



## Frequently asked questions

### General

#### What is a royal commission?

A royal commission in Australia is the highest form of inquiry, established to investigate and report on matters of public significance.

In Victoria, the Governor of Victoria, as the Queen's representative, may establish a royal commission on the advice of the Premier of Victoria.

#### What are Letters Patent?

In Victoria, Letters Patent is the document issued by the Governor of Victoria that formally establishes a royal commission under the *Inquiries Act 2014*. Letters Patent can specify matters including:

- the person or persons appointed as Commissioners and/or chair of a royal commission
- a royal commission's terms of reference
- the time in which a royal commission must report on its inquiry
- a royal commission's operating budget
- how an inquiry is to be conducted.

#### What is the Inquiries Act?

The *Inquiries Act 2014* (Inquiries Act) is a Victorian law that provides for the establishment and conduct of certain types of inquiries, including royal commissions.

The Inquiries Act sets out a range of matters relating to royal commissions, including:

- arrangements for the appointment of staff and Commissioner/s
- conduct of the inquiry—for example, a royal commission may conduct its inquiry in a manner it considers appropriate, subject to the requirements of procedural fairness, the letters patent, and the Inquiries Act
- powers that may be exercised, including the power to compel the production of documents and other things or the attendance of witnesses
- reporting requirements
- confidentiality and the sharing and use of information by a royal commission and its staff
- the protection of individuals who give information or evidence to a royal commission.

#### What are terms of reference?

Terms of reference are specified in Letters Patent and set out the purpose and scope of a royal commission's inquiry. A royal commission is required to inquire into and report on matters raised in its terms of reference.



## **The Royal Commission into the Management of Police Informants**

### **When was the Commission established?**

The Commission was established under Letters Patent issued by the Governor of Victoria, dated 13 December 2018.

The Letters Patent were later amended on 7 February 2019 to reflect the changes to the scope of the Commission's inquiry and the resignation of former Commissioner Malcolm Hyde AO APM.

### **Why was the Commission established?**

On 3 December 2018, the Premier of Victoria, the Hon. Daniel Andrews MP, announced that the Victorian Government would establish a royal commission to independently inquire into Victoria Police's recruitment and management of police informants (also known as 'informers' or 'human sources') who are subject to legal obligations of confidentiality or privilege.

The announcement followed a decision of the High Court of Australia regarding a former criminal defence barrister, Ms Nicola Gobbo, who was recruited by Victoria Police as a human source.

### **Who is the Commissioner?**

The Honourable Margaret McMurdo AC is the Commissioner.

### **Who is working at the Commission?**

The Commission has employed a multi-disciplinary team to support its work, including policy and research staff, qualified investigators, public sector operational staff and legal staff.

The law firm Holding Redlich has been engaged as solicitors assisting the Commission and will provide legal support and advice to the Commission.

### **Who are the Counsel Assisting?**

The Commission has appointed barristers who will assist the Commission. Counsel Assisting are:

- Chris Winneke QC
- Penny Neskovcin QC
- Andrew Woods
- Megan Tittensor
- Sandip Mukerjea
- Michael Allen
- Israel Cowen
- Natalie Kaye.

Counsel Assisting provide specialist legal advice to the Commission on its powers, duties and functions, and facilitate the conduct of the Commission's inquiry. At the Commission's



public hearings, Counsel Assisting will help identify matters of inquiry, obtain evidence and assist the Commissioner to assess the evidence presented.

### **What are the Commission's terms of reference?**

The Commission's terms of reference are set out in its Letters Patent - <https://www.rcmpi.vic.gov.au/letters-patent>.

In line with its terms of reference, the Commission will examine the number of, and extent to which, cases may have been affected by the conduct of Ms Gobbo, and the conduct of Victoria Police in managing her as a human source. The Commission will also consider the adequacy and effectiveness of Victoria Police's processes for recruiting, handling and managing human sources who are subject to legal obligations of confidentiality or privilege; the use of such human source information in the criminal justice system; and any measures needed to improve future processes and practices.

### **When will the Commission report?**

When the Premier announced the establishment of the Commission in December 2018 it was required to report on the number of, and extent to which, cases may have been affected by Ms Gobbo's conduct by 1 July 2019. It was also required to report on all remaining matters under its terms of reference by 1 December 2019. The Commission and the Government were able to agree to extend these dates if necessary.

