

Email

12 October 2020

Solicitors Assisting
 Board of Inquiry into the COVID-19 Hotel Quarantine Program
lawyers@quarantineinquiry.vic.gov.au

Our ref 13615/19613/80203807

Dear Solicitors Assisting

Board of Inquiry into the COVID-19 Hotel Quarantine Program (Inquiry)

We refer to the above matter and to your letters dated 8 and 10 October 2020 seeking further information and/or documents from the Department of Premier and Cabinet (**DPC**). We are instructed as follows.

1. 10 October 2020 letter

- 1.1 Your letter of 10 October 2020 seeks telephone records of staff who contacted or may have contacted Mr Ashton between 1.16pm and 1.32pm on 27 March 2020 (including certain annotations); copies of text, WhatsApp or similar messages, identifying who decided or may have decided to engage private security contractors in the Hotel Quarantine Program; and any other telephone records DPC has or can obtain identifying who decided or may have decided to engage private security contractors in the Hotel Quarantine Program.
- 1.2 Secretary Chris Eccles and Deputy Secretaries Tim Ada and Kate Houghton were the key DPC staff who engaged in some communications concerning what became the Hotel Quarantine Program before 2pm on 27 March 2020. Accordingly, for the purposes of responding to your 10 October 2020 letter, our inquiries have focused upon their records. If the Board would like DPC to undertake a broader inquiry, please let us know.
- 1.3 We enclose the records of each of Mr Eccles, Mr Ada and Ms Houghton (including the requested annotations).
- 1.4 Mr Eccles' detailed telephone records, obtained from Telstra on 11 October 2020, show that he telephoned Mr Ashton at 1.17pm, with the call lasting 135 seconds. They also show calls made to Simon Phemister at 12.20pm (lasting 361 seconds) and at 1.47pm (lasting 215 seconds).
- 1.5 Given these records were only obtained from Telstra on 11 October 2020, they were neither in DPC's, nor Mr Eccles', possession at the time of responding to NTP-007 or NTP-130, nor at the time of Mr Eccles' oral evidence to the Inquiry. No criticism can or should be made nor adverse inference drawn of Mr Eccles or of DPC for not earlier providing records:
- (a) that were not within their possession; and
 - (b) it was not within their knowledge that the production of those records by Telstra was possible by request without a court order or compulsory statutory process.
- 1.6 Mr Ada and Ms Houghton both use DPC-provided mobile phones. As a result, DPC has the ability to extract, from its computer records, details of calls made (but not received) or SMS texts sent through a mobile phone tower (not over the internet), and to provide them in a

spreadsheet. Nothing in Mr Ada's¹ nor Ms Houghton's² records is relevant and therefore nothing in their records answers the request in your 10 October 2020 letter. Nevertheless, they are produced for your reference and for completeness, including identification of to whom each call was made. There are no relevant text messages (and similar) to be produced in answer to your 10 October 2020 letter beyond those already produced to the Inquiry.

2. 8 October 2020 letter

2.1 DPC has made further inquiries of relevant DPC staff, being:

- (a) Secretary Chris Eccles;
- (b) Deputy Secretary Tim Ada;
- (c) Deputy Secretary Kate Houghton;
- (d) Deputy Secretary Jeremi Moule;
- (e) General Counsel Toby Hemming;
- (f) Rebecca Jarvis (who attended the 27 March 2020 SCC meeting);
- (g) Michael Lemieszek (who attended the 27 March 2020 SCC meeting);
- (h) Miriam Slattery (who attended the 27 March 2020 SCC meeting);
- (i) Helen Stitt (who attended the 27 March 2020 SCC meeting); and
- (j) _____, Mr Eccles' then principal adviser.

2.2 For completeness and by way of explanation for the basis upon which inquiries were made of the above individuals, we note that there are Deputy Secretaries within DPC other than those listed above (namely Brigid Monagle, Fairer Victoria; Matt O'Connor, Industrial Relations Victoria; and Elizabeth Langdon, Jobs and Skills Exchange). However, those other Deputy Secretaries had no role in relation to the Hotel Quarantine Program or matters relevant to it at all before late April at the earliest. DPC has not identified any other relevant DPC staff members.

