

Subpoena Number: 2023/S/0025

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

SUBPOENA TO PROVIDE A WRITTEN STATEMENT

To: Mr Neil Gaughan

Of: Australian Federal Police
C/- Mr Tony Giugni
Australian Government Solicitor
Level 5, 4 National Circuit
BARTON ACT 2604

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/0025**Schedule of Questions for Statement****Chief Police Officer for ACT Policing Neil Gaughan****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. 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. Include details about what the training involved, the organisation/department that provided the training and when you received the training.
11. Outline your service history with the AFP. Include your rank, where you were stationed, the dates you held the various positions and the description of the role/job/work performed by you in the various positions. Include your rank at the relevant times. Outline the section and unit in which the position sat and the general description of the purpose of the relevant section and unit.
12. When did you start recruitment training with the AFP/ACT Policing? Include details of the training involved and the organisation/department that provided the training.
13. Outline your appointment to the Chief Police Officer for ACT Policing (**the ACT CPO**). Include details of the job description. **Attach** a job description if one exists.

Training and Education

14. 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.

AFP Training College

15. Outline the arrangements between the AFP and ACT Government in relation to providing training for AFP/ACT Policing officers. Include details of the reasons for the arrangements. **Attach** a copy of any referenced agreement, policy, procedure, guideline and/or governance.
16. Outline the training course material provided to AFP/ACT Policing officers. Include information about whether specific training relevant to the ACT jurisdiction and conducting sexual assault investigations is provided. **Attach** a copy of the relevant

training documentation/course material. If already attached and/or provided, refer to the relevant parts of your statement.

17. Outline any amendments to the training and education provided by the AFP Training College for AFP/ACT Policing officers in relation to conducting sexual assault investigations in the past four years. Provide details of when the amendments were made, what was amended, the extent of your involvement (if any), whether models from other jurisdictions were evaluated and the reasons for the amendments. **Attach** a copy of the relevant training documentation/course material.

AFP/ACT Policing Arrangements

18. Outline the relationship between AFP and ACT Policing. Explain the governance material in relation to the AFP's provision of community policing to the ACT. Include details about the AFP and ACT obligations pursuant to the governance material. The following must be explained:
 - (a) Policing Arrangement between the between the Minister for Justice of the Commonwealth and the ACT Minister for Police and Emergency Services;
 - (b) Ministerial Direction by the ACT Minister for Police and Emergency Services to the ACT CPO; and
 - (c) Purchase Agreement between the ACT Government and the AFP.

Attach a copy of all relevant governance material.

19. Outline the distinction between the matters which fall within the AFP and ACT Policing jurisdictions. Include information about how conflicts are managed when the two jurisdictions intersect. Provide practical examples. **Attach** a copy of any referenced agreement, policy, procedure, guideline and/or governance material. If already attached and/or provided, refer to the relevant parts of your statement.
20. Explain the Four Pillars of the ACT Policing Police Services Model. **Attach** a copy of the Police Services model and any other relevant agreement, policy, procedure, guideline and/or governance. If already attached and/or provided, refer to the relevant parts of your

statement.

21. Explain any other relevant Practical Guides in relation to the relationship between AFP/ACT Policing. Include reference and information about your Statement of Intent to the Minister for Police and Emergency Services dated 22 November 2022 (**ACT CPO 2023 Statement of Intent**). **Attach** a copy of any referenced Practical Guide, the ACT CPO 2023 Statement of Intent and any other agreement, policy, procedure, guideline and/or governance. If already attached and/or provided, refer to the relevant parts of your statement.

Organisational Structure

22. Outline the AFP structure/chain of command in relation to your role and ACT Policing as at April 2019. 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.
23. **Attach** an organisational structure/chart for ACT Policing as at April 2019. Identify in the organisational structure/chart each person in the chain of command for the ACT Policing Criminal Investigations/Sexual Assault and Child Abuse Team (**SACAT**). Include details of their rank and the position they occupied.
24. Outline the AFP structure/chain of command in relation to your role and ACT Policing as at April 2020. 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.
25. **Attach** an organisational structure/chart for the AFP as at April 2020. Identify in the organisational structure/chart each person in the chain of command for the ACT Policing Criminal Investigations/SACAT. Include details of their rank and the position they occupied.
26. Outline the AFP structure/chain of command in relation to your role and ACT Policing as at February 2021. Include information about who occupied those positions at that time (including the rank and position that person holds) and the function you performed within

that structure.

