

ROYAL COMMISSION INTO THE MANAGEMENT
OF POLICE INFORMANTS

Held in Melbourne, Victoria

On Friday, 22 November 2019

Led by Commissioner: The Honourable Margaret McMurdo AC

Also Present

Counsel Assisting: Mr C. Winneke QC
 Mr A. Woods
 Ms M. Tittensor

Counsel for Victoria Police Mr S. Holt QC
 Ms R. Enbom SC

Counsel for State of Victoria Mr C. McDermott

Counsel for Nicola Gobbo Mr R. Nathwani

Counsel for DPP/SPP Ms K. O'Gorman

Counsel for CDPP Ms A. Haban-Beer

Counsel for Police Handlers Mr G. Chettle
 Ms L. Thies

Counsel for Faruk Orman Mr M. Koh

Counsel for AFP Ms I. Minnett

Counsel for ACIC Ms S. Martin

09:35:52 1 COMMISSIONER: Yes, I note that we're starting in open
09:35:55 2 hearing this morning to do some directions hearings. As
09:36:02 3 for the appearances, changes are we have Mr Holt back for
09:36:06 4 Victoria Police, Mr McDermott back for the State I think.
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09:36:11 6 MR CHETTLE: Yes, he's here somewhere.
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09:36:13 8 COMMISSIONER: He must have been here at some point. And
09:36:16 9 otherwise the appearances are the same. I think the first
09:36:18 10 matter to deal with, perhaps briefly, is Ms Martin, the
09:36:25 11 Australian Government Solicitor matter about the
09:36:27 12 non-publication order. Not here?
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09:36:36 14 MR WOODS: I don't believe she's here at the moment. She
09:36:38 15 may be outside.
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09:36:40 17 COMMISSIONER: Ms Martin, yes, we're just dealing with your
09:36:44 18 matter briefly. So you've presented us with some material
09:36:47 19 which was just handed to me before I came into the hearing
09:36:52 20 room. I haven't had a chance to read it so I suggest that
09:36:56 21 I perhaps extend the order until 4 pm and we'll deal with
09:37:00 22 this with the directions hearings at 2 this afternoon.
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09:37:05 24 MS MARTIN: Thank you, Commissioner. I was just having a
09:37:07 25 short discussion earlier with solicitors assisting and
09:37:09 26 we're happy to have that order extended for the time being
09:37:12 27 but we're in a position to deal with it perhaps just before
09:37:16 28 the lunch break.
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09:37:17 30 COMMISSIONER: I'm doing directions at 2, that's what I'm
09:37:21 31 suggesting to you.
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09:37:23 33 MS MARTIN: Certainly. Thank you, Commissioner.
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35 COMMISSIONER: So we'll deal with it at 2 when I'm doing
36 the other directions.
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38 MS MARTIN: Thank you, Commissioner.
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09:37:25 40 COMMISSIONER: Order 3 of the order made on 24 October
09:37:28 41 2019, varied on 31 October 2019, and further varied on 20
09:37:34 42 November 2019 regarding the non-publication of ACIC
09:37:38 43 material is further varied until 4 pm on 22 November 2019
09:37:41 44 or until further order. A copy of this order is to be
09:37:42 45 posted on the door of the hearing room.
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09:37:56 47 The other matters are to do with Victoria Police and

09:37:59 1 the continuation of the mentions made last week. Mr Holt,
09:38:06 2 you're in the hot seat today
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09:38:08 4 MR HOLT: I am, Commissioner.
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09:38:09 6 COMMISSIONER: Yes. So Peter Lardner's statement was
09:38:16 7 initially due on 6 June. It was requested on 30 May. We
09:38:24 8 were told last week that it would be finalised this week.
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09:38:27 10 MR HOLT: It is being finalised this week, Commissioner.
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09:38:29 12 COMMISSIONER: We still don't have it yet.
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09:38:31 14 MR HOLT: My expectation is that will be signed probably
09:38:33 15 today and therefore will be in a position to be produced
09:38:37 16 either over the weekend or on Monday.
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09:38:40 18 COMMISSIONER: All right. As soon as it's signed could you
09:38:42 19 let the solicitors assisting know so they can serve the
09:38:45 20 Notice to Produce.
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09:38:47 22 MR HOLT: Yes, Commissioner.
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09:38:47 24 COMMISSIONER: And hopefully then it could be produced
09:38:49 25 forthwith.
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09:38:50 27 MR HOLT: Yes.
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09:38:51 29 COMMISSIONER: Sometimes we're finding the Notice to
09:38:53 30 Produce is issued and they're still relying on the
09:38:57 31 technical seven days. Obviously at this stage if it's
09:39:00 32 there and it's ready it should come as soon as possible.
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09:39:03 34 MR HOLT: No, we understand, Commissioner. It's not a
09:39:07 35 question, can I assure the Commission, of relying on the
09:39:07 36 technical seven days, it's simply where there are
09:39:12 37 statements that might raise other human source issues there
09:39:14 38 were some concerns last week. Those were resolved and my
09:39:16 39 expectation is that we'll be having statements coming once
09:39:19 40 Notices to Produce are issued. We understand the time
41 limits.
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09:39:22 43 COMMISSIONER: Thank you. The next one is Kieren Walsh's
09:39:26 44 statement.
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09:39:27 46 MR HOLT: That's in precisely the same position,
09:39:30 47 Commissioner.

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COMMISSIONER: We were told last week it was unlikely to be finalised before late November.

MR HOLT: It will be signed today, we've moved that up.

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COMMISSIONER: Signed today. Again, as soon as it's signed if your solicitors could inform our solicitors so the Notice to Produce can be issued. I think Andrew Glow, a Notice to Produce, we've told that has been finalised and the Notice to Produce has been issued.

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MR HOLT: I was aware that it had been finalised, I wasn't aware the notice had been issued but it doesn't surprise me it would have happened very recently.

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COMMISSIONER: All right. I hope it has, I'm not sure it has either. It has. I'm getting the nod.

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MR HOLT: I'm being instructed it was done yesterday, so that statement is ready to go, Commissioner.

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COMMISSIONER: Good. That should be produced today, I suppose, is that right?

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MR HOLT: I expect so, subject to any issues I'm not aware of but I don't think there are in light of that witness.

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COMMISSIONER: All right then. Shane O'Connell's statement, due on 27 March. Last week we were told it may be finalised this week, more likely next.

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MR HOLT: It remains next, Commissioner.

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COMMISSIONER: Next. All right then. Bernie Edwards' statement, due on 11 October. Ms Enbom had to get instructions about - - -

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MR HOLT: I can indicate that that statement is well advanced and again I would expect that to be likely finalised this next week, subject to issues of emails.

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COMMISSIONER: Okay. The other priority statement is, Officer Pearce, pseudonym.

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MR HOLT: That person, I'm instructed, is unwell and I'm seeking instructions as to where the status of the material

09:41:35 1 to support the proposition that he is unwell is and I'll
09:41:40 2 update the Commission as soon as I can about that.
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09:41:45 4 COMMISSIONER: Last week we were told that you were going
09:41:47 5 to write to the solicitors assisting last Friday with
09:41:49 6 detailed instructions about the position and I don't think
09:41:52 7 that's been done.
09:41:53 8

09:41:53 9 MR HOLT: I apologise if that hasn't been done,
09:41:56 10 Commissioner. I'll chase that up. I'm aware of his
09:41:59 11 position and the difficulties he has, there's some
09:42:03 12 complexity about that, but that should have been done and
09:42:03 13 I'll make sure it is.
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09:42:08 15 COMMISSIONER: Yes, all right. And then Lucinda Nolan's
09:42:11 16 statement.
09:42:11 17

09:42:11 18 MR HOLT: That's in the same position as Edwards and the
09:42:14 19 other ones we referred to. That's well advanced and we
09:42:17 20 would expect it hopefully this week, possibly next,
09:42:21 21 Commissioner, I mean as in this coming week, but possibly
09:42:22 22 the one following.
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09:42:23 24 COMMISSIONER: Last week Ms Enbom said she hoped - she was
09:42:27 25 meeting with her on the weekend and hoped to turn around a
09:42:30 26 statement in a few days.
09:42:32 27

09:42:32 28 MR HOLT: The difficulty is, Commissioner, as you'll be
09:42:32 29 aware, Ms Enbom has been dealing with that statement and
09:42:37 30 she's been otherwise occupied perhaps for longer than had
09:42:38 31 been expected with the current witness but that situation
09:42:44 32 should end today and that's why I'm just being a little bit
09:42:46 33 cautious the timing on that one.
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09:42:48 35 COMMISSIONER: All right. In addition to those priority
09:42:49 36 statements, a further 28 statements of current and former
09:42:53 37 Victorian Police Force remain overdue, some outstanding
09:42:57 38 since March. There has been some progress since last week,
09:43:01 39 and that's good. But with the limited weeks left in this
09:43:04 40 year of hearings it's really imperative that we get all
09:43:07 41 these statements.
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09:43:08 43 MR HOLT: We understand, Commissioner. Commissioner, as
09:43:10 44 you noted, we have produced I think 11 statements to the
09:43:13 45 Commission since the last possibly ten, I think one is just
09:43:17 46 awaiting a Notice to Produce, or that may have been
09:43:22 47 provided this morning, but otherwise it's that. And all

