



Submissions of Ms Nicola Gobbo with respect to Terms of Reference 1 and 2

Royal Commission into the Management of Police Informants

Peter W Collinson QC

Rishi Nathwani

Counsel

MinterEllison

Solicitors

Part D – Response to submissions of other parties

13. Introduction

782. This Part responds to the submissions made by other parties. It is a continuation of our previous submissions and the paragraphs follow those from Part C, Conclusions.
783. Again, due to the pressures of time, this Chapter does not address every adverse comment made against Ms Gobbo in the submissions of others. This should not be seen as acceptance of any part of any other submission unless expressly stated.
784. Despite submissions from various potentially affected people, Ms Gobbo maintains the stance she has taken in relation to Volume 3 of Counsel Assisting's submissions; that is, it is not for Ms Gobbo to comment upon these individual cases, it is a matter for the Commission and the Courts.

14. Procedural fairness

785. At [2] to [13], [28] to [100] and thereafter throughout our submissions, it was submitted that Ms Gobbo had not been afforded procedural fairness for a number of reasons, including the unfairness in not being able to consider material in time and respond accordingly. More so, we submitted that this was compounded by the partisan, pre-conceived narrative that Counsel Assisting embraced during the process that perpetuated into their written submissions.

786. In so far as Ms Gobbo was concerned, this included, *inter alia*:

- (a) not putting material to Ms Gobbo in cross-examination in respect of which Counsel Assisting now seek adverse findings on (for example, allegedly lying in the memorandum to Duncan Allan SC);¹
- (b) not adducing all the evidence where they seek adverse findings, despite their obligation to present all material to assist the Commissioner to make findings. Examples include:
 - (i) all the relevant evidence before Ginnane J;²
 - (ii) not referring to, or even adducing in evidence, the cross-examination of Mr McGrath during his committal hearing which indicated he was questioned about his belief that the Marshall murder was a debt collection as opposed to a planned execution;³
 - (iii) failing to address all of Ms Gobbo's diary entries relating to her contact with Jeff Pope (in particular those in the year 2000);⁴
 - (iv) ignoring the evidence that demonstrated Mr Cooper had no money at the time of his arrest;⁵
 - (v) ignoring the credibility issues of Messrs Thomas, Bickley and Cooper;⁶

¹ Responsive Submissions of Ms Gobbo (14 August 2020), [569]-[583].

² Ibid, Chapter 8, [418]-[446].

³ Ibid, Chapter 9, in particular [471]-[478].

⁴ Ibid, Chapter 11.

⁵ Ibid, Chapter 6.

⁶ Ibid, Chapter 1 at [82]-[83]; Chapter 5; Chapter 6; Chapter 4 at [319]-[323].

- (vi) ignoring Mr Thomas' evidence that he knew Ms Gobbo was acting for Mr McGrath;⁷
 - (vii) ignoring the memorandum to Colin Lovitt QC indicating that Mr Lovitt QC, his instructor and Mr Thomas knew that Ms Gobbo acted for Mr McGrath at the time he assisted police and that those named individuals knew that Ms Gobbo had spoken to Thomas on the day of the murders of Moran/Barbaro as she set it out in writing to them;⁸
 - (viii) ignoring the knowledge of many practitioners that Ms Gobbo acted in conflict;⁹
 - (ix) not referring to the transcript of Mr Thomas' bail application;¹⁰ and
- (c) raising matters by innuendo without then seeking any finding from the Commissioner, such as the cash allegations from Mr Thomas and Mr Cooper.

787. As a result, it was submitted that the Commissioner should take great care before simply accepting the submissions (or even narrative) of Counsel Assisting as it was partisan, incomplete and misleading.

788. This submission is fortified having considered how Counsel Assisting have adopted a similar approach with other evidence relating to other parties, as set out in the various submissions.

789. It is telling that virtually every party with standing leave who has provided a submission has questioned the fairness of the proceedings and the partisan nature of the submissions of Counsel Assisting, including a selective approach to the evidence they have relayed in their submissions. Even parties against whom adverse comments are not sought have complained at the approach taken by Counsel Assisting. For example, the ACIC in their submission not only comment that Counsel Assisting breached the ECDs despite the ACIC "*repeatedly engaging with the Commission*"¹¹ but, more so, that at [67] to [89] of volume 2 of Counsel Assisting's submissions, Counsel Assisting have failed to consider Federal Agent 3's Diary, which indicated that there was no contact between that Agent and Ms Gobbo as alleged by Counsel Assisting. The Commission

⁷⁷ Ibid, Chapter 9, [520]-[527].

⁸ Ibid, Chapter 9, [493]-[535].

⁹ Ibid, Chapter 9, [493]-[513].

¹⁰ Ibid, Chapter 9, [536]-[559].

