



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

# Progress Report

JULY 2019



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

# Progress Report

**The Honourable Margaret McMurdo, AC**  
Commissioner

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



1 July 2019

The Hon. Linda Dessau, AC  
Governor of Victoria  
Government House  
Government House Drive  
Melbourne Victoria 3004

Your Excellency

In accordance with the Letters Patent dated 13 December 2018 and amendments to the Letters Patent dated 7 February 2019, I have the honour of presenting to you the Progress Report of the Royal Commission into the Management of Police Informants.

Yours sincerely

**The Honourable Margaret McMurdo, AC**  
Commissioner



# Contents

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## **Introduction**

|                                       |    |
|---------------------------------------|----|
| Establishment of the Commission ----- | 14 |
| The Commission's powers -----         | 15 |
| The Commission's obligations -----    | 16 |
| The Commission's reports -----        | 18 |
| Scope of this report -----            | 19 |

## **Background**

|   |    |
|---|----|
| Human sources in the criminal justice system -----                      | 24 |
| The use of Ms Gobbo as a human source -----                             | 25 |
| Previous reviews into the use of Ms Gobbo as a human source -----       | 26 |
| Court proceedings -----   | 28 |
| Previous reviews into the use of human sources by Victoria Police ----- | 32 |

## **The first six months**

|  |    |
|--|----|
| Numbers at a glance -----                | 40 |
| Approach to the terms of reference ----- | 46 |

## **Next steps**

|  |    |
|--|----|
| Gathering further evidence -----                     | 64 |
| Examining best practice and developing reforms ----- | 66 |

## **Appendixes**

**69**

## **Endnotes**

**79**





## COMMISSIONER'S FOREWORD

The Royal Commission into the Management of Police Informants was established after revelations that former barrister, Ms Nicola Gobbo, covertly provided information to Victoria Police about the criminal activities of people who had engaged her as their lawyer. These actions resulted in the convictions of several individuals being called into question, with the High Court of Australia observing that their prosecution 'was corrupted in a manner which debased fundamental premises of the criminal justice system.'<sup>1</sup>

The Commission is undertaking a mammoth, Janus-like task. It must unravel a complicated web of relationships, conduct and consequences dating back to the early 1990s. It must also examine present practices, and then look to the future to consider best practice reforms that ensure any past shortcomings are not repeated.

Everyone has the right to independent legal advice and to expect that their lawyer will act ethically and in their best interests. They also have the right for certain communications with their lawyer to remain confidential. Those charged with criminal offences have the right to a fair trial, in which the prosecution must prove their guilt beyond reasonable doubt. They are entitled to receive both information upon which the prosecution intends to rely, and information that may undermine the prosecution case.

In addition to the duties owed to clients, lawyers have duties to the court and the administration of justice, which oblige them not to mislead the court or other legal practitioners.

Police perform an essential public service in detecting and investigating crime and protecting the community. They must, however, exercise their considerable power and authority according to the law they are sworn to uphold, even when under extreme pressure to solve crimes. They are not above the law; nor are they above scrutiny.

If criminal investigations or prosecutions are so compromised that an accused is denied fundamental rights, the consequences are serious. Convictions may be overturned and alleged offenders set free, causing victims distress and community concern. The time and effort expended, and paid for by the taxpayer, may be for nothing. If new trials are granted, victims may be forced to endure further proceedings long after the alleged offences occurred. Public trust in the criminal justice system is likely to be diminished.

It follows that the Commission's work is significant not only to the individuals whose cases may have been affected by the use of Ms Gobbo as a human source. The inquiry has much broader significance in preserving the integrity of the criminal justice system and community confidence in that system.

This report describes the Commission's progress over its first six months. As the inquiry is ongoing, with more evidence to be collected and analysed, the report does not make findings or recommendations. These will be set out in the Commission's final report.

The scope of the Commission's inquiry has expanded exponentially. It was originally understood that Ms Gobbo acted as a human source for five years, between 2005 and 2009. Victoria Police disclosures in early 2019 mean that the Commission must now scrutinise an 18-year period of interaction between police and Ms Gobbo.



As at 19 June 2019, the Commission has held 22 days of hearings and examined 32 witnesses. That evidence has focused on Ms Gobbo's contact with Victoria Police between 1993 and 2004. It has received 131 submissions from members of the public and contacted over 130 individuals and agencies with expertise in policy and practices relevant to the terms of reference. It has issued 374 Notices to Produce and requests for information, resulting in the production of over 58,000 documents.

The Commission has heard from many people who allege that their cases were affected by Ms Gobbo's use as a human source by Victoria Police. The Commission, its legal team and staff are working hard to obtain all information necessary to review potentially affected cases, starting with individuals who are currently in custody. Where relevant evidence comes to light, the Commission will continue to promptly advise the prosecution, consistent with the obligations set out in the Letters Patent.

Anyone who considers they may have been affected and who has not yet come forward should do so by 31 July 2019. Without supporting evidence, the Commission will be unable to confidently determine whether, and to what extent, a case may have been affected.

To conduct an effective inquiry, the Commission relies on full and timely disclosure of material. Delays in the provision of this material in a form that can be made public have hampered the Commission's progress, a concern I have raised expressly with Victoria Police in public hearings. I remain cautiously optimistic that the difficulties encountered to date will lessen as the inquiry continues, particularly with the development of a protocol between the Commission, Victoria Police and the State of Victoria to deal with ongoing public interest immunity claims.

The highly sensitive information before the Commission presents challenges. The community expects transparency and I will conduct as much of the inquiry as possible in public. But equally important public interests must be considered, including the safety of human sources, other individuals and their families, whose lives may be endangered if their identities become known.

Over the coming months, the Commission will continue reviewing cases that may have been affected by the use of Ms Gobbo as a human source. It will call witnesses relevant to Ms Gobbo's interactions with Victoria Police between 2005 and 2010 and assess the adequacy of current systems and practices for managing human sources with legal obligations of confidentiality and privilege. The Commission will also consult with national and international experts and justice agencies to determine whether police should use such human sources—and if so, how this may be done in a manner consistent with the administration of justice.

I again thank Mr Malcolm Hyde, AO, APM for his contribution to the Commission's early administration. I also thank the Commission's dedicated team of lawyers, investigators and policy, research and administrative staff for their diligence in progressing the Commission's work. Finally, I thank the many agencies and individuals who have assisted the inquiry, including Fair Work Australia for generously allowing the Commission to utilise its facilities.

I look forward to completing the Commission's important work and presenting its final report to the Governor of Victoria by 1 July 2020.



**The Honourable Margaret McMurdo, AC**





# Introduction

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## ESTABLISHMENT OF THE COMMISSION

On 3 December 2018, the Victorian Government announced that it would establish a royal commission to independently inquire into Victoria Police's recruitment and management of human sources who are, or have been, subject to legal obligations of confidentiality or privilege.

This followed a decision of the High Court about former criminal defence barrister, Ms Nicola Gobbo, who was used by Victoria Police as a human source (also referred to as an 'informant' or 'informer').<sup>2</sup>

In announcing the establishment of the Commission, the Premier of Victoria stated: 'while these events took place many years ago, the Victorian public has a right to know that every part of the criminal justice system acts fairly and lawfully at all times.'<sup>3</sup>

The Commission was formally established on 13 December 2018 by Letters Patent issued by the Governor of Victoria. The Honourable Margaret McMurdo, AC and Mr Malcolm Hyde, AO, APM were appointed as Commissioners.

The Letters Patent specify the Commission's terms of reference and are set out at Appendix A. In summary, the Commission is required to inquire into and report on the number of, and extent to which, cases may have been affected by the conduct of Ms Gobbo as a human source, and the conduct of Victoria Police officers in managing Ms Gobbo as a human source. The Commission is also required to consider the adequacy and effectiveness of Victoria Police's processes for managing human sources who are subject to legal obligations of confidentiality or privilege (for example, lawyers or other professionals); the use of information obtained from human sources in the criminal justice system; and any recommended measures to address systemic or other failures identified by the Commission.

When the Letters Patent were drafted in December 2018, it was understood that Ms Gobbo had acted as a human source between September 2005 and January 2009. The Commission was required to report on the number of, and extent to which, cases may have been affected by the conduct of Ms Gobbo as a human source by 1 July 2019, and the remaining terms of reference by 1 December 2019.

In January 2019, Victoria Police disclosed to the Commission that their first contact with Ms Gobbo occurred in 1993. Victoria Police also disclosed that Ms Gobbo was first registered as a human source in 1995, and that other people with legal obligations of confidentiality or privilege, such as other legal practitioners and legal sector employees, may have been registered as human sources by Victoria Police.

The Letters Patent were amended on 7 February 2019 to reflect the matters disclosed to the Commission and the subsequent resignation of Commissioner Malcolm Hyde, AO, APM. While the disclosed matters did not cause a direct conflict of interest, Mr Hyde resigned to avoid any potential adverse perceptions about the impartiality of the Commission in light of his past employment with Victoria Police and professional associations with police officers who may be examined by the Commission. The amended Letters Patent are set out at Appendix B.

Victoria Police then made further disclosures to the Commission indicating that Ms Gobbo continued to provide information to police until 2010, after her deregistration as a human source in 2009. Victoria Police also disclosed the use of additional human sources employed in other professions that may be subject to legal obligations of confidentiality or privilege.

Due to the expanded terms of reference and the significant increase in material to be examined by the Commission, in May 2019 the Victorian Government agreed to extend the Commission's reporting date, requiring it to report on all terms of reference by 1 July 2020. The Government also provided \$20.5 million in additional funding to the Commission.<sup>4</sup>

## THE COMMISSION'S POWERS

The *Inquiries Act 2014 (Vic)* (Inquiries Act) provides for the establishment and conduct of various types of inquiries in Victoria, including royal commissions. It vests royal commissions with extensive powers, including the power to:

- issue a notice to compel a person to produce documents ('Notice to Produce')
- issue a notice to compel a person to attend and give evidence ('Notice to Attend')
- apply for a search warrant; for example, to inspect and copy a document
- protect individuals who give information to a royal commission
- conduct hearings in public or private.<sup>5</sup>

# Introduction

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The Commission may conduct its inquiry in any manner that it considers appropriate, subject to the requirements of procedural fairness, the Inquiries Act and the Letters Patent.<sup>6</sup> The Inquiries Act also empowers the Commission to apply to the Supreme Court for orders to produce documents or for witnesses to appear, where the Commissioner is satisfied that there is no reasonable excuse for non-compliance.<sup>7</sup> It is an offence under the Inquiries Act to fail to comply without reasonable excuse with a Notice to Produce or a Notice to Attend, punishable by a fine of 240 penalty units or two years' imprisonment.<sup>8</sup>

Given the nature of this inquiry, it is important to note that the Commission has no judicial power. It cannot overturn convictions, change sentences, order retrials or release people from custody. Only courts have these powers. If individuals decide to challenge their convictions or sentences, they must do so in the courts. Any individual who wishes to do so should seek independent legal advice.

Nor does the Commission have the power to initiate criminal or disciplinary charges. If the Commission considers that conduct could give rise to criminal or disciplinary charges, it will be for the relevant prosecuting or regulatory authorities to determine whether charges or disciplinary proceedings should be brought.<sup>9</sup>

## THE COMMISSION'S OBLIGATIONS

In addition to setting out the terms of reference, the Letters Patent specify a number of other matters that the Commission must take into account during its inquiry.

The Commission must take care not to prejudice any ongoing or future investigations or court proceedings. It must also seek to avoid unnecessary duplication of previous inquiries, specifically those conducted by former Chief Commissioner of Victoria Police Mr Neil Comrie, AO, APM in 2012, the Honourable Murray Kellam, QC in 2015 and the then Director of Public Prosecutions (DPP), Mr John Champion, SC in 2016.

The Commission must also carefully consider the safety of Ms Gobbo and other individuals in undertaking its inquiry. Human sources and their families face grave risks of harm from others—public exposure of their identities could be life-threatening. The Commission takes this obligation very seriously. It has had a major impact on how the Commission conducts its hearings and manages and discloses the evidence received. Where necessary, the Commission has closed hearings to the public; paused the live streaming of hearings; redacted transcripts and exhibits; made non-publication orders and used pseudonyms to mask the identities of some individuals. While the Commission is determined to undertake as much of its work in public as possible, it will continue to take steps to protect the safety of witnesses and other individuals affected by its inquiries.



The Letters Patent require the Commission to promptly bring to the attention of the DPP or the Commonwealth Director of Public Prosecutions (CDPP) any information or documents that the Commission considers relevant to their functions, including their duty of disclosure.

The duty of disclosure obliges the prosecution to make available to an accused person all material upon which the prosecution intends to rely and any credible material that may be helpful to the accused's case. This duty is an integral part of the prosecution's role in ensuring a fair trial and continues after the conclusion of court proceedings.

Victoria Police and prosecuting authorities had begun this process prior to the establishment of the Commission, making disclosures to a number of individuals. To date, the Commission has identified material requiring disclosure to a prosecuting authority in relation to one additional individual whose case may have been affected by the use of Ms Gobbo as a human source. This process will continue throughout the remainder of the Commission's inquiry.

In addition to requiring that the Commission affords individuals procedural fairness in conducting its inquiry, the Inquiries Act specifies that, before the Commission makes any finding that is adverse to a person, it must be satisfied that the person is aware of the matters on which the proposed finding is based and has had an opportunity to respond.<sup>10</sup> If the Commission includes an adverse finding in its report, it must also consider and fairly set out the person's response.<sup>11</sup>

Finally, as a public authority, the Commission, like Victoria Police, has obligations under the *Charter of Human Rights and Responsibilities Act 2006* (Vic).<sup>12</sup> These obligations include considering human rights when making decisions and acting compatibly with human rights.<sup>13</sup> Relevant human rights include the right to a fair hearing, criminal procedural rights, the rights to life, liberty and security, the right to be free from arbitrary interference with one's family, and the protection of families and children.<sup>14</sup> The Commission will continue to give proper consideration to people's human rights in conducting its inquiry.

# Introduction

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## THE COMMISSION'S REPORTS

The original Letters Patent required the Commission to report its findings and any recommendations in relation to its first term of reference by 1 July 2019, and in relation to the other terms of reference by 1 December 2019, or by a date agreed between the Commission and the Government.

The Commission's task is an extremely complex one, the scope of which has grown significantly. The Commission is now required to inquire into cases that may have been affected and the conduct of current and former Victoria Police officers over an 18-year period, rather than the period originally specified in the terms of reference. The matters under examination by the Commission also represent uncharted waters. They involve complex and unique circumstances for which there are no clear legal precedents.

The volume of material received by the Commission is substantial and continues to grow. Delays in the receipt of relevant information have slowed the Commission's progress, as has the need to address a range of complex legal issues. Much of the material that the Commission must analyse to fulfil its terms of reference is subject to public interest immunity, suppression orders or other sensitivities, which prevent straightforward access to material and its release into the public domain.<sup>15</sup>

Early in its inquiry, the Commission identified that the terms of reference are inextricably linked. Assessing the extent to which cases may have been affected by the use of Ms Gobbo as a human source, as required under term of reference 1, necessarily involves assessment of Victoria Police's conduct, as required under term of reference 2. This is also closely linked to the analysis of current policies and practices for the use of relevant human sources and use of their evidence in the justice system, as required under terms of reference 3 and 4. Consequently, reporting on the terms of reference together will enable a more complete examination of the matters being considered.

This report focuses on the work undertaken since the Commission's establishment and the further work to come. The Commission's final report, now due for completion by 1 July 2020, will address all of the Commission's terms of reference.

## SCOPE OF THIS REPORT

The report begins by outlining key events that led to the establishment of the Commission, including relevant reviews and court proceedings. It then sets out the Commission's work to date and how it intends to approach its terms of reference over the coming months.

The report does not present findings about cases that may have been affected, the conduct of Ms Gobbo or Victoria Police, or other matters arising from the terms of reference. The Commission will obtain further evidence, thoroughly review the material gathered, develop findings and provide relevant parties with an opportunity to respond before delivering its final report and recommendations.





## TIMELINE: ESTABLISHMENT OF THE ROYAL COMMISSION

### 2012–16

#### Comrie Review finalised

In **July 2012**, Mr Neil Comrie, AO, APM produced a confidential Victoria Police review into the use of Ms Gobbo as a human source and the adequacy of policies and practices relevant to her management from September 2005 to January 2009.

#### Kellam Report finalised

In **February 2015**, the Honourable Murray Kellam, QC delivered a confidential report for the Independent Broad-based Anti-Corruption Commission (IBAC) about Victoria Police's use of Ms Gobbo as a human source from September 2005 to January 2009. The report identified nine case study individuals who may have received legal assistance from Ms Gobbo while she was acting as a human source.

#### Champion Report recommends disclosure to relevant individuals

In **February 2016**, then DPP, Mr John Champion, SC, finalised a confidential report that considered whether the prosecution of individuals named in the Kellam Report resulted in miscarriages of justice. The report concluded that the DPP had a duty to disclose this possibility to relevant individuals.

