

Subpoena Number: 2023/S/0013

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

SUBPOENA TO PROVIDE A WRITTEN STATEMENT

To: Mr Michael Chew

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 AEST on 4 April 2023**, by delivering it to Nara House, 3 Constitution Avenue, Canberra City ACT 2601.

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

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

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

Date: 28 March 2023



Walter Sofronoff KC
Chairperson
Board of Inquiry

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

Subpoena 2023/S/0013**Schedule of Questions for Statement****Michael Chew****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. Have you sat, or do you currently sit, on any boards, committees, working groups, or taskforces? If so, provide details of the name of the board, committee, working group, or taskforce, when you started (and finished if applicable) and what role you had/have on the board, committee, working group, or taskforce.
5. **Attach** a current CV.

Tertiary Qualifications

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

Courses and/or Diplomas

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

Employment Chronology

8. Outline any previous policing experience you had before joining the AFP/ACT Policing. Include any previous service history, with dates, and your station, rank and role.
9. When did you first join the AFP?

10. What did your recruitment to the AFP involve? Include details of any training you received during recruitment to the AFP/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. Approximately how many sexual assault investigations have you conducted in your police career? Of those investigations, how many have you conducted in the ACT?
13. 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.
14. Outline your appointment to Deputy Chief Police Officer – Response in ACT Policing. Include details of the job description. **Attach** a job description if one exists.

Training and Education

15. Outline the training and education you have received. Include information about the dates you underwent the training, what the training and education involved and the name of the training provider.
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 Sexual Assault and Child Abuse Team (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. To the extent not addressed above, provide details of your involvement in amending the training and education for SACAT members. Provide details of whether models from other jurisdictions were considered.
21. State whether you are aware of any requirements in relation to psychological assessments for Criminal Investigations/SACAT officers to ensure the wellbeing and welfare of staff. If so, provide details of:
 - (a) whether the assessment is mandatory;
 - (b) when the requirement for psychological assessments for Criminal Investigations/SACAT was introduced;
 - (c) your understanding of how frequently psychological assessments for SACAT members is required; and
 - (d) your awareness of any policy, procedure, guideline and/or governance in relation to psychological assessments for your position.

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

Organisational Structure

22. Outline the AFP/ACT Policing structure/chain of command as at February 2021. Include information about who occupied the positions at that time (including the rank and position that person holds), the function you performed within that structure, who you reported to you and your direct reports.
23. **Attach** a copy of the organisational structure/chart for the AFP/ACT Policing as at February 2021. Identify in the organisational structure/chart the chain of command for the Criminal Investigations/SACAT division, their rank, name and the position they

occupied.

24. Outline the current structure/chain of command for the AFP/ACT Policing. Include information about when the structure changed, why it changed, the function you perform within that structure, who you report to and your direct reports.
25. **Attach** a copy of the current organisational structure/chart for the AFP/ACT Policing. Identify in the organisational structure/chart the chain of command for the Criminal Investigations/SACAT division, their rank, name, and the position they occupy.

Duties and Responsibilities

26. Outline your duties and responsibilities as the Deputy Chief Police Officer – Response in ACT Policing in relation to Criminal Investigations/SACAT. Include information about who you directly report to, your direct reports and the approximate number of officers you supervise. Provide details of your responsibilities in relation to making decisions about gathering evidence and decision to charge. **Attach** a copy of any relevant agreements, policies and/or guidelines.
27. 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.

Triage Process for Sexual Assault Complaints

28. 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.
29. 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

30. Outline the extent of your involvement (if any), as Deputy Chief Police Officer - Response, in relation to a sexual assault investigation. State whether this has changed during the past four years. If so, provide details of how your involvement was different and how, when and why the process changed.
31. Outline the typical process of conducting a sexual assault investigation from the perspective of your position. Include the following information:
 - (a) 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
 - (b) whether you typically have any direct contact with the DPP/ODPP, the complainant and/or the accused. If so, provide examples of the instances in which you would have direct contact with these persons.

