



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2023-291

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	45
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

From: no-reply@act.gov.au
To: [CMTEDD FOI](#)
Subject: Freedom of Information request
Date: Monday, 14 August 2023 2:59:27 PM

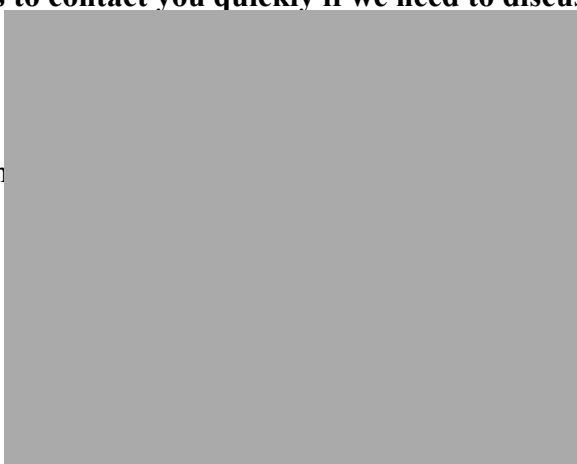
Caution: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe. [Learn why this is important](#)

Please find online enquiry details below. Please ensure this enquiry is responded to within fourteen working days.

Your details

All fields are optional, however an email address OR full postal address must be provided for us to process your request. An email address and telephone contact number will assist us to contact you quickly if we need to discuss your request.

Title:
First Name:
Last Name:
Business/Organisation:
Address:
Suburb:
Postcode:
State/Territory:
Phone/mobile:
Email address:



Request for informat

(Please provide as much detail as possible, for example subject matter and relevant dates, and also provide details of documents that you are not interested in.)

I seek access to the following information relating to the Board of Inquiry into the Criminal Justice System in the Australian Capital Territory (the Board of Inquiry): (a) All communications between Mr Walter Sofronoff KC and journalists and/or media organisations from 1 February 2023 to 7 August 2023; (b) All communications between Mr Sofronoff and officers of the Chief Minister, Treasury and Economic Development Directorate that relate to interaction or dealings between Mr Sofronoff and journalists and/or media organisations; and/or (c) All communications between Mr Sofronoff and members of the ACT Executive that relate to the disclosure of the Board of Inquiry's report to journalists and media organisations. For the purposes of this application, communications are defined to include but not be limited to correspondence, emails (whether sent or received by @act.gov.au or other email addresses including personal email addresses), phone text messages, instant messaging service messages including but not limited to WhatsApp, Signal, Telegram or other like platforms); as well as records of discussions. I note that non-publication order 26 issued by the Board of Inquiry on 30 July 2023 provides that "All information

Under the Freedom of Information Act 2016 I want to access the following document/s (*required field):

in the possession of, or created by, the Board of Inquiry and staff which has not been approved for publication, shall not be published by the Directorate with responsibility for the Inquiries Act 1991, unless it is of an administrative nature” [emphasis added]. Communications relating to Mr Sofronoff’s interactions or dealings with journalists and/or media organisations are clearly of an administrative nature.

I do not seek access to duplicates of any document captured within the scope of this request. I do not seek access to the mobile numbers or full email addresses of government officials, nor the names and contact details of government officials not in the Senior Executive Service or equivalent. I do ask that junior officials’ position or titles be left unredacted, along with email domains that provide useful information as to the origin and destination of communication e.g ‘[redacted]@act.gov.au’. I also ask that email domains of journalists and/or media organisations be left unredacted.

I do not want to access the following documents in relation to my request::

Thank you.
Freedom of Information Coordinator



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2023-291

FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 14 August 2023, in which you sought access to Board of Inquiry – Criminal Justice System records.

Specifically, you are seeking:

- *“I seek access to the following information relating to the Board of Inquiry into the Criminal Justice System in the Australian Capital Territory (the Board of Inquiry):*
 - (a) All communications between Mr Walter Sofronoff KC and journalists and/or media organisations from 1 February 2023 to 7 August 2023;*
 - (b) All communications between Mr Sofronoff and officers of the Chief Minister, Treasury and Economic Development Directorate that relate to interaction or dealings between Mr Sofronoff and journalists and/or media organisations; and/or*
 - (c) All communications between Mr Sofronoff and members of the ACT Executive that relate to the disclosure of the Board of Inquiry’s report to journalists and media organisations.*

For the purposes of this application, communications are defined to include but not be limited to correspondence, emails (whether sent or received by @act.gov.au or other email addresses including personal email addresses), phone text messages, instant messaging service messages including but not limited to WhatsApp, Signal, Telegram or other like platforms); as well as records of discussions. I note that non-publication order 26 issued by the Board of Inquiry on 30 July 2023 provides that “All information in the possession of, or created by, the Board of Inquiry and staff which has not been approved for publication, shall not be published by the Directorate with responsibility for the Inquiries Act 1991, unless it is of an administrative nature” [emphasis added]. Communications relating to Mr Sofronoff’s interactions or dealings with journalists and/or media organisations are clearly of an administrative nature.

I do not seek access to duplicates of any document captured within the scope of this request. I do not seek access to the mobile numbers or full email addresses of government officials, nor the names and contact details of government officials not in the Senior Executive Service or equivalent. I do ask that junior officials’ position or titles be left unredacted, along with email domains that provide useful information as to the origin and destination of communication e.g ‘[redacted]@act.gov.au’. I also ask that email domains

of journalists and/or media organisations be left unredacted.”

On 28 August 2023 you were contacted to discuss the scope of your requested information. On 30 August 2023 you confirmed agreement to the following in relation to your request:

1. In relation to the correspondence from Mr Sofronoff, you stated your focus is the correspondence of Mr Sofronoff, but it would also include correspondence sent on behalf of Mr Sofronoff or anything that was clearly done upon his direction.
2. In relation to the correspondence between Mr Sofronoff and the media, you indicated you are not interested in clarification/s around non-publication orders. Your focus is very much around the report and Mr Sofronoff's interaction with the media in relation to that.

Authority

As an appointed Information Officer under section 18 of the Act by the Director General of CMTEDD, I am authorised to make a decision on access or amendment to government information in the possession or control of CMTEDD.

Timeframes

In accordance with section 40 of the Act, CMTEDD was required to provide a decision on your access application by 25 September 2023 however, following on from third party consultations, the due date is now 17 October 2023.

Decision on access

Searches were completed for relevant documents and 27 documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents and the documents released to you are provided as **Attachment B** to this letter.

I have decided to grant access in full to four documents and partial access to 23 documents as I consider them to contain:

- contrary to the public interest information under schedule 1; or
- information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below.

Statement of Reasons

In reaching my access decisions, I have taken the following into account:

- the Act;
- *Inquiries Act 1991*
- *The Human Rights Act 2004*;
- the *Information Privacy Act 2014*.
- *Hogan v Hinch* [2011] 243 CLR 506;
- Your requested scope of information;
- *Non-publication order 26 – Board of Inquiry – Criminal Justice System*;
- *Non-publication order 14 – Board of Inquiry – Criminal Justice System*;
- the views of third parties;
- ACT Ombudsman’s Guidelines - Freedom of Information; and
- CMTEDD Disclosure Log 2023, specifically FOIs CMTEDDFOI 2023-287, CMTEDD2023-283 and CMTEDD2023-289, and CMTEDDFOI 2023-270 and 2023-272.

Government information is defined in section 14 of the Act to include information held by an agency or Minister. Under section 14(b) of the Act it does not include information relating to a Minister’s personal or political activities or information created or received by a Minister in their capacity as a member of the Legislative Assembly. ‘Held’ is also defined in section 14 to be information contained in a record held by the agency or Minister or contained in a record that the agency or Minister is entitled to access.

Your scope of requested information has been interpreted to refer to the Board of Inquiry – Criminal Justice System, under the *Inquiries Act 1991*. The Board of Inquiry is an agency under section 15(1)(k) of the Act. Accordingly, I find the Act applies to Board of Inquiry documents.

The scope of your requested focuses on communications containing interactions with Mr Sofronoff KC and media, as well as Mr Sofronoff KC and CMTEDD staff.

The scope of requested information includes only records administrative in nature, noting there are several non-publication orders made by the Chairperson of the Board of Inquiry - Criminal Justice system prohibiting the publication of some material related to the Board of Inquiry, unless ‘administrative in nature’.

Information which relates to the discharge of the Board of Inquiry’s substantive powers and functions would not be information of an ‘administrative nature’ and I have determined this to be outside of scope. Examples may include correspondence relating to written submissions and witness statements.

Duplicates

The documents being released are copies under s47(1)(a) of the Act. Where exact duplicates have been identified, the duplicate copies have been removed from the provided documents, and not listed in the attached Schedule.

Exemption claimed

As a decision maker, I am required to determine whether the information within scope is in the public interest to release. To make this decision, I am required to:

- assess whether the information would be contrary to public interest to disclose as

per Schedule 1 of the Act, and

- perform the public interest test as set out in section 17 of the Act by balancing the factors favouring disclosure and factors favouring nondisclosure in Schedule 2.

I have determined that some of the information within the scope of your application contains information that is taken to be contrary to the public interest to disclose under Schedule 1 of the Act.

1.1 Information disclosure of which would be contempt of court or Legislative Assembly

Information the disclosure of which would, apart from this Act and any immunity of the Crown—

(b) be contrary to an order made or direction given by a tribunal or other entity having power to take evidence on oath.

I note that [Non-publication order 26 – Board of Inquiry – Criminal Justice System](#) states that:

All information in the possession of, or created by, the Board of Inquiry and staff which has not been approved for publication, shall not be published by the Directorate with responsibility for the Inquiries Act 1991, unless it is of an administrative nature.

I note that Schedule 1, 1.1 of the FOI Act specifically uses board of inquiry under the *Inquiries Act 1991*, as a relevant example of this provision. Some of the information contained in documents 1, 7, 9, 23 and 25 are not administrative in nature and as such, cannot be released. Where information cannot be provided, there is a description contained in the attached Schedule.

1.2 Information subject to legal professional privilege

Information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege.

Documents 9 and 23 contain information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege. The information relates to legal advice received and sought by the ACT Government and other parties in relation to this matter and it is not considered to be in the public interest to release. This information can only be released if the parties involved agree to waive that privilege. Furthermore, these documents concern material that cannot be published due to non-publication orders, and material that is not administrative in nature and discusses the work of the Board of Inquiry.

1.4 Sensitive information

The information that has been redacted contains information about a person that is personal, private and sensitive. I am of the view that the disclosure of this information would be unreasonable as the release of this information has the potential to cause harm to that individual.

Documents identified with redactions under this provision included information that has been redacted as it contains information about a person that is personal, private and

sensitive. I am of the view that the disclosure of this information would be unreasonable as the release of this information has the potential to cause harm to that individual. This includes documents 1, 7 and 25.

Information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act

The public interest information **under schedule 2 of the Act**

Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lies. As part of this process I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* [2011] 243 CLR 506, [31] French CJ stated that when ‘used in a statute, the term [public interest] derives its content from “the subject matter and the scope and purpose” of the enactment in which it appears’. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the ‘public interest’.

Factors **favouring disclosure** in the public interest under schedule 2, section 2.1 of the Act:

- (a) disclosure of the information could reasonably be expected to do any of the following:*
 - (i) promote open discussion of public affairs and enhance the government’s accountability;*
 - (ii) contribute to positive and informed debate on important issues or matters of public interest;*
 - (iii) inform the community of the government’s operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community;*
 - (viii) reveal the reason for a government decision and any background or contextual information that informed the decision.*

Having considered the factors identified as relevant in this matter, I consider that release of the information within the scope of the request may promote open discussion of public affairs and enhance the government’s accountability. The release of the documents identified will provide contextual information to the public regarding Board of Inquiry - Criminal Justice System’s communications with the media and the public.

I am satisfied that these factors favouring disclosure carry considerable weight. I identified the following factor for non-release.

Factors favouring nondisclosure in the public interest under schedule 2, Section 2.2 of the Act:

(a) *disclosure of the information could reasonably be expected to do any of the following:*

- (ii) *prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004.*

Having reviewed the information, I consider that the protection of an individual's right to privacy, is a significant factor. Release of information concerning individuals working within the ACT Public Service is generally not considered to prejudice the protection of an individual's right to privacy. I have examined the emails which refer to employees and Board of Inquiry Members and or Counsel Assisting. Regardless of their level within the organisation, it is clear that these people, including employees are dealing with the ACT Government in their professional capacity, not in a personal or private capacity. Therefore, I do not accept that disclosing their names or job titles could reasonably prejudice their right to privacy.

However, where mobile phone numbers may be used for home and work purposes, this information is redacted, as it could or would reasonably be expected to prejudice an individual's right to privacy under the *Human Rights Act 2004*.

Some of the redacted documents include identifying information in emails from third parties. The release of this information could or would reasonably be expected to prejudice an individual's right to privacy under the *Human Rights Act 2004*. As such, the contact details and identifying information of individuals named in the documentation have been removed, as I consider that the release of this information could impact their right to privacy. However, I note that there is a considerable amount of information already within the public domain, as such I have balanced this factor strongly in favour of disclosure.

Information Already Available

Additional documents that are considered within scope of your request have now been published on the CMTEDD 2023 Disclosure Log 2023, which is available here:

<https://www.cmtedd.act.gov.au/functions/foi/disclosure-log-2023>.

