

**Royal Commission****into the Management of Police Informants****STATEMENT OF NEIL JOHN PATERSON****1 Background**

1.1 My full name is Neil John Paterson. I am a sworn member of Victoria Police presently holding the rank of Assistant Commissioner. I joined Victoria Police in 1988 and have been a police member for over 31 years.

1.2 I hold the following qualifications:

- (a) Juris Doctor;
- (b) Graduate Certificate of Applied Management;
- (c) Graduate Diploma in Disaster Management;
- (d) Graduate Certificate in Disaster Management; and
- (e) Diploma of Frontline Management.

1.3 I have spent significant periods of my career as a criminal investigator, being deployed to metropolitan criminal investigation units and in crime squads within the Crime Command. Those criminal investigation units have included:

- (a) Fitzroy Criminal Investigation Branch, where, as a Constable between 1989 and 1992, I investigated numerous complex criminal offences including arson, drug-trafficking, rape, serious assault, theft and deception offences; during that period of time, I was also seconded to *Taskforce Begonia*, which related to a complex fraud investigation;
- (b) Fairfield Criminal Investigation Branch, where, as a Senior Constable from 1992 to 1994, I investigated numerous complex criminal offences including drug-trafficking, serious assault, theft, burglary and deception offences;
- (c) Sunshine Criminal Investigation Branch, where, as a Detective Senior Constable from 1994 to 1997, I investigated numerous complex criminal offences including drug-trafficking, serious assault, deception, rape and homicide offences;

- (d) Homicide Squad, where, as a Detective Senior Constable from 1998 to 1999, I investigated numerous complex homicide offences;
  - (e) Warragul Criminal Investigation Branch, where, as a Sergeant from 2000 to 2003, I investigated numerous complex criminal offences including drug-trafficking, drug-cultivation, serious assault, theft, burglary and deception offences; and
  - (f) Arson and Explosives Squad, where, as a Detective Sergeant from 2003 to 2004, I investigated numerous complex criminal offences of arson, homicide and arson causing death.
- 1.4 From 2004 to 2006, I was a Senior Sergeant at the Commonwealth Games Planning Office, where I oversaw and implemented security and risk planning for the 2006 Commonwealth Games Village.
- 1.5 From 2006 to 2008, I was an Inspector and managed the Legal Policy Unit of Victoria Police. In that role, I was responsible for leading the consultation, negotiation and subsequent development, in conjunction with the Department of Justice, of legislation affecting Victoria Police.
- 1.6 From 2008 to 2009, I was an Inspector, Local Area Commander for the Kingston Police Service Area (PSA). In the role, I was responsible for the delivery of all policing services by the 236 sworn policing staff and the 14 Victorian Public Service staff within the PSA. The PSA had a population of approximately 200,000 people.
- 1.7 From 2009 to 2010, I was the Superintendent, Divisional Manager for the Road Policing Enforcement Division. In that role, I had responsibility for the road safety camera program, including red light and speed cameras and the processing of all infringements issued by Victoria Police.
- 1.8 From 2010 to 2013, I was the Detective Superintendent, Divisional Manager of the State Intelligence Division (SID) of the Intelligence and Covert Support Department. In that role, I had responsibility for the Security and Organised Crime Intelligence Unit, the Sex Offender Registry, the Prison Intelligence Unit, the State Intelligence Unit, the Intelligence Collection and Liaison Unit, the Crime Stoppers Unit, the Human Source Management Unit, the Sporting Integrity Intelligence Unit and the Joint Intelligence Group Coordination Unit. I was also the Intelligence Capability Advisor under the State crisis arrangement. During that period, I spent periods of time upgraded to Acting Assistant Commissioner responsible for the

Intelligence and Covert Support Department. Despite being upgraded to Acting Assistant Commissioner during this period of time I received no hand-over briefing that related to the Comrie Review. At a point in time I had some awareness that a 'highly protected' matter was subject to a review, however, former Assistant Commissioner Jeff Pope had informed me that he would maintain carriage of that during the periods I was upgraded.

- 1.9 During my time at the SID, I formed part of a Review Steering Committee, over sighting a review of the Covert Services Division (CSD). This review was commissioned in March 2012, by former Assistant Commissioner Jeff Pope and the review was led by Detective Superintendent Paul Sheridan, the divisional manager of the CSD. The purpose of the review was to examine the structure of the CSD to ensure that the Division was best placed for future challenges within the operational environment. An additional component of the review was to assess the efficiency of the current intelligence flow from the CSD to the wider intelligence holdings of Victoria Police, particularly those within the Intelligence and Covert Support Department.
- 1.10 At the same time, I was also leading a separate review and organisational restructure of the SID. My involvement in the review of the CSD was limited to matters relevant to the review that I was leading of the SID and my role at the SID generally. I was involved in the components that related to the Intelligence Assessment Phase and, to a lesser extent, the application of Maximum Time In Position (MTIP) because it specifically related to the Undercover Unit. I was not privy to the final CSD review report.
- 1.11 From 2013 to 2015, I was the Superintendent, Divisional Manager for the Frankston Division (Division 4) of the Southern Metro Region. In that role, I had responsibility for the delivery of all policing services to the PSAs of Frankston and the Mornington Peninsula. The division had over 550 police staff delivering policing services to a community of over 300,000 people.
- 1.12 From July 2015 to October 2015, I undertook the role of Acting Commander, Chief of Staff to incoming Chief Commissioner Graham Ashton.
- 1.13 On 19 October 2015, I commenced as the Assistant Commissioner responsible for the Intelligence and Covert Support Command. In that role, I manage the Divisions of Surveillance Services Division, Covert Services Division, State Intelligence

Division, Specialist Intelligence Services Division, Offender Management Division and a Business Services Division.

- 1.14 The Intelligence and Covert Support Command provides specialist services to the various policing Regions and Commands across the organisation. Within the Divisions mentioned above, I have responsibility for the Human Source Management Unit and the Witness Protection Unit.
- 1.15 In my extensive career at Victoria Police as an operational police officer, I have been responsible for the management of numerous police witnesses and human sources, and I have had to conduct and consider risk assessments in order to ensure the safety of witnesses and human sources.
- 1.16 In my current role as Assistant Commissioner responsible for the Intelligence and Covert Support Command, I have executive oversight of all human source management across the organisation, including policy and practice. I am also the chair of the Human Source Rewards Committee.
- 1.17 In July 2016, I became the inaugural chair of the National Criminal Intelligence Capability Committee (NCICC), a governance committee of the Australia Criminal Intelligence Commission. That Committee has a leadership role over a number of covert and high risk working groups including the Australasian Human Source Working Group.
- 1.18 Law enforcement and the intelligence community have made use of confidential human sources for hundreds of years. In more recent decades, the use of confidential human sources has brought risks to both those who provide information to police on a confidential basis, and also to the police agencies that deal with them.
- 1.19 Victoria Police relies on the use of human sources to provide information in relation to criminal activity, and in particular in relation to serious and organised crime. The ability of Victoria Police to recruit and use human sources is inherently dependent on potential human source believing that their identity will be kept confidential and that their personal safety will be of paramount importance to Victoria Police and will be protected. When the identity of a human source is compromised there are many examples of such a compromise leading to the death or serious injury of the human source. For this reason, the confidentiality of human sources is paramount.
- 1.20 Whilst Victoria Police was formed in 1853, our recent history shows that the first formal policy on the use of confidential human sources was in 1986. That policy has

changed on numerous occasions over the subsequent years with our current policy last updated on 8 May 2018.<sup>1</sup>

- 1.21 It is broadly recognised among law enforcement agencies and the intelligence community that as organised criminal networks become more sophisticated and 'go dark' from the usual technologies to gather intelligence and evidence, then the use of confidential human sources is a particularly important component in the gathering of intelligence.
- 1.22 Lastly, in relation to Ms Gobbo specifically, from June 2016 to December 2018, I was a member of a specific, high-level Victoria Police steering committee, called the Bendigo Steering Committee, which was responsible for, amongst other things, overseeing the ongoing management of risk associated with Ms Gobbo. Although that committee no longer exists, I continue to have an oversight role in relation to the management of risk to Ms Gobbo in my role as Assistant Commissioner responsible for the Intelligence and Covert Support Command. Subsequent to the Bendigo Steering Committee and in response to the announcement of the Royal Commission in December 2018, Victoria Police established the Landow Steering Committee. I am a member of the Landow Steering Committee.
- 1.23 In December 2018, Victoria Police also established *Taskforce Landow*, a specific taskforce that has responsibilities including, coordinating the Victoria Police's responses to the Royal Commission and continuing to meet the obligations of Victoria Police in regards to our ongoing disclosure obligations with the Victoria Office of Public Prosecutions and the Commonwealth Director of Public Prosecutions.

## **2 Preparation of this statement**

- 2.1 I have prepared this statement in response to a letter from the Royal Commission dated 22 February 2019 requesting that Victoria Police answer nine questions set out in the letter (**Questions**). The Royal Commission has asked that the answers be provided in the form of a statement from me and that it be completed by 18 March 2019.

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<sup>1</sup> Policy updated on 6 December 2018, however changes made were only to formatting.

- 2.2 This statement will be produced to the Royal Commission in response to a Notice to Produce that it intends to serve on me. It will be produced in accordance with the existing arrangement between Victoria Police and the Royal Commission that the Royal Commission will not disclose it to anyone before Victoria Police has informed the Royal Commission as to which parts are subject to a claim of Public Interest Immunity.
- 2.3 This statement also contains information that is the subject of one or more suppression orders made in the *AB & EF v CD* proceedings.
- 2.4 By reason of the roles that I have had within Victoria Police, I have direct knowledge of only some of the matters set out in this statement. This statement has been prepared from documents and information provided by many different divisions and teams.
- 2.5 Victoria Police has voluminous documentation relevant to the Questions. To date, Victoria Police has produced over 13,000 documents to the Royal Commission. Further documents are to be produced.
- 2.6 Evidently, it has not been possible, in the time available, to undertake a review of all relevant documentation.
- 2.7 This statement has also been prepared prior to witness statements having been prepared by the 49 current and former members who have been requested to provide statements to the Royal Commission and without enquiries having been made of all current and former members with some involvement.
- 2.8 Given the 26-year period that this statement covers, the number of members involved over that period and the voluminous body of documentary material, it is not possible for this statement to capture all relevant information in the time that has been given for it to be prepared. This statement sets out Victoria Police's answers to the Questions based on the material that was able to be considered in the time available.
- 3 Nature of relationship between Victoria Police and Nicola Gobbo (question 1)**
- 3.1 Question 1 asks me to identify the period during which Victoria Police had contact with Ms Gobbo and the nature of that relationship from initial contact until the present.
- 3.2 On 4 June 2018, Victoria Police became aware that Ms Gobbo's initial contact with Victoria Police had been much earlier than it had previously understood.

- 3.3 Subsequent to the formation of *Taskforce Landow* in December 2018, an investigation commenced into the earlier registrations. This investigation is ongoing.
- 3.4 Investigators have prepared detailed timelines of the contact that they have identified between Ms Gobbo and Victoria Police during the earlier period. The timelines identify that contact was first made on 3 September 1993. These timelines were the subject of a briefing by investigators to counsel assisting the Royal Commission on 6 March 2019. As the investigation progresses, the timelines are being updated with new information.
- 3.5 Below is a *summary* of the contact that Victoria Police had with Ms Gobbo from 3 September 1993 onwards. The detail of the contact is to be found in the timelines (for the earlier period of 1993 to 2000), in the Loricated database (for 2005 to 2009) and the subsequent contact that is described in paragraphs 3.107 to 3.109. Such material has and is being provided to the Royal Commission.
- 3.6 This is my summary.

1993 – Operation Yak

- 3.7 It was on 3 September 1993 that Ms Gobbo first had contact with Victoria Police.
- 3.8 At that time, Ms Gobbo was a University student. She was living with her de facto partner Brian Wilson at a house in Rathdowne Street, Carlton (**Rathdowne house**). Victoria Police had received information, through Crime Stoppers, that Mr Wilson was trafficking drugs. As a result of that information, Victoria Police commenced an investigation code-named '*Operation Yak*'.
- 3.9 On 3 September 1993, police executed a search warrant on the Rathdowne house. Ms Gobbo was present. There is no evidence that Ms Gobbo knew that the warrant was to be executed or had any contact with police prior to it being executed.
- 3.10 During the execution of the warrant, Ms Gobbo assisted police by directing Sergeant Trevor Ashton to drugs hidden behind a vent in the laundry.<sup>2</sup>
- 3.11 Following the execution of the search warrant, Mr Wilson was charged with trafficking drugs, another person by the name of Victor Vellios was charged with drug possession, and Ms Gobbo was charged with possession and use of cannabis and amphetamines. Ms Gobbo was bailed to appear at the Melbourne Magistrates' Court.

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<sup>2</sup> Witness Statement of Trevor John Ashton signed on 21 March 2019.

- 3.12 There is a note in Sergeant Ashton's notebook for the day of the arrests that states "assist re Wilson". He is now not able to recall whether that is a reference to him assisting in the processing of Mr Wilson or whether it relates to Ms Gobbo offering to assist police in relation to Mr Wilson.<sup>3</sup>
- 3.13 On 29 November 1993, Ms Gobbo pleaded guilty to her drug charges. She received a bond without the recording of a conviction.<sup>4</sup>
- 3.14 Ms Gobbo's co-accused, Wilson and Vellios, also both pleaded guilty.<sup>5</sup> Mr Wilson was sentenced to 8 months imprisonment suspended for 24 months. Mr Vellios was fined \$200 and no conviction was recorded.<sup>6</sup>
- 3.15 There is no evidence that Ms Gobbo assisted police with the charges against Mr Wilson by providing a statement or giving evidence.

1995 - Registration as a human source

- 3.16 Following *Operation Yak*, Sergeant Ashton continued to have some contact with Ms Gobbo. His diary records that on occasions he spoke to Ms Gobbo at the MCG where she was working.<sup>7</sup> Another member, Senior Constable Rod Arthur, also recalls occasions on which he was with Sergeant Ashton when they spoke to Ms Gobbo near the Magistrates Court in Melbourne. Sergeant Ashton does not now have any recollection of the matters that they discussed. The contact was sporadic throughout 1994 and 1995. Ms Gobbo was still a university student at that time.
- 3.17 In April 1995, another search warrant was executed on the Rathdowne house. Drugs were again seized. Mr Wilson was charged. Ms Gobbo was not present nor was she charged.
- 3.18 By mid-1995, another police officer, Constable Tim Argall, had met Ms Gobbo through Sergeant Ashton. Sergeant Ashton and Constable Argall were working together at the time.
- 3.19 In July 1995, officers Ashton and Argall registered Ms Gobbo as a human source. The application form records:
- (a) that Ms Gobbo was a student;

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<sup>3</sup> *ibid.*

<sup>4</sup> Victoria Police LEAP records (VPL.0002.0002.0104).

<sup>5</sup> *ibid.*

<sup>6</sup> *ibid.*

<sup>7</sup> Witness statement of Trevor John Ashton signed on 21 March 2019.



- (b) her reliability as a human source as "very good";
  - (c) her reasons for assisting police as "genuinely wants to assist police";
  - (d) a description of her as "informer is a law student at Melb Uni currently living with a known criminal. She was charged with possess amphet last year as a result of the criminal that was living with her. Is quite reliable and seeking a career as a solicitor".<sup>8</sup>
- 3.20 Sergeant Ashton has stated that the application contains his handwriting. However, he has no recollection of making the application.<sup>9</sup>
- 3.21 On 12 July 1995, members Ashton and Argall took Ms Gobbo to the Special Response Squad so that she could provide information in relation to the involvement of Mr Wilson and an unknown man by the name of Gavin in firearms and drug trafficking. That event is recorded in Sergeant Ashton's notebook. He does not have an independent recollection of it.
- 3.22 Throughout the remainder of July 1995, Ms Gobbo provided further information to Victoria Police about Mr Wilson and Gavin. No contact or information reports have been located in relation to such contact. Contact is recorded in diaries and daybooks.
- 3.23 There is no evidence that Victoria Police then had any further contact with Ms Gobbo until the following February.

#### 1996 - Operation Scorn

- 3.24 By 16 February 1996, Victoria Police had commenced a new operation in relation to Mr Wilson code-named '*Operation Scorn*'.
- 3.25 An Undercover Unit Operation Progress Report prepared at this time records that Ms Gobbo (not named) had just finished her law degree and that she was assisting police with the operation.
- 3.26 On 21 February 1996, Ms Gobbo introduced an undercover police officer to Mr Wilson. He obtained a drug sample from Mr Wilson and was given a quotation for the supply of amphetamines.
- 3.27 Shortly thereafter, it appears that *Operation Scorn* came to an end. The reason is not presently clear. However, there are two operation reports that may assist. The first

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<sup>8</sup> VPL.0005.0007.0088.

<sup>9</sup> Witness statement of Trevor John Ashton signed on 21 March 2019.

report, dated 5 March 1996, describes Ms Gobbo as a "loose cannon" because she was "making her own arrangements and not liaising with investigators". A second report then records that the "job [was] cancelled". Both reports appear to have been made by Detective Senior Sergeant John (Jack) Blayney. I infer from those reports that Ms Gobbo was not considered reliable enough for investigators to proceed in using an undercover police officer to acquire drugs. The use of undercover members in operations is high risk [REDACTED]

- 3.28 It is unlikely that DSS Blayney's observation about Ms Gobbo was ever known to members who later had contact with Ms Gobbo. At that time, Victoria Police did not maintain an electronic database recording information in relation to human sources. Paper files were maintained.
- 3.29 It appears that Victoria Police had no further contact with Ms Gobbo in the following 20 months. The evidence is that the relationship recommenced in November 1997.