¹¹ Responsive Submissions of the ACIC (7 August 2020), RCMPI.0192.0001.0004_0001 at 0002, [8]-[11].

was notified of this on 18 June 2020 yet there was “*none of this information*” “*referenced in Counsel Assisting Submissions*”.¹²

790. Other parties, in a similar vein to Ms Gobbo, have set out how Counsel Assisting have breached procedural fairness in referring to material not tendered and/or not questioning the relevant party despite seeking adverse comment. For example:

- (a) Graham Ashton raised the issue that Counsel Assisting seek a finding against him based upon public statements made by him, despite that material not being in evidence and him not being questioned about them.¹³
- (b) Victoria Police detail that for virtually every police officer against whom adverse comment is sought, material matters were not put to them, including Mr O'Brien, Mr Biggin, Mr Bateson, Mr Kelly, Mr Flynn, Mr Ryan and Mr Rowe. Perhaps the clearest example of the breach is in relation to Mr Glow, who was not even afforded the opportunity of giving evidence.
- (c) Mr Overland's submissions also detail material that was not put to him in cross-examination yet upon which Counsel Assisting seek adverse comment.
- (d) The SDU give the example of documents being tendered after the hearings that were not put to the SDU, yet adverse comment is made by Counsel Assisting.¹⁴

791. Accordingly, all of the evidence in relation to a number of individuals demonstrates that Counsel Assisting have unfairly sought findings/comments against individuals, including Ms Gobbo, in flagrant breach of procedural fairness. All of this should be taken into account when the Commissioner comes to determine the fairness of the findings sought.

792. Many parties with standing leave also make complaint in a similar vein to Ms Gobbo that Counsel Assisting have embarked on a pre-determined narrative. Each party has not simply made that allegation – each is supported by evidence. Perhaps the most obvious example is the failure to even mention Mr Thomas' committal transcript where Mr McGrath was cross-examined about the

¹² Ibid, [13]

¹³ Responsive Submissions of Graham Ashton (undated), COM.0111.0002.0001_0001 at 0005 [24], 0006 [26], 0043 [210].

¹⁴ Responsive Submissions of the Source Development Unit (7 August 2020), RCMP1.0193.0001.0002_0001 at 0020, [36(a)]. Also see [38]-[40].

debt collection/execution point (despite copying and pasting latter parts of the committal transcript in their final submissions).

793. However, the examples of other parties bolster the submissions made on behalf of Ms Gobbo regarding the pre-conceived narrative of Counsel Assisting, to the extent the Commissioner should not simply accept what Counsel Assisting have suggested and, more so, reconsider the factual matrix.
794. There are far too many examples of all the evidence that Counsel Assisting have failed to put before the Commissioner in their final submissions. However, the most illuminating (yet troubling) examples are where Counsel Assisting have produced part of a document/transcript and have removed words that change the meaning (or provide a misleading picture as to the meaning). The removal of those words can only be a conscious, deliberate decision, in particular given that Counsel Assisting had as long as they did to finalise their submissions. That being so, it evinces the pre-determined narrative. The multiple examples set out in Tranche 2 of Victoria Police's submissions at [11.4] to [11.5], [113.15] to [113.22], [114.5] to [114.6] and [116.5] to [116.8], in respect of what Counsel Assisting included and excluded in their submissions, best demonstrates the troubling approach adopted by Counsel Assisting. We point out in our submissions a similar approach by Counsel Assisting, including in relation to Ms Gobbo's evidence before Ginnane J, as well as how the evidence she gave before the Commission was reproduced by Counsel Assisting deliberately omitting relevant parts.

Role of Counsel Assisting in preparation of the final report

795. It is noted that both Victoria Police¹⁵ and Simon Overland¹⁶ refer to the principles that where a Commission is inquiring into allegations of misconduct, in particular where Counsel Assisting have recommended particular (criminal) findings, they should not be involved in the preparation of the final report.¹⁷ Those submissions are adopted and endorsed on behalf of Ms Gobbo. Given the

¹⁵ Responsive Submissions of Victoria Police, Tranche 1 (undated), VPL.3000.0001.0497 at 0520, [9.22]-[9.26].

¹⁶ Responsive Submissions of Simon Overland (18 August 2020), COM.0120.0001.0001_0001, [4].

¹⁷ *Re Royal Commission on Thomas' Case* [1982] 1 NZLR 252; Peter M. Hall, *Investigating Corruption and Misconduct in Public Office: Commissions of Inquiry – Powers and Procedures* (Lawbook Co, 2 ed, 2019), [8.275].

submissions of Counsel Assisting and the findings they seek, Counsel Assisting should not be involved in the preparation or finalisation of the final report.

