

ROYAL COMMISSION INTO THE MANAGEMENT
OF POLICE INFORMANTS

Held in Melbourne, Victoria

On Tuesday, 1 October 2019

Led by Commissioner: The Honourable Margaret McMurdo AC

Also Present

Counsel Assisting:	Mr C. Winneke QC Ms M. Tittensor
Counsel for Victoria Police	Ms R. Enbom Ms K. Argiropoulos
Counsel for State of Victoria	Ms C. McCudden
Counsel for Nicola Gobbo	Mr P. Collinson QC Mr R. Nathwani
Counsel for DPP/SPP	Ms K. O'Gorman
Counsel for CDPP	Ms C. Fitzgerald
Counsel for Police Handlers	Mr G. Chettle Ms L. Thies
Counsel for AFP	Ms I. Minnett

09:37:26 1 MR WINNEKE: Good morning, Commissioner.
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09:37:27 3 COMMISSIONER: Good morning. I understand the appearances
09:37:29 4 are as they were yesterday save that we have Ms McCudden
09:37:35 5 for the State of Victoria today and Ms Fitzgerald for the
09:37:39 6 Commonwealth DPP. Mr Chettle, I understand you had
09:37:42 7 something to raise?
09:37:44 8
09:37:44 9 MR CHETTLE: Three matters, Commissioner. I apologise.
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09:37:46 11 COMMISSIONER: No need to apologise. In open or closed?
09:37:50 12 We're currently in closed hearing.
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09:37:53 14 MR CHETTLE: Commissioner, I don't know whether there's any
09:37:55 15 sensitivity about the matters Mr Winneke raised at the
09:37:58 16 commencement of Friday the 20th about Ms Gobbo being in
09:38:01 17 communication with the Commission on three occasions. It's
09:38:05 18 in relation to that.
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09:38:06 20 COMMISSIONER: Yes.
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09:38:08 22 MR CHETTLE: I think it can probably be in open hearing,
09:38:11 23 because it was at this stage.
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09:38:12 25 COMMISSIONER: Yes, all right, if it can be. So we're in
09:38:14 26 open hearing at the moment.
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09:38:17 28 MR CHETTLE: Commissioner, as you're aware the Commission's
09:38:20 29 been in receipt of information from three conversations
09:38:24 30 with Ms Gobbo which Mr Winneke's informs us are transcribed
09:38:29 31 from tape-recordings. On behalf of my clients I'd be
09:38:34 32 seeking access to those documents and I understand my
09:38:37 33 instructing solicitor has written to the Commission and
09:38:39 34 I've raised the matter with Mr Winneke. As of yesterday
09:38:44 35 Mr Winneke, I think it would be fair to say, was in
09:38:47 36 agreement with the proposition that anything the Commission
09:38:49 37 informs itself of relevant to the determination of issues
09:38:54 38 around my clients, we're entitled to address and look at.
09:38:59 39 But what's occurred is counsel for Ms Gobbo have indicated
09:39:02 40 that they object to the transcripts being provided to us.
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09:39:09 42 COMMISSIONER: You're ahead of me there, I haven't heard
09:39:14 43 that last step yet.
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09:39:15 45 MR CHETTLE: That's the only reason we're having a dispute
09:39:17 46 because I raised the issue with Victoria Police. It's
09:39:18 47 subject to PII. We were able to resolve that matter,

09:39:21 1 Mr Winneke and I were in resolution. The principles are
09:39:24 2 clear, and I'm not going to spend much time on this because
09:39:28 3 I think Mr Winneke and I are in agreement, "Parties must be
09:39:31 4 made aware of any information that a tribunal acquires for
09:39:34 5 itself and have a fair opportunity to deal with it". It's
09:39:37 6 obviously desirable I deal with this before my clients get
09:39:42 7 here, the rest of my clients, so that I can deal with
09:39:44 8 anything that might arise. So what I'm asking is a
09:39:49 9 direction from you, Commissioner, that we be provided with
09:39:52 10 those transcripts. If the case be, and I understand
09:39:57 11 there's a dispute about this, if the case be that the
09:40:00 12 information was provided confidentially or Ms Gobbo was of
09:40:06 13 the view that it would not be disseminated, that is not to
09:40:09 14 the point in my submission. Apparently there's some
09:40:11 15 dispute about that but I don't know.