#### 1997 - Operation Carron

- 3.30 By November 1997, Ms Gobbo was employed as a solicitor at Melbourne law firm **Law firm 1**. She had been admitted to the legal profession the previous year, 1996.
- 3.31 On 18 November 1997,<sup>10</sup> as a result of a Drug Squad operation code-named 'Operation Carron', four people were arrested for drug offences. The operation was in relation to large scale drug trafficking across various States.
- 3.32 **Law firm 1** were acting for at least three people charged, namely Darren Jackson, Traian Duma and Peter Reid.
- 3.33 Former **Kruger** was the police informant. He worked in the Drug Squad at the time.
- 3.34 As set out below, there is presently no evidence that Ms Gobbo provided information to Victoria Police in relation to *Operation Carron* prior to charges being laid. There is also no evidence that Ms Gobbo assisted police in relation to the prosecution of any of the charges, at all, or, by providing information in breach of legal professional

<sup>10</sup> Diary of DSC **Kruger** VPL.0005.0007.0140).

privilege. To date, *Taskforce Landow* has reviewed relevant diaries and spoken to members. Enquiries continue.

- 3.35 **Kruger** spoke to Ms Gobbo on the day of the arrests. He is not able to now recall what they discussed.
- 3.36 In January 1998, **Kruger** then attended the offices of **Law firm 1** to serve parts of the brief of evidence on Ms Gobbo. He met her on two other occasions to serve further evidence.
- 3.37 On 11 May 1998, Detective Senior Sergeant Wayne Strawhorn<sup>11</sup>, who was working in the Drug Squad with **Kruger**, attended a meeting with Ms Gobbo and the Office of Public Prosecutions (OPP) **Kruger** was also present. The meeting was in relation to the charges against Mr Jackson. **Kruger** is not able to recall what was discussed at that meeting.
- 3.38 At around this time, Ms Gobbo told **Kruger** that her employer, **Solicitor 1** was engaging in fraudulent activity.
- 3.39 A meeting then followed on 21 July 1998 between **Kruger** and Ms Gobbo regarding *Operation Carron* and **Solicitor 1**. Former Detective Senior Constable Chris Lim was also present. DSC Lim recalls attending for the purpose of assisting **Kruger** in assessing the suitability of Ms Gobbo as a human source. DSC Lim recalls having some concerns, namely that: (a) Ms Gobbo was too overt in her desire to provide information to police; (b) she was a solicitor; and (c) he thought that her relationships with some officers was inappropriate. DSC Lim also recalls being aware that Ms Gobbo was in possession of drugs that belonged to Mr Reid but he is not able to recall if he was told that at the meeting or how he became aware of that information. I understand that DSC Lim has been spoken to but time has not permitted a statement to be taken from him.
- 3.40 However, an Information Report is available in relation to the meeting.<sup>12</sup> It records that Ms Gobbo provided information that included the following: (a) **Solicitor 1** was involved in money laundering; (b) investigators should check properties provided as surety for Mr Reid; (c) **Solicitor 1** was funding Mr Reid's defence because Mr Reid was important to him; and (d) investigators should analyse **Solicitor 1**

<sup>11</sup> DSS Strawhorn is no longer an officer of Victoria Police. In 2003, while a Detective Senior Sergeant, he was charged with drug offences and threatening to kill a police officer. In 2006, he was convicted of supplying drugs to underworld identity Mark Moran (now deceased). He was sentenced to a term of imprisonment.

<sup>12</sup> IR HDIRO176 (VPL.0005.0022.0331).

trust account. The Information Report states that further contact was to be made by Kruger with Ms Gobbo and that he was to liaise with Detective Sergeant **Member 1** of the National Crime Authority.

3.41 On 14 September 1998, the committal hearing for Messrs Jackson, Duma and/or Reid was held in the Melbourne Magistrates' Court.

3.42

3.43

3.44 Victoria Police introduced a new intelligence management IT system in 2005. The Interpose system allows Victoria Police to track information, intelligence and investigation management. The system also contains modules including a human source management module, which was introduced in 2007. A requirement to use the human source management module was subsequently included in a policy update on 28 April 2011.

3.45

3.46 [REDACTED] it appears that on 7 December 1998, DSS Strawhorn met with Ms Gobbo.<sup>14</sup> It is not known what they discussed. DSS Strawhorn's diary entry for the meeting does not contain any detail. Only limited discussions have occurred with DSS Strawhorn during *Taskforce Landow's* investigation of this period.

3.47 On 21, 25 and 27 January 1999, Kruger also met with Ms Gobbo. His diary records that it was in relation to "bail and property for PII [REDACTED]"

3.48

<sup>13</sup> The Interpose system is described in section 4 of the Statement.

<sup>14</sup> Entry in DSS Strawhorn's diary (VPL.0005.0007.0152).

<sup>15</sup> *ibid.*

3.49 In June 1999, the three co-accused charged following *Operation Carron* were convicted and sentenced, as follows:

- (a) Mr Reid, was sentenced to 12 months imprisonment with 20 months suspended. The charges were possession of a drug of dependence and trafficking cannabis and heroin.
- (b) Mr Jackson was sentenced to four years and eight months imprisonment with a non-parole period of two years and eight months. The charges with which he was convicted were trafficking heroin, handling stolen goods and possessing cannabis.
- (c) [REDACTED] was sentenced to three years imprisonment wholly suspended. The charges with which he was convicted were trafficking a commercial quantity of heroin and trafficking cocaine.

3.50 Victoria Police's LEAP records do not disclose whether any of the accused pleaded guilty. There is reference in an Information Report to Mr Reid having pleaded guilty.<sup>16</sup>


3.51 Whilst it appears that Ms Gobbo was representing Messrs Jackson and [REDACTED], it is not known whether she was also represented Mr Reid. The firm at which she worked was acting for Mr Reid, but it is not known whether Ms Gobbo or **Solicitor 1** had carriage of Mr Reid's charges.

1999 - Operation Ramsden and further registration as a source

3.52 It appears that, by April 1999, **Kruger** and/or DSC Lim had contacted the Asset Recovery Squad in relation to the information provided by Ms Gobbo about **Solicitor 1**. The Asset Recovery Squad was part of the Crime Department in the Major Fraud Group. It investigated activities associated with asset recovery under the *Confiscations Act 1997* (Vic). At that time, the Asset Recovery Squad had regular contact with the Drug Squad because often their investigations led to applications under the *Confiscations Act 1997* (Vic).<sup>17</sup>

<sup>16</sup> VPL.0005.00070189.

<sup>17</sup> Witness Statement of Gavan Segrave signed on 21 March 2019.

- 3.53 An investigation by the Asset Recovery Squad code-named '*Operation Ramsden*' commenced. The target of *Operation Ramsden* was <sup>Solicitor 1</sup>
- 3.54 There were meetings between the Asset Recovery Squad and the Drug Squad in relation to the information provided by Ms Gobbo, as set out below.
- 3.55 On 28 April 1999, there was a meeting between former Detective Senior Constable Pope (as he then was) of the Asset Recovery Squad and members <sup>Kruger</sup> and Strawhorn of the Drug Squad.
- 3.56 On 12 May 1999, there was a further meeting between members <sup>Kruger</sup> and Strawhorn (of the Drug Squad), DSC Pope and Detective Sergeant Gavan Segrave (of the Asset Recovery Squad). The meeting was held at the Drug Squad.
- 3.57 Later that day, members DSC Pope and DS Segrave met with Ms Gobbo at a location in South Melbourne about her information concerning <sup>Solicitor 1</sup> <sup>18</sup>
- 3.58 The following day, on 13 May 1999, DSC Pope made an application to register Ms Gobbo as a human source. The application records that she may provide information about "fraud/ money laundering".<sup>19</sup> The application is also signed by DS Segrave. It was approved on 26 May 1999. Ms Gobbo was given registration number 'MFG13'.
- 3.59 There were then a series of meetings between members DSC Pope and DS Segrave and Ms Gobbo as part of *Operation Ramsden*. DSS Strawhorn appears to have been providing assistance with the operation, which included introducing <sup>PII</sup> to members DSC Pope and DS Segrave.
- 3.60 
- 3.61 In June 1999, members DSC Pope, DSS Strawhorn, DS Segrave and Detective Senior Constable Robert Sneddon then attended meetings with <sup>PII</sup>. He

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<sup>18</sup> *ibid.*

<sup>19</sup> VPL.0005.0007.0132.

<sup>20</sup> <sup>PII</sup>

informed the members that Mr Reid and **Solicitor 1** were laundering money and that **Solicitor 1** was making fraudulent claims to Legal Aid.<sup>21</sup>

- 3.62 Around the same time, DSC Pope was in regular contact with Ms Gobbo. He spoke to her on an almost daily basis during the first two weeks of June 1999 but then much less in the second half of the month. She provided him with computer discs containing documents from **Solicitor 1**'s computer. Victoria Police have not been able to locate the discs and, therefore, it is not known what was on them. Ms Gobbo had provided them as information relevant to her allegation that **Solicitor 1** was engaging in money laundering.
- 3.63 Around this time, members DS Segrave, DSS Strawhorn, DSC Sneddon and Detective Senior Constable Kira Olney also had contact with Ms Gobbo. Members DSC Sneddon and DSC Olney were working at the Asset Recovery Squad.
- 3.64 By 28 May 1999, the National Crime Authority had commenced an investigation into **Solicitor 1** and possibly Mr Reid, code-named '*Operation Andesine*'. It is understood that DSC Pope believed that Ms Gobbo was assisting the NCA with its operation.
- 3.65 Between August and October 1999, DSC Pope continued to have some contact with Ms Gobbo in relation to *Operation Ramsden*. The information provided by Ms Gobbo was described by him to be of no value.
- 3.66 By October 1999, Ms Gobbo was working as a barrister and was providing little or no assistance in relation to *Operation Ramsden*.
- 3.67 On 3 January 2000, DS Segrave submitted a request for Ms Gobbo's status as a human source to be reclassified to "inactive" and she be de-registered on the basis that investigators had had no recent contact with her.<sup>22</sup> DS Segrave recalls that Ms Gobbo was ultimately either unwilling or unable (he cannot now recall which) to provide sufficient assistance in relation to *Operation Ramsden*.<sup>23</sup>
- 3.68 *Operation Ramsden* did not result in any charges being laid.

#### 2001 – The beginning of acting for underworld crime figures

<sup>21</sup> VPL.0002.0002.0053.

<sup>22</sup> Witness Statement of Gavan Segrave signed 21 March 2019.

- 3.69 By 2001, Ms Gobbo was acting for a range of clients suspected by Victorian law enforcement and prosecutorial agencies of serious criminal offending, including Tony Mokbel, Carl Williams, and others associated with them.<sup>24</sup>
- 3.70 Ms Gobbo's dealings with Mokbel, Williams and their associates at this time occurred in the context of the notorious 'gangland wars' in Melbourne, which involved significant violence between rival gangs including numerous murders.<sup>25</sup>
- 3.71 In 2002, Ms Gobbo appeared on several occasions to apply for bail for Tony Mokbel, following his arrests on serious drug offences.<sup>26</sup>
- 3.72 In about mid-2003, Ms Gobbo was briefed to appear for Lewis Moran at a bail application, but, according to her, she was told by both Tony Mokbel and Carl Williams that she was not to act for him.<sup>27</sup> Despite the warning, she appeared for Mr Moran and was successful in obtaining bail on his behalf.<sup>28</sup>
- 3.73 On the Friday following her appearance for Mr Moran, Ms Gobbo claims that she was threatened by a known associate of Carl Williams, Andrew Veniamin, in relation to her having appeared for Mr Moran.<sup>29</sup>
- 3.74 Notwithstanding the alleged threat, Ms Gobbo has stated that she appeared the following week for Mr Moran at a bail variation application at Melbourne Magistrates' Court. She has further stated that while on the steps of the Court building, she was approached by Detective Senior Sergeant Phillip Swindells.
- 3.75 Ms Gobbo has stated that DSS Swindells:<sup>30</sup>
- (a) told her that police knew what had happened the week before with Andrew Veniamin;
  - (b) said to her that Mr Veniamin was a "dangerous individual" and that she needed to be careful; and

<sup>24</sup> Confidential Affidavit of EF sworn 21 November 2016, paragraph 6 (EF Affidavit) (VPL.0012.0002.2414, at [6]); Transcript of first instance hearing before Ginnane J (Transcript) 130.1-15 (21 February 2017) (VPL.0012.0002.4085).

<sup>25</sup> Transcript 255.19-24 (28 February 2017) (EF) (VPL.0012.0002.4284).

<sup>26</sup> *AB and EF v CD* [2017] VSC 350R (Ginnane J) (SC Reasons) at [378(a), (b) and (c)] (VPL.0005.0013.0200, at 0314 [378(a), (b) and (c)]); Facts Admitted by EF (exhibit DPP-19), paragraph 31(a), (b) and (c) (VPL.0012.0002.2536, at 2540 [31(a), (b) and (c)]).

<sup>27</sup> EF Affidavit, paragraph 7 (VPL.0012.0002.2414, at 2415 at [7]).

<sup>28</sup> EF Affidavit, paragraph 7 (VPL.0012.0002.2414, at 2415 at [7]).

<sup>29</sup> EF Affidavit, paragraph 8 (VPL.0012.0002.2414, at 2415 at [8]).

<sup>30</sup> EF Affidavit, paragraph 9 (VPL.0012.0002.2414, at 2415 at [9]).



(c) told her that she could contact police if she wanted to discuss the situation.

3.76 DSS Swindells does not disagree with Ms Gobbo's account of the conversation. DSS Swindells was a member of the *Purana Taskforce*.

3.77 The *Purana Taskforce* had officially commenced on 12 May 2003. It was initially tasked with the investigation of three unsolved homicides, namely those of Dino Dibra, Paul Kallipolitis and Nikolai Radev between 2000 and 2003. Whilst conducting those investigations, four further murders were committed of persons with significant links to criminal activity. They were the murders of Jason Moran, Pasquale Barbaro, William Thompson and Mark Malia between June and August 2003. The *Purana Taskforce* took over the investigation of those homicides. It will be remembered that more people connected with this criminal activity went on to be murdered in Victoria at this time. *Purana Taskforce's* objectives were to identify, apprehend and convict the person(s) responsible for the murders and to disrupt major criminal activity.

3.78 By late 2003, after many of the murders being investigated by the *Purana Taskforce* had occurred, Ms Gobbo claims that she had received specific threats from Carl Williams and Tony Mokbel to make sure that an associate of theirs, [REDACTED] did not co-operate with police [REDACTED]<sup>31</sup>

3.79 Detective Sergeant Stuart Bateson's notes record that, from 22 March 2004, he started having discussions with Ms Gobbo in relation to one of her clients who was seeking a plea deal. DS Bateson was a member of the *Purana Taskforce* at the time. His notes record that it was on 18 June 2004 that Ms Gobbo first raised with him that she was concerned about her welfare. He "explained that our door was open anytime".<sup>32</sup> I am informed by *Taskforce Landow* that that conversation is believed to have occurred at the Melbourne Magistrates' Court and that it was an offer to have Ms Gobbo formally report her safety concerns and have them investigated.

3.80 On 24 July 2004, Ms Gobbo suffered a serious stroke. She underwent heart surgery and was unable to work for approximately six months.<sup>33</sup>

#### 2004 – The beginning of the Source Development Unit

<sup>31</sup> Transcript 253.9-25 (28 February 2017) (EF) (VPL.0012.0002.4284) and 375.3-9 (1 March 2017) (EF) (VPL.0012.0002.4402).

<sup>32</sup> Chronology of events prepared by DS Bateson and provided to the Royal Commission (*Bateson chronology*) (VPL.0015.0001.0409).

<sup>33</sup> EF Affidavit, paragraph 12 (VPL.0012.0002.2414, at 2416 at [12]).

- 3.81 In about January 2004, Victoria Police commenced a process of establishing a specialised unit that would be responsible for managing human sources that were considered to be especially "high risk". The unit was initially known as the 'Dedicated Source Unit', however, the name later changed to the 'Source Development Unit' (SDU). It was formally established in 2004 after a pilot program.
- 3.82 One of the stated objectives of the SDU was to enable the "proactive targeted recruitment of new sources".<sup>34</sup>
- 3.83 Further detail about the SDU is set out later in this statement.

#### 2005 – The beginning of *Operation Posse*

- 3.84 In early 2005, the intelligence unit of the *Purana Taskforce* undertook a focussed assessment of the criminal operations of the Mokbel family. A decision was made to commence an investigation which specifically targeted the Mokbel family. The assessment considered that:<sup>35</sup>
- (a) the objective of the new investigation should be "the marginalisation of the principals and disruption of persons associated with the principal";
  - (b) the investigation should commence "a series of operations ... against associates of the Mokbels in order to isolate and marginalise them";
  - (c) "[b]y removing persons from within their sphere of influence [sic] will cause them to alter their behaviour. While the ultimate goal will be the incarceration of the cartel, the serious disruption of their activities will have a similar effect";
  - (d) the new investigation should be developed in stages, with the intelligence cell to be staffed first and assistance to be obtained from the Special Projects Unit (SPU) in respect of telephone intercepts, listening devices and tracking data.