09:43:24 1 that I can indicate, as Ms Enbom did, Commissioner, I can
09:43:27 2 assure the Commission we are working extraordinarily hard
09:43:30 3 with no shortage of resources to get those matters done
09:43:32 4 and obviously the focus has been on the priority statements
09:43:34 5 for the Commission, which we're attempting to get done.
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09:43:37 7 COMMISSIONER: They're all important though because until
09:43:39 8 we get these statements we don't know whether we're going
09:43:41 9 to be calling these people or not.
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09:43:43 11 MR HOLT: I understand, Commissioner. We have to
09:43:46 12 prioritise resources and the Commission's assisted in that
09:43:48 13 providing us lists, and we're attempting to deal with that.
09:43:50 14 As the Commission may know, we're speaking regularly with
09:43:54 15 those assisting you to attempt to work out how to best deal
09:43:58 16 with the situation because they can't be produced
09:43:58 17 immediately.
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09:43:58 19 COMMISSIONER: The deadline we're looking at is finishing
09:44:02 20 hearings in respect in TOR 1 and 2 this year, by 20
09:44:08 21 December.
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23 MR HOLT: We understand, Commissioner.
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09:44:09 25 COMMISSIONER: So we do need these statements.
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09:44:12 27 MR HOLT: We do. It is, of course, not the position that
09:44:16 28 we have lost any hearing days because of the absence of
09:44:18 29 witnesses being in a position to give evidence, and we've
09:44:18 30 been speaking with the witnesses that we understand, at
09:44:20 31 least on a contingent basis, that the Commissioner wishes
09:44:24 32 to call over the next 17 days and there do appear to be a
09:44:29 33 lot more than 17 days worth of evidence in that material.
09:44:32 34 None of that is causing us to slow down, I should say, it's
09:44:35 35 simply that it's obvious enough, with respect, that there
09:44:38 36 is a lot of work still to be done on the material that is
09:44:41 37 already present.
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09:44:41 39 COMMISSIONER: Yes, okay. Well, I'm not going to repeat
09:44:46 40 myself. Then we move to transcripts. There are 48
09:44:50 41 outstanding in camera transcripts, including the Cooper
09:44:54 42 transcript.
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09:44:57 44 MR HOLT: I'm sorry, Commissioner, I missed the word you
09:45:00 45 said initially, 48 outstanding?
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09:45:04 47 COMMISSIONER: In camera transcripts.

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09:45:05 2 MR HOLT: Yes.
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09:45:06 4 COMMISSIONER: Including the Cooper transcript, and updates
09:45:08 5 haven't been provided, as requested by the Commission, as
09:45:10 6 to the status of PII. That's what's holding up the - - -
09:45:14 7
09:45:14 8 MR HOLT: I think we've done Cooper, Commissioner, because
09:45:18 9 that one was asked to be done separately. I'm sure that
09:45:21 10 has been done. I think those assisting you are indicating
09:45:22 11 to me that that is the case.
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09:45:24 13 COMMISSIONER: Okay. Sorry, I've been given the wrong
09:45:26 14 information.
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09:45:28 16 MR HOLT: There's a lot of material, I'm not being critical
09:45:30 17 of anybody.
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09:45:31 19 COMMISSIONER: I know. That's all right. And then I'm
09:45:32 20 told since 29 October only four transcripts have been
09:45:36 21 published because of PII delays and then exhibits. We've
09:45:41 22 got 30 exhibits that I have reviewed following Victoria
09:45:49 23 Police's initial PII review and Victoria Police have still
09:45:56 24 not responded to that and we've got the protocol. I'm very
09:46:01 25 keen to get this PII system working because we're going to
09:46:06 26 need the answers to the areas of disagreement so that
09:46:13 27 submissions can be written and the report written in a form
09:46:17 28 that's publicly available.
09:46:18 29
09:46:19 30 MR HOLT: Commissioner, can I just indicate this in
09:46:21 31 relation to the Commissioner. You started with the closed
09:46:23 32 hearing transcripts.
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09:46:24 34 COMMISSIONER: Yes.
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09:46:25 36 MR HOLT: It was indicated to us by those assisting you in
09:46:30 37 mid-October, in response a request because of a need to
09:46:34 38 allocate resources, that they weren't to not be done but
39 were at the bottom of the list which included some other
09:46:36 40 very significant matters of priority, most importantly
09:46:42 41 ongoing statements, ongoing exhibits, and the ICRs, which
09:46:44 42 are an enormous job, which is now I think about 70 percent
09:46:50 43 through or 80 per cent through from Victoria Police's
09:46:53 44 perspective. So we accept that the closed hearing
09:46:57 45 transcripts are at the bottom in terms of numbers but they
09:46:58 46 are at the bottom for that reason. We will of course
09:47:01 47 re-prioritise if we need to. I can say the ICRs which are

09:47:04 1 the other very large job.
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09:47:05 3 COMMISSIONER: They're coming on quite well.
09:47:08 4
09:47:08 5 MR HOLT: Are largely done, and that will free up resources
6 in terms of those other matters pretty quickly I expect,
7 Commissioner.
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09:47:11 9 COMMISSIONER: Largely done might be a tad optimistic.
09:47:15 10 We've 109 of the 174.
09:47:18 11
09:47:18 12 MR HOLT: Yes.
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09:47:19 14 COMMISSIONER: Sixty-five still waiting, but still, it's
09:47:21 15 good progress and that's very good.
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09:47:24 17 MR HOLT: Can I indicate, Commissioner, one of the reasons
09:47:25 18 why I think it was proposed that we de-prioritise the
09:47:30 19 closed hearing transcripts is it's become clear that
09:47:33 20 dealing with the closed hearing transcripts is dramatically
09:47:38 21 easier once the ICRs have been done because they tend to
09:47:40 22 flow one into the other.
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09:47:40 24 COMMISSIONER: That's true and they're obviously going to
09:47:42 25 be very important for submission writing and report
09:47:45 26 writing. So it's true that they should be a priority. I
09:47:48 27 thank you for that and I thank you for prioritising the
09:47:50 28 Cooper transcript, that's good.
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09:47:52 30 MR HOLT: In terms of exhibits, Commissioner, without
09:47:55 31 getting into the detailed numbers here, and it may be an
09:47:59 32 issue that we have to take up with those assisting, I
09:48:01 33 understand that of the 740 exhibits I think there are 370
09:48:09 34 presently agreed, in effect, or where there are no
09:48:11 35 outstanding disputes.
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09:48:12 37 COMMISSIONER: 300?
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09:48:15 39 MR HOLT: My note is there are perhaps 72 or more matters
09:48:18 40 that are presently sitting with the Commission in terms of
09:48:21 41 review of matters that - - -
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09:48:22 43 COMMISSIONER: There are a lot on my desk.
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09:48:25 45 MR HOLT: And others that are back with us. We do continue
09:48:27 46 to prioritise those, Commissioner. Obviously the exhibits
09:48:30 47 increase daily, understandably, and some of them are

09:48:34 1 referred to briefly in hearing but are very long documents.
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09:48:39 3 COMMISSIONER: There are 30 exhibits that you've initially
09:48:42 4 reviewed for PII, I've reviewed back to you, and there
09:48:44 5 hasn't been any response. I mentioned these last week too
09:48:51 6 and Ms Enbom did express the hope that she was going to
09:48:57 7 find some time over the next few days to look into those
09:49:02 8 because - - -
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09:49:03 10 MR HOLT: I was going to say, Commissioner, that isn't, on
09:49:05 11 the face of it, consistent with the instructions that I
09:49:08 12 have about the numbers that are sitting respectively where.
13 But I'm not sure there's much value in this, if the
09:49:13 14 Commissioner wishes, in going through those in detail now.
09:49:13 15 I'm more than happy to take that up today while
09:49:16 16 Mr Bateson's evidence continues.
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09:49:16 18 COMMISSIONER: Perhaps you can look into it with the
09:49:18 19 solicitors assisting, but they're the numbers I've been
09:49:21 20 given, that there are 30 exhibits that have gone back to
09:49:26 21 VicPol after my comments from the initial review.
09:49:29 22 Nothing's happened and they need to get into the agreed
09:49:32 23 process for sorting out the disagreements.
09:49:34 24

09:49:34 25 MR HOLT: Yes, Commissioner. I will check those numbers.
09:49:37 26 As I say, the numbers that I have indicate that there are I
09:49:40 27 think 14 in that category presently and that a number have
09:49:45 28 then gone back to the Commission and that there may be a
09:49:48 29 large number of others, about 72, that currently sit with
09:49:51 30 the Commission. There are obviously a large number of just
09:49:55 31 extant exhibits which presently sit with us, but that
09:49:57 32 number just continues to increase. There's no way we can
33 keep that down because - - -
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09:49:59 35 COMMISSIONER: Yes, it's up to 337. At some stage perhaps
09:50:05 36 after, even after the sittings have finished, there will
09:50:08 37 have to be priority. The Commission will have to look at
09:50:09 38 what are priority ones, what needs to be done urgently.
09:50:12 39

