

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

**SUBMISSIONS ON BEHALF OF MR SIMON OVERLAND APM  
RESPONDING TO COUNSEL ASSISTING'S REPLY SUBMISSIONS**

- 1 Counsel Assisting delivered reply submissions on 25 September 2020 (“**CA Further Submissions**”). Those submissions contain new allegations and seek new findings against Mr Overland – approximately three months after Counsel Assisting’s primary submissions, more than six weeks after Mr Overland’s primary submissions, and little over one month before the Royal Commission’s final report is due – and without any explanation proffered for why the submissions are only now being made (other than they follow a request of the Royal Commissioner that Counsel Assisting respond; that request if in writing has not been provided to Mr Overland).
- 2 We feel it necessary to repeat the statement, for emphasis: the CA Further Submissions, which purport to be reply submissions, contain new allegations and seek new findings against Mr Overland.
- 3 They do not do so because new material has come to light. Insofar as they do so, they are not reply submissions. That they do so is inappropriate and unfair. Making new allegations and seeking new findings that were presumably not apparent to Counsel Assisting at the time it prepared its 2,500 plus page primary submission reveals not only the strained and fragile nature of these new allegations and findings, but casts a gloomy shadow over the allegations and findings asserted in their primary submissions.
- 4 In Mr Overland’s primary submissions,<sup>1</sup> a number of facts were identified as being fatal to the drawing of the inferences Counsel Assisting sought against Mr Overland. In response, Counsel Assisting have altered their submissions on these key facts. No explanation is given for this volte-face; it does not arise from findings invited in submissions by any other party; one can only assume Counsel Assisting alter their position in recognition of the fatal flaws in the case they had advanced, as identified by Mr Overland in his primary submissions.

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<sup>1</sup> Submissions of Simon Overland APM dated 18 August 2020 (“**Mr Overland’s primary submissions**”).

- 5 Two observations arise from this approach:
- a) Rather than make any appropriate concessions in reply, with the benefit of review of all parties' submissions, Counsel Assisting instead seek last minute changes to key factual allegations to suit a frayed narrative.
  - b) The newly sought inferences fight a pitched battle with other inferences that Counsel Assisting had themselves submitted ought be drawn. The battle results in the inevitable failure of both inferences. If Counsel Assisting could not settle on the inference of the greatest likelihood, the Royal Commissioner should be slow to make serious, inference based, findings against Mr Overland. Moreover, the CA Further Submissions have not synthesised the changes in position with the earlier factual findings for which they contended in their earlier submissions (some of which are predicated on their now jettisoned interpretation of facts), nor with the whole of the evidence.
- 6 The newly sought findings in the CA Further Submissions should be rejected. As set out in further detail below, these lack a probative basis and frequently would amount to a breach of procedural fairness if made because Counsel Assisting did not put to Mr Overland in cross-examination the key allegations underlying their new version of events (unsurprisingly, given how recently this alternate case theory has emerged). Further, despite receiving submissions from a number of parties pointing out the factual inaccuracies and errors in approach in Counsel Assisting's earlier submissions, Counsel Assisting repeat their incautious approach to summarising the evidence in these more recent submissions, resulting in a number of inaccuracies and misleading assertions. It further underscores that the Royal Commissioner cannot rely on assertions, supposed inferences or factual conclusions that are advanced in those submissions without a meticulous consideration of every submission and every footnote reference therein, as well as a detailed review of all parties' responsive submissions and all documents and other evidence referred to in these submissions.
- 7 The remainder of these submissions address the key new allegations made against Mr Overland. Mr Overland has been provided with little over a week to respond to these new, lengthy submissions of Counsel Assisting, and so his response is accordingly constrained to key issues only: simply because an element of Counsel Assisting's new case is not

addressed by Mr Overland does not mean that he accepts Counsel Assisting's version of events or reasoning.

### **Mr Overland's alleged awareness of Ms Gobbo's informing on Mr Mokbel**

8 As set out in Mr Overland's earlier submissions, since well before Mr Overland gave *viva voce* evidence to this Commission, Mr Overland's evidence has been that he was aware, at the time of Ms Gobbo's registration, that Mr Mokbel was (or had been) a client of Ms Gobbo's.<sup>2</sup> The CA Further Submissions unfairly, and misleadingly, attempt to paint this as a recent concession, and also unfairly, and misleadingly, assert that Mr Overland's position changed during his evidence (at [822]).<sup>3</sup>

9 Counsel Assisting make seven assertions (at [822]) in defence of having gone to great pains, in their primary submissions, to establish that Mr Overland knew as at 30 March 2006, that Ms Gobbo had been representing Mr Tony Mokbel, notwithstanding that Mr Overland had already stated that he believed he was aware Ms Gobbo was acting for Mr Mokbel in late 2005, early 2006. The fundamental stated premise of this part of the CA Further Submissions is that "*Mr Overland's position as to when he knew of this fact changed during his evidence*" as set out in the seven assertions. An examination of each of the seven assertions reveals that fundamental premise to be quite wrong:

- a) At [822.1], Counsel Assisting do not accurately summarise the evidence Mr Overland gave at the passage on which they rely (*viz.* T.11353). Mr Winneke QC's questions were not directed squarely to Mr Mokbel, but to whether Ms Gobbo "*had been acting for people such as Tony Mokbel*" and asked Mr Overland for his "*specific recollection*".<sup>4</sup>

*You had an awareness that she was, and I'm asking for a specific recollection, but generally speaking you you're aware, you knew your investigators - perhaps I should not put it knew personally - you knew that she had been acting for people such as Tony Mokbel?*

In his response, Mr Overland specifically acknowledged that "*I'm not saying I didn't know but it's difficult for me to be confident that I did know at that time*"

<sup>2</sup> Mr Overland's primary submissions at [189].

<sup>3</sup> This is the second time this unfair submission has been advanced; see Mr Overland's primary submissions at [191]-[192].

<sup>4</sup> T.11353.2-6(16/12/19).

(emphasis added).<sup>5</sup> This is omitted from Counsel Assisting's version of Mr Overland's evidence. It obviously does not reconcile with the submission that his evidence "*changed*".

