

THE BOARD OF INQUIRY INTO THE COVID-19 HOTEL QUARANTINE PROGRAM

AFFIDAVIT OF RICHARD DOUGLAS MURPHY

Date of document: 2 November 2020

Filed on behalf of the Department of Health and Human Services

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Reference RLB 1305953

I, **RICHARD DOUGLAS MURPHY** of 525 Collins Street Melbourne in the State of Victoria, Solicitor, make oath and say:

1. I am a partner of MinterEllison, the solicitors for the Department of Health and Human Services (**DHHS**). Together with my partners, Rebecca Bedford and Melinda Smith, I have the conduct and care of this proceeding on behalf of DHHS. Except where I otherwise indicate, I make this affidavit from my own knowledge.

Notices to Produce

2. On 15 October 2020, the Board of Inquiry into the COVID-19 Hotel Quarantine Program (**Board**) served on Kym Peake, as Secretary for the Department of Health and Human Services (**DHHS**) a Notice to Produce marked as 'NTP-163'. NTP-163 required the production of:
 - (a) a copy of the email sent to Professor Brett Sutton on 27 March 2020 bearing the titled 'Re: Vic Hotel Quarantine Arrangements', and any emails responding to, forwarding and/or referring to that email, including the email sent from Professor Sutton to Braedon Hogan at 6.46pm on 27 March 2020; and



- (b) a copy of the email sent from Dr Finn Romanes to Mr Noel Cleaves on 1 April 2020 bearing the title 'Information – Chain of Command – People in Detention', and any emails responding to, forwarding and/or referring to that email.
2. On 19 October 2020, the Board served on DHHS a Notice to Produce marked as 'NTP-165'. NTP-165 required the production of:
- (a) the 'two other emails' referred to in the first paragraph on the second page of the letter from Minter Ellison to Solicitors Assisting the Board dated 19 October 2020, and any emails responding to, forwarding and/or referring to either or both of those 'two other emails'; and
- (b) any emails responding to, forwarding and/or referring to the email sent from Dr Finn Romanes bearing the title 'RE: Smoking policy – Operation Soteria' at 7.50pm on 1 April 2020.

DHHS Searches

3. I am informed by a Cyber Forensics Analyst, Prevention, Detection & Complaints, Integrity Unit of DHHS, that he undertook the searches listed below of the DHHS exchange mailbox for DHHS email users. I understand that the exchange mailbox is a system that contains DHHS emails including those sent, received, saved and/or deleted.
4. The Cyber Forensics Analyst informed me that the searches undertaken were:

No.	Description	Date Range
1.	Subject line search using the following phrase: 'Information - Chain of command - people in detention'	1 April 2020 - 20 October 2020
2.	Subject line search using the following phrases: <ul style="list-style-type: none"> • 'Governance of mandatory detention implementation' • 'VIC Hotel Quarantine arrangements' • 'Passengers under detention having Covi swabs at hospitals' • 'Smoking policy - Operation Soteria' 	1 April 2020 – 20 October 2020

No.	Description	Date Range
3.	Subject line search using the following phrases: <ul style="list-style-type: none"> • 'Information - Chain of command - people in detention' • 'Governance of mandatory detention implementation' • 'VIC Hotel Quarantine arrangements' • 'Passengers under detention having Covi swabs at hospitals' • 'Smoking policy - Operation Soteria' 	27 March 2020 - 31 March 2020
4.	Attachment name search using the following phrases: <ul style="list-style-type: none"> • 'Information - Chain of command - people in detention' • 'Governance of mandatory detention implementation' • 'VIC Hotel Quarantine arrangements' • 'Passengers under detention having Covi swabs at hospitals' • 'Smoking policy - Operation Soteria' (this was split into two batches 27 March - 27 Sep, 28 Sep to 20 Oct)	27 March 2020 - 20 October 2020
5.	Search over entire email including email body and attachment content using the following phrases: <ul style="list-style-type: none"> • 'Information - Chain of command - people in detention' • 'Governance of mandatory detention implementation' • 'VIC Hotel Quarantine arrangements' • 'Passengers under detention having Covi swabs at hospitals' • 'Smoking policy - Operation Soteria' 	27 March 2020 - 20 October 2020

6. I am also informed by the Cyber Forensics Analyst that:

- (a) for the searches referred to in paragraphs 3, 4 and 5 above, he used 26 March 2020 as the date search criteria because the search through the platform is done based on UTC time. I understand that, if he started the search at 27 March 2020 (UTC), it would potentially have missed emails that were sent/received on 27 March 2020 (AEDT); and
- (b) copies of all the documents identified by the above searches were sent by DHHS to MinterEllison by way of share file transfers (**Share File Transfers**).

