

# TRANSCRIPT OF PROCEEDINGS



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## BOARD OF INQUIRY – CRIMINAL JUSTICE SYSTEM

**CHAIRPERSON: MR W. SOFRONOFF KC**

**CANBERRA**

**12.17 PM, THURSDAY, 30 MARCH 2023**

MS E. LONGBOTTOM KC with MR J. JONES and MS LYNCH appeared as Counsel Assisting.

MR I. DENHAM appeared on behalf of the MR S. DRUMGOLD SC.

MS K. RICHARDSON SC appeared on behalf of the Australian Federal Police.

MR C. GNECH appeared on behalf of thirteen AFP members.

MS K. EVANS appeared on behalf of Heidi Yates.

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THE CHAIRPERSON: Ms Longbottom.

MS LONGBOTTOM: Good afternoon, Mr Sofronoff. I appear with  
Mr Jones and Ms Lynch as counsel assisting.

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THE CHAIRPERSON: Thank you. Now, there are some parties in  
attendance who seek leave to appear or to be represented.

MS LONGBOTTOM: I understand that's the case.

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THE CHAIRPERSON: Yes.

MR DENHAM: If I might go first, Mr Sofronoff. My name is Denham,  
D-e-n-h-a-m.

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THE CHAIRPERSON: Sorry, could you spell that again?

MR DENHAM: D-e-n-h-a-m.

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THE CHAIRPERSON: Yes, Tenham. Yes, Mr Tenham, who do you appear  
for?

MR DENHAM: Denham, sorry, your Honour. Sorry – Mr Sofronoff.

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THE CHAIRPERSON: Denham. I'm sorry. Denham, yes.

MR DENHAM: I seek leave to appear on behalf of Mr Drumgold SC.

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THE CHAIRPERSON: Yes. Thank you. You have leave, Mr Denham.  
Anyone else in the courtroom for the moment? No?

**AUDIOVISUAL LINK ESTABLISHED**

**[12.18 pm]**

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THE CHAIRPERSON: Ms Richardson.

MS RICHARDSON: Thank you, Commissioner. May it please the inquiry,  
I seek leave to appear on behalf of the Australian Federal Police.

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THE CHAIRPERSON: Thank you. You have leave. And, Mr Gnech,  
you're there?

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MR GNECH: Yes. Thank you, commissioner. I seek leave to appear on  
behalf of 13 Australian Federal Police officers as per my application filed  
yesterday.

THE CHAIRPERSON: Yes, you have leave. Ms Evans. Ms Evans, can you hear me?

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MS EVANS: Yes, Mr Sofronoff.

THE CHAIRPERSON: Yes.

MS EVANS: I seek leave to appear on behalf of Heidi Yates.

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THE CHAIRPERSON: You have leave.

MS EVANS: Thank you.

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THE CHAIRPERSON: And Ms Holt. Ms Holt, can you hear me? Somebody might contact Ms Holt and we can attend to that in due course. Ms Longbottom.

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MS LONGBOTTOM: Thank you, Mr Sofronoff. This board of inquiry was established on 1 February this year. On 6 February you issued a subpoena to ACT Policing, requiring the production of certain documents. I tender a copy of that subpoena.

THE CHAIRPERSON: Dated?

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MS LONGBOTTOM: 6 February 2023.

THE CHAIRPERSON: Exhibit 1.

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**##EXHIBIT 1 - SUBPOENA ISSUED TO ACT POLICING DATED 6/2/2023**

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MS LONGBOTTOM: As you are aware, the AFP has taken the legal position that it is not bound to comply with subpoenas issued by this inquiry, as a Commonwealth entity. Can I tender, in relation to that issue, correspondence exchanged between yourself and AGS - - -

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THE CHAIRPERSON: Yes.

MS LONGBOTTOM: - - - who are the solicitors who act for AFP. The first is a letter from AGS dated 10 February 2023.

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THE CHAIRPERSON: Exhibit 2.

**##EXHIBIT 2 - LETTER FROM AGS DATED 10/2/2023**

MS LONGBOTTOM: The second is a letter from the solicitor assisting the inquiry to AGS dated 11 February 2023.

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THE CHAIRPERSON: Exhibit 3.

**##EXHIBIT 3 - LETTER FROM SOLICITOR ASSISTING BOARD OF INQUIRY TO AGS DATED 11/2/2023**

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MS LONGBOTTOM: And the third is a letter from AGS to the solicitor assisting the board of inquiry dated 15 February 2023.

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THE CHAIRPERSON: Exhibit 4.

**##EXHIBIT 4 - LETTER FROM AGS TO SOLICITOR ASSISTING BOARD OF INQUIRY DATED 15/2/2023**

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MS LONGBOTTOM: A perusal of that correspondence exposes the position taken by the AFP in relation - - -

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THE CHAIRPERSON: Yes. I had taken a contrary view very early after I was appointed, but I've done more work on it and I think the AGS has got it right, with respect. So as I understand it, the contention in summary is that the ACT legislature passed the Inquiries Act. I have been appointed under that Act. I issue subpoenas by virtue of a statutory power conferred upon me by an ACT statute.

30

The Australian Federal Police is a Commonwealth entity established under a Commonwealth statute and, unless there is some Commonwealth statute which permits the ACT legislature to bind the AFP as an institution, or its officers, then it has no legislative power to do so as a matter of law, and there is no such provision, and it follows then that the AFP statute governs what the AFP can and can't do, and one of the things it can't do is reveal information that is confidential to the AFP. So the position is the subpoena that I issue having no effect upon the AFP.

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You can't compel the lawful production of confidential information by the AFP, although I need some such information from the AFP, and as I understand the position that the AFP has adopted, it is that under its statute, one of its functions is to provide policing to the ACT, to the Territory. Another of its functions is to do what is conducive to any of the other of its functions, and the AFP has taken the view that cooperation with this inquiry

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is conducive to its function of providing police services to the ACT and, consistently with that, they regard themselves or the AFP regards itself as under a statutory obligation, imposed by its own statute, to do that which is conducive, and that is to provide me with the information that I ask for.

5

So, although we issue subpoenas to the AFP as a matter of practicality so that there's a document, we might as well do it by letter, but in any event, what we call a subpoena in that connection is actually a request for documents that the AFP has said it will act upon for the reason that I have just explained. Is that how you understand it?

10

MS LONGBOTTOM: That is the case, Mr Sofronoff, and one thing I would emphasise in that respect. As you will see from the letters from AGS dated 10 February and 15 February, the AFP is explicit to affirm its commitment to assist the inquiry to the fullest extent possible. Can I refer you, for example, in that respect to Exhibit 2 at paragraph 2.

15

THE CHAIRPERSON: Yes. Thank you.

20

MS LONGBOTTOM: Those open statements of cooperation reflect the public position the AFP has taken in relation to this inquiry. Indeed, it's apparent from statements made by the ACT police chief that this inquiry was welcomed by the AFP.

