

## AUSTRALIAN CAPITAL TERRITORY

BOARD OF INQUIRY  
CRIMINAL JUSTICE SYSTEM**In the matter of the *Inquiries Act 1991******Inquiries (Board of Inquiry – Criminal Justice System) Appointment 2023*****Board of Inquiry into the Criminal Justice System in the Australian Capital Territory****STATEMENT OF REECE PHILIP KERSHAW**

I, REECE PHILIP KERSHAW, of Edmund Barton Building, 47 Kings Avenue, Barton, ACT 2600, state as follows:

The following statement is provided voluntarily in response to the request I received from the Board of Inquiry into the Criminal Justice System in the Australian Capital Territory to give information in a written statement regarding my knowledge of matters set out in the Schedule attached to that subpoena. Attached and marked 'AFP.0018.0001.0121' is a copy of the relevant subpoena request.

The Board of Inquiry emailed the request for a statement to my lawyers at 6:58pm on Tuesday 28 March 2023 seeking a written response by 5pm on Tuesday, 4 April 2023. I am grateful to the Board for granting me an extension until Tuesday, 11 April 2023. Unfortunately, in the time available and due to my travel interstate for part of the past two weeks, I have not been able to conduct as thorough search of records as I would have liked to inform my answers to these questions, nor to review all of the relevant records as thoroughly as I would like. However, I have done my best in the time available out of a strong desire to assist the conduct of the Inquiry to the greatest extent possible in the circumstances.

**Background and Professional History***Question 1*

1. I am the Commissioner of the Australian Federal Police (AFP).

*Question 2*

2. The outline of my current position as the AFP Commissioner is the general administration of, and control of the operations of the AFP. Most of these responsibilities are set out in Part IV of the *Australian Federal Police Act 1979* (Cth) (AFP Act). I am authorised to delegate, in writing, powers, functions or duties under the Act to a Deputy Commissioner, an AFP employee or a special member. The functions of the AFP are set out at sections 8 of the AFP Act. Subsection 37(2) of the AFP Act provides that the Minister responsible for the AFP may give written direction to the AFP Commissioner with respect to the general policy to be pursued in relation to the performance of functions of the AFP. Attached and marked 'AFP.0018.0001.0284' is the Act. There are two ministerial directions currently in

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force under section 37(2) of the AFP Act. Attached and marked 'AFP.0014.0001.0004' and 'AFP.0014.0001.0006' are copies of those directions.

*Question 3*

3. Since commencing as AFP Commissioner on 2 October 2019 I have sat, or currently sit, on at least the following boards, committees, working groups or taskforces:

a. Not relevant

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l. Not relevant  
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o. AFP Strategy and Performance Board, Chair. Position held since commencement of the Board in early 2020.

p. AFP Commissioner’s Advisory Panel, Chair. Position held from commencement of the Panel July 2020 until cessation of the Panel in September 2022.

q. AFP Senior Leadership Forum, Chair. Position held since commencement as AFP Commissioner. Note this forum was previously named the Senior Leadership Committee (2020-2022) and Senior Leadership Group (2019).

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bb. AFP Audit and Risk Committee, Observer. Position held since commencement as AFP Commissioner.

cc. AFP Executive Leadership Committee, Chair. Position held since commencement as AFP Commissioner.

dd. AFP Leadership Development Committee, Chair. Position held since commencement of the Committee in early 2021.

ee. AFP Legacy, Patron. Position held since commencement as AFP Commissioner.

ff. Not relevant

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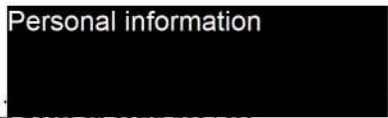
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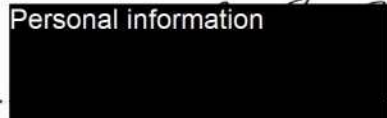


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mm. Not relevant

Not relevant

*Question 4*

4. Attached and marked 'AFP.0014.0001.0051' is a copy of my current CV.

**Tertiary Qualifications**

*Question 5*

5. I refer to my CV attached in response to Question 4 above.

**Courses and/or Diplomas**

*Question 6*

6. I refer to my CV attached in response to Question 4 above.

**Employment Chronology**

*Question 7*

7. I refer to my CV attached in response to Question 4 above. Prior to joining the AFP in 1988, I did not have any policing experience. Between 2011 and 2019, I left the AFP and joined the Northern Territory Police force as an Assistant Commissioner and then Commissioner of the Northern Territory Police. Not relevant

Not relevant

*Question 8*

8. I first joined the AFP in April 1988.

*Question 9*

9. In the time available I have not been able to locate information concerning the process of my recruitment to the AFP. My recollection is that it involved a written application and, following acceptance, various training courses directed at different aspects of a police officer's role. My recollection is that these courses were provided by the AFP.

