

Subpoena Number: 2023/S/0012

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

**SUBPOENA TO PROVIDE A WRITTEN STATEMENT**

To: Mr Jason McDevitt

Of: Australian Federal Police  
C/- Mr Calvin Gnech  
Gnech & Associates  
Level 8, 193 North Quay  
BRISBANE QLD 4000

I, WALTER SOFRONOFF KC, Chairperson of the Board of Inquiry established by the Inquiries (Board of Inquiry – Criminal Justice System) Appointment 2023 (NI2023-49)<sup>1</sup> 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](mailto: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



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Walter Sofronoff KC  
**Chairperson**  
Board of Inquiry

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<sup>1</sup> 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/0012****Schedule of Questions for Statement****Jason McDevitt****Current Employment**

1. What is your current rank?
2. What is your current position within the Australian Federal Police (**AFP**)/Australian Capital Territory (**ACT**) Policing?
3. Outline the job description for your current position. If you have a formal job description, **attach** a copy.
4. **Attach** a current CV.

**Tertiary Qualifications**

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

**Courses and/or Diplomas**

6. 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**

7. 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.
8. When did you first join the AFP?
9. Why did you join the AFP?
10. What did your recruitment to the AFP involve? Include details of any training you received during recruitment to the AFP/ACT Policing. 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/ACT Policing? Include details of the training involved and the organisation/department that provided the training.
13. Outline your appointment to Detective Sergeant in the Sexual Assault and Child Abuse Team (SACAT). Include details of the job description. **Attach** a job description if one exists.
14. Approximately how many sexual assault investigations have you conducted in your police career? Of those investigations, how many have you conducted in the ACT?

### **Training and Education**

15. Outline the training and education you have received on and related to conducting sexual assault investigations. Include information about the dates you underwent the training, what the training and education involved and the name of the training provider. **Attach** a copy of your training record and the relevant training documentation/course material.
16. Outline any training/course you are currently in the process of completing. Include information about the date you commenced the training/course, what the training/course involves and the name of the training provider. **Attach** a copy of the relevant training documentation/course material.
17. Describe the correlation between the training and education you have received on and related to conducting sexual assault investigations and how investigations are conducted in practice.
18. Outline your observations and/or opinions of the experience and training levels of the

SACAT members.

19. What training and experience did a member of SACAT require as at 1 February 2021. Has that changed? If so, when and what was changed? **Attach** a copy of the relevant training documentation/course material.
20. State whether, prior to and/or during your time in SACAT, there was a requirement for members to undergo any psychological assessments to ensure the wellbeing and welfare of team members. Is so, provide details of:
  - (a) whether the assessment was mandatory;
  - (b) your impressions of the purpose of the psychological assessment;
  - (c) the date(s) you underwent psychological assessment(s) (include reference to the date and how long you had been working in SACAT at that time or how long prior to commencing at SACAT you underwent the assessment);
  - (d) your understanding of how frequently psychological assessments for SACAT members is required; and
  - (e) your awareness of any policy, procedure, guideline and/or governance in relation to SACAT psychological assessments.

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

### **Organisational Structure**

21. Outline the AFP/ACT Policing structure/chain of command for SACAT as at February 2021. Include information about who occupied those positions at that time (including the rank and position that person holds) and the function you performed within that structure.
22. **Attach** a copy of the organisational structure/chart for the AFP/ACT Policing SACAT as at February 2021. Identify in the organisational structure/chart each person in the SACAT, their rank and the position they occupied.
23. Outline the current structure/chain of command for the Criminal Investigations Team. Include information about when the structure changed, why it changed and the function

you perform within that structure.

24. **Attach** a copy of the current organisational structure/chart for the AFP/ACT Policing Criminal Investigations Team. Identify in the organisational structure/chart each person in the Criminal Investigations Team, their rank, and the position they occupy.