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

32. State the duties and responsibilities of the following officers generally and in relation to conducting a sexual assault investigation:
 - (a) Detective Superintendent;
 - (b) Detective Inspector;
 - (c) Detective Sergeant; and
 - (d) Constable (of all relevant divisions).
33. In your experience, state whether you have been involved in a sexual assault investigation in which the Detective Superintendent is actively involved in the investigation. If so, provide details of the level and nature of the Superintendent's involvement.
34. 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.
35. Describe the AFP/ACT Policing's "victim-centric" approach to liaising with sexual assault complaints. Provide examples to illustrate the approach where appropriate.
 36. Explain your understanding of the threshold to charge a person with a sexual offence in the ACT. 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.
 37. If your understanding of the threshold to charge a person with a sexual offence has changed in any way over the past four years, explain when, how and why it has changed.
 38. 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.
 39. 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. If the process has changed during the past four years, outline how the process was different and how, when and why the process changed. **Attach** a copy of the relevant documents, guidelines, policies, procedures and/or governance material.
 40. 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.
 41. Outline the process for discontinuing an investigation at the request of a complainant. Provide details of whether you receive a briefing in relation to this and whether you provide a subsequent briefing to your direct report(s). If the process has changed during

the past four years, outline how the process was different and how, when and why the process changed. **Attach** a copy of the relevant documents, guidelines, policies, procedures and/or governance.

42. 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

43. 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.
44. 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

45. 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**).
46. 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.

47. 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.
48. 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.

Sensitive Investigations Oversight Board (SIOB)

49. State whether you have read the "Review into the AFP's Response to and Management of Sensitive Investigations" by Mr John Lawler AM APM dated 17 January 2020 (**the Lawler Review**).
50. Outline the circumstances, which you are aware of, that gave rise to the formation of the Sensitive Investigations Oversight Board (**SIOB**). State when the SIOB was formed.
51. Outline the purpose of the SIOB. Provide details of the types of matters the SIOB review and what role the SIOB undertakes in relation to a sensitive investigation (i.e. whether the SIOB evaluates or investigates sensitive investigations). State whether the SIOB reviews investigations in both the Commonwealth and ACT jurisdictions. If so, provide details of whether the process for reviewing Commonwealth and ACT jurisdiction sensitive investigations differs and, if so, how the process differs. **Attach** a copy of any referenced agreement, policy, procedure, guideline and/or governance.
52. Outline the AFP positions which sit on the SIOB. Provide details of whether you have sat on the SIOB during your time as Deputy Chief Police Officer – Response and what

your duties and responsibilities are (if any) in reporting to the SIOB. **Attach** a copy of any referenced agreement, policy, procedure, guideline and/or governance.

53. Explain the definition of a '*sensitive*' investigation and how this differs from the definitions of '*politically sensitive investigation*' in the AFP National Guideline on Politically Sensitive Investigations and '*politically sensitive matters*' in the Memorandum of Understanding (MOU) between the AFP and the Australian Electoral Commission (AEC). Provide practical examples where appropriate. **Attach** a copy of the AFP National Guideline on Politically Sensitive Investigations, the MOU between the AFP and the AEC, and any referenced agreement, policy, procedure, guideline and/or governance.
54. Outline the process of how an investigation is classified as a sensitive investigation and how sensitive investigations are evaluated by the SIOB. Provide details of:
- (a) what stage of an investigation a matter is typically classified as a sensitive investigation. Include details of the circumstances which may give rise to the need to brief the SIOB and the nature of the evidence typically obtained at that stage. Provide practical examples where appropriate;
 - (b) What is the process for a matter to be referred to the SIOB, including the chain of command for raising a potential sensitive investigation to SIOB and the briefings that are required. Include references to the briefing templates utilised;
 - (c) whether any preliminary briefings are prepared and/or provided to you, as the Deputy Chief Police Officer - Response, in relation to a potential sensitive investigation. Include references to what preliminary briefings are required and your duties and responsibilities in actioning the briefings; and
 - (d) the actions SIOB takes once a brief in relation to a potential sensitive investigation is received. Provide detail of whether recommendations from SIOB are typically in writing or verbal and to whom the recommendations are provided to.

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

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

55. 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.
56. During 2021, did you attend regular meetings with the DPP/ODPP? If so, outline your involvement 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).
57. Outline the typical level of involvement you have, as the Deputy Chief Police Officer – Response, with the DPP directly or with the ODPP in an investigation/matter concerning sexual assault.
58. 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.
59. 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.

Victims of Crime Commissioner

60. Outline your professional dealings (if any) with the Victims of Crime Commissioner prior to the matter of *R v Lehrmann*.
61. 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.
62. Prior to *R v Lehrmann* state whether you been involved in 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.

Investigation

Involvement in the Investigation in 2019

63. When did you first become aware of the Investigation? Include information about who informed you of the Investigation, details of the information provided, whether you had any prior awareness of the complaint and whether you briefed anyone in relation to the information provided. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. To the extent communications were verbal outline the parties to the communications and the effect of the words spoken (**the usual particulars**).
64. In chronological order, outline your interactions in relation to the Investigation in 2019. 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

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, 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) any briefings you received by AFP/ACT Policing officers in relation to the Investigation, including information/briefings you received in Musters;
- (h) any briefings you provided in relation to the Investigation; and
- (i) your overall impressions of the interaction.

