



LAW IN ORDER PTY LIMITED

ACN 086 329 044

T: 1300 004 667

W: www.lawinorder.com.au

TRANSCRIPT OF PROCEEDINGS

ACT BOARD OF INQUIRY – CRIMINAL JUSTICE SYSTEM

CHAIRPERSON: MR W. SOFRONOFF KC

CANBERRA

THURSDAY, 1 JUNE 2023 AT 9.58 AM (AEST)

MS E. LONGBOTTOM KC with MR J. JONES and MS E. LYNCH appeared as Counsel Assisting

MR M. TEDESCHI KC with MS B. ANNIWELL appeared on behalf of MR S. DRUMGOLD SC

MS C. WEBSTER SC appeared on behalf of Ms JEROME

MR A. MULLER appeared on behalf of MR S. WHYBROW

MR C. MITCHELL and MS W. HALL appeared on behalf of the Australian Federal Police

MR M. BLACK appeared on behalf of thirteen AFP members

MR T. GAME SC and MS K. EDWARDS appeared on behalf of MS H. YATES

MR J. MACK appeared on behalf of MR M. GREIG

MR SMITH appeared for MS JOHNSON

<THE HEARING RESUMED AT 9.58 AM

5 **THE CHAIRPERSON:** Yes, Mr Jones.

MR JONES: I call John Warwick Korn, Chairman. He will take (indistinct).

10 **THE CHAIRPERSON:** Yes. Mr Korn, you will see the form of oath in front of you. If you would recite the words, please.

<JOHN WARWICK KORN, SWORN

<EXAMINATION BY MR JONES:

15 **THE CHAIRPERSON:** Thank you, Mr Korn. Yes, Mr Jones.

MR JONES: Thank you, Chair. You are John Warwick Korn?

20 **MR KORN:** I am.

MR JONES: You are a barrister in private practice at the bar in Sydney?

25 **MR KORN:** I am.

MR JONES: You signed a statement on 4 April 2023 for this Board of Inquiry?

MR KORN: I did.

30 **MR JONES:** Can you recall whether you swore or affirmed that statement?

MR KORN: I don't believe I have ever affirmed a document. I believe I would have sworn it.

35 **MR JONES:** Thank you. Is there anything you wish to change or add to that statement?

MR KORN: There was one matter I brought to the Board's inquiry that as a result of - and I don't now recall whether I saw something or heard something - that I brought to the attention of the inquiry.

40 **MR JONES:** All right. Does that relate to a conversation you had with Mr Drumgold?

MR KORN: It does.

45 **MR JONES:** All right. We will come to that in a minute. Other than that issue, is there anything else you wish to add or change?

MR KORN: No, not that I - no, not from my perspective.

50 **MR JONES:** And your statement was true and correct?

MR KORN: It is.

MR JONES: Thank you. I believe that's been tendered, Mr Chair -

5

THE CHAIRPERSON: Thank you.

MR JONES: - as part of a tender bundle. On 6 August 2021, a brief of evidence was served on you on a USB by the AFP in relation to The Queen v Lehrmann?

10

MR KORN: Yes.

MR JONES: You had a look at that USB, and it was - the material on it was foreign to you?

15

MR KORN: What I said and what I remember seeing at the time was when I opened it, it didn't appear to me to be a trial brief. There were a number of blocks indicating files. And when I - even the most cursory perusal told me straightaway it was not a brief in the form that I would expect. There is a particular type of brief we get. We get a Crown case statement - we get the indictment; we get a Crown case statement; documents like that. And even allowing for the differences in jurisdictions, I was - it just did not look like a trial brief. So I determined not to look at it because I thought I would get another one from the Director's office forthwith.

20

MR JONES: Yes. Did you come to have a conversation with Detective Superintendent Moller about the brief -

25

MR KORN: Yes.

MR JONES: - soon after receiving it?

30

MR KORN: I won't say that it was soon after. I don't remember the time perspective. But, yes, I did have a conversation with Mr Moller.

MR JONES: And what did Mr Moller tell you and what did you tell Mr Moller?

35

MR KORN: He told me that there was material on the brief that shouldn't be there, and I told him what I've just told you, almost in precisely the same language -

MR JONES: All right.

40

MR KORN: - that I had looked at it, and I remember telling him it was the trial brief, and I didn't look further.

MR JONES: Thank you. Did you come to have a conversation with Mr Drumgold after that conversation with Mr Moller?

45

MR KORN: Whether it was after or not, I'm not going to say one way or the other. But I had a conversation with Mr Drumgold when he rang me about it.

MR JONES: And what did Mr Drumgold tell you and what did you tell Mr Drumgold in that conversation?

5 **MR KORN:** The whole of it or just the gist of it?

MR JONES: The gist of it.

10 **MR KORN:** He raised with me that there was material that shouldn't have been there and that it was of such a nature that not even the police should have it, not even the defence, and I remember him specifically saying, "Not even I should have it."

MR JONES: And by "I", you mean a reference to himself?

15 **MR KORN:** He was referring to himself.

MR JONES: All right.

20 **MR KORN:** He was trying to impress upon me just how solemn it was that no one should have access to that.

MR JONES: Very well.

25 **MR KORN:** I believe then - because I had never looked to see - I never went through - and I never even looked to see whether there was a -

THE CHAIRPERSON: An index.

30 **MR KORN:** An index. So I had never seen any reference to counselling notes. I - and my best recollection, Mr Chairman, is that there were four or five blocks, suitcases - whatever you want to call them - folders. I didn't get past the very earlier stages when I came to that view. I couldn't see the point in reading something which may or may not be the brief. It looked more like an investigator's brief. I remember saying that. And I couldn't see the point in reading a volume of material. I wanted to wait and see what it was that the Director's office were going to use in court.

35 **MR JONES:** And did you tell Mr Drumgold that you hadn't accessed the material on it?

MR KORN: Absolutely.

40 **MR JONES:** And at some later stage, did you arrange for it to be returned to the AFP?

45 **MR KORN:** Well, what I actually said was - he actually said to me - he said, "Can you dispose of it or get rid of it?" And I remember quite clearly I was the one who said, "I will do better than that. I will return it." And he said, "Would you be prepared to do that?" I said, "Of course."

MR JONES: And did you return it?

50 **MR KORN:** Yes, I did.

MR JONES: Without viewing any further material on it?

MR KORN: Without looking at any further material.

5 **MR JONES:** Thank you. That's the evidence-in-chief.

THE CHAIRPERSON: Mr Jones, do we have the dates of those phone calls with Mr Moller and Mr Drumgold -

10 **MR JONES:** Yes.

THE CHAIRPERSON: - from other sources or from Mr Korn's sources that he can't recall now?

15 **MR JONES:** Both. There is a greater recollection by reference to notes for the - Superintendent Moller.

THE CHAIRPERSON: Yes. So when was the - can you give me the date that the USB stick was delivered to Mr Korn, the date of the Moller conversation and the date of the Drumgold conversation, please?

20 **MR JONES:** The USB was delivered on 6 August 2021. What originally happened was it was -

25 **THE CHAIRPERSON:** Sorry, I just want the dates.

MR JONES: Ultimately, it was in the evening.

THE CHAIRPERSON: Yes.

30 **MR JONES:** Mr Korn collected it from the AFP headquarters in Sydney.

THE CHAIRPERSON: Yes.

35 **MR JONES:** And -

MR KORN: Mr Chair, what happened was I was expecting - I was told - I believe I had two conversations with Mr Moller. I won't go through them unless you want me to. But in respect when I went over to - when I went over to AFP headquarters there at Goulburn Street - there is a little alleyway - laneway that we all know is there.

40 **THE CHAIRPERSON:** Yes.

MR KORN: A police officer came down. We talked near that alleyway. I was given some material - some paperwork. But there was no stick. I had - I was expecting a USB - a stick. There was no stick there. So I then rang Mr Moller and told him there was no stick, and I then put him on to the phone to speak with the other - I won't say a name because it's apparently been redacted from my statement, but the AFP police officer's a female. I put Mr Moller on to her. The proposition Mr Moller originally had for me was that he would get another one down and it would probably arrive on Monday. I then left. And then later that afternoon, I

5 actually got a further conversation some time mid-afternoon from that same female police officer indicating that she now had a stick. I was led to believe that they had somehow accessed a central computer and - and downloaded it. And I then - I was - I go - I have a particular arrangement on Friday night, so I actually drove back to the same location, parked in the laneway. She came down and gave me the stick at that time.

THE CHAIRPERSON: Yes. Thank you. And that's 6 August, Mr Jones?

10 **MR JONES:** That's right. And then -

THE CHAIRPERSON: Right. So then the Moller?

15 **MR JONES:** - Detective Superintendent Moller says that he attempted to call Mr Korn at 0821 on 23 September '21 and then received a call back, having not had success, at 8.41 that same day, and there was some discussion about some redactions.

THE CHAIRPERSON: Yes. And Mr Drumgold?

20 **MR JONES:** Mr Drumgold says - I will have to check what date he said (indistinct).

THE CHAIRPERSON: Well, you can give it to me later. All right. Thanks.

25 **MR JONES:** But he speaks of the date, and Mr Korn says it is some time between 29 September and 1 October.

THE CHAIRPERSON: Thank you.

30 **MR JONES:** And then there is another telephone call between Detective Superintendent Moller and Mr Korn on 8 October 2021, and that follows an email from Mr Korn confirming what he's just told you.

THE CHAIRPERSON: Yes. Thank you. I just wanted the timeline. Yes.

35 **MR JONES:** That's the evidence-in-chief.

THE CHAIRPERSON: Thank you. Mr Tedeschi, do you have some questions?

MR TEDESCHI: Yes. Thank you.

40 **THE CHAIRPERSON:** Yes.

<EXAMINATION BY MR TEDESCHI:

45 **MR TEDESCHI:** Mr Korn, if I could take you to your statement. I don't think you have a copy, so I will just read some brief sections to you. You say at page 8:

50 "My first contact was with Detective Marcus Boorman, and that happened early in 2021, probably around February or March. It was before any notification that charges would be instituted. My best recollection is that it was limited to only two telephone calls."

Do you recall now what those telephone calls were about?

5 **MR KORN:** No I can't - I won't say - there was - no, I don't know precisely, Mr Tedeschi.
But I never had any conversation with him about a brief because there was no charging at that
stage. I was of an understanding - and this - what I'm about to say next I won't say unless
required because I see it's also been redacted. But I knew Mr Lehrmann was in - was around,
but he was in a particular place. And I think I made contact initially to say if it ever came to
10 the stage where proceedings would be instituted, that they make me the first point of contact
because I didn't want a media circus, journalists and things like that. In my experience,
having been a practitioner in the ACT - after I finished law school here, I started practice here
in '76 - February '76, I think. I always found the AFP to be civilised compared to what I later
learnt with the New South Wales Police.

15 **MR TEDESCHI:** Thank you. I didn't ask you that, but it's useful to know. During any of
those two telephone calls, did Detective Boorman tell you anything about his view of whether
or not Mr Lehrmann should be charged?

20 **MR KORN:** No.

MR TEDESCHI: Did he express some doubts about the veracity of the case against
Mr Lehrmann?

25 **MR KORN:** Mr Boorman?

MR TEDESCHI: Did Mr Boorman -

MR KORN: No.

30 **MR TEDESCHI:** - express any concerns about the veracity of the case against
Mr Lehrmann?

MR KORN: I have no recollection that anything like that ever took place.

35 **MR TEDESCHI:** You then say that in the first week of August, you received telephone calls
from Detective Superintendent Moller. You say the first call happened on a Wednesday. And
reconstructing your recollection over the next two days, that it was Wednesday, 4 August.
You say:

40 "In this week, I believe I had four telephone conversations with Mr Moller."

Now, two pages further on, you - one page further on and two pages further on, you give
some information about -

45 **MR KORN:** Do you want me to follow this, Mr Tedeschi? I have not read my statement
before coming here today.

MR TEDESCHI: I will read you the relevant part. You give some details about those
conversations. What I want to ask you is this: during any of those conversations, did

Superintendent Moller express any views about whether or not Mr Lehrmann should be charged?

MR KORN: No.

5

MR TEDESCHI: Did he express any views about his approach to the strength or weaknesses of the case against Mr Lehrmann?

MR KORN: No.

10

MR TEDESCHI: Paragraph 19 on page 11, you say that on Wednesday, 4 August 2021, that was the occasion when you received your first telephone call from Mr Moller to tell you that the matter would be proceeding to court, that Mr Lehrmann would be charged. And two pages further on, you provide more information about that call. And, specifically, you refer to that part of the conversation where you're trying to make an arrangement for Mr Lehrmann to present himself to be charged rather than any other way.

15

MR KORN: If it came - if that came to the pass.

20

MR TEDESCHI: And you -

MR KORN: That was a continuation of the first conversation.

MR TEDESCHI: And you give -

25

MR KORN: The determination hadn't been yet made whether it would be a charge or whether it would be by another - by a CAN notice.

30

MR TEDESCHI: And you refer to Superintendent Moller telling you that there would be a Court Attendance Notice. During any of that phone call - or those phone calls on 4 August 2021, did Superintendent Moller tell you anything about his views about the strength or weakness -

MR KORN: No, he did not.

35

MR TEDESCHI: - of the prosecution case?

MR KORN: I have a very clear recollection those calls were dominated by my concern as to how the formality of the charges would take place. And I used the expression, "I want to do everything I can to avoid a media circus." And Mr Moller replied in similar terms. That was the content - I - overwhelmingly, that was my concern at that time.

40

MR TEDESCHI: All right. You refer in that conversation on 4 August 2021 to being told by Superintendent Moller that the proceedings would be filed in court the following day, Thursday, 5 August. And then on page 15, you say Mr Moller said this to you:

45

"Mr Korn, we have prepared a brief. We have put it on a USB stick, and we have delivered - or are delivering a copy of that to the ACT DPP. And we propose to give you an identical copy of what is delivered to the Director's office."

50

Do you recall that?

MR KORN: That was precisely the conversation.

5 **MR TEDESCHI:** At the time, did it strike you as unusual that the police were intending to deliver a copy of the brief directly to you rather than through the DPP office?

MR KORN: No.

10 **MR TEDESCHI:** Had that ever happened in the ACT before, to your - in your experience?

MR KORN: Mr Tedeschi, if you have seen my statement, which I'm sure you have, I don't profess to have experience in the ACT. So I had nothing to judge it by.

15 **MR TEDESCHI:** Based upon your experience in New South Wales, was that something that had ever happened?

MR KORN: I regularly get briefs on USBs - very - very often - and I do not get - I do not get sticks - USBs from the Director's office. I get - when I get sticks, I get them from the police.

20 **MR TEDESCHI:** And is that directly from the police or -

MR KORN: Yes.

25 **MR TEDESCHI:** - through the DPP?

MR KORN: Directly in the sense that it either comes directly to me or through a solicitor.

30 **THE CHAIRPERSON:** But from police rather than the DPP?

MR KORN: Absolutely. I - I don't recall ever receiving a director - a USB from the Director's office.

35 **THE CHAIRPERSON:** You get paperwork from them, do you, when you get material from them?

MR KORN: Yes. Yes.

40 **THE CHAIRPERSON:** Yes.

MR KORN: And now - and now - I had a foible, you might say, Mr Chairman, for many years, that I used to object strenuously to the police giving me originally a disk, because it was a cost-cutting measure, and it would cost my client lots of money to get it printed off.

45 **THE CHAIRPERSON:** Yes.

MR KORN: So I used to object to having them, and I never got one from the DPP.

50 **THE CHAIRPERSON:** Yes. Thank you.

MR TEDESCHI: During any of your conversations with Superintendent Moller, did he tell you that there were some important text messages in the brief or in the Cellebrite report?

5 **MR KORN:** I have no recollection of a Cellebrite report ever being mentioned, and I do - no, I do not remember a conversation in those terms.

MR TEDESCHI: Do you recall, after receiving the brief, having a telephone conversation with Mr Drumgold in which you said words to this effect: "Moller was telling me there were some important text messages in the brief, but the report - or the Cellebrite report is huge."
10 Do you know what text messages he's referring to?

MR KORN: I had no such conversation with Mr Drumgold along those lines.

15 **MR TEDESCHI:** And did Mr Drumgold say to you, "All relevant evidence will be in the case statement - or the Crown case statement"?

MR KORN: Mr Drumgold said the last part to me when I offered to get the - when I offered to return the stick back. He said, "We will get you a brief in due course." And the original way it was going to be given to me was through Dropbox, and we tried for six or eight weeks.
20 But I was somehow excluded. They tried technicians. But he had - he did say, "I will get you" - in that conversation where I offered to return it, he did say, "We will get you a brief in due course." But we had no such conversation where I said to him anything - allegedly that Mr Moller had said. Absolutely not.

25 **MR TEDESCHI:** Yes, those are the questions. Thank you.

THE CHAIRPERSON: Thank you, Mr Tedeschi. Does anybody else have any questions for Mr Korn? Any re-examination, Mr Jones?

30 **MR JONES:** There's not, but I will give you - it is paragraph 255 of Mr Drumgold's statement, and he identifies a call on 16 September 2021. And Mr Korn can be excused.

THE CHAIRPERSON: Thank you. You are free to go -

35 **MR KORN:** Can I add to that in case, Mr -

THE CHAIRPERSON: I'm sorry?

