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TRANSCRIPT OF PROCEEDINGS

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INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

THURSDAY 14 FEBRUARY 2019

(8th 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: I call Mr Rapke, Commissioner.

3 <JEREMY RAPKE, affirmed and examined:

4 COMMISSIONER: In the documents that you received we set out  
5 the matters about which you will be examined today, I'm  
6 obliged to remind you as to what they are. Firstly,  
7 you may be questioned about aspects of the Lorimer Task  
8 Force investigation of the murders of Sergeant Gary  
9 Silk and Senior Constable Rodney Miller, concerning the  
10 taking of witness statements, the preparation of the  
11 brief of evidence for the trial of Debs and Roberts,  
12 and whether there was full disclosure of witness  
13 statements or other relevant information prior to or  
14 during the trial; second, witness statement-taking  
15 practices by Victoria Police; third, compliance with  
16 the obligation to disclose evidence by Victoria Police.

17 Mr Rapke, you don't require legal representation,  
18 and I assume you're here to respond to the summons.  
19 You understand the rights and obligations under the  
20 Act. I am required to remind you as to what they are,  
21 but given your status and experience I'll do no more  
22 than say, obviously you must answer the questions,  
23 answer them truthfully and, so long as you do so, your  
24 answers can't be used in evidence against you subject  
25 to certain exceptions.

26 Yes, Mr Rush.

27 MR RUSH: Mr Rapke, your name is Jeremy Rapke?---Yes.

28 I'd ask you to have a look at the formal documents that were  
29 served on you. Do you appear today in response to a

1 summons that was served on you on 20 December 2018?---I  
2 do.

3 Is the number of that summons, SE2830?---Correct.

4 With the summons, was there a document, a statement of  
5 rights and obligations?---There was.

6 And also a confidentiality notice dated 11 December  
7 2018?---Yes, that's correct.

8 And a covering letter of 12 December 2018?---I assume so,  
9 yes.

10 I tender those documents, Commissioner.

11 #EXHIBIT W - Documents served on summons to Mr Rapke.

12 Mr Rapke, you're currently a barrister?---That's right.

13 Can we get a brief history of your legal career?---I was  
14 admitted to practice in 1973, signed the Bar role in  
15 1974. I was in private practice between 1974 and 1995.  
16 In 1995 I was appointed a Senior Crown Prosecutor for  
17 the State of Victoria. Between 1995 and 2011,  
18 I believe, I was a public prosecutor holding various  
19 different positions.

20 Did you also hold the Office of Director of Public  
21 Prosecutions?---I was, yes.

22 Between what years?---That would have been 2007 through to  
23 2011, I think.

24 As a Senior Crown Prosecutor, were you the lead prosecuting  
25 counsel both at committal and trial of Debs and  
26 Roberts?---Yes.

27 I appreciate the time effluxion, but firstly, can you just  
28 indicate to the Commissioner the nature of a brief that  
29 is received by a Crown Prosecutor; what comes to you

1 and what the role of the Crown Prosecutor is in  
2 assessing the brief and - - -?---You're talking about  
3 generally, not in this particular case?

4 Generally?---Well, generally it originates from Victoria  
5 Police, they prepare the brief, and it's delivered to  
6 the Office of Public Prosecutions where there's a  
7 distribution of briefs and it comes to a designated  
8 prosecutor, and it's simply a bundle of documents  
9 prepared by the police. Sometimes, not always, there  
10 might be a covering memo from a solicitor in the Office  
11 of Public Prosecutions. Depending on what stage the  
12 proceedings are at, it might be pre-committal, it might  
13 be post-committal, there will be different types of  
14 documentation contained in the bundle, and the task of  
15 the prosecutor is, again depending on what stage it's  
16 reached, to either prepare the case for committal or  
17 prepare the case for trial or, in some cases, to be  
18 given advice to police if that's what's being sought.  
19 So, the task of the prosecutor will depend on what  
20 precisely is the stage of the proceedings; that can  
21 vary from representing - taking the case into court,  
22 both committal or a trial to prosecute it, or giving  
23 advice to the police or other agencies at a certain  
24 stage of the proceedings.

25 If we come to Debs and Roberts, in receiving that brief a  
26 substantial part of that is comprised of statements:  
27 statements of witnesses, statements of police and  
28 exhibits that have been variously collected along the  
29 way?---That's right.

1 If we look at those statements perhaps in relation, firstly,  
2 to the committal proceedings; for the role of the  
3 prosecutor and counsel, what's involved in that as far  
4 as the statements are concerned?---Well, you would  
5 acquaint yourself with the case and, if it's a  
6 committal, then of course the list of witnesses to be  
7 called at the committal would have already been  
8 predetermined through various court processes. I  
9 suppose what a prosecutor would do, would concentrate  
10 on - first of all read as much of the brief as one can  
11 in the time available, but concentrating on the  
12 statements of those witnesses who are to be called at  
13 the committal. If it's a trial, then you'd want to  
14 read almost everything that's in the brief if you can,  
15 and then following the brief, determine which of the  
16 witnesses need to be called or should be called, and  
17 also what order, always bearing in mind the obligations  
18 to be fair to the accused. So, you sometimes might  
19 call witnesses that you don't particularly need, but  
20 you recognise that they need to be called for the  
21 unfolding of the narrative for fairness, and also  
22 bearing in mind the obligations that fall upon all  
23 prosecutors in relation to disclosure, an ongoing  
24 obligation on the part of the Crown to disclose defence  
25 material which might be of assistance to them.

26 I just stop you there. What is the obligation of  
27 disclosure, what's encompassed in that?---Well, there's  
28 an obligation, ongoing obligation, so it's not just a  
29 once off so it continues right throughout the

1 proceedings, an ongoing obligation on the part of the  
2 prosecution to disclose to the defence material in the  
3 possession of the prosecution, or capable of being  
4 obtained by the prosecution, in other words known by  
5 the prosecution, existing perhaps in somebody else's  
6 possession, an obligation on the part of the  
7 prosecution to disclose such material if it's capable  
8 of assisting the client's re Alistair-type test. I  
9 call it, the decision in Alistair. If it's on the  
10 cards and able to assist the defence in the  
11 presentation of their case if it's relevant to the  
12 proceedings or issues in the proceedings, then there's  
13 an obligation on the prosecution to disclose that  
14 material to the defence right throughout the  
15 proceedings.

16 COMMISSIONER: What was the case you referred to,  
17 Mr Rapke?---That's Alistair v The High Court, isn't it,  
18 talks about the test.

19 Thank you.

20 MR RUSH: That, I take it, is material that is both  
21 supportive of a prosecution case and potentially  
22 supportive of a defence case?---That's right.

23 And that is an underlying obligation, as you've said, on the  
24 prosecution?---Yes.

25 In relation to the obtaining of that material, all of the  
26 material, does the prosecution have any role in the  
27 investigation of the offence?---No, we don't - the  
28 prosecution, the prosecutors and the Office of Public  
29 Prosecutions under the DPP are not investigators, we

1 don't investigate. We can advise, in the course of the  
2 investigation where the advice is sought by the police,  
3 we can advise on legal issues arising in the  
4 investigation, but we don't actually conduct  
5 investigations.

6 In the committal and trial of Debs and Roberts, as  
7 prosecutor and through the Office of Public  
8 Prosecutions, is there a contact between those police  
9 that have been responsible for the investigation and  
10 the prosecution?---There's ongoing contact right  
11 throughout the proceedings.

12 Do you recall in this matter who the primary source of  
13 contact was?---For myself, you're asking? Well, I  
14 think I'd have to say the primary contacts I had were  
15 with the leaders of the Lorimer Task Force, which would  
16 be Paul Sheridan and Graeme Collins, they would be the  
17 two principal people in terms of the overall  
18 investigation. Now, there were subparts of the  
19 investigation which were specialised parts of the  
20 investigation where we might have had greater contact  
21 with other officers, but those are the two principal  
22 investigators and those were the ones we had most  
23 contact with.

24 We have the day book of then Detective Senior Sergeant  
25 Collins and it indicates that, for instance at the  
26 committal, he was regularly in attendance and, if an  
27 issue came up, there would be discussion with you or  
28 other officers of the Office of Public Prosecutions.  
29 That is consistent, I take it, with what you're talking

1 about?---Yes.

2 COMMISSIONER: Who was the informant, Mr Rapke?---I believe  
3 the informant was Paul Sheridan.

4 MR MATTHEWS: If it assists, in relation to Roberts  
5 I believe it was - I've forgotten his rank - but Dean  
6 Thomas, who signed the actual charge for Roberts, but  
7 there may be different informants, if that assists.

8 COMMISSIONER: Yes, thank you, Mr Matthews.

9 MR RUSH: At committal and at trial witness statements from  
10 Operation Hamada and Operation Pigout were relied upon  
11 in the prosecution brief?---That's right.

12 From the perspective of preparation for trial, I take it  
13 those statements would be read by you or by your junior  
14 counsel?---That's correct.

15 Your junior counsel, I think in the committal, was  
16 Mr Kidd?---I think I had two; he was one of them, yes.  
17 And Mr Serroch(?)?---Correct.

18 Upon looking back, appreciating the time, reading those  
19 statements, was there anything that concerned you as to  
20 the practice of police in relation to the way in which  
21 descriptions of offenders were recorded in statements  
22 of eyewitnesses to Hamada robberies?---Looking back on  
23 it now, and as you keep on saying it's a long time, so  
24 16 years or thereabouts, I can't bring to mind any  
25 occasion when I had any questions or concerns about the  
26 quality of the statements or the contents of the  
27 statements. I certainly don't remember raising  
28 anything of that nature with any of the police  
29 officers.



1 IBAC has taken evidence now from a number of police  
2 witnesses as to a practice of deliberately not  
3 recording in any significant detail the identities of  
4 offenders that are given by primary witnesses - - -

5 COMMISSIONER: The descriptions.

6 MR RUSH: Descriptions, thank you. (To witness) Of  
7 offenders, that there was a practice of not recording  
8 those descriptions in any detail in original  
9 statements. Is that a practice of which you are  
10 familiar?---I'm familiar with it now because I've heard  
11 about it in recent days, but I wasn't familiar at the  
12 time of that practice, and there was no indication on  
13 the material I read of that and that such a practice  
14 existed in this case.

15 I'll take you to it, but statements that were used in  
16 committal and at trial in effect refer to that  
17 practice; is that something that was picked up?---No,  
18 not by me.

19 I take it, when you say not by you, not by anyone - no one  
20 made you aware of any such - - - ?---No, if anybody in  
21 my team picked it up, it wasn't drawn to my attention.

22 COMMISSIONER: Mr Rapke, you said a little earlier that you  
23 had no concerns that any of the evidence that you were  
24 calling from these witnesses was a matter that raised  
25 issues for you, but that's not really what you're now  
26 being directed to. What you are being asked is whether  
27 or not the process that you were made aware of, whether  
28 or not you had any concern about the actual procedure  
29 that was being followed of having a witness not record

1 in their statement the description but have it written  
2 on a separate note or piece of paper, and then at a  
3 later point of time a supplementary statement is made  
4 by the witness referring to that description in the  
5 separate note?---Well, I wasn't aware of that practice,  
6 so I couldn't have a concern about it.

7 MR RUSH: By way of example, Mr Rapke, Exhibit 289 is of a  
8 witness to a robbery on 27 June 1998 at the Jade Kew  
9 Chinese Restaurant, Linda Lee. If I can indicate at  
10 the outset, this statement was taken by Mr Beanland who  
11 was then a detective with the Armed Robbery Squad, and  
12 there was a crew from that squad that had been seconded  
13 into the Lorimer Task Force. What we see on the screen  
14 is the statement of Linda Lee and to take you to it,  
15 she refers in the second paragraph to the robbery on  
16 27 June, she was working over the course of that day.  
17 Then, further down the page, the paragraph: "After the  
18 work had finished, later on in the evening the  
19 employees were sitting at the table." About five lines  
20 down, I think it's her son, Bobby, got up to fetch some  
21 rice. "At that stage I heard Bobby say, 'Who is it?'  
22 I thought that he must have heard the front door open.  
23 No one answered. Bobby walked a few steps forward to  
24 see if he could see what was happening. At that time I  
25 looked up and saw two persons inside the restaurant. I  
26 saw they were wearing some type of rubber mask over  
27 their face, standing at the cabinet where we keep our  
28 China. I saw that the first one was taller than the  
29 second one." Then there is reference in the concluding

1 paragraph on that first page: "I saw the first one  
2 walking towards us." About six lines from the bottom  
3 of the page, you see: "Whilst that was all happening  
4 the second man, the shorter one, was pulling the blinds  
5 shut at the front and the side of the restaurant. The  
6 first one walked up to the table and continued to  
7 demand money", and there is conversation occurring  
8 after that. Going over the page: "I didn't see who was  
9 first but I knew that they started to tie us up. Hear  
10 the sound of tape being pulled from the roll." Further  
11 down: "All through this the first man was asking us who  
12 the boss was." Then the next paragraph: "The man who  
13 walked into the bar was wearing runners which were  
14 black in colour, had a strap over the top, no laces,  
15 white or silver stripe in the middle of them. And then  
16 when he walked into the bar and came back he was  
17 aggressive, he was looking for money." Then she says:  
18 "I would say they were inside for at least ten minutes,  
19 maybe 15 minutes." There, you would appreciate, there  
20 is no actual height referred to, no build of either  
21 offender referred to, and nothing in relation to the  
22 accent of either offender, just as starting points.  
23 Over the page, Mr Beanland took that a couple of days  
24 after the robbery, on 30 June 1998, so approximately  
25 six weeks before the Silk-Miller murders. If we could  
26 have a look at Exhibit 288, this is a further statement  
27 of Linda Lee that was taken on 26 November 2000. She  
28 says in the second paragraph: "I have previously made a  
29 statement to police in relation to a robbery committed

1           on my restaurant on 27 June 1998."

2           COMMISSIONER: Do we have a hard copy of that,

3           Mr Rush?---Thank you.

4           MR RUSH: The next two: "At the time of making my statement

5           I described the two males who robbed us, however these

6           descriptions were not put into my statement. From

7           referring to notes that were made of the description I

8           gave and my memory I am able to say that they were two

9           males." She then goes on, as you will see, to describe

10          "the more aggressive male as 6 feet tall, medium build.

11          He had white skin." Describes the jeans and sneakers

12          and in the final paragraph: "The second male is

13          smaller, had a smaller build, he did not do much

14          talking." What I suggest to you, Mr Rapke, there

15          exposed is a first statement that does not detail in

16          any significant way a description of offenders, and a

17          second statement that specifically refers to the

18          descriptions having been given but not put in the

19          initial statement. So, can you give any explanation as

20          to how - or, did you pick that up?---No.

21          COMMISSIONER: Was this a witness that was called at trial,

22          Mr Rush?

23          MR RUSH: Yes, this is a witness on the trial brief.

24          COMMISSIONER: From memory, Mr Rapke, the critical aspect of

25          the evidence of all of the victims in the Pigout and

26          Hamada robberies was their description of offenders

27          because you were relying upon that conduct, the conduct

28          of those offenders, as relevant to the identity of

29          those who committed the murders?---Yes.

1 MR RUSH: There is an immediate problem in that practice, is  
2 there not?---Well, is the practice you're talking about  
3 not including in the first statement of a witness  
4 everything they can say in relation to descriptions of  
5 an individual?

6 Yes?---I'd say there's clearly a problem, if that's done  
7 deliberately; if it's deliberately omitted, yes, it's a  
8 problem.

9 If it's deliberately omitted there's a problem; what's the  
10 problem?---Well, firstly, you'd want to know why it's  
11 been deliberately omitted, but it means that the  
12 evidence they can give of descriptions, which is  
13 clearly important in this case, is not complete. So,  
14 when reading the first statement, if that's the only  
15 statement you read, you'd think that's all I can say  
16 about the description, so there's a problem in terms of  
17 both informing the prosecution about what they can -  
18 all they can say about them, and of course if you don't  
19 inform the prosecution and the prosecution about all  
20 they can say, the prosecutors can't in turn inform the  
21 court, the jury, the defence, they can't discharge all  
22 their obligations that we've spoken about before.

23 That problem has its genesis, in that, as to whether a full  
24 description is given becomes a decision of police  
25 officers that are investigating?---Well, if that's -  
26 they're the ones making the decision, yes. I mean, you  
27 wouldn't know from this whether or not it's simply an  
28 omission by the witness or whether it's a deliberate  
29 omission by the police. And there might be a number of

1 reasons why a witness when making a first statement  
2 through the trauma, the anxiety, all sorts of things,  
3 might not get their mind around everything they can say  
4 into a statement, and then later on they think of  
5 something when reviewing the statement, they say, "I  
6 can say more than that", and obviously in those  
7 circumstances, if they can say more and they can  
8 remember it, you will bring the second statement into  
9 existence, so you've got the two statements which then  
10 together would be the full picture of what this witness  
11 can say.

12 But, if a witness gives a description to police of offenders  
13 of the nature we've seen here, including height and  
14 build - - - ?---At the time of making the first  
15 statement?

16 - - - at the time of making the first statement, and that is  
17 deliberately kept out of the first statement, can you  
18 think of any legitimate reason why that would  
19 happen?---I can't think of any legitimate reason.

20 That only leaves the potential, does it not, for an  
21 illegitimate reason, that we will only use the  
22 description if it suits or purposes in the end?---Well,  
23 that's a possible, that's a possible legitimate reason,  
24 yes.

25 Is there not an additional factor in relation to the witness  
26 making a statement and putting in a description which  
27 is made close to 18 months after the actual robbery  
28 itself?---Well, it creates a problem for the witness,  
29 because then the witness is open to the attack of,

1           you've thought about it so long after the event, how  
2           reliable is it because of the effluxion of time.

3       From your perspective and the OPP perspective, looking at  
4       that statement and the fact that the witness was gone  
5       back to and asked to include or make a statement that  
6       included a full description 18 months later, would  
7       that, if it had been observed, not have raised  
8       questions?---Well, it would have if it had been  
9       observed, yes.

10       COMMISSIONER: The majority of witnesses stated that they  
11       could think of no legitimate reason for that practice.  
12       One or two witnesses, however, advanced the explanation  
13       that when a witness that's been the subject of a  
14       violent offence is making their first statement, the  
15       witness may not be in the best mental state to give a  
16       reliable account about the description, and so, that  
17       might justify recording that potentially unreliable  
18       description on a separate note or paper; what do you  
19       say about that?---Well, I think I alluded to the  
20       possibility of the question that anxiety and/or  
21       nervousness might result in a witness not remembering  
22       everything, but if the witness purports to remember and  
23       purports to be able to give a description, then I don't  
24       know that it's up to the individual police officer  
25       taking the statement to form his own opinion about  
26       whether or not that witness is reliable enough to  
27       include that. I think the obligation on the police  
28       officer in those circumstances would be to include  
29       everything the witness has said and it's then a matter

1 of testing in court as to the reliability of it.  
2 Yes, and a variation on that explanation, Mr Rapke, was - by  
3 way of example, the witness says that the offender had  
4 in his possession a double-barreled shotgun but the  
5 CCTV footage immediately available to the officer at  
6 the time of taking the statement shows that it wasn't a  
7 double-barreled shotgun, it was some other form of  
8 rifle; that the witness might be shown the CCTV footage  
9 and then it would become apparent to the witness that  
10 they were mistaken about that and so avoid making a  
11 mistake in their statement. What do you say about  
12 that?---As a practice?

13 Or the legitimacy of following that procedure?---Well, then  
14 it ceases to be the witness's statement and becomes a  
15 statement which essentially has been concocted by the  
16 police officer. It's not a legitimate practice to  
17 fashion a statement of a witness so that it conforms  
18 with other evidence that you have. If it's a witness's  
19 statement, it's what the witness says, correct or  
20 incorrect.

21 Warts-and-all?---Yes.

22 Yes.

23 MR RUSH: I just want to go to one other example of the  
24 Hamada brief, Mr Rapke, which is Exhibit 324, a  
25 statement of Shirley Ng who also was at the Jade Kew  
26 Restaurant on 27 June 1998 when it was the subject of  
27 an armed robbery. This is a statement taken by  
28 Detective Sergeant Peterson.