### **Duties and Responsibilities**

25. Explain your understanding of what a police officer's duties and responsibilities are in conducting a sexual assault investigation. Include references to relevant agreements, policies, procedures, guidelines and/or governance where appropriate. **Attach** a copy of any referenced agreement, policy, procedure, guideline and/or governance.
26. Outline your duties and responsibilities as a Detective Sergeant in Criminal Investigations/SACAT in conducting a sexual assault investigation. Include information about who you directly report to, your direct reports and the approximate number of investigators you supervise. **Attach** a copy of any relevant agreements, policies and/or guidelines.

### **Triage Process for Sexual Assault Complaints**

27. Outline how sexual assault complaints are triaged through the AFP/ACT Policing. Distinguish between how both new and historical complaints are dealt with. If the process was different as at 23 March 2019 and/or 4 February 2021, outline how the process was different and how, when and why the process changed.
28. Identify who, within Criminal Investigations/SACAT, would typically respond to a sexual assault complaint. Provide details about what initial steps are taken by the relevant AFP officer and the services offered to the complainant after making a complaint. If the process was different as at 23 March 2019 and/or 4 February 2021, outline how the process was different and when and why the process changed.

### **Investigating Sexual Assault Complaints**

29. Outline the typical process of conducting a sexual assault investigation from the

perspective of your position. Include the following information:

- (a) the initial Meet and Greet process with a complainant including the nature of the information that is provided to the complainant at this stage;
- (b) the nature of the evidence that is ordinarily obtained;
- (c) the engagement of other relevant parties/entities such as support services and intermediary programs and the general nature of their support and involvement;
- (d) when the Office of the Director of Public Prosecutions (**ODPP**) or the Director of Public Prosecutions, Mr Shane Drumgold SC (**DPP**) would ordinarily be consulted; and
- (e) the evidence that would need to be obtained at this stage (particularly in historical matters where forensic evidence is unavailable).

**Attach** a copy of any policies, procedures, guidelines or documents which guide a sexual assault investigation.

30. State whether the typical process of conducting a sexual assault investigation has changed during the past four years. If so, provide details of how the process was different and how, when and why the process changed.
31. In your experience, state whether you have been involved in a sexual assault investigation in which the Superintendent is actively involved in the investigation. If so, provide details of the level and nature of the Superintendent's involvement.
32. Explain the adjudication process for compiling briefs of evidence for the ODPP. Provide details as to why the adjudication process is conducted. **Attach** a copy of any relevant documents, guidelines, policies, procedures and/or governance material. If the process has changed during the past four years, outline how the process was different and how, when and why the process changed.
33. State whether, in your experience, you have ever served a brief of evidence directly on the legal representatives for a defendant. If so, provide details of the instance in which the service occurred.
34. Explain the redaction process undertaken by AFP/ACT Policing in compiling briefs of

- evidence. Provide details as to the information that is typically redacted and who typically undertakes the process. **Attach** a copy of any relevant documents, guidelines, policies, procedures and/or governance material. If the process has changed during the past four years, outline how the process was different and how, when and why the process changed.
35. Outline the system and methods of communication the AFP/ACT Policing utilise to speak with sexual assault complainants. In particular, explain how frequently the AFP/ACT Policing communicates to a complainant during the conduct of an investigation and the modes of communication available for a complainant to communicate directly with the AFP/ACT Policing when required. **Attach** a copy of the relevant documents, guidelines, policies, procedures and/or governance material. If the system and methods have changed during the past four years, outline how the system and methods were different and how, when and why changes have occurred.
  36. Describe the AFP/ACT Policing's "victim-centric" approach to liaising with sexual assault complaints. Provide examples to illustrate the approach where appropriate.
  37. Explain your understanding of the threshold to charge a person with a sexual offence. Provide examples of what is required and what may affect the threshold, including your understanding of corroboration and whether it is required before charging a person for a sexual offence.
  38. If your understanding of the threshold to charge a person with a sexual offence has changed in any way since over the past four years, explain when, how and why it has changed.
  39. Explain the process that is undertaken by AFP/ACT Policing when a further statement or further information is required from a complainant. **Attach** a copy of the relevant documents, guidelines, policies, procedures and/or governance material. If the process has changed during the past four years, outline how the process was different and how, when and why the process changed.
  40. Following an investigation, explain the process that is undertaken by AFP/ACT Policing in advising and/or consulting with complainants when a decision is made to charge or

not to charge. **Attach** a copy of the relevant documents, guidelines, policies, procedures and/or governance material. If the process has changed during the past four years, outline how the process was different and how, when and why the process changed.

