



Special Commission of Inquiry into the Ruby Princess

Correspondence between The Special Commission of Inquiry into the Ruby Princess and the Australian Government Solicitor

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Our ref. 20202987

15 May 2020

Ms Jennifer Hoy
Senior Solicitor assisting the Special Commission
of Inquiry into the Ruby Princess

Australian Government Solicitor
4 National Circuit, Barton ACT 2600
Locked Bag 35, Kingston ACT 2604
T 02 6253 7000 DX 5678 Canberra
www.ags.gov.au

Canberra
Sydney
Melbourne
Brisbane
Perth
Adelaide
Hobart
Darwin

By email: jennifer.hoy@rubyprincessinquiry.nsw.gov.au;
enquiries@rubyprincessinquiry.nsw.gov.au


Dear Ms Hoy

INQUIRY INTO THE RUBY PRINCESS

1. We refer to the Special Commission of Inquiry into the Ruby Princess (the Commission) established by the NSW Government under the *Special Commissions of Inquiry Act 1983* (NSW) (Commissions of Inquiry Act). The terms of reference of the Commission, as set out in the Letters Patent signed by the Governor of NSW on 15 April 2020, require that Special Commissioner Bret Walker SC inquire into and report and make recommendations to the NSW Government on certain matters including the communications, decisions and actions of the Commonwealth, specifically (but not confined to) the Australian Border Force (which is part of the Department of Home Affairs portfolio) and the federal Department of Agriculture, Water and the Environment.
2. The Australian Government Solicitor acts for the Commonwealth of Australia in relation to the Commission on the instructions of the Department of Agriculture, Water and the Environment, the Department of Home Affairs and the Department of Health.
3. The Commonwealth is in the course of preparing documentation about the Ruby Princess cruise ship, including matters that might be relevant to the Commission's inquiry. To assist the Commission the Commonwealth intends voluntarily to provide the Commission with relevant material by 29 May 2020, noting the Commission's website invites provision of material by that date.
4. It is intended that the Commonwealth's material will focus on matters concerning communications, decisions and actions of the Department of Agriculture, Water and the Environment, the Department of Home Affairs (including the Australian Border Force) and the Department of Health relevant to the Commission's terms of reference with a view to assisting the Commission's inquiries and preparation of its report to the NSW government. It will also address the relevant legal framework in which decisions and actions occurred.

5. The Commonwealth's preparedness to assist the Commission voluntarily should not be taken as a concession that the Commonwealth or its officers and employees are bound by the Commissions of Inquiry Act or subject to any of the Commission's coercive powers.
6. Please direct to us any communication regarding the Commonwealth, its agencies, employees or officers.

Yours sincerely



Simon Daley

Chief Solicitor
T 02 9581 7490
simon.daley@ags.gov.au

Paul Vermeesch

Deputy Chief Solicitor
T 02 6253 7428
paul.vermeesch@ags.gov.au



Special Commission of Inquiry into the Ruby Princess

15 May 2020

Mr Paul Vermeesch
Deputy Chief Solicitor
Locked Bag 35
KINGSTON ACT 2604

By email: paul.vermeesch@ags.gov.au

Dear Mr Vermeesch

Re: Your letter dated 15 May 2020

I refer to the above Special Commission of Inquiry (**the Commission**), established by letters patent dated 15 May 2020, in which I assist Commissioner Bret Walker SC.

Thank you for your letter dated 15 May 2020. The Commissioner has noted the matters you have raised, including those in point 5 of your letter.

The Commissioner is of the view that the Commonwealth and its officers and employees are compellable under the *Special Commissions of Inquiry Act 1983* (NSW) (**the Act**), by reason of the *Service and Execution of Process Act 1992* (Cth).

However, the Commissioner has asked me to pass on that he greatly appreciates the preparation of documentation that you have described, and that he considers he will be much assisted by the provision of a statement dealing with the matters outlined in point 4 of your letter, with any relevant material annexed. The Commissioner will not take this assistance as being any indication by the Commonwealth that it is bound by the Act. The date you have proposed is suitable to the Commission.

Enclosed with this letter are the following Schedules:

- | | |
|-------------------|---|
| Schedule A | Documents requested from the Commonwealth Department of Health |
| Schedule B | Documents requested from the Department of Agriculture, Water and the Environment |
| Schedule C | Documents requested from the Australian Border Force. |

To the extent that the materials described therein do not already form part of the documentation that the Commonwealth intends to provide to the Commission, the Commissioner has asked that the Commonwealth give consideration to providing the Commission with those materials, as well.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Jennifer Hoy'.

Jennifer Hoy

Senior Solicitor Assisting the Special Commission

Special Commission of Inquiry into the Ruby Princess

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T (02) 92285795 |

Schedule A – documents requested from Department of Health

Policies and Procedures

1. In relation to the Australian Government Cruise Ship Protocol for Covid-19 dated 6 March 2020, please provide:
 - a. A copy of the document;
 - b. Any record of the process of creation of the document; and
 - c. Any record of the author of the document.

2. In addition to (1), and in relation to any other policies, procedures, guidelines, public health orders or protocols used, developed or implemented by the Department of Health from 1 January 2020 in respect of:
 - a. An epidemic or a pandemic;
 - b. Control of infectious disease (including an epidemic or pandemic) in the community;
 - c. cruise ships;
 - d. people arriving in Australia from overseas; and
 - e. COVID-19;

please provide:

 - a. A copy of the document;
 - b. Any record of the process of creation of the document; and
 - c. Any record of the author of the document.

3. In relation to the documents described in (1) and (2), information as to the other Commonwealth government agencies and NSW government agencies that were provided with copies of those documents, and the time at which they were provided those copies.

Information in relation to the Ruby Princess

4. All available information, including that obtained by the National Incident Room, as at the date of production in relation to:
 - a. How many passengers of the Ruby Princess have contracted COVID- 19;
 - b. How many crew members of the Ruby Princess have contracted COVID-19;
 - c. How many passengers have died as a result of contracting COVID-19;
 - d. How many passengers or crew members remain in hospital for treatment of COVID-19;

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T (02) 92285795 |

- e. How many cases of COVID-19 are associated with the disease being passed on from a passenger to someone in the community;
 - f. How many persons, if any, who were not passengers on the Ruby Princess have died as a result of contracting COVID-19 from a passenger or crew member of the Ruby Princess; and
 - g. The identities and the addresses and contact details of the persons in (a) to (f), above (and in the case of persons who have died, identified in subparagraphs (c) and (f), their last known addresses).
5. In relation to (4), all available information as to the questions asked of, and information requested from, passengers of the Ruby Princess to obtain the information referred to in (4)(a)-(f), including in relation to the onset date of symptoms of COVID-19.
6. In relation to (5), the answers provided, and information and documents produced in response to those questions and requests.
7. In relation to the voyage of the Ruby Princess between 8 March and 19 March 2020, including: (a) its departure on 8 March 2020; (b) the docking and disembarkation of the ship on 19 March 2020; and (c) subsequent efforts to diagnose and treat Ruby Princess passengers, all records of communications with:
- a. Princess Cruises Ltd and Carnival plc;
 - b. the Port Authority of New South Wales;
 - c. the Australian Border Force;
 - d. the Department of Agriculture, Water and the Environment;
 - e. the NSW Police Force; and
 - f. NSW Health.

Public Health measures

8. Any documents, records, communications or other information in relation to the disembarkation of the Ruby Princess on both the 8 March 2020 and the 19 March 2020, including:
- a. Notices, correspondence or communications with passengers who were aboard the Ruby Princess since 24 February 2020; and
 - b. Tracing the contact Ruby Princess passengers have had with other persons since leaving the vessel.

