

AUSTRALIAN CAPITAL TERRITORY

BOARD OF INQUIRY
CRIMINAL JUSTICE SYSTEM*In the matter of the Inquiries Act 1991**Inquiries (Board of Inquiry – Criminal Justice System) Appointment 2023***Board of Inquiry into the Criminal Justice System in the Australian Capital Territory****STATEMENT OF ERIN GRACE PRIESTLY**

I, Erin Grace Priestly, of 20-22 London Circuit Canberra City, state as follows:

The following statement is provided in response to the subpoena I received from the Board of Inquiry into the Criminal Justice System in the Australian Capital Territory requiring me to give information in a written statement regarding my knowledge of matters set out in the Schedule attached to that subpoena. Attached and marked 'Exhibit 1' is a copy of the relevant subpoena.

Background and Professional History

1. I am currently employed as a Grade 3 Prosecutor at the Australian Capital Territory Office of the Director of Public Prosecutions ('ODPP'). [REDACTED]
2. In 2017, I graduated with a Bachelor of Laws and Bachelor of International Relations at the Australian National University. I am currently completing a Master of Laws, specialising in Criminal Justice and Criminology, at the University of New South Wales and expect to graduate in August 2023.
3. In 2018, I completed a Graduate Diploma of Legal Practice at the Australian National University.
4. On Friday 15 June 2018, I was admitted as a lawyer in the Australian Capital Territory.
5. Between December 2018 and February 2020, I was employed as a defence lawyer at [REDACTED]. In this role, I represented clients who had been charged with criminal offences, ranging from summary to strictly indictable offences. I appeared in defended hearings, sentences and bail applications in the ACT Magistrates Court, ACT Childrens Court and NSW Local Courts; bail applications in the ACT Supreme Court; appeals to the ACT Supreme Court and NSW District Court; and instructed Counsel in trials and sentences in the ACT Supreme Court.

From 7 February 2020, I was employed as a Grade 1-2 Prosecutor at the ODPP. As a Grade 1-2 Prosecutor, I was considered as a junior prosecutor that had little to no supervisory responsibilities and would fall under two categories: typical duties for prosecutor or a research officer. The roles and responsibilities are provided in the ACT Public Service Work Level Standards – Classification: Prosecutor. Attached and marked 'Exhibit 2' is a copy of the ACT Public Service Work Level Standards. I worked in a

general team until May 2020, at which time I moved to the Family Violence Unit. In February 2021, I moved to the Sexual Offences Unit ('SOU'), and on 13 January 2022, I became a Grade 3 Prosecutor. Shortly after I moved to the List Team, as the second in charge. The List Team is comprised of Prosecutor Associates, who are admitted lawyers, who appear predominantly in the ACT Magistrates Court and ACT Childrens Court lists; a Grade 3 Prosecutor who is second in charge; and a Grade 4 Supervising Lawyer. Throughout my time at the ODPP, I have predominantly prosecuted summary indictable matters in the ACT Magistrates Court – appearing in defended hearings, at sentences and bail applications. After becoming a Grade 3 Prosecutor, I began to appear in the ACT Supreme Court in less complex sentencing matters that included indictable or summary indictable offences.

6. I have not sat, nor do I currently sit, on any boards, committees, working groups or taskforces.
7. Attached and marked 'Exhibit 3' is my current CV.

Duties and Responsibilities

8. As a member of the SOU, I prosecuted sexual offence matters which were in my carriage. As a Grade 1-2 prosecutor, I would be allocated files from my supervisor (who was a Grade 4 prosecutor) that would only remain in the Magistrates Court. If the matter was strictly indictable, I would maintain the carriage and prepare the documents prior to allocation to Counsel who would take over. Whilst at the SOU, I would generally only receive one-to-two files every couple of weeks. There were roughly 4 prosecutors within the team, two Grade 3 prosecutors, one Grade 4 (supervisor), and myself, as a Grade 1-2 prosecutor. The duties and responsibilities involved:
 - a. Reviewing fresh in custody sex offence matters and referring appropriate matters to the SOU supervisor or appearing to prosecute in any bail applications, where necessary as allocated by my supervisor;
 - b. Reviewing Statement of Facts as provided by the AFP, in the first instance, and if necessary, requesting additional or replacement charges initially laid by the AFP. On receipt of the Statement of Facts, a prosecutor within the ODPP would be allocated. That ODPP member would consider the charges laid and, in some instances, request or direct the AFP to reconsider the categorisation of the charges laid or consider whether further charges needed to be laid. This process

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was only requested upon the DPP's review of the Statement of Facts and would generally require approval from my supervisor;

- c. Reviewing the Brief of Evidence provided by the AFP, prior to disclosing it to an accused's legal representative, to ensure it did not contain any material which should not be disclosed. Following the matter being heard in Court and a plea of not guilty being entered by the accused, the AFP would ordinarily prepare the Brief of Evidence which is then referred to the ODPP. It is my understanding that the informant was to review and redact all non-relevant or prohibited information, which is then passed through AFP Joint Operations for final review prior to provision to the ODPP. The electronic version of the Brief of Evidence is generally uploaded into a SharePoint server, which is then provided to the allocated prosecutor.


Reviewing the Brief of Evidence included identifying protected confidence material, pursuant to Division 4.4.3 of the *Evidence (Miscellaneous Provisions) Act 1991* (which is attached and marked '**Exhibit 4**'), or private details of the complainant or other witness, that were not relevant to proceedings.

- d. Appearing in contested hearings or at sentencing, if the matter remained in the jurisdiction of the ACT Magistrates Court;
- e. If the matters were committed to the ACT Supreme Court, retaining carriage up until committal, and preparing any committal documents, or materials for pre-trial applications, if necessary;
- f. Offer and conduct a 'meet and greet' with complainants early on in proceedings where accepted, which involved introducing myself, the role of the ODPP and providing a brief overview of the court process. The offer is made as soon as practicable once a matter enters the ODPP, in particular, once the Statement of Facts is provided.

As a prosecutor in the SOU, I was also required to abide by:

- g. The Prosecution Policy which, amongst other things, requires that the ODPP not disclosure the address or telephone number of any person, unless that information is relevant to a fact in issue and disclosure is not likely to present a safety risk to any person. The Prosecution Policy is the guiding document and the initial starting point for the duration of prosecuting. Attached and marked '**Exhibit 5**' is a copy of the Prosecution Policy;


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- h. All Director's Instructions. Director's Instruction No 13 – Guidelines for contact with child complainants in sexual offence matters, was particularly relevant to the SOU. Attached and marked '**Exhibit 6**' is a copy of the Director's Instructions; and
- i. The various obligations of the ODPP as set out in the *Victims of Crime Act 1994*, including, for example, to consult with complainants regarding proposed resolution of matters (ss 15G, 16B), to tell complainants about Victim Impact Statements and Reparation Orders (ss 15F, 16E) and to give complainants information about a hearing or trial process (s 15E) – attached and marked '**Exhibit 7**' are extracts of the sections referred to.

