

ROYAL COMMISSION INTO THE MANAGEMENT
OF POLICE INFORMANTS

Held in Melbourne, Victoria

On Wednesday, 1 May 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
 Ms K. Argiropoulos

Counsel for State of Victoria Ms E. Hilliard

Counsel for Nicola Gobbo Mr P. Collinson QC
 Mr R. Nathwani

Counsel for DPP/SPP Ms K. O'Gorman

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These claims are not yet resolved.

15:42:09 1 MR WOODS: Commissioner, it may end up taking a little bit
15:42:12 2 longer. Victoria Police have just asked for the diaries
15:42:15 3 back just to sort them, which hopefully will make it even
15:42:19 4 more efficient for me going through them.
15:42:21 5
15:42:21 6 COMMISSIONER: Yes. Mr Winneke, are you going to appear on
15:42:26 7 the discussions to the redactions so that Mr Woods - - -
15:42:29 8
15:42:29 9 MR WINNEKE: I'm happy to appear in this matter. I'm not
15:42:32 10 too sure what the issues are. I have a copy of the
15:42:34 11 transcript and I gather my learned friend's has some
15:42:37 12 submissions to make about redactions to the transcript.
15:42:40 13 Perhaps I better hear what he has to say before I say
15:42:43 14 anything.
15:42:43 15
15:42:44 16 COMMISSIONER: Let's deal with them as we can. This isn't
15:42:46 17 being streamed now, is that right? Not being streamed,
15:42:50 18 thank you.
15:42:51 19
15:42:52 20 Mr Holt, it might be best if we start with, if you've
15:42:57 21 got it, the material that's attached to a letter of 20
15:43:06 22 April about some exhibits relating to Mr Pope, because
15:43:09 23 they're the oldest in time.
15:43:10 24
15:43:11 25 MR HOLT: They are. Commissioner, I have to confess
15:43:13 26 because I wasn't anticipating this issue being raised
15:43:16 27 today, I've only just raised this material. I can see from
15:43:19 28 a very quick perusal the nature of the areas that continue
15:43:23 29 to be pressed.
15:43:24 30
15:43:24 31 COMMISSIONER: Sure.
15:43:25 32
15:43:25 33 MR HOLT: Even on a very quick look at them I suspect that
15:43:27 34 it's a matter that would be most, as I indicated earlier,
35 but I then spent the day dealing relating to this next
15:43:31 36 witness and so on, it would be a matter which I could deal
15:43:34 37 with most fruitfully I think with Mr Winneke and if there
15:43:36 38 are any issues I would propose simply to deal with them by
15:43:39 39 way of written submission, which would be the final
15:43:42 40 submission provided to the Commissioner, and we'll do that
15:43:47 41 tonight. I'm just not in a position to assist,
42 Commissioner, I apologise for the delay. I'm not aware of
15:43:49 43 the detail of these matters.
15:43:49 44
15:43:50 45 COMMISSIONER: Can I just take you to them?
15:43:51 46
15:43:52 47 MR HOLT: Yes, Commissioner.

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15:43:52 1
15:43:52 2 COMMISSIONER: Because we're in closed hearing. The first
15:43:54 3 is in the investigation log that was tendered. It's
15:44:01 4 VPL.0005.0007.0189. I presume this is Pope's investigation
15:44:36 5 log and it's 20 May 1999. You should be able to get that
15:44:47 6 up soon I hope. Yes. I think this will save time
15:44:56 7 actually.
15:44:56 8
15:44:57 9 MR HOLT: Thank you, Commissioner, of course. I simply
15:44:59 10 indicate that I may not be in a position to do other than
15:45:02 11 respond immediately to issues that are obvious or, with
15:45:04 12 respect, take them on notice and attempt deal with
15:45:08 13 them - - -
15:45:08 14
15:45:09 15 COMMISSIONER: Sure. Hopefully they're pretty obvious.
15:45:15 16 Redacted would be better but it doesn't really matter.
15:45:18 17 Redacted would be better. See the entry for 20 May 1999.
15:45:27 18
15:45:27 19 MR HOLT: Yes Commissioner.
15:45:28 20
15:45:29 21 COMMISSIONER: Obviously they're objecting to, you're
15:45:32 22 objecting to the name [REDACTED] and [REDACTED] I would
15:45:36 23 propose that instead, rather than just blacking it out,
15:45:40 24 square brackets, Person 2 and Person 1.
15:45:44 25
15:45:45 26 MR HOLT: I would expect that in light of the way in which
15:45:47 27 we dealt with matters yesterday, Commissioner, that would
15:45:49 28 be acceptable. Again I would make a note of that and take
15:45:51 29 that on notice.
15:45:52 30
15:45:52 31 COMMISSIONER: All right. Then the next one again [REDACTED]
15:45:55 32 would become Person 2 on [REDACTED] 1999, if you see that, line
15:46:02 33 2?
15:46:03 34
15:46:03 35 MR HOLT: Yes.
15:46:03 36
15:46:03 37 COMMISSIONER: The next one that's highlighted is the entry
15:46:06 38 for [REDACTED] 1999. This is where I do need your help. It
15:46:10 39 says, about five lines down it says, "[REDACTED], along with their
15:46:15 40 [REDACTED], have already analysed the documents and they
15:46:18 41 believe that the documents do not support the" and then the
15:46:22 42 objection is to "UC [REDACTED] relating to [REDACTED]". Undercover, is
15:46:27 43 it? Does that UC mean undercover?
15:46:29 44
15:46:29 45 MR HOLT: That would be my assumption.
15:46:31 46
15:46:31 47 COMMISSIONER: Yes. So now I don't quite understand, is

