

## 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 HELEN MARY DREW**

I, HELEN MARY DREW, of 47 Kings Ave, Barton, state as follows:

1. The following statement is provided 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.0038.0001.0001' is a copy of the relevant subpoena.
2. The Board of Inquiry emailed 'AFP.0038.0001.0001' 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. My substantive position is Principal Lawyer with the Operations Legal team, Chief Legal Counsel portfolio, Australian Federal Police (AFP). In this role I am responsible for providing legal advice on operational matters, subpoenas, public interest immunity and other information release and protection issues. I am currently acting in the position of Deputy General Counsel, Operations Legal which in addition to the above involves management and supervision of lawyers in the Operations Legal team.
4. I hold a Bachelor of Arts (Hons), Bachelor of Laws (Hons) and a Graduate Diploma of Legal Practice from the Australian National University, and a Graduate Diploma of Education from the University of New England. I am admitted as a legal practitioner of the ACT Supreme Court and hold a restricted government practicing certificate in the ACT.
5. Attached and marked 'AFP.0037.0001.0049' is a copy of my CV. I note my employment at the ACT Director of Public Prosecutions between 2002 and 2005, during which time I was a colleague of the current Director.

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### Interactions with the Director of Public Prosecutions/Office of the Director of Public Prosecutions

*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*
  - d. *Undated document titled "identified discrepancies"*
  - e. *Undated document titled "review doc"*
6. No. To my knowledge no-one in the AFP Legal team advised or communicated to the DPP or his staff that the above documents were subject to legal professional privilege. AFP Legal's view in relation to these documents was communicated to the ODPP on 20 June 2022 and in conference on 15 September 2022.
  7. My interactions with the DPP and the ODPP in relation to the above documents, in particular documents (a) and (b), were as follows:
  8. On Thursday 16 June 2022 I attended an online meeting with the DPP and members of his staff. Also in attendance were Callum Hughes and Emma Frizzell from ACT Policing and Shelley Miller and Stephanie McKenzie from AFP Legal. The meeting was arranged by AFP Legal to discuss outstanding disclosure issues following a disclosure request made to the AFP by the defence team for, among other things, "investigative review documents referred to in the disclosure statement". Stephanie McKenzie made notes of this meeting (attached and marked 'AFP.2009.0001.4939').
  9. In the meeting, the DPP said words to the effect that he had formed the view that documents (a) and (b) were privileged because they were created for the dominant purpose of obtaining legal advice. With respect to document (c), my recollection is that there was some uncertainty as to whether the DPP or his staff had seen this document at the time of the meeting.
  10. On Friday 17 June 2022 at 2.56pm Stephanie McKenzie sent an email to Callum Hughes (attached and marked 'AFP.2003.0010.6948') and copied me to that email. I was involved in settling the text of this email. The email:

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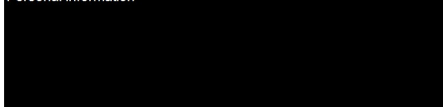
- a. noted AFP Legal’s reservations about the DPP’s assessment of documents (a) and (b):

Although we understand some of these documents have previously been disclosed to the DPP and have been assessed by the DPP to be subject to legal professional privilege (i.e. the brief drafted by Marcus Boorman dated 4/6/21 and the brief drafted by Scott Moller dated 7 /6/21), out of an abundance of caution, we think it is appropriate to re-send the documents to the DPP in light of our discussion yesterday.

Consistent with our earlier advice, we note we have some reservations about the DPP's assessment that the brief drafted by Marcus Boorman dated 4 June 2021 is subject to legal professional privilege. In particular, the brief does not appear to have been initially created for the dominant purpose of seeking legal advice, although it appears the context in which it was provided to the DPP leads the Director to consider that copy is privileged. At the moment we consider it appropriate to defer to the DPP's view on this issue, but will likely flag with the DPP the potential for arguments in relation to whether all versions of the document are privileged if access to the documents is pressed by defence.

- b. asked for copies of all documents that might fall within the description of ‘investigative review documents’, and
- c. attached a copy of document (c) to check whether there were any issues with disclosing it to the DPP.
11. On Friday 17 June 2022 at 3:44 pm, in response to the request for all documents that might fall within the description of “investigative review documents”, Emma Frizzell supplied additional documents (d) and (e) in an email to Callum Hughes and Stephanie McKenzie to which I was copied (attached and marked ‘**AFP.2003.0020.6435**’).
12. On Monday 20 June 2022 at 7:09 pm Stephanie McKenzie emailed documents (a) to (e) to the ODPP, and I was copied to that email. As set out in the email, AFP Legal flagged the potential argument that copies of documents (a) and (b) were not privileged. I prepared the initial draft of this email (attached and marked ‘**AFP.2003.0016.2995**’).
13. On 21 June 2022 at 10:46 am, Erin Priestly of the ODPP responded advising that the Director “is of the view that the documents are 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*” (attached and marked ‘**AFP.2003.0016.9358**’).
14. On Thursday 15 September 2022 I attended an in person meeting with the DPP at his office. Also present at the meeting were Assistant Commissioner Peter Crozier and Commander Joanne Cameron from ACT Policing, Shelley Miller and Stephanie McKenzie from AFP Legal and Mitchell Grieg from the ACT DPP. The purpose of the

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meeting was to discuss an application made to the ACT Supreme Court by the defence seeking disclosure of, among other things, the investigative review documents. The defence's application was listed for hearing for the following day.

