



**Royal Commission
into the Management of Police Informants**

Final Report

Summary and Recommendations

NOVEMBER 2020

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into the Management of Police Informants**

Final Report
Summary and Recommendations

The Honourable Margaret McMurdo, AC
Commissioner

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The Royal Commission into the Management of Police Informants acknowledges the traditional Aboriginal owners of country throughout Victoria. We pay our respects to them, their culture and their Elders, past, present and future, and their ancient tradition of striving for a better functioning community.

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Final Report Summary

INTRODUCTION

The Victorian Government established the Royal Commission on 13 December 2018, after the High Court of Australia upheld the decisions of Victorian courts to allow the Director of Public Prosecutions (DPP) to disclose to a group of convicted persons that Victoria Police had used former defence barrister, Ms Nicola Gobbo, as a human source.

The High Court described the conduct of Ms Gobbo and Victoria Police as a corruption of the criminal justice system:

[Ms Gobbo's] actions in purporting to act as counsel for the Convicted Persons while covertly informing against them were fundamental and appalling breaches of [her] obligations as counsel to her clients and of [her] duties to the court. Likewise, Victoria Police were guilty of reprehensible conduct in knowingly encouraging [Ms Gobbo] to do as she did and were involved in sanctioning atrocious breaches of the sworn duty of every police officer to discharge all duties imposed on them faithfully and according to law without favour or affection, malice or ill-will. As a result, the prosecution of each Convicted Person was corrupted in a manner which debased fundamental premises of the criminal justice system.¹

Police are not entitled to pursue suspects at any cost—they must comply with the law and use their powers in a fair and ethical way. Additionally, lawyers cannot freely hand over information about their clients to police—if they do so, they risk breaching their professional obligations and undermining the criminal justice system.

When the State prosecutes, convicts and punishes a citizen, it uses considerable powers, including the power to deprive them of their liberty. As a check on those powers, there are well-established rules and principles, such as those now enshrined in the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Charter), to ensure that as far as possible, criminal investigations and court processes are fair and balanced. These rules and principles apply no matter how serious the crime, and regardless of the accused person's identity.

¹ *AB (a pseudonym) v CD (a pseudonym); EF (a pseudonym) v CD (a pseudonym)* (2018) 362 ALR 1, 4 [10] (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ). The term 'Convicted Persons' refers to seven people who were represented by Ms Gobbo and were convicted of serious criminal offences.

The community might question the need to scrutinise and denounce seemingly effective intelligence-gathering by the police. The fact that Victoria Police was able, with Ms Gobbo's assistance, to secure convictions against people accused of committing serious violent and drug-related offences could be seen as a positive outcome for the community.

That view, while understandable, overlooks the far-reaching and detrimental consequences of the conduct of Ms Gobbo and Victoria Police. During the Commission's inquiry, two of Ms Gobbo's former clients had their convictions overturned. Both had been deprived of their liberty, spending many years in prison after unfair trials. Numerous other people are seeking to appeal their convictions. There have been many court proceedings and inquiries, at great public expense, and there are likely to be more. These events have put at risk the integrity of the criminal justice system, harmed the reputation of the legal profession, and diminished public confidence in Victoria Police.

The Commission was established to find out how and why these events occurred, and to make sure they can never happen again.

In line with this objective, the Commission recommends that the conduct of Ms Gobbo and relevant current and former Victoria Police officers be referred to a Special Investigator, to consider whether there is sufficient evidence to bring criminal charges against them, and/or disciplinary charges in the case of current Victoria Police officers. It also recommends a suite of reforms to increase accountability and transparency in Victoria Police's use and management of human sources; establish a model of independent external oversight; reinforce police disclosure obligations; and improve aspects of legal profession regulation. Finally, it proposes governance and monitoring measures to make sure that Victoria Police and other relevant agencies implement these reforms in an effective and timely way.

The Commission's recommendations aim to enable and support Victoria Police in its work to protect the community from criminal activity and protect the rights of individual citizens, while strengthening the operation of, and public confidence in, Victoria's criminal justice system.

THE COMMISSION'S TASK

The Commission had both an investigative task and a policy reform task. Its terms of reference are set out in Box 1.

BOX 1: THE COMMISSION'S TERMS OF REFERENCE

The Commission was appointed to inquire into and report on:

1. The number of, and extent to which, cases may have been affected by the conduct of Ms Gobbo as a human source.
2. The conduct of current and former Victoria Police officers in their disclosures about and recruitment, handling and management of Ms Gobbo as a human source.

3. The current adequacy and effectiveness of Victoria Police's processes for the recruitment, handling and management of human sources who are subject to legal obligations of confidentiality or privilege, including:
 - a. whether Victoria Police's practices continue to comply with the recommendations of the Kellam Report
 - b. whether the current practices of Victoria Police in relation to such sources are otherwise appropriate.
4. The current use of human source information in the criminal justice system from human sources who are subject to legal obligations of confidentiality or privilege, subject to section 123 of the *Inquiries Act 2014* (Vic), including:
 - a. the appropriateness of Victoria Police's practices around the disclosure or non-disclosure of the use of such human sources to prosecuting authorities
 - b. whether there are adequate safeguards in the way in which Victoria Police prosecutes summary cases, and the Office of Public Prosecutions prosecutes indictable matters on behalf of the Director of Public Prosecutions, when the investigation has involved human source material.
5. Recommended measures that may be taken to address:
 - a. the use of any other human sources who are, or have been, subject to legal obligations of confidentiality or privilege and who came to the Commission's attention during the inquiry
 - b. any systemic or other failures in Victoria Police's processes for its disclosures about and recruitment, handling and management of human sources who are subject to legal obligations of confidentiality or privilege, and in the use of such human source information in the broader criminal justice system, including how those failures may be avoided in future.
6. Any other matters necessary to satisfactorily resolve the matters set out in terms of reference 1–5.

The scope of the inquiry

In line with its terms of reference, the Commission's inquiry focused on some specific aspects of Victoria Police's role, responsibilities and functions in the criminal justice system, including the use of human sources subject to legal obligations of confidentiality or privilege, the use of information from such sources in criminal proceedings, and how cases may have been affected by the conduct of Ms Gobbo and Victoria Police.

What are human sources?

Also known as police ‘informants’ or ‘informers’, human sources are people registered to covertly (secretly) supply information about a crime or people involved in criminal activity to police and other law enforcement agencies, usually on an ongoing basis, with the expectation that their identity will be protected. Human sources can also be ‘tasked’; that is, given an assignment or instruction by police to gather information about criminal activity. This, combined with the covert nature of their informing, is what generally distinguishes human sources from other people who give information to police, such as witnesses or victims of crime. The information that human sources provide can be critical to the ability of police to combat serious and organised crime.

It is widely accepted that the identity of a human source must be kept confidential to protect the safety of the source and those close to them, and to make sure that people remain willing to provide information to police.

Victoria Police has produced internal guidance for its officers about the use of human sources since 1986. The current policy, the *Victoria Police Manual—Human Sources* (Human Source Policy) came into effect in May 2020 and sets out a range of requirements for managing human sources.

The police officers who act as the primary point of contact with human sources are called ‘handlers’. They are typically supervised by more senior police officers, including ‘controllers’, who are responsible for direct supervision of the handler–human source relationship.

The human source management process typically involves the following key stages or elements: assessment, registration, management, sharing of information and deactivation. These are displayed in Figure 1.

Figure 1: Common elements of human source management



What are legal obligations of confidentiality or privilege?

Legal obligations of confidentiality and privilege are duties, based in law, that require people entrusted with confidential or privileged information not to disclose or disseminate that information.

Confidential information, in the context of the Commission's inquiry, is information communicated in certain professional relationships (such as lawyer–client and doctor–patient relationships). It can also be information that a person acquires in the course of their occupation or employment and that they are legally obliged to keep secret (for example, some government employees). Privileged information is confidential information that attracts a higher level of protection. A court can order disclosure of confidential information in legal proceedings, but it cannot order disclosure of privileged information unless an exception applies. Privilege only applies to certain information, such as that sometimes shared by a person with their lawyer, doctor or counsellor, or with a journalist or cleric.

Part of the Commission's role was to consider whether it was appropriate for Victoria Police to seek, acquire and use information from a human source, Ms Gobbo, who as a lawyer was legally obliged to keep that information confidential. Another part of the Commission's role was to examine Victoria Police's current processes for using and managing human sources who have legal obligations of confidentiality or privilege, or who otherwise have access to confidential or privileged information.

While it might be advantageous for police to have ready access to information that supports their investigations of criminal activity, other important and competing interests need to be considered. Permitting police to 'override' confidentiality protections enshrined in law risks interfering with a person's right to and expectations of privacy. It also risks undermining the public interest in establishing professional relationships built on trust, and jeopardising prosecutions and convictions if the access to and/or use of the information is found to be illegal or improper.

What is disclosure in criminal proceedings?

In criminal proceedings, police and prosecuting agencies have a duty to disclose all material that is relevant, or potentially relevant, to an accused person's case. This includes material on which the prosecution intends to rely in its case against the accused person, and material that may undermine the prosecution case or help the accused person's case. The duty of disclosure is fundamental to a person's right to a fair trial.

As part of this duty, the prosecution may need to disclose to an accused person how the evidence against them was obtained. If the case against an accused person is based on information provided by a human source, however, the identity of the human source will typically not be disclosed. This is because, in court proceedings, the identity of human sources is generally protected by public interest immunity (PII).

PII is a rule of evidence and a principle under the common law where the State seeks to withhold relevant information on the basis that its production or disclosure would be contrary to the public interest. Only a court can determine PII claims, and the information will only be protected by PII if the court determines that the public interest in withholding the information (for example, to protect the identity of a human source) outweighs other public interests (for example, to provide the accused person with all evidence relevant to their case). If the court determines that the PII claim is made out, the material is not disclosed to an accused person and cannot become evidence in the case.

In the cases of Ms Gobbo's clients and other people she informed on, her status as a human source was not disclosed to the court or the accused persons at the time of their prosecutions.

In the court proceedings related to the DPP’s proposed disclosure to the convicted persons represented by Ms Gobbo, the Victorian courts and the High Court concluded that it was not in the public interest to keep her identity as a human source confidential. The courts determined that, because of the egregious actions of Ms Gobbo and Victoria Police officers, the public interest in disclosing the information to the convicted persons outweighed the public interest in protecting Ms Gobbo’s identity as a human source.

What is an affected case?

To identify cases that may have been affected by Ms Gobbo’s conduct as a human source, the Commission interpreted the phrase ‘may have been affected’ to mean that the conduct in question could have caused someone to be convicted in circumstances where there was a substantial miscarriage of justice. Circumstances that may constitute a substantial miscarriage of justice include when there has been a departure from or interference with the rules, principles or processes that underpin the integrity of the criminal justice system, and the accused person has therefore been deprived of a fair trial. Various factors—including errors or omissions in a trial or in evidence-gathering processes, failure to disclose relevant material to an accused person, or improper conduct of lawyers or police officers—can give rise to a substantial miscarriage of justice. This can occur even if the case against an accused person is considered to be a very strong one, if the process leading to the conviction was unfair.

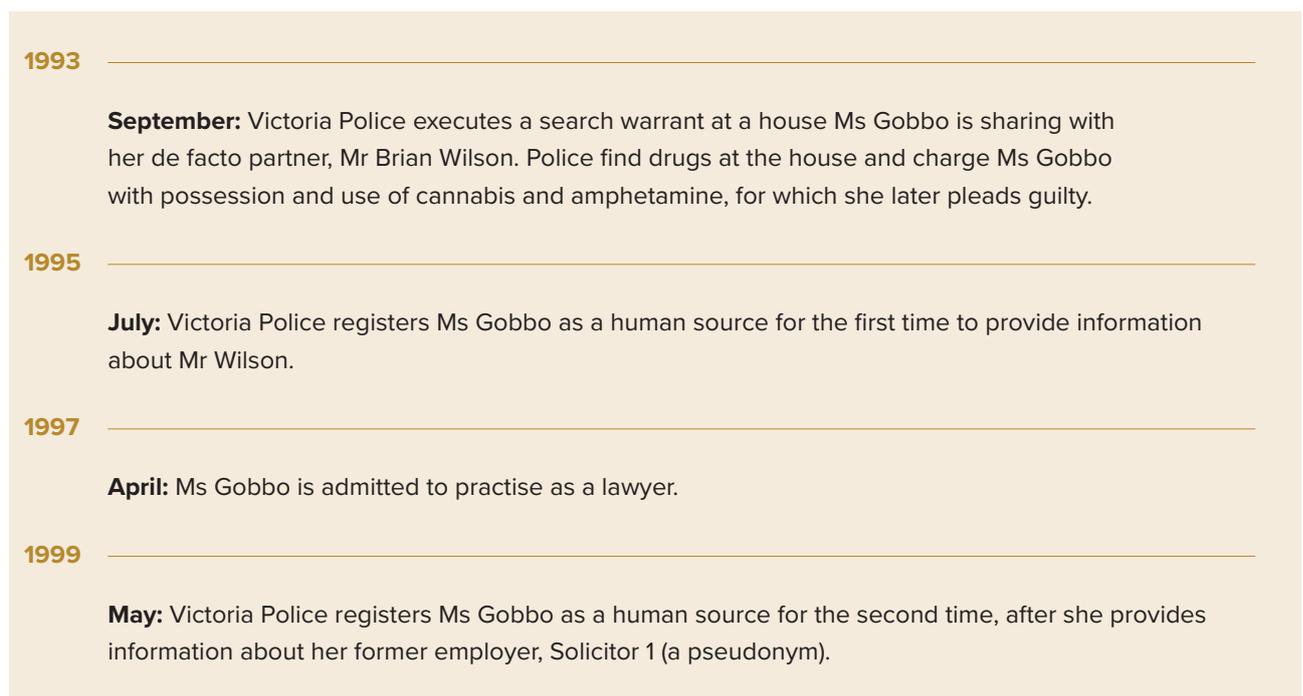
While the Commission focused on cases that resulted in convictions or findings of guilt, it is important to acknowledge that Ms Gobbo’s conduct may have also affected people who were not ultimately convicted or found guilty of a crime, including those who were investigated, charged and/or prosecuted due in part to her role as a human source.

Chronology of key events

At various times between 1993 and at least 2010, Ms Gobbo provided information to Victoria Police about her clients, their associates and other people, some of whom were involved in Melbourne’s so-called ‘gangland wars’.

Key events related to Ms Gobbo’s relationship with Victoria Police and the establishment of the Commission are listed in Figure 2.

Figure 2: Timeline of key events



2002–03

Ms Gobbo continues to provide information to Victoria Police informally.

2003–04

Ms Gobbo has conversations with officers of Victoria Police’s Purana Taskforce, which is investigating several murders associated with the ‘gangland wars’.

2005

September: Victoria Police registers Ms Gobbo as a human source for the third time. Over the following years, she provides a significant amount of information about her clients, their associates and other people, some of whom are involved in the gangland wars.

2009

January: Ms Gobbo’s role as a human source ends when Victoria Police tries to transition her to the role of a witness in the first of two high-profile police investigations.

2010

April: Ms Gobbo commences civil litigation against Victoria Police, claiming that it failed to fulfil promises made to her when she agreed to become a witness.

2011

February: Former Victoria Police officer, Mr Paul Dale, is charged with criminal offences. Ms Gobbo is to give evidence in the proceedings. Mr Dale subsequently serves a subpoena on Victoria Police seeking documents that could have revealed Ms Gobbo’s status as a human source.

October: As a result of Mr Dale’s subpoena, Victoria Police obtains legal advice. That advice triggers the first of three confidential reviews into the use of Ms Gobbo as a human source (Comrie Review).

2012

July: Former Chief Commissioner of Victoria Police, Mr Neil Comrie, AO, APM, completes a confidential report, *Victoria Police Human Source 3838: A Case Review* (Comrie Review), which examines the use of Ms Gobbo as a human source and Victoria Police’s policies and practices relevant to her management.

2014

March: The *Herald Sun* newspaper publishes an article alleging that Victoria Police recruited a lawyer, ‘Lawyer X’, to inform on criminal figures running Melbourne’s drug trade.

April: Victoria Police makes a formal notification to the Independent Broad-based Anti-corruption Commission (IBAC) regarding the use of Ms Gobbo as a human source.

2015

February: On behalf of IBAC, the Honourable Murray Kellam, AO, QC, completes a confidential report, *Report Concerning Victoria Police Handling of Human Source Code Name 3838* (Kellam Report), which examines the conduct of current and former Victoria Police officers in their management of Ms Gobbo as a human source, and Victoria Police’s human source management policies and procedures. The report identifies nine people whose prosecutions may have been affected by the use of Ms Gobbo as a human source.

2016

February: The Director of Public Prosecutions (DPP), Mr John Champion, SC, completes a confidential report, *Report of the Director of Public Prosecutions in Relation to Recommendation 12 of the Kellam Report* (Champion Report), regarding the cases of the nine people identified in the Kellam Report. He considers that he has a duty to disclose the matters raised in the Kellam Report to six people, all of whom were represented by Ms Gobbo and prosecuted by the DPP. The DPP later identifies a seventh potentially affected person.