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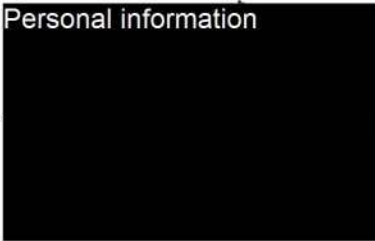
*Question 10*

10. Table 1 below outlines my service history with the AFP and the Northern Territory Police. In the time available to prepare this statement and to the best of my knowledge, Table 1 states my rank, where I was stationed, and the dates I held the various positions.

Date/s	Position description/milestone
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2010 – 2011:	Cmdr. AFP HQ. Commander Serious and Organised Crime
2011 – 2014:	Not relevant
2014 – 2015:	Not relevant
2015 – 2019:	Not relevant
2019 - current:	AFP Commissioner

*Question 11*

11. AFP records indicate that I commenced recruitment training with the AFP on 18 April 1988. In terms of the training and department involved, I refer to my answer to Question 9 above.

*Question 12*

12. I was appointed as the AFP Commissioner by the Governor-General pursuant to section 17 of the *Australian Federal Police Act 1979* (Cth). My appointment commenced on 2 October 2019. In terms of my job description, I refer to Question 2 above.

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## Training and Education

### *Question 13*

13. The training and education that I have received are set out in my CV referred to in response to Question 4 and a record of my AFP training since 2019 is set out in the exhibit attached and marked ‘AFP.0015.0001.0879’. To the best of my knowledge, those records are a complete record of my training.

## AFP Training College

### *Question 14*

14. The arrangements between the AFP and ACT Government for providing training for AFP/ACT Policing officers are part of the Purchase Agreement made between the ACT Government and the AFP under the Policing Arrangement made for the provision of policing services to the ACT (see my response to question 17 for more detail on those documents). Attached and marked ‘AFP.0012.0001.0064’ is a copy of the Purchase Agreement. Clause 12.8 of the current Purchase Agreement provides that ‘ACT Policing will continue to provide training and development opportunities for staff to increase skills and capability, focusing on police and leadership in line with ACT Government policy objectives outlined in clause 3’.

### *Question 15*

15. I refer to my response to Question 14 and say further that education and training is within the responsibility of the AFP Learning and Development Command. I have asked the AFP Learning and Development Command to produce, directly to the Board of Inquiry, a copy of (a) the basic training package for AFP officers; (b) any training specific to ACT Policing officers; and (c) the current sexual assault investigation training package. I have asked for that production to occur directly to the Board so as to not hold up completion of this statement.

### *Question 16*

16. I am advised that amendments were made to the training and education provided by the AFP Training College for AFP/ACT Policing officers in relation to conducting sexual assault investigations over the past four years, including that the former Sexual Assault and Child Abuse Team Program (SACAT) was reinvigorated and renamed the Sexual Offences and Child Abuse Program (SOCAP) in 2022, and delivered in pilot in January 2023 to ACT Policing members. Investigations and Specialist Training (IST) assisted ACT Policing with the formulation and program management of the program, although

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most of the new and refreshed content was sourced or provided by ACT Policing Criminal Investigations, and external specialist providers.

### **AFP/ACT Policing Arrangements**

#### *Question 17*

17. ACT Policing is a business unit of the AFP, and is responsible for the delivery of community policing services to the ACT. This is contemplated by section 8(1A) of the *Australian Federal Police Act 1979* (Cth). Under that section, the Minister for Justice of the Commonwealth entered into an ongoing arrangement with the ACT Minister for Police and Emergency Services commencing June 2017 ('the Policing Arrangement'). Attached and marked '**AFP.0012.0001.0056**' is a copy of the Policing Arrangement.
18. The Policing Arrangement requires the Commissioner to appoint a Chief Police Officer for the ACT, with the approval of the Police Minister. The Policing Arrangement, at clause 2.1, states that the ACT Government will purchase policing services from the AFP in accordance with written agreements between the Police Minister, AFP Commissioner and the Chief Police Officer. Purchase Agreements are periodically entered into on that basis. The current Purchase Agreement was signed by myself, Minister Mick Gentleman MLA and Deputy Commissioner Neil Gaughan in his role as Chief Police Officer in September 2022. Attached and marked '**AFP.0012.0001.0064**' is a copy of the current Purchase Agreement.
19. In broad terms, the Purchase Agreement indicates the quantum of police services the ACT Government wishes to purchase, and the terms on which it does so. Clause 7 of the Policing Arrangement gives the Police Minister the power to give the Chief Police Officer general directions in relation to policy, priorities and goals for policing services to the ACT. The Chief Police Officer is required to comply with such directions, unless contradicted by a direction issued by the Commonwealth Minister. The most recent Ministerial Direction of Minister Gentleman, dated 28 September 2022, specifically raises 'Implement Effective Sexual Assault Prevention and Responses' as one focus area. Attached and marked **AFP.0012.0001.0051** is the 28 September 2022 Ministerial Direction. As of the most recent Purchase Agreement, the Chief Police Officer has been required (under clause 6) to publish an annual 'Statement of Intent' including an overview of the strategies and plans intended to address the Ministerial Direction.