Pandemic planning

9. All documents relating to the exercise known as the “EmegenSea Detour” involving: an outbreak of pandemic influenza on a cruise ship coming into Sydney; and an outbreak of an unknown, but clinically severe disease on a cruise ship coming into Hobart.
10. A copy of the National Protocol for Pandemic (H1N1) 2009 on Cruise Ships.
11. A copy of any policy, protocol or procedure developed by, or in consultation with, the Communicable Diseases Network Australia, in relation to border control measures:
 - a. relating to Covid-19;
 - b. relating to human biosecurity generally and in force during 2020;
 - c. relating to cruise ships (either generally or any cruise ship in particular).
12. A copy of any advice provided by the Communicable Diseases Network Australia in relation to border control measures or cruise ships since 1 January 2020.

Schedule B – documents requested from Department of Agriculture, Water and the Environment

Policies and Procedures

1. In relation to any policies, procedures, guidelines, public health orders or protocols used, developed or implemented by the Department of Agriculture, Water and the Environment from 1 January 2020 in respect of:
 - a. An epidemic or a pandemic;
 - b. Control of infectious disease (including an epidemic or pandemic) in the community;
 - c. cruise ships (including the grant of pratique);
 - d. overseas travellers returning to Australia; and
 - e. COVID-19;

please provide:

- a. A copy of the document;
 - b. Any record of the process of creation of the document; and
 - c. Any record of the author of the document.
2. In relation to the documents described in (1), information as to the other Commonwealth government agencies and NSW government agencies that were provided with copies of those documents, and the time at which they were provided those copies.

Coordination with other agencies

3. Any delegations, authorisations or appointments (including under the *Biosecurity Act 2015* (Cth)), protocols, memoranda of understanding or other arrangements in place since 1 January 2020 between the Department of Agriculture, Water and the Environment and the NSW government (including any of its agencies) concerning the management of human biosecurity and health risks (including in relation to arriving cruise ships).

Pandemic planning

4. All documents relating to the exercise known as the “EmegenSea Detour” involving: an outbreak of pandemic influenza on a cruise ship coming into Sydney; and an outbreak of an unknown, but clinically severe disease on a cruise ship coming into Hobart.

Information in relation to the Ruby Princess

5. In relation to the voyage of the Ruby Princess between 8 March and 19 March 2020, including: (a) its departure on 8 March 2020; (b) the docking and disembarkation of the ship on 19 March 2020; and (c) subsequent efforts to diagnose and treat Ruby Princess passengers, all records of communications with:
 - a. Princess Cruises Ltd and Carnival plc;
 - b. the Port Authority of New South Wales;
 - c. the Australian Border Force;
 - d. the Commonwealth Department of Health;
 - e. the NSW Police Force; and
 - f. NSW Health.

Public Health measures

6. Any documents, records, communications or other information in relation to the disembarkation of the Ruby Princess on both the 8 March 2020 and the 19 March 2020, including:
 - a. Notices, correspondence or communications with passengers who were aboard the Ruby Princess since 24 February 2020; and
 - b. Tracing the contact Ruby Princess passengers have had with other persons since leaving the vessel.

Schedule C - Documents requested from Australian Border Force

Policies and Procedures

1. In relation to any policies, procedures, guidelines, public health orders or protocols used, developed or implemented by the Australian Border Force from 1 January 2020 in respect of:
 - a. An epidemic or a pandemic;
 - b. Control of infectious disease (including an epidemic or pandemic) in the community;
 - c. the entry into Australia of cruise ships and other commercial vessels;
 - d. overseas travellers returning to Australia; and
 - e. COVID-19;

please provide:

- a. A copy of the document;
 - b. Any record of the process of creation of the document; and
 - c. Any record of the author of the document.
2. In relation to the documents described in (1), all records of communication with other Commonwealth government agencies and NSW government agencies relating to those documents.
3. To the extent that they are not covered by (1) and (2), all documents and communications relating to the “bespoke arrangements” put in place directly under the command of the Australian Border Force, as referred to by the Prime Minister during a press conference on 15 March 2020.

Coordination with other agencies

4. Any delegations, authorisations or appointments (including under the *Biosecurity Act 2015* (Cth) or the *Customs Act 1901* (Cth)), protocols, policies, manuals, memoranda of understanding or other arrangements in place since 1 January 2020 between the Australian Border Force and the NSW government (including any of its agencies) concerning the management of human biosecurity and health risks in relation to cruise ships arriving in Australia.

Pandemic planning

5. All documents relating to the exercise known as the “EmegenSea Detour” involving: an outbreak of pandemic influenza on a cruise ship coming into Sydney; and an outbreak of an unknown, but clinically severe disease on a cruise ship coming into Hobart.

Information in relation to the Ruby Princess

6. In relation to the voyage of the Ruby Princess between 8 March and 19 March 2020, including: (a) its departure on 8 March 2020; (b) the docking and disembarkation of the ship on 19 March 2020; and (c) subsequent efforts to diagnose and treat Ruby Princess passengers, all records of communications with:
 - a. Princess Cruises Ltd and Carnival plc;
 - b. the Port Authority of New South Wales;
 - c. the Department of Agriculture, Water and the Environment;
 - d. the Commonwealth Department of Health;
 - e. the NSW Police Force; and
 - f. NSW Health.
7. Records of all telephone calls and other communication between the Australian Border Force and the Port Authority of NSW on 18 and 19 March 2020 and the names and details of any officers of the Australian Border Force involved in those communications.
8. Any documents, records, communications or other information in relation to the disembarkation of the Ruby Princess on both the 8 March 2020 and the 19 March 2020, including:
 - a. Information relating to the procedures employed for the disembarkation of passengers and crew and the checking of their passports;
 - b. Notices, correspondence or communications with passengers who were aboard the Ruby Princess since 24 February 2020; and
 - c. Tracing the contact Ruby Princess passengers have had with other persons since leaving the vessel.
9. Any notices, messaging or correspondence used, developed or implemented by the Australian Border Force since 1 January 2020 that has been provided to cruise ship passengers and operators.



Our ref. 20202987

29 May 2020

Ms Jennifer Hoy
Senior Solicitor assisting the Special Commission
of inquiry into the Ruby Princess

By email: jennifer.hoy@rubyprincessinquiry.nsw.gov.au

Australian Government Solicitor

Level 42, MLC Centre
19 Martin Place Sydney NSW 2000
GPO Box 2727 Sydney NSW 2001
T 02 9581 7777 F 02 9581 7778 DX 444 Sydney
www.ags.gov.au

Canberra
Sydney
Melbourne
Brisbane
Perth
Adelaide
Hobart
Darwin

Dear Ms Hoy

Commonwealth statement and document provision

1. We refer to our letter of 15 May 2020 and to your reply letter of the same day.
2. The Commonwealth is actively progressing its preparation of the material that it proposes to lodge with the Commission, but, notwithstanding best endeavours, will not be in a position to do so by today as originally foreshadowed.
3. We anticipate that we will be in a position to lodge the Commonwealth's material by the end of next week.

Yours sincerely

Simon Daley

Chief Solicitor

T 02 9581 7490 F 02 9581 7732

M [REDACTED]

Simon.Daley@ags.gov.au



Our ref. 20202987

12 June 2020

Ms Jennifer Hoy
Senior Solicitor assisting the Special Commission
of inquiry into the Ruby Princess

By email: jennifer.hoy@rubyprincessinquiry.nsw.gov.au

Australian Government Solicitor

Level 42, MLC Centre
19 Martin Place Sydney NSW 2000
GPO Box 2727 Sydney NSW 2001
T 02 9581 7777 F 02 9581 7778 DX 444 Sydney
www.ags.gov.au

Canberra
Sydney
Melbourne
Brisbane
Perth
Adelaide
Hobart
Darwin

Dear Ms Hoy

Commonwealth statement and document provision

1. We refer to our letter of 15 May 2020, by which we informed the Commission that the Commonwealth intended voluntarily to provide a statement and material relevant to the Commission's inquiry. We refer also to your email earlier today.
2. We now enclose a voluntary statement on behalf of the Commonwealth which has been prepared by the Australian Government Solicitor with the assistance of Ruth Higgins SC, Joanna Davidson and Matthew Sherman of counsel. We also enclose accompanying documents that the Commonwealth considers may assist the Commission's inquiries.
3. As requested in your letter dated 15 May 2020, in compiling the accompanying documents the Commonwealth has given consideration to the categories described in Schedules A, B and C to that letter.
4. We have not redacted all sensitive information (including sensitive personal information) from the documents accompanying the voluntary statement. If the Commission proposes to publish the voluntary statement or those documents, please let us know so that we can prepare a redacted version which is suitable for publication (in particular noting the potential operation of Commonwealth secrecy provisions in respect of any on-disclosure by the Commission).