09:50:12 40 MR HOLT: Absolutely. And our resources will free up in
09:50:15 41 this regard once the ICRs are done.
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09:50:23 43 COMMISSIONER: We can see the light at the end of the
09:50:28 44 tunnel with the ICRs so that's good. Progress is being
09:50:31 45 made. I think that's the only matters that we needed to
46 raise.
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1 MR HOLT: Thank you, Commissioner.
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09:50:32 3 COMMISSIONER: All right, if there's nothing else then
09:50:34 4 we'll return to closed hearing.
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09:50:36 6 MR WINNEKE: Yes, Commissioner. I wonder if before we do,
09:50:38 7 if we can stand down briefly. I just wouldn't mind having
09:50:42 8 a chat to Ms Enbom briefly before we start.
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09:50:45 10 COMMISSIONER: Yes, all right then. Thank you.
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12 (Short adjournment.)
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10:11:07 14 COMMISSIONER: Yes.
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10:11:09 16 MR WINNEKE: Thanks Commissioner. I apologise for that
10:11:11 17 delay.
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10:11:12 19 COMMISSIONER: I'm sure it's time well spent. So we need
10:11:16 20 to go into closed hearing again?
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10:11:18 22 MR WINNEKE: We do, Commissioner, because of the situation
10:11:23 23 with respect to a number of witnesses.
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10:11:25 25 COMMISSIONER: All right. Pursuant to s.24 of the
10:11:27 26 Inquiries Act access to the Inquiry during the evidence of
10:11:30 27 Commander Bateson commencing at 10.10 am is limited to
10:11:38 28 legal representatives and staff assisting the Royal
10:11:40 29 Commission, the following parties with leave to appear in
10:11:43 30 the private hearing and their legal representatives: State
10:11:46 31 of Victoria, Victoria Police, including Media Unit
10:11:49 32 representatives, Graham Ashton, the DPP and the OPP,
10:11:53 33 Commonwealth DPP, Nicola Gobbo, SDU handlers, AFP,
10:11:57 34 Australian Criminal Intelligence Commission, the legal
10:12:00 35 representatives of the following parties with leave to
10:12:02 36 appear: John Higgs, Pasquale Barbaro, Faruk Orman, Andrew
10:12:09 37 and Mandy Hodson and Mr Cooper and media representatives
10:12:14 38 accredited by the Royal Commission are allowed to be
10:12:17 39 present in the hearing room. The hearing is to be recorded
10:12:17 40 but not streamed or broadcast. Subject to any further
10:12:18 41 order there is to be no publication of any material,
10:12:20 42 statements, information or evidence given, made or referred
10:12:23 43 to before the Commission which could identify or tend to
10:12:26 44 identify the persons referred to as Witness A, Witness B,
10:12:30 45 Witness X, Mr Cooper, any member of the Source Development
10:12:34 46 Unit or their whereabouts. A copy of this order is to be
10:12:40 47 posted on the hearing room door.

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(IN CAMERA HEARING FOLLOWS)

13:53:24 1 UPON RESUMING AT 2.00 PM:

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3 PROCEEDINGS IN OPEN HEARING:

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14:05:33 5 COMMISSIONER: We're now in open hearing. The first
14:05:36 6 matter - is Ms Martin here? Yes, Ms Martin, I've read that
14:05:40 7 material now and the order. Unless you want to say
14:05:43 8 anything the order I propose is that the order made on 30
14:05:48 9 October 2019 and varied on 31 October and 22 November is
14:05:53 10 revoked and in its place the following order is made.
14:05:56 11 There's to be no publication of lines 2 to 3 of p.8559 of
14:06:02 12 the hearing of 30 October 2019. All such references are to
14:06:07 13 be removed from the published transcript and the live
14:06:09 14 stream. A copy of the order is to be posted on the hearing
14:06:13 15 room door. That's all you're seeking, isn't it?

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14:06:19 17 MS MARTIN: Thank you, Commissioner. There are just two
14:06:20 18 matters that the ACIC just wishes to bring to your
14:06:21 19 attention. If I might just briefly refer to those. And
14:06:24 20 thank you for the order that has been made.

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14:06:25 22 The first matter the ACIC just wishes to bring to your
14:06:29 23 attention is what might be the appropriate manner in which
14:06:32 24 certain matters should be considered prior to the use or
14:06:35 25 disclosure of ACC examination materials in this Commission,
14:06:39 26 and the second is in respect of what may have already been
14:06:42 27 used or disclosed in the Commission in circumstances where
14:06:45 28 the ACIC is not aware of all of the various references to
14:06:50 29 date.

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14:06:51 31 In respect of what should potentially in our
14:06:55 32 submission occur prior to any future use or disclosure of
14:07:02 33 ACC examination materials, we should point out that there
14:07:07 34 are two means by which Examiner confidentiality directions
14:07:11 35 can be made. They can be made either under the
14:07:13 36 Commonwealth legislation or the State legislation, as is
14:07:16 37 referred to in the letter that the Commissioner has read.

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14:07:20 39 In circumstances where the ECD is made under the
14:07:26 40 Commonwealth legislation, the ACIC's position is that those
14:07:29 41 ECDs may not be neutralised by the operation of the
14:07:35 42 Inquiries Act and as such any use or disclosure of ACC
14:07:40 43 examination materials that are subject to a Commonwealth
14:07:44 44 ECD, may be unlawful and we wish to bring to the
14:07:47 45 Commission's attention that in order to determine whether
14:07:51 46 materials are subject to a Commonwealth ECD or a State ECD,
14:07:57 47 the most effective means of doing so would be to inform the

14:08:01 1 ACIC before there is such use for disclosure so that the
14:08:06 2 ACIC can provide what assistance it can to the Commission
14:08:10 3 to prevent such unlawful use or disclosure.
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14:08:14 5 Secondly, if the ECD that applies in respect of the
14:08:18 6 ACIC examination material is in fact a State ECD, so one
14:08:22 7 that's made under the Australian Crime Commission State
14:08:26 8 Provisions Act 2003 of Victoria, that in those
14:08:30 9 circumstances it may be appropriate for the Commission to
14:08:33 10 consider types of matters that the ACIC itself must
14:08:36 11 consider when determining whether or not there ought to be
14:08:39 12 a variation of an ECD, and those matters include the
14:08:43 13 potential prejudice to the safety or reputation of a
14:08:47 14 person, prejudice to the fair trial of a person and
14:08:51 15 affording individual examinees individual procedural
14:08:55 16 fairness by taking steps to contact them to seek their
14:08:58 17 views as to the proposed publication.

18
14:09:00 19 If, having considered those matters, the Commission
14:09:02 20 determines that it is appropriate to disclose or use the
14:09:06 21 ECD related materials, then the ACIC doesn't oppose that,
14:09:12 22 but the concern that the ACIC has is that to date it hasn't
14:09:16 23 been necessarily clear whether those sorts of matters have
14:09:20 24 been considered prior to the use or disclosure of such
14:09:23 25 material.

14:09:25 26
14:09:25 27 Secondly, in respect of materials that have already
14:09:27 28 been used or disclosed, the ACIC has written to solicitors
14:09:31 29 assisting requesting that any references that have been
14:09:34 30 made in the transcripts be searched for so that the ACIC
14:09:38 31 can make a determination as to whether the materials might
14:09:41 32 fall under either the Commonwealth legislation in terms of
14:09:45 33 the ECD or the State legislation. The ACIC is certainly
14:09:50 34 very willing to assist in the process of trying to make
14:09:53 35 that determination but would really need to see what the
14:09:57 36 references are, and in order to allow that process to
14:10:01 37 occur, to ensure that the Commission is satisfied that
14:10:05 38 there hasn't been an unlawful disclosure or use, that a
14:10:10 39 proposal that we would make is that perhaps there ought to
14:10:13 40 be an interim non-publication order in respect of past
14:10:18 41 references to ACIC examination materials of particular
14:10:20 42 persons so that that process of determining whether or not
14:10:24 43 the past references have been unlawful or, alternatively,
14:10:29 44 whether disclosure is appropriate in the Commission's
14:10:33 45 view - - -

14:10:33 46
14:10:33 47 COMMISSIONER: So what's the order you're seeking?

