

Subpoena Number: 2023/S/0006

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

SUBPOENA TO PROVIDE A WRITTEN STATEMENT

To: Mr Scott Moller

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)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 AEDT on 23 March 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: 16 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/0006**Schedule of Questions for Statement****Scott Moller****Current Employment**

1. What is your current rank?
2. What is your current position within the Australian Federal Police (AFP)/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 any tertiary qualifications that you have. 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. Why did you join the AFP?
9. 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.
10. Outline your service history with the AFP. Include your rank, where you were stationed,

the dates you held the various positions, the description of the role/job/work performed by you in the various positions, the section and unit in which the position sat and a description of the purpose of the relevant section and unit.

11. Outline your appointment to Superintendent, Criminal Investigations. Include details of the job description. **Attach** a job description if one exists.
12. Approximately, how many sexual assault investigations have you conducted in your police career? Of those, how many have you conducted in the Australian Capital Territory (ACT)?

Training and Education

13. Outline the training and education you have received related to conducting sexual assault investigations. Include information about the dates you underwent the training, what the training and education involved and who provided the training. **Attach** a copy of your training record and the relevant training documentation/course material.
14. Describe the correlation between the training and education you have received related to conducting sexual assault investigations and how investigations are conducted in practice.
15. Outline your observations and/or opinions of the experience and training levels of the Sexual Assault and Child Abuse Team (SACAT) team members.
16. What training and experience did a member of the SACAT team 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.

Organisational Structure

17. 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 what rank and position that person holds) and the function you performed within that

structure.

18. **Attach** an organisational structure/chart for the AFP as at February 2021. Identify in the organisational structure/chart each person in the SACAT, their rank, and the position they occupy.
19. 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.
20. **Attach** a current organisational structure/chart for the AFP 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

21. 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.
22. Outline your duties and responsibilities as Superintendent, Criminal Investigations in conducting a sexual assault investigation. Include information about who you directly report to and who directly reports to you. **Attach** a copy of any relevant agreements, policies and/or guidelines.

Triage Process for Sexual Assault Complaints

23. 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.
24. Identify who, within the Criminal Investigations Team, 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 how, when and why the process changed.

Investigating Sexual Assault Complaints

25. Outline the typical process of conducting a sexual assault investigation from the perspective of your position. Include information about what evidence is ordinarily obtained, what communication would be had with relevant parties and when the Office of the Director of Public Prosecutions (**ODPP**) or the Director of Public Prosecutions, Mr Shane Drumgold SC (**DPP**) would be consulted. **Attach** a copy of any policies, procedures or documents which guide a sexual assault investigation.
26. If the typical process of conducting a sexual assault investigation has changed during the past four years, outline how the process was different and how, when and why the process changed.
27. 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 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.
28. Outline the system and methods of communication the AFP utilise to speak with sexual assault complainants. In particular, explain how frequently a complainant is required to be communicated with during the conduct of an investigation and the modes of communication available for a complainant to communicate directly with the AFP 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 since then.
29. Describe the AFP/ACT Policing's "victim-centric" approach to liaising with sexual

assault complaints. Provide examples to illustrate the approach where appropriate.

30. 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.
31. 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 how and why it has changed.
32. Explain the process that is undertaken by AFP/ACT Policing when a further statement or further information is thought to be 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 since then.
33. Explain the process that is undertaken by AFP/ACT Policing in advising and/or consulting with complainants when, following an investigation, a decision has been 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 since then.
34. State whether or not 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 or not sexual assault complainants are treated differently to other victim/survivors of crime.
35. 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 since then.
36. State whether or not 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, whether or not the sexual assault complainant, in such instances, is treated differently to other victim/survivors of crime

and whether or not the conduct of the investigation is therefore affected in any way.

Challenges, Issues and/or Pressures

37. 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.
38. Explain any issues, challenges and/or pressures you perceive to currently exist *within* the AFP/ACT Policing that hinder the conduct of sexual assault investigations. Provide examples where possible.
39. Explain any issues, challenges and/or pressures you perceive to have existed *external* to the AFP/ACT Policing in the past four years that hinder the conduct of sexual assault investigations. Provide examples where possible.
40. Explain any issues, challenges and/or pressures you perceive to currently 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

41. 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**).
42. Outline your awareness or involvement (if any) of any matter contained in the Steering Committee's Report prior to the release of the Steering Committee's report. **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. Outline your awareness or involvement (if any) of the statistics relating to sexual assault complaints, investigations, charges and/or prosecutions in the past four years. **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.