A Notice of Decision for access application CMTEDDFOI 2023-283 & 289, was published on the CMTEDD 2023 Disclosure Log under reference number CMTEDDFOI 2023-287, available here:

https://www.cmtedd.act.gov.au/data/assets/pdf_file/0011/2291384/2023-283-and-290.pdf

A Notice of Decision for access application CMTEDDFOI 2023-287, was published on the CMTEDD 2023 Disclosure Log under reference number CMTEDDFOI 2023-287, available here:

https://www.cmtedd.act.gov.au/data/assets/pdf_file/0011/2298494/2023-287.pdf

A Notice of Decision for access application CMTEDDFOI 2023-270, was published on the CMTEDD 2023 Disclosure Log under reference number CMTEDDFOI 2023-270, available here:

https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0005/2300918/2023-270.pdf

A Notice of Decision for access application CMTEDDFOI 2023-272, was published on the CMTEDD 2023 Disclosure Log under reference number CMTEDDFOI 2023-272, available here:

https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0010/2301679/2023-272.pdf

Material within the scope of your requested information overlaps with material now available to you. Accordingly, I refuse to deal with part of your application under section 43(1)(d) of the Act where the information is already available to you under section 45(a) and of the Act.

These include a letter attachment from the Chief Minister and Attorney General dated 3 August 2023 to Mr Sofronoff and his letter in response to that correspondence, emailed on his behalf on 3 August 2023.

I note that [Non-publication order 14](#), relating to non-publication of evidence, is referred to in document 10. As this document is publicly available, it has not been provided and I refuse to deal with part of your application under section 43(1)(d) of the Act where the information is already available to you under section 45(a) and of the Act. The non-publication order can be accessed at the following Board of Inquiry website location:

https://www.cjsinquiry.act.gov.au/_data/assets/pdf_file/0009/2209329/Non-publication-Order-14-PDF-207-KB.pdf

Published documents include documents relating to media releases and or media strategy, as well as communications with media and or individual journalists. Accordingly, I refuse to deal with parts of the request for information where material is publicly available under section 43(1)(d) and section 45(a) of the Act where information is publicly available.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

Charges

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are applicable for this request because the total number of pages to be released to you exceeds the charging threshold of 50 pages. However, the charges have been waived in accordance with section 107(2)(b) of the Act.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published on the CMTEDD

disclosure log 3 days after the date of my decision. Your personal contact details will not be published.

You may view CMTEDD disclosure log at <https://www.cmtedd.act.gov.au/functions/foi>.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact the CMTEDD Information Access Team by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,



Emma Hotham
Information Access Team
Chief Minister, Treasury and Economic Development Directorate

17 October 2023



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST

Reference NO.

"I seek access to the following information relating to the Board of Inquiry into the Criminal Justice System in the Australian Capital Territory (the Board of Inquiry): (a) All communications between Mr Walter Sofronoff KC and journalists and/or media organisations from 1 February 2023 to 7 August 2023; (b) All communications between Mr Sofronoff and officers of the Chief Minister, Treasury and Economic Development Directorate that relate to interaction or dealings between Mr Sofronoff and journalists and/or media organisations; and/or (c) All communications between Mr Sofronoff and members of the ACT Executive that relate to the disclosure of the Board of Inquiry's report to journalists and media organisations. For the purposes of this application, communications are defined to include but not be limited to correspondence, emails (whether sent or received by @act.gov.au or other email addresses including personal email addresses), phone text messages, instant messaging service messages including but not limited to WhatsApp, Signal, Telegram or other like platforms); as well as records of discussions. I note that non-publication order 26 issued by the Board of Inquiry on 30 July 2023 provides that "All information in the possession of, or created by, the Board of Inquiry and staff which has not been approved for publication, shall not be published by the Directorate with responsibility for the Inquiries Act 1991, unless it is of an administrative nature" [emphasis added]. Communications relating to Mr Sofronoff's interactions or dealings with journalists and/or media organisations are clearly of an administrative nature."

CMTEDDFOI 2023-291

Additional information:

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2. In relation to the correspondence between Mr Sofronoff and the media, you indicated you are not interested in clarification/s around non-publication orders. Your focus is very much around the report and Mr Sofronoff's interaction with the media in relation to that.

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-7	Email chain – Subject: "Private confidential and not for publication"	14/12/2023-22/03/2023	Partial	Sch s 1 s 1.1 Sch s 1 s 1.4 Sch 2 s 2.2 (a)(ii)	Yes
2	8	Email chain – Subject: "Private confidential and not for publication"	14/12/2022-28/03/2023	Partial	Sch 2 s 2.2 (a)(ii)	Yes
3	9-10	Email chain – Subject: "Private confidential and not for publication"	14/12/2023-29/03/2023	Partial	Sch 2 s 2.2 (a)(ii)	Yes
4	11	Email chain – Subject: "Private confidential and not for publication"	14/12/2023-28/03/2023	Partial	Sch 2 s 2.2 (a)(ii)	Yes
5	12-16	Email chain – Subject: "Inquiry into the conduct of criminal justice agencies involved in the trial R V Lehrmann"	20/02/2023-17/03/2023	Partial	Sch 2 s 2.2 (a)(ii)	Yes
6	17-18	Email chain – Subject: "Re: Speak with ABC News"	20/02/2023-21/02/2023	Partial	Sch 2 s 2.2 (a)(ii)	Yes
7	19-20	Email chain – Subject: "Media inquiry"	30/03/2023	Partial	Sch s 1 s 1.1 Sch s 1 s 1.4 Sch 2 s 2.2 (a)(ii)	Yes

8	21-22	Email chain – Subject: “Media inquiry - seeking clarification”	18/04/2023 – 19/04/2023	Partial	Sch 2 s 2.2 (a)(ii)	Yes
9	23-25	Email chain – Subject: “Publication of statements”	19/04/2023	Partial	Sch s 1 s 1.1 Sch s 1 s 1.2 Sch 2 s 2.2 (a)(ii)	Yes
10	26-27	Email chain – Subject: “Media enquiry - non-publication orders” – Note - attachment not provided as it is publicly available.	20/04/2023	Partial	Sch 2 s 2.2 (a)(ii)	Yes
11	28	Email containing File Note - Subject: “T/I (missed call) then T/O to journalist 1314 for 4 mins”	04/05/2023	Partial	Sch 2 s 2.2 (a)(ii)	Yes
12	29-30	Email chain – Subject: “Exhibits”	11/05/2023-15/05/2023	Partial	Sch 2 s 2.2 (a)(ii)	Yes
13	31-32	Email chain – Subject: “Exhibits”	11/05/2023-15/05/2023	Partial	Sch 2 s 2.2 (a)(ii)	Yes
14	33	Email chain – Subject: “Exhibits”	11/05/2023-15/05/2023	Full		Yes
15	34-40	Email chain: Subject: “Media article in The Australian”	12/05/2023-13/05/2023	Partial	Sch 2 s 2.2 (a)(ii)	Yes
16	41-44	Email chain – Subject: “Access by media to statements and exhibits”	15/05/2023-19/05/2023	Partial	Sch 2 s 2.2 (a)(ii)	Yes
17	45-46	Email chain – Subject: “Telephone call from xx”	18/05/2023	Partial	Sch 2 s 2.2 (a)(ii)	Yes
18	47	Email Chain - subject: “Front page of today’s Australian”	19/05/2023	Partial	Sch 2 s 2.2 (a)(ii)	Yes
19	48	Front page of the Australian 19/05/2023, emailed 18/05/2023	undated	Full		Yes
20	49-51	Letter from Mr Sofronoff KC – ‘Correspondence from the Chair’	22/05/2023	Partial	Sch 2 s 2.2 (a)(ii)	Yes
21	52	Letter to Mr Sofronoff KC – ‘Response to the chair’	22/05/2023	Full		Yes
22	53	Email – Subject: “Board of Inquiry - Correspondence from the Chair” – Note: for attachment refer to Folio 20.	22/05/2023	Partial	Sch 2 s 2.2 (a)(ii)	Yes
23	54-56	Email chain – Subject: “Media complaint”	22/05/2023	Partial	Sch s 1 s 1.1 Sch s 1 s 1.2 Sch 2 s 2.2 (a)(ii)	Yes
24	57-60	Email chain – Subject: “Media Watch Query”	22/05/2023-24/05/2023	Partial	Sch 2 s 2.2 (a)(ii)	Yes
25	61	Email containing File note - Subject: “T/I from journalist @ 1136 on 26 May 2023”	26/05/2023	Partial	Sch s 1 1.4 Sch s 1 1.1 Sch 2 s 2.2 (a)(ii)	Yes
26	62	Email – Subject: “Final Report”	31/07/2023	Full		Yes

27	63	Email chain – “Fwd: ABC 730”	06/08/2023	Partial	Sch 2 s2.2 (a)(ii)	Yes
Total No of Docs						
27						

From: [Banks, HelenP](#)
To: [Joshua Jones](#); walter@sofronoff.com.au; [Erin Longbottom](#)
Subject: FW: Private confidential and not for publication
Date: Wednesday, 22 March 2023 9:23:00 AM

OFFICIAL

Dear Walter and Josh

I understand that Josh has been liaising with [Sch 2.2\(a\)\(ii\)](#) about this issue. Can we please discuss an appropriate response.

Thanks
Helen

From: [Sch 2.2\(a\)\(ii\)](#)
Sent: Tuesday, 21 March 2023 11:12 PM
To: Banks, HelenP <HelenP.Banks@inquiry.act.gov.au>
Subject: Private confidential and not for publication

You don't often get email from [Sch 2.2\(a\)\(ii\)](#) [Learn why this is important](#)

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Dear Helen

I write to renew my request for media access to relevant documents relating to the matters the Sofronoff inquiry is investigating at the appropriate time and as the inquiry deems appropriate.

I understand in making this request that not all the material I am seeking will necessarily be made available for various reasons.

To assist you, I propose to outline some of the material I am seeking in greater detail.

Sch 1 1.1, Sch 1 1.4

Sch 1 1.1, Sch 1 1.4

Sch 1 1.1, Sch 1 1.14

Sch 1 1.1, Sch 1 1.4

Sch 1 1.1, Sch 1 1.4

Sch 1 1.1, Sch 1 1.4



Sch 1 1.1, Sch 1 1.4

outside scope

From: [Banks, HelenP](#)
To: [Erin Longbottom](#); [Joshua Jones](#); walter@sofronoff.com.au; [Eleanor Lynch](#)
Cc: [Cuddihy, GenevieveA](#)
Subject: FW: Private confidential and not for publication
Date: Tuesday, 28 March 2023 12:34:00 PM
Attachments: [~WRD0000.jpg](#)

OFFICIAL

Dear all

[Sch 2.2\(a\)\(ii\)](#) is seeking a response to her request.

Thanks
Helen

From: [Sch 2.2\(a\)\(ii\)](#) >
Sent: Tuesday, 28 March 2023 12:30 PM
To: Banks, HelenP <HelenP.Banks@inquiry.act.gov.au>
Subject: Re: Private confidential and not for publication

You don't often get email from [Sch 2.2\(a\)\(ii\)](#). [Learn why this is important](#)

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Can you confirm receipt please ? Thank you

Duplicate

From: [Walter Sofronoff](#)
To: [Erin Longbottom](#); [Banks, HelenP](#); [Joshua Jones](#); [Eleanor Lynch](#)
Cc: [Cuddihy, GenevieveA](#)
Subject: Re: Private confidential and not for publication
Date: Wednesday, 29 March 2023 4:38:34 PM

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Have the parties been notified now?

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From: Erin Longbottom <[Sch 2.2\(a\)\(ii\)](#)>
Sent: Wednesday, March 29, 2023 12:35:04 PM
To: Banks, HelenP <HelenP.Banks@inquiry.act.gov.au>; Joshua Jones <[Sch 2.2\(a\)\(ii\)](#)>;
Walter Sofronoff <walter@sofronoff.com.au>; Eleanor Lynch <[Sch 2.2\(a\)\(ii\)](#)>
Cc: Cuddihy, GenevieveA <GenevieveA.Cuddihy@inquiry.act.gov.au>
Subject: Re: Private confidential and not for publication

Hi Helen,

I've spoken with Walter. Can you please arrange a meeting with [Sch 2.2\(a\)\(ii\)](#) tomorrow after the directions hearing?

Erin

EJ Longbottom KC

Murray Gleeson Chambers, Level 31, [239 George Street, Brisbane, QLD 4000](#)

Tel [+61 7 3012 8221](tel:+61730128221) | **Fax** [+61 7 3175 4666](tel:+61731754666) | **Mobile** [Sch 2.2\(a\)\(ii\)](#)

Website www.murraygleesonchambers.com.au

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On 28 Mar 2023, at 12:37 pm, Erin Longbottom
<[Sch 2.2\(a\)\(ii\)](#)> wrote:

Hi Helen –

I will draft a response and run it by Walter now.

Thanks.

Erin

EJ Longbottom KC

Murray Gleeson Chambers, Level 31, 239 George Street, Brisbane, QLD 4000
T:+61 7 3012 8221 | **M:**Sch 2.2(a)(ii) | **W:** www.murraygleesonchambers.com.au

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From: "Banks, HelenP" <HelenP.Banks@inquiry.act.gov.au>
Date: Tuesday, 28 March 2023 at 11:34 am
To: Erin Longbottom Sch 2.2(a)(ii), Joshua Jones
Sch 2.2(a)(ii), "walter@sofronoff.com.au"
<walter@sofronoff.com.au>, Eleanor Lynch Sch 2.2(a)(ii) >
Cc: "Cuddihy, GenevieveA" <GenevieveA.Cuddihy@inquiry.act.gov.au>
Subject: FW: Private confidential and not for publication

OFFICIAL

Dear all

Sch 2.2(a)(ii) is seeking a response to her request.

Thanks
Helen

Duplicate

From: [Banks, HelenP](#)
To: [Erin Longbottom](#); [Joshua Jones](#); walter@sofronoff.com.au; [Eleanor Lynch](#)
Cc: [Cuddihy, GenevieveA](#)
Subject: RE: Private confidential and not for publication
Date: Wednesday, 29 March 2023 5:33:00 PM

OFFICIAL

Meeting with [Sch 2.2\(a\)\(ii\)](#) is organised for 2pm tomorrow.

