

IN THE ROYAL COMMISSION INTO THE MANAGEMENT OF POLICE INFORMANTS

1 Reply Submission on Behalf of the Tranche 1 Former and Current Members of Victoria Police

- 1.1 This reply submission is filed in response to the many detailed submissions now filed on behalf of parties involved in this Royal Commission. For consistency, the individuals who were the subject of the Tranche 1 submissions, file this reply submission jointly.
- 1.2 Whilst there are some factual contests in the submissions filed on behalf of parties with standing leave, there are two powerful themes that emerge from the submissions as a whole.
- 1.3 Both themes are important to the appropriateness of the findings and recommendations to be made in this Royal Commission.
- 1.4 The first theme to emerge is that there were many different factors that, over several years, culminated in the mismanagement of Ms Gobbo as a human source. It was, as Mr Murray Kellam AO QC concluded in his inquiry, a “*systemic failure*”. The submissions of the various parties are very useful in that they assist in identifying the many different elements of that failure. The list of elements is long.
- 1.5 That list includes the following:
 - (a) weak organisational governance structures, which was something that former Chief Commissioner Ken Lay observed with the benefit of his experience since retiring from Victoria Police and working within other organisations;¹
 - (b) the unit that registered and managed Ms Gobbo was newly established (the **SDU**) and its developing policies and procedures had not yet been tested and refined within Victoria Police, such as the sterile corridor;²
 - (c) there were no restrictions in policy on the recruitment and use of human sources with legal obligations of confidentiality and privilege;³
 - (d) there was an inadequate risk assessment framework for the recruitment of human sources;⁴
 - (e) there was no internal human source oversight body of the kind that now exists with access to high level legal advice;⁵
 - (f) there were insufficient resources within the SDU to manage a source with Ms Gobbo’s additional complexities;⁶

¹ Victoria Police Tranche 2 Submissions at Chapters 1 and 6; Exhibit RC1171B – Statement Kenneth Lay dated 9 February 2020 at [5]-[14] (VPL.0014.0119.0013 at .0013-.0015); T13529.41-T13530.29 (Lay); T13559.22-T13562.11 (Lay).

² SDU Handlers’ Submissions at p 9 [18(b)], p 22 [47], Section B; Victoria Police Tranche 2 Submissions at Chapter 1.

³ Victoria Police Tranche 2 Submissions [2.19].

⁴ Victoria Police Tranche 2 Submissions [78.18]-[78.37].

⁵ Victoria Police Tranche 2 Submissions [2.17]-[2.25]; Chapter 4, Parts 22 and 23.

⁶ SDU Handlers’ Submissions at Section D; Victoria Police Tranche 2 Submissions at Chapters 1 and 6.

- (g) for much of the time, the SDU did not have a full-time Inspector overseeing its operations, one of the Inspectors had no real experience in human source management and, at no time, was an Inspector^{PII} with the SDU;⁷
- (h) when the relevant events occurred, over a decade ago, it was very rare for police members to obtain legal advice about operational matters. They briefed up or they tried to work it out themselves;⁸
- (i) police members, generally, had limited formal training and knowledge of legal professional privilege;⁹
- (j) police members had no formal training and, generally, very limited knowledge of a barrister's broader professional obligations, including the obligation to avoid different types of conflicts of interest;¹⁰
- (k) formal training about disclosure obligations was wholly inadequate, the understanding of the obligation by members was, generally, very limited and the disclosure obligation was not emphasised within the organisation;¹¹
- (l) there was no formal training or formal processes to follow in making claims of Public Interest Immunity over documents, including in relation to the application of redactions;¹²
- (m) there was considerable emphasis within the organisation on protecting the identity of all human sources in order to protect life (including Ms Gobbo), there was strict policy in place about the non-disclosure of human sources and there was a written direction to this effect¹³:

Members must carefully consider the evidence they will give prior to being cross examined. Members must also be aware of where the cross examination is heading and attempt to forestall cross examination on the identity of the informer before the member is confronted with a direct question as to his identity.

- (n) no systems and processes were implemented within the SDU (or within Covert Services/the State Intelligence Division) or within Crime to manage the unique complexities that came with Ms Gobbo's role as a source;¹⁴
- (o) if police members were told to watch out for legal professional privilege and conflict and to keep a documentary record in connection with Ms Gobbo's role¹⁵ then that was an inadequate response to the management of risk;
- (p) there was confusion as to reporting lines within Crime with Mr Overland believing that DAI O'Brien was reporting to Commander Purton but DAI O'Brien believed

⁷ SDU Handlers' Submissions at Section D; Victoria Police Tranche 2 Submissions at Chapters 1 and 6. As to the inexperience of an Inspector, the evidence is at Exhibit RC1217 – Statement of Inspector Andrew Glow at [17]-[27] (VPL.0014.0095.0001 at .0003-.0004).

⁸ Statement of AC Kevin Casey dated 15 August 2020 at [109]-[115] (VPL.0014.0134.0001 at .0016).

⁹ Victoria Police Tranche 2 Submissions at Chapter 7, Part 42; Statement of AC Kevin Casey dated 15 August 2020 at [53] (VPL.0014.0134.0001 at .0009).

¹⁰ Victoria Police Tranche 2 Submissions at Chapter 7, Part 42; Statement of AC Kevin Casey dated 15 August 2020 at [44]-[52] (VPL.0014.0134.0001 at .0009).

¹¹ Simon Overland's Submissions at p 31-32 [91]; OPP and DPP Submissions at p 13-16 [35]-[42]; Victoria Police Tranche 2 Submissions at Chapters 1, 5 and 7. As to the evidence about lack of training, see Statement of AC Kevin Casey dated 15 August 2020 at [17], [29], [40], [64]-[70] (VPL.0014.0134.0001 at .0005, .0007, .0008 and .0011).

¹² Victoria Police Tranche 2 Submissions [36.4]. As to the absence of training and processes, see Statement of AC Casey dated 15 August 2020 at [17], [45], [58], [66] (VPL.0014.0134.0001 at .0004-.0005, .0009 and .0011).

¹³ Victoria Police Tranche 2 Submissions [40.6]. As to the direction, see Exhibit 299 – Dedicated Source Unit Standard Operating Procedures dated 28 January 2005 (IBAC.0010.0001.0689 at .0041).

¹⁴ See for example, Victoria Police Tranche 2 Submissions [2.17]-[2.25]; Chapter 4, Parts 22 and 23.