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09:40:12 17 COMMISSIONER: I don't know whether that's still in dispute
09:40:16 18 or not either. You're just a bit premature, Mr Chettle. I
09:40:21 19 think the Commission has to, that is me, needs to be
09:40:22 20 informed further of what stage we're at all with this. I
09:40:26 21 understand what you're saying and I agree in principle with
09:40:29 22 what you say, but I think we're at the stage at the moment
09:40:31 23 where we're still sorting matters out and there may be
09:40:34 24 matters that were said in those transcripts which have
09:40:37 25 privacy considerations and so forth.

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09:40:39 27 MR CHETTLE: I would obviously give any undertakings that
09:40:41 28 would be required about confidentiality. I'm just
29 interested whether it applies to - - -
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09:40:45 31 COMMISSIONER: No, there were no confidentiality, as far as
09:40:48 32 the Commission's concerned there was absolutely no
09:40:52 33 confidentiality considerations overall but there might be
09:40:57 34 matters of privacy and we're giving Ms Gobbo's lawyers some
09:41:02 35 time to consider their position and that's where I
09:41:05 36 understand we are at the moment, so that's why I say you're
09:41:08 37 a bit premature.

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09:41:09 39 MR CHETTLE: I'll leave that at this stage. But related to
09:41:12 40 it is a second matter I raised with Mr Winneke. Up until
09:41:15 41 now what's been occurring is statements get released for a
09:41:18 42 witness shortly before that witness is being called.

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09:41:22 44 COMMISSIONER: Yes.

09:41:22 45
09:41:22 46 MR CHETTLE: As I understand it there are a number of
09:41:25 47 statements provided now to the Commission and available

09:41:28 1 that relate to people who are relevant to my clients, for
09:41:31 2 example, Mr Overland. I use him as an example. Mr Winneke
09:41:34 3 and I have again discussed this. It's on exactly the same
09:41:39 4 principle. I'd seek to see this material before my clients
09:41:42 5 give evidence so that we can address it. I'm sure the
09:41:46 6 Commissioner doesn't want us to recall them to deal with
09:41:50 7 matters. I've still got three clients who haven't given
09:41:55 8 evidence and can probably deal with issues that arise from
09:41:58 9 any of the statements that relate to them. So what I'm
09:42:00 10 asking, and again I think Mr Winneke will agree with me,
09:42:03 11 once they've been PIIed I'd ask that they be provided to me
09:42:08 12 on the same basis as all the other material has, rather
09:42:10 13 than waiting until a couple of days before the witness is
09:42:13 14 called. And I use Mr Overland, Mr Ashton as examples.
09:42:16 15 They clearly are relevant to my clients' issues. They're
09:42:20 16 the two matters I wanted to raise, Commissioner.

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09:42:23 18 COMMISSIONER: Yes. Mr Winneke, did you want to say
09:42:25 19 anything?

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09:42:27 21 MR WINNEKE: No, Commissioner. As I understand it there's
09:42:28 22 issues - I hear what Mr Chettle says about his clients and
09:42:36 23 being entitled to have them, at least wishing to have them
09:42:39 24 before his clients are called. Some of them have been
09:42:44 25 called already. I can say, Commissioner, that for the most
09:42:49 26 part they don't relate to his clients at all but that's by
09:42:52 27 the by. The issue I think that we've got at the moment is
09:43:00 28 - well there are two. There are matters which - I
09:43:03 29 understand my learned friend for Ms Gobbo says there's
09:43:08 30 matters that oughtn't be put into the public domain because
09:43:12 31 they're purely private matters and of no consequence.
09:43:18 32 Secondly, the question is whether it's said that there was
09:43:21 33 some sort of arrangement that they would never be
09:43:28 34 published. Now I don't know whether that's maintained.

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09:43:28 36 COMMISSIONER: Have they listened to the tape?

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09:43:31 38 MR WINNEKE: I don't know whether that's put but I
09:43:33 39 understand it may well be. So perhaps at least we ought to
09:43:36 40 be put on notice whether that is in fact going to be pushed
41 before we go any further.

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09:43:37 43 COMMISSIONER: Yes. Yes, Mr Nathwani.