#### *Question 18*

20. I refer to my response to Question 17. In my role, I do not usually have involvement in or direct oversight of operational matters where these issues might arise. However, I

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understand this issue is partially dealt with by Clause 3 of the Policing Arrangement, which deals with some policing services that the AFP is required to provide within the ACT but which are not the responsibility of the ACT Government and, as a result, are not covered by the Purchase Agreement. I understand that particular crime types, issues or situations are identified as being more likely to give rise to jurisdictional issues, and specific arrangements are entered into to manage or mitigate those issues. Such arrangements would include terrorism incidents, joint anti-child exploitation taskforces and operational security in and around the Australian Parliament House. For example, an investigation in the ACT regarding a terrorism incident could be taken carriage of by AFP or ACT Policing officers. In deciding who would take carriage, consideration would be given to the resources required and the deployment of any necessary specialist teams.

### Organisational Structure

#### *Question 19*

21. The AFP structure/chain of command including in relation to my role and ACT Policing as at October 2019 is set out in the organisational chart attached and marked '**AFP.0015.0001.0881**'. Within that structure I perform the function of AFP Commissioner. When I was appointed AFP Commissioner in October 2019 the ACT Policing Chief Police Officer was at the rank of Assistant Commissioner and was a direct report to the Commissioner. The position of Chief Police Officer was held by Ray Johnson and I was the Commissioner.
22. In November 2019, I met with Mr Mick Gentleman MLA, Minister for Police and Emergency Services ACT regarding my intention to elevate the level of representation of the Chief Police Officer of ACT Policing from an Assistant Commissioner to a Deputy Commissioner. I followed up with a letter to Mr Gentleman on 3 December 2019. Attached and marked '**AFP.0014.0001.0002**' is the 3 December 2019 letter. In May 2020, I appointed Deputy Commissioner (DC) Neil Gaughan to the role of Chief Police Officer ACT.

#### *Question 20*

23. Exhibited and marked '**AFP.0015.0001.0881**' is an organisation chart for the AFP as at October 2019. The second Tab in this spreadsheet, titled "SACAT ACTP 31 Oct 19" shows the chain of command for the SACAT as at 31 October 2019.

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*Question 21*

24. Exhibited and marked 'AFP.0015.0001.0883' is an organisation chart for the AFP current at the time of this statement. The new AFP organisation structure took effect on Monday 20 February 2023. I restructured the organisation as I considered it was necessary to ensure the AFP continues to respond to the increasingly complex threat environment and that our senior leadership structures are designed for effective, accurate and timely decisions on major operational and policy issues. I remain responsible for six direct reports: Chief of Staff Joanne Cameron (higher duties); Chief Operating Officer Charlotte Tressler; acting Deputy Commissioner Crime Grant Nicholls (higher duties); Deputy Commissioner National Security Ian McCartney; Deputy Commissioner International & Specialist Capability Lesa Gale; Chief Police Officer (CPO) for the ACT Neil Gaughan.

*Question 22*

25. I refer to my response to Questions 19, 20, and 21 above and add that the ACT Policing Chief Police Officer is at the rank of Deputy Commissioner and reports directly to me.

**Duties and Responsibilities***Question 23*

26. I refer to my answer to Question 2 for details on my duties and responsibilities and add further that they include, but are not limited to, overall management, supervision, and responsibility for the AFP. My duties and responsibilities are primarily sourced in statute, most importantly the *Australian Federal Police Act 1979* (Cth), but also including other legislation of general application and the general law. I am the accountable authority of the AFP for the purposes of the Commonwealth finance law (the *Public Governance, Performance and Accountability Act 2013*). As explained in my answer to Question 21 my direct reports are:

- Chief of Staff
- Chief Operating Officer
- Deputy Commissioner Crime
- Deputy Commissioner National Security
- Deputy Commissioner International and Specialist Capability

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- Deputy Commissioner Chief Police Officer.

As part of these supervision arrangements, I meet 1:1 with each of my direct reports approximately once per fortnight, although this is subject to availability. I also try to meet once a week with my direct reports collectively through the Executive Leadership Committee (ELC). Again, this is subject to availability. I try to meet once a week with my senior leadership group, which includes all direct reports and all SES band 2 AFP members. This is usually done through my weekly meeting. As with the other meetings described above, this is subject to availability. In performing my role as AFP Commissioner I am assisted by my Office, comprised of a small number of personal staff. I have an email address (Personal information) at which I directly receive emails. I also have email addresses (Personal information) and (Personal information) which my staff monitor and which I do not personally read as a matter of course. I rely on my staff to exercise discretion and judgment in determining what emails should be brought to my attention.