15. Information obtained as a lawyer or as a friend/associate?

796. As we set out in the Cooper case study chapter at [606] to [609] of our submissions, the evidence indicates that Ms Gobbo provided information that she received in circumstances where it cannot be said that she was acting as Mr Cooper's lawyer at that time. Often, Mr Cooper provided the information at social gatherings late in the evening. The information could not be said to be legally privileged as it related to new and/or planned future criminal offending. Mr Cooper referred to Ms Gobbo as his best friend. The evidence in the ICRs also demonstrates that Mr Cooper would sometimes speak about his criminal offending with other associates whilst Ms Gobbo was present. Sometimes the associates would discuss further offending in her presence.
797. This was a feature of a large amount of information Ms Gobbo received, not just limited to information from Mr Cooper.
798. Mr Thomas, in his often-ignored statement and evidence,¹⁸ in fact confirmed that the Mokbels and their associates would routinely discuss their criminal activity with Ms Gobbo present, so much so that Mr Thomas had to confirm with Milad Mokbel that it was safe and appropriate to discuss this with Ms Gobbo present. Again, when Ms Gobbo heard this information, it could not have been for the purpose of obtaining lawful legal advice, as the offending discussed did not relate to any proceedings and the police had not detected the criminality. It also was usually openly discussed in social settings. Ms Gobbo owed no confidence to anyone in relation to that particular information. Ms Gobbo herself described herself as akin to a piece of furniture in the room, and the totality of the evidence the Commission has received confirms that.
799. It follows that, before the Commission considers whether Ms Gobbo breached any duties, the Commissioner should bear this well in mind. Although our submissions have addressed the case studies of Mr Cooper and Mr Thomas, this issue applies to many of those potentially affected cases, in particular those who were part of the Mokbel syndicate. Where the information was provided due to an associate/friend relationship (as opposed to lawyer-client relationship) or in a social setting where Ms Gobbo was like a piece of furniture in the room, it is not accepted that any professional duty had been breached by Ms Gobbo.

¹⁸ Exhibit RC1175, First Statement of Mr Thomas [2]; Transcript of Mr Thomas (10 February 2020), pages 13580 and 13627-8.

800. The submissions of Victoria Police (and the SDU)¹⁹ detail other examples of this. Taken together, they are not exhaustive. The DPP in their submissions urge caution in making findings about the existence and duration of any lawyer-client relationships of Ms Gobbo and sets out that the Commissioner cannot make findings of fact to the requisite standard as to the legal relationship Ms Gobbo had with individuals at various times.²⁰ We adopt and endorse the caution set out in the DPP's submissions.

Mr Cooper – Attending the police station

801. Ms Gobbo's justification in attending the police station to represent Mr Cooper was so that she would not be outed as a human source, and consequently killed. It is not accepted that, as a result of attending, Ms Gobbo's behaviour was attended by impropriety. A number of Victoria Police officers and the SDU make a similar submission. The Commission should consider many of Ms Gobbo's actions in that context – there was a very real risk that if she was known to be a human source, it was more than likely she would be killed. The threats made to her demonstrated this – confirmation, by behaving in a different way, such as not attending on Mr Cooper, or later Milad Mokbel and others, would have highlighted her role.

802. The Commission received the following evidence from Mr Black in relation to this issue:²¹

*That's a complicated question and I don't want to be difficult about it, but at the end of the day there was an operational decision to allow 3838 to walk in and speak with that individual. Was it the greatest decision? Probably not. Was it made for good sound reason? Absolutely it was. **We were concerned, the decision was made in the fact that if she didn't walk into that room she was going to get killed, because we might have bought her a T-shirt to let everyone in the world know that she's a human source and they would have killed her. That was primarily one of the main reasons why that decision was made. It wasn't corrupt.** Yeah, with the benefit of hindsight maybe it wasn't the greatest decision. Yeah, maybe we should have got some legal advice but at*

¹⁹ Responsive Submissions of the Source Development Unit (7 August 2020), RCMP1.0193.0001.0002_0001 at 0070-0084, [162]-[181].

²⁰ Responsive Submission of the OPP/DPP (undated), RCMP1.0194.0001.0001_0001 at 0027, [77]-[81].

²¹ Transcript of Officer Black (24 October 2019), pages 8257-8 (emphasis added).

the end of the day we didn't. We weren't acting corruptly and we were doing the best we possibly could with the sanctioning of Victoria Police and Victoria Police command.

803. The Commission should have this evidence at the forefront of its mind when considering making adverse findings.

16. Submissions made about Ms Gobbo

The SDU

804. At Part C of their submissions, the SDU set out criticisms of Ms Gobbo.²²
805. Part of those criticisms relate to conduct on behalf of Ms Gobbo prior to her registration, including her criminal antecedents and her misleading the Board of Examiners.
806. Further, the SDU go on to mention that they were unaware of Ms Gobbo's two prior registrations. Part of that failing is a failing of Victoria Police, as all Ms Gobbo's prior registrations were known to Victoria Police. Further, her criminal "conviction" (good behaviour bond) in 1993 was referred to in both her 1995²³ and 1999²⁴ registrations. Her 1999 registration was submitted by Mr Segrave, who in 2005 was a member of Intelligence and Covert Support. On any view of the matter, Victoria Police systems should have been such that the SDU were made aware of prior registrations. As Sandy White stated in evidence, this was "*negligent*".²⁵ He said that he had spoken to Mr Pope several times about Ms Gobbo, yet Mr Pope never mentioned he once handled her as a source.²⁶
807. The SDU then refer to Ms Gobbo's duplicitous behaviour by informing on her boyfriend and employer and reaffirm this was not known to the SDU. It is doubtful whether this this would have made any difference to the SDU's decision to seek registration of Ms Gobbo. The SDU registered Ms Gobbo on the basis that she was duplicitous – they wanted to obtain information from her relating to her clients/associates (who she often associated with in a social setting). It is also not clear what the SDU suggest would have changed had they known she had been registered twice before (without her knowing) and that she had received a good behaviour bond for possessing drugs. Virtually all human sources tend to have a criminal history and virtually all are duplicitous.
808. With the benefit of hindsight, it is right to say Sandy White's evidence is that he let his guard slip. However, over the course of several recorded meetings, it is apparent he treated Ms Gobbo with a large degree of suspicion; he says as much.²⁷ At the outset of the relationship, it is apparent that

