

B E T W E E N: **TONY STRICKLAND (a pseudonym)**
Appellant

-and-

10 **COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS & ORS**
Respondents



B E T W E E N: **DONALD GALLOWAY (a pseudonym)**
Appellant

-and-

20 **COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS & ORS**
Respondents

B E T W E E N: **EDMUND HODGES (a pseudonym)**
Appellant

-and-

30 **COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS & ORS**
Respondents

B E T W E E N: **RICK TUCKER (a pseudonym)**
Appellant

-and-

40 **COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS & ORS**
Respondents

APPELLANTS' FURTHER REDACTED CHRONOLOGY

Part I:

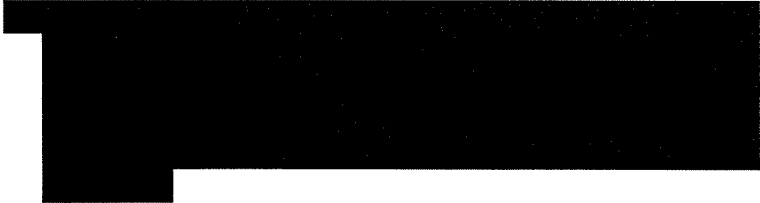


I certify that this chronology is in a form suitable for publication on the internet.

Part II:

Date	Event	Appeal Book Reference
13.09.2007	Australian Crime Commission (ACC) Examiner Sage gave a direction under sec 25A(9) of the <i>Australian Crime Commission Act 2002</i> (Cth) (ACC Act) in relation to the examination of Patrick David McCarthy (who had not been charged), effectively quarantining the examination material from the Australian Federal Police (AFP) and the Commonwealth Director of Public Prosecutions (CDPP): <i>R v Seller, R v McCarthy</i> (2012) 232 A Crim R 146 at [43]-[45] (<i>Seller(1)</i>); <i>R v Seller and Anor</i> (2013) 273 FLR 155 at [22] (<i>Seller(2)</i>); <i>Director of Public Prosecutions (Cth) v Donald Galloway (a pseudonym) & Ors</i> [2017] VSCA 120 at [43], [67] (CA).	
14.09.2007	ACC Examiner Sage gave a direction under sec 25A(9) of the ACC Act in relation to the examination of Ross Edward Seller (who had not been charged), effectively quarantining the examination material from the AFP and the CDPP: <i>Seller(1)</i> at [43]-[45], <i>Seller(2)</i> at [27], CA at [43], [67].	
25.06.2008	The Australian Crime Commission (ACC) Board made the ACC Special Investigation Authorisation and Determination (Financial Crimes) 2008 (Financial Crimes Determination). It listed many federal offences but not [REDACTED].	ECB.351
26.02.2009	Decision of Jessup J in <i>ABC v Sage</i> (2009) 175 FCR 319 handed down. A important aspect of the decision was that Sage (the Examiner) swore an affidavit in the proceeding confirming that he had made directions under sec 25A of the <i>Australian Crime Commission Act 2002</i> (Cth), limiting attendees at the examination and quarantining examination material, to protect the fair trial of the examinee.	
Late May 2009	The Chairman of the [REDACTED], was prompted by [REDACTED] to request that the AFP investigate allegations [REDACTED].	
25.05.2009	The Australian Federal Police (AFP) commenced its investigation into [REDACTED], codenamed Operation Thuja (a pseudonym).	Exhibit 1 (paragraph 3)
10.06.2009	The ACC Board made Amendment No. 1 of 2009 to the Financial Crimes Determination, which extended the authorised Investigation until 30 June 2010.	ECB.353
16.09.2009	Decision of Mansfield J in <i>OK v Australian Crime Commission</i> (2009) 259 ALR 507 handed down.	

Date	Event	Appeal Book Reference
30.10.2009	<p>An AFP Major Investigation Plan (MIP) was submitted to “<i>amend the ECD (estimated completion date) to June 2010, and outline the intended investigation method including the execution of search warrants, examination of documents, use of ACC coercive hearings, collection of witness statements and preparation of a Summons Brief of Evidence.</i>”</p> <p>The MIP was prepared by [REDACTED] and approved by [REDACTED] and relevantly noted:</p> <p>“... it is planned Op. THUJA investigators will use the ACC coercive hearings as it is perceived current [REDACTED] senior executives may have knowledge of alleged [REDACTED] activity. AFP MO has already approached the ACC Melbourne who indicated they would be prepared to assist the AFP in this investigation through the Financial Crime reference” (at page 7).</p> <p>“Legal Advice. The investigation team has been utilising the AFP MO Legal officer and has requested the Commonwealth DPP to provide ongoing legal advice during the investigation.” (at page 8).</p>	Exhibit 36, Exhibit 4 (paragraph 22)
12.11.2009	Senior Investigating Officer (SIO) Mr Schwartz (a pseudonym) commenced leading the Operation Thuja investigation into the activities of [REDACTED] and [REDACTED].	Exhibit 1 (paragraph 3)
13.11.2009	<p>[REDACTED], National Manager Counter Terrorism, AFP sent an email to Schwartz, copied to [REDACTED], [REDACTED], AFP setting out details of Schwartz’s role as SIO as follows:</p> <ol style="list-style-type: none"> 1. <i>The overall strategic management of the operation and control of AFP elements</i> 2. <i>Approval of the major investigation plan (MIP)</i> 3. <i>Approval of the prepared risk assessment</i> 4. <i>Provision of approved SITREPS in respect of the conduct of the operation</i> 5. <i>Oversight of the preparation of the brief of evidence for the operation</i> 6. <i>Ensuring regular investigative briefings are conducted as required</i> 7. <i>Clearing media statements</i> 8. <i>Determining the investigative structure to assist in achieving the outcomes of the operation</i> 9. <i>Acting as the principal decision maker and final arbiter on operational matters</i> 	Exhibit 38 (page 3)