¹⁵ Simon Overland's Submissions at p 29 [82]-[85].

that he was reporting to Mr Overland and the evidence is that Commander Purton's role was limited;¹⁶

- (q) there were different understandings as to the sharing of information with OPP prosecutors. Mr Overland thought, perhaps based on his experience in Federal prosecutions involving the Commonwealth DPP, that Victoria Police members and OPP prosecutors discussed human sources and their identities¹⁷, whereas the general practise in Victoria did not involve such sharing of information;¹⁸
- (r) police members worked in silos and, therefore, there was little collaboration and sharing of information between different parts of Victoria Police;¹⁹
- (s) detectives were overworked investigating many underworld murders and sophisticated illicit drug operations and there was little time for pause and reflection on broader issues and those outside of their immediate focus;²⁰
- (t) officers within Crime believed that as Ms Gobbo had been registered by the SDU and was being managed by the specialist officers within that unit, that Ms Gobbo was the responsibility of the SDU and it was not for them to trespass into that area;²¹
- (u) the operation of the sterile corridor meant that investigators relied upon the SDU to appropriately filter and sanitise information prior to dissemination. An unintended consequence of the sterile corridor was that matters that should have been properly considered for disclosure were not known to the investigators, who were responsible for making disclosure;²²
- (v) members at the top of the chain of command, being those within Executive Command who reported directly to the Chief Commissioner, knew that Ms Gobbo was a source which gave comfort and confidence to members below about her use;²³
- (w) the human source was someone who was more deeply involved in underworld crime than any police member knew and no one predicted that she would disregard her professional obligations in the way that she did at times;²⁴ and
- (x) the other elements set out in Victoria Police's Tranche 2 submissions.

1.6 It is evident from this list that it was the perfect storm. It was a combination of circumstances occurring together which resulted in the mismanagement of the human source and the significant consequences that have followed.

1.7 Hard-working police members have acknowledged that they made errors in the unique and highly unusual circumstances that arose. Their conduct occurred within a framework that was wholly inadequate to manage the risks associated with Ms Gobbo. The unfortunate reality for the members is that if the right framework had been in place and,

¹⁶ Simon Overland's Submissions at p 30-31 [88]; Victoria Police Tranche 1 Submissions, Submission of Mr Jim O'Brien [50.39].

¹⁷ Simon Overland's Submissions at p 33-34 [95]-[97], p 58 [163(d)], p 69 [184(b)]. See also T12140.6-T12141.5 (Overland).

¹⁸ This was a feature of the evidence given by police members. See for example, Victoria Police Tranche 2 Submissions, Submission of Sergeant Tim Johns. See also OPP and DPP Submissions on this topic.

¹⁹ Victoria Police Tranche 2 Submissions [6.4].

²⁰ This was a feature of the evidence of detectives. See for example, Victoria Police Tranche 1 Submissions, Submission of DI Gavan Ryan [28.106]; Submission of Mr Jim O'Brien [50.32], [51.27]; Submission of Com. Stuart Bateson.

²¹ Simon Overland's Submissions at p 22-23 [62]-[66], p 25 [69], p 32 [92], p 36 [102(c)], p 52 [147(d)], p 55 [153(i)], p 58 [163(e)]; Victoria Police Tranche 1 Submissions, Submission of Mr Jim O'Brien [50.62], [51.7]; Submission of Inspector Dale Flynn [61.6], [63.3]; Submission of DS Paul Rowe [57.10]-[57.12].

²² Victoria Police Tranche 1 Submissions, Submission of Superintendent Jason Kelly [36.26]; Submission of Mr Jim O'Brien [51.8]; Submission of Inspector Dale Flynn [63.5]; Victoria Police Tranche 2 Submissions [5.15], [7.2], [10.3].

²³ Victoria Police Tranche 1 Submissions [11.26]-[11.27].

²⁴ Victoria Police Tranche 1 Submissions [11.15].

if Ms Gobbo had still been registered by the SDU, then her use would have been so closely managed by the SDU and supervised by Executive Command, that the members would never have found themselves in the circumstances they did and they would never have had to make the decisions which they acknowledge they got wrong.

- 1.8 The long list of circumstances set out above – many of which are not acknowledged by Counsel Assisting - must be taken into account when considering the appropriateness of making the findings that Counsel Assisting submit are open on the evidence in relation to individual members.
- 1.9 The second theme which runs through the submissions of parties with standing leave is the approach taken by Counsel Assisting to their final submissions. As observed by many parties, the submissions advance a case as counsel would in a civil or criminal proceeding rather than analyse the evidence in the performance of the role of objective truth-seeker. The submissions do not evaluate the evidence both for and **against** possible findings. That task is a critical part of the role of Counsel Assisting in helping to ensure that findings made by the Commissioner are safe and proper.
- 1.10 As a consequence of the general approach taken, Counsel Assisting have fallen further into error by submitting that findings are open on the evidence when they are not and by inviting the Commissioner to make findings well outside of the Royal Commission's terms of reference.
- 1.11 It is evident from the tone and content of the submissions of parties with standing leave that the erroneous approach taken by Counsel Assisting has had a profound impact on people. One retired member had to read in Counsel Assisting's submissions (which were circulated to parties with standing leave, affected persons and others) a submission that it was open to the Commissioner to find that he had engaged in very serious conduct in connection with events in which he had almost no involvement. His submissions invited Counsel Assisting to withdraw their submission because it had no proper basis. At the 11th hour, they withdrew it and the submissions were redacted accordingly before they were published on the internet. That member should never have been called on to answer that submission and it should never have been published to anyone.
- 1.12 The member has to endure the perception that the heavy redactions in the submissions were made to "*censor*" his wrongdoing when the true facts are something different and not stated here in any detail for obvious reasons.
- 1.13 While members made errors, they still have a right to be treated with fairness and decency.
- 1.14 For the reasons stated universally in the submissions made by many of the parties with standing leave, Counsel Assisting's submissions must be read by the Commissioner with the understanding that they do not contain the evidence against the findings proposed by Counsel Assisting and that fundamental and countless errors have been identified throughout them by parties with standing leave. It is not clear how natural justice permits any of the contested findings against individuals to be made in light of the approach taken by Counsel Assisting of, *inter alia*, not setting out the evidence against findings said to be open.

- 1.15 The Appendix to this reply submission contains responses to specific factual matters in submissions made by parties with standing leave and others. It also addresses an aspect of Counsel Assisting's submissions which was not addressed in the Tranche 1 submissions.

Dated: 8 September 2020

RENEE L ENBOM
KAREN ARGIROPOULOS
SIOBHAN KELLY
SIMON FRAUENFELDER

.....
Corrs Chambers Westgarth
Solicitors for the Tranche 1 members

Appendix

2 Response to specific factual matters

- 2.1 This part of the Appendix addresses two matters.
- 2.2 First, it addresses a number of commonalities in the submissions that are at odds with the findings that Counsel Assisting submit are open to the Commissioner.
- 2.3 Second, it addresses a number of factual disputes some of which, when taken alone are minor, but are nonetheless important to the Commissioner's overall analysis. In the limited time available, it has not been possible to identify and respond to all factual disputes.