MR KORN: Can I add something, Mr Chairman?
40

THE CHAIRPERSON: Yes, please. What is it?

MR KORN: I would not have - even if Mr Moller had said the content of what Mr Tedeschi is - I absolutely would not have had that conversation with an opponent, a DPP prosecutor.
45

THE CHAIRPERSON: Yes.

MR KORN: That - I absolutely would not have had that conversation.

50 **THE CHAIRPERSON:** Yes, I understand. Thank you.

MR KORN: That's not in my nature.

THE CHAIRPERSON: Any questions arising out of that, Mr Tedeschi?

5

MR TEDESCHI: No. Thank you.

THE CHAIRPERSON: Thank you, Mr Korn. You are free to go. Thank you for coming.

10 **MR KORN:** Thank you, sir.

<**THE WITNESS WAS RELEASED**

THE CHAIRPERSON: Ms Longbottom.

15

MR GAME: Could I just -

THE CHAIRPERSON: Mr Game.

20 **MR GAME:** Just for - as a matter of courtesy, your Honour, I'm appearing today with Mr (indistinct).

THE CHAIRPERSON: Yes. Yes. Thank you, Mr Game. Yes, I saw you there. Yes. Ms Longbottom.

25

MS LONGBOTTOM: Thank you, Mr Sofronoff. Mr Korn's evidence ends the second module. We now commence the third module of the Board of Inquiry's hearings, which concern the Victims of Crime Commissioner. This module relates to subparagraph (f) of your Terms of Reference, which ask you to inquire into whether the Victims of Crime Commissioner acted in accordance with the relevant statutory framework in terms of support provided to the complainant in the matter of *The Crown v Lehrmann*.

30

The Victims of Crime Commissioner is an officer appointed under statute. The Commissioner's office delivers a range of advocacy and support services for victims of crime and administers various assistance schemes. The Victims of Crime Commissioner is a member of the Human Rights Commission. As will appear, this is significant.

35

A "victim of crime" is an expression that is not defined in the Act. But when one reads the statute as a whole, it is clear that the expression means a person who plausibly claims to be a victim of crime. The Act makes it plain that a person can be a statutory victim although nobody has yet been convicted of the offence and even if nobody will ever be convicted.

40

THE CHAIRPERSON: Such as if the offender or the suspected offender is dead?

45 **MS LONGBOTTOM:** Precisely, Mr Sofronoff. This statutory concept has implications for the presumption of innocence, as will appear. That tension is particularly stark in the Australian Capital Territory, and that is because, unlike other statutory officeholders, such as the Victims of Crime Commissioner here, Ms Yates is a member of and operates from within the Human Rights Commission. Section 22 of the Human Rights Act, which applies to all

members of the Human Rights Commission, explicitly declares the presumption of innocence to be a human right.

5 The Commissioner's approach was that it was her duty to form a view as to whether she was satisfied on the balance of probabilities that an individual has suffered harm because of an offence in order to determine whether or not that individual satisfied the statutory threshold of being a victim under her legislation. Insofar as it concerns the particular subject matter of this inquiry, you will hear evidence that Ms Yates first came into contact with Ms Higgins in April 2021 through her partner, Mr Sharaz. Mr Sharaz asked Ms Yates to provide support and help to Ms Higgins in relation to her upcoming meeting with the then Prime Minister, Scott Morrison. Ms Yates met Ms Higgins and subsequently attended that meeting with her.

15 From that point, Ms Yates became involved with Ms Higgins and provided her with support throughout the police investigation and trial. In May of 2021, Ms Yates requested from police that they contact - any contact with Ms Higgins come through her office. And over the next 18 months, Ms Yates provided information to Ms Higgins and her partner about the investigation and the court process. Ms Yates liaised with police and then subsequently the Office of the Director of Public Prosecutions on their behalf. And by her presence, Ms Yates provided support to Ms Higgins during the entire investigation and criminal trial process. We will inquire into the type and level of support that Ms Yates provided to Ms Higgins throughout this period.

25 Now, Mr Sofronoff, Ms Yates has been the subject of public criticism. In particular, concerns have been publicly expressed about the effect of Ms Yates' conspicuous presence at the side of Ms Higgins when she made her speech on the court steps after the jury was discharged in the criminal trial on 27 October 2022. It has been suggested that the action of Ms Yates at a time when there was to be a fresh trial had a propensity to affect the presumption of innocence to which Mr Lehrmann was entitled. You will hear evidence about why Ms Yates performed her duties in the way that she did and whether her performance of duties justified these public criticisms or not.

35 Now, Mr Chair, it is important for me to emphasise that this module and, in particular, the evidence you will hear from Ms Yates today will address sensitive and potentially distressing material with respect to self-harm and suicidality. We ask that viewers who may be sensitive to this to please take note, and we encourage anyone who may be distressed to reach out for additional support if needed. And there are links on the Board of Inquiry's website to services that are available to viewers.

40 Mr Sofronoff, before I call Ms Yates to give evidence, I propose to attend to the tender of a number of documents. Operator, can you please display tender list 6. My apologies, Mr Operator. It is tender list 5. Thank you. Mr Chair, I tender the documents described in that list in the manner in which they are described.

45 **THE CHAIRPERSON:** I will mark the tender list F, and the exhibits listed in will have the numbers that you've allocated to them on that document.

MS LONGBOTTOM: Thank you. I call Commissioner Yates.

50 **THE CHAIRPERSON:** Have a seat, Ms Yates. Did you want to raise something, Mr Game?

MR GAME: No. The last witness left a tissue on the chair.

THE CHAIRPERSON: I see. Thank you.

5 **MR GAME:** It is pretty important.

THE CHAIRPERSON: Thank you. Thank you. Ms Yates, will you take an oath or make an affirmation?

10 **MS YATES:** An affirmation.

THE CHAIRPERSON: Yes. There's a card in front of you. If you would - on one side is the affirmation. If you would read that, please.

15 **<HEIDI YATES, AFFIRMED**

<EXAMINATION BY MS LONGBOTTOM:

THE CHAIRPERSON: Thank you. Ms Longbottom.

20

MS LONGBOTTOM: Ms Yates, you are the Victims of Crime Commissioner?

MS YATES: Yes.

25 **MS LONGBOTTOM:** You have prepared a statement for the Board that's dated 21 April 2023?

MS YATES: Yes.

30 **MS LONGBOTTOM:** Have you had an opportunity to review that statement before coming to give evidence today?

MS YATES: I have.

35 **MS LONGBOTTOM:** Is that statement true and correct to the best of your knowledge and belief?

MS YATES: Yes, although I was hoping to correct two typographical errors, if I may.

40 **MS LONGBOTTOM:** Of course. Can you take me to the first of those typographical errors?

MS YATES: Certainly. The first relates to - on page 179. In paragraph (f), I indicate that section 11 of the Victims of Crime Act entitles me to (indistinct), and that should be a section 13.

45

MS LONGBOTTOM: Okay. And what is the next correction?

MS YATES: It relates to paragraph 148.25 of my statement, which begins, "At 11.37 pm that day." That should in fact -

50

MS LONGBOTTOM: If I can just stop you there while we go to that page. So it's at paragraph 148, did you say?

MS YATES: .25.

5

MS LONGBOTTOM: So, operator, if you could please turn to _0318 of that document. It's on page 380 of your statement.

MS YATES: And it indicates, "At 11.37 pm that day." It should be "am".

10

THE CHAIRPERSON: Yes. Thank you.

MS LONGBOTTOM: Save for those corrections, is your statement true and correct to the best of your knowledge and belief?

15

MS YATES: Yes.

MS LONGBOTTOM: Mr Sofronoff, Ms Yates' statement has already been tendered, and it is Exhibit 121 in the tender bundle. Now, Ms Yates, you have held the office of Victims of Crime Commissioner since 2018?

20

MS YATES: Yes.

MS LONGBOTTOM: And in January of this year, you were reappointed to that role?

25

MS YATES: Yes.

MS LONGBOTTOM: And how long is your current term as Victims of Crime Commissioner?

30

MS YATES: A five-year term.

MS LONGBOTTOM: Now, Ms Yates, your statutory functions are principally defined by section 11 of the Victims of Crime Act?

35

MS YATES: Yes.

MS LONGBOTTOM: And regulation 22 of the Victims of Crime Regulation?

40

MS YATES: Yes.

MS LONGBOTTOM: Operator, I'm going to ask you to please display those two provisions alongside each other. But, Ms Yates, while that's coming up, in your statement you refer to your statutory functions as including advocacy, support and assistance. May I ask: when you say "support and assistance", how do you differentiate between those two terms?

45

MS YATES: Generally, by way of assistance, we're referencing the Victims of Crime (Financial Assistance) Act -

50

MS LONGBOTTOM: Okay.

MS YATES: - and the scheme we administer under that Act.

5 **MS LONGBOTTOM:** And so that is a function that's specifically prescribed in section 11, as we will see when it becomes apparent on the screen. So that's there referred to in subsection 11(a) of the Act. When you speak of "support", in terms of the statutory functions that are identified here on the screen, what are you referring to there?

10 **MS YATES:** The word "support" is an umbrella term, if you like, for various expects of my functions and of the support - of the types of services that we can offer eligible victims. So it summarises support in relation to advocacy, in relation to advocating for reform that meets the interests of victims. Under the Victims Services Scheme, we deliver a range of frontline services that provide different types of support.

15 **MS LONGBOTTOM:** So if I can just stop you there. You mentioned advocacy. So advocacy is specifically provided for in subsection 11(1)(b) and 11(1)(c) of your Act.

MS YATES: Mmm.

20 **MS LONGBOTTOM:** You have also mentioned reform, and that is specifically mentioned in subsection 11(1)(h) of the Act.

MS YATES: Mmm.

25 **MS LONGBOTTOM:** You've then spoken - or you've alluded to victim services that you also provide.

MS YATES: Mmm.

30 **MS LONGBOTTOM:** Can I ask you to identify what they are and how they fit into your particular functions as set out here in sections 11 and 22?

35 **MS YATES:** So section 11(1)(a) talks about my responsibility to manage the Victims Services Scheme, the Financial Assistance Scheme and any other programs for the benefit of victims. And we do administer a number of other programs. So under each of those schemes or programs, there are a range of services we provide. Would you like me to speak to some examples?

40 **MS LONGBOTTOM:** If you could. And if you could focus those examples on the types of support that are material to, I think, the investigation and - the investigation of a criminal offence, as well as a trial.

45 **MS YATES:** Okay. So for example, under the Victims Services Scheme, people are entitled to access case coordination, which can involve a number of services, including information about the criminal justice process; assistance reporting to police; access to brokered therapeutic providers, such as counsellors and social workers and mental health nurses. We also - under the regulation, I'm required to run a volunteer program. And we offer court support and justice support through that program, as well as it being delivered by staff of my office, including myself.

50

MS LONGBOTTOM: And if I could just stop you there. You referred to staff of your office. Am I correct to understand your office is called VS ACT, which is Victim Services ACT?

5 **MS YATES:** We operate our frontline services under the banner of Victims Support ACT.

MS LONGBOTTOM: Thank you for that correction. Okay. Go on.

10 **MS YATES:** So we also offer advocacy in the context of our client's rights as set out in part 3A of the Victims of Crime Act, which is referred to generally as the Charter of Rights For Victims of Crime. And in accordance with my functions, we have a duty to monitor and promote compliance with those rights, which we do on an individual client basis. So people may seek our support if they are having difficulty, or they feel their rights have been breached by a criminal justice agency. We may assist in ensuring - in trying to resolve any
15 concerns that are raised in that regard, as is also indicated under the Act.

MS LONGBOTTOM: And in terms of your understanding of the legislative framework within which you operate, 11(a) speaks of your functions in terms of, in some instances, you personally undertaking those acts, for example, advocating and managing the Victims Service
20 Scheme. But there are also aspects of the services that are provided by Victim Support that are not in terms, at least in section 11, envisaged to be functions that you, yourself, personally perform. So if I can give you one example: acting as a liaison between a victim and police. Can you speak to your understanding of the legislative scheme and the basis upon which you personally can perform those functions?
25

MS YATES: Certainly. My functions under 11 - section 11 are very broad, which include to advocate for victims in, you know, ways that - that they wish. I also note that under the Victims of Crime Regulation, it does, in fact, indicate that my functions under that regulation are to provide victims with a number of services, either myself or arrange for others to do so.
30 And that assistance needs to be individualised and tailored in accordance with the regulatory requirements. So we have a number of in-house policies that speak to when matters may be triaged to me. And so we very carefully ensure that we are listening to what our clients - what type of support they are seeking and are responsive to that.

35 **MS LONGBOTTOM:** And in terms of the types of support they are seeking, would it be correct to understand that there are particular types of services that Victim Support ACT might provide that are not within your particular skill set, for example, particular types of psychological support or counselling, and in that event, what can Victim Support ACT (indistinct) have the provision to make referral to others to provide that support if needs
40 be?

MS YATES: Yes. I would say firstly we are, in accordance with the regulation, a multi-disciplinary team. So we do have in-house staff with particular expertise around counselling, for example. However, the regulation also provides for us to approve providers
45 in community who have to go through a process of approval but then provide services on our behalf, particularly psychological care services to eligible clients.

MS LONGBOTTOM: Now, Ms Yates, the statutory functions you perform concern a victim as defined in -
50

THE CHAIRPERSON: Just before you get on to that. Ms Yates, part of the work that you do, I have learned, is akin to providing social work counselling to victims of crime. At least it looks like that, that a particular person might need the kind of support from - almost from a statutory friend who can - who, because of that person's experience and perhaps formal training, knows how the criminal justice system works and knows what to expect from police and what to expect from prosecutors, knows what the court experience will involve and can shepherd the victim through those things. Now - so I take it from what I've read that, from time to time, an officer within your Commission will be allocated to a particular victim to provide that kind of help; is that right?

MS YATES: Yes.

THE CHAIRPERSON: Now, under which of the functions - there might be a number of them - is that being done in section 11 or regulation 22, would you say?

MS YATES: So section 11 indicates the multiple schemes I am responsible for administering.

THE CHAIRPERSON: Yes.

MS YATES: If you look to the Victim Services Scheme, it sets out a number of different types of support that my staff or I are required to -

THE CHAIRPERSON: Those are the ones where you are tier 1 or tier 2 or tier 3; is that right?

MS YATES: That's right.

THE CHAIRPERSON: So that's like counselling hours that you get, and depending upon the seriousness of the situation, you may get more or fewer counselling hours depending upon your need.

MS YATES: Yes.

THE CHAIRPERSON: But that's not what are talking about here, is it?

MS YATES: No. In addition to that, the relation speaks to a need for myself or others I nominate to ensure victims have the information and assistance they require to assist them.

THE CHAIRPERSON: All right. So that would be (k) - 22(k). Is that right?

MS YATES: Yes, but it is also reflected in the regulation. But yes.

THE CHAIRPERSON: That's section - section 22 of the regulations is what (indistinct).

MS YATES: Sorry. Yes. That's right. Yes.

THE CHAIRPERSON: 22(k), is that what you are referring to?

MS YATES: Yes, that's right.

THE CHAIRPERSON: So that's what we look at. And under that, you are providing - sometimes it is you, yourself, but sometimes it is others within your office -

5 **MS YATES:** Yes.

THE CHAIRPERSON: - who then form a relationship with a victim of crime to provide the kind of guidance that I've just described. Is that correct?

10 **MS YATES:** Yes. Correct. And, again, under 22(b), you can see, to provide or arrange for the provision of professional services for victims, which describes those relationships with brokered providers. But also we have professionals within our own office -

THE CHAIRPERSON: Yes.

15

MS YATES: - who may provide that support directly.

THE CHAIRPERSON: Yes. You have got formally trained officers in various fields that you can allocate to particular problems - to deal with a particular problem. Is that right?

20

MS YATES: That's right, yes.

THE CHAIRPERSON: Yes. All right.

25 **MS YATES:** And then under the Financial Assistance Scheme, of course, there is a clear regime for the provision of assistance, which may allow a victim to access medical care or psychological care -

THE CHAIRPERSON: Yes. Yes. Yes.

30

MS YATES: - as an alternate route. In relation to justice advocacy, so ensuring that our clients understand their rights under part 3A of the Act, I am, in effect, delegating my responsibilities to ensure we monitor and promote compliance with victims' rights.

35 **THE CHAIRPERSON:** So in the scenario that I put to you, if somebody who forms a relationship with a victim to provide guidance during investigation, prosecution and trial, that - the kind of guidance that is being provided, you would say, fits within - on the left-hand side of the screen - section 11(1)(b)?

40 **MS YATES:** Yes. And also in relation to (k).

THE CHAIRPERSON: 22(k).

MS YATES: Sorry, 11(1)(k).

45

THE CHAIRPERSON: I see. 11(1)(k). To ensure that victims receive information and assistance they need - I see - in connection with their involvement - I understand. That's very wide. Yes. Thank you for that.

50 **MS YATES:** Thank you.

THE CHAIRPERSON: Yes, Ms Longbottom.

5 **MS LONGBOTTOM:** And, Ms Yates, in terms of that question Mr Sofronoff just asked about the kind of guidance and prosecution - sorry, the guidance and support that yourself and other members within your office can provide people as part of the discharge of your function under 11(1)(k), am I correct to understand that you receive some specialist training to assist you to guide people through that process?