25

THE CHAIRPERSON: Yes, and indeed several individual police officers for whom Mr Gnech acts have been very helpful.

30

MS LONGBOTTOM: Yes. That has certainly been our experience to date, commissioner. Sorry – Mr Sofronoff. Just to complete the record in relation to those public statements of support, can I tender a newspaper article from The Australian dated 9 December 2022. That reports various statements made by the ACT Chief of Police in relation to the then planned public inquiry.

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THE CHAIRPERSON: Is there a particular part of it I should look at?

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MS LONGBOTTOM: If I could take you to the end of the article where there is a reference to Mr Gaughan, who is the ACT police chief – sorry, I correct myself. It's on page 2 of the article, second paragraph from the bottom, where there is reference to an email sent by Commissioner Gaughan welcoming a public inquiry into all aspects of the matter, including the actions of police, the prosecution and defence.

45

THE CHAIRPERSON: Yes, I see. Thank you.

MS LONGBOTTOM: So the tenor of those public statements is consistent with the letter of what is contained in communications we have received from

AGS in respect of the subpoena that you issued on 6 February. As you are no doubt keenly conscious, there is a magnitude of work that you are being asked to undertake in order to facilitate the production of a report under your terms of reference by the end of June. To that end, it is critical that we have the timely production of documents that may be material to your investigations and hearings that are scheduled to take place next month. To date there have been issues with respect to the timely production of documents by the AGS in respect of that subpoena. Can I just emphasise in that regard, if you go back to Exhibit 1, Mr Sofronoff - - -

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10

THE CHAIRPERSON: The subpoena. Yes.

MS LONGBOTTOM: Yes. The documents requested under that subpoena were due to be provided on or before 13 February.

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THE CHAIRPERSON: 13 February. Yes. Of course, that was just an estimate by the commission, which, as in the case of all the subpoenas that have been issued – I mean the valid ones and the requests that we made to the AFP – are always open to be extended when required.

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MS LONGBOTTOM: That is so, but we are now some almost two months down the track from the issuing of that subpoena.

THE CHAIRPERSON: Yes.

25

MS LONGBOTTOM: And a number of categories of documents remain outstanding.

THE CHAIRPERSON: I see. All right.

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MS LONGBOTTOM: And it might be helpful if I illustrate that proposition with respect to a particular category of the documents requested by the subpoena. Can I take you to paragraph 1 of the subpoena, which seeks production of the full brief of evidence in relation to the matter the subject of the terms of reference.

35

THE CHAIRPERSON: Yes.

MS LONGBOTTOM: Then can I take you in that regard, Mr Sofronoff, to a letter provided by AGS dated 20 February 2023.

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THE CHAIRPERSON: Yes.

MS LONGBOTTOM: I seek to tender that letter. Thank you. I'm grateful to my learned friend for reminding me that I haven't tendered the article from The Australian.

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THE CHAIRPERSON: All right. I'll mark that Exhibit 5.

MS LONGBOTTOM: Thank you.

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**##EXHIBIT 5 – NEWS ARTICLE FROM THE AUSTRALIAN DATED 9/12/2022**

10 MS LONGBOTTOM: And I might just take a step back, Mr Sofronoff, and take you to Exhibit 3 – rather, Exhibit 4, which is the letter from AGS dated 15 February 2023.

THE CHAIRPERSON: That's Exhibit 4.

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MS LONGBOTTOM: Exhibit 4, yes.

THE CHAIRPERSON: Yes. What do you want me to look at?

20 MS LONGBOTTOM: At paragraph 5, the first dot point of that letter, you will see there's reference, in relation to category 1, to the provision of an index to the brief of evidence.

25 THE CHAIRPERSON: So what the AFP produced was not the brief of evidence but the index to the brief of evidence?

MS LONGBOTTOM: That's so, and the letter - - -

30 THE CHAIRPERSON: Redacted because of - - -

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MS LONGBOTTOM: With redactions, and I just emphasise there the reference to redactions relevant to various pieces of Commonwealth legislation, because that is a continuing feature of some of the issues that have been identified in the correspondence with respect to production.

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THE CHAIRPERSON: Yes.

MS LONGBOTTOM: If I can then take you to the letter of 20 February, which is Exhibit 6 that I've just tendered.

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THE CHAIRPERSON: Yes. Well, that's Exhibit 6.

45 **##EXHIBIT 6 - LETTER PROVIDED BY AGS DATED 20/2/2023**

MS LONGBOTTOM: And direct your attention to subparagraph (3)(a) of that letter.

THE CHAIRPERSON: Yes.

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MS LONGBOTTOM: You will see there it makes reference to the provision of a stamped version of the index of the brief of evidence that was provided on 15 February.

10 THE CHAIRPERSON: So they have given us another copy of the index but this time marked with a database number.

MS LONGBOTTOM: That's so. Can I then seek to tender a letter dated 28 February 2023 from AGS.

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THE CHAIRPERSON: Yes. Exhibit 7.

**#\*EXHIBIT 7 - LETTER FROM AGS DATED 28/2/2023**

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MS LONGBOTTOM: And direct your attention there to paragraph 7 to 9 of that letter.

25 THE CHAIRPERSON: Yes. Let me have a look at it. So this is now three weeks after the request was made and the AGS is writing to say that the AFP is closely considering whether – what's that? – two Commonwealth statutes and a Territory statute prevent or prohibit disclosure to me of documents, and they are closely considering it and they won't produce it until the AFP reaches a concluded view. All right. Where do we go next?

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MS LONGBOTTOM: Before we go to the next document, can I just make one point about this.

35 THE CHAIRPERSON: Yes.

MS LONGBOTTOM: One difficulty is a lack of specificity even to help us understand the issue in terms of production, the specific provisions that may be informing the AFP's enquiries in that regard. I should note that there was some reference made in the letter dated 15 February, which is Exhibit 4, at paragraph 6, to the types of provisions that may be informing the AFP's consideration of the material, but we're some three weeks later and there is an overarching lack of specificity about the particular issues that they are grappling with in terms of production.

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45

THE CHAIRPERSON: Yes. Well, we don't know what provision of the ACT legislation, for example, might preclude the production of material



under an ACT statute to me, let alone the Commonwealth Acts, which aren't – I'm not familiar with the Telecommunications (Interception and Access) Act 1979, but the Crimes Act is not a brief statute.

5 MS LONGBOTTOM: No, and to give due credit to the AFP, in the letter dated 15 February there is specific reference made to section 3E of the Crimes Act and particular provisions of the AFP Act, but certainly insofar as it concerns the Telecommunications (Interception and Access) Act, we're not given any specificity about what might be informing its view. But if I could then take you, Mr Sofronoff, to an email from AGS dated 6 March 2023. If I can tender that.

THE CHAIRPERSON: Yes. Exhibit 8.

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**##EXHIBIT 8 - EMAIL FROM AGS DATED 6/3/2023**

MS LONGBOTTOM: I'll give you an opportunity to read it.

