

**VICTORIAN
INSPECTORATE**

SPECIAL REPORT

**Investigation of unauthorised
disclosures by an integrity officer**

JUNE 2024

About the Victorian Inspectorate

The Victorian Inspectorate, as the lead integrity body, oversees 14 other integrity bodies including IBAC and the Victorian Ombudsman. The VI provides independent assurance to Parliament and the people of Victoria that integrity bodies act lawfully and properly. Where the VI identifies non-compliance or other areas for improvement, it works with the relevant integrity body to strengthen and continuously improve Victoria's integrity system. For more information visit www.vicinspectorate.vic.gov.au

Authorised and published by the Victorian Inspectorate, 565 Bourke Street, Melbourne

Published by order, or under the authority, of the Parliament of Victoria, June 2024.

ISBN: 978-0-6484319-2-3 (print)

ISBN: 978-0-6484319-5-4 (online)

Under licences purchased from Newspix, this report reproduces content from the following articles by Shannon Deery published in the *Herald Sun*: 'Doomed from Start' (11 July 2023) and 'We Wanted Overland' (17 July 2023).

With the exception of the *Herald Sun* material, you are free to reuse this work under a Creative Commons Attribution 4.0 International Licence provided you credit the State of Victoria (Victorian Inspectorate) as author, indicate if changes were made and comply with the other licence terms. The licence does not apply to any branding, including government logos.

If you require a more accessible version of this document, please email communications@vicinspectorate.vic.gov.au or call 0457 105 620.

Letter of transmittal

To

The Honourable President of the Legislative Council

and

The Honourable Speaker of the Legislative Assembly

Under section 87 of the *Victorian Inspectorate Act 2011*, I present to each House of the Parliament the Victorian Inspectorate's Report 'Investigation of unauthorised disclosures by an integrity officer'.

Yours Sincerely



Eamonn Moran PSM KC
Inspector

Contents

GLOSSARY OF TERMS	1
FOREWORD	2
EXECUTIVE SUMMARY	3
INTRODUCTION	4
PROCEDURAL FAIRNESS	6
SECRECY OBLIGATIONS	7
OPERATION SHELL	9
THE COMPLAINT TO THE VI	9
THE INVESTIGATION	13
EVIDENCE OF DISCLOSURES TO SHANNON DEERY	13
IMPACT OF THE ARTICLES	16
DISCLOSURES TO FRIENDS — CONFIRMATION OF INFORMATION	19
BROADER IMPACTS OF UNAUTHORISED DISCLOSURES	23
LESSONS FOR INTEGRITY BODIES AND THEIR OFFICERS	23
RISKS FOR ‘WHISTLEBLOWERS’ WHO DISCLOSE TO THE MEDIA OR MEMBERS OF THE PUBLIC	24
RISKS FOR JOURNALISTS AND THE INTEGRITY SYSTEM	24
FINDINGS	25
RECOMMENDATIONS	26
APPENDIX A — PROCEDURAL FAIRNESS RESPONSE — JB	27
APPENDIX B — PROCEDURAL FAIRNESS RESPONSE — SHANNON DEERY AND THE <i>HERALD SUN</i>	28
APPENDIX C — PROCEDURAL FAIRNESS RESPONSES — PAUL COGHLAN AO KC, GEOFFREY HORGAN KC, SHANNON DEERY AND THE <i>HERALD SUN</i>, AND KERRI JUDD KC	30

Glossary of Terms

Code of Conduct	Code of Conduct for Victorian public sector employees of special bodies
Confidential OSI information	OSI information that is not in the public domain, or is only in the public domain due to unauthorised use or disclosure of the information
DPP	Director of Public Prosecutions, Kerri Judd KC
IBAC Act	<i>Independent Broad-based Anti-corruption Commission Act 2011 (Vic)</i>
JB	Initials of former OSI senior investigator referred to in this report
OSI	Office of the Special Investigator (Victoria)
OSI Special Report	Special Report tabled in Parliament by the OSI on 21 June 2023
PA Act	<i>Public Administration Act 2004 (Vic)</i>
PID Act	<i>Public Interest Disclosures Act 2012 (Vic)</i>
SI Act	<i>Special Investigator Act 2021 (Vic)</i> (repealed by <i>Special Investigator Repeal Act 2023 (Vic)</i>)
SI Repeal Act	<i>Special Investigator Repeal Act 2023 (Vic)</i>
Special Investigator	Geoffrey Nettle AC KC
VI	Victorian Inspectorate
VI Act	<i>Victorian Inspectorate Act 2011 (Vic)</i>

Foreword

Integrity and investigatory bodies of all kinds acquire sensitive information in the course of their work. That information is acquired for purposes connected with their official functions. It must not be used or disclosed for any other purpose. To guard against this happening, the legislation under which such a body operates generally contains a provision making unauthorised use or disclosure of official information a criminal offence. In Victoria codes of conduct based on the public sector values set out in the *Public Administration Act 2004* (Vic) (PA Act) proscribe such conduct. To emphasise to persons who work in such bodies the importance of not misusing or disclosing official information, they are generally required on appointment to take an oath or make an affirmation that they will not do so. This obligation does not end when a staff member ceases work but remains with them for life.

Sadly, all these safeguards cannot prevent a staff member going rogue and leaking official information to the media or, without authorisation, disclosing official information to others. This report is about a former member of the investigations staff of the (now abolished) Victorian Office of the Special Investigator (OSI) who did just that. The report results from an investigation conducted by the Victorian Inspectorate (VI) following the making of a complaint to it about articles published in the *Herald Sun* in July 2023.

Such conduct deserves condemnation. It risks adversely affecting the reputation, welfare and safety of others, both within and outside the integrity body. It lessens confidence in the integrity system. It is the antithesis of how the community expects an integrity officer to behave. For its part, the Victorian Inspectorate is fully committed to investigating and exposing such conduct by any current or former staff members of integrity bodies when it is within its jurisdiction to do so.

Taking welfare and public interest considerations into account, the VI has chosen not to fully identify the former staff member referred to in this report but instead to refer to them by their initials. A key reason for using their initials is to remove any veil of suspicion that might otherwise hang over other former staff members of the OSI.

When the VI identifies a compliance issue, we use our published *Integrity Response Guidelines* to decide how to respond. In accordance with those *Guidelines* we decided to make this public report. Through this report we aim:

- To raise awareness about the standards expected of staff working in integrity and investigatory bodies
- To cause such staff to reflect on the importance and purpose of confidentiality obligations and the serious consequences for themselves and others of breaching them
- To cause integrity and investigatory bodies to train staff on their confidentiality obligations, including how to avoid inadvertent disclosures
- To cause journalists to reflect on the risks of errors in their reporting when relying on information from unauthorised sources
- To inform the public about the conduct investigated by the VI and publicly condemn that conduct
- To deter conduct of a similar kind by other staff of integrity and investigatory bodies
- To promote legislative reform so that there is consistency across integrity body legislation in the use that may be made of self-incriminating evidence.



Eamonn Moran PSM KC
Inspector

Executive summary

- i. Investigations conducted by integrity bodies deal with highly sensitive information. To protect this information, integrity officers take an oath or make an affirmation that they will not disclose this information. There can be criminal penalties for breaching that obligation and the obligation continues even after an officer leaves their employment.
- ii. The VI can investigate alleged breaches of this obligation — officers must give evidence and cannot claim a privilege against self-incrimination.
- iii. This framework creates the safeguards Parliament has decided are necessary to protect investigations, and the reputation, welfare and safety of those associated with investigations.
- iv. Integrity officers who speak to the media without authorisation are breaching those safeguards and risking the reputation, welfare and safety of others.
- v. On 11 and 17 July 2023, the *Herald Sun* published information attributed to persons described by it as ‘whistleblowers’ from the OSI. The disclosure of this information was not authorised.
- vi. The articles were written by the *Herald Sun*’s State Politics Editor, Shannon Deery. The VI’s investigation found that confidential OSI information was disclosed without authorisation to Shannon Deery by an OSI senior investigator and that same investigator also disclosed confidential OSI information to another member of the public by confirming to them the accuracy of information published in the *Herald Sun*.
- vii. The VI uses the term ‘whistleblowers’ in this report to avoid confusion, as this is the term used in the *Herald Sun* articles. However, if the OSI investigator genuinely believed improper conduct had occurred and warranted investigation, the public interest disclosures regime set up by the *Public Interest Disclosures Act 2012* (Vic) (PID Act) was available and provides appropriate protections to the discloser. Going to the media was not appropriate and had serious consequences.