#### Question 24

27. The *Australian Federal Police Act 1979 (Cth) (AFP Act)* and the *Australian Federal Police Regulation 2018 (AFP Regulation)* provide the legal framework by which AFP members are appointed and within which they perform their duties.
28. The primary duties of AFP members are set out in:
  - a. The AFP Act and the AFP Regulations. Attached and marked 'Exhibit AFP.0018.0001.0284' is a copy of the Act. Attached and marked 'Exhibit 13' is a copy of the AFP Regulations.
  - b. The AFP professional standards, which are set out in Commissioner's Order 2 and include the AFP Core Values and AFP Code of Conduct. Attached and marked 'Exhibit 14' is a copy of Commissioner's Order 2.
  - c. Commonwealth legislation (other than the AFP Act).
  - d. ACT legislation such as the *Victims of Crime Act (ACT)* and the *Director of Public Prosecutions Act 1990 (ACT)*. Attached and marked 'Exhibit 15' is a copy of the *Victims of Crime Act (ACT)*. Attached and marked 'Exhibit 16' is a copy of the *Director of Public Prosecutions Act 1990 (ACT)*.
  - e. The Commissioner's Order on Governance (CO1), which establishes a governance framework to support the effective performance of the AFP while

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ensuring accountability and integrity. Attached and marked ‘**Exhibit 17**’ is a copy of the Commissioner’s Order on Governance. The AFP’s Governance Framework includes Commissioner’s Orders, National Guidelines and functional governance.

- f. Guidance information for AFP members is set out in the AFP’s Investigative Doctrine, standard operating procedures, better practice guides and a range of other orders, codes, doctrines, policies and procedures which give content to the duties of AFP members and guidance on how those duties should typically be performed.

*Duties under the AFP Act and the AFP Regulations*

29. Each AFP member starts their career in the AFP by taking an oath or affirmation. Section 36(1) of the AFP Act required me, as the AFP Commissioner, to take an oath or affirmation prior to commencing my duties. Sections 36(2) and (3) of the AFP Act require all other AFP members to swear an oath or affirmation immediately after his or her appointment and give an undertaking relating to the performance of his or duties. The form of the oath, affirmation and undertaking are prescribed by Regulation 13 of the AFP Regulations and set out in Form 1, Schedule 1 to the AFP Regulations. Attached and marked ‘**Exhibit 13**’ is a copy of the AFP Regulations. The undertaking is in the following form:

*I, [insert name], undertake that I will, in the performance of my duties as a [ \* member/ \* special member/ \* protective service officer/ \* special protective service officer] of the Australian Federal Police, comply with the provisions of the Australian Federal Police Act 1979 , the regulations made under that Act, the Commissioner's Orders issued under section 38 of that Act and any lawful direction, instruction or order, whether written or oral, under section 40 of that Act.*

30. Section 38 of the AFP Act (referred to in the undertaking extracted above) provides that in the exercise of my powers under section 37, I may, by writing, issue orders with respect to the general administration of, and the control of the operations of, the AFP.
31. Section 40 of the AFP Act (which is also referred to in the undertaking) states that an AFP appointee must not disobey, or fail to carry out, a lawful direction or order, whether written or oral, given to him or her by me or the AFP appointee under whose control, direction, or supervision he or she performs his or her duties.

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32. Section 60A prohibits an AFP member from recording, divulging, or communicating ‘prescribed information’ (as defined in section 60A) unless the disclosure is made for one of the purposes set out in sections 60A(1)(c) to (g) or (2A) to 2(D) of the AFP Act.
33. In addition to the core duties imposed by sections 40 and 60A of the AFP Act, the AFP Act imposes specific duties on members holding certain positions or performing certain functions. These include:
- a. the duties of protective services officers (Part II, Division 3);
  - b. the duties of members, special members and protective services officers relating to protective services functions (Part II, Division 4); and
  - c. the duties of an Acting Commissioner or Deputy Commissioner when the office of Commissioner or Deputy Commissioner is vacant or where the office holder is absent (ss 18-19).

*Duties under the AFP Professional Standards*

34. On 22 September 2020, I issued the “AFP Commissioner’s Order on Professional Standards” (**Commissioner’s Order 2**). Attached and marked ‘**Exhibit 14**’ is a copy of Commissioner’s Order 2. It took effect from the date of its publication on the AFP intranet.
35. Commissioner’s Order 2 sets out the ‘AFP professional standards.’ These are my expectations regarding how AFP Appointees conduct themselves under ss 38 and 40RC of the AFP Act (sections 38 and 40RC of the AFP Act together set out my power to determine professional standards to be complied with by AFP members). The AFP professional standards include the AFP Core Values and the Code of Conduct as outlined in sections 7 and 8 of Commissioner’s Order 2.
36. Section 5 of Commissioner’s Order 2 imposes an obligation on all AFP members to be aware of and comply with the AFP’s “integrity framework” and maintain the highest level of professional standards in their official and private capacities. Section 3.2 defines “integrity framework” as the range of strategies to prevent, detect and respond to the risk of corruption, misconduct, and practice issues. The integrity framework encompasses both the AFP professional standards along with the AFP’s complaint management methodology and processes. Section 6 imposes an obligation on AFP members in supervisory positions to ensure that their team members are aware of and comply with the AFP’s integrity framework.