²² Responsive Submissions of the Source Development Unit (7 August 2020), RCMP1.0193.0001.0002_0001 at 0035-37, [63]-[69].

²³ Exhibit RC30, 1995 Informer Application of Nicola Gobbo, VPL.0005.0007.0088.

²⁴ Exhibit RC34, 1999 Informer Application of Nicola Gobbo, VPL.0005.0013.0952 at 0957.

²⁵ Transcript of Mr Sandy White (23 August 2019), page 5240.39-42

²⁶ Ibid, page 5241.16-20.

²⁷ Transcript of Ms Gobbo, Sandy White, Peter Smith, Paul Rowe and Steve Mansell (16 September 2005), VPL.0005.0037.0027, pages 13-4.

he was not sure he could trust Ms Gobbo as he was unaware if she was really meeting with the SDU just to assist Mr Mokbel.

809. The SDU suggest that Ms Gobbo had lied to them when she said she was not acting for and/or charging fees to certain clients. This cannot be sustained. There were several conversations where the SDU asked Ms Gobbo not to represent someone, such as Milad Mokbel, or told her it was their preference that she did not, such as Mr Thomas. She also attended the police station when Mr Cooper was arrested. All of that occurred by mid-2006. The SDU did not seek to deregister her then. The ICRs provide other examples, where Ms Gobbo reports representing someone she had previously been told not to or had agreed not to. The SDU were aware; they did not deregister her, but instead chose to continue using her, briefing her, tasking her and putting her in danger. Further, in relation to receiving money, the SDU must have known she was charging clients. There are references in the ICRs to Ms Gobbo discussing payment (for example, for Mr Cooper, "*waxing ironic that she won't be paid for representing him*"), which leads to the inference that she had been charging him. Also, part of the justification of the SDU (per Mr Black) for Ms Gobbo attending the police station to represent Mr Cooper was that if she did not, she might as well have had a T-shirt saying she was a human source. By the same token, to suddenly stop charging individuals would also have raised the same issues, in particular where Ms Gobbo had provided the service she was contracted to do so, and honestly believed she was entitled to the payment.
810. The SDU also point out that Ms Gobbo had lied to them in relation to her relationship with Mr Dale and the use of "bodgie" phones supplied by Adam Ahmed. It is right to say that Ms Gobbo was not initially entirely forthcoming with the SDU about this; however, it was Ms Gobbo who told the SDU about her previous lie to them. Further, the context of the relationship should be considered when the SDU ask the Commission to consider "*Ms Gobbo: impression v reality*"; the SDU were meant to be the "experts" in dealing with human sources, who Sandy White readily accepted can lie and manipulate. As set out in our submissions, in fact it was the SDU (under the command of Victoria Police) who lied to and manipulated Ms Gobbo from the outset of their unequal relationship, with Sandy White one of the main protagonists. In this regard, we note that:
- (a) he lied during the first meeting about the recording;

- (b) at the second meeting, he continued with that lie, telling Ms Gobbo he had not recorded the first meeting;²⁸
- (c) he then lied to Ms Gobbo about his views on her transition when told by Mr Overland that she should be a witness; and
- (d) he manipulated her on occasions when he had concerns about her safety, yet at the same time was part of a decision-making group who decided to continue to task her (for example, see the SML entry of 7 August 2007, where it was agreed she could be tasked in relation to Petra and Briars).

811. The SDU more broadly also lied and manipulated Ms Gobbo during the currency of the relationship, beyond those matters set out above:

- (a) When Ms Gobbo was to be questioned by Petra, the SDU lied to her telling her it was in relation to Mr Ahmed's alibi.
- (b) Another example is the email sent by Tony Biggin to the SDU on 8 January 2009 when Ms Gobbo is being transitioned into a witness, where Mr Biggin refers to the SDU as "we";²⁹ a review of that document shows that as soon as the decision was made to transition Ms Gobbo, the SDU were concerned with exposure of the unit and their tradecraft; nothing was mentioned about her safety.