Duplicate

From: [Walter Sofronoff](#)
To: [BOI Information](#)
Subject: Re: Inquiry into the conduct of criminal justice agencies involved in the trial R V Lehrmann
Date: Friday, 17 March 2023 3:00:26 PM

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Reply: thank you for your inquiry.

At this stage of the inquiry the particular matters which will be examined in detail are being considered. Nothing that falls within the terms of reference has been ruled out.

Sent from [Outlook for iOS](#)

From: BOI Information <BOI.Information@inquiry.act.gov.au>
Sent: Friday, March 17, 2023 12:57:12 PM
To: Walter Sofronoff <walter@sofronoff.com.au>
Cc: BOI Information <BOI.Information@inquiry.act.gov.au>
Subject: FW: Inquiry into the conduct of criminal justice agencies involved in the trial R V Lehrmann

OFFICIAL: Sensitive - Legal Privilege

Dear Walter

How would you like us to respond to this?

Thank you

Felicity

Felicity Perkins | Executive Officer/Business Manager

Board of Inquiry – Criminal Justice System

Level 5 Nara Centre

3 Constitution Avenue CANBERRA CITY ACT 2601 | PO Box 1429, CANBERRA ACT 2601

From: Sch 2.2(a)(ii)
Sent: Tuesday, 21 February 2023 3:24 PM
To: BOI Information <BOI.Information@inquiry.act.gov.au>
Subject: Fwd: Inquiry into the conduct of criminal justice agencies involved in the trial R V Lehrmann

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Hello, just hoping to receive an update on this request?

Cheers

----- Forwarded message -----

From: Sch 2.2(a)(ii) [redacted]
Date: Mon, 20 Feb 2023 at 17:45
Subject: Re: Inquiry into the conduct of criminal justice agencies involved in the trial R V Lehrmann
To: JACSMedia <JACSMedia@act.gov.au>
Cc: BOI Information <BOI.Information@inquiry.act.gov.au>

Thanks Michael. Just confirming I'm still seeking a response to the questions, cheers BOI

On Mon, 20 Feb 2023 at 16:46, JACSMedia <JACSMedia@act.gov.au> wrote:

OFFICIAL

Hi [redacted],

We've just been advised that as your question relates to the BOI enquiry, I've redirected it to: BOI.Information@inquiry.act.gov.au

[@BOI Information](mailto:BOI.Information@inquiry.act.gov.au) – please see below for response.

Also, please send any other enquiries relating to the BOI to that email address.

Thanks,

Michael Weaver | Assistant Director Media and Content

Communications and Engagement | [Justice and Community Safety Directorate](#)

Media contacts

JACS media: 02 6207 7173 | JACSmedia@act.gov.au

ACT Emergency Services Agency 24-hour media line: 02 6207 8564 (media enquiries only) |

ESAMedia@act.gov.au

From: Sch 2.2(a)(ii) [redacted] >
Sent: Monday, 20 February 2023 12:35 PM
To: JACSMedia <JACSMedia@act.gov.au>
Subject: Inquiry into the conduct of criminal justice agencies involved in the trial R V Lehrmann

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Good afternoon,

I am contacting you regarding [concerns raised by Brittany Higgins](#) on the weekend about a photograph she provided to police as part of its investigation into her alleged sexual assault was published in the media.

Can JACS confirm whether the inquiry into the conduct of criminal justice agencies involved in the trial R V Lehrmann will specifically examine the concerns raised by Higgins in relation to three separate occasions where material of this nature was published by the Australian?

Regards

--

Sch 2.2(a)(ii)

Level 4, 607 Bourke St
Melbourne VIC 3000
theguardian.com/au

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--
Sch 2.2(a)(ii)

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From: [Walter Sofronoff](#)
To: [BOI Information](#)
Subject: Re: Speak with [Sch 2.2\(a\)\(ii\)](#) ABC News
Date: Tuesday, 21 February 2023 10:21:57 AM

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Yes, please arrange a meeting at a suitable time on Wednesday or Thursday

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From: BOI Information <BOI.Information@inquiry.act.gov.au>
Sent: Tuesday, February 21, 2023 9:15:09 AM
To: Walter Sofronoff <walter@sofronoff.com.au>
Subject: Speak with [Sch 2.2\(a\)\(ii\)](#) ABC News

OFFICIAL

Dear Walter

Please see below email from [Sch 2.2\(a\)\(ii\)](#) ABC News. Are you content for me to set up a meeting with [Sch 2.2\(a\)\(ii\)](#) when you are in Canberra? I will inform [Sch 2.2\(a\)\(ii\)](#) that you will speak with her off-the-record.

Thanks
Helen

From: [Sch 2.2\(a\)\(ii\)](#) >
Sent: Monday, 20 February 2023 6:45 PM
To: BOI Information <BOI.Information@inquiry.act.gov.au>
Subject: RE: Attention Helen Banks

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Hi,

I am writing to you on the advice of [Sch 2.2\(a\)\(ii\)](#) seeking a briefing from Walter Sofronoff about the inquiry into the conduct of criminal justice agencies involved in the trial R v Lehrmann.

I am interested to know just how open the proceedings will be, and where they will be. Also who will be called. I see there have been subpoenas issued already, and suppression orders imposed.

I would also like to ask just how wide the inquiry is prepared to go with other revelations that

have been made since. The weekend discussion about the pages of a diary belonging to Sch 2.2

I am also wondering if our discussion would be on or entirely off the record. Obviously an interview about how the inquiry is proceeding would be very helpful.

Let me know when is an appropriate time.

I have filed some stories based on the information on the web site to run on ABC radio news and online tomorrow morning (21/02/2023).

I look forward to hearing from you.

Sch 2.2(a)(ii)

ABC News

Sch 2.2(a)(ii)

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From: [BOI Information](#)
To: [Walter Sofronoff](#); [Longbottom Erin](#); [Sch 2.2\(a\)\(ii\)](#); [Eleanor Lynch](#); [Wong Geoffrey](#)
Cc: [BOI Information](#)
Bcc: [Perkins Felicity](#)
Subject: FW: Media inquiry
Date: Thursday, 30 March 2023 3:10:00 PM
Attachments: [image001.png](#)

OFFICIAL

Good afternoon

Please see below media query. Can you please let us know how you would like us to respond.

Thank you

Felicity

Felicity Perkins | Executive Officer/Business Manager

Board of Inquiry – Criminal Justice System

Level 5 Nara Centre

3 Constitution Avenue CANBERRA CITY ACT 2601 | PO Box 1429, CANBERRA ACT 2601

From: [Sch 2.2\(a\)\(ii\)](#)
Sent: Thursday, 30 March 2023 3:04 PM
To: BOI Information <BOI.Information@inquiry.act.gov.au>
Subject: Media inquiry

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Hi,

I have a media inquiry in relation to the Board of Inquiry into the Criminal Justice System in the ACT.

[Sch 1 1.1](#), [Sch 1 1.4](#)

I can be reached on [Sch 2.2\(a\)\(ii\)](#)

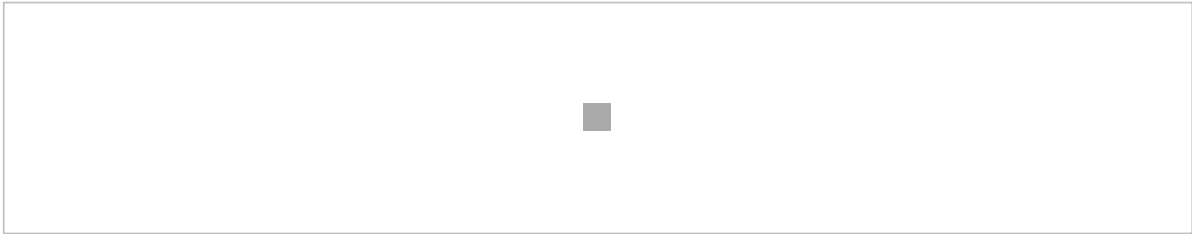
Thank you.

Best wishes,

Sch 2.2(a)(ii)

5 Thomas Holt Drive, North Ryde NSW 2113
Locked Bag 918, North Sydney NSW 2059

email | Sch 2.2(a)(ii) [redacted]
web | www.skynews.com.au



From: [Walter Sofronoff](#)
To: [BOI Information](#); [Erin Longbottom](#); [Joshua Jones](#); [Eleanor Lynch](#)
Cc: [Cuddihy, GenevieveA](#)
Subject: Re: Media inquiry - seeking clarification
Date: Wednesday, 19 April 2023 9:22:32 AM

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We do not comment on what we have until we publish

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From: BOI Information <BOI.Information@inquiry.act.gov.au>
Sent: Tuesday, April 18, 2023 6:09:49 PM
To: Walter Sofronoff <walter@sofronoff.com.au>; Erin Longbottom
 Sch 2.2(a)(ii) >; Joshua Jones Sch 2.2(a)(ii) >; Eleanor Lynch
 Sch 2.2(a)(ii)
Cc: Cuddihy, GenevieveA <GenevieveA.Cuddihy@inquiry.act.gov.au>
Subject: FW: Media inquiry - seeking clarification

OFFICIAL

Dear Walter, Erin, Josh and Ellie

Please see Sch 2.2(a)(ii) email below.

Is it sufficient to respond that the parties continue to assist the Board of Inquiry with the production of documents and it will not comment on whether it has received Sch 2.2(a)(ii), Sch 1.1.1

Thanks
 Helen

-----Original Message-----

From: Sch 2.2(a)(ii) >
Sent: Tuesday, 18 April 2023 3:48 PM
To: BOI Information <BOI.Information@inquiry.act.gov.au>
Subject: Media inquiry - seeking clarification

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Hi folks,

I'm writing a piece for this weekend's The Saturday Paper on the opening of the Board of Inquiry into the Lehrmann case & in that context, I've been back through the transcript of the March 30 directions hearing & read through all of the exhibits tendered thus far that are publicly available.

I note in the AGS letter to the inquiry of March 27, tendered as Exhibit 9, at paragraph 11, that - as of that date - among the documents the AFP/ACT Policing were not able to provide were Brittany Higgins' counselling notes.

I take these to be the same counselling notes that the ACT Police provided without authority to the defence the lead-up to the criminal prosecution of last year.

I note in the preceding paragraph in the same letter (paragraph 10, Exhibit 9) that the AGS cites a number of pieces of federal legislation posing possible obstacles to the provision of documents, including two pieces of health legislation.

I note that Counsel Assisting told the chairperson during the March 30 hearing that there would be ongoing correspondence with the AGS to try to smooth out some of these issues around document availability and the jurisdictional problems posed by the Inquiries Act and intersecting legislation.

My query to you relates to whether anything has changed in this situation and whether the AGS/AFP/ACT Policing are still declining to provide those counselling notes?

If so, is that a final position or still being worked through?

And if it is a final position, can that problem be overcome somehow, for example by having the DPP provide the notes, or does the health legislation preclude anybody from providing them on privacy grounds?

If the latter, how can the inquiry examine the possible impact of the police error in providing the notes to the defence ahead of the criminal trial if the chairperson is unable to see what they contain?

Am I missing something here?

I'm very mindful of the sensitivity around this issue.

I just want to make sure that I have the most up-to-date and accurate information in the event that I report that the police are declining to provide the notes, citing a piece of legislation that presumably should also have precluded the police from providing the same notes to the defence ahead of the trial.

I'm contactable at this email address or on mobile Sch 2.2(a)(ii)

I'd be grateful to hear back from someone tomorrow if this can be clarified. I have to write this feature-length piece tomorrow night to file it on Thursday morning.

Many thanks in anticipation,

Sch 2.2(a)(ii)

The Saturday Paper

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From: [Erin Longbottom](#)
To: [Cuddihy, GenevieveA](#); walter@sofronoff.com.au
Cc: [Joshua Jones](#); [Eleanor Lynch](#); [BOI Information](#)
Subject: Re: Publication of statements [AGSDMS-DMS.FID4819271]
Date: Wednesday, 19 April 2023 12:32:10 PM

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Hi Gen,

I thought where we got to yesterday was that the material will not be published to the media/public before the hearing.

Am I right about that Walter? I know we discussed the possibility of providing information to the media with an embargo on publication until after it is tendered, but I was proceeding on the basis that this is a decision you would make closer to the time and isn't something that would necessarily be discussed with the parties.

Erin

EJ Longbottom KC

Sch 2.2(a)(ii)

Murray Gleeson Chambers, Level 31, 239 George Street, Brisbane, QLD 4000
T:+61 7 3012 8221 | **M:** [Sch 2.2\(a\)\(ii\)](#) | **W:** www.murraygleesonchambers.com.au

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From: "Cuddihy, GenevieveA" <GenevieveA.Cuddihy@inquiry.act.gov.au>
Date: Wednesday, 19 April 2023 at 12:11 pm
To: "walter@sofronoff.com.au" <Walter@sofronoff.com.au>, Erin Longbottom
[Sch 2.2\(a\)\(ii\)](#) >
Cc: Joshua Jones [Sch 2.2\(a\)\(ii\)](#) >, Eleanor Lynch [Sch 2.2\(a\)\(ii\)](#) >, BOI
Information <BOI.Information@inquiry.act.gov.au>
Subject: FW: Publication of statements [AGSDMS-DMS.FID4819271]

OFFICIAL: Sensitive - Legal Privilege

Dear Walter and Erin,

Sch 2.2(a)(ii), Sch 1 1.1, Sch 1 1.2

Sch 1 1.1, Sch 1 1.2, Sch 2.2(a)(ii)

Very happy to discuss further with you.

