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TRANSCRIPT OF PROCEEDINGS

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INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

THURSDAY 28 FEBRUARY 2019

(15th day of examinations)

BEFORE THE HONOURABLE ROBERT REDLICH QC

Counsel Assisting: Mr Jack Rush QC

Ms Catherine Boston

OPERATION GLOUCESTER INVESTIGATION

PUBLIC EXAMINATIONS PURSUANT TO PART 6 OF THE INDEPENDENT  
BROAD-BASED ANTI-CORRUPTION COMMISSION ACT 2011

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*Every effort is made to ensure the accuracy of transcripts.  
Any inaccuracies will be corrected as soon as possible.*

1 COMMISSIONER: Yes, Mr Rush.

2 MR RUSH: Commissioner, the submissions of counsel  
3 assisting, just to point out, are exactly that, the  
4 submissions of counsel assisting and no one else.

5 What we contend has been reinforced in the past  
6 four weeks of public hearings, if reinforcement was  
7 necessary, is that police are entrusted with very  
8 significant powers in relation to criminal  
9 investigation, and the evidence of the past four weeks  
10 underscores the very great trust placed in police that  
11 these powers will be exercised fairly and impartially.

12 What counsel assisting submit is indicated and  
13 demonstrated by the evidence of the past four weeks is  
14 that police failed that test; when they failed that  
15 test, the administration of justice is imperilled.

16 We stress again that the public hearings are not a  
17 re-opening of Operation Lorimer, the police  
18 investigation into the murders of Sergeant Gary Silk  
19 and Senior Constable Rod Miller, nor are they in any  
20 way an investigation of the subsequent convictions of  
21 Debs and Roberts.

22 However, an examination of police statement-making  
23 practices in Lorimer and what preceded Lorimer,  
24 Operation Hamada and Operation Pigout, has exposed  
25 serious irregularities in the conduct of  
26 statement-taking; statement-taking being at the core of  
27 police investigation process.

28 The common theme, if we could bring up, or a  
29 unifying theme as we refer to it in what is before you,

1 the common theme of the practices of police that have  
2 been exposed in the investigation is that the practices  
3 are insidious in the sense that they are concealed and  
4 hidden. Thus, when a police officer makes a second  
5 statement, a statement that may add or delete crucial  
6 information to or from the first statement, and the  
7 first statement is not referred to and subsequently  
8 destroyed, only police will know of that conduct. If  
9 the conduct remains undisclosed, as is likely on the  
10 evidence that is before IBAC, the potential impact  
11 again on the administration of justice does not need to  
12 be stated.

13 Evidence received at the hearings just this week  
14 from experienced police prosecutors is such that the  
15 Commissioner may think that it gives rise to a  
16 justified concern that the practices exposed by IBAC in  
17 one form or another still remain an unfortunate element  
18 of police investigation.

19 The improper statement-making practices are  
20 difficult to detect, the covert nature of the practices  
21 prevents knowledge of their prevalence. It is only  
22 because IBAC has been able to put a large body of  
23 resources into Operation Gloucester that it has been  
24 exposed at all.

25 As Mr Rapke, senior Crown prosecutor and  
26 subsequently Director of Public Prosecutions stated in  
27 his evidence, "Without police transparency the changed  
28 statement, the improving of statements, to facilitate a  
29 police prosecution will not be exposed at all", and the

1 position of trust placed in police investigators cannot  
2 be better illustrated than by that statement of an  
3 experienced prosecutor.

4 The upshot of the improper practices,  
5 Commissioner, is that witnesses, police witnesses,  
6 attend court attesting to evidence by way of a  
7 statement that does not fully disclose the manner in  
8 which the witness has produced his or her evidence.  
9 There is obviously a consequent pressure to deny the  
10 existence of a previous statement or document.

11 The Pullin statements that we have seen time and  
12 again before the Commission - the two statements  
13 produced by Senior Constable Pullin both dated  
14 16 August 1998, both timed 4.25 am - are a graphic  
15 example of the practice.

16 The statements attributed to Senior Constable  
17 Miller in the second Pullin statement, to use a word  
18 used in evidence by the leader of Operation Lorimer,  
19 Inspector Sheridan, enhanced the police theory around  
20 the involvement of Debs and Roberts. It is, of course,  
21 but one example, but for a senior police officer on  
22 duty at St Kilda Road on the day of the murders, but  
23 for that person taking copies of a handful of  
24 statements of first responders, including the first  
25 statement of Pullin, the improper practices that have  
26 been identified by IBAC in the course of private and  
27 public examinations would not have come to light.

28 Counsel assisting have to note that there has been  
29 no challenge, no attempt to deny or ameliorate the

1 nature and extent of the improper practices identified  
2 by IBAC; that is, no challenge, no amelioration put  
3 forward by Police Command through the Chief  
4 Commissioner of Police over the last four weeks.

5 Yesterday IBAC heard from Assistant Commissioner  
6 Casey and Acting Inspector Trevor Rowe concerning  
7 police training around the making of statements. There  
8 was, on their evidence, a demonstrated willingness of  
9 cooperation to address the problems that have been  
10 identified by IBAC; but, with that, a concession that  
11 on examination of the teaching materials at both the  
12 Police Academy and within the detective training, that  
13 issues around proper transparency and a duty of  
14 disclosure are inadequately addressed in those training  
15 materials.

16 There was a recognition yesterday by senior police  
17 that this is something that needs to be addressed, and  
18 thoroughly addressed, and over the course of these  
19 submissions the necessity of that, we think as counsel  
20 assisting, will become apparent.

21 What has been identified over the course of four  
22 weeks of public hearings can be shown in the improper  
23 practices that have been identified. We will come to  
24 each one of these practices individually, but they are  
25 there set out on the screen: omitting a witness's  
26 description of an offender; omitting information which  
27 is contradicted by other evidence or is otherwise  
28 perceived by police to be unreliable; speaking to  
29 witnesses to fix up inconsistencies and not disclosing

1 the intervention; taking a replacement statement  
2 instead of a supplementary one; signing a backdated  
3 statement; signing an acknowledgment then in the  
4 absence of the statement maker; making supposed  
5 contemporaneous notes well after the fact, and failing  
6 to disclose information which may assist the defence.

7 The current prevalence of those improper practices  
8 is generally not known, save that now that the  
9 Commission has strong evidence from police prosecutors  
10 that many of the practices still exist, and also, in  
11 relation to effectively nearly every one of those  
12 practices, there is no direction to police at the  
13 Academy and training or detectives as to specifically  
14 the type of conduct that they should not engage in.

15 If we could turn to practice 1, which is as we set  
16 out, the omitting of a witness's description of the  
17 offender from the witness statement, often recording  
18 the description on a separate document. The evidence  
19 from witnesses over the four weeks of these public  
20 examinations is backed up by other evidence that IBAC  
21 has, that there has been a course of conduct to  
22 deliberately not include witness's descriptions in  
23 statements but instead to record them somewhere else.

24 The evidence, varying from Mr Guerin(?), to  
25 Mr Collins, to Mr Sheridan, was that it was a practice  
26 that emerged in the 1980s.

27 COMMISSIONER: Mr Rush, Mr Guerin gave evidence in private  
28 examination; is that so?

29 MR RUSH: That's correct.

1 COMMISSIONER: What was the thrust of his evidence?

2 MR RUSH: That he was aware of the practice at the Armed  
3 Robbery Squad and that, in his view, as we've set out,  
4 it was a practice that he first became aware of in the  
5 1980s.

6 The way in which descriptions recorded varied and  
7 those variations, we set out. Mr Peterson and  
8 Ms Gleeson gave evidence that some are recorded in  
9 notebooks or day books of police officers; some are  
10 recorded, as the Commissioner has seen, on separate  
11 pieces of paper and may be attached to the statements  
12 that they refer to; some are attached and some are not;  
13 some are recorded on a computer database.

14 The Commissioner may remember that, in relation to  
15 witness statements from Operation Hamada, there was no  
16 recorded note attached to the statements of the persons  
17 that were witnesses to the eight or nine armed  
18 robberies that that operation referred to.

19 We remind that the manner in which the practice  
20 has eventuated, there was a variety of evidence  
21 concerning it. Detective Senior Constable Graeme  
22 Kelly, who was attached to Mr Bezzina's crew in 1998  
23 and was involved in statement taking on 16 August 1998:  
24 Mr Kelly gave evidence at IBAC in a private hearing  
25 that he was taught the practice at the Academy in 1987.  
26 That, indeed, is supported by Ms Gleeson who gave  
27 evidence the day before yesterday, who subsequently  
28 left the Police Force to become a barrister, that she  
29 similarly gave evidence that she was taught the

1 practice in 1985.

2 Former detective, then in 1998 Detective Senior  
3 Constable Rosemary Eden, indicated that she had been  
4 taught the practice either at the Academy in 1985 or by  
5 senior members when she was a trainee.

6 The other witness specifically relating to this  
7 point was then Senior Constable Riley who took a  
8 statement from a Hamada witness that left out the  
9 details written on a separate piece of paper, who said  
10 he was taught the practice once he had left the Academy  
11 by a sergeant detective - and I retract what I said,  
12 that may have been at the Academy in 1989 or it may  
13 have been very early on in his police service.

14 Finally, then Sergeant Sol Soloman, who was with  
15 Homicide in 1988, gave evidence at the private hearing  
16 of IBAC that the practice that he recalled, it being  
17 mentioned or taught at the Detective Training School  
18 and - or, it wasn't taught there, but he remembered an  
19 older detective informing him of it and the process  
20 and, while he didn't use it himself, he was aware of  
21 it.

22 Putting that body of evidence together,  
23 Commissioner, we would contend that the enormity of  
24 that practice as demonstrated just by the selection of  
25 witnesses that are available here at IBAC indicates  
26 that it was a practice that was widely used, used in  
27 the most superior echelons of Victoria Police with as  
28 we have seen and heard the reputation of Homicide and  
29 the reputation of the Armed Robbery Squad, having some



1 of the senior investigators of Victoria Police involved  
2 and practising in those squads, that it was clear that  
3 this practice had a wide recognition.

4 Whilst there was evidence from Sergeant Iddles of  
5 him becoming aware of it, I think he said in 1997 when  
6 he was connected with Armed Robbery, apart from that  
7 there is no evidence of anyone grasping the magnitude  
8 of the practice, its potential impact and insisting  
9 that it was not in any way further used.

10 Again, we observe from the evidence that is now  
11 before IBAC that the Commissioner would be entitled to  
12 find that there has been no specific direction from  
13 Police Command at any time to ensure that within the  
14 Force this practice has ceased.

15 We can refer, and the Commissioner is aware, that  
16 within the Debs and Roberts brief there were six  
17 statements that clearly demonstrated that descriptions  
18 had been given at a time of the first statement but not  
19 included in the statement that was made. Three of  
20 those separate descriptions were in the brief and they  
21 are: Mark Louey, Mark Suganda and Leong Ling, and at  
22 various times those statements have been referred to.  
23 And, three statements where notes were taken of the  
24 witness's description, as evidenced by the witness's  
25 reference to those notes in subsequent statements that  
26 those notes were not included in the brief: Linda Lee,  
27 Lochai Lee and Shirley Ng. And in the Debs and Roberts  
28 brief, 11 supplementary statements where extra  
29 description information was added two years later after

1 a visit by Lorimer detectives. Amongst other things,  
2 this raised the very real question as to whether  
3 fulsome descriptions had been deliberately omitted in  
4 the first statements of those witnesses.

