
TRANSCRIPT OF PROCEEDINGS

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

FRIDAY 22 FEBRUARY 2019

(11th 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

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

1 COMMISSIONER: Mr Rush.

2 MR RUSH: Commissioner, Mr Collins' counsel became
3 indisposed last night, so that further examination has
4 been deferred until Monday morning.

5 COMMISSIONER: Very good.

6 MR RUSH: And I call Mr Buchhorn.

7 <GEORGE PATRICK BUCHHORN, sworn and examined:

8 COMMISSIONER: As your summons indicated, Mr Buchhorn, you
9 ought to be questioned about the following matters and
10 I need to remind you as to what they are.

11 First, the Lorimer Task Force investigation of the
12 murders of Sergeant Gary Silk and Senior Constable
13 Rodney Miller concerning the taking of witness
14 statements, the preparation of the brief of evidence
15 for the trial of Debs and Roberts, and whether there
16 was full disclosure of witness statements or other
17 relevant information prior to or during the trial.

18 Second, witness statement-taking practices by
19 Victoria Police; and third, compliance with the
20 obligation to disclose evidence by Victoria Police.

21 You're represented by Mr Trood, and at the
22 conclusion of counsel assisting's questions of you and
23 any cross-examination that I permit, Mr Trood will have
24 the opportunity to ask you further questions to
25 elaborate on any of your answers or to provide any
26 additional information that you think is relevant.

27 When you were served with a summons you received a
28 notice of rights and obligations?---That's correct.

29 And you've read those carefully?---Yes.

1 Has Mr Trood explained them to you?---Yes.
2 Do you require me to repeat them?---No.
3 Are you sure?---Yes.
4 Just in summary, your obligation is to answer the questions
5 that are put to you, to answer them truthfully, and so
6 long as you do so your answers can't be used in
7 evidence in a court of law. You follow that?---Yes.
8 But I do want to emphasise, Mr Buchhorn, that it is really
9 important that you tell the truth, the whole truth and
10 nothing but the truth; do you follow?---Yes.
11 Very good. Yes, Mr Rush.
12 MR RUSH: Mr Buchhorn, your full name is George Patrick
13 Buchhorn?---That is correct.
14 You reside at an address that was set out on the summons
15 with which you were served?---That's correct.
16 If you have a look, I'll take you through some formalities.
17 Do you appear here today as a consequence of a summons
18 served on you on 18 December 2018?---That's correct.
19 Is the summons numbered SE2747?---That's right.
20 You've indicated to the Commissioner you received a
21 statement of rights and obligations with that
22 material?---That's correct.
23 Did you receive a confidentiality notice dated 11 December
24 2018?---Yes.
25 And also a covering letter of 12 December 2018?---Yes.
26 I tender those documents, Commissioner.
27 #EXHIBIT CC - Documents served on summons to Mr Buchhorn.
28 As you've indicated to the Commissioner, you appreciate
29 providing false evidence to IBAC will amount to perjury

1 with a maximum penalty of 15 years?---Yes.

2 Mr Buchhorn, did you commence your career with the police
3 force in 1981?---No, 1980.

4 Is that when you attended the Police Academy?---That's
5 correct.

6 Could you just briefly give us a history of your career in
7 Victoria Police?---I was with Victoria Police for a
8 little bit over 34 years, finished as detective senior
9 sergeant at Flemington Crime Investigation Unit.

10 During my career I worked at the Homicide Squad on two
11 separate occasions, and also the Rape Squad which
12 became the Sex Crimes Squad.

13 Perhaps, did you start off in uniform?---Yes.

14 Can you indicate to the Commissioner just how long you were
15 in the uniform branch and where you were posted?---I
16 was in uniform initially as a constable and senior
17 constable for about six years; worked at Russell
18 Street, City West, then Heidelberg. Then got a
19 position with City West CIB in about 1986, was there
20 for about three years, then went to the Rape Squad for
21 about two years, and then from there to Homicide for
22 about three years.

23 And so, what were the years that you were in Homicide?---89
24 or 90 to 93, and then I went back in 96.

25 For how long were you there from 1996?---Till 2001, about
26 five years.

27 Then, after 2001, what did you do?---I was promoted to
28 senior sergeant, initially to Moonee Ponds, and then
29 worked in the North-West Metro area as a senior

1 sergeant for the next, I think, about 12, 13 years in
2 different stations and units.

3 When you were in Homicide for the second period, for part of
4 that period at least you were in the crew of Detective
5 Senior Sergeant Collins?---That's correct.

6 Did you have experience with any other crew?---I was on
7 Charlie Bezzina's crew when I was there as a detective
8 senior constable; it was actually Jack Jacobs who was
9 the senior sergeant, but Charlie was the sergeant. I
10 went from that crew to Paul Sheridan's crew.

11 Just going back, what was the year you were made
12 sergeant?---I think it was 93.

13 So, you dealt with a number of people, if I could firstly
14 ask you about Mr Bezzina. For how long were you in
15 Mr Bezzina's crew?---About 18 months.

16 Did you find him to be a thorough and meticulous leader of
17 his crew?---Well, he wasn't the senior sergeant, he was
18 a sergeant, but in all aspects Charlie basically ran
19 that crew.

20 And was thorough and meticulous?---I'd say so, yes.

21 What about Detective Senior Sergeant Collins?---Yes, I'd say
22 the same of Graeme Collins as well.

23 The Collins crew was the crew, the principal crew, from
24 Homicide that became part of Operation Lorimer?---Yes.

25 And at that stage you were in the crew?---Yes.

26 Just going back, did you attend the crime scene on 16 August
27 1998?---Yes.

28 What was your role at the crime scene?---It was management
29 of the crime scene analysis, then to attend the

1 post-mortems, and in the early months my role was as
2 the liaison between the task force and the forensic
3 science laboratories and the management of crime scene
4 examinations and tests, et cetera.

5 Mr Buchhorn, have you followed the transcript of this
6 inquiry?---Yes, I have.

7 You understand the issues of interest to IBAC as a
8 consequence of the inquiry?---Yes.

9 It is fair to say, is it not, that by 1998 you were an
10 experienced investigator?---Yes.

11 And it's during the course of Operation Lorimer you in fact
12 completed a course concerning the preparation of briefs
13 for trial?---That's correct.

14 That was fundamentally your role in Operation Lorimer, the
15 preparation of the brief?---That's correct.

16 You've previously given evidence at IBAC along those lines,
17 that you had responsibility for reporting to Mr Collins
18 for the preparation of the brief of evidence?---That's
19 correct.

20 That you had a role in correcting major discrepancies in
21 statements?---I'm not sure on that point.

22 Perhaps if we have a look at Exhibit 405.

23 COMMISSIONER: What aren't you sure about,

24 Mr Buchhorn?---Sir, when I was examined in 2015, I
25 wasn't given access to any of the files or information
26 reports and was unaware of what I was to be asked until
27 I got to the hearing that day. A number of members'
28 statements were handed to me, and then I was examined
29 on the contents of those statements. I know in the

1 back of my mind at the time I was concerned about the
2 context of those statements and why they were being put
3 to me, and that certainly rested in the back of my
4 mind, but at that hearing I answered questions to the
5 best of my ability and to my knowledge, but I did not
6 have the advantage of having access to my diary, my day
7 books, the investigation, the information reports or
8 the brief of evidence, so I was a bit reticent about
9 answering some of those questions, but I attempted to
10 answer them to what was still my recollection.

11 So, you've read the transcript of your evidence of
12 2015?---That's correct.

13 And you've made clear now what the limitations were in terms
14 of your answers at that time. Put that evidence to one
15 side. What counsel's now asking you, given the
16 opportunity you've had now over some time to consider
17 very carefully what your role was having regard to the
18 issues you know are being explored in this hearing.
19 What you said was, you're not sure about the point that
20 you had a role to play in addressing deficiencies or
21 gaps in witnesses' statements, and I've asked you, what
22 aren't you sure about?---Well, that's right; I mean,
23 back in 2015 I, I guess, speculated on why some of
24 those discrepancies were being shown to me; I'm not
25 sure whether that speculation was fair and, now that
26 I've had the opportunity to, I guess, read the
27 transcripts, see what the issues are, spend a
28 considerable amount of time going back through my
29 diaries and my day books, in some ways I'm more

1 confused now than I was at that first hearing. I had
2 in my mind that I did certain things, but in now seeing
3 what other people are saying - because I at that first
4 hearing thought that my main task from the very first
5 day was preparation of the brief; I'm not so sure any
6 more that that's the case. I now realise that the
7 majority of my time in those early days, weeks
8 and months was tied up with the crime scene
9 examination, the preparation of listening device
10 affidavits. Also, I note that there are references
11 there to Operation Roundup which was trying to manage
12 the huge influx of information reports that we were
13 receiving, so a lot of my time was spent away from the
14 brief, certainly in those early days, weeks, months and
15 possibly even a year, until - but until I'd seen that
16 and heard what other people are saying, I had in my
17 mind that my job was the brief.

18 So, don't let me put words in your mouth, but are you saying
19 to the Commission that you don't think, looking back
20 now on the evidence that you gave in 2015, that you did
21 justice to your position as you now understand
22 it?---Well, that's right, because now I can see that I
23 was doing a lot of other things that I'd forgotten
24 about.

25 Yes.

26 MR RUSH: Perhaps, just to deal with the question that I
27 raised - perhaps if you could bring the microphone just
28 a little bit closer. The question I raised was that
29 part of your role was the correction of discrepancies

1 in statements. I just want to remind you of the
2 evidence that you gave, understanding what you've just
3 said to the Commissioner, at Exhibit 405, p.4005. If
4 we go down to line 15, you were asked this question:
5 "Was it your practice to amend or get people to do a
6 supplementary statement?" And you say: "It depended on
7 the nature of the information in the statement. If it
8 was seen as a gap or something had been omitted or
9 forgotten or left out, or they hadn't seen it as being
10 relevant, and a lot of - a lot of police members, you
11 know, with the years of experience or lack of
12 experience often don't understand the relevance of what
13 they've seen, what they've heard or what they have
14 said, and part of my role was to read all the
15 statements and then, if say a member was referring to
16 another member being present, I would then go to their
17 statement, see whether there were any major
18 discrepancies in those statements, and then try to
19 correct those discrepancies by speaking to people."
20 Now, I want to suggest that was something that you
21 did?---Yes.

22 Read all the statements, saw if there were any
23 discrepancies, and then you had a role of trying to
24 work out or fix up what the differences may be between
25 statements?---Well, as I said, sir, when I was examined
26 in 2015 I'd forgotten that it was - I was heavily
27 involved with the crime scene and the analysis that was
28 going on there. I forgot that we were - I was tasked
29 with the preparation of lengthy affidavits for

1 listening devices in relation to some very - some
2 suspects that, you know, came up very early in the
3 investigation, and then it wasn't until reading my
4 notes and diary in some detail that I saw that
5 Operation Roundup, which is an operation name that was
6 given to trying to get the huge volume of information
7 we were receiving under control, that that was also one
8 of my tasks. So, I guess one of - and I forgot about
9 Rose Eden completely, that in the initial stages of the
10 investigation I'd see that she was pregnant, I'd
11 forgotten about that, and her role was basically an
12 administrative role, and so, she would have been that
13 initial person to be doing that.

14 Whilst those matters may have been brought back to your mind
15 as a consequence of reading your day book or your
16 diary, what I suggest to you is that a principal and
17 fundamental role for you from day one of Operation
18 Lorimer involved the statements and the collection of
19 statements?---I don't agree with that, not from day
20 one.

21 Perhaps if we start at Exhibit 136.

22 COMMISSIONER: While that's coming up on the screen,
23 Mr Buchhorn, I should have said to you: if at any stage
24 you want to have a break, just indicate and we'll take
25 some time out. If there's something you want to
26 discuss with your counsel, just let me know?---Okay.

27 MR RUSH: What we've got at Exhibit 136 is an extract,
28 Mr Buchhorn, from the running log kept by Operation
29 Lorimer of the daily activity of members. What is

1 extracted here, if you go halfway down the page, on
2 1 September 1998, you see it's a daily activity,
3 "Crew 1. Member updating and see Detective Sergeant
4 Buchhorn update for crew 1." Refers to what Senior
5 Detective Welsh is doing, she's compiling
6 questionnaires in relation to firearms. Senior
7 Detective Kennedy was looking at a list of Hyundai
8 sedans, Detective Sergeant Buchhorn was reading and
9 assessing all statements in relation to content,
10 accuracy and follow-up enquiries. So, that, as I
11 suggested to you in an earlier question, was part and
12 fundamental, I suggest, to your role over this period
13 of time. Whilst there may have been other things, this
14 was a very important aspect?---Sir, I haven't seen this
15 document before - or, I'm not sure where it's come
16 from, whether that's an information report?

17 Are you questioning the accuracy of it?---No, I'm not, I'm
18 just saying, I haven't seen this - this has never been
19 shown to me.

20 I know it's never been shown to you, but in the light of
21 your question and saying you were doing other things,
22 all I'm putting to you is that a constant job for you
23 involved the checking of statements?---But that's not
24 my recollection now.

25 Okay, if we have a look at Exhibit 137. Exhibit 137 is a
26 further extract from the running log daily activity
27 sheet. If we go just below halfway down the page, we
28 come to 14 September and it relates to matters that are
29 being undertaken. Then daily activity on 20 September

1 1998, crew 1, member update. Over the page: "Detective
2 Sergeant Buchhorn, update for crew 1. Currently making
3 a list of corrections and follow-up enquiries needed re
4 statements supplied for the brief of evidence." Now
5 that's, what I suggest, is exactly what you were saying
6 to IBAC in 2015 was your role: looking at statement and
7 going to discrepancies?---It may have been a role of
8 the crew.

9 No, your role, specifically your role, you were in charge of
10 it?---I don't recall.

11 COMMISSIONER: We need to distinguish two things,

12 Mr Buchhorn: what your memory permits you to recall and
13 what you might take issue with. Do you have any doubt
14 that you were tasked with making a list of corrections
15 and follow-up enquiries needed re statements for the
16 brief of evidence, do you have any doubt that that was
17 one of your functions?---I don't have an independent
18 recollection of that occurring.

19 No, I'm not asking you that. Let me make something clear to
20 you, Mr Buchhorn: you are going to be shown a large
21 number of contemporaneous records of what was going on
22 with the task force. Whether or not you now remember
23 something is not the same thing as telling us whether
24 or not you take issue with what's recorded in those
25 notes. Do you have any doubt that one of your tasks
26 was to make follow-up enquiries needed re statements
27 supplied for the brief of evidence?---No, I don't
28 take - I don't take issue with that per se; I don't
29 remember it.

1 Because, I think as you know, counsel assisting is going to
2 take you to a significant number of individual
3 witnesses where it's said you did make follow-up
4 enquiries; you know that's coming, don't you?---Yes.

5 MR RUSH: We leave on the page what's said there, "Currently
6 making a list of corrections and follow-up enquiries
7 needed re statements supplied for brief of evidence."
8 What you told the Commission under oath in 2015 was
9 this: "Part of my role was to read all the statements,
10 and if say a member was referring to another member
11 being present, I'd then go to their statements, see
12 whether there were any major discrepancies in those
13 statements, try and correct those discrepancies by
14 speaking to people." What I suggest you said in 2015
15 exactly fits in with what is described in the daily
16 running sheet as what you were doing in September 1998.
17 You'd agree with that?---That sounds - sounds right.

18 And you clearly indicated to the Commissioner, you say "it
19 sounds right" and you say that now, but in 2015 you
20 clearly indicated that was your job in 1998?---That was
21 my recollection at the time in 2015; as I said before,
22 I realise now that I was doing a lot of other things,
23 so I'm not sure now how much time I had to perform this
24 function or whether it was being performed by somebody
25 else. It might have been allocated and tasked to me,
26 but I'm not sure now that - how much time I was able to
27 give it, because I just don't remember.

28 Firstly, are you in any doubt that, under Mr Collins, you
29 had the overall responsibility for the preparation of

1 the brief?---The administrative side of it, yes.

2 What do you mean "the administrative side of it"?---My

3 recollection now is that Graeme Collins, being the

4 senior sergeant at the task force, had the primary

5 responsibility of proof reading those statements and

6 asking for any corrections to be made, or a statement

7 might have been missed, and then they were handed to me

8 to, I guess, put the actual brief of evidence together.

9 So, it's your understanding that Collins read all the

10 statements?---Yes.

11 And that you and he would meet concerning the

12 statements?---Well, I sat outside the door of his

13 office, so it's my recollection that, once the

14 statements had been received, it may be that I was

15 going through them initially, but when it actually came

16 to the preparation of the brief, Graeme had the

17 responsibility of proof reading the statements and

18 making sure that the brief of evidence was complete.

19 The commencement of the brief of evidence in fact started in

20 1998, with the collection of statements?---That's my

21 recollection, yes.

