

Board of Inquiry into the COVID-19 Hotel Quarantine Program

FURTHER SUBMISSIONS OF THE CHIEF COMMISSIONER OF VICTORIA POLICE

24 November 2020

Contents

A.	DJPR was engaging a non-police security workforce prior to the 4:30 pm SCC meeting	2
B.	Communications between Mr Eccles and CCP Ashton from 1:16 pm	4
C.	The 2:00 pm meeting between Minister Neville, Commr Crisp, and CCP Ashton	7
D.	Assumptions underpinning non-opposition to a decision for private security	9
Attachment A	Updated Chronology of relevant events on 27 March 2020 re the setting up of the HQP and private security	12

Norton Rose Fulbright Australia
Level 38, Olderfleet, 477 Collins Street
Melbourne Victoria 3000
Att: Peter Cash
Tel: +61 3 8686 6672
nortonrosefulbright.com
Our ref: 4030013

**FURTHER SUBMISSIONS OF
THE CHIEF COMMISSIONER OF VICTORIA POLICE¹**

1. These submissions respond to **Issue 1** in the Further Submissions of Counsel Assisting.² Counsel Assisting adhere to the submission that “*there was no clear decision or decision-maker,*” and now submit that there was a “*starting assumption*” in favour of private security, rather than a “*creeping assumption*”: CAS [1]–[2].
2. Victoria Police submits that these findings should not be made, and submits that new evidence supports the propositions at VPS [7]: a decision was made before the State Control Centre (“**SCC**”) meeting at 4:30 pm on 27 March 2020, or there was a settled consensus in favour of private security (unaided by Victoria Police’s view) prior to that meeting.
3. At the outset, there are four matters, developed below, which support Victoria Police’s position, each of which requires the Board not to accept Counsel Assisting’s submissions on Issue 1.
4. *First*, there is contemporaneous documentary evidence that DPC was briefing people, before the 4:30 pm SCC meeting, that an “*outcome*” of National Cabinet was that private security would be used.³ See [29]–[30] below.
5. *Second*, there is contemporaneous documentary evidence supporting a finding that, at 1:17 pm on 27 March 2020, Mr Eccles told CCP Graham Ashton that “*private security would be used.*”⁴ See [23]–[28] below.
6. *Third*, there is plentiful contemporaneous documentary evidence of DJPR staff taking steps to procure a private security workforce before the 4:30 pm SCC meeting.⁵ See [11]–[15] and [18][20] below.
7. *Fourth*, it is inconsistent with the “*probabilities of ordinary human experience*”⁶ that whereas the need for a security workforce was identified immediately—by no later than 12:17 pm on 27 March 2020—the agency in charge (then, DJPR), in circumstances of real urgency, would decide nothing in regard to security, and take no steps, for more than four hours.
8. These and other matters are developed below. In light of the new evidence, attached is an updated chronology of relevant events on 27 March 2020.⁷

¹ Victoria Police continues to rely on its submissions dated 5 October 2020, VPOL.0033.0001.0001_H which are referred to as “**VPS [X]**”.

² The Further Submissions of Counsel Assisting dated 17 November 2020 are referred to as “**CAS [X]**”.

³ DHS.5000.0075.3961_R.

⁴ Ex 174 (Attachments to First Statement of CCP Ashton), VPOL.0005.0001.0244, which can only have been prompted by the conversation between Mr Eccles and CCP Ashton.

⁵ See Attachment A (updated Chronology) in items 1B, 1C and 4; and items 19 and 23 in the original Chronology to VPS.

⁶ To use an expression used in *Republic of Nauru v WET040 (No 2)* [2018] HCA 60; (2018) 93 ALJR 102 at 109 [35] (Gageler, Nettle and Edelman JJ)

⁷ In view of the page limit stipulated by the Board, the updated Chronology only contains items 1-17D. Items 18ff are unchanged, and are found in Victoria Police’s principal submission.

- 2 -

A. DJPR was engaging a non-police security workforce prior to the 4:30 pm SCC meeting

9. Below, submissions are put concerning the actions of DPC and DJPR in the earliest moments of the HQP. They are not criticisms. Victoria Police repeats VPS [5]: all involved worked to the best of their ability, and in good faith.
10. A matter exposed in new material, but not explored in Counsel Assisting's further submissions, is the significance of it being now established that Mr Eccles telephoned Mr Phemister at 12:20 pm on 27 March 2020.⁸
11. Mr Phemister has deposed that this telephone call was the first that he learned that a Hotel Quarantine Program (“HQP”) was to be implemented in Victoria.⁹ The phone call lasted about 360 seconds, *i.e.*, six minutes.¹⁰ On this evidence, the first moment that Mr Phemister could have set his staff and Department in motion about the HQP was about 12:26 pm, after his telephone discussion with Mr Eccles ended.
12. Yet three minutes before the Eccles/Phemister phone call even commenced, at 12:17 pm, Mr Kamenev (Dep Sect., DJPR) emailed various other DJPR employees saying (relevantly), “[Mr Menon (DJPR)] *is going to write to us shortly with potential requirements for a cleaning and security workforce to manage people who might be quarantined in hotel rooms.*” Ms Currie of DJPR likewise deposed that she first became aware that an HQP was to be established at 12:17 pm on 27 March 2020, via Mr Kamenev's email.¹¹
13. Thus, the contemporaneous documents establish that, somehow, at least Ms Currie and Mr Kamenev knew about the implementation of the HQP: (1) before Mr Eccles's call to Mr Phemister; and (2) before Mr Phemister says he knew about the HQP.
14. Mr Menon's evidence adds confusion. He has deposed that he learned of the HQP from Mr Phemister, at “*around midday.*”¹² It is Mr Menon who, according to Mr Kamenev's 12:17 pm email, would be writing shortly with potential requirements for (*inter alia*) a **security** workforce for an HQP. The natural inference is that someone had asked Mr Menon, prior to 12:17 pm, to write an email setting out such requirements (or, *perhaps*, that Mr Menon learned of his task only from Mr Kamenev's email at 12:17 pm).¹³ But Mr Menon says he learned of the HQP from Mr Phemister. Mr Phemister says that he learned of it from Mr Eccles (which, it is now known, occurred at 12:20 pm), and that he called Mr Menon after that.¹⁴ None of this explains how it is

⁸ Mr Eccles' phone records, HQI.0001.0060.0001, lines 38–39.