Matters of commonality

- 2.4 There are several key commonalities that have been arrived at by the different parties which are contrary to the submissions of Counsel Assisting.
- 2.5 The matters of commonality include:
- (a) that Ms Gobbo did not act improperly in connection with Mr McGrath's statement-taking process;²⁵
 - (b) that Ms Gobbo was not informing on Mr Thomas;²⁶
 - (c) that Ms Gobbo's potential conflict in acting for multiple people in connection with Mr Thomas did not necessarily extend to the whole of the proceeding against him and was capable of being resolved by informed consent;²⁷
 - (d) that Mr Thomas knew that Ms Gobbo had acted for Mr McGrath;²⁸
 - (e) that Mr Thomas knew that Mr McGrath had changed his story about whether or not he knew that Mr Marshall was to be murdered and that Mr McGrath was extensively cross-examined about this fact during the committal proceeding in March 2005;²⁹
 - (f) that legal practitioners and a judicial officer knew that Ms Gobbo was acting for Mr Thomas having acted for Mr McGrath;³⁰
 - (g) that Ms Gobbo was acting as Mr Thomas's legal representative when she was given copies of transcripts of interviews between Mr Thomas and investigators, that she was not being tasked in connection with Mr Thomas, and that the transcripts were given to her through the SDU as a matter of convenience only;³¹
 - (h) that the discussions about adjourning Mr Cooper's plea hearing did not contemplate dishonesty or conduct that might mislead the Court;³²

²⁵ Nicola Gobbo's Submissions at p 134-135 [439]-[446], p 154-156 [483]-[492], p 176 [549]; SDU Handlers' Submissions at p 36 [74]; Victoria Police Tranche 1 Submissions, Submission of Com. Stuart Bateson [16.18]-[16.28].

²⁶ Nicola Gobbo's Submissions at p 181 [562]; SDU Handlers' Submissions at p 58 [137], p 58-59 [138]-[139]; Victoria Police Tranche 1 Submissions, Submission of DI Gavan Ryan [28.124], [28.157]; Submission of Mr Jim O'Brien [52.92(d)], [52.96].

²⁷ Nicola Gobbo's Submissions at p 156 [493]; Victoria Police Tranche 1 Submissions, Submission of Com. Stuart Bateson [14.63]-[14.68].

²⁸ Nicola Gobbo's Submissions at p 168 [520]; Victoria Police Tranche 1 Submissions, Submission of Com. Stuart Bateson [14.64], [17.70], [17.74], [18.1].

²⁹ Nicola Gobbo's Submissions at p 141-143 [463]-[469], p 143 [470], p 145-154 [471]-[482]; Victoria Police Tranche 1 Submissions, Submission of Com. Stuart Bateson [13.14(d)], [14.42], [14.56]-[14.60], [19.4].

³⁰ Nicola Gobbo's Submissions at p 157-165 [496]-[507]; Victoria Police Tranche 1 Submissions, Submission of Com. Stuart Bateson [14.64]-[14.67], Part 20.

³¹ Nicola Gobbo's Submissions at p 157-165 [496]-[507]; Victoria Police Tranche 1 Submissions, Submission of Com. Stuart Bateson [14.64]-[14.67], Part 20.

³² Nicola Gobbo's Submissions at p 195 [616]-[618]; SDU Handlers' Submissions at p 143-145 [333]-[339]; Victoria Police Tranche 1 Submissions, Submission of Mr Jim O'Brien [52.237]-[52.242].

- (i) that the SDU attempted to persuade Ms Gobbo not to attend and represent Mr Cooper after his arrest, but that she was determined to do so, although this was not known to the investigators dealing with Mr Cooper in relation to his arrest;³³
- (j) that Mr Smith attended St Kilda Road on the night of Mr Cooper's arrest because of his expertise in persuading people to cooperate with police and not as part of a plan to task Ms Gobbo in connection with Mr Cooper's arrest;³⁴
- (k) that the meeting of 24 July 2007 was about whether it was viable to use Ms Gobbo as a witness, and not about broader considerations concerning the use of Ms Gobbo as a human source;³⁵
- (l) that when the SDU told Messrs Davey and Solomon that the Paul Dale notes had already been shown to Mr Ryan and were of no value to the investigation, this was a diversion to avoid investigators pressing to see the notes;³⁶ and
- (m) that Mr Kellam reached the correct conclusion, namely, that Victoria Police was negligent in its management of Ms Gobbo and that individual members had no intention to act with impropriety.³⁷

2.6 These are the important matters of commonality that we have been able to identify in the time available. There will likely be others.

2.7 We now address below the disputed issues that we have been able to identify in the time available.

Ms Gobbo's submissions

2.8 Ms Gobbo relies on a number of facts that are wrong, not supported by evidence or which present an incomplete picture. These are briefly addressed below.

Prior to Ms Gobbo's 2005 registration

2.9 Ms Gobbo refers to a conversation she had with Com. Bateson in July 2004, the day after she had a stroke.³⁸ Ms Gobbo's submissions do not make clear that it was Ms Gobbo who telephoned Com. Bateson - ostensibly to tell him that she would be continuing to act for Mr McGrath. Com. Bateson had no reason to believe that there was any impact on Ms Gobbo's cognitive functioning from the stroke. What Ms Gobbo communicated to Com. Bateson was that **notwithstanding** her stroke, she intended to continue working and, specifically, representing Mr McGrath. Precisely why Ms Gobbo made that telephone call is unknown.

2.10 Ms Gobbo makes reference³⁹ to a conversation between Mr O'Brien and Sandy White when Ms Gobbo was in hospital. Mr O'Brien's submissions demonstrate that this was a "short" and "very general" conversation that was of no moment – so much so that Mr O'Brien does not even recall it taking place. The SDU's submissions reach the same

³³ Nicola Gobbo's Submissions at p 196 [623], p 198 [636]; SDU Handlers' Submissions at p 145-149 [340]-[347]; Victoria Police Tranche 1 Submissions, Submission of Mr Jim O'Brien [52.258]-[52.260].

³⁴ Nicola Gobbo's Submissions at p 204-206 [659]; SDU Handlers' Submission at p 162-163 [379]; Victoria Police Tranche 1 Submissions, Submission of Mr Anthony (Tony) Biggin [45.15]; Submission of Inspector Dale Flynn [65.25].

³⁵ SDU Handlers' Submissions at p 187-188 [461]; Victoria Police Tranche 1 Submissions, Submission of DI Gavan Ryan [30.1]-[30.6], Submission of Mr Anthony (Tony) Biggin [47.1]-[47.20], Submission of Mr Jim O'Brien [53.46]-[53.84].

³⁶ SDU Handlers' Submissions at p 103 [231]-[232]; Victoria Police Tranche 1 Submissions, Submission of DI Gavan Ryan [30.13]-[30.25].

³⁷ Nicola Gobbo's Submissions at p 214 [693]; Victoria Police Tranche 1 Submissions [1.10], [10.13], [11.23], [12.3], Submission of Mr Anthony (Tony) Biggin [39.8], Submission of Mr Jim O'Brien [48.9], [48.10], Submission of Inspector Dale Flynn [61.4], [62.4].

³⁸ Nicola Gobbo's Submissions at p 81 [292].

³⁹ Nicola Gobbo's Submissions at p 81 [293], p 234 [760].

conclusion.⁴⁰ Ms Gobbo's emphasis on this discussion gives it greater significance than it warrants. It is not evidence of a plan by Victoria Police to recruit Ms Gobbo as a human source. It was a short, general, isolated discussion that was so insignificant that one of the participants does not recall it and it went no further.