10 **MS YATES:** Indeed. There is training our staff undertake to ensure we can answer victim questions regarding criminal justice processes in particular, but also a broader set of skills around engaging with people affected by (audio drop) trauma, which often relates to their experience of crime.

15 **MS LONGBOTTOM:** Aspects of this training, but it includes accidental counsellor (indistinct) focuses on developing skills for engaging with clients, including those who have been a victim of a sexual assault?

MS YATES: Mmm.

20

MS LONGBOTTOM: It includes training directed to suicide intervention -

MS YATES: Yes.

25 **MS LONGBOTTOM:** - and prevention, and it includes vicarious trauma training. Now, you say there an aspect of that training is to learn about being able to clearly delineate the boundaries of your role when liaising with people who have experienced trauma. What do you mean by that?

30 **MS YATES:** When - it's incredibly important to me in relation to my work health and safety obligations to my own team that people are very confident in setting clear boundaries around the nature of services that they provide. Vicarious trauma training is common in the sector, certainly across victim services across Australia, and it's very important that we are skilled in being able to make clear to clients that we are here for them, that we can listen to what they
35 need and respond appropriately, but that appropriate boundaries are set in relation to the difference between what they may be experiencing and our professional roles in engaging with them.

40 **MS LONGBOTTOM:** And can you give me an example of (indistinct) when working with a client?

MS YATES: Certainly. So from time to time, that might be about the nature of services that are provided. Some clients seek very little of us; some clients seek a great deal of support. And it may be about saying, "I understand you're telling me it would be useful for me to
45 come with you to, you know, all of these health appointments or all of these meetings with your child's teacher. But, in fact - I understand you are telling me that would be useful, but it's unfortunately not my role."

50 **MS LONGBOTTOM:** And I - and that would, I imagine, be a challenge of the role of working with clients given the vulnerable state in which many of them find themselves?

5 **MS YATES:** Indeed. And we are very careful in making sure victims know we are hearing what they are asking, we are understanding why they are seeking our help and, whenever possible, we are looking to see whether there might be someone else outside of our organisation to assist if it's the kind of task that it's not appropriate for us to assist with.

10 **MS LONGBOTTOM:** Now, can I come back to the statutory scheme. The functions that you perform concern a victim as defined by the Victims of Crime Act. And I might just ask, Mr Operator, if you can please turn up section 6 of the Act. So the Act there stipulates that a victim is a person who suffers harm because of an offence?

MS YATES: Yes.

15 **MS LONGBOTTOM:** How does your office construe that expression in determining whether or not a person is eligible for the services you provide?

20 **MS YATES:** So fundamentally, as I outline in my statement, when assessing a client's eligibility for services or whether they fall within this remit, we operate from the starting point that we accept the information a client gives us unless it is clearly inaccurate or unless we receive credible information from another source as to the information being inaccurate. So in practical terms, we start from a position of belief. And I - I think, in practice, it would be impossible to run a victim support service in any other way.

25 **MS LONGBOTTOM:** And when you say "belief", you mean belief that the individual has suffered harm because of an offence?

30 **MS YATES:** If they are telling us that they have suffered harm because of an offence, we believe that in the first instance. But we also take the lead of our other criminal justice partners, including police and the prosecution, and someone's eligibility - we may receive information over time that someone's eligibility changes. Or if we have any concerns about the credibility of what a client is telling us, we will engage with them closely on that to make sure we haven't misunderstood what we are telling. But I am entitled also under the Act to seek information from our other criminal justice partners to help us determine the issue of eligibility.

35 **THE CHAIRPERSON:** So you start by taking a person at face value and accepting at face value the claims they make about an offence and any harm that they have suffered.

40 **MS YATES:** Yes.

45 **THE CHAIRPERSON:** But depending upon the circumstances, you will make some checks to see if the account is confirmed in some way or if the account is excluded by something or doubts are raised. And then depending upon the circumstances, you will pursue that until you form a view as to whether, in your opinion, the person should be treated as a victim under the statute. Because, of course, you're not concerned with ultimate proof, you're not concerned with certainty and you're not concerned with proof beyond a reasonable doubt or any particular standard of proof. The Act is silent on it. So you - in the end, you and your - the officers in your - in the Commission form a view that you're prepared to accept a person as having suffered as a result of an offence.

50

MS YATES: Indeed. Noting that it's our role to make that assessment -

THE CHAIRPERSON: Yes.

5 **MS YATES:** - and it's the role of other agencies, like police, to investigate any complaint of an offence that's made.

10 **THE CHAIRPERSON:** And I think - tell me if I have understood you correctly. It may turn out that somebody who claims to be the victim - have suffered harm because of an offence may not have suffered harm - may be a victim but may not have suffered harm, or it may be that they were involved in the offence and that's one of the excluded people. A co-offender can't claim to be a victim. So I take it that, theoretically at least, the question whether somebody is entitled to be treated as falling under the Act remains an open one throughout?

15 **MS YATES:** Indeed. And it is beneficial legislation, and I have shared with the inquiry the legal advice I received, which (indistinct) broader interpretation is to be certainly preferred. Noting that the Act itself, for example, provides our clients with rights throughout the administration of justice process.

20 **THE CHAIRPERSON:** Yes. Yes, that's right.

MS YATES: And that if we took a narrow view as to being able to only assist people once the conviction was made by the court, that we would in fact not be able to deliver the intent of the Act.

25 **THE CHAIRPERSON:** Yes, I think what you are referring to is that later parts of the Act confer powers and duties upon - I will say "you", but it's you through your - through the people engaged in - employed in your office as well as you, but I will just speak about you. Later parts of the Act confer duties upon you to deal with people who are victims under the statute while they engage in the criminal process to adjudicate whether an offence has been committed.

30 **MS YATES:** Yes.

35 **THE CHAIRPERSON:** So you're - if I understand your statute correctly - you tell me if I've understood it. The Act requires you to treat a person as - I will use a neutral term - eligible for benefits under the statute even while the question of whether the offence that renders that person eligible under the statute is being adjudicated and might result in an acquittal. Now, we won't trouble with acquittals for the moment - because we don't have to, thankfully - and what that might mean for a person's eligibility. But certainly until there's a verdict by a jury, 40 and even while that determination is underway, if a person is eligible under the statute, you are obliged to provide the services.

45 **MS YATES:** We are.

THE CHAIRPERSON: So what's important here then is, if I have understood it, that if instead of calling a person who is eligible a victim that person was called a claimant, which is what they are - they claim to be victims because there is no certainty involved in the test - there's no test, first, is there, under the Act?

50

MS YATES: No, it's a civil act in the balance of -

5 **THE CHAIRPERSON:** It's a statement that a person is eligible if that person is a person who suffers harm because of an offence. But there's no test for satisfying whether the person falls in that category or not. And so you have applied the methods that you have described. You take it at face value, and you test it and you ask police and so on. But if we call that person a claimant, then the person remains a claimant from the moment they walk into your office, perhaps before an investigation has been started because no complaint has been made yet, while the investigation is underway, and they remain a claimant while the trial is
10 underway and until the moment that a verdict is reached by a jury or a magistrate; correct?

MS YATES: Yes.

15 **THE CHAIRPERSON:** So - now, it happens that a claimant is called a victim, but we will deal with that problem later. But the scheme of the Act is you're not entitled to refuse to provide services because the commission of an offence has not been proved beyond a reasonable doubt to anybody's satisfaction.

20 **MS YATES:** Yes.

THE CHAIRPERSON: Thanks.

25 **MS LONGBOTTOM:** Ms Yates, I want to turn to your involvement with Ms Higgins. You first became aware of Ms Higgins, if not precisely by name, on 30 January 2021 when you spoke at a community event. And during a break, you were approached by one of the presenters who indicated to you that he was working with a young woman who was about to make a sexual assault disclosure.

30 **MS YATES:** Mmm.

MS LONGBOTTOM: Do you recall that exchange?

MS YATES: Yes.

35 **MS LONGBOTTOM:** And that presenter told you that that disclosure would likely attract national media attention?

MS YATES: Mmm.

40 **MS LONGBOTTOM:** And he asked whether or not you would provide a message of support?

MS YATES: Yes, he said he was gathering such messages.

45 **MS LONGBOTTOM:** And then he subsequently contacted you by email -

MS YATES: Mmm.

50 **MS LONGBOTTOM:** - and indicated to you that that individual's name was Brittany?

MS YATES: Yes.

MS LONGBOTTOM: And you provided that expression of support to Brittany?

5 **MS YATES:** Yes.

MS LONGBOTTOM: But your initial actual contact with Ms Higgins came some months later at the end of April of 2021?

10 **MS YATES:** Yes. And I was never aware whether that initial email of general support was actually provided to anyone.

MS LONGBOTTOM: Okay. But by the end of April, Ms Higgins had been public about her allegation of sexual assault?

15 **MS YATES:** Mmm.

MS LONGBOTTOM: And there had been an interview that was broadcast on Network Ten's The Project in February of that year? And on 26 April, you received an email from Ms Higgins' partner? And if I could just ask you for the record just to indicate "yes" or "no".

MS YATES: Yes, yes. Yes.

25 **MS LONGBOTTOM:** You knew Mr Sharaz from his time as a local news journalist in Canberra?

MS YATES: Vaguely.

30 **MS LONGBOTTOM:** After you received that email contact, you subsequently spoke to him on the phone?

MS YATES: Yes.

35 **MS LONGBOTTOM:** And during that conversation, he told you that Ms Higgins needed support and help in relation to a meeting with the then Prime Minister that was to take place that Friday?

MS YATES: Yes.

40 **MS LONGBOTTOM:** Now, the next day, on 27 April, you met with Ms Higgins (indistinct)?

MS YATES: Yes.

45 **MS LONGBOTTOM:** And you spoke with her about her plans to meet the Prime Minister?

MS YATES: Yes.

50 **MS LONGBOTTOM:** And Ms Higgins sought information from you about systemic issues affecting victims of sexual assault?

MS YATES: Yes.

5 **MS LONGBOTTOM:** Can you give me an overview of the type of information that you offered to provide Ms Higgins with respect to that request?

10 **MS YATES:** Yes. I took her request to be of the sort that we often receive from clients who are advocating for change such that they say, "This is my experience of the crime. Is this what normally happens? Is this a broken system or was it just in my case that something went wrong?" So Ms Higgins was seeking - she talked about the kinds of matters she wished to raise with the Prime Minister, including promoting better access to clear pathways for people who had experienced sexual violence to come forward and make a report, ensuring they could access confidential information about complaint pathways, timely therapeutic support, etcetera. So we provided her with some information about those types of matters.

15 **MS LONGBOTTOM:** And in your statement when you talk about your advocacy function, you talk about two aspects of it: one is individual advocacy; the other is - I think you call it systemic advocacy?

20 **MS YATES:** Yes.

MS LONGBOTTOM: The types of information Ms Higgins was asked fits within your systemic advocacy part of your function?

25 **MS YATES:** Yes. And part of that function is working with our clients who themselves wish to undertake systemic advocacy and supporting them to do so.

30 **MS LONGBOTTOM:** Now, you have just mentioned "client" there. During the meeting on 27 April, you indicated to Ms Higgins that your view was that she was within your jurisdiction as Victims of Crime Commissioner?

MS YATES: Mmm.

35 **MS LONGBOTTOM:** Did you raise with Ms Higgins on that occasion the other types of support and assistance you and your agency offers?

40 **MS YATES:** I had touched on those briefly in my initial conversation with Mr Sharaz. I believe I may have very briefly touched on those things with Ms Higgins, but it was clear she was seeing my support just in relation to the meeting on the Friday.

MS LONGBOTTOM: So it specifically focused on the advocacy aspect of your function?

MS YATES: Yes.

45 **MS LONGBOTTOM:** Now, later that week, on 30 April, you accompanied Ms Higgins to two meetings in Sydney?

MS YATES: Yes.

MS LONGBOTTOM: The first of those two meetings was with Mr Albanese and Ms Plibersek?

MS YATES: Yes.

5

MS LONGBOTTOM: And the purpose and substance of that meeting concerned Ms Higgins' discussion of her own experiences and a list of requests that she wanted to make of the then Opposition Leader?

10 **MS YATES:** So those are two things. I just note that Ms Higgins was not speaking about the incident herself.

MS LONGBOTTOM: Okay.

15 **MS YATES:** She was focused on speaking about the need for systemic change in light generally of her experience, but it was a real focus on those systemic issues.

MS LONGBOTTOM: So systemic rather than individual advocacy?

20 **MS YATES:** Yes.

MS LONGBOTTOM: You attended a meeting later that day with the then Prime Minister, Scott Morrison, and Stephanie Foster?

25 **MS YATES:** Yes.

MS LONGBOTTOM: Can you explain to Mr Sofronoff who Ms Foster is?

30 **MS YATES:** So at the time, Ms Stephanie Foster was a senior public servant, I think within the Prime Minister and Cabinet Department. And I understood she was at the meeting - I think she was introduced at the meeting as being present because she had been tasked to undertake a review of parliamentary workplace responses to disclosures of serious incidents.

35 **MS LONGBOTTOM:** And the substance of that meeting, in large part, concerned the very issue with which Ms Foster was tasked to undertake a review, and that was responses to disclosures of sexual assault within Parliament by staffers?

MS YATES: Yes.

40 **MS LONGBOTTOM:** How was it that you came to attend the two meetings that day with Ms Higgins?

MS YATES: Ms Higgins asked me to attend.

45 **MS LONGBOTTOM:** Now, your next substantive interaction with Ms Higgins was early the following month, on 5 May?

MS YATES: Yes.

MS LONGBOTTOM: That interaction didn't concern your advocacy function; rather, it concerned the investigation into the allegations that had been made by Ms Higgins?

MS YATES: That's right.

5

MS LONGBOTTOM: On that day, you received a phone call from Ms Higgins where she asked you to call police to find out some more information about the investigation?

MS YATES: Yes.

10

MS LONGBOTTOM: In broad terms, can you give an outline of the discussion that you had with Ms Higgins on that day?

MS YATES: Yes. And I - I will step carefully, noticing I'm tasked to uphold Ms Higgins' privacy, but I want to be as clear and open (indistinct).

15

MS LONGBOTTOM: And I can see the hesitation on your face, Ms Yates. Am I right to understand that it would not be your preference to speak about the detail of these matters?

MS YATES: Yes.

20

MS LONGBOTTOM: And what is your reluctance to do that?

MS YATES: The clients who access our service do so on the basis that we have obligations - and it is our practice - to uphold their rights to privacy and dignity. And I'm concerned that giving evidence in this inquiry may be misunderstood by our current or future clients to suggest that if they come to our service, we may also speak about their matters to others, which is absolutely not the case. And so in wanting to protect the privacy and dignity of the client in this matter, I want to make clear that I am here under subpoena, wanting to assist the inquiry as best I can, but I absolutely am committed to my obligations to client privacy and confidentiality.

25

30

THE CHAIRPERSON: Ms Yates, this might help you in going about how you answer questions. One of the matters that I have to look at is what you did by way of giving support to Ms Higgins -

35

MS YATES: Yes.

THE CHAIRPERSON: - and then why you chose to give support in particular ways that you did. There will be reasons for all of that. If we dig down to the bedrock of fact, that would involve breaching the kind of confidence that you have referred to, and I don't need that kind of detail. But what I need in order to understand your decisions is to know what it was that prompted you or provoked you to do particular things or to make particular decisions.

40

45

MS YATES: Sure. Yes.

THE CHAIRPERSON: And in the case of somebody who claims to have been the victim of a rape, you might do one thing. In the case of another person, you might do a lot of other things.

50

MS YATES: Yes.

5 **THE CHAIRPERSON:** And obviously the decision to do one thing or another will depend upon the needs of the person concerned, and those needs arise from their state of mind and their state of health -

MS YATES: Yes.

10 **THE CHAIRPERSON:** - to put it broadly.

MS YATES: Mmm.

15 **THE CHAIRPERSON:** I don't need the details.

MS YATES: Mmm.

20 **THE CHAIRPERSON:** But I do need some idea of what were the personal circumstances that you perceived that made you decide, "Well, I will do this."

MS YATES: Yes.

25 **THE CHAIRPERSON:** And, "I will attend here, and I will attend there." I think you said a moment ago that sometimes clients of yours want you to go to every medical appointment, but you don't go to every medical appointment. But sometimes you will go to every medical appointment, and the reason will be the client's need. And that's explained by the client's health - mental and physical health circumstances. But I need to know something about what drove you to make your decisions.

30 **MS YATES:** Yes.

35 **THE CHAIRPERSON:** But I don't need details of Ms Higgins' particular circumstances. But you can take it that some of those circumstances are in the public domain already, and that - and, you know, people - I won't go into it, but, you know, there's a lot out there already. Just because it's out there, you needn't feel the need to repeat it in the witness box if you don't find it necessary. But do you understand, that I need to have a historical context in relation to your relationship with Ms Higgins so I can understand why you did the things you did?

40 **MS YATES:** Certainly. And I'm very keen to assist -

THE CHAIRPERSON: Well, if you bear that in mind. Go as far as you feel comfortable with, and it will probably be sufficient. All right.

45 **MS YATES:** Thank you, Mr Chair.

MS LONGBOTTOM: So, Ms Yates, in light of that exchange, can you please give an overview of what assistance Ms Higgins sought from you on that occasion and why?