⁹ Ex 184 (Statement of Mr Phemister), [25]; DJP.050.001.0040 (Second Statement of Mr Phemister), [11].

¹⁰ Mr Eccles' phone records, HQI.0001.0060.0001, lines 38–39.

¹¹ Ex 36 (Statement of Katrina Currie), [11] referring to Ex 37 (Attachments to Statement of Katrina Currie), at DJP.104.008.6765.

¹² Ex 49 (Statement of Unni Menon), [12].

¹³ It is theoretically possible that Mr Menon could already have been looking at the issue of security for other reasons—*e.g.*, “Hotels for Heroes”—but Mr Menon denied that this was so and expressly confirmed that the spreadsheet he put together in relation to security in hotels was “*for mandatory quarantine*”—P-634.12–15 (Day 10, 31 August 2020).

¹⁴ Ex 184 (Statement of Simon Phemister), [28].

- 3 -

possible that, at 12:17 pm, Mr Kamenev and Ms Currie of DJPR knew of the existence of the HQP, or that Mr Menon was already working on a **security** workforce.

15. To this point, it may have been safe for the Board to assume that—at least prior to around 1:00 pm, when word of the HQP seemed to start to spread more widely—the initial impetus for action by DJPR was (and was only) Mr Eccles’s phone call to Mr Phemister. But, given the evidence identified above, that assumption is now not safe. The most likely explanation for Mr Kamenev’s email of 12:17 pm, earlier in time than Mr Eccles’s phone call to Mr Phemister of 12:20 pm, is that there was another source of information to DJPR who told at least Mr Kamenev, while or before National Cabinet was meeting, that the HQP would be established. Somehow, Mr Menon must have also learned of the HQP prior to 12:20 pm (which, on Mr Phemister’s evidence, is the earliest he could have learned of it).
16. All of the foregoing is completely unexplained in the evidence and is not addressed in Counsel Assisting’s further submissions. Mr Kamenev—whose 12:17 pm email is one of the earliest references to the HQP generally, and to a security workforce specifically—was not called or asked to provide a witness statement. There has been no cross-examination on the timing of the various phone calls and emails. Mr Phemister was not asked to provide his phone records, which could have pinpointed the timing of his telephone call to Mr Menon.
17. Relatedly, Mr Phemister says in his affidavit affirmed on 20 October 2020 that it was only after the SCC meeting at 4:30 pm on 27 March 2020 that DJPR moved to identify private security companies, or to take action to engage private security.¹⁵ This is inconsistent with his earlier affidavit, with affidavits of other DJPR witnesses, and with the documentary evidence.
18. In his first affidavit, Mr Phemister deposes that notes taken by Ms Febey in a meeting between Mr Phemister, Ms Febey, and others in DJPR, “*accurately reflect matters discussed*”.¹⁶ Those notes record that Ms Febey would be responsible for “*the whole process*” including “*security*.”¹⁷ The notes of Mr Rankin likewise record that Ms Febey would be responsible for the DJPR process, and that hotels were to provide security.¹⁸ Mr Menon deposed that, in the first telephone call he received from Mr Phemister, he was asked to ascertain which hotels were available to provide accommodation and their capacity to provide (*inter alia*) security services.¹⁹
19. So, within the first thirty minutes of preparing the HQP, there were repeated references to DJPR procuring a non-police security workforce: in Mr Kamenev’s 12:17 email, in Mr Menon’s recollection of his phone call with Mr Phemister, and in both sets of contemporaneous notes of the 12:30 pm meeting between Mr Phemister, Ms Febey, and others. Mr Menon says that he commenced to prepare his spreadsheet identifying (*inter alia*) the capacity of hotels to provide

¹⁵ DJP.050.001.0040 at [4], [14], [20].

¹⁶ Ex 184 (Statement of Simon Phemister) at [31].

¹⁷ Ex 185 (Attachments to Statement of Simon Phemister), DJP.202.002.0001. See item 4 in the attached Updated Chronology.

¹⁸ Ex 33 (Attachments to Statement of Claire Febey), DJP.202.002.0001 (Tab 1) at .0003.

¹⁹ Ex 49 (Statement of Unni Menon), [12], see also P-651.8–11 (Day 10, 31 August 2020).

- 4 -

security services “[u]pon being requested to do so by Mr Phemister” (i.e., starting at about 12:26 pm)—**not** after 4:30 pm.²⁰

20. Though chronologically out of order, it should be mentioned here that, between 4:12 pm and 4:19 pm—so before the 4:30 pm SCC meeting—DJPR staff exchanged text messages as to the “need [for] a security stream in our plan,” including a likely need for “private security on buses (TBC)”, “additional security at hotels”—to be provided as “part of full service”—with police “on call to enforce where there is non compliance.”²¹
21. Finally, it bears repeating Mr Phemister’s own evidence that 27 March 2020 was a day “measured in minutes.”²² The need for security (of some kind) at hotels was identified immediately—as early as 12:17 pm and repeatedly after as outlined above. If DJPR’s idea was that Victoria Police (or for that matter, anyone) should be directing it as to what security should be engaged (private or otherwise), DJPR would have contacted Victoria Police immediately. It did not do so. Mr Phemister did not contact CCP Ashton until 3:30 pm,²³ and when he did he did not ask him for views on security at all. Instead, Mr Phemister sent this message:²⁴

“Graeme [sic], we’re running the inbound passenger isolation system with Transport (just announced by the Premier). Can I get a point person from your crew to liaise with pls. If anyone else sees a role for their crew pls let me know. Claire Febey, DJPR is running this with support of Paul’s team.”

22. There are aspects of the DJPR evidence in relation to the period between 12:00 pm and 1:00 pm on 27 March 2020 that are unexplained and (on current evidence) inexplicable: see [15]–[19] above. But what does emerge clearly is that, contrary to any suggestion that DJPR somehow ignored security until it received a “direction” in the 4:30 pm SCC meeting, DJPR immediately set about procuring a non-police security workforce, which it contemplated may be provided as part of a “full service”, by hotels themselves: see [20] above. It did not seek the views of any entity—Victoria Police included—about this decision (or even assumption). It evidently did not consider that necessary, on the basis that it (and Ms Febey in particular) would be responsible “for the whole process,” including security: see [18] above.