41. State whether you believe any underlying cultural views have existed within the AFP in the past four years with respect to conducting sexual assault investigations. Specifically, whether sexual assault complainants are treated differently to other victim/survivors of crime.
42. Outline the process for discontinuing an investigation at the request of a complainant. If the process has changed during the past four years, outline how the process was different and how, when and why the process changed.
43. State whether you believe any underlying cultural views have existed within the AFP in the past four years with respect to conducting sexual assault investigations *after* it has been reinstated by a complainant. Specifically in such instances, whether the sexual assault complainant is treated differently to other victim/survivors of crime and whether the conduct of the investigation is therefore affected in any way.

#### **Challenges, Issues and/or Pressures**

44. 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.
45. 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.

#### **Report of the Sexual Assault Prevention and Response Steering Committee**

46. State whether you have read the Sexual Assault Prevention and Response Steering Committee's report titled "Listen. Take Action to Prevent, Believe and Heal" published



in December 2021 (**the Steering Committee's Report**).

47. Outline the steps taken by the AFP/ACT Policing in response to the Steering Committee's Report in relation to:
- (a) cross-agency cooperation and communication with the Victims of Crime Commissioner for the ACT (**the Victims of Crime Commissioner**), Canberra Rape Crisis Centre and other relevant agencies;
  - (b) implementing training for police officers in relation to conducting sexual assault investigations; and
  - (c) dealing with sexual assault complainants generally.

Include details of when these steps were taken and the status of the implementation of these steps.

48. Outline whether you have observed a cultural shift within the ODPP in the prosecution of sexual assault offences since the release of the Steering Committee's Report. Provide details of the extent of any cultural shift and the reasons for your views.
49. Outline whether you have observed a cultural shift within the AFP/ACT Policing in its investigation and charging of sexual assault offences since the release of the Steering Committee's Report. Provide details of the extent of any cultural shift and the reasons for your views.

**Director of Public Prosecutions (DPP)/Office of the Director of Public Prosecutions (ODPP)**

50. Describe, the professional relationship between the ODPP and AFP/ACT Policing prior to the investigation of the allegations of Ms Brittany Higgins concerning Mr Bruce Lehrmann (**the Investigation**). Include details about whether the relationship was positive or whether you held any concerns about the relationship and the nature of those concerns.
51. During 2021, did the ODPP and AFP/ACT Policing hold regular meetings in relation to sexual offence matters? If so, outline your involvement (if any) in those meetings.

Include details about the general nature of those meetings, including who was required to attend, the purpose and frequency of the meetings, whether any file notes were kept and by whom, and the extent of your involvement (if any).

52. Outline the typical level of involvement you have, as an investigator, with the DPP directly or with the ODPP in an investigation/matter concerning sexual assault.
53. Detail your professional relationship with the DPP prior to the commencement of the Investigation. Include details about whether the relationship was positive or whether you held any concerns about the relationship and the nature of those concerns. Provide examples where appropriate.
54. Describe your professional relationship generally and the extent of your prior dealings with and/or knowledge (if any) of the ODPP Prosecutors involved in the Investigation prior to the commencement of the investigation, including but not limited to:
  - (a) Ms Skye Jerome;
  - (b) Mr Mitchell Greig;
  - (c) Ms Sarah Pitney;
  - (d) Ms Erin Priestly; and
  - (e) Mr Andrew Chatterton.

Include details about your professional views (if any) about those prosecutors and the basis of those views, whether the relationship was positive or whether you held any concerns about the relationship and the nature of those concerns. Provide examples where appropriate.