50 **MS YATES:** So, broadly, Ms Higgins was talking to me in some detail about the significant pressure that she was under. She was being invited to contribute to a number of formal

reviews that were occurring at a Federal Government level, which were reportedly sparked as a result of her disclosure. She was receiving very high levels of contact from hundreds of people directly, including many people who were wishing to discuss their own experiences of sexual violence with her, to make disclosures and seek her engagement on them. She was
5 being subjected to persistent online trolling or abuse and threats, and she was also dealing with the impacts of her own experience at Parliament House and trying to assist the police in the investigation. So she initially asked me whether I could contact police to seek an update, and I indicated that was something I could do for her. She then spoke about the particular difficulties she was experiencing in terms of engagement with police, and she asked whether
10 I could act for the time being as a point of contact.

MS LONGBOTTOM: And in terms of those difficulties, can you outline what they were?

MS YATES: She at that stage indicated that police had been contacting her from time to time, asking her for information or at times seemed to be calling without a specific reason for
15 the call. She wasn't complaining in any way about the manner that they engaged with her, but rather she was very anxious about when police might call and what they may be asking of her. Noting that every time her phone dinged or rang, she was concerned it might be police and that in the middle of something else or in a public place she might be asked a question
20 which took her back to the traumatic events for her. And she was anxious about - that was adding to her overall anxiety and pressures she was experiencing.

MS LONGBOTTOM: And in terms of the specific assistance she asked you to provide, that is, being a point of contact -
25

MS YATES: Mmm.

MS LONGBOTTOM: - between Ms Higgins and police -

MS YATES: Yes.
30

MS LONGBOTTOM: - is that a role you had performed previously?

MS YATES: It was. It's a role that clients often ask our office to undertake, and it may be on
35 a one-off basis around a particular question we are putting and conveying an answer back about; it may be over a specific set of issues that take some weeks or months; or it may be on an ongoing basis. It's something that's common practice for our office, but since the Charter of Rights has been in place, it's also specifically provided for under 18(b) of the Act, which allows a client to nominate a person with whom contact can be made.
40

MS LONGBOTTOM: So that charter enshrines a practice that has, for some time, been engaged in by your office?

MS YATES: Yes.
45

MS LONGBOTTOM: So later that day, you contacted Detective Inspector Boorman and you passed on the request that you be the point of contact?

MS YATES: Yes.
50

MS LONGBOTTOM: What was the response that you received from Detective Inspector Boorman about that request?

5 **MS YATES:** Two key things that I recall. The first was he was concerned that I was - that Ms Higgins was raising a concern about the timeliness or nature of the engagement, which I indicated was not the case, that she wasn't making any complaint about the nature of - you know, the way that police were speaking or engaging with her, but rather the very nature of the contact.

10 **THE CHAIRPERSON:** That is, she couldn't cope with dealing with police?

MS YATES: Not knowing when they might contact her and ask her to reflect on or provide information about an incredibly difficult event for her. The second thing Mr Boorman informed me was that they had had some difficulty maintaining contact with Ms Higgins, that she hadn't been responsive to engagements from police and that that was making things difficult.

MS LONGBOTTOM: And had you had dealings with Detective Inspector Boorman before?

20 **MS YATES:** I had.

MS LONGBOTTOM: And particularly in the context of your dealings in providing assistance to Ms Higgins at around this time, how would you characterise your relationship with him and with ACT Police more generally that were involved in the investigation?

25 **MS YATES:** In the investigation. So at that point, I didn't necessarily know who was involved in the investigation. Ms Higgins had mentioned the name of Senior Constable Frizzell, but I - she didn't - Ms Higgins - I had asked her whom I should call to seek the update she requested, and she said, "I don't know." So I contacted Inspector Boorman. I had established professional, productive working relationships with many people in ACT Policing that had been developed across years of working together on both individual client and systemic matters.

30 **MS LONGBOTTOM:** Now, later that month, on 26 May, you attended a evidence-in-chief interview with Ms Higgins as her support person?

MS YATES: Yes.

MS LONGBOTTOM: How did that come about?

40 **MS YATES:** Mr Boorman had called me - sorry, Inspector Boorman had called me the Friday beforehand and had indicated to me that they were in the final stages of the investigation but that they wished to speak to Ms Higgins, face to face, to take an - undertake a further interview with her, and he asked for my assistance to arrange that.

45 **MS LONGBOTTOM:** So that's in terms of facilitating the fact of the interview itself. But how did you come to be Ms Higgins' support person during that interview?

50 **MS YATES:** During that conversation with Mr Boorman, he indicated he thought the interview might involve traumatic and confronting material, and he recommended that

5 Ms Higgins have a support person with her at that interview from either the Canberra Rape Crisis Centre or another service. I conveyed that information to Ms Higgins when I called her to discuss the request from police for a further interview, that police had recommended she have a support person with her. Ms Higgins asked whether I would attend as her support person, and I said that I would.

MS LONGBOTTOM: Now, the interview itself took a couple of hours?

10 **MS YATES:** Yes. Might I just highlight one further point in response to that question. I called Inspector Boorman and then emailed him and indicated that Ms Higgins had asked me to attend and that I would attend if it was suitable to ACT Policing.

MS LONGBOTTOM: And why did you send that email?

15 **MS YATES:** Because my office can only attend police interviews in support of a client with the agreement of ACT Policing. So I was checking in that that arrangement was suitable to Inspector Boorman.

20 **MS LONGBOTTOM:** And did you receive a response to that email?

MS YATES: I didn't. But I had spoken to Mr Boorman before sending that email and indicated the same thing, and Mr Boorman had not said - had said, you know, along the lines of, you know, "Great. We will see you then."

25 **THE CHAIRPERSON:** Now, you said that you're not entitled to attend unless police consent. Is that in a statute or a regulation or is it just practice?

30 **MS YATES:** It relates to the fact that - that our role is to listen to a client about the support they are seeking, but we are not responsible for the investigative process. And we are deferential to and respect that we don't understand the ins and outs of investigations. So if police are engaging with someone in an interview, it is their interview -

THE CHAIRPERSON: Yes.

35 **MS YATES:** - and we only attend where that is suitable.

THE CHAIRPERSON: Yes, I understand. It's a matter of practicality, that if police don't want you there, there will be a good reason for that and you won't go.

40 **MS YATES:** That's right.

THE CHAIRPERSON: Thanks.

45 **MS LONGBOTTOM:** And when you, in fact, attended on 26 May for the evidence-in-chief interview, did police express any objection to you being present as a support person?

MS YATES: None.

50 **MS LONGBOTTOM:** Now, the interview itself took a couple of hours?

MS YATES: Yes.

MS LONGBOTTOM: Who conducted the evidence-in-chief interview?

5 **MS YATES:** The interview was conducted by Senior Constable Frizzell and Detective Constable Madders.

MS LONGBOTTOM: And after the interview had finished, there was a discussion with a number of members of ACT Police, including Senior Constable Frizzell and Detective
10 Madders, but also Detective Inspector Boorman and Detective Superintendent Moller?

MS YATES: Yes. And Sergeant Saunders.

MS LONGBOTTOM: Now, you say in your statement that during that discussion, you
15 observed Ms Higgins becoming quite upset?

MS YATES: Yes.

MS LONGBOTTOM: Can you provide Mr Sofronoff with an overview of what occurred
20 during that discussion and what was said that led to Ms Higgins becoming upset?

MS YATES: May I also refer to my statement in this regard? Yes.

MS LONGBOTTOM: If it assists, operator, can you please display the statement at - it is
25 WIT.0057.00034.0001_0001 at _0251. In particular, paragraphs 122.24 and 122.25.

MS YATES: So the interview had gone for a couple of hours. It was, I think as Inspector
Boorman had flagged, difficult and confronting. At the end - for Ms Higgins. At the end of
30 that interview, it was indicated that we should wait in the room as others were coming in to
join us at that time. As I mentioned in my statement, three other police officers came into the
room. And I record there in paragraph 122.24 the best of my recollection and also drawing on
some handwritten notes I was making at the time about comments that Superintendent Moller
made.

MS LONGBOTTOM: And can I ask you particularly about the comments you made in
35 response to Detective Superintendent Moller when he had indicated to Ms Higgins that she
ought not speak to the media because if she did that, it couldn't go ahead; it would all be for
nothing?

MS YATES: So those words were communicated in a different tone from his earlier
40 comments.

MS LONGBOTTOM: What was the difference in the tone?

MS YATES: So it was louder. It was more harsh. So it was directive rather than informative.
45 And Superintendent Moller was using his hands to emphasise things. I observed a change in
Ms Higgins' response. So -

MS LONGBOTTOM: What was that change?
50

5 **MS YATES:** I recall noting that she - her - she started to slump in her chair. She started looking down, and I believe she started to cry. I don't have a really clear recollection, but it was evident to me that there was a change in her response to what was being said. So you can see there that I intervene, and did so in real time, noting the impact on Ms Higgins of what was being said. And I make some comments that are there in my statement.

MS LONGBOTTOM: What do you mean when you say, "I did so in real time"? What is - what's the purpose of you making that observation?

10 **MS YATES:** Well, I was seeking to immediately ameliorate what I saw as comments which Ms Higgins was distressed by.

15 **THE CHAIRPERSON:** So the police officer said something in a hard tone. Your respective positions were two women seated, five men standing?

MS YATES: Four men and one woman.

THE CHAIRPERSON: Four men and -

20 **MS YATES:** Not all standing. They were across the room. I can't recall.

25 **THE CHAIRPERSON:** Right. Anyway, you were outnumbered by police officers. And so Mr Moller gave this warning - this observation and this warning and this prediction, and it distressed Ms Higgins. So what is it that you wanted to achieve by what you - what was it now in hindsight - you obviously acted instinctively, really, as a matter of experience. You just did what you did.

MS YATES: Yes.

30 **THE CHAIRPERSON:** What were you trying to do?

35 **MS YATES:** I could hear that the superintendent was saying, "You need to stop speaking to the media." But I was responding primarily to his comment that if the matter couldn't go ahead, then it would all be for nothing. And from my years of providing support to our clients, I'm aware it's not unusual for our clients to blame themselves where a charge isn't laid or to leave a meeting with police feeling like they've done the wrong thing, that they have stuffed everything up, that - you know, to internalise blame for a process not going in a particular way.

40 So police were giving clear directions for her to no longer engage in the media, which may have brought an end to her media engagement. But they were saying that if a charge couldn't go ahead, it would all be for nothing. So I was seeking to intervene just to make clear that there - there might be a whole lot of reasons why a charge couldn't go ahead in this matter, which may or may not relate to Ms Higgins' conduct, but to give her some affirmation that even if, you know, what was said at that point, you know, was said and she complied with police directions, that she had already achieved some good things, to say - the criminal justice process, I knew, was very important to her. But she had also undertaken important systemic advocacy to improve systems for sexual assault survivors and that that would stand even if the criminal justice process couldn't go ahead.

50

THE CHAIRPERSON: It's interesting, isn't it, that there were two things that Mr Moller said: one was, "Please don't talk to the media"; and the second was, "If you do, the case might fail." And - "the case might fail, and if it does, it will all be for nothing."

5 **MS YATES:** Yes.

THE CHAIRPERSON: So he was saying two things, "Please don't talk to the media" -

MS YATES: Yes.

10 **THE CHAIRPERSON:** - which would have been enough on its own, but he pointed out that, "If you do speak to the media, the case might fail and it will all be for nothing." I understand you to be saying that what you said was addressing the second part of his statement.

15 **MS YATES:** Yes, the notion that it -

THE CHAIRPERSON: That it would all be for nothing.

20 **MS YATES:** It would all be for nothing.

THE CHAIRPERSON: Yes. And if a disinterested observer were listening to this, if the disinterested observer thought you were addressing the first part of this statement, then it would sound like you're explaining why she would keep speaking to the media. Do you see?

25 **MS YATES:** Yes.

THE CHAIRPERSON: I'm just saying that's a possibility, that he was saying two things. You were addressing only one of them, and it's in the mind of the listener which one you are addressing. I know what you're addressing. That's so. But it's in the mind of the listener what it sounds like you're addressing, doesn't it?

30

MS YATES: Yes.

35 **THE CHAIRPERSON:** Yes.

MS YATES: Because -

THE CHAIRPERSON: I'm not blaming you. I'm just - as a matter of fact, that seems to me to be so, that it depends what you are listening to.

40

MS YATES: Yes.

THE CHAIRPERSON: Yes. Thanks.

45

MS LONGBOTTOM: Mr Sofronoff, I'm about to move on to another issue. It will take some sort of 15 minutes. I'm conscious of the time. I'm content to press on, but if -

THE CHAIRPERSON: Well, no, let's have a break, then, until quarter to 12.

50

<THE HEARING ADJOURNED AT 11.22 AM

<THE HEARING RESUMED AT 11.52 AM

5 **THE CHAIRPERSON:** Yes, Ms Longbottom.

MS LONGBOTTOM: Thank you, Mr Sofronoff. Ms Yates, before the adjournment, you were giving evidence with respect to the evidence-in-chief interview that took place on 26 May (indistinct).

10 **MS YATES:** Yes.

MS LONGBOTTOM: The next afternoon, on 27 May 2021, you received a phone call from Detective Superintendent Moller?

15 **MS YATES:** Yes.

MS LONGBOTTOM: During that phone call, Detective Superintendent Moller told you that police had been accessing Ms Higgins' phone?

20 **MS YATES:** Yes.

MS LONGBOTTOM: And he expressed to you some concerns about what he found on that phone?

25 **MS YATES:** Yes.

MS LONGBOTTOM: Can you identify what those concerns were?

30 **MS YATES:** I'm just pausing here, noting that these are sensitive matters.

MS LONGBOTTOM: Yes.

MS YATES: Mr - Superintendent Moller informed me that they had accessed the material on her phone, and they were concerned that she was looking at suicide and self-harm websites.

MS LONGBOTTOM: Now, after you had that phone call with Detective Superintendent Moller, you then called Ms Higgins?

40 **MS YATES:** I did.

MS LONGBOTTOM: Before I ask you about the content of that conversation - Mr Sofronoff, can I indicate that passage of Ms Yates' evidence is - or has been redacted.

45 **THE CHAIRPERSON:** Yes.

MS LONGBOTTOM: It's paragraph 122.28 of her statement. The reason it has been redacted is because it contains personal and sensitive information.

50

THE CHAIRPERSON: Yes.

5 **MS LONGBOTTOM:** But correct me if I am wrong about this, Ms Yates: the permission of Ms Higgins has been sought and obtained in order to - for you to publicly give evidence about that part of your statement?

MS YATES: Yes.

10 **MS LONGBOTTOM:** And, Ms Yates, do you have some reluctance in terms of giving evidence about that conversation?

MS YATES: I do.

15 **MS LONGBOTTOM:** Can you tell Mr Sofronoff what that reluctance is?

MS YATES: I'm reluctant that very sensitive personal information at a difficult point in time -

20 **THE CHAIRPERSON:** Can we approach it in this way: you learnt from - about a risky situation from Mr Moller?

MS YATES: Yes.

25 **THE CHAIRPERSON:** And you then contacted Ms Higgins, and you took some steps -

MS YATES: Yes.

30 **THE CHAIRPERSON:** - to look after her, but the key point is that you became aware that her health was at risk?

MS YATES: Yes, at immediate risk.

THE CHAIRPERSON: At acute risk.

35 **MS YATES:** Yes.

THE CHAIRPERSON: Yes. And that's all we need to know, that you learnt from your conversation with her and from what Mr Moller had said that something had to be done.

40 **MS YATES:** Yes.

THE CHAIRPERSON: Yes. Go on.

45 **MS LONGBOTTOM:** Mr Sofronoff, I do think there are some other matters that are important -

THE CHAIRPERSON: You lead the evidence then, Ms Longbottom.

50 **MS LONGBOTTOM:** - for you to know. As you've just said, you learnt that Ms Higgins - you formed the view that Ms Higgins' welfare was at immediate risk?

MS YATES: Yes.

5 **MS LONGBOTTOM:** During the course of that conversation you had with Ms Higgins, you had a discussion about strategies that she was using to keep herself distracted?

MS YATES: Yes.

10 **MS LONGBOTTOM:** And you asked her how that was working for her?

MS YATES: Yes.

15 **MS LONGBOTTOM:** Can you tell Mr Sofronoff what she told you in response to that question?

MS YATES: Do you mind if I just -

THE CHAIRPERSON: Refresh your memory from your statement, would you.

20 **MS YATES:** Yes. And, sorry, could you just put that question to me again?

MS LONGBOTTOM: Yes. You had a discussion with Ms Yates about strategies she put in place to keep herself distracted?

25 **MS YATES:** Yes.

MS LONGBOTTOM: And you asked her whether or not that was working for her?

MS YATES: Yes.

30 **MS LONGBOTTOM:** And I'm asking you about the response that she provided you.

35 **MS YATES:** She indicated that the things that had stopped her from acting in the past were no longer present. I asked her whether her psychologist was someone that she could trust around how she was feeling, and she said that - no.

MS LONGBOTTOM: And, Ms Yates, am I correct that during that discussion, Ms Higgins expressed to you her experience of information that was online and its impact on her?

40 **MS YATES:** Yes. Feel free to take me to that particular -

MS LONGBOTTOM: Can I take you to - it's halfway down the page on _0253. The line -

45 **THE CHAIRPERSON:** What paragraph number is it?

MS LONGBOTTOM: It's paragraph 122.28. But it's on the next page.

