

Subpoena Number: 2023/S/0023

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

SUBPOENA TO PROVIDE A WRITTEN STATEMENT

To: Mr Robert Rose

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/0023**Schedule of Questions for Statement****Robert Rose****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 your tertiary qualifications. Include details of where and when you obtained those tertiary qualifications.

Courses and/or Diplomas

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

Employment Chronology

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

11. 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.
12. Outline your appointment to Team Leader of the Brief Management Team (**BMT**). Include details of the job description. **Attach** a job description if one exists.
13. Approximately how many sexual assault investigations have you conducted in your police career? Of those investigations, how many have you conducted in the ACT?

Training and Education

14. Outline the training and education you have received on and related to compiling briefs for AFP/ACT Policing. Include information about the dates you underwent the training, what the training and education involved and the name of the training provider. **Attach** a copy of your training record and the relevant training documentation/course material.
15. 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.

Organisational Structure

16. Outline the AFP/ACT Policing structure/chain of command for the BMT as at August 2021. Include information about who occupied those positions at that time (including the rank and position that person holds) and the function you performed within that structure.
17. **Attach** an organisational structure/chart for the AFP as at August 2021. Identify in the organisational structure/chart each person in the BMT and Adjudication divisions, their rank and the position they occupied.

Duties and Responsibilities

18. Explain your understanding of what a police officer's duties and responsibilities are in compiling briefs of evidence. 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.
19. Outline your duties and responsibilities as a Team Leader in the BMT. Include information about who you directly report to, your direct reports and the approximate number of staff you supervise. **Attach** a copy of any relevant agreements, policies and/or guidelines.
20. Outline the roles, duties and responsibilities of the staff in the BMT. Provide practical examples of the tasks the staff in BMT undertake. **Attach** a copy of any relevant agreements, policies and/or guidelines.
21. Outline the duties and responsibilities of the Adjudication and Practice Team Leader. **Attach** a copy of any relevant agreements, policies and/or guidelines.
22. Outline the roles, duties and responsibilities of the staff in Adjudications. Provide practical examples of the tasks the staff in Adjudications undertake. **Attach** a copy of any relevant agreements, policies and/or guidelines.

Challenges, Issues and/or Pressures

23. 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 and/or brief compilation process. Provide examples where possible.
24. 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 and/or brief compilation process. Provide examples where possible.

Report of the Sexual Assault Prevention and Response Steering Committee

25. 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**).
26. 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.

27. 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.
28. Outline whether you have observed or driven a cultural shift within the AFP/ACT Policing in its investigation and charging of sexual assault offences since the release of the Steering Committee’s Report. Provide details of the extent of any cultural shift and the reasons for your views.

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

29. 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.

30. During 2021, did the ODPP and AFP/ACT Policing hold regular meetings in relation to brief compilations? If so, outline your involvement (if any) in those meetings. Include details about the general nature of those meetings, including who was required to attend, the purpose and frequency of the meetings, whether any file notes were kept and by whom, and the extent of your involvement (if any).
31. 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.
32. 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

33. Outline your professional dealings (if any) with the Victims of Crime Commissioner prior to the matter of *R v Lehrmann*.
34. 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.

35. Prior to *R v Lehrmann* state whether you have observed the Victims of Crime Commissioner (or her staff) supporting 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.

Brief Management Team & Adjudication

36. Outline how the BMT and Adjudication divisions intersect (if at all) and provide practical examples where appropriate. **Attach** a copy of any relevant documents, guidelines, policies, procedures and/or governance material.
37. State whether each station in the ACT has an Adjudication and Practice Team Leader and Brief Adjudication team member. If so, provide details of the number of stations in the ACT and how many team members are allocated to each station. **Attach** a copy of any relevant documents, guidelines, policies, procedures and/or governance material.
38. Explain the difference between a summons brief and a hearing brief. Provide details of the documents and evidence that are typically included in each type of brief, and which division typically undertakes preparation of summons briefs and hearing briefs. **Attach** a copy of any relevant documents, guidelines, policies, procedures and/or governance material.
39. 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.
40. State whether, in your experience, you have ever served a brief of evidence directly on the legal representatives for a defendant. If so, provide details of the instance in which the service occurred.
41. Explain the redaction process undertaken by AFP/ACT Policing in compiling briefs of

evidence. Provide details as to the information that is typically redacted and who typically undertakes the process. **Attach** a copy of any relevant documents, guidelines, policies, procedures and/or governance material. If the process has changed during the past four years, outline how the process was different and how, when and why the process changed.