14:10:36 1
14:10:36 2 MS MARTIN: The order would be that until further order
14:10:39 3 there should be no publication of the fact of any
14:10:41 4 examination of a particular person by the ACC.
5
14:10:45 6 COMMISSIONER: Just a minute. There be no - - -
14:10:48 7
14:10:49 8 MS MARTIN: No publication of the fact of any examination
14:10:54 9 of a particular person by the ACC, nor the content of
14:11:06 10 matters referred to in any such ACC examination.
11
14:11:26 12 COMMISSIONER: Yes.
14:11:27 13
14:11:27 14 MS MARTIN: Other than in respect of Paul Dale, unless the
14:11:32 15 proposed publication has been the subject of consultation
14:11:43 16 by the RCMPI with the ACIC and consideration by the
14:11:58 17 Commissioner.
18
14:12:22 19 COMMISSIONER: Okay. Now the problem is that there may be
14:12:25 20 such publications, I suppose, it's possible that there
14:12:28 21 might be transcripts that are up on the website that may do
14:12:32 22 those things.
14:12:34 23
14:12:34 24 MS MARTIN: That is possible and obviously we would do our
14:12:37 25 best to prioritise reviewing those at the outset.
26
14:12:39 27 COMMISSIONER: I might be making an order that the
14:12:41 28 Commission is going to be immediately in breach of, so it
14:12:45 29 might be better if I let the order lie until a certain
14:12:50 30 date. It gives everyone time to make sure that it's going
14:12:54 31 to be complied with.
14:12:56 32
14:12:56 33 MS MARTIN: If that's the appropriate means of doing so.
34
14:12:59 35 COMMISSIONER: It's better than nothing. How long do you
14:13:03 36 think it would take for there to be consultation between
14:13:06 37 officers of the Commission and officers on the ACIC on
14:13:08 38 this?
14:13:09 39
14:13:09 40 MS MARTIN: In some respects we're in your hands,
14:13:11 41 Commissioner, in the sense that we obviously don't have
14:13:13 42 access to the transcripts other than those which are
14:13:16 43 publicly available.
44
14:13:17 45 COMMISSIONER: They're the only ones of course that have
14:13:19 46 been published.
14:13:20 47

14:13:21 1 MS MARTIN: To date, that's right.
2
14:13:22 3 COMMISSIONER: Other ones have been made available in a
14:13:25 4 limited way to parties with leave and there might be an
14:13:30 5 argument as to whether they've been published or not.
14:13:35 6
14:13:35 7 MS MARTIN: There is though the possibility that the media
14:13:37 8 in attendance during closed hearings may make reference
14:13:41 9 inadvertently to materials that are the subject of ACC
14:13:44 10 examinations.
11
14:13:45 12 COMMISSIONER: Yes, because there isn't a non-publication
14:13:48 13 order from this Commission about those. They may not
14:13:51 14 realise that they're not allowed to mention them.
14:13:54 15
14:13:54 16 MS MARTIN: Precisely.
17
14:13:55 18 COMMISSIONER: That's a difficulty too. I think it should
14:13:58 19 be given some priority. Is seven days unrealistic if my
14:14:05 20 instructing solicitors - if the instructing solicitors
14:14:09 21 could give some indication about that. Would it involve
14:14:12 22 searches of transcript for the - - -
14:14:13 23
14:14:14 24 MR WOODS: It does. There might be a more efficient way of
14:14:16 25 going about it, Commissioner.
26
14:14:17 27 COMMISSIONER: Yes, Mr Woods.
14:14:18 28
14:14:18 29 MR WOODS: It's not clear to me whether the ACIC have
14:14:21 30 standing leave.
31
14:14:22 32 COMMISSIONER: I can't remember who's got standing leave.
14:14:24 33 Anyone know? No, I think they applied - - -
14:14:34 34
14:14:35 35 MR WOODS: I don't think they do, no. Were it to seek
14:14:37 36 that, then it would be a simple matter of providing all of
14:14:38 37 the relevant transcripts to the ACIC. They can do a simple
14:14:40 38 search of them, they can then come back to the Commission
14:14:43 39 staff and say, "These are the things what we have an issue
40 with". They also have been seeking and have been granted
41 leave in relation to particular witnesses. There's a 15
14:14:47 42 minute delay, there's the ability for the Commissioner to
14:14:51 43 make orders as the proceeding goes ahead.
44
14:14:53 45 COMMISSIONER: And indeed we have been doing that, often
14:14:56 46 from time to time.
14:14:57 47

14:14:59 1 MR WOODS: Yes. So I think taking those two factors into
14:15:00 2 account from an administrative efficiency point of view, it
14:15:03 3 might be better to go about it that way. They get leave
14:15:07 4 generally, they obtain the transcripts, they review them
14:15:10 5 for their own purposes and they advise the Commission.
6
14:15:12 7 COMMISSIONER: And then let us know what particular orders
14:15:14 8 need to be made.
14:15:15 9
14:15:15 10 MR WOODS: Let us know what the issues are and we can then
11 hopefully just work out an answer.
12
14:15:18 13 COMMISSIONER: Or we could just redact them. How does that
14:15:22 14 sound, Ms Martin?
14:15:23 15
14:15:23 16 MS MARTIN: Commissioner, it sounds a very sensible way
14:15:27 17 forward. I don't currently have instructions to seek leave
14:15:31 18 generally but I can certainly seek those instructions as
14:15:32 19 soon as possible.
20
14:15:33 21 COMMISSIONER: Yes.
14:15:33 22
14:15:33 23 MS MARTIN: And then if I could suggest that the order that
14:15:35 24 I proposed be made for perhaps two weeks, during which
14:15:38 25 time we can obtain those - - -
26
14:15:39 27 COMMISSIONER: The only thing about making the order is I'm
14:15:41 28 just not sure that I'm not going to immediately have the
14:15:44 29 Commission in breach of it.
14:15:46 30
14:15:47 31 MS MARTIN: I wonder if we might word it in such a way that
14:15:49 32 in respect of those transcripts which are already in the
14:15:52 33 public domain are excluded from the operation of the order
14:15:57 34 until such time as we've been able to verify whether there
14:16:03 35 are any issues with those.
36
14:16:04 37 COMMISSIONER: Okay. All right then. If you can just get
14:16:08 38 instructions about whether you'd like standing leave. It's
14:16:11 39 probably sensible that you do because it just crops up from
14:16:15 40 time to time and sometimes it's not always expected. It's
14:16:20 41 not a bad solution and then you can search and then if you
14:16:23 42 find parts that offend orders they can be redacted.
14:16:28 43
14:16:28 44 MS MARTIN: I agree, Commissioner.
45
14:16:29 46 COMMISSIONER: If the Commission thinks that they shouldn't
14:16:32 47 be redacted then the matter can be argued.

14:16:35 1
14:16:35 2 MS MARTIN: Thank you, Commissioner.
3
14:16:37 4 COMMISSIONER: All right then. I order that the order made
14:16:39 5 on 30 October 2019 and varied on 21 October 2019 and 26
14:16:44 6 November 2019 is revoked and in its place the following
14:16:47 7 order is to be made.
14:16:49 8
14:16:50 9 There is to be no publication of the words on lines 2
14:16:58 10 to 3 of p.8559 of the hearing of 30 October 2019 commencing
14:17:05 11 "and that" and finishing with "a few days later?" All such
14:17:13 12 references are to be removed from the published transcript
14:17:16 13 and the live stream.
14:17:19 14
14:17:22 15 I further order that until further order there is to
14:17:25 16 be no publication of the fact of any examination by a
14:17:28 17 particular person by the ACC, nor the content of matters
14:17:31 18 referred to in such ACC examination, other than in respect
14:17:35 19 of Paul Dale, unless the proposed publication has been the
14:17:39 20 subject of consultation between the RCMPPI and - the Royal
14:17:47 21 Commission and the ACIC and the consideration of the Royal
14:17:54 22 Commissioner. This order has no effect on presently
14:18:01 23 published material. A copy of this order is to be
14:18:09 24 published on the door of the hearing room.
14:18:13 25
14:18:14 26 MS MARTIN: Thank you, Commissioner.
27
14:18:15 28 COMMISSIONER: Thank you Ms Martin. Right. The next
14:18:19 29 matters are mentions involving Ms Gobbo. The first thing,
14:18:28 30 Mr Nathwani, is I allowed Ms Gobbo the opportunity to
14:18:33 31 produce a statement to the Commission by 18 November and
14:18:38 32 that has not been produced.
14:18:40 33
14:18:41 34 MR NATHWANI: Correct. I was just reminding myself, I've
14:18:45 35 had some discussions with Mr Woods this morning, that on 4
14:18:49 36 October you gave some directions at that stage and the
14:18:52 37 first direction was a statement by Ms Gobbo by the 18th.
14:18:56 38 If - - -
39
14:18:57 40 COMMISSIONER: Yes, I have no power to direct a statement
14:18:59 41 but it was providing the opportunity for a statement to be
14:19:01 42 given to the Commission by 18 November.
14:19:03 43
14:19:04 44 MR NATHWANI: Of course.
45
14:19:05 46 COMMISSIONER: Yes.
14:19:05 47

