

ROYAL COMMISSION INTO THE MANAGEMENT OF POLICE
INFORMANTS

SUBMISSIONS ON BEHALF OF PAUL MULLETT AND NOEL ASHBY

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Filed on behalf of: P. Mullett & N. Ashby	Telephone: [REDACTED]
Stephens Lawyers	Our Ref: RCMPI 101860-3 &
205, 546 Collins Street	RCMPI 103934-2
Melbourne VIC 3000	

Overview

1. Paul Mullett and Noel Ashby were charged on 29 July 2008 with offences arising out of an OPI investigation into unauthorised dissemination of confidential information and improper association between Ashby and others. The public narrative at the heart of this prosecution (and the preceding OPI hearings) was that Mullett and Ashby's leaking compromised the otherwise watertight Briars Taskforce. Indeed, Mullett's charge for Attempt to Pervert the Course of Justice was particularised as being that he told Brian Rix to tip off Peter Lalor that he was a target in the Briars investigation and that Lalor and Dave Waters' phones were being tapped.¹
2. Victoria Police laid the charges against Mullett and Ashby. It had a duty to disclose all relevant materials of help to them in the proceedings. That is a duty owed to the court, not the accused. It is a 'golden rule' of such importance that a failure in its discharge can result in a miscarriage of justice. It is ongoing and includes, where appropriate, an obligation to make enquiries.² There is no distinction between individuals who comprise Victoria Police for the purposes of Victoria Police's disclosure obligations in a proceeding brought by it³.

¹ *Mullett v Nixon & Ors* [2016] VSC 512 per T Forrest J at [105]-[107].

² *Roberts v The Queen* [2020] VSCA 58 at [56].

³ See *R v Farquarshon* (2009) 26 VR 410 per Warren CJ, Nettle and Redlich JJA at [211]-[212] where the prosecution, properly, conceded that for disclosure purposes 'the Crown' was imbued with the knowledge of its component parts and it mattered not whether the informant in the murder trial could

3. Victoria Police had in its possession at the time it laid charges against Mullett and Ashby information from Nicola Gobbo which provided Mullett with a defence to the Attempt to Pervert charge: Waters told her that Lalor, if called to give evidence, would say that he did not get the information from Rix.⁴ This was consistent with Mullett's claim at the OPI and in the criminal proceedings that any communication by him to Lalor via Rix was in reference to the 'Kit Walker' investigation.⁵
4. Lalor was not called to give evidence. Gobbo's information was not disclosed to Mullett or Ashby. Her existence as a human source remained hidden.
5. The criminal charges against Mullett and Ashby ultimately resolved by way of a combination of discharge, discontinuance and acquittal – but not before each of Mullett and Ashby had lost their careers and reputations and been put through the expense, stress and humiliation of OPI hearings and committals.⁶ At no time during these proceedings did Victoria Police admit that it was in possession of information it was obliged to disclose. It was only (finally) revealed during this Royal Commission. It can be presumed that Victoria Police would have continued to fail to disclose this information even if Mullett and Ashby's matters had proceeded to jury trial. Any resulting convictions would have been miscarriages of justice as a result.
6. This was not the only information provided by Gobbo to Victoria Police which was unlawfully not disclosed to Mullett and Ashby. On 1 April 2007, Gobbo told Victoria Police that Waters claimed to have a source at Purana leaking him information about Briars⁷ and, in September 2007, Gobbo was tasked to provide information about Briars to Waters⁸. Further, it seems there were telephone intercepts in place in April 2007 in relation to the 'Kit Walker' investigation and issues about that investigation discussed

be shown to have subjectively known what the informant in the King matters knew about the status of those charges.

⁴ This information was recorded by the SDU (Iddles T14180.21-29). The practice was that such information would be passed from SDU to Iddles to Wilson and members of the Briars Board of Management: Iddles T14132; Overland T12098 L10-23.

⁵ See *Mullett v Nixon & Ors* [2016] VSC 512 per Justice T Forrest at [107]-[108] where His Honour explained the 'Kit Walker' matter and referred to the prosecution case in the criminal proceedings against Mullett requiring exclusion of the 'Kit Walker' explanation.