29 COMMISSIONER: We have another hard copy, Mr Rush?---Thank



1           you.

2       MR RUSH: Who was also a member of the Armed Robbery Squad.

3           Dealing with the first paragraph, she refers to 27 June  
4           1998 when she got to work, and the last customers  
5           leaving at about 10.50 pm. Over at p.3516, towards the  
6           middle of the page: "I can't remember the exact time  
7           but I believe it was about an hour after Keith arrived,  
8           we heard the front door open, it was hidden by a  
9           petition wall. No one walked in around the petition.  
10          Bobby called out but there was no reply and then all of  
11          a sudden a male with a handgun came around the corner,  
12          he was wearing a plastic mask covering his head. He  
13          said, 'Get down on the fucking floor'. Then ten  
14          seconds later [at the bottom] the second offender  
15          appeared behind the one with the gun and we all got on  
16          the floor. The first one was yelling at us, 'Hurry  
17          up.'" Then, in the third paragraph on that page,  
18          refers to: "The second one started to tie us up." In  
19          the next paragraph: "The first one came back out of the  
20          kitchen, was asking where the money was, where the boss  
21          was and grabbed Bobby." Then, in the second-last  
22          paragraph, she says: "I didn't see much after this due  
23          to being on the ground. I could hear them all the  
24          time". At the bottom, refers to: "The offender getting  
25          aggressive and annoyed and the boss wasn't there."  
26          There's a further statement as to the conversation, and  
27          that coming from the first one. In the second-last  
28          paragraph on that page: "The first one was still asking  
29          all of this, the second one was still tying some of us

1 up. I looked at him, saw he was wearing a Bob Hawke  
2 plastic mask, black jeans, maroon jumper and black  
3 denim jacket with sheepskin inside. Runners were white  
4 but had no brand." Over the page: "The first offender  
5 helped the second one finish tying us up and at one  
6 stage put the gun on the table. Said, 'Don't do  
7 anything stupid.'" So again, you would agree, a very  
8 limited description as to the height, the build, the  
9 accents of the offenders?---Yes.

10 Then, at Exhibit 323, there is a further statement from  
11 Ms Ng.

12 COMMISSIONER: Just a moment, Mr Rush.

13 WITNESS: Thank you.

14 MR RUSH: Statement taken by Sergeant Paul Dale dated  
15 26 November 2000. Back to the first page, Ms Ng  
16 states: "I have previously made a statement to police  
17 in relation to a hold-up at Jade Kew Chinese Restaurant  
18 on 27 June 1998 working as a waitress at the time.  
19 From referring to the notes of the descriptions I gave  
20 police on the night and my memory I am able to say that  
21 there were two males. The first male who was doing  
22 most of the talking was taller, had a bigger build to  
23 the second male, he was above 5 feet 11 to 6 feet tall.  
24 He had a male mask with brown hair on his head, about  
25 26 to 30 years of age, Australian accent, medium build  
26 with a beer belly. The second male was smaller, Bob  
27 Hawke mask, grey hair, he was a good half head shorter  
28 than the first male, not as big a build, I don't  
29 believe he had an accent." Again, reference to having

1 previously given police a description but has now set  
2 out in a statement 18 months later. I have to ask you,  
3 Mr Rapke, no one brought to your attention and you  
4 didn't pick up that, here we have a statement detailing  
5 in much greater detail the description that had  
6 previously been given?---That's right.

7 COMMISSIONER: I just wonder, Mr Rapke, whether you're doing  
8 justice to yourself. You or one of your juniors must  
9 have taken the witness through their evidence?---Yes,  
10 that's correct.

11 That evidence would have included both the information set  
12 out in the first statement, together with the detailed  
13 description set out in the second?---Presumably so,  
14 yes.

15 So that, whoever was taking those witnesses - and how many,  
16 Mr Rush, of them are there approximately where a  
17 separate note - - -

18 MR RUSH: Of the Hamada witnesses, six or seven.

19 COMMISSIONER: And what about in relation to Pigout?

20 MR RUSH: Thirty or 40.

21 COMMISSIONER: What I'm suggesting to you, Mr Rapke - and  
22 you're not alone here because Mr Hill gave precisely  
23 the same evidence for the accused Roberts - your focus  
24 was on the question whether or not there was any reason  
25 to doubt the reliability of the witnesses' description  
26 of the offenders, not a focus on the process that had  
27 been followed. I wonder whether, even though you may  
28 not now remember that this process was followed, is it  
29 not evident that between you and your juniors it would

1 have been clear that that was a process that had been  
2 followed in relation to a large number of  
3 witnesses?---Well, possibly, I can't say more than  
4 that's possible. I don't know how many witnesses we  
5 ended up calling, but probably close to 200, I would  
6 think, and a huge bundle of material, and the picture  
7 which emerged from all the evidence was of two  
8 offenders and a pretty consistent description, in terms  
9 of heights and ages and various other features of  
10 their - - -

11 In relation to all these armed robberies?---All of them, and  
12 so, the concentration generally I suspect was on the  
13 overall picture which emerged rather than a  
14 detailed - - -

15 I think we understand that, but I'm just drawing the point  
16 to your attention that both you and Mr Hill, who  
17 appeared for the accused, could not now remember that  
18 that was the process that had been followed in  
19 obtaining and placing before the jury that full  
20 description, that it came from a second statement made  
21 sometime after the first referring to a description  
22 that had been given at the outset?---Well, you talk  
23 about it as a process; I'm not sure that even reading  
24 the two statements alongside each other it would have  
25 jumped out to me that there was that process, as  
26 opposed to simply a witness sometime later filling in  
27 more detail. How that detail came to be filled in, in  
28 a sense what prompted the second statement, would not  
29 necessarily be apparent from just looking at the two of

1           them. So, if you just take the statement of Shirley  
2           Ng, she talks about: "Referring to notes of the  
3           descriptions I gave the police." Now, that's in itself  
4           a bit ambiguous, is she saying her own notes or notes  
5           of police of what she had said? So, you'd have to read  
6           extremely carefully, closely, and then hopefully it  
7           would raise a question in your mind as to what is she  
8           saying and then, if it did raise that question, you  
9           yourself would ask questions of - - -

10          I understand why you say that by way of reconstruction. But  
11          am I not right, Mr Rush, in saying that as a result of  
12          this process a request was made of the prosecution, and  
13          thus the police, to produce all of the original notes  
14          which contained the descriptions?

15          MR RUSH: I'd need to check that, Commissioner. There were  
16          a number of requests made in relation to particular  
17          statements, for original statements and the like, but  
18          whether there was a specific request made for actual  
19          notes, I just need to check, I can't say at this time.

20          COMMISSIONER: I thought I read somewhere in recent days  
21          that a large number of notes, that is, the description  
22          note, was called for presumably on the basis that the  
23          defence having received the supplementary statement  
24          which referred to an earlier note, the defence were  
25          seeking access to the earlier note.

26          MR RUSH: I'll need to check that, Commissioner. There  
27          certainly was a request for police notes of first  
28          responders, but whether it went to this, I'll just have  
29          to check.

1 COMMISSIONER: Perhaps Ms Boston or Mr O'Connor can check  
2 that, thank you.

3 MR RUSH: Mr Rapke, perhaps another example that  
4 particularly raises the point the Commissioner has  
5 asked questions about is a statement of Mr Ling,  
6 Exhibit 301. He was the owner of the Green Papaya  
7 Asian Restaurant that was held up on 18 July  
8 1998?---Thank you.

9 This is a statement taken by Senior Constable Riley on  
10 19 July, the morning after the incident. If you look  
11 at the statement again on the first page, a reference  
12 to the date, 18 July, if we go to the second-last line  
13 on that page, statement, Mr Ling states: "I saw a man  
14 with a mask waving a gun around in his right hand  
15 standing in our reception area. A small gun out, I do  
16 not know what type of gun it was." Then he refers to  
17 being instructed by the man to lie on the floor, says  
18 what people did, and then towards the bottom of the  
19 page, the paragraph: "Before we laid down I saw a  
20 second man walk in behind the first man, he also had a  
21 mask on his face, he also had a small gun but I did not  
22 get a good look at him. The mask he wore was similar  
23 to that of the first man. The first man who was taller  
24 than the second sent the other man around the  
25 restaurant to check on everybody while he stayed in the  
26 reception area." Over the page there's reference to  
27 the first man taping the hands and feet of the staff.  
28 Below that: "Before we were tied up the first man said  
29 'Who's the boss?' I put my hand up. Then he said

1 'Where's the money?'. " And there's further reference  
2 to conversation with the first man. The last  
3 paragraph on that page: "I then heard the first man  
4 say, 'Max is outside. How many have you got?' The  
5 second man said, 'Three'. 'How many to go?' The  
6 second man said, 'Three'." In the rest of the  
7 statement there is further reference to the first and  
8 second male and conversation without any further  
9 description apart from, p.3446. Just below the middle  
10 of the page Mr Ling says: "I would say the first man  
11 was in charge, very much in control. The second man  
12 was sluggish and appeared inexperienced." Now that, as  
13 I've said, at p.3447 is a statement taken by Senior  
14 Constable Riley. With that statement and on the trial  
15 brief is Exhibit 169.

16 COMMISSIONER: Do you have that amongst your papers,  
17 Mr Rapke?---169? No.

18 Not in the document that you have?---No.

19 MR RUSH: I may be able to deal with it on the screen.

20 Mr Riley has given evidence, in accordance with his  
21 practice, of not putting descriptions of offenders in  
22 first statements, that he made the following  
23 descriptions: you see there: "Approximately 6 feet,  
24 dark-coloured hair." And then a description of the  
25 mask: "Godzilla or dinosaur. Sounded Australian."  
26 Description of the gun and "the second male at 5 foot  
27 6, rubber mask as above. Brown jacket, black pants.  
28 Possibly Southern Europe, Arab, Lebanese accent."  
29 Whilst that was on the brief with the statement, it was

1 not something that you particularly picked up?---Well,  
2 if it was on the brief I would have seen it - - -  
3 I guess this question arises: if you had observed the nature  
4 of the statement-taking practices that are, I would  
5 suggest, apparent on this examination, what would you  
6 have done?---I suppose I would have done two things:  
7 first of all enquired as to why was this practice - why  
8 wasn't all this material included, and if the witness  
9 can say all these things at the time that the first  
10 statement was taken, why weren't they included; that  
11 would be the question and that's the question to ask.  
12 But beyond that, I'd want to make sure that all the  
13 material, all the - all what the witness could say was  
14 provided to all the people that needed to know that,  
15 and that would have included the defence.

16 And a query as to why this practice?---Yes, I said that; I'd  
17 enquire as to why, why this - why if the witness could  
18 say all these things, they could have said these things  
19 at the time of their first statement, why they weren't  
20 included; I think I would have asked them as to why  
21 that wasn't done.

22 COMMISSIONER: That went to the issue of satisfying yourself  
23 that the witness's description came from the witness as  
24 a reliable and credible description?---It goes to the  
25 question of that, it goes to the question of - - -

26 And second, that you wanted to ensure that there was  
27 appropriate disclosure. But, as became apparent from  
28 Mr Hill's evidence and yours, your focus was upon  
29 whether or not the evidence given was legitimate,



1 truthful, accurate evidence?---Yes.

2 And, if it became apparent that there was a process followed  
3 which might be the subject of criticism but which did  
4 not affect the quality of the evidence, that wasn't  
5 part of your concern?---Well, had I picked it up as a  
6 practice that was followed by police investigators, and  
7 if I had a concern that the practice was an  
8 illegitimate practice, in other words for an  
9 illegitimate reason, then that's a matter I think I  
10 would have pursued.

11 Even though that wouldn't be part of your brief?---Correct.  
12 When I say "pursued", asked questions of those who were  
13 in charge of the operation, those that put the brief  
14 together to find out why does this practice exist  
15 because, apart from just the obligations we've spoken  
16 about, the disclosure obligations and other obligations  
17 of fairness, it can rebound on the witness, because  
18 essentially cross-examination will proceed on, not only  
19 what the witness has said in the witness box, but what  
20 they've said on prior occasions and, if there's umpteen  
21 versions of what the witness has said, it leaves the  
22 witness open to attack of later reconstructions and/or  
23 memory being prompted by somebody else or some other  
24 thing, so it affects the witness as much and therefore  
25 the presentation of the case.

26 MR RUSH: I take it, you were not aware of that part of the  
27 investigation where there had been directions from  
28 Collins to members of Operation Lorimer to go out and  
29 get specific second statements of better descriptions

1 of offenders?---Well, that's the first time I've heard  
2 that Collins had given such a direction; I've never  
3 heard of that before.

4 We looked at Exhibit 169, if we just bring that back. There  
5 the accent of the first male is referred to as "sounded  
6 Australian"?---Yes.

7 Mr Ling was revisited by Mr Beanland from the Armed Robbery  
8 Squad and Mr Kennedy, who had also been seconded to  
9 Operation Lorimer on, I think, 13 January 2000. At  
10 Exhibit 118 - - -

11 COMMISSIONER: Just while you're pausing there, Mr Rush.

12 The reference I made earlier to notes being sought by  
13 defence, it's actually in relation to the Giller trial,  
14 so presumably relating to the Pigout witnesses, and the  
15 information we have is that, on 27 April 2001,  
16 Butterworth delivered to the OPP documents, including  
17 separate pieces of paper containing descriptions of  
18 suspects by some 17 witnesses and that that material  
19 was provided to the OPP as part of the response to a  
20 form 8A disclosure request from the legal  
21 representatives of Giller.

22 MR RUSH: Yes, sir.

23 COMMISSIONER: Would you have cited the material in the  
24 Giller trial, Mr Rapke?---It was a plea, I think,  
25 wasn't it? Didn't - - -

26 The Pigout?---Didn't give a plea or? Whether I sighted it,  
27 I think I prosecuted the plea.

28 MR RUSH: I think yesterday the transcript was read to  
29 Mr Butterworth of a call that was made for that

1 material during the committal, I think of Debs and  
2 Roberts.

3 COMMISSIONER: Yes. So, it would be, it wasn't Giller, it  
4 was Debs and Roberts?

5 MR RUSH: I think it may have been material in the Giller  
6 brief, but the actual call and then the follow-up  
7 correspondence, I think, resulted in - - -

8 COMMISSIONER: In Debs' and Roberts' trial?

9 MR RUSH: Correct.

10 COMMISSIONER: Does that refresh your memory at all?---No.

11 MR RUSH: If we could turn to p.2717, these are notes made  
12 by Mr Beanland. And, however he's made the notes, you  
13 will see that under "first professional", which has  
14 "first offender, first male", as previously he has  
15 "first male with a South European accent, Middle  
16 Eastern accent." Whereas the original notes that had  
17 been made at the time of the statement of Mr Ling  
18 in July 1998 had the first male as sounding  
19 Australian?---The second one.

20 No, the first one?---But the second one had the accent, I  
21 think.

22 And the second one having that accent, correct. They had  
23 seen Mr Ling and, as a consequence of that, a  
24 handwritten statement was prepared for Mr Ling by  
25 Mr Kennedy at Exhibit 300. There the statement  
26 prepared for Mr Ling: "I wish to now add to those  
27 previous statements by saying that the bigger or larger  
28 of the two male offenders had a Southern European or  
29 Middle Eastern accent." The final part of this

1 particular exercise, Mr Rapke, is at Exhibit 303, where  
2 on 26 November 2000 a further statement is prepared for  
3 Mr Ling which, as you would see in the third paragraph,  
4 gives the detail that was in the initial notes that  
5 were made by the first police officer that took the  
6 statement, but it has, "His accent sounded like it was  
7 Southern European", so we're back with the first note.  
8 As far as the second male is concerned, again all the  
9 descriptions from the notes that were made back in July  
10 1998 are in but there's no reference to any accent at  
11 all.

12 COMMISSIONER: I don't think that's right. I thought the  
13 original notes attributed an Australian accent to the  
14 taller man, and a Southern European or Middle Eastern  
15 accent to the smaller man.

16 MR RUSH: They did, I've - sorry.

17 COMMISSIONER: So, this then departs from that description.

18 MR RUSH: Correct. (To witness) So, the first notice we've  
19 seen had the first offender as with an Australian  
20 accent, and again, clearly there is reference to the  
21 notes by Mr Witschi who's involved in the  
22 statement-taking from Mr Ling, but the first notes have  
23 an Australian accent, but this being prepared off that  
24 sheet still has the accent as Southern European?---So,  
25 just if I understand this: in relation to Ling you've  
26 got two statements and a set of notes, so you've got  
27 three documents; is that correct?

28 In relation to Mr Ling, we've got a first statement  
29 in July?---Yes, got that.

1 We've got a further statement in January of 2000?---Yes.  
2 Which specifically has "Southern European" for the first  
3 offender, and then we have a third statement on  
4 26 November 2000 which, again, has the accent sounding  
5 like it was Southern European, but in contradistinction  
6 to the notes that were taken at the time of the first  
7 offence?---So you've got three statements and a set of  
8 notes?

9 In two statements Mr Ling has said that. In his first  
10 statement he has described it as an Australian  
11 accent?---Thank you.

12 COMMISSIONER: In his notes, in the notes?---In the notes  
13 made by the police officer?

14 MR RUSH: Correct?---Yes.

15 So again, firstly in relation to the practice, very clearly  
16 we've got details being put of descriptions this time  
17 in a third statement, and also a failure to reference  
18 description in the first statement as led, so the  
19 contradiction across the second and third statement.  
20 Again, Mr Rapke, whilst that would have been read, as a  
21 process not picked up?---Not picked up by me, and can I  
22 ask, was all this material available to the defence?

23 Yes, it was?---Was it picked up by them?

24 Well, I don't know?---Well, you'd know because it'd be on  
25 the transcript.

26 I think the Commissioner's told you what Mr Hill said?---So  
27 there was no cross-examination of any of these  
28 witnesses about the transposition or the descriptions  
29 of accents and so on?

1 But whether it's picked up by defence or whether it isn't,  
2 the position is, we have a practice from  
3 police - - - ?---I understand all that, but the note  
4 I've got about the examination also suggests that you  
5 have a look at the consequences of all this, and I'm  
6 wondering whether or not - and of course one of the  
7 consequences we spoke about, failure to disclose, but  
8 if there's a disclosure, I'm just wondering whether or  
9 not it's only my end of the Bar table who didn't pick  
10 these things up or was it not picked up at the other  
11 end and not used at the other end?

12 From an IBAC perspective, Mr Rapke, what we are examining  
13 is, you are aware of the practices of police in  
14 statement preparation, and obviously as a consequence  
15 of their practices it is of critical importance to the  
16 OPP as to the way in which they go about statement  
17 taking?---Well, we don't take statements, but - - -

18 No, the way in which police go about their statement-taking.  
19 And here, as discussed, we have a process clearly of  
20 not putting in details of descriptions of offenders in  
21 first statements which, I think you've agreed and I  
22 think the Commissioner has pointed out, that there is  
23 no legitimate explanation as to why that would  
24 occur?---Well, I can't think of one.

25 And what is left is that, if the descriptions do not fit  
26 police theory through the course of the investigation,  
27 we don't bother about them?---Well, that's a possible  
28 explanation for why they're doing these things, yes, I  
29 accept that.

1 Particularly is that so, obviously, where the descriptions  
2 are not provided with the statements?---Yes. Well,  
3 we've seen the example of, if you don't provide them  
4 with the statements, how you could have errors creeping  
5 in, you've got this transposition of accents in the  
6 Ling situation.

7 I'm sorry, I missed that?---I'm saying you've got an example  
8 of, in the Ling situation where, if you don't include  
9 it all, you could end up with a transposition and  
10 therefore errors in relation to the description.

11 Correct.

12 COMMISSIONER: Mr Rapke, we said at the outset of these  
13 public hearings that it's not part of the focus of  
14 these hearings to pursue the question whether there  
15 were errors in the trial. My recollection however is,  
16 even though Mr Hill couldn't remember a great deal  
17 about the trial, that this particular issue did emerge;  
18 that is, that transposition. Is that so, Mr Rush?

