

ROYAL COMMISSION INTO THE
MANAGEMENT OF POLICE INFORMANTS

Held in Melbourne, Victoria

On Friday, 15 February 2019

Led by Commissioner: The Honourable Margaret McMurdo AC

Also Present

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

1 COMMISSIONER: Associate, please read the Amended Letters
2 Patent.

3
4 ASSOCIATE: The following reflects the Letters Patent
5 issued under the Public Seal of the State on the 13th day
6 of December 2018, and the amendments to the Letters Patent
7 issued under the Public Seal of the State on the 7th day of
8 February 2019.

9
10 Elizabeth the Second, by the grace of God, Queen of
11 Australia and her other realms and territories, head of the
12 Commonwealth:

13
14 I, the Honourable Linda Dessau AC, the Governor of the
15 State of Victoria, with the advice of the Premier under
16 section 5 of the *Inquiries Act 2014*, section 41A of the
17 *Interpretation of Legislation Act 1984*, and all other
18 enabling powers, amend the Letters Patent entered into the
19 Register of Patents Book number 47 Page Number 25 on 13
20 December 2018 establishing the Royal Commission into the
21 Management of Police Informants and appoint you, the
22 Honourable Margaret Anne McMurdo AC as Commissioner and
23 Chairperson, to constitute a Royal Commission to inquire
24 into and report on the matters specified in the terms of
25 reference.

26
27 Background.

28
29 The reasons for decision of the High Court of
30 Australia, the Victorian Court of Appeal and the Supreme
31 Court of Victoria in AB and CD, EF and CD have detailed the
32 conduct of Victoria Police in relation to the informant
33 known as '3838', and referred to hereafter as EF, who was a
34 criminal defence barrister recruited by Victoria Police to
35 provide information about various members of the criminal
36 fraternity, including those involved in the Melbourne
37 'gangland wars', some of whom were EF's clients, between
38 2005 and 2009. Victoria Police has since disclosed that EF
39 was first registered as an informant in 1995 (using
40 different informant numbers from time to time). It is also
41 possible that EF provided information to Victoria Police
42 while not registered as an informant.

43
44 There are appeal proceedings currently underway
45 brought by three persons whose convictions are alleged to
46 have been affected by the conduct of EF, and it is
47 anticipated that more cases may be affected, and further

1 proceedings may be commenced.

2
3 A case review was prepared by the former Chief
4 Commissioner Neil Comrie into Victoria Police's handling of
5 EF, in particular the application of policies, control
6 measures and supervisory practices relevant to their
7 handling, and recommended that Victoria Police review all
8 matters associated with EF to ensure all issues of
9 significance were identified and appropriate actions taken.

10
11 An independent inquiry by the Independent Broad-based
12 Anti-corruption Commission, conducted by the Honourable
13 Murray Kellam AO AC in 2015, into human source management
14 at Victoria Police found that Victoria Police had failed to
15 act in accordance with appropriate policies and guidelines
16 in their recruitment, handling and management of EF, and
17 found negligence of a high order and made recommendations
18 for the future recruitment, handling and management of
19 human sources.

20
21 The former Director of Public Prosecutions, the
22 Honourable John Champion, conducted an internal
23 investigation into the DPP's handling of the affected
24 matters and found no evidence of inappropriate conduct on
25 the part of the DPP or Office of Public Prosecutions, and
26 found that those offices had no knowledge of the identity
27 of EF or the use of EF as a human source by Victoria
28 Police.

29
30 And whereas it is anticipated that you will, in the
31 conduct of your inquiry:

32
33 A. seek not to prejudice any ongoing investigations
34 or judicial proceedings or exercise any of its coercive or
35 investigative powers in a manner which would be in contempt
36 of court;

37
38 B. not unnecessarily duplicate the investigations or
39 recommendations of inquiries or investigations previously
40 conducted in these or related matters:

41
42 1. that are described in the background above or
43 that otherwise come to your attention during the course of
44 your inquiry; and

45
46 2. insofar as they are relevant to the terms of
47 reference for your inquiry;

1
2 C. work cooperatively, as appropriate, with other
3 inquiries or investigations into Victoria Police's handling
4 of EF to avoid unnecessary duplication;

5
6 D. have regard to:

7
8 1. the existence of related judicial
9 proceedings;

10
11 2. the possibility of further proceedings being
12 commenced by other affected persons;

13
14 3. the safety of EF and other persons affected
15 by the matters raised in this inquiry; and

16
17 E. promptly bring to the attention of the Director of
18 Public Prosecutions and the Commonwealth Director of Public
19 Prosecutions any information or documents that you consider
20 relevant to their functions, including their continuing
21 duty of disclosure.

22
23 Terms of reference.

24
25 You are appointed to inquire into and report on:

26
27 1. The number of, and extent to which, cases may have
28 been affected by the conduct of EF as a human source.

29
30 2. The conduct of current and former members of
31 Victoria Police in their disclosures about and recruitment,
32 handling and management of EF as a human source.

33
34 3. The current adequacy and effectiveness of Victoria
35 Police's processes for the recruitment, handling and
36 management of human sources who are subject to legal
37 obligations of confidentiality or privilege, including:

38
39 a. whether Victoria Police's practices continue to
40 comply with the recommendations of the Kellam report; and

41
42 b. whether the current practices of Victoria Police
43 in relation to such sources are otherwise appropriate.

44
45 4. The current use of human source information in the
46 criminal justice system from human sources who are subject
47 to legal obligations of confidentiality or privilege,

1 subject to section 123 of the *Inquiries Act 2014*,
2 including:

3
4 a. the appropriateness of Victoria Police's practices
5 around the disclosure or non-disclosure of the use of such
6 human sources to prosecuting authorities; and

7
8 b. whether there are adequate safeguards in the way
9 in which Victoria Police prosecutes summary cases, and the
10 Office of Public Prosecutions prosecutes indictable matters
11 on behalf of the Director of Public Prosecutions, when the
12 investigation has involved human source material.

13
14 5. Recommended measures that may be taken to address:

15
16 a. the use of any other human sources who are, or
17 have been, subject to legal obligations of confidentiality
18 or privilege and who come to your attention during the
19 course of your inquiry; and

20
21 b. Any systemic or other failures in Victoria
22 Police's processes for its disclosure about and
23 recruitment, handling and management of human sources who
24 are subject to legal obligations of confidentiality or
25 privilege, and in the use of such human source information
26 in the broader criminal justice system, including how those
27 failures may be avoided in the future.

28
29 6. Any other matters necessary to satisfactorily
30 resolve the matters set out in paragraphs 1-5.

31
32 You are required to report your findings and any
33 recommendations to the Governor in relation to the
34 specified matter at first instance, and by 1 July 2019 or
35 such other date as agreed between the Commission and the
36 Government.

37
38 You are required to report your findings and any
39 recommendations to the Governor in relation to the
40 remaining matters as soon as possible thereafter, and no
41 later than 1 December 2019 or such other date to be agreed
42 between the Commission and the Government.

43
44 Conduct of the inquiry.

45
46 You are directed to conduct your inquiry in accordance
47 with section 12 of the *Inquiries Act 2014*.

1
2 You may also consult with experts and engage persons
3 to provide relevant advice and assistance.

4
5 You are authorised to incur expenses and financial
6 obligations to be met from the Consolidated Fund up to \$7.5
7 million in conducting this inquiry.