⁶ See Mullett Statement dated 26 August 2019 at [32(b)], [34]-[35]; Ashby Statement dated 27 August 2019 at [36].

⁷ ICR dated 1 April 2007 (the contents of which were put to Overland at Overland T11719-T11721).

⁸ Exhibit RC937b Briars Taskforce Update dated 30 July 2007; Exhibits RC593b, 830b, 901b Briars Taskforce Updates dated 10 September 2007.

in the Briars Taskforce on 10 April 2007.⁹ These materials were not disclosed to Mullett and Ashby and, it appears, Justice Wilcox, who ran the OPI Operation Diana hearings, was also not given them.¹⁰

7. Affidavits by Overland, Cornelius, Ashton and Wilson in Mullett and Ashby's proceedings omitted any reference to these relevant matters.¹¹ Rather, Overland swore an affidavit with a false narrative: the only way information about Briars could leak was through Ashby. Here (as elsewhere) Gobbo's involvement was erased.
8. This corrupting of Victoria Police's fundamental obligations under the criminal justice system occurred, in part, due to the lack of oversight of it by either ESD or the OPI. Rather than providing accountability in Victoria Police's use of Gobbo and its disclosure obligations, each was involved in the Briars Taskforce as a partner. Cornelius and Ashton were, in effect, complicit in Overland's 'ends justify the means' approach to hiding Gobbo from those accused of crimes about which she had provided disclosable information.
9. In Mullett's civil proceedings against Christine Nixon, Kieran Walshe and Wayne Taylor for malicious prosecution and misfeasance in public office in 2016, in order to ensure the defendants fulfilled their obligations to discover documents (including those which adversely affected their case¹²) Victoria Police were subpoenaed by VGSO.¹³ No documents disclosing what Waters had told Gobbo or what Gobbo told Waters were discovered by the defendants. Again, the true state of what Victoria Police knew at the

⁹ Iddles T14099; Nolan Statement dated 10 December 2019 at [30].

¹⁰ See OPI Public Report <https://www.parliament.vic.gov.au/papers/govpub/VPARL2006-10No80.pdf> at [91]-[95].

¹¹ Exhibit RC988 Overland Affidavit dated 1 November 2007; Exhibit RC1054 Cornelius Affidavit dated 1 November 2007; Ashton Affidavit dated 23 January 2008; Wilson Affidavits dated 2 November 2007 and 09 November 2007.

¹² In order to ensure a fair trial, there is a duty pursuant to ss26 and 55 of the *Civil Procedure Act 2010* for parties to the proceedings and other persons to whom the overarching obligations apply (s10) to disclose to each party the existence of all documents that are, or have been, in that persons possession, custody or control of which they are aware and which they consider, or ought to reasonably consider, are critical to the resolution of the dispute. See also: *Liesfield v SPI Electricity Pty Ltd (Ruling No 1)* [2013] VSC 634 at [25]; Order 29 of the *Supreme Court (General Civil Procedure Rules) (Vic) 2015*. The obligations of disclosure under s26 of CPA are ongoing obligations throughout the trial and do not limit or affect a party's obligation to provide discovery under Order 29 (see s26(4) CPA). The overarching obligations would have applied to Victoria Police as they were involved in the proceedings as a result of the defendants' intention to attempt to shift personal liability to Victoria Police had Mullett's claim/s been upheld: *Mullett v Nixon, Walshe and Taylor* [2016] VSC 126 per T Forrest J at [63]-[65].

¹³ *Mullett v Nixon, Walshe and Taylor* [2015] VSC 727 per J Forrest J at [16]-[17].

time the decision was taken by it to charge Mullett and Ashby was not revealed to the court or Mullett.

10. Victoria Police's commitment to covering up Gobbo's role regardless of their legal obligations requires the Commission's condemnation [TOR 2]. Mullett and Ashby's criminal cases and Mullett's civil case each 'may have been affected by the conduct of Gobbo as a human source' [TOR 1].