5 This issue was raised with Mr Sheridan and  
6 Mr Collins. Neither was capable of stating whether  
7 descriptions had been taken from Hamada witnesses and  
8 were not included in the Lorimer brief because those  
9 descriptions did not fit the police theory involving  
10 Debs and Roberts.

11 In the Giller brief which has been examined over  
12 the course of this investigation by IBAC investigations  
13 there were 50 statements taken where separate  
14 descriptions were attached, as well as three statements  
15 where extra descriptions were added many years after  
16 the event.

17 COMMISSIONER: Mr Rush, this particular practice,  
18 practice 1, is to be distinguished from all of the  
19 other practices that we received evidence about, in  
20 that, there is at least an audit trail where the  
21 witness has given a description in the first place and,  
22 though it's not recorded in the statement, it's been  
23 recorded in a separate note. But, of course, one's  
24 only to know of that if the note is produced.

25 MR RUSH: Commissioner, that is so, and in Operation Pigout  
26 it appears in at least most of the statements the note  
27 was produced with the statements. But in Operation  
28 Hamada there were statements where the description  
29 material was not produced with those statements and it

1 required - well, no one was to know, save for the  
2 second statement, that that material existed.

3 COMMISSIONER: Yes.

4 MR RUSH: And that, I suppose, highlights the point that  
5 no one was able to point to, for example, Hamada  
6 witnesses that may have been gone back to, may have  
7 been seen but didn't have further statements taken  
8 because descriptions were not attached to those  
9 statements, and it is unknown whether the descriptions  
10 provided, if those persons were approached, met the  
11 theory of police in relation to Debs and Roberts.

12 COMMISSIONER: Has there been any witness that sought to  
13 attach a legitimate reason to that process of not  
14 recording the witness's description of the offenders?

15 MR RUSH: There have been a suggestion from Mr Peterson with  
16 Armed Robbery at the time, and I think from one other  
17 witness - and it perhaps was taken up by notes that we  
18 saw from early in the 1990s at the Police Academy  
19 concerning taking statements from armed robbery  
20 victims - that there is a state of confusion around  
21 their recollections, and that was one justification  
22 that was put forward, but the predominant evidence is  
23 that there is no legitimate reason for not taking a  
24 statement with full descriptions and details. No  
25 legitimate reason.

26 COMMISSIONER: You mean, when you say "state of confusion",  
27 that in the case of a violent offence a witness may not  
28 always do justice to an accurate description. But all  
29 senior officers who were asked about such an

1 explanation have said, have they not, that the  
2 obligation on a police officer is to record the  
3 witness's account whether it's reliable or not?

4 MR RUSH: That's been the evidence, but only after a closer  
5 examination of a potential excuse.

6 COMMISSIONER: Yes.

7 MR RUSH: I have spoken about the extent of the practice.

8 The Commissioner will recall Mr Peterson giving  
9 evidence. He indicated he was in Armed Robbery in  
10 1998, was responsible for Hamada statements, he  
11 indicated that it was employed in Armed Robbery and,  
12 from his experience, was employed more widely than that  
13 squad. As I've indicated, uniform members such as  
14 Ms Gleeson, such as Mr Riley, have spoken of its  
15 existence outside.

16 The significance of it is, Commissioner, that as  
17 put forward in a number of statements here that, for  
18 example, Senior Constable Poke and Senior Constable  
19 Thwaites on 16 August at the Moorabbin Police Station  
20 late, I say later in the morning, after Mr Thwaites had  
21 made a statement, he was directed by Detective Senior  
22 Constable Kelly, in accordance with Kelly's practice  
23 and on his evidence what he'd been taught, to remove  
24 details of descriptions of offenders that Mr Thwaites  
25 had detailed in his statement as a dying declaration  
26 from Mr Miller.

27 Ms Poke has given evidence that she was so upset  
28 by that practice that she, on the morning, did not make  
29 a statement.

1 COMMISSIONER: So upset by what the detective was  
2 instructing Mr Kelly to omit?

3 MR RUSH: Correct, Commissioner. Counsel assisting would  
4 submit, the fact that in the patrol duty return signed  
5 by both of them there is what we would say is the  
6 unusual entry of the details of Detective Senior  
7 Constable Kelly with his police number and underneath  
8 "re statements" which, on the evidence of Mr Thwaites,  
9 was put in that because of his upset at what had been  
10 engaged in at Moorabbin.

11 So, Commissioner, I should direct you, at  
12 transcript p.500, to Mr Peterson's evidence that his  
13 assumption was that the practice was taught because in  
14 a few cases lost in the 1980s, they were lost due to  
15 inaccuracy of witnesses' descriptions in a trial. He  
16 also referred to a subsequent statement being taken if  
17 it would help the prosecution case. That, in itself,  
18 raises a concern as to the practice and the  
19 illegitimacy of the practice and the manner in which it  
20 may be used.

21 Mr Riley gave evidence that the description would  
22 be used only if the informant perceived that it may  
23 assist the prosecution case. So, counsel assisting  
24 would submit to the Commissioner, on the evidence,  
25 there can really be only that explanation for the  
26 existence of the practice.

27 Whilst it could be said that it became habit and  
28 individual members may not have turned their mind to  
29 the purpose of the practice, nevertheless it has to be

1 said, on the evidence before IBAC, that the only real  
2 purpose for the practice could be that illegitimate use  
3 of coming back to it if it was thought that it may  
4 assist in some manner or another the prosecution case.

5 COMMISSIONER: And not to come back to it if it didn't?

6 MR RUSH: And not to come back to it if it didn't, indeed.

7 There is evidence before the Commission that this  
8 practice extended into the 2000s. I've indicated that  
9 Mr Riley resigned from the Police Force in 2002 and he  
10 said it was still in use at that stage.

11 Mr Birch indicated that, from his perspective  
12 there's evidence to say that in the Armed Robbery Squad  
13 it didn't exist after 2001, and that is upon senior  
14 persons who advocated the practice leaving the Armed  
15 Robbery Squad.

16 But whilst that can be said, as I indicated at the  
17 outset in relation to these practices, it really cannot  
18 be said that the practice has completely left the  
19 Police Force for a number of reasons, including the  
20 evidence that we heard from Mr Dunn and Ms Gleeson over  
21 the course of the IBAC hearings, and the existence of  
22 the practice itself, because of its nature as I  
23 indicated at the outset, is of a covert type. I  
24 repeat, Commissioner, that there has never been any  
25 formal direction made through Police Command to  
26 highlight the practice and the fact that it must be  
27 eliminated.

28 Practice 2 concerns the omitting of information  
29 which is contradicted by other evidence or if it is

1 otherwise perceived as being unreliable. Evidence in  
2 the inquiry has disclosed that individual police  
3 members will exclude relevant evidence from their  
4 individual statements and from the brief if they  
5 consider that evidence to be unreliable.

6 COMMISSIONER: Mr Rush, it's not just from their own  
7 statements; they will instruct civilian witnesses to  
8 exclude material.

9 MR RUSH: Not only from police, that's correct,  
10 Commissioner, in the sense that we've seen examples  
11 from the civilian statements in Hamada and Pigout where  
12 that has been excluded, and particularly at the stage  
13 where Debs and Roberts were, in police eyes, the likely  
14 prime suspects for the murders.

15 Mr Sheridan gave evidence this week, Commissioner,  
16 that the purpose of re-approaching Hamada witnesses was  
17 in an attempt, as he said, "to enhance the case against  
18 Roberts and Debs." When asked how that would happen,  
19 Sheridan said: "Well, it depends what the witness has  
20 to say when we approach them." That's at p.1289 of the  
21 transcript.

22 The real problem with that approach from the  
23 inspector tasked, in charge and setting the strategy  
24 and direction for Operation Lorimer, is that it leaves  
25 to individual members and investigators the exercise of  
26 their own discretion as to how they will go about - to  
27 use the inspector's words - enhancing that case.

28 We submit that any proper or any assessment of  
29 witnesses carried out by officers in those

1 circumstances, whether it be conscious or unconscious,  
2 leads to a process and a course of action that is  
3 likely only to concentrate on and deliver evidence that  
4 fits in with the Debs and Roberts theory.

5 The difficulty arises with that discretion, and  
6 obviously it is our submission and it has been agreed  
7 to time and time again once this practice has been  
8 identified with witnesses, that it is critical that all  
9 information or relevant information is included in  
10 statements.

11 COMMISSIONER: Mr Rush, there's been a considerable amount  
12 of evidence led during the course of these hearings to  
13 the fact that, even in relation to summary matters, the  
14 most basic of the criminal process, that there is a  
15 process by which the informant, the senior constable  
16 that prepares a statement, submits it to his or her  
17 sergeant, the sergeant reviews the statement,  
18 determines that there are matters that should be  
19 included that haven't been, determines there are  
20 matters within it that shouldn't be and returns the  
21 draft statement to the more junior officer, that that  
22 process might go on with innumerable exchanges between  
23 the officer and the sergeant before a statement is  
24 finally settled upon, and from the evidence that has  
25 been placed before the Commission that is, as we speak  
26 today, a current process.

27 So, while it might be that, for inconsequential  
28 corrections, that's a process that could be deemed  
29 acceptable, if that process includes the omission or



1 the addition of significant information, there is no  
2 audit trail of the process that's been followed. And,  
3 if the junior officer and the sergeant take that  
4 practice with them to more complex investigations in  
5 more serious policing, Crime Cars, Homicide, there's  
6 the risk, is there not, that those practices will  
7 continue?

8 MR RUSH: If one, and we will come to it, Commissioner, is  
9 to consider the evidence after the weekend of  
10 Mr Buchhorn, what you describe as to that process of  
11 sending statements back to witnesses for various types  
12 of corrections, including substantive directions, was  
13 the very process that was followed in Operation  
14 Lorimer. The evidence of Mr Dunn and Ms Gleeson  
15 supports that as being a process that still exists and  
16 it's agreed to as a basic process by Mr Sheridan and  
17 Mr Collins.

18 The problem that you identify, Commissioner, is a  
19 problem that has been the subject of complaint by the  
20 experienced prosecutor, Mr Dunn, over a fair period of  
21 time and there is no way of identifying it and, as we  
22 said at the outset, the reason that it is now  
23 identified and the reason the practice has been exposed  
24 really is coincidence. But there is no trail, there is  
25 no disclosure, and so, as we are going to remind the  
26 Commissioner of what Mr Rapke says, it ceases to be the  
27 witness's statement and becomes a statement which  
28 essentially has been concocted by the police officer.  
29 It's not a legitimate practice to fashion a statement

1 of a witness so that it conforms with other evidence  
2 that you have. If it's a witness's statement, it's  
3 what the witness says, correct or incorrect.

4 Unless that is followed - we heard from, I think,  
5 Mr Sheridan the description, "The statement should  
6 contain all relevant information, warts-and-all", but  
7 the adoption of the practice that the Commissioner  
8 asked about means that that type of aspiration is not  
9 being met on a daily and practical basis in the way in  
10 which briefs are prepared from the Magistrates' Court  
11 to some of the significant criminal investigations that  
12 are taking place.

