

Royal Commission into the Management of Police Informants

Submissions on behalf of Victoria Police in reply to the submissions of some former members of the Source Development Unit

1 Introduction

- 1.1 Victoria Police makes these submissions in response to the submissions of the former members of the SDU (**SDU Submissions**) in relation to the Comrie Review, Kellam Report and the judgment of the High Court in *AB v CD & EF* [2018] HCA 58.
- 1.2 Victoria Police has already made detailed submissions in relation to each of those matters. However, the SDU Submissions require a response because the former members of the SDU raise concerns about the findings of the Comrie Review (particularly those paragraphs referred to in the judgment of Ginnane J).¹
- 1.3 The former members of the SDU also criticise the conduct of Acting Commander Stephen Gleeson in assisting Mr Comrie with his review.
- 1.4 That criticism is unfounded. In truth, Acting Commander Gleeson's integrity and effort were critical to ensuring that the use of Ms Gobbo as a human source could be properly examined. He should be commended not criticised.
- 1.5 As explained below, the former members of the SDU made a number of appropriate concessions in their evidence and submissions about the handling and management of Ms Gobbo. Those concessions are appropriate and are consistent with similar concessions that have been made by Victoria Police. In light of those concessions, it is unclear why the former SDU members maintain their criticism of Acting Commander Gleeson, the Comrie Review and the Kellam Report.
- 1.6 In summary, Victoria Police's position is as follows:
- (a) The Comrie Review was an important part of how Ms Gobbo's use as a human source came to light. It was an appropriate and important step taken by members of Victoria Police Executive Command, very shortly after receiving advice from Mr Gerard Maguire in late 2011.
 - (b) While the Comrie Review identifies shortcomings in the manner in which the SDU handled Ms Gobbo, it makes no findings in relation to these shortcomings. It would have been inappropriate for Mr Comrie to have done so given that Assistant Commissioner Pope had initiated a separate review into the SDU as part of the Covert Services Division Review.² The conclusions of the Comrie Review are focused on the deficiencies in policies and practices, and the 27 recommendations made by Mr Comrie are each directed to addressing these shortcomings.³
 - (c) The extracts of the Comrie Review that are identified in the SDU Submissions are factually accurate. Insofar as they relate to the conduct of the SDU, the extracts do no more than offer tentative conclusions for internal consideration as to the motivations of Ms Gobbo's handlers. Victoria Police reiterates its submission, based on all of the evidence, that the members of the SDU did not act with knowing impropriety.
 - (d) The suggestion that the Comrie Review "strongly influenced" the Kellam Report is incorrect.⁴ It is plain from reading the Kellam Report that Mr Kellam AO QC reviewed the source materials in detail and relied heavily on the sworn evidence given before him, including the sworn evidence of the SDU members themselves. The fact that Mr Kellam endorsed the findings of the Comrie Review is not

¹ SDU Submissions at [4] (page 2).

² Victoria Police Tranche 2 Submissions at [119.6] (page 266).

³ Victoria Police Tranche 2 Submissions at [124.1]-[124.2] (page 274).

⁴ SDU Submissions at [5(i)] (page 4).

surprising given that they relate to the same subject matter and its proposals for change were sensible. However, to suggest that Mr Kellam was influenced in some undue way by Mr Comrie undermines the significant work performed by Mr Kellam in examining the issues before him.

- (e) The SDU submissions include factual errors about the role of Mr Danye Maloney at the time of Ms Gobbo's registration.