Findings sought

11. It is submitted that pursuant to TORs 1 and 2, the Commission ought make the following findings:
 - a. Victoria Police were under a duty to disclose in the Mullett and Ashby criminal proceedings that: (a) Waters told Gobbo that Lalor said Rix did not tell him about Briars; (b) Waters told Gobbo that he was receiving information about Briars from Purana; (c) that Gobbo (at the direction of Victoria Police) told Waters about Briars.
 - b. The failure to disclose gives rise to a risk that the Mullett and Ashby criminal proceedings were improperly commenced or continued.
 - c. Victoria Police were under a duty to inform the defendants in the civil proceedings that: (a) Waters told Gobbo that Lalor said Rix did not tell him about Briars; (b) Waters told Gobbo that he was receiving information about Briars from Purana; (c) that Gobbo (at the direction of Victoria Police) told Waters about Briars; in order that the defendants could fulfil their obligations of discovery.
 - d. The failure to inform gives rise to a risk that the Mullett civil proceedings were tainted and unfair.

Taskforce Briars

12. In July 2006, ^{Mr Gregory} commenced a series of conversations/statements with police regarding the murder of Chartres-Abbott (which ^{Mr Gregory} claimed to have committed). In September 2006, ^{Mr Gregory} told police that Waters, Saunders,

Campbell, Dale and Alexander each had some knowledge of the events and that Waters assisted the murder by providing ^{Mr Gregory} with the victim's address.¹⁴

13. Taskforce Briars was formally established in March 2007 by way of joint-agency agreement between Victoria Police and the OPI to investigate (and seek to corroborate) ^{Mr Gregory} allegations. The Briars management group including Overland, Cornelius and Ashton met regularly for briefings as to the progress of the investigation and Chief Commissioner Nixon was provided with reports where necessary.¹⁵ Rod Wilson headed the Taskforce and Stephen Waddell and Ron Iddles were tasked to investigate. There was a concern to ensure information about Briars was kept among this group.

Gobbo and Briars

14. Gobbo had been a registered human source for many years by the time Taskforce Briars was set up in 2007. Overland says he first learned of this in September 2005¹⁶ (as did, according at least to Overland, Nixon¹⁷). Overland received regular briefings regarding the information that Gobbo was providing to the police.¹⁸
15. Gobbo knew ^{Mr Gregory} and had visited him in prison in 2006.¹⁹ He was being housed with two of Gobbo's clients who were, by that stage, also assisting the police. In addition, Gobbo had contact with Waters in the role of legal confidant (if not lawyer) and friend, socialising with him and her ex-boyfriend Campbell (another ex-police member).²⁰
16. Gobbo's contact with Waters continued after the commencement of the Briars Taskforce. Gobbo reported the contents of her conversations with Waters to SDU including, on 1 April 2007, when she told her handler that Waters told her that he was concerned about what ^{Mr Gregory} had been saying, that it would all be 'crap' unless corroborated and that Waters had a contact at Purana.²¹ Gobbo, in effect, was reporting

¹⁴ See statements of ^{Mr Gregory}

¹⁵ Overland T11719.

¹⁶ Overland Supplementary Statement 17 January 2020 at [171].

¹⁷ Ibid at [41].

¹⁸ Overland Statement at [117]-[120].

¹⁹ This was put to Overland by Counsel Assisting: Overland T11721.43-44.

²⁰ RC0146 ICR Summary.

²¹ ICR 1 April 2007.

that Waters claimed to have a corrupt relationship with someone from Purana who was giving him information about Briars.²²

17. The Commission should, it is submitted, find that Overland was aware of this report by Gobbo shortly after it was made. Overland conceded that must have been the case²³ and it is inconceivable that he would not have been told in light of his role and the content of the information provided by Gobbo on 1 April 2007.
18. On 22 June 2007, Wilson briefed the Briars Taskforce that The Age journalist Nick McKenzie had been provided with information about Briars from a source who left policing eight years earlier but was still well connected to people in Crime.²⁴ The Briars Board of Management wished to determine McKenzie's source.²⁵
19. By May 2007, discussions were occurring between Overland and Biggin regarding Gobbo becoming a witness against Waters. This strategy was, for example, discussed on 27 July 2007 and is recorded in a Briars Taskforce Update of 30 July 2007 which includes handwritten notes of Cornelius including, inter alia, 'seed story in the media'.²⁶
20. After a series of meetings between Overland and the SDU, Overland directed that Gobbo be tasked to pass on information about Briars to Waters.²⁷ She did so on 8 September 2007 while covertly recording him and this information was then passed back to Overland who discussed it with others on the Briars Taskforce.²⁸

²² Overland accepted this was at least a potential meaning T12047 L40-47.