Date	Event	Appeal Book Reference
	<p>10. <i>Maintaining a decision log recording every decision and the reasons for the decision</i></p> <p>11. <i>Ensuring compliance with AFP guidelines and procedures</i></p> <p>12. <i>Ensuring operational coordination of investigations</i></p> <p>13. <i>Approval of tactical decision in respect of investigative actions</i></p> <p>14. <i>Conducting meetings with other agencies appropriate to this operation</i></p> <p>15. <i>Determining parameters to facilitate joint investigative actions and priorities with other supporting agencies</i></p> <p>16. <i>In the event of a multi agency operation, developing an investigative agreement between the relevant parties.</i></p>	
19.11.2009	The AFP executed search warrants at [REDACTED] premises.	ECB.455
23.12.2009	The AFP executed a further search warrant at [REDACTED] premises.	
17.02.2010	<p>[REDACTED] of the AFP emailed [REDACTED] attaching a copy of the document titled “ACC Coercive Examinations – Information for Investigators” and an ACC referral form which the ACC had previously requested the AFP complete when seeking use of the Examination Powers.</p> <p>Relevantly, the ‘Information for Investigators’ document contained the following statements:</p> <ul style="list-style-type: none"> - <i>the ACC will not examine a witness directly about their own offending (page 1).</i> - <i>if a person is to be charged with a criminal offence, or there is considered to be sufficient evidence to ground the laying of a criminal charge (prima facie), the ACC is unlikely to examine that witness. In all such cases the ACC and the relevant Examiner should be advised ASAP to discuss available options (page 1).</i> - <i>the ACC examination process is primarily concerned with generating intelligence – its purpose is not to gather evidence, although this may be the outcome, for example, if a witness ultimately decides to provide a statement (induced or otherwise) or a taped interview under caution/rights (page 1).</i> - <i>the investigation being conducted by the AFP must fall within a relevant ACC Determination to be considered for the use of coercive powers... (page 1).</i> - <i>the AFP does not decide whether a person is examined or not – this is a 3 stage process... (page 1).</i> - <i>The Examiner will offer a witness the opportunity to claim a blanket protection against self-incrimination and will</i> 	Exhibits 14, 15 and 16

Date	Event	Appeal Book Reference
	<p><i>encourage the witness to take advantage of this offer. THE REASON FOR THIS RELATES BACK TO THE PRIMARY PURPOSE OF THE EXAMINATION – TO GATHER INTELLIGENCE (pages 2-3).</i></p>	
19.02.2010	<p>Schwartz prepared a Minute to Manager Special (MS), AFP which relevantly stated:</p> <p><i>“The AFP has engaged the Australian Crime Commission (ACC) in relation to Operation Thuja in order to extract information and evidence from witnesses and suspects by means of the ACC’s coercive powers to conduct examinations. The hearings will be conducted pursuant to the ACC’s Financial Crimes/Money Laundering Determination.</i></p>	ECB.33
05.03.2010	<p>Federal Agent Webb sent an email to Schwartz attaching a copy of an Excel spreadsheet titled “ACC Examinee List”. Her email relevantly stated:</p> <p><i>“Please find attached a spreadsheet containing the Op Thuja ACC Examination Program. The hearings are due to commence on 24 March 2010. The premise behind the scheduling is generally consistent with the ‘Outside/In’ approach. The persons peripheral to the main POI’s will be examined first, followed by those that are currently considered suspects. An outline of each person’s role and information they may be able to provide is contained in the attached spreadsheet.”</i></p>	ECB.45
12.03.2010	<p>AFP meet with Cohen and Bonnici regarding examinations. A note of the meeting records in part:</p> <p></p> <p></p>	Exhibit 152
18.03.2010	<p>The AFP executed a search warrant at  premises.</p>	ECB.175
24.03.2010	<p>David Sewell, solicitor at the Commonwealth Director of Public Prosecutions (CDPP) prepared a memorandum to Graeme Davidson, Director and Shane Kirne, Deputy Director which relevantly stated that:</p> <p><i>“Since the investigation began, a number of warrants have been executed and ACC hearings are taking place over the next several weeks but a brief is still some months off.”</i></p>	ECB.96

Date	Event	Appeal Book Reference
30.03.2010	<p>Webb (AFP) sent an email to Ayres and Cohen (ACC), copied to Bonnici, [REDACTED] which stated:</p> <p><i>“Attached are the briefing papers for [REDACTED] [REDACTED] which should be enough to have the summons issued...”</i></p> <p><i>FYI – we are yet to interview some of these persons and this is expected to occur prior to summons service.”</i></p>	ECB.86, ECB.167
01.04.2010	<p>Sewell (CDPP) sent an email to Schwartz, copied to Kirne (CDPP) regarding a matter (which is redacted). Schwartz forwarded the email to the Operation Thuja team with a note which stated <i>“Team, For your info.”</i> Webb recorded the email in a case note headed <i>“CDPP Advice re: [redacted].”</i></p>	ECB.101
01.04.2010	<p>Schwartz, [REDACTED] and Webb of the AFP met with Cohen, Ayres and Bonnici of the ACC and Tim Sage, the ACC Examiner at the ACC’s office.</p>	ECB.170
06.04.2010	<p>Webb sent an email to Ayres, Cohen and Bonnici, copied to Schwartz, [REDACTED] at 8.49am which attached a revised ACC timetable. The proposed timetable provided for examinations of [REDACTED] (12 April), [REDACTED] (13 April) and [REDACTED] (15 April).</p>	ECB.205
06.04.2010	<p>Ayres responded to Webb’s email at 9.16am with a query: <i>“Which [REDACTED] personnel are you approaching today?”</i></p> <p>Webb responded to Ayres’ email at 10.20am and stated:</p> <p><i>“[REDACTED] is coming in today – between 12.30-1pm. [REDACTED] [REDACTED] will all be contacted today and offered an interview. Will let you know the outcome of those as soon as available.”</i></p>	ECB.164
06.04.2010	<p>[REDACTED] prepared a SITREP (at 9.33am) as at 6 April 2010 which relevantly stated:</p> <p><i>“Follow up avenues of enquiry resulting from ACC Hearings. Continued interrogation of computer data holdings. Approach [REDACTED] targets for TROIs.”</i></p>	ECB.418 & Exhibit 9
06.04.2010	<p>[REDACTED] telephoned [REDACTED] at 11.30am and advised that the AFP sought to conduct a formal record of interview (ROI) with him. Renwick’s case note recorded:</p> <p><i>“[REDACTED] was advised that the interview would take place under Criminal Caution and that he was not obliged to participate in the interview. [REDACTED] was also advised that he may seek legal advice on whether to participate in the ROI.</i></p>	ECB.138

