

## AUSTRALIAN CAPITAL TERRITORY

BOARD OF INQUIRY  
CRIMINAL JUSTICE SYSTEM

**In the matter of the *Inquiries Act 1991***  
***Inquiries (Board of Inquiry – Criminal Justice System) Appointment 2023***  
**Board of Inquiry into the Criminal Justice System in the Australian Capital Territory**

**STATEMENT OF STEPHANIE MAREE MCKENZIE**

I, Stephanie Maree McKenzie, of the Australian Federal Police, Southern Command Headquarters, 155 Little Lonsdale Street, Melbourne, Victoria, state as follows:

1. I provide the following statement voluntarily in response to the subpoena I received from the Board of Inquiry into the Criminal Justice System in the Australian Capital Territory. Attached and marked 'AFP.0037.0002.0001' is a copy of the relevant subpoena.
2. The Board of Inquiry emailed 'AFP.0037.0002.0001' to my lawyers at 12:17pm on Thursday 1 June 2023. It asked for a written response by 5:00pm on Tuesday 6 June 2023. I have done my best, in the time available, to answer the questions fully and as accurately as possible to the best of my knowledge and recollection.

**Background and Professional History**

3. I am a lawyer currently assigned to Operations Legal, a branch within AFP Legal, which is the internal legal department of the Australian Federal Police (AFP). My role primarily involves providing advice to AFP investigators on Commonwealth police powers and offences as well as providing advice on and support to the conduct of prosecutions, including disclosure, protection of sensitive information and protections for confidential witnesses. Attached and marked 'AFP.0037.0002.0009' and 'AFP.0037.0002.0012' is a copy of a recent advertisement for roles within this team (formally known as AFP Legal Operations & Counter-Terrorism).
4. I have a Bachelor of Laws with First Class Honours and a Bachelor of Arts from Deakin University. I also have a Graduate Diploma of Legal Practice from the College of Law. I was admitted as an Australian Lawyer in the Supreme Court of Victoria in 2019. Attached and marked 'AFP.0037.0002.0027' is a copy of my curriculum vitae.

**Whether, to your knowledge, anyone within the AFP legal team advised or communicated to the Director of Public Prosecutions (DPP)/Office of the Director of Public Prosecutions (ODPP) staff that they had determined that the documents falling under the description 'investigative review documents' or any of the following individual documents were privileged?**

- (a) Minute of Marcus Boorman dated 4 June 2021
- (b) Executive Briefing of Scott Moller dated 7 June 2021
- (c) Investigative review dated 2 August 2021

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**(d) Undated document titled “identified discrepancies”****(e) Undated document titled “review doc”**

5. Attached and marked ‘AFP.2003.0010.7851’ is a copy of my email to Ms Erin Priestly of the ODPP on 20 June 2022 regarding the issue of legal professional privilege over the ‘investigative review documents’ (as described above). I note that Ms Helen Drew (Principal Lawyer – Operations Legal) contributed to the drafting of this email.
6. As set out in AFP.2003.0010.7851, we wrote to Ms Priestly informing her that although the communication of the documents described above dated 4 June 2021 and 7 June 2021 to the DPP for the purpose of advice may be considered privileged, copies of the documents in the AFP’s hands that were not communicated to the DPP for this purpose may not be considered to be privileged. We sought Ms Priestly’s advice on whether in light of this information the documents needed to be disclosed in the prosecution. Attached and marked ‘AFP.2003.0016.8885’ is correspondence to and from Ms Erin Priestly of the ODPP, copying Shelley Miller, Helen Drew, Detective Inspector Callum Hughes, Senior Constable Emma Frizzell, Detective Leading Senior Constable Trent Madders and the SVC DPP cases mailbox, which includes a copy of this request for advice.
7. In this same correspondence (AFP.2003.0010.7851), we identified and informed Ms Priestly of discrete legal professional privilege redactions within two of the documents attached to that correspondence, being the report of the investigation review conducted by Commander Andrew Smith dated 2 August 2021 and the coversheet to Detective Superintendent Scott Moller’s executive briefing dated 7 June 2021. We asked that should the documents be disclosed to defence, the discrete legal professional privilege redactions be applied.
8. To the best of my knowledge, I am not aware of anyone within AFP Legal, at any time, advising or communicating to the DPP or ODPP staff that copies of the ‘investigative review documents’ (as described above) in the hands of the AFP were privileged or the subject of a claim for legal professional privilege by the AFP.

**Whether, to your knowledge, anyone within the AFP legal team advised or communicated to the DPP or ODPP staff that the documents had been placed in schedule 1 on a disclosure certificate?**

9. To the best of my knowledge, I am not aware of anyone within AFP Legal advising or communicating to the DPP or ODPP staff that the documents as described above (that

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is, copies of the investigative review documents in the hands of the AFP) had been placed in schedule 1 on a disclosure certificate.