55. Outline how often you have formally met with the DPP/ODPP to discuss the conduct of an investigation concerning sexual assault. Provide details of the nature of those investigations.

#### **Victims of Crime Commissioner**

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

57. Based on your experience as of 31 March 2021, describe the role performed by the Victims of Crime Commissioner (or her staff) exercising statutory functions under the *Victims of Crime Act 1994* (ACT) in relation to a victim of a sexual offence. Provide examples and details where appropriate.
58. Prior to *R v Lehrmann* had you conducted any sexual offence investigations where the Victims of Crime Commissioner (or her staff) had supported a complainant at court or acted as an intermediary between the police and the complainant or between the ODPP and the complainant? If so, provide an estimate of the number of investigations and a brief description of the nature of those investigations.

### **The Investigation**

#### *Involvement in the Investigation from 5 February 2021 to 30 March 2021*

59. When did you first become involved in the Investigation? Include information about who informed you of the Investigation, details of the information provided, the position that you were allocated and whether you had any prior awareness of the complaint. **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**).
60. In chronological order, outline your interactions with in relation to the Investigation up until 30 March 2021. Include in your response any involvement with AFP/ACT Policing officers, the DPP/ODPP staff, Mr Lehrmann, legal representatives for Mr Lehrmann, Ms Higgins, legal representatives for Ms Higgins and/or the Victims of Crime Commissioner. Include the following information about the interaction:
- who initiated/arranged the interaction;
  - the purpose of the interaction;
  - where the interaction took place;
  - the people in attendance;
  - any evidence/material you were provided, including when you reviewed the evidence/material;
  - the nature of the interaction in relation to:

- i. the progress of the Investigation, including the evidence obtained and yet to be obtained;
  - ii. your views in relation to the prospects of the matter and the reasons for your views (in particular, in relation to threshold to charge); and
  - iii. your views you held in relation to the conduct of the Investigation to date, including the reasons for your views;
- (g) why the role of Informant/Case Officer was allocated to Senior Constable Emma Frizzell and then to Detective Leading Senior Constable Trent Madders. Provide details as to why the allocation changed, when it changed and what roles each officer subsequently fulfilled during the Investigation;
- (h) whether any discussions were had about ways to retrieve the complainant's mobile phone, including what methods were considered, who was involved in the discussions, the decisions made and the reasons for those decisions;
- (i) the Meet and Greet, including whether any evidence/material was provided by the complainant and whether the complainant was asked to conduct an evidence-in-chief interview on this day and her response to this request;
- (j) the evidence-in-chief interview;
- (k) whether Ms Higgins was encouraged to not engage with media during the Investigation;
- (l) your impressions of the interaction; and
- (m) in relation to your engagement with Ms Higgins, whether you were involved in any discussions with other AFP/ACT Policing officers, the DPP/ODPP staff, legal representatives for Ms Higgins and/or the Victims of Crime Commissioner following any of the interactions.

The following dates must be included:

- (n) 17 February 2021
- (o) 19 February 2021;
- (p) 4 March 2021;
- (q) 10 March 2021;
- (r) 11 March 2021; and
- (s) 17 March 2021;
- (t) 25 March 2021;

**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, provide the usual particulars.

61. To the extent not addressed above, outline whether you had any involvement in briefing the Sensitive Investigation Oversight Board (**SIOB**) or preparing briefing documents to the SIOB. If so, provide details of:
- (a) the purpose of your involvement;
  - (b) what documents you prepared/assisted in preparing;
  - (c) who the documents were provided to; and
  - (d) the feedback you received in relation to the briefing (if any).

**Attach** a copy of the relevant briefing documents and any 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, provide the usual particulars.