June: The Chief Commissioner of Victoria Police, Mr Graham Ashton, lodges an application in the Supreme Court of Victoria to stop the DPP from disclosing Ms Gobbo's role as a human source to the seven potentially affected people, on the basis that this information is subject to a PII claim. Ms Gobbo later files her own proceeding against the DPP and the applications are heard together in a closed court.

2017

June: The Supreme Court determines that the DPP should be permitted to disclose information to the potentially affected people about Ms Gobbo's role as a human source. Victoria Police and Ms Gobbo later appeal the decisions to the Court of Appeal of the Supreme Court of Victoria.

November: The Court of Appeal dismisses the appeals and upholds the earlier decisions of the Supreme Court.

2018

May: The Chief Commissioner and Ms Gobbo obtain special leave (permission) to appeal the Court of Appeal's decision to the High Court of Australia.

November: The High Court revokes special leave to appeal, thereby allowing the DPP to disclose the information to the potentially affected people. The High Court orders that the hearing's occurrence and outcomes not be published until 3 December 2018.

December: The Victorian Government establishes the Commission. At this time, Ms Gobbo's identity has not been made public. She is referred to in court proceedings and the Commission's Letters Patent as 'EF'. It is generally understood that Ms Gobbo was a human source for Victoria Police between 2005 and 2009.

2019

January: The Commission is told that Victoria Police first registered Ms Gobbo as a human source in 1995 and registered her as a human source for a second time in 1999. Victoria Police also identifies that other legal practitioners and employees may have been used as human sources.

The Chief Commissioner initiates new court proceedings seeking a permanent order prohibiting the publication of the names and images of Ms Gobbo and her children.

February: The Victorian Government expands the Commission's terms of reference in light of Victoria Police's disclosures about its earlier involvement with Ms Gobbo and the possible use of other legal practitioners and employees as human sources.

March: Ms Gobbo's identity as a human source is made public.

July: The Commission publishes its progress report.

THE COMMISSION'S INQUIRY

The Commission examined matters of significant public interest that had been cloaked in secrecy for many years. Consequently, one of its critical functions was to assist the Victorian community to understand how Ms Gobbo came to be used as a human source, the consequences of her and Victoria Police's actions, and what could be done to prevent similar events occurring in the future. The Commission therefore sought to conduct as much of its inquiry in public as possible.

This was complicated by the sensitive nature of material before the Commission. It was important to protect the identities of certain people who gave evidence at the Commission's hearings and certain people affected by the inquiry in other ways. Releasing this information could have put their safety or the safety of people close to them at serious risk. It was also important not to reveal confidential methods and tactics that police use to detect and investigate crimes. The Commission adapted its processes to manage these risks and issues, including by closing hearings when necessary and using pseudonyms to deidentify certain people in its final report.

The Commission's work

The Commission structured its inquiry around the five key areas of work outlined below.

Obtaining information relevant to the inquiry

The Commission issued notices to individuals and organisations to compel them to produce documents to the Commission by a specific time ('notices to produce'). Some organisations and office holders are exempt from the Commission's coercive powers under the *Inquiries Act 2014* (Vic) (Inquiries Act) and provided information voluntarily. The Commission received over 155,000 documents during its inquiry.

Engaging with members of the public

The Commission received 157 submissions from members of the public and organisations about matters related to the terms of reference. These submissions informed the Commission's review of potentially affected cases. They also helped the Commission identify issues requiring examination at its hearings, and possible reforms relating to human source management policies and practices; the use and disclosure of human source information in criminal proceedings; and legal ethics and legal profession regulation. The Commission also engaged with the community through its website and the media.

Conducting hearings

The Commission held 129 days of public and private hearings and heard from 82 witnesses. In hearings held between February 2019 and February 2020, the Commission examined issues related to cases potentially affected by the use of Ms Gobbo as a human source and the related conduct of Victoria Police officers (terms of reference 1 and 2). In May 2020, the Commission held hearings to examine policy and practice issues related to the use of human sources and human source information (terms of reference 3 and 4).

Conducting research

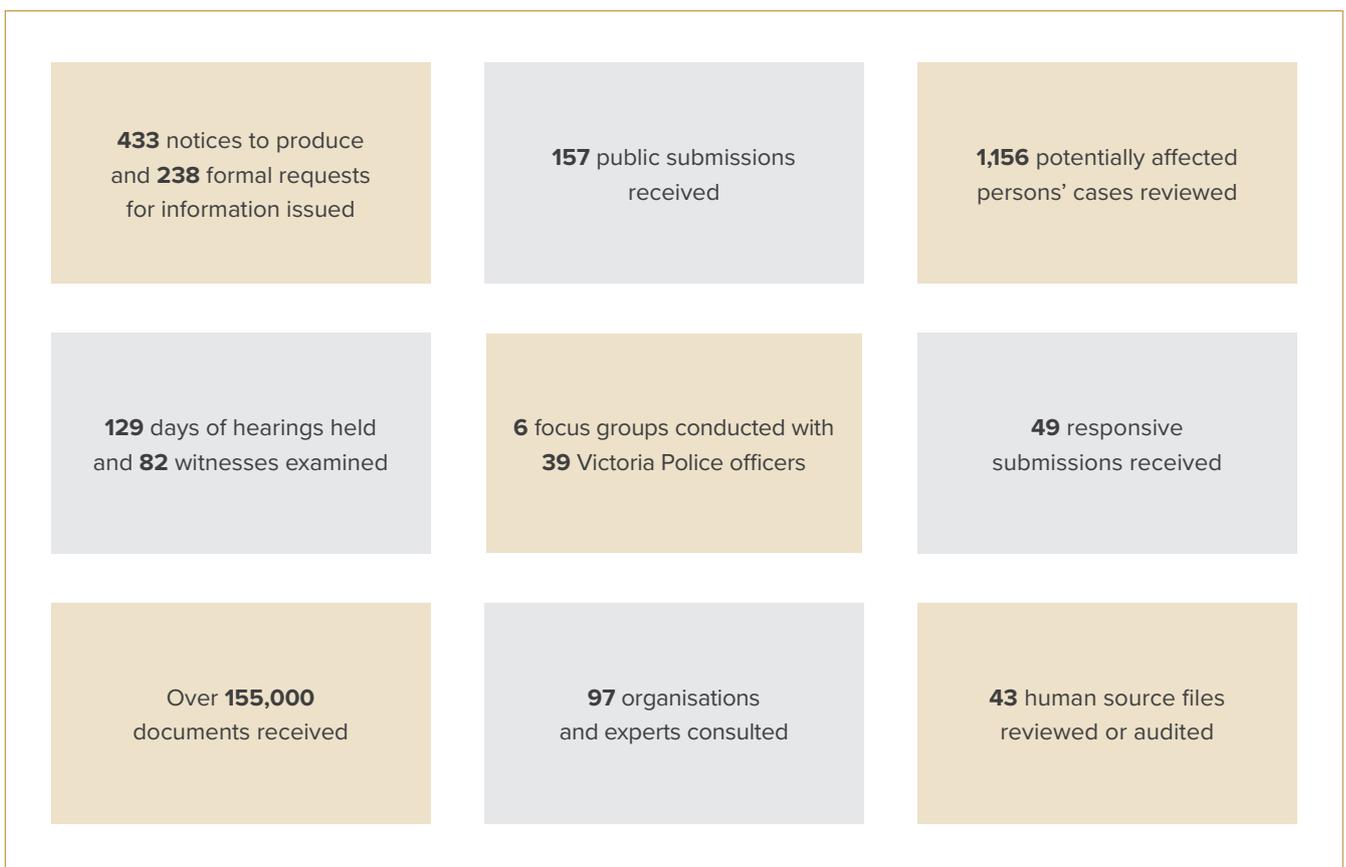
The Commission conducted an in-depth research program to inform its inquiry into terms of reference 3–6. This included undertaking literature reviews and desktop research; assessing policies and procedures provided by law enforcement and other agencies; conducting focus groups with currently serving Victoria Police officers involved in human source management; auditing and reviewing relevant human source files; preparing a consultation paper on disclosure issues and practices; and consulting with 97 organisations and experts from Australia and overseas.

Receiving submissions from Counsel Assisting

The role of Counsel Assisting the Commission was to identify and advance lines of inquiry; identify and determine the order of witnesses and examine witnesses at the Commission’s hearings; provide advice on particular areas of law and procedure; and make submissions to the Commission. In June and September 2020, Counsel Assisting provided written submissions to the Commission relating to terms of reference 1 and 2, including the findings they considered were open to the Commissioner to make about the conduct of Ms Gobbo and Victoria Police officers, and the cases they considered may have been affected by Ms Gobbo’s use as a human source.

Some key figures related to the Commission’s work are displayed in Figure 3.

Figure 3: The Commission’s work



Procedural fairness

Under the Inquiries Act, the Commission was able to conduct its inquiry in the manner it considered appropriate, subject to the Letters Patent, its powers under the Inquiries Act and the requirements of procedural fairness.

The Commission afforded procedural fairness to potentially affected persons and organisations in various ways, including by giving them the opportunity to apply to appear at the Commission's hearings and/or cross-examine witnesses, and to make public submissions or provide other information in support of their interests.

In June 2020, after it received Counsel Assisting closing submissions, the Commission commenced a formal adverse findings and procedural fairness process. This enabled people whose interests were adversely or otherwise materially affected by Counsel Assisting's proposed findings to make written submissions in response ('responsive submissions'). The Commission received 45 responsive submissions relevant to terms of reference 1 and 2. The Commission also provided Victoria Police, the DPP and Office of Public Prosecutions (OPP), and The Police Association with relevant extracts from its draft final report relating to terms of reference 3–6 and received four responsive submissions.

The Commission considered Counsel Assisting submissions, all responsive submissions and other evidence obtained during the inquiry when making its findings, conclusions and recommendations. Where the Commission has made a finding adverse to a person or organisation, it has fairly set out their response in the final report.

A royal commission is not a court and it does not have judicial power. In light of this, and to avoid the risk of unfairly prejudicing possible future investigations or trials, the Commissioner decided not to make findings in the final report as to whether Ms Gobbo and/or any named current or former Victoria Police officers may have engaged in criminal conduct. The Commission, did, however, consider the duties and standards of professional behaviour required of police and lawyers, as well as the tests set down in law, to establish whether they may have engaged in misconduct. The question of whether Ms Gobbo and Victoria Police officers did, in fact, commit criminal offences or misconduct, and the implications of any such conduct for potentially affected persons' cases, will be matters for investigatory and prosecuting agencies and the courts to determine.

THE COMMISSION'S CONCLUSIONS

The potential effects of Ms Nicola Gobbo's conduct as a human source

All people charged with a criminal offence, no matter who they are or what they are accused of, have the right to independent legal advice. They have the right to expect that their lawyer will act ethically and in their best interests, and will not disclose information shared in confidence. They have the right to a fair trial, in which the prosecution must prove their guilt beyond reasonable doubt; and they have the right to receive both information on which the prosecution intends to rely, and information that may undermine the prosecution case. A large number of people may have been denied these rights because of the conduct of Ms Gobbo and some current and former Victoria Police officers.

The Commission's task was to examine the number of cases that may have been affected by the conduct of Ms Gobbo as a human source, and the extent to which they were potentially affected. The Commission had no power to overturn convictions, order re-trials, change sentences or release people from custody. Decisions to take or not to take these steps will be made by the courts, in the event that the potentially affected persons choose to pursue their appeal rights.

After a rigorous analysis of the evidence, including all relevant submissions, the Commission has concluded that the convictions or findings of guilt of 1,011 people may have been affected by Victoria Police’s use of Ms Gobbo as a human source. This includes people who were deprived of the opportunity to be represented by an independent lawyer acting in their best interests, and those who may have been affected by Ms Gobbo’s conflicts of interest and/or tainted evidence arising from her conduct as a human source. It includes cases where she was acting as the person’s lawyer, and cases where she was not; for example, where the person was a co-accused of one of her clients.

Figure 4 shows the categories of conduct relevant to whether the Commission found a case may have been affected by Ms Gobbo’s use as a human source. At least one of these categories applied to each of the 1,011 people identified by the Commission.

Figure 4: Categories of conduct—Ms Gobbo and Victoria Police

Ms Nicola Gobbo	Victoria Police
Conflict of interest	
Ms Gobbo acted for an accused person and she did not disclose her status as a human source	Ms Gobbo acted for an accused person and Victoria Police did not disclose her status as a human source or take steps to have public interest immunity (PII) claims considered by the Director of Public Prosecutions (DPP) or the courts
Ms Gobbo provided information to Victoria Police in relation to the accused person, and/or otherwise assisted or attempted to assist in their prosecution, before and/or during the period she acted for them, and she did not disclose this	Ms Gobbo provided information to Victoria Police in relation to the accused person, and/or otherwise assisted or attempted to assist in their prosecution, before and/or during the period she acted for them, and Victoria Police did not disclose this or take steps to have PII claims considered by the DPP or the courts
Tainted evidence	
Evidence relied on in prosecuting the accused person may have been illegally or improperly obtained due to Victoria Police’s use of Ms Gobbo as a human source	Evidence relied on in prosecuting the accused person may have been illegally or improperly obtained due to Victoria Police’s use of Ms Gobbo as a human source, and Victoria Police did not take steps to have PII claims considered by the DPP or the courts

The 1,011 people can also be split into two groups. The first group of 887 people are potentially affected in a broad way, like the manner identified in *R v Szabo*. These people were represented by Ms Gobbo between 1998 and 2013 and it was not disclosed to them that she was providing information to police as a human source. The second group of 124 people are potentially affected in a more specific way. Counsel Assisting wrote case studies on each of these 124 people in their submissions.

Ms Gobbo's duplicitous and improper conduct spanned a period of more than 15 years. It started before she was admitted as a lawyer in the early 1990s, and became progressively more entrenched and destructive until her third period as a human source for Victoria Police came to an end in 2009.

Even as a young law student in the 1990s, Ms Gobbo was willing to give police information about those who trusted her. In 1993, when Ms Gobbo was sharing a house with her then de facto partner, Mr Brian Wilson, Victoria Police executed a search warrant at the property. Ms Gobbo told police that drugs were hidden in a vent in the laundry. Ms Gobbo was charged with use and possession of cannabis and amphetamine. She pleaded guilty and received a non-custodial sentence without conviction. Mr Wilson was charged with trafficking, use and possession of a drug of dependence, and received a suspended sentence.

In the following two years, Ms Gobbo maintained contact with Victoria Police, actively seeking out and cultivating opportunities to meet with police officers and give them information. In 1995, Victoria Police officers registered her as a human source, evidently because of information she had provided against Mr Wilson.

Ms Gobbo was admitted to legal practice in 1997. As part of the admission process, she was required to make submissions to the Board of Examiners about her suitability to practise law, including by submitting an affidavit. The affidavit she provided to the Board was misleading in several respects regarding her drug-related offending.

Between 1997 and 1999, Ms Gobbo gave information to police about the alleged fraudulent activity of her employer, Solicitor 1 (a pseudonym). She approached police proactively and enthusiastically, suggesting people and matters they should investigate. These actions undermined the interests of her clients at the time. The information Ms Gobbo provided led to Victoria Police registering her as a human source for the second time in 1999.

By the time the gangland wars escalated in the early 2000s, Ms Gobbo had developed professional and personal relationships with prominent organised crime figures. Victoria Police's Purana Taskforce was established to combat the violence arising from the gangland wars. Purana pursued a strategy of persuading people suspected of criminal activity to 'roll'; that is, to give evidence against their associates, particularly those higher up in their criminal networks, in exchange for a reduced sentence. Ms Gobbo proved a valuable resource to achieve that end.

The case of Mr McGrath (a pseudonym) illustrates how Ms Gobbo assisted the Purana Taskforce to pursue this strategy. Ms Gobbo played a part in convincing Mr McGrath, her client, to give evidence against his associates. This conduct was not in itself improper, but she made corrections to and comments about his statements, to assist police, without taking instructions from him. She encouraged him to change his story to strengthen Victoria Police's case against his associates, and concealed from him the true nature of her relationship with police. Despite Ms Gobbo and some Victoria Police officers submitting that this aspect of Ms Gobbo's conduct was not improper, and even though the outcome for Mr McGrath was favourable, the Commission has found that he did not have the benefit of an independent lawyer acting on his instructions.

Mr McGrath's evidence led to the prosecution of Mr Thomas (a pseudonym). Given that Ms Gobbo had acted for Mr McGrath and refined his statements to strengthen his credibility as a witness, including against Mr Thomas, it was unethical for her to then act as Mr Thomas' lawyer. It does not matter that Mr Thomas knew she had acted for Mr McGrath—he did not know she had worked with police to bolster Mr McGrath's credibility. As with Mr McGrath, Ms Gobbo encouraged Mr Thomas to roll. She was actively involved in this process, advising police about how to approach him, suggesting topics to explore and editing his statements. Mr Thomas ultimately made many statements to police implicating others in criminal activity.

The case of Mr Faruk Orman, also Ms Gobbo's client, illustrates the chain reaction caused by her conduct. The case against Mr Orman relied heavily on Mr Thomas' evidence. Ms Gobbo took active steps to ensure that Mr Thomas gave evidence against Mr Orman. She divulged Mr Orman's defence tactics to Victoria Police officers, and kept the true nature of her involvement with Mr Thomas and Victoria Police hidden from Mr Orman.