B. Communications between Mr Eccles and CCP Ashton from 1:16 pm

23. At 1:16 pm on 27 March 2020, CCP Ashton sent a text message to Mr Eccles, which said that CCP Ashton was getting word from Canberra that the HQP would involve police guarding Victorian arrivals for 14 days.²⁵ Counsel Assisting submit that it may be inferred that Commr Reece Kershaw (AFP) was the source of that information. It is worth noting, however,

²⁰ See Ex 49 (Statement of Unni Menon), [25] (emphasis added); see also [12] and [24].

²¹ Ex 33 (Attachments to Statement of Claire Febey), DJP.500.001.0002 (Tab 3), at .0005. See item 23 to the original Chronology attached to VPS.

²² P-1825.43 (Day 22, 22 September 2020).

²³ And there is no evidence that anyone else from DJPR contacted—or sought to contact—any other Victoria Police member prior to 4:30 pm on 27 March 2020.

²⁴ Ex 174 (Attachments to first statement of Graham Ashton), VPOL.0005.0001.1279. See item 20 to the original Chronology attached to VPS.

²⁵ Ex 174 (Attachments to First Statement of Graham Ashton), VPOL.0005.0001.0140. See item 7 to the attached updated Chronology.

- 5 -

that CCP Patton's notes of the COVID-19 Police Commissioners' Forum held on 26 March 2020 do not bear on this inquiry in any meaningful way: *contra* CAS [3]. They record that Commr Kershaw says that "*we need to be prepared for quarantine*,"²⁶ and then a description by Mike Bush (then New Zealand's Commissioner of Police) of New Zealand's system. This says nothing about security arrangements.

24. It is now known that at 1:17 pm—immediately after CCP Ashton's text to Mr Eccles—Mr Eccles telephoned CCP Ashton and the two spoke for just over two minutes. At 1:22 pm, as was previously known, CCP Ashton texted Commr Kershaw saying that, "*ADF will do Passenger transfer and private security will be used*," which he thought (as shown by CCP Ashton's 1:32 pm text) was "*the deal set up by our DPC*."²⁷
25. Counsel Assisting shy away from the plain (and only available) finding, which is that Mr Eccles conveyed the information that "*private security will be used*" to CCP Ashton: CAS [5]–[6]. Counsel Assisting urge no finding about "*what was said*," on the basis that "*neither participant could recall the conversation*." But recollections are unnecessary when there is contemporaneous documentary evidence. Indeed, even if there were recollections, greater weight would be afforded to contemporaneous documentary evidence, for the usual reasons.²⁸
26. It is plain, and Counsel Assisting accept, that at 1:16 pm CCP Ashton thought that police would be used for security in the HQP: CAS [3.1]. Six minutes later, he recorded in writing a different state of knowledge: that private security would be used. The evidence discloses only one thing happening between 1:16 pm and 1:22 pm—Mr Eccles calling CCP Ashton, in response to a text that the latter sent the former. It can **only** be concluded that Mr Eccles told CCP Ashton what CCP Ashton put in his text to Commr Kershaw, only minutes later.
27. Mr Eccles denies this. He has no recollection of the phone call to CCP Ashton,²⁹ but says that he did not have any knowledge of any decision to use private security,³⁰ and that it was not his role (nor did he have expertise) to make such decisions himself.³¹ Mr Eccles says he did not know at 1:17 pm of any such decision, but what Mr Eccles did or did not know at various times on 27 March 2020 is as much a matter of recollection as the fact or content of a similarly-timed phone call (which Mr Eccles does not remember). In any event, his recent affidavit has not been tested in examination or cross-examination. Mr Eccles' recollection is (respectfully) not a safe basis on which to make findings; contemporaneous documentary evidence is.

²⁶ The reference to "*we*" is to all Police Commissioners present, not Victoria Police in particular.

²⁷ Ex 174 (Attachments to First Statement of Graham Ashton), VPOL.0005.0001.0244. See item 10 to the attached updated Chronology.

²⁸ See, e.g., *Effem Foods Pty Ltd v Lake Cumbeline Pty Ltd* [1999] HCA 15; (1999) 161 ALR 599 at [15]–[16] (Gleeson CJ, Gaudron, Kirby and Hayne JJ). See also *Bathurst Regional Council v Local Government Financial Services Pty Ltd (No 5)* [2012] FCA 1200 at [1247] (Jagot J), quoted with evident approval on appeal: *ABN AMRO Bank NV v Bathurst Regional Council* (2014) 224 FCR 1 at 204 [1036] (Jacobson, Gilmour and Gordon JJ).

²⁹ Affidavit of Christopher Eccles dated 20 October 2020, [3] (DPC.0017.0003.0001).

³⁰ Affidavit of Christopher Eccles dated 20 October 2020, [6] (DPC.0017.0003.0001).

³¹ Affidavit of Christopher Eccles dated 20 October 2020, [7]–[8] (DPC.0017.0003.0001).

- 6 -

28. Accordingly, Mr Eccles's evidence does not provide any sound basis for failing to find, based on the contemporaneous documentary evidence, that he did tell CCP Ashton that private security would be used. If Mr Eccles cannot recall the fact or content of his telephone conversation to CCP Ashton, that is precisely when documentary evidence is critical.³² This does not require (and Victoria Police does not seek) a finding that Mr Eccles has misled the Board. It requires only a finding that (as he appears readily to concede³³) he has imperfect recollection of the events of 27 March 2020, such that it is safer to rely on documents in order to draw inferences about what he knew and said (and to whom, and when).
29. Significantly, that there was a decision that private security would be used, arising out of the National Cabinet meeting, is corroborated by at least four other contemporaneous matters:
- (1) The evidence of DJPR's activities concerning a non-police security workforce, commencing immediately after (or indeed before) Mr Eccles's telephone call to Mr Phemister at 12:20 pm: see [18]–[22] above.
 - (2) The email from Ms Nicole Lynch at 2:48 pm to (amongst others) Ms Peake confirming that the "**National Cabinet outcomes**" included that "[e]nforcement by S&T governments keen for police not to babysit, but called in as needed (e.g. use private security)."³⁴ It is noteworthy that Ms Lynch states later in the email chain that her account of this "outcome" was "based on verbal debrief from DPC."³⁵
 - (3) The reference to private security in the Premier's press conference at about 3:20 pm.³⁶ This is in a context where it is clear from the (incomplete) telephone records now produced to the Board that there were communications between Mr Phemister, Mr Ada, and the Premier's private office commencing at 1:08 pm, including to provide "*something on ... security*."³⁷ It is also apparent that two other DPC executives, Ms Helen Stitt and Mr Michael Lemieszek, were "*working closely*" with Ms Febey (DJPR),³⁸ although the content of those discussions has not been the subject of any evidence and their telephone records have not been produced.³⁹

³² Often cited is Atkin LJ's observation in *Societe d Avances Commerciales (Societe Anonyme Egyptienne) v Merchants Marine Insurance Co (The "Palitana")* [1924] 20 Ll L Rep 140 at 152: "... I think that an ounce of intrinsic merit or demerit in the evidence, that is to say, the value of the comparison of evidence with known facts, is worth pounds of demeanour."

