

Subpoena Number: 2023/S/0031

Sections 18(c), 26(1) and 26(3) of the *Inquiries Act 1991*

SUBPOENA TO PROVIDE A WRITTEN STATEMENT

To: Mr Ian McCartney

Of: Australian Federal Police
C/- Mr Tony Giugni
Australian Government Solicitor
Level 5, 4 National Circuit
BARTON ACT 2604

I, WALTER SOFRONOFF KC, Chairperson of the Board of Inquiry established by the Inquiries (Board of Inquiry – Criminal Justice System) Appointment 2023 (NI2023-49)¹ dated 1 February 2023 require you to give a written statement to the Board of Inquiry pursuant to sections 18(c), 26(1)(b) and 26(3)(b) of the *Inquiries Act 1991* in regard to your knowledge of the matters set out in the Schedule annexed hereto.

YOU MUST COMPLY WITH THIS REQUIREMENT BY:

Giving a written statement signed and witnessed in accordance with section 7 of the *Oaths and Affirmations Act 1984* (ACT) to the Board of Inquiry on or before **5:00 pm AEST on 4 April 2023**, by delivering it to Nara House, 3 Constitution Avenue, Canberra City ACT 2601.

A copy of the written statement must also be provided electronically by email at BOI.Notices@inquiry.act.gov.au with the subject line "Requirement for Written Statement".

If you believe that you have a reasonable excuse for not complying with this notice, you will need to satisfy me of this by the above date.

Failure to comply with this notice without lawful excuse is a Contempt of Board and you may be dealt with accordingly.

Date: 28 March 2023



Walter Sofronoff KC
Chairperson
Board of Inquiry

¹ The terms of reference of the Board of Inquiry, contained in NI2023-49 dated 1 February 2023 are set out as **Annexure A** to this subpoena.

Subpoena 2023/S/0031**Schedule of Questions for Statement****Ian McCartney****Current Employment**

1. What is your current rank?
2. What is your current position within the Australian Federal Police (**AFP**)?
3. Outline the job description for your current position. If you have a formal job description, **attach** a copy.
4. Have you sat, or do you currently sit, on any boards, committees, working groups, or taskforces? If so, provide details of the name of the board, committee, working group, or taskforce, when you started (and finished if applicable) and what role you had/have on the board, committee, working group, or taskforce.
5. **Attach** a current CV.

Tertiary Qualifications

6. Outline your tertiary qualifications. Include details of where and when you obtained those tertiary qualifications.

Courses and/or Diplomas

7. Outline any courses, diplomas and/or designations have you completed/obtained. Include details of where and when you undertook the courses, diplomas and/or designations.

Employment Chronology

8. Outline any previous policing experience you had before joining the AFP/ACT Policing. Include any previous service history, with dates, and your station, rank and role.
9. When did you first join the AFP?
10. What did your recruitment to the AFP involve? Include details of any training you received during recruitment to the AFP. Include details about what the training involved,

the organisation/department that provided the training and when you received the training.

11. Outline your service history with the AFP. Include your rank, where you were stationed, the dates you held the various positions and the description of the role/job/work performed by you in the various positions. Include your rank at the relevant times. Outline the section and unit in which the position sat and the general description of the purpose of the relevant section and unit.
12. When did you start recruitment training with the AFP? Include details of the training involved and the organisation/department that provided the training.
13. Outline your appointment to Deputy Commissioner of the AFP. Include details of the job description. **Attach** a job description if one exists.
14. Outline your experience, if any, in conducting sexual assault investigations. If you have conducted sexual assault investigations, state approximately how many have you conducted in your police career. Of those investigations, state approximately how many have you conducted in the ACT.

Organisational Structure

15. Outline the AFP/ACT Policing structure/chain of command as at February 2021. **Attach** a copy of the organisational structure/chart for the AFP as at February 2021.
16. Outline the current structure/chain of command for the AFP/ACT Policing. Include information about any substantial change to the structure/chain of command since February 2021, the reason that change and the function you perform within that structure, who you reported to and your direct reports. **Attach** a copy of the current organisational structure/chart for the AFP/ACT Policing.

Duties and Responsibilities

17. Outline your duties and responsibilities as Deputy Commissioner of the AFP. Include information about who you directly report to, your direct reports and whether there

were/are any scheduled regular meetings with your direct reports. **Attach** a copy of any relevant agreements, policies and/or guidelines.

Investigating Sexual Assault Complaints

18. Outline the extent of your involvement (if any), as Deputy Commissioner, in relation to a sexual assault investigation. State whether this has changed during the past four years. If so, provide details of how your involvement was different and how, when and why the process changed.