Kind regards,

Genevieve

Genevieve Cuddihy | Senior Solicitor Assisting
Board of Inquiry – Criminal Justice System

m: [Sch 2.2\(a\)\(ii\) GenevieveA.Cuddihy@inquiry.act.gov.au](mailto:GenevieveA.Cuddihy@inquiry.act.gov.au)
w: www.cjsinquiry.act.gov.au

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From: Sch 2.2(a)(ii)
Sent: Wednesday, 19 April 2023 10:37 AM
To: Cuddihy, GenevieveA <GenevieveA.Cuddihy@inquiry.act.gov.au>
Subject: Publication of statements [AGSDMS-DMS.FID4819271]

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Dear Genevieve

Sch 1 1.1, Sch 1 1.2, Sch 1 1.4

Sch 1 1.2, Sch 1 1.1, Sch 1 1.4, Sch 2.2(a)(ii)



From: [Erin Longbottom](#)
To: [Walter Sofronoff](#); [Banks, HelenP](#); [Joshua Jones](#); [Eleanor Lynch](#)
Cc: [Cuddihy, GenevieveA](#)
Subject: Re: Media enquiry - non-publication orders
Date: Thursday, 20 April 2023 5:09:09 PM
Attachments: [Non-publication-Order-14-PDF-207-KB.pdf](#)

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Helen –

Walter and I have just spoken about the issue.

He is going to look at the NPO (**attached**) and get in touch.

Erin

EJ Longbottom KC

Murray Gleeson Chambers, Level 31, 239 George Street, Brisbane, QLD 4000
T: +61 7 3012 8221 | **M:** [Sch 2.2\(a\)\(ii\)](#) | **W:** www.murraygleesonchambers.com.au

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From: Walter Sofronoff <walter@sofronoff.com.au>
Date: Thursday, 20 April 2023 at 4:59 pm
To: "Banks, HelenP" <HelenP.Banks@inquiry.act.gov.au>, Erin Longbottom
[Sch 2.2\(a\)\(ii\)](#) <[Sch 2.2\(a\)\(ii\)](#)>, Joshua Jones <[Sch 2.2\(a\)\(ii\)](#)>, Eleanor Lynch
 <[Sch 2.2\(a\)\(ii\)](#)>
Cc: "Cuddihy, GenevieveA" <GenevieveA.Cuddihy@inquiry.act.gov.au>, "Mossop, CarlS" <CarlS.Mossop@inquiry.act.gov.au>, "Lauc, JessicaK" <JessicaK.Lauc@inquiry.act.gov.au>, "Wong, Geoffrey" <Geoffrey.Wong@inquiry.act.gov.au>
Subject: Re: Media enquiry - non-publication orders

Helen, please call her and tell her we're looking into it immediately and thank her for raising it.

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From: Walter Sofronoff <walter@sofronoff.com.au>
Sent: Thursday, April 20, 2023 4:57:47 PM
To: Banks, HelenP <HelenP.Banks@inquiry.act.gov.au>; Erin Longbottom
[Sch 2.2\(a\)\(ii\)](#) <[Sch 2.2\(a\)\(ii\)](#)>; Joshua Jones <[Sch 2.2\(a\)\(ii\)](#)>; Eleanor Lynch
[Sch 2.2\(a\)\(ii\)](#) <[Sch 2.2\(a\)\(ii\)](#)>

Cc: Cuddihy, GenevieveA <GenevieveA.Cuddihy@inquiry.act.gov.au>; Mossop, CarlS <CarlS.Mossop@inquiry.act.gov.au>; Lauc, JessicaK <JessicaK.Lauc@inquiry.act.gov.au>; Wong, Geoffrey <Geoffrey.Wong@inquiry.act.gov.au>
Subject: Re: Media enquiry - non-publication orders

She has a point. Erin and Josh, have a talk about it and then call me.

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From: Banks, HelenP <HelenP.Banks@inquiry.act.gov.au>
Sent: Thursday, April 20, 2023 4:56:02 PM
To: Walter Sofronoff <walter@sofronoff.com.au>; Erin Longbottom <Erin.Longbottom@inquiry.act.gov.au>; Joshua Jones <Sch 2.2(a)(ii) >; Eleanor Lynch <Sch 2.2(a)(ii) >
Cc: Cuddihy, GenevieveA <GenevieveA.Cuddihy@inquiry.act.gov.au>; Mossop, CarlS <CarlS.Mossop@inquiry.act.gov.au>; Lauc, JessicaK <JessicaK.Lauc@inquiry.act.gov.au>; Wong, Geoffrey <Geoffrey.Wong@inquiry.act.gov.au>
Subject: Media enquiry - non-publication orders

OFFICIAL

Dear all

Sch 2.2(a)(ii) from the Saturday Paper telephoned with respect to the non-publication orders that have been made. She stated that she has received legal advice that the non-publication orders are very broad and cover documents that are already in the public domain, such as Drumgold's FOI letter. She further stated that documents that were mentioned in the previous hearings are potentially caught within the non-publication orders. She is of the view that the broad nature of the non-publication orders prevents her from writing media articles as she is concerned that she will inadvertently breach the non-publication orders.

I informed her that I would raise her issue with counsel-assisting the BOI.

Helen Banks

Executive Director
Board of Inquiry – Criminal Justice System
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From: [Joshua Jones](#)
To: [Erin Longbottom](#)
Cc: [Walter Sofronoff](#); [Eleanor Lynch](#); [Cuddihy, GenevieveA](#)
Subject: T/I (missed call) then T/O to [Sch 2.2\(a\)\(i\)](#) 1314 for 4 mins
Date: Thursday, 4 May 2023 1:24:25 PM

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[Sch 2.2\(a\)\(i\)](#) Lawyers talk and she has heard that WS is going to find that the DPP should never have pursued a prosecution. Can I confirm?

JRJ: You will have to wait for the report.

[Sch 2.2\(a\)\(i\)](#) Recounts her understanding of the criminal justice system. Word on word, he said v she said etc... how could there not be a case to prosecute.

JRJ: You will have to wait until the report. Not to be quoted, but from a criminal law perspective, the test applied by the prosecutor is not the same as the jury and is low. It is not correct to say he said v she said. Crown must prove BRD.

[Sch 2.2\(a\)\(i\)](#) Can you tell me anything juicy.

JRJ: No. But come along to the hearings and you will have plenty to write about.

[Sch 2.2\(a\)\(i\)](#) Bye.

JRJ: Bye. Keep trying.

Joshua Jones

Barrister

[Murray Gleeson Chambers](#)
Level 31, 239 George Street
Brisbane, Qld 4000

T: [+61 7 3175 4688](tel:+61731754688)

F: [+61 7 3175 4666](tel:+61731754666)

M: [Sch 2.2\(a\)\(ii\)](#)

E: [Sch 2.2\(a\)\(ii\)](#)

W: www.murraygleesonchambers.com.au

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From: [BOI Information](#)
To: [Sch 2.2\(a\)\(ii\)](#); [BOI Information](#); [Cuddihy, GenevieveA](#); [Jones, Joshua](#); [Eleanor Lynch](#); [Erin Longbottom](#); [Walter Sofronoff](#)
Subject: RE: Exhibits
Date: Monday, 15 May 2023 11:38:00 AM

OFFICIAL

Dear colleagues

I am in the process of responding to [Sch 2.2\(a\)\(ii\)](#) One of her questions is below:

some of the statements I downloaded as adobe searchable documents to find key words - are they still tendered ? Can they still be reported if I have it?

Can you please provide me with the Board's position in relation to this question.

Thanks
Helen

From: [Sch 2.2\(a\)\(ii\)](#)
Sent: Thursday, 11 May 2023 7:27 PM
To: BOI Information <BOI.Information@inquiry.act.gov.au>; Cuddihy, GenevieveA <GenevieveA.Cuddihy@inquiry.act.gov.au>; Jones, Joshua <Joshua.Jones@inquiry.act.gov.au>
Subject: Exhibits

You don't often get email from [Sch 2.2\(a\)\(ii\)](#) [Learn why this is important](#)

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Good evening

Just seeking some clarification

While I have endeavoured to watch the proceedings today [Sch 2.2\(a\)\(ii\)](#)

[Out of scope](#)

I had it on background but I am now concerned I missed something that explains the following:

- All the exhibits seem to have been pulled down. Is there an issue with reporting them or not ?
- there was some suggestion of a meeting tonight with lawyers re exhibits and public /media access to them? If so, was there any media representation at the discussion ?
- Previously, only access to [Sch 2.2\(a\)\(ii\)](#) exhibits was restricted after it was the subject of a

retrospective urgent suppression last night but it now seems to have spread to the entire website

- The Australian has reported **Sch 2.2(a)(ii)** statement but that document now cannot be accessed and when I looked earlier the name was there but the material could not be accessed.

- some of the statements I downloaded as adobe searchable documents to find key words - are they still tendered ? Can they still be reported if I have it?

- have they been taken down for a reason ?

Just hoping I can clarify that what is going on.

We have received no further advice of retrospective suppression orders pertaining to further matters published on the website but keen to ensure we are being advised.

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From: [BOI Information](#)
To: [Eleanor Lynch](#); [BOI Information](#); [Banks, HelenP](#); [Joshua Jones](#)
Cc: [Walter Sofronoff](#); [Erin Longbottom](#); [Cuddihy, GenevieveA](#)
Subject: RE: Exhibits
Date: Monday, 15 May 2023 11:52:00 AM

OFFICIAL

Thanks Ellie – was just sending an email to the effect that I had inadvertently copied [Sch 2.2\(a\)\(ii\)](#) into my email.

From: Eleanor Lynch [Sch 2.2\(a\)\(ii\)](#) >
Sent: Monday, 15 May 2023 11:50 AM
To: BOI Information <BOI.Information@inquiry.act.gov.au>; Banks, HelenP <HelenP.Banks@inquiry.act.gov.au>; Joshua Jones <[Sch 2.2\(a\)\(ii\)](#) >
Cc: Walter Sofronoff <walter@sofronoff.com.au>; Erin Longbottom <[Sch 2.2\(a\)\(ii\)](#) >; Cuddihy, GenevieveA <GenevieveA.Cuddihy@inquiry.act.gov.au>
Subject: Re: Exhibits

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Hi Helen

I note you responded to [Sch 2.2\(a\)\(ii\)](#) in your previous email – so everyone just be careful in replying to Helen's email as you may respond to [Sch 2.2\(a\)\(ii\)](#)

I don't understand what [Sch 2.2\(a\)\(ii\)](#) is talking about with that point but you can advise her that the tendered material has been taken down to ensure that all sensitive personal information of third parties has been redacted. Parties are performing a double check on the material and it will be re-uploaded as soon as possible.

My view is that you can tell her that she can still report on general nature of those statements, but we are working to ensure all sensitive and personal information is redacted and not published (such as names, addresses, phone numbers, irrelevant sensitive information of third parties). [@Joshua Jones](#) do you agree? Or should we just tell her to wait?

Regards
Eleanor Lynch

Murray Gleeson Chambers
Level 31, 239 George Street
Brisbane, Qld 4000

T: +61 7 3175 4600
M: [Sch 2.2\(a\)\(ii\)](#)
E: [Sch 2.2\(a\)\(ii\)](#)
W: www.murraygleesonchambers.com.au

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Duplicate

From: [Joshua Jones](#)
To: [Eleanor Lynch](#)
Cc: [BOI Information](#); [Banks HelenP](#); [Walter Sofronoff](#); [Erin Longbottom](#); [Cuddihy GenevieveA](#)
Subject: Re: Exhibits
Date: Monday, 15 May 2023 12:01:48 PM

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I think she should wait until the newly redacted statements and exhibits are uploaded. That way there can't be any confusion. This, destroy what you have, get the new stuff and off you go observing any non-publication in place.

Joshua Jones
 Barrister

[Murray Gleeson Chambers](#)
 Level 31, 239 George Street
 Brisbane, Qld 4000

T: [+61 7 3175 4688](#)
 F: [+61 7 3175 4666](#)
 M: [Sch 2.2\(a\)\(ii\)](#)
 E: [Sch 2.2\(a\)\(ii\)](#)
 W: www.murraygleesonchambers.com.au

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On 15 May 2023, at 11:58 am, Eleanor Lynch <[Sch 2.2\(a\)\(ii\)](#)> wrote:

Unfortunately, I don't think it is covered as Helen's email said "As you will note, I have sought further clarification with respect to your question about using statements that you have already downloaded."

What do you think about advising her about this?

Regards
 Eleanor Lynch

Murray Gleeson Chambers
 Level 31, 239 George Street
 Brisbane, Qld 4000

T: +61 7 3175 4600
 M: [Sch 2.2\(a\)\(ii\)](#)
 E: [Sch 2.2\(a\)\(ii\)](#)
 W: www.murraygleesonchambers.com.au

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From: Joshua Jones [Sch 2.2\(a\)\(ii\)](#)
Date: Monday, 15 May 2023 at 11:56 am
To: Eleanor Lynch [Sch 2.2\(a\)\(ii\)](#) >
Cc: [BOI Information](#) <BOI.Information@inquiry.act.gov.au>, "Banks, HelenP" <HelenP.Banks@inquiry.act.gov.au>, Walter Sofronoff QC <walter@sofronoff.com.au>, Erin Longbottom <[Sch 2.2\(a\)\(ii\)](#)>, "Cuddihy, GenevieveA" <GenevieveA.Cuddihy@inquiry.act.gov.au>
Subject: Re: Exhibits

She should now have clarity regarding what she can and cannot publish, given Helen's email.