8
9 The Letters Patent and the amendments to the Letters
10 Patent are issued under the Public Seal of the State.

11
12 Witness.

13
14 Her Excellency the Honourable Linda Dessau, Companion
15 of the Order of Australia, Governor of the State of
16 Victoria in the Commonwealth of Australia at Melbourne this
17 13th day 6 December 2018.

18
19 Signed by Her Excellency the Honourable Linda Dessau
20 AC.

21
22 By Her Excellency's Command.

23
24 Signed by the Honourable Daniel Andrews MP, Premier of
25 Victoria.

26
27 Entered on the record by me in the Register of Patents
28 Book Number 47 Page Number 25 on the 13th day of December
29 2018.

30
31 Signed by Chris Eccles, Secretary, Department of
32 Premier and Cabinet.

33
34 And further, the amendments to the Letters Patent:

35
36 Witness.

37
38 Her Excellency the Honourable Linda Dessau, Companion
39 of the Order of Australia, Governor of the State of Victoria
40 in the Commonwealth of Australia at Melbourne this 7th day
41 of February 2019.

42
43 Signed by Her Excellency the Honourable Linda Dessau
44 AC.

45
46 By Her Excellency's Command.
47

1 Signed by the Honourable Daniel Andrews MP, Premier of
2 Victoria.

3
4 Entered on the record by me in the Register of Patents
5 Book Number 47 Page Number 34 on the 7th day of February
6 2019.

7
8 Signed by Chris Eccles, Secretary, Department of
9 Premier and Cabinet.

10
11
12 COMMISSIONER: Thank you.

13
14 This Commission results from the conduct of a former
15 legal practitioner and her relationship with Victoria
16 Police. Court orders presently prevent the Commission from
17 naming this person. The media has referred to her as
18 Lawyer X. The police have referred to her by various
19 informant registration numbers, including 3838. In recent
20 court proceedings she was called EF, the nomenclature I
21 will use this morning. She purported to act as counsel for
22 clients charged with criminal offences whilst
23 simultaneously informing on those clients to police.

24
25 After this conduct had apparently ceased, others
26 outside Victoria Police became aware of it. The Victorian
27 Independent Broad-based Anti-corruption Commission (IBAC)
28 inquired into it. In a confidential 2015 report, the IBAC
29 found that her informing to police had the potential to
30 undermine the convictions of a number of people. The then
31 Director of Public Prosecutions concluded he was under a
32 legal duty to disclose relevant information from the IBAC
33 report to those whose convictions may have been tainted by
34 this conduct.

35
36 Victoria Police and EF then instituted proceedings in
37 the Supreme Court to stop the DPP from disclosing the
38 information. The hearing was in closed court without
39 notice to the convicted people concerned. Justice Ginnane,
40 whilst recognising there was a clear public interest in
41 preserving the anonymity of police informers and keeping EF
42 and her children safe, found that there was a more pressing
43 public interest in disclosing the information. It might
44 allow those convicted to challenge their convictions, and
45 it would maintain public confidence in the criminal justice
46 system.

1 Victoria Police and EF unsuccessfully appealed to the
2 Court of Appeal. In unanimously dismissing the appeals,
3 their Honours reiterated the great importance of preserving
4 community confidence in the court, and that, in the
5 circumstances here, the public interest in disclosure
6 outweighed public interest immunity.

7
8 Victoria Police and EF next sought to appeal to the
9 High Court of Australia, which ultimately revoked the
10 special leave to appeal originally granted. Whilst
11 recognising the clear public interest in maintaining the
12 anonymity of a police informer's identity, the seven judges
13 of the High Court unanimously expressed their hope that
14 these circumstances would never be repeated. The Court
15 stated:

16
17 "EF's action in purporting to act as counsel for the
18 Convicted Persons while covertly informing against them
19 were fundamental and appalling breaches of EF's obligations
20 as counsel to her clients and of EF's duties to the court.
21 Likewise, Victoria Police were guilty of reprehensible
22 conduct in knowingly encouraging EF to do as she did and
23 were involved in sanctioning atrocious breaches of the
24 sworn duty of every police officer to discharge all duties
25 imposed on them faithfully and according to law without
26 favour or affection, malice or ill-will. As a result, the
27 prosecution of each convicted person was corrupted in a
28 manner which debased fundamental principles of the criminal
29 justice system. It follows, as Justice Ginnane and the
30 Court of Appeal held, that the public interest favouring
31 disclosure is compelling: the maintenance of the integrity
32 of the criminal justice system demands that the propriety
33 of each Convicted Person's conviction be re-examined in
34 light of the information. The public interest in
35 preserving EF's anonymity must be subordinated to the
36 integrity of the criminal justice system."

37
38 Some members of the public may query the outrage
39 expressed by the courts, professional associations and
40 legal academics at the conduct of EF and the police,
41 arguing that it had a positive effect, namely, the
42 conviction of serious offenders.

43
44 But, as the courts have explained, these are matters
45 of high principle, fundamental to our democracy. The Rule
46 of Law requires that everyone (the rich, the disempowered,
47 the poor, the mighty, individuals, governments and their

1 agencies, police officers and corporations) everyone is
2 answerable to the same laws before independent courts.
3 Those charged with criminal offences are usually legally
4 represented. Whether handsomely paid, on Legal Aid rates
5 or acting without fee, the law requires lawyers to keep
6 clients' confidences, act in the clients' best interest,
7 and disclose and avoid any potential or actual conflict of
8 interest. Lawyers also have critical ethical obligations
9 to the court and the administration of justice centred on
10 honesty and independence. Clients must be able to speak
11 frankly to the lawyers preparing their court cases, knowing
12 their communications remain confidential. Legal
13 professional privilege and responsibilities, however, are
14 not absolute: they do not prevent lawyers from doing
15 everything possible to stop clients from physically harming
16 themselves or others, nor do they prevent communications
17 about a future fraud or crime.

18
19 The public naturally expects their police officers, as
20 well as their lawyers, to uphold the law it and to exercise
21 their considerable power and authority according to law.
22 When those whom the community entrusts to uphold and
23 enforce the law themselves breach fundamental legal
24 obligations, confidence in our justice system, and indeed
25 our democracy, is seriously diminished.

26
27 The police use of lawyers to inform on their own
28 clients has the obvious potential to undermine the criminal
29 justice system and the public's confidence in it. I will
30 give an illustration. Most people charged with criminal
31 offences plead guilty after confidentially discussing their
32 cases with lawyers and receiving frank and independent
33 advice as to what is in their best interests. Offenders
34 often receive a lesser sentence after pleading guilty than
35 if they were convicted after a trial. This is in
36 recognition of their cooperation with the administration of
37 justice, particularly if coupled with remorse, insight and
38 the seeds of rehabilitation. Guilty pleas take a fraction
39 of the preparation and court time required by trials, with
40 a correspondingly incremental economic benefit to the
41 community. Guilty pleas also help lessen ongoing trauma
42 for victims. If those charged with criminal offences
43 doubted that their lawyers were acting in their best
44 interests they would not accept the lawyer's advice, courts
45 could not rely on the integrity of legal practitioners
46 appearing before them, and lawyers could not trust each
47 other. It would be equally problematic if the community

1 doubted whether their police officers were honestly and
2 conscientiously following lawful processes in enforcing the
3 Rule of Law. The criminal justice system would regress
4 into a dysfunctional, far more costly, clogged quagmire of
5 universal distrust.