2 Concessions made by the SDU

2.1 In their evidence and submissions, the former members of the SDU rightly made a number of concessions:

- (a) They concede that there were failings and errors made by the SDU in their management of Ms Gobbo. They also concede that the policies and procedures that they developed could have been better crafted to consider and deal with human sources with obligations of confidentiality and privilege.⁵
- (b) Legal advice should have been sought at an early stage, even though it was not considered necessary at the time.⁶
- (c) The acknowledgement of responsibilities form should have been a more flexible document able to be amended to accommodate important boundaries peculiar to a particular source.⁷
- (d) The risk assessment should have expressly identified the risk that Ms Gobbo would act for people on whom she informed and the risk of Ms Gobbo breaching her ethical obligations insofar as disclosing legally privileged information.⁸
- (e) The SDU members had only a narrow understanding of conflict of interest and missed the broader conflict of interest issue of a barrister acting for a client in relation to historical matters and informing on them in relation to unrelated crimes they were presently committing.⁹
- (f) The SDU's concerns to ensure Ms Gobbo's safety by protecting her identity as a source overrode considerations of what can now be seen as required by way of proper disclosure.¹⁰

2.2 The SDU (specifically Officer Sandy White) also conceded – rightly – that knowing what they know now, it is highly unlikely that they would take on Ms Gobbo as a source and that they would not do so without significant legal support.¹¹

2.3 It is appropriate for the SDU to have made these concessions. They are consistent with what Victoria Police had assessed as being the cause of the shortcomings in the recruitment, handling and management of Ms Gobbo as a human source.¹² As Victoria Police has said in its submission, it is accurate, fair and appropriate for it to acknowledge that it is Victoria Police that bears primary responsibility for what occurred.¹³

⁵ SDU Submissions at [45] (page 21).

⁶ SDU Submissions at [45] (page 21).

⁷ SDU Submissions at [46] (page 21).

⁸ SDU Submissions at [47] (page 22).

⁹ SDU Submissions at [234]-[235] (Page 104-105).

¹⁰ SDU Submissions at [48] (page 22).

¹¹ SDU Submissions at [49] (page 22).

¹² SDU Submissions at [50] (page 23).

¹³ Victoria Police Tranche 2 Submission at [2.36] (page 14).

3 The SDU criticisms of the Comrie Review

- 3.1 The SDU submissions say (at [4]) that the former SDU members disagree strongly with the findings of the Comrie Review. However, no attempt is made in the SDU Submissions to identify with any precision the particular findings of the Comrie Review that the SDU members disagree with, or the reasons why they disagree with those findings.
- 3.2 In fact, many of the concessions made in the SDU Submissions and evidence set out above, are consistent with many of the findings and recommendations made by Mr Comrie in the Comrie Review. For example, Mr Comrie recommended, amongst other things, that:
- (a) all Victoria Police human source policies, associated instructions and practice guides be revised to clearly reflect that special considerations apply to the obtaining, usage and management of information that may be subject to legal professional privilege;¹⁴
 - (b) Victoria Police policies be amended so that prior to registration of any human source to whom a professional duty may apply, appropriate legal advice is obtained;¹⁵
 - (c) Victoria Police re-develop the template Acknowledgement of Responsibilities to enable the inclusion of additional responsibilities that may be necessary in any particular source/handler relationship;¹⁶ and
 - (d) Victoria Police develop a more comprehensive and robust human source risk assessment process to address the many shortcomings apparent in the risk assessment process that was conducted in the case of Ms Gobbo;¹⁷
- 3.3 Each of the above recommendations aligns with the concessions that have properly been made by the former members of the SDU in their submissions.
- 3.4 The only parts of the Comrie Review that the SDU Submissions specifically take issue with are (at [4]) those parts which are extracted at pages 16-17 and paragraph [40] of the judgment of Ginnane J in *AB & EF v CD* [2017] VSC 350.
- 3.5 Those passages say little about the SDU or the former SDU members. To the extent that they relate to the SDU, they state as follows (with emphasis added):
- (a) Entries contained in the 3838 ICRs, **taken at face value**, indicate that on many occasions 3838, in providing information to police handlers about 3838's clients, has disregarded legal professional privilege.¹⁸
 - (b) [I]n some instances, it is **open to interpret** that such conduct **may have potentially** interfered with the right to a fair trial for those concerned. In the absence of any **apparent** active discouragement from the police handlers for 3838 to desist with furnishing information on such matters, the handlers remain **vulnerable to perceptions** that they may have actually been inducing or

¹⁴ Exhibit RC0510B – Neil Comrie, Victoria Police Human Source 3838: A Case Review Report, 30 July 2012 at page 20, (recommendation 3) (VPL.0005.0001.0001 at .0021).