²³ Overland T11746 L12-11747 L11; T12047 L1-38.

²⁴ Overland T11746 L12-34.

²⁵ Overland T11747 L30-39.

²⁶ Exhibit RC978 (confidential) Briars Taskforce Update dated 30 July 2007 with Cornelius handwritten notes and Exhibit RC938 Typed versions of handwritten notes of Cornelius. Counsel Assisting put this to Overland at T11777-11778.

²⁷ Overland T11738-11739; Exhibit RC577c Biggin Further Statement dated 25 July 2019 at [81]-[82]; See diary entries and other documents put to Biggin at T7648-7649; T7684-7685; T7616-7617; T7797-7798.

²⁸ Exhibits RC593b, 830b, 901b Briars Taskforce Update dated 10 September 2007; Overland T11784 L31-T11785, L21. Overland's evidence that it was likely that Gobbo's name was used during the 10 September 2007 Briars Taskforce meeting because he wrote her name on his copy of the Briar Taskforce Update of that date. This evidence supports that Cornelius knew that '3838' was Gobbo. See also Cornelius Taskforce update 10 September 2007 (Exhibits RC593b, 830b, 901b) where a name appears to be crossed out and '3838' added.

21. Ashton accepts that by mid-2007 he was aware that Gobbo was providing information to Victoria Police and that references to 3838 were to Gobbo.²⁹ He says he informed the Director of the OPI, George Brouwer, of that fact.³⁰ However, documentary evidence suggests Ashton was aware as early as May or July 2006.³¹
22. Cornelius' evidence that he did not know about Gobbo's role as a human source in 2007 should be rejected. Black's diary entry of 24 April 2007 establishes that Waddell (who must have been acting at the direction of the Board of Management of Briars) spoke to SDU about Gobbo being tasked to the targets of Briars. Overland confirms the tasking of 8 September 2007 was discussed at the Briars Taskforce meeting of 10 September 2007 with likely reference to her name.³² Cornelius' evidence that the other members of the Briars Board of Management kept information about Gobbo from him³³ is improbable. It also seems at odds with the regular updating provided to the Board of Management by those such as Iddles and Wilson – the latter believing that the members of the Board of Management knew about Gobbo.³⁴

Operation Diana

23. The OPI commenced Operation Diana on 30 May 2007 to investigate leaks to the media from the Briars Taskforce. Ashton was, at the time, both on the Briars Taskforce Board of Management and deputy director of the OPI.
24. There were private OPI hearings in October 2007 and public OPI hearings in November 2007. Affidavits were prepared by Overland, Cornelius, Ashton and Wilson for these hearings.³⁵ Each dealt with the topic of leaks from Briars. None mentioned Gobbo (by name or informer number) or that Victoria Police was told on 1 April 2007 that Waters claimed to have a Purana contact leaking him information about Briars.³⁶

²⁹ Ashton Statement dated 30 August 2019 at [104]-[107]; Ashton T10758 L40-47; Ashton T10747.

³⁰ Ashton T10749 L21-45.

³¹ See Ashton Statement at [54] which refers to a diary entry on 29 May 2006 which refers to Gobbo. See also White's diary entry 27 July 2006 and Overland's answers about that entry at T11555-11557; Exhibit RC275b White's Statement at [136].

³² See above fn 28.

³³ Cornelius T12558.

³⁴ Wilson Statement dated 19 November 2019 at [39] (see also Wilson evidence regarding his assumptions of knowledge by those on the Board of Management: T10462-10465 and T10527 L38-44.).

³⁵ See above fn 11.

³⁶ This was put by Counsel Assisting to Overland at T11786.

