

**ROYAL COMMISSION INTO THE MANAGEMENT OF POLICE INFORMERS**  
***TERMS OF REFERENCE 1 AND 2***

**SUPPLEMENTARY SUBMISSIONS OF FORMER MEMBERS OF THE SOURCE  
DEVELOPMENT UNIT MESSRS BLACK, FOX, GREEN, SMITH, WHITE AND  
WOLF**

**A. INTRODUCTION**

1. The Royal Commission has given parties with leave to appear an opportunity to make submissions in response to the closing submissions of other interested parties in this Royal Commission, which were circulated on 26 August 2020.
2. These submissions address three matters arising from the closing submissions of Mr Simon Overland and Victoria Police, respectively. They are to be read in conjunction with submissions filed on behalf of Messrs Black, Fox, Green, Peter Smith, Sandy White and Wolf (the **SDU**) on 7 August 2020.
3. The matters to which these submissions respond are as follows:
  - a. Mr Overland's assertion that he was the one who raised the need to develop a termination process for Ms Gobbo's management;<sup>1</sup>
  - b. An error in Victoria Police's submissions in which it is said that Mr Black was present at a meeting with Messrs Sandy White and Green on 19 April 2006;<sup>2</sup> and
  - c. Victoria Police's submission that the SDU's failure to complete a formal Acknowledgement of Responsibility document (**AOR**) represented a lost opportunity for the SDU to cement with Ms Gobbo the 'terms, conditions and rules' concerning her registration.<sup>3</sup>

**B. DISCUSSION ABOUT THE NEED TO DEREGISTER MS GOBBO WAS  
INSTIGATED BY THE SDU**

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<sup>1</sup> Submissions on behalf of Mr Simon Overland APM, p 7 [22].

<sup>2</sup> Victoria Police closing submissions, tranche 2, p 148 [74.9].

<sup>3</sup> Victoria Police closing submissions, tranche 2, p 165 [78.47-57].

4. Mr Overland asserts that ‘he was the one’ who raised the need to develop a termination process for Ms Gobbo, and that he repeatedly urged those responsible for Ms Gobbo to develop an exit strategy for her.<sup>4</sup> These assertions are said by Mr Overland to be uncontroversial and uncontradicted by Messrs Sandy White and Peter Smith.
5. Mr Overland may well have supported the termination of Ms Gobbo’s source relationship with the SDU, and/or have independently been thinking about the need to cease management of Ms Gobbo at the same time that the SDU were internally discussing how to deregister Ms Gobbo. However, it is more probable that it was the SDU—and not Mr Overland—who first raised the need to develop that exit strategy. That is, it was not Mr Overland who instigated the discussion on 17 May 2006 about developing a ‘termination process’.

**The evidence relied on does not establish that it was Mr Overland’s idea to cease Ms Gobbo’s management**

6. In support of his assertions, Mr Overland relies on an entry in the SDU’s source management log (SML) on 17 May 2006, which records that Ms Gobbo’s ‘termination process’ was discussed between him, Mr Sandy White and Mr Peter Smith. In his statement, Mr Overland acknowledged that he has no specific recollection of this meeting.<sup>5</sup>
7. Mr Overland also relies on his evidence to the Commission that he was ‘clear in his mind’ that he raised with the SDU the need to develop the termination process. It is submitted that Mr Overland’s recollection is mistaken in this regard.
8. Mr Overland conceded that he might have reconstructed his memories as a result of having seen various notes and other records.<sup>6</sup> Indeed, his memory was demonstrably unreliable at other times during his evidence (for example, in relation to his diary keeping practices).

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<sup>4</sup> Submissions on behalf of Mr Simon Overland APM, p 7 [22].

<sup>5</sup> Exhibit RC 915, statement of Mr Simon Overland, p 25 [131].

<sup>6</sup> Transcript of Simon Overland, 23 January 2020, 12204.24.

9. Mr Overland did not disagree that the SDU had already been considering how to cease managing Ms Gobbo prior to the meeting on 17 May 2006. His evidence to the Commission about this proposition was as follows:<sup>7</sup>

*Mr Chettle: When you look at the entries that surround this meeting of the SDU with you, I suggest the following picture emerges: they had already thought about finding a way to ease her out. One of the considerations was to have you thank her and see her?*

*Mr Overland: H'mmm.*

*Mr Chettle: That was discussed with you as a possibility. Mr Biggin was informed of that possibility, but ultimately it didn't happen?*

*Mr Overland: Yeah.*

*Mr Chettle: All right. Now that – do you agree that that's an acceptable interpretation of what occurred at that time?*

*Mr Overland: That's broadly consistent with my recollection, which was there was an agreement that that's what should happen at that time.*

Mr Overland then pointed out that this was the first time he was seeing a lot of the material. The questioning continued:

*Mr Chettle: The significant thing is when you made your statement, you were aware of that meeting and you---*

*Mr Overland: Because of my attendance at IBAC I was, yes.*

*Mr Chettle: When you thought about what occurred, you thought, "Well, that's right, I know I had an issue about an exit strategy"?*

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<sup>7</sup> Transcript of Simon Overland, 23 January 2020, 12208.41.