22 What you say to the Commissioner is that, as the statements

23 arrived from Operation Lorimer - I just need to

24 understand this - that they would be read by

25 Mr Collins?---At some stage, yes.

26 Well, I asked you, as they arrived, as the statements

27 arrived at Operation Lorimer, they would be read by

28 Mr Collins?---I'm not certain about that.

29 Read by you?---I would presume so.

1 And would you have a discussion with Mr Collins about the
2 content of the statements?---I would assume that we
3 would at some stage discuss that, but I had forgotten
4 about Rose Eden's role in all of this as well.
5 I'll come to that. There's just a couple of other matters I
6 need to go to in Exhibit 563, p.9347. We've been to
7 this, but just to remind you, this is the entry on
8 1 September from the daily running log. Further down
9 the page, "Detective Sergeant Buchhorn", right at the
10 bottom, "Reading and assessing all statements in
11 relation to content and accuracy of the follow-up
12 enquiries." At p.9349, again just under halfway down
13 the page: "Update for crew 1. Detective Senior
14 Sergeant Buchhorn checking statements for accuracy and
15 follow-up enquiries." That sort of work continued, at
16 p.9375, at the bottom of the page, you see the daily
17 activity for 20 September, "Crew 1", it's reporting
18 back to 17 September 1998, "Member updating", and over
19 the page: "Detective Sergeant Buchhorn update for
20 crew 1. Currently making a list of corrections and
21 follow-up enquiries needed re statements supplied for
22 brief of evidence." What I want to show you, with that
23 in mind, is a statement at Exhibit 325, and if we could
24 bring up side-by-side Exhibit 81. At Exhibit 325, we
25 have a statement from Mr Ollie and on the right-hand
26 side notes which, as I'll take you to them, but they
27 concern the statement of Mr Ollie. Firstly, that is
28 your handwriting, is it not?---Yes.

29 What this represents, I suggest, is, if you look at the

1 first entry, "1" in your handwriting, has arrival time,
2 it seems, at 12.30 pm, "should be am". That's a note
3 of yours?---Oh, yes.

4 What that would be is you going through the statement of
5 Mr Ollie and picking up the mistakes in it?---Yes.

6 If we look at the statement of Mr Ollie, the time of
7 arrival, he's put at 12.20, but it's "am" rather than
8 "pm" in the third paragraph?---Yep.

9 That's been ticked, you've ticked "item 1". "Item 2. Need
10 more detail re observing of scene. Car positions.
11 Portable blue light. Body in relation to each other."
12 If you go to the fourth line of that paragraph: "When
13 there I could see three other unmarked police units
14 were already in attendance. Without stopping I turned
15 around, exited the scene from my direction of entry
16 back along Cochranes Road. At this intersection the
17 road is divided, median strip. At no time did I get
18 out of the car, nor did I drive to the south side of
19 the road." So, in relation to certainly car positions
20 or numbers of cars that's been ticked as having been
21 done for Mr Ollie's statement? There's a tick there
22 beside "2"?---Yes.

23 There's also a note: "Remove call signs of CBT 311" and the
24 procedure was that - - - ?---I might just change my
25 glasses because I'm having difficulty reading, because
26 it's rather large, sir.

27 Of course?---That's not helping either.

28 COMMISSIONER: Is that too close for you?---Yeah, I'm just
29 having difficulty focusing.

1 MR TROOD: Mr Commissioner, is the exhibit available in
2 documentary form? That might solve the problems.

3 COMMISSIONER: It might. It would mean that it would slow
4 the process down considerably. We'll see. If he's
5 having difficulty with reading it on the screen,
6 obviously we'll have to do that, but thank you,
7 Mr Trood.

8 MR RUSH: Can you read that now, Mr Buchhorn?

9 COMMISSIONER: Do we have this in hard copy?

10 MR RUSH: I don't have a spare one, Commissioner.

11 COMMISSIONER: We have it, Mr Rush.

12 MR RUSH: Okay. (To witness) So, are you looking at the
13 moment at the statement or the notes?---I'm having a
14 look at the statement here.
15 Do you see the notes on the screen?---Yeah.
16 Just to go back, someone - I suggest you - has read the
17 statement of Mr Ollie and the notes are the corrections
18 that you indicate should be made to Mr Ollie's
19 statement?---That's correct.

20 And the ticks in relation to each of those from time - pm
21 or am - to call signs and using the am or pm only, and
22 they are represented in Mr Ollie's statement?---Yes.
23 So, it is pretty apparent that the first statement has come
24 in to you then Mr Ollie has made a subsequent statement
25 correcting those matters?---Yes.

26 If we look at Mr Ollie's statement, in the first paragraph,
27 there is nothing to suggest that this is made by way of
28 supplementary statement?---Yes.

29 COMMISSIONER: When you were reading the transcript of these

1 proceedings here, you were aware that this issue had
2 been explored with other witnesses?---Yes.
3 What conclusion have you come to as to what process was
4 followed by you?---Sir, looking at that note and what's
5 been discussed here this morning, I think what was
6 happening at the time was that statements were being
7 submitted, I was going through them and making notes
8 similar to that one, and then, I'm not sure now what
9 the process was in relation to asking the member to
10 make those corrections.

11 You're not sure?---I don't know whether I spoke to the
12 member or whether the statement was sent back, I'm not
13 sure.

14 But a new statement was provided?---Yes - well, yes.
15 Yes.

16 MR RUSH: So, whilst you don't know the process,
17 whether - - -?---I don't remember now.

18 You don't remember the process, what is apparent is that the
19 member had made a statement, the statement has been
20 corrected, but the member has not referred to the
21 member's previous statement?---That looks like what was
22 happening, yes.

23 And you would agree that that is not a practice that in any
24 way can be condoned?---I don't know about that, um,
25 this was 20 years ago, um, members' statements were of
26 different qualities which reflected their experience,
27 um, I guess now having heard what's been said, best
28 practice would have been to ask them to make a
29 supplementary statement and make reference to their

1 first statement. But I think, looking at this and
2 that, probably what I was doing was asking them to make
3 those changes to their statement and not really picking
4 up that, um, the point that's been stressed during this
5 hearing, that that should have been reflected in that
6 statement.

7 COMMISSIONER: I just want to try and understand more
8 precisely what your thinking was, Mr Buchhorn. I
9 think, without exception, every witness that has been
10 asked about the process of adding to a statement that's
11 already been made has said, there's only one correct
12 way to do that and that's by a supplementary statement
13 that makes clear on its face, "I previously made a
14 statement and I am now providing some additional
15 information", and I don't think anyone has suggested
16 that that's now the practice but it wasn't the practice
17 then. Did you agree that that was the process that
18 should have been followed, the supplementary
19 statement?---Yes.

20 So, I'm just trying to understand why you didn't follow that
21 established process?---At the time I was - looking at
22 this now - going through the statements that were being
23 submitted to the task force, I was making notes, and I
24 presume there will be others that'll show the things
25 that I was picking up in the statements that needed
26 some degree of clarification. I accept that what
27 should have been done was that a supplementary
28 statement should have been supplied, but what I think
29 has happened here is that I was either sending it back

1 to the member saying, "These are the things that I have
2 noted, can you make those changes."

3 What Mr Collins told us yesterday, Mr Buchhorn, was - I'm
4 now referring to p.1036 of the transcript: that where a
5 witness makes a subsequent statement and, whether or
6 not their first statement was signed or unsigned, where
7 they provide additional information at a later point of
8 time there is a need for disclosure of the fact that
9 there had been an earlier statement. Did you not
10 recognise that at the time you were following this
11 process?---No. I'm just looking at this and I think
12 that's what was - what was happening; I was sending it
13 back and then it was being returned.

14 Do you agree, in relation to Mr Ollie, that only one
15 statement was produced for the police brief?---I don't
16 know, I don't have access to that.

17 If the evidence shows that only one statement was produced,
18 and there was no reference to the earlier statement,
19 that was your responsibility to determine what went on
20 to the brief?---Partly, yes.

21 So, what was your state of mind back then? You didn't think
22 there was an obligation then to disclose the earlier
23 statement?---Sir, I think my state of mind then was
24 that the members were sending these statements through
25 basically as a draft for checking, and whether we felt
26 that it met the required standards that we were looking
27 for and, if it didn't, I just sent it back with a note;
28 I think that's what's happened.

29 Yes?---But having heard what's been said in previous days

1 here, I accept that what should have happened is, they
2 should have made mention that they'd made a statement
3 and it's been sent back for - - -
4 Further amendment?---Yeah, I accept that bit.
5 But I'm just trying to understand, in terms of your
6 training, why it wouldn't have been apparent to you at
7 that time that transparency of the investigative
8 process, that is, the sequence in which information was
9 obtained, must be disclosed. Why wouldn't that have
10 been apparent to you at the time?---Nothing, um -
11 meaning, we weren't - I wasn't trying to be deceitful
12 to the courts, I was trying to put the best case
13 forward with the full amount of information. A number
14 of the points that I have raised here were common
15 errors by primarily uniform police, using police
16 jargon, et cetera. The am/pm was an error. He's
17 obviously not realised he's put "pm", so it was a
18 typing error, so that's gone back to the member after
19 I've checked it and, in my mind the document that they
20 were submitting was a draft and they sent it for
21 checking and it went back.
22 When you say "a draft" - - -?---Well, that's in my mind what
23 it was; they - - -
24 Even if it was signed - - -?---Yes.
25 - - - and acknowledged, it was, you're still viewing it as a
26 draft?---Yeah. That appears to be, looking at this,
27 what was in my mind at the time.
28 Yes.
29 MR RUSH: So, what happened to the original statement?---I

1 don't know.

2 Well, on the basis that, for instance Mr Morris has done a
3 further statement picking up the corrections that have
4 been identified - - -

5 COMMISSIONER: Ollie.

6 MR RUSH: I'm sorry, Mr Ollie has picked up the corrections
7 and done a further statement, and that is the only
8 statement that appears on the brief; surely it's likely
9 the first statement has been disposed of?---Possibly,
10 yes.

11 We'll come to it, but there's evidence of shredding of
12 statements at Operation Lorimer; is that what would
13 happen to it?---Sir, I think, looking at this example,
14 I would have sent that back to the member, and it
15 appeared - you know, looking at that again, he's made
16 the corrections that I saw, and then this has been
17 re-submitted and then this is, I presume, the statement
18 that then went onto the brief of evidence. I never
19 turned my mind to what happened to the other statement
20 from Mr Ollie.

21 COMMISSIONER: There's material which counsel assisting may
22 take you to, Mr Buchhorn, to the effect that documents
23 were shredded; at one stage the OPP was making
24 enquiries of you, Mr Collins and Mr Solomon about what
25 had happened to an original statement of
26 Ms Poke?---Yes.

27 And in the course of that enquiry a very detailed response
28 was provided to the OPP in which it was suggested that
29 a lot of statements, copy statements, were shredded

1 and, in the case of Ms Poke, by accident an original
2 statement of hers was shredded. Do you have any memory
3 now of a process of shredding documents?---Um, just in
4 relation to Helen Poke, I remember her coming to the
5 office - - -

6 But, forgive me, counsel assisting is going to take you to
7 that in some detail, but I'm just wanting to ask you
8 about the general concept of shredding documents. Do
9 you have a memory of documents being shredded?---In
10 relation to Helen Poke?

11 No, no, just generally?---Generally, no.

12 In relation to Lorimer Task Force statements and copy
13 statements?---It would only happen, as it did with
14 Helen, if the member supplying the statement supplied
15 six copies, basically the hand up brief copies of the
16 statements which we wouldn't use.

17 And you might have shredded those?---We would.

18 Mr Collins, when asked about that yesterday said he has no
19 knowledge, in any investigation he's ever done, that
20 shredding of documents would take place. Was the
21 shredding of documents something that was a common
22 experience to you?---No, the only specific example I
23 can recall was Helen Poke; that she brought in a whole
24 bunch of copies which were of no use to us because we
25 then have the statements retyped.

26 Do you have any reason now to doubt the information that was
27 provided to the Director, that there was a lot of
28 shredding of documents and, in the course of doing
29 that, the original of Ms Poke got shredded?---That was,

1 to the best of my recollection back then, that trying
2 to work out - and again, I mean, I'm relying on a
3 memory that I'm not completely confident with - that
4 when the brief has been served, that the copy of the
5 statement that we had retained as the original
6 statement was actually unsigned, and I think I've
7 contacted Helen to get her to come in to sign that
8 statement.

9 As I say, I'm not wanting to explore the detail of that at
10 the moment, I'm just more concerned - - -?---But that's
11 the only single time I recall that, you know, a
12 specific example of someone bringing in multiple copies
13 of statements which we wouldn't use.

14 But I'm now really directing your attention to the general
15 proposition conveyed to the OPP that there was a
16 shredding of documents?---If there were other members
17 who brought in multiple copies of their statement, then
18 yes, we would probably shred the copies and keep one as
19 the original.

20 Yes, Mr Rush.

21 MR RUSH: The process identified with Mr Ollie's statement
22 was something, I take it, that occurred with every
23 statement that came in from police
24 officers?---Probably, yes.

25 That the process would be gone through and corrections would
26 be made?---Looking at that, yes.

27 So there's no need, we've been through it, Mr Morris [sic],
28 we have a similar sheet of points for correction in
29 your handwriting. But the only reason, Mr Buchhorn,

1 that has come to the attention of IBAC is because, in a
2 search of the Operation Lorimer files, only two of
3 these notes could be found?---Okay.

4 I beg your pardon, that's the OPP file, only two of these
5 notes could be found. In the context of what we've
6 been talking about in the Commission of disclosure, on
7 the basis of the evidence that you're giving, there is
8 the potential for many of the statements to have been
9 corrected in the manner that you have described?---Yes.

10 On the face of the statements that appeared in the trial
11 brief, that would be unknown to anyone but the people
12 responsible for the corrections?---Yes.

13 Whilst we deal with what may be seen as Mr Ollie as being,
14 in the context of eyewitness events, somewhat
15 insignificant, for other members they can be highly
16 significant corrections? Other members that were
17 witnesses or heard conversation?---Yes.

18 I want to go directly to a point of interest to the
19 Commission, Mr Buchhorn. You, as we know, were
20 examined at IBAC in October 2015 and asked questions
21 about the statement of Mr Pullin?---Yes.

22 If we could bring up Exhibit 405 at p.4018, at line 9 you
23 were asked by Ms Austin: "Any contact with Glenn Pullin
24 in relation to his statement?" You answered: "No. No,
25 because we've got evidence which indicates that he was
26 approached by you to make an amendment to his
27 statement. Do you remember anything about that?" And
28 you answered: "No." Do you wish in any way to
29 reconsider that evidence that was given to IBAC in

1 2015?---Sir, in going through my day book and diaries,
2 I note that I had met with Mr Pullin at the Fraud Squad
3 in June 1999 I think it was, but as I said, at that
4 first hearing I didn't have any access to my notes or
5 diaries, and that certainly had not been brought to my
6 attention I had met with him. I had no independent
7 recollection of ever meeting him and, if I hadn't found
8 that in my notes and diaries I would still say, no, I
9 had never spoken to him.

10 You know, now at least, that Mr Pullin, and from IBAC in
11 2015, Mr Pullin made a statement on the morning of
12 16 August 1998 at Moorabbin?---Yes.

13 And that was acknowledged by Mr Bezzina at 4.25 am?---Yes.

14 And you know that, in 2017, a further statement of Mr Pullin
15 was located and made public which was signed by
16 Mr Bezzina at 4.25 am on 16 August?---Yeah, I saw that
17 in the paper.

18 After seeing it in the paper, you would be satisfied that
19 those statements are different?---It was very hard to
20 read in the paper, but I've seen larger copies since;
21 yes, they're different.

22 So, they're different. Both, as indicated, the same date
23 and the same time and the same person acknowledging, so
24 that is an impossible situation, is it not? That would
25 not have occurred on 16 August?---I don't know whether
26 I'd say it's impossible.

27 COMMISSIONER: You said you've seen the hard copies; when
28 have you seen the hard copies, Mr Buchhorn?---Um,
29 Mr Trood provided me with some copies of some newspaper

1 website, that was in larger print, because I only had
2 the newspaper which was quite small.

3 MR RUSH: From the earliest time your responsibility was to
4 go to statements of police members who had spoken with
5 or who had conversation with Mr Miller; isn't that
6 right?---Sorry, can you repeat the question?

7 From the earliest time of the Operation Lorimer
8 investigation it was your responsibility to go to the
9 statements of persons who had spoken with Mr Miller or
10 who had heard conversations between police and
11 Mr Miller?---I presume so, I don't have any independent
12 recollection of them.