812. These factors put into context the submissions as to "*impression v reality*"; Ms Gobbo naively believed the SDU were behaving in an honest fashion towards her and genuinely cared about her safety. Their actions at key times suggest otherwise. Ms Gobbo had a wholly different impression of the SDU as compared to the reality of how they treated her.

Victoria Police

813. While on the surface making an unreserved apology³⁰ and accepting their central conduct that gave rise to this Royal Commission and all that it encompasses, the submissions of Victoria Police are filled with mitigation of their position, deflecting blame onto and continually criticising Ms Gobbo (as well as, on occasion, implicating the SDU as and when appropriate). The totality of their preceding

²⁸ Transcript of Ms Gobbo, Sandy White and Peter Smith (21 September 2005), VPL.0005.0115.0001 at 0020.

²⁹ SML/2958 (8 January 2009), VPL.2000.0001.9298.

³⁰ Responsive Submissions of Victoria Police, Tranche 2 (24 August 2020), VPL.3000.0001.1184 at 1192-3, [2.2]-[2.9].

paragraphs to the apology, at [2.7] to [2.8] of Tranche 2 of the submissions, detail that Ms Gobbo was manipulative and unethical. Thereafter, at [6] to [7] of Tranche 2, Victoria Police further seek to mitigate their responsibility by attacking Ms Gobbo – repeating that “*what cannot be lost sight of is the unusual psychological make up of Ms Gobbo. She appears to have been simultaneously intelligent, articulate, needy, vulnerable, manipulative, dishonest and with a questionable moral and ethical compass*”.³¹ There are numerous other examples of attacks on Ms Gobbo despite the transparent caveat that “*this is not to deflect responsibility onto Ms Gobbo*”.³² The authors knew they were doing exactly that. The submissions are flooded with attacks on Ms Gobbo’s character and credibility.

814. Even if the criticisms of Ms Gobbo are accepted, it demonstrates how culpable Victoria Police were in choosing to register her as a human source, continuing that relationship for several years despite being well aware of her issues and, thereafter, seeking to turn her into a witness for their benefit, whilst at the same time resigning her life to one where she now exists with her children in expectation that she will one day be killed. There is no acknowledgement from Victoria Police as to the impact their decision making has had on Ms Gobbo’s life and those of her children. Ms Gobbo, despite her key role in this saga, lives every day with the consequences of her actions, in a way not one police officer does nor will. Whilst Victoria Police officers may suffer reputational damage, not one will have to endure that which Ms Gobbo has since 2018 and will continue to for the rest of her life. Victoria Police do not acknowledge this in the 1000 pages of submissions they make, notwithstanding the false promises they made to Ms Gobbo over time; instead, they seek to apportion blame to Ms Gobbo.
815. On even a superficial review, the submissions of Victoria Police are full of contradictions.
816. On reading the submissions of Victoria Police, in particular Tranche 1 on behalf of the seven individual officers, the submissions are replete with criticism of and deflection onto Ms Gobbo. Further, there is a specific appendix dedicated to Ms Gobbo. It states that Ms Gobbo’s history was such that it demonstrated that she was too close to her criminal clients and from a young age mixed within drug circles, and continued to do so thereafter, joining the Mokbel and Williams drug clan. It

³¹ Ibid, at 1206, [7.4].

³² Responsive Submissions of Victoria Police, Tranche 2 (24 August 2020), VPL.3000.0001.1184 at 1206, [7.10].

concludes that, had the full picture being known, Ms Gobbo would have been approached differently and with greater caution.

817. Firstly, there is no evidence as to how Victoria Police suggest they would have approached Ms Gobbo differently, and there is no evidence that she would have been treated with greater caution. It is noted that Victoria Police deplore the submission of Counsel Assisting for not having an evidential foundation.
818. Secondly, and more pertinently, Victoria Police fail to acknowledge this information was known to them.
819. Thirdly, the information that Ms Gobbo was close to the criminal fraternity is the exact reason they sought to register Ms Gobbo, and is the same reason they continued to use her, despite having apparent concerns about her health and safety (from mid-2006 onwards).
820. Victoria Police registered Ms Gobbo as she was an associate of Tony Mokbel and his network – Victoria Police themselves justify the registration of Ms Gobbo on the basis she was “*a criminal associate*” and not a lawyer (see for example Tranche 2, [46.7]). At [47], Victoria Police submit, “*this observation is relevant because it helps to explain why Ms Gobbo was not – at the time of registration, seen principally as a lawyer, but essentially as an associate of serious criminals. In turn, this explains much of the decision making that followed*”.³³
821. It is contradictory that, in the Appendix, Victoria Police then seek to suggest they did not know the “*full picture*” they seek to paint. Apart from the documentation relating to her admission to practice, all of the other information in the Appendix was known to Victoria Police. Rather, it was negligent that Sandy White and the SDU were not given all the information, as Sandy White acknowledged.³⁴ The negligence is only apportionable to Victoria Police.
822. The totality of the evidence that underpins the police knowledge of matters set out in the Appendix is not rehearsed here, but in short form:
- (a) the police (Trevor Ashton and Mr Argall) were involved in 1995 (and were still serving officers when giving evidence at the Commission);

³³ Responsive Submissions of Victoria Police, Tranche 2 (24 August 2020), VPL.3000.0001.1184 at 1273, [47.1].