*Mr Overland: Yep, yep.*

*Mr Chettle: And you put your interpretation on to what you remembered as having occurred?*

*Mr Overland: Correct, and I still – well, whether they came to me with the intent of raising that – my recollection is I was definitely thinking about that anyway, so maybe we were both thinking about that ---*

*Mr Chettle: About the same thing?*

*Mr Overland: And there was a conversation and there was an agreement that that's what should be attended to.*

*Mr Chettle: Can I put it bluntly. The concern on behalf of the SDU was when you read your statement, it looks like, "I came up with the idea we had to get rid of her and I told them"?*

*Mr Overland: I'm sorry. I certainly remember that being my idea. I don't remember any opposition to the idea at the time, I remember that being an agreed course of action.*

*Mr Chettle: In fact – all right. You don't quibble with the fact the SDU were thinking about a way to ease her out as well?*

*Mr Overland: No, I don't.*

*Mr Chettle: And that they came to you, saying, "Look, you thank her and can we give her some Celine Dion tickets?", and it was decided that that was inappropriate and it would not go to the rewards committee?*

*Mr Overland: Yes, that sounds right. I don't specifically recall, but I do remember being amused by the Celine Dion proposition.*

10. In other words, the SDU, through questioning, contradicted that Mr Overland was the one who raised the need to develop the termination process. In response, Mr Overland conceded that the SDU may have been considering how to ease Ms Gobbo out prior to meeting with him on 17 May 2006.

#### **Other evidence about the 17 May 2006 meeting**

11. Messrs Sandy White and Peter Smith did not directly contradict Mr Overland's assertions in evidence because they were not directly asked whether it was the SDU or Mr Overland who first raised the need to develop a termination process for Ms Gobbo. The first time the SDU learnt of Mr Overland's suggestion that he consistently sought to have the SDU develop an exit strategy was upon receipt of Mr Overland's statement (the transcript of his evidence before the IBAC inquiry not having been provided to the SDU until approximately 30 October 2019). His statement about this issue postdates Messrs Sandy White and Peter Smith's *viva-voce* evidence to the Royal Commission.
12. Whilst Messrs Sandy White and Peter Smith did not contradict Mr Overland's evidence that he was the one who raised the need to develop the termination process (because they were not asked), they did not give evidence that supported Mr Overland's assertion either.
13. Mr Sandy White was asked about the 17 May 2006 meeting. Although he couldn't recall his view at the time, he said that his view 'must have been' that it was then appropriate to deregister Ms Gobbo.<sup>8</sup> He thought that Ms Gobbo's deregistration would have been a consideration after Milad Mokbel's arrest.<sup>9</sup>
14. Mr Peter Smith was not asked about the 17 May 2006 meeting or any discussion about the termination process.
15. Mr Black said that around 17 May 2006 the SDU were 'absolutely' considering deregistering Ms Gobbo.<sup>10</sup> He recalled that 'caretaker mode' commenced after a

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<sup>8</sup> Transcript of Sandy White, 7 August 2019, 4088.4.

<sup>9</sup> Transcript of Sandy White, 7 August 2019, 4088.22.

<sup>10</sup> Transcript of Mr Black, 23 October 2019, 8192.30.

discussion between Messrs Biggin and Sandy White that the SDU were no longer to task Ms Gobbo, and that this took place in around April 2006.<sup>11</sup> His evidence is broadly consistent with an entry in the SML on 27 April 2006 which records that, following the arrest of Mr Cooper, Mr Sandy White and Mr Biggin discussed a potential reward for Ms Gobbo. During the 27 April 2006 meeting, it was recommended that a potential ‘reward’ would be for Mr Overland to acknowledge his appreciation of Ms Gobbo’s assistance. It is probable that this discussion prompted the meeting with Mr Overland on 17 May 2006, as the potential reward was discussed further—with Mr Overland—on that date.

## **Conclusion**

16. It is submitted that the Commissioner cannot be satisfied that it was Mr Overland ‘who was the one’ who raised the need to develop the termination process. As set out in part K of our submissions dated 7 August 2020, the SDU were constantly, and independently, considering how to terminate the relationship with Ms Gobbo.
17. It is more probable on the evidence that the SDU approached Mr Overland as a result of the unit’s desire to cease management of Ms Gobbo and in order to discuss a potential reward for her. Whilst Mr Overland may have supported the idea (or independently, been thinking the same thing as members of the SDU), he was not the one who first raised the need for a termination process. It was the SDU who instigated the conversation.
18. The SDU’s attempts to cease management of Ms Gobbo are addressed in more detail in part K of our submissions dated 7 August 2020.

## **C. MR BLACK WAS NOT AT THE MEETING ON 19 APRIL 2006**

19. Victoria Police erroneously refer to Mr Black’s presence at a meeting on 19 April 2006 in the lead up to Mr Cooper’s arrest.<sup>12</sup> Mr Black was not at the meeting referred to.