### 2017–18

#### Supreme Court determines disclosures should be permitted

On **19 June 2017**, the Supreme Court determined that the DPP should be permitted to disclose information about Ms Gobbo's role as a human source to seven individuals. This decision was appealed to the Court of Appeal by the Chief Commissioner of Victoria Police and Ms Gobbo.

#### Appeal dismissed by the Court of Appeal

On **21 November 2017**, the Court of Appeal dismissed the appeal. The Chief Commissioner of Victoria Police and Ms Gobbo were granted permission to appeal the Court of Appeal's decision to the High Court on **9 May 2018**.

#### High Court revokes permission to appeal

On **5 November 2018**, the High Court revoked the permission to appeal that was originally granted. The High Court ordered that the hearing's occurrence and outcomes not be published until **3 December 2018**.

### 2019

#### Commission's inquiry expands

On **7 February 2019**, the Letters Patent were amended after Victoria Police's disclosure that Ms Gobbo was first registered as a human source in 1995 and other legal sector employees with obligations of confidentiality or privilege may have been used as human sources.

#### The Commission's hearings commence

In **February 2019** the Commission's hearings commenced.

#### Ms Gobbo's name is released to the public

On **1 March 2019**, the High Court's interim non-publication order preventing the wider public release of Ms Gobbo's name and image lapsed.

## The Chief Commissioner and Ms Gobbo seek to stop the disclosures

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On 10 June 2016, the Chief Commissioner of Victoria Police lodged an application in the Supreme Court to stop the disclosure of information about Ms Gobbo's role as a human source on the basis it was subject to public interest immunity. On 11 November 2016, Ms Gobbo joined the proceedings.

## Commission established and Letters Patent issued

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On 3 December 2018, the Premier of Victoria announced the establishment of the Commission. On 13 December 2018, the Commission was formally established by Letters Patent issued by the Governor of Victoria.

## Court file becomes public

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On 12 April 2019, the documents from the court proceedings, including redacted versions of the Comrie Review and Kellam and Champion Reports became publicly available for the first time.

## Commission's deadline extended

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On 25 May 2019, the Victorian Government agreed to extend the Commission's reporting date and provide additional funding in light of the Commission's expanded terms of reference. The Commission will now provide a final report on all terms of reference by 1 July 2020.

## Commission's Progress Report delivered

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On 1 July 2019, the Commission delivered a progress report providing an overview of the Commission's first six months of operation.

# Background

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## HUMAN SOURCES IN THE CRIMINAL JUSTICE SYSTEM

A human source, also known as an ‘informant’ or ‘informer’, is commonly understood to be a person who covertly supplies information about crime or people involved in criminal activity to police or other law enforcement agencies.<sup>16</sup> The information that human sources provide may be used to aid in the investigation and prosecution of crimes. Human sources may also help police to understand the broader criminal environment and develop more effective policing techniques to help prevent crime.<sup>17</sup>

Generally, human sources can be distinguished from other people who assist police—for example, witnesses or victims of crime, or other members of the community who volunteer information to police about events they have seen or heard in the course of their day-to-day activities.

Human sources provide a critical source of information and intelligence for law enforcement, especially in efforts to combat serious and organised crime, corruption and acts of terrorism.<sup>18</sup> As they are sometimes involved in criminal conduct themselves, human sources can provide police with access to criminal networks and activities that are often impenetrable through other means.<sup>19</sup>

While the use of human sources has been described as ‘one of the most effective weapons in the hands of the detective’,<sup>20</sup> it can also be fraught with risks.<sup>21</sup> A person who provides information to police as a human source typically does so with the expectation that their identity will be protected.<sup>22</sup> Significant harm may come to the person if their role as a human source is revealed to the people or class of people they are informing on, and reduce the willingness of other individuals to assist police.<sup>23</sup>

Other risks include improper associations between police and human sources; exploitation of police by the human source to gain an advantage or to engage in further illicit activity; the use of tainted or unreliable information provided by a human source; and manipulation of the human source arising from a power imbalance between police and the source.<sup>24</sup> The use of human sources by police is largely hidden from the public, both to protect the identity of the human source and to avoid jeopardising investigations. However, the covert relationship between police and human sources can ‘[lend] itself to corruption and unethical behaviour’.<sup>25</sup> Police must carefully manage and control these risks through robust policies, procedures and practices, with appropriate accountability and oversight.

Like all law enforcement agencies, Victoria Police relies on human sources to aid in its detection, investigation and prevention of crime.<sup>26</sup> Its recruitment, use and management of human sources has evolved significantly over the last 20 years, and is governed by various internal policies and procedures.<sup>27</sup> The Commission will report on the current adequacy and effectiveness of Victoria Police’s policies and procedures guiding the management of human sources in its final report.



## THE USE OF MS GOBBO AS A HUMAN SOURCE

The Commission's task arises due to the conduct of Ms Gobbo, also known as 'EF' or 'Informant 3838' or 'Lawyer X',<sup>28</sup> and the conduct of Victoria Police in utilising her as a human source.

Ms Gobbo represented a number of clients charged with criminal offences, some of whom were involved in Melbourne's so-called 'gangland wars'. Ms Gobbo was formally registered as a human source at various times between 1995 and 2009. Related legal proceedings,<sup>29</sup> and information obtained by the Commission, indicate that during that period, Ms Gobbo simultaneously informed on the criminal activity of individuals she may have legally represented or to whom she may have provided legal advice. Some of these individuals were subsequently convicted and sentenced to lengthy terms of imprisonment for serious crimes. Victoria Police has confirmed that after she was deregistered as a human source, Ms Gobbo continued to provide information to Victoria Police until 2010.<sup>30</sup>

As a lawyer,<sup>31</sup> Ms Gobbo owed a range of ethical and professional duties to her clients and the court.<sup>32</sup> The High Court held that she acted in a manner contrary to those duties when she provided confidential information to Victoria Police received from her clients. The Court described Ms Gobbo's actions as 'fundamental and appalling breaches' of her obligations to the court and to her clients.<sup>33</sup> The Court also stated: '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 accordingly to law without favour or affection, malice or ill-will'.<sup>34</sup>

# Background

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## PREVIOUS REVIEWS INTO THE USE OF MS GOBBO AS A HUMAN SOURCE

The use of Ms Gobbo as a human source by Victoria Police has been the subject of three previous reviews, each tasked to examine some, but not all, of the matters that fall within the scope of the Commission's inquiry. Their key findings are outlined below. Consistent with the Letters Patent, the Commission will seek to avoid duplication of these reviews.

Given their sensitive nature, the reviews were undertaken confidentially. They later formed part of the evidence considered during litigation between the Chief Commissioner of Victoria Police, Ms Gobbo, and the DPP.<sup>35</sup> While the litigation was underway, orders were made for the content of the reviews and other relevant information to be restricted from publication until 12 April 2019.<sup>36</sup> In order to properly carry out its work, the Commission applied for and obtained permission from both courts to access the court files and details of the reviews in February 2019.<sup>37</sup>

### COMRIE REVIEW

In 2012, the former Chief Commissioner of Victoria Police, Mr Neil Comrie, AO, APM conducted a review entitled *Victoria Police Human Source 3838—A Case Review* (the Comrie Review). The review was commissioned by then Deputy Commissioner of Victoria Police, Mr Graham Ashton, AM, APM.<sup>38</sup>

The Comrie Review examined the policies, control measures and practices relevant to Ms Gobbo's management as a human source from September 2005 to January 2009. It found the 'utilisation of any source who may be bound by professional duties introduces complexities and risks that must be recognised and appropriately managed. Failure to give proper consideration to such matters may have dire consequences...'<sup>39</sup>

The Comrie review resulted in 27 recommendations, which called for a robust and ongoing risk assessment process for 'high-risk' human sources; consistent and thorough policies and procedures; improved supervision and monitoring; the requirement to obtain legal advice where the human source is occupationally bound by legal and ethical duties; and the development of a management plan for human sources who are transitioned to witnesses. The Comrie Review also endorsed the findings and 26 recommendations of an internal Victoria Police audit of human source management practices in 2010.<sup>40</sup>

The Commission is considering the Comrie Review as part of its inquiry into Victoria Police's implementation of the Kellam Report recommendations, discussed below.

## KELLAM REPORT

On behalf of the IBAC,<sup>41</sup> in 2015 the Honourable Murray Kellam AO, QC produced a report entitled *Report Concerning Victoria Police Handling of Human Source Code Name 3838* (the Kellam Report). This investigation arose following media reports of Victoria Police's use of a human source named 'Lawyer X' and a notification by the Chief Commissioner of Victoria Police to IBAC.<sup>42</sup>

The Kellam Report examined the conduct of Victoria Police officers in their use of Ms Gobbo as a human source, and the application and adequacy of its policies, control measures and management practices. Mr Kellam found 'negligence of a high order', concluding that Victoria Police had failed to act in accordance with appropriate policies and procedures.<sup>43</sup>

The Report identified and named nine individuals who received or possibly received legal assistance from Ms Gobbo while she was informing on them to Victoria Police and who were convicted of serious criminal offences. These individuals were Mr Antonios (Tony) Mokbel, Mr Rabie (Rob) Karam, Mr Frank Ahec, Mr Horty Mokbel, Mr Milad Mokbel, Mr Kamel (Karl) Khoder, Mr Darren Bednarski, Ms Zaharoula Mokbel and Person 7.<sup>44</sup> Mr Kellam found that the convictions of these nine individuals and the administration of justice could have been undermined due to the use of Ms Gobbo as a human source.<sup>45</sup>

The Kellam Report made 16 recommendations and endorsed the recommendations of the Comrie Review.<sup>46</sup> It called for changes to governing policies and guidelines to more thoroughly assess, manage and review the risks of using information from human sources bound by professional obligations of confidentiality or privilege. Other recommendations included obtaining legal advice in situations where human sources are bound by professional obligations; improving supervision and oversight; and developing procedures to guide actions where a human source may have significant mental health issues. The Report further recommended that the DPP should examine whether any prosecutions based on evidence involving confidential or privileged information obtained by Victoria Police from Ms Gobbo had resulted in miscarriages of justice.

The Commission is examining and will report on Victoria Police's implementation of and continued compliance with the Kellam Report's recommendations in its final report.

# Background

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## CHAMPION REPORT

In 2016, the then DPP, Mr John Champion, SC, produced a report entitled *Report of the Director of Public Prosecutions in Relation to Recommendation 12 of the Kellam Report* (the Champion Report). The Champion Report examined materials relied on by the Office of Public Prosecutions (OPP) in prosecuting the individuals named in the Kellam Report to ascertain whether miscarriages of justice may have occurred.

The DPP concluded that six of the nine individuals named in the Kellam Report had entered into, or potentially entered into, a lawyer-client relationship with Ms Gobbo.<sup>47</sup> These individuals were Mr Antonios (Tony) Mokbel, Mr Frank Ahec, Mr Milad Mokbel, Mr Kamel (Karl) Khoder, Mr Darren Bednarski and Person 7. Two of the nine individuals, Mr Horty Mokbel and Ms Zaharoula Mokbel, were not considered to be in a lawyer-client relationship with Ms Gobbo based on information available to the DPP, and one other individual, Mr Rabie (Rob) Karam, was found to be beyond the scope of the DPP's review, as he was prosecuted for federal offences by the CDPP.<sup>48</sup>

The DPP found that the circumstances surrounding the convictions of the six individuals activated the prosecutorial duty to disclose that Ms Gobbo's conduct may have tainted their convictions.<sup>49</sup> The DPP also observed that the CDPP would need to be informed about the circumstances to the extent that they affected federal prosecutions.

The Commission is considering the Champion Report in conducting its inquiry.

The DPP's proposed disclosure of post-conviction evidence to the affected individuals was challenged in a number of court proceedings by Victoria Police and Ms Gobbo. These are outlined below.

## COURT PROCEEDINGS

During late 2016–18, Victoria Police and Ms Gobbo were engaged in extensive litigation to prevent the DPP disclosing Ms Gobbo's identity to seven individuals.<sup>50</sup> The proceedings were heard in closed court without notice to the individuals and publication of the proceedings was suppressed.<sup>51</sup>

The proceedings began following the completion of the Champion Report, when the DPP sent the Chief Commissioner of Victoria Police a copy of the letters intended to inform the seven individuals that Ms Gobbo was informing on them to Victoria Police. Six of these seven individuals, as identified in the Champion Report, were Mr Antonios (Tony) Mokbel, Mr Frank Ahec, Mr Milad Mokbel, Mr Kamel (Karl) Khoder, Mr Darren Bednarski and Person 7. The seventh individual, Mr Zlate Cvetanovski, was identified later by the DPP as an individual to whom disclosure should also be made.<sup>52</sup>

Victoria Police and Ms Gobbo sought to stop the DPP from disclosing this information, arguing that public interest immunity applied. The named individuals were not informed about these proceedings and did not take part in them. However, their interests were advanced by *amici curiae*<sup>53</sup> appointed by the Court and the Victorian Equal Opportunity and Human Rights Commission, which intervened in the case.<sup>54</sup>

Public interest immunity is a rule of evidence that applies in court proceedings. It allows a public agency to refuse to produce material in court on the basis that its admission into evidence or disclosure would be contrary to the public interest.<sup>55</sup> Public interest immunity claims are determined on the circumstances of each case. The court must balance various public policy considerations for and against disclosure.<sup>56</sup> In Victoria, the balancing exercise is expressed in the following terms:

*If the public interest in admitting into evidence information or a document that relates to matters of state is outweighed by the public interest in preserving secrecy or confidentiality in relation to the information or document, the court may direct that the information or document not be adduced as evidence.*<sup>57</sup>

Information is deemed to relate to ‘matters of state’ in certain circumstances, including if disclosing the information would prejudice the prevention, investigation or prosecution of a crime, or would enable a person to ascertain the existence or identity of a human source.<sup>58</sup>

The public interest in protecting the identity of a human source will generally outweigh the public interest in disclosing their identity.<sup>59</sup> However, this rule, known as the ‘informer rule’, is not absolute.<sup>60</sup> The public interests in favour of protecting a human source’s identity, such as preventing the ‘drying up’ of human source information about crime and protecting the personal safety of the human source,<sup>61</sup> must be balanced against the public interest in promoting open justice and ensuring a fair hearing, including by affording an accused person an opportunity to fully challenge the prosecution’s case against them.<sup>62</sup>

Victoria Police and Ms Gobbo first challenged the DPP’s intended disclosures in the Supreme Court, then the Court of Appeal, and finally in the High Court. All three courts were in unanimous agreement that the public interest in the disclosures being made to the affected individuals outweighed the public interest in protecting Ms Gobbo’s identity.<sup>63</sup>

# Background

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On 5 November 2018, the High Court outlined its view of the impact of the actions of Victoria Police and Ms Gobbo:

*[T]he prosecution of each Convicted Person was corrupted in a manner which debased fundamental premises of the criminal justice system. It follows, as Ginnane J and the Court of Appeal held, that the public interest favouring disclosure is compelling: the maintenance of the integrity of the criminal justice system demands that the propriety of each Convicted Person's conviction be re-examined in light of the information. The public interest in preserving [Ms Gobbo's] anonymity must be subordinated to the integrity of the criminal justice system.<sup>64</sup>*

The High Court ordered that any information that would reveal the proceedings or the identity of relevant parties could not be published until 3 December 2018. This was to allow for appropriate security arrangements for Ms Gobbo to be made.<sup>65</sup> The Court also ordered that information from the proceedings could not be published until 5 February 2019.<sup>66</sup> On the application of the Chief Commissioner of Victoria Police, further orders were made by the High Court extending this date to 12 April 2019.<sup>67</sup>

## **SUBSEQUENT PROCEEDINGS TO PROTECT MS GOBBO'S NAME AND IMAGE**

The orders of the High Court initially prevented Ms Gobbo's identity and image from becoming known.<sup>68</sup> This led to Ms Gobbo being variously referred to as 'EF' or 'Informant 3838' or 'Lawyer X'. The Commission's Letters Patent and terms of reference, consistent with the High Court's orders, do not name Ms Gobbo.

On 11 February 2019, the Commission was permitted by the High Court to issue Notices to Produce that named Ms Gobbo, and for persons to produce documents or information to the Commission in response, including documents referring to Ms Gobbo by her name or containing her image.<sup>69</sup>

On the same day, the Chief Commissioner of Victoria Police and Ms Gobbo made an application to the Court of Appeal for permanent non-publication orders preventing the publication of Ms Gobbo's identity and image, audio recordings between Ms Gobbo and police officers, her medical history and the identities of her children.<sup>70</sup> The application was opposed by the DPP and the CDPP. The Commission intervened in the proceedings, together with some media outlets, to oppose the application. Legal counsel were also appointed as *amici curiae*.

The Commission successfully argued that, to conduct the most thorough examination of cases that may have been affected by Ms Gobbo's conduct, the Commission would need to publish her name and image to seek information from individuals who may have been affected. The Commission also argued that the audio recordings would be important evidence in its inquiry.