On 25 May 2019, the Attorney-General announced an extension of the reporting timelines in response to a request from the Commission.

The Commission provided a progress report to the Governor of Victoria on 1 July 2019. A final report covering all terms of reference will be delivered by 1 July 2020.

### **Why were the reporting timeframes for the Commission extended?**

The increased span of inquiry into Victoria Police's use of Ms Gobbo as a human source (from five to over eighteen years) coupled with the volume of information to be examined by the Commission, a multitude of suppression orders and delays in the provision of information has made reporting on the first term of reference by 1 July 2019 impossible.

A further difficulty is that the inquiry into the first term of reference is closely linked with term of reference two which explores the conduct of current and former members of Victoria Police in their disclosures about recruitment, handling and management of Ms Gobbo as a human source. Those inquiries and any resulting reports cannot be efficiently separated.

### **How much is the Commission costing?**

The Commission's approved budget is \$28 million.

### **Will individuals who may be affected, especially those in custody, be disadvantaged by the extension?**

The Commission has heard from many people who allege that their cases were affected by Ms Gobbo's use as a human source by Victoria Police. The Commission, its legal team and



staff are working hard to obtain all information necessary to review potentially affected cases, starting with individuals who are currently in custody.

Those whose case(s) may have been affected, especially persons in custody, will not be disadvantaged by the extension. The Commission will continue to promptly disclose all relevant information to prosecuting authorities as required under the Letters Patent. This will help to ensure that individuals are not disadvantaged and can take steps to challenge their convictions or sentences in the courts if they wish.

Anyone who considers they may have been affected and who has not yet come forward should do so by 31 July 2019. Without supporting evidence, the Commission will be unable to confidently determine whether, and to what extent, a case may have been affected.

Any person who wishes to challenge their conviction or sentence should seek independent legal advice. The Commission is not a court and is unable to overturn convictions, change sentences or release people from custody.

### **How will the Commission obtain information?**

The Commission is obtaining information through public submissions, hearings, research, consultation with key stakeholders and experts, and other information provided to it by organisations and individuals.

Under the Inquiries Act, the Commission has the power to require organisations and individuals to provide information that will assist the Commission's inquiry. For example, the Commission has the power to:

- compel a person to produce a document
- require a person to give evidence at its public hearings
- apply for a search warrant; for example, to inspect and copy a document.

### **How can I provide information to the Commission?**

During its submissions period, the Commission invited members of the public to make a submission to the Commission, relevant to its terms of reference. Submissions could be made on behalf of individuals or organisations to inform the work of the Commission. The period to lodge a submission has now closed.

The Commission is also hearing from witnesses during its hearings. The Commission will continue to identify and call witnesses for its public hearings throughout the inquiry and publish a schedule of witnesses on the website, prior to the hearings. Public hearings began in February 2019.

More information about the Commission's processes for its public hearings can be found in Practice Direction 1.

### **When were submissions due?**

Written submissions concerning the number of, and extent to which, cases may have been affected by the conduct of Ms Gobbo as a human source were due by Friday, 15 March 2019.



Submissions on all other matters raised in the Commission's terms of reference were due by Friday, 12 April 2019.

### **What can I do if I did not make a submission and believe that I may have been affected by the conduct of Ms Gobbo?**

While the due date for public submissions has now closed, anyone who considers they may have been affected and who has not yet come forward should do so by 31 July 2019. Without supporting evidence, the Commission will be unable to confidently determine whether, and to what extent, a case may have been affected.

### **Why was the submission I made to the Commission not published?**

The Commission has received 131 submissions from organisations and members of the public; 15 have been published to the website.

The published submissions include submissions about the conduct of Victoria Police, those related to the use and management of human sources, those about the use of evidence obtained from human sources in the criminal justice system, and those about legal professional ethics and regulation and other such issues.

While the preference is to make submissions available to the public, there are several reasons why the Commission may choose not to publish a submission. These include the author's preference for the treatment of their submission, the need to protect the safety of the author or other individuals, and legal restrictions including client legal privilege, public interest immunity, defamation and suppression orders.

Where appropriate, the Commission will publish additional submissions as soon as possible.

### **Can the Commission overturn convictions or sentences?**

The Commission does not have the power to overturn convictions or release someone from custody.