MS YATES: Yes.

50 **MS LONGBOTTOM:** It's about halfway down the page.

5 **MS YATES:** Mmm. Yes. To my recollection, she was talking about the fact that every time she went online, there was a furore. People were contacting her all the time - and I mentioned that earlier in my evidence - and that she can't get away from it. She can't get around the constant contact. And, "For the last 100 days, I've been finding out more about what's happened to myself from TV, and I don't know how to make that better any more."

10 **MS LONGBOTTOM:** Now, Ms Yates, you have just said - you have made reference to your earlier evidence. Is that a reference to the evidence you earlier gave about concerns Ms Higgins had expressed to you about how she was dealing with online contact and contact from individuals about her complaint?

15 **MS YATES:** About her complaint, but also sharing stories of their own sexual assaults and seeking her engagement with them on that.

MS LONGBOTTOM: Now, during the course of that conversation, you sought permission from Ms Higgins and you spoke to her partner?

20 **MS YATES:** Yes.

MS LONGBOTTOM: And with the consent of Ms Higgins and her partner, you took steps to have an ambulance called?

25 **MS YATES:** Yes.

MS LONGBOTTOM: And you took steps to facilitate her access to receive inpatient care?

MS YATES: Yes.

30 **MS LONGBOTTOM:** Ms Yates, that was not the only occasion on which you held concerns about Ms Higgins' immediate welfare?

MS YATES: No.

35 **MS LONGBOTTOM:** That was not the only occasion on which you provided assistance to ensure that she received urgent mental health care?

MS YATES: That's right.

40 **MS LONGBOTTOM:** Ms Yates, I'm going to take you through a number of events where you facilitated that assistance.

MS YATES: Mmm.

45 **MS LONGBOTTOM:** I'm not going to ask you to speak to the specific detail of your engagement with Ms Higgins -

MS YATES: Okay. Thank you.

50 **MS LONGBOTTOM:** - but I do want to ask you questions about the chronology.

MS YATES: Sure.

5 **MS LONGBOTTOM:** The next occasion on which you became aware of an immediate concern to Ms Higgins' welfare was on 16 August 2021?

MS YATES: Yes.

10 **MS LONGBOTTOM:** What was happening around that time?

MS YATES: So it was roughly 10 days after Ms Higgins had been informed by Superintendent Moller that a summons had been served. On that day, I think she also received an email directly from Superintendent Moller. But obviously - yes. So -

15 **MS LONGBOTTOM:** When you say she received an email directly from Detective Superintendent Moller, what is the significance of that in your mind?

20 **MS YATES:** I was just working through the chronology in my head and, in fact, I don't think that's relevant.

MS LONGBOTTOM: The next occasion on which you became aware of an urgent need to obtain medical assistance for Ms Higgins was in April 2022?

25 **MS YATES:** Yes.

MS LONGBOTTOM: On 29 April 2022?

THE CHAIRPERSON: You can take the dates from Ms Longbottom.

30 **MS YATES:** Yes. Yes.

MS LONGBOTTOM: Do you recall what was happening around that time?

35 **MS YATES:** I recall that was the period where we were awaiting her Honour's decision in relation to the first stay application.

MS LONGBOTTOM: And that decision was handed down the next day?

40 **MS YATES:** Yes.

MS LONGBOTTOM: But the application had been some time earlier that month?

45 **MS YATES:** It had. And I think it had been Ms Higgins' expectation that we might receive a decision on that quite soon after the application, but it was some weeks of waiting, which had built pressure.

MS LONGBOTTOM: And in terms of your understanding of Ms Higgins' expectation, how did you come to have that understanding?

MS YATES: I believe Mr Drumgold had informed her that the decision would be handed down within a reasonable time, and he didn't specify a date or time, but the general indication was that it would come, you know, within a few days or a week or so.

5 **MS LONGBOTTOM:** And were you present at that communication - that conversation or did Ms Higgins communicate it to you afterwards?

MS YATES: I would have been present or I would have communicated it from Mr Drumgold to Ms Higgins.

10 **MS LONGBOTTOM:** The next occasion on which you became aware of Ms Higgins' need for urgent care was in June 2022?

MS YATES: Yes.

15 **MS LONGBOTTOM:** And that was the day on which the second temporary stay application was granted?

MS YATES: Yes.

20 **MS LONGBOTTOM:** And do you recall what the second temporary stay application concerned?

MS YATES: That was in relation to comments made at the Logies, if I recall.

25 **MS LONGBOTTOM:** And, Ms Yates, you were also instrumental in obtaining assistance for Ms Higgins when she required hospitalisation during the trial?

MS YATES: Yes.

30 **MS LONGBOTTOM:** And there were two occasions on which you facilitated that assistance?

MS YATES: I believe so. Yes.

35 **MS LONGBOTTOM:** The first occasion was during the course of Ms Higgins giving her evidence?

MS YATES: Yes.

40 **MS LONGBOTTOM:** And the second occasion was after she had finished giving her evidence?

MS YATES: Yes.

45 **MS LONGBOTTOM:** Now, Ms Yates, can I take you to an email you sent on 15 September 2022 to Ms Higgins. Operator, can you please display VCC.0001.0001.0596_0001. Ms Yates, in this email, you are offering to Ms Higgins to provide support from a person called Carmel -

50

MS YATES: Mmm.

MS LONGBOTTOM: - in relation to particular assistance she might be able to provide Ms Higgins in going through the trial.

5

MS YATES: Mmm.

MS LONGBOTTOM: Can you give Mr Sofronoff the context to you sending this email? Why did you take this step?

10

MS YATES: Thanks. Do you mind if I just take a moment to review the email?

MS LONGBOTTOM: Of course.

15 **MS YATES:** Thank you.

MS LONGBOTTOM: And can I particularly ask you to focus, Ms Yates, when you are reading that email, on the third paragraph where you talk about your own expertise in providing support and legal representations - legal representation, but unique pressures of the matter and your desire to ensure you're doing everything you can to offer Ms Higgins the best support.

20

MS YATES: Mmm. Thank you. So could you just put the question to me again, sorry, the - the context?

25

MS LONGBOTTOM: Why did you send that email?

MS YATES: Yes. So it had been a very long, extraordinary set of engagements in this matter.

30

THE CHAIRPERSON: Excuse me, Ms Yates. What's the date of this?

MS LONGBOTTOM: 15 September 2022.

35 **THE CHAIRPERSON:** Thank you.

MS YATES: The first court appearance - sorry, 15 September 2022. So we are preparing in the lead-up for the rescheduled trial in early October. From my earliest engagements with Ms Higgins, I had on a regular basis reminded her of the additional psychological support that she could access through our office. And in doing so, I was keen to make sure she understood she had options for seeking additional support. And I was really seeking to try and expand her circle of trusted persons whom she could speak to.

40

MS LONGBOTTOM: Why were you seeking to expand that circle?

45

MS YATES: In part, because of the immense pressures she was under and what I had learnt regarding her poor mental health at key junctures in the matter as it progressed. And as you just highlighted, they were generally at points where something changed or there was some development in the criminal matter. So Ms Higgins had not chosen to take up those offers of additional support. I will be really honest, I was feeling the pressure throughout this matter

50

for Ms Higgins' wellbeing, as we do in relation to all our clients, but as - I would say this was an extraordinary matter at the heart of the most intensively publicised sexual assault case perhaps in the country. And so I was really encouraging Ms Higgins to be able to trust in and seek support from a broader range of people.

5

MS LONGBOTTOM: And to your knowledge, how big was the circle of support she had at that time?

10 **MS YATES:** My observation on that - well, I was surprised as I - as Ms Higgins started to trust me, just how small that circle of trust was. There's no doubt that she had contact with many people who were in contact with her, but Ms Higgins - her privacy was very important to her. And other than her partner and immediate members of her family, there were very few people that she was trusting at that time.

15 **MS LONGBOTTOM:** And in this email, you are inviting Ms Higgins to join in a discussion with you with an expert?

MS YATES: Yes.

20 **MS LONGBOTTOM:** What was the nature of the expertise of Carmel who is referred to?

MS YATES: So a little earlier in the year, I think after a period of hospitalisation, Ms Higgins had agreed to attend an online meeting with Carmel and myself. And, again, that was me trying to facilitate different options to ease her engagement with someone in expertise.

25

MS LONGBOTTOM: And what expertise did Carmel have?

30 **MS YATES:** So Carmel is a very experienced sexual assault counsellor, having worked for decades in Canberra and been well respected as a professional in this area.

MS LONGBOTTOM: And you mention an earlier invitation to have a meeting with you and Carmel in June, I think you said. Did Ms Higgins take up that invitation?

35 **MS YATES:** She did. So Carmel and I were present in my office, and we called Ms Higgins in. And it was really an opportunity for Ms Higgins to understand the kinds of support that Carmel could provide and for her to ask Carmel any questions. At the end of that - I think this is not so sensitive that I can share it because it's really quite practical. At the end of that engagement, Ms Higgins agreed to meet with Carmel the following week for a one-on-one session online. I was on leave, I believe, at that time. And when I returned from leave, I learnt that, in fact, Ms Higgins had chosen not to attend the scheduled meeting, which was her - her right and her choice, which I absolutely respected. So now a couple of - you know, some time further down the line, we are getting closer to trial, I was again trying to offer Ms Higgins the options to build the strategies available to her to deal with what I thought would be a very - as - as is the case for - for many of our clients, engaging and giving evidence at trial is an incredibly stressful experience.

45

MS LONGBOTTOM: And I'm struck by the language you use in the fourth-last paragraph. You say:

50

"Absolutely no pressure..."

And then again, the next paragraph, you reiterate:

5 "...I promise if you would rather not join this chat."

What was your thinking in terms of expressing invitation in that way?

10 **MS YATES:** I wanted her to know that it was absolutely her choice whether or not to engage with Carmel. I wasn't requiring her to that. We don't direct or require our clients to participate in anything like this. So I wanted to be clear with her that I was not trying to pressure her into doing something she was uncomfortable with. However, I also wanted to make clear that I felt like I needed some - someone to check in with about skills to support her in this
15 extraordinary point in time and that I was - I wanted to be transparent with her that I was still going to have that conversation but that I wouldn't be talking about her matter with Carmel.

MS LONGBOTTOM: And in terms of the discharge of your functions, what kind of support did you feel you needed from Carmel to enable you to properly support Ms Higgins?

20 **MS YATES:** I - I'm always learning about better ways to support our clients. And in this incredibly pressurised environment, I wanted to touch base with someone who had spent decades supporting clients at court in very high volume over a very long time period to make sure at the front of my mind I had every strategy available to assist Ms Higgins and to promote her welfare during the trial.

25 **MS LONGBOTTOM:** And did Ms Higgins take up the opportunity to speak with you and Carmel in relation to the upcoming trial?

30 **MS YATES:** To the best of my recollection, she did not. She - sorry. Sorry, I'm getting confused about which she didn't attend. We did, because I'm remembering now my notes from that conversation which have been provided to the Board. So we did have that conversation.

MS LONGBOTTOM: Now, Ms Yates, I want to turn to the trial itself -

35 **MS YATES:** Mmm.

40 **MS LONGBOTTOM:** - and a number of aspects of your actions during that trial. Now, you are aware that you have been publicly criticised for aspects of your action during the course of the trial in the matter of The Crown v Lehrmann?

MS YATES: Yes, those criticisms have come after the completion of the trial.

45 **MS LONGBOTTOM:** And one aspect of that criticism is your decision to publicly walk next to Ms Higgins into court every day? You accept that criticism has been made?

MS YATES: Yes.

MS LONGBOTTOM: And that criticism is not so much directed to your decision to be a support person for Ms Higgins in court; rather, it's the public nature of that support having regard to the statutory office that you hold?

5 **MS YATES:** Mmm.

THE CHAIRPERSON: Or, more strictly, the title of the statutory office.

10 **MS LONGBOTTOM:** Yes. Now, I would like to ask you to comment on that criticism and the reasons why you decided to make that public show of support, being conscious of your statutory office of Victims of Crime Commissioner.

MS YATES: May I look to my statement, which outlines those matters?

15 **THE CHAIRPERSON:** Yes. Yes, look at your statement if it helps you answer the question.

MS LONGBOTTOM: I think it might be, operator - are you referring particularly, Ms Yates, to paragraph 147.1 of your statement? Which, Mr Operator, appears on page
20 _0311.

MS YATES: So I would, by way of context, begin by noting that this was an extraordinary matter. For a start, the initial contact with Ms Higgins was in the context of an invite to meet with the Prime Minister. This was highly unusual. And then my early engagement in her matter indicated high level and very senior ranked ACT Policing officers and information
25 flow up to federal ministers' officers about the matter, etcetera. I had also assisted Ms Higgins, as you have outlined, to seek urgent care on a number of occasions.

MS LONGBOTTOM: Now, can I just stop you there.

30 **MS YATES:** Yes.

MS LONGBOTTOM: In terms of the first comment you made about the intensity of the sort of profile of the matter, in making your decision to walk into court with Ms Higgins each day, it could not have been lost on you that this was a matter that would attract - that was a
35 fact that would attract public attention, that would be reported in the media?

MS YATES: Yes.

MS LONGBOTTOM: And that calls into question what you refer to in your statement as
40 the balancing exercise you are required to undertake. And if I could just step out the basis of that balancing exercise. You are, like others in Australia, an independent statutory officer who has responsibility for victims of crime?

MS YATES: Mmm.

45 **MS LONGBOTTOM:** That responsibility situates you within the criminal justice system?

MS YATES: Yes.

MS LONGBOTTOM: And the obligations in the criminal justice system to preserve the right to a fair trial?

MS YATES: Yes.

5

MS LONGBOTTOM: And the presumption of innocence?

MS YATES: Mmm.

10 **MS LONGBOTTOM:** But one matter that sets you apart from other statutory officers in relation to victims of crime is that you sit within the Human Rights Commission?

MS YATES: That's right.

15 **MS LONGBOTTOM:** And as a member of the Human Rights Commission, you are statute-bound to uphold the rights enshrined in the Human Rights Act?

MS YATES: Mmm.

20 **MS LONGBOTTOM:** And sections 21 and 22 of that Act, in terms, require you to uphold the presumption of innocence?

MS YATES: Yes.

25 **MS LONGBOTTOM:** And the right to a fair trial?

MS YATES: Yes.

MS LONGBOTTOM: So -

30

THE CHAIRPERSON: Well, section 22 establishes as a matter of statute -

MS LONGBOTTOM: That's right.

35 **THE CHAIRPERSON:** - that the presumption of innocence of an accused person is a human right.

MS LONGBOTTOM: I accept that, Mr Sofronoff.

40 **THE CHAIRPERSON:** Yes.

MS LONGBOTTOM: And in your statement, you refer to the need for you to undertake that balancing exercise?

45 **MS YATES:** Mmm.

MS LONGBOTTOM: And you also refer to, in the particular context of a trial, the triangulation of interests -

50 **MS YATES:** Yes.

MS LONGBOTTOM: - that exist and that are incumbent on you, as a statutory office holder, to take into account.

5 **MS YATES:** Mmm.

MS LONGBOTTOM: What are those triangulation of interests?

10 **MS YATES:** So in a 2021 matter of R v QX, the Supreme Court of the ACT adopted the approach taken in the UK courts in recognising that the right to a fair trial in section 21 involves that triangulation of the accused rights, of the rights of the victim and their family, and the public interest.

15 **MS LONGBOTTOM:** But am I right that that particular decision concerned a case where the rights of the victim were particularly related to whether or not a witness intermediary should be appointed for a complainant?

20 **MS YATES:** Yes, that was the context. But if I recall, her Honour's commentary went to the broader issue of whether the right to a fair trial, in fact, involves the rights of victims at all. So it was preliminary remarks about the framework of - or how section 21 might be interpreted and whether it involves a balancing exercise.

25 **MS LONGBOTTOM:** But you would accept that in your decision-making about not being a support person to Ms Higgins but the decision to be really the public face of that support by walking into her with court, you were statute-bound to take into account not just her rights as a victim but also those important human rights of Mr Lehrmann in relation to the presumption of innocence and the right to a fair trial?

30 **MS YATES:** I absolutely agree. And I take my responsibilities under the Human Rights Act very seriously. I note I am also a public authority under section 40B of the Act that requires me to act in a way that's consistent with human rights.

35 **MS LONGBOTTOM:** And accepting that as you do, what do you say about the criticism about your decision to be that public face of support with Ms Higgins and the perception at least that that infringed on the presumption of innocence of Mr Lehrmann?

40 **MS YATES:** Those perceptions concern me greatly. And whilst they weren't raised during the trial, they have certainly been raised afterwards and need to be considered. I note that, in my view, those concerns perhaps reflect a misunderstanding of my role in the justice system. Noting that the ACT Government, in balancing rights, has enabled my office to provide support and assistance to clients as they move through the criminal justice process. Police have the duty to investigate; prosecution brings - brings matters; and defence counsel defend their client's right. So if that is known and understood, I think that together we can, in fact, improve community faith in the justice system such that each of us has a different role but ultimately act at the direction of the court.

MS LONGBOTTOM: Can I just stop you there.

50 **MS YATES:** Yes.

MS LONGBOTTOM: You talked about your particular statutory role. Are you referring there specifically to the fact that under your legislation, a victim is a claimant, as Mr Sofronoff said earlier, in relation to an offence, rather than being an individual in respect of an offence for which there has been a conviction?