¹⁵ Exhibit RC0510B – Neil Comrie, Victoria Police Human Source 3838: A Case Review Report, 30 July 2012 at page 20, (recommendation 3) (VPL.0005.0001.0001 at .0021).

¹⁶ Exhibit RC0510B – Neil Comrie, Victoria Police Human Source 3838: A Case Review Report, 30 July 2012 at page 39, (recommendation 8) (VPL.0005.0001.0001 at .0040).

¹⁷ Exhibit RC0510B – Neil Comrie, Victoria Police Human Source 3838: A Case Review Report, 30 July 2012 at page 34, (recommendation 5) (VPL.0005.0001.0001 at .0035).

¹⁸ Exhibit RC0510B – Neil Comrie, Victoria Police Human Source 3838: A Case Review Report, 30 July 2012 at page 16 (VPL.0005.0001.0001 at .0017).

encouraging the provision of such information. These concerns are heightened in instances where handlers have passed on such information to other police case managers, **presumably** so that they may make use of it.¹⁹

- (c) Some particular handlers **seemed keen** to take full advantage of 3838's capabilities by also seeking tactical advice about the best way to disrupt activities of certain clients of 3838 and even information about where points of vulnerability may lie for prosecutions.²⁰
- (d) Mr Comrie's review reflected the concern that despite clear indications from some Victoria Police members of their advertence to the particular risks and consequences associated with utilising EF, Victoria Police members, including senior members, **did not appear to have addressed such issues**, with the consequence, inter alia, that certain convictions of clients of EF **may** be 'open to claims of being unsafe'.²¹

3.6 What is immediately apparent from the passages referred to above is that the Comrie Review forms no conclusions about the conduct of the SDU. Each passage is qualified, presumably because Mr Comrie has not interviewed the relevant SDU members and has formed the view that it is not necessary for him to make findings about those matters.

3.7 In addition, the matters referred to in the extracts cited above are accurate and supported by the evidence before the Royal Commission. Specifically, the Kellam Report provides evidence in support of each of those matters that is derived from either the primary records maintained by the SDU or the evidence given to IBAC by the former members of the SDU.

4 Response to paragraph 5 of the SDU submissions

4.1 The former members of the SDU make a series of criticisms of Victoria Police, Acting Commander Gleeson, the Comrie Review and the Kellam Report in paragraph 5 of the SDU Submissions. Victoria Police's response to each of those matters is set out below:

The drafting of the Comrie Review

4.2 There is nothing unusual or improper about the fact that Acting Commander Gleeson played a significant role in the preparation of the Comrie Review. The process followed by Mr Comrie and Acting Commander Gleeson was thorough and is explained in orthodox terms in Acting Commander Gleeson's statement.²² Acting Commander Gleeson's work on the Comrie Review was acknowledged by Mr Comrie when he gave his report to Chief Commissioner Lay, however, the report itself and the recommendations in it are Mr Comrie's.²³

The records relied on in preparation of the Comrie Review

¹⁹ Exhibit RC0510B – Neil Comrie, Victoria Police Human Source 3838: A Case Review Report, 30 July 2012 at page 16 (VPL.0005.0001.0001 at .0017).

²⁰ Exhibit RC0510B – Neil Comrie, Victoria Police Human Source 3838: A Case Review Report, 30 July 2012 at page 16 (VPL.0005.0001.0001 at .0017). Source 3838: A Case Review Report, 30 July 2012 at page 16 (VPL.0005.0001.0001 at .0017).

²⁰ Exhibit RC0510B – Neil Comrie, Victoria Police Human Source 3838: A Case Review Report, 30 July 2012 at page 16 (VPL.0005.0001.0001 at .0017).

²⁰ Exhibit RC0510B – Neil Comrie, Victoria Police Human Source 3838: A Case Review Report, 30 July 2012 at page 16 (VPL.0005.0001.0001 at .0017).