If you wish to challenge your conviction or sentence, you should seek independent legal advice on the possible legal avenues that are available.

### **What is an 'Application for Leave to Appear'?**

Under Section 15 of the Inquiries Act, the Commission may allow a person or organisation to appear at, or participate in, its public hearings. This is known as 'leave to appear'.

Being granted leave to appear at the Commission's public hearings is different from being called as a witness. Witnesses will be identified and called by the Commission to appear at its public hearings. Other individuals or organisations who wish to appear must apply for leave to appear.

Leave to appear enables a person to participate in part or all of the Commission's hearings, to the extent permitted by the Commission. For example, the Commission might permit a person, or their legal representative, to appear on a particular day of the Commission's hearings to make an oral submission.

In granting a person leave to appear, the Commission may consider factors such as:

- whether the person has a direct or special interest in the inquiry
- the likelihood that the Commission may make an adverse finding against the person



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- the ability for the person to assist the Commission in its inquiry
- any other matters the Commission considers relevant (for example, whether granting leave to appear at the public hearings would assist the Commission over and above a person making a written submission to the Commission through the public submissions process).

To apply for leave to appear, a person or organisation must submit an Application for Leave to Appear. The application is available on the website and further information can be found in Practice Direction 1 and Practice Direction 2.

### What is an 'Application for Leave to Cross-Examine Witnesses'?

If a person or organisation is granted leave to appear at the Commission's public hearings, they may also wish to apply for leave to cross-examine witnesses, or a particular witness, at the Commission's hearings.

In assessing applications for leave to cross-examine, the Commission will consider whether a person or organisation has sufficient interest to cross-examine a witness, the purpose of that cross-examination, the issues to be canvassed, and any documents that the person or organisation might intend to refer the witness to.

To apply for leave to cross-examine, a person or organisation must first seek and be granted leave to appear, and then submit an Application for Leave to Cross-Examine Witness. The application is available on the website and more information can be found in Practice Direction 1.

### What is a 'Notice to Attend'?

A Notice to Attend is a formal document issued by the Commission requesting that a person attend a Commission hearing to give evidence as a witness.

It is important that witnesses who have been served with a Notice to Attend do not communicate about the evidence that they might give to the Commission with any other witnesses. This will help to avoid any risk that their evidence might be distorted.

Further information about prohibited communication between witnesses and other persons can be found in Practice Direction 2.

### I have been served with a Notice to Attend the Commission's hearings as a witness. Can I be legally represented?

Witnesses may be legally represented at the Commission's hearings, with the permission of the Commission.

If a lawyer wishes to appear at the Commission's hearings for the limited purpose of representing a witness while the witness gives evidence, the lawyer must seek permission from the Commission in writing at least seven days prior to their client giving evidence. Further information can be found in Practice Direction 1.

The Commission will not grant a lawyer permission to represent a witness at a hearing if there is any risk of a conflict of interest or the potential for distortions of evidence. For example, if a lawyer acts for a witness but has previously acted for another witness, this could give rise to a conflict of interest.



When considering a lawyer's request to appear at a hearing, the Commission may request that the lawyer provide detailed written reasons, or attend the Commission in person, to answer any questions the Commission might have regarding any potential conflict of interest or the integrity of evidence. Further information can be found in Practice Direction 2.

### **What should I do if I'm worried about my physical safety when giving evidence to the Commission?**

If you have any concerns about your immediate safety, you should contact Victoria Police on 000 or your local Police Station.

The Letters Patent which set up the Commission require it to have regard to the safety of all persons affected by the matters raised in the inquiry. This is an important consideration in terms of how the Commissioner decides to deal with submissions and hearings.

The Commission takes the security of all participants and attendees at hearings very seriously and has in place a range of security measures to ensure the safety of both witnesses and hearing attendees.

Witnesses should discuss any security issues with their legal representative who can liaise with Commission officers. (If a witness does not have legal representation, please email [contact@rcmpi.vic.gov.au](mailto:contact@rcmpi.vic.gov.au) or phone 1800 312 612).

At the discretion of the Commissioner, in some cases this may result in the need to implement measures such as having closed hearings, providing witnesses with access via a discreet entrance, utilizing remote audio or videoconferencing, making a non-publication order, or an order not to show the individual's image through the video streaming and/or utilising a pseudonym.