44. 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 when these steps were taken and the status of the implementation of these steps.

45. 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.
46. Outline whether you have observed a cultural shift within the AFP/ACT Policing in their 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)

47. Describe, from your perspective, 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.
48. 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, how often the meeting occurred, whether any file notes are kept and by whom, and the extent of your involvement (if any).

49. 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.
50. 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.

51. Outline how often you have met with the DPP/ODPP in a formal way to discuss the conduct of an investigation concerning sexual assault.
52. Outline any discussions you have had with the DPP in relation to co-ordinating media messaging in relation to your pieces to camera in your former roles dealing with confiscation of assets. Provide details as to what was discussed, when the discussion(s) occurred and your impressions of the discussion(s). **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.

Victims of Crime Commissioner

53. Outline your professional dealings (if any) with the Victims of Crime Commissioner prior to the matter of *R v Lehrmann*.
54. Describe, based on your experience as of 31 March 2021, 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.
55. 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

56. When did you first become involved in the Investigation? Include information about who informed you of the Investigation, what you were informed of and whether you had any awareness of the complaint prior to this. **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**).
57. Outline the steps you took, as Superintendent of Criminal Investigations, in initiating the Investigation. Provide information of who you assigned the Investigation to and why. **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.
58. Outline the information/evidence the AFP/ACT Policing had at the time Ms Higgins re-

instated her allegations concerning Mr Lehrmann that you were aware of.

59. Outline what information/evidence 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.
60. Outline your involvement, if any, in investigative reviews arising from the Investigation. If so, please provide details of what the investigative review was, governing material related to the investigative review, who requested your involvement and the nature of your involvement. **Attach** a copy of the investigative review report(s), governance material 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.

Interactions with AFP/ACT Policing officers

61. In chronological order, outline your interactions with AFP officers related to the Investigation up until Mr Lehrmann was summonsed on 6 August 2021. Include information about:
- (a) the person who initiated/arranged the interaction;
 - (b) the purpose of the interaction;
 - (c) where the interaction took place;
 - (d) the people in attendance;
 - (e) the material (if any) you were provided in relation to the interaction, including whether you reviewed the material prior to or after the interaction;
 - (f) the nature of the interaction;
 - (g) any directions you received from
 - i. Deputy Chief Police Officer Michael Chew for the period throughout the investigation and trial period; and
 - ii. Assistant Commissioner Peter Crozier including but not limited to June/July/August 2021; and
 - (h) your impressions of the interaction.

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.

62. Outline any documents, reports and/or briefings you provided to other AFP/ACT Policing officers in relation to the Investigation, including to Deputy Chief Police Officer Michael Chew and/or the Sensitive Investigations Oversight Board. Include information about the processes governing the provision of such documents, who (if anyone) requested its preparation, whether you received a response, and your impressions of the response received (if any). The following must be included:
- (a) the Executive Briefing prepared by you addressed to the DCPO-R titled 'Seeking direction in relation to Operation COVINA – alleged sexual intercourse without consent, Australian Parliament House 23rd March 2019' dated 7 June 2021 (**the Executive Briefing**).

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.

63. State whether you were involved in any discussions with AFP/ACT Policing officers and/or the DPP/ODPP in relation to claims of legal professional privilege over the documents produced by the AFP/ACT Policing in relation to the Investigation (including but not limited to the Executive Briefing and Minute prepared by Detective Inspector Marcus Boorman addressed to the DCPO-R titled 'Op Covina Direction/Decision – Alleged Sexual Assault Australian Parliament House 23 March 2019' dated 4 June 2021). If so, include information about:
- (a) the person who initiated/arranged the interaction;
- (b) the purpose of the interaction;
- (c) where the interaction took place;
- (d) the people in attendance;
- (e) the material (if any) you were provided in relation to the interaction, including

- whether you reviewed the material prior to or after the interaction;
- (f) the nature of the interaction; and
 - (g) your impressions of the interaction.

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.

64. State whether you were aware that the DPP/ODPP had concerns about any of the AFP/ACT Policing officers allocated to the Investigation. If so, provide details of how you became aware of the concerns, what your response was, your impressions of the concerns and whether you put any safeguards in place to address the concerns. **Attach** a copy of any relevant court decision and 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.
65. State the date you were allocated as the Sensitive Investigations Officer for the Investigation. Provide details of who assigned you to the position, what the role entailed why you were assigned to the position. Include information about the processes governing the position, any briefings you provided in this role and who you provided these briefings to. **Attach** a copy of any briefings any relevant governance material for the position and 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.
66. State whether you performed the role as Sensitive Investigations Officer for the Investigation simultaneously with your Superintendent position. If so, provide details of whether this hindered the Investigation in any way and whether you requested the position be allocated to someone else. **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.