25. In evidence before the Commission, Overland agreed that his OPI affidavit went to how information relating to Operation Briars might have got into the public domain and how it might have been disseminated.³⁷ Overland conceded that one reason for not mentioning Gobbo could have been so as not to compromise her but maintained that he did not consider it was relevant.³⁸ That later assertion should be either rejected or taken as an indication that Overland then (and perhaps even now) does not understand that exculpatory material is relevant.
26. Indeed, Overland's OPI affidavit went further than to just not mention Gobbo. It painted a picture of Purana and leaks about Briars at paragraphs [50]-[52] that is at odds with what Overland knew: that Waters claimed to have a corrupt relationship with a Purana member who kept him informed about Briars. Overland, in a pattern evidenced in his evidence to the Commission more generally, refused to accept responsibility for having failed to include this information in his affidavit. He gave dissembling explanations for this including suggesting: the omission could have been inadvertent;³⁹ that perhaps Waters was not telling the truth to Gobbo;⁴⁰ that the affidavit was prepared by the OPI who determined relevance (though he is not sure if he actually told the OPI investigators about Gobbo);⁴¹ that Ashton knew about it;⁴² and/or that he thought the affidavit was the 'full picture' that the OPI was interested in.⁴³
27. Overland's evidence that he believes he did not deliberately hide from the OPI investigators Gobbo's involvement in Briars and the extent of who knew about Briars⁴⁴ should be rejected. In the second half of 2007, Overland was committed to hiding Gobbo's role at any cost. It is improbable that he told the OPI investigators about it and considered it was a matter for them whether they referred to Gobbo being a human source in an affidavit which was tendered in a public hearing and included in the 2008 briefs of evidence against Mullett and Ashby. It is of note that section 86K(1)(c) of the *Police Regulation Act 1958 (Vic)*, which was in operation at the time, made it a

³⁷ Overland T12045 L36-44; T12046 L1-3.

³⁸ Overland T11786 L1-10.

³⁹ Overland T12048 L26-33.

⁴⁰ Overland T12048 L40-45.

⁴¹ Overland T12049 L11-31; T12056 L24-46.

⁴² Overland T12049 L33-42; T12061 L13-23.

⁴³ Overland T12051 L16-47.

⁴⁴ Overland T12056 L43-12057 L6.

criminal offence for a person, including a police member, to wilfully make a false or misleading statement to the Director of the OPI or any other person exercising the powers of the director.

28. A week after Overland swore his OPI affidavit, the public OPI Diana hearings commenced. Counsel assisting, Greg Lyon QC, opened that the focus of the investigative hearings was leaks in relation to Briars and the unauthorised passing of critical information, some of which was passed to the targets of Briars. In evidence to the Commission, Overland accepted he was aware of this statement by Lyon.⁴⁵ He took no steps to ensure Lyon was aware of the information about leaks that Gobbo had told Victoria Police or that Gobbo had herself (at the direction of Victoria Police) told Waters about Briars.⁴⁶
29. Similarly, though Overland admitted he knew the particulars of the Attempt to Pervert charge laid against Mullett in 2008, he took no steps to ensure that the OPP were aware of everything Victoria Police knew about Briars and leaks. This, he said, was simply not his responsibility.⁴⁷ In effect, the Deputy Commissioner in charge of Crime did not consider it his job to ensure (including by setting appropriate policies surrounding disclosure) that those running a criminal proceeding were provided with exculpatory material relevant to criminal charges before a court.
30. Cornelius accepted generally (as opposed to specifically in the Mullett and Ashby proceedings) that, in relation to Gobbo during years including 2007-2009, Victoria Police did not comply with their disclosure obligations to the courts and significant improvements were required.⁴⁸ Cornelius accepted that Victoria Police took the view that Gobbo's identity had to be protected until the High Court decision confirmed that ensuring a fair trial for those accused trumps public interest considerations such as witness safety and protection of sources.⁴⁹
31. Cornelius' OPI affidavit of 1 November 2007⁵⁰, like that of Overland, failed to disclose any information about Gobbo and leaks. Cornelius agreed that one would expect to find

⁴⁵ Overland T12057 L8-18.

⁴⁶ Overland T12057 L26-34.

⁴⁷ Overland T12057 L20-12058 L2.

⁴⁸ Cornelius T12357 L38-T12358 L8; Cornelius T12588 L22-26.

⁴⁹ Cornelius T12593-T12594.