62. As the Detective Sergeant, outline the steps you took in initiating the Investigation. **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, provide the usual particulars.
63. Outline the information/evidence the AFP/ACT Policing had at the time Ms Higgins reinstated her allegations concerning Mr Lehrmann of which you were aware.
64. Outline the information/evidence that would need to be obtained to progress the Investigation. State whether the AFP/ACT Policing obtained the information/evidence required and the (approximate) dates the information/evidence was obtained.
65. Outline the AFP/ACT Policing officers you supervised during this period of time of the Investigation. Provide details as to what the supervision involved, the approximate date the positions/officers changed and reasons for the changes (if any).
66. To the extent not addressed above, outline the AFP/ACT Policing officers you worked with during this period of time of the Investigation. Provide details as to the approximate

date the positions/officers changed and reasons for the changes (if any).

67. Outline the purpose of allocating two investigators on separate teams within SACAT to the Investigation. Provide details of:
- (a) who made the decision;
  - (b) when the decision was made;
  - (c) why the decision was made;
  - (d) whether this was usual; and
  - (e) whether this caused any difficulties during the Investigation.

**Attach** a copy of the relevant briefing documents and any 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, provide the usual particulars.

68. In relation to the questions above, outline if you had any time over this period where you were not at work due to leave and/or personal reasons.

*Involvement in the Investigation on or around 31 March 2021*

69. In chronological order, outline your interactions with the DPP/ODPP in relation to the Investigation on or around 31 March 2021. Include the following information about the interactions:
- (a) who initiated/arranged the interaction;
  - (b) the purpose of the interaction;
  - (c) where the interaction took place;
  - (d) the people in attendance;
  - (e) any evidence/material you were provided, including when you reviewed the evidence/material;
  - (f) the nature of the interaction in relation to:
    - i. the progress of the Investigation, including the evidence obtained and yet to be obtained;
    - ii. decision-making in relation to charging Mr Lehrmann;
    - iii. your views in relation to the prospects of the matter and the reasons for your

- views (in particular, in relation to the threshold to charge); and
- iv. your views in relation to the conduct of the Investigation to date, including the reasons for your views;
- (g) whether any of the following was discussed:
- i. difficulty in obtaining Ms Higgins' and/or Mr Lehrmann's mobile phone to conduct a Cellebrite download;
  - ii. conducting an interview with Mr Lehrmann;
  - iii. CCTV footage of Ms Higgins and Mr Lehrmann entering the Australian Parliament House;
  - iv. obtaining an expert evaluation of intoxication;
  - v. the credibility of Ms Higgins and/or Mr Lehrmann;
  - vi. concerns in relation to Ms Higgins and/or Mr Lehrmann's mental health; and
  - vii. encouraging Ms Higgins not to engage with media during the Investigation;
- (h) when you prepared the case note #152933891 in relation to the 31 March 2021 meeting, including who you discussed the content of the case note with.
- (i) your overall impressions; and
- (j) whether you were involved in any discussions with other AFP/ACT Policing officers, the DPP/ODPP staff, legal representatives for Mr Lehrmann, legal representatives for Ms Higgins and/or the Victims of Crime Commissioner following the interactions. If so, provide the usual particulars of this discussion and your impressions of these discussions.

**Attach** a copy of case note #152933891 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.

*Involvement in the Investigation from 1 April 2021 to 26 May 2021*

70. In chronological order, outline your involvement in the Investigation on and around 1 April until 26 May 2023 when the second evidence-in-chief interview with Ms Higgins was conducted. Include in your response any involvement with AFP/ACT Policing officers, the DPP/ODPP staff, Mr Lehrmann, legal representatives for Mr Lehrmann, Ms Higgins, legal representatives for Ms Higgins and/or the Victims of Crime Commissioner. Include the following information about the interaction:

- (a) who initiated/arranged the interaction;
- (b) the purpose of the interaction;
- (c) where the interaction took place;
- (d) the people in attendance;
- (e) any evidence/material you were provided, including when you reviewed the evidence/material;
- (f) the nature of the interaction in relation to:
  - i. the progress of the Investigation, including the evidence obtained and yet to be obtained;
  - ii. your views in relation to the prospects of the matter and the reasons for your views (in particular, in relation to threshold to charge); and
  - iii. your views you held in relation to the conduct of the Investigation to date, including the reasons for your views;
- (g) whether any discussions were had about ways to retrieve the complainant's mobile phone, including what methods were considered, who was involved in the discussions, the decisions made and the reasons for those decisions;
- (h) whether the DPP/ODPP raised concerns with you in relation to Detective Leading Senior Constable Trent Madders' involvement in the Investigation. If so, provide details of:
  - i. the Magistrates Court decision which gave rise to these concerns;
  - ii. the basis for the concerns;
  - iii. what you did to address/manage the concerns raised; and
  - iv. your involvement (if any) in the AFP Professional Standards Response investigation;
- (i) why you contacted Senior Constable Emma Frizzell to advise her she would be travelling to Queensland on 15 April 2021 in lieu of Detective Leading Senior Constable Trent Madders. Provide reasons of when and why the arrangement changed;
- (j) whether Ms Higgins was encouraged to not engage with media during this period;
- (k) your impressions of the interaction; and
- (l) whether you were involved in any discussions with any other persons following the interaction. If so, provide the usual particulars of this discussion and your impressions of these discussions.



The following dates must be included:

- (m) 7 April 2021;
- (n) 21 April 2021; and
- (o) 20 May 2021.

**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.

71. In relation to the question above, outline if you had any time over this period where you were not at work due to leave and/or personal reasons.

*Involvement in the Investigation surrounding the second evidence in chief interview on 26 May 2021*

72. State whether conducting a second evidence-in-chief interview is usual in investigations concerning sexual assault. Provide details of the reasons why this occurs.
73. In chronological order, outline your involvement and interactions in the Investigation on and around the second evidence-in-chief interview conducted with Ms Higgins on 26 May 2023. Include the following information about the involvement/interactions:
- (a) who initiated/arranged the interaction;
  - (b) the purpose of the interaction;
  - (c) where the interaction took place;
  - (d) the people in attendance;
  - (e) any evidence/material you were provided, including when you reviewed the evidence/material;
  - (f) the nature of the interaction in relation to:
    - i. the progress of the Investigation, including the evidence obtained and yet to be obtained;
    - ii. your views in relation to the prospects of the matter and the reasons for your views (in particular, in relation to threshold to charge); and
    - iii. your views you held in relation to the conduct of the Investigation to date, including the reasons for your views;
  - (g) when you became aware a second evidence-in-chief interview was required to be

conducted with Ms Higgins. Provide details of who informed you of this, what you were informed of, and the reasons provided (if any);

- (h) whether Ms Higgins was encouraged to not engage with media during the Investigation;
- (i) whether any discussions were had about ways to retrieve the complainant's mobile phone, including what methods were considered, who was involved in the discussions, the decisions made and the reasons for those decisions;
- (j) your impressions of the interaction; and
- (k) whether you were involved in any discussions with other AFP/ACT Policing officers, the DPP/ODPP staff, legal representatives for Mr Lehrmann, legal representatives for Ms Higgins and/or the Victims of Crime Commissioner following the interaction. If so, provide the usual particulars of this discussion and your impressions of these discussions.

The following dates must be included:

- (l) 26 May 2021; and
- (m) 27 May 2021.

**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.

*Involvement in the Investigation on or and around 1 June 2021 and interaction with the DPP/ODPP*

74. In chronological order, outline your interaction with the DPP/ODPP in relation to the Investigation on or around 1 June 2021. Include the following information about the interactions:
- (a) who initiated/arranged the interaction;
  - (b) the purpose of the interaction;
  - (c) where the interaction took place;
  - (d) the people in attendance;
  - (e) any evidence/material you were provided, including when you reviewed the evidence/material;
  - (f) the nature of the interaction in relation to:

- i. the progress of the Investigation, including the evidence obtained and yet to be obtained;
  - ii. decision-making in relation to charging Mr Lehrmann;
  - iii. your views in relation to the prospects of the matter and the reasons for your views (in particular, in relation to the threshold to charge); and
  - iv. your views in relation to the conduct of the Investigation to date, including the reasons for your views;
- (g) whether any of the following was discussed:
- i. difficulty in obtaining Ms Higgins' and/or Mr Lehrmann's mobile phone to conduct a Cellebrite download;
  - ii. conducting an interview with Mr Lehrmann;
  - iii. CCTV footage of Ms Higgins and Mr Lehrmann entering the Australian Parliament House;
  - iv. obtaining an expert evaluation of intoxication;
  - v. the credibility of Ms Higgins and/or Mr Lehrmann;
  - vi. concerns in relation to Ms Higgins and/or Mr Lehrmann's mental health;
  - vii. encouraging Ms Higgins not to engage with media during the Investigation;
- (h) your overall impressions; and
- (i) whether you were involved in any discussions with other AFP/ACT Policing officers, the DPP/ODPP staff, legal representatives for Mr Lehrmann, legal representatives for Ms Higgins and/or the Victims of Crime Commissioner following the interactions. If so, provide the usual particulars of this discussion and your impressions of these discussions.

**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.

*Involvement in the Investigation from 1 June 2021 to 5 July 2021*

75. In chronological order, outline your involvement in the Investigation on and around 1 June until 5 July 2021 including involvement with AFP/ACT Policing officers, the DPP/ODPP staff, Mr Lehrmann, legal representatives for Mr Lehrmann, Ms Higgins, legal representatives for Ms Higgins and/or the Victims of Crime Commissioner. Include the following information about the interaction:

- (a) who initiated/arranged the interaction;
- (b) the purpose of the interaction;
- (c) where the interaction took place;
- (d) the people in attendance;
- (e) any evidence/material you were provided,, including when you reviewed the evidence/material;
- (f) the nature of the interaction;
- (g) whether Ms Higgins was encouraged to not engage with media during this period;  
and
- (h) your overall impressions, including in relation to:
  - i. the progress of the Investigation, including the evidence obtained and yet to be obtained;
  - ii. your views in relation to the prospects of the matter and the reasons for your views (in particular, in relation to threshold to charge); and
  - iii. your views you held in relation to the conduct of the Investigation to date, including the reasons for your views.

The following date must be included:

- (i) 2 June 2021.

**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.

76. In relation to the question above, outline if you had any time over this period where you were not at work due to leave and/or personal reasons.
77. State the date you transferred from ACT Policing to AFP Northern Command. Provide details of who you handed your duties over to and what information was provided in the handover. **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.

**Advice provided by the DPP**

78. State whether you have sought advice from the DPP in relation to a sexual assault investigation prior to the Investigation/matter of *R v Lehrmann*. If so, provide details of the information, documents and evidence that were provided to the DPP on those occasions.
79. Outline your involvement (if any) in compiling the preliminary brief of evidence to the DPP that was served on the DPP on or about 21 June 2021 and who else (if anyone) was involved in its creation. Include information as to why certain information/evidence, if any, was omitted from the brief of evidence (including but not limited to CCTV footage). **Attach** a copy of the relevant index to the brief of evidence.
80. 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 about the date you read the advice and your impression of the advice (including the reasons for your impressions). **Attach** a copy of the DPP Advice.
81. At the time the DPP provided his advice, state whether you believed the Investigation was completed/sufficient to warrant a decision to commence criminal proceedings against Mr Lehrmann. Provide reasons for your views.
82. State whether you believe the DPP maintained objectivity in relation to providing advice to the AFP/ACT Policing. Provide details as to the reasons for your answer, whether you expressed any concerns to anyone (including why you did or did not) and provide examples where appropriate. **Attach** a copy of any documents including Cellebrite records to support your answer.
83. State whether there was a suggestion by you or any other AFP/ACT Policing officer to obtain independent legal advice in relation to the Investigation. If so, provide details of who made the suggestion to whom and what decision was made (if any).
84. Outline any issues and concerns you had regarding the DPP's conduct during the Investigation. Did you express these issues and concerns? If so, provide information about to whom you disclosed your concerns and the reasons or circumstances which gave

rise to your 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.