5

MS YATES: Yes, that's certainly part of my consideration. I note that Ms Higgins was entitled to court support from our office. I note that she asked me to support her. I note that it wasn't clear until, in fact, the day the trial started whether she would choose to enter the court publicly or whether she might choose to exercise one of the - any of the other options I discussed with her, which are available to sexual assault complainants, and - sorry, I will stop there.

10

THE CHAIRPERSON: So let's just have a look at that because, in a way, it's why you're here. So we had better stop and have a look at it.

15

MS YATES: Yes.

THE CHAIRPERSON: You mentioned defence counsel and police and the prosecutor and yourself. So if we take them one by one.

20

MS YATES: Yes.

THE CHAIRPERSON: Police bring a charge and so - and the prosecutor brings a charge if they are satisfied to a certain degree that the person who is to be accused is guilty.

25

MS YATES: Yes.

MS LONGBOTTOM: At that stage, nobody knows for a fact that the accused is guilty. That is, the complainant knows, the accused knows. But the rest of us who have to deal with this - nobody knows whether there's guilt or actual innocence as a matter of certain fact. So police bring a charge upon the basis of a certain degree of belief about guilt. You needn't pause to find out what that level is. And so when they bring a charge, that initiates a process by which another tribunal will determine guilt or not guilt. But it's not correctly or rightly or accurately to be taken as a statement by police that, "We think he is guilty," that, "We think as a matter of fact he is guilty."

30

35

MS YATES: Indeed.

THE CHAIRPERSON: It is taken to be a statement by police that, "We think there is a sufficiently reasonable case that he is guilty. He might not be."

40

MS YATES: Indeed.

THE CHAIRPERSON: So we have dealt with the police. So too the prosecutor is obliged to prosecute subject to restraints -

45

MS YATES: Yes.

THE CHAIRPERSON: - upon how the prosecution can be conducted and things that the prosecutor must do.

50

MS YATES: Yes.

5 **THE CHAIRPERSON:** But the prosecutor is duty-bound to prosecute, again, if there's a degree of satisfaction about the quality of the evidence -

MS YATES: Yes.

10 **THE CHAIRPERSON:** - not about actual guilt. That is to say, it would be nonsense to ask a prosecutor, "How can you prosecute a guilty - an innocent man?"

MS YATES: Yes.

15 **THE CHAIRPERSON:** Because the prosecutor has no opinion as a prosecutor about guilt or innocence, only about the sufficiency of the evidence to warrant doing the job of prosecuting.

MS YATES: Yes.

20 **THE CHAIRPERSON:** So when the prosecutor stands there, the prosecutor isn't said to be giving an imprimatur - a seal of approval - for guilt. It may look like that, but a good prosecutor will always ensure that the things said by way of advocacy are impersonal. A good prosecutor acting ethically would never assert a belief in guilt.

25 **MS YATES:** Yes.

THE CHAIRPERSON: You are familiar with that?

MS YATES: Yes.

30 **THE CHAIRPERSON:** So then we turn to defence counsel.

MS YATES: Yes.

35 **THE CHAIRPERSON:** And solicitors have a different set of rules, but a barrister - you're a lawyer yourself, aren't you?

MS YATES: Yes.

40 **THE CHAIRPERSON:** And you're aware that a barrister is obliged as an ethical matter to accept a brief in a jurisdiction in which the barrister practices -

MS YATES: Yes.

45 **THE CHAIRPERSON:** - and if a reasonable fee is offered and if the barrister is otherwise available?

MS YATES: Yes.

50 **THE CHAIRPERSON:** It's called the cab-rank rule.

MS YATES: Yes.

THE CHAIRPERSON: You're like a taxi; you have to take the next fare.

5

MS YATES: Yes.

THE CHAIRPERSON: So when a barrister is asked, "How can you defend a guilty person?" It's a nonsense question because the barrister is obliged to shepherd the client through the process consistent with ethical rules that restrain what you can do. And of course, if you know the client is guilty, then other rules apply -

10

MS YATES: Yes.

THE CHAIRPERSON: - if you know because a client told you or there is some other way you know. But otherwise defence counsel, in Australia at least, and in Britain - maybe not in the United States - would never say, "My client is innocent, and we will prove it." An ethical barrister would never say anything about the client's potential to be found guilty or not; just that the defence will be vigorously - they always say "vigorously defended" for some reason, rather than just "defended". How else can one defend but vigorously? So defence counsel doesn't give an imprimatur of innocence, just as a prosecutor doesn't given an imprimatur of guilt.

20

MS YATES: Yes.

25

THE CHAIRPERSON: Now, it seems to me that your position is complicated because the name of the statute is Victims of Crime, and you're the Victims of Crime Commissioner. But if you were called a Complainants Commissioner - Complainants of Crime Commissioner, then it would be clear that your involvement - your wholehearted professional involvement with what a person you call a client is not asserting anything other than you are satisfied that the statutory test for eligibility has been satisfied and you are duty-bound to offer the services that you are duty-bound to offer. Is that how you see it?

30

MS YATES: Yes.

35

THE CHAIRPERSON: Are there occasions, then, when there's a risk that you - as a barrister might - cross the line, and if you are not careful, you cross the line and you are rightly to be regarded as asserting victimhood in your client? Are there circumstances in which the provision by you of services runs the risk of avoidably asserting that your client is, in fact, a victim rather than the client has satisfied a statutory test and is therefore entitled to statutory services?

40

MS YATES: I absolutely acknowledge that possibility which, in my view, would be founded on a misunderstanding of my statutory functions and the matters you've just outlined.

45

THE CHAIRPERSON: But is there a possibility of a transgression which is not founded on a misunderstanding, because of the way - I'm speaking hypothetically, you understand.

MS YATES: Yes. Yes.

50

THE CHAIRPERSON: Because the way you choose to offer services or the way you behave or the things you say may result in people rightly concluding that you are asserting that, "As a matter of fact, my client is a victim of crime."

5 **MS YATES:** Well, I guess I have to very carefully balance the risk of something like that happening in the minds of others with the response -

THE CHAIRPERSON: Rightly happening. I don't mean wrongly happening. It's difficult to protect against wrong thinking. But we are talking about right thinking because you do something or omit to do something that causes somebody rightly to conclude that you're saying, "This person is a victim - is that accused's actual victim." Do you think there are things that you might do that might - in the fulfilment of your duties that might lead to that kind of a right conclusion in the public's mind?

15 **MS YATES:** Certainly that's possible. Whether or not that occurred in this case is another matter.

THE CHAIRPERSON: Well, let's go to this case, then.

20 **MS YATES:** Yes.

THE CHAIRPERSON: So what do you say about your sticking by Ms Higgins' side in a case of public notoriety and daily news video? Do you think you transgressed that line there?

25 **MS YATES:** I don't.

THE CHAIRPERSON: Tell me why.

MS YATES: I believe that I carefully considered my responsibilities to Ms Higgins under the Act. And in doing so, I was cognisant of my requirements under the Human Rights Act to balance but also the tasks that the government has - and the functions have given me, no doubt for policy reasons, as to ensuring the community that certain supports are available. In practice also, I note that there are a number of checkpoints along the way, as I had experienced in this matter over some 18 months, where there are opportunities for our criminal justice partners to raise concerns, for example, regarding my engagement. So I talked before about police giving us approval to attend. When it moved to the prosecutor's office, I again checked in that it was suitable for me to continue to provide support, which he did. The DPP indicated to me he was going to make a formal application under section 49 of the Evidence (Miscellaneous Provisions) Act for me to be Ms Higgins' support person in court. That application was made. No objection was made by defence counsel, to the best of my understanding in looking at the transcript.

THE CHAIRPERSON: This is the provision that says particular witnesses - and Ms Higgins was one of those -

45 **MS YATES:** Yes.

THE CHAIRPERSON: - can actually have physically present in court a support person with her while she is giving evidence; is this right?

50

MS YATES: That's right. And, importantly, the Chief Justice gave directions to the jury in accordance with that section.

5 **THE CHAIRPERSON:** Yes. So just for people who don't know - and similar provisions exist, I think, in every jurisdiction - that when that happens, the presiding judge tells the jury to read nothing into it -

MS YATES: Yes.

10 **THE CHAIRPERSON:** - that this is done for reasons of law -

MS YATES: Yes.

15 **THE CHAIRPERSON:** - and you aren't to infer that because the witness has a support person that that has anything to do with the accused's guilt or innocence.

MS YATES: Absolutely.

20 **THE CHAIRPERSON:** Yes.

MS YATES: And I recall her directions to the jury included words to the effect that Ms Yates is known to me, she's a part of the system, she's not a friend of Ms Higgins and you shouldn't give Ms Higgins' evidence more or less weight by virtue -

25 **THE CHAIRPERSON:** Yes. Yes.

MS YATES: So I think, Mr Chair, I wanted to highlight that if at any point throughout those engagements, including at trial, or indeed in day 2 or 3 of the trial, any concerns had been raised with me about the support I was providing Ms Higgins, I would have absolutely considered those.

30 **THE CHAIRPERSON:** The perception of the support.

35 **MS YATES:** The perception of the support. Indeed. It would have been incredibly important to me to consider and drafts those, including by speaking to Ms Higgins about them and what else we might do to alleviate them. Public faith and understanding in my office is incredibly important to me. So if they had been raised at any prior point by defence counsel or - or the court itself, I would have absolutely considered it. But in -

40 **THE CHAIRPERSON:** Now -

MS YATES: Sorry.

45 **THE CHAIRPERSON:** Sorry, go on. Go on.

MS YATES: But in the absence of those - any concerns being raised, I was doing my best in the circumstances to consider the functions that government has given me to make clear that complainants are entitled to support in very difficult circumstances, including if they choose to walk into court, which, as I say, I didn't know whether or not that would be the case, and that that might assist, together with an understanding of the other roles you have outlined, to

50

built community faith in the justice process, to encourage people to come forward knowing that whilst the justice process can be very challenging, support is available to them at every stage. Noting that it's in the interests of the community more broadly for victims to feel able to come forward and report crime, to provide their evidence to be decided by the court.

5

THE CHAIRPERSON: So there have been media stories about your actions in relation to Ms Higgins at the trial. But did I understand you to say that you weren't aware of any criticisms of that kind during the trial, in the media I mean? You obviously can't cover all the media and something might be there, but you weren't aware of any such criticisms directed at your actions at the time?

10

MS YATES: That's right.

THE CHAIRPERSON: Thanks. Yes, Ms Longbottom.

15

MS LONGBOTTOM: Ms Yates, in terms of your decision to walk into court with Ms Higgins, did you specifically ask either the DPP or ACT Police about the wisdom of that decision?

20

MS YATES: Yes, that was discussed with the DPP.

MS LONGBOTTOM: So I'm talking not just about being a support to Ms Higgins in court but about walking in with her in public. That was a matter that you raised with the DPP?

25

MS YATES: Yes.

MS LONGBOTTOM: When was that?

30

MS YATES: That was in the context of one of the final proofing sessions the DPP undertook with Ms Higgins where there was a discussion about how - what option she might choose to enter and leave the court by, and that specific matter was discussed.

MS LONGBOTTOM: And during that discussion, did Mr Drumgold raise any concerns with you about you walking in publicly with Ms Higgins into court?

35

MS YATES: None.

MS LONGBOTTOM: Now, in terms of the risk factors Mr Sofronoff has just raised, I think as you've said earlier, this was a unique case in many ways. One of - part of the context in which you as an independent statutory officer had to make your decision was the events that had led up to trial. That included the second stay application, a temporary stay being granted because of a speech that had been publicly given expressing proof in the allegations Ms Higgins made. Was that a factor in your consideration in determining to make that public show of support in walking with Ms Higgins into court?

45

MS YATES: It - it was part of the matrix of facts and considerations that - facts and other things that contributed to my consideration. Again, at this point, no concerns had been raised. The DPP advised this was suitable. I was on a daily basis managing a client with very fragile mental health, with a very small circle of trusted support. There had been threats to her life. I think that's redacted in the statement, but it's now on the public record because it's been

50

reported. I was trying to, as the Act requires me to, ensure she had the information and assistance she needed at this point in the administration of justice, and I had significant concerns for her welfare.

5 **MS LONGBOTTOM:** And with the benefit of hindsight, would you make that decision to walk in with her publicly again?

10 **MS YATES:** It's hard to know - to go back in time to consider what went on - whether I would have made a different decision. I'm confident with the information available to me at the time I made a fair decision in balancing all of the matters that I was required to balance. Are there learnings from this case regarding the risk of misunderstanding of what it meant for me to be walking by her as she was - yes, there are. And I would certainly consider that should a victim in future seek me to be with them.

15 **THE CHAIRPERSON:** I guess at a strictly legal level, the Human Rights Act declares that the presumption of innocence is a human right. Therefore, Mr Lehrmann is entitled to have his right in that respect respected by everybody, including you.

20 **MS YATES:** Indeed.

THE CHAIRPERSON: Certainly including by a commissioner of the Human Rights Commission.

25 **MS YATES:** Yes.

THE CHAIRPERSON: And as a commissioner on the Human Rights Commission and because you sit there as the Victims of Crime Commissioner, the statute imposes another duty upon you to support Ms Higgins. So we can take it as a legal matter that the statutory assumption is that both duties can be fulfilled.

30 **MS YATES:** Indeed.

MS LONGBOTTOM: They are not inconsistent. The statute would not impose inconsistent duties on a person. That would be an irrational statute.

35 **MS YATES:** Indeed. Particularly given that - sorry, Mr Chair.

40 **THE CHAIRPERSON:** No. No, that's all I wanted to say, that it must be that you can fulfil your duty as the Victims of Crime Commissioner without offending - without breaching Mr Lehrmann's right.

45 **MS YATES:** Indeed. And - and two things I would highlight in that regard is that since 2004, when the Human Rights Act came in, all ACT legislation goes through a human rights scrutiny process where the rights of people affected must be carefully balanced. So when the charter came in and the review of my functions at the same time, the Attorney-General had to issue a statement of compatibility saying the various rights engaged by the charter had been balanced and considered. So in complying -

50 **THE CHAIRPERSON:** When would the attorney have had to do that - when was the Human Rights Act passed?

MS YATES: So the Human Rights Act was passed in 2004.

THE CHAIRPERSON: Yes.

5

MS YATES: The Charter of Rights, which was brought in as part 3A of the Act -

THE CHAIRPERSON: Yes.

10 **MS YATES:** - and which also a review of my functions occurred at the same time, was passed in August 2020 and commenced in January 2021. So it has been quite recent.

THE CHAIRPERSON: I see. So there was a legislatively invoked review of your functions to determine whether those functions were consistent with the charter?

15

MS YATES: At the time the charter was in development, government also took -

THE CHAIRPERSON: I see. That was in - before the charter was enacted?

20

MS YATES: There was a -

THE CHAIRPERSON: Enforced.

MS YATES: Yes.

25

THE CHAIRPERSON: I just misunderstood the sequence that you're saying. Your Act was 1994?

MS YATES: Yes.

30

THE CHAIRPERSON: The Human Rights Act was two thousand and -

MS YATES: Four.

35 **THE CHAIRPERSON:** Four. So 10 years. And then in about 2020, there was a review to determine whether your functions as the Victims of Crime Commissioner were consistent with the Human Rights Act. Is that right or not?

MS YATES: Perhaps I haven't been clear on that.

40

THE CHAIRPERSON: No, yes.

MS YATES: So between 2019 and 2020, there was a great deal of policy work and consultation done to develop the Charter of Rights.

45

THE CHAIRPERSON: Yes.

MS YATES: And when the legislative amendments that brought section 3A into being were occurring, there were also a series of amendments to the objects of the Act and - and to my functions.

50

THE CHAIRPERSON: I see. I see.

MS YATES: So that all happened in the same piece of legislation -

5

THE CHAIRPERSON: I see.

MS YATES: - passed in August -

10 **THE CHAIRPERSON:** And that's when you became - that's when you were wrapped into the Human Rights Commission. That's why. Is that right?

MS YATES: Actually, that had occurred back in 2016.

15 **THE CHAIRPERSON:** Did it? Right.

MS YATES: Yes.

THE CHAIRPERSON: Okay. Thank you.

20

MS LONGBOTTOM: Ms Yates, the other matter for which you have been publicly criticised is your decision to stand next to Ms Higgins when she gave a speech outside of court on 27 October 2022.

25 **MS YATES:** Mmm.

MS LONGBOTTOM: I want to take you through the steps leading to that occurrence. Now, that morning, you received a phone call from the associate of the Chief Justice to inform you that the jury would be discharged?

30

MS YATES: Yes. Sorry, that a juror would be discharged.

MS LONGBOTTOM: A juror would be discharged. You attended court that morning with Ms Higgins?

35

MS YATES: Yes.

MS LONGBOTTOM: You were present when the jury was discharged?

40 **MS YATES:** Yes.

MS LONGBOTTOM: Were you present for the entirety of the hearing in court that morning?

45 **MS YATES:** No.

MS LONGBOTTOM: Why not?

MS YATES: May I go to my statement in that regard?

50

MS LONGBOTTOM: Of course. If it would assist, operator, can you please turn to page _0319 of the statement and particularly expand paragraph 149.2 and paragraph 149.3, which goes (indistinct).