### **Will the Commission reimburse me for any costs incurred in appearing as a witness?**

Under section 42 of the *Inquiries Act 2015* any person who is served with a Notice to Attend as a witness at a hearing of the Commission is entitled to be paid expenses and allowances in accordance with the prescribed scale set out in the *Inquiries Regulations 2015*.

Witnesses are entitled to reimbursement for costs incurred relating to loss of income, childcare, meals, accommodation allowances and travel expenses.

Information about the process for making a claim for reimbursement can be found in the Witness Information Sheet on the Commission's website at [www.rcmpi.vic.gov.au](http://www.rcmpi.vic.gov.au).

### **What support is available for witnesses issued with a Notice to Attend by the Commission?**

Counselling support is available for witnesses giving evidence at the hearings to support their health and well-being. The Commission has engaged an independent specialist psychological counselling service to provide confidential support prior to, during, and following attendance at the Commission.



Witnesses can access:

- One pre-hearing counselling session during the 7 days prior to appearing before the Commission
- One debrief counselling session following their attendance at the Commission.

The Commission can also provide counselling for witnesses during hearings if required. This can be provided at the Fair Work Commission, where the Commission's hearings are being conducted, or the witness can attend the service provider's premises which are located nearby.

To access this service please contact Caraniche on 1800 099 444.

### **Can I access a grant of legal assistance?**

Victoria Legal Aid (VLA) does not have a guideline which specifically covers legal assistance for people appearing before a Royal Commission. As such, there is no automatic entitlement to assistance to appear before one. However, VLA does have a Public Interest and Strategic Litigation guideline, which covers assistance in a proceeding which "is not otherwise covered by Victoria Legal Aid guidelines and carries significant public benefit."

At present, applications for assistance will be assessed under this guideline. In deciding whether to grant legal assistance under the Public Interest guideline, VLA must have regard to several considerations, including whether the matter "carries significant public benefit" and "the likely cost of the proceedings". The VLA means test applies to applications under this guideline in the usual way.

In order to expedite any application for legal assistance for representation at the Commission, VLA requires the following information to accompany an application for legal aid:

- If applicable, proof that the person has been issued with a Notice to Appear by the Commission
- If applicable, proof that the person has been granted leave to appear and/or to cross-examine a witness
- The Commission's written response to any application for leave to appear and/or approval that the person may be legally represented
- A copy of the person's application and supporting submission to the Commission seeking leave
- Details about previous grants of legal assistance
- Information about the person's and their partner's income and assets.

Any telephone enquiries from legal representatives about the Commission can be made to Victoria Legal Aid on 9606 5356 or at [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au).



## Terms of reference

### What is a human source?

A human source, also known as a police informant or informer, can be described as an individual who covertly supplies information to police about crime or people involved in criminal activity. This information might be used in the investigation and prosecution of a crime.

Generally, human sources can be distinguished from other people who might provide information to police—for example, witnesses to an accident or victims of crime.

### Who is EF?

'EF' is former criminal barrister Ms Nicola Gobbo, who covertly provided information to Victoria Police about people engaged in criminal activity. Some of these people were her clients.

EF is the pseudonym given to Ms Gobbo in court proceedings. She has also been referred to as informant '3838' and other informant numbers by Victoria Police, and was referred to as 'Lawyer X' in the media.

At the time the Commission's terms of reference were issued, Ms Gobbo's identity was subject to a non-publication order. That order has now been lifted.

### Is the Commission looking at all human sources?

No. The terms of reference require the Commission to inquire into Victoria Police's recruitment and management of a specific class of informants. It will look at:

- the use of Ms Gobbo as a human source
- any other human sources used by Victoria Police who are subject to legal obligations of confidentiality or privilege (i.e. members of the legal profession or other relevant professions).

The Commission is limited to looking at matters that fall within the scope of its terms of reference. It cannot examine other Victoria Police conduct or the use of human sources more broadly.

If you have concerns about other Victoria Police conduct, or suspected police misconduct, you might wish to contact:

- the Independent Broad-based Anti-corruption Commission (IBAC) - <https://www.ibac.vic.gov.au/general/contact-us>
- the Victoria Police Conduct Unit, Professional Standards Command.