67. State the date you ceased your role as Sensitive Investigations Officer for the Investigation. Provide details of who made the decision, why the decision was made and your impressions of the decision. **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.
68. Outline your involvement (if any) in preparing briefings for Commissioner Reece Kershaw (or any other AFP/ACT Policing officers) in relation to Senate Estimates prior to, during and after the Investigation. Provide details as to the process for providing briefings in relation to Senate Estimates (if any). **Attach** a copy of any relevant briefing material and 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.
69. Outline your interaction(s) with Commissioner Reece Kershaw in relation to the Investigation, including social or casual interactions. Include details about who initiated the interaction, what was discussed, and your impressions of any interactions. **Attach** a copy of any relevant governance material for the position and 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.

Interactions with the DPP/ODPP prior to the Trial in the Matter of R v Lehrmann

70. Outline the typical level of involvement you have, as Superintendent, with the DPP directly or with the ODPP in an investigation/matter concerning sexual assault.
71. In chronological order, outline your interactions with the DPP/ODPP in relation to the Investigation up until Mr Lehrmann was summonsed on 6 August 2021. Include information about:
- (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 in relation to the interaction, including when you reviewed the evidence/material;
- (f) whether 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;
- (g) the body language of the DPP (or his staff);
- (h) 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;
- (i) 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;
- (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 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.

The following dates must be included:

- (l) 12 April 2021; and
- (m) 1 June 2021.

72. Outline any issues and concerns you had regarding the DPP's conduct during the Investigation. Did you express these issues and concerns with anyone? Provide information about who you disclosed your concerns to 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.
73. 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.
74. 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.

Advice provided by the DPP

75. 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 what information, documents and evidence were provided to the DPP on those occasions.
76. 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 else,

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.

77. State whether or not 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.
78. State whether, in your opinion, at the time the DPP provided his advice you believed the Investigation was completed/sufficient to warrant a decision to commence criminal proceedings against Mr Lehrmann. Provide reasons for your views.
79. State whether, you have reason to believe the DPP had contact with Ms Higgins either directly or via an intermediary prior to the summons being served on Mr Lehrmann on 6 August 2021. **Attach** a copy of any relevant documents to support your answer.
80. 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).

Interactions with the legal representatives for Mr Lehrmann

81. In chronological order, outline your interactions with the legal representatives for Mr Lehrmann during the Investigation up until Mr Lehrmann was summonsed on 6 August 2021. Include information about:
 - (a) the purpose of the interaction;
 - (b) where the interaction took place;
 - (c) the people in attendance;
 - (d) any evidence/material you were provided in relation to the interaction, including when you reviewed the evidence/material;
 - (e) 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 laying charges against Mr Lehrmann;
 - iii. 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
- iv. your views in relation to the conduct of the Investigation to date, including the reasons for your views;
- (f) whether you had any discussions with Mr John Korn before Mr Lehrmann was charged and/or soon after he was charged including but not limited to the disclosure of the brief of evidence, the provision of confidential counselling records, concerns you had regarding Ms Higgins's creditability, Ms Higgins' Celebrite records and/or suggesting Mr Korn issue a subpoena for AFP/ACT Policing records;
- (g) your impressions of the interaction; and
- (h) 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.

82. State whether your level of involvement with the legal representatives for Mr Lehrmann was unusual compared to other sexual assault investigations you have conducted. Provide reasons for your views.

Interactions with Ms Higgins and/or her legal representatives during the Investigation

83. In chronological order, outline your interactions with Ms Higgins in relation to the Investigation up until Mr Lehrmann was summonsed on 6 August 2021. Include information about:
- (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 in relation to the interaction, 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) Evidence-in-Chief Interviews (including when and why a second Evidence-in-Chief Interview was conducted with Ms Higgins);
- (h) whether Ms Higgins was encouraged to not engage with media during the Investigation;
- (i) your impressions of the interaction; 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.

The following dates must be included:

- (k) 26 May 2021; and
- (l) 12 July 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.