**Whether at any stage it was communicated by the DPP (expressly or impliedly) that AFP Legal should obtain the views of the authors of the relevant documents to determine the purpose of the Investigative Review Documents.**

10. To the best of my knowledge, the DPP did not communicate, either expressly or impliedly, that AFP Legal should obtain the views of the authors of the relevant documents to determine the purpose of the ‘investigative review documents’ (as described above).

**Provide details of your meeting with the DPP and ODPP staff on 19 July 2022. You must include details of the following:**

- (a) the purpose of the meeting;**
- (b) whether the DPP and ODPP staff were informed of the purpose of the meeting? If so, provide details of when the DPP/ODPP were informed of the purpose of the meeting and the nature of what was said;**
- (c) your recollection of the meeting including the nature of what was said (and by whom);**
- (d) whether advice was sought from the DPP and/or /ODPP staff in relation to whether documents were subject to legal professional privilege. If so, please provide details of;**
  - i. what documents were discussed and in what terms;**
  - ii. whether the DPP suggested AFP Legal to obtain the views of the authors of those documents in relation to the dominant purpose of the relevant documents. If so, provide details of the nature of the DPP’s suggestion;**
  - iii. whether you otherwise inferred from the DPP’s comments that AFP Legal should obtain the views of the author of the relevant documents in relation to the purpose of the Investigative Review Documents. If so, provide details of why you drew this inference.**

11. In order to put the 19 July 2022 meeting in context, it is necessary to first provide some brief background.
12. On 16 June 2022, a teleconference was held between the DPP, ODPP staff, ACT Policing and AFP Legal regarding disclosure requests received from defence representatives in *R v Lehrmann*. During the teleconference, the DPP advised that his office would liaise with defence to seek to narrow the scope of some of their disclosure requests. This was in response to members from ACT Policing informing the DPP and

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ODPP staff present at this meeting that voluminous material was responsive to the requests for copies of the complainant's Google drive and iCloud account as well as the request for all PROMIS records relating to Operation Covina.

13. During the 16 June 2022 teleconference, the DPP said he had "provided advice that two of the documents he had seen were privileged as they were created for the dominate (sic) purpose of obtaining legal advice". I understood that the two documents the DPP has previously seen were the Minute of Marcus Boorman dated 4 June 2021 and Executive Briefing of Scott Moller dated 7 June 2021. Attached and marked 'AFP.2009.0001.4939' is a copy of my file note of that meeting.
14. After the teleconference, Ms Erin Priestly of the ODPP and I corresponded via email on 16 June 2022 at 6:21pm and 17 June 2022 at 12:13pm copying Shelley Miller, Helen Drew, Detective Inspector Callum Hughes, Senior Constable Emma Frizzell, Detective Leading Senior Constable Trent Madders and the SVC DPP cases mailbox. A copy of these emails are attached and marked 'AFP.2003.0016.8885'.
15. On 20 June 2022, I sent an email to Ms Priestly of the ODPP in relation to the status of the 'investigative review documents'. I attached copies of all five 'investigative review documents' to my email. In my email, I stated:

*We understand the Director has previously received the documents dated 4 June 2021 and 7 June 2021 in the context of being asked to provide advice and considers in that context the documents are subject to LPP. We would be grateful if you could confirm that these are the same documents and that the Director's position is that they are privileged.*

*Assuming at this stage the Director's position is that the first two documents should not be disclosed because they are subject to LPP, we note that if disclosure of the documents is pressed by the defence, there is a potential argument that other copies of the documents in the hands of the AFP are not privileged. The argument would be that prior to being provided to the Director, these documents were documents prepared for the purpose of internal AFP briefing and guidance, and that copies of the documents held by the AFP are not privileged because they did not involve communications with a legal advisor and were not made for the dominant purpose of obtaining legal advice or for use in, or for the purposes of litigation proceedings. Grateful if you could advise whether you consider this relevant in the current circumstances.*

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*We do not believe you have previously been provided with the third, fourth or fifth documents, in the context of a request for advice or otherwise, and it appears to us that the documents would be disclosable, but will defer to your office's view on this.*

