

ROYAL COMMISSION INTO THE MANAGEMENT
OF POLICE INFORMANTS

Held in Melbourne, Victoria

On Thursday, 12 September 2019

Led by Commissioner: The Honourable Margaret McMurdo AC

Also Present

Counsel Assisting:	Mr C. Winneke QC Mr A. Woods Ms M. Tittensor
Counsel for Victoria Police	Mr S. Holt QC Ms K. Argiropoulos
Counsel for State of Victoria	Mr T. Goodwin
Counsel for Nicola Gobbo	Mr P. Collinson QC Mr R. Nathwani
Counsel for DPP/SPP	Ms K. O'Gorman
Counsel for CDPP	Ms R. Avis
Counsel for Police Handlers	Mr G. Chettle Ms L. Thies
Counsel for John Higgs	Ms C. Dwyer
Counsel for Faruk Orman	Mr M. Koh
Counsel for Pasquale Barbaro	Mr C. Wareham
Counsel for AFP	Ms I. Minnett

09:37:43 1 COMMISSIONER: Yes, I understand the appearances are
09:37:45 2 largely the same as yesterday. We've got Mr Winneke back
09:37:48 3 today. We've got Mr Holt back today. And otherwise I
09:37:54 4 think the appearances are the same as yesterday.
09:37:56 5 Mr Collinson, I understand you're wanting or needing to go
09:37:59 6 into closed session.

09:38:01 7
09:38:01 8 MR COLLINSON: That's so. I'll be spending most of my
09:38:04 9 time, Commissioner, on a person who everyone understands
09:38:07 10 needs to be dealt with in that way.

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09:38:10 12 COMMISSIONER: Yes, I understand. All right then, we'll
09:38:11 13 now go into closed hearing with the orders that I made
09:38:14 14 yesterday in respect of this witness's evidence applying.

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16 (IN CAMERA PROCEEDINGS FOLLOW)
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1 UPON RESUMING IN OPEN HEARING:

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12:13:45 3 MR COLLINSON: The question I'm leading up to, Mr Smith, is
12:13:49 4 to put to you that in the light of the information that was
12:13:54 5 available to SDU about the adverse state of psychological
12:13:58 6 health of Ms Gobbo around this time, don't you think she
12:14:03 7 was badly placed to make a decision reflecting her own
12:14:11 8 interests in agreeing to become a witness against
12:14:15 9 Mr Dale?---She always struck me as quite a robust,
12:14:26 10 intelligent person despite any health issues that were
12:14:29 11 going on, so that was a factor or may have been a factor to
12:14:34 12 consider. It would have been a factor to consider but I
12:14:37 13 always thought she was capable of making her own decisions
12:14:40 14 regardless.

12:14:41 15
12:14:41 16 The consequences, even leaving aside her psychological
12:14:44 17 condition, were horrendous I suggest?---Yes.

12:14:48 18
12:14:48 19 In agreeing to become a witness?---Yes, it would have.

12:14:51 20
12:14:55 21 There's obviously the risk that you might get murdered,
12:15:00 22 that risk existed, didn't it?---From the Petra side of
12:15:05 23 things?

12:15:05 24
12:15:06 25 Yes?---Yes.

12:15:07 26
12:15:07 27 If Ms Gobbo had agreed, as she did agree, to give evidence
12:15:11 28 against Mr Dale, there was a clear risk that she might be
12:15:15 29 murdered?---I would think so, yes.

12:15:19 30
12:15:20 31 And in the light of that risk, there was a clear risk that,
12:15:25 32 to use a very general expression, some kind of protective
12:15:29 33 steps would need to be taken in respect of her?---I thought
12:15:34 34 that was always, I thought it was part of her plan, not
12:15:39 35 that I know what her plan really was.

12:15:41 36
12:15:42 37 Her career as a barrister would be finished, wouldn't
12:15:48 38 it?---If she went down a certain path, yes, that would be
12:15:54 39 right.

12:15:54 40
12:15:54 41 If Ms Gobbo, as she did, went down the path of being a
12:15:58 42 witness it effectively would finish her career as a
12:16:01 43 barrister?---And then went down another path after that,
12:16:07 44 yes.

12:16:07 45
12:16:07 46 Yes. So I suppose I'm really just asking perhaps with the
12:16:14 47 benefit of hindsight do you look back on it and wonder to

12:16:18 1 yourself why did Ms Gobbo decide to do something so
12:16:23 2 stupid?---No, I did not think - I think she felt morally
12:16:31 3 obliged to do it. She said as much in the discussions
12:16:34 4 around that time, yeah.
12:16:36 5
12:16:37 6 Various criticisms have been raised of Ms Gobbo's conduct
12:16:42 7 in relation to the subject matter of this Royal Commission
12:16:45 8 but I suggest to you that one thing that is plain from the
12:16:51 9 ICRs surrounding and concerning her decision to be a
12:16:56 10 witness against Mr Dale, is that she did so out of good
12:17:03 11 conscience doing the right thing for the community. Is
12:17:07 12 that your view?---Yes.
12:17:11 13
12:17:11 14 I mean everything else for her was completely negative in
12:17:17 15 undertaking the step of being a witness?---Yes, I'd agree
12:17:24 16 with that.
12:17:24 17
12:17:43 18 There's just one other piece of transcript I wanted to show
12:17:49 19 to you and I don't know whether I've given the right
12:17:53 20 warnings here but it's the transcript of 2 February 2006,
12:17:58 21 VPL.0005.0051.0871. Is that something that can be
12:18:07 22 retrieved? You'll see, Mr Smith, that this is a transcript
12:18:24 23 of a meeting, one of these regular meetings that you had
12:18:30 24 with Ms Gobbo?---H'mm.
12:18:32 25
12:18:32 26 On this occasion it would seem there's another gentleman
12:18:37 27 there and I don't know whether he ought to be the subject
12:18:40 28 of some kind of pseudonym.
12:18:42 29
12:18:42 30 COMMISSIONER: Yes, he is. We might need to go into closed
12:18:45 31 session again I think for this.
12:18:46 32
12:18:47 33 MR COLLINSON: I think I can - I just won't say his name.
12:18:50 34
12:18:52 35 COMMISSIONER: He has a pseudonym. It's an early one, I'm
12:18:55 36 just trying to find my list.
12:18:57 37
12:18:57 38 MR COLLINSON: I think I can do this, Commissioner, without
12:19:00 39 having to go into closed session. Person 12 is apparently
12:19:10 40 the reference.
12:19:15 41
12:19:15 42 COMMISSIONER: Person 12 it is, yes.
12:19:17 43
12:19:19 44 MR COLLINSON: And there's another handler there as
12:19:23 45 well?---Yes.
12:19:23 46
12:19:23 47 But I don't think I need to worry about that. The passage

12:19:27 1 I just want to take you to is at p.0949. Do you recollect,
12:19:59 2 Mr Smith, that one of the perceived advantages that the
12:20:05 3 police saw when Ms Gobbo became an informer back in
12:20:09 4 September 2005 was that she had social connections with the
12:20:15 5 criminal community which were unusual for a barrister. Is
12:20:17 6 that something you recollect?---Yes.

12:20:20 7
12:20:24 8 Even though that's so, I want to suggest to you that in
12:20:29 9 this passage of transcript Ms Gobbo explained to you and
12:20:35 10 the other representatives that she greatly accelerated her
12:20:44 11 social life with criminals upon becoming an informer. Do
12:20:47 12 you have a recollection of her saying that sort of
12:20:51 13 thing?---No, I don't so if you can take me to that passage.
12:20:58 14 I mean I have a recollection of telling her to carry on
12:21:05 15 with her normal life, not to do anything out of the
12:21:08 16 ordinary. If she said it it may be the case but you'd have
12:21:11 17 to take me to it.

12:21:13 18
12:21:13 19 It's on this page. Down the foot of the page you see
12:21:17 20 Ms Gobbo said, "Before I started talking to you I wasn't
21 really, I really didn't see any of them very much outside
12:21:22 22 of work" and she's referring to criminals there. Well,
12:21:29 23 Person 12 mentions the word "work" to finish the sentence.
12:21:34 24 Ms Gobbo says, "You know, 9, sort of 9 to 7 or 8, but I
12:21:37 25 remember when this started Milad was really shitty with me
12:21:42 26 because I had refused to go out for dinner with him". You
12:21:47 27 go, "M'mm". Ms Gobbo continues "For probably eight months
12:21:50 28 or seven months." Person 12 says, "So he'd keep on you if
12:21:56 29 you wanted to come out for" and she replies, "Yeah. Gone
12:21:58 30 out for dinner. Yep, yeah". Then Ms Gobbo continues,
12:22:01 31 "Then I just, so early last year it was virtually stopped.
12:22:03 32 Part of that was because I didn't really know, but
12:22:08 33 Solicitor 2 was with Mr Mokbel". And then she continues,
12:22:14 34 "And I think, and before Carl Williams was arrested there
12:22:17 35 was a whole different social, go back a bit in time there
12:22:21 36 was a whole different social world with Carl, Roberta,
12:22:24 37 Lewis Caine, Solicitor 2. Yep. Tony, I never was part of
12:22:28 38 any of that". She continues, "I wasn't involved in that.
12:22:32 39 Then 2005, you know, the first few months probably not. I
12:22:37 40 actually had my life on track for a few months there and
12:22:37 41 then it just fell apart, you know, that day. I can't even
12:22:40 42 remember who was, see they all came out of the woodwork
12:22:45 43 after that, my stroke, all these crooks that wanted to
12:22:48 44 express their undying love"?---H'mm.

12:22:50 45
12:22:50 46 You'll remember Ms Gobbo had her stroke in 2004?---Yes.
12:22:54 47

12:22:57 1 Do you agree - what I want to - if one looks at the ICRs
12:23:03 2 generally it's plain, isn't it, that Ms Gobbo's largely
12:23:11 3 gathering information from criminals through her social
12:23:15 4 interactions with them?---Yes.
12:23:19 5
12:23:19 6 I mean you've been at pains to - sorry, you continue?---I
12:23:23 7 said largely, yes.
12:23:24 8
12:23:25 9 You've been at pains to make the point that the handlers
12:23:29 10 didn't have a particular interest in hearing Ms Gobbo's
12:23:33 11 observations about some aspect of criminal proceedings
12:23:38 12 where she was appearing as counsel?---Yes.
12:23:40 13
12:23:41 14 Because you generally took the view that that was off
12:23:45 15 limits because it was legal professional
12:23:47 16 privilege?---That's right.
12:23:48 17
12:23:48 18 And maybe one could debate whether there were deviations
12:23:53 19 from that from time to time but at least a lot of the time
12:23:55 20 you adhered to that principle of doing action, do you
12:24:04 21 agree?---Yes.
12:24:04 22
12:24:05 23 So it's inevitable, isn't it, that the information you were
12:24:08 24 interested in was the information that Ms Gobbo gathered
12:24:11 25 through her social interactions with criminals?---Any
12:24:17 26 interaction but it was social mostly, yes.
12:24:19 27
12:24:20 28 I suggest to you that the whole course of the relationship
12:24:24 29 involved SDU encouraging Ms Gobbo to develop and continue
12:24:32 30 those social relationships with the criminal community so
12:24:35 31 she could gather information in that way?---Certainly to
12:24:47 32 continue relationships she had. I mean she would tell us
12:24:50 33 about someone and we'd ask questions and then she would
12:24:54 34 have further interaction with them and perhaps give us
12:24:58 35 information about them. Again, that's very basic
12:25:04 36 source/handler, you know, the way of the world.
12:25:08 37
12:25:08 38 I'm not saying - - - ?---I don't say, I didn't perceive
12:25:14 39 that she suddenly started going out a lot more and
12:25:19 40 associating with these people a lot more. I didn't know
12:25:21 41 what she'd done beforehand. I thought she had from what
12:25:28 42 little I knew of her beforehand.
12:25:30 43
12:25:30 44 You appreciate she was tasked from time to time?---Yes.
12:25:34 45
12:25:34 46 To pursue information from particular nominated
12:25:39 47 individuals?---That's right, she would tell us she was

12:25:41 1 going to whatever place and there might be some tasking or
12:25:44 2 some questions about that, yes, but as you say
12:25:47 3 (indistinct).
12:25:48 4

12:25:48 5 But it was implicit in the tasking, wasn't it, that she
12:25:51 6 would gather the information in social settings?---Often,
12:25:58 7 yes. Mostly in fact.
12:26:00 8

12:26:00 9 Really inevitably because you weren't tasking her to gather
12:26:05 10 information she acquired from them in her chambers or in a
12:26:08 11 coffee shop near her chambers in a legal case she was doing
12:26:14 12 for them?---No, no, I suppose not. So what else is there?
12:26:16 13 Socially.
12:26:16 14

12:26:17 15 COMMISSIONER: Mr Collinson, many police witnesses have
12:26:20 16 given evidence that she was associating with criminals
12:26:23 17 before she came to the SDU and I didn't understand that had
12:26:25 18 been challenged until now.
12:26:27 19

12:26:30 20 MR COLLINSON: No, that's not challenged but it
12:26:30 21 accelerated, it will be put for Ms Gobbo, once she
12:26:37 22 undertook this role. Commissioner, in accordance with the
12:26:39 23 previous practice perhaps I'll tender these pages from that
12:26:43 24 transcript. So it's p.0949 to .0941.
12:26:48 25

12:26:50 26 #EXHIBIT RC500A - (Confidential) Transcript of 2/02/06.
12:26:52 27 between the SDU and Nicola Gobbo
12:26:58 28 pp.0949-0951.
29

12:27:14 30 #EXHIBIT RC500B - (Redacted version.)
12:27:14 31

12:27:15 32 Just one last question, Mr Smith. Your second witness
12:27:18 33 statement schedules a whole lot of ICRs references relevant
12:27:24 34 to particular topics, you recall that?---Yes.
12:27:26 35

12:27:27 36 Am I right to say that solicitors put together those lists
12:27:30 37 for you to peruse for accuracy?---No. I picked them out of
12:27:36 38 the ICRs.
12:27:36 39

12:27:37 40 You undertook the work yourself, did you, to go through the
12:27:40 41 ICRs to pull out those references?---Yes.
12:27:42 42

12:27:43 43 No further questions.
12:27:44 44

12:27:44 45 COMMISSIONER: Yes, thanks Mr Collinson. Perhaps before
12:27:48 46 you cross-examine. Mr Holt, there are two applications I
12:27:53 47 think from affected persons to cross-examine. Would it be

12:27:57 1 better if they're granted to hear from them before you
12:28:01 2 cross-examine?
12:28:02 3
12:28:03 4 MR HOLT: That would certainly be our preference,
12:28:06 5 Commissioner.
12:28:06 6
12:28:06 7 MR WOODS: I don't oppose that being the order.
12:28:08 8 Commissioner, they are applications to be made on behalf of
12:28:12 9 Mr Barbaro and Mr Higgs. I understand the questions will
12:28:17 10 be quite brief. We're in the Commission's hands about how
12:28:22 11 it will be handled. I've had an opportunity to speak to
12:28:25 12 counsel for those individuals and I have a general
12:28:27 13 understanding of what the questions are and in my
12:28:30 14 submission they are appropriately asked of this witness.
12:28:32 15
12:28:32 16 COMMISSIONER: Yes, all right then. We'll deal with one
12:28:34 17 first perhaps. Mr Higgs. Who is appearing for Mr Higgs,
12:28:38 18 who wants to ask some questions?
12:28:41 19
12:28:42 20 MR WOODS: That's Ms Dwyer.
21
12:28:43 22 COMMISSIONER: Yes, thank you.
12:28:43 23
12:28:44 24 WITNESS: Excuse me Commissioner, if I may.
12:28:46 25
12:28:46 26 COMMISSIONER: Yes?---I apologise, I don't know if this is
12:28:49 27 an appropriate time but I would request a couple of minutes
12:28:55 28 break please.
12:28:56 29
12:28:56 30 Sure, sure. We'll have a break. You let us know when
12:28:58 31 you're ready to resume?---I'll just be a couple of minutes.
12:29:22 32
33 (Short adjournment.)
34
12:36:57 35 COMMISSIONER: Yes, Mr Smith, can you hear me?---Yes, loud
12:37:00 36 and clear, thank you.
12:37:01 37
12:37:01 38 Thank you.
12:37:02 39
12:37:03 40 MR WOODS: Commissioner, the issue that was raised prior to
12:37:06 41 that break was the ability for Mr Higgs and Mr Barbaro's
12:37:11 42 counsel to ask some questions of the witness. I've spoken
12:37:15 43 to counsel for those two individuals and have a broad
12:37:19 44 understanding of what those issues are, and as I've said to
12:37:22 45 you I think they're appropriately put. I've explained to
12:37:25 46 the State in broad brush what those issues are. The final
12:37:33 47 remaining question is whether or not there's an opportunity

12:37:35 1 for the State to get instructions, which I understand they
12:37:40 2 would like to do and whether or not that's to be the course
12:37:43 3 that's adopted.
12:37:44 4
12:37:45 5 COMMISSIONER: Somebody from the State, Mr Goodwin.
12:37:49 6
12:37:50 7 MR GOODWIN: Yes, it's only on the basis that we've
12:37:53 8 previously taken a position on leave to cross-examine by
12:37:58 9 persons representing affected persons. We've filed
12:38:01 10 submissions and a supporting affidavit on that issue
12:38:04 11 globally. I simply wanted an opportunity to seek specific
12:38:10 12 instructions in relation to that.
12:38:11 13
12:38:11 14 COMMISSIONER: You should have had them, Mr Goodwin.
12:38:13 15
12:38:13 16 MR GOODWIN: I've had no notice. The State had no notice
12:38:15 17 of the applications.
12:38:17 18
12:38:17 19 COMMISSIONER: Nor did we. But you should know that
12:38:18 20 affected people may want to ask questions.
12:38:20 21
12:38:21 22 MR GOODWIN: Yes.
12:38:21 23
12:38:21 24 COMMISSIONER: Of various witnesses. We haven't got time
12:38:24 25 in this Commission to adjourn the matter.
12:38:26 26
12:38:26 27 MR GOODWIN: I didn't propose an adjournment.
28
12:38:30 29 COMMISSIONER: Well you've just had a break to ring
12:38:33 30 someone.
12:38:34 31
12:38:34 32 MR GOODWIN: I spent the time understanding the nature of
12:38:37 33 the questions that would be asked, which I didn't know, and
12:38:40 34 I simply propose to use the luncheon break to get the
12:38:45 35 appropriate instructions.
12:38:46 36
12:38:48 37 COMMISSIONER: They're ready to do it now.
12:38:50 38
12:38:51 39 MR GOODWIN: I'm happy for the matter to proceed and seek
12:38:53 40 those instructions now.
12:38:53 41
12:38:53 42 COMMISSIONER: Mr Holt, have you got some questions to ask
12:38:56 43 that will take us through to the luncheon break?
12:38:58 44
12:38:58 45 MR HOLT: They wouldn't take anywhere near that long,
12:39:03 46 Commissioner, I expect five or ten minutes.
12:39:03 47

