



Our ref. 23000715

28 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 –
third tranche**

1. We refer to the subpoena served on 6 February 2023 and our previous correspondence relating to the AFP's voluntary cooperation with the Inquiry, notwithstanding the Commonwealth's position that it is not subject to the compulsory powers set out in the *Inquiries Act 1991* (ACT).

Voluntary production of requested documents

2. We **enclose** documents comprising the third tranche of documents from the AFP, along with a list of documents now produced. This tranche relates to Category 1 of the 6 February subpoena.
3. Limited redactions have been applied to personal information being contact details of AFP members, as is consistent with the usual approach of the AFP in responding to subpoenas and other document disclosure processes. This is based on real concern and experience that publication of individual employee details may lead to their being inappropriately contacted. In our efforts to provide these materials without delay, it is possible some details have not been redacted. Accordingly, in the event the Board intends to remove the non-publication order, we respectfully request an opportunity to re-review the documents to identify any further redactions of this nature that may be required. The names of relevant officers are not redacted.
4. We also wish to bring to the Board's attention that the documents contain a significant volume of personal information of other individuals (non-AFP), for example:
 - a. AFP.0002.0002.0272, which contains Fiona Knight's contact details;
 - b. AFP.0002.0002.0294, which contains contact details for a number of APH employees; and
 - c. AFP.0002.0002.2086, which contains Ms Higgins' phone number and email address.
5. We expect the Board does not intend to publish that personal data. The AFP's usual process would be to redact that information ahead of its production (the personal

data itself generally having little forensic relevance). To assist the Board without delaying the present production, we have produced the documents with limited redactions. However, before any publication of the documents occurs, we suggest that an appropriate and secure procedure be that, for those items in the bundle that the Board selects for tender and publication, the AFP is granted another opportunity to perform a further comprehensive sweep to redact that information accordingly. We would be grateful for the Board's indication of its agreement to that step.

6. In addition, a subset of the material in the brief of evidence had already been redacted – those redactions then remain in place in the produced material.

Material the AFP is unable to voluntarily disclose

7. A small amount of the information contained in the brief was obtained under legislation authorising the collection and use of information via warrants and other means, and which limit the further use and disclosure of that information to limited prescribed circumstances. The relevant legislative prohibitions to which we refer are contained in the *Telecommunications (Interception and Access) Act 1979* (Cth), the *Crimes Act 1914* (Cth), and the *Crimes Act 1900* (ACT). The AFP is closely considering whether such information could be disclosed to the Board on a voluntary basis, but we have withheld information obtained under these Acts from this production tranche until the AFP reaches a concluded view.
8. The withheld information also includes materials voluntarily provided by Department of Parliamentary Services for the purpose of criminal investigations only. We are seeking consent from the Department of Parliamentary Services to release these materials to you.
9. If the AFP makes any inadvertent disclosures to the Inquiry, the AFP will rely on the principles set out in the High Court's decision *Expense Reduction Analysts Group Pty Ltd v Armstrong Strategic Management and Marketing Pty Ltd* (2013) 250 CLR 303 at 325, as well as rule 31 of the *Legal Professional Uniform Law Australian Solicitors' Conduct Rules 2015*. We will notify you as soon as possible if we become aware of any inadvertent disclosures. We appreciate your understanding in this regard.

Further productions

10. In our letter dated 15 February 2023, we indicated that the AFP anticipated producing documents relating to category 3 by 24 February 2023.
11. We are instructed that the AFP is still processing this material. We will produce this material as soon as we are able to, and likely in tranches. We apologise for the delay.

12. Please do not hesitate to contact me if you have any questions about this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tony Giugni', with a stylized, cursive script.

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