- 2.11 Ms Gobbo asserts that she was targeted and recruited by Victoria Police. That is nonsense. That suggestion is comprehensively rebutted in the Tranche 1 and 2 submissions and in the Appendix to Tranche 1. The matters relied on by Ms Gobbo at paragraph [301] do not support her contention. Indeed, when the list of matters enumerated in that paragraph are examined, they reveal the falsity of Ms Gobbo's assertion.
- 2.12 The matters in paragraphs [301(a)] and [301(d)] are external factors beyond the control of Victoria Police. The matters at paragraphs [301(b)-(c)] were not connected to recruiting Ms Gobbo as a human source. They arose from Victoria Police's awareness that Ms Gobbo had been threatened by criminal underworld figures and reflected Victoria Police's preparedness to assist Ms Gobbo if she wished to take action about those threats – a step that would have had significant consequences for her personal safety. The matter in paragraph (e) has been addressed above.
- 2.13 Accordingly, when Ms Gobbo approached DSC Rowe in August 2005 (item (j) of paragraph [301]) the **only** piece of evidence of any desire by Victoria Police to recruit Ms Gobbo as a human source was the brief conversation between Mr O'Brien and Mr White in July 2004. Even if Com. Bateson's alleged statement that 'the door is always open' is added, the evidence falls well short of establishing that Victoria Police targeted and recruited Ms Gobbo. To the contrary, it demonstrates the complete absence of **any** prior attempt by Victoria Police to recruit Ms Gobbo when she contacted then DSC Rowe. It identifies two isolated events in a more than 12-month period, neither of which was progressed, and neither of which were known to Mr Rowe. As explained in Mr Rowe's submission, Mr Rowe did not know Ms Gobbo and had never met her personally prior to her extraordinary contact with him on 31 August 2005. The matters pointed to by Ms Gobbo further evidence that all of the substantive contact between Victoria Police and Ms Gobbo was initiated by her. That is wholly consistent with her history as set out in the Appendix to the Tranche 1 submissions. On every occasion from the 1990s, it was Ms Gobbo who approached police members to provide information and assist – members at both Victoria Police and the Australian Federal Police - and she had meetings with the National Crime Authority.
- 2.14 Ms Gobbo's assertion that privileged information was "*often disseminated*"⁴¹ must be rejected. As Counsel Assisting's submissions acknowledge, and as expressly submitted by Victoria Police and certain of its officers, Ms Gobbo was not recruited to inform on her clients and information that was subject to legal professional privilege was not generally disseminated. As has been accepted, some information subject to legal professional privilege was disseminated – but that was very much the exception rather than the rule and it was unintentional.
- 2.15 Ms Gobbo's claimed motivations for why she assisted Victoria Police⁴² are self-serving and inconsistent with the known facts. For the reasons given in the Tranche 1 submissions and the submissions of Victoria Police at Chapter 15, Ms Gobbo's

⁴⁰ SDU Handlers' Submissions at p 34-35 [68].

⁴¹ Nicola Gobbo's Submissions at p 90 [316].

⁴² Nicola Gobbo's Submissions at p 90 [318], p 94 [322], p 94-95 [324].

motivation was to leave the Mokbel crew – but it is now known that it was not to leave behind her lifestyle of criminal associations. She joined another criminal network.

The Thomas Case Study

- 2.16 Ms Gobbo submits that the Commissioner should reject parts of Mr Thomas's evidence.⁴³ The reasons why this evidence should be accepted are addressed in the Tranche 1 submissions. However, it is important to observe that Ms Gobbo accepts Mr Thomas's evidence that he knew that she had acted for Mr McGrath when Mr McGrath implicated Mr Thomas. That is a further reason why the Commissioner should accept the Tranche 1 submissions on this point. It leaves Counsel Assisting as the sole voice urging the Commissioner to find on the evidence that Mr Thomas did not know about the conflict.
- 2.17 Ms Gobbo's submissions use the term 'edited' in connection with Mr McGrath's statements.⁴⁴ It is not clear to the extent to which Ms Gobbo claims that she in fact 'edited' Mr McGrath's statements. Elsewhere in her submissions, Ms Gobbo submits that her involvement in Mr McGrath's statement-taking process was lawful and proper. If Ms Gobbo is actually seeking to convey that she 'edited' Mr McGrath's statements, that proposition has been comprehensively rebutted in the Tranche 1 submissions and is not supported by Ms Gobbo's own submissions. The **only** conclusion open on the evidence is that Ms Gobbo made notes of certain matters for the purpose of obtaining instructions from her client, that Ms Gobbo took those instructions and that it was Mr McGrath, and Mr McGrath alone, who asked for amendments to the statements.
- 2.18 With reference to Mr Thomas, Ms Gobbo submits that the *"only non-disclosure by police was to **hide**"* her name.⁴⁵ If that description is intended to imply some wrongdoing, it must be rejected. As has been comprehensively explained in the submissions of Com. Bateson, Ms Gobbo's name was redacted and a claim of PII was made. The claim was assessed and upheld by Chief Magistrate Gray. Ms Gobbo's name was not, therefore, 'hidden'. It was redacted from materials provided to Mr Thomas in accordance with the ruling of the Chief Magistrate. That is distinctly different from *"hiding"* the information.

Other submissions regarding Victoria Police members

- 2.19 Ms Gobbo refers⁴⁶ to an approach by Mr Overland and Mr O'Brien to the (then) DPP to secure an adjournment of Mr Cooper's scheduled plea hearing. It is unclear whether Ms Gobbo suggests that there was some impropriety in that approach. For the reasons developed in the Tranche 1 submissions, there was nothing improper about it. If Ms Gobbo intends to criticise Mr O'Brien, that criticism should be rejected.
- 2.20 Ms Gobbo also conflates the issue of whether officers knew, when she was referred to the DSU for assessment that she was acting for Mr Mokbel in current proceedings with the question of whether she had acted for him in the past. For the reasons developed in the Tranche 1 submissions, that distinction is important. Mr O'Brien's evidence was that he did not know that Ms Gobbo was acting for Mr Mokbel at the time that Ms Gobbo approached Messrs Rowe and Mansell. In assessing the conduct of officers connected with the referral of Ms Gobbo to the DSU for assessment, including Mr O'Brien, that distinction is important.

⁴³ Nicola Gobbo's Submissions at p 96 [326], p 113 [363]-[368].

⁴⁴ Nicola Gobbo's Submissions at p 135 [445].

⁴⁵ Nicola Gobbo's Submissions at p 142-143 [468].

⁴⁶ Nicola Gobbo's Submissions at p 195 [618].