⁵⁰ Exhibit RC1054 Cornelius Affidavit dated 1 November 2007.

in this affidavit all relevant matters relating to the subject matter of leaks from Briars and that while it refers to the 30 July 2007 Briars update from Wilson, there is no mention of the fact that tasking Gobbo to leak to Waters was discussed during that meeting.⁵¹ Cornelius accepted that he asserted in his affidavit that the only possible way that McKenzie could have been leaked information about Briars was via Linnell.⁵² He said he did not, at that time, see the need to disclose that Gobbo had been tasked to leak and that he considered it was for him to determine relevance at that time though accepted if/when Victoria Police brought a matter to court, disclosure obligations would flow.⁵³

32. In relation to disclosure in the criminal proceedings against Mullett and Ashby, Cornelius said he typed his notes of 30 July 2007 because they were called for as part of either or both of the criminal disclosure process or civil discovery process.⁵⁴ Cornelius accepted that this document may have been relevant and said he recalls providing it to the OPI⁵⁵ (though it was, of course, Victoria Police, not the OPI, who laid the charges against Mullett and Ashby).

Gobbo tells Victoria Police that Lalor's position is that Rix did not tell him about Briars

33. On 10 November 2007, Gobbo told Victoria Police that she had spoken to Waters including about the Operation Diana OPI hearings. Waters, she said, told her that he expected Lalor to be called to those hearings and asked if Rix told him about Briars. Lalor would say no, rather that he got that information because Iddles went to Prahran and obtained statements from two detectives. Waters, Gobbo said, believed that his phone was 'off' because of information coming back to him about what was on his phone and because of Iddles' inquiries.
34. This report from Gobbo to Victoria Police was documented on an informer contact report.⁵⁶

⁵¹ Cornelius T12561 L33-38 though see T12563 L1-42.

⁵² Cornelius T12564.

⁵³ Cornelius T12564-T12565 L47.

⁵⁴ Cornelius T12567.

⁵⁵ Cornelius T12568 L8-12.

⁵⁶ See Iddles T14180 L16-29 where it is referred to as having been contained in a 'source contact sheet'.

35. Iddles with Waddell, who later took a draft statement from Gobbo including about this topic, agreed that it was clear that Gobbo's information was that Rix was not the source of the Briars leak.⁵⁷ In Iddles opinion, this evidence provided Mullett with a defence to the Attempt to Pervert charge⁵⁸ and was plainly disclosable.⁵⁹
36. Neither Lalor nor Waters were called to give evidence in the Operation Diana OPI hearings. The fact that Victoria Police held a record of Lalor's reported exoneration of Rix and, therefore, Mullett, was not made known to either Mullett or Ashby.

Lack of OPI and ESD oversight

37. The statutory function of the OPI includes investigation of police integrity issues. It is plain that in 2007, in relation to Gobbo and the lengths that Victoria Police went to keep her role hidden from courts and accused, the OPI (and ESD) failed to provide any independent oversight of the lawfulness of Victoria Police's approach. This failure must be understood in the context of the OPI having adopted a partnership role with Victoria Police in investigations such as Briars and Petra which, as a result, meant it had a conflict of interest when it came to oversight of those investigations. Despite what the Commission has uncovered about Victoria Police's failure to understand and/or apply fundamental requirements of the criminal law, the OPI did not investigate or criticise Victoria Police's actions.⁶⁰
38. Ashton was warned by lawyers and investigators in 2007 that joint agency agreements between the OPI and Victoria Police conflicted with the OPI's oversight role.⁶¹ He continued to support the arrangement which he considered was justified because of the legislative framework at the time and because the priority was to ensure that Victoria Police had the resources and support they needed to investigate the Briars and Petra allegations.⁶²

⁵⁷ Iddles T14179 L1-32.

⁵⁸ Iddles T14180 L16-29.

⁵⁹ Iddles T14180 L40-14181 L1-3.

⁶⁰ Ashton T10653 L25-37.

⁶¹ Exhibit RC866B Email chain Twigg to Nolan and others 18 June 2007-21 June 2007; Exhibit RC867B (confidential) Email from Mr Carroll to Mr Ashton and others dated 22 June 2007; Exhibit RC 1345 Nolan Statement dated 10 December 2019, at [26]; Ashton T10722-T10726; Ashton T11014.