6
7 That is not to say the use of police informants is
8 necessarily inherently improper. Far from it. The
9 obtaining of intelligence through those who are variously
10 called police informers, informants or, to use the
11 contemporary, less pejorative descriptor, human sources,
12 is an age-old and important policing resource. It is
13 especially use in today's post 9/11 world where the
14 community expects its police services to prevent serious
15 crimes, including terrorism, before they occur. When
16 police officers have a close-knit, mutually respectful
17 relationship with the community they serve, as they should,
18 intelligence will flow naturally and legitimately.

19
20 But obtaining information from informants can be
21 fraught with difficulty. It comes with significant risks
22 which must be carefully managed to avoid potential
23 injustices. Informers may innocently misstate,
24 deliberately exaggerate or even maliciously fabricate
25 information to obtain a benefit, such as reductions in
26 criminal charges, payments, or revenge against an enemy.
27 Experience has shown that unsafe or unfair convictions can
28 result. As I have explained, particular problems arise
29 where informants provide information in breach of their
30 legal obligations of confidentiality or privilege. Those
31 obligations prohibit both informers from lawfully providing
32 that category of information to police, and police
33 officers, who are by their oath or affirmation of office
34 bound to 'discharge all duties legally imposed ...
35 faithfully and according to law', from lawfully receiving
36 it. In any case, unlawfully obtained evidence of this kind
37 is unlikely to be admissible at a trial if the court is
38 aware of the true circumstances surrounding its receipt.
39 The whole costly, clandestine and unlawful exercise cannot
40 legitimately achieve its original goal. All it achieves is
41 to undermine the very criminal justice system legal
42 practitioners and police officers are duty-bound to uphold
43 and serve.

44
45 The use of police informants and the covert
46 relationship between informant and police handler is
47 necessarily hidden from the public, both to protect the

1 identity of the informant and to avoid jeopardising current
2 investigations. But secrecy tends to foster unsatisfactory
3 practices, even corruption, and detracts from fairness,
4 accountability and transparency. A secure, functional
5 system with just, clear, comprehensible, consistent and
6 practical rules and processes, together with appropriate
7 independent, secure oversight, is required to foster best
8 practice, to prevent corruption, to provide adequate
9 protection to informers and their police handlers alike,
10 and to maintain the community's trust and confidence in its
11 police service. Independent oversight will ensure that
12 police officers are not tempted to breach those rules and
13 processes, even when investigating grave matters or under
14 intense community or media pressure. This Commission will
15 attempt to balance the various legitimate competing
16 interests I've discussed here, together with many other
17 challenges, in its investigations and recommendations.

18
19 The Background to the Letters Patent establishing this
20 Commission, issued on 13 December 2018, as you have heard,
21 referred to a time period between 2005 and 2009. In
22 response to the Commission's Notice to Produce of 23
23 January 2019, Victoria Police reported that they first
24 registered EF as an informant in 1995 and that her first
25 contact with police was in 1993.

26
27 The Commission recently obtained a letter sent from
28 Victoria Police to the IBAC which stated that, in addition
29 to EF, there were six possible police informants who
30 required assessment to ascertain with "if there had been
31 any possible breaches of legal professional privilege".
32 Only one, the Commission was informed, a solicitor who met
33 with police in April 2014, was identified as posing a risk
34 of such breach. Police listed him as a 'community contact'
35 and, given 'the risks posed by his profession', he was not
36 approved as a police informant. His file was formally
37 deactivated in May 2014 without police obtaining any
38 intelligence or information. Police stated that they had
39 not identified any further concerns regarding their "human
40 sources and potential conflicts of interest or breaches of
41 legal professional privilege". They added that "another
42 lawyer, now deceased, had previously provided information
43 to Victoria Police". The Commission was also informed
44 that Victoria Police advised the IBAC that the informants
45 are probably employees within legal practices ... the sixth
46 source is apparently an Australian lawyer".
47

1 As a result of that material, the government amended
2 the Commission's terms of reference on 7 February 2019.

3
4 There has been considerable media and public
5 speculation, and a deal of misinformation, about the
6 possible identity of those referred to in the IBAC
7 material. It is, therefore, appropriate I disclose the
8 following information received from Victoria Police on
9 Wednesday 13 February 2019 in response to a request from
10 the Commission.

11
12 The first person referred to in the IBAC letter,
13 police, stated was a court clerk with access to information
14 by virtue of their role and registered as a police informer
15 from 8 January 2015 until deregistered on 11 May 2016.
16 Police considered this person "was unable to provide
17 substantial intelligence" and "unreliable and too 'risky'
18 to be used" as a police informant "long-term" because of
19 the person's role. Police thought this person "was not
20 subject to any legal professional privilege obligations".

21
22 The second person, police stated, was a registered
23 police informant from 1 October 2009 until deregistered on
24 11 May 2016. This person provided some information and may
25 possibly have been "a court clerk or legal secretary with a
26 firm" but "did not appear to be ... a practicing lawyer".
27 Police added that it did not seem that this person "was
28 privy to any legal advice and there is no indication that
29 the information given to ... police came from meetings
30 between any lawyer and client".

31
32 The third person police described as a legal secretary
33 in a corporation who was registered only as a community
34 contact, not as a police informant, from 8 January 2015
35 until the file was "deactivated" on 11 May 2015.

36
37 The fourth was a solicitor, but, police stated, he too
38 was registered only as community contact, not a police
39 informant. The file was "initiated" on 10 April 2014 and
40 "deactivated" on 12 May 2014. This person did not provide
41 information about clients and agreed with police "that
42 there could be no conflict of interest".

43
44 The fifth, whom police described as a former solicitor
45 with significant health issues which made the person
46 unsuitable, was never registered as a police informant.
47 This file was "initiated" on 6 February 2015 and

1 "deactivated" three days later.

2
3 Likewise, the sixth person, police stated, was never
4 registered as a police informant. This person "was a
5 'self-proclaimed legal advisor'" but was not a registered
6 legal practitioner. This file was "initiated" on 4
7 December 2015 and "deactivated" on 26 January 2016.

8
9 Police stated that the deceased police informant
10 referred to in the IBAC material was a practising lawyer
11 but declined to provide any further information as "this
12 matter is the subject of an ongoing homicide
13 investigation".

14
15 The accuracy of all this recently provided information
16 and whether there are further police informants with legal
17 obligations of privilege, together with many other issues,
18 will be thoroughly examined by the Commission as it
19 investigates and reports on its terms of reference as now
20 amended.

21
22 It is important to keep in mind that the scope of the
23 Commission's work is tightly defined by those terms of
24 reference. This is not an open-ended, broad inquiry into
25 Victoria Police, or even into Victoria Police's management
26 of police informers generally.

27
28 Under the first term of reference, the Commission is
29 entrusted with shining light on which of the hundreds of
30 cases which EF appeared as a legal practitioner may have
31 been affected by her conduct as a police informant and if
32 so to what extent. This Commission has no judicial power.
33 It is not empowered to quash convictions, change sentences
34 or order retrials. If, as a result of the Commission's
35 reporting on this term of reference, individuals decide to
36 challenge their convictions or sentences, they must do so
37 in the courts. Presently, the Commission is required to
38 report to the Governor on this first term of reference by 1
39 July 2019.