I do not believe any of the above are in conflict with each other. I do not recall, from my experience in the ODPP, of there being any delegations to my knowledge, although I am aware that the Director can delegate his functions under s 17 of the *Director of Public Prosecutions Act 1900*.

9. My understanding of the 'reasonable prospects of conviction' and 'public interest' criteria is informed by the Prosecution Policy (Exhibit 5). They, respectively, form the two stage test of whether or not to prosecute.

A non-exhaustive list of the factors to be considered when assessing a matters prospects of conviction are set out at 2.7 of the Prosecution Policy (Exhibit 5). It is my understanding that, with respect to the prosecution of a sex offence, as they are often 'word on word' cases, to be satisfied there are reasonable prospects of conviction requires an assessment on how the *Liberato* principle might be applied. That is: could a finder of fact accept an accused's version (if known) or consider that it might be true? If not, could a finder of fact consider the complainant to be credible? In my view, this does not require that the complainant's evidence be free entirely of inconsistencies, however, does require an assessment of their honesty and reliability, and the impression they are likely to make in court, including how they will cope under cross-examination. I believe it is not my role as a prosecutor to be satisfied beyond reasonable doubt that an offence has been committed – rather that is a role for the finder of fact. However, I must be satisfied that the evidence is adequate to establish that the offence charged has been committed by the accused.

Ordinarily, while it is in the public interest to bring a person suspected of committing a crime before the Court, in sex offence matters, the attitude of the complainant to the prosecution, as well as their health, is of particular importance. These are two of the (non-

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exhaustive) list of factors to be considered, as set out at 2.9 of the Prosecution Policy (Exhibit 5).

Sex Offences Prosecutions

10. Since my admission on 15 June 2018, I had the primary conduct of approximately three sexual assault matters with my former employer (in 2019), and 17 matters (in 2021) when employed by the ODPP, resulting in a total of 20 matters. Some of these matters were not finalised before [REDACTED]
11. I have not undertaken any specialist training in relation to the prosecution of sex offences.

Australian Federal Policing (AFP)/ACT Policing

12. With respect to a sex offence matter, where a complainant wishes to proceed with a formal complaint, it is the duty of AFP/ACT Policing officers to thoroughly investigate the complaint. If they hold a reasonable suspicion that an offence has been committed, it is their duty to charge the suspected offender and bring the matter before the court. At times, it may be appropriate at the investigative stage, for AFP/ACT Policing to seek advice from the ODPP, in accordance with the Collaborative Agreement.

My first understanding of the Collaborative Agreement was when it was discussed in a SOU meeting, and subsequently sent to me via email, on 23 August 2021. This was prior to my involvement in the *R v Lehrmann* case.

Attached and marked 'Exhibit 8' is a copy of that email and the Collaborative Agreement between the DPP and AFP.

13. Prior to the matter of *R v Lehrmann*, I found that, generally, the working relationship between the ODPP and AFP/ACT Policing was positive. Most interactions were productive and respectful, even in the face of differences of opinion. Such differences of opinion generally related to whether there should be a negotiation of charges or charges dropped entirely. In instances of difference, I observed that the ODPP tended to adopt a more reserved approach. A member of the AFP held the role of a liaison officer between the AFP and ODPP and would assist with any conflicts or issues that arose. I found this member particularly helpful in navigating such issues.

Overall, it was a positive relationship and I had no concerns.

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14. Prior to commencing in the SOU, I had no view of the conduct of AFP/ACT Policing regarding sex offence matters. During my time in the SOU, prior to the matter of *R v Lehrmann*, I perceived the conduct to be good, as the AFP/ACT Policing would be genuinely receptive to feedback from the ODPP, the teams would follow up evidence, there were open lines of communication, and both teams would work quite collaboratively.

After commencing at the SOU and before my first involvement of *R v Lehrmann*, the quality of the investigations were generally good. However, at times, it appeared that AFP/ACT policing officers lacked sufficient knowledge of sex offence matters which, in my view, affected the quality of their investigations and/or the charges laid. For example, I either directly observed, or heard through other prosecutors, the following:

- a. A matter where a complainant in their Evidence in Chief Interview ('EICI') disclosed they had told approximately five friends of the alleged sexual assault. The informant had not attempted to interview those friends to obtain this evidence of complainant. The Statement of Facts did not include such information, however it was stated by the complainant in their EICI that they disclosed the offence to their friends. This led me to believe the informant was not aware of the significance of complaint evidence in supporting a charge (or in giving rise to reasonable doubt, if such complaint was not consistent);
- b. A matter where the complainant alleged a person had digitally penetrated them and performed cunnilingus on them without their consent. There was no alleged penile vaginal penetration. The informant had laid a charge of attempted sexual assault. This led me to believe the informant was not aware of the definition of sexual intercourse at law, leading to a lack of knowledge regarding sex offences;
- c. A matter where an informant queried if a complainant could withdraw consent where they had earlier engaged in consensual kissing with an alleged offender. This evidently showed a lack of knowledge of the elements of an offence.

My views regarding AFP knowledge of sex offence matters worsened after a training session between the SOU and AFP policing officers who were attached to the Sexual Assault and Child Abuse Team ('SACAT'), conducted on 24 November 2021. The primary purpose of this training session, run by Ms Skye Jerome and Mr Andrew Chatterton, was for the SOU to present on common evidential issues arising in typical sex offence matters. For example, forensics, complaint evidence, and previous history of domestic violence. This was an AFP led training day held at AFP Headquarters at Majura,

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in the ACT. The SOU was invited to present, and the attendees from my team included Mr Chatterton, Ms Jerome, both who presented, myself, and [REDACTED] Mr [REDACTED] and I sat on the 'side-lines' and observed. I do not recall any notes being taken, however there was a PowerPoint presented by Ms Jerome and Mr Chatterton. I do not recall if I was provided a copy of this PowerPoint, however, I have not been able to locate one. Around this time, a report regarding sex offences in the ACT was being released - the Report of the Sexual Assault Prevention and Response Reform Program Steering Committee ('SAPR'). There was a concerning statistic regarding the low rate of complaints of sex offences that led to charge by the police and it was disclosed to me by Ms Jerome, that many of the matters which were not charged were child sex offences. I cannot recall whether this was communicated to me before or after the training session, however, that knowledge has resulted in me finding the below comments particularly concerning.