³³ Affidavit of Christopher Eccles dated 20 October 2020, [3] (DPC.0017.0003.0001).

³⁴ DHS.5000.0075.3961_R at .3962. Emphasis in bold in original.

³⁵ DHS.5000.0075.3961_R at .3961.

³⁶ Ex 210, VPOL.0006.0002.0013 at .0014 (transcript) HQI.0001.0002.0013 (video recording).

³⁷ See items 5C, 5D, 9 (where the quote comes from), 9A, 15B, 15C, 15D, 17B and 17D of the attached updated Chronology. The Board is left in an invidious position as the evidence remains incomplete because Mr Phemister's telephone records have not been produced, and the records of DPC and PPO staff that have been produced disclose only outgoing calls.

³⁸ See email from Helen Stitt (DPC) to Tim Ada (DPC) dated 27 March 2020 at 3.56pm, in response to the request from ^{Senior Policy Advisor, PPO} (PPO) at 3.53pm: DPC.0001.0001.6703.

³⁹ That Ms Febey and other DJPR staff were involved in preparing Q&As for "DPC/PPO" and seeking direction from the PPO in relation to issues arising in setting up the HQP is also apparent from DJPR's internal text messages: see Ex 33 (Attachments to Statement of Claire Febey), DJP.500.001.0001 at .0016, .0018, .0019.

- 7 -

- (4) The absence of any contact to Victoria Police by DJPR until 3:30 pm, and even then such contact (Mr Phemister's text to CCP Ashton) not suggesting that Police were at all in contemplation for a security role: see [21] above.
30. Of the matters surveyed above, at least three rely on documentary or otherwise uncontroversial evidence and point to DPC as the source of (at least) knowledge of the private security decision. They are these: first, Mr Eccles's phone call to Mr Phemister, after which DJPR commenced to procure a non-police security workforce; second, CCP Ashton's texts referring to private security and DPC, the only source for which information (on the evidence) could have been Mr Eccles at 1:17 pm; third, Ms Lynch's email, which expressly says that she had been told by DPC that an outcome of National Cabinet was that private security would be used (or, at least, that police would only be "*called in as needed*").

C. The 2:00 pm meeting between Minister Neville, Commr Crisp, and CCP Ashton

31. Counsel Assisting submit that it should be inferred that: (1) private security was mentioned in the 1:17 pm telephone call from Mr Eccles to CCP Ashton; and (2) therefore that it was CCP Ashton who was "*the source of information*" about the use of private security either before or during the 2:00 pm meeting between Min Neville, CCP Ashton, and Commr Crisp: CAS [7].
32. As to the first of these proposed inferences, the finding should instead be that in the 1:17 pm phone call Mr Eccles told CCP Ashton that private security would be used: see [24]–[28] above. The second proposed inference should not be drawn at all.
33. The evidence of CCP Ashton is that he likely related his level of knowledge at that time to Commr Crisp in the telephone call at 1:35 pm,⁴⁰ which likely included the information conveyed to him by Mr Eccles in the 1:17 pm phone call. However, by 2:00 pm there were various people who were discussing the use of private security (including, as outlined above, people in DJPR and in DPC). The evidence of both CCP Ashton and Min Neville is that it was Commr Crisp who said in their 2:00 pm meeting that private security would be used, with police support.⁴¹ Commr Crisp's notes include much more detail about the arrangements for the HQP than "*ADF/private security*."⁴² It is now clear that CCP Ashton did not make or receive any calls from any person who could have been the source of additional information about the HQP. Victoria Police maintains the submission that it can be inferred that Commr Crisp obtained information from another source, and likely made inquiries following his receipt of information from the ADF⁴³ and CCP Ashton and conveyed what he had learned during the meeting.⁴⁴ Other than conveying

⁴⁰ P-1665.20–25 (Day 19, 17 September 2020).

⁴¹ VPS [38(3)].

⁴² It includes '*Sun/Mon Stage 3. Direction by CHO. Ship/Air. - Straight to Hotel. ADF/Private Security. Testing Regime. Modelling. DJPR. - Testing...*' See Ex 148 (Attachments to Third Statement of Andrew Crisp) at DOJ.514.001.0001.

⁴³ See item 14 in the attached chronology.

⁴⁴ For the reasons in VPS [35] and [38(3)-(4)]; in summary, CCP Ashton gave evidence that he would have conveyed to Commr Crisp the information he then had at hand in their 1:35 pm call and the evidence of what occurred at the 2:00 pm meeting by those who had the better recollection (CCP Ashton and Min Neville), as compared to Commr Crisp.

- 8 -

what he had learned from Mr Eccles to Commr Crisp at 1:35 pm, there is no basis for inferring that CCP Ashton was anyone's "source of knowledge": cf. CAS [7].