Yours sincerely

Simon Daley

Chief Solicitor

T 02 9581 7490 F 02 9581 7732

M [REDACTED]

Simon.Daley@ags.gov.au



Special Commission of Inquiry into the Ruby Princess

1 July 2020

Mr Simon Daley
Chief Solicitor
Australian Government Solicitor
GPO Box 2727
SYDNEY NSW 2001

By email: simon.daley@ags.gov.au; tristan.lockwood@ags.gov.au

Dear Mr Daley

I refer to the above Special Commission of Inquiry (**the Commission**), established by letters patent dated 15 April 2020, in which I assist Commissioner Bret Walker SC.

Thank you for your letter dated 12 June 2020 and for the provision of the voluntary statement on behalf of the Commonwealth (**the Statement**).

Proposed tender and publication of the Statement

As discussed with Mr Lockwood briefly on Monday, senior counsel assisting the Commission proposes to tender the Statement and accompanying documents. In light of (4) of your letter dated 12 June 2020, I write to provide confirmation of this proposed course and invite you to provide a redacted version proposed for publication.

It would assist if any redacted version could be provided to the Commission no later than **5:00pm Tuesday 7 July 2020**.

Request for attendance by Ms Joseph

The Commissioner has determined that he would be assisted by oral evidence from Ms Traci Joseph, Department of Agriculture, Water and the Environment. Please advise whether Ms Joseph is available to attend the Commission on **Thursday 9 July 2020 at 9:30am** to give evidence.

If the Commonwealth or Ms Joseph requires, or would prefer the comfort of, a summons to attend in relation to her giving evidence, please advise those assisting and one will be issued forthwith.

Yours faithfully

A handwritten signature in black ink, appearing to read 'J. Hoy'.

Jennifer Hoy

Senior Solicitor Assisting

Special Commission of Inquiry into the Ruby Princess

Level 3 | Registrar General's Building | 1 Prince Albert Road, Queens Square | SYDNEY NSW 2000
T (02) 92285795 |



Our ref. 20203214

3 July 2020

Ms Jennifer Hoy
Senior Solicitor assisting the Special Commission
of Inquiry into the Ruby Princess

Australian Government Solicitor
4 National Circuit, Barton ACT 2600
Locked Bag 35, Kingston ACT 2604
T 02 6253 7000 DX 5678 Canberra
www.ags.gov.au

Canberra
Sydney
Melbourne
Brisbane
Perth
Adelaide
Hobart
Darwin

By email: jennifer.hoy@rubyprincessinquiry.nsw.gov.au

Dear Ms Hoy

INQUIRY INTO THE RUBY PRINCESS

1. Thank you for your letter dated 1 July 2020.
2. The Commonwealth has provided to the Special Commission on a voluntary basis a considerable amount of documentary information, including a lengthy and detailed written statement and supporting documents. The Commonwealth has done so in an effort to assist the Special Commission, notwithstanding its position that it is not bound by the *Special Commissions of Inquiry Act 1983* (NSW).
3. The Commonwealth remains willing to co-operate with the Special Commission. However, it respectfully declines Commissioner Walker's request that Ms Traci Joseph attend and give oral evidence before the Special Commission.
4. If the Commissioner identifies by return correspondence the further information that would assist him, we will seek instructions from the Commonwealth as to whether that further information may be provided, again on a voluntary basis.
5. We will write to you separately regarding the proposed tender and publication of the voluntary statement and accompanying documents provided to the Special Commission on 12 June 2020 on behalf of the Commonwealth.

Yours sincerely

Paul Vermeesch
Deputy Chief Solicitor
T 02 6253 7428
paul.vermeesch@ags.gov.au



Special Commission of Inquiry into the Ruby Princess

7 July 2020

Mr Simon Daley
Chief Solicitor
GPO Box 2727
SYDNEY NSW 2001

By email: simon.daley@ags.gov.au; Tristan.lockwood@ags.gov.au

Dear Mr Daley

I refer to the above Special Commission of Inquiry (**the Commission**), established by letters patent dated 15 April 2020, in which I assist Commissioner Bret Walker SC.

Thank you for your letter dated 12 June 2020 and for the provision of the voluntary statement on behalf of the Commonwealth (**the Statement**).

Further requests

Having reviewed the statement and accompanying documents, and further to the letter from Mr Vermeesch dated 3 July 2020, the Commissioner has directed that I write to you and raise a number of questions and requests, which are set out below. The Commissioner notes that he is due to report to the NSW Governor by **14 August 2020**.

1. Other than the policy provided at Tab 26¹ (HEA.0001.0001.0198), please identify and provide copies of any other “business policy” developed by the Commonwealth Department of Health (**Health**) in relation to human biosecurity (S[29]ff).
2. Have any policies referred to in Interrogatory 1 been updated in light of the risks to human health posed by COVID-19? If so, when did this occur?
3. Was the Traveller Illness Checklist (**TIC**) referred to at [19] and [78] of the Statement updated in light of the risks to human health posed by COVID-19? If so, please provide copies of those update(s).
4. Further to [19] of the Statement, please provide a copy of any training modules that relate to:
 - a. the administration of the TIC referred to at [19] and [78] of the Statement; and

¹ Please note that Tab references below refer to the Index to Documents Accompanying the Statement.

- b. the performance of services by a Human Biosecurity Officer (**HBO**) or a Chief Human Biosecurity Officer (**CHBO**).
5. Paragraph [31] of the Statement states that Health “maintains and reviews policies related to pratique”. Please provide any policies of Health not already included in the accompanying documents provided to the Commission on 12 June 2020 that relate to the grant of pratique.
6. Clause 4.5 of Schedule 3 of the Memorandum of Understanding (**MOU**) referred to in [29] of the Statement and produced at Tab 10 refers to a separate schedule in respect to “human biosecurity emergency response services”. The Commission would be grateful for provision of a copy of that separate schedule.
7. Clause 11, Schedule 3 of the MOU refers to a Human Biosecurity Forum (**the Forum**). The Commission would be grateful if the Commonwealth could advise whether the Forum has met in 2020. If so, please provide copies of all agendas, minutes and other documents relevant to matters discussed at any meetings held in 2020.
8. The Commission understands that the Marine Arrivals Reporting System described at [46]-[52] of the Statement does not generate an automatic email or alert directed to the relevant CHBO, HBOs, or a jurisdictional health authority (eg. NSW Health) when a vessel uploads data relevant to human biosecurity. Is this correct?
9. In relation to the communications from NSW Health to Department of Agriculture, Water and Environment (**DAWE**) concerning the risk assessment of the NSW Health Expert Panel, referred to in [97] of the Statement:
- a. When did DAWE receive the last such communication from NSW Health in relation to the arrival of the Ruby Princess on 19 March 2020?
- b. Did DAWE consider that any of the communications received related to the grant of pratique?
- c. In the period when DAWE was being notified of the outcome of the NSW Health Expert Panel’s risk assessments in relation to arriving cruise ships, did Biosecurity Officers continue to perform human health inspections and administer TICs?
10. The Statement provides that the TIC, DAWE operational guidelines and the Negative Pratique Instrument referred to at [75] all required a Biosecurity Officer to obtain advice from a HBO prior to the grant of pratique (see, e.g. paragraphs [78],[79]):
- a. After NSW Health ceased communicating the NSW Health Expert Panel’s decisions, was the advice referred to above sought from relevant HBO’s by officers of DAWE? If so, how was that advice sought?
11. The Commission notes the change to the suspect case definition for COVID-19 made by the Communicable Diseases Network of Australia published on 10 March 2020. In light of this change to the suspect case definition, please explain why the TIC was only updated to include mainland China, Iran, South Korea and Italy on 18 March 2020 (see [48] of the Statement)?

