possible that DSC Rowe had a very good reason why he was not aware of that opportunity or why he did not take the opportunity. However, DSC Rowe has had no opportunity to supply any such evidence.
- 60.20 Third, even without the benefit of properly led evidence, there are apparent reasons why the finding should not be made. In particular, the conflict issues created by Ms Gobbo's involvement in Mr Bickley's case were different to those arising in Milad Mokbel's case. There is no basis to infer that the methods of preventing Ms Gobbo appearing in court for Mr Bickley might have been effective in dealing with Ms Gobbo's informal background work for Milad Mokbel.
- 60.21 In Mr Bickley's case, Ms Gobbo sought to involve herself formally, on a brief from Mr Bickley's solicitor, Margaret Macauley. DSC Rowe took proactive steps to stop this occurring. In March 2007, DSC Rowe exchanged emails with a Senior Solicitor at the OPP, Tamara Heffernan, regarding Ms Gobbo's apparent conflict in acting for Mr Bickley.²¹⁰⁵ Ms Heffernan had noted that Ms Macaulay was aware of Ms Gobbo's conflicts and so would brief a different counsel. DSC Rowe was not satisfied this would solve the problem, so asked Ms Heffernan a number of follow up questions in a further email:
- Its my understanding that the onus would be on Nicola GOBBO to excuse herself, is this correct? And if she doesn't, is it the case that here would be very little we could do? The only reason I ask is [Bickley] has been very determined in wanting to use her.*
- 60.22 Ms Heffernan's reply was made clear that there needed to be formal processes through the Victorian Bar Ethics Committee in order to prevent Ms Gobbo from acting. Ms Heffernan replied that "All we can do is advise that the DPP is of the view that a conflict plainly exists" and that it relied upon Ms Gobbo withdrawing herself or seeking approval from the Victorian Bar's Ethics Committee:
- Hi Paul,*
- All we can do is advise that the DPP is of the view that a conflict plainly exists.*
- When I raised that with Margaret, she didn't dispute that.*
- And if Nicola tried to act (and I don't think she would) she would have to seek the advice of the Ethics Committee of the Victorian Bar.*
- Having read a number of their rulings re conflicts, I'm confident that they would advise that she cannot act.*
- 60.23 This email exchange is significant because it demonstrated to DSC Rowe that even once a conflict was raised with the OPP, the ultimate mechanism for managing conflicts relied upon Ms Gobbo referring herself to the Ethics Committee of the Victorian Bar.
- 60.24 Ms Gobbo's involvement with Milad Mokbel was informal and would have been hard to control with a formal referral to the Bar's Ethics Committee. DSC Rowe understood that

²¹⁰⁵ Exhibit RC-0739, Email chain between Rowe, Flynn, and Heffernan re DB dated 28 March 2007 – VPL.6030.0200.3220.

Ms Gobbo was assisting Milad Mokbel “as a favour” because he was having trouble paying his legal bills.²¹⁰⁶ He also said it seemed that Ms Gobbo refused to pull herself away from Milad Mokbel and others, and kept agreeing to help them out when they asked.²¹⁰⁷

- 60.25 Had DSC Rowe considered the hypothetical scenario now posed by Counsel Assisting, a formal process of asking Ms Gobbo to refer herself to the Bar Ethics Committee would have seemed highly unlikely to stop her involving herself in Milad Mokbel’s matter.

²¹⁰⁶ Exhibit RC-0266, Statement of Paul Rowe dated 25 June 2019 – VPL.0014.0035.0028 at 0048 [150].

²¹⁰⁷ Exhibit RC-0266, Statement of Paul Rowe dated 25 June 2019 – VPL.0014.0035.0028 at 0048 [151].

K. Submission of Inspector Dale Flynn

61 Introduction

- 61.1 Inspector Dale Flynn is a dedicated and hard-working police officer who has been a sworn member of Victoria Police for 33 years. As the lead investigator for Operation Posse, then Detective Acting Senior Sergeant Flynn was aware of Ms Gobbo's involvement as a human source. Mr Flynn navigated these unprecedented events in accordance with his training, experience and knowledge and by adopting the course laid down by his superiors. At all times Mr Flynn believed that he was acting lawfully and ethically. He did his best in this unique scenario. Giving evidence about these matters before a Royal Commission "*was something we never, ever would have dreamed would have occurred*".²¹⁰⁸
- 61.2 Mr Flynn relied on the safeguards he knew to be in place – the SDU, the chain of command and Ms Gobbo's professional obligations. In dealing with the "*complex*"²¹⁰⁹ situation of Mr Cooper's arrest, those safeguards failed. Unfortunately, without relevant training or experience, Mr Flynn was not in a position to realise that these safeguards had failed, let alone know how to deal with the situation when they did.
- 61.3 With the benefit of hindsight, Mr Flynn recognises that there were things that he would have done differently. But, at no time, did Mr Flynn have any intention to act with impropriety.
- 61.4 In conducting his inquiry for the Independent Broad-Based Anti-Corruption Commission, the Honourable Murray Kellam AO QC found just that – Mr Flynn did not intend to act with impropriety. Mr Flynn was cross-examined before Mr Kellam without notice as to why he was being required to attend. Relevance
Relevance
- 61.5 Counsel Assisting's submissions disregard the clear delineation of roles and departments within Victoria Police and the strict chain of command by which the organisation operated. These features of Victoria Police are fundamental to understanding and assessing Mr Flynn's conduct.
- 61.6 Mr Flynn was as an investigator. His "*focus was on catching [Mr Cooper]*".²¹¹⁰ Victoria Police was organised in such a way that Mr Flynn could conduct himself in an almost blinkered fashion by directing all of his energy on maintaining the progress of an investigation. The SDU had been recently established to ensure that the management of human sources was separated from the investigative role. Mr Flynn relied on the SDU as the experts in managing human sources; they possessed specialised knowledge and experience that Mr Flynn lacked. While, in retrospect, knowing what we know now, this organisational structure may be queried and criticised, it would be unfair to assess Mr Flynn's conduct without this lens.
- 61.7 Further, Victoria Police was a top-down organisation. Mr Flynn was aware that his superiors knew of Ms Gobbo's use as a human source and that her use had been sanctioned by senior members of Victoria Police. It was reasonable for Mr Flynn to

²¹⁰⁸ T6660.4-5 (D Flynn).

²¹⁰⁹ T6788.47-T6789.1 (D Flynn).

²¹¹⁰ T6786.21 (D Flynn).

assume that from their willingness to proceed that there was nothing improper about Ms Gobbo's involvement.

- 61.8 Other structural deficiencies within Victoria Police also contributed to Mr Flynn making decisions which, with the benefit of hindsight, he accepts could have been handled differently. Mr Flynn had received inadequate training in relation to his obligations of disclosure and the making of public interest immunity claims, particularly within the unique context of Ms Gobbo's dual roles as a human source and barrister. In addition, he had received no training in relation to the identification and management of conflicts of interest.
- 61.9 Counsel Assisting submit that it is open to the Commission to make certain adverse findings about Mr Flynn's conduct. In some instances, making these findings would require the Commissioner to reject Mr Flynn's evidence before this Commission and, in others, to ascribe to him an intention to act improperly or for an improper purpose in the conduct of his policing duties. Counsel Assisting's submissions however misstate, overlook or ignore critically relevant evidence. They must be approached with caution.
- 61.10 Counsel Assisting's submissions unfairly portray concessions that Mr Flynn made with the benefit of hindsight as evidence of his knowledge at the relevant period. This demonstrates hindsight bias and is an inappropriate form of reasoning. Mr Flynn's honesty and willingness to make appropriate concessions does not provide evidence of previous impropriety. This is not only an unfair and improper way to treat such evidence, but it is also inconsistent with the evidence that actually addresses Mr Flynn's state of knowledge when dealing with Ms Gobbo.
- 61.11 Mr Flynn accepts that "*mistakes were made*"²¹¹¹ and that "*if we had our time again we would probably do [certain things] differently*".²¹¹² In particular, he acknowledges that knowing what he knows now, he would do the arrest differently,²¹¹³ and not involve Ms Gobbo.²¹¹⁴ He would also ask more questions, especially about legal professional privilege,²¹¹⁵ and conflict of interest.²¹¹⁶ He also would have sought legal advice much earlier.²¹¹⁷ These are all concessions with the benefit of hindsight and do not provide an evidentiary basis for assessing Mr Flynn's conduct at the time these events occurred.
- 61.12 Mr Flynn never acted with impropriety. To the extent Counsel Assisting's proposed findings suggest otherwise, they are not open on the evidence. In place of those findings, these submissions set out proposed findings that are open on the evidence and take full account of the evidence before the Commission. In the time available, it has not been possible for Mr Flynn to address every factual matter concerning him in Counsel Assisting's submissions. Therefore, in these submissions, Mr Flynn principally addresses those factual findings urged by Counsel Assisting which are adverse to Mr Flynn and draws to the Commissioner's attention additional facts, not addressed by Counsel Assisting, which are relevant to an assessment of Mr Flynn's conduct.
- 61.13 These submissions are organised as follows:
- (a) Section 62 addresses Mr Flynn's work history and his evidence to the Commission. Mr Flynn gave credible, reliable, and candid evidence. While he

²¹¹¹ T7211.11 (D Flynn).

²¹¹² T6655.28-29 (D Flynn).

²¹¹³ T6655.28-29 (D Flynn).

²¹¹⁴ T6777.12-14; T6849.37-40; T7265.42-46 (D Flynn).

²¹¹⁵ T6655.23-26 (D Flynn).

²¹¹⁶ T6692.6-22 (D Flynn).

²¹¹⁷ T6655.27-35 (D Flynn).

made appropriate concessions with the benefit of hindsight, it would be unfair to judge Mr Flynn's conduct on the basis of what he knows now;

- (b) Section 63 addresses why the Commissioner cannot be satisfied that Mr Flynn intended to act with impropriety in connection with Ms Gobbo;
- (c) Section 64 sets out some of the background to Mr Flynn's involvement with Mr Cooper and Ms Gobbo;
- (d) Section 65 critically examines the evidence surrounding the circumstances surrounding Mr Cooper's arrest to demonstrate that there is no basis for finding that Mr Flynn intentionally acted improperly in the manner with which he navigated this situation;
- (e) Section 66 addresses Mr Flynn's involvement with Mr Cooper following his arrest;
- (f) Section 67 demonstrates that when all the evidence is considered as a whole in respect of the arrest and ongoing cooperation of Mr Flynn there is no proper basis to make the findings identified in Counsel Assisting's submissions; and
- (g) Section 68 explores the fact that, at all times, Mr Flynn conduct himself in line with the directions of Victoria Police that Ms Gobbo's identity as a human source was to be kept confidential.

61.14 This submission should be read with the submission in Part B above as to why the Commissioner does not have the power to make ^{Relevance} [redacted] ^{Relevance} [redacted] at paragraphs [1935]-^{Relevance} [redacted] and should decline to make such findings.

62 Mr Flynn as a witness and hindsight reasoning

Mr Flynn's work history

- 62.1 Mr Flynn joined Victoria Police in 1987 at the age of 25. He completed Detective Training School in December 1992 and the Investigators Management Course in 2002. In February 2002 he commenced as a Detective Sergeant at the Major Drug Investigation Division (**MDID**) reporting to then Detective Senior Sergeant Jim O'Brien. In November 2005, he moved to the Purana Taskforce, where he remained until January 2008. In March 2006, he held the rank of Acting Detective Senior Sergeant and in July 2007 assumed the role of Detective Senior Sergeant permanently.
- 62.2 Mr Flynn is currently employed by Victoria Police as a Regional Emergency Management Inspector in the Southern Metro Region, attached to the State Emergency and Support Command. He has undertaken this or similar roles since 2014 and he has not been involved in criminal investigations since that time.
- 62.3 As the lead investigator of Operation Posse, he led an investigation crew in one of the highest priority task forces for Victoria Police during the time in question. The entire organisation was under enormous pressure to deliver results in the gangland war. Mr Flynn was also exposed to an extremely unusual situation, Ms Gobbo's involvement as a human source, and he was forced to navigate it with inadequate training or guidance from the organisation.
- 62.4 In that pressurised climate, Victoria Police let its officers down. This was recognised by Mr Kellam in his report in February 2015, he stated: *"I consider that any impropriety on behalf of individual police officers is substantially mitigated by the lack of guidance and supervision that those officers should have had from their superior officers, particularly*

in the prevailing unique circumstances".²¹¹⁸ Mr Kellam went on to say that in his view, the:²¹¹⁹

conduct by individual police officers resulted not from any personal intention to act with impropriety on their part, but from what I consider to be behaviour constituting negligence of a high order on the part of those responsible for their supervision, guidance, instruction and management in the particular prevailing circumstances of obvious attendant risk.

- 62.5 In his evidence, Mr Flynn described the use of Ms Gobbo as a "systemic fault or error made by the organisation".²¹²⁰ This was not an attempt to deflect or blame others. Rather, Mr Flynn recognised how wider organisational failures had created the situation he then had to deal with. From the moment Ms Gobbo was registered, the integrity and ethical framework within which the investigators, such as Mr Flynn, operated was compromised. Mr Flynn, and other investigators, received information from the SDU and from Mr O'Brien that had not been appropriately filtered and assessed. But he was blind to this fact and therefore ignorant to the ethical impacts of acting on this intelligence. The failure of the SDU and Ms Gobbo to appropriately manage Ms Gobbo's conflicts of interest meant that investigators were also caught up in her ethical maelstrom, and were caught up unwittingly. Mr Flynn did not intentionally act with any impropriety. He and trusted the systems and safeguards he knew to be in place. It's only with hindsight that his conduct may seem, as Counsel Assisting seem to assert, insouciant to the extent of the issues that were unfolding.
- 62.6 Further, the consequences of the situation cannot be understated. If Ms Gobbo's involvement as a human source had come to light at this time, Ms Gobbo would likely have been killed. Even in hindsight, Mr Flynn acknowledged that while it was unfortunate that the information about Ms Gobbo's involvement did not come to light earlier, he noted that "I would still be in a quandary if the role that Ms Gobbo played as a human source was not public at that stage, I'd still be very concerned about the information coming to light".²¹²¹
- 62.7 Mr Flynn always sought to conduct himself professionally and was well-liked. In cross-examination, Mr O'Brien, who was Mr Flynn's direct manager for many years, stated that he "knew that a lot of people who knew Dale Flynn trusted him."²¹²²

Mr Flynn gave honest evidence before the Royal Commission

- 62.8 Mr Flynn was an engaged, honest and open witness. During six days of evidence and hundreds of questions in cross-examination, Mr Flynn did not shy away from criticism, nor was he argumentative. Rather, he was considered, willing to make concessions and agreed with propositions put by Counsel Assisting even when they were against his interest. One such example was the exchange that occurred with Counsel Assisting regarding the steps taken by investigators to prevent others from knowing about Ms Gobbo's involvement on the night of Mr Cooper's arrest.²¹²³

COUNSEL ASSISTING: No, I'm talking about the action on the part of investigators to prevent anyone from knowing, whether it be [Mr Cooper], his solicitor, Mr Hargreaves, any of the people against whom he

²¹¹⁸ Exhibit RC0113B – Kellam Report, 6 February 2015 (VPL.0007.0001.1400 at .1483) (citations omitted).

²¹¹⁹ Exhibit RC0113B – Kellam Report, 6 February 2015 (VPL.0007.0001.1400 at .1483-1484) (citations omitted).

²¹²⁰ T6660.7-9 (D Flynn).

²¹²¹ T6791.24-28 (D Flynn).

²¹²² T5506.10-16 (D Flynn).

²¹²³ T6786.41-T6787.6 (D Flynn).

gave evidence, steps were taken to prevent them from knowing, and indeed the court, what had occurred on the 22nd of April, and subsequent?

MR FLYNN: Well steps were taken to not reveal that Ms Gobbo was a human source for Victoria Police, yes.

COUNSEL ASSISTING: Even though it was known that Ms Gobbo did not provide independent legal advice to [Mr Cooper]?

MR FLYNN: Yes. Well again I don't think I ever thought of it in those terms but, yeah, I accept what you're saying.

62.9 Mr Flynn conceded that while he was "*initially... a little bit defensive*", particularly of the decision of the High Court of Australia,²¹²⁴ he was willing to "*accept that mistakes were made*".²¹²⁵

62.10 While Mr Flynn does not have a strong recollection of a number of these events from thirteen years ago, he conceded things were possible, even where there was no evidence to suggest that he had been aware of the events at the time.²¹²⁶

62.11 At the start of his cross-examination, a number of hypothetical examples were put to Mr Flynn by Counsel Assisting. Critically, these hypotheticals were presented as if from a textbook, lacking any of the complexity, pressure or conflicting priorities faced by Mr Flynn in dealing with Ms Gobbo's involvement with Victoria Police.²¹²⁷

62.12 These hypotheticals are stripped of any real value once one considers the operation of the chain of command, the pressure on investigators to deliver results in the unrelenting gangland war, and the fact that Victoria Police "*had long operated on the presumption that the safety of a witness, or indeed a human source, was paramount and that would...trump other considerations*".²¹²⁸

62.13 Mr Flynn's conduct should not be assessed out of context. He acted in accordance with organisational expectations and pursuant to the principles that he had been instructed to uphold. Mr Flynn cannot be held responsible for a lack of organisational management or foresight and certainly not for a lack of appropriate training.

62.14 To his credit, with the benefit of hindsight, Mr Flynn acknowledged on a number of occasions during his evidence that he would have conducted himself differently. For example, he stated that:

*You know, in preparing to give evidence for this Commission and looking back over the course of these investigations there's probably things that if I had my time again I could, I would change but generally at the time of conducting the investigations I believe that I was adhering to [the SELF] principles, yes.*²¹²⁹

62.15 This Commission is in a difficult position. It is never easy to assess decisions and behaviour with hindsight; all the unknowns are known, and the outcome is fact. Judging decisions and conduct with this benefit is misleading, as we typically have more information than the people we are judging and know at least one of the possible outcomes. When assessing the behaviour of an individual in the past, it is easy to see relationships and join dots which may not have been apparent or available to that

²¹²⁴ *AB (a pseudonym) v CD (a pseudonym)* (2019) ALJR 321.

²¹²⁵ T7211.9-11 (D Flynn).

²¹²⁶ See, eg, T6750.25-42; T6882.38-44; T6787.3-6 (D Flynn).

²¹²⁷ T6656.18-T6659.9 (D Flynn).

²¹²⁸ T12594.6-9 (L Cornelius).

²¹²⁹ T6655.11-16 (D Flynn).

person at that particular snapshot in time. As the Full Court of the Supreme Court of South Australia held in *Macks v Viscariello*: “*There is a limit to the ability of a person to forecast; everything makes sense in hindsight. It is a trap to think that what makes sense in hindsight was predictable*”.²¹³⁰ Hindsight suggests that he *should have known, should have asked questions, and he should have acted*.

62.16 It is important not to judge Mr Flynn’s actions with respect to his current state of knowledge and understanding. To do so would be an impermissible application of hindsight reasoning. As far as possible, these submissions have sought to assist the Commission to point out where Mr Flynn’s evidence was given with the benefit of hindsight.

62.17 Mr Flynn refers to and adopts Victoria Police’s submissions on hindsight reasoning.

63 No intention to act with impropriety

63.1 Mr Flynn’s involvement in the events connected to Mr Cooper’s arrest and cooperation with Victoria Police is dealt with in detail below. However, it is important to understand the context in which that occurred – in particular, Mr Flynn’s role as an investigator and the safeguards and processes he understood were in place to deal with high risk human sources.

63.2 There are six key features of the evidence that supply the context necessary to understand why Mr Flynn never intended to act with any impropriety.

63.3 **First**, Mr Flynn was an investigator. He was not an expert in managing human sources. Having recently been established in the wake of corruption within Victoria Police arising from improper relationships between investigators and informers, the SDU had been given a specific mandate - to manage high risk human sources so that the investigators were removed from that specialist work.²¹³¹ Mr Flynn expected that the SDU would have managed the risks associated with Ms Gobbo’s use as a human source. There was no reason for him to think otherwise. The investigators treated the SDU as a separate unit. It had been created to improve operations and reduce the risks to human sources. They had specialised training, processes, and experience specific to human source management that the investigative teams did not. As Mr O’Brien explained:²¹³²

The creation of the SDU meant that the MDID played no role in risk assessment, source registration or source handling. To my mind, this was a significant improvement over the old system, as it meant that specialist officers were able to manage the safety of the human source as well as the flow of the information. This outsourced significant risk from the MDID to the SDU. To my mind, this was why the SDU was set up.

63.4 Similarly, Mr Paul Rowe, who was involved in introducing Ms Gobbo to the SDU understood that Ms Gobbo was referred to the DSU because “*the DSU were the specialists in assessing and managing high risk human sources*” and “*members of the DSU would undertake detailed background enquiries as part of their assessment process and would consider the potential information the person had to offer as well as the risks and other difficulties as part of their process*”.²¹³³

63.5 **Second**, procedural strategies such as the ‘sterile corridor’, were designed and implemented to ensure that there was a clear separation between the human source

²¹³⁰ *Macks v Viscariello* (2017) 130 SASR 1, 111 [538].

²¹³¹ T7246.13-26 (D Flynn).

²¹³² Exhibit RC0464B – Statement of Mr James (Jim) O’Brien, 14 June 2019 at [46] (VPL.0014.0040.0001 at .0011).

²¹³³ Exhibit RC0266B – Statement of Detective Sergeant Paul Rowe, 25 June 2019 at [45] (VPL.0014.0035.0001 at .0007)

and investigators. The SDU would receive the intelligence from the human source, assess it and distribute it to the investigators. As Mr Flynn explained in cross-examination, he would never know whether or not the information had been properly obtained unless the DSU (as it then was) declared it, but their general practice was just to provide the information rather than revealing how it was obtained. He stated that *"they just provided the information. And to be fair, that was my focus as well, is just getting the information and working out what I was going to do with it"*.²¹³⁴ Removing privileged and confidential information was the SDU's responsibility. It was reasonable for Mr Flynn to have relied on the SDU to filter out the information provided by Ms Gobbo that should not be relied on by investigators. Accordingly, as the evidence reveals, Mr Flynn honestly believed that he was lawfully entitled to use that information for the purpose of investigating serious offending and apprehending those suspected of serious criminal offences. It was also Mr Flynn's understanding that the SDU and Ms Gobbo would manage any issues of conflict of interest.

- 63.6 **Third**, Mr Flynn was aware that his superior officer, then Detective Acting Inspector O'Brien, was involved in and understood the way in which Ms Gobbo was being utilised as a human source. Victoria Police operated in accordance with a strict chain of command which determined who was in charge of any given situation.²¹³⁵ Given this strict hierarchy, it was reasonable for Mr Flynn to expect that if there were concerns about the use of Ms Gobbo as a human source, Mr O'Brien would have directed him accordingly. This did not occur. Mr Flynn was also aware that Mr O'Brien was reporting up to then Deputy Commissioner Overland.²¹³⁶ It was therefore reasonable for Mr Flynn to proceed on the basis that there was nothing improper about Victoria Police using Ms Gobbo as a human source.
- 63.7 **Fourth**, Mr Flynn's overwhelming concern with respect to Ms Gobbo was her safety. This is understandable as Purana Taskforce were aware that human sources were high risk²¹³⁷ and that Ms Gobbo was particularly high risk given the persons she was informing against. Operation Posse briefing papers had 'identities of human source protected' listed as a key performance indicator of the operation.²¹³⁸ That was consistent with Victoria Police policy, instruction and training which emphasised the need for officers to maintain the utmost confidentiality in relation to the identity of informants.²¹³⁹ Mr Flynn was aware that Ms Gobbo had been the subject of several death threats and later became involved in the investigating threats against her as part of Operation Gosford.²¹⁴⁰ Mr Flynn was acutely aware of the risk to life that the discovery of Ms Gobbo's identity presented.
- 63.8 With hindsight it can be seen that there were occasions where Mr Flynn prioritised the protection of Ms Gobbo's identity above all else. It is very important that these instances are put into context. Mr Flynn believed he was conforming with his obligations as a police officer.²¹⁴¹ Victoria Police had cultivated a culture where the protection of the human source was regarded as a *"golden rule"*²¹⁴² - the paramount consideration in an

²¹³⁴ T6723.34-39 (D Flynn).

²¹³⁵ Untendered Statement of Assistant Commissioner Kevin Casey, 15 August 2020 at [96]-[97] (VPL.0014.0134.0001 at .0014).

²¹³⁶ T72862.6-11 (D Flynn).

²¹³⁷ Exhibit RC0467B – Investigation Plan for Operation Posse, 17 November 2005 (VPL.0100.0009.0001 at .0004).

²¹³⁸ Exhibit RC0467B – Investigation Plan for Operation Posse, 17 November 2005 (VPL.0100.0009.0001 at .0004).

²¹³⁹ See Victoria Police's submissions on training.

²¹⁴⁰ T7121.17-34 (D Flynn).

²¹⁴¹ Untendered Statement of Assistant Commissioner Kevin Casey, 15 August 2020 at [39] (VPL.0014.0134.0001 at .0008).

²¹⁴² T7261.17-20 (D Flynn).

investigation. This “golden rule” has been in the Victoria Police Manual since at least 1986.²¹⁴³ As AC Cornelius stated in his evidence:²¹⁴⁴

...Victoria Police, and I think policing more generally, had long operated on the presumption that the safety of a witness, or indeed a human source, was paramount and that would, if you like, trump other considerations.

- 63.9 **Fifth**, there were key structural deficiencies within the Victoria Police organisation which contributed to Mr Flynn’s failure to identify and respond to Ms Gobbo’s ethical issues and which contextualise Mr Flynn’s conduct in court in the cases that utilised Mr Cooper’s evidence. In relation to Mr Flynn personally, the key deficiencies that contributed to that failure were:
- (a) inadequate training in relation to Victoria Police’s obligation of disclosure and a complete lack of training about disclosure within the context of a human source who was a practicing barrister; and
 - (b) the absence of any training in relation to the identification and management of lawyers’ conflicts of interest.
- 63.10 At the time of these events Mr Flynn’s understanding of lawyers’ conflicts of interest was limited. He could not recall ever receiving training about these issues.²¹⁴⁵ As set out in Victoria Police’s submissions, there was no training about lawyers’ professional and ethical duties provided to investigators, beyond some limited training about legal professional privilege.²¹⁴⁶ Nor did Mr Flynn receive any specific information, instruction or training in how to deal with these issues upon Ms Gobbo’s registration as a human source.²¹⁴⁷ This explains why Mr Flynn was operating under the misapprehension that Ms Gobbo could still provide Mr Cooper with proper legal advice, despite having provided police with information leading to his arrest.²¹⁴⁸ He believed that she could still advise Mr Cooper in relation to his options, including his choice to not assist police.
- 63.11 **Sixth**, Mr Flynn had a reasonable expectation that Ms Gobbo would act in accordance with her professional obligations. His impression of Ms Gobbo at that time was of “a smart and educated person”²¹⁴⁹ who would know and understand her professional obligations and what she could and could not do. Mr Flynn had been advised by his superiors that conflict of interest was a matter for Ms Gobbo as the lawyer to sort out.²¹⁵⁰ During the period of her use, he was not informed of the conversations between Ms Gobbo and her handlers in which she described the “general ethics [of this situation are] fucked”²¹⁵¹ and that she had “chucked ethics out the window and chucked legal professional privilege out the window”.²¹⁵² At no point could he have predicted that Ms Gobbo would act in flagrant disregard of her ethical obligations.

²¹⁴³ See Victoria Police’s submissions on training; Untendered Statement of Assistant Commissioner Kevin Casey, 15 August 2020 at [59] (VPL.0014.0134.0001 at .0010).

²¹⁴⁴ T12594.5-9 (L Cornelius).

²¹⁴⁵ T6712.19-20 (D Flynn).

²¹⁴⁶ See Victoria Police’s submissions on training; Untendered Statement of Assistant Commissioner Kevin Casey, 15 August 2020 at [17], [29], [40], [44]-[45] (VPL.0014.0134.0001 at .0005, .0006, .0008, .0009).

²¹⁴⁷ T7261.35 (D Flynn); see Untendered Statement of Assistant Commissioner Kevin Casey, 15 August 2020 at [61] (VPL.0014.0134.0001 at .0010).

²¹⁴⁸ T6777.4-14; T6786.14-16 (D Flynn).

²¹⁴⁹ Exhibit RC0538B – Statement of Inspector Dale Stephen Flynn at [31] (VPL.0014.0042.0001 at .0005).

²¹⁵⁰ T6692.6-T6693.14 (D Flynn).

²¹⁵¹ Exhibit RC0496D – Transcript of discussion between Peter Smith, Sandy White, Officer Green, an unknown male and Ms Gobbo, 20 April 2006 at p 273 (VPL.0005.0097.0011 at .0283).

²¹⁵² Exhibit RC0298B – Transcript of discussion between Peter Smith, Sandy White and Ms Gobbo, 28 July 2006 at p 81 (VPL.0005.0104.0440 at .0520).

- 63.12 This is not to say that Mr Flynn was not aware that he had responsibilities to act when he became aware of unethical or unlawful behaviour and that he had particular obligations in a court. However, based on his training and the directions from his superiors, he did not appreciate that there was any issue with Ms Gobbo providing information about ongoing criminal activity, and he did not ever believe that Victoria Police's use of Ms Gobbo was impacting on any persons' right to receive a fair trial.²¹⁵³
- 63.13 In summary, Mr Flynn understood the situation involving Ms Gobbo was complex. But he understood there were a number of safeguards in place – the SDU, his superior officers due to operation of the chain of command and Ms Gobbo's professional obligations. He relied on those safeguards. Unfortunately, without the knowledge of Ms Gobbo's conversations with the SDU and without training about issues of conflict, Mr Flynn did not appreciate those safeguards had failed. He believed he was acting properly and according to the rules and processes meant to guide him.
- 63.14 While Mr Flynn recognises that with hindsight, he would do things differently, there is no basis for this Commission to conclude that Mr Flynn was intentionally acting in a way to conceal Ms Gobbo's conduct from the court or to deny the court's ability to ensure that accused persons would receive a fair trial.

64 Mr Flynn's exposure to Mr Cooper prior to his arrest on 22 April 2006

Pre September 2005

- 64.1 Prior to his involvement in Operation Posse, Mr Flynn was familiar with Mr Cooper. Mr Flynn had arrested Mr Cooper within days of starting at the MDID.²¹⁵⁴ Mr Flynn was aware that Mr Cooper was not only producing drugs for Mr Mokbel, but other underworld criminals, including Carl Williams.²¹⁵⁵
- 64.2 Mr Flynn was aware that Ms Gobbo had represented Mr Cooper in court. He thinks that he first became aware that Ms Gobbo was acting for Mr Cooper in November 2002 when Ms Gobbo appeared on behalf of Mr Cooper at a committal mention in respect of the Operation Landslip charges.²¹⁵⁶
- 64.3 It was around the time of the committal proceeding for the charges relating to Operation Landslip and Operation Matchless, being March 2005, that Mr Flynn became aware that Ms Gobbo had a personal relationship with Mr Cooper, as well as a professional relationship.²¹⁵⁷
- 64.4 In May 2005, Ms Gobbo contacted Mr Flynn about negotiating a plea deal for Mr Cooper, prior to a formal offer being made to the Office of Public Prosecutions.²¹⁵⁸ During a telephone conversation on 23 May 2005, Ms Gobbo told Mr Flynn that Mr Cooper was considering providing assistance to police as part of a deal. Mr Flynn did not consider this to be a genuine offer and wrote the word "*doubtful*" next to his diary note of the conversation.²¹⁵⁹ There had been prior discussions with Mr Flynn about Mr Cooper assisting police following his arrest in respect of the Landslip Operation, but Mr

²¹⁵³ T7206.1-3 (D Flynn).

²¹⁵⁴ T6667.6-18 (D Flynn); Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [9] (VPL.0014.0042.0001 at .0002).

²¹⁵⁵ T6670.10-14 (D Flynn).

²¹⁵⁶ T6669.5-9 (D Flynn); Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [16] (VPL.0014.0042.0001 at .0003).

²¹⁵⁷ T6672.44-46 (D Flynn).

²¹⁵⁸ T6684.16-20 (D Flynn); Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [25]-[26] (VPL.0014.0042.0001 at .0004).

²¹⁵⁹ T6684.12-46 (D Flynn); Untendered diary of Inspector Dale Flynn, 23 May 2005 (VPL.0010.0007.0001 at .0037).

Cooper “shut [Victoria Police] down very quickly”.²¹⁶⁰ In cross-examination, Mr Flynn noted that these discussions are “common course” in drug investigations.²¹⁶¹

- 64.5 Mr Flynn does not recall being concerned at the time that Ms Gobbo was offering the assistance of one client, Mr Cooper, in relation to another client, Mr Tony Mokbel.²¹⁶² Mr Flynn explained that this was because he did not believe it was a serious suggestion.²¹⁶³ While Mr Flynn had concerns that Ms Gobbo may have had a conflict of interest he recalls that someone advised him that: “It’s a matter for her. It’s just a matter for her to sort out”.²¹⁶⁴ This is consistent with Mr Flynn’s approach to Ms Gobbo’s involvement following Mr Cooper’s arrest. As discussed below, it was his understanding that Ms Gobbo was an educated lawyer, who knew what information she could and could not provide and would act in accordance with her ethical obligations.²¹⁶⁵
- 64.6 Mr Flynn was not aware that other officers, including Mr O’Brien, were concerned about Ms Gobbo’s association with criminal elements during this time. Nor was he aware that Messrs O’Brien and White were discussing in about August 2004 the possibility of using Ms Gobbo as a human source.²¹⁶⁶
- 64.7 Mr Flynn was similarly not aware that Ms Gobbo had been providing some information to then DS Stuart Bateson prior to her registration. He did not become aware of this until it was made public during this Royal Commission.²¹⁶⁷

September 2005 to December 2005

- 64.8 A number of factual errors in Counsel Assisting’s submissions paint an incorrect picture of Mr Flynn being routinely and regularly aware of and involved with Ms Gobbo’s role as a source. This is not correct. Mr Flynn neither introduced Ms Gobbo to the SDU nor had any role in her ongoing management.
- 64.9 Mr Flynn’s evidence was to the effect that, at the end of September 2005, he came to suspect that Ms Gobbo was acting as a source.
- 64.10 On 15 September 2005, Mr Flynn was asked by DS Mansell to assist DSC Rowe to facilitate an introduction between Ms Gobbo and the SDU, as DS Mansell was unavailable. Mr Flynn was not informed why Ms Gobbo was being introduced to the SDU, although he assumed that it was because she was considering or intending to provide information to police.²¹⁶⁸ He did not know what the information was in relation to. On 16 September 2005, Mr Flynn contacted Ms Gobbo to arrange the meeting, however, it eventuated that DS Mansell was available to attend the meeting and so Mr Flynn did not. He has no recollection of being briefed with regards to what occurred at that meeting.²¹⁶⁹
- 64.11 At paragraph [1765], Counsel Assisting state that Ms Gobbo began providing information about Mr Cooper as soon as she became registered as a human source. However, there is no evidence that Mr Flynn knew that Ms Gobbo had been registered at that point, nor that she was providing information immediately upon registration.

²¹⁶⁰ T6685.10-12 (D Flynn).

²¹⁶¹ T6685.21-24 (D Flynn).

²¹⁶² T6686.9-15 (D Flynn).

²¹⁶³ T6686.17-19 (D Flynn).

²¹⁶⁴ T6692.18-22; T6693.10-12 (D Flynn).

²¹⁶⁵ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [31] (VPL.0014.0042.0001 at .0005).

²¹⁶⁶ T6679.19-38; 21-26 (D Flynn).

²¹⁶⁷ T6686.44-6687.17 (D Flynn).

²¹⁶⁸ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [29] (VPL.0014.0042.0001 at .0004-0005).

²¹⁶⁹ T6699.2-T6700.16 (D Flynn); Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [29]-[30] (VPL.0014.0042.0001 at .0004).