14:19:05 1 MR NATHWANI: What I was about to set out, perhaps some of
14:19:08 2 the reasoning why you don't have one so we're unequivocally
14:19:12 3 clear, is that you indicated on that date a statement by
14:19:15 4 the 18th, "If it was to be provided". Then you adjourned
14:19:19 5 the application in relation to whether she has a reasonable
14:19:24 6 excuse or not to the 26th, which is of course next Tuesday.
14:19:27 7 Then you made the final direction which was any material,
14:19:30 8 fresh material from medical professionals in effect as to
14:19:33 9 her health or otherwise by Tuesday the 19th, so the day
14:19:38 10 after.
11
14:19:39 12 COMMISSIONER: So anyway, that wasn't provided and you're
14:19:41 13 wanting an extension of time I understand?
14:19:44 14
14:19:44 15 MR NATHWANI: For the medical evidence.
16
14:19:46 17 COMMISSIONER: How long do you want?
14:19:48 18
14:19:49 19 MR NATHWANI: We asked in writing till Monday evening as
14:19:51 20 we've indicated in writing.
21
14:19:53 22 COMMISSIONER: You will then have all the material?
23
24 MR NATHWANI: Yes.
25
14:19:56 26 COMMISSIONER: That you're intending to rely on?
14:19:59 27
14:20:00 28 MR NATHWANI: Absolutely.
29
14:20:00 30 COMMISSIONER: All right. I'll give you an extension of
14:20:02 31 time until 5 pm on Monday 25 November to provide the
14:20:07 32 medical reports on which you're relying to show medical
14:20:13 33 reasonable excuse. I'm intending to adjourn the
14:20:17 34 application for you to demonstrate reasonable excuse to
14:20:29 35 9.30 am on - - -
14:20:45 36
14:20:46 37 MR NATHWANI: It's currently listed for the 26th, which is
14:20:48 38 Tuesday.
14:20:48 39
14:20:48 40 COMMISSIONER: Yes, it's too soon when we're only getting
14:20:51 41 the material at 5 pm the previous evening. So I'll deal
14:20:53 42 with the application on Wednesday the 4th at 9.30 am.
14:21:09 43
14:21:09 44 The next thing I want to deal with is I have indicated
14:21:16 45 previously that it is the intention of the Commission to
14:21:23 46 tender the transcripts of teleconferences between Ms Gobbo,
14:21:37 47 her lawyers and the Commission on 20 March, 11 April and 13

14:21:45 1 June and also the undated and unsigned work in progress
14:21:55 2 draft statement of Ms Gobbo provided to the Commission by
14:22:00 3 her counsel. You have provided written submissions to the
14:22:07 4 Commission submitting that that material should not be
14:22:16 5 publicly tendered or acted on by the Commission.
14:22:18 6
14:22:19 7 MR NATHWANI: Yes.
8
14:22:19 9 COMMISSIONER: I'm asking you if you wish to add anything
14:22:22 10 to those written submissions?
14:22:24 11
14:22:25 12 MR NATHWANI: We would. I don't know - the position as we
14:22:30 13 understood it when we filed those submissions was we
14:22:33 14 received a response by those acting on behalf of the
14:22:36 15 Commission, the solicitors, indicating that you wished to
14:22:44 16 adjourn that decision until the decision as to whether or
14:22:45 17 not Ms Gobbo's excused is made. And I can well understand,
14:22:48 18 given what we set out in writing as to our views and
14:22:53 19 submissions as to why the material shouldn't be disclosed,
14:22:55 20 that perhaps it should wait until that decision. I can
14:22:59 21 articulate all the reasons that we put in writing as to why
14:23:01 22 we say the material shouldn't be disclosed, but in many
14:23:05 23 respects it might be cart before the horse.
24
14:23:08 25 COMMISSIONER: Well, I'm prepared to accede to that in
14:23:11 26 terms of disclosing it publicly but I am not prepared to
14:23:16 27 accede to it at this stage in respect of providing that
14:23:19 28 information to Victoria Police for the purposes of public
14:23:26 29 interest immunity submissions, because otherwise the whole
14:23:28 30 process will be slowed down even further.
14:23:31 31
14:23:31 32 MR NATHWANI: I can speak to Mr Holt and ensure, of course,
14:23:34 33 it will be on the usual undertaking basis and there
14:23:38 34 wouldn't be an issue. As we outline in writing, for
14:23:41 35 general disclosure beyond Victoria Police, that was the
14:23:43 36 issue of relevance to individual parties.
14:23:43 37
14:23:44 38 COMMISSIONER: I think your submissions are actually
14:23:47 39 wanting us not to disclose it to them either.
14:23:49 40
14:23:50 41 MR NATHWANI: I understand, there's not much I can really
14:23:53 42 say. It's a matter for you ultimately. If the position
14:23:57 43 is given - - -
44
14:23:57 45 COMMISSIONER: You're no longer pressing that?
14:24:02 46
14:24:02 47 MR NATHWANI: Well, it's difficult to in the circumstances

14:24:05 1 to see how, when the basis of the disclosure is the PII
14:24:07 2 process. Our preference, for the reasons we set out in
14:24:10 3 writing, are that it shouldn't be disclosed to any party
14:24:12 4 until you've made the decision you have to make on 4
14:24:16 5 December.
6

14:24:17 7 COMMISSIONER: The reason I'm not prepared to accept that
14:24:21 8 submission is because if I do then there'll be even further
14:24:24 9 delay if the decision is made. If it's PIIed at least that
14:24:29 10 means it can be then made publicly available.
14:24:32 11

14:24:32 12 MR NATHWANI: Can I have a brief chat with Mr Holt because
14:24:34 13 it may be that if there's an agreement, as there has been
14:24:36 14 in the past, that it's limited to a number of people. For
14:24:40 15 example, it could be given just to Mr Holt to review on a
14:24:43 16 purely PII basis.
17

14:24:43 18 COMMISSIONER: Lucky Mr Holt.
14:24:45 19

14:24:45 20 MR HOLT: Commissioner, it couldn't be that limited but I
14:24:48 21 do hold instructions that we would deal with that material
14:24:53 22 on the basis that we understood it was only being provided
14:24:57 23 to us for the purposes of public interest immunity review
14:24:59 24 and for no other purpose and we would treat it on that
14:25:02 25 basis, and we would our very best to limit - we would limit
14:25:05 26 the number of people involved in that process to probably
14:25:08 27 one member of counsel and there would need to be someone at
14:25:12 28 Victoria Police because I can't otherwise deal with those
14:25:15 29 questions.
30

14:25:16 31 COMMISSIONER: I want it done by 12 o'clock on 3 December.
14:25:19 32

14:25:19 33 MR HOLT: Thank you, Commissioner.
34

14:25:22 35 COMMISSIONER: I'm just telling you that when you talk
14:25:24 36 about how many people to be involved in it.
14:25:26 37

14:25:26 38 MR HOLT: What I'm indicating is we would understand the
14:25:27 39 basis we would receive it on and we would limit the number
14:25:31 40 of people appropriately. I can't comment on timelines
41 because we haven't seen the document or the length of it or
14:25:33 42 anything of that kind. Commissioner, as you know, some
14:25:35 43 documents are very easy some documents are not.
44

14:25:41 45 COMMISSIONER: I don't think it will be particularly
14:25:42 46 onerous to do a PII review on it. There are names and
14:25:45 47 dates and things like that.

14:25:46 1
14:25:46 2 MR HOLT: We would well understand the basis we were
14:25:48 3 receiving it and we would treat it on that basis alone.
4
14:25:49 5 COMMISSIONER: I think someone who is familiar with it
14:25:51 6 would be able to do it pretty quickly.
14:25:55 7
14:25:55 8 MR HOLT: Thank you, Commissioner.
14:25:57 9
14:25:57 10 MR NATHWANI: And to that end I think - my memory is
14:25:58 11 failing me but we've already undertaken a process of
14:26:02 12 removing personal information, I believe, and I'll check
14:26:06 13 that I'd ask that that version be sent to VicPol.
14
14:26:08 15 COMMISSIONER: Yes. Of course it doesn't mean the
14:26:09 16 Commission will accept that.
14:26:10 17
14:26:10 18 MR NATHWANI: No, no, I understand. But the Commissioner
14:26:12 19 is aware that some of the personal information is
14:26:18 20 completely irrelevant to the purposes of any of the parties
14:26:20 21 here and relates in part, for example, to her medical
14:26:23 22 health.
23
14:26:24 24 COMMISSIONER: Well that's a different issue and that won't
14:26:26 25 be an issue for Victoria Police, so Victoria Police will
14:26:29 26 only be concerned with the PII issue. The privacy issues
14:26:32 27 you've already - I think you've already marked up the
14:26:37 28 documents in that way.
14:26:38 29
14:26:38 30 MR NATHWANI: I think that's right.
31
14:26:39 32 COMMISSIONER: It doesn't really matter whether Victoria
14:26:41 33 Police see that or not. I've seen it. It's not really for
14:26:44 34 them. They'll just be dealing with the PII issues.
14:26:49 35
14:26:50 36 MR NATHWANI: Yes.
37
14:26:52 38 COMMISSIONER: All right then. Did you want to say
14:26:55 39 anything, Mr Woods?
14:26:56 40
14:26:56 41 MR WOODS: Not about that issue, Commissioner.
42
14:26:58 43 COMMISSIONER: All right. Then the next issue - Mr Woods,
14:27:18 44 do you say it's appropriate that I adjourn the
14:27:23 45 consideration of whether I tender these documents until the
14:27:34 46 submissions are made on the issue of Ms Gobbo's reasonable
14:27:40 47 excuse?