Introduction

1. The OSI was established in 2021 by the *Special Investigator Act 2021 (Vic) (SI Act)* to ‘investigate potential criminal conduct and breaches of discipline relating to the recruitment, management and use by Victoria Police of Nicola Maree Gobbo as a human source’.¹ The Honourable Geoffrey Nettle AC KC was appointed as the Special Investigator (Special Investigator).²
2. Under section 41 of the SI Act, it was the role of the Director of Public Prosecutions (DPP), Kerri Judd KC, to determine if a charge should be filed against a person for an offence investigated by the OSI.³
3. On 21 June 2023, the OSI tabled a Special Report in Parliament in which the Special Investigator expressed the view that there was ‘no longer any point in OSI persisting’ due to the likelihood of future briefs relating to offences being rejected by the DPP. The Special Investigator stated it was his view ‘that the appropriate course is for the OSI to be wound up’.⁴
4. On 27 June 2023, the Attorney-General announced the OSI would cease operations.⁵ The Special Investigator, a statutory appointee, and all OSI employees ceased working on or before 7 July 2023. The OSI was abolished by the *Special Investigator Repeal Act 2023 (Vic) (SI Repeal Act)* with effect from 2 February 2024.
5. The VI is the lead oversight body in Victoria’s integrity system. It was established to oversee a number of Victorian integrity bodies and their officers, including the OSI. The VI has power to receive and investigate complaints about the conduct of the OSI and OSI personnel.⁶
6. Despite the abolition of the OSI, the VI’s power to investigate conduct of the OSI and OSI personnel continues until August 2025.⁷
7. In July 2023, the *Herald Sun* published articles titled ‘Doomed from Start’ (on 11 July) and ‘We Wanted Overland’ (on 17 July) written by its State Politics Editor Shannon Deery (the articles). The articles reported confidential OSI information that was attributed to OSI ‘whistleblowers’. On 27 July 2023, the VI received a complaint about the source of the information in the articles. The VI commenced an investigation named Operation Shell on 11 August 2023.

1 SI Act s 1(a), as repealed by SI Repeal Act s 4.

2 A Special Investigator was appointed after Mr Nettle ceased in the role and they acted until the OSI was wound up in February 2024. When using the term Special Investigator, this report is referring to Mr Nettle only.

3 SI Act s 41(1), as repealed by SI Repeal Act s 4.

4 Office of the Special Investigator (Victoria), ‘Special Report to Parliament’, 20 June 2023 at [42].

5 On 27 June 2023, the Victorian Attorney-General announced the Government’s decision to accept recommendations from both the Special Investigator and the Royal Commission Implementation Monitor to wind up the OSI.

6 VI Act s 11(8), as repealed by SI Repeal Act s 20. Despite that repeal, s 43 of the SI Repeal Act allows the VI to receive complaints about the conduct of the OSI and OSI personnel until 2 August 2024.

7 SI Repeal Act s 45. Section 46 of the SI Repeal Act permits the VI to report on, and make recommendations in respect of, an investigation into the conduct of OSI personnel until February 2026.

8. Under section 87 of the *Victorian Inspectorate Act 2011* (Vic) (VI Act), the VI may table a special report at any time on any matter relating to the performance of its duties and functions. In this report, the VI makes observations relevant to all integrity bodies, aimed at preventing unauthorised disclosures to members of the public occurring in the future. Unauthorised disclosures by integrity body personnel may potentially prejudice investigations, the safety and reputation of individuals, and the fair trial of a person who has been or may be charged with an offence. Unauthorised disclosures also have the potential to undermine the confidence of the public in Victoria's integrity system.
9. This report also encourages disclosures to be made in accordance with the PID Act, as this is the proper avenue for raising concerns about potential improper conduct and provides a discloser with protections. The VI has a function to promote the purposes of the PID Act.⁸
10. Due to welfare and public interest considerations, the VI has decided to use the initials of the OSI investigator who the VI has found disclosed confidential OSI information to Shannon Deery. The report will refer to them using their initials 'JB'. The VI has decided not to use a pseudonym as it is important that other OSI officers are not reputationally impacted by our finding that a former OSI investigator disclosed information to a journalist and another member of the public. There are no other former OSI officers who were involved in OSI investigations with the initials JB. Another 'JB' worked at OSI in an administrative role from January to August 2022. This is not the 'JB' referred to in the report.

⁸ PID Act ss 1, 56(1)(ea).

Procedural Fairness

11. To prepare this report it has been necessary for the VI to reproduce information published by the *Herald Sun* and content from an earlier draft version of the articles. As a result, Kerri Judd KC, the Honourable Paul Coghlan AO KC, Geoffrey Horgan KC, Simon Overland APM, Graham Ashton AM APM, Luke Cornelius APM and Nicola Gobbo are named in the report. Except as set out in this report, the VI makes no comment about the accuracy of the information contained in those articles.
12. The following persons who are named in the report or may be identifiable are not the subject of any adverse comment or opinion by the VI: Ms Judd, Mr Coghlan, Mr Horgan, Mr Overland, Mr Ashton, Mr Cornelius, Ms Gobbo, Attorney-General of Victoria, the Honourable Geoffrey Nettle AC KC, the Special Investigator appointed between August 2023 and February 2024, WhatsApp Participants 1–4 and the person with the initials 'JB' who worked in an administrative role at the OSI.
13. The VI provided the relevant sections of this report to JB, Shannon Deery, the Herald and Weekly Times Pty Ltd (publisher of the *Herald Sun*), Mr Nettle, Ms Judd, Mr Coghlan, Mr Horgan, Mr Overland, Mr Ashton and Mr Cornelius for procedural fairness. All individuals were provided the opportunity to respond to relevant extracts of this report. Some amendments were made to the draft report as a result. Where amendments were not made or did not fully address the issues raised by the individuals, the elements of each response received have been set out in the appendices to this report. Individuals whose response is not contained in the appendices either informed the VI they did not wish to provide a response or did not respond to the VI when provided the opportunity to respond.

Secrecy Obligations

14. Due to the sensitivity of the information obtained by some integrity bodies during investigations, legislation provides safeguards to protect individuals from the harm that can result from information being disclosed. Disclosure may potentially prejudice an investigation, the reputation, welfare and safety of those involved, and any criminal proceedings. One safeguard is holding officers of integrity bodies, even after they cease to hold office, to a higher standard of confidentiality than other members of the community.
15. For example, upon commencement, officers of the VI, the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Ombudsman take an oath or make an affirmation promising not to disclose, except as authorised or required by law, any information received in the performance of their duties and functions or the exercise of their powers.⁹ That confidentiality obligation continues after an officer has left the integrity body's employment. The various legislation governing these bodies, and other bodies overseen by the VI, provides for criminal penalties for the improper disclosure of information.¹⁰
16. Likewise, when they started, officers of the OSI took an oath or made an affirmation not to disclose, except as authorised or required by law, any information received in the performance of their duties and functions or the exercise of the powers of the office.¹¹ Section 89 of the SI Act sets out the ongoing obligation of OSI officers not to disclose OSI information without authorisation and the penalties that apply for a breach. Section 89 relevantly provides:

89 Unauthorised use or disclosure of Office of Special Investigator information

- (1) *Unless expressly authorised to do so by the Office of the Special Investigator, an OSI officer, a former OSI officer or a service provider must not, without reasonable excuse, use or disclose any Office of Special Investigator information about investigations of the Office of the Special Investigator or the functions and powers of that office.*

Penalty: 240 penalty units or level 7 imprisonment (2 years maximum) or both.

- (2) *Subsection (1) does not apply to any Office of Special Investigator information—*
 - (a) *that is in the public domain, other than because of an unauthorised use or disclosure of information; or*
 - (b) *that is in the public domain because its use or disclosure had been previously expressly authorised by the Office of the Special Investigator.*
- (3) *Without limiting what may be a reasonable excuse, it is a reasonable excuse if the OSI officer, former OSI officer or service provider took reasonable steps not to use or disclose the Office of Special Investigator information.*

⁹ VI Act s 30; IBAC Act s 37; *Ombudsman Act 1973* (Vic) s 10.

¹⁰ VI Act s 34; IBAC Act s 40; *Ombudsman Act 1973* (Vic) s 26A; *Audit Act 1994* (Vic) s 71 (Victorian Auditor-General's Office); *Major Crime (Investigative Powers) Act 2004* (Vic) s 68 (Office of the Chief Examiner); *Privacy and Data Protection Act 2014* (Vic) s 120 (Office of the Victorian Information Commissioner); *Wage Theft Act 2020* (Vic) s 77 (Wage Inspectorate Victoria).