⁶² Ashton T10652-10653; T10656; Ashton T10723-10725; Ashton T11014.

39. OPI investigator Nolan told the Commission that, in his opinion, the fact that the OPI was a party to the Briars and Petra investigations compromised its objectivity vis a vis Victoria Police.⁶³ This view was shared by Sir Ken Jones who severed ties between the OPI and Victoria Police in late 2009 having concluded that joint operations resulted in Victoria Police not having been effectively regulated.⁶⁴
40. The OPI's role in and knowledge of Victoria Police's unlawful use and concealment of Gobbo was obscured by Ashton's determination to cease taking notes between 22 January 2007 and 1 July 2008.⁶⁵ Rather than setting an example of transparency, ethics and commitment to the rule of law, Ashton (and the OPI) adopted the same 'ends justify the means' approach to investigation as Victoria Police.

Gobbo's unsworn statement

41. On 20 May 2009, Cornelius authorised Waddell and Iddles to travel to Bali to obtain a statement from Gobbo. Waddell and Iddles had obtained material from the SDU to assist with this process. When they returned, Waddell provided Cornelius with a briefing and Cornelius assisted Waddell in accessing further SDU materials to assist with completing the document.⁶⁶ The statement was discussed in Briars Taskforce meetings in 2009 and legal advice about it was sought.⁶⁷
42. The statement included details about: Gobbo's meeting with Waters on 1 April 2007 (see above); her disclosing some 'mail' to Waters on 13 September 2007 that ^{Mr Gregory} had made a statement implicating Waters and Lalor in the 'vampire' murder; and Waters having told Gobbo that Lalor would, if called to give evidence in the Operation Diana OPI hearings, say that Rix did not leak to him about Briars.⁶⁸ The statement also detailed conversations that Gobbo had with Waters in 2008 where he confirmed he had a source at Homicide who was providing him with updates about Briars.
43. In light of: (a) the significance of the Briars investigation; (b) the extraordinary steps taken to attempt to corroborate ^{Mr Gregory} allegations against Waters and Lalor; (c)

⁶³ Nolan T14706 L32-14707 L7.

⁶⁴ Jones T11154-11157.

⁶⁵ Ashton T10714.

⁶⁶ Cornelius Statement dated 20 September 2019 at [107]-[108]; Cornelius T12407-12409.

⁶⁷ Exhibit RC1012 – Briars meeting notes of Cornelius 01 June 2009; Exhibit RC1027 File note in relation to Taskforce Briars 27 July 2009; Cornelius T12401; T12481-12484; T12497-8.

⁶⁸ Exhibit RC260B, VPL.002.0002.0120.

the potential significance of Gobbo's evidence; and (d) the complex and controversial decision which faced Victoria Police regarding whether to turn a human source into a witness, it is improbable that this statement was not read by the Board of Management including Cornelius.⁶⁹

Mullett's civil proceedings

44. On 27 March 2013, Mullett commenced civil proceedings in the Supreme Court against Christine Nixon, Kieran Walshe and Wayne Taylor for malicious prosecution and malfeasance in public office. The trial was heard in May 2016 and Justice T Forrest handed down judgment in favour of the defendants on 31 August 2016.
45. Mullett claimed in the proceedings that the decisions to suspend him and to charge him were influenced by Nixon's desire to get rid of Mullett due to his public opposition to her, a relationship found by Justice T Forrest to have, by 2007, been 'toxic'.⁷⁰ One of the issues in the civil proceeding was whether Mullett could establish that the defendants did not 'honestly believe' the criminal case that was instituted and maintained or, alternatively, that they had no sufficient basis for such an honest belief [17]. Justice T Forrest examined the process of review undertaken by Taylor and Walshe in mid-2008 before the charges were laid. Taylor gave evidence that he had made enquiries of the OPI as to whether there was any exculpatory evidence in existence and been assured that there was not.⁷¹
46. Cornelius gave evidence in the civil proceedings that on 14 September 2007, Ashton told him that the OPI had been conducting an investigation into allegations that senior members of Victoria Police had been leaking information in relation to Briars. Cornelius said that he was 'shocked' at the allegation that Mullett and Ashby were providing information to one of the Briars' targets. Cornelius confirmed there was a second meeting on 17 September 2007 to discuss these allegations between Nixon, Overland, Ashton, Brouwer and himself.⁷²
47. Cornelius also gave evidence that he attended the OPI on each day of the Operation Diana public hearings between 7-15 November 2007 at Nixon's behest and watched

⁶⁹ cf Cornelius T12570 L7-12571 L2.