- b) At [822.2], Counsel Assisting again do not accurately summarise the evidence given on the transcript pages footnoted in support (T.11442.-11443). Mr Overland gave evidence that it was his understanding that Ms Gobbo "*was around that time providing information about other members of the Mokbel syndicate and the intention, as I understood it, was not to go directly at Mokbel at that time but to work around him and take out those around him and build a case against him that way*"<sup>6</sup>... "*My understanding was that she was informing more against those around Mokbel ... [a]nd it was absolutely with the intention of building a case against him, as I explained, using the drug investigations as a means to put pressure on him around the homicides, and yes, it was messy, absolutely it was*".<sup>7</sup> This was positive evidence offered up by Mr Overland, relating to the strategy of putting pressure on Mr Mokbel through Ms Gobbo providing information on others in his syndicate, rather than anything "accepted" by Mr Overland (as asserted by Counsel Assisting). It also, critically, was Mr Overland's evidence – acknowledging it was "absolutely messy" – that the strategy to get to Mr Mokbel was through Ms Gobbo informing on those around him.
- c) It was after the evidence set out above at sub-paragraph (b) that Mr Winneke QC then put it to Mr Overland what is summarised by Counsel Assisting, at [822.3], as "*it was put to Mr Overland that he could not have it both ways*"; the real question at T.11443 (ie the page cited by Counsel Assisting) being:<sup>8</sup>

*Mr Overland, can I suggest to you that if what you say is correct, that you were so concerned about this, you were so careful to inform your investigators that this could not occur, that is she couldn't continue to act for Mokbel, and it so obviously then occurred, can I suggest to you that what you're saying to the Commission is simply not correct, it cannot be right? ---No, it is correct.*

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<sup>5</sup> T.11353.8-9(16/12/19).

<sup>6</sup> T.11442.24-29.

<sup>7</sup> T.11443.6-12.

<sup>8</sup> T.11443.40-46.

- d) Counsel Assisting, at [822.4], misleadingly flip the chronology to assert that Mr Overland's evidence, set out at sub-paragraph (b) above, came after "*it was put to Mr Overland that he could not have it both ways*" – to support the faulty submission that Mr Overland's evidence changed after Counsel Assisting's puttage (set out at subparagraph (c) above).
- e) Counsel Assisting, at [822.5], again flip the chronology to misleadingly suggest that the evidence Mr Overland gave about not recalling exactly when he became aware Ms Gobbo was acting for Mr Mokbel on Commonwealth charges came after Counsel Assisting's puttage (set out at subparagraph (c) above), when in fact it came before.
- f) Counsel Assisting then turn to the line of questioning on 18 December 2019, during which Mr Overland was shown *The Age* from 30 March 2006 (at [822.6], [822.7]) – and completely omit from their summary the fact that, on 16 December 2019, on the morning of Mr Overland's first day of evidence, he gave the following evidence (emphasis added):

*I take it you would also have been aware that in late 2005, 2006 previously Ms Gobbo was acting for Mr Mokbel in relation to drug charges brought by the Commonwealth?--- Look, I believe so but I don't have a particularly clear recollection of that.*

*No, all right. In due course we might put in front of you at least newspaper articles which make it clear that Ms Gobbo was acting for Mr Mokbel?---Yes.*

*At the time?---I accept that she was acting for Mr Mokbel at the time.*

*You would have been aware of that at the time?---I assume so but I don't have a specific recollection of that.*

- 10 Counsel Assisting's submission that Mr Overland's evidence changed on this issue is flatly inconsistent with what in fact occurred, and ought be rejected. It also underscores the unacceptable risk that this Royal Commission would take, were it to rely on any assertions, supposed inferences or factual conclusions that are advanced in Counsel Assisting's submissions without a meticulous consideration of every submission and every footnote reference therein.

11 At [824], Counsel Assisting have now pointed to matters which, they submit, support their conclusions in Chapter 12 regarding what Mr Overland knew about Ms Gobbo informing on Mr Mokbel:

a) At [824.1], Counsel Assisting assert there is a “strong inference” that on 12 September 2005 that Mr Overland “would have been given some information as to how Ms Gobbo came to be dealing with police, including her concerns of conflict between the interests of Mr Mokbel and Mr Bickley” (at [824.1]). There is no basis for this assertion that on 12 September 2005 Mr Overland was told of Ms Gobbo’s “concerns of conflict between the interests of Mr Mokbel and Mr Bickley”. The only matters relied upon by Counsel Assisting are:

(i) [194] of volume 2 of their earlier submissions, which only states a proposed use of Ms Gobbo as a human source in relation to an investigation relating to Mr Mokbel:

*On 12 September 2005, at a Purana Taskforce weekly update meeting he [ie Mr Overland] was told by Mr O’Brien about the proposed use of Ms Gobbo as a human source in relation to Operation Quills, an investigation relating to Mr Tony Mokbel.*

(ii) [1331] of volume 2 of their earlier submissions, which extract Mr O’Brien’s diary note of 12 September 2005. This extract does not refer to concerns Ms Gobbo had of conflicts between the interests of Messrs Bickley and Mokbel at all; it simply stated:<sup>9</sup>

*Discussion re Solicitor Nicola Gobbo + opportunities re Op [redacted]  
Consider ACC Hearings to Discussed Recent AFP Investigation re Mokbel  
& A/C Query re Mokbel State Charges...*

One need only read the content of those two entries, being the only evidence relied on by Counsel Assisting, to understand that there is no basis for an inference, let alone a “strong inference”, that Mr Overland was given some information on 12 September 2005 of Ms Gobbo’s “concerns of conflict between the interests of Mr Mokbel and Mr Bickley”. Further, as was noted in Mr Overland’s primary submission at [70], Counsel Assisting ignore Mr Overland’s own diary note and evidence of this

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<sup>9</sup> Mr James (Jim) O’Brien’s diary, 12 September 2005, VPL.0005.0153.0014 at .0016.

meeting, including his evidence that “*I do not believe that I was informed at this meeting, based on my general recollection and this entry, that I was informed about Ms Gobbo at this meeting*” because in light of his other diary entries at around this time, he believes he would have recorded this information had he been told.<sup>10</sup> There is still no attempt from Counsel Assisting to explain why or how Mr O’Brien’s diary entry is to be preferred over Mr Overland’s notes, and Mr Overland’s evidence and recollection.

- b) At [824.2] to [824.4], Counsel Assisting refer to meetings in which updates were given on the information Ms Gobbo had provided, but the bulk of these diary notes record information being provided about persons in Mr Mokbel’s syndicate, rather than point to Ms Gobbo informing on Mr Mokbel. As such, the diary entries are consistent with Mr Overland’s understanding “*that she was informing more against those around Mokbel ..., and yes, it was messy, absolutely it was*”.<sup>11</sup> Further and fundamentally, Counsel Assisting relies on notes of others of meetings to impute knowledge to Mr Overland – which was not put to Mr Overland in cross-examination. It is accepted that not every fact, theory or proposition can, or must, be put to every witness in a Royal Commission of this scope and working within the time constraints that exist, but this is a matter that is apparently relied on by Counsel Assisting as being fundamental to the case against Mr Overland. Procedural fairness dictates that these key factual matters, relied on as establishing Mr Overland’s knowledge, relevant to serious findings against Mr Overland, should have been put to him.

