

AUSTRALIAN CAPITAL TERRITORY

BOARD OF INQUIRY

CRIMINAL JUSTICE SYSTEM

PRACTICE GUIDELINE 01/2023

Published on 24 February 2023

Communication, Public Hearings, Leave to Appear, Witness Statements, Subpoenas, Confidentiality and Other Matters

Part A. Introduction

1. This Practice Guideline should be read in conjunction with the *Inquiries Act 1991* (ACT).
2. The Australian Capital Territory Executive established the Board of Inquiry under section 5 of the Act and appointed Walter Sofronoff KC as the Board of Inquiry and Chairperson. The Terms of Reference for the Inquiry are available on the Inquiry's website (www.cjsinquiry.act.gov.au) and require the Board to 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.

Part B: Communication with the Board

3. The Board invites any person or organisation with information or evidence relevant to the Terms of Reference to submit that information or evidence to the Board by **11 April 2023**. If such information or evidence is intended to be submitted confidentially, the Executive Director of the Board should be contacted in the first instance.
4. Information and evidence should be provided via email (or where information is voluminous, upon request, a secure upload link can be provided) and directed to the Executive Director at BOI.Information@inquiry.act.gov.au. Anyone seeking an exception or assistance in meeting this requirement (eg if it is necessary to provide documents in hardcopy) should contact the Executive Director by email (at the above email) or by telephone on (02) 6205 5700 to discuss how best to forward the material.
5. Any person or organisation seeking to make a general submission to the Board should do so by following the process set out on the Inquiry's website.
6. Where possible, all written material submitted to the Board should be in fully text-searchable, multi-page PDF format.
7. Alternative arrangements for communication with the Board can be made by contacting the Executive Director by telephone on (02) 6205 5700.
8. Any questions about the Inquiry should be directed to the Executive Director at BOI.Information@inquiry.act.gov.au.

Part C: Hearings

9. The Board has the power to hold hearings to conduct the Inquiry under Division 3.2 of the Act.
10. The Board may direct that certain hearings, or parts of a hearing, be held in private. In all other cases, the hearings will be open to the public and live-streamed via the Inquiry's website.
11. The Board will hold an initial public hearing on **17 April 2023** at which:
 - (a) the Chairperson will make general introductory remarks concerning the nature and scope of the Inquiry;
 - (b) applications for legal representatives to appear at hearings of the Inquiry will be heard (refer to **Part D** of this Practice Guideline for more information on how to apply for leave to appear at a public hearing).
12. Otherwise, the Board is planning to begin public hearings on 26 April 2023. If circumstances change, this date may be changed.
13. Subject to the Chairperson's discretion, all witnesses giving evidence at the public hearings will be called and examined by Counsel Assisting the Inquiry. A witness's examination-in-chief will usually involve the tendering of a statement provided by the witness to Counsel Assisting in advance of the hearing as well as oral evidence.
14. The order of further examination of each witness will usually be:
 - (a) examination by parties given leave to appear;
 - (b) examination by the lawyer representing the witness; and
 - (c) re-examination by Counsel Assisting.
15. The Chairperson may limit the issues about which a witness may be examined and limit the time available for examination by any person.

Part D: Leave to Appear at Public Hearings

16. Persons are free to attend and observe public hearings of the inquiry without seeking leave to appear.
17. A person may only take part in the proceedings personally or by a legal representative if the Chairperson gives leave under s 25(b) of the Act. Leave to appear entitles a person to participate in the proceedings of the Inquiry to such extent as the Chairperson considers appropriate.
18. Leave to appear may be given subject to conditions - including restrictions with respect to the subjects about which a party may cross-examine a witness or make submissions. Any leave to appear may be withdrawn or made subject to additional conditions at any time at the discretion of the Chairperson.
19. A person seeking leave to appear at public hearings should complete the form entitled “Application for Leave to Appear at the Public Hearings of the Board of Inquiry” which is available on the Inquiry’s website.
20. Written submissions attached to the application should be limited to two pages and address:
 - (a) the parts of the Terms of Reference in which the person is interested or in respect of which their interests may be materially affected by the Inquiry and the basis for that interest or how that interest may be materially affected;
 - (b) the parts of the Terms of Reference about which the person has particular knowledge or expertise enabling that person to assist the Board together with details of the knowledge or expertise.
21. Applications for leave to appear should be submitted by **5:00pm AEST on 11 April 2023** to BOI.Information@inquiry.act.gov.au.
22. Paragraph 23 of this Practice Guideline does not prevent anyone seeking leave to appear at any time after 11 April 2023 by contacting the Executive Director by email at BOI.Information@inquiry.act.gov.au or by telephone on (02) 6205 5700 to arrange for the application to be received and considered.

Part E: Subpoenas

23. From time to time, the Chairperson may issue subpoenas pursuant to section 26(1) of the Act requiring persons to attend to give evidence, to produce documents or to give information and answer questions.
24. Any person served with a subpoena may seek leave to be represented by a lawyer while that person is producing information or evidence or giving evidence.

Part F: Witness Statements

25. Statements must:
 - (a) be in the form required by the Board (which will be advised to a witness by the Board when a written statement is requested);
 - (b) attach all documents or copies of documents referred to which are in the witness's possession or control or describe as accurately as possible any such documents which are not in the witness's possession or control and, in that case, state where the witness believes the documents can be found;
 - (c) present any documents in a way that will facilitate the Inquiry's efficient and expeditious reference to them and must:
 - (i) be identified by placing a letter, number or other identifying mark on each exhibit, and by indexing and paginating or tabbing bundles of documents;
 - (ii) with respect to electronic copies, be in fully text-searchable, multi-page PDF format together with relevant metadata as defined in any document management protocol published on the Inquiry's website.
 - (d) where leave to appear by a legal representative has been granted, be prepared by that legal representative;
 - (e) where the witness has no legal representative, be prepared by the witness in consultation with Board staff by arrangement between the witness and the Executive Director.

Part G: Publication and Confidentiality

26. Subject to the Chairperson's determination of any application for confidentiality, any information, witness statements (including exhibits to those statements), documents or

submissions provided to the Board might be published in whole or in part on the Inquiry's website or otherwise made publicly available.

27. Any person or organisation who provides information or evidence to the Board and wishes such material to be treated confidentially should provide the material to the Board together with a written notice stating:
- (a) the part of the material for which confidentiality is sought;
 - (b) whether total confidentiality is sought or whether there is no objection to publication to particular persons or classes of persons; and
 - (c) the ground on which such confidentiality is necessary despite the public nature of the Inquiry.
28. Where confidentiality is sought:
- (a) the Chairperson will decide the application and notify the person or their legal representative of his decision.
 - (b) A person who wishes to object to the decision should give prompt notice of intention to the Board by email to the Executive Director and, in any event, no later than seven clear days after the notification of the decision to publish.
 - (c) The Board will notify the person or their legal representative of a date on which the objection can be heard. The material will be kept confidential until the objection has been heard and determined.
29. Nothing in this guideline should be taken as limiting the Chairperson's powers to treat any material or information as confidential and to take any steps appropriate for the preservation of that confidentiality.



Walter Sofronoff KC
Chairperson
24 February 2023