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THE CHAIRPERSON: Yes, let me have a look. So in the subpoena I wanted production of the – paragraph 1 of the subpoena requested production of the full brief of evidence relating to Ms Higgins' complaint concerning Mr Lehrmann. So that's the brief of evidence in the possession of AFP. And paragraph 2 of the schedule to the subpoena requested an exact copy of the brief of evidence as it was provided by police to the Director of Public Prosecutions.

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MS LONGBOTTOM: That is so.

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THE CHAIRPERSON: So you would expect that they contained similar documents and there would be a large overlap, but there may be differences, and the differences might be significant for some reason, I take it. Yes.

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MS LONGBOTTOM: Precisely so, and in that respect I draw your attention to the third paragraph of that email and the statement made there about the desirability of avoiding the production of very large volumes of material of limited usefulness.

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THE CHAIRPERSON: I wonder why they think they have to do that.

MS LONGBOTTOM: I mean, it appears – and Ms Richardson, of course, will be in a position to speak to this. I mean, one might take it as being an expression of endeavouring to cooperate, but the difficulty is, in terms of your investigative functions, that that really is the task for you to undertake rather than the task being undertaken by the AFP.

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5 THE CHAIRPERSON: And I see that the brief as provided to the DPP – that's item 2 in the schedule to the subpoena – is referred to in the second paragraph of this email and it's said that the brief contains a large volume of unedited video footage from various places, and phone records which exceed 100,000 pages, and the author of the letter says:

We anticipate the data processing and review of this material will take a very significant amount of time.

10 Did anyone explain why they are reviewing it rather than handing it over?

MS LONGBOTTOM: Not that I am aware of, Mr Sofronoff, but I stand to be corrected about that.

15 THE CHAIRPERSON: All right. We might learn today. All right, where do we go next?

20 MS LONGBOTTOM: While you're on paragraph 2, can I just indicate in that respect, as I understand it we still have not been provided with a copy of the brief of evidence that was provided to the DPP, which is paragraph 2 of your subpoena of 6 February.

25 THE CHAIRPERSON: So just to make it clear so that I understand what you're putting, term of reference (a) requires me to look at whether any police officers failed to act in accordance with their duties, and one of their duties is to consider the evidence that they had gathered and decide whether or not to charge somebody under the statute that governs those matters, which requires consideration of the nature of the evidence and whether it satisfies a particular statutory test, and term of reference (c) requires me to consider a similar question in relation to the DPP and his decision, if he made a decision, in relation to the presentation of an indictment and the continuation of the proceeding. So it would be a little hard for me to look into that if I don't have the police brief and the brief that Mr Drumgold received from police.

35 MS LONGBOTTOM: Precisely so. I should clarify, though, in that respect, Mr Sofronoff, I don't have a copy to tender, but I'm informed that there was an exchange between the inquiry and AGS on 8 March – I'll find the correct date – which indicated an agreement to that material not being produced for the time being, subject to particular matters. Can I then take you, Mr Sofronoff, to another letter from AGS, dated 27 March 2023, which I seek to tender.

45 THE CHAIRPERSON: Exhibit 9.

**##EXHIBIT 9 - LETTER FROM AGS DATED 27/3/2023**

5 MS LONGBOTTOM: And can I draw your attention in that respect to paragraph 2 of the letter and paragraph 10 as well.

THE CHAIRPERSON: Now, just so I can follow this, paragraph 10 repeats that there is a concern that certain statutes prohibit the production of documents that the AFP has in its possession to me.

10 MS LONGBOTTOM: Yes.

15 THE CHAIRPERSON: But it doesn't identify the provisions. And this information which the AFP considers, no doubt on advice from the AGS, is covered by that legislation, is not going to be disclosed, and that includes the document showing which documents are redacted under what they call the legislative restriction coding. Can you help me understand what that is? That is to say, have we been provided with a list of all of the documents that are not being produced?

20 MS LONGBOTTOM: As I understand it, Mr Sofronoff, there is a document management system that is being used by the inquiry called Lexel.

THE CHAIRPERSON: Yes.

25 MS LONGBOTTOM: A document which is referred to in the last sentence of that paragraph has been uploaded to Lexel, which provides the relevant legislative restriction coding. We've had a look at that document and I can indicate it has a series of columns, one of which is 'Legislative restrictions', in respect of which there is either a statement 'No' or, in some instances, a statement 'Part', but - - -

30 THE CHAIRPERSON: But does it help you understand that there is a particular document the character of which is identified, say 'Statement of witness' or 'Medical record', and a reference to a statutory provision to tell you the ground upon which the AFP considers it ought not produce it?

35 MS LONGBOTTOM: In simple terms, no, it does not appear to. It identifies the fact of a restriction and refers to the material documents, but it's difficult, from our perspective, in terms of gaining that understanding to which you refer.

40 THE CHAIRPERSON: Yes, all right. There are obviously some statutory restrictions that could well apply. There's a reference in the letter to the National Health Act and to the Health Insurance Act, and one would think that there are undoubtedly provisions in those two Commonwealth statutes to say, 'Don't produce these things to anybody,' and, in the absence of a Commonwealth provision saying, 'You must produce it,' those provisions

have effect. But, more importantly, in practical terms it's probable that any documents covered by the health statutes aren't documents that I would be wanting to look at. So it would be nice to know what they are so that one can cease being anxious that something important is being overlooked.

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MS LONGBOTTOM: Precisely so.

THE CHAIRPERSON: So with those two statutes it would be nice to know what the provisions are so that we can be satisfied with the other statutes, like the Telecommunications (Interception and Access) Act 1979. While sitting here at the moment, I have no idea why something would be prohibited and whether it's rightly prohibited, about which I can't make a judgment, and whether it's worth the trouble to take it any further, because I don't know what the document is.

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MS LONGBOTTOM: That's so, Mr Sofronoff, and it is not lost on counsel assisting that there is a volume of documents that the AFP has been asked to produce. But it is necessary to emphasise, given the date by which you have to complete your inquiry, the commitment that the AFP has given to cooperate must be honoured by provision of documents in a timely fashion, and that is the difficulty that we are facing.

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THE CHAIRPERSON: Now, I now believe there have been discussions between you and solicitors at the Australian Government Solicitor about these issues.

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MS LONGBOTTOM: There have been. There have been, Mr Sofronoff, and our hope today is to place certain of those matters on the record so that there can be a certainty, from our perspective, about when documents will be produced and, relatedly, the identification of claims of privilege, public interest immunity and the like with respect to those documents. Before we get to that, though, I should just complete the record by tendering the second subpoena that was issued to the AFP.

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THE CHAIRPERSON: What's the date of it?

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MS LONGBOTTOM: 27 March 2023.

THE CHAIRPERSON: Exhibit 10.

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MS LONGBOTTOM: And may I tender, as well, related - - -

THE CHAIRPERSON: There was a subpoena of 20 March. Is that the one you're referring to?