²¹ *AB & EF v CD* [2017] VSC 350 at [33].

²² Exhibit RC1407 – Statement of Superintendent Stephen Gleeson dated 6 November 2019 at [39] (VPL.0014.0084.0001 at .0009).

²³ Exhibit RC1372 - Memo from Lay to Ashton re Comrie review dated 06/08/2012 (VPL.0100.0001.0606 at .0609).

4.3 The Comrie Review was completed based on the materials that were made available to Mr Comrie and Acting Commander Gleeson. Contrary to the submissions of the SDU (at [5(b)]), Acting Commander Gleeson did not gather the relevant documents. Rather, he relied on the HSMU and SDU to locate relevant records for him. The evidence of Mr Black which is referred to in the SDU Submissions (at [5(b)]) is not consistent with the contemporaneous documents and fails to take into account the evidence before the Royal Commission which demonstrates that Acting Commander Gleeson was told that he had been provided with all relevant records:

- (a) In February 2012, Officer Hotham – who was the Officer in Charge of the HSMU – was appointed to assist Superintendent Gleeson by facilitating access to relevant records. By February 2012, all intelligence holdings relating to Ms Gobbo had been transferred to the HSMU and kept in a secure filing cabinet.²⁴ In addition, the SDU's electronic records had been migrated to Interpose.
- (b) On 1 February 2012, Officer Hotham informed Superintendent Paterson that he was going to provide Superintendent Gleeson with access to certain materials.²⁵ The email states that:

Following the meeting with Steve Gleeson this morning I am going to provide him with access to a number of documents relating to policy, CMRD review and the Interpose source file itself. There may also be a need to review some of the hardcopy material on hand.

- (c) On 2 February 2012, Officer Hotham arranged for Superintendent Gleeson to be added to the HSMU Interpose security group, which meant that he had full access to all material on Interpose that was available to the HSMU. He also organised training on the use of the Interpose system.²⁶
- (d) On 7 February 2012, Officer Hotham emailed Officer Green to confirm whether there were any hardcopy or electronic documents at the SDU relating to Ms Gobbo that would not be on interpose.²⁷ The email states:

Are you aware of any hardcopy or electronic documents at SDU relating to 2958/3838 that would not be attached to the Interpose shell/s? Of particular interest would be anything that discusses the transition from CHIS to witness or concerns about same.

- (e) Officer Green raised this query with Sandy White and told Officer Hotham that all information would probably be on the Source Management Log, which had been uploaded.²⁸

4.4 Evidently, Acting Commander Gleeson made every effort to locate and review all relevant material. He was reliant on Officer Hotham of the HSMU to locate these materials, who was in turn reliant on the SDU to explain where any relevant materials were stored.

The records kept by the SDU

²⁴ Exhibit RC1254 – Statement of Officer Hotham dated 15 November 2019 at [18] (VPL.0014.0092.0001 at .0003).

²⁵ Untendered email from Neil Paterson to Officer Hotham dated 14 February 2012 (VPL.6137.0040.4525).

²⁶ Exhibit RC1254 – Statement of Officer Hotham dated 15 November 2019 at [31] (VPL.0014.0092.0001 at .0005); Exhibit RC1150b – Email from Superintendent Steve Gleeson to Interpose Business Support Unit dated 3 February 2012 (VPL.0100.0040.0557).

²⁷ Exhibit RC1151b – Email from Officer 'Hotham' to Officer 'Green' dated 7 February 2012 (VPL.6137.0074.3079).

²⁸ Exhibit RC1254 – Statement of Officer Hotham dated 15 November 2019 at [33] (VPL.0014.0092.0001 at .0006); Exhibit RC1152b – Emails between Officer 'Hotham', Officer 'Green' and Officer 'White' dated 7 and 8 February 2012 (VPL.6025.0006.4029).

