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SPECIAL INQUIRY

THE HONOURABLE ACTING JUSTICE ROBERT ALLAN HULME

5 THURSDAY 9 NOVEMBER 2023

**INQUIRY INTO THE CONVICTIONS OF THE CROATIAN SIX**

10 Mr D Buchanan SC for Maksimilian Bebic, Vjekoslav Brajkovic and Mile Nedic  
 Mr G Woods KC with Mr B Haverfield for Jan (John) Krawczyk, John Marheine,  
 Christopher Ingram, Brian Harding, Richard Grady, Ian Kennedy, Brian  
 Howard, Michael Simmons, Robert Musgrave, Colin Helson, Victor Jefferies,  
 Rodney Harvey, Alexander Booth, Clive Silvester, Ian Jameson, and John  
 Wilson  
 15 Mr A Brown for the Office of the Director of Public Prosecutions (NSW)  
 Mr R Coffey for the Commissioner of NSW Police  
 Ms T McDonald SC with Ms T Epstein - Counsel Assisting the Inquiry

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HIS HONOUR: Yes, Ms McDonald?

MCDONALD: If your Honour pleases. I appear as Counsel Assisting with my  
 learned friend, Ms Epstein.

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HIS HONOUR: Yes. Mr Buchanan?

BUCHANAN: Buchanan, for the petitioners. May it please the Court.

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WOODS: If your Honour pleases. Woods, and with me, Mr Haverfield, briefed  
 by Mr Madden. We appear for all of Mr Madden's clients, with one  
 exception. Does your Honour wish me to read the names onto the record?

HIS HONOUR: I think you should.

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WOODS: I seek your leave to appear.

HIS HONOUR: Yes.

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WOODS: The names are Jan (John) Krawczyk, John Marheine, Christopher  
 Ingram, Brian Harding, Richard Grady, Ian Kennedy, Brian Howard, Michael  
 Simmons, Robert Musgrave, Colin Helson, Victor Jefferies, Rodney Harvey,  
 Alexander Booth, Clive Silvester, Ian Jameson, and John Wilson.

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HIS HONOUR: On the list I have, Mr Woods, there's a person by the name of  
 Counsel who you did not mention. Is that the one--

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WOODS: Your Honour, I'm instructed that we haven't been able to make  
 contact, but in due course, I may be seeking leave in relation to that gentleman  
 as well. But other than that, we seek leave.

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HIS HONOUR: Does anyone have any opposition to those former officers being granted leave to appear? No. I grant those 16 persons you've nominated leave to appear and presented as you've indicated. Thank you Mr Woods.

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BROWN: Your Honour, my name is Brown. I seek leave to appear on behalf of the Director of Public Prosecutions for New South Wales.

10 HIS HONOUR: Thank you Mr Brown. Does anyone have anything to say in opposition to leave being granted to the Office of the DPP appearing? No. Mr Brown, your client has leave to appear thank you. Yes, anything else?

15 COFFEY: Your Honour, my name is Coffey. I understand your Honour granted leave to the Commissioner of Police, and I seek to appear for the Commissioner on this occasion. Ordinarily, I'm led by Ms Needham and with Mr Short.

20 HIS HONOUR: Your appearance is noted. Is there anything else?

MCDONALD: I'm sorry, your Honour.

HIS HONOUR: No. Is there anything else, Ms McDonald?

25 MCDONALD: Your Honour, the purpose of the direction hearing, other than for leave to be granted to others to appear, is to give an update on the progress of the Inquiry in preparation for the hearing period which has been set down in December, which we've described as the first tranche of evidence.

30 Your Honour, on 2 November, the parties were served with a proposed scope of the Inquiry, proposed witness list for the first hearing tranche, index and tender bundle for the first hearing block, and a non-publication order. The parties were requested to advise whether there were any issues as to the proposed scope of the Inquiry and provide a written outline of those issues by  
35 close of business on 7 November 2023. To date, no written outline has been received from the parties in respect of the scope.

Your Honour, Mr Buchanan of Senior Counsel--

40 HIS HONOUR: I'm sorry, Ms McDonald. Just before you go on, I understand that the scope of the Inquiry as proposed was circulated consequent upon some submissions or correspondence having been received by those assisting me; is that correct? We should acknowledge that.

45 BUCHANAN: May it please the Inquiry. Yes.

MCDONALD: Yes, your Honour.

50 HIS HONOUR: Yes. A rather extensive submission, particularly on behalf of the petitioners.

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5 MCDONALD: Yes, your Honour. Your Honour, Mr Buchanan raised with me further material concerning the issue of police conduct around the time of the arrest and then the trial of the petitioners and concentrating on the topic of police verballing. Your Honour, some additional material has been provided to our instructing solicitors, including electronic materials on the phenomenon of police fabrication of evidence in the period centring 1979 to 1981. It contains a number of research and newspaper articles on police verballing. Then my instructing solicitors received a further report to parliament, Operation Florida, volume 1, by the Police Integrity Commission.

10 Your Honour, those materials are currently being reviewed, but we do note that within the proposed tender bundle are extracts from the Wood Royal Commission which cover those topics. But we have been provided with those material, and we will review it.

15 HIS HONOUR: Alright.

20 MCDONALD: Your Honour, if we could then turn to the witness list. Again, your Honour, submissions were received by the petitioners concerning proposed witnesses for the first tranche, and as we have stated, a proposed witness list has been circulated.

25 There have been some developments since the circulation of that list, your Honour. Mr Brajkovic and Mr Stipic are expected to be available to give evidence during that first hearing block. Mr Bebic, it was proposed that he be called, but that is subject to confirmation of his medical status, and there are still some enquiries being made about that.