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MS LONGBOTTOM: It is, sorry. I correct myself. 27 March was the date by which the material the subject of that subpoena was to be produced.

THE CHAIRPERSON: So it's a subpoena of 20 March which is Exhibit 10.

5 **##\*EXHIBIT 10 - SUBPOENA ISSUED TO THE AFP DATED 20/3/2023**

THE CHAIRPERSON: Yes.

10 MS LONGBOTTOM: And then may I tender a letter from AGS dated 27 March, which is the date by which that material was due under the 20 March subpoena.

15 THE CHAIRPERSON: Yes. Just excuse me a moment. And there's a letter you want to tender.

MS LONGBOTTOM: Yes, Mr Sofronoff. It's a letter from AGS dated 27 March 2023.

20 THE CHAIRPERSON: Exhibit 11.

**##\*EXHIBIT 11 - LETTER FROM AGS DATED 27/3/2023**

25 MS LONGBOTTOM: That letter concerns the subpoena dated 20 March.

THE CHAIRPERSON: Yes. Shall I read it or do you want to take me to parts of it?

30 MS LONGBOTTOM: No, if you can read it, particularly paragraphs 3 to 5.

THE CHAIRPERSON: Thanks. Yes, what did you want to say about that letter and the subpoena?

35 MS LONGBOTTOM: Simply to emphasise again that the AFP indicates, particularly in paragraph 5, that it is only able to make partial production of the documents the subject of the subpoena, and not within the time frame requested under the subpoena, and that really underscores, from our perspective, the object of the directions hearing today, and that is counsel assisting's desire to obtain some certainty about the time frame for production, but also to ensure that that happens in a timely fashion.

40 THE CHAIRPERSON: It's odd, isn't it, because I'm just looking at item 1 in the schedule to the subpoena of 20 March. It asks for any audio recordings or transcripts of audio recordings or records of a telephone call between Mr Steven Whybrow, who acted for Mr Lehrmann at the trial, and Detective

5 Superintendent Scott Moller at a particular time on a particular day, and while I can see that other categories of documents that are asked for – there are 17 of them – may require a lot of collation, a document like that – or, rather, a recording or a document like that, you just ask Detective Superintendent Moller whether the call was recorded and whether he knows if a transcript was made. He's the one who would know.

10 MS LONGBOTTOM: That's so, Mr Sofronoff, and there may be reasons that Ms Richardson can articulate today as to why that document has not been produced.

THE CHAIRPERSON: Well, it may not exist, but - - -

15 MS RICHARDSON: If I could - - -

MS LONGBOTTOM: Exactly, yes.

MS RICHARDSON: Sorry, I'm loath to interrupt.

20 THE CHAIRPERSON: Yes.

MS RICHARDSON: I'm sorry. Remotely it's a bit awkward for me.

25 THE CHAIRPERSON: No, no, that's all right, Ms Richardson. What did you want to say?

30 MS RICHARDSON: Sorry. Only that a lot of the matters that are being raised have been squarely addressed in the table that we sent through to solicitors assisting at 11.17 this morning, and I know that's relatively late.

THE CHAIRPERSON: I know some of them have been discussed. I think some of them were to be produced today and some tomorrow, but there's - - -

35 MS RICHARDSON: But if my learned friend could tender that document, because it's an open document which, in my submission, reveals a very extensive amount of cooperation and certainty about deadlines. So, for example, the audio recording - - -

40 THE CHAIRPERSON: I think, Ms Richardson, she was going to, but - - -

MS LONGBOTTOM: I was, yes.

45 MS RICHARDSON: It's just that matters are being raised as speculative as to when things will be produced, when this table sets squarely that, for example, that audio recording and a diary entry will be coming on Tuesday, in a couple of days. And, for example, in relation to category 1 that my learned friend spent significant time addressing, in the 6 February, the table

5 sent in this morning indicates that there has been full production of that. And category 2, we've indicated our position as to what will be happening in relation to that, that there will be full production other than there will be maybe a small claim for legal professional privilege. The documents have otherwise been produced and there will be an index given because of the large amount of duplication between categories 1 and 2, to indicate, of the fuller category 1, which documents fall into category 2, so that we don't - - -

10 THE CHAIRPERSON: Why don't we – I will ask Ms Longbottom to tender the schedule and I'll have a look at it.

15 MS RICHARDSON: I think that would be a way to cut through a lot of this, because we have dealt with a huge amount of this in the table that was sent through.

20 THE CHAIRPERSON: Yes. Just so that you both know my thinking, this morning or this afternoon I didn't want to go document by document to consider what has or has not been produced. I want to get a sense of where the AFP is standing in relation to the production of documents, what's left to be produced, and to get a definite date by which there will either be a refusal to produce or production, because, subject to looking at the schedule that you have referred to, one of the problems seems to be that there is no fixed timetable because the AFP has taken the attitude – correctly, as I have said – that the subpoena can't fix a time. So it all depends upon the AFP, and that's fine as long as I know what's happening, because I have to conduct it. I have to finish this inquiry by 30 June and I can't do it if I don't know when crucial documents are coming.

30 MS RICHARDSON: Well, perhaps if that document is tendered. If I could indicate, Mr Sofronoff, it's certainly not our position that because the AFP's participation in this inquiry is voluntary, that we in effect are setting our own deadlines. That's absolutely not the position we're taking. The reason for the timing difficulties is the very large number of documents that have to be reviewed and produced, and the particular difficulties in relation to the subject matter in respect of other pieces of legislation that prohibit production; the fact that documents – we might have to interact with other agencies; parliamentary privilege; PII; LII. There are also very sensitive reviews because the categories inadvertently, in terms of review, pick up highly sensitive other investigations which are irrelevant.

40 It's actually a very complex task that the AFP is taking, and even though it's voluntary, the AFP is undertaking it as though it is a subpoena in the sense that compliance in a timely fashion is extremely important. That's why, in terms of the certainty that you seek – and I'm happy to go through it category by category, but it may not be a good use of hearing time. But that document which was sent at 11.17 sets out the position of the AFP in relation to

production. In my submission it reveals a large amount of cooperation and that things will be produced in large part over the next short period of time.

5 THE CHAIRPERSON: Now, you said that the position that the AFP takes is that its cooperation is voluntary. Is that how it regards it?

10 MS RICHARDSON: Well, it's in the sense that, Mr Sofronoff, you outlined in a sense that the territorial body cannot, as a constitutional basis – on a constitutional basis, bind federal - - -

15 THE CHAIRPERSON: Yes, I understand that, but was I correct in thinking that the reason why the AFP is providing documents is that it's doing so pursuant to its function to do anything incidental or conducive to the performance of its function of providing police services to the Territory?

