



VICTORIAN GOVERNMENT  
SOLICITOR'S OFFICE

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21 May 2010

Superintendent Peter Lardner  
Civil Litigation Division  
Victoria Police Centre  
DX PII [redacted]  
MELBOURNE  
By email: PII [redacted]

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subject to Legal  
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Dear Superintendent Lardner

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**Gobbo v State of Victoria & Ors - Supreme Court proceeding No 2316 of 2010**

Name	Party	Representative
Nocola Gobbo	Plaintiff	Piper Alderman
State of Victoria	First Defendant	VGSO
Simon Overland	Second Defendant	VGSO
Christine Nixon	Third Defendant	VGSO

### Purpose

- To advise you generally in relation to the civil proceedings instituted in the Supreme Court by Nicola Gobbo against the State of Victoria, the Chief Commissioner of Police and Christine Nixon.

### Background

- On 13 February 2009, Paul Dale, a former police officer, was charged with the murder of Terence Hodson at Kew between 15 and 16 May 2004. The charge was brought against Mr Dale as a result of an investigation by the Petra Taskforce within Victoria Police. Mr Dale was bailed by the Court of Appeal on 21 September 2009.
- In January 2009, after lengthy discussion with investigators from the Petra Taskforce (most of which we understand were recorded by Victoria Police), the plaintiff, a former barrister, agreed to provide a statement to Victoria Police. We are instructed that the investigators from the Petra Taskforce offered to provide the plaintiff with appropriate protection and assistance under the *Witness Protection Act 1991*. We are further instructed that agreement was not able to be reached with the plaintiff in relation to the terms of the protection and assistance to be offered to the plaintiff. Negotiations between the Petra Taskforce and the plaintiff and the Witness Security Unit of Victoria Police and the plaintiff continued throughout the early part of 2009. Our office became involved in the negotiations in mid 2009. Draft [redacted]



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[REDACTED] for the provision of [REDACTED] and assistance within [REDACTED]. [REDACTED] were exchanged between the parties. Also, draft [REDACTED] for the provision of [REDACTED] and assistance outside the [REDACTED] were prepared and exchanged between the parties. Agreement could not be reached between the parties with the main area of dispute being the plaintiff's refusal to agree to [REDACTED]. Inclusion [REDACTED] is voluntary. Victoria Police made it a condition of the plaintiff's inclusion [REDACTED] that she [REDACTED].

4. Another area of difficulty in the negotiations was reaching agreement over the amount of financial assistance that ought to be provided to the plaintiff. One of the difficulties faced by the Chief Commissioner in negotiating an agreement to provide financial assistance to the plaintiff was the impact of the decision of the Supreme Court of Queensland in *R v Moti* [2009] QSC 407. That decision supports the proposition that anything other than modest subsistence payments to a protected witness in a prosecution could lead to the relevant prosecution being dismissed on the basis that the payments bring the administration of justice into disrepute.
5. After making her statement, the plaintiff was temporarily [REDACTED] for short periods [REDACTED]. However, Victoria Police were unable to convince the plaintiff to [REDACTED] to accommodation at a reasonable distance outside the [REDACTED]. The plaintiff also refused to deal with many of the police officers who were assigned to provide her with [REDACTED] and assistance.
6. Victoria Police conducted a threat assessment in relation to the safety and security of the plaintiff as a result of her agreeing to give evidence against Mr Dale. The threat to the plaintiff was assessed as "Extreme", the highest rating of risk. Eventually, Victoria Police advised the plaintiff that it could not adequately manage the risk to her safety while she remained outside [REDACTED] and it advised the plaintiff that it was withdrawing the ad hoc [REDACTED] arrangements that had been in force up until that time. Victoria Police did however continue to pay the plaintiff \$1,000 per week to provide for her day-to-day subsistence expenses.
7. In January 2010, the first in a series of Witness Summonses was served upon the Chief Commissioner on behalf of Mr Dale. The Witness Summons sought, among other things, production of documents relating to the plaintiff and any agreement by Victoria Police to provide inducements to the plaintiff to give evidence. There was extensive argument in relation to the documents to be produced in response to the Witness Summons and many objections were made on behalf of the Chief Commissioner on the ground of public interest immunity. The solicitors for the plaintiff wrote to our office requesting a copy of the Witness Summons and expressing concern about the production of documents relating to her that may endanger her safety. Victoria Police advised the plaintiff as to how they proposed to respond to the Witness Summons. Further, they provided the plaintiff's solicitors with copies of documents relating to the plaintiff which were proposed to be produced in response to the Witness Summons unopposed. The purpose being to give the plaintiff an opportunity to comment and make any public interest immunity objections herself if considered necessary.