40
41 Under the remaining terms of reference, the Commission
42 will inquire into and report on Victoria Police's
43 disclosures about and recruitment of EF as an informant;
44 Victoria Police's processes relating to and use of
45 informants subject to legal obligations of confidentiality
46 or privilege more generally, including disclosure or
47 non-disclosure to prosecuting authorities; the use of

1 informants other than EF who are subject to legal
2 obligations of confidentiality or privilege (this may
3 extend the Commission's work beyond lawyers to people such
4 as medical practitioners and other professionals); any
5 systemic or other failures in Victoria Police's processes
6 concerning informants of this kind; the use of information
7 obtained in this way in the criminal justice system; and
8 how to avoid any established shortcomings in the future.
9 Presently, the Commission is required to report to the
10 Governor on these matters by 1 December 2019.

11
12 As requested in the Letters Patent, the Commission
13 will not unnecessarily duplicate work done by former
14 inquiries, specifically those of Chief Commissioner Neil
15 Comrie, the IBAC, and the DPP.

16
17 The Commission also recognises the care it must take
18 to avoid prejudice to ongoing investigations and to present
19 or future judicial proceedings.

20
21 Since 13 December 2018 when the Letters Patent were
22 first issued, counsel assisting, the solicitors to the
23 Commission, the Commission staff and I have been working
24 hard in carrying out our responsibilities. I warmly
25 acknowledge and thank former Commissioner Malcolm Hyde AO
26 APM for his administrative assistance during this
27 formative stage.

28
29 The Commission is taking a multi-disciplinary approach
30 to its work, utilising the skills of lawyers,
31 investigators, analysts, criminologists, public policy
32 researchers, and public sector operational staff. Already
33 our legal and research teams have worked together to
34 produce useful briefing notes. The Commission has also
35 issued a considerable number of Notices to Produce as a
36 result of which the Commission expects to receive hundreds
37 of thousands of documents from Victoria Police alone, with
38 almost as many from other sources. Some material is likely
39 to be highly confidential. The Commission is in the
40 process of establishing both secure premises in which to
41 store that information and an equally secure, independent
42 and efficient computerised document system through which to
43 manage it. The document management protocol is available
44 on the Commission's website which is now operational with a
45 1800 number.

46
47 The website invites public submissions. I encourage

1 anyone with information of potential relevance to the
2 Commission's work to make a submission through the website
3 or to contact a Commission officer. Submissions concerning
4 cases affected by EF's informing to police are due by
5 Friday 8 March. Those concerning the remaining matters are
6 due by Friday 5 April.

7
8 It is possible that people with sensitive information
9 may be reluctant to contact the Commission for fear of
10 reprisals. Anyone with concerns should urgently contact a
11 Commission officer who will treat any information received
12 with utmost confidentiality. Further, the Commission would
13 be gravely concerned if an employer or organisation in any
14 way sought to discourage someone with relevant information
15 from coming forward. It is an offence under s.51 Inquiries
16 Act for an employer to take detrimental action against an
17 employee for providing information to the Commission.
18 Information given to the Commission in answer to Notices to
19 Produce or to Attend would not, in my view, amount to a
20 breach of a confidentiality clause. Under s.39(4)
21 Inquiries Act, a witness to the Commission has the same
22 protection and immunity as a witness in the Supreme Court.

23
24 If an organisation or individual were to seek legal
25 redress against a member of the public or a whistle-blower
26 for providing information, the Commission would consider
27 invoking its coercive powers and would closely examine the
28 motives behind the attempt. Again, I emphasise that if
29 anyone has information which may assist the Commission but
30 fears any consequential adverse impact whatsoever, please
31 contact a Commission officer.

32
33 The website also contains details on how to apply for
34 leave to appear and for leave to cross-examine, and
35 explains likely limitations on any grants of leave. A
36 number of applications for leave to appear have already
37 been made and are currently being assessed.

38
39 The Commission's first Practice Direction is available
40 on the website. It provides helpful information about
41 public hearings, the production and tendering of documents,
42 witnesses and giving evidence, leave to appear at public
43 hearings, how to comply with a notice to produce or a
44 notice to attend, restricted publication orders, and access
45 to and publication of evidence.

46
47 The Commission's legal team has been steadily

1 addressing existing suppression and non-publication orders
2 to ensure the Commission has access to all relevant
3 materials. This has not been straightforward and has been
4 time consuming. Only this week, for example, have we been
5 able to issue and serve for the first time those Notices to
6 Produce in which it is necessary to refer to EF by her
7 name.

8
9 The media plays a crucial role in informing the public
10 about the Commission's work and in encouraging witnesses to
11 come forward. The modern, time-poor journalist faces
12 particular pressures in attempting to keep the public
13 instantly informed in today's fast-paced technological
14 environment. The Commission website is designed to help
15 journalists carry out their public responsibility of
16 accurate, timely and fair reporting, and explains how to
17 contact our easily accessible media liaison officer for
18 clarification.

19
20 Regrettably, a practice seems to be developing of
21 information the subject of Notices to Produce issued and
22 served by the Commission being made available to the media
23 before being received by the Commission. I emphasise that
24 it is for the Commission to decide when and to what extent
25 it discloses information relevant to this inquiry, and the
26 course of action it will take in response. The reporting of
27 speculative or prematurely disclosed sensitive information
28 is apt to prejudice the work and efficacy of the
29 Commission. It could endanger life. I ask journalists to
30 exercise great care when reporting on matters of concern to
31 the Commission, and I urge those responsible for leaks of
32 information to the media to refrain.

33
34 As much as possible the Commission intends to hold
35 hearings in public and to publish witness statements,
36 tender documents and transcripts of hearings as soon as
37 practicable on the website. Much of our work will be
38 live-streamed via the website. Where the public interest
39 requires, however, the Commission will make orders under
40 s.24 Inquiries Act, limiting public and media access to
41 proceedings, and under s.26 Inquiries Act, restricting
42 publication of information. I am confident the media and
43 the public will conscientiously comply with such orders. I
44 note that it is an offence under s.48 Inquiries Act to
45 contravene them. But even when hearings are closed, the
46 Commission will endeavour to publish timely edited
47 transcripts and relevant documents related to the

1 proceedings whenever feasible.

2
3 The Commission is most grateful to the President of
4 the Fair Work Commission, Justice Iain AK Ross AO, for the
5 use of these pleasant and functional courtrooms for our
6 hearings. He and his staff could not have been more
7 helpful.

8
9 I thank the Commission's lawyers and staff for their
10 hard work so far, but the very great bulk of our work
11 awaits. I thank the media, in anticipation, for accurately
12 informing the public and, subject to Commission ordered
13 constraints necessitated by public interest immunity and
14 safety considerations, for facilitating open justice. The
15 Commission's lawyers, staff and I look forward to working
16 cooperatively with members of the public, the prosecuting
17 authorities, Victoria Police and many of its serving and
18 former police officers, other government agencies, and
19 experts in best practising policing methods, as the
20 Commission gives effect to its terms of reference.

21
22 Mr Winneke.

23
24 MR WINNEKE: Thank you Commissioner.

25
26 I appear with Mr Andrew Woods and Ms Megan Tittensor
27 as Counsel Assisting this Royal Commission. Together with
28 Solicitors Assisting the Commission, the Commission staff
29 we look forward to supporting you in carrying out the
30 important work ahead of us.