13 COMMISSIONER: But Mr Collins has told us that, although
14 there were a variety of crews with different sergeants
15 in charge of them, each was assigned to different areas
16 of the investigation; you were assigned a task in
17 relation to the crime scene and first responders. Do
18 you doubt that?---No, I don't doubt that but, as I said
19 at the outset, in those early days, weeks and months,
20 my main focus was on the crime scene; the checking of
21 statements would have been a secondary role.
22 Accounting for the members that were with Rod before he
23 passed away, I think, was probably something that -
24 I believe Rose Eden kept a table of what statements had
25 been - or members' names and what statements still
26 needed to be required, so I think in those early days I
27 would think that Rose was probably looking at what
28 statements we did and what statements we didn't have
29 from all the members that attended. I think it's worth

1 mentioning that, on the morning we had approximately
2 120 police respond to the crime scene, so it was an
3 enormous task just to capture all the police who
4 attended, let alone any civilian witnesses.

5 That schedule which Ms Eden prepared and updated on a
6 regular basis in which she listed all of the members
7 who might have anything relevant to say about the
8 investigation, had a column which set out if the
9 witness had made a statement, so that, if the answer
10 was no, then you would know that, if it was the area of
11 the crime scene/first responders, that you'd have to go
12 back to them and get a statement?---Someone would have
13 to go and get that statement, or they'd be asked - if
14 they were members they'd probably just get asked to
15 supply a statement.

16 But can we safely assume, Mr Buchhorn, that that
17 schedule was for the purpose of identifying which
18 witnesses had made a statement and which witnesses had
19 not?---Correct.

20 MR RUSH: Just returning, I suggested to you that you had a
21 responsibility for following up witnesses specifically
22 who could speak of a dying declaration conversation
23 with Mr Miller?---Sir, at the time dying declaration
24 was a possibility, but because of the legalities of
25 whether Rod knew that he was dying or had a hopeless
26 expectation of death, it was something that we hadn't
27 turned our minds to at that early stage, it was simply
28 to make sure that every member who went to that crime
29 scene had made some form of a statement but we weren't

1 particularly focused on it being a dying declaration
2 until sometime later.

3 Let me take you to Exhibit 408. Just before I do, when you
4 say "sometime later" - - -?---I don't know whether it
5 would have been sometime later, it certainly wasn't in
6 those early stages because - - -

7 Well, what do you mean by "early stages"?---Well, those
8 first few months.

9 If we have a look at Exhibit 480. What I'm taking you to is
10 the day book of then Detective Senior Sergeant Collins
11 at p.7236. Three-quarters of the way down the
12 page there is this note: "Chase up Buchhorn re
13 clarification of statements by Miller at scene.
14 Queries identified in statements. Follow-up required
15 re dying declarations." So, no question there about
16 dying declarations, is there?---What date's this?
17 October, 21 October?---Okay.

18 So, that's a month later and you are being requested, I
19 suggest - - -?---Two months later, isn't it?
20 - - - by Mr Collins to chase up the queries identified in
21 the statements of those who were part of hearing dying
22 declaration, the evidence that we've discussed, with
23 Mr Miller?---What was the date in October?
24 20 October?---So, it's over two months - sorry, it's over
25 two months.

26 Two months, very well. So, you say before that there were
27 some queries about it?---It wasn't something that we -
28 well, I hadn't turned my mind to, that Rod had made a
29 dying declaration.

1 I suggest that it was very much on your mind, very much on
2 the mind of police officers, indeed Constable Gardiner
3 was put in the ambulance to take notes of conversations
4 with Mr Miller on the way to hospital because of the
5 importance of dying declarations. Do you remember
6 that?---I wasn't there at the time, but I know that
7 Constable Gardiner did go in the ambulance, and
8 I believe in some of the other statements he was
9 directed to make notes of anything that Rod may have
10 said on the way to hospital.

11 You're not seriously stating to the Commission, are you,
12 there was some doubt as to whether the conversations of
13 Mr Miller would be regarded as dying
14 declarations?---Sir, it's my understanding that it's a
15 legality issue as to whether a person who subsequently
16 died but made some form of a statement prior to them
17 dying, did they know they were actually dying and, if
18 they didn't, if they just suddenly had a - some sort of
19 a medical incident that took their life, it would then
20 be a legal argument as to whether that was a dying
21 declaration or not; that's my understanding.

22 COMMISSIONER: Was there any such argument ever raised at
23 committal or trial?---I don't know.

24 From the first occasion then that you looked at any
25 contemporaneous record made by any one of the first
26 responders who was attending Mr Miller before he was
27 taken away in the ambulance, was it not apparent to you
28 from Mr Miller's own words that he recognised he was
29 dying?---Sir, as I said, that - you know, that might

1 have been my view at the time, but I'm not the one who
2 actually gets to decide that, and it's important that
3 we get those statements, I understand that as well, but
4 you know, that would be a discussion sometime later as
5 to whether it was accepted as a dying declaration or
6 not.

7 Do you have any recollection of anyone ever raising a doubt
8 about whether the words uttered by Mr Miller before he
9 was taken away in the ambulance might not be a dying
10 declaration? Do you have any recollection of that ever
11 being suggested?---Sir, based on my recollection,
12 I believe that it probably would be a dying declaration
13 in these circumstances.

14 MR RUSH: Just to be crystal clear, you were tasked by
15 Mr Buchhorn - - - ?---Mr Collins.

16 I'm sorry, by Mr Collins with the role of clarifying the
17 statements of those who were witnesses to the dying
18 declarations?---Yes.

19 If we go to an earlier note from Mr Collins' diaries
20 from August 1998, Exhibit 481, p.7240, the note in the
21 middle of the page, and this is on 22 August 1998,
22 Mr Buchhorn: "George and crew. Brief preparation
23 statement. Follow up enquiries. Scene members.
24 Contamination checks." You understand what that means,
25 do you not?---It could mean a number of things, um, you
26 know the - as I said, we had, I think, around 120
27 police attend that scene. From recollection we had an
28 inspector drive through crime scene tape, so the scene
29 was contaminated. The car that - one of the cars was

1 moved from its original position where Bendeich and
2 Sherrin had parked. There were shoe impressions, there
3 were cigarette butts, there was a spent round from the
4 firearm that Gary had been shot in the chest with
5 sitting on the ground; how it came to be there was to
6 be explored and was never answered, so there were a
7 number of contamination issues.

8 And potentially contamination issues between members who
9 were witness to dying declarations who may not have
10 heard but may have been told?---How do you mean?

11 What I mean, is that, it's the contamination of a witness's
12 recollection of being told what Mr Miller has said
13 rather than hearing what Mr Miller has said even though
14 they'd be in the vicinity?---I don't recall that, um,
15 it's a possibility, but um, I don't have a recollection
16 of that. To me, that reads physical contamination.

17 COMMISSIONER: That's a standard term that's used in
18 relation to crime scene?---Contamination?

19 Yes?---Yes.

20 MR RUSH: Your role in brief preparation, I think you agree,
21 continued right over the course of Operation Lorimer to
22 committal and to trial?---Yes.

23 And the role of a brief manager, as you were, is
24 fundamentally the collection of statements and
25 exhibits?---Yes.

26 And having an oversight of that material at all
27 times?---Yes, but my oversight was also overlooked by
28 Graeme, then ultimately Paul Sheridan.

29 In that sense, with any statement - and I use the word

1 loosely - problems in relation to statements or
2 conflicts in relation to statements, would they be
3 discussed with Mr Collins or Mr Sheridan?---I would
4 think so.

5 How often did you meet, firstly, with Mr Collins? You said
6 you were right outside his door?---Yeah.

7 So, I take it, there were constant updates in relation to
8 this sort of matter?---I would imagine we spoke
9 frequently every day.

10 And what about Mr Sheridan?---Well, he sat the other side of
11 the desk, so I was sitting in the middle, Graeme
12 Collins was on the left and Paul was in the corner
13 office on the right.

14 So, what was Mr Sheridan's role, daily role?---Well, he was
15 the overall leader of the task force, so he set the
16 direction of the investigation, set the priorities.
17 You know, a number of different suspects were
18 investigated over the years that we were together, and
19 he would, I guess, oversight what resources and efforts
20 were put into each of those and then he would allocate
21 the roles for each of the crews. As you said, my
22 primary role in my mind was the brief preparation but
23 also remembering the crime scene et cetera, and then at
24 some stage well into the operation I had the
25 responsibility of managing property and exhibits, so
26 Paul would basically be setting those roles and the
27 direction that we went.

28 COMMISSIONER: Can we, Mr Buchhorn, proceed on the
29 assumption that within a month or so of you commencing

1 the investigation it would have become absolutely clear
2 to you that anything said by Mr Miller at the crime
3 scene before he was taken away to hospital would have
4 been - particularly about the number of offenders or
5 their description, would have been of critical
6 importance?---Sir, I don't agree. It was important,
7 but it wasn't pivotal. The crime scene was large, and
8 basically where Rod was in Warrigal Road was almost
9 like a secondary crime scene. The primary crime scene
10 was around in Cochranes Road and that's where all of
11 our focus was, on that primary crime scene, because
12 that's where the evidence was located.

13 I'm not sure what you're disagreeing with,
14 Mr Buchhorn?---That what Rod said was critical to the
15 success of the investigation. It was important and it
16 certainly had a role, but what we found in Warrigal
17 Road - not Warrigal Road, Cochranes Road, that's where
18 the critical evidence was located.

19 Do you doubt that Mr Miller was not at the crime scene where
20 the police officer's motorvehicle was at the time that
21 he was shot?---No, no, he was there. I mean, we - the
22 crime scene allowed us to position where Rod was
23 standing when the initial shots were being fired.

24 So, have you at any stage entertained any doubt that he
25 would have been able to make observations of those who
26 shot him or shot his partner?---No.

27 You don't see the description that he would have given the
28 first responders as really important information?---It
29 was important. I said it was important, I just don't

1 believe it was pivotal to the success of the
2 investigation.

3 MR RUSH: The crime scene, and the evidence relating to the
4 crime scene, firstly, the evidence would have been
5 secured at first opportunity?---In - yes.

6 And the investigation of the crime scene would have occurred
7 over a period of days?---Yes.

8 Up to a week?---I'm not sure how long it took us to clear
9 the crime scene. I imagine it was - - -

10 You would not expect it to be more than a week, would
11 you?---Sorry?

12 You would not expect the investigation of the crime scene to
13 be more than seven days?---No, I think from memory
14 Gary's body was removed just prior to lunchtime and
15 then I left the crime scene and went to the Coroner's
16 Court for the post-mortems. So, I think from memory
17 the crime scene would have continued that day, probably
18 into the early hours of the next morning.

19 Have a look at Exhibit 471, which is an extract from
20 Mr Collins' diary of December 1999. If we go to
21 p.6765, "Discussion with Buchhorn on Operation Solly."
22 And details: "And discuss brief preparation, statements
23 identified and need to be proof read. They are in
24 separate file. Other enquiries, photos"?---"D24 tape".
25 "D24 tape need attending to. Buchhorn to concentrate on
26 these tasks and fill in re ..."?---"Screen enquiries we
27 needed."

28 So that again indicates the important role that you
29 continued to have throughout this process in relation

1 to brief and statements?---Yes.

2 COMMISSIONER: What was the operation that Mr Collins is
3 there referring to?---Op Solly was the operation named
4 given to Debs and Roberts.

5 When he talks about the details of conversations, what's he
6 referring to?---I don't know.

7 MR RUSH: He would be referring, would he not, to the
8 discussions that were being taken in the course of the
9 investigation of offenders?---I don't know.

10 You indicated previously that Mr Sheridan had overall
11 responsibility for the direction of the investigation.
12 It very quickly became a direction of the investigation
13 that they were two offenders and they were Debs and
14 Roberts; isn't that right?---Certainly the fact that
15 there were two offenders was identified very early on
16 from the crime scene, but Debs and Roberts, no, they
17 weren't identified as suspects. I think we initially
18 spoke - not me, but the task force, spoke to Debs and
19 Roberts on about day eight of the investigation and
20 that was in response to an alert that we put out for
21 anyone trying to acquire a replacement rear screen for
22 a Hyundai. We got that call from - I think they were
23 called Korean Auto Parts, I think they were out at
24 Dandenong, and a couple of detectives went there.
25 Turns out that it was Roberts - not sure whether it was
26 Nicole or Joanne Debs that was with him, but by the
27 time the members got there the car had gone, but the
28 people at the shop got the registration number of the
29 Hyundai. I'm not sure now whether they went round the

1 same day or the next day to the address, which turned
2 out to be Debs' home address from memory, and the car
3 was there; Roberts, and I think it was Nicole, were
4 cleaning it. They spoke to them. By that stage we had
5 received information from Korea in relation to a code
6 that is on the rear screen of Hyundais and that
7 provides the build date of the glass screen, so we had
8 possession of that. The two members spoke to Nicole
9 and Roberts and questioned them about whether the car
10 had been damaged, they denied the car had been damaged.
11 They looked at the rear screen and could see that it
12 was a replacement screen, but they didn't - - -

13 Can I just stop you there because I don't think we need this
14 detail?---It's how my records - - -

15 What it does indicate is that you have a very, very good
16 memory of the investigation and the matters involved in
17 the investigation?---I remember the crime scene quite
18 clearly, and I remember quite clearly how the
19 investigation unfolded.

20 But what your answer, at least in part addressed, is that
21 very early on the number of offenders and the identity
22 of offenders would have been of critical importance to
23 the investigation?---We knew the number from the
24 evidence that was contained in the crime scene. The
25 ballistics showed that there were two gunmen, and that
26 Rod Miller had fired four shots in the direction of
27 where Gary Silk had collapsed. One of the police
28 rounds wasn't recovered at the time. I think it was
29 the next day Martin King from Channel 9 actually found

1 the remains of another police round, so we returned to
2 the crime scene and recovered what was the copper
3 coating of the bullet but the actual lead part was
4 missing.

5 Again, it's not really an answer to my question and I'll be
6 specific. Two offenders and the identity of the
7 offenders was a critical issue for Operation Lorimer in
8 this investigation?---Yes, but you seem to be
9 suggesting that we knew in those early days who was
10 responsible for this, and we didn't.

11 No, I'm not suggesting that at all. I'm suggesting that the
12 issues around whether there were one or two offenders,
13 and the description of those offenders were matters of
14 critical importance to the investigation?---The
15 descriptions that we had - - -

16 No, I'm not asking about what they were. I'm asking a very
17 direct question, that whether there were one or two
18 offenders and the description of offender or offenders
19 were critical to the investigation?---We had that
20 information from the crime scene.

21 You had the description of the offenders from the crime
22 scene?---No, we had the number of offenders.

23 Well, let's just deal with that?---Yep.

24 The description of offenders was critical
25 information?---Bendeich and Sherrin who drove past
26 provided a basic description - - -

27 Of one offender?---Of one offender, of the person they saw
28 standing in the doorway of the Hyundai.

29 And didn't observe any other offender?---No, they

1 unfortunately drove past - - -
2 So, I understand that, they did not. So, my question comes
3 back to the position that, whether there were one or
4 two offenders and the description of offenders was of
5 critical importance at the earliest stage of this
6 investigation?---Yes.
7 Can we have a break, Commissioner?
8 COMMISSIONER: Certainly. Have a break, Mr Buchhorn, it's
9 going to be a long day, I fear. You can go and have a
10 coffee with your counsel?---Okay.
11 Ten minutes, quarter of an hour, Mr Rush?
12 MR RUSH: 15 minutes.
13 Hearing adjourns: [11.40 am]
14 Hearing resumes: [11.59 am]
15 COMMISSIONER: Yes, Mr Rush.
16 MR RUSH: Commissioner. (To witness) Can we go to
17 Exhibit 197. I think you've been referring to this in
18 part, Mr Buchhorn, in your evidence. This is a
19 spreadsheet concerning witnesses which IBAC
20 investigators located within a folder of Ms Eden in the
21 electronic Lorimer file. The metadata date indicates
22 that this was last modified on 9 October 1998.
23 Firstly, you would be aware of Ms Eden keeping this
24 sort of detail?---I would think so, yes.
25 And you would have been keeping up-to-date with it?---As
26 much as I could, yes.
27 Indeed, when Ms Eden left Homicide, you in fact had a role
28 in maintaining this, did you not?---I would imagine so.
29 If we go to p.2995, we see approximately six entries from

1 the bottom of the page, "Mr Pullin", and under the
2 heading, "Statements", "Statement required? Yes.
3 Statement obtained? Yes." So, as of this file of
4 9 October 1998, it's clearly apparent that Mr Pullin
5 had provided a statement?---According to this record,
6 yes.

7 That is absolutely consistent, I should assure you, with the
8 evidence that's been given to IBAC by Mr Pullin, that
9 he made a statement at Moorabbin on 16 August
10 1998?---Yes.

11 And that is a statement that you would have read?---I would
12 assume so, yes.

13 And it's a statement that you would have followed up on the
14 basis of the instructions that you were given by
15 Mr Collins concerning dying declaration
16 witnesses?---I'm not sure that note that you showed me
17 from Graeme Collins, what the date of that is and how
18 that correlates to this, this record.