Date	Event	Appeal Book Reference
07.04.2010	At 3.19pm, Sage issued a Summons to ██████ to attend to be examined on 12 April 2010.	ECB.331, ECB.367 & Exhibit 105
07.04.2010	Members of the AFP met with the CDPP. Schwartz created a case note recording the meeting on 8 April 2010.	ECB.268
07.04.2010	An Evidence Matrix created by ██████ in relation to ██████ records that ██████ were suspected of committing an offence contrary to ██████.	Exhibit 46 (page 14)
08.04.2010	████████ served with ACC summonses.	ECB.348 (page 3)
09.04.2010	<p>Cohen (ACC) sent an email to Webb, copied to Ayres which stated:</p> <p><i>“We can organise to get you the copies of the summaries but keep in mind that they are merely the best contemporary summary that we can obtain at the time. For complete accuracy, you should rely on transcriptions.</i></p> <p><i>Once we have disseminated the copies of the Examinations, the information is disseminated to the AFP for your purposes, you can load the names onto PROMIS. The restrictions we place on the use of the information relates to communicating outside of the AFP. Internal storage and use (within the AFP) of the material is a matter for your information policy and procedures regarding the handling of security classified material.”</i></p>	ECB.226
09.04.2010	Webb sent an email to Ayres and Cohen attaching the ACC Briefing Paper for ██████ examination and noted that ██████ paper would be provided on Monday.	ECB.147 & Exhibit 52
12.04.2010	<p>█████ was compulsorily questioned at the ACC before Examiner Sage. Counsel assisting was Bonnici.</p> <p>Various documents were shown to ██████ during the course of the examination and a list kept in an Exhibit Register.</p> <p>At the conclusion of ██████ examination, directions were made by the Examiner permitting dissemination of his compelled testimony to be made to the AFP and the CDPP.</p>	Exhibits 7 & 8
12.04.2010	Sage signed an Authority to Attend for ██████ examination and authorised 20 AFP staff members to be present during ██████ examination.	ECB.333
12.04.2010	ACC attendance records show that AFP officers Webb, ██████ ██████ attended the ACC for ██████ examination.	ECB.139

Date	Event	Appeal Book Reference
12.04.2010	An ACC staff member prepared a summary of the ACC examination of ██████.	Exhibit 50 & ECB.262
12.04.2010	<p>Schwartz emailed Cohen and Ayres at 10.52am attaching the ACC Briefing Paper for ██████ examination.</p> <p>The briefing paper is ECB.88 and Exhibit 17. Under the heading "Previous AFP approaches to ██████", it states:</p> <p><i>"On 7 April 2010, ██████ was contacted by AFP investigators and asked to participate in a formal record of interview. Later that day, he advised he stated [sic] that he was unavailable to attend any location to liaise with AFP investigators nor could he commit to a set date in the future."</i></p>	ECB.12, ECB.88 & Exhibit 17
13.04.2010	<p>█████ was compulsorily questioned at the ACC before Examiner Sage. Counsel assisting was Bonnici.</p> <p>At approximately 4.20pm that day, the examination was adjourned to 22 April 2010 for mention. At the time of adjournment of ██████ examination, interim non-publication orders were made by the Examiner but an exception was made for dissemination to be made to the AFP.</p>	Exhibit 3
13.04.2010	Sage signed an Authority to Attend for ██████ examination and authorised 20 AFP staff members to be present during ██████ examination.	ECB.336
13.04.2010	ACC attendance records show that AFP officers ██████ ██████ attended the ACC for ██████ examination.	ECB.49
13.04.2010	<p>Ayres (ACC) sent an email to Webb at 3.43pm, copied to Cohen which stated</p> <p>(Regarding ██████ examination)</p> <div data-bbox="440 1473 1203 1816" style="background-color: black; width: 100%; height: 150px; margin: 10px 0;"></div> <p>Webb responded at 3.45pm: <i>"GOOD WORK! Its a start, now we need to get it into evidence!"</i></p> <p>Ayres responded at 3.59pm: <i>"Peter is hopeful... we plan to adjourn him off today to next week and let you guys make the approach."</i></p>	ECB.13