At the session, I found some of the interactions by the AFP / ACT Policing attendees with the ODPP to be disrespectful. Several concerning comments were made by AFP / ACT Policing attendees including:

- a. That an officer would require more than just a child's allegation that a sexual offence had been committed before they would charge an alleged offender, with that officer suggesting children are unreliable witnesses. This belief persisted even after being informed of the standard directions regarding child witnesses and the views of the High Court on such;
- b. A general unwillingness amongst officers to charge on the word of a complainant alone. For example, an officer questioned why they should 'believe' a complainant over the word of an alleged offender. This officer did not accept that it was not their role to play judge or jury but to simply proceed on the basis of whether they had a reasonable suspicion an offence had been committed.

I observed that when Ms Jerome and Mr Chatterton tried to explain the law on the above issues to AFP / ACT Policing attendees, they were spoken over or some officers were argumentative. I cannot recall the names of the specific officers who behaved this way.

Attached and marked '**Exhibit 9**' is a copy of the email advising me of the training day.

Attached and marked '**Exhibit 10**' is a copy of the SAPR Report and the email disseminating it to the SOU.

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15. My relationship, generally, and the extent of my prior dealings with the AFP/ACT Policing officers involved in the investigation of Ms Higgins' allegation of sexual assault against Mr Lehrmann prior to the commencement of *R v Lehrmann* is as follows:
- a. Detective Superintendent Scott Moller – no prior relationship or dealings that I can recall;
 - b. Detective Inspector Marcus Boorman - no prior relationship or dealings that I can recall;
 - c. Detective Sergeant Gareth Saunders - no prior relationship or dealings that I can recall;
 - d. Detective Sergeant Jason McDevitt - no prior relationship or dealings that I can recall;
 - e. Detective Sergeant Robert Rose - no prior relationship or dealings that I can recall;
 - f. Detective Sergeant David Fleming – I had carriage of a drug offence matter at or around the time of *R v Lehrmann* where Detective Sergeant David Fleming provided an expert report. Our dealings with one another were brief and without issue;
 - g. Detective Inspector Callum [REDACTED] - no prior relationship or dealings that I can recall;
 - h. Commander Joanna Cameron - no prior relationship or dealings that I can recall;
 - i. Acting Commander Hall O'Meagher - no prior relationship or dealings that I can recall;
 - j. Acting Sergeant James [REDACTED] - no prior relationship or dealings that I can recall;
 - k. Detective Leading Senior Constable Trent Madders - no prior relationship or dealings that I can recall; and

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1. Senior Constable Emma Frizzell – I had previously dealt with Senior Constable Frizzell, as she was an informant on a sex offence matter of which I had carriage. I found her to be polite, cooperative and thorough – she was responsive to emails and provided a comprehensive Brief of Evidence. My relationship with Senior Constable Frizzell was simply a professional, working relationship. My views of her did not change during the matter of *R v Lehrmann*.
16. I did not have any professional concerns in relation to the AFP/ACT Policing officers involved in the investigation at the time of my initial allocation as prosecutor in *R v Lehrmann*.

However, during the matter Ms Jerome expressed a concern to me regarding Detective Leading Senior Constable Madders. I do not recall precisely when, but a verbal conversation took place where Ms Jerome advised me of a previous matter which she had carriage of, where it appeared Detective Leading Senior Constable Madders had deliberately redacted a significant part of his police notes. Ms Jerome directed me to disclose the decision in that matter on Mr Lehrmann's legal representatives and I subsequently did so. Attached and marked '**Exhibit 11**' is a copy of those disclosures and the relevant decision.

Further, during the course of my involvement in *R v Lehrmann* various concerns arose and were disclosed and/or communicated between the DPP, Ms Jerome, and myself during day-to-day workplace conversations. I do not recall the specific time and dates of these conversations. Such concerns included:

- a. The fact the Brief of Evidence was directly disclosed to the representatives of Mr Lehrmann by the AFP prior to be reviewed by the ODPP (see below at [31]);
- b. The lack of efficient response to the disclosure of certain material in the brief to the representatives of Mr Lehrmann by the AFP upon being made aware (see below at [32]);
- c. A disclosure made by Mr John Korn to Mr Shane Drumgold SC ('DPP') (see below at [34]);
- d. A disclosure by Ms Higgins or the Victims of Crime to the DPP (see below at [47]).

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Victims of Crime Commissioner

17. Prior to the matter of *R v Lehrmann*, I had one prior dealing with the Victims of Crime Commissioner, when I was interviewed for a job at Victim Support ACT in May 2021, and the Victims of Crime Commissioner was a member of the interview panel.
18. I had carriage of one other sex offence matter where a staff member of Victim Support ACT, [REDACTED] supported a complainant. As far as I recall, this matter began in December 2021 and had not been finalised by the time I went on birth leave. [REDACTED] attended an introductory meeting with the complainant at the ODPP and, at times, communicated with the office on the complainant's behalf. I believe it was the intention for [REDACTED] to act as a support person to the complainant at the eventual trial, which had not occurred by the time I went on birth leave. The role of a support person was to sit in the room with the complainant as they gave evidence (see, *Evidence (Miscellaneous Provisions Act s 49)*).

Involvement in the matter of *R v Lehrmann*

19. I first became aware of Ms Higgins' allegation of sexual assault against an unnamed person following the media surrounding The Project Interview, which aired in February 2021, and the March 4 Justice rally in March 2021. I did not, however, watch The Project Interview at the time it aired. The only details I was aware of was that Ms Higgins alleged another staff member had sexually assaulted her in Parliament House. I do not recall being aware of the name of the alleged offender, or the substantive details of the sexual assault, until I began working on the matter of *R v Lehrmann* in September 2021. There was an all-staff meeting held roughly mid 2021 (I do not recall the date) where the DPP advised staff that the matter was coming to the office, but that we were to not comment on it, and ensure it stayed on a 'need-to-know' basis. The matter was excessively shutdown so only certain people had access to the file. It is my understanding that this is not unusual in high profile matters.
20. On or around 16 September 2021, I was allocated as a prosecutor by the DPP in the matter of *R v Lehrmann*. I received a phone call from the DPP advising I had been allocated to the matter, to instruct himself and Ms Jerome of Counsel. He told me he would leave a copy of the Brief on a USB in my office for my collection (as we were working from home at the time due to COVID-19) for me to review. I subsequently received an email from the DPP, copying in Ms Jerome. In that email, the DPP confirmed the initial tasks he would like me to undertake. The allocation of this matter was followed a different process than I had previously experienced in the SOU. Attached and marked 'Exhibit 12' is a copy of that email.