- 4.5 The submissions of the SDU (at [5(c)]) misconstrue Mr Biggin's oral evidence about the SDU records. During his oral evidence, Mr Biggin was taken to the document that he prepared in response to a series of questions that Superintendent Gleeson had raised with Mr Biggin at the time the Comrie Report was being prepared. Those answers clearly show that the errors in the SDU records had nothing to do with the manner in which they were uploaded to Interpose, but were instead a product of the manner in which the SDU records were conveyed to the HSMU. Mr Biggin said:²⁹

*[D]uring the management of this human source, two systems were used, the initial manual system called the Z drive used by the Source Development Unit, which necessitated physically conveying source data to the Human Source Management Unit on disc or other electronic means. **This resulted in numerous occasions in the data being 'lost' or misplaced, there is no suggestion that data was misused but due to its sheer volume was not properly added by the Human Source Management Unit to the main file, resulting in numerous audits being conducted [to] rectify the data integrity issues.***

This has led to data not matching time frames.

Interpose was introduced and then the dedicated human source module later introduced. This allowed – generally speaking – a snap shot of where the human source data was and what was required at that time. Generally speaking this module assists greatly from a management perspective.

The other issue related to the work load of the human source controllers. This was a "log jam" in that they had to verify the information and data before records could be updated.

- 4.6 In the course of Operation Loricated, the electronic documents maintained by the SDU, including those documents stored on the "z drive", were analysed by the Operation Loricated Project Team. While the "z drive" was a source of useful and relevant material, it was not a substitute for the work completed by the Operation Loricated Project Team.³⁰

Access to the tape recorded SDU conversations

- 4.7 The SDU's criticism of Acting Commander Gleeson for failing to locate or listen to the tape recorded SDU conversations with Ms Gobbo (at [5(d)]) is not supported by the evidence. The evidence before the Royal Commission reveals that Acting Commander Gleeson went to great lengths to locate the audio records and to ensure that they were reviewed:

- (a) On 10 May 2012, Superintendent Gleeson sent an email to Officer Hotham, asking a number of specific questions about the records maintained by the SDU.³¹ In these questions, Superintendent Gleeson sought, amongst other things:
- (i) any Acknowledgements of Responsibilities in relation to Ms Gobbo;
 - (ii) risk assessments for Ms Gobbo, other than those conducted on 15 November 2005 and 20 April 2006;
 - (iii) any psychological advice sought in relation to Ms Gobbo; and

²⁹ Exhibit RC0586b – Mr Anthony Biggin's responses to questions raised by Superintendent Steve Gleeson dated 9 May 2012 (VPL.0005.0040.0009 at .0012).

³⁰ Victoria Police Tranche 2 Submissions at [129.6] (page 285)

³¹ Untendered email from Steve Gleeson to Officer Hotham dated 10 May 2012 (VPL.6072.0004.3036).

- (iv) copies of any documentation provided by the SDU to the Petra Taskforce;
- (b) In order to answer these queries, Officer Hotham approached the members of the SDU, including Detective Inspector O'Connor and Officer Richards.
- (c) On 15 May 2012, Officer Hotham provided Superintendent Gleeson with risk assessment documents and answered a number of the questions that Superintendent Gleeson had asked on 10 May 2012.³²
- (d) On 24 May 2012, Officer Hotham met with Superintendent Gleeson to discuss his outstanding document requests, and specifically the missing acknowledgement of responsibility document. Superintendent Gleeson was told that the acknowledgment of responsibility may have occurred verbally.³³
- (e) Between 25 May 2012 and 4 June 2012, the Inspector in Charge of the SDU, John O'Connor, personally listened to audio recordings to attempt to locate an acknowledgement of responsibilities. In June and July 2012, representatives of the SDU – including Officer Peter Smith – listened to further audio recordings to attempt to locate an AOR.³⁴
- (f) Enquiries were also made of Officer Sandy White, who informed the SDU that he presented a hard copy AOR form to Ms Gobbo but that she refused to sign it.³⁵ However, Superintendent Gleeson was not informed of Officer White's explanation.³⁶

4.8 The submissions of the SDU give the impression that it was solely the responsibility of Acting Commander Gleeson to locate these materials. What the SDU fail to acknowledge is that the SDU were specifically asked to assist Mr Gleeson in locating these records. If there were records that Mr Gleeson did not have available to him, then the reason for that shortcoming is because they were not made available to him by the SDU or the HSMU.