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15:46:40 1 there a concern that no one knows there's an undercover
15:46:43 2 person dealing with [REDACTED]?
15:46:45 3
15:46:45 4 MR HOLT: Yes.
15:46:47 5
15:46:48 6 COMMISSIONER: Was that right? Is it not clear from the
15:46:50 7 sentencing that there was an undercover person - - -
15:46:53 8
15:46:53 9 MR HOLT: I think the concern is about the use of [REDACTED]
15:46:55 10 [REDACTED] Commissioner, in terms of the initial
15:46:58 11 confidential police methodology. It's the [REDACTED] I
15:47:01 12 think which is the issue looking at the table in the
15:47:04 13 letter.
15:47:04 14
15:47:04 15 COMMISSIONER: The fact that there was a [REDACTED]
15:47:06 16
15:47:06 17 MR HOLT: Yes, not the existence of an undercover. I think
15:47:10 18 that was known. But it's the [REDACTED] of the [REDACTED] which is the
15:47:13 19 issue.
15:47:14 20
15:47:14 21 COMMISSIONER: Yes.
15:47:14 22
15:47:15 23 MR HOLT: For the same reasons that have been identified
15:47:16 24 previously in relation to [REDACTED] that's the only
15:47:20 25 issue.
15:47:26 26
15:47:27 27 COMMISSIONER: What do you say, Mr Winneke?
15:47:28 28
15:47:30 29 MR WINNEKE: Commissioner, I don't know how it could be
15:47:32 30 that "UC [REDACTED] is something which reveals - I mean, look,
15:47:37 31 clearly it suggests that there was an undercover and the
15:47:41 32 undercover had a [REDACTED] I don't know, it
15:47:45 33 may well be that that was a method that was used on the
15:47:49 34 occasion but I can't see how that - - -
15:47:52 35
15:47:52 36 COMMISSIONER: Means that it's used always.
15:47:54 37
15:47:54 38 MR WINNEKE: Always. Look, Commissioner, there's no
15:47:56 39 material which supports it but my learned friend asserts
15:47:58 40 that that's the case.
15:47:59 41
15:47:59 42 COMMISSIONER: Yes.
15:48:00 43
15:48:05 44 MR WINNEKE: I must say I can't understand how that would
15:48:10 45 be something which would reveal to all the world that as a
15:48:14 46 matter of course on every occasion there would be [REDACTED]
15:48:17 47 [REDACTED] but certainly it was on that occasion.

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15:48:19 1
15:48:19 2 COMMISSIONER: Yes, okay. I have to say that's my
15:48:23 3 preliminary view too.
15:48:25 4
15:48:25 5 MR HOLT: Commissioner, and again on the basis of the
15:48:27 6 qualification I gave as to my capacity to assist at
15:48:32 7 present, it will rarely be the case in our respectful
15:48:35 8 submission that material that relates to the question of
15:48:36 9 police methodology will explicitly assert that it is a
15:48:40 10 universal strategy or anything of that kind. The mere
15:48:43 11 of it in our respectful submission is something which
15:48:45 12 carries that kind of a risk, that is of a knowledge
15:48:48 13 becoming known of that as at least a police methodology
15:48:54 14 that could then be on other occasions. And again,
15:48:57 15 with respect, if the word was simply redacted so
15:49:02 16 that it was clear, as is known in the public record that it
15:49:05 17 was an undercover, then that might achieve both goals
15:49:09 18 without in any meaningful way compromising what the
15:49:16 19 Commission is attempting to do.
15:49:17 20
15:49:18 21 COMMISSIONER: The trouble is it's something there that
15:49:20 22 doesn't support some evidence relating to and if you
15:49:24 23 take out "UC then the whole sentence doesn't make
15:49:27 24 sense, so that's why I'm inclined to leave it in. Unless
15:49:35 25 you could - so that's my preliminary view. I'll give you
15:49:42 26 overnight to consider it.
15:49:43 27
15:49:44 28 MR HOLT: I'd be grateful. I understand the position, I'll
15:49:46 29 take instructions on that point.
15:49:48 30
15:49:49 31 COMMISSIONER: All right. Then if we go over the page, 27
15:49:52 32 May 1999. Four lines down, "Regarding the of
15:50:00 33 "The of is highlighted that it should be
15:50:03 34 redacted.
15:50:05 35
15:50:05 36 MR HOLT: Commissioner, can I shortcut this issue in this
15:50:08 37 way?
15:50:09 38
15:50:09 39 COMMISSIONER: Yes.
15:50:10 40
15:50:11 41 MR HOLT: These objections were obviously taken earlier in
15:50:13 42 the hearing, as the Commissioner has noted. Some of these
15:50:16 43 issues were in fact dealt with in open hearing yesterday
15:50:19 44 and so I suspect our position may change. Might I simply
15:50:20 45 have the opportunity to - - -
15:50:21 46
15:50:21 47 COMMISSIONER: You get the position of what I'm wanting to

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15:50:24 1 do.
15:50:24 2
15:50:25 3 MR HOLT: I do. I well understand.
15:50:25 4
15:50:25 5 COMMISSIONER: I'm wanting to protect the safety of people
15:50:30 6 involved in these investigations but I also am wanting in
15:50:35 7 public an understandable narrative.
15:50:40 8
15:50:40 9 MR HOLT: We understand, Commissioner. Can I say, with
15:50:42 10 respect, the Commissioner made that very clear in the
15:50:44 11 course of proceedings yesterday and we're shifting the
15:50:46 12 approach in the way in which we deal with these matters on
15:50:50 13 that basis.
15:50:50 14
15:50:50 15 COMMISSIONER: Okay.
15:50:51 16
15:50:51 17 MR HOLT: Some of the documents have already been revealed.
15:50:54 18 Can I take that on notice and we will provide either a
15:50:56 19 formal written submission tonight on those issues which
15:50:59 20 will then, if it needs to be, be supported by evidence or
15:51:01 21 we will indicate to the contrary.
15:51:02 22
15:51:02 23 COMMISSIONER: Right. So the next document I have dated
15:51:05 24 today is - relates to the redacted affidavit of Person 4.
15:51:25 25 Yes, we don't have to worry about that at this stage, do
15:51:27 26 we?
15:51:28 27
15:51:28 28 MR HOLT: No, I don't think we have to worry about that
15:51:28 29 one, Commissioner.
15:51:28 30
15:51:28 31 COMMISSIONER: No. Good, we'll forget that one.
15:51:31 32
15:51:31 33 MR HOLT: Thank you.
15:51:31 34
15:51:32 35 COMMISSIONER: Then we've got yesterday's public
15:51:34 36 transcript.
15:51:36 37
15:51:36 38 MR HOLT: Commissioner, can I make an apology at the outset
15:51:40 39 in respect of this. I had indicated this morning that that
15:51:43 40 was going to be provided immediately, that was my
15:51:45 41 expectation because the review had been completed by me and
15:51:48 42 my junior counsel this morning.
15:51:51 43
15:51:51 44 COMMISSIONER: Yes.
15:51:51 45
15:51:52 46 MR HOLT: There was a misunderstanding, a genuine one,
15:51:52 47 which I now need to undo. I should be able to do that