20 MS RICHARDSON: The position we take is that it's consistent with those functions to cooperate with the inquiry, but we're not obliged to do so under those functions. But it is consistent with those functions for us to voluntarily - - -

25 THE CHAIRPERSON: Your client takes the view that, although it is one of its functions to do anything that's conducive to the performance of providing police services to the ACT, although something is conducive to be done and it becomes one of the functions of the AFP to do that thing that is conducive to be done, it's under no statutory duty to do it. Is that how the AFP looks at it?

30 MS RICHARDSON: Could I take that question on notice, Mr Sofronoff, because I had come to the – and this is no criticism, obviously – to discuss production of documents. I had not understood that that issue would be raised and I will have to review the correspondence where the AFP has set out its position on this issue previously, because I am dealing with this in real time. We have certainly taken the position that it's consistent with our functions to take the cooperative approach that we are taking to the inquiry.

35 THE CHAIRPERSON: Yes. I would have thought that if, as it is, for example, one of the functions of the AFP is to provide police services in relation to the ACT, the AFP is under a statutory duty to provide those services, and similarly, if there is something that is conducive to one of the other functions to be done, then the AFP is under a duty to do it. Now, that doesn't mean you're bound by a subpoena that I issue, nor does it mean that you're bound by any time limit that I could impose if I had the power, but it's not the case that, as I see it – I might be wrong, and you can tell me in due course. I won't press you now. It's not, as I see it, a voluntary action that the AFP can choose to provide or not to provide. And while we're on that – why don't you take a seat, Ms Longbottom.



5 While we're on that, I was just struck by the treatment of item 1 in the 6 February request and the approach taken that – yes, I'm looking at the email of 6 March 2023 and the approach taken that somebody is going to review the video recordings that were included in the brief and decide whether any part of it is useful to me or not, and withhold what is considered by the AFP, or perhaps a lawyer within the Australian Government Solicitor's Office – withhold it because that person thinks it's not useful to me. Have I read it correctly?

10 MS RICHARDSON: In relation to that, I think that's a matter that we can try and sort out offline with the solicitors. I think that the motivating factor there is that the amount of CCTV footage adds up to more than 100 gigabytes of material. It's an absolutely massive amount of data, including unedited footage, and just would swamp the inquiry. But if the inquiry – if in fact it  
15 wants all of that material, we can take that on board.

The table that we sent through this morning indicated that, in effect, CCTV footage would be produced and an index of what is not being produced would be provided so that the inquiry is not swamped with it and the inquiry  
20 would have visibility about what else is out there and can make the request. So if that is not an approach that would be helpful or appeals to the counsel assisting team, we're very happy to take that on board. It's just that it's an absolutely overwhelming amount of material.

25 THE CHAIRPERSON: But isn't that what the AFP gave Mr Drumgold? You see, I have to have what Mr Drumgold had and I have to have what police had so that I can address terms of reference (a) and (c). I don't see how I can do it if I don't have the whole brief that each of them had.

30 MS RICHARDSON: Could I take that on board - - -

THE CHAIRPERSON: Frankly, I don't see the difficulty in producing it, because AFP produced their brief pretty quickly to Mr Korn, I think it was, so there's a document that was capable of being produced, and they produced  
35 it promptly to Mr Drumgold, and now it's been two months and I still don't have the whole document.

MS RICHARDSON: I'm instructed that there are some difficulties with producing the full amount of material because there's search warrant material  
40 in it and there are constraints just producing the entire amount to the inquiry.

THE CHAIRPERSON: How does it conduce to cooperate with the inquiry if I am not told what are the legislative provisions that are troubling the AFP?

45 MS RICHARDSON: I hear - - -

THE CHAIRPERSON: Am I ever going to be told?

MS RICHARDSON: Yes.

THE CHAIRPERSON: Yes?

5

MS RICHARDSON: Yes, you will be told, commissioner. We will deal with that expressly in writing in relation to the CCTV footage, as to whether there are any constraints and identifying what they are, as to why the full amount of CCTV footage can't be produced, if that's the case.

10

THE CHAIRPERSON: I noticed in one of the letters - - -

MS RICHARDSON: We will deal with that ...[not transcribable]...

15

THE CHAIRPERSON: Sorry, were you going to say something? I noticed in one of the letters that - - -

MS RICHARDSON: No, I said we'll deal with it ...[not transcribable]...

20

THE CHAIRPERSON: I noticed in one of the letters that – excuse me. Just for your reference – I'm digressing just for a moment. For your reference, the letter of 10 February from the AGS to the board of inquiry, paragraph 2 states that 'The AFP's cooperation must proceed on a voluntary basis.' That's where I got that notion from. There was, in one of the earlier letters – in the letter of 28 February, paragraph 7, it said that the AFP is closely considering whether certain legislation prohibits disclosure, and then a month later, on 27 March, paragraph 10, the AGS communicated the AFP's decision that certain information can't be produced. Where does your client stand now in relation to those matters?

25

30

MS RICHARDSON: I will have to take that on notice, Mr Sofronoff, but it's my understanding it's as set out in that letter, and I note that the letter makes clear that it only applies to a small amount of information.

35

THE CHAIRPERSON: All right. Now, Ms Longbottom, would you tender the schedule, please, that Ms Richardson referred to.

MS LONGBOTTOM: Yes, of course, Mr Sofronoff.

40

THE CHAIRPERSON: Exhibit 12.

**##EXHIBIT 12 - DOCUMENT PRODUCTION SCHEDULE**

45

MS LONGBOTTOM: I should indicate - - -

5 THE CHAIRPERSON: Could I see that, please. And one of the problems, Ms Richardson, is this document, you said, was delivered to the board three-quarters of an hour before this hearing. So it makes it rather difficult, doesn't it, for us to function when, as it appears, everything is being done by the AFP on a purely voluntary basis, which makes one doubt that adequate resources are being applied to this task by those either within AGS or the AFP? Because other people are producing documents very promptly, and voluminous documents.

10 MS LONGBOTTOM: Mr Sofronoff, can I just jump to Ms Richardson's defence in that respect and just indicate that we did provide the version of the schedule to them yesterday evening. So they have had a limited amount of time to consider it.

15 THE CHAIRPERSON: All right. Now, Ms Richardson, what do you say is the best way to proceed to – this is what I would like to achieve, and you can speak to your client then and speak to Ms Longbottom. This is what I'd like to do. I would like to have within a very short time period clear dates given to me by when it's expected that I will receive various categories of  
20 documents from the AFP, and the sky doesn't fall if you're a day or two late or if you need extra time because you find that it can't be done within the time that was promised, but I need certainty, and in the case of documents that it's said that statutory provisions preclude their production, I would like a clear statement of how that works so that, if I come to a different view, there  
25 can be a discussion about it.

MS RICHARDSON: Yes, that's a practical way forward. In relation to dates, the document just marked as Exhibit - - -

30 THE CHAIRPERSON: Yes, I was going to say, don't trouble to give those dates to me now. Can I - - -

MS RICHARDSON: No, I'm just saying as a device that that document sets out the dates.