12:39:04 1 COMMISSIONER: I'm sorry, I'm allowing the questions to be
12:39:07 2 asked, Mr Goodwin. They seem relevant and there's no
12:39:10 3 reason why they shouldn't be asked. I just haven't got
12:39:14 4 time in these hearings to adjourn to allow you to get
12:39:20 5 instructions. Every minute is precious.
12:39:21 6
12:39:21 7 MR GOODWIN: I hear what you say, Commissioner.
12:39:23 8
12:39:23 9 COMMISSIONER: Yes, all right then.
12:39:24 10
11 <CROSS-EXAMINED BY MS DWYER:
12
12:39:25 13 Mr Smith, can you hear me?---Yes, I can.
12:39:27 14
12:39:30 15 As we move through the documents I'm using a slightly
12:39:34 16 different document than many of the other members of
12:39:38 17 counsel sitting at the Bar table, so I'll use a number of
12:39:43 18 references as we move through and for the first one, I
12:39:50 19 don't have the reference for my colleagues, but on 10
12:39:58 20 January 2008 did you check with Nicola Gobbo the phone
12:40:10 21 numbers of some targets, including John Higgs?---I may well
12:40:20 22 have done but I need to see the documents.
12:40:22 23
12:40:22 24 If there's a record in the ICR - it's 10 January 2008 at
12:40:30 25 12.08. And we'll get a page reference for that shortly.
12:40:36 26 Can you see that on the screen now, Mr Smith?---Yes,
12:40:44 27 10/1/08.
12:40:44 28
12:40:44 29 Am I permitted to see that on the screen so that I can
12:40:47 30 speak to what the witness is seeing? I'm not sure if I am
12:40:51 31 allowed to.
12:40:51 32
12:40:52 33 COMMISSIONER: Should we be in closed hearing?
12:40:56 34
12:40:56 35 MR HOLT: Not on the basis of what I understand the content
12:40:59 36 to be which my friend has shared. On the basis that this
12:41:01 37 is between counsel, I'm happy for her to look at my
12:41:05 38 document.
12:41:05 39
12:41:05 40 COMMISSIONER: Yes, thank you. Do you have a page
12:41:13 41 reference in the hard copy, Mr Holt?
12:41:15 42
12:41:16 43 MR HOLT: 1560, Commissioner, is the reference.
12:41:20 44
12:41:21 45 COMMISSIONER: 1560.
12:41:24 46
12:41:25 47 MS DWYER: Do you recall, Mr Smith, whether you checked

12:41:32 1 with Ms Gobbo the phone numbers of targets, including
12:41:37 2 Mr Higgs?---I don't recall but it's in the ICR, so I did.
12:41:45 3
12:41:45 4 You accept that you did that?---Yes.
12:41:46 5
12:41:47 6 And can I ask you this, you gave some evidence yesterday
12:41:51 7 that the ICRs very closely match your original
12:41:56 8 notes?---Yes.
12:41:56 9
12:41:57 10 You accept that?---Yes, it was the point of them.
12:42:00 11
12:42:00 12 And that was for the purpose of accuracy?---Yes.
12:42:04 13
12:42:05 14 Your original notes, did they reflect closely the contents
12:42:10 15 of conversations?---That's certainly how I tried to do
12:42:16 16 them.
12:42:16 17
12:42:17 18 Does that mean you would have used the word "target" with
12:42:22 19 Ms Gobbo?---No.
12:42:24 20
12:42:25 21 What word do you say that you used?---I don't know. I
12:42:34 22 wouldn't have needed to use that word. I wouldn't use that
12:42:38 23 word with a source. If that's in my, in my text when I'm
12:42:43 24 writing the contact report for clarity, sometimes you need
12:42:47 25 to clarify why you're putting that person down.
12:42:50 26
12:42:53 27 You've said you're not sure what word you used. Is it the
12:42:56 28 case that you don't remember?---What words I used when
12:43:05 29 talking to the source?
12:43:06 30
12:43:06 31 Yes?---Um - - -
12:43:09 32
12:43:09 33 About targets?---Right. I wouldn't have used the word
12:43:15 34 target. The source would have told me the number and I
12:43:19 35 would decide what category of person that was and if they
12:43:25 36 were a potential target that is how I would write the
12:43:30 37 contact report. I definitely wouldn't talk about a target
12:43:34 38 with any source as a matter of fact.
12:43:34 39
12:43:35 40 Certainly a source like Ms Gobbo isn't stupid. She would
12:43:39 41 understand that police are targeting particular people.
12:43:41 42 Was there a shorthand for describing a target of an
12:43:46 43 investigation between you and Ms Gobbo?---No, there was
12:43:50 44 just always notes.
12:43:52 45
12:43:54 46 Moving to another entry, being on 13 January 2008 at 16:55.
12:44:02 47 I understand the page reference for the date is 1559 and

12:44:08 1 then we'll scroll down to p.1560 for the relevant time.
12:44:20 2
12:44:20 3 COMMISSIONER: Did you say 13 January?
12:44:23 4
12:44:23 5 MS DWYER: Yes, 13 January 2008 at - - -
12:44:31 6
12:44:31 7 COMMISSIONER: 1566.
12:44:33 8
12:44:34 9 MS DWYER: 16:55.
12:44:36 10
12:44:37 11 COMMISSIONER: Page 1566, 13 January.
12:44:40 12
12:44:40 13 MR HOLT: I think the page is 1567 for this entry,
12:44:44 14 Commissioner.
12:44:44 15
12:44:44 16 COMMISSIONER: Right.
12:44:55 17
12:44:56 18 MS DWYER: It says, "Received call 3838. Seen Karl Khoder,
12:45:03 19 he will know when Karam seeing Higgs. Advised V
12:45:09 20 relevant"?---That's right.
12:45:10 21
12:45:16 22 Was it you having this conversation?---This is my ICR.
12:45:24 23 Yes, it was, it would be.
12:45:25 24
12:45:26 25 Does that entry mean that you advised Ms Gobbo that this
12:45:32 26 information was very relevant?---Yes, I must have done.
12:45:36 27
12:45:38 28 She would have understood that to mean that Karam and Higgs
12:45:41 29 were the target of a police operation at that point in
12:45:44 30 time?---Well, I don't know whether she could draw that bow,
12:45:51 31 but she certainly knew that we were interested in them, I
12:45:56 32 guess. We weren't in the habit of advising what operations
12:46:00 33 were and were not going on.
12:46:01 34
12:46:02 35 Is this an example of you tasking Ms Gobbo?---I think -
12:46:12 36 well was she going this anyway? Let's scroll up and see
12:46:21 37 how it evolved. Was she going anyway and then letting us
12:46:22 38 know or tasking?
12:46:22 39
12:46:22 40 Sorry, could you just repeat that?---I'm wondering whether
12:46:24 41 it was a meeting that had been arranged by her or by
12:46:30 42 others, you know, with her, to meet and she was advising us
12:46:34 43 or whether we had, which was mostly the case, or whether we
12:46:40 44 had tasked her to do it. That's why I'm moving further
12:46:45 45 back to see how it evolved.
12:46:47 46
12:46:48 47 Are you suggesting that if you requested Ms Gobbo to set up

12:46:52 1 a meeting, that would be an example of tasking, but asking
12:46:56 2 her to, or advising her that particular information would
12:47:04 3 be very relevant would not be an example of tasking?---Well
12:47:11 4 I'm talking about the handler, the way handlers talked to
12:47:19 5 each other when they're tasked. A person is asked to do
12:47:27 6 something, that's a tasking. If they give you some
12:47:30 7 information that's all intelligence I guess. I'm not
12:47:33 8 really sure, I'm not really sure what the difference is to
12:47:41 9 you. I mean whatever the, I would send her to go there or
12:47:46 10 she goes there of her own volition and we find out
12:47:50 11 information, I'm not sure of the thrust - - -
12:47:52 12
12:47:52 13 Perhaps I can assist. My question to you is do you
12:47:56 14 consider advising Ms Gobbo that particular information
12:48:00 15 would be very relevant to be an example of tasking?---In
12:48:09 16 the way the handler thinks, no, it's not an example of
12:48:12 17 tasking, no. Tasking is when you ask somebody to go and do
12:48:17 18 something.
12:48:17 19
12:48:18 20 If you did advise Ms Gobbo that something was very relevant
12:48:22 21 would that generally see that information come back to
12:48:25 22 you?---I suppose in these cases, yes, probably, yep.
12:48:34 23
12:48:36 24 Moving down the page, just to that bottom entry at
12:48:45 25 17:35?---H'mm.
12:48:46 26
12:48:46 27 You've then received a call from Burton?---H'mm.
12:48:50 28
12:48:50 29 And it seems that he told you from TI, "Nil re Karam
12:48:57 30 meeting Higgs"?---H'mm.
12:48:58 31
12:49:01 32 There was at this time intel flowing from the Drug Task
12:49:10 33 Force to the SDU, that's right, isn't it?---Is that in
12:49:18 34 relation to this reference?
12:49:19 35
12:49:20 36 There's multiple references throughout the ICRs I suggest
12:49:25 37 to you?---Okay, okay.
12:49:27 38
12:49:27 39 And if you need to refresh your memory we can scroll
12:49:31 40 through and look at a couple of examples. But does that
12:49:34 41 generally accord with your memory?---It does but you've got
12:49:41 42 a reference to Burton there and then you asked a question
12:49:44 43 about the Drug Task Force.
12:49:48 44
12:49:48 45 Where was Burton stationed at this time?---I think you'll
12:49:54 46 see that at 12.15, I don't know - at this time, a reference
12:50:03 47 at 12.15.

1
12:50:04 2 I see that, thank you. Out of an abundance of caution I
12:50:07 3 don't think we need to say that. Then perhaps I'll ask the
12:50:14 4 question without linking it to that reference?---Yes.
12:50:18 5
12:50:18 6 Do you recall at this time information flowing from the
12:50:25 7 Drug Task Force to the SDU?---Do I recall it? No. If it
12:50:34 8 happened though, I would have put it in an ICR.
12:50:36 9
12:50:39 10 What reason is there for information to be flowing from
12:50:43 11 investigating teams to the SDU?---Could be a number of
12:50:53 12 reasons.
12:50:55 13
12:50:57 14 Perhaps - - - ?---Go on.
12:50:58 15
12:51:00 16 COMMISSIONER: Did you want to answer the question? You
12:51:03 17 said there would be a number of reasons?---Well, I can't
12:51:07 18 remember the investigation but often it's to do with
12:51:12 19 location of suspects or potential meetings that are
12:51:16 20 happening, h'mm.
12:51:20 21
12:51:21 22 MS DWYER: And the reason why the SDU wants to know
12:51:24 23 potential meetings that are happening is to assist them in
12:51:29 24 their tasking for human sources, isn't it?---It may well be
12:51:33 25 exactly that, that's right.
12:51:34 26
12:51:46 27 Was Fisher a member of the Drug Task Force?---I don't
12:51:54 28 remember.
12:51:54 29
12:52:05 30 Do you recall information flowing from Burton to the SDU?
12:52:12 31 I just can't remember what you said in that regard?---I
12:52:18 32 don't recall it but if it happened, it will be here.
12:52:22 33
12:52:22 34 Thank you. Turning to another entry, 14 January 2008 at
12:52:34 35 17:40. I'm not sure if my page references are right, we
12:52:38 36 can try.
12:52:39 37
12:52:39 38 COMMISSIONER: 1568.
12:52:43 39
12:52:43 40 MS DWYER: I think my page references are wrong. This
12:52:53 41 says, "Advised Burton re Higgs/Karam at Café Romantica at
12:53:00 42 20:00. Substantial money but not tonight. TI on Higgs
12:53:04 43 confirmed. Also FedPol have promised anything re Higgs
12:53:11 44 will advise. This has not occurred"?---H'mm. Yes.
12:53:15 45
12:53:16 46 I'll just take one moment.
12:53:30 47

12:53:30 1 COMMISSIONER: That's actually 13 January.
12:53:36 2
12:53:36 3 MR HOLT: Commissioner, my friend has a specific query and
12:53:39 4 I've undertaken to her that we will answer it separately.
12:53:44 5
12:53:44 6 COMMISSIONER: I'm just trying to find that page, I thought
12:53:47 7 I had it but I don't. What's the page number at the top?
12:53:52 8 3157.
12:53:54 9
12:53:55 10 MS DWYER: 14 January 2008, 17:40.
12:53:58 11
12:53:58 12 COMMISSIONER: I have it now.
12:54:00 13
12:54:00 14 MS DWYER: There's a reference in that entry to a telephone
12:54:03 15 intercept on Higgs?---Yes.
12:54:06 16
12:54:11 17 Do you know whether that telephone intercept derived from
12:54:18 18 the intelligence you obtained on 10 January confirming
12:54:22 19 Mr Higgs's phone number?---I have no idea.
12:54:30 20
12:54:36 21 And then scrolling down to 19:35. You can see there,
12:54:51 22 "Phone Burton. Advise large amount of money from Higgs to
12:54:54 23 Karam". There's a particular number there and, "Via
12:54:59 24 Internet, two IRs required"?---H'mm.
12:55:04 25
12:55:04 26 It might be that there's some further information here,
12:55:11 27 though there doesn't seem to be. Do you know whether those
12:55:16 28 IRs were produced?---No, I don't but reading that I can't
12:55:25 29 even really see what the information was. I'd have to
12:55:29 30 scroll back. To answer your question, no, I don't, because
12:55:33 31 my normal practice was to put the IR number right there
12:55:37 32 actually.
12:55:40 33
12:55:41 34 Do you know why that information would have required two
12:55:45 35 IRs?---That was a methodology matter, it's an SDU practice.
12:55:56 36
12:55:57 37 Then say no more. If we can move to 21 January 2008 at
12:56:15 38 17:05. "Received call from 3838. Asked re following three
12:56:34 39 people, for officer with a pseudonym of Richards.
12:56:40 40
12:56:45 41 COMMISSIONER: Hang on, we've lost the witness. It must be
12:57:15 42 the State of Victoria's revenge. So we've lost the network
12:57:34 43 connection. I think it is State of Victoria's revenge.
12:57:38 44 They've lost the network connection and it's going to take
12:57:42 45 a while to get back so we're going to have to take an early
12:57:46 46 lunch. We'll resume at 1.45 and you might have some
12:57:51 47 instructions by then, particularly in respect to - - -

12:58:00 1
12:58:01 2
12:58:02 3
12:58:02 4
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12:58:24 6
12:58:24 7
12:58:24 8
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MR GOODWIN: Mr Barbaro.

COMMISSIONER: Yes, thanks. We'll adjourn until then.

<(THE WITNESS WITHDREW)

LUNCHEON ADJOURNMENT

12:58:26 1 UPON RESUMING AT 1.49 PM:
2
13:49:31 3 COMMISSIONER: Yes. Mr Goodwin, did you have any
13:49:37 4 submissions?
13:49:38 5
13:49:38 6 MR GOODWIN: Yes, I've sought instructions. The State
13:49:41 7 continues to rely on the written submissions that were
13:49:44 8 previously filed regarding the cross-examination of
13:49:47 9 witnesses by affected persons, and otherwise I have no
13:49:50 10 further submissions to make regarding the specific - - -
11
12 COMMISSIONER: We need you to talk into a microphone so
13 that you can be heard.
14
13:49:54 15 MR GOODWIN: Apologies. As I stated, Commissioner, the
13:49:57 16 State continues to rely on the written submissions that
13:50:00 17 it's previously filed regarding cross-examination of
13:50:03 18 witnesses by affected persons. But otherwise I do not
13:50:08 19 propose to make specific submissions about the application.
20
13:50:12 21 COMMISSIONER: So you're not objecting?
13:50:15 22
13:50:15 23 MR GOODWIN: No.
24
13:50:16 25 COMMISSIONER: Could you tell your client that time is of
13:50:18 26 the essence. They have a lawyer present throughout this
13:50:23 27 inquiry. I would expect you to have instructions that you
13:50:29 28 can make submissions on these matters as they arise without
13:50:32 29 having to get an adjournment constantly.
13:50:35 30
13:50:35 31 MR GOODWIN: Yes, Commissioner.
32
13:50:36 33 COMMISSIONER: I would expect the State to give you
13:50:38 34 instructions to act on their behalf.
13:50:40 35
13:50:41 36 MR GOODWIN: Yes, and we've made a general submission on
13:50:43 37 the issue and we continue to rely on that.
38
13:50:46 39 COMMISSIONER: Yes.
13:50:46 40
13:50:47 41 MR GOODWIN: It was only that, the specific applications we
13:50:51 42 didn't have notice of, that's all Commissioner.
43
13:50:54 44 COMMISSIONER: Well they were only made orally.
13:50:57 45
13:50:57 46 MR GOODWIN: Yes.
47

13:50:58 1 COMMISSIONER: There was no notice of them. As to the
13:51:02 2 types of questions being asked, they're not going to be
13:51:05 3 known until the last minute because matters are emerging.
13:51:09 4 This is a living thing.
13:51:10 5
13:51:11 6 MR GOODWIN: Yes.
7
13:51:11 8 COMMISSIONER: That's the way it's going to be in the
13:51:14 9 future.
13:51:15 10
13:51:15 11 MR GOODWIN: Yes.
12
13:51:16 13 COMMISSIONER: I suggest you get those instructions.
13:51:18 14
13:51:18 15 MR GOODWIN: Yes, and I did. Thank you, Commissioner.
16
13:51:20 17 COMMISSIONER: Thank you.
18
13:51:29 19 COMMISSIONER: We've got the witness on the phone, you can
13:51:32 20 hear me, Mr Smith?---I can now, Commissioner, yes.
13:51:36 21
13:51:36 22 <PETER SMITH, recalled:
13:51:39 23
13:51:40 24 MS DWYER: And you can hear me, Mr Smith?---Yes.
25
13:51:42 26 If we can go then to 21 January 2008 at 17:05. There you
13:51:48 27 received a call from 3838 and I take it you asked her about
13:51:57 28 three people for a handler with the pseudonym of Richards;
13:52:05 29 is that right?---If that's what's written in the ICR that
13:52:07 30 would be right but I haven't got it in front of me, of
13:52:10 31 course.
32
13:52:11 33 COMMISSIONER: It should be up in front of you on the
13:52:12 34 screen there, is it not there?---No.
13:52:17 35
13:52:17 36 MS DWYER: We'll select an option to have it brought up on
13:52:20 37 your screen. Just let us know when you can see it and
13:52:24 38 you've had the chance to read it?---Yes, at 17:05 hours,
13:52:29 39 yes.
40
13:52:29 41 Is that right, that you asked her about three
13:52:33 42 people?---Yes.
43
13:52:36 44 Two of those, so the second person by the name of
13:52:41 45 Steve?---M'hmm.
46
13:52:41 47 Was it you giving her the information, "Shoplifter, lives

13:52:47 1 near The Grove, mate of Higgs"?---Let me read it to see if
13:52:56 2 it can prompt me. I think that's what I was told.
3
13:53:05 4 That's what - - - ?---Because I wouldn't tell her that, no.
5
13:53:15 6 You were given information by Officer Richards?---Actually,
13:53:21 7 can I just go back on that previous answer. I'm actually
13:53:24 8 unsure now, I'm not sure. But, yes, I was given
13:53:27 9 information via Richards.
10
13:53:29 11 And you were tasked with finding out what Ms Gobbo knew
13:53:35 12 about these people. Reading that entry, that seems to be
13:53:40 13 what occurred, do you agree with that?---Yes.
14
13:53:46 15 To find out what Ms Gobbo knew you needed to give her some
13:53:50 16 identifying features of the relevant person, didn't
13:53:57 17 you?---That may be the case if there wasn't a name, yeah.
18
13:54:00 19 And certainly with respect to that second entry,
13:54:03 20 Steve?---Yeah, that's why I changed my answer because I
13:54:07 21 think that's right, yeah.
22
13:54:08 23 So it seems to be that you would have given her those
13:54:12 24 identifying features which I've already read out?---M'hhh.
25
13:54:16 26 And she reported back that she didn't know anything, is
13:54:19 27 that the effect of the entry?---Of persons 2 and 3 listed
13:54:27 28 there, yes.
29
13:54:35 30 Officer Richards was a member of the SDU at that time; is
13:54:41 31 that right?---Yes.
32
13:54:43 33 Do you know why you were tasked with asking Ms Gobbo about
13:54:48 34 these people?---I can't remember now, no.
35
13:54:55 36 No members of the SDU were involved in investigations, were
13:55:00 37 they?---No.
38
13:55:02 39 So this information must have - I withdraw that. This
13:55:07 40 request must have come from outside of the SDU, do you
13:55:12 41 agree with that?---Not necessarily, no, I don't.
42
13:55:17 43 Why would someone from inside the SDU - - -
13:55:22 44
13:55:22 45 MR HOLT: Excuse me, Commissioner.
13:55:46 46
13:55:46 47 MR WOODS: Commissioner, I think it would be appropriate if

