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SPECIAL INQUIRY

THE HONOURABLE ACTING JUSTICE ROBERT ALLAN HULME

5 THURSDAY 10 AUGUST 2023

INQUIRY INTO THE CONVICTIONS OF THE CROATIAN SIX

10 Ms J Needham SC with Mr M Short for the NSW Commissioner of Police
Mr D Buchanan SC with Mr S De Brennan for Maksimilian Bebic, Vjekoslav
Brajkovic and Mile Nekic
Ms T McDonald SC with Ms T Epstein - Counsel Assisting the Inquiry

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AUDIO VISUAL LINK COMMENCED AT 10.02AM

JUDICIAL OFFICER: Yes, Ms McDonald?

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MCDONALD: Your Honour, I seek leave, with my learned friend, Ms Epstein, to appear as Counsel Assisting in the Inquiry.

JUDICIAL OFFICER: You're most welcome.

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BUCHANAN: May it please, your Honour, my name is Buchanan. I seek leave to appear for three of the former accused, the ones who were the petitioners before Wright J, Mile Nekic, Maksim Bebic, and Vjekoslav Brajkovic. I seek leave to appear for them, together with my learned junior, Mr De Brennan, who is on AVL, out at Campbelltown.

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JUDICIAL OFFICER: Yes.

BUCHANAN: Thank you very much, your Honour.

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JUDICIAL OFFICER: Clearly, you have a substantial and direct interest to represent, and you're most welcome, as well.

BUCHANAN: May it please, your Honour.

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JUDICIAL OFFICER: Ms Needham?

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NEEDHAM: Your Honour, my name is Needham. I seek leave to appear for the Commissioner of Police, of the NSW Police Force. I appear today and seek leave for my learned junior, Mr Mathew Short, and, eventually, Mr Ryan Coffey, to appear for the Commissioner.

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JUDICIAL OFFICER: Ms Needham, I know the Commissioner was given notice and invited to consider appearing. I have in mind a basis upon which the NSW Police, generally, might wish to appear, but can you articulate what the basis is, as perceived by the organisation itself?

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5 NEEDHAM: Your Honour, we would be seeking leave to appear on the basis that there will be, as we understand it, allegations made about conduct of individual police. To the extent that that affects the institution, and the Commissioner's role as the leader of that institution, that would be, we would say, something that the Inquiry may be assisted by.

10 JUDICIAL OFFICER: Yes. It's not envisaged that the representation would extend to protecting the individual - or safeguarding the interests of the individual officers?

NEEDHAM: Your Honour, I do not think so. I have not yet had the capacity to look at the entirety of the evidence, but I do not think that any of the police would be particularly represented by the Commissioner.

15 JUDICIAL OFFICER: Yes. I would imagine that, if they sought to be represented, it would be separately.

NEEDHAM: Separately, yes.

20 JUDICIAL OFFICER: On the understanding that there is an interest in the organisation of the NSW Police in relation to practices and procedures that may come under examination during the Inquiry, I grant leave for the appearance, as you seek it.

25 NEEDHAM: May it please, your Honour.

JUDICIAL OFFICER: Yes?

30 MCDONALD: Your Honour, in 1981, after a trial which continued over 172 sitting days, six men were convicted of a number of offences. The six men, known as "The Croatian Six", were Maksimilian Bebic, Mile Nekic, Vjekoslav Brajkovic, Anton Zvirotic, Joseph Kokotovic and Ilija Kokotovic. They were convicted of offences of participating in a conspiracy to bomb two travel agencies in Sydney, a Serbian social club, a theatre, and Sydney Water supply pipes, as well as other offences, of possessing explosives or stealing.

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40 On 17 February 1981, the men were sentenced to 15 years' imprisonment, but it appears they were released after serving about seven or eight years of their sentence. An appeal to the Court of Criminal Appeal was unsuccessful. In subsequent years, applications were made, pursuant to the relevant statutory provisions, for a review of those convictions. Until last year, those applications were unsuccessful.