16. The next day, 21 June 2022, Ms Priestly responded to my email stating that the DPP was of the view that the 'investigative review documents' were "preparatory to confidential communications between DPP and AFP for the dominant purpose of providing legal advice, and are not disclosable pursuant to s 118 of the Evidence Act 2011." This email is attached as part of '**AFP.2003.0010.7729**'.
17. To the best of my recollection, by early July 2022, AFP Legal had not received confirmation from the ODPP regarding whether these specific disclosure requests needed to be progressed in light of the voluminous responsive holdings. Accordingly, I sent an email to Ms Priestly on 8 July 2022 at 12:12pm to arrange a meeting with her to discuss this matter. Attached and marked '**AFP.2003.0010.7817**' is my email correspondence with Ms Priestly arranging this meeting.
18. As set out in AFP.2003.0010.7817, I informed Ms Priestly that the purpose of meeting was "to discuss the status of defence's disclosure requests". Ms Shelley Miller (Deputy General Counsel – Operations Legal), Ms Helen Drew, Detective Inspector Callum Hughes and Senior Constable Emma Frizzell were copied to this email correspondence. I do not know what Ms Priestly communicated to the DPP or other ODPP staff regarding the purpose of the meeting.
19. Additionally, prior to the meeting on 19 July 2022, I sent a summary of the matters that Ms Drew and I wished to raise with the ODPP during this meeting to Ms Miller as Ms Miller also planned to dial into the teleconference. Attached and marked '**AFP.2009.0001.3878**' is my email correspondence to Ms Miller.
20. The meeting occurred via Microsoft Teams on 19 July 2022. It commenced at around 3:00pm and concluded around 3:20pm. Ms Miller, Detective Inspector Hughes, the DPP (Mr Shane Drumgold), Ms Priestly and I dialled into the meeting. Attached and marked '**AFP.2009.0001.4938**' is my file note of this meeting.
21. During this meeting, I recall the discussion focused on the matters I had set out for discussion in AFP.2009.0001.3878 and in particular, whether the AFP needed to undertake any future action with respect to defence's disclosure requests, noting that if disclosure of the voluminous records was required, we needed to know as soon as

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possible so that further review of the material for necessary redactions could commence.

22. As recorded in AFP.2009.0001.4938, the documents discussed during this meeting included:
  - a. a Cellebrite report for one of the complainant's phones,
  - b. records of the complainant's Google and iCloud drives,
  - c. PROMIS records, and
  - d. documents from two-named AFP members.
  
23. In this meeting, the DPP advised that if the defence pressed the AFP for the above documents, he would require defence to make an application to the court.
  
24. The DPP also confirmed that he was not waiting on anything disclosure-related from the AFP at that stage.
  
25. As further recorded in AFP.2009.0001.4938, towards the end of the meeting, the DPP confirmed his prior advice with respect to legal professional privilege applying to the 'investigative review documents'. I understood this to be a reference to the documents attached to my email to Ms Priestly on 20 June 2022 (AFP.2003.0010.7851).
  
26. To the best of my recollection, the DPP's prior advice consisted of:
  - a. The DPP's comment in the teleconference on 16 June 2022 that he had "provided advice that two of the documents he had seen were privileged as they were created for the dominate (sic) purpose of obtaining legal advice" (see paragraph 13 above).
  
  - b. Ms Priestly's email of 21 June 2022, which stated that "the DPP has reviewed this material and is of the view that the documents are preparatory to confidential communications between DPP and AFP for the dominant purpose of providing legal advice..." I understood the documents Ms Priestly referred to were the five documents attached to my email to Ms Priestly of the previous day, namely: (i) Minute of Marcus Boorman dated 4 June 2021; (ii) Executive Briefing of Scott Moller dated 7 June 2021; (iii) Investigative review dated 2 August 2021; (iv) Undated document titled "identified discrepancies"; and (v) Undated document titled "review doc" (see paragraph 16 above).

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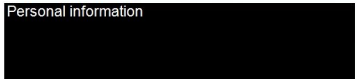
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27. To the best of my knowledge, the DPP did not at any point (at this meeting or otherwise) suggest to AFP Legal to obtain the views of the authors of these documents (as described above) in relation to the dominant purpose of the documents, and I did not otherwise infer this from any remarks made by the DPP during this meeting.


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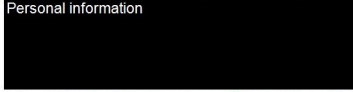
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**SWORN** before me at Canberra in the Australian Capital Territory on Tuesday, 6 June 2023.

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Signature of witness

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Troy Stephen Wei-Chieh Sauzier



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**INDEX TO EXHIBITS**

No.	Description	Document ID
1.	Notice 2023/S/00 – subpoena to provide written statement	AFP.0037.0002.0001
2.	Recent advertisement for roles within AFP Legal Operations & Counter-Terrorism	AFP.0037.0002.0009 AFP.0037.0002.0012
3.	Curriculum Vitae	AFP.0037.0002.0027
4.	Email to Ms Erin Priestly on 20 June 2022 at 7:09pm	AFP.2003.0010.7851
5.	Email from Ms Erin Priestly on 17 June 2022 at 12:13pm	AFP.2003.0016.8885
6.	File note of meeting of 16 June 2022	AFP.2009.0001.4939
7.	Email from Ms Priestly on 21 June 2022 at 10:45am	AFP.2003.0010.7729
8.	Email to Ms Priestly on 8 July 2022 at 12:12pm	AFP.2003.0010.7817
9.	Email to Ms Shelley Miller on 19 July 2022 at 1:54pm	Not relevant [REDACTED] AFP.2009.0001.3878
10.	File note of meeting of 19 July 2022	AFP.2009.0001.4938