Challenges, Issues and/or Pressures

19. Explain any issues, challenges and/or pressures you perceive to have existed within the AFP/ACT Policing in the past four years that have hindered the conduct of sexual assault investigations. Provide examples where possible.
20. Explain any issues, challenges and/or pressures you perceive to exist external to the AFP/ACT Policing that hinder the conduct of sexual assault investigations. Provide examples where possible.

Sensitive Investigations Oversight Board (SIOB)

21. State whether you have read the “Review into the AFP’s Response to and Management of Sensitive Investigations” by Mr John Lawler AM APM dated 17 January 2020 (**the Lawler Review**).
22. Outline the circumstances, which you are aware of, that gave rise to the formation of the Sensitive Investigations Oversight Board (**SIOB**). State when the SIOB was formed.
23. Outline your involvement, if any, in the formation of SIOB and any governing policies and procedures. **Attach** a copy of any referenced agreement, policy, procedure, guideline and/or governance.
24. Outline the purpose of the SIOB and how it operates. Provide details of:
 - (a) the types of matters the SIOB review;
 - (b) the criteria for investigations that are considered ‘sensitive investigations’;

- (c) what role the SIOB undertakes in relation to a sensitive investigation (i.e. whether the SIOB evaluates or investigates sensitive investigations);
- (d) whether the SIOB reviews investigations in both the Commonwealth and ACT jurisdictions. If so, provide details of whether the process for reviewing Commonwealth and ACT jurisdiction sensitive investigations differs and, if so, how the process differs; and
- (e) how investigations are referred to the SIOB, how they are briefed on an ongoing basis and the reason for the briefing. Include information about whether it was common to invite AFP/ACT Policing officers who were not members of the SIOB to brief SIOB on particular sensitive investigations. Provide practical examples where appropriate.

Attach a copy of any referenced agreement, policy, procedure, guideline and/or governance.

- 25. Outline the AFP positions which sit on the SIOB. Provide details of whether you have sat on the SIOB during your time as Deputy Commissioner and what your duties and responsibilities are (if any) in reporting to the SIOB. **Attach** a copy of any referenced agreement, policy, procedure, guideline and/or governance.
- 26. Explain the definition of a '*sensitive*' investigation and how this differs from the definitions of '*politically sensitive investigation*' in the AFP National Guideline on Politically Sensitive Investigations and '*politically sensitive matters*' in the Memorandum of Understanding (MOU) between the AFP and the Australian Electoral Commission (AEC). Provide practical examples where appropriate. **Attach** a copy of the AFP National Guideline on Politically Sensitive Investigations, the MOU between the AFP and the AEC, and any referenced agreement, policy, procedure, guideline and/or governance.
- 27. Outline the process of how an investigation is classified as a sensitive investigation and how sensitive investigations are evaluated by the SIOB. Provide details of:
 - (a) what stage of an investigation a matter is typically classified as a sensitive investigation. Include details of the circumstances which may give rise to the need

to brief the SIOB and the nature of the evidence typically obtained at that stage. Provide practical examples where appropriate;

- (b) What is the process for a matter to be referred to the SIOB, including the chain of command for raising a potential sensitive investigation to SIOB and the briefings that are required. Include references to the briefing templates utilised;
- (c) whether any preliminary briefings are prepared and/or provided to you, as Deputy Commissioner, in relation to a potential sensitive investigation. Include references to what preliminary briefings are required and your duties and responsibilities in actioning the briefings; and
- (d) the actions SIOB takes once a brief in relation to a potential sensitive investigation is received. Provide detail of whether recommendations from SIOB are typically in writing or verbal and to whom the recommendations are provided to.

Attach a copy of any referenced agreement, policy, procedure, guideline and/or governance.

- 28. Outline the circumstances in which a Senior Investigations Officer (SIO) would be involved/appointed by the SIOB and/or an investigation which the SIOB is considering. Explain the nature of the role of the SIO.
- 29. Outline when someone outside of the AFP, for example a government minister, would be briefed on a SIOB meeting and/or an investigation which the SIOB is considering.

The Investigation

- 30. When did you first become aware of the investigation of the allegations of Ms Brittany Higgins concerning Mr Bruce Lehrmann (**the Investigation**)? Include information about who informed you of the Investigation, details of the information provided, whether you had any prior awareness of the complaint and whether you briefed anyone in relation to the information provided. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. To the extent communications were verbal outline the parties to the communications and the effect of the words spoken (**the usual particulars**).