The following dates must be included:

- (j) 20 October 2019.

Attach a copy of 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 5 February 2021 to 6 August 2021

65. When did you first become aware of the reinstatement of the Investigation in 2021? Include information about who informed you of the Investigation, details of the information provided, whether you had any prior awareness of the complaint, of your involvement and whether you briefed anyone in relation to the information provided.
- Attach** a copy of 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.

66. In chronological order, outline your interactions in relation to the Investigation from 5 February 2021 up until 6 August 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 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, 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) any briefings you received by AFP/ACT Policing officers in relation to the Investigation, including:
 - i. in Musters;
 - ii. weekly briefings with Detective Superintendent Scott Moller;
 - iii. the Minute titled “Op Covina Direction / Decision – Alleged Sexual Assault Australian Parliament House 23 March 2019” by Detective Inspector Marcus Boorman dated 4 June 2021 (**the Boorman Minute**); and
 - iv. the Executive Briefing titled “Seeking direction in relation to Operation COVINA – alleged sexual intercourse without consent, Australian Parliament House 23rd March 2019” by Detective Superintendent Moller dated 7 June 2021 (**the Moller Executive Briefing**);
 - (h) any briefings you provided to your direct report(s) and the nature of those briefings, including in relation to Senate Estimates;

- (i) any briefings you provided to Chief Police Officer Neil Gaughan;
- (j) any discussions you had with AFP/ACT Policing officers in relation to whether the Investigation should be classified as a ‘sensitive investigation’;
- (k) whether you were involved in any briefings of the Investigation to the SIOB and/or whether you were involved in any discussions in relation to briefing the SIOB. Provide details of when the matter was classified as a ‘sensitive investigation’;
- (l) any regular meetings with the DPP/ODPP you attended in your role as Deputy Chief Police Officer – Response in which the Investigation and/or any AFP/ACT Policing officers involved in the Investigation were discussed;
- (m) any discussions/correspondence with the DPP in relation to engaging with the media and/or providing updates to the media on the AFP/ACT Policing seeking advice from the DPP or the status of the Investigation generally;
- (n) in relation to your discussion with Detective Superintendent Scott Moller on or around 17 June 2021, whether you advanced a view to Detective Superintendent Moller to the effect of “*insufficient evidence to proceed... I had a meeting with the DPP who stated they would support Prosecution. If it was my choice I wouldn’t proceed, but it’s not my choice, there is too much political interference*”. Provide reasons for the basis of your views;
- (o) whether any concerns were raised to you in relation to Ms Higgins’ mental health. If so, provide details of what you were aware of, when you became aware and who raised the concerns; and
- (p) your overall impressions of the interaction.

The following dates must be included:

- (q) 8 February 2021;
- (r) 7 June 2021;
- (s) 17 June 2021;
- (t) 2 July 2021;
- (u) 7 July 2021;
- (v) 29 July 2021;
- (w) 30 July 2021; and
- (x) 5 August 2021.

Attach a copy of 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.

67. To the extent not addressed above, state whether you were aware of the internal investigation review conducted by Commander Andrew Smith in July/August 2021 in relation to the Investigation. If so, provide details of:
- (a) who informed you;
 - (b) when you were informed;
 - (c) what you were informed of;
 - (d) whether any recommendations from the review were considered prior to charging Mr Lehrmann, and if so provide details of:
 - i. when the recommendation(s) were actioned;
 - ii. who actioned the recommendation(s); and
 - iii. whether a recommendation was not actioned and the reasons as to why; and
 - (e) your overall impressions.

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

Advice Provided by the DPP

68. To the extent not addressed above, outline your views in relation to obtaining advice from the DPP in the Investigation. Provide details of:
- (a) when you formed the view that advice from the DPP should be obtained;
 - (b) the reasons for your views;
 - (c) whether any AFP/ACT Policing officers held differing views to you in relation to this and the reasons for their views;
 - (d) what you perceived to be the purpose of providing a preliminary brief of evidence to the DPP. Include information as to whether you perceived the preliminary brief of evidence to be sufficient and provide reasons for your views;

- (e) whether you thought it was the responsibility of the DPP to adjudicate the brief of this stage. Provide reasons for your views;
- (f) whether the nature of the briefing note provided to the DPP with the preliminary brief of evidence included the usual level of detail/comment about an investigation. Provide reasons for your views;
- (g) why the Boorman Minute and Moller Executive Briefing were provided to the DPP with the preliminary brief of evidence. Provide details of whether you directed any AFP/ACT Policing officers to include these documents with the briefing note to the DPP.