19 Let me go back. The date of the note of Mr Collins is
20 20 October?---Okay.

21 What we know, I suggest from the date on the Pullin
22 statement, 16 August, and the record kept by Operation
23 Lorimer of which you with Ms Eden had some oversight,
24 is that Mr Pullin had provided a statement?---Yes.

25 On 20 October, in the Collins day book, is that - for you to
26 "seek clarification of statements made by Miller at the
27 scene, queries identified in statements, follow-up
28 required re dying declarations." Now, that covered the
29 statement of Mr Pullin, did it not?---It would have,

1 yes.

2 So, we could take it, could we not, that you would have read
3 the statement of Mr Pullin?---I assume so.

4 And when, as I have taken you to the records of the daily
5 logs, you are reading and checking the statements of
6 individual police witnesses as the statements are
7 received, obviously one of those is Mr Pullin?---It
8 would have been, yes.

9 And the sort of corrections or additions that you have
10 agreed you made in relation to statements, we can take
11 it, would have been made in relation to Mr Pullin's
12 statement?---If it needed any amendment, yes.

13 Well, clearly at some time it did need amendment.

14 COMMISSIONER: Just a moment. (To witness) Mr Buchhorn, how
15 long have you been living now with the issue of the two
16 Pullin statements?---Um, when it came out in the media,
17 I think, November 2017.

18 You've explained how your counsel has shown you hard copies
19 or some media publication, and you've been following a
20 transcript of these proceedings, so you must by now
21 have a very clear sense of whether or not the first
22 formal statement required some elaboration or
23 addition?---The statement that we received or?

24 The first statement made by him, the one made on 16 August.
25 You must have a very clear sense now of whether or not
26 that initial statement was lacking some information or
27 particulars in relation to the dying declaration?---In
28 comparing the two statements, yes, there's been
29 additional information included.

1 So, why did you give counsel the answer that you just did a
2 moment ago?---What answer was that?

3 You speculated about whether there would be a need to go
4 back to Mr Pullin?---Sir, I'm not sure, um, which
5 version of that statement we had in front of us at the
6 time.

7 At what time, sorry?---Again, it's speculation that we never
8 saw the first statement. We only saw the second
9 statement.

10 MR RUSH: Just so we understand, Mr Buchhorn; are you
11 indicating to the Commissioner, on your oath, that you
12 speculate as to whether you ever, at any time, saw the
13 first statement?---Yes.

14 COMMISSIONER: What do you think this document's referring
15 to when it refers to Mr Pullin making a
16 statement?---That we had a statement.

17 What do you think that statement was, Mr Buchhorn?---I think
18 we had the second statement.

19 The second?---Yes.

20 MR RUSH: Well, we'll come to it in due course. You agree,
21 do you not, from what we've seen this morning, that
22 your role was to, in great detail, go through
23 statements and pick up matters that you considered
24 should be corrected, should be clarified?---Yes.

25 In a sense, to make things neat for the case?---No, I
26 disagree with that terminology. It was to ensure that,
27 particularly the members' statements, contained all the
28 available information and detail, and that it was
29 written in plain English, that it didn't contain police

1 jargon or abbreviations that outside the police force
2 would have been difficult to follow.

3 Very well. Could we have a look at Exhibit 344.

4 Exhibit 344 is a statement identified by Mr Pullin as
5 his first statement. If you go to p.3591, you see that
6 it is signed by Mr Pullin and acknowledged at Moorabbin
7 by Mr Bezzina at 4.25 am on 16 August?---Yes.

8 If we return to p.3590, and you go halfway down the fourth
9 paragraph commencing, "He was conscious and said
10 'Silky's dead'. I continued to calm him. He stated he
11 couldn't breathe. I assisted him to move into a
12 position whereby he felt comfortable. Other members
13 were arriving. I opened the chamber of the police
14 issue firearm and observed that approximately four
15 shots had been fired from the firearm. I said to him,
16 'Did you hit him?' And he replied, 'I don't think so.'
17 I closed the chamber of the firearm and replaced the
18 firearm on the ground where I had found it." Then he
19 indicates that he went off to search a carpark and came
20 back, removed Mr Miller's baton, spray and other
21 matters before he was placed on the stretcher to go in
22 the ambulance to hospital. So, what I want to suggest
23 to you is that, potentially at least, that has
24 remarkably little detail of conversation with
25 Mr Miller?---I don't know if I'd agree with the word
26 "remarkable." It was a very dynamic scene and
27 obviously it would have been quite chaotic and busy,
28 and that members would have seen, heard and recalled
29 things differently.

1 If that could stay on the screen and could we bring up
2 Exhibit 263. What is on the right-hand side of the
3 screen is a statement made by Constable Gardiner, as he
4 then was, who you will recall we discussed earlier this
5 morning was the constable that went in the ambulance
6 with Mr Miller for the purposes of noting anything said
7 by Mr Miller in the ambulance?---Yes.

8 You will note, at p.3301, that this is a statement that is
9 made by Mr Gardiner on 16 August at Clayton, at the
10 hospital I suggest, before Detective Senior Constable
11 Jones; and Jones was known to you, was he not?---Ah, is
12 that David Jones?

13 Yes?---Then, yes, yes.

14 Peter Jones, I beg your pardon?---No.

15 No? Very well. If you go to p.3299 and the second-last
16 paragraph commencing, "A senior constable, the same one
17 that found the gun asked, 'What happened?' Miller
18 replied, 'Two, one on foot.' The senior constable
19 asked, 'Any vehicle?' And Miller replied, 'Dark
20 Hyundai.' We continued to comfort him and he
21 complained he could not breathe." So that also is a
22 statement that you would have read and checked in the
23 same manner as you have indicated you have for each of
24 the other statements?---Yes.

25 What you automatically would have observed is that
26 Mr Gardiner refers with some specificity to the
27 conversation of Mr Pullin, the constable that checked
28 the gun, with Mr Miller?---One would presume so, yes.

29 And that automatically, as far as clarification is

1 concerned, would have led you to check what was in
2 Mr Pullin's statement?---I would assume so, yes.
3 And automatically at some stage have led you to be speaking
4 with Mr Pullin to seek clarification?---I would have
5 thought so.
6 And you did, I suggest?---When?
7 No, I'm just asking you. I suggest you did speak with
8 Mr Pullin about this statement?---I don't recall.
9 You recall going to see him at the Fraud Squad?---I didn't
10 recall that until I saw that on the notes.
11 But you do now?---Well, according to my notes, I did.
12 And you spent how long with him at the Fraud Squad?---Um, I
13 don't recall.
14 COMMISSIONER: Mr Buchhorn, I remind you of something I
15 raised with you much earlier this morning, and that is,
16 I'm concerned that, where you are dealing with
17 contemporaneous records, including your diary entry,
18 the fact that Pullin made two statements, the fact that
19 there's evidence that you're aware of that you
20 approached other first responders to get further detail
21 of the dying declaration of Mr Miller, I'm concerned
22 that you don't take refuge in the "I don't recall
23 "argument if, as a matter of logic, you should be able
24 to see for yourself that you must have gone back to
25 Mr Pullin and asked him for more detail. Do you follow
26 what I'm putting to you?---Yes, I do.
27 So when you look at all the material that you've been able
28 to take into account, are you saying to counsel that
29 you don't believe you asked Mr Pullin to make a further

1 statement?---I don't recall that.

2 MR RUSH: Did you seek clarification of Mr Pullin's

3 statement?---I don't recall that.

4 You say you've read your notes recently?---Yes.

5 And - - -?---And I know that I met with him in June 1999.

6 Do you not recall your note as indicating that you were

7 seeking clarification of his statement?---That's what

8 the note says.

9 Well, do you doubt your own note?---I don't know that, um, I

10 was asking him to make any changes to his

11 statement - - -

12 I'm not asking you that. Do you doubt your own note, that

13 you went to Mr Pullin for clarification of his

14 statement?---Clarification of the contents of his

15 statement is possible.

16 COMMISSIONER: Mr Buchhorn, I'll repeat what I just said to

17 you a moment ago. I'm concerned that you're not to be

18 judged by taking refuge in "I don't recall". If, as

19 you can see as an experienced former investigator, you

20 can see from the totality of the evidence that is

21 available and which has been referred to already during

22 the course of these public hearings, that you were

23 engaged in the process of going back to all of the

24 first responders to get further elucidation of what

25 Mr Miller said in his dying declaration. And, taking

26 all of that evidence into account, do you have any

27 doubt that you went back to Mr Pullin and asked him for

28 further information?---Sir, that's one explanation.

29 And, do you doubt it?---Sir, I suspect, when I first became

1 aware of there - this discrepancy between two
2 statements, and I found that note that I had gone to
3 see him, although I have no recollection of actually
4 doing that, reading the newspaper copies of the
5 statements at home I thought, what would I have
6 possibly wanted to go and speak to him about? And, one
7 possibility is that at that time I was still trying to
8 track down where Rod had collapsed and how the sand had
9 gotten into the barrel of his firearm. And I speculate
10 that the reason that I spoke to Mr Pullin is because he
11 handled the firearm in the crime scene, and I wonder
12 whether I have gone to him possibly with a crime scene
13 photo to ask him, "Is that where the firearm was when
14 you picked it up and is that where you put it down?"

15 MR RUSH: So - - -?---Asking him a question about the
16 forensics.

17 You have been instructed by Mr Collins, as we've been to, to
18 clarify statements of dying declaration;

19 correct?---That's what he's written in his notes, yes.

20 Are you now saying that you don't recall that instruction,
21 or you didn't undertake that instruction?---I don't
22 recall the instruction, it's a long time ago but, as I
23 said, when I first became aware of these two
24 statements, I tried to piece together why I went and
25 spoke to Glenn Pullin that day.

26 COMMISSIONER: Mr Buchhorn, an unkind view of what you just
27 said is, "I have attempted to reconstruct what I did so
28 as to place an innocent gloss on my participation in
29 Mr Pullin's second statement." Isn't that more likely

1 to be the correct explanation?---No, I don't agree with
2 that.

3 MR RUSH: So, for you, there was still an issue about sand
4 in the barrel of the gun?---Yeah.

5 What was that issue about?---Where had Rod fallen.
6 And what was the issue in relation to the trial? The issue
7 - were Sheridan or Collins directing you about this
8 issue?---No, as I said, my main focus - - -
9 Just answer the question. Was Sheridan or Collins giving
10 you directions about this specific issue?---My job was
11 the crime scene, this was part of the crime scene.

12 Please answer the question. Was Sheridan or Collins giving
13 you specific directions about the gun or sand in the
14 gun?---Sir, I was meeting with the scientists and crime
15 scene examiners on a fairly regular basis, and this was
16 an outstanding issue that we were trying to piece
17 together. I recall going back to the crime scene with
18 Peter Ross, who was one of our scientists, to see if we
19 could find an area, using his expertise in relation to
20 the type of soil that was in the barrel, as to where
21 Rod might have collapsed; you know, it may have
22 expanded the crime scene, there may have been something
23 that we had missed. We never found that site, but what
24 we did find when we went back was another bullet hole
25 and that had been missed.

26 So, looking at your diary - - -?---So, it was a live issue.
27 Looking at your diary, you are able to locate when you went
28 back to the crime scene with Mr Ross?---I imagine I've
29 got a note of that.

1 Yes?---Or it will be in the information reports.
2 Tell me, was it in June 1999?---No, it was earlier than
3 that.
4 How much earlier?---It was probably two or three weeks
5 after.
6 So, it's got nothing to do with the time period that we are
7 talking about, it's 12 months later effectively, is it
8 not, or close to?---Sir, I don't know if I'd been asked
9 a question by one of the people at the forensic science
10 laboratories in relation to the ballistics, in relation
11 to the handgun; I don't know whether, when Mr Pullin
12 has opened the chambers, whether that has caused some
13 confusion for the scientists, so it was a matter of
14 trying to clarify that. That's what I think might have
15 happened, what I mean.
16 It would be far more likely, having regard to your task of
17 reading and correcting statements, that you went back
18 for a clarification of his statement in the context of
19 what Mr Gardiner said he had in fact repeated?---I
20 don't believe that's the case.
21 COMMISSIONER: So, is your sworn evidence, Mr Buchhorn, that
22 you did not go back to Mr Pullin and ask him to provide
23 more detail in relation to Mr Miller's dying
24 declaration?---I don't remember doing that with him. I
25 can't be more open, sir, I just don't remember.
26 Does that mean you might have?---Sorry?
27 Does that mean you're conceding you might have gone back to
28 him?---I have no recollection of doing that with him.
29 MR RUSH: Could we have a look at Exhibit 530, p.134, down

1 the bottom of the page, and this is 18 June 1999.
2 You've written in your day book: "Clear to Fraud Squad.
3 Senior Detective Glenn Pullin" - what's that,
4 "statement signed"?---"Statement to be clarified."
5 No, no, if you read the bottom line?---Yeah, "Statement to
6 be clarified."
7 Statement, "SD"? "Statement signed Pullin"?---"S/ment".
8 Beg your pardon?---It's "S/M-E-N-T".
9 No, "S/T", "Statement"?---No. "Spoke to".
10 "Spoke to" and "S/D" then?---Senior detective.
11 I beg your pardon?---Senior detective.
12 He was a senior detective?---Yes, I believe so.
13 "Statement to be clarified"?---Yes.
14 COMMISSIONER: Does that help you at all, Mr Buchhorn, to
15 grasp the nettle about whether it's possible you went
16 back to Mr Pullin and asked for more detail in relation
17 to the dying declaration?---Sir, it doesn't clarify
18 that for me, um, I still think it had to do with the
19 forensics.
20 How long have you thought that,
21 Mr Buchhorn?---Since November 2017.
22 You gave evidence to IBAC?---Yes.
23 Mr Trood cross-examined Mr Pullin, here in the public
24 hearing; in neither occasion was it suggested, either
25 by you or by your counsel, that issue was being taken
26 with whether or not you asked Mr Pullin to add to his
27 statement. This is the first time we have heard the
28 suggestion made that you dispute that you asked him to
29 clarify any detail of his statement?---Sir, is that a

1 question?

2 Yes, it is. Do you have something to say about

3 that?---Sorry?

4 Why have you not advanced this explanation before, that you

5 did not go back to Mr Pullin and ask him to provide

6 further detail in relation to Mr Miller's dying

7 declaration?---Sir, I spoke to Mr Trood about this; I

8 don't know what was said in this hearing.

9 Have you not seen his cross-examination of Mr Pullin?---Sir,

10 I wasn't here, so. I've read - yes, I've read the

11 transcripts.

12 Was he faithfully putting to Mr Pullin your position at that

13 time?---I can't answer that question, sir.

14 The thrust of his cross-examination was to suggest to

15 Mr Pullin that, in response to a request from someone

16 to provide further detail, Mr Pullin may have retyped

17 his statement himself rather than you. Is that not the

18 gist of the cross-examination?---Sir, the gist of what

19 you're asking me in relation to Glenn Pullin's

20 statement, and the dates being the same and being

21 signed by Charlie Bezzina, I have no memory of being

22 involved in that.

23 Do you want to grapple with what I'm putting to you,

24 Mr Buchhorn: that the cross-examination of Mr Pullin

25 was not to the effect that Mr Pullin was not asked to

26 provide more detail, but to the question who retyped

27 the statement and how it came that Mr Bezzina came to

28 acknowledge it?---Yes, I've seen what Mr Bezzina has

29 said.

1 MR RUSH: So, that's your day book entry. If we could turn
2 to Exhibit 506, Mr Buchhorn. Going down to 21 June,
3 and the entry that you made there: "On duty 8 am at
4 office re Lorimer to 11.45. Clear to Fraud Squad
5 squad. ST [spoke to] Senior Detective Pullin re
6 clarification of statement. Clear 12.20." Now, that's
7 the entry in your diary as well?---Yes.

8 Are you aware of any other member of the group, your crew,
9 that had any follow-up conversation for clarification
10 with Mr Pullin?---No.

11 You also spoke with Mr Thwaites, did you not?---Yes.

12 He was a person at the scene with Mr Miller?---Yes.

13 You also spoke, it took you some time, with Ms Eden, a
14 person at the scene with Mr Miller?---Ms Eden?

15 Ms Eden - sorry, no. You also spoke with Ms Poke, a person
16 at the scene with Mr Miller?---Yes.

17 Because it was your responsibility to follow these people up
18 in connection with dying declarations?---In relation to
19 making statements, yes.

20 And to clarify the dying declarations?---It would have been
21 part of the process, yes.

22 I just need to put to you evidence that is before IBAC, from
23 Mr Iddles who had a conversation with Mr Pullin to this
24 effect: that Pullin was approached by you for a second
25 statement. Do you recall that?---I read that in
26 transcripts.

27 Do you recall it happening?---No.

28 Can you think of any other reason why you were with

29 Mr Pullin, apart from what you say is some connection

1 with the gun and the crime scene about a year after the
2 incident?---That's what I think I was there for.