The Court of Appeal refused to grant the permanent non-publication orders sought by the Chief Commissioner of Victoria Police and Ms Gobbo.<sup>71</sup> The Court stated:

*We accept that it is necessary, in order to maximise the prospect of identifying persons whose cases may have been affected by EF's conduct, that the Royal Commission publish details of her name and image in the course of seeking information and submissions from the public.*<sup>72</sup>

The Chief Commissioner of Victoria Police and Ms Gobbo then successfully sought non-publication orders to protect the names and images of Ms Gobbo's children in the High Court. The Commission did not oppose this application.<sup>73</sup>

On 1 March 2019, an order that prevented the wider public release of Ms Gobbo's name and image lapsed and the Commission identified Ms Gobbo on its website. The Commission also published notices including her image in Victorian prisons and in *The Age* and the *Herald Sun*. The notices invited submissions from people who were legally represented by Ms Gobbo and who believed their case may have been affected by her role as a human source.<sup>74</sup>

# Background

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## **PREVIOUS REVIEWS INTO THE USE OF HUMAN SOURCES BY VICTORIA POLICE**

The Comrie Review and the Kellam and Champion Reports<sup>75</sup> were preceded by several other reviews that examined Victoria Police's use and management of human sources generally. While these reviews did not specifically consider human sources with legal obligations of confidentiality or privilege, their findings point to a pattern of challenges and risks arising from the use of human sources. Some of these reviews are outlined below.

### **CEJA TASK FORCE**

Victoria Police's Ceja Task Force was established in January 2002 to investigate drug-related corruption within the Victoria Police Drug Squad.<sup>76</sup> The Victorian Ombudsman produced two interim reports about Ceja in 2003–04 and the Office of Police Integrity (OPI) produced a final report in 2007.<sup>77</sup>

Based on Ceja's investigations, the OPI found that '[i]nadequate control and mismanagement of informers was central to some of the corrupt practices uncovered at the Drug Squad and elsewhere',<sup>78</sup> and that Victoria Police's governing policy on human sources required continued monitoring to determine its effectiveness.<sup>79</sup>

### **OFFICE OF POLICE INTEGRITY REVIEWS**

The OPI was established in 2004 to detect, investigate and prevent police corruption and serious misconduct.<sup>80</sup> Early in its establishment, the OPI described human source management as an area 'where the risk of police corruption or serious misconduct is highest.'<sup>81</sup>

In 2007, the OPI concluded an extensive investigation into Victoria Police policies and practices relating to human source management.<sup>82</sup> The investigation recommended compulsory basic and specialist training in human source management; active management and supervision in high-risk policing areas to manage risks to human sources and police officers; improved sharing of human source registered numbers, particularly to identify the source of information in warrant applications; and regular audits of compliance with Victoria Police's Human Source Management Policy.<sup>83</sup>

The OPI continued to monitor and report on Victoria Police's management of the risks associated with the use of human sources until it was replaced by the IBAC in 2013.<sup>84</sup>



## INTERNAL VICTORIA POLICE REVIEWS

In 2010, Victoria Police's Corporate Management Review Division produced a report entitled *Audit of Victoria Police Human Source Management Practices* (the CMRD Audit). The purpose of the CMRD Audit was to identify whether risks associated with the use of human sources were being adequately managed by Victoria Police. The CMRD Audit reviewed a representative sample of 95 human source files and made 26 recommendations to improve human source management.<sup>85</sup>

In 2012, Victoria Police Intelligence and Covert Services Command completed a review entitled *Covert Services Review 2012* (the ICSC Review), which examined Victoria Police's Covert Services Division. The ICSC Review recommended that the unit primarily responsible for the use and management of high-risk human sources, the Source Development Unit, be disbanded.<sup>86</sup>

## KEY EVENTS RELEVANT TO THE COMMISSION'S WORK

The chronology over the following pages lists some key events that are relevant to the Commission's work, based on information received as at 19 June 2019 through witness statements, evidence provided in hearings and documents produced. The chronology includes four timelines, representing events relevant to Melbourne's 'gangland wars', Victoria Police's management of human sources, Ms Gobbo and Victoria Police's interaction with Ms Gobbo during the time period being examined by the Commission. The Commission's understanding of these and related events will continue to develop as additional information is gathered and analysed.

### MELBOURNE'S 'GANGLAND WARS'

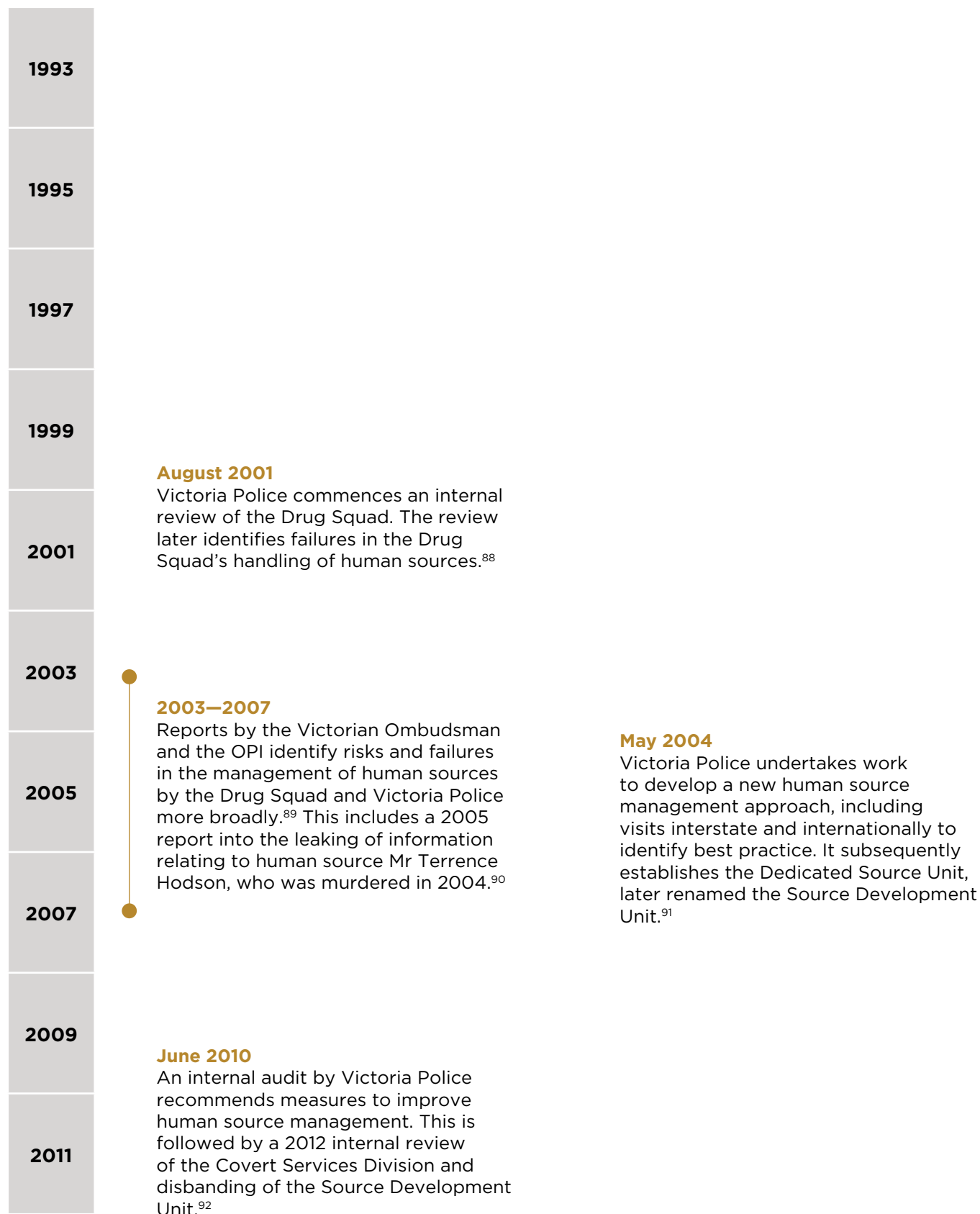
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| 2011 |  |

**1998—2010**  
Melbourne's 'gangland wars', a series of violent disputes between rival gangs involved in drug trafficking and other illegal activity, result in the murders of numerous individuals. Victoria Police conducts a series of major investigations into 'gangland' and related activity, including Operations Landslip and Matchless (into the manufacture of methamphetamine at clandestine laboratories), Purana Taskforce (into unsolved homicides and drug trafficking enterprises related to the 'gangland wars'), Operation Posse (into drug trafficking enterprises and the criminal operations of the Mokbel family), Operation Briars (into the murder of Mr Shane Chartres-Abbott) and Petra Taskforce (into the murders of Mr Terrence Hodson, a human source used by Victoria Police, and his wife, Mrs Christine Hodson).<sup>87</sup>

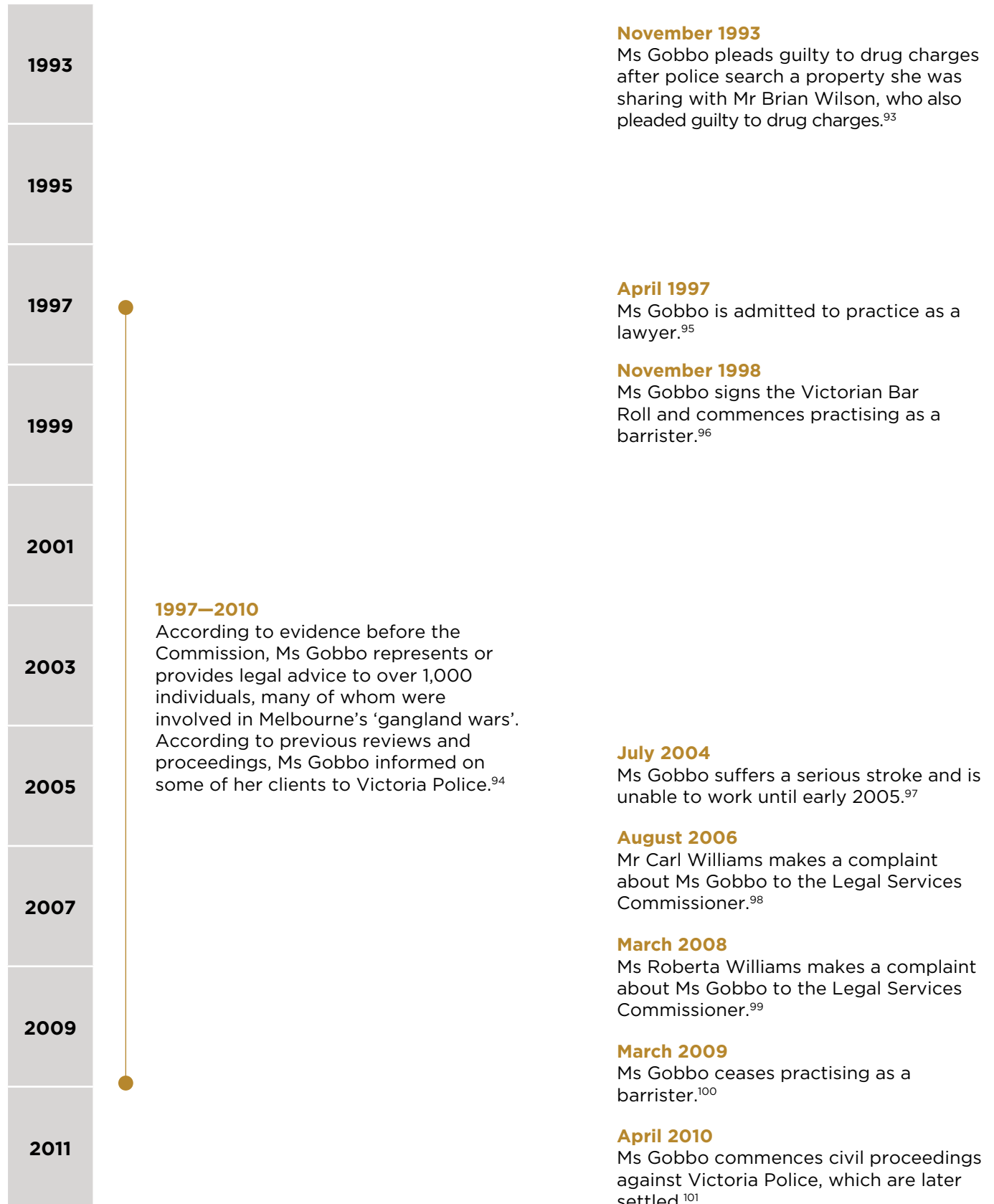
## VICTORIA POLICE USE OF HUMAN SOURCES

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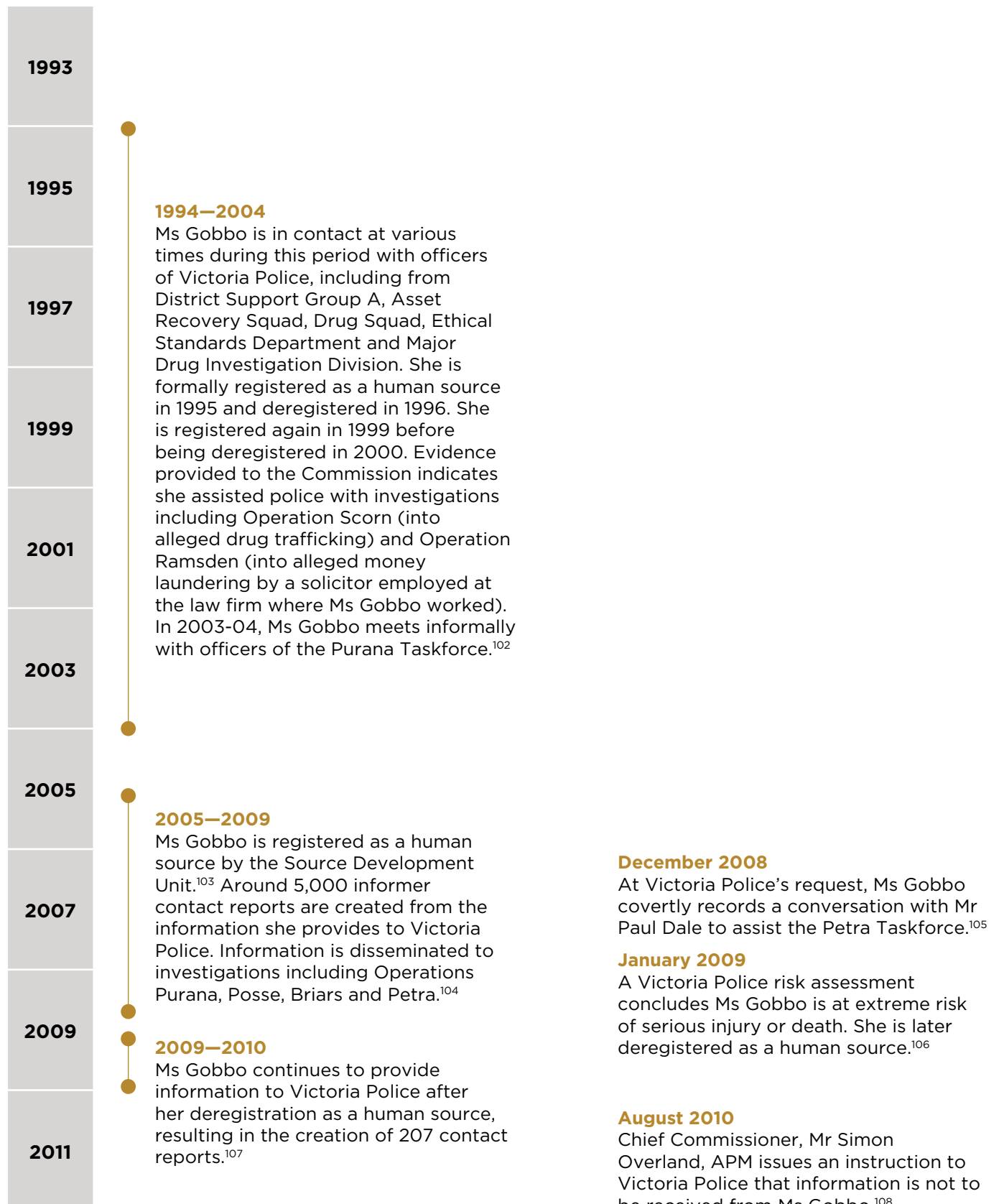
## MS GOBBO'S PRACTICE AS A LAWYER

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## VICTORIA POLICE'S MANAGEMENT OF MS GOBBO

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# The first six months

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## NUMBERS AT A GLANCE

As at 19 June 2019, the Commission has:





While only part way through its inquiry, the Commission has undertaken significant work to examine the matters within its terms of reference. It has collected a substantial volume of information through Notices to Produce, requests for information, public submissions, public hearings, closed hearings, and policy and research work. The Commission has identified numerous lines of inquiry that it will continue to pursue through further investigations, hearings, research and stakeholder consultations.