85. State whether you observed a breakdown of the relationship with the DPP/ODPP and the AFP/ACT Policing during the Investigation. If so, provide details to the extent of the breakdown of the relationship and the effect this had on the Investigation and subsequent prosecution. Provide examples where appropriate.
86. Outline your impression of the treatment by the DPP/ODPP in relation to the Investigation towards you and other AFP/ACT Policing officers involved in the Investigation. Provide details of your impressions and examples where appropriate.

### **Decision to Charge**

87. Upon obtaining advice from the DPP dated 28 June 2021 and undertaking the additional investigations requested in this correspondence, state whether you believed there was sufficient evidence to proceed to charging Mr Lehrmann. Provide details of the date you formed this view, the reasons for your views and include examples drawing on the evidence available where possible.
88. When were you advised that Mr Lehrmann would be charged? Provide details of the date you were advised, by whom, of what you were advised 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.
89. State whether you perceived that there was any pressure to charge Mr Lehrmann. If so, provide details as to from where and whom the pressure arose.
90. State what steps were taken to consult with Ms Higgins and/or the Victims of Crime Commissions following the decision to charge. Include the following information about the interaction:
  - (a) who initiated/arranged the interaction;

- (b) the purpose of the interaction;
- (c) where the interaction took place;
- (d) the people in attendance;
- (e) any evidence/material you were provided, including when you reviewed the evidence/material;
- (f) the nature of the interaction in relation to the decision to charge;
- (g) your overall impressions; and
- (h) whether it was unusual and the basis for your views. Provide 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.

91. Upon the charging of Mr Lehrmann, outline your views and the attitude of the AFP/ACT Policing officers involved in the Investigation towards the prosecution. Provide details on the basis for your views and examples where applicable.

**Other Involvement in the Investigation and/or Trial in the Matter of *R v Lehrmann***

92. To the extent not addressed above, in chronological order, outline any other interactions you had in the Investigation and/or trial in the matter of *R v Lehrmann* following your transfer from ACT Policing to AFP Northern Command. Include in your response any involvement with AFP/ACT Policing officers, the DPP/ODPP staff, legal representatives for Mr Lehrmann, Ms Higgins, legal representatives for Ms Higgins and/or the Victims of Crime Commissioner. Include the following information about the interaction:
- (a) who initiated/arranged the interaction;
  - (b) the purpose of the interaction;
  - (c) where the interaction took place;
  - (d) the people in attendance;
  - (e) any evidence/material you were provided, including when you reviewed the evidence/material;
  - (f) the nature of the interaction;
  - (g) your overall impressions; and

- (h) whether it was unusual and the basis for your views. Provide 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.

93. To the extent not addressed above, outline whether you received or were aware of any advice or representations were made by the DPP (or his staff) regarding a general proposition in relation to a complainant providing their mobile telephone to police for the purpose of their investigations of the complaint. If so, provide details of who provided this advice or representation, when the advice/representation was provide and your impressions of the advice/representation.
94. State whether you had any involvement or awareness of the Summons and/or brief of evidence served on the legal representatives for Mr Lehrmann on 6 August 2021. If so, provide details of what you were aware of and your impressions.
95. 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.

### **Bail**

96. Outline your interactions (if any) with the DPP/ODPP and/or the legal representatives for Mr Lehrmann in relation to the considerations for bail for Mr Lehrmann. State whether it is unusual for legal representatives to speak to the AFP/ACT Policing in relation to bail considerations. Include details about who was involved in those communications, the purpose of the communications, what was discussed, and your impressions of any communications. **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.



## Media

97. State whether you believe the level of media involvement in the matter of *R v Lehrmann* affected the conduct of the Investigation of Ms Higgins' complaint. If so, include details about the basis for your views and provide examples where possible.
98. 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.
99. To the extent not addressed above, outline the communications (if any) you have 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

100. 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.
101. 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.