31
32 As you have indicated, some issues that the Commission
33 is required to investigate have already been the subject of
34 litigation in the Supreme Court of Victoria and appeals to
35 the Victorian Court of Appeal and to the High Court of
36 Australia. Prior to that litigation, an investigation had
37 been undertaken by former Victorian Chief Commissioner of
38 Police, Mr Neil Comrie. Investigations had also been
39 undertaken by the Independent Broad-based Anti-corruption
40 Commission and the Director of Public Prosecutions.
41 Victoria Police has carried out its own reviews. We
42 understand that those reviews are ongoing. The Offices of
43 Public Prosecutions, both State and Commonwealth, are doing
44 likewise. Each of those investigations and reviews and the
45 litigation that has been mentioned, covered only a part of
46 the area that this Commission has been tasked to look into.
47 However, this Commission will receive the benefit of those

1 other investigations. The Commission is obliged by its
2 terms to cooperate with them, and not unnecessarily
3 duplicate the work that has, and is ongoing.

4
5 As you have noted, Commissioner, the circumstances
6 surrounding the recruitment and utilisation of a legal
7 practitioner as an informer to provide information to
8 police, including information about her own clients, have
9 resulted in a number of criminal convictions being called
10 into question. The High Court made it very clear that the
11 conduct of the legal practitioner and the Victoria Police
12 that was considered by the Court in that case was highly
13 inappropriate. The Court found that this conduct, as you
14 have indicated, corrupted the prosecutions that led to
15 those convictions in a manner which debased fundamental
16 premises of the criminal justice system.

17
18 It is important to reflect upon why these matters are
19 so significant.

20
21 In Australia we are fortunate to have a legal system
22 that applies equally to one and all. Each of us enjoys
23 fundamental rights and protections to ensure our fair
24 treatment under this system. These rights and protections
25 have developed over decades, and indeed centuries. They
26 are a very important part of the bedrock that underpins the
27 Rule of Law in our society. They help ensure that the
28 rights of citizens are appropriately balanced with the
29 powers of the State.

30
31 Many of these rights and protections are well-known.
32 For example, when a criminal charge is brought against a
33 citizen, the prosecution on behalf of the State, bears the
34 onus of proving the charge. It must prove the charge
35 beyond a reasonable doubt. This onus on the prosecution
36 sits hand in hand with the right to silence - there is no
37 onus upon a person charged with a criminal offence to prove
38 his or her innocence.

39
40 Closely related to these protections is the right to
41 independent legal representation. The obligation upon a
42 lawyer is to act in the interests of the accused person and
43 not in the interests of the prosecution. Legal
44 practitioners are obliged to keep certain communications
45 with their clients confidential. They protect
46 communications which are subject to legal professional
47 privilege. Accused people, and other clients of legal

1 practitioners more generally, should feel comfortable
2 giving their lawyers full and frank instructions without
3 fear that those instructions will be later used against
4 them. Legal practitioners must not disclose confidential
5 information to others without their client's permission.

6 To do so is not only a grave breach of the lawyer's
7 obligation to the client and duty to the court, but also
8 deprives the client of that fundamental right to silence.

9
10 Legal professional privilege and associated duties of
11 confidentiality do not only exist in the criminal sphere.
12 Every person who provides information to a lawyer when
13 seeking legal assistance, whether in relation to a criminal
14 offence or more generally, for example a business or
15 employment dispute, a family law proceeding, or for that
16 matter having a will prepared, every such person has the
17 right to seek and obtain independent legal advice. Except
18 in a very narrow set of circumstances they can expect that
19 communications with their lawyer will remain confidential,
20 and certainly will not be provided to the opposing party.

21
22 These are not obscure legal rules, but they are at the
23 very centre of the criminal justice system. These rules
24 are known by all of the participants, the police
25 investigators, the lawyers and the judges. If any of these
26 rights are perverted there is a very real risk that a
27 conviction will be set aside. And if so, the time, efforts
28 and costs associated with the investigation and prosecution
29 of an accused person will be wasted. Equally as
30 importantly, the consequences to victims of criminal
31 activity can be great. Through no fault of theirs they may
32 be required to undergo additional tribulations of further
33 hearings, or worse, see guilty offenders walk free.

34
35 It is also of relevance in this Commission to consider
36 the central importance of the duty of disclosure, that is
37 the duty on the part of the prosecution to provide to an
38 accused person, all of the relevant information that is
39 proposed to rely upon to prosecute its case. However, in
40 addition, the prosecution must disclose any information
41 that may undermine the prosecution case. Again, this is a
42 universally accepted protection associated with our
43 criminal justice system. The following pertinent comments
44 were made by the British Attorney-General late last year
45 when he tabled a report that had been prepared following a
46 significant review in that country of systemic failures to
47 disclose information to accused persons. He said this:

1 "The central importance of the duty of disclosure must be
2 seen from the twin perspective of fairness to the accused
3 and as a vital guarantor of a secure conviction. Cases
4 that collapse or are stayed and convictions that are
5 quashed because of serious deficiencies in disclosure are
6 fair neither to the complainant and the defendant nor to
7 the public and they undermine confidence in the
8 administration of justice".
9

10 The issues of disclosure are relevant to a number of
11 the terms of reference that the Commission must look into
12 and I will return to those shortly when I deal briefly with
13 each of the terms of reference.
14

15 In summary, the task of this Royal Commission as laid
16 out by the Letters Patent, is to determine, without
17 unnecessarily duplicating the work of previous
18 examinations, the nature and consequences of the conduct
19 engaged in by EF and Victoria Police, to consider whether
20 current policies and practices are adequate and effective,
21 and to recommend any further changes that may help to
22 prevent such events occurring in the future.
23

24 I will now make some specific comments about each Term
25 of Reference.
26

27 Term of Reference 1 requires the Commission to inquire
28 into and report on, "The number of, and extent to which,
29 cases may have been affected by the conduct of EF as a
30 human source".
31

32 For obvious reasons, this Term of Reference is
33 prioritised as it concerns individuals whose trials may
34 have been affected, some of whom are in custody. It is
35 proper that these matters be considered with expedition.
36 The Commission is obliged to report to the Governor its
37 findings and recommendations concerning Term of Reference 1
38 by 1 July of this year. Previous reviews and litigation
39 have identified seven former clients of EF whose
40 convictions may have been affected. Subsequent and ongoing
41 investigations by the State and Commonwealth Offices of
42 Public Prosecutions with the assistance of Victoria Police
43 have identified further cases. There may well be more. It
44 has now come to light that EF was first registered as a
45 human source by Victoria Police in 1995 and then again in
46 1999. It is known that EF represented many clients between
47 her admission to practice as a lawyer in 1996 and her

1 de-registration as a human source in 2009.

2
3 The Commission is currently undertaking the
4 significant task of identifying the number of cases which
5 may have been affected and considering the extent to which
6 each case may have been affected.

7
8 It is expected that this term of reference will
9 largely involve a review of a significant volume of
10 documents, including briefs of evidence and records of
11 contact between EF and Victoria Police. It will be
12 necessary to examine, amongst other matters, what
13 information was conveyed by EF to police, whether that
14 information was confidential, or subject to legal
15 professional privilege, the manner in which the information
16 was deployed in the investigation and prosecution of
17 persons, and what other untainted evidence was available to
18 the prosecution in each case.