3 Were you at any stage directed, by Mr Sheridan or
4 Mr Collins - you'd been directed by Collins to follow
5 up dying declaration witnesses - at any stage can you
6 point in your diary or anywhere else to a direction
7 from Collins or Sheridan to follow up in relation to
8 the gun or the placement of the gun?---No, that was my
9 area of responsibility, was what happened in the crime
10 scene, and that was a part of the crime scene that I
11 was still trying to find an answer to.

12 You were operating under the direction, you've said,
13 specifically of Collins; that's right, isn't it?---Yes.

14 You make fairly full notes; correct?---Yes.

15 And Mr Collins makes very full notes?---Yes.

16 And, apart from a couple of weeks later going to the crime
17 scene with Mr Ross, is there any note in your diary, or
18 in your day book, concerning following up specifically
19 in relation to the gun?---Sir, I suspect that some of
20 this detail would be contained in the information
21 reports.

22 I didn't ask about that, I asked about your diary or your
23 day book?---I'm sorry, I'm trying to answer the
24 question.

25 Well, if you could answer the question: is there any entry
26 in your diary or your day book specifically about
27 following up about the placement or sand in the
28 gun?---Yes, there is. At one of the meetings out at
29 the forensic science laboratories, I recall reading

1 recently that there is a note about the sand in the
2 barrel and that the firearm wouldn't have been fired
3 after that.

4 And what date was that?---It would have been in probably the
5 first two weeks.

6 Thank you?---Or maybe longer. There were a number of
7 meetings as the scientific evidence discovered more
8 information from the crime scene, but it's there
9 somewhere.

10 COMMISSIONER: Could I just understand then, Mr Buchhorn,
11 what is your theory about the two Pullin
12 statements?---Sir, I think that, at Moorabbin, that
13 Glenn Pullin has submitted, you can call it statement
14 No.1, to Charlie Bezzina who had been sent back there
15 to coordinate the taking of statements from the
16 members, that that has been handed to him. Now, either
17 Charlie has noted that there was a lack of detail, or
18 has asked Glenn Pullin a direct question about, "Did
19 Rod Miller say anything that you remember?" And I
20 think that what has occurred then is that, Mr Pullin
21 has been asked by Mr Bezzina to add that extra
22 information into his statement on the morning so the
23 dates are the same, and then, when that second
24 statement has come back to Mr Bezzina, he's not noticed
25 the time in the jurat and has just signed it and then
26 put it to one side.

27 So, it was done on the same day, within a short - the second
28 one is done a very - - -?---Since I became aware of
29 these two statements I tried to work out how would this

1 happen. I've heard, you know, what Mr Bezzina thinks
2 has happened; that doesn't make a lot of sense. What
3 makes more sense is that it was done at the same time
4 albeit a few minutes apart.

5 So, Mr Pullin's recollection is, he made a statement on the
6 day, later you went to him, or someone involved in the
7 Lorimer Task Force went to him and said, "There's
8 detail missing, please make another statement", and
9 another statement was made, and a long time after the
10 first one, and Bezzina then acknowledged that
11 statement. Now, that's his sworn testimony.

12 Mr Bezzina accepts that that process occurred, that he
13 was asked at a much later date to make a second
14 statement and acknowledge it, which he did. You say
15 they're both wrong?---Yes.

16 Not based on any recollection but on a reconstruction;
17 correct?---Yes.

18 Which would absolve you of any responsibility?---I wouldn't
19 put it in those terms.

20 Sorry?---I said, "I wouldn't put it in those terms."

21 Why wouldn't you?---Sir, I was trying to work out the pieces
22 of this puzzle, and in my mind, that's the most simple
23 explanation; I don't believe that anybody has done this
24 deliberately, I don't think there was any, um,
25 nefarious reasons for doing all of this, and I think it
26 was just in the rush of the morning with a bunch of
27 members who are quite upset and traumatised, that it
28 was just a simple error on the morning.

29 So, looking at that reconstruction, your theory, how would

1 Mr Bezzina know on 16 August, having got a statement
2 from Mr Pullin which he'd signed and which Mr Bezzina
3 acknowledged, how would Mr Bezzina know on that morning
4 that there was a deficiency in the level of detail
5 being provided by Mr Pullin?---I suspect, sir, that
6 there were a number of members back at Moorabbin at
7 that time, and that Mr Bezzina's role would have been
8 there to sit and coordinate the statements, and I
9 suspect that he's been given other statements that have
10 additional detail and either he has asked Pullin
11 directly, "Did Rod say something?", or Pullin has then
12 remembered, "Oh, hang on a minute, Rod said something,
13 I'll just add that to my statement."

14 You've looked at all those statements, that was your job in
15 the end, to look at all those statements; what other
16 statement did Mr Bezzina have access to on the morning
17 of 16 August that would have enabled him to say
18 Mr Pullin's detail was insufficient?---I think
19 Mr Thwaites was there, Helen Poke was there; I don't
20 know what was being discussed, um - - -

21 You know full well, Ms Poke made no statement on that
22 particular morning, and you know from having followed
23 the public hearings that Mr Thwaites was directed not
24 to include in his statement the detail concerning
25 Mr Miller's dying declaration, so they can't be the
26 source of Mr Bezzina's information?---Sir, there may
27 have been discussions or there may have been a briefing
28 either before Mr Bezzina left the crime scene or back
29 at the police station where those sorts of details may

1 have been discussed.

2 Yes, and then the instruction you got from Mr Collins, to go
3 back to Mr Pullin and seek further detail in relation
4 to his statement, what's your theory as to what that
5 relates to?---Graeme Collins didn't direct me to go
6 back to Mr Pullin. His direction was in general, it
7 wasn't to any specific member looking at his notes.

8 What's the diary then a reference to in relation to
9 Mr Pullin's statement?---As I said, sir, I believe that
10 I probably was asking him about the crime scene and his
11 handling of the handgun. I've been to other crime
12 scenes where police have handled things, realised
13 they've done the wrong thing and they shouldn't pick
14 something up, but they don't tell you about it and then
15 that can create issues further down the track.

16 Yes.

17 MR RUSH: Have you read Mr Bezzina's evidence to
18 IBAC?---Yes.

19 You're aware, from your reading of the second statement,
20 that one of the key differences is that the first
21 statement does not refer to multiple offenders?---Yes.

22 And you would have read Mr Bezzina's evidence that he was
23 totally unaware, while he was at Moorabbin, that there
24 were two offenders?---I don't recall reading that bit.

25 Well, you've said you've read it. You say you don't recall
26 it because it doesn't fit in with your theory?---No,
27 I'm not saying that, I'm saying I don't recall reading
28 that.

29 Let me remind you, if you've read the evidence.

1 Mr Bezzina's evidence is that, if he'd have appreciated
2 there were two offenders, he would have taken a
3 completely different course at Moorabbin to the one he
4 did and would have been in touch with the command post
5 that had been set up at Cochranes Road. Did you not
6 read that?---Sir, I don't agree with that, um - - -
7 No, no, you don't agree with what?---The fact that there
8 wasn't information to suggest that there were two
9 offenders.
10 No, no, I'm not asking you about information, I'm telling
11 you what Mr Bezzina's evidence is. Do you
12 understand?---Yes.
13 And Mr Bezzina went with Mr Sheridan to take his statement
14 at Moorabbin - Sherrin?---Sherrin, yes.
15 Thank you - at Moorabbin who referred to one offender. You
16 would have read that statement multiple times?---Yes.
17 And Mr Bezzina's evidence is that throughout his time at
18 Moorabbin he was working on the hypothesis there was
19 one offender; that was his evidence here. Are you
20 doubting his oath or doubting his word?---Yes.
21 You are?---Yes.
22 You're saying that Mr Bezzina must have known there were two
23 offenders?---Yes.
24 And he has lied on his oath to the Commission?
25 COMMISSIONER: Well, I don't think we need to explore that,
26 Mr Rush.
27 MR RUSH: You're making it up as you go along, I suggest,
28 Mr Buchhorn?---Is that a question?
29 Yes?---No.

1 COMMISSIONER: That's quite an extraordinary position. As
2 you acknowledged, this is no more than a theory by you,
3 a reconstruction of what you think might have happened
4 that would explain the two statements. It's not based
5 on any recollection of anything, is it?---No.

6 MR RUSH: And so, when Mr Pullin gives evidence that the
7 second statement was brought to him, retyped for his
8 signature, you'd disagree with it? You didn't do
9 that?---No.

10 You didn't do it in June 1999?---No.

11 Let me go back to what the sworn evidence in IBAC is of what
12 Mr Pullin said to Mr Iddles: that you approached - you
13 approached - Mr Pullin for a second statement. Are you
14 saying you don't recall that or it didn't happen?---I
15 don't think it happened.

16 And are you saying - that's really not an - are you saying
17 you don't recall it or it didn't happen?---I don't
18 recall it.

19 So, in that sense, you leave open the potential that it did
20 happen?---I don't think it did.

21 Because there are other members of the police force who were
22 part of the dying declaration group that you did take a
23 second statement from, aren't there, like
24 Mr Thwaites?---I took a statement from him.

25 And you know that Mr Thwaites had made a statement on
26 16 August?---No, I don't.

27 Well, I'll come to it; let's just stick with Mr Iddles and
28 Mr Pullin. Mr Pullin said to Mr Iddles: "Another
29 police officer had heard Pullin having a conversation

1 with Miller and it was not in Pullin's statement."
2 That would be precisely the circumstances that we've
3 seen in relation to Gardiner's statement and Pullin's
4 first statement, wouldn't it?---Sorry, I'm not sure
5 what you're referring to.

6 The statement of Gardiner as to what Mr Pullin asked
7 Mr Miller and received information from Mr Miller.
8 We'll put it up on the screen and I'll just remind you
9 of it: "A senior constable, the same one that found the
10 gun asked, 'What happened?' Miller replied, 'Two, one
11 on foot.' The senior constable asked, 'Any vehicle?'
12 Miller replied, 'Dark Hyundai'." That was not in
13 Miller's first statement, was it? Sorry, not in
14 Pullin's first statement, was it?---What I've seen,
15 yes.

16 So, when Mr Iddles said that: "Pullin said the reason for
17 the second statement was another police officer had
18 heard Pullin having a conversation with Mr Miller and
19 it was not in Mr Miller's statement" - sorry, "Not in
20 Mr Pullin's statement", that would fit precisely with
21 what is set out in Mr Gardiner's statement?---Yes.

22 And that George: "George told him the other member's a bit
23 of a dickhead and we need to rely on you for the
24 information." Does that not jog your memory?---No, it
25 doesn't make any sense.

26 Why doesn't it make any sense, if you've got to clarify the
27 statements?---Sir, as I said, some time ago now; the
28 information that was being relayed by the members that
29 were with Rod Miller was important but it wasn't

1 pivotal.

2 COMMISSIONER: It wasn't?---Pivotal.

3 "Pivotal". Yes.

4 MR RUSH: As you agreed, I think in one of the first
5 questions, as a very experienced investigator, that is
6 your evidence, that this is not pivotal
7 evidence?---What Rod was able to relay to the members,
8 as I said, was important but it wasn't pivotal to the
9 outcome of the investigation; it was certainly part of
10 it.

11 In the sense that, what Pullin is saying to Iddles, that
12 there's a conversation that you had that wasn't in your
13 statement, it fits in perfectly with the statement of
14 Gardiner that we've seen and the statement of Mr Pullin
15 that we've seen?---Sir, on recollection of reading
16 those transcripts, I think Mr Pullin admits that he was
17 not well and that he named me, because I - - -

18 Just a minute, I'm not speaking about the transcript of
19 Mr Pullin. Please listen to the question. This is the
20 transcript of Mr Iddles and Mr Iddles recounting to the
21 Commission what he was told by Pullin. Do you
22 understand that?---Yes.

23 Right, and what he says is that, Mr Pullin told him that
24 you, George, that the other member is "a bit of a
25 dickhead" and therefore he needed to fix up his
26 statement to fit in with what the other member had
27 heard him speak with Mr Miller about and Mr Miller
28 respond; you understand that?---Yes, I do, and I still
29 say it doesn't make any sense.

1 COMMISSIONER: Doesn't it?---No.
2 The person that is being referred to here is Mr Clarke. You
3 understand the system that was operating at that
4 time?---Yes.
5 That Mr Clarke had the radio available to him - - -
6 MR RUSH: I think Mr Gardiner.
7 COMMISSIONER: No, Mr Clarke, at the time that Mr Miller was
8 making the dying declaration, Mr Clarke had the radio
9 available to him, Mr Pullin was conveying to Mr Clarke
10 things that Mr Miller was saying, and Mr Clarke was
11 broadcasting those. You're familiar with that process,
12 aren't you?---Yes.
13 And you went back to Mr Clarke, didn't you, after he made
14 his first statement and sought further detail from
15 him?---I did take a second statement from Mr Clarke,
16 yes.
17 About that event, the process that Mr Clarke followed, and
18 what Mr Pullin's role was, and more detail?---Um, in
19 relation to the second statement from Mr Clarke, I
20 don't have the document in front of me, but my
21 recollection is that I spoke to him to clarify the
22 voices on the D24 recording.
23 Yes. Why did you do that?---As a matter of completeness, to
24 identify the person who was relaying the description
25 was in fact his voice.
26 So, you looked at Mr Clarke's statement, saw that there was
27 a deficiency, and went back to him?---No, sir, that's
28 not what I'm saying. I'm saying that I had the D24
29 tape and, as a matter of completeness, maybe it was a

1 direction, we need to identify individual voices.
2 So, there's something important that needed to be added by
3 Mr Clarke?---No, sir, it was more to identify the voice
4 and then we could admit that recording into evidence
5 later at court. That's my voice and that's the
6 transcript of the D24 recordings which I went through,
7 and that way we could admit it into evidence.

8 Did you look then, Mr Buchhorn, when you were seeing what
9 was recorded in the radio broadcast, did you look to
10 see to what extent the statements of the first
11 responders who were present when Mr Miller was making
12 these declarations, what they said? Did you look at
13 their statements to see the extent to which what they
14 said accorded with the radio communication?---Probably,
15 yes.

16 And, if there was a deficiency in their statements, would
17 not that have been the very thing that Mr Collins was
18 saying to you, you Buchhorn go back to these people and
19 get the additional detail?---No.

20 MR RUSH: You went back to Mr Clarke, as you've agreed with
21 the Commissioner?---Yes.

22 You went back to Mr Thwaites?---I went to Mr Thwaites, yes.
23 For clarification?---I took a statement from him.

24 And took a further statement from him?---I don't know - - -
25 Nobody took a statement from him?---Took a statement from
26 him.

27 And, in the same course of your requirements in your job, it
28 makes absolute sense that you went back for the very
29 same reason to Mr Pullin?---As I said, I don't recall

1 and I don't agree.

2 But just looking at the basis upon which you've been to
3 other dying declaration witnesses, you would agree,
4 would you not, that that makes absolute common sense;
5 that's what you were doing, going back to these
6 witnesses and going over their statements or
7 re-checking or clarifying issues in their
8 statements?---Sir, as I said, I don't know that I ever
9 saw that first statement.

10 That's not what I'm asking you. What I'm asking you is, it
11 makes absolute sense that, when you write in your notes
12 you're going back to see Mr Pullin for clarification of
13 his statement, it is entirely consistent with what you
14 would have done with other dying declaration
15 witnesses?---No, I don't agree, I don't have a
16 recollection, um, particularly the scenario that
17 Mr Bezzina has put forward - - -

18 No, no, I'm not asking about that, I'm just
19 asking - - -?---But I'm relying on that to see if it'll
20 stir up a memory.

21 If you just answer the question. It is entirely consistent
22 with you having been back to Thwaites, with you having
23 been back to Clarke for clarification of their dying
24 declaration statements, that you did the same with
25 Mr Pullin?---No, sir, I don't agree. With those other
26 two members, I've made a note in my notes, "Statement
27 obtained." I didn't do that with Mr Pullin.

28 COMMISSIONER: When you gave evidence to IBAC back in 2015,
29 Mr Buchhorn, you said, when asked about whether you

1 might have gone back to Mr Pullin to ask for
2 clarification of his statement, you said: "I don't
3 recall it, but it's possible that I did speak to him
4 particularly if we had other statements to put him in
5 the vicinity at the time that those words were
6 mentioned. But, as I said before, if a police member
7 or any other witness didn't recall it, then they
8 weren't pressured to change any statements." That was
9 your recollection and acknowledgment of your state of
10 mind at that time?---Yes.

11 What's changed?---Nothing.

12 Well, it's not your evidence now, is it?---No, now I've got
13 the benefit of having my notes and diaries to try and
14 refresh.

15 Well, what is it in your notes or diary that now enables you
16 to say that it wasn't possible that you went back to
17 Mr Pullin for clarification of his statement? What is
18 it in your notes?---Because I haven't put in there
19 "statement obtained". When I spoke to Mr Thwaites and
20 to Mr Clarke, I've written in my notes "statement
21 obtained". I haven't done that with Mr Pullin, which
22 would suggest to me that I didn't take a statement from
23 him.