- 3.85 This investigation was ultimately code-named '*Operation Posse*'. It commenced in November 2005.<sup>36</sup> The lead investigator was DS Flynn.

#### 2005 – Further registration as a human source

<sup>34</sup> Exhibit SF-1 (IBAC Report) to the Confidential Affidavit of Assistant Commissioner Stephen Fontana sworn 9 June 2016 (1<sup>st</sup> Fontana Affidavit), page 6 (VPL.0008.0001.0045, at 0053).

<sup>35</sup> Exhibit MS-1 to the Confidential Affidavit of Detective Inspector Monique Swain sworn 11 November 2016 (Swain Affidavit), page 3 (paragraph 14) (VPL.0008.0001.0453).

<sup>36</sup> Exhibit MS-1 to the Swain Affidavit, page 3-4 (paragraphs 14-15) (VPL.0008.0001.0453).

- 3.86 By early 2005, Ms Gobbo had recovered sufficiently from her heart surgery to return to work. She appeared for Tony Mokbel at a committal hearing in February 2005<sup>37</sup> and for [REDACTED] at a committal hearing conducted on 21 and 22 March 2005.<sup>38</sup>
- 3.87 DS Bateson's diary records that on 19 May 2005, he received a telephone call from Ms Gobbo. She said that she wanted to speak to him about a confidential matter and they arranged to meet. They had further brief discussions by telephone over the following few days and, on 23 May 2005, met at a location in South Melbourne. DS Bateson's diary records that she provided information in relation to barrister **Barrister**, and solicitor **Solicitor 2**. They met again on 4 June 2005 and she provided further information about **Solicitor 2**.<sup>39</sup> She told DS Bateson that, among other matters: (a) those barristers could not be trusted; (b) **Solicitor 2** was providing a messaging service between Carl Williams (who was in prison) and people outside of prison, including Tony Mokbel; (c) **Solicitor 2** was not using a trust account which was in breach of legislation; (d) **Solicitor 2** was living in an apartment owned by Mr Mokbel and he arranged the finance for her car; and (e) **Barrister** was owed legal fees.
- 3.88 DS Bateson's diary records that on 29 June 2005 he met with Ms Gobbo at a cafe in Melbourne. She provided information in relation to **Solicitor 2**, George Williams and Tony Mokbel.<sup>40</sup> There was a further meeting on 21 July 2005 at which Ms Gobbo spoke again about **Barrister** and **Solicitor 2**.<sup>41</sup> She spoke about similar matters to those set out above.
- 3.89 On 16 August 2005, Victoria Police arrested and charged **Mr Bickley** with offences relating to the trafficking of MDMA.<sup>42</sup> Ms Gobbo did not know **Mr Bickley**,<sup>43</sup> but she received a telephone call on the day of the arrest from Detective

<sup>37</sup> SC Reasons at [378(d)] (VPL.0005.0013.0200, at 0314 [378(d)]); Facts Admitted by EF (exhibit DPP-19), paragraph 31(d) (VPL.0012.0002.2536, at 2540 [31(d)]).

<sup>38</sup> SC Reasons at [245(d)] (VPL.0005.0013.0200, at 0289[245]); Facts Admitted by EF (exhibit DPP-19), paragraph 2(d) (VPL.0012.0002.2536, at 2536 [2(d)]).

<sup>39</sup> Bateson chronology (VPL.0015.0001.0409).

<sup>40</sup> *ibid.*

<sup>41</sup> *ibid.*

<sup>42</sup> SC Reasons at [342] (VPL.0005.0013.0200, at 0308 [342]); Facts Admitted by EF (exhibit DPP-19), paragraph 17 (VPL.0012.0002.2536, at 2538 [17]).

<sup>43</sup> EF Affidavit, paragraph 13 (VPL.0012.0002.2414, at 2416 [13]).

Senior Constable Paul Rowe of the Major Drug Investigation Division (MDID) who told her that **Mr Bickley** was requesting to speak with her.<sup>44</sup>

- 3.90 Ms Gobbo attended the Melbourne Custody Centre to meet with **Mr Bickley**<sup>45</sup> and she subsequently attended the Melbourne Magistrates' Court on 31 August 2005 to appear at a bail application made on his behalf.<sup>46</sup> According to Ms Gobbo, she was "highly stressed" by this time because she was being pressured by Tony Mokbel to represent **Mr Bickley** and to ensure that he obtained bail.<sup>47</sup> She has stated that she felt that she was at a "breaking point"<sup>48</sup> due to the position she found herself in with Mr Mokbel, and she recalls walking to court and hoping that she would be hit by a tram or a car.<sup>49</sup>
- 3.91 Although Ms Gobbo attended the Melbourne Magistrates' Court for **Mr Bickley**'s bail application on 31 August 2005, the application did not proceed due to the failure of the instructing solicitor to obtain a gaol order for the attendance of **Mr Bickley**.<sup>50</sup>
- 3.92 At this time, the informal discussions between DS Bateson and Ms Gobbo were continuing in relation **Barrister** **Solicitor 2** and others.<sup>51</sup> Ms Gobbo was also speaking to Detective Sergeant Dale Flynn around this time.<sup>52</sup>
- 3.93 Following discussions, then Detective Acting Superintendent Robert Hill, from MDID submitted a 'Request For Assistance (RFA), Source Development Unit' form. MDID members were to assist the SDU members to meet with Ms Gobbo in order to assess her suitability as a potential human source.<sup>53</sup>
- 3.94 On 16 September 2005, former Detective Sergeant Steve Mansell and Detective Senior Constable Paul Rowe, both from MDID, introduced Ms Gobbo to two

<sup>44</sup> SC Reasons at [349] (VPL.0005.0013.0200, at 0309 [349]); EF Affidavit, paragraph 13 (VPL.0012.0002.2414, at 2416 [13]).

<sup>45</sup> SC Reasons at [349] (VPL.0005.0013.0200, at 0309 [349]); Transcript 303.2-3 (28 February 2017) (EF) (VPL.0012.0002.4284).

<sup>46</sup> SC Reasons at [14], [343] (VPL.0005.0013.0200, at 0208 [14] and 0308 [343]); Facts Admitted by EF (exhibit DPP-19), paragraph 18 (VPL.0012.0002.2536, at 2539 [18]); Transcript 303.26-29 (28 February 2017) (EF) (VPL.0012.0002.4284).

<sup>47</sup> EF Affidavit, paragraph 18 (VPL.0012.0002.2414, at 2417 [18]).

<sup>48</sup> *ibid.*

<sup>49</sup> Transcript 224.27-31 (27 February 2017) (EF) (VPL.0012.0002.4154); SC Reasons at [17] (VPL.0005.0013.0200, at 0208 [17]).

<sup>50</sup> SC Reasons at [14], [343] (VPL.0005.0013.0200, at 0208 [14] and 0308 [343]); Facts Admitted by EF (exhibit DPP-19), paragraph 18 (VPL.0012.0002.2536, at 2539 [18]).

<sup>51</sup> See Bateson chronology for the detail (VPL.0015.0001.0409).

<sup>52</sup> Diary of DS Flynn (VPL.0010.0004.0001).

<sup>53</sup> Exhibit MS-1 to the Swain Affidavit, pages 2-3 (paragraphs 10-12) (VPL.0008.0001.0453).

members of the SDU, **Sandy White-O** and Detective  
**Peter Smith-O** <sup>54</sup>

- 3.95 At the meeting, Ms Gobbo expressed to the officers that she was very concerned that the fact of her communication with police might be revealed.<sup>55</sup> In response, **Jones-Jones-DSS** acknowledged the risk and said that they could begin with a discussion about what assistance she may be able to offer and how it could be progressed in a safe way.<sup>56</sup> **Brennan-DS** made statements to a similar effect.<sup>57</sup>
- 3.96 Ms Gobbo has stated that from her experience as a criminal barrister, she understood that, in practice, there were two types of human sources:
- (a) those facing criminal charges themselves, who might be tasked to participate covertly in an illegal transaction, or to introduce an undercover operative to a target; and
  - (b) those who would be used "purely in the background" to provide intelligence to police that may or may not be acted upon.<sup>58</sup>
- 3.97 Ms Gobbo has stated that she understood from her discussions with police that she was to be used as a human source of the second type.<sup>59</sup> She believed that she would never be placed by police in a circumstance that revealed that she was the source of any particular information.<sup>60</sup>
- 3.98 Following that meeting, and on the same day, an application was made by SDU to register Ms Gobbo as a human source.<sup>61</sup>
- 3.99 Thereafter, Ms Gobbo and her handlers began to have daily contact with one another.<sup>62</sup>

<sup>54</sup> EF Affidavit, paragraph 21 (VPL.0012.0002.2414, at 2418 [21]); Exhibit MS-1 to the Swain Affidavit, page 3 (paragraph 12) (VPL.0008.0001.0453). Also see ICR (VPL.0012.0002.2618).

<sup>55</sup> MFI-15 (Transcript of part of audio recording between Ms Gobbo and SDU on 16 September 2005 (the audio recording is exhibit DPP-14) (MFI-15), page 3 (VPL.0012.0002.2552, at 2554).

<sup>56</sup> MFI-15, page 3 (VPL.0012.0002.2552, at 2554); see also SC Reasons at [26] (VPL.0005.0013.0200, at 0217 [26]).

<sup>57</sup> MFI-15, page 4 (VPL.0012.0002.2552, at 2555); see also SC Reasons at [26] (VPL.0005.0013.0200, at 0217 [26]).

<sup>58</sup> SC Reasons at [24] (VPL.0005.0013.0200, at 0216 [24]); Transcript 149.17-26 (21 February 2017) (EF) (VPL.0012.0002.4085); see also Transcript 262.24 (28 February 2017) (EF) (VPL.0012.0002.4284) and Transcript 240.6-12 (27 February 2017) (EF) (VPL.0012.0002.4154).

<sup>59</sup> SC Reasons at [24] (VPL.0005.0013.0200, at 0216 [24]).

<sup>60</sup> Transcript 150.25-30 and 151.24-27 (21 February 2017) (EF) (VPL.0012.0002.4085); SC Reasons at [24] (VPL.0005.0013.0200, at 0216 [24]).

<sup>61</sup> Informer Registration Application (VPL.0005.0017.0001).



- 3.100 Given the frequency of contact, it is not possible to describe all of the contact in this statement. Such information is recorded in Victoria Police's Loricated database.
- 3.101 The information Ms Gobbo provided was disseminated to various major police taskforces, including the *Purana*, *Posse*, *Briars* and *Petra Taskforces*, which had targeted criminal syndicates involved in drug trafficking and multiple homicides, including the homicide of human source, Terrence Hodson, and his wife Christine.<sup>63</sup> Ms Gobbo's interactions with her handlers at the SDU are recorded in more than 5,000 informer contact reports (ICRs) covering the period of her registration as a human source by the SDU in September 2005 to January 2009.<sup>64</sup>

#### 2009 - Deregistration as a human source

- 3.102 In January 2009, Victoria Police conducted a risk assessment in relation to Ms Gobbo and determined that it was necessary for her to enter the Witness Protection Program (WPP). The risk assessment had concluded that she was at extreme risk of serious injury or death.<sup>65</sup> The reasons are set out below.
- 3.103 The decision to conduct a risk assessment at this time was a result of Ms Gobbo having given assistance to the *Petra Taskforce* in 2008.<sup>66</sup>
- 3.104 The *Petra Taskforce* was the taskforce that investigated the murders of Terrence and Christine Hodson.<sup>67</sup> Terrence Hodson had been a registered human source and, before his death, had agreed to give evidence against suspected corrupt police officer, Paul Dale.
- 3.105 In December 2008, at Victoria Police's request, Ms Gobbo had covertly recorded a conversation between herself and Mr Dale.
- 3.106 In January 2009, Ms Gobbo agreed to make a statement about her relationship with Mr Dale and his alleged criminal activities, and Victoria Police decided to use her

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<sup>63</sup> SC Reasons at [30(d)] (VPL.0005.0013.0200, at 0218 [30(d)]).

<sup>64</sup> Exhibit SF-1 (IBAC Report) to the 1<sup>st</sup> Fontana Affidavit, p 17 (VPL.0008.0001.0045 at 0064); 1<sup>st</sup> Fontana Affidavit, paragraphs 71 and 73-75 (VPL.0008.0001.0001 at 0024 - 0025).

<sup>65</sup> SC Reasons at [39] (VPL.0005.0013.0200, at 0221 [39]); Swain Affidavit, paragraph 17.1 (VPL.0008.0001.0453).

<sup>66</sup> 1<sup>st</sup> Fontana Affidavit, paragraph 74 (VPL.0008.0001.0001 at 0025).

<sup>67</sup> 1<sup>st</sup> Fontana Affidavit, paragraphs 73-75 (VPL.0008.0001.0001 at 0024 - 0025); Exhibit JRC-2 (Comrie Review) to the 1<sup>st</sup> Champion Affidavit, page 5 (VPL.0012.0002.1672 at 1679).

<sup>68</sup> 1<sup>st</sup> Fontana Affidavit, paragraph 75 (VPL.0008.0001.0001 at 0025).

statement and the covert recording as evidence in support of murder charges laid against Mr Dale and Mr Rodney Collins.<sup>68</sup>

3.107 As a result of Ms Gobbo agreeing to give that statement, Victoria Police decided to deregister her as a human source in January 2009.<sup>69</sup> Members of Victoria Police remained extremely concerned about the risk to Ms Gobbo, particularly in light of the intention to call her as a witness,<sup>70</sup> and the Witness Security Unit held a number of meetings with her in January 2009 to consider her formal entry into the WPP.<sup>71</sup>

3.108 I have recently been informed that after Ms Gobbo was de-registered, she continued to provide information to Victoria Police during the period from 4 March 2009 to 6 August 2010. I presently understand that: (a) the information was provided to [REDACTED] Griffin-DS and Lloyd-DS who were part of the *Petra Taskforce*; (b) there are 207 Contact Reports; (c) the information provided by Ms Gobbo was considered in investigations concerning Rob Karam, George Lipp and the murder of Carl Williams by Matthew Johnson; and (d) on about 27 August 2010, then Chief Commissioner Simon Overland issued an instruction that Victoria Police was not to receive intelligence from Ms Gobbo.

3.109 *Taskforce Landow* has undertaken initial inquiries to determine the bearing that information had on three investigations and I am advised as follows:

- (a) **Investigation 1:** On 12 March 2009, Ms Gobbo provided Victoria Police with information concerning an allegation that Rob Karam had 'potentially' breached his bail conditions. *Taskforce Landow* is making further inquiries but on the basis of preliminary LEAP checks that it has conducted, it does not appear that this information resulted in a conviction.
- (b) **Investigation 2:** In the period from 2 June 2009 to 13 September 2009, Ms Gobbo provided Victoria Police with information concerning George Lipp. On 22 February 2013, George Lipp was convicted of a number of offences in the County Court including trafficking a commercial quantity of methylamphetamine and firearm offences. Mr Lipp received a 5 year term of

<sup>68</sup> 1<sup>st</sup> Fontana Affidavit, paragraph 73.3 (VPL.0008.0001.0001 at 0025).

<sup>69</sup> 1<sup>st</sup> Fontana Affidavit, paragraph 71 (VPL.0008.0001.0001 at 0024); Exhibit SF-1 (IBAC Report) to the 1<sup>st</sup> Fontana Affidavit, page 3 (VPL.0008.0001.0045 at 0060); SC [30(a)].

<sup>70</sup> 1<sup>st</sup> Fontana Affidavit, paragraph 73.5 (VPL.0008.0001.0001 at 0025).

<sup>71</sup> 1<sup>st</sup> Fontana Affidavit, paragraph 76 (VPL.0008.0001.0001 at 0025).

imprisonment. Mr Lipp unsuccessfully attempted to appeal against his sentence. He received parole on 25 May 2017 and remains on parole.

Victoria Police is currently undertaking further inquiries to determine whether Ms Gobbo provided advice or representation to Mr Lipp, the nature of the information that Ms Gobbo provided about him and whether she provided this information in breach of LPP.

- (c) **Investigation 3:** On 20, 22 and 28 April 2010, Ms Gobbo provided Victoria Police with information concerning the murder of Carl Williams. Mr Williams was murdered in prison on 19 April 2010 by inmate, Matthew Johnson. Taskforce Landow is conducting further inquiries but, on the basis of the information presently available, it has not identified a nexus between the information Ms Gobbo provided to Victoria Police and Mr Johnson's conviction.

3.110 These matters are continuing to be investigated by *Taskforce Landow*.

3.111 In March 2009, Ms Gobbo ceased practicing as a barrister.

3.112 Victoria Police continued to assess that the risk to Ms Gobbo remained high and sought (unsuccessfully) on several occasions in 2010, 2011 and 2012 for her to agree to enter the WPP.<sup>72</sup>

3.113 In 2014, following the publication of articles in the Herald Sun newspaper about Ms Gobbo being a human source (which did not name her), Victoria Police adopted a number of immediate safety measures for Ms Gobbo.<sup>73</sup> Victoria Police urged Ms Gobbo to reconsider entering the WPP (with her child) on the terms that she had previously declined to accept [REDACTED]<sup>74</sup> After further consideration, she again declined to enter the WPP.<sup>75</sup>

3.114 Since that time, Victoria Police has continued to encourage Ms Gobbo to enter the WPP.

3.115 Given the extreme risk to Ms Gobbo's life, I have not set out in this statement any information in relation to her current situation.