- 2.21 The contention that “everything” Ms Gobbo “did was with the imprimatur of Victoria Police”⁴⁷ is nonsense. The evidence is replete with examples of Victoria Police, its investigators and the SDU attempting to restrain Ms Gobbo. Despite those efforts, Ms Gobbo acted as she saw fit. Submissions of this kind are meaningless and do not withstand scrutiny.
- 2.22 Ms Gobbo’s submission that several police officers were aware that Ms Gobbo had previously provided information to Victoria Police in circumstances that, arguably, indicated she was breaching her professional duties is to be rejected.⁴⁸ To the extent that the allegation rests on the assertion that Purana investigators had a close relationship with Ms Gobbo in connection with Mr McGrath, Mr Thomas and Carl Williams, that is a complete mischaracterisation of the evidence. Ms Gobbo engaged with Purana investigators in her capacity as a barrister. It was not a ‘close’ relationship – it was a working relationship and nothing more.
- 2.23 Ms Gobbo submits that the decision to task her in connection with Mr Dale shows that the primary concern was the investigation and not Ms Gobbo’s health or safety.⁴⁹ Ms Gobbo further submits that the decision to task and deploy her in connection with Mr Dale shows that Ms Gobbo’s safety was never a primary consideration for Mr Overland or those he commanded.⁵⁰ If that is intended to be a criticism of Mr Ryan, it must be rejected. Ms Gobbo was not tasked in connection with Mr Dale. As is set out in detail in Mr Ryan’s submissions, Ms Gobbo was interviewed as a material witness in connection with the murders of Terrence and Christine Hodson. She was, appropriately, treated as a person of interest. Her status as a human source did not, and should not, have shielded her from an investigation into a double homicide in relation to which she had been identified as the conduit between Carl Williams and Mr Dale – a key person of interest.
- 2.24 Ms Gobbo also submits that Mr Overland’s conduct in permitting Mr O’Brien to use a second diary (an authorisation that was **not** implemented) allowed “*the hiding of material and thus precluded appropriate judicial oversight*”.⁵¹ There is no evidence at all that the purpose of using a second diary was to disguise information from judicial oversight. The only evidence before the Commission is that the purpose of the second diary was to prevent inadvertent or accidental compromise of Ms Gobbo’s status as a human source (recalling that Mr O’Brien was to be the single point of contact for dissemination of information from the SDU to the Purana Taskforce). In circumstances where the only evidence before the Commission is to the contrary, the Commissioner cannot conclude that the purpose was to “disguise information from judicial oversight”.
- 2.25 Finally, the suggestion at paragraph [750(b)] that Com. Bateson was a conduit for information between Mr Overland and Ms Gobbo must be rejected. There is no evidence at all that Mr Overland provided information to Com. Bateson or that Com. Bateson played such a role.

The SDU’s submissions

- 2.26 Members of the SDU are highly critical of the Comrie and Kellam reports. The resolution of the SDU’s specific criticisms do not alter the central finding of the Kellam report that no individual officer had any intention to act with impropriety and that the principal cause of these events was negligence. There is nothing in the SDU submissions that should

⁴⁷ Nicola Gobbo’s Submissions at p 228 [748].

⁴⁸ Nicola Gobbo’s Submissions at p 228-229 [750].

⁴⁹ Nicola Gobbo’s Submissions at p 236 [764(g)].

⁵⁰ Nicola Gobbo’s Submissions at p 239 [773].

⁵¹ Nicola Gobbo’s Submissions at p 236-237 [764(j)].

result in this Commission deciding not to place weight on the findings of Mr Kellam about the motivations and intentions of members.

- 2.27 The SDU's submissions use the term 'informing' to describe Ms Gobbo's communications with Com. Bateson in 2004.⁵² It is not clear whether the SDU uses this term deliberately. However, for the reasons advanced in the Tranche 1 submissions, Ms Gobbo was never Com. Bateson's informer.

Ms Gobbo's ongoing contact with Mr Cooper

- 2.28 At paragraph [92], the SDU's submissions assert that the "SDU members believed [Ms Gobbo's] involvement with Mr Cooper ceased after the inconsequential filing hearing", which took place on 26 April 2006.
- 2.29 This assertion is not correct. The SDU members must have been aware that Ms Gobbo had ongoing contact with Mr Cooper after the filing hearing because the ICRs contain scores of references to Ms Gobbo's ongoing contact with him. Taking the period between his arrest and his sentencing in May 2007 as an example, the ICRs record repeated contact between Ms Gobbo and Mr Cooper in every month during that period:
- (a) ICRs for May 2006 include Ms Gobbo reporting her visits to Mr Cooper in prison;⁵³
 - (b) ICRs for June 2006 include Ms Gobbo's reporting that Mr Cooper was happy with the progress of his statements;⁵⁴
 - (c) ICRs for July 2006 include Ms Gobbo reporting that she had been to see Mr Cooper in prison;⁵⁵
 - (d) ICRs for August 2006 include Ms Gobbo's comment that she was being "*hassled relentlessly*" by Mr Cooper;⁵⁶
 - (e) ICRs for September 2006 include Ms Gobbo reporting that she had been to see Mr Cooper in prison;⁵⁷
 - (f) ICRs for October 2006 include Ms Gobbo reporting that she was in "*daily contact*" with Mr Cooper from prison;⁵⁸
 - (g) ICRs for November 2006 include Ms Gobbo's report that she received 100 roses from Mr Cooper as a present;⁵⁹
 - (h) ICRs for December 2006 include Ms Gobbo reporting the contact with Mr Cooper on Christmas Day;⁶⁰
 - (i) ICRs for January 2007 include Ms Gobbo reporting that Mr Cooper has promised to pay all of Ms Gobbo's legal fees;⁶¹
 - (j) ICRs for February 2007 include Ms Gobbo's report that it was "out of character" for Mr Cooper not to have contacted her for three days;⁶²

⁵² SDU Handlers' Submissions at p 34 [66].

⁵³ Exhibit 281 – ICR 31-3838 (VPL.2000.0003.1871).

⁵⁴ Exhibit 281 – ICR 34-3838 (VPL.2000.0003.1904).

⁵⁵ Exhibit 281 – ICR 38-3838 (VPL.2000.0003.1941).

⁵⁶ Exhibit 281 – ICR 40-3838 (VPL.2000.0003.1964).

⁵⁷ Exhibit 281 – ICR 44-3838 (VPL.2000.0003.2000).

⁵⁸ Exhibit 281 – ICR 48-3838 (VPL.2000.0003.2043).

⁵⁹ Exhibit 281 – ICR 53-3838 (VPL.2000.0003.2139).

⁶⁰ Exhibit 281 – ICR 59-3838 (VPL.2000.0003.2181).

⁶¹ Exhibit 281 – ICR 62-3838 (VPL.2000.0003.2190).

⁶² Exhibit 281 – ICR 67-3838 (VPL.2000.0003.2227).