Perhaps the most brazen example of Ms Gobbo's conduct is the case of Mr Cooper (a pseudonym), a drug manufacturer for the Mokbel family. Police believed that if Mr Cooper were to roll, he might disclose key details of the Mokbel criminal syndicate. Ms Gobbo leveraged her position as Mr Cooper's lawyer, friend and confidant to persuade him to divulge information about his criminal activities. She gave Victoria Police information about his drug laboratory, leading to his arrest. When police encouraged Mr Cooper to roll, he asked for Ms Gobbo to attend the police station as his lawyer. She obliged and, acting as both Mr Cooper's lawyer and an agent for police, advised him to assist authorities. Mr Cooper heeded Ms Gobbo's advice and ultimately made over 40 statements to police.

Mr Zlate Cvetanovski was also caught in the web of Ms Gobbo's compounding conflicts of interest. Ms Gobbo represented Mr Cvetanovski after his arrest on drug charges. The evidence of Mr Cooper was crucial in the case against him. Perhaps unsurprisingly given her previous conduct, Ms Gobbo did not disclose her involvement with Mr Cooper to Mr Cvetanovski. She also assisted Victoria Police to obtain warrants and gather evidence used to prosecute him.

The case of Mr Antonios (Tony) Mokbel points to the sheer volume of information Ms Gobbo gave to Victoria Police. She told police about Mr Mokbel's properties, finances, contact numbers, associates, and the vehicles and code names he used. She divulged the defence strategies and tactics used by Mr Mokbel's legal team, both in his criminal trial and his extradition proceedings. She represented numerous clients, such as Mr Cooper, who with her assistance gave evidence against Mr Mokbel.

The 'Tomato Tins' drug syndicate cases exemplify the wide-ranging impacts of Ms Gobbo's conduct. She provided Victoria Police with information about the drug syndicate led by Mr Pasquale Barbaro and, taking advantage of her relationship with another of her clients, Mr Rabie (Rob) Karam, gave police the bill of lading for a shipment of tomato tins that contained vast amounts of MDMA. She told police about the locations of meetings between Mr Karam and other co-conspirators. Ultimately, 32 people were convicted for their part in the Barbaro drug syndicate. Remarkably, Ms Gobbo acted for at least 10 of these people, after having provided police with information that may have led to them being charged.

As these brief case studies show, Ms Gobbo's conduct as a human source for Victoria Police, while practising as a criminal defence lawyer, was extensive and sustained. It was also inexcusable. Her breach of her obligations as a lawyer has undermined the administration of justice, compromised criminal convictions, damaged the standing of Victoria Police and the legal profession, and shaken public trust and confidence in Victoria's criminal justice system.

Already, two people, Mr Orman and Mr Cvetanovski, have successfully appealed their convictions based on Ms Gobbo's conduct. There are many more appeals in progress.

The Commission's role in exposing Ms Gobbo's actions, although not judicial, is a powerful one. Its inquiry has shone a bright light on the extraordinary reach of her once-hidden wrongdoing. Ms Gobbo herself, in giving evidence before the Commission, admitted that aspects of her conduct were unethical and wrong. The Commission's work will allow the community to better understand the nature of this conduct and, critically, empower those whose convictions or findings of guilt may be affected to make informed decisions about any future action they may take.

The Commission recommends that the Victorian Government appoints a Special Investigator to investigate whether Ms Gobbo may have committed any criminal offences connected with her conduct as a human source for Victoria Police.

Ms Gobbo was recently struck off the Supreme Court's Roll of Legal Practitioners and is unable to practise law. She remains, however, on the Victorian Bar Roll's list of 'retired' barristers. The Commission is concerned that this has the potential to undermine public confidence in the Victorian Bar. In light of Ms Gobbo's conduct, the Commission recommends that the Victorian Bar seeks to address this issue, given the symbolic significance of her remaining on the Bar Roll.

The conduct of Victoria Police officers

The duties and obligations of police officers arise from their oath or affirmation, legislation, prosecutorial guidelines and the common law. Before they can commence service, every police officer must take an oath or make an affirmation promising to:

- well and truly serve without favour or affection, malice or ill-will
- keep and preserve the peace
- prevent, to the best of their abilities, all offences
- discharge all of the duties legally imposed on them faithfully and according to law.

In their recruitment, use and management of Ms Gobbo as a human source, the conduct of a number of Victoria Police officers seems to have fallen short of the behaviour required by their legal, ethical and professional obligations when they:

- encouraged Ms Gobbo to act as counsel for an accused person or at least condoned it, knowing that she was a human source and was therefore not providing the person with independent legal advice; was covertly informing on them or had covertly informed on them; and/or had provided information that assisted police to obtain incriminating evidence against them
- failed to disclose these matters to the prosecution, the defence or the court, or to properly claim PII, despite the fact that this evidence would potentially have assisted the defence of accused persons
- failed to seek legal advice on these matters.

The Commission accepts Victoria Police's contentions that it is important to contextualise the lead up to Ms Gobbo's third registration as a human source in 2005. The murders of Mr Jason Moran and Mr Pasquale Barbaro at a children's football match in 2003 intensified political and public pressure for Victoria Police to end Melbourne's gangland wars. It established the Purana Taskforce to do just that. As noted above, Purana's key strategy was to target the 'weakest link' in criminal networks and have them give evidence against more senior figures. At around this time, Victoria Police also established the Source Development Unit (SDU) to better utilise human sources, and its officers were eager to prove its worth.

In this environment, Ms Gobbo found herself in a precarious situation with her high-profile gangland clients and turned to Victoria Police. Remarkably, Ms Gobbo and the officers involved were unaware that this was her third registration as a human source for Victoria Police.

Despite the extraordinary circumstances of a criminal defence barrister becoming a human source against the very people she represented, neither the SDU officers who registered her, nor their superior officers, sought legal advice as part of the registration process. The absence of such advice in the face of serious and obvious risks became a recurrent theme in Victoria Police's management of Ms Gobbo. A compelling explanation is that Victoria Police did not want to be told they could not use Ms Gobbo in the ways they intended.

Mr McGrath's case in 2004, a year before Ms Gobbo's third registration, established patterns of police behaviour that would continue in the years following. Purana investigators worked with Ms Gobbo in encouraging Mr McGrath to become a prosecution witness. The investigators left Ms Gobbo to manage her conflicts of interest, and concealed the true nature of her involvement from Mr McGrath and from those he implicated in serious crimes.

Similar events occurred shortly afterwards with Ms Gobbo's representation of Mr Thomas. Purana Taskforce investigators worked with her as she encouraged Mr Thomas to confess to serious crimes and become a prosecution witness. When Mr Thomas considered whether he should change his legal team, investigators vouched for Ms Gobbo's honesty. Again, Victoria Police did not make proper disclosure about Ms Gobbo's role to Mr Thomas or the people he implicated in the statements he gave to police.

There were elements of opportunism in Victoria Police using Ms Gobbo to help them roll Mr McGrath and Mr Thomas. In Mr Cooper's case, however, this outcome was carefully planned.

Mr Cooper was on bail for two episodes of serious drug offending, the second committed while he was on bail for the first, and he was likely to receive a heavy sentence. Victoria Police officers worked with Ms Gobbo, his lawyer, to facilitate his third arrest for serious drug offending so that his situation would be so dire that he had no alternative but to assist police in bringing down the Mokbel cartel. With Ms Gobbo's assistance, Victoria Police set up Mr Cooper for his third arrest. He went on to make over 40 statements that helped them charge, and ultimately convict, 26 people.

As prosecutions relying on Mr Cooper's evidence progressed, Victoria Police avoided disclosing to the accused persons Ms Gobbo's role in persuading Mr Cooper to become a prosecution witness against them. Investigators told the Commission that they acted in accordance with their training and standard practice at the time; that they assumed their superiors or Ms Gobbo's SDU handlers were managing the risks; and that they were always motivated by the need to protect her safety, rather than any improper intent. While part or all of that may be true, it does not change the fact that accused persons, many of whom faced lengthy prison terms, were denied information to which they were entitled and that could have assisted them to defend the criminal charges against them.

It should have been clear to the Victoria Police officers involved that they needed to disclose Ms Gobbo's status and conduct as a human source to the DPP and accused persons, or to make a PII claim to the court accompanied by all relevant supporting material. It was for the court, not Victoria Police, to determine whether this information should be kept from the accused persons. At the very least, the officers should have appreciated that this was a matter requiring legal advice.

At various times, the SDU officers managing Ms Gobbo were concerned about the potential ethical and legal problems involved in using her as a human source. By mid-2006, the prospect of a royal commission had been raised, signalling a growing appreciation of the risks within Victoria Police. Ms Gobbo's health had also deteriorated. From mid-2006 to mid-2007, the SDU officers had in place an 'exit strategy' to bring Ms Gobbo's role as a human source to an end. She was not ready to stop. And as senior Victoria Police officers began to see her potential value in helping to solve high-profile murder investigations involving suspected police corruption, the plans to deregister Ms Gobbo were shelved.

These investigations, Petra Taskforce and Briars Taskforce, each involved a series of 'sliding door' moments when senior officers could and should have acted to stop using Ms Gobbo as a human source, and to the extent possible, prevent further damage to Victoria's criminal justice system. They did not do so. This meant Victoria Police could continue to use Ms Gobbo as a source and capitalise on the valuable information and tactical advice she provided.

After receiving a subpoena in January 2011 to provide documents that could have revealed Ms Gobbo's status as a human source, Victoria Police finally obtained legal advice in October 2011. The advice identified that Ms Gobbo's role as a human source may need to be disclosed and that potentially affected persons may seek to challenge their convictions. At that point, Victoria Police should have acted with great urgency to address the fact that people who had been convicted of crimes and lost their liberty may have been denied their rights to a fair trial. Its progress, however, was slow—both in taking steps to fully understand the consequences of Ms Gobbo's use as a human source, and in seeking to remedy the situation.

This delay was completely unacceptable, not least because it was a problem of Victoria Police's own making. It is likely that it stemmed not just from concerns for Ms Gobbo's safety, but also a desire to avoid reputational damage, external inquiries, judicial criticism and appeals against convictions. These factors were placed ahead of accepting responsibility and ensuring justice was done according to law.

After three confidential reviews, and two years in which Victoria Police fought to prevent the DPP from disclosing to certain people that their convictions may have been tainted, Ms Gobbo's use as a human source was revealed to affected persons and the Victorian community, following the High Court's decision in 2018. This revelation occurred some 13 years after Victoria Police registered Ms Gobbo as a human source for the third time.

The Commission considers that the conduct of several current and former Victoria Police officers in managing Ms Gobbo, including their failure to fulfil their disclosure obligations in prosecutions affected by her informing, may have constituted misconduct and/or breaches of discipline at that time. That conduct was apt to bring Victoria Police into disrepute and diminish public confidence in it.

The Commission recommends that the Victorian Government refers the conduct of current and former Victoria Police officers to the proposed Special Investigator to investigate whether there is sufficient evidence to establish the commission of criminal and/or disciplinary offences connected with the use of Ms Gobbo as a human source. With the Special Investigator's investigation into the conduct of Ms Gobbo and current and former officers of Victoria Police, and with those who may have failed to receive a fair trial because of this conduct now able to pursue their appeal rights in an informed way, Victorians can be assured that their criminal justice system is working in accordance with the rule of law, as it should.

Victoria Police's conduct: systemic issues and causal factors

While the use of Ms Gobbo as a human source was in many ways extraordinary, it was also a systemic failure. It continued for several years, even though many Victoria Police officers, including some very senior officers, were aware of Ms Gobbo's informing.

Victoria Police concedes that more than 100 police officers and personnel knew that Ms Gobbo was a human source between 2005 and 2009. It appears that none of these officers or personnel reported it to or raised concerns with Victoria Police's then Ethical Standards Department or with an external oversight body.

Several officers who gave evidence to the Commission stressed that, at the time of Ms Gobbo's use as a human source, Victoria Police was under significant pressure to stem the violence associated with Melbourne's gangland wars. Some suggested that there was nothing unlawful or improper about their management of Ms Gobbo and the associated risks.

In late August 2020, Victoria Police provided a submission to the Commission, in which it accepted:

... without reservation that the way in which Ms Gobbo was managed as a human source in a way that resulted in a profound interference with the relationship between lawyer and client was a major failing. The consequences of that failing are resonating through the criminal justice system and will do so for many years. It has come at a very high cost to the organisation, to public confidence and to the criminal justice system.²

Victoria Police also issued a public apology to the courts, whose processes were affected by what occurred, and to the community for breaching its trust.

² Responsive submission, Victoria Police, 24 August 2020, 10 [2.8].

In its submission, Victoria Police contended that the conduct occurred because of reasons that are ‘primarily organisational and systemic’. It accepted that individual officers should have done better in some instances, but maintained that those involved in the recruitment, handling and management of Ms Gobbo did not engage in *knowing* impropriety.

The Commission does not accept that there was no knowing impropriety on the part of any officer involved in these events. The conduct of some officers fell well short of an acceptable standard. Further, an organisation is the sum of its parts; it is not an entirely separate entity that functions independently of the people within it. If the organisation and systems were flawed, it was because the individuals who made up the organisation and developed its systems, particularly senior leaders, lacked the moral clarity, vision and ability to fix those flaws. Several officers, including those responsible for leadership of the organisation, knew enough about the risks and the potential consequences of using Ms Gobbo as a human source to have taken a different and more appropriate course.

The Commission agrees that there were several organisational conditions, structures, cultures and processes that contributed to the events and the fact that they were able to continue for so many years. These include failures of leadership and governance, of management and supervision, of policy and training, and of processes to properly identify, assess and manage risk.

Much of the conduct demonstrated by individual officers could not have occurred without critical failures of leadership and governance in Victoria Police—in particular, an ineffective command and governance structure; and a pervasive and negative cultural emphasis, led from the top down, on getting results, with insufficient regard to the serious consequences for the rights of individuals and the proper administration of the criminal justice system.

There were also deficiencies in the human source management policy framework at the time of Ms Gobbo’s relationship with Victoria Police. The policies and processes in place from 1995 to 2003 were rudimentary. The overriding focus was protecting the confidentiality of a human source’s identity and location—known as the ‘golden rule’. There was no risk assessment process and little guidance on the appropriateness of registering people whose use as a human source could pose serious risks to themselves, other people or Victoria Police.

By 2003, Victoria Police had begun to implement a contemporary human source management policy. While it considered this a best practice approach, the organisation maintained a rigid, unnuanced application of the golden rule. There is an obvious and critical need to protect the safety of human sources—but this must be balanced against other important public interests. Victoria Police’s sole and exclusive focus on protecting the identity of the human source at all costs seems to have contributed to officers neglecting other fundamental obligations, including their duty of disclosure. The human source management policy was also deficient as it lacked guidance relating to obtaining and using confidential or privileged information, and when to seek legal advice.

There were also instances of SDU officers and investigators failing to comply with parts of the human source management policy and associated procedures. This went largely unchecked by more senior officers, suggesting a willingness to tolerate bending the rules to help solve serious crime.

While the daily engagement with and management of Ms Gobbo was the SDU’s responsibility, the officers appointed as her handlers were not wholly responsible for the problems that arose from her use as a human source. Other factors contributed, including the lack of an appropriately trained senior officer with dedicated responsibility for overseeing the SDU; the apparent willingness of managers to defer to SDU officers’ expertise rather than actively supervising their actions; and a possible perception among some SDU officers and investigators that, because certain senior officers were aware of Ms Gobbo’s use as a human source, they condoned or even encouraged it.

Another organisational factor was the inadequacy of policies, procedures and training related to police disclosure obligations, a fact that has been highlighted by other recent inquiries into Victoria Police practices.

Victoria Police has long been on notice about the need to make proper disclosure to people whose cases may have been affected by the use of Ms Gobbo as a human source. The Commission is concerned about how slowly Victoria Police has acquitted its disclosure obligations and provided these people with the information that they should have received many years ago as part of their trials. To address this, the Commission recommends that Victoria Police provides monthly reports on its progress to the proposed Implementation Taskforce and Implementation Monitor, discussed below.

The Commission is also concerned that so many officers across different levels within Victoria Police did not take adequate responsibility for their part in the events that were the subject of this inquiry. This suggests a reluctance to acknowledge their contribution to the individual and collective failures that led to the recruitment, use, management and non-disclosure of Ms Gobbo as a human source, and to be accountable for their actions.

While Victoria Police's use of Ms Gobbo as a human source occurred many years ago, the systemic repercussions are still being felt. Court proceedings, and the various inquiries established to examine the events, have cost many millions of public dollars. Public confidence in police has been undermined. Given the systemic failures identified by the Commission, it is critical that Victoria Police assures the Victorian Government and community that it has taken and will continue to take steps to prevent past mistakes being repeated, including in its response to the Commission's recommendations. It is encouraging that the Chief Commissioner of Victoria Police has commented publicly that the organisation will heed the Commission's recommendations and take whatever steps necessary to learn from its mistakes.

Victoria Police's use of other human sources with legal obligations of confidentiality or privilege

In January 2019, shortly after this inquiry commenced, the Commission became aware that Victoria Police had identified a number of other human source files related to people associated with the legal profession. Consequently, the Victorian Government extended the scope of the inquiry, requiring the Commission to examine Victoria Police's use of any other human sources with legal obligations of confidentiality or privilege (term of reference 5a).