This section sets out the Commission's work to date and how it is approaching the terms of reference.

## **INFORMATION SOUGHT BY THE COMMISSION**

A substantial part of the Commission's work involves piecing together events and interactions that occurred many years ago in the context of complex police investigations and criminal prosecutions.

As at 19 June 2019, the Commission has issued 374 Notices to Produce and requests for information from relevant individuals and agencies. The types of documents being sought include policies and procedures, court documents and records of contact between Ms Gobbo and Victoria Police between 1993 and 2010.

Reviewing the large quantities of documents provided is a challenging task. The Commission has received over 58,000 documents. There are more than 5,000 contact reports arising from Ms Gobbo's interaction with Victoria Police.<sup>109</sup> There are also thousands of entries from police officers' diaries and a formidable number of intelligence reports, court and interview transcripts, Steering Committee papers, policies and procedures, file notes and correspondence. A large number of documents remain outstanding, with many more expected to be produced over the coming months.

The Commission has encountered delays in the receipt of information needed to conduct its investigations. Agencies and individuals have been asked to locate documents created five, 10 and in some cases up to 20 years ago, when filing and document management systems were significantly less sophisticated than they are today. Lengthy manual processes have been needed to identify, collate and digitise relevant records.

# The first six months

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Suppression and non-publication orders relating to court proceedings have inhibited the Commission's access to essential documents. While the Commission is taking steps to address these orders, some restrictions on the use and disclosure of information will remain.

Given the sensitivity and quantity of relevant material, the Commission has established bespoke, protected-level document management, information technology and security systems to securely store documents received.

Operational sensitivities and associated claims of public interest immunity have also affected the Commission's ability to obtain and disclose documentation. As noted earlier in this report, public interest immunity restricts the production of otherwise relevant evidence in legal proceedings. In the context of this inquiry, claims of public interest immunity may be made where publication of documents or information would be contrary to the public interest in preserving the confidentiality of that evidence.<sup>110</sup> Claims of public interest immunity are commonly made in relation to covert police methodologies and the use of human sources.

The Commission will continue to engage with relevant agencies to ensure it is able to examine, and where possible make public, relevant documentation. To facilitate this process in a timely way, the Commission has established a protocol between Victoria Police, the State of Victoria and the Commission to deal with parties' claims of public interest immunity over documents required to be produced to the Commission. This protocol is published on the Commission's website.

The Commission is grateful for the continued cooperation of individuals and agencies that have provided information relevant to the inquiry, including the courts, IBAC, DPP, CDPP, Victorian Ombudsman and Australian Criminal Intelligence Commission, which are exempt from the Commission's compulsory powers under the Inquiries Act but have nonetheless provided material voluntarily.<sup>111</sup>

## PUBLIC SUBMISSIONS

The views and experiences of the Victorian community are of critical importance to the Commission's work. The Commission has sought public submissions to inform its inquiry and taken steps to communicate its work to individuals who may have been affected by the use of Ms Gobbo as a human source by Victoria Police, as well as to the broader community. This has included advertising the Commission's call for public submissions in major metropolitan newspapers, prisons and via its website and the media.

The Commission encourages any individuals who believe they may have been affected by the conduct of Ms Gobbo and have not yet contacted the Commission to do so by 31 July 2019. If the Commission does not receive all relevant information, it may not be possible to assess whether a case may have been affected by Ms Gobbo's conduct as a human source.

As at 19 June 2019, the Commission has received 131 public submissions. Several submissions have come from individuals who state that they were legally represented by or received legal advice from Ms Gobbo and that their cases may have been affected by her use as a human source by Victoria Police. Some of these individuals were convicted and sentenced for offences, while other cases did not result in a conviction. Submissions have also addressed the conduct of Victoria Police officers in their use and management of Ms Gobbo and other human sources. Other submissions have addressed various issues relevant to the terms of reference, including lawyers' obligations and client legal privilege, legal professional ethics, legal services regulation, amendments to the *Evidence Act 2008* (Vic), and the use of human sources subject to legal obligations of confidentiality or privilege. Some submissions relate to matters that fall outside the Commission's terms of reference.

Public submissions can be viewed on the Commission's website. While the Commission's preference is to make submissions available to the public, there are various reasons for non-publication—these include the author's preference for the treatment of their submission, the need to protect the safety of the author or other individuals, and legal reasons such as restrictions on the publication of information that might be subject to client legal privilege, public interest immunity or suppression orders. Some submissions relevant to the conduct of Ms Gobbo and Victoria Police cannot be published while the Commission progresses its investigations into the allegations made. The Commission will continue to progressively review submissions and publish them as soon as it is appropriate.

# The first six months

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## HEARINGS

Public hearings contribute to the conduct of an open and transparent inquiry and keep the Victorian community informed about the Commission's progress.

As at 19 June 2019, the Commission has conducted 22 days of hearings, examined 32 witnesses and tendered over 235 exhibits. Public hearings are live streamed on the Commission's website with a 15-minute delay to ensure that matters subject to public interest immunity, suppression orders or other sensitivities are not inadvertently broadcast. The website is also regularly updated with published witness statements, documents received into evidence and transcripts of evidence given by witnesses at the hearings. The names of witnesses who have appeared at the Commission's public hearings are listed in Appendix C.

In the Commission's first round of public hearings<sup>112</sup> Mr Neil Paterson, APM, Assistant Commissioner, Intelligence and Covert Support Command, Victoria Police, gave evidence about Ms Gobbo's dealings with Victoria Police from 1993 to 2010. This round of public hearings also explored interactions between Ms Gobbo and Victoria Police between 1993 and 1999, including her first contact with police when charged with drug offences prior to her admission as a lawyer, her initial registration as a human source in 1995 and subsequent registration in 1999.

The second round of public hearings<sup>113</sup> focused on Victoria Police dealings with Ms Gobbo between 1999 to 2003, with emphasis on Victoria Police's Drug Squad and Ethical Standards Department.

The third round of public hearings<sup>114</sup> explored contacts between Ms Gobbo and officers of Victoria Police between 2003 to 2004, with a focus on Victoria Police's Major Drug Investigation Division and the Homicide Squad.

The fourth round of public hearings<sup>115</sup> is intended to focus on Victoria Police's Major Drug Investigation Division, along with Ms Gobbo's interactions with officers of the Purana Taskforce, which was established to investigate unsolved homicides and drug trafficking offences associated with Melbourne's 'gangland wars'.

So far, the Commission has heard evidence about Ms Gobbo's professional and personal associations with Victoria Police officers and the information she provided them, both while registered as a human source and at other times while not formally registered. Victoria Police officers have also given evidence about their understanding of client legal privilege, lawyers' duty of confidentiality to their clients, the prosecution's duty of disclosure, and the training that officers have received in relation to these issues.

A number of witnesses have recounted events and interactions that date back many years, sometimes aided by police diary entries and other records made at the time. Several witnesses indicated that they could no longer recall the matters raised by Counsel Assisting the Commission in these hearings, due to the significant time lapse.

The Commission has received 34 applications for leave to appear at the hearings. If the Commission grants a person leave to appear at a hearing, they (or their lawyer) can participate in part or all of that hearing.<sup>116</sup> If a person or organisation is granted leave to appear, they may also apply for leave to cross-examine relevant witnesses.

The Commission has granted unconditional leave to appear (allowing parties to participate in all of the Commission's hearings and for all terms of reference) to the DPP and Solicitor of Public Prosecutions, the State of Victoria, Victoria Police and the Chief Commissioner of Victoria Police. Ms Gobbo has been granted unconditional leave to appear in relation to hearings relevant to terms of reference 1 and 2. A range of other parties have been granted more limited leave to appear for certain parts of the Commission's hearings and to cross-examine certain witnesses.

Where necessary to protect people's safety or to avoid jeopardising other proceedings or investigations, the Commission has redacted sensitive information from exhibits and transcripts, classified some evidence as confidential and conducted closed hearings. The Commission has heard arguments from Victoria Police, the media and other relevant parties about how closed hearings should be conducted.

As at 19 June 2019, the Commission has made 21 exclusion orders under section 24 of the Inquiries Act, limiting public and sometimes media access to parts of the proceedings. It has made 38 non-publication orders under section 26 of the Inquiries Act, requiring certain witnesses to be referred to by pseudonyms and prohibiting the publication of any material that could identify such witnesses. Two orders have since been lifted in full or in part.

# The first six months

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## **POLICY AND RESEARCH**

The Commission has commenced a substantial body of policy and research work to support its inquiry, particularly in relation to the use of human sources subject to legal obligations of privilege or confidentiality and the use of evidence obtained from human sources in the criminal justice system.

The Commission has written to over 130 individuals and agencies with relevant expertise and experience, including Australian and international law enforcement agencies, prosecuting authorities, police oversight, integrity and anti-corruption agencies, legal services regulatory organisations, peak bodies and researchers who specialise in policing, human source management and the criminal justice system.

The Commission is grateful to the large number of agencies and individuals who have demonstrated a willingness to share their insights and experience.

## **APPROACH TO THE TERMS OF REFERENCE**

This section outlines how the Commission is approaching its terms of reference, including some of the key concepts, considerations and avenues of inquiry identified to date.

### **Term of reference 1: Cases that may have been affected by the conduct of Ms Gobbo as a human source**

Term of reference 1 requires the Commission to inquire into and report on the number of, and extent to which, cases may have been affected by the conduct of Ms Gobbo as a human source. The Commission has prioritised its work on this term of reference as it concerns individuals who have been convicted of criminal offences, some of whom are still in custody.

Term of reference 1 and term of reference 2 are inextricably linked. Examining the extent to which cases may have been affected by the use of Ms Gobbo as a human source under term of reference 1 may also involve some consideration of the conduct of current and former officers of Victoria Police, as required under term of reference 2.

The term 'may have been affected' is important because it conveys the parameters and limitations of the Commission's task. The role of the Commission is not to conclude that a case was in fact affected, nor to dispute or question the overall outcome of a case, such as whether a conviction was appropriate. These are matters for the courts to determine, if individuals decide to challenge their convictions or sentences. The courts apply specific legal frameworks and rules of evidence to the individual facts they find in each case to assess whether it was properly conducted and whether a conviction should stand or be overturned.

The Commission's task is to examine the conduct of Ms Gobbo in her dual role as a lawyer and human source and determine whether it is reasonably arguable that because of this conduct, a case may have been affected in a manner that breached laws or legal principles or denied an individual their legal rights.

Term of reference 1 is perhaps the most challenging of all the Commission's tasks. The review of cases is heavily reliant on the provision of information by various parties including Ms Gobbo, Victoria Police, prosecuting and other agencies, and people who were represented by or received legal advice from Ms Gobbo. Some of these people may choose not to come forward. In other cases, particularly those dealt with by the criminal justice system many years ago, relevant records may not be easily accessible or may no longer exist. In cases that may have been indirectly affected by the use of Ms Gobbo as a human source, obtaining full and complete evidence presents additional challenges.

Despite these constraints, the Commission is taking all feasible steps to develop a comprehensive understanding of the cases that may have been affected. The matters under examination raise unusual and perhaps unique facts and complicated legal uncertainties. There are no clear precedents to precisely guide the Commission in its assessment.

There are, however, general laws and legal principles that are relevant. The following section, while not exhaustive, outlines some of these principles.

# The first six months

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## RELEVANT LAWS AND LEGAL PRINCIPLES

### Breach of client legal privilege and associated duties

A client who engages a lawyer has a right to client legal privilege,<sup>117</sup> which protects disclosure of certain communications or documents shared between a lawyer and client for the dominant purpose of litigation or providing legal advice, unless, for example, this privilege is waived by the client.<sup>118</sup> Protecting certain communications that occur between lawyers and clients is essential to the administration of justice.<sup>119</sup> The importance of client legal privilege has been described as follows:

*The proper administration of justice requires that clients are able to communicate freely and frankly with their lawyer, without fear of disclosing any information relevant to the legal advice they are seeking. It is well understood that, in the absence of the privilege, legal proceedings may be delayed or even miscarried as lawyers may not be able to properly represent their client, or bring relevant matters to the attention of the court.<sup>120</sup>*

A breach of client legal privilege could include disclosure to third parties of confidential communications between a client and their lawyer, which were for the dominant purpose of the lawyer providing legal advice.

A client's right to claim privilege over communications with their lawyer is not absolute. Client legal privilege can be lost in circumstances where the client, their lawyer or a third party engage in communications or prepare documents in furtherance of a fraud, an offence, or an act that renders a person liable to a civil penalty or a deliberate abuse of statutory power.<sup>121</sup>

Individuals communicate with a lawyer for various reasons, including to obtain legal, business, strategic or other advice. Depending on the circumstances, some client-lawyer communications may be protected by client legal privilege and others may not.<sup>122</sup> In reviewing cases, the Commission is examining the nature of the information that Ms Gobbo provided to Victoria Police and whether it was subsequently used in criminal investigations and prosecutions. This will include an assessment of the circumstances in which the information was provided to, or obtained by, Ms Gobbo to identify whether it may have been the subject of client legal privilege.



## Breach of confidentiality

Lawyers also have a broader duty of confidentiality to their clients, which requires that they do not disclose confidential information acquired from a client-lawyer relationship.<sup>123</sup> This duty enables an individual who seeks legal assistance to discuss relevant matters freely, with the knowledge that any sensitive information provided will not be disclosed. Without this confidence, a person might choose not to obtain legal advice.<sup>124</sup> The duty of confidentiality also assists lawyers to provide better advice and representation to their clients, including advice that might dissuade them from engaging in illegal conduct, and ultimately supports the public's trust in lawyers and the legal system.<sup>125</sup>

There are limited exceptions to the duty of confidentiality. These might include where the client consents to the information being disclosed; where the information is obtained by the lawyer from another person in circumstances that do not attract confidentiality; or where disclosure is necessary to prevent probable serious crime or imminent serious physical harm to the client or another person.<sup>126</sup>

Discussions between a lawyer and client that occur socially but in circumstances where a client believes the relationship to be one of confidence, while not attracting client legal privilege, may still be deemed confidential.<sup>127</sup> In assessing whether information Ms Gobbo provided to police may have been subject to client legal privilege, the Commission is also examining whether information may have been disclosed in breach of the duty of confidentiality.

# The first six months

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## **Breach of the duty of loyalty or conflicts of interest**

Lawyers also hold a duty of loyalty to their clients.<sup>128</sup> This duty requires a lawyer to promote and protect the interests of their client and avoid conflicts of interest.<sup>129</sup> It is fundamental that the client can rely on and trust that their lawyer is acting in good faith and in accordance with their best interests.

Conflicts of interest can arise when a lawyer's duty to their client conflicts with the duties they owe to another current or former client, or with the lawyer's own personal interests.<sup>130</sup> For example, a lawyer may be restricted from representing two clients in the same matter where the clients' interests may diverge. This is because there is a chance that the lawyer will not be able to act in the best interests of each client.

A breach of this duty may have arisen if Ms Gobbo represented multiple persons in the same case and there were inconsistent interests among these clients. A breach may have also occurred where Ms Gobbo's own personal interests conflicted with her duty to act in the best interests of her client.

In examining the interaction between the duty of loyalty and Ms Gobbo's conduct as a human source, the Commission will consider a range of circumstances in which a lawyer's conflict of interest, failure to disclose conflicts of interest and breach of the duty of loyalty could occur. Examples might include circumstances where a lawyer:

- had previously represented and continued to act for a central witness in the case against the client
- provided information about a client or relayed the content of conversations with a client to police
- taped conversations with a client to provide to the police
- in the course of a criminal investigation or proceedings, provided information to police that was calculated to strengthen the prosecution case against a client
- was the source of evidence contained in a prosecution brief of evidence against a client
- held themselves out as independent and able to provide objective and sound legal advice to a client while being a source of the evidence against the client.

## Breach of duty to the court

Upon admission to the legal profession, lawyers become officers of the court and their paramount duty is to act independently in the interests of the administration of justice.<sup>131</sup> For example, lawyers must not deceive or knowingly or recklessly mislead the court, withhold information or documents that are required to be disclosed, or waste the court's time.<sup>132</sup> The duty to the court ensures the integrity of the justice system. Lawyers must not act singularly in their client's interests to the detriment of ensuring justice is delivered in accordance with the law.<sup>133</sup>

A breach of the duty to the court is also likely to arise in the circumstances described earlier, where there has been a breach of another duty—such as a lawyer's failure to disclose a conflict of interest. Thus, if the Commission finds that Ms Gobbo may have breached a client's legal privilege or acted in a manner that conflicted with her client's interests, a failure to disclose such breaches or conflicts to the court may also amount to a breach of her duty to the court.