13:55:48 1 there's to be a discussion with counsel for a potentially
13:55:52 2 affected person, that perhaps counsel assisting should be
13:55:54 3 part of it.
13:55:55 4
13:55:55 5 MR HOLT: I agree. I'm sorry. Can I explain to my friend
13:55:58 6 what the issue is? I'm happy to do that and I apologise.
13:56:22 7
13:56:23 8 Commissioner, just anticipating with my usual caution,
13:56:25 9 I wonder if this topic which I've raised with my learned
13:56:30 10 friend might be dealt with in private, just out of an
13:56:32 11 abundance of caution, anticipating what an answer might be.
12
13:56:37 13 COMMISSIONER: Yes, all right then.
13:56:37 14
13:56:38 15 MS DWYER: I can have one more topic I can deal with in
13:56:41 16 open and then we can move into closed.
17
13:56:43 18 COMMISSIONER: Thanks Ms Dwyer.
13:56:44 19
13:56:45 20 MS DWYER: Moving to 24 January 2008 at 16:17, and I
13:56:50 21 understand this is p.1 of the 2958 ICRs. There at the
13:56:55 22 entry at 16:17 you received a call from 2958 and she
13:57:08 23 reported that she received a text from Karam. "Just
13:57:13 24 arrived at airport and asking for coffee. [REDACTED] says that
13:57:19 25 Karam is only here to see Higgs"?---Yes.
26
13:57:26 27 You may not remember but it appears that information is
13:57:31 28 coming from both Karam and [REDACTED]. If I can have one
13:57:39 29 moment?---I think I know who [REDACTED] is, yes.
30
13:57:42 31 Is that [REDACTED]?---That's who I'm thinking of, yes
13:57:47 32
13:58:24 33 Reading that again, "Just arrived at airport and asking for
13:58:31 34 coffee". A particular person says that Karam is only here
13:58:33 35 to see Higgs"?---Yes.
36
13:58:37 37 Ms Gobbo refers to two sources of information there, Karam
13:58:42 38 and another person. I'm sure I'm stretching your memory
13:58:47 39 but do you know how she received that information from the
13:58:55 40 second name mentioned?---No. I could speculate but I don't
13:59:11 41 remember and the speculation would be based on the way I've
13:59:13 42 written it but I don't remember it.
43
13:59:17 44 Given you had a practice in terms of the way that you took
13:59:20 45 your notes and you created the ICRs?---Yes.
46
13:59:25 47 What does this record indicate to you?---That the source

13:59:33 1 did receive a text from Karam and that the text said, had
13:59:40 2 information that indicated just arrived at the airport and
13:59:44 3 was asking to have a coffee, and then I think it's likely
13:59:46 4 that the source added that the other person had told the
14:00:04 5 source the other information at some other recent time and
14:00:08 6 that she had passed that on to me.
7
14:00:20 8 At 16:23 you received some further information from the
14:00:27 9 human source about Karam?---Yes.
10
14:00:28 11 And then at 16:30 you updated Fisher from the Drug Task
14:00:37 12 Force?---That's right.
13
14:00:38 14 And the entry, "Re after 18:00 surveillance currently on
14:00:44 15 Higgs", is that information coming back to you from
14:00:52 16 Fisher?---No. Oh, the surveillance covering the Higgs is
14:00:58 17 but not "re after 18:00".
18
14:01:04 19 "So update Fisher DTF re after 18:00" is passing on the
14:01:11 20 information you'd received from Ms Gobbo?---Yes.
21
14:01:14 22 And the surveillance currently on Higgs is an update from
14:01:18 23 Fisher about Drug Task Force activities; is that
14:01:23 24 right?---Correct.
25
14:01:28 26 Are you aware that on - if I can just have one moment and
14:01:37 27 make sure I don't need to move to closed at this point.
14:01:54 28 Are you aware that on 28 February 2008 Ms Gobbo was tasked
14:02:01 29 by Petra or via Petra to record John Higgs?---No.
30
14:02:13 31 Perhaps at that point we can move to closed and there's
14:02:18 32 just a couple of topics to deal with, Commissioner.
33
14:02:21 34 COMMISSIONER: Right. We'll now go into closed hearing
14:02:23 35 with the orders that I made earlier in respect of this
14:02:31 36 witness during closed hearings again applying.
37
38 (IN CAMERA HEARING FOLLOWS)
39
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47

1 UPON RESUMING IN OPEN HEARING:

14:16:50 2
14:16:50 3 MR WAREHAM: Mr Smith, can you hear me?---Yes.
4

14:16:53 5 I have a tendency to mumble. If you can't understand what
14:16:57 6 I'm saying just pull me up. You'll be relieved to hear
14:16:58 7 that I'm only going to have a few questions for you and
14:17:01 8 it's really about your first statement. Do you have a copy
14:17:03 9 of that handy?---I do now. Just bear with me.
10

14:17:10 11 I can get it put up on the screen. The number is
14:17:19 12 COM.0026.0001.0001. I'm just going to take you to a
14:17:41 13 question that you were asked or that you've answered in
14:17:43 14 your statement that is at 0012 and you might find it being
14:17:51 15 question 16?---M'hmm.
16

14:17:57 17 I don't believe that your hard copy is paginated; is that
14:18:06 18 right?---I can see the question numbers, there's no page
14:18:08 19 numbers, no.
20

14:18:09 21 Okay, right?---I can see it on the screen also, yes.
22

14:18:11 22
14:18:15 23 You say in respect of question 16 that at the time you had
14:18:22 24 no knowledge or understanding of a lawyer's duty or
14:18:25 25 obligation related to confidentiality, that's right?---I
14:18:32 26 didn't understand it then. I probably still don't clearly
14:18:36 27 understand it now.
28

14:18:37 29 You pre-empted my follow-up question?---Yes. It's been the
14:18:42 30 subject of many questions prior to now.
31

14:18:44 32 Yes, but would it be fair to say that since you've left the
14:18:49 33 SDU, and perhaps Victoria Police more broadly, and since
14:18:54 34 your involvement in this Royal Commission, that you've had
14:18:57 35 a greater understanding, you've got a now greater
14:19:00 36 understanding of that duty of confidentiality?---I wouldn't
14:19:05 37 necessarily say that at all.
38

14:19:09 39 Okay. At the time that you were working at the SDU, and
14:19:14 40 again in Victoria Police more generally, did you understand
14:19:17 41 the lawyer needed to act in the best interests of their
14:19:20 42 client?---I think my answers again were back then I
14:19:31 43 probably didn't even really consider it. Yes, sorry,
14:19:38 44 what's the question? Did I understand that they should?
45

14:19:41 46 Yes. Was it your understanding that lawyers, either
14:19:46 47 barristers or solicitors, had a particular obligation to

14:19:50 1 act in their client's best interest?---I didn't really
14:19:57 2 consider that, no.
3
14:20:03 4 I'm going to take you to - I'm going to deal really with
14:20:08 5 what would colloquially be referred to as the tomato tins
14:20:14 6 case, just to order your own thoughts?---Yes.
7
14:20:19 8 You would accept, wouldn't you, that Ms Gobbo's involvement
14:20:23 9 in the tomato tins case was extremely problematic? Would
14:20:31 10 you accept that?---Post discovery of the tomato tins of
14:20:41 11 course, yes. I think it has been, yes. As odd as this may
14:20:48 12 sound, I didn't have a lot to do with that aspect of her
14:20:52 13 handling. I did have some, I'm not denying that.
14
14:20:57 15 No, no?---But the critical parts were mostly handled by
14:21:02 16 others.
17
14:21:02 18 She was the source of the bill of lading being provided to
14:21:06 19 police or authorities, that's correct, isn't it?---I
14:21:08 20 understand that to be right.
21
14:21:10 22 And indeed I think in answer to a question or a series of
14:21:14 23 questions by Mr Woods yesterday you said that but for her
14:21:18 24 providing it to you, that you, being the police and
14:21:23 25 authorities, wouldn't have known about the importation of
14:21:27 26 the drugs and the like; is that correct?---I don't remember
14:21:35 27 being asked about that topic. If the record says that, so
14:21:39 28 be it.
29
14:21:41 30 I'm just asking if you cast your mind back to yesterday in
14:21:44 31 the afternoon?---Yes.
32
14:21:44 33 Shortly before the Commission adjourned for the
14:21:51 34 day?---Okay.
35
14:21:51 36 The response you gave was that you, and I say you, but
14:21:56 37 Victoria Police, wouldn't have known the importation, do
14:21:59 38 you have a recollection of saying that?---Oh okay, yeah,
14:22:03 39 it's coming back now. Yeah, I think I recall something of
14:22:06 40 that nature, yes, that would be right.
41
14:22:08 42 You'd have to accept, wouldn't you, given what you know
14:22:11 43 now, that Ms Gobbo was conflicted at the time in
14:22:18 44 circumstances where she was representing my client,
14:22:22 45 Mr Barbaro, while also representing others in the course of
14:22:27 46 that importation?---I don't know.
47

14:22:36 1 You don't know if you'd be conflicted?---This whole subject
14:22:42 2 of conflict, when it comes to crimes being committed and
14:22:47 3 dealing with clients, is still unclear to me.
4
14:22:50 5 Okay. Would you accept that at some point some of the
14:22:57 6 parties in the importation would have differing
14:23:06 7 interests?---I don't know what you mean by that.
8
14:23:09 9 Some might be wanting to plead guilty or some might be
14:23:14 10 wanting to contest things or things like that. The way
14:23:17 11 they proposed to deal with their matters might ultimately
14:23:22 12 be different between each of the people who are arrested in
14:23:26 13 respect of this?---Okay. I don't know.
14
14:23:35 15 She was representing others and she was the source of the
14:23:40 16 information that was the catalyst for their arrest, would
14:23:44 17 you accept that?---Yes.
18
14:23:52 19 You would expect, wouldn't you, that if Mr Barbaro was
14:23:58 20 aware that his barrister was the source of the information
14:24:02 21 that ultimately led to his arrest, that he might have
14:24:06 22 thought twice about whether or not that barrister was the
14:24:09 23 right person to represent his interests?---I don't know
14:24:15 24 what was in his mind.
25
14:24:17 26 Well do you think that a person who's accused of a crime
14:24:23 27 would employ a barrister who had been the person who
14:24:27 28 ultimately set the whole thing in motion, his arrest?---But
14:24:33 29 isn't this ultimately a matter for the barrister?
30
14:24:37 31 But it's a matter for Mr Barbaro though in who he selects
14:24:44 32 as being his counsel?---M'mm.
33
14:24:46 34 Do you accept that?---It's up to him who he selects as
14:24:52 35 counsel?
36
14:24:53 37 Yes?---Yes.
38
14:24:54 39 And that knowing that his barrister or the person who he
14:25:00 40 had selected to be his counsel was the person who set in
14:25:05 41 train the events that led to his arrest, that would be a
14:25:09 42 relevant matter for him to consider?---M'mm.
43
14:25:14 44 Is that a yes?---No, I'm thinking.
45
14:25:18 46 COMMISSIONER: He's thinking about it. He's thinking about
14:25:20 47 it.

14:25:21 1
14:25:21 2 MR WAREHAM: I'm sorry, Mr Smith, I can't see you so if
14:25:24 3 you're thinking I can't tell?---Of course. If I perhaps
14:25:31 4 take a pause it's me thinking.
5
14:25:34 6 We need some thinking music?---No, that would be
14:25:36 7 distracting. I understand what you're saying.
8
14:25:42 9 Excellent?---I think that - maybe.
10
14:25:50 11 Maybe?---Maybe is my answer, yes.
12
14:25:53 13 And it would certainly be a relevant consideration if you
14:25:56 14 were paying that person?---I suppose so, that would flow
14:26:02 15 on.
16
14:26:05 17 Did you ever yourself raise concerns with Ms Gobbo about
14:26:13 18 her involvement representing Mr Barbaro in this matter,
14:26:20 19 that being the tomato tins matter?---I don't recall that I
14:26:26 20 did. If I did it would be in the ICR. I don't know if I
14:26:29 21 ever knew that she was representing Mr Barbaro.
22
14:26:36 23 Did you say you didn't know if she was representing?---If I
14:26:39 24 did know - I don't know if I knew. I don't recall now.
14:26:43 25 It's that long ago I don't know who represented what and
14:26:46 26 towards the end there was a long period of not dealing with
14:26:50 27 this source so I can't remember.
28
14:26:56 29 Do you have a paper copy of your statement, your first
14:26:59 30 statement, in front of you?---Yes.
31
14:27:05 32 In answer to question 21 - which for my friends at the Bar
14:27:16 33 table ends in 0014. Just have a read of that
14:27:19 34 question?---Yes.
35
14:27:24 36 So you say that no one raised any issues with you about
14:27:29 37 Ms Gobbo in respect of that question?---That's right.
38
14:27:33 39 And you stand by that position?---Yes, that's as my
14:27:40 40 understanding.
41
14:27:41 42 Implicit in that question, and indeed implicit in your
14:27:45 43 answer, is that these organisations or persons representing
14:27:49 44 those organisations knew of her status and had no issues,
14:27:53 45 would you accept that?---I suppose the way question's
14:28:01 46 worded that is what's implied.
47

14:28:04 1 So when you've read that question and you've provided an
14:28:06 2 answer, is that how you interpreted the question at that
14:28:11 3 time?---Yeah.
4
14:28:16 5 Can you tell me, please, to your knowledge when did the
14:28:27 6 Australian Federal Police, Customs or the Commonwealth
14:28:29 7 Department of Public Prosecutions become aware of
14:28:34 8 Ms Gobbo's status as a registered human source?---I don't
14:28:39 9 know if and when they did.
10
14:28:41 11 Okay. That's all I have for this witness.
12
14:28:54 13 COMMISSIONER: Thank you.
14:28:55 14
14:28:56 15 MR WAREHAM: That's all the questions I have for you,
14:28:59 16 Mr Smith, thanks very much.
17
14:29:01 18 COMMISSIONER: Thank you Mr Wareham. Yes, Mr Holt.
14:29:03 19
20 <CROSS-EXAMINED BY MR HOLT:
21
22 Mr Smith, can you hear me okay?---Yes.
23
14:29:04 24 Saul Holt, I'm counsel for Victoria Police. I only have a
14:29:06 25 few questions for you. Can I confirm, Commissioner, we're
14:29:11 26 in open hearing at present?
27
14:29:12 28 COMMISSIONER: Yes, we are in open hearing.
14:29:14 29
14:29:14 30 MR HOLT: Thank you, I'm grateful. You were just asked
14:29:15 31 some questions about the tomato tins matter, do you recall
14:29:18 32 that?---Yes.
33
14:29:19 34 It was put to you and you agreed that Ms Gobbo was the
14:29:22 35 catalyst for Mr Barbaro and, I think by implication,
14:29:28 36 others' arrest, do you recall that?---Yes.
37
14:29:29 38 And it was put to you on the basis that the arrests of
14:29:33 39 those persons, Mr Barbaro particularly, were "set in train"
14:29:37 40 by Ms Gobbo, do you recall that?---Words to that effect,
14:29:41 41 yes.
42
14:29:42 43 Yes. The tomato tins prosecution was a Federal
14:29:45 44 prosecution, do you agree?---Yes.
45
14:29:47 46 So a prosecution where the arrests were made by the
14:29:52 47 Australian Federal Police?---Yes.

1
14:29:52 2 And where the prosecution was conducted by the Commonwealth
14:29:55 3 Director of Public Prosecutions?---As I understand, that's
14:30:00 4 how their system works, yeah.
5
14:30:02 6 Did you have at the time any knowledge of the detail of the
14:30:05 7 AFP's investigation in respect of the tomato tins matter
14:30:09 8 and what information that organisation might have held that
14:30:12 9 led to the arrests of those persons ultimately?---No, none.
10
14:30:16 11 No, thank you. The final topic I have for you is the
14:30:19 12 exciting after lunch issue of recording and how information
14:30:24 13 is recorded. Am I right that there were two ways in which
14:30:29 14 you spoke to Ms Gobbo, one was face-to-face and the other
14:30:32 15 was by telephone?---Yes, and very, very rarely text.
16
14:30:37 17 Understood, thank you. Now, just focusing on the
14:30:40 18 telephones. We can see in the ICRs where there's a
14:30:45 19 telephone call because you record specifically a telephone
14:30:48 20 call from Ms Gobbo, for example?---Yeah, everything, every
14:30:50 21 call had to be accounted for, if you like.
22
14:30:53 23 Yes. But the primary document, if we can put it that way,
14:30:56 24 where your contacts, phone calls from Ms Gobbo in this
14:30:59 25 context were recorded was your diary, that's where it was
14:31:02 26 recorded at the time?---In the early days of handwritten
14:31:08 27 diaries, yes.
28
14:31:10 29 When there were handwritten diaries they were recorded in
14:31:14 30 your diaries?---Yes.
31
14:31:16 32 And then you would transfer the diary material, in effect,
14:31:19 33 to an ICR as soon as you practicably could?---Yes.
34
14:31:24 35 And over time, given how extraordinarily busy and
14:31:29 36 overworked this unit was, and you in particular, it became
14:31:32 37 harder and harder, didn't it, to record - to do that
14:31:35 38 process of taking the information from your diary into the
14:31:38 39 ICRs in a timely way, there were some delays, and I'm not
14:31:43 40 being critical?---There were delays. It was quite
14:31:46 41 laborious and time consuming, yes.
42
14:31:49 43 In terms of where there's a difference between what's
14:31:51 44 recorded in your diary and what's recorded in the ICR
14:31:55 45 about, say, the content of information from Ms Gobbo, for
14:31:58 46 example?---Yes.
47

14:31:59 1 Your diary would be the better record, is that fair?---I'm
14:32:05 2 not sure what discrepancies you're talking about, I
14:32:07 3 suppose, but probably. But I mean when I've typed it maybe
14:32:12 4 I've expressed it in a different, more clearer way.
5
14:32:14 6 I understand. But, for example, where, and I'll take you
14:32:17 7 to an example in a moment, where your diary records
14:32:22 8 something taken down in real time but the ICR is dated
14:32:26 9 sometimes weeks or sometimes months later, the best record
14:32:28 10 would be your diary?---Yes, definitely.
11
14:32:30 12 Thank you. Now when you would receive information from
14:32:36 13 Ms Gobbo and then pass it on, I'm concerned here
14:32:39 14 particularly with Mr O'Brien of Purana?---Yes.
15
14:32:43 16 You would obviously record the passing on of that
14:32:46 17 information to Mr O'Brien?---Yes, that was my practice, to
14:32:51 18 note it down as it occurred.
19
14:32:54 20 Is it fair to say that the way in which you did that, as we
14:32:57 21 can see in the ICRs and also in your diaries, most but not
14:33:03 22 all of the time was to use the shortening ADV for
14:33:08 23 advised?---That's right.
24
14:33:08 25 And then initials or the name to indicate the person to
14:33:12 26 whom the information had been give?---Yes.
27
14:33:13 28 Often, might I suggest, indeed the majority of the time,
14:33:17 29 when you wrote down ADV, say JOB for Jim O'Brien, you
14:33:23 30 wouldn't then recount in your diary precisely the
14:33:26 31 information that you had given to Mr O'Brien, you would
14:33:29 32 simply say, "ADV JOB"?---Yes.
33
14:33:33 34 In your diary, yes?---That's right. But I can elaborate on
14:33:41 35 that further if you like.
36
14:33:42 37 Please do, I'm sure it would assist the
14:33:46 38 Commissioner?---Well information reports, if they were
14:33:51 39 submitted, were sanitised. So I would only - the
14:33:56 40 information we received sort of verbatim from the source.
41
14:34:00 42 Yes?---But I would only pass on to Mr O'Brien, for example,
14:34:04 43 if that was him, a sanitised version of that.
44
14:34:07 45 I understand. So when we look at your diary or the ICRs
14:34:12 46 we'll see that you've written down, as best as you can,
14:34:15 47 verbatim everything that Ms Gobbo has told you, yes?---Yes.