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15:51:53 1 within about 20 minutes to half an hour of being out of
15:51:56 2 here I would expect, and then I can provide a document
15:51:58 3 marked up with those that we seek. The two passages that
15:52:01 4 we identified in the communication with the Commission this
15:52:07 5 morning remain as ones that we would ask to be redacted.
15:52:11 6 So if the Commission would be assisted by dealing with
15:52:13 7 those now?
15:52:13 8
15:52:13 9 COMMISSIONER: Yes, let's deal with those now.
15:52:16 10
15:52:16 11 MR HOLT: Thank you. The first is at p.1076 at lines 36 to
15:52:42 12 47, so line 36 to the conclusion of the page in fact, and
15:52:47 13 then there's a related, but not as significant passage on
15:52:51 14 the next page, in fact it's the 1076 passage.
15:52:54 15
15:52:54 16 COMMISSIONER: Okay. I can see why you want out "was the
15:52:58 17 supply source in [REDACTED]
15:53:01 18
15:53:01 19 MR HOLT: Yes.
15:53:01 20
15:53:02 21 COMMISSIONER: Why couldn't that become "was Person 1"?
15:53:09 22
15:53:09 23 MR HOLT: It almost certainly could, Commissioner.
15:53:11 24
15:53:12 25 COMMISSIONER: That can become Person 1.
15:53:15 26
15:53:15 27 MR HOLT: Again, Commissioner, can I simply indicate this,
15:53:17 28 because of the communication mix up, which is my fault
15:53:20 29 today.
15:53:20 30
15:53:20 31 COMMISSIONER: You've got to do some things anyway
15:53:23 32 overnight.
15:53:23 33
15:53:24 34 MR HOLT: These issues are being reviewed by the police and
15:53:26 35 I don't want to be acting contrary to instructions - - -
15:53:27 36
15:53:27 37 COMMISSIONER: I'll tell you what my preliminary view is.
15:53:31 38
15:53:31 39 MR HOLT: Thank you, Commissioner, that would be helpful.
15:53:33 40
15:53:34 41 COMMISSIONER: "Was Person 1 there", and then over the
15:53:37 42 page, 1077, from about line 14 down to 25.
15:53:56 43
15:53:57 44 MR HOLT: I'm sorry, Commissioner, in terms of p.1076 - - -
15:53:59 45
15:53:59 46 COMMISSIONER: There's more, is there?
15:54:03 47

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15:54:03 1 MR HOLT: Just the bottom part which talks about the
15:54:05 2 informer being the supply source for [REDACTED]
15:54:07 3
15:54:07 4 COMMISSIONER: Yes.
15:54:08 5
15:54:08 6 MR HOLT: But again I would expect that the Commissioner's
15:54:11 7 position will be similar to that above.
15:54:12 8
15:54:12 9 COMMISSIONER: So who should that be? "Was person" - and
15:54:18 10 another person - - -
15:54:23 11
15:54:23 12 MR HOLT: Commissioner, it might be a matter in terms of
15:54:27 13 whether that can be amended in a way that remains accurate
15:54:30 14 and still protects the position. It's something I might
15:54:34 15 just need to reflect on if I may and take instructions on.
15:54:36 16
15:54:36 17 COMMISSIONER: If you look above to 32 it suggests that the
15:54:39 18 same person who was the supply person in [REDACTED] was a
15:54:41 19 supply source in [REDACTED]. So you probably want that out.
15:54:48 20
15:54:49 21 MR HOLT: Yes, I would think so, Commissioner. Again,
15:55:11 22 Commissioner, what I can attempt to do is to propose
15:55:14 23 changes shortly which would permit the narrative to remain
15:55:17 24 the same but not reveal a critical question which, fitted
15:55:23 25 together with other evidence, can lead to the question of
15:55:25 26 identification.
15:55:25 27
15:55:26 28 COMMISSIONER: I appreciate the difficulty with the supply
15:55:27 29 source being named as a particular informer or person.
15:55:31 30
15:55:31 31 MR HOLT: And also, Commissioner, the general proposition
15:55:34 32 as well which is simply the public confirmation, in effect,
15:55:39 33 in a sort of official way, of the fact that there were
15:55:44 34 informers who were at least by implication persons arrested
15:55:51 35 in respect of that operation itself carries a risk, in
15:55:55 36 combination with other material, of being able to identify
15:55:58 37 those people, which is why we took a general approach to
15:56:03 38 simply cutting that issue out.
15:56:04 39
15:56:04 40 COMMISSIONER: I'm not told that in those instances it was
15:56:06 41 public knowledge in sentencing remarks or anything of that
15:56:09 42 nature. They, I think, were the only - then there was 1077
15:56:18 43 too.
15:56:18 44
15:56:19 45 MR HOLT: 1077 but it's the same issue in effect.
15:56:19 46
15:56:20 47 COMMISSIONER: Yes. It just needs some tidying up there.