24 But you've recorded in your notes that you went back to get
25 clarification of Mr Pullin's statement?---Yes.

26 And then you hypothesise, however, now that that wouldn't
27 have been in relation to that which you said was a
28 possibility back in 2015?---No, because my practice, in
29 going through my notes to refresh my memory, that I

1 would have written "statement obtained" if that's what
2 I had done.

3 MR RUSH: If I just might interrupt this examination about
4 Mr Pullin's statement and have a look at Exhibit 83.

5 COMMISSIONER: I'm sorry, I should ask you: if Mr Pullin had
6 typed the statement, the new statement rather than you
7 and had Mr Bezzina acknowledge it and provided it to
8 you, would you have recorded that in your diary as
9 "statement obtained"?---Sorry, I don't follow.

10 And that's what your counsel was putting to Mr Pullin. Your
11 counsel was putting to Mr Pullin, "Did you retype the
12 statement, get Mr Bezzina at a later point of time to
13 acknowledge it, rather than you, Mr Buchhorn, typed
14 it." That's what your instructions to Mr Trood were a
15 couple of weeks ago?---Yes, that's consistent with what
16 I'm trying to tell you now.

17 So, you've just said to us that you wouldn't have then
18 recorded in your diary - if Mr Pullin retyped the
19 statement, you wouldn't have recorded in your diary
20 "statement taken". So, why does the absence of that in
21 your diary now become important?---Sir, if that's what
22 was put to Mr Pullin, and I don't remember reading that
23 in the transcript, then I'd suggest that Pullin
24 retyping his own statement is consistent with what I
25 think might have happened on the morning, that he's
26 been asked to add that additional detail in.

27 No, no, I'm dealing with your evidence now, that your
28 theory, you stick with your theory because there's
29 nothing in your diary that says "I took a statement

1 from Mr Pullin", and you've agreed that, if you didn't
2 take the statement but Mr Pullin retyped it, you
3 wouldn't have inserted anything in your diary about
4 that?---I don't know.

5 Yes, Mr Rush.

6 MR RUSH: Look at Exhibit 83. This is a note of 16 August,
7 but if you go below, that's your writing, is it
8 not?---Yes.

9 "Original notes from Senior Constable Clarke. Notes checked
10 against statement." So that also was a course that you
11 were undertaking, receiving notes and checking them
12 against the statement. Correct?---Yes.

13 That was part of your job: to go to patrol duty returns, to
14 go to notes made by members and check against
15 statements?---Yes.

16 And, where clarification was needed between notes and
17 statements, you would go to the member for
18 clarification?---Yes.

19 But you say here, for some reason with Pullin, it's not
20 clarification as you've written of his statement in the
21 sense of what he said/I said/dying declaration; that's
22 not the reason for going?---I don't think it was.

23 Just to continue. Mr Iddles said that Pullin told him:
24 "George told him the other member was a dickhead and a
25 second statement was made for him", and he signed that
26 statement not in the presence of Mr Bezzina. You
27 understand that?---Yes.

28 And that he was presented with a retyped statement. That
29 was Mr Pullin's evidence; do you understand

1 that?---Yes.

2 Did you retype Mr Pullin's statement?---I don't think so.

3 What's that mean?---I have no recollection of that.

4 So, it's possible that you did?---Unlikely.

5 Would there be any reason for retyping Mr Pullin's

6 statement?---No.

7 Well, there would be if there was new material to go into

8 it, wouldn't there?---The scenario that has been

9 suggested by Mr Bezzina, to me, doesn't make sense.

10 COMMISSIONER: Could we bring up Mr Pullin's statement,

11 Mr Rush.

12 MR RUSH: Which one? The two together?

13 COMMISSIONER: Yes, the two together, please.

14 MR RUSH: Exhibit 593, Commissioner.

15 COMMISSIONER: You've been through the differences between

16 the two statements, Mr Buchhorn?---What do you want me

17 to read?

18 I'm asking you whether you are already aware of the

19 differences between the two statements?---I mean, I've

20 seen these in the newspaper and - yes.

21 Well, have another look, and you will see on the right all

22 of the matters marked in purple are additions to the

23 first statement?---Yes.

24 Do you maintain your theory that that might have come about

25 by Mr Bezzina having Mr Pullin do a second statement

26 the same morning including all those matters?---Yes.

27 That's a serious answer, is it?---Yes.

28 MR RUSH: I think we've covered it, but if you look at

29 Exhibit 593, and the fourth paragraph which commences,

1 "I ran towards him", if you just read that one to
2 yourself?---Which one are you looking at?
3 On the left-hand side; what we've come to call here,
4 Mr Buchhorn, the first statement?---How much of it did
5 you want me to read?
6 Perhaps, Commissioner, I can have a hard copy given over
7 lunchtime.
8 COMMISSIONER: Yes, certainly.
9 MR RUSH: And, if it's appropriate, to adjourn for lunch.
10 COMMISSIONER: Yes, I see the time.
11 MR TROOD: Just one thing before we break.
12 COMMISSIONER: Yes, Mr Trood.
13 MR TROOD: Insofar as it's been suggested to the witness
14 that his theory, as it's been called - - -
15 COMMISSIONER: I'm sorry?
16 MR TROOD: Insofar as it's been suggested that Mr Buchhorn's
17 theory, as it's been broadly called - - -
18 COMMISSIONER: Well, I think that's all it is, isn't it?
19 MR TROOD: No, I'm trying to summarise, Your Honour.
20 COMMISSIONER: Yes.
21 MR TROOD: Is a recent - - -
22 COMMISSIONER: Invention.
23 MR TROOD: - - - invention somehow after the date of the
24 commencement of this proceedings, I should state, Your
25 Honour, that that's - - -
26 COMMISSIONER: Please don't do that in the witness's
27 presence, Mr Trood.
28 MR TROOD: No. Well, I'll ask him to be excused.
29 COMMISSIONER: Would you like to leave the hearing and we'll

1 resume with you at 2, Mr Buchhorn, and you're welcome
2 to go away, have some lunch with Mr Trood.

3 <(THE WITNESS WITHDREW)

4 COMMISSIONER: Yes, Mr Trood.

5 MR TROOD: The suggestion that that's come to light, for
6 example, subsequent to Mr Pullin's evidence, I can
7 state is not right. That's a suggestion which has been
8 provided - - -

9 COMMISSIONER: You mean to say, you had those
10 instructions - - -

11 MR TROOD: Well, not instructions, but that has certainly
12 been provided before 5 February, which is Mr Pullin's
13 evidence day.

14 COMMISSIONER: But I don't follow. If you say it's not your
15 instructions, what's the relevance of what you're
16 telling me?

17 MR TROOD: Well, as I apprehend what was being suggested,
18 Your Honour, is that, that theory had just been formed
19 after the commencement of these proceedings and after
20 Mr Pullin's evidence. If I'm wrong about that, I'll be
21 corrected.

22 COMMISSIONER: But my point was that it's not reflected by
23 your cross-examination.

24 MR TROOD: Accepting that for the moment, Your Honour, that
25 is not something - the reason why I'm stating this now
26 is, this is the first opportunity.

27 COMMISSIONER: Very good.

28 MR TROOD: And that is that, that suggestion - - -

29 COMMISSIONER: You mean, that theory had been raised before

1 your cross-examination?

2 MR TROOD: Yes.

3 COMMISSIONER: Yes, thank you. Adjourn until 2 o'clock.

4 Luncheon Adjournment: [1.02 pm.]

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1 UPON RESUMING AT 2.04 PM:

2 COMMISSIONER: Come back into the witness box, please,

3 Mr Buchhorn. Yes, Mr Rush.

4 MR RUSH: Can we have Exhibit 593, please, Commissioner.

5 (To witness) You had an opportunity of looking at this
6 over the lunch break, Mr Buchhorn?---I received it a
7 few minutes ago.

8 I'm sorry?---I received it a few minutes ago.

9 Okay, have you read it?---Glanced over it.

10 I just want to draw your attention to a couple of matters.

11 Looking at the second statement, the one on the
12 right-hand side of the screen and the right-hand side
13 of the hard copy in front of you. You see, there are
14 some quite minor changes, for example if you look at
15 the third paragraph in the fourth line, "Alighted the
16 van and placed my ballistic vest on", and the English
17 has been changed from, if you look adjacent: "... the
18 van and placed on my ballistic vest." Someone's
19 obviously preferred a different style of English in
20 relation to that?---Yep.

21 Then, if you go down to the next paragraph: "I ran towards
22 him and arrived at him with another member", and then
23 whoever has done this has put in: "Senior Constable
24 Clarke from Cheltenham Police Station"?---Yes.

25 Nothing to do with conversation, but the sort of incidental
26 stylistic matters that are very similar to what we've
27 seen earlier this morning when you were looking at, for
28 instance, the Ollie statement, aren't they?---Yes.

29 Then, if we go down to the second-last paragraph in the

1 first column: "I left Miller to be comforted by", as
2 opposed to on the opposite side of the page, "I
3 returned to Miller and again comforted him." Again,
4 just a stylistic change?---Yes.

5 And, at the top of the right-hand column of the second
6 statement there are some spelling corrections, from
7 "abulance" in the fourth line to a correction of
8 "ambulance" and "unnecessary" is corrected. Even down
9 to the description of Bezzina as the correct way of
10 doing it, "DSS" in capitals, rather than what is in the
11 original statement of "DS sergeant", all minor
12 stylistic changes?---The "DS sergeant" is probably the
13 proper way of putting it.

14 At any event, minor stylistic changes?---Yes.

15 And then, as you observe, going back to the first column of
16 the second statement, in the fourth paragraph - and
17 we've been to it - there is a he said/I said
18 conversation placed in there where the offenders are
19 referred to in the plural?---Yes.

20 And that does not appear in the first statement?---No.

21 Does that jog your memory? And, if I might also add, it's
22 been retyped, hasn't it?---Yes.

23 It's been retyped in the sense of, if we just look at, for
24 instance, the right-hand side of the second statement,
25 the formatting is straight down the page?---Yes.

26 Whereas, in the first statement, there is no such
27 formatting?---No.

28 So, do you still now say that it's likely this was done on
29 16 August?---That's - that's what my belief is, yes.

1 COMMISSIONER: Sorry. I'm just curious: you say your belief
2 or it's a theory that would explain all this?---That's
3 my theory then.

4 And it's your theory, notwithstanding the sworn testimony of
5 Bezzina and Pullin to the contrary - - -?---Yes.

6 - - - right, the evidence that you were specifically - by
7 Mr Collins, and his notes and some of your own entries,
8 that you were specifically tasked with going back to
9 the first responders to get further detail in relation
10 to the dying declaration?---Yes.

11 Despite all that, you cling to your theory?---Yes.

12 And I think you said before lunch, "And if Mr Bezzina has
13 said" - you don't accept Mr Bezzina's testimony that he
14 came away from the morning of 16 August with the belief
15 that there was only one shooter?---Yes, I don't believe
16 that.

17 Based upon a briefing that Mr Sherrin had given?---I don't
18 know who gave the briefing, but there was the
19 conversation on the D24 tape that talks about two
20 offenders, so there was information available to
21 Mr Bezzina on that morning to suggest that there were
22 two offenders.

23 As you would well know, Mr Buchhorn, the transcript of the
24 radio communications wasn't available first thing in
25 the morning on 16 August - - -?---Not the transcript,
26 but I imagine that would have been discussed.

27 And indeed - I'm sorry?---But I imagine there would have
28 been some discussion.

29 But, as Mr Bezzina has said, as Mr Collins has said, the

1 content of those radio broadcasts was not known until
2 sometime later?---I don't know whether Mr Collins said
3 that.

4 No, Mr Collins' evidence is that he relied upon the briefing
5 that he got from Mr Bezzina as to Mr Bezzina's
6 knowledge, and it was Mr Collins' position as at the
7 early hours of the morning of 16 August, that there was
8 only one shooter?---I didn't know that.

9 You didn't know that?---No.

10 If you look at his notes which he produced taken at the
11 time, you would see that, when he got a briefing from
12 Mr Bezzina, he noted that Mr Pullin had made a
13 statement. So, at the time he got the briefing from
14 Mr Bezzina, Bezzina was communicating to him that
15 Pullin had made a statement?---I don't have those
16 notes.

17 No, but I'm providing you with information to see whether or
18 not you're prepared to revisit the strength of your
19 theory; do you follow?---Yes.

20 So, you would expect, if Mr Bezzina had got, not one, but
21 two statements from Mr Pullin, and the second one
22 having all of this additional information in it which
23 showed not one shooter but two, you would expect
24 Mr Bezzina would have communicated that to
25 Mr Collins?---I would expect so, yeah.

26 The first statement which Mr Pullin made was in the
27 possession of a former senior officer of Victoria
28 Police who was on duty at the St Kilda Road complex in
29 the early hours of the morning of 16 August, and he was

1 on duty, he had state-wide duties, he was briefed about
2 the murders of Silk and Miller, and he was handed a
3 number of operational documents at 9.20 pm on the day
4 after the murders; he was handed a number of
5 operational documents which included a statement from
6 Constable Sherrin, a statement from Constable Pullin
7 and a statement from Constable Pratt, and it's those
8 statements that found their way to IBAC, and those
9 statements include the one from Pullin which is the
10 first statement, and it's only by good fortune that,
11 because he wasn't part of the Lorimer Task Force, he
12 kept possession of that statement of Mr Pullin. Were
13 it not for that, we would never have had hard evidence
14 that Mr Pullin had made that statement. That doesn't
15 rather suggest, does it, that there was a second
16 statement made the same night different to the first?
17 You would expect, if there had have been, he would have
18 been given the second statement, or at least both of
19 them?---Yes.

20 What does that say about your theory?---Sir, I - I can't
21 tell you what I don't know.

22 Mr Rush, there's a document, isn't there, which sets out the
23 content of the first statement?

24 MR RUSH: Yes. I'd just like you to keep in mind the
25 differences between the first and second statement that
26 we've identified. So, the first one on the left-hand
27 side, the conversation referring to Mr Silk: "Continued
28 to calm. Stated he couldn't breathe. Assisted him.
29 Positioned where he felt comfortable. Other members

1 were arriving. I opened the chamber and checked the
2 gun." Second statement: "I said to him, 'Did you hit
3 him?' He replied, 'I don't think so.' I asked, 'Were
4 they in the car or on foot?' And he replied, 'They
5 were on foot.' I asked him, 'How long ago did it
6 happen?' He replied, 'A couple of minutes.'" So
7 they're the differences in the statements. I want to
8 take you to a document which is Exhibit 14. Exhibit 14
9 is a chronology created by Operation Lorimer, by the
10 persons within Operation Lorimer, and it's dated - the
11 metadata date is 28 October 1998. If we go to
12 Exhibit 322, at the top of the page, see it has, fifth
13 line, "CMB 311 Pullin and Gerardi. Patrolling chased
14 in shopping centre. Hears call of shots fired 'Member
15 down'. Attends vicinity of shooting. Search the area.
16 Locates Miller. Driveway 477 Warrigal Road. Miller
17 conscious, said 'Silky's dead, Silky's dead'. Pullin
18 opens firearm. Pullin asks Miller, 'Did you hit him?'
19 Miller says, 'I don't think so.' Pullin and Senior
20 Constable Hough and another unknown member search
21 carpark of Silky Emperor." That's the extent of the
22 chronology which effectively repeats the statement that
23 Mr Pullin has made concerning his conversation that is
24 in the first statement?---Are you asking me a question?

25 I am.

26 COMMISSIONER: Mr Buchhorn, why do you do that? You know
27 full well what's happening here. Counsel's trying to
28 give you the - - -?---Sir, I don't know what this
29 document is.

1 Mr Buchhorn, counsel has given you the opportunity to look
2 at objective evidence that exists at a particular point
3 of time and is inviting you to reflect upon what effect
4 that has on your theory. Do you not understand that
5 that's what's happening?---No.

6 Away you go.

7 MR RUSH: This is a chronology which I've indicated to you
8 was created within Operation Lorimer of the information
9 that was then available that sets out what was
10 available from Pullin and Gerardi. What I'm putting to
11 you is that, what is in that paragraph is entirely
12 consistent with what is in the original statement, the
13 first statement of Mr Pullin?---It's consistent, yes.

14 It's consistent, isn't it? And, if there was the second
15 statement detailing the differences, then one would
16 expect it to be in the chronology of information that
17 was created within Operation Lorimer?---Yes.

18 So, the fact that it isn't would suggest that we've got a
19 statement that has been created, the second statement,
20 well after this date?---That's one possibility. The
21 other possibility is that this is a bit of a summary.

22 That what?---That this is a bit of a summary.

23 This isn't, a what?---That this is a summary.

24 It is a summary, correct, and it's a summary that has
25 effectively what is in the first statement but not in
26 any way the important material that is in the second
27 statement, so it wouldn't be a summary, would
28 it?---Well, no, I still think - I would still say that
29 it's a summary.