19
20 It will also be necessary to examine the conduct of
21 the police officers who obtained that information, and that
22 of their senior officers. In this respect there will be
23 overlap between the first and the second terms of
24 reference.

25
26 Amongst other materials that the Commission will
27 examine are source materials, including original voice
28 recordings of discussions between EF and her police officer
29 handlers. The Commission has access to those documents and
30 also diaries, electronic and handwritten, which will also
31 evidence communications between EF and police handlers.
32 These materials will be examined closely in order to
33 determine what information was provided, whether it was
34 provided in breach of duties and what use it was put to in
35 ongoing investigations and prosecutions.

36
37 It is expected that all relevant witnesses will be
38 examined, whether voluntarily or by compulsion, using the
39 powers available to the Commission in the Inquiries Act to
40 which you have referred.

41 The Commission is in communication with EF via her
42 legal representatives and it is understood that she will be
43 cooperatively assisting the Commission in its
44 investigation.

45
46 Relevantly, since the establishment of the Commission
47 it has issued more than 40 Notices to Produce upon

1 individuals and entities. Those notices compel the
2 production of documents which will assist the Commission in
3 its task. As documents continue to arrive it is expected
4 that further Notices will be served and that process will
5 be ongoing.

6
7 In considering the extent to which cases may have been
8 affected it is important to remember that the Commission
9 does not itself have the ability to overturn convictions or
10 release a person from custody. That is a matter for the
11 courts, as the Commissioner has mentioned. The
12 Commission's powers are limited to the powers set out in
13 the Inquiries Act and by the scope of its Terms of
14 Reference. Any actions taken in response to the Royal
15 Commission's findings or recommendations are matters for
16 the relevant individuals and agencies. If any person
17 believes that his or her case may have been affected by the
18 conduct of EF, they are encouraged to make a submission to
19 the Commission.

20
21 As you have pointed out, Commissioner, at this stage
22 it is not possible to publicly identify EF by name. That
23 position may or may not change. However, it is expected
24 that an examination of documents gathered by the Commission
25 will identify, if not the entire catchment of persons whose
26 cases may have been affected, a majority of them, and
27 indeed a vast majority. The Commission has the ability to
28 privately identify EF by name to those persons, and it will
29 make every effort to communicate with each such person and
30 give them an opportunity to make a submission. Anyone
31 seeking to challenge a conviction or sentence, in addition
32 to contacting the Commission should seek independent legal
33 advice concerning avenues that may be available to them.

34
35 As set out in the Letters Patent, the Commission must
36 take care not to prejudice any ongoing investigations or
37 judicial proceedings. The Commission cannot exercise its
38 powers in a manner that would be in contempt of court.
39 Accordingly, there may be matters that come to the
40 attention of the Commission that cannot be fully
41 investigated or mentioned in the Commission's reports.
42 While the Commission acknowledges the need for an open and
43 transparent consideration of the matters under examination,
44 these are important constraints that it must take very
45 seriously.

46
47 The Commission is also obliged to promptly notify the

1 State and Commonwealth Directors of Public Prosecutions of
2 any information it receives related to their functions,
3 importantly, including their functions of disclosure
4 relevant to material to an accused or convicted person.
5 That step has already been taken in relation to some
6 information that has come to the attention of the
7 Commission so far, in particular the information that EF
8 was first registered as an informer in 1995 and the
9 existence of other informers that may have had legal
10 obligations of confidentiality or privilege to which you
11 have referred.

12
13 Term of Reference 2 requires the Commission to examine
14 the conduct of current and former members of Victoria
15 Police in their disclosures about and recruitment, handling
16 and management of EF as a human source.

17
18 It is envisaged that the relevant issues will be
19 examined at least in part in public hearings. The
20 Commission will likely require the attendance of
21 individuals involved in recruiting and managing EF as a
22 human source, and those involved in the management and
23 oversight of handling human sources generally.

24
25 It is instructive to have some understanding of the
26 background of the use of human sources within Victoria
27 Police and the state of affairs that existed during the
28 time that EF was a human source.

29
30 In this regard, the Commission will derive
31 considerable assistance from the work performed by earlier
32 inquiries over the years that have touched upon the use of
33 human sources.

34
35 It is apparent from internal Victoria Police reviews
36 and Ombudsman Victoria reports that in the early 2000s
37 Victoria Police was aware of continued problems relating to
38 corruption within its Drug Squad. In 2001, a review of the
39 Drug Squad was commissioned. Thereafter a number of other
40 operations, reviews, reports, recommendations and indeed
41 criminal prosecutions of members of the Drug Squad
42 followed. Amongst the issues that came to light were
43 problems associated with the use of human sources by
44 detectives.

45
46 By November of 2001, one of those reviews recommended
47 the adoption of a new informer management system with audit

1 and compliance safety mechanisms for greater
2 accountability. A May 2003 Ombudsman Report also outlined
3 various within the Drug Squad, including that it used
4 "unstructured, secretive, unaccountable and sometimes
5 unprofessional methods in handling informers"; that members
6 had not been appropriately supervised; that there was
7 little, if any, control over informers; that there were two
8 different policies relating to the use of informers; one
9 for the Crime Department and one for other departments.
10 There was a recommendation to establish a new Informer
11 Management Unit with audit and compliance measures.

12
13 In June of 2004, a further Ombudsman Report indicated,
14 amongst other matters, that Victoria Police had by then
15 established the new Informer Management Unit, known as the
16 IMU, with a new "sterile corridor" approach to managing
17 informers, and that a new Chief Commissioner's instruction
18 on informer Management Policy had been issued in September
19 2003.

20
21 The Commission understands that in November 2004 a
22 pilot unit, the Source Development Unit, was set up within
23 Victoria Police. This was a unit designed to enable the
24 "proactive targeted recruitment of new sources". Members
25 of Victoria Police travelled interstate and overseas for
26 the purpose of gathering information to establish a best
27 practice model for the SDU. In 2004 it is understood that
28 a representative or representatives of Victoria Police were
29 sent to the United Kingdom for this purpose.

30
31 It is apparent that the UK Home Office had issued a
32 "Code of Practice" in September of 2000, which provided
33 "guidance or authorisation or use or conduct of covert
34 human intelligence sources" by public authorities. This
35 Code contained comprehensive procedures dedicated to issues
36 which might arise in the event that a human source was a
37 legal practitioner or subject to obligations of legal
38 professional privilege.

39
40 It stated amongst other matters that: "Where there is
41 any doubt as to the handling and dissemination of
42 information which may be subject to legal professional
43 privilege, advice should be sought from a legal adviser ...
44 before any further dissemination of the material takes
45 place".

46
47 That Code of Practice also stated at paragraph 3.5:

1 "Legally privileged information obtained by a source is
2 extremely unlikely to ever be admissible as evidence in
3 criminal proceedings. Moreover, the mere fact that use has
4 been made of a source to obtain such information may lead
5 to any related criminal proceedings being stayed as an
6 abuse of process".

7
8 In addition to the publication of the Code of
9 Practice, in November of 2002 the English Court of Appeal
10 handed down a decision, R v Robinson, in which the members
11 of the Court recorded their concern about the use by police
12 of an employee of a legal firm to inform on that firm's
13 clients. The Court of Appeal expressed similar concerns to
14 those expressed by the courts in the litigation to which
15 you have referred already, Commissioner. And they called
16 for submissions from the prosecution and the relevant Chief
17 Constable concerning whether it was "sought to justify the
18 practice and, if so, on what basis".