Attach a copy of the briefing letter provided to the DPP on or around 18 June 2021 and communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.

- 69. State whether, in your experience, the AFP/ACT Policing 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.
- 70. Outline your involvement (if any) in directing and/or preparing the preliminary brief of evidence to the DPP that was served on the DPP on or about 21 June 2021. Provide details of what your directions were, the reasons for your directions and/or extent of your involvement in the preparation of the preliminary brief of evidence. **Attach** a copy of the relevant index to the brief of evidence.
- 71. 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.
- 72. 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.

73. 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 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.
74. State whether there was a suggestion by you or made to you by other AFP/ACT Policing officer to obtain independent legal advice in relation to the Investigation. If so, provide details of who made the suggestion, what decision was made (if any) and the reasons for the decision.

Decision to Charge

75. Outline when you formed the view that there was sufficient evidence to charge Mr Lehrmann. Provide details of the reasons for your views. Outline any directions you made to the AFP/ACT Policing officers involved and/or whether you provided any briefings to any AFP/ACT Policing officers in relation to charging Mr Lehrmann. Provide details of whether:
- (a) you directed any officer to charge Mr Lehrmann. If so, provide reasons as to who you provided the direction to, what your direction was and why you made the direction; and
 - (b) the officer allocated to charge Mr Lehrmann and/or any other AFP/ACT Policing officer raised any concerns with you in relation to charging Mr Lehrmann. If so, provide details of what concerns were raised and what you did to address the concerns.

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

76. State whether you had received any pressure from within the AFP/ACT Policing and/or

the DPP to charge Mr Lehrmann and whether you relayed this information onto any AFP/ACT Policing officers (either directly or indirectly) to charge Mr Lehrmann. If so, provide details as to from where and whom the pressure arose/was directed to.

77. Outline the usual process for informing a complainant that a charge would be preferred on the accused. State whether you were aware that Ms Higgins and/or the Victims of Crime Commissioner had been consulted following the decision to charge Mr Lehrmann. Provide details of the extent of your awareness. **Attach** a copy of any referenced legislative provision, agreement, policy, procedure, guideline, governance material 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.
78. 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.

Summons, Brief of Evidence and Disclosure

79. Outline whether the usual adjudication process was followed in the Investigation in the first instance. If not, provide details of what alternate process was followed and:
- (a) why the usual process was not followed;
 - (b) whether you raised any concerns or questioned why the usual process was not followed;
 - (c) who (if anyone) advised you to proceed with an alternate process including when you were advised, or alternatively, whether you directed this alternate process and when;
 - (d) what you were told in relation to serving the Summons and/or brief of evidence directly on the legal representatives for Mr Lehrmann;
 - (e) what were the risks and benefits of the alternate process and whether these risks and benefits were considered by you; and
 - (f) whether you were aware of anyone reviewing the brief of evidence prior to it being

served, and if so, who/which officers you understood to be undertaking the review.

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.

80. Outline your involvement (if any) in preparing the Summons and/or brief of evidence for the DPP/ODPP and/or the legal representatives for Mr Lehrmann. **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.
81. 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 and the brief of evidence served upon the Defence with the Summons and up until the date the brief of evidence was rectified. 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. reasons why you directed the brief of evidence to be served directly on the legal representatives for Mr Lehrmann;
 - ii. whether any concerns were raised about the disclosure issue; and
 - iii. steps taken by the AFP/ACT Policing to rectify the issue;
 - (g) any briefings in which you were involved in;
 - (h) the plan devised to serve the Summons and/or brief of evidence. Provide details of each stage during which the plan was devised, who devised the plan and was involved in its execution, what the plan involved (and whether it changed at any stage), why a plan was devised and whether it was usual in such investigations;
 - (i) whether you directed the AFP/ACT Policing officers involved in the Investigation

in any way to serve the brief of evidence quickly. Provide details of what you meant by your remarks;

- (j) in the development of the plan who decided and directed that the brief of evidence be directly served on the legal representatives for Mr Lehrmann with the Summons which is outside the usual process for service of briefs of evidence and how was this communicated to the Investigation team;
- (k) was the DPP consulted in the development of the plan for the service of the brief of evidence directly on the legal representatives for Mr Lehrmann with the Summons;
- (l) in the development of the plan did you consider the risks and benefits of the serving the brief of evidence directly on the legal representatives for Mr Lehrmann;
- (m) whether you directed any AFP/ACT Policing officers to not contact Ms Higgins and/or the Victims of Crime Commissioner in relation to when the brief of evidence would be or was served; and
- (n) 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.