⁷⁰ *Mullett v Nixon & Ors* [2016] VSC 512 per T Forrest J (*Mullett v Nixon*) at [41]-[42].

⁷¹ *Mullett v Nixon* at [74] and [95].

⁷² *Ibid* at [50]

the evidence. On 14 November 2007, Nixon, Cornelius, Overland and lawyers from VGSO met to discuss whether there was sufficient evidence to suspend Mullett. Advice was sought from Peter Hanks QC and Mullett was suspended on 15 November 2007 with Nixon signing the notice.⁷³

48. On 10 November 2007, of course, Gobbo had informed Victoria Police that Lalor, according to Waters, claimed he never received information about Briars from Rix.
49. Cornelius made no mention in his evidence to Justice T Forrest of Gobbo's role in obtaining information about Briars leaks from Waters or her role in leaking to him. Nor did Cornelius inform the court whether those details were made known to Taylor who had been told by Cornelius not to simply 'rubber stamp' the OPI charges⁷⁴ but rather, presumably, to independently assess all inculpatory and exculpatory evidence before determining whether there was a proper basis to charge.
50. In his evidence before the Commission, Cornelius denied knowing about what Gobbo told Victoria Police on 10 November 2007 at the time he gave his evidence in the civil proceeding in 2016.⁷⁵ As this information was contained in Gobbo's statement which Cornelius was briefed about (and, it is submitted, must have read) in 2009, that evidence should be rejected.
51. In any event, however, Cornelius readily (and appropriately) accepted before the Commission that what Victoria Police knew about Lalor's position on Rix was something highly relevant for both his legal advisors and the judge to know in Mullett's civil proceedings.⁷⁶ This view was shared by Iddles who gave evidence before the Commission that, in his opinion, Gobbo's draft statement was subject to discovery in Mullett's civil proceeding.⁷⁷
52. Had this (and other relevant aspects of the Briars/Waters/Gobbo information on leaks) been discovered, the defendants' evidence (and that of witnesses such as Cornelius) would have been tested by reference to it.

⁷³ Ibid at [40].

⁷⁴ Ibid at [77].

⁷⁵ Cornelius T12570-12571.

⁷⁶ Cornelius T12571 L1-29

⁷⁷ Iddles T14181 L22-28.

53. It may be noted that evidence given at the Commission by Sir Ken Jones QPM was that he saw files and documents in the possession of Victoria Police relating to Operation Diana which, in his view, demonstrated that Victoria Police worked with the OPI on the investigation.⁷⁸ Any such documents were neither discovered nor disclosed – a fact that only suggests they do not exist if it is assumed that Victoria Police understood their duties of disclosure and discovery. The evidence led at the Commission leads inevitably to the conclusion that, at least prior to the High Court’s decision in *AB (A Pseudonym) v CD (A Pseudonym)* (2018) 262 ALR 1, no such assumption can be made.

Summary

54. For the reasons above, it is submitted that Victoria Police’s commitment to hiding their use of Gobbo from courts and accused impacted upon the fairness of the criminal proceedings brought against Mullett and Ashby and Mullett’s later civil proceedings.
55. The terms of reference for the Commission do not limit consideration of the cases which may have been affected by the conduct of Gobbo as a human source only to those cases in which a conviction was obtained. Mullett and Ashby have for more than a decade had hidden from them exculpatory evidence. They have lost their careers, income and reputations. They are entitled to have the unlawful way in which Victoria Police treated them identified and condemned.
56. The Commission should, it is submitted, make the findings set out above.

Julie Condon QC
Ruth Shann
Counsel for Mullett and Ashby

⁷⁸ Jones Statement 7 December 2019 at [29]-[31]; Jones T11262; Jones T11304.