<sup>72</sup> 1<sup>st</sup> Fontana Affidavit, paragraphs 91.5, 91.6, 94, 95.2 and 96 (VPL.0008.0001.0001 at 0029 - 0031).

<sup>73</sup> 1<sup>st</sup> Fontana Affidavit, paragraph 100 (VPL.0008.0001.0001 at 0032).

<sup>74</sup> 1<sup>st</sup> Fontana Affidavit, paragraphs 103-106 (VPL.0008.0001.0001 at 0034).

<sup>75</sup> 1<sup>st</sup> Fontana Affidavit, paragraphs 104-105 (VPL.0008.0001.0001 at 0034).



3.116 The above sets out the contact that Ms Gobbo had with Victoria Police in her roles as a human source and witness. Victoria Police is in the process of collating documentation into allegations of other types of relationships between Ms Gobbo and former and current members of Victoria Police.

#### **4 Victoria Police's processes and procedures in place during the period (question 2)**

4.1 Question 2 asks me what processes and procedures Victoria Police had in place for the recruitment, management and handling of human sources with legal obligations of confidentiality or privilege from 1993 to present.

4.2 Throughout the period Victoria Police had contact with Ms Gobbo, Victoria Police had policies and procedures in place for the recruitment, management and handling of human sources.

4.3 Those policies did not expressly refer to human sources with legal obligations of confidentiality or privilege until the update of the *Victoria Police Manual, Policy Rules, Human Sources* issued on 4 February 2014.

4.4 *Taskforce Landow* has prepared a chart<sup>76</sup> identifying the applicable policy rules and some of their key features. The documents containing these policies have also been produced to the Royal Commission in response to a notice to produce.

4.5 A summary of the applicable Victoria Police policies, instructions and procedures during the relevant period until the present is as follows.

#### 1986 - Victoria Police Manual, Crime, Confidentiality of Information Received<sup>77</sup>

4.6 Since 1986 the *Victoria Police Manual* has contained provisions requiring members to preserve the confidentiality of the identity and location of human sources.

#### 1992 - Force Circular Memo No. 91-9<sup>78</sup>

4.7 On 17 December 1991, Victoria Police issued *Force Circular Memo No. 91-9* which contained the 'Registration of Informers (91-9-3)' policy (91-9-3). 91-9-3 required a system of registering human sources to be implemented from 1 January 1992.

4.8 91-9-3 defined a human source as "a person who provides information to police concerning criminal acts on a regular basis" and required such persons to be registered.

<sup>76</sup> VPL.0005.0016.0001.

<sup>77</sup> VPL.0002.0001.2273.

<sup>78</sup> VPL.0002.0001.2249.

4.9 91-9-3 also permitted members to register 'casual informants' if they considered it necessary. The registration process was undertaken by the Registrar, who was an officer appointed by the District Commanders in each district. In summary, the registration process required:

- (a) The member wishing to register the human source to supply the Registrar with an unsealed envelope containing the human source's full name, date of birth and current address.
- (b) The Registrar to peruse the contents of the envelope and ensure that it was appropriate to register the human source.
- (c) If registered, the human source was assigned a number which was recorded on the envelope. The envelope was then sealed and kept in a secure place.

4.10 91-9-3 required members to report to their superiors concerning arranged and chance meetings with human sources. It also required members to record meetings with a registered human source, and payments made to human sources, in their official diary or notebook.

#### 1993 – Victoria Police Manual Operating Procedures

4.11 From 1 November 1993 the procedures relating to human sources were set out in Chapter 4.8.2 of the '*Victoria Police Manual Operating Procedures*' (**Operating Procedures**).<sup>79</sup> The Operating Procedures were substantially the same as those provided for in *Force Circular Memo No. 91-9*.

4.12 On 1 December 1994 the Operating Procedures were amended to provide that the Registrar of human sources is to be the District Commander.<sup>80</sup> On 29 November 1999 the Operating Procedures were further amended to provide that the Registrar of Informers is to be the Divisional Superintendent.<sup>81</sup>

#### July 2003 – Victoria Police Manual Instruction 111-3 Informers<sup>82</sup>

4.13 On 11 July 2013 '*VPM Instruction 111-3 Informers*' was issued. It contained procedures similar to those provided for by the Victoria Police Manual Operating Procedures. It provided that the Registrar of human sources was the Divisional Manager.

#### September 2003 – Chief Commissioner's Instruction 7/03, Informer Management Policy

<sup>79</sup> VPL.0002.0001.1836.

<sup>80</sup> VPL.0002.0001.1914.

<sup>81</sup> VPL.0002.0001.2022.

<sup>82</sup> VPL.0002.0001.1660.

- 4.14 On 22 September 2003 '*Chief Commissioner's Instruction 7/03*' (CCI 7/03)<sup>81</sup> was issued. It replaced *VPM Instruction 111-3*.
- 4.15 CCI 7/03 was introduced following a review of Victoria Police human source management procedures and review of interstate and overseas best practice. The Policy also implemented recommendations from the Drug Squad Review.
- 4.16 CCI 7/03 was a comprehensive human source management policy. It incorporated all six phases of the human source management process including recruitment, registration, interaction, payment, deactivation and requests for human source assistance.
- 4.17 CCI 7/03 outlined the roles and responsibilities of handlers and co-handlers, the controller, the immediate supervisor of the controller (OIC), Local Informer Registrar (LIR), Central Informer Registrar (CIR), Informer Management Unit (IMU) and Informer Payment Committee (IPC).
- 4.18 A paper based system was still in use during this time.
- 4.19 CCI 7/03 required an initial risk assessment to be conducted incorporating information relevant to the following:
- (a) Risk to human source – including history, criminal or otherwise, with may lead to risk of compromise.
  - (b) Risk to Information – including content, intended use, subsequent dissemination, relevance.
  - (c) Risk to Handler(s)/Controller – experience and ability of member to fulfil role, adequate training, personal knowledge relating to human source.
  - (d) Risk to Victoria Police – embarrassment to Victoria Police, loss of credibility, exposure of methodology, cost effectiveness.
  - (e) Risk to Public – impact on community, harm to public, confidence issues.
- 4.20 The registration process required the OIC and LIR to evaluate the identified risks, consider potential risks and risk management strategies, ensure compliance with the relevant policy and guidelines and ensure that there has been adequate consideration of duty of care issues.

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<sup>81</sup> VPL.0002.0001.2196.

- 4.21 The responsibilities of the LIR, post the evaluation considerations, was to 'authorise' the registration, create and endorse a unique computer generated code on the registration form, authorise the allocation of a handler, co-handler and controller, authorise the creation of an Informer Management File (IMF) and Local Informer Management File (LIMF) and to forward certain documents to the Informer Management Unit (IMU).
- 4.22 Following registration, CCI 7/03 required an Acknowledgement of Responsibilities (AOR) form to be completed and forwarded to the IMU. [REDACTED]  
[REDACTED]  
[REDACTED]
- 4.23 CCI 7/03 required contact between handlers and human sources to be planned and documented as soon as practicable after contact occurred.
- 4.24 CCI 7/03 required the following audit and compliance processes:
- (a) Monthly review by the controller with such reviews and any recommendations to be endorsed on the IMF.
  - (b) Provision of a quarterly report by the handler.
  - (c) Quarterly inspections/reviews of IMFs by the LIR.
  - (d) Yearly audit of IMFs by the Regional Audit Team and Crime Department Audit and Compliance Team.
  - (e) Annual audit of human sources by the LIR.
- 4.25 CCI 7/03 provided for special processes concerning the use of child informers, due to "the inherent legal, moral and psychological risks involved".
- 4.26 A transitional period applied to the introduction of CCI 7/03 whereby within 60 days of publication of CCI 7/03 it had to be fully implemented and complied with. In particular, upon the introduction of the Policy the Local Informer Registrar was required to:
- (a) advise all members that all currently registered human sources must be considered not registered; and
  - (b) ensure that human sources that require re-registration are re-registered under the new policy.

- 4.27 CCI 7/03 was updated on 22 September 2004<sup>84</sup> and the transitional provisions removed. The instruction was reissued (unchanged) on 20 September 2005<sup>85</sup> as CCI 3/05 pending a further review of the Policy.

May 2007 – Victoria Police Manual Instruction 111-3 Human Sources

- 4.28 On 7 May 2007 '*VPM Instruction 111-3 Human Sources*'<sup>86</sup> (**VPM Instruction**) was issued. The previous nomenclature of 'informer' changed with the issue of this Policy to 'human source'.
- 4.29 The VPM Instruction distinguished between 'confidential sources' and 'covert sources'. A confidential source was defined as a human source who provides information only, with no further involvement. A covert source was defined as a human source who provides information of interest with an expectation that their identity would be protected and:
- (a) who actively seek out further intelligence or information on direction, request or tasking of police,
  - (b) receive reward, reimbursement or any other benefit, or
  - (c) there is a threat or potential of danger or harm to a person as a result of the relationship between the human source and Victoria Police.
- 4.30 Confidential sources were required to be registered and the source relationship monitored to ensure their status did not change to a covert source. Covert sources were required to be registered, risk assessments conducted and an AOR form completed.
- 4.31 The VPM Instruction detailed the responsibilities of the OIC/Supervisor, Local Source Registrar (LSR), Controller and Human Source Management Unit (HSMU) with respect to the registration process.
- 4.32 The VPM Instruction also replaced the term 'Central Informer Registrar' (CIR) to 'Central Source Registrar' (CSR) and included their responsibilities as policy, training and coordination of all source registrations.
- 4.33 The VPM Instruction required the suitability of the human source to be assessed and an initial risk assessment to be conducted prior to registration. Following registration,

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<sup>84</sup> VPL.0002.0001.2214.

<sup>85</sup> VPL.0002.0001.2232.

<sup>86</sup> VPL.0002.0001.1662.

the VPM Instruction required a full risk assessment to be completed by the handler or controller in line with the Human Source Risk Assessment Manual.<sup>87</sup> The risk assessment model described in the manual was based on an Australian and New Zealand Standard (AS/ANS 4360:2004 Risk Management) and required five categories of risks to be assessed and numerically scored:

- (a) risk of human source being compromised;
- (b) risk of handler(s)/controller being jeopardised;
- (c) risk to the integrity of the information;
- (d) risk to Victoria Police of corruption or exposure; and
- (e) risk of public harm.

4.34 Where a risk assessment identified a human source as high risk, the HSMU was required to be contacted for operational advice and assistance.

4.35 Following registration, an AOR form was required to be completed and forwarded to the HSMU. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

4.36 The VPM Instruction required handlers to complete a Contact Report as soon as practicable after contact with a human source had occurred and the controller to be briefed on the report. Following the briefing the controller must forward an electronic copy of the report to the HSMU within 48 hours unless exceptional circumstances exist and circulate a sanitised Information Report.

4.37 Audit and compliance processes under the instruction included:

- (a) Controller to complete a monthly review of the human source relationship, risk assessment and information gained, and a quarterly report for forwarding to the LSR.
- (b) LSR to conduct yearly audits of source management files and procedural, ethical and value audits for all active sources they have responsibility for, and audit meetings with human sources on an identified needs basis.

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<sup>87</sup> VPL.0005.0016.0034.

4.38 Special rules applied to juvenile sources.

November 2008 - Victoria Police Manual Instruction 111-3 Human Sources

4.39 On 3 November 2008 VPM Instruction *111-3 Human Sources* was updated (**Updated VPM Instruction**).<sup>88</sup>

4.40 The Updated VPM Instruction set out the following overarching principles:

The following Human Source principles must always be adhered to:

- Human Sources (informers) must only be used for the purpose of intelligence collection and investigative support in a manner in which the integrity of sources, the community, police members and Victoria Police is protected. Where it is intended to task them in circumstances where they would be criminally responsible for their conduct authority must be obtained under the *Crimes (Controlled Operations) Act 2004*...
- Human Sources must always be registered. Any interaction with a Human Source whether active or inactive must be documented by way of a Contact Report.
- Human Sources must be properly supervised and clear about the legal and ethical boundaries of their activity. They must not be recruited if there are insufficient handlers, controllers or other resources available to manage them safely.
- Community Contacts may be registered in order to protect their confidentiality and ultimately the safety of those persons who assist police.

4.41 The Updated VPM Instruction referred to what was previously called a 'confidential source' as a 'community contact'. It also referred to the SDU, Intelligence & Covert Support Department. The SDU was a covert unit comprised of source handlers and controllers dedicated solely to the tasks of managing designated high-risk human sources for Victoria Police and targeted recruitment of potential human sources in the organised crime or national security environments. Where a risk assessment identified a source as high risk, the instruction required the SDU to be contacted for

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<sup>88</sup> VPL.0002.0001.1675.

operational advice and assistance. The instruction did not require the SDU to manage all human sources determined to be at the high risk level.

- 4.42 The Updated VPM Instruction made reference to the '*Human Source Practice Guide*' (**Practice Guide**).<sup>89</sup> The Practice Guide provided systems and instructions for the use and management of human sources. It was developed as a result of extensive local, national and international research and consultation, bringing together current established best practice and recent developments.
- 4.43 The Practice Guide provided further guidance as to the recruitment, management and handling of human sources, including risk assessment processes and ethical considerations. It also contained guidance for dealing with potential sources who are in custody and for vulnerable individuals, such as persons suffering with a mental illness.
- 4.44 The Practice Guide included information about judicial processes including disclosure in criminal proceedings, protection of the source identity and information communicated to police by the source, claims of public interest immunity and use of information from a human source in search warrant applications.

February 2010 – Victoria Police Manual Policy Rules, Human Sources<sup>90</sup> and Victoria Police Manual Procedures and Guidelines, Human Sources<sup>91</sup>

- 4.45 On 22 February 2010 the '*Victoria Police Manual Policy Rules, Human Sources*'<sup>92</sup> (**Policy Rules**) and the '*Victoria Police Manual Procedures and Guidelines, Human Sources*'<sup>93</sup> (**Procedure and Guidelines**) were first issued.
- 4.46 The Procedure and Guidelines support the Policy Rules and should be read in conjunction with the Policy Rules. The Policy Rules are mandatory and provide the minimum standards that operational members and supervisors must apply. The Procedure and Guidelines are not mandatory requirements but are provided to members to support the interpretation and application of the Policy Rules. They include recommended good practices and assessment tools to help members make lawful, ethical and professional decisions.

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<sup>89</sup> VPL.0005.0016.0002.

<sup>90</sup> VPL.0002.0001.1687.

<sup>91</sup> VPL.0002.0001.1694.

<sup>92</sup> Referred to in the Victoria Police Manual as "VFMP Human Sources".

<sup>93</sup> Referred to in the Victoria Police Manual as "VFMG Human Sources".



- 4.47 The Policy Rules define a 'human source' as an identified person who develops or maintains a relationship with another person/s for the purpose of providing information to Victoria Police with an expectation that their identity will be protected and:
- (a) actively seek out further intelligence or information on direction, request or tasking of police,
  - (b) may receive reward, reimbursement or any other benefit,
  - (c) there exists a threat or potential of danger or harm to a person as a result of the relationship between the human source and Victoria Police, or
  - (d) are used as part of any approved undercover police operation.
- 4.48 The Policy Rules define a 'community contact' as an identified person who through the course of their daily activities provides information to Victoria Police with an expectation that their identity will be protected. They must not be requested or tasked to actively gather intelligence nor should be considered for reward or benefit.
- 4.49 The Policy Rules provided that human sources must be registered. Community contacts may be registered in order to protect their confidentiality and safety.
- 4.50 As with previous policies, the Policy Rules required the suitability of the human source to be assessed and an initial risk assessment to be conducted prior to registration, and a full risk assessment to be completed by the handler [REDACTED].
- [REDACTED] The full risk assessment was to be completed in line with the Human Source Risk Assessment Manual. Where a risk assessment identified a human source as high risk, the instruction required the SDU to be contacted for operational advice and assistance.
- 4.51 The Policy Rules require all contact with human sources and community contacts to be documented on a Human Source Contact Report as soon as practicable following contact. In relation to information obtained from human sources, the disclosure of information must be overseen by Local Sources Registrars and the HSMU to ensure that the information obtained from a human source is disseminated in a timely manner and in accordance with operational needs. Details of how information is disseminated must be recorded on the Activity Log and Contact Report.
- 4.52 As with previous policies, audit and compliance processes included:

- (a) controller to complete a monthly review of the human source relationship, risk assessment and information gained, and a quarterly report for forwarding to the LSR.
- (b) LSR to conduct yearly audits of human source management files and procedural, ethical and value audits for all active sources they have responsibility for, and audit meetings with sources on an identified needs basis.