Counsel Assisting's footnote reference is incorrect. The ICR that Counsel Assisting seek to rely on does not identify that information was disseminated to Mr Flynn.²¹⁷⁰

- 64.12 Counsel Assisting further submit, at paragraph [1765], that Mr Flynn, as well as Officers Smith, White, Rowe, Mansell and O'Brien knew that Mr Cooper was an ongoing client of Ms Gobbo. The allegation implicit in that submission is that members of Victoria Police, including Mr Flynn, recognised that Ms Gobbo had a conflict of interest but simply ignored it and used her as a human source in relation to Mr Cooper. Counsel Assisting address Ms Gobbo's duplicity again at paragraph [1807]. It is misleading to assess the conduct of members of Victoria Police as a group. It must be appreciated that each member held a different position, had different responsibilities, and had different degrees of knowledge. The better approach is to determine exactly what each police officer understood with respect to conflict of interest and then to identify what could reasonably have been expected of him. In relation to Mr Flynn, there is no evidence that he appreciated that Ms Gobbo had a conflict of interest between her role as a human source and Mr Cooper's legal representative. To the contrary, his evidence, as explained below, was that he did not identify the conflict.
- 64.13 Mr Flynn's evidence was that he first realised Ms Gobbo was acting as a human source during a meeting on 30 September 2005. This meeting concerned members of his team at the MDID joining the Purana Taskforce. His diary records that at this meeting, Officer Smith of the DSU (as it then was), informed those present about some information provided by a human source. Mr Flynn does not believe that Officer Smith named Ms Gobbo as the human source, however due to the nature of the information (being information about Mr Cooper and members of the Mokbel family), he suspected that it had been provided by her.²¹⁷¹
- 64.14 Mr Flynn recalls "*feeling surprised*" to discover that Ms Gobbo was acting as a human source. However, as he explained in his statement, he:²¹⁷²
- dismissed that feeling after thinking through in [his] mind that: (a) Ms Gobbo was a smart and educated person who would know what information she could and could not provide; (b) she had a personal relationship with Mr Cooper and may have known the information through that relationship; and (c) the DSU's expertise was in handling human sources and it had received the information and was passing it on so there must not be any impediment to doing so.*
- 64.15 Mr Flynn's understanding was reasonable given that Victoria Police operated in accordance with a clear delineation between disciplines and according to a strict chain of command. For the reasons set out at paragraph 63.3, it was reasonable for Mr Flynn's to have expected the SDU to manage the risks associated with Ms Gobbo's use as a human source. There was no reason for him to think otherwise.
- 64.16 As discussed above at 63.9, there were key structural deficiencies that contributed to Mr Flynn's failure to identify and response to the conflict of interest. In cross-examination, Mr Flynn candidly acknowledged that he did not recognise that a conflict existed. With respect to his understanding of legal professional privilege he stated that:²¹⁷³

²¹⁷⁰ Exhibit RC0281 – ICR3838 (001), 16 September 2005 (VPL.2000.0003.1587); Exhibit RC0281 – ICR3838 (002), 20-21 September 2005 (VPL.2000.0003.1593).

²¹⁷¹ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [31] (VPL.0014.0042.0001 at .0005).

²¹⁷² Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [31] (VPL.0014.0042.0001 at .0005).

²¹⁷³ T6715.35-42 (D Flynn).

in relation to barristers it wasn't all barristers are totally off limits. My understanding was yes, there was some conversations in relation to legal professional privilege that had to remain confidential and that implied to me that there were others that did not have to be confidential and that could be passed on to us.

- 64.17 It was not the case that Mr Flynn intentionally ignored the issues of conflict. Rather his understanding was that these issues would be handled by other members of Victoria Police. In cross-examination he explained that *"I would have thought that those discussions were happening within other areas of Victoria Police but I wasn't part of it all"*.²¹⁷⁴ This is not an unreasonable expectation. As explained above, Victoria Police had structures and departments in place to enable its officers to focus on their role. It was reasonable for Mr Flynn to assume that the SDU were aware of, and in charge of managing risks such as privilege, confidentiality and the significant conflicts that could have arisen from using Ms Gobbo as a human source, and that these issues had been considered by senior members of Victoria Police who had been involved in approving Ms Gobbo's registration. Mr Flynn accepts now that he put too much trust in other divisions of the organisation and should have asked questions. Further, Mr Flynn did not have the necessary training or experience to be managing human sources, he did not receive any training relevant to human source management until 2009.²¹⁷⁵ Even when Mr Flynn completed human source training in 2009, the highest level of training available for investigators was substantially lower than the level of training provided to the SDU handlers.²¹⁷⁶
- 64.18 Counsel Assisting state, at paragraph [1771], that on 4 October 2005, Mr White met with Mr Flynn for a *"full briefing in relation to Ms Gobbo and [redacted] Mr Cooper"*. This meeting is recorded in Mr White's diary²¹⁷⁷ but the occurrence of this meeting, or its contents were not put to Mr Flynn in cross-examination. Mr Flynn's notes of the meeting are brief: *"S/T [White] re task force & HS"*.²¹⁷⁸ It is reasonable to assume that Mr Flynn did not get a 'full' briefing with respect to Ms Gobbo's 'full' involvement as a human source. Mr White, who had been involved with the SDU since its establishment, would have been well-versed in sanitising information to ensure that other police members received no more information than they needed. Given each of the officers at the meeting would likely have had different requirements as to the information that they had a 'need to know' about Ms Gobbo's role, it is highly unlikely that Mr White briefed the investigators about the breadth of Ms Gobbo's involvement.
- 64.19 Counsel Assisting allege, at paragraph [1772], that the following day, on 5 October 2005, Mr White met with Mr Flynn and Ms Burrows to design a strategy by which Mr Flynn would [redacted] encounter with Mr Cooper.²¹⁷⁹ Mr White's diary records that in his notes from this meeting: *"Flynn approach to HS [redacted]"*.²¹⁸⁰ Counsel Assisting do not address Mr Flynn's contrasting evidence. In cross-examination, Mr Flynn explained that he was not aware that it was intended that he would meet with Mr Cooper. He thought that Victoria Police were trying to arrange a meeting between Ms Gobbo and Mr Cooper in order to *"strengthen the relationship"*.²¹⁸¹ He conceded that *"it's possible it was raised and I've just forgotten it but I'm just not – this is a surprise to*

²¹⁷⁴ T6798.16-18 (D Flynn).

²¹⁷⁵ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [Appendix A] (VPL.0014.0042.0001 at .0019).

²¹⁷⁶ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [Appendix A] (VPL.0014.0042.0001 at .0019).

²¹⁷⁷ Exhibit RC0370 – Diary of Officer 'White', 4 October 2005 (VPL.0100.0096.0001 at .0003-0005).

²¹⁷⁸ Untendered diary of Inspector Dale Flynn, 4 October 2005 (VPL.0098.0059.0001 at .0002).

²¹⁷⁹ T6709.8-16 (D Flynn).

²¹⁸⁰ Exhibit RC0370 – Diary of Officer 'White', 4 October 2005 (VPL.0100.0096.0001 at .0003-0004).

²¹⁸¹ T6708.28-31 (D Flynn).

me".²¹⁸² Mr Flynn's recollection accords with his diary note from 5 October 2005: [redacted] meeting with [Mr Cooper] + HS on Wednesday night".²¹⁸³

- 64.20 Counsel Assisting's submission does not accurately portray Mr Flynn's evidence. Mr Flynn cannot recall being part of this plan. While it is not explicit, it appears that Counsel Assisting seek to infer from this submission that Mr Flynn was involved from the outset in the orchestration and planning of the strategy to persuade Mr Cooper to co-operate with police. This is not true. Ultimately, this meeting did not go ahead.²¹⁸⁴
- 64.21 It appears that, from the SDU's perspective at least, there were ongoing attempts by [redacted] Ms Gobbo to organise circumstances where Mr Flynn could [redacted] Ms Gobbo and Mr Cooper. The ICRs indicate that these discussions about [redacted] meeting continued throughout October 2005 and even up to 13 December 2005.²¹⁸⁵ However, Mr Flynn does not recall this strategy. In cross-examination Mr Flynn explained that if it was in Mr White or Mr O'Brien's diary "it may have been something that we considered fairly early on" but he did not recall it.²¹⁸⁶
- 64.22 The evidence surrounding these plans [redacted] to organise [redacted] meeting", demonstrate that [redacted] at that point was to talk Mr Cooper into cooperating, – not to arrest Mr Cooper in the midst of further offending. Two SDU meetings are relevant to demonstrate this point – 26 September 2005 and 1 October 2005. These predate Officer White's briefings with Mr Flynn considered above.
- 64.23 On 26 September 2005, Ms Gobbo met with Officer Sandy White and Officer Peter Smith. During the conversation, Officer White asked whether Ms Gobbo might be able to convince Mr Cooper to speak [redacted] "off the record".²¹⁸⁷
- Officer White: Do you think – just going back to [Mr Cooper] – are you – do you think you are persuasive enough to talk [Mr Cooper] into talking?
- Ms Gobbo: No. I - - -
- Officer White: No, not even off the record?
- Ms Gobbo: Oh, off the record?
- Officer White: Like, if he was to talk to [Officer Smith] and myself off the record?
- Ms Gobbo: Yeah, no, off the record he would.
- 64.24 From there, Ms Gobbo recounted two instances where she had personally seen Mr Cooper show some predisposition toward cooperating with police. The former was an interaction with a Drug Squad detective, Dave Bartlett, during one of Mr Cooper's earlier committal hearings.²¹⁸⁸ The latter instance was a lengthy discussion that Mr Cooper had with Mr Flynn while Ms Gobbo was arranging surety for Mr Cooper's bail.²¹⁸⁹ According to Ms Gobbo, Mr Flynn "canvassed in loose terms" during their

²¹⁸² T6708.45-T6708.4 (D Flynn).

²¹⁸³ Exhibit RC0543B – Diary of Inspector Dale Flynn, 5 October 2005 (VPL.0010.0007.0001 at .0044).

²¹⁸⁴ T6710.41-44 (D Flynn).

²¹⁸⁵ Exhibit RC0281 – ICR3838 (004), 1 October 2005 (VPL.2000.0003.1604 at .1607); Exhibit RC0281 – ICR3838 (012), 13 December 2005 (VPL.2000.0003.1666 at .1674).

²¹⁸⁶ T7233.34-39 (D Flynn).

²¹⁸⁷ Exhibit RC0282 – Transcript of meeting between Nicola Gobbo, Sandy White and Peter Smith, 26 September 2005 at p 188 (VPL.0005.0076.0004 at .0191).

²¹⁸⁸ Exhibit RC 0282 – Transcript of meeting between Nicola Gobbo, Sandy White and Peter Smith, 26 September 2005 at pp 190-191 (VPL.0005.0076.0004 at .0193-0194).

²¹⁸⁹ Exhibit RC 0282 – Transcript of meeting between Nicola Gobbo, Sandy White and Peter Smith, 26 September 2005 at pp 191-192 (VPL.0005.0076.0004 at .0194-0195).

conversation that Mr Cooper could “come and help” but it did not amount to anything.²¹⁹⁰

64.25 It is clear from the conversation that Officer White contemplated that [PII] [PII] [PII] Officer White suggested that Mr Cooper was in a “*similar position*” to Ms Gobbo, in that his life would be easier without the Mokbels around.²¹⁹¹ Officer White then said that if he and Officer Smith could discuss it with Mr Cooper, there might be a way to arrange it [PII] [PII]²¹⁹²

Officer White: And there may be a way to actually make that happen [PII] [PII]. But again, like yourself, we wouldn't know [PII] [PII].

Ms Gobbo: Yeah.

Officer White: So if you think you've got some sway in that area, now, whether it's myself and [Officer Smith] or he would prefer to talk to Dale [Flynn], either way it can be organised.

64.26 At the next SDU meeting on 1 October 2005, Ms Gobbo, Officer White and Officer Smith consider that [PII] [PII] meeting” with Mr Flynn would be the way to broach the subject of Mr Cooper cooperating with Victoria Police:²¹⁹³

Officer Smith: I think we asked you before, would – would [Mr Cooper] ever rollover?

Ms Gobbo: I don't think so. He did – I can - - -

Officer Smith: Well - - -

Ms Gobbo: There would be no difficulties in talking about the ins and outs of it all. You know, if I happen to be having dinner with him [PII] [PII] [PII] - - -

Officer Smith: Mm.

Ms Gobbo: - - - I mean, he would sit down with Dale and have a drink with him and just Because I know that ... expected anything. And probably Dave Bartlett as well, I dunno, not as much for Bartlett.

64.27 The transcripts of these meetings were not put to Mr Flynn in his evidence before the Commission. It seems evident from the transcript however that it was Ms Gobbo who suggested Mr Flynn be involved in this strategy. Indeed, this is not the first time that Ms Gobbo sought Mr Flynn's involvement. In his diary entry on 31 August 2005,

²¹⁹⁰ Exhibit RC0282 – Transcript of meeting between Nicola Gobbo, Sandy White and Peter Smith, 26 September 2005 at p 192 (VPL.0005.0076.0004 at .0195).

²¹⁹¹ Exhibit RC0282 – Transcript of meeting between Nicola Gobbo, Sandy White and Peter Smith, 26 September 2005 at p 193 (VPL.0005.0076.0004 at .0196).

²¹⁹² Exhibit RC0282 – Transcript of meeting between Nicola Gobbo, Sandy White and Peter Smith, 26 September 2005 at p 193 (VPL.0005.0076.0004 at .0196).

²¹⁹³ Exhibit RC0489B – Transcript of meeting between Nicola Gobbo, Mr Sandy White and Mr Peter Smith, 1 October 2005 (VPL.0005.0087.0068 at .0203).

Mr O'Brien recorded that: "*Mansell told me that Ms Gobbo might be willing to speak to Detective Sergeant Flynn as she knew and trusted him*".²¹⁹⁴

- 64.28 The transcripts demonstrate that [PII] at that point was to talk Mr Cooper into cooperating, beginning with [PII] meeting – not to arrest Mr Cooper in the midst of further offending. The SDU and Ms Gobbo continued to consider this plan until at least mid-December 2005. However, the plan ultimately did not come to fruition.
- 64.29 This evidence puts a decidedly different complexion on Ms Gobbo's informing on Mr Cooper during the early period of her registration. It makes absolutely clear that there was no plan from the outset of her informing to use Ms Gobbo to incriminate Mr Cooper. Instead, the SDU were actively exploring other options to convince Mr Cooper to cooperate [PII]. Importantly, this evidence demonstrates that [PII] was not to arrest Mr Cooper in the midst of further offending, but to talk him into cooperating, it also demonstrates that Mr Flynn was not involved from the outset in [PII] planning of the "rolling" of Mr Cooper.
- 64.30 Between early October 2005 and November 2005, steps were taken by Mr Flynn's superiors in relation to the establishment and planning of Operation Posse. Mr Flynn played a peripheral role in this planning. Of all the meetings that took place during this period between Mr O'Brien and Victoria Police Command, as well as Mr O'Brien and the SDU, the evidence demonstrates that Mr Flynn attended only one meeting. On 15 November 2005, Mr Flynn attended a meeting with Mr O'Brien and others at the Assistant Commissioner's office regarding Operation Posse. The Investigation Plan demonstrates that Mr Flynn was peripheral to all the strategic planning. The plan was created without Mr Flynn's involvement and before he was a member of the Purana Taskforce. While Mr Flynn 'officially' started at the Purana Taskforce in November 2005, in practice he did not commence working in the Purana Taskforce until February 2006.²¹⁹⁵ Mr Flynn was only made aware of the investigative plan at the beginning of Operation Posse.
- 64.31 At paragraph [1780] to [1781], Counsel Assisting refer to a meeting between the SDU and Ms Gobbo on 28 October 2005 in which Ms Gobbo's conflict of interest in relation to Mr Cooper was discussed. Mr Flynn was not privy to these conversations,²¹⁹⁶ and he was not informed of the discussion.

Further Tasking in relation to Mr Cooper

- 64.32 Between late December 2005 to April 2006, Ms Gobbo was specifically tasked to assist Operation Posse.²¹⁹⁷ Counsel Assisting's submissions note, at paragraph [1795], that Mr Flynn accepted that members of the Purana Taskforce were "*keen to task [and] get as much information from Ms Gobbo as possible*".²¹⁹⁸ He stated that "*we were very enthusiastic about the investigation*".²¹⁹⁹ However, Counsel Assisting's submissions fail to acknowledge that Mr Flynn's understanding was that as Ms Gobbo was being managed by the SDU, they were responsible for filtering any privileged information out of the intelligence before it was disseminated to the investigators. Accordingly, he

²¹⁹⁴ T5506.6-8 (J O'Brien); Exhibit RC0468B – Mr James (Jim) O'Brien diary summaries, 31 August 2005 at p 3 (VPL.0005.0126.0001 at .0003).

²¹⁹⁵ Exhibit RC1523B – Supplementary Statement of Inspector Dale Flynn, 6 May 2020 at [5] (VPL0014.0042.0021 at .0021).

²¹⁹⁶ Exhibit RC0626B – Transcript of conversation between Mr Sandy White, Mr Peter Smith, Mr Black and Ms Nicola Gobbo, 28 October 2005 (VPL.0005.0051.0336 at .0474-0478).

²¹⁹⁷ See, for example, Exhibit RC0281 – ICR3838 (014), 25 December 2005 (VPL.2000.0003.1685 at .1685); Exhibit RC0281 – ICR3838 (026), 12-13 April 2006 (VPL.2000.0003.1823 at .1823-1826).

²¹⁹⁸ T7230.9-14 (D Flynn).

²¹⁹⁹ T7229.38-39 (D Flynn).

thought that he was entitled to use all of the information provided to him for the purpose of investigating serious criminal conduct. As Mr Flynn stated:²²⁰⁰

our thought as the Purana investigators was [that] those issues were to be sorted out by another area of Victoria Police...SDU. So they were to deal with all the source related issues, that's why they were created, and the information would be filtered to us as investigators and we would run the investigation.

- 64.33 This accords with Mr O'Brien's evidence that he believed that as the SDU were the experts, they would manage the risks associated with Ms Gobbo's registration, including in relation to matters of legal conflict and legal professional privilege.²²⁰¹
- 64.34 That Operation Posse would use information from registered human sources is not remarkable. The use of human source information was a central feature of the work of the Purana Taskforce and policing more generally, especially drug policing. Further, this belief that these issues would be sorted out by another area of Victoria Police was fair and reasonable and accorded with the Operation Posse Investigation Plan. The Investigation Plan clearly states that:²²⁰²

[h]uman source management and handling is a major issue of consideration outside the scope of investigation...Where possible all human sources will be handled by the Dedicated Source Unit. All relevant risk assessment will be conducted by them.

Ms Gobbo provides information about the location of Mr Cooper's laboratory

- 64.35 Across the course of February and March 2006, the information Ms Gobbo provided the SDU about Mr Cooper became increasingly specific until, in April 2006, it allowed Victoria Police to locate the premises from which Mr Cooper was manufacturing drugs.²²⁰³
- 64.36 On 13 April 2006 at 2:30 pm and then again on 14 April 2006 in the early hours of the morning, Mr Flynn received intelligence from Officer Evans and Mr O'Brien, respectively, that Mr Cooper was making drugs at a premise under renovation in Strathmore.²²⁰⁴ As Mr Flynn explained in his statement, "[i]t did not enter my mind that this was information that police could or should not act upon. It was information that a serious crime was being committed at a particular location".²²⁰⁵ Mr Flynn used the intelligence that was provided to locate the area of the laboratory. He discovered that there were vehicles that were associated with Mr Cooper at the location and as a result his team were able to focus on that address by deploying surveillance units.²²⁰⁶
- 64.37 It is not disputed that the intelligence supplied by Ms Gobbo was "crucial" to the discovery of Mr Cooper's lab²²⁰⁷ and that she provided information that resulted in Mr Cooper's arrest.²²⁰⁸

Discussions about the potential adjournment of Mr Cooper's case

- 64.38 As Counsel Assisting set out at paragraph [1814], Ms Gobbo and her handlers had several discussions about the possibility of manufacturing an adjournment of Mr

²²⁰⁰ T7229.47-T7230.7 (D Flynn).

²²⁰¹ T5530.2-14 (J O'Brien).

²²⁰² Exhibit RC0467B – Investigation Plan for Operation Posse, 17 November 2005 (VPL.0100.0009.0001 at .0004).

²²⁰³ Exhibit RC464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [153] (VPL.0014.0040.0001 at .0030).

²²⁰⁴ Untendered diary of Inspector Dale Flynn, 13-14 April 2006 (VPL.0010.0007.0001 at .0059-0060).

²²⁰⁵ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [39] (VPL.0014.0042.0001 at .0007).

²²⁰⁶ T6768.29-T6769.25 (D Flynn).

²²⁰⁷ T6881.25-26 (D Flynn).

²²⁰⁸ T7183.1-2 (D Flynn).

Cooper's plea. As he explained in cross-examination, Mr Flynn was not aware of these plans. He provided that he had no notes about these events or any recollection of any plan to manufacture an adjournment. Counsel Assisting walked him through some of the details of this event but this did not twig his memory.²²⁰⁹

Meetings in the lead up to Mr Cooper's arrest

- 64.39 Despite attending two meetings with the SDU and Mr O'Brien on 18 and 19 April 2006, there is no evidence that Mr Flynn was aware of, or complicit in, any premeditated plan to involve Ms Gobbo in advising Mr Cooper to ensure his cooperation with police.
- 64.40 There is no evidence that Mr Flynn had any knowledge of the content of Ms Gobbo's discussion with her handlers on 9 March 2006, part of which is extracted at [1819] of Counsel Assisting's submissions.
- 64.41 On 18 April 2006, as recorded in Mr Flynn's diary, he met with Messrs Kelly, White, O'Brien, Officer Highway from the Technical Surveillance Unit (TSU) and Mr Michael O'Connor from the State Surveillance Unit (SSU). It appears from Mr Flynn's diary entry that they discussed the complex range of surveillance, technical and investigation resources needed to gather evidence about Mr Cooper's clandestine laboratory and arrest him – preferably while Mr Cooper was in the laboratory manufacturing drugs. That is evident from the fact that Mr Flynn's diary mentions the Victoria Police Forensic Science Centre (VPFSC) and records that Messrs Rowe and Hayes^{PII} presumably as part of a search for evidence relevant to Mr Cooper's drug manufacturing activities. It is within this context that Mr Flynn's diary also refers to a "strategy" for interviewing Mr Cooper following his arrest:²²¹⁰

1000 [Redacted] [Redacted] [Redacted]

Officer White [Redacted] Officer Highway (TSU), O'CONNOR (SSU), [Redacted] [Redacted] O'BRIEN

• VPFSC.

• Planning in Unit Mr Cooper SUBJECT.

• CONCLUSION PLAN

• CYETANOVISILI - ACC HEARING PLAN

- FOUND US AFTER [Redacted]

OLD POLICE & NOTES [Redacted]

RTC DOC. REG. 10 Kilo DOT FOR SALE

See [Redacted] & [Redacted] TO [Redacted] [Redacted] [Street Number]

[Redacted] [Street] [Redacted]

1145 RTC

- 64.42 In cross-examination, Mr Flynn explained that he "can't actually recall this meeting very well" but that his notes recall a discussion about "a planned interview with [Mr Cooper], so we were going to approach the interview to try and get him to assist police".²²¹¹

²²⁰⁹ T6762.7-33 (D Flynn).

²²¹⁰ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [42] (VPL.0014.0042.0001 at .0007-0008).

²²¹¹ T6770.7-12 (D Flynn).

64.43 Mr Flynn also explained that the investigative strategy was to organise the surveillance and sequence of the arrest in order to catch Mr Cooper in the most compromising position so as to have the most leverage to persuade him to cooperate:²²¹²

COUNSEL ASSISTING: You wanted to catch him at the site in possession of the chemicals and with as much incriminating evidence as possible?

MR FLYNN: Yes, that's correct.

COUNSEL ASSISTING: To enable you, the police, to say to him, "Look, you're in all sorts of strife here"?

MY FLYNN: Yes.

COUNSEL ASSISTING: "The only way you're going to see the light of day for a very long time is to assist us"?

MR FLYNN: Yes.

COUNSEL ASSISTING: That's the idea?

MR FLYNN: That's all correct, yes.

64.44 In their submissions, Counsel Assisting rely only on Mr Flynn's statement,²²¹³ to assert the following about that meeting:²²¹⁴

On 18 April 2006, Messrs Flynn, Kelly and O'Brien along with Ms Gobbo's controller, Mr Sandy White, participate in a briefing in relation to Operation Posse in which they discussed "a strategy" for the approach to the interview of Mr Cooper upon his forthcoming arrest.

64.45 In their description of the meeting,²²¹⁵ Counsel Assisting note that Mr White was Ms Gobbo's controller. The unstated implication is that Mr White was at the meeting in that capacity to facilitate Ms Gobbo's involvement in obtaining Mr Cooper's cooperation. However, Counsel Assisting fail to note Mr Flynn's evidence (despite it being in the same paragraph of Mr Flynn's statement relied on to establish that the meeting of 18 April 2006 occurred) that Mr White was probably at the meeting "*because of his expertise in persuading him to assist police and then on how we should handle him if he agreed to provide assistance*".²²¹⁶ On the basis of that evidence, the likelihood is that Mr White was at this meeting not because he was Ms Gobbo's controller but because of his experience in persuading offenders to assist police.

64.46 Counsel Assisting also fail to note Mr White's diary entry for 18 April 2006. At 9:05 am, Mr White notes that he received a call from Mr O'Brien requesting a meeting with the TSU and the SSU regarding "[Mr Cooper] proposed action".²²¹⁷ Mr White also records in his diary a meeting at 10:05 am with Messrs O'Brien, Highway, O'Connor, Flynn and another. In this meeting, he recorded, that it was "[I]oo risky for camera in [premises]...External camera on [redacted] house".²²¹⁸ Crucially, Mr White's diary also notes:²²¹⁹

²²¹² T6761.42 – T6762.5 (D Flynn).

²²¹³ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [42]-[43] (VPL.0014.0042.0001 at .0007-0008).

²²¹⁴ Counsel Assisting Submissions at p 420 [1821], Vol 2.

²²¹⁵ Counsel Assisting Submissions at p 420 [1821], Vol 2.

²²¹⁶ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [43] (VPL.0014.0042.0001 at .0008).

²²¹⁷ Exhibit RC0391B – Diary of Officer 'White', 18 April 2006 (VPL.2000.0001.0677 at .0712).

²²¹⁸ Exhibit RC0391B – Diary of Officer 'White', 18 April 2006 (VPL.2000.0001.0677 at .0713).

²²¹⁹ Exhibit RC0391B – Diary of Officer 'White', 18 April 2006 (VPL.2000.0001.0677 at .0714).

Objective: Mr Cooper in possession incriminating evidence
- Roll over - use against others.

- 64.47 Mr White's diary entry demonstrates that the purpose of the meeting was to ascertain the ways in which technical and surveillance units could be used to ensure that Mr Cooper was arrested in possession of incriminating evidence. There is no discussion of using Ms Gobbo to influence Mr Cooper. On the basis of that evidence, the likelihood is that Mr White was at this meeting not because he was Ms Gobbo's controller but because of his experience in persuading offenders to assist police.
- 64.48 Counsel Assisting's submissions also omit the fact that Officer Highway from the Technical Support Unit and Michael O'Connor from the State Surveillance Unit attended this meeting. Their presence cannot simply have been overlooked, as they are mentioned in the only source of evidence relied upon by Counsel Assisting, namely Mr Flynn's statement.²²²⁰
- 64.49 This fact is significant on a general level because it is extremely unlikely that Mr White and the investigators would discuss Ms Gobbo's role as a source in front of these officers. And it would be impossible to have any conversation about using Ms Gobbo to convince Mr Cooper to assist without disclosing the fact she was a source.
- 64.50 However, the evidence before the Commission goes further – it demonstrates that neither Messrs Highway nor O'Connor knew Ms Gobbo was a source at the time of this meeting.
- 64.51 Mr Highway's statement records that he did not know Ms Gobbo was a source while at Victoria Police, and that he first became aware of this through media reporting.²²²¹
- 64.52 Mr O'Connor's statement addresses this meeting in particular, stating that while he assumed a human source was involved because of Officer Sandy White's presence, he did not recall being told the identity of any sources and that there was no reason for him to ask.²²²² Mr O'Connor believed he learned Ms Gobbo was a source in around June 2006, in the context of separate discussions around unauthorised disclosure of information about surveillance targets.²²²³
- 64.53 Counsel Assisting's submissions also ignore other evidence available about what was discussed at the meeting on 18 April 2006. Those sources of evidence support the submission that the discussion centred on the complex range of surveillance, technical and investigation resources needed to gather evidence about Mr Cooper's clandestine laboratory and arrest him in the most compromising position:

²²²⁰ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [42] (VPL.0014.0042.0001 at .0007). See also Untendered diary of Inspector Dale Flynn, 18 April 2006 (VPL.0010.0008.0001 at .0019).

²²²¹ Exhibit RC1223B – Statement of Officer 'Highway', 10 October 2019 at [14] (VPL.0014.0074.0001 at .0003).

²²²² Exhibit RC1243B – Statement of Mr Michael O'Connor, 26 November 2019 at [20](b) (VPL.0014.0099.0001 at .0003).

²²²³ Exhibit RC1243B – Statement of Mr Michael O'Connor, 26 November 2019 at [29]-[30] (VPL.0014.0099.0001 at .0005).

- (a) Diary notes from both Messrs O'Brien²²²⁴ and White²²²⁵ record discussion about whether it was possible to place surveillance cameras in the lab and other positions.
- (b) Mr O'Connor's statement and diary record that he had repeated discussions with Messrs O'Brien and Flynn that week, concerning the surveillance necessary to follow Mr Cooper and gather evidence about the drugs he was manufacturing.²²²⁶ Mr O'Connor's evidence was that Mr Cooper was "*particularly aware of possible surveillance and often took fairly drastic anti-surveillance measures*", which meant significant surveillance resources were needed to locate him and gather evidence.²²²⁷
- (c) Officer Highway's diary for 18 April 2006 notes that the meeting discussed "*strategies for Op Posse video surveillance installation*".²²²⁸
- (d) Diary notes taken by Mr O'Brien²²²⁹ record that the discussion descended even to the detail of the direction from which Mr Flynn would approach the lab when the arrest took place.

64.54 There was discussion about Mr Cooper cooperating with police, but the evidence indicates it was general discussion about convincing someone who was caught red-handed to cooperate with police. In his statement, Mr Flynn explained that there were two matters that Victoria Police thought might persuade Mr Cooper to assist police following his arrest. He stated that: "*[w]e had planned to put to him that he would get a significantly reduced jail sentence for assisting and would, therefore spend less time away from [his children]*".²²³⁰ This is entirely orthodox policing. There is no evidence to indicate that the discussion was part of some plan to use Ms Gobbo to encourage Mr Cooper to "roll" and implicate his associates.

64.55 On 19 April 2006, Mr Flynn's diary records he attended a further briefing about Operation Posse with Messrs White, Highway (TSU) and the SSU member. Mr Flynn's diary notes record that they discussed topics including the "*I/V strategy*",²²³¹ and "*surveillance tapes (both TSU & SSU)*".

1000 *Private with OCU & SSU (MUSK) & TSU* Officer Highway
Re: POSSE
by STRATEGY
- SURVEILLANCE TAPES (Both TSU & SSU)
Beau Locs. All

64.56 These notes support the position that any discussion of "strategy" was a reference to the resources that would be used to gather evidence against Mr Cooper and arrest him in the act. Mr Flynn does not have a specific memory of this meeting. In his statement he said that "*I assume that the meeting involved discussion about the approach that we were to take to the interview of [Mr Cooper] I do not have any memory of there being a*

²²²⁴ T5732.18-19 (J O'Brien).

²²²⁵ Exhibit RC0391B – Diary of Officer 'White', 18 April 2006 (VPL.2000.0001.0677 at .0713-0714); see also T5732.39-42 (J O'Brien).

²²²⁶ Exhibit RC1243B – Statement of Mr Michael O'Connor, 26 November 2019 at [19] (VPL.0014.0099.0001 at .0003).

²²²⁷ Exhibit RC1243B – Statement of Mr Michael O'Connor, 26 November 2019 at [19] (VPL.0014.0099.0001 at .0003).

²²²⁸ Untendered diary of Officer 'Highway', 18 April 2006 (VPL.0098.0157.0001 at .0002).

²²²⁹ T5732.21-23 (J O'Brien).

²²³⁰ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [42] (VPL.0014.0042.0001 at .0008).

²²³¹ Untendered diary of Inspector Dale Flynn, 19 April 2006 (VPL.0098.0150.0001 at .0029).

documented plan for the interview".²²³² However, the presence of Officer Highway and Mr O'Connor at this meeting is significant and makes it highly improbable that there was any discussion during the meeting about using Ms Gobbo to persuade Mr Cooper to "roll", for the reasons explained at 64.51 to 64.53 above.

64.57 Indeed, Counsel Assisting also fail to refer to the ICR for 19 April 2006 which notes that at 10:30 am:

"[White] and [Smith] confer with Op PURANA D/S/S O'Brien and D/S Flynn, discuss tactics for post arrest, based on HS information, regarding co-operation and possible [PI] [Mr Cooper]. Points to be included in I/V plan by O'Brien".

64.58 This supports the position that the focus of the meeting was not 'use of HS' but "*tactics...based on HS information*". There is simply no evidence that at this meeting on 19 April 2006 there was premeditated plan to involve Ms Gobbo in advising Mr Cooper to ensure his cooperation with police.

64.59 At paragraphs [1824]-[1825], Counsel Assisting rely on a conversation between Officers White and Green and Ms Gobbo to establish that as at 20 April 2006, Ms Gobbo and relevant members of Victoria Police were knowingly engaged in an improper deception on Mr Cooper. This was a conversation that was isolated to Officers White and Green and Ms Gobbo. Counsel Assisting refer to 'relevant members' which suggests that this information was disseminated broadly. However, there is no evidence upon which the Commissioner could find that Mr Flynn was aware of the contents of this conversation.

64.60 Mr Flynn does not recall being told about this conversation and in particular that Ms Gobbo described the general ethics of the whole situation as "*fucked*".²²³³ In cross-examination, Mr Flynn said that if he had been told by a lawyer that the situation was "ethically fucked", while he wouldn't "*go directly to legal advice...[he'd] certainly start reporting up*".²²³⁴

64.61 Further, Mr Flynn was adamant in his evidence that it was not the case that the investigators had simply decided to "*wear that risk*".²²³⁵ Mr Flynn said that:²²³⁶

It was not ever a case of any scenario where we've got together and said, 'Well, we're probably not doing the right thing here, but we'll get away with it, no one will find out about it so we'll do it anyway'.

64.62 Mr Flynn's evidence on this point is corroborated by other evidence that Mr Flynn was not personally aware of and which is not addressed in Counsel Assisting's submissions. As covered in detail in Victoria Police's submission regarding the conduct of the SDU, the transcript of the 20 April 2006 meeting and the SDU members' evidence demonstrate that there was no plan among the SDU to use Ms Gobbo to persuade Mr Cooper to cooperate or to encourage Ms Gobbo to advise Mr Cooper after his arrest. Rather, at the meeting on 20 April 2006, the SDU tried to dissuade Ms Gobbo from attending to advise Mr Cooper.

64.63 Based solely on conclusions drawn from the ICRs, it might appear as if there was a plan to use Ms Gobbo in this way. Mr Flynn conceded that, looking at the ICR in isolation, it would seem there was such a plan.²²³⁷ But a full appreciation of the evidence

²²³² Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [44] (VPL.0014.0042.0001 at .0008).

²²³³ T6784.29 -33 (D Flynn).

²²³⁴ T7295.9-18 (D Flynn).

²²³⁵ T6785.11-12 (D Flynn).

²²³⁶ T6785.27-30 (D Flynn).

²²³⁷ T7326.37-41 (D Flynn).

demonstrates that there was not. Ms Gobbo insisted on attending and the SDU were not in a position to stop her doing so.

- 64.64 The full transcript of the 20 April 2006 meeting and the SDU members' evidence is highly relevant to proving that Mr Flynn was not part of any plan to use Ms Gobbo to encourage Mr Cooper to assist. Put simply, Mr Flynn was not part of any such plan because there was no such plan.

65 Mr Cooper's arrest

- 65.1 The day of Mr Cooper's arrest saw the progressive failure of the safeguards that Mr Flynn understood to be in place. The SDU members had not managed Ms Gobbo in a way that addressed the risks arising from her dual role. Those above Mr Flynn in the chain of command did not identify or deal with the potential conflicts of interest that arose. Ms Gobbo's insistence on attending was a breach of her own professional obligations.
- 65.2 Throughout the entire process of Mr Cooper's arrest, Mr Flynn conducted himself in accordance with his training and experience as an investigator. Unfortunately, gaps in that training and experience meant he was not properly equipped to even identify that the safeguards had failed with respect to Ms Gobbo's interactions with Mr Cooper, let alone deal with the complex situation he faced.

Conduct of Ms Gobbo and Victoria Police upon Mr Cooper's arrest on 22 April 2006

- 65.3 On 21 April 2006, Victoria Police obtained a search warrant to search Mr Cooper's laboratory, and the properties of other suspects in the investigations.²²³⁸ An affidavit was prepared in support of the search warrant. The affidavit was compiled by members of Mr Flynn's crew, and records information obtained in the investigation, including information provided by Ms Gobbo to the SDU. Mr Flynn believes that the affidavit was compiled from a number of sources, such as members' diaries and an investigation chronology.²²³⁹
- 65.4 Counsel Assisting submit²²⁴⁰ that the Purana Task Operation Posse Phase One Operation Order (**Phase One Operation Order**) 'demonstrates the significance of information implicating Mr Cooper which was supplied by his lawyer Ms Gobbo'. The Phase One Operation Order is also useful to provide context as to the wide ranging intelligence gathering work that was being undertaken by the Purana Taskforce in connection with Mr Cooper outside of the information provided by Ms Gobbo.
- 65.5 In paragraph [1828] of their submissions, Counsel Assisting note that Mr Flynn was nominated as the Investigation Leader for Operation Posse. This information is documented in the Phase One Operation Order.²²⁴¹ Whilst Mr Flynn was the Investigation Leader, there were several higher ranking officers involved in the operation including the Operations Commander, the Forward Commander and the Deputy Forward Commander. All arrests were made were made at the discretion of the Forward Commander, Mr O'Brien.