19 MR RUSH: I think so, yes, it is.

20 COMMISSIONER: No?

21 MR MATTHEWS: I'm just relying on my note. It looks as  
22 though what Mr Hill said was, he wasn't aware of the  
23 practice; I'm not sure he was actually taken to that  
24 further - - -

25 COMMISSIONER: With great respect to Mr Hill and to  
26 Mr Rapke, we're asking them to try and remember things  
27 of 20 years ago; I don't think Mr Hill had much  
28 recollection of the process.

29 MR RUSH: I do understand, and am informed, that Mr Witschi,

1           who was the final statement-taker of Ling, was  
2           cross-examined about that aspect at the committal  
3           hearing.

4   COMMISSIONER:   Yes.

5   MR RUSH:   Mr Rapke, we have evidence at IBAC that, on the  
6           morning of 16 August, first responder police attended  
7           to make statements at the Moorabbin Police Station.  
8           Obviously, you're aware of some of those  
9           statements?---Yes, you're talking about police members  
10          making statements at Moorabbin?   Yes.

11   And at Moorabbin police officers, uniform police officers,  
12          went to put in full descriptions of what they had been  
13          told by Mr Miller prior to him being taken to hospital,  
14          about what he said about the number of offenders and  
15          descriptions of offenders?---M'hmm.

16   And that they were instructed to remove that detail,  
17          consistent with the practice that we've seen, from  
18          their statements.   Formally as a practice you were  
19          unaware of it.   Until these proceedings were you aware  
20          of that?---No.

21   We have evidence from Homicide Squad officers that that was  
22          a practice that was used in homicide in relation to the  
23          taking of statements from eyewitnesses.   Again, is that  
24          anything that you're familiar with or have been  
25          suspicious - - -?---You're now talking about the  
26          practice of not including, in the first statement of a  
27          police member on the scene of a homicide, all that that  
28          witness can say, all that that member can say, about  
29          what they witnessed and what they heard?



1 Correct?---No, I've never heard of that as a practice.  
2 And I take it, you weren't aware that that had occurred in  
3 the Lorimer investigation?---No, I am not aware of that  
4 having occurred in the Lorimer investigation.

5 MR RUSH: Perhaps by example, Exhibit 85 is the police diary  
6 of Senior Constable Helen Poke. At p.1997, she  
7 referred to conversation with Mr Miller as part of  
8 details that she recorded in her diary after she had  
9 been at the crime scene but prior to attending the  
10 Moorabbin Police Station. Halfway down that page you  
11 see the note: "Kept calm, reassurance. He said 'I'm  
12 fucked, help me'. He said, 'On foot two, one by  
13 foot'." And her interpretation of this note is "6  
14 feet. One. Check shirt, dark Hyundai, dark hair."  
15 Obviously that description of the conversation  
16 describing two offenders, of the car and the  
17 description of clothing is of great importance?---I  
18 agree with that.

19 The evidence both of Senior Constable Poke and Senior  
20 Constable Thwaites who was with her with Mr Miller is,  
21 at the Moorabbin Police Station they were directed by a  
22 detective senior constable with the Homicide Squad to,  
23 after Mr Thwaites had prepared a statement, not to put  
24 in that sort of detail?---And the detail you're  
25 referring to that they were asked not to put in was,  
26 what, the description of the two offenders or the  
27 actual description - - -

28 Two offenders and the detail that is there?---Well, I've not  
29 heard of that, that's the first time I've heard of

1           that, and I can think of no legitimate reason why you  
2           wouldn't include, in a case like this, as much as you  
3           possibly could in your statement that you made straight  
4           after the event.

5           What are the consequences of that sort of conduct?---Well,  
6           in a case like this, they can be very significant.

7           Indeed, in any case, very significant?---Yeah. I say that  
8           "in this particular case" because, even to this day for  
9           reasons I don't understand, there is a contest as to  
10          whether there was one or two people at the scene, and  
11          here you have a dying man saying quite clearly to a  
12          person who's taking notes apparently that there were  
13          two people, so you would imagine that that's a very  
14          important fact to include in a case of this nature.

15          And, I take it, that's again something you've never  
16          encountered in your time as a prosecutor or as a  
17          barrister?---That's correct. Perhaps I should  
18          rephrase: when I say "I've never encountered"; I'm  
19          looking back over 45 years of practice. If I've never  
20          encountered it, I don't recall having done so, and it's  
21          never emerged as an issue in any case I've been in in  
22          four and a half decades of practice.

23          The evidence before the Commission is that it was, in  
24          effect, a common practice for the taking of either  
25          witness statements at the Homicide Squad, at the Armed  
26          Robbery Squad, and in uniform police?---Well, that's  
27          news to me, and it's surprising to me.

28          In your time with the DPP, at any stage since these events,  
29          have you seen anything that has been produced by police

1 in any sense to indicate that this sort of practice is  
2 not to be tolerated?---No, I haven't seen anything of  
3 that nature.

4 From a disclosure point of view, without full disclosure,  
5 obviously you're not going to be in a position to have  
6 knowledge of the statement-taking practices?---If we  
7 don't get it from the police, we can't disclose it.

8 And, if you don't get it, the defence don't get it?---And  
9 the defence don't get it, the court doesn't get it, the  
10 jury don't get it, a whole lot of people don't get it.

11 I want to show you a witness statement that was used at  
12 committal and at trial of Senior Constable Pullin.  
13 Exhibit 593.

14 COMMISSIONER: Mr Rush, were you going to return to the  
15 Thwaites-Poke issue?

16 MR RUSH: Yes. (To witness) What we have here, Mr Rapke, in  
17 Exhibit 593 is a witness statement of Mr Pullin, you  
18 will see dated 16 August 1998 and witnessed by  
19 Mr Bezzina. On the right-hand side of the page,  
20 witness statement dated - - -

21 COMMISSIONER: We've got that in hard copy, if that assists  
22 you, Mr Rapke?---Thank you.

23 MR RUSH: The witness statement of Mr Pullin also dated  
24 16 August 1998 and the acknowledgment of the statement  
25 taken by Mr Bezzina, again, at the same time, 4.25 am  
26 on 16 August.

27 COMMISSIONER: Do you want a few moments to look at that,  
28 Mr Rapke?---Am I to pick up - what am I looking for? I  
29 assume they're different, are they?

1 All of the material highlighted in the second statement is  
2 additional to what's in the first?---Okay.  
3 Or at variance with what's in the first?---Thank you. Yes,  
4 I can see all that.

5 MR RUSH: By way of example, in the second statement, in the  
6 fourth paragraph, in the last five lines, what is  
7 inserted: "I also asked him, 'Were they in a car or on  
8 foot?', and he replied, 'They were on foot.' I asked  
9 him, 'How long did it happen?' He replied, 'A couple  
10 of minutes.' Miller was quite obviously in pain." And  
11 he goes on. The evidence again before the Commission  
12 is that the second statement that is dated and timed in  
13 the same manner as the first statement was in fact made  
14 a very significant time after 16 August?---Yep.

15 And witnessed by Mr Bezzina, and the first statement was not  
16 disclosed?---Not disclosed to anybody? Not disclosed  
17 to anybody?

18 Not disclosed to anybody?---Which statement was in the brief  
19 then? It must be the second statement was in the brief  
20 then?

21 The only statement at the committal brief and the trial  
22 brief is the second statement. I take it, you didn't  
23 see two statements bearing the same time and  
24 date?---No.

25 COMMISSIONER: And had you, you would have disclosed it?---I  
26 would have done two things: ask how it comes about, and  
27 disclose it, of course.

28 MR RUSH: Mr Bezzina has signed, as you will see, both  
29 statements and he has given evidence that the signing -

1 to IBAC - that the signing of statements that are  
2 effectively backdated is a common practice across the  
3 Homicide Squad and possibly other areas. Is it a  
4 practice that you are aware of?--No, I'm not. Did he  
5 explain why that is such a common practice?

6 Perhaps that's another matter, Mr Rapke, as to his  
7 explanation, but he has indicated - can you think of  
8 any reason why, what is in effect a second statement  
9 containing further detail - can there be any  
10 justification for backdating that statement?---No. No,  
11 I can't.

12 COMMISSIONER: You might ask Mr Rapke about the concept of  
13 reformatting, Mr Rush.

14 MR RUSH: Mr Rapke, I was going to take you to a statement  
15 of Senior Constable Helen Poke. Perhaps if I could ask  
16 you generally, in the course of committal preparation  
17 is it common practice for police to reformat  
18 statements?---"Reformat"?

19 Or retype statements?---I'm aware of a practice where  
20 sometimes, if you have a handwritten statement, they  
21 might produce a typed version of it just for ease of  
22 reading, but that's the only practice I'm aware of that  
23 would come even close to what you call "reformatting".

24 If we have a look at Exhibit 336. Here is a statement of  
25 Senior Constable Helen Poke that, if we go to p.3558,  
26 at the bottom of the page is unsigned. Are you  
27 familiar with that form of statement?---What, an  
28 unsigned statement?

29 Yeah?---Unsigned, undated statement?

1 Are you aware of reformatting of statements generally in  
2 relation to brief preparation?---Well, as I said, the  
3 only practice I'm aware of is, on occasions you have a  
4 handwritten statement that the police might produce for  
5 ease of reading and nothing else, a typed version of  
6 it, but that's the only process I'm aware of that might  
7 come close to what you call reformatting.

8 COMMISSIONER: Was it the practice where, we're calling it  
9 reformatting, where a handwritten statement is then  
10 retyped like this is, that wouldn't contain the  
11 signature of the witness or the officer acknowledging  
12 the signing of the statement?---No, not normally, no.

13 MR RUSH: If we have a look at Exhibit 337?---Can I say in  
14 addition to that, normally what would happen where you  
15 did have that typing of a handwritten statement is, the  
16 brief would include both the original handwritten  
17 statement and behind it the typed version so that you  
18 could compare.

19 COMMISSIONER: Yes.

20 MR RUSH: Exhibit 337 is a statement of Ms Poke, and the  
21 evidence is that that is in a format that readily comes  
22 up on a police computer for statement taking. If I  
23 just ask you to look at a couple of things: at p.3561,  
24 down at the bottom paragraph right at the bottom of the  
25 page: "I remember Miller saying they were on foot, two  
26 of them, one on foot, check shirt, dark  
27 Hyundai"?---Yes.

28 Over the page, we have that dated 11 April 2000 but no  
29 signature?---Dated, what, 11 April? Where do I find

1           that?

2           Right at the bottom, the acknowledgment is

3           taken - - -?---Oh, yes, I see.

4           Taken 11 April 2000?---Yep.

5           I take it, your surprise about that is the length of time

6           after 16 August 1998?---Does this purport to be the

7           first and only statement that Poke made?

8           Purport to be the first statement?---I am very surprised by

9           that. How many years afterwards? Is it two years?

10          The evidence, just so you understand, Mr Rapke, of Ms Poke

11          is that, as a consequence of the direction to remove

12          particulars that we've been through and not permitting

13          statements, that she walked out and didn't make a

14          statement on the night. But, even so, that's a

15          surprise to you that it would come so long

16          after?---Yes.

17          If we could bring up side-by-side Exhibit 336 with

18          Exhibit 337. If we go to the first page of

19          Exhibit 337. This is an identical statement that has

20          been reformatted in the manner that you see on the

21          left-hand side?---I've got two statements here.

22          They're identical in their content, are they?

23          They're identical in their content. The one on the

24          left-hand side appeared in the committal brief on

25          11 April 2000?---Right.

26          You, as far as the reformatting is concerned there, do you

27          see any reason for it?---If you could go right down to

28          the bottom, please.

29          So there we've got the signature block of Sergeant Atkins

1 and the time and date, exactly the same as on the  
2 statement that we've previously been to?---Okay. So,  
3 the only difference is how it looks, is that it?  
4 The only difference is how it looks; correct?---Well, I  
5 don't understand why you'd do that.  
6 Just for clarity, if we go to p.3557 of Exhibit 336. You  
7 see the second paragraph: "I remember Miller saying  
8 they were on foot, two of them, one on foot, check  
9 shirt, dark Hyundai." Again, a description that is  
10 exactly the same as the one we've been to in the  
11 previous statement. If we have a look at Exhibit 339,  
12 this is another copy of the statement of Senior  
13 Constable Poke. If we could have a look at p.3570,  
14 second paragraph, where it's said: "I remember Miller  
15 saying they were on foot, two of them, one on foot,  
16 check shirt", and then what is inserted is, "6 feet 1,  
17 dark hair" and then "dark Hyundai." Over the page,  
18 it's signed and dated with the original date crossed  
19 out, at 9.20 am on 12 January 2000, and the  
20 acknowledgment is made by Mr Buchhorn. Do you recall  
21 this being raised in the trial at all, Mr Rapke?---No,  
22 I don't have any recollection of any cross-examination  
23 of this nature, I don't remember it being raised.

24 Or at the committal?---No, I don't, no.

25 The statement signed by Mr Buchhorn with the change,  
26 together with the statement that I've taken you to, the  
27 reformatted statement, were on the committal brief. If  
28 you can have a look at Exhibit 476, these are the diary  
29 notes of Mr Collins, 5 October 2000. You will see in



1 the first page: "9.40 at Melbourne Magistrates' Court.  
2 Liaise with witnesses and assist prosecutor", which  
3 would be entirely consistent with the role that you've  
4 discussed. There's a note about: "Questionnaires" and  
5 to "members re issue smoking called for by defence.  
6 Raised by Poke." And then this: "Issue re Poke  
7 statement not being made until April 2000. Why? Not  
8 asked. Why didn't she provide? Make a time when asked  
9 for notes." And, it seems, they didn't - asked if  
10 crossed her mind, over the page. Is this refreshing  
11 your memory at all, as to - - - ?---No, it's not, no.  
12 Then a reference down the page after adjournment for lunch,  
13 there was a question raised about Poke's OSTT  
14 qualification and its expiry date during  
15 cross-examination, and then: "Work records re  
16 non-operational duties. When did they start?" Then:  
17 "Frankston PS where Poke made statement alterations to  
18 page 3, paragraph 2 omitted from typed statement. (2)  
19 6 feet, one on foot, dark Hyundai. Original statement  
20 made by Poke called for. Acknowledged by Atkins on  
21 11 April." Now, from your perspective, do you have any  
22 recollection at all around this issue?---The Poke  
23 statements and notes and things of that, no - no, I  
24 don't have any recollection of any of this being at  
25 issue at the committal or at the trial. I know with  
26 Poke, she was very adversely - greatly and adversely  
27 affected by this event, and I think we were told that  
28 she'd gone off work for quite a long time, was still  
29 struggling even at the time that she was asked to give

1 evidence. Now, whether or not that played into any  
2 explanations or anything we asked or were told, I don't  
3 know. That's my only recollection of Helen Poke and  
4 what - but I don't recall that being an issue about her  
5 statements so much as just her general health.

6 COMMISSIONER: What's clear from that documentation, is  
7 that, at the committal the defence was alive to the  
8 fact that her statement, on its face, reflected that  
9 there had been some statement made earlier back on  
10 11 April 2000, and that had been crossed out, which led  
11 to requests for information. But if it had been a  
12 statement that made no suggestion on its face that  
13 she'd said anything earlier, then both prosecution and  
14 defence would have no reason to think that earlier  
15 statements had been made, that information had  
16 previously been provided, or that a direction had been  
17 given that certain information should not be referred  
18 to; none of that would be apparent?---Well, that's  
19 correct.

20 MR RUSH: We have some notes from the OPP made by  
21 Ms Voulanas at Exhibit 87. At the bottom entry,  
22 "Phoned George Buchhorn 17 September at 1.45?" You  
23 were familiar at this stage with Mr Buchhorn?---I knew  
24 he was part of the Lorimer Task Force, yes.

25 And had a role in relation to witnesses and having witnesses  
26 present at the committal?---I don't recall that. Could  
27 very well have done, sorry, I just don't remember that  
28 today but.

29 This explanation appears to be given to Ms Voulanas: "She

1 had her statement taken some ..."?---Months.  
2 "Some months [thank you] later. She supplied notes which  
3 had additional comments that weren't in the first  
4 statement. First statement was unsigned.  
5 Acknowledgment is January 2001. Unable to change the  
6 acknowledgment on computer. So, George crossed out  
7 acknowledgment by hand and handwrote a new one. This  
8 statement contained the 6 foot and Hyundai comments.  
9 This is the statement that should have been on the  
10 brief." Here we have reference to two statements taken  
11 some months after, and obviously a further statement  
12 with the material that we've identified going into the  
13 statement, and it seems, on the note, reference to only  
14 one of those statements that should be on the  
15 brief?---One statement should have been on the brief,  
16 yes.

17 Should have been on the brief together with the first  
18 one?---It makes sense to suggest this is two statements  
19 and a separate note, yes.

20 Certainly from the IBAC perspective and the evidence of  
21 Ms Poke, the first signed statement of Ms Poke is not  
22 available and, according to a note of Mr Solomon, was  
23 shredded, he says accidentally. Were you made aware of  
24 that?---No. The shredding of the statement?

25 So it's said?---No, I've never heard of any statements in  
26 this case being shredded.

27 COMMISSIONER: Will you still be some time, Mr Rush?

28 MR RUSH: Yes.

29 COMMISSIONER: Would you like a short break, Mr Rapke?---No,

1 I'll be fine, thank you, Commissioner.

2 MR RUSH: If we have a look at Exhibit 378, this is a  
3 statement of Senior Constable Thwaites and it is dated,  
4 at p.3720, 23 October 1998. That is a statement taken  
5 by Mr Buchhorn on that date.

6 COMMISSIONER: Did you deal with Mr Buchhorn during the  
7 committal or trial, Mr Rapke?---I had some dealings  
8 with him but not many.

9 What did you understand his role to be?---I'm not sure I  
10 recall that now, I'm sorry, Commissioner. It might  
11 have been some liaison role, but I don't have a strong  
12 recollection of it.

13 Very good.

14 MR RUSH: Mr Thwaites has given evidence that he made a  
15 statement on 16 August 1998 at the Moorabbin Police  
16 Station, which he said was ripped to shreds by the  
17 Homicide Squad member that I've informed you of in  
18 relation to not putting details of the dying  
19 declaration into his statement. That is the only  
20 statement of Mr Thwaites that was on the committal and  
21 trial brief?---This one on the screen?

22 Yes. Again, I need to formally put it to you that, if there  
23 had been any other statement in your possession or the  
24 possession of the OPP, that would have been  
25 provided?---Absolutely.

26 HIS HONOUR: I should make clear to you, Mr Rapke, it was  
27 not just Mr Thwaites' evidence, but the officer from  
28 the Homicide Squad who took his statement confirmed  
29 that he directed Mr Thwaites not to include that

1 information in the statement?---That is, the  
2 description of the offenders?

3 Yes?---Extraordinary.

4 MR RUSH: The significance of that perhaps, Mr Rapke, is at  
5 Exhibit 103. At p.2284, this is the patrol duty return  
6 which was completed by Mr Thwaites. Towards the bottom  
7 of the page, starting with "assisting second member to  
8 ambulance, Constable Gardiner", refers to F492. KG8, I  
9 understand, is canine tracking?---Yes.

10 "There's two male offenders, one on foot. Possibly second,  
11 possibly Hyundai. Mazda 323. No further detail. One  
12 of the offenders said to be 6'1, 6'2, long dark hair,  
13 three to four days' growth, blue check shirt, blue  
14 jeans." That is the nature of the detail that he says  
15 he was directed not to put in his statement. Again, it  
16 goes without saying, that is critical  
17 detail?---Absolutely.

18 As you sit there, you cannot think of any legitimate reason  
19 why a police officer would be directed not to put that  
20 sort of detail in his statement?---No, I can't think of  
21 any legitimate reason.