Briefings to the Sensitive Investigations Oversight Board (SIOB)

31. Outline when the Investigation was referred to SIOB and accepted as a “sensitive investigation”. State whether you were a member of SIOB at that time.
32. Outline who sat on the SIOB when the Investigation was referred to SIOB. Provide details of their rank, name and the position they occupied. If any changes occurred, provide details of those changes.
33. Provide details of who was allocated as the Sensitive Investigations Officer (**SIO**) for the Investigation and what the duties and responsibilities of that role is. State whether it is unusual to allocate a SIO to a sexual assault investigation. If so, provide details of why a SIO was allocated in the Investigation. **Attach** a copy of the relevant documents, guidelines, policies, procedures and/or governance material. If already attached and/or provided, refer to the relevant parts of your statement.
34. In chronological order, outline any dealings which SIOB had in relation to the Investigation and/or matter of *R v Lehrmann*. Provide details of:
 - (a) who gave any briefing of the Investigation;
 - (b) the purpose of any briefing and if any recommendations were sought from SIOB;
 - (c) the date of any briefing;
 - (d) whether any briefing was provided during a SIOB meeting or “out of session”;
 - (e) the people in attendance for any briefing;
 - (f) any evidence/material/supporting documents provided to the SIOB;
 - (g) whether any briefing was provided in writing, oral or both;
 - (h) the nature of the briefing (if any) in relation to:
 - i. the progress of the Investigation, including the evidence obtained and yet to be obtained;
 - ii. any views in relation to the prospects of the matter and the reasons for those views (in particular, in relation to threshold to charge); and
 - iii. your views in relation to the conduct of the Investigation to date, including the reasons for those views; and
 - (i) the nature of any discussions between members of the SIOB about the Investigation or matter of *R v Lehrmann*;
 - (j) the nature of any discussions between members of the SIOB and persons external

to the SIOB in relation to the Investigation or matter of *R v Lehrmann*;

- (k) any briefings given by members of the SIOB to persons external to the SIOB; and
- (l) the recommendations made by SIOB as a result of the briefing.

Attach a copy of any relevant evidence/material/supporting documents, written briefings, minutes and communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.

35. To the extent not addressed above, provide details of any briefing or discussions you were involved in or aware of between the AFP and any Federal Minister (or Ministerial Officer) regarding the Investigation or the matter of *R v Lehrmann*. Provide details of:
- (a) who gave any briefing;
 - (b) why the briefing was given;
 - (c) who initiated the briefing;
 - (d) the purpose of any briefing and if any information or recommendations were sought from the Federal Minister or their office;
 - (e) the date of any briefing/discussion;
 - (f) the people in attendance for any briefing;
 - (g) any evidence/material/supporting documents exchanged;
 - (h) whether any briefing was provided in writing, oral or both; and
 - (i) any other discussions that took place between the AFP and any Federal Minister (or Ministerial Officer) that you were involved in or aware of.

Attach a copy of any relevant evidence/material/supporting documents, any guidelines which guide these matters, written briefings, minutes and communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.

36. To the extent not addressed above, outline your knowledge and involvement in the internal investigation review conducted by Commander Andrew Smith in July/August 2021 in relation to the Investigation. If so, provide details of:
- (a) who initiated this internal investigation;

- (b) why it was undertaken;
- (c) your understanding of the findings of the investigation;
- (d) your understanding of whether any recommendations from the review were actioned prior to charging Mr Lehrmann, and if so provide details of:
 - i. when the recommendation(s) were actioned;
 - ii. who actioned the recommendation(s); and
 - iii. whether a recommendation was not actioned and the reasons as to why; and
- (e) your overall impressions.

Attach a copy of the investigation review conducted by Commander Andrew Smith in July/August 2021 in relation to the Investigation and relevant communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.

Complaints

37. To the extent not addressed above, state whether you are aware of any complaints received from Mr Steven Whybrow SC or any other members of public in relation to contentious behaviour and/or contempt of court relating to the conduct of Ms Lisa Wilkinson and/or Ms Higgins related to the matter of *R v Lehrmann*. If so, provide details of:
- (a) when the complaints were received;
 - (b) the nature of the complaints;
 - (c) how you were made aware of the complaints;
 - (d) whether the SIOB was made aware of the complaints and, if so, how they were made aware;
 - (e) what material you and/or SIOB were provided with in relation to the complaints;
 - (f) what steps you took in relation to each of the complaints (and dates when these steps were taken); and
 - (g) whether any investigations were initiated. If not, explain way not. If investigations were initiated, provide details of:
 - i. who conducted the investigation/where it was referred to; and
 - ii. whether the investigation is ongoing or has been concluded. If the investigation is ongoing, provide details of who has carriage of the

investigation and the expected timeframe for its conclusion. If the investigation has been concluded, provide details of what the outcome of the investigation was.

