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Mr Findlay McRae
Director, Legal Services
Victoria Police
637 Flinders Street
Docklands VIC 3008

WARNING

This information is protected by the
Whistleblowers Protection Act 2001.
Breach of the confidentiality of this
information is a criminal offence.

By hand

Dear Mr McRae

Investigation under the *Whistleblowers Protection Act 2001*

I am finalising my investigation into allegations of improper conduct involving Victoria Police and I have completed a draft report. As you are referred to in the report, I am providing you with an opportunity to comment on relevant sections before I finalise the report.

The sections of the draft report relevant to you are enclosed. If you wish to make any response, please provide it in writing to me within 14 days of receiving this letter, making express reference to relevant comments. If you elect not to make any comment, I would appreciate your advising me accordingly. Please note that you are personally responsible for any response you may wish to make.

As you will appreciate, this information has been provided to you under the provisions of the *Whistleblowers Protection Act 2001* (the Act). I wish to remind you of the strict requirements under the Act not to disclose any information contained in this letter and its attachments, or information you have obtained from my office as a result of this investigation (section 22 of the Act). You cannot release any parts of the draft report to any person, including legal advisers, without my permission. A conviction for breach of this provision can lead to a penalty of six months imprisonment or a fine of 60 penalty units, or both.

If you have any queries regarding this process, you may contact Mr Glenn Sullivan, Director, Investigations on (03) 9613 6254.

Yours sincerely

G E Brouwer
OMBUDSMAN

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41. Mr Findlay McRae, Director Legal Services at Victoria Police similarly said at interview that the Petra investigators managing Ms Gobbo were providing a 'bodyguard service' for her.

- 59. The expenditure list held by the Witness Security Unit shows that \$519,418.17 was spent on the management of Ms Gobbo for the period 4 March 2009 to 9 November 2010.
- 60. During interview Mr McRae said that Mr Jeremy Rapke, former Director of Public Prosecutions provided advice to Victoria Police that any financial assistance to Ms Gobbo should be reduced to an acceptable level in light of her witness status and proceedings against Mr Dale. Mr McRae said:

... it's fair to say that Gobbo was getting more than the usual recompense ... to keep her at a standard of living ... So, the risk for us with her as a witness was that the whole case [against Mr Dale] might be ... declared an abuse of process and struck out [of court]. So, I spoke to the State DPP [Director of Public Prosecutions] about that and he said, "Reel everything back to subsistence" ...

successful in her estoppel claim. The scenarios vary from an award of \$1,292,788 to \$7,501,057.

- 89. The most likely scenario was considered to be an award of \$2,258,518. In relation to this, Mr Ryan's document states:

The second scenario is calculated on the basis that the plaintiff is awarded damages to include income support until the age of 65 at the level she was receiving prior to agreeing to give evidence against Mr Dale minus an amount to reflect the plaintiff's income received on the basis that she were successfully re-employed after 5 years. This figure is \$2,258,518. In our view, this is the most reasonable option.

- 90. The advice further states that settling the writ would negate having to go to trial and therefore prevent the 'exposure of sensitive information damaging to the criminal justice system'; 'diversion of police resources'; and 'significant legal costs'. The advice subsequently concludes:

In our view, an additional sum in the order of \$1 million dollars would not be inappropriate to reflect the value of these additional benefits. However, untimely the value placed upon these benefits is a matter for you [Victoria Police].

- 91. While Mr Ryan's summary advice provides a proposed settlement option, the evidence available to me does not explain precisely how a [REDACTED] dollar settlement figure was reached and what was taken into account. For instance, Mr Ryan's summary document does not refer to whether or not Ms Gobbo's medical conditions were taken into account with regard to the calculation of the quantum.

- 92. Written advice from counsel was not obtained by Victoria Police or the VGSO, despite the significant amount suggested for settlement and the legal costs charged by counsel.

- 93. Tax invoices from Mr Wheelahan, Ms Orr and Mr Rush show that Victoria Police was charged a combined total of \$57,200 for legal assistance, not including services provided by the VGSO.

Financial delegation and legal advice obtained by the Minister

94. On 10 August 2010, Mr Overland wrote to the then Minister for Police and Emergency Services, the Hon Bob Cameron. In his letter Mr Overland explained that Ms Gobbo had initiated legal proceedings and that he requested an instrument of authorisation to enable the Director of Legal Services or him to settle the writ for terms up to [REDACTED]

[REDACTED] Mr Overland also provided the minister with a briefing paper outlining the background to the matter and counsel's advice on liability and quantum.