To this end, during the inquiry, the Commission:

- reviewed 12 Victoria Police human source files related to people associated with the legal profession dated between 1990 and 2016, and in some cases examined relevant issues in private hearings
- conducted an audit of 31 human source files related to people with other occupations potentially subject to legal obligations of confidentiality or privilege (such as nurses and government workers), dated between 2016 and 2019
- inquired into allegations by members of the public that 45 people with legal obligations of confidentiality or privilege had been used as human sources by Victoria Police.

Based on the information available to the Commission, there is no evidence to indicate that Victoria Police's use of any human sources, other than Ms Gobbo, resulted in the use of confidential or privileged information that may have affected the validity of any criminal prosecutions or convictions. While this finding is encouraging, it must be qualified by the Commission's limited access to relevant files, as discussed below.

The Commission's review and audit of files did identify some instances of Victoria Police officers not complying with the organisation's policies and procedures, along with a potential lack of understanding among some officers about the risks of using human sources with legal obligations of confidentiality or privilege. These observations were consistent with themes and issues that emerged in other aspects of the Commission's work, including its focus groups with Victoria Police officers who hold human source management responsibilities.

There were some limitations on the Commission's review of these human source files, including its lack of access to Interpose, Victoria Police's intelligence and case management system, which contains human source records. Consequently, the Commission had to rely entirely on Victoria Police to identify and disclose relevant files and information, and to advise if and how it used any information it received from these human sources.

Victoria Police did not give the Commission access to 11 human source files relating to people with potential legal obligations of confidentiality or privilege. It said these files were extremely sensitive and could not be provided to the Commission because they were subject to a PII claim.

As these 11 human source files have not been independently reviewed, the Commission recommends that the Victorian Government appoints a suitably qualified person to review them as a priority.

The review should identify whether there is evidence to suggest that any criminal prosecutions were affected—either because evidence was improperly obtained by Victoria Police from any of the 11 human sources, or because relevant evidence that should have been disclosed to prosecuting authorities and accused persons was not disclosed. If such evidence is identified, the Chief Commissioner should make a referral to the Victorian DPP and/or the Commonwealth Director of Public Prosecutions.

Victoria Police's implementation of the Kellam Report recommendations

In 2014, following a notification from Victoria Police, IBAC appointed the Honourable Murray Kellam, AO, QC, to confidentially examine the conduct of current and former Victoria Police officers in relation to their use of Ms Gobbo as a human source, and the application and adequacy of Victoria Police policies, control measures and management practices during the period from 2005 to 2009.

Mr Kellam's inquiry followed an earlier review into Victoria Police's use of Ms Gobbo as a human source by former Chief Commissioner Neil Comrie, AO, APM, entitled *Victoria Police Human Source 3838: A Case Review* (Comrie Review).

It also followed a series of other internal and external reviews into Victoria Police's use of human sources dating back to the early 2000s. Those reviews consistently highlighted:

- insufficient management and supervision of officers responsible for handling human sources, creating risks of misconduct and corruption
- the development of inappropriate and sometimes corrupt relationships between human sources and police officers
- insufficient information management controls, leading to the leaking of sensitive and secretive information to criminal networks
- a lack of compliance with Victoria Police's Human Source Policy among certain officers and units, including the use of 'unregistered sources'
- a lack of sufficient safeguards within the policy framework
- inadequate training of officers responsible for handling human sources.

Mr Kellam completed his confidential report, entitled *Report Concerning Victoria Police Handling of Human Source Code Name 3838* (Kellam Report), in 2015. His key findings, many of which echoed those of the Comrie Review, are set out in Box 2.

BOX 2: KEY FINDINGS OF THE KELLAM REPORT

The Kellam Report found that:

- Ms Gobbo’s handlers in the SDU had an imperfect understanding of the meaning and extent of confidential or privileged information.
- Handlers were not subject to sufficient oversight in their dealings with Ms Gobbo.
- There was a lack of formal documentation that set out the key risks and boundaries of Victoria Police’s relationship with Ms Gobbo.
- In the absence of formal documentation, officers made their own subjective assessments to determine what was ethical and appropriate.
- Victoria Police was negligent in using confidential and privileged information provided by Ms Gobbo for the purpose of furthering police investigations against her clients, without first obtaining legal advice.
- There may have been ‘wilful blindness’ on the part of Ms Gobbo’s handlers, but any impropriety on their part was ‘substantially mitigated by the lack of guidance and supervision’ that they should have had from their superior officers.

The Kellam Report’s 16 recommendations addressed three key areas of Victoria Police’s human source management practices:

- safeguards associated with obtaining and using confidential or privileged information from human sources
- improvements to risk assessment practices
- changes to Victoria Police policies and procedures for the day-to-day management of human sources.

Victoria Police has now implemented most of the Kellam Report recommendations, having introduced a series of policy changes between 2014 (in response to the Comrie Review) and 2020, while the Commission’s inquiry was underway.

The policy changes introduced by Victoria Police include:

- additional safeguards for human sources in occupations subject to legal obligations of confidentiality or privilege
- a requirement that risk assessments clearly outline the purpose for engaging a human source and a requirement for a revised risk assessment if the purpose changes
- a requirement that ‘high risk’ human sources be reviewed each month to consider whether any new risks have arisen that may change Victoria Police’s approach to engaging and managing the source
- new references to Victoria Police’s obligations under the Charter in the Human Source Policy, along with some hypothetical scenarios related to human sources involving legal obligations of confidentiality or privilege.

Some aspects of Victoria Police’s response to the Kellam Report recommendations are commendable. It took early action to address certain policy deficiencies while the Kellam inquiry was underway. It also implemented most recommendations within 12 months of the inquiry’s completion.

In other areas Victoria Police's response was not as effective or timely as it could have been. The most important Kellam Report recommendations related to safeguards associated with the use of confidential or privileged information from human sources, and risk assessment practices. The policy changes that Victoria Police introduced did not adequately fulfil the intention of these recommendations, which was to:

- manage the risk of obtaining or using confidential or privileged information from any human source, not just those with occupations subject to legal obligations of confidentiality or privilege
- make clear that, before registering any human source, officers should consider whether the use of the source is necessary and proportionate to the law enforcement objective to be achieved by obtaining the information.

In May 2020, Victoria Police further revised its Human Source Policy after receiving advice from its counsel during the Commission's inquiry. While some of these policy changes more fully addressed the intention of the Kellam Report recommendations, they came five years after completion of the Kellam Report, and eight years after the Comrie Review made the same recommendations. Given the importance of the policy improvements, this delay is unacceptable.

There is also evidence that Victoria Police did not take all necessary steps to embed its policy reforms into operational practice, through supporting guidance, communication and training for officers with human source management responsibilities. This appears to have contributed to uncertainty and confusion among officers about critical policy requirements and safeguards relating to the use of confidential or privileged information from human sources.

Victoria Police could have taken more effective action to monitor and evaluate the effectiveness of policy changes, including by engaging with officers responsible for human source management regarding their understanding of the new requirements and expectations.

The Commission recommends that Victoria Police establishes clear processes for the future review and amendment of human source management policies and procedures, including processes for seeking and incorporating operational input from officers involved in human source management; providing timely and accurate advice to officers about policy and procedural changes; and undertaking regular review and evaluation to address any emerging risks or developments in the operating environment. This will in turn help to ensure that policy requirements are clear, understood by officers, and applied effectively and consistently across the organisation.

Victoria Police processes for the use and management of human sources involving legal obligations of confidentiality or privilege

As this inquiry has shown, the use of lawyers as human sources poses clear risks. These risks also apply to the use of other human sources who have access to confidential or privileged information. This is not to say that police should be absolutely prohibited from using human sources who are subject to legal obligations of confidentiality or privilege, but it does mean that the use of a human source who has access to confidential or privileged information should be a rare occurrence, treated with extreme caution and subject to strict safeguards.

While specific risks arise from the use of human sources involving legal obligations of confidentiality or privilege, the use of *any* human source by police presents legal and ethical risks. Human sources are typically people involved in criminal activity, and the need for police to form relationships with them to obtain information sometimes blurs ethical and professional boundaries, creating risks of misconduct and corruption. Because the engagement between police and the human source necessarily occurs in secret, any improper conduct may not be detected.

Further, the tasking of human sources—and the issuing of rewards to them—can involve police exploiting relationships and encouraging sources to engage in deception. This can in turn involve limiting the human rights of the source or of others. Finally, by covertly providing information to police about people known to them, human sources can put themselves and those close to them at risk of serious harm or even death.

Given these risks and the need for a consistent, coherent policy and procedural framework for the use of human sources, the Commission adopted a broad approach to its examination of Victoria Police's current processes. It identified safeguards needed not only to prevent the improper use of confidential or privileged information, but also to support the ethical use of human sources more generally.

Victoria Police has made significant improvements to its human source management processes since its registrations of and interactions with Ms Gobbo. It is now one of the few Australian law enforcement agencies that adopts specific rules and safeguards for the use of human sources involving legal obligations of confidentiality or privilege.

While these improvements are commendable, an internal policy is not sufficient to appropriately govern Victoria Police's use and management of human sources, nor to instil confidence in the Victorian community about the integrity and propriety of its human source management program. The Commission has concluded that legislation is necessary to regulate Victoria Police's registration and management of human sources, and provide clear, enforceable rules about when and how they can be used. This would bring the requirements for Victoria Police's use of human sources into line with those that govern its use of other covert powers and methods.

The proposed human source management legislation needs to permit and facilitate the effective use of sources to gather intelligence, conduct investigations, and prevent, disrupt and detect criminal activity, while simultaneously ensuring that their use is necessary, proportionate, justified and compatible with human rights. It should include specific safeguards for the use of sources who are reasonably expected to have access to confidential or privileged information.

The legislative framework should also incorporate clear, streamlined responsibilities and arrangements for registering human sources, to increase accountability and efficiency in decision making. Rather than dispersing responsibility across multiple people in a committee or business unit, these important decisions should be made by specific officers with the appropriate seniority and experience.

Decisions about the registration of human sources who may access confidential or privileged information should be made by an officer of or above the rank of Assistant Commissioner, informed by legal advice and external, independent input. In the unlikely event that Victoria Police confronts a situation where it wishes to register a source due to a specific intention to obtain or disseminate confidential or privileged information, the legislation should specify that this can only occur if there are exceptional and compelling circumstances; that is, where there is a serious threat to national security, the community, or the life and welfare of a person, and the information cannot be obtained through any other reasonable means.

The Commission does not make the recommendation for a legislative framework lightly. It recognises that Victoria Police may have concerns that such a framework will result in the use of human sources becoming more widely known in the community, or compromise source safety or police methodology. Victoria Police may also be concerned that it will deter officers from using human sources. While these are legitimate concerns, evidence before the Commission—including from law enforcement agencies working under a comparable legislative framework in the United Kingdom—suggests that neither of these risks will eventuate, provided the legislation is appropriately drafted. With this in mind, the Commission urges those drafting the legislation to undertake meaningful consultation with Victoria Police and other relevant stakeholders.

The introduction of legislation will not displace the need for internal policies and procedures. Rather, the Human Source Policy should complement and expand upon legislative requirements and provide officers with practical guidance about why these requirements exist and how to satisfy them. The current Human Source Policy would benefit from the inclusion of a clear set of principles and objectives to support police decision making and actions, and encourage a shared understanding of Victoria Police's expectations for the proper and ethical use of human sources.

The Human Source Policy would also benefit from the inclusion of more comprehensive guidance about human rights, the nature of confidential and privileged information, and the risks of obtaining and disseminating it. This guidance should also be embedded in human source management training.

The Commission also makes recommendations to complement the new legislative and policy framework and strengthen Victoria Police's human source management capability and capacity. These include:

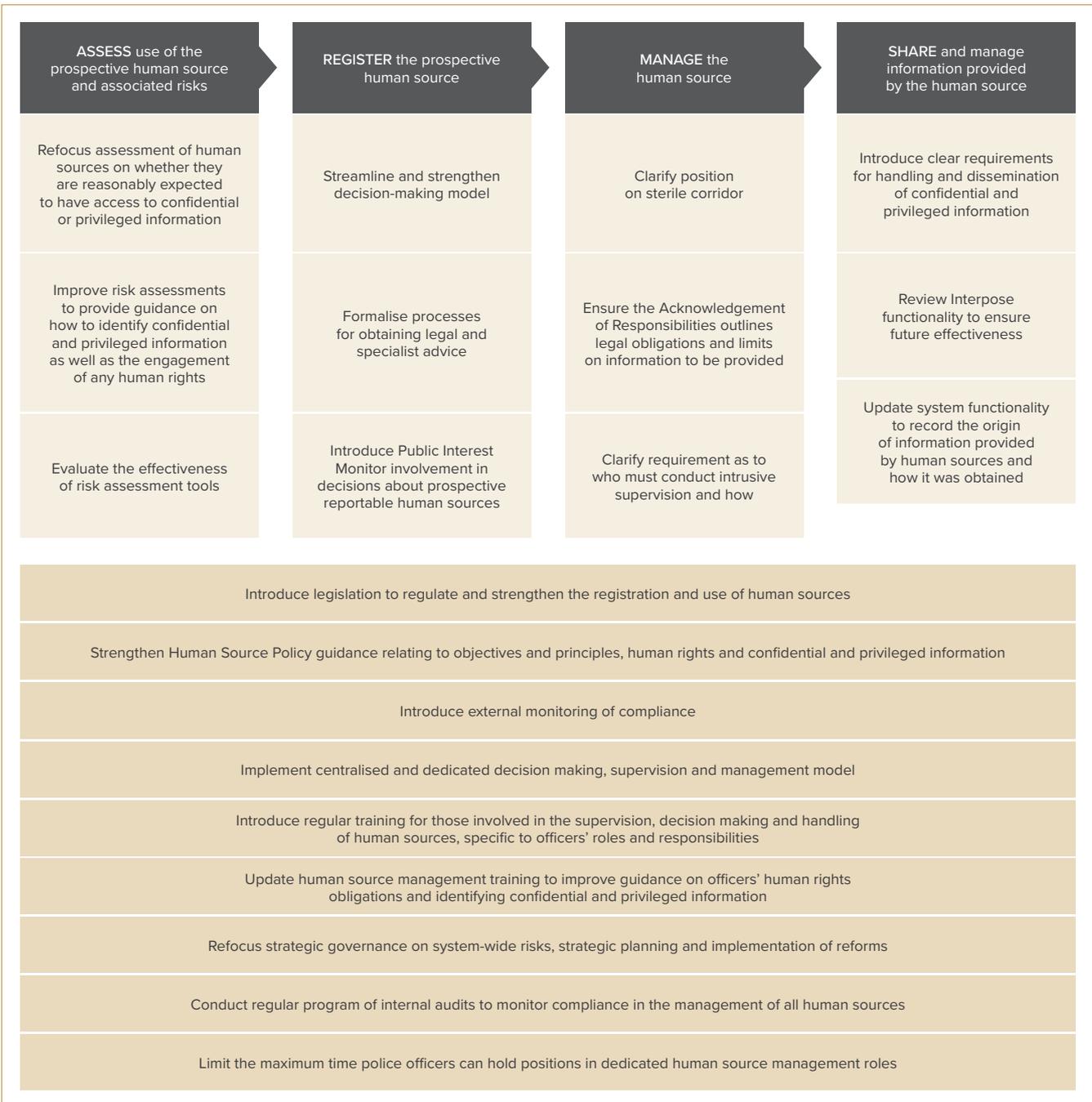
- a centralised organisational model, where all human sources are managed by dedicated source teams reporting directly to central management and by officers with the appropriate skills, training and experience
- ongoing training for officers involved in human source management, to update their knowledge and understanding of policy requirements, and to reinforce and build on their existing skills to manage human sources and the associated risks
- training for senior officers that focuses on effective risk management, supervision, oversight and decision making, to give them the knowledge and skills to effectively supervise and support the officers responsible for the day-to-day management of human sources
- clear instructions and practical guidance about who is responsible for the supervision of officers who manage human sources, why supervision is necessary and how it should be performed in practice
- more emphasis in human source risk assessments on confidential and privileged information, human rights and the risks that the use of a source could pose to the proper administration of justice
- an independent evaluation of risk assessment tools under development or recently implemented by Victoria Police
- formal processes and a reporting framework for compliance audits and monitoring of human source management
- 'maximum time in position' requirements for police officers in dedicated human source management roles, to support officer health and wellbeing, and reduce the risks of corruption and misconduct that can arise in specialist, covert areas of policing.

The Commission also emphasises the importance of diversity in Victoria Police and among its officers who work with and oversee the use of human sources, recognising that the composition of the organisation should reflect that of the Victorian community.

The scale of change recommended by the Commission is significant. This should not discourage Victoria Police. It has already taken steps to improve its human source management framework, which the Commission acknowledges and commends. The Commission's recommendations aim to build on these reforms and existing strengths, and support Victoria Police officers to manage sources lawfully, ethically and even more effectively.

Figure 5 displays the Commission’s recommendations, across each part of the human source management process.

Figure 5: Overview of recommendations to strengthen Victoria Police’s human source management framework



External oversight of Victoria Police's use of human sources

Independent, external oversight encourages police officers to use their significant powers fairly and lawfully, and adhere to high ethical and professional standards, including when they are using covert methods and tactics. It helps to hold officers to account when they act improperly, and supports public trust and confidence in policing.