**Mr Overland’s instruction that Ms Gobbo was not to act for those upon whom she was informing**

- 12 Counsel Assisting’s primary submissions accepted Mr Overland’s evidence that he gave an instruction that Ms Gobbo was not to act for those upon whom she was informing. Indeed, many of the findings they invite the Commissioner to make are predicated on such an instruction having been given. For example, at [1058]:

<sup>10</sup> Supplementary Overland Statement of 17 January 2020 at [71], [73].

<sup>11</sup> T.11443.6-12.

*In the event that the Commissioner does not accept that Ms Gobbo's representation of Mr Thomas while informing on him became known to Mr Overland at any time during the relevant period, it is open to the Commissioner to find that Mr Overland should have made inquiries and discovered those matters. That is so because his evidence was that he gave a precise direction that Ms Gobbo could not continue to act for people if she was providing information about them. Given he was legally qualified and, to give this direction, readily identified the serious risks posed to the integrity of the administration of justice, he had an obligation to make inquiries as to whether his direction was being complied with.*

- 13 Similar findings, premised on Mr Overland having given the instruction, are invited at [1435] and [1898].
- 14 Counsel Assisting have now abandoned this position and positively assert that the Commissioner should not find that the instruction was given.<sup>12</sup> Counsel Assisting present three “options” which would impugn this evidence given by Mr Overland. While “option 2” is, ostensibly, that Mr Overland gave the instruction, all the submissions made under this heading argue that the Commissioner should disregard “option 2” and find that the instruction was not given.
- 15 It is difficult to overstate the centrality of this issue to the matters being considered by the Royal Commission. Its significance could scarcely have escaped the attention of Counsel Assisting. Yet no challenge was mounted to this evidence during cross-examination and no challenge was mounted in Counsel Assisting's primary submissions. As noted above, the contrary was the case – the evidence was accepted. Despite this, not a word of explanation is offered by Counsel Assisting as to why, having reviewed all of the evidence and considered all of the issues when drafting primary submissions, it did not occur to them that the evidence should not be accepted.
- 16 The change can only be an implicit acknowledgement that, as set out in Mr Overland's earlier submissions, the fact of this instruction of Mr Overland's means that the inferences Counsel Assisting seek in relation to Mr Overland in the Mr Thomas and Mr Cooper case studies are not the most probable ones.<sup>13</sup>
- 17 Rather than make any concession that the fact of Mr Overland's instruction may mean their inferences are not the most probable, or alternatively grapple with the matters raised in Mr

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<sup>12</sup> CA Further Submissions at [827] and following.

<sup>13</sup> See Mr Overland's primary submissions at [147], [153], [161], [163], [168], [177], [197].



Overland's submissions and reason as to why their inferences remain the most probable, Counsel Assisting instead contend for a last minute change to the assessment of the relevant "facts" in an attempt to resuscitate their preferred narrative. To maintain a failed narrative Counsel Assisting even, for the first time, call into question Mr Overland's credibility (by seeking a finding that goes against his evidence).

18 Counsel Assisting's primary position – being that the instruction was given – should be accepted, and the submissions made regarding the three new "options" rejected:

- a) Acceptance of Counsel Assisting's new submissions requires Mr Overland's evidence to be discredited. Counsel Assisting has provided no cogent reason why it ought be discredited. No other party – including parties whom one could have expected to challenge the evidence (such as the former SDU officers, or current or former members of Victoria Police) – have sought to challenge, dispute or discredit Mr Overland's evidence on this issue. Indeed, the former SDU members' submission even acknowledges that it was Mr Overland's understanding that Ms Gobbo would not act for people she informed on.<sup>14</sup>
- b) Counsel Assisting, who had the benefit of eight days of cross-examination of Mr Overland, did not challenge Mr Overland's evidence that he gave the instruction. It would deprive Mr Overland of procedural fairness were their recent submissions to be accepted.
- c) Counsel Assisting have made no attempt to synthesise their new submission (that Mr Overland did not give the instruction) with their earlier, primary submissions, which are predicated on the instruction having been given.<sup>15</sup> If their new position on the instruction were adopted, where does that leave the earlier findings predicated on Mr Overland having given the instruction? How is Mr Overland provided with a fair opportunity to respond, when facts are now being changed in an ad hoc, scrambled and piecemeal fashion?
- d) "Option one" further requires the Royal Commission to reject Mr Overland's evidence that he appreciated the sensitivity of using Ms Gobbo as a human source,

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<sup>14</sup> Submissions of Messrs Black, Fox, Green, Smith, White and Wolf dated 7 August 2020 at [241] ("SDU submissions").

<sup>15</sup> Primary submissions of Counsel Assisting at [1058], [1435], [1898].

including appreciating from the outset the legal and ethical issues about her role as a human source or witness.<sup>16</sup> Again, this was not a matter which Counsel Assisting challenged Mr Overland on.

- e) The submissions made under the heading “Option two” at [844] are lacking any basis, are unfairly made, and would, if accepted by the Royal Commission, amount to a breach of procedural fairness:
- (i) Counsel Assisting incorrectly state that “*Mr O’Brien disputed that he was ever given such a direction*”. Mr O’Brien’s submission (at [51.12]) was no more than that he “*had no recollection of having any such discussions with Mr Overland*”.<sup>17</sup>
  - (ii) Without citing any evidence in support, Counsel Assisting wrongly assert that “*Mr Sandy White similarly denied being given such an instruction*” (at [844.1]). Mr Overland does not have standing leave (and so does not have access to all exhibits, unredacted transcript, and did not appear at Mr White’s in camera examination), but from the transcript to which he does have access, Mr White gave no such denial. Nor does any such denial appear in the former SDU members’ submissions.
  - (iii) Counsel Assisting also misconstrue Mr Overland’s evidence before IBAC when they assert that “*he had no such recollection [of a discussion with Mr Maloney] when asked about it in 2014 before Mr Kellam*” (at [844.2]). In the passage of testimony cited by Counsel Assisting, Mr Overland is answering a topic of questions relating to what did Mr Overland do “*to follow up to ensure*” that Mr White had “*taken your [Mr Overland’s] message on board*” and that Mr Overland’s measures were being implemented. Mr Overland’s evidence was that he had no immediate recollection of a conversation with Mr Maloney about whether Mr White was being “*looked after*” and how Mr White was going with 3838, and further noted that he was “*struggling to recall*”. For the Royal

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<sup>16</sup> Witness statement of Simon James Overland at [8]; Supplementary Statement of Simon James Overland at [76].

<sup>17</sup> Submissions of Victoria Police, tranche 1, at [51.12].