- (k) ICRs for March 2007 include discussions between the SDU and Ms Gobbo about her visiting Mr Cooper in prison;⁶³
- (l) ICRs for April 2007 include Ms Gobbo reporting her frequent phone calls to Mr Cooper;⁶⁴ and
- (m) ICRs for May 2007 include Ms Gobbo reporting that she was unhappy that a meeting with Mr Cooper in prison could not be arranged for her.⁶⁵

There was no plan to use Ms Gobbo to encourage Mr Cooper to cooperate

- 2.30 The SDU members submit that Counsel Assisting imply that “the plan was then to send Ms Gobbo in to advise” Mr Cooper as an agent of police.⁶⁶ The SDU’s submissions then state that the “*plan was Purana’s*”.⁶⁷ It is unclear whether the SDU intends to adopt the characterisation of the “plan” implied by Counsel Assisting, or merely to state that responsibility for managing Mr Cooper’s arrest lay with investigators. If it is the former, then the submission that such a plan existed cannot be accepted for the reasons advanced in the Tranche 1 submissions. Mr O’Brien was shocked when Ms Gobbo attended and advised Mr Cooper and there was no plan to use Ms Gobbo to advise him. To the contrary, Mr O’Brien understood that an arrangement had been made for Ms Gobbo to be unavailable.⁶⁸
- 2.31 As explained in the Tranche 1 submissions, the only plan on the part of the investigators was to convince Mr Cooper, who had been caught red-handed, to cooperate with police in order to receive a reduced sentence. That aspect was entirely orthodox policing and did not rely on Ms Gobbo to advise Mr Cooper. This is supported also by the earlier visit to the DPP by (then) AC Overland and DI O’Brien well prior to arrest, to seek an indication on sentence in the event of Mr Cooper’s full cooperation.

Investigators were not ‘warned’ of the SDU’s concerns about potential inadmissibility

- 2.32 The SDU assert that investigators were told of SDU members’ concerns recorded in Officer White’s diary for 19 April 2006 – that is, the SDU members’ concern that Mr Cooper’s admissions might not be admissible if Ms Gobbo attended to advise him after his arrest.⁶⁹ As explained below, those assertions are not supported by the evidence before the Commission.
- 2.33 The submission that Sandy White informed Mr O’Brien of his concerns about Ms Gobbo attending and representing Mr Cooper is inconsistent with Mr O’Brien’s evidence.⁷⁰ In circumstances where 14 years has passed, Mr White may have an honest but mistaken belief that he told Mr O’Brien of these concerns. Certainly, Mr O’Brien recalls discussions in which he was informed that the SDU had taken steps to prevent Ms Gobbo from attending to advise Mr Cooper following his arrest. In circumstances where Mr O’Brien gave clear and unequivocal evidence that he did not turn his mind to concerns of the kind being described by Mr White prior to Mr Cooper being arrested, the Commissioner cannot conclude that Mr White did in fact raise these concerns with Mr O’Brien prior to Ms Gobbo attending on Mr Cooper on the night of 20 April 2006. Further, if Mr White did have such serious concerns prior to the arrest then it is not clear why he did not brief up those concerns to his superior officer or take positive steps to try

⁶³ Exhibit 281 – ICR 69-3838 (VPL.2000.0003.2257).

⁶⁴ Exhibit 281 – ICR 73-3838 (VPL.2000.0003.2344).

⁶⁵ Exhibit 281 – ICR 80-3838 (VPL.2000.0003.2427).

⁶⁶ SDU Handlers’ Submissions at p 142-143 [332].

⁶⁷ SDU Handlers’ Submissions at p 142-143 [332].

⁶⁸ T5747.21-24 (O’Brien).

⁶⁹ SDU Handlers’ Submissions at p 142-143 [332], p 146-147 [343], p 151-152 [354], p 152 [355].

⁷⁰ SDU Handlers’ Submissions at p 152 [355]; T5747.7-47 (O’Brien).

to ensure that the SDU's human source did not turn up to advise Mr Cooper when he was arrested, thereby placing investigators in an unenviable position.

- 2.34 Mr Flynn has no recollection of receiving any warning from the SDU about this issue, although he accepted that "possibly" that issue or concern was brought to his attention.⁷¹ The SDU's submissions refer at paragraph [354] to a conversation which Mr Flynn was not present for, and which occurred several days after the arrest. The SDU's submissions do not identify any evidence given before the Commission about Mr Flynn being told of the 19 April 2006 concerns. In those circumstances, there is insufficient evidence before the Commission to support a finding that Mr Flynn was told of these admissibility concerns prior to Mr Cooper's arrest.
- 2.35 As explained in Mr Rowe's submission, prior to Mr Cooper's arrest, Mr Rowe did not appreciate the potential legal risks of Ms Gobbo attending to advise Mr Cooper. Indeed, Mr Rowe did not turn his mind to whether Ms Gobbo might attend to advise Mr Cooper.⁷²
- 2.36 In two instances, the SDU submissions refer to Mr Rowe's evidence in a way that incorrectly suggests Mr Rowe was told or aware of potential legal risks prior to Ms Gobbo attending to advise Mr Cooper. In both instances, the SDU's submissions mirror similar errors made in Counsel Assisting's submissions.
- 2.37 **First**, in paragraph [343], the SDU's submissions assert that Mr Rowe understood Ms Gobbo was repeatedly told by the SDU not to act for Mr Cooper. This assertion is said to support the SDU's submission that the SDU warned Ms Gobbo prior to Mr Cooper's arrest that she could not act for him.
- 2.38 This submission misrepresents Mr Rowe's general evidence about warnings the SDU gave to Ms Gobbo as specifically relating to warnings prior to Mr Cooper's arrest. In this way, the SDU's submissions mirror the incorrect presentation of the evidence at paragraph [1918.4] of Counsel Assisting's submissions, which is considered in detail in Mr Rowe's Tranche 1 Submission.⁷³
- 2.39 As set out in that submission, Mr Rowe gave general evidence that significant efforts were being made to stop Ms Gobbo acting for people where she had provided information leading to their arrest. However, Ms Gobbo's attempts to reinsert herself happened later in 2007, for example with Milad Mokbel.⁷⁴ As considered elsewhere in Mr Rowe's submission, Mr Rowe also understood the SDU were meant to make arrangements so that Ms Gobbo would be unavailable after Mr Bickley's later arrest.⁷⁵
- 2.40 The evidence relied on in the SDU's submissions involved Mr Rowe giving similarly general evidence that did not relate specifically to the period before Mr Cooper's arrest. Mr Chettle's questioning was not confined to Mr Cooper and expanded out to any one of "those people" where Ms Gobbo provided information that led to their arrest. This is readily apparent from the questioning cited in paragraph [343] of the SDU's Submissions, which referred to earlier questions that Mr Rowe had been asked:⁷⁶

And you were asked questions about whether or not she should act for people who she provides information, they subsequently get arrested and perhaps [Mr

⁷¹ T6782.12-28 (Flynn).

⁷² Victoria Police Tranche 1 Submissions, Submission of DS Paul Rowe [58.64(h)].

⁷³ Victoria Police Tranche 1 Submissions, Submission of DS Paul Rowe [58.45]-[58.49].

⁷⁴ Exhibit 266 – Statement of Paul Rowe dated 25 June 2019 at [150]-[151] (VPL.0014.0035.0028 at .0048).

⁷⁵ Victoria Police Tranche 1 Submissions, Submission of DS Paul Rowe [59.11]-[59.21].

⁷⁶ T3320.23-28 (Rowe).

Cooper] is the best example. You would not be surprised to know that she was told repeatedly by members of the SDU that she could not act for those people?