1
14:34:19 2 And then we see "ADV JOB", and what you've done in that is
14:34:24 3 kind of, at least to some extent, sanitised it in the
14:34:28 4 process of telling him?---That's right, and any exception
14:34:33 5 to that would be I think something I was just shown maybe a
14:34:35 6 few minutes ago.
7
14:34:36 8 Yes?---Or earlier today, I can't remember, "Advised all of
14:34:40 9 the above ".
10
14:34:40 11 All right?---For example, that would indicate their area is
14:34:46 12 included, so that's a difference.
13
14:34:47 14 I understand and I'm going to take you to one of those
14:34:49 15 entries in a moment, so thank you for highlighting that.
14:34:52 16 Let's in fact go to one of those entries. If we could go,
14:34:58 17 please, to the ICRs and have a look here at p.252 of the
14:35:03 18 ICRs. I'm here, Commissioner, on the date 18 April 2006.
14:35:21 19 Yes, thank you. Could we go back a page, I apologise, just
14:35:24 20 to get the context. Here we're now in fact at 251 and you
14:35:28 21 were asked some questions about this both yesterday and
14:35:31 22 today, Mr Smith. This is the date where at the top of 251
14:35:36 23 we can see a note which I'll come back in a moment to. At
14:35:40 24 19:05 which says, "Advise DSS O'Brien Op Purana all of
14:35:47 25 above". That's I think the example you were talking about
14:35:50 26 from earlier today?---Yes, that would relate to the intel
14:35:52 27 above, yes.
28
14:35:53 29 Understood, thank you. We'll come back to that one. If we
14:35:56 30 can then scroll through. We're still on 18 April, do you
14:35:59 31 see that, and there's a call from the human source,
14:36:01 32 Ms Gobbo, at 22:10?---Yes.
33
14:36:05 34 And then we go over the page and we see there at the very
14:36:10 35 top of the page, but still on the 18th, "Controller White,
14:36:15 36 Sandy White advised", do you see that?---Yes.
37
14:36:19 38 Below that, "DSS O'Brien immediately advised all of above",
14:36:25 39 do you see that?---Yes.
40
14:36:26 41 That suggests, doesn't it, on the face of the ICR that that
14:36:28 42 immediate advice of all of the above goes to O'Brien late
14:36:31 43 on 18 April 2006?---Yes.
44
14:36:35 45 But if we go to the end of this ICR, which is on p.267, and
14:36:45 46 again please understand that I'm not being critical, it is
14:36:48 47 absolutely accepted the kind of work pressure this unit was

14:36:52 1 under by Victoria Police. 12 September 2006 is the date
14:36:57 2 upon which you have dated the ICR at the end of the period
14:37:02 3 that's covered?---Okay, yeah, that would have been the date
14:37:07 4 I ultimately submitted the typed copy.
5
14:37:08 6 All right. I suspect, but please tell me if I'm right or
14:37:12 7 wrong, that the process of completing that ICR out of your
14:37:15 8 diaries might have been done at any stage before 12
14:37:18 9 September, kind of as time allowed for administrative
14:37:22 10 tasks?---That's right. When you get a chance to do it -
14:37:25 11 yeah, that's right. It's difficult.
12
14:37:27 13 We can't look at the ICR and say this entry was taken from
14:37:31 14 your diary and put into the ICR, that any particular entry
14:37:38 15 was done on any particular date, but we can be confident
14:37:41 16 that the whole thing was finished on 12 September?---Yes,
14:37:43 17 that's right.
18
14:37:43 19 I understand, thank you very much. Can we then go back to
14:37:48 20 - no, we don't need to do that. Just recall for a moment,
14:37:51 21 because I'll have something else put up on the screen in a
14:37:55 22 second, but we have that entry "DSS O'Brien immediately
14:37:58 23 advised of all of above" in the ICR indicating late on the
14:38:02 24 18th. So to recap, that material would have gone into the
14:38:07 25 ICR based on you looking at your diaries and completing the
14:38:13 26 ICRs at some point between the 18th of April and the 12th
14:38:17 27 of September?---Some time between then, that's right.
28
14:38:23 29 We just can't be more specific about when, but you were
14:38:26 30 under a lot of pressure so these admin. tasks took some
14:38:30 31 time?---Yea, and I recollect - I mean the document might
14:38:32 32 have been half done for some time and then I got to the
14:38:34 33 rest of it.
34
14:38:36 35 Understood?---Yeah, but I couldn't tell you.
36
14:38:38 37 No, that's all right. But in light of all that again, the
14:38:41 38 best record is your diary, correct?---Yes, I think so,
14:38:44 39 yeah, the next one is with time.
40
14:38:46 41 Please understand I'm not being critical in asking these
14:38:50 42 questions. Could we have a look please at your diary, it's
14:38:53 43 VPL.2000.0001.5547. You see them side-by-side, Mr Smith.
14:39:18 44 Can you see that?---Exciting, yes.
45
14:39:22 46 I won't comment. We see this is p.96 your diaries and we
14:39:29 47 can see from the top of the page you've noted helpfully

14:39:32 1 April 06. We can see that?---M'hmm, yes.
2
14:39:35 3 Thank you. Can we go over the page, please, this will test
14:39:39 4 you, still keeping it on that side if we can. If we go
14:39:44 5 down to the bottom of p.97 we see Wednesday the 9th of the
14:39:48 6 4th, can you see that?---Yes.
7
14:39:51 8 I've got very good at your handwriting but please tell me
14:39:54 9 if I get it wrong. Which means, as a matter of logic,
14:39:57 10 everything above that is on the 18th, yes?---Yes.
11
14:40:00 12 And we can see a reference in your diary which correlates
14:40:05 13 to the controller Sandy White updated in the ICR?---Oh yes.
14
14:40:15 15 No, no, I'm sorry. Can we go back on the ICR page to - - -
14:40:20 16 ?---Yes, it is there, yes. It's where the - - -
17
14:40:23 18 Yes, to 252. We need to go to 252 on the ICRs. There we
14:40:30 19 go. Now we're literally on the same pages. We can see at
14:40:36 20 the top, "Controller Sandy White advised", and that appears
14:40:39 21 in context to correlate to the entry which has a shortening
14:40:44 22 of Sandy White's real surname and then the word - - -
14:40:48 23 ?---My abbreviation, yes, that's right.
24
14:40:50 25 Yes, terrific. What we don't see there, and again this is
14:40:52 26 just an example of the problem of time between diaries and
14:40:58 27 ICRs, I'd suggest?---Okay.
28
14:40:59 29 What we don't see there is any reference to a call to
14:41:03 30 Mr O'Brien, do you see that? Do you see that that isn't
14:41:06 31 there?---I'm looking for it. If you tell me it's there I'm
14:41:09 32 not going to find it.
33
14:41:10 34 It's not there because you can see - - - ?---No.
35
14:41:13 36 You've put it in but it's over the page on the 19th. Can
14:41:16 37 we do that on the diary, go to p.98? Perfect, thank you.
14:41:22 38 We can see there, and no matter how much I try I can't
14:41:26 39 understand the word you've written before JOB. Could you
14:41:29 40 tell me what that is at the top of the page?---"From."
41
14:41:33 42 "From JOB." There's a call there from him, but in any
14:41:35 43 event that's a conversation you're having with him, talking
14:41:37 44 about some of the intel that's been received the day
14:41:39 45 before?---Yes.
46
14:41:42 47 Again then, when we look back at the note that you've made,

14:41:47 1 that indicates on the face of the ICR that Detective Senior
14:41:51 2 Sergeant O'Brien was immediately "advised all of the above"
14:41:54 3 on the night of the 18th?---Right.
4
14:41:56 5 The better record, may I suggest, and again without
14:42:00 6 criticism, is from your diary as to when information was
14:42:03 7 provided and in what form?---Just to be clear, you're
14:42:08 8 saying that I told him the next day?
9
14:42:13 10 That's what it appears from the diary and I'm asking you,
14:42:16 11 because there's no entry the night before?---There is no
14:42:18 12 entry the night before, except what doesn't jibe with that
14:42:24 13 is "from".
14
14:42:25 15 I understand. So it may well be that you've left a message
14:42:29 16 or something and he's called back and, if so, you might
14:42:32 17 expect that to be in Mr O'Brien's diaries?---I would expect
14:42:40 18 it to be in his diary in any case either way. I mean, I
19 don't know what you want me to say about it.
20
14:42:44 21 No, I understand, thank you. I know it's hard looking at
14:42:46 22 these documents after a period of time. Just one final
14:42:48 23 matter then. Could we keep looking at the nifty split
14:42:58 24 screen. Could we go back to 251 of the ICRs please. At
14:43:01 25 the top there, that's the reference I asked you to keep in
14:43:03 26 mind, "19:05 advise DSS O'Brien Op Purana re all above", do
14:43:12 27 you see that?---Okay, yeah.
28
14:43:13 29 If we can remove the highlighting. Perfect. If we can
14:43:17 30 just try and find the relevant entry to that in your diary.
14:43:21 31 It's p.96 at the top. So one back please. Perfect. Just
14:43:26 32 there is perfect. We can see there at 19:05 an equivalent
14:43:32 33 entry which just in your diary says "ADV JOB" in the way we
14:43:42 34 talked about before?---Yes.
35
14:43:43 36 Thank you, Commissioner, that's the cross-examination.
37
14:43:45 38 COMMISSIONER: Thank you. Yes Mr Chettle.
14:43:46 39
40 <RE-EXAMINED BY MR CHETTLE:
41
14:43:47 42 Thank you, Commissioner. Just while that's there,
14:43:50 43 Mr Smith. I think what Mr Holt's trying to establish is
14:43:54 44 that you may have rung on the 18th but didn't speak to him
14:43:58 45 but he returned a call to you on the next day, the 19th,
14:44:03 46 and you updated him then, is that a possibility?---It is
14:44:07 47 but I can't remember. As I say - - -

1
14:44:09 2 I'm not expecting you to remember?---- - - what goes
14:44:12 3 against that is "from JOB". That means he rang me. So I
14:44:16 4 can't remember, yeah, I can't remember.
5
14:44:17 6 He rang you in return to the message you'd left last night
14:44:20 7 or tried to catch him the night before?---Yeah, that's a
14:44:24 8 possibility.
9
14:44:26 10 I want to go back to the beginning of a few topics. You
14:44:33 11 were asked about which transcripts and tapes you've
14:44:36 12 listened to in relation to conversations with Ms Gobbo, do
14:44:38 13 you remember questions along that line and Mr Collinson - -
14:44:42 14 - ?---You're quite difficult to hear, I'm sorry.
15
14:44:45 16 I'm sorry. Mr Collinson asked you about whether or not the
14:44:47 17 20th of April of 06 was your most listened to tape,
14:44:51 18 remember those questions? If you don't, say so?---I know
14:44:59 19 there were questions about the tapes. I listened to it - I
14:45:02 20 listened to one reasonably intently or half of it.
21
14:45:06 22 That's the 30th - - - ?---I don't know if it was that one.
14:45:09 23 It was a different date.
24
14:45:12 25 The one you listened to intently was 30 October 06, was it
14:45:16 26 not, that's the date on which she's shown a number of
14:45:20 27 briefs of evidence to review?---Yes.
28
14:45:23 29 Commissioner, I've spoken to Mr Winneke about this. We've
14:45:25 30 provided a copy of - sorry, I'll get some evidence first.
14:45:29 31 What you did is you made corrections to that transcript,
14:45:33 32 didn't you?---As I went along, yeah. I didn't - I don't
14:45:36 33 think I deleted anything, I put in red any corrections that
14:45:39 34 I heard.
35
14:45:40 36 And you did a classification of the seriousness of some of
14:45:43 37 the errors and generally assessed the quality of the
14:45:46 38 transcript?---Well I corrected it and found it to be of
14:45:53 39 some - a large number of errors, some of which were quite
14:45:58 40 important.
41
14:45:58 42 We provided Mr Winneke with a copy of that, Commissioner.
14:46:01 43 Although neither of us have our copies with us in the
14:46:04 44 hearing today I'm going to notionally tender the corrected
14:46:08 45 transcript and I'll provide it to you when I bring it in.
46
14:46:13 47 COMMISSIONER: It really should be shown in the witness,

14:46:14 1 shouldn't it?
14:46:15 2
14:46:15 3 MR CHETTLE: He provided it to us and we've given it to
14:46:18 4 Mr Winneke. I don't think there's any argument.
5
14:46:21 6 MR WINNEKE: No, no. We have it, Commissioner, the
14:46:23 7 document. Certainly the document Mr Chettle gave us, and I
14:46:29 8 assume it's the one his client gave to him.
14:46:33 9
14:46:34 10 MR CHETTLE: You gave it to me to provide to Mr Winneke,
14:46:37 11 that's the way it went, wasn't it, Mr Smith?---I didn't
14:46:38 12 know what you were going to do with it but I gave it to
14:46:40 13 you.
14
14:46:40 15 COMMISSIONER: What transcript is this?
14:46:42 16
14:46:42 17 MR CHETTLE: 30 October 06, Commissioner. It's a corrected
14:46:45 18 or edited transcript by the witness.
19
14:46:47 20 COMMISSIONER: How many pages is it, do you know?
14:46:49 21
14:46:50 22 MR CHETTLE: No, I don't. I can't tell you that.
23
14:46:53 24 COMMISSIONER: Between SDU handlers and Gobbo, is that
14:46:55 25 right?
14:46:55 26
14:46:56 27 MR CHETTLE: Yes.
28
14:46:58 29 COMMISSIONER: You're wanting to tender that and it will be
14:47:00 30 produced later?
14:47:01 31
14:47:02 32 MR CHETTLE: Yes, I'll bring it in in the morning.
33
14:47:05 34 COMMISSIONER: And no doubt it'll be an A and a B copy.
14:47:09 35
14:47:10 36 #EXHIBIT RC501A - (Confidential) Transcript between SDU
14:47:12 37 handlers and Ms Gobbo dated 30/10/06.
14:47:12 38
14:47:14 39 #EXHIBIT RC501B - (Redacted version.)
14:47:15 40
14:47:15 41 COMMISSIONER: It's been marked up by this witness?
14:47:18 42
14:47:18 43 MR CHETTLE: It has, it's been marked with tape stickies
14:47:20 44 and things. As you explained I think in your evidence,
14:47:24 45 Mr Smith, you completed your first statement without having
14:47:27 46 had the time to go through the ICRs that related to
14:47:34 47 you?---Yes.

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And the second statement are your entries of various topics that you've extracted from the ICRs that either you completed or in some cases Mr Anderson completed?---Yes.

Last night before we left the Commission - one of the topics you isolate is entries that relate to Ms Gobbo's health that you set out one after the other in relation, in your second statement?---Yes, that's a number of them, it's not all of them, but I think it's a good representation.

Can I take you to your second statement on the second-last page, please. Commissioner, do you recall asking last night, you asked about a particular entry in relation to her health and we said we'd look for it overnight. Can I take you to the second-last page and the second-last entry on the second-last page.

COMMISSIONER: Yes, someone pointed that out to me as soon as we got outside the courtroom.

MR CHETTLE: I think you'll find that's the one you were inquiring about, Commissioner.

COMMISSIONER: Yes, it was.

MR CHETTLE: Have you got it there, the Cymbalta medication?---Yes.

That's the entry you were talking about last night to the Commissioner?---Yes.

All right. Now, in that very - you told the Commission that those early entries where Mr White was present as a controller, during the early meetings with Ms Gobbo were an assessment phase, you recall that evidence?---I don't but they were.

In relation to that first meeting on 16 September when the question that everyone's asked you about, tell me what you know about Mr Mokbel, do you remember that question?---Yes.

Was any information from that meeting disseminated?---I don't believe so. If it was it would be recorded in the ICRs. I don't think it was, no.

You were shown - this is another technical matter - you

14:49:46 1 were shown Exhibit 112 which is the who knew she was a
14:49:50 2 source document, do you remember that document?---Yes.
3
14:49:56 4 If it can be brought up on the screen so I can illustrate
14:49:59 5 the point I want to make. 112. As was pointed out - - -
14:50:57 6 ?---Yes.
7
14:50:58 8 As was pointed out yesterday, that document is now in
14:51:01 9 alphabetical order, you see that?---That's right.
10
14:51:04 11 As far as the names go?---Yes.
12
14:51:06 13 When the document was originally prepared I take it it
14:51:10 14 wasn't prepared in alphabetical order, it would be a
14:51:14 15 growing document which would be in random order?---That's
14:51:17 16 my recollection. Names were put on when we first started
14:51:20 17 to do it, so it was (Indistinct) to start with and then as
14:51:24 18 time went on they were added to at the bottom of the list.
19
14:51:28 20 You'll see that there is next to the name of the
14:51:30 21 individuals there's a "location" column where which unit or
14:51:36 22 squad they're in is set out, do you see that there?---Yes,
14:51:40 23 yes.
24
14:51:40 25 What's been pointed out prior to your arrival as a witness
14:51:45 26 is that the locations or the squads for the individual
14:51:48 27 members don't always match, they're from different squads.
14:51:54 28 For example, if you looked at the name under Mr Cheesman,
14:51:58 29 there's a name there that you would be familiar with and
14:52:01 30 supposedly - - - ?---Yes.
31
14:52:04 32 - - - comes from Operation Purana. There's an example
14:52:08 33 that's wrong, isn't it?---I think even Mr Cheesman's is
14:52:12 34 wrong.
35
14:52:13 36 Correct. That's where it came to the attention. Can I put
14:52:16 37 this - just so the Commission understands how this document
14:52:19 38 got to have that, the document's been put in alphabetical
14:52:23 39 order by the analyst which has rearranged the names of the
14:52:26 40 people, but the locations haven't been adjusted at the same
14:52:30 41 time, so they're wrong?---I guess. I don't know how it's
14:52:36 42 come to that but, yeah, there's certainly a few that are
14:52:40 43 wrong. Certainly a lot of the - on a quick look, a lot of
14:52:45 44 the locations are wrong. How that's occurred I don't know.
45
14:52:47 46 The proposition - I just tried to assist the Commission, if
14:52:50 47 the names were altered, to put them in alphabetical order

14:52:54 1 you'd need to adjust the units as well, wouldn't you?---Of
14:52:57 2 course, of course, but that's not happened here. But
14:52:59 3 they're certainly wrong. And it definitely was not in
14:53:03 4 alphabetical order.
5
14:53:05 6 COMMISSIONER: Mr Chettle, this was a living document?
14:53:08 7
14:53:08 8 MR CHETTLE: It was.
9
14:53:09 10 COMMISSIONER: When did it finish, when was the cut-off
14:53:11 11 point?
12
14:53:12 13 MR CHETTLE: Do you know the answer to that, Mr Smith, was
14:53:15 14 it still being done at the time that the unit was closed
14:53:17 15 down?---I think it would have been done up until the point
14:53:22 16 of de-registration.
17
14:53:24 18 Of her in January 09. Yes, all right?---Yeah. I actually
14:53:29 19 don't remember but that would make absolute sense for that
14:53:32 20 to have occurred.
21
14:53:39 22 You were asked questions about the risk that Ms Gobbo faced
14:53:41 23 and you remember the questions about risk of death and high
14:53:45 24 risk of serious injury, things of that sort?---Yes.
25
14:53:50 26 Insofar as this unit and its management of other sources,
14:53:55 27 did similar or higher risk of death or serious injury
14:54:00 28 relate to the people you were managing?---Yes.
29
14:54:04 30 In fact, without going into details, was one of the people
14:54:10 31 you were running involved with bkie groups?---Yes.
32
14:54:17 33 And obviously enormous risk to those people?---Yes.
34
14:54:28 35 You gave some evidence about Mr Biggin's role and you
14:54:32 36 indicated that at one stage he was your Superintendent
14:54:35 37 effectively in control of the DSU or SDU. Remember those
14:54:42 38 questions?---Yes. Yes, he was.
39
14:54:48 40 Was there in July of 2006 a reorganisation of the Police
14:54:52 41 Departments that saw Mr Biggin move into the role of
14:54:56 42 director supervision of the SDU?---Yes, that's right. He
14:54:59 43 wasn't there to start with. He was on the division where -
14:55:05 44 there were two divisions within where we were and he was on
14:55:09 45 the other side of it, if you like, and there was some
14:55:12 46 arrangement and then he became our sort of line boss.
47

