

Submissions re: Counsel Assisting's submissions – Paul Noel Dale

(As at the date of these submissions Mr Dale has not been provided with Counsel Assisting's submissions)

Thank you for the opportunity to respond to your correspondence of 2 July 2020 concerning the processes proposed to be adopted by Counsel Assisting concerning its submissions and how they relate to our client Mr Dale.

We note that Counsel Assisting has indicated that the submissions in their view contain no adverse findings against Mr Dale. Further that Counsel Assisting does not consider Mr Dale as an affected person under the Commission's first term of reference (TOR 1). No explanation for this opinion is provided in the correspondence.

As a result of Counsel Assisting's opinion, it is said that no draft submissions are to be provided to Mr Dale.

These short submissions address two matters; is Mr Dale an affected person under TOR 1; and should Mr Dale be provided on a confidential basis relevant draft submissions of Counsel Assisting.

Is Mr Dale an affected person under TOR 1?

There is no reference in TOR 1 to the concept of an *affected person*. TOR 1 requires the Commission to report on:

1. The **number of**, and **extent to which**, **cases** may have been **affected** by the conduct of EF **as a human source**. (*emphasis added*)

The ordinary meaning of **affected** is **influenced or touched by an external factor**.

Whilst never convicted, Mr Dale was involved in three cases (The Dale cases).

- Charged with matters relating to what became known as the Dublin Street burglary (5 December 2003);
- Charged with the murder of Terrence Hodson (13 December 2009); and
- Charged with perjury offences relating to his compulsory attendance at an ACC hearing.

The Dublin Street burglary

It is conceded that despite Ms Gobbo's questionable behaviour as a lawyer in the aftermath of the burglary, she was not acting as a police informer at the time, and did not influence or cause the charging of Mr Dale in a capacity as a human source. It is a matter of evidence before the Commission however, that Mr Dale sought her out as one of his lawyers and she took instructions from him from this time. It is also a matter of evidence that Ms Gobbo subsequently handed over Mr Dale's written instructions to Victoria Police in her capacity as a human source. Such flagrant breaches of professional conduct rules however, did not affect the conduct of the Dublin Street case.

The Murder of Terence Hodson

During the period between the dropping of the Dublin Street charges and the charging of Mr Dale, Ms Gobbo was a prolific police informer. As that informing related to Mr Dale, the evidence included her handing over privileged written communications from Mr Dale to Victoria Police. The evidence also shows that Ms Gobbo appreciated, as did her handlers, that Mr Dale had sought legal advice from Ms Gobbo on a number of occasions.

Following Mr Dale's compulsory examination on 26 November 2008, he once again reached out to Ms Gobbo for legal advice. At that meeting on 7 December 2008, Ms Gobbo encouraged Mr Dale to communicate about that hearing, stating '*But Paul, the reality is that, um, you are entitled to talk to a lawyer about it.*' The evidence shows that her police handlers had requested and facilitated the wearing of a surveillance device to record the conversation. This directly led to the charging of Mr Dale with

murder. Whilst this conduct inevitably led her to being a witness, she was operating as a police informer at the point in time she responded to Mr Dale's request for legal advice. As she had done with Mr Dale's privileged notes, she immediately handed over the recording of his instructions to Victoria Police.

As a result of her conduct and Mr Dale's subsequent charges, Mr Dale was incarcerated for 8 months including for a prolonged period of time in solitary confinement. As set out in Mr Dale's original submissions, this caused substantive injury to Mr Dale's mental health and economic loss. Mr Dale's defence team in the matter appropriately sought documentation concerning Ms Gobbo's relationship with Victoria Police. The conduct of the police, lawyers, and prosecuting authorities is appropriately being reviewed by the Commission as to their fundamental duties of disclosure under Terms of Reference 2 (TOR 2). However there is no question that Mr Dale's case was affected by the conduct of Ms Gobbo as a police informer.

The ACC perjury offences

The subsequent ACC perjury offences were once again fundamentally reliant on Ms Gobbo's recording of Mr Dale seeking legal advice on 7 December 2008. Without that recording, no such charges could have been brought. Once again Mr Dale's defence team renewed its efforts to pressure prosecuting authorities to comply with their fundamental duty of disclosure to the accused. Once again this led to the dropping of numerous charges which might reveal Ms Gobbo's true relationship with police. Mr Dale was subsequently acquitted by a jury of the residual charges, but only after a protracted and profoundly unfair legal process. Once again, the Commission will be required to examine the conduct of prosecuting authorities under TOR 2 and the extent of attempts to prevent Ms Gobbo's involvement with Victoria Police being revealed.

At the time Mr Dale was charged with the perjury offences, he was no longer a serving police officer. As a result, he lost the right to recover legal costs from the Police Association defence fund. Accordingly, Mr Dale incurred substantial legal expenses to once again establish his innocence.

This proceeding should never have been brought and was only possible because of Ms Gobbo's conduct as a police informer and her exploitation of his understandable desire for legal advice immediately following an inquisition conducted by the ACC. Whilst Mr Dale incurred hundreds and thousands of dollars in legal defence expenditures, Ms Gobbo was by then in receipt of millions of dollars in compensation paid by the State and was seeking additional sums. None of that information was ever disclosed to Mr Dale. Mr Dale's perjury case was clearly affected by Ms Gobbo's role as a police informer.

Counsel Assisting's approach to who is an affected person

It is clear that TOR 1 as articulated is far broader in its scope than perhaps first envisaged. Understandably, an attempt has been made by Counsel Assisting to limit the scope by developing the concept of an affected person rather than responding to a case by case examination of Ms Gobbo's impact. Whilst Mr Dale appreciates the scope of the task to set out all the damage that Ms Gobbo has done to the Victorian legal system and understands the need to prioritise those who were wrongfully convicted, in particular those who remain incarcerated, he is concerned by any suggestion that he is not an affected person under the ordinary meaning of TOR 1.

If the process of establishing the concept of an affected person is done by artificially putting criteria in place which excludes some, it is important that this be specifically set out in any submissions and that those submissions acknowledge that others, including Mr Dale, have of course been profoundly affected by her conduct, even if not convicted. Apart from the impact of incarceration, financial devastation, mental injury and the blight on his career and reputation Mr Dale was at the forefront of attempting to expose the conduct of Ms Gobbo in circumstances where powerful institutions were behind the push to prevent it ever coming to light. Insultingly, the concocted cover story for the cover up by those institutions was, in part, to insist that if information came to light, Mr Dale was a threat to her life. Mr Dale has spent years of his life effectively screaming under water. He is entitled to be regarded as an affected person under TOR 1 or otherwise have his status as a victim of Ms Gobbo (and her enablers) acknowledged.

Should Mr Dale be able to receive and comment on Counsel Assisting draft submissions?

In the letter of 2 July 2020, there is no suggestion that Mr Dale will not *make an appearance* in Counsel Assisting's submissions. Mr Dale was not granted standing leave to appear or have the substantive institutional support that many of those whose conduct is in question received, including large legal teams, multiple Counsel including Senior Counsel, seemingly uncapped taxpayer funding, and access to the Commission's documents in a timely manner. Witnesses which Mr Dale had an acute interest in were often brought on with little notice, and without relevant documentation being available to persons without standing leave. This is no criticism of the Commission or those ably assisting it, but merely an inevitable feature of the two tiered leave provisions. Mr Dale is still awaiting documents which were sought through the Commission process. In circumstances where he is a significant part of the story the Commission has traversed, he should be given the opportunity to receive, confidentially, those parts of the submissions that relate to the Dale cases and be afforded the opportunity to put on submissions in reply if required. In doing so he will meet the Commission's timetable.