### **I was represented by Nicola Gobbo. How can I provide this information to the Commission?**

During its submissions period, the Commission was accepting submissions from members of the public who were represented by Ms Gobbo. The period to lodge submissions has now closed.

While the due date for public submissions has now closed, the Commission encourages any individuals who believe they may have been affected by the conduct of Ms Gobbo to contact the Commission directly, if they have not already done so.

If you have any questions, you can contact the Commission's enquiries team by email at [contact@rcmpi.vic.gov.au](mailto:contact@rcmpi.vic.gov.au) or telephone 1800 312 612. You may also wish to seek independent legal advice.

### **What are legal obligations of confidentiality or privilege?**

Lawyers have legal obligations of privilege and confidentiality to their clients.

Client legal privilege, or legal professional privilege, is a right that protects the disclosure of certain communications between a lawyer and a client when these communications are for the dominant purpose of seeking or providing legal advice, or for use in legal proceedings.

Legal professionals also have a broader duty to keep information about a client's legal affairs confidential, and not to disclose such information to anyone, without the client's permission.

Lawyers have a duty to act in their clients' best interests and to ensure that they do not have any conflict of interest.

These obligations are intended to ensure that clients can speak freely and frankly with their lawyers without fear that the information will be used against them.

Certain other professions have legal and professional obligations to maintain client confidentiality; for example, people employed in law firms, doctors and other health professionals.

### **What is the Comrie Review and the Kellam Report?**

The Comrie Review is a review that was undertaken by former Chief Commissioner of Victoria Police, Neil Comrie, concerning Victoria Police's general handling of Ms Gobbo as a human source and the application of policies, control measures and management practices relevant to her handling from September 2005 to January 2009.

The Kellam Report is a report that was prepared in 2015 by the Honourable Murray Kellam QC on behalf of the IBAC, concerning Victoria Police and its handling of Ms Gobbo as a human source.

Given the sensitive nature of these reviews, they were undertaken confidentially. They later formed part of the evidence considered during litigation between the Chief Commissioner of Victoria Police, Ms Gobbo and the Director of Public Prosecutions in late 2016 to 2018.

While the litigation was underway, orders were made that restricted publication until 12 April 2019.



Redacted copies of the Comrie Review and the Kellam Report can now be accessed via a web portal from the Supreme Court of Victoria - <https://www.supremecourt.vic.gov.au>

### **What is IBAC?**

IBAC is Victoria's independent anti-corruption and police oversight agency. Established under the *Independent Broad-based Anti-corruption Commission Act 2011*, IBAC replaced the Office of Police Integrity.

Its role is to:

- receive complaints and notifications of public sector corruption and police misconduct
- investigate and expose corruption and police misconduct
- inform the public sector and community about the risks and impacts of corruption and police misconduct, and ways it can be prevented.

Further information can be found on the [IBAC website](https://www.ibac.vic.gov.au/general/contact-us) at <https://www.ibac.vic.gov.au/general/contact-us>

### **What is section 123 of the *Inquiries Act 2014*?**

Section 123 of the *Inquiries Act* provides that the Commission cannot inquire into, or exercise any powers in relation to the Ombudsman, IBAC, the Director of Public Prosecutions, Victorian courts, and certain other persons and bodies. Section 123 of the Act does not prevent these people or bodies from voluntarily giving evidence or providing information to the Commission.

### **What are summary cases?**

Summary matters or cases deal with summary offences. These are less serious offences that are heard in the Magistrates' Court. Some summary offences can be dealt with through the infringement notice system, instead of appearing in court.

### **What are indictable matters?**

Indictable matters or cases deal with indictable offences. These are serious offences that are usually heard by a judge or jury in the County Court or Supreme Court. Some less serious indictable offences can be heard 'summarily' in the Magistrates' Court if the accused consents to this and the court considers it appropriate.

### **What are prosecuting authorities?**

When a person is charged with an offence under the Victorian *Crimes Act 1958*, they are generally prosecuted by Victoria Police, or by the Office of Public Prosecutions if it is a more serious offence, on behalf of the State of Victoria.

If a person is charged with a Commonwealth offence, they are prosecuted by the Australian Federal Police or the Commonwealth Director of Public Prosecutions.

These bodies are known as 'prosecuting authorities'.