14:55:17 1 At the time you conducted the audit that you've referred to
14:55:20 2 and you were asked about in April - - -?---That's right.
3
14:55:23 4 - - - he was not your line supervisor at that
14:55:27 5 stage?---Okay, did I say that?
6
14:55:28 7 No, no. I think yesterday you couldn't remember who it was
14:55:32 8 and I wanted to put a name to you of Superintendent Ian
14:55:35 9 Thomas. Does that name ring a bell?---Okay. That doesn't
14:55:38 10 ring a bell and I know that, my memory now that Mr Biggin
14:55:42 11 was in fact not our direct, in our direct line of command
14:55:47 12 at the time of the audit, yeah, but he was later.
13
14:55:51 14 After the audit and after, I suggest, 1 July 06 when he
14:55:55 15 became your head of line supervisor, you said yesterday
14:55:59 16 that he was often in the office. Do you recall giving that
14:56:02 17 answer?---Yeah, he was. Probably more than most
14:56:09 18 Superintendents in offices I've worked in.
19
14:56:12 20 Does that mean he actually came to the particular location
14:56:16 21 where the squad operated?---I suppose we moved locations -
14:56:24 22 you're reminding me now. The location we were, we weren't
14:56:32 23 in police premises for fair while, and probably it occurred
14:56:36 24 more so when we were back in police premises, which would
14:56:38 25 make sense.
26
14:56:39 27 So he had a day-to-day appreciation, from your observation,
14:56:43 28 of what was happening at the unit?---Yeah, and - so what I
14:56:49 29 said earlier about him being in the office, that happened
14:56:51 30 more so when we were in police premises. But he had been
14:56:54 31 at the premises and I'm sure - I know that Sandy White was
14:57:04 32 in regular consultation with him.
33
14:57:06 34 Yesterday you were taken to a transcript of a conversation
14:57:12 35 you participated in with Ms Gobbo on 12 January of 06 and
14:57:17 36 this is where she discussed hypothetically the hypothetical
14:57:23 37 position of Mr Mokbel wouldn't plead or was told to plead
14:57:26 38 but he wouldn't do it, do you remember those
14:57:29 39 questions?---Yes, in general terms, yes.
40
14:57:32 41 And can I put up p.117 of the ICRs, please. 3838. You'll
14:57:45 42 remember the Commissioner pointed out to you the entry in
14:57:48 43 the ICRs that relate to him not pleading or won't plead or
14:57:53 44 being stubborn, words to that effect?---Yes.
45
14:58:02 46 There you are. Just above the Tony Mokbel reference," HS
14:58:06 47 and Heliotis want Mokbel to plead but he won't, he's too

14:58:12 1 stubborn", do you see that entry?---Yes.
2
14:58:15 3 Was there any dissemination of that conversation with
14:58:17 4 Ms Gobbo?---No.
5
14:58:20 6 After she said it you put it in the documents, that's where
14:58:23 7 it stayed?---Yes.
8
14:58:25 9 All right. The next topic that you were asked about I
14:58:28 10 think it's on p.80 of the ICRs. It's 28 July 06. I'm told
14:59:20 11 I've got the wrong page number. 372, thank you. I know
14:59:47 12 what it is, it's p.80 of the 28 July 06 conversation you
14:59:52 13 had with her of the transcript. It's referred to in the
14:59:54 14 ICRs but I need perhaps to go to this point. You remember
14:59:59 15 her being annoyed about what she said was you disseminating
15:00:06 16 information about a \$20,000 alleged theft, and you'll she
15:00:13 17 says, "What I'm annoyed about is the 20 grand. I told you
15:00:16 18 I never mentioned that figure". Mr White says, "Yeah". Do
15:00:20 19 you remember that yesterday, you were taken to that section
15:00:22 20 of a tape?---It rings a bell, yes, the 20,000, yes. Is
15:00:28 21 that in front of me right now though?
22
15:00:32 23 No, you haven't. It's p.80 of VPL.0005.0184.0520. I'm
15:01:25 24 satisfied - I can work with what we've got on the screen if
15:01:29 25 you like, Mr Operator. You see a copy of your ICR on the
15:01:35 26 screen in front of you?---Yes.
27
15:01:38 28 You'll see under the heading "Possible compromise by
15:01:43 29 ESD"?---Yes. Can it be scrolled down? Yes.
30
15:01:46 31 You'll see, "HS angry re actual potentially being aware of
15:01:51 32 her involvement with police. HS told by handler that he'd
15:01:55 33 listened to the recording. Discussion re ESD inquiry and
15:01:58 34 actual interview". Now you'll see a name there, under the
15:02:01 35 name of Mr Overland, there's a name starting with S that's
15:02:05 36 written in the document?---There's two that start with S.
37
15:02:10 38 Yes, I know. The second of them?---The second of them,
15:02:13 39 yes.
40
15:02:13 41 Has a pseudonym?---Oh right.
42
15:02:16 43 Did that conversation that you had in relation to her anger
15:02:20 44 relate to an alleged theft of \$20,000 by that particular
15:02:28 45 name?---I believe so, that's right.
46
15:02:30 47 Insofar as that was concerned, you had told Mr Attrill of

15:02:36 1 what she had told you had happened with that particular
15:02:41 2 person?---I don't know if - I can't remember if I spoke to
15:02:49 3 Attrill directly or certainly it was passed on to him.
4
15:02:53 5 All right?---But it is his area, yeah.
6
15:02:56 7 The question I wanted to ask you was, firstly, did it cross
15:03:03 8 your mind that the information you passed on to him in
15:03:04 9 relation to that alleged \$20,000 theft, did it cross your
15:03:08 10 mind that that was legally professionally privileged?---It
15:03:11 11 didn't at that time, no.
12
15:03:14 13 Do you now appreciate that it may have been?---Yes.
14
15:03:23 15 Is there any explanation as to why it would be disseminated
15:03:25 16 in the way that it was?---The subject matter in that
15:03:30 17 involved corruption or potential corruption or an
15:03:34 18 allegation of that and we were always obliged to never - we
15:03:42 19 always had to pass that on. It wasn't up to us to filter
15:03:48 20 whether it was right, wrong or otherwise. The fact that it
15:03:51 21 had been the allegation of a subject that had come up here
15:03:57 22 I think - no, I actually think this is from - Mr Biggin
15:04:00 23 would have enforced this from my memory. Anything to do
15:04:07 24 with corruption should be passed on if at all possible.
25
15:04:10 26 Yes, thank you. When you made your first statement, as you
15:04:14 27 pointed out, when you were asked whether or not there was
15:04:20 28 anything legally professionally privileged you might have
15:04:23 29 disseminated or come across and used, you declared being
15:04:27 30 given the information by Ms Gobbo about two guns on 22
15:04:32 31 April of 2006, do you remember that piece of
15:04:36 32 evidence?---Yes. Yes, I did.
33
15:04:38 34 And indeed you admitted, you said that you passed that on.
15:04:42 35 At the time you made your first statement had you read the
15:04:46 36 record of interview that was conducted by the individual
15:04:52 37 who was being spoken to at the police station?---No.
38
15:04:56 39 Have you read it since?---I think I have. I can't remember
15:05:04 40 what it says.
41
15:05:06 42 It says what it says, I won't hold you up by taking you to
15:05:11 43 it?---Okay.
44
15:05:13 45 You've been asked some questions today about the tomato
15:05:16 46 cans case?---M'mm.
47

15:05:22 1 Propositions were put to you yesterday by counsel assisting
15:05:26 2 that Ms Gobbo was acting in the grossest dereliction of
15:05:36 3 duty to her clients because she was acting for Mr Karam at
15:05:39 4 the time that she provided information to the SDU about the
15:05:41 5 bill of lading for the tomato cans. Do you remember those
15:05:45 6 questions?---Yes, that was the flavour of the questions for
15:05:50 7 sure.
15:05:50 8
15:05:50 9 You said in answer to it that you remembered her
15:05:53 10 disappointment about somebody being acquitted. Do you
15:05:56 11 remember saying something like that to the Commissioner
15:05:58 12 yesterday?---Yes, yes.
13
15:06:00 14 So in relation to the trial that she was doing for
15:06:04 15 Mr Karam, did she in fact secure an acquittal for him in
15:06:07 16 relation to that very matter?---I don't know.
17
15:06:14 18 You don't know which one you were referring to when you
15:06:18 19 talked about her disappointment of the committal?---Oh,
15:06:20 20 sorry, the acquittal matter was not Mr Karam. That was an
15:06:25 21 example of her feelings in a court matter where she'd done
15:06:30 22 the best for her client and when he got acquitted was
15:06:35 23 disappointed.
24
15:06:37 25 I'm suggesting to you, that was Mr Karam but you can't
15:06:39 26 remember, is that what it comes to?---No, no, that's right,
15:06:42 27 no.
28
15:06:43 29 The reward application that you indicated for speeding
15:06:50 30 fines that she got?---Yes.
31
15:06:52 32 Who makes the decision in relation to whether that
15:06:54 33 happens?---It originates with the handler, it's signed off
15:07:01 34 by the controller, then it goes to - well I'm not sure of
15:07:05 35 the chain but it ends up at HSMU, and then there's a
15:07:09 36 rewards - back then, I think it's probably still the same,
15:07:14 37 there's a rewards committee. So it's a group of I think
15:07:17 38 mostly independent officers and, you know, that committee
15:07:23 39 rotates. The members change all the time, they're quite
15:07:26 40 high ranking and they make a decision.
41
15:07:29 42 So it's not the SDU's choice. You make the recommendation
15:07:32 43 and someone else determines it?---Yes.
44
15:07:34 45 All right. You said you remember Mr White having a
15:07:42 46 conversation with you about whether or not Ms Gobbo was
15:07:49 47 told not to go to the police station on 22 April, do you

15:07:55 1 remember questions about that being asked?---Yes.
2
15:07:59 3 And you said that you can remember it from a conversation
15:08:01 4 with him from the SDU days, remember something along those
15:08:05 5 lines?---Yes.
6
15:08:06 7 What do you remember him saying to you in the SDU days?
15:08:09 8 Forget about when the Royal Commission started?---Oh.
9
15:08:12 10 Back in the SDU days?---It was like, "I don't care what you
15:08:21 11 say, Mr White, I'm going". I remember - - -
12
15:08:38 13 That's what he told you back then?---Actually, that was my
15:08:43 14 word, it must have been a first name.
15
15:08:49 16 As I understand your evidence he's reminded you of that
15:08:55 17 again after the Royal Commission was called on?---I even
15:08:57 18 remember the gesture that he used with his hands, pumping
15:09:02 19 one fist into a palm. That was his gesture but I sort of
15:09:05 20 remember that.
21
15:09:06 22 Back then?---Yeah.
23
15:09:13 24 Mr Collinson asked you about whether you recall any
15:09:17 25 information that she gave you that was incorrect, remember
15:09:22 26 questions along those lines?---Yes.
27
15:09:25 28 And he said that I'd correct him if he was wrong. You
15:09:30 29 remember Ms Gobbo giving you a version of events back in
15:09:33 30 the early days about her involvement with Paul Dale?---Yes,
15:09:37 31 that's right. Yes, I do now.
32
15:09:41 33 Do you recall that she had another version of events that
15:09:43 34 she gave you subsequently in 2008?---That's right, yes.
35
15:09:50 36 Did she admit to you that she hadn't told you the truth in
15:09:53 37 the early days?---That's right, yes. That was - maybe I
15:09:59 38 should have answered that maybe there was some lies by
15:10:03 39 omission but the things that she told us certainly didn't
15:10:07 40 ring true, but yes, in this matter, yeah, the story
15:10:09 41 certainly changed.
42
15:10:12 43 Indeed, at the end she - by the time you left, parted ways
15:10:16 44 with you, she'd given you assurances that she wasn't acting
15:10:19 45 for people that you told her she couldn't act for?---I
15:10:26 46 think so.
47

15:10:26 1 I can go through them all but the records speak for
15:10:29 2 themselves?---Okay.
3
15:10:33 4 Were you aware that this Commission has now been provided
15:10:35 5 with evidence that she was in fact charging substantial
15:10:40 6 sums of money to people who she said she wasn't acting for?
15:10:45 7 Are you aware of that?---I have been told that. I'm not
8 even sure what those documents are but I've been told it
15:10:50 9 is.
10
15:10:51 11 That's of recent times?---Right.
12
15:10:52 13 Is that right?---I accept that I was told that. I hadn't
15:10:54 14 seen them and I wouldn't even know what they were.
15
15:10:56 16 The point I'm trying to make, you know it now but you
15:10:59 17 didn't know it back then?---Yes.
18
15:11:04 19 Insofar as the proposition was put to you that you didn't
15:11:10 20 discuss with her any of the risks she was taking by doing
15:11:16 21 what she did on 22 April 2006, do you remember that line of
15:11:25 22 questioning?---Yes.
23
15:11:28 24 Did she exhibit to you any awareness of the risks to
15:11:31 25 herself in relation - did she know the risks she was
15:11:35 26 running as far as you were concerned?---I think she did.
15:11:39 27 She knew the Mokbels, we didn't.
28
15:11:44 29 On the very tape-recorded conversation that you were taken
15:11:48 30 to for 20 April, you remember there was a conversation
15:11:53 31 where Mr White said, "Look, how does it work that you're
15:11:56 32 going to turn up and act for him when you're the person
15:12:01 33 responsible for putting him there?" Remember that line
15:12:04 34 of - - -?---Yes.
35
15:12:09 36 Mr White at one stage said, "Look, some barrister might
15:12:12 37 take the view that there's been some form of" - some person
15:12:20 38 might ask the question how could this be and she said words
15:12:23 39 to the effect, "Who in the fuck's going to say that? I
15:12:27 40 don't want to be dead tomorrow". Do you remember that
15:12:29 41 conversation?---Yeah, that's right, yeah.
15:12:30 42
15:12:33 43 In relation to what she did when she says, "I don't want to
15:12:40 44 be dead tomorrow", do you accept that that was a realistic
15:12:43 45 risk that she understood she was taking?---Yes.
46
15:12:53 47 On the suggestion of her involvement socially with the

15:12:55 1 crooks prior to her involvement with SDU, have you seen the
15:12:58 2 photo of her at Carl Williams' daughter's
15:13:08 3 christening?---I'm got an image that I think was in the
15:13:12 4 paper, I think it's probably from there.
5
15:13:14 6 Carl Williams on one side and Benji Veniamin on the other,
15:13:17 7 that one?---Yes.
15:13:18 8
15:13:21 9 COMMISSIONER: I think you tendered it?
15:13:23 10
15:13:24 11 MR CHETTLE: I did. No, I showed it, Commissioner. I
15:13:26 12 didn't tender it.
13
15:13:27 14 COMMISSIONER: You didn't tender it, okay.
15:13:28 15
15:13:28 16 MR CHETTLE: I thought about tendering it but I think
15:13:31 17 there's some issue with copyright.
15:13:41 18
15:13:41 19 Can I take you to - Mr Collinson asked you questions
15:13:45 20 about whether you actively tried to discourage her
15:13:50 21 behaviour in relation to socialising with crooks or getting
15:13:53 22 too involved with a particular person, do you
15:13:59 23 remember?---Yes.
24
15:13:59 25 Can I take you to ICR - p.86 of the ICRs, that's the first
15:14:09 26 lot. This is p.17 of ICR 012.
27
15:14:14 28 COMMISSIONER: You're going to be a while yet?
15:14:17 29
15:14:17 30 MR CHETTLE: No, Commissioner, I'm not. I'm going to
15:14:19 31 finish as soon as I possibly can.
32
15:14:21 33 COMMISSIONER: I'm sure you are. I'm just wondering
15:14:24 34 whether we should give the witness a break.
15:14:27 35
15:14:28 36 MR CHETTLE: I think this my last topic.
37
38 COMMISSIONER: All right then.
39
15:14:29 40 MR CHETTLE: Unless I can think up some more,
15:14:33 41 Commissioner?---Yes, it's on the screen.
42
15:14:38 43 You'll see that the top entry, a particular person
15:14:42 44 attempted to kiss her last week?---Yes.
45
15:14:48 46 She was advised not to allow the relationship to develop
15:14:50 47 for the sake of the handlers. It's an issue for

15:14:52 1 her?---Yes.
2
15:14:54 3 It's an issue for her only. She doesn't want to discourage
15:14:57 4 him and damage their relationship because she wants to
15:14:59 5 represent him, right?---Yes.
6
15:15:04 7 Is that you giving her that advice?---No.
8
15:15:08 9 Is that someone - - - ?---I think that's likely to be - we
15:15:15 10 can check at the top of the ICR I guess.
11
15:15:17 12 Mr Black, I'm sorry. The dot points?---It could be
15:15:22 13 Anderson.
14
15:15:23 15 I'm told I read it incorrectly?---Right.
16
15:15:28 17 I said "wants to represent him", she said "she has to
15:15:30 18 represent him". Sorry, I misread that. On the topic of -
15:15:46 19 the expression that caused you some disdain, her use of the
15:15:51 20 term cock teasing, do you remember questions about that by
15:15:56 21 Mr Collinson?---Yes.
22
15:15:57 23 Can I take you to ICR - p.973 of the ICRs. This is ICR 87.
15:16:12 24 I want to take you to - it's p.14 of that ICR at 87.
15:16:20 25 Halfway down the page she says - she confirms she's not
15:16:29 26 sleeping with anyone. "She became too close to them for
15:16:31 27 the simple reason of just being available for them. It's
15:16:35 28 not difficult to get close to them. She admits there's a
15:16:39 29 bit of cock teasing going on but nothing more"?---Yes.
30
15:16:43 31 That was in relation to her relationship with Rob Karam on
15:16:46 32 this occasion?---I can see that.
33
15:16:50 34 Yes, Commissioner. That's all the re-examination I have.
35
15:16:55 36 COMMISSIONER: Will you be long, Mr Woods?
15:16:57 37
15:16:57 38 MR WOODS: Maybe about ten to 15 minutes, Commissioner.
39
15:17:00 40 COMMISSIONER: Perhaps we should give the witness a break I
15:17:02 41 think. We'll have the afternoon break, thanks.
42
43 (Short adjournment.)
44
15:36:16 45 MR CHETTLE: Commissioner, I did forget one matter. With
15:36:18 46 your leave?
15:36:19 47

15:36:19 1 COMMISSIONER: Yes, certainly Mr Chettle.
15:36:21 2
15:36:22 3 MR CHETTLE: Can I put up Exhibit 301, please. Have a look
15:36:29 4 at that. Can you see that document, Mr Smith?---Yes.
15:36:32 5
15:36:33 6 It's headed, "3838 current issues, 26 May 06". The records
15:36:40 7 indicate that on that day you ceased being a handler or
15:36:47 8 handed over the handling of Ms Gobbo to Mr Green, do you
15:36:51 9 follow?---Yes.
15:36:51 10
15:36:51 11 If you go through to the last page perhaps when you look
15:36:55 12 at, there's a heading under DSU and "personal issues", the
15:36:59 13 fourth page of that document?---Yes.
15:37:01 14
15:37:01 15 You'll see down the last line she believes that someone is
15:37:05 16 having a holiday?---That's right, yeah.
15:37:07 17
15:37:08 18 Do you recognise this document?---Well that would be a,
15:37:14 19 it's mine, it would be a hand over document to whatever
15:37:17 20 handler was taking over from me.
15:37:19 21
15:37:19 22 This was produced to Mr White. He didn't know what it was,
15:37:25 23 but you prepared the document to give to the next handler
15:37:28 24 who took over from you on about that day?---That would be
15:37:31 25 right, yeah.
15:37:32 26
15:37:32 27 That's just to clarify that, Commissioner. I have no
15:37:35 28 further questions.
15:37:35 29
15:37:36 30 COMMISSIONER: Yes Mr Woods.
31
32 <RE-EXAMINED BY MR WOODS:
33
15:37:38 34 Mr Smith, earlier today you were asked some questions by
15:37:44 35 Mr Collinson, who's representing Ms Gobbo, about Ms Gobbo's
15:37:51 36 motivation and whether or not she was, whose interests she
15:37:57 37 was acting in, they were broadly characterised as these
15:38:00 38 questions. You gave an answer to one of those questions to
15:38:03 39 say that you think that Ms Gobbo was always trying to act
15:38:07 40 in the best interests of her clients. Do you recall giving
15:38:10 41 that evidence earlier today?---Yes.
15:38:13 42
15:38:13 43 And you stand by that position?---When she was actually
15:38:19 44 handling a matter in court is what I meant, yes.
15:38:22 45
15:38:22 46 Can I just take you through a couple of scenarios. The
15:38:26 47 first is, we spoke yesterday about the first three