45 In 2021, an application was filed in the Supreme Court, on behalf of Mr Bebic, Mr Brajkovic and Mr Nekic, for an inquiry into their convictions. On 30 August of last year, his Honour Wright J exercised his discretion, under s 79(1) of the *Crimes (Appeal and Review) Act 2001* (NSW), to direct that an inquiry be conducted into those convictions. In addition to the three applicants for the Inquiry, his Honour, of his own volition, also included that the convictions of
50 Mr Zvirotic, Joseph Kokotovic and Ilija Kokotovic would also be subject to the

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Inquiry.

5 Then, on 16 March this year, his Honour, the Chief Justice, pursuant to s 79(1)(a) of the *Crimes (Appeal and Review) Act 2001* (NSW), appointed your Honour to conduct the Inquiry.

10 Your Honour, today, we anticipate that we will first identify broadly what we anticipate the scope of the Inquiry will be. There are some documents that we will seek to tender. Also, we would seek some further orders, concerning the progression of the Inquiry.

15 Turning to the scope of the Inquiry, described broadly, the Inquiry will focus on important aspects of the evidence led at the trial, but, in doing so, it will look further than merely an examination of transcripts and exhibits. Again broadly, there were two key parts of the evidence at the trial. There was the evidence of a witness Vico Virkez, and then there was the evidence of a number of police officers, who gave evidence of confessions or admissions made by the six men, and also evidence of finding equipment and explosives at certain locations.

20 The witness Vico Virkez was a witness who, to adopt the contemporary language of the *Evidence Act 1995* (NSW), was criminally concerned in the events which gave rise to the prosecutions. Indeed, he was the person who alerted the authorities to the bomb threats, and his information led to the arrest and charging of the men. He gave evidence at their trial. We anticipate that the Inquiry will examine whether his evidence at trial was deliberately false in a number of aspects.

30 This also raises a broader role of Mr Virkez. That is, his connection with the Yugoslav Intelligence Service and whether he was acting, or being used, as an informer or an agent provocateur by that service. Questions of providing false information to the police and also to ASIO may also arise.

35 The second aspect is the evidence of the police officers concerning confessions or admissions given by the men and, as we outlined, the finding of explosives and other equipment at locations associated with the men.

40 Another focus of the Inquiry, we anticipate, will be information that has been withheld from the defence at the time of the trial, whether pursuant to a claim of public interest immunity that was upheld, or possibly on illegitimate grounds. In particular, in 2018, the declassification and availability of some ASIO records should allow the Inquiry to investigate at least some of that aspect.

45 Your Honour, that is a very broad description of what we anticipate the Inquiry will be focusing on.

50 We were now going to turn to the tender of documents and, also, the question of orders, but, before we leave the question of the focus and scope of the Inquiry, we do note that we will seek an order that the parties make any further

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submissions as to the focus or scope of the Inquiry by 22 September for consideration by your Honour.

Your Honour, in respect of the material we would seek to tender--

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JUDICIAL OFFICER: Sorry, Ms McDonald, just before you proceed to that, just following on from your very brief outline of the anticipated scope of the Inquiry, you've referred to the evidence at the trial, for the prosecution, given by police officers, as to confessional statements made, and certain things said to have been recovered, which I understand was controversial at the trial.

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MCDONALD: Yes, your Honour.

JUDICIAL OFFICER: You heard my exchange with Ms Needham earlier about individual officers and whether they might seek to be represented at the Inquiry. Have officers been notified of the existence of the Inquiry and how it might affect them?

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MCDONALD: Your Honour, may I describe that as a work-in-progress. A list of police officers who we consider may be able to give relevant evidence has been drawn up, and enquiries have been undertaken about locating those officers. I can indicate to your Honour that the enquiries, so far, have indicated that a number of the officers have passed away. There are other officers who we have identified as being the officers who were witnesses or referred to in documentation and for some of them we do have possible addresses and contact numbers. We are currently contacting those officers, or ex-officers, to confirm that we do have the right person, and also, then, informing them of the Inquiry, their possible interest, and inviting them to contact the solicitors assisting the Inquiry for further information. But, as I said, your Honour, it is a work-in-progress. A lot of work has been done, but we are still continuing with that job.