13 COMMISSIONER: While that practice that I've summarised may  
14 permit - to use your term - concoction, the Commission  
15 is largely concerned with a process that may be  
16 entirely innocent in the sense that neither the  
17 sergeant or the junior officer is intending to include  
18 anything in the final statement which is untruthful.

19 But the mere fact that that process takes place,  
20 that there's no audit trail of how the statement comes  
21 into its final form, is a process which those officers  
22 take with them throughout their career in the Force,  
23 and then it gives rise to the possibility, in hopefully  
24 an exceptional case, that there's concoction of  
25 something in the course of that process.

26 But in either case the court, the prosecution, the  
27 defence, did not know about the process that's been  
28 engaged in and therefore the court, the prosecution,  
29 the defence are denied the capacity to properly

1 evaluate the state of the evidence.

2 MR RUSH: Commissioner, I entirely agree with that  
3 summation, including the summation that through its  
4 use - and I think this was evidence from Mr Buchhorn -  
5 that because of the nature of its use and the frequency  
6 of its use police do not get a true appreciation of  
7 just how potentially damaging that can be to the case  
8 that's been prepared, and ultimately in the sort of  
9 case that you identified, the credibility of the  
10 officers.

11 COMMISSIONER: Yes. I think I'm right in saying, am I not,  
12 that Mr Buchhorn was at pains to say that, although  
13 he'd followed the process of only a final statement and  
14 no audit trail, there was nothing deceitful or  
15 nefarious about his intent. That's not a satisfactory  
16 explanation for the process, is it?

17 MR RUSH: No. He indicated that the sort of process that we  
18 are discussing was a process adopted in every type of  
19 police investigation in collection of statements and,  
20 from his perspective, was probably continuing today.

21 Commissioner, can I turn to improper practice 3,  
22 which involves speaking to witnesses to fix up  
23 inconsistencies in the evidence and not disclosing the  
24 intervention to the parties.

25 We've mentioned, and the Commissioner mentioned,  
26 the example of Mr Peterson, he having shown CCTV  
27 footage to a witness to demonstrate that that witness  
28 was wrong about the type of gun that was being used in  
29 an armed robbery, and there was no reference made to

1 that intervention of showing the CCTV footage to the  
2 witness.

3 The basis of that, again not, to use your word,  
4 "nefarious", but just he felt that the witness needed  
5 to see that to put the witness in the right position  
6 rather than it being established that, in relation to  
7 that and potentially other matters, the witness may not  
8 be as reliable a witness as some others.

9 COMMISSIONER: I think to be clear, my recollection is,  
10 Mr Peterson wasn't referring to something that in fact  
11 had occurred; he cited that, did he not, as an example  
12 to illustrate his point that there must be  
13 circumstances, he thought, where it would be  
14 appropriate to exclude from a witness's statement  
15 something that was plainly wrong.

16 MR RUSH: Yes, Commissioner.

17 COMMISSIONER: And that also revealed, did it not, another  
18 problem and that was that he thought it okay to show  
19 the witness the CCTV footage so that the statement of  
20 the witness would then become the witness's description  
21 as the witness saw it on the footage and not the  
22 witness's recollection?

23 MR RUSH: And not identifying that the witness has seen the  
24 CCTV footage.

25 Mr Buchhorn identified that during the course of  
26 Operation Lorimer he corrected major discrepancies in  
27 statements by speaking to people and that intervention  
28 was not disclosed to parties.

29 We are at pains to say, Commissioner, that there

1 is nothing inherently wrong with police seeking further  
2 material and further evidence from witnesses who have  
3 provided statements, but unilaterally it was agreed by  
4 every witness that, if that occurs, it must be done by  
5 way of supplementary statement to set up the audit  
6 trail of which the Commissioner is speaking.

7 COMMISSIONER: So, there should always be an audit trail?

8 Subsequent statements should reveal the fact that  
9 there'd been a previous one and, if the query is a  
10 result of the investigator raising some question that  
11 needs to be explored, there should be a record kept of  
12 it.

13 MR RUSH: Yes, Commissioner. That's highlighted by the next  
14 practice, which is the taking of a replacement  
15 statement from a witness which fails to acknowledge the  
16 existence of the previous statement instead of a  
17 supplementary statement.

18 As I indicated in my last submission, that all  
19 witnesses - all witnesses - police witnesses that have  
20 appeared at IBAC, have indicated that if a statement is  
21 deficient in some way or another, the only way to  
22 properly correct that deficiency is by way of  
23 supplementary statement.

24 I have referred to Mr Dunn who, it needs to be  
25 recognised, had a 50-year career in Victoria Police,  
26 and he indicated that he identified over the course of  
27 that career it still existing when he retired in 2012,  
28 what he described as systematic problems with junior  
29 members improving their notes and statements at the

1 direction of supervisors, and then having to indicate  
2 on oath that the notes and the dates of the notes and  
3 the statements have been made at a time when they were  
4 in fact not.

5 Again, that was emphasised by Ms Gleeson, who  
6 spent 18 years as a police prosecutor, that when she  
7 left the Victoria Police in 2007 she gave evidence that  
8 many junior members were still being told by their  
9 supervisors that they should alter statements. For  
10 her, she mentioned the assertion of cautions and rights  
11 to witnesses, and they were told to do that by  
12 sergeants who had the responsibility for approving the  
13 briefs and to insert that even in circumstances where  
14 those warnings and explanation of rights had not been  
15 given.

16 COMMISSIONER: I think Assistant Commissioner Casey  
17 acknowledged yesterday, did he not, that the training  
18 or learning at the Academy or at detective training  
19 would very speedily be overcome by what the particular  
20 officer learnt on the beat, learnt in the course of  
21 practising the art of investigation?

22 MR RUSH: Yes, Commissioner. I'll find it, but the  
23 percentage of learning on practical duties as opposed  
24 to the Academy, I think it was seen as roughly - it was  
25 80 per cent as opposed to 20 per cent; that the real  
26 experience and learning for police officers occurs on  
27 the job.

28 COMMISSIONER: Yes.

29 MR RUSH: Both those prosecutors were able to inform the

1 Commission of the really invidious position that the  
2 junior police officer finds when faced with a direction  
3 from a sergeant as to the manner in which that brief  
4 should be improved or corrected or added to. That was  
5 acknowledged, I think, by Mr Iddles, by Mr Riley and  
6 other witnesses, and it is common sense that for a  
7 young police officer to refuse the direction of a  
8 sergeant is an incredibly difficult position for that  
9 person to be in, but unfortunately that sort of  
10 learning, when it comes from the experience of the  
11 sergeant or the senior sergeant, the important persons  
12 in the police station, can become a matter of learning,  
13 thus a matter of habit eventually for police that are  
14 exposed to the practice.

15 Mr Dunn observed that the taking of replacement  
16 statements, he observed it resulting in cases being  
17 lost by police, that the credibility of the police  
18 officer concerned is affected, that is, the credibility  
19 of the Force, and there is obviously the potential for  
20 perjury. He also referred to the changes and the  
21 amendments not being disclosed, as we have said, by way  
22 of audit trail to court, prosecutor or defence.

23 COMMISSIONER: It was Mr Buchhorn's evidence, was it not,  
24 Mr Rush, that the practice of a replacement statement  
25 and not disclosing prior statements was, in his  
26 experience, a universal practice and remained so until  
27 he'd retired?

28 MR RUSH: Correct, Commissioner.

29 COMMISSIONER: And what date did he retire?

1 MR RUSH: 2012, Commissioner.

2 MR TROOD: 2014, I think, Commissioner.

3 COMMISSIONER: Thank you, Mr Trood.

4 MR RUSH: Thank you, Mr Trood.

5 I just return briefly on this point to the  
6 evidence of Mr Buchhorn, that it was standard practice  
7 in any police investigation for the sergeant to send a  
8 memo, or otherwise contact police, listing required  
9 corrections to statements and, of course as we've seen,  
10 that was the very practice that was adopted by  
11 Mr Buchhorn.

12 Mr Buchhorn's practice - and I will come to this  
13 with a couple of witnesses, but I'm going to ask  
14 Ms Boston to take the Commissioner to the particular  
15 witnesses that have been the subject of examination  
16 before IBAC - but Mr Buchhorn indicated that that  
17 practice was a practice that was adopted by him upon -  
18 as is clear - the direction of his supervisors  
19 Mr Collins and Mr Sheridan, that that practice included  
20 correction and additions to statements from dying  
21 declaration witnesses.

22 I'll ask Ms Boston to go to specific examples of  
23 it being identified from the witness statements in  
24 relation to that practice.

25 COMMISSIONER: Very good. Yes, Ms Boston.

26 MS BOSTON: Commissioner, we submit that the evidence before  
27 IBAC establishes that replacement statements were made  
28 by eight first responders to the shootings of Sergeants  
29 Silk and Senior Constable Miller. Five of those



1 replacement statements were made by first responders  
2 who were in a position to hear dying declarations of  
3 Senior Constable Miller and a replacement statement was  
4 probably also made by the crime scene videographer.

5 It's not possible to determine whether replacement  
6 statements were made by further witnesses due to the  
7 destruction or return of first statements and  
8 correction memorandums by the Lorimer Task Force.

9 One of the replacement statements made, that of  
10 Senior Constable Pullin, we would submit, was clearly  
11 backdated, but that otherwise all of the replacement  
12 statements identified appear to have been dated as at  
13 the day they were made.

14 But, despite being correctly dated, such  
15 replacement statements nevertheless improperly  
16 concealed the fact that a previous statement had been  
17 made, the date on which that previous statement was  
18 made, and the changes that were made to its contents.  
19 During the committal and trial, the prosecution and  
20 defence were not made aware that any of these  
21 replacement statements had been made other than the  
22 statement of Helen Poke.

23 Senior Constable Poke was a uniform member who did  
24 not make a statement on the morning of the murders  
25 because she was upset as the Commissioner has heard.  
26 What occurred thereafter is not at all clear.

27 A reformatted, unsigned statement dated 11 April  
28 2000, and witnessed by Sergeant Atkins, was included on  
29 the committal brief of evidence, and that's

1 Exhibit 336.

2 On 14 September 2001, shortly before the committal  
3 hearing, George Buchhorn advised the OPP that a further  
4 statement had been taken from Senior Constable Poke on  
5 12 January 2001 with Sergeant Atkins's name crossed out  
6 and the acknowledgment signed by Sergeant Buchhorn, and  
7 that's Exhibit 339. That statement contained  
8 additional words which had not been included in the  
9 statement on the brief, "6 foot 1, dark hair."

10 The amended statement dated 12 January 2001 was  
11 filed with the court and served on the defence some  
12 nine months later, on 21 September 2001, shortly prior  
13 to the committal hearing.

14 An electronic version of that statement in the  
15 same format and with the same content with one  
16 exception was located by IBAC investigators in the  
17 Lorimer files; this is Exhibit 338. The one difference  
18 was that the jurat and acknowledgment clause referred  
19 only to Detective Buchhorn and not Sergeant Atkins and  
20 only to 12 January 2001, with no reference to the  
21 previous statement date of 11 April 2000. The  
22 electronic statement was unsigned and dated 12 January  
23 2001. Metadata reveals it was prepared on 14 September  
24 2001.