15:38:30 1 face-to-face meetings you had with Ms Gobbo and I took you
15:38:33 2 to some transcript and put a couple of propositions to you
15:38:37 3 based on the transcript as to Ms Gobbo explaining on three
15:38:42 4 occasions that she was acting for a particular individual
15:38:48 5 late in 2005 and early in 2006, do you remember that?---I
15:38:53 6 think I remember the gist of that.
15:38:55 7
15:38:55 8 You know from that list that you've got in front of you the
15:38:59 9 person I'm talking about, it's the 35th name I
15:39:04 10 believe?---Right.
15:39:04 11
15:39:07 12 You accept the fact that she brought about that person's
15:39:10 13 arrest?---Yes.
15:39:12 14
15:39:13 15 You know that she was acting for Mr Karam on 5 June 2007
15:39:19 16 when she handed over the bill of lading that's been under
15:39:23 17 discussion?---I don't - as I say I wasn't involved in that.
15:39:30 18 If that's the case, you know, I don't know if she was
15:39:35 19 acting for him at that time.
15:39:36 20
15:39:36 21 You can take it from me she was acting for him in a County
15:39:44 22 Court trial on the day she handed over that bill of
15:39:48 23 lading?---Sorry, that does actually ring a bell, yes.
15:39:49 24
15:39:50 25 Are you aware of the matter of Mr Orman that has just been
15:39:55 26 before the Court of Appeal, are you generally aware of the
15:40:02 27 outcome of that matter?---Yes, but not the intricacies of
15:40:06 28 it, no.
15:40:06 29
15:40:07 30 I can tell you that one of the reasons or the reason
15:40:08 31 identified both by the Director of Public Prosecutions and
15:40:10 32 accepted by the Court of Appeal in that matter, that what
15:40:13 33 Ms Gobbo was actually doing was encouraging a prosecution
15:40:17 34 witness, who was a former client of hers, to go and give
15:40:22 35 evidence against her current client at that stage,
15:40:26 36 Mr Orman. Now, that's the basis upon which that appeal was
15:40:30 37 allowed. Were you aware of that?---If I had read it I've
15:40:35 38 forgotten it.
15:40:37 39
15:40:38 40 Mr White and yourself on 20th of the 4th, and there was a
15:40:43 41 clip that was played yesterday, I don't need to replay,
15:40:46 42 where Mr White said, "Some people could put up an argument
43 that a person who is a barrister perhaps could never help
15:40:51 44 the police and still represent the person that she's
15:40:54 45 helping the police with". Firstly, you accept that was a
15:40:57 46 reasonable question to ask given the timing being 20 April
15:41:01 47 2006?---Yes, we went over that yesterday, I think it was in

15:41:07 1 the context of - you know what the context was, trying to
15:41:11 2 flesh out all the, or some of the issues.
15:41:15 3
15:41:15 4 In fact the issues that were being fleshed out in that
15:41:18 5 particular part of the discussion was the real trouble that
15:41:21 6 occurred to both you and Mr White that she might not be
15:41:26 7 acting in that particular client's best interests, you'd
15:41:29 8 accept that?---That she might not be - sorry, in what
15:41:32 9 context?
15:41:33 10
15:41:33 11 She might not be acting in that client's best interests if
15:41:36 12 she was the person who assisted the police in that person
15:41:39 13 being implicated?---What I meant, I think the comment
15:41:44 14 you're focusing in on, is that once, once the matter came
15:41:49 15 to court, that she always acted in their best interests in
15:41:54 16 the court, in the court case.
15:41:58 17
15:41:58 18 In the court case. So you're separating the fact that she
15:42:00 19 might have been assisting police in implicating them in
15:42:03 20 different matters in the background, and keeping that
15:42:06 21 secret from the clients, but on the other hand when she
15:42:09 22 stood up in court, for all intents and purposes she was
15:42:12 23 doing a good job on the person's behalf, is that your
15:42:15 24 position?---For the latter part yes, I wasn't even
15:42:19 25 including the first part at all.
15:42:21 26
15:42:22 27 You would say it's acting in her client's best interests in
15:42:26 28 implicating the person in criminal activity so long as she
15:42:31 29 stands up in court and affects that she's a barrister who's
15:42:38 30 acting in the client's best interest in that particular
15:42:40 31 matter?---I'm not putting it that way, no. That wasn't the
15:42:46 32 point I was making in that example yesterday I think it
15:42:49 33 was. I said she had this, I don't know when it came to
15:42:56 34 court cases, regardless of whether she thought that, well
15:43:01 35 she would do the best, the absolute best she could in court
15:43:06 36 for the person regardless of what she thought of the thing.
15:43:09 37
15:43:09 38 Taking Mr Orman's example just for a moment. I'm not
15:43:12 39 saying that you were aware of it, but it's a pretty
15:43:17 40 important matter and it's a pretty well-known matter
15:43:20 41 because of what's happened in the last few weeks in
15:43:23 42 relation to that. She was implicating or encouraging the
15:43:28 43 police to go and essentially rev up a witness who was
15:43:33 44 getting cold, who was going to be implicating her client,
15:43:36 45 Mr Orman, before the court. You accept that was the
15:43:40 46 situation that existed in late 2007, early 2008?---If
15:43:45 47 that's what's come out in the court case, of course I'm not

15:43:51 1 going to say anything about that. I'm sure the court with
15:43:54 2 the full facts made the right decision about that. I'm
15:43:58 3 saying I'm not qualified to really comment on the things.
15:44:01 4
15:44:01 5 The record shows whilst she didn't appear for him at his
15:44:05 6 committal or his trial, she in fact did appear for him on
15:44:09 7 his behalf on a number of occasions in late 2007 and early
15:44:13 8 2008. You're not in a position to say that's not
15:44:18 9 correct?---No.
15:44:19 10
15:44:19 11 So is it your position then that so long as she pretended
15:44:25 12 in court to be acting on that gentleman's, in that
15:44:28 13 gentleman's best interest, it didn't really matter what was
15:44:31 14 happening in the background because in your view that was
15:44:34 15 still acting in her client's best interests as long as it
15:44:36 16 looked that way in court?---When you say pretended, that's
15:44:48 17 not what I meant, I was talking about the actual court
15:44:50 18 case. But with all those matters you put to me I would
15:44:54 19 probably concede that there's some issues there.
15:44:56 20
15:44:57 21 There's some issues there. In fact there's more than
15:45:00 22 issues there. You would accept it was abundantly clear she
15:45:04 23 wasn't acting in her client's best interests on a number of
15:45:07 24 occasions, do you accept that? Do you want me to put some
15:45:14 25 examples to you?---No - yeah, okay, I accept that's the
15:45:18 26 case.
15:45:19 27
15:45:21 28 About that same individual that we started talking about a
15:45:24 29 moment ago, you said that, it was your position and
15:45:30 30 Mr White's position that you didn't want Ms Gobbo to attend
15:45:36 31 the police facility when that person was arrested. Now you
15:45:39 32 recall that evidence?---Yes.
15:45:40 33
15:45:41 34 You also said this morning that it was somewhat of a fait
15:45:46 35 accompli that she would turn up in any event, do you recall
15:45:49 36 that?---Yes, that's right.
15:45:50 37
15:45:50 38 All right. Firstly, the long conversation that was had
15:45:59 39 with Ms Gobbo that was transcribed two days before that
15:46:03 40 arrest took place - you remember we've pretty much done
15:46:09 41 that one to death, we've spent a lot of time on that
15:46:12 42 transcript on that date, you recall that one?---Yes.
15:46:14 43
15:46:14 44 That's the one that you've had an opportunity to read more
15:46:17 45 recently?---Yeah, I have read it, yes, that's right, the
15:46:21 46 20th.
15:46:22 47

15:46:22 1 There was some discussion on that occasion with Ms Gobbo as
15:46:27 2 to precisely how it was going to work when she turned up
15:46:29 3 and there was a struggle, a mental struggle that one can
15:46:34 4 see when you read the transcript that Mr White and yourself
15:46:36 5 were having with how that conflict situation might work.
15:46:40 6 Do you recall those parts of the transcript?---Yes.

15:46:43 7
15:46:45 8 Given the timing of that particular transcript and that
15:46:48 9 meeting being two days before that person and his
15:46:52 10 co-accused's arrest, you accept that that would have been
15:46:55 11 the obvious time to say to Ms Gobbo, "You are not to turn
15:47:00 12 up when this person is arrested"?---Yes.

15:47:05 13
15:47:06 14 I've looked through that transcript in some detail and I
15:47:11 15 can say that there is no indication, no direct indication
15:47:17 16 in that transcript where Ms Gobbo is told that precise
15:47:20 17 thing, i.e., "You are not to turn up when that person is
15:47:25 18 arrested". Do you accept that?---Yes, I do.

15:47:28 19
15:47:30 20 In fact, on the day of that person's arrest - - -

15:47:35 21
15:47:36 22 MR HOLT: Excuse me, Commissioner.

15:47:45 23
15:47:49 24 MR WOODS: Now, at p.259 of the ICRs, if that could be
15:47:55 25 brought up on, not the public screens but the other
15:48:02 26 screens, including the witness's screen. Before I take you
15:48:15 27 to that. Did you warn the investigators in relation to the
15:48:22 28 crimes that this person was being implicated in that
15:48:25 29 Ms Gobbo was likely to turn up after his arrest?---I don't
15:48:33 30 think so.

15:48:33 31
15:48:34 32 On the day of that person's arrest there is an entry that
15:48:41 33 says, you'll see at the top of the page that when the -
15:48:50 34 Ms Gobbo is told, firstly, that that individual and his
15:48:55 35 co-accused are now in custody and that was a phone call
15:48:58 36 that was made by you. You agree with that?---Yes.

15:49:01 37
15:49:02 38 All right. You accept in the normal course of events when
15:49:06 39 an individual is asked, read their rights and asked whether
15:49:10 40 they want to discuss the matter with a lawyer or have a
15:49:13 41 lawyer represent them, that that person will not be, will
15:49:18 42 be contacted by either the investigators or the individual.
15:49:21 43 You accept that?---That's right.

15:49:22 44
15:49:24 45 You'll see that after you have called her to say that that
15:49:29 46 person is in custody, you've said to her, "Make sure you
15:49:33 47 ignore the handlers when you attend the police facility"

15:49:41 1 and you tell her to text message and she can meet the
15:49:46 2 handlers away from the building, you agree with
15:49:49 3 that?---Yes.
15:49:49 4
15:49:52 5 It's the case that that's at 15:04, and then at 16:10 on
15:50:01 6 that same day Ms Gobbo calls you and at that stage she says
15:50:06 7 that she has been contacted by the investigators about the
15:50:10 8 arrest of that person and his co-accused. Do you agree
15:50:13 9 with that?---Yes.
15:50:14 10
15:50:15 11 Can I suggest then, because of the timing of the two phone
15:50:20 12 calls, firstly from the SDU handlers, being yourself, and
15:50:26 13 then, secondly, from the investigators, that there was
15:50:29 14 every intention on the SDU's behalf that Ms Gobbo would
15:50:34 15 turn up and in fact you were facilitating her turning up by
15:50:38 16 calling her and telling her that that person was in
15:50:40 17 custody, do you accept that?---We knew she was going to
15:50:46 18 turn up, yes.
15:50:47 19
15:50:47 20 That's not answering my question. You knew she was going
15:50:51 21 to turn up, that's abundantly clear. What I'm saying is
15:50:54 22 that it was you that called her and not the investigators
15:50:57 23 first, do you agree with that timing at least?---That's
15:51:01 24 what happened, yes. That's what happened, correct.
15:51:03 25
15:51:03 26 Can I suggest then that if it was truly the case that you
15:51:07 27 did not want Ms Gobbo to turn up, it wouldn't have been you
15:51:11 28 calling her and telling her that the person was in custody,
15:51:15 29 for a start you would have left it to the
15:51:21 30 investigators?---It should have been left to the
15:51:23 31 investigators. As I say, at a certain point obviously we
15:51:28 32 had made a decision and it goes back to that meeting on the
15:51:32 33 20th, which I think I've said we didn't go far enough and
15:51:37 34 we got it wrong, that she shouldn't be turning up but we
15:51:42 35 clearly missed that and at some stage we just accepted that
15:51:46 36 she was going to do it.
15:51:48 37
15:51:48 38 When the person was arrested and that's when you called her
15:51:52 39 because you accepted she was going to do it so you might as
15:51:56 40 well tell her and let her know the person has been
15:51:59 41 arrested?---Yes.
15:52:00 42
15:52:01 43 Can you confirm your position as to whether or not it was
15:52:03 44 in fact more than that? You were calling her to invite her
15:52:07 45 to come down because you wanted her to come down?---No, no,
15:52:11 46 no, that's not right, just advice. Just to let her know
15:52:17 47 that the arrests had occurred, that's all.

15:52:19 1
15:52:19 2 You didn't say to her, "Do not come to that
15:52:23 3 facility"?---No, I didn't because we'd already gone past
15:52:25 4 that.
15:52:25 5
15:52:26 6 In fact, you knew she was coming because you said, "Make
15:52:30 7 sure you don't show any sign of recognition of the
15:52:32 8 handlers"?---Clearly, that's right.
15:52:34 9
15:52:37 10 Just a slightly different topic. Mr Collinson asked you
15:52:40 11 some questions about whether Ms Gobbo gave you any
15:52:45 12 information that you found to be untruthful, do you recall
15:52:47 13 that?---Yes, I couldn't think of any.
15:52:50 14
15:52:51 15 You couldn't think of any. Mr Chettle put one of them to
15:52:54 16 you about Mr Dale and you accepted that was something
15:52:58 17 untruthful that she initially told you?---Yes, that was -
15:53:04 18 that's right, that was a long time between, I had forgotten
15:53:08 19 about that. That was quite significant I suppose.
15:53:10 20
15:53:11 21 You also accepted a question from Mr Chettle that she
15:53:13 22 didn't tell you about charging legal fees for legal work
15:53:17 23 for various individuals, is that correct?---Yes, I suppose
15:53:23 24 so, yes. I didn't think about that.
15:53:26 25
15:53:26 26 She also lied to you, I'm going to suggest to you, on a
15:53:30 27 number of occasions when she said she wouldn't act for a
15:53:35 28 particular person but she pressed on and acted for the
15:53:38 29 person anyway, you agree with that?---Did she end up
15:53:42 30 telling us about that? I thought the question was about
15:53:46 31 information she had supplied.
15:53:47 32
15:53:47 33 I'm asking more broadly about her honesty with you as
15:53:52 34 handlers?---All right, okay. I believe she did in fact do
15:53:55 35 that on occasion.
15:53:55 36
15:53:56 37 On occasion she said that she was losing money by dealing
15:53:59 38 with the SDU because it was preventing her from acting for
15:54:03 39 particular clients. On a number of those occasions the
15:54:07 40 Commission has information that in fact she was acting on
15:54:10 41 behalf of those clients where she told the SDU that she was
15:54:13 42 losing money because she couldn't. Are you aware of any of
15:54:17 43 those occasions?---No, I'm not doubting the records you've
15:54:22 44 got but I didn't know about that.
15:54:23 45
15:54:23 46 In relation to her relationships with her clients and not
15:54:26 47 the SDU, you accept that she was being dishonest with those

15:54:29 1 clients by forming on them, on the ones that she did inform
15:54:37 2 on?---By being dishonest?
15:54:39 3
15:54:39 4 She was being dishonest by informing on them and continuing
15:54:45 5 to act on their behalf?---The role of an informer is not to
15:54:47 6 tell the person you're informing on.
15:54:50 7
15:54:50 8 I'm not talking about her relationship with you or that
15:54:52 9 precise thing you've mentioned there. What I'm just
15:54:57 10 putting to you is that Ms Gobbo was being dishonest with
15:55:00 11 her clients because on a number of occasions, some of them
15:55:02 12 we have been through, she was informing on the client
15:55:06 13 whilst acting for the client at the same time. Do you
15:55:08 14 accept that that was dishonest on her behalf? I'm not
15:55:12 15 laying the blame of that at your feet, I'm saying that that
15:55:15 16 was what was persisting at the time?---That might be right,
15:55:23 17 yes.
15:55:23 18
15:55:24 19 Do you accept that from time to time Ms Gobbo was also
15:55:26 20 dishonest with the courts? Are you aware of any of those
15:55:29 21 occasions?---If she did tell us - certainly if she was
15:55:36 22 intending to do that we would not have stood by idly with
15:55:41 23 that happening.
15:55:42 24
15:55:42 25 Are you aware that Justice King told Ms Gobbo that she had
15:55:45 26 a particular conflict and that she shouldn't have anything
15:55:48 27 to do with a particular individual, is that something that
15:55:51 28 rings any bells with you?---Yes, yes, it was.
15:55:54 29
15:55:54 30 And Ms Gobbo actually did continue to have something to do
15:55:58 31 with that particular individual?---I can't say I ever fully
15:56:05 32 understood that, that matter, the fact that the court - was
15:56:09 33 that the occasion where she was called into court to
15:56:11 34 explain something?
15:56:13 35
15:56:13 36 That's the one?---Okay. I can't say I ever fully
15:56:16 37 understood that. I thought she had stopped acting for that
15:56:20 38 person, without recalling all the details now.
15:56:23 39
15:56:23 40 The records speak for themselves in that regard?---Okay.
15:56:26 41
15:56:26 42 Can I just say, you've conceded a number of things as we've
15:56:30 43 been through them. As it turns out, I suggest to you that
15:56:34 44 in fact Ms Gobbo was deeply dishonest in her dealings with
15:56:40 45 you and the SDU generally I should say?---To do with the
15:56:46 46 information she supplied? I disagree with that.
15:56:49 47

15:56:49 1 She didn't lie in relation to the information she supplied
15:56:52 2 but she lied in relation to some of those other issues I've
15:56:57 3 taken you to, is that right?---It appears that way now,
15:57:04 4 yes.
15:57:04 5
15:57:07 6 It was also suggested to you early today that the
15:57:11 7 information that Ms Gobbo obtained was generally obtained
15:57:15 8 by her in social settings. Do you remember that
15:57:19 9 question?---Yes.
15:57:20 10
15:57:21 11 Your recollection was that you thought it was mostly in
15:57:24 12 social settings, do you recall that?---Well I think I
15:57:28 13 explained with most sources that's how it occurs.
15:57:32 14
15:57:32 15 How it occurs but how it did occur with this particular
15:57:36 16 source?---That's my recollection, yeah, of course.
15:57:38 17
15:57:39 18 Listening to the transcripts, reading the ICRs, reading
15:57:44 19 your diaries, the other members at the SDU diaries, it's
15:57:51 20 very clear that Ms Gobbo didn't give a lot of detail about
15:57:54 21 the context in which she received information. Sometimes
15:57:58 22 she did, but usually she didn't. Do you agree with that
15:58:02 23 proposition?---My recollection is with my contacts I knew
15:58:10 24 how the interaction or where it occurred.
15:58:13 25
15:58:13 26 Whether or not you wrote it in your diary or wrote it in
15:58:16 27 the ICR you satisfied yourself it was in a social setting,
15:58:21 28 is that right?---No, no, I didn't satisfy myself. I'm not
15:58:28 29 saying I didn't need to know, I generally did know is my
15:58:31 30 recollection.
15:58:31 31
15:58:32 32 Can I suggest to you that you are simply not in a position
15:58:33 33 to say whether the information was obtained in mostly a
15:58:37 34 social setting or mostly a professional setting? You
15:58:40 35 simply don't know the answer to that?---My recollection is
15:58:43 36 it was often socially, more often than not.
15:58:47 37
15:58:47 38 You don't know which it was most of the time, you'd accept
15:58:52 39 that?---I'm saying most of the time it was social is my
15:58:57 40 recollection.
15:58:57 41
15:58:58 42 What I'm asking is how do you know it was mostly
15:59:01 43 social?---Because I'm trying to go over in my mind, my
15:59:04 44 memory, what - how information came to me, where it
15:59:08 45 occurred, who was there, the particular locations,
15:59:12 46 particular meeting places, at night-time, at restaurants,
15:59:17 47 you know, various other places like that.