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21. The DPP allocated the initial work in the matter as outlined in paragraph [20] above. Regarding disclosure, I do not recall the DPP ever formally putting a procedure in place, however, as the matter developed, if myself (or later, a Prosecutor Associate, Mr Mitchell Greig) received material, we would email it to the DPP and Ms Jerome and they would respond when, and if, they wished for it to be disclosed. There were no regular or standing meetings but, rather, meetings were held on an 'as needs' basis.

Further to this, whilst the DPP did not formally allocate these tasks, it was the understanding within our office that instructors would be responsible for the more administrative tasks involved in a prosecution, including issuing the subpoenas, drafting applications, drafting supporting affidavits, organising proofing sessions, sending email correspondence, and taking file notes in any proofing sessions or relevant meetings. Closer to the original trial date, the DPP allocated himself and Ms Jerome witnesses whose evidence they would lead. Generally, I would attend the proofing sessions between the DPP and his witnesses, and Mr Greig would attend the proofing sessions between Ms Jerome and her witnesses. I do not know why the sessions were allocated in this way, however I assume it was because the witness list was extensive, with 50 witnesses. Attached and marked '**Exhibit 13**' is a copy of the email advising of the witness distribution.

As there was no paralegal allocated to assist in the matter, and I was the most junior person on the team at the time (with minimal experience), I covered more paralegal and administrative tasks, rather than decision-making tasks. My role within the matter was very much one of administrative support.

Whilst I was present during, and contributed to, conversations where forensic decisions were made, I deferred to the opinions of the DPP and Ms Jerome, who I understood had extensive experience in sex offences matters.

22. I am not aware of any discussions between the ODPP and the Commonwealth DPP regarding carriage of the prosecution of the allegations made by Ms Higgins with respect to Mr Lehmann.
23. I am not aware of any discussions with, or comments made by, the DPP in relation to him using powers under the *Director of Public Prosecutions Act 1990* (ACT) to charge Mr Lehmann if the AFP/ACT Policing did not charge him.

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24. My involvement in the matter of *R v Lehrmann* ceased on 31 August 2022. I had originally been expecting to go on leave from 5 September 2022 and, as such, the matter had already been substantially 'handed over' to another prosecutor, Ms Sarah Pitney, by 31 August 2022. [REDACTED] I was unable to contact all witnesses and inform them of the new contact person.

21 June 2021 Brief of Evidence and 28 June 2021 advice

25. I do not recall reviewing the Brief of Evidence provided by the AFP/ACT Policing to the ODPP on or about 21 June 2021.
26. On 20 June 2022, I received an email which had an Executive Briefing prepared by Detective Superintendent Scott Moller dated 7 June 2021 and a Minute prepared by Detective Inspector Marcus Boorman dated 4 June 2021, attached ('21 June 2021 Supporting Documents'). Attached and marked '**Exhibit 14**' is a copy of the email and attachments.

These documents were sent to me for advice regarding a disclosure request from defence, following on from a meeting with the AFP and AFP Legal on 16 June 2022. Attached and marked '**Exhibit 15**' is a copy of the file note from that meeting. I passed this email onto the DPP, however I did not read the attachments, as it was my understanding that the DPP was to provide some advice, which was later provided to me to forward to the AFP. As such, I have no personal knowledge of what was contained in those documents. Attached and marked '**Exhibit 16**' are copies of the relevant emails.

27. I do not recall reviewing the 21 June 2021 Brief of Evidence.
28. I do not recall reading the advice provided by the DPP to Detective Superintendent Scott Moller on 28 June 2021.

Dealings with the AFP/ACT Policing

29. I was involved in the following meetings, largely in an administrative capacity, with ACT Policing Officers regarding the matter of *R v Lehrmann*:
- a. A meeting on 8 October 2021 via telephone. Persons present were Skye Jerome, myself, Superintendent Scott Moller, Detective Leading Senior Constable Trent Madders, Detective Sergeant David Fleming and Senior Constable Emma Frizzell. This meeting was initiated by Senior Constable Frizzell to discuss the

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Disclosure Certificate and remainder of the brief. Attached and marked 'Exhibit 17' is a copy of the email requesting the meeting.

In the meeting, Senior Constable Frizzell sought advice on several documents, namely, whether they were disclosable. Ms Jerome advised that she would not be able to provide such advice without having seen the documents. Superintendent Moller advised they would compile the documents and send them through. Attached and marked 'Exhibit 18' is a file note from that meeting.

Following on from that meeting, we were not provided the documents, as Ms Jerome sent an email confirming that AFP Legal was responsible for determining what material is subject to legal professional privilege and that the ODPP did not require a copy of the briefing documents. Attached and marked 'Exhibit 19' is a copy of that email.

- b. A meeting on 25 November 2021 via telephone. Persons present were Ms Jerome, myself, Detective Leading Senior Constable Trent Madders and Senior Constable Emma Frizzell. I believe the meeting was initiated by Ms Jerome, to clarify some points in DLSC Madders's statement. During the meeting, Ms Jerome clarified parts of his statement, as well confirmed the status of outstanding brief material. Attached and marked 'Exhibit 20' is a copy of the file note from that meeting.
- c. A meeting on 10 February 2022 in person at the ODPP. Persons present were Ms Jerome, myself, DS Fleming and SC Frizzell. I do not recall who initiated the meeting. The purpose of the meeting was to discuss the status of the outstanding brief material. At that meeting SC Frizzell provided a copy of: a self-prepared statement of [REDACTED] a statement and supplementary statement of Senior Constable Cilla [REDACTED] and a draft Disclosure Certificate. I do not recall personally reviewing these documents and believe they were provided directly to Ms Jerome. Attached and marked 'Exhibit 21' is a copy of the file note from that meeting. Following from that meeting, SC Frizzell sent through an updated eBrief excel sheet. Attached and marked 'Exhibit 22' is a copy of that email. SC Frizzell sent a further email regarding a meeting with [REDACTED]. Attached and marked 'Exhibit 23' is a copy of that email.
- d. A meeting on 28 February 2022 in person at the ODPP. Persons present were Ms Jerome, myself, SC Frizzell and Detective Inspector Callum [REDACTED]. The

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meeting was requested by SC Frizzell. The purpose of the meeting was to discuss the status of the brief and outstanding material. Attached and marked 'Exhibit 24' is a copy of the email requesting that meeting. Attached and marked 'Exhibit 25' is a copy of the file note from that meeting.