The Investigation

42. 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**).
43. In chronological order, outline your interactions in relation to the Investigation in 2021 prior to your involvement in compiling the brief of evidence. Include in your response any involvement with AFP/ACT Policing officers, the DPP/ODPP staff, Mr Lehrmann, legal representatives for Mr Lehrmann, Ms Higgins, legal representatives for Ms Higgins and/or the Victims of Crime Commissioner. Include the following information about the interaction:
- (a) who initiated/arranged the interaction;
 - (b) the purpose of the interaction;
 - (c) where the interaction took place;
 - (d) the people in attendance;
 - (e) any evidence/material you were provided, including when you reviewed the evidence/material;
 - (f) the nature of the interaction in relation to:
 - i. the progress of the Investigation, including the evidence obtained and yet to be obtained;
 - ii. your views in relation to the prospects of the matter and the reasons for your views (in particular, in relation to threshold to charge); and
 - iii. your views in relation to the conduct of the Investigation to date, including

the reasons for your views;

- (g) your impressions of the interaction;
- (h) the briefing you received in relation to supervising officers allocated to conduct enquiries related to correspondence received from the DPP. Provide details of what you were briefed in relation to this, who you supervised, what tasks were undertaken, and why you were allocated to supervise the officers; and
- (i) in relation to your engagements with Ms Higgins (if any), whether you were involved in any discussions with other AFP/ACT Policing officers, the DPP/ODPP staff, legal representatives for Ms Higgins and/or the Victims of Crime Commissioner following any of the interactions.

The following date must be included:

- (j) 6 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.

44. To the extent not addressed above, state the date you transferred responsibility for the supervision/tasks provided to you on or around 6 July 2021. Provide details of who you handed your duties over to and what information was provided in the handover. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.

Brief of Evidence

45. State when Detective Superintendent Scott Moller directed you to facilitate the brief of evidence in the Investigation/matter of *R v Lehrmann*. Provide details of what you were told. **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.

46. State whether Detective Superintendent Moller took you “offline” (that is, away from your other duties) to compile the brief of evidence in the Investigation/matter of *R v Lehrmann*. If so, provide details of who you handed your duties to. If not, provide details of what other role(s)/duties and/or investigations you were undertaking at this time. **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.
47. In chronological order, outline your interactions in relation to the preparation of the brief of evidence in the Investigation/matter of *R v Lehrmann* on or around 5 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 the following information about the interaction:
- (a) who initiated/arranged the interaction;
 - (b) the purpose of the interaction;
 - (c) where the interaction took place;
 - (d) the people in attendance;
 - (e) any evidence/material you were provided, including when you reviewed the evidence/material;
 - (f) the nature of the interaction;
 - (g) your impressions of the interaction;
 - (h) in relation to your engagements with Ms Higgins (if any), whether you were involved in any discussions with other AFP/ACT Policing officers, the DPP/ODPP staff, legal representatives for Ms Higgins and/or the Victims of Crime Commissioner following any of the interactions.

The following date must be included:

- (i) 6 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.

48. State whether you raised concerns with Detective Superintendent Moller and/or any other AFP/ACT Policing officers in relation to departing from the usual adjudication process in this instance. Provide details of why you did/did not raise 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.
49. State whether any concerns were raised to you by any AFP/ACT Policing officers in relation to departing from the usual adjudication process in this instance. If so, provide details of who raised the concerns, the nature of their concerns and what steps you took to address/manage their 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.
50. In chronological order, outline your interactions after the brief of evidence was served on the legal representatives for Mr Lehrmann. Include in your response any involvement with AFP/ACT Policing officers, the DPP/ODPP staff, Mr Lehrmann, legal representatives for Mr Lehrmann, Ms Higgins, legal representatives for Ms Higgins and/or the Victims of Crime Commissioner. Include the following information about the interaction:
- (a) who initiated/arranged the interaction;
 - (b) the purpose of the interaction;
 - (c) where the interaction took place;
 - (d) the people in attendance;
 - (e) any evidence/material you were provided, including when you reviewed the evidence/material;
 - (f) the nature of the interaction;
 - (g) your impressions of the interaction;
 - (h) in relation to your engagements with Ms Higgins (if any), whether you were involved in any discussions with other AFP/ACT Policing officers, the DPP/ODPP staff, legal representatives for Ms Higgins and/or the Victims of Crime Commissioner following any of the interactions.

The following date must be included:

- (i) 21 September 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.

Impressions of the DPP/ODPP during the Investigation

51. Outline any issues and concerns you had, or were otherwise made aware of, regarding the DPP's conduct during the Investigation. 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.
52. 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.
53. Outline your impression of the treatment by the DPP/ODPP in relation to the Investigation 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

54. Outline any issues and concerns you had, or were otherwise made aware of, regarding the Victim of Crime Commissioner's conduct during the Investigation. 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.

55. 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. 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.
56. Outline your impression of the treatment by the Victims of Crime Commissioner (or her staff) in relation to the Investigation towards you and other AFP/ACT Policing officers involved. Provide details of your impressions and examples where appropriate.
57. To the extent not addressed above, state whether you were aware of any AFP/ACT Policing officers feeling 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. **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

58. 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

59. 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.

60. 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.
61. 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

62. 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.
63. 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.