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JUDICIAL OFFICER: Thank you.

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MFI #1 TENDER INDEX AS OF 10/08/23

MCDONALD: Your Honour, to our right is a trolley, I think, with 16 volumes on it. Your Honour, if I may take you to MFI 1, the first exhibit that we would tender is described in the left-hand column as number 1. They're the formal documents establishing the Inquiry and they are to be found in the first part of vol 1 of the tender.

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JUDICIAL OFFICER: Are you seeking to have these individually marked or, in their entirety, as one?

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MCDONALD: Your Honour, the proposal was, for example, the documents which come under number 1 to be marked as Exhibit 1, the documents under number 2, which are transcripts, to be marked as Exhibit 2. Then, and this is on p 15, the judgments folder, which is vol 15, for that to be marked as Exhibit 3. Then, your Honour, on p 17, the exhibits, under s 4, to be marked

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as Exhibit 4, and they're to be found in vol 16.

JUDICIAL OFFICER: Those items will be marked as you have indicated.

5 EXHIBIT #1 FORMAL DOCUMENTS ESTABLISHING THE INQUIRY,
ADMITTED WITHOUT OBJECTION

EXHIBIT #2 TRANSCRIPTS, ADMITTED WITHOUT OBJECTION

10 EXHIBIT #3 JUDGMENTS, ADMITTED WITHOUT OBJECTION

EXHIBIT #4 EXHIBITS, ADMITTED WITHOUT OBJECTION

15 MCDONALD: Your Honour, if I may turn to the progression of the
Inquiry. There has been circulated with the parties a proposed short minutes
of order for today, with some dates nominated. If I may broadly describe it,
your Honour, it anticipates that the evidence in the Inquiry would be called in
either two tranches or two blocks. It proposes that evidence be called in the
20 week commencing 4 December, with some witnesses, and then a longer
period, of probably about two weeks, being set down next year.

Before progressing with the short minutes of order, does your Honour have a
copy?

25 JUDICIAL OFFICER: Not that I can immediately put my hands on.

MCDONALD: Your Honour, maybe if I can hand up a copy, which, again,
could be--

30 JUDICIAL OFFICER: A copy was sent to me in advance, but it's
elsewhere. Yes?

35 MCDONALD: Your Honour, as foreshadowed in the answer to your Honour's
question, the collation of material and identification of witnesses is
ongoing. What we anticipate is that, in the first tranche, we would call
evidence from Mr Brajkovic and also Mr Bebic, and also, depending upon
identification or location, maybe one or two other witnesses. The police
officers, we anticipate, if we can find them, will be giving evidence next year.

40 Your Honour, the orders set out a proposed a timetable and also the
setting-down of the first hearing block on 4 December. May I indicate, your
Honour, that last night we've received communication from our learned friends
that some of those dates create difficulties for the availability of counsel. In the
time available, we haven't been able to have a full discussion with them. One
45 proposal, your Honour, is, instead of making the orders today, if your Honour
was minded, for us to continue our discussions with our learned friends, to see
if there can be any accommodation with possible dates, and then to put that to
your Honour, to ascertain whether that is convenient for your Honour and
whether your Honour would be minded to make those orders.

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5 We are keen to start the Inquiry this year and to have at least some evidence in that first week. As currently advised, we don't think the evidence will take the five days - it will probably take at least a couple of days, but not the whole five days. Whether our learned friends can accommodate that limited number of days with their other obligations, again, is something that we would seek to explore.

10 Your Honour, if I may just return to the short minutes of order. It's anticipated that Counsel Assisting will issue a proposed witness list, and also give an indication of other evidence that may be relied upon in that first tranche. Order 4 anticipates that, if a party wishes to place written evidence before the Inquiry for that first hearing block, it should be provided at a date prior to those dates. I had a conversation with my learned friend Ms Needham
15 yesterday. She suggested that, in determining whether any further evidence is required, an indication of the witnesses who would be called would be useful, to obtain that first. Upon reflection, that has some merit, so we were going to, again, maybe, amend some of the dates of these orders, your Honour, to accommodate that suggestion.