27. **Attach** an organisational structure/chart for the AFP as at February 2021. Identify in the organisational structure/chart each person in the chain of command for the ACT Policing Criminal Investigations/SACAT. Include details of their rank and the position they occupied.
28. Outline the current structure/chain of command for the AFP. Include information about when the structure changed, why it changed and the function you perform within that structure.
29. **Attach** a current organisational structure/chart for the AFP in relation to the chain of command for ACT Policing. Identify in the organisational structure/chart each person in the Criminal Investigations/SACAT, their rank, and the position they occupy.

Duties and Responsibilities

30. Outline your duties and responsibilities as the ACT CPO. Include information about who you directly report to and your direct reports. **Attach** a copy of any relevant agreements, policies and/or guidelines.
31. 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.

Investigating Sexual Assault Complaints

32. Outline the extent of your involvement (if any), as ACT CPO, in relation to a sexual assault investigation. State whether this has changed during the past three years. If so, provide details of how your involvement was different and how, when and why the process changed.
33. 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. If already attached and/or provided, refer to the relevant parts of your statement.

- 34. 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).
- 35. 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.
- 36. Describe the AFP/ACT Policing's "victim-centric" approach to liaising with sexual assault complaints. Provide examples to illustrate the approach where appropriate.
- 37. Explain your understanding of the threshold to charge a person with a sexual offence 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.
- 38. 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.

39. Explain the process that is undertaken by AFP/ACT Policing when a further statement or further information is required from a complainant. **Attach** a copy of the relevant documents, guidelines, policies, procedures and/or governance material. If the process has changed during the past four years, outline how the process was different and how, when and why the process changed.
40. Following an investigation, explain the process that is undertaken by AFP/ACT Policing in advising and/or consulting with complainants when a decision is made to charge or not to charge. 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.
41. State whether you believe any underlying cultural views have existed within the AFP in the past four years with respect to conducting sexual assault investigations. Specifically, whether sexual assault complainants are treated differently to other victim/survivors of crime.
42. Outline your involvement (if any) when a complainant requests to discontinue an investigation. 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 material.
43. State whether you believe any underlying cultural views have existed within the AFP in the past four years with respect to conducting sexual assault investigations *after* it has been reinstated by a complainant. Specifically in such instances, whether the sexual assault complainant is treated differently to other victim/survivors of crime and whether the conduct of the investigation is therefore affected in any way.

Challenges, Issues and/or Pressures

44. Explain any issues, challenges and/or pressures you perceive to have existed *within* the

AFP/ACT Policing in the past four years. Specifically, in relation to the conduct of sexual assault investigations. Include information about the training, size, recruitment and resources of ACT Policing. Provide examples where possible.

45. Explain any issues, challenges and/or pressures you perceive to exist *external* to the AFP/ACT Policing. Specifically, in relation to the conduct of sexual assault investigations. Include information about the environment in which ACT Policing operates and any complexities in the AFP/ACT Policing arrangement. Provide examples where possible.

Sensitive Investigations Oversight Board (SIOB)

46. 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**).
47. State when the SIOB was formed.
48. Outline the formation of the Sensitive Investigations Oversight Board (**SIOB**). Provide details of which positions sit on the SIOB, who chairs the SIOB, whether you have a position in relation to the SIOB, the duties and responsibilities of each position on the SIOB and the reasons for this formation. **Attach** a copy of any referenced agreement, policy, procedure, guideline and/or governance.
49. Outline the purpose of the SIOB. Provide details of the types of matters the SIOB reviews 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.
50. 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.

51. Outline the process of how an investigation is classified as a sensitive investigation. Provide details of 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. **Attach** a copy of any referenced agreement, policy, procedure, guideline and/or governance.
52. Outline the process of how sensitive investigations are evaluated by the SIOB. Provide details of:
 - (a) what briefings are prepared to the SIOB, including the chain of command for raising a potential sensitive investigation to SIOB. Include references to the briefing templates utilised;
 - (b) whether any preliminary briefings are prepared and/or provided to you, as Chief Police Officer, in relation to a potential sensitive investigation. Include references to what preliminary briefings are required and your duties and responsibilities in actioning the briefings;
 - (c) the actions SIOB takes once a brief in relation to a potential sensitive investigation is received; and
 - (d) the general nature of the decisions SIOB commonly provides. Specially, in relation to whether to charge. 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.