2.3 Having made those inquiries, with respect to the five queries set out in the 8 October 2020 letter ((a)-(e)), each of those persons listed above have confirmed instructions in the following terms:

- (a) They do not know who made the decision to engage private security contractors in the hotel quarantine program.
- (b) Question (b) is therefore not applicable.

¹ Mr Ada made four calls in the relevant time period: (i) to his voicemail, (ii) to a member of the Premier's Private Office in response to a text message already held by the Board (DPC.0028.0001.0001) and put by Counsel Assisting to the Premier, (iii) to a DPC Executive Director, and (iv) to a DPC employee who, at the time, was employed as Mr Ada's senior adviser.

² Ms Houghton made no calls in the relevant time period.

- (c) They do not have any information that may assist the Board in determining who made the decision to engage private security contractors in the hotel quarantine program.
- (d) Save for Mr Eccles, they did not themselves contact, and they do not otherwise know who contacted or may have contacted, Mr Ashton between 1.16pm and 1.32pm on 27 March 2020. As to Mr Eccles, he telephoned Mr Ashton at 1.17pm, as described above.
- (e) Save for Mr Eccles, question (e) is not applicable. As to Mr Eccles, (i) the telephone records he obtained on 11 October 2020 disclose that he made the contact with Mr Ashton, but (ii) he does not recall the contents of the telephone call. Otherwise, we refer to the observations below.

Observations regarding Mr Eccles' records

- 2.4 **First**, Mr Eccles' evidence was that he does not recall what, if anything, he did in response to Mr Ashton's 1.16pm text message.³ The totality of Mr Eccles' evidence was that he may have telephoned Mr Ashton in response. His evidence was that he could not recall whether he did so.
- 2.5 Critically, he gave evidence that:
- “while I do not recall if I called Mr Ashton after receipt of his text message referred to at [5.5] of his statement, if I had done so I would not have (and would not have been able to) convey any decision about the use of private security — as no such decision had been made by me or anyone to whom I had spoken”.⁴
- 2.6 During cross-examination, Mr Eccles was asked whether he called Mr Ashton to brief him on National Cabinet and the use of police at hotels.⁵ His answer was no, but this was inconsistent with the totality of his evidence. It was not the meaning he was intending to convey as is evidenced by the clear evidence in his written statement and other oral evidence.
- 2.7 During cross-examination, Mr Eccles was also asked whether he had checked his telephone records to determine whether he telephoned Mr Ashton after receiving the text message of 1.16 pm. Mr Eccles' evidence was that he had checked his records; that the records did not reveal the contact; but he was “not sure how complete [his] phone records are”.⁶ We are instructed that the records to which he had access at that point did not identify individual calls.
- 2.8 In response to your 10 October 2020 letter, Mr Eccles approached Telstra to see if further records were available. On 11 October 2020 Mr Eccles obtained further records, which DPC now produces. Those records show that Mr Eccles telephoned Mr Ashton at 1.17pm on 27 March and that the call lasted 135 seconds. Consistent with his evidence, Mr Eccles still does not recall telephoning Mr Ashton.

³ Further witness statement of Christopher Barcroft Eccles dated 16 September 2020 (exhibit HQI0179a) (**Second Eccles Statement**), [21].

⁴ Second Eccles Statement, [23].

⁵ T1794.45-T1795-1 (Eccles XXN).

⁶ T1796.11-20 (Eccles XXN).