34. In the light of the foregoing, the submissions at CAS [8]–[12] are now addressed. As to CAS [8], the evidence reveals not only that private security was "discussed" between Mr Eccles and CCP Ashton, it also reveals that Mr Eccles told CCP Ashton that "private security will be used," as CCP Ashton then texted Commr Kershaw. That demonstrates a decision, as do the matters outlined at (in particular) [3]–[7] and [24]–[30] above. The Board should not accept Counsel Assisting's submission in CAS [8].
35. As for CAS [9], Mr Eccles says that *he* did not make a decision. However there is ample evidence of an actual decision having been made by *someone* prior to 4:30 pm: see [3]–[7] and [24]–[30] above. It is erroneous for Counsel Assisting to submit that Mr Phemister's evidence was that "private security was not mentioned" in his conversations with Mr Eccles. Mr Phemister's most-recent evidence (untested in cross-examination) is that he "ha[d] no recollection" of discussing private security with Mr Eccles, and if he did he would have communicated that to Ms Febey.⁴⁵ But, in fact, he did communicate to Ms Febey that she was to make arrangements for security, as contemporaneous notes show: see [18]–[20] above. This suggests strongly that either Mr Eccles or some other person⁴⁶ did tell Mr Phemister that he was to arrange private security, consistently with Ms Lynch's contemporaneous note that that was an "outcome" of National Cabinet: see [29(2)] above.⁴⁷
36. There is ample documentary evidence of a decision having been made on 27 March 2020.⁴⁸ The fact that not every document created on 27 March refers to private security does not deny the existence of documents that do so refer. Thus, CAS [10.1] is a *non sequitur*.
37. A review of the notes of the VSB meeting show that Counsel Assisting's characterisation of it cannot be accepted: CAS [10.2]. Far from Mr Phemister having had "*no input*" into discussion of enforcement options, of the relevant passage⁴⁹, eight of the sixteen total bullet-pointed contributions are attributed to Mr Phemister including, crucially, "*VICPOL'S role will be spot checks*" (bottom of page 3).
38. Accordingly, the Board should not accept the submissions at CAS [11]. To begin with, the first (known) reference to a non-police security workforce came at 12:17 pm in Mr Kamenev's email,

⁴⁵ Statement of Mr Phemister dated 20 October 2020 (DJP.050.001.0040).

⁴⁶ As discussed in [12] and [15]–[16] above, it is clear from the documentary evidence that DJPR knew of the hotel quarantine program and the possibility of needing to engage cleaning and private security contractors by 12.17pm. There are records of outgoing telephone calls from Cameron Harrison, Director of Policy and Cabinet, PPO to Mr Phemister during the morning and afternoon of 27 March 2020 (see HQL.0001.0065.0001), but Mr Phemister "*does not believe*" that he received any information about the hotel quarantine program from him (DJP.050.001.0040 at [23]).

⁴⁷ DHS.5000.0075.3961_R at .3962.

⁴⁸ See [3]–[7] and [24]–[30] above.

⁴⁹ See, relevantly, commencing with the words "*spot checks*" at point 5 on page 3, and ending with the words "*spread out*" at point 2 on page 4). Ex 178 (Attachments to First Statement of Chris Eccles), DPC.0013.0001.0001 at .0003-.0004.

- 9 -

not 1:17 pm in Mr Eccles's phone call. Further, there is in fact ample documentary evidence of a decision in favour of private security preceding the 4:30 pm SCC meeting: see [3]–[7] and [24]–[30] above.

39. Ultimately, CAS [12] is not a correct or complete account of the evidence. By 4:30 pm on 27 March 2020, the issue of private security had been the subject of discussion in various fora, and the decision (or, if one insists, assumption) was settled. As to the significance of the “*preference*” expressed in that meeting by AC Grainger, Victoria Police repeats its submissions at VPS [53]–[66], none of which has been addressed by Counsel Assisting.⁵⁰

D. Assumptions underpinning non-opposition to a decision for private security

40. Counsel Assisting submit (in essence): (1) people (including CCP Ashton) assumed that detention in the HQP setting was indistinguishable from other settings in which private security had successfully been engaged; (2) in fact the settings were different; (3) the differences had the consequence that private security was inappropriate in the HQP setting; (4) accordingly, people who acquiesced in the decision for private security were wrong: CAS [13]–[14]. These submissions should not be accepted.
41. It is highly unlikely (and there is no evidence) that any person thought that the HQP was indistinguishable from “*voluntary attendance at a public event*”: cf. CAS [14.1]. A relevant question is whether the differences were such that, even if CCP Ashton’s assumptions of proper training, tasking, resourcing, and support were made good (see CAS [13.3]), nevertheless private security would be inappropriate.
42. This question is not capable of answer on the basis of the evidence regarding this HQP. As outlined in VPS [84]–[98], the roles assigned to private security were the subject of mission creep, such that private security was not (as CCP Ashton assumed it would be) limited to a static guarding function. The Board can hardly conclude this assumption to be unreasonable given that those who were involved in establishing the HQP were also proceeding on that basis.
43. Notably, in an email at 3:49 pm on 27 March 2020, Ms Peake records that she “*confirmed with Chris Eccles*” a number of matters, including “*remove the current permissions to leave the hotel, except to go to hospital*”.⁵¹ Further, in providing DPC with answers for the PPO’s question as to “*How will we ensure hotel workers are protected from coronavirus?*”, DJPR’s response was:⁵²

“• People will be required to stay in their allocated rooms and not wander

⁵⁰ In particular, before AC Grainger expressed a “*preference*,” Ms Febey had already said that DJPR had “*overall lead responsibility for delivery*”, “*end to end*” (see VPS [60]), and that she “*would have thought*” that Victoria Police’s role was “*around where things are not going as they should and you need to be called in to assist with enforcement*” (see VPS [61(2)]). In this light, the “*preference*” expressed by AC Grainger did not contribute to any decision (see VPS [66]), especially given that the Board would find that the decision (or assumption) in favour of private security preceded the 4:30 pm SCC meeting (see VPS [54]–[57]). As the Board did not hear evidence directly from AC Grainger, a finding not favourable to him should not be made.

⁵¹ See email from Kym Peake to Jacinda de Witts at 3:49 pm: DHS.5000.0075.3972 at .3962.

⁵² See email from DJPR (identity redacted) to Michael Lemieszek, DPC 27 March 2020 7:43 pm DPC.0001.0001.6703. It should be noted that the submissions in DPC’s letter of 12 October 2020

- 10 -

around the hotel. Private security guards will be on hand to enforce this.

- Procedures will be put in place to ensure staff do not come into contact with people while they stay at the hotel.”