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Level 3 | Registrar General’s Building | 1 Prince Albert Road, Queens Square | SYDNEY NSW 2000
T (02) 92285795 |

12. The Commission notes [104](f) of the Statement and the MARS Pre Arrival Report (**PAR**). Was question 2.3.3 intended to refer to infection and spread of any disease, or was it intended to refer only to gastrointestinal illness (see "2.3) Gastro-intestinal illness")?
13. The Commission has received material that indicates that the National Incident Room, under the auspices of Health, is tracking and collating data in relation to the spread of infection of COVID-19 nationally, as well as cases related to the Ruby Princess. The Commission would be grateful for provision of the information requested in Item 4 of Schedule A of the letter to the Australian Government Solicitor dated 15 May 2020 to enable the Commissioner to accurately record that information in his Final Report. The information requested in Item 4 of Schedule A is:
 4. All available information, including that obtained by the National Incident Room, as at the date of production in relation to:
 - a. How many passengers of the Ruby Princess have contracted COVID- 19;
 - b. How many crew members of the Ruby Princess have contracted COVID-19;
 - c. How many passengers have died as a result of contracting COVID-19;
 - d. How many passengers or crew members remain in hospital for treatment of COVID-19.
14. The Commission notes that [187] of the Statement indicates that Health became aware of positive tests in respect of Ruby Princess passengers in the evening of 19 March 2020. The legal representatives for NSW Health have indicated that they believe that this an error and that Health were not aware of positive tests until 20 March 2020. Clarification of this point would be appreciated.
15. Paragraph [155] of the Statement provides that DAWE did not administer a TIC in relation to arrival of the Ruby Princess on 19 March 2020. Please provide information about why the TIC was not administered.

Please do not hesitate to contact me if clarification is required in relation to any of the matters raised above.

Yours faithfully



Jennifer Hoy

Senior Solicitor Assisting

Special Commission of Inquiry into the Ruby Princess

Level 3 | Registrar General's Building | 1 Prince Albert Road, Queens Square | SYDNEY NSW 2000
T (02) 92285795 |



Our ref. 20202987

8 July 2020

Ms Jennifer Hoy
Senior Solicitor assisting the Special Commission
of Inquiry into the Ruby Princess

Australian Government Solicitor
4 National Circuit, Barton ACT 2600
Locked Bag 35, Kingston ACT 2604
T 02 6253 7000 DX 5678 Canberra
www.ags.gov.au

Canberra
Sydney
Melbourne
Brisbane
Perth
Adelaide
Hobart
Darwin

By email: jennifer.hoy@rubyprincessinquiry.nsw.gov.au;

Dear Ms Hoy

Special Commission of Inquiry into Ruby Princess: response to summons

1. We refer to your email sent at 5.08pm on 7 July 2020 and the attached summons issued by Mr Bret Walker SC, Commissioner appointed to the Special Commission of Inquiry into the Ruby Princess under letters patent dated 15 April 2020, and directed to Ms Traci Joseph, of the Department of Agriculture, Water, and the Environment (**DAWE**).
2. In relation to the summons, the Australian Government Solicitor (**AGS**) acts for the Commonwealth of Australia on the instructions of DAWE.
3. The summons purports to be made pursuant to section 14 of the *Special Commissions of Inquiry Act 1983* (NSW) (the **NSW Act**). The summons states that the Commissioner requires Ms Joseph to attend the Special Commission of Inquiry at 9:30am on Wednesday 15 July 2020 to give evidence. The summons also states that failure to comply with it without lawful excuse may amount to an offence under section 25 of the NSW Act.
4. We confirm that Ms Joseph is an employee of the Australian Public Service in DAWE in accordance with the *Public Service Act 1999* (Cth).
5. The Commonwealth considers that the Commissioner does not have power to issue the summons to Ms Joseph as an employee of the Commonwealth. Our reasons for this, briefly stated, include the following:
 - a. as a matter of statutory construction, the NSW Act is not intended to regulate the Commonwealth executive and the coercive powers contained in the NSW Act do not apply to the Commonwealth or its employees;
 - b. even if the coercive powers in the NSW Act did, as a matter of statutory construction, purport to apply to the Commonwealth and its employees, the NSW provisions are invalid in their application to the Commonwealth and its employees by reason of NSW's legislative incapacity to restrict or modify the

capacity of the Commonwealth executive to execute and maintain Commonwealth law, or to abrogate the Commonwealth's privilege against discovery.

6. In relation to 5(a) above, we note:
 - a. the general presumption that the Crown is not bound by a statute;
 - b. the presumption that the legislature of one polity does not intend to bind the Crown in right of a different polity;
 - c. the strong presumption against interpreting a statute so as to impose a liability of a criminal nature upon the Crown in any of its capacities;
 - d. the absence of any provisions in the NSW Act or the *Interpretation Act 1987* (NSW) to the effect that the Crown in right of the Commonwealth is bound; and
 - e. that the text, context and purpose of the NSW Act do not otherwise reveal a legislative intention that the coercive powers of the Commission bind the Commonwealth executive.
7. The Commonwealth does not regard the *Service and Execution of Process Act 1992* (Cth) as rendering the Commonwealth or its employees amenable to compulsion by the Commission.
8. For the above reasons, and with a view to avoiding the need for court proceedings, we are instructed to respectfully request that the Commissioner withdraw the summons by no later than **midday on Friday 10 July 2020**. If the summons is not withdrawn by then, we anticipate being instructed to commence proceedings against the Commissioner for a determination on these issues.
9. If the summons is not withdrawn by midday on 10 July 2020 and the Commonwealth commences legal proceedings, we anticipate receiving instructions to request that, before 15 July 2020, the Commissioner either withdraw the summons, provide an appropriate undertaking, or advise that the Commissioner suspends the requirement for compliance with the summons pending the resolution of proceedings.
10. If you have any questions or would like to discuss please contact us (details below).

Yours sincerely



Paul Vermeesch
Deputy Chief Solicitor
T 02 6253 7428
paul.vermeesch@ags.gov.au



Stacey Hahn
Senior Lawyer
T 02 9581 7594
stacey.hahn@ags.gov.au



Special Commission of Inquiry into the Ruby Princess

9 July 2020

Mr Paul Vermeesch
Deputy Chief Solicitor
GPO Box 2727
SYDNEY NSW 2001

By email: paul.vermeesch@ags.gov.au; stacey.hahn@ags.gov.au

Dear Mr Vermeesch

I refer to the above Special Commission of Inquiry (**the Commission**), established by letters patent dated 15 April 2020, in which I assist Commissioner Bret Walker SC.

I refer to your email letter dated 8 July 2020 conveying the response of the Commonwealth on the instructions of the Department of Agriculture, Water and the Environment (**DAWE**) to the summons issued by Commissioner Walker SC to Ms Joseph, an employee of the Australian Public Service (**APS**) (**the summons**).

It would appear from your letter that, at least for the purposes of responding to the summons, the Australian Government Solicitor (**AGS**) is acting for Ms Joseph. If I am wrong in that regard, please let me know urgently. For the present, the Commissioner will proceed on the basis that it is proper to deal with the AGS in order to communicate with Ms Joseph.

It is apparent that the Commonwealth and the Commissioner hold opposite views concerning the compulsory effect of the summons. The focus of this difference appears to be Ms Joseph's character as an APS employee in DAWE. To this may be added the evident fact that the relevant subject matter of her proposed evidence sought by the summons for the purpose of the Commission is confined to her acts, and omissions (if any), relating to the grant of pratique for the disembarkation of the Ruby Princess on 19 March 2020 in Sydney.