¹¹ SI Act s 20, as repealed by SI Repeal Act s 4.

(4) *In this section—*

Office of Special Investigator information

means—

(a) *in relation to an OSI officer or a former OSI officer, any information that has come to the knowledge or into the possession of the officer—*

(i) *in the performance of functions or the exercise of powers as an OSI officer; or*

(ii) *otherwise as a result of being an OSI officer...*

17. In accordance with section 13 of the SI Repeal Act, section 89 continues to apply as if the SI Act had not been repealed.
18. Unlike the legislation applying to other integrity bodies, the OSI's secrecy provision excludes OSI information that is in the public domain (other than because of an unauthorised use or disclosure of information). This is likely due to the OSI being established in response to the Royal Commission into the Management of Police Informants. A significant amount of information relevant to the work of the OSI was made public during the Royal Commission. There was no definition of 'public domain' in the SI Act.
19. For clarity, this report uses the term 'confidential OSI information' to describe OSI information¹² that either is not in the public domain or is only in the public domain due to unauthorised use or disclosure of the information. That is, 'confidential OSI information' is the information to which the confidentiality obligation contained in section 89(1) of the SI Act applies.

Code of conduct for Victorian public sector employees of special bodies and Public Administration Act obligations

20. Employees of integrity bodies such as the VI, IBAC, the Victorian Ombudsman, the Office of the Information Commissioner, the Victorian Auditor-General's Office and the OSI (until its abolition) are governed by the Code of conduct for Victorian public sector employees of special bodies¹³ (Code of Conduct) and the PA Act. Together, the Code of Conduct and the PA Act impose obligations on each employee of an integrity body in relation to maintaining confidentiality in and not disclosing information about the investigations, functions, and powers of their integrity body that has been obtained through the employee's role.
21. The Code of Conduct states that 'official information' obtained in the course of an employee's duties should only be disclosed when the employee is required to do so by law, or in the legitimate course of duty, or when called to give evidence in court, or when proper authority has been given.¹⁴ Under the PA Act, improper use of information acquired by a person by virtue of their position may amount to misconduct in certain circumstances.¹⁵
22. The Code of Conduct recognises that employees of special bodies are provided with confidential information from people outside their organisations due to the nature of their roles, and those people have a right to expect such information will be treated confidentially in accordance with relevant legislation and policies.¹⁶
23. The Code of Conduct also limits the comments employees of special bodies may make publicly or privately about public sector work with which they are involved.¹⁷ The Code of Conduct further states that such employees should seek to build and maintain a high level of trust with the community.¹⁸

12 SI Act s 89(4)(a), as amended by SI Repeal Act s 13.

13 Section 6(1) of the PA Act states these are special bodies for the purposes of the PA Act. The Code of Conduct is issued under section 61 of the PA Act.

14 Code of Conduct, clause 3.4.

15 PA Act s 4(1).

16 Code of Conduct, clause 6.2.

17 Code of Conduct, clause 3.5.

18 Code of Conduct, clause 3.9.

Operation Shell

The complaint to the VI

24. On 27 July 2023, the VI received a complaint under section 43(11) of the VI Act about OSI personnel¹⁹ *‘that information supplied to the Herald Sun by ... ‘whistleblowers’ may have been used or disclosed by OSI personnel in breach of section 89 of the Special Investigator Act 2021’*. Following an assessment of the complaint, the VI commenced an investigation known as Operation Shell on 11 August 2023.
25. The Australian Federal Police (AFP) Guideline on investigative action involving professional journalists or news media organisations recognises that investigations, such as Operation Shell, should consider *‘the importance of a free and open press in Australia’s democratic society ... before undertaking investigative action involving a professional journalist’*.²⁰ However, the AFP Guideline states that this is always balanced with any public interest implications caused by such a disclosure. In this case, the VI considered investigation was warranted and in the public interest.
26. Operation Shell investigated whether one or more former OSI officers disclosed OSI information²¹ about one or more OSI investigations or the OSI’s functions or powers to a member of the public without express authorisation or a reasonable excuse.
27. The VI assessed whether the information attributed to whistleblowers in the articles could be characterised as confidential OSI information and whether this information was disclosed by OSI personnel to Shannon Deery, or any other members of the public, without a reasonable excuse or authorisation.
28. The following information in the articles was attributed to OSI ‘whistleblowers’ by Shannon Deery:

19 At the time of the complaint, the definition of ‘OSI personnel’ in the VI Act included current and former OSI officers.

20 Australian Federal Police, ‘Guideline on investigative action involving professional journalists or news media organisations’, at page 1.

21 As defined by section 89(4)(a) of the SI Act, as amended by SI Repeal Act s 13.

Figure 1: Information attributed to OSI 'whistleblowers' in 'Doomed from Start', 11 July 2023

'The furious whistleblowers say a year before she ruled out laying charges Victoria's top prosecutor Kerri Judd told their boss she doubted the investigation would go anywhere. Ms Judd denies the claim.'

'A senior OSI whistleblower claimed Ms Judd, the Director of Public Prosecutions, "expressed doubt we could get anywhere" despite just one brief having been prepared by that stage. "Surely she should have kept an open mind," one senior source said. "We were doomed from the start."'

'The whistleblowers also claim that senior justice officials — including a former top state prosecutor — refused to fully co-operate with investigators.'

'Former director of public prosecutions and Supreme Court judge Paul Coghlan, and former chief crown prosecutor Geoff Horgan, declined to be formally interviewed, OSI whistleblowers said. Both men declined to sign statements, telling investigators they had nothing to add to their work, the OSI sources said.'

TUESDAY, JULY 11, 2023 \$2.80 (inc GST) HERALDSUN.COM.AU

Herald Sun

We're for you

LAWYER BOMBSHELL LEAK

DOOMED FROM START

EXCLUSIVE
Shannon Deery

Whistleblowers in the special office set up to determine whether criminal charges should be laid in the Lawyer X scandal say their probe was "doomed from the start".

The furious whistleblowers say a year before she ruled out laying charges Victoria's top prosecutor, Kerri Judd, told their boss she doubted the probe would go anywhere. Ms Judd denies this claim.

The Office of Special Investigator, established by the Andrews government as a

LAWYER

'SHE SHOULD HAVE KEPT AN OPEN MIND'

Claim DPP wrote off case early

EXCLUSIVE
Shannon Deery

Whistleblowers in the special office set up to determine whether criminal charges should be laid in the Lawyer X scandal say their probe was "doomed from the start".

The furious whistleblowers say a year before she ruled out laying charges Victoria's top prosecutor, Kerri Judd, told their boss she doubted the probe would go anywhere. Ms Judd denies this claim.

The Office of Special Investigator, established by the Andrews government as a

'The whistleblowers this week have echoed subsequent criticisms of the government for not giving the OSI direct powers to prosecute any parties regarding the Lawyer X scandal.'

'OSI whistleblowers say the investigators were working to secure statements from all staff at the Office of Public Prosecutions and Victoria Police's anti-gangland Purana task force that had been connected to matters involving Ms Gobbo.'

Figure 2: Information attributed to OSI 'whistleblowers' in 'We Wanted Overland', 17 July 2023



29. Although not explicitly attributed to 'whistleblowers' in the 11 July article, it can be inferred from the context of the article that the following information was provided by the same source or sources:

Figure 3

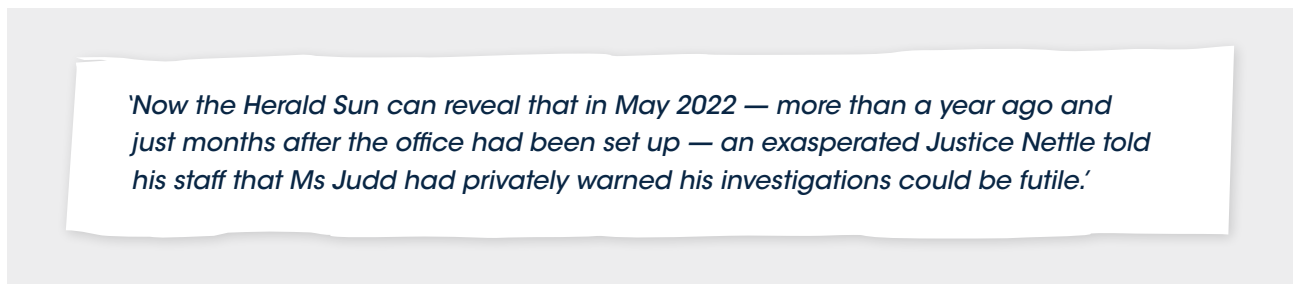


Figure 4: Timeline of key events between November 2021 and August 2023²²



22 This timeline sets out correspondence relevant to the VI's investigation as described in, or attached to, the OSI's special report tabled on 21 June 2023. The timeline does not include all correspondence between the DPP and Special Investigator during the relevant period.