#### ***Dale committal hearing***

8. A committal hearing commenced in the Magistrates' Court before Magistrate Reardon on 9 March 2010. On 10 March 2010, the Director of Public Prosecutions



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(the DPP) applied for a suppression order in relation to [REDACTED]. The Chief Commissioner sought to join in the application but the magistrate refused to grant leave to counsel to appear on his behalf on the ground that he had no standing. The suppression order application was refused later that day. (On 26 March 2010, Justice Beach determined that the Chief Commissioner did in fact have standing to make a suppression order application) On 11 March 2010, the DPP applied for a suppression order in relation to the identity of the plaintiff. The Chief Commissioner did not join in the application given that the magistrate was of the view that he did not have standing. The suppression order application was refused later that day. However, the media did not thereafter publish her identity in relation to the criminal proceeding as they appeared to consider themselves bound by an earlier suppression order made in bail proceedings in the Supreme Court by Justice Byrne. On 29 April 2010, the media sought clarification in relation to the suppression order concerning the plaintiff. Magistrate Reardon confirmed that there was no suppression order in place. At this point, relying on the decision of Justice Beach of 26 March 2010, an application was made on behalf of the Chief Commissioner for a suppression order relating to the plaintiff. This application was adjourned to the following week. In the meantime and notwithstanding the existence of an interim suppression order, the media published articles which led to the identification of the plaintiff as a witness in the criminal proceedings. Further, the plaintiff's solicitors advised that they would oppose the making of the suppression order. The Chief Commissioner then withdrew his application.

9. On 16 March 2010, the plaintiff made an application to be excused from giving evidence on the basis that she was not medically fit. Medical evidence was given in support of the application in closed court. The Witness Summons requiring the plaintiff to give evidence was not set aside but his Honour adjourned the Witness Summons to a date later in the year when she was less incapacitated.
10. The committal was adjourned on 12 April 2010 until later in the year. Since the death of [REDACTED] in [REDACTED], a key prosecution witness, a decision is pending by the DPP in relation to whether the prosecution will be discontinued.

#### The civil proceedings

11. The plaintiff has been threatening to institute civil proceedings for some time. On 29 April 2010, the plaintiff filed proceedings in the Supreme Court naming the State of Victoria, Simon Overland and Christine Nixon as defendants. Later that day, we applied to the Acting Prothonotary under Rule 28.05(2)(b) of the Rules for an order that the court file remain confidential. The plaintiff's solicitors advised that this order was opposed. The Acting Prothonotary made an order the following day closing the file. He also then issued the proceeding. However, later that day the media (supported by the plaintiff's counsel) applied to Justice Osborn to have the order of the Acting Prothonotary vacated. This application was not opposed by the Chief Commissioner as he had earlier that day withdrawn the suppression order application in relation to the plaintiff in the Magistrates' Court. Further, there was no point having an order that the file remain confidential if the plaintiff had no interest in the confidentiality of the proceedings. There was nothing preventing the plaintiff from providing a copy of the Writ to the media. The alternative would have been to apply for a suppression order in relation to any confidential material disclosed in the court documents. We were instructed that no such material existed which could support a suppression order application.



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### *Causes of action*

12. The plaintiff alleges causes of action in contract, estoppel, breach of fiduciary duty and negligence.
13. The plaintiff claims to be suffering from some serious medical conditions. She had a stroke in 2004. She claims that the conduct of Victoria Police has detrimentally affected her health and ruined her career causing her massive economic loss.

### *Counsel*

14. In accordance with your instructions, we have briefed Michael Wheelahan SC, Rowena Orr and Michael Rush of counsel to provide preliminary advice and to prepare a Defence on behalf of the defendants.
15. Counsel provided advice in conference on 20 May 2010 and expressed the opinion that, although there were defects in the way the plaintiff's Statement of Claim had been drafted (particularly in relation to the negligence claim), it was not in the defendants' strategic interests to apply to the Court at this stage to strike out any parts of the Statement of Claim. Counsel expressed the view that the strongest cause of action for the plaintiff was the estoppel claim.