22 The Commission has evidence from a Detective Senior  
23 Constable Morris. There is a statement on the brief of  
24 Detective Senior Constable Morris at Exhibit 321. If  
25 we go to p.3510, it is made on 1 September 1998 and the  
26 acknowledgement is from Detective Senior Sergeant  
27 Rankin. If I can ask that side-by-side with that  
28 statement we could bring up Exhibit 80. If we go to  
29 the first page of Mr Morris's statement, if you see the

1 note on the right-hand side of the screen, Senior  
2 Detective Peter Morris, point 1: "How was he informed  
3 by Senior Detective Hanson? Clarify", and there's a  
4 tick. If you go to the fourth paragraph of Mr Morris,  
5 you read: "At approximately 11.45 pm the restaurant  
6 shut. Senior Constable Seymour and I began to return  
7 to the Frankston Police Station. A short time after  
8 this I was informed by Detective Senior Constable  
9 Hanson a police member had been wounded in Cochranes  
10 Road, Moorabbin, and it would appear Detective Senior  
11 Constable Hanson contacted myself via mobile telephone  
12 as my vehicle was experiencing radio communication  
13 problems." So, insofar as there is clarification of  
14 how Mr Morris was informed, it would appear that, if it  
15 wasn't, it's now in the statement?---Yes.

16 Then point 2: "Clarify time. I immediately drove to the  
17 intersection of Warrigal Road and Nepean Highway,  
18 arriving at 12.30 am", and that now has a tick on the  
19 right-hand side. Point 3: "Told van to close Warrigal  
20 Road. Stop traffic travelling west, Warrigal Road,  
21 basically north-south." Included in the statement:  
22 "Upon arrival at this location I met an unknown police  
23 divisional van and instructed same to close all traffic  
24 from travelling north along Warrigal Road." On its  
25 face, you would agree that what has been checked from  
26 what I suggest is an initial statement, and ticked off  
27 this detail in his second statement?---Seems to be,  
28 yes.

29 As an example of what is not ticked off, you see on the

1 right-hand side it says: "Delete field contact with  
2 Beech(?), it's not relevant." That's not ticked and,  
3 if you go down to the second-last paragraph of  
4 Mr Morris's statement, in there there's reference to  
5 the contact with Mr Beech?---Yep.

6 Again, the proper method of making such a statement would be  
7 by way of supplementary statement?---Yes.

8 And this sort of statement replacement, not acknowledging  
9 the first statement, are you familiar with that?---No,  
10 I'm not. I'm very familiar with supplementary  
11 statements, it's a very common thing, but a  
12 supplementary statement by its very nature means that  
13 there's been an earlier statement and you're generally  
14 provided with both of them.

15 Mr Morris in fact told the Commission that he would be happy  
16 to make what he described as a replacement statement as  
17 long as not too much detail changed, and from a police  
18 practice you would agree that is unacceptable?---Yes.  
19 No, I think the supplementary statement is the  
20 preferable way.

21 But again, unless it's disclosed, you wouldn't know about  
22 it?---That's correct.

23 Mr Ollie(?) at Exhibit 325, and if we could bring up  
24 Exhibit 81 side-by-side if possible. Mr Ollie's  
25 statement, the typewritten statement at the bottom of  
26 the page is made on 7 September 1998?---Yes.

27 Point 1 of the Francis Ollie writing has morning time, it  
28 seems, of "12.30 pm", should be "am". You see in the  
29 statement it is 12.20 am. The writing in blue is

1 Mr Ollie's writing in point 2: "Need more detail of  
2 observations of scene, car positions, portable blue  
3 light, body in relation to each other." See in the  
4 fourth line of the paragraph we've been to: "When there  
5 I could see three other unmarked police units already  
6 in attendance. Without stopping I turned around,  
7 exited the scene from my direction of entry. Along the  
8 north side of Cochranes Road, the intersection of  
9 Cochranes Road is divided by a carpark." Point 3:  
10 "Remove call signs of CBT311." And on review of that  
11 statement there is no reference to call sign of CBT311,  
12 and a further reference to "time am/pm only." Again,  
13 from Mr Ollie's perspective, he has agreed that he made  
14 a replacement statement and the same point arises, does  
15 it not, that as far as a practice is concerned, this is  
16 an unsatisfactory practice?---It is an unsatisfactory  
17 practice. I'm not sure what I'm looking at here. This  
18 note on the right-hand side, what's that?

19 The note on the right-hand side is a direction, after review  
20 of the statement, we believe in the writing of  
21 Mr Buchhorn, as to the manner in which the statement  
22 should be redone?---So, this is during the  
23 investigation phase, or is this post-investigation in  
24 putting the brief together to go to the prosecutors, or  
25 what?

26 This is, as you see, the date of the second statement is  
27 2 September 1998?---1998.

28 So, there'd been a statement made and, without any  
29 acknowledgment of the previous statement, a replacement



1 statement has been made?---Okay, so this is a direction  
2 from, you say, Mr Buchhorn to Mr Ollie as to what he  
3 should amend in the statement he's made to satisfy  
4 Mr Buchhorn?

5 To satisfy Mr Buchhorn and with no reference to the previous  
6 statement?---Well, I agree with what you say, it's not  
7 a satisfactory practice, you should have a  
8 supplementary statement if you want to do that.

9 COMMISSIONER: So, if the first statement is not disclosed,  
10 then neither the prosecution or the defence can follow  
11 the sequence in which information has been obtained or  
12 added?---Or the development of the statement.

13 And whether or not it has any significance?---Indeed.

14 MR RUSH: Mr Rapke, I think I've been to it, but the sort of  
15 practices that are identified thus far in examination,  
16 the impact of those have what sort of potential?---Now,  
17 you're not talking about this particular, are you just  
18 talking the entire thing?

19 Correct, about those practices?---Well, they have the  
20 potential, depending upon the significance of the  
21 material which has been omitted or amended or massaged,  
22 they have the potential to cause a miscarriage of  
23 justice.

24 MR RUSH: Commissioner, I'm just wondering if I could have a  
25 couple of minutes to re-check my notes?

26 COMMISSIONER: Yes, certainly. Before we adjourn. (To  
27 witness) You said earlier, Mr Rapke, that at no time in  
28 your 45 years have you become aware of this practice.  
29 It will be evident to you, from the evidence we've gone

1 through this morning, that where the taking of an  
2 initial statement or the provision of information which  
3 is not recorded in an initial statement is not  
4 disclosed, neither prosecution or defence will ever  
5 become aware of it unless the case is subjected to the  
6 sort of examination that we've been able to subject the  
7 Lorimer exercise to?---Or unless the person who had  
8 their statements fiddled with - - -

9 Comes forward?--- - - - comes forward and says what's  
10 happening.

11 So, in the absence of someone putting up their hand and  
12 saying, "This is what happened", it has the effect of  
13 concealing this unsatisfactory process?---Of course.

14 MR RUSH: I'll just be five minutes, Commissioner.

15 COMMISSIONER: Very good, we'll adjourn briefly.

16 Hearing adjourns: [12.05 pm].

17 Hearing resumes: [12.12 pm].

18 COMMISSIONER: Yes, Mr Rush.

19 MR RUSH: Just in conclusion, a couple of general practices,  
20 Mr Rapke. Contemporaneous notes of police officers, or  
21 alleged contemporaneous notes not being made for days  
22 or weeks after the event; have you encountered  
23 that?---Yes.

24 Having encountered it, are you aware of any general  
25 direction or training over any course of time from  
26 Police Command as to that practice?---No, I'm not aware  
27 of any directions in that regard.

28 That contemporaneous notes, or alleged contemporaneous  
29 notes, may be changed to better a police case?---I've

1 never heard of that, no.

2 Or police officers giving evidence that is, in effect, a lie

3 as to the contemporaneity of their notes?---No, I'm not

4 aware of that ever having occurred.

5 They are the matters, Commissioner.

6 COMMISSIONER: Mr Rapke, Mr Bezzina gave evidence in

7 relation to the Pullin statement and the fact that he

8 had witnessed the acknowledgment by Mr Pullin as being

9 on 16 August 1998 when, as he accepted, it was some

10 very substantial time later than that - I hope I'm not,

11 in summarising his position, doing him an injustice -

12 no harm done because the content of Mr Pullin's

13 statement was truthful, or he believed it to simply be

14 a replication of what Mr Pullin had previously said.

15 Is that an acceptable reason for signing a statement

16 with a false date on it?---The falsity of the date is

17 Mr Bezzina's in a sense. He's put the false - he's put

18 on the statement a false date as to when he - when it

19 was acknowledged in his presence; is that the position?

20 Correct?---So, the statement on its face, that's the one

21 statement that we have of Pullin, one statement

22 purports to be made at a particular time and it wasn't

23 made and purports to have been witnessed at that time

24 by Bezzina? Well, that can't be acceptable.

25 One of the consequences of the broad practice that we've

26 talked about is that it can either permit false

27 evidence to be adduced without detection, or

28 alternatively, in circumstances where there is no

29 falsity in the material that's produced, it nonetheless

1 raises doubts about the material when there shouldn't  
2 be any?---It does all that, it does both those things,  
3 and it also, in a case where if it's made a  
4 considerable time later as apparently in this Pullin  
5 situation, on its face it purports to be a more  
6 contemporaneous document, more contemporaneous with the  
7 events it's describing, so therefore it has that  
8 additional weight which can be attached to it as being  
9 closer to the event and therefore more reliable than if  
10 it's made many months or years later.

11 Yes. May we take it, Mr Rapke, that during the entire time  
12 that you were engaged in the Lorimer prosecution, none  
13 of these matters came to your attention?---Correct.

14 In your subsequent period as the Director of Public  
15 Prosecutions, at no time did any of these practices  
16 come to your attention?---That's right.

17 Are you aware of there being any education or focus within  
18 the police force on seeking to address or focus upon  
19 these sorts of issues?---No, I'm not, but I'm not sure  
20 in what circumstance I would be aware of their  
21 educational processes. You mean out of the college and  
22 Police Academy? No, I'm not aware of their curriculum  
23 and I don't know what focus - I'm sure they do get  
24 education in terms of making statements and how to make  
25 them, but I don't know anything, that this has been a  
26 specific focus of any part of the curriculum.

27 Yesterday we heard evidence by way of a contemporaneous  
28 example, that is, a case only last year, where the  
29 detective responsible for the investigation did not

1 disclose to the defence the fact that the critical  
2 eyewitness had done a face-fit of the offender at the  
3 time she made her statement, or very close to the time  
4 that she made her statement, but then it wasn't  
5 included in the victim's statement, nor was any  
6 reference made to that face-fit in the informant's  
7 statement, and the explanation forthcoming was that the  
8 detective did not appreciate that there was any  
9 obligation to disclose exculpatory material to the  
10 defence. Is that something you've had any experience  
11 of? That is, misunderstanding by police officers about  
12 the extent of their obligations to disclose?---I have  
13 come across situations where I've had to explain to the  
14 police members in the course of a prosecution the  
15 prosecution's obligations of disclosure and that they  
16 extend to exculpatory material. I had to explain that  
17 because it seemed to me that that's not well  
18 understood, or I'd been asked the question, "Why do you  
19 have to disclose this?", which leads me to believe that  
20 they didn't understand that it extends to that sort of  
21 material, so it might be that there is either  
22 misconceptions or lack of education on some of those  
23 matters.

24 Thank you.

25 MR RUSH: Just one matter, Commissioner.

26 COMMISSIONER: Yes, Mr Rush.

27 MR RUSH: To conclude, Mr Rapke, I've taken you to the  
28 statements of Ollie, Morris and Pullin and evidence of  
29 replacement statements; I take it, you are not aware,

1 from the prosecution point of view, of any replacement  
2 statements having been made in the circumstances that  
3 we've discussed of those three witnesses?---In the  
4 Debs-Roberts case?

5 Yes?---No, I'm not.

6 COMMISSIONER: Mr Matthews, is there anything you want to  
7 raise?

8 MR MATTHEWS: No need for cross-examination.

9 COMMISSIONER: Very good. No reason why Mr Rapke should not  
10 be excused?

11 MR RUSH: No.

12 COMMISSIONER: Mr Rapke, I'll release you from the summons,  
13 the confidentiality notice. We'll provide you with a  
14 video recording of your evidence and a transcript of  
15 your evidence and the Commission expresses their  
16 gratitude for your assistance. Thank you, Mr Rapke.

17 <(THE WITNESS WITHDREW)

18 COMMISSIONER: Are you ready to proceed with the next  
19 witness?

20 MR RUSH: Yes, Commissioner, I call Ms Voulanas.

21 <KIM MICHELLE VOULANAS, affirmed and examined:

22 COMMISSIONER: Ms Voulanas, in the summons that was served  
23 on you the matters about which you might be questioned  
24 were set out, I should remind you about what those  
25 matters are.

26 (1) The Lorimer Task Force investigation of the  
27 murders of Sergeant Gary Silk and Senior Constable  
28 Rodney Miller concerning the taking of witness  
29 statements, the preparation of the brief of evidence

1 for the trial of Debs and Roberts, and whether there  
2 was full disclosure of witness statements or other  
3 relevant information prior to or during the trial; (2)  
4 witness statement-taking practices by Victoria Police  
5 police; and (3) compliance with the obligation to  
6 disclose evidence by Victoria Police.

7 Ms Voulanas, you're not represented, you  
8 understand you have a right to be - - -

9 MS SHARP: I am representing.

10 COMMISSIONER: Oh, my apologies.

11 MS SHARP: Sorry, Commissioner, if I could announce my  
12 appearance. Ms Sharp appearing on behalf of the  
13 witness. I came in just behind Ms Voulanas.

14 COMMISSIONER: Yes, my apologies. You weren't here for  
15 Mr Rapke, were you?

16 MS SHARP: No, I was not.

17 COMMISSIONER: Thank you, very much. I'll vary what I was  
18 about to say then, Ms Voulanas. At the end of your  
19 evidence and answering questions of counsel assisting  
20 and any other cross-examination that's permitted, your  
21 counsel may have the opportunity to further examine  
22 you, you may want to add things to what you've  
23 previously said or to provide some additional  
24 information and you'll have that opportunity.

25 When you were served with the summons you received  
26 also a notice of confidentiality?---I did.

27 And a statement of rights and obligations?---Yes, I did.

28 Has counsel discussed with you the contents of the rights  
29 and obligations?---Yes, she has.

1 Just by way of summary then, you are required to answer the  
2 questions, you're required to answer them truthfully.  
3 So long as you do, subject to exceptions, your evidence  
4 can't be used against you in a court of law. You  
5 understand that?---Yes.

6 Do you want me to expand any further on your rights and  
7 obligations?---No, thank you.

8 Very well.

9 MR RUSH: Ms Voulanas, your full name is Kim Michelle  
10 Voulanas?---Yes, that's correct.

11 If I could ask you to have a look at the documents by way of  
12 formality. Do you appear here today as a consequence  
13 of the service of a summons upon you on 13 December  
14 2018?---11th - dated 11 December, yes.

15 The summons is dated 11 December?---Yes, that's correct.

16 Together with the summons, did you receive a statement of  
17 rights and obligations?---Yes, I did.

18 And a confidentiality notice that was dated 11 December  
19 2018?---Yes, that's correct.

20 And a covering letter of 12 December 2018?---Yes, that's  
21 correct.

22 I tender those documents, Commissioner.

23 #EXHIBIT X - Documents received on summons by Ms Voulanas.

24 Ms Voulanas, you are a solicitor with the Office of Public  
25 Prosecutions?---Yes, I am.

26 How long have you been with the Office of Public  
27 Prosecutions?---Twenty-one years.

28 Prior to employment there, what were you doing?---I

29 completed my articles with a commercial firm by the



1 name of Anderson Rice. Once admitted, I worked with  
2 them for approximately a year before moving to the  
3 Office of Public Prosecutions.

4 Over the years, you start there as a solicitor, what's your  
5 current position?---Principal solicitor.

6 Firstly, were you the solicitor primarily responsible at the  
7 Office of Public Prosecutions for the prosecution of  
8 Debs and Roberts?---Yes, I was.

9 Can you indicate, firstly, just what comes to you or what  
10 liaison there is with police and then how the  
11 prosecution develops?---When I'm allocated, or when I  
12 was allocated this file, I received the police brief  
13 which has been prepared by the investigators in  
14 relation to the matter. It was a large brief at the  
15 time, and then after that I correspond with the  
16 informant and other police members that are looking -  
17 investigating the matter from therein. With this  
18 matter, given that it was such a large matter, it was  
19 the only file that I had at the time, I had the conduct  
20 of that till the end of the trial, which was for a  
21 number of years, and during that time I would have  
22 spoken to the police that were investigating it  
23 regularly, almost on a daily basis.

24 I take it, over the course of your time with the Office of  
25 Public Prosecutions, you've dealt here with the  
26 Operation Lorimer Task Force, but with Homicide Squad,  
27 what was known as the Armed Robbery Squad and other  
28 elements of criminal investigation with Victoria  
29 Police?---Yes.

1 From the perspective of the preparation of the brief, is  
2 there any advice offered to police about brief  
3 preparation, or does, in effect, the brief land with  
4 the OPP?---Generally solicitors are allocated files  
5 once the brief is prepared. Once the charges have been  
6 filed we receive the brief at that point. We then  
7 examine the brief and we might - we make sure there's  
8 sufficient evidence to support the charges, and we  
9 might ask the police to make further enquiries, obtain  
10 further statements if we think they're necessary. In  
11 this particular case, from memory, I believe that I was  
12 allocated the matter prior to charging; however, I  
13 don't believe I had much involvement in the preparation  
14 of the brief prior to it actually being fully prepared  
15 and arriving at the Office of Public Prosecutions.

16 So, you would have had liaison with the head of Operation  
17 Lorimer, which is Detective Senior Sergeant  
18 Collins?---Yes.

19 And those assisting him, amongst them Sergeant  
20 Buchhorn?---?---Yes.

21 Inspector Sheridan?---Yes.

22 And other police working with them?---Yes, that's correct.

23 When you receive the brief, what's the nature of the  
24 preparation or the role of you as solicitor and your  
25 assistance in going over the brief?---So, we read the  
26 brief and the charges, and we have to ensure that we  
27 believe that there's sufficient evidence to prosecute  
28 those charges. We may make recommendations to the  
29 police to obtain further evidence if we believe there

1 is further evidence to be obtained. Then, of course,  
2 as solicitors we're responsible for briefing counsel to  
3 prosecute the matter through trial, which we did in  
4 that case. And then the other thing, major thing that  
5 we do as solicitors prosecuting the matters, is we  
6 liaise with the defence solicitor in regards to how the  
7 matter's going to proceed.

8 Much of the brief is made up of statements?---Yes.

9 Are those statements read?---Yes.

10 And, the purpose of that, the reading?---Well, the  
11 statements form part of the evidence, so we have to  
12 read the brief to understand what the evidence is in  
13 the matter, including the witness statements.

14 Over the course of preparation, committal and trial, did you  
15 at any stage have any concerns about the way in which  
16 statements have been prepared, particularly for  
17 eyewitness witnesses, of the Hamada robberies?---No.

18 COMMISSIONER: Just to be clear, Ms Voulanas, you were also  
19 the legal officer at the OPP for the Giller  
20 trial?---That's correct.

21 And so, you had possession of the brief with respect to the  
22 Pigout matters?---Yes.

23 MR RUSH: And at the Giller trial, and I think also the  
24 statements of persons that had been subject to armed  
25 robberies in Operation Pigout, those statements were  
26 called for and became part of - called for at committal  
27 in the Debs-Roberts trial?---Well, at committal they  
28 would have been part of the brief of evidence. The  
29 witness statements in relation to the armed robberies;

1           is that what you mean?

2       I appreciate the length of time, but did you make any  
3           observations, in relation to those statements, that  
4           particulars/descriptions of offenders were made on  
5           separate pieces of paper?---Not that I recall.

6       Perhaps by way of example if we look at Exhibit 235. This  
7           is a statement of Steven Chenh, and in the first  
8           paragraph the statement refers to him being employed at  
9           the Eating House Restaurant which was the subject of a  
10          robbery on Saturday, 21 December 1991. You generally  
11          see, if we quickly go down to the page to the  
12          third-last line, at the entry of persons into the  
13          restaurant, he says: "I saw a man with a gun, he had a  
14          mask on, a monster mask pointing a gun which was about  
15          a foot long at my brother." Then over the page, in the  
16          second line, he refers to another man: "This man also  
17          had a mask on, had a gun, same size." There's  
18          reference in the next paragraph, in the third-fourth  
19          line, "The other staff lied down." There's reference  
20          to "the smaller armed man then tying me up with blue  
21          cord. He tied my arms behind my back. I then saw the  
22          bigger man go behind the bar to the till." There's  
23          then further reference to the events and, over the  
24          page, where the offenders went to. Finally in the last  
25          four lines: "One thing I forgot was, when I was tied up  
26          the bigger man kept asking me who was the boss, I told  
27          him the boss was away. Approximately \$7,000 in cash  
28          was taken." Looking at that statement, you'd agree  
29          that what's referred to is a smaller and a bigger man

1 and at least to conversations with those men, but  
2 there's nothing about actual height, about build or  
3 about accents?---Not that I can see.