## Other relevant legal principles

There are various rules and procedures that ensure investigations and prosecutions of individuals for criminal offences are conducted fairly. For instance, there are specific duties that require the prosecution to disclose relevant material to an accused person.<sup>134</sup> Courts also have a responsibility to ensure fair hearings, including by making decisions about the evidence that can be used in a criminal case.<sup>135</sup>

In its review of cases, the Commission is considering how information obtained from Ms Gobbo was used in investigations and prosecutions and whether relevant rules and procedures were followed. For example, if evidence relied on in a trial against an accused person was obtained from information provided by Ms Gobbo in breach of her obligations as a lawyer, a question may arise as to whether that evidence was improperly or illegally obtained by Victoria Police. In this way, the review of cases under term of reference 1 is closely linked to the review of Victoria Police conduct under term of reference 2.

As the Commission receives further documentation and progresses its review of cases, other relevant legal principles and scenarios may emerge and inform its determination about whether and to what extent a particular case may have been affected.

# The first six months

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## THE COMMISSION'S REVIEW OF CASES

The Commission's approach to reviewing cases involves multiple interconnected stages.

The first stage is to identify individuals represented by Ms Gobbo during the period she operated as a human source. From the information gathered to date, the Commission understands that over 1,000 individuals were legally represented by or received legal advice from Ms Gobbo during the relevant period. It is important to note that not every such individual was necessarily the subject of information she provided to Victoria Police.

The Commission has also received material related to individuals who were not represented by Ms Gobbo in court proceedings, but whose cases may nonetheless have been affected—for example, because Ms Gobbo acted for a co-accused. Some individuals who were not ultimately convicted of a criminal offence (but rather were acquitted or had charges withdrawn) have also submitted that their cases may have been affected.

The second stage of the Commission's review involves collecting relevant documents and information from law enforcement agencies, prosecuting authorities and other parties. This includes relevant court documents, contact reports and audio recordings.

The third stage involves analysis of the material received to assess whether a case may have been affected by the conduct of Ms Gobbo as a human source, and if so, the extent to which it may have been affected.

While the review of cases requires consideration of exceptional and possibly unique facts and circumstances, the Commission has developed key questions to guide its analysis, informed by the laws and legal principles described earlier in this report. The questions listed below, while not exhaustive, form a critical part of the Commission's review:

- Did Ms Gobbo's conduct involve a breach of legal obligations of confidentiality or privilege?
- Did Ms Gobbo's conduct involve a failure to disclose any identified conflicts of interest?
- Was evidence in the case obtained as a consequence (directly or indirectly) of Ms Gobbo's conduct as a human source?

- How important was this evidence in the case?
- Did Ms Gobbo provide information about, influence, or act for, witnesses, co-accused or other persons involved in the case?
- What was the nature and extent of Ms Gobbo's role in obtaining instructions from, advising, and/or appearing for the accused person in the case?
- Was the accused deprived of an opportunity to take, or attempt to take, a different course in their proceedings because of Ms Gobbo's involvement or influence on the case as a human source?
- Was there a failure to disclose material or information to an accused person, which would have been favourable to the accused person and in breach of the prosecution's duty of disclosure?
- Did Ms Gobbo have a personal relationship with police officers involved in the investigation or prosecution of the case at the time of the investigation and prosecution, which may have constituted a conflict of interest?

This task is complicated by a range of factors, including the magnitude and interconnected nature of the criminal offending in some cases and overlapping police operations involving multiple co-accused. Further, some documentation prepared by law enforcement agencies in the relevant cases runs to tens of thousands of pages. Finally, extensive interaction between Ms Gobbo and police over many years, and the volume of information she provided, makes it difficult to trace the passage of such information from her human source handlers to other police for use in often protracted investigations and prosecutions.

As it progresses its review of cases, the Commission is giving priority to those involving individuals who are currently in custody or who have made submissions to the Commission that their case may have been affected. During each stage of the review and as more information is obtained from hearings, submissions and the production of further documents, it is anticipated that the Commission may identify additional cases, along with additional questions and considerations to guide the review process.

# The first six months

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## **POSSIBLE IMPLICATIONS OF CASES AFFECTED BY THE CONDUCT OF MS GOBBO**

As noted earlier in this report, individuals whose convictions may be called into question by Ms Gobbo's conduct may seek to have their conviction or sentence overturned by a court. It is important to re-emphasise that the Commission has no power to effect these outcomes. The potential avenues of recourse that may be available to a convicted person are summarised below.

### **Avenues of appeal**

#### *Appeals against conviction*

A person convicted of an offence in the County Court or Supreme Court can apply for leave to appeal their conviction by the Court of Appeal. Section 276(1) of the *Criminal Procedure Act 2009* (Vic) provides that an appeal must be allowed if the Court is satisfied that:

- (a) the verdict of the jury is unreasonable or cannot be supported having regard to the evidence; or
- (b) as the result of an error or an irregularity in, or in relation to, the trial there has been a substantial miscarriage of justice; or
- (c) for any other reason there has been a substantial miscarriage of justice.

There are several circumstances in which a court may determine that there has been a substantial miscarriage of justice, and they cannot be rigidly defined. The High Court has stated that the kinds of miscarriage referred to in section 276(1) include, but are not limited to, three kinds of cases. These are:

- where the jury has arrived at a result that cannot be supported having regard to the evidence
- where there has been an error or an irregularity in, or in relation to, the trial and the Court of Appeal cannot be satisfied that the error or irregularity did not make a difference to the outcome of the trial
- where there has been a serious departure from the prescribed processes for trial.<sup>136</sup>

If an appeal against conviction is successful, the Court will overturn the conviction and order that a new trial is held or that the person is acquitted.<sup>137</sup> Any sentence imposed for the offence (for example, a term of imprisonment, Community Correction Order or a fine) will also be set aside. If the person is in custody, they will likely be released. Exceptions would include if the person is also serving a sentence of imprisonment for another, unrelated offence, or if the Court orders a new trial and bail is refused.

In considering an appeal against conviction, the courts also have an inherent power to order a permanent stay of criminal proceedings. The effect of a permanent stay is that the proceedings come to an end. The power to order a permanent stay comes from the court's power to protect the integrity of its processes and ensure fairness.<sup>138</sup> It is only used in exceptional circumstances, where a defect cannot be remedied by other powers available to the court.<sup>139</sup>

#### *Petition for mercy*

If a person wishes to challenge their conviction but they have already unsuccessfully appealed, the only way that the conviction can be reviewed is to apply for a petition for mercy. On considering a petition for mercy, the Attorney-General has the power to refer the case to the Court of Appeal.<sup>140</sup> If this occurs, the case is treated as an appeal against conviction.<sup>141</sup> The Attorney-General also has the power to refer a specific point of law to the Supreme Court, which can provide an advisory opinion.<sup>142</sup>

# The first six months

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## Other orders arising from a conviction

If an appeal is allowed, in addition to the conviction and sentence being set aside, there are other orders that may be affected. Some of these are outlined below.

### *Subsequent sentencing orders*

During sentencing, a court must have regard to, among other things, an offender's previous character, which may include prior criminal history.<sup>143</sup> This means a person with relevant previous convictions could be sentenced more severely than someone without any relevant past criminal convictions. As a result, it is possible that sentences that are currently being served for convictions not directly affected by the conduct of Ms Gobbo could still be subject to an appeal against sentence.<sup>144</sup> That is, an individual may argue that the sentence imposed was higher than it should have been because the court considered a prior conviction that was subsequently overturned.

### *Asset confiscation and associated orders*

In certain circumstances, the State has the power to require the forfeiture of an offender's assets. Generally, forfeiture of assets occurs after a finding of guilt for serious profit-motivated offences (for example, drug trafficking) or following a conviction for certain offences where property is found to have been used, or intended to be used, in connection with an offence. Where there is no property to forfeit (for example, when an offender has already spent the proceeds of crime), a court can make an order requiring the offender to pay an amount of money equivalent to what they gained from the crime through a pecuniary penalty order.<sup>145</sup> The State also has the power to forfeit a person's assets in some circumstances where a person has not been charged or convicted of a criminal offence.<sup>146</sup> The *Confiscation Act 1997* (Vic) sets out a process for any property forfeited (or the value of any property forfeited) to be returned if a conviction is set aside by a court.<sup>147</sup>

### *Post-sentence supervision and detention orders*

A court can order an offender who has committed a serious sex offence or a serious violence offence to be subject to post-sentence supervision or detention after they have completed their sentence of imprisonment.<sup>148</sup> Offenders on a post-sentence supervision order are supervised by Corrections Victoria after they are released into the community from prison and must comply with a range of conditions. Offenders subject to a post-sentence detention order are detained in prison for the duration of the order. A person subject to a post sentence supervision or detention order who has their original conviction set aside would no longer be subject to the post-sentence order.<sup>149</sup>



## ONGOING DISCLOSURE

Alongside the work of the Commission, both the OPP and CDPP have been conducting searches of their databases to identify any cases they prosecuted that may have been affected by the use of Ms Gobbo as a human source. This has involved identifying matters where Ms Gobbo appeared for the defence over the relevant timeframe and seeking information from Victoria Police about those matters so that the OPP and CDPP can determine whether information must be disclosed to potentially affected individuals.

In addition to the seven individuals who received disclosure in December 2018 following the High Court's decision,<sup>150</sup> the DPP and CDPP have made subsequent disclosures to other individuals based on information provided by Victoria Police. The Commission understands that the DPP and CDPP will continue to do so if they identify any further cases where this is required.

Evidence to support disclosures to affected individuals is also being sought from Victoria Police in cases where individuals have applied for a petition for mercy or sought leave to appeal. Mr Faruk Orman has applied for a petition for mercy and Mr Zlate Cvetanovski, Mr Antonios (Tony) Mokbel and Mr Rabie (Rob) Karam have applied for leave to appeal their convictions to the Court of Appeal. The Court of Appeal has set timeframes to progress the disclosure of documents from Victoria Police to enable these applications to proceed. The Commission is taking all reasonable steps to assist the prosecuting authorities in their ongoing disclosure obligations.

### **Term of reference 2: The conduct of Victoria Police in managing Ms Gobbo as a human source**

Term of reference 2 requires the Commission to inquire into and report on the conduct of current and former officers of Victoria Police in their disclosures about and recruitment, handling and management of Ms Gobbo as a human source.

Just as lawyers have duties and obligations that arise from their profession, police officers must promise to discharge their duties faithfully and according to law, without favour or affection, malice or ill-will.<sup>151</sup> The importance of individual police officers acting honestly, fairly and with integrity is reflected in the laws and professional and ethical standards that apply to Victoria Police officers.

# The first six months

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As police officers are responsible for the collection of evidence that forms part of criminal prosecutions, how that evidence is obtained is relevant to whether the investigation and prosecution have been conducted lawfully. For example, courts have restricted the use of evidence obtained by police through search warrants that were not appropriately sworn.<sup>152</sup> Accordingly, and as outlined earlier in this report, the issues arising from term of reference 2 may also be relevant to the Commission's assessment of whether, and to what extent, a case may have been affected as required under term of reference 1.

To address term of reference 2, the Commission is inquiring into the nature and extent of police officers' involvement in and knowledge of the use of Ms Gobbo as a human source. This includes examining the extent to which police officers complied with relevant policies and procedures; the appropriateness of their conduct in recruiting and managing Ms Gobbo as a human source; police governance and other organisational arrangements in place at the time; and the extent to which issues relating to police accountability, leadership and culture played a role in the events that transpired.

The Commission is also required to examine Victoria Police disclosures concerning the use of Ms Gobbo as a human source. This includes its disclosure of relevant material to prosecuting authorities and affected individuals at the time that these individuals were being prosecuted, and its continued disclosures after the High Court decision allowed the prosecuting authorities to notify certain affected individuals of Ms Gobbo's use as a human source.

The Commission is not empowered to conduct a broad inquiry into the operation, effectiveness or integrity of Victoria Police, nor its management of human sources generally. Term of reference 2 is confined to the conduct of police officers relating to their use of Ms Gobbo as a human source. The Commission faces an enormous task in fulfilling this term of reference, in part because of the extensive interaction between Ms Gobbo and many different officers, divisions and taskforces within Victoria Police over a period of 18 years. The Kellam Report noted that, notwithstanding the need to keep Ms Gobbo's identity and management as a human source confined to a small number of individuals, evidence provided to the investigation indicated that at least 150 police officers were aware of Ms Gobbo's identity as a human source by 2009.<sup>153</sup>

So far, the Commission has called a number of current and former officers of Victoria Police who had interactions with Ms Gobbo to give evidence at hearings. It has also heard from senior Victoria Police officers involved in the management and oversight of human sources generally.

## **Term of reference 3: The current adequacy and effectiveness of Victoria Police processes and practices**

Term of reference 3 requires the Commission to consider 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. This includes examining Victoria Police's compliance with recommendations of the Kellam Report.<sup>154</sup>

The Commission has heard that there have been many changes to policies, procedures and practices for the management of human sources since the time that Ms Gobbo was first registered as a human source. Victoria Police has given evidence that all of the recommendations of the Kellam Report have now been implemented.<sup>155</sup> The Commission will continue to examine whether Victoria Police's current practices comply with these recommendations and are otherwise appropriate.

This will include assessing the extent to which current policies and procedures reflect best practice in the management of human sources with legal obligations of confidentiality of privilege, and the extent to which Victoria Police has taken all necessary steps to ensure its officers understand and apply relevant requirements and safeguards.

To address this term of reference, the Commission requires timely access to relevant policies and procedures. The Commission appreciates the sensitivities of covert policing methodologies, including the use of human sources, and the need to treat this information carefully. Some jurisdictions, such as the United Kingdom, have legislative schemes and published codes of practice guiding the use of human sources.<sup>156</sup> Much information, however, particularly that detailing covert or sensitive operational methodologies, is not easily accessible.

The Commission will be reliant on the expertise, collaboration and cooperation of law enforcement agencies in Australian and international jurisdictions as it continues its work to fulfil term of reference 3. To date, the Commission has had positive engagement and cooperation from several law enforcement agencies in other jurisdictions.

#### **Term of reference 4: The use of specified human source information in the criminal justice system**

Term of reference 4 requires the Commission to examine the adequacy of Victoria Police's current practices for the disclosure of information from human sources who are subject to legal obligations of privilege or confidentiality to prosecuting authorities (such as the DPP, the CDPP and Victoria Police prosecutors in the Magistrates' Court).

The Commission is also required to examine whether there are adequate safeguards in relation to the ways in which Victoria Police and the DPP prosecute matters when the investigation has involved human source material.

# The first six months

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As outlined earlier in this report, prosecutors have a duty to disclose all relevant material to an accused person. The duty of disclosure applies to ‘the prosecution’ in a broad sense. This includes police prosecutors, the DPP and other lawyers who act on behalf of the DPP to prosecute a crime. For the purposes of the prosecutorial duty of disclosure, law enforcement agencies are part of the prosecution.<sup>157</sup>

The use and identities of human sources are often the subject of claims of public interest immunity. This is partly because of the substantial risk of harm to them and their families if their identities become known, and partly because of the community safety benefits to be gained from the continued use of human sources, who require confidence that their identities will be protected. Claims of public interest immunity are relevant to prosecutorial duties of disclosure as they may affect the ability of the prosecution to disclose information to an accused person and discharge this obligation appropriately.

The Commission is examining Victoria Police’s disclosure practices in relation to human sources with obligations of confidentiality or privilege. Its task is limited to these circumstances and does not extend to Victoria Police’s broader practices for disclosure to prosecuting authorities.

To address this term of reference, among other things, the Commission is examining information from Victoria Police about the current operation of disclosure processes, procedures or guidelines in relation to prosecutions that involve specified human sources. The Commission aims to develop an understanding of how human source material is being used in the criminal justice system. The Commission will also examine the safeguards currently in place, how they protect specified human sources and the collection of information, and how these considerations are balanced against the right of an accused person to a fair trial.

Under the Inquiries Act, the Commission cannot inquire into entities such as the DPP.<sup>158</sup> That does not, however, prevent such agencies from voluntarily giving evidence or producing information.<sup>159</sup> The Commission gratefully acknowledges the DPP’s and CDPP’s cooperation to date on this and other terms of reference.

## **Term of reference 5: Recommended measures – Other human sources and any systemic failures**

Term of reference 5 requires the Commission to recommend measures to address the use of any other human sources who are or have been subject to legal obligations of confidentiality or privilege and come to the Commission’s attention during the inquiry. Victoria Police has disclosed the use of several human sources who are not lawyers or legal practitioners but who may be, or may have been, subject to legal obligations of confidentiality or privilege.

Term of reference 5 does not require the Commission to forensically examine the use of such human sources to the same extent that is required in the case of Ms Gobbo. However, if the Commission forms the view that a case may have been affected by the use of such a human source, it will promptly provide any relevant information to the appropriate prosecuting authority.

There is no formal definition of ‘legal obligations of confidentiality or privilege’, nor an exhaustive list of the professions that might be subject to such obligations. The Commission is examining the approaches adopted in other jurisdictions, some of which call for specific safeguards for the use of human sources likely to hold confidential or privileged information, including lawyers, medical professionals, journalists, Members of Parliament and ministers of religion.<sup>160</sup>

This term of reference also asks the Commission to recommend measures to address any systemic or other failures relating to the management of human sources subject to legal obligations of confidentiality or privilege and the use of such human source information in the broader criminal justice system. In this vein, the Commission has an important role in preventing relevant misconduct or systemic failures by Victoria Police in the future.

