

Revised 01/11

VP Form 1028

# ISSUE COVER SHEET

**File No:****Issue: BENDIGO STEERING COMMITTEE**

To inform the Bendigo Steering Committee of the progress of case studies relating to Witness F.

**Background:**

Assistant Commissioner Stephen Leane and Director Fin McRae met with John Champion (DPP) and Bruce Gardner on 25 November 2014 to update the DPP in regard to progress on the case studies for court related matters arising from Operation Loricated. The following briefing was provided to the Director of Public Prosecutions;

1. Description of Comrie Review and identification of case studies
2. Description of the thematic approach of Operation Loricated and the reconstruction of the HS file
3. Description of the on-going work on the five case studies identified in the Comrie Review undertaken as part of Operation Bendigo.

**Other matters discussed:**

4. The investigation team reported that there is no evidence of a deliberate attempt to pervert the course of justice or orchestrate court outcomes.
5. Some discussion on the difficulties of a defence practitioner being a source over a period of time of 2005 - 2009.
6. Discussion regarding what constitutes a miscarriage of justice.
7. It was noted that information provided in affidavits for LDs and TIs would not of itself constitute a miscarriage of justice.
8. There are many notations in the records that indicate that information that went to defence strategy (or what the handlers consider to be legal professionally privileged information) was quarantined from the relevant informants.
9. It appears that Jim O'Brien was privy to some information although there is no record of him passing that information on to informants or prosecutors.
10. Some discussion in regard to the exception to privilege in regard to furtherance of a crime as articulated in Section 125 of the Uniform Evidence Act.

**Options for consideration of the DPP**

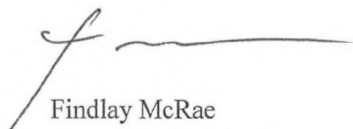
11. Consider whether to consult with the Commonwealth OPP on the matter of Karam.
12. Consider whether to engage a retired high court judge or seek further advice.
13. Victoria Police analysis will cease at this point until the DPP provides a response.

## Response of DPP

14. "This matter was discussed earlier this week by the Director's Committee. In brief, the Director believes that at present the PPS has no duty of disclosure to the defence in any of the 5 "case studies" you sent us, largely as a consequence of the uncertainty about the nature, extent or timing of X's behaviour in those matters.
15. We don't yet have sufficient information to invoke the processes in our Miscarriage of Justice Policy.
16. That position may change depending on the outcome of the IBAC investigation and whatever findings or recommendations it may make.
17. For the same reasons, the Director sees no purpose in us undertaking a review of the files in issue at this stage - it is almost certain that nothing of relevance would exist on the prosecution file."

**Recommendation:**

To note the above.

  
 Findlay McRae  
 Director Legal Services  
 15/12/2014

**NEXT STEPS**

- AC LEAD  
 ⇒ Miscarriage of Justice Act 1988 matter from DPP.  
 ⇒ DPP indicated that the best place to test this is at appeal.  
 ⇒ Response of DPP has changed our position.
- ① Consult with the Commonwealth DPP.
  - ② Consult with the Legal Services Commission, ③ initiate IBAC of ext steps.