- 84. Describe your impressions of Ms Higgins' co-operation during the Investigation. Did Ms Higgins' level of cooperation affect the conduct of the Investigation? If so, provide information on how the Investigation was affected and include examples where possible.
- 85. Outline your views in relation to Ms Higgins' engagement with the AFP/ACT Policing during the Investigation. Provide details as to whether you believe Ms Higgins' involvement with the media affected the conduct of the Investigation in any way and

whether you expressed your views to anyone (including to Ms Higgins).

86. State whether you became aware of any issues related to Ms Higgins' mental health. If so, provide details as to the information within your knowledge and outline any steps you took in relation to that information, including, but not limited to any discussions you had at that time with the DPP/ODPP and/or other AFP/ACT Policing officers regarding Ms Higgins' mental health. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

Interactions with the Victims of Crime Commissioner during the Investigation

87. State when you were informed that communication with Ms Higgins must be directed through the Victims of Crime Commissioner. Include details about who informed you and what you were informed of. **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.
88. To the extent not covered above, in chronological order, outline your interactions with the Victims of Crime Commissioner during the Investigation up until Mr Lehrmann was summonsed on 6 August 2021. Include information about:
- (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 in relation to the interaction, 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 laying charges against Mr Lehrmann; and
 - iii. 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
 - iv. your views in relation to the conduct of the Investigation to date, including

the reasons for your views;

- (g) whether the Victims of Crime Commissioner stated words to the effect of “*Ms Higgins is the face of the movement*”;
- (h) whether Ms Higgins was encouraged to not engage with media during the Investigation;
- (i) your impression of the interaction; 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 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 there were any practicality issues in communicating with Ms Higgins through the Victims of Crime Commissioner during the Investigation. If so, provide details as to the effect the Victims of Crime Commissioner acting as an intermediary had on the conduct of the Investigation. Provide examples where applicable.
- 90. Outline how the Victims of Crime Commissioner became a witness in the Investigation. Provide details as to when this occurred, who was involved in the decision to name the Victims of Crime Commissioner as a witness, and your impressions in relation to this. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

Interactions with other persons in relation to the Investigation

- 91. List the approximate number of witnesses you engaged with in the Investigation.
- 92. In chronological order, outline your interactions with any other persons in relation to the Investigation, including people from the Australian Parliament. Include information about:

- (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 in relation to the interaction, including when you reviewed the evidence/material;
- (f) the nature of the interaction in relation to:
 - i. the Investigation and the evidence obtained and yet to be obtained;
 - ii. decision-making in relation to laying charges against Mr Lehrmann; and
 - iii. 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
 - iv. your views in relation to the conduct of the Investigation to date, including the reasons for your views;
- (g) your impressions of the interaction; and
- (h) 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.

Decision to Charge

93. State whether, once all the evidence in the Investigation was obtained, 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.
94. 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 what your impressions of the advice were. **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.

95. State what steps were taken to consult with Ms Higgins and/or the Victims of Crime Commissions following the decision to charge. Include information about:
- (a) the purpose of the interaction;
 - (b) where the interaction took place;
 - (c) When the interaction took place;
 - (d) the people in attendance;
 - (e) the nature of the interaction in relation to the decision to charge;
 - (f) your impressions of the interaction; and
 - (g) whether this interaction with the Ms Higgins/Victims of Crime Commissioner was unusual and the basis of 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.

96. Were you asked to sign the Summons for Mr Lehrmann? If so, by whom. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.
97. State whether, at the time you signed the Summons for Mr Lehrmann you perceived there to be sufficient evidence to charge. If not, provide details for the reasons for your views and why you signed the Summons.
98. State whether, at the time of charging Mr Lehrmann, you perceived there to be any pressure to do so. If so, provide details as to where/whom the pressure came from.
99. Once Mr Lehrmann was charged, outline your views of the attitude of the AFP/ACT Policing officers involved in the Investigation towards the DPP/ODPP and trial in the matter of *R v Lehrmann*. Provide details on the basis for your views and examples where

appropriate.