As may be seen from the Voluntary Statement and accompanying documents provided to the Commission by the Commonwealth on 12 June 2020, it is uncontroversial that in the case of a listed human disease the grant of pratique will involve, in very general terms, formal co-operation between officers of the Commonwealth and officers of the State. In particular, the involvement of both the relevant Biosecurity Officer (an officer of the Commonwealth) and the relevant Human Biosecurity Officer (an officer of the State) is required or envisaged in the grant of pratique in such a case.

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Again, it is evidently uncontroversial that this co-operation is expected to occur under an explicit arrangement between the Commonwealth and the State of the kind contemplated by the *Biosecurity Act 2015* (Cth). In all likelihood, the Report by the Commissioner in response to his Terms of Reference will address one way or another the operation of these arrangements concerning the grant of pratique on this occasion.

Material already held by the Commission will be considered in relation to this topic. They sufficiently indicate the real possibility that Ms Joseph could explain or provide further detail, perhaps usefully, concerning the co-operative provision of information and public health assessment that was desirably engaged in the grant of pratique.

By way of prior notification to a person who may be affected by the expression and publication of conclusions about their conduct, the Commissioner wishes Ms Joseph to understand that it is a possibility that an inappropriate informality, lack of explicit regard to statutory and administrative requirements, and a failure of sensible liaison between her and State officers could be found by the Commissioner to have occurred in this case. In turn, it may be that these possibilities, which arguably appear from the material provided by the Commonwealth to the Commission, might found criticisms of the conduct of Ms Joseph, those training and supervising her, and those making the arrangements in question between the Commonwealth and the State.

I should stress that the Commissioner has not formed final views on any of these matters. He is firmly of the view that Ms Joseph very likely can provide more detail of the administrative conduct in relation to the grant of pratique in this case, going beyond what has already most usefully been supplied by the Commonwealth.

Regardless of the disagreement about the summons, there is an opportunity for Ms Joseph to respond to these possibilities, preferably with evidence and in any event by submissions. I am available at short notice to discuss with you resort to these alternative approaches. The Commissioner is intent on providing Ms Joseph with this procedural fairness.

The Commissioner takes the position, respectfully, that it is not an appropriate occasion, or use of resources, to seek to persuade you, on behalf of the Commonwealth, that the Commonwealth's position in relation to the compulsory effect of the summons is wrong. Neither has your letter persuaded the Commissioner that he is wrong. It follows that the Commissioner intends to maintain the position that the summons is within the power available in that regard, and should be obeyed.

However, the compulsory effect of the summons arises from the power to force compliance by means of a warrant, and also from the criminal offence constituted by disobedience to it. The Commissioner has power for the former, but not the latter, mode of enforcement.

The Commissioner accepts that the communicated refusal of Ms Joseph to comply with the summons is, so far as she is concerned personally, no doubt in good faith, without improper disrespect for the authority of the Commissioner, and in accordance with the perceived requirements of her employment. So far as the Commissioner is concerned, these are very important matters for him to consider in deciding how to proceed.

It is clear that the attempted execution of a warrant in New South Wales would be resisted by Ms Joseph and the Commonwealth, as they are both entitled to do on the basis of their opposite view of the Commissioner's power to summons Ms Joseph. The Commissioner accepts there is no question of contumelious disregard of accepted legal authority.

Further, the question of power plainly involves large matters of legislative competence and related constitutional matters. It is quite unrealistic to suppose that litigation could be completed in time to permit compliance by the Commissioner with the Letters Patent.

In these circumstances, the Commissioner has asked that I notify you in unqualified terms that he will not issue a warrant to enforce the summons, given the matters noted above, which weigh heavily in favour of sparing Ms Joseph any further uncertainty about her position on 15 July 2020.

For what it is worth, in relation to criminal proceedings thereafter, as to which the Commissioner has no dispositive authority, it is nonetheless appropriate for me to pass on, for the benefit of Ms Joseph, the Commissioner's clear view that it would not be in the public interest that she individually be prosecuted in order to test these constitutional differences.

However, your demand that the Commissioner withdraw the summons is excessive. The summons stands as an assertion of a power resisted by the Commonwealth. The summons will form part of a narrative which will appear in the Report by the Commissioner concerning the involvement of the Commonwealth in the proceedings of the Commission. In particular, it will inform any comments the Commissioner may decide to express concerning the obstacles placed in the way of proper investigation of the co-operative federalism manifested in the arrangements for the grant of pratique, when the Commonwealth resists the application to its officers of the terms of State legislation applying generally to everyone whose evidence may inform a Special Commission of Inquiry.

The Commissioner would, of course, enter a submitting appearance in any litigation. He does not wish to be further involved in any dealings about that prospect. However, respectfully, may I suggest that the Attorney-General would be the appropriate interlocutor were the Commonwealth unfortunately disposed to take that course.

For completeness only, the Commissioner asks me to note that he had carefully considered the question of power before issuing the summons, including the factors noted in paras 6 and 7 of your letter. He does not accept that the framing of the propositions in para 6 is appropriate in light of principle and authority, and respectfully suggests that the subjection of the Commonwealth and its officers to the rule of law is not so simply side-stepped. This is to venture into matters that will not be settled by an exchange of correspondence.

Yours faithfully


Jennifer Hoy
Senior Solicitor Assisting



Our ref. 20202987

10 July 2020

Ms Jennifer Hoy
Senior Solicitor assisting the Special Commission
of Inquiry into the Ruby Princess

Australian Government Solicitor
4 National Circuit, Barton ACT 2600
Locked Bag 35, Kingston ACT 2604
T 02 6253 7000 DX 5678 Canberra
www.ags.gov.au

Canberra
Sydney
Melbourne
Brisbane
Perth
Adelaide
Hobart
Darwin

By email: jennifer.hoy@rubyprincessinquiry.nsw.gov.au;

Dear Ms Hoy

Special Commission of Inquiry into Ruby Princess: response to summons

1. We refer to your letter received by email at 5:10pm on 9 July 2020.
2. We confirm that the Australian Government Solicitor (**AGS**) acts for the Commonwealth of Australia, on the instructions of the Department of Agriculture, Water, and the Environment (**DAWE**) in relation to the summons directed to Ms Traci Joseph dated 7 July 2020 (the **Summons**).
3. Ms Joseph is not separately legally represented. Unless and until otherwise advised, the Commission may communicate with AGS in respect of any matters to be communicated to Ms Joseph. In particular, we can assure you that Ms Joseph will be made aware of your letter of 9 July 2020 and of the Commissioner's concern that she have a reasonable opportunity to respond to the concerns raised in that letter about her conduct, including by way of any voluntary evidence or submission by her on her own behalf.
4. We note the Commissioner takes a different view to the Commonwealth with regard to the compulsory effect of the Summons and he does not agreed to withdraw it. Respectfully, the Commonwealth would disagree with any suggestion that the Commonwealth is seeking to sidestep the rule of law. Rather, the Commonwealth has a different view as to the content of the law from the Commissioner. The Commonwealth remains willing to assist the Special Commission as far as possible, consistent with its long-standing position on the effect of such summonses. Like the Commissioner, the Commonwealth is desirous to avoid the need for litigation. In particular the Commonwealth wishes to avoid the need to commence legal proceedings, noting the Commissioner's assessment, with which we agree, that there is no prospect of the substantive issues raised by any such proceedings being determined before the Commission's task is concluded.