15:59:20 1
15:59:20 2 Okay?---She would be invited out to a particular meeting,
15:59:25 3 where others would be involved. That's my picture that's
15:59:30 4 in my mind about how a lot of those things occurred.
15:59:34 5
15:59:34 6 You recorded when she said if it was at a restaurant or
15:59:38 7 café for example, you would record that in the ICR?---I
15:59:41 8 think I did, yes. Particularly when I knew where it was
15:59:46 9 going to be.
15:59:46 10
15:59:47 11 Mr Wareham, counsel for Mr Barbaro, asked you whether you
15:59:51 12 understood then or now a lawyer's obligation to act in
15:59:54 13 their client's best interest, do you recall that?---What
16:00:00 14 was the specific - I can't remember what I said.
16:00:02 15
16:00:02 16 He said do you understand it is a lawyer's obligation to
16:00:06 17 act in their client's best interests. Your answer was
16:00:09 18 you're pretty unclear about that, you're not sure about
16:00:12 19 your answer to that?---I'm not sure how to express it.
16:00:15 20
16:00:15 21 Yesterday I put to you a number of hypothetical situations
16:00:19 22 to do with legal professional privilege and conflict of
16:00:21 23 interest, do you remember some of those?---Yes.
16:00:25 24
16:00:27 25 I want to put another one to you and I'm not suggesting for
16:00:29 26 a moment this is to occur, but let's assume that for the
16:00:36 27 sake of discussing this point that as a result of these
16:00:42 28 interactions you were charged with a criminal offence. I
16:00:46 29 want you just to imagine that set of circumstances for a
16:00:49 30 moment?---Okay.
16:00:52 31
16:00:52 32 You would immediately get a lawyer to represent you,
16:00:56 33 wouldn't you?---I think so.
16:00:58 34
16:01:00 35 And it would be your expectation that that lawyer would be
16:01:03 36 acting in your best interests, that would be your
16:01:06 37 expectation?---Yes.
16:01:07 38
16:01:08 39 And it would be a significant shock to you if you found out
16:01:12 40 that that lawyer was helping the prosecution agency who
16:01:16 41 were prosecuting you, do you agree with that?---In that
16:01:21 42 hypothetical situation, yes, it would be.
16:01:23 43
16:01:23 44 In fact what I want to suggest to you, because of your
16:01:26 45 answers to those questions you do have a pretty good grasp
16:01:29 46 on what a lawyer's obligation to act in their client's
16:01:36 47 interest is, do you accept that now?---I don't think I've

16:01:38 1 got a good grasp at all.
16:01:41 2
16:01:41 3 You get full points from me for your answer just then.
16:01:46 4 Mr Holt asked you about some detail in your diary and
16:01:49 5 compared that with an ICR. Do you recall that?---Yes.
16:01:53 6
16:01:55 7 What I want to suggest to you, that when there is more or -
16:02:02 8 there's more detail in an ICR than there is in your diary,
16:02:06 9 that is a result of you being able to reflect on the entry
16:02:12 10 in the typed out ICR and put more detail in than you are
16:02:18 11 able to at the moment when you were jotting it down quickly
16:02:22 12 when Ms Gobbo was giving you the information. Is that a
16:02:25 13 reasonable thing for me to say?---Yeah, depends how well -
16:02:30 14 you put a subject matter down it would prompt me to write
16:02:34 15 more than just the few words I wrote on it. I remember the
16:02:38 16 story involved in that, yeah.
16:02:39 17
16:02:39 18 Where you say you've advised, let's say "Jim O'Brien all of
16:02:43 19 the above", you wouldn't have written that in an ICR for
16:02:47 20 example unless that's what you had done, you accept
16:02:50 21 that?---Yeah, that was my practice. I think I explained
16:02:54 22 there was a difference between that and just saying
16:02:57 23 advised.
16:02:57 24
16:03:00 25 The now infamous quote "tell me everything you know about
16:03:04 26 Tony Mokbel" was put to you by Mr Chettle a moment ago and
16:03:08 27 that was something that Mr White said to Ms Gobbo on 16
16:03:12 28 September 2005. Do you recall that?---Yes.
16:03:15 29
16:03:17 30 Mr Chettle asked you whether any of that information was
16:03:20 31 disseminated from the 16 September 2005 meeting, you agree
16:03:23 32 with that?---Yes.
16:03:24 33
16:03:28 34 Firstly, can I suggest that the reason that question was
16:03:32 35 asked by Mr White in the meeting that you were in with
16:03:36 36 Ms Gobbo was because you weren't asking for information
16:03:40 37 about Tony Mokbel for your own amusement, you were asking
16:03:43 38 for information about Tony Mokbel because you wanted to get
16:03:46 39 intelligence on him to pass over to Purana, that's
16:03:50 40 correct?---That was, that was part of the reason we
16:03:55 41 questioned, but as I said the other day it was a
16:03:59 42 multi-faceted question and it was a question asked pretty
16:04:03 43 well of every source very early on in that form.
16:04:05 44
16:04:06 45 If the SML at p.1 could be brought up, please. I don't
16:04:11 46 have a number for it unfortunately. I think the operator
16:04:14 47 knows. You'll see there on 16 September there's an entry

16:04:23 1 which records the meeting that took place, the first
16:04:27 2 meeting with Ms Gobbo, you agree with that?---Yes.
16:04:39 3
16:04:39 4 Obviously this is a long meeting with Ms Gobbo and the
16:04:43 5 SML's purpose is simply to record very briefly what
16:04:46 6 occurred, is that a fair summation?---Yeah, I have no input
16:04:52 7 into this document.
16:04:54 8
16:04:55 9 I understand. On 19 September there is a meeting with
16:05:02 10 Acting Superintendent Hill, Mr O'Brien and Mr Mansell and
16:05:08 11 there's a discussion of tactical options and info security,
16:05:13 12 "Agreed MDID members be told human source assessed by SDU
16:05:19 13 as no value"?---Yes.
16:05:20 14
16:05:20 15 "Members who have knowledge of human source intended
16:05:23 16 approach include Flynn, Mansell, Cheesman, Bateson and
16:05:28 17 Bullock", you see that?---Yes.
16:05:30 18
16:05:31 19 And you accept that - so three days after that first
16:05:36 20 meeting in fact there was a meeting between the SDU and
16:05:40 21 these senior members of Victoria Police to discuss the use
16:05:44 22 of Ms Gobbo as a human source?---That does look like what's
16:05:53 23 occurred, yes.
16:05:53 24
16:05:53 25 It's inevitable that in that meeting there was a discussion
16:05:57 26 about the information that Ms Gobbo was able to
16:06:01 27 provide?---No, that's not inevitable at all.
16:06:04 28
16:06:05 29 Are you - - - ?---Controller White has written this I
16:06:11 30 believe. No, that entry is about misinformation to
16:06:16 31 members.
16:06:16 32
16:06:16 33 That's part of it?---Yeah, but I don't see any record there
16:06:23 34 of information passed on. That was early days. If it was
16:06:28 35 going to happen, we're going to go back and revisit those
16:06:33 36 subjects and, at this point at arriving at this document,
16:06:41 37 further information may well be disseminated. I don't see
16:06:45 38 where it happened there.
16:06:46 39
16:06:47 40 I don't need to put each of the diaries to you now but if
16:06:51 41 it's the case that attendees of these meetings recorded
16:06:56 42 information that was provided to them in this meeting, you
16:07:00 43 wouldn't dispute the fact that information Ms Gobbo
16:07:03 44 provided was indeed disseminated in the meeting?---Well I'd
16:07:10 45 have to know what they were but, as I say, it doesn't
16:07:14 46 indicate in this that that occurred.
16:07:17 47

16:07:17 1 Let me take you through it without bringing it up on the
16:07:20 2 screen. I'll take you to Mr O'Brien's diary. At 9.12 am
16:07:25 3 on that day, 19 September 2005, meeting at State
16:07:29 4 Intelligence Division. He was there, Hill was there, White
16:07:31 5 was there, Smith was there and Mansell was there. So it
16:07:36 6 accords with, almost entirely with that entry and, sorry,
16:07:43 7 it doesn't accord entirely with that entry. "Spoke about
16:07:51 8 SDU's meeting with Gobbo three days earlier. Recorded
16:07:55 9 information the SDU had received from her. Mark Lanteri
16:08:00 10 cooking for Mokbel. Discussion about scenario involving an
16:08:02 11 introduction of an undercover relating to a corrupt officer
16:08:05 12 or money laundering venture". That was one of the issues
16:08:09 13 that was discussed at that first meeting on 16
16:08:13 14 September?---Yeah, it's just floated as a possibility.
16:08:16 15
16:08:17 16 It was floated as a possibility by Ms Gobbo?---I can't
16:08:22 17 remember who brought it up, she may have, yeah.
16:08:25 18
16:08:25 19 The record shows it was by Ms Gobbo?---Okay, okay.
16:08:28 20
16:08:28 21 Given the fact that at least two of the items that were -
16:08:34 22 items of information that were provided by her on 16
16:08:37 23 September are then recorded in Mr O'Brien's diary relating
16:08:40 24 to, this is specifically relating to Mr Mokbel at that 19
16:08:46 25 September 2005 meeting, you would accept the fact that it
16:08:50 26 is the case that information from that meeting was
16:08:52 27 disseminated?---I think it looks like it was talked about
16:08:58 28 in general terms. If they want to know where can we
16:09:01 29 possibly go with this, I don't think it's specific.
16:09:05 30
16:09:05 31 The fact that Mr Lanteri is cooking for Mr Mokbel, that's
16:09:09 32 specific, isn't it?---Yes, it is. I don't know whether
16:09:15 33 they already knew that. But yeah, it was never decided
34 whether to go I suppose.
35
16:09:19 36 Whether or not they already knew it, the fact that Ms Gobbo
16:09:22 37 had said, "How about getting an undercover officer to set
16:09:25 38 up Mr Mokbel", that's certainly something they didn't know,
16:09:28 39 you'd accept that?---Sorry, I was - just say that again
16:09:36 40 about the undercover officer.
16:09:38 41
16:09:38 42 The fact that it was Ms Gobbo who came up with the idea of
16:09:41 43 the undercover officer, I want to suggest to you that
16:09:44 44 first, and that's clear in the transcript of the meeting of
16:09:46 45 16 September, all right?---Yeah, but that's, that's not
16:09:53 46 intel, that's a possible strategy that we were thinking of
16:09:56 47 using. This is very early days and we're fleshing out what

16:10:00 1 may or may not happen and obviously - I'm sure Mr White,
16:10:06 2 Mr White was wanting to give a broad brush picture of where
16:10:13 3 we might be at after one meeting with other members
16:10:16 4 present.
16:10:17 5
16:10:17 6 You can't possibly still be of the position that you were
16:10:22 7 earlier where you say no information from the 16 September
16:10:26 8 2005 meeting was disseminated with the two items I've just
16:10:30 9 put to you, do you accept that?---As I say, in a very broad
16:10:35 10 brush approach that may have occurred, but there was no
16:10:38 11 information report saying this - you know, "Go and work on
16:10:40 12 this, this is specific". I can't remember the meeting but
16:10:46 13 I can see in the flow of events, in the sequence of events
16:10:50 14 that they would want to know roughly where we stand and
16:10:59 15 where it's likely to go. That's my understanding of it.
16:11:02 16 If they wrote down certain things obviously they were said,
16:11:04 17 I don't deny that. But that wasn't the purpose of the
18 meeting and it was given a very broad brush approach to -
16:11:09 19 after the first meeting, "This is what's said, we might be
16:11:12 20 able to go here, there or wherever", it wasn't like, "Okay,
16:11:16 21 target A, this is his name, address and phone number". And
16:11:20 22 it wasn't like that at all, this was very broad.
16:11:22 23
16:11:25 24 There's an entry in Mr White's diary - it might be brought
16:11:33 25 up on the screen in a moment. This is 19 April 2006. It's
16:11:41 26 in the context of the individual that we started talking
16:11:44 27 about a moment ago and it's on the screen. You remember we
16:11:50 28 - - - ?---Yes.
16:11:51 29
16:11:52 30 - - - we spoke about that long meeting and the transcript
16:11:55 31 that you had had an opportunity to read recently, a moment
16:11:58 32 ago, you recall that?---Yes.
16:11:59 33
16:12:00 34 This entry is the day before that meeting?---Okay.
16:12:04 35
16:12:05 36 And this is Mr White's diary. Do you recognise that
16:12:11 37 handwriting?---Yeah.
16:12:14 38
16:12:15 39 And there's a meeting with yourself, Green and
16:12:23 40 Mr White?---Yes.
16:12:24 41
16:12:24 42 Sorry, Mr Black?---Yes, yes.
16:12:28 43
16:12:29 44 I'm getting my spectrum confused I think. I'm getting
16:12:33 45 colours thrown at me from all over the room. Mr Green. Do
16:12:38 46 you see that?---Yes.
16:12:40 47

16:12:42 1 Some people say it's Black and some people say it's White.
16:12:46 2 Well, in any event don't read out the initials. In any
16:12:53 3 event there is a meeting that takes place and what's
16:12:58 4 identified the day before that longer discussion is an
16:13:02 5 issue re Nicola Gobbo representing that person we were
16:13:07 6 talking about a moment ago after that person's arrest. Do
16:13:10 7 you see that first line?---Yes.
16:13:12 8
16:13:13 9 You see that it's expected that there will be evidence from
16:13:16 10 that person implicating - well, that the evidence that that
16:13:22 11 person would give may not be admissible if counsel is not
16:13:26 12 impartial. Do you accept that?---That's exactly what's
16:13:32 13 written, yes.
16:13:32 14
16:13:32 15 That was an item that was agreed by the three of you, that
16:13:35 16 that was an issue?---That's the note's that's made there,
16:13:40 17 yes.
16:13:40 18
16:13:44 19 Sorry, sorry. I'm misreading it. It says agreed and then
16:13:48 20 a colon, do you see those two dots there?---I need to
16:13:52 21 scroll down I guess to see what's underneath.
16:13:54 22
16:13:54 23 "Agreed investigators to be warned", see those
16:13:57 24 words?---Yes.
16:13:58 25
16:14:00 26 And I don't need to read the next part of it there. But
16:14:05 27 there's a full stop after the word "warned", do you agree
16:14:08 28 with that?---Yes.
16:14:09 29
16:14:11 30 One of the resolutions that the three of you came to at
16:14:14 31 that meeting was that the investigators needed to be warned
16:14:17 32 about this serious issue with the admissibility of
16:14:21 33 evidence, do you accept that?---I totally do not recall it
16:14:25 34 but I accept it.
16:14:26 35
16:14:27 36 Do you know whether that was done, whether the
16:14:30 37 investigators were warned about that issue?---Yeah, I - I
16:14:36 38 can only speculate. I mean Mr White was pretty, if he
16:14:39 39 wrote it down - I don't know, I mean, yeah, I didn't think
16:14:44 40 - - -
16:14:44 41
16:14:44 42 Given that it was agreed you accept that it would have been
16:14:47 43 Mr White's practice that it would have been passed
16:14:51 44 on?---Yes.
16:14:51 45
16:14:53 46 They're the questions, thank you Commissioner.
16:14:55 47

16:14:55 1 COMMISSIONER: Thank you. You're excused and free to go,
16:14:58 2 thanks Mr Smith?---Thank you.
3
16:15:02 4 <(THE WITNESS WITHDREW)
16:15:02 5
16:15:02 6 COMMISSIONER: The next witness is ready to proceed?
16:15:05 7
16:15:05 8 MR CHETTLE: He's there, Commissioner, I understand.
9
10 COMMISSIONER: He's there.
11
16:15:06 12 MR CHETTLE: It's just a question of changing chairs.
16:15:08 13
16:15:09 14 COMMISSIONER: Changing over, yes, all right. If we could
16:15:10 15 get Mr Fox to come forward.
16:15:27 16
16:15:27 17 MR WINNEKE: Commissioner, Mr Woods is taking this witness.
18
19 COMMISSIONER: Yes.
20
16:15:29 21 MR WINNEKE: I'm appearing with him for this matter.
16:15:31 22 Ms Tittensor is not appearing in this matter.
16:15:33 23
16:15:34 24 COMMISSIONER: Yes, yes, thank you. We should note that
16:15:36 25 it's only Mr Woods and Mr Winneke who are appearing for the
16:15:41 26 Commission in respect to this witness. And it's an
16:15:44 27 appropriate time now for me to clarify something I said
16:15:47 28 during Mr White's evidence.
29
16:15:49 30 Ms Tittensor, one of counsel assisting, acted for
16:15:53 31 Mr Fox when he gave evidence for part of a day before
16:15:56 32 Justice Kellam in the IBAC in 2014. That evidence
16:16:01 33 concerned Mr Fox's role as an SDU handler. In early March
16:16:06 34 this year prior to the Commission hearing evidence this
16:16:09 35 matter was discussed by Mr Winneke QC, senior counsel
16:16:18 36 assisting the Commission, and Mr Chettle, Mr Fox's senior
16:16:23 37 counsel. Mr Winneke confirmed with Mr Chettle that
16:16:33 38 Ms Tittensor would continue as counsel assisting despite
16:16:37 39 the fact that she had previously acted for Mr Fox on the
16:16:40 40 understanding that she would not be involved in any
16:16:43 41 examination of him, nor contribute to any submissions or
16:16:46 42 discussions concerning his role.
43
16:16:50 44 I also note that Ms Tittensor declared her previous
16:16:54 45 appearance before the IBAC to the Commission prior to
16:16:59 46 accepting the brief to assist the Royal Commission.
47

16:17:04 1 Careful consideration was given as to whether any
16:17:08 2 conflict, potential or otherwise, could be managed. In
16:17:13 3 March the Commissioner and counsel assisting, including of
16:17:17 4 course Ms Tittensor, were content with her continuing to
16:17:21 5 act as counsel assisting in light of the arrangements that
16:17:26 6 had been made.
16:17:31 7
16:17:31 8 MR WINNEKE: That's correct, Commissioner. It's a matter I
16:17:33 9 discussed with Mr Chettle and that was the understanding.
16:17:37 10
16:17:37 11 COMMISSIONER: We've still got an empty chair here at the
16:17:41 12 moment so we'll just wait until Mr Fox comes. Does anyone
16:17:45 13 know if he's taking an oath or affirmation?
16:17:48 14
16:17:49 15 MR CHETTLE: He'll take an oath, Commissioner.
16:17:52 16
16:17:52 17 COMMISSIONER: An oath, right. Yes Mr Fox. Can you hear
16:17:57 18 me, Mr Fox?---Can you hear me now?
16:18:03 19
16:18:03 20 Yes, I can. Can you hear me, Mr Fox?---Yes I can.
16:18:05 21
16:18:06 22 Thank you. I understand you will take an oath?---That's
16:18:08 23 correct.
16:18:08 24
16:18:08 25 Could you take the Bible in your right hand and the oath
16:18:11 26 will now be administered. Thank you.
16:18:14 27
16:18:16 28 <OFFICER FOX, sworn and examined:
16:18:35 29
16:18:35 30 COMMISSIONER: Yes Mr Chettle.
16:18:36 31
16:18:37 32 MR CHETTLE: Mr Fox, can you hear me?---Yes, I can.
16:18:39 33
16:18:39 34 For the purposes of this Commission you are known by the
16:18:42 35 pseudonym of Officer Fox?---Yes.
16:18:45 36
16:18:46 37 You've made I think in all three statements to the
16:18:50 38 Commission?---Yes, that's correct.
16:18:53 39
16:18:53 40 Did you make your first statement in response to a notice
16:18:58 41 on 31 May of this year, and I'll give you a reference, it
16:19:06 42 is COM.0005.0001.0002?---I accept that reference.
16:19:15 43
16:19:16 44 That's the date you made your first statement?---That's
16:19:19 45 correct.
16:19:19 46
16:19:19 47 Is it true and correct?---Yes.