4 Attached to that statement, Exhibit 146, there on a separate  
5 piece of paper are the written descriptions of the  
6 first and second male. So you see their descriptions,  
7 of the first: "190 centimetres tall, 20s, large build.  
8 Australian accent. Monster mask." And: "The second  
9 male: "Possibly Australian. Small build. 1750.  
10 Monster party mask." But insofar as height and accent  
11 and build, they're not referenced in the initial  
12 statement?---Right.

13 I can show you approximately 25 or 30 statements taken from  
14 the Pigout brief that have the same conduct, that full  
15 descriptions are not in their initial statements but  
16 made on separate pieces of paper. You would have  
17 obviously seen that on reading the brief?---I haven't  
18 seen the Pigout brief since I did it, and so, I don't  
19 recall, to be honest with you.

20 COMMISSIONER: So we had information that on 27 April 2001  
21 Sergeant Butterworth delivered to the OPP case file  
22 documents that included separate pieces of paper  
23 containing the descriptions of suspects by some 17  
24 witnesses and that that material was provided as part  
25 of the response to a form 8A disclosure request from  
26 the legal representatives of Giller. You would have  
27 been the officer handling the matter at the OPP?---I  
28 believe so.

29 Do you have any memory of that?---No.

1 MR RUSH: What is identified just in that statement, is that  
2 a practice with which you're familiar?---No.

3 Putting to one side for the moment operation Pigout, and  
4 certainly the Hamada witness statements were matters,  
5 obviously, that were involved and you saw and read  
6 because they were provided in the brief that we've  
7 spoken about?---Yes.

8 As an example - just to clarify: you'll be familiar that  
9 what many of those statements dealt with were witness  
10 statements of persons that had been the subject of  
11 armed robberies over the course of the first part of  
12 1998?---Yes, that's correct.

13 If we have a look at Exhibit 289, this is a statement of  
14 Linda Lee. You will see there, she ran the Jade Kew  
15 Chinese Restaurant which was the subject of a robbery  
16 on 27 June 1998. She details arrival at the restaurant  
17 and, towards the middle of the page, indicates that:  
18 "After work sat down to a meal with staff." Then,  
19 towards the bottom of that paragraph, five lines from  
20 the bottom: "At that time I looked up, saw two persons  
21 inside the restaurant, I saw that they were wearing  
22 some type of rubber mask over their face, they were  
23 standing at the cabinet. Saw the first one was taller  
24 than the second, holding a black gun wearing some type  
25 of jacket. I saw the first one walking towards us,  
26 saying to us that he wanted money, yelling to us to lie  
27 on the floor." If we go down to approximately six  
28 lines from the bottom: "Whilst that was all happening,  
29 the second man, the shorter one, was pulling up the

1 blinds shut at the front and the side of the  
2 restaurant. The first one walked up to the table and  
3 continued to demand money." Over the page, describes  
4 in the first paragraph being taped up, tied arms and  
5 legs. Four lines from the bottom of that paragraph:  
6 "All through this the first man was asking us who the  
7 boss was, who belonged to the Volvo out the front of  
8 the restaurant." And then in the next  
9 paragraph describes the man who walked into the bar  
10 wearing runners, black in colour, strap over the top,  
11 no laces, white and silver stripe in the middle of  
12 them, and in the next paragraph describes them being  
13 inside for ten to 15 minutes and then they left the  
14 restaurant. Again, no accent, no heights, no build  
15 referred to in that statement. Do you know or are you  
16 familiar - if we go to p.3402 - Mr Beanland, detective  
17 senior constable, took that statement?---Am I familiar  
18 with Mr Beanland?

19 Yes?---Yes, I am.

20 He was a member of the Armed Robbery Squad who was in a crew  
21 that was attached to Operation Lorimer?---Yes, that's  
22 correct.

23 That statement is taken a couple of days after the robbery.  
24 If we have a look at Exhibit 288, at p.3999, firstly  
25 you see there it's a further statement of Ms Lee. Over  
26 the page, this is a further statement taken on  
27 25 November 2000 by Sergeant Paul Dale. If we go back  
28 to the first page where, in the second paragraph,  
29 Ms Lee says: "I previously made a statement to police

1 in relation to a robbery committed at my restaurant on  
2 27 June 1998. At the time of making my statement I  
3 described the two males who robbed us, however these  
4 descriptions were not put into my statement. From  
5 referring to notes that were made of the description I  
6 gave and my memory I am able to say that there were two  
7 males." Then she goes on to describe one as being  
8 6 feet tall, of medium build, with white skin, and what  
9 that person was wearing, and the second male being  
10 smaller, with a smaller build who didn't do much  
11 talking. Now, that was a statement on their committal  
12 and trial brief. The practice that I suggest is  
13 demonstrated in that statement-taking by comparison,  
14 one with the second, is that a full description is not  
15 being put in their original statement?---Okay.

16 "Okay", I take it, means you agree?---I'm not quite sure  
17 what you mean by "the practice".

18 Well, as far as Mr Beanland is concerned, if one accepts  
19 what Ms Lee is saying in the second statement, "After  
20 referring to notes that were made of the description I  
21 gave and my memory", and then setting out the height  
22 and build, what the witness is saying, that she gave  
23 that description at the time of the first  
24 statement?---She's saying, as far as I can see, that  
25 she could give a description but it wasn't in her first  
26 statement, so for whatever - I'm not sure of the  
27 reason, but she's now making a subsequent statement to  
28 give that description.

29 You're not sure of the reason why she'd be making a



1 subsequent statement?---From memory, I don't know in  
2 this particular case.

3 If one looks at the date of the statement, of November 2000,  
4 and it's part of Operation Lorimer, it would be pretty  
5 clear, would it not, why there is a subsequent  
6 statement with a fuller description?---Sorry, was this  
7 a lot - was this a Pigout?

8 No?---No, this is a Hamada statement, sorry.

9 No, this is a Hamada statement?---Sorry.

10 With the robbery taking place six weeks before 16 August  
11 1998?---Yes.

12 So, the description of offenders is always important to go  
13 into a first statement, is it not?---If the witness can  
14 offer the description, yes.

15 And here, on reading of the two statements, you would agree,  
16 that what Ms Lee is saying, that she had previously  
17 given the description that is now set out in the second  
18 statement?---Sorry, can I read the start of her second  
19 statement again, please?

20 Yes, p.23398.

21 COMMISSIONER: Second paragraph: "I have previously made a  
22 statement ..."?---Thank you. Yes, she seems to be  
23 saying that, at the time of making her statement she  
24 described the males, however these descriptions were  
25 not put into her statement, yes.

26 But: "From referring to notes that were made of the  
27 description I gave and my memory I am able to say", and  
28 it goes on?---Yes, someone's made some notes of her  
29 description, yes.

1 MR RUSH: So, going back to my question, on the basis of  
2 what Ms Lee is saying and a comparison of the first and  
3 second statement, the full details of the descriptions  
4 of the offenders that she'd given at the time of the  
5 first statement was not put in that first  
6 statement?---Yes, that's what she says.

7 You would agree, would you not, that from a perspective of a  
8 police investigation, that full descriptions should go  
9 in the first statement?---Yes.

10 COMMISSIONER: Why should they go in the first  
11 statement?---Um, well, I think that it would - when an  
12 offence like this is committed by offenders that the  
13 witness does not know, if the witness is able to give a  
14 description of the offender, it may be able to help  
15 investigators investigate the matter further.

16 But why should it go in the statement rather than just in  
17 the note?---Oh, okay. Well, the statement is what ends  
18 up on the brief of evidence, so presumably everything  
19 the witness can say about a matter should be put in a  
20 statement; there's one document that will then end up  
21 on the brief of evidence.

22 Do you see a danger if the description or any relevant  
23 information is not put on the statement but is just  
24 recorded somewhere else; do you see a danger?---It  
25 could get lost, misplaced.

26 MR RUSH: There's also a danger, is there not - well, you  
27 say it gets lost - a danger that a full description of  
28 the offenders may never be disclosed?---I can't answer  
29 that.

1 Well, that's a potential danger, isn't it, if you don't put  
2 full descriptions in, in the first statement?---Well,  
3 if it was lost, it wouldn't end up being disclosed, I  
4 imagine.

5 Here, was there any question made as to why further  
6 statements were being taken from Hamada witnesses  
7 in November 2000?---Sorry, can you repeat the question?

8 Here you see a further statement from Ms Lee that's been  
9 taken in November 2000?---Yes.

10 My question is, was there any question from the OPP as to  
11 why statements setting out identity were being taken  
12 18 months after an offence or after the events?---Did  
13 the OPP ask police why subsequent statements were being  
14 taken? Is that the question?

15 Yeah?---I can't recall from memory. It would be in my file  
16 if anything - correspondence that I had with the  
17 Lorimer police would be recorded in my file.

18 The Commission has evidence from Homicide Squad members,  
19 from Armed Robbery Squad members, that it was a common  
20 practice not to record full descriptions of offenders  
21 in first statements. Is that a practice that you're  
22 aware of?---No.

23 COMMISSIONER: Can I take it, from the fact you've been with  
24 the OPP for 20 years, you've got no recollection of  
25 that practice ever being a subject of concern within  
26 the Director's office?---No, I've not been aware of  
27 that practice and I'm not aware of it being a concern.

28 MR RUSH: I'll just go to one more example, Ms Voulanas,  
29 Exhibit 301. This is a statement taken from Mr Ling.

1 As you see, Mr Ling was the owner of the Green Papaya  
2 Asian Restaurant and it was the subject of an armed  
3 robbery on 18 July 1998. Quickly running through it  
4 down to the second-last line of that page: "I saw a man  
5 with a mask on waving a gun around in his right hand."  
6 To down past the middle of the page: "Before we laid  
7 down I saw a second man walk in behind the first man,  
8 he also had a mask on his face, he also had a small  
9 gun, but I did not get a good look at it. The mask he  
10 wore was similar to that of the first man. The first  
11 man, who was taller than the second, sent the other man  
12 around the restaurant to check on everybody while he  
13 stayed at the reception area." Then over the page, he  
14 talks about the first man taped the hands and feet of  
15 staff. Next paragraph: "Before we were tied up the  
16 first man said, 'Who's the boss?' I put my hand up and  
17 he said, 'Where's the money?'. " And further  
18 observations of the first man at the bottom of that  
19 page: "I then heard the first man say 'Max is outside.  
20 How many have you got?' The second man said, 'Three'.  
21 They were talking about how many people there were left  
22 to tie up", and there's discussions with the person  
23 over the page about: "Any more money? Is it a busy  
24 night?" And a response, "Doing a half price." Then  
25 down the page: "I then heard the first man tell the  
26 second man it was time to go." Further down the page:  
27 "The first man yelling out, 'Is anyone getting picked  
28 up?'. " Over the page, "They appeared well prepared.  
29 At one point the first man asked Mark, a waiter,

1 'Where's the money?', repeatedly. I would say the  
2 first man was in charge, very much in control. The  
3 second man was sluggish and appeared inexperienced."  
4 That statement, over the page, is taken by Senior  
5 Constable Riley on 19 July, the morning after the  
6 robbery, less than a month before the Silk-Miller  
7 murders. Then, if you look at Exhibit 169, here is set  
8 out in a separate piece of paper the evidence that we  
9 have from Mr Riley, is that in accordance with the  
10 practice that he understood was appropriate, you don't  
11 put full details in the first statement, so he set out:  
12 "Approximately 6 feet tall. Dark-coloured hair". "The  
13 accent", third from the bottom, "of the first male  
14 sounded Australian. The second male, 5 foot 6,  
15 possibly Southern European, Lebanese accent."

16 Mr Ling's statements were on the committal and trial  
17 brief. What would - - - ?---Sorry, was it the  
18 statement and that page that was on the brief?

19 Yes, both. What he clearly sets out, you would agree, is  
20 the practice we were referring to? That is, not  
21 putting in full descriptions, keeping it on a separate  
22 piece of paper, maybe in a notebook or somewhere  
23 else?---In that particular case they haven't put the  
24 descriptions into the statement, yes.

25 I've detailed to you the Operation Pigout brief, I've just  
26 taken you to one example, but on the basis, as the  
27 Commissioner says, those briefs were delivered to the  
28 OPP, and as seen the statements with descriptions  
29 attached, here a second example in the Hamada brief of

1 full descriptions not going into the first statement.  
2 That's what we see?---Well, that's what that appears to  
3 be, appears to be that's what that is.

4 This was not something that came - obviously you read the  
5 briefs, but in reading the briefs, this wasn't a  
6 standout or didn't come to your attention?---I don't  
7 recall this type of statement and description on a  
8 different page.

9 I might shorten this by taking you to Exhibit 303. This is  
10 a statement taken by Detective Sergeant Witschi; are  
11 you familiar with him?---Ritchie?

12 Yes?---Yes.

13 How are you familiar with him?---Oh, Witschi? No. Sorry, I  
14 thought you said Ritchie, with an "R".

15 Okay. So, this is a further statement of Mr Ling made on  
16 26 November 2000. What is set out there, you would  
17 agree, apart from one matter, is consistent with the  
18 handwritten statement or the handwritten details that  
19 were taken by Mr Riley who took the first  
20 statement?---I'll just read it, if I may. Yes.

21 Consistent except for one thing: in the third paragraph,  
22 last sentence, in relation to the first and taller male  
23 it is said his accent sounded like it was Southern  
24 European?---Yes.

25 And, I'm not going to take you back to it but I can if you  
26 wish, in the description that was taken at the time of  
27 the first statement for the first male, the accent is  
28 "sounded Australia"?---Yes.

29 Which it highlights, I suppose, one of the problems in not

1 taking full details and placing them in the first  
2 statement?---Yes.

3 COMMISSIONER: Were you the instructor at the  
4 committal?---Yes.

5 MR RUSH: I've taken you to just two statements which, I  
6 suggest, are consistent with a practice of not putting  
7 full descriptions of offenders in first statements?---I  
8 can't say whether it was a practice or not. I can say  
9 there were two examples that you've shown me.

10 You - - -

11 COMMISSIONER: Just accepting for the moment - I understand  
12 your reticence - that, in addition to the 17 witnesses  
13 for whom the requests sought a response as to the  
14 original note taken from the witness that wasn't  
15 recorded in their statement, just accepting that the  
16 Commission has a significant number of other witnesses  
17 from the Hamada exercise where the same procedure was  
18 followed, you would have had to have become aware at  
19 the time that that was a procedure being followed; do  
20 you not accept that?---I can't recall specifically  
21 that - - -

22 I understand you can't recall - - - ?---That seems to be the  
23 case, yes.

24 - - - it's 20 years ago, but allowing for that, do you not  
25 accept that your responsibility was to familiarise  
26 yourself with the content of the witnesses' statements  
27 for the purposes of both the committal and  
28 trial?---Yes, that's right, yes.

29 So, if the Commission's right, that there were additional

1 notes taken in all those cases, then it's something you  
2 would have been aware of at the time, but I take it  
3 from your evidence, it wasn't a matter that raised at  
4 that time any concern for you or others involved in the  
5 prosecution?---No, that's right, and I can't recall the  
6 sequence of how everything occurred now. However, it  
7 appears, from what I've been shown, that subsequent  
8 statements were taken in which these descriptions were  
9 included and there was a statement at the top to  
10 explain the fact that the witness did actually give a  
11 description at the time and that that was not put in  
12 the first statement. So, as I say, I can't recall  
13 specifically, but if I and others briefed in the matter  
14 were aware of that - and I'm not sure if we directed  
15 those statements to be taken or not or if the police  
16 took them upon themselves - however, by what you've  
17 shown me there, what was done in taking the subsequent  
18 statement appears to rectify the position of not having  
19 the description in the first statement because the  
20 witness is saying at the start of the statement, I told  
21 police at the time that I'd given these descriptions  
22 and they weren't put in my statement, however here you  
23 go, I'm making another statement and I'm telling you  
24 now that these are the descriptions that I gave the  
25 police at the time, so that would rectify that.

26 MR RUSH: Can you think of any legitimate reason why the  
27 descriptions wouldn't be put in the original statement  
28 at the time of the making?---No, I don't know why they  
29 weren't put in the statement, I can't think of why they



1           wouldn't be put in the statement. I don't take  
2           statements, so I'm - I don't think through those  
3           processes but - - -  
4    You're an experienced solicitor. You can't think of any  
5           legitimate reason why descriptions would not be put in  
6           original statements?---No, I can't think of a reason.  
7    There is an illegitimate reason, though, isn't there, that  
8           readily comes to mind?---I don't know what the reason  
9           would be.  
10   That, if the descriptions do not fit the suspects that are  
11          incriminated with the investigation, that it won't be  
12          referred to at all?---I wouldn't like to think that  
13          that happens.  
14   I'll be 30 or 40 minutes, Commissioner.  
15   COMMISSIONER: Yes, very well, 2 o'clock. Adjourn till 2.  
16          Have a break, have a chat to your counsel, we'll see  
17          you at 2.

18   Luncheon Adjournment:           [1.03 pm]

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1 UPON RESUMING AT 2.02 PM:

2 MR RUSH: Ms Voulanas, do you recall the name, Helen Poke,  
3 Senior Constable Helen Poke?---Yes, I do, she was one  
4 of the dying declarations witnesses.

5 And Senior Constable Graeme Thwaites?---Yes, I believe they  
6 were in the same car together on the night.

7 As part of the process of the preparation of the brief are  
8 patrol duty returns examined?---Yes, they would have  
9 been served on the defence and provided to us as part  
10 of the Form 32 material. There then, I believe for the  
11 senior constables, that amounts to their notes, part of  
12 their notes in relation - - -

13 Sorry, part of their notes?---Yeah.

14 The Commission, firstly, has evidence that on 16 August at  
15 the Moorabbin Police Station, where first responder  
16 witnesses went to make statements, there was a Homicide  
17 Squad detective who instructed Mr Thwaites and Ms Poke  
18 not to put in details of the descriptions that had been  
19 given to them by Mr Miller of offenders. Are you now  
20 aware of that allegation?---I've only just become aware  
21 of that, when you said that.

22 Because of the newspapers?---Um, I haven't really read a lot  
23 of the newspapers in relation to this.

24 So, what, just as a consequence of what I've said to you  
25 or?---Yes. I wasn't aware that they were directed by a  
26 sergeant not to include descriptions in a statement, I  
27 was not aware of that.

28 And we have evidence from the homicide detective that that  
29 instruction that he gave to Ms Poke and to Mr Thwaites

1 was entirely consistent with the practice that he  
2 adopted at Homicide Squad at the time of not putting in  
3 descriptions of offenders in first statements. And  
4 again, you'd say, I wasn't aware of that?---I wasn't  
5 aware of that.

6 And I take it, you say I'm not aware of that practice being  
7 adopted at the Homicide Squad?---No, I'm not aware of  
8 that.

9 Just to go back, or the Armed Robbery Squad?---I'm not aware  
10 of that practice at the Armed Robbery Squad.

11 Or being adopted anywhere in the police force?---That's  
12 correct, I'm not aware of that practice.

13 Just to complete the picture, police that we have heard from  
14 have agreed that that was a practice that was adopted  
15 by - we have another homicide senior detective who said  
16 it was a common practice at homicide. And again, not  
17 something that you've come across in your career?---No.

18 I'm not sure whether you have seen the diary notes recently  
19 of Senior Constable Poke at Exhibit 85?---I haven't  
20 seen them recently.

21 You haven't, no?---No. But we were aware, at the committal,  
22 of some issue with Helen Poke's statement and the diary  
23 notes.