35 THE CHAIRPERSON: I see.

40 MS RICHARDSON: So in my submission ...[not transcribable]... accept that you won't have had a chance to view it. It does have, in my submission, a real degree of clarity and certainty about when things are going to happen in relation to various categories, and our fervent hope is that on review of that, commissioner, that you will see that a huge amount of progress has been made and will be made in the next short period of time, and we have set out in this document deadlines by which things will happen.

45

THE CHAIRPERSON: All right. Excuse me, Ms Richardson. Ms Longbottom, how do you want to progress this now that you've got the schedule with dates in it?

5 MS LONGBOTTOM: Mr Sofronoff, we will need an opportunity to digest that. I think to the extent to which documents are not produced within a timely time frame as set out in here, we can deal with that separately with my learned friend and, if necessary, come back to you for a further directions hearing, but at this stage we are content to review this and cooperate with  
10 Ms Richardson in respect of the time frames.

There is, though, a related issue with respect to the articulation of claims of privilege and also the articulation, as you have identified, of bases upon which the AFP considers itself precluded from producing particular  
15 documents and we think it would be helpful if you issued directions to put time frames around the identification of those matters. To that end, I prepared or we prepared some proposed directions which - - -

20 THE CHAIRPERSON: Has Ms Richardson seen that?

MS RICHARDSON: I think a photograph of that has been sent to me. If that's the document saying that LPP and PII claims would be made by the 11th, I have seen that via photograph, and I am instructed that we agree to that time frame.

25 MS LONGBOTTOM: I will hand up a copy of that, but what I'm suggesting is there will need to be another direction to accommodate the separate category of non-production of documents because of - - -

30 THE CHAIRPERSON: I don't know what you mean. A separate category to consider what?

MS LONGBOTTOM: To the extent to which the AFP determines that it won't produce documents because of various Commonwealth legislation,  
35 there may need to be a second direction to put a time frame around that.

THE CHAIRPERSON: Yes. That's not in the schedule that you sent to Ms Richardson?

40 MS LONGBOTTOM: No, it's not in the direction that we're proposing.

THE CHAIRPERSON: All right. Let me have a look at the schedule. I'm the only one who hasn't read it. All right. Now, you've had a chance to look at this now, Ms Richardson?

45 MS RICHARDSON: I've certainly seen the direction in relation to LPP and PII claims by the 11th and I'm instructed that we are happy with that.

THE CHAIRPERSON: All right. What's the other thing you wanted, Ms Longbottom? Why is that - - -

5 MS LONGBOTTOM: A like direction that would read that by 1.00 pm on 11 April 2023 the AFP identify in writing any bases upon which it contends that documents to be produced under - - -

THE CHAIRPERSON: Documents requested, yes.

10

MS LONGBOTTOM: Yes – that documents requested cannot lawfully be produced - - -

THE CHAIRPERSON: Yes. All right.

15

MS LONGBOTTOM: - - - together with submissions.

THE CHAIRPERSON: Well, you can figure out the language.

20

MS LONGBOTTOM: Yes.

THE CHAIRPERSON: Are you content with that being added as something to be done by 11 April, Ms Richardson?

25

MS RICHARDSON: Yes, we are.

THE CHAIRPERSON: All right. So Ms Longbottom will draft something and show it to you and you can agree it. Now, you've mentioned the DPP and the Victims of Crime Commissioner. Ms Evans is on remote for Ms Yates, but I didn't hear anybody – oh, yes, Mr Denham is for Mr Drumgold. What do you say about this? Since you're here, I'll ask you first.

30

MR DENHAM: Thank you, Mr Sofronoff. Of course, my client, the DPP, is in a different category. His office is created by an ACT statute - - -

35

THE CHAIRPERSON: Yes.

MR DENHAM: - - - and therefore unquestionably bound by a subpoena issued by this inquiry.

40

THE CHAIRPERSON: Yes. I think your client is concerned with – I think your client foreshadowed claims of legal professional privilege.

45

MR DENHAM: That's right. That's right, so - - -

THE CHAIRPERSON: And so that remains to be wrestled with.

MR DENHAM: It does.

5

THE CHAIRPERSON: So what do you say about 1(a) in this – 1(a) and (b)?

MR DENHAM: The only thing that I would say – well, a couple of points, Mr Sofronoff. The first is, in reading those, obviously this is intended to relate to documents produced under various subpoenas issued to different entities.

10

THE CHAIRPERSON: Yes. It's all-encompassing. Just tell me why you say that protected - - -

15

MR DENHAM: What I'm not sure of is – certainly we can identify, and have done, the documents which we would produce under the subpoena but which we anticipate are subject to claims for privilege.

20

THE CHAIRPERSON: Yes, but what I want is your claim – to tell me what the privilege is, whose privilege it is and why it arises, and - - -

MR DENHAM: That's right, and we have done that in our analysis of the documents that we have extracted in order to comply with the subpoena.

25

THE CHAIRPERSON: Yes, but have you told us?

MR DENHAM: As I understand it, that is – yes.

THE CHAIRPERSON: You have?

30

MR DENHAM: We have, by way of a schedule that is attached to the Lexel upload that has been occurring - - -

35

THE CHAIRPERSON: Right. Just excuse me a moment. Let's see what's there. You might - - -

MR DENHAM: - - - quite recently.

THE CHAIRPERSON: Yes.

40

MS LONGBOTTOM: That may well have been done, but we haven't been able to see the upload on the database as of yet.

THE CHAIRPERSON: Well, you might discuss that with Mr Denham and sort it out.

45

MS LONGBOTTOM: Yes.

5 THE CHAIRPERSON: Otherwise, what I will do is I'll – if you accept that we can't tell what the claim of privilege relates to – I'll start again. Undoubtedly you will have identified the document in respect of which you claim privilege. What I need to know, so that I can understand your claim and challenge it with your client if I want to do that, is why you say it's protected, because for the moment I can't see that the DPP himself could claim any privilege. I can see that a plausible claim for privilege might be made in respect of advice that the DPP gives to the AFP.

10 MR DENHAM: Certainly.

15 THE CHAIRPERSON: But having regard to the way that this matter has been conducted, I would expect the AFP would waive privilege – over some of the documents, anyway. Maybe over all of them, but that remains to be seen.

MR DENHAM: That's certainly - - -

20 THE CHAIRPERSON: So I'm having difficulty understanding the claim, and it might relate just to that and Ms Yates or somebody like that, but I need to know.

MR DENHAM: No, there's a bit more to it, Mr Sofronoff.

25 THE CHAIRPERSON: Yes.

30 MR DENHAM: Certainly the documents that we have identified as being privileged in the hands of the AFP, they fall into a particular category. And, sorry, to answer your question, the schedule we have produced identifies the nature of the privilege – is it legal professional privilege, parliamentary privilege and others – and who we have identified as being the likely holder of that privilege.

35 THE CHAIRPERSON: Yes. And why there is privilege?

MR DENHAM: And why.