There is currently no external oversight of Victoria Police's use of human sources beyond IBAC's general jurisdiction to investigate alleged police misconduct and corruption; for example, in response to a complaint from a member of the public or a notification from Victoria Police. It is unlikely, however, that a person other than a human source would complain to IBAC about possible police misconduct relating to human source management, because of the secret nature of the activity and the high risks to a source's safety should their identity become widely known.

In contrast, external oversight regimes exist to monitor and scrutinise Victoria Police's use of other covert powers, methods and functions, such as the use of surveillance devices, telecommunications intercepts, controlled operations, covert search warrants, assumed identities and the admission of a person to witness protection.

As in Victoria, in other Australian states and territories, there are no agencies with specific, dedicated functions to independently oversee police agencies' use of human sources. At the Commonwealth level, the Inspector-General of Intelligence and Security monitors intelligence agencies' operational activities through regular inspections, and reviews their human source management processes and practices to make sure that agency personnel act legally and with propriety, comply with ministerial guidelines and directives, and respect human rights.

In the United Kingdom, the Investigatory Powers Commissioner's Office (IPCO) provides independent oversight of public authorities' use of investigatory powers, including the use of human sources. IPCO monitors authorities' compliance with legislation, codes of practice and relevant policies by undertaking inspections and reviewing human source files. In addition, law enforcement agencies must seek the final approval of an IPCO Judicial Commissioner if they intend to use a human source to obtain legally privileged information.

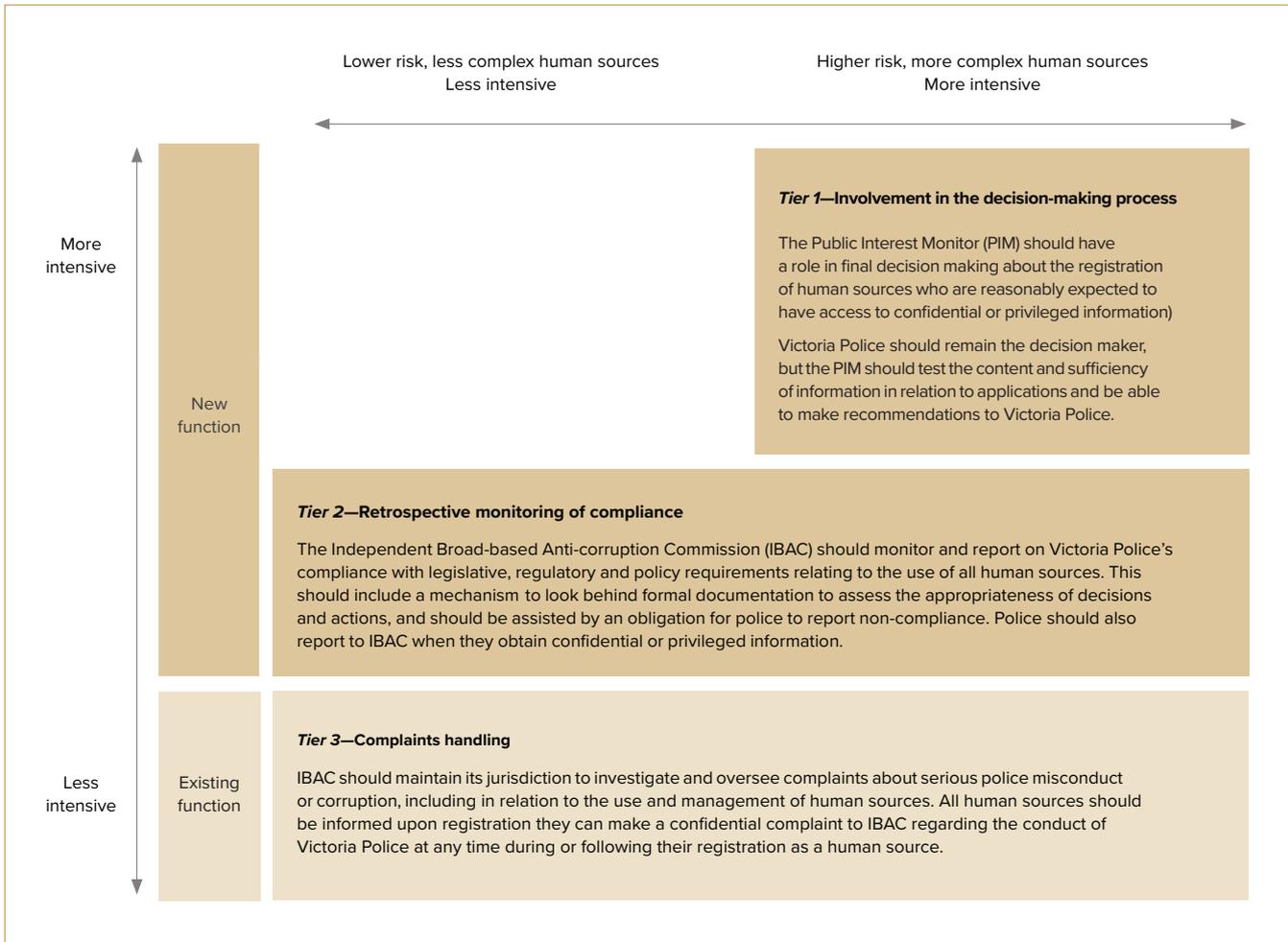
Consistent with the views of stakeholders and other available evidence, the Commission considers that external oversight of Victoria Police's use of human sources would:

- encourage compliance with legal and policy requirements for the registration and use of human sources
- mitigate risks to Victoria Police, human sources and the criminal justice system
- raise policing standards, including by assisting police to balance competing public interests and make ethical decisions
- address a gap in Victoria's current oversight system, noting that other covert police powers and methods are subject to external oversight
- support transparency and improve public confidence in Victoria Police's use of human sources.

While the Commission considers that greater scrutiny is warranted for human sources who might provide confidential or privileged information to Victoria Police, it is also of the view that a broad external oversight function is warranted for all human sources. This recognises the inherent risks and potential intrusiveness of the use of human sources, evidence of historical and ongoing non-compliance with human source management policy requirements among some Victoria Police officers, and the need to assure the community that police manage all human sources ethically and appropriately.

Figure 6 displays the Commission’s recommended model for the external oversight of Victoria Police’s use of human sources.

Figure 6: Proposed external oversight model for Victoria Police’s use of human sources



The Commission recommends a tiered external oversight model, with the nature and intensity of oversight aligned to the level of risk involved. This model consists of three tiers:

- **Tier 1**—Consistent with its role in relation to other police powers and functions, the Public Interest Monitor (PIM) should be involved in Victoria Police’s decisions to register human sources who are reasonably expected to have access to confidential or privileged information. On notification of a proposed registration, the PIM’s role would be to test the content and sufficiency of the material relied on in the registration application and to make submissions or recommendations to Victoria Police, including advice on whether the PIM considers it necessary and proportionate to register the human source.
- **Tier 2**—IBAC should be responsible for monitoring Victoria Police’s compliance with the human source legislative and policy framework. This monitoring function should extend to Victoria Police’s use of all human sources, and should consist of regular inspections and public reporting.
- **Tier 3**—IBAC should retain its existing jurisdiction to investigate complaints about police misconduct and corruption, which may include complaints about Victoria Police’s use and management of human sources.

The Commission also considers that it would be beneficial for the Victorian Government to undertake a principle-based review of the broader police oversight system, with a view to improving the coherence and consistency of this system and encouraging meaningful, outcome-focused monitoring of Victoria Police conduct and compliance.

The use and disclosure of information from human sources in the criminal justice system

Victoria Police's obligations and practices for disclosing information from human sources with legal obligations of confidentiality or privilege are essentially covered by the same laws and policies that regulate the disclosure of human source information more generally in the Victorian criminal justice system.

Police, as part of the prosecution, play a vital role in ensuring that criminal proceedings are conducted fairly. They have several well-defined legal duties to ensure this occurs, including the duty of disclosure. In Victoria, the duty of disclosure comes from a combination of legislation (primarily the *Criminal Procedure Act 2009 (Vic)*), common law and professional guidelines. This duty extends to police because prosecuting authorities are not responsible for investigating matters and can therefore only act on the material police bring to their attention.

The duty of disclosure requires police to give prosecutors and accused persons all material they are aware of that is relevant, or potentially relevant, to an accused person's case. This includes material that may undermine the prosecution case and help the accused person. The duty of disclosure continues even after proceedings related to a prosecution have been finalised.

There are some exceptions to the duty of disclosure, one of which is material protected by PII. The prosecution may refuse to disclose material on the basis of PII when, for example, disclosure of the material is not in the public interest because it may place a person in danger or reveal the identity of a human source. In Victoria, the police, not the prosecutors, are responsible for making PII claims, which are then determined by the courts.

The Commission heard of several challenges associated with the ability of police to fulfil their disclosure obligations, including:

- the complexity and volume of material police obtain in many investigations and their ability to review this material
- the difficulties associated with determining whether material is relevant and needs to be disclosed
- the additional difficulties where the investigation relies on information from human sources and may be subject to PII.

The Commission considers that there is scope to strengthen, clarify and reinforce the legislative regime governing police disclosure obligations. It recommends the introduction of a statutory duty for police to provide the DPP with material and information that might be relevant to either the prosecution or the accused person's case; to notify the DPP of the existence and nature of any material subject to a claim of PII, privilege, legislative immunity or publication restriction; and, when requested, to disclose that material and information to the DPP. It also recommends the introduction of a legislative requirement for Victoria Police to complete a disclosure certificate, to remind officers of their important disclosure obligations and ensure they have disclosed all relevant material to prosecuting authorities in an accountable and transparent way. The certificate would need to describe relevant material not being disclosed due to a claim of PII or some other restriction or exception.

It is important that key stakeholders work together to develop procedures that support Victoria Police to navigate and make decisions about complex disclosure and PII issues. The roles of police and prosecutors are interdependent, and effective communication and consultation is critical to the proper functioning of the criminal justice system.

The Commission recommends that the DPP and Victoria Police jointly establish clearer and more transparent protocols and procedures to facilitate early and effective discussion of complex issues relating to disclosure and PII claims. These protocols and procedures should:

- ensure Victoria Police has adequate and early support, including legal advice, when making complex decisions about relevant and disclosable information that may be subject to PII
- tailor the level of support provided to Victoria Police so that greater support is provided in respect of complex PII and disclosure issues
- ensure the DPP's independence is maintained.

Victoria Police advised the Commission that it is in the process of implementing a range of improvements to disclosure processes and practices, including additional training for officers and a pilot program involving the use of dedicated disclosure officers. While these initiatives look promising, they are in their early stages. The Commission recommends that they be independently reviewed to ensure they are effective and able to achieve sustained and long-term improvements in Victoria Police's disclosure practices.

Organisational improvements also depend on effective leadership, governance and cultural change. To support this, the Commission recommends the establishment of a disclosure governance committee consisting of members from Victoria Police, the Victorian Office of Public Prosecutions and other relevant stakeholders, with responsibility for identifying and monitoring systemic disclosure issues, and overseeing the development and implementation of reforms to improve disclosure practices.

Legal profession regulation

Lawyers have considerable power and authority when representing a client. They have expert knowledge about the law and legal system, and access to their client's confidential information. Their advice and actions can have a direct and significant influence on their client's wellbeing, the outcomes the client is able to achieve, and the client's future. When lawyers deliberately betray their client's trust or act in ways contrary to their client's interests, it can have a devastating impact on the client. It is also, as this inquiry has shown, apt to undermine both the integrity of the criminal justice system and public confidence in the legal profession.

Legal profession regulation exists to protect consumers and the public, and to support the proper administration of justice. Victoria's legal profession regulatory framework consists of legislation, the common law, professional conduct rules, support services and ongoing education. These elements work together, requiring lawyers to demonstrate high standards of ethical and legal practice. When lawyers fail to uphold these standards, complaint, investigation and disciplinary mechanisms act to correct and deter the behaviour.

Due to the limits of the Commission's terms of reference, it has not undertaken a wholesale review of legal profession regulation in Victoria. Rather, it has focused on the specific aspects of legal profession regulation that support the ethical conduct of lawyers, and related issues raised by stakeholders the Commission consulted.

While Victoria's legal profession regulatory framework has changed significantly since Ms Gobbo practised as a lawyer, there is scope to further strengthen and improve aspects of it.

It is important that lawyers fully understand the duty of confidentiality they owe to their clients and their responsibility to maintain appropriate professional boundaries. It would be beneficial to clarify and harmonise these aspects of the professional conduct rules for solicitors and barristers.

Legal ethics education is integral to supporting lawyers' understanding and application of their ethical duties and obligations in practice, as well as their ongoing professional development. Embedding legal ethics education in lawyers' continuing professional development, including through the use of practical, scenario-based learning,

would support them to understand the common ethical issues that can arise in legal practice and enhance their skills to manage those issues. Strengthening awareness of and access to the various ethical supports that are available to lawyers is also important.

When a complaint is made about a lawyer's conduct, it is critical that the processes for investigating it are not only independent, but also seen to be independent. Under the current model, the Victorian Legal Services Commissioner is responsible for the receipt, management and resolution of complaints about the professional conduct of lawyers. The Commissioner delegates some of their powers regarding the conduct of barristers to the Victorian Bar, including the power to investigate complaints against barristers. While this approach has benefits—including the ability to draw on the practical insights and subject matter expertise of the Victorian Bar regarding accepted standards of legal practice and advocacy—it risks a public perception that the model lacks independence, given that another function of the Victorian Bar is to advocate on behalf of its members. Recognising the importance of public confidence in all branches of the legal profession, the Commission recommends that the Victorian Legal Services Commissioner holds sole responsibility for investigating complaints about barristers, so that there is a single, consistent, independent approach to the management of all complaints regarding lawyers in Victoria.

The Commission has also carefully considered the potential benefits and risks of a mandatory requirement for lawyers to report suspected misconduct by other lawyers. While some submitters raised legitimate issues and concerns, the Commission considers that the introduction of such a mandatory reporting requirement would deter misconduct by lawyers, encourage their adherence to high ethical standards, strengthen public confidence in the legal profession, and bring it into line with other professions and fields where mandatory obligations apply, including the health sector and policing.

The Commission also recommends reforms to strengthen the rigour of the legal admission process and to support access to independent legal representation for people in police custody.

Finally, in light of the events that led to this inquiry, the Commission recommends that legal profession regulators and professional associations work together to develop communications material for the public about lawyers' professional and ethical obligations, with the aim of restoring and maintaining public confidence in the legal profession and the broader criminal justice system.

Issues arising during the conduct of the Commission's inquiry

The Commission had both an investigative task, focused on examining events that happened many years ago, and a policy reform task, focused on assessing current policies and processes and identifying ways that they could be improved. Both tasks required the Commission to use its powers under the Inquiries Act and gather information from a range of sources, including from Victoria Police and other law enforcement agencies, statutory bodies and office holders, the courts and government departments.

The Commission's inquiry involved highly sensitive matters that are not typically subject to public scrutiny. There are many good reasons for this. Keeping the identities of human sources confidential is critical to their safety, and not revealing specific details of covert police methods helps to ensure police are not hindered in their efforts to disrupt, prevent and investigate crime. Some sensitive information relevant to the inquiry was specifically covered by the *Witness Protection Act 1991* (Vic) or court suppression orders, which prevented the Commission from publishing the information or referring to it in public hearings.

Accordingly, the nature of many matters examined by the Commission created unavoidable obstacles to accessing, using, sharing and publishing certain information. To a significant degree, the Commission was able to manage and resolve these issues. In many cases, it developed protocols and arrangements that enabled access to, and publication of, relevant information in a way that minimised the legal, operational and safety risks.

As the Inquiries Act is relatively new, having commenced in 2014, this was the first Victorian royal commission that relied heavily on the investigative and coercive powers the legislation provides. This meant the Commission had to tackle novel issues relating to the practical operation of the legislation and its interaction with other areas of law.

The most significant challenge for the Commission related to information subject to PII claims. Under the Inquiries Act, it is a reasonable excuse for a person not to comply with the Commission's power to compel the production of documents on the basis that the information is subject to PII. This legislative exception, combined with the volume of material over which Victoria Police claimed PII and the broad nature of many claims, complicated and delayed the production, review and publication of material. This in turn hindered the Commission's ability to inquire into subject matter relevant to its terms of reference. Accordingly, the Commission recommends amendment of the Inquiries Act to remove the ability to refuse production of material to a royal commission on the basis that the information is subject to PII.

Other potential reforms to improve and modernise the operation of the Inquiries Act include:

- clarifying provisions that exempt certain bodies and persons from the requirement to comply with the coercive powers of a royal commission
- creating a power to compel a person to provide a written statement within a specified timeframe
- enhancing the flexibility of requirements regarding service of notices to attend and produce
- modernising requirements for publishing non-publication or suppression orders made by royal commissions and boards of inquiry.