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09:43:39 45 MR NATHWANI: Hopefully the Commission received an email
09:43:40 46 from those instructing me yesterday I think about half 5, 6
09:43:45 47 o'clock, setting out a response to an email sent by your

09:43:49 1 team at 8.30 on Saturday evening.
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09:43:49 3 COMMISSIONER: If I have sent it it's collapsed into the
09:43:53 4 email chain and I haven't seen it.
09:43:56 5
09:43:56 6 MR NATHWANI: We obviously received the Commission's email
09:44:00 7 Saturday evening at half past eight setting out the
09:44:03 8 Commission's position that didn't accept our initial view,
09:44:08 9 which was that where the transcripts we received from this
09:44:10 10 Commission indicate one, or can be read in a particular
09:44:11 11 way, we didn't appreciate that there's obviously a
09:44:15 12 difference between the transcript as it reads and the
09:44:18 13 audio.
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09:44:18 15 COMMISSIONER: It's not the transcript as agreed, it's the
09:44:20 16 transcript - anyway, always the best evidence is the tape.
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18 MR NATHWANI: I don't disagree.
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09:44:24 20 COMMISSIONER: When this became an issue I asked to hear
09:44:26 21 the tape because it was not my understanding of what
09:44:29 22 happened there when I was present for that hearing, so I
09:44:32 23 called for the tape. We've listened to the tape. We've
09:44:35 24 had it typed.
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26 MR NATHWANI: I only got wind of the issue of the tape
27 yesterday.
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09:44:38 29 COMMISSIONER: So you're welcome to listen to the tape.
09:44:43 30 The tape is the best evidence.
09:44:47 31
32 MR NATHWANI: I understand that, I'm not disagreeing with
09:44:47 33 you, but you perhaps set it out best: this Commission gave
09:44:48 34 us a deadline to deal with the factors before the
09:44:51 35 material's released. That deadline doesn't expire until 3
09:44:55 36 October, which is the position, so with many respects to
09:44:58 37 Mr Chettle whether or not everyone's in agreement with him
38 will have to wait.
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09:44:59 40 COMMISSIONER: Mr Chettle will just have to settle for the
09:45:04 41 moment, Mr Chettle.
09:45:06 42
09:45:06 43 MR NATHWANI: And as an aside, and I use Mr Chettle's
09:45:09 44 phrase, "Mr Winneke agrees with me", I have perused all
09:45:13 45 three of the transcripts and I think only one of his
09:45:16 46 clients, Sandy White, is mentioned about four times and any
09:45:19 47 issues that arise would have been dealt with actually on a

09:45:24 1 relevant basis. I can't see why he should get it at all.
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09:45:24 3 COMMISSIONER: I think you're perfectly correct. I've
09:45:30 4 given you till 3 October so we'll leave it till then.
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6 MR NATHWANI: Thank you.
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8 COMMISSIONER: And you're most welcome to listen to the
09:45:32 9 tape in the meantime because I can understand your concerns
09:45:33 10 from the transcript, but because the transcript did not at
09:45:37 11 all reflect what I had understood had happened, I asked
09:45:40 12 that we listen to the tape, and we've listened to the tape,
09:45:44 13 and it's - as we so often find in this Commission, the
09:45:47 14 transcript and the tape do not actually closely correlate
09:45:50 15 and sometimes the missing ands can be important.
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09:45:54 17 MR NATHWANI: I don't disagree. The added complexion is I
09:45:57 18 was given all of the correspondence between the
09:46:00 19 Commission's solicitors and those instructing me, which
09:46:03 20 puts it in a slightly different light, even if, which of
09:46:06 21 course I accept the transcript, the audio is as it is.
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09:46:09 23 COMMISSIONER: Of course you can make submissions if you
09:46:11 24 want to and the view I've expressed, although I've
09:46:15 25 expressed it strongly, is of course a preliminary view and
09:46:17 26 you might be able to persuade me differently.
09:46:21 27

09:46:21 28 MR NATHWANI: I'm sure we'll try.
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09:46:23 30 COMMISSIONER: All right then. So Mr Chettle, premature,
09:46:24 31 we'll just have to - - -
09:46:24 32

09:46:25 33 MR CHETTLE: I wasn't aware of the correspondence,
09:46:27 34 Commissioner, but I will - - -
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09:46:28 36 COMMISSIONER: We'll see what happens.
09:46:29 37

09:46:29 38 MR CHETTLE: Yes.
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09:46:32 40 COMMISSIONER: All right. What about the other matter, the
09:46:35 41 Overland statements and so forth that have been requested?
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09:46:40 43 MR WINNEKE: Commissioner, as far as I'm concerned if there
09:46:44 44 are statements which the Commission has which have been the
09:46:49 45 subject of analysis for public interest immunity, then
09:46:54 46 insofar as they effect or concern Mr Chettle's clients, I
09:46:58 47 don't see any problem with him having them. That's the