Commission's convenience, the passage of transcript relied on by Counsel Assisting is set out in full (emphasis added):

*Mr Hevey: I'm trying to get an insight though, a senior officer who feels confident to say to the senior sergeant, "Listen, [Sandy] watch out for this woman. I've got real concerns about her and how she's behaving." What then do you do to follow up to make sure that he's taken your message on board and is using them?*

*MR OVERLAND: Well, at that stage I don't recall doing anything else because he was in another command, so not my direct command responsibility and look, to be quite frank, I had plenty of other things to be, you know, worried about and occupied by at that time.*

*MR HEVEY: But let's assume it was Danny Malony (sic), for the sake of a name. That would be exactly the sort of thing that you two senior ranking officers would chat about.*

*MR OVERLAND: Yeah.*

*MR HEVEY: "Danny, is [Sandy] being looked after here? How's he going with 3838?"*

*MR OVERLAND: Yeah.*

*HEVEY: "She's a snake. She's potentially dangerous. We need to make sure that everything's on board."*

*MR OVERLAND: Yeah.*

*MR HEVEY: "Mate, keep an eye on him." Just two senior officers chatting over a coffee.*

*MR OVERLAND: And that may well have happened. I have no recollection of that, but then I'm struggling to recall a lot of this so, you know, as we go along you paint a picture for me and that helps but I don't recall whether I did or I didn't - well, sorry, I don't recall doing it but I'm not saying that I didn't -*

- (iv) Counsel Assisting unfairly submit that "Mr Overland's memory may not be reliable in relation to those events" (at [844.3]), an unfair submission because they did not, during the course of their eight days of cross-examination of Mr Overland, put to Mr Overland his memory may have been unreliable on the instruction he gave, and accordingly deprived him of the opportunity to respond and explain why he is so confident he accurately recalls giving the instruction. Mr Overland has already addressed why he proceeded with evidence on the basis that he did not keep a diary at Victoria Police based on multiple requests made of Victoria

Police, who told him that they were unable to locate any diaries assigned to him.<sup>18</sup> Moreover, the diaries, once found (five days into Mr Overland's cross-examination), confirmed the accuracy and reliability of Mr Overland's evidence and that he was candid about what he could remember and what he could not remember.

- (v) Counsel Assisting submit that an inference should be drawn from the fact that Mr Overland did not record in his diary "*notes of any instructions directing that Ms Gobbo could not continue to act for those she was informing upon, or the consequences that might have on court proceedings*" (at [844.4]). Counsel Assisting do not grapple with the evidence Mr Overland gave as to why he considers the diary did not record the instruction<sup>19</sup> - evidence which was also not challenged by Mr Winneke QC during the course of his cross-examination of Mr Overland:

*I note that I have not made a note specifically about issues associated with legal/professional privilege, but I do not believe I would have made such a specific entry in my diary for the reason I have previously explained to the Commission. To make such a specific entry would have identified the source as a lawyer and potentially endangered her.*

- (vi) A further piece of unfair speculation at [844.4] is that "*It seems that Mr Overland accepts that given Ms Gobbo was in effect acting as an agent of Victoria Police, she could be told who she could act for and who she could not*". Again, Mr Winneke QC never put this to Mr Overland. It is a crude and implausible corollary of Mr Overland's instruction.
- (vii) Counsel Assisting conclude [844] with a series of sub-paragraphs of faulty top-down reasoning that Mr Overland must not have given the direction because, it is said, it was not followed. The submission ignores that, as set out in the former SDU officers' submissions, the SDU did endeavour to prevent Ms Gobbo from acting for persons in relation to charges arising from intelligence she had provided to Victoria Police.<sup>20</sup>

<sup>18</sup> See Mr Overland's reply submissions of 7 September 2020 at [12(a)].

<sup>19</sup> Supplementary Statement of Simon James Overland at [76].

<sup>20</sup> SDU submissions at [250]-[259].

- f) Option 3, at [847], purports to provide “*context*” for finding the instruction was not given – but many of the reasons provided there point to Mr Overland having given the instruction (ie because he appreciated the use of a lawyer as a human source was extraordinary/he understood the use of human sources to be complex, and so took the step of issuing an instruction in relation to her use). Further, it needs to be noted at [847.2] a submission is made to “*an earlier Purana strategy*” having been “*recognised by Mr Overland as involving complex legal and ethical issues*” such that he “*consulted with the DPP and senior crown prosecutors*”. No further specificity is provided to assist Mr Overland understand what this submission relates to, and so he is unable to address it in this reply. The footnoting provided by Counsel Assisting does not assist (it cross references simply to Mr Overland’s evidence that Purana investigations and prosecutions were done with the full knowledge of the then Director of Public Prosecutions and the Senior Crown Counsel). Counsel Assisting also submit that “*at no stage thereafter did Mr Overland make any enquiry as to who Ms Gobbo was acting for, or continuing to act*” (at [847.5]), as to which Mr Overland repeats his earlier submissions (not grappled with by Counsel Assisting).

### **Failure to ensure appropriate legal advice**

- 19 Counsel Assisting’s further submissions, under the heading “*Failure to ensure appropriate legal advice*”, seem to relate only to their earlier submission (at [424] of their primary submissions) that Mr Overland “*should have ensured that legal advice concerning her proposed use was obtained from the DPP, a lawyer within Victoria Police or the Victorian Government Solicitors Office*” “*when he became aware of the proposed use of Ms Gobbo as a human source*” (given Counsel Assisting refer only to [91]-[93] of Mr Overland’s primary submissions), and Mr Overland responds accordingly. If Counsel Assisting intended to also make submissions impacting their submissions in relation to legal advice Mr Overland ought to have ensured was obtained at [1004] (addressed in Mr Overland’s primary submissions at [154]-[158]) or [3541] (addressed in Mr Overland’s primary submissions at Annexure A, item 23), then Counsel Assisting need to explicitly notify Mr Overland of this.
- 20 For the first time, Counsel Assisting seek a finding that Mr Overland’s “failure” to ensure legal advice on becoming aware of the proposed use of Ms Gobbo as a human source was

obtained was a “*deliberate decision*”.<sup>21</sup> No explanation is provided for why this submission is made for the first time in responsive submissions. It was never put to Mr Overland that he deliberately decided not to obtain this legal advice.