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15:56:22 1
15:56:23 2 MR HOLT: Yes, and we can do that, Commissioner. I'm
15:56:23 3 hoping that's already been done. Can I raise two other
15:56:27 4 general issues in respect of the - - -
15:56:28 5
15:56:28 6 COMMISSIONER: The transcript from yesterday's private
15:56:31 7 hearing, where are we with that?
15:56:33 8
15:56:33 9 MR HOLT: That's still in the process of being reviewed,
15:56:35 10 Commissioner. Can I indicate for obvious reasons, because
15:56:39 11 it's a private hearing and it's a more general and open
15:56:42 12 discussion, the process of proposing redacting or proposing
15:56:45 13 redactions for the Commissioner's consideration in relation
15:56:47 14 to PII is a more complex one. My expectation is that it
15:56:53 15 would be done by close of business today, but it might be a
15:56:56 16 little longer, I'll just need to take instructions when we
15:56:59 17 leave court. As we discussed this morning, we will confirm
15:57:02 18 with the solicitors and counsel assisting an absolute
15:57:04 19 agreed timeline for when these redactions or these
15:57:08 20 proposals need to be given in relation to both open and
15:57:12 21 closed transcript, because of the mistake, or the
15:57:14 22 misunderstanding this morning. But there was another
15:57:16 23 matter, Commissioner, in relation to that which was the
15:57:19 24 second paragraph at 1082.
15:57:23 25
15:57:23 26 COMMISSIONER: I don't think I was told about that one.
15:57:25 27
15:57:26 28 MR HOLT: It's at the bottom of 1082. I'm spending today
15:57:32 29 apologising, Commissioner, but this is my fault as well.
15:57:35 30 The last question and answer were redacted in accordance
15:57:38 31 with the exchange that the Commissioner and I had
15:57:41 32 yesterday.
15:57:41 33
15:57:41 34 COMMISSIONER: Yes.
15:57:44 35
15:57:44 36 MR HOLT: I am bound to say in my head had anticipated that
15:57:47 37 that was in fact all part of the same question and answer,
15:57:49 38 including just the question that precedes it, because
15:57:52 39 that's part of, together with the part that's been
15:57:54 40 redacted, that's part of what essentially put the last
15:57:59 41 piece of the jigsaw puzzle together. It's the same
15:58:01 42 submission in respect to both that I ought to have made at
15:58:04 43 that point. Because essentially what's happened up till
15:58:07 44 that point is that there's identification of the informers
15:58:08 45 and so on and who fits where, and then this completes the
15:58:11 46 picture by essentially identifying the whole set of people,
15:58:15 47 how many there were, that sort of thing.

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15:58:19 1
15:58:20 2 COMMISSIONER: So it's just from 40?
15:58:21 3
15:58:22 4 MR HOLT: From 40, including which was already proposed to
15:58:25 5 be redacted, but from 40 as well, so that previous question
15:58:28 6 and answer which, as I say, yesterday when I was dealing
15:58:30 7 with it I was surprised when I read the transcript, I
15:58:33 8 thought that in fact would have been part of the same
15:58:36 9 question and answer but I was wrong.
15:58:37 10
15:58:37 11 COMMISSIONER: What do you say about that one, Mr Winneke?
15:58:40 12
15:58:43 13 MR WINNEKE: I'm not too sure that I follow, Commissioner.
15:58:47 14
15:58:48 15 COMMISSIONER: They're saying that you'd know that [REDACTED]
15:58:52 16 and [REDACTED] were amongst the four people, including
15:58:59 17 [REDACTED] and [REDACTED] for whom Ms Gobbo and her employer firm
15:59:07 18 acted arising out of [REDACTED] and [REDACTED]
15:59:11 19
15:59:11 20 MR HOLT: It just tells you that.
15:59:14 21
15:59:14 22 MR WINNEKE: I understand that. That does appear to be
15:59:31 23 correct, I accept that.
15:59:34 24
15:59:36 25 COMMISSIONER: The original transcript, of course, of these
15:59:39 26 pages will be kept so that the Commission can take notice
15:59:43 27 of the original. It's just that this is the one that will
15:59:47 28 go on the website.
15:59:49 29
15:59:49 30 MR HOLT: I should say, Commissioner, that's precisely as
15:59:52 31 we had expected the Commission would deal with it. We're
15:59:55 32 not suggesting for a moment this is not material the
15:59:58 33 Commission can deal with.
15:59:59 34
16:00:00 35 MR WINNEKE: I understand what my learned friend is saying,
16:00:01 36 I do follow.
16:00:04 37
16:00:04 38 COMMISSIONER: Yes, I follow that too.
16:00:05 39
16:00:06 40 MR HOLT: Commissioner, there's only one more general issue
16:00:07 41 I should raise now simply perhaps to get the Commissioner's
16:00:11 42 indication on it while we go through this final process
16:00:12 43 shortly. That is, the Commissioner will recall that some
16:00:13 44 way through the proceeding we moved from [REDACTED] 1, 2 and
16:00:17 45 3 to [REDACTED] 1, 2 and 3.
16:00:22 46
16:00:23 47 COMMISSIONER: Do you want that all corrected?