24 Her diary notes at p.1997, her evidence to the Commission  
25 is, and I think at the committal hearing was that these  
26 notes were written by her in her car whilst with  
27 Mr Thwaites prior to attending at the Moorabbin Police  
28 Station to make a statement?---Right.

29 At p.1997, it's a he said notes: "He said 'I'm fucked, help

1 me'. He said 'On foot, two. One by foot, 6 foot. One  
2 checked shirt. Dark Hyundai. Dark hair'." That would  
3 be, you would agree, as an experienced criminal  
4 solicitor, critical information to go into the first  
5 statement?---Yes.

6 It not going into the first statement, not a practice you're  
7 aware of, but could you - - -?---Sorry, I didn't - I  
8 wasn't aware that she had more than one statement.

9 You weren't aware, what?---That she had more than one  
10 statement. You're saying first statement - - -

11 Well, let's just stick with the night. She refused to make  
12 a statement in accordance with the direction that was  
13 given to her by the homicide detective and after seeing  
14 a psychologist walked out of the Moorabbin Police  
15 Station?---Right.

16 So, a couple of things arising out of that. Firstly, it's  
17 very important that eyewitnesses make their statements  
18 as soon as possible after events?---Correct, when  
19 you're memory's fresh and the events are fresh in your  
20 mind.

21 It's very important that information of the nature that  
22 we've just looked at goes into statements rather than  
23 is held back?---Correct.

24 And the question I asked you as a result of that as an  
25 experienced solicitor, the potential - not necessarily  
26 this trial - but in relation to that sort of practice  
27 being adopted by police has the potential to impact as  
28 a perversion of the course of justice?---Sorry, I don't  
29 recall Helen's statement, so I'm not sure what you're

1 saying, was - are you saying that was all left out or?  
2 Yeah?---That whole thing?  
3 On the night, 16 August, she was instructed not to put that  
4 into a statement and refused to make a statement?---The  
5 Hyundai or the complete amount of that?  
6 Correct. Not to put that type of detail in her statement,  
7 as was Mr Thwaites?---Not to put anything about a  
8 Hyundai? Sorry, I'm - I don't understand what you're  
9 saying.  
10 Not to put anything. Not to put detail about two  
11 offenders?---Oh, okay.  
12 A description of the offenders in the statement?---Oh, okay.  
13 'Cos - sorry, because what I was reading had a lot more  
14 detail than that, I'm just trying to ascertain what  
15 you're saying was left out.  
16 So, consistent with the statements that I've taken you to  
17 before lunch, the description of the height of the  
18 offenders - - -?---Okay.  
19 - - - the hair of the offenders, and here the number of  
20 offenders - - -?---Oh, okay.  
21 - - - not to go into statements?---Right.  
22 There is no dispute that that is a practice that should not  
23 be adopted by police?---I imagine so.  
24 The question resulting about that, I'm asking you as an  
25 experienced solicitor, putting aside the Debs-Miller  
26 trial, but on the basis that - sorry, the Debs-Roberts  
27 trial, on the basis that that practice is adopted in  
28 other trials or in other investigations, it has the  
29 potentially of, firstly, undermining the

1 investigation?---Oh, I can't comment generally.

2 No, I'm not asking you to comment generally. But if police  
3 are not putting relevant details in first statements,  
4 then we have a problem in relation to the  
5 investigation, do we not?---Well, yeah, they need to  
6 put relevant details into statements.

7 And, if they don't do it, it will tend to undermine the  
8 validity of the investigation?---I - I don't know if it  
9 would undermine - it would be depending on what was  
10 left out, what was the - I don't know how to answer  
11 that.

12 In relation to an armed robbery at a restaurant, when  
13 offenders are apprehended and charged, and eyewitnesses  
14 have not put descriptions of the offenders in their  
15 first statements, it has the potential to undermine the  
16 investigation of that armed robbery?---Well, I think  
17 from a prosecution point of view, it would - it may  
18 make it more difficult because the description of the  
19 offenders might be quite relevant when it comes to -  
20 because when I pick up the brief, when I look at the  
21 statements, my focus is, is there sufficient evidence  
22 to support these charges and in the Hamada armed  
23 robberies, for example, a lot of our case was - it was  
24 called similar fact case back in those days, so we were  
25 relying on what the witnesses said the offenders looked  
26 like, what they were carrying, what they were saying,  
27 what they were doing in order to build that case, so it  
28 makes it harder for us if we don't have all of that  
29 information.

1 And, if you're relying on what they looked like, what they  
2 said and their accents, if that material is not in the  
3 witnesses' first statements, but is made 18 months  
4 after the statement, you would agree that that tends to  
5 undermine the prosecution case?---If a statement's made  
6 18 months later which contains that information?

7 Correct?---I think it would depend on the witness. If the  
8 witness was confident that they remembered those things  
9 correctly 18 months later. I mean, the basic principle  
10 is that you get the statement as soon as you can from  
11 the witness because the events are freshest in their  
12 mind and they would have the clearest recollection of  
13 them, so you theoretically get the best evidence. But  
14 you might still have a witness who can accurately  
15 recall great detail some 18 months later, so that's why  
16 I don't know if I could say generally that it would  
17 undermine the investigation.

18 If you, as a principal solicitor at the OPP, come across  
19 statements of the nature that we have seen, where first  
20 statements do not include that but subsequent  
21 statements do, what do you do about it?---I've not seen  
22 that as a principal solicitor at the - - -

23 Well, you have seen it but you haven't appreciated the  
24 significance of it; isn't that really the answer?---No.

25 I thought the statements that we went to before lunch were  
26 very clear examples of statements that did not include  
27 descriptions of offenders but, 18 months later, second  
28 statements were made to include descriptions of  
29 offenders. You agree that that's what you saw before

1 lunch?---That's correct, and when I was - when I - I  
2 can't recall - look, and I can't recall in recent times  
3 receiving briefs like that - - -

4 My question - - -?--- - - - but when I did, and I'm going by  
5 the dates that were given there, so it appears to me  
6 that I would have received those briefs with those two  
7 statements contained in them, and for me looking at it,  
8 when I've read the first statement and then I've read  
9 the second statement, to me, all the information is  
10 there because the witness goes on to say, "Well, I did  
11 tell them at the time that this was the description and  
12 from those notes that were taken I can tell you now  
13 that this is the description of the offender", so as  
14 far as I'm concerned when I'm reading that all of the  
15 information is there.

16 I appreciate that, and so, all you were concerned about is,  
17 the description of the offender is there and not the  
18 process by which the description ended up in the  
19 statements?---Yeah, I - I wasn't - yeah.

20 My question is subtly different, that if you became aware of  
21 a police process of not putting descriptions of  
22 offenders in first statements, my question is, would  
23 you not do something about it?---Um, oh, yeah, I  
24 suppose we'd make enquiries as to what - why that was  
25 going on, if they were deliberately doing it and why  
26 they were doing it, sure.

27 Because, as you've agreed before lunch, you cannot think of  
28 an explanation as to why they'd be doing it?---I don't  
29 know, yeah. But also, it's not something I'm turning



1 my mind to when I'm reading the brief. It's not  
2 something that would jump out as being something  
3 untoward.

4 COMMISSIONER: You were surrounded by more experienced, more  
5 senior people than you?---Yes.

6 That didn't raise this issue?---Yes.

7 MR RUSH: Can we have a look at Exhibit 593. This is, on  
8 the left-hand side, a copy of a statement of Mr Pullin  
9 who was a first responder on 16 August 1998, and you  
10 see that it is acknowledged at Moorabbin at 4.25 am on  
11 16 August 1998?---Yes.

12 The signature underneath and the handwritten block letters  
13 are Bezzina taking the acknowledgment. Then, if you  
14 look to the right-hand side, you will see a further  
15 statement signed by Mr Pullin and acknowledged at  
16 4.25 am on Sunday, 16 August, and again signed by  
17 Mr Bezzina?---Yes.

18 Are you aware of this situation, of the reporting that's  
19 been in at least The Herald Sun in 2017, of there being  
20 two Pullin statements?---I was aware that it's been  
21 said that there were two Pullin statements, yes.

22 What is highlighted in purple, in the second statement on  
23 the right-hand side of the page, are the additions and  
24 changes to the second statement?---Right.

25 Mr Bezzina has given evidence that it was a common practice  
26 at homicide to sign backdated statements. Are you  
27 aware of any such practice?---No.

28 Are you aware of any practice of replacing statements with  
29 second statements, not acknowledging the first

1 statements, and putting a date on them to make it look  
2 like the second statement is the first statement?---No.  
3 Are you aware of any practice of making a further statement,  
4 dating it at the time of the further statement, but  
5 doing away with the first statement and not referring  
6 to it in the second statement?---No.

7 A couple of matters: if we have a look at Exhibit 321, you  
8 see there a statement of Detective Senior Constable  
9 Morris?---Yes.

10 The statement, on the next page, taken on 1 September  
11 1998?---Yes.

12 If we could bring up Exhibit 80 and, if possible,  
13 side-by-side with Exhibit 321. What is there is a  
14 Victoria Police - what is cut off is a heading,  
15 "Victoria Police memo." What is in blue was found in a  
16 box of material from the Office of Public  
17 Prosecutions?---Right.

18 You will see that what is in blue there refers to Senior  
19 Detective Morris, and point 1 is: "How was he informed  
20 by Senior Detective Hanson? Clarify", and that has a  
21 tick?---Yes.

22 If you go across to the paragraph: "At approximately  
23 11.45 pm the restaurant shut. Senior Constable Seymour  
24 and I began to return to the Frankston Police Station.  
25 A short time after this I was informed by Detective  
26 Senior Constable Hanson a police member had been  
27 wounded at Cochranes Road, Moorabbin. Detective Senior  
28 Constable Hanson contacted myself via mobile phone as  
29 my vehicle was experiencing radio communication

1           problems"?---Yes.

2       So, on the face of it, point 1 appears to have been answered

3           in the body of the statement?---Well, I can't comment

4           on that, that's not my memo.

5       Well, you can comment on it to the extent that point 1 says,

6           "How was he informed by Senior Detective Hanson", the

7           statement very clearly sets out that he was informed by

8           Hanson by, not by radio communication, but by mobile

9           telephone?---But I don't know what that means; like, I

10          don't know what the authors of that - I mean, I - - -

11        You mean, you don't know what the author means by - - -?---I

12          can see - - -

13        - - - how was he informed by Senior Detective Hanson,

14          clarify?---I don't know what that means, I didn't write

15          it and it wasn't given to me.

16        But in the context of what I've just taken you to, surely

17          you would agree that that gives context to the point

18          that is being raised about Senior Detective Morris's

19          statement?---Well, that may be one way to look at it,

20          but I don't know the context of that memo, I don't know

21          the date of that memo, I don't know who wrote that

22          memo, I don't know anything about it. I can't comment

23          on it.

24        If we accept that it's about Senior Detective Morris's

25          statement?---I can't see that it's about Senior

26          Detective Morris's statement, it doesn't say that.

27        "How was he informed by Senior Detective Hanson?

28          Clarify"?---But nowhere does it say, "I'm asking these

29          questions about the statement." I'm sorry, I can't

1           answer that.

2           What do you think it's asking questions about?---I don't

3           know.

4           In the context of Detective Senior Constable Hanson being

5           referred to in the statement - - -?---I haven't got a

6           date on that memo.

7           No?---I don't know when that was dated.

8           Okay?---For a start.

9           Senior Detective Morris has agreed that it is likely that,

10          as a consequence of looking at what is involved in what

11          is in blue before you, that he made a replacement

12          statement?---Okay.

13          And, if you accept that there are a number of items, such as

14          the one I've put before you in blue, and we'll go to

15          one or two others, and what I'm suggesting to you is if

16          we compare the first request that is ticked with what

17          is in Mr Morris's statement, at least on its face it

18          appears that, in relation to how he was informed by

19          Hanson, appears in the statement?---Well, in the

20          statement he says how he was informed by Hanson, yes.

21          And then it says "clarify time", and the time "12.30 am"

22          appears in the statement; correct?---Yes, the time

23          "12.30 am" appears in the statement.

24          And then, where it's got "told van to close Warrigal Road

25          and stop traffic travelling west, Warrigal Road is

26          basically north-south", what appears in the statement

27          is: "I immediately drove to the intersection of

28          Warrigal Road and Nepean Highway arriving at 12.30.

29          Upon arrival at this location I met an unknown

1           divisional van, instructed same to close all traffic  
2           travelling from north along Warrigal Road." So again,  
3           the direction appears in the statement?---I don't know  
4           if it was a direction, but the words you read out  
5           appear in the statement.

6           Each of those matters has a tick?---On the right-hand side  
7           of the screen there is a document which has no date on  
8           it, which is written in blue, and there are things with  
9           ticks.

10          No, if you just answer my - - -?---I can't answer it.

11          Each of the matters I have taken you to, (1), (2) and (3)  
12          has a tick?---Yes.

13          COMMISSIONER: What counsel's putting to you is, does it not  
14          appear that the statement on the left side of the  
15          screen has come into existence after this notation on  
16          the right side of the screen has been raised so that  
17          the person making the statement has addressed the  
18          questions or the tasks enumerated on the right side of  
19          the screen?---I understand that's what's being said,  
20          but for me to be able to answer that, I haven't got a  
21          date on this memorandum, so I can't say.

22          Very good?---I can't say if it's before or after. I didn't  
23          author the memo and there is no date on it.

24          MR RUSH: If we go down to point 5: "Delete field contact  
25          with Beech, it's not relevant." Do you see  
26          that?---Yes, I see that.

27          And there's no tick on point 5, you agree with  
28          that?---There's no tick on point 5.

29          No tick. And then, if you go to the second-last paragraph

1 of the statement on the left: "Whilst performing mobile  
2 patrols in Kingston Road I had cause to speak to  
3 Jonathan Beech of Heatherton. He did not appear."  
4 That doesn't have a tick and clearly hasn't been  
5 deleted. It's not deleted from the statement?---That's  
6 what you said is in the statement.

7 Have you ever, in your perusal of the brief, did you see any  
8 notes, Victoria Police memos, of the nature that is on  
9 the right?---No.

10 Concerning Senior Detective Morris?---No, I can't recall.

11 COMMISSIONER: It wouldn't be uncommon though, would it, for  
12 a senior investigator looking at statements to say to a  
13 more junior investigator, "This statement is deficient  
14 in this particular or that particular, you need to go  
15 and get further information from the witness"?---I  
16 honestly can't answer that, I don't know. I'm not  
17 involved in statement-taking, I don't know what senior  
18 police members say to junior police members, so I don't  
19 know. I receive the statement at the end.

20 But I think you told us, even back 20 years ago and around  
21 that time that you commenced/became involved in this  
22 major prosecution, you were talking to investigators  
23 every day?---Yes.

24 Since then has it not been your experience that it's often  
25 the case that, once one looks at a witness's statement,  
26 it becomes apparent that there are things that are not  
27 addressed in the statement that need to be added, or  
28 things that are in the statement that need to be  
29 corrected?---Sure. Often, when I look at a statement,

1 I can say, "Oh, maybe we need to go back to that  
2 witness and ask them further questions about it", but I  
3 don't go into details with the police as to how they  
4 take those statements, I'm sorry - - -

5 No, I follow that?--- - - - is what I'm trying to say. I  
6 will simply say to them, "Can you go back and ask this  
7 witness if they can provide more information about this  
8 and, if so, take a statement."

9 What happens when you do that, in terms of what's produced?  
10 Do you find a new statement is produced that contains  
11 that further information?---Yes. Yeah, generally they  
12 will go and they'll speak to that witness and they'll  
13 produce a new statement, yep.

14 MR RUSH: Is that in the form of a supplementary  
15 statement?---Yes, it usually starts off with, "I have  
16 made a statement in relation to this matter. Further,  
17 I have been contacted by Detective Senior Constable  
18 So-and-So, he's asked me about this and I can say  
19 this." But I don't talk to them about how they go  
20 about taking that statement, I just say, "Take the  
21 statement."

22 COMMISSIONER: At the end of that exercise, if there's more  
23 than one statement that's been produced by the witness  
24 that's been disclosed to you, what's your  
25 obligation?---To disclose it to defence.

26 Can we assume, Ms Voulanas, that if you had more than one  
27 statement from Mr Morris, or from any other witness in  
28 the Lorimer investigation, you would have disclosed  
29 that?---Yes.

1 MR RUSH: The process that we've just been through in  
2 relation to Mr Morris's statement, if you accept for  
3 the purposes of the question that the statement was  
4 amended or changed, you would anticipate that that  
5 would be done by way of supplementary statement rather  
6 than a replacement statement?---Correct.

7 Could we have a look at Exhibit 337?---Sorry, just on that,  
8 too, just to clarify, when I say "statement", I mean  
9 properly sworn statement, not just something that a  
10 junior might - - -

11 COMMISSIONER: Not just a piece of paper with a note on  
12 it?---Yes.

13 MR RUSH: Do you have any recollection about there being  
14 some difficulties associated with the production of  
15 statements by Senior Constable Poke?---Yes, yeah.  
16 I believe at the committal there were issues raised.  
17 From memory, it was apparent on the face of Helen  
18 Poke's statement, there was a crossed out  
19 acknowledgment and there were - there was an issue with  
20 her statement raised at committal. Because I do recall  
21 that we - we sent a number of queries to the Lorimer  
22 investigators following the committal and an  
23 explanation as to Helen Poke's statement was one of  
24 those queries. Yeah, I do recall there was an issue in  
25 relation to this particular statement.

26 COMMISSIONER: Because, on its face, the document that you'd  
27 been given suggested there'd been a previous  
28 document?---Well, it was - it was - the acknowledgment  
29 had been crossed out, which was unusual. We didn't



1 know why, so there was that query. But I do recall at  
2 the committal there was some - there was some issue  
3 during cross-examination at the committal in relation  
4 to her statement as well, which I can't exactly recall  
5 at the moment.

6 MR RUSH: Just to give some context, Exhibit 337 is an  
7 unsigned statement of Ms Poke that is dated, at p.3562,  
8 the acknowledgment - not made, but it is dated 11 April  
9 2000 and not signed?---Right. See, I wouldn't call  
10 that a statement, it's not sworn.

11 Not sworn; what would you call it?---Well, it's not a  
12 statement, it's not a sworn statement, um. I've not  
13 seen that.

14 Not seen that?---No.

15 If we have a look at Exhibit 336. This is a copy coming up  
16 of the statement of Ms Poke that appeared on the  
17 committal brief at 11 April 2000. If we go to p.3558,  
18 that also is not sworn?---Right. Is that the copy or?  
19 I'm not sure.

20 I was going to ask you that. The formatting of that, is  
21 that consistent with the formatting that is done by  
22 police in relation to preparation for a committal  
23 brief?---I can't recall, but certainly in relation to  
24 briefs, if there is a handwritten statement or a  
25 statement that's been sworn and it's otherwise  
26 illegible in parts, a typed copy of the statement is  
27 also included in the brief, just for ease of reading by  
28 counsel when they receive it.

29 COMMISSIONER: That retyped document for ease of reading, is

1           that normally signed?---No.

2       MR RUSH: At p.3557 of that Exhibit 336, the second

3           paragraph, you see there: "I remember Miller saying

4           they were on foot, two of them, one on foot, check

5           shirt, dark Hyundai"?---Yes.

6       Then, if you go to Exhibit 339, this is a statement of

7           Ms Poke at p.3571, signed by Ms Poke, and then I think

8           what you're referring to - - - ?---Cross-out.

9       - - - the acknowledgment of Mr Buchhorn that this statement

10          was sworn on 12 January 2001?---Yes.

11       Then, if you go to p.3570, in the second paragraph: "I

12          remember Miller saying they were on foot, two of them

13          on foot, one on foot, check shirt", then included,

14          "6 foot 1 inch, dark hair." I don't know if you recall

15          the "6'1 dark hair" was not in the statement that we've

16          previously been to?---It was not, sorry?

17       Not previously in the statement that I took you to that was

18          on the committal brief?---The unsigned one?

19       Yes?---Right. Was that on the committal brief?

20       The one I previously took you to, Exhibit 336?---I only

21          recall this statement, with the cross-out.