Chronology of circumstances surrounding Mr Cooper's arrest

²²³⁸ T6794.41-42 (D Flynn).

²²³⁹ T6794.38-T6795.4 (D Flynn); Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [46] (VPL.0014.0042.0001 at .0008).

²²⁴⁰ Counsel Assisting Submissions at p 424 [1827], Vol 2.

²²⁴¹ Untendered Purana Taskforce, Operation Posse, Phase One, Operation Order, execution date to be determined at [14]-[15] (VPL.0099.0117.0289 at .0305).

- 65.6 Mr Flynn was present at the arrest of Mr Cooper on 22 April 2006. He arrived after the Special Operations Group had arrested Mr Cooper and [Mr Agrum] at the property. Mr Flynn read Mr Cooper his rights to contact a friend or relative and a legal practitioner.²²⁴² Mr Cooper asked Mr Flynn to contact a family member and Ms Gobbo.²²⁴³ At this point, Mr Flynn refused Mr Cooper's request. At paragraph [1831.1], Counsel Assisting state that the reason for refusing this request was 'apparently' to avoid compromising the investigation. While Counsel Assisting unfairly imply that this was not Mr Flynn's motivation for refusing the request, they do not suggest an ulterior one. In cross-examination, Mr Flynn explained that this was not an unusual practice with respect to arrests of high-level drug offenders because of a concern of fabrication and destruction of evidence.²²⁴⁴ He stated: "*So generally we wait until all opposed warrants had been executed and all the people we were trying to arrest had been arrested*".²²⁴⁵
- 65.7 Counsel Assisting do not make any reference to the relevant legislation, s 464C(1)(c) of the *Crimes Act 1958* (Vic) which provides that an investigating official may delay a person's attempts to contact a relative or legal practitioner if the investigating official believes on reasonable grounds that doing so may lead to the fabrication or destruction of evidence. As detailed in Mr Flynn's affidavit in support of the search warrant, dated 21 April 2006, the search warrant pertained to ten properties and five individuals.²²⁴⁶ There was a clear risk that if Mr Cooper's associates were alerted to his arrest key evidence would be destroyed.
- 65.8 After Mr Cooper was transferred to St Kilda Road Police Station, Mr Flynn facilitated telephone contact between Mr Cooper and Ms Gobbo.²²⁴⁷ Mr Flynn could hardly have done anything else. In cross-examination, Mr Flynn explained that "*generally once [a] person requests a particular legal practitioner, well then we're kind of bound to allow them to speak to that person*".²²⁴⁸ Numerous witnesses before the Commission appreciated the bind that Mr Flynn was in.²²⁴⁹ As Mr Allen explained in cross-examination, "*if a person in custody is asking for a specific legal representation, the role is to facilitate that request. Otherwise we breach the standing orders and other legislation*".²²⁵⁰
- 65.9 Mr Flynn's training and experience, consistent with the requirements of s 464C of the *Crimes Act 1958*, emphasised to him the importance of allowing a person upon arrest to communicate with or attempt to communicate with a lawyer of their choice. As described in the Victoria Police's submissions, this was a core obligation which was emphasised in the Victoria Police Manual and in the training provided by Victoria Police.²²⁵¹
- 65.10 Section 464C of the *Crimes Act 1958* requires that before a person in custody can be questioned, an investigating official must inform the person of their right to communicate

²²⁴² T6792.13-16 (D Flynn).

²²⁴³ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [48] (VPL.0014.0042.0001 at .0009).

²²⁴⁴ T6797.26-32 (D Flynn); Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [48] (VPL.0014.0042.0001 at .0009).

²²⁴⁵ T6797.23-25 (D Flynn).

²²⁴⁶ Exhibit RC0733B – Affidavit for a search warrant, 21 April 2006 (VPL.0005.0035.1204 at .1204).

²²⁴⁷ T6800.2-18 (D Flynn); Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [49] (VPL.0014.0042.0001 at .0009).

²²⁴⁸ T6798.41-44 (D Flynn).

²²⁴⁹ See, eg, T2976.33-T2977.33 (A Allen).

²²⁵⁰ T2976.38-41 (A Allen).

²²⁵¹ See Untendered Statement of Assistant Commissioner Kevin Casey, 15 August 2020 at [55]-[56] (VPL.0014.0134.0001 at .0010).

with or attempt to communicate with a lawyer.²²⁵² The investigating official must then as soon as practicable afford reasonable facilities to enable the person to contact their lawyer and allow them to communicate with them in circumstances where the communication will not be overhead.²²⁵³ If this requirement is not complied with, evidence of confessions or admissions obtained during questioning may be inadmissible at trial.²²⁵⁴

- 65.11 There are exceptions to these obligations, but they are strict and expressly set out in s 464C of the *Crimes Act 1958*. None of the exceptions concern the situation which confronted Mr Flynn that night. Mr Flynn was aware of the exceptions, given his refusal to initially allow Mr Cooper to speak to Ms Gobbo as described above. However, once Mr Cooper had been conveyed to the St Kilda Road police station, Mr Flynn saw no lawful basis upon which he could refuse Mr Cooper's request. Mr Flynn had no training or experience to draw upon regarding any other potential options that might have been available to him at that point. To the contrary, the Victoria Police training and instruction Mr Flynn had received emphasised that there were only the three narrow circumstances, as set out in s 464C of the *Crimes Act 1958*, in which a suspect's request to speak to a lawyer could be refused or delayed.²²⁵⁵
- 65.12 In cross-examination, it was put to Mr Flynn that one option he had was to have told Mr Cooper that Ms Gobbo was a suspect and therefore she could not act as his lawyer.²²⁵⁶ This suggestion assumes that at this time Mr Flynn was aware of Ms Gobbo's conflict of interest. This is not true. As set out above, Mr Flynn was not abreast of the conversations that had been had with Ms Gobbo and the SDU that the "*general ethics [of the situation were] fucked*" and he was acting upon the understanding that any conflicts involving Ms Gobbo would have been handled by the SDU. Further, it was not possible for a police member to tell Mr Cooper about Ms Gobbo's status as a human source.²²⁵⁷ To do so would have violated the terms of Ms Gobbo's registration as a source, Victoria Police directions concerning the protection of the human source and Mr Cooper's right to a lawyer of his choice. It would also have placed Ms Gobbo's life in real and immediate danger.
- 65.13 It was not even possible to tell Mr Cooper that Ms Gobbo could not act for him without providing an explanation or simply citing "*unspecified reasons*", as this would light up Ms Gobbo as a source. Counsel Assisting accepted as much in questioning Officer Smith:²²⁵⁸

Counsel Assisting: The problem was if you went and said to the people, "She can't act for you for unspecified reasons", that posed the real risk of disclosing the fact she was assisting the police?

Officer Smith: Of course, it would be blatantly obvious.

Ms Gobbo's initial attendance at the St Kilda Road police station

- 65.14 At approximately 4:25 pm on 22 April 2006, Ms Gobbo attended the St Kilda Road police station and spoke with [Mr Agrum] and then with Mr Cooper. She left at approximately 5:45 pm. At paragraph [1831.8], Counsel Assisting state that despite

²²⁵² *Crimes Act 1958* (Vic), s 464C(1).

²²⁵³ *Crimes Act 1958* (Vic), s 464C(2).

²²⁵⁴ *R v Percerap* [1993] 2 VR 109 at 120 and now under s 138 of the *Uniform Evidence Act 2008* (Vic).

²²⁵⁵ See Victoria Police's submissions on training.

²²⁵⁶ T6709.37-40 (D Flynn).

²²⁵⁷ Exhibit RC0464B – Statement of Mr James (Jim) O'Brien, 14 June 2019 at [175] (VPL.0014.0040.0001 at .0034-0035).

²²⁵⁸ T6109.42-45 (Officer Smith).

knowing that this situation was “complex”, Mr Flynn did not seek to stop Ms Gobbo’s involvement, did not seek legal advice or did not disclose the full circumstances of Ms Gobbo’s involvement to Mr Cooper. This submission of Counsel Assisting is factually correct however it must be put in context. While he recognised the situation was “complex”, he did not have the training or experience to appreciate the seriousness of the situation and potential options that might have been available to him at this point.

65.15 While Mr Flynn does not have a diary entry to support his recollection, he thinks that he may have raised his concerns about these issues of conflict with Mr O’Brien.²²⁵⁹ It is important to remember that at this time Mr Flynn was a Detective Sergeant, and when issues arose, he generally “report[ed] up” rather than seeking advice through other channels, such as Victoria Police legal counsel.²²⁶⁰ Mr O’Brien was aware of Ms Gobbo’s registration by the SDU as a human source²²⁶¹ and Mr O’Brien was across the investigation leading up to Mr Cooper’s arrest, including that Ms Gobbo supplied the intelligence about Mr Cooper’s laboratory in Strathmore.²²⁶² It would have been reasonable for Mr Flynn to view Mr O’Brien’s knowledge of these matters as tacit approval of her involvement as a human source in Operation Posse.

65.16 As has been described repeatedly above, Mr Flynn’s understanding of lawyers’ conflicts was limited. He could not recall ever receiving training about these issues nor did he receive any specific information or training in how to manage these issues specifically with respect to Ms Gobbo. He also expected that Ms Gobbo would act in accordance with her professional and ethical obligations and he had no appreciation of the wrongfulness of the situation and the potential consequences. His limited understanding of these issues is demonstrated by the evidence he gave to the Commission. In cross-examination he explained that he was of the view that “even though she’s helped us in arresting [Mr Cooper], that she could still go there and give him proper legal advice”.²²⁶³ He added:²²⁶⁴

I still thought at the time that if [Mr Cooper] indicated that he didn’t want to talk to police, he didn’t want to answer questions, that she would talk to him about the pros and cons of doing that.

65.17 At paragraph [1831.8], Counsel Assisting are critical of the fact there was no preventative or remedial action taken once Ms Gobbo arrived at the police station. Mr Flynn’s role was as an investigator – as he said, “my focus was on catching [Mr Cooper]” – as set out above at 63.3, given the formal structure of divisions within the organisation, it was fair for him to assume that the SDU would have handled any issues of Ms Gobbo’s conflicts.²²⁶⁵ This assumption accorded with the delineation of responsibility in the Operation Posse investigative plan²²⁶⁶ and with Mr Flynn’s understanding of the specialist role of the SDU.

65.18 Finally, it should be noted that Mr O’Brien was also present at the St Kilda police station and knew that Ms Gobbo had attended. It is not unreasonable for Mr Flynn to have assumed, in accordance with the chain of command, that if issues had arisen, Mr O’Brien would be abreast of them and would have taken any necessary preventative or remedial action. As indicated above, Victoria Police operated according to a strict chain

²²⁵⁹ T6716.27-34 (D Flynn).

²²⁶⁰ T6718.36-38 (D Flynn).

²²⁶¹ Exhibit RC0464B – Statement of Mr James (Jim) O’Brien, 14 June 2019 at [53] (VPL.0014.0040.0001 at .0012).

²²⁶² Exhibit RC0464B – Statement of Mr James (Jim) O’Brien, 14 June 2019 at [150] (VPL.0014.0040.0001 at .0029).

²²⁶³ T6786.14-16 (D Flynn).

²²⁶⁴ T6787.30 (D Flynn).

²²⁶⁵ T6786.21 (D Flynn).

²²⁶⁶ Exhibit RC0467B – Investigation Plan for Operation Posse, 17 November 2005 (VPL.0100.0009.0001 at .0004).

of command which determines who is in charge of any given situation. One element of the chain of command provides that the most senior person in a situation is in charge of that situation, unless or until someone more senior takes over responsibility. It is unreasonable to have expected Mr Flynn to have acted in any way to undermine his boss, Mr O'Brien, or a member of the SDU. Additionally, Mr Flynn knew that Mr O'Brien and the SDU had significantly more exposure to the situation than he did. Mr Flynn had worked with Mr O'Brien for a long time and trusted him, Mr Flynn did not question the approach as he respected and trusted his colleagues and their experience and decision making.

- 65.19 In cross-examination, as Counsel Assisting state at paragraph [1831.8], Mr Flynn accepts *"with the benefit of hindsight"* that there were other paths of action he could have pursued. Counsel Assisting seem to infer that Mr Flynn was aware of these options at the time but chose not to take them. Counsel Assisting's submission ignores the real impact of hindsight. Mr Flynn was not saying that he was aware of these options at the time and chose to ignore them. He was accepting that retrospectively they were options that could have been explored. For the reasons set out above, Mr Flynn acted appropriately at the time given his understanding of the situation.
- 65.20 Ms Gobbo arrived at St Kilda Road Police Station at 4:25 pm and departed at 5:45 pm. In his diary, Mr Flynn records that after arriving, Ms Gobbo immediately spoke with Mr [Agrum] and then at 4:43 pm she spoke with Mr Cooper.²²⁶⁷ Mr Flynn cannot recall if Ms Gobbo spent the entire hour with Mr Cooper.²²⁶⁸ Mr Smith, the handler who completed the ICRs recorded at 5:30 pm: *"Rec Missed Call and Ph Back. HS v. emotional after seeing [Cooper] in custody. HS has spoken to D/Sgt FLYNN, who has told HS nothing yet"*.²²⁶⁹
- 65.21 After Ms Gobbo left the St Kilda Road police station, Mr Flynn spoke with Mr Biggin. In their submission at paragraph [1831.13] Counsel Assisting fail to note that Mr Flynn does not recall this meeting. When asked about this meeting in cross-examination Mr Flynn said that Mr Cooper's arrest *"was obviously a very significant resolution phase of our investigation"* and it is likely he updated Mr Biggin as to this event.²²⁷⁰ Mr Flynn's evidence was that he briefed Mr Biggin as to the *"progress of the investigation"*.²²⁷¹ There is no evidence that he briefed Mr Biggin about the conflict of interest associated with Ms Gobbo's attendance to advise Mr Cooper. Indeed, Mr Flynn's evidence to the Commission was that he believed his update to Mr Biggin was no more than *"Yes, we've located the lab, we've found this, we've arrested him and brought him back here and then spoken to them"*.²²⁷²
- 65.22 Counsel Assisting's suggestion that Mr Biggin was the most senior officer of Victoria Police available for Mr Flynn to speak to is misplaced. Victoria Police operated pursuant to a strict chain of command. As Mr Flynn explained in cross-examination, he would brief his direct report, Mr O'Brien. It was unreasonable to expect Mr Flynn to raise concerns with Mr Biggin.
- 65.23 Counsel Assisting submit that it was likely that Mr Flynn briefed Mr O'Brien as to Ms Gobbo's attendance at the St Kilda Road police station. Mr Flynn's evidence was that *"I suspect at some stage I updated him"*.²²⁷³ However, he clarified his evidence by noting

²²⁶⁷ Exhibit RC0538B – Statement of Inspector Dale Stephen Flynn, 17 June 2019 at [51] (VPL.0014.0042.0001 at .0009).

²²⁶⁸ Untendered diary of Inspector Dale Flynn, 22 April 2006 (VPL.0098.0150.0001 at .0032); T6802.30-32 (D Flynn).

²²⁶⁹ Exhibit RC0281 – ICR3838 (028), 22 April 2006 (VPL.2000.0003.1835 at .1845).

²²⁷⁰ T6807.16-17 (D Flynn).

²²⁷¹ T6814.38-44 (D Flynn).

²²⁷² T6808.14-17 (D Flynn).

²²⁷³ T7280.28 (D Flynn).

that it was not the usual practice for Mr O'Brien to inform that an accused person had requested legal advice, who the legal adviser was and how the legal adviser had provided advice (that is, whether by phone or in person).²²⁷⁴ Mr O'Brien gave evidence that someone may have told him that Ms Gobbo was present in the building to see Mr [Agrum] and Mr Cooper, but he did not see her there.²²⁷⁵ Mr O'Brien goes on to say that he "was annoyed by the fact that she actually came down to the station".²²⁷⁶ He also rhetorically asked, once she was at the police station: "what could I do about it?"²²⁷⁷ In cross-examination, Mr O'Brien states that Mr Flynn "may" have reported to him what was going on during Mr Cooper's arrest.²²⁷⁸

- 65.24 Critical for Mr Flynn is that he believed that Mr O'Brien knew that Ms Gobbo had attended the police station for Mr Cooper's interview. Mr Flynn acted on the basis that his superiors were aware of Ms Gobbo's involvement and approved of it.

PII [REDACTED] conversation with Mr Cooper

- 65.25 At 6.50 pm Mr Cooper was taken to a meeting room inside the St Kilda Police Station to meet with Messrs O'Brien, Smith and Flynn. The purpose of this meeting was to facilitate a conversation with Mr Cooper, to convince him to agree to assist Victoria Police. In their submission at paragraph [1831.15], Counsel Assisting query the presence of Mr Smith in this meeting. Mr Flynn's evidence was that whilst it was not his decision for Mr Smith to be in the room, his role in the room was logical as "that's what their job is basically, to get people on board to assist us with our investigations".²²⁷⁹ Mr Flynn was not sure whether Messrs O'Brien and Smith remained until the end of the meeting.²²⁸⁰ During this meeting, Mr Cooper requested to speak to Ms Gobbo.²²⁸¹ Mr Flynn facilitated that call and Ms Gobbo returned to St Kilda Road police station.
- 65.26 In cross-examination Mr Flynn accepted that it was "possible" that when Mr Smith attended at St Kilda Road Police Station, he advised Mr Flynn that Ms Gobbo was in the vicinity and waiting to return if necessary.²²⁸² Mr Flynn was not aware that Ms Gobbo was waiting near Victoria Police.²²⁸³ Mr Flynn has no record in his diary that he was told about Ms Gobbo remaining in the vicinity. Further, when putting these matters to Mr Flynn in cross-examination, Counsel Assisting did not refer to an ICR in support of this proposition. As noted at paragraph 62.8 above, this is an example of Mr Flynn agreeing with a proposition put by Counsel Assisting, even though it was against his interest.

Ms Gobbo returns to the St Kilda Road police station

- 65.27 At 7.15 pm Ms Gobbo returned to the St Kilda Road police station.²²⁸⁴ At paragraph [1831.19.2], Counsel Assisting assert that Mr Flynn contributed to the presentation of a 'false picture' at Mr Cooper's second interview which was designed to conceal Ms Gobbo's role as a human source. Undeniably, Mr Flynn did not inform Mr Cooper of Ms Gobbo's role as a human source and at all times, he was acting upon the understanding

²²⁷⁴ T7280.17-23 (D Flynn).

²²⁷⁵ T5755.4-6 (J O'Brien).

²²⁷⁶ T5755.10-11 (J O'Brien).

²²⁷⁷ T5755.27-28 (J O'Brien).

²²⁷⁸ T5757.36 (J O'Brien).

²²⁷⁹ T6868.36-37 (D Flynn).

²²⁸⁰ T6819.31-35 (D Flynn).

²²⁸¹ T6819.39-41 (D Flynn).

²²⁸² T6820.16-23 (D Flynn).

²²⁸³ T6805.17-36 (D Flynn).

²²⁸⁴ T7035.24 (D Flynn).

that the identity of the human source should be protected at all costs. But Mr Flynn was not acting with impropriety. This is for three key reasons:

- (a) Mr Flynn did not believe that there were issues of conflict associated with Ms Gobbo's involvement.
- (b) Mr Flynn was not part of any premeditated plan to use Ms Gobbo to persuade Mr Cooper to give evidence.²²⁸⁵ While Mr Flynn concedes that, from the ICRs he was shown while giving evidence, it appears as though such a plan may have existed, he was not privy to those discussions.²²⁸⁶ As explained above, the discussions Mr Flynn did not know about in fact demonstrate that there was no plan.
- (c) Mr Flynn understood that he was required to conceal Ms Gobbo's role as a human source at all costs. His overriding concern was to protect her safety and he was not acting with any understanding or intention that his conduct may interfere with the administration of justice.

65.28 Counsel Assisting's submissions refer at paragraph [1831.19.3] to Ms Gobbo's various descriptions of what occurred during this discussion. When extracts of the recordings of Ms Gobbo's discussions with her handlers were played to Mr Flynn, he said he did not recall it occurring in this way,²²⁸⁷ although he conceded it was "possible" Ms Gobbo's accounts were correct.²²⁸⁸ Mr Flynn's evidence was that Mr Cooper had been emotionally distressed on other occasions, including the following evening, but he did not recall him being emotional on the night of his arrest.²²⁸⁹ Mr Flynn did not reject Ms Gobbo's description of Mr Cooper needing "a bit of a push".²²⁹⁰

65.29 Despite Mr Flynn's concessions that Ms Gobbo's account of these events was "possible", the state of the evidence about what occurred during this meeting is unsatisfactory. Given Ms Gobbo's lack of credibility, as addressed in Victoria Police's submissions, the Commissioner may have some doubt about the accuracy of her accounts. It is likely that Ms Gobbo was embellishing to generate attention and sympathy from her handlers.

65.30 More importantly, Mr Cooper did not give his own evidence about this event. When asked a leading question about these events, he said only that it was "possible" that it had occurred.²²⁹¹ Unled, his evidence was that he took Ms Gobbo's hands and comforted her when she arrived at St Kilda Road and that it was Ms Gobbo who was crying and professing distress at his predicament – but this meeting occurred during Ms Gobbo's initial attendance upon him, in private, with no-one else in the room.²²⁹² Mr Cooper then went on to describe in some detail the advice that Ms Gobbo provided to him during the 45 minutes they were alone, which he understood to include advice that he would have to "roll" on associates.²²⁹³ Mr Cooper later agreed, that it was "possible" the events had occurred in the way Ms Gobbo had described, but the question of whether any police officers were present when that occurred was not clarified.²²⁹⁴ The way that Mr Cooper's evidence was adduced makes it very difficult for the Commission to determine what actually happened in the room between Ms Gobbo and Mr Cooper,

²²⁸⁵ T7236.39; T7264.8-10 (D Flynn).

²²⁸⁶ T7236.39-41 (D Flynn).

²²⁸⁷ T6854.4; T6877.29 (D Flynn).

²²⁸⁸ T6854.6 (D Flynn).

²²⁸⁹ T6877.29 (D Flynn).

²²⁹⁰ T6877.36-37 (D Flynn); Exhibit RC0679B – Transcript of conversation between Ms Nicola Gobbo and Inspector Boris Buick, 27 September 2011 (VPL.0100.0068.0953 at .0979). [CA's fn is incorrect]

²²⁹¹ T8712.43 (Cooper).

²²⁹² T8699.35 – T8700.9 (Cooper).

²²⁹³ T8702.14 (Cooper).

²²⁹⁴ T8713.46 – T8714.3 (Cooper).

especially given that neither witness can be approached as a witness of truth on an issue of this kind.

- 65.31 Mr Flynn accepts that, during his meeting, Mr Cooper requested that he speak to Ms Gobbo and for Mr Flynn to remain present.²²⁹⁵ He explained that “*we were there for some period of time*”.²²⁹⁶ During that meeting, as recorded in Mr Flynn’s diary. “*Mr Cooper agreed to be reinterviewed + assist*”.²²⁹⁷
- 65.32 In their submissions, at paragraph [1831.19.4], Counsel Assisting misconstrue this evidence. They fail to acknowledge that this concession was made by Mr Flynn with the benefit of hindsight. At the time, Mr Flynn believed that even though Ms Gobbo had provided the information that led to Mr Cooper’s arrest, she was able to counsel him as to his choice of whether to assist police. Mr Flynn explained that:²²⁹⁸
- I still thought at the time that if [Mr Cooper] indicated that he didn’t want to talk to police, he didn’t want to answer questions, that she would talk to him about the pros and cons of doing that...I still was of the belief that Ms Gobbo could advise [Mr Cooper] of his choices in relation to what he does.*
- 65.33 Counsel Assisting also note in their submission at [1831.19.4] that Mr Flynn agreed in cross-examination that Ms Gobbo was acting a police agent. This is a misrepresentation of Mr Flynn’s evidence. Mr Flynn agreed that Mr Cooper did not know that Ms Gobbo “*was an agent for the police*”.²²⁹⁹ Counsel Assisting also point to page 7183 of the transcript. This reference refers to an exchange between Counsel Assisting and Mr Flynn where he agreed, with hindsight, that Ms Gobbo had convinced Mr Cooper to cooperate. During that exchange, neither Counsel Assisting nor Mr Flynn use the language of police agent.²³⁰⁰
- 65.34 There is no basis to suggest that Mr Flynn considered Ms Gobbo to be a police agent at any relevant time. Indeed, Mr Flynn had no advanced information or expectation that Ms Gobbo would actively encourage Mr Cooper to co-operate with police – although that is what she did towards the end of the interview process.²³⁰¹ As described above, Mr Flynn had organised the surveillance and the sequence of the arrest in order to catch Mr Cooper in the most compromising position so as to have the most leverage to persuade him to cooperate. Mr Flynn’s approach to having Mr Cooper cooperate had nothing to do with Ms Gobbo’s involvement.
- 65.35 Mr Flynn explained that the “*first part*” of the operation was “*to catch him offending. That is the focus, our main focus on the 22nd*” and the “*next focus*” was to have Mr Cooper cooperate PII²³⁰²

Mr Cooper’s second record of interview

- 65.36 At 9:08 pm that evening, Mr Flynn together with DSC Paul Rowe, re-interviewed Mr Cooper.²³⁰³ Ms Gobbo was not present for the interview. Mr Cooper made admissions in relation to the Strathmore lab and spoke about his relationship with the Mokbel family.²³⁰⁴ The interview concluded at 11:27 pm. PII

²²⁹⁵ T6828.28-34 (D Flynn).

²²⁹⁶ T6828.41-T6829.1 (D Flynn).

²²⁹⁷ Untendered diary of Inspector Dale Flynn, 22 April 2006 (VPL.0010.0007.0209 at .0211).

²²⁹⁸ T6787.26-36 (D Flynn).

²²⁹⁹ T6827.19-20, 24-26 (D Flynn).

²³⁰⁰ T7183.1-5 (D Flynn).

²³⁰¹ T6788.23-33 (D Flynn).

²³⁰² T6840.42-T6841.2 (D Flynn).

²³⁰³ Exhibit RC0365 – Record of interview between Mr Cooper, Ms Anne Farer and Inspector Dale Flynn, 22 April 2006 (VPL.0008.0001.1429 at .1434-1507).

²³⁰⁴ T6835.17-40 (D Flynn).

PII [REDACTED] Mr Flynn understood that Mr O'Brien had obtained legal advice that the investigators could keep him in custody after he had been charged PII [REDACTED]

PII 2305

- 65.37 During the second interview with Mr Cooper there were a series of activities undertaken that Mr Flynn was not aware of. Mr O'Brien had updated the SDU handlers, indicating to them that Mr Cooper had agreed to cooperate. Ms Gobbo attended a meeting with her handlers from the SDU to discuss the approach that had been designed between herself and the SDU, much to Mr Flynn's surprise. Ms Gobbo and her handlers remained on "standby" just in case she was required any further that evening, but Mr O'Brien advised she would not be required further.²³⁰⁶ Again, these were all activities that were planned and implemented without the inclusion or awareness of Mr Flynn.
- 65.38 After Mr Cooper's decision to assist police had been made, Mr Flynn did not raise any concerns with Mr O'Brien or anyone else. While this is regrettable, it is understandable given Mr Flynn's limited understanding of the problems with what had occurred and the seriousness of its consequences, and his trust in Mr O'Brien and the SDU.
- 65.39 With the benefit of hindsight, Mr Flynn accepts that he could have reported any concerns to Mr O'Brien and they could have discussed other options which might have included seeking legal advice from within Victoria Police.²³⁰⁷
- 65.40 Mr Flynn continued to focus on the investigation in the belief that others were dealing with the complex issues relevant to Ms Gobbo. If he had his time again, Mr Flynn would have done things differently. However, at the time of Mr Cooper's arrest Mr Flynn thought he was doing the right thing and adhering to the SELF principles.²³⁰⁸ He did not deliberately set out to do anything wrong and risk jeopardising the admissibility of evidence and potential prosecutions.²³⁰⁹

66 Mr Flynn's involvement with Mr Cooper following his arrest

Activities in late April 2006 following Mr Cooper's arrest

- 66.1 Following his arrest Mr Cooper began assisting Victoria Police to advance investigations into his criminal associates. Mr Flynn was responsible for the management of Mr Cooper during this time.²³¹⁰
- 66.2 As Counsel Assisting summarise at paragraph [1761], Ms Gobbo had ongoing involvement with Mr Cooper following his arrest. With respect to this summary the following is noted:
- (a) Mr Flynn's diary records that he facilitated one phone call between Ms Gobbo and Mr Cooper on 23 April 2006.²³¹¹

²³⁰⁵ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [53] (VPL.0014.0042.0001 at .0010).

²³⁰⁶ Exhibit RC0281 – ICR3838 (028), 23 April 2006 (VPL.2000.0003.1835 at .1846); T6874.31-35 (D Flynn).

²³⁰⁷ T7266.1-10 (D Flynn).

²³⁰⁸ T6655.4-16 (D Flynn).

²³⁰⁹ T6653.25 (D Flynn).

²³¹⁰ T6881.28-T6882.4 (D Flynn); Exhibit RC0365 – Record of interview between Mr Cooper, Ms Anne Farer and Inspector Dale Flynn, 22 April 2006 (VPL.0008.0001.1429 at .1434-1507).

²³¹¹ Counsel Assisting Submissions at pp 394-395 [1761.1], Vol 2; Untendered diary of Inspector Dale Flynn, 23 April 2006 (VPL.0098.0150.0001 at .0034).

- (b) Mr Flynn has no recollection of Ms Gobbo conferring with Mr Cooper in custody on 25 April 2006, and there is no note in his diary to this effect.²³¹²
- (c) Mr Flynn has no recollection of Ms Gobbo conducted a professional visit to Mr Cooper in custody on 30 April 2006, and there is no note in his diary to this effect.²³¹³ Mr Flynn was not involved in the service on Ms Gobbo, on behalf of Mr Cooper, of evidential material from Mr Hayes. He also has no note of this event in his diary.²³¹⁴ It is accepted that Mr Hayes was one of the investigators in Mr Flynn's team.
- 66.3 On the morning of 24 April 2006, Mr White has recorded in his diary that he attended a meeting at St Kilda Police Station with Messrs O'Brien, Biggin, O'Connell and Flynn.²³¹⁵ Mr White's diary shows that the meeting concerned plans for Mr Cooper's assistance over the coming days. Mr Flynn does not have a record of this meeting in his diary but during cross-examination, he was willing to accept that it occurred.²³¹⁶
- 66.4 Between 23 April 2006 and 25 April 2006, Mr Cooper participated in discussions with his associates about the supply of drugs, which were covertly recorded by Victoria Police. These associates included Milad Mokbel, Mr Bickley and Horty Mokbel.²³¹⁷
- 66.5 Over this period, Mr Flynn recalls that he facilitated calls, at Mr Cooper's request, between Mr Cooper and Ms Gobbo.²³¹⁸ In cross-examination, Mr Flynn explained that Mr Cooper sought reassurance from Ms Gobbo and that Mr Flynn sought to facilitate these calls for welfare reasons. At paragraph [1838], Counsel Assisting note that these phone calls were 'on the ostensible basis that she was his legal representative', and as a result the information provided may have held obligations of privilege. As explained above, Mr Flynn did not appreciate these complexities, and believed that Ms Gobbo could still provide support and advice to Mr Cooper. Mr Flynn did not intentionally seek to deceive Mr Cooper. He believed that he was performing the role expected of him by Victoria Police.
- 66.6 At paragraph [1840], Counsel Assisting assert that on 24 April 2006, during a debrief session with Superintendents Biggin, Steendam and Grant as well as DAI O'Brien, Mr Flynn had an opportunity to raise any concerns that had arisen from the recent events. Whilst this statement is factually true, it does not encapsulate the context fairly. First, Mr Flynn's focus over those days was completely on the progression the investigation and managing Mr Cooper.²³¹⁹ As Mr Flynn put it "*by this stage her involvement was well and truly included and we were just progressing on with our criminal investigation*".²³²⁰ Secondly, the meeting involved discussions about whether to conclude the operation that night by arresting Milad Mokbel or waiting until the following day.²³²¹ It was, therefore, forward looking rather than retrospective. Thirdly, Mr Flynn understood that Mr O'Brien was aware of what was occurring. Consistent with the command structure in place at Victoria Police, Mr Flynn would expect that DAI O'Brien would brief his superiors as to the progress of these significant events. Supt Grant's statement to the Commission confirms that he was kept updated by Mr O'Brien with regards to Mr

²³¹² Counsel Assisting Submissions at p 395 [1761.2], Vol 2.

²³¹³ Counsel Assisting Submissions at p 395 [1761.5], Vol 2.

²³¹⁴ Counsel Assisting Submissions at p 396 [1761.6], Vol 2.

²³¹⁵ Exhibit RC0394B – Diary of Officer 'White', 23 April 2006 (VPL.2000.0001.0677 at .0728-0730).

²³¹⁶ T6882.38-44 (D Flynn).

²³¹⁷ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [55]-[56] (VPL.0014.0042.0001 at .0010-0011).

²³¹⁸ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [55] (VPL.0014.0042.0001 at .0010).

²³¹⁹ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [55] (VPL.0014.0042.0001 at .0010).

²³²⁰ T6897.9-12 (D Flynn).

²³²¹ Exhibit RC1256B – Statement of Richard Grant, 28 November 2019, at [73] (VPL.0014.0103.0001 at .0010); Exhibit RC1244B – First statement of DC Wendy Steendam, 4 December 2019 at [23]-[24] (VPL.0014.0113.0001 at .0004)

Cooper's arrest, and that he, in turn, kept Mr Overland updated over the course of the weekend.²³²² Fourthly, as Counsel Assisting highlight at [1840], the culture at Victoria Police was such that human sources were not discussed, even among senior officers.²³²³ By not raising Ms Gobbo's role, Mr Flynn avoided the risk of unwittingly exposing information about Ms Gobbo's involvement to other members. Mr Flynn was not acting with impropriety. In doing so, he was acting in accordance with his training and with the Operation Posse Commencement Briefing, dated 22 November 2005, which stated that:²³²⁴

I probably don't need to mention this topic in this environment it should be understood. If you don't know who the ████████ in this operation are then you probably don't need to know. Rest assured nothing is being kept from you. RHS issues in this operation are so critical that the risk has been assessed as extreme.

- 66.7 Counsel Assisting's submissions refer to Mr Flynn's evidence that it was possible but unlikely that that Ms Gobbo's role was discussed at this meeting.²³²⁵ Given Mr Grant and DC Steendam's unchallenged evidence that they did not know Ms Gobbo was a human source,²³²⁶ Ms Gobbo's role in relation to Mr Cooper must not have been discussed at this meeting.

May 2006 to February 2007 (Mr Cooper's plea and sentence)

- 66.8 Mr Flynn continued to manage Mr Cooper while he was incarcerated. This included fielding telephone calls and requests from Ms Gobbo who acted as Mr Cooper's conduit.²³²⁷ On 1 May 2006, Ms Gobbo contacted Mr Flynn complaining that Mr Cooper needed more money in prison.²³²⁸ On 2 May 2006, Mr Flynn went to see Mr Cooper in prison. He also had a telephone call with Ms Gobbo about personal belongings that Mr Cooper wanted in prison.²³²⁹
- 66.9 Over time, the Purana Taskforce began to facilitate payment to Mr Cooper by putting money into his spend account at the prison.²³³⁰ In paragraph [1846], Counsel Assisting state that Mr Flynn gave evidence that initially this money was provided by Ms Gobbo. Mr Flynn's evidence was more circumspect. He was not certain and stated only that "*I think that's correct, yes*".²³³¹ Within the months leading up to the Royal Commission, Mr Cooper told Mr Flynn that he left Ms Gobbo the sum of \$400,000.²³³² Mr Flynn did not recall whether Mr Cooper told him what the money was to be used for.²³³³ Eventually Victoria Police began to make these payments to Mr Cooper. Mr Flynn "*organised the money to go in, it was indicating it was coming from [a family member]*".²³³⁴ It did not appear as if the payments were from Ms Gobbo.²³³⁵

²³²² Exhibit RC1256B – Statement of Richard Grant, 28 November 2019 at [58]-[68] (VPL.0014.0103.0001 at .0009).

²³²³ T6896.37-42 (D Flynn).

²³²⁴ Exhibit RC0470B – Operation Posse commencement briefing, 22 November 2005 (VPL.0005.0096.0001 at .0002).

²³²⁵ Counsel Assisting Submissions at pp 435-436 [1840], Vol 2.

²³²⁶ Exhibit RC1256B – Statement of Richard Grant, 28 November 2019 at [94] (VPL.0014.0103.0001 at .0013); Exhibit RC1244B – First statement of DC Wendy Steendam, 4 December 2019 at [132] (VPL.0014.0113.0001 at .0016)

²³²⁷ T6923.32-35 (D Flynn).

²³²⁸ T6923.37-39 (D Flynn).

²³²⁹ T6932.6-12 (D Flynn).

²³³⁰ T6924.20-23; T6925.32-38 (D Flynn).

²³³¹ T6924.25-28 (D Flynn).

²³³² T6924.41-47; T6925.6-9 (D Flynn).

²³³³ T6925.2-4 (D Flynn).

²³³⁴ T6925.23-24, 44-46 (D Flynn).