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16:00:30 1
2 MR HOLT: All the way through we think would be safer. So
16:00:31 3 we would do that if the Commissioner was in agreement.
16:00:32 4
16:00:39 5 COMMISSIONER: I imagine that can be done by the transcript
16:00:41 6 people fairly easily, can't it? It can be done by the
7 transcription people fairly easily? So we can have that
16:00:41 8 corrected.
16:00:42 9
10 MR HOLT: Thank you, Commissioner, and as I say I simply
11 need the opportunity to find out what's happened with the
16:00:43 12 document I did this morning to see whether there are any
16:00:45 13 other issues. If there are, we'll deal with them.
16:00:46 14
16:00:47 15 COMMISSIONER: Sorry, which document?
16:00:49 16
16:00:49 17 MR HOLT: This open transcript, Commissioner. As I
16:00:51 18 indicated, we had prepared a document which had also - - -
16:00:54 19
16:00:54 20 COMMISSIONER: Yes.
16:00:55 21
16:00:56 22 MR HOLT: And I need to see whether I have instructions to
16:00:58 23 pursue any other matters and ensure those instructions need
16:01:02 24 to be pursued and we'll do that very quickly and they'll be
16:01:05 25 accompanied by appropriate submissions if they're to be
16:01:07 26 made and they'll be done after court today.
16:01:10 27
16:01:10 28 COMMISSIONER: I still think that it might be better if we
16:01:13 29 actually do this in the hearing then, because I think that
16:01:16 30 then settles it once and for all publicly. It then remains
16:01:20 31 clear that this is something that's in control of the
16:01:22 32 Commission.
16:01:24 33
16:01:24 34 MR HOLT: Absolutely. I think we will still nonetheless
16:01:27 35 provide in an appropriate notice of results of what those
16:01:30 36 issues are tonight so that the Commissioner is in a
16:01:33 37 position to resolve them in the morning.
16:01:34 38
16:01:35 39 COMMISSIONER: It would be very good if we could also deal
16:01:37 40 with tomorrow the transcript of the private hearing
16:01:41 41 yesterday and today's public hearing at the same time.
16:01:46 42
16:01:46 43 MR HOLT: I don't expect there'll be any issues about
16:01:49 44 today's public hearing, subject obviously to a final review
16:01:56 45 tonight. I will ensure the Commissioner is informed as to
46 progress on the other public interest immunity review in
16:01:59 47 relation to the closed hearing yesterday.

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16:01:59 1
16:02:00 2 COMMISSIONER: Even if you don't have time to make a formal
16:02:02 3 submission I think it would just be sensible to deal with
16:02:06 4 it all tomorrow and then that material can go on the
16:02:08 5 website.
16:02:10 6
16:02:10 7 MR HOLT: Thank you Commissioner.
16:02:11 8
16:02:11 9 COMMISSIONER: Yes.
16:02:13 10
16:02:13 11 MR WINNEKE: Can I just raise one matter?
16:02:15 12
16:02:15 13 COMMISSIONER: Yes.
16:02:15 14
16:02:16 15 MR WINNEKE: Insofar as my learned friend's request to have
16:02:19 16 those matters redacted so as Persons 1 and 2 can't be
16:02:25 17 identified, I understand the position that's put. Although
16:02:29 18 can I say this: our submission would be that ultimately
16:02:36 19 these are matters that ought be disclosed to particularly
16:02:43 20 Mr Arnautovic. I understand that there's a process at the
16:02:46 21 moment of redaction. I understand from my learned friend
16:02:50 22 that that hasn't been completed but ultimately it would be
16:02:55 23 our submission that it would need to be justified that the
16:02:58 24 public interest in disclosing those names is sufficient to
16:03:04 25 outweigh their disclosure to Mr Arnautovic.
16:03:08 26
16:03:09 27 COMMISSIONER: Yes.
16:03:09 28
16:03:10 29 MR WINNEKE: At the moment - perhaps if we can reserve our
16:03:13 30 position with respect to that. I understand that is a
16:03:16 31 process which is going on at the moment, not just with
16:03:18 32 respect to Arnautovic, but with quite a number of matters
16:03:22 33 and it seems to be a fairly slow process.
16:03:25 34
16:03:26 35 COMMISSIONER: That's right. I've alerted Ms O'Gorman to
16:03:28 36 that and she's alert to that as well.
16:03:30 37
16:03:31 38 MR WINNEKE: That's right. The position insofar as
16:03:33 39 Ms O'Gorman and the OPP is concerned specifically with
16:03:37 40 respect to this is a little bit different because of the
16:03:39 41 position that they've chosen to take. But ultimately, and
16:03:44 42 this might need to be ventilated or at least thrashed out
16:03:48 43 in due course, our submission is that Mr Arnautovic ought
16:03:51 44 be provided with this material.
16:03:52 45
16:03:52 46 COMMISSIONER: Yes.
16:03:55 47

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16:03:56 1 MR WINNEKE: Can I just say that whilst I understand our
16:03:59 2 learned friend's position, I think that ought to be
16:04:01 3 addressed sooner rather than later so as that issue can be
16:04:07 4 resolved. Because if it's necessary for that material, and
16:04:12 5 appropriate for that material to be passed on to
16:04:14 6 Mr Arnautovic, well then on one view there oughtn't be any
16:04:20 7 redactions in any event.
16:04:21 8
16:04:21 9 COMMISSIONER: Yes, well that would be - there is a lot in
16:04:25 10 what you say. Now as I understand it Mr Arnautovic is not
16:04:28 11 presently legally represented although he has a lawyer
16:04:31 12 who's been providing him some assistance.
16:04:33 13
16:04:34 14 MR WINNEKE: He has a lawyer who is assisting him. Indeed,
16:04:36 15 the solicitor who instructed Ms Gobbo, and I think
16:04:39 16 Mr Sheales in the trial, is now counsel. I've had
16:04:43 17 communications with that person and he's aware of these
16:04:45 18 matters.
16:04:46 19
16:04:46 20 COMMISSIONER: I'm wondering if it would be helpful if the
16:04:50 21 Commission, perhaps with the support of counsel for
16:04:56 22 Victoria Police and the DPP, made an approach to Legal Aid
16:05:02 23 to see if that - because Mr Arnautovic is currently in
16:05:07 24 custody, he's certainly sentenced?
16:05:09 25
16:05:10 26 MR WINNEKE: He's in custody not in relation to these
16:05:16 27 matters but in relation to other matters, but that may well
16:05:18 28 be by the by.
16:05:19 29
16:05:19 30 COMMISSIONER: The sentence he got on those matters may
16:05:22 31 well have been higher because of the sentence he got on
16:05:23 32 these matters.
16:05:23 33
16:05:25 34 MR WINNEKE: Potentially, and for other reasons also.
16:05:25 35
16:05:25 36 COMMISSIONER: There is a logical argument as to why these
16:05:28 37 matters could be relevant to his current term of
16:05:31 38 imprisonment.
16:05:32 39
16:05:33 40 MR WINNEKE: Commissioner, on any view if there are issues
16:05:35 41 here that need to be disclosed they ought to be disclosed
16:05:39 42 absolutely ASAP because he's in custody.
16:05:42 43
16:05:42 44 COMMISSIONER: Yes. It would be a lot easier perhaps if he
16:05:44 45 were legally represented because - - -
16:05:45 46
16:05:46 47 MR WINNEKE: I agree.