- e. A meeting on 27 April 2022 in person at the ODPP. Persons present were Ms Jerome, myself, SC Frizzell and DS Fleming. SC Frizzell requested that meeting. The purpose of the meeting was to discuss the status of the brief and any outstanding enquiries before the trial. Following from this meeting, myself and Ms Jerome spoke with the DPP regarding the issues raised. Attached and marked 'Exhibit 26' is a copy of the file note from both meetings, as well as the email requesting the meeting. I sent an email as per the DPP's advice on the same date. Attached and marked 'Exhibit 27' is a copy of that email.
- f. A meeting on 16 June 2022 via telephone (Exhibit 14). Persons present were the DPP, Ms Jerome, myself, DI [REDACTED] SC Frizzell, DLSC Madders, Stephanie [REDACTED] (AFP Legal), Shelley [REDACTED] (AFP Legal) and Helen [REDACTED] (AFP Legal). The meeting was initiated by Stephanie [REDACTED] to discuss a disclosure request from defence, as well as a subpoena that had been issued to the AFP. Attached and marked 'Exhibit 28' is a copy of the email requesting that meeting.
- g. A meeting on 19 July 2022 via telephone. Persons present were the DPP, myself, [REDACTED] Ms [REDACTED] and Ms [REDACTED]. The meeting was initiated by AFP Legal to discuss the status of disclosure on defence. Attached and marked 'Exhibit 29' is a copy of the file note from that meeting. Attached and marked 'Exhibit 30' is a copy of the email requesting that meeting.

Disclosure (Pre-Trial)

30. In sex offence matters, after a plea of not guilty is entered, it is the usual process for the AFP to prepare a Brief of Evidence and associated Disclosure Certificate and provide this to the ODPP. The Disclosure Certificate which accompanies the Brief of Evidence is a signed statement stating that the AFP has disclosed all relevant material. Under the Collaborative Agreement (Exhibit 5), the AFP is to provide Briefs of Evidence to the ODPP. The allocated prosecutor then reviews the Brief of Evidence prior to it being disclosed to the legal representatives for an accused. The purpose of this review is twofold:

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- a. To ensure that no material which ought not to be disclosed is included in the Brief of Evidence. This includes protected confidence material, any Evidence in Chief Interview, or private information regarding the complainant which is not relevant to proceedings; and
- b. To identify any further evidence which should be obtained or lines of inquiry which should be pursued.

If there were any issues identified with respect to the brief, it would not be disclosed at that stage and, instead, the AFP would be contacted to make changes and resubmit the brief to the ODPP.

In my view, an issue with this process is that it can result in the Brief of Evidence not being disclosed to an accused's legal representatives in a timely manner as, often, the Brief of Evidence needs to be amended.

31. By the time I became involved in the matter of *R v Lehrmann*, the Brief of Evidence had already been served on the legal representatives for Mr Lehrmann.
 - a. I do not recall how I first became aware that the Brief of Evidence was served directly on the legal representatives for Mr Lehrmann. Based on Exhibit 12, it appears I may have been informed by the DPP in an earlier telephone conversation that the brief had been served;
 - b. I am not aware whether the DPP/ODPP were consulted and agreeable to service in this manner;
 - c. Service in this manner was not usual. Generally, as set out above, the Brief of Evidence would be provided by the AFP to the ODPP in the first instance. It would then be reviewed by the ODPP before being provided to an accused's legal representatives.
32. I was not directly involved in communicating with the AFP/ACT Policing in relation to the Brief of Evidence served on the legal representatives for Mr Lehrmann, however, I was copied in to email communications regarding this. Attached and marked 'Exhibit 31' are all such communications between the DPP and Superintendent Moller, of which I am aware

[REDACTED]

[REDACTED]

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33. I had the following concerns regarding the Brief of Evidence served by AFP/ACT Policing on the legal representative for Mr Lehrmann:

- a. The audio only EICI had been served. Whilst not expressly prohibited by the legislation (in my view), I was aware it was not the usual practice of the ODPP to serve anything beyond the transcript of any EICI. I found this very unusual;
- b. A number of PDF documents that had been served had not been 'locked'. Effectively, this meant that the redactions placed over Ms Higgins' private information (including, for example, her date of birth and address) could be moved and that private information accessed; and
- c. Documents, which appeared to me to be counselling communications, had been served.

I emailed the DPP and Ms Jerome about these concerns. Attached and marked 'Exhibit 32' is a copy of that email. I do not recall any further verbal discussions, prior to the email being sent to Superintendent Moller (see above at [32]).

34. At some stage, I had a verbal conversation with the DPP where he told me he had spoken with Mr John Korn regarding the service of the brief. I believe this was after the AFP had not responded in a timely manner to the concerns the DPP had raised over the service of the concerning material. I do not recall when or where this conversation took place. The DPP told me Mr John Korn had said he had electronically copied the brief and could not figure out how to delete the concerning material.

I cannot recall whether it was in the same conversation, however, the DPP also told me that Mr John Korn had told him the officer who served the brief on him had said words to the effect of 'you will find some of her text messages pretty interesting'. The DPP had understood this was in reference to Ms Higgins' text messages.

35. Protected confidence material within the meaning of s 79A of the *Evidence (Miscellaneous Provisions) Act 1991* regarding Ms Higgins was provided to the ODPP:

- a. The counselling records formed part of the initial Brief of Evidence, prepared by the AFP and reviewed by me on 16 and 17 September 2021. I cannot recall how the AFP themselves obtained those records. I believe the only way the AFP could obtain counselling records would be with the complainant's consent to

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release the information or by warrant. I do not recall if either option was exercised;

- b. I understand the counselling records were provided to the ODPP with the Brief of Evidence on 6 August 2021;
- c. I reviewed the counselling records as part of my initial review of the Brief of Evidence on 16 and 17 September 2021. I only reviewed part of those documents as I soon realised it was likely protected confidence material;
- d. I am not aware of whether the DPP or Ms Jerome reviewed the counselling records;
- e. I queried with the DPP and Ms Jerome whether we should make an application under s 79E of the *Evidence (Miscellaneous Provisions) Act 1991* for the counselling records to be disclosed, in order to regularise both the ODPP's and Mr Lehrmann's legal representatives' possession of the counselling records. I do not recall whether the DPP or Ms Jerome had a view regarding this suggestion; and
- f. The DPP sent an email to the Victims of Crime Commissioner containing the counselling records. This was in response to a request by Ms Higgins to view what had been unlawfully disclosed. I did not delete that email. Attached and marked 'Exhibit 33' is a copy of that email.

I cannot recall whether the ODPP retained any further copies of the counselling records. It was the usual practice to 'write over' an original copy of an electronic brief with the new copy of a brief, however, I cannot say with certainty that this occurred.