5. We note the Commissioner's assurance in unqualified terms that he will not issue a warrant to enforce the Summons pursuant to section 22 of the *Special Commissions of Inquiry Act 1983* (NSW) (the **Act**) and respectfully thank you for that assurance.
6. Notwithstanding that assurance and the Commonwealth's previously expressed position that the Commissioner does not have power to issue the Summons to the Commonwealth or its employees, the Commonwealth seeks to ensure there is no risk to Ms Joseph by way of prosecution as a result of her not attending the Special Commission on 15 July 2020 as purportedly required by the Summons and having regard to the assurances provided in your letter of 9 July 2020.
7. To that end, the Commonwealth proposes to take up the Commissioner's invitation to provide a further written submission on a voluntary basis, directed to Ms Joseph's actions and the administrative conduct in relation to the grant of pratique as notified in your letter of 9 July 2020 (and to the extent noted in your previous correspondence to the Commonwealth).
8. The Commonwealth seeks your advice that, pursuant to section 16 of the Act, the Commissioner excuses Ms Joseph from the requirement to attend the Special Commission on 15 July 2020.
9. The Commonwealth would not seek to assert that procedural fairness has not been afforded to it or Ms Joseph as a consequence of her non-attendance on 15 July 2020. Your letter of 9 July 2020 otherwise provides an opportunity to the Commonwealth and Ms Joseph to respond to the matters of concern.
10. If the Commissioner is agreeable to this proposal, we would be assisted by provision of any specific questions to be addressed by the Commonwealth or Ms Joseph, to the extent they differ from those set out in your email and attachments of 3 July 2020 and your letter of 7 July 2020, so that attention can be directed to those matters.
11. We would be grateful for your response by 5:00pm on 10 July 2020, so that we can seek instructions and commence any necessary legal proceedings promptly.

Yours sincerely



Paul Vermeesch
Deputy Chief Solicitor
T 02 6253 7428
paul.vermeesch@ags.gov.au



Stacey Hahn
Senior Lawyer
T 02 9581 7594
stacey.hahn@ags.gov.au



Special Commission of Inquiry into the Ruby Princess

10 July 2020

Mr Paul Vermeesch
Deputy Chief Solicitor
Australian Government Solicitor
GPO Box 2727
SYDNEY NSW 2001

By email: paul.vermeesch@ags.gov.au; stacey.hahn@ags.gov.au

Dear Mr Vermeesch

I refer to the above Special Commission of Inquiry (**the Commission**), established by letters patent dated 15 April 2020, in which I assist Commissioner Bret Walker SC.

I further refer to your letter dated 10 July 2020 responding to the matters raised in correspondence from the Commission dated 9 July 2020. Thank you for confirming that the Commission may communicate with you in relation to matters to be communicated to Ms Traci Joseph.

Invitation to provide further information

The Commissioner notes that the Commonwealth proposes to take up his invitation to provide further information as to Ms Joseph's actions and the administrative conduct in relation to the grant of pratique on 19 March 2020 (point 7 of your letter).

In light of same, and as invited by point 10 of your letter, please find specific questions below that the Commissioner asks be addressed by the Commonwealth and Ms Joseph. The Commissioner notes that these enquiries are additional to those already set out in the letter dated 7 July 2020, and separate from the issues for consideration of the Commonwealth, provided on 3 July 2020.

Questions for the Commonwealth and Ms Joseph

1. Is there a formal mechanism or procedure that facilitates the provision of the necessary advice (or notification of the outcome of the relevant risk assessment) from a Chief Human Biosecurity Officer (**CHBO**) or Human Biosecurity Officers (**HBO**) to Biosecurity Officers in relation to human biosecurity matters? If there is no formal mechanism, what was Ms Joseph's usual practice to obtain this advice or notification? Is it done verbally, via email or by some other method?
2. Did the means by which advice or notification was provided by a CHBO or HBO's to Biosecurity Officers change when NSW Health convened expert panels to

Special Commission of Inquiry into the Ruby Princess

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T (02) 92285795 |

assess the risk posed to human health by international cruise ship arrivals from about 22 February 2020? If so, how did it change?

3. Paragraph [97] of the Voluntary Statement of the Commonwealth (**VS**) states that communication of the outcome of NSW Health expert panel risk assessments ceased in mid-March 2020. What, if anything, did Ms Joseph do upon that occurring? Is Ms Joseph aware of any steps taken by other DAWE officers in relation to this change?
4. When Ms Joseph spoke with Bibi Tokovic on the gangway of the Ruby Princess on the morning on 19 March 2020, did Ms Tokovic inform her about the swabs that had been sent away for testing for COVID-19? (VS at [150])
5. Whilst Ms Joseph was undertaking the Routine Vessel Inspection (**RVI**) on board the Ruby Princess on 19 March 2020, she was provided with information in relation to the "landing orders for swabs" (VS at [155]). Did she regard this as relevant to the considerations she was required to make re the grant of pratique?
6. It appears uncontroversial that a Human Health Inspection of the Ruby Princess was required on 19 March 2020 (see the relevant Work Instruction (**the Work Instruction**) at Tab 24 of the accompanying documents to the VS, especially at pp. 7- 8). Did Ms Joseph undertake the required steps, in particular:
 - (a) did Ms Joseph undertake the interview with the Master of the ship?
 - (b) did Ms Joseph verify the human health declaration against the medical log provided by the Ruby Princess?
 - (c) In relation to (a) and (b), if the answer is no, why were these steps not taken?
7. The information currently available to the Commission indicates that by the time Ms Joseph boarded the Ruby Princess on 19 March 2020, she was aware that NSW Health would not be attending the arrival of the ship to conduct an onboard health assessment. In light of this information, why didn't Ms Joseph administer the Traveller Illness Checklist (**TIC**) whilst on board the Ruby Princess on 19 March 2020?
8. In light of the fact that the TIC was not administered, and NSW Health did not attend and conduct an onboard assessment, how, if at all, was advice from a CBHO or HBO obtained by Ms Joseph in relation to the grant of pratique for the Ruby Princess on 19 March 2020?
9. If the Work Instruction was not adhered to, no TIC was administered, and no advice was sought from a CHBO or HBO, did Ms Joseph consider that she had any responsibilities in relation to human biosecurity in relation to the arrival of the Ruby Princess on 19 March 2020? If so, please describe those responsibilities.
10. If Ms Joseph did not communicate the grant of pratique orally, why were passengers permitted to commence disembarkation over one hour prior to the grant of pratique in the Maritime Arrival Reporting System? (VS at [162]). In relation to this issue, the Commission notes that Annexure 16 of the statement of Julie Taylor dated 13 May 2020 (Exhibit 43 in the Commission) indicates that disembarkation commenced at 7:14am.
11. Two passengers were disembarked from the Ruby Princess on 19 March 2020 a number of hours prior to both any inspection of the vessel, or the grant of pratique.

In relation to the assessments required to be made by Biosecurity Officers upon the arrival of a vessel such as the Ruby Princess, is Ms Joseph of the view that it would be relevant for a TIC to be completed for such passengers, or at least for information about their health status to be provided to DAWE for consideration?

Further steps

On the basis that the Commonwealth provides the further information requested above by **noon on Tuesday 14 July 2020**, the Commissioner undertakes to excuse Ms Joseph from the summons for her attendance on 15 July 2020.

Please do not hesitate to contact me if you wish to discuss.