21 Further, the submission by Counsel Assisting – that Mr Overland deliberately refrained from obtaining advice at the time of her registration – is at odds with:

- a) the number of steps Mr Overland took, on learning that Ms Gobbo had been registered as a human source (and cognisant of the Chief Commissioner’s Instruction on Informer Management Policy). He spoke with Mr Moloney and Ms Nixon (as set out in [73] to [93] of his primary submissions). He issued the instruction that Ms Gobbo was not to act for persons against whom she was informing. He directed Mr Purton on the need to keep “*audit trails*”. This tells against him “deliberately” refraining from taking other steps to allay his “*surprise and concern*” on learning of her registration;
- b) the fact that he was familiar with the Chief Commissioner’s Instruction on Informer Management Policy, and so he knew registration of Ms Gobbo involved an analysis of the risks and benefits of her registration, including consideration of the content of the information and the impact on the public’s confidence in the Victorian Police (as set out above at paragraph 68(a) of his primary submissions);
- c) his awareness that a sterile corridor had been established under the Chief Commissioner Instruction, and was conscious not to intervene inappropriately, considering: “*If the risk assessment done by the professionals by the SDU was such that she shouldn’t be registered, she wouldn’t be. ...if I’d intervened in the way you’re suggesting then I think that may well have been a criticism that was made of me*” (as set out in paragraph 69 of his primary submissions).

Counsel Assisting have failed to grapple with any of this in their reply submission asserting his decision was a “deliberate” one.

22 The submission ought be rejected as lacking any evidentiary basis, not being the most probable inference. Further if this finding were made it would deny Mr Overland

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<sup>21</sup> CA Further Submissions at [853].

procedural fairness. The acknowledgement that not every proposition can or should be put to every witness does not excuse the failure to put to Mr Overland the highly significant proposition that he deliberately decided not to seek legal advice.

### **Direction to keep ‘audit trails’**

- 23 Counsel Assisting, for the first time, address Mr Overland’s diary entry which records he had given an instruction of a need for “*audit trails*”.<sup>22</sup> Mr Overland gave evidence – not challenged by Counsel Assisting in their lengthy cross-examination of him – that this entry reflected his expectation that Victoria Police “*needed to be highly accountable for the manner in which information was obtained from Ms Gobbo and used in criminal investigations and prosecutions*” ... *[I appreciated] the sensitivity of using Ms Gobbo as a human source and [expected] that full and appropriate disclosure would be made to prosecuting authorities when necessary*”.<sup>23</sup>
- 24 Mr Overland noted in his earlier submission that this objective evidence of an instruction to Mr Purton to keep “*audit trails*” was a fact fatal to the proposition that Mr Overland knew or believed that he was involved in any improper conduct in respect of Ms Gobbo’s role as a human source: giving a clear direction to the Commander of Crime to keep “*audit trails*” in respect of a human source is consistent with only one motivation and mindset of Mr Overland: he wanted, instructed and expected that the dealings by Victoria Police with Ms Gobbo would be ethical and appropriate. The fact that Mr Overland wanted, instructed and expected that, from at least that point forward, there would be a paper trail evidencing all relevant matters in respect of the information received from Ms Gobbo is impossible to reconcile with a belief or apprehension on his part that her role as a human source was, or would become, improper.<sup>24</sup>
- 25 Faced with this submission by Mr Overland, Counsel Assisting again seek a last minute factual finding that the reference to “*audit trails*” ought be interpreted in a different fashion: in a manner which is not the most natural reading of the objective evidence (the diary note), in a manner which goes against Mr Overland’s evidence as to what the reference means, and in a manner which was not put to Mr Overland in cross-examination.

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<sup>22</sup> CA Further Submissions at [858] and following

<sup>23</sup> Second Overland Statement at [75].

<sup>24</sup> Mr Overland’s primary submissions at [20].

- 26 Remarkably, Counsel Assisting now also contend, for the first time, for an interpretation of the reference to “*IR as normal*” which is consistent with a malign intent by Mr Overland. They contend that Mr Overland instructed “*IR as normal*”, apparently aware that the IR that would be disclosed to the Courts “*would be sanitised... would not indicate the source of the intelligence within*”. This is a serious allegation. Again it was not put to Mr Overland. He has had no opportunity to respond. It is also inconsistent with Mr Overland’s unchallenged evidence of his understanding of the disclosure process, as set out in Mr Overland’s primary submissions at [97], that full disclosure of the “*IR as normal*” was being made to prosecution lawyers to allow them to make appropriate PII claims. His view is (and was) “*you’ve got to give it to the prosecutor and then you make your PII claim from there*”.
- 27 Counsel Assisting have not addressed this evidence – that Mr Overland expected full disclosure to prosecution lawyers (cf the Court) – in seeking their interpretation of “*IR as normal*”.
- 28 In any event, the overwrought and misconceived interpretation which Counsel Assisting seek to apply to the diary note does not overcome the fatal flaw this objective entry has on their case against Mr Overland. Accepting for a moment that the direction to keep “audit trails” was, as Counsel Assisting contend (at [863]) “*with a different purpose in mind.... Mr Overland’s concern to avoid compromise of Ms Gobbo’s identity and ... that he wanted to ensure that ... a record was kept to ensure it could be ascertained who held such information*”, and that Mr Overland used “normal” thinking of how IRs are sanitised for the Courts, then:
- a) Mr Overland instructed that a full record be kept in the IR for review by anyone internally within Victoria Police, including anyone who audited the IRs (which, as it turned out, occurred), and to the OPI;
  - b) he instructed that a full “IR” be kept, notwithstanding there was always a risk that the full, non-sanitised version of the IR may ultimately be before the Court or another independent body (which, as it turned out, occurred);



c) he further instructed that there be a record to ensure there was an auditable trail of each person who had been made aware of information in relation to the use of Ms Gobbo as a human source.

29 Even Counsel Assisting's implausible construction of the diary entry is consistent only with Mr Overland having wanted, instructed and expected that information records be kept as normal evidencing all relevant matters in respect of the information received from Ms Gobbo, and that in addition to the normal approach, an auditable trail was to be kept. An instruction to expand the information records kept with respect to Ms Gobbo is still impossible to reconcile with a belief or apprehension on his part that her role as a human source was, or would become, improper.

**Mr Overland's expectation that Ms Gobbo's identity would be revealed during court proceedings**

30 Counsel Assisting make new submissions seeking to discredit Mr Overland's evidence that he understood that full disclosure was made to prosecution lawyers.

31 The new submissions made do not withstand scrutiny. They are premised on an unrealistic expectation that someone as senior as Mr Overland was involved in the minutiae of trial procedure, and was devoting attention to supervising disclosure processes (which were not his responsibility<sup>25</sup>).