16:19:22 1
16:19:22 2 I'll tender that statement, Commissioner.
16:19:23 3
4 #EXHIBIT RC502A - (Confidential) Statement of Officer Fox
16:19:06 5 COM.0005.0001.0002.
16:19:28 6
16:19:30 7 #EXHIBIT RC502B - (Redacted version.)
16:19:32 8
16:19:32 9 Subsequently you went back and completed a second statement
16:19:38 10 which contained a mass of information about the contents of
16:19:41 11 the ICRs?---That's correct.
16:19:44 12
16:19:45 13 I'll give you a reference of COM.0005.0002.0001_0001?---I
16:19:58 14 accept that reference.
16:19:58 15
16:20:01 16 Are the contents of that statement true and correct?---Yes.
16:20:05 17
16:20:05 18 I'll tender that statement.
16:20:07 19
16:20:08 20 #EXHIBIT RC502C - (Confidential) Statement of Officer Fox
16:19:47 21 COM.0005.0002.0001_0001.
16:20:10 22
16:20:10 23 #EXHIBIT RC502D - (Redacted version.)
16:20:15 24
16:20:15 25 You completed a third statement on 5 September of this year
16:20:19 26 in relation to matters the Commissioner has just mentioned,
16:20:26 27 a two page statement?---Yes, that's correct.
16:20:28 28
16:20:29 29 And that is exhibit number COM.0005.0003.0001_0001?---I
16:20:46 30 accept that reference.
16:20:47 31
16:20:48 32 I tender that, Commissioner.
16:20:50 33
16:20:51 34 COMMISSIONER: There won't be any need for that to be
16:20:53 35 redacted?
16:20:53 36
16:20:53 37 MR CHETTLE: No, there is no need for that to be redacted,
16:20:54 38 Commissioner.
16:20:54 39
16:20:55 40 #EXHIBIT RC502E - Statement of Officer Fox
16:20:35 41 COM.0005.0003.0001_0001.
16:21:02 42
16:21:04 43 Attached to your second statement were two annexures, one
16:21:10 44 being a list of all 5,500 contacts with Ms Gobbo and the
16:21:14 45 other being a dissemination chart in relation to where
16:21:19 46 information was disseminated to, is that right?---That was
16:21:23 47 my first statement, yes.

16:21:24 1
16:21:26 2 And annexed to that are the two exhibits that I just
16:21:30 3 referred to?---Yes.
16:21:32 4
16:21:33 5 You also prepared for the assistance of the Commission
16:21:39 6 VPL.0005.0170.0001. I'm told it's not on your system yet,
16:21:48 7 Commissioner. Did you prepare a one page list which
16:21:50 8 effectively sets out who was the handler for Ms Gobbo for
16:22:00 9 any particular period?---Yes.
16:22:02 10
16:22:03 11 We believe the Commission have a copy of this. I'll hand a
16:22:06 12 hard copy up, Commissioner, because it's not on the system
16:22:10 13 at the moment. It's just a convenient chart about who was
16:22:16 14 handling at which time.
16:22:16 15
16:22:17 16 #EXHIBIT RC503 - SDU handler timeframes chart.
16:22:23 17
16:22:24 18 It's a matter for you, Commissioner, but I had mentioned to
16:22:26 19 Mr Winneke I proposed to tender the correspondence that was
16:22:31 20 between the Commission and my instructing solicitors in
16:22:34 21 relation to the third statement.
16:22:36 22
16:22:36 23 COMMISSIONER: It's entirely a matter for you, Mr Chettle.
16:22:39 24
16:22:39 25 MR CHETTLE: I'll tender a letter dated 5 September 2019
16:22:43 26 from Mr Hargreaves to Mr Rapke.
16:22:49 27
16:22:50 28 #EXHIBIT RC504 - Correspondence between Mr Hargreaves and
16:22:54 29 Mr Rapke dated 5/09/19.
16:23:04 30
16:23:04 31 The same exhibit number, Commissioner, I think it will be
16:23:07 32 convenient to have the response from Mr Rapke to
16:23:10 33 Mr Hargreaves dated 9 September 2019.
16:23:13 34
16:23:15 35 #EXHIBIT RC504 - Response from Mr Rapke to Mr Hargreaves
16:23:11 36 dated 9/09/19.
16:23:17 37
16:23:19 38 Mr Fox, you have provided and prepared, apart from the
16:23:29 39 lists of documents that are in your statements, effectively
16:23:34 40 briefing papers in relation to summaries of a number of
16:23:38 41 matters, have you not?---Yes.
16:23:40 42
16:23:42 43 Commissioner, I have provided copies of these to Mr Holt
16:23:46 44 and I think we've sent through copies to the Commission.
16:23:50 45 They'll need to be redacted, certainly the longer one, but
16:23:53 46 I don't want to hold up - there's no urgency for it, but I
16:23:58 47 just want to tender them and move on.

16:23:59 1
16:23:59 2 COMMISSIONER: What are they?
16:24:02 3
16:24:02 4 MR CHETTLE: One is the tomato cans pills, how it happened,
16:24:06 5 the summary, the story in relation to the cans.
16:24:08 6
16:24:08 7 COMMISSIONER: Who has prepared that?
16:24:11 8
16:24:11 9 MR CHETTLE: This witness. He was principally responsible
16:24:15 10 for the information in relation to that matter.
16:24:20 11
16:24:21 12 MR WOODS: I should say I haven't seen that document so we
16:24:23 13 might need to check what the number is and when it was
16:24:25 14 produced so that we can bring it up on the system.
16:24:27 15
16:24:28 16 MR CHETTLE: We'll give it to you. The other one, can I
16:24:29 17 call it the \$15 million pill summary and tender that. You
16:24:39 18 prepared that summary, did you, Mr Fox?---Yes, I did.
16:24:41 19
16:24:44 20 As I said to the Commission, you were largely responsible
16:24:48 21 for taking a lot of the information in relation to
16:24:52 22 that?---Yes, I was.
16:24:54 23
16:24:54 24 As a spin-off, really, did information become available in
16:24:58 25 relation to what might be called the Matthew Johnson
16:25:01 26 summary in relation to what was said to be an attempted
16:25:05 27 murder of a man called Clait?---Yes.
16:25:10 28
16:25:10 29 And the involvement of Karam and Manella in relation to
16:25:14 30 that activity?---Yes.
16:25:16 31
16:25:17 32 That's the second of the summaries I propose to tender,
16:25:20 33 Commissioner.
16:25:20 34
16:25:20 35 COMMISSIONER: What do I call that?
16:25:22 36
16:25:22 37 MR CHETTLE: The Matthew Johnson summary I think is
16:25:25 38 probably convenient.
16:25:27 39
16:25:27 40 #EXHIBIT RC505A - (Confidential) Officer Fox's \$15 million
16:25:32 41 pill summary.
42
16:25:27 43 #EXHIBIT RC505B - (Redacted version.)
16:25:34 44
16:25:34 45 #EXHIBIT RC506A - (Confidential) Officer Fox's Matthew
16:25:38 46 Johnson summary.
16:25:41 47

16:25:34 1 #EXHIBIT RC506B - (Redacted version.)
16:25:46 2
16:25:46 3 MR HOLT: Commissioner, they happened very recently. They
16:25:49 4 are very big documents. They are in effect a summary of
16:25:52 5 other evidence and in some senses a submission rather than
16:25:56 6 anything else. We will review them but we would propose
16:25:59 7 not prioritising them over other matters that we're doing
16:26:02 8 for the Commission at present.
16:26:02 9
16:26:02 10 COMMISSIONER: Until I hear to the contrary from counsel
16:26:07 11 assisting the Commission we'll proceed on that basis.
12
13 MR HOLT: Thank you Commissioner.
14
15 MR CHETTLE: And I am certainly happy with that,
16 Commissioner. I just wanted them in evidence eventually.
17
16:26:13 18 MS AVIS: Commissioner, I just wonder the Commonwealth
16:26:14 19 could be provided with a copy of those documents?
20
16:26:17 21 COMMISSIONER: Yes, indeed.
16:26:17 22
16:26:17 23 MR WOODS: It might be simplest for Mr Chettle to explain
24 when they were produced to the Commission and then we can
16:26:24 25 identify them on the system, that's the easiest way.
16:26:24 26
16:26:24 27 MR CHETTLE: I'm told they were sent to VicPol first. I
16:26:27 28 don't know whether VicPol has sent them to the Commission.
16:26:30 29
16:26:31 30 MR HOLT: We don't produce other people's documents,
16:26:34 31 Commissioner.
16:26:34 32
16:26:34 33 MR CHETTLE: I was told I couldn't given them to the
16:26:34 34 Commission so I had to give them to VicPol, but they will
16:26:34 35 be given to the Commission.
16:26:36 36
16:26:37 37 MR HOLT: Sorry, I need to be clear. We don't need to see
16:26:38 38 anyone else's documents before they come to the Commission.
16:26:41 39 All we ask is for the opportunity to review them before
40 they're published. I just should be clear about that for
16:26:46 41 the Commissioner.
16:26:46 42
16:26:46 43 MR CHETTLE: They are from Loricated, Commissioner. We
16:26:49 44 understand they have to go to VicPol before they can go
16:26:51 45 anywhere else. They're off the Loricated system. But in
16:26:52 46 any event we'll rectify the problem, we'll send it to
16:26:55 47 everybody.

16:26:56 1
16:26:56 2 COMMISSIONER: The main thing is to get it into the system
16:27:00 3 that the Commission has access to and then it can be
16:27:03 4 provided to the Commonwealth DPP.
16:27:05 5
16:27:06 6 MR CHETTLE: As I understand it they get a Ringtail number
16:27:08 7 or whatever it's called from the police. That's the
16:27:11 8 process.
16:27:13 9
16:27:13 10 COMMISSIONER: And I think Mr Wareham would like a copy as
16:27:16 11 well.
16:27:17 12
16:27:17 13 MR WAREHAM: Yes.
16:27:18 14
16:27:18 15 MR CHETTLE: Subject to when they're redacted - - -
16:27:21 16
16:27:21 17 COMMISSIONER: Is it just the \$15 million pill one that you
16:27:25 18 want?
19
16:27:26 20 MR WAREHAM: We don't need the other one, Commissioner.
16:27:28 21
16:27:28 22 MR HOLT: Sorry, Commissioner, they can't possibly be
16:27:32 23 provided to affected persons until they've been PIIed
16:27:36 24 reviewed for obvious reasons.
16:27:36 25
16:27:37 26 COMMISSIONER: That does change the question of priorities
16:27:40 27 then.
16:27:40 28
16:27:41 29 MR HOLT: Maybe, Commissioner, but there's no change in any
16:27:42 30 of the underlying material that the Commission has. All
16:27:45 31 that this document does is to summarise things in a
16:27:49 32 different way. The affected persons have been given
16:27:51 33 entries out of Loricated which affect their client, which
16:27:54 34 affect them. So there should in fact be no change. It's
16:27:57 35 in effect a submission because it summarises other
16:28:03 36 material. I take the point, it's a very large document, we
16:28:06 37 were only given it yesterday I think. And I'm happy to
16:28:10 38 review it, Commissioner, and perhaps we could raise it
16:28:13 39 again in the morning once counsel assisting and us have had
16:28:15 40 a chance to look at it. I simply would resist any
16:28:20 41 proposition that a document that was given to us yesterday
42 which is very, very long and includes many, many entries
16:28:23 43 out of Loricated simply now be given to affected persons
16:28:26 44 without any other process.
16:28:27 45
16:28:28 46 MS DWYER: If I can be heard Commissioner.
16:28:29 47

16:28:30 1 COMMISSIONER: Yes.
16:28:31 2
16:28:31 3 MS DWYER: I have been seeking a number of entries which
16:28:33 4 are relevant to my client and aren't included in the
16:28:36 5 summary of extracts for some time now. I believe - - -
16:28:40 6
16:28:40 7 COMMISSIONER: Which summary of extracts?
16:28:42 8
16:28:42 9 MS DWYER: The summary of extracts relevant to John Higgs.
16:28:45 10
16:28:45 11 COMMISSIONER: Yes.
16:28:46 12
16:28:47 13 MS DWYER: That document has been constructed in a
16:28:50 14 particular way which I won't raise in open hearing, but
16:28:55 15 since I think the first date is 8 August, it's been clear
16:29:00 16 by the way that counsel assisting has been cross-examining
16:29:04 17 significant material relevant to Mr Higgs is excluded from
16:29:10 18 that summary of extracts. That has been conveyed in
16:29:14 19 writing to Victoria Police or the solicitors instructing
16:29:20 20 Victoria Police and no further material has been produced.
16:29:27 21 So in terms of the ranking of priorities, in my submission
16:29:33 22 this is now becoming quite urgent as the handlers seem to
16:29:42 23 be giving evidence at a quicker and quicker pace.
16:29:46 24
16:29:47 25 COMMISSIONER: Perhaps we'll know a little bit more once
16:29:50 26 counsel assisting have had an opportunity to see this
16:29:52 27 document.
16:29:53 28
16:29:53 29 MS DWYER: Yes.
16:29:54 30
16:29:54 31 COMMISSIONER: Can it be provided forthwith?
16:29:57 32
16:29:58 33 MR CHETTLE: It can be provided to the Commission, it will
16:30:00 34 have to be redacted before it can go to the affected
16:30:03 35 persons.
16:30:03 36
16:30:03 37 COMMISSIONER: I understand that. I understand that. But
16:30:08 38 can it be provided to the Commission as soon as we adjourn
16:30:11 39 tonight?
16:30:11 40
16:30:11 41 MR CHETTLE: It can be, Commissioner, right now if in fact
16:30:14 42 it hasn't been already. My junior is doing that right now.
16:30:18 43
16:30:18 44 COMMISSIONER: No doubt we'll hear more about it tomorrow
16:30:21 45 morning when we know a bit more about it.
16:30:23 46
16:30:23 47 MR CHETTLE: There's one further matter before I sit down,

16:30:26 1 Commissioner, and this is since the making of the statement
16:30:28 2 there is some new material that is relevant that I raised
16:30:31 3 with Mr Woods and I'd seek to lead from this witness very
16:30:36 4 briefly.
16:30:36 5
16:30:37 6 COMMISSIONER: We might as well do that before we adjourn
16:30:39 7 for the day.
16:30:39 8
16:30:40 9 MR CHETTLE: Mr Fox, are you familiar with what you call
16:30:45 10 the Paul Dale documents, documents that Nicola Gobbo
16:30:49 11 provided to the SDU that she had obtained from Dale when he
16:30:54 12 was in custody?---Yes.
16:30:55 13
16:31:00 14 The Commission are aware of what happened with those, they
16:31:02 15 ended up with the SDU. On 19 March of 2008 did you receive
16:31:08 16 a request from Mr Davey from Petra asking for those notes
16:31:17 17 that Ms Gobbo had obtained from Mr Dale?---I can't recall
16:31:26 18 if it was me specifically but certainly a request came to
16:31:30 19 the unit.
16:31:30 20
16:31:31 21 Can I take you to ICR 10 in relation to 2958, 19 March 08
16:31:42 22 at time 15:01?---Yes.
16:31:53 23
16:31:53 24 COMMISSIONER: What page is that?
16:31:55 25
16:31:56 26 MR CHETTLE: I haven't got a page number.
16:31:57 27
16:31:57 28 COMMISSIONER: The VPL number will do.
16:32:03 29
16:32:04 30 MR CHETTLE: It's p.107 of volume 3 of the 2958. Do you
16:32:10 31 have that, Mr Fox?---I'm just looking for it.
16:32:14 32
16:32:14 33 Look at p.107 of the third volume of ICRs. It's on the
16:32:22 34 screen now I'm told?---Okay. Thank you, yes, I can see
16:32:27 35 that.
16:32:30 36
16:32:31 37 Keep going down to p.4 of that. Yes. See at 15:40?---Yes.
16:32:41 38
16:32:42 39 There's a reference to a call from her, from
16:32:45 40 Ms Gobbo?---Yes.
16:32:45 41
16:32:46 42 And she talks about Cameron Davies but in fact Davey is his
16:32:53 43 real name, isn't it?---That's how I've spelt it, yes,
16:32:56 44 Davies.
16:32:57 45
16:32:57 46 Is this your ICR or someone else's?---Mine.
16:33:01 47

16:33:02 1 There's a reference there that he wants a copy of the
16:33:05 2 document she previously spoke about?---Yes.
16:33:07 3
16:33:12 4 There's some discussion about that. I don't need to take
16:33:15 5 you through that but the entry speaks for itself?---Yes.
16:33:18 6
16:33:18 7 Did you assure her, and this is what I'm trying - that the
16:33:22 8 document had not left the SDU possession?---Yes.
16:33:25 9
16:33:26 10 And if I can then take you to 26 March 08?---Yes.
16:33:38 11
16:33:38 12 At 13:30, 26 March 08 in the ICRs. 26 March 08?---It might
16:33:59 13 be my diary.
16:34:00 14
16:34:00 15 It's your diary, is it? Have you got an entry in your
16:34:03 16 diary for 26 March 08 at 13:30?---Yes, I will have.
16:34:09 17
16:34:09 18 Can you pull that up, if you would?---Unless the Commission
16:34:20 19 can bring it up?
16:34:21 20
16:34:21 21 No, they can't.
16:34:22 22
16:34:22 23 COMMISSIONER: We don't have the diaries, which is a bit of
16:34:25 24 an issue actually, that we don't?---I haven't got my laptop
16:34:29 25 set up, I can do that now if you want or tomorrow.
16:34:33 26
16:34:33 27 MR CHETTLE: Can I read you the summary you prepared for
16:34:36 28 me?---Yes.
16:34:36 29
16:34:36 30 26 March 08, 13:30, "Met with O'Connell in the CBD. Handed
16:34:42 31 over historical Paul Dale phone numbers. Shane allowed to
16:34:46 32 read over Paul Dale documents. Not handed over". Do you
16:34:52 33 see that?---Yes.
16:34:52 34
16:34:53 35 Does that record what occurred on that day?---Yes.
16:34:57 36
16:34:57 37 When Mr O'Connell read the documents did you then keep them
16:35:01 38 thereafter and put them back in the file?---Yes.
16:35:03 39
16:35:05 40 Thank you, Commissioner, I wanted to draw the Commission's
16:35:08 41 attention to that. They are the questions I have.
16:35:10 42
16:35:11 43 COMMISSIONER: Are you wanting to tender the diary entry?
16:35:14 44
16:35:14 45 MR CHETTLE: I'll tender the diary entry for 26 March 08
16:35:16 46 when it's located, Commissioner.
16:35:17 47

16:35:21 1 COMMISSIONER: Will that need redaction.
16:35:23 2
16:35:23 3 MR CHETTLE: I doubt it.
16:35:24 4
16:35:24 5 MR WOODS: Commissioner, before you do so the first
16:35:26 6 document I was going to tender through the witness was a
16:35:29 7 consolidated file of all of his diaries. Perhaps if that
16:35:32 8 comes first in time and then we go to this. I'll just read
16:35:34 9 that out for the record. That's RCMP.0053.0001.0008. And
16:35:43 10 that's all the diaries that have been produced from this
16:35:46 11 witness.
16:35:47 12
16:35:49 13 COMMISSIONER: Then we'll have access to his diaries. This
16:35:52 14 isn't a summary, this is the actual diaries?
16:35:55 15
16:35:55 16 MR WOODS: This is the diaries that have been produced.
16:35:59 17
16:36:03 18 #EXHIBIT RC507A - (Confidential) Officer Fox's diaries.
16:36:13 19
16:36:14 20 #EXHIBIT RC508 - Diary entry of 26/03/08
16:36:20 21
16:36:20 22 MR CHETTLE: They're the matters, Commissioner.
16:36:22 23
16:36:22 24 COMMISSIONER: I think we'll call it quits for the day and
16:36:25 25 adjourn until 9.30 tomorrow. I'll remind everybody that
16:36:28 26 I'm finishing at 3.40 tomorrow afternoon.
27
16:37:03 28 <(THE WITNESS WITHDREW)
16:37:04 29
16:37:04 30 ADJOURNED UNTIL FRIDAY 13 SEPTEMBER 2019
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