### **Term of reference 6: Any other relevant matters**

Term of reference 6 enables the Commission to inquire into and report on any other matters necessary to satisfactorily resolve the matters set out in terms of reference 1 to 5.

The Commission has received public submissions that raise other matters relevant to the Commission’s terms of reference, including regulation of the legal profession, Victoria Police’s transition of human sources to witnesses, and the management and protection of witnesses. The Commission will consider these submissions and other evidence received insofar as they relate to its inquiry into terms of reference 1 to 5.





# Next steps

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While the Commission has undertaken substantial work to progress its inquiry, there is still considerable work to do.

## GATHERING FURTHER EVIDENCE

In the coming months, the Commission will progress its review of cases relevant to term of reference 1. It will also continue to seek relevant documents, conduct hearings, examine witnesses and analyse material to support its inquiry.

The Commission intends to call additional current and former officers of Victoria Police to appear at hearings in relation to terms of reference 1 and 2. Hearings expected to commence from 22 July 2019 will examine the work of the Victoria Police Source Development Unit. This unit was responsible for managing Ms Gobbo as a human source between 2005 and 2009 and is central to the Commission's inquiry. The Commission also intends to call current and former members of Victoria Police senior command to give evidence about a range of matters, including the decision-making, governance and oversight arrangements relevant to Ms Gobbo's use as a human source.

On 5 June 2019, the Commission held a directions hearing to address, among other things, how the hearings relating to Ms Gobbo's interactions with the Victoria Police Source Development Unit will proceed. The Commission also heard from the legal representatives of several individuals whose convictions may have been affected by the conduct of Ms Gobbo and who seek leave to appear in those hearings.

On the information presently before it, the Commission considers it important to afford potentially affected individuals appropriate opportunities to participate in hearings relating to terms of reference 1 and 2. In turn, the ability of these individuals to participate meaningfully relies on them having access to information relevant to their cases.

As submitted by Counsel Assisting the Commission at the 5 June 2019 directions hearing:

*There are a number of reasons why that's important but significantly it enables them to assist the Commission to determine the extent to which their cases may have been affected. In order for them to do so, in our view, they're entitled to know what information was provided to Victoria Police handlers and investigators by Ms Gobbo and how such information was used, if it was, in their prosecutions by the Crown and whether such information should have been disclosed to them prior to their trials.<sup>161</sup>*



The Commission will continue to afford individuals and agencies appropriate opportunities to participate in the Commission's hearings, and to reiterate its expectation that Victoria Police provides potentially affected individuals with all material relevant to their cases.

The Commission will also give Ms Gobbo the opportunity to give evidence before the Commission and work with her lawyers to facilitate her participation.

Following a series of stakeholder consultations over the coming months, the Commission intends to call relevant witnesses to give evidence at the Commission's hearings about the adequacy and effectiveness of current Victoria Police policies, procedures and practices, and national and international best practice for the management of human sources subject to legal obligations of confidentiality or privilege.

The Commission's upcoming hearing schedule will be published on the Commission's website as soon as practicable prior to hearings. As far as possible, the Commission will continue to hold its hearings in public. Where necessary, for example to protect people's safety, the Commission will continue to hold closed hearings, redact exhibits and make non-publication orders.

The Commission will endeavour to allow Commission-accredited media to be present in closed hearings. As the inquiry progresses, the Commission will also review the exclusion and non-publication orders it has made and lift any orders that are no longer necessary. To inform these decisions, the Commission may hold directions hearings to enable Victoria Police, media organisations and other relevant parties to appear and make submissions.

# Next steps

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## **EXAMINING BEST PRACTICE AND DEVELOPING REFORMS**

Over the coming months, the Commission will continue to progress its policy and research work, including engagement with relevant experts to examine current best practice and to compare Victorian approaches with those of other jurisdictions. This will assist the Commission to identify legislative, policy, procedural and other measures needed to build on, and strengthen, Victoria's framework for the use and management of relevant human sources.

The Commission is acutely aware of the need for a balanced and operationally practical approach to the use of human sources that also ensures appropriate governance, accountability and transparency. As the Commission has stated publicly, the proper and principled use of human sources is a critical tool for police in the prevention, detection and investigation of crime. The Commission is also conscious of the need to consider the specific legal and operational context in which Victoria Police and the Victorian criminal justice operate when developing its findings and recommendations.

The Commission has been and will continue to consult widely with Australian and international agencies and individuals to assist in the development of evidence-based reforms. The Commission also intends to hold selective roundtables with key experts and practitioners later in the year to refine proposed reforms.

In developing findings, the Commission will also afford relevant parties appropriate opportunities to respond. If the Commission proposes to include an adverse finding in its report, it will ensure that the person has had an opportunity to respond and will consider and fairly set out the person's response in its final report.<sup>162</sup>

The Commission will deliver its final report on 1 July 2020, including recommendations to ensure that any future use of human sources bound by obligations of confidentiality or privilege is robust and effective, and supports the continued integrity of Victoria's criminal justice system.







# Appendix A:

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# Letters Patent

**ELIZABETH THE SECOND, BY THE GRACE OF GOD  
QUEEN OF AUSTRALIA AND HER OTHER REALMS AND TERRITORIES,  
HEAD OF THE COMMONWEALTH:**

I, the Honourable Linda Dessau AC, the Governor of the State of Victoria, with the advice of the Premier, under section 5 of the *Inquiries Act 2014* and all other enabling powers, appoint you

the Honourable Margaret Anne McMurdo AC as Commissioner and Chairperson, and Malcolm Arthur Hyde AO APM as Commissioner

to constitute a Royal Commission to inquire into and report on the matters specified in the terms of reference.

#### BACKGROUND

- The reasons for decision of the High Court of Australia, the Victorian Court of Appeal and the Supreme Court of Victoria in *AB v CD*, *EF v CD* have detailed the conduct of Victoria Police in relation to the informant known as '3838', who was a criminal defence barrister recruited by Victoria Police to provide information about various members of the criminal fraternity, including those involved in the Melbourne 'gangland wars', some of whom were 3838's clients, between 2005 and 2009.
- There are appeal proceedings currently underway brought by three persons whose convictions are alleged to have been affected by the conduct of 3838, and it is anticipated that more cases may be affected, and further proceedings may be commenced.
- A case review was prepared by the former Chief Commissioner Neil Comrie into Victoria Police's handling of 3838, in particular the application of policies, control measures and supervisory practices relevant to their handling, and recommended that Victoria Police review all matters associated with 3838 to ensure all issues of significance were identified and appropriate actions taken.
- An independent inquiry by the Independent Broad-based Anti-corruption Commission, conducted by the Hon Murray Kellam AO QC in 2015, into human source management at Victoria Police found that Victoria Police had failed to act in accordance with appropriate policies and guidelines in their recruitment, handling and management of 3838, and found negligence of a high order and made recommendations for the future recruitment, handling and management of human sources.

- The former Director of Public Prosecutions, the Hon John Champion, conducted an internal investigation into the DPP's handling of the affected matters and found no evidence of inappropriate conduct on the part of the DPP or OPP, and found that those offices had no knowledge of the identity of 3838 or the use of 3838 as a human source by Victoria Police.

AND WHEREAS it is anticipated that you will, in the conduct of your inquiry:

- A. seek not to prejudice any ongoing investigations or judicial proceedings or exercise any of its coercive or investigative powers in a manner which would be in contempt of court;
- B. not unnecessarily duplicate the investigations or recommendations of inquiries or investigations previously conducted in these or related matters:
  - i. that are described in the background above or that otherwise come to your attention during the course of your inquiry; and
  - ii. insofar as they are relevant to the terms of reference for your inquiry;
- C. work co-operatively, as appropriate, with other inquiries or investigations into Victoria Police's handling of 3838 to avoid unnecessary duplication;
- D. have regard to:
  - i. the existence of related judicial proceedings;
  - ii. the possibility of further proceedings being commenced by other affected persons;
  - iii. the safety of 3838 and other persons affected by the matters raised in this inquiry; and
- E. promptly bring to the attention of the Director of Public Prosecutions and the Commonwealth Director of Public Prosecutions any information or documents that you consider relevant to their functions, including their continuing duty of disclosure.

TERMS OF REFERENCE

You are appointed to inquire into and report on:

1. The number of, and extent to which, cases may have been affected by the conduct of 3838 as a human source.
2. The conduct of current and former members of Victoria Police in their recruitment, handling and management of 3838 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; and
  - 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*, 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; and
  - 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 any systemic or other failures in Victoria Police's processes for the 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 paragraphs 1-5.

You are required to report your findings and any recommendations to the Governor in relation to the specified matter [1] at first instance, and by 1 July 2019 or such other date as agreed between the Commission and the Government.

You are required to report your findings and any recommendations to the Governor in relation to the remaining matters as soon as possible thereafter, and no later than 1 December 2019 or such other date to be agreed between the Commission and the Government.

#### CONDUCT OF THE INQUIRY

You are directed to conduct your inquiry in accordance with section 12 of the *Inquiries Act 2014*.



You may also consult with experts and engage persons to provide relevant advice and assistance.

You are authorised to incur expenses and financial obligations to be met from the Consolidated Fund up to \$7,500,000.00 in conducting this inquiry.

These letters patent are issued under the Public Seal of the State.



WITNESS

Her Excellency the Honourable  
Linda Dessau, Companion of the  
Order of Australia, Governor of  
the State of Victoria in the  
Commonwealth of Australia at  
Melbourne this 13<sup>th</sup> day of  
December two thousand and  
eighteen.

By Her Excellency's Command

The Honourable Daniel Andrews MP  
Premier of Victoria

Entered on the record by me in the Register of Patents Book No 47 Page No 25 on the 13<sup>th</sup> day  
of December 2018

Secretary, Department of Premier and Cabinet

# Appendix B: \_\_\_\_\_

## Amendments to Letters Patent

ELIZABETH THE SECOND, BY THE GRACE OF GOD  
QUEEN OF AUSTRALIA AND HER OTHER REALMS AND TERRITORIES,  
HEAD OF THE COMMONWEALTH:

I, the Honourable Linda Dessau AC, the Governor of the State of Victoria, with the advice of the Premier, under section 5 of the *Inquiries Act 2014*, section 41A of the *Interpretation of Legislation Act 1984* and all other enabling powers, amend the Letters Patent entered into the Register of Patents Book No. 47 Page No. 25 on 13 December 2018 establishing the Royal Commission into the Management of Police Informants by:

1. **Removing** Malcolm Arthur Hyde AO APM as Commissioner
2. In the first paragraph under the heading 'Background', after the words 'in relation to the informant known as 3838' **insert** –  
  
' , and referred to hereafter as EF,'
3. In all subsequent paragraphs, for the word '3838' wherever appearing **substitute** –  
  
'EF'
4. In the first paragraph under the heading 'Background', after the sentence ending with the words 'between 2005 and 2009.' **insert** –  
  
'Victoria Police has since disclosed that EF was first registered as an informant in 1995 (using different informant numbers from time to time). It is also possible that EF provided information to Victoria Police while not registered as an informant.'
5. In paragraph 2 under the heading 'Terms of Reference', after the words 'members of Victoria Police in their' **insert** –  
  
'disclosures about and'
6. For paragraph 5 under the heading 'Terms of Reference' **substitute** –  
  
'5. Recommend 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 come to your attention during the course of your inquiry; and
- 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.'

These amended letters patent are issued under the Public Seal of the State.

WITNESS



Her Excellency the Honourable  
Linda Dessau, Companion of the  
Order of Australia, Governor of  
the State of Victoria in the  
Commonwealth of Australia at  
Melbourne this ~~7th~~ day of  
February two thousand and  
nineteen.

By Her Excellency's Command

The Honourable Daniel Andrews MP  
Premier of Victoria

Entered on the record by me in the Register of Patents Book No 47 Page No 34 on the 7<sup>th</sup> day  
of February 2019

Secretary, Department of Premier and Cabinet

# Appendix C: --- Witnesses in Public Hearings

As at 19 June 2019, the Royal Commission has held 22 days of hearings and heard evidence from 32 witnesses.

The names of witnesses who appeared at public hearings are listed in the table below. These hearings, or parts of these hearings, were open to the public and streamed on the Commission's website. Transcripts and exhibits from some public hearings are also available on the website.

In some instances, the Commission has held closed hearings to protect the safety of certain witnesses and potentially affected persons. The names of these witnesses are not included in the table below.

| Name               | Title  | Hearing date(s)           |
|--------------------|--|---------------------------|
| Neil Paterson, APM | Assistant Commissioner, Victoria Police        | 27–29 March 2019          |
| Trevor Ashton      | Inspector, Victoria Police                     | 29 March 2019             |
| John Gibson        | Former Detective Sergeant, Victoria Police     | 29 March 2019             |
| Peter Trichias     | Acting Inspector, Victoria Police              | 29 March 2019             |
| Michael Holding    | Former Sergeant, Victoria Police               | 29 March 2019             |
| Tim Argall         | Detective Senior Sergeant, Victoria Police     | 1 April &<br>18 June 2019 |
| Rodney Arthur      | Detective Senior Sergeant, Victoria Police     | 1 April 2019              |
| Gavan Segrave      | Detective Inspector, Victoria Police           | 1 April 2019              |
| Jeff Pope          | Former Assistant Commissioner, Victoria Police | 1–2 April 2019            |
| Wayne Strawhorn    | Former officer, Victoria Police                | 30 April–1 May 2019       |
| Martin Allison     | Inspector, Victoria Police                     | 1 May 2019                |
| Steven Martin      | Former officer, Victoria Police                | 1 May 2019                |
| Christopher Notman | Former Inspector, Victoria Police              | 1 May 2019                |

| Name                       | Title   | Hearing date(s)       |
|----------------------------|---|-----------------------|
| David Bartlett             | Police officer, Victoria Police                   | 2 May 2019            |
| 'Kruger' <sup>163</sup>    | Former Detective Sergeant, Victoria Police        | 2 April & 8 May 2019  |
| Peter De Santo             | Former Commander, Victoria Police                 | 9–10 May 2019         |
| Terry Purton               | Former Commander, Victoria Police                 | 14 May 2019           |
| Charlie Bezzina            | Former Detective Senior Sergeant, Victoria Police | 14 May 2019           |
| Liza Burrows               | Detective Senior Constable, Victoria Police       | 15 May 2019           |
| Robert Hill                | Assistant Commissioner, Victoria Police           | 15 May 2019           |
| Wayne Cheesman             | Inspector, Victoria Police                        | 16 May 2019           |
| George Tapai               | Former Detective Senior Sergeant, Victoria Police | 16 May 2019           |
| Kevin Sheridan             | Superintendent, Victoria Police                   | 16 May 2019           |
| Andrew Murray Gregor       | Former Detective Senior Sergeant, Victoria Police | 17 May 2019           |
| Stephen Campbell           | Former officer, Victoria Police                   | 21 May 2019           |
| Paul Dale                  | Former officer, Victoria Police                   | 22 May & 17 June 2019 |
| David Miechel              | Former officer, Victoria Police                   | 22 May 2019           |
| 'Person 12' <sup>164</sup> | N/A   | 22 May 2019           |
| Jason Kelly                | Superintendent, Victoria Police                   | 19 June 2019          |





# Endnotes

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<sup>1</sup>*AB (a pseudonym) v CD (a pseudonym) & Ors; EF (a pseudonym) v CD (a pseudonym) & Ors* (2018) 362 ALR 1, 4 [10] (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ).

<sup>2</sup>The Commission uses the term 'human source', the term most frequently used in its Letters Patent. Crous explains that '[a]s part of modernising the police officer-informer relationship, the term *informer* has been replaced by such terms as Covert Human Intelligence Source (CHIS), Human Source (HS) or human intelligence source.' The Commission uses the term 'informant' where necessary; for example, when quoting documents that use this term. The term 'informant' is also used in Victoria to refer to the police officer who formally brings a charge against an accused person in court. Such police officers are not the focus of the Commission's inquiry. See Charl Crous, 'Human Intelligence Sources: Challenges in Policy Development' (2009) 5(3) *Security Challenges* 117, 118 (emphasis in original).

<sup>3</sup>Victorian Premier, Attorney-General, Minister for Police and Emergency Services, 'Royal Commission Into Management Of Informants' (Media Release, 3 December 2018) 1.

<sup>4</sup>Victorian Attorney-General, 'Statement On The Royal Commission Into Informants' (Media Release, 25 May 2019).

<sup>5</sup>See generally *Inquiries Act 2014* (Vic) pt 2.

<sup>6</sup>*Inquiries Act 2014* (Vic) s 12.

<sup>7</sup>*Inquiries Act 2014* (Vic) s 23.