44. Even if CCP Ashton (and others) should have foreseen that, without Victoria Police’s involvement, private security would come to undertake tasks going well beyond static guarding (e.g., fresh air breaks), it is not clear either that that meant private security was necessarily inappropriate, or that resulting health issues should have been predicted by a person with security, not health, expertise (such as CCP Ashton).
45. As to the first of these points, the evidence went well beyond private security working well in a public event. CCP Patton referred to private security at “*government and private conferences and summits*,” visits by “*internationally protected VIPs*,” and even at Victoria Police’s centre at Spencer Street.⁵³ Private security guards were used in compulsory detention: a notification dated 12 July 2020 from the general manager of Serco to its staff expressly contemplates that MSS security officers were working in detention settings.⁵⁴ Mr Watson gave evidence as to the role that Wilson Security performs in regard to youth detention in Tasmania.⁵⁵ G4S Custodial Services Pty Ltd held a prisoner-transport contract with Corrections Victoria from 2009.⁵⁶
46. As to the use of private security in a detention setting with a health overlay in particular, private security is used in hotel quarantine programs in other states (including New South Wales).⁵⁷ The evidence of Professor Grayson is that, while their role is purely one of security and confined to lower risk tasks, security guards are used at Austin Health’s COVID and SCOVID wards.⁵⁸ High-risk tasks involving face to face contact are performed by health workers.⁵⁹ Other health settings, such as mental health, have detainees not under police guard.⁶⁰
47. Thus, there is nothing unusual about private security in a **detention** setting: *cf.* CAS [14.1].
48. *Contra* the assumptions underlying CAS [14.2]: (1) use of private security in a **health** context is also not unusual; and (2) even if the characteristics of this virus were such that the HQP was different to other health settings (*i.e.*, private security was inherently inappropriate for the roles that they in fact performed), that would tend to suggest that the replacement workforce should

(HQI.0001.0062.0001) at 2.17 relies upon an incomplete and inaccurate version of that email exchange. The full version does not support DPC’s submission.

⁵³ Ex 169 (Witness Statement of CCP Patton APM), [6.4].

⁵⁴ Ex 66 (Attachments to Statement of Jamie Adams) at Tab 69 (MSSS.0001.0010.0033_0001) is an email chain ending 14 July 2020 involving employees of MSS Security and Serco. See the last message in the chain.

⁵⁵ P-778.20-31 (Day 11, 2 September 2020)

⁵⁶ <https://www.corrections.vic.gov.au/prisoner-transport-services-contract-awarded>.

⁵⁷ See, e.g., evidence of former Minister Mikakos at P-2090.21–22 (Day 24, 24 September 2020); evidence of CPP Patton at 1654.24–30 (Day 19, 17 September 2020); evidence of Mr Coppick at P-877.3-16 (Day 12, 3 September 2020).

⁵⁸ P-52.43–53.5; P-54.12-20 (Day 3, 17 August 2020).

⁵⁹ Evidence of Professor Grayson, P-52.43–53.35; P-54.12-20 (Day 3, 17 August 2020).

⁶⁰ Alfred Health uses private security (Ex 99 (Statement of Simone Alexander), [32]–[34]). It appears that Wilson Security provides security at Thomas Embling Hospital (see the *Wilson Security Victoria Agreement 2018*, an enterprise agreement, at cl 2.2.1.6) See <https://www.fwc.gov.au/document/agreement/AE503377>.

- 11 -

be guided by health rather than security experts (e.g., nurses), or at least that nurses should have been used for some of the roles that private security in fact performed. This was a matter for identification by someone with health expertise. Victoria Police cannot be assigned responsibility for failing to predict what public health and infectious diseases experts in DHHS failed to predict.

49. Similarly, again it has not been shown (and cannot be assumed) that the HQP population had greater vulnerability or health/welfare requirements than (say) people in immigration detention or prisons (in which private security is used⁶¹): cf. CAS [14.3]. Even if they did, the proper assumption is that the replacement workforce should be guided by people with health or mental health expertise, and this was something naturally to be identified by people with healthcare expertise (persons within DHHS, not CCP Ashton or other Victoria Police personnel).
50. Finally, as to CAS [14.4], if the contracts were such that security guards were inadequately trained, supervised, and tasked (about which Victoria Police makes no submission), that reveals a problem in procurement and contracting processes within DJPR, and unrelated to the merits of using private security generally.

Dan Star QC
Joanna Davidson
Jim Hartley

24 November 2020

Peter Cash
Norton Rose Fulbright Australia
Solicitor for Victoria Police

⁶¹ As to private security in immigration detention, see, e.g., *Plaintiff M68/2015 v Minister for Immigration and Border Protection* (2016) 257 CLR 42 at 63 [12]–[13], 68 [33], 83 [89], [89 [107], 108 [170]–[173], 148–149 [333]–[336], the *Kamasae* litigation (e.g., *Kamasae v Commonwealth of Australia (No 10)* [2017] VSC 272), *Yousefi v Commonwealth of Australia* [2012] NSWSC 967 at [52]–[54].

ATTACHMENT A to Submissions of Victoria Police to the Board of Inquiry into the Hotel Quarantine Program

UPDATED CHRONOLOGY OF RELEVANT EVENTS ON 27 MARCH 2020 RE THE SETTING UP OF THE HQP AND PRIVATE SECURITY

Note: **Highlighting** added for emphasis.