5 **MS YATES:** So my recollection was that Ms - was that the Chief Justice had indicated that she was going to discharge the jury. And as I say there, partway through her saying that, I observed and could hear Ms Higgins having breathing difficulties. So she was beside me in the court. Her lawyer and others were in the row in front. And I was - I could hear the change in her breathing. And then she said words to me, "I have to go." And I'm not a medical
10 practitioner, but I would generally term what I was observing as what I would call a panic attack. I was next to her in the aisle, so I got up and she came in front of me. And I guided her to the nearest bathroom outside of the court. Once inside the bathroom, she became very distressed. And I don't think I need to describe perhaps the nature of that distress.

15 **MS LONGBOTTOM:** Can I ask: how long were you in the bathroom with Ms Higgins?

MS YATES: I think probably close to 15 minutes. I - she was very distressed. She at one point moved into a stall in the bathroom, and I was keen to give her her privacy, but I was verbally checking up on her every minute or so. I was also trying to keep an ear out to the
20 door such that if anybody else entered, I could ask them to perhaps use a bathroom around the corner. But it took a considerable amount of time for Ms Higgins to settle.

MS LONGBOTTOM: And by the time Ms Higgins had settled, the court hearing had finished?

25 **MS YATES:** Yes. I had messaged Ms Higgins' friend, Ms Webster, just to let her know where we were. And at some point, she came to the bathroom and indicated to me that court was over.

30 **MS LONGBOTTOM:** And -

THE CHAIRPERSON: Who told you that?

MS YATES: Ms Webster.

35 **THE CHAIRPERSON:** Yes.

MS LONGBOTTOM: And from the bathroom, you then went to the remote witness room?

40 **MS YATES:** That's right.

MS LONGBOTTOM: And present in the remote witness room was Ms Webster, Ms Higgins, Ms Higgins' lawyer?

45 **MS YATES:** Yes.

MS LONGBOTTOM: And her partner?

MS YATES: Yes.

50

MS LONGBOTTOM: How long you were in the remote witness room before Ms Higgins went to give her speech?

MS YATES: I don't recall. I would estimate - I don't recall. Perhaps 15, 20 minutes.

5

MS LONGBOTTOM: Was there any discussion in the room of the outcome of the hearing before the Chief Justice?

MS YATES: As I note in my statement, once Ms Higgins was sitting with her other individuals in the remote room, I was ferrying cups of tea and water to others in that room, because I was very anxious to ensure she drank something and could calm herself. She was still not at her best. And I stayed outside the room to give her time to speak with her loved ones and with her lawyer about what happened and, to be really frank, to also settle myself.

MS LONGBOTTOM: And I just might ask, operator, would you mind taking down those paragraphs off the livestream. Why did you feel the need to settle yourself?

MS YATES: It had been an extremely stressful couple of months. Indeed, really, an 18-month period of intensive involvement in an extraordinary matter. What had just happened in the courtroom indicated the mistrial, which meant that the matter may need to be heard all over again. I was primarily, though, concerned by Ms Higgins' distress, as I have described, which caused us to leave the courtroom before the Chief Justice had finished her remarks. I was very concerned about Ms Higgins at that point, noting many previous occasions where a change or an update in the criminal proceeding or investigation had caused her to become very unwell quite quickly. So at that time, I was very worried for Ms Higgins and her welfare. It had been my duty across other days she intended - she attended court to - to get her safely back to her accommodation, and that was what I wanted to do in this - on this day. I - she was clearly not okay.

MS LONGBOTTOM: But at some point, it was indicated to you that Ms Higgins wanted to give a statement outside the front of court?

MS YATES: Yes.

MS LONGBOTTOM: Were you aware of the contents of that statement?

MS YATES: I was aware of the content of a statement that I understood Ms Higgins had prepared in the context of a - a conviction or an acquittal.

THE CHAIRPERSON: So she had prepared in anticipation that there would be two possibilities, an acquittal or a conviction, and she had prepared a speech that she would make in either case.

MS YATES: Yes.

45

THE CHAIRPERSON: So you knew that.

MS YATES: Yes.

THE CHAIRPERSON: And did you know what she was going to say in either case?

MS YATES: I - did I know? I was copied in to some correspondence between Ms Higgins and her lawyer which contained drafts of the statement. It was one statement.

5 **THE CHAIRPERSON:** So in any event, you knew that she had prepared a speech in anticipation that either there might be - there would be either an acquittal or a conviction.

MS YATES: Yes.

10 **THE CHAIRPERSON:** And now you have - what actually happened was a third unexpected alternative, a mistrial.

MS YATES: Yes.

15 **THE CHAIRPERSON:** Yes. Go on, Ms Longbottom.

MS LONGBOTTOM: Were you alive to the possibility that a speech Ms Higgins would give would speak to the truth of the allegations she had made?

20 **MS YATES:** Can you just put that to me again so I can consider it.

MS LONGBOTTOM: When you were told she would give a speech -

MS YATES: Yes.

25 **MS LONGBOTTOM:** - were you alive to the possibility that that speech would contain a statement by Ms Higgins about the truth of the allegations she had made against Mr Lehrmann?

30 **MS YATES:** I had been copied in to correspondence that had various drafts of that speech. I think I note here that somebody informed me that she was going to give a speech.

THE CHAIRPERSON: What you are being asked is that in the events that actually happened -

35

MS YATES: Yes.

THE CHAIRPERSON: - and then becoming aware that she was wanting to say something publicly -

40

MS YATES: Yes.

THE CHAIRPERSON: - did it cross your mind that amongst the things she would say would be words to the effect that, "Bruce Lehrmann is guilty"?

45

MS YATES: Frankly, at that point, that was not in my mind. And I recognise with hindsight that it could have been. But at that point in time, as you can see here, I was ready to make arrangements to return Ms Higgins to her accommodation after a very stressful period of time. Someone said, "She wants to make a statement on her way out of court." And I was focused on - I wasn't focused on what she may or may not say.

50

THE CHAIRPERSON: Thank you.

5 **MS LONGBOTTOM:** But would you accept that if Ms Higgins made a statement about the truth of the allegations she had made against Mr Lehmann, that it may be problematic for you as Victim of Crime Commissioner to stand next to her publicly when she made those comments?

10 **MS YATES:** I would honestly say that I did not consider that on that day.

MS LONGBOTTOM: Now, you were told that Ms Higgins wanted to make a statement. You say you then went to the court foyer and you, in effect, put in place arrangements for that to occur?

15 **MS YATES:** I - I had been responsible for gathering information from the sheriffs throughout Ms Higgins' time at court about where she could or should be at different points in time. So again, as was my role, I sought information from the sheriffs, that if she was going to give a statement, where that could happen. I wanted her to be informed about any restrictions on where she could or couldn't stand. So I gathered that information, and I
20 communicated that to Ms Higgins.

MS LONGBOTTOM: And at the time you were gathering that information, had Ms Higgins asked you to stand next to her when she gave a speech?

25 **MS YATES:** I can't recall.

MS LONGBOTTOM: Okay. But at some stage before she went to give the statement, she asked you to stand next to her?

30 **MS YATES:** She did.

MS LONGBOTTOM: What was your thinking at that time?

35 **MS YATES:** My thinking at that time was that I was extremely concerned for her welfare. I remained concerned when she was in the remote rooms that she was still not looking well. So still distressed, shaking hands, etcetera. I was concerned that should she choose to pause outside the court and make any kind of statement that she may have another panic attack or, indeed, that she may collapse. And those welfare matters were at the very foremost of my
40 mind.

MS LONGBOTTOM: Having regard to those concerns about her welfare, did you speak to Ms Higgins about the wisdom of her giving a speech at that time?

45 **MS YATES:** I didn't. I was conscious she had been sitting with her lawyer and with her loved ones. I was aware from being copied in to several emails that she and her lawyer had been working on the matter of that statement which we - for some time, and even that Mr Zwier, I understood, had some engagement with Mr Drumgold about the fact that Ms Higgins was intending to do a statement. I don't know the details of that. But I had really left that set of events to Ms Higgins to seek advice from her legal advisor about and, to be
50 honest, I was very grateful that he was there.

MS LONGBOTTOM: And my comment is not so much directed to necessarily the content of the speech. At this particular juncture, I'm asking you about her state and, given your statutory functions, whether or not you did - or in hindsight you think you ought to have said to her, "I'm concerned about your welfare. I don't think you should do this at this point in time."

MS YATES: I think it's quite likely that in my engagement with her, you know, I said, "Are you sure you are okay? Are you all right?" To check that she was - "is this what you want to do?" I'm very conscious, as I've been throughout the matter, of not directing Ms Higgins - or respecting her attempts to navigate a series of very difficult and complex circumstances whilst retaining her agency.

MS LONGBOTTOM: And that's the thing you speak about in your statement in terms of agency, particularly (indistinct). Can you explain to Mr Sofronoff what you mean about that?

MS YATES: Mr Chair, I would say that from time to time there are suggestions made, explicitly or otherwise, that myself and my office should direct victims or should control their actions or should stop them from doing certain things or make them make certain choices. And, frankly, that is not our role. We are there to ensure they have all the information they are entitled to. We actively convey and remind our clients of advice received from police and from the DPP or from the court, which I did intensively throughout this matter. But, fundamentally, our clients retain the agency to make decision in their own lives as they navigate difficult circumstances. And that agency is very important to our clients and something that I uphold as - as their right to make decisions.

THE CHAIRPERSON: I've seen this word "agency" used in this context in other materials in this inquiry. By "agency", you also mean autonomy?

MS YATES: Yes. Freedom of choice.

THE CHAIRPERSON: Yes. Thanks.

MS LONGBOTTOM: Ms Higgins asked, for the reasons you have outlined, you agree, to stand next to her. What do you say to the public criticisms of that decision?

MS YATES: I say I had been tasked under the Act to provide support to Ms Higgins through many stages of the criminal justice process. I say that my presence alongside her had not been objected her to by defence counsel or anyone else, nor any concerns raised that I could and would have considered at any earlier point.

MS LONGBOTTOM: But you would accept that a speech of that type was a very different thing than walking into court?

MS YATES: Yes.

MS LONGBOTTOM: Yes.

MS YATES: So I would say that on that day, which was a highly unusual, unexpected day at the end of a very complex and challenging matter, in my mind, I had focused on the welfare

of Ms Higgins. I have outlined to you my concerns about the fact that she may have another panic attack or collapse while she was giving that speech. And my priority was her welfare, to get her safely back to her accommodation.

5 **MS LONGBOTTOM:** Now, you say in your statement this is the only occasion on which you have stood next to a client when they gave a speech to the media. Would you do it again?

MS YATES: It would -

10 **THE CHAIRPERSON:** Do what again?

MS LONGBOTTOM: Stand next to a client when they were giving a speech to the media outside of court.

15 **MS YATES:** Under the Act, it would be fair for a client to ask that of me, and I believe I would need to consider that request. Every matter is different. But in considering any future request I received, the learnings from this matter would absolutely be in my mind.

20 **THE CHAIRPERSON:** Well, now you would say, "It would depend on what you are going to say."

MS YATES: Indeed. And whether the trial was at an end or mid-trial. Commissioners before me have stood beside victims on the steps of court as they have given statements, like Mr - Mr Hinchey in - in a high-profile matter. It has happened before. Would it happen again? It would have to be a consideration of all the matters before me in that case, but also this matter.

25 **MS LONGBOTTOM:** And in terms of the learnings you have taken away from that particular event in this matter, in hindsight, do you think you should have asked about the content of the speech before you made the decision to stand next to her?

MS YATES: I think if I could go back in time, I would have inquired as to what happened in court after I left.

35 **MS LONGBOTTOM:** And why is that?

MS YATES: Because when I've read the transcript, I see that the Chief Justice made specific directions to the media in relation to their conduct.

40 **MS LONGBOTTOM:** But as you have said earlier, even if you weren't aware of the specific matters the Chief Justice raised, you were at least aware that there had been an acquittal? Sorry, I withdraw that. There had been - the trial had been aborted?

MS YATES: Yes.

45 **MS LONGBOTTOM:** And that there was the possibility of a retrial?

MS YATES: Yes.

50 **MS LONGBOTTOM:** So you were aware of that factor?

MS YATES: Yes.

5 **MS LONGBOTTOM:** Again, in terms of the learnings you take away, as a lawyer, you must have been aware then - as a lawyer, you must be aware that because of the prospect of a further trial, live issues were that that trial be fair and the presumption of innocence of the accused. So even putting to one side the fact you weren't aware of what specifically the Chief Justice had said, in hindsight, do you think you ought to have asked about the content of the speech?

10 **MS YATES:** In hindsight, yes. Yes.

MS LONGBOTTOM: And in hindsight, if you knew about the content of the speech, would you still have made the decision to go and stand next to Ms Higgins in front of court when she gave it?

THE CHAIRPERSON: Well, it depends on the state of knowledge.

20 **MS LONGBOTTOM:** Well, I've asked the state of knowledge. If she knew about the content of the speech.

THE CHAIRPERSON: I see. Thank you.

25 **MS YATES:** It's hard to go back in time to - to - with all the information that was then available to me. But now having more information to weigh up the decision that I would have made, I'm very open to the likelihood that if I had more information to consider, I may have made a different decision.

30 **MS LONGBOTTOM:** Nothing further. Thank you, Mr Sofronoff.

THE CHAIRPERSON: Yes. Thank you. Now, we're about to adjourn for lunch, but I need to know: who among you is going to ask Ms Yates some questions?

35 **MR TEDESCHI:** I have some very brief questions to ask.

THE CHAIRPERSON: All right. Anybody else? Mr Game?

MR GAME: I don't think I've got any re-examination.

40 **THE CHAIRPERSON:** All right. Do you want to think about that?

MR GAME: Yes, but if it is, it is just going to be one or two small things.

45 **THE CHAIRPERSON:** All right. The only reason I ask that is that we can continue now and conclude the witness if -

MR GAME: That's fine.

50 **THE CHAIRPERSON:** Or would you prefer to adjourn?

MR TEDESCHI: Yes, prefer to adjourn.

5 **THE CHAIRPERSON:** All right. Well, we will adjourn till 2.30, then. And then we will talk about what happens afterwards, because Ms Yates is the last witness to be called. All right. Thank you. Adjourn till 2.30.

<THE HEARING ADJOURNED AT 1.03 PM

10 **<THE HEARING RESUMED AT 2.45 PM**

THE CHAIRPERSON: Yes, Mr Tedeschi.

15 **MR TEDESCHI:** Yes. Thank you. Ms Yates, could you give us an idea, please, of the extent of personal experience you've had in being a support person for victims who have been involved in court cases?

MS YATES: Specifically in court cases - do you mean at the time of - may I ask just to clarify the question?

20 **MR TEDESCHI:** Around court cases, not necessarily in court, but people who are victims who have been involved in - as witnesses in criminal trials?

25 **MS YATES:** Well, broadly, I think in my statement I indicated that I've worked with around 200 victim-survivors during my five years as Victims of Crime Commissioner, and I would estimate that around half of them have been involved in criminal justice procedures.

30 **MR TEDESCHI:** Right. So can I take you now to the evidence that you gave in answer to questions from counsel assisting at paragraph 122.24, which is about Ms Higgins' second EICI.

THE CHAIRPERSON: What paragraph was that?

35 **MR TEDESCHI:** That's paragraph 122.24 at page 251. You describe that Ms Higgins was upset during the course of the interview, and particularly when she was shown the CCTV of Parliament House. And then you describe that there were five police officers in the room afterwards, and you've told us about the words that Superintendent Moller said and what the reaction was of Ms Higgins. In the course of those people that you've been a support person for in the past, or since, have you ever had an experience like that?

40 **MS YATES:** No.

MS LONGBOTTOM: What was different about this experience compared to the other people that you have been a support person for?

45 **MS YATES:** It's rare for the complainant to have contact with police officers other than the investigating officers responsible for their matter. From time to time, we may assist a client to raise a concern with someone higher up the ranks about the conduct of a particular officer. But otherwise, one of the unusual features of this matter was that there were five police officers in the room.

50

MR TEDESCHI: Did you feel that that number of police officers in the room was intimidating to someone in Ms Higgins' position?

5 **MS YATES:** I did. And that's certainly what Ms Higgins informed me after the meeting.

MS LONGBOTTOM: And in terms of speaking to a complainant after an EICI, as you've described, what do you say about whether you've had an experience like that before, the way in which she was spoken to after the interview?

10 **MS YATES:** Are you referring to the content of the conversation after the interview?

MR TEDESCHI: Well, both content and tone.

15 **MS YATES:** It was unusual. It was unusual to have that many police officers in a room with a sexual assault complainant. Under the Charter of Rights, victims have the right to respectful engagement. The interviewing officers in the EICI had been respectful and clear. This last part of the conversation with the five officers led by Superintendent Moller was different in tone, as I record.

20 **MR TEDESCHI:** Going now to paragraph 126.7 at page 273, you describe an email that you received from Superintendent Moller on 23 August 2021 which included an email that Superintendent Moller had sent directly to Ms Higgins on 16 August 2021.

MS YATES: Yes.

25

MR TEDESCHI: Now, prior to that, had there been a request for any contact with Ms Higgins by the police to be made through you?

MS YATES: Yes.

30

MR TEDESCHI: So were you surprised to receive an email from Superintendent Moller which showed that he had, some days earlier, had direct communication with Ms Higgins contrary to that request?

35 **MS YATES:** I thought it was unusual.