09:47:04 1 position as far as the Commission's concerned and that's
09:47:07 2 the position that I've always taken.
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09:47:10 4 COMMISSIONER: So that's even before they've been PIIed and
09:47:13 5 subject - - -
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09:47:14 7 MR WINNEKE: No, no, once they've been PIIed and that's the
09:47:18 8 agreement that we have with Victoria Police and there's no
09:47:21 9 issue with that as far as I'm concerned.
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09:47:23 11 COMMISSIONER: The delay is the PII end, isn't it?
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09:47:26 13 MR WINNEKE: As I understand it - now it may well be that
09:47:28 14 there's an arrangement that Mr Chettle has with Victoria
09:47:33 15 Police concerning PII documents. That's a matter for him
09:47:37 16 and Victoria Police. If that arrangement is that he's
09:47:42 17 entitled to have them, insofar as the Commission's happy to
09:47:47 18 provide them to him because they relate to his clients,
09:47:52 19 again, I see no issue with him being provided with them.
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09:47:55 21 COMMISSIONER: Yes. Did you want to be heard,
09:47:57 22 Ms Argiropoulos?
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09:47:59 24 MS ARGIROPOULOS: Commissioner, there's no difficulty with
09:48:00 25 statements being provided once they've been PII reviewed.
09:48:04 26 I'll just need to make some inquiries about where that
09:48:06 27 process is at with statements. I'm aware that they're
28 being - - -
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09:48:09 30 COMMISSIONER: We're trying to speed this up.
09:48:11 31
09:48:12 32 MS ARGIROPOULOS: Yes. I'm aware that there have been a
09:48:14 33 large number of statements produced by Victoria Police to
09:48:16 34 the Commission in the last week, it's just I'm not across
09:48:19 35 where things are at with PII. We've heard what's been said
09:48:22 36 and we've got no difficulty with the PII reviewed version
09:48:27 37 of any statements that have been provided to the Commission
09:48:31 38 being provided to Mr Chettle.
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09:48:33 40 COMMISSIONER: Does that satisfy you, Mr Chettle?
09:48:36 41
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09:48:36 43 MR CHETTLE: Yes. The timing is not - I'm happy to wait
09:48:41 44 for the PII review. The problem has been the practice has
09:48:45 45 developed they're not distributed until the witness is
09:48:45 46 about to be called. So once they're PIIed if they can be
09:48:46 47 given to us if they're relevant, that will solve my
problems.

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09:48:46 2 COMMISSIONER: We can certainly do that, but I don't think
09:48:48 3 that we're getting the PII reviewed statements much ahead.
09:48:53 4
09:48:54 5 MR CHETTLE: This arises, Commissioner, because we received
09:48:56 6 a letter from those instructing those assisting you, "We
09:49:01 7 confirm the statements of these persons will be circulated
09:49:04 8 prior to them being called", if you want to see them
09:49:07 9 earlier get in touch with Corrs. The practice has been
09:49:11 10 we're not getting them until shortly before the witness is
09:49:14 11 called. All I'm asking is once they're PIIed, if they
09:49:19 12 relate to me, can I please have them?
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09:49:21 14 COMMISSIONER: We're certainly happy to do that. As I say,
09:49:25 15 from my experience the PIIing is happening at a very late
09:49:30 16 stage and if we get it done even before the witness is
09:49:32 17 called it's unusual. That's my understanding. Is that
09:49:34 18 right, Mr Winneke?
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09:49:35 20 MR WINNEKE: That seems to be - - -
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09:49:37 22 COMMISSIONER: We're trying to improve it.
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09:49:40 24 MR WINNEKE: It varies obviously. If there's - we cannot
09:49:42 25 provide documents to other parties until the police have
09:49:48 26 done their PII analysis. There's nothing we can do about
09:49:52 27 it. Once that's done, and so long as that document relates
09:49:56 28 to a particular party, obviously there is no issue with it
09:50:00 29 being passed on to enable the parties to have it in good
09:50:04 30 time prior to the witness being called. There's certainly
09:50:07 31 no deliberate holding back of statements. We wait until
09:50:15 32 they've been PIIed. Once it's done they can be passed on.
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09:50:20 34 COMMISSIONER: What comes first is a preliminary PII from
09:50:24 35 Victoria Police and then the Commission reviews it, then it
09:50:27 36 goes back. So there's a bit of argy-bargy. I suppose
09:50:31 37 after the preliminary PII we could release it to people but
09:50:35 38 I don't know whether Victoria Police is happy with that.
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09:50:37 40 MR WINNEKE: It's a matter for them. I mean the agreement
09:50:41 41 the Commission has with Victoria Police, and it was an
09:50:45 42 arrangement that was put in place early on to enable this
09:50:49 43 process to get going as soon as possible, was that we would
09:50:49 44 not understandably - the police have a right to claim
09:50:51 45 public interest immunity pursuant to the legislation. Now
09:50:54 46 they have said - they've provided the Commission with the
09:51:00 47 documents, for the most part unredacted, although not

09:51:03 1 always, but once it's been PIIed we are in a position to
09:51:06 2 hand it on. So we've got to wait until that's done.