Yours faithfully



Jennifer Hoy

Senior Solicitor Assisting



Our ref. 20202987

11 July 2020

Ms Jennifer Hoy
Senior Solicitor assisting the Special Commission
of Inquiry into the Ruby Princess

By email: jennifer.hoy@rubyprincessinquiry.nsw.gov.au;

Australian Government Solicitor
4 National Circuit, Barton ACT 2600
Locked Bag 35, Kingston ACT 2604
T 02 6253 7000 DX 5678 Canberra
www.ags.gov.au

Canberra
Sydney
Melbourne
Brisbane
Perth
Adelaide
Hobart
Darwin

Dear Ms Hoy

Special Commission of Inquiry into Ruby Princess: response to summons

1. We refer to your letter dated 10 July 2020, received late afternoon that day. We also refer to related correspondence and to the summons addressed to Ms Traci Joseph dated 7 July 2020 (the **Summons**).
2. As previously indicated, the Commonwealth wishes to co-operate with the Commission and to assist it with its inquiries. To that end, the Commonwealth proposes to prepare a single response to your most recent letter and to the Commission's earlier requests dated 3 July and 7 July 2020. Unfortunately, the Commonwealth will not be able to provide its response by midday on Tuesday 14 July 2020 as the Commissioner has requested, but expects that it will be able to do so by close of business on Thursday 16 July 2020. We note that the Commonwealth is not proposing to seek leave to make oral submissions on 15 July 2020.
3. Our letter dated 8 July 2020 requested that the Commissioner withdraw the Summons. Your response dated 9 July 2020 indicated that the Commissioner was not prepared to do so because it stands as an assertion of power resisted by the Commonwealth and will form part of a narrative that will appear in the report. The Commissioner nevertheless accepted that Ms Joseph's refusal to comply with the Summons, communicated through the Commonwealth, was 'no doubt in good faith' and that in order to spare Ms Joseph any further uncertainty about her position on 15 July, the Commissioner indicated in unqualified terms that he would not issue a warrant to enforce the Summons in the particular circumstances.
4. However, your letter also acknowledged that the risk of punishment for disobedience to the Summons lay beyond the Commissioner's dispositive authority, but that the Commissioner's 'clear view [is] that it would not be in the public interest that [Ms Joseph] individually be prosecuted in order to test [the] constitutional differences' between the Commonwealth and the Commissioner.
5. While the Commonwealth appreciates and respectfully agrees with the Commissioner's comments that it would not be in the public interest to prosecute Ms Joseph, the risk that the

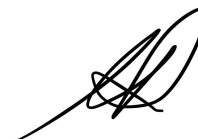
relevant prosecuting authority might take a different view means that Ms Joseph remains at risk if she does not attend in answer to the Summons. This prompted our letter dated 10 July 2020 requesting that the Commissioner exercise his powers under section 16 of the *Special Commissions of Inquiry Act 1983* (NSW) (the **Act**) to excuse Ms Joseph from the need to attend on the return of the Summons on 15 July 2020.

6. Against that background, we note that your letter dated 10 July 2020 indicates that before the Commissioner decides whether he is prepared to excuse Ms Joseph from attendance on 15 July 2020, he wishes to consider the Commonwealth's response. It thus appears that there is a risk depending on the Commissioner's assessment of the Commonwealth's response he may decide that he is not prepared to excuse Ms Joseph notwithstanding the views expressed in your letter dated 9 July 2020. This leaves Ms Joseph in an invidious position and means that the Commonwealth may have no choice but to commence proceedings to protect its long-held position that summonses of the kind in issue are not validly binding on the Commonwealth and its employees.
7. Having regard to the Commissioner's views conveyed in your letter dated 9 July 2020, we submit that the appropriate course would be for Ms Joseph to be excused altogether. At the very least, given that the Commonwealth will not be in a position to provide its response until after 15 July 2020, Ms Joseph should be excused from attending until sometime after that response has been made. That said, we respectfully submit that a decision whether to excuse Ms Joseph should not be contingent on the Commissioner's assessment of the Commonwealth's response.
8. As advised by our email sent at 1:09 pm on 10 July 2020, while the Commonwealth is seeking to avoid litigation and provide a response to the Special Commission, the High Court has tentatively arranged for a 10:00 am hearing on Tuesday 14 July 2020 to accommodate the need for the urgent disposition of any application by the Commonwealth in advance of the return of Summons on 15 July 2020. The Court has indicated that in this event, any submissions from the parties would need to be filed by 4:00pm on Monday 13 July 2020.
9. In these circumstances, so that the Commonwealth has sufficient time to file proceedings on Monday should that be necessary, and so that the parties will have time to file any submissions by 4:00 pm that day, we request that by no later than **10:00 am on Monday 13 July 2020** you advise whether the Commissioner is prepared to exercise his powers under section 16 of the Act to excuse Ms Joseph from the need to attend in answer to the Summons on 15 July 2020.

Yours sincerely



Paul Vermeesch
Deputy Chief Solicitor
T 02 6253 7428
paul.vermeesch@ags.gov.au



Stacey Hahn
Senior Lawyer
T 02 9581 7594
stacey.hahn@ags.gov.au



Special Commission of Inquiry into the Ruby Princess

13 July 2020

Mr Paul Vermeesch
Deputy Chief Solicitor
Australian Government Solicitor
GPO Box 2727
SYDNEY NSW 2001

By email: paul.vermeesch@ags.gov.au; stacey.hahn@ags.gov.au

Dear Mr Vermeesch

I refer to the above Special Commission of Inquiry (**the Commission**), established by letters patent dated 15 April 2020, in which I assist Commissioner Bret Walker SC.

I further refer to your letter dated 11 July 2020 responding to the matters raised in correspondence from the Commission dated 10 July 2020. The Commissioner welcomes the proposal of the Commonwealth to prepare and provide a single response to the requests made by the Commission in earlier correspondence by close of business Thursday 16 July 2020 (**the response**).

Request for consideration under section 16

I note your most recent letter requests that the Commissioner exercise his power under s 16 of the *Special Commissions of Inquiry Act 1983* (NSW) (**the Act**) and excuse Ms Joseph from the need to attend the Commission on 15 July 2020, in answer to the Summons addressed to her issued on 7 July 2020 (**the Summons**).

I write to advise that, as previously indicated, the Commissioner proposes to postpone consideration of the exercise of any powers pursuant to s 16 of the Act until after he has had an opportunity to review the response.

Summons stood over

In light of the expected timing of the provision of the response, the Commissioner has directed that the Summons to Ms Joseph be stood over until **2:00pm on 17 July 2020**. We anticipate being in a position to notify you of the Commissioner's intention to exercise of his powers under s 16 of the Act or otherwise by **10:00am on 17 July 2020**.

Please do not hesitate to contact me if you wish to discuss.

Yours faithfully

A handwritten signature in black ink, appearing to be 'J. Hoy'.

Jennifer Hoy

Senior Solicitor Assisting

Special Commission of Inquiry into the Ruby Princess

Level 3 | Registrar General's Building | 1 Prince Albert Road, Queens Square | SYDNEY NSW 2000
T (02) 92285795 |



Our ref. 20202987

14 July 2020

Australian Government Solicitor
4 National Circuit, Barton ACT 2600
Locked Bag 35, Kingston ACT 2604
T 02 6253 7000 DX 5678 Canberra
www.ags.gov.au

Canberra
Sydney
Melbourne
Brisbane
Perth
Adelaide
Hobart
Darwin

Ms Jennifer Hoy
Senior Solicitor assisting the Special Commission
of Inquiry into the Ruby Princess

By email: jennifer.hoy@rubyprincessinquiry.nsw.gov.au

Copy to: [REDACTED] [@cso.nsw.gov.au](mailto:[REDACTED]@cso.nsw.gov.au)

Dear Ms Hoy

Special Commission of Inquiry into the Ruby Princess

1. We refer to your letter dated 13 July 2020, the summons addressed to Ms Joseph dated 7 July 2020 (the **Summons**), and to previous correspondence.
2. We note your advice that the Commissioner welcomes the Commonwealth's proposal to provide a single response by close of business on Thursday 16 July 2020 to the requests made by the Commission in earlier correspondence. We also note your advice that the Commissioner has directed that the Summons be stood over until 2:00pm on Friday 17 July 2020 in anticipation of the Commissioner being in a position to notify the Commonwealth by 10:00am on Friday 17 July 2020 of his intention to exercise his powers under s 16 of the *Special Commissions of Inquiry Act 1983* (NSW) or otherwise. We are grateful for that indulgence, but wish to draw to your attention to some further matters of concern.
3. As indicated in your earlier correspondence, the Commissioner wishes to consider the Commonwealth's response to the Commission's requests before deciding under section 16 whether or not to excuse Ms Joseph from further attendance.
4. This prompted our letter of 11 July 2020, in which we emphasised the invidious position created for Ms Joseph if the Commissioner decides, following his assessment of the Commonwealth's response, that he is not prepared to excuse her pursuant to section 16. We submitted that a decision about her attendance should not be made contingent on an assessment of that response. We submitted that the appropriate course would be for Ms Joseph to be excused altogether, and, at the

very least, Ms Joseph should be excused from attending until sometime after that response has been made.