25 It was not a reformatted version, we would submit,  
26 of the statement served on the defence on 21 September  
27 2001, it was in exactly the same format. It is not  
28 clear what was intended to be done with the statement  
29 typed up on 14 September 2001, we would submit. That

1 was, however, the same day that Detective Buchhorn left  
2 a message for the OPP advising that there had been an  
3 incident with Helen Poke in relation to her statement.

4 Further complicating matters, at the committal  
5 evidence Senior Constable Poke gave evidence that more  
6 evidence was added to her statement than is apparent  
7 from comparing the two versions of Poke's statement in  
8 IBAC's possession, and that included the detail as to  
9 there being two offenders; namely, "Two of them, one on  
10 foot."

11 It is not clear, we submit, how many versions of  
12 her statement Poke made, why those different versions  
13 were created or how the versions came to be. Different  
14 accounts about that matter have been given by Senior  
15 Constable Poke and Detective Buchhorn over the years.

16 That not even the Commission is able to determine  
17 what has occurred, despite having these documents and  
18 other materials, highlights the vice of the practice of  
19 creating replacement statements rather than taking  
20 subsequent statements. The process is not transparent.

21 By definition, the replacement statement fails to  
22 acknowledge the existence of a previous statement and  
23 does not, on its face, reveal the amendments which have  
24 been made to the statement and why. On any account,  
25 though, in relation to Poke's statements, it's clear  
26 that original documents have been shredded by a member  
27 of the Lorimer Task Force and that at least one  
28 replacement statement was made.

29 COMMISSIONER: The information which was provided to the

1 Office of Public Prosecutions after the committal, when  
2 enquiries were made about Ms Poke's statements was,  
3 correct me if I'm wrong, not merely Ms Poke's original  
4 statement or statements had been shredded, but that  
5 there'd been wholesale shredding of copy documents. Is  
6 there any evidence that that's an appropriate  
7 procedure?

8 MS BOSTON: No, Commissioner, no one's suggested it's  
9 appropriate to shred documents.

10 A replacement statement was also made as part of  
11 Operation Lorimer by another uniform member, Senior  
12 Constable Graeme Thwaites. His statement on the brief  
13 is dated 23 October 1998, with the acknowledgment taken  
14 by Detective Buchhorn.

15 However, the evidence clearly establishes that  
16 Thwaites made a statement at the Moorabbin Police  
17 Station on the night of the murders, 16 August 1998.  
18 So much is clear, we submit, first on the basis of  
19 Thwaites' and Poke's evidence in IBAC to that effect;  
20 secondly, a note to the Lorimer Task Force sent to the  
21 OPP after the committal which, in the context of  
22 seeking to explain the Poke situation, passingly  
23 referred to Thwaites having made a statement at the  
24 police station on 16 August 1998; and thirdly, the  
25 Lorimer spreadsheet prepared by Detective Senior  
26 Constable Eden which lists Thwaites as having made a  
27 statement and the metadata of that document reveals it  
28 was last modified on 24 August 1998.

29 There's also Thwaites' evidence to the Commission

1 that he signed the statement and it was acknowledged by  
2 an officer which, we submit on the evidence, was  
3 clearly Detective Senior Constable Kelly. That  
4 statement has never been seen by the prosecution or the  
5 defence and it was not included in the brief or in the  
6 disclosure materials.

7 IBAC investigators, Commissioner, are in  
8 possession of the physical electronic Lorimer files and  
9 they do not contain a copy of Thwaites' first  
10 statement.

11 The replacement statement on the brief, which was  
12 acknowledged by Buchhorn on 23 October 1998, makes no  
13 mention of the previous statement or of the amendments  
14 that were made to it.

15 There is also overwhelming evidence, we would  
16 submit, that a replacement statement was made by  
17 uniform member Senior Constable Francis Adams, another  
18 first responder in a position to hear Senior Constable  
19 Miller's dying declarations.

20 Senior Constable Adams's statement on the brief  
21 was dated 29 February 2000. However, the Lorimer  
22 spreadsheet last modified on 24 August 1998 indicates  
23 that he had made a statement already by that time.

24 Further, Senior Constable Adams testified before  
25 the Commissioner that he recalled giving an account to  
26 a detective on the night of the murders and that he  
27 recalled signing something.

28 Further, Detective Eden's day book states, on  
29 16 August 1998 at 9.20 am - following, we might add,

1 some unexplained redactions by an unknown person, not  
2 being Detective Eden: "Statement from Senior Constable  
3 Adams." That's on 16 August. Detective Eden did not  
4 recall acknowledging statements on the morning, though  
5 she said she may have been given statements to hold on  
6 to, and she readily conceded that, having regard to the  
7 notes in her day book, it looks like she had received a  
8 statement from Senior Constable Adams at that time.

9 She also testified that the timings in the logbook  
10 were consistent with Senior Constable Adams having made  
11 a statement on the morning. That logbook had Senior  
12 Constable Adams entering the crime scene at 7.40 and  
13 exiting at 9.12 am.

14 Finally, Senior Constable Adams's statement  
15 included on the brief is dated 29 February 2000 and  
16 indicates that he was at that time stationed at the  
17 Cheltenham Police Station. But, as Senior Constable  
18 Adams told the Commission, by that date he had in fact  
19 already left that station, he was no longer stationed  
20 there, which provides yet more confirmation that the  
21 statement on the brief was in fact a replacement  
22 statement. It was not disclosed and was not retained  
23 by the Lorimer Task Force, we submit.

24 Fourthly, Senior Constable Lou Gerardi, he was  
25 Senior Constable Pullin's partner and the fourth first  
26 responder to hear Senior Constable Miller's dying  
27 declaration to have provided a replacement statement.  
28 Senior Constable Gerardi's statement on the brief is  
29 dated 25 October 1998. However, the Lorimer

1 spreadsheet, with a metadata date of 9 October 1998,  
2 reveals that he had already made a statement by that  
3 time. Senior Constable Gerardi's first statement has  
4 not been found and there's no record of the amendments  
5 made.

6 Fifthly, Senior Constable Ian Gray was another  
7 first responder, though he was not in a position to  
8 hear Senior Constable Miller's dying declarations. The  
9 evidence establishes that he, too, made a replacement  
10 statement. His statement on the brief is dated  
11 8 December 1998.

12 However, Senior Constable Gray gave evidence to  
13 the Commission that he vividly remembers making a  
14 statement at the Moorabbin Police Station on the  
15 morning of the murders, 16 August 1998. That's also  
16 supported by his day book which says on that day:  
17 "Code 1 to CMB. CMB re statement." Which is code for,  
18 Commissioner, "Go to Moorabbin Police Station.  
19 Moorabbin Police Station re statement."

20 It is also supported by the fact, we submit, that  
21 Gray's statement says he was directed to attend the  
22 Moorabbin Police Station which is, as the evidence  
23 demonstrates, where other police members were directed  
24 to go to make statements.

25 Sixthly, Detective Senior Constable Peter Morris  
26 was another first responder who, the evidence  
27 establishes, we submit, made a replacement statement.  
28 Again, he was not in a position to hear Senior  
29 Constable Miller's dying declarations.

1 Morris's statement on the trial brief was dated  
2 1 September 1998. An undated six point memorandum with  
3 Peter Morris's name on it in Buchhorn's handwriting was  
4 located by IBAC with the original brief at the OPP.  
5 The three points ticked off on that memorandum were  
6 reflected in Morris's statement on the trial brief, and  
7 the three points not ticked off were not reflected in  
8 the statement. This reveals, we submit, that Detective  
9 Sergeant Buchhorn had reviewed a previous statement  
10 which Morris had made and drawn attention to a variety  
11 of matters which were subsequently corrected.

12 We note, Commissioner, that a fourth matter listed  
13 in Detective Sergeant Buchhorn's memo, relating to  
14 Morris's stopping of a man named Beech when he was  
15 looking for a suspect on the night of the murders, was  
16 not ticked off on Buchhorn's memo and material relating  
17 to Beech was included in the signed copy of Morris's  
18 statement on the brief.

19 However, that matter was deleted from an unsigned,  
20 reformatted copy of Morris's statement which was  
21 included in the hand up brief used at committal stage,  
22 and that reformatted version of Morris's statement  
23 omitted any reference to his interactions with Beech.

24 In his evidence before the Commission, Inspector  
25 Sheridan agreed that, insofar as the deleted passage  
26 suggested Morris was looking for one suspect, it was  
27 relevant to the defence. The relevant page number  
28 being 1351.

29 We submit, Commissioner, that this raises a real



1 question as to whether there was an intention to obtain  
2 a further replacement statement, a signed one, or even  
3 whether there was a deliberate attempt to hide that  
4 information from prosecution and defence.

5 We submit it's not necessary to resolve that  
6 question. As Sheridan conceded, the very process has  
7 the potential to pervert the course of justice, it is  
8 an improper statement-taking practice. Again, the  
9 first version of Morris's statement has not been found.

10 Seventhly, Detective Senior Constable Francis  
11 Ollie was another first responder who was not in a  
12 position to hear Senior Constable Miller's dying  
13 declarations and the evidence establishes that he, too,  
14 made a replacement statement.

15 Detective Ollie's statement on the brief is dated  
16 7 September 1998. However, an undated "points for  
17 correction" memorandum from Detective Buchhorn was  
18 located with the original brief. Four points were  
19 ticked off, we would submit clearly by Buchhorn, and we  
20 submit that those corrections were reflected in the  
21 statement and that clearly an earlier version of  
22 Detective Ollie's statement had been made. The first  
23 version of detective Ollie's statement has not been  
24 found and was not disclosed to the prosecution or to  
25 the defence.

26 Like the memorandum in relation to Morris, the  
27 corrections required of Detective Ollie were not of any  
28 significance, we would submit, to the prosecution of  
29 the matter. However, the process is inherently

1 improper, obscuring, as it does, that information from  
2 the prosecution and the defence and the two memorandums  
3 were not seen by either party.

4 Eighthly, Senior Constable Paul Edwards was the  
5 crime scene video operator. His statement was dated  
6 11 January 2001, however the evidence suggests that he,  
7 too, made a replacement statement, we would submit.

8 The reformatted version of Senior Constable  
9 Edwards's statement included on the hand up brief was  
10 unsigned and not dated except it said "2000". His  
11 signed statement on the trial brief was dated  
12 11 January 2001.

13 Further, more significantly, Graeme Collins's day  
14 book, on 1 November 2000, includes a document headed,  
15 "Operation Lorimer brief prep tasks", which states:  
16 "Update Senior Constable Paul Edwards' statement.  
17 Remove reference to the crime scene video." Collins  
18 made a written note in respect of that task:  
19 "Reformat - Buchhorn."

20 We submit this entry reveals two things: first,  
21 Lorimer had in its possession a statement from Edwards  
22 as at 1 November 2000, two months before the date on  
23 which his statement on the brief was ultimately dated.

24 Secondly, there is an explicit direction from  
25 Graeme Collins to George Buchhorn to update the  
26 statement by removing an unknown reference to a crime  
27 scene video.

