

ROYAL COMMISSION INTO THE MANAGEMENT OF POLICE
INFORMANTS

**RESPONSIVE SUBMISSIONS ON BEHALF OF PAUL MULLETT AND
NOEL ASHBY**

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Filed on behalf of: P. Mullett & N. Ashby

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1. On 20 August 2020, Paul Mullett and Noel Ashby received correspondence from the solicitors assisting the Royal Commission regarding Counsel Assisting's submissions which were to be published on 31 August 2020. An invitation was provided for Mullett and Ashby to make a further submission in response. This is that submission.
2. Counsel Assisting's submissions limit the scope of Term of Reference 1 to only cases in which a conviction or finding of guilt was obtained.¹ This limitation is contrary to the natural meaning of Term of Reference 1.
3. By Letters Patent, the Commissioner was appointed to inquire into and report on, *inter alia*, 'the number of, and extent to which, cases may have been affected by the conduct of 3838 as a human source' (Term of Reference 1). The word chosen was 'cases' not 'convictions or findings of guilt'.
4. Counsel Assisting provide no authority in support of their construction but rather justify the 'filtering' 'in order to give practical meaning to the word "affected"' ² (a term which is itself unnaturally construed by Counsel Assisting³).

¹ *Counsel Assisting Submissions with respect to Terms of Reference 1 and 2 – Volume 1 Legal Principles* at [21] and [70].

² *Ibid* at [21].

³ *Ibid* at [22].

5. Counsel Assisting's desire to confine the number of cases considered by the Royal Commission is understandable. Gobbo's conduct (aided and directed by Victoria Police) may have affected an overwhelmingly large number of cases and the resources and time given to the Royal Commission are far from infinite.
6. But the words comprising a Term of Reference cannot be unnaturally constrained even for sensible practical reasons. If the words of Term of Reference 1 were, after consideration, determined to be too broad then the Letters Patent could have been amended. This did not occur.
7. It is axiomatic that a person's life can be devastatingly impacted by a proceeding which does not result in a conviction or finding of guilt. Mullett and Ashby lost careers that had been carefully built over more than three decades. They lost their reputations. They and their families suffered as a result of the saturation media attending their prosecutions. These impacts were not erased by the ultimate collapse of the prosecution cases against them. Far from it.
8. Further, Mullett's civil litigation loss resulted in a costs order against him personally payable (pursuant to Assignment Deed Polls) to Victoria Police. The crushing economic impact of that continues to this day. VGSO (on behalf of the Chief Commissioner of Police) on 13 May 2020 indicated it seeks costs of over a million dollars.
9. For the reasons detailed in submissions filed on behalf of Mullett and Ashby dated 29 July 2020, Mullett and Ashby have for more than a decade had hidden from them exculpatory evidence relevant to both the criminal and civil proceedings. They are entitled, pursuant to the scope of the natural words of the Terms of References, to have the unlawful way in which Victoria Police treated them identified and condemned.
10. The Commission should, it is submitted, make the findings set out at [11] of Mullett and Ashby's submissions of 29 July 2020.

Julie Condon QC

Ruth Shann

Counsel for Mullett and Ashby