### *Key areas of risk*

16. In our view, the key area of risk in relation to the plaintiff's claim, is the contact that the plaintiff had with the Petra Taskforce prior to her agreeing to record the conversation with Mr Dale and subsequently to make a statement to Victoria Police. On 23 December 2008, the plaintiff claims that Detective Senior Sergeant Shane O'Connell made representations to her to the effect that if she agreed to make a statement she would be "no worse off financially or otherwise" as a consequence (see para 14(e) of the Statement of Claim). These representations are claimed to have been made with the authority of the Chief Commissioner. In *Australian Crime Commission v Gray & Anor* [2003] NSWCA 318, the New South Wales Court of Appeal awarded damages by way of compensation to a witness who had agreed with the Australian Crime Commission to give evidence in a prosecution on the basis that he would not be financially disadvantaged for doing so. The Court considered that the agreement was enforceable subject to the reasonableness of the financial contributions.
17. Our instructions are that the Petra Taskforce did not make any agreement with the plaintiff in relation to the provision of [REDACTED] and assistance but that they did record her concerns and requests and seek appropriate approval from management within Victoria Police. We note that many of the conversations between Petra and the plaintiff have been recorded and are in the process of being transcribed. Once we have reviewed the transcripts, we will be in a better position to assess the risk to the defendants.

### *Exposure of sensitive information*

18. A trial in this case will involve scrutiny of the procedures adopted by Victoria Police in dealing with informers and in obtaining the cooperation of witnesses in criminal proceedings and will involve an examination of the limitations of [REDACTED]. Clearly, this is not desirable from the perspective of Victoria Police but it may be



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unavoidable if the plaintiff is not prepared to be reasonable in negotiating to resolve the proceedings.

19. Another issue in relation to the Defence of the defendants is the history of the plaintiff's relationship with Victoria Police. We understand that the plaintiff has provided information to Victoria Police in matters other than the Dale prosecution and that she may still be providing information to Victoria Police. Clearly, the plaintiff's status as a police informer is highly confidential and sensitive and its disclosure is likely to further increase the risk to her safety.
20. The plaintiff claims that she has suffered injury as a result of being referred to as an "informer" by counsel for the Chief Commissioner in the Dale committal hearing. In order to properly respond to this claim, the defendants need to consider whether it is appropriate to plead in their Defence that the plaintiff was and is in fact a police informer. If it were to be pleaded, a suppression order would need to be obtained in relation to the defence of the Defendants. However, it may be that a suppression order does not provide sufficient protection in relation to the potential disclosure of this information.

#### *Confidential briefing for counsel*

21. Counsel have requested that Victoria Police arrange a confidential briefing at which they can be advised of the extent of the plaintiff's relationship with Victoria Police and how it may impact on the way the Defence is drafted. Counsel are also concerned to ascertain whether the information provided to Victoria Police in matters other than the Dale prosecution may be protected by legal professional privilege.

#### **Discovery and document management**

22. The discovery process in this proceeding will be a significant task. There are many, many hours of conversations between members of the Petra Taskforce and the witness which need to be transcribed prior to the Defence of the defendants being filed. This task will need to be given priority with appropriate allocation of resources. We enclose a copy of a memorandum from counsel in which they stress the importance of prioritising the preparation of the transcripts.
23. Many of the documents in this case will be sensitive. Accordingly, we have arranged to purchase a portable computer hard-drive on which we will store sensitive information. Myself and Monika Pekevka will have access to the hard drive which we will store in a safe in John Cain's office. We understand that Victoria Police will arrange for a safe to be provided to Michael Wheelahan SC so confidential documents can be stored in his chambers. If possible, it would be desirable to have a further safe provided to Rowena Orr so that she could store sensitive information at her home. We confirm that Senior Sergeant Andy Bona has been appointed the central contact point for the obtaining of documents.

#### **Timelines**

24. The Defence of the defendants is due to be filed on served by **9 June 2010**. A directions hearing has been listed in the Supreme Court on **18 June 2010**.
25. We will not be in a position to file the Defence by 9 June 2010 given the transcription task which is required to be undertaken. Accordingly, we propose to

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seek the consent of the plaintiff to an extension. Once you advise us as to how long the transcription task will take we can finalise this letter to the plaintiff's solicitors.

#### **Affect of civil proceeding on Dale criminal proceeding**

26. If the criminal prosecution against Dale proceeds, then it may be argued that the civil proceeding ought to be stayed pending the outcome of the criminal proceedings. Exposure of the issues raised in the civil proceeding is likely to affect the credit of the plaintiff as a prosecution witness and could arguably compromise the criminal trial. Counsel have not yet considered this issue and it can be revisited in the event that the DPP decides to continue with the prosecution.

#### **Future conduct**

27. Counsel will commence preparation of the Defence while the various documents are being prepared and collated.
28. We await your instructions in relation to the timeline for the preparation of the transcripts. If you have any queries, please contact David Ryan on [redacted]

Yours faithfully  
Victorian Government Solicitor's Office



David Ryan  
Managing Principal Solicitor

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