32 The assertion at [868.1] – "*Mr Blayney suggested that a hypothetical legal advice be sought to work through various scenarios. If Mr Overland had understood that Ms Gobbo's use as a human source had been approved in court processes to that point, this would have been raised*" – does not accord with Mr Overland's evidence that: one, he understood the hypothetical legal opinion to be one in relation to "a general concern about a barrister acting as a human source" (not one working through various scenarios, as Counsel Assisting put it), and two, that he considered there to be no value to the hypothetical legal opinion around the general concern of a barrister being a human source, precisely because it appeared to him that "*any issues associated with that would be dealt with*" through "*criminal justice processes*", the "*prosecution process*" and "*discovery*", so did not need to be the subject of

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<sup>25</sup> See Mr Overland's primary submissions at [156]-[157].

a hypothetical legal opinion.<sup>26</sup> The submission at [868.2] conflates the concepts of PII claims appropriately being made around Ms Gobbo's *identity* with the PII claims being made around the entire involvement of a human source/Ms Gobbo. The submission at [868.3] ignores Mr Overland's earlier submission (made in the context of the SWOT analysis) that it is not the most probable inference, on an understanding of those potential outcomes, that a person would deduce that Ms Gobbo's role as a human source had not been disclosed in any court proceeding.<sup>27</sup>

33 Further, Counsel Assisting's final assertion, made without citing any evidence or providing any reasoning to support ("*Nor should it be accepted that he had that expectation* [that full disclosure was being made to the prosecution] *from the outset*"), should be rejected. It is, again, a late change introduced by Counsel Assisting, inviting the Royal Commission to discredit Mr Overland's evidence without providing anything in support to justify it, and without having put it to Mr Overland in cross-examination.

34 Finally, no explanation is given for the making of these new submissions, including an attack on Mr Overland's credibility, so late. It again appears to be a late change in acknowledgement that otherwise Mr Overland's evidence in relation to disclosure – and in particular his expectation from the outset that appropriate disclosure to prosecutors had occurred – tells against the inferences sought by Counsel Assisting being the most probable inference on the evidence as a whole.

### **Ms Gobbo's registration, handling and management was not Mr Overland's responsibility**

35 The new submissions made by Counsel Assisting under this heading simply enumerate instances of involvement by Mr Overland in matters relating to Ms Gobbo. That he was involved in matters relating to Ms Gobbo is uncontroversial (it can simply be seen from his lengthy witness statements and his eight days of cross-examination). Counsel Assisting still fail to confront, however, why they seek findings that there was an "*obligation*" on Mr Overland but not on any other senior officer in the chain of command, including those responsible for the Intelligence and Covert Support Department. The dogged focus on Mr Overland, to the exclusion of other senior officers in the chain of command, perhaps explains the shifting narrative and shifting inferences that are pursued by Counsel Assisting

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<sup>26</sup> T.11763-T.11767 (19/12/19), emphasis added.

<sup>27</sup> Annexure A, item 17.

against Mr Overland, but reflects a distorted view of the operation of Victoria Police at the time and of the totality of the evidence.

36 Critically, Mr Overland raised the following facts in his primary submission as being impossible to reconcile with the inferences Counsel Assisting sought:<sup>28</sup>

- a) the policy and structures in place, in response to police corruption, that meant that not only was the SDU separate from the Crime Department and Mr Overland's responsibilities, but that a "*sterile corridor*" was to be adhered to (including by Mr Overland); and
- b) the volume and seriousness of the responsibilities, workload, and position of Mr Overland as AC Crime, Deputy Commissioner and Chief Commissioner.

37 These were not matters addressed in Counsel Assisting's primary submissions, and the CA Further Submissions are also silent on the issue.

38 No attempt has been made by Counsel Assisting to show how their invited inferences and findings are plausible, once Mr Overland's role during the relevant periods at Victoria Police is properly and fairly considered, and the structures and policies in place at the time considered.

39 The failure of Counsel Assisting to address the sterile corridor issue leaves a cavernous hole in its submissions to the Royal Commission and its attempt to apportion blame for the problems associated with the way in which Victoria Police dealt with Ms Gobbo.

40 The creation of the sterile corridor was addressed in Mr Overland's primary statement<sup>29</sup> and his supplementary statement.<sup>30</sup> It was also referred to on numerous occasions during Mr Overland's oral evidence.<sup>31</sup>

41 It was also referred to in evidence by numerous witnesses.<sup>32</sup>

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<sup>28</sup> Mr Overland's primary submissions, Part C.

<sup>29</sup> At [152]

<sup>30</sup> At [115]

<sup>31</sup> Including T.11325.34-40, T.11336.22-25 (16/12/19); T.11538.21-25 (17/12/19); T.11939.14-24 (19/12/19); T.12089.38-44, T.12133.44-T.12134.42 (22/1/20).

<sup>32</sup> Including Ms Nixon (T.11675.4-44) (18/12/19); and, as set out in the submissions of Victoria Police, tranche 1, DS Kelly: (at [36.326]), Mr James (Jim) O'Brien (at [50.62]) and Mr Flynn (at [67.16]); and, as set out in the submissions of the SDU officers, Mr Cowlshaw (at [95]) and Mr Sandy White (at [278]).

- 42 The issue of the sterile corridor was a prominent feature of the primary submissions on behalf of Mr Overland. Those submissions dealt with the issue of the sterile corridor at length and explained that:
- a) The inferences sought by Counsel Assisting are impossible to reconcile with the policy and structures in place, in response to police corruption, that meant that not only was the SDU separate from the Crime Department and Mr Overland's responsibilities, but that a "sterile corridor" was to be adhered to (including by Mr Overland);<sup>33</sup>
  - b) Mr Overland was aware that one of the policy responses implemented to deal with police corruption was the implementation of the "sterile corridor", which was also at that time viewed as world's best practice and a way in which to minimise the possibility of corruption developing;<sup>34</sup>
  - c) The concept of "sterile corridor" requires the separation of management of an investigation from management of the human source and Mr Overland was the ultimate manager of the investigations in his position as Assistant Commissioner, Crime;<sup>35</sup>
  - d) Accordingly, during the time in which Mr Overland was Assistant Commissioner, Crime, the SDU not only fell outside his responsibility, but he was aware of the requirement for it being separate from his management;<sup>36</sup>
  - e) Mr Overland was aware that a sterile corridor had been established under the Chief Commissioner Instruction, and was conscious not to intervene inappropriately;<sup>37</sup>
  - f) The primary submissions of Counsel Assisting had failed to address the inferences that competed with those for which they contended and which arose from Mr Overland's evidence that the sterile corridor meant that the management of the source was separate to his purview of management of investigations;<sup>38</sup>

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<sup>33</sup> At [19(d)(iv)]

<sup>34</sup> At [64]

<sup>35</sup> At [65]

<sup>36</sup> At 66]

<sup>37</sup> At [92], quoting evidence from T 11431.21-24

<sup>38</sup> At [102(c)]