4.53 On 14 February 2011 the Policy Rules and Procedures and Guidelines were amended to include a requirement that where a human source becomes a witness, payments to meet the costs associated with the witness appearing in court must be made in accordance with VPMG Court Processes.<sup>94</sup> On 28 April 2011 the Policy Rules and Procedures and Guidelines were amended to reflect Victoria Police's use of the Interpose system for the management of Human Sources.<sup>95</sup> On 16 January 2013 and 4 February 2014 further minor amendments were made to the Policy Rules.<sup>96</sup>

September 2014 - Victoria Police Manual Policy Rules, Human Sources<sup>97</sup>

- 4.54 On 29 September 2014 the Victoria Police Manual Policy Rules, Human Sources (**Human Sources Policy Rules**) were issued, which amalgamated and revised the Policy Rules and Procedures and Guidelines that had previously been in place.
- 4.55 These amendments were made at the direction of the Human Source Governance Committee to incorporate the bulk of the recommendations emanating from the 2010 Corporate Management Review Division (CMRD) Audit (which made 26 recommendations)<sup>98</sup> and the 2012 Comrie Review (Comrie made 27 recommendations and endorsed the recommendations made by the CMRD in 2010).
- 4.56 The Human Sources Policy Rules extensively overhauled Victoria Police's previous policy in relation to human sources and introduced, for the first time, express provisions relating to human sources with legal obligations of confidentiality or privilege.

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<sup>94</sup> VPL.0002.0001.1719.

<sup>95</sup> VPL.0002.0001.1703 and VPL.0002.0001.1711.

<sup>96</sup> VPL.0002.0001.1719.

<sup>97</sup> VPL.0002.0001.1719.

<sup>98</sup> Refer to paragraph 5.15.

- 4.57 One of the express purposes of the Human Sources Policy Rules is "to ensure the management of human sources is within legal and ethical boundaries".
- 4.58 The Human Sources Policy Rules distinguish between 'human sources', who must be registered, and 'community contacts' who may be registered to preserve their anonymity and safety.
- 4.59 The Human Sources Policy Rules set out the roles, responsibilities and minimum training requirements for members of the handling team (namely handler/s, controller, officer in charge (OIC), Local Source Registrar (LSR)) and details the roles and responsibilities of the Central Source Registrar (CSR), Human Source Management Unit (HSMU), Human Source Rewards Committee (HSRC), the Human Source Governance Committee and the Intelligence and Covert Support Command Ethics Committee (**Ethics Committee**).
- 4.60 The Detective Superintendent of the Covert Services Division, Intelligence and Covert Support Command (ICSC) assumes the role of CSR. The CSR has oversight of all registrations and human source activity. The HSMU has responsibility for management of the source registrar. It oversees all human source management, ensures compliance with the Policy Rules and provides specialist advice and support to operational members where required. The Human Source Governance Committee is chaired by the Assistant Commissioner ICSC (or a delegate) and receives LSR audits via the HSMU. It can make recommendations to the Assistant Commissioner ICSC for further action regarding audits or for policy or professional development.
- 4.61 The Ethics Committee is chaired by the Assistant Commissioner ICSC. Part of the role of the committee is to provide advice on and make decisions regarding human source management which have strategic implications or likely significant community interest.
- 4.62 The Human Sources Policy Rules require supervisors, including source controllers, the OIC and the LSR, to practice 'instructive supervision'. This includes understanding the organisation's expectations when it comes to managing the inherent risks in human source relationships, reviewing information received from the source, re-assessing risk and ensuring the AOR form has been delivered, is appropriate and is being reinforced.
- 4.63 An AOR form is required to be delivered to a human source [REDACTED] and to be reiterated and constantly evaluated. At a minimum the AOR

must be reviewed on monthly basis by the controller as part of the risk assessment review process, and the outcome endorsed on Interpose.

- 4.64 Paragraph 2.2 of the Human Sources Policy Rules provides guidance in relation to occasions where human sources are used as prosecution witnesses. The Human Sources Policy Rules provides that the Central Source Registrar (CSR) may determine that use of a human source as a witness is not in the best interests of the human source, the organisation, an investigation, the community or any combination of these. In this event, the decision may be referred to the Assistant Commissioner ICSC who may seek a determination at executive level.
- 4.65 The Human Sources Policy Rules explain Victoria Police's requirements in relation to risk assessment. These include the following concerning human sources with legal obligations of confidentiality or privilege:

4.5 Legal, ethical, medical or psychological considerations

Where complex legal, ethical or medical considerations are evident with a human source, such as the human source being occupationally bound by other duties, or there is (the presence of medical or mental health issues) advice must be sought from the HSMU.

4.6 Professional privilege and other circumstances

- Members must be mindful that some sources as a result of their occupations may have professional obligations regarding confidentiality e.g. Lawyers, Doctors and Clergy.
- Handlers must consider the legal and ethical implications for the management of these sources and the information or intelligence they transmit in compiling their registration applications.
- Members must obtain advice from HSMU management as to the method of handling and recording of any such information or intelligence that may conflict with the professional obligations of the source.
- The source Interpose file is to accurately reflect the planning and methodology to be followed in managing such a source. HSMU

advice is binding and may include the quarantine of information transmitted that may breach such an obligation or relationship.

- The HSMU will obtain advice from Legal Services Division regarding the quarantine or use of information or intelligence obtained which may breach a professional obligation.
- The strict adherence of this policy is not intended to discourage the use of high-risk sources in such circumstances but to effectively manage the relationship and information obtained in accordance with acceptable legal and community standards.

- 4.66 The Human Sources Policy Rules require handlers to complete a Source Contact Report as soon as practicable following any contact, with such period to not exceed 72 hours. Any information verbally provided to another work area must be the subject of an information report as soon as practicable.
- 4.67 Requests for assistance from human sources (whether coming from within Victoria Police or from an external law enforcement agency) are managed by the HSMU and approved by the CSR.
- 4.68 Paragraph 15 of the Human Sources Policy Rules provides guidance as to the reporting of any inappropriate behaviour between the source and a police member.
- 4.69 Audit and compliance requirements provided for by the Human Sources Policy Rules include the following:
- (a) Controllers must complete a monthly review of the source relationship, risk assessment and information gained.
  - (b) OICs must review active registrations every 3 months.
  - (c) Source Contact Reports must be controller reviewed within 7 days.
  - (d) The LSR must conduct an audit of each source management file within their division at the time of deactivation.
  - (e) The outcome of each audit conducted must be reported to the HSMU on the 31<sup>st</sup> of December each year, for review by the Human Source Governance Committee.

March 2016 - Victoria Police Manual, Human Sources<sup>99</sup>

4.70 On 15 March 2016 the 'Victoria Police Manual, Human Sources' policy (VPM Human Sources) was issued, incorporating the recommendations of the IBAC Review conducted by the Honourable Justice Kellam.

4.71 In the Gazette of 21 March 2016, the following inclusion noted the change to policy:

Victoria Police Manual (VPM) Human sources, formerly VPMP Human sources, has been amended to incorporate recommendations from an IBAC review conducted into the policy and procedures for the management of human sources. The amendments relate to the following key points:

- Requirements when assessing people who may be bound by legal/professional privilege.
- Requirements when assessing people who have identified mental health issues.
- Greater clarity around when a source is registered and approved for deployment and actioning of intelligence.
- The unique identification number attributed to a source upon commencement of a registration application must not be used until the application is approved by the CSR of their delegate.

4.72 Paragraph 1.7 of the VPM Human Sources, concerning the responsibilities of the controller, was amended to include new responsibilities prior to registration being approved. This included ensuring the AOR is delivered and uploaded to Interpose [REDACTED] ensuring that the risk assessment is evaluated for potential and identified risks and that sufficient mitigation strategies are in place, and that the completed risk assessment is uploaded to Interpose [REDACTED]

4.73 Paragraph 1.9 made significant changes to the responsibilities of the LSR, namely:

- (a) A requirement that, on receipt of the Registration/Evaluation Form, the LSR will ensure sufficient risk mitigation strategies are in place, ensure that the

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<sup>99</sup> VPL.0002.0001.1750.

completed AOR is uploaded to Interpose and ensure that a comprehensive risk assessment is uploaded to Interpose PII [REDACTED]

- (b) A requirement that the LSR endorse Interpose to indicate their satisfaction that all perceivable risks have been identified within the risk assessment document, that risk controls are sufficient and that any change to risk profile must trigger a new risk assessment process. The CSR will not approve registration until this endorsement has occurred.
- 4.74 Paragraph 1.10 significantly changed the responsibilities of the CSR, including by giving the CSR final determination and oversight of all sources identified as high risk. In relation to sources assessed as low to medium risk, the role of the CSR may be delegated and performed by the HSMU, however the CSR maintains overall authority on all human source governance functions.
- 4.75 Paragraph 1.11 included new increased responsibilities for the HSMU. The VPM Human Sources requires the HSMU, in consultation with the CSR, to undertake frequent, comprehensive and accountable reviews of all high risk human source files and records. In the case of sources assessed as low to medium risk, the HSMU will authorise the approval of the registration on behalf of the CSR.
- 4.76 Paragraph 1.16 was revised to include a requirement that the AOR be reiterated by all handling team members for the duration of the source relationship.
- 4.77 Paragraph 1.18 was amended to change the definition of tasking to require it to be any *approved* assignment given to the human source by handlers.
- 4.78 Paragraph 1.19 was revised to include human source management that “involves complex ethical, legal or medical issues” as matters which the Ethics Committee is to provide advice on and make decisions relative to.
- 4.79 Paragraph 2.2, concerning the use of human sources as witnesses, was amended to allocate to the Ethics Committee the power to determine that the use of a human source as a witness is not in the best interests of the human source, the organisation, an investigation, the community or any combination of these. It also introduced new considerations relating to human sources who are to be or have been the subject of a compulsory hearing before an agency such as IBAC, ACC or the OCE.
- 4.80 Paragraph 3.2, regarding the registration of human sources, was significantly updated to provide that the generation by Interpose of a human source registration number

only indicates that the details of the proposed human source have been registered on the system, and that registration is not approved until such time as the CSR provides that approval. The VPM Human Sources states that the human source is not to be tasked until the registration is approved and that the source registration number is not be used in any manner (including warrant applications) until registration has been approved by the CSR. Paragraph 3.2 also required the LSR to make a recommendation of approval for all source registrations.

- 4.81 Paragraph 3.3 introduced new arrangements for after-hours urgent registration.
- 4.82 Paragraph 4.4, concerning risk assessments for high and extreme risk sources, was revised to require the LSR, as part of the monthly inspection process, to endorse current risk assessments to reflect that no new risks have arisen that would require a revised risk assessment to be undertaken and that the current risk assessment remains fit for purpose.
- 4.83 Paragraphs 4.5 and 4.6, concerning human sources' legal obligations of confidentiality or privilege, were revised to insert the parts underlined below:

4.5 Legal, ethical, medical or psychological considerations

- Where complex legal, ethical or medical considerations are evident with a human source, such as the human source being occupationally bound by other duties, or there is (the presence of medical or mental health issues) advice must be sought from the HSMU. Examples of persons falling into this category include but are not limited to; lawyers, doctors, members of parliament and religious officials.
- Where complex legal or ethical considerations are present with a potential human source, HSMU must seek advice from Legal Services Division prior to the completion of the risk assessment process. Such advice must be brought to the attention of both the LSR and CSR for consideration prior to registration being approved.
- Where significant psychological or medical issues are apparent or are perceived to exist at any stage of the human source registration or management process HSMU must seek advice from Psychology Services or a Forensic Medical Officer at VIFM



and provide that advice both to the LSR and CSR for consideration and proper regard.

#### 4.6 Professional privilege and other circumstances

- Members must be mindful that some sources as result of their occupations may have confidentiality obligations or professional obligations regarding confidentiality, e.g. lawyers, doctors and clergy.
- Handlers must consider the legal and ethical implications for the management of these sources and the information or intelligence they transmit in compiling their registration applications.
- Members must obtain advice from HSMU management as to the method of handling and recording of any such information or intelligence that may conflict with the professional obligations of the source.
- The source Interpose file is to accurately reflect the planning and methodology to be followed in managing such a source. HSMU advice is binding and may include the quarantine of information transmitted that may breach such an obligation or relationship.
- Where a human source, who is in a position to which confidentiality obligations or professional privilege applies, voluntarily offers information that is or appears to be in breach of that privilege then the following is to occur at the earliest opportunity:
  - the Interpose record is to be updated with a notation that the information appears to be in breach of professional privilege
  - the information is not be acted upon or disseminated further
  - the HSMU must be advised at the earliest opportunity

the HSMU must obtain legal advice from Legal Services Division regarding the use of information or intelligence obtained which may breach a professional obligation

- the HSMU will advise the CSR who in turn will advise the Human Source Management Ethics Committee
- the Human Source Management Ethics Committee will review the information provided and make a recommendation as to how the information and the source will be treated.
- Handlers must not actively seek information from human sources to whom a professional obligation may apply if such information would cause the human source to breach such a duty knowingly.
- The strict adherence of this policy is not intended to discourage the use of high risk sources in such circumstances but to effectively manage the relationship and information obtained in accordance with acceptable legal and community standards.

May 2018 - Victoria Police Manual, Human Sources<sup>100</sup>

4.84 On 8 May 2018 the *Victoria Police Manual, Human Sources* was further revised (**Revised VPM Human Sources**).

4.85 These revisions were made as a result of a further review of Victoria Police's human source policy which was undertaken to ensure that all of the recommendations made by Comrie (apart from recommendation 6 concerning IT) and Kellam had been fully implemented.

4.86 There is a marked up version of the Revised VPM Human Sources which highlights all of the additions and deletions made.<sup>101</sup>

4.87 A summary of the more significant changes introduced by the Revised VPM Human Sources is as follows.

4.88 Section 1.15 amends the definition of sterile corridor and introduces the concepts of 'full' and 'partial' sterile corridors. A full sterile corridor refers to a situation where investigators are unaware of the identity of the source of the information. A partial sterile corridor is the situation where investigators are aware of the identity of the source of information but the safety and risks to the source are handled by staff not involved in the investigation.

<sup>100</sup> VPL.0002.0001.1776.

<sup>101</sup> VPL.0015.0003.0001.

- 4.89 Section 1.16 provides a definition of 'single source information'.
- 4.90 Further instructions were added to section 1.17 regarding AORs. AORs must be delivered in a face to face meeting PII. The AOR must be reviewed by the controller on a monthly basis, against all intelligence holdings, including the contact reports, as part of the risk assessment process.
- 4.91 Section 1.18 was amended to change the definition of tasking to "any assignment or instruction given to the human source by the handlers".
- 4.92 Amendments were made to section 1.20 concerning the role of the Ethics Committee in relation to human sources with legal obligations of confidentiality or privilege. Any source that falls within the positive obligation category is by a default high risk and CSR approval is necessary. As part of this approval process the CSR must consult the Executive Director Legal Services Department. The Ethics Committee must review the decision made by the CSR to ensure that registration is proportionate and necessary to utilise a human source in cases where there is a positive obligation concerning complex legal, ethical or medical issues.
- 4.93 Amendments were made to section 2.2 regarding human sources as witnesses. For active human sources other than a high-risk source, the Revised VPM Human Sources requires a management plan to be developed between the handling team and the investigation team and endorsed by the CSR, including full risk assessments and comprehensive legal advice. Where the transfer of a high-risk human source to a witness may occur, the CSR is to be notified and a referral made to the Ethics Committee.
- 4.94 Section 2.3 contains new procedures in relation to human sources who have been the subject of a compulsory hearing before an agency such as IBAC, ACIC or the OCE.
- 4.95 Section 2.5, concerning the transfer of a human source from one handling team to another, now requires an updated AOR to be undertaken. The transfer of a high risk human source requires the approval of the LSR and a documented handover process with a new AOR, risk assessment, management plan and controller meet to be conducted.
- 4.96 Amendments have also been made to section 3 concerning the registration process.

- 4.97 Section 4.4 has been amended to provide that the only work unit that is to handle a high risk source (where CSR approval has been granted) is a dedicated source team within ISCS, unless exceptional circumstances exist.
- 4.98 Changes have been made to sections 4.5 and 4.6. Section 4.5 now deals with medical or psychological considerations while section 4.6 deals with professional privilege and obligations of confidentiality. All registrations involving significant mental health issues or legal or professional privilege issues must be personally approved by the CSR and cannot be delegated to members of the HSMU. If there is a potential for a breach of legal professional privilege then the matter must be referred by the CSR to the Human Source Ethics Committee.
- 4.99 Section 4.7 has been added to the Revised VPM Human Sources regarding deactivation of sources.
- 4.100 Sections 5.1 to 5.5 have been amended to clarify the stages throughout which the registration is considered a draft, reviewed, approved or not approved, and the limitations on the use of the source during each of these stages.
- 4.101 Amendments were made to section 6.5 regarding disclosure of information, particularly in relation to verbal dissemination of information.
- 4.102 Amendments were made to section 7.4 which require source contact reports to be completed as soon as practicable and within 72 hours of the contact, and reviewed by controllers as soon as practicable and within 7 days of completion.
- 4.103 PII [REDACTED]

## **5 Victoria Police's awareness of practices regarding use of sources (question 3)**

- 5.1 Question 3 asks me whether, from 1993 to present, Victoria Police became aware of any investigations and/or recommendations into its use of human sources with legal obligations of confidentiality or privilege, or best practice in this field generally.
- 5.2 I set out below the matters that have been identified within the time available and matters in which I was involved.

### 2001 to 2004 – Events up to the creation of the SDU

- 5.3 At the beginning of 2001, Victoria Police's Ethical Standards Department (ESD) commenced 'Operation HEMI', being an investigation into allegations of corruption in the Drug Squad.