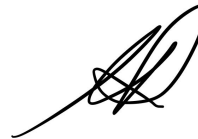
5. That submission was motivated by a concern that the Commonwealth have sufficient time for it to take steps to commence proceedings and obtain any necessary interlocutory orders so as to protect its and Ms Joseph's position in the event the Commissioner declines to exercise his power to excuse Ms Joseph.
6. With respect, the Commissioner's intention to notify the Commonwealth by 10:00am on Friday 17 July 2020 of his decision whether or not to excuse Ms Joseph, and for the Summons to be returnable at 2:00pm the same day, leaves only the narrowest of potential windows for the Commonwealth to take those protective steps if necessary.
7. The Deputy Registrar had earlier advised that the High Court would seek to accommodate the Commonwealth's potential proceeding, including by making the Duty Justice available for a tentative urgent hearing on 14 July 2020, on the expectation that urgent interim orders might need to be sought by the Commonwealth.
8. As you are aware, following receipt of your letter, we notified the Deputy Registrar as promptly as possible that the tentative hearing on 14 July 2020 would no longer be required, but in light of the Special Commission's correspondence, it may still be necessary for the Commonwealth to both file proceedings and seek an urgent hearing and determination sometime after 10:00am and before 2:00pm on 17 July 2020. The Deputy Registrar has indicated that the Court has a narrow window on that day, between existing hearings, in which it might be in a position to hear the matter. The Deputy Registrar has also indicated that the High Court has greater availability to hear any urgent application by the Commonwealth during the week commencing 20 July 2020 (and would be considerably assisted if the application could be deferred until then).
9. We are also concerned that the timeframes arising from your letter of 13 July 2020 do not allow the Commonwealth, the State of NSW (which would be named as a defendant in any proceeding) and the Court sufficient time for the orderly and proper constitution and disposition of the serious matters that might potentially be in dispute. For example, the Deputy Registrar advised on 10 July 2020 of tentative arrangements for a hearing on Tuesday 14 July 2020 and a requirement that any submissions from the parties be filed in the Digital Lodgement System by 4 pm on Monday 13 July 2020. Further, the State of NSW has since requested a period of 24 hours from receipt of the Commonwealth's submissions to file submissions in response. That orderly approach will simply not be possible as things stand.

10. Having regard to the above, we respectfully request that the Commissioner grant a further indulgence and stand over the Summons until 10:00am on Tuesday 21 July 2020 (anticipating that any urgent application could be heard sometime on Monday 20 July 2020). Could you please let us know by **6:00pm on 14 July 2020** whether the Commissioner would be prepared to make such a direction.

Yours sincerely



Paul Vermeesch
Deputy Chief Solicitor
T 02 6253 7428
paul.vermeesch@ags.gov.au



Stacey Hahn
Senior Lawyer
T 02 9581 7594
stacey.hahn@ags.gov.au



Special Commission of Inquiry into the Ruby Princess

14 July 2020

Mr Paul Vermeesch
Deputy Chief Solicitor
Australian Government Solicitor
GPO Box 2727
SYDNEY NSW 2001

By email: paul.vermeesch@ags.gov.au; stacey.hahn@ags.gov.au

Cc: [REDACTED]@cso.nsw.gov.au

Dear Mr Vermeesch

I refer to the above Special Commission of Inquiry (**the Commission**), established by letters patent dated 15 April 2020, in which I assist Commissioner Bret Walker SC.

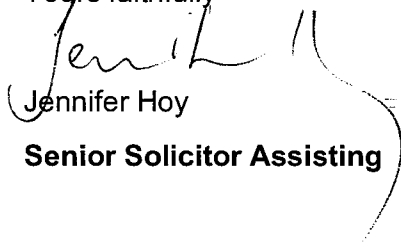
Thank you for your letter dated 14 July 2020 in relation to the summons issued to Ms Traci Joseph on 7 July 2020 (**the Summons**).

I write to advise that the Commissioner has carefully considered the matters raised therein, and so as to assist the High Court and the parties to make any necessary arrangements in an orderly fashion, has directed that the Summons be stood over until **10:00am on Tuesday 21 July 2020**.

As previously indicated, on the basis that the further response from the Commonwealth is received by close of business Thursday 16 July 2020, I anticipate being in a position to notify you of the Commissioner's intention to exercise of his powers under s 16 of the *Special Commissions of Inquiry Act 1983* (NSW) or otherwise by **10:00am on 17 July 2020**.

Please do not hesitate to contact me if you wish to discuss.

Yours faithfully


Jennifer Hoy
Senior Solicitor Assisting

Special Commission of Inquiry into the Ruby Princess

Level 3 | Registrar General's Building | 1 Prince Albert Road, Queens Square | SYDNEY NSW 2000
T (02) 92285795 |



Our ref. 20203214

15 July 2020

Ms Jennifer Hoy
Senior Solicitor assisting the Special Commission
of Inquiry into the Ruby Princess

Australian Government Solicitor
4 National Circuit, Barton ACT 2600
Locked Bag 35, Kingston ACT 2604
T 02 6253 7000 DX 5678 Canberra
www.ags.gov.au

Canberra
Sydney
Melbourne
Brisbane
Perth
Adelaide
Hobart
Darwin

By email: jennifer.hoy@rubyprincessinquiry.nsw.gov.au;

Dear Ms Hoy

Commonwealth response to Commission's requests for further information

1. We refer to our letter of 11 July 2020 and your letter of 13 July 2020.
2. In our letter of 11 July 2020 we communicated the Commonwealth's proposal to prepare a single response (the Response) to the Commissioner's requests for further information by your correspondence on 3, 7 and 10 July 2020, and to provide the Response by close of business on 16 July 2020. By your letter on 13 July 2020, the Commissioner welcomed that proposal.
3. The Commonwealth's position remains, as communicated by our letter of 15 May 2020 in respect of what became its voluntary statement to the Commissioner dated 12 June 2020, that its preparedness to assist the Commission voluntarily should not be taken as a concession that the Commonwealth or its officers and employees are bound by the *Special Commissions of Inquiry Act 1983* (NSW) or subject to any of the Commission's coercive powers. The Commissioner confirmed by your letter of 15 May 2020 that he would not take the voluntary statement as such.
4. We write to seek an assurance that the Commissioner will similarly not take the Response as any such concession.

Yours sincerely

Simon Daley
Chief Solicitor
T 02 9581 7490
simon.daley@ags.gov.au



Special Commission of Inquiry into the Ruby Princess

17 July 2020

Mr Paul Vermeesch
Deputy Chief Solicitor
Australian Government Solicitor
GPO Box 2727
SYDNEY NSW 2001

By email: paul.vermeesch@ags.gov.au; stacey.hahn@ags.gov.au

Dear Mr Vermeesch

I refer to the above Special Commission of Inquiry (**the Commission**), established by letters patent dated 15 April 2020, in which I assist Commissioner Bret Walker SC.

I further refer to the summons issued to Ms Traci Joseph by the Commissioner dated 7 July 2020 (**the summons**) and our previous correspondence in relation to the summons, now returnable at 10:00am on Tuesday 21 July 2020.

The Commissioner is grateful for the provision of the voluntary statement of the Commonwealth dated 16 July 2020 and the accompanying documents. In light of the provision of that material, the Commissioner has this morning exercised his powers under s 16 of the *Special Commissions of Inquiry Act 1983* (NSW) and excused Ms Joseph from attendance at the Commission in response to the summons.

Yours faithfully


Jennifer Hoy

Senior Solicitor Assisting

Special Commission of Inquiry into the Ruby Princess

Level 3 | Registrar General's Building | 1 Prince Albert Road, Queens Square | SYDNEY NSW 2000

T (02) 92285795 |