The investigation

30. During its investigation, the VI obtained:
 - Evidence from ten witnesses; and
 - Documents or things through requirements to produce and witness summonses.²³
31. The Special Investigator was interviewed during the investigation. He informed the VI that he did not provide any OSI officers express or general authority to disclose any OSI information.
32. All OSI officers were informed of their secrecy obligations when they began their employment at the OSI through an induction process. The VI was informed by the Special Investigator and other executives that this information was reinforced throughout their employment as appropriate. All former OSI officers interviewed by the VI clearly understood their confidentiality obligations.
33. The VI's investigation found that the articles by Shannon Deery contained OSI information that was attributed to OSI whistleblowers and was not in the public domain.
34. The VI obtained evidence from JB, a former Senior Investigator and acting Team Leader at the OSI. JB was employed at the OSI from 17 January 2022 to 7 July 2023.
35. The VI investigation found that JB disclosed confidential OSI information to Shannon Deery in or around July 2023, and that JB also told a friend via text message that information contained in the 11 July article was 'all true'. Relevantly, confirming information that has come into the public domain without authorisation is a disclosure.

Evidence of disclosures to Shannon Deery

JB and Shannon Deery interactions June–September 2023

36. The articles were published on 11 and 17 July 2023 respectively. The evidence obtained by the VI established that JB and Shannon Deery had, at a minimum, the following interactions between June and September 2023:

Figure 5: JB and Shannon Deery interactions between June 2023 and September 2023



5 July 2023 Email Chain

37. An email chain between JB and Shannon Deery was produced to the VI and demonstrates that JB was a source of confidential OSI information contained in the articles.

²³ VI Act s 47D (repealed by SI Repeal Act s 4) and 53(1)(b).

38. Shannon Deery sent the following email to JB at 3.55pm on 5 July 2023:

Figure 6: Email from Shannon Deery to JB, 5 July 2023 at 3:55pm

On 5 July 2023, at 3:55 pm, Shannon Deery <[REDACTED]> wrote: ← Reply

Hi [JB]

Hope you're well.

At this stage we'd plan to run at least two stories, off the front page, early next week. Below are not by any means final versions, but just give you a taste of what they'd look like (just the top of them). As agreed, I am happy to send you full versions once completed. Having chatted with our lawyers I have a few questions below that, if you can help, will make these much safer to run.

1. VICTORIA'S top prosecutor privately warned that the special investigation into the Lawyer X scandal would go nowhere, 12 months before she ruled out laying charges over the matter.

In an explosive revelation, the Herald Sun has confirmed Director of Public Prosecutions Kerri Judd told special investigator Geoffrey Nettle in May last year his investigations would lead nowhere.

Justice Nettle, who has since resigned from the role, told a meeting of OSI staff of the claim following a private meeting with Mrs Judd.

[REDACTED] Paul Coghlan [REDACTED] and former chief crown prosecutor Geoff Horgan all refused to be interviewed by the Office of the Special Investigator. Sources said each of the men were formally asked to participate in investigations, but refused, saying they had nothing useful to add. They have been accused of hampering the work of the OSI. ETC ETC

2. INVESTIGATORS probing the Lawyer X scandal wanted former top cop Simon Overland charged and believed they had a "smoking gun" to prove his guilt.

The Herald Sun can reveal Mr Overland was under active investigation at the time Justice Geoffrey Nettle advised the government to wind down the Office of Special Investigator amid an ongoing feud with DPP Kerri Judd.

Investigators believed they had a "smoking gun" to implicate Mr Overland and were due to send a brief of evidence to Ms Judd for consideration.

"He was the one they really wanted," [REDACTED].

It is understood Mr Overland was a focal point for investigators since the office was established in 2021, with a belief that any and all wrongdoing happened under his watch.

Former chief Graham Ashton and assistant commissioner Luke Cornelius were also in the sights of investigators.

During the royal commission into Lawyer X Gobbo described Overland as "evil, corrupt and dishonest".

"I was always led to believe that he was well aware of my informing and that he was a huge supporter and encourager of it," she said.

"There were often circumstances in which I was - would say to my handler, whichever handler I was with at the time... 'Are you sure, are you sure you know what you're doing?'

"And each and ever time they would say to me that their bosses had approved of it and... Simon Overland was specifically aware of what I was doing and that he had approved of it."

Having discussed these with our lawyers we need to clarify a few things to make them legally safe.

- 1. Are you able to provide some quotes re: your recollection of the meeting with Nettle in which he explained what Judd had said last May?**
- 2. Would anyone else be willing to corroborate this?**
- 3. Can you run me through again what the Overland smoking gun was?**

With all that, we'd be good to go legally.

Hope this all makes sense.

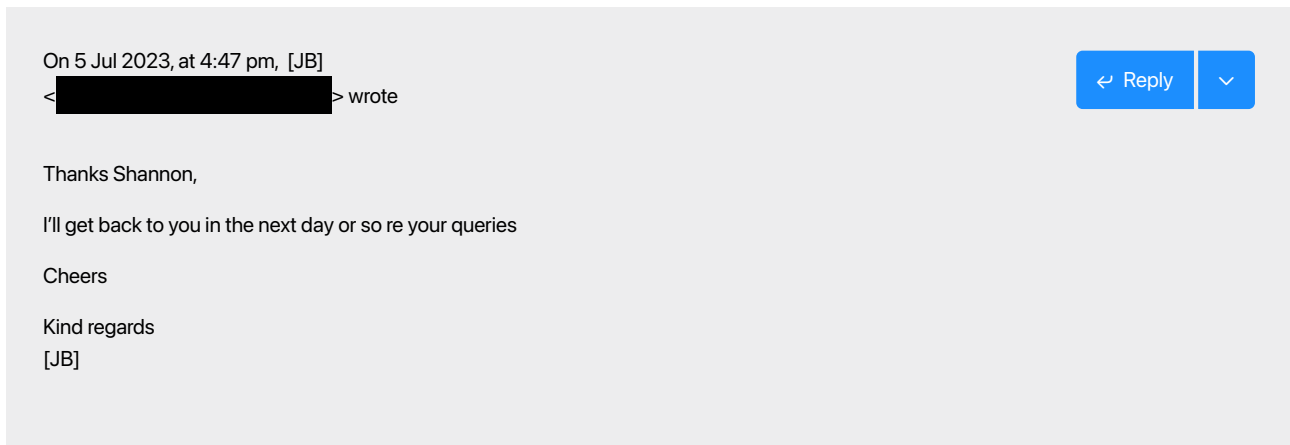
Cheers

Shannon Deery
State Politics Editor

HWT Tower 40 City Road Southbank VIC 3006
T [REDACTED] M [REDACTED]
E [REDACTED] W www.heraldsun.com.au

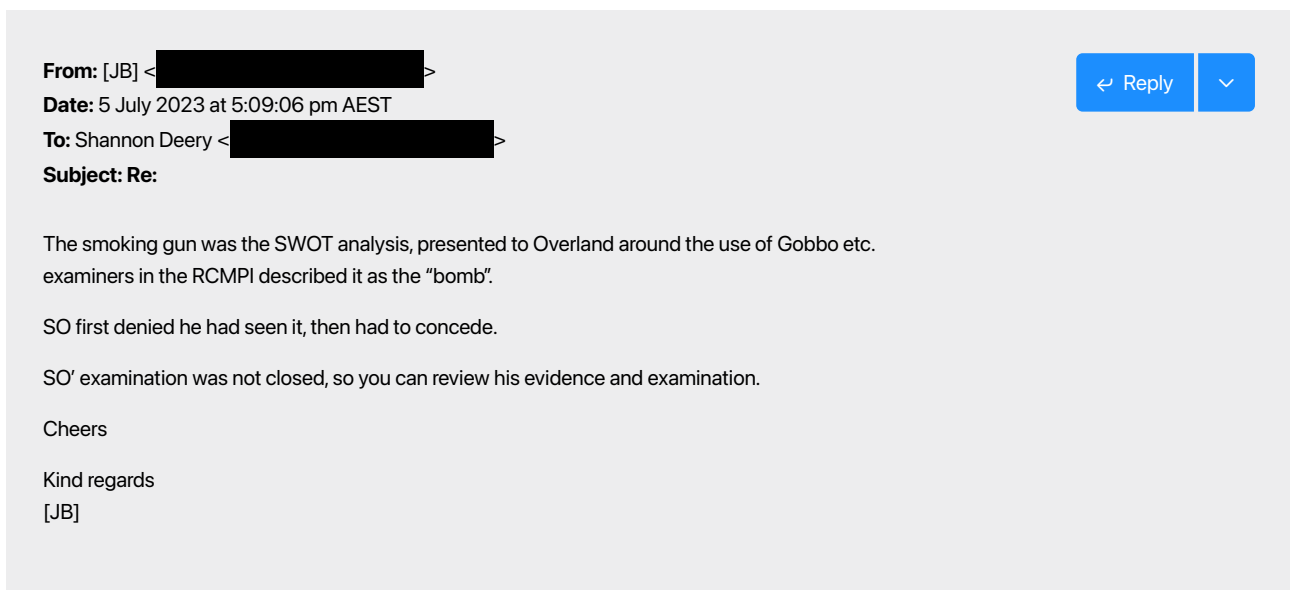
39. At 4.47pm on 5 July 2023, JB responded to Shannon Deery:

Figure 7: Email from JB to Shannon Deery, 5 July 2023 at 4:47pm



40. JB sent him another email at 5.09pm:

Figure 8: Email from JB to Shannon Deery, 5 July 2023 at 5:09pm



41. They spoke on the telephone for 14 minutes on 6 July 2023.
42. When interviewed, JB stated they could not recall the specific wording of the prohibition on disclosing OSI information, but agreed that in broad terms they knew that, unless they had a reasonable excuse for doing so, they were prohibited from speaking about information about the OSI's work that had come to their knowledge as a result of being an OSI officer.
43. Shannon Deery and JB stated they communicated in the weeks prior to the articles being published about a matter unrelated to the OSI. JB also accepted they discussed confidential OSI information with Shannon Deery and information they provided was contained in or referred to in the articles that were published in the *Herald Sun*. JB could not recall specifics regarding which OSI information contained in the articles was sourced from them directly. They accepted that the 5 July email was evidence of disclosures but could not recall what other disclosures they made or confirmed. JB could not recall any other interactions they had with Shannon Deery, however they did not dispute that they broadly occurred as specified in Figure 5 above.
44. The VI is satisfied that JB provided confidential OSI information to Shannon Deery. The VI has been unable to determine whether Shannon Deery received confidential OSI information from any other OSI source.
45. Shannon Deery did not confirm or deny that JB was a source of information in the articles and did not comment on whether OSI information was discussed during their interactions. Section 69 of the VI Act abolishes a journalist's privilege to refuse to disclose confidential sources in response to a summons. Shannon Deery was not required to identify whether JB was a source because the VI had sufficient evidence that JB was a source of information in the articles.

Impact of the articles

Inaccuracies in the 11 July 2023 article

46. The 'bombshell' claim that was repeated 5 times in the 11 July 2023 *Herald Sun* article and sparked the headline 'Doomed from Start' was that the DPP had told the Special Investigator in May 2022 that she 'doubted his investigation would go anywhere' and 'his investigation could be futile'. The article said the meeting occurred on 18 May 2022.
47. The VI has concluded that the DPP did not inform the Special Investigator in any meeting on 18 May 2022 or at any other time in 2022 that OSI investigations 'could be futile'. There is no evidence that the Special Investigator informed OSI staff of this in 2022. The Special Investigator gave evidence to the VI that there was no event in May 2022 that could be construed as the DPP expressing such an opinion, and no meeting with OSI staff where such an opinion was conveyed. It was reported that the DPP denied this occurred when contacted by the *Herald Sun* for comment prior to the publication of the 11 July 2023 article. The DPP confirmed to the VI that no such opinion was conveyed to the Special Investigator in a meeting in May 2022. None of the senior OSI officers interviewed as part of the VI's investigation had any knowledge of any such meeting occurring. In their evidence to the VI, JB could not identify any such meeting.

Potential for impact on others named in the articles

48. The articles named two individuals who were said to have 'refused to fully cooperate with investigators'. The VI's investigation did not require a finding about the accuracy of that information, and therefore the individuals named in the articles were not interviewed during the VI's investigation.
49. However, as the report reproduces adverse comments made about these individuals, they were given an opportunity to respond in accordance with procedural fairness requirements, and their responses are set out in Appendix C. Mr Deery and the *Herald Sun* were given the opportunity to comment on the responses and their position is also set out in Appendix C.

Potential for impact on OSI personnel

50. As the articles stated that the information had been sourced from unidentified OSI 'whistleblowers' and a reference was made to a 'senior OSI whistleblower', there was a potential for all senior former OSI officers to come under suspicion as possible sources. A WhatsApp group chat involving a number of former OSI officers recorded their concerns. In the group chat, the former OSI officers discussed the articles when they were published, and a number of participants expressed concern about the impact the articles may have on their reputations. It is noted that these individuals as a collective were likely to have been experiencing a difficult time, having already lost their jobs at the OSI without much warning.
51. Former OSI officers seeking employment may have been impacted by the suspicion that they could have been a source for the articles, and breached their confidentiality obligations. Those were obligations that they would likely have if employed in a similar role in the future.
52. The WhatsApp chat recorded their concerns.

Figure 9: WhatsApp conversation between former OSI officers, 17 July 2023

Participant 1:

Whoever is doing this is trashing the reputation of the OSI and of us as investigations staff. Needs to stop. 🙄

Participant 2:

... Separately, in full support of [REDACTED] earlier observation, the H/Sun's mole needs to think very carefully about further backgrounding; including, as I suspect, because it won't end well. We all remain subject to acknowledged constraints/restrictions on what we can say, post-tenure, to literally anyone. Those curbs come via several mechanisms, each carrying genuine legal effect, with sanctions ready to be applied if a relevant finding were ever made. Plus, the office is beginning to take on an appearance of sore losers. Personally, I was horrified last week to see a past reference by the SI to the DPP's alleged view that the OSI's work would never bear fruit.

[REDACTED]

the media report was the first I had ever heard of the claim. I note your view, [REDACTED], that the focus is upon the OPP, but this could get very nasty for the H/Sun's Person X. No need for my text to kick off a polemic. But we all need to be very careful, media-wise...

Participant 3:

... I agree [REDACTED]. I'd add that these sort of drip feed 'whistleblower' stories have a detrimental effect on those still seeking to continue working. No good comes of it.

Participant 4:

I agree with [REDACTED] and [REDACTED]. It doesn't matter who the articles are aimed at. They refer to OSI whistleblowers as providing the material for the articles. It definitely looks like a case of sour grapes and it makes the OSI as a whole lose credibility.

53. During the investigation, the VI obtained evidence from seven former OSI officers, in addition to JB. Concerns were raised by most of the witnesses about the impact of articles that attributed information to OSI ‘whistleblowers’. Some of these concerns were also reflected in the OSI WhatsApp group chat that was produced. Witnesses discussed the implications for them applying for roles within integrity bodies and being identified as a person of interest due to how the OSI sources were described in the articles. Witnesses also commented on how the articles exacerbated an already stressful period due to the loss of their jobs at the OSI and the potential for their professional reputations to be tarnished in the long term.
54. Disclosures of this type impact not only those individuals named, and an integrity body’s employees, but also the integrity system as a whole. It is paramount that the public has trust in the investigative processes of integrity bodies and that anyone who may be involved in an investigative process can rely on confidentiality being maintained by integrity body employees. As discussed below, there are established and proper channels for integrity body employees to raise legitimate concerns about the conduct of public officers — in particular, such concerns can be reported through Victoria’s statutory ‘whistleblower’ scheme.