14:27:40 1
14:27:41 2 MR WOODS: No, my submission would be that they should be
14:27:43 3 treated quite separately and, for example, if Ms Gobbo was
14:27:48 4 not to be excused on medical grounds it would continue to
14:27:53 5 be my submission that those documents should be tendered,
14:27:55 6 even if she is to give evidence. I would submit they
14:27:59 7 should be treated separately and the consideration should
14:28:02 8 be separate, so in other words it needn't be heard at the
14:28:07 9 same time for that reason but it might be heard at the same
14:28:10 10 time for expediency.
11
14:28:13 12 COMMISSIONER: So they should be tendered at the moment
14:28:15 13 prior to PII and the determination of PII of them in their
14:28:17 14 final form in a confidential - - -
14:28:20 15
14:28:20 16 MR WOODS: We might end up with an A and B, yes, that's
14:28:22 17 correct.
14:28:22 18
14:28:23 19 COMMISSIONER: Just as a confidential exhibit at this
14:28:24 20 stage?
14:28:25 21
14:28:25 22 MR WOODS: That's my submission, yes.
23
14:28:27 24 COMMISSIONER: What do you say to that, Mr Nathwani?
14:28:30 25
14:28:30 26 MR NATHWANI: It slightly misses the rationale and
14:28:35 27 principle as to why. In my submission it's much better to
14:28:38 28 wait, and this the point, to this extent. We set out in
14:28:39 29 writing that the nature of those documents is they are not
14:28:42 30 subject to particular protections unless they're sworn up,
14:28:48 31 or signed. So as a result Ms Gobbo would not be afforded
14:28:52 32 the same protection, for example, as another document that
14:28:55 33 may be produced subject to her being fit and if, let's say,
14:29:00 34 using the example Mr Woods did, you ordered that she was
14:29:04 35 fit and she did give evidence, well of course she can then
14:29:07 36 sign up to them. Whereas they don't have that same
14:29:09 37 protection the moment they're tendered. And you were at
14:29:10 38 pains to stress throughout a number of conversations that
14:29:13 39 you wanted them sworn up or signed up for that precise
14:29:16 40 reason. So whilst I understand the view to be expeditious
14:29:20 41 - - -
42
14:29:21 43 COMMISSIONER: We were encouraging that to happen.
44
45
46 MR NATHWANI: No, I understand, I well understand.
47

14:29:22 1 COMMISSIONER: On any basis we could think of, and that was
14:29:27 2 one basis that we thought might encourage her to do so, but
14:29:30 3 it didn't work.

14:29:31 4
14:29:31 5 MR NATHWANI: I'm not criticising. I'm just saying you
14:29:34 6 foresaw the perfectly rational reason then as to why it was
14:29:40 7 necessary and the same still applies.

8
14:29:42 9 COMMISSIONER: All right then. Is there anything else you
14:29:44 10 wanted to say?

14:29:45 11
14:29:45 12 MR NATHWANI: No.

13
14:29:46 14 COMMISSIONER: No. All right then. I've considered the
14:29:57 15 written and oral submissions to the Commission from counsel
14:30:05 16 for Ms Gobbo as to why the Commission should not tender or
14:30:11 17 act on the transcripts of conversations between Ms Gobbo,
14:30:15 18 her lawyers, the Commissioner and counsel assisting the
14:30:19 19 Commission and the draft unsigned statement prepared by her
14:30:23 20 counsel. I am deeply conscious of the requirements of
14:30:28 21 procedural fairness under the Inquiries Act, however under
14:30:32 22 that Act I am not bound by the rules of evidence and may
14:30:36 23 inform myself on any matter as I see fit. This is not a
14:30:39 24 court but an inquiry.

25
14:30:44 26 Having given Ms Gobbo, who has been legally
14:30:46 27 represented throughout the life of the Commission and its
14:30:48 28 hearings, every opportunity to provide a statement without
14:30:55 29 fruition, I am satisfied that the Commission should now
14:30:59 30 receive this material to inform itself of matters relevant
14:31:02 31 to the Commission's Terms of Reference 1 and 2. For the
14:31:09 32 moment those exhibits will remain confidential until I have
14:31:14 33 determined the issue of whether Ms Gobbo has provided a
14:31:20 34 reasonable excuse to the Commission for her non-attendance
14:31:23 35 and the documents have been reviewed by Victoria Police for
14:31:30 36 public interest immunity matters.

14:31:34 37
14:31:34 38 Whilst I accept there is some considerable weight in
14:31:38 39 the issues raised by Ms Gobbo's counsel, in that these are
14:31:45 40 valid concerns and are themselves relevant to the limited
14:31:49 41 weight that can be given to the material, given that it's
14:31:52 42 unsigned, unsworn and given in circumstances which may have
14:31:55 43 been difficult for her, I am however also conscious that
14:32:06 44 during the interviews she was engaged and responsive and it
14:32:17 45 seems appropriate to me that the Commission should receive
14:32:21 46 the material and inform itself of them.

14:32:25 47

14:32:25 1 I will mark the transcript of the conversation between
14:32:44 2 the Commission and Ms Gobbo in the presence of her lawyers
14:32:47 3 on 20 March 2019 as Exhibit 787, a confidential exhibit at
14:32:59 4 this stage. 11 April 2019, 788. 13 June 19, 789. The
14:33:11 5 unsigned draft statement provided by her counsel as 780.
14:33:18 6 They're all at this stage confidential exhibits.

14:33:22 7
14:33:22 8 #EXHIBIT RC787 - (Confidential) Conversation between the
14:32:44 9 Commission and Ms Gobbo in the presence
14:32:46 10 of her lawyers on 20/03/19.

14:33:25 11
14:33:25 12 #EXHIBIT RC788 - (Confidential) Conversation between the
14:32:44 13 Commission and Ms Gobbo in the presence
14:32:46 14 of her lawyers on 11/04/19.

14:33:26 15
14:33:27 16 #EXHIBIT RC789 - (Confidential) Conversation between the
14:32:44 17 Commission and Ms Gobbo in the presence
14:32:46 18 of her lawyers on 13/06/19.

19
14:33:11 20 #EXHIBIT RC790 - (Confidential) Unsigned draft statement
14:33:14 21 provided by Ms Gobbo's counsel.

14:33:31 22
14:33:32 23 COMMISSIONER: I direct that Victoria Police complete the
14:33:33 24 public interest immunity examination of the documents by 12
14:33:37 25 noon on 3 December, or any such time as otherwise ordered
14:33:47 26 in case there's an extension needed. I'll adjourn the
14:33:52 27 application for Ms Gobbo to show reasonable cause as to why
14:34:03 28 she has not appeared before the Commission until 9.30 on
14:34:09 29 Wednesday 4 December.

14:34:13 30
14:34:13 31 MR WOODS: If the Commissioner pleases.

32
14:34:15 33 COMMISSIONER: I think that deals with everything. No,
14:34:17 34 there's still the Cooper matter, isn't there?

14:34:21 35
14:34:21 36 MR NATHWANI: Just on that topic, could I ask we also have
14:34:24 37 just confidential exhibits at this stage, also tender our
14:34:26 38 submissions in relation to those documents, which is
14:34:29 39 shorthand, just so everyone's aware.

40
14:34:31 41 COMMISSIONER: Yes.

14:34:32 42
14:34:32 43 MR NATHWANI: And you've referred to, indicate we've
14:34:34 44 received correspondence setting out that she had a
14:34:36 45 reasonable excuse on 15 March, nevertheless engaged in a
14:34:41 46 phone call shortly there afterwards. That Ms Gobbo
14:34:49 47 understood that to be providing instructions to Commission

14:34:49 1 counsel and her disclosure of them would be a breach of
14:34:52 2 that confidence, and then issues in relation to relevance
14:34:54 3 and reliability.
14:34:54 4
14:34:55 5 COMMISSIONER: What are you wanting tendered, just the
14:34:57 6 submissions?
14:34:58 7
14:34:58 8 MR NATHWANI: Yes please.
9
14:34:59 10 COMMISSIONER: All right.
14:35:00 11
14:35:01 12 #EXHIBIT RC791 - (Confidential) Submissions from Ms Gobbo's
14:35:06 13 counsel.
14
14:35:16 15 That will be a confidential exhibit at this stage. We've
14:35:19 16 still got the matter relating to your application,
14:35:25 17 Mr Nathwani, in respect of recalling Mr Cooper.
18
19 MR NATHWANI: Yes. Can I - - -
20
14:35:32 21 COMMISSIONER: Again, we've got your written submissions,
14:35:33 22 is there anything you wanted to add to them?
14:35:36 23
14:35:36 24 MR NATHWANI: Just this, and we maintain them. In the last
14:35:39 25 two or three days there's been cross-examination of a
14:35:42 26 particular witness on a similar topic. Can I quote lead
14:35:46 27 counsel for the Commission saying the following, "A
14:35:48 28 barrister who is doing his or her best to represent their
14:35:51 29 client would be wanting to fight tooth and nail to find out
14:35:56 30 the process by which this person, i.e. a witness, is now
14:35:58 31 giving evidence against another witness, would want to know
14:36:00 32 how that process occurred, do you accept that proposition,
14:36:03 33 that is a proper barrister doing their job?" Answer:
14:36:07 34 "Yes". Then this morning lots of cross-examination on the
14:36:09 35 same topic, including phrases such as, "Defence counsel has
14:36:15 36 the right to know how evidence is procured, it's to ensure
14:36:21 37 people have a fair trial, not appropriate to conceal
14:36:25 38 matters from the court or defence. Even where it's been
14:36:29 39 procured in an appropriate way, defence are entitled to
14:36:32 40 know when changes occur and why as an ability to test".
14:36:34 41 They're all phrases used in criticism of a witness
14:36:37 42 currently giving evidence and we say the situation is
14:36:40 43 analogous to what we put in writing.
44
14:36:43 45 COMMISSIONER: Yes Mr Woods.
14:36:44 46
14:36:44 47 MR WOODS: Commissioner, the situation with the particular