- 2.9 **Second**, Mr Eccles gave evidence that “[n]o decision was made by me nor, as far as I am aware, any other person within DPC, to engage private security in the Hotel Quarantine Program”.⁷
- 2.10 **Third**, the telephone records Mr Eccles obtained on 11 October 2020 do not demonstrate that Mr Eccles, or anyone else in DPC, made a decision that private security be used in what became the Hotel Quarantine Program. It is evidence of nothing more than the fact Mr Eccles telephoned Mr Ashton. Mr Ashton’s own evidence was that he does not recall from whom he received the advice referred to in his text message of 1.32pm.⁸ In fact, the use of the equivocal words “I think” as in “I think that’s the deal set up by our DPC” in Mr Ashton’s 1.32pm message supports the fact that the information did not come from Mr Eccles. Had Mr Eccles conveyed some “decision” by him or DPC to use private security, that would have been clear to Mr Ashton.
- 2.11 **Fourth**, a staff member in the Premier’s Private Office sent a text message to a Deputy Secretary in DPC at 1.19pm stating, in relation to the Premier’s upcoming press conference, “[w]e will need also something on food and security for people in hotels, in addition to transport”.⁹ The Deputy Secretary responded saying “Simon is getting back to me ASAP”. The reference to “Simon” is a reference to Mr Phemister, the Secretary of DJPR. This exchange further supports the fact that no decision had been made by Mr Eccles or DPC to engage private security.
- 2.12 **Fifth**, given the National Cabinet meeting concluded at about 1pm,¹⁰ and the decision to quarantine international travellers in hotels was made at that meeting, it is implausible that Mr Eccles or DPC could have been involved in, and then conveyed, a decision to use private security so shortly thereafter.¹¹
- 2.13 **Sixth**, any inference that Mr Ashton was informed of a decision to use private security by about 1.30pm would be inconsistent with:
- (a) Mr Ashton’s own evidence that at a meeting at 2pm that day he asked Commissioner Crisp “if he could confirm what was Victoria Police’s intended role and whether Victoria Police would be asked to guard at hotels”;¹²
 - (b) the closing submissions of the Chief Commissioner of Victoria Police that “CCP Ashton’s evidence is that at the start of the meeting [at 2pm], he was attempting to gather information about the role of Victoria Police. He explained that it was necessary for him to do this because, depending on what the role was proposed to be, a lot of work would be required to put arrangements in place”;¹³ and

⁷ Second Eccles Statement, [22]. See also T1768.4-11 (Eccles XN).

⁸ Witness statement of Graham Leonard Ashton dated 7 September 2020 (exhibit HQI0173a) (**First Ashton Statement**), [5.4].

⁹ DPC.0028.0001.0001 (put to the Premier at T2128.25-T2129.33, albeit apparently not tendered).

¹⁰ T1758.20-21 (Eccles XN)

¹¹ See T1768.21-25 (Eccles XN); T2130.10-17 (Andrews XN).

¹² First Ashton Statement, [2.4(3)].

¹³ See also the Submissions of the Chief Commissioner of Victoria Police dated 5 October 2020 (VPOL.0033.0001.0001) (**VicPol submissions**) at [38(2)]. See also the evidence to which that submission refers.

- (c) both Mr Ashton's and Minister Neville's evidence that it was Commissioner Crisp who stated, at that meeting, that private security would be used¹⁴ (noting there is no evidence suggesting Mr Eccles, or anyone else at DPC, spoke with Commissioner Crisp before that meeting¹⁵).
- 2.14 **Seventh**, Mr Eccles did not convey any "decision" to engage, or even discuss, private security in either of the calls with Mr Phemister. Both their recollections of the first call were to the contrary.¹⁶ Neither appear to have recalled or given evidence regarding the second call but there is no reason to suggest that private security was discussed in that call. That call was made very shortly after Mr Eccles spoke to Deputy Secretary Ada with respect to the text message exchange with the Premier's Private Office regarding when the Program could commence.¹⁷
- 2.15 **Eighth**, in light of the evidence that Mr Eccles may have contacted Mr Ashton following Mr Ashton's text message to him at 1.16pm and other evidence about events later that day, Counsel Assisting, in closing submissions, invited the Board to find that "the decision or the conclusion or the outcome" that private security would be used as the first tier of enforcement was not made before the State Control Centre meeting held on 27 March 2020,¹⁸ which commenced some three hours after Mr Ashton's text message was sent.
- 2.16 **Finally**, at the State Control Centre on 27 March 2020, a DPC representative inquired as follows: "And a general question that we were asked to make sure we understood is what role the ADF will play, please?" Commissioner Crisp responded: "Again, that's why we went through this particular process, to identify where there was a lack of capability or capacity to undertake any of the phases of the operation. I suggest that at this stage we can manage this. The ADF will be doing just exactly what they're doing at the moment, helping us to plan for this particular operation. So at this stage we don't see a need for boots on the ground, so to speak".¹⁹
- 2.17 As can be seen from that exchange, DPC was seeking information late in the day on 27 March 2020 about the security arrangements to be used in the Hotel Quarantine Program — a step it would not have needed to take if it had made (or indeed become aware of) a decision to use private security. That query was made as a result of a query from the Premier's Private Office.²⁰