The Commission faced considerable challenges in relation to document production. In particular, Victoria Police's frequent failure to produce documents in a timely and comprehensive manner—together with its at times narrow view of, and obdurate approach to, the scope of notices to produce—unnecessarily diverted the Commission's resources and impeded the inquiry. Consequently, at the time of finalising the report, the Commission cannot be certain that it received all information from Victoria Police that was relevant to the inquiry. The Commission's findings and recommendations, and the submissions of Counsel Assisting, are based on material that was available to the Commission at the time of writing.

Work beyond the Commission

Because the conduct of Ms Gobbo and Victoria Police has had significant consequences, the Commission has made wide-ranging recommendations directed to various agencies across government, the justice system and the legal profession. Its recommendations fall into three broad categories:

- referrals for investigation to determine whether further action should be taken in relation to the conduct of Ms Gobbo and current and former Victoria Police officers, including prosecution of criminal offences or disciplinary action
- processes to ensure that all potentially affected persons receive timely disclosure of information relevant to their cases
- reforms to laws, policies and procedures governing the use of human sources, disclosure of information in criminal proceedings, and aspects of legal profession regulation.

The Commission considers that, for various reasons, it would be problematic or challenging for the conduct of Ms Gobbo and Victoria Police officers to be examined by existing investigative authorities; that is, Victoria Police or IBAC. Instead, it recommends that the Victorian Government establishes a dedicated Special Investigator with all necessary powers to investigate potential criminal conduct on the part of Ms Gobbo and relevant current and former Victoria Police officers, and any disciplinary breaches by relevant current Victoria Police officers. Like IBAC, a Special Investigator would be separate from and independent of Victoria Police. Unlike IBAC, however, a Special Investigator would be able to investigate the full spectrum of conduct by Victoria Police officers and Ms Gobbo.

The Commission has also made recommendations to facilitate the Special Investigator's access to the Commission's records.

Finally, the Commission recommends the establishment of two key mechanisms to oversee the implementation of its recommendations:

- a cross-agency taskforce to drive and coordinate the careful, effective and timely development and implementation of the recommendations (Implementation Taskforce)
- an independent monitor to assess and report on the status and adequacy of implementation, and to engage closely with the Taskforce as reforms are developed, implemented, embedded and completed (Implementation Monitor).

The Implementation Monitor should report annually to the Attorney-General, or more frequently as needed, on the progress and adequacy of implementation. The Attorney-General should report annually to the Victorian Parliament until implementation is complete.

Recommendations

The Commission's recommendations are detailed in Volumes II, III and IV of the final report.

Together, they aim to ensure that conduct associated with Victoria Police's use of Ms Nicola Gobbo as a human source is thoroughly investigated; to prevent the recurrence of similar events in the future; and to help restore and maintain public confidence in Victoria Police, the legal profession and the criminal justice system.

The Commission has made 111 recommendations, as listed below. Further information about the purpose and context of the recommendations and their rationale is detailed in the Commission's final report.

VOLUME II

The potential effects of Ms Nicola Gobbo's conduct as a human source

RECOMMENDATION 1

That the Victorian Government, immediately after it has established the Special Investigator proposed in Recommendation 92, refers the conduct of Ms Nicola Gobbo to the Special Investigator to investigate whether there is sufficient evidence to establish the commission of a criminal offence or offences connected with her conduct as a human source for Victoria Police.

If the Special Investigator considers that there is sufficient evidence to establish the commission of a criminal offence or offences, they should prepare a brief of evidence for the Victorian Director of Public Prosecutions to determine whether to prosecute.

RECOMMENDATION 2

That the Victorian Bar Council, within three months, considers removing Ms Nicola Gobbo from the Victorian Bar Roll, including by any necessary amendment to the Victorian Bar Constitution.

The conduct of Victoria Police officers

RECOMMENDATION 3

That the Victorian Government, immediately after it has established the Special Investigator proposed in Recommendation 92, refers the conduct of current and former Victoria Police officers named in this report or the complete and unredacted submissions of Counsel Assisting to the Special Investigator to investigate whether there is sufficient evidence to establish the commission of a criminal and/or disciplinary offence or offences connected with Victoria Police's use of Ms Nicola Gobbo as a human source.

If the Special Investigator considers that there is sufficient evidence to establish the commission of a criminal offence or offences, they should prepare a brief of evidence for the Victorian Director of Public Prosecutions to determine whether to prosecute.

If the Special Investigator considers that there is sufficient evidence to establish the commission of a disciplinary offence or offences, they should deal with those matters in accordance with Recommendation 99.

RECOMMENDATION 4

That the Chief Commissioner of Victoria Police, within three months:

- a. takes steps to ensure that Victoria Police's organisational and executive structure enables the role of Executive Director, Legal Services to provide independent legal advice to Victoria Police Executive Command (or creates an alternative senior legal advisory role for this purpose)
- b. considers whether limits should be placed on the maximum time a person may spend in the position of Executive Director, Legal Services (or any alternative senior role created within Victoria Police for the purpose of providing independent legal advice to Executive Command).

Victoria Police's conduct: systemic issues and causal factors

RECOMMENDATION 5

That Victoria Police provides monthly progress reports to the Implementation Taskforce proposed in Recommendation 107, regarding its progress in fulfilling its ongoing disclosure obligations to potentially affected persons identified by the Commission. These reports should also be made available to the Implementation Monitor proposed in Recommendation 108.

VOLUME III

Victoria Police's use of other human sources with legal obligations of confidentiality or privilege

RECOMMENDATION 6

That the Victorian Government, within three months, appoints a suitably qualified and independent person to review the 11 Victoria Police human source files subject to a claim of public interest immunity. The appointed person should have full and unfettered access to the human source files and report to the Attorney-General, the Minister for Police and the Chief Commissioner of Victoria Police on whether:

- a. any of the human sources provided information to Victoria Police in possible breach of their legal obligations of confidentiality or privilege
- b. any confidential or privileged information provided by the human sources was used or disseminated by Victoria Police
- c. a referral should be made to the Victorian Director of Public Prosecutions and/or Commonwealth Director of Public Prosecutions for further consideration, if there is evidence to suggest a prosecution or conviction was based on information improperly obtained by Victoria Police or may have been affected by the non-disclosure of relevant evidence.

Victoria Police's implementation of the Kellam Report recommendations

RECOMMENDATION 7

That Victoria Police, within three months and consistent with its *Capability Plan 2016–2025*, establishes clear processes for the review and amendment of human source management policies and procedures, including processes for:

- a. seeking and incorporating operational input from police officers involved in human source management
- b. disseminating and communicating policy and procedural changes so that all relevant officers receive timely and accurate advice about impending change
- c. reviewing and evaluating policies and procedures on an annual basis to ensure its human source management practices are responsive to emerging risks, changes to the operating environment and changes to any relevant legislation; and are consistent with Victoria Police's human rights obligations under the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

Victoria Police's processes for the use and management of human sources involving legal obligations of confidentiality or privilege

RECOMMENDATION 8

That the Victorian Government, within two years, implements legislation for Victoria Police's registration, use and management of human sources, to provide a clear framework for police to obtain and use information from human sources and to ensure they are used in an ethical and justifiable manner.

RECOMMENDATION 9

That the Victorian Government, in developing the legislation for Victoria Police's registration, use and management of human sources, makes it an offence to disclose information relating to a human source without authorisation (including information that a human source provided or was tasked to provide, and information about the identity of a human source and their registration and management).

RECOMMENDATION 10

That the Victorian Government, in developing the legislation for Victoria Police's registration, use and management of human sources, defines 'reportable human sources' as a class of people who are prospective or registered human sources and who are reasonably expected to have access to confidential or privileged information.

RECOMMENDATION 11

That the Victorian Government, in developing the legislation for Victoria Police's registration, use and management of human sources, establishes clear decision-making arrangements that demonstrate alignment between the seniority of the decision maker and the level of risk posed by the registration of human sources. The legislation should:

- a. empower the Chief Commissioner of Victoria Police to register human sources to assist in gathering criminal intelligence and/or investigating criminal activity
- b. permit the Chief Commissioner to delegate the power to register reportable human sources to an officer of or above the rank of Assistant Commissioner and non-reportable human sources to an officer of or above the rank of Superintendent
- c. require that an application for the registration of a prospective human source must be authorised by the Chief Commissioner or their delegate before the person can be used as a human source.

RECOMMENDATION 12

That the Victorian Government, in developing the legislation for Victoria Police's registration, use and management of human sources, requires the Chief Commissioner of Victoria Police or their delegate to be satisfied that in registering any human source, the registration is appropriate and justified, including that:

- a. the use of the person as a human source is necessary to achieve a legitimate law enforcement objective and is proportionate to that objective
- b. the risks associated with the person's registration have been identified and can be adequately managed.

RECOMMENDATION 13

That the Victorian Government, in developing the legislation for Victoria Police's registration, use and management of human sources:

- a. empowers the Chief Commissioner of Victoria Police or their delegate to impose conditions in respect of the registration of any human source
- b. requires the Chief Commissioner or their delegate to determine the period that a human source may be registered
- c. requires the Chief Commissioner or their delegate to determine the frequency with which the registration of a human source should be reviewed.

RECOMMENDATION 14

That the Victorian Government, in developing the legislation for Victoria Police's registration, use and management of human sources, requires that a prospective human source who is reasonably expected to have access to information that would be confidential or privileged but for an exception to the duty of confidentiality or privilege, should for the purpose of the human source registration process be treated as though they are a reportable human source.

RECOMMENDATION 15

That the Victorian Government, in developing the legislation for Victoria Police's registration, use and management of human sources, requires that:

- a. the Chief Commissioner of Victoria Police or their delegate must consider formal legal advice before deciding to register a reportable human source
- b. the Chief Commissioner or their delegate must have regard to any recommendations or submissions on the proposed registration that the Public Interest Monitor has made before deciding to register a reportable human source.

RECOMMENDATION 16

That the Victorian Government, in developing the legislation for Victoria Police's registration, use and management of human sources:

- a. requires that the Chief Commissioner of Victoria Police or their delegate must be satisfied that there are exceptional and compelling circumstances to justify the registration of a human source where Victoria Police intends to obtain or disseminate confidential or privileged information from that person
 - b. provides that 'exceptional and compelling circumstances' be defined as circumstances where there is a serious threat to national security, the community or the life and welfare of a person; and where the information cannot be obtained through any other reasonable means
 - c. requires that the Chief Commissioner or their delegate must consider formal legal advice before deciding to register a human source with the intention to obtain or disseminate confidential or privileged information from that person
 - d. requires that the Chief Commissioner or their delegate must have regard to any recommendations or submissions on the proposed registration that the Public Interest Monitor has made before deciding to register a human source with the intention to obtain or disseminate confidential or privileged information from that person.
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RECOMMENDATION 17

That the Victorian Government, in developing the legislation for Victoria Police's registration, use and management of human sources, requires that where a reportable or non-reportable human source provides confidential or privileged information to police that was not expected or authorised at the time of their registration as a human source:

- a. Victoria Police must quarantine the confidential or privileged information
 - b. Victoria Police must cancel the registration and commence a new application (if Victoria Police considers it necessary to continue using the person as a human source), in line with Recommendations 11, 15 and 16.
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RECOMMENDATION 18

That the Victorian Government, in developing the legislation for Victoria Police's registration, use and management of human sources, allows the Chief Commissioner of Victoria Police or their delegate to make an emergency authorisation of a reportable human source. This power should only be used in circumstances where: there is a serious threat to national security, the community, or the life and welfare of a person; the threat is imminent; and the information is not able to be obtained through any other reasonable means.

RECOMMENDATION 19

That Victoria Police, within 12 months, implements changes to its decision-making model and associated requirements in the Human Source Policy, on an interim basis until the legislation proposed in Recommendation 8 comes into force. The Human Source Policy should:

- a. provide that the Assistant Commissioner, Intelligence and Covert Support Command, is responsible for decisions to register Category 1–3 human sources and to disseminate confidential or privileged information obtained from any human source
 - b. provide that the Central Source Registrar is responsible for the registration of human sources other than Category 1–3 human sources
 - c. require the Assistant Commissioner to consider formal legal advice in deciding whether to authorise the registration of a Category 1 human source or to disseminate confidential or privileged information, and to consider other specialist advice as required in deciding whether to register a Category 2 or 3 human source
 - d. replace the requirement for officers to seek approval from the Human Source Ethics Committee to ‘approach’ a prospective Category 1–3 human source with a requirement for the handling team to consult with the Human Source Management Unit before approaching such a prospective source
 - e. remove Category 4 human sources as a separate category under the Human Source Policy.
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RECOMMENDATION 20

That Victoria Police, within 12 months:

- a. implements changes to its Human Source Policy to include a statement of the organisation’s objectives and guiding principles for the registration, use and management of human sources, including but not limited to principles of integrity, necessity and proportionality, accountability, effectiveness, consistency, and safety and sensitivity
 - b. obtains operational input to inform the development of these objectives, principles and associated guidance.
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RECOMMENDATION 21

That Victoria Police, within 12 months, implements changes to its Human Source Policy to provide practical examples of the ways in which human source management can engage and limit the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006* (Vic), and guidance for police officers in considering whether the use of a human source is necessary and proportionate.

RECOMMENDATION 22

That Victoria Police, within 12 months, implements changes to its Human Source Policy to provide practical guidance to assist police officers to identify potentially confidential or privileged information. This guidance should include advice and examples relating to:

- a. the types of occupations and professional relationships that attract legal obligations of confidentiality or privilege
- b. the exceptions to legal obligations of confidentiality or privilege and when these may apply
- c. the implications of using confidential or privileged information, including the potentially adverse consequences for any resulting investigations, prosecutions or convictions
- d. when and how to seek further advice, including from the Human Source Management Unit.

Victoria Police should seek legal advice from its Legal Services Department or the Victorian Government Solicitor's Office in developing this guidance.

RECOMMENDATION 23

That Victoria Police, within 12 months, implements changes to its Human Source Policy to provide clear requirements and instructions to police officers on the use and handling of confidential and privileged information, including in relation to the quarantine, retention, dissemination and destruction of such information.

RECOMMENDATION 24

That Victoria Police, within 12 months, implements changes to its Human Source Policy to require that:

- a. when dealing with human sources involving legal obligations of confidentiality or privilege, the Acknowledgement of Responsibilities must clearly set out any limitations on the information a human source can provide
 - b. police officers must not actively, without appropriate authority, seek information from a human source that would cause the human source to breach a legal obligation of confidentiality or privilege.
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RECOMMENDATION 25

That Victoria Police, within 12 months, implements changes to its Human Source Policy to provide clear instructions and practical guidance on the circumstances in which it may be appropriate to dispense with the requirement for a sterile corridor and the measures that officers should adopt to manage the associated risks.

RECOMMENDATION 26

That Victoria Police, within two years, establishes an organisational model for the registration, use and management of human sources that provides for:

- a. the management of all human sources by dedicated source teams
 - b. centralised internal oversight of the management of human sources by the Human Source Management Unit, the Central Source Registrar and the Assistant Commissioner, Intelligence and Covert Support Command.
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RECOMMENDATION 27

That Victoria Police, within two years, removes the roles of Officer in Charge and Local Source Registrar from its decision-making process and organisational model for the registration, use and management of human sources.

RECOMMENDATION 28

That Victoria Police, within two years, introduces requirements limiting the maximum time that police officers can hold positions within dedicated source teams and the Human Source Management Unit to five years.

RECOMMENDATION 29

That Victoria Police, within two years:

- a. develops a prevention and detection strategy to mitigate the risk of misconduct and corruption that may arise from the implementation of a centralised and dedicated human source management model, taking into account the Commission's findings and those of previous inquiries
 - b. ensures that this strategy is regularly reviewed and refined as part of Victoria Police's strategic management of this high-risk area of policing.
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RECOMMENDATION 30

That Victoria Police, within 12 months and as part of its current work to improve its human source risk assessments, develops guidance on how to assess:

- a. the source and nature of information reasonably expected to be provided by a human source, to identify whether that information could be confidential or privileged
- b. the risks that the use of a human source could pose to the proper administration of justice
- c. the engagement of any human rights set out in the *Charter of Human Rights and Responsibilities Act 2006* (Vic), including how any limitation is reasonable, necessary and proportionate in the circumstances.

RECOMMENDATION 31

That Victoria Police, within three years, engages an independent expert to evaluate and report on the effectiveness of its new human source management risk assessment tools, to determine whether they support effective identification and management of risks.

RECOMMENDATION 32

That Victoria Police, within 12 months, implements changes to its Human Source Policy to provide clear instructions and practical guidance about who is responsible for supervision of the handling team, why effective supervision is necessary and how it should be applied in practice.

RECOMMENDATION 33

That Victoria Police, within 12 months, develops guidance in its human source management training to assist police officers to identify confidential and privileged information, focusing on the origin of information and circumstances in which such information could be provided to police, including:

- a. how to identify potential legal obligations of confidentiality or privilege through the risk assessment process
- b. how to manage any professional conflicts of interest that may arise for a human source with legal obligations of confidentiality or privilege.

Victoria Police should seek legal advice from its Legal Services Department or the Victorian Government Solicitor's Office in developing this training material.

RECOMMENDATION 34

That Victoria Police, within 12 months, develops guidance in its human source management training on:

- a. the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* that are generally engaged by the management of human sources, including the right to life, the right to privacy and the right to a fair hearing
- b. how to assess whether the use of a human source unreasonably limits the human rights of the source or other people.