³⁴ Transcript of Sandy White (23 August 2019), page 5240.39-42.

- (b) in 1999, Mr Pope and Mr Segrave registered Ms Gobbo knowing about the 1995 matters;
- (c) from 1998 to 2004, Ms Gobbo provided information to several Victoria Police officers, including Mr Strawhorn, Mr De Santo (the head of Ethical Standards) and also Mr Bateson;
- (d) Mr De Santo was investigating corrupt police and engaged with Ms Gobbo due to her relationships with them;
- (e) Mr Bateson tasked her in relation to Solicitor 2;³⁵
- (f) Mr Bateson and his Purana counterparts, including Gavan Ryan, were well aware of his contact with Ms Gobbo;
- (g) further, Mr Swindells, Mr Hatt, Ms Kerley and Mr Allen all dealt with Ms Gobbo during the investigation and prosecutions of many of the gangland killings. They all knew of her associations to some degree or another; and
- (h) disclosed telephone intercepts detail that Ms Gobbo was often heard in conversation with Mr Thomas, Carl Williams and others. Mr Ryan in fact was initially suspicious of Ms Gobbo due to her close association with Messrs Mokbel and Williams as Purana conducted surveillance routinely and Ms Gobbo would often show up.³⁶

823. At [13.2] to [13.3] of the Appendix, Victoria Police by innuendo imply that Ms Gobbo may have been involved in the murders of the Hodsons. This ignores the evidence at the Commission by their own members; that is, that the Petra investigators were best placed to make that conclusion, and their assessment was that Ms Gobbo had been unwittingly used by Paul Dale and Carl Williams.³⁷

824. At [14] of the Appendix, the submissions detail the murder of Jason Moran and the use of Ms Gobbo by Mr Thomas and Mr Williams of Ms Gobbo as an alibi. Despite earlier in their submissions stating that Mr Thomas should not be accepted as honest,³⁸ Victoria Police suggest he is credible here. More so, the fact of the alleged alibi was known to Stuart Bateson, and so undermines the

³⁵ Transcript of Stuart Bateson (28 November 2019), page 10098.

³⁶ Transcript of Gavan Ryan (9 August 2019), page 4234.9-16.

³⁷ ICR/2958, ICR/46 (17 November 2008).

³⁸ See for example, the submissions in response to Mr Thomas suggesting Ms Gobbo made him plead guilty at [23.122], in particular at (k), (o) and then (l) where it is submitted; "*Mr Thomas's evidence alone is insufficient*": Responsive Submissions of Victoria Police, Tranche 1 (undated), VPL.3000.0001.0497 at 0614-5.

submission that had Victoria Police known the full picture, they would have treated Ms Gobbo differently. Finally, the submission (like other parts of Victoria Police's submissions) does not deal with all of the evidence which demonstrates that Mr Thomas lied about Ms Gobbo being used as an alibi previously (in relation to when he says he was in Queensland with her – Ms Gobbo's diaries show she was in fact not there until days later).³⁹

825. Mr Bateson and the Purana Crew were all well aware of Ms Gobbo's role in the Marshall murders, as set out in the Appendix at [15], and then in [16] about approaching the police about Solicitor 2. The heading should in fact read, "*Approaching Stuart Bateson (who kept Mr Ryan, and so Purana, abreast of details) in relation to Solicitor 2 and others*". [16] omits that Ms Gobbo met Mr Bateson to provide information about Solicitor 2. By that time, Ms Gobbo had represented Solicitor 2. Mr Bateson still received information and the evidence is that he reported it back to Mr Ryan, his superior. He even (by his own admission) tasked Ms Gobbo to obtain certain information from Solicitor 2.⁴⁰ It follows that Mr Bateson and Mr Ryan (and so Purana) were aware of much of this information contained in the Appendix. Both sought fit to separately thank Ms Gobbo when Carl Williams entered his guilty plea. As set out in our submissions, it appears this was due to the fact that she had in fact looked after Mr McGrath's interests over those of Carl Williams.
826. Consequently, it is surprising that Victoria Police suggest Ms Gobbo lied to Mr Bateson⁴¹ when she told him she would not report back to Mr Williams and Mr Thomas that Mr McGrath was co-operating with Purana and looking to roll on them. Victoria Police rely on Mr Thomas' statement as such (despite later saying he cannot be believed on matters unhelpful to Victoria Police).⁴² In fact, what Mr Thomas said was that he was aware from Ms Gobbo that Mr McGrath was sorting out his own deal:

In the lead up to my arrest, I was provided with updates from Gobbo following the arrest of McGrath. She was representing him. I was made aware by Gobbo

³⁹ See Chapter 9, [514]-[535].

⁴⁰ Transcript of Stuart Bateson (28 November 2019), page 10098.