19
20 Senior Counsel for the Police in responding to the
21 Court referred to the Home Office Code of Practice and
22 informed the court that "in today's climate" the employee
23 in question "would not be registered as an informant". He
24 referred to the use of such an informant as being "fraught
25 with danger".

26
27 The Commission will investigate whether Victoria
28 Police was aware of this Code of Practice and whether any
29 legal advice was sought by Victoria Police at any stage,
30 before or during EF's registration, as to the
31 appropriateness or otherwise of her use as a human source
32 or the use of information received from her.

33
34 Further, as seems from the court processes leading to
35 this Royal Commission, the status of EF as a police
36 informer and the information that was provided by her to
37 members of Victoria Police was apparently not disclosed to
38 accused persons or to the State or Commonwealth Director of
39 Public Prosecutions, to whom it should well have been
40 disclosed, so that appropriate decisions could have been
41 made concerning the ongoing conduct of prosecutions. The
42 Commission will examine whether this apparent situation is
43 in fact correct, and if so, why there was no such
44 disclosure

45
46 Term of Reference 3 requires the Commission to inquire
47 into and report on the current adequacy and effectiveness

1 of Victoria Police's processes for the recruitment,
2 handling and management of human sources who are subject to
3 legal obligations of confidentiality or privilege. The
4 Commission will obtain and review documents which set out
5 current processes and will seek evidence as to the efficacy
6 of the same. It expects to conduct private and public
7 hearings into the relevant current processes in order to
8 determine whether they are adequate and effective. In
9 doing so the Commission will need to consider precisely how
10 many other human sources Victoria Police are using who are
11 subject to legal obligations of confidentiality or
12 privilege.

13
14 Term of Reference 4 requires the Commission to inquire
15 into and report upon disclosure obligations of relevant
16 human source material to prosecuting authorities. The
17 Commission will consider whether there are adequate
18 safeguards in place when offences are prosecuted where
19 relevant human source material has been utilised.

20
21 Term of Reference 5 requires the Commission to
22 recommend measures to address the use of any human sources
23 other than EF who were or are subject to legal obligations
24 of confidentiality or privilege.

25
26 Commissioner, as you have mentioned, information that
27 has recently come to light suggests that police may have
28 used other informers who are in a similar category to EF.
29 This has led to a broadening of the scope of the inquiry
30 which is reflected in the fifth Term of Reference.

31
32 I should say this at this point, although the
33 Commission must report on 1 July only about the cases that
34 may have been affected by EF, the Commission regards Term
35 of Reference 5 as being broad enough to enable it to
36 inquire as to whether other proceedings may have been
37 affected by other informers with similar duties to EF.

38
39 The Commission intends to make similar inquiries with
40 respect to other informers and, at the very least, bring
41 relevant information or documents to the attention of the
42 State and Commonwealth Director of Public Prosecutions.

43
44 As you have already indicated, the Commission has
45 sought and received additional details from Victoria Police
46 about other informers who may have had access to
47 information that was confidential or privileged. You have

1 outlined the information provided. Additionally, the
2 Commission has asked Victoria Police as a matter of urgency
3 to provide information as to whether any persons are
4 currently in custody as a result of the conduct of such
5 informers and we understand that this information will be
6 provided shortly.

7
8 The Commission will consider any relevant systemic
9 failures within Victoria Police and the broader criminal
10 justice system in order to recommend how to avoid these
11 failures in the future. It is expected that the Commission
12 will rely on international and Australian experts and will
13 conduct its inquiries largely by way of public hearings
14 following the receipt of reports and submissions in
15 relation to these issues.

16
17 If I can now briefly comment on the use of human
18 sources in the criminal justice system as it is a feature
19 of law enforcement that for good reason is rarely subject
20 to public dialogue.

21
22 The term "human source" generally applies to a person
23 who covertly supplies information to police about crime or
24 people engaged in criminal activities. Human sources are
25 of fundamental importance to our system of criminal
26 justice. There have been many cases throughout history
27 where substantial wrongdoing or loss of life has been
28 prevented owing to information provided by human sources,
29 informers that is. It has been said that "one of the most
30 effective weapons in the hands of the detective is the
31 informer".

32
33 However, the use of human sources also carries risks
34 that must be managed carefully. Great harm may come to a
35 source if their identity or the fact of their informing
36 becomes known. Moreover, if police cannot adequately
37 protect human sources, others with intimate knowledge of
38 criminal activity may be less willing to come forward and
39 to share information.

40
41 There is also a risk that human sources, the majority
42 with a criminal history themselves, will seek to exploit
43 their relationship with law enforcement to engage in
44 further illicit activity or gain some other advantage.
45 Another risk is the reliance on untested, unreliable or
46 tainted evidence proffered by a human source which in turn
47 has the potential to lead to wrongful convictions or failed

1 prosecutions.

2
3 Those risks are magnified where the human source is
4 someone bound by legal obligations of privilege or
5 confidentiality.

6
7 Commissioner, law enforcement agencies must have
8 stringent policies and procedures in place to guard against the
9 risks that attend the use of human sources. Generally this
10 includes robust management and supervision of the officers
11 in contact with sources, adequate training of those
12 officers, and diligent and secure record keeping. It
13 includes rules that prescribe the manner in which officers
14 may engage with a human source, the scope of their
15 authority and discretion and how the information obtained
16 from a source should be used and disclosed to other
17 parties. It also includes effective oversight and
18 monitoring so that the use of human sources is subject to
19 rigorous and ongoing security [scrutiny].

20
21 In some jurisdictions special rules and safeguards
22 exist for human sources who are privy to confidential or
23 privileged information, including doctors and lawyers,
24 journalists and members of the clergy. This recognises the
25 specific and significant risks associated with human
26 sources who have legal and professional obligations to keep
27 certain information confidential.

28
29 The Commission will look closely at national and
30 international experience and examples of best practice as
31 part of the inquiry into Terms of Reference 3 to 5. In
32 addition to assessing the current adequacy and
33 effectiveness of Victoria Police policies and practices,
34 the Commission will look to the future and seek to identify
35 any further measures needed to ensure the proper and
36 principled management of human sources.

37
38 Commissioner, I will now speak briefly about how the
39 Commission intends to conduct its inquiry into these
40 matters.

41
42 As I have indicated, the Letters Patent require the
43 Commissioner to report on Term of Reference 1 by 1 July
44 2019, and on the remaining Terms of Reference by 1 December
45 2019.

46
47 The timeframes are ambitious. A very substantial

1 volume of information must be collected and analysed in
2 forensic detail. This task has been made more onerous and
3 complex by the disclosure that EF was registered as a human
4 source in 1995, ten years earlier than understood when the
5 original Letters Patent were drafted.

6
7 In carrying out this task we will be reliant on many
8 agencies and individuals for the timely and transparent
9 provision of information. Their cooperation is critical to
10 the ability of the Commission to meaningfully examine and
11 draw conclusions about the matters set out in the terms of
12 reference. It will provide the basis on which the
13 Commission can form clear advice about the number and
14 extent of cases affected by EF's conduct. It will also
15 help to ensure that any policy or process changes
16 recommended by the Commission are well-informed, practical
17 and operationally sound.

