



Our ref. 23000715

15 February 2023

Solicitor Assisting the Board of Inquiry
ACT Board of Inquiry into Criminal Justice System

By email: BOI.notices@inquiry.act.gov.au

Dear Office of the Solicitor Assisting

R v Lehrmann – ACT Board of Inquiry – voluntary production of documents – first tranche

1. We refer to our letter dated 10 February 2023, to your letter dated 11 February 2023, and to the subpoena served on 6 February 2023.

Commonwealth position on the application of the Inquiries Act 1991

2. The Commonwealth has carefully considered the matters raised in your letter of 11 February 2023. We reiterate that the AFP supports the Inquiry and will cooperate with the Inquiry to the fullest extent possible. However, the Commonwealth's view of the legal position remains as stated in our 10 February letter: that is, the Commonwealth is not subject to the compulsory powers set out in the *Inquiries Act 1991* (ACT).
3. We are instructed that the Commonwealth does not propose to apply for declaratory relief. The Commonwealth considers the legal position to be clear and, importantly, the AFP is working to produce the documents sought by the Inquiry as set out in the remainder of this letter.

Voluntary production of requested documents

4. As stated in our 10 February letter, the AFP is treating the subpoena as a formal request for documents.
5. Accordingly, we **enclose** documents comprising the first tranche of documents from the AFP, relating to the following categories in the subpoena:
 - Category 1 – in relation to this category the index to the brief of evidence is provided with redactions to certain items pending confirmation of whether the information contained in the items can be lawfully provided under the *Telecommunications (Interception and Access) Act 1979* (Cth).
 - Category 5

Further production

6. The AFP is working to produce more documents to the Inquiry as soon as possible. We are instructed that your request captures a volume of material, in which a number of documents are to be closely examined to determine whether they can be produced to the Inquiry, having regard to such matters as:
 - material obtained under search warrants issued under the *Crimes Act 1914* (Cth) s 3E
 - material obtained under the *Telecommunications (Interception and Access) Act 1979* (Cth)
 - appropriate identification and handling of material subject to Division 4.3.3 in the *Evidence (Miscellaneous Provisions) Act 1991* (ACT)
 - material obtained under s 40VE of the *Australian Federal Police Act 1979* (Cth)
 - legal professional privilege.
7. Taking into account the volume of material and the complexity of the issues arising in some of the documents, the AFP anticipates it will provide tranches of documents for the following categories on or in some cases before 24 February 2023 (as documents become available and may be provided earlier, we will do so in consultation with you):
 - categories 1, 2 and 3 will be provided by 24 February 2023. In respect of category 3, we are instructed that the AFP is working with some 20 or more ACT police members to search and recover records, which is a large and ongoing task. We will update you as to progress, but it is likely at this stage that documents responsive to category 3 will need to be provided over the course of multiple tranches because of the volume of material involved.
 - category 8 – the documents have been identified and are being reviewed for legal professional privilege. We expect to be in a position to provide them within the next two days.
 - Category 9 - relevant governance documents have been identified and will be provided in the next day. Those documents also link to video files which will be provided as soon as they are able to be extracted. This is likely to be by the end of this week.

8. The provenance of documents captured in categories 4, 6 and 7 raises legal issues as to their disclosability. We are analysing the position as a matter of priority and will further advise.
9. We are also instructed that there are no documents to produce in response to the description in category 10 of your request. We invite the Inquiry to provide any further information or description which may assist our client to meet the intent of this category.
10. Please do not hesitate to contact me if you have any questions about this matter.

Yours sincerely



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