Joshua Jones
 Barrister

From: [Joshua Jones](#)
To: [Walter Sofronoff](#)
Cc: [Erin Longbottom](#); [Eleanor Lynch](#); [Banks, Helen](#); [Cuddihy, Genevieve](#)
Subject: Re: Media article in The Australian [MA-S.FID501652]
Date: Saturday, 13 May 2023 9:28:00 AM
Attachments: [Screenshot 2023-05-13 at 9.26.27 am.png](#)
[Screenshot 2023-05-13 at 9.26.33 am.png](#)
[Screenshot 2023-05-13 at 9.26.39 am.png](#)
[Screenshot 2023-05-13 at 9.26.45 am.png](#)
[Screenshot 2023-05-13 at 9.26.51 am.png](#)
[Screenshot 2023-05-13 at 9.26.55 am.png](#)

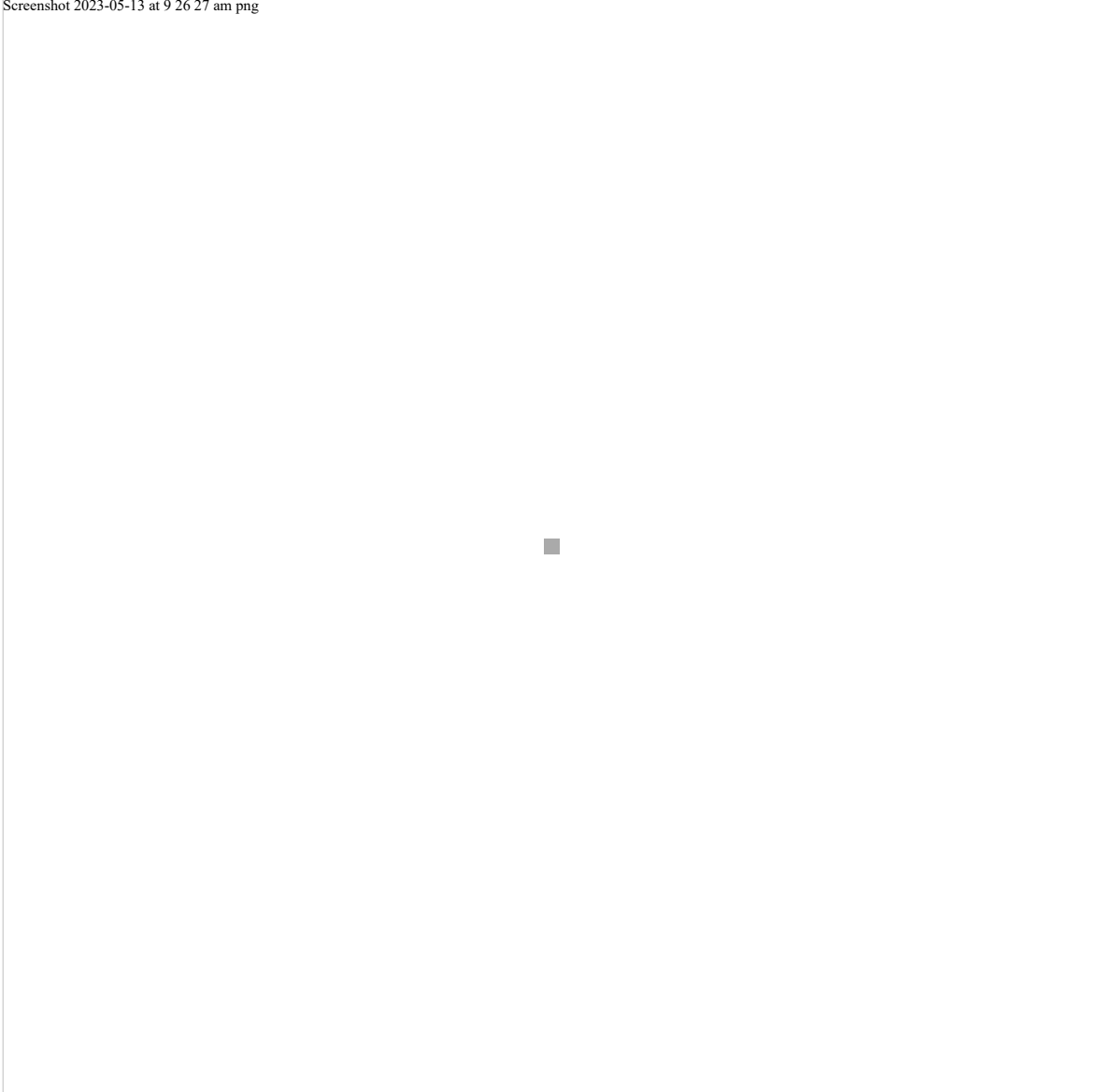
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Walter / EJ,

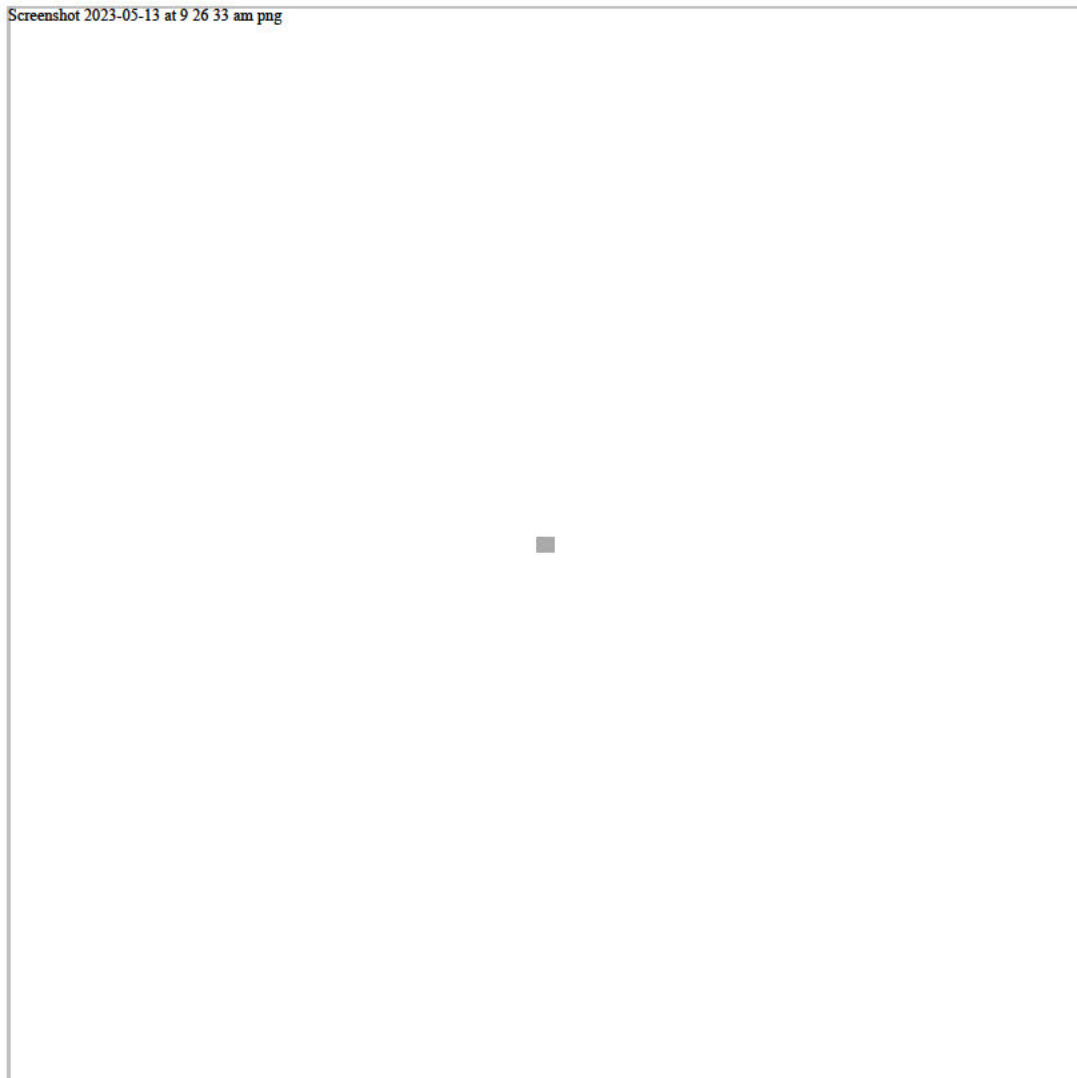
Will one of you speak with JA about this?