28 Edwards, Collins and Buchhorn all told the  
29 Commission they could not explain the note in

1 circumstances where Senior Constable Edwards was the  
2 crime scene videographer. It may be that a particular  
3 reference to the crime scene video was removed from the  
4 statement. Most likely it was not an amendment of any  
5 significance to the prosecution and defence of the  
6 charges, we would submit.

7 The difficulty again, though, is that, it cannot  
8 be determined what changes were made due to the lack of  
9 transparency in the process employed and any previous  
10 version is no longer in existence, and therein lies the  
11 problem with replacement statements, we submit; it  
12 obscures the fact that there have been changes and it  
13 also conceals the sequence in which information has  
14 been provided by witnesses.

15 Might that be an appropriate time for a short  
16 break, Commissioner?

17 COMMISSIONER: Yes. You'll be able to deal with Mr Pullin  
18 then, I take it?

19 MS BOSTON: Yes.

20 COMMISSIONER: Yes, we'll adjourn for ten minutes.

21 Hearing adjourns: [3.14 pm]

22 Hearing resumes: [3.24 pm]

23 COMMISSIONER: Yes, Mr Rush.

24 MR RUSH: Commissioner, to turn now to the statement of  
25 Mr Pullin and the substantial amendments which are  
26 demonstrated at Exhibit 593, if we could bring that up.

27 Perhaps, while it's being brought up,  
28 Commissioner, it is obvious, and we've been through  
29 this with a number of witnesses, that it's a statement

1 that was backdated and what was concealed was the  
2 previous statement, the amendments, and obviously the  
3 date upon which that second statement was made.

4 COMMISSIONER: What do you want on the screen, Mr Rush?

5 MR RUSH: It's really to highlight, and I'll come to it, the  
6 second statement, as we have seen, bears the same date,  
7 the same time and the signature of Mr Bezzina. It  
8 obviously is designed to give the impression that it  
9 was the original statement.

10 According to the evidence that we have - that is,  
11 of Mr Pullin's account to Mr Iddles - Mr Buchhorn told  
12 him it was necessary to make a further statement to  
13 make things fit. The conversation that is inserted  
14 into the third paragraph from the bottom is, we say,  
15 referring significantly to the evidence that is in the  
16 statement of Mr Gardiner and the conversation that  
17 Mr Gardiner referred to in his statement made on  
18 16 August at Clayton, at Monash Medical Centre, that he  
19 heard conversation between Mr Pullin and Mr Miller  
20 where Mr Miller described two persons on foot and a  
21 dark Hyundai.

22 COMMISSIONER: Is that Mr Gardiner or Mr Clarke?

23 MR RUSH: Mr Gardiner. The evidence, we say, is clear  
24 Commissioner, that this statement was certainly not  
25 made before 21 June 1999.

26 Exhibit 506, I don't need it brought up, was the  
27 extract from the day book of Mr Buchhorn. That  
28 indicated that he visited Mr Pullin at the Fraud Squad  
29 for the purposes "of re clarification of statement.

1 Statement to be clarified."

2 Counsel assisting say that the entry is  
3 unequivocal: Buchhorn, as directed by Collins, and with  
4 the knowledge of Sheridan, was following up and  
5 clarifying statements concerning dying declarations.

6 The entry in his diary is unequivocal in what it's  
7 referring to and we would submit that the Commissioner  
8 should reject the assertion that was made in his  
9 initial evidence, that he had felt that, after  
10 reviewing his note, that the purpose of him going to  
11 see Mr Pullin on that date was a crime scene issue  
12 concerning the potential of sand in the gun. The  
13 unlikelihood of that being done at least ten months  
14 after the crime scene was the subject of investigation,  
15 it was highly unlikely, and he could not point to any  
16 entries in his diary after the first, I think three  
17 weeks, that related to crime scene evidence and  
18 material as opposed to him being tasked to visit  
19 various persons for the purposes of clarification of  
20 brief.

21 The amendments, we say on the evidence, and I'll  
22 come to it, were made at the request of Mr Buchhorn;  
23 that is, we say, the only available inference that can  
24 be drawn on the evidence. It is clearly apparent from  
25 a comparison of the two statements that the second one  
26 was typed up from scratch.

27 Mr Pullin's evidence was that the first one was  
28 not saved in any form and that also fits in with  
29 evidence of practices around police computers at the

1 time.

2 The other matter that we submit should be rejected  
3 again was what was put forward by Mr Buchhorn, that the  
4 explanation or a potential explanation, a theory in  
5 relation to the second statement, was that in fact  
6 Mr Pullin had made two statements on the morning of  
7 16 August.

8 That should be rejected, we say, for a number of  
9 reasons: firstly, it does not fit in at all with the  
10 direct evidence of Mr Pullin as to his conduct and the  
11 way in which he made his statement on 16 August. It  
12 does not fit in at all with the retyping of the  
13 statement in a manner which is so different in a number  
14 of material respects with corrections and changes to  
15 individual words and the like.

16 It does not fit in with the evidence of  
17 Mr Bezzina, who indicated that he signed the statement  
18 at a subsequent time. It does not fit in with the day  
19 book note of Mr Collins, which note has a summary of  
20 the statement of Mr Pullin and does not refer at all to  
21 two offenders or conversation with Mr Miller. And, it  
22 does not fit in, as was demonstrated, despite  
23 Mr Sheridan's initial assertion, with what was written  
24 in his day book, that when he was briefed he wrote down  
25 in direct words one offender as being the subject of a  
26 direct conversation between a member and Mr Miller  
27 around a dying declaration.

28 COMMISSIONER: Mr Rush, I took it, from the sequence of

29 Mr Buchhorn's evidence, that by the last few hours of

1 his evidence and his explanation, that indeed he had  
2 engaged in this process of taking replacement  
3 statements and not retaining the original statement,  
4 that he was recanting or resiling from both his  
5 testimony or his theory that these two statements were  
6 made one after the other on the morning of 16 August,  
7 or that the reason for his visitation in June was for  
8 the purpose of getting some information from Mr Pullin  
9 about sand in the revolver. Were you going to address  
10 that question?

11 MR RUSH: I'm going to address the differences in his  
12 evidence from the time when he first gave evidence on  
13 the first day before IBAC and the second day.

14 COMMISSIONER: Yes.

15 MR RUSH: Yes, Commissioner. It's counsel assisting's  
16 submission that, on the evidence, the evidence of  
17 Mr Iddles as to the conversation he had with Mr Pullin  
18 in 2015, and the evidence around Buchhorn's diary and  
19 the visitation to Mr Pullin in June 2009, that  
20 Buchhorn - - -

21 COMMISSIONER: 2009?

22 MR RUSH: 1999. In June 1999 - - -

23 COMMISSIONER: Yes.

24 MR RUSH: - - - that he saw Mr Pullin at the Major Fraud  
25 Squad, that Buchhorn directed Pullin to make the  
26 changes to his statement and at the very least  
27 Mr Pullin signed that statement which included those  
28 changes, even though he says he does not recall  
29 conversations as to how that came to be included.

1 Mr Bezzina's role in this I will address in due  
2 course. It's unclear as to the specific knowledge he  
3 had in relation to material that had been inserted in  
4 the statement.

5 The thrust of that, Commissioner, as far as it  
6 concerns Mr Pullin, we say, is of some significance.  
7 At Exhibit 617, if I could ask that that be brought up.  
8 I haven't got the page number in front of me. I might  
9 come back to that.

10 Perhaps if I could go to Exhibit 277, p.3351.  
11 There's a difficulty with this, I might come back do  
12 it, Commissioner, and deal with Mr Pullin.

13 COMMISSIONER: Yes.

14 MR RUSH: Can I turn to practice 5, perhaps, if that could  
15 be brought up, and I don't intend to dwell on this  
16 because it's something I will deal with with  
17 Mr Bezzina, and it concerns the signing of a backdated  
18 statement.

19 Mr Bezzina indicated, at least initially, it was  
20 common practice to backdate statements. He backtracked  
21 from that position somewhat in saying, "It occurs from  
22 time to time ."

23 Mr Murnane gave evidence, retired superintendent,  
24 that the backdating of statements occurred, that a  
25 police member would sign a statement and it may be  
26 acknowledged on a later date. Our only comment in  
27 relation to this is, it is always extremely difficult  
28 to know when a statement is backdated, and that, of  
29 course, highlights the vice in relation to it. As we



1 reiterate, it's only because a second version of the  
2 Pullin statement came to light that this practice has  
3 been identified.

4 Our submission is that it is a practice that is -  
5 and it is really the entirety of the evidence - a  
6 practice that is wholly unacceptable.

7 In his affidavit, Mr Bezzina - Exhibit 1, p.4 -  
8 this is an affidavit sworn by Mr Bezzina on 15 March  
9 2018. Mr Bezzina said: "I do not know how the second  
10 statement has come into existence. I have closely  
11 examined the signature on the photocopy of the second  
12 statement. It appears to be mine. I am confident that  
13 the sentence, 'I also asked him, were they in a car or  
14 on foot? And he replied they were on foot' was not in  
15 the statement that I took from Pullin on the night of  
16 the murders. I say this because of my recollection and  
17 my belief at the time of taking statements was, there'd  
18 only been one offender involved. This would have been  
19 crucial information that would have needed to be  
20 relayed to the command post."

21 So, I highlight that to indicate how the version  
22 of events of explanation from Mr Bezzina has changed.  
23 At Exhibit 431 - - -

24 COMMISSIONER: How did that affidavit come into existence,  
25 Mr Rush?

26 MR RUSH: I believe it was an affidavit that was signed for  
27 the purpose of Mr Roberts. It's attested to by  
28 solicitors acting for Mr Roberts.

29 COMMISSIONER: For the purpose of an application to the

1 Supreme Court, was it?

2 MR RUSH: I understand so. To Mr Mitchell, in an interview  
3 with Mr Iddles on 21 July, at p.5107, line 16, Bezzina  
4 said: "Yeah, but I'm not shying away from it. I said  
5 to the investigators yesterday, I said, look, I'm more  
6 than convinced looking at those two signatures and the  
7 block letters underneath it's definitely my signatures.  
8 And it's now me trying to work out, well, what was said  
9 to me to get me to sign that second statement without  
10 reading it, and I put trust in the detectives, as you  
11 do the people that work for you and say, okay, I'm not  
12 reading a witness statement, I'm just reasserting what  
13 I did." Question: "Okay, so you would possibly sign it  
14 without reading it." Answer: "Absolutely." Question:  
15 "And it's common?" Answer: "Yeah, it's common because  
16 with the amount of statements we take as investigators,  
17 and especially a witness statement, and I knew I took  
18 that witness statement sometime previous, so I had no  
19 reason to go through it with a fine tooth comb or  
20 question that detective who approached me, whoever that  
21 was."

22 That is Mr Bezzina indicating that it's a common  
23 practice, common to sign backdated statements. But to  
24 IBAC at Exhibit 615, p.9795, line 9, Mr Bezzina was  
25 asked this question: "But the practice couldn't follow  
26 if anyone who's required to acknowledge the statement  
27 didn't allow it to bear a date and a time on it which  
28 was a false." Answer: "I didn't believe it to be false  
29 because I knew it was the time and date of the

1 particular evening." Question: "But you didn't know  
2 that because you hadn't bothered, you say, to read the  
3 statement, you didn't look to see whether its content  
4 was the same as the initial statement?" Answer: "No, I  
5 would have looked at the time and date because the time  
6 and date being different, I would have then queried it.  
7 Yes. So I didn't read the statement."