The "Out of Scope" document

4.9 It was entirely appropriate for Acting Commander Gleeson to report the "out of scope" issues to Mr Pope and to the Chief Commissioner. In fact, Mr Gleeson had an obligation to do so under the *Police Regulation Act 1958*. Victoria Police refers to its submissions dated 25 August 2020 at [123.1]-[123.11].

The Comrie Review was a desktop review

4.10 The Comrie Review is properly described as a desktop review. Because it was a desktop review and was not considering matters of misconduct, it was appropriate for Mr Comrie to apply the existing policies to past events.³⁷ Contrary to the submissions of the SDU (at [5(f)]), the fact that Acting Commander Gleeson was involved in the preparation of the Comrie Report does not detract from Mr Comrie's independence.

4.11 Contrary to the submissions of the SDU (at [5(k)]), the Comrie Review is not critical of any member of the SDU. As is clear from the recommendations made, the criticisms

³² Exhibit RC1254 – Statement of Officer Hotham dated 15 November 2019 at [35] (VPL.0014.0092.0001 at .0006); Untendered email from Steve Gleeson to Officer Hotham dated 15 May 2012 (VPL.0100.0040.0634); Exhibit RC0613b – Email from Officer 'Hotham' to Superintendent Steve Gleeson dated 15 May 2012 (VPL.0100.0040.0923).

³³ Exhibit RC1254 – Statement of Officer Hotham dated 15 November 2019 at [36] (VPL.0014.0092.0001 at .0006).

³⁴ Exhibit RC0795B – Statement of Superintendent John O'Connor dated 11 October 2019 at [104] (VPL.0014.0077.0001 at .0018)

³⁵ Exhibit RC0795B – Statement of Superintendent John O'Connor dated 11 October 2019 at [105]-[106] (VPL.0014.0077.0001 at .0018); Untendered email from Officer Smith to Mr O'Connor dated 19 July 2012 (VPL.6078.0008.6903).

³⁶ Exhibit RC1407 – Statement of Superintendent Stephen Gleeson dated 6 November 2019 at [53] (VPL.0014.0084.0001 at .0012 - .0013).

³⁷ Victoria Police Tranche 2 Submissions at [120.3]-[120.4] (page 268)

made by Mr Comrie relate only to the adequacy of the processes followed by the SDU and the policies as they existed at the time that the review was conducted. In making those recommendations, it was not necessary for Mr Comrie to make findings about individuals.

- 4.12 That is not to say that in conducting the Comrie Review, Acting Commander Gleeson and Mr Comrie did not identify concerning materials surrounding Ms Gobbo's management. However, Acting Commander Gleeson had good reasons for not speaking with individual members of the SDU and it was appropriate for him not to do so.³⁸

References to senior police members in the Comrie Report

- 4.13 The SDU submission (at [5(g)]) that the Comrie Report made no reference to the involvement of senior police officers in the recruitment, handling and management of Ms Gobbo is incorrect. The Comrie Report identifies deficiencies in the Monthly management meetings.³⁹ It also identifies that risks associated with the use of Ms Gobbo – including the risk that previous convictions were open to claims of being unsafe – were documented in a file which was provided to the then Assistant Commissioner Crime.⁴⁰
- 4.14 Where potential concerns were identified in relation to senior police members, these were acted on appropriately. Victoria Police refers to its submissions on the out of scope document prepared by Acting Commander Gleeson and communicated to the Office of Police Integrity in 2012.⁴¹

The assumptions made about the Acknowledgment of Responsibilities template

- 4.15 The SDU submission (at [46]) asserts that *“Both the Comrie review and Kellam Report assume the AOR was a document that could be modified to suit unique risks. In 2005 it could not.”* This is factually wrong. In fact, the Comrie Review recorded (at page 35, paragraph 3) that the AOR form was:

*“...simply a fixed template form available to be downloaded from the VicPol forms menu on the Word program within the mainframe. The only actual provision for input on this form is for it to be adopted with the signatures and details of the source, the handler and the controller to indicate acceptance. **The AOR template does not have any fields to record any additional instructions that may be necessary for a particular source.***

- 4.16 Indeed, Recommendation 8 of the Comrie Review was that the template be re-developed “to enable the inclusion of additional responsibilities as may be necessary in any particular source / handler relationship”.

Acting Commander Gleeson and the civil litigation

- 4.17 Contrary to the SDU Submissions (at [5(h)]), Acting Commander Gleeson was not involved in the civil claim commenced by Ms Gobbo in 2010. The evidence before the Royal Commission is that Acting Commander Gleeson attended a single meeting with the VGSO and with Superintendent Lardner on 9 June 2010. He was, at that time, managing the Victoria Police response to the Bushfires Royal Commission and had no more than a passing knowledge of the civil litigation that was being managed by other

³⁸ Victoria Police Tranche 2 Submissions at [120.3] (“A paper-based review?”, page 268).

³⁹ Exhibit RC0510B – Neil Comrie, Victoria Police Human Source 3838: A Case Review Report, 30 July 2012 at page 31 (VPL.0005.0001.0001 at .0032).

⁴⁰ Exhibit RC0510B – Neil Comrie, Victoria Police Human Source 3838: A Case Review Report, 30 July 2012 at page 26 (VPL.0005.0001.0001 at .0027).

⁴¹ Victoria Police Tranche 2 Submissions at [123.1]-[123.11] (pages 271 - 274).

officers, VGSO and very senior and capable barristers. The proposition that Acting Commander Gleeson should have done anything at that stage is unsupportable.

The Kellam Report

- 4.18 There was nothing improper in Acting Commander Gleeson speaking with IBAC during its investigation.
- 4.19 The SDU submissions contend (at [5(i)]) that the Kellam Report was influenced by Acting Commander Gleeson's views as to what had occurred in relation to Ms Gobbo's management. This submission is without basis. It is to be observed that:
- (a) Mr Kellam AO QC conducted his review independently and thoroughly.
 - (b) In conducting his investigation, Mr Kellam reviewed the primary records of Victoria Police and conducted examinations of 14 witnesses who gave evidence to the inquiry.
 - (c) While Mr Kellam endorses the findings of the Comrie Review, he does so based on his analysis of the primary records of Victoria Police and on the evidence given during the course of the inquiry. For example, Mr Kellam's says (at page 23) that:⁴²

The position the Source held as a legal representative to the members of the 'Mokbel cartel' and associated criminals, could, and should have resulted in information obtained and passed to VicPol members being categorised as either legally professionally privileged information, confidential information or information subject to criminal activity falling outside the fiduciary relationship. The recognition of information, being the subject of these different classifications, is (almost without exception) absent from the source and management material examined in the course of this inquiry. Examination of witnesses revealed this failure was compounded by reliance on self-interpretation of the nature of the information by handler, controllers and supervisors which created an inconsistent approach to receipt, documentation, dissemination and use of the information provided.

- (d) The Kellam Report then goes on to give five pages of examples of intelligence gleaned from Ms Gobbo's clients, subject to those various classifications which was disseminated without any apparent consideration of the relevant issues.

Neither the Comrie Review or Kellam Report deliberately or inadvertently distanced Police Command from involvement in or use of Ms Gobbo as an informer

- 4.20 The SDU submission (at [5(l)]) that the Comrie Review and Kellam Report sought to distance police command from involvement in and knowledge of Ms Gobbo's use as an informer is incorrect. In fact, the opposite is true. Mr Kellam described the failure by those responsible for the management of the SDU to ensure that protocols for the AOR and RA processes were complied with, over a significant period of time constituted "*negligence of a high order*".⁴³ Victoria Police accepts this criticism.⁴⁴

⁴² Exhibit RC0113 - Murray Kellam, Report Concerning Victoria Police Handling of Human Source Code Name 3838 dated 6 February 2015 (VPL.0007.0001.0001 at .0027).