²³³⁵ T6925.15-21 (D Flynn).

66.10 In cross-examination, Mr Flynn explained that it was not unusual for Victoria Police to be making payments to a witness.²³³⁶

Conduct of members of Victoria Police and Ms Gobbo in relation to Mr Cooper's statements and ongoing cooperation

66.11 Following the collection of an initial four statements in April 2006, Mr Flynn and his team continued to take statements from Mr Cooper.

66.12 In the initial stages of the statement taking process, Mr Flynn was attending a prison to meet with Mr Cooper. In their submissions, Counsel Assisting suggest that a pattern occurred whereby Mr Cooper would telephone Ms Gobbo following these visits to discuss these matters. Mr Flynn's evidence was that he accepted that this was the case, though he could not recall when he became aware of this arrangement.²³³⁷ Mr Flynn was also in contact with Ms Gobbo as Mr Flynn considered Ms Gobbo important to Mr Cooper's welfare.²³³⁸ As he said in cross-examination "*they were close to each other so when he saw her he was generally happy with her.*"²³³⁹

66.13 On 8 May 2006, Mr Cooper was removed from prison and placed in another location for the purpose of access and taking statements.²³⁴⁰

66.14 On that day, Mr Cooper informed Mr Flynn of a perceived threat against Ms Gobbo made by M. Mokbel.²³⁴¹ Mr Flynn's diary records that H. Mokbel had also threatened that if Mr Cooper was "*arrested before Anzac Day [Ms Gobbo will] be dead too*".²³⁴² The ICR for this period indicates that Mr Cooper had also received death threats, specifically that H. Mokbel "*is prepared to pay any amount for [Mr Cooper] to be killed*".²³⁴³ This background is critical to understanding why Mr Flynn, and the other investigators, prioritised the protection of Ms Gobbo and Mr Cooper. Protecting their safety was Victoria Police's priority.

66.15 On 14 May 2006, Mr Flynn facilitated a meeting between Ms Gobbo and Mr Cooper at the Victoria Police Centre on Flinders Street.²³⁴⁴ In cross-examination, Mr Flynn explained that the purpose of this meeting was "*[t]o the best of my knowledge it was just to provide support to [Mr Cooper] in relation to the route that he had decided to take at that stage*".²³⁴⁵

66.16 In paragraph [1850], Counsel Assisting assert that 'originally' it had been Victoria Police's intention to not allow Ms Gobbo to see Mr Cooper during this process, 'presumably to maintaining the integrity of his evidence'. Counsel Assisting's submissions do not acknowledge Mr Flynn's evidence on this topic. The evidence that Ms Gobbo was not to see Mr Cooper during this process was contained in an ICR dated 8 May 2006. It noted that "*[Mr Cooper] will not see HS during statement taking process with PURANA*".²³⁴⁶ There is no evidence that this was communicated to Mr Flynn. Mr Flynn's evidence before the Commission was that he did not know where that

²³³⁶ T6926.3-8 (D Flynn).

²³³⁷ T6932.14-36 (D Flynn).

²³³⁸ T7135.1-13 (D Flynn).

²³³⁹ T7150.7-10 (D Flynn).

²³⁴⁰ T6938.6-11 (D Flynn).

²³⁴¹ T6937.18-29 (D Flynn).

²³⁴² T6740.33-40 (D Flynn).

²³⁴³ Exhibit RC0281 – ICR3838 (031), 8 May 2006 (VPL.2000.0003.1871 at .1876).

²³⁴⁴ T6950.9-10 (D Flynn).

²³⁴⁵ T6940.46-T6941.1 (D Flynn).

²³⁴⁶ Exhibit RC0281 – ICR3838 (031), 8 May 2006 (VPL.2000.0003.1871 at .1877).

information came from. He said that “[i]t doesn’t ring correct because I know I arranged a meeting between Ms Gobbo and [Mr Cooper] within a week of this date”.²³⁴⁷

66.17 In paragraph [1850], Counsel Assisting surmise that the decision to not have any interaction between Ms Gobbo and Mr Cooper during this process was ‘presumably to maintain the integrity of [Mr Cooper’s] evidence’, and cite Mr Flynn’s evidence in cross-examination in support of this proposition. This misrepresents Mr Flynn’s evidence. Mr Flynn did not state or accept in cross-examination that maintenance of the integrity of the evidence was or even may have been the purpose of that direction. It was put to him that this would have been a “*sensible course to take*” given Ms Gobbo’s involvement as a human source, and Mr Flynn simply agreed that this was a possible consideration.²³⁴⁸

66.18 In paragraph [1851], Counsel Assisting submit that the purpose of this meeting was so that Ms Gobbo could persuade Mr Cooper ‘to be fully frank with the investigators’. This submission ignores Mr Flynn’s firm evidence to the contrary. In cross-examination, Mr Flynn was adamant that the purpose of the meeting was for Mr Cooper “*to be able to speak to her in length, get some moral support, discuss any issues he had with her*”.²³⁴⁹ He reiterated that:²³⁵⁰

They were close with each other and she did form that role that she could, she was friendly with him...they were close to each other so when he saw her he was generally happy with her. Of course there was that legal side to her as well, that if he needed to discuss anything he could.

66.19 Following that meeting, it is recorded by Ms Gobbo’s handlers in the ICRs that she had seen Mr Cooper and there were “*no major issues, signing statements end of this week*”.²³⁵¹ There is simply no evidence to suggest that the meeting was anything other than a welfare visit and a way to keep Mr Cooper happy. In their submission at footnote 2526, Counsel Assisting refer the reader to Mr Flynn’s diary. The diary entry relates to June 2006 and not 14 May 2006.

66.20 Counsel Assisting note at [1851] that Ms Gobbo later reported to her handlers that she “*had spoken to Mr Cooper about ‘how to make him bullet proof’*”. Counsel Assisting’s submission does not acknowledge that Mr Flynn was never made aware of this.²³⁵²

66.21 On 21 May 2006, Mr Flynn met with Ms Gobbo at her chambers. Mr Flynn’s diary records that the meeting lasted for almost three hours.²³⁵³ He remembers picking up books for Mr Cooper and delivering those items to the prison,²³⁵⁴ however he does not recall what he and Ms Gobbo talked about²³⁵⁵ but he suspects they were talking about Mr Cooper.²³⁵⁶ He explained that “*if she told me anything of great value I would suspect I would have made a note of it. I believe this would just be general conversation about [Mr Cooper’s] welfare and, you know, the whole process that was occurring*”.²³⁵⁷ After that meeting, Mr Flynn updated Mr O’Brien.²³⁵⁸ Mr O’Brien’s diary does not record what Mr Flynn told him. He also spoke to Officer Smith, Ms Gobbo’s handler. The notes in

²³⁴⁷ T6938.34-37 (D Flynn).

²³⁴⁸ T6938.43-47 (D Flynn).

²³⁴⁹ T6941.29-33 (D Flynn).

²³⁵⁰ T7150.4-10 (D Flynn).

²³⁵¹ Exhibit RC0281 – ICR3838 (031), 14 May 2006 (VPL.2000.0003.1871 at .1883).

²³⁵² Exhibit RC0281 – ICR3838 (031), 15 May 2006 (VPL.2000.0003.1871 at .1884).

²³⁵³ Untendered diary of Inspector Dale Flynn, 19 April 2006 (VPL.0098.0150.0001 at .0056).

²³⁵⁴ T7007.17-19 (D Flynn).

²³⁵⁵ T7007.17-19 (D Flynn).

²³⁵⁶ T7008.31-33 (D Flynn).

²³⁵⁷ T7008.41-45 (D Flynn).

²³⁵⁸ T7010.16-17 (D Flynn).

the ICR suggest that Ms Gobbo had spent 90 minutes on the phone with Mr Cooper earlier that day, and that Mr Cooper was not happy with the conditions he was in and that he had no confidence in the process.²³⁵⁹ It is consistent and entirely feasible that Ms Gobbo and Mr Flynn discussed these conditions and how Victoria Police could keep Mr Cooper happy.

- 66.22 During the relevant period, Mr Flynn facilitated Ms Gobbo's visits to Mr Cooper in custody. Mr Flynn was involved in this process as sometimes Ms Gobbo did not like the access times, and she requested longer visits.²³⁶⁰
- 66.23 In June 2006, Mr Flynn shared Mr Cooper's working statements and transcripts with Mr Green of the SDU.²³⁶¹ In paragraph [1852.4], Counsel Assisting describe this being done for the 'ostensible purpose' of having the statements checked to ensure that they did not disclose Ms Gobbo's status as a human source. Mr Flynn's sworn evidence to the Commission was that was the purpose of providing the statements to the SDU. He recalled that there were "*concerns that there may be something in there that could reveal her status as a human source*".²³⁶² Moreover, he did not recall Ms Gobbo making any amendments to the statements.²³⁶³ He stated that: "*...to the best of my recollection Ms Gobbo's involvement in the statement taking process – I can't recall a specific incident of a change I made as a result of her information*".²³⁶⁴ It must be remembered that Mr Flynn viewed protecting Ms Gobbo's source identity as the most important consideration.
- 66.24 Counsel Assisting put to Mr Flynn that the real purpose for giving the documents to Ms Gobbo was for duplicitous purposes, the inference being that the statements were shared with Ms Gobbo for her review and commentary on the content, as well as to ensure her confidentiality. Mr Flynn explained "*I can only stick to what I thought they were being delivered for. If that was a conversation the SDU members had with her direct, well I wasn't part of that*".²³⁶⁵ Mr Flynn vehemently denied the allegation in cross-examination that one of the reasons the documents were given to Ms Gobbo was so that she could correct anything that might put Cooper's credibility in doubt.²³⁶⁶ Mr Flynn does however concede in cross-examination that he is "*at a loss*"²³⁶⁷ as to why the transcripts were given to Ms Gobbo. He admits that his only answer as to why he provided it is a "*weak one*", being that "*the SDU asked for it*".²³⁶⁸ This was a concession that was made in hindsight.
- 66.25 As Counsel Assisting note at paragraph [1852.5] neither Mr Cooper nor his solicitor, Mr Hargreaves, were made aware that Ms Gobbo reviewed the statements. However, from Mr Flynn's perspective sharing those documents with the SDU was not about Mr Cooper's evidence, but about the impact of those documents on Ms Gobbo's safety. Mr Flynn was not aware that Ms Gobbo had provided comments on the draft statements.
- 66.26 By 17 July 2006, Mr Hargreaves was reading Mr Cooper's unsigned statements,²³⁶⁹ which were ultimately signed on 6 August 2006 in the presence of Mr Flynn and Mr O'Brien.²³⁷⁰

²³⁵⁹ Exhibit RC0281 – ICR3838 (032), 21 May 2006 (VPL.2000.0003.1886 at .1890).

²³⁶⁰ T7011.22-27 (D Flynn).

²³⁶¹ T6945.40-42 (D Flynn).

²³⁶² T7021.9-11 (D Flynn).

²³⁶³ T6945.45 (D Flynn).

²³⁶⁴ T6949.21-25 (D Flynn).

²³⁶⁵ T7021.23-30 (D Flynn).

²³⁶⁶ T7026.5-10 (D Flynn).

²³⁶⁷ T7024.40 (D Flynn).

²³⁶⁸ T7024.47-7025.3 (D Flynn).

²³⁶⁹ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [70] (VPL.0014.0042.0001 at .0013).

67 Counsel Assisting's proposed findings about Mr Flynn's conduct in relation to Mr Cooper

67.1 At paragraph [1911], Counsel Assisting set out a summary of evidence about Mr Flynn's knowledge and conduct in relation to Ms Gobbo which is relied upon in order to substantiate their proposed adverse findings at paragraphs [1912] and [1913]. As pointed out below, not all of the evidence listed in this paragraph is correct. Further, some of the evidence, provided in summary form, has been stripped of the context that is crucial to a full understanding of its significance and weight. The Commissioner would fall into error if that summary of the evidence or the proposed findings that follow were accepted. Given the seriousness of the allegations made in Counsel Assisting's submissions, it is necessary and appropriate for the Commissioner to set out an accurate summary of the evidence and make findings of fact that reflect that summary. That summary is set out at 67.11 below. Alternative findings to those made by Counsel Assisting at 1912 and 1913 are set out at 67.19 and 67.29 below.

Response to the proposed evidentiary findings at paragraph [1911]

67.2 Mr Flynn accepts that the proposed evidentiary findings at [1911.1], [1911.2] and [1911.3] are open on the evidence. However, with respect to paragraph [1911.3] and the evidence concerning Mr Flynn's involvement with Ms Gobbo and Mr Cooper prior to Mr Cooper's arrest, he reiterates that conversations with accused persons about providing assistance to police are "*common course*".²³⁷¹ A more detailed analysis of this issue is set out at paragraphs 64.1 to 64.7.

67.3 In relation to paragraph [1911.4], Mr Flynn:

- (a) accepts the first part of the proposed evidentiary finding. Mr Flynn was asked by DS Mansell to assist DSC Rowe to facilitate an introduction between Ms Gobbo and the SDU, as DS Mansell was unavailable. However, on the date of the meeting DS Mansell was available, and Mr Flynn was not required to attend;²³⁷² and
- (b) submits that the assertion in the second part of the proposed finding that he "*knew from that date that she was acting as a human source*" is not open on the evidence. There is no evidence that Mr Flynn was informed of what had occurred during Ms Gobbo's introductory meeting with the DSU (as it then was), nor that he was advised of the outcome of the registration process.

67.4 In relation to paragraph [1911.5], Mr Flynn accepts that he was receiving information from the SDU in relation to Mr Cooper but does not accept that he knew this "*from 16 September 2005*". As referred to above, while he suspected from 30 September 2005 that the source was Ms Gobbo this was never confirmed.²³⁷³ Mr Flynn also accepts that he was aware that Ms Gobbo was continuing to act for Mr Cooper,²³⁷⁴ however, he did not appreciate that there was anything improper about this. He understood that any ethical issues concerning Ms Gobbo were being managed by the SDU.

67.5 Mr Flynn does not accept that paragraph [1911.6] is open on the evidence. First, it was Mr Flynn's evidence that he thought that Victoria Police were trying to arrange a

²³⁷⁰ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [71] (VPL.0014.0042.0001 at .0013).

²³⁷¹ T66685.22 (D Flynn).

²³⁷² T6699.29-T6700.16 (D Flynn); Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [29]-[30] (VPL.0014.0042.0001 at .0004-0005).

²³⁷³ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [31] (VPL.0014.0042.0001 at .0005).

²³⁷⁴ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [35] (VPL.0014.0042.0001 at .0006).

meeting between Ms Gobbo and Mr Cooper in order to “*strengthen the[ir] relationship*”. He did not recall that he was to play a part in this meeting. Second, as considered in detail above, it was not contemplated by the SDU that from the outset of Ms Gobbo’s informing that she would incriminate Mr Cooper. Rather, the other evidence demonstrates that the plan initially involved convincing Mr Cooper to cooperate [PII].

- 67.6 Mr Flynn accepts the evidentiary finding at paragraph [1911.7] but notes that he initially refused Mr Cooper’s request in accordance with s 464C(1)(c) of the *Crimes Act 1958* on the basis that he was concerned that this communication would result in the escape of an accomplice or the fabrication or destruction of evidence.²³⁷⁵ This was not an unusual practice with respect to arrests of high level drug offenders.²³⁷⁶ Once back at the police station Mr Flynn saw no lawful basis on which he could refuse Mr Cooper’s request to contact Ms Gobbo.
- 67.7 Mr Flynn accepts the proposed evidentiary finding at [1911.8].
- 67.8 Mr Flynn accepts the proposed evidentiary finding at [1911.9] but notes he did not have the training or experience to appreciate the seriousness of the situation and the potential options that might have been available to him at this point.
- 67.9 Mr Flynn does not accept that the proposed findings in paragraphs [1911.10] and [1911.11] are open on the evidence. While these statements are factually correct, they are devoid of important contextual evidence. Mr Flynn did know, as he stated in cross-examination, that improperly obtained evidence may be excluded²³⁷⁷ and that a person has a right to an independent lawyer.²³⁷⁸ But in recognising that Mr Flynn was aware of these obligations, we must be careful to not ignore the insidious complexity of the issues that he was faced with. Mr Flynn had completed Detective Training School and repeated an abridged version of the training once he became a Detective Sergeant.²³⁷⁹ But this training was general. Mr Flynn was not possessed with a rigorous understanding of conflicts of interest, disclosure and a barrister’s ethical obligations. Nor, when Ms Gobbo was tasked to Operation Posse, was Mr Flynn given specific and careful training on how to handle her involvement.²³⁸⁰ Rather Victoria Police expected him to navigate issues that were riddled with complexity and which had hugely serious consequences with nothing but a textbook understanding of his obligations.
- 67.10 The evidentiary finding in paragraph [1911.12] is not open on the evidence. As has been explained repeatedly in these submissions, Mr Flynn did not fully understand the issues of conflict of interest that arose from Ms Gobbo’s involvement. He was of the view that any of these issues would have been resolved by the SDU and that he was entitled to act on any intelligence he received.²³⁸¹ He also thought that Ms Gobbo could still provide Mr Cooper with proper legal advice.²³⁸² Finally, he expected Ms Gobbo to abide by her professional and ethical obligations.
- 67.11 On that basis, it is submitted that Counsel Assisting’s summary of the evidence at paragraph [1911] should not be accepted and that, in its place, the Commissioner should rely instead upon the following summary of evidence:

²³⁷⁵ T6797.19-25 (D Flynn).

²³⁷⁶ T6797.28-32 (D Flynn); Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [48] (VPL.0014.0042.0001 at .0009).

²³⁷⁷ T6723.9-16 (D Flynn).

²³⁷⁸ T6652.21-23 (D Flynn).

²³⁷⁹ T6650.15-22 (D Flynn).

²³⁸⁰ T7261.25-33 (D Flynn).

²³⁸¹ T6723.34-39 (D Flynn).

²³⁸² T6786.13-16 (D Flynn)

- (a) During the relevant period, as a police member, Mr Flynn was a public official.
- (b) Between 2002 and 2005 Mr Flynn held the rank of Detective Sergeant at the MDID during which time he reported to Mr O'Brien.
- (c) During this period, Mr Flynn had been involved in the arrest of Mr Cooper for serious drug related offences in 2002 (in relation to the Landslip Case) and again in 2003 (in relation to the Matchless Case). He was aware of Ms Gobbo's representation of Mr Cooper from late 2002 and Mr Flynn dealt with Ms Gobbo in relation to plea negotiations for those matters during and after committal proceedings in 2005. Those type of plea negotiations and discussions were common course as between an investigating officer and a person's lawyer.
- (d) Mr Flynn assisted with arrangements for Mr Rowe and Mr Mansell to introduce Ms Gobbo to a member of the SDU on 16 September 2005. Mr Flynn was asked to make this introduction as Mr Mansell was unavailable. Mr Mansell became available and Mr Flynn did not meet with the member of the SDU and Ms Gobbo.
- (e) Mr Flynn first suspected that Ms Gobbo was a source during a meeting on 30 September 2005. This meeting concerned the movement of members of MDID to Purana Taskforce. During that meeting, the attendees were informed by Officer Smith of the DSU of intelligence that had been provided by a human source. Mr Flynn assumed that Ms Gobbo was the human source due to the nature of the material, being that it concerned Mr Cooper and members of the Mokbel family.²³⁸³
- (f) Mr Flynn suspected that Ms Gobbo was providing information about Mr Cooper and others from 30 September 2005 onward, although this was not confirmed at this time. Mr Flynn understood that Ms Gobbo continued to act for Mr Cooper, but he believed that there was nothing improper because the SDU would have been addressing any ethical issues that arose.
- (g) In early October 2005, Mr Flynn participated in discussions with the SDU about a PII meeting" with Mr Cooper and Ms Gobbo and a member of Victoria Police. The purpose of this PII meeting was to attempt to convince Mr Cooper to cooperate PII. Mr Flynn does not recall being asked to play a role in this PII meeting. The SDU continued to discuss this PII with Ms Gobbo until at least 13 December 2005, although it was never brought to fruition.
- (h) Mr Flynn was the Investigation Leader in the Operation to arrest Mr Cooper and Mr Agrum. He read Mr Cooper his rights. Mr Cooper told him that he wanted Ms Gobbo to be contacted as his lawyer. Mr Flynn initially denied Mr Cooper's request to contact Ms Gobbo because Mr Flynn believed this contact might lead to the escape of an accomplice or fabrication or destruction of evidence. Mr Flynn was permitted to do so by s 464C(1)(c) of the *Crimes Act 1958* (Vic). After arriving with Mr Cooper at the police station, Mr Flynn believed he was obligated to allow Mr Cooper's request to see Ms Gobbo because of his obligations under s 464C(1)(b) of the *Crimes Act 1958* (Vic) to allow a person to attempt to contact their lawyer before being questioned.
- (i) Mr Flynn was present and knew that Ms Gobbo attended to advise Mr Cooper on his arrest on 22 April 2006.

²³⁸³ Exhibit RC0538B – Statement of Inspector Dale Flynn, 17 June 2019 at [31] (VPL.0014.0042.0001 at .0005).

- (j) When Ms Gobbo attended, he saw that her attendance to represent Mr Cooper was “complex”, because she had told the police of the very crime that led to his arrest. In facing that complexity, Mr Flynn relied on the safeguards he knew were in place – the SDU, his superior officers due to operation of the chain of command and Ms Gobbo’s professional obligations. He was not in a position to realise that those safeguards had failed, nor did he possess the necessary training to enable him to adequately handle this situation. His lack of training meant that he did not appreciate the seriousness of the situation or the potential options that may have been available to him.
- (k) At a high-level, Mr Flynn understood that evidence improperly obtained might lead to its exclusion. But he did not appreciate that evidence against Mr Cooper may have been improperly obtained.
- (l) At a high-level, Mr Flynn understood that depriving a person of their right to an independent lawyer was wrong. But he did not appreciate that the circumstances surrounding Mr Cooper’s arrest compromised Ms Gobbo’s independence and he believed that Ms Gobbo could still provide Mr Cooper with proper legal advice.
- (m) Mr Flynn did not appreciate that evidence against Mr Cooper may have been improperly obtained. He believed that he was entitled to act on information that had been filtered through the SDU and that the SDU members were managing ethical issues related to Ms Gobbo.
- (n) At all relevant times, Mr Flynn conducted himself in accordance with the training he had provided, and the obligations set down for him by Victoria Police.

Response to the proposed adverse findings at paragraph [1912]

- 67.12 Mr Flynn accepts the proposed finding at paragraph [1912.1]. Mr Flynn was aware that Ms Gobbo was a barrister, he was also aware that she was a human source. As explained above, Mr Flynn realised Ms Gobbo was acting as a human source at a meeting on 30 September 2005. As noted at paragraph 64.14 above, Mr Flynn was surprised to discover that Ms Gobbo was playing this role, but he reconciled her involvement on the basis that there would have been steps taken in the background, by the SDU and Command to ensure it was appropriate.²³⁸⁴
- 67.13 Mr Flynn accepts the proposed finding at paragraph [1912.2], subject to the qualifications that he was not involved in managing Ms Gobbo as a source and believed it was appropriate to act on information he received as it had been filtered through the SDU. Mr Flynn expected that the SDU, who were responsible for managing Ms Gobbo, would work to ensure that there were no ethical issues with the intelligence that was conveyed to the investigators.²³⁸⁵ Further, his understanding (which he now recognises was incorrect) was that Ms Gobbo could still provide legal advice to Mr Cooper, even though she had provided intelligence that had led to his arrest.²³⁸⁶
- 67.14 In response to paragraph [1912.3] Mr Flynn submits that there is no evidentiary basis for the Commissioner to find that Mr Flynn knew this at the relevant time. Whilst Mr Flynn accepts that mistakes were made and that, with the benefit of hindsight, he would do things differently, he does not accept that he knew that Ms Gobbo had a conflict of interest. Mr Flynn is not a lawyer, nor was he given any relevant training specific to Ms

²³⁸⁴ T7229.47-T7230.7 (D Flynn).

²³⁸⁵ T6723.41-42 (D Flynn).

²³⁸⁶ T6777.3-8 (D Flynn).

Gobbo's involvement.²³⁸⁷ It was also reasonable for Mr Flynn to expect Ms Gobbo to act in accordance with her own professional obligations. Further, as noted above at paragraph 64.5, he recalls that someone advised him that: "*It's a matter for her. It's just a matter for her to sort out*".²³⁸⁸

- 67.15 Mr Flynn's role was to investigate crime. His role relied on other divisions in Victoria Police, such as the SDU fulfilling their role. He, like others in the organisation, reasonably operated on the understanding that Victoria Police's operational structure and procedures would prevent a breach such as this, as well as a belief (albeit misguided) that Ms Gobbo would conduct herself in alignment with her legal and ethical obligations as a barrister. With hindsight, Mr Flynn can see the issues and conflicts, but there is no evidence that Mr Flynn was alive to these issues at the time.
- 67.16 Mr Flynn accepts the proposed finding at paragraph [1912.4] is open on the evidence. However, there is no evidence that Mr Flynn knew there was anything improper about this. It cannot be emphasised enough that Mr Flynn held the understanding that the SDU "*were to deal with all the source related issues*". In fact, as he noted in cross-examination, "*that's why they were created*" – the SDU acted as a sterile corridor between the human source and the investigators. They were responsible for filtering out the privileged information from the intelligence and then "*the information would be filtered to us as investigators and we would run the investigation*".²³⁸⁹ As Mr Flynn put it:
- You have to just, you know, consider the different roles that the different police officers were playing at the time... In one respect it was easy for me not to concern myself too much with Ms Gobbo... Because she wasn't my role. My role was leading an investigating team and catching [Mr Cooper] and people associated with his offending.*²³⁹⁰
- 67.17 Mr Flynn rejects the proposed finding at paragraph [1912.5] and submits that this finding is not open on the evidence for three reasons.
- (a) First, Mr Flynn had played only a peripheral role in the planning of Operation Posse.
 - (b) Second, Mr Flynn was not privy to many of the conversations that were occurring between the SDU and Ms Gobbo.²³⁹¹ While he conceded in evidence that the ICR entry from 22 April 2006²³⁹² "*makes it fairly evident*"²³⁹³ that there was a pre-meditated plan, Mr Flynn was not aware of any such plan at this time.
 - (c) Third, Mr Flynn was of the understanding that Ms Gobbo's continued involvement during this phase of the investigation was to keep Mr Cooper happy.²³⁹⁴ She was a means to manage his welfare.²³⁹⁵ He did not appreciate that there was anything wrong with Ms Gobbo's continued contact with Mr Cooper.
- 67.18 Mr Flynn does not accept the proposed finding at [1912.6] and submits that this finding is not open on the evidence. While he did not intend to reveal Ms Gobbo's identity as a human source, he had no intention to not comply with his statutory and common law

²³⁸⁷ T7261.25-40 (D Flynn)

²³⁸⁸ T6692.18-22; T6693.10-12 (D Flynn).

²³⁸⁹ T7229.47-T7230.7 (D Flynn).

²³⁹⁰ T6776.29-34 (D Flynn); See also T6786.18-23 (D Flynn).

²³⁹¹ Exhibit RC0626B – Transcript of conversation between Mr Sandy White, Mr Peter Smith, Mr Black and Ms Nicola Gobbo, 28 October 2005 (VPL.0005.0051.0336 at .0474-0478).

²³⁹² Exhibit RC0281 – ICR3838 (028), 22 April 2006 (VPL.2000.0003.1635 at .1846).

²³⁹³ T7236.37-41 (D Flynn).

²³⁹⁴ T7150.4-16 (D Flynn).

²³⁹⁵ T6922.19-21 (D Flynn).

disclosure obligations. At the time, Mr Flynn operated under the understanding that protecting the identity of the human source was the absolute priority. This was the "golden rule".²³⁹⁶ Further, Mr Flynn cannot have been expected to deviate from this rule. It would have been in conflict with his oath as a police officer to not act to protect Ms Gobbo's life. Additionally, he was acting in accordance with the path laid down by his superiors. To put this rule in context it is worth setting out in some detail an exchange between Counsel for Victoria Police and Mr Flynn during re-examination:²³⁹⁷

- Counsel: You'd never had any experience with dealing with a human source who was a practising lawyer?
- Mr Flynn: Correct.
- Counsel: You've given evidence already that you very well understood the golden rule, if you like, at Victoria Police concerning sources, being that you never confirm or disclose the identity of a human source?
- Mr Flynn: Yes.
- Counsel: You understood the reasons for that rule?
- Mr Flynn: Yes, it was solely for the protection of the source.
- Counsel: Apart from your understanding of that golden rule, were you provided with any information, instruction, training, once Nicola Gobbo had been registered as a source, as to how to manage any potential issues that might arise?
- Mr Flynn: No.
- Counsel: Did anybody at Victoria Police provide you with any instructions or training about how to ensure that you weren't receiving and acting on information which might be privileged or confidential?
- Mr Flynn: No.
- Counsel: Anything about how to deal with issues about public interest immunity and disclosure.
- Mr Flynn: No, there was nothing additional.

67.19 Given that Counsel Assisting's proposed findings are only partially available on the evidence, Mr Flynn submits that in place of the proposed findings at paragraph [1912] of Counsel Assisting's submissions, the following set of factual findings should be made:

67.20 On the evidence, it is open to the Commissioner to find that:

- (a) Mr Flynn knew that Ms Gobbo was a barrister. From 30 September 2005, Mr Flynn suspected Ms Gobbo was a human source. By the time of Mr Cooper's arrest, Mr Flynn knew Ms Gobbo was acting as a human source.
- (b) Ms Gobbo was informing on Mr Cooper while acting for him. Mr Flynn was not involved in managing Ms Gobbo as a source. He believed it was appropriate to act on information he received about Mr Cooper, as it had been filtered through the SDU.

²³⁹⁶ T7261.17-20 (D Flynn).

²³⁹⁷ T7261.14-40 (D Flynn).

- (c) Mr Flynn did not appreciate that Ms Gobbo's role as a barrister advising Mr Cooper and her role as a source created a conflict of interest. With the benefit of hindsight, Mr Flynn understands the potential for conflict. However, at the time, he believed that any issues arising from Ms Gobbo's role as a barrister would be dealt with by the safeguards he knew to be in place – the SDU, his superior officers due to the operation of the chain of command and Ms Gobbo's professional obligations.
- (d) Mr Flynn knew that it was Ms Gobbo's informing on Mr Cooper that led to the obtaining of incriminating evidence against Mr Cooper and led to his arrest on 22 April 2006. However, Mr Flynn believed this was appropriate because that information had been filtered through the specialist source managers at the SDU.
- (e) There was no plan to use Ms Gobbo to encourage Mr Cooper to cooperate with police and implicate his associates and Mr Flynn did not use Ms Gobbo in that way. In any case, Mr Flynn was not aware of conversations between Ms Gobbo and the SDU that took place prior to Mr Cooper's arrest.
- (f) Mr Flynn understood that Ms Gobbo's role as a human source was not to be disclosed because of the extreme risk to her safety. He had never had experience with a lawyer acting as a human source. He had never been provided with any information, instruction or training as to how to manage potential issues that might arise in respect of disclosing such a source's identity.

Response to the proposed adverse findings at paragraph [1913]

- 67.21 The ultimate finding that Counsel Assisting seek, at paragraph [1913] – that between May 2006 and February 2007, Mr Flynn continued to use Ms Gobbo as a human source against Mr Cooper so that Mr Cooper would incriminate his associates – does not play proper regard to the role Mr Flynn played at the time within Victoria Police.
- 67.22 Mr Flynn was an investigator and he was acting in accordance with an Investigation Plan that had been created by his superiors. It is not fair to hold Mr Flynn responsible for the continued use of Ms Gobbo. This is not to say that an investigator does not have ethical and legal obligations or that an investigator is meant to blindly comply with an investigative plan in the face of these ethical and legal obligations. However, it is important to recognise Mr Flynn's position. He believed the SDU were handling any ethical issues, and his training was such that he was not equipped to appreciate the problems, let alone address them.
- 67.23 Addressing the proposed findings in turn, Mr Flynn accepts the proposed finding at [1913.1].
- 67.24 Mr Flynn rejects the proposed finding at paragraph [1913.2] and submits that this finding is not open on the evidence. Mr Flynn understood that Ms Gobbo's continued involvement was as a support person for Mr Cooper. During the statement making process, Mr Cooper was providing the information that implicated his criminal associates. Mr Flynn did not believe Ms Gobbo was having anything to do with that process. It should be reiterated that Mr Flynn did not believe that Ms Gobbo was reviewing Mr Cooper's statements in order to correct or add to the information, but only to make sure the material in the statements would not expose her role as a human source.²³⁹⁸

²³⁹⁸ T7021.8-11 (D Flynn).

67.25 Mr Flynn rejects the finding at paragraph [1913.3] and submits that this finding is not open on the evidence. Mr Flynn believed that the SDU were responsible for ensuring that Ms Gobbo was not in a position of conflict. He had no reason to second guess them, nor did he have the knowledge or training to properly understand her conflicts. As Mr Flynn stated:

*If I understood all the conflicts, and some of the ones that you've expressed today, I would have deeper concerns, but I – you know, this is all new to me. I haven't read this or seen this before.*²³⁹⁹

67.26 Mr Flynn accepts the finding at paragraph [1913.4] is open on the evidence and refers to paragraph 67.16 above.

67.27 Mr Flynn rejects the proposed finding at paragraph [1913.5] and submits that this finding is not open on the evidence for the reasons explained at paragraph 67.17.

67.28 Mr Flynn does not accept the proposed finding at [1913.6] and submits that this finding is not open on the evidence for the reasons explained at paragraph 67.18.

67.29 On the basis that Counsel Assisting's proposed findings at paragraph [1913] are not open on the evidence, Mr Flynn submits that the following set of findings ought to be made in their place.

67.30 During the period from May 2006 to the time of his plea in February 2007, Ms Gobbo was in contact with Mr Cooper. During that time, Mr Flynn knew that:

- (a) Ms Gobbo was a barrister and human source.
- (b) Ms Gobbo's continued contact with Mr Cooper was part of an ongoing personal relationship, not a professional lawyer-client relationship. Mr Flynn believed that Ms Gobbo's only involvement in that statement taking process was to assess statements to consider if they would expose her as a human source.

67.31 In respect of the further proposed findings at [1913.3]-[1913.6], Mr Flynn submits that those proposed findings are addressed by essentially the same findings above, modified below in respect of the period from May 2006 to February 2007:

- (a) Mr Flynn knew that it was Ms Gobbo's informing on Mr Cooper that led to the obtaining of incriminating evidence against Mr Cooper and led to his arrest on 22 April 2006. However, Mr Flynn believed this was appropriate because that information had been filtered through the specialist source managers at the SDU.
- (b) There was no plan to use Ms Gobbo to encourage Mr Cooper to cooperate with police and Mr Flynn did not use Ms Gobbo in that way. Mr Flynn understood that Ms Gobbo's ongoing contact with Mr Cooper after his arrest was to manage issues to do with his welfare, given their ongoing personal relationship
- (c) Mr Flynn understood that Ms Gobbo's role as a source was not to be disclosed because of the extreme risk to her safety. He had never had experience with a lawyer acting as a human source. He had never been provided with any information, instruction or training as to how to manage potential issues that might arise in respect of disclosing such a source's identity.

Proposed findings at paragraphs [1935] Relevance

67.32 Finally and importantly, the proposed findings at [1935] Relevance are not open on the evidence. There are myriad reasons why these submissions cannot be accepted –

²³⁹⁹ T6794.28-31 (D Flynn).

including a lack of any specified factual basis and no evidence Relevance
Relevance In so far as the proposed findings depend upon the proposed findings at paragraphs [1912] and [1913] of Counsel Assisting's submissions, they are simply not supported by the evidence and should not be made for the reasons explained above.

- 67.33 Mr Flynn otherwise refers to the legal submissions made by Mr Flynn and the six other former and current members as to why these findings should not be made.

68 Other adverse findings not open on the evidence

- 68.1 This section of Mr Flynn's submissions responds to Counsel Assisting's submissions regarding proposed findings that relate to matters other than those which directly concern the arrest and management of Mr Cooper.
- 68.2 As noted in the overview, in the time available, it has not been possible for Mr Flynn to address every factual matter referred to in Counsel Assisting's submissions concerning Mr Flynn. Therefore, these submissions, particularly in this section, focus on the adverse findings proposed by Counsel Assisting and address those proposed findings which are not open on the evidence or should not otherwise be made and draws to the Commissioner's attention additional facts or detail not addressed by Counsel Assisting.

Ms Gobbo's involvement in M. Mokbel's plea negotiations

- 68.3 At paragraph [2664], Counsel Assisting assert the following:

Mr Flynn agreed in that Ms Gobbo involved herself in attempts to negotiate a plea on behalf of M. Mokbel, and that she had no business involving herself in the representation of M. Mokbel as she was hopelessly conflicted.

- 68.4 Counsel Assisting's submissions misconstrue the evidence. They ignore that Mr Flynn's concessions about these matters were made with the benefit of hindsight. Counsel Assisting did not put to Mr Flynn that he was aware that Ms Gobbo was conflicted at the time that she was negotiating a plea on behalf of M. Mokbel. It is worth setting out this exchange in some detail:²⁴⁰⁰

Counsel Assisting: Do you accept that Ms Gobbo had involved herself in this process?