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16:05:46 1
16:05:46 2 COMMISSIONER: Because orders at least then could be made
16:05:48 3 that the disclosures made to his lawyers with reservations
16:05:52 4 about it being disclosed to him, but I suppose at some
16:05:55 5 point it's going to have to be disclosed to him.
16:05:58 6
16:05:59 7 MR WINNEKE: Ideally, Commissioner, we would be seeking
16:06:01 8 submissions, the Commission would be seeking educated
16:06:10 9 submissions from him as to whether or not his case may have
16:06:10 10 been affected. Now as things stand at present if this
11 material is redacted we're not in a position to provide it
12 to Mr Arnautovic so as he can make a submission.
16:06:11 12
16:06:13 13 COMMISSIONER: Or even to his lawyer.
16:06:14 14
16:06:15 15 MR WINNEKE: Well, the same, that's correct.
16:06:15 16
16:06:16 17 COMMISSIONER: Or even to his lawyer on the condition that
16:06:16 18 he doesn't disclose it to his client so that he can then
16:06:19 19 make at least some submissions about it.
16:06:22 20
16:06:23 21 MR WINNEKE: I agree. There are difficulties in doing that
16:06:24 22 but certainly in an ideal world Mr Arnautovic would be
16:06:26 23 appraised of this material as soon as possible.
16:06:30 24
16:06:36 25 COMMISSIONER: Indeed. I guess in some senses he perhaps
16:06:36 26 ought to have been given the opportunity to be represented
16:06:39 27 at some of these hearings that we've been having where
16:06:42 28 these things have been ventilated.
16:06:45 29
16:06:47 30 MR WINNEKE: I agree.
16:06:47 31
16:06:48 32 COMMISSIONER: It might be that these people have to be
16:06:48 33 recalled to allow him to do that.
16:06:50 34
16:06:55 35 MR WINNEKE: That's something obviously that may need to be
16:06:55 36 considered.
16:06:59 37
16:06:59 38 COMMISSIONER: Yes.
16:07:00 39
16:07:01 40 MR HOLT: Commissioner, may I assist in a way that I hope
16:07:02 41 might give the Commission some level of comfort about where
16:07:05 42 this issue presently sits. The material that's come light
16:07:09 43 both from the material that Assistant Commissioner Paterson
16:07:10 44 provided to the counsel assisting the Commission on the
16:07:13 45 weekend, which was then confirmed in large measure by the
16:07:15 46 evidence given by Mr Strawhorn given yesterday, changes
16:07:19 47

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16:07:22 1 unquestionably the landscape in respect of the issue of
16:07:26 2 public interest immunity in respect of Mr Arnautovic and in
16:07:28 3 respect of those issues that underlie it. That is a matter
16:07:31 4 which is presently the subject of urgent advice being given
16:07:33 5 to Victoria Police in that regard and my expectation is
16:07:35 6 that a position will be reached very shortly on that.

16:07:38 7
16:07:39 8 COMMISSIONER: Yes. It's in a very similar category, one
16:07:42 9 would have thought, as to what the High Court said in the
16:07:47 10 AF case.

16:07:48 11
16:07:48 12 MR HOLT: And I appreciate that indication, Commissioner.
16:07:51 13 But in that respect what I can indicate is this: that view
16:07:54 14 will be confirmed as soon as it possibly can and it will be
16:07:58 15 communicated both obviously to the Director of Public
16:08:01 16 Prosecutions in accordance with obligations of disclosure
16:08:04 17 and also to the Commission, and it may well be that we need
18 to make submissions about timing that follow that because
16:08:08 19 of certain steps Victoria Police might need to take in the
16:08:10 20 meantime which I'm - in respect of human safety in effect.
16:08:15 21 So there are certain practical steps that might also need
16:08:18 22 to be taken. But it's a matter that has been the subject
16:08:20 23 of discussion both with the Director and also with our
16:08:24 24 learned friends assisting the Commission and I obviously
16:08:26 25 will keep the Commissioner advised appropriately in
16:08:29 26 relation to that. We understand how significant it is. We
16:08:32 27 also understand that it's the first of these in a way and
16:08:34 28 ensuring that it's done correctly by everybody might set a
16:08:37 29 template for the way in which it's dealt with.

16:08:40 30
16:08:40 31 COMMISSIONER: But time remains of the essence of course.

16:08:43 32
16:08:43 33 MR HOLT: It does, Commissioner, but there are
16:08:46 34 countervailing considerations that need to be very
35 carefully considered. I can assure the Commissioner that
36 we understand the importance of time and it really is the
16:08:52 37 material that's arisen very recently which has put this
16:08:53 38 into a different category.

16:08:55 39
16:08:55 40 COMMISSIONER: Have you any idea as to the time frames
16:08:58 41 you're - - -

16:09:00 42
16:09:01 43 MR HOLT: I can't give the Commissioner a specific answer
16:09:03 44 about that at present because I would be misleading the
16:09:06 45 Commissioner if I did so. My expectation is we're talking
16:09:08 46 about days, not weeks, in terms of being able to resolve
16:09:11 47 that issue.