22       What I'm putting to you is that Exhibit 336 and p.3554 was

23          on the committal brief. At p.3557, you see there: "Two

24          of them, one on foot, check shirt, dark Hyundai." What

25          is not there is the height and the hair?---Right, but

26          that's the none - unsigned version, is that - - -

27       Unsigned version.

28       COMMISSIONER: That's the reformatted?---The

29          reformatted - - -

1 So you wouldn't expect that to be signed?---No.

2 MR RUSH: What you would expect to be signed is where we  
3 started, at p.3560, Exhibit 337. At p.3562, down the  
4 bottom of the page, I took you to this statement, so  
5 that's the unsigned statement purporting to bear a date  
6 11 April 2000 but it hasn't been signed. And Ms Poke's  
7 evidence is that she did in fact swear a statement  
8 identical to that at that time before Mr Atkins, the  
9 sergeant of police in Frankston, just as I'll be asking  
10 you about it. At p.3561, the previous page, consistent  
11 with the reformatted version on the committal brief.  
12 In the last paragraph she says: "Two of them, one on  
13 foot, check shirt, dark Hyundai." What is not there is  
14 "6 foot 1, dark hair"?---Right, and that's the sworn  
15 version?

16 That's the sworn version. This was the subject of, firstly,  
17 if we go to Exhibit 59, this is a letter under the hand  
18 of Detective Senior Sergeant Collins dated 21 September  
19 2001 to the solicitors for Debs. At p.1772, under the  
20 heading, "Additional statements", see there referred  
21 to: "Senior Constable Helen Poke dated 12 January 2001.  
22 This statement has been amended to include details  
23 contained in this member's notes that were not included  
24 in the statement that is part of the brief of  
25 evidence."

26 COMMISSIONER: You need to go down further. It might assist  
27 as to where that's to be found, Mr Rush.

28 MR RUSH: Okay. (To witness) So, "Additional statements.  
29 Poke, statement has been amended to contain details

1 contained in this member's notes not included in the  
2 statement that is part of the brief of evidence."  
3 COMMISSIONER: That's not on the screen at the moment,  
4 Mr Rush.  
5 MR RUSH: Sorry, this is just under the heading, "Additional  
6 statements", and then the words - - -  
7 COMMISSIONER: Yes, I see, thank you.  
8 MR RUSH: - - - "This statement has been amended to include  
9 details"?---Right.  
10 In relation to the process of provision of such matters to  
11 the defence, this is a letter to the Legal Aid  
12 Commission solicitors for Debs?---Right.  
13 Does that come through you or does that go through  
14 Collins?---It appears that that was sent by Sergeant  
15 Collins. If it had have come through me, there would  
16 have been a letterhead from - a letter on it from me.  
17 So, if there was a letter in front of that, that's from  
18 me. I mean, normally once we have the brief the police  
19 will send the material to us at the OPP and we are then  
20 responsible for passing that on to defence. When I've  
21 received a letter like this, sometimes what I'll do is,  
22 I'll put a covering letter on it saying, I enclose this  
23 material which has been forwarded to me from Sergeant  
24 Collins. But I'm not sure - if there was a letterhead  
25 on it from me, it's gone through me, but otherwise it  
26 may have come from Sergeant Collins.  
27 You won't recall this, so I'll ask that Exhibit 87, some  
28 notes concerning this issue, it seems, prior to the  
29 letter of Mr Collins for legal aid?---Oh, okay.

1 Exhibit 87 at 2001. This is a note - I take it, that's not  
2 your handwriting?---That's not my handwriting, no.  
3 "George Buchhorn rang in regards to incident with Helen  
4 Poke. Has spoken to Helen. Indicated that in her  
5 notes she indicated the height and dark hair but it did  
6 not appear in her first statement. The difference was  
7 picked and she did a second statement but due to an  
8 error administratively it hasn't appeared in her second  
9 statement which was acknowledged by George. You might  
10 be best to call George about this." Do you know who  
11 signed that?---Well, it says "Kylie". Kylie was a  
12 paralegal who was working on this matter.  
13 And, is the next note yours?---Oh, yep, that's my note.  
14 I've phoned - sorry?  
15 And this would appear to be a phone call you made to  
16 Mr Buchhorn?---That's correct.  
17 On 17 September?---Yep.  
18 And so, he is providing an explanation to you, it seems, in  
19 relation to the Poke statement subsequently provided to  
20 the defendant's solicitors?---That's right, yep. Yeah,  
21 he says the first statement was unsigned, yep.  
22 So, he said to you, "She had her statement taken"?---That's  
23 correct.  
24 "Some months later"?---Yep.  
25 "She's supplied notes which had additional comments that  
26 weren't in the first statement"?---Yes, that's what I  
27 was told.  
28 "First statement was unsigned"?---Yes.  
29 "Acknowledgment in January 2001"?---Yes.

1 "Unable to change the acknowledgment on computer"?---Yes.  
2 "So George crossed out 'Acknowledgment' by hand and  
3 handwrote a new one"?---Yes, that's what I was told.  
4 Just going back to the crossed out version, what we know is  
5 that inserted into that version is the "6 feet 1, dark  
6 hair", which we've seen?---Yes, that's what he told me,  
7 yep, as well, yep, this statement contains the 6  
8 foot - - -  
9 I'm just wondering about, that seems to have been inserted -  
10 did he say who, or who inserted that?---This is the  
11 statement that should have been on the brief. Oh, I  
12 don't know if I've got further comments about it.  
13 "This statement contained the 6 foot and Hyundai  
14 comments"?---Yes.  
15 "This is the statement that should have been on the  
16 brief"?---That's right, that's what I was told.  
17 COMMISSIONER: It's evident from all this, isn't it,  
18 Ms Voulanas, that this is a replacement statement, it's  
19 not following the procedure that you and many witnesses  
20 have identified as the correct procedure, namely the  
21 witness should make a supplementary statement providing  
22 for the additional information?---No, I disagree with  
23 that, because these were police witnesses which is a -  
24 also puts them in a different position. My  
25 understanding was, they type it up themselves, send it  
26 through, check it, type it. From what I was told, this  
27 was an unsworn, this was never sworn according to what  
28 George had told me, so it wasn't actually a statement,  
29 it wasn't a completed statement because she hasn't

1 sworn it. So, my understanding was that she typed it  
2 up but didn't swear it, sent it through to George  
3 unsworn, so it's not a statement, sent it through to  
4 George, he's checked it and compared it to her notes  
5 and said to her, "Oh, you've left out this 6 foot 1,  
6 the Hyundai, have a look at your notes." She's fixed  
7 it, sent it back, and he's acknowledged it. So, my  
8 understanding of this conversation that I had with  
9 George was that - and that's hence the cross-out, that  
10 was the explanation for that, is my understanding of  
11 this was, when she's sworn that statement which has the  
12 cross-out acknowledgment on it, that is the first time  
13 she's sworn this statement, a statement whatsoever.  
14 And we - we conferenced her prior to the committal as  
15 well, and I don't believe she ever said that she'd  
16 signed any other statement back then. And I'm not sure  
17 what she said at the committal, but I'm not sure that  
18 she said that then either. But certainly my  
19 understanding was that she'd never actually sworn  
20 another statement in relation to this matter.

21 MR RUSH: I'll just ask you to have a look at Exhibit 68.  
22 Are you familiar with this process: "Replies to OPP  
23 queries after the committal"?---Yeah, that's correct,  
24 we'd sent off a series of queries and the police  
25 replied to them.

26 If we go down to what is "Q47" which concerns Helen Poke,  
27 and I'm not going to read the entirety of it. If you  
28 go down to perhaps about ten lines under the - - -

29 MS SHARP: I'm sorry, could the witness be able to read the

1           entire response so that she can - - -

2           COMMISSIONER: I'm sorry?

3           MS SHARP: Could Ms Voulanas read the entire response so she

4           can put the question in context, please?

5           COMMISSIONER: Yes, of course.

6           WITNESS: Thank you.

7           MR RUSH: You see where it starts there: "Buchhorn later

8           checked the statement."

9           COMMISSIONER: Do we have a copy? Just a moment, Mr Rush.

10          WITNESS: Thank you.

11          MR RUSH: Perhaps, if you want to read the entirety of Q47

12          and then I'll direct you to it?---Thank you.

13          Okay, it's a little bit confusing as to what they're saying,

14          which might be why I had to clarify.

15          On its face, it's different to what Mr Buchhorn told

16          you?---It's confusing, yeah.

17          Well, let's just have a look at it. If you go down to about

18          ten lines down Q47, you see: "A later review of

19          statements by Buchhorn revealed she had not made a

20          statement so she was chased up on the phone"?---Yes,

21          now that says to me nothing's been sworn.

22          "She then compiled a statement from her notes which she had

23          secured in a locker she didn't have immediate access to

24          and delivered the statement and a copy of the notes to

25          the task force"?---Yeah.

26          You would understand that to mean that she had delivered a

27          sworn copy of the statement?---No.

28          Well, you just queried earlier on you wouldn't call

29          something a statement if it hadn't been signed?---Oh,



1 no, but this - whoever wrote this part of the memo, I  
2 think, is not using the term "statement" as I would use  
3 the term "statement". Because there's "statement",  
4 there's "subsequent statement", there's "first  
5 statement", all referring to what seems to me to be the  
6 same thing, which is why I clarified with George on the  
7 phone whether that was sworn or not, and he said it  
8 wasn't.

9 We have sworn evidence from Ms Poke that what is set out  
10 there is precisely what she did - - -?---Yeah, I - - -  
11 - - - that she went to her garage, rather than a locker, and  
12 in a box she found her diary?---Right.

13 Went back and compiled the statement, that it was sworn in  
14 front of Sergeant Atkins, and with a notebook,  
15 delivered posted internally to Operation  
16 Lorimer?---Yeah, and what did she say at the committal  
17 about that?

18 Just a minute. And you would understand, for a police  
19 officer to be asked to provide a statement about what  
20 had happened on the evening of 16 August, it is highly  
21 unlikely such a police officer would provide a  
22 statement that is unsworn ?---I - I can't comment on  
23 that.

24 Well, your experience would tell you that, surely. If a  
25 person's asked to provide - - - ?---I don't know if she  
26 would provide an unsworn statement to an investigator  
27 to read to make sure it contains everything and then  
28 swears it, I don't know what their practice is in  
29 relation to that. I just know what I was told by

1 George Buchhorn in relation to it.

2 And so, this is a review, after you've spoken to Mr Buchhorn  
3 and after the committal, when the OPP is directly  
4 raising questions concerning Ms Poke. If you take it  
5 from me that this is put together by Sol Soloman - is  
6 that a person known to you?---I do know Sol, yeah.

7 I take it, they would take very seriously a request of this  
8 nature from the OPP because it would be important to  
9 the trial?---Yeah, yeah, we'd wanted to cover off all  
10 issues that were raised at the committal.

11 So, on the basis of the evidence that IBAC has and, I  
12 suggest to you, common sense, what Ms Poke has provided  
13 is a sworn statement and a copy of her notes?---That  
14 wasn't my understanding.

15 But surely, it's your understanding from reading that and on  
16 the basis of her sworn evidence - - - ?---I don't know  
17 what I understand from reading this, I find it  
18 confusing.

19 You don't understand that?---No. It talks about statement,  
20 it talks about copies, it talks about second statement,  
21 first statement, um, it just - it's not clear to me  
22 what that means.

23 Let's continue on: "Buchhorn later checked the statement  
24 against the notes supplied and found discrepancies.  
25 She was again contacted and arrangements were made for  
26 her to re-attend to clarify the statement and make a  
27 second statement." Is there any confusion about  
28 that?---I don't know how the author is using the term  
29 "statement", so - - -

1 No, are you confused about what is written there?---Well, it  
2 doesn't say that the first statement was acknowledged  
3 and sworn in front of anyone, that's - and that's why  
4 I - that's why I've got that note from George Buchhorn,  
5 because that's what I wanted to know.

6 This is well after Mr Buchhorn and, on its face, a different  
7 version to what you got from Mr Buchhorn; isn't that  
8 the position?---I don't know what that says.

9 Then it goes on: "She then came in with a printed copy of  
10 the amended statement which contained the clarified  
11 points re the description given by Miller. Second  
12 statement still had the old jurat attached on the  
13 morning, the diskette she'd brought in refused to open  
14 on the computer at the office, so the old jurat was  
15 simply crossed out and Helen signed the statement which  
16 was then acknowledged by Buchhorn. In relation to the  
17 lost first statement, I believed that this was shredded  
18 by accident." What do you think that's referring  
19 to?---I don't know.

20 COMMISSIONER: Well, read on?---"Many members sent  
21 statements with duplicated ..."

22 You don't need to read it aloud?---Okay, sorry. Look, I'm  
23 sorry, and there would have been a fair bit of  
24 discussion about this I'm sure at the time, I would  
25 have other notes in relation to it, but just from my  
26 recollection of it, I think our concluded view at the  
27 end of the day - and there would have been much back  
28 and forth about this, because I'm not clear about what  
29 this means; however, the other note that I have from

1 George Buchhorn was my understanding of what happened  
2 in relation to it, and from memory I'm sure we were of  
3 the view that there was never an earlier signed  
4 statement.

5 MR RUSH: What is being said there is that the first  
6 statement was shredded, a human error?---Yeah,  
7 I believe, mistakenly though, the first statement was  
8 shredded. Look, as I say, I find what's written here a  
9 bit unclear. I know that we would have properly  
10 enquired with the Lorimer investigators as to what  
11 happened to come to a concluded view in relation to  
12 what happened to that, and I'm sure there would be more  
13 notes in my file back and forward about that as to what  
14 actually happened, because I'm pretty sure our  
15 concluded view was that she never swore an earlier  
16 statement. And we conferenced all of the witnesses as  
17 well prior to the committal and prior to the trial, I  
18 had notes about that, I can't recall this particular  
19 conference. But generally in our conferences we'd ask  
20 all of the witnesses if they've read their statement,  
21 if it contains - if they're happy with their statement,  
22 if there's anything they want to change about their  
23 statement, if there's anything they wanted to add or  
24 tell us about it, and I'm sure it wasn't raised.

25 COMMISSIONER: I'm sorry, are you saying that at some stage  
26 Poke acknowledged that she hadn't signed the first  
27 statement?---I believe, going by memory again, at the  
28 committal we only had the first statement, um, that's  
29 what we were relying on, and I can't recall exactly

1           because this wasn't a big, big issue at the case, so I  
2           may be wrong, but I believe we only had that one  
3           statement.

4       No, no, I'm now looking at your end position that "we  
5       concluded that she hadn't signed a first statement", is  
6       that because she eventually changed her position and  
7       acknowledged that, or is that a conclusion you reached  
8       notwithstanding her claim that she'd signed it?---I  
9       can't - I can't recall - we spoke to her prior to the  
10      committal and prior to the trial; I can't recall what  
11      she said at the committal, but the investigations, we  
12      asked them, the Lorimer detectives, to make further  
13      enquiries with her post committal to find out what the  
14      position was in relation to it, so our final position  
15      would have been based on the Lorimer detectives talking  
16      to Helen Poke.

17      That's based on what Mr Buchhorn told you?---Yes. And any  
18      other notes I've got in the files about conversations  
19      with Lorimer detectives about that statement.

20      I must say, speaking for myself, Mr Solomon, he seems to  
21      plainly be proceeding on the basis that the document he  
22      shredded was a signed statement?---Okay.

23      MR RUSH: I want to put to you something from Exhibit 50,  
24      which is a Facebook post made by Ms Poke just a day or  
25      two days after the exposure in The Herald Sun of the  
26      second Pullin statement. It's a lengthy statement. I  
27      particularly want to draw your attention, if we go down  
28      the page to, you see there: "On the night they balled  
29      us out for putting all the evidence in our statements

1 and we were told to remove it. I told the senior  
2 detective to stick it up his arse it was my statement  
3 not his sanitised version. I wrote what I saw and did  
4 and most importantly what I heard from Rod when I  
5 cradled him. So, in the end I did not make a statement  
6 that night. It was about 2 years later when they  
7 realised they didn't have one from me. I did not  
8 mishear Rod, how could I? Or furthermore, how could  
9 the 6 of us all mishear what he said. I was eventually  
10 told to make a statement without all the evidence on my  
11 running sheet and day book, leave it out they said, no  
12 conversation or descriptions. Firkin 2 years after the  
13 statement I got dragged into Lorimer and told to put it  
14 all back. But no, the firkin elite of the elite don't  
15 make it a 2nd statement, it's an altered 1st statement,  
16 with the 4th page acknowledgment and jurat from the 1st  
17 statement perfectly refitted and not re-witnessed and  
18 dated. So, then they firkin brain surgeons shred the  
19 wrong statement and place the first statement on the  
20 hand up brief served ..." Now, you wouldn't anticipate  
21 that Ms Poke would tell you that when conferencing with  
22 you, would you?---Well, yeah. If that's what's  
23 happened, that would have been her opportunity to tell  
24 us.

25 And you wouldn't anticipate that Mr Buchhorn would tell you  
26 that either? It's not a practice that would be readily  
27 owned up to, is it?---I don't know, I can't speak for  
28 what - look, one of the reasons you conference your  
29 witnesses is to make sure that they're - what they're

1           gonna say, what they're - that they're happy with their  
2           evidence and that they can tell us anything that, you  
3           know, is out of the ordinary or that we might not know  
4           that we need to know about. If this is true, then this  
5           is something that we should have known about and she  
6           could have mentioned it to us in conference.

7           I guess my question is, after your 20 years of experience  
8           dealing with police officers, that sort of practice is  
9           not a practice that would be readily owned up to by  
10          police officers?---That's not a practice I've heard of.  
11          I'm not asking you that?---Well, it wouldn't be owned up to  
12          me - it's never been owned up to me. No one's told me  
13          that that happens.

14          And neither has anyone told you it was a common practice at  
15          homicide to backdate statements?---No, definitely not.  
16          Because it wouldn't be a practice that would be readily  
17          owned up to?---I don't know if they'd own up to it or  
18          not.

19          They are the matters, Commissioner.

20          COMMISSIONER: Just pardon me a moment, Mr Matthews. I'm  
21          just looking at Ms Poke's evidence at the committal.  
22          It seems that she made quite clear that she did sign  
23          the statement on 11 April and that Sergeant Atkins  
24          acknowledged her signature?---Right.

25          That's at p.24, 5458 of the exhibit in this  
26          hearing?---Right.

27          Yes, I'm sorry, Mr Matthews?

28          MR MATTHEWS: I wonder if I might have leave on two matters,  
29          Commissioner. The first is that, we have the

1 correspondence between Ms Voulanas and the defence in  
2 the Roberts matter, the equivalent correspondence to  
3 the Debs correspondence that my learned friend took  
4 Ms Voulanas to, that is, the disclosure relating to the  
5 Poke statement amongst other things. I wonder if I  
6 might just put that to Ms Voulanas and see whether that  
7 refreshes her memory as to what she knew at the time of  
8 the trail of correspondence. Perhaps I might hand you,  
9 Commissioner, a copy of that.

10 COMMISSIONER: Is it identical to - - -

11 MR MATTHEWS: Well, not quite. There's something very  
12 similar, if not - something very similar from Detective  
13 Sergeant Collins, or Senior Sergeant Collins, but  
14 there's also correspondence from Ms Voulanas herself  
15 and a request from Mr Roberts' solicitor for more  
16 detail in relation to the Poke matter and then  
17 Ms Voulanas's response on 12 October 2001. I wonder if  
18 I might take the witness to that and see whether that  
19 assists her.

20 COMMISSIONER: Yes. What's the other matter?

21 MR MATTHEWS: The other matter is just a single question,  
22 which is that, we've seen just now the letter from Sol  
23 Soloman answering some queries from the Office of  
24 Public Prosecutions, including in relation to the  
25 shredding of a statement, whether that fact was  
26 disclosed to the defence.