Disclosures to friends — confirmation of information

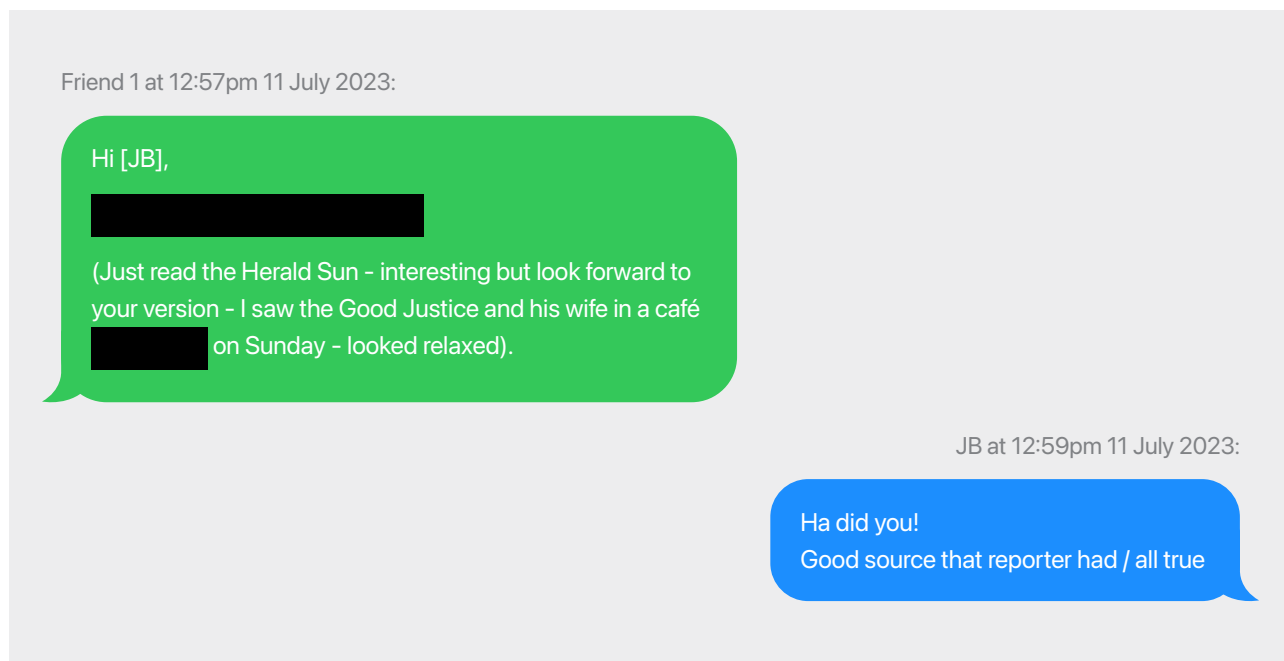
55. The vast majority of employees of integrity bodies take their confidentiality obligations very seriously and would never disclose confidential information to a journalist. However, employees must also be aware that risks arise from the possibility of ill-considered or inadvertent disclosures to friends or family, including through the confirmation of, or expression of an opinion about, published information. Even if not intended, a recipient may assume that the integrity-body employee is disclosing something confidential due to an awareness of where that person works.

JB’s text messages to friends

56. The VI obtained the following separate chains of text messages between JB and two friends, who were not former OSI officers. The text messages with the first friend relate to the 11 July 2023 article ‘Doomed from Start’ and, in the case of the second friend, the messages relate to the OSI Special Report.

FRIEND ONE

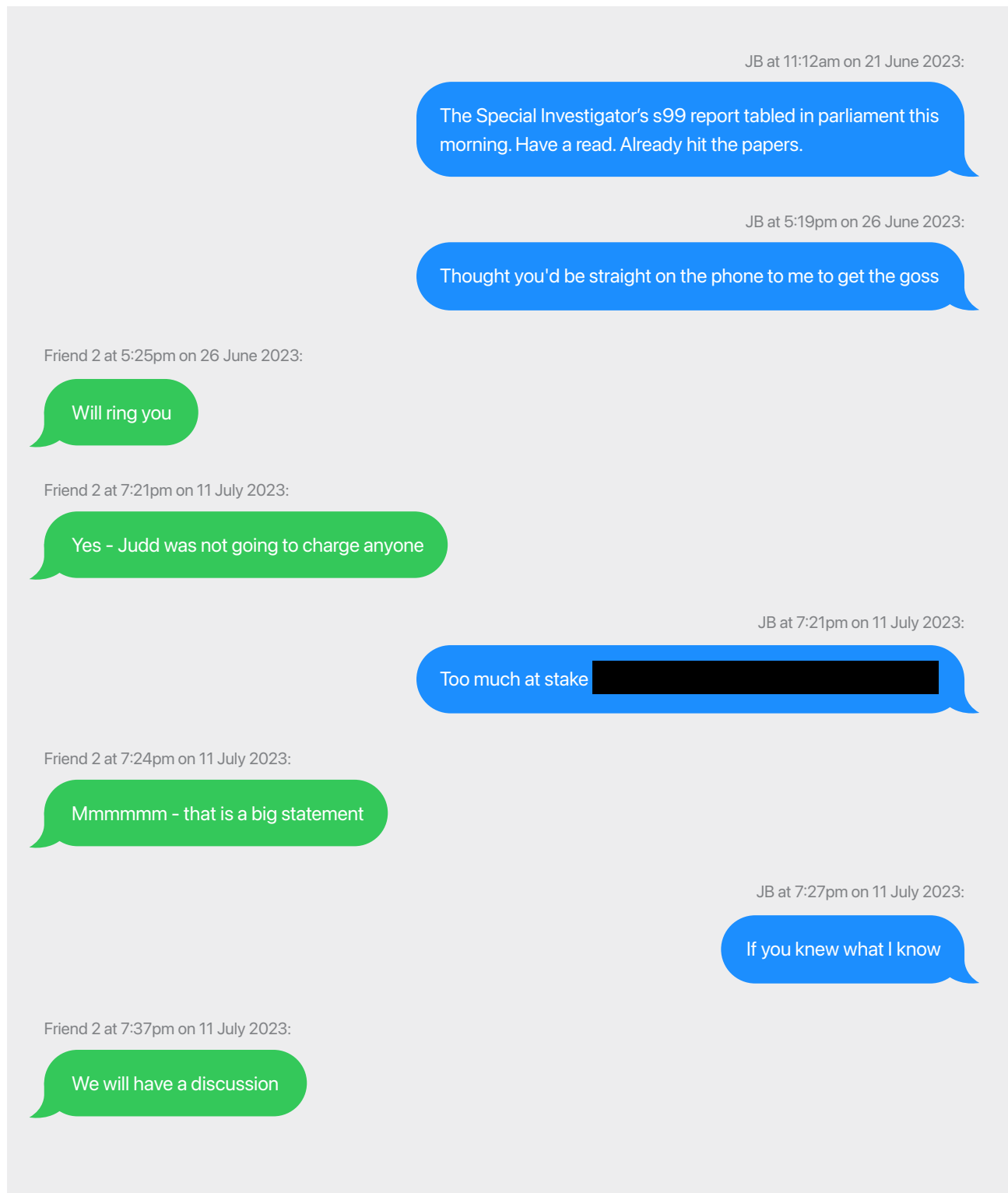
Figure 10: Text messages between JB and Friend 1, 11 July 2023



57. When interviewed, JB confirmed copies of the text messages were accurate and accepted that they were confirming the substance of the 11 July 2023 article to be true to Friend 1. JB denied that confirming the accuracy of the article amounted to them giving confidential OSI information to their friend. JB stated: *'I don't consider that I'm talking about my work. I'm just confirming that what was written in the article seemed true to me.'* When put to them that there was information in the article that was not previously in the public domain, JB denied this and stated that numerous witnesses spoken to during OSI investigations were aware of some of the information that was published in the articles. In particular, they referred to witnesses having knowledge about other individuals and whether they were cooperating with OSI investigations. The VI noted during this line of questioning that those individuals were a narrow cross-section of the community, and the broader community was not aware of this information. JB accepted that was accurate.

FRIEND TWO

Figure 11: Text messages between JB and Friend 2 between 21 June 2023 and 11 July 2023



58. The VI has decided not to publish the words following ‘Too much at stake...’ in the text to Friend 2 as JB was asserting something that (regardless of its accuracy) may impact the reputation of a group of people. In their evidence, JB denied that their text messages to Friend 2 revealed confidential OSI information and stated they were just expressing an opinion. The messages were exchanged on the same date Shannon Deery’s first article was published — 11 July 2023.
59. JB was asked about the exchange where they said to Friend 2 ‘If you knew what I know’ and Friend 2 responded with ‘We will have a discussion’. JB denied they had ever discussed OSI information with Friend 2.
60. Regardless of whether a discussion occurred or whether any information conveyed in text messages was in fact confidential OSI information rather than opinion, a person would likely put weight on whatever JB said given their role at the OSI — any opinion would be assumed to have a basis in fact.
61. The question of whether OSI information was in the ‘public domain’ is relevant to the disclosures made by JB. Section 89 of the SI Act does not prohibit disclosure of OSI information that is already in the public domain.²⁴
62. In this case, the circumstance that JB considered that information disclosed to Shannon Deery and JB’s friends may have been known to a number of people directly involved in investigations that were conducted by the OSI, does not mean it was in the ‘public domain’ for the purposes of section 89 of the SI Act.
63. In the case of OSI personnel, information discussed with individuals during the course of an investigation, such as with witnesses, is not information in the public domain. Information must be readily available to any member of public to be considered to be in the public domain, not merely available to certain individuals outside an integrity body due to their connection to an investigation.²⁵
64. Furthermore, confirmation of information that has been disclosed without authorisation and published — such as in a newspaper article — may itself constitute an unauthorised disclosure of confidential information because of the obligations placed on OSI personnel by section 89 of the SI Act. If information is in the public domain ‘because of an unauthorised use or disclosure of the information’, the SI Act requires OSI personnel to continue to maintain their confidentiality obligations.