53. Outline your involvement (if any) in relation to the SIOB. State whether you are responsible for briefing matters to the SIOB and/or relaying recommendations/comments

from SIOB. If so, provide details of the nature of investigations in which you brief to SIOB and/or relay recommendations/comments in relation to.

Report of the Sexual Assault Prevention and Response Steering Committee

54. 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**).
55. 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.

56. Outline whether you have observed or driven a cultural shift within the AFP/ACT Policing in the 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.
57. Outline whether you have observed a cultural shift within the DPP/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.
58. Outline whether you have observed a cultural shift in relation to the Victims of Crime Commission in providing support/assistance to victim/survivors of sexual assault since the release of the Steering Committee's Report. Provide details of the extent of any cultural shift and the reasons for your views.

59. State whether have had any involvement in relation to the Oversight Committee that was formed in response to recommendation 15 of the Steering Committee's Report. If so, provide details of:
- (a) the extent of your involvement;
 - (b) when it was formed;
 - (c) what the Terms of Reference are;
 - (d) what reviews/investigations the working group is undertaking/seeking to undertake; and
 - (e) where the working group is up to in their reviews/investigations.

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

60. 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.
61. 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).
62. Outline the typical level of involvement you have, as ACT CPO, with the DPP directly or with the ODPP in an investigation/matter concerning sexual assault.
63. Describe 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.
64. State whether your professional relationship with the DPP and/or ODPP changed after the commencement of the Investigation. If so, provide details about how the relationship

changed and provide examples where appropriate.

Victims of Crime Commissioner

65. Outline your professional dealings (if any) with the Victims of Crime Commissioner prior to the matter of *R v Lehrmann*.
66. 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.
67. 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

68. 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**).
69. State when and how you became aware that the Investigation was classified as a 'sensitive investigation'. Provide details of who was allocated as the Sensitive Investigations Officer (**SIO**) and the duties and responsibilities of that role. State whether it is unusual to allocate a SIO to a sexual assault investigation. If so, provide details of why a SIO was allocated in the Investigation. **Attach** a copy of the relevant documents, guidelines, policies, procedures and/or governance material (if already attached and/or provided, refer to the relevant parts of your statement) 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.

Interactions in relation to the Investigation in 2021

70. In chronological order, outline your interactions with AFP/ACT Policing officers, Ministers, Members of Parliament, the DPP/ODPP staff, Mr Lehrmann, legal representatives for Mr Lehrmann, Ms Higgins, legal representatives for Ms Higgins, the Victims of Crime Commissioner and any other persons in relation to the Investigation in 2021. Exclude any interactions in relation to seeking or receiving advice from the DPP.

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; and
 - ii. your views in relation to the conduct of the Investigation to date, including the reasons for your views;
- (g) your overall impressions of the interaction;
- (h) any recommendations you received from the SIOB;
- (i) any briefing you received from any AFP/ACT Policing officers in relation to the Investigation, including in relation to:
 - i. the brief of evidence served on the legal representatives for Mr Lehrmann; and
 - ii. the Victims of Crime Commissioner being identified as a witness in the Investigation.
- (j) any interactions with AFP Professional Standards, including in relation to the brief

- of evidence served on the legal representatives for Mr Lehrmann;
- (k) any concerns raised/escalated in relation to ACT Policing's engagement with the Victims of Crime Commissioner and/or the Victims of Crime Commissioner's support role to Ms Higgins during the Investigation. Include reference to your correspondence to the DPP dated 2 October 2021 and the DPP's response to this correspondence;
 - (l) any briefings you provided, including your briefings to the AFP Commissioner in relation to Senate Estimates on 22 March 2021 and/or 25 May 2021. Provide details about why you provided a briefing at this time;
 - (m) any interactions in relation to the various investigative reviews in relation to the allegations of Ms Higgins concerning Mr Lehrmann (including but not limited to the reviews of Ms Stephanie Foster, Mr Phil Gaetjens, Ms Kate Jenkins and Mr John Kunkel). Provide details of your concerns in relation to the reviews (if any) and what you did to address the concerns;
 - (n) any interactions you had with AFP/ACT Policing officers in relation to concerns relating to the complainant's credibility, briefing the DPP and/or charging Mr Lehrmann, including your interactions with Superintendent Scott Moller;
 - (o) whether you provided any directions to change