<sup>8</sup>*Inquiries Act 2014* (Vic) s 46. A fine of 240 penalty units equates to \$39,652.80 based on the current value of a penalty unit as at 1 July 2019. See *Monetary Units Act 2004* (Vic) s 6; Victoria, *Victoria Government Gazette*, No G 14, 4 April 2019, 572.

<sup>9</sup>When a person is charged with a criminal offence under Victorian law, they are generally prosecuted by Victoria Police in the Magistrates' Court or by the Director of Public Prosecutions (DPP), together with the Office of Public Prosecutions (OPP), if it is a more serious offence in the County Court or the Supreme Court. If a person is charged with a Commonwealth offence, they are prosecuted by the Commonwealth Director of Public Prosecutions (CDPP). These bodies are known as 'prosecuting authorities'. A regulatory authority, usually a government agency or other public body, exercises regulatory powers in a specific field, including the power to bring disciplinary charges. For example, the Victorian Legal Services Commissioner may bring disciplinary proceedings against an Australian lawyer. The Chief Commissioner of Police may charge a police officer for breaches of discipline. See *Legal Profession Uniform Law Application Act 2014* (Vic) s 49, sch 1 pt 5.2; *Victoria Police Act 2013* (Vic) pt 7.

<sup>10</sup>*Inquiries Act 2014* (Vic) s 36(1).

<sup>11</sup>*Inquiries Act 2014* (Vic) s 36(2)-(3).

<sup>12</sup>*Charter of Human Rights and Responsibilities Act 2006* (Vic) s 4.

<sup>13</sup>*Charter of Human Rights and Responsibilities Act 2006* (Vic) s 38(1).

<sup>14</sup>See generally *Charter of Human Rights and Responsibilities Act 2006* (Vic) pt 2.

<sup>15</sup>Public interest immunity is discussed further at page 29.

<sup>16</sup>There are also various colloquial terms for human sources. One example is the term 'snitch'. See J Mitchell Miller, 'Becoming an Informant' (2011) 28(2) *Justice Quarterly* 203, 205; Clive Harfield, 'Police Informers and Professional Ethics' (2012) 31(2) *Criminal Justice Ethics* 73, 73.

<sup>17</sup>Charl Crous, 'Human Intelligence Sources: Challenges in Policy Development' (2009) 5(3) *Security Challenges* 117, 119-20.

<sup>18</sup>J Mitchell Miller, 'Becoming an Informant' (2011) 28(2) *Justice Quarterly* 203, 203; Seumas Miller and Ian A Gordon, *Investigative Ethics: Ethics for Police Detectives and Criminal Investigators* (Wiley Blackwell, 2014) 232; Exhibit RC0008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 4 [1.19].



<sup>19</sup>Office of Police Integrity, *Annual Report—Financial Year Ending 30 June 2008* (Report, 2008) 17; J Mitchell Miller, 'Becoming an Informant' (2011) 28(2) *Justice Quarterly* 203, 204; Clive Harfield, 'Police Informers and Professional Ethics' (2012) 31(2) *Criminal Justice Ethics* 73, 73–4.

<sup>20</sup>Kingsley Hyland, 'Assisting Offenders' in Roger Billingsley (ed), *Covert Human Intelligence Sources—The Unlovely Face of Police Work* (Waterside Press, 2009) 73, 74, quoting Lord Chief Justice Lane in *R v King* [1988] 7 Cr App R(S) 227.

<sup>21</sup>Charl Crous, 'Human Intelligence Sources: Challenges in Policy Development' (2009) 5(3) *Security Challenges* 117, 120–1; J Mitchell Miller, 'Becoming an Informant' (2011) 28(2) *Justice Quarterly* 203, 217.

<sup>22</sup>Exhibit RCO008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 4 [1.19].

<sup>23</sup>Seumas Miller and Ian A Gordon, *Investigative Ethics: Ethics for Police Detectives and Criminal Investigators* (Wiley Blackwell, 2014) 234. See also *Jarvie v The Magistrates' Court of Victoria at Brunswick* [1995] 1 VR 84, 88 (Brooking J).

<sup>24</sup>Seumas Miller and Ian A Gordon, *Investigative Ethics: Ethics for Police Detectives and Criminal Investigators* (Wiley Blackwell, 2014) 232–233.

<sup>25</sup>Charl Crous, 'Human Intelligence Sources: Challenges in Policy Development' (2009) 5(3) *Security Challenges* 117, 117.

<sup>26</sup>Exhibit RCO008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 4 [1.19].

<sup>27</sup>Exhibit RCO008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 42 [4.84].

<sup>28</sup>EF is the pseudonym given to Ms Gobbo in court proceedings. She has also been referred to as 'Informant 3838' by Victoria Police and as 'Lawyer X' in the media.

<sup>29</sup>These legal proceedings are discussed at pages 28–30.

<sup>30</sup>Exhibit RCO008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 23 [3.108].

<sup>31</sup>Lawyers practising in Victoria may work as barristers or solicitors. Barristers are generally self-employed and appear in court on behalf of a client to present and argue a case. They have specialist skills in advocacy and may specialise in an area of law. Solicitors often work in partnerships or are employees of a law firm and tend to provide legal advice to clients on a broad range of issues. Barristers are 'briefed' by solicitors to represent a client. See Victorian Bar, *What is a Barrister?* (Web Page) <<https://www.vicbar.com.au/public/about/what-barrister>>.

<sup>32</sup>Lawyers' ethical and professional duties are outlined at pages 48–51.

<sup>33</sup>*AB (a pseudonym) v CD (a pseudonym) & Ors; EF (a pseudonym) v CD (a pseudonym) & Ors* (2018) 362 ALR 1, 4 [10] (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ).

<sup>34</sup>*AB (a pseudonym) v CD (a pseudonym) & Ors; EF (a pseudonym) v CD (a pseudonym) & Ors* (2018) 362 ALR 1, 4 [10] (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ) (citations omitted).

<sup>35</sup>These legal proceedings are discussed at pages 28–30.

<sup>36</sup>Order of Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ in *AB (a pseudonym) v CD (a pseudonym) & Ors; EF (a pseudonym) v CD (a pseudonym) & Ors* (High Court of Australia, M73/2018; M74/2018, 14 February 2019); Order of Beach and McLeish JJA in *AB v CD & EF* (Court of Appeal, Supreme Court of Victoria, S APCI 2017 0082; S APCI 2017 0087; S APCI 2017 0083, 14 February 2019).

<sup>37</sup>Order of Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ in *AB (a pseudonym) v CD (a pseudonym) & Ors; EF (a pseudonym) v CD (a pseudonym) & Ors* (High Court of Australia, M73/2018; M74/2018, 11 February 2019); Order of Beach and McLeish JJ in *AB v CD & EF* [2017] (Court of Appeal, Supreme Court of Victoria, S APCI 2017 0082; S APCI 2017 0087; S APCI 2017 0083, 18 February 2019).

# Endnotes

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<sup>38</sup>Exhibit RC0008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 47 [5.17].

<sup>39</sup>Neil Comrie, *Victoria Police Human Source 3838: A Case Review* (Report, 30 July 2012) 17.

<sup>40</sup>Neil Comrie, *Victoria Police Human Source 3838: A Case Review* (Report, 30 July 2012) 7. The 2010 internal Victoria Police audit of human source management practices is outlined later in this report at page 33.

<sup>41</sup>The Independent Broad-based Anti-corruption Commission (IBAC) is Victoria's anti-corruption agency established under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic). Its role is to receive complaints and notifications of public sector corruption and police misconduct; investigate and expose corruption and police misconduct; and inform the public sector and community about the risks and impacts of corruption and police misconduct, and ways it can be prevented. IBAC replaced the Office of Police Integrity (OPI) in 2013. See *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ss 2(2), 15, sch cls 3-4; Independent Broad-based Anti-corruption Commission, *Annual Report 2012-13* (Report, 2013) 12.

<sup>42</sup>A notification regarding Victoria Police's management of human source information was made to the IBAC on 10 April 2014 pursuant to Section 57(2) of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic). This section requires the Chief Commissioner of Victoria Police to notify the IBAC of any complaint received by the Chief Commissioner about corrupt conduct or police personnel misconduct by a Victoria Police employee. Murray Kellam, *Report Concerning Victoria Police Handling of Human Source Code Name 3838* (Report, 6 February 2015) 1 [1] Independent Broad-based Anti-corruption Commission, *Special Report Concerning Police Oversight* (Report, August 2015) 29 [4.3.1].

<sup>43</sup>Murray Kellam, *Report Concerning Victoria Police Handling of Human Source Code Name 3838* (Report, 6 February 2015) 59.

<sup>44</sup>Murray Kellam, *Report Concerning Victoria Police Handling of Human Source Code Name 3838* (Report, 6 February 2015) 19-38. 'Person 7' is a pseudonym assigned by the Commission pursuant to Section 26 of the *Inquiries Act 2014* (Vic).

<sup>45</sup>Murray Kellam, *Report Concerning Victoria Police Handling of Human Source Code Name 3838* (Report, 6 February 2015) 29-32.

<sup>46</sup>Murray Kellam, *Report Concerning Victoria Police Handling of Human Source Code Name 3838* (Report, 6 February 2015) 90.

<sup>47</sup>John Champion, *Report to the Director of Public Prosecutions in Relation to Recommendation 12 of the Kellam Report* (Report, 5 February 2016) [63], [72], [76], [80], [84], [87].

<sup>48</sup>John Champion, *Report to the Director of Public Prosecutions in Relation to Recommendation 12 of the Kellam Report* (Report, 5 February 2016) [24], [66], [69].

<sup>49</sup>The DPP's duty to disclose arises out of obligations under common law, statute and internal DPP policies. See *Criminal Procedure Act 2009* (Vic) ss 42, 111, 185 and *Cannon v Tache* (2002) 5 VR 317 as cited in Director of Public Prosecutions Victoria, *Director's Policy—Disclosure* (Policy Document, 24 November 2014) [10]. See also John Champion, *Report to the Director of Public Prosecutions in Relation to Recommendation 12 of the Kellam Report* (Report, 5 February 2016) 7 [33].

<sup>50</sup>*AB & EF v CD* [2017] VSC 351, [1].

<sup>51</sup>*AB (a pseudonym) v CD (a pseudonym) & Ors; EF (a pseudonym) v CD (a pseudonym) & Ors* (2018) 362 ALR 1, [3] (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ).

<sup>52</sup>John Champion, *Memorandum on the Prosecution of Zlate Cvetanovski* (Memorandum, 29 July 2016).

<sup>53</sup>A person, usually a barrister, who, with the court's permission, may advise the court on a point of law or on a manner of practice: *Butterworths Concise Legal Dictionary* (3rd ed, 2004) 'amicus curiae'.

<sup>54</sup>*AB (a pseudonym) v CD (a pseudonym) & Ors; EF (a pseudonym) v CD (a pseudonym) & Ors* (2018) 362 ALR 1, [3] (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ). An intervener, once given leave to intervene, becomes a party to the proceedings and can appeal, tender evidence and make submissions: *Butterworths Concise Legal Dictionary* (3rd ed, 2004) 'intervener'.

<sup>55</sup>*Evidence Act 2008* (Vic) ss 130, 131A; *Sankey v Whitlam* (1978) 142 CLR 1, 38 (Gibbs ACJ).

<sup>56</sup>*Jarvie v The Magistrates' Court of Victoria at Brunswick* [1995] 1 VR 84, 88 (Brooking J); Australian Law Reform Commission, *Keeping Secrets: The Protection of Classified and Security Sensitive Information* (Report 98, May 2004) 311 [8.151].

<sup>57</sup>*Evidence Act 2008* (Vic) s 130(1).

<sup>58</sup>*Evidence Act 2008* (Vic) s 130(4).

<sup>59</sup>*Jarvie v The Magistrates' Court of Victoria at Brunswick* [1995] 1 VR 84, 88 (Brooking J).

<sup>60</sup>The informer rule originally applied as an absolute rule prohibiting disclosure of a human source's identity. However, exceptions to the rule were developed from the 19<sup>th</sup> century. See further Henry Mares, 'Balancing Public Interest and a Fair Trial in Police Informer Privilege: A Critical Australian Perspective' (2002) 6 *International Journal of Evidence and Proof* 94.

<sup>61</sup>*R v Smith* (1996) 86 A Crim R 308; *Jarvie v The Magistrates' Court of Victoria at Brunswick* [1995] 1 VR 84, 88 (Brooking J). See also Chris Taylor, 'In the Public Interest: Public Interest Immunity and Police Informants' (2001) 65(5) *The Journal of Criminal Law* 435, 442; Henry Mares, 'Balancing Public Interest and a Fair Trial in Police Informer Privilege: A Critical Australian Perspective' (2002) 6 *International Journal of Evidence and Proof* 94, 105-6.

<sup>62</sup>*Jarvie v The Magistrates' Court of Victoria at Brunswick* [1995] 1 VR 84, 88, 90 (Brooking J). See also Judicial College of Victoria, 'Open Courts Bench Book', 4.4.3 *Category 3: Informers, undercover police operatives and police methods* (Web Page, 6 February 2019) [15]-[19] <<http://www.judicialcollege.vic.edu.au/eManuals/OCBB/index.htm#67727.htm>>; Chris Taylor, 'In the Public Interest: Public Interest Immunity and Police Informants' (2001) 65(5) *The Journal of Criminal Law* 435, 443; Henry Mares, 'Balancing Public Interest and a Fair Trial in Police Informer Privilege: A Critical Australian Perspective' (2002) 6 *International Journal of Evidence and Proof* 94, 106.

<sup>63</sup>*AB (a pseudonym) v CD (a pseudonym) & Ors; EF (a pseudonym) v CD (a pseudonym) & Ors* (2018) 362 ALR 1, [9]-[13] (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ); *AB v CD & EF* [2017] VSCA 338, [187]-[214] (Ferguson CJ, Osborn, McLeish JJA); *AB & EF v CD* [2017] VSC 350, [409]-[422].

<sup>64</sup>*AB (a pseudonym) v CD (a pseudonym) & Ors; EF (a pseudonym) v CD (a pseudonym) & Ors* (2018) 362 ALR 1, [10] (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ).

<sup>65</sup>*AB (a pseudonym) v CD (a pseudonym) & Ors; EF (a pseudonym) v CD (a pseudonym) & Ors* (2018) 362 ALR 1, Order 4.8 (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ).

<sup>66</sup>*AB (a pseudonym) v CD (a pseudonym) & Ors; EF (a pseudonym) v CD (a pseudonym) & Ors* (2018) 362 ALR 1, Order 3.1(f) (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ).

<sup>67</sup>*AB v CD & EF* [2019] VSCA 28, [5] (Ferguson CJ, Osborn, McLeish JJA); Order of Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ in *AB (a pseudonym) v CD (a pseudonym) & Ors; EF (a pseudonym) v CD (a pseudonym) & Ors* (High Court of Australia, M74/2018, 14 February 2019); Order of Beach and McLeish JJA in *AB v CD & EF* (Court of Appeal, Supreme Court of Victoria, S APCI 2017 0082; S APCI 2017 0087; S APCI 2017 0083, 14 February 2019).

<sup>68</sup>*AB (a pseudonym) v CD (a pseudonym) & Ors; EF (a pseudonym) v CD (a pseudonym) & Ors* (2018) 362 ALR 1, Order 3.1(f) (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ).

# Endnotes

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<sup>69</sup>*AB v CD & EF* [2019] VSCA 28, [7] (Ferguson CJ, Osborn, McLeish JJA).

<sup>70</sup>These were two separate applications under different statutory provisions. See generally *AB v CD & EF* [2019] VSCA 28; *AB (a pseudonym) v CD (a pseudonym) & Ors*; *EF (a pseudonym) v CD (a pseudonym) & Ors* (2019) 364 ALR 202.

<sup>71</sup>See generally *AB v CD & EF* [2019] VSCA 28, [76], [84], [87] (Ferguson CJ, Osborn, McLeish JJA).

<sup>72</sup>*AB v CD & EF* [2019] VSCA 28, [71] (Ferguson CJ, Osborn, McLeish JJA).

<sup>73</sup>*AB (a pseudonym) v CD (a pseudonym) & Ors*; *EF (a pseudonym) v CD (a pseudonym) & Ors* (2019) 364 ALR 202, 207 [20]-[21].

<sup>74</sup>Notices in *The Age* and the *Herald Sun* were published on 2 March 2019.

<sup>75</sup>The Comrie Review and the Kellam and Champion reports are outlined at pages 26–8.

<sup>76</sup>The Drug Squad was originally formed in 1952. In early 2002, the Drug Squad was disbanded and replaced by the Major Drug Investigation Division. Ombudsman Victoria, *Ceja Task Force Investigation of Allegations of Drug Related Corruption—Interim Report of the Ombudsman* (Interim Report No 1, May 2003) 2 [2.1].