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37. Section 7 of Commissioner’s Order 2 provides that all AFP appointees “must” adhere to the **AFP Core Values**. The term ‘must’ means that the AFP Core Values are mandatory obligations or duties. The AFP Core Values are:
- a. Integrity. Displayed through soundness of moral principle, honesty and sincerity.
  - b. Commitment. Characterised by dedication, application, perseverance, a belief in our ability to achieve and add value.
  - c. Excellence. Never-ending search for improvement leads to excellence. We aim for excellence in everything we do.
  - d. Accountability. Ownership of work or results and being answerable for outcomes.
  - e. Fairness. Being impartial and equitable.
  - f. Trust. Having faith and confidence and being able to rely and depend on others.
  - g. Respect. Treat others how you want to be treated and value their contributions.
38. Section 8 of Commissioner’s Order 2 requires AFP members to adhere to the **AFP Code of Conduct**. Again, the use of the term ‘must’ throughout the AFP Code of Conduct means that it imposes mandatory obligations or duties on AFP members. The Code of Conduct provides that AFP members:
- a. Must act with care and diligence in the course of AFP duties.
  - b. Must act with honesty and propriety in the course of AFP duties.
  - c. Must act with fairness, reasonableness, courtesy and respect, and without discrimination or harassment, in the course of AFP duties.
  - d. Must comply with all Australian laws, including any Act or instrument made under an Act, or any law of a state or territory including any instrument made under such a law.
  - e. Must comply with any lawful direction given by a person who has the authority to give such a direction.
  - f. Must disclose, and take reasonable steps to avoid, any conflict of interest (actual, perceived or potential) connected to their AFP duties or employment.

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- g. Must not improperly use information obtained as a result of AFP duties or employment and/or duties, status, power or authority as an AFP appointee in order to gain, or seek to gain, a benefit or advantage for the AFP appointee, or for any other person, or for any other improper purpose.
  - h. Must use and manage Commonwealth resources in a proper manner.
  - i. Must behave in a way that upholds the good order, discipline and security of the AFP.
  - j. Must behave in a way that upholds the AFP Core Values, and the integrity and good reputation of the AFP.
  - k. While deployed overseas, must behave in a way that upholds the good reputation of Australia.
  - l. Must not fail to give prompt attention to their duties, or be absent from duty without authority, with the intention of prejudicing police services or protective services functions.
  - m. Must not, without lawful authority or excuse, disclose or take any action that brings, or is intended to bring, information to the notice of another AFP appointee or any other person relating to matters arising under Part V of the AFP Act (professional standards and AFP conduct and practice issues).
  - n. Must not use or communicate to another person any information that comes to the AFP appointee's knowledge, or into the AFP appointee's possession, or obtain access to information by reason of being an AFP appointee, except in the performance of their duties.
39. Section 9 of Commissioner's Order 2 sets out the obligations of AFP members to comply with AFP governance mandatory compliance requirements (that is, documents that use the word 'must'), Australian laws, legislative instruments, legislative arrangements, section 40 directions, government policy, external agreements, and joint agency governance. As I indicated above, both the AFP Core Values and the AFP Code of Conduct use the term 'must' and should therefore constitute mandatory compliance requirements.
40. Section 9 of Commissioner's Order 2 also deals with 'guidance information'. Guidance information does not impose mandatory obligations, but rather (as the description indicates) guidance that typically should be followed. Guidance information is found in AFP governance instruments, legislation, policy, external agreements, and joint agency

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governance materials. It is typically denoted where the instrument or document uses the terms “should”, “may”, or “have regard to”. Section 9.6 provides that a ‘serious breach’ of guidance information may constitute a breach of the AFP professional standards.

41. Sections 10.2 of Commissioner’s Order 2 deals with reporting obligations where an AFP member learns that another AFP member has contravened the AFP professional standards. In those circumstances, section 10.2 of Commissioner’s Order 2 requires the AFP member to report it in accordance with Part A of the AFP National Guideline on Complaint Management.
42. Sections 11 to 21 of Commissioner’s Order 2 deal with complaint management methodology and processes.

*Duties under other Commonwealth legislation*

43. Section 9 of the AFP Act acknowledges that AFP members have duties imposed on them other Commonwealth laws. These include:
  - a. duties conferred under a law of the Commonwealth (s 9(1)(a)); and
  - b. in relation to Commonwealth laws, authorities or property, matters arising on Commonwealth land or authorities, the safeguarding of Commonwealth interests, or the investigation of State offences that have a Commonwealth interest, AFP members have the duties conferred or imposed on a constable or police officer in the place in which the member is acting (s 9(1)(c)).