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	<p>Webb then forwarded the email chain to Schwartz. At 4.08pm, Schwartz sent an email to Webb which stated:</p> <p><i>"The approach to him should be made by persons who were not there to keep the process completely separate. I'm thinking you and I but will discuss on return. Also thinking quite soon."</i></p>	
13.04.2010	<p>An ACC staff member prepared a summary of the ACC examination of ██████████.</p>	ECB.281
15.04.2010	<p>██████████</p> <p>██████████</p>	Exhibit 132
21.04.2010	<p>Webb sent an email to Ayres, copied to ██████████ ██████████ Cohen and Bonnici which relevantly stated:</p> <p><i>"... Is it possible to have ██████████ adjourned until 24 May (which was the other day Tim kept free for us)? The ██████████ computers won't be available to us for approximately 2 weeks (then we need to get them onto our system – another week possibly). By the end of May, it is more likely that we will have accessed/reviewed this material prior to continuing his hearing..."</i></p>	ECB.50
22.04.2010	<p>Webb sent an email to Bullock (ACC), copied to Schwartz and ██████████ which relevantly stated in part:</p> <p><i>... The hearings have enabled us to continue to investigate the matter confident that we are on the right track as well as obtaining some valuable contextual statements (and hopefully a full and frank TROI tomorrow). Will keep you informed."</i></p>	ECB.54
29.04.2010	<p>██████████ prepared a SITREP as at 29 April 2010 which listed the following as an intended action/outcome:</p> <p><i>"Follow up avenues of enquiry resulting from ACC Hearings."</i></p>	ECB.292
03.05.2010	<p>The AFP gained access to ██████████ computer system.</p>	Exhibit 1 (paragraph 37)
17.05.2010	<p>Webb sent an email to Bonnici, Cohen and Ayres, copied to ██████████ which stated:</p> <p><i>"We have obtained additional evidence from the ██████████ database which will, in all likelihood, result in ██████████ being charged."</i></p>	ECB.51 & ECB.448

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	<p><i>Is it possible (and appropriate) to dismiss him without continuing the examination? He is due back next Friday 28 May...</i></p> <p>Ayres responded to Webb's email on 20 May 2010:</p> <p><i>"Yes, in those circumstances it would not be appropriate to continue ██████████ examination."</i></p>	
21.05.2010	<p>Webb sent an email to Bonnici and Cohen, copied to Schwartz, ██████████ which relevantly stated:</p> <p><i>"Thanks for your advice yesterday Chris, as we discussed, it is intended that we will discontinue ██████████ examination on the basis of the additional material we've obtained from the ██████████ database."</i></p>	ECB.52
25.05.2010	<p>Ex parte Directions were made in relation to ██████████ ACC examination by Examiner Sage on the application of Counsel assisting, Bonnici. ██████████ and his lawyers were not given notice of the application.</p> <p>The Directions permitted dissemination of the record of ██████████ compelled testimony to the AFP and "any prosecution authority".</p>	Exhibit 134
01.06.2010	<p>A teleconference was held at the CDPP between Kirne, Sewell and Samantha Holmes in Melbourne, Bruce Taggart in Canberra and Chris Craigie (director) in Sydney. A file note prepared by Holmes recorded the following relevant matters:</p> <p><i>"Discussed the history of the matter to date – ACC conducting examinations... A number of people have been shown documents by the ACC. ██████████ of ██████████ and on ██████████ only shown 1 document at ACC and apparently went into a trance like state after realising how bad things were."</i></p> <p><i>"Doc shown to ██████████ at ACC relatively innocuous, but there are more detailed emails discussing the ██████████"</i></p>	ECB.60
02.06.2010	<p>Decision of Full Federal Court in <i>Australian Crime Commission v OK</i> (2010) 185 FCR 258 handed down.</p>	
02.06.2010	<p>Kirne, Sewell and Holmes of the CDPP met with ██████████ solicitor, ██████████ and barrister, ██████████</p> <p>Kirne informed ██████████ lawyers that:</p> <ul style="list-style-type: none"> - it was "highly likely ██████████ will be charged" <p>... ██████████ asked why ██████████ ACC examination was stopped. Sewell responded: ██████████ "moved from a suspect to a person that would likely be charged."</p>	ECB.294
09.06.2010	<p>Schwartz prepared a Minute to NMCO through MS "for decision. Approval is sought to formalise a decision to investigate the alleged illegal activities of ██████████"</p>	ECB.15

Date	Event	Appeal Book Reference
	<p><i>at the time of the Examination) have to seek a non-publication variation order prior to conducting the Dissemination.”</i></p> <p>Webb responded: <i>“Thanks Nick. It’s primarily CDPP that we would be want included.”</i></p>	
27.07.2010	<p>AFP Commander ██████ sent a letter of appreciation to the ACC, marked to the attention of Bullock. The letter relevantly stated:</p> <p><i>“The conduct of these examinations enabled investigators to gain a more detailed understanding of the mechanics of both organisations and the foreign business environments the companies were operating in. In addition, the examinations resulted in obtaining three additional witness statements and one person of interest participating in a taped record of interview.</i></p> <p><i>In particular, the assistance of Julian Ayres, Nick Cohen and Chris Bonnici was invaluable and the degree of flexibility they afforded to AFP investigators was very much appreciated. At all times, these members acted professionally and demonstrated commitment to meeting the objectives of the investigation. The valuable insight provided by the ACC Examiner, Mr Tim Sage was also paramount in enabling investigators to make informed decisions.</i></p> <p><i>The use of the ACC coercive powers in the course of AFP investigations is a highly valuable resource. The forging of a close working relationship between both agencies can only strengthen the capabilities of both law enforcement agencies.”</i></p>	ECB.34
30.07.2010	<p>Webb sent an email to Cohen, copied to Schwartz which stated:</p> <p><i>“As discussed Weds morning, it would be valuable for us to have the CDPP included in all non-publication orders and receive material from examinations conducted on Op Thuja witnesses. Also, for AFP purposes only, we would appreciate the summaries which were created during the hearings.</i></p> <p><i>As the investigation has now progressed to include ██████ business dealings in ██████, would it be possible to schedule another 2 weeks of examinations for the end of November, early December 2010 (with 2 days in Sydney)? The number of examinations at this stage is unknown as we are yet to ascertain those witnesses levels of cooperation...”</i></p>	
31.07.2010	<p>At paragraph 12 of his statement, Schwartz stated that:</p> <p><i>“By late July 2010, the investigation had progressed significantly due to the receipt and comprehensive examination of material from both ██████. ...By July 2010, the AFP had already begun to compile Briefs of Evidence in relation to ██████ and ██████ was a person of interest in relation to ██████.”</i></p>	Exhibit 1 (paragraph 12)