MS LONGBOTTOM: Did you think it was inappropriate, considering the request that had been made?

40 **MS YATES:** I remember turning my mind to that it was unusual given there was an agreement in place regarding contact and that that was Ms Higgins' right under the charter, to have a point of liaison. I didn't understand why he had made that direct contact.

MR TEDESCHI: And the email to you was seven days after he had sent the email to
45 Ms Higgins?

MS YATES: Yes.

MR TEDESCHI: Do you know if Ms Higgins had responded to Superintendent Moller to
50 that email?

MS YATES: I clarified with her afterwards and, no, she hasn't responded. And to put that in context, we've had evidence - we've explored evidence today in relation to some of the circumstances of what Ms Higgins was going through on that date of 16 August.

5

MR TEDESCHI: Yes. And did you later have a discussion with Ms Higgins about how she felt about having received that email directly from Superintendent Moller on 16 August?

MS YATES: I recall broadly that she indicated she wished she hadn't had to receive that.

10

THE CHAIRPERSON: She what?

MS YATES: That she wished she hadn't received it.

15 **THE CHAIRPERSON:** Did you ever raise with Moller why he sent it or why he did that?

MS YATES: I didn't. Ms Higgins didn't ask me to raise it with him, and in the context of the complexities of the matter, I chose not to.

20 **MR TEDESCHI:** Now, about - Superintendent Moller in his email of 16 August and 23 August was seeking, it would appear from the content, to be re-establishing direct communications between police and Ms Higgins. Was it as a result of those attempts that you, on 23 August, contacted Mr Drumgold to see if he would act as an intermediary?

25 **MS YATES:** Mr Moller's email that I received on - sorry, Superintendent Moller - on 23 August was a reminder to me that I needed to check back in with Ms Higgins as to how she wished contact to happen going forward. So we had had news of the summons being served on 6 August and then a period of time. And I realised that we needed to - I needed to check back in, now that the matter was in a different phase, as to how she wished contact to occur.

30

MR TEDESCHI: In paragraph 126.8, you refer to an email that you sent to Mr Drumgold asking for him to participate in the communication process?

35 **MS YATES:** That's right. So at some stage during the investigation, I recall Ms Higgins had asked me, "If this matter - if the charge is laid and the matter proceeds, is it possible for updates to be provided to me with your assistance via the DPP rather than police?" And I had explained to her that it is the practice in the ACT that may be possible.

MR TEDESCHI: All right.

40

MS YATES: And she indicated that if it was, that would be her preference. So at this time, I've noted I need to check back in with Ms Higgins about her preference. I've gone to the DPP to check whether this option is available for her consideration. When Mr Drumgold indicates that it is, I then go to Ms Higgins to discuss the options available and what she would like.

45

MR TEDESCHI: And did you notify Superintendent Moller of the result of all that?

50 **MS YATES:** I did. I thought it was very important that we were all on the same page about what Ms Higgins had requested occur. So I sent an email to Superintendent Moller and Mr Drumgold, and cc'ing Ms Higgins.

MR TEDESCHI: Can you recall when that was?

MS YATES: If I refer to my statement for a moment. I believe it was on 26 August 2021.

5

MR TEDESCHI: 26 August?

MS YATES: I believe so.

10 **MR TEDESCHI:** Is that in paragraph 126.10?

MS YATES: Yes.

15 **MR TEDESCHI:** Now, you said that on 26 August - I think you also say you sent an email to Mr Moller, cc'ing Ms Higgins and Mr Drumgold, confirming that the DPP would take on responsibility for providing Ms Higgins with information?

MS YATES: Yes.

20 **MR TEDESCHI:** That was on the 26th. Now, about - a little over two weeks later, did you - on 9 September 2021 - receive an email from Superintendent Moller which you refer to in paragraph 126.12?

MS YATES: Yes.

25

MR TEDESCHI: And that was an email in which Superintendent Moller stated that there was a need to obtain a statement from you?

MS YATES: Yes.

30

MR TEDESCHI: Now, upon receiving that, you sought independent legal advice from the ACT Government Solicitor?

MS YATES: Yes.

35

MR TEDESCHI: And on 15 September, you received an email from Mr Moller setting out the reason why they wanted to interview you; is that right?

MS YATES: Yes.

40

MR TEDESCHI: That was that you had been present for a number of meetings between the investigators and police and Ms Higgins, and that you may be able to offer corroborative and independent evidence in relation to those meetings; is that right?

45 **MS YATES:** Yes.

MR TEDESCHI: Were you given any more detail other than that?

MS YATES: No.

50

MR TEDESCHI: Were you told anything about evidence of continuity of a phone of Ms Higgins?

MS YATES: No.

5

MR TEDESCHI: Were you told anything about a photograph of a drink that had been shown to police on Ms Higgins' phone?

MS YATES: No.

10

MR TEDESCHI: Were you told anything about the police wanting to interview you about any admissions made between - or by Ms Higgins to you in the course of private conversations during which you had been acting as a support person for her?

MS YATES: No.

15

MR TEDESCHI: You say in paragraph 126.16 that you were somewhat confused by what Superintendent Moller told you on 15 September about the reason for the interview. Can you tell us why you were confused?

20

MS YATES: Based on the explanation provided in Superintendent Moller's email to me on 15 September, it seemed unusual to me that they would be seeking a record of interview in relation to what occurred in a meeting where there were two ACT Policing members present, who were senior. My recollection was that they were taking notes during that meeting. So I was - I thought it was unusual.

25

MR TEDESCHI: In all of the cases in which you have been a support person for a person - for people involved in the criminal justice system, have you been asked to make a statement about an interview that you've been present at?

30

MS YATES: No.

MR TEDESCHI: Not one?

MS YATES: No.

35

MR TEDESCHI: In any of the cases in which you've been a support person for persons involved in the criminal justice system, have you been asked any questions about discussions that you've had privately with the support - with the person that you're supporting?

40

MS YATES: No.

MR TEDESCHI: Not one?

MS YATES: No.

45

MR TEDESCHI: Do you recall during an interview with the police when you were present that Ms Higgins showed them a photograph of a drink on her phone?

MS YATES: Yes.

50

MR TEDESCHI: Now, the interview was arranged for 17 September 2021. That's your interview?

5 **MS YATES:** Yes.

MR TEDESCHI: And you refer to that at paragraph 130.2. You say that your interview occurred by phone. Is that because there were still COVID restrictions - lockdown?

10 **MS YATES:** Yes.

MR TEDESCHI: And the people who interviewed you were Senior Constable Madders and Frizzell?

15 **MS YATES:** Yes.

MR TEDESCHI: You had with you a support person, being a senior person in the - in Victims Support ACT?

20 **MS YATES:** Yes.

MR TEDESCHI: And the interview went for about 21 minutes and was recorded?

25 **MS YATES:** Yes.

MR TEDESCHI: Either in the interview or out of the interview privately not being recorded, were you asked any questions about handing over Ms Higgins' phone?

30 **MS YATES:** No.

MR TEDESCHI: Yes. Thank you. Those are the questions.

THE CHAIRPERSON: Thank you. Does anybody else have any questions for Ms Yates? Ms Longbottom, do you have any re-examination?

35 **MS LONGBOTTOM:** No, I don't, Mr Sofronoff.

THE CHAIRPERSON: And, Mr Game, you have nothing?

40 **MR GAME:** No, your Honour.

THE CHAIRPERSON: No. Thank you, Ms Yates. You are free to go.

45 **MS YATES:** Thank you.

<THE WITNESS WAS RELEASED

THE CHAIRPERSON: Now, that concludes the calling of witnesses at public hearings, so we need to make some plans for -

50

MR TEDESCHI: In regard to that, Chairman, counsel assisting is going to tender the documents in relation to the FOI application.

THE CHAIRPERSON: Yes. That's right.

5

MR TEDESCHI: Look, I think it's highly unlikely, but there's just one witness that we need to have a look at again to determine whether we need to cross-examine her. It's unlikely, but I would just like to reserve our position on that, if I may.

10 **THE CHAIRPERSON:** Yes. Well, do you want to tell me who it is or do you want to -

MR TEDESCHI: Ms Cantwell.

THE CHAIRPERSON: Sorry?

15

MR TEDESCHI: Ms Cantwell, a DPP officer.

THE CHAIRPERSON: Yes. So -

20 **MR TEDESCHI:** The information officer.

THE CHAIRPERSON: Yes. When will you know whether you want to -

MR TEDESCHI: By Monday, if that's all right.

25

THE CHAIRPERSON: All right.

MS RICHARDSON: Could I -

30 **THE CHAIRPERSON:** Yes.

MS RICHARDSON: Something I say might assist in that respect. I have discussed offline with counsel assisting and Mr Tedeschi that we are proposing to put on a document in relation to the FOI module because of the - because Mr Drumgold would not be returning to give evidence and that module hadn't yet formally commenced. I understand that counsel assisting is going to tender the documents relevant to the FOI module this afternoon, including the various witness statements that go to that topic, one of which is Ms Cantwell's statement, who is the FOI officer at the DPP.

35

40 The document that I have foreshadowed that we will provide, ideally by tomorrow so that allows other people to take a position, is a document that we say are the factual matters arising in relation to the FOI issue, and the inferences that we say the inquiry can draw from that material aren't affected by the fact that Mr Drumgold will be coming back to give evidence. So we are, in effect, setting out the position as to what we say the evidence would allow inferences to be drawn.

45

And I - we do endorse the position that under the practice note that the inquiry has issued - because central to that FOI matter is the evidence that Ms Cantwell has given by her witness statement as to the steps she took - that under the practice direction, Mr Tedeschi, if he wishes to challenge that evidence, would need to, in effect, ask for her to be called and put

50

matters to her. So the FOI document will go on tomorrow, which should inform Mr Tedeschi's position. But in any event, it's apparent from the evidence of Ms Cantwell that he will need to make a decision about his position -

5 **THE CHAIRPERSON:** All right. So is there anything you want me to do at the moment or are you just telling me that?

MS RICHARDSON: No. I'm really just saying it so that it is clear on the record -

10 **THE CHAIRPERSON:** Yes. No, I understand.

MS RICHARDSON: - in the sense that we accept in terms of final witnesses that if Mr Tedeschi formed a view that he needed to challenge Ms Cantwell, that that would be a decision within the practice direction that might require some further evidence.

15

THE CHAIRPERSON: All right. So you are going to prepare a document in relation to the FOI issue in which you will have some contentions about what can be done in the circumstances in which we find ourselves.

20 **MS RICHARDSON:** Yes.

THE CHAIRPERSON: And have you had a chance to talk to Mr Tedeschi about it or is it -

MS RICHARDSON: Yes.

25

THE CHAIRPERSON: Mr Tedeschi, what do you say I should do?

MR TEDESCHI: Chairman, I think it's an admirable way forward for Ms Richardson to prepare that document. When I've seen it - and it will be by tomorrow - I will then have an opportunity to make a decision about Ms Cantwell, and we will make that by Monday. And otherwise, I think your counsel assisting has a suggested program for submissions that -

30

THE CHAIRPERSON: Now, is there any reason you can't make a decision about Ms Cantwell as soon as you've got the documents from Ms Richardson?

35

MR TEDESCHI: We just need a little time to consider it and to -

THE CHAIRPERSON: If you need the time, you can have the time.

40 **MR TEDESCHI:** Yes.

THE CHAIRPERSON: It's just that I will be here tomorrow.

MR TEDESCHI: I see.

45

MS RICHARDSON: I can be here tomorrow as well. I mean, it's a matter for Mr Tedeschi. But in my submission, it has been apparent from the moment Ms Cantwell's evidence was provided that there is a conflict between her and Mr Drumgold.

THE CHAIRPERSON: Yes. Well, he just needs whatever time he needs. So - it's just that I will be here tomorrow, so we could deal with it tomorrow if you're in a position to deal with it.

5 **MR TEDESCHI:** I don't think I will be.

THE CHAIRPERSON: I don't mean calling her.

MR TEDESCHI: No.

10

THE CHAIRPERSON: I mean telling me. But you can do that by email. It doesn't matter, I suppose. And - all right. So there's a chance that you might need another witness called and then we will have to reconvene to hear that.

15 **MR TEDESCHI:** Yes.

THE CHAIRPERSON: That's fine. We can do that. And after Ms Richardson's document has been circulated, we can all work out what to do about that.

20 **MR TEDESCHI:** Yes.

THE CHAIRPERSON: And you will need time to consider it, because it mostly affects your client.

25 **MR TEDESCHI:** Yes.

THE CHAIRPERSON: So I will be guided by what both of you submit. And it follows, then, that there's nothing to be done tomorrow. We will hear from you and Ms Richardson by Monday -

30

MR TEDESCHI: Yes.

THE CHAIRPERSON: - and we will know what we are doing.

35 **MR TEDESCHI:** Yes.

THE CHAIRPERSON: And there might have to be a session by video link or in person to deal with Ms Richardson's document and what's to flow from it -

40 **MR TEDESCHI:** Yes.

THE CHAIRPERSON: - but there might not be. So we wait until Monday. All right. And otherwise, we had better work out some directions for the future progress of the matter leading to a report. Ms Richardson, you were standing up to say something?

45

MS RICHARDSON: Only - in a similar vein, I've discussed with counsel assisting and Mr Tedeschi that we also propose to put on a separate document in relation to the investigative review documents defence subpoena. It's not as urgent as the FOI document, because the FOI document involves the question of whether a further witness would be

50

THE CHAIRPERSON: Well, you will deal with it as you can and -

5 **MS RICHARDSON:** It's just that we would put it on promptly next week, noting that the adverse comment notices are proposed to go out by the 9th.

THE CHAIRPERSON: Yes. Yes.

10 **MS RICHARDSON:** I just - I've foreshadowed to the parties that we - this is another mechanism by which we are trying to deal in a practical way with the fact that Mr Drumgold is not coming back to give evidence.

15 **THE CHAIRPERSON:** No, I understand. I understand. And thanks for your assistance on that. If we don't lose time now, we won't be pressured at the end, is my experience on these things. So, Ms Longbottom, you've got a proposal?

MS LONGBOTTOM: I do, Mr Sofronoff. And our hope is that that proposal will accommodate the steps proposed by Ms Richardson and the opportunity for Mr Tedeschi to respond. Would it be convenient if I step through the proposed directions?

20

THE CHAIRPERSON: Well, I can see them.

MS LONGBOTTOM: Yes.

25 **THE CHAIRPERSON:** You've given me a copy, and you've circulated it to your colleagues.

30 **MS LONGBOTTOM:** We have. There is one addition to (indistinct) my colleagues, and that is - the third direction is that by 28 June, parties to provide reply submissions, if any. So there's an additional step we proposed there that wasn't in the version that was circulated before lunch.

THE CHAIRPERSON: Yes, I see that. And does anybody want to say anything about these four directions that Ms Longbottom proposes?

35

MR TEDESCHI: That's fine. Thank you.

40 **THE CHAIRPERSON:** Yes. Good. Just in case there is any puzzlement, the draft recommendations are a draft of those recommendations I might be minded to make in the report, and we will circulate those to everybody, but crucially to parties the subject of the recommendations, such as the AFP or the DPP or the Victims of Crime Commissioner, so that we get feedback in relation to those recommendations and some assistance in making recommendations that are - to ensure that they are at least workable or at least not unworkable. All right.

45

50 Well then, I will direct that the Board of Inquiry will deliver potential adverse findings to the parties by 9 June 2023. The parties are to deliver written submissions to each other and to the inquiry by 23 June 2023. Any submissions in reply to those written submissions are to be delivered to relevant parties and to the inquiry by 28 June 2023. The Commission will deliver a copy of its draft recommendations by 30 June 2023. And then after that, assuming nothing

else happens, we will aim to get the report done as soon as possible, but in any event by 31 July. Is there anything else, Ms Longbottom?

5 **MS LONGBOTTOM:** I need to attend to the tender of some documents.

THE CHAIRPERSON: Yes. Do that.

10 **MS LONGBOTTOM:** Operator, can you please display tender list number 6. Mr Sofronoff, this list comprises, in effect, a mop-up tender of documents from the DPP and AFP module.

THE CHAIRPERSON: Yes.

15 **MS LONGBOTTOM:** So I seek to tender the documents identified in the list in the manner in which they're described.

THE CHAIRPERSON: All right. Well, that will be Exhibit G.

<EXHIBIT G TENDERED AND MARKED

20 **THE CHAIRPERSON:** And the exhibits listed in it will have the numbers that you've allocated.

25 **MS LONGBOTTOM:** And, operator, can you please display, then, tender list 7. Mr Sofronoff, this is the tender list for the FOI module, and you will note proposed exhibit 146 is the statement of Katie Cantwell that Mr Tedeschi referred to (indistinct).

THE CHAIRPERSON: Yes. That will be Exhibit H.

<EXHIBIT H TENDERED AND MARKED

30 **THE CHAIRPERSON:** And the documents listed in it will have the exhibit numbers that you've allocated.

35 **MS LONGBOTTOM:** There's nothing further from counsel assisting, Mr Sofronoff.

40 **THE CHAIRPERSON:** Good. Thank you. Well, thank you to all the legal representatives for your assistance in making this inquiry as efficient as it has been, whatever that is. We will adjourn, then, to a date to be fixed for the delivery of the report, unless something arises out of Ms Richardson's initiative. Thank you.

<THE HEARING ADJOURNED AT 3.12 PM