Screen shots **attached**

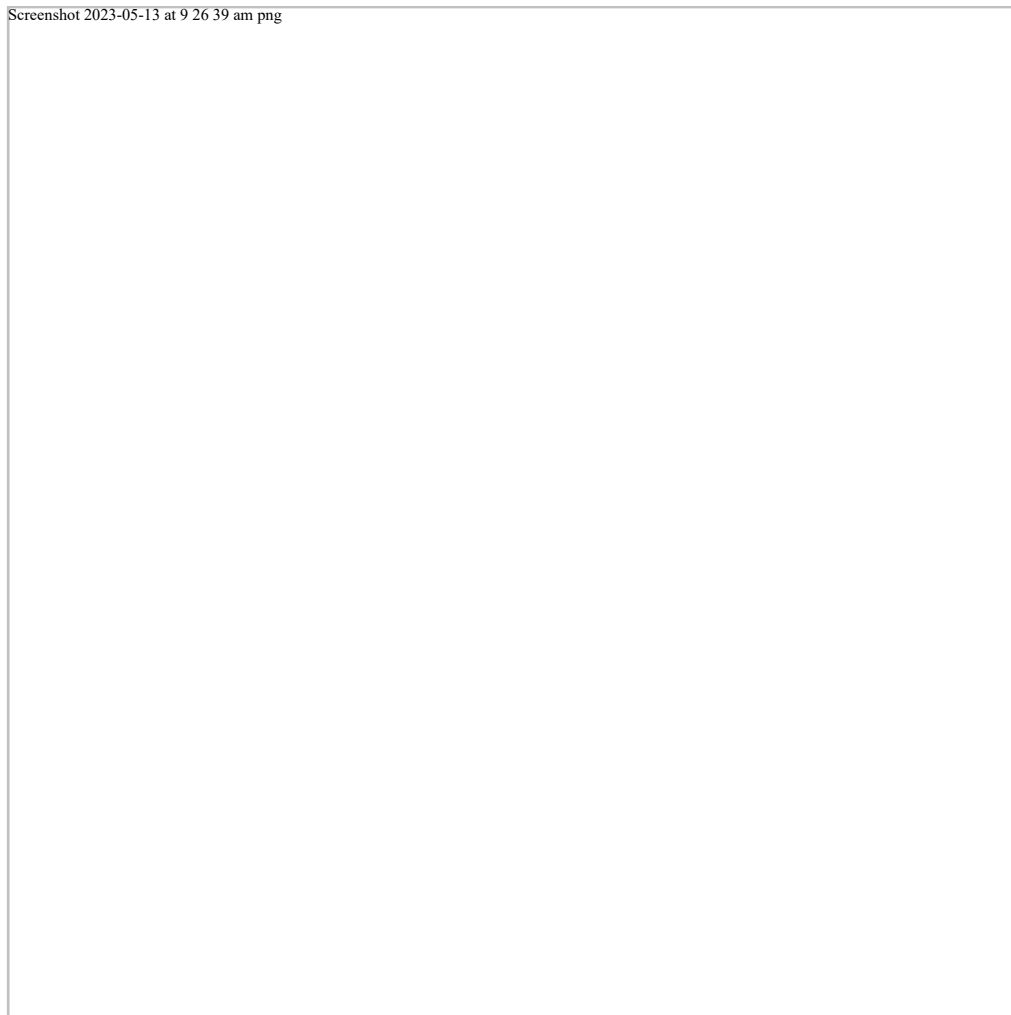
Screenshot 2023-05-13 at 9 26 27 am.png



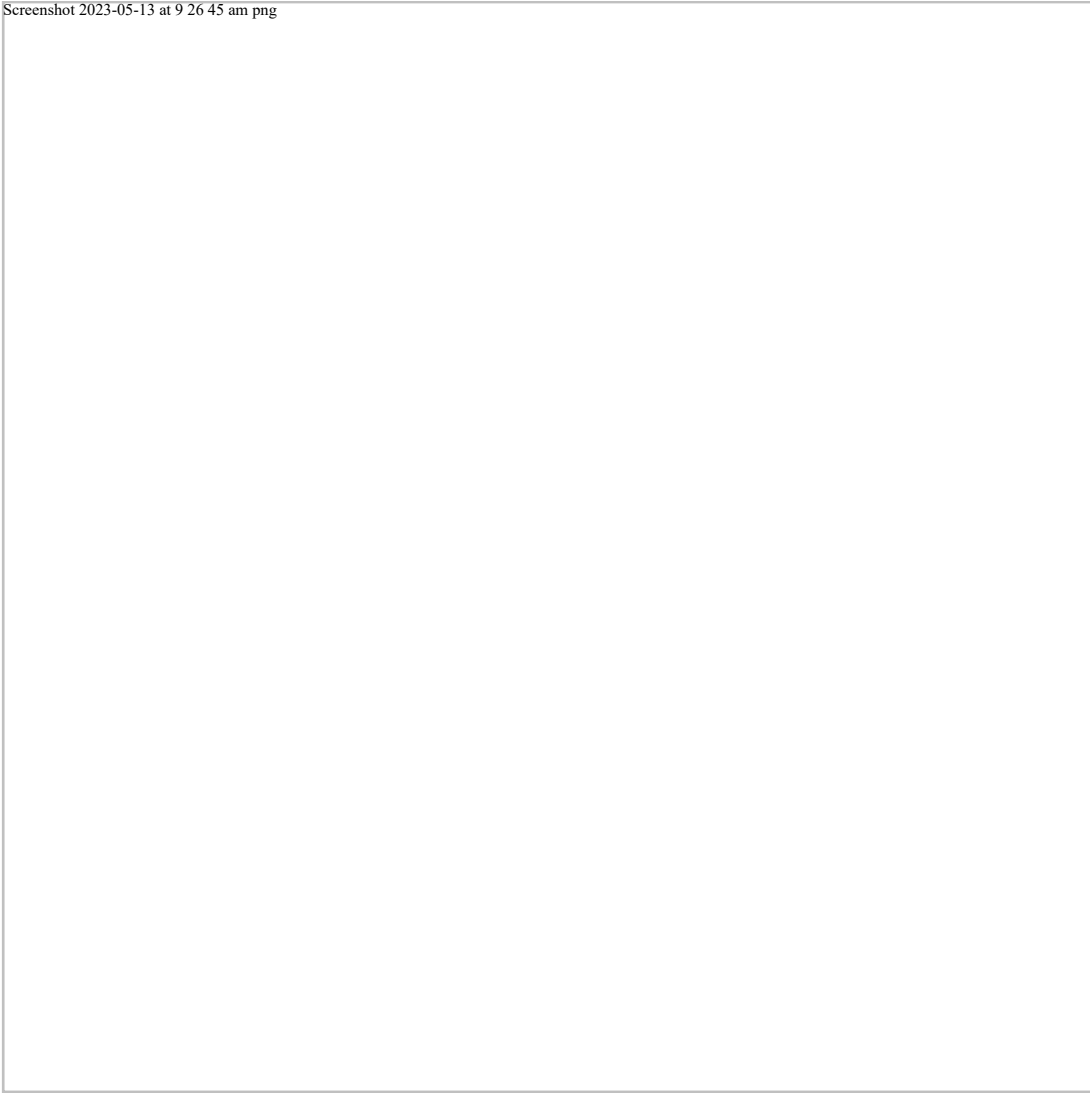
Screenshot 2023-05-13 at 9 26 33 am.png



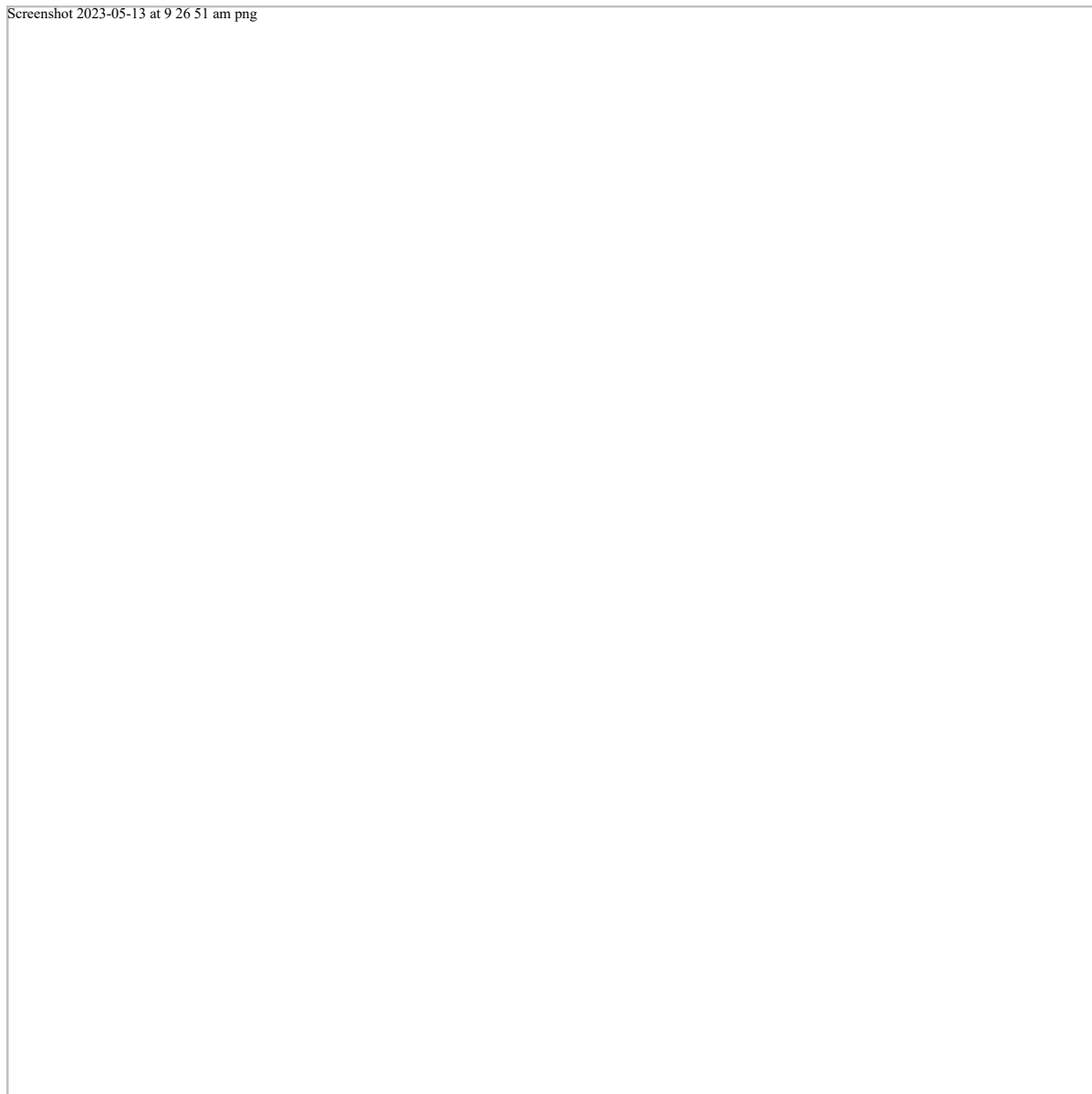
Screenshot 2023-05-13 at 9 26 39 am.png



Screenshot 2023-05-13 at 9 26 45 am.png



Screenshot 2023-05-13 at 9 26 51 am.png



Screenshot 2023-05-13 at 9 26 55 am png

Joshua Jones
Barrister

[Murray Gleeson Chambers](#)
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Brisbane, Qld 4000

T: [+61 7 3175 4688](tel:+61731754688)

F: [+61 7 3175 4666](tel:+61731754666)

M: [Sch 2.2\(a\)\(iii\)](#)

E: [Sch 2.2\(a\)\(ii\)](#)

W: www.murraygleesonchambers.com.au

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On 12 May 2023, at 4:53 pm, Cuddihy, GenevieveA <GenevieveA.Cuddihy@inquiry.act.gov.au> wrote:

OFFICIAL: Sensitive

Dear Walter and counsel,

Please see email from [Sch 2.2\(a\)\(iii\)](#) regarding media articles in the Australian. Helen will draft a response for your consideration.

Kind regards,

Genevieve

Genevieve Cuddihy | Senior Solicitor Assisting
Board of Inquiry – Criminal Justice System

m: [Sch 2.2\(a\)\(iii\)](#) : GenevieveA.Cuddihy@inquiry.act.gov.au
w: www.cjsinquiry.act.gov.au

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From: [Sch 2.2\(a\)\(iii\)](#)

Sent: Friday, 12 May 2023 4:40 PM

To: Cuddihy, GenevieveA <GenevieveA.Cuddihy@inquiry.act.gov.au>

Cc: BOI Notices <BOI_notices@inquiry.act.gov.au>; Sch 2.2(a)(ii)

Subject: Media article in The Australian [MA-S FID501652]

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Dear Ms Cuddihy

I refer to the matters raised by Mr Sofronoff in his *ex tempore* decision delivered on Wednesday afternoon, and in particular to the request made at transcript P-280.13 asking the media companies to do all that is possible to remove certain material from the public eye.

Although I cannot personally view it (as it is behind a paywall) I understand an article which Mr Sofronoff may have had in contemplation remains available for viewing at this address:

<https://www.theaustralian.com.au/nation/bombshell-police-dossier-raises-stakes/news-story/7a8049f1584996585a8cf152d5a41651>

I would be grateful if you could bring this to the attention of counsel assisting.

Kind regards

Sch 2.2(a)(ii)

From: [BOI Information](#)
To: [Walter Sofronoff](#); [Erin Longbottom](#); [Joshua Jones](#); [Eleanor Lynch](#)
Cc: [Cuddihy, GenevieveA](#)
Subject: Access by media to statements and exhibits
Date: Friday, 19 May 2023 12:20:00 PM
Attachments: [~WRD0000.jpg](#)

OFFICIAL

Dear Walter

Please see below email from [Sch 2.2\(a\)\(ii\)](#) which highlights the current confusion with various media organisations regarding their ability to publish information that has previously been available on our website but have since been taken down for redaction purposes. I note that there are no non-publication orders currently in place for these documents (save for Ex 48 of [Sch 2.2\(a\)\(ii\)](#) statement).

I acknowledge that the redaction process has become far more complex than initially expected which has resulted in some documents that were initially available being removed from the website at short notice. The team has been working incredibly long hours to rectify these issues but are also assisting at the same time to prepare for next week's hearings.

I am further concerned that some members of the media are receiving information (including statements and exhibits) from the Board of Inquiry in advance of other media organisations. I have received numerous telephone calls from media expressing their concerns that there is currently not a level-playing field between them.

On a related note, and despite your pleas to the media to report accurately, respectfully and fairly, I draw your attention to further reporting by **The Australian** in relation to Mr Drumgold. It appears that media outlets are now filming at his home:

[1852289755_20240518.pdf \(isentia.com\)](#)

I suggest that all media enquiries are directed to me in the first instance to ensure that all media organisations are given the same access to information.

I am happy to discuss further if it would be of assistance.

Helen Banks

Executive Director

Board of Inquiry – Criminal Justice System

Level 5 Nara Centre

3 Constitution Avenue CANBERRA CITY ACT 2601 | PO Box 1429, CANBERRA ACT 2601

From: [Sch 2.2\(a\)\(ii\)](#) >

Sent: Friday, 19 May 2023 11:51 AM

To: BOI Information <BOI.Information@inquiry.act.gov.au>; Jones, Joshua <Joshua.Jones@inquiry.act.gov.au>; Banks, HelenP <HelenP.Banks@inquiry.act.gov.au>; [REDACTED]

Subject: Re: URGENT

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Dear Ms Banks,

I am seeking some clarification in relation to the following matters please.

With regard to this correspondence below, I note that as of 11:35 am Friday, May 19 that the exhibits for [REDACTED] have either not been restored or have been restored and taken down again.

<https://www.cjsinquiry.act.gov.au/public-hearings/hearing-exhibits>

This is causing some difficulty and confusion with what can and cannot be reported because documents are being published and then unpublished by the inquiry or in some cases published, unpublished and then published again with further redactions.

My questions are as follows

1. Do you expect to restore the exhibits to [REDACTED] statements? When is this likely to occur?

I note that on Monday, the expectation was that *"The Board expects that [REDACTED] statement and exhibits will be reuploaded today."*

2. Noting that in the correspondence you note "Exhibits 28, 32, 44 and 48 will not be published online." can a hard copy of the non-redacted exhibits be obtained -subject to any suppression orders? (Noting that in the second version of the suppression order that the entirety of 48 is captured)

3. Are there any missing non publication orders given on the website the non pub orders jump from 1 to 23

- [Non-publication Order 14 \[PDF 203.4 KB\]](#)
- [Non-publication-Order-23.pdf \[PDF 212.0 KB\]](#)
- [Non-publication-Order-24-Exhibit-48-of-\[REDACTED\]-statement Amended.pdf \[PDF 249.9 KB\]](#)

4. Are you aware that the website states there is a non-pub order in place that Mr Sofronoff vacated during the hearing on Wednesday?

- [Non-publication-Order-24-Exhibit-48-of-Sch 2.2\(a\)\(ii\)-statement Amended.pdf \[PDF 249.9 KB\]](#)

5. Does this need to be amended to ensure the information the BOI has on its website is accurate with regard to non pub orders?

6. Is there a reason that Sch 2.2(a)(ii) statement has been published and then unpublished and do you expect Sch 2.2(a)(ii) statement to be re-uploaded after it was published by the BOI and then unpublished.

7. Will be putting the final version of the police statements and exhibits online during the evidence of the police ? That would be very helpful

Thank you.

Sch 2.2(a)(ii)

On Mon, 15 May 2023 at 11:49, BOI Information <BOI.Information@inquiry.act.gov.au> wrote:

OFFICIAL

Dear Sch 2.2(a)(ii)

The statements and exhibits were removed from the Board of Inquiry's website to enable a further process of redactions to be applied on some documents. On 11 May 2023, counsel and solicitors from the Board met with parties' legal representatives to discuss the redaction process. There were no media persons at this meeting.

Documents will be available on the website when this redaction process is finalised. The Board expects that Sch 2.2(a)(ii) statement and exhibits will be reuploaded today.

Exhibits 28, 32, 44 and 48 will not be published online.

Non-publication order – Exhibit 48

I refer to the non-publication order made by Mr Sofronoff on 10 May 2023. Please see link below for ease of reference:

[https://www.cjsinquiry.act.gov.au/_data/assets/pdf_file/0012/2222211/Non-publication-Order-24-Exhibit-48-of-Sch 2.2\(a\)\(ii\)-statement.pdf](https://www.cjsinquiry.act.gov.au/_data/assets/pdf_file/0012/2222211/Non-publication-Order-24-Exhibit-48-of-Sch 2.2(a)(ii)-statement.pdf)

Exhibit 48 is the subject of a non-publication order and the document was published in error. Please destroy any copies you have of this document. The reference to Exhibit 48 (WIT.0001.0003_391) in the non-publication order is a reference to the entire document that commences with that reference number (that is, WIT.0001.0003_391 to WOT.0031.0003_0503).

As you will note, I have sought further clarification with respect to your question about using statements that you have already downloaded.