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09:51:09 4 COMMISSIONER: Yes, but what I'm saying is the PII final
09:51:11 5 process takes a while, so there's an initial PII claim by
09:51:16 6 Victoria Police and then the Commission has input and it
09:51:19 7 goes back and then according to the protocol it's then
09:51:22 8 supposed to go off to the State and then if necessary be
09:51:25 9 determined by me and then judicially reviewed.

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09:51:29 11 MR WINNEKE: Commissioner, I'm happy for them to go - once
09:51:30 12 the initial process has been done, if they make ambit
09:51:33 13 claims we can then negotiate, but once the ambit claims
09:51:36 14 have been made I'm happy for those documents to go on to
09:51:39 15 other parties.

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09:51:40 17 COMMISSIONER: So is Victoria Police happy with that?

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09:51:42 19 MS ARGIROPOULOS: Yes, Commissioner. If I can just add
09:51:44 20 briefly that insofar as witness statements for people that
09:51:48 21 we act for, the process, as I understand it, is that those
09:51:52 22 are subjected to PII review before they're produced to the
09:51:55 23 Commission. So even though there might then be some
09:51:58 24 negotiating in terms of the claims made, there's no
09:52:01 25 difficulty with those statements as reviewed and subject to
09:52:05 26 initial claims being provided to Mr Chettle. The situation
09:52:08 27 is a bit different with witnesses we don't act for, such as
09:52:12 28 Mr Overland, in that obviously that statement has been
09:52:15 29 produced to the Commission. It's then been provided by the
09:52:19 30 Commission staff to my instructors for PII review. I'll
09:52:24 31 just seek some urgent instructions about where things are
09:52:27 32 at with that because that's obviously a priority task so
09:52:30 33 that can be provided, but I understand that there's no
09:52:33 34 difficulty otherwise with statements for our witnesses
09:52:35 35 being provided to Mr Chettle as soon as they've been
09:52:40 36 produced because they've already been subject to PII. I
09:52:45 37 should say the same would apply to Mr Nathwani and those
09:52:49 38 acting for Ms Gobbo because the statements are produced in
09:52:59 39 that way with the PII having already been initially done.

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09:53:04 41 COMMISSIONER: All right.

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09:53:07 43 MR NATHWANI: We made a request yesterday for the
09:53:09 44 statements of Buick, Biggin and - I think they're the two.
09:53:14 45 We're told that was awaiting clearance from Victoria
09:53:17 46 Police. I think that's just been given so if we could have
09:53:20 47 them we'd be grateful.

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09:53:22 2 COMMISSIONER: So who's taking on responsibility for
09:53:24 3 providing these, Victoria Police or the Commission?
09:53:28 4
09:53:29 5 MS ARGIROPOULOS: No, it's for the Commission.
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09:53:31 7 MR WINNEKE: We provide them once we've been told that we
09:53:33 8 can provide them, insofar as they've been subject to
09:53:38 9 analysis for public interest immunity.
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09:53:38 11 COMMISSIONER: The initial PII claim.
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09:53:41 13 MR WINNEKE: The initial PII claim.
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09:53:42 15 COMMISSIONER: At that point, once we've got the initial
09:53:45 16 PII claim, then they'll be distributed to the interested
09:53:49 17 parties.
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09:53:50 19 MR WINNEKE: Yes.
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09:53:51 21 COMMISSIONER: All right then.
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09:53:52 23 MR CHETTLE: Thank you, Commissioner.
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09:53:53 25 COMMISSIONER: Our solicitors will get on to that and if
09:53:55 26 there are any that are in that category now they'll be
09:54:00 27 provided.
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09:54:01 29 MR WINNEKE: I should say that's what's been happening,
09:54:06 30 Commissioner. I hear some noises but that's what's been
09:54:11 31 happening.
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09:54:11 33 COMMISSIONER: All right then. We can now go back to
09:54:15 34 Mr Flynn.
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36 MR WINNEKE: Yes, thanks Commissioner.
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09:54:15 38 COMMISSIONER: And we are in closed hearing again.
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41 MR WINNEKE: Yes, we are, Commissioner.
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09:54:17 43 COMMISSIONER: With the orders apposite that were in place
09:54:21 44 yesterday's afternoon.
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09:54:23 46 MR WINNEKE: Yes.
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(IN CAMERA HEARING FOLLOWS)

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