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03.08.2010	<p>Cohen sent an email to Webb, copied to Edwards which stated:</p> <p><i>“Please find attached the Examination summaries provided for Intel purposes only. Please note that these summaries are fairly rough in some cases as they were taken contemporaneously during the Examination and should not be relied upon for evidentiary purposes...”</i></p> <p>The email attached summaries prepared for the ACC examinations of [REDACTED].</p>	ECB.56
03.09.2010	<p>Schwartz and Clinnick met with [REDACTED] at his home. Schwartz’s case note of the meeting relevantly records:</p> <p><i>“[REDACTED] was advised that investigators wished to conduct a formal record of interview with him in relation to his knowledge of [REDACTED]. [REDACTED] was advised that this interview could assist in determining his criminal involvement in the offences of [REDACTED]. [REDACTED] was further advised that he was not obliged to participate in this interview and that if he did choose to participate, that he would be afforded his legislative caution and rights.”</i></p>	ECB.7
09.09.2010	<p>Schwartz and Clinnick met with [REDACTED] solicitor, [REDACTED] at AFP Melbourne. Clinnick’s case note of the meeting relevantly records:</p> <p><i>“[REDACTED] requested to speak with a solicitor and to provide a response to the interview request at a later date. [REDACTED] later replied that he would decline an interview based on legal advice from [REDACTED]. It was decided to contact [REDACTED] to fully appraise him of [REDACTED] alleged involvement....</i></p> <p><i>During the meeting [REDACTED] was made aware of the investigation with reference to [REDACTED]. [REDACTED] was advised that the AFP sought co-operation from [REDACTED] in return for legislative assistance that is available if he were to co-operate...”</i></p>	ECB.8
17.09.2010	<p>Cohen sent an email to Webb which stated:</p> <p><i>“Just a quick update re the dissemination to the CDPP. The conversion of the video to the audio should be completed by early next week and will consist of the following:”</i></p> <p>[REDACTED]</p> <p>Webb responded on 20 September 2010:</p> <p><i>“Is it possible to have the videos released also? In particular, [REDACTED] to the CDPP?”</i></p>	ECB.394

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21.09.2010	A briefing paper prepared by Schwartz and headed "Commissioner's Briefing Notes – 21 September 2010" stated under the heading 'Other issues': <i>"A second round of ACC hearings are booked for last week of November, first week of December."</i>	ECB.442
28.09.2010	The ACC sent a letter to Kirne and Sewell, CDPP enclosing disseminated ACC examination material, being recordings of ACC examinations of ██████████ and others.	ECB.106
06.10.2010	The AFP executed search warrants at the homes of ██████████ ██████████	ECB.419
06.10.2010	Cohen sent an email to Bonnici and Webb which relevantly stated: <i>"Just a quick email to let you both know I met with David Sewell CDPP and provided him with the audio copies of the Thuja Examinations to date. I explained to David that the copies were provided for intelligence purposes and not for inclusion in a brief of evidence.</i> <i>██████████ in regards to the transcripts of the Examinations, I explained that he could now receive them directly from you."</i> Webb responded: <i>"Thanks Nick. I will send them the transcript of ██████████ later this week."</i>	ECB.301 & ECB.234
06.10.2010	██████████ attended AFP Headquarters for the first part of a taped record of interview under caution. ██████████ was not legally represented. The interview commenced at 7.49pm and concluded at 11.57pm.	ECB.141
07.10.2010	██████████ attended AFP Headquarters for the second part of a taped record of interview under caution. ██████████ was not legally represented. The interview commenced at 5.09pm and concluded at 11.03pm.	ECB.144
08.10.2010	Sewell sent an email to Webb, copied to Schwartz which noted that the ACC had provided the CDPP with recordings of a number of ACC examinations including ██████████ ██████████	ECB.97
12.10.2010	Webb sent a letter to Sewell enclosing copies of ACC examination summaries of a number of ACC examinations including ██████████ ██████████	ECB.103

Date	Event	Appeal Book Reference
12.10.2010	AFP officer ██████████ attended the offices of the CDPP and delivered ACC examination summaries for a number of ACC examinations including ██████████	ECB.235 & ECB.302
12.10.2010	Webb sent an email to Sewell with the subject line "ACC Summaries". The email stated: <i>"They have just been delivered to you... hardcopies."</i>	ECB.237
05.11.2010	Webb sent an email to Cohen, copied to Schwartz, ██████████ ██████████ which attached a copy of a proposed ACC examination timetable. Relevantly, the timetable proposed an examination of ██████████ on 22 November 2010 and an examination of ██████████ on 24 November 2010.	ECB.212
10.11.2010	Webb sent an email to Cohen and Bonnici, copied to Schwartz which relevantly stated: <i>"Attached are the two remaining summaries for Week 1 to enabled [sic] summons to be considered/issued. Will see you at 2pm this afternoon."</i> The witness summary in relation to ██████████ relevantly stated: <i>"In September 2010, ██████████ was approached by investigators and asked to participate in a formal interview. He later declined to participate."</i>	ECB.159 & ECB.215
10.11.2010	Webb sent an email to Cohen and Bonnici, copied to Schwartz, ██████████ which attached a comprehensive briefing paper for ██████████.	ECB.216
10.11.2010	Schwartz, Webb, ██████████ met with Bonnici, Cohen, Cullen and others at the ACC. Webb's case note of the meeting recorded: <i>ACC were advised that we would seek to have all material provided to CDPP at the time of the hearings, rather than delaying and having to seek variations to non-publication orders."</i>	ECB.192
11.11.2010	Webb sent an email to Cohen, Bonnici and Cullen, copied to Schwartz, ██████████ which attached a spreadsheet containing addresses of examinees. The email also contained a list of the names of 19 AFP staff members who intended to attend the ACC examinations.	ECB.217
15.11.2010	Deakin signed a Statement of Facts and Circumstances in support of the issue of a Section 28 Summons to ██████████ At page 11 of the document, the following statement appears: <i>"The witness was to be summonsed to an earlier round of examinations but the AFP decided to approach him to speak to</i>	ECB.325 & ECB.342