⁴¹ Responsive Submission of Victoria Police, Tranche 1 (undated), VPL.3000.0001.0497 at 0548, [14.88], 0568-9 [17.105]-[17.109].

⁴² See for example, the submissions in response to Mr Thomas suggesting Ms Gobbo made him plead guilty – [23.122], in particular at (k), (o) and (l) where it is submitted; "*Mr Thomas's evidence alone is insufficient*" or [52.171(n)] – "*Mr Thomas' evidence was false*": Responsive Submissions of Victoria Police, Tranche 1 (undated), VPL.3000.0001.0497 at 0614-5 and 0801-2.

*that police would be coming for me. She said the delay in them arresting me was because McGrath was still working out his deal.*⁴³

827. This does not mean Ms Gobbo was telling him that Mr McGrath was prepared to provide a statement against Mr Williams and Mr Thomas; instead, as a criminal lawyer would well understand, this was a reference to Mr McGrath looking to plead guilty in a favourable way. At the time, Mr McGrath was arrested for the Marshall murder but known to be involved in others, including the Moran/Barbaro murders. Sorting out his own deal was a reference to that. Victoria Police are quick to conclude that Ms Gobbo lied to Mr Bateson about this. Using their own reasoning, Ms Gobbo was not asked this by Victoria Police. More so, the obvious answer is ignored by them, as are the facts. Mr McGrath did plead guilty and roll. His statement (ignored by Victoria Police) suggests Ms Gobbo at the very least gave him advice consistent with his interests and not those of Mr Williams.
828. The last part of the Appendix still suggests Ms Gobbo approached Victoria Police. This completely ignores the evidence in totality (which is ironic given Victoria Police criticise Counsel Assisting for doing the same). Mr Bateson, Mr Swindells and Mr Mansell all made comments to Ms Gobbo about either getting on board or that the door is always open (to assist Victoria Police). The dispute would of course have been resolved with the recordings made by Messrs Rowe and Swindells; they have of course disappeared, as did the 1999 registration documents of Ms Gobbo when last in Mr Pope's possession. However, on the evidence of Mr Rowe, it is evident that Ms Gobbo made remarks on the telephone that led to Mr O'Brien telling his detective to try to get Ms Gobbo to repeat them, this time whilst being covertly recorded and then, once they were, recording her when speaking about her signing up. What we do know is that Mr Rowe recalls Mr Mansell telling Ms Gobbo she should get on board; not the other way around. Our submissions at [300] to [305] detail the recruitment of Ms Gobbo. However, the fact that the Appendix to Tranche 1 refers to Ms Gobbo "*approaching police to assist*" demonstrates that Victoria Police still do not acknowledge fully their actions. The submission entirely ignore the evidence of one of their police officers about another telling Ms Gobbo to get on board, in the context of two others having previously done so, both at times when Ms Gobbo's close relationship to criminal associates was causing her trouble (i.e. Mr Veniamin

⁴³ RC1175, First Statement of Mr Thomas (undated), RCMP1.0131.0001.0001 at 0007, [28].

threatening her for Williams/Mokbel when Mr Swindells approached her and then when representing Mr McGrath in fear of Mr Williams' reaction).

829. For Victoria Police to submit that, had this information in the Appendix been known to them, that Ms Gobbo would have been approached differently and more cautiously is:
- (a) flawed as the information was known broadly to Victoria Police (in particular Purana);
 - (b) is not reflected evidentially as not one witness states Ms Gobbo would have been dealt differently; and
 - (c) finally, is disingenuous - when one considers how it is referred to in Tranche 1, the submissions seek to deflect responsibility to Ms Gobbo, despite protestations to the contrary.
830. The submissions criticise Ms Gobbo and generally question her credibility. It is apparent that, at times, the conclusions of Victoria Police are that Ms Gobbo's evidence cannot be accepted where uncorroborated (for example, see [74.11] in Tranche 2). However, on other occasions, Victoria Police urge the Commissioner to accept Ms Gobbo's evidence when there is no corroboration;⁴⁴ in the latter it is always when it suits the narrative of Victoria Police (such as saying that she found Mr Bateson honest). The submissions do the same in relation to Mr Thomas and, to a lesser degree, Mr Cooper.
831. More so, Victoria Police criticise Counsel Assisting for painting an incomplete picture on numerous occasions. Yet in their own submissions, Victoria Police freely criticise Ms Gobbo as vague or having no recollection,⁴⁵ without reference to her health/medical issues. Where police officers gave less than compelling or credible evidence, Victoria Police ask the Commission to bear in mind that the relevant events occurred a long time ago. In stark contrast, when considering Ms Gobbo's evidence, the submissions do not even pay lip service to the same concepts. It is ironic as some evidence of their members was, on any view, incredible; for example, Counsel Assisting detail Mr Cornelius' evidence and its repetitive inconsistency with contemporaneous documents (some in his own hand). Another example is Gavan Ryan's evidence as to his having no idea why he was at the OPI hearing, as compared to the evidence of the SDU who spoke to him, Mr Overland who sent

⁴⁴ For example, see Responsive Submissions of Victoria Police, Tranche 1 (undated), VPL.3000.0001.0497 at 0615, [23.122(o)].