8 There is Mr Bezzina saying that he looked at the  
9 statement and assured himself, apparently, of the time  
10 and date of the second statement.

11 COMMISSIONER: Had it been the time and date on which he in  
12 fact was signing it, then he would have queried it?

13 MR RUSH: Potentially, Commissioner.

14 COMMISSIONER: But, so long as it was the original date, he  
15 didn't need to?

16 MR RUSH: He didn't need to. At p.9797, line 16, he was  
17 asked: "On what basis do you think it's okay to sign  
18 something which is false on its face?" He answered:  
19 "False on that particular case. I balanced that  
20 against the original statement because I knew that  
21 Pullin had made a statement on that time and date."  
22 Question: "Be that as it may, your statements reads  
23 'Acknowledgment made and signature witnessed by me' at  
24 a particular time." Answer: "Yes, I know what you're  
25 saying." Question: "Well, why on earth did you think  
26 that that would be okay to do that?" Answer: "I didn't  
27 turn my mind to it."

28 At p.9799, line 15, he was asked: "And you  
29 appreciate that by that practice being adopted a

1 statement can come into existence, as this one has,  
2 which doesn't accurately reflect the process by which  
3 the witness has come to give their account?" Answer:  
4 "Yes, sir."

5 There has been a variation in the evidence of  
6 Mr Bezzina, but his sworn testimony to IBAC is that he  
7 signed a statement on a date which was not the date or  
8 the time of the acknowledgment clause in the statement.

9 We contend that the evidence strongly supports a  
10 finding that Mr Bezzina has knowingly put his signature  
11 to a false statement, has put his signature to a  
12 statement understanding that what he was doing was  
13 signing something that was false.

14 Throughout the course of the proceedings,  
15 Commissioner, there has been no good reason provided at  
16 all as to why this process was necessary. No  
17 legitimate explanation as to why it is that this  
18 statement - if it be the fact that Mr Bezzina believed  
19 it, that it was the same as the one he had previously  
20 signed - there is no good explanation either from him  
21 or anyone else as to a legitimate reason why that  
22 process would be adopted.

23 The illegitimate reason is obvious, and really it  
24 is the only reason that exists: that there was an  
25 awareness of a different statement or the necessity of  
26 signing a different statement over ten months or so  
27 after these events; a practice that Mr Bezzina says was  
28 common in Homicide.

29 The evidence, of course, is that the practice is

1 unacceptable. The evidence from Mr Sheridan, to  
2 Iddles, to other persons working in Homicide is, it is  
3 not a practice at all that they are familiar with in  
4 Homicide. If that evidence be accepted, it adds to the  
5 inference that the reasoning behind the signature of  
6 Mr Iddles applied well after the event is - - -

7 COMMISSIONER: Mr Bezzina.

8 MR RUSH: Beg your pardon, Mr Bezzina after the event is for  
9 a purpose that is improper.

10 COMMISSIONER: Yes.

11 MR RUSH: There is one other matter that's just escaped my  
12 mind in relation to that, Commissioner, as I stand on  
13 my feet.

14 I return, perhaps, to Mr Pullin. I'm not sure if  
15 it's possible to bring up Exhibit 277. This is the  
16 affidavit of Mr Iddles which he affirmed in his  
17 evidence to IBAC, I refer you again to the  
18 paragraph just below the middle of the page: "I asked  
19 Glenn about the statement he made and mentioned that I  
20 thought there was an issue with it or the date it was  
21 actually made. There was silence on the phone for a  
22 few moments and then Glenn said, 'How do you know? I  
23 thought only two members of Victoria Police were aware  
24 I'd made two statements'. Glenn said, 'I made two  
25 statements but only one went on the brief.' I said,  
26 'How did that happen?' Glenn said, 'I've been  
27 approached by George Buchhorn who was a detective  
28 sergeant working on the investigation. George  
29 mentioned to me that another police officer had heard

1 me having a conversation with Rod Miller as I was  
2 holding him at the time of the shooting. The  
3 conversation was not in the statement I previously made  
4 about the events of that night'."

5 The Commission will recall Mr Pullin's evidence,  
6 that he indicated that he said Mr Buchhorn, but he had  
7 no real recollection of Mr Buchhorn being the person  
8 responsible for calling him. That was the subject of  
9 examination of Mr Pullin on 5 February here at IBAC,  
10 Exhibit 617, p.9894.

11 At the top of the page, the diary of Mr Buchhorn  
12 was put to him: "11.45 cleared Fraud Squad. Senior  
13 Detective Glenn Pullin. Statement to be clarified  
14 that's in the day book." He said, a non-responsive  
15 Answer: "So that, if he is responsible for a  
16 clarification in relation to your statement, that also  
17 would be consistent with you thinking you might have  
18 spoken to him?" Answer: "Well, there you go, I now  
19 know I met him. I now know I met him."

20 I indicated, at 11.50 at the bottom of the page,  
21 "ST might be spoke to. Do you agree that it's probably  
22 what it is, 'spoke to Senior Detective Pullin'?"

23 Answer: "Well, there you go, absolutely no recollection  
24 of that, didn't know I'd met him." Question: "There's  
25 the conversation with that clarification, it's entirely  
26 consistent with you telling Mr Iddles and Mr Abbey  
27 you'd been contacted by Buchhorn?" Answer: "Well, it  
28 would certainly appear to be, yeah. I have no idea  
29 why, I don't remember that. Anyway, there you go."

1           The evidence of Pullin signing a further statement  
2           dated in the manner in which we have just seen is to be  
3           looked at, Commissioner, in the light of the evidence  
4           he gave at Exhibit 444 at the committal proceeding,  
5           where his evidence-in-chief, he gives his name: "Senior  
6           Constable of Police at Malvern." Mr Rapke asks the  
7           occupation, "a student". Question: "Did you make a  
8           statement dealing with your involvement in this  
9           matter?" Answer: "Yes, I did." Question: "Would you  
10          look at that document, please. Is that a statement  
11          which you made on 16 August 1998?" Answer: "Yes."  
12          Question: "Are the contents of the statement true?"  
13          Answer: "Yes." And the statement was tendered.

14        COMMISSIONER: Just pause there, Mr Rush. Is that the  
15          procedure that was followed with all committal  
16          witnesses?

17        MR RUSH: Indeed, it is, Commissioner.

18        COMMISSIONER: That they are shown a statement and asked  
19          whether its contents is true and correct?

20        MR RUSH: Yes, it is, Commissioner.

21        COMMISSIONER: Is that the course that was followed with  
22          those of the witnesses that Ms Boston took us to who  
23          were the subject of a replacement statement, that all  
24          of them only referred to one statement?

25        MR RUSH: I will need to check that, Commissioner. My  
26          understanding is, yes.

27        COMMISSIONER: Of those that were called?

28        MR RUSH: Of those that were called to give evidence, that  
29          was the procedure.

1 COMMISSIONER: Which suggests on its face, does it not, that  
2 not only Mr Buchhorn but the witnesses were privy to  
3 the process that only the last statement needed to be  
4 referred to?

5 MR RUSH: Commissioner, that would appear to be exactly what  
6 happened. I think Mr Buchhorn gave evidence that the  
7 nature of the way it happens, that police believe that  
8 they only need to refer to their second statement. But  
9 here, there is evidence of a conversation with Iddles  
10 that Pullin was told only - by Buchhorn - only to refer  
11 to the second statement.

12 COMMISSIONER: Yes.

13 MR RUSH: That provides evidence, at least, of grounds to  
14 consider whether Mr Pullin committed perjury in  
15 indicating that the statement, which was the second  
16 statement which appeared on the brief at the time of  
17 the committal, he knew that and his evidence, sworn  
18 evidence in that sense, gives grounds to consider that  
19 he'd perjured himself.

20 COMMISSIONER: Well, Mr Rush, it's not IBAC's function to  
21 determine whether criminal offences have been committed  
22 but to find facts, but you submit that that, on its  
23 face, suggests Mr Pullin gave false evidence?

24 MR RUSH: I do, Commissioner, or we do.

25 If I could turn to practice 6, Commissioner.  
26 Really, this is highlighted as a particular practice,  
27 the acknowledgment in the absence of the statement  
28 maker, it was the practice identified with Mr Bezzina,  
29 Mr Pullin, and it flies in the face of what has been



1 clear-cut evidence that the acknowledgment clause is of  
2 particular significance in relation to  
3 statement-taking, the acknowledgment that the statement  
4 is true and correct made in the belief that making a  
5 false statement in circumstances renders the statement  
6 maker liable to perjury, is a most important part of  
7 the statement-taking procedure which this practice  
8 clearly indicates was not followed and, on one view of  
9 the evidence, is a common practice from Mr Bezzina's  
10 evidence at Homicide.

11 Practice 7, making of supposed contemporaneous  
12 notes after the event. In a sense, this also has been  
13 dealt with through the course of submissions,  
14 Commissioner, but Mr Dunn and Ms Gleeson have indicated  
15 this was a common practice until at least 2012.

16 Mr Dunn's evidence was that he found it was an  
17 increasing practice rather than a decreasing practice  
18 because of the time constraints and the pressure that  
19 was put on police to complete these sort of  
20 administrative details after hours. But it's  
21 certainly, on the evidence, a practice that the  
22 Commission and you, sir, would be entitled to find was  
23 something that is continuing.

24 There is reference there to a statement or a  
25 document, Exhibit 79, which I won't take the Commission  
26 to, it's a document of Mr Collins, where Mr Collins on  
27 one view, and he agreed that the view was open, that  
28 the interpretation of the document that was sent out to  
29 police for the purposes of statement-taking, on one

1 view of it, was an invitation to make notes after the  
2 event and designate them as contemporaneous, although  
3 he said that was certainly not what he intended by the  
4 document.

5 COMMISSIONER: The evidence of Mr Dunn, Mr Rush, was that,  
6 following representations that he made to Force  
7 Command, the Chief Commissioner gave instructions or  
8 varied the instructions which previously existed for  
9 investigators in relation to contemporaneous notes to  
10 try and address one of Mr Dunn's concerns, and I think  
11 from recollection that was either in late 99 or the  
12 early 2000s; it's Mr Dunn's evidence that that practice  
13 continued thereafter?

14 MR RUSH: Continued and, by the end of his time as  
15 prosecutor, he believed it was increasing rather than  
16 decreasing with recollections of people in fact writing  
17 up notes very soon prior to giving evidence.

18 Finally, Commissioner, practice 8 is failure to  
19 disclose evidence which may tend to assist the accused.  
20 This, perhaps, is best identified as a more recent  
21 example of the evidence that was taken concerning  
22 Operation Mothballing, of police failing to appreciate  
23 the obligation of disclosure of relevant evidence,  
24 something that was highlighted as missing from police  
25 training materials.