Additional material added in **Green text**

No	Time	Event	Key Evidence	Reference / Exhibit
1.	Morning	National Cabinet meeting		
1A	10.07am and 11.27am	Mr Cameron Harrison, Director of Policy & Cabinet, PPO , telephones Simon Phemister , DJPR	Duration - 3 mins 7 secs, and 2 mins 2 sec	Mr Cameron Harrison's phone records HQI.0001.0065.0001
1B	Around midday	Simon Phemister , DJPR telephones executive director, Mr Unni Menon	Mr Menon's evidence is that at around midday, Mr Phemister called him and "asked [him] to ascertain which hotels would be available to provide accommodation as part of the program (including their capacity to provide meals, security and cleaning services)."	Menon statement, [12], Ex 49
1C	12.17pm	Alex Kamenev, Deputy Secretary DJPR emails various persons in DJPR regarding potential requirements for a cleaning and security workforce to manage people who might be quarantined in hotel rooms	Ms Katrina Currie, DJPR gave evidence that she: "first became aware that a hotel quarantine program was to be established in Victoria when I received an email from Alex Kamenev, Deputy Secretary – Delivery and Recovery (COVID-19) at 12.17 pm on 27 March 2020, which stated: <i>Unni is going to write to us shortly with potential requirements for a cleaning and security workforce to manage people who might be quarantined in hotel rooms. We might need to act quickly depending on govt policy choices in this space so would be good to think through options. It would be in metro and regions. I need a point person who can work with Unni. Alex"</i>	Currie Statement at [11], Ex 36 Ex 37 (Attachments to Statement of Katrina Currie), DJP.104.008.6765
2.	Around midday At 12.20pm	Chris Eccles , Secretary, DPC steps out of the National Cabinet meeting before it finishes and telephones Simon Phemister , Secretary, DJPR.	Duration 6 min 1 sec Mr Eccles' evidence is that he "advise[d] him that there had been agreement that all new international arrivals will need to quarantine for 14 days effective from midnight on Saturday" and he explained the need for hotels, for people with deep logistical experience and urgency. Mr Phemister's evidence is that "[f]rom my discussion with Mr Eccles that day, I understood that DJPR had lead responsibility for delivering the Program, and that I needed to identify each of the building blocks that might be needed to implement the Program. ... As at 27 March 2020, however, I understood that DJPR would be playing a lead role in the Program."	HQI.0001.0060.0001 Eccles' first statement, [77]-[78], Ex 177 Phemister's statement, [26], Ex 184

No	Time	Event	Key Evidence	Reference / Exhibit
4.	Around 12.30pm	Simon Phemister, Secretary, DJPR meets with three executive directors of DJPR (incl Claire Febey).	Mr Phemister accepts the accuracy of Ms Febey's notes.	Phemister's statement, [31], Ex 184 Ex 185 (Attachments to statement of Simon Phemister), DJP.202.002.0001
			Ms Febey's notes include: "I will responsible for the whole process Everything Sanitation, food services, health care, security They need to be safe, but we need them to stay where they are Simon will call Graeme Ashton, need a regime that makes sure they adhere to their quarantine ... Simon will get from the Premier's ... Premier is announcing at 3pm Police and security"	Ex 185 (Attachments to statement of Simon Phemister), DJP.202.002.0001 at .0002 and .0003
			There are also notes of this same meeting by Charles Rankin, Office of the Secretary, DJPR. These notes state: "Claire will be responsible for the DJPR process. Hotels to provide sanitation, health, security, catering. Medical support, concierge. They need to provide a full suite of service. They cannot go outside and wander. SP to call Graham Ashton. Need to ensure they abide by their quarantine. ... SP to get start date from PPO."	Febey's statement, [10], Ex 32 Ex 33 (Attachments to statement of Claire Febey), DJP.201.002.0001, tab 002
			Mr Phemister's further affidavit evidence is that: <i>had Mr Eccles given me an instruction to use private security in that telephone call, I would have communicated that to Claire Febey (which I did not) and my team would have moved forward to identify private security contractors, rather than awaiting the direction which was ultimately received at the First SCC Meeting.</i>	DJP.050.001.0040 at [14]
4A	12.32pm	Mr Cameron Harrison, PPO, telephones Simon Phemister, DJPR	Duration - 4 mins 10 secs	HQI.0001.0065.0001
4B	12.36pm	David Millward, Unified Security, sends email to all management requiring	On 27 March 2020 at 12.36pm, Mr Millward sent an email to management personnel at Unified Security In light of the ongoing deterioration in the Covid 19 situation, its impact on our personnel, clients & suppliers and in accordance with industry best practice the Executive have made the	Ex 69 (Witness statement of David Millward) at [66].

No	Time	Event	Key Evidence	Reference / Exhibit
		them to complete Commonwealth COVID training by 2.30pm	decision to make the following course an urgent compulsory component in your ongoing training & development programs, as such prior to 2.30pm today (It takes 10mins) can all personnel please register for & complete the following online course: https://www.health.gov.au/resources/apps-and-tools/covid-19-infection-control-training	Exhibit 70 (Attachments to Witness statement of David Millward) at USG.0001.0009.0020
4C	12.38pm	Lissie Ratcliffe, Premier's Chief of Staff, telephones Minister Mikakos	Duration - 5 mins 54 secs	HQI.0001.0063.0001
5A	1.03pm	Telephone call from Commr Kershaw, AFP to CCP Ashton	Duration 4 mins 12 secs	TELS.0001.0001.0006, items 36 and 38 Ex 173, Ashton's first statement [2.2], [5.1] Ashton's statement 19 October 2020 at [13]-[15]
5B	1.08pm	Senior Policy Advisor, PPO Senior Advisor PPO telephones Tim Ada, DPC	Duration 54 secs	HQI.0001.0064.0001
5C	1.11pm	Tim Ada, DPC telephones Simon Phemister, DJPR	Duration 1 min 36 secs	HQI.0001.0061.0001
6	1.12pm	Text from CCP Ashton to Commr Kershaw, AFP	"Mate. Question. Why wouldn't AFP guard people At the hotels??"	Ex 174 (Attachments to first statement of Graham Ashton), VPOL.0005.0001.0244
7	1.16pm	Text from CCP Ashton to Chris Eccles , Secretary, DPC	"Chris I am getting word from Canberra for a plan whereby arrivals from overseas are to be subjected to enforced isolation from tomorrow. The suggestion is Victorian arrivals are conveyed to a hotel Somewhere where they are guarded by police for 14 days. Are you aware of anything in this regard?? Graham"	Ex 174 (Attachments to first statement of Graham Ashton), VPOL.0005.0001.0140
8	Between 1.16pm and 1.22pm	CCP Ashton receives a call from someone advising of arrangements to use private security.	Mr Ashton's evidence is that he cannot recall whether Mr Eccles or some other person telephoned him. Mr Eccles' evidence is that he does not recall if he called CCP Ashton but says if he did he would not have been able to convey any decision about the use of private security.	Ashton's first statement, [5.6], Ex 173 Eccles' second statement, [23], Ex 179
	1.17pm	Mr Eccles telephones CCP Ashton	Duration 2 mins 15 secs	TELS.0001.0001.0006, items 39 and 42 HQI.0001.0060.0001, Item 56