- 2.41 **Second**, in paragraph [355], the SDU's submissions assert that Mr Rowe was aware of the issues raised in Mr White's diary note from 19 April 2006 – that is, the issue that if Ms Gobbo advised Mr Cooper after his arrest, it could affect the admissibility of any admissions obtained from him.
- 2.42 This assertion is not correct. The SDU's submissions have incorrectly presented this evidence in the same way as Counsel Assisting did at paragraph [1918.7] of their submissions, as considered in detail in Mr Rowe's Tranche 1 Submission.⁷⁷
- 2.43 As explained there, the context in which this evidence was given indicates Mr Rowe was referring to general issues considered in 2005 about whether Ms Gobbo could supply information. Mr Rowe was not referring to the more specific legal concerns about Mr Cooper's arrest referred to in Officer White's diary note. As set out in that submission, this is apparent from:
- (a) Mr Rowe's evidence, which refers to everyone being aware of the issues *"you know at the end of 05 when she's, you know when people are turning their minds to can this even be done."*⁷⁸ This cannot be a reference to the specific admissibility concerns that only arose in April 2006.
 - (b) Mr Rowe's other evidence that indicates he had only considered the risks of Ms Gobbo's position in a "general sense" and had not turned his mind to whether Ms Gobbo might turn up to advise Mr Cooper.⁷⁹

The submissions of Mr Thomas, Mr Cvetanovski and Mr Mokbel

- 2.44 Mr Thomas was provided with extracts from Counsel Assisting's submissions. His responsive submissions state that his only area of concern relates to the publication of information in footnotes that might tend to identify him.⁸⁰ If that is intended by Mr Thomas to be an endorsement of Counsel Assisting's submissions, it should not be accepted. The Tranche 1 submissions detail the serious errors and deficiencies in Counsel Assisting's treatment of Mr Thomas's case study. Mr Thomas's failure to engage with the submissions in light of those errors means that no weight can be placed on his submissions.
- 2.45 Further, as far as we are aware, Mr Thomas was not given the submissions of Victoria Police and its officers, the SDU or Ms Gobbo. That is a further reason why Mr Thomas's submission is of no assistance.
- 2.46 Mr Cvetanovski and Mr Mokbel filed submissions that contain serious allegations against individual officers that are not supported by any evidence at all. The allegations made in these submissions should be disregarded. Procedural fairness has not been afforded in relation to these allegations and, in the absence of any evidence supporting them, they should not be entertained.

The DPP's submissions

- 2.47 The DPP's submissions refer at [43] to Counsel Assisting's submission that there was a "plan" within Victoria Police to avoid disclosing Ms Gobbo's role as a human source to

⁷⁷ Victoria Police Tranche 1 Submissions, Submission of DS Paul Rowe [58.55]-[58.61].

⁷⁸ T9512.11-13 (Rowe).

⁷⁹ T9201.6-15 (Rowe).

⁸⁰ Mr Thomas' Submissions at p 1 [2].

the defence, prosecution and the Court. The DPP refers to and adopts that submission but then just lists matters set out in Counsel Assisting's submissions.

- 2.48 The DPP adopted Counsel Assisting's submission without having read the Tranche 1 and 2 submissions made by Victoria Police and members which set out the evidence that is contrary to Counsel Assisting's submission and which show that there was no such "*plan*". Ms Gobbo's identity was protected in the same way and for the same reasons that the identities of all human sources were protected at the relevant time.

3 Response to matters concerning Anthony (Tony) Biggin

- 3.1 At paragraphs [419] to [420], the former members of the SDU submit that Mr Biggin was involved in discussions about deregistering Ms Gobbo or placing her in caretaker mode in April 2006. Mr Biggin disputes that he was involved in any such discussions or decisions in April 2006.
- 3.2 As Mr Biggin's submission makes clear, Mr Biggin did not have any responsibility or control over the DSU/SDU until 1 July 2006.⁸¹ Prior to 1 July 2006 he knew very little about Ms Gobbo's informing and her management by the DSU. The suggestion that he would have been involved in discussing her deregistration prior to 1 July 2006 is therefore illogical.
- 3.3 It was from around November 2006, some months after the SDU came within his command, that Mr Biggin commenced discussions with the SDU about deactivating Ms Gobbo. Mr Biggin's evidence was that the trigger for him in considering Ms Gobbo's deactivation at that time was the fact that she had been registered for over 12 months. In his experience, once a source had been registered for 12 months it was time to actually consider deactivation and look for ways to end the human source relationship.⁸²
- 3.4 From November 2006, Mr Biggin took active steps to try to limit Ms Gobbo's use and attempt to end the human source relationship.⁸³ Some of the steps he took are described in Mr Biggin's submission⁸⁴ and his statement.⁸⁵
- 3.5 The extract of Officer White's diary that is reproduced at paragraph [419] of the SDU submissions expressly refers to Mr Biggin's audit. The diary entry is dated 27 April 2006,⁸⁶ not 25 April 2006, the 27th being the date Mr Biggin attended the DSU premises to conduct his audit.⁸⁷
- 3.6 Mr Biggin has made detailed submissions about his audit, including the nature of the audit as a high level, overview audit.⁸⁸ There is no evidence that the deactivation of Ms Gobbo was considered or discussed as part of his audit. To the contrary, the contemporaneous audit document prepared by Mr Biggin shows that his view at that time was that Victoria Police should continue the human source relationship with Ms Gobbo, with the DSU continuing to manage her. Mr Biggin observed that "*further deployment of the source will need to be carefully planned*".⁸⁹ Had Mr Biggin contemplated that Ms Gobbo would be deregistered or placed in caretaker mode at that time, his audit document would have reflected this.
- 3.7 At paragraph [420] of the SDU submissions, reference is made to Mr Black's evidence as confirming the proposition that Mr Biggin was involved in a discussion about caretaker mode around April 2006. However, Mr Black's evidence does not support this proposition. In evidence, Mr Black was vague and unsure about when the caretaker mode was discussed and commenced. He asked his Counsel to provide him with access to a document or diary to refresh his memory of when caretaker mode was

⁸¹ Victoria Police Tranche 1 Submissions, Submission of Mr Anthony (Tony) Biggin [41.1]-[41.10], [46.1]-[46.30].

⁸² T7579.43-7581.9 (Biggin).

⁸³ Victoria Police Tranche 1 Submissions, Submission of Mr Anthony (Tony) Biggin [46.25]-[46.26].

⁸⁴ Victoria Police Tranche 1 Submissions, Submission of Mr Anthony (Tony) Biggin [46.25]-[46.27].

⁸⁵ Exhibit 577C – Further Statement of Anthony (Tony) Biggin dated 25 July 2019 at [71]-[79] (VPL.0014.0041.0008 at .0022-.0024).

⁸⁶ Exhibit 395 – Diary of Mr Sandy White dated 27 April 2006 (VPL.2000.0001.0677 at .0746).

⁸⁷ Exhibit 277 – Victoria Police Issue Brief re DSU audit of human source records dated 28 April 2006 (VPL.2000.0002.0017 at .0017).