1 A summary that doesn't include the information which you
2 have identified before lunch as being critical as to
3 the number of offenders?---No, I didn't say it was
4 critical, I said it was important.

5 Okay. Tell me, did you hear the intergraph broadcast on
6 16 August?---Ah, it would have been some days
7 afterwards.

8 MR TROOD: Just a question, perhaps for my information. The
9 screen I've got says, "Exhibit 14, chronology,
10 Operation Lorimer, chronology of evidence 15 August to
11 16 August 1998."

12 MR RUSH: That's not what I said. It's a chronology that
13 the metadata date tells us is created on 28 October.

14 MR TROOD: Just for my own assistance then, is this document
15 said to have come into existence on that metadata date,
16 or does that represent something else? It's not clear,
17 because the heading of the document - I can't quite
18 follow what the heading of the document is purporting
19 to say relative to what counsel was saying.

20 COMMISSIONER: Mr Rush, can you assist Mr Trood?

21 MR RUSH: No later than 28 October.

22 MR TROOD: I'm sorry, so that, the last time the document's
23 been changed in some way is 28 October? Is that what's
24 been suggested?

25 MR RUSH: Yes.

26 COMMISSIONER: That seems to be the case, yes, Mr Trood.

27 MR RUSH: If there was a statement of Mr Pullin that
28 indicated the information that is in the second
29 statement concerning the number of offenders, that

1 would be put in the chronology, wouldn't it?---It would
2 help, yes.

3 COMMISSIONER: You'd think it would?---Yes.

4 MR RUSH: If one was creating a chronology - I withdraw
5 that, Commissioner. Did you retype that
6 statement?---No.

7 The second statement. Have you throughout Operation
8 Lorimer, at any stage, retyped a witness's
9 statement?---Not to my knowledge, no.

10 Is that, you say, not something you would do?---I wouldn't
11 have thought so, no.

12 COMMISSIONER: Could I come back to Mr Clarke's statement.

13 I have raised with you before the adjournment that you
14 went back to Mr Clarke in what I suggested was pursuit
15 of your direction that you go back to various first
16 responders and get further detail of their statements.
17 You then again proffered as an explanation, you only
18 went back to Clarke to get some detail to prove the D24
19 communication?---That's my recollection, yes.

20 Have you looked at Mr Clarke's second statement?---I don't
21 have access to that material.

22 Do we have access to it, Mr Rush?

23 MR RUSH: Yes, we do, Commissioner. At Exhibits 240-245.
24 Exhibit 241, p.3200.

25 COMMISSIONER: Do we have a hard copy of that?

26 MR RUSH: Page 3202.

27 COMMISSIONER: Perhaps if you could scan down the document
28 to - is that the second statement?

29 MR RUSH: That's the first statement.

1 COMMISSIONER: Could we go to the second one, please.

2 MR RUSH: Exhibit 241. Exhibit 240, I think.

3 COMMISSIONER: Just take the witness slowly through that.

4 MR RUSH: In the third paragraph there you refer,

5 Mr Buchhorn, to - or what is referred to in the

6 statement: "Since the incident I have listened to the

7 tape recording of transmissions made on the police

8 radio. I have also been shown a transcript of this

9 tape recording. The transcript makes reference to the

10 police call sign Cheltenham 206. The transmissions are

11 made by me. The information I have given on police

12 radio is information I was told by Senior Constable

13 Miller." And then, perhaps if you go down to the next

14 paragraph: "I asked Senior Constable Miller questions

15 relating to what had occurred. Senior Constable Miller

16 was having difficulties in breathing, was only able to

17 speak in short sentences. I asked him his name. After

18 a while he was saying, 'Miller'. Due to the

19 difficulties he was having breathing it's hard to

20 understand. I then asked him how many offenders there

21 were, he told me, 'Two'. I then asked him if he knew

22 where they had gone, said he didn't know. I asked if

23 the offenders were in a car or on foot and he said, 'On

24 foot.' And I think, he said, I think Senior Constable

25 Miller also used the word, 'Chased'." That's a

26 statement, going over to the next page, 3199, that was

27 taken by you on 5 May 2000. If I can ask you this: you

28 at that stage had the intergraph transcript?---Yes.

29 COMMISSIONER: So, you did take this statement, contrary to

1 your evidence of a moment ago that you don't believe
2 you took statements yourself?---No, I didn't say that.
3 What did you say?---I didn't say that I didn't take
4 statements.
5 What did you say? What was your evidence then,
6 Mr Buchhorn?---I've taken a number of statements and,
7 in relation to Colin Clarke, my recollection was that I
8 took this second statement to verify that it was his
9 voice on the D24.
10 You did that in the second paragraph. The balance of the
11 statement is all directed to the content of the
12 communications between Mr Miller, Mr Clarke and those
13 members who were talking to Mr Miller, isn't it?---Yes.
14 And Mr Pullin's evidence before the Commission is, it's that
15 very detail that you obtained from Mr Clarke that led
16 you to go to Mr Pullin and say, "I need more detail
17 from you because this other member has provided this
18 additional detail." What do you say to that?---Sir,
19 I'm not, um, sure about the timing of all of that. I
20 mean, this was in May 2000. I don't know why I've got
21 all that extra detail in Colin Clarke's statement, I
22 don't have the first statement, so I don't know whether
23 that was in his first statement or this was information
24 that he told me in May 2000.
25 What do you think, Mr Buchhorn? Do you think you would have
26 put that in the second statement if it was already in
27 his first one?---I don't know, I - as I said, I don't
28 - I'm at a disadvantage here because I can't see what
29 the first statement contained compared to this.

1 In the light of what you see here in Mr Clarke's second
2 statement, do you not see that it makes much more
3 likely the explanation Mr Pullin has provided that you,
4 having spoken to Mr Clarke and got this further detail,
5 you saw the need to go back to other first responders
6 and get further information?---I've certainly done that
7 with Mr Clarke.

8 Assuming you didn't already have that detailed information
9 from the other first responders, is there any doubt in
10 your mind that that information would have led you to
11 go back to the other first responders?---Sir, I would
12 have thought, if I had done that with the other
13 members, particularly given the passage of time, the
14 format that I've used here about reference to a
15 previous statement, is what I would have done.

16 I'm not sure I'm clear about whether you're answering my
17 question. Do you doubt that, had you not already got
18 that level of detail from the first responders, you
19 would have realised the need to go back to them to also
20 find out what they say about that level of
21 detail?---Yes, I would have, but I would have put it as
22 a supplementary statement.

23 Ah. So, is the fact that there's no supplementary
24 statement, your reason for clinging to the theory that
25 you didn't go back to Mr Pullin?---Sir, I'm not
26 clinging to a theory. I've given you, you know, the
27 best recollections that I have based on the material
28 that I have at my disposal.

29 Let's be clear about that. You don't have any recollection,

1 you've made that very clear, Mr Buchhorn?---Yes.
2 It's only a theory to try and explain two different
3 statements of Mr Pullin?---Yes.
4 And, now that you've seen Mr Clarke's statement which
5 contains this additional information, do you not accept
6 the likelihood that you would have gone back to other
7 first responders who dealt with Mr Miller and asked
8 them about this further detail?

9 COMMISSIONER: Yes, Mr Trood?

10 MR TROOD: The witness has requested to see the first
11 statement so he can make the comparison. In my
12 submission, before he can give a proper answer he
13 really needs to see that document.

14 COMMISSIONER: I don't accept that, Mr Trood.

15 MR TROOD: If Your Honour pleases.

16 COMMISSIONER: Do you want to see Mr Clarke's first
17 statement to satisfy yourself that what's here is not
18 in his first statement?---Yes.

19 Yes. Can we make that available?

20 MR RUSH: Yes, Commissioner. The first statement is
21 Exhibit 241. I can provide a copy. It's not
22 there?---No.

23 Are you aware of the reason why it's not there?---No.

24 Because he was instructed by Mr Kelly from Homicide Squad
25 not to put it in the statement?---I've read that in the
26 transcripts.

27 Are you aware of that sort of practice?---No.

28 Never encountered that? I'll come back to that,
29 Commissioner.

1 COMMISSIONER: But, accepting that none of that detail is
2 there, and Mr Clarke has noted at the beginning of this
3 second statement that he's being spoken to because the
4 Homicide Squad wants to clarify a number of points and
5 the conversation, the detail of it, is one of those
6 points?---Yes.

7 And it's you taking the statement, so you're the member of
8 the Homicide Squad who made the request?---I would have
9 spoken to Mr Clarke, yes.

10 What do you say now about your theory?---Sir, I can only
11 tell you what I know, and I don't know what I went and
12 spoke to Mr Pullin about.

13 No, what you can do is what every other witness in this
14 public hearing has done, is, notwithstanding that they
15 may not have a recollection, when they see the
16 objective evidence they make the appropriate
17 concessions or acknowledgments of what must have been.
18 Why are you not doing that?---Sir, if I took a second
19 statement from Mr Pullin, it would not have been in
20 that format.

21 MR RUSH: So we can deal with it, you have there you were
22 the person responsible for going and clarifying matters
23 with Mr Clarke?---Yes.

24 You also were responsible for going and seeing
25 Mr Thwaites?---Yes.

26 You were also responsible for going, or obtaining a
27 statement from Ms Poke?---Yes.

28 All of them are dying declaration witnesses?---Yes.

29 And, that would suggest, your responsibility for the

1 clarification of dying declaration witnesses?---Yes.
2 And that would include Mr Pullin?---Yes.
3 And each one of those witnesses, Poke, Thwaites, Clarke,
4 have made second statements?---Um, I think Mr Clarke's
5 the only one that's made a second statement.
6 We'll come to that. Each of the others have made second
7 statements?---I think Mr Thwaites has only made the
8 one.
9 Put aside Mr Thwaites - - -
10 COMMISSIONER: What was that, Mr Buchhorn?---I think
11 Mr Thwaites only made one statement, the one that I
12 took.
13 MR RUSH: I'm going to come to that.
14 COMMISSIONER: Is that a memory or, again, a theory?---No,
15 it's, um, based on my recollection of the witness list,
16 that it only has one statement for him.
17 MR RUSH: So you've got a recollection of only one statement
18 from Mr Thwaites?
19 COMMISSIONER: No, no, he said it's based on the witness
20 list, Mr Rush.
21 MR RUSH: Based on what?
22 COMMISSIONER: On the witness list.
23 MR RUSH: On the witness list. There's only one
24 statement?---I believe that's - - -
25 And there's only one statement from Mr Pullin on the witness
26 list?---Yes.
27 And there was only one statement from Ms Poke on the witness
28 list initially?---Yes.
29 But that was changed, wasn't it?---I don't know.

1 Because Ms Poke made a subsequent statement. She made an
2 addition to her statement?---Are you referring to the
3 statement that I've acknowledged?

4 Yes?---Sir, when I met with Helen Poke, my recollection is
5 that I contacted her because I found that the statement
6 that we had on the brief of evidence was unsigned, so
7 that document, I got her to come in anticipating - - -
8 You needn't worry, I'm going to take you to Ms Poke in some
9 detail.

10 COMMISSIONER: Let Mr Buchhorn finish that answer.

11 MR RUSH: I'm sorry, Commissioner.

12 WITNESS: That document was unsigned, so that meant we
13 didn't have a signed statement from Helen Poke. My
14 recollection is that I contacted her, she came into the
15 Lorimer Task Force office - I remember that clearly -
16 and that she had her notebook with her and that that
17 notebook had extra description, I think it was
18 "6 foot 1", there was a second point, and that she had
19 brought in a number of copies of her statement but was
20 lacking that two points, so from recollection I think
21 she had a floppy disk with her soft copy of her
22 statement on it. I have then used the soft copy
23 basically as a draft, and added in the additional
24 description, and then when I've tried to print it so we
25 could sign it, the jurat wouldn't allow me to edit it
26 and that had Nigel Atkins' name on it. So, rather than
27 inconvenience Helen any longer, printed it, I've
28 crossed that out, got her to sign and then acknowledged
29 it and then that became the signed statement for the

1 original part of the brief.

2 And you've got a clear recollection of that, have you?---No,

3 I'm just trying to piece the puzzle together.

4 Sorry - - -?---I remember her coming into the Lorimer Task

5 Force office.

6 But beyond that, that account is, what, a reconstruction of

7 what you think might have happened?---Well, not

8 entirely, sir, um, looking through the transcripts,

9 particularly of Kim Voulanas and the memo, the

10 conversations that I've had with her, I guess was

11 another piece of that puzzle that sort of reconfirmed

12 in my mind that that's what happened with Helen Poke.

13 But you understand what the term "reconstruction" is?---Yes.

14 We distinguish "reconstruction" from "a memory"?---Yes.

15 So, you remember her coming in, but what actually occurred

16 when she came in is a reconstruction in which you've

17 drawn on various documents to reach that conclusion; is

18 that correct?---Well, now I can draw on the documents;

19 when I was first asked that question in the 2015

20 hearing, I didn't have those documents, and I was

21 relying entirely on what my memory was of that

22 encounter.

23 Yes.

24 MR RUSH: One of the early calls made for information that

25 you were aware of at Operation Lorimer was for patrol

26 duty returns?---That would be normal, yes.

27 In Operation Lorimer, they were provided and gone through by

28 people, including you?---Yes.

29 For the purposes of checking the patrol duty returns against

1 statements that had been provided by members?---Yes.
2 And by way of example, if we look at Exhibit 103, we have
3 here the patrol duty return of Mr Thwaites and Ms Poke.
4 I'm going to ask you to go to p.2284. Just down the
5 page a bit further, there is a description there,
6 starts with "assisting second member". Then, if you go
7 down to, "Two male offenders. One on foot. Possibly
8 second. Possibly Hyundai. Mazda 323. No further
9 detail. One of the offenders said to be 6'1, 6'2.
10 Long dark hair. Three to four day growth. Blue
11 checked shirt. Blue jeans. No further details." So,
12 from the perspective of Operation Lorimer, that, no
13 doubt you would agree, was important detail?---Yes.

14 And so, the task that you would have in going through the
15 statements would be to compare what is in the patrol
16 duty return with what is provided in the
17 statement?---Yes.

18 The sworn evidence of Mr Thwaites is that he made a
19 statement on 16 August and was instructed by Detective
20 Senior Constable Kelly not to put detail of offenders
21 in his statement. You would have read that in the
22 transcript?---Yes.

23 He was upset so much, at p.2286 he wrote in his patrol duty
24 return: "Instructed by Grant Kelly SD25603 Homicide
25 Squad re statements", and his evidence is that he put
26 that in to identify the person that had told him not to
27 put the detail in his statement. Understand
28 that?---Yes.

29 And there'd be no other reason or justification for putting

1 it in that you would think, or it's not the normal
2 thing to go in a patrol duty return, is it?---Um, no.
3 You understand that Mr Kelly has given evidence to IBAC that
4 it was his practice, he says taught to him at the
5 Academy, not to put descriptions of offenders in first
6 statements?---Yes.

7 Are you aware of that practice?---I'm aware of some members
8 indulging in that practice.

9 So, the statement, on the basis that you accept Mr Thwaites
10 for example has made a statement, and that information,
11 descriptions and details of offenders has been
12 deliberately excluded, it would mean there would be an
13 absolute necessity to go to him for a further
14 statement?---Yes.

15 And you did?---I got a statement from him, I don't know
16 what's in it now.

17 COMMISSIONER: I'm sorry, I didn't quite catch that?---I've
18 got a statement from him, but I don't know what's in it
19 now.

20 MR RUSH: If we could go to Exhibit 197, p.2993. What we're
21 looking at, as we looked at this morning, is the
22 spreadsheet that was in the folder of Ms Eden with the
23 metadata date indicating last modified on 9 October
24 1998. You see, at p.2993, you have Poke and Thwaites
25 and it indicates that Mr Thwaites had provided a
26 statement?---Yes.

27 COMMISSIONER: And we have, Mr Buchhorn, the sworn evidence
28 of Mr Thwaites, Mr Kelly and Ms Poke that he made a
29 statement on 16 August.

1 MR RUSH: And again, just to make it clear, you would not
2 expect this to identify a statement within the
3 possession of Operation Lorimer of Mr Thwaites unless
4 it was there to be looked at?---Yes.
5 And what this is, is entirely consistent with his evidence
6 that he completed a statement on 16 August?---Yes.
7 If we could have a look at Exhibit 378. You see, this is a
8 statement from Mr Thwaites. If we go to p.3720, it's a
9 statement taken by you and acknowledged at 1.29 pm on
10 23 October 1998?---Yes.
11 When it says "taken" - "acknowledgment taken and signature
12 witnessed", does that mean you were actually
13 responsible for the typing of the statement?---Ah, no.
14 What's it mean?---That I'm witnessing his signature to the
15 acknowledgment.
16 So, who would type this statement?---I'm not sure.
17 COMMISSIONER: Could have been you, could have been
18 Mr Thwaites?---Possibly.
19 MR RUSH: If we go to p.3717, Mr Thwaites indicates his
20 name, senior constable, then goes into his duties
21 commencing on 15 August 1998; correct?---Yes.
22 And there is nothing there to reference this being a second
23 or a supplementary statement; that's right, isn't
24 it?---That's right.
25 So you, I suggest, Mr Buchhorn, at this stage, October 1998,
26 with the instructions of Mr Collins, firstly would be
27 absolutely aware that Mr Thwaites made a statement on
28 16 August?---Yes.
29 And that this statement is a second statement?---Um, are we

1 able to scroll down further?