No	Time	Event	Key Evidence	Reference / Exhibit
9	Commencing at 1.19pm	Text messages between Senior Policy Advisor, PPO [redacted], PPO and Tim Ada, Deputy Secretary, DPC	Text messages of PPO staff member refers to "security". (Identity of PPO staff member redacted and unknown to Victoria Police but understood to be Senior Policy Advisor, PPO [redacted] based on Premier's affidavit) Text Senior Policy Advisor, PPO [redacted] to Tim Ada 1.19pm "We will also need something on food and security for people in 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)" Text Senior Policy Advisor, PPO [redacted] to Tim Ada (time unknown) "Premier will stand up at 3pm so any clarity on whether we can go from tonight before then would be great" Text message of Tim Ada (time unknown) refers to "Simon is getting back to me ASAP". According to the Premier, this is likely to be a reference to Simon Phemister. Further text message from Senior Policy Advisor, PPO [redacted] to Tim Ada (time unknown) 'We will do it from tomorrow Tim to give everyone more time to give everyone more time to iron out the details. Just got confirmation' Reply from Tim (time unknown): 'Ok, thanks [redacted] Tim'	P-2129.40 – 2131.7 (Day 25, 25 September 2020) DPC.0028.0001.0001
9A.	1.21pm	Telephone call from Tim Ada, DPC to Senior Policy Advisor, PPO [redacted]	Duration 1 min	HQI.0001.0061.0001
10	1.22pm	Text from CCP Ashton to Commr Kershaw, AFP	"Mate my advise [sic] is that ADF will do Passenger transfer and private security will be used."	Ashton's first statement, [5.2], Ex 173 Ex 174 (Attachments to first statement of Graham Ashton), VPOL.0005.0001.0244
11	1.24pm	CCP Ashton telephones CC Fuller, NSW Police	Duration - 6 mins 17 secs.	Ashton's second statement, [4], Ex 175
12	1.31pm	Text from Commr Kershaw, AFP to CCP Ashton	"Ok that's new"	Ex 174 (Attachments to first statement of Graham Ashton), VPOL.0005.0001.0244
13	1.32pm	Text from CCP Ashton to Commr Kershaw, AFP	"I think that's the deal set up by our DPC. I understand NSW will be a different arrangement. I spoke to Mick F." [ie, Mick Fuller, the Chief Commissioner of NSW Police]	Ashton's first statement, [5.3], Ex 173 Ex 174 (Attachments first to statement of

No	Time	Event	Key Evidence	Reference / Exhibit
				Graham Ashton), VPOL.0005.0001.0244
14	1.34pm	Text from Commr Crisp to CCP Ashton	"I just received this from the ADF. I assume you would have it but just letting you know. Thanks Andrew, federal announcement very shortly regarding ADF support to state police for COVID19"	Ex 174 (Attachments to first statement of Graham Ashton), VPOL.0005.0001.1283
15	1.35pm	CCP Ashton telephones Commr Crisp	Duration – 2 mins 46 secs.	Ashton's second statement, [4], Ex 175
15A	1.39pm	Lissie Ratcliffe, Premier's Chief of Staff, telephones Minister Neville	Duration - 5 mins 5 secs Minister Neville has given affidavit evidence that it was during this phone call that she first learned that there would be a hotel quarantine program and that she was informed that DJPR would be responsible for standing up the HQP.	HQI.0001.0063.0001 LMN.0002.0001.0001 (Affidavit of Minister Neville) at [4]-[6]
15B	1.42pm	Tim Ada, DPC telephones Chris Eccles, DPC	Duration - 3 mins 53 secs	HQI.0001.0061.0001
15C	1.47pm	Tim Ada, DPC telephones Simon Phemister, DJPR	Duration 25 secs	HQI.0001.0061.0001
15D.	1.47pm	Chris Eccles, DPC telephones Simon Phemister, DJPR	Duration 3 mins 35 secs	HQI.0001.0060.0001, Item 56
16	Approx 2pm (meeting scheduled at 1.30, but started closer to 2pm)	Regular meeting with Minister re COVID issues. Attended by: <ul style="list-style-type: none"> Minister Lisa Neville CCP Ashton Commr Crisp and assistant Corri McKenzie, DJCS 	The handwritten notes by CCP Ashton state: "1400hrs Min Meeting. ... → Hotels. Security guards Police back up."	Ashton's first statement, [2.4], Ex 173 Ex 174 (Attachments to first statement of Graham Ashton), VPOL.0005.0001.0057 at .0064
			The handwritten notes by Commr Crisp simply record "ADF / Private Security".	Ex 148 (Attachments to third statement of Andrew Crisp), DOJ.514.001.0001
17	Approx 2.30pm (conference commenced between	Prime Minister's press conference - announcements made re hotel quarantine and ADF assistance re compliance		Ex 157a Video of press conference Ex157b Transcript of press conference

No	Time	Event	Key Evidence	Reference / Exhibit
	2.21pm and 2.33pm ⁶²)	checks		
17A	2.36pm	Lissie Ratcliff, Premier's Chief of Staff telephones Minister Neville	Duration - 40 secs	Lissie Ratcliff phone records HQI.0001.0063.0001 HQI.0001.0067.0001 Letter from Lissie Ratcliff LMN.0002.0001.0001 HQI.0001.0061.0001
17B	2.38pm	Tim Ada, DPC telephones PPO staff member	Duration - 48 secs	HQI.0001.0061.0001
17C	2.48pm	Email from Ms Nicole Lynch National Cabinet Director (Health and Public Health) to various DHHS staff	Contains a summary of National Cabinet outcomes and which includes the following: <i>"Enforcement by S & T governments keen for police not to babysit, but called in as needed (e.g. use private security"</i>	DHS.5000.0075.3961
17D	2.53pm	Tim Ada, DPC telephones PPO staff member	Duration - 49 secs	HQI.0001.0061.0001

⁶² <https://www.smh.com.au/national/coronavirus-updates-live-australian-covid-19-cases-set-to-pass-3000-as-worldwide-fatalities-climb-beyond-22-000-20200326-p54ed7.html?fbclid=IwAR3g79xfbaPcv0t-1ygKDbcx8FA6Wgg4JeU9uRwoOIGNBHLhdDefCT18a-M> Sydney Morning Herald live reporting for 27 March 2020. Report at 2.21pm titled "Prime Minister Scott Morrison addresses the media after the national cabinet meeting" with video of announcement; followed by report at 2.33pm which commences the live reporting of the announcement titled "Self-isolation rules strengthened for people arriving in Australia".