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

71. To the extent not addressed above, state whether any complaints, issues or concerns were raised/escalated to you (either indirectly or directly) in relation to any of the AFP/ACT Policing officers involved in the Investigation by:
- (a) the DPP/ODPP;
 - (b) the Victims of Crime Commissioner;
 - (c) Ms Higgins and/or her legal representatives;
 - (d) Mr Lehrmann and/or his legal representatives; or
 - (e) any other persons.

If so, provide details of what the concerns were, when the concerns were raised/escalated to you and what actions you took 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.

Advice Provided by the DPP

72. State whether advice is typically sought from the DPP for AFP/ACT Policing investigations. If so, provide details of the general nature of investigations in which advice from the DPP is typically sought.
73. Outline the AFP/ACT Policing process in obtaining advice from the DPP. Provide details of whether any briefing documents and/or briefs of evidence are prepared. Include information of whether you are aware if the AFP adopts a similar practice. **Attach** a copy of the relevant training documentation/course material.
74. State whether there is a process for seeking independent legal advice. That is, advice independent from the DPP. If so, provide details of the situations which may give rise to obtaining independent legal advice, the process involved, and whether the AFP/ACT Policing has sought independent legal advice in your experience.
75. State whether you were involved in discussions/briefings regarding seeking advice from the DPP in relation to the Investigation. If so, in chronological order, provide details of:
 - (a) when you became aware the AFP/ACT Policing sought to seek advice from the DPP in relation to the Investigation;
 - (b) how you became aware;
 - (c) what you were aware of;
 - (d) whether seeking independent legal advice was discussed. If so, provide details as to why independent legal advice was not sought; and
 - (e) your overall impressions, including what you understood the officers' next steps would involve.

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 have read, or were otherwise made aware of, the advice provided by the DPP to Detective Superintendent Moller dated 28 June 2021 (**the DPP Advice**). If so, provide details about the date you read/became aware of the DPP advice and your impression of the advice (including the reasons for your impressions). **Attach** a copy of the DPP Advice.
77. State whether you had any interactions with the DPP directly (or his staff) in relation to the DPP Advice. If so, provide details of:
- (a) who initiated/arranged the interaction;
 - (b) where the interaction took place;
 - (c) the people involved;
 - (d) what was discussed; and
 - (e) 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.

78. State whether you had any interactions with any AFP/ACT Policing officers in relation to the DPP Advice. If so, provide details of:
- (a) who initiated/arranged the interaction;
 - (b) where the interaction took place;
 - (c) the people involved;
 - (d) what was discussed;
 - (e) whether seeking independent legal advice was discussed. If so, provide details as to why independent legal advice was not sought; and
 - (f) your overall impressions, including whether you perceived there to be any pressure to charge Mr Lehrmann and/or do so quickly.

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

Decision to Charge

79. Outline which officer has the responsibility of making decisions in relation to laying a charge. Explain how the independence of an officer's decision to charge is balanced with legislative requirements and any external pressures and/or influence. **Attach** a copy of any relevant documents, guidelines, policies, procedures and/or governance material. If already attached and/or provided, refer to the relevant parts of your statement.
80. Outline any interactions you had with AFP/ACT Policing officers in relation to charging Mr Lehrmann. Include information about:
- (a) when you were advised that Mr Lehrmann would be charged;
 - (b) who initiated/arranged the interaction;
 - (c) where the interaction took place;
 - (d) the people involved;
 - (e) what was discussed; and
 - (f) 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.

81. State whether you received any pressure from within 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.
82. 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.

Trial

83. Outline briefings you received (if any) in relation to the trial in the matter of *R v Lehrmann*. Include information about whether any concerns were raised to you in relation to the conduct of any AFP/ACT Policing officers during the trial. **Attach** a copy of

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

84. 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. 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.
85. To the extent not addressed above, state whether any complaints, issues or concerns were raised/escalated to you (either indirectly or directly) in relation to any of the AFP/ACT Policing officers involved in the Investigation prior to, during or after the trial in the matter of *R v Lehrmann* by:
- (a) the DPP/ODPP;
 - (b) the Victims of Crime Commissioner;
 - (c) Ms Higgins and/or her legal representatives;
 - (d) Mr Lehrmann and/or his legal representatives; or
 - (e) any other persons.