24 Unless the information is in the public domain ‘because of an unauthorised use or disclosure of the information’ (SI Act s 89(2)(a), as amended by SI Repeal Act s 13).

25 See, for example: *Australian Football League v The Age Co Ltd* (2006) 15 VR 419; *The State of Western Australia v Godbold* [2022] WADC 112.

Broader impacts of unauthorised disclosures

Lessons for integrity bodies and their officers

65. The lessons from this investigation are relevant to all Victorian integrity bodies and their officers. While officers are told of their confidentiality obligations when they commence employment and promise to maintain confidentiality, it is also important that they understand what that means practically and are given guidance about how to manage interactions with friends and family about their work. This is particularly important when their work is in the public eye. They should also know (and be reminded) that their confidentiality obligations do not cease when their employment does.
66. It is helpful for officers of integrity bodies to set boundaries from the start with their friends and families about what they can and cannot discuss — this avoids awkward questions and even more awkward responses in the future, and limits the risks of inadvertent disclosure of confidential information. Officers should certainly avoid inviting questions about their work, as occurred in this case. In addition, officers of integrity bodies should be mindful about any comments they make or opinions they express concerning current events in the Victorian integrity system.
67. The 11 July 2023 article referred to the ‘whistleblowers’ opinion on government policy.²⁶ Opinions or comments such as these may be assumed by members of the public to be based on information officers are privy to as part of their work, even if this is not the case. In addition, the expression

of such an opinion may be inconsistent with obligations on employees contained in the Code of Conduct relating to publicly or privately commenting on public sector work to which they are connected.²⁷ Conduct may breach the Code of Conduct even if it does not breach statutory confidentiality obligations. Officers should ensure they are familiar with the Code of Conduct provisions relating to official information and public comment.²⁸

Abrogation of the privilege against self-incrimination and the limits on immunities for the use of evidence

68. Officers of integrity bodies should also be aware that witnesses who are summoned to the VI to give evidence must answer all questions asked of them. Under section 70 of the VI Act, there is no privilege against self-incrimination if answers provided might tend to incriminate the witness or make them liable to a penalty. However, with some exceptions, any evidence a witness provides that may tend to incriminate them or make them liable to a penalty is not admissible in evidence against them before any court. The exceptions to this immunity are outlined in section 70(2) of the VI Act. They include proceedings for perjury or giving false information, contempt of the Victorian Inspectorate under the VI Act, disciplinary processes or actions, and offences against various Acts connected to the VI’s oversight role, including the VI Act, the *Audit Act 1994* (Vic), the *Ombudsman Act 1973* (Vic), the IBAC Act, the *Major Crime (Investigative Powers) Act 2004* (Vic), as well as certain offences against the PID Act relating to false disclosures.²⁹

26 ‘The whistleblowers this week have echoed subsequent criticism of the government for not giving the OSI direct powers to prosecute any parties regarding the Lawyer X scandal’, Shannon Deery, ‘Doomed from Start’, *Herald Sun* (Melbourne, 11 July 2023).

27 Code of Conduct, clause 3.5.

28 Code of Conduct, clauses 3.4 and 3.5.

29 PID Act ss 72, 73.

69. This means, for example, that if an IBAC officer or an Ombudsman officer admits during an examination at the VI that they have disclosed information in breach of their confidentiality obligations, that evidence can be used against them in any prosecution for a criminal offence under their respective Act.
70. Offences against the SI Act were not included in section 70(2) of the VI Act when the OSI was established. As a result, any evidence obtained from OSI personnel in response to a witness summons that may tend to incriminate them in relation to any offences under the SI Act, including section 89, is not admissible in evidence against them. However, such evidence can be used against OSI personnel in relation to offences under the VI Act.
71. Victoria has a statutory ‘whistleblower’ scheme designed to encourage and facilitate disclosures of improper conduct by public officers and public bodies. Part of the Victorian Inspectorate’s role under the PID Act is to promote the purposes of the Act,³⁰ which includes encouraging individuals who wish to make disclosures to do so through the legislated mechanisms. The PID Act sets out the framework for disclosures to be properly assessed and, where necessary, investigated. The PID Act provides protection for individuals who make such disclosures and those who may suffer detrimental action in reprisal for disclosing improper conduct. To receive protection, a disclosure must be made to a relevant assessing entity,³¹ which is the VI for a disclosure about the OSI, and IBAC for a disclosure about the conduct of the DPP.
72. The potential consequences of disclosing to the media instead of the bodies set up to receive such disclosures may include that the individuals who disclose confidential information to the media have no protections under the PID Act, that incorrect and untested information may be published, and there may be irreversible impacts on the reputation of the subject of the information.

Risks for journalists and the integrity system

73. Relying on unauthorised disclosures may potentially impact the accuracy of the information that is published. It may result in the publication of inaccurate information and conclusions being drawn from an individual’s perception of events. The risk can be further compounded in organisations where employees work within operational teams that only share information on a ‘need to know basis’, as information sourced from some employees in the organisation may be incomplete and, taken out of context, inaccurate.
74. The media has an important role to report on integrity matters and government; however there are serious non-disclosure obligations on integrity body officers or former officers that need to be maintained in the public interest.

Risks for ‘whistleblowers’ who disclose to the media or members of the public

71. Victoria has a statutory ‘whistleblower’ scheme designed to encourage and facilitate disclosures of improper conduct by public officers and public bodies. Part of the Victorian Inspectorate’s role under the PID Act is to promote the purposes of the Act,³⁰ which includes encouraging individuals who wish to make disclosures to do so through the legislated mechanisms. The PID Act sets out the framework for disclosures to be properly assessed and, where necessary, investigated. The PID Act provides protection for individuals who make such disclosures and those who may suffer detrimental action in reprisal for disclosing improper conduct. To receive protection, a disclosure must be made to a relevant assessing entity,³¹ which is the VI for a disclosure about the OSI, and IBAC for a disclosure about the conduct of the DPP.

³⁰ PID Act s 56(1)(ea).

³¹ Or make its way to such an assessing entity via another body.

Findings

75. The VI is not permitted to make a finding that any individual is guilty of, or has committed, any criminal offence or disciplinary offence.³² This does not prevent the VI making findings of fact about investigated conduct. VI investigations apply a civil standard of proof (proof on the balance of probabilities) when determining whether or not the alleged conduct occurred. Regard is had to the principles established in the decision of *Briginshaw v Briginshaw*.³³ The principles do not alter the requirement for any findings of fact to be made on the balance of probabilities, however they require consideration be given to the seriousness of any finding, the inherent likelihood or unlikelihood of the fact in question, and the gravity of the consequences that may flow from a finding. A criminal finding requires a criminal trial and a standard of proof beyond reasonable doubt.
76. The key factual findings made on the balance of probabilities by the VI are:
- (i) JB was an OSI officer from 17 January 2022 until 7 July 2023.
 - (ii) JB had an ongoing obligation not to disclose confidential OSI information to members of the public without authorisation or a reasonable excuse.
 - (iii) In or around July 2023, JB disclosed to journalist Shannon Deery confidential OSI information without authority.
 - (iv) On 11 July 2023, JB disclosed confidential OSI information to a member of the public by confirming the content of the 11 July 2023 article.

³² VI Act s 87(7)(a).

³³ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

Recommendations

77. The SI Repeal Act provides that the VI's power to make recommendations in respect of the OSI under former section 85H of the VI Act continues until February 2026, but the recommendations must be made to the Attorney-General, rather than the OSI. That includes recommendations for taking action to prevent specified conduct from occurring in the future.
78. A purpose of this report is to remind former OSI staff of their ongoing confidentiality obligations under section 89 of the SI Act, which are continued by section 13 of the SI Repeal Act, and to inform them of the type of conduct that could constitute a breach and the potential consequences of unauthorised disclosures. Recommendation 1 is made to further that purpose.
79. Recommendation 2 addresses the inconsistency between the treatment of personnel of the different bodies oversighted by the VI in respect of the abrogation of the privilege against self-incrimination and the use that can be made of evidence obtained. Paragraphs [68] to [70] above address this issue.