18
19 As you have indicated, Commissioner, we will seek
20 information in a variety of ways. We are now calling for
21 public submissions and from Monday 18 February people will
22 be able to make these submissions via the secure online
23 portal on the Commission's website. The due date for
24 submissions on Term of Reference 1 relating to cases
25 affected by the conduct of EF, is Friday 8 March 2019. The
26 due date for submissions on the remaining terms of
27 reference is Friday 5 April.

28
29 We encourage individuals and agencies who can
30 contribute to the investigation of the various Terms of
31 Reference to make submissions. While the Commission
32 prefers submissions to be public, people may opt for their
33 submissions to be treated as anonymous or confidential. If
34 anonymity is requested, identifying details will be removed
35 from the submission if it is referenced in the Commission's
36 reports or published on its website. If confidentiality is
37 requested the submission or the confidential parts of it
38 will not be published or quoted by the Commission.
39 Commissioner, more information about the submission process
40 is available on the website.

41
42 The Commission will also draw on compulsory powers
43 given to it under the Inquiries Act. As indicated above
44 these include the issuing of orders in the form of Notices
45 to Produce documents and notices to attend the Commission
46 to give evidence.

47

1 It is an offence under the Inquiries Act to refuse or
2 fail to comply with a notice without a reasonable excuse.
3 More information about a person's obligations in response
4 to a Notice to Produce can be found in the Inquiries Act
5 and Practice Directions published on the Commission's
6 website.

7
8 Individuals required to give evidence in public or
9 private hearings will be issued with a Notice to Attend.
10 The Commission has also sought initial applications from
11 people wishing to be granted leave to appear at public
12 hearings. The Commission intends to call for further
13 applications throughout the inquiry as the scope of the
14 hearing or series of hearings is determined.

15
16 The Commission will generally not grant unconditional
17 leave to appear. Most grants of leave will be confined to
18 matters in which the person or organisation has a direct or
19 special interest. Where a person is granted leave to
20 appear, he or she may make a further application for leave
21 to tender evidence or to cross-examine a witness. The
22 Commission will not grant any general, open-ended right of
23 cross-examination or tender of evidence to any person.
24 More information about these procedures again is available
25 in Practice Directions on the website.

26
27 The Commission will carefully consider applications
28 for leave to appear which indicate that a single legal
29 practitioner or law firm seeks to represent multiple
30 persons or entities. Generally, the Commission expects
31 that legal practitioners and law firms will not represent
32 multiple parties. Otherwise, the legal practitioners or
33 law firms will need to satisfy the Commission that any
34 conflicts of interest or potential distortions of evidence
35 will be avoided.

36
37 Whilst we expect to hold a considerable number of
38 public hearings, which at this stage we intend to commence
39 234 the latter part of March, we also anticipate that much
40 of the Commission's work will involve the close analysis of
41 reports, tapes, transcripts and other documents away from
42 the hearing room. It is anticipated that some of the
43 Commission's hearings may need to be held in private. The
44 matters being investigated by the Commission involve
45 sensitive information about criminal activities and police
46 operations. In addition, evidence received by or presented
47 by the Commission may refer to current or anticipated court

1 proceedings.

2

3 As an investigative body, the Commission can determine
4 whether, when and to what extent it will disclose
5 information obtained in its inquiry. When clearly
6 necessary for legal privacy, safety or other reasons the
7 Commission will restrict the disclosure of some
8 information.

9

10 In addition to holding hearings in private where
11 required, the Commission may make orders to prohibit
12 publication, may elect not to publish specific material on
13 its website or in its reports, and may need to redact
14 submissions, transcripts, witness statements or other
15 documents prior to publication. Obviously that will be
16 kept to absolute necessity.

17

18 The Commission will also be supported by a
19 comprehensive policy and research program. It has
20 commenced the work of gathering and analysing relevant
21 materials and it has sought the assistance of law
22 enforcement agencies in other jurisdictions to build an
23 understanding of contemporary policies, procedures and best
24 practice in the use of human sources. The Commission is
25 likely to call on experts in relevant fields and hold round
26 tables later in the year to draw on their insights and
27 experiences.

28

29 Again, I wish to emphasise our reliance on relevant
30 agencies for their cooperation and assistance. We are
31 acutely aware of the sensitivities of operational
32 procedures guiding the use of human sources and of the need
33 to deal carefully with this material. We will use the full
34 range of options available to the Commission to
35 appropriately manage information provided by those who are
36 willing to share their expertise and lessons learned.

37

38 Can I indicate that certain bodies and public officers
39 are not amenable to the investigative powers of the
40 Commission. Those include the IBAC, the Victorian Director
41 of Public Prosecutions, Crown Prosecutors, Judicial
42 Officers and the Courts. However, those bodies and public
43 officers are not prevented from voluntarily assisting the
44 Commission where it is within their powers and capacities
45 to do so. Already the Commission has been assisted by the
46 voluntary assistance from such bodies and officers and it
47 is confidently expected that such voluntary assistance will

1 continue in order that the matters that are the subject of
2 the Letters Patent can be effectively and efficiently
3 investigated.

4
5 Today I have endeavoured to outline the processes by
6 which we expect the Commission to run. We will continue to
7 inform the community via the Commission's website of the
8 Commission's work and direction as the inquiry progresses.

9
10 As I have previously indicated, the timeframes set out
11 in the terms of reference are tight. The date of 1 July
12 2019 for reporting in relation to Term of Reference 1 was
13 set down when it was understood that EF commenced acting as
14 a human source in 2005. We now know that commenced about
15 ten years earlier. Clearly the work involved in relation
16 to Term of Reference 1 has now significantly expanded.
17 Further, the Commission has issued a large number of
18 Notices to Produce and the documents captured by those
19 Notices to Produce number in the hundreds of thousands.
20 The existence of suppression orders made in parallel legal
21 proceedings have affected the Commission's progress.
22 Whilst the Commission's strong preference is to meet the
23 reporting deadline in the Terms of Reference, it will not
24 sacrifice an appropriately thorough investigation in order
25 to do so.

26
27 If and when the Commission forms the view that it
28 cannot properly report in the time available, it will
29 request that the Government provide it with further time.

30
31 In closing, the significance of the issues involved in
32 this Royal Commission cannot be understated. The
33 legitimacy of our criminal justice system relies on the
34 process being fair and even-handed. It follows that the
35 work of the Commission is relevant not just to the
36 individuals whose criminal convictions may have been
37 affected by any improper conduct of EF and Victoria Police,
38 much greater and more fundamental principles are at stake.
39 All members of the community, including importantly the
40 victims of criminal activity, must be able to trust that
41 the justice system and the individuals working within it,
42 including police investigators and legal professionals,
43 will adhere to the highest standards of integrity and
44 propriety.

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46 Commissioner, we look forward to assisting the
47 Commission to understand the events that form the basis of

1 this inquiry, the consequences arising from those events
2 and what more can be done to guard against similar events
3 occurring in the future. Together with solicitors to the
4 Commission and the staff of the Commission, we assure you
5 that you will be well supported in this important
6 undertaking. Thank you.

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9 COMMISSIONER: Thank you Mr Winneke.

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11 The Commission, as Mr Winneke has indicated, hopes to
12 hold public hearings as soon as practicable. Details of
13 hearing dates will be published nearer the time on the
14 Commission's website. Adjourn the hearing of the Royal
15 Commission to a date to be fixed.

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