- 36. I cannot recall when the Disclosure Certificates were provided to the ODPP by the AFP and did not retain a copy of them. I have only been able to locate a defence copy of the Disclosure Certificate from April 2022 in my emails. As far as I recall, the Disclosure Certificates were substantially drafted by the AFP, subject to the below:

- a. At a meeting on 10 February 2022 (Exhibit 20), SC Frizzell provided a draft Disclosure Certificate. The purpose of providing that certificate was for the ODPP to comment on who, on that certificate, we would like statements from (at which point, if they provided statements, they would be removed from the

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Disclosure Certificate as their evidence would form part of the Brief of Evidence).

- b. As per Exhibits 25 and 26, following from a meeting with the AFP on 27 April 2022, the DPP advised that the internal AFP documents discussed were not disclosable and requested they, instead, be placed on the updated Disclosure Certificate.

Once the prosecution is in receipt of the Disclosure Certificate, the ODPP discloses it to the defence. There are generally two versions of Disclosure Certificate - the defence version does not have any contact information, however the prosecution version does.

- 37. As above, I was involved in the following communications to the AFP regarding the Disclosure Certificate:

- a. The DPP allocated Ms Jerome and me as primary point contacts for the AFP to settle the Disclosure Certificate. Attached and marked '**Exhibit 34**' is a copy of the relevant email.
- b. As per Exhibit 21, at a meeting on 10 February 2022, SC Frizzell provided a draft Disclosure Certificate. The purpose of providing that certificate was for the ODPP to comment on who, on that certificate, we would like statements from (at which point, if they provided statements, they would be removed from the Disclosure Certificate).
- c. As per Exhibits 26 and 27, following from a meeting with the AFP on 27 April 2022, the DPP advised that the internal AFP documents discussed were not disclosable and requested they, instead, be placed on the updated Disclosure Certificate.
- d. As per Exhibit 28, on 16 June 2022 the DPP advised the AFP he believed that the request for advice and attached spreadsheet was subject to legal professional privilege. As per Exhibit 14, the ODPP was subsequently emailed a number of documents referred to in that meeting, and the DPP advised the documents were preparatory to confidential communications between the DPP and AFP for the dominant purpose of providing legal advice.

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- e. As per Exhibit 29, on 19 July 2022, the DPP advised the AFP that all investigation review documents were legally privileged.
38. I was involved in the following communications regarding the disclosure of all, or part of Ms Higgins' and Mr Lehrmann's Cellebrite records:
- a. At the meeting on 27 April 2022, referred to above, the AFP questioned whether the full Cellebrite report was required. At that stage, only individual conversations, as separate documents, had been provided in the Brief of Evidence. The DPP was of the view the full Cellebrite should be disclosed, subject to appropriate redactions. This was communicated to SC Frizzell via email. Attached and marked '**Exhibit 35**' is a copy of that email.
 - b. On or around 8 June 2022, I was present for a verbal conversation between Mr Whybrow SC and the DPP, where Mr Whybrow SC requested a copy of the unredacted Cellebrite report, on an undertaking the personal details of the complainant would not be provided to Mr Lehrmann. This conversation occurred at Court, either before or after a mention in the matter.
 - c. On 9 June 2022, I received an email from Mr Lehrmann's legal representative, Rachel Fisher, requesting further disclosure of a number of items, including the unredacted Cellebrite report of Ms Higgins' mobile phone. Attached and marked '**Exhibit 36**' is a copy of that email. I had a verbal conversation with the DPP, where I understood he was content with Mr Whybrow SC's approach – that is, we would provide the unredacted Cellebrite report to defence, subject to an undertaking not to provide personal details of Ms Higgins to Mr Lehrmann. However, this must have been a misunderstanding as, as below, that was not the DPP's ultimate view. I sent an email to the AFP indicating we would provide the unredacted Cellebrite on the same date. Attached and marked '**Exhibit 37**' is a copy of that email.
- I did not review the unredacted version. I only reviewed the redacted version. During my involvement in the matter, the unredacted version was not provided to Mr Lehrmann's legal representatives.
- d. As per Exhibit 28, at the meeting on 16 June 2022, the DPP communicated his view that the unredacted Cellebrite report should not be disclosed, as it would be in breach of s 14F of the *Victims of Crime Act*.

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- e. On 17 June 2022, I emailed Ms Fisher and advised the unredacted Cellebrite report would not be provided and requested she narrow the request as to what redacted material was sought. Attached and marked '**Exhibit 38**' is a copy of that email.
- f. On 23 August 2022, I received an email from Ms Fisher again requesting a copy of Ms Higgins' unredacted Cellebrite report, however the scope of the request was not narrowed. This request was followed up by Ms Fisher on 29 August 2022. Attached and marked '**Exhibit 39**' is a copy of that email chain.
- g. On 24 August 2022, there was an in-person meeting between the DPP, Ms Jerome, myself, Mr Greig and Ms Pitney. In that meeting, the DPP formulated a response to the request for a Cellebrite report. Following this meeting, Ms Pitney confirmed with SC Frizzell that on a sensible appraisal of the case, there was nothing in Cellebrite report, already disclosed that could be seen as relevant or possibly relevant to a fact in issue, or to the credibility of reliability of a witness. Attached and marked '**Exhibit 40**' is a copy of that email chain.
- h. On 29 August 2022, the DPP drafted a response to Ms Fisher's further request for the Cellebrite report. He circulated the draft for comment and I queried if we should disclose that we were in possession of the full unredacted Cellebrite report. This was in response to Mr Greig raising with me, via our internal chat and telephone program 'Webex', whether the DPP was aware we were in possession of the full unredacted Cellebrite. On 30 August 2022, the DPP drafted an amended response. Attached and marked '**Exhibit 41**' are copies of the relevant emails and internal 'Webex' conversation
- i. On 31 August 2022, Mr Greig sent the DPP's response to Ms Fisher. Attached and marked '**Exhibit 42**' is a copy of that email and response, as well as the instruction to send the email.

Interactions with Ms Higgins

39. It is usual for the prosecutor with carriage in the ODPP to discuss a sex offence prosecution with a complainant directly. Ordinarily, there is a 'Meet and Greet' with a complainant, early on in a prosecution, where the general court process is explained. After each court appearance generally a Witness Assistance Service ('WAS') officer from the ODPP will update the complainant as to what occurred or, if the appearance was legally technical, the prosecutor themselves may update the complainant. Much of

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this communication is to comply with the ODPP's obligations under the *Victims of Crime Act 1994*.