Victoria Police should seek input from the Victorian Equal Opportunity and Human Rights Commission in developing and delivering this training.

RECOMMENDATION 35

That Victoria Police, within 12 months, develops and implements training for controllers, the Human Source Management Unit, the Central Source Registrar and the Assistant Commissioner, Intelligence and Covert Support Command, focused on effective risk management, supervision, oversight and decision making in respect of the use of human sources. This training should include guidance on identifying confidential and privileged information, and the circumstances in which such information could be provided to police.

RECOMMENDATION 36

That Victoria Police, within 12 months, requires all handlers and controllers to successfully complete intermediate human source management training at a minimum.

RECOMMENDATION 37

That Victoria Police, within 12 months, introduces requirements for mandatory annual human source management training for all police officers with human source management responsibilities and timely training associated with any significant policy or legislative changes.

RECOMMENDATION 38

That Victoria Police, within 12 months, enhances Interpose or develops some other system for recording details of the origin of information provided by human sources and how it was obtained.

RECOMMENDATION 39

That Victoria Police, within 12 months, reviews the broader functionality of Interpose to ensure that it will support the effective implementation of the Commission's recommendations.

RECOMMENDATION 40

That Victoria Police, within 12 months, implements changes to its Human Source Policy and associated processes to:

- a. provide for six-monthly compliance audits of human source files at all risk levels by the Compliance and Risk Management Unit within the Intelligence and Covert Support Command
 - b. clearly set out the compliance monitoring functions of both the Compliance and Risk Management Unit and the Human Source Management Unit.
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RECOMMENDATION 41

That Victoria Police, within 12 months, implements changes to its Human Source Policy and associated processes to require that:

- a. the results of human source management audits be reported to the Assistant Commissioner, Intelligence and Covert Support Command
- b. any system-wide risks or major failings that are identified through human source management audits be reported to the Victoria Police Audit and Risk Committee.

RECOMMENDATION 42

That Victoria Police, within three months, establishes a strategic governance committee to:

- a. contribute to the development, and oversee Victoria Police's implementation of, the human source management reforms recommended by the Commission
 - b. identify, address and monitor emerging risks, issues and opportunities in Victoria Police's human source management program and provide strategic advice to the Assistant Commissioner, Intelligence and Covert Support Command and Deputy Commissioner, Specialist Operations
 - c. be responsible for strategic planning for Victoria Police's human source management program.
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RECOMMENDATION 43

That the Victorian Government ensures Victoria Police is appropriately funded and resourced to implement the Commission's recommendations.

External oversight of Victoria Police's use of human sources

RECOMMENDATION 44

That the Victorian Government, within two years, implements legislation for external oversight of Victoria Police's registration, use and management of all human sources.

RECOMMENDATION 45

That the Victorian Government, in developing legislation for external oversight of Victoria Police's registration, use and management of human sources, adopts a model comprised of the following three tiers:

- a. The Public Interest Monitor should be involved in Victoria Police's decision-making process for registering reportable human sources.
- b. The Independent Broad-based Anti-corruption Commission should retrospectively monitor Victoria Police's compliance with the human source management framework recommended by the Commission, including the proposed legislation, any regulations, Victoria Police's Human Source Policy and related procedures.
- c. The Independent Broad-based Anti-corruption Commission should continue to receive, handle and investigate complaints about Victoria Police, including any complaints about Victoria Police's use of human sources.

RECOMMENDATION 46

That the Victorian Government, in developing legislation for external oversight of Victoria Police's registration, use and management of human sources, provides the Public Interest Monitor with the following legislative functions in relation to Victoria Police applications to register reportable human sources:

- a. test the sufficiency and adequacy of information relied on by Victoria Police in its application to register a reportable human source
- b. ask questions of any person giving information about the application
- c. assess the appropriateness of, and make recommendations or submissions on, the application to the Chief Commissioner of Victoria Police or their delegate
- d. such other functions as considered necessary or appropriate.

RECOMMENDATION 47

That the Victorian Government, in developing legislation for external oversight of Victoria Police's registration, use and management of human sources, provides the Public Interest Monitor with all necessary and reasonable powers required to fulfil its functions under the new legislation, including the power to:

- a. request, access and receive relevant documents, information or other material from Victoria Police
- b. require the Chief Commissioner of Victoria Police or other relevant Victoria Police personnel to answer questions relevant to an application to register a reportable human source
- c. make recommendations to the Chief Commissioner or their delegate regarding Victoria Police's decisions relating to human sources
- d. refer to the Chief Commissioner for reconsideration a delegate's decision not to accept a recommendation of the Public Interest Monitor relating to an application to register a reportable human source.

RECOMMENDATION 48

That the Victorian Government, in developing legislation for external oversight of Victoria Police's registration, use and management of human sources, empowers the Public Interest Monitor to make retrospective submissions or recommendations to the Chief Commissioner of Victoria Police or their delegate about the adequacy of any decisions made or actions taken by Victoria Police in relation to an emergency authorisation (made in line with the process proposed in Recommendation 18).

RECOMMENDATION 49

That the Victorian Government, in developing legislation for external oversight of Victoria Police's registration, use and management of human sources, requires the Public Interest Monitor to:

- a. report to the Attorney-General annually on, among other things, the performance of its legislative functions, Victoria Police's acceptance or rejection of its recommendations and its views about the adequacy of actions taken by Victoria Police
- b. provide special reports to the Attorney-General on other occasions if it deems necessary, or on the Attorney-General's request
- c. provide copies of these annual and special reports to the Minister for Police and the Chief Commissioner of Victoria Police.

RECOMMENDATION 50

That the Victorian Government, in developing legislation for external oversight of Victoria Police's registration, use and management of human sources, requires the Attorney-General to:

- a. table in the Victorian Parliament annual and special reports prepared by the Public Interest Monitor
- b. cause the reports to be published on a Victorian Government website, subject to any redactions that the Public Interest Monitor considers necessary on safety and security grounds.

RECOMMENDATION 51

That the Victorian Government, in developing legislation for external oversight of Victoria Police's registration, use and management of human sources, provides that the Chief Commissioner of Victoria Police has obligations to:

- a. notify the Public Interest Monitor of any application to register a reportable human source
- b. provide all information relevant to the application, whether supportive or adverse, to the Public Interest Monitor
- c. ensure that any relevant Victoria Police personnel provide information and answer questions relevant to an application when requested by the Public Interest Monitor
- d. provide the Public Interest Monitor with all information relevant to an emergency authorisation of a reportable human source and a report explaining why the circumstances were exceptional and compelling and why the threat was imminent
- e. respond to the Public Interest Monitor within a reasonable time after a recommendation has been made as to whether the recommended action has been or will be taken, or provide reasons as to why the recommendation is not accepted
- f. ensure that Victoria Police personnel provide all reasonable assistance to support the Public Interest Monitor in the performance of its functions.

RECOMMENDATION 52

That the Victorian Government, in developing legislation for external oversight of Victoria Police's registration, use and management of human sources, provides the Independent Broad-based Anti-corruption Commission with legislative functions to:

- a. monitor Victoria Police's compliance with the human source management framework recommended by the Commission
 - b. conduct inspections of Victoria Police human source records at least once every six months
 - c. receive and consider reports from Victoria Police regarding material breaches of compliance with, or material deviations from, the human source management framework
 - d. receive and consider reports from Victoria Police regarding its management of confidential or privileged information obtained from a human source
 - e. make findings and recommendations to the Chief Commissioner of Victoria Police.
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RECOMMENDATION 53

That the Victorian Government, in developing legislation for external oversight of Victoria Police's registration, use and management of human sources, provides the Independent Broad-based Anti-corruption Commission with all necessary and reasonable powers required to fulfil its legislative functions, including the power to:

- a. enter any Victoria Police premises, after notifying the Chief Commissioner of Victoria Police
 - b. have full and free access to Victoria Police human source records and systems
 - c. make copies of records, in accordance with appropriate security measures
 - d. request Victoria Police personnel to answer questions and provide documents
 - e. request further inspection outside the legislative inspection period to monitor and assess Victoria Police's implementation of any of its recommendations
 - f. do any other thing reasonably necessary to discharge its legislative functions effectively.
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RECOMMENDATION 54

That the Victorian Government, in developing legislation for external oversight of Victoria Police's registration, use and management of human sources, provides that the Chief Commissioner of Victoria Police has obligations to:

- a. report regularly (every three or six months) to the Independent Broad-based Anti-corruption Commission on any material breach of, or material deviation from, the human source management framework recommended by the Commission, and explain the circumstances of that breach and steps taken or planned to rectify the breach and prevent it recurring
- b. report regularly (every three or six months) to the Independent Broad-based Anti-corruption Commission on confidential or privileged information that Victoria Police has obtained from any human source and how that information has been or will be dealt with
- c. respond in writing within a reasonable time of receiving a recommendation of the Independent Broad-based Anti-corruption Commission, either to accept the recommendation or explain why it has not been accepted
- d. implement a recommendation of the Independent Broad-based Anti-corruption Commission within a reasonable time of receiving and accepting it
- e. ensure that Victoria Police personnel provide all reasonable assistance to the Independent Broad-based Anti-corruption Commission in the performance of its functions.

RECOMMENDATION 55

That the Victorian Government, in developing legislation for external oversight of Victoria Police's registration, use and management of human sources, requires the Independent Broad-based Anti-corruption Commission to:

- a. report to the Attorney-General annually on, among other things, the performance of its legislative functions and Victoria Police's compliance with the human source management framework recommended by the Commission
 - b. provide special reports to the Attorney-General on other occasions if the Independent Broad-based Anti-corruption Commission deems necessary, or on the Attorney-General's request
 - c. provide copies of these annual and special reports to the Minister for Police and the Chief Commissioner of Victoria Police.
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RECOMMENDATION 56

That the Victorian Government, in developing legislation for external oversight of Victoria Police's registration, use and management of human sources, requires the Attorney-General to:

- a. table in the Victorian Parliament annual and special reports prepared by the Independent Broad-based Anti-corruption Commission
 - b. cause the reports to be published on a Victorian Government website, subject to any redactions that the Independent Broad-based Anti-corruption Commission considers necessary on safety and security grounds.
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RECOMMENDATION 57

That Victoria Police, within three months, implements changes to its Human Source Policy to require that all human sources are informed upon registration that they are able to make complaints to the Independent Broad-based Anti-corruption Commission, which may be confidential if they wish.

RECOMMENDATION 58

That the Victorian Government, in developing legislation for external oversight of Victoria Police's registration, use and management of human sources, allows the Public Interest Monitor and Independent Broad-based Anti-corruption Commission to securely share information relevant to their respective legislative functions regarding Victoria Police's use and management of human sources.

RECOMMENDATION 59

That the Public Interest Monitor and the Independent Broad-based Anti-corruption Commission, within two years and prior to the commencement of the proposed new legislation for external oversight of Victoria Police's registration, use and management of human sources, implement appropriate security protocols and infrastructure to securely receive, share, store and dispose of sensitive human source information.

RECOMMENDATION 60

That the Victorian Government, within two years, ensures that the Public Interest Monitor, Independent Broad-based Anti-corruption Commission and Victoria Police are appropriately funded and resourced to undertake the additional legislative functions and fulfil associated obligations that the Commission has recommended for the external oversight of the use of human sources.

RECOMMENDATION 61

That the Victorian Government, within two years, undertakes a review of institutional and legislative structures for the oversight of Victoria Police's exercise of powers, to ensure that Victoria's police oversight system is consistent and coherent and contributes to improved police accountability, including through outcome-focused monitoring of police decisions and actions.

VOLUME IV

Use and disclosure of information from human sources in the criminal justice system

RECOMMENDATION 62

That the Victorian Government, within 12 months, introduces a legislative requirement for the responsible Victoria Police officer to:

- a. provide the Victorian Director of Public Prosecutions with all material obtained during an investigation that may be relevant to either the prosecution or the accused person's case, except for material that is subject to a claim of privilege, public interest immunity, a legislative immunity or publication restriction
 - b. notify the Director of the existence and nature of any material subject to a claim of privilege, public interest immunity, a legislative immunity or publication restriction
 - c. where requested, provide the Director with any material subject to a claim of privilege, public interest immunity, legislative immunity or publication restriction.
-

RECOMMENDATION 63

That the Victorian Government, within 12 months, introduces a legislative requirement for Victoria Police to complete a disclosure certificate in summary proceedings when a full brief is served and in indictable proceedings when a hand-up brief is served, which describes:

- a. relevant material not contained in the brief of evidence that is subject to a claim of privilege, public interest immunity, a legislative immunity or publication restriction
- b. the nature of the privilege or immunity claim or publication restriction in relation to each item.

A copy of the disclosure certificate should be provided to the Victorian Director of Public Prosecutions and served on accused persons.

RECOMMENDATION 64

That Victoria Police, within 12 months, amends its internal policies and procedures to align with the legislative changes proposed in Recommendations 62 and 63. These amendments should include guidance for the responsible Victoria Police officer on disclosure obligations and how to describe withheld materials in the proposed disclosure certificate.

Victoria Police should consult with the Victorian Director of Public Prosecutions in developing these amendments.

RECOMMENDATION 65

That the Victorian Director of Public Prosecutions, within 12 months, amends the *Policy of the Director of Public Prosecutions for Victoria* to align it with the legislative changes proposed in Recommendations 62 and 63.

RECOMMENDATION 66

That the Victorian Government, within 12 months, amends sections 41(e) and 110(e) of the *Criminal Procedure Act 2009* (Vic) to clarify that any information, document or thing that is relevant to an alleged offence includes any material relevant to the credibility of a prosecution witness.

RECOMMENDATION 67

That the Victorian Government, within six months, in consultation with the Victorian Director of Public Prosecutions, Victoria Police, the Victorian courts, Victoria Legal Aid and other relevant stakeholders:

- a. reviews the adequacy of existing court powers to make non-disclosure orders
 - b. considers whether a legislative power should be introduced to empower Victoria Police and/or the Director to initiate applications for a court to determine public interest immunity claims without giving notice to an accused person.
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RECOMMENDATION 68

That the Victorian Director of Public Prosecutions, Victoria Police, the Victorian Government Solicitor's Office and any other relevant stakeholders work together to establish clear protocols and procedures, within 12 months, to facilitate effective engagement with, and resolution of, complex issues arising from disclosure obligations and public interest immunity claims.

These protocols and procedures should:

- a. ensure Victoria Police has adequate and early support, including legal advice, when making complex decisions about relevant and disclosable information that may be subject to public interest immunity
- b. tailor the level of support provided to Victoria Police, to enable greater support in cases involving complex public interest immunity and disclosure issues
- c. ensure the Director's independence is maintained and potential conflicts of interest are avoided.

RECOMMENDATION 69

That the Victorian Director of Public Prosecutions, within 12 months, amends the *Policy of the Director of Public Prosecutions for Victoria* to provide appropriate guidance on when and how the Director can be consulted by Victoria Police in relation to complex issues arising from disclosure obligations and public interest immunity claims. These amendments should reflect the protocols and procedures proposed in Recommendation 68.

RECOMMENDATION 70

That Victoria Police, within 12 months, amends its internal policies and procedures to provide appropriate guidance on when and how Victoria Police can consult the Victorian Director of Public Prosecutions in relation to complex issues arising from disclosure obligations and public interest immunity claims. These amendments should reflect the protocols and procedures proposed in Recommendation 68 and the need for police officers to obtain early legal advice when potentially complex disclosure and public interest immunity issues arise; and provide a clear framework for seeking that advice.

RECOMMENDATION 71

That Victoria Police, within six months, implements the measures it has proposed to improve training and support for police officers regarding their disclosure obligations, across all levels of the organisation.

RECOMMENDATION 72

That Victoria Police commissions two independent reviews of the measures implemented in Recommendation 71, to ensure that they adequately reflect any applicable changes to law and policy and are effective in improving police officers' understanding of their disclosure obligations. The reviews should be undertaken as follows:

- a. an initial independent external review within two years of implementation
 - b. an additional independent external review within five years of the initial review.
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RECOMMENDATION 73

That Victoria Police commissions two independent reviews of the implementation of its dedicated disclosure officer initiative, to ensure that it is effective in improving disclosure processes and practices. The reviews should be undertaken as follows:

- a. an initial independent external review within two years of implementation
- b. an additional independent external review within five years of the initial review.

RECOMMENDATION 74

That Victoria Police, within six months, reviews the information management systems it relies on to fulfill its disclosure obligations, to assess with specificity:

- a. the extent to which the implementation of recent system reforms will enable Victoria Police to fulfil its disclosure obligations adequately
- b. remaining system gaps and issues
- c. system functionality needed to address any identified gaps and issues
- d. investment requirements to develop and implement any additional system functionality needed.

RECOMMENDATION 75

That Victoria Police, within three months, establishes a disclosure governance committee that has responsibility for identifying and monitoring systemic disclosure issues and overseeing the development and implementation of reforms to improve disclosure processes and practices.

The committee's membership should consist of stakeholders with expertise in policing, disclosure, public interest immunity and the conduct of criminal prosecutions, including the Victorian Office of Public Prosecutions, the Victorian Government Solicitor's Office, the Department of Justice and Community Safety, Victoria Legal Aid and any other relevant legal profession representatives.