27 COMMISSIONER: I'm sorry, what fact?

28 MR MATTHEWS: The fact of the shredding of the statement,  
29 that is, the response given by Solomon to the office



1 was disclosed in turn to the defence, whether those  
2 queries were disclosed. Whether that fact of the  
3 shredding of the statement was disclosed to defence.  
4 COMMISSIONER: Yes. Do you have any submission to make  
5 about either of those matters, Mr Rush?  
6 MR RUSH: No, I don't, Commissioner.  
7 COMMISSIONER: Very well.  
8 MR MATTHEWS: I might just start with that, if I might, sir?  
9 COMMISSIONER: Yes, I give you leave to appear and ask those  
10 questions, Mr Matthews.  
11 MS SHARP: Could I just ask for one clarification?  
12 Mr Peters represents who?  
13 COMMISSIONER: I'm sorry?  
14 MS SHARP: Mr Peters represents whom? Sorry, Mr Matthews  
15 represents whom?  
16 COMMISSIONER: Mr Matthews represents Mr Roberts.  
17 MS SHARP: Thank you.  
18 <EXAMINED BY MR MATTHEWS:  
19 Just one matter, if I might, on that letter from Mr Solomon  
20 you've been taken to, there's mention in there of the  
21 shredding of various statements, including one from  
22 Ms Poke. Are you able to recall, was the content of  
23 that disclosed to the defence after you'd received that  
24 information via the Solomon letter?---I can't recall,  
25 I'm sorry.  
26 I wonder if I might get you to have a look at this,  
27 Ms Voulanas. I'll let you have a look at all of it,  
28 it's the Roberts version of the Debs disclosure from  
29 Detective Senior Sergeant Collins?---Right.

1 If you could go through all of it, ignore everything apart  
2 from the aspects relating to Ms Poke and I'm just going  
3 to take you to something that you say in the letter at  
4 the end of that?---Okay.

5 I should say, a couple of them go over to the second page on  
6 the other side, it's double-sided?---Yes, I've read  
7 those.

8 If it assists you, Ms Voulanas, the committal in this matter  
9 ran from 24 September until 13 November 2001, so this  
10 correspondence seems to be mid-committal?---Oh, okay.

11 If that assists?---Right. And when did Helen Poke give  
12 her - - -

13 Let me just check that and I'll give you that piece of  
14 information as well.

15 COMMISSIONER: You accept those four documents as  
16 correspondence passing between you and -  
17 well - - -?---Ms Altman.

18 Three of them are correspondence between you and another  
19 person, one is between Mr Collins and the solicitors  
20 for Mr Roberts?---Oh, I've got a letter - the first one  
21 I've got is a letter by me addressed to the committal  
22 coordinator.

23 Yes?---The second one is a - oh, yes, a letter from Victoria  
24 Police.

25 From Mr Collins to the defendant's solicitors?---Yes.

26 Yes?---And the third one that I have is a letter addressed  
27 to me from Marita Altman.

28 Yes?---And the last one I have is a letter by me addressed  
29 to Marita Altman.

1 COMMISSIONER: I'll receive those as exhibits.

2 #EXHIBIT ROBERTS 1 - Four letters: 1(a) letter of 21/09/2001  
3 between Ms Voulanas and the committal coordinator; 1(b)  
4 letter from Detective Sergeant Collins to Lethbridges  
5 dated 21/09/2001; 1(c) letter dated 08/10/2001 being  
6 from Maria Altman of Lethbridges to Ms Voulanas; 1(d)  
7 letter dated 12/10/2001 from Ms Voulanas to Ms Altman.

8 MR MATTHEWS: Commissioner, and Ms Voulanas, if it assists,  
9 Ms Poke gave evidence at the committal on  
10 5 October?---Right.

11 So, this Lethbridges conversation comes post that  
12 evidence?---Yes, thank you.

13 In light of all that information, and having read those  
14 documents, Ms Voulanas, you will see in the last  
15 paragraph of your letter, the final of the four, you  
16 write that: "I have been instructed that the original  
17 statement, i.e. the very first draft of my statement  
18 made by Senior Constable Helen Poke was made by her on  
19 a police computer and subsequently amended and  
20 overwritten by her when she redrafted and refined  
21 portions of it. Accordingly, I am instructed that it  
22 is not possible now to recover a copy of the first  
23 statement made by Senior Constable Poke"?---Yes.

24 Are you able to explain what you meant by that and, in  
25 particular, what you meant by "the first  
26 statement"?---Um, because I've referred to the original  
27 statement in inverted commas there?

28 Yes?---Yeah, that's what I was saying before was my  
29 understanding of - because following Helen Poke's  
evidence, we then asked the Lorimer detectives to tell  
us, make enquiries and tell us what's happened with

1 this statement, what's going on, and there would have  
2 been correspondence back and forth - I don't think what  
3 I saw before was all of the correspondence, but there  
4 was definitely correspondence back and forth, and I  
5 would not have sent that lawyer to Marita Altman  
6 unless, (1) of course I've discussed it with my  
7 counsel, but also, unless we were satisfied from the  
8 Lorimer detectives that that was the final position in  
9 relation to her statement, and my understanding of that  
10 was that she'd never typed up and sworn an earlier  
11 statement, it was something she typed up on the  
12 computer, emailed it to George, he said that "you've  
13 left it out", she's gone and she's gone back to her  
14 statement saved on the computer, put that in and then  
15 it's been typed up and sworn and acknowledged, and that  
16 was our final understanding of what happened in  
17 relation to her statement, as instructed.

18 COMMISSIONER: As you sit there now, are you able to say  
19 that those sentences in the last paragraph of  
20 Exhibit 1(d), the letter of 12 October, are based on  
21 anything other than what Mr Buchhorn told you? That  
22 is, the note that counsel assisting directed you to a  
23 short time ago?---I can't recall, but I would - if I  
24 had access to my file, I'd be able to check and see -  
25 oh, I'd say that there was a little bit of back and  
26 forwards communication about this to work out what - so  
27 we could get correct information as to what happened in  
28 relation to this, but I can't recall that what I've  
29 been shown is the full amount.

1 Because that notation would involve you disregarding  
2 Ms Poke's sworn testimony?---Yeah.  
3 And it would require you to conclude that, when she drafted  
4 her statement, she included inserting the name of the  
5 sergeant who was going to acknowledge her  
6 statement?---Yeah.  
7 Even though it hadn't been acknowledged?---Yes.  
8 You assumed that?---That's what we were told. Well, as we  
9 understood it - well, for whatever reason we were told  
10 that it couldn't be changed, um, I read something just  
11 before about it being printed out, but um - was it here  
12 where I read it?  
13 Look, there is no reference there to the statement being  
14 shredded?---No.  
15 Do you know why that is?---That's what we would have been  
16 told, that that is what happened, not that that is what  
17 happened; that shredding, we would have been told, is  
18 not what had happened. I'm going from memory, I  
19 haven't got access to my file.  
20 MR MATTHEWS: As I understood it, the shredding information  
21 in Mr Solomon's letter came at a later point in time,  
22 it was dated later than 12 October ?---I haven't got a  
23 date on this.  
24 When you say there would have been a back and forth before  
25 you reached this position we see in your correspondence  
26 to Ms Altman, who would the back and forth have been  
27 with? Are you able to provide any names about who your  
28 contact would have been for this, or contacts?---I  
29 can't tell you in particular at this point in time. We

1 would have - you know, there was telephone  
2 correspondence between the Lorimer police and myself,  
3 we had conferences, we - you know, counsel and myself  
4 and the Lorimer police, there was - you know, generally  
5 there was a number that I - I can't recall if they all  
6 had separate numbers, but at any one time anyone would  
7 be picking up the phones and I could ask my questions  
8 to anyone of the Lorimer investigators. So, I can't  
9 say without having access to my file from memory.

10 Are you able to recall what your understanding was, back at  
11 the time that you wrote this letter, of when Ms Poke  
12 had drafted that original version of her statement? At  
13 what point of time that she drafted that first  
14 version?---From memory, I thought that it was occurring  
15 at around the same time that it was sworn, the George  
16 Buchhorn acknowledged statement.

17 When you say "around the time", what does that mean to you  
18 by that?---I don't know the exact time.

19 Do you mean roughly the same time?---I didn't - I didn't - I  
20 don't know that I particularly asked what time that  
21 occurred, um, I was asking about the process, as to  
22 what occurred.

23 If I can just have a moment.

24 COMMISSIONER: Yes, anything arising out of that?

25 MR MATTHEWS: If I could just have a moment to have a look  
26 at some notes, if I could.

27 COMMISSIONER: Yes.

28 MR RUSH: I have one additional matter I can deal with while  
29 my learned friend's looking at that.

1 COMMISSIONER: Yes.

2 MR RUSH: Ms Voulanas, you recall I took you to a statement  
3 of Mr Morris that had attached to it notes where the  
4 writing was in blue?---Oh, yes.

5 The position with that is that it was subpoenaed from the  
6 Office of Public Prosecutions and was in a box supplied  
7 by the Office of Public Prosecutions, and that that  
8 blue note was actually attached to the statement of  
9 Mr Morris. Just by way of example, another example of  
10 that, if we could have a look at Exhibit 325, that's a  
11 statement of Detective Senior Constable Ollie. You see  
12 that he's referring to his movements on 15 August and  
13 in the third paragraph, at 12.20 am, he heard the radio  
14 call of shots at Cochranes Road. If we bring up next  
15 on the screen Exhibit 81. You see a similar note to  
16 what we saw last time, this time concerning  
17 Mr Ollie?---M'hmm.

18 The additional factor that I want to put into this question,  
19 is that, each of these was attached to the statement  
20 that was in the OPP box?---Right.

21 I think you've indicated you were not familiar with seeing  
22 these attachments to the statements?---I can't recall  
23 them.

24 So, they might have been observed by you, or did someone  
25 else carry out this sort of work you'd refer to? You  
26 would go through and read the statements?---I would  
27 read the statements on the brief, yeah.

28 If this was attached to a statement, no doubt you would read  
29 this too?---Was that attached to the statement on the

1           brief or the original statement or?

2       This is attached to the original statement in the box?---Oh,

3           there, I don't look at the original statements in the

4           box; that's tendered at the committal.

5       So, you don't look at that?---No, because there - copies are

6           all on the brief.

7       So, you would be unaware of this attachment to the

8           statement?---Yes.

9       And that goes for what we saw previously with Mr Morris,

10           unaware of that attachment?---Correct, yeah, I'd not

11           seen that.

12       On the basis that it is attached and is supplied to the OPP,

13           it would be attached for a reason of relevance, no

14           doubt?---I don't know why they attached it.

15       We'll have a look at this side-by-side. You see point 1

16           that is ticked there: "Had arrival at time of scene of

17           12.30 pm. Should be am"?---M'hmm.

18       You see in the third line, that is, it's "12.30 am"?---Yes.

19       And that's a tick, "should be am, not pm." Then the second

20           part: "Need more detail re observations of scene. Car

21           positions, portable blue light, body in relation to

22           each other." And there, after that's been ticked in

23           the statement, "And there I can see three other

24           unmarked police units are already in attendance.

25           Stopping, I turned around, exited the scene from my

26           direction of entry, back along the north side of

27           Cochranes Road." And that's a tick as to potentially

28           more detail. And then 3: "Remove call signs of CBT311

29           and review of that statement has no such call signs."



1 I go back to the question I asked: on the basis that  
2 this was attached to the original statement, would that  
3 not make it, in your opinion, more likely that there  
4 has been a direction to Mr Ollie to change his  
5 statement?---I don't know.

6 What do you think?---I don't know.

7 I know you don't know, but doesn't it suggest it to you?---I  
8 can't say.

9 You can't say?---No.

10 What do you think it relates to?---I'm not sure.

11 Do you think it relates to the statement?---I don't know,  
12 you'd have to ask the author of this.

13 Can you think of anything else it would relate to?---I'm not  
14 sure.

15 Well, in saying you're not sure, you can't think of anything  
16 else it would relate to; is that your answer?---No, I -  
17 look, there's no date on it, I don't know whose written  
18 it, I don't know what it means. I can't comment on  
19 what it means.

20 I suggest, and the question is, I'm asking you if you can  
21 think of anything else it would relate to?---I don't  
22 know, it's out of context, there's no date, I don't  
23 know who wrote it, I don't know - it could have been  
24 given to them - I don't know, I'm not sure.

25 In thinking of all those matters, is the answer that you  
26 cannot think of anything else that it relates to?---It  
27 could relate to anything.

28 Did Mr Ollie have any other involvement in this trial at all  
29 apart from providing this statement and giving

1 evidence?---I can't recall.

2 Thank you.

3 COMMISSIONER: Mr Rush, what's the exhibit number for the  
4 notation of Ms Voulanas of her conversation with  
5 Mr Buchhorn, about the explanation for the Poke  
6 statement.

7 MR RUSH: Exhibit 87, Commissioner.

8 COMMISSIONER: Thank you. While I'm looking at that, was  
9 there something else you wanted to ask, Mr Matthews?

10 MR MATTHEWS: No, for the moment, nothing, Commissioner.

11 COMMISSIONER: Very good. Just bear with me a moment,  
12 please, Ms Voulanas?---Certainly.

13 Ms Voulanas, the explanation that you received from  
14 Mr Buchhorn on 17 September as to what had happened in  
15 relation to Ms Poke's statement doesn't say anything  
16 about it not being possible to recover a copy of the  
17 first statement?---No.

18 Do you know where that information came from?---I am -  
19 I am - I imagine there are further notes in my notes,  
20 my file, in relation to it.

21 When Ms Poke gave evidence at the committal, she didn't  
22 merely say that she'd signed the statement, she went on  
23 to give quite a detailed explanation of how the jurat  
24 was attached. She went on to say she took the  
25 statement into Sergeant Atkins who was in the  
26 sergeant's office, that she'd walked in and asked him  
27 to witness the signature in front of him, which she  
28 did, and that that was the procedure which she normally  
29 adopted when she'd have a jurat attached to her

1 statement. So, you rejected all of that on the basis  
2 of what Mr Buchhorn told you?---I - I can't - I can't  
3 recall now exactly how that played out, but I do know  
4 that that would have been our concluded position in  
5 relation to the matter of it after making enquiries  
6 with the Lorimer investigators.

7 Who else did you make enquiries from other than Mr Buchhorn  
8 who was the person responsible for getting her to add  
9 to her previous statement?---From memory now, being  
10 19 years later, I can't recall, but I may have notes in  
11 my file.

12 And the fact that the document had Mr Atkins' name on it  
13 didn't trouble you at all, if all she was doing was  
14 sending to you a draft of the statement that would  
15 later have to be signed in front of who knows who, it  
16 didn't trouble you that it had on it Mr Atkins'  
17 name?---No, well - again, I imagine the police when  
18 they type up their statements would be using a  
19 pro forma, or she might have used one - it might  
20 already be there as the default position. He was, as I  
21 understand it, her sergeant at the time, he probably  
22 was the normal - person who normally jurated her -  
23 acknowledged and witnessed her statements, so I - I was  
24 given an explanation as to why that was crossed out  
25 and, no, that didn't appear unusual.

26 Yes, thank you. Mr Rush.

27 MR RUSH: Commissioner, there is a further note of  
28 Ms Voulanas at Exhibit 88, p.2002, concerning a phone  
29 call with Detective Senior Sergeant Collins on

1           11 October.

2           COMMISSIONER: Perhaps you might take the witness to that  
3           one, please.

4           MR RUSH: You referred to, you were asked about anyone else  
5           at paragraph 4, Ms Voulanas. I'd better start at the  
6           top. Is this your handwriting?---Yes.  
7           Is this a phone call to Mr Collins on 11 October  
8           2001?---Yes, I've called Graeme Collins, yep.  
9           And it concerns the letter from Lethbridges of 8 October  
10          2001?---Correct.  
11          Concerning the Poke statement?---Yes, and other matters,  
12          yep.  
13          You have a conversation with Mr Collins?---Yes.  
14          And at (4), you have recorded: "There is no original  
15          statement of Helen Poke. She had it on computer.  
16          Saved over new one"?---Correct, that's what I was told.  
17          That's what you were told by Mr Collins?---That's what I was  
18          told by Mr Collins. So, yeah, there was a number of  
19          telephone calls and conversations about this to get to  
20          our concluded view.  
21          And, I take it, Mr Collins would be relying on what he was  
22          told by Mr Buchhorn?

23          MR MATTHEWS: Your Honour, I object. How on earth would  
24          this witness know that, with respect?

25          COMMISSIONER: Mr Matthews ...

26          MR RUSH: Did you understand where Mr Collins was getting  
27          his information from?---No.  
28          Was Mr Collins directly responsible for obtaining files and  
29          statements?---Mr Collins was overseeing, he was the

1 informant, he was overseeing the investigation, but  
2 then he had a crew of investigators that worked for  
3 him. Generally, they were divided up into the  
4 different elements - the different areas of evidence:  
5 someone was for listening devices, someone was for  
6 dying declaration witnesses, someone was for the  
7 Hyundai search, there was someone in charge generally  
8 of each of those. However, they were able to all talk  
9 as to each of the different elements of it, because  
10 they were pretty much all over it, across the whole  
11 brief.

12 And, apart from Mr Buchhorn, are you aware of any other  
13 police officer that was directly responsible for  
14 statement-taking from Ms Poke?---Well, I thought there  
15 was only the one, so no.

16 COMMISSIONER: What was your impression, after Ms Poke had  
17 given evidence at the committal? Was it that she was  
18 critical of aspects of the way the task force had  
19 handled her?---I have seen what she said here now. She  
20 is - at the time, from memory, I was more under the  
21 impression that she was terribly traumatised by what  
22 she had witnessed and was terribly upset by that, and  
23 that was my understanding as to why she saw the  
24 psychologist and had time off work, I believe, in  
25 relation to it. So, it was more my understanding of  
26 trauma of the incident that occurred on the night of  
27 being with Senior Constable Miller, and also, there was  
28 a fear the gunman was still on the loose and so I think  
29 that I was more under the impression that she was

1           traumatised by, (1) being with an injured colleague,  
2           and (2) the fear for her own safety and the safety of  
3           other members in the area; that was the impression we  
4           had, not that she was critical of anything that  
5           Victoria Police had done.

6           So when did you first learn that she was critical of the  
7           investigation?---It's only been in recent times.

8           Nothing arising out of that? Very good. Is there any  
9           reason why Ms Voulanas should not be excused? Do you  
10          have some questions?

11         MS SHARP: I have two short questions, if I could please,  
12          Commissioner?

13         COMMISSIONER: Yes, certainly.

14         <EXAMINED BY MS SHARP:

15         Ms Voulanas, when was the last time you looked at your file  
16          in relation to this matter?---Ah, would have been  
17          during the running of the trial, so a number of years,  
18          16 years ago.

19         And the last time you've read any of the statements or any  
20          of the evidence in the matter?---The same.

21         Just in relation to the evidence from Ms Poke, as the  
22          Commissioner outlined to you Ms Poke gave evidence at  
23          the committal that she'd sworn a previous statement  
24          that was jurated or sworn before Atkins. If you'd ever  
25          received a second statement, what would you have done  
26          with it?---Oh, provided it to the defence.

27         Thank you, those were the matters.

28         COMMISSIONER: Thank you.

29                 So, Ms Voulanas, I'll excuse you from any further

1 attendance, so the confidentiality notice will no  
2 longer apply to you. I see no reason to emphasise the  
3 order for witnesses out of court as there are no other  
4 witnesses. As I say that, it occurs to me there is  
5 some aspects of your evidence that may overlap with  
6 witnesses yet to be called, so out of an abundance of  
7 caution I just advise you, given the order for  
8 witnesses out of court, you should not speak to any  
9 witnesses yet to be called about the evidence you've  
10 given or the evidence they are to give. Do you  
11 follow?---I do, thank you.

12 We'll make a video recording of your evidence available to  
13 you and also a transcript of your evidence. I thank  
14 you for your attendance.

15 <(THE WITNESS WITHDREW)

16 COMMISSIONER: Mr Rush, we're adjourning until when?

17 MR RUSH: Until next Wednesday morning, Commissioner.

18 COMMISSIONER: 10 am?

19 MR RUSH: 10 am.

20 COMMISSIONER: Very good. Nothing else?

21 MR RUSH: No, Commissioner.

22 COMMISSIONER: Adjourn the hearing, please.

23 Hearing adjourns: [3.40 pm]

24 ADJOURNED UNTIL WEDNESDAY, 20 FEBRUARY 2019

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