⁴³ Exhibit RC0113 - Murray Kellam, Report Concerning Victoria Police Handling of Human Source Code Name 3838 dated 6 February 2015 (VPL.0007.0001.0001 at .0062).

⁴⁴ Victoria Police Tranche 2 Submissions at [141.3] (page 318).

5 Acting Commander Gleeson acted appropriately and with distinction

- 5.1 As these submissions demonstrate, the criticism of Acting Commander Gleeson is unfounded and unfair. In truth, Acting Commander Gleeson behaved impeccably and with distinction. He should be commended not criticised:
- a. He conducted the work underpinning the Comrie Review thoroughly and without fear or favour, relying heavily on information given to him by the SDU itself;
 - b. Although the terms of reference for the Comrie Review focused on the adequacy of systems and processes, Acting Commander Gleeson identified concerning aspects of her handling and management. He documented those and reported them to his superiors in an 'out of scope' report;
 - c. The 'out of scope' report gave rise to possible concerns about the conduct of various police involved with this matter including the conduct of senior officers at a command level. Far from covering those matters up, Acting Commander Gleeson, with the support of the Executive Director of Legal Services Department, reported those concerns to the OPI. This act demonstrates beyond any doubt that nothing that Acting Commander Gleeson did was intended to protect anyone – no matter how senior;
 - d. Then Chief Commissioner Ken Lay also sent the 'out of scope' report to the OPI. It follows that Acting Commander Gleeson's conduct facilitated Victoria Police's appropriate disclosures to its oversight body;
 - e. Acting Commander Gleeson assisted the IBAC inquiry with information and briefing material. Given his extensive knowledge of the background and vast quantity of material, this was completely appropriate and acknowledged by Mr Kellam.
- 5.2 In truth, Acting Commander Gleeson's integrity and effort were critical to ensuring that the use of Ms Gobbo as a human source could be properly examined.

Submission of Acting Commander Stephen Gleeson

The SDU Submissions contend, amongst other things, that Acting Commander Gleeson was negligent, lacked objectivity, lacked an appreciation of key issues and acted inappropriately in briefing IBAC during the investigation that led to the Kellam Report.

Mr Gleeson rejects those criticisms and adopts the submissions made by Victoria Police in this document about his conduct.

6 Correcting errors about Mr Danye Moloney's role

- 6.1 At paragraph [123] the SDU submissions assert that Mr Danye Moloney was the Central Source Registrar.⁴⁵ This is not correct.
- 6.2 Mr Moloney's evidence was that he was not at any time the Central Informer Registrar or Central Source Registrar, despite Officer White stating the contrary in his evidence.⁴⁶

⁴⁵ SDU submissions at [123] (page 53).

⁴⁶ Exhibit RC1325B – Statement of Danye Moloney at [49] & [57] (VPL.0014.0070.0025 at .0032-33)

- 6.3 As is correctly explained in Counsel Assisting's submissions,⁴⁷ the applicable Victoria Police human source policies provided that the Central Informer Registrar or (as it was later named) Central Source Registrar was the Superintendent, State Intelligence Division, Intelligence and Covert Support.⁴⁸
- 6.4 Mr Moloney was the Commander, Intelligence and Covert Support Department from July 2005 until November 2008, but never performed the role of a Superintendent within that Department.

Saul Holt
Karen Argiropoulos
Adam Purton

⁴⁷ Counsel Assisting Submissions at [232] (page 50), Vol. 2.

⁴⁸ Exhibit RC008, Annexure 35 – Chief Commissioner's Instruction 6/04 (VPL.0002.0001.2214 at .2225); Exhibit RC008, Annexure 37 – VPM Instruction 111-3 Human Sources (VPL.0002.0001.1662 at 1662).