Legal profession regulation

RECOMMENDATION 76

That the Victorian Legal Services Board and Commissioner, the Law Institute of Victoria and the Victorian Bar work with community legal services and Victoria Legal Aid to, within six months, prepare and distribute communications aimed at restoring and promoting public and client confidence in the legal profession. These communications should:

- a. educate clients and the public on lawyers' ethical duties and obligations, particularly in relation to confidentiality, conflicts of interest and legal professional privilege
- b. inform clients and the public about where they can seek help or advice regarding concerns they may have about their lawyer.

RECOMMENDATION 77

That the Victorian Government, within six months, considers whether the Victorian Legal Admissions Board requires any additional powers to request and consider documentation from other agencies for the purpose of assessing applications for admission to the legal profession.

If such powers are conferred in Victoria, a Council of Attorneys-General working group should consider whether a harmonised approach could be adopted in all Australian jurisdictions.

RECOMMENDATION 78

That the Legal Services Council, Law Council of Australia and Australian Bar Association work together to, within 12 months, clarify and harmonise the duty of confidentiality and its exceptions, as contained in the Solicitors' Conduct Rules and the Barristers' Conduct Rules.

RECOMMENDATION 79

That the Law Council of Australia, within 12 months, updates the commentary to the Solicitors' Conduct Rules in relation to the duty of confidentiality and its exceptions, to include guidance on:

- a. the factors to be considered when assessing whether a disclosure of confidential information is justified
 - b. where and how a solicitor can obtain advice on ethics when considering making a disclosure
 - c. steps to be taken to document the actions taken by a solicitor regarding the information received and the disclosure made
 - d. any further actions that a solicitor should take when considering making a disclosure.
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RECOMMENDATION 80

That the Victorian Bar, within 12 months, prepares guidance in relation to the duty of confidentiality and its exceptions, including:

- a. the factors to be considered when assessing whether a disclosure of confidential information is justified
 - b. where and how a barrister can obtain advice on ethics when considering making a disclosure
 - c. steps to be taken to document the actions taken by a barrister regarding the information received and the disclosure made
 - d. any further actions that a barrister should take when considering making a disclosure.
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RECOMMENDATION 81

That the Victorian Bar, within six months, develops ethics guidance on specific conflict of interest issues and scenarios that can arise for criminal defence barristers.

The Victorian Bar should prepare this guidance in consultation with the Criminal Bar Association, Victoria Legal Aid and other relevant stakeholders.

RECOMMENDATION 82

That the Law Council of Australia, within 12 months, includes specific guidance on maintaining appropriate professional boundaries in the commentary to the Solicitors' Conduct Rules.

RECOMMENDATION 83

That the Victorian Bar, within 12 months, develops specific guidance for barristers on maintaining appropriate professional boundaries.

RECOMMENDATION 84

That the Victorian Legal Services Board and Commissioner, within six months, issues clear guidance about how legal ethics education should be embedded in the four compulsory fields of continuing professional development, including through the use of practical, scenario-based learning.

RECOMMENDATION 85

That the Legal Services Council, Law Council of Australia and Australian Bar Association work together to, within 12 months, harmonise the powers held by local regulatory authorities through the Solicitors' Continuing Professional Development Rules, so that policies and requirements for continuing professional development can be made for solicitors as they can already for barristers.

If this change has not been made within 12 months, the Victorian Government should, within a further 12 months, provide the Victorian Legal Services Board and Commissioner with the power to regulate solicitors' continuing professional development, as it is currently able to do in respect of barristers.

RECOMMENDATION 86

That the Victorian Government, within 12 months, pursues through the Council of Attorneys-General and the Legal Services Council, an amendment to the Legal Profession Uniform Law introducing a mandatory requirement for lawyers to report the suspected misconduct of other lawyers. The Victorian Government should ensure the Victorian Legal Services Board and Commissioner is appropriately resourced to implement this recommendation.

If the amendment incorporating a mandatory reporting obligation has not been agreed within 12 months, the Victorian Government should, within a further 12 months, introduce a mandatory reporting requirement for Victorian lawyers to report the suspected misconduct of other lawyers.

RECOMMENDATION 87

That the Victorian Legal Services Board and Commissioner, the Victorian Bar and the Law Institute of Victoria, in consultation with other relevant stakeholders and prior to the commencement of the mandatory reporting obligation proposed in Recommendation 86, prepare harmonised guidance and continuing professional development activities for the legal profession to accompany and support the introduction of a mandatory reporting requirement.

RECOMMENDATION 88

That the Victorian Legal Services Commissioner, within 12 months, revokes the Instrument of Delegation conferred on the Victorian Bar for receiving and handling complaints regarding barristers and resumes that function.

RECOMMENDATION 89

That the Victorian Bar and the Law Institute of Victoria, within six months, assess the awareness level, use and views of the ethical, health and wellbeing support services and resources offered to their members. If the awareness levels and usage are found to be low, the Victorian Bar and the Law Institute of Victoria should review the quality of the services and resources and improve marketing and communications to ensure members are aware of the useful supports available.

The Victorian Bar and the Law Institute of Victoria should regularly review the effectiveness of these services and resources (at least every two years) and update them as required to meet the needs of members.

RECOMMENDATION 90

That Victoria Police, within 12 months, amends the *Victoria Police Manual* and relevant training materials to comprehensively set out obligations under section 464C of the *Crimes Act 1958 (Vic)* and the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* related to the right of a person in police custody to communicate with a lawyer.

Victoria Police should undertake this work in consultation with relevant stakeholders including Victoria Legal Aid, the Department of Justice and Community Safety, Law Institute of Victoria, Victorian Bar, Federation of Community Legal Centres and Victorian Aboriginal Legal Service.

Issues arising during the conduct of the Commission's inquiry

RECOMMENDATION 91

That the Victorian Government, within 18 months, amends the *Inquiries Act 2014 (Vic)* to:

- a. remove the ability for a person to refuse to comply with a notice to give information to a royal commission on the basis that the information is the subject of public interest immunity
- b. insert a provision to make clear that it is not a reasonable excuse for a person to refuse or fail to comply with a requirement to give information (including answering a question) or produce a document or other thing to a royal commission on the basis that the information, document or other thing is the subject of public interest immunity
- c. specify that any such information or document or other thing does not cease to be the subject of public interest immunity only because it is given or produced to a royal commission in accordance with a requirement under the Act.

Work beyond the Commission

RECOMMENDATION 92

That the Victorian Government, within 12 months, develops legislation to establish a Special Investigator with the necessary powers and resources to investigate whether there is sufficient evidence to establish the commission of a criminal offence or offences (connected with Victoria Police's use of Ms Nicola Gobbo as a human source) by Ms Gobbo or the current and former police officers named in the Commission's final report or in the complete and unredacted submissions of Counsel Assisting.

RECOMMENDATION 93

That the Victorian Government, in developing the legislation to establish the Special Investigator, requires that the person appointed as the Special Investigator be an Australian lawyer with at least 10 years' experience in criminal law or a related field.

RECOMMENDATION 94

That, where the Special Investigator compiles a brief of evidence containing sufficient evidence to establish the commission of a criminal offence or offences by Ms Nicola Gobbo or current or former Victoria Police officers, the Victorian Director of Public Prosecutions should be responsible for determining whether to prosecute and, if so, for the prosecution of the matter under the *Public Prosecutions Act 1994* (Vic).

RECOMMENDATION 95

That the Victorian Government, in developing the legislation to establish the Special Investigator, requires the Special Investigator to report regularly to the Implementation Monitor proposed in Recommendation 108 on their progress to establish their operations, and on the outcomes of their investigations.

RECOMMENDATION 96

That the Victorian Government, in developing the legislation to establish the Special Investigator, requires the Special Investigator to investigate whether there is sufficient evidence to establish the commission of misconduct or a breach of discipline under the *Victoria Police Act 2013* (Vic) (connected with Victoria Police's use of Ms Nicola Gobbo as a human source) by current Victoria Police officers named in the Commission's final report or in the complete and unredacted submissions of Counsel Assisting.

RECOMMENDATION 97

That the Victorian Government, in developing the legislation to establish the Special Investigator, empowers the Special Investigator to investigate:

- a. whether there is sufficient evidence to establish the commission of a criminal offence or offences (connected with Victoria Police's use of Ms Nicola Gobbo as a human source) by any current or former Victoria Police officers other than those named in the Commission's final report or in the complete and unredacted submissions of Counsel Assisting
- b. whether there is sufficient evidence to establish the commission of misconduct or a breach of discipline under the *Victoria Police Act 2013* (Vic) (connected with Victoria Police's use of Ms Gobbo as a human source) by any current Victoria Police officers other than those named in the Commission's final report or in the complete and unredacted submissions of Counsel Assisting.

RECOMMENDATION 98

That the Victorian Government, in developing the legislation to establish the Special Investigator, provides the Special Investigator with all necessary and reasonable powers required to fulfil their role in investigating misconduct or breaches of discipline, including but not limited to the power to direct any police officer to give any relevant information, produce any relevant document or answer any relevant question during a disciplinary investigation.

Any information, document or answer given in response to such a direction should not be admissible in evidence before any court or person acting judicially, other than in proceedings for perjury or for a breach of discipline.

To support the Special Investigator's powers, the failure of an officer to comply with a direction from the Special Investigator should itself constitute a breach of discipline.

RECOMMENDATION 99

That the Victorian Government, in developing the legislation to establish the Special Investigator, empowers the Special Investigator to lay disciplinary charges against relevant police officers if satisfied there is sufficient evidence to do so.

RECOMMENDATION 100

That the Chief Commissioner of Victoria Police ensures that a suitably qualified, independent authorised person, who is not a police officer, determines any disciplinary charges laid by the Special Investigator.

RECOMMENDATION 101

That the Chief Commissioner of Victoria Police reports to the Special Investigator and Implementation Monitor proposed in Recommendation 108 on the outcome of any disciplinary proceedings arising from the Special Investigator's investigation of current Victoria Police officers.

RECOMMENDATION 102

That the Victorian Government ensures that under the *Public Records Act 1973* (Vic), the Commission's records be unavailable for public inspection for 75 years, subject to: any order of the Supreme Court of Victoria; the legislation providing the Special Investigator and the Independent Broad-based Anti-corruption Commission with access to the records; or any decision of the responsible Minister under section 9(2)(b) of the Act to permit all or any of the records to be open for inspection by any specified person or class of persons.

RECOMMENDATION 103

That the Victorian Government, in developing the legislation to establish the Special Investigator, ensures that the legislation:

- a. gives the Special Investigator full and free access to the Commission's records
- b. requires the Special Investigator to establish appropriate security arrangements for access to and the management of such records.

The Victorian Government should also ensure that the Independent Broad-based Anti-corruption Commission has a legislative entitlement to obtain full and free access to the Commission's records.

RECOMMENDATION 104

That the Department of Premier and Cabinet notifies Victoria Police of any court order or request to access the closed records of the Commission, except in relation to requests made by the Special Investigator or Independent Broad-based Anti-corruption Commission.

RECOMMENDATION 105

That Victoria Police and the Victorian Director of Public Prosecutions, within three months, in accordance with their ongoing disclosure obligations, apply the Commissioner's determinations in relation to the public interest immunity claims (or as otherwise determined by a court) over the complete and unredacted submissions of Counsel Assisting, and, where relevant, facilitate disclosure of these revised versions of the submissions to potentially affected persons.

RECOMMENDATION 106

That Victoria Police and prosecuting agencies, within six months, make all reasonable attempts to advise the 887 people whose cases may have been affected in the manner identified in *R v Szabo* that their cases may have been affected by Ms Nicola Gobbo's conduct as a human source, and facilitate ongoing disclosure of relevant information to those persons.

RECOMMENDATION 107

That the Victorian Government, within three months, establishes an Implementation Taskforce, chaired by a senior executive of the Department of Justice and Community Safety, with responsibility for coordinating and completing implementation of the Commission's recommendations. The Taskforce should:

- a. consist of members from the Department of Justice and Community Safety, Department of Premier and Cabinet, Victoria Police, the Victorian Office of Public Prosecutions, the Special Investigator and other relevant stakeholders
- b. engage regularly with, and report formally and informally to, the Implementation Monitor proposed in Recommendation 108 throughout the implementation process.

RECOMMENDATION 108

That the Victorian Government, within three months, appoints an independent Implementation Monitor to monitor the implementation of the Commission's recommendations until implementation is completed.

RECOMMENDATION 109

That the Victorian Government, in establishing the role of the Implementation Monitor, provides the Implementation Monitor with the support of a small secretariat located within the Department of Justice and Community Safety, and all necessary and reasonable legislative powers required to fulfil their role, including the power to:

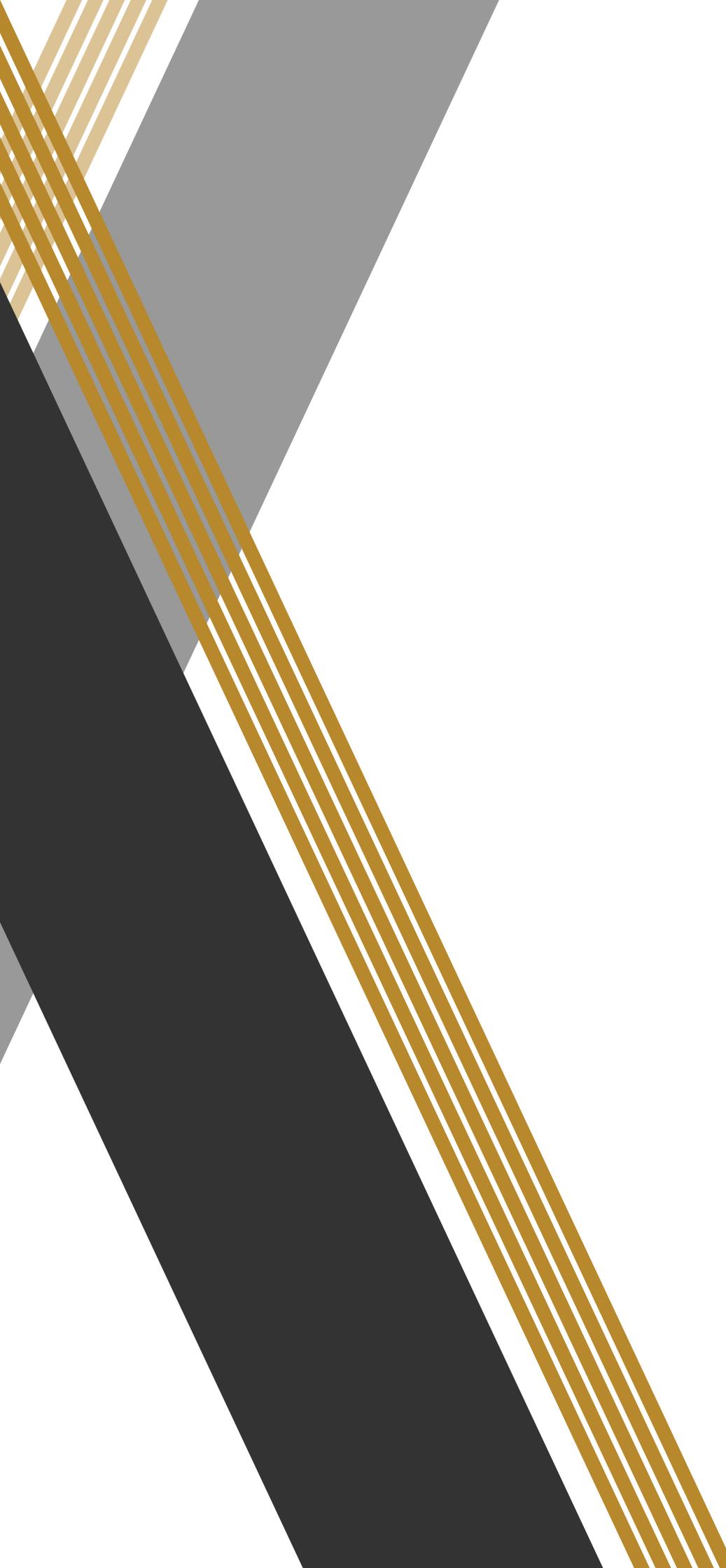
- a. assess the implementation of the Commission's recommendations throughout the implementation process, not only once responsible agencies have reported on the completion of implementation
 - b. access Implementation Taskforce documents and attend meetings of the Implementation Taskforce
 - c. indicate to responsible agencies the extent to which their implementation of the Commission's recommendations is considered adequate
 - d. request regular reports from Victoria Police on its progress in fulfilling its ongoing disclosure obligations to potentially affected persons identified by the Commission
 - e. request reports from the Special Investigator on progress to establish their operations and the outcomes of their investigations
 - f. request reports from the Chief Commissioner of Victoria Police on the progress and outcomes of any disciplinary proceedings arising from the Special Investigator's disciplinary investigations.
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RECOMMENDATION 110

That the Victorian Government, in establishing the role of the Implementation Monitor, requires it to report to the Attorney-General annually, or more frequently as it deems necessary, on the progress of the implementation of the Commission's recommendations, the adequacy of implementation and what further measures may be required to ensure the Commission's recommendations are implemented fully within the specified timeframes.

RECOMMENDATION 111

That the Attorney-General reports annually to the Victorian Parliament on the progress of the implementation of the Commission's recommendations, until implementation is complete.



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