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	<i>them further and the summons was never issued. However, he has declined to speak further to AFP investigators."</i>	
15.11.2010	Bonnici signed Legal Submissions in Support of the issue of a Section 28 Summons to [REDACTED]	ECB.343
16.11.2010	Webb sent an email to Cohen, Bonnici and Cullen which stated: <i>"I've updated the ACC Schedule... deferring [REDACTED] to 30 November."</i>	ECB.218
16.11.2010	Deakin signed a Statement of Facts and Circumstances in support of the issue of a Section 28 Summons to [REDACTED].	ECB.322 & ECB.337
16.11.2010	Bonnici signed Legal Submissions in Support of the issue of a Section 28 Summons to [REDACTED].	ECB.338
17.11.2010	At 10.16am, Sage recorded his Reasons for the Issue of a Summons pursuant to s 28(1) of the ACC Act to [REDACTED].	ECB.345
17.11.2010	At 10.17am, Sage issued a Summons to [REDACTED] to Appear before the ACC on 24 November 2010.	ECB.344
17.11.2010	At 11.45am, Sage recorded his Reasons for the Issue of a Summons pursuant to s 28(1) of the ACC Act to [REDACTED].	ECB.340
17.11.2010	At 11.47am, Sage issued a Summons to [REDACTED] to Appear before the ACC on 24 November 2010.	ECB.339
24.11.2010	<p>[REDACTED] was compulsorily questioned at the ACC before Examiner Sage. Counsel assisting was Bonnici.</p> <p>Various documents were shown to [REDACTED] during the course of the examination and a list kept in an Exhibit Register.</p> <p>[REDACTED] examination was adjourned to 29 November 2010 for further hearing. At the time of adjournment of [REDACTED] examination, interim non-publication orders were made by the Examiner.</p>	Exhibits 136 & 137
24.11.2010	Sage signed an Authority to Attend for [REDACTED] examination and authorised 20 AFP staff members to be present during [REDACTED] examination.	ECB.341
24.11.2010	AFP Investigative Assistant [REDACTED] prepared a summary of the ACC examination of [REDACTED].	ECB.224

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29.11.2010	<p>Webb sent an email to Cohen and Bonnici, copied to [REDACTED] and Schwartz which stated:</p> <p><i>“Just letting you know that [REDACTED] was served early Saturday morning. He didn’t raise any concerns about the lack to time to brief up, so we expect him to appear tomorrow. The documents will be delivered this morning.”</i></p>	ECB.219
29.11.2010	<p>[REDACTED] was compulsorily questioned at the ACC before Examiner Sage. Counsel assisting was Bonnici.</p> <p>At the conclusion of [REDACTED] examination, directions were made by the Examiner for dissemination of the record of his compelled testimony to be made to the AFP and the CDPP.</p>	Exhibits 136 & 137
29.11.2010	<p>Schwartz sent an email to Sewell (CDPP) which stated: “[REDACTED] at ACC tomorrow. Should be a bit of a laugh.”</p>	ECB.61
30.11.2010	<p>Schwartz prepared a Future Strategies paper to MSR through CCO “A” MO and DMMO, AFP. At page 5 of the paper, under the heading “ACC hearings”, Schwartz wrote:</p> <p><i>“Five persons are scheduled to appear before ACC coercive hearings which began on 23 November 2010. The majority of these persons are either witnesses who have refused to assist the AFP with providing a statement or are suspects whose knowledge of the offence and the involvement of other co-accused needs to be explored prior to indemnities being offered. The witnesses are:</i></p> <p>...</p> <p><i>[REDACTED] who is implicated in the [REDACTED] brief. [REDACTED] will be asked about his knowledge of his company’s bribing activities with a view to charging him. A 21E discount or an indemnity in return for his assistance against co-accused will be considered.</i></p> <p><i>[REDACTED] who has sent numerous highly questionable emails but who was at the lower end of the approval chain. He may be offered a section 21E discount to his sentence should he be willing and able to assist the AFP.”</i></p>	ECB.35 & ECB.443
30.11.2010	<p>[REDACTED] was compulsorily questioned at the ACC before Examiner Sage. Counsel assisting was Bonnici.</p> <p>Various documents were shown to [REDACTED] during the course of the examination and a list kept in an Exhibit Register.</p> <p>At the conclusion of [REDACTED] examination, directions were made by the Examiner for dissemination of his compelled testimony to be made to the AFP and the CDPP.</p>	Exhibits 48 & 147