26 In that case a face-fit which bore no resemblance  
27 to the accused was not disclosed to prosecution or  
28 defence until its existence emerged during the trial.  
29 The police officer, who had eight years' experience and

1 a detective senior constable, put together a lot of  
2 summary briefs, hand up briefs, was not aware of the  
3 obligation of disclosure; that she was required to  
4 disclose material that had the potential of assisting  
5 the prosecution case, although she disclosed evidence  
6 that assisted the - beg your pardon: unaware of the  
7 disclosure obligation to disclose evidence which helped  
8 the defence case as well as understanding that evidence  
9 that assisted a prosecution case would be disclosed,  
10 and the detective's crew and supervising sergeant did  
11 not pick up that failure on a check of the brief.

12 It was acknowledged in evidence that the  
13 supervisor, the detective responsible for the brief,  
14 had been through no different training to any other  
15 officer with her superiority.

16 I'll deal with Mr Buchhorn, Commissioner, briefly.

17 COMMISSIONER: Yes.

18 MR RUSH: He had a direct responsibility for the checking of  
19 statements. He was tasked by Mr Collins. The file  
20 note or the day book note of Mr Collins - which I won't  
21 take you to but if we bring up Exhibit 480 while I'm  
22 addressing this point - the day book of Mr Collins,  
23 Exhibit 480, clearly indicates that in a meeting that  
24 was attended by Mr Sheridan, that a tasking job was  
25 given to Mr Buchhorn.

26 So, if we go down the page a little bit, a bit  
27 further - Exhibit 480 - going initially to p.7236, at  
28 9.05 am, reference to a meeting with Sheridan and other  
29 sergeants. Commissioner, that's the evidence that

1 discloses - involved in Operation Lorimer. Then, down  
2 to the first asterisk point: "Chase up Buchhorn re  
3 clarification of statements by Miller at scene.  
4 Queries identified in statements. Follow-up required  
5 re dying declaration."

6 So, in the end, Mr Buchhorn agreed that that was  
7 his task and he did his job; he detailed, by checking  
8 and reading statements, that he would note corrections  
9 that were to be made, that he would either send a memo  
10 or phone persons in relation to the amendments. The  
11 phone details, for example, it was a phone call to  
12 Ms Poke, on the evidence of Ms Poke, to attend at  
13 Operation Lorimer. It was a phone call that Mr Pullin  
14 received. He agreed that, in the end, very frequently  
15 what he ended up with as a consequence of this process  
16 were second statements that did not reference first  
17 statements and replaced the first statement.

18 He said in evidence - I don't take you to it,  
19 Commissioner, but it's at transcript 1236.16 - that in  
20 the end almost all the documents that should have been  
21 disclosed were either shredded or returned to members,  
22 and that's by way of either sworn or unsworn  
23 statements, and the notes that were attached to  
24 statements, if they were returned, were shredded.

25 So, Commissioner, his evidence, and again, I won't  
26 take you to it, but the Poke statement, the one that is  
27 dated 12 January 2001, Exhibit 291, but there's no need  
28 to bring it up, this is the statement where the  
29 attestation clause of Sergeant Atkins from April 2000

1 is crossed out and 12 January - and Mr Buchhorn  
2 acknowledges the statement on that date.

3 What is included in that statement is further  
4 details of Ms Poke's conversation with Mr Miller that  
5 in the statement has "6 feet 1 and dark Hyundai."  
6 Those details did not appear in the April 2000  
7 statement, and there was no acknowledgment in that  
8 statement, at the beginning of the statement, that this  
9 was in any way a supplementary statement. And so that  
10 is, just by way of example, Mr Buchhorn was party,  
11 himself, to the procedure that has been identified.

12 It was put to him, when he first appeared on  
13 22 February 2019, he said - and I don't ask that it be  
14 brought up - but at p.1111.29; that he had no  
15 recollection of checking statements; that he thought he  
16 may have seen statements; that shredding of documents,  
17 the only document that he shredded accidentally was the  
18 original statement of Ms Poke; he had some doubt about  
19 whether he had had conversation with members about  
20 dying declarations of Mr Miller.

21 Over the weekend he had a chance to reconsider his  
22 evidence. When he came back to IBAC on 25 February, at  
23 p.1218 he was asked questions about the practice and  
24 second statements, and he said this: "I have given this  
25 some thought over the weekend, particularly when I was  
26 shown those memos, and that did bring back some  
27 recollection of the process of checking statements that  
28 members were supplying, they were sending them in for  
29 checking that purpose. I was clearly checking them

1 and, if I found any errors in their statements, I  
2 attached a memo to it, sent the statement back saying  
3 these are the things that need to be corrected, then  
4 the members would correct them and then send me back  
5 the changed statement and that's the statement that  
6 would then go onto the brief of evidence."

7 At p.1219, he said in answer to a question: "The  
8 process that you say that you followed of going back to  
9 the police witness asking for more detail or for  
10 corrections, and ultimately finishing up with a second  
11 statement which would then replace the first one, you  
12 say that was a general practice, it just wasn't your  
13 practice?" Answer: "No, it's a general practice, it's  
14 likely to be still going on today because, as I said, I  
15 gave this some thought over the weekend, it occurred to  
16 me that, even getting away from what we are discussing  
17 here, a general brief of evidence at any police station  
18 unit goes to a supervisor for checking and, you know,  
19 you would find rarely a brief would get through in its  
20 first attempt; you find mistakes, you send it back or  
21 if the errors are so great you would not authorise the  
22 brief."

23 So here, the evidence and the recognition by  
24 Mr Buchhorn of the practice of the replacement, and his  
25 evidence that the original statements, be they unsigned  
26 or signed, would either end up back with the member or,  
27 if they come to Lorimer, they would not be the  
28 statements that would go on the brief of evidence, it  
29 would only be the second statement.

1 Now, that was a senior investigator. One of the  
2 first questions he was asked in examination before IBAC  
3 was about his experience as an investigator and he  
4 agreed he was an experienced investigator. There is,  
5 we say, Commissioner, strong evidence to suggest that  
6 this was not negligent behaviour but it was behaviour  
7 that was conducted with a deliberate purpose of going  
8 about enhancing the brief.

9 It's been said in evidence - I think Mr Iddles  
10 made the comment - that for a witness to be making a  
11 statement about recollections of conversations a year  
12 after those conversations took place in a supplementary  
13 statement would invite issues of examination at  
14 committal and trial about the credibility of that  
15 witness and the validity of that witness's  
16 recollection. There is, we say, the very strongest of  
17 inferences to be drawn that the practices that were  
18 adopted by Mr Buchhorn were deliberate in the sense of  
19 deliberately going about enhancing the brief and the  
20 theory in relation to the suspects that were then in  
21 the focus of Operation Lorimer.

22 Can I finally turn to the evidence of Mr Collins  
23 and Mr Sheridan. ^ SPELLED Mr Sheridan gave evidence  
24 that he would, in his time as inspector at Homicide,  
25 check every brief and read every statement. The  
26 Commissioner will remember the three entries  
27 in September that led up, we say, to the meeting with  
28 Mr Collins where there was the direction to Buchhorn to  
29 clarify dying declarations. There are three entries

1 from Mr Sheridan concerning dying declarations.

2 In the context of the importance of the dying  
3 declarations, it is close to inconceivable, we would  
4 say, that Mr Sheridan did not read the initial  
5 statements and the further statements. At  
6 transcript p.1344, he was asked this question at  
7 line 11: "So if that process occurred, namely - and  
8 let's focus on the first responders and dying  
9 declarations - if that process was followed, that each  
10 of those persons made a further statement which  
11 contained additional information about what Senior  
12 Constable Miller said, but only the final statement was  
13 kept, isn't that something that you would have been  
14 aware of?" He said: "I would have thought so ... but I  
15 stick with what I said, I have no recollection that  
16 that ever occurred ... and I would have thought I'd  
17 have remembered it."

18 Whilst the recollection may not be with  
19 Mr Sheridan 20 years later, what we would submit is  
20 that the process that he agreed, he would have thought  
21 he would have seen those statements, is the most likely  
22 evidence and evidence that the Commission should  
23 accept.

24 Where that leaves Mr Sheridan is unclear. The  
25 Commissioner may think that a person with the level of  
26 detail and experience, which was clearly indicated  
27 through his notebook and his evidence, that it is  
28 surprising, to say the least, that on an examination  
29 and comparison of statements, when a member of his crew



1 is being directed to go back to clarify a dying  
2 declaration and over the course of time receiving  
3 further statements that do not acknowledge the first  
4 statements, that someone of Mr Sheridan's experience  
5 would pick that up. That, we say on the evidence, is  
6 something that potentially is an available finding for  
7 the Commissioner.

8 COMMISSIONER: What do you say as to his evidence that he  
9 wouldn't have recognised that the ultimate statement  
10 was different to any statement he previously read?

11 MR RUSH: Which statement?

12 COMMISSIONER: I think his broad response was to say, "I may  
13 not have appreciated that the statement that was going  
14 onto the brief was in any sense different to any  
15 earlier statement."

16 MR RUSH: Commissioner, we would concede that that is a  
17 possible, but we would say in the context, unlikely  
18 explanation. Whilst it's possible, the level of detail  
19 and adamancy with which he acknowledged his overall  
20 responsibility for the checking of statements, one, I  
21 think, could express some surprise at that assertion.

22 Commissioner, Mr Collins, at p.1385 of the  
23 transcript, after discussion about statement  
24 replacement and replacing first statements with second  
25 statements, was asked: "Well, it's well-known, a  
26 practice well-known, that statements would be enhanced  
27 by way of correction, taking out material or putting in  
28 material?" He answered: "Certainly, that was the  
29 process that was undertaken, that we would review

1 statements and if there is a need for additional  
2 information, yeah, that would be included in a second  
3 statement." Question: "But by way of a  
4 supplementary - - -?" Answer: "Supplementary, yes,  
5 sir."

6 That, he went on to say, was what he would expect  
7 and anticipate. Again, from Mr Collins' perspective,  
8 the general thrust of his evidence was similar to  
9 Mr Sheridan's, that although he knew of the process of  
10 going out and seeking clarification of statements, that  
11 the dying declaration evidence was of great importance  
12 to Operation Lorimer.

13 Again, from counsel assisting's submission, the  
14 statement that he did not acknowledge or notice that  
15 second statements were being placed on the file in  
16 circumstances where they were replacing clearly what  
17 were, from the perspective of the senior members of  
18 Operation Lorimer, inadequate statements, that the  
19 Commissioner could anticipate that in checking those  
20 statements again and the statements that were coming  
21 in, that would be one of the major areas of concern of  
22 the senior inspector and the senior investigator in  
23 relation to dying declaration statements which, as is  
24 clear, were of great importance.

25 And again, I've said it, one could only express  
26 great surprise if there was not the observation that  
27 what these people were seeing were not supplementary  
28 statements and referencing the first statement because  
29 of the numbers of statements that were replacing the

1 initial statements; and because on the file and on the  
2 brief only the statements that filled the obligations  
3 of clarification were contained and that, in itself,  
4 with people that acknowledge there were statements that  
5 needed clarification, that the only statements on the  
6 brief itself were clarifying statements, it is to the  
7 extent of saying incredible that that would not have  
8 been picked up at the time by the persons responsible  
9 for the brief and for the investigation.

10 COMMISSIONER: The evidence discloses that Mr Collins would  
11 have been aware that Ms Poke made at least two  
12 statements, because he was one of those that wrote to  
13 relevant parties at the time of disclosure saying that  
14 there were two statements.