Mr Flynn: Yes.

Counsel Assisting: Do you accept that Ms Gobbo had no business in involving herself in this process because she was hopelessly conflicted?

Mr Flynn: Well, yes.

Counsel Assisting: Do you accept that at that stage Milad Mokbel had solicitors on the record who Victoria Police could perfectly well deal with?

Mr Flynn: Well, I don't argue that point. I don't know if I was aware of it at the time.

- 68.5 Counsel Assisting's submissions repeatedly make this point. For example, as Counsel Assisting note at [2719], on 22 May 2007, Ms Gobbo reported to the SDU that M. Mokbel wanted the matter settled. Ms Gobbo believed that M. Mokbel would accept the

²⁴⁰⁰ T6975.43-T9676.6 (D Flynn).

terms offered by Mr Flynn.²⁴⁰¹ Again, Mr Flynn was willing to concede, with the benefit of hindsight, that Ms Gobbo had a "*desire to get the matter things resolved and [she was] managing things in the background*".²⁴⁰²

- 68.6 Similarly, at [2723], Counsel Assisting point to Mr Flynn's attendance at [Mr Agrum's] plea hearing on 28 May 2007. Counsel Assisting assert, at paragraph [2723] that Mr Flynn was aware that Ms Gobbo should not have been representing [Mr Agrum]. First, Counsel Assisting do not provide any evidence to support this latter assertion. The footnote reference directs the reader to a page in Mr Flynn's cross-examination where Counsel Assisting is taking Mr Flynn through his diary notes for that day. Mr Flynn acknowledges that [Mr Agrum] was someone with whom she had "*potentially a significant conflict*".²⁴⁰³ Implicit in Counsel Assisting's submission is the assertion that Mr Flynn should have acted to prevent this in some way. As set out above, Mr Flynn had a very limited understanding of lawyers' conflicts of interest and understood that Ms Gobbo and the SDU were managing any conflicts.

14 March 2007 conference with the DPP

- 68.7 At paragraph [2688], Counsel Assisting refer to the conference Messrs Flynn and Rowe attended with the Director of Public Prosecutions, Mr Coghlan QC on 14 March 2007 whereby they were told by Mr Coghlan that Ms Gobbo was not to represent Mr Bickley due to her conflict having previously represented Mr Tony Mokbel and Mr Cooper. Counsel Assisting assert that "*Mr Coghlan's advice was apparently not sufficient to persuade those members from taking any steps to prevent the continued involvement of Ms Gobbo in respect of Mr Milad Mokbel.*" Counsel Assisting do not cite or refer to any evidence in support of this assertion. It should be rejected.
- 68.8 At paragraph [2689], Counsel Assisting allege that it is open to the Commission to find that Messrs Flynn and Rowe would have been aware that they could have raised "*the question*" with Mr Coghlan QC. It is not clear what Counsel Assisting mean by "*the question*", as Counsel Assisting have not provided any explanation for this proposed finding and have not referred to any evidence. It may be that Counsel Assisting are referring to questions regarding Ms Gobbo's conflict of interest in relation to her involvement as a human source. Any explanation for why this issue was not raised would be purely speculative as Mr Flynn was not asked any questions about this matter. Neither was Mr Rowe. It would be manifestly unfair to make a hypothetical adverse finding about Mr Flynn's conduct in these circumstances.
- 68.9 Even without the benefit of properly led evidence on this issue, there are good reasons why the finding should not be made.
- 68.10 First, at all times, Mr Flynn was acting in accordance with the "*golden rule*". This rule regarded the protection of Ms Gobbo as the paramount consideration. Had Mr Flynn raised this issue with Mr Coghlan QC, he would have exposed Ms Gobbo's role as a human source and put her safety, and likely her life, in jeopardy. His failure to raise Ms Gobbo's role in relation to Milad Mokbel can be explained by Mr Flynn's understanding that the protection of Ms Gobbo was the paramount consideration.
- 68.11 Secondly, it should be noted that the conflict issues created by Ms Gobbo's involvement in M. Mokbel's case were different to those that arose in Mr Bickley's case. As described in the submissions on behalf of Mr Rowe, in Mr Bickley's case Ms Gobbo sought to involve herself formally on a brief from Mr Bickey's solicitor, Margaret

²⁴⁰¹ Exhibit RC0281 – ICR3838 (080), 22 May 2007 (VPL.2000.0003.2427 at .2435); T7118.1-7 (D Flynn).

²⁴⁰² T7119.18-21 (D Flynn).

²⁴⁰³ T7118.20-23 (D Flynn).

Macauley. Mr Rowe took proactive steps to stop this occurring, including by seeking advice from the Office of Public Prosecutions. By contrast, Ms Gobbo's involvement with M. Mokbel was informal. Mr Rowe's evidence was that he understood that Ms Gobbo was assisting M. Mokbel "as a favour" because he was having trouble paying his legal bills.²⁴⁰⁴ He also said it seemed that Ms Gobbo refused to pull herself away from M. Mokbel and others, and kept agreeing to help them out when they asked.²⁴⁰⁵

- 68.12 Thirdly, as explained above, Mr Flynn was of the understanding that he was not in a position to police Ms Gobbo's professional obligations. Indeed, he had been advised that these were matters for her to "sort out".²⁴⁰⁶

Concessions by Mr Flynn in cross-examination

- 68.13 At paragraph [2712], Counsel Assisting point to a number of concessions made by Mr Flynn in cross-examination. Again, Counsel Assisting's submissions do not articulate that these concessions were made with the benefit of hindsight. In retrospect, Mr Flynn accepted that Ms Gobbo should not have been involved in M. Mokbel's committal hearing, could have revealed Ms Gobbo's involvement and could have told Ms Gobbo that she was not to be involved.
- 68.14 Counsel Assisting's propositions culminated in the assertion that there were matters that "should have been thrashed out amongst senior members of the Victoria Police". Counsel Assisting have hit the nail on the head – these were matters for "senior members". Mr Flynn was not in a position where he could realistically divert the strategy with regards to a high value and high-risk human source. He was not aware of all the moving parts, the breadth and extent of the ethical issues and could not reasonably be expected to make a decision with such potentially significant consequences.

The 12 August 2008 subpoena²⁴⁰⁷

- 68.15 On 12 August 2008, Grigor Lawyers served a subpoena on the Chief Commissioner of Police in relation to the trial of H. Mokbel. Amongst other things, the subpoena sought the production of all notes, memorandums, information reports, transcripts of conversations and interviews related to Mr Cooper.
- 68.16 Mr Flynn's diary entry dated 12 August 2008 noted that the subpoena had been received. Mr Flynn faxed a copy of the subpoena to the Subpoena Management Unit. His diary also records that he spoke to Mr Johns about the subpoena and sent him a copy of it along with Mr O'Brien's notes.²⁴⁰⁸
- 68.17 Records from the Subpoena Management Unit indicate that the subpoena was assigned to Mr Johns on 13 August 2008.²⁴⁰⁹
- 68.18 On 13 August 2008, Mr Flynn's diary records that he spoke to Mr Green at the SDU about the subpoena.
- 68.19 In an ICR dated 13 August 2008 Mr Green recorded the following:

²⁴⁰⁴ Exhibit RC0266B – Statement of Detective Sergeant Paul Rowe, 25 June 2019 at [150] (VPL.0014.0035.0028 at .0048).

²⁴⁰⁵ Exhibit RC0266B – Statement of Detective Sergeant Paul Rowe, 25 June 2019 at [151] (VPL.0014.0035.0026 at .0048).

²⁴⁰⁶ T6692.6-T6693.14 (D Flynn).

²⁴⁰⁷ Dealt with in Counsel Assisting's Submissions at pp 728-733 [2956]-[2982], Vol 2.

²⁴⁰⁸ Exhibit RC1337B – Diary of Inspector Dale Flynn, 12 August 2008 (RCMPI.0062.0002.0002 at _0061).

²⁴⁰⁹ Exhibit RC1332D – Supplementary statement of Sergeant Tim Johns, 18 February 2020 at [13] (VPL.0014.0118.0021 at .0022).

1307	Called by D/S/SGT FLYNN re subpoena from GRIGOR re Horty M trial want all conversations with [redacted] Mr Cooper. Two issues re source involvement – One on 22/6 day of [redacted] Mr Cooper's arrest. Two 1 or 2 weeks after arrests [redacted] Mr Cooper met source at VPC briefly
1310	RTO Discuss above. Care to be taken re first meeting. No issue re second meeting after arrests

- 68.20 Counsel Assisting's submissions assert that Mr Green advised Mr Flynn that "*care [was] to be taken*" in the provision of the first meeting, but there was no issue with the second meeting after arrests. However, it is not clear from the ICR that this formed a part of Mr Green's discussion with Mr Flynn; given the separate entry in the ICR extracted above, it is more likely that Mr Green subsequently discussed this with Mr White after returning to the office. This appears to be consistent with Mr White's diary, which records a discussion with Mr Green regarding Horty Mokbel, albeit it at 12.10 pm (although the timing may have been wrongly recorded).²⁴¹⁰ Notably Mr Flynn's diary does not record that he was provided with this advice. Nor was Mr Flynn asked about the content of this ICR during cross examination.
- 68.21 At 2.20 pm, Mr Flynn's diary records that he had a conference call with Messrs Shireffs and Grigor about the subpoena. The call lasted less than 5 minutes. Mr Flynn's note suggests that Mr Shireffs advised him that he was only seeking records of meetings not already provided and unedited copies of transcripts of Mr Cooper's interviews.
- 68.22 Following the call, Mr Flynn updated an OPP lawyer and Officer Green. It was recorded by Mr Green that he received a telephone message from Mr Flynn at 2:45 pm about "*matter re second date / meeting resolved after call to Grigor solicitors was made. They don't want every meet and greet details*".²⁴¹¹
- 68.23 Mr Flynn then contacted Mr Johns and asked him to compare the "*sanitised*" and "*non-sanitised*" versions of Mr Cooper's records of interview.²⁴¹²
- 68.24 On 16 August 2008, Mr Johns' diary records that he spoke with Mr Grigor about the subpoena. As Mr Johns explains in his statement, "My diary records that Mr Grigor was content to receive a transcript of Mr [Cooper's] record of interview in compliance with the subpoena".²⁴¹³
- 68.25 Mr Johns subsequently provided the transcript of Mr Cooper's interview to Mr Grigor.
- 68.26 At paragraph [2978], Counsel Assisting assert that Mr Flynn, as well as Messrs Johns, White and Green must have known that Ms Gobbo's involvement as a human source against Mr Cooper was improper. For the reasons referred to in this submission, and specifically at paragraphs 63.9 to 63.10, Mr Flynn did not appreciate the impropriety of Ms Gobbo's conduct in relation to Mr Cooper. He had a limited understanding of lawyers' conflicts and did not appreciate the impact on subsequent prosecutions.
- 68.27 In paragraph [2980] of their submissions, Counsel Assisting pluck out, devoid of any context, Mr Flynn's evidence that revealing Ms Gobbo's identity to defence counsel or

²⁴¹⁰ Untendered diary of Officer 'White', 13 August 2008 (VPL.2000.0001.1508 at .1528).

²⁴¹¹ Exhibit RC0281 – ICR3838 (033), 13 August 2008 (VPL.2000.0003.1287 at .1295).

²⁴¹² Untendered diary of Inspector Dale Flynn, 13 August 2008 (VPL.0098.0059.0071 at .0072).

²⁴¹³ Exhibit RC1332D – Supplementary statement of Sergeant Tim Johns, 18 February 2020 at [15] (VPL.0014.0118.0021 at .0023).

the judge “*would create a lot of issues*”.²⁴¹⁴ However, Counsel Assisting ignore Mr Flynn’s evidence that the “issues” he was referring to concerned her safety.²⁴¹⁵ He denied that Victoria Police’s concern was that the evidence would potentially be thrown out and Victoria Police would be criticised and suffer embarrassment for doing what it did.²⁴¹⁶

- 68.28 This submission downplays the importance placed on the protection of human sources by Victoria Police as an organisation. Mr Flynn was frank with the Royal Commission that he acted so as not to reveal Ms Gobbo’s identity, as he understood he was required to. He was unwavering in his position that this was consistent with his training and experience and the culture within Victoria Police at the time.²⁴¹⁷

The underlying reason why all these questions you’ve asked me is our perceived need to keep Nicola Gobbo’s involves a human source [a] secret... And the risk to her if her involvement became public knowledge. I go back to what I’ve said earlier about Victoria Police’s policies with human source[s], and that kind of had a lot to do with the decision making process.

- 68.29 Mr Flynn was following directions. He did the best he could based on his training and experience.

Suggested findings of Counsel Assisting at paragraphs [2975], [2976] and [2977]

- 68.30 At paragraphs [2975] and [2976] Counsel Assisting urge the Commissioner to make findings adverse to Mr Flynn about the response to the 13 August 2008 subpoena, despite Mr Flynn not having been asked any questions about this in cross-examination. It would be manifestly unfair for adverse findings to be made about Mr Flynn’s conduct in these circumstances. However, even without direct evidence, there are reasons why the findings should not be made.
- 68.31 There is simply no basis for the finding set out at [2975] of Counsel Assisting’s submissions. In circumstances where an agreement was reached between the parties to narrow the scope of the subpoena, the evidence does not support a finding that Victoria Police should nonetheless have produced further materials to the court in response to the subpoena.
- 68.32 Paragraph [2976] asserts that investigators and the SDU sought to “improperly” sanitise notes and “improperly” purport to reach agreement with defence lawyers in order to limit the production of materials.
- 68.33 There is no evidentiary basis upon which the Commission can find that Messrs Flynn and Johns acted improperly in securing an agreement from the defence lawyers that all they were after was an unredacted transcript of Mr Cooper’s record of interview.
- 68.34 First, the subpoena issued was very broad.²⁴¹⁸ It is common practice for discussions to occur between the parties in relation to subpoenas, particularly when they are very broad, and for the scope of documents sought to be narrowed as a result.
- 68.35 Secondly, there is no evidence that there was anything improper about the manner in which these discussions occurred.

²⁴¹⁴ T6967.29 (D Flynn).

²⁴¹⁵ T6867.33 (D Flynn).

²⁴¹⁶ T6967.9-15 (D Flynn).

²⁴¹⁷ T6955.1-10 (D Flynn).

²⁴¹⁸ T14665.30 (T Johns).

- 68.36 The only person involved in these discussions who gave evidence to the Commission about them is Mr Johns. He told the Commission that Mr Grigor told him he was only seeking the unedited record of interview. Mr Johns expressly denied that he attempted to suggest to Mr Grigor that there wasn't material available or which would be of assistance other than the record of interview.²⁴¹⁹ When Counsel Assisting asked Mr Johns for his explanation as to why Mr Grigor was prepared and happy to accept the record of interview and no other records, Mr Johns replied, "I can't guess the state of mind of Alistair Grigor".²⁴²⁰
- 68.37 The Commission has received a statement from Mr Grigor but it does not deal with this issue. The absence of any evidence from Mr Grigor about why he and Mr Shireffs were prepared to accept the record of interview in satisfaction of the subpoena means that there is no evidence to support Counsel Assisting's assertion that this agreement was reached because of any improper conduct on the part of Messrs Flynn and Johns.
- 68.38 In relation to Mr Flynn's notes, there is no evidence before the Commission as to the redactions that had been made to Mr Flynn's notes as provided to H. Mokbel's legal representatives. Mr Flynn accepts, however, that at times during his evidence he conceded that parts of his notes may have been redacted on the advice of the SDU. If this occurred, it was not for an improper purpose. Rather, Mr Flynn's overriding concern was the protection of Ms Gobbo. This was consistent with his training and experience at the time, which emphasised the importance of protecting human sources above all other considerations.
- 68.39 At paragraph [2982], Counsel Assisting suggest that a number of findings are open to the Commission in relation to Mr Flynn's dealing with the 12 August 2008 subpoena.
- 68.40 In relation to paragraph [2982.1], Mr Flynn accepts that he was concerned to prevent the exposure of Ms Gobbo's role as a human source. He did not intentionally act with impropriety in taking this approach. Mr Flynn understood that this approach was necessary in order to protect Ms Gobbo's identity and accorded with his training and experience. This is evidenced by the following exchange in cross-examination:²⁴²¹
- Counsel Assisting: The question I put to you was that would be an unfortunate situation because neither the court nor anyone else would ever know that something had occurred on that day which may well be relevant to an investigation and charges, but which was in relation to which a claim of PII was made?
- Mr Flynn: I do follow what you're saying but I just don't think I've ever considered it in that type of detail. My memory in relation to protecting human sources, which is protect human sources whenever we can, and generally we've been fairly successful in excluding this type of information that might reveal it, so I don't know if I've ever thought that way. I understand what you're asking me but it was just a matter I'd assume it's source related, we redact it.
- 68.41 While with hindsight, there are problems with this approach Mr Flynn cannot be held responsible for adopting this approach. As he explained in cross-examination, it was up to individual police offices to determine how to redact their diary. He had received no training as to how to undertake this task, and limited training in relation to public interest

²⁴¹⁹ T14668.42-3 (T Johns).

²⁴²⁰ T14668.28-9 (T Johns).

²⁴²¹ T6749.32-44 (D Flynn).

immunity and disclosure. Mr Flynn cannot be blamed for his lack of training and understanding – this was the fault of the organisation²⁴²². It was Mr Flynn's evidence that this practice was "*common at the time*".²⁴²³ Indeed, this was evidenced by the fact that Mr Flynn could not recall ever giving his subordinates instruction on the redaction process, and that he acknowledged the need for improvement in this area. This point was illustrated by the following exchange during cross-examination:²⁴²⁴

Counsel Assisting: No doubt as a Sergeant, and then a Senior Sergeant, as you go up the ranks, you would provide instructions to your crew as to what to do?

Mr Flynn: I don't recall - I think you asked me this once before - I don't recall specifically giving instructions about how to redact notes or anything along those lines.

Counsel Assisting: Yes?

Mr Flynn: I don't know if it was something I would have expected them to know or whether they would - or I can't recall ever anyone actually coming to me and saying, "I've got this letter, how do I do this?" I can't recall ever doing that.

Counsel Assisting: Do you think that it would be of value for all police officers to be given very clear instructions and guidance about processes that should be undertaken when it came to redacting notes for the purposes of provision, either in a brief as part of a request for disclosure or as simply a part of a request during the course of a committal proceeding or a trial?

Mr Flynn: Yes, I do.

68.42 Mr Flynn accepts the finding at paragraph [2982.2] is open on the evidence.

68.43 Mr Flynn rejects the proposed finding at paragraph [2982.3]. It was Mr Flynn's understanding that despite having provided intelligence about Mr Cooper that led to his arrest, Ms Gobbo was still in a position to provide legal advice to Mr Cooper. Mr Flynn was also of the view that, as a "*smart and educated person*",²⁴²⁵ Ms Gobbo would self-regulate and not cross her ethical boundaries. As he stated, in a quote that bears repeating:²⁴²⁶

I still thought at the time that if [Mr Cooper] indicated that he didn't want to talk to police, he didn't want to answer questions, that she would talk to him about the pros and cons of doing that...I still was of the belief that Ms Gobbo could advise [Mr Cooper] of his choices in relation to what he does.

68.44 It is submitted that the proposed finding at paragraph [2982.4] is not open on the evidence. As explained above, Mr Flynn believed the need to protect human sources was the overriding concern and did not appreciate the relevance of the circumstances of Mr Cooper's arrest to subsequent criminal proceedings including the trial of H.

²⁴²² See Untendered Statement of Assistant Commissioner Kevin Casey, 15 August 2020 at [67] (VPL.0014.0134.0001 at .0011).

²⁴²³ T7286.29-30 (D Flynn).

²⁴²⁴ T7286-44-T7287.16 (D Flynn).

²⁴²⁵ Exhibit RC538B – Statement of Inspector Dale Flynn, 17 June 2019 at [31] (VPL.0014.0042.0001 at .0005).

²⁴²⁶ T6787.26-30 (D Flynn).

Mokbel. Moreover, Mr Flynn's overriding concern was the protection of Ms Gobbo's role as a source.

- 68.45 Mr Flynn submits that the finding at paragraph [2982.5] is not open on the evidence. He did know that the issue of illegally obtaining evidence may have been related to a criminal proceeding. But, Mr Flynn was not aware that the evidence had been obtained improperly, as described elsewhere in these submissions.
- 68.46 Mr Flynn submits that the finding at paragraph [2982.6] is not open on the evidence. There is no evidence that Mr Flynn possessed such knowledge.

The 1 September 2008 subpoena

- 68.47 In late August 2008, H. Mokbel's lawyers sought access to a number of unredacted information reports (IRs).²⁴²⁷ Mr Johns worked with VGSO and Mr Ron Gipp of counsel, to make a PII claim over parts of the documents.²⁴²⁸
- 68.48 On the morning of 3 September 2008, Mr Fox provided redacted versions of the IRs to Mr Johns via email, noting that the edits had been made on the basis of the SDU's considerations.²⁴²⁹ Mr Flynn, together with Mr Johns, attended on Mr Gipp that morning to prepare for the PII claim.²⁴³⁰ Ms Gobbo's involvement as a human source was not revealed to Mr Gipp or the presiding Judge, the Honourable Justice Curtain, and was not recorded in the affidavit.
- 68.49 On 4 September 2008, Justice Curtain upheld the PII claims of Victoria Police over all but one of the IRs. As a result of Her Honour's ruling, Mr Jones prepared a supplementary affidavit. Again, this affidavit did not reveal Ms Gobbo's identity. The following day, Justice Curtain held that Victoria Police was not required to disclose the final IR.
- 68.50 Mr Flynn submits that the proposed finding at paragraph [3007] should not be made. While the matters set out in this paragraph are factually correct, it is clear that defence counsel were only seeking IRs relevant to Mr Cooper and his activities between 1 November 2004 and 30 April 2006. This is apparent from Mr John's affidavit, which is referred to by Counsel Assisting at [3009]. It is also evident from the transcript of the hearing before Justice Curtain, which is not referred to in Counsel Assisting's submissions, despite being an exhibit before the Commission. As Mr Shireffs informed Her Honour:

*The subpoena seeks an information report pertaining to the activities of [Mr Cooper] between 1 November 2004 and 30 April 2006. Previously we obtained in other proceedings some information reports that had large portions of them deleted, obliterated, so you couldn't see the information contained within. We're seeking to obtain that information. I understand there will be claims of public interest immunity on the basis of informer privilege and/or police methodology or ongoing investigations.*²⁴³¹

- 68.51 In these circumstances, the proposed finding at [3007] should not be made.
- 68.52 At paragraph [3010], Counsel Assisting suggest that it is open to find that Mr Flynn, and Mr Johns, knew that there were an extensive number of documents that should have

²⁴²⁷ Exhibit RC1332B – Statement of Sergeant Tim Johns, 11 December 2019 at [72], [75], (VPL.0014.0118.0001 at .0011).

²⁴²⁸ Exhibit RC1332B – Statement of Sergeant Tim Johns, 11 December 2019 at [76] (VPL.0014.0118.0001 at .0011).

²⁴²⁹ Exhibit RC1332B – Statement of Sergeant Tim Johns, 11 December 2019 at [78] (VPL.0014.0118.0001 at .0012).

²⁴³⁰ Untendered diary of Inspector Dale Flynn, 3 September 2008 (VPL.0098.0059.0076 at .0076-0077).

²⁴³¹ Exhibit RC1331B – Transcript of proceedings, *The Director of Public Prosecutions v Harty Mokbel and Tareq Bayeh* (Supreme Court of Victoria, Curtain J, 3 September 2008), p 751 (VPL.0005.0273.0001 at .0002).

been disclosed under the terms of the subpoena. Mr Flynn rejects this finding. First, such a finding was not put to Mr Flynn in cross-examination and it is therefore not fair to Mr Flynn to make this finding when he was not presented with the opportunity to respond to it. Secondly, as explained above, it is clear that defence counsel were only seeking IRs relevant to Mr Cooper and his activities between 1 November 2004 and 30 April 2006. Thirdly, as Counsel Assisting demonstrate in their exploration of the evidence in paragraphs [2983] to [2989], Mr Flynn was not involved in the process of responding to this subpoena up until the morning of 3 September 2008. Accordingly, this proposed finding should not be made.

- 68.53 Mr Flynn rejects the finding at paragraph [3011] and submits that it is not open on the evidence. There is no evidence that Mr Flynn acted improperly with respect to the agreement made with the defence.

Mr Flynn's involvement with Jacques El Hage

- 68.54 Chapter 17 of Counsel Assisting's submissions include a section on Mr Flynn's involvement with Ms Gobbo within the context of Mr El Hage. Ms Gobbo was involved in this matter as a human source, a lawyer and a victim. In cross-examination, Counsel Assisting described this as "*the trifecta*".²⁴³² It was undeniably an insidiously complex situation. And it did not have an easy solution. Ms Gobbo was so deeply enmeshed in this web that any solution at this point, mid 2008, posed a serious risk to her life.
- 68.55 In relation to the arson, Mr Flynn was the first person that Ms Gobbo contacted after her car was set alight.²⁴³³ In cross-examination however Mr Flynn explained that he had moved offices, and Ms Gobbo should not have called him.²⁴³⁴
- 68.56 On 21 July 2008, Mr El Hage was arrested by appointment.²⁴³⁵ Mr Flynn met with Mr El Hage, as well as his legal advisors, Mr Grigor and Ms Gobbo, so that Mr El Hage could surrender himself.²⁴³⁶ Mr Flynn's evidence was that it was "*a fairly simple matter just to go through the process of arranging him to be charged and bailed*".²⁴³⁷ Mr Flynn gave evidence that he was unaware that Ms Gobbo charged Mr El Hage for his bail application and that she was charging for preparing committal documents and documents seeking disclosure with respect to Mr Cooper's documents.²⁴³⁸
- 68.57 When asked by Counsel Assisting whether her role would include seeking appropriate disclosure, including disclosure of communications between herself and Mr Cooper, Mr Flynn responded, "*I don't know how to answer that. That would be a – that would be something that she could be tasked to do, yes*".²⁴³⁹ It is apparent from Mr Flynn's evidence that this had not occurred to him at the time.
- 68.58 Within this overwhelming web of complexity, care must be taken to clearly identify Mr Flynn's role and his appreciation of the risks. Mr Flynn was no longer a member of Taskforce Purana but was the informant on the Mr El Hage brief. Mr Flynn, as has been reiterated in these submissions, did not have a full understanding of the ethical issues. Rather, Mr Flynn believed that the ethical issues were a matter for Ms Gobbo. He explained that "*I come back to a previous answer about the conflict of her involvement*

²⁴³² T7187.15 (D Flynn); Counsel Assisting Submissions at p 785 [3268], Vol 2.

²⁴³³ T7184.10-11 (D Flynn).

²⁴³⁴ T7184.15-17 (D Flynn).

²⁴³⁵ T7185.39-41 (D Flynn).

²⁴³⁶ T7185.8-9 (D Flynn).

²⁴³⁷ T7187.28-30 (D Flynn).

²⁴³⁸ T7186.15-20 (D Flynn).

²⁴³⁹ T7186.29-35 (D Flynn).

with Mr El Hage and others was [a] matter for her".²⁴⁴⁰ He denied knowing that Ms Gobbo had had "some sort of ethical bypass".²⁴⁴¹

68.59 In the face of everything we know now, this response seems almost insouciant. But we must be careful not to assess Mr Flynn's conduct through the lens of all the dots now being joined. Mr Flynn simply did not have the adequate training and skills to identify, let alone deal with these complex ethical issues. He must not be held accountable for Victoria Police's failings – for both putting him in this position and for not providing him with the necessary instruction and training. Mr Flynn did the best he could in an incredibly complex situation and at all times believed he was conducting himself in accordance with his ethical obligations. Indeed, the scenario where Ms Gobbo was killed as a result of Mr Flynn exposing her involvement would have been a clear failing of his obligations as police officer.

Mr Flynn's involvement with Zlate Cvetanovski

68.60 Mr Cvetanovski was arrested on 25 April 2006 in respect to charges stemming from Operation Posse.²⁴⁴² He obtained legal advice from Ms Gobbo and he gave a no comment interview.

68.61 At paragraph [4159.1] of their submissions, Counsel Assisting state that:

On 8 May 2006, Ms Gobbo told her police handler, Mr Peter Smith, that Mr Cooper was not telling the police everything he knew about Mr Cvetanovski.

68.62 This paragraph has no footnotes. There is nothing recorded in the ICR for 8 May 2006 that indicates that Ms Gobbo had such a discussion with Mr Smith.²⁴⁴³

68.63 Counsel Assisting point to the meeting of Ms Gobbo, Messrs Cooper and Flynn on 14 May 2006. Counsel Assisting infer, at paragraphs [4159.1] and [4159.2], from the contemporaneous nature of these events, that Ms Gobbo was used by Victoria Police in order to extract information from Mr Cooper about Mr Cvetanovski. There is no basis for this inference. First, neither of these paragraphs have any references. It is not clear what evidence Counsel Assisting are seeking to rely on. Second, Mr Flynn was emphatic in his denial that Ms Gobbo played any role in contributing to Mr Cooper's statements during this meeting. It was only a welfare visit to keep Mr Cooper happy.²⁴⁴⁴

68.64 Ms Gobbo advised her handler on 11 June 2006 that Mr Cooper wanted Mr Flynn to be advised that he wanted to amend his statements about Mr Cvetanovski.²⁴⁴⁵

68.65 At paragraph [4167], Counsel Assisting assert that Mr Flynn was 'fully aware' of Ms Gobbo's involvement with respect to Mr Cooper and Mr Cvetanovski. The implication being that Mr Flynn should have taken steps to dilute, if not prevent Ms Gobbo's involvement. For the reason set out above, this is an oversimplification of Mr Flynn's position. Specifically, and by way of repetition:

- Exposure of Ms Gobbo's role as a human source would likely result in Ms Gobbo's death;

²⁴⁴⁰ T7187.35-37 (D Flynn).

²⁴⁴¹ T7187.12 (D Flynn).

²⁴⁴² T9097.28-30 (C Hayes).

²⁴⁴³ Exhibit RC0281 – ICR3838 (031), 8 May 2006 (VPL.2000.0003.1871 at .1876-1877).

²⁴⁴⁴ T6950.12-20 (D Flynn).

²⁴⁴⁵ Exhibit RC0281 – ICR3838 (035), 11 June 2006 (VPL.2000.0003.1913 at .1913).

- Mr Flynn did not manufacture these events but was put in a position where he was forced to manage an incredibly complex situation without adequate training or a full appreciation of the ethical issues;
- Mr Flynn's superiors had not said to him that Ms Gobbo's involvement as both a human source and legal advisor was not to be permitted. Rather, his superiors had continued to proceed with the investigations, meaning that Mr Flynn was not alert to any potential issues;
- Mr Flynn's conduct was dictated by the strict chain of command. Mr O'Brien who was Mr Flynn's superior was completely aware of Ms Gobbo's role. The culture at Victoria Police was not such that Mr Flynn could raise these issues over Mr O'Brien's head;
- Mr Flynn did not have any training in conflicts of interest or legal professional privilege. His understanding was that Ms Gobbo could act as Mr Cooper's legal advisor despite having also been an informer;
- Mr Flynn understood that it was the SDU's role to manage Ms Gobbo and therefore the SDU would have resolved any conflicts of interest or ethical issues. Further, Mr Flynn understood that Ms Gobbo would adhere to her professional and ethical obligations.

Mr Cvetanovski's trial

- 68.66 During Mr Cvetanovski's trial in April 2011, his counsel, Mr Pena-Rees, raised issues with Mr Cooper about his relationship with Ms Gobbo.²⁴⁴⁶ This included an allegation that Mr Cooper nominated Ms Gobbo as someone who could be trusted to pass on money to pay for precursor chemicals.²⁴⁴⁷ The Court was also told about Ms Gobbo's involvement in organising Mr Cooper's party.²⁴⁴⁸ It was put to Mr Cooper that he was protecting Ms Gobbo. Eventually Mr Pena-Rees revealed that he intended to ask Mr Cooper whether he collaborated with Ms Gobbo.²⁴⁴⁹ In cross-examination, Mr Flynn accepted that these questions were coming close to establishing the truth that Ms Gobbo knew about Mr Cooper's dealings.²⁴⁵⁰
- 68.67 As a consequence, the trial prosecutor, Mr Champion, sought the leave of the court to seek instructions prior to commencing his re-examination.²⁴⁵¹
- 68.68 On 11 April 2011, Mr Flynn attended a conference with Mr Champion, his instructing solicitor from the OPP, the informant Mr Hayes and Mr Pearce. The meeting ran for about 90 minutes. In his diary record of the meeting, Mr Flynn made the following note: "*Nicola Gobbo conspired with Mr Cooper and/or police to make false statements*". In cross-examination, Mr Flynn explained that the meeting operated by way of an update whereby Mr Champion informed Mr Flynn of these matters²⁴⁵² but that he can't remember any specific questions.²⁴⁵³ Mr Flynn does not believe that Mr Champion specifically asked him if Ms Gobbo had been cooperating with police.²⁴⁵⁴ Mr Flynn recalls that he felt alarmed as a consequence of the meeting as "*it was obviously*

²⁴⁴⁶ T7188.42-45 (D Flynn).

²⁴⁴⁷ T7191.1-9 (D Flynn).

²⁴⁴⁸ T7194.11-13 (D Flynn).

²⁴⁴⁹ T7196.21-27 (D Flynn).

²⁴⁵⁰ T7194.39-44 (D Flynn).

²⁴⁵¹ T7199.7-20 (D Flynn).

²⁴⁵² T7202.21-26 (D Flynn).

²⁴⁵³ T7202.31-32 (D Flynn).

²⁴⁵⁴ T7203.13-16 (D Flynn).

heading towards divulging Ms Gobbo's role as a human source".²⁴⁵⁵ Mr Flynn believes that he advised Mr Champion that he would need to get advice from his superiors.²⁴⁵⁶ Ultimately, however, Mr Flynn did not seek further advice because this line of enquiry was not pursued in court.²⁴⁵⁷

68.69 During cross-examination, Counsel Assisting were incredulous that Mr Flynn's priority was protecting Ms Gobbo's identity as a human source at this time. At paragraph [4192], Counsel Assisting set out the exchange between Counsel Assisting and Mr Flynn. This exchange is important. In the face of persistent and dogged questioning, Mr Flynn's position was unwavering. His overarching concern was that Ms Gobbo's identity as a human source would be disclosed. As Mr Flynn put it, he did not volunteer to Mr Champion that Ms Gobbo was a human source "*because she was a human source*".²⁴⁵⁸ While with hindsight, Mr Flynn now recognises the impact that this may have had on Mr Cvetanovski's fair trial, it is critical that Mr Flynn's conduct is considered in context.

68.70 As mentioned repeatedly in these submissions, Mr Flynn's training and the culture at Victoria Police was that the identity of the human source was to be given upmost priority. Mr Flynn's assessment of that environment is blunt but demonstrative:²⁴⁵⁹

COUNSEL ASSISTING: It's alarming that she may be discovered as a human source, but it is alarming that potentially a person who is in the dock may not get a fair trial and might be convicted when perhaps he oughtn't be on the basis of evidence that was improperly obtained?

MR FLYNN: Well that's something I look back now and say, yes, but I don't think it was a consideration at the time.

68.71 While this situation is regrettable, it was the product of the policies and guidelines of the organisation, as a whole. It would be unreasonable to hold Mr Flynn accountable for acting in accordance with his training and following the directions of his organisation.

68.72 At paragraph [4206], Counsel Assisting allege that by the time of Mr Cvetanovski's trial it should have been apparent that Ms Gobbo's role as a human source was a relevant issue. This misstates Mr Flynn's evidence as to his state of knowledge at that time. Mr Flynn's evidence was that he had not thought in any detail of any potential argument about the exclusion of Mr Cooper's evidence in Mr Cvetanovski's trial; his focus and concern was about the potential for Ms Gobbo's role as a human source to be exposed.²⁴⁶⁰ As Mr Flynn explained:

*I honestly don't think I was thinking too much along the lines of the consequence of the trial, my recollection is that I was mainly concerned about Ms Gobbo being divulged as a human source.*²⁴⁶¹

68.73 At paragraph [4212], Counsel Assisting assert that it is open to the Commissioner to find that in April 2011, Mr Flynn, amongst others, should have disclosed Ms Gobbo's role to the prosecutor in Mr Cvetanovski's trial or to the court so that a PII claim could be made. Mr Flynn submits that this proposed finding is not open on the evidence. It must be recalled that Mr Flynn did not have a full understanding of the ethical issues or

²⁴⁵⁵ T7203.40-41 (D Flynn).

²⁴⁵⁶ T7204.36-42 (D Flynn).

²⁴⁵⁷ T7205.4-6 (D Flynn).

²⁴⁵⁸ T7203.45 (D Flynn).

²⁴⁵⁹ T7205.44-T7206.3 (D Flynn).

²⁴⁶⁰ T7205.17-26 (D Flynn).

²⁴⁶¹ T7207.44-T7208.1 (D Flynn).

the consequences of Ms Gobbo's involvement in Mr Cooper's decision to co-operate and provide evidence against his associates. Despite Ms Gobbo's ongoing relevance to these matters Victoria Police had not sought to provide Mr Flynn with instruction or training on how to navigate these issues.