40. I am aware of the following instances of the DPP directly communicating with Ms Higgins in relation to the matter of *R v Lehrmann*:
- a. A meeting with Ms Higgins on 12 November 2021, to advise her of the process going forward. This was an audio-visual meeting. I am not aware of any other persons who may have been present. Attached and marked 'Exhibit 43' are emails where the DPP advised me of this meeting and I was copied into correspondence regarding the meeting.
 - b. An in-person meeting with Ms Higgins on 3 February 2022 at the ODPP in relation to the providing information of the disclosure material. Also present at that meeting were Ms Jerome, the Victims of Crime Commissioner and myself. The purpose of this meeting was to discuss the irregular brief service to defence, including the disclosure of the counselling records. Attached and marked 'Exhibit 44' is a copy of the file note from that meeting. Attached and marked 'Exhibit 45' is a copy of the email from the DPP inviting me to attend the meeting.
 - c. A telephone conference call with Ms Higgins on 29 April 2022. Also present on the phone call were Ms Jerome, prosecutor [REDACTED] myself, Mr Greig, the Victims of Crime Commissioner and Ms Higgins' partner, David Sharaz. In that phone call, the DPP advised Ms Higgins that the applications for both a temporary and permanent stay had been dismissed and he shared her Honour Chief Justice McCallum's thoughts as directed. In short, this was a warning that further public commentary by Ms Higgins could lead to a stay of the matter. Attached and marked 'Exhibit 46' is a copy of the file note from that phone call.
 - d. A proofing conference with Ms Higgins on 17 May 2022 at the ODPP, requested by the ODPP. Also present at that conference were Ms Jerome, myself, Mr Greig and the Victims of Crime Commissioner. At that conference, Ms Higgins was shown both of her EICI and her evidence was discussed. Attached and marked 'Exhibit 47' is a copy of the file note from that conference.

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- e. A virtual conference with Ms Higgins on 31 May 2022. Also present at that conference were the Victims of Crime Commissioner and Mr Sharaz. Attached and marked '**Exhibit 48**' is an email where I was advised of that conference.
- 41. My direct interactions with Ms Higgins are set out at 40(b) and (d) above. These were my only direct interactions with Ms Higgins.
- 42. I was aware Ms Higgins' was dealing with mental health issues after I first reviewed the Brief of Evidence. In her EICI conducted on 26 May 2021, Ms Higgins referred to seeing a doctor for her mental health (QA 92) and that she had been prescribed medication (QA 107).

At some stage, I became aware that Ms Higgins' was continuing to suffer with her mental health. I cannot recall whether it was around the time of the first or second stay application, however, I recall the DPP telling me we would need to carefully consider how we communicated the listing of the stay application to Ms Higgins, as she was dealing with mental health issues. The first stay application was lodged in April 2022 and the second was lodged in June 2022. The matter was initially to go to trial in June 2022.

- 43. A number of arrangements were requested, and some subsequently made, regarding Ms Higgins' arrangements for the trial. I do not know the extent to which these arrangements were 'special', as this is the only trial I have instructed in as a prosecutor. The arrangements were as follows:
 - a. The Victims of Crime Commissioner queried whether the ODPP would be supportive of arranging for Ms Higgins to stay overnight before or after her proofing session. The ODPP arranged accommodation for Ms Higgins and Mr Sharaz following the proofing conference, however they ultimately made other arrangements. The ODPP also arranged flights for Ms Higgins and Mr Sharaz. Attached and marked '**Exhibit 49**' are the email chains discussing those arrangements.
 - b. Ms Higgins, through the Victims of Crime Commissioner, queried whether the ODPP could make flight and accommodation arrangements for Ms Higgins for the trial, which would allow her to bring her dog for emotional support. I do not believe Ms Higgins was representing the dog as an official emotional support animal but, rather, that the dog would bring her comfort in what would be a difficult time. The DPP declined to arrange flights which accommodated the dog, however, was willing to reimburse Ms Higgins any petrol costs she may

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incur, should she decide to drive down from Queensland to Canberra. The DPP was willing to arrange for dog friendly accommodation for Ms Higgins. This was originally booked for the trial, which was due to commence in June 2022, however was ultimately cancelled following the decision to temporarily stay the matter. I do not know whether these arrangements were ultimately the same for the subsequent trial as I was no longer active in the matter. Attached and marked 'Exhibit 50' is a copy of the relevant email chain.

- c. Ms Higgins, through the Victims of Crime Commissioner, expressed concern over safe access to the court. The DPP discussed having the AFP on 'stand by' should there be an escalation outside of court on the day Ms Higgins gave evidence. The DPP requested a police presence at the trial. Similar concerns were later raised by Mr Sharaz, through the Victims of Crime Commissioner. Attached and marked 'Exhibit 51' is a copy of the relevant email chain.
- d. I requested that Ms Higgins be able to move internally within the courthouse, from the remote witness room to the trial court room. Attached and marked 'Exhibit 52' is a copy of that request.

Interactions with the Victims of Crime Commissioner

- 44. The Victims of Crime Commissioner attended both meetings between Ms Higgins and the DPP (referred to above at [40]), the hearings of the stay applications and was often communicating on behalf of Ms Higgins with the ODPP and vice versa. I did not think it was unusual for a person from a professional agency, in this instance Victim Support ACT, to be supporting a complainant. Given the high-profile nature of this matter, I did not think it was particularly strange for the Victims of Crime Commissioner herself to undertake such a role..
- 45. In addition to what is set out at paragraphs [35(f)] and [40(b)-(d)] above, I am aware of the following interactions between the DPP and the Victims of Crime Commissioner in the matter of *R v Lehrmann*:
 - a. On 16 September 2021, the DPP emailed the Victims of Crime Commissioner and introduced me as a primary point of contact in the matter. Attached and marked 'Exhibit 53' is a copy of that email.
 - b. On 5 November 2021, the Victims of Crime Commissioner emailed the DPP raising several matters, namely requesting further information regarding the upcoming appearance in the Supreme Court and advising the DPP of an award

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Ms Higgins was to receive. Attached and marked '**Exhibit 54**' is a copy of that email.

- c. On 27 and 28 February 2022, the DPP and the Victims of Crime Commissioner emailed about a Court appearance in the matter. Attached and marked '**Exhibit 55**' is a copy of that email.
- d. On 14 April 2022, the Victims of Crime Commissioner emailed the DPP about an alternative contact during a period of leave. Attached and marked '**Exhibit 56**' is a copy of that email.
- e. On 24 May 2022, the Victims of Crime Commissioner emailed the DPP about safety measures for Ms Higgins' attendance at court, copying in myself, Ms Jerome, and Ms Treacy (of her office). Attached and marked '**Exhibit 57**' is a copy of this email.
- f. At some stage towards the end of May 2022, the DPP spoke to the Victims of Crime Commissioner about Mr Lehrmann's change of legal representation. I Attached and marked '**Exhibit 58**' is a copy of the email advising me of that conversation.
- g. On 27 June 2022, the Victims of Crime Commissioner forwarded an email from Mr Sharaz to the DPP, copying in myself and Ms Jerome. Attached and marked '**Exhibit 59**' is a copy of that email.