- 5.4 On 29 July 2001, Detective Sergeant Paul Rosenes, formerly of the Drug Squad, and four other offenders were arrested for drug offences. Former Detective Senior Constable Stephen Paton was also later charged with drug offences.
- 5.5 As a consequence of the above events, on 2 August 2001, the Corporate Management Review Division Project Group of Victoria Police (CMRDPG) commenced a review of the Drug Squad (**Drug Squad Review**). The Drug Squad Review was headed by Detective Superintendent Terry Purton.
- 5.6 On 28 November 2001, the CMRDPG published its report.<sup>102</sup> It made 144 recommendations, including the establishment of a Taskforce to comprehensively and thoroughly investigate allegations of corruption and improper conduct.
- 5.7 The Drug Squad Review identified failings in the Drug Squad's handling of human sources generally, including corrupt relationships. It recommended changes to policy and the establishment of an *Informer Management Unit* within Victoria Police.
- 5.8 By February 2002, the Taskforce had been established and commenced operations (code-named '*Taskforce Ceja*'). The office of the Victorian Ombudsman was involved.
- 5.9 Between 2003 and July 2007, the Ombudsman published a series of reports in relation to *Taskforce Ceja* –
  - (a) The first interim report dated May 2003 endorsed the CMRDPG's recommendations in relation to improved informer management.<sup>103</sup>
  - (b) The second interim report dated June 2004 noted that Victoria Police had established the Informer Management Unit (which is now known as the Human Source Management Unit (HSMU) as of 15 May 2006) which had primary responsibility for dealing with all registered human sources and would aim to create a 'sterile-corridor' approach to managing human sources and their intelligence.<sup>104</sup>
  - (c) The third and final report dated July 2007 noted that Victoria Police had established a framework for the CMRDPG's recommendations and a force-wide human source management framework.<sup>105</sup>

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<sup>102</sup> VPL.0005.0028.0001.

<sup>103</sup> Ceja first interim report, p 16-7 (VPL.0015.0002.0033 at 0053 - 0054).

<sup>104</sup> Ceja second interim report, p 7 (VPL.0015.0002.0001 at 0012).

<sup>105</sup> Ceja third and final report, p 33(VPL.0015.002.006 at 0105).

- 5.10 In December 2003, the new Informer Management Unit submitted a Concept Proposal focussed on a method of applying the 'sterile corridor'. It was considered that in order to separate the investigator from the source handler, a Dedicated Source Handling Team should be implemented.
- 5.11 In January 2004, the Concept Proposal was put forward by the State Intelligence Division and authorisation was given to commence a level one project aimed primarily at establishing the roles, functions and responsibilities of a Dedicated Source Handling Team (known as the 'DSU'), and identifying the degree to which 'sterile corridors' are applied to human source intelligence.
- 5.12 The project team studied national and international best practice, examining existing human source structures and speaking to representatives from law enforcement agencies.<sup>106</sup> Focus groups were used. Individuals were interviewed. Stakeholder interviews occurred with the Director of Public Prosecutions, Paul Coghlan QC, Deputy Ombudsman Police Complaints, Brian Hardiman, and *Taskforce Ceja* Commander Danyne Moloney.<sup>107</sup>
- 5.13 In May 2004, the project team provided its final report.<sup>108</sup> It recommended that the DSU be implemented. The final report set out in detail the recommended structure and operation of the DSU.
- 5.14 Thereafter, the unit was implemented and became known as the Source Development Unit (SDU).

#### 2004 to 2010 - Audits and Reviews

- 5.15 Following implementation of the SDU, there were several audits and reviews of the HSMU, the SDU and human source management, as follows:<sup>109</sup>
- (a) In 2004, the Corporate Management Review Division (CMRD) conducted an audit of the HSMU. 22 recommendations were made.
  - (b) In 2005, the CMRD conducted a review of the SDU. 12 recommendations were made.

<sup>106</sup> e.g. Report of Paul Walshe, Case Manager – Covert Operations, Victoria Police, dated 26 June 2003 (VPL.0005.0007.0070); Report of Detective Senior Constable Drew Morgan dated 18 November 2003 (VPL.0005.0007.0001).

<sup>107</sup> Report of the Dedicated Source Handling Teams Project, May 2004, p 13 (VPL.0005.0007.0016 at 0028).

<sup>108</sup> Report of the Dedicated Source Handling Teams Project, May 2004 (VPL.0005.0007.0016).

<sup>109</sup> Report of the CMRD entitled 'Audit of Victoria Police Human Source Management Practices', June 2010, p 16 (VPL.0001.0001.0047 at 0062).

- (c) In 2007, the OPI conducted an investigation of Victoria Police's human source management. 6 recommendations were made.
- (d) In 2010, the CMRD conducted a further review of human source processes. The review involved an audit of 95 human source files and interviews with 11 human sources. The review received advice and assistance from a range of personnel. 26 recommendations were made.

5.16 It has not been possible in the time available to obtain and review the documentation in relation to each of the above processes. In any event, the current policies are based off the recommendations of the Kellam and Comrie reviews.

#### 2012 – Neil Comrie case review

- 5.17 On 19 March 2012, former Chief Commissioner Neil Comrie AO, APM, was engaged to undertake a case review of Victoria Police's use of Ms Gobbo as a human source.<sup>110</sup> His engagement was commissioned by former Deputy Commissioner Graham Ashton, as set out later in this statement.
- 5.18 Mr Comrie's focus was on the policies, control measures and managerial supervisory practices that were relevant to Victoria Police's handling of Ms Gobbo as a human source.
- 5.19 Mr Comrie's case review involved:
- (a) reviewing Victoria Police's human source policies;
  - (b) reviewing Ms Gobbo's human source file held on Victoria Police's 'Interpose' computer system;
  - (c) reviewing the CMRD's review report from 2010;
  - (d) seeking legal advice from the Victorian Government Solicitor's Office (VGSO) in relation to duties that police may owe to human sources generally and any additional duties and considerations that may apply when the source may be bound by occupational duties. A written advice was provided by David Ryan of VGSO on 6 June 2012.<sup>111</sup> It specifically addresses the use of human sources with legal obligations of confidentiality or privilege.

<sup>110</sup> Assisted by Superintendent Steve Gleeson.

<sup>111</sup> VPL.0005.0005.0001.

- 5.20 On 30 July 2012, Mr Comrie produced an internal report for Victoria Police containing his findings.<sup>112</sup> He made 27 recommendations and endorsed the recommendations made by the CMRD in 2010.

#### 2012/3 – Covert Services Review (Intelligence & Covert Support Command)

- 5.21 In March 2012, AC Pope, who was at the time Assistant Commissioner responsible for Covert Support Command, commissioned a review into the Covert Services Division. The review included an examination of the SDU. I was on the Steering Committee for the review.
- 5.22 On 31 January 2013, the review published its report which included many recommendations.<sup>113</sup> In relation to the SDU, the key recommendation was the disbandment of the SDU. A Steering Committee was to be established to review the opportunities to change the HSMU.

#### 2013 – Operation Loricated

- 5.23 On 29 January 2013, as a result of recommendation one in Mr Comrie's report, '*Operation Loricated*' commenced. The operation was conducted by a project team. A Steering Committee was also formed. The chair of the Steering Committee was Assistant Commissioner Stephen Fontana.
- 5.24 The objectives of *Operation Loricated* included collecting and reviewing documents held by Victoria Police in relation to Ms Gobbo, and identifying investigation themes and opportunities to improve intelligence collection and analysis in the future.
- 5.25 On 21 May 2014, *Operation Loricated* produced its report.<sup>114</sup> A number of recommendations were made in relation to the management of human sources generally and specifically in relation to Ms Gobbo.

#### 2014/5 – IBAC report

- 5.26 On 10 April 2014, Victoria Police notified the Independent Broad-based Anti-Corruption Commission (IBAC) about the use of Ms Gobbo as human source.<sup>115</sup>

<sup>112</sup> SC Reasons at [32] (VPL.0005.0013.0200, at 0219 [32]); Swain Affidavit, paragraph 15 (VPL.0008.0001.0453); Exhibit JRC-2 (Comrie Review) to the 1<sup>st</sup> Champion Affidavit (VPL.0012.0002.1672).

<sup>113</sup> Covert Services Review 2012 (Intelligence & Covert Support Command) (VPL.0001.0001.0025).

<sup>114</sup> *Operation Loricated* Completion Report, 21 May 2014 (VPL.0002.0001.0209).

<sup>115</sup> Kellam Report, [A.1] (VPL.0007.0001.1400 at 1404); it appears there were discussions on 1 and 3 April 2014 leading up to this event.



- 5.27 On 15 May 2014, the Commissioner of IBAC declared himself unable to investigate the matter and he delegated his duties to the Honourable Murray Kellam AO QC.
- 5.28 On 1 July 2014, the Honourable Murray Kellam, determined to conduct an investigation into the conduct of Victoria Police in its management and use of Ms Gobbo as a human source. He was focussed on an examination of whether or not the potential harm to the administration of justice by utilising a legal practitioner as a human source was understood by, and appropriately managed by, those responsible for such management at Victoria Police. He obtained written advice from a senior barrister with expertise in LPP, Dr Sue McNicol.
- 5.29 On 6 February 2015, the Honourable Murray Kellam produced a report of his investigation. He made 16 recommendations, including endorsing a number of the recommendations made by Mr Comrie.<sup>116</sup> The advice provided by Dr McNicol is contained in the report.

#### 2019 – International research

- 5.30 Between 17 February and 9 March 2019, I travelled to the United Kingdom, Canada and the United States to gain a better understanding of their legislation (where relevant), policy and practices as they relate to the engagement and management of confidential human sources, including those sources who may owe a legal obligation of confidentiality or privilege.
- 5.31 I set out below a summary of the information that I obtained.

#### *United Kingdom*

- 5.32 In 1998 the UK introduced the *Human Rights Act 1998 (HRA)*, in order to incorporate the European Convention on Human Rights (*ECHR*) into domestic law. The HRA, came into effect as of 2 October 2000. The *Regulation of Investigatory Powers Act 2000 (RIPA)*, was introduced in order to provide a regulatory framework around Articles 2, 6 and 8 of the *ECHR*. The *Regulation of Investigatory Powers Act 2000* received Royal Assent on 28 July 2000.
- 5.33 The RIPA introduced a legislative scheme for the authorisation of covert human intelligence sources, among other provisions, in order to address the HRA. Notably, section 27(1) of RIPA provides that conduct under RIPA “shall be lawful for all purposes” if an authorisation confers an entitlement to engage in that conduct and

<sup>116</sup> Kellam Report, section J (VPL.0007.0001.1400 at 14489 – 1494).

the conduct is in accordance with the authorisation. *In Re McE*<sup>117</sup>, the extent of RIPA was considered in context of legal professional privilege. Subsequent to this, *The Regulation of Investigatory Powers (Covert Human Intelligence Sources: Matters Subject to Legal Privilege) Order 2010*<sup>118</sup> (2010 Legal Privilege Order) was made on 22 January 2010 and came into force on 18 February 2010.

- 5.34 The Home Office, Covert Human Intelligence Sources - Revised Code of Practice - August 2018<sup>119</sup> (Code of Practice), provides guidance on the authorisation processes under RIPA and the 2010 Legal Privilege Order. Where police are seeking an authorisation for the use of a covert human source intended to obtain matters subject to legal privilege, then 8.56 of the Code of Practice provides that "An authorisation for these purposes should only be sought where there are exceptional and compelling circumstances that make the authorisation necessary, and the approving officer approves the decision. Circumstances which can be regarded as "exceptional and compelling" will only arise in a very strict range of cases, where there is a threat to life or limb or in the interests of national security."
- 5.35 For such an authorisation, the authorising officer level for each policing agency in the UK is set out in Annex A of the Code of Practice. The approving officer for such an authorisation is a Judicial Commissioner appointed under the *Investigatory Powers Act 2016* (IPA).
- 5.36 Where an authorisation is only likely to obtain, provide access to or disclose knowledge of matters subject to legal privilege, then such activity must be authorised at a more senior level within each agency, but is not required to be approved by a Judicial Commissioner.
- 5.37 Where an authorisation for the use or conduct of a covert human intelligence source intended to result in the acquisition of knowledge of matters that would be subject to legal privilege if they were not created or held with the intention of furthering a criminal purpose, such an authorisation must also be authorised at a more senior level within each agency, but is not required to be approved by a Judicial Commissioner. 8.61 of the Code of Practice requires that the application must include a statement to that effect and the reasons for believing that the items are likely to be created or held to further a criminal purpose.

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<sup>117</sup> VPL.0015.0001.0466.

<sup>118</sup> VPL.0015.0001.0527.

<sup>119</sup> VPL.0015.0001.0340.

- 5.38 In short, the United Kingdom has a legislative scheme that governs the use of a confidential human source that may obtain, provide access to or disclose matters subject to legal privilege. The Investigatory Powers Commissioners Office <sup>120</sup> (IPCO), established under the IPA, provides independent oversight on the use of investigatory powers under RIPA.
- 5.39 The Metropolitan Police and the National Crime Agency (and its predecessor) have long held that in order to ensure the requirements of the RIPA, the 2010 Legal Privilege Order and the Code of Practice are met, that dedicated human source handling units are required. They have stated that dedicated specialist teams who have specialist training and knowledge are considered 'best practice' and enable both agencies to ensure they meet the expectations of the IPCO.
- 5.40 The *Police Act 1997*, also provides a definition of 'matters subject to legal privilege' as follows:

Communication between a professional legal adviser and his client for the purpose of giving legal advice" OR

Communications between a professional legal advisor and his client, or any other person, which are made in connection with, or in contemplation of, legal proceedings and for the purposes of such proceedings.

- 5.41 The United Kingdom has also experienced many criminal cases over recent years where disclosure obligations of police and prosecutors have not been met. In 2018, the Crown Prosecution Service, the National Police Chief's Council and the College of Policing committed to a joint action plan titled the National Disclosure Improvement Plan<sup>121</sup>. In addition a number of UK policing agencies have now recruited full-time staff in the role of 'disclosure officers' to ensure their obligations of disclosure are met.

#### *Canada*

- 5.42 There are in excess of 140 police agencies across Canada. Many of these agencies exist at a local, city or municipal level, with some having provincial level responsibilities.

<sup>120</sup> <https://www.ipco.org.uk/>.

<sup>121</sup> VPL.0015.0001.0518.

- 5.43 The Royal Canadian Mounted Police (RCMP) has a national policing role across Canada. The RCMP has agency policy that applies to the management and handling of confidential human sources which they refer to as 'confidential informers' (CIs). Their policy does not prohibit engaging with a person who has legal obligations of confidentiality or privilege, however they indicate that they would be very hesitant to do so. The RCMP advised that they had done so in the past.
- 5.44 Confidential Informer Privilege is considered one of two classes of privilege enshrined in the Common Law. CI privilege arises where a police officer promises confidentiality in exchange for criminal information from a person. The case of *R v Named Person B*<sup>122</sup>, is a fairly recent case that sets the threshold test relating to the disclosure of a CI's identity. This test is that to disclose the identity of a CI "an [accused] must establish that it falls within the 'innocence at stake exception'". In the case of *Named Person v Vancouver Sun*<sup>123</sup>, the court held that "Outside the innocence at stake exception, the rule's protection is absolute." A CI can waive privilege if it is 'informed'. The privilege is owned by both the Crown and the informer, so it requires both to waive the privilege.
- 5.45 The second class of privilege enshrined in the common law of Canada, is Legal Professional Privilege (LPP). The case of *Alberta (Information and Privacy Commissioner) v. University of Calgary*<sup>124</sup> considered LPP as "a substantive right that is fundamental to the proper functioning of the legal system".
- 5.46 The RCMP Policy differentiates between a CI and an 'Agent'. A CI is not tasked and never required to give evidence in court. An Agent however, though operating initially in a covert capacity, must agree to dispense their CI Privilege and give evidence in court and they are regularly paid significant money to do so. As a consequence, an Agent is often required to be protected in a Witness Protection Program. This concept of Agent is similar to the way in which Ms Gobbo was managed by police as a witness in the Petra Taskforce investigations, subsequent to her deactivation as a human source.
- 5.47 Due to the importance placed on to two classes of privilege, the RCMP indicate that they would only engage a person who has a legal obligation of confidentiality or

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<sup>122</sup> VPL.0015.0001.0102.

<sup>123</sup> VL.0015.0001.0024.

<sup>124</sup> VPL.0015.0001.0272.

privilege as a CI or Agent, when the information sought to be obtained did not breach LPP.

- 5.48 In terms of disclosure, the seminal case in Canada is *R v Stinchcombe*<sup>125</sup>. This decision upholds the duty of the Crown to "...disclosure to the defence all material evidence whether favourable to the accused or not." More recently the case of *R v Jordan*<sup>126</sup>, has set a time limit on the Crown within which disclosure must occur.
- 5.49 In September 2012, the RCMP published a Major Case Management Guide (**Guide**). This guide was modelled from a similar guide in the UK and in particular set instructions for police on their disclosure obligations and how they were to be acquitted.
- 5.50 In the RCMP and most major police forces in Canada a Coordinated Investigation Team (**CIT**) in major cases is led by the command triangle (Team Commander, Primary Investigator and File Coordinator). A major role of the File Coordinator, besides managing the investigation file, is disclosure. On major files the File Coordinator will often be the last person remaining assigned to the investigation, working with the Crown through the prosecution to ensure the disclosure is managed. Depending on the size and complexity of the investigation, the File Coordinator may be assisted by a "disclosure team", typically made up of police officers, (sometimes retired police officers) civilians and technical support, and by a Crown Counsel specifically assigned to work with the investigation team and manage the disclosure.
- 5.51 In addition to the Guide, many Provincial police agencies have also entered into Memoranda of Understanding (**MoU**) with their relevant Provincial Prosecution Service. The RCMP is also a signatory to these MoU. The MoU set out comprehensive instructions for police on disclosure and includes schedules which cover 'Costs of Production', 'Best Practices Protocol Quality Crown Brief', and 'Business Rules Regarding Electronic Disclosure'.

