

**ROYAL COMMISSION INTO THE
MANAGEMENT OF POLICE INFORMERS**

**SUBMISSIONS ON BEHALF OF
CARMELO FALANGA**

Date of document:	7 August 2020
Filed on behalf of:	Applicant
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	Reference: CFRC20

Background

1. Carmelo Falanga ('Falanga') was prosecuted in relation to what has become known as the 'Tomato Tins' case.
2. He pleaded not guilty to a charge of conspiracy to possess a commercial quantity of an unlawfully imported border controlled drug (MDMA – ecstasy) pursuant to ss 11.5(1) and 307.5(1) of the *Criminal Code* (Cth).
3. The trial indictment alleged that between 13 June and 3 October 2007, Visser and Falanga conspired with each other, and with Pasquale Barbaro, Saverio Zirilli, John Higgs, Rob Karam, Salvatore Agresta, Pasquale Sergi, and others, to possess a commercial quantity of MDMA.
4. The trial was conducted with one co-offender Jan Visser.
5. It is significant that the charge specifically alleged Falanga had conspired with, among others, Rob Karam.
6. On 9 April 2014 Falanga was convicted.
7. On 4 July 2014 he was sentenced to 23 years imprisonment with a non-parole period of 16 years and 6 months. He is currently serving this sentence.
8. The Royal Commission into Nicola Gobbo's misconduct was established in December 2018. Thereafter the Royal Commission obtained evidence and information, from various sources, and conducted both public and private hearings.

9. Counsel Assisting the Commission have now prepared written submissions urging that certain findings are made by the Commissioner.
10. Falanga was provided with part of the written submissions, drafted by Counsel Assisting, and given an opportunity to make submissions in reply.
11. These are the submissions Falanga wishes to make in response to the submissions he and his lawyers have now seen.

The disadvantage experienced by Falanga

Funding:

12. The Royal Commission was established in December 2018 and has conducted its work since that date.
13. Of concern to Falanga, is the Victorian Government's funding of Gobbo (at a significant level) during the Royal Commission. The very person who was the architect of so many others misfortune has been able to have substantial representation throughout the life of the Commission.
14. In contrast Falanga, a person adversely affected by Gobbo's mischievous actions, has received no funding.

Information

15. The Royal Commission and Counsel Assisting are aware of all evidence concerning Gobbo's actions at the relevant time – this includes presumably confidential material and evidence / information that has arisen from private hearings.
16. Falanga has no knowledge of such information and can only provide a response in a limited way given that lack of wider knowledge.
17. To this extent, Falanga must rely on the 'facts' as outlined by Counsel Assisting in their submissions.

Timing

18. While the Commission had been in operation since December 2018, Falanga only received a copy of Counsel Assisting's submissions on 21 July 2020 and was given until 7 August 2020 to respond.
19. Given the difficulties which Covid 19 have caused within the prison system, during this very period, the ability to obtain full instructions has been severely compromised.

Community expectations when a lengthy sentence is imposed

20. When an offender receives a significant period of immediate imprisonment, like that imposed on Falanga, the community expect that the investigation and prosecution of such an offender has been proper, ethical and lawful.
21. To state the obvious, to deprive a person of their liberty for such a substantial portion of their life is a significant step.
22. In Falanga's case there is a real question whether his investigation and prosecution can pass any of these three basic requirements. (proper, ethical and lawful)
23. It is submitted that the Commissioner should find that the proceedings lacked each of these three key requirements.
24. In addition, the failure to disclose relevant information to Falanga prior to his trial has caused a substantial miscarriage of justice – a matter Falanga is pursuing in the Court of Appeal.

Submission made at the outset of the Commissions work on behalf of Falanga

25. On 15 March 2019 Falanga's solicitor, Sarah Tricarico, provided brief written submissions to the Commission on his behalf. This was at the outset of the Commission's work.
26. In those submissions Ms Tricarico asserted:

Gobbo acted for and was involved with his co-accused Rob Karam during a period she was also a Police Informer and further that she disclosed and provided evidence to the authorities which she had obtained by way of her professional legal and social relationship with Karam.

...

During the criminal proceedings if Mr. Falanga was aware or had been informed of the fact and circumstances of Gobbo's involvement with Karam and her role as a Registered Informer he would have challenged the admissibility of the evidence, such as the Bill of Lading, and any other evidence obtained by the investigators where they relied upon the information of Gobbo to investigate the matter, obtain warrants for searches, intercepted telephone communications, listening and tracking devices.

27. The Case Study of Falanga refers specifically to the above submissions made by Ms Tricarico.¹

¹ Counsel Assisting's Submissions, 'Volume 3: The 'Tomato Tins' and related proceedings case study', at [318].

28. The work of the Commission appears to have unearthed evidence which supports those submissions made in March 2019. Counsel Assisting succinctly stated:

Material before the Commission supports the general effect of those assertions.²

Case Study prepared by Counsel Assisting concerning Falanga

Adopting the conclusions / findings made by Counsel Assisting

29. For the reasons set out above, Counsel Assisting are in a far better position to assess Gobbo's misconduct and how it may have affected the investigation and prosecution of Falanga.
30. Accordingly, Falanga adopts and supports the conclusions reached and submissions contended for by Counsel Assisting where it concerns Falanga.
31. He does wish to make some additional submissions based on the factual findings and / or conclusions advanced by Counsel Assisting in so far as it effects him.

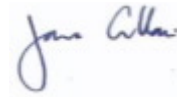
Submissions

32. The trial of Falanga was fundamentally unfair.
33. Critical evidence relied on by the prosecution during his trial was obtained by improper and / or illegal means in connection with Victoria Police using Gobbo as a human source. This, most relevantly, pertains to the method by which Victoria Police came into possession of the bill of lading which became the cornerstone of the 'Tomato Tins' investigation and prosecutions.
34. The bill of lading was the starting point for other investigative techniques (surveillance, telephone intercepts / listening devices) which it is submitted were irretrievably infected by the impropriety / illegality which surrounds the bill of lading.
35. None of this was disclosed to Falanga which prevented him from making arguments, prior to the empanelment of a jury, whether that evidence should have been led during his trial.
36. Successful arguments, advanced on behalf of Falanga at a pre-trial stage, may have devastated and decimated the admissible evidence against Falanga. This was the crucial opportunity lost by Falanga.

² Counsel Assisting's Submissions, 'Volume 3: The 'Tomato Tins' and related proceedings case study', at [319].

Publication

37. Falanga does not object to his Case Study, as prepared by Counsel Assisting, being published on the Commission's website.

A handwritten signature in blue ink, appearing to read "Jane Allan".

Counsel for Mr Falanga