15 MR RUSH: That's correct, Commissioner, and it is clear from  
16 his notes that he made when this matter was raised in  
17 cross-examination of Ms Poke at the committal he was  
18 aware of it. On his evidence, that did not facilitate  
19 any further investigation of where the position was  
20 with other witnesses who had clearly been approached  
21 for, as Mr Sheridan would say, enhancement of their  
22 evidence.

23 Commissioner, that really is a summation of  
24 counsel assisting's overall submissions. The  
25 concluding remark is, this has been one of the rare  
26 instances of a public examination by IBAC. We note  
27 that over the course of the hearing there have been 15  
28 approaches from various persons in relation to  
29 providing information to IBAC about the nature of the

1 investigation that has taken place, and that the  
2 highlighting of the practices in the circumstances in  
3 public has been, from counsel assisting's submission, a  
4 very important matter to bring to the attention of the  
5 public and of police, the nature of the investigation  
6 and the practices that have been identified.

7 Finally, Commissioner, it is appreciated by  
8 counsel assisting, although we sit here for four weeks  
9 and examine witnesses, that for every person that comes  
10 into IBAC to be the subject of that examination and for  
11 persons that have an involvement, sometimes an intimate  
12 involvement with the evidence and the nature of the  
13 investigation, that it can be a very pressurised  
14 environment and we acknowledge that, and in  
15 acknowledging it only say that, from counsel  
16 assisting's point of view, we had a job to do and we  
17 did it as well and in the interests of understanding  
18 the pressure that is on witnesses.

19 So, they are the matters, Commissioner.

20 COMMISSIONER: Just before you sit down, Mr Rush. In  
21 summary, what do you say the effect of Assistant  
22 Commissioner Casey and Mr Rowe's evidence in relation  
23 to training, either at Academy or detective training  
24 level, in relation to the eight practices that you've  
25 identified?

26 MR RUSH: I indicated during submissions that there was  
27 certainly expressed yesterday a willingness to  
28 cooperate with IBAC in relation to addressing all the  
29 matters that have been involved.

1           During the evidence it was indicated that there  
2 was only really one area of educational material that  
3 addressed what should not be done, and that was in  
4 relation to the taking of supplementary statements.  
5 That now apparently does appear and is addressed, but  
6 what it doesn't indicate is that, one leaves the  
7 Academy or leaves the detective - not so much Detective  
8 Training School - and that much of the training and  
9 understanding of police procedure is done on the job.

10           I think there was a recognition of the need for  
11 continuing education, a recognition that each one of  
12 these practices could still be extant within elements  
13 of the Police Force, and I think I can only leave it on  
14 the basis that the promise that was effectively made by  
15 Assistant Commissioner Casey that he would work  
16 co-operatively with IBAC to ensure processes were  
17 adopted within the Police Force to address these  
18 particular practices, and that could vary from some  
19 form of continuing education, particularly at the  
20 sergeant level, to some form of gaining an  
21 understanding from enquiry as to the manner in which  
22 the practices still exist.

23           I think counsel assisting were left with the firm  
24 understanding that there was a commitment to  
25 transparency and in ensuring that those materials met a  
26 standard that ensured police understood that relevant  
27 material had to be disclosed, and that disclosure  
28 practice, and that there would be steps taken to  
29 address each of the issues that have been raised.

1 COMMISSIONER: Thank you, Mr Rush; thank you, Ms Boston.

2 I see the time. What I'd like to do is just get  
3 an indication from counsel, please, as to which counsel  
4 would seek leave to make any submissions tomorrow?

5 Mr Stewart?

6 MR STEWART: Yes, Commissioner, I'd seek to make submissions  
7 tomorrow.

8 COMMISSIONER: In relation to Mr Bezzina?

9 MR STEWART: Yes.

10 COMMISSIONER: Yes, you will have that leave.

11 Mr Trood?

12 MR TROOD: Commissioner, my client's currently working and  
13 will be so engaged until 8 pm this evening. I'm going  
14 to need to make contact, so could I, as it were,  
15 reserve - - -

16 COMMISSIONER: Of course. Let me say, Mr Trood, that if  
17 your instructions are that you'd wish to make a  
18 submission, I'll hear from you.

19 MR TROOD: Thank you.

20 COMMISSIONER: Mr Matthews?

21 MR MATTHEWS: Commissioner, I would anticipate seeking leave  
22 to make brief submissions, very brief submissions.

23 COMMISSIONER: About what, Mr Matthews?

24 MR MATTHEWS: Can I have overnight and address you on that  
25 first thing in the morning, just to consider what's  
26 been said today?

27 COMMISSIONER: That's fine, if you're prepared to take the  
28 risk that I'll say I won't give you leave tomorrow. I  
29 wouldn't want you to - - -

1 MR MATTHEWS: I've been here for 18 days already and remain  
2 unfunded, I might talk to you about that tomorrow,  
3 Commissioner, but I will take that risk.

4 COMMISSIONER: Very good. Any other submissions?

5 MR HAY: Commissioner.

6 COMMISSIONER: Yes, Mr Hay.

7 MR HAY: Thank you. Can I just be briefly heard on some  
8 correspondence that's occurred between IBAC and my  
9 instructors during the course of today?

10 It concerns - the Commissioner will recall, I  
11 appeared here when Mr Casey and Mr Rowe gave evidence.

12 COMMISSIONER: Yes.

13 MR HAY: And there was reference to putting in a written  
14 submission to address some of the matters that had  
15 arisen during the exchange between the bench and the  
16 witnesses.

17 We were contacted today to ask about whether, in  
18 that submission, we would be contesting any of the  
19 facts as it were that had been the subject of evidence  
20 during the course of the hearings, and I think the  
21 communication was to the effect that, if we did want to  
22 contest particular facts, you would need to hear from  
23 us and we would need to make an application as to why  
24 that should be allowed.

25 COMMISSIONER: Yes.

26 MR HAY: Can I just make this observation and we'll see if  
27 we have a difficulty - I don't think we do, but I'd  
28 like to be clear about it?

29 COMMISSIONER: Yes.

1 MR HAY: The types of information that we wanted to put  
2 forward and we'll be in the process of gathering will  
3 be responsive to what occurred during the course of the  
4 evidence yesterday; and also, once we've had a chance  
5 to analyse what my learned friend, Mr Rush, has said,  
6 whether or not there's anything that arises out of  
7 that, but I think it's particularly responsive to what  
8 occurred yesterday.

9 In that context, there was reference to a  
10 complaint made, I want to say it was in about 2003 by  
11 Mr Rowe. That resulted in, I think, some documentation  
12 internally that then in turn resulted in a direction  
13 from the Commission that I think you may have referred  
14 to just recently.

15 We would seek to put on - or we may seek once  
16 we've called that material to hand, and I think some of  
17 it may have actually already ended up with IBAC - but  
18 there may be some additional material there. That  
19 material we would like to put forward in order to, as  
20 it were, contextualise the response and draw to the  
21 Commission's attention any material that might be  
22 relevant to the question of training. In particular, I  
23 have in mind that sergeant's brief checking quality  
24 assurance course, and there may be some others, but  
25 that's the one that immediately occurs.

26 In doing that, it's possible that at one level of  
27 generality there might be a contest between what  
28 Mr Dunn asserts and what Victoria Police as an  
29 organisation either did or did not do or what it may



1 have discovered as to the prevalence of that practice.

2 But the focus of the Commission's hearings, it  
3 seems to me, with respect, are principally on the  
4 practice itself to the extent that it exists and the  
5 response to it, not so much the complaint.

6 COMMISSIONER: And that's so.

7 MR HAY: So, if that's so, I expect if we can put it forward  
8 on that basis and in the way I've suggested, which is  
9 to give context to the response and any other relevant  
10 documentation that arose out of that response, I don't  
11 think there is any factual conflict that would require  
12 an application of that type that has been raised in  
13 correspondence between IBAC and VGS.

14 But I did want to make that clear just in case the  
15 Commissioner took a different view and we needed to  
16 craft our response accordingly. So, unless that  
17 presents a concern, we don't propose to make oral  
18 submissions but we would propose to put a written  
19 submission that captures the material that I've  
20 referred to in order to assist the Commissioner to make  
21 the determinations that principally arise out of  
22 Mr Casey and Mr Rowe's evidence.

23 COMMISSIONER: Mr Hay, I have no concern at all about you  
24 making a written submission in relation to Mr Casey or  
25 Rowe's evidence or the issues that touch on it.

26 MR HAY: Yes.

27 COMMISSIONER: What I'm anxious to avoid, however, is that  
28 there isn't a belated disputation about the practices  
29 themselves when, for no doubt good reason, a decision

1 was made by the Chief Commissioner, or those advising  
2 the Chief Commissioner, that there was no need for the  
3 Chief Commissioner to be represented during the course  
4 of any of the evidence when, had there been an issue  
5 about any of the practices, that evidence could have  
6 been explored or challenged.

7 MR HAY: I understand. Could I make just two observations  
8 that I think are relevant to that?

9 First, I think it's just practically impossible  
10 for us to say in any particular instance it did or did  
11 not occur. The extent of the prevalence of the  
12 practice is a more - firstly, a bit difficult to  
13 grapple with in terms of how you might measure it, and  
14 you heard some evidence about that from Mr Casey, I  
15 think, about corrupt - - -

16 COMMISSIONER: He acknowledged that he has no empirical  
17 evidence about one of those practices.

18 MR HAY: Quite, and so, that makes it a difficulty to work  
19 out - to gather evidence in order to address it. So,  
20 that's the first observation.

21 The second observation is this: I'm acting  
22 obviously enough for the Chief Commissioner who has  
23 under him very many different areas, and in that role  
24 we are trying to present an organisational response to  
25 that. We were able to do so via Mr Rowe and Mr Casey  
26 in the time that we had, but we thought after the  
27 exchange there was probably a little bit more that we  
28 could put forward, and it was with that in mind that we  
29 suggested the course that we have.

1           It's not to try and second-guess or revisit  
2           particular pieces of evidence about particular  
3           instances or examples of the practices that you're  
4           examining.

5       COMMISSIONER: Very good. That said then, the Commission's  
6           grateful for every assistance that the Chief  
7           Commissioner can give to the task that still lies  
8           ahead.

9       MR HAY: Thank you.

10       COMMISSIONER: So, I don't require your attendance then,  
11           Mr Hay; a written submission will be sufficient.

12       MR HAY: As the Commissioner pleases, thank you.

13       COMMISSIONER: To those counsel who either intend or  
14           contemplate making a submission tomorrow, I just remind  
15           counsel that under the IBAC Act there is an obligation  
16           by IBAC, once a draft special report is prepared, to  
17           give parties who might be the subject of an adverse  
18           comment an opportunity to respond to that comment, but  
19           it was my view that seeing we're in a public hearing  
20           setting, it would only be fair to give you an  
21           opportunity to make oral submissions in public without  
22           in any way limiting your rights under the IBAC Act to  
23           respond to any proposed comment in a special report.

24       MR STEWART: I'm grateful, Commissioner.

25       COMMISSIONER: Very good, 10 am tomorrow morning.

26       Hearing adjourns:     [4.36 pm]

27       ADJOURNED UNTIL FRIDAY, 1 March 2019