*Duties under ACT legislation*

44. Section 8(1)(a) of the AFP Act relevantly provides that the functions of the AFP are (subject to ministerial arrangements in accordance with s 8(1A)), the provision of police services in relation to the ACT.
45. Section 9 of the AFP Act provides that AFP members have specific duties imposed on them when performing functions in the ACT. These are the duties conferred or imposed on a constable or police officer by or under any law (including the common law) of the ACT (s 9(1)(b)).
46. I understand that relevant ACT legislation includes:
  - a. The *Victims of Crime Act (ACT) (VoC Act)* imposes duties on the ACT Police Chief of Police (as a ‘justice agency’ within the meaning of section 8 of the VoC Act) regarding his or her dealings with victims. Attached and marked

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**‘Exhibit 15’** is a copy of that Act.

- b. Section 14 of the *Director of Public Prosecutions Act 1990* (ACT) outlines the circumstances in which the director may request the Chief Police officer for the assistance of police officers in the investigation of that matter. Attached and marked **‘Exhibit 16’** is a copy of that Act.

*The duty of disclosure*

47. I understand that the common law imposes a duty of disclosure on prosecutors to produce evidence relevant to the accused’s case, including exculpatory evidence. I also understand that at common law, there is no distinction made between the prosecuting agency and the investigative agency; they are both regarded by the court as ‘the prosecution’. Practically speaking, I understand this means that any relevant information held by the police is subject to the duty of disclosure.
48. This obligation is reflected in the AFP’s internal governance material. The AFP Investigations Standards and Practices sets out the essential components of information management which either ‘must’, or ‘should’, be undertaken to meet the AFP’s duty of disclosure in criminal cases. It describes:
- a. The duty of disclosure (page 4).
  - b. The duty to record (pages 9-11). This is a duty of all investigators and AFP appointees.
  - c. The duty to register (pages 11-12). This is a duty of all investigators and AFP appointees.
  - d. The duty to review (pages 12-13). This is the duty of the Case Officer and the Disclosure Coordinator.
  - e. The duty to reveal and disclose (13-16). These are duties of the Case Officer and the Disclosure Coordinator. Duties are also imposed on investigators and AFP appointees who are in possession of material that is so sensitive that it cannot be disclosed via the disclosure register.
  - f. The obligation of certification to the prosecutor (page 16). This is an obligation

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of the Disclosure Coordinator.

*Guidance information in the AFP Investigations Doctrine*

49. The AFP Investigations Doctrine “represents the philosophy for AFP investigations” and functions as a guide for all investigators and AFP support staff when conducting an investigation. Attached and marked ‘**AFP.0009.0001.0062**’ is a copy of the AFP Investigations Doctrine. It was originally published in June 2013 and then updated in September 2020, following the Lawler Review. It sets out the processes of initiating, evaluating, planning, and carrying out an investigation.
50. My understanding is that the Investigations Doctrine consists principally of guidance information within the meaning of section 9 of Commissioner’s Order 2. My understanding is based on the statement of intent at page 3 which states “doctrine is not a rigid compliance document in its own right”, as well as my understanding of its purpose as a guide and a record of the AFP’s investigative philosophy. As such, it is my understanding that only a ‘serious breach’ of the Investigations Doctrine may constitute a breach of the AFP professional standards under s 9.6 of Commissioner’s Order 2. That said, the Investigations Doctrine is intended to reflect the AFP Core Values (compliance with which is mandatory) and operates in conjunction with other governance documents which do impose mandatory requirements, such as the Commissioner’s orders.

*Guidance information in other policies and procedures*

51. The AFP has adopted several standard operating procedures and better practice guides which are relevant to the investigation of sexual offences. These include:
- a. The Functional Governance Standard Operating Procedure (attached and marked ‘**Exhibit 19**’).
  - b. The AFP Investigations Doctrine (attached and marked ‘**AFP.0009.0001.0062**’).
  - c. The Senior Investigations Office Guide (attached and marked ‘**AFP.0013.0001.0082**’).
  - d. The Better Practice Guide on Victims’ Rights (attached and marked ‘**AFP.0009.0001.0214**’).
  - e. Better Practice Guide on Criminal Investigations Response and Notification (attached and marked ‘**AFP.0009.0001.0047**’).

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- f. Better Practice Guide on Child Abuse and Sexual Offence Investigations (attached and marked ‘**AFP.0002.0001.0001**’).
52. The AFP also has better practice guides and policies relevant to the sharing of information with people outside the AFP. These include:
- a. The Better Practice Guide on Ministerial Briefings for Investigations (attached and marked ‘**AFP.0012.0001.0039**’).
  - b. The Handbook on AFP National Media. Attached here and marked ‘**AFP.0013.0001.0110**’ is a copy of that Handbook. The handbook provides that a media strategy should be determined in consultation with the relevant stakeholders, considering information security considerations. All media reports must be cleared, at a minimum, by the relevant Commander.