- g) The primary submissions of Counsel Assisting had failed to grapple with Mr Overland's unchallenged evidence that the sterile corridor meant that information relating to and the management of the source was outside Mr Overland's authority or control;<sup>39</sup>
- h) The primary submissions of Counsel Assisting had failed to explain how the most probable inference is that Mr Overland knew that Ms Gobbo was informing on Mr Thomas in light of the fact that a sterile corridor operated to separate Mr Overland from the SDU, being a barrier which Mr Overland saw as reflecting best practice in relation to management of sources and a practice that he was required to comply with by the operation of the relevant Chief Commissioner's Instruction;<sup>40</sup>
- i) The submission by Counsel Assisting that it is open to the Commissioner to find that Mr Overland should have made inquiries and discovered Ms Gobbo's representation of Mr Thomas while informing on him ignores that there was in place a sterile corridor to limit knowledge in relation to human sources and a new Chief Commissioner instruction and policy setting out the structures and policies to be adhered to in relation to management of sources.<sup>41</sup>

43 Understandably, it was not only Mr Overland's submissions that addressed the sterile corridor issue in detail. For example, the primary submissions of Victoria Police discussed the "*important structural component*" of the sterile corridor and the expert evidence of Sir Jonathan Murphy in relation to the issue.<sup>42</sup> They also discussed the fact that the sterile corridor "*meant that matters which should have been properly considered for disclosure were not known to those who were responsible for disclosure*" and that at "*a practical level, the relevant information was held in a highly secure and restricted access area of covert policing at Victoria Police*".<sup>43</sup> The former SDU officers' primary submissions describe the implementation of a "*sterile corridor*" "*[a] critical concept of the new SDU*" (emphasis added), and affirm the concept of a sterile corridor as involving the separation of the management of the human source from management of the investigation.<sup>44</sup>

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<sup>39</sup> At [147(d)]

<sup>40</sup> At [153(i)]

<sup>41</sup> At [163(d)]

<sup>42</sup> At [5.15]

<sup>43</sup> At [10.3]

<sup>44</sup> Former SDU officers' primary submissions at [53].

- 44 What did the CA Further Submissions say in response to these detailed and specific submissions about the sterile corridor? Precisely nothing.
- 45 The CA Further Submissions use the phrase “*sterile corridor*” once in the 278 page document: when quoting evidence from Mr Ryan.<sup>45</sup> No further analysis or discussion of the matter is entertained.
- 46 It can be readily accepted that not every issue raised in evidence could have been or should have been addressed by Counsel Assisting in their primary submissions. The same can be said of the impossibility of Counsel Assisting responding in their reply submissions to the many issues raised by the numerous parties making submissions.
- 47 But the organisational structure of Victoria Police and, in particular, the very specific structure of the sterile corridor is one of the most significant issues addressed in evidence and in submissions, going to the heart of the way in which human sources were managed and how members of Victoria Police were not permitted access to information and knowledge about human sources.
- 48 We repeat that the theories and findings advanced by Counsel Assisting are based on inferential reasoning about what Mr Overland knew and what he should have known about Ms Gobbo. Those theories and findings cannot turn their face away from an undisputed factual matter that is so central to those theories and findings, that so challenges those theories and findings, because it is inconvenient.
- 49 Term of Reference 2 requires the Royal Commission to inquire into and report on the conduct of current and former members of Victoria Police in their disclosures about and recruitment, handling and management of EF as a human source.
- 50 It is respectfully submitted that it is not possible for the Royal Commissioner to submit a report that meaningfully addresses Term of Reference 2 if it does not address the sterile corridor rule that governed the behaviour of the current and former members of Victoria Police in relation to human sources.

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<sup>45</sup> At [304]

**The inherent unlikelihood Mr Overland would have decided to transition Ms Gobbo from human source to witness if he was aware of her inappropriate use as a human source**

51 Counsel Assisting address Mr Overland’s earlier submission that there were only two possibilities:

- Mr Overland believed that his instruction for an audit trail would have been complied with and would reveal no wrongdoing by him, that his direction that Ms Gobbo could not continue to act for people if she was providing information about them had been followed, and that his expectation of appropriate disclosure to prosecutors had occurred; or
- Mr Overland knew or believed that his role in the dealings by Victoria Police with Ms Gobbo were unlawful or unethical, but resisted the fierce opposition from other police officers so as to act in an entirely self-destructive manner by exposing those dealings with Ms Gobbo to scrutiny.

52 The CA Further Submissions fail to overcome the problem that these irreducible alternatives present for the case against Mr Overland. They do not grapple with the fact that, even on the untenable, eleventh hour reading of “*IR as normal*” and “*audit trails*”, Mr Overland was issuing from the outset a directive that a complete, auditable trail would be kept, with the potential to be audited/disclosed in the future.

53 To address the second possibility referred to above, Counsel Assisting revisit their narrative in relation to whether Mr Overland received the SWOT analysis, and what he did next. As set out in Mr Overland’s earlier submissions,<sup>46</sup> while Mr Overland does not recall having seen the SWOT analysis, he readily offered up that, “*I agree with everything that’s contained in it. I think it is a reasonable document in terms of setting out the situation*”. Mr Overland, again, later stated that, while he does not recall seeing the SWOT analysis, “*I recall being very clear about the views of the SDU and their concerns*”, and further:

*I was well aware of those risks. I thought those risks had existed for some time. I thought we were managing them. I thought the most sensible [thing] to do at that point in time in all the circumstances was to transition Ms Gobbo from a source to a witness and get her into witness security so that she was protected. ... I wasn’t trying to cover anything up here. I was simply trying to deal with a difficult*

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<sup>46</sup> Annexure to Mr Overland’s primary submissions, item 18.

*situation. ... I thought they were matters I was managing, the OPI was involved in managing them, Mr Cornelius was involved in managing them, so I thought they had a sufficient level of focus at a sufficiently senior level in the organisation.*

54 The CA Further Submissions submit that a finding should be made that the SWOT analysis was provided to Mr Overland. The submission is made, it seems, based purely on Mr Overland “*leaving alone*” Mr Maloney’s evidence, which is said to be “*telling*” (at [893]). However:

- a) Mr Overland was not a party with standing leave. He did not appear at Mr Maloney’s evidence (or the majority of witnesses’ evidence). He does not have the extensive access to transcripts or exhibits parties with standing leave have.
- b) Mr Overland had six weeks to respond to over 2,500 pages of submissions made by Counsel Assisting. Similar to the approach adopted by other parties,<sup>47</sup> the fact he has not addressed every single matter raised by Counsel Assisting in their detailed submissions should not be taken as an acceptance of their submission, nor should it be taken as “*telling*” that he has not addressed each and every detail.