Summons, Brief of Evidence and Disclosure

100. Outline the steps you took as Superintendent in preparing the Summons for Mr Lehrmann and/or the brief of evidence for the DPP/ODPP and/or the legal representatives for Mr Lehrmann. Provide details as to who you assigned to prepare the brief of evidence and the Disclosure Certificates. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.
101. Outline the usual adjudication process for preparing a brief of evidence. State whether this process was followed in the Investigation in the first instance. If not, provide details as to why it was not followed, including who advised you (if anyone) to proceed with an alternate process. Include information about whether you are aware of anyone reviewing the brief prior to it being served and, if so, who. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.
102. Did you express any views to follow the usual adjudication process in preparing the brief of evidence in this Investigation/for the matter of *R v Lehrmann*? If so, provide details as to the reasons for your views, to whom you expressed your views and their response (if any). **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.
103. In chronological order, outline your interactions with AFP/ACT Policing officers, the DPP/ODPP, legal representatives for Mr Lehrmann and/or Ms Higgins and the Victims of Crime Commissioner leading to the service of the Summons for Mr Lehrmann/the brief of evidence and up until the date the brief of evidence was rectified. Include information about:
 - (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 in relation to the interaction, including when you reviewed the evidence/material;
- (f) the nature of the interaction in relation to:
 - i. whether any concerns were raised about the disclosure issue; and
 - ii. steps taken by the AFP/ACT Policing to rectify the issue;
- (g) whether you said words to the effect of “*there are some important text messages in the brief*” to Mr Korn;
- (h) any briefings you were involved in; and
- (i) your impressions of the interaction.

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.

104. Outline your involvement (if any) in the preparation of the Disclosure Certificates in the matter of *R v Lehrmann*. 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.

Trial in the Matter of *R v Lehrmann*

*Interactions with AFP/ACT Policing officers during the trial in the matter of *R v Lehrmann**

105. State what arrangements were in place for the AFP/ACT Policing officers involved in the trial in the matter of *R v Lehrmann*. Provide details as to what your role was, whether it changed prior to or during the trial, and who you worked with during the trial in the matter of *R v Lehrmann*. Include information as to whether it was usual for you to perform this role during a trial for a sexual assault offence. **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.

106. In chronological order, outline your interactions with AFP/ACT Policing officers leading to and during the trial in the matter of *R v Lehrmann*. Include details about who was involved in those communications, the purpose of the communications, what was discussed, and your impressions of any communications, including but not limited to the preparation of statements. **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.

Interactions with DPP/ODPP during the trial in the matter of R v Lehrmann

107. In chronological order, outline your interactions with the DPP/ODPP leading to and during the trial in the matter of *R v Lehrmann*. Include details about who was involved in those communications, the purpose of the communications, what was discussed, and your impressions of any communications including but not limited to:
- (a) whether you were called to give evidence as a witness. If not, provide details as to whether this was unusual;
 - (b) whether any tasks were requested by the DPP/ODPP. If so, provide details including who made the request, to whom the request was made to, what the task involved and the approximate date the request was made;
 - (c) any communications in relation to enquiries regarding Ms Higgins' appointments with a Medical Centre;
 - (d) in their dealings with the DPP in relation to his duty to decide whether to continue and to discontinue criminal proceedings against Mr Lehrmann; and
 - (e) whether any interactions with the DPP/ODPP during the trial was unusual and the basis of 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.

Interactions with the legal representatives for Mr Lehrmann

108. Explain your understanding of whether police officers can speak with legal representatives for a defendant regarding a prosecution case.
109. Explain your understanding of the appropriateness or otherwise of disclosing perceived weaknesses in a prosecution case to the legal representatives of the defendant.
110. Outline your interactions (if any) with the legal representatives for Mr Lehrmann during the trial of the matter of *R v Lehrmann*. Include details about who was involved in those communications, the purpose of the communications, what was discussed, and your impressions of any communications. Specifically, in relation to:
 - (a) the Executive Briefing.

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.

Interactions with Ms Higgins, her legal representatives and/or the Victims of Crime Commissioner during the trial

111. Outline your interactions (if any) with Ms Higgins, her legal representatives and/or the Victims of Crime Commissioner during the trial of the matter of *R v Lehrmann*. 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.

Interactions with any other persons

112. State whether during the trial of the matter of *R v Lehrmann* you sat in a row of seats next to the partner of Senator Linda Reynolds, who was a witness in the matter. Include details about your reasons for sitting next to Senator Reynolds' partner during the trial.
113. Outline your interactions (if any) with any other persons during the trial of the matter of *R v Lehrmann*. 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.

Bail

114. 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

115. 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.

116. 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.

117. 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

118. 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.
119. Outline any other matters you wish to raise with respect to the Terms of Reference of the Board of Inquiry, including but not limited to:
- (a) the correspondence provided by the DPP to the Attorney-General on or about 10 November 2021. **Attach** a copy of the relevant correspondence.

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.