

**IN THE ROYAL COMMISSION
INTO THE MANAGEMENT OF POLICE INFORMANTS**

**SUBMISSIONS ON BEHALF OF MR SIMON OVERLAND APM
RESPONDING TO THE LETTER FROM THE SOLICITORS ASSISTING THE
ROYAL COMMISSION DATED 1 OCTOBER 2020**

- 1 Mr Overland’s submissions of 18 August 2020 contained detailed submissions explaining why the *2013 Police Act* did not apply to Mr Overland.¹ The further submissions filed on behalf of Counsel Assisting dated 25 September 2020 (“**CA Further Submissions**”) did not reply to this issue at all.
- 2 In Mr Overland’s reply submissions of 7 September 2020, it was noted that no submissions had been received from Counsel Assisting inviting the Royal Commission to make a finding of a breach of the legislation preceding the *2013 Police Act*. Again, the CA Further Submissions did not reply to this issue.
- 3 By letter from the solicitors assisting the Royal Commission dated 1 October 2020, it was stated, relying on Counsel Assisting’s primary submissions, vol 1, [388], [390], and [393]-[393]:

where Counsel Assisting have submitted that findings be made that Police Officers (including your client) may have committed breaches of discipline or misconduct under the Police Act (see for example Vol 2 at [1935]), this should be read as conduct which may have breached the relevant provisions at the relevant time (being the Police Regulation Act) and in accordance with the transitional provisions as set out above, enliven the retrospective operation of the Police Act such that conduct before its operation may be considered under its provisions.

(emphasis added).

- 4 As can be seen from the emphasised section, the letter clarifies that Counsel Assisting do not make a submission inviting the Royal Commission to make a finding that Mr Overland’s conduct may have breached the *Police Regulation Act 1958 (Vic)*. It is appropriate that they do not do so: the operative provisions of the *Police Regulation Act*

¹ [116] and following

1958 were repealed when ss 278-286 of the 2013 *Police Act* came into force, and so former officers cannot be charged with a breach of discipline under this predecessor legislation.²

5 It would be quite wrong to make a finding that a person may have breached legislation that does not and did not apply to that person.

6 The letter clarifies that Counsel Assisting relies on the transitional provisions set out in the 2013 *Police Act* to invite findings against Mr Overland under the 2013 *Police Act* only. As set out in Mr Overland's primary submissions at [116]-[119], this Act is of no application to Mr Overland, as the retrospective operation of the Act is limited:

- a) the Act delineates between a "*police officer*" (a definition Mr Overland does not, and has never, met, recalling that Mr Overland left Victoria Police in June 2011) and "*former member of police personnel*" (a definition which Mr Overland does, and has always, met under the 2013 *Police Act*);
- b) the transitional provisions identified by Counsel Assisting makes express provision in respect of "*conduct*" which occurred before the commencement day of the Act only. The provisions do not provide for any intended retrospective effect on "*former members of police personnel*", or extend the definition of "*police officers*" to include persons who were police officers prior to the commencement day of the Act, but no longer are;
- c) there is a presumption against retrospective statutory construction and it is to be assumed that clear language will be used if legislation is to have a retrospective effect.³

7 Despite having filed detailed further submissions some weeks after the above submissions were made, Counsel Assisting made no attempt to reply to those submissions. It is not explained by Counsel Assisting how or why those submissions were incorrect or ought not be accepted.

² A similar submission is made by Victoria Police in its submissions, tranche 1, [69.126].

³ See cases cited at [118] of Mr Overland's primary submissions.

8 There is no basis on which the Royal Commissioner can or should make a finding that Mr Overland may have breached either the *Police Regulation Act* or the *2013 Police Act*.

Dated: 9 October 2020

J.J. GLEESON

G. COLEMAN
Counsel for Mr Overland

CORRS CHAMBERS WESTGARTH
Solicitors for Mr Overland