THE CHAIRPERSON: Good. Right.

40 MR DENHAM: So for the purposes of litigation, for instance, or legal advice, to give a couple of examples. With respect to a large number of documents, they were brought into existence for the sole purpose of some criminal proceedings in which my client was the prosecutor.

45 THE CHAIRPERSON: Yes.

MR DENHAM: Those documents would, in my submission, be the subject of a claim for privilege.

THE CHAIRPERSON: By whom?

5

MR DENHAM: By the prosecutor, my client, on the basis that they were prepared, as I say, for the purposes of criminal proceedings, not for the purposes of proceedings - - -

10 THE CHAIRPERSON: Sorry. A document is prepared by a statutory office holder, the DPP, for the purpose of running a criminal trial.

MR DENHAM: That's right.

15 THE CHAIRPERSON: And he says he doesn't have to produce it to a board of inquiry?

MR DENHAM: That's not what I'm saying.

20 THE CHAIRPERSON: What are you saying?

MR DENHAM: I am saying it is a – he is compelled by the subpoena that has been issued, but the common law of privilege can still apply to those documents.

25

THE CHAIRPERSON: Of course it does, yes. Of course it does. In fact, it's the only thing that - - -

MR DENHAM: That's right.

30

THE CHAIRPERSON: It's the only - - -

MR DENHAM: That's the only residual protection.

35 THE CHAIRPERSON: Yes, that's right. Anyway, it's all going to be explained in the document that you say has been prepared.

40 MR DENHAM: It will be, but there could be a significant number. In my submission the more difficult thing is – or the more difficult question that we will have to grapple with, and we will do so in conversations, is the waiver of that privilege. So, as with the - - -

THE CHAIRPERSON: Well, the first thing is whether there is any privilege.

45 MR DENHAM: That's right, and then the second thing is, shall it be waived?



5 THE CHAIRPERSON: But I'm correct, aren't I, that if your client is claiming privilege as the DPP over documents he created or a member of his staff created for use in the criminal trial, then the reason you're raising – the reason you are saying the words 'legal professional privilege' is because you are foreshadowing that they will not be produced, isn't it?

MR DENHAM: Foreshadowing a possible basis upon which they may not be produced, and - - -

10 THE CHAIRPERSON: Well, when am I going to know?

MR DENHAM: Well, they have been flagged and you will know - - -

15 THE CHAIRPERSON: But flagging doesn't matter. When am I going to know that your client refuses to produce a document – or, I should say, declines to produce a document? When will I know?

MR DENHAM: It is on that schedule that has been produced overnight to the inquiry.

20 THE CHAIRPERSON: So the assertion that a particular document will not be produced because it's privileged appears in the document that you have described.

25 MR DENHAM: In the schedule, and the identification of that document so that you will have the information you need.

THE CHAIRPERSON: So I was right when I said that your client is claiming privilege and saying he doesn't have to produce those documents.

30 MR DENHAM: That's - - -

THE CHAIRPERSON: You said I wasn't right, but I was right, was I? Yes, tell me.

35 MR DENHAM: Yes. Yes, yes.

THE CHAIRPERSON: Don't let me - - -

40 MR DENHAM: No, no, that's – I'm just thinking it through.

THE CHAIRPERSON: - - - badger you.

45 MR DENHAM: No, no, I'm thinking it through. Yes, I think that's right.

THE CHAIRPERSON: All right. So he claims privilege over documents and says he needn't produce them because it's his privilege and therefore they are protected against production.

5 MR DENHAM: That's right.

THE CHAIRPERSON: Yes, I understand.

10 MR DENHAM: And that leads us then into the next territory, which is - - -

THE CHAIRPERSON: Sorry?

15 MR DENHAM: Into the next question, which we don't have to address today, but which is that my client wishes to and will participate with this inquiry in the fullest way possible, and if that involves a waiver of the privilege which he otherwise holds, then he would like to consider that and do that.

20 THE CHAIRPERSON: Right. Well, when is he going to consider it?

MR DENHAM: The answer to that is, in a situation where we have produced some 137,000 documents, I think the time to consider that is when the focus of this inquiry becomes clearer.

25 THE CHAIRPERSON: No.

MR DENHAM: Certainly a large number of - - -

30 THE CHAIRPERSON: No, it doesn't work that way.

MR DENHAM: No. A large number of them will be produced, and certainly by 11 April, the date that's been specified in - - -

35 THE CHAIRPERSON: All right. Well, I'm going to make this direction so that creates a deadline for your client to decide what he's going to do with respect to particular documents, and then we can deal with it in good time when it arises.

40 MR DENHAM: That's right.

THE CHAIRPERSON: I'm not for a moment saying he doesn't have a proper claim, but I need to know what it is so that we can engage on it - - -

45 MR DENHAM: That's right.

THE CHAIRPERSON: - - - and deal with it one way or the other.

MR DENHAM: That's right. Just one more thing in relation to this: it is not clear to me whether this order, so far as it concerns my client, only concerns the documents which he is producing and therefore can see and therefore can claim or at least foreshadow a claim for privilege, whereas this order is set to say that my client, for instance, might be directed to make a claim for privilege over documents being produced by the AFP, but we don't know what the AFP has produced. So we don't have access - - -

THE CHAIRPERSON: What do you mean, he might be directed to claim privilege? Who could direct him?

MR DENHAM: Well, by this order. So this order says - - -

THE CHAIRPERSON: I see, yes.

MR DENHAM: - - - by 1.00 pm on 11 April the DPP, for instance, is to identify in writing claims over documents to be produced under subpoena 2023/5.

THE CHAIRPERSON: You're saying that there may be a document in the hands of the AFP over which Mr Drumgold wishes to claim privilege and wishes not to produce, but he won't know if they have got such a document.

MR DENHAM: That's right.

THE CHAIRPERSON: Right. What's the solution you propose to that?

MR DENHAM: I don't have one.

MS LONGBOTTOM: The solution proposed, Mr Sofronoff, is to vary non-publication orders that you've made in relation to the production of documents by the AFP and the VCC.

THE CHAIRPERSON: But that's a publication in the world at large.

MS LONGBOTTOM: No. But the non-publication order – and I can hand up copies, which might assist – is proposed to be varied in a limited respect to facilitate - - -

THE CHAIRPERSON: All right. Let me have a look at it. Then you can tell me what you want me to do. Thank you. I see. All right. So what you want me to do is to vary the non-publication orders, which at the moment say something to the effect 'Documents the subject of subpoena X, directed to person Y, shall not be published to any person' and you want to vary it so that it says 'other than in the case of the AFP, it is at liberty to publish such documents as it thinks fit to the commissioner and to the DPP so that they can decide whether they have a claim for privilege'.

MS LONGBOTTOM: That's so, and there may need to be some finessing to the language of the proposed non-publication order to cover particular categories of claims.