2 Sure?---Am I able to see it in hard copy?

3 COMMISSIONER: Yes, certainly.

4 WITNESS: Yes.

5 MR RUSH: And is there anything particular that you've

6 observed from the statement?---It doesn't have the

7 description in it.

8 What would have happened to the first statement?---Sir, I

9 think this is probably me typing this one up, um, just

10 the - - -

11 Why do you think that?---Just the way that it's set out,

12 with the name in capitals at the top. So, I think I've

13 compiled this statement for him to then take to him and

14 get him to sign it.

15 And my question was, what would have happened to the first

16 one?---Probably gave it to Mr Thwaites.

17 Why?---Sir, as I mentioned earlier when you showed me the

18 memos, and I understand now that it's not best

19 practice, but with members' statements, if they had

20 supplied a statement which had extra details required,

21 I would bring that to their attention, I think hand

22 them back the statement that they've submitted, and ask

23 them to re-submit, basically brief checking, checking

24 the statements and the contents.

25 You will appreciate that members making statements - not

26 necessarily Mr Thwaites - but members making statements

27 as to conversations and to giving descriptions,

28 statements that are not made contemporaneously are the

29 subject of great criticism, potentially criticism when

1 they go to court, particularly where identity and
2 descriptions are an issue?---Yes.

3 It would also be important, would it not, if someone is
4 changing their statement to include identity material,
5 that they would be subject to the same sort of
6 criticism if the first statement was still
7 available?---Yes, I am now.

8 COMMISSIONER: Just on that score, could I just read you
9 something that Mr Collins said yesterday about the
10 importance of transparency in the investigation process
11 and see whether you agree. He said that ultimately the
12 obligation to be transparent in the investigation
13 rested with him as the officer in charge, but then he
14 went on when pressed as to, well, who was tasked with
15 the role of collecting statements and keeping a record
16 of them. He said you were tasked with that job. And
17 he explained that, if the sequence of obtaining
18 information in the investigative process is not made
19 transparent, that could work an injustice, that it's
20 necessary that there be full disclosure of every
21 statement that's taken. I think you indicated this
22 morning you weren't entirely of that view at the time;
23 you did not think you had an obligation to disclose the
24 first statement where a second one was brought into
25 existence?---Sir, um, no. Obviously, now that I know
26 what I know, then yes, this practice of mine of giving
27 members back their statements with a memo, "you need to
28 address these points", now appears to be an improper
29 procedure. At the time I thought it was okay.

1 But in the case - - - ?---But it wasn't done for any
2 nefarious reasons.

3 I understand that's your position, Mr Buchhorn, but in the
4 case of Mr Thwaites it wasn't really delivering a memo
5 with a couple of incidental things that needed to be
6 corrected; you sat down and took a fulsome second
7 statement which contained some important facts?---Yeah.
8 But the same reasoning still applied on your part, that you
9 did not think, once the second statement was brought
10 into existence, there needed to be disclosure of the
11 first?---Um, not at the time.

12 And might we not conclude that was your thinking in relation
13 to Mr Pullin?---Sir, looking at this, I can see that
14 that's something that I could have done as far as the
15 way it's set out, but looking at that, I just can't see
16 myself doing that.

17 You're talking about the typing of it?---Just the way that
18 it's - the whole thing, it's just not what I
19 would - - -

20 You're talking about the content?---Sorry?

21 You're talking about the content of it?---The content, and
22 also the signing and the dates. You know, with
23 Mr Thwaites' statement, I put the date that I met with
24 him and he signed the statement; I haven't tried to
25 change dates, but I should have, as you said, made it a
26 supplementary.

27 Mr Buchhorn, the Pullin statement doesn't purport to be
28 taken by you or acknowledged by you, it purports to be
29 a statement made by Mr Pullin and acknowledged by

1 Mr Bezzina. All I'm asking at the moment is, may we
2 not conclude that, for the same reason as occurred in
3 relation to these other statements, once a second
4 statement came into your possession, you saw no need to
5 keep the first one?---Possibly, yes.

6 MR RUSH: Just to follow that up, Mr Buchhorn, when you went
7 to see Mr Pullin on 18 June 1999 at the Fraud Squad,
8 it's entirely possible that you took the first
9 statement and gave it to him, is it?--No, sir, I don't
10 agree with that, because the problem I had with that is
11 the date. I think with the statements that I've taken,
12 demonstrate that I wasn't trying to hide the fact of
13 the date that the statement was taken and the date that
14 the statement was signed; whereas this second Pullin
15 statement doesn't have that degree of transparency.

16 COMMISSIONER: In terms of the administration of justice, is
17 there a difference between a second statement which is
18 backdated to the date of the original one, so that it
19 appears to be the first statement that was taken, and
20 the first, the original's destroyed; or, as in
21 Mr Thwaites' case, a second statement taken at a later
22 time and the first one no longer kept? In either case,
23 the same result, isn't it - - -?---Yes.

24 - - - that there's no transparency and neither prosecution
25 or defence are able to see what has been added in the
26 second document?---Yes.

27 MR RUSH: Mr Bezzina's signature, just to clarify, appears
28 on both those Pullin statements that you've seen this
29 morning?---Yes.

1 And Mr Bezzina has - you read his evidence - has indicated
2 that it was common at Homicide that, where he knew he'd
3 taken the witness statement, that he had no reason to
4 go through it with a fine tooth comb or question the
5 detective who put it in front of him. Are you aware of
6 that practice in Homicide?---No.

7 Accepting that Mr Bezzina did not sign a second statement on
8 16 August and, as you say, that statement has been
9 retyped, reformatted in effect, can you provide any
10 explanation, if you're not the person, who else had
11 responsibility for going to dying declaration witnesses
12 and obtaining further statements?---I don't know.

13 Was there any other person, any other of the detectives in
14 your squad, that had that specific responsibility
15 delegated to them?---No.

16 Then again, does that not suggest to you that you are the
17 person that is responsible for the second Pullin
18 statement?---No.

19 If there is no other detective delegated with that
20 responsibility, and you are the only one, does it not -
21 how else could it have happened?---I don't know.

22 COMMISSIONER: I think we need to clarify. When you say
23 "responsible", you're meaning, Mr Rush, is there anyone
24 else who would have directed Mr Pullin's attention to
25 the need to provide a second statement with more
26 detail. That's what Mr Rush is really asking you. You
27 don't suggest someone else was doing that?---I don't
28 know.

29 You know that was, you had that task?---I was tasked with

1 that, yes.

2 But what you're saying is, you're not sure if someone else
3 may not have also been asked to do that?---Well, it's
4 possible because, you know, we were working in a secure
5 office.

6 MR RUSH: You gave some detail earlier to the Commissioner
7 and to the Commission about Ms Poke's statement?---Yes.

8 Is it the position that you shredded her original
9 statement?---Sir, um, I'm not 100 per cent sure any
10 more. Given what's come out in this hearing, and
11 seeing the note from Kim Voulanas, I'm not sure whether
12 that in fact occurred.

13 Because it wasn't until 21 September - beg your pardon, it
14 wasn't until September 2001, just weeks before the
15 committal, that you appreciated you did not have a
16 signed statement from Ms Poke?---Yes.

17 You informed IBAC in 2015, Exhibit 405, p.4015, at the
18 bottom of the page, line 35. You were being asked
19 questions about Ms Poke's statement and you answered
20 this: "The file name and stuff. Somehow we got a soft
21 copy. Whether she had it emailed to us and then we
22 worked off that in the office and then, rather than
23 having copies of the statement that we had together
24 changed, I've decided to shred the hard copy statement
25 that she had brought in, signed an amended statement
26 and then somehow I've managed to shred the original of
27 that, and then on the day of court got her to sign and
28 then I've witnessed her acknowledgment." That's what
29 you informed IBAC as to the history in relation to

1 Ms Poke?---Yes.
2 So, just looking at that: you have said, and there's nothing
3 about not having a recollection, you've said: "We got a
4 soft copy, whether she'd emailed it to us, we worked
5 off that in the office." Then you say: "Rather than
6 having copies of the statement that we had together
7 changed, I've decided to shred the hard copy statement
8 that she brought in." Is that a practice that you
9 would normally adopt?---Sir, as I said before, what I
10 think occurred is that she brought in a floppy disk.
11 When I was questioned at the hearing back in 2015, I
12 didn't know that, it's something that I've read in the
13 transcript, that there was mention of a floppy disk.
14 I, you know, suppose that we had an email system - I'm
15 not even sure we did - to have it emailed in; anyway,
16 we had a soft copy somehow. My recollection is, and as
17 you say it's a reconstruction, that she brought in hard
18 copies of her statement. I thought - my recollection
19 again is that I was just getting her to come in and
20 sign a statement, not knowing that she had extra
21 information to include in that statement, so when I say
22 I shredded the statement she brought in, my memory is
23 that I shredded the extra copies of the unsigned
24 document that we had.

25 COMMISSIONER: Just to clarify something with you,
26 Mr Buchhorn. You've read your evidence from 2015?---I
27 read through it, yes.

28 And you will remember then that, when you were asked
29 questions about your practice where a second statement

1 was made that would amend the first, you said that your
2 practice was to take a supplementary statement. What
3 you've indicated today candidly is that your practice
4 at this time was, if you took a second statement, you
5 simply replaced the first one with the second
6 one?---That's right.

7 So, I take it, you concede that your evidence at IBAC was
8 incorrect in that regard?---Yes, sir, but I didn't have
9 the benefit of my notes and diaries plus all the
10 material that's been heard at this hearing, which has
11 provided me with some other pieces to the puzzle.

12 MR RUSH: On the basis of what you told IBAC, the hard copy
13 statement, her initial statement that she brought in
14 you have said was shredded, and then somehow you've
15 managed to shred the further statement that she
16 made?---That's what I thought happened.

17 So, that would suggest that shredding was not uncommon at
18 Lorimer?---Ah, well, shredding of those sorts of
19 documents, no.

20 Shredding of hard copy statements?---Well, of duplicate
21 statements that she brought in, um, no, that wouldn't
22 be unusual.

23 COMMISSIONER: But your answer that Mr Rush has just taken
24 you to, at line 35 and onwards, is that you in fact
25 shredded two original copies: the first one she brought
26 in, and then when she made a new statement with
27 additional details, that also was shredded
28 accidentally?---Sir, I don't think she brought in a
29 signed statement, I think she brought in unsigned

1 statements, and then, as I said, I was able to - and
2 again, this is a reconstruction - edit the main body of
3 the statement, but because it was a formatted type of
4 statement, it had a jurat that auto-populated all those
5 sorts of things, that - I wasn't able to edit that to
6 remove Nigel Atkins' name and put my name in. So,
7 instead of inconveniencing her any longer, I printed
8 it, crossed that out, and then put my details in. Now,
9 I'm not sure now whether I in fact did shred that
10 original statement. If there is a statement that has
11 that alteration on it, then that would be the original
12 statement that we signed together. So, I might be
13 wrong in saying I shredded an original statement.

14 MR RUSH: You contacted Ms Poke in late 1999 and requested
15 she make a statement?---Possibly, yes.

16 What you referred to - well, I suggest you did make a
17 statement and that was dated April 2000. Perhaps if we
18 have a look at Exhibit 336. This is a copy of that
19 statement prepared for the committal brief. If we go
20 to p.3558, at the bottom of the page we have what would
21 be standard for a committal document, the signature
22 blocks and the typed statement, that that's
23 acknowledged on 11 April 2000?---Yes.

24 And at p.3557, in the document prepared for the committal
25 proceeding, in the second paragraph is: "I remember
26 Miller saying they're on foot, two of them, one on
27 foot, check shirt. Dark Hyundai." That was
28 subsequently clarified by you?---Yes.

29 With the insertion of "height" and "dark hair"?---Yes.

1 Do you remember that?---Well, I remember there were two
2 points that needed to be included in her statement.
3 Clarified, I suggest, if we have a look at Exhibit 85.
4 COMMISSIONER: How are you feeling, Mr Buchhorn? Are you
5 all right?---Tired.
6 We might have a break in five minutes and you can gather
7 your thoughts.
8 MR RUSH: At p.1997, Ms Poke's notebook where she has
9 detailed conversation: "Kept calm. Reassurance. He
10 said, 'I'm fucked, help me.' He said, 'On foot two.
11 One by foot. 6 feet. One check shirt. Dark Hyundai.
12 Dark hair'." Now, that notebook came into your
13 possession, did it not?---I believe that's what she
14 brought in with her.
15 Her statement was delayed from you requesting, in late 1999,
16 she says, because she wanted to go to notebooks that
17 she kept in cartons or the like in her garage, does
18 that ring a bell?---Yes, I saw that in the transcript.
19 Whilst you saw it in the transcript, is it something that
20 you now remember for the delay or the further delay in
21 her providing her statement?---No.
22 In April 2000, she says that she swore her statement in
23 front of Sergeant Atkins and forwarded that, with her
24 notebook, into Operation Lorimer. Firstly, having
25 regard to the date of the statement, April 2000, you
26 would anticipate, would you not, that that statement
27 would be forwarded to Lorimer at or near the date that
28 it bears, April 2000?---Yes.
29 And you would anticipate that someone forwarding a statement

1 that has those acknowledgment clauses would provide a
2 sworn statement?---Ah, yes.

3 There'd be no point in Ms Poke making her statement, having
4 it sworn by Mr Atkins at Frankston, there'd be no
5 point in her sending in an unsigned statement, would
6 there?---Unless it was done by mistake.

7 Sorry?---Unless it was done by mistake.

8 What, unless she neglected to have it sworn?---Yes.

9 Are you suggesting that then Senior Constable Poke would go
10 to the trouble of making a statement and not having it
11 sworn?---It's possible.

12 Highly unlikely though, isn't it?---Unfortunately, Helen was
13 unwell for a very long time.

14 If you had received an unsigned statement from her in April
15 2000, you would have ensured that you followed up with
16 her before January 2001?---If I'd noticed that it was
17 unsigned, yes.

18 You, as we've seen, have been through all these statements
19 in the greatest of detail, haven't you?---I'm sorry?

20 You have been through these statements, as we've seen, in
21 the greatest of detail?---I don't follow the question.

22 COMMISSIONER: Meaning, you've looked at them very
23 carefully?---When? At the time?

24 During the course of discharging your task of looking at
25 statements that came in and seeing whether there were
26 further things that needed to be addressed?---Okay, I
27 follow, yes.

28 MR RUSH: And, I put to you, it reaches the height of
29 ridiculousness for you not to make an observation that

1 you have received an unsigned statement?---It's
2 possibly that I missed it.
3 Could we have a break, Commissioner?
4 COMMISSIONER: Yes.
5 MR RUSH: Commissioner, depending on how the witness is, but
6 I'm not going to finish today, and if we have a break
7 for five or ten minutes.
8 COMMISSIONER: I think we'll adjourn for ten minutes, give
9 the witness a break and maybe go until 4.15, and then
10 continue tomorrow - on Monday. Adjourn the hearing,
11 please.
12 Hearing adjourns: [3.15 pm]
13 Hearing resumes: [3.28 pm]
14 MR TROOD: Mr Buchhorn is just coming.
15 COMMISSIONER: Do you want to see what's keeping
16 Mr Buchhorn?
17 MR TROOD: Perhaps if I can be excused and I'll ...
18 COMMISSIONER: Yes, certainly. I'm loath to send someone
19 else out, they might disappear too. We'll adjourn
20 momentarily.
21 Hearing adjourns: [3.33 pm]
22 Hearing resumes: [3.35 pm]
23 COMMISSIONER: What's the position, Mr Trood?
24 MR TROOD: Sir, Mr Buchhorn's in the witness room, he is not
25 composed and not well, in that sense, so my application
26 would be for the Commission not to take any further
27 evidence today and to adjourn until Monday morning.
28 COMMISSIONER: Yes, very good. Is there someone - - -
29 MR TROOD: There is someone with him, I'm told a

1 psychologist.

2 COMMISSIONER: Very good.

3 MR TROOD: So, yes, there is someone.

4 COMMISSIONER: Thank you, very good. We'll adjourn until
5 10 am, Monday.

6 MR TROOD: Thank you, sir.

7 Hearing adjourns: [3.36 pm]

8 ADJOURNED UNTIL MONDAY, 25 FEBRUARY 2019

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