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30.11.2010	Sage signed an Authority to Attend for ██████ examination and authorised 19 AFP staff members to be present during ██████ examination.	ECB.346
30.11.2010	<p>Kirne (CDPP) sent an email to Sewell, copied to Robertson and Holmes which relevantly stated:</p> <p><i>"[Schwartz] rang me this morning re exploring the possibility of AFP executing a s/w on ██████ post his evidence at the ACC. At the ACC hearing today ██████ apparently brought with him a copy of emails sent by the AFP to his lawyer on which he has made notes addressing various queries. The matter was stood down to enable the ACC to copy the emails. I understand from Schwartz that the ACC Act extends privilege to use of documents produced to a hearing. Schwartz queried whether a warrant could be executed if the ACC did not seek to query ██████ re those emails.</i></p> <p><i>I said I thought that as he had effectively 'produced' them in the sense he brought them into the witness box and was then asked what the bundle of documents he held was, that to deliberately refrain from questioning him re those docs with the purpose of then executing a s/w was a bit too cute for my liking and likely to be seen by a court as unfair. I also said there were possible LPP issues, depending upon the purpose and content of his notes on emails."</i></p>	ECB.62
30.11.2010	An ACC staff member sent an email to Webb and ██████ copied to Cohen which attached copies of summaries prepared in relation to ACC examinations of ██████	ECB.225
13.01.2011	<p>██████████, Investigative Assistant at the AFP sent an email to Cohen which relevantly stated:</p> <p><i>"Are you able to advise when the DVD copies of the ACC hearings will be available to us? We'd like to get them in the near future if possible so we can have transcripts made."</i></p>	ECB.397
17.01.2011	<p>Cohen responded to ██████ email:</p> <p><i>"Firstly, apologies for the confusion over the last few days. I have confirmed that we currently have the copies of the Examinations to be disseminated to the AFP. They have not been signed off as yet but we will try and sort this out by later this week."</i></p>	ECB.397
20.01.2011	<p>Schwartz prepared a Future Strategies Paper to MSR. At page 5 of the paper, under the heading "ACC hearings", Schwartz wrote:</p> <p><i>"Five persons attended ACC coercive hearings in late November early December 2010. The hearings did not substantially add to our current intelligence holdings but did lock certain witnesses into a version of events which may prove valuable at court. The</i></p>	ECB.36 & ECB.444

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	<i>transcripts of the hearings will be disseminated to CDDP so that they may be used in future indemnity or coerced statement assessments.</i>	
28.01.2011	The ACC sent a letter to the CDDP which enclosed copies of audio recordings of ACC examinations in relation to [REDACTED] and others.	ECB.282
31.01.2011	Cohen sent an email to Webb which stated: <i>“Your disks and the SFO’s disks are ready to be picked up. Also, I know you have provided the details previously but are you able to provide the CDDP contact details so I can deliver their disks. Thanks.”</i> Webb responded and provided Sewell’s address at the CDDP.	ECB.238 & ECB.398
23.02.2011	Webb sent an email to Cohen, copied to Cullen and Schwartz which relevantly stated: <i>“As discussed, below is a summary of the outcomes from the ACC examinations conducted in relation to AFP Operation Thuja, the ongoing investigation into the [REDACTED]</i> <ul style="list-style-type: none"> - <i>between 25 March – 25 May 2010, ACC examinations were conducted on 11 persons of interest to Op Thuja (ACC Project Agrale);</i> - <i>these examinations enabled AFP investigators to get a more in depth understanding of the mechanics of the business, the overseas operating environment, [REDACTED];</i> - <i>in one instance during a hearing, a suspect acknowledged that there was a risk that offences of [REDACTED] may be occurring in [REDACTED] – this examination was then discontinued;</i> - <i>these examinations resulted in the obtaining of 3 witness statements and one suspect participating in a formal taped record of interview;</i> - <i>between 23-30 November 2010, a further 5 examinations were conducted on persons of interest to Op Thuja (ACC Project [REDACTED]);</i> - <i>some of these persons had earlier been reluctant to speak with police and this process enabled investigators to illicit relevant information;</i> - <i>in addition, some incidents had previously not been raised due to operational reasons and these were then explored with witnesses;</i> 	ECB.270

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	<p>- again, in reviewing relevant emails, there was some acknowledgement from persons that the [REDACTED] may have been used inappropriately; an</p> <p>- a further outcome of all examinations is that each person of interest has now provided a version of events which may later be valuable for future prosecutions.</p> <p>... Despite this, the ACC process has been valuable in providing background information about roles of [REDACTED] employees, the corporate culture of the organisations, and [REDACTED]. There was certainly no alternative explanation to dissuade us from our suspicions that [REDACTED].</p>	
25.03.2011	<p>Sewell sent an email to Schwartz which advised that he had received summaries rather than transcript of the first set of ACC examinations (including [REDACTED]), but no summaries or transcript of the second set (including [REDACTED]).</p> <p>Schwartz forwarded Sewell's email to Webb and stated:</p> <p><i>"Something for next week. Can you get someone, perhaps [REDACTED], to compile a chart of what we have compared to what CDPP have in terms of ACC audios and summaries (and compare these lists against who actually turned up), then we will work out what extra to give them."</i></p>	ECB.107 & ECB.239
01.07.2011	<p>[REDACTED] were arrested and charged with [REDACTED].</p>	ECB.132 & ECB.450
08.12.2011	<p>The CDPP sent letters to the solicitors for each accused outlining a proposed disclosure protocol. The letter noted that the AFP had collected approximately 14 terabytes of electronic data from [REDACTED] that there were approximately 40 million searchable files on the database, and from those, 3,400 documents had been extracted to compile the briefs of evidence relating to [REDACTED].</p>	ECB.376 ECB.377 ECB.378
10.04.2012	<p>Schwartz sent Sewell and Robertson electronic copies of transcripts of ACC examinations, including the record of the compelled testimony of [REDACTED].</p> <p>Robertson forwarded Schwartz's email to Holmes and John Barrington, copied to Sewell with a note:</p> <p><i>"Sam and John, FYI. I have saved these to an ACC transcript electronic folder in the Thuja matter folder."</i></p>	ECB.23 & ECB.94
13.04.2012	<p>Sewell sent a memorandum to the Commonwealth Director of Public Prosecutions through Graeme Davidson and Shane Kirne. Much of the memo is redacted. Part of it states:</p>	ECB.95, ECB.287 and Exhibit 24