5

THE CHAIRPERSON: So you anticipate, Mr Denham, that the AFP, for example, will identify documents that they think your client might – in respect of which your client might claim privilege, show them to your client and he can make up his mind.

10

MR DENHAM: That's right. That just brings me to the next point, which is, in terms of timing I think 11 April is achievable, but I don't know what documents might fall within that category.

15

THE CHAIRPERSON: Well, why don't we leave it as 11 April and if you get into trouble, we can talk about it.

MR DENHAM: I think that's the pragmatic way.

20

THE CHAIRPERSON: All right. Did you want to say anything about what I've just discussed in relation to the AFP showing documents to the DPP or the Victims of Crime Commissioner, Ms Richardson?

25

MS RICHARDSON: No, only to say that on my instructions that's already been happening, that there's cooperation between the DPP and the AFP in that respect.

30

THE CHAIRPERSON: All right. I'll vary the non-publication direction to ensure that that is not an obstacle. Was there anything else from your point of view, Mr Denham?

MR DENHAM: No, Mr Sofronoff.

35

MS LONGBOTTOM: Mr Sofronoff, there's just one matter in respect of which I would be grateful if my learned friend could give me some clarity. The intention of the direction we have asked you to make is that by 11 April not only are claims of legal professional privilege and the like identified, but also that the DPP identifies the extent to which those claims are pressed or waived.

40

THE CHAIRPERSON: Well, you're going to be told – I will be told the documents over which privilege is claimed and maintained, because I don't care about documents over which there's a waiver.

45

MS LONGBOTTOM: Certainly. And I just wanted to be clear with my learned friend that we mutually understand that to be the intent of the direction.

THE CHAIRPERSON: Is that clear, Mr Denham?

5 MR DENHAM: That's clear, and that was my understanding.

THE CHAIRPERSON: And anything that's left after that will be open, yes?

MR DENHAM: Is left, that's right.

10 THE CHAIRPERSON: All right. Thank you. Now, Ms Evans, can you hear me?

MS EVANS: Yes, I can, Mr Sofronoff.

15 THE CHAIRPERSON: The direction that Ms Longbottom is asking for, to provide information about claims by 11 April, concerns your client as well. Have you seen a copy of the proposed direction?

20 MS EVANS: No, I haven't, Mr Sofronoff, but I can inform you that we have already indicated and provided a list to the inquiry of the claims that we believe third parties may have.

THE CHAIRPERSON: Yes.

25 MS EVANS: My client herself has no claim.

THE CHAIRPERSON: Yes.

30 MS EVANS: But you would be aware that we have provided lists both to the DPP and to Ms Higgins' legal advisers.

THE CHAIRPERSON: Yes. I'm aware of that, yes.

35 MS EVANS: And informed the inquiry.

THE CHAIRPERSON: Yes. So I will make the direction in terms that bind your client, but I'm doing it on the footing that, as we apprehend the position at the moment, there is nothing for your client to do. If anything changes, then you can put your hand up and let us know and we will deal with it then.

40 MS EVANS: Thank you.

45 THE CHAIRPERSON: All right. Is there anybody that I have overlooked who wants to be heard on the direction about making claims of public interest immunity or legal professional privilege? All right. Now, there was a Ms Holt on the remote system earlier who couldn't hear me, I think, when I asked for people to - - -

MS HOLT: I can, sorry.

THE CHAIRPERSON: No, that's all right.

5

MS HOLT: Thank you, Mr Sofronoff. We've sorted out our tech issues. Thank you.

10 THE CHAIRPERSON: Yes. So I will make that direction in the terms that you've asked for, Ms Longbottom, and I will make the variation to the non-publication direction in the terms that you've asked for.

15 MS LONGBOTTOM: Thank you, Mr Sofronoff. We may circulate, as well, a form of wording to cover that second category of direction with respect to the specific material - - -

20 THE CHAIRPERSON: Yes. Well, you circulate it amongst your colleagues and work it out. Ms Richardson, is there anything else that you wanted to raise?

25 MS RICHARDSON: No, only on a separate topic. We have received requests for statements for five of our officers after close of business on Tuesday night and we are endeavouring to work on them at great speed. There's a large amount of material requested, as you would be aware. In relation to Commissioner Kershaw, he's at a two-day commissioners' conference, a meeting of commissioners around Australia, in another city. I don't know whether it's a security issue for me to say where he is, but he's - - -

30 THE CHAIRPERSON: No, don't worry. Don't worry about it.

MS RICHARDSON: He's somewhere else.

35 THE CHAIRPERSON: Yes. He's doing other work, yes.

MS RICHARDSON: He's somewhere else, running the AFP with other commissioners. So we are hamstrung in our ability in relation to him in particular, but we are doing our absolute best to work on those at full speed.

40 THE CHAIRPERSON: Thank you for raising that.

MS RICHARDSON: So we will keep solicitors instructing updated on time frames in terms of those documents, but there is a huge amount of material requested in those statements.

45

THE CHAIRPERSON: Thank you for that. Mr Gnech, is there anything - - -

MS RICHARDSON: We understand - - -

THE CHAIRPERSON: Sorry? Sorry, Ms Richardson.

5 MS RICHARDSON: I'm sorry. I was going to say we understand that the timely production of them is very important to the inquiry and we're doing our absolute best.

10 THE CHAIRPERSON: Yes.

MS RICHARDSON: It's just that seven days is really a big ask, but we are working on them with great priority.

15 THE CHAIRPERSON: Thank you for that. I appreciate it very much. Mr Gnech, did you want to raise anything?

20 MR GNECH: No, thank you, commissioner. I will just reiterate, my clients as well – those statements are quite onerous and we are working frantically to comply with the short time frame and we will keep the solicitors of the inquiry updated.

THE CHAIRPERSON: Thank you for that. Anything else, Ms Longbottom?

25 MS LONGBOTTOM: Can I just raise one matter in relation to the statements to be produced from Mr Gnech's clients. We're certainly conscious that those statements might refer to documents that are to be produced by the AFP.

30 THE CHAIRPERSON: Yes.

MS LONGBOTTOM: Our hope and expectation is that those statements will annex documents that have been produced by the AFP, and we're sure that AGS and Mr Gnech will work cooperatively to achieve that, but we just wanted to place that expectation on the record.

35 THE CHAIRPERSON: All right.

40 MS RICHARDSON: Could I indicate on behalf of the AFP that we have had discussions to that effect and we will certainly be cooperating, because Mr Gnech is in the position where he needs our cooperation in relation to documents and we will be providing that to him. We have already put in place discussions about that.

45 THE CHAIRPERSON: Thank you. Thank you, Ms Richardson. Nothing else, Ms Longbottom?

MS LONGBOTTOM: Nothing further, Mr Sofronoff.

THE CHAIRPERSON: We'll adjourn then.

5

**ADJOURNED**

**[1.32 pm]**



## **EXHIBIT LIST**

<b>NUMBER</b>	<b>DESCRIPTION</b>	<b>PAGE NO.</b>
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