MinterEllison Searches & Review

7. I am informed by a Coordinator Lead (**Coordinator Lead**) of MinterEllison's Legal Technology Consulting Team (**LTC Team**) that MinterEllison received the Share File Transfers, and that the LTC Team uploaded them onto a Nuix Discover (formerly known as Ringtail) Database for this matter (**Ringtail Database**) on or around 20 October 2020, 22 October 2020, 23 October 2020 and 25 October 2020.
8. I am also informed by the Coordinator Lead that, as part of the processing and uploading of documents to the Ringtail Database, duplicate documents were automatically removed by a technology assisted deduplication process.
9. I am also informed by the Coordinator Lead that on 26 October 2020 he undertook searches of all of the documents held on MinterEllison's Ringtail Database relating to this matter, including those received by the Share File Transfers, and those already held in the Ringtail Database prior to 20 October 2020, as follows:
- (a) a separate email subject line search for each of the following subject lines:
- (i) 'Information - Chain of command - people in detention';
 - (ii) 'Governance of mandatory detention implementation';
 - (iii) 'VIC Hotel Quarantine arrangements';
 - (iv) 'Passengers under detention having Covi swabs at hospitals'; and
 - (v) 'Smoking policy - Operation Soteria'; and
- (b) a separate full text search (which searches the contents of emails and attachments) for each of the following phrases:
- (vi) 'Information - Chain of command - people in detention';
 - (vii) 'Governance of mandatory detention implementation';
 - (viii) 'VIC Hotel Quarantine arrangements';
 - (ix) 'Passengers under detention having Covi swabs at hospitals'; and



(x) 'Smoking policy - Operation Soteria'.

10. I am further informed by the Coordinator Lead that:

- (a) the searches referred to in paragraph 9 above were not restricted by any date range; and
- (b) the emails identified were then reviewed by MinterEllison employees to ascertain whether they were responsive to NTP-163 or NTP-165. The Coordinator Lead has confirmed from the Ringtail Database system information that MinterEllison employees have reviewed all the emails revealed by the searches.

11. I am further informed by the Coordinator Lead that:

- (c) prior to 26 October 2020, MinterEllison's LTC Team had also undertaken a number of other searches to identify particular documents that were responsive to NTP-163 and NTP-165;
- (a) the most extensive searches are those conducted on 26 October 2020 as they captured all documents on the Ringtail Database including those received by the Share File Transfers; and
- (b) the searches conducted on 26 October 2020 captured the documents previously caught by earlier searches plus some additional emails.

Documents produced pursuant to NTP-163 and 165

12. MinterEllison, on behalf of DHHS, produced to the Board emails responsive to NTP-163 on:

- (a) 15 October 2020;
- (b) 19 October 2020;
- (c) 22 October 2020;
- (d) 23 October 2020; and
- (e) 29 October 2020.

13. MinterEllison, on behalf of DHHS, produced to the Board emails responsive to NTP-165 on:

- (a) 20 October 2020;



- (b) 22 October 2020;
 - (c) 23 October 2020; and
 - (d) 29 October 2020.
14. The emails produced to the Board are the documents that are responsive to NTP-163 and NTP-165 identified through the searches and review described above other than:
- (a) duplicate emails (for example, emails that are identical, or substantively identical save for minor time stamp differences or metadata differences);
 - (b) individual emails where a chain of emails produced to the Board otherwise contains the email. Where possible, this approach was adopted to seek to minimise the amount of duplicated material provided to the Board;
 - (c) documents the subject of legal professional privilege;
 - (d) emails on or after the receipt of NTP-163 on 15 October 2020 and NTP-165 on 19 October 2020 respectively;
 - (e) emails produced to the Board prior to NTP-163 and NTP-165; and
 - (f) emails that were identified by DHHS' Data Integrity Unit as being emails that were drafts and/or versions of emails that were not delivered.

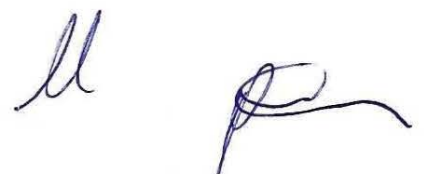
Further searches

15. On 29 October 2020, I caused MinterEllison's Cyber and Information Security Team to undertake separate full text searches of the firm's email system for the period from 1 January 2020 up to and including 15 October 2020 to seek to identify if there were any other emails from DHHS to MinterEllison (not uploaded to the Ringtail Database) with the following content in the email or an attachment:
- (a) 'Information - Chain of command - people in detention';
 - (b) 'Governance of mandatory detention implementation';



- (c) 'VIC Hotel Quarantine arrangements';
 - (d) 'Passengers under detention having Covi swabs at hospitals'; and
 - (e) 'Smoking policy - Operation Soteria'.
16. I am informed by MinterEllison's Head of Cyber and Information Security and believe that:
- (a) the searches referred to in paragraph 15 above were conducted on 30 October 2020; and
 - (b) the results of the searches were provided to MinterEllison employees for review on 30 October 2020.
17. To the best of my knowledge, no further emails responsive to NTP-163 or NTP-165 were identified by the MinterEllison employees that conducted the review referred to in the previous paragraph, other than emails that fall into the categories described in paragraph 14 above.
18. I believe that the searches outlined above are reasonable and appropriate to identify all emails responsive to NTP-163 and NTP-165.
19. I am not aware of any other emails that are responsive to NTP-163 or NTP-165 that have not been produced to the Board.

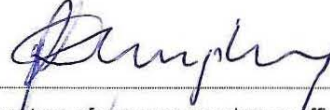
The contents of this affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.



Sworn at Melbourne

in the State of Victoria

on 2 NOVEMBER 2020



(signature of person swearing or affirming the affidavit contents, to be signed in front of the authorised affidavit taker)

Before me



(signature of authorised affidavit taker)

on 2 November 2020
Australian lawyer
525 Collins Street
Port Melbourne vic 3207

A person authorised under section 19(1) of the **Oaths and Affirmations Act 2018** to take an affidavit.