55 As to the relevant evidence of Mr Maloney which Counsel Assisting say Mr Overland ignores, and given the importance Counsel Assisting wish to give to this evidence, it is important to review carefully the submissions made by Counsel Assisting on this issue. Counsel Assisting identify [3406]-[3408] of their primary submissions<sup>48</sup> as the paragraphs it is “*telling*” that Mr Overland ignores. However, these paragraphs do not contain any reference to Mr Maloney:

3406.

*Following the instruction that Ms Gobbo would become a witness, it was determined that any deployment of Ms Gobbo should be handled by the Petra Taskforce. This was a strategy adopted in order to attempt to avoid the discovery of Ms Gobbo’s role as a human source with the SDU in any criminal proceeding brought against Mr Dale. It was foreseen that should Ms Gobbo become a witness any recording made by her may become evidence in the case. If it was known that the SDU deployed Ms Gobbo and not the Petra Taskforce, there would likely be questions raised as to Ms Gobbo’s relationship with the SDU.*

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<sup>47</sup> For example SDU submissions at [14].

<sup>48</sup> Counsel Assisting’s reply submissions at [892], footnote 997.



3407.

*So much is clear from contemporaneous records made at the time:*

- *Mr Sandy White in the SML said 'Decision that preferable that Petra deploy [Ms Gobbo] in case deployment becomes evidentiary – need a barrier / break [between] SDU management and witness management'*
- *Mr Sandy White in his diary said 'Agree deployment of [Ms Gobbo] to be done by Petra to isolate re Dale from SDU in order to protect historical relationship with SDU and discovery should [Ms Gobbo] become witness against Dale'*
- *Mr Peter Smith in the ICR said 'Decide that preferable for Op Petra deploy [Ms Gobbo] to minimise risk of revealing [human source] role'.*

3408.

*Mr Overland stated he recalled discussions to the effect of Mr Sandy White's entry in the SML as to the need for a 'barrier / break', although it was his belief that such discussions were in the hypothetical as he maintained that no determination had been made at that time as to Ms Gobbo becoming a witness, and he was not aware that there was a proposal to deploy Ms Gobbo to record Mr Dale.*

56 The only possible reference which Mr Overland has been able to identify as relevantly relating to Mr Maloney's evidence and which was not addressed in Mr Overland's primary submissions appears over 80 paragraphs later at [3490] of Counsel Assisting's submissions, where it is said that:

*Mr Maloney agreed that the SWOT analysis raised very major concerns for Victoria Police, and major risks associated with the transition of Ms Gobbo from human source to witness. He said for that reason he took it by hand to Mr Overland with the intention that it should be tabled at the Petra Taskforce Management Committee meeting for consideration. He wrote on the file that it was destined for 'D/C Overland' for 'Petra Steering Committee – Consideration'.*

57 This is simply a summary of Mr Maloney's evidence. No follow up submission is made, based on the summary, that a certain factual finding should be made. The fact that it was not specifically addressed in Mr Overland's primary submissions does not warrant the epithet "telling".

58 Further, Counsel Assisting cannot pick and choose from Mr Maloney's evidence. If Mr Maloney's evidence (as extracted at paragraph 56 above) is to be relied on by Counsel Assisting to seek a new finding that Mr Overland did receive the SWOT analysis, Counsel Assisting must also take into account Mr Maloney's other evidence about what Mr Overland did having received it.

59 In particular, and as set out in Counsel Assisting’s primary submissions, Mr Maloney gave evidence that the document was *tabled* at a Petra Taskforce meeting, spoken to – including Mr Overland speaking to their contents – and that advice and guidance was then provided by the Petra Taskforce Committee on the options.<sup>49</sup> Mr Maloney also gave evidence (set out in Counsel Assisting’s earlier submissions) that the ultimate decision rested with Mr Overland as head of the Taskforce, and that he supported Mr Overland’s decision.<sup>50</sup>

60 This is ignored in the CA Further Submissions. Counsel Assisting instead now, inconsistently, assert – without pointing to any transcript/evidence in support – that Mr Maloney’s evidence was that Mr Overland “*did not highlight concerns held by the SDU members*” and “*talked it down*”. These new assertions, incautiously put without reference to evidence and without explaining how they fit with Counsel Assisting’s earlier submissions, should be rejected.

61 If, as Counsel Assisting contend, Mr Maloney’s recollection is preferred over Mr Overland’s, then Counsel Assisting’s new submission – that “*Mr Overland’s conduct upon the receipt of this document is damning*” and that his decision to transition Ms Gobbo to a witness out of “*self-preservation*” – is unsustainable rhetoric. How is tabling and speaking to the contents of the SWOT analysis at the Petra Taskforce Committee meeting damning? How can Mr Overland’s decision be seen as one made simply out of self-preservation, when others like Mr Maloney (who would not benefit from Mr Overland’s self-preservation) also supported it?

### **Messrs Thomas and Cooper**

62 Particularly given the limited time available to prepare his submissions in reply, Mr Overland has not been able to interrogate each matter referred to in Counsel Assisting’s submissions at [906] to [925]. That he does not address these paragraphs is not to be taken as acceptance of any of the matters set out therein, and he relies on his earlier submissions in relation to the Thomas and Cooper case studies.

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<sup>49</sup> Counsel Assisting primary submissions at [3513]-[3514].

<sup>50</sup> *Ibid* at [3514].

## Conclusion

- 63 For the above reasons, Counsel Assisting's recent changes to key factual allegations against Mr Overland are not sustainable.
- 64 It is also respectfully submitted that the CA Further Submissions undermine the confidence the Royal Commission can have in Counsel Assisting's earlier, primary submissions. Counsel Assisting's case against Mr Overland is an inferential one, and before drawing an inference it must be the most probable inference on the evidence as a whole. But an internally inconsistent narrative is now advanced by Counsel Assisting against Mr Overland. Counsel Assisting's newly sought inferences are (for the reasons set out above) not plausible, and the abandonment of earlier sought inferences is consistent only with a concession that those primary submissions are not the most probable inference. Confronted with competing submissions lacking synthesis, the Royal Commission is now left with a difficult task of having to piece together how the new allegations fit within the evidence as a whole and with aspects of Counsel Assisting's earlier submissions predicated on now jettisoned conclusions (which Counsel Assisting have not addressed this in their reply submissions).
- 65 It further underscores that the findings sought against Mr Overland are simply not sustainable. They are findings without a proper basis, based on grossly inadequate (and at times non-existent) evidence and conjecture and would, if made, not only amount to a breach of Mr Overland's entitlement to procedural fairness, but also be fundamentally wrong and contrary to the search for the truth to which this Royal Commission is directed.

**Dated:** 9 October 2020

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