### Challenges, Issues and/or Pressures

#### *Question 25*

53. My immediate impression of the issues, challenges and pressures facing AFP/ACT Policing on being appointed Commissioner in October 2019 was that the AFP generally was receiving an increasing number of increasingly complex and sensitive investigations. The most prominent examples of these at the time were investigations in relation to unauthorised disclosures of sensitive government information to media outlets. In relation to sexual assault investigations specifically, the review conducted by Renee Leon for the ACT Government addressed ACT Policing’s conduct of sexual assault investigations and made a number of recommendations (the Leon Report). Attached and marked ‘**AFP.0018.0001.0690**’ is a copy of the Leon Report, called ‘Listen, Take Action to Prevent, Believe and Heal’.
54. The review was conducted for the ACT Government and the recommendations related to ACT Government entities and ACT Policing. The implementation of the report is within the purview of Chief Police Officer, who is responsible to the relevant ACT government minister for the provision of police services in the ACT. I understand that ACT Policing has committed to implement all of the recommendations of the Leon Report that relate to the AFP. The progress of implementation of the recommendations is a matter for the ACT CPO.

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55. The issue of investigation and prosecution of allegations of sexual assault is a wider issue that all jurisdictions across Australia are grappling with and I recall speaking to Ms Leon about this review and her recommendations at around the time that the Report was released. The matters of training, size, recruitment and resources of ACT Policing are generally a matter for ACT Policing to manage in consultation with the ACT Government. As set out in response to question 17 above, Under the Policing Arrangements, the CPO is responsible to the ACT executive government for the delivery of the outcomes set out in the Agreement. Attached and marked 'AFP.0012.0001.0064' is a copy of the current Purchase Agreement. I was a signatory to the most recent Purchase Agreement as the AFP Commissioner from whom the police services are purchased. That Purchase Agreement provides that the funding provided to the AFP for ACT Policing services is determined by the ACT executive government annually. The day-to-day management of the Purchase Agreement is a matter for the responsible ACT minister and the CPO.

*Question 26*

56. The terms and intended breadth of this question are not clear to me, however in the very limited time available and doing my best I set out the following. I have not observed any complexities arising from the AFP/ACT Policing arrangement or the environment in which ACT Policing operates. The environment in which all police forces operate is complex and evolving. Police undertake a challenging and complex job. We are constantly balancing the complexity of the environment in which we operate and our resources and priorities with the needs of the community. I have briefly outlined the environment in which ACT Policing operates in response to Question 25 above. In addition to those observations I would add that the purchasing of police services and resourcing of that service is ordinarily (and appropriately) dealt with between the CPO and the responsible ACT minister.

**Sensitive Investigations Oversight Board (SIOB)**

*Question 27*

57. Yes, I read the Independent Review of the Conduct of Sensitive Investigations in the AFP (the Lawler Review) shortly after it was published. Attached and marked 'AFP.0013.0001.0131' is a copy of the Lawler Review.

*Question 28*

58. The circumstances that gave rise to the Lawler Review are that my immediate impression and a focus of my attention on being appointed Commissioner in October

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2019 was that the AFP generally was receiving an increasing number of complex and sensitive investigations, as set out in my response to Question 25. The most prominent examples of these at the time were the sensitive and complex investigations of unauthorised disclosures of information to media outlets. However, other examples include the investigations involving the application of parliamentary privilege, espionage and foreign interference, and war crimes.

59. On 14 October 2019 I commissioned the Lawler Review in order to better understand the issues and to find ways to improve the AFP's handling of such investigations. The purpose and Terms of Reference of the Lawler Review are best explained by understanding that the factors driving the increasing number, and complexity, of sensitive investigations was environmental: there were an increasing number of complex referrals for investigation. Unauthorised disclosures of information at that point in time were often occurring and often involved disclosures to journalists who wished to ensure the confidentiality of their sources. The recommendations of the Lawler Review ultimately led to the formation of the Sensitive Investigations Oversight Board (**SIOB**).

*Question 29*

60. I am aware that prior to my commissioning of the Lawler Review and the subsequent establishment of the SIOB, sensitive investigations were managed under the guidance of the Investigations Standards and Practices (**ISP**) framework. The ISP was intended to provide a nationally consistent method to building and maintaining professional conduct across AFP investigations, and was made up of several standards for investigators to follow when conducting an investigation. All investigations were conducted in line with the Investigations Doctrine, which provided philosophical and procedural guidance on the conduct of all investigations undertaken by the AFP. Attached and marked '**AFP.0009.0001.0062**' is a copy of the AFP Investigations Doctrine. Prior to the establishment of the SIOB, the Case Categorisation and Prioritisation (**CCPM**) was the primary prioritisation tool for determining the acceptance, rejection, termination, finalisation and resourcing of referrals into the AFP. Attached and marked '**AFP.0014.0001.0009**' is a copy of the CCPM.

*Question 30*

61. The Lawler Review was publicly released on 14 February 2020. I agreed in principle to implement all 24 options, including the implementation of the SIOB (consideration no. 20, p 19 of the Lawler Report). The SIOB was formed at this time, and the first SIOB convened on 20 February 2020.