⁸⁸ Victoria Police Tranche 1 Submissions, Submission of Mr Anthony (Tony) Biggin [44.1]-[44.37].

⁸⁹ Exhibit 277 – Victoria Police Issue Brief re DSU audit of human source records dated 28 April 2006 (VPL.2000.0002.0017 at .0018).

discussed between Messrs Biggin and White, but no such document was provided to assist him.⁹⁰ It is also apparent that Mr Black's evidence about what caretaker mode entailed was confused, as he maintained that verbal dissemination of intelligence provided by Ms Gobbo only occurred whilst she was in caretaker mode.⁹¹

- 3.8 Accordingly, the Commissioner should reject the suggestion that Mr Biggin was involved in discussions about deregistering Ms Gobbo or placing her in caretaker mode in April 2006 and accept Mr Biggin's evidence that these discussions occurred from around November 2006.

⁹⁰ T8105.32-T8106.14 (Black); T8263.19-24 (Black).

⁹¹ T8105.25-30 (Black).

4 Response to matters concerning Jason Kelly

Arrest of PII in PII 2006

- 4.1 At paragraphs [1556]-[1575], Counsel Assisting's submissions refer to the fact that Ms Gobbo advised PII after he was re-arrested on PII 2006. PII had originally been arrested earlier in PII 2006 in possession of PII that were later identified PII.⁹² Ms Gobbo did not advise PII after that original arrest.
- 4.2 Counsel Assisting do not propose any adverse findings in relation to the arrest of PII. However, Counsel Assisting's submissions make a number of implicit criticisms of individuals involved. Those criticisms are not supported by the evidence and cannot be relied upon by the Commissioner. While this matter was not raised in a responsive submission, a response is detailed here because it is necessary to address a further instance of Counsel Assisting presenting an incomplete picture of the evidence that includes only the evidence against Victoria Police members.
- 4.3 **First**, Counsel Assisting ignore evidence that Purana investigators had obtained the intelligence used to arrest PII from sources completely separate from Ms Gobbo.⁹³ It is relevant and should be noted that Ms Gobbo had had nothing to do with the fact that PII was arrested in possession of PII.
- 4.4 **Second**, the evidence indicates the Purana Investigators involved – Mr Kelly and PII – were not aware Ms Gobbo was acting for PII until he asked to speak with her after his re-arrest on PII 2006. Counsel Assisting fail to refer to the direct evidence given by PII that he did not know Ms Gobbo was acting for PII until PII 2006.⁹⁴ Nor is there a basis to infer that Mr Kelly was aware Ms Gobbo was acting for PII. The matters identified by Counsel Assisting indicate Ms Gobbo told only the SDU members she was acting for PII. The relevant ICR does not indicate that information about PII was disseminated to anyone.⁹⁵
- 4.5 **Third**, there is no evidence whatsoever for Counsel Assisting's assertion at [1560] that Purana investigators had "clearly" told the SDU that PII was to be arrested "in anticipation" that Ms Gobbo would advise him after his arrest. Counsel Assisting do not cite evidence for this proposition. They cannot do so because there is none. The ICRs do not identify any link demonstrating Purana investigators sought to have this information passed on to Ms Gobbo. The ICRs merely record a Purana investigator – not Mr Kelly or PII – informing the SDU after PII arrest had taken place.⁹⁶
- 4.6 There is no evidence about this because Counsel Assisting never asked any of those involved about the matter, despite having called each of Officer Smith, Mr Kelly and PII. To draw this inference without having put it to any of those individuals is grossly unfair and an abject denial of procedural fairness.
- 4.7 In any case, the inference is contrary to the evidence. As Counsel Assisting identify at [1563], PII was lodged at Melbourne Custody Centre just over half an hour after his arrest. Mr Kelly then returned to the Purana office. This is entirely inconsistent with any alleged plan to have Ms Gobbo turn up to advise PII. Had the investigators wished

⁹² Counsel Assisting's Submissions correctly identify that Mr Irons was arrested by PII and PII however, only PII was a member of Mr Kelly's crew at Purana: See Exhibit 234B – Statement of Superintendent Jason Kelly, 12 June 2019 at [28] (VPL.0014.0038.0001 at .0005).

⁹³ PII
⁹⁴
⁹⁵
⁹⁶

for Ms Gobbo to attend to advise PII then they could have taken PII to be interviewed so he could have extended contact with Ms Gobbo. Instead, PII was taken straight into custody and the relevant investigator returned to the office.

4.8 **Fourth**, Counsel Assisting have ignored evidence that shows PII cooperation was due to factors entirely separate to Ms Gobbo. PII evidence indicates that other avenues were pursued to convince PII to cooperate with police, including discussions that Mr Kelly and PII had with a PII shortly after his re-arrest in PII 2006.⁹⁷ Mr Kelly's diary records that:

- (a) on PII 2006, Mr Kelly had discussions with PII;⁹⁸
- (b) on PII 2006, that PII told Mr Kelly that PII "has requested a meeting/statement with investigators";⁹⁹ and
- (c) on PII 2006, a member of DS Kelly's crew took a statement from PII¹⁰⁰

4.9 Based on that evidence, it is highly likely that DS Kelly's discussions with PII – and the fact PII had been caught red handed in possession of PII – were the reasons that PII decided to cooperate with police. Counsel Assisting did not obtain a statement from PII as to the reasons why he co-operated with police.

Other matters

4.10 Counsel Assisting's submissions contain two other inaccuracies concerning Mr Kelly that should be corrected.

4.11 First, at paragraph [2652], Counsel Assisting's submissions state that Mr Kelly was the informant for PII. This is incorrect. While Mr Kelly was the informant for PII it was PII who was the informant for PII and PII¹⁰¹

4.12 Second, at paragraph [4774], Counsel Assisting's submissions state that Mr Kelly was "uncomfortable" when Mr O'Brien told him about Ms Gobbo's use as a human source. This is not correct. Mr Kelly's evidence about "not being completely comfortable" related only to the time of Mr Cooper's arrest,¹⁰² not when Mr Kelly was first informed of Ms Gobbo's role as a human source.¹⁰³ As addressed in his earlier submission, even at the time of Mr Cooper's arrest, Mr Kelly was confident that all matters to do with Ms Gobbo's management were being properly addressed.¹⁰⁴

⁹⁷ PII

⁹⁸ Exhibit 236 – Diary of Superintendent Jason Kelly dated PII to PII 2006 (VPL.0005.0144.0001 at PII)

PII

⁹⁹ PII

¹⁰⁰ PII

¹⁰¹ PII

¹⁰² Exhibit 234B – Statement of Superintendent Jason Kelly dated 12 June 2019 at [34] (VPL.0014.0038.0001 at .0006).

¹⁰³ Exhibit 234B – Statement of Superintendent Jason Kelly dated 12 June 2019 at [18]-[21] (VPL.0014.0038.0001 at .0006).

¹⁰⁴ Victoria Police Tranche 1 Submissions, Submission of Superintendent Jason Kelly [36.20]-[36.30].