

of the offence. In that case, and in that case only, the balance falls on the side of disclosure.²⁴

28 I accept EF's evidence that Victoria Police assured her that her identity as a police informer would be kept confidential.

Background to the proceeding

The Kellam Report

29 On 6 February 2015, the Honourable Murray Kellam QC, acting as delegate of the Independent Broad-based Anti-corruption Commission ('IBAC') prepared a report titled 'Report concerning Victoria Police handling of Human Source code name 3838' ('the Kellam Report'). The Kellam Report concerned Victoria Police's use of a registered human source, source 3838, described as a 'well-known barrister' specialising in criminal law and acting for a number of high profile clients involved in criminal proceedings and criminal activities.

30 Among other things, Mr Kellam found that:

- (a) Victoria Police used EF as a registered human source between 16 September 2005 and 12 January 2009;
- (b) During that time, EF continued to act as a barrister practising criminal law in Victoria;
- (c) The information that EF provided to Victoria Police included information obtained from her clients, which was prima facie subject to legal professional privilege or otherwise confidential; and
- (d) EF maintained daily contact with her handlers, who disseminated information provided by her to various taskforces within Victoria Police.²⁵

²⁴ *R v Mokbel (Ruling No. 1)* [2005] VSC 410, [68] (Gillard J) quoting *D v National Society for the Prevention of Cruelty to Children* [1978] AC 171, 218.

²⁵ Findings contained in Kellam Report, 2-3 and 11 [2].

31 The Kellam Report identified, as examples, nine people about whom EF provided information to Victoria Police who were subsequently convicted of serious criminal offences. Eight of those persons have been prosecuted by the Office of Public Prosecutions Victoria ('OPP'), and two have been prosecuted by the Commonwealth Director of Public Prosecutions ('CDPP').²⁶

The Comrie Review

32 Before the Kellam Report, former Chief Commissioner Neil Comrie prepared a case review of Victoria Police's general handling of EF and in particular the application of policies, control measures and managerial supervisory practices relevant to her handling during the period of September 2005 to January 2009. Mr Comrie said in his review:

Entries contained in [EF]'s ICRs taken at face value, indicate that on many occasions [EF], in providing information to police handlers about [EF]'s clients, has disregarded legal professional privilege. Furthermore, in some instances, it is open to interpret that such conduct may have potentially interfered with the right to a fair trial for those concerned. In the absence of any apparent active discouragement from the police handlers for [EF] to desist with furnishing information on such matters, the handlers remain vulnerable to perceptions that they may have actually been inducing or encouraging the provision of such information. These concerns are heightened in instances where handlers have passed on such information to other police case managers, presumably so that they may make use of it.²⁷

...

Some particular handlers seemed keen to take full advantage of [EF]'s capabilities by also seeking tactical advice about the best way to disrupt activities of certain clients of [EF] and even information about where points of vulnerability may lie for prosecutions.²⁸

33 Mr Comrie's review reflected the concern that despite clear indications from some Victoria Police members of their advertence to the particular risks and consequences associated with utilising EF, Victoria Police members, including senior members, did

²⁶ Tony Mokbel was prosecuted by both the OPP and CDPP.

²⁷ First Champion affidavit, exhibit JRC-2, Case Review by Mr Neil Comrie AO, APM dated 30 July 2012, 16 '(Comrie Review').

²⁸ Comrie Review, 14.