The interactions I observed between the DPP and the Victims of Crime Commissioner were minimal, however my impression was that the pair had a professional, working relationship.

- 46. In addition to those already outlined in this statement, I had the following interactions with the Victims of Crime Commissioner:
 - a. An email exchange on 17 September 2021, following my being allocated the role of instructing prosecutor in this matter. Attached and marked '**Exhibit 60**' is a copy of that email chain.

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Interactions with DPP

47. Throughout the course of this matter, I had many conversations with the DPP, however these were informal and no file note was made. I do not recall all specific dates and times of these conversations. During some of these conversations, the DPP expressed to me the following concerns he held in relation to police conduct in the matter of *R v Lehrmann*:
- a. The comment made regarding the text messages to Mr John Korn by an AFP officer, referred to above at [34]. The DPP expressed to me concern that the AFP may not be aligned with securing a successful prosecution;
 - b. The disclosure of the audio EICI, private details of Ms Higgins and the Ms Higgins' counselling records to the representatives of Mr Lehrmann, as well as the lack of timely response by the AFP to the above, once the issue was raised. I do not recall specific dates when these occurred, however, we had a number of conversations regarding the above. I queried whether the DPP felt the disclosure of such material had been intentional. The DPP told me he did not believe such disclosure had been intentional, however, expressed concern that, as the Brief of Evidence had not been disclosed through the ODPP, in the usual manner, the issues had not been picked up by the ODPP prior to disclosure. The DPP also expressed concern that the AFP were not responding to the, potentially unlawful, disclosure in a timely manner, despite numerous emails from the DPP;
 - c. Comments made by the AFP to Ms Higgins at the time her second EICI was conducted. I cannot recall when this conversation occurred, however the DPP told me a number of male officers had come into the room and pressured Ms Higgins to not proceed with the complaint, citing the low success rate of sexual offence prosecutions. I am not sure whether Ms Higgins communicated this to the DPP directly or if it was communicated through the Victims of Crime Commissioner.
48. During my involvement in the matter of *R v Lehrmann*, the DPP expressed the view:
- a. There was a strong prosecution case. This occurred on at least two occasions, as follows:
 - i. I cannot recall the date, however, the first occasion was during a conversation in his office with myself and Ms Jerome. The DPP stated




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words to the effect that he believed it was a strong prosecution case, in part, because of what he considered to be lies Mr Lehrmann had told, when regard was had to the other evidence, which substantially affected his credibility. I cannot recall whether the DPP intended to run a case that these were *Edwards* lies.

- ii. The second occasion was during a meeting with Ms Higgins. I cannot be sure which meeting this was, but I recall the DPP telling Ms Higgins words to the effect that this was a strong a prosecution as a sexual offence matter gets. I do not believe the DPP provided Ms Higgins with a basis for that view. I believe this conversation occurred in one of the meetings the DPP had with Miss Higgins however I have been unable to locate any reference of the conversation in a file note.

Whilst it was not directly linked to an assessment of the strength of the prosecution case, I recall another occasion where the DPP said he believed Ms Higgins would be a credible witness and would withstand cross-examination well.

- b. I do not recall the DPP communicating any concerns regarding the prosecution case or the conduct of the prosecution.

Conduct of the AFP and ODPP/DPP during matter generally

Conduct of the AFP/ACT Policing Officers

- 49. The extent of my concerns regarding the conduct of the AFP/ACT Police regarding the matter of *R v Lehrmann* are outlined already in this statement.

Conduct of the ODPP/DPP

- 50. I had no concerns regarding the conduct of the DPP during my involvement in the matter of *R v Lehrmann*.
- 51. As above.

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Media

52. I do not recall being involved in any communication between the ODPP and the AFP/ACT Policing in relation to the preparation or implementation of the AFP media plan in relation to the matter on *R v Lehrmann*.
53. I do not recall the DPP expressing any views to me in relation to the AFP media plan.
54. I had no interactions with the media in relation to the matter of *R v Lehrmann*.

Miscellaneous

55. Attached and marked '**Exhibit 61**' are the text messages between myself and the DPP, myself and Ms Jerome, and myself and Mr Steven Whybrow SC, relating to the matter of *R v Lehrmann*. The first series of text messages with Mr Whybrow SC relate to the provision of the Brief of Evidence, after he called me and advised he had been briefed in the matter by Kamy Saeedi Law.
56. I did not ever hold concerns that there may not be reasonable prospects of a conviction. Whilst I had some concerns over the complainant's credibility, as this is almost always in issue in sexual offence matters, they did not rise to such a high level. My main concern was Ms Higgins' interactions with the media, prior to participating in an EICI, however this concern was assuaged after Ms Higgins was proofed – I found her explanation, and demeanour, compelling.

Board of Inquiry

57. On 21 February 2023, I received a telephone call from Mr Whybrow SC advising me he had provided my name to the Board of Inquiry (the **Board**) as a person they may wish to speak with. He said I may be able to shed light on a particular issue but did not communicate what this issue was, and I did not ask. Following this, I called the DPP and advised him I had spoken to Mr Whybrow SC about providing evidence to the Board. The DPP advised me I would be entitled to legal representation if I were to be subpoenaed to give evidence.

On 25 February 2023, I received a call from the DPP regarding arrangements for a laptop to be provided to me, so that I could download my emails regarding the matter of *R v Lehrmann*, in answer to a subpoena to the DPP. Once I had downloaded the emails, I emailed the DPP to arrange for the emails to be delivered to the Board. Attached and marked '**Exhibit 62**' is a copy of that email chain.

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On or around 8 March 2023, I received a call from the DPP regarding arrangements for legal representation. I advised the DPP I had already spoken with the Board but had been advised I would be required to prepare a written statement and would appreciate legal assistance with this. The DPP said he would send me an example of what to email the ACT Government Solicitor, in order to obtain such assistance. Attached and marked 'Exhibit 63' is a copy of that email.

On 29 March 2023, I emailed the DPP to arrange for a laptop so I could access the ODPP system for the purpose of preparing my written statement. The DPP called me and I confirmed I had legal representation to assist with the preparation of the statement. The DPP confirmed he would arrange for a laptop to be available for me. Following this, the DPP emailed to confirm the laptop was ready for collection. Attached and marked 'Exhibit 64' is a copy of the relevant emails.

58.

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59. I do not wish to raise any other matter with respect to the Terms of Reference of the Board.


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AFFIRMED before me at Canberra in the Australian Capital Territory on 18 April 2023.



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Signature of witness

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Lisa Quilty
Solicitor, ACT