#### *United States of America*

- 5.52 There are in excess of 18,000 police agencies across the United States of America. Many of these agencies exist at a local, city or municipal level, with some having state level responsibilities. Many of these agencies have no or little policy guidance

<sup>125</sup> VPL.0015.0001.0001.

<sup>126</sup> VPL.0015.0001.0162.

on the management of confidential human sources. Police agencies, do however, actively engage with the relevant prosecuting body (ie district attorney) during the early stages on many investigations. There is no legislation in the US governing the use of confidential human sources.

- 5.53 At the Federal level in the US, agencies under the US Department of Justice (USDOJ), such as the Federal Bureau of Investigation (FBI) and the Drug Enforcement Agency (DEA), must comply with the *Attorney General's Guidelines Regarding the Use of Confidential Human Sources (The CHS Guidelines)*. The CHS Guidelines require 'early approval' processes for a confidential human source "who is under an obligation of a legal privilege of confidentiality or affiliated with the media."
- 5.54 In these circumstances the USDOJ agency must seek written approval within 60 days of the commencement of the relationship with the confidential human source, for the continued use of that source. A Human Source Review Committee (HRSC) is the body that must approve the continued use of that source. The HRSC is to be chaired by an FBI Agent at or above the level of Deputy Assistant Director, and membership includes two attorneys from the FBI's Office of General Counsel and five Federal Prosecutors Office (FPO) Attorney's for the Criminal Division. At least one of the FPO Attorney's must be the Deputy Assistant Attorney General from the Criminal Division.
- 5.55 The approval process is required to be completed within a period of 45 days and whilst the request is pending, the FBI are permitted to continue to use the confidential human source.
- 5.56 The approval of the HRSC is not required for a confidential human source under an obligation of legal privilege where it relates to International Terrorism Investigations, National Security Investigations or Other Activities under the National Security Intelligence Guidelines. In these circumstances the use of the confidential human source is subject to 'enhanced review provisions' under the FBI's Confidential Human Source Validation Standards Manual.

#### *General observations*

- 5.57 An important feature of each international jurisdictional model that I observed was that each agency invested in dedicated and trained specialist staff to manage confidential human sources. This was seen as particularly important in terms of

compliance with legislation and policy and to enable an organisation to ensure they met their over sighted obligations. Dedicated specialist staff also enabled agencies to target training and ensure their staff are trained to a higher level than previous models.

- 5.58 Each of the international jurisdictions I visited stated that they are either in the process of increasing, or applying to increase, their dedicated specialist staffing levels. This is because they place significant importance on the value that a confidential human source provides, particularly in the organised crime and national security environment where traditional and new technologies were no longer effective in obtaining intelligence due to factors like encryption.
- 5.59 In the United Kingdom, agencies like the Metropolitan Police have developed Information Report (IR) processes that ensure that information received, even one-off information, must be attributed to a real person and linked to their identity. This process ensures that the Met Police are able to identify to provenance of all information to ensure that information is not received that breaches legal obligations of confidentiality or privilege.
- 5.60 The UK National Crime Agency (NCA) and Metropolitan Police both believed that the College of Policing National Decision Model <sup>127</sup> (NDM) also plays a key part in the making of decisions relating to covert policing activities. The NCA stated that the NDM provided 4 keys considerations in context of the use of a confidential human source where legal obligations of confidentiality or privilege may be engaged, were:
- (a) Proportionality;
  - (b) Lawful: Must have a basis in law
  - (c) Accountable
  - (d) Necessary: Prevention and Detection of Crime.
- 5.61 Each of the international jurisdictions I visited have made a considerable investment in in-house legal counsel which in most instances were embedded alongside the dedicated human source units. In-house legal counsel were considered essential to the process of ensuring an agency was compliant with either their legislative or policy

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<sup>127</sup> <https://www.app.college.police.uk/app-content/national-decision-model/the-national-decision-model/#top>.

confidential human source framework and that issues in the use of confidential human sources that may owe a legal obligation of confidentiality or privilege were identified early and mitigated.

- 5.62 Each of the international jurisdictions I visited also had early involvement with their relevant prosecution agency, often, in the early stages of an investigation. It was felt that this early engagement also offered an additional avenue to identify any legal issue associated with the use of a confidential human source. No analysis has been undertaken on this type of model in the Victorian context.
- 5.63 Each of the international jurisdictions I visited also believed that the use of specialist software systems for the management of confidential human sources were an important component of good governance, identification of non-compliance issues, audit and reporting. The two main suppliers of relevant software were Pegasus<sup>128</sup> and Charter<sup>129</sup>.
- 5.64 As a result of my engagement with the UK, Canada and the US, I am preparing a paper for Victoria Police Executive Command to consider the various aspects of the covert human source programs from these jurisdictions which may enhance our current policy, practice and IT systems relevant to human sources and information reports. As yet, Victoria Police has not undertaken the required analysis on how any of the international jurisdictional policies or practice would translate into the Victorian context.
- 5.65 Recently Victoria Police has undertaken significant information technology (IT) reform, under the banner of BlueConnect. Victoria Police is already planning for a new case management system which will include a new human source management module. This new case management system will replace the Interpose system including the human source management module contained in that system.
- 5.66 I note that Victoria Police also has a number of policies that cover our disclosure obligations in criminal prosecutions.

#### *Australian observations*

- 5.67 I refer back to my role on the NCICC committee. This role involves me on an ongoing basis considering how human sources are managed by different agencies in Australia.

<sup>128</sup> <https://altia-abm.com/products/pegasus/>.

<sup>129</sup> <https://equiniticharter.com/covert-operations/a-modular-solution/source-management/>.



5.68 No Australian jurisdiction has legislation that governs the management of covert human sources. Each relevant agency in Australia has their own policy on the management of covert human sources.

**6 Victoria Police's identification of shortcomings in practices (question 4)**

6.1 Question 4 asks me whether, from 1993 to present, Victoria Police has identified any failures or shortcomings in its processes and practices concerning the recruitment and handling of human sources with legal obligations of confidentiality or privilege.

6.2 The audits and reviews set out in response to question 3 that predate Mr Comrie's report, identified improvements to be made to Victoria Police's management of human sources generally. They did not identify any failures or shortcomings in relation to human sources with legal obligations of confidentiality or privilege.

6.3 It was through Mr Comrie's review that failures and shortcomings into the management of human sources with legal obligations of confidentiality or privilege were formally identified. Mr Kellam also identified the same type failures and shortcomings. They are set out in the reports of Messrs Comrie and Kellam.

6.4 My response to question 2 above details changes to Victoria Police processes and procedures that were made as a result of failures or shortcomings that were identified. In relation to human sources with legal obligations of confidentiality or privilege, these failures or shortcomings were not formally identified until Mr Comrie's review, and expressly addressed in the relevant policies from February 2014.

6.5 The failures and shortcomings that were identified relating specifically to Ms Gobbo are set out in answer to question 5 below.

**7 Victoria Police's identification of shortcomings regarding Ms Gobbo (question 5)**

7.1 Question 5 asks me whether, from 1993 to present, Victoria Police has identified any failures or shortcomings in its processes and practices related to the use of Ms Gobbo.

7.2 Such failures and shortcomings were identified. I set out below the matters with which I am presently aware.

2012 – Neil Comrie case review

7.3 Mr Comrie's report dated 30 July 2012 (referred to earlier in this statement) identified relevant failures or shortcomings. Victoria Police acknowledged and accepted the

recommendations of Mr Comrie. They have all been implemented save for the six items relating to IT which will be addressed in the implementation of the new case management IT system as mentioned above.

7.4 Mr Comrie's report identified the following failures:

- (a) Police handlers obtained information from Ms Gobbo which was protected by legal professional privilege (LPP) and they potentially encouraged her to provide such information.<sup>130</sup>
- (b) Police handlers may not have fully appreciated the legal and ethical issues associated with using Ms Gobbo as a human source.<sup>131</sup>
- (c) Police handlers may have discussed with Ms Gobbo matters that she was involved in before the Office of Police Integrity and the Australian Crime Commission in circumstances where such proceedings are subject to confidentiality notices. In doing so, they may have caused Ms Gobbo to perceive that unlawful conduct would be tolerated.<sup>132</sup>
- (d) Victoria Police's human source policies, associated instructions and practice guides needed to be revised to clearly address the issue of obtaining, using and managing information that may be the subject of LPP.<sup>133</sup>
- (e) The risk assessment document to be completed when registering a human source made no provision for high-level managers to comment or approve the assessment.<sup>134</sup>
- (f) The risk assessment process used to assess Ms Gobbo was grossly inadequate for a number of reasons, namely:<sup>135</sup>
  - (i) the first risk assessment was dated well after both the application to register her as a human source and SDU's dealings with her;
  - (ii) the risk assessment identified a risk that information held by Victoria Police about the use of Ms Gobbo as a human source could be

<sup>130</sup> Comrie Report, p 14; 17 (VPL.0012.0002.1672 at 1688 and 1691).

<sup>131</sup> Comrie Report, p 15 (VPL.0012.0002.1672 at 1690).

<sup>132</sup> Comrie Report, p 19-20 (VPL.0012.0002.1672, at 1693 - 1694).

<sup>133</sup> Comrie Report, p 20 (VPL.0012.0002.1672, at 1694).

<sup>134</sup> Comrie Report, p 21 (VPL.0012.0002.1672, at 1695).

<sup>135</sup> Comrie Report, p 20-25 (VPL.0012.0002.1672, at 1694 - 1699).

- disclosed to targets and it appears that insufficient arrangements were made to protect the information;
- (iii) the risk assessment failed to address the risk that the information provided by Ms Gobbo may be subject to LPP;
  - (iv) the Australasian Human Source Risk Assessment Manual, which at the time provided guidance to members compiling a risk assessment, may have misguided police handlers into taking the view that the anticipated end results justified using Ms Gobbo as a human source despite her professional obligations. The relevant part of the Manual was poorly expressed and open to misinterpretation;
  - (v) the failings in the risk assessment left individual police handlers to make their own judgement about the appropriateness of receiving and using certain information from Ms Gobbo which resulted in varying views on the issue;
  - (vi) after some police handlers had identified the risk that information provided by Ms Gobbo may be subject to LPP (and referred to the issue in Information Contact Reports (ICR), there was a failure to undertake a fresh risk assessment on that issue;
- (g) The risks associated with using Ms Gobbo as a human source (including her mental and physical health) were documented in a file provided to the then Assistant Commissioner Crime, Dannye Moloney, who passed it on to the then Deputy Commissioner overseeing the Petra Task Force Steering Group, Simon Overland. No evidence was identified suggesting that those communications prompted any further consideration of the risks or promoted the provision of directions to the SDU. The latter may have led SDU members to the view that Victoria Police condoned the use of Ms Gobbo.<sup>136</sup>
- (h) As risk assessment protocols had been grossly inadequate, no controls were developed or implemented in relation to the use of Ms Gobbo as a human source.<sup>137</sup>
- (i) Victoria Police's Legal Services department should have been consulted at the outset and the advice should have been reflected in the risk assessment.<sup>138</sup>

<sup>136</sup> Comrie Report, p 26 (VPL.0012.0002.1672, at 1700).

<sup>137</sup> Comrie Report, p 26 (VPL.0012.0002.1672, at 1700).

- (j) It appears from ICRs that control measures contained in the second risk assessment dated 20 April 2006 were not complied with as follows:<sup>139</sup>
  - (i) handlers were to pass on relevant information to the Purana taskforce via the Officer in Charge. However, ICRs suggest that verbal updates were provided to Purana taskforce members.
  - (ii) handlers were to only task Ms Gobbo after consideration of a risk assessment specific to the deployment. There was no evidence of that having occurred.
- (k) Despite a range of troubling matters emerging (health issues, economic issues, threats of legal action, threats to life and an intimate relationship with a member) during the handlers' contact with Ms Gobbo, those matters did not prompt a fresh and full risk assessment.<sup>140</sup> The monthly consideration of risk issues was at best cursory.<sup>141</sup>
- (l) The submission of ICRs by handlers and their verification by controllers was tardy.<sup>142</sup> That may have contributed to managerial unawareness of the matters in sub-paragraph (k) above.<sup>143</sup>
- (m) An Acknowledgement of Responsibility form (AOR) was not obtained from Ms Gobbo.<sup>144</sup>
- (n) There had been unsatisfactory management and supervision of the process involving Ms Gobbo.<sup>145</sup>
- (o) Management directions were not followed by handlers.<sup>146</sup>
- (p) Members of 'Taskforce Petra' may have adopted an investigative tactic that involved prompting a person to seek advice from Ms Gobbo so that the

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<sup>138</sup> Comrie Report, p 28 (VPL.0012.0002.1672, at 1702).

<sup>139</sup> Comrie Report, p 28 (VPL.0012.0002.1672, at 1702).

<sup>140</sup> Comrie Report, p 29-30 (VPL.0012.0002.1672, at 1703 - 1704).

<sup>141</sup> Comrie Report, p 31 (VPL.0012.0002.1672, at 1705).

<sup>142</sup> Comrie Report, p 29, 42 (VPL.0012.0002.1672, at 1703 and 1718).

<sup>143</sup> Comrie Report, p 30 (VPL.0012.0002.1672, at 1704).

<sup>144</sup> Comrie Report, p 35 (VPL.0012.0002.1672, at 1709).

<sup>145</sup> Comrie Report, p 43-6 (VPL.0012.0002.1672, at 1717 - 1720).

<sup>146</sup> Comrie Report, p 47 (VPL.0012.0002.1672, at 1721).

information provided by the client (which would be subject to LPP) would be passed onto police.<sup>147</sup>

2014/5 – IBAC report

7.5 The report of the Honourable Murray Kellam dated 6 February 2015 (referred to earlier in this statement) identified relevant failures or shortcomings. Victoria Police acknowledged, accepted and implemented all recommendations made by the Honourable Murray Kellam.

7.6 The report identified the following:

- (a) Members of the SDU failed to comply sufficiently, or at all, with a Standard Operating Procedure designed to identify and avoid or minimise risk associated with human source handling.<sup>148</sup>
- (b) Further to (a) above, no AOR was prepared. That meant that multiple persons dealing with Ms Gobbo were left to make their own assessment about receiving and using information from her, and inconsistent approaches were ultimately taken by different handlers.<sup>149</sup>
- (c) Further to (a) above, in relation to risk assessment:
  - (i) the risk assessment documentation was inadequate;
  - (ii) the risk assessment process was grievously flawed and deficient.
  - (iii) only two written risk assessments were prepared. Neither referred to the legal and ethical issues associated with a barrister acting as a human source despite the fact that the issue of utilising information protected by LPP was raised with the SDU at an early stage;
  - (iv) the first risk assessment dated 15 November 2005 was completed more than two months after SDU had commenced dealing with Ms Gobbo. The second risk assessment was prepared 6 months later on 20 April 2006;
  - (v) there was no formal monthly risk assessment at any stage, as was required.

<sup>147</sup> Comrie Report, p 55 (VPL.0012.0002.1672, at 1729).

<sup>148</sup> Kellam Report, [A.7(ii)], [B.3] and sections D, F and I (VPL.0008.0001.0045).

<sup>149</sup> Kellam Report, [B.6], [C.9], [C.11], and sections F and I (VPL.0008.0001.0045).

- (vi) the end result was that the SDU had no identifiable and up to date risk assessment which could be utilised for the guidance of SDU members.<sup>150</sup>
- (d) Victoria Police failed to obtain legal advice before using Ms Gobbo as a human source.<sup>151</sup> Had an AOR been prepared and had the issue of LPP been the subject of an appropriate formal risk assessment then it is likely that legal advice would have been obtained before Ms Gobbo was utilised as a human source. The senior officers of Victoria Police responsible for the overall operation and oversight of the SDU failed to ensure that the AOR and risk assessment processes were followed. That failure, over a significant period of time, was negligence of a high order.
- (e) Victoria Police failed to undertake a sufficient assessment of Ms Gobbo's assertion to police on 28 November 2005 that acting as a human source posed no legal or ethical issues.<sup>152</sup> It was left to Ms Gobbo to self-regulate her legal and ethical responsibilities. These events occurred in circumstances where, after registration, members associated with the SDU came to believe that Ms Gobbo suffered from psychiatric or psychological problems.<sup>153</sup>
- (f) Records indicated that Ms Gobbo had:<sup>154</sup>
  - (i) provided Victoria Police with information obtained that was subject to LPP or was otherwise confidential;
  - (ii) provided legal and tactical advice to Victoria Police in relation to pending criminal proceedings against her clients and others;
  - (iii) been tasked to obtain intelligence relating to her clients for use in investigations;
- (g) The receipt and utilisation of such information provided by Ms Gobbo, without having first obtained legal advice in respect of LPP and confidentiality, was negligence of a high order. He did not find that any member had committed a criminal offence.