15. In this meeting the DPP again expressed the view that documents (a) and (b) were privileged on the basis that they had been provided to him with the brief of evidence for the purpose of seeking legal advice. The DPP said he would resist the application on the basis of legal professional privilege. There was also discussion between the DPP and others present at the meeting in relation to the way the documents were referred to in one disclosure certificate but not another. I did not think the way the documents were referred to in the disclosure certificates was determinative of their status as privileged or not privileged, and did not participate in this part of the conversation.
16. In the course of the meeting I indicated that the AFP accepted the versions of documents (a) and (b) provided to the DPP in the context of seeking his advice on the brief of evidence were likely privileged. However, I also indicated that the AFP held other versions of the documents that appeared to be created for the purpose of internal briefing, and we did not think we would have evidence from the authors of those documents to support a position that the documents were created for the dominant purpose of obtaining legal advice. I noted preliminary advice we had received from AGS in relation to the documents supported the AFP's view. I noted that we understood Scott Moller did not believe when he was creating the 7 June 2021 Executive Briefing that it was for the purpose of seeking legal advice. I also indicated that I did not think the AFP would be able to successfully resist a subpoena for the documents. Stephanie McKenzie made notes of this meeting (attached and marked 'AFP.2009.0001.4922').
17. On Friday 16 September 2022, Stephanie McKenzie and I attended the mention of the application for disclosure before the Supreme Court. The Court gave leave to the defence to issue a short service subpoena for the documents. After the mention, the DPP, who was present with a member of his staff, asked to speak to Stephanie and me in the court precincts. The DPP said words to the effect that following the meeting between the AFP and DPP the previous day (15 September 2022) he had given further consideration to the issue of privilege in relation to the documents. He outlined his attendance at meetings with ACT Policing investigators on 31 March 2021 and 1 June 2021 which were for the purpose of seeking legal advice from him, and which in his view, led to the creation of documents (a) and (b). The DPP said that Skye Jerome could provide affidavit evidence in relation to the meetings with investigators if required. I said words to the effect that we would consider the matters he had raised with us. Stephanie McKenzie recorded notes of this meeting (attached and marked 'AFP.2009.0001.4936').

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18. At 4pm on Wednesday 21 September 2022 I attended a teleconference with the DPP. Also in attendance were Joanne Cameron and Callum Hughes from ACT Policing, Shelley Miller from AFP Legal and Mitchell Grieg of the ODPP. Other members of the staff of the ODPP may also have been in attendance. At this meeting we advised the DPP that we would be producing documents, including documents (a) and (b) to the Court in response to the subpoena, and would be claiming LPP over only one document. The DPP asked to be provided with a copy of the documents being produced.
19. Following the meeting I forwarded a copy of the documents to Mitchell Grieg by way of two emails (attached and marked ‘**AFP.0038.0001.0009**’). I also forwarded a copy of the email of 20 June 2022 in which we had first raised the issue of privilege and which I had referred to in the meeting (attached and marked ‘**AFP.2009.0001.0016**’).
20. On the morning of Thursday 22 September 2022 I received an email from the DPP about the application of privilege to documents (a) and (b) having regard to the classification of the documents. The following day I responded to the DPP’s email setting out the reasons why the AFP did not make a claim of privilege over the documents (attached and marked ‘**AFP.2003.0016.3389**’).

*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?*

21. I was not working with the AFP at the time the disclosure certificate was prepared. However, I am aware of earlier advices about the disclosure certificate prepared by AFP Legal colleagues (attached and marked ‘**AFP.3000.0003.0374**’ and ‘**AFP.3000.0003.0374**’).

*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.*

22. No, my recollection is that this course of action was never recommended by the DPP to AFP Legal. The AFP made specific enquiries of the authors of the relevant documents on the advice of the Australian Government Solicitor.

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

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- 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.*

23. I did not attend this meeting.

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TROY STEPHEN WEI-CHIEH SAUZIER

**Signed** before me at Canberra in the Australian Capital Territory on 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**

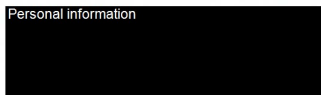
Document ID	Description
AFP.0038.0001.0001	Notice 2023/S/0045 – subpoena to provide written statement
AFP.0037.0001.0049	Current CV of Helen Drew
AFP.2009.0001.4939	Notes of meeting on 16 June 2022 by Stephanie McKenzie
AFP.2003.0010.6948	Email from Stephanie McKenzie to Callum Hughes on 17 June 2022 at 2:56pm
AFP.2003.0020.6435	Email from Emma Frizzell to Callum Hughes and Stephanie McKenzie on 17 June at 3:44pm
AFP.2003.0016.2995	Email from Stephanie McKenzie to Erin Priestly on 20 June 2022 at 7:09pm
AFP.2003.0016.9358	Email from Erin Priestly to Stephanie McKenzie on 21 June 2022 at 10:46am
AFP.2009.0001.4922	Notes of meeting on 15 September 2022 by Stephanie McKenzie
AFP.2009.0001.4936	Notes of meeting on 16 September 2022 by Stephanie McKenzie
AFP.0038.0001.0009	Email from Helen Drew to Mitchell Greig on 21 September 2022 at 6:25pm
AFP.2009.0001.0016	Email from Helen Drew to Mitchell Greig on 21 September 2022 at 7:07pm
AFP.2003.0016.3389	Email from Helen Drew to Shane Drumgold on 23 September 2022 at 12:02pm
AFP.3000.0003.0374 AFP.2003.0018.9772	Earlier legal advices from AFP Legal regarding the disclosure certificate

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