Attach a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes, meeting minutes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.

38. To the extent not addressed above, state whether any concerns were raised to you (either indirectly or directly) in relation to any of the AFP/ACT Policing officers involved in the Investigation by:
- (a) the DPP/ODPP;
 - (b) the Victims of Crime Commissioner;
 - (c) Ms Higgins and/or her legal representatives;
 - (d) Mr Lehrmann and/or his legal representatives; or
 - (e) any other persons.

If so, provide details of what the concerns were, when the concerns were raised to you and what actions you took to address the concerns. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.

Briefing Request and Advice Provided by the DPP

39. State whether you have read the briefing request to the DPP from Detective Superintendent Moller on 18 June 2021 (**the DPP Briefing Request**) and the accompanying the Minute titled “Op Covina Direction / Decision – Alleged Sexual Assault Australian Parliament House 23 March 2019” by Detective Inspector Marcus Boorman dated 4 June 2021 (**the Boorman Minute**). If so, provide details of:
- (a) the date you read these documents;
 - (b) how you came to read them (i.e. who provided them to you); and
 - (c) your impression of the documents (including the reasons for your impressions).

Attach a copy of the DPP Briefing Request, the Boorman Minute and any other relevant communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.

40. State whether you have read the advice provided by the DPP to Detective Superintendent Moller on 28 June 2021 (**the DPP Advice**). If so, provide details of:
- (a) the date you read these documents;
 - (b) how you came to read them (i.e. who provided them to you); and
 - (c) your impression of the documents (including the reasons for your impressions).

Attach a copy of the DPP Advice and any other relevant communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.

41. State whether you had any interactions with any AFP/ACT Policing officers in relation to the briefing request (or its annexures) or the DPP Advice. If so, provide details of:
- (a) who initiated/arranged the interaction;
 - (b) where the interaction took place;
 - (c) the people involved;
 - (d) what was discussed; and
 - (e) your overall impressions.

Attach a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.

The Trial in the Matter *R v Lehrmann*

42. When were you advised that Mr Lehrmann would be charged? Provide details of the date you were advised, by whom, what you were advised of and your overall impressions.
- Attach** a copy of relevant communications including but not limited to correspondence,

emails, text messages, file notes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.

43. State whether you attended the trial in the matter of *R v Lehrmann*. If so, provide details of the day(s) you attended the trial and the reasons for your attendance.
44. State whether you received updates in relation to the trial in the matter of *R v Lehrmann*. If so, provide details of the nature of the updates you received and whether you actioned any items arising from the updates. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.

1 November 2022 Correspondence

45. Outline how you became aware of the correspondence addressed to the Chief Police Officer for ACT Policing from the DPP dated 1 November 2022 regarding the conduct of the Investigation and trial in the matter of *R v Lehrmann* (**1 November 2022 Correspondence**). Include information about:
- (a) when you became aware;
 - (b) how you became aware;
 - (c) what you were aware of;
 - (d) your overall impressions; and
 - (e) what actions were taken by you and/or whether you directed any actions.

Attach a copy of the 1 November 2022 Correspondence and any accompanying relevant communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.

46. State whether you discussed the content of the 1 November 2022 with any person (including any AFP/ACT Policing officers, the DPP/ODPP, the Victims of Crime Commissioner or media). If so, provide details of:
- (a) who initiated/arranged the interaction;

- (b) where the interaction took place;
- (c) the people in attendance;
- (d) what was discussed; and
- (e) your overall impressions.

Attach a copy of the 1 November 2022 Correspondence and any accompanying relevant communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.

Victims of Crime Commissioner

47. Outline your professional dealings (if any) with the Victims of Crime Commissioner prior to and during the matter of *R v Lehrmann*.