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<sup>11</sup> Transcript of Mr Black, 22 October 2019, 8105.32.

<sup>12</sup> Victoria Police closing submissions, tranche 2, p 148 [74.9].

20. It appears this error has arisen due to a misreading of Mr Sandy White's handwriting in his diary entry for that date.<sup>13</sup> This seems highly likely, as even Mr Sandy White was critical of his own handwriting in evidence.<sup>14</sup>
21. Mr Sandy White's diary entry sets out the initials of each officer said to be present at the 19 April 2006 meeting. A close examination of the entry reveals that the initials are not those of Mr Black.<sup>15</sup>
22. In his evidence to the Commission, Mr Black referred to his own diary entries for 19 April 2006 and confirmed he was not at the meeting with Messrs Sandy White and Peter Smith.<sup>16</sup>
23. The Commissioner is urged to find that Mr Black had no involvement in the 19 April 2006 meeting. As set out in paragraphs [383] to [396] of our submissions dated 7 August 2020, Mr Black was not involved in any conversations relating to Ms Gobbo and Mr Cooper between 13 and 22 April 2006.

**D. FAILURE TO ENFORCE THE AOR MADE NO MATERIAL DIFFERENCE**

24. Victoria Police repeat the findings of Mr Gleeson's Comrie Review that the AOR in Ms Gobbo's case 'would be of critical importance ... to clearly establish the terms, conditions and rules to govern [Ms Gobbo's] actions in this role.'<sup>17</sup> The failure of the SDU to appreciate the significance of the AOR, and, at best, their communication of the AOR to Ms Gobbo verbally, is said by Victoria Police to be a lost opportunity to cement with Ms Gobbo the 'terms, conditions and rules' concerning her registration.<sup>18</sup>
25. It is submitted that, contrary to Victoria Police's assertions, the SDU's failure to ensure Ms Gobbo formally accepted the AOR did not make any material difference to how Ms

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<sup>13</sup> Victoria Police closing submissions, tranche 2, p 148 footnote 669, which refers to Exhibit RC0388 – Diary of Sandy White.

<sup>14</sup> Transcript of Sandy White, 23 August 2019, 5245.36.

<sup>15</sup> Mr Sandy White also misread his own handwriting and initially believed that Mr Black was present at the meeting (5272.38).

<sup>16</sup> Transcript of Mr Black, 24 October 2019, 8237.28.

<sup>17</sup> Victoria Police closing submissions, tranche 2, p 165 [78.53].

<sup>18</sup> Victoria Police closing submissions, tranche 2, p 165 [78.56].

Gobbo's management ultimately played out. There was no opportunity lost as a result of this oversight.

26. It must be remembered that the AOR form in 2005 was a pro-forma document. Its contents were dictated by policy. It required potential sources to acknowledge that they understood the following five points only:
- a. *My relationship with the Victoria Police Force will not protect me from prosecution if I commit an unlawful act;*
  - b. *The responsibility of Victoria Police Force extends only to those acts by me which are expressly authorised by Victoria Police;*
  - c. *I am aware that the Victoria Police Force will make every effort to protect my identity;*
  - d. *I am not an employee of the Victoria Police Force; and*
  - e. *The restrictions placed upon my contact with the Victoria Police have been explained to me.*
27. As Victoria Police highlight, Ms Gobbo went to great lengths during the early stages of her informing to emphasise to her handlers that she was an honest and ethical lawyer of integrity.<sup>19</sup> That being the case, the AOR (as it then was) seemingly had no role to play as a control mechanism for a source like Ms Gobbo. It cannot then be said by Victoria Police that the SDU's failure to enforce the AOR (as it then was) represented a lost opportunity to cement the terms, conditions and rules of Ms Gobbo's registration.
28. Had the AOR been able to be customised in order to set ground rules particular to each individual source, it would have been a significant document of utility for Ms Gobbo's unique situation. But it was not. Victoria Police submit that procedures and policies proved inadequate to address the risks created by a unique source like Ms Gobbo.<sup>20</sup> The AOR, as it was in 2005, was one of these inadequate procedures (and to that extent, the comments of the Comrie Review are accurate). Given the inadequacy of the AOR's terms in Ms Gobbo's instance, that it was not formally enforced did not make a material difference to how Ms Gobbo's management played out. Whether or not it was formally

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<sup>19</sup> See, eg., Victoria Police closing submissions, tranche 2, p 135 [71.3].

<sup>20</sup> See, eg., Victoria Police closing submissions, tranche 2, p 156 [77.4].

enforced (and the fact that it was reinforced<sup>21</sup>) is a distraction from more significant issues to be determined by this Commission.

29. This issue is also addressed at paragraph [46] of our submissions dated 7 August 2020.

**G CHETTLE**

**L THIES**

**2 September 2020**

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<sup>21</sup> See, eg., Mr Black's diary entry for 28 November 2005 and Mr Black's evidence on transcript, 25 October 2019, 8343.28.