14:36:46 1 witness was that he declined the invitation to make a
14:36:50 2 statement to the Commission. I was the person who examined
14:36:54 3 the witness and I did so based on documents that have been
14:36:58 4 disclosed by Victoria Police and Ms Gobbo. The item - the
14:37:07 5 issue that Ms Gobbo sees as understandably adverse to her
14:37:16 6 interests, the witness disclosed during his evidence on the
14:37:20 7 afternoon of the day that he gave evidence was something
14:37:21 8 that I learnt about by a document that was put under my
14:37:25 9 nose while the examination was continuing. Those issues
14:37:28 10 were put to the witness. It's a misunderstanding of the
14:37:33 11 questions that Mr Winneke put to the witness this morning
14:37:36 12 to draw an analogy to the current situation because in that
14:37:41 13 situation the basis on which those questions were put was
14:37:45 14 that there were documents in the background that were known
14:37:48 15 about by the prosecutorial authority that for one reason or
14:37:51 16 another were not disclosed. The situation here, quite
14:37:54 17 different, is that a witness who declined to give a
14:37:58 18 statement disclosed something during the day that was then
14:38:02 19 put to him in examination. The real question is whether or
14:38:06 20 not Ms Gobbo, who instructs her lawyers that she wants that
14:38:12 21 witness re-examined on those points, has the opportunity to
14:38:14 22 do so. That will rely in part on the adverse or the
14:38:20 23 contradictory material that Ms Gobbo has available. We
14:38:26 24 understand that despite the 1 July 2019 Notice to Produce
14:38:31 25 being issued which would capture any such material, that
14:38:36 26 material has not been disclosed to the Commission at this
14:38:39 27 stage. There's little use in continuing to consider the
14:38:44 28 application to recall the witness in circumstances where it
14:38:51 29 hasn't been disclosed to the Commission what the
14:38:54 30 contradictory material is. So that the cart isn't put
14:38:57 31 before the horse, what I submit is that those materials
14:38:59 32 should be immediately disclosed, they should be identified
14:39:03 33 and the process of which the examination of that witness
14:39:06 34 would proceed and the things that would seek to be elicited
14:39:10 35 are provided to the Commission. The Commissioner can then
14:39:12 36 decide whether or not that's appropriate. In any event,
14:39:15 37 Ms Gobbo has not been excused. If she has contrary
14:39:21 38 material or contrary recollections that she wishes to put
14:39:24 39 then she's - until she's excused then one can assume she
14:39:28 40 has the ability to do so. So that's my submission.

41
14:39:33 42 COMMISSIONER: What are you saying, that the application's
14:39:36 43 premature so it should be adjourned until Ms Gobbo's
14:39:40 44 disclosed to the Commission under a current existing Notice
14:39:48 45 to Produce the material she wants to put to the witness?

14:39:51 46
14:39:51 47 MR WOODS: Yes. As we understand it it's been explained,

14:39:53 1 I'm not sure whether it's in the documents, but certainly
14:39:57 2 it's been explained in the general sense that there are
14:40:00 3 contemporaneous records by which it can be shown in counsel
14:40:05 4 for Ms Gobbo's submission that the particular evidence that
14:40:09 5 was given by the witness is incorrect. Now I've been
14:40:14 6 through what I understand to be the disclosure of the kind,
14:40:19 7 and I should say it's text messages, at least in part, and
14:40:22 8 I'm unable to determine from the documents that have been
14:40:25 9 disclosed where the particular text messages are. As I
14:40:27 10 understand it the Commission simply doesn't have them.
14:40:29 11 There's been some correspondence from Ms Gobbo's solicitors
14:40:34 12 I believe this morning to the effect that, and I can read
14:40:39 13 it at least in a general sense, that there are mobile phone
14:40:48 14 records, that there's a review that's taking place by
14:40:57 15 Minter Ellison, that they expect to be in a position to
14:41:01 16 produce responsive messages to the Commission next week
14:41:04 17 after we've completed final checks and quality assurance
14:41:08 18 processes. Now I have reviewed the Notice to Produce of 1
14:41:13 19 July 2019 and it's unambiguous that text messages of this
14:41:19 20 kind have been caught. But in any event that's the
14:41:22 21 situation. It appears from that correspondence that Minter
14:41:27 22 Ellison are saying the Commission doesn't have them at the
14:41:29 23 moment. But Mr Nathwani might be able to assist you on
14:41:31 24 that point.

25
14:41:32 26 COMMISSIONER: Before you sit down, the application is - if
14:41:36 27 you look at the submissions on the second-last page, that
14:41:40 28 counsel provide - the first one is that counsel provide a
14:41:43 29 copy of his notes as he took Mr Cooper through prior to his
14:41:46 30 evidence during conference days earlier.

14:41:49 31
14:41:49 32 MR WOODS: Yes. Well if I could make a submission on that.

33
14:41:52 34 COMMISSIONER: Yes.

14:41:52 35
14:41:54 36 MR WOODS: It's an illogical request because it's been
14:41:57 37 explained, both in open Commission now, but also directly
14:42:03 38 to counsel, that the situation was that this was not
14:42:06 39 disclosed by the witness prior to giving evidence. That
14:42:11 40 being the case, besides all of the other reasons why you
14:42:16 41 don't get counsel assisting's cross-examination notes it
14:42:21 42 would be illogical because it's simply not in there,
14:42:22 43 because I learnt it for the first time during his evidence
14:42:25 44 as well, so there's no basis on which to ask for those.

14:42:25 45
14:42:26 46 COMMISSIONER: And then the next one, "We be provided the
14:42:30 47 notes taken by Mr Cooper's lawyers during the conference".

14:42:33 1 You've really answered that already.
14:42:34 2
14:42:35 3 MR WOODS: I was a participant in the conference.
4
14:42:36 5 COMMISSIONER: Yes. The next is that Mr Cooper be
14:42:38 6 recalled. You say that's premature.
14:42:40 7
14:42:40 8 MR WOODS: Yes.
9
14:42:40 10 COMMISSIONER: And then the next one - that really seems to
14:42:51 11 be it, doesn't it?
14:42:52 12
14:42:52 13 MR WOODS: I think they're the three points, Commissioner.
14
14:42:54 15 COMMISSIONER: They're the three points. Yes, all right
14:42:55 16 then. Mr Nathwani.
14:42:57 17
14:42:58 18 MR NATHWANI: Can I firstly deal with the disclosure issue.
14:43:00 19 As I think I indicated to counsel at the time, I was under
14:43:03 20 the impression they had been served, the text messages,
14:43:06 21 because I discussed them with I think Mr Winneke the next
14:43:10 22 day, saying there's his text messages that we all have,
14:43:16 23 that had I known Cooper was going say what he was going to
14:43:20 24 say I would have put to him but was caught on the move.
14:43:20 25 The reasoning is simple: there are over 40,000 messages.
14:43:26 26 A lot of them are not relevant at all and so being the
14:43:32 27 subject of redaction scrutiny and the like by a technical
14:43:34 28 team and I thought that we sent - I'm told you'll get them
14:43:37 29 either close of play today or first thing Monday. Just in
30 relation to Cooper, the rest of them - - -
31
14:43:40 32 COMMISSIONER: All right. All relevant text messages that
14:43:42 33 you have in your possession.
14:43:44 34
14:43:44 35 MR NATHWANI: For Cooper, and all the others by next
14:43:47 36 Friday.
37
14:43:47 38 COMMISSIONER: All relevant text messages by next Friday,
14:43:49 39 all right.
14:43:50 40
14:43:51 41 MR NATHWANI: But Cooper, I'm told, possibly today but more
14:43:54 42 than likely Monday.
43
14:43:55 44 COMMISSIONER: All right.
14:43:56 45
14:43:56 46 MR NATHWANI: Can I then deal with the more position - - -
47

14:43:59 1 COMMISSIONER: So it's suggested that your application
14:44:03 2 should be adjourned until that's occurred? Do you agree
14:44:05 3 with that?

14:44:07 4
14:44:07 5 MR NATHWANI: It's difficult to argue against it. I've
14:44:10 6 seen the material and I'd be surprised if it wasn't
14:44:14 7 accepted that it undermined what he said, significantly.

8
14:44:20 9 COMMISSIONER: They're the only documents that you'd be
14:44:23 10 wanting to put to this witness?