Recommendation 1

The Victorian Inspectorate recommends that the Attorney-General distributes a copy of this report to all former members of staff of the Office of the Special Investigator.

Recommendation 2

The Victorian Inspectorate recommends that the Attorney-General, when proposing legislation that provides the VI with investigatory and inquiry powers in respect of a new body, considers amending section 70(2) of the VI Act in order that self-incriminating evidence given in accordance with a witness summons may be used against the witness in proceedings for an offence against the Act establishing the body so that section 70 has a uniform operation.

Appendix A

Procedural Fairness Response — JB

On behalf of JB, the following was submitted:

‘We note the contents of the draft report and accept in broad terms the contents contained therein. [JB] accepts that [they] liaised with Mr Deery and accepts the contents of the email exchange that [they] disclosed. [JB] accepts that whilst [they] cannot recall specifics, it appears from the exchange on 5 July 2023 that there had been some prior discussion between the two and that in those discussions, it appears information may have been disclosed.

In the return correspondence from [JB] to Mr Deery on 5 July 2023 [JB] refers only to publicly available information being Mr Overland’s evidence/examination in the Royal Commission from December 2019. [JB] does not provide further comment or quotes as requested by Mr Deery. It cannot be excluded that given Mr Deery sought legal advice regarding the article and requested further corroboration before running the story, that [JB] is not the only ‘source’ he relied upon.

In relation to the inclusion of the text exchanges between [JB] and friend one, the exchange is brief and lacks specificity. [JB] accepts that in general, [they] ‘confirmed’ the contents of the article, however, maintains that no further conversation occurred with this friend regarding the article or anything to do with the OSI.

The exchange involving friend two begins by referencing the publicly available report being the Special Investigators report tabled in June 23, prior to publication of both articles. [JB’s] reference to “Yes- Judd was not going to charge anyone” is a sentiment expressed and inferred in that report. [JB] maintains that despite the comments of “we will have a discussion” that nil discussion ever occurred. The findings in the draft report provided at para [60] that any opinion expressed by [JB] would be given more weight is in of itself an opinion.’

Appendix B

Procedural Fairness Response — Shannon Deery and the *Herald Sun*

Powers and role of the VI

On behalf of Mr Deery and the *Herald Sun*, it was submitted that:

- Material in the VI report *‘cannot sensibly be characterised as related to the “performance of its duties and functions”’* under section 87(1) of the VI Act.
- The material under the headings “Impact of the articles” and subheadings “Inaccuracies in the 11 July 2023 article” and “Potential for impact on others named in the articles”, “Potential for impact on OSI personnel”; “Broader impacts of authorised disclosures” and subheadings “Risks for journalists and the integrity system” and “Risks for ‘whistleblowers’ who disclose to the media or members of the public” is not *‘referrable to a function of the VI under s 11(8) (a)–(d)’* of the VI Act.
- *‘It is not the role of the VI to determine who a journalist should or should not rely upon as a source of information’.*
- *‘[I]t is not the role of the VI to “correct the record” (as the VI sees it) through the use of the VI’s extraordinary investigations and inquiries powers which abrogate the journalist privilege’.*

VI response:

The matters contained in the report relate to the performance of the duties and functions of the VI to assess and report on conduct relevant to a complaint concerning an unauthorised disclosure, to assess the effectiveness of policies and procedures which relate to the legality and propriety of activities of OSI personnel, to report on and make recommendations on those matters and on the prevention of future unauthorised disclosures, and to promote the purposes of the PID Act. The lessons in the report are applicable to all other integrity bodies, including IBAC, and therefore support an object of the VI Act — to enhance compliance of IBAC personnel with the IBAC Act and other laws.

On behalf of Mr Deery and the *Herald Sun*, it was also submitted that:

The report *‘...raises serious questions about the motives of the VI and whether the VI’s real intention in relation to this report is to champion the cause of the DPP.’*

VI response:

The investigation was not the result of a complaint from Ms Judd, and this comment has no basis.

Paragraphs [47] and [73]

On behalf of Mr Deery and the *Herald Sun*, it was submitted:

‘We note the general warning in relation to use of information and conclusions “drawn from an individual’s perception of events” ([73]), which we assume extends to the statements of Ms Judd and Mr Nettle not just information provided by confidential sources.’

VI response:

The evidence of the purported participants to an alleged conversation, one of whom gave evidence on oath, is to be preferred to a confidential source who is not purported to have been present during the original alleged conversation.

Paragraph [38]

On behalf of Mr Deery and the *Herald Sun*, it was submitted that the content of the email sent by Mr Deery to JB on 5 July 2023 at 3:55pm from after ‘Hope you’re well’ until ‘[h]aving discussed these with our lawyers we need to clarify a few things...’ *‘be excluded from the report. Inclusion of this information is unnecessary and does not relate to any downstream findings, and is irrelevant to the VI’s statutory task.’*

VI response:

The content of the 5 July 2023 email is a key piece of evidence demonstrating JB was a source of the information contained in the articles.

Paragraph [50]

Mr Deery and the *Herald Sun* objected to the inclusion of the first sentence of paragraph [50], submitting that *‘[i]t is a factual inaccuracy which ought be excluded. It assumes that a ‘senior OSI whistleblower’ must come from within the OSI. There is no factual basis for this assertion.’*

VI response:

The 11 July article commences with *‘Whistleblowers in the special office ... say their probe was doomed from the start’*. The context for the reference to ‘senior OSI whistleblower’ is *‘A senior OSI whistleblower claimed Ms Judd ... “expressed doubt **we** could get anywhere”...’* (emphasis added). The implication is clear.

Appendix C

Procedural Fairness Responses — Paul Coghlan AO KC, Geoffrey Horgan KC, Shannon Deery and the *Herald Sun*, and Kerri Judd KC

As the VI reproduced material that contained adverse comment or opinion about Mr Horgan and Mr Coghlan, they were given an opportunity to respond to the material and their responses are fairly set out below. As indicated at paragraph 48 of the report, the VI has not made any finding about the accuracy of the material relating to them that was published in the 11 July 2023 article.

Paul Coghlan AO KC

Mr Coghlan submitted that:

- He did co-operate with the OSI inquiry. Although he declined to make a statement, he had a lengthy discussion with two investigators about relevant matters and a second meeting with the same investigators who informed him of the progress of the OSI's enquiries.
- Following the windup of the OSI and the publication of the articles by the *Herald Sun*, the same two investigators contacted him and told him that *'they were happy with my responses and had reported that fact to the OSI. They assumed that if it did become necessary in any prosecution I would make a statement or otherwise co-operate'* and that *'they thought the article was unfair'*.
- He complained to the Press Council about the article that referred to him but the matter was not resolved.

Geoffrey Horgan KC

Mr Horgan submitted that:

- He was not approached by the *Herald Sun* in relation to the accuracy of the contents of the 11 July 2023 article as it concerned him.
- He met with two OSI officers and answered any questions they had and agreed to provide a statement should they require one at some future time.
- He was never subsequently asked to provide a statement.
- Following the articles, he wrote a letter of complaint to the editor of the *Herald Sun* complaining of the inaccuracies printed as to his conduct. This letter was not published.

Shannon Deery and the *Herald Sun*

In response, on behalf of Mr Deery and the *Herald Sun* it was submitted that:

‘Mr Deery wrote to the OPP on 10 July 2023 stating:

“I understand neither Justice Coghlan or Mr Horgan are currently employed with the OPP. I have no way of reaching them so am seeking to garner some form of a response to their specifics through the OPP. Alternatively, I am not sure if you have a way of passing this on to them.”

Mr Deery received a response which read, in part:

“We have no comment to make on the decisions of individuals with respect to the OSI’s investigations.”

Mr Deery took this to mean that his request had been actioned. Mr Deery was not informed by the OPP that it could not pass on his request to its former employees Mr Horgan and Mr Coghlan.

Mr Deery recalls Ms Judd being on the public record at the time saying she was responding to OSI claims on behalf of former employees.’

Kerri Judd KC

Ms Judd submitted that:

‘In relation to Mr Deery’s recollection of me being on the public record at the time saying I was responding to OSI claims on behalf of former employees, that is not my recollection.’

VICTORIAN
INSPECTORATE