Media

48. State whether you believe the level of media involvement in the matter of *R v Lehrmann* affected the conduct of the Investigation. If so, include details about the basis for your views and provide examples where possible.
49. Outline your involvement (if any) in communication between the ODPP and the AFP/ACT Policing in relation to the preparation of implementation of the AFP media plan in relation to the Investigation, including but not limited to the AFP media plan distributed on 5 August 2021. Include details about whether you perceived the AFP's media plan to be adequate and provide reasons and examples where appropriate. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.
50. Outline any media releases from the AFP/ACT Policing you were involved in preparing or otherwise discussed with any other persons (including the DPP/ODPP and Victims of Crime Commissioner). Provide details of the AFP/ACT policies, procedures, guidelines and/or governance in relation to publicly commenting on investigations. Include information about whether comments are typically made in relation to referring

investigations to the DPP or the status of an investigation. **Attach** a copy of the media release(s), any relevant policy, procedure, guideline, governance, and any relevant communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.

51. To the extent not addressed above, outline the communications (if any) you have personally received and/or had with the media in relation to the matter of *R v Lehrmann*. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, social media messages, calendar invitations, calendar appointments, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

Board of Inquiry

52. State whether you have spoken to any AFP/ACT Policing staff or any other persons (excluding your legal representatives) in relation to your provision of evidence to the Board of Inquiry under s 26(1)(b) of the *Inquiries Act 1991*. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, social media messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.
53. Outline any other matters you wish to raise with respect to the Terms of Reference of the Board of Inquiry.

Notes

Informal service

1. Even if this notice has not been served personally on you, you must, nevertheless, comply with its requirements, if you have actual knowledge of the notice and its requirements.

Where the addressee is a corporation or agency

2. If this notice is addressed to a corporation or agency, the corporation or agency must comply with the notice by its appropriate person or proper officer.

Objections

3. If you object to a document or thing produced in response to this notice being inspected by a party to the proceeding or anyone else, you must tell the Board of Inquiry about your objection and the grounds of your objection either orally on the return date for this notice or in writing before or after the return date.

Production of copy instead of original

5. If the notice requires you to produce a document, you may produce a copy of the document unless the subpoena specifically requires you to produce the original.
6. The copy of the document may be—
 - (a) a photocopy; or
 - (b) in PDF format; or
 - (c) in any other electronic form that the issuing party has indicated will be acceptable.

Contempt of Board of Inquiry

7. A person commits an offence if the person does something in the face, or within the hearing, of a board that would be contempt of court if the board were a court of record (see *Inquiries Act 1991*, s 36 (**Contempt of Board**)).
8. Failure to comply with a subpoena without lawful excuse is a Contempt of Board and may be dealt with accordingly.
9. Failure to comply with a subpoena may also be a criminal offence (see *Criminal Code*, s 719 (Failing to attend) and s 720 (Failing to produce document or other thing)).

Protections

10. Where a person is required to produce a document (or other thing) or answer a question to the Board of Inquiry, that person is not able to rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to

produce the document or other thing or answer the question (see *Inquiries Act 1991*, s 19 (Privileges against self-incrimination and exposure to civil penalty)).

11. However, anything obtained because of the producing of the document or other thing, or the answering of the question, is not admissible in evidence against that person in a civil or criminal proceeding, except for an offence relating to the falsity or misleading nature of the document or other thing or answer, and for an offence against chapter 7 of the *Criminal Code* (see *Inquiries Act 1991*, s 19 (Privileges against self-incrimination and exposure to civil penalty)).

ANNEXURE A

Terms of Reference

1. The Board will inquire into:
 - (a) Whether any police officers failed to act in accordance with their duties or acted in breach of their duties:
 - i. in their conduct of the investigation of the allegations of Ms Brittany Higgins concerning Mr Bruce Lehrmann;
 - ii. in their dealings with the Director of Public Prosecutions in relation to his duty to decide whether to commence, to continue and to discontinue criminal proceedings against Mr Lehrmann in relation to those allegations;
 - iii. in their dealings with the legal representatives for Mr Lehrmann before, during or after the trial in the matter of *R v Lehrmann*;
 - iv. in their provision of information to any persons in relation to the matter of *R v Lehrmann*.
 - (b) If any police officers so acted, their reasons and motives for their actions.
 - (c) Whether the Director of Public Prosecutions failed to act in accordance with his duties or acted in breach of his duties in making his decisions to commence, to continue and to discontinue criminal proceedings against Mr Lehrmann.
 - (d) If the Director of Public Prosecutions so acted, his reasons and motives for his actions.
 - (e) The circumstances around, and decisions which led to the public release of the ACT Director of Public Prosecutions' letter to the Chief Police Officer of ACT Policing dated 1 November 2022.
 - (f) 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 *R v Lehrmann*.
 - (g) Any matter reasonably incidental to any of the above matters.
2. The Board will report to the Chief Minister by 30 June 2023.