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16:09:11 1
16:09:12 2 COMMISSIONER: Okay.
16:09:13 3
16:09:14 4 MR HOLT: That's a matter that's the subject of active
16:09:17 5 discussion and advice at present. We're not talking about
16:09:18 6 a large volume of material, it's really a question of
16:09:19 7 whether or not Victoria Police's position is a certain kind
16:09:21 8 or another and either way that would need to be ventilated
16:09:25 9 and litigated potentially but one, of course, may be easier
16:09:30 10 than the other and I simply need to finalise that position.
16:09:30 11 As I say, there may be a need for some further delay for
16:09:34 12 practical reasons which we'll obviously raise with the
16:09:37 13 Commission, but in terms of that initial decision that's
16:09:41 14 one that's being actively considered at present. I agree
16:09:43 15 with our learned friend entirely, in the event that a
16:09:45 16 different position is reached then the material that's
16:09:47 17 previously been redacted will need to be revisited if a
16:09:51 18 different position is reached. But at present that's the
16:09:55 19 position we're in.
16:09:58 20
16:09:58 21 MS O'GORMAN: If I can just put on the record that the DPP
16:10:01 22 has made no issue as to the issue regarding redaction and
16:10:04 23 PII which my learned friends have taken a lead on. That's
16:10:07 24 not to be taken as any indication that the DPP has reached
16:10:11 25 any views about the matter when it comes to the DPP taking
16:10:13 26 any steps in terms of fully evolved disclosure, but I just
16:10:17 27 want to put on the record that any non-submission by the
16:10:22 28 DPP in this forum shouldn't be taken by Victoria Police or
16:10:25 29 any other party as an indication as to the DPP's views in
16:10:30 30 respect of PII.
16:10:30 31
16:10:32 32 COMMISSIONER: I understood that you your position was
16:10:33 33 simply that you didn't want to be shown material which was
16:10:37 34 still subject to a PII claim.
16:10:39 35
16:10:40 36 MS O'GORMAN: My instructions are not that that is
16:10:41 37 necessarily the case as far as the provision of material is
16:10:45 38 in the Commission's forum. Certainly it is the case that
16:10:48 39 if there is redacted material that is tendered, for
16:10:52 40 example, the DPP's position is that they'd like to be shown
16:10:55 41 that material and subject to there being no proper
16:10:58 42 constraints that we ought to be shown it in court.
16:11:01 43
16:11:03 44 COMMISSIONER: Sorry, do you mean the unredacted material,
16:11:05 45 you should be shown the unredacted material?
16:11:08 46
16:11:09 47 MS O'GORMAN: The DPP is content to receive the redacted

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16:11:14 1 material.
2
3 COMMISSIONER: Yes.
4
5 MS O'GORMAN: As far as the provision of unredacted
16:11:14 6 material is concerned, the DPP is simply not pressing that
16:11:16 7 as an issue in the Commission's forum. It's not the case
16:11:20 8 that DPP necessarily does not want to see the unredacted
16:11:25 9 material.
10
11 COMMISSIONER: I see. So you would be prepared if the
16:11:26 11 Commission decided that we should supply you with the
16:11:28 12 material because it was proper disclosure to do so, you
16:11:31 13 would be prepared to receive the unredacted material?
16:11:36 14
15
16 MS O'GORMAN: Yes, Commissioner.
16:11:39 16
17
18 COMMISSIONER: I see. I didn't understand that yesterday.
16:11:40 18 Thank you.
16:11:43 19
20
21 MS O'GORMAN: If I can just clarify, because that's perhaps
16:11:45 21 an issue of importance to the DPP.
16:11:47 22
23
24 COMMISSIONER: Yes, it is.
16:11:49 24
25
26 MS O'GORMAN: Simply the position that was put yesterday
16:11:52 26 was that I understood that Mr Holt had explained to the
16:11:53 27 tribunal the DPP's position was that it did not wish to
16:11:56 28 receive particular pieces of material in terms of methods
16:12:00 29 of communication as between Victoria Police and the DPP.
16:12:07 30 In respect of the one document that was tendered to the
16:12:09 31 Commission, the DPP's position was that we do wish to see
16:12:12 32 that document. The DPP is in fact keen to see any
16:12:15 33 documents the Commission has available to it that is
16:12:18 34 capable of being shown to the DPP and is keen to see
16:12:21 35 material that is provided to the Commission.
16:12:24 36
37
38 COMMISSIONER: I see. Thank you for that because I did not
16:12:26 38 understand that properly yesterday.
16:12:28 39
40
41 MR HOLT: Can I just approach my friend?
16:12:31 41
42
43 COMMISSIONER: Yes.
16:12:33 43
44
45 (Discussion at Bar table.)
16:12:34 45
46
47 MR HOLT: Sorry, Commissioner, it's simply there were
16:12:54 46
16:12:55 47

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16:12:57 1 discussions late into last night with the Director about
16:13:01 2 these issues and we were just settling on them. I think it
16:13:05 3 might resolve this issue completely very shortly. We'll
16:13:08 4 just seek to address those.

16:13:09 5
16:13:10 6 COMMISSIONER: Yes.

16:13:10 7
16:13:11 8 MR WINNEKE: Commissioner, just before we complete
16:13:13 9 discussing this matter, I understand from Mr Holt that an
16:13:18 10 urgent advice has been sought, one assumes from counsel, as
16:13:23 11 to when that would be provided to them we haven't heard but
16:13:30 12 one assumes that he'll be able to find out overnight from
16:13:34 13 counsel or whoever it is when that advice will be able to
16:13:37 14 be provided, but can I say this: regardless of what the DPP
16:13:41 15 chooses to do with respect to disclosure I would like to
16:13:45 16 have this material, including the document that was
16:13:51 17 tendered yesterday through Mr Strawhorn and his evidence,
16:13:55 18 provided to Mr Arnautovic and any legal representative who
16:14:00 19 he may have or choose to have. I would seek from the
16:14:07 20 police, who are currently maintaining a claim of public
16:14:14 21 interest immunity, tomorrow a clear indication as to when
16:14:18 22 we would be in a position or they would be in a position to
16:14:21 23 advise us as to whether or not the Commission can or cannot
16:14:25 24 provide the material to Arnautovic. In my submission I
16:14:31 25 understand there's an urgent advice being sought but one
16:14:34 26 would imagine the Commission could be told tomorrow morning
16:14:37 27 when that decision is likely to be made.

16:14:39 28
16:14:39 29 COMMISSIONER: Yes.

16:14:41 30
16:14:41 31 MR WINNEKE: Because in my submission it's something that
16:14:43 32 ought be provided to Mr Arnautovic sooner rather than
16:14:48 33 later, if not by the DPP but certainly by the Commission.