Helen Banks

Executive Director

Board of Inquiry – Criminal Justice System

Level 5 Nara Centre

3 Constitution Avenue CANBERRA CITY ACT 2601| PO Box 1429, CANBERRA ACT 260

Duplicate

From: [Erin Longbottom](#)
To: [Banks, HelenP](#)
Cc: [Walter Sofronoff](#); [Joshua Jones](#); [Eleanor Lynch](#); [Cuddihy, GenevieveA](#)
Subject: Re: Telephone call from [Sch 2.2\(a\)\(ii\)](#)
Date: Thursday, 18 May 2023 11:23:41 AM

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Hi Helen,

Can we email her the redacted documents that have been tendered - the redactions for the DPP tranche should be largely done now?

Regards,

Erin

EJ Longbottom KC

Murray Gleeson Chambers, Level 31, [239 George Street, Brisbane, QLD 4000](#)

Tel [+61 7 3012 8221](#) | **Fax** [+61 7 3175 4666](#) | **Mobile** [Sch 2.2\(a\)\(ii\)](#)

Website [www.murraygleesonchambers.com.au](#)

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On 18 May 2023, at 9:20 am, Banks, HelenP
<HelenP.Banks@inquiry.act.gov.au> wrote:

OFFICIAL

Dear Walter and counsel assisting

This morning I received a telephone call from [Sch 2.2\(a\)\(ii\)](#), Saturday Paper. She raised concerns about the inability to access exhibits and statements that were previously available on the website. She stated that it has given an unfair advantage to those media organisations who immediately downloaded the documents and proceeded to hastily report on them. She is in the middle of writing an article for publication on Saturday and is now unable to complete it without access to the documents.

I informed [Sch 2.2\(a\)\(ii\)](#) that I would raise the issue with you and she is seeking an urgent response.

Helen Banks
Executive Director

Board of Inquiry – Criminal Justice System
Level 5 Nara Centre
3 Constitution Avenue CANBERRA CITY ACT 2601 | PO Box 1429, CANBERRA ACT
2601

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From: [Cuddihy, GenevieveA](#)
To: [Walter Sofronoff](#); [Erin Longbottom](#); [Joshua Jones](#); [Eleanor Lynch](#)
Cc: [BOI Notices](#)
Subject: FW: Front page of today's Australian [MA-S.FID501652]
Date: Friday, 19 May 2023 6:24:45 PM
Attachments: [image001.jpg](#)
[Australian Front Page tomorrow.jpeg](#)

OFFICIAL: Sensitive

Dear Walter and Counsel,

Please see email correspondence below from [Sch 2.2\(a\)\(ii\)](#) regarding the front page article in the Australian today.

Kind regards,
Genevieve

Genevieve Cuddihy | Senior Solicitor Assisting

Board of Inquiry – Criminal Justice System

m [Sch 2.2\(a\)\(ii\)](#) GenevieveA.Cuddihy@inquiry.act.gov.au

w: www.cjsinquiry.act.gov.au

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From: [Sch 2.2\(a\)\(ii\)](#) >
Sent: Friday, 19 May 2023 6:15 PM
To: Cuddihy, GenevieveA <GenevieveA.Cuddihy@inquiry.act.gov.au>
Cc: BOI Notices <BOI.notices@inquiry.act.gov.au>; [Sch 2.2\(a\)\(ii\)](#)
Subject: Front page of today's Australian [MA-S.FID501652]

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[Learn why this is important](#)

Dear Ms Cuddihy

I am sure you have seen the front page of today's Australian. A copy is attached.

The article is entirely contrary to the remarks made by Mr Sofronoff asking the media to report responsibly on the subject matter of the Inquiry.

We would ask you draw the article to the attention of Mr Sofronoff.

Kind regards

Sch 2.2(a)(ii)



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THEAUSTRALIAN.COM.AU THE INFORMED AUSTRALIAN

BUSINESS (P13)
THE PwC CLEAN UP
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Secrets of the TITANIC

INSIDE RACISM PROBE CRISIS
BREAKING POINT
NEWS, SPORT (P5, 24)

TREASURY CHIEF'S PRODUCTIVITY ALARM

Priority one call to save good times

TOM DUSEVIC
NATIONAL CHIEF REPORTER

Australia's abysmal productivity performance will wipe out more than half the expected economic bounty from full employment, record migration and the commodity price boom, Treasury secretary Steven Kennedy has warned, as he said faster budget repair would be required if borrowing costs rose more than anticipated.

In a frank post-budget speech on Thursday, Dr Kennedy laid out the nation's economic to-do list, including rebuilding fiscal buffers before the next crisis, improving the quality of taxing and spending, encouraging business investment, better competition policy to support dynamism, and stricter limits on social programs, particularly the National Disability Insurance Scheme.

"While employment and participation are moving in the right direction, productivity is not," Dr Kennedy told a gathering of business economists in Melbourne. "Halting and reversing this decline in productivity growth is a long-term structural challenge that has implications for the fiscal position and living standards more broadly. Tackling this challenge will require continued investment in the productive capacity of the economy."

The candid appraisal from the federal government's top economic adviser comes after unanimous and robust criticism last week from business groups that Jim Chalmers shirked a bold productivity reform agenda in his second budget.

In March, the Treasurer dismissed the Productivity Commission's proposals for workplace flexibility and market-based climate policy in its mammoth five-yearly performance review.

This week Dr Chalmers said the commission was a key institution and would be revamped to provide a better evidence base to shape structural policies.

IR reforms will worsen workforce shortages: bosses

EXCLUSIVE

EWIN HANNAN
WORKPLACE EDITOR

Employers say the federal government's proposed "same job, same pay" labour hire laws risk exacerbating workforce shortages, driving up food prices and creating a "massive compliance bomb for business".

Business groups are increasingly expressing their opposition to the proposed laws, which are designed to crack down on worker exploitation by labour hire firms and are a key plank of Labor's second wave of

industrial relations changes to be introduced later this year.

Employers responding to the government's consultation paper on the proposed laws are seeking to narrow their scope and delay their introduction by pushing to have them subject to a transition period.

In a submission seen by The Australian, the Australian Chamber of Commerce and Industry says the basis for the laws is flawed, and the definition of labour hire under the scheme should be narrow and exclude service providers, recruitment and placement services, contracting arrangements, and group training organisations.

"This policy will have significant ramifications for the Australian economy. The policy

Continued on Page 4

As well, the Treasury chief pushed back against claims by economists the budget would add to inflationary pressures and require a harsher interest-rate response from the Reserve Bank, which has raised its cash rate target from 0.1 per cent to 3.85 per cent over the past 12 months.

Dr Kennedy argued that this financial year and next would see "relative tightening" in the budget position, and welcomed ongoing debate on fiscal policy "to be primarily about the quality of spending and taxing decisions and the sustainability of these decisions—especially given the ongoing challenges we face in these areas".

Dr Kennedy noted smaller deficits in this year's budget would result in a lower level of debt to GDP, which is now expected to peak at 36.5 per cent, or 10 percentage points lower and five years earlier than previously thought. "This is a welcome development," he said. "However, debt-to-GDP is expected to remain higher than prior to the pandemic, even 10 years from now."

"It would not be unusual for another economic downturn to

come along in that time. Australia has not achieved a period of sustained reductions in debt to GDP since before the global financial crisis."

Dr Kennedy said the build-up of debt since the GFC had made the fiscal position "increasingly sensitive to borrowing costs, which have been more volatile recently". The 10-year bond yield, which approximates the average cost of new debt issuance, has risen as high as 4.2 per cent over the past year, but has fallen to about 3.3 per cent of late.

"If yields are higher than budget projections assume, larger improvements to the primary balance will be necessary to reduce debt-to-GDP," he said.

According to sensitivity analysis in the budget, if yields were 150 basis points higher in four years, gross debt-to-GDP would peak three years later and would be three percentage points of GDP higher by 2033-34.

Continued on Page 4

MORE REPORTS P4
EDITORIAL P10
ROBERT GOTTLIEBSEN P21

PM royal letters 'risk relations'

EXCLUSIVE

TROY BRAMSTON
SENIOR WRITER

More than 20 items of direct correspondence between former prime ministers and Queen Elizabeth II have been blocked from public release following a Freedom of Information request because disclosure would damage international relations.

A request by The Australian for letters exchanged between Tony Abbott, Malcolm Turnbull and Scott Morrison and the queen as Australia's head of state found

22 items existed but access has been denied, even though she is deceased and the prime ministers are no longer in office.

The Department of the Prime Minister and Cabinet recognised that the queen was Australia's head of state but said revealing correspondence with her prime ministers in Australia would apparently breach confidentiality and could reasonably be expected to "cause damage" to international relations.

"While the queen was Australia's head of state, she simultaneously occupied the roles of the queen of the UK and queen of other Commonwealth realms,"

the department advised The Australian late last week.

"By nature of multiple roles held by the queen, breaching these conventions could reasonably damage Australia's relations with other realms of which the queen was head of state, including but not limited to the UK, Canada and New Zealand."

The department earlier advised that disclosing a document may "diminish the confidence which another country would have in Australia as a reliable recipient of its confidential information" even though the prime minister is head of

Continued on Page 2

Crown lager or Drumgold bitter? Prosecutor calls beer o'clock



LIAM MENDES

ACT chief prosecutor Shane Drumgold enjoys an early-afternoon beer in the driveway of his Canberra home

KRISTIN SHORTEN
LIAM MENDES
REMY VARGA

With a beer in his hand but deep in contemplation, ACT chief prosecutor Shane Drumgold spent much of Thursday perched in the sun in the driveway of his Canberra home, aware that his grueling ordeal on the witness stand of the Sofronoff inquiry is far from over.

Mr Drumgold's future as Director of Public Prosecutions looked increasingly uncertain as he abruptly began four weeks off work while continuing to defend his handling of Brittany Higgins' rape allegation and Bruce Lehrmann's discontinued prosecution.

With the Board of Inquiry set to resume on Monday to hear evidence from police, the ACT government announced Mr



Higgins



Lehrmann

Drumgold was "on leave at his request" and that Deputy DPP Anthony Williamson SC would act in his position until June 13.

A spokesperson said it was not anticipated that Mr Drumgold's absence from work would impact his planned return to the witness box but a date has not yet been set.

The Office of the Director of Public Prosecutions said Mr Drumgold was "taking leave from the office in order to focus on the Board of Inquiry".

Last week, ACT Attorney-General Shane Rattenbury de-

clined an invitation to express confidence in the DPP, saying only that the Sofronoff inquiry "should be allowed to continue its work".

The 58-year-old refused on Thursday to comment on his sudden absence but appeared to be in deep thought when spotted, casually dressed in a hoodie and track-suit pants, outside his Canberra home.

The high-profile barrister spent part of the afternoon sipping beer in his driveway while chatting with his adult son, who was changing the wheel of an early model BMW.

Ms Higgins, a former Liberal staffer, alleged Bruce Lehrmann raped her in Senator Linda Reynolds' ministerial office in the early hours of March 23, 2019 after a night out drinking with colleagues in Canberra.

Mr Lehrmann was later

charged with sexual intercourse without consent and pleaded not guilty.

The 29-year-old's trial was sensationally aborted in October due to juror misconduct and immediately listed for a retrial in February, before Mr Drumgold discontinued proceedings in December over concerns for Ms Higgins' mental health. Mr Lehrmann maintains his innocence.

In November, Mr Drumgold sent a letter to the ACT's chief police officer, Neil Gaughan, alleging police misconduct before and during the prosecution and calling for a public inquiry into how the case was handled.

That letter sparked the inquiry, which is being conducted by Walter Sofronoff KC, former Queensland solicitor-general and

Continued on Page 6

EDITORIAL P10

Difficult reality of Dan debt disaster

EXCLUSIVE

RACHEL BAXENDALE
VICTORIAN POLITICAL REPORTER

Covid-related spending will account for less than a third of Victoria's projected debt levels by the end of the current financial year, and just over a fifth of the \$165.9bn of net debt the state is projected to reach by 2025-26.

Foreshadowing "difficult choices" ahead of next Tuesday's state budget, Daniel Andrews on Thursday talked up the pandemic as the key cause of the state's financial woes.

But analysis of previous Victorian budgets, budget updates and financial statements demonstrates \$25.3bn, or more than 40 per cent, of debt accrued by the Andrews government since 2019-20 is unrelated to Covid.

The situation is also set to get worse, with state debt projected to increase by another \$49.9bn by 2025-26, amounting to an extra \$75.2bn in debt accumulated in the six years from 2019-20 that was not part of the plan ahead of the pandemic, but is not Covid-related.

On its dedicated website for Covid-19 financial reporting, the Victorian Department of Treasury and Finance attributes a total of \$35.8bn to "coronavirus-related costs", including \$4.4bn in 2019-20, \$13.3bn in 2020-21 and \$18.2bn in 2021-22.

The \$35.8bn equates to 31 per cent of the \$116bn of net debt the

Continued on Page 6

Mandarins work out the gender agenda

MARGINCALL

YONI BASHAN
CHRISTINE LACY

It's an urgent matter occupying the headspace of Treasury's top officials. And it's not interest rates, or wages, the squeeze on supply chains or fears for productivity. It's pronouns, and the use of gender-affirming language in what's long been renowned as one of the stuffiest departments in the land.

Margin Call has obtained a copy of Treasury's newly inked guidelines on how staff should address fellow workers. Signed off on May 9, the guidelines recommend a more prolific use of third-person pronouns in emails and during introductions, with staff encouraged to announce their gender when meeting colleagues.