20 I think the main issue at the moment, your Honour, is the question of availability of some counsel, some of whom have been involved in this matter for many years, and whether it is possible to accommodate it, though, acknowledging that trying to accommodate diaries of counsel is a very challenging exercise.

25 JUDICIAL OFFICER: Yes. I'm comfortable with the matter being left at the moment, so that some further discussions can be had. I can indicate that, given all of the circumstances, there is scope for some flexibility about this, but with the proviso that, as you have indicated, I, too, am anxious for the matter to
30 at least commence with some days of hearing this year. I'd be reluctant to have it go beyond that. I would like to at least get a start, with a view to it continuing, as the draft indicates it will, in about late March next year. If that can be accommodated, at all, with the different circumstances, the conflicting circumstances, that you've mentioned, I'd appreciate that.

35 All right. I'll leave the making of these orders. I'll make them in chambers, once these matters have been further discussed.

40 MCDONALD: Thank you, your Honour. If your Honour pleases.

JUDICIAL OFFICER: Yes. Ms Needham?

45 NEEDHAM: Your Honour, I was just rising to say that my instructions are that the Commissioner would be happy to assist in the location of whatever officers they still have contact with; so, perhaps the solicitors could discuss that.

JUDICIAL OFFICER: Yes. That would be appreciated. Thank you, Ms Needham.

50 MCDONALD: Your Honour, I failed to mention one matter. An Order for

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5 Production was served on NSW Police. The documents were returnable last Friday. Again, I had a conversation with my learned friend about that. During that conversation, she indicated that the Commissioner requires more time to locate the documents, and also indicated it was a matter of locating documents, making sure that they're the correct documents in answer to the order, and that there are no issues of either protective orders or confidentiality orders that need to be sought about the material. My learned friend raised an extension of five weeks from last Friday.

10 Your Honour, we have some sympathy because the trial was in the early 80s and finding documents from such a long period, we anticipate, will be a bit of a challenge. So, from Counsel Assisting's perspective, we would have no objection for that amount of time being granted to the Commissioner of Police.

15 JUDICIAL OFFICER: I would readily accept that there are some challenges involved in this exercise, in various ways, including what you've just described, and I grant the extension.

20 NEEDHAM: I'm grateful to your Honour.

JUDICIAL OFFICER: Mr Buchanan, anything you wish to raise?

25 BUCHANAN: Not at this stage, your Honour. We note the first three paragraphs of the proposed short minutes and have nothing to say about those. The rest of them involves dates. We don't have any submission to make as to the structure of those paragraphs; it's just if we could have discussion with our learned friend about those dates and, hopefully, come to an arrangement that will be suitable to everyone, including, of course, the Inquiry.

30 JUDICIAL OFFICER: All right. Yes, that's fine. Thank you, Mr Buchanan.

35 Ms McDonald, once these proposed orders are finalised and I make them in chambers, for the public who may be interested, there is a website for the Inquiry?

40 MCDONALD: Yes, there is, your Honour. It contains information; for example, it listed today's direction hearing and also provided a link. Your Honour, maybe if I can get the address for the website and we might read it on to the record, if my learned junior can help me with that. Your Honour, the website is called the croatiansixinquiry.dcj.nsw.gov.au.

45 Your Honour, at the moment, assuming that we can put some agreed short minutes of order to your Honour in chambers, we didn't anticipate the need for another directions hearing. That's just on the proviso about the individual police officers. The individual police officers may obtain their own representation, or may seek to appear themselves, and it may be a matter, your Honour, of seeking authorisation for them to appear in the December block of evidence. If we could attempt to facilitate that, or, if there is some delay in authorisation being obtained, we would propose, on a conditional

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basis that authorisation will be granted, that they be given access to the material to allow for preparation for the week of hearing in December.

5 JUDICIAL OFFICER: That's a very sensible suggestion, I might say. Thank you.

AUDIO VISUAL LINK CONCLUDED AT 10.29AM

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