30 Ian Cunliffe, the former Head of Legal at the Department of Prime Minister and Cabinet, was included on the list. However, it is now proposed that his evidence be postponed until the second hearing block next year. The reason for that is that further notices have been issued, and further materials are expected to be produced by various Commonwealth agencies which may be relevant to the evidence of Mr Cunliffe. Those orders for production are returnable either just before or after the first hearing block, and it is our view that Mr Cunliffe would be better placed to give evidence once we receive that material so parties are given access to it, which may govern any questions that they would wish to ask of Mr Cunliffe.

40 HIS HONOUR: I suppose theoretically, one possibility would be to commence his evidence in the first tranche of hearing in December, and then continue it into the new year. But I take it from what you say that it's regarded as the sensible approach that it not even commence until all of the material has been received and assessed.

45 MCDONALD: Yes, your Honour.

HIS HONOUR: Yes. I understand.

50 MCDONALD: Your Honour, also on the witness list were three journalists. If I

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can focus first on Chris Masters and Joey Watson. Contact has been made with those two gentlemen. Again, notices have been issued for production of documents from them, and we are waiting for that material to be produced, and then a decision can be made as to whether there is utility in calling them.

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Mr Paul McGeough, we have tried to contact him through his old employer, the Sydney Morning Herald, and also an email address that we located in some of the other material that's been obtained, and we have been unsuccessful. It seems or we suspect that he may be retired and living in the United States, but we're still making further enquiries about where he is. What we would ask through your Honour is that if any of the parties have any more up to date contact details about Mr McGeough, if that could be provided to our instructing solicitors.

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HIS HONOUR: Alright. That's noted, thank you.

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MCDONALD: Your Honour, given the position with Mr Cunliffe, it is now proposed that the second hearing block, that was listed for the period 25 March and 5 April 2024, should be extended for a week. During the period already set down, we have Easter, so we lose, obviously, the Friday and the Monday. Given Mr Cunliffe, depending on the material, his evidence may take a little bit of time, in all those circumstances, our suggestion or our proposal would be that the second tranche be extended for another week.

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HIS HONOUR: I agree.

MCDONALD: Furious agreement.

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HIS HONOUR: Yes.

MCDONALD: Your Honour, they were the only matters that we wish to raise in updating the progress of the matter leading up to the first tranche of hearing.

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HIS HONOUR: Can I just say, for various and good reasons, the hearings in relation to this Inquiry are taking a reasonable amount of time to come on. The documentary material appears to be vast, and there's still documents being sought, as you've indicated. I'm concerned that if we have time within the proposed three weeks of the second tranche of hearing time in late March, going into April next year, if there is time, I'm wondering whether we might be in a position to proceed straight into submissions. If that's thought to be unlikely, perhaps because of the time that might be needed to formulate submissions after hearing the evidence, that we should give thought sooner rather than later to setting aside some hearing time for submissions to follow. That needn't be done now, but I would ask that some thought be given to that and what might be the most convenient course. I would not want to get to the end of the hearing in early April and then have a question as to when people might be in a position to proceed into submissions with various things that people might have that conflict in the near further from that point. Can that be thought through?

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MCDONALD: Your Honour, could we propose that at some point during the first hearing week, if we can revisit that before your Honour?

5 HIS HONOUR: Yes, okay. If people can come prepared in that first week in December to deal with that, we'll do so. Yes.

MCDONALD: If your Honour pleases.

10 HIS HONOUR: Is there anything else anyone would like to raise at this point?

WOODS: Your Honour, may I just seek some instructions?

HIS HONOUR: Certainly, Mr Woods.

15 WOODS: Nothing to add at this stage, your Honour. My learned friend, Mr Haverfield, asked are we confirming that the first hearing is from 8 to 12 December. Sorry. The extended second tranche is from 8 to 12 April. Is that--

20 HIS HONOUR: If that's the next week following the Friday 5 April, I think so.

WOODS: Okay.

25 HIS HONOUR: Mr Coffey.

COFFEY: Your Honour, I accept that the convenience of the parties is not necessarily a primary consideration in this matter, but with respect to the matter, as your Honour's observed, has a substantial amount of information, and whilst I don't cavil with a need for a further week in terms of - my concern is that the availability of, particularly for the police, there are three of us, but all three of us are already engaged the following week. My leader texted me to tell me she has a five-week hearing immediately afterwards. I have some difficulty in terms of notice and about what we can specifically do about that in resources, and whether or not it needs to be the immediate week after. I'm not sure whether all of the other parties are in a position to simply continue on that week as well. But I much accept that it's taken some time to get to this point, and also material. I'm just conscious that there is a lot of material then to find other people to come into the matter as well.

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40 HIS HONOUR: Yes. I understand your concern, Mr Coffey, but I think I have to leave things as they have been proposed earlier this afternoon. We don't know whether we will definitely need a third week.

45 COFFEY: Of course.

HIS HONOUR: We're setting it aside in case we do.

COFFEY: Yes, your Honour.

50 HIS HONOUR: What might remain to be done in a third week is unknown. It might be in relation to topics that are of particular interest to those

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who you represent, or maybe not.

COFFEY: I appreciate that.

5 HIS HONOUR: I think we'll just leave things as they are, and we'll deal with those sorts of issues, as the situation becomes clearer.

COFFEY: Thank you, your Honour.

10 HIS HONOUR: Thank you, Mr Coffey. Nothing else? I thank you for your attendance here today.

ADJOURNED TO MONDAY 4 DECEMBER 2023