<sup>77</sup>See Ombudsman Victoria, *Ceja Task Force—Drug Related Corruption—Interim Report of the Ombudsman* (Interim Report No 1, May 2003); Ombudsman Victoria, *Ceja Task Force—Drug Related Corruption—Second Interim Report of Ombudsman Victoria* (Interim Report No 2, June 2004); Office of Police Integrity, *Ceja Task Force—Drug Related Corruption—Third and Final Report* (Final Report No 3, July 2007). The Victorian Ombudsman operates under the *Ombudsman Act 1973* (Vic) and investigates complaints about the administrative actions and decisions taken by government departments and agencies, and about the conduct or behaviour of their staff. From 1988 until 2004, the office of the Victorian Ombudsman had various police oversight functions. The Deputy Ombudsman (Police Complaints) and later the office of Police Ombudsman investigated complaints about police misconduct, including corruption. In 2004, the OPI was created and assumed responsibility for police oversight functions. The OPI was later replaced by the IBAC in 2013. See *Ombudsman Act 1973* (Vic) s 15(1); *Police Integrity Act 2008* (Vic) s 1, as repealed by *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) sch cls 3–4.

<sup>78</sup>Office of Police Integrity, *Ceja Task Force—Drug Related Corruption—Third and Final Report* (Final Report No 3, July 2007) 33.

<sup>79</sup>Office of Police Integrity, *Ceja Task Force—Drug Related Corruption—Third and Final Report* (Final Report No 3, July 2007) 33.

<sup>80</sup>Office of Police Integrity, *Office of Police Integrity Annual Report—30 June 2005—Edition 01* (Report, 2005) 17.

<sup>81</sup>Office of Police Integrity, *Office of Police Integrity Annual Report 2005–06* (Report, 2006) 17.

<sup>82</sup>Office of Police Integrity, *Annual Report—Financial Year Ending 30 June 2008* (Report, 2008) 18.

<sup>83</sup>Office of Police Integrity, *Annual Report—Financial Year Ending 30 June 2008* (Report, 2008) 19–20.

<sup>84</sup>*Independent Broad-based Anti-corruption Commission Act 2011* (Vic) sch cls 3–4; Office of Police Integrity, *Annual Report—Financial year ending 30 June 2009* (Report, 2009) 44–5.

<sup>85</sup>Corporate Management Review Division, *Audit of Victoria Police Human Source Management Practices* (Report, June 2010) 6–15, 17, as referred to in Exhibit RC0008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 47 [5.21]–[5.22].

<sup>86</sup>Victoria Police, *Covert Services Review 2012 (Intelligence & Covert Support Command)* (Report, 2012) 4, as referred to in Exhibit RC0008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 48 [5.21]–[5.22].

<sup>87</sup>*AB & EF v CD* [2017] VSC 350 [256]–[257]; Exhibit RC0008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 17–22 [3.77], [3.84]–[3.85], [3.101], [3.104].

<sup>88</sup>Exhibit RC0008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 45 [5.6]–[5.7].

<sup>89</sup>See Ombudsman Victoria, *Ceja Task Force—Drug Related Corruption—Interim Report of the Ombudsman* (Interim Report No 1, May 2003); Ombudsman Victoria, *Ceja Task Force—Drug Related Corruption—Second Interim Report of Ombudsman Victoria* (Interim Report No 2, June 2004); Office of Police Integrity, *Ceja Task Force—Drug Related Corruption—Third and Final Report* (Final Report No 3, July 2007).

<sup>90</sup>Office of Police Integrity, *Report on the leak of a sensitive Victoria Police Information Report*, (Report, February 2015) 1.

<sup>91</sup>Exhibit RC0008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 46 [5.14].

<sup>92</sup>Corporate Management Review Division, *Audit of Victoria Police Human Source Management Practices* (Report, June 2010) 6–15, 17 as referred to in Exhibit RC0008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 46 [5.15].

<sup>93</sup>Exhibit RC0008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 8 [3.13].

<sup>94</sup>See Neil Comrie, *Victoria Police Human Source 3838: A Case Review* (Report, 30 July 2012) 16; Murray Kellam, *Report Concerning Victoria Police Handling of Human Source Code Name 3838* (Report, 6 February 2015) 2 [7]; *AB (a pseudonym) v CD (a pseudonym) & Ors; EF (a pseudonym) v CD (a pseudonym) & Ors* (2018) 362 ALR 1, [1] (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ).

<sup>95</sup>Exhibit RC0019 Certificate of Admission, 29 March 2019, 1.

<sup>96</sup>*AB & EF v CD* [2017] VSC 350 [12].

<sup>97</sup>*AB & EF v CD* [2017] VSC 350 [13].

<sup>98</sup>This complaint was referred to the Victorian Bar Ethics Committee. Exhibit RC0181 Letter from the Victorian Bar Ethics Committee to Williams, 18 June 2019, 1.

<sup>99</sup>Exhibit RC0211 Memorandum from Legal Services Commissioner, 18 June 2019, 1; Exhibit RC0212 Letter from the Legal Services Commissioner to N Gobbo, 19 June 2019, 1.

<sup>100</sup>Exhibit RC0008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 24 [3.111].

<sup>101</sup>*AB & EF v CD* [2017] VSC 350 [216].

<sup>102</sup>Exhibit RC0028 Statement of Sergeant Trevor Ashton, 29 March 2019, 3 [18]–[32]; Exhibit RC0054 Statement of Detective Senior Sergeant Tim Argall, 1 April 2019, 3–5 [14]–[21]; Exhibit RC0064 Statement of Former Detective Sergeant ‘Kruger’, 2 April 2019, 3 [16]–[17], 5 [28]; Exhibit RC0033 ARU Information Report, 1 April 2019, 1; Exhibit RC0068 ARU Information Report, 2 April 2019, 1; Transcript of Detective Inspector Gavan Segrave, 1 April 2019, 608–10; Exhibit RC0097b Statement of former Detective Inspector Peter De Santo, 9 May 2019, 3 [16]–[17]; Transcript of Former Victoria Police Officer Miechel, 22 May 2019, 66–8; Exhibit RC0030 Registration of human source, 29 March 2019, 1–2; Exhibit RC0034 Informer Application, 1 April 2019, 1; Exhibit RC0050 Recommendation to reclassify N Gobbo, 1 April 2019, 1; Exhibit RC0070 Operation Scorn Progress Report, 2 April 2019, 1; Exhibit RC0035 ARU Information Report, 1 April 2019, 1; Exhibit RC0042 ARU Information Report, 1 April 2019, 1; Exhibit RC0043 ARU Information Report, 1 April 2019, 1.

<sup>103</sup>Exhibit RC0116 Informer Registration Application, 15 May 2019, 1.

<sup>104</sup>Exhibit RC0008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 22 [3.101].

<sup>105</sup>Exhibit RC0008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 22 [3.105].

# Endnotes

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<sup>106</sup>Exhibit RC0008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 22–3 [3.102], [3.107].

<sup>107</sup>Exhibit RC0008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 23 [3.108].

<sup>108</sup>Exhibit RC0008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 23 [3.108].

<sup>109</sup>Exhibit RC0008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 22 [3.101].

<sup>110</sup>Section 18(1) of the *Inquiries Act 2014* (Vic) provides that a person who is served with a notice to produce or notice to attend in relation to a royal commission may make a claim to the royal commission that they have a reasonable excuse for failing to comply with the notice. Section 18(2)(c) further provides that it is a reasonable excuse for a person to fail to comply with a notice by refusing to give information to a royal commission if the information is the subject of public interest immunity. See also *Evidence Act 2008* (Vic) s 130.

<sup>111</sup>Section 123 of the *Inquiries Act 2014* specifically provides that a royal commission cannot inquire into or exercise any powers in relation to certain persons or bodies, such as the Ombudsman, IBAC, DPP and Victorian courts.

<sup>112</sup>Held 27 March 2019–2 April 2019.

<sup>113</sup>Held 30 April 2019–10 May 2019.

<sup>114</sup>Held 14–22 May 2019.

<sup>115</sup>Held from 17 June 2019.

<sup>116</sup>*Inquiries Act 2014* (Vic) s 15.

<sup>117</sup>Client legal privilege is the statutory form of legal professional privilege contained in the Uniform Evidence Acts. See *Evidence Act 2008* (Vic) ss 117–126.

<sup>118</sup>*Evidence Act 2008* (Vic) ss 118, 122(1). See also *Esso Australia Resources Ltd v Commissioner of Taxation* (1999) 201 CLR 49.

<sup>119</sup>*Kennedy v Wallace* (2004) 213 ALR 108 as cited in Explanatory Memorandum, Evidence Bill 2008 (Vic) cl 117.

<sup>120</sup>Law Council of Australia, 'Client Legal Privilege', *Policy Agenda* (Web Page, 2017) <<https://www.lawcouncil.asn.au/policy-agenda/regulation-of-the-profession-and-ethics/client-legal-privilege>>. See further *Baker v Campbell* (1983) 153 CLR 52; *Esso Australia Resources Ltd v Commissioner of Taxation* (1999) 201 CLR 49; *Kennedy v Wallace* (2004) 213 ALR 108.

<sup>121</sup>*Evidence Act 2008* (Vic) s 125.

<sup>122</sup>*Kennedy v Wallace* (2004) 213 ALR 108, 135 (Allsop J).

<sup>123</sup>Confidential information is permitted to be shared with the members of the lawyer's firm or staff. See *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (Vic) pt 2 r 9.1; *Legal Profession Uniform Conduct (Barristers) Rules 2015* (Vic) rr 114, 116.

<sup>124</sup>*Baker v Campbell* (1983) 153 CLR 52, 68 (Gibbs CJ). See also Australian Law Reform Commission, *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws* (Final Report 129, 2016) 339–40 [12.14]–[12.16].

<sup>125</sup>*Baker v Campbell* (1983) 153 CLR 52, 68 (Gibbs CJ). See also Paula Baron and Lillian Corbin, *Ethics and Legal Professionalism in Australia* (Oxford University Press, 2nd ed, 2017) 155–6, [1.2]; Christine Parker, Suzanne Le Mire and Anita Mackay, 'Lawyers, Confidentiality and Whistleblowing: Lessons from the McCabe Tobacco Litigation' (2017) 40(3) *Melbourne University Law Review*, 999, 1012.

<sup>126</sup>See, eg, *Legal Profession Uniform Conduct (Barristers) Rules 2015* (Vic) rr 82, 114; *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (Vic) r 9.2.

<sup>127</sup>See, eg, *Legal Profession Uniform Conduct (Barristers) Rules 2015* (Vic) rr 114–115.

<sup>128</sup>See generally Paula Baron and Lillian Corbin, *Ethics and Legal Professionalism in Australia* (Oxford University Press, 2nd ed, 2017) ch 5.

<sup>129</sup>See, eg, *Legal Profession Uniform Conduct (Barristers) Rules 2015* (Vic) r 35; *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (Vic) rr 4.1.1, 10–12. See also Paula Baron and Lillian Corbin, *Ethics and Legal Professionalism in Australia* (Oxford University Press, 2nd ed, 2017) 122–4 [1.2].

<sup>130</sup>*Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (Vic) rr 10, 12; *Legal Profession Uniform Conduct (Barristers) Rules 2015* (Vic) r 119.

<sup>131</sup>*Legal Profession Uniform Conduct (Barristers) Rules 2015* rr 4(a), 23; *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (Vic) r 3.1.

<sup>132</sup>See *D'Orta-Ekenaike v Victoria Legal Aid* (2005) 223 CLR 1, 41 [111] (McHugh J).

<sup>133</sup>*Gianarelli v Wraith* (1988) 165 CLR 543, 578–9 (Brennan J).

<sup>134</sup>See *Cannon v Tahche & Ors* (2002) 5 VR 317, 339–41 [56]–[60] (Winneke P, Charles and Chernov JJA). The duty of disclosure is regulated by a combination of the common law, statutory obligations under the *Criminal Procedure Act 2009* (Vic), ethical obligations of lawyers and guidelines issued by the DPP.

<sup>135</sup>See, eg, *Jago v The District Court of New South Wales* (1989) 168 CLR 23.

<sup>136</sup>*Baini v The Queen* (2012) 246 CLR 469, 479 [25]–[26] (French CJ, Hayne, Crennan, Kiefel and Bell JJ).

<sup>137</sup>*Criminal Procedure Act 2009* (Vic) s 277.

<sup>138</sup>See *Connelly v Director of Public Prosecutions* [1964] AC 1254; *Jago v The District Court of New South Wales* (1989) 168 CLR 23; *Williams v Spautz* (1992) 174 CLR 509, 529 (Mason CJ, Dawson, Toohey and McHugh JJ); *Moti v The Queen* (2011) 245 CLR 456; *X7 v Australian Crime Commission* (2013) 248 CLR 92 [38] (French CJ and Crennan J).

<sup>139</sup>See *Jago v The District Court of New South Wales* (1989) 168 CLR 23, 76 (Gaudron J). See also *R v Smith & Ors* [1995] VR 10, 14 (Brooking J).

<sup>140</sup>*Criminal Procedure Act 2009* (Vic) s 327(1)(a).

<sup>141</sup>*Criminal Procedure Act 2009* (Vic) s 327(2).

<sup>142</sup>*Criminal Procedure Act 2009* (Vic) s 327(1)(b).

<sup>143</sup>*Sentencing Act 1991* (Vic) ss 5(2)(f)–(g), 6.

<sup>144</sup>A person sentenced in the County Court or Supreme Court can apply for leave to appeal their sentence to the Court of Appeal. See *Criminal Procedure Act 2009* (Vic), s 278.

<sup>145</sup>*Confiscation Act 1997* (Vic) s 59.

<sup>146</sup>This is known as civil forfeiture. See *Confiscation Act 1997* (Vic) s 16.

<sup>147</sup>*Confiscation Act 1997* (Vic) ss 46–47. In relation to civil forfeiture, Section 38(5) of the *Confiscation Act 1997* (Vic) provides the quashing of a conviction for a civil forfeiture offence does not affect the validity of a civil forfeiture order that was based on that offence. A similar asset confiscation scheme operates in relation to Commonwealth offences under the *Proceeds of Crimes Act 2002* (Cth).

# Endnotes

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<sup>148</sup>Victoria's post-sentence supervision and detention scheme applies to serious violent offenders and serious sex offenders whom the court determines will be an unacceptable risk of committing further relevant serious offences after finishing their prison sentence. The power for a court to order a post-sentence supervision or detention order is provided for in the *Serious Offenders Act 2018* (Vic). Specifically, Section 14 of that Act sets out the power of the court to make a supervision order and Section 62 sets out the court's power to make a detention order.

<sup>149</sup>Section 8(4) of the *Serious Offenders Act 2018* (Vic) specifically provides that a person is not an eligible offender for the purposes of a supervision or detention order if on appeal, the conviction or finding of guilt in respect of the serious sex offence or serious violence offence, by reason of which the person is an eligible offender, is set aside.

<sup>150</sup>See generally *AB (a pseudonym) v CD (a pseudonym) & Ors; EF (a pseudonym) v CD (a pseudonym) & Ors* (2018) 362 ALR 1. The circumstances precipitating these disclosures are outlined in more detail at pages 28–30.

<sup>151</sup>*Victoria Police Act 2013* (Vic) s 50, sch 2 form 1.

<sup>152</sup>See, eg, *Director of Public Prosecutions v Marijancevic; Director of Public Prosecutions v Preece; Director of Public Prosecutions v Preece* (2011) 33 VR 440.

<sup>153</sup>Murray Kellam, *Report Concerning Victoria Police Handling of Human Source Code Name 3838* (Report, 6 February 2015) 84 n 176.

<sup>154</sup>The Kellam Report is outlined at page 27.

<sup>155</sup>Exhibit RC0008 Statement of Assistant Commissioner Neil Paterson, 27 March 2019, 38 [4.70], 42 [4.85], 61 [7.5].

<sup>156</sup>See, eg, *Regulation of Investigatory Powers Act 2000* (UK) pt II; Home Office (UK), *Covert Human Intelligence Sources Revised Code of Practice* (August 2018).

<sup>157</sup>See *Cannon v Tahche & Ors* (2002) 5 VR 317, 339–41 [56]–[60] (Winneke P, Charles and Chernov JJA); *R v Mallard* (2005) 224 CLR 125, 132–3 (Gummow, Hayne, Callinan and Heydon JJ).

<sup>158</sup>*Inquiries Act 2014* (Vic) s 123(1). The Commission does not have the power to compel the production of documents or other information from Commonwealth bodies, such as the CDPP.

<sup>159</sup>*Inquiries Act 2014* (Vic) s 123(3).

<sup>160</sup>See, eg, Home Office (UK), *Covert Human Intelligence Sources Revised Code of Practice* (August 2018) ch 8.

<sup>161</sup>Transcript of Directions Hearing, 5 June 2019, 2242.

<sup>162</sup>*Inquiries Act 2014* (Vic) s 36(1)–(3).

<sup>163</sup>'Kruger' is a pseudonym assigned by the Commission pursuant to section 26 of the *Inquiries Act 2014* (Vic).

<sup>164</sup>'Person 12' is a pseudonym assigned by the Commission pursuant to section 26 of the *Inquiries Act 2014* (Vic).







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