FULLREPORT P13

SECOND EDITION NO 18,221



Big spending risks inflation backlash, despite surplus
COMMENTARY

AI could blow AUKUS subs out of the water
DEFENCE

Indigenous art program changing lives
INDIGENOUS AFFAIRS



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AUSTRALIAN CAPITAL TERRITORY
BOARD OF INQUIRY
CRIMINAL JUSTICE SYSTEM

22 May 2023

Michelle Gunn
Editor-in-chief
The Australian
2 Holt Street
Surry Hills NSW 2010

By email: Sch 2.2(a)(ii)

Dear Ms Gunn,

I have no doubt that you appreciate that being called to give evidence at a public inquiry can be daunting to a person. I know from my previous experience in conducting public inquiries that the prospect of being required to give evidence can actually cause a witness to become sick. For that reason, inquiry staff take great pains, whenever possible, to support witnesses in a variety of ways to ensure that they can face this potentially distressing experience with some confidence.

It is against that background that I write to you about the photo of Mr Shane Drumgold SC published in the Australian on 19 May 2023. I attach a copy of the photo and its associated article.

That photo appears to me to be capable of an inference.

It might be inferred that the journalists and the photographer associated with the photo took the trouble to discover Mr Drumgold's home address, or covertly followed him to his home, where the photographer hid in a position from which he could take a photo of Mr Drumgold without his knowledge or consent using a telephoto lens. Unlike the photos taken openly of Mr Drumgold, as he went about his professional business, this was an manoeuvre to catch him in an informal state, caught off guard. The result was a photo that is captioned in a clever way to demean its subject: *Crown lager or Drumgold bitter? Prosecutor calls beer o'clock.*

Thus, it might be inferred that the purpose of the publication was to humiliate Mr Drumgold.

As I understand it, a photograph published to support a news article can serve one of two proper purposes. It can corroborate the story. So, the publication of a photo of Mr Drumgold leaving an inquiry hearing corroborates a story about his attendance to give evidence by demonstrating his presence and, to a small extent, it may add some interest.

A photo can also add information to a story by revealing something that the written word alone cannot do, such as when a weeping relative is pictured leaving a sentence hearing.

There may be other purposes of which I am unaware but these are the two that I know about. I am baffled by this photo. It is incapable of serving either of these purposes nor, as far as I can tell, any other proper purpose. Rather, it appears to have been used just to humiliate Mr Drumgold.

If that is so, the publication of the photo, as well as the covert way in which it was obtained, can have legal consequences.

I have pointed out to you that most, if not all, witnesses are loathe to give evidence at a public inquiry for reasons that can be easily understood. The real prospect that one may be stalked to one's home, where a photographer will take a photo calculated to embarrass or humiliate the witness in the public eye, may create a genuine motivation not to cooperate with my inquiry.

I have the power to compel witnesses to give me their evidence, both in private and at a public hearing. However, I rely upon the actual willingness of witnesses to give me their earnest assistance. Without genuine cooperation, freely given, my ability to perform my duty would be hampered. It follows that persons who create such unwillingness are interfering with the conduct of my inquiry.

I therefore ask you to inform me what was your purpose in publishing this particular photo of Mr Drumgold because I myself am unable to discover a relationship between this photograph and a fair report of the proceedings or a report about a matter of public interest. Your response will allow me to determine whether I have to take any steps to ensure the continuity of full cooperation by witnesses who are yet to give evidence, including Mr Drumgold, or to protect them.

I am hoping that a prompt response by you will preclude the need for me to inquire into the issue further. In any event, I would be grateful for your prompt reply, which I will consider in deciding which course to take.

Yours sincerely,



Walter Sofronoff KC

Chair

Board of Inquiry – Criminal Justice System

22 May 2023

Dear Mr Sofronoff,

Thank you for your letter received this morning via email.

I have reviewed the letter carefully and have also sought legal advice.

From the outset, I feel it important to acknowledge that *The Australian* considers your work in conducting the Board of Inquiry particularly important and in the public interest.

We are devoting considerable resources to provide full and in-depth coverage of your Inquiry, and take very seriously our responsibility to produce both accurate and fair reporting of the proceedings and thoughtful, considered analysis of the issues raised in those proceedings.

I note your concerns regarding the publication of the photo of Mr Drumgold enjoying his leave.

While it is our firm view the taking and publication of the photo is not unlawful, we do consider it necessary to address the largely editorial issue you have raised about the purpose of the photo.

The article to which the photo was attached was not simply an article about Mr Drumgold's evidence. In fact, it related primarily not to Mr Drumgold's appearance at the Inquiry but rather to the fact that he had abruptly taken leave from his position..

The online headline for the article is, "ACT DPP Shane Drumgold 'on leave' after Sofronoff inquiry evidence".

The article dealt with matters relating to Mr Drumgold's leave including who would take over Mr Drumgold's position in his absence, the purpose of the leave and the fact that it was unexpected.

It is not, in *The Australian's* view, surprising, remarkable or inappropriate to publish a photo of a person on leave to accompany an article about that person having taken leave.

The publication of the photo was certainly not intended to demean or humiliate Mr Drumgold as your letter alleges.

Having said all of the above, I have taken on board your criticisms and concerns.

Kind regards.



Michelle Gunn
Editor in Chief
The Australian

From: [BOI Notices](#)
To: Sch 2.2(a)(ii)
Cc: [BOI Notices](#)
Bcc: [Walter Sofronoff](#); Sch 2.2(a)(ii); [Eleanor Lynch](#)
Subject: Board of Inquiry - Correspondence from the Chair
Date: Monday, 22 May 2023 10:48:00 AM
Attachments: [22.05.2023 - Correspondence from the Chair - Board of Inquiry - Criminal Justice System.pdf](#)

OFFICIAL

Dear Ms Gunn,

Please find attached correspondence of today's date from the Chair of the Board of Inquiry – Criminal Justice System, Walter Sofronoff KC.

Kind regards

Board of Inquiry – Criminal Justice System
PO Box 1429 Canberra ACT 2601

T (02) 6205 5700

W www.cjsinquiry.act.gov.au

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Sch 1 1.1, Sch 1 1.2, Sch 2.2(a)(ii)



Sch 1 1.2, Sch 1 1.1

Subject: Media complaint

OFFICIAL

Dear Walter and counsels assisting

Sch 2.2(a)(ii) telephoned to complain about the unavailability of police statements. Sch 2.2(a)(ii) is now a freelance journalist.

Sch 2.2(a)(ii) stated that the police officers who are giving, or are due to give, evidence are currently 'sheltered'. The statement of Sch 2.2(a)(ii) was available that enabled media parties to comment on its contents. He informed me that it is a question of justice and unfairness. He commented that it is clear that preferential treatment is currently being given to the Australian for access to statements. He further stated that the police are being given 'tender treatment' unless persons read the Australian. He specifically stated that the Inquiry is currently being 'gamed'.

He stated that equal treatment should be given to all parties and he intends to write about the above issues shortly if it is not rectified.

His phone number is Sch 2.2(a)(ii).

Helen Banks

Executive Director

Board of Inquiry – Criminal Justice System

Level 5 Nara Centre

3 Constitution Avenue CANBERRA CITY ACT 2601 | PO Box 1429, CANBERRA ACT 2601

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From: [Erin Longbottom](#)
To: [BOI Information](#)
Cc: [walter sofronoff](#); [Walter Sofronoff](#)
Subject: Re: Media Watch query
Date: Wednesday, 24 May 2023 4:19:27 PM
Attachments: [image001.jpg](#)

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Dear Helen – see below a proposed response settled by Walter.

Dear Sch 2.2(a)(ii),

The statement of Superintendent Moller, like all statements furnished to the inquiry, was circulated some time ago to the legal representatives of all parties who have been given leave to appear. The statement was tendered to the inquiry as an exhibit on 11 May 2023. It was finally uploaded to the public website last Monday evening after final redactions had been made to it. I trust this responds to your query.

Regards,

Erin

EJ Longbottom KC

Murray Gleeson Chambers, Level 31, 239 George Street, Brisbane, QLD 4000

Tel +61 7 3012 8221 | **Fax** +61 7 3175 4666 | **Mobile** Sch 2.2(a)(ii)

Sch 2.2(a) | **Website** www.murraygleesonchambers.com.au

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From: BOI Information <BOI.Information@inquiry.act.gov.au>

Date: Wednesday, 24 May 2023 at 1:01 pm

To: Erin Longbottom Sch 2.2(a)(ii)

Subject: FW: Media Watch query

OFFICIAL

Dear Erin – please see email below from Sch 2.2(a)(ii) – Media Watch ABC. Can you please provide guidance on a response.

Thanks

Helen

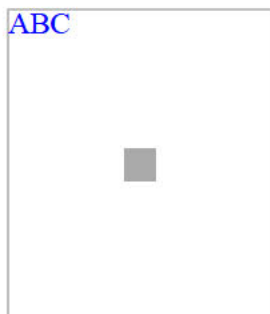
From: Sch 2.2(a)(ii)
Sent: Wednesday, 24 May 2023 11:13 AM
To: BOI Information <BOI.Information@inquiry.act.gov.au>
Subject: RE: Media Watch query

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Hi Helen,

Following up on previous email. Can you please confirm – what time or day was the Moller statement uploaded to the Commission website and is that when it was first publicly made available or were journalists sent it before 23 May 2023?



Sch 2.2(a)(ii)

We acknowledge Aboriginal and Torres Strait Islander peoples as the First Australians and Traditional Custodians of the lands where we live, learn and work.

From: Sch 2.2(a)(ii)
Sent: Tuesday, May 23, 2023 9:32 AM
To: BOI Information <BOI.Information@inquiry.act.gov.au>
Subject: Re: Media Watch query

Thanks Helen. It wasn't there yesterday was it? Can you tell me when it was out there or made available to journalists please?

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From: BOI Information <BOI.Information@inquiry.act.gov.au>
Sent: Tuesday, May 23, 2023 9:28:03 AM
To: Sch 2.2(a)(ii)
Subject: RE: Media Watch query

OFFICIAL

Dear Sch 2.2(a)(ii)

Detective Superintendent Moller's statement is available on the website at:

https://www.cjsinquiry.act.gov.au/_data/assets/pdf_file/0005/2226506/38-Statement-of-Scott-Miller-dated-22-April-2023-WIT.0033.0005.0001_R.pdf

Helen Banks

Executive Director

Board of Inquiry – Criminal Justice System

Level 5 Nara Centre

3 Constitution Avenue CANBERRA CITY ACT 2601 | PO Box 1429, CANBERRA ACT 2601

From: Sch 2.2(a)(ii)

Sent: Monday, 22 May 2023 12:08 PM

To: BOI Information <BOI.Information@inquiry.act.gov.au>

Subject: Media Watch query

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Good morning,

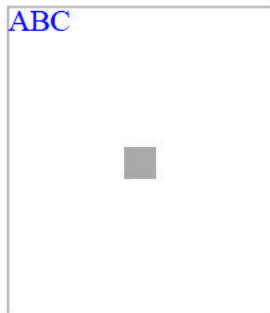
I understand Detective Superintendent Scott Moller has made a submission to the Inquiry you are involved in.

Will the statement be published on the Inquiry website and provided to media or has it been already? I can't see it online, except parts of it in a story in The Australian today.

If the full statement has not been provided to journalists or published on the website can you please let me know when it will be or the time it was?

Sch 2.2(a)(ii)

ABC



Sch 2.2(a)(ii)



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From: [Joshua Jones](#)
To: [Erin Longbottom](#)
Cc: [Eleanor Lynch](#); [Walter Sofronoff](#); [Cuddihy, GenevieveA](#)
Subject: T/I from [Sch 2.2\(a\)\(ii\)](#) @ 1136 on 26 May 2023
Date: Friday, 26 May 2023 12:14:26 PM

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Sch 1 1.1, Sch 1 1.4

Joshua Jones
Barrister

[Murray Gleeson Chambers](#)
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T: [+61 7 3175 4688](tel:+61731754688)

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M: [Sch 2.2\(a\)\(ii\)](#)

E: [Sch 2.2\(a\)\(ii\)](#)

W: www.murraygleesonchambers.com.au

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From: [Atkinson, Carys](#)
To: [Walter Sofronoff](#); [Erin Longbottom](#); [Eleanor Lynch](#); [Joshua Jones](#)
Cc: [BOI Notices](#)
Subject: Final Report
Date: Monday, 31 July 2023 1:38:20 PM
Attachments: [ACT Report - 31 July 2023.docx](#)

Dear Walter and Counsel

Please see attached a word copy of the final report. Carl is organising an objective connect link to provide the full electronic copy of the report provided to the Chief Minister.

Kind Regards

Carys Atkinson | Solicitor Assisting

Board of Inquiry – Criminal Justice System

Level 5 Nara Centre

3 Constitution Avenue CANBERRA CITY ACT 2601 | PO Box 1429, CANBERRA ACT 2601

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From: Sch 2.2(a)(ii)
To: [Walter Sofronoff](#)
Cc: [Banks, HelenP](#)
Subject: Fwd: ABC 730
Date: Sunday, 6 August 2023 12:24:28 PM

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Hi Walter. See below.

Sch 2.2(a)(ii)

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From: Sch 2.2(a)(ii) >
Sent: Sunday, August 6, 2023 10:50:53 AM
To: Sch 2.2(a)(ii) au>
Subject: ABC 730

ABC 7.30 would like to request first television interview with Judge Walter Sofronoff KC as soon as the Judge deems it appropriate.

The Sofronoff inquiry has expeditiously addressed grave concerns over the Public Prosecution's handling of the Lehrmann's rape trial.

The findings reported in the media point to serious failures and a "lack of objectivity" in Public Prosecutor Drumgold's conduct.

However, the leaking of the report by media breaching the Board's trust is now distracting from the fundamental mission of the Sofronoff Board of Inquiry.

ABC 7.30 and host Sch 2.2(a)(ii) can be trusted to handle legally sensitive matters.

We could work around any logistical hurdle.

Best regards,

Sch 2.2(a)(ii)

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