- 68.74 At paragraph [4193], Counsel Assisting state that 'It was put to Mr Flynn following this that he would have considered the need for legal advice, and if he was not prepared to tell Mr Champion, then he could have had recourse to legal advice within the police force. Mr Flynn agreed he could have done this, however said he did not as the issue died away". Counsel Assisting fail to note that this was a concession made with hindsight.
- 68.75 It is critical to note that Mr Champion did not advise Mr Flynn to seek legal advice. Mr Champion's advice, as explained by Mr Flynn during cross-examination, was that [REDACTED] may need legal advice.²⁴⁶² This is reflected in Mr Flynn's diary (which is extracted in Counsel Assisting's submissions at paragraph [4182]).
- 68.76 During cross-examination it was put to Mr Flynn that he "*should have got some legal advice...if you weren't prepared to tell Mr Champion*".²⁴⁶³ Mr Flynn's willingness to concede, with the benefit of hindsight, that he should have received legal advice, is consistent with his position throughout this entire Royal Commission. He now recognises that mistakes were made but, at all times, believed that he was acting in accordance with his training and the obligations imposed on him by Victoria Police. The overwhelming weight of the evidence is that he did not intend to act with impropriety.
- 68.77 Mr Flynn was put in an insidiously complex situation which he was not trained for. The longer these matters continued, the more complex they became and the more ill equipped a hard-working and dedicated investigator came to be to handle them.

²⁴⁶² T7206.31-34 (D Flynn).

²⁴⁶³ T7206.39-42 (D Flynn).

L. Relevance and misconduct

69 Applicable law and application Relevance

69.1 In Volume 2 of their Submissions, Counsel Assisting propose findings that the current and former members of Victoria Police whose submissions are in this Tranche 1 Relevance
Relevance The proposed findings in Chapter 7 relate to Mr Thomas and involve Mr O'Brien, Relevance and Mr Bateson. The proposed findings in Chapter 11 relate to Mr Cooper and concern Mr O'Brien, Mr Ryan, Mr Biggin, Mr Flynn, Mr Kelly and Mr Rowe.

69.2 Part B above sets out why the Commissioner does not have the power to make findings Relevance The submissions made by each of the current and former members assess in detail why the proposed factual findings relating to each of those individuals are not open on the evidence.

69.3 This section considers why, even if the Commissioner did have the power to make such findings, Counsel Assisting's assertions Relevance
Relevance

69.4 The seriousness of these assertions means the Commissioner must take particular care in assessing them. While the principle in *Briginshaw* might be cited so often as to amount to a "ritual incantation",²⁴⁶⁴ it has critical and important content. Reduced to its essence, it requires that the Commissioner closely scrutinise Counsel Assisting's assertions and only make findings Relevance if "reasonably satisfied" it is more likely than not that the conduct occurred. As Dixon J said in *Briginshaw* in a passage relied on by Counsel Assisting:²⁴⁶⁵

In such matters, "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

69.5 None of Counsel Assisting's assertions Relevance
Relevance come close to providing "reasonable satisfaction". The assertions either lack an identified factual basis, are positively precluded as a matter of law, or both.

69.6 Relevance

69.7 Relevance

²⁴⁶⁴ Transcript of Proceedings, *Witham v Holloway* (High Court of Australia, 10 February 1995) at 20.36-42 (McHugh J).

²⁴⁶⁵ *Briginshaw v Briginshaw* (1938) 60 CLR 336, 362 (Dixon J).

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

Relevance

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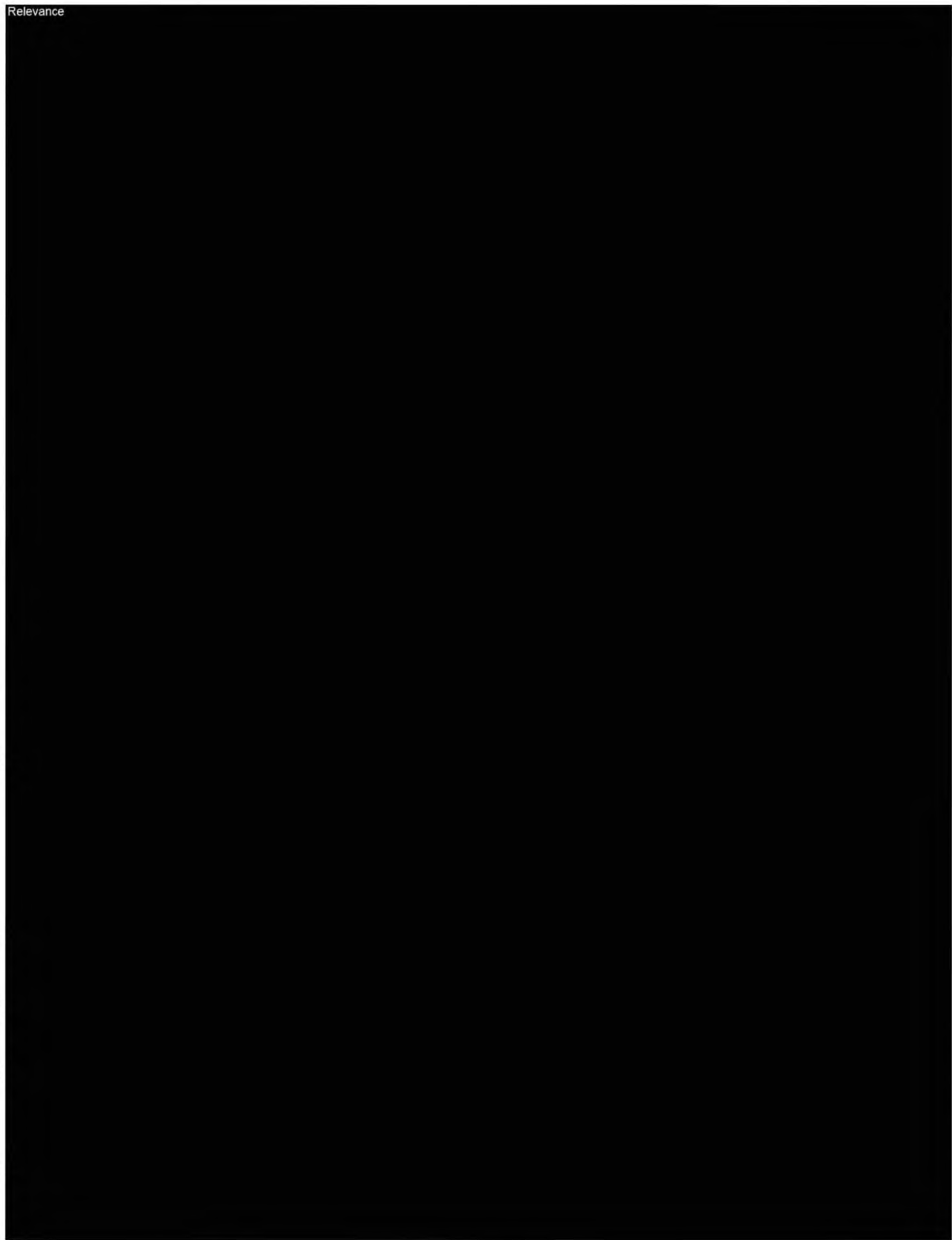
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69.18 Breaches of discipline: There are three reasons why the proposed findings as to potential breaches of discipline are not open to the Commissioner.

69.19 First, as a threshold issue, former officers cannot be subject to discipline under the *Victoria Police Act*.

69.20 Second, the proposed findings also have no utility because the *Victoria Police Act* creates a prescriptive investigative, inquiry and sanction process for potential breaches of discipline.

69.21 Third, the proposed findings are not open on the evidence. Considering the lack of relevant training and experience of the officers and the complexity of the issues they were faced with, there is no warrant for the findings proposed. Further, there was no breach of discipline arising from the failure to complain about others' conduct. An officer is only obliged under the *Victoria Police Act* to complain about another officer where the officer has an actual belief that another officer has engaged in misconduct. The evidence establishes that no officer had the requisite belief.

69.22 As it stands, Counsel Assisting's insufficiently substantiated assertions are exactly the type of "inexact proofs" Dixon J warned against in *Briginshaw*. Put shortly, Counsel Assisting's assertions do not stack up and cannot be accepted.

69.23

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Relevance

Alleged breaches of discipline

- 69.111 Counsel Assisting propose findings that the members' conduct may have constituted a "breach of discipline" under s 125 of the *Victoria Police Act 2013* (Vic) and/or "misconduct" under s 166 of that Act. These proposed findings concern both Mr Thomas²⁵³⁴ and Mr Cooper²⁵³⁵ and are said to arise from officers:
- (a) failing to take steps to disclose that Ms Gobbo was a police informer to Mr Thomas or Mr Cooper and/or their legal representatives;²⁵³⁶ or
 - (b) failing to take steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court;²⁵³⁷ or
 - (c) failing to report the misconduct of other officers when they were obliged to do so under provisions of the *Victoria Police Act* or its predecessor legislation.²⁵³⁸
- 69.112 These proposed findings are not open to the Commissioner for three reasons.
- 69.113 First, as a threshold issue, former officers cannot be subject to discipline under the *Victoria Police Act*, such that the proposed findings could never result in any disciplinary action. Therefore, the findings would have no utility. Findings with no purpose should never be made.
- 69.114 Second, the remaining proposed findings are not open on the evidence. Considering the lack of relevant training and experience of the officers and the complexity of the issues they were faced with, there is no warrant for a finding. Further, there was no breach of discipline arising from the failure to complain about others' conduct. An officer is only obliged under the *Victoria Police Act* to complain about another officer where the officer has an actual belief that another officer has engaged in misconduct. The evidence establishes that no officer had the requisite belief.

Statutory scheme of Part 7 and Part 9 of the *Victoria Police Act*

- 69.115 It is necessary as an initial step to identify and explain the statutory scheme of internal discipline created by the *Victoria Police Act*, as Counsel Assisting's submissions do not acknowledge or explain the position that the statutory terms "breach of discipline" or "misconduct" hold within that scheme.
- 69.116 Part 7 of the *Victoria Police Act* – titled "Discipline" – sets out a prescriptive process for the investigation, charging, hearing and sanction of breaches of discipline. Under the process, conduct that amounts only to a breach of discipline is dealt with as an internal matter by the Chief Commissioner according to the prescriptive statutory process.
- (a) *Preliminary investigation*: If the Chief Commissioner reasonably believes an officer may have committed a breach of discipline, the Chief Commission may begin an investigation of the matter.²⁵³⁹ During the investigation, the officer may be transferred, directed to take leave or suspended.²⁵⁴⁰

²⁵³⁴ Counsel Assisting Submissions Volume 2 at [1081].

²⁵³⁵ Counsel Assisting Submissions Volume 2 at [1935].

²⁵³⁶ Counsel Assisting Submissions Volume 1 at [512].

²⁵³⁷ Counsel Assisting Submissions Volume 1 at [512].

²⁵³⁸ Counsel Assisting Submissions Volume 1 at [520]. The identified provisions are s 167(3) of the *Victoria Police Act 2013* (Vic) and s 86L(2A) of the *Police Regulation Act 1958* (Vic).

²⁵³⁹ *Victoria Police Act 2013* (Vic), s 126(1). The Chief Commissioner may authorise another officer or person employed under the *Public Administration Act 2004* (Vic) to charge and inquire into and determine a charge: see *Victoria Police Act 2013* (Vic), s 130.

- (b) *Charging*: The Chief Commissioner may charge an officer with the commission of a breach of discipline if, after the preliminary investigation, the Chief Commissioner reasonably believes that the officer has committed a breach of discipline.²⁵⁴¹
- (c) *Potential offences*: If the preliminary investigation indicates that the officer has gone beyond a breach of discipline and may have committed an offence, then the Director of Public Prosecutions is involved in deciding whether to treat the matter as a breach of discipline or a criminal matter.²⁵⁴² The Chief Commissioner can also commence a criminal investigation into the matter if they reasonably believe the conduct amounts to a criminal offence.
- (d) *Inquiry into a charge*: Once an officer is charged, the Chief Commissioner or a person they authorise must inquire into and determine the charge.²⁵⁴³ The inquiry then proceeds according to certain statutory requirements.²⁵⁴⁴
- (e) *Determination and sanction*: If after considering all the submissions, the person conducting the inquiry finds that the charge has been proved, the person conducting the inquiry may determine to impose one or more sanctions. Those sanctions include a reprimand, adjourning the inquiry on condition of good behaviour, a fine, a period for which an officer is ineligible for promotion, reduction in rank or remuneration, transfer to other duties or dismissal from Victoria Police.²⁵⁴⁵

69.117 What constitutes a “breach of discipline” is defined in s 125(1). It is important to set the definition out in full to appreciate the breadth of matters captured:

- (1) A police officer or protective services officer commits a breach of discipline if he or she—
 - (a) contravenes a provision of this Act or the regulations; or
 - (b) fails to comply with a direction given under section 84 of the *Independent Broad-based Anti-corruption Commission Act 2011*; or
 - (c) fails to comply with the Chief Commissioner's instructions; or
 - (d) fails to comply with a direction given under Part 5; or
 - (e) refuses to consent to the use of evidence derived from a sample in the circumstances referred to in section 87; or
 - (f) fails to comply with a direction given under Division 1 of Part 9 of the *Independent Broad-based Anti-corruption Commission Act 2011*; or
 - (g) refuses to consent to the use of evidence derived from a sample in the circumstances referred to in section 174 of the *Independent Broad-based Anti-corruption Commission Act 2011*; or
 - (h) engages in conduct that is likely to bring Victoria Police into disrepute or diminish public confidence in it; or

²⁵⁴⁰ *Victoria Police Act 2013* (Vic), s 126(2).

²⁵⁴¹ *Victoria Police Act 2013* (Vic), s 127(1).

²⁵⁴² *Victoria Police Act 2013* (Vic), s 127(2)-(3).

²⁵⁴³ *Victoria Police Act 2013* (Vic), s 129.

²⁵⁴⁴ *Victoria Police Act 2013* (Vic), s 131.

²⁵⁴⁵ *Victoria Police Act 2013* (Vic), s 132(1).

- (i) fails to comply with a lawful instruction given by the Chief Commissioner, a police officer of or above the rank of senior sergeant or a person having the authority to give the instruction; or
- (j) is guilty of disgraceful or improper conduct (whether in his or her official capacity or otherwise); or
- (k) is negligent or careless in the discharge of his or her duty; or
- (l) without the approval of the Chief Commissioner—
 - (i) applies for or holds a licence or permit to conduct any trade, business or profession; or
 - (ii) conducts any trade, business or profession; or
 - (iii) accepts any other employment; or
- (m) acts in a manner prejudicial to the good order or discipline of Victoria Police; or
- (n) has been charged with an offence (whether under a Victorian law or under a law of another place) and the offence has been found proven.

69.118 It is evident from this definition that a breach of discipline goes beyond punishing misconduct in the course of duties to include matters that are peculiarly directed at maintaining personal standards and the efficient running of the police force. For example, it is a breach of discipline to engage in disgraceful or improper conduct outside an officer's duties²⁵⁴⁶ or to accept other employment without the approval of the Chief Commissioner.²⁵⁴⁷

69.119 Counsel Assisting refer also to "misconduct" as defined in s 166 of the *Victoria Police Act*. The provisions concerning "misconduct" are in Part 9 of the *Victoria Police Act*, which deals with complaints and is separate to the discipline regime set out in Part 7.

69.120 Engaging in misconduct, as defined in s 166, does not of itself constitute a breach of discipline. "Misconduct" is only relevant in so far as an officer is obliged, under s 167(3), to complain about another officer's conduct if they have "reason to believe that the other officer is guilty of misconduct". There are no statutory consequences that separately attach to an officer engaging in "misconduct".

Threshold issue: Former officers cannot be subject to discipline under the *Victoria Police Act*

69.121 The impugned conduct concerning Mr Thomas and Mr Cooper occurred prior to the commencement of the *Victoria Police Act*. As Counsel Assisting identify,²⁵⁴⁸ transitional provisions mean that except where an investigation or disciplinary action had been commenced under the previous Act, the discipline provisions of the *Victoria Police Act* are taken to apply to that conduct.²⁵⁴⁹

69.122 The discipline provisions in Part 7 of the *Victoria Police Act* are expressed only to apply to "police officers". Nothing in the statutory text indicates that these provisions might apply to a former officer. Nor do the provisions sensibly apply to former officers. For example, the sanctions for proven breaches of discipline in s 132(1) do not sensibly

²⁵⁴⁶ *Victoria Police Act 2013* (Vic), s 125(1)(j).

²⁵⁴⁷ *Victoria Police Act 2013* (Vic), s 125(1)(i).

²⁵⁴⁸ Counsel Assisting Submissions Volume 1 at [518]-[519].

²⁵⁴⁹ *Victoria Police Act 2013* (Vic), sch 6, cl 31-32.

apply to former officers, who cannot be transferred to other duties, have their remuneration reduced or be dismissed from Victoria Police.

- 69.123 That interpretation is confirmed by the fact that the *Victoria Police Act* expressly refers to “former police officers” or “former members” in circumstances where it is intended that the provisions apply to former officers of Victoria Police.²⁵⁵⁰ As a key example, the offences for unauthorised disclosure of confidential information gained in the performance of police duties understandably apply to both “members” and “former members” of Victoria Police.²⁵⁵¹
- 69.124 Therefore, the proposed findings cannot as a matter of law have any relevance to Mr Biggin, Mr O'Brien or Mr Ryan.
- 69.125 The only remaining current serving members about whom these findings could be made are Mr Kelly, Mr Bateson, Mr Flynn and Mr Rowe. However, for the reasons below, the proposed findings should not be made and are not open on the evidence.
- 69.126 For completeness, it is noted that former officers cannot be charged with a breach of discipline under the predecessor legislation, the *Police Regulation Act 1958* (Vic). The operative provisions of that Act were repealed when ss 278-286 of the *Victoria Police Act* (as passed) came into force. As set out above, conduct that occurred while the previous legislation was in force is to be disciplined under the *Victoria Police Act*.

Findings not open on the evidence

- 69.127 The proposed findings are not open on the evidence. The proposed findings as to breaches of discipline are said to arise from officers:
- (a) failing to take steps to disclose that Ms Gobbo was a police informer to Mr Thomas or Mr Cooper and/or their legal representatives;²⁵⁵²
 - (b) failing to take steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VSGO and then possibly a court;²⁵⁵³ or
 - (c) failing to report the misconduct of other officers when they were obliged to do so under provisions of the *Victoria Police Act* or its predecessor legislation.²⁵⁵⁴
- 69.128 In respect of the alleged disclosure failures, the evidence considered in detail in the sections above demonstrates that none of the conduct of current or former officers constitutes a breach of discipline. In respect of the failure to report misconduct, the obligation to disclose never arose because the officers did not believe other officers had engaged in misconduct.

Alleged disclosure failures

- 69.129 Counsel Assisting submit that the alleged disclosure failures amount to a breach of discipline because it is conduct likely to bring Victoria Police into disrepute or diminish public confidence in it, conduct that is disgraceful or improper, or conduct that shows the officers were negligent or careless in the discharge of their duties.²⁵⁵⁵
- 69.130 That assertion does not take account of the evidence before the Commission. Breaches of discipline must necessarily involve falling short of the standards expected

²⁵⁵⁰ See *Victoria Police Act 2013* (Vic), ss 104(1)(b), 205(1)(b), 207(c)(iii), 208(c)(ii) and 225-228.

²⁵⁵¹ *Victoria Police Act 2013* (Vic), ss 225 and 277-278.

²⁵⁵² Counsel Assisting Submissions Volume 1 at [512].

²⁵⁵³ Counsel Assisting Submissions Volume 1 at [512].

²⁵⁵⁴ Counsel Assisting Submissions Volume 1 at [520]. The identified provisions are s 167(3) of the *Victoria Police Act 2013* (Vic) and s 86L(2A) of the *Police Regulation Act 1958* (Vic).

²⁵⁵⁵ Counsel Assisting Submissions Volume 2 at [1081.1] and [1935.1].

of officers Victoria Police. When assessing an individual officer's conduct against the body of their peers, one must take account of extent – or lack – of resources, training and experience of the officers involved. It would be wrong for individual officers to be judged by criteria divorced from the circumstances in which they operated.

- 69.131 As the Tranche 2 submissions will identify, there were serious deficiencies in training and structural shortcomings that put officers in positions they were not prepared for. Nowhere were those organisational deficiencies and shortcomings more evident than in training and practice about disclosure generally and disclosure of human sources in particular.
- 69.132 The evidence before the Commission is that there was a lack of training concerning conflicts and limited training about legal professional privilege. The particular types of conflict created by a lawyer acting as a human source are difficult to understand and not something any officers had experienced in the course of their duties.
- 69.133 The evidence before the Commission demonstrate these officers worked incredibly hard under great pressure. While a number of them accept they would do things differently with the benefit of more experience and hindsight, none of these officers ever had any intention to act improperly.
- 69.134 The complexity of the scenario combined with serious organisational shortcomings meant the individuals were unfortunately not equipped to deal with the situations they were presented with.

Failure to complain about other officers' conduct

- 69.135 As considered above, "misconduct" under the *Victoria Police Act* is relevant only to the question of whether an officer is obliged to complain about the conduct of another officer. That said, failing to complain about another officer's conduct might be a breach of discipline where the *Victoria Police Act* obliges them to do so, as it is a breach of discipline for an officer to contravene a provision of the *Victoria Police Act*.²⁵⁵⁶
- 69.136 However, it is not open on the evidence for the Commissioner to find that any officers were obliged to complain about another officer's conduct. The relevant obligation requires that the officer actually believe that another officer has engaged in misconduct. The evidence demonstrates that no officer had the requisite belief in respect of any other officer's conduct in relation to either Mr Thomas or Mr Cooper.
- 69.137 The applicable principles are considered in the submissions concerning DS Kelly and DSC Rowe's obligations under the predecessor to the *Victoria Police Act*. The statutory language remains relevantly the same, so those principles are set out and applied below.
- 69.138 Under s 167(3) of the *Victoria Police Act*, a police officer is obliged to complain about another's conduct where they have "reason to believe that the other officer is guilty of misconduct":

A police officer or protective services officer must make a complaint to a police officer or protective services officer of a more senior rank to that officer, or to the IBAC, about the conduct of another police officer or protective services officer if he or she has reason to believe that the other officer is guilty of misconduct.

- 69.139 The particular formulation "reason to believe" was evidently chosen deliberately for s 167(3). It was carried over directly from the corresponding provision in predecessor

²⁵⁵⁶ *Victoria Police Act 2013* (Vic), s 125(1)(a).

legislation,²⁵⁵⁷ despite many other powers being recast or changed when the *Victoria Police Act* “re-enact[ed] and modernise[d]” the law governing police in Victoria.²⁵⁵⁸ No other statutory power or obligation in the *Victoria Police Act* is conditioned on there being “reason to believe”.

- 69.140 The statutory language “reason to believe” has established meaning. Unanimous High Court authority demonstrates that “reason to believe” requires, first and foremost, actual belief on the part of the decision-maker. In *Boucaut Bay Co Ltd (in liq) v The Commonwealth*, the High Court unanimously held that actual belief was required where the decision-maker needed “reason to believe” before terminating certain rights:²⁵⁵⁹

In my opinion, if at any time the Minister in the natural and ordinary course of his official duties acted on information of his trusted officers and formed a belief in the general terms mentioned in the latter part of the first paragraph of clause 15 that the contract was not being fairly carried out, he had power to terminate the contract without the formality of an inquiry. The one condition of his action is that he had reason to believe, and that implies actual belief.

- 69.141 Subsequent authority confirms that “reason to believe” requires both actual belief and that the actual belief be based on reasonable grounds.²⁵⁶⁰
- 69.142 The consequence of this is that the obligation to complain in s 167(3) is triggered only in circumstances where an officer actually believes that another officer is guilty of serious misconduct. If the officer forms that belief, then it must be on reasonable grounds. But if they do not form that belief, then the obligation is not triggered.
- 69.143 There is no evidence to indicate that any of the identified officers believed that their fellow officers engaged in misconduct.

²⁵⁵⁷ *Police Regulation Act 1958* (Vic), s 86L(2A)

²⁵⁵⁸ *Victoria Police Act 2013* (Vic), s 1(a).

²⁵⁵⁹ *Boucaut Bay Co Ltd (in liq) v The Commonwealth* (1927) 40 CLR 98, 106 (Isaacs ACJ; Gavan Duffy, Powers and Rich JJ agreeing) (emphasis added). Senior Counsel for the Commonwealth was Owen Dixon KC.

²⁵⁶⁰ *WA Pines Pty Ltd v Bannerman* (1980) 41 FLR 175, 186 (Lockhart J; Bowen CJ agreeing); *Hammond v Power* [2006] VSCA 25 [105] (Chernov JA; Maxwell P agreeing).

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

Appendix

Analysis of the evidence about Ms Gobbo

1 Introduction

- 1.1 There is a substantial body of evidence before the Royal Commission about Ms Gobbo and her conduct from the early 1990s.
- 1.2 Counsel Assisting have not drawn together that evidence in their submissions. It has been drawn together in this Appendix.
- 1.3 When read as a whole and chronologically, it can be seen that Ms Gobbo started mixing within drug circles from a young age and that she remained within such circles thereafter, joining the Mokbel and Williams drug enterprise.
- 1.4 Many members of Victoria Police gave evidence that Ms Gobbo appeared to be too close to her criminal clients. The evidence before the Commission shows that she was far more involved with her clients than was understood.
- 1.5 If the full picture had been known when members were dealing with Ms Gobbo as a lawyer and a source then she would have been approached differently and with far greater caution.

2 The start of Ms Gobbo's association with drug criminals and assisting police (1993-95)

- 2.1 In early 1993, Ms Gobbo, then a young University student, "*formed a friendship*"²⁵⁶¹ with a Mr Brian Wilson.
- 2.2 Mr Wilson was not only a "*user of drugs*", as downplayed in Ms Gobbo's affidavit to the Board of Examiners in 1997 when she was seeking admission to practice law,²⁵⁶² but in fact he was trafficking in drugs and had secreted a large amount of amphetamine in their house (**Rathdowne Street home**).²⁵⁶³
- 2.3 The latter of those facts was omitted from Ms Gobbo's affidavit to the Board of Examiners. Her affidavit was false and misleading in a number of other respects:
 - (a) Far from simply being a "*housemate*",²⁵⁶⁴ as stated to the Board of Examiners, Ms Gobbo and Mr Wilson lived together in a de facto relationship in their Rathdowne Street home, which they jointly owned from at least 1993 to 1995.²⁵⁶⁵
 - (b) Mr Wilson was running with a crew of career drug traffickers in the nightclub industry, whom Ms Gobbo told the Royal Commission were "*really people that held the liquor licences on behalf of organised criminals*".²⁵⁶⁶
 - (c) Although Ms Gobbo swore to the Board of Examiners that she had tipped off police about Mr Wilson's drug possession, she told the Royal Commission, "*I can categorically say that it wasn't me because I didn't know myself*".²⁵⁶⁷ Both statements made by her on oath were untrue. There is no evidence that Ms Gobbo tipped off police and there is evidence that she knew that Mr Wilson had

²⁵⁶¹ T244.44-T245.28; T12999.3-5 (Gobbo); Exhibit RC0015 – Affidavit to the Board of Examiners, 4 February 1997 at [8] (LAB.0001.0001.0002_0002).

²⁵⁶² Exhibit RC0015 – Affidavit to the Board of Examiners, 4 February 1997 at [9] (LAB.0001.0001.0002_0002).

²⁵⁶³ T13001.3-26 (Gobbo).

²⁵⁶⁴ Exhibit RC0015 – Affidavit to the Board of Examiners, 4 February 1997 at [8] (LAB.0001.0001.0002_0002).

²⁵⁶⁵ T12999.10-14; T13003.25-34; T13004.25-30 (Gobbo).

²⁵⁶⁶ T244.22-29 (Gobbo – Exhibit RC0787B) adopted in Ms Gobbo's evidence at T12997.45-T12998.6 (Gobbo).

²⁵⁶⁷ T245.33-39 (Gobbo – Exhibit RC0787B).

drugs in their home.²⁵⁶⁸ It seems likely that Ms Gobbo was as surprised as Mr Wilson when the police raided their home. The fact that drugs were found in Ms Gobbo's bedside drawer when the warrant was executed and that she was herself charged with drug offences and pleaded guilty indicates that rather than it being she who had alerted police, in fact, she was caught by police;

- (d) Further, there are police records showing that information about the activities at the Rathdowne Street home was provided to police by way of a CrimeStoppers report on 19 August 1993.²⁵⁶⁹ Mr Michael Holding, then a Sergeant, contacted the person who had made the report to CrimeStoppers and obtained his assistance;²⁵⁷⁰
- (e) Mr Holding's evidence to the Royal Commission was that he invited Ms Gobbo to make a statement against Mr Wilson but that she declined to do so;²⁵⁷¹
- (f) A cigarette packet containing amphetamine and cannabis was found in Ms Gobbo's bedroom in her chest of drawers, in addition to the large amount of amphetamine found in their living space.²⁵⁷² (Then) Sergeant Trevor Ashton conducted the search of Ms Gobbo's bedroom and made notes of his conversation with Ms Gobbo, including "*purchase April '93. \$100 – 10gms.*"²⁵⁷³ (Now) Acting Superintendent Ashton gave evidence that he believed "*\$100 – 10gms*" was a reference to Ms Gobbo telling him the purchase price of methamphetamine at that time;²⁵⁷⁴
- (g) Not only did Ms Gobbo fail to tell the Board of Examiners about the cannabis and amphetamine in her drawer in September 1993, her Affidavit to the Board positively asserted that:
 - (i) although she had "*experimented*" with marijuana at university parties on two occasions in 1991 and 1992, she had not used marijuana or any other illegal drugs since those occasions;²⁵⁷⁵
 - (ii) she had only pleaded guilty to two counts of possession of drugs and one count of use of drugs because she was advised that she was deemed liable as the owner and occupier of the premises at which the drugs were found;²⁵⁷⁶
- (h) Those assertions were untrue. Ms Gobbo now admits she had used amphetamines and, despite the intimation in her affidavit, she had pleaded guilty to charges relating to both amphetamine and cannabis;²⁵⁷⁷
- (i) Further, Ms Gobbo had known where a large amount of amphetamine was hidden in a concealed cavity in the laundry and took police to that hiding place in

²⁵⁶⁸ Exhibit RC0008 – Statement of Assistant Commissioner Neil Paterson APM, 22 March 2019 at [3.15] (VPL.0014.0005.0001 at .0008).

²⁵⁶⁹ There was a CrimeStoppers report on 19 August 1993 concerning a suspicion that Mr Wilson, living at the Rathdowne Street home was a drug trafficker: See Exhibit RC0021 – Letter of Commendation to Mr Michael Holding, 8 December 1993 (VPL.0005.0007.0129 at .0130).

²⁵⁷⁰ Exhibit RC0021 – Letter of Commendation to Mr Michael Holding, 8 December 1993 (VPL.0005.0007.0129 at .0130).

²⁵⁷¹ Exhibit RC0020 – Statement of Mr Michael Holding, 27 March 2019 at [20]-[22] (VPL.0014.0009.0001 at .0003).

²⁵⁷² T13000.29-44 (Gobbo); Exhibit 28 – Statement of Inspector Trevor Ashton, 21 March 2019 at [11] (VPL.0014.0002.0001 at .0002).

²⁵⁷³ Exhibit RC0029 – Diary and daybook of Inspector Trevor Ashton, 3 September 1993 (VPL.0002.0002.0004 at .0007).

²⁵⁷⁴ T575.12-22 (T Ashton).

²⁵⁷⁵ Exhibit RC0015 – Affidavit to the Board of Examiners, 4 February 1997 at [13] to [14] (LAB.0001.0001.0002 at .0003).

²⁵⁷⁶ Exhibit RC0015 – Affidavit to the Board of Examiners, 4 February 1997 at [11] to [12] (LAB.0001.0001.0002 at .0002-0003).

²⁵⁷⁷ T13000.36-44 (Gobbo).

her Rathdowne Street home.²⁵⁷⁸ Ms Gobbo told the Royal Commission in March 2019 that she had no idea the drugs were concealed there. That was untrue. She conceded in her evidence in February 2020 that she had in fact led police to the concealed cavity containing the drugs;²⁵⁷⁹

- (j) Ms Gobbo's affidavit to the Board of Examiners made no mention of amphetamines having been found at all. Police found in her Rathdowne Street home:²⁵⁸⁰
 - (i) a quantity of amphetamines with a 1993 street value of \$82,000;
 - (ii) a quantity of cannabis with a 1993 street value of \$3,000; and
 - (iii) a large quantity of stolen property and a number of prescribed weapons.
- (k) Among her other lies, Ms Gobbo told the Board of Examiners:

*The police frightened me a lot, both during the interview process and about the possibility of being picked up for marijuana use in future.*²⁵⁸¹
- (l) Quite to the contrary, but consistent with many other accounts of Ms Gobbo, Mr Holding gave evidence that he found her to be "very confident and opinionated" and that "she thought the process was like a game".²⁵⁸²
- (m) Two years later, in 1995, Ms Gobbo wanted to get rid of Mr Wilson, who was her criminal associate and boyfriend, and so she rang police to tell them of his drug use and drug trafficking and that he had a gun. A warrant was then executed on their Rathdowne Street home in April 1995 and he was arrested.²⁵⁸³

- 2.4 It is clear from the omission of the key matters set out above, that Ms Gobbo, in her affidavit to the Board of Examiners, sought to deceive the Board as to the true extent of her relationship with Mr Wilson and involvement with drugs.²⁵⁸⁴ A letter from Ms Gobbo to the Board of Examiners similarly made no effort to clarify these matters, notwithstanding her acknowledging that "full disclosure" to the Board of Examiners was required by an applicant for admission.²⁵⁸⁵
- 2.5 In July 1995, in connection with the information she provided to police in order to end her relationship with Mr Wilson, Ms Gobbo was registered as a human source for the first time.²⁵⁸⁶
- 2.6 Detective Senior Sergeant Tim Argall (then a Constable), one of the officers who registered Ms Gobbo at that time, described her as "enthusiastic" in wanting to assist police in relation to Mr Wilson.²⁵⁸⁷
- 2.7 There were plans for Ms Gobbo to introduce an undercover operative to Mr Wilson as part of Operation Scorn, but ultimately, that operation was cancelled on 5 March 1996 by (then) Detective Senior Sergeant Jack Blayney, who described Ms Gobbo at the time

²⁵⁷⁸ T13000.29-44, T13001.5 (Gobbo); Exhibit RC0028 – Statement of Inspector Trevor Ashton at [12] (VPL.0014.0002.0001 at .0002); See also, T13000.34 (Gobbo).

²⁵⁷⁹ T130001.3-12 (Gobbo).

²⁵⁸⁰ Exhibit RC0021 – Letter of Commendation to Mr Michael Holding, 8 December 1993 (VPL.0005.0007.0129 at .0129).

²⁵⁸¹ Exhibit RC0015 – Affidavit to the Board of Examiners, 4 February 1997 at [14] (LAB.0001.0001.0002 at .0002-0003).

²⁵⁸² Exhibit RC0020 – Statement of Mr Michael Holding, 27 March 2019 at [23] (VPL.0014.0009.0001 at .0003).

²⁵⁸³ T13004.32-35 (Gobbo).

²⁵⁸⁴ Ms Gobbo accepts that the affidavit was misleading because of the material omitted at T13004.46-47.

²⁵⁸⁵ Exhibit RC0014 – Application for admission to the Supreme Court of Victoria, 30 January 1997 (LAB.0001.0001.0008).

²⁵⁸⁶ Exhibit RC0030 – Registration of human source, undated (VPL.0005.0007.0088).

²⁵⁸⁷ T700.11-13 (Argall).

as a “*loose cannon*” in a Progress Report for Operation Scorn.²⁵⁸⁸ DSS Blayney was responsible, at the time, for managing Victoria Police’s undercover investigations across the state.²⁵⁸⁹

- 2.8 (Now) Assistant Commissioner Blayney gave evidence that he believed, based on the Progress Report, that he had discussed the operation with Ms Gobbo’s controller at the time and, as a result of that discussion, decided to cancel the undercover job. He gave evidence that he expected that he would have known Ms Gobbo’s identity as a human source only because the controller had disclosed her identity in the context of raising concerns as to her reliability.²⁵⁹⁰ As Assistant Commissioner Neil Paterson explained in his evidence to the Royal Commission, the use of undercover members is high risk PII²⁵⁹¹
- 2.9 DSS Argall was asked under cross-examination about his observations of Ms Gobbo at that time. His impression was not that she was a “loose cannon” but rather that she was getting “*too far ahead of herself*” in that she was eager to participate and excited about the prospect of an undercover operative.²⁵⁹² DSS Argall’s evidence was that Operation Scorn was abandoned because of a lack of credible information provided by Ms Gobbo.²⁵⁹³
- 2.10 That was the first occasion on which Ms Gobbo sought to assist police. It seems that she was motivated by a desire to end her relationship with a criminal associate, who was also her boyfriend. That is also what motivated her to offer assistance to police a decade later in 2005. She wanted to end her relationship then with other very dangerous drug criminals.