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	<p><i>"In order to obtain a 50% discount ██████ will have to account for lies before the ACC and to the AFP. This office received a transcript from the ACC on Wednesday 11 April 2012 which is 173 pages long.</i></p> <p><i>From the ACC transcript it seems that ██████ had a mild heart attack in 2000 and then a further one at the end of 2007."</i></p>	
16.04.2012	<p>Sewell sent an email to Davison and Roderick Jensen, CDPP, copied to Kirne which relevantly stated:</p> <p><i>"We did not include the ACC transcript as that is 173 pages long, but have very briefly summarised its effect in the memo (I can easily provide it if you want it).</i></p>	ECB.288, ECB.299 & ECB.421
13.08.2012	<p>Committal hearing for ██████ and others commenced in the Melbourne Magistrates' Court regarding ██████</p>	
17.08.2012	<p>Decision of Garling J in <i>R v Seller</i> (2012) 232 A Crim R 146 handed down.</p>	
20.08.2012	<p>All legal staff in the Melbourne office of the CDPP were sent an email which attached a copy of Garling J's decision in <i>R v Seller</i> which stated:</p> <p><i>"If you have a case where the ACC has conducted an examination of an accused, where that material has been provided to the CDPP, could you please let your branch head know. As you know, for some months now, we have advised DPP staff not to accept or read examinations, pending this decision being handed down. That process should certainly continue."</i></p>	ECB.312 (paragraph 4(i)) & Exhibit 119
03.09.2012	<p>Nicholas Robinson SC sent an email to Barrington, copied to Sarah Keating and Kevin Armstrong of Counsel and Sewell which stated:</p> <p><i>"If you have electronic copies of any of the ACC transcript I would like a copy as I can use Isys to search, given the breadth of xxn we have, it would be of help!"</i></p> <p>Barrington responded to Robinson's email on 4 September 2012:</p> <p><i>"Unfortunately don't have electronic copies of any ACC transcripts for any of our witnesses"</i></p>	Exhibit 110 (Exhibit JJB-1)
06.09.2012	<p>Sewell sent an email to Bonnici, copied to Barrington which stated:</p> <p><i>"I wonder if the ACC transcripts can be provided in electronic format for the purpose of provision to our Counsel only and for our purposes only in the Operation Thuja prosecution to search them?"</i></p>	ECB.102

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	<i>Such electronic material would not be put onto our corporate database but kept discretely apart.</i>	
01.10.2012	Barrington examined a sub-directory of the CDPP network drive under the Operation Thuja matter directory called "ACC Examinations." In that sub-directory he located electronic copies of transcripts of ACC examinations of [REDACTED]	Exhibit 20 (paragraph 7), ECB.90 & ECB.280
27.02.2013	[REDACTED] telephoned [REDACTED] and advised him that he would be charged in relation to [REDACTED]. [REDACTED] was invited to attend AFP headquarters to participate in a TROI under caution.	ECB.71
13.03.2013	[REDACTED] were charged with further offences relating to [REDACTED]. Tucker was charged with [REDACTED] offences relating to [REDACTED].	
22.07.2013	Committal hearing for [REDACTED] commenced in the Melbourne Magistrates' Court regarding [REDACTED].	
25.09.2013	[REDACTED] discharged by the Magistrate in respect of the [REDACTED] charges. [REDACTED] committed to stand trial in relation to the false accounting charges.	
10.02.2014	[REDACTED] committed to stand trial by the Magistrate in respect of the [REDACTED] charges.	
02.05.2014	[REDACTED] directly indicted by the CDPP in respect of the [REDACTED] charges.	
25.08.2014	<p>Hollingworth J commenced hearing an application made by [REDACTED] in the Supreme Court of Victoria for a permanent stay of proceedings against them on numerous grounds including:</p> <ul style="list-style-type: none"> - the ACC examinations (and various decisions or documents relating to them) were unlawful or beyond power; - the nature and extent of the release of ACC materials to the AFP and the CDPP was unlawful; - the conduct of the AFP and the CDPP in relation to the ACC materials has been such as to fundamentally change the accusatorial nature of a criminal trial, and has destroyed the right of the ACC accused to a fair trial. 	
17.06.2016	Hollingworth J handed down her ruling in <i>Commonwealth Director of Public Prosecutions v [REDACTED] & Ors</i> [2016] VSC 334R.	

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27.06.2016	Hollingworth J ordered that the proceedings against [REDACTED] be permanently stayed.	
05.08.2016	The CDPP commenced an interlocutory appeal in relation to Hollingworth J's decision to permanently stay the proceedings in the Victorian Court of Appeal. The ACIC sought leave to intervene in the appeal.	
25.05.2017	Maxwell P, Redlich JA and Beach JA handed down their ruling in <i>Director of Public Prosecutions (Cth) v Donald Galloway (a pseudonym) & Ors</i> [2017] VSCA 120 and overturned the permanent stay of proceedings ordered by the trial judge.	
17.11.2017	Bell J, Keane J and Edelman J granted special leave to appeal to the High Court of Australia from the whole of the judgment and order of the Court of Appeal of the Supreme Court of Victoria given and made on 25 May 2017 to each of [REDACTED]	

Dated: 22 December 2017



.....
Howard Rapke, Solicitor per
Bret Walker, Garry Livermore
and Carmen Currie
Counsel for the Appellant
Hodges (a pseudonym)