16:14:51 34
16:14:52 35 COMMISSIONER: Just from our obligations to ensure that
16:14:55 36 natural justice is done.

16:14:56 37
16:14:57 38 MR WINNEKE: Exactly.

16:14:58 39
16:14:58 40 COMMISSIONER: That's in addition to our obligation under E
16:15:05 41 of the Terms of Reference to promptly bring to the
42 attention of the DPP any information or documents relevant
16:15:07 43 to their functions including their continuing duty of
16:15:09 44 disclosure.

16:15:10 45
16:15:10 46 MR WINNEKE: Well insofar as that's concerned, as I
16:15:12 47 understand it from my learned friend they're happy to

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16:15:15 1 receive the material in an unredacted form.
16:15:17 2
16:15:18 3 COMMISSIONER: Yes.
16:15:18 4
16:15:19 5 MR WINNEKE: I've indicated we can provide them with a
16:15:21 6 package of material.
16:15:22 7
16:15:22 8 COMMISSIONER: I didn't understand that until just now
16:15:24 9 though. Did you?
16:15:26 10
16:15:26 11 MR WINNEKE: I did but that's from other sources.
16:15:28 12
16:15:29 13 COMMISSIONER: Okay, right. Then that probably should be
16:15:33 14 done.
16:15:34 15
16:15:34 16 MR WINNEKE: Yes, well insofar as the DPP is concerned,
16:15:38 17 yes. Insofar as our duty to provide it to Arnautovic - - -
16:15:43 18
16:15:43 19 COMMISSIONER: We can deal with it tomorrow.
16:15:45 20
16:15:46 21 MR WINNEKE: Mr Holt should be in a position to tell us
16:15:50 22 tomorrow.
16:15:51 23
16:15:52 24 MR HOLT: We'll take instructions overnight, Commissioner,
16:15:56 25 and intend to advance matters in the morning.
16:15:56 26
27 COMMISSIONER: Thank you. We're no longer in closed court,
28 closed hearing.
29
16:15:56 30 MR WINNEKE: The time now is quarter past four. I think
16:15:59 31 Mr Woods has been going through diaries. I think he has
16:16:03 32 further to go. It may well be, Commissioner, that there's
16:16:07 33 not much point in starting.
16:16:08 34
16:16:09 35 COMMISSIONER: No. Would you just check with Mr Woods
16:16:11 36 because I understood there was a possibility he'd be able
16:16:14 37 to finish this witness fairly quickly.
16:16:14 38
16:16:14 39 MR WOODS: Rather than speak to Mr Winneke, there was a
16:16:16 40 possibility - - -
16:16:18 41
16:16:18 42 COMMISSIONER: But it no longer exists.
16:16:20 43
16:16:21 44 MR WOODS: No, and there's a couple more diary entries that
16:16:24 45 I'd like to have a look at.
16:16:25 46
16:16:26 47 COMMISSIONER: We're coming back tomorrow in any case.

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16:16:30 1
16:16:30 2 MR WOODS: We're coming back tomorrow anyway. Were that
3 not the case we'd probably deal with it now or in a little
16:16:32 4 while, but no, tomorrow's more useful.
16:16:32 5
16:16:32 6 COMMISSIONER: Then when we come back tomorrow I would also
16:16:36 7 like to have some more information about A 1st PO
16:16:46 8 about his application for ill-health or how we might be
16:16:50 9 able to deal with it in a way that can accommodate his
16:16:54 10 ill-health, or whether his evidence is relevant even. If
16:16:57 11 the material in relation to him can also be provided that
16:17:02 12 would be also helpful.
16:17:03 13
16:17:04 14 MR HOLT: Commissioner, he is seeing - in light of the
16:17:08 15 comments that were made today he's seeing his general
16:17:12 16 practitioner at 7.30 tomorrow morning, which is as soon as
16:17:14 17 an appointment could be made. We would expect to have a
16:17:15 18 report from the general practitioner which will hopefully
16:17:17 19 assist the Commissioner eventually following. There still
16:17:18 20 hasn't been able to be contact directly by solicitors with
16:17:24 21 him but there are members of the police who he is speaking
16:17:24 22 to. He is genuinely distressed I indicate to the
23 Commissioner and so we hope that that material might allow
16:17:29 24 another path through it. We'll discuss it with our learned
16:17:32 25 friends as we need to.
16:17:33 26
16:17:33 27 COMMISSIONER: What about all his diaries and documents
16:17:35 28 relating to him?
16:17:37 29
16:17:38 30 MR HOLT: They've been provided, Commissioner.
31
32 COMMISSIONER: They have now been provided?
33
16:17:39 34 MR HOLT: They were provided a number of days ago,
16:17:40 35 Commissioner.
16:17:40 36
16:17:40 37 COMMISSIONER: Is that right?
38
39 MR HOLT: And his contact report.
40
16:17:49 41 COMMISSIONER: Is that right? I didn't understand that was
16:17:50 42 the case. Is that the case?
16:17:51 43
16:17:51 44 MR HOLT: The diaries that exist, Commissioner. The
16:17:52 45 relevant ones as I'm instructed have been provided.
16:17:59 46
16:18:00 47 MR WINNEKE: We have a number of pages of diaries, yes, we

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16:18:02 1 do.
16:18:05 2
16:18:05 3 MR HOLT: And a contact report, Commissioner.
16:18:06 4
16:18:06 5 COMMISSIONER: The contact report only dealt with his
16:18:08 6 illness, not in respect of any - - -
16:18:10 7
16:18:11 8 MR HOLT: I don't think there's much substantive in it, but
16:18:14 9 there are diaries provided some time ago, Commissioner.
16:18:16 10
16:18:17 11 COMMISSIONER: There are some diaries there, all right. I
16:18:17 12 didn't know that. All right then. We'll adjourn until 10
16:18:22 13 o'clock tomorrow.
16:18:56 14
16:18:56 15 ADJOURNED UNTIL THURSDAY 2 MAY 2019
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