95. In a response letter dated 11 August 2010, Mr Cameron provided an instrument of authorisation to the Chief Commissioner and Director Legal Services to the amount of [REDACTED] Mr Cameron stated that he also sought separate legal advice which similarly concluded that it was desirable for the writ to be settled.

96. During interview Mr McRae said:

... the Minister delegated the financial delegation to the Chief Commissioner and the Director, Legal Services, because it was outside the Chief Commissioner's delegation.

97. The legal advice sought by Mr Cameron was from Mr Peter Hanks QC. In his written advice, Mr Hanks stated that it is highly likely Ms Gobbo would be successful in her claim for compensation and he supports the award proposed by counsel, in addition to covering Ms Gobbo's legal costs and a further amount of \$100,000.

98. In relation to the additional amount of \$100,000, Mr Hanks' advice stated:

There are good reasons why Victoria Police may wish to avoid public exposure of its dealings with Ms Gobbo; those reasons would justify a premium on the settlement figure of around \$100,000.

99. The 'good reasons' to avoid public exposure, as referred to by Mr Hanks, are not discussed in his advice. During interview Mr McRae was asked what Mr Hanks was alluding to when he made this statement. In response Mr McRae said:

The reasons are that exposure of the people that she [Ms Gobbo] was talking to would lead to a risk to their health and wellbeing.

...

It would never come out through an open court because the court would - we'd always suppress it. But the documents fly around and then somehow copies are given to other people. So, once it's in the court process we lose control.

Settlement of the writ

100. Mediation for the writ was held on 11 August 2010. Mr Overland and Ms Nixon, the defendants listed on the writ, were not present at mediation. Assistant Commissioner Emmett Dunne, the Officer in Charge of the Ethical Standards Division, was present as a senior representative for Victoria Police.

101. The writ was settled for a sum of [REDACTED] and terms of settlement were agreed to by both the plaintiff and the defendants. Mr Ryan signed off on the terms of settlement on behalf of the defendants. Mr McRae was responsible for authorising the payment to Ms Gobbo.

Expeditious settlement to avoid embarrassment

102. The disclosure to my office included the allegation that Victoria Police settled the writ quickly in order to avoid any embarrassment for engaging a criminal barrister to provide evidence against her own clients. The period between the issuing of the writ and its settlement at mediation was less than four months.

103. The information obtained by Ms Gobbo during her former dealings with clients while a barrister is subject to legal professional privilege. Section 3.1 of the *Professional Conduct and Practice Rules 2005* states:

A practitioner must never disclose to any person ... any information which is confidential to a client and acquired by the practitioner's firm during the client's engagement unless -

3.1.1 the client authorises disclosure;

3.1.3 the practitioner discloses information in circumstances in which the law would probably compel its disclosure, despite a

client's claim of legal professional privilege, and for the sole purpose of avoiding the probable commission or concealment of a serious criminal offence.

104. During interviews on 20 January and 21 February 2012 Ms Gobbo said that Victoria Police did not encourage her to solicit information from her clients for the purpose of assisting with criminal investigations. Ms Gobbo further said that she did not provide Victoria Police with information about her clients. Evidence provided by Ms Gobbo at interview and documents obtained from Victoria Police's Civil Litigation Division do not indicate that Ms Gobbo provided information about her clients to Victoria Police.

105. There was however evidence to suggest that the settlement of the writ would avoid exposure of the Witness Protection Program and Victoria Police's management of witnesses. In Mr Ryan's summary of legal advice to Victoria Police he states:

A trial in this case will involve scrutiny of the procedures adopted by Victoria Police ... in obtaining the cooperation of witnesses in criminal proceedings and will involve an examination of the limitations of the Program [the Witness Protection Program]. The trial is likely to receive a great deal of publicity which could be damaging to Victoria Police and the administration of the criminal justice system.

106. With regard to concerns about exposure to the Witness Protection Program, at interview Mr Ryan said:

... my understanding is that often people that come into the Witness Protection Program are themselves people who have criminal issues and they don't necessarily have a high legal earning capacity. Gobbo was very different in that she was certainly a very successful criminal barrister. And I think trying to accommodate her needs and those of Victoria Police in the Witness Protection Program, it was novel and I think it did expose some limitations in the program chiefly around - around financial assistance and what's reasonable and what a court is going to consider to be reasonable. Also ... she had very strong views about not wanting her life to be restricted, so there was a balance between wanting to secure her evidence and Victoria Police being