If so, provide details of what the concerns were, when the concerns were raised/escalated to you and what actions you took 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.

86. To the extent not addressed above, outline any other discussions/interactions you had with the DPP relating to the matter of *R v Lehrmann* and/or Ms Higgins. **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 whether you had any discussions with the DPP prior to his correspondence addressed to the 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 the interaction took place;
 - (b) who initiated/arranged 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) what was discussed;
 - (g) your overall impressions of the interaction; and
 - (h) whether you took any steps in relation to addressing the concerns raised by the DPP. If you did not take any steps at this time, provide reasons as to why.

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. Outline what you did after receiving the 1 November 2022 Correspondence, including

whether you discussed the content of the 1 November 2022 Correspondence with any person (including any AFP/ACT Policing officers, the DPP/ODPP and/or the Victims of Crime Commissioner). Include information about:

- (a) when the interaction took place;
- (b) who you spoke to;
- (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) what was discussed;
- (g) your overall impressions; and
- (h) whether you referred the DPP's concerns to the AFP Professional Standards.

Attach a copy of your correspondence to the DPP dated 7 December 2022 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.

90. To the extent not addressed above, state whether you informed any media reporters in relation to the existence/content of the 1 November 2022 Correspondence. If so, provide details of:

- (a) when the interaction took place;
- (b) who you spoke to;
- (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) what was discussed;
- (g) your overall impressions; and
- (h) the reasons for your actions.

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

91. Outline your involvement 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 the email correspondence dated 8 December 2022 and 9 December 2022 titled “legal advice on ROR: Urgent media query: DPP complaint to CPO over Lehrmann matter” and “Draft complaint to the ACT Ombudsman” 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.

Other Involvement

92. To the extent not addressed above, state whether you are aware of any complaints received from Mr Steven Whybrow SC or any other members of public in relation to contentious behaviour and/or contempt of court relating to the conduct of Ms Lisa Wilkinson and/or Ms Higgins related to the matter of *R v Lehrmann*. If so, provide details of:
- (a) when the complaints were received;
 - (b) the nature of the complaints;
 - (c) what steps you took in relation to the complaints; and
 - (d) whether any investigations were initiated. If so, provide details of:
 - i. who conducted the investigation/where it was referred to; and
 - ii. whether the investigation is ongoing or has been concluded. If the investigation is ongoing, provide details of who has carriage of the investigation and the expected timeframe for its conclusion. If the investigation has been concluded, provide details of what the outcome of the investigation was.

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.

AFP Internal Reviews

93. Provide an overview of the process governing the conduct of AFP Internal Reviews.

Provide details of:

- (a) how an internal review is initiated. Provide examples of the circumstances which may give rise to an internal review;
- (b) who is responsible for devising a team to conduct the review;
- (c) the process for conducting an internal review;
- (d) who is informed of the recommendations from the review.

Attach a copy of any relevant agreements, policies and/or guidelines. If already attached and/or provided, refer to the relevant parts of your statement.

94. To the extent not addressed above, provide details of any AFP Internal Reviews you were aware of, or otherwise involved in, during your time as ACT CPO in relation to the Investigation or conduct of sexual assault investigations in the ACT generally. **Attach** a copy of the final report of the review 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.

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

95. 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.

96. 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.

97. 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*

98. 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.
99. 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.
100. 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.
101. 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.

Media

102. State whether you believe the level of media involvement in the matter of *R v Lehrmann* affected the conduct of the Investigation. If so, include details about the basis for your views and provide examples where possible.
103. Outline any media releases from the AFP/ACT Policing you were involved in preparing or otherwise discussed with any other persons. Include information about whether comments are typically made in relation to referring investigations to the DPP or the status of an investigation. Provide details of the AFP/ACT policies, procedures, guidelines and/or governance in relation to publicly commenting on investigations. **Attach** a copy of any 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.
104. 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

105. 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.

106. 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.