<sup>150</sup> Kellam Report, [B.6], [C.10]-[C.11], and sections F and I (VPL.0008.0001.0045).

<sup>151</sup> Kellam Report, section F (VPL.0008.0001.0045).

<sup>152</sup> Kellam Report, [A.7(iii)] and section F (VPL.0008.0001.0045).

<sup>153</sup> Kellam Report, [B.1]-[B.7] and section F (VPL.0008.0001.0045).

<sup>154</sup> Kellam Report, [A.7(iv)], [C.12], and sections D and F (VPL.0008.0001.0045).

- (h) There was a lack of guidance and supervision of SDU members by those responsible for their supervision, guidance, instruction and management.<sup>135</sup>

#### 2013 – Operation Loricated

- 7.7 The report produced by *Operation Loricated* dated 21 May 2014 (referred to earlier in this statement) identified relevant failures or shortcomings.
- 7.8 I have not reproduced those findings in this statement because they are easily identifiable in the *Operation Loricated* report which is not lengthy.
- 8 Victoria Police's identification of shortcomings leading to nondisclosure (question 6)**
- 8.1 Question 6 asks me whether Victoria Police has identified any failures and shortcomings, in the period from 1993 to present, in its processes and practices concerning information obtained from Ms Gobbo or other human sources with legal obligations of confidentiality or privilege which led to non-disclosure of relevant matters to accused persons, prosecuting authorities and/or courts.
- 8.2 Victoria Police did identify such failures and shortcomings. I set out below my understanding of when and how they were identified.
- 8.3 It appears that it was the proceedings against former member of Victoria Police, Paul Dale, that triggered a series of events that led to Mr Comrie's review. Those events are set out below.
- 8.4 In late 2003, Mr Dale, David Miechel and Terrence Hodson were charged with drug trafficking and other offences. At the time of their arrest, Mr Dale was a Detective in the MDID and Mr Miechel was a Detective Senior Constable in the same division.
- 8.5 Subsequently, co-accused Terrence Hodson co-operated with police and made a statement implicating Messrs Dale and Miechel. He intended to give evidence in the prosecution of them on the drug charges. On 16 May 2004, Mr Hodson and his wife were murdered. As a result, in October 2004, the drug charges against Messrs Dale and Mr Miechel were withdrawn by the prosecution.
- 8.6 Victoria Police investigated the murders of Mr Hodson and his wife. Ms Gobbo assisted police in relation to that investigation.

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<sup>135</sup> Kellam Report, section I (VPL.0008.0001.0045).

- 8.7 In February 2009, Mr Dale was charged with the murder of Mr Hodson. Ms Gobbo was listed as a witness and relevant statements provided as part of the hand-up brief. Carl Williams was also to be a witness.
- 8.8 On 19 April 2010, Carl Williams was murdered in prison. The charge against Mr Dale for the murder of Mr Hodson was then withdrawn by the prosecution.
- 8.9 Accordingly, up to this point, two witnesses who were to give evidence against Mr Dale had been murdered which resulted in the discontinuance of the prosecution of Mr Dale.
- 8.10 On 28 January 2011, Mr Dale was charged by Detective Senior Sergeant Boris Buick of Victoria Police with charges arising from the Australian Crime Commission Act. Ms Gobbo was listed to give evidence in that proceeding. Mr Dale served a subpoena on Victoria Police in relation to documents concerning Ms Gobbo. Mr Dale's defence was that at all times he was speaking to Ms Gobbo it was on an occasion which attracted LPP. Ms Gobbo denied that Mr Dale was ever a client.
- 8.11 On 4 October 2011, barrister Gerard Maguire provided written advice to Victoria Police about the subpoena.<sup>156</sup> In doing so, he raised the potential for persons who Mr Gobbo had acted for (and gave Mr Mokbel as an example) seeking to challenge their convictions on the basis that information was improperly obtained. He advised that the issue be raised with senior management within Victoria Police. He also advised that urgent consideration be given to providing relevant information to the prosecutor in Mr Dale's matter for the purpose of determining what, if any, disclosure was required in the interests of fairness.
- 8.12 Thereafter, there were a series of meetings involving the then Deputy Commissioner Graham Ashton, former Deputy Commissioner Tim Cartwright and others about the issues raised by Mr Maguire. I was not involved in any of those meetings and I expect that they will be the subject of witness statements to be provided by some or all of those who attended.
- 8.13 On about 3 November 2011, then Deputy Commissioner Ashton and former Deputy Commissioner Cartwright, commissioned former Chief Commissioner Neil Comrie to undertake his review of Victoria Police's involvement with Ms Gobbo as a human source.

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<sup>156</sup> VPL.0005.0003.2968. Enquiries are being made to ascertain whether Mr Maguire ever provided any earlier advice (in writing or orally) about the issues the subject of this advice.



- 8.14 Mr Comrie's report dated 30 July 2012 stated that entries contained in some of the ICRs indicated that Ms Gobbo, in providing information to police handlers, had disregarded LPP and that such conduct may have potentially interfered with the right to a fair trial for those concerned.<sup>157</sup> He stated that full exploration of such matters would entail substantial investigation. Further, that the potential significance of such conduct was a matter for Victoria Police to further consider. Mr Comrie's report identifies the process and practice failures that led to Victoria Police receiving from Ms Gobbo information potentially protected by LPP and to its non-disclosure.
- 8.15 On 6 August 2012, former Chief Commissioner Ken Lay provided a copy of Mr Comrie's report to the Office of Police Integrity.
- 8.16 On 29 January 2013, Victoria Police commenced '*Operation Loricated*'. As explained earlier in this statement, that taskforce was established as a result of recommendation one in Mr Comrie's report. Its objectives included collecting and reviewing documents held by Victoria Police in relation to Ms Gobbo, and then reviewing and analysing the reconstructed file to identify issues.
- 8.17 The '*Operation Loricated*' review, which was more expansive than Mr Comrie's review in terms of the documents that were considered, identified that the issues of LPP and conflict of interest in using Ms Gobbo as a human source had been the subject of differing views within the SDU and Command.<sup>158</sup> It was recommended in the final report dated 21 May 2014 that all of the information obtained relevant to these issues be provided to Victoria Police's Legal Services division for consideration and review and that it be the subject of detailed analysis by a suitably qualified legal professional.<sup>159</sup>
- 8.18 Following the '*Operation Loricated*' review, in May 2014, an operation code-named '*Operation Bendigo*' commenced. The Chair of the Steering Committee was Deputy Commissioner Cartwright. As set out above, Victoria Police notified IBAC about the use of Ms Gobbo as a human source on 10 April 2014.

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<sup>157</sup> Comrie Report, p 16-7 (VPL.0012.0002.1672 at 1690 – 1691).

<sup>158</sup> Operation Loricated Final Report, at phase 4 (VPL.0002.0001.0209).

<sup>159</sup> Operation Loricated Final Report, attachment B (VPL.0002.0001.0209).

- 8.19 At the outset, the *Operation Bendigo* Steering Committee created an investigation group to conduct further investigations into five specific cases to identify any instances of legal conflict and which may reflect a miscarriage of justice.<sup>160</sup>
- 8.20 On 10 January 2015, the investigation group provided its report. The reported conclusion was that the five examples had been reviewed and assessed and the findings provided to the Director of Legal Services, Fin McRae.<sup>161</sup>
- 8.21 On 6 February 2015, the Honourable Justice Kellam provided his report. He recommended that the Chief Commissioner provide a copy of the report together with appropriate material to the Director of Public Prosecutions for consideration at the highest level, as to whether any prosecution conducted by the DPP in the past and based upon evidence provided by Victoria Police, which evidence may have been obtained by reason of breach of LPP or release by Ms Gobbo of other confidential material, has resulted in a miscarriage of justice.<sup>162</sup> His report identifies the process and practice failures that led to Victoria Police receiving from Ms Gobbo information potentially protected by LPP and to its non-disclosure.
- 8.22 Later in February 2015, the Victorian DPP commenced a review of the prosecutions of the seven convicted persons identified in Mr Kellam's report.
- 8.23 I understand that there were meetings between Victoria Police and the DPP during the period that I have covered above. I was not involved in any of the meetings and they will be the subject of one or more witness statements by those who attended.
- 8.24 On 10 March 2016, Chief Commissioner Ashton received a letter from the DPP, Mr John Champion, informing him of his view that disclosure was required to the convicted persons identified in Mr Kellam's report of the provision of information to police by Ms Gobbo.
- 8.25 The letter ultimately led to the *AB and EF v CD* proceeding which has now reached its conclusion.
- 8.26 There are other legal proceedings and processes on foot brought by convicted persons who claim that their convictions are tainted by the assistance that Ms Gobbo provided to police.

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<sup>160</sup> Operation Bendigo Investigation Group, Terms of Reference (VPL.0005.0003.2428).

<sup>161</sup> Crime Command Operation Bendigo Completion Report dated 10 January 2015, p 6 (VPL.0006.0001.0065 at 0070).

<sup>162</sup> Kellam Report, recommendation 12 (VPL.0008.0001.0045 at 0137).

- 8.27 In 2018, an analysis process commenced with the objective of identifying all prosecutions<sup>163</sup> which may have been affected by Ms Gobbo providing information to police that was the subject of LPP. The Office of Public Prosecutions provided to Victoria Police a list of the clients for whom Ms Gobbo had acted from 19 September 2005. Victoria Police's Senior Advocacy Team (SAT) was tasked with reviewing relevant materials and making an assessment. This work is ongoing. The SAT is continuously providing information to the OPP. I confirm that Victoria Police provided a briefing to counsel assisting the Royal Commission on this process on 6 March 2019. Victoria Police is also providing to the Royal Commission on an ongoing basis the information that is being provided to the OPP arising from those analyses.
- 8.28 In March 2018, Victoria Police informed IBAC that it had identified a human source who may have owed duties of confidentiality and privilege. On 18 December 2018, Victoria Police informed IBAC that it had identified a further six such human source files that required reconstruction and assessment to determine if there had been any possible breaches of confidentiality and privilege.<sup>164</sup>
- 8.29 Since that time, and very recently, other human sources who may have owed a legal duty of confidentiality and privilege have been identified and IBAC has been informed of those sources.
- 8.30 I confirm that Victoria Police provided a briefing to counsel assisting the Royal Commission on all but one of those human sources. Victoria Police has provided to the Royal Commission a schedule containing information in relation to all but one of those human sources and provided relevant human source management materials in relation to those sources.<sup>165</sup> Victoria Police has provided information in relation to the other human source by letter to the Royal Commission<sup>166</sup> and is in the process of providing the relevant human source management materials in relation to that source.

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<sup>163</sup> Until the lifting of the suppression orders regarding the relevant High Court and Supreme Court proceedings, Victoria Police has not been in a position to obtain or identify a list of potentially affected cases dealt with in the summary jurisdiction.

<sup>164</sup> Letter from DC Patton to Commissioner Robert Redlich (VPL.0005.0013.0559).

<sup>165</sup> Letter from Corrs Chambers Westgarth to Holding Redlich dated 7 March 2019.

<sup>166</sup> Letter from Corrs Chambers Westgarth to Holding Redlich dated 20 March 2019.

## 9 Victoria Police's identification of misconduct (question 7)

- 9.1 Question 7 asks whether Victoria Police identified any misconduct or potential misconduct by Victoria Police, its officers or employees or anyone otherwise acting on its behalf during the period from 1993 to present, relating to the matters the subject of the earlier questions.
- 9.2 In May 2018 a panel was established called the Kellam Report Review Panel (**Panel**). The Panel was set up following a sequence of correspondence between Victoria Police and IBAC on the following dates:
- (a) 30 April 2018 (IBAC to Victoria Police);<sup>167</sup>
  - (b) 9 May 2018 (Victoria Police to IBAC);<sup>168</sup>
  - (c) 14 May 2018 (IBAC to Victoria Police);<sup>169</sup>
  - (d) 28 June 2018 (Victoria Police to IBAC).<sup>170</sup>
- 9.3 Terms of Reference were set for the Panel.<sup>171</sup> The Panel conducted a review "on the papers" to determine whether "any current serving members mentioned in the Kellam Review are believed to have committed a breach of discipline" by reference to section 125 of the *Victoria Police Act 2013*. The Panel prepared a report.<sup>172</sup> The outcome of the review process was reported to the Bendigo Steering Committee, to which I was a member.
- 9.4 I am aware that disciplinary proceedings are only available against current serving members of Victoria Police and it is for that reason that the Terms of Reference were limited in that way. I am also aware that pursuant to section 65 of the *Independent Broad-Based Anti-Corruption Act 2011* complaints in relation to the conduct of Police Officers of the rank Assistant Commissioner and above can only be dealt with by IBAC.
- 9.5 By way of letters dated 27 September 2018<sup>173</sup> and 17 October 2018<sup>174</sup> the results of that review were advised to IBAC. In particular, it was determined that no

<sup>167</sup> VPL.0005.0013.0598.

<sup>168</sup> VPL.0005.0013.0577.

<sup>169</sup> VPL.0005.0013.0575.

<sup>170</sup> VPL.0005.0013.0573.

<sup>171</sup> VPL.0005.0013.0758.

<sup>172</sup> Report signed by Superintendent Peter Lardner dated 20 September 2018 (VPL.0005.0024.0001).

<sup>173</sup> VPL.0005.0013.0570.

<sup>174</sup> VPL.0005.0013.0569.

disciplinary process would be commenced against any serving member subject to that review.

9.6 Both the Comrie Report and the Kellam Report identified ways in which the conduct of Police Officers fell below standards articulated in those reports. By way of example, the Kellam Report described certain conduct as "negligent". It also identified instances where processes and policies were not followed. Victoria Police has accepted the findings of both the Comrie Report and the Kellam Report. The correspondence noted above to IBAC in 2018 explains why, notwithstanding those accepted findings, no disciplinary action was taken against current serving members.

9.7 I have had no direct involvement with the Panel process apart from the advice from the outcome provided to the Bendigo Steering Committee.

**10 Victoria Police's identification of conduct below policing standards (question 8)**

10.1 Questions 8 asks me whether Victoria Police has identified any conduct, practice, behaviour or activity engaged in by it, its officers, employees or anyone otherwise acting on its behalf during the period from 1993 to present, which it considers has fallen or may have fallen below appropriate policing standards of conduct relating to the matters the subject of the earlier questions.

10.2 As noted in response to question 7, both the Comrie Report and the Kellam Report identified ways in which the conduct of Police Officers fell below standards articulated in those reports. By way of example, the Kellam Report described certain conduct as "negligent". It also identified instances where processes and policies were not followed by individual officers. Victoria Police has accepted the findings of both the Comrie Report and the Kellam Report. Conduct of those kinds would likely also fall below appropriate standards of policing as contained in the Victoria Police Code of Conduct - Professional and Ethical Standards.

10.3 The correspondence noted above to IBAC in 2018 explains why, notwithstanding those accepted findings, that no disciplinary action was taken against current serving members.

10.4 As I have explained in response to question 9(b) and (c) below, Victoria Police has treated the issues that were identified in both the Comrie Report and the Kellam

Report as being primarily systemic and organisational issues and they have been addressed on that basis in the ways described.

**11 Inquiries, investigations and preventative steps (question 9)**

- 11.1 Question 9 asks me whether identified process and practice failures or shortcomings and any matters identified in response to questions 7 and 8 have been the subject of any inquiry, investigation or legal proceeding.
- 11.2 This question has been addressed in responding to the earlier questions.
- 11.3 The shortcomings have been directly the subject of the following inquiries that I am aware of:
- (a) the Comrie review;
  - (b) the Kellam review.
- 11.4 I otherwise refer to the various investigations and proceedings identified in response to the earlier questions.
- 11.5 Victoria Police does accept that there were systemic failures. They are identified and explained in the reports referred to earlier in this statement.
- 11.6 Following the Comrie and Kellam processes, steps were and continue to be taken to prevent reoccurrence of the failures. Those steps have been set out in this report. In addition, I have been provided with a spreadsheet prepared by Victoria Police which details the implementation of the recommendations made by Messrs Comrie and Kellam.<sup>175</sup>
- 11.7 On 1 November 2014 the CSD commenced a 12 month pilot for the management of high risk sources which was called the Dedicated Source Management Team (DSMT). In July 2015 an interim Evaluation Report for the period 01 November 2014 to 30 April 2015 was completed. In November 2015 Deputy Commissioner Shane Patton approved the continuation of the pilot until the final evaluation of the pilot was completed. He also approved a name change to the High Risk Source Team (HRST), which better defined their charter. On 16 March 2016 the final evaluation report was provided to Deputy Commissioner Patton and on 25 March 2016 approval was provided for a number of recommendations, including the continuation of the HRST post the pilot evaluation.

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<sup>175</sup> VPL.0005.0013.0516.

- 11.8 The failures that have occurred in relation to Ms Gobbo could not occur in the context of our current policies, intrusive supervision and practice and government framework. Current high risk sources can only be managed by the HRST, within the Covert Services Division. Victoria Police continues to manage high risk human sources under this new model. Continuing to utilise high risk human sources is critical to meeting Victoria Police's obligations to the community in terms of serious and organised crime and the security environment.

Dated: 22 March 2019



**Neil John Paterson**

**Assistant Commissioner**

**Victoria Police**