3 Socialising with criminal clients as a junior lawyer (1997-98)

- 3.1 In February 1997,²⁵⁹⁴ Ms Gobbo commenced working for Solicitor 1, having approached him while he was attending at her workplace, Molomby & Molomby Solicitors, where she told him she wanted to work at his firm.²⁵⁹⁵ His firm was a well-known criminal law firm. Ms Gobbo was admitted to practice in April 1997.²⁵⁹⁶
- 3.2 In his statement to the Royal Commission, Solicitor 1 explained how Ms Gobbo quickly made clear to him that her sole interest was in criminal law and that she soon began dealing directly with clients of the firm.²⁵⁹⁷ He further stated the following:

About six months into Ms Gobbo’s employment I was concerned about her socialising with clients of the firm and the police, in particular that she was socialising with them outside work hours and whether this created the right impression. I was aware that people were gossiping about her.

²⁵⁸⁸ T10195.47 (Blayney); T13006.22-33 (Gobbo); Exhibit RC0069B – Statement of Assistant Commissioner John (Jack) Blayney, 27 March 2019 at [8]-[9], [14] (VPL.0014.0010.0001 at .0003-0004); Exhibit RC0070 – Operation Scorn progress report, 5 March 1996 (VPL.0005.0007.0122).

²⁵⁸⁹ Exhibit RC0069 – Statement of Assistant Commissioner John (Jack) Blayney, 27 March 2019 at [10] (VPL.0014.0010.0001 at .0003).

²⁵⁹⁰ Exhibit RC0069 – Statement of Assistant Commissioner John (Jack) Blayney, 27 March 2019 at [14]-[16] (VPL.0014.0010.0001 at .0004); T10195.46-T10196.16 (Blayney).

²⁵⁹¹ Exhibit RC0008 – Statement of Assistant Commissioner Neil Paterson, 22 March 2019 at [3.27] (VPL.0014.0005.0001 at .0009-0010).

²⁵⁹² T673.41-T674.6 (Argall).

²⁵⁹³ Exhibit RC0054 – Statement of Detective Senior Sergeant Tim Argall, 27 March 2019 at [30] (COM.0037.0001.0001 at .0007).

²⁵⁹⁴ Exhibit RC0158 – Fax from Ms Nicola Gobbo to the Law Institute of Victoria, 6 February 1997 (LSB.0001.0036).

²⁵⁹⁵ Exhibit RC0972B – Statement of Solicitor 1, 20 May 2019 at [1] (COM.0053.0001.0001).

²⁵⁹⁶ Exhibit RC0019 – Certificate of Admission of Ms Nicola Gobbo, 7 April 1997 (LAB.0001.0001.0001_0001).

²⁵⁹⁷ Exhibit RC0972B – Statement of Solicitor 1, 20 May 2019 at [7], [9] (COM.0053.0001.0001).

Ms Gobbo appeared to be socialising with clients outside of work hours at restaurants, nightclubs and Crown Casino.

- 3.3 At that time, Ms Gobbo was only a first-year solicitor. It appears that the lifestyle that she had at University – associating with people involved in crime – had continued on after she was admitted to the legal profession.
- 3.4 Ms Gobbo told SDU handlers that as early as 1996 or 1997, she had started acting for and socialising with Jack Doumani, an underworld figure and associate of Tony Mokbel. She said that he had been loyal to her (whatever that means) since that time.²⁵⁹⁸
- 3.5 Persons 1 and 2 were clients of Solicitor 1's firm. Person 1 told Wayne Strawhorn, then a Detective Senior Sergeant, that he ^{PII} [REDACTED] to Ms Gobbo and ^{PII} [REDACTED] ^{PII} [REDACTED],²⁵⁹⁹ indicating that Ms Gobbo knew him prior to her commencing work at Solicitor 1's firm. Ms Gobbo also told the Royal Commission that she had socialised with Person 2 ^{PII} [REDACTED] for whom she also acted during her employment at Solicitor 1's firm.²⁶⁰⁰
- 3.6 Further, Ms Gobbo's evidence to the Royal Commission was that she had socialised with other clients of Solicitor 1's firm,²⁶⁰¹ including John Higgs, a significant criminal involved in the drug trade and a senior member of an outlaw motorcycle gang.²⁶⁰²
- 3.7 Mr Lim, then a Detective Senior Constable, gave evidence that, when he met Ms Gobbo in July 1998, he was shocked when she told him and Officer Kruger that she was in possession of a large quantity of amphetamine belonging to Peter Reid who was a client of Solicitor 1's firm.²⁶⁰³ DSC Lim asked her why she had his drugs and Ms Gobbo said that she was making herself trustworthy.²⁶⁰⁴
- 3.8 In evidence to the Royal Commission, Ms Gobbo agreed that she had crossed the line into socialising and becoming friends with her clients, right from those early days in the late 1990s as a newly admitted solicitor all the way through to her registration in 2005.²⁶⁰⁵ Ms Gobbo had crossed the line, however, prior to becoming a solicitor she was already involved with drugs and criminals. That simply grew through her work at Solicitor 1's firm and then through her work as a barrister.

4 Dealings with a corrupt Drug Squad member (1998)

- 4.1 Ms Gobbo gave evidence that from early 1998, she met regularly with Mr Strawhorn, then a Detective Senior Sergeant,²⁶⁰⁶ usually at a café in South Melbourne.²⁶⁰⁷
- 4.2 Former DSS Strawhorn was at that time a member of the Drug Squad.²⁶⁰⁸ He was a corrupt member who had his own associations with drug criminals.²⁶⁰⁹ He was convicted of selling drugs to underworld criminal Mark Moran who was later executed during the gangland war by his drug-trafficking rival Carl Williams.²⁶¹⁰ Ms Gobbo said that she was in awe of Mr Strawhorn.²⁶¹¹

²⁵⁹⁸ Exhibit RC0281 – ICR3838 (031), 5 June 2006 (VPL.2000.0003.1871 at .1874).

²⁵⁹⁹ T1092.13-16 (Strawhorn).

²⁶⁰⁰ T13043.24-30 (Gobbo).

²⁶⁰¹ T13043.27-47 (Gobbo).

²⁶⁰² T13745.7-15 (Gobbo).

²⁶⁰³ T958.46 to T959.6 (Lim); Exhibit RC0074 – Statement of Mr Christopher Lim, 15 April 2019 at p 2 (COM.0039.0001.0001).

²⁶⁰⁴ Exhibit RC0074 – Statement of Mr Christopher Lim, 15 April 2019 at p 2 (COM.0039.0001.0001).

²⁶⁰⁵ T13745.17-22 (Gobbo).

²⁶⁰⁶ T13029.18-23 (Gobbo).

²⁶⁰⁷ T13028.30-35 (Gobbo).

²⁶⁰⁸ Exhibit RC0080B – Statement of Mr Wayne Strawhorn dated 18 April 2019 at [6(f)] (COM.0040.0001.0002)

²⁶⁰⁹ T11328.15-18; T1132827-30 (Overland).

²⁶¹⁰ T11328.20-25 (Overland).

- 4.3 It is likely, on the evidence as a whole, that Ms Gobbo and Mr Strawhorn knew of each other through moving in similar circles.
- 4.4 Mr Strawhorn's evidence was that his only contact with Ms Gobbo as a human source was when he facilitated her introduction to (then) Detective Senior Constable Pope of the Asset Recovery Squad.²⁶¹² He was aware that she had supplied information to Officer Kruger about the alleged criminal activities of Solicitor 1.²⁶¹³ He otherwise met with her in relation to one of her clients, [REDACTED],²⁶¹⁴ and in relation to other matters, about which he spoke to her in her capacity as a barrister.²⁶¹⁵
- 4.5 Ms Gobbo's evidence was consistent to the extent that she also said she did discuss a particular client with Mr Strawhorn, in a professional capacity. She was advising that client [REDACTED].²⁶¹⁶

5 Approach by Ms Gobbo to police about Solicitor 1 (1998)

- 5.1 The evidence establishes that it was Ms Gobbo who approached police to provide information about Solicitor 1.
- 5.2 Based on the nature of the information that Ms Gobbo provided, she clearly regarded Solicitor 1 as an associate of their criminal clients. According to her, Solicitor 1 had business dealings with the firm's clients and was laundering money for them through the firm.
- 5.3 This is yet another example of Ms Gobbo passing on information to authorities about other criminal associates she knew. Given her eagerness to pass this information on – first to Victoria Police and then to other agencies – it is likely that she saw something to gain for herself. That also appears to have been the assessment of the AFP agents who dealt with her, as addressed in the section below.
- 5.4 Ms Gobbo's evidence that it was Mr Strawhorn who approached her and told her about Solicitor 1's conduct should be rejected as either false or only half the story.²⁶¹⁷
- 5.5 First, her evidence is self-serving and not corroborated.
- 5.6 Secondly, it is inconsistent with her own evidence that her 2 February 1998 note is a note of a meeting with Officer Kruger and DSS Bowden and that it records matters that they told her, namely the matters about Solicitor 1.²⁶¹⁸
- 5.7 Thirdly, her evidence is contradicted by Officer Kruger who was an honest and reliable witness. He recalled Ms Gobbo telling him, at some stage, about the matters concerning Solicitor 1.²⁶¹⁹
- 5.8 Officer Kruger was asked about Ms Gobbo's note purportedly made on 2 February 1998. His evidence was that it could not be a record of him telling Ms Gobbo about Solicitor 1 because he was not in a position to know those matters.²⁶²⁰ However, Ms Gobbo plainly was in a position to know those matters because she worked for Solicitor 1. Further, Officer Kruger has a note of the same date recording a meeting with

²⁶¹¹ T13029.44-T13030.6 (Gobbo).

²⁶¹² Exhibit RC0080B – Statement of Mr Wayne Strawhorn at [11(f)], [17] (COM.0040.0001.0002_0003 and _0005)

²⁶¹³ Exhibit RC0080B – Statement of Mr Wayne Strawhorn at [16] (COM.0040.0001.0002_0005); T1091.36-39 (Strawhorn).

²⁶¹⁴ Exhibit RC0080B – Statement of Mr Wayne Strawhorn at [11]-[12] (COM.0040.0001.0002_0002 to 0004)

²⁶¹⁵ Exhibit RC0080B – Statement of Mr Wayne Strawhorn at [13]-[15] (COM.0040.0001.0002_0004 to 0005)

²⁶¹⁶ T13028.21-28 (Gobbo)

²⁶¹⁷ T13007.44-T13008.10 (Gobbo).

²⁶¹⁸ T13003.21-36 (Gobbo).

²⁶¹⁹ Exhibit RC0064 – Statement of Officer 'Kruger', 28 March 2019 at [16] (VPI.0014.0012.0001 at .0003).

²⁶²⁰ T1385.27-38 (Kruger).

solicitors in relation to Operation Carron (an operation that had targeted a syndicate trafficking heroin).²⁶²¹ Officer Kruger cannot recall this meeting. If it is a note of a meeting with Ms Gobbo then it does not record him asking Ms Gobbo about Solicitor 1's involvement in money laundering.²⁶²²

- 5.9 Fourthly, DSS Bowden's evidence was that he had no memory of approaching Ms Gobbo for information about Solicitor 1's criminal activities.²⁶²³
- 5.10 Mr Strawhorn gave evidence about this issue. While acknowledging that his evidence should generally be approached with caution, he said that he had never heard of Officer Kruger and DSS Bowden approaching Ms Gobbo for information about Solicitor 1.²⁶²⁴

6 Approach by Ms Gobbo to the AFP about Solicitor 1 (1998)

- 6.1 Around this same time, Ms Gobbo started speaking to members of the Australian Federal Police.
- 6.2 The AFP met with her between April and July 1998. The AFP agents decided not to register her as a human source. They made that decision *not* because she was a lawyer. They considered her to be untrustworthy because, in their assessment, she was making out that she wished to assist with information, when, in truth, she was trying to ascertain information from them. The evidence is as follows.²⁶²⁵
- 6.3 On 13 May 1998, Ms Gobbo contacted the AFP and spoke to an officer about "recruiting details".²⁶²⁶ She complained that she had called the AFP officer three weeks earlier but had received no response. She went on to say (apparently with a degree of familiarity) that she had not seen the officer around Caterina's and asked when they would next be there as she had some "issues she wished to discuss". They arranged to meet the following evening.²⁶²⁷
- 6.4 The next evening, 14 May 1998, Ms Gobbo met with AFP officers, Federal Agent 1 and Federal Agent 2, at Caterina's. They moved on to the Celtic Club at 8 pm, where she stayed with the officers until midnight. During the evening, she alluded to the possibility that she could provide information to the AFP.²⁶²⁸ She also:
- (a) "expressed concern that she not be ID'd in records and official diaries and notes";
 - (b) "continue[d] to allude to possible info & express concern of records kept"; and
 - (c) "mentioned fear of LD's [listening devices] in her house".
- 6.5 Further meetings were then held on 15 and 16 May 1998.²⁶²⁹
- 6.6 On 21 May 1998, Federal Agent 1 spoke to Ms Gobbo again regarding an earlier request by her for a meeting. She was told the meeting would have to be brief. The police notes record that Ms Gobbo responded that "she would probably be able to have

²⁶²¹ T1380.35-41 (Kruger).

²⁶²² T1381.1-8 (Kruger).

²⁶²³ T1051.1-T1053.16 (Bowden);

²⁶²⁴ T1091.3-21 (Strawhorn).

²⁶²⁵ Exhibit RC0794B – Enclosures to letter from AFP to the RCMP (AFP.0001.0002.0041).

²⁶²⁶ T13009.29-34; T13009.47-T13010.1; T13010.19-21 (Gobbo); Exhibit RC0794B – Enclosures to letter from AFP to the RCMP, various dates (AFP.0001.0002.0041 at .0013).

²⁶²⁷ Exhibit RC0794B – Enclosures to letter from AFP to the RCMP, various dates (AFP.0001.0002.0041 at .0013).

²⁶²⁸ T13010.23-27; T13010.34-36 (Gobbo); Exhibit RC0794B – Enclosures to letter from AFP to the RCMP, various dates (AFP.0001.0002.0041 at .0017).

²⁶²⁹ Exhibit RC0794B – Enclosures to letter from AFP to the RCMP (AFP.0001.0002.0041 at .0017).

a short meeting with [Federal Agents 1 and 2], just as a trust building exercise. (Laughed)."²⁶³⁰

- 6.7 Ms Gobbo called the AFP back later in the afternoon and insisted she wanted to meet for two to three hours. Federal Agent 1's note²⁶³¹ records:

16.25: [Federal Agent 1] Received call from Gobbo to AFP mobile phone. Short discussion about meeting that evening. She stated that she was happy to meet where ever AFP wanted. She identified the fact that she had a hard day. She wanted to meet for 2-3 hour period. I identified that this was not possible due to commitments. She said she could meet at 5.45 pm but did not want to meet for only fifteen minutes. I stated to her that if she intended to 'compromise' the AFP I would not be interested. She claimed that this was not the case. She claimed that she did not wish to be compromised by the AFP either. She then suggested that we ([Federal Agents 1 & 2]) meet sometime next week. I asked her if she had court commitments during the week to which she said everyday. I suggested we meet during her lunch break. She agreed.

- 6.8 Federal Agent 1's note for the following day, 22 May 1998,²⁶³² records that Ms Gobbo called him again and said, amongst other things, that she had information to provide.
- 6.9 In June 1998, Ms Gobbo met two further federal agents, Federal Agent 3 and Federal Agent 4, involved in a committal proceeding in which she was acting. During the committal, she telephoned one of those agents and told him that she had information to provide to the AFP. She met with Federal Agents 3 and 4 on 30 June 1998 to provide information to them about Solicitor 1's criminal activities.²⁶³³
- 6.10 Ms Gobbo's note of the meeting records that she also talked to the AFP agents about Mr Higgs, Mr Mokbel and others.²⁶³⁴ Her notes have not been corroborated.
- 6.11 Based on the AFP documents tendered, the final meeting between Ms Gobbo and the AFP was on 7 July 1998 when she met with Federal Agents 3 and 4 at a hotel in East Melbourne.²⁶³⁵

7 Ms Gobbo's dealings with the NCA about Solicitor 1 (1998)

- 7.1 In September 1998, Ms Gobbo commenced the Victorian Bar Readers' Course. She signed the Bar Roll in November 1998.²⁶³⁶
- 7.2 Leading up to the start of the Bar Readers' Course and during it, her desire to provide information about Solicitor 1 remained. Her motivation for having him investigated is not apparent on the evidence. There are a lot of possibilities: she may have been wanting to eliminate professional competition or she may have seen it as an opportunity to build a relationship with police in order to get information that assisted her and her associates.

²⁶³⁰ Exhibit RC0794B – Enclosures to letter from AFP to the RCMP (AFP.0001.0002.0041 at .0004).

²⁶³¹ Exhibit RC0794B – Enclosures to letter from AFP to the RCMP (AFP.0001.0002.0041 at .0004).

²⁶³² Exhibit RC0794B – Enclosures to letter from AFP to the RCMP (AFP.0001.0002.0041 at .0004).

²⁶³³ T13011.35 to T13012.21 (Gobbo). Exhibit RC0794B – Enclosures to letter from AFP to the RCMP (AFP.0001.0002.0041 at .0014-0015).

²⁶³⁴ T13012.26 to T13013.17 (Gobbo).

²⁶³⁵ T13014 to T13015 (Gobbo).

²⁶³⁶ T13020.15-18 (Gobbo).

- 7.3 On 21 July 1998, Ms Gobbo met Officer Kruger and Detective Senior Constable Chris Lim. Officer Kruger recalled some issue between DSC Lim and Ms Gobbo in that one or both of them had reservations about the other.²⁶³⁷
- 7.4 Mr Lim gave evidence that, at the time he met Ms Gobbo, he was aware of her reputation for socialising with police and spending time in nightclubs.²⁶³⁸ On meeting her, his impression was that she was a “dishonest and untrustworthy person”.²⁶³⁹ He found her to be very eager to provide information²⁶⁴⁰ and sensed that she was “playing both sides” by wanting to get information from police to pass onto her clients.²⁶⁴¹
- 7.5 DSC Lim’s last observation was right. Ms Gobbo admitted in evidence that she was trying to get information out of police officers.²⁶⁴²
- 7.6 Whilst Officer Kruger cannot recall doing so, it appears from documentary evidence that he or another member directed Ms Gobbo to the National Crime Authority (NCA) in relation to her money laundering allegations about Solicitor 1.²⁶⁴³
- 7.7 According to notes Ms Gobbo has provided to the Royal Commission, she met with an NCA officer on 8 September 1998,²⁶⁴⁴ 29 September 1998,²⁶⁴⁵ 30 September 1998,²⁶⁴⁶ 16 October 1998,²⁶⁴⁷ 21 October 1998,²⁶⁴⁸ and 9 November 1998.²⁶⁴⁹ According to Ms Gobbo, she provided information about Solicitor 1 during these meetings.
- 7.8 There is documentary evidence that corroborates that Ms Gobbo did meet with the NCA for the purpose of providing information about Solicitor 1.²⁶⁵⁰ Her notes of the meetings should not be accepted as accurate unless they have been corroborated by the NCA members or otherwise.

8 Dealings with the Asset Recovery Squad about Solicitor 1 (1999)

- 8.1 Moving into 1999, Ms Gobbo persisted in offering information about Solicitor 1.
- 8.2 On 27 April 1999, the matter was referred to (then) Detective Senior Constable Jeff Pope of the Asset Recovery Squad.²⁶⁵¹
- 8.3 DSC Pope then met with a number of police about the matter. He spoke to Detective Sergeant Gavan Segrave of the Asset Recovery Squad and then with Mr Strawhorn and Officer Kruger. He also met with Detective Acting Inspector Curran and Mr Roger Jeans, a solicitor with the Asset Recovery Squad.²⁶⁵²

²⁶³⁷ Exhibit RC0064 – Statement of Officer ‘Kruger’, 28 March 2019 at [21] (VPL.0014.0012.0001 at .0004); T843.40-T844.5 (Pope).

²⁶³⁸ T967.35-T968.16 (Lim); Exhibit RC0074 – Statement of Mr Christopher Lim, 15 April 2019 at p 1 (COM.0039.0001.0001).

²⁶³⁹ Exhibit RC0074 – Statement of Mr Christopher Lim, 15 April 2019 at p 2 (COM.0039.0001.0001).

²⁶⁴⁰ T958.41-44 (Lim). Exhibit RC0074 – Statement of Christopher Lim, dated 15 April 2019, p 2 (COM.0039.0001.0001).

²⁶⁴¹ T969.22-25 (Lim).

²⁶⁴² T13138.20-28 (Gobbo).

²⁶⁴³ Exhibit RC0064 – Statement of Officer ‘Kruger’, 28 March 2019 at [17]-[20] (VPL.0014.0012.0001 at .0003-0004); Exhibit RC0068 – Information Report HDIR0176 (VPL.0005.0022.0331); Exhibit RC0067A – Diary of Officer Kruger, 21 July 1998 (VPL.0005.0007.0140 at .0146).

²⁶⁴⁴ Untendered Court Book of Ms Nicola Gobbo, 8 September 1998 (MIN.0002.0001.0005_0022 at _0097).

²⁶⁴⁵ Untendered Court Book of Ms Nicola Gobbo, 29 September 1998 (MIN.0002.0001.0005_0022 at _0098).

²⁶⁴⁶ Untendered Court Book of Ms Nicola Gobbo, 30 September 1998 (MIN.0002.0001.0005_0022 at _0098).

²⁶⁴⁷ Untendered Court Book of Ms Nicola Gobbo, 16 October 1998 (MIN.0002.0001.0005_0022 at _0099).

²⁶⁴⁸ Untendered Court Book of Ms Nicola Gobbo, 21 October 1998 (MIN.0002.0001.0005_0022 at _0099).

²⁶⁴⁹ Untendered Court Book of Ms Nicola Gobbo, 9 November 1998 (MIN.0002.0001.0005_0022 at _0100).

²⁶⁵⁰ Exhibit RC0033 – Information Report FEIR1056, 12 May 1999 (VPL.0005.0007.0193).

²⁶⁵¹ T712.1-35 (Pope); Exhibit 63 – Diary of Mr Jeffrey Pope, 27 April 1999 (VPL.0005.0007.0164 at .0164).

²⁶⁵² T712.39-T713.42 (Pope); Exhibit RC0063 – Diary of Mr Jeffrey Pope, 28 April 1999 (VPL.0005.0007.0164 at .0164).

- 8.4 On 12 May 1999, Mr Strawhorn and Officer Kruger introduced Ms Gobbo to DSC Pope and DS Segrave.²⁶⁵³ An Information Report was prepared recording that that Solicitor 1 was the subject of the information Ms Gobbo sought to provide.²⁶⁵⁴
- 8.5 On 13 May 1999, DSC Pope completed an Informer Registration Application, which was approved by DS Segrave on 19 May 1999, registering Ms Gobbo as a human source.²⁶⁵⁵ That form contained a note made by DS Segrave that Ms Gobbo had no known history of supplying information to law enforcement agencies. Mr Pope and Mr Segrave did not know that Ms Gobbo had been registered in 1995 for the purpose of providing information about her de facto and criminal associate, Mr Wilson. Mr Pope said in evidence that he believed that the only knowledge they had at the time was of her speaking to the Drug Squad before being referred onto him.²⁶⁵⁶ Mr Segrave gave evidence that he did not know that Ms Gobbo had provided information to the Drug Squad.²⁶⁵⁷
- 8.6 Between May and September 1999, Ms Gobbo met with DSC Pope to provide information.²⁶⁵⁸
- 8.7 In evidence, Mr Pope recalled having meetings with Ms Gobbo. His recollection was that the information she provided was of no investigative value.²⁶⁵⁹
- 8.8 Mr Pope recalled that the information mainly related to Solicitor 1 and his alleged involvement with clients in money laundering. He was not aware of the names of the clients allegedly involved, until further investigation was undertaken.²⁶⁶⁰ If Ms Gobbo was acting for any of those clients, he did not know that fact.²⁶⁶¹
- 8.9 On 1 October 1999, Mr Pope prepared an Information Report about a meeting with Ms Gobbo recording that no useful information was provided.
- 8.10 On 3 January 2000, DS Segrave recommended that Ms Gobbo's registration be reclassified as 'inactive' because investigators had had no contact with Ms Gobbo in months and a final report for the investigation into Solicitor 1, called Operation Ramsden, was shortly to be submitted.²⁶⁶²
- 8.11 The operation came to an end without charges.²⁶⁶³

9 Dealings with a member charged with drug offences (1999)

- 9.1 At the end of 1999, Ms Gobbo was in a relationship with Stephen Campbell who was a Detective Senior Constable.²⁶⁶⁴ She met him when he was the informant in a

²⁶⁵³ T13033.22-35 (Gobbo); T848.30-33 (Pope); Exhibit RC0032 – Statement of Detective Inspector Gavan Segrave, 22 March 2019 at [11] (VPL.0014.0004.0001 at .0004); Exhibit RC0057 – Statement of Mr Jeff Pope, 1 April 2019 at [11] (RCMPI.0005.0001.0001); Exhibit RC0080B – Statement of Mr Wayne Strawhorn at [11(f)] (COM.0040.0001.0002 at .0003); Exhibit RC0064 – Statement of Officer 'Kruger', 28 March 2019 at [28] (VPL.0014.0012.0001 at .0005).

²⁶⁵⁴ Exhibit RC0033 – Information Report FEIR1056, 12 May 1999 (VPL.0005.0007.0193).

²⁶⁵⁵ Exhibit RC0034A – Informer Application for Ms Nicola Gobbo, 13 May 1999 (VPL.0005.0013.0952).

²⁶⁵⁶ T758.11-17 (Pope).

²⁶⁵⁷ T622.44 to T623.1.

²⁶⁵⁸ Exhibit RC0058 – Informer Management File Activity Log, MFG-13 (VPL.0005.0037.0010).

²⁶⁵⁹ T759.14-32 (Segrave).

²⁶⁶⁰ T767.12-16 (Pope).

²⁶⁶¹ T767.35-38 (Pope).

²⁶⁶² Exhibit RC0050 – Recommendation to reclassify Ms Nicola Gobbo, 3 January 2000 (VPL.0100.0121.0155 at .0216).

²⁶⁶³ T634.39-47 (Segrave).

²⁶⁶⁴ T13061.18-31 (Gobbo); T2100.6-9 (Campbell); Exhibit RC0135 – Statement of Mr Stephen Campbell, 16 May 2019 at p 2 (COM.0049.0001.0002).

prosecution in which she was acting.²⁶⁶⁵ Their relationship continued from 1999 to 2006.

- 9.2 Mr Campbell was charged in 2003 with drug offences relating to events which occurred in May 1999 – a time when he was having regular social contact with Ms Gobbo.²⁶⁶⁶
- 9.3 It has been revealed through the Royal Commission that:
- (a) Mr Campbell obtained legal advice from Ms Gobbo when he was charged;²⁶⁶⁷
 - (b) she then PII PII;²⁶⁶⁸
 - (c) PII PII during the committal hearing from 15 to 19 September 2003;²⁶⁶⁹
 - (d) during the committal hearing, Ms Gobbo's client was considering whether to give evidence against Mr Campbell and others;²⁶⁷⁰
 - (e) unbeknownst to Ms Gobbo's client, she was still in her relationship with Mr Campbell and stayed with him at his house during the committal hearing.²⁶⁷¹
- 9.4 Ms Gobbo accepted in evidence that this was something that she absolutely should have made known to her client.²⁶⁷²

10 Colleagues observing close relationships with criminals

- 10.1 By this time, parts of the legal profession had noticed that Ms Gobbo had unusually close relationships with criminals for whom she acted.
- 10.2 Many solicitors and barristers have provided statements to the Royal Commission outlining their observations.
- 10.3 County Court Judge Gregory Lyon, who was a senior barrister when Ms Gobbo was at the Bar, recalled the following:

*[F]rom the outset, I had grave reservations about Ms Gobbo's fitness to practise at the Bar. I was implacably opposed to Ms Gobbo taking a room in Crockett Chambers. From my earliest encounters with her, she was too close to her clients and to underworld figures. Nothing changed my view on that in the years until she left the Bar.*²⁶⁷³

- 10.4 Lyon J's statement states that he was "shocked" when he observed Ms Gobbo kiss Carl Williams' father, George, on the cheek outside court. George Williams was at court watching proceedings in which someone was giving evidence adverse to the interests of his son Carl or Tony Mokbel. The witness was someone with whom Ms Gobbo had both a professional and a very close social relationship. Lyon J explained that he "thought this to be highly inappropriate and unprofessional" and that it made him "consider that there was a real conflict of her interests."²⁶⁷⁴

²⁶⁶⁵ Exhibit RC0136 – Court book of Ms Nicola Gobbo, 18 December 1998 (MIN.0001.0001.0003_0014).

²⁶⁶⁶ T2112.23-T2113.39 (Campbell); Exhibit RC0137 – Diary of Ms Nicola Gobbo, multiple dates (MIN.0002.0001.0005_0008); Exhibit RC0138 – Diary of Ms Nicola Gobbo, multiple dates (MIN.0002.0001.0005_0022).

²⁶⁶⁷ T2114.42-46, T2115.27-32 and T2115.7-5 (Campbell).

²⁶⁶⁸ T2114.24-26 (Campbell); T2144.21-23 (Pseudonymised Person); T13061.5-7 (Gobbo); Exhibit RC0147B – Statement of Pseudonymised Person.

²⁶⁶⁹ T2147.39-T2148.3 (Pseudonymised Person); Exhibit RC0143 – Diary of Ms Nicola Gobbo, 15-19 September 2003 (MIN.0002.0002.0001_0021 at _0043).

²⁶⁷⁰ T13062.21-23 (Gobbo).

²⁶⁷¹ T13061.33-42; T13061.47-T13062.3 (Gobbo).

²⁶⁷² T13062.43-46 (Gobbo).

²⁶⁷³ Exhibit RC0975B – Statement of Judge Gregory Lyon, 2 September 2019 at [8] (COM.0074.0001.0001 at _0002).

²⁶⁷⁴ Exhibit RC0975B – Statement of Judge Gregory Lyon, 2 September 2019 at [9] (COM.0074.0001.0001 at _0002).

- 10.5 Others made the following similar observations:
- (a) *...I started to wonder about Nicola. She would talk of her life-style, of late-night drinking and socialising with undesirable criminals, albeit clients,*²⁶⁷⁵
 - (b) *Her major problem in my eyes was that she seemed to socialize far too much with a plethora of her clients. She constantly referred to instances where they were at her home, she at theirs, or they were drinking together somewhere. I told her she could not "run with the horses and the hounds", meaning be both a barrister and so closely linked to her clients...*²⁶⁷⁶
 - (c) *Ms Gobbo would have direct dealings with clients independent of a solicitor. It was not unusual for her to refer to having socialised with clients,*²⁶⁷⁷
 - (d) *Nicola Gobbo was a member of our chambers. I do not recall when she joined our chambers. I believe it was sometime in 2005. In approximately late 2008, she was asked to leave our chambers. Philip Dunn QC, another founding member of our chambers, raised concerns amongst members of chambers who formed the view that Ms. Gobbo was engaging inappropriately with clients in and out of chambers. These concerns were shared by me. There were observations as well as rumours circulating about Ms. Gobbo's personal intimacy with her clients, other people's clients and police officers – in professional as well as private contexts – which we considered had the potential to give rise to conflicts of interest because her conduct seemed to lack discretion and a sense of what was appropriate. She also made reference to her sexual prowess with both clients and police. When I referred to 'conflict' in this context, I did not mean intentional betrayal of confidences or duty but rather an inability to judge boundaries of propriety...*²⁶⁷⁸
- 10.6 Ms Gobbo agreed, under cross-examination, that from at least 1998, she was "someone who has socialised – crossed the line effectively into socialising and being friends with [her] criminal clients, right through from those early days in the late 90s, right through until [her] registration in 2005".²⁶⁷⁹

11 Becoming part of the Mokbel crew (2002)

- 11.1 By early 2002, Ms Gobbo was no longer only socialising with small-time drug criminals like Mr Wilson. She had joined the Mokbel crew. She was associating with Tony Mokbel and his family, friends and criminal associates and being their lawyer.²⁶⁸⁰
- 11.2 The Mokbel crew was not a group of petty drug criminals. Ms Gobbo had joined a crew engaging in the most serious criminal activity in Victoria at the time – large scale drug trafficking and murder. Her relationship with an associated crew member, Carl Williams, was so close that she spoke at his daughter's christening in December 2003.²⁶⁸¹ Only two months before the christening, in October 2003, Mr Williams had murdered Michael Marshall. His hitman executed Mr Marshall in the street in front of his young child.²⁶⁸² In the few months before that murder, Mr Williams murdered Jason Moran and Mark Malia.²⁶⁸³ The horrific circumstances of Mr Moran's execution are well known and do not need to be repeated. The circumstances of Mr Malia's murder were also horrific in a

²⁶⁷⁵ Exhibit RC980B – Statement of Mr Warren Peacock, 2 October 2019 at [12] (COM.0084.0001.0001 at _0002).

²⁶⁷⁶ Exhibit RC0783B – Statement of Mr Colin Lovitt, 14 November 2019 at p 1 (COM.0095.0001.0001 at _0001).

²⁶⁷⁷ Exhibit RC0968B – Statement of Mr Alistair Grigor, 9 May 2019 at p 1 (COM.0048.0001.0001 at _0001).

²⁶⁷⁹ Exhibit RC0977B – Statement of Mr Robert Richter QC, 25 November 2019 at [3]-[4] (VPL.0014.0124.0001 at _0001).

²⁶⁷⁹ T13745 (Gobbo); see also T13757.

²⁶⁸⁰ T13045.32-35; T13046.8-10 (Gobbo).

²⁶⁸¹ T13049.28-32; T13202.31-36 (Gobbo).

²⁶⁸² T10104.7-12 (Bateson).

²⁶⁸³ T10104.17-20 (Bateson).

- different way – he was tortured.²⁶⁸⁴ A few months after the christening, Mr Williams murdered again. This time it was Jason Moran's father, Lewis.²⁶⁸⁵
- 11.3 Ms Gobbo's association with Tony Mokbel was just as close.²⁶⁸⁶ She had weekly dinners with Mr Mokbel and his family members.²⁶⁸⁷ She received numerous and frequent telephone calls from his extended family.²⁶⁸⁸
- 11.4 The weekly dinners commenced in Tony Mokbel's absence at first because he was on remand, but, once released on bail, Mr Mokbel became part of those weekly dinners. She also saw him separately to those dinners on a regular basis.²⁶⁸⁹
- 11.5 Ms Gobbo knew that the dinners were "*operating there as some form of legitimisation or cover for conversations that [she] knew were about ongoing criminal offences.*"²⁶⁹⁰ The weekly dinners were not meetings for the purpose of discussing legal matters, though a pallid attempt was made to characterise them as such.²⁶⁹¹ They were gatherings with Ms Gobbo's associates at which criminal offending was openly discussed.²⁶⁹²
- 11.6 In addition to Mokbel family members, Ms Gobbo told her handlers that, at these dinners, she met and associated with many criminals, such as Joseph Parisi,²⁶⁹³ Steve ('Oggy') Gavanas,²⁶⁹⁴ Mr Luxmore²⁶⁹⁵ and Tony Bayeh.²⁶⁹⁶
- 11.7 Ms Gobbo's weekly dinners with the Mokbels continued until Mr Mokbel absconded during his trial in 2006.²⁶⁹⁷ After Mr Mokbel was apprehended in Greece in June 2007 and before he was extradited back to Australia, Ms Gobbo was communicating with him.²⁶⁹⁸
- 11.8 Ms Gobbo knew that she was associating with a crew of highly organised and sophisticated criminals.²⁶⁹⁹ She knew that they were involved in large scale unlawful drugs being distributed into the community and that they were attempting to interfere with the course of justice.²⁷⁰⁰ With that knowledge, she became part of the crew.²⁷⁰¹ She used "burner" telephones to communicate with the Mokbels and members of the crew.²⁷⁰² The telephones were provided to her by Tony Mokbel and the crew.²⁷⁰³ The telephones were used to speak about criminal activities.²⁷⁰⁴

Associating with other members of the crew

- 11.9 Through the Mokbels, Ms Gobbo met and associated with many serious criminals. Not only was she associating with Mr Williams when he was committing the worst crimes, she was also associating with one of the crew's hitmen, Mr Thomas (pseudonym). He

²⁶⁸⁴ T10103.2-3 (Bateson).

²⁶⁸⁵ T10103.17-18 (Bateson).

²⁶⁸⁶ T13046.1-8 (Gobbo).

²⁶⁸⁷ T13046.21-25 (Gobbo).

²⁶⁸⁸ T13046.25-27 (Gobbo).

²⁶⁸⁹ T13046.29-44 (Gobbo).

²⁶⁹⁰ T13749.9-15 (Gobbo).

²⁶⁹¹ T13046.22-32 (Gobbo).

²⁶⁹² T13745.32-35 (Gobbo).

²⁶⁹³ Exhibit RC0281 – ICR3838 (004), 1 October 2005 (VPL.2000.0003.1604 at .1605-1606).