¹⁴ VicPol submissions at [38(3)], citing T1665.46-1667.21 and T1951.31-46.

¹⁵ See the text exchange between Deputy Secretary Houghton and Commissioner Crisp at 2.04pm (Exhibit HQI0181a).

¹⁶ See T1757.16-T1758.15 (Eccles XN); T1816.3-29 and T1819.36-40 (Phemister XN).

¹⁷ See attached timestamped version of DPC.0028.0001.0001.

¹⁸ T2211.4-8; T2265.1-3.

¹⁹ See transcript of SCC meeting, Exhibit HQI0148(2)b at p 25.4-11.

²⁰ DPC.0001.0001.6686, put to Mr Eccles at T1776.4-32, albeit apparently not tendered.

Yours sincerely



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Chargeable Item	Charge Type Category	Charge Type	Charge Reference	Start WeekDay	Start Date	Start Time	End Date	Origin (Place)	Destination	Number Dialed	Identity of person whose number was dialled	Provider / Network	Rate	Duration (sec)	Volume	Excl GST \$	Incl GST \$
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Mobile Calls	Mobile Calls	MobileNet - National Direct Dialed calls	[REDACTED]	Fri	27-Mar-20	01:11PM	27-Mar-20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	96	0	0	0
Mobile Calls	Mobile Calls	MobileNet - National Direct Dialed calls	[REDACTED]	Fri	27-Mar-20	01:21PM	27-Mar-20	[REDACTED]	[REDACTED]	[REDACTED]	Simon Phemister, DJPR Senior Adviser PPO	[REDACTED]	[REDACTED]	60	0	0	0
Mobile Calls	Mobile Calls	MobileNet - National Direct Dialed calls	[REDACTED]	Fri	27-Mar-20	01:42PM	27-Mar-20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	233	0	0	0
Mobile Calls	Mobile Calls	MobileNet - National Direct Dialed calls	[REDACTED]	Fri	27-Mar-20	01:47PM	27-Mar-20	[REDACTED]	[REDACTED]	[REDACTED]	Chris Eccles, DPC Simon Phemister, DJPR	[REDACTED]	[REDACTED]	25	0	0	0
Mobile Calls	Mobile Calls	MobileNet - National Direct Dialed calls	[REDACTED]	Fri	27-Mar-20	02:38PM	27-Mar-20	[REDACTED]	[REDACTED]	[REDACTED]	Senior Adviser PPO	[REDACTED]	[REDACTED]	48	0	0	0
Mobile Calls	Mobile Calls	MobileNet - National Direct Dialed calls	[REDACTED]	Fri	27-Mar-20	02:53PM	27-Mar-20	[REDACTED]	[REDACTED]	[REDACTED]	Senior Adviser PPO	[REDACTED]	[REDACTED]	49	0	0	0
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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hotels, in addition to transport. PM will say all states need this operational by midnight Saturday - so if the answer is we can't do from tonight that's ok (but the sooner the quarantine obviously the better)

1:19 pm

Premier will stand up at 3pm, so any clarity on whether we can go from tonight before then would be great

1:37 pm

Simon is getting back to me ASAP. Tim

1:59 pm

We will do it from tomorrow Tim to give everyone more time to iron out the details. Just got confirmation

2:19 pm

Ok, thanks Tim

2:36 pm