⁴⁵ For example, see Responsive Submissions of Victoria Police, Tranche 1 (undated), VPL.3000.0001.0497 at 0643, [28.49].

him and Ms Gobbo who spoke to him all on the basis he was there to protect the fact that she was a source. This is not even acknowledged in the submissions of Victoria Police, perhaps understandably so.

832. Victoria Police positively rely on the fact that it was because of the note taking of Victoria Police that much of this sorry tale has become known in detail to the Commission and positively use this as part of their submissions; however, they fail to recognise that most of those notes came from the SDU, who Victoria Police criticise where necessary. In fact, at one point they go as far as to question the accuracy of the ICRs where the evidence is inconsistent with their interests. The submission is paradoxical as it ignores that Victoria Police (perhaps conveniently) lost crucial evidence, such as the recordings of Ms Gobbo with Mr Rowe and Mr Mansell shortly before she was registered; or that Jeff Pope, who registered Ms Gobbo in 1999 and knew of her history in 1995 and then returned later as head of the intelligence and covert support unit "*misplaced*" her file; or that Jim O'Brien was authorised to use a second diary (albeit he was not); or that senior decision makers saw fit not to take diary notes. Mr Ryan, by his own admission, did not take notes in relation to human source matters so the material could never be disclosed; no doubt Victoria Police would say this explains the large number of "*I cannot recall*" answers during his evidence. It is not mitigation of his position but a consequence of the deliberate, clandestine tactic he deployed.
833. One of the repeated criticisms of Ms Gobbo is that each individual police officer did not believe Ms Gobbo would act in breach of her legal and ethical duties. Victoria Police give the example of the complexity of conflicts of interest and the police officers not receiving the training that lawyers do. Whilst that must be right, even the most junior, trainee police officer would have recognised that a human source giving information against her own clients was a *prima facie* conflict of interest. The Commission should not forget that the police officers registered Ms Gobbo as a result of her giving some information about Tony Mokbel. All of the police officers involved knew she acted for Mr Mokbel and that he had ongoing proceedings. It is hard to digest the submission that the most basic of conflicts was not recognised by the police officers even if the more complex ones were not, in particular by the senior police officer the submissions are made about. Mr Flynn had dealt with Ms Gobbo for the Matchless and Landslip cases. He knew that Ms Gobbo had provided information for the Posse case. Ms Gobbo was still acting for Mr Cooper at that time for the other two cases. There was a *prima facie* conflict of interest that should have been apparent.

834. The Commission and the Victorian community should not lose sight of the fact that Victoria Police registered Ms Gobbo knowing much of what they did that is set out in the Appendix to the submissions. It is no answer to say individuals were unaware. Even once aware, Victoria Police, as an institution and as individuals, chose to continue to receive information from and deploy Ms Gobbo. This occurred even when there were serious concerns about her safety and also her mental health. Victoria Police deployed Ms Gobbo against Mr Dale; they provided her the recording device and debriefed her immediately after. In relation to the tomato tins case, Ms Gobbo provided the bill of lading; once the drugs were seized, the police realised they did not have sufficient evidence, and so tasked Ms Gobbo to meet with the targets for the best part of a year knowing this put her in serious jeopardy. It was at a time she was receiving death threats, including bullets in the post and had had her car fire bombed. Yet Victoria Police continued. Even in the face of the SDU expressing concern about Ms Gobbo becoming a witness (as it would expose them and also put her life at significant risk) Victoria Police went ahead with transitioning Ms Gobbo into a witness. Whilst Ms Gobbo accepted her failings in evidence (and still does), Victoria Police's apology is littered with caveats, inconsistency and deflection coupled with a failure to accept all events, including the recruitment of Ms Gobbo. None of this would have occurred but for their conduct, no matter what the behaviour and motivation of Ms Gobbo. By late 2006, many of the issues relating to Ms Gobbo, from professional breaches (i.e. conflicts of interest) to personal deficiencies and health issues were well known to Victoria Police decision makers, as was the serious risk to her safety. Notwithstanding this, they continued to use to their benefit for just under three more years. This fact alone is illuminating.
835. Many of the police officers assert that they presumed that Ms Gobbo would conduct herself in accordance with her legal and professional obligations. They all submit that because they did not know all that was known about Ms Gobbo, they expected a high-profile barrister would abide by her professional obligations. The same is true for Ms Gobbo. She wrongly expected the police she dealt with at Purana, the SDU and those that approved her use would be honest, trustworthy and of integrity and abide by their obligations. She was wrong. As already outlined, she was lied to, manipulated and used by Victoria Police.

836. However articulately and subtly undertaken, an attempt to shift blame onto Ms Gobbo, as Victoria Police seek to do in their submissions, seriously undermines the veracity of the unreserved apology that Victoria Police make to the community.