14:44:25 11
14:44:26 12 MR NATHWANI: It depends. I say for this reason, because
14:44:28 13 perhaps we didn't put it in writing clearly enough. There
14:44:31 14 are two issues at play. One that we are aware of, i.e. the
14:44:35 15 matter that arose whilst Mr Woods was on his feet, the
14:44:39 16 email. So that's the 2012 issue. I can't say much more
14:44:43 17 than that. That arose whilst he was on his feet. We don't
14:44:50 18 seek disclosure of his notes for that purpose. It's a
14:44:52 19 broader purpose. And this is going back to exactly why say
14:44:56 20 it's similar to the criticisms being made of the current
14:44:57 21 witness. Mr Cooper was legally represented. We were not
14:45:00 22 aware at all that as it transpired, no criticism is made,
14:45:05 23 but just as a fact, that counsel for the Commission had
14:45:07 24 spoken to Cooper the day before his evidence, in the
14:45:10 25 situation where Cooper had not provided a statement at all,
14:45:13 26 ergo those notes and what may have been asked, what may not
14:45:18 27 have been asked, what was amended by Mr Woods as to what he
14:45:21 28 was going to ask or not ask. I saw the hard copy of them
14:45:24 29 in court, which Mr Woods showed me the volume of them. We
14:45:28 30 are entitled to, it is our submission, because they were
14:45:32 31 notes that were either amended as a result of a discussion,
14:45:34 32 no criticism of the current witness, of allowing a witness
14:45:38 33 to - or Ms Gobbo to alter a witness statement and to have
14:45:47 34 them just looked at. So we are interested in seeing those
14:45:51 35 notes to ascertain if there were any topics that were
14:45:54 36 cross-examined or added in to the cross-examination or in
14:45:55 37 fact taken out by virtue of what Cooper was saying during
14:45:58 38 that 45 minute conversation with counsel who, as I
14:46:00 39 understand it, took him through all the topics that he
14:46:03 40 intended to take him through. And that, under both
14:46:07 41 procedural fairness and the criticisms made of other
14:46:11 42 witnesses by your counsel should mean we get disclosure of
14:46:18 43 those notes. It would be different if he'd been
14:46:22 44 represented by his own lawyers. But this is a different
14:46:24 45 situation. There was no statement. So the only
14:46:26 46 information we have is a 45 minute conversation with
14:46:28 47 certain parties present that informed the cross-examination

14:46:32 1 that was then undertaken.
2
14:46:33 3 COMMISSIONER: They contain no reference, you know that,
14:46:35 4 they contain no reference to the allegations.
14:46:38 5
14:46:39 6 MR NATHWANI: I don't know that.
7
14:46:40 8 COMMISSIONER: You do, you've been told that they contain
14:46:44 9 no reference to the 2012 allegations. You've been told how
14:46:47 10 the 2012 allegations arose.
14:46:47 11
14:46:48 12 MR NATHWANI: No, no we're mixing the up the two issues
14:46:49 13 again. Forget the 2012. I'm saying forget that, that's a
14:46:51 14 separate discrete issue. What else was discussed, what was
14:46:54 15 added to Mr Woods' cross-examination by what Cooper was
14:46:57 16 saying? What was taken out of Mr Woods' cross-examination
14:47:00 17 by what Cooper was saying? What areas did Mr Woods decide
14:47:04 18 to then go into further detail given what Mr Cooper was
14:47:07 19 saying? All relevant matters such as the changing of the
14:47:11 20 statement to say, "I might have thought someone was going
21 to be killed", or, "Actually I did think someone was going
14:47:17 22 to be killed", exactly the same. The words of Mr Winneke
14:47:19 23 yesterday, today, are apposite.
24
14:47:21 25 COMMISSIONER: Well I think if we called for those
14:47:24 26 documents in respect of every witness who's given evidence
14:47:28 27 here we'd never finish this Royal Commission. But what do
14:47:31 28 you say - - -
14:47:32 29
14:47:33 30 MR NATHWANI: This witness hasn't given a statement so
14:47:35 31 there is a difference, there is a significant difference.
14:47:37 32 We had no idea as to what he was going to say in relation
14:47:39 33 to specific topics.
34
14:47:41 35 COMMISSIONER: What do you say, Mr Woods?
14:47:43 36
14:47:43 37 MR WOODS: He now knows. I mean it's perfectly clear,
14:47:45 38 Commissioner. The point is that Mr Nathwani seems to
14:47:49 39 misunderstand about a process such as this, is that in a
14:47:53 40 Royal Commission counsel assisting routinely speak to
14:47:58 41 witnesses before they give evidence. It is a very, very
14:48:00 42 usual thing. There is nothing untoward about it. The
14:48:04 43 situation that's been explained specifically to Mr Nathwani
14:48:07 44 is that the witness had been delayed, he was apparently
14:48:12 45 nervous about giving evidence, and there was an offer to
14:48:15 46 explain at a high level the things that would be asked of
14:48:19 47 him and that he was largely unresponsive during that phone

14:48:22 1 call. There cannot have been any changes to my notes as a
14:48:29 2 result of that because it was simply going through
14:48:32 3 electronic notes and explaining areas that would be
14:48:35 4 examined. So it fails the same test of logicality. If it
14:48:43 5 were the case - if Mr Nathwani was right, then the fact of
14:48:48 6 providing a statement doesn't really come into play. It
14:48:51 7 would be any time there was a discussion with any witness.
8
14:48:54 9 COMMISSIONER: All right.
14:48:54 10
14:48:57 11 MR WOODS: So no, I oppose that application.
12
14:49:02 13 COMMISSIONER: Given that this a Royal Commission or
14:49:04 14 inquiry and not a court hearing I'm not persuaded that
14:49:09 15 Mr Nathwani has any right to the notes requested and I
14:49:12 16 refuse the application. As to the application for
14:49:14 17 Mr Cooper to be recalled, I adjourn that application until
14:49:20 18 9.30 on Wednesday 4 December.
14:49:26 19
14:49:27 20 MR NATHWANI: Sorry, next Friday? Sorry, forgive me, I
14:49:31 21 thought you were saying next Wednesday.
22
14:49:33 23 COMMISSIONER: No, Wednesday 4 December.
14:49:34 24
14:49:35 25 MR NATHWANI: Can I just say, I've had brief discussions
14:49:37 26 with Mr Holt and just generally should the application be
14:49:44 27 acceded to, it is possible for the witness, as far as
14:49:52 28 Victoria Police and logistics are concerned, for that to be
14:49:55 29 accommodated. I'm trying to speak as - we're in open.
30
14:49:59 31 COMMISSIONER: I se, yes, yes. A possibility if the
14:50:01 32 documents are all sorted out beforehand too, it might be
14:50:04 33 able to be done by telephone.
14:50:07 34
14:50:07 35 MR NATHWANI: Yes, I had a discussion with Mr Woods to that
14:50:09 36 effect.
37
14:50:09 38 COMMISSIONER: Yes. And it would only be fairly brief,
14:50:12 39 wouldn't it?
14:50:13 40
14:50:13 41 MR NATHWANI: About 15, 20 minutes.
42
14:50:14 43 COMMISSIONER: All right then. Back to Mr Bateson and
14:50:16 44 we're back to closed hearing I'm afraid.
14:50:22 45
14:50:22 46 MR HOLT: We'll just obtain the witness.
47

14:50:24 1 COMMISSIONER: Sure. It will take me that long to make the
14:50:26 2 order, Mr Holt. Pursuant to s.24 of the Inquiries Act
14:50:29 3 access to the Inquiry during the evidence of this witness
14:50:32 4 commencing at 2.50 pm is limited to legal representatives
14:50:40 5 and staff assisting the Royal Commission, the following
14:50:43 6 parties with leave to appear in the private hearing and
14:50:45 7 their legal representatives: the State of Victoria,
14:50:48 8 Victoria Police, including Media Unit representatives,
14:50:51 9 Graham Ashton, the DPP and the OPP, Commonwealth Director
14:50:54 10 of Public Prosecutions, Nicola Gobbo, SDU handlers,
14:50:57 11 Australian Federal Police, Australian Criminal Intelligence
14:50:59 12 Commission, legal representatives of the following parties
14:51:01 13 with leave to appear: John Higgs, Pasquale Barbaro, Faruk
14:51:07 14 Orman, Andrew and Mandy Hodson, Mr Cooper. Media
14:51:09 15 representatives accredited by the Royal Commission are
14:51:13 16 allowed to be present in the hearing room. The hearing is
14:51:15 17 to be recorded but not streamed or broadcast. Subject to
14:51:15 18 any further order there is to be no publication of any
14:51:18 19 materials, statements, information or evidence given, made
14:51:21 20 or referred to before the Commission which could identify
14:51:24 21 or tend to identify the persons referred to as Witness A,
14:51:27 22 Witness B, Witness X, Mr Cooper, any member of the Source
14:51:31 23 Development Unit or their whereabouts. A copy of this
14:51:35 24 order is to be posted on the door of the hearing room.

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(IN CAMERA HEARING FOLLOWS)