²⁶⁹⁴ Exhibit RC0281 – ICR3838 (007), 28 October 2005 (VPL.2000.0003.1623 at .1631); ICR3838 (020), 28 February 2006 (VPL.2000.0003.1751 at .1759).

²⁶⁹⁵ Exhibit RC0281 – ICR3838 (007), 28 October 2005 (VPL.2000.0003.1623 at .1631).

²⁶⁹⁶ Exhibit RC0281 – ICR3838 (007), 28 October 2005 (VPL.2000.0003.1623 at .1631).

²⁶⁹⁷ T13048.35-38 (Gobbo).

²⁶⁹⁸ T13046.46 to T13047.7 (Gobbo).

²⁶⁹⁹ T13745.40-43 (Gobbo).

²⁷⁰⁰ T13745.45 to T13746.10 (Gobbo).

²⁷⁰¹ T13746.17-25 (Gobbo).

²⁷⁰² T13747.7-10 (Gobbo).

²⁷⁰³ T13474.12-14 (Gobbo).

²⁷⁰⁴ T13194.2-8 (Gobbo).

was convicted of multiple executions.²⁷⁰⁵ Mr Thomas was making drugs when Mr Mokbel first introduced Ms Gobbo to him.²⁷⁰⁶

- 11.10 By 2003, having initially met him through the Mokbels,²⁷⁰⁷ Ms Gobbo developed an exceptionally close personal relationship with Mr Cooper,²⁷⁰⁸ describing herself as his “best friend”.²⁷⁰⁹ He described Ms Gobbo in the same terms.²⁷¹⁰ He had a significant criminal role in Mokbel’s enterprise. This relationship developed well before her registration as a human source in 2005²⁷¹¹ and continued for many years, until around late 2012 or early 2013.²⁷¹²
- 11.11 In around 2003, Ms Gobbo first met Azzam (or Adam) Ahmed, a convicted drug trafficker and associate of Tony Mokbel and Carl Williams.²⁷¹³ This relationship developed into a romantic one by no later than 2004.²⁷¹⁴ It was a close relationship. He was with her on 24 July 2004 when she had her stroke and he drove her to hospital.²⁷¹⁵ He contacted Ms Gobbo’s family and friends to notify them of her stroke.²⁷¹⁶ Ms Gobbo told the Royal Commission that “every criminal in Melbourne” visited her in hospital in the days after her stroke.²⁷¹⁷ When Mr Ahmed was arrested in August 2004, a water bill in Ms Gobbo’s name was found in his car. Ms Gobbo’s evidence was that she had been in Mr Ahmed’s car.²⁷¹⁸ Ms Gobbo paid money into Mr Ahmed’s prison account when he was imprisoned.²⁷¹⁹

Associating with Carl Williams and his crew

- 11.12 As mentioned earlier, Ms Gobbo became a very close associate of Carl Williams.
- 11.13 It was sometime in early 2002 that she first met him through Tony Mokbel. She met him when she was visiting Mr Mokbel in prison.²⁷²⁰
- 11.14 Ms Gobbo went on to associate with and represent Mr Williams when he was charged with threatening to kill (then) Detective Sergeant Stuart Bateson.²⁷²¹ She associated with Carl Williams’ family members, including his wife and father and, in her words, “Carl’s crew”.²⁷²² She acted for the family members and she was observed in public as having a very friendly manner towards them.²⁷²³ There was also the christening function²⁷²⁴ and the friendly photograph of her with Mr Williams and Andrew Veniamin, a suspected hitman who was shot dead by Mick Gatto.²⁷²⁵ Com. Bateson gave evidence that surveillance showed that Ms Gobbo was the Master of Ceremonies at the

²⁷⁰⁵ Exhibit RC0281 – ICR3838 (019), 19 February 2006 (VPL.2000.0003.1743 at .1744).

²⁷⁰⁶ Exhibit RC0281 – ICR3838 (019), 17 February 2006 (VPL.2000.0003.1743 at .1743).

²⁷⁰⁷ T8660.30-35 (Mr Cooper).

²⁷⁰⁸ T8669.40 to T8670.13 (Mr Cooper).

²⁷⁰⁹ T13417.15; T13757.17-20 (Gobbo).

²⁷¹⁰ Ref to his oral evidence.

²⁷¹¹ T13757.12-31 (Gobbo).

²⁷¹² T8740.46 to T8741.16 (Mr Cooper); Exhibit 1014 - Bund

²⁷¹³ Exhibit RC0281 – ICR3838 (004), 1 October 2005 (VPL.2000.0003.1604 at .1609)

²⁷¹⁴ T64.15 (Exhibit RC0789B – Transcript of conversation between Ms Nicola Gobbo and the RCMP, 13 June 2019), and Exhibit RC0281 – ICR2958 (006), 26 February 2008 (VPL.2000.0003.0801 at .0803).

²⁷¹⁵ T13270.12-14 (Gobbo).

²⁷¹⁶ Exhibit RC0281 – ICR3838 (004), 1 October 2005 (VPL.2000.0003.1604 at .1605).

²⁷¹⁷ T13270.21-22 (Gobbo).

²⁷¹⁸ T13054.35-47 (Gobbo).

²⁷¹⁹ T13054.35-47 (Gobbo).

²⁷²⁰ T13049.9-15 (Gobbo).

²⁷²¹ T13049.17-22 (Gobbo).

²⁷²² T192.36 (Exhibit RC0787B – Transcript of conversation between Ms Nicola Gobbo and the RCMP, 20 March 2019)

²⁷²³ For example, kissing George Williams on the cheek outside court on an occasion when Mr Williams had attended to watch another underworld figure give evidence adverse to Carl Williams’ interests: Exhibit RC975B – Statement of Judge Gregory Lyon, 2 September 2019 at [9] (COM.0074.0001.0001 at _0002).

²⁷²⁴ T13049.28-32; T13202.31-34 (Gobbo).

²⁷²⁵ T2632.35 to T2633.12 (Kelly).

- christening function. She did not simply give a speech, as Ms Gobbo told the Royal Commission.²⁷²⁶
- 11.15 Ms Gobbo came to know and associate with both Mr Andrews (pseudonym) and Mr McGrath (pseudonym) through Mr Williams,²⁷²⁷ including by using "burner" telephones provided to her.²⁷²⁸ Both men were very dangerous hitmen.²⁷²⁹
- 11.16 Ms Gobbo's evidence to the Royal Commission was that when these men were later charged with murder, Mr Williams insisted that she act for each of them, for the purpose of preventing them from doing anything adverse to Mr Williams' interests,²⁷³⁰ namely from telling police that Mr Williams had paid them to commit the murders.
- 11.17 Ms Gobbo was also a conduit between Mr Williams and Paul Dale, using "burner" telephones,²⁷³¹ at least between February and May 2004.²⁷³² That was the period leading up to the murders of Terence and Christine Hodson. By that time, Mr Hodson had implicated Mr Dale in the burglary of the drug house in Dublin Street, Oakleigh where drugs were being made for Tony Mokbel with the involvement of Azzam Ahmed and Abby Haynes.²⁷³³
- 11.18 Between at least February and May 2004, Ms Gobbo was a conduit between Mr Dale and Mr Williams²⁷³⁴ and assisted them to arrange a meeting on about 6 May 2004,²⁷³⁵ ten days before Terence and Christine Hodson were murdered.²⁷³⁶
- 11.19 On 16 May 2004, the night the Hodsons were murdered, Ms Gobbo was out to dinner with Mr Ahmed.²⁷³⁷ It has been suggested that the dinner was intended to provide Mr Ahmed with an alibi for the murders.²⁷³⁸
- 11.20 When the Hodson were found executed, Ms Gobbo was the first person notified of the murders by their son, Andrew, who had found them.²⁷³⁹ Prior to his murder, Ms Gobbo had been involved in the early stages of Terence Hodson providing assistance to police, particularly in relation to implicating Mr Dale in the Dublin Street burglary.²⁷⁴⁰ On 1 July 2004, Ms Gobbo was interviewed by Detective Senior Sergeant Charlie Bezzina and Detective Senior Constable Cameron Davey as a potential witness in the investigation of the Hodson murders.²⁷⁴¹

Expanding criminal associations

- 11.21 By no later than 2005 and prior to her registration as a source, Ms Gobbo was associating with Rabie (or Rob) Karam.
- 11.22 In November 2005, Ms Gobbo told her handlers that she was having almost daily contact with Mr Karam. He drove her to a hospital appointment²⁷⁴² and she was going

²⁷²⁶ T3342.16-23 (Bateson).

²⁷²⁷ T13050.30 to T13051.1 (Gobbo).

²⁷²⁸ T13051.5-7 (Gobbo).

²⁷²⁹ T10104.14-15; T10066.10-13 (Bateson).

²⁷³⁰ T13747.31-34; T13156.29-37 (Gobbo).

²⁷³¹ T13193.34-40 (Gobbo)

²⁷³² T13193.34-40; T13194.2-8 (Gobbo).

²⁷³³ Exhibit RC0232 – Summary of evidence OPP v Mr Paul Dale, undated (RCMPI.0016.0002.0009_0159). See further at section 13.

²⁷³⁴ T13194.2-8 (Gobbo).

²⁷³⁵ T13194.18-47 (Gobbo).

²⁷³⁶ T13194.33-39 (Gobbo).

²⁷³⁷ T13197.1-11 (Gobbo).

²⁷³⁸ T13197.33 to T13198.5 (Gobbo).

²⁷³⁹ T13197.13-16 (Gobbo).

²⁷⁴⁰ Exhibit RC0097B – Statement of Mr Peter De Santo, 7 May 2019 at [17] (VPL.0014.0026.0001 at .0009-0015).

²⁷⁴¹ Exhibit RC0102A – Statement of Mr Charlie Bezzina, 17 April 2019 at [8] (VPL.0014.0016.0001 at .0002); Exhibit RC0104B – Transcript of interview between Mr Charlie Bezzina, Mr Cameron Davey and Ms Nicola Gobbo (VPL.0005.0095.0001).

²⁷⁴² Exhibit RC0281 – ICR3838 (010), 1 December 2005 (VPL.2000.0003.1653 at .1655).

out with him and his brothers to pubs and nightclubs.²⁷⁴³ In January 2006, SDU handlers recorded a report from a police officer that Ms Gobbo had been observed “*kissing and cuddling*” Mr Karam as they left a restaurant.²⁷⁴⁴

- 11.23 Ms Gobbo told her handlers about her minding Mr Karam’s telephone while he talked with Mr Mokbel about their criminal activities.²⁷⁴⁵ It was a common practice of Mr Mokbel when talking “*business*” with his associates to leave their mobile telephones with her while they went for a “walk and talk”. In these situations, Ms Gobbo was facilitating their criminal activities.
- 11.24 In January 2006, Ms Gobbo attended a New Year’s Eve party hosted by Tony Mokbel at his apartment. The party was attended by about 50 of Mr Mokbel’s friends, family and criminal associates, including Danielle Maguire and her daughter, Jason Haykal, Simon Khoury, Emidio Navarolli, his wife and associates, Karl Khoder, Jeffrey Jamou, Milad Mokbel and his wife and children, a “*tall drug dealer named Steve*”, Mr Cooper and others.²⁷⁴⁶ There were drugs at the party.²⁷⁴⁷ Ms Gobbo left the party at about 2.30 am with [Mr Ketch]²⁷⁴⁸
- 11.25 By this time, Ms Gobbo had a well-established relationship with [Mr Ketch]²⁷⁴⁹ He called her his “*best buddy*”.²⁷⁵⁰

Leaving the Mokbel crew and joining the rival Carlton crew

- 11.26 It seems that Ms Gobbo did not become a human source in 2005 to leave behind a life of associating with criminals. She wanted to leave the Mokbel crew.
- 11.27 That is evident from the fact that in around May 2006, she began associating with a different crew, being Mick Gatto’s Carlton crew. Mr Gatto was an underworld figure who shot dead Carl Williams’ bodyguard, Andrew Veniamin.²⁷⁵¹ Ms Gobbo was associating with him and crew members, Mat Tomas,²⁷⁵² Faruk Orman,²⁷⁵³ Steve Kaya²⁷⁵⁴ and others.
- 11.28 By April 2008, the Mokbels and their associates had become suspicious of Ms Gobbo.²⁷⁵⁵ Ms Gobbo reported that she was receiving threats from Tony Mokbel²⁷⁵⁶ and his associate, Tony Bayeh. On 16 April 2008, while having dinner with Jacques El-Hage, a criminal associate of Tony Mokbel’s, her car was set on fire.²⁷⁵⁷
- 11.29 By this time, she was much closer to Mr Gatto’s crew. She had not been tasked by the SDU to get close to them. She did it for her own reasons.²⁷⁵⁸ She referred to Mr Gatto

²⁷⁴³ Exhibit RC0281 – ICR3838 (009), 27 November 2005 (VPL.2000.0003.1649 at .1649); also Exhibit RC0281 – ICR3838 (016), 25 January 2006 (VPL.2000.0003.1709 at .1718) and Exhibit RC0281 – ICR3838 (021), 3 March, 6 March, 9 March 2006 (VPL.2000.0003.1761 at .1761, .1765, .1767).

²⁷⁴⁴ Exhibit RC0281 – ICR3838 (016), 25 January 2006 (VPL.2000.0003.1709 at .1719).

²⁷⁴⁵ Exhibit RC0281 – ICR3838 (002), 21 September 2005 (VPL.2000.0003.1593 at .1598).

²⁷⁴⁶ Exhibit RC0281 – ICR3838 (015), 12 January 2006 (VPL.2000.0003.1695 at .1703-1704).

²⁷⁴⁷ Exhibit RC0281 – ICR3838 (015), 12 January 2006 (VPL.2000.0003.1695 at .1703).

²⁷⁴⁸ Exhibit RC0281 – ICR3838 (015), 12 January 2006 (VPL.2000.0003.1695 at .1703-1704).

²⁷⁴⁹ Exhibit RC0281 – ICR3838 (015), 11 January 2006 (VPL.2000.0003.1695 at .1702).

²⁷⁵⁰ Exhibit RC0281 – ICR3838 (040), 9-10 August 2006 (VPL.2000.0003.1964 at .1973-1974).

²⁷⁵¹ Exhibit RC0281 – ICR3838 (032), 22 May 2006 (VPL.2000.0003.1886 at .1891).

²⁷⁵² Exhibit RC0281 – ICR3838 (039), 23 July 2006 (VPL.2000.0003.1951 at .1952); Exhibit RC0281 – ICR3838 (051), 29 October 2006 (VPL.2000.0003.2104 at .2112-2113).

²⁷⁵³ Exhibit RC0281 – ICR3838 (025), 5 April 2006 (VPL.2000.0003.1808 at .1809); Exhibit RC0281 – ICR3838 (051), 23 October 2006 (VPL.2000.0003.2104 at 2105).

²⁷⁵⁴ Exhibit RC0281 – ICR3838 (055), 3 December 2006 (VPL.2000.0003.2156 at .2157).

²⁷⁵⁵ Exhibit RC0281 – ICR2958 (012), 2 April 2008 (VPL.2000.0003.0865 at .0867).

²⁷⁵⁶ Exhibit RC0281 – ICR2958 (014), 14 April 2008 (VPL.2000.0003.0897 at .0897).

²⁷⁵⁷ Exhibit RC0281 – ICR2958 (014), 16 April 2008 (VPL.2000.0003.0897 at .0912).

²⁷⁵⁸ Exhibit RC0281 – ICR2958 (012), 6 April 2008 (VPL.2000.0003.0865 at .0883).

by the nickname “boyfriend”,²⁷⁵⁹ which continued well into at least 2009.²⁷⁶⁰ In response to Mr Mokbel’s threats, Mr Gatto told Ms Gobbo to “*tell them that you’re on our side now*”, meaning part of Mr Gatto’s Carlton Crew.²⁷⁶¹ An associate of Mr Gatto’s, known as Dave, offered Ms Gobbo a gun if she needed one.²⁷⁶² In response to her car being set on fire, she was told “*you are now with the Carlton crew.*”²⁷⁶³

- 11.30 This appears to mark the ultimate transition from Ms Gobbo’s alignment with Tony Mokbel’s crew to Mick Gatto’s crew, though some of Ms Gobbo’s close associations with people in Mr Mokbel’s crew, such as Rob Karam, Azzam Ahmed and ^{Mr Cooper}, remained intact.

12 Socialising with Paul Dale and other police suspected of involvement in drugs and murder (2002-4)

- 12.1 In the years before Ms Gobbo became a human source, she was also associating with members of Victoria Police who were or went on to be suspected of involvement in drugs and murder.
- 12.2 At some point between about November 2002 and September 2003, Ms Gobbo started associating with former police member Paul Dale who was later charged with theft from Tony Mokbel’s Dublin Street drug house and with the murder of Crown witness Terrence Hodson.²⁷⁶⁴ Ms Gobbo’s association with Mr Dale continued for a number of years, up until she became a witness against him in early 2009. These matters are addressed in the next section below.
- 12.3 Former member Peter De Santo gave evidence, which Ms Gobbo admitted, that during the Spring Racing Carnival in November 2003, he saw her associating with former police officers Steve Campbell and David Waters, both of whom were, at the time, accused of and shortly to stand trial for drug offences.²⁷⁶⁵ ^{PII} [REDACTED], Ms Gobbo also acted for ^{PII} [REDACTED] Mr Waters, who Ms Gobbo had met through Steve Campbell and whom she described as a friend,²⁷⁶⁶ was also later a suspect in the murder of Shane Chartres-Abbott.²⁷⁶⁷
- 12.4 Ms Gobbo also had an association with former police member (and suspect in the Chartres-Abbott murder investigation) Peter Lalor.²⁷⁶⁸
- 12.5 Lastly, there was Mr Richard Shields. He was a police officer who was dismissed from Victoria Police in September 2006²⁷⁶⁹ for several reasons, including allegations that he had an inappropriate relationship with Ms Gobbo and had misused police resources.²⁷⁷⁰

²⁷⁵⁹ Exhibit RC0281 – ICR2958 (003), 7 February 2008 (VPL.2000.0003.0773 at .0773); Exhibit RC0281 – ICR2958 (012), 1 April 2008 (VPL.2000.0003.0865 at .0865).

²⁷⁶⁰ Untendered Witness Contact Report prepared by Officer Graham Evans, 14 April 2009 (VPL.0005.0038.0210).

²⁷⁶¹ Exhibit RC0281 – ICR2958 (014), 14 April 2008 (VPL.2000.0003.0897 at .0899).

²⁷⁶² Exhibit RC0281 – ICR2958 (014), 14 April 2008 (VPL.2000.0003.0897 at .0899).

²⁷⁶³ Exhibit RC0281 – ICR2958 (014), 18 April 2008 (VPL.2000.0003.0897 at .0928).

²⁷⁶⁴ Exhibit RC0281 – ICR2958 (049), 16 December 2008 (VPL.2000.0003.1510 at .1516).

²⁷⁶⁵ T1587.33-41 (De Santo); T2123.35-T2124.22 (Campbell); T13064.1-17 (Gobbo). Exhibit RC0097B – Statement of Mr Peter De Santo, 7 May 2019 at [17] (VPL.0014.0026.0001 at .0003, .0011). As to drug offences, see T13061.13-16 (Gobbo).

²⁷⁶⁶ Exhibit RC0788B – Transcript of conversation between Ms Nicola Gobbo and the RCMPI, 11 April 2019 at T946.2-5; Exhibit RC0260B – Statement of Ms Nicola Gobbo, 21 May 2009 (VPL.2000.0002.0120).

²⁷⁶⁷ T13164.21-26 (Gobbo).

²⁷⁶⁸ For example, Exhibit RC0281 – ICR3838 (047), 29 September 2006 (VPL.2000.0003.2028 at .2029); Exhibit RC0281 – ICR3838 (040), 1 August 2006 (VPL.2000.0003.1964 at .1964); see also Exhibit RC0260B – Statement of Ms Nicola Gobbo, 21 May 2009 (VPL.0002.0002.0120 at .0121).

²⁷⁶⁹ Exhibit RC0826B – Extract of Report to Mr Rod Wilson, 26 November 2006 (VPL.0005.0147.0001 at .0014).

²⁷⁷⁰ Exhibit RC0825B – Statement of Mr Rodney Wilson, 19 November 2019 at [8]-[10] (VPL.0014.0094.0001 at .0001-0002); Exhibit RC0826B – Extract of Report to Mr Rod Wilson, 26 November 2006 (VPL.0005.0147.0001 at .0024-0025); see also Exhibit RC1220B – Statement of Mr Lindsay Attrill, 14 August 2019 (VPL.0014.0049.0001).

This association was not explored with Ms Gobbo by Counsel Assisting during her evidence.

13 Interviewed by police in relation to the murder of the Hodsons (2004)

- 13.1 Following the murder of the Hodsons in May 2004, Ms Gobbo was interviewed by the Homicide Squad.
- 13.2 Ms Gobbo gave evidence to the Royal Commission that, at the time of her police interview, she thought she might be implicated in the murders herself.²⁷⁷¹
- 13.3 This is not surprising given her involvement in events leading up to the murders.
- 13.4 In the period between the Dublin Street burglary in September 2003 and the murder of the Hodsons in May 2004, Ms Gobbo:
- (a) acted for Abby Haynes, Colleen O'Reilly and Azzam Ahmed when they were charged in connection with the drug operation at the Dublin Street house. She did so for Tony Mokbel.²⁷⁷² It was his drug operation.
 - (b) was instructed by Mr Mokbel to find out as much as possible about what the police knew about the drug operation at the house;²⁷⁷³
 - (c) was in regular contact with Paul Dale who was suspected of being involved in the burglary and who wanted to know if Mr Mokbel wanted him killed for the burglary;²⁷⁷⁴
 - (d) passed messages between Terrence Hodson and Mr Dale who were both suspects in the burglary;²⁷⁷⁵
 - (e) met with Mr Hodson, who then, without telling Ms Gobbo, went on to co-operate with police in implicating Mr Dale in the burglary and who told police that Mr Dale had threatened to kill him and his family if he ever told police about his involvement;²⁷⁷⁶
 - (f) continued to have contact with Mr Dale who sought to find out from Ms Gobbo whether Mr Hodson was assisting police against him;²⁷⁷⁷
 - (g) met with Mr Hodson to try to find out whether he had decided to co-operate with police. Mr Hodson suspected that she was trying to obtain the information for Mr Dale who Mr Hodson believed was in an intimate relationship with Ms Gobbo at the time;²⁷⁷⁸
 - (h) thereafter had telephone contact with Mr Dale using telephones that they both knew were not being monitored;²⁷⁷⁹
 - (i) fished for information from police as to what they knew about Mr Dale's involvement in drugs;²⁷⁸⁰

²⁷⁷¹ T13158.39-T13159.1 (Gobbo).

²⁷⁷² T13742.41-T13743.4 (Gobbo).

²⁷⁷³ T13135.45-47 (Gobbo).

²⁷⁷⁴ T13136.3-4 (Gobbo).

²⁷⁷⁵ Exhibit RC0229 – Statement of Ms Nicola Gobbo, 7 January 2009 (VPL.0002.0001.1456 at .1457-8).

²⁷⁷⁶ Exhibit RC0232 – Summary of Evidence – OPP v Mr Paul Dale (RCMPI.0016.0002.0009_0159 at _0198-0199).

²⁷⁷⁷ Exhibit RC0229 – Statement of Ms Nicola Gobbo, 7 January 2009 (VPL.0002.0001.1456 at .1458).

²⁷⁷⁸ Exhibit RC0129B – Statement of Mr Andrew Murray Gregor, 14 May 2019 at [20] (VPL.0014.0033.0001 at .0003).

²⁷⁷⁹ Exhibit RC0232 – Summary of Evidence – OPP v Mr Paul Dale (RCMPI.0016.0002.0009_0159 at _0205-0206).

²⁷⁸⁰ Exhibit RC0129B – Statement of Mr Andrew Murray Gregor, 14 May 2019 at [29] (VPL.0014.0033.0001 at .0005); T2007.38-46 (Gregor).

- (j) spoke to Mr Dale when he was eventually arrested in relation to the burglary and visited him in custody;²⁷⁸¹
 - (k) then became a conduit between Mr Dale and Carl Williams and facilitated a meeting between them;²⁷⁸²
 - (l) was invited by Mr Dale to go away with him on the weekend that the Hodsons ended up being murdered;²⁷⁸³ and
 - (m) was having dinner with Mr Ahmed, one of the persons charged with the Dublin Street burglary, when the Hodsons were murdered.
- 13.5 Following the murder of the Hodsons, who were Crown witnesses against Mr Dale in relation to the Dublin Street burglary at the time, the charges against Mr Dale were withdrawn.²⁷⁸⁴
- 13.6 Mr Williams later provided a statement to police stating that Mr Dale asked him to arrange the murder of the Hodsons. His statement referred to Ms Gobbo's involvement. It was as a result of that statement that Ms Gobbo then also became a witness.
- 13.7 Mr Williams and Ms Gobbo were to both be Crown witnesses against Mr Dale when he was charged with the murder of Mr Hodson. However, the murder charge was later withdrawn after Crown witness Mr Williams was murdered.

14 The murder of Jason Moran (2003)

- 14.1 Between late 2002 and early 2003, the gangland war was well underway with many execution murders taking place across Melbourne.²⁷⁸⁵
- 14.2 The war became particularly dangerous and brazen in June 2003 when Jason Moran and Pasquale Barbaro were murdered in circumstances that placed many children at risk and exposed them to something that children should never see.²⁷⁸⁶
- 14.3 Carl Williams and his associates Mr Thomas, Mr Andrews and McGrath committed the murder.²⁷⁸⁷
- 14.4 At the time, Ms Gobbo was a close associate of these men.
- 14.5 Ms Gobbo was using "burner" telephones to communicate with Mr McGrath and Mr Andrews.²⁷⁸⁸
- 14.6 Ms Gobbo was regularly associating with Mr Thomas, who told the Royal Commission that:
- (a) he used drugs with Ms Gobbo; and
 - (b) he had dinner with Ms Gobbo and the Mobbels once or twice a week over a few years.²⁷⁸⁹
- 14.7 There is evidence before the Royal Commission that Ms Gobbo:

²⁷⁸¹ Exhibit RC0229 – Statement of Ms Nicola Gobbo, 7 January 2009 (VPL.0002.0001.1456 at .1459).

²⁷⁸² T13432.36-41 (Gobbo).

²⁷⁸³ Exhibit RC0229 – Statement of Ms Nicola Gobbo, 7 January 2009 at 9 (VPL.0002.0001.1456 at 1464)

²⁷⁸⁴ Exhibit RC0232 – Summary of evidence – OPP v Mr Paul Dale (RCMP1.0016.0002.0009_0209).

²⁷⁸⁵ Exhibit RC0269B – Statement of Commander Stuart Bateson, 7 May 2019 at [13]-[26] (VPL.0014.0027.0001 at .0004_0006).

²⁷⁸⁶ Exhibit RC0269B – Statement of Commander Stuart Bateson, 7 May 2019 at [21] (VPL.0014.0027.0001 at .0005).

²⁷⁸⁷ Exhibit RC0269B – Statement of Commander Stuart Bateson, 7 May 2019 at [21]-[23] (VPL.0014.0027.0001 at .0005).

²⁷⁸⁸ See paragraph 11.15.

²⁷⁸⁹ T13621.8-29 (Thomas); Exhibit 1175 – Statement of Mr Thomas at [4]-[7], [59] (RCMP1.0131.0001.0001_0001 at __0002_0015).

- (a) knew that Carl Williams was planning the murder of Mr Moran;
 - (b) knew that she had been telephoned by Mr Williams and Mr Thomas at the time of the murder to provide them with an alibi; and
 - (c) knew that Mr Williams and Mr Thomas had murdered Mr Moran.
- 14.8 Mr Thomas told the Royal Commission that, “[Ms Gobbo] knew that Jason Moran was going to get knocked”. He said that prior to the murder, he had told Ms Gobbo, “Carl’s going after [Jason Moran].”²⁷⁹⁰
- 14.9 Mr Thomas also told the Royal Commission that on the day of the murder, he and Mr Williams had arranged to donate blood so as to provide themselves with an alibi for the time of the murder. In order to strengthen this alibi, they telephoned Ms Gobbo while they were on their way to the medical clinic to give blood. Ms Gobbo called them back a short time later and reported to them that Mr Moran had been murdered.²⁷⁹¹
- 14.10 Mr Thomas told the Royal Commission that Ms Gobbo called him later that same day and that during the discussion she said that she knew that she had been used as an alibi.²⁷⁹²
- 14.11 He told the Royal Commission that Ms Gobbo did not express any concern about that. He said that he had previously used her to help him with an alibi and that she knew that.²⁷⁹³
- 14.12 When Mr Thomas was ultimately charged with the murder of Mr Moran and Mr Barbaro, Ms Gobbo represented him.

15 The murder of Mr Marshall (2003)

- 15.1 About 4 months after murdering Jason Moran, Mr Williams, Mr McGrath and Mr Andrews killed Mr Marshall.
- 15.2 Mr McGrath and Mr Andrews were arrested almost immediately. The murder had been captured on a listening device that police had installed in the car pursuant to a lawfully obtained warrant in Mr McGrath’s car.²⁷⁹⁴ When interviewed by police, Mr McGrath quickly indicated a willingness to assist by implicating Carl Williams.²⁷⁹⁵
- 15.3 Both Mr McGrath and Mr Andrews later pleaded guilty and became Crown witnesses against Mr Williams who had ordered the murder.
- 15.4 There is evidence before the Royal Commission that Ms Gobbo’s involvement in this murder was as follows:
- (a) she knew that Mr Williams and Mr Thomas had committed the murder;
 - (b) she facilitated Mr Andrews receiving his payment for the murder;
 - (c) she accepted instructions from Mr Williams and Mr Mokbel to represent one of the men charged to ensure that he did not assist police.
- 15.5 Mr Andrews’ witness statement about the murder states that Ms Gobbo visited him in custody following his arrest for the murder of Mr Marshall. It states that he asked her to tell Carl Williams and Tony Mokbel to give his payment for the murder to his mother. He

²⁷⁹⁰ T13584.32-38 (Thomas).

²⁷⁹¹ Exhibit RC1175B – Statement of Mr Thomas, 27 September 2019 at [27] (RCMPI.0131.0001.0001_0001 at _0007).

²⁷⁹² T13584.12-34; T13622.4-18 (Thomas).

²⁷⁹³ T13622.17-18 (Thomas).

²⁷⁹⁴ Exhibit RC0269A – Statement of Commander Stuart Bateson, 7 May 2019 at [30] (VPL.0014.0027.0001 at .0006).

²⁷⁹⁵ Exhibit RC0269A – Statement of Commander Stuart Bateson, 7 May 2019 at [32] (VPL.0014.0027.0001 at .0007).

says that Ms Gobbo held a note up to the glass screen in the custody centre indicating that she would see Mr Williams and Mr Mokbel later that day. Mr Andrews says that a short time later he was told by either Mr Williams or his mother that his mother had received the payment.²⁷⁹⁶ Mr Andrews also conveyed these matters to Detective Senior Sergeant Nigel L'Estrange in March 2019.²⁷⁹⁷

- 15.6 In her evidence to the Royal Commission, Ms Gobbo admitted "*making those notes...through the glass of the Custody Centre and then not really thinking about those notes until whatever date it was...that Jim O'Brien came with a search warrant.*"²⁷⁹⁸ Ms Gobbo admitted that shortly after her discussion with Mr Andrews, she went to see Mr Williams and Mr Mokbel.²⁷⁹⁹
- 15.7 Ms Gobbo told the Royal Commission that during her discussions with Mr Williams and Mr Mokbel, there was concern that Mr Andrews and Mr McGrath would "roll" and assist police against them.²⁸⁰⁰ Ms Gobbo stated that Mr Williams and Mr Mokbel directed her to act for Mr McGrath to ensure that he did not make a statement or assist police against them.²⁸⁰¹ Ms Gobbo went on to act for him but ultimately he did provide a statement and assist police.
- 15.8 Ms Gobbo stated in evidence that she knew she was assisting people potentially implicated in the murder and that it was "*happening fairly often*" at that time.²⁸⁰² She accepted that, based on Mr Andrews' evidence, she may be viewed as potentially complicit in the murder.²⁸⁰³

16 Approach to police about Solicitor 2 and others (2005)

- 16.1 By 2005, another lawyer, Solicitor 2, was starting to associate with the Mokbel and Williams crews.
- 16.2 On 10 May 2005, Solicitor 2 was arrested and charged with possession of an unregistered gun and four counts of giving false evidence to the Australian Crime Commission. Ms Gobbo acted for Solicitor 2.²⁸⁰⁴
- 16.3 Around this same time, Ms Gobbo felt that Solicitor 2 was taking over her position by getting closer to Mr Mokbel.²⁸⁰⁵
- 16.4 Ms Gobbo told the Royal Commission that as a result of feeling that her position with Mr Mokbel was being usurped by Solicitor 2, she started to provide information to police about Solicitor 2.²⁸⁰⁶
- 16.5 Ms Gobbo's provision of information to police about Solicitor 2 did not continue for long. It was shortly after providing this information that she became a registered source with the SDU.²⁸⁰⁷ The two events were not connected.

²⁷⁹⁶ Exhibit RC0637B – Statement of Mr 'Andrews', 7 March 2006 at [68]-[69] (VPL.0100.0001.4784 at .4862).

²⁷⁹⁷ Exhibit RC0264B – Statement of Nigel L'Estrange, 11 June 2019 at [44] (VPL.0014.0036.0001 at .0008).

²⁷⁹⁸ T13157.31-39 (Gobbo).

²⁷⁹⁹ T13156.13-17; T13157.31-44 (Gobbo).

²⁸⁰⁰ T13156.29-37 (Gobbo).

²⁸⁰¹ T13156.29-37 (Gobbo).

²⁸⁰² T13156.14-18 (Gobbo).

²⁸⁰³ T13157.26-29 (Gobbo).

²⁸⁰⁴ T13294.1-8 (Gobbo).

²⁸⁰⁵ T13294.22-24 (Gobbo).

²⁸⁰⁶ T13297.3-16; T13750.40-44 (Gobbo).

²⁸⁰⁷ T3430.38-47 (Bateson).

17 Approaching police to assist and becoming a source (2005)

- 17.1 Moving forward, in August 2005, Ms Gobbo chose, just like she had had many times over the previous decade, to approach police again with information about her criminal associates. This time, she approached (then) Detective Senior Constable Paul Rowe and Detective Sergeant Steve Mansell.
- 17.2 We will never know all of the circumstances that prompted Ms Gobbo to turn on her crew at this point in time.
- 17.3 Ms Gobbo told DSC Rowe and DS Mansell that Mr Mokbel was pressuring and paying her to act for someone who had been charged for the purpose of preventing that person from assisting police against Mr Mokbel.²⁸⁰⁸ She said that she was concerned that she may have committed criminal offences by assisting Mr Mokbel in this way and that she was concerned about her reputation within the legal profession. She also said that she was suffering health problems.²⁸⁰⁹
- 17.4 DSC Rowe's impression was that she was under pressure and wanted to part ways with the Mokbel crew.²⁸¹⁰ Ms Gobbo told the Royal Commission something similar.²⁸¹¹
- 17.5 Ms Gobbo had been part of the Mokbel crew for several years. Her role in the crew, at least, included protecting the head of the crew, Mr Mokbel, and others from apprehension by police.
- 17.6 It is clear from Ms Gobbo's approach to DSC Rowe and DS Mansell that she wanted to part ways with her crew. It is not clear what prompted her at this point to want to leave. Mr Mokbel may have owed her money. He may have threatened her. He may have been getting closer to Solicitor 2 and, therefore, paying Ms Gobbo less attention. She may have found a better opportunity in another crew. There are numerous possibilities. At a general level, she appears to have been motivated by fear and revenge. She knew what her crew was capable of and she must have known that walking away with the information she had and joining a rival crew would risk her life.
- 17.7 It is clear that, contrary to the impression she sought to convey in her evidence, she did not intend to leave the Mokbel crew for a different life away from criminal and drug circles. By no later than May 2006, she was already becoming part of a rival crew, the Carlton crew.

18 Conclusion

- 18.1 It is evident from the submissions above, that from a young age, Ms Gobbo started using drugs and got herself involved in the drug scene. She began by associating with lower level drug offenders but, over time, became a member of Victoria's most dangerous and prolific organised drug syndicate.

²⁸⁰⁸ T3250.12-17 (Rowe); Exhibit 266 – Statement of Detective Sergeant Paul Rowe, 25 June 2019 at [14] and [20] (VPL.0014.0035.0028 at 0030).

²⁸⁰⁹ Exhibit RC0266B – Statement of Detective Sergeant Paul Rowe, 25 June 2019 at [20] (VPL.0014.0035.0028 at 0030).

²⁸¹⁰ T3253.46 to T3254.13 (Rowe).

²⁸¹¹ T13314.27-32 (Gobbo).

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

On behalf of the following seven individuals:

Commander Stuart Bateson
Former Detective Inspector Gavan Ryan
Superintendent Jason Kelly
Former Superintendent Tony Biggin
Former Detective Inspector Jim O'Brien
Detective Sergeant Paul Rowe
Inspector Dale Flynn