82. Outline your involvement (if any) in the preparation of the Disclosure Certificates in the matter of *R v Lehrmann* and any communications had with AFP/ACT policing officers, AFP Legal and/or the DPP/ODPP. 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.
83. 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.

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

84. 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*. 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) whether any concerns were raised by the DPP/ODPP in relation to alleged missing CCTV footage, including what you did in relation to the DPP/ODPP's concerns;
 - (h) whether it was unusual and the basis for your views. Provide examples where appropriate;
 - (i) whether any concerns were raised to you in relation to Ms Higgins' mental health. If so, provide details of what you were aware of, when you became aware and who raised the concerns; and
 - (j) 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.

85. 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.
86. State whether you received updates in relation to the trial in the matter of *R v Lehrmann*, including in a Signal encrypted AFP/ACT Policing group chat in relation to updates in the trial in the matter of *R v Lehrmann*. If so, provide details of the nature of the updates

you received and whether you actioned any items arising from the updates. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.

Bail

87. 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.

1 November 2022 Correspondence

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

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

89. State whether you discussed the content of the 1 November 2022 with any person

(including any AFP/ACT Policing officers, the DPP/ODPP, the Victims of Crime Commissioner or media). If so, provide details of:

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

Attach a copy of 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.

90. Outline your involvement (if any) in enquiries surrounding documents disclosed by the DPP through a Freedom of Information request received on or about 8 December 2022 in relation to the 1 November 2022 Correspondence. Provide details of the extent of your involvement in any discussions surrounding the disclosure and whether a complaint was referred to the ACT Ombudsman. **Attach** a copy of 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.

Impressions of the DPP/ODPP during the Investigation and Trial in the Matter of *R v Lehrmann*

91. Outline any issues and concerns you had regarding the DPP's conduct during the Investigation and/or trial in the matter of *R v Lehrmann*. Did you express these issues and concerns to anyone? If so, provide information about to whom 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.
92. State whether you observed a breakdown of the relationship with the DPP/ODPP and the

AFP/ACT Policing during the Investigation and/or trial in the matter of *R v Lehrmann*. 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.

93. Outline your impression of the treatment by the DPP/ODPP in relation to the Investigation and/or trial in the matter of *R v Lehrmann* towards you and other AFP/ACT Policing officers involved. Provide details of your impressions and examples where appropriate.

Impressions of the Victims of Crime Commissioner during the Investigation and Trial in the Matter of *R v Lehrmann*

94. Outline any issues and concerns you had regarding the Victim of Crime Commissioner's conduct during the Investigation and/or trial in the matter of *R v Lehrmann*. Did you express these issues and concerns to anyone? If so, provide information about to whom 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.
95. State whether you observed a breakdown of the relationship with the Victims of Crime Commissioner (or her staff) and the AFP/ACT Policing during the Investigation and/or trial in the matter of *R v Lehrmann*. 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.
96. Outline your impression of the treatment by the Victims of Crime Commissioner (or her staff) in relation to the Investigation and/or trial in the matter of *R v Lehrmann* towards you and other AFP/ACT Policing officers involved. Provide details of your impressions and examples where appropriate.
97. To the extent not addressed above, state whether you perceived there to be any AFP/ACT Policing officers felt intimidated in any way by the presence of the Victims of Crime

Commissioner during the Investigation and/or trial in the matter of *R v Lehrmann*. State whether any officers raised concerns with you. If so, provide details of when the concerns were raised and the nature of the concerns.

Media

98. 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.
99. 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.
100. Outline any media releases from the AFP/ACT Policing you were involved in preparing or otherwise discussed with any other persons (including the DPP/ODPP and Victims of Crime Commissioner). Provide details of the AFP/ACT policies, procedures, guidelines and/or governance in relation to publicly commenting on investigations. Include information about whether comments are typically made in relation to referring investigations to the DPP or the status of an investigation. **Attach** a copy of the media release(s), any relevant policy, procedure, guideline, governance, and any relevant communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.
101. To the extent not addressed above, outline the communications (if any) you have personally received and/or had with the media in relation to the matter of *R v Lehrmann*. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, social media messages, calendar invitations,

calendar appointments, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

Board of Inquiry

102. 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.

103. 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.