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*Question 31*

62. I have outlined the reasons for the formation of the SIOB in response to Question 30 above. DC McCartney is Chair of the SIOB. I do not sit on the SIOB and do not recall ever attending a SIOB meeting. The SIOB Terms of Reference describe in broad terms the purpose, role, and membership of SIOB and set out the nature of a ‘sensitive’ investigation. Attached and marked ‘**AFP.0013.0001.0273**’ is a copy of the SIOB Terms of Reference.

*Question 32*

63. I refer to my responses to Questions 27-31 and further refer to the AFP National Guideline on sensitive investigations. Attached here and marked ‘**AFP.2001.0001.0071**’ is a copy of the AFP National Guidelines on sensitive investigations.

*Question 33*

64. I refer to my responses to Questions 27-32 and further refer to the MOU between the AFP and the Australian Electoral Commission. Attached and marked ‘**AFP.0013.0001.0277**’ is a copy of the MOU between the AFP and the AEC.

*Question 34*

65. I refer to my responses to Questions 27-33.

*Question 35*

66. I refer to my responses to Questions 27-34. I am aware that all matters for consideration by the SIOB are submitted in writing in the form of a briefing paper. Attached and marked ‘**AFP.0016.0001.0056**’ is a copy of the SIOB briefing template. I do not receive SIOB Briefing Papers prior to matters being tabled at the SIOB. However, I may receive verbal or separate briefings at various times throughout the course of an investigation from my direct reports on a matter that has come before the SIOB.

*Question 36*

67. I refer to my responses to Questions 27-35 and also add the following.
- a. There is no formalised procedure by which I am briefed in relation to a SIOB matter. When it is determined appropriate by the SIOB Chair, my Office may be provided with a copy of a minute of any critical decisions in relation to a SIOB matter. This flexibility is essential to the proper functioning of my

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Office and the AFP as a whole. I understand that there are in the rough order of more than 100 SIOB investigations open within the AFP at any one time. It is simply not possible for me to be briefed in relation to all of those, or even anything but a proportion of those.

- b. Determining what SIOB matters should be briefed up to me or my Office is a discretionary matter. I have received verbal briefings in relation to SIOB matters from SIOB members. I have also received briefings about SIOB matters from other reporting lines, such as via the responsible line area or the media director or my Office. I rely on my colleagues to exercise judgment and discretion in determining what matters to brief me on and when. I understand that sometimes briefs may be provided to my Office. It is a matter for my Office to then determine whether or not to brief me on that – it is possible that my Office may be briefed on a matter and I may not know about that briefing.
- c. As a rule of thumb, I would expect the relevant Deputy Commissioner, or SIOB member would be more likely to brief my Office, the media director, or me in relation to a matter if it is possible it will be the subject of media attention in order to ensure that I can be appropriately prepared to answer any questions asked of me. Another guiding principle that I would expect my colleagues to keep in mind when determining whether to brief me or my Office is the principle that there be “No Surprises”. This is reflected in the Better Practice Guide on Ministerial Briefings for Investigations. Attached and marked ‘**AFP.0012.0001.0039**’ is a copy of the Better Practice Guide on Ministerial Briefings for Investigations. As the AFP Commissioner, I often bear responsibility for briefing the AFP Minister or their Office in relation to certain SIOB matters or otherwise significant operational matters, about which I refer to my response to Question 49.
- d. What action I take (if any) with a briefing I receive about a SIOB matter depends very much on what the nature of the briefing is. As such, it is extremely difficult to state with any certainty what action I would take (if any) following receipt of a briefing given the nature of the factors described above. I see my role as facilitating others to assist them to do their jobs to the best of their abilities. For example, this could be in the nature of ensuring that adequate resources are provided to support particular tasks by cutting through resource constraints that may affect a SIOB investigation. I see my role here as being to support others and to receive information for situational awareness. I recall that in the Lehrmann matter I was briefed on process and the status of the investigation, about which I refer to my response to Question 49.

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*Question 37*

68. I refer to my responses to Questions 27-36 above and say further that in the case of the Lehrmann investigation I briefed the responsible Minister, the Minister for Home Affairs. See further my response to Question 49. I wanted the SIOB to indicate in advance whether or not it considered it would be appropriate to brief the Minister and if so, at what stage in the investigation that could occur. This was to ensure there was no risk of disturbing the investigation from the Minister being briefed on the investigation. I recall SIOB providing that assurance before I briefed the Minister.

**Report of the Sexual Assault Prevention and Response Steering Committee***Question 38*

69. I have read the Steering Committee's Report (prepared by Ms Renee Leon). I had a brief conversation with Ms Leon about her Report at around the time of its publication. She raised with me the recommendations of the Report, which I looked at briefly shortly after it was published. As indicated in response to Question 25 above, the response to the recommendations is within the responsibility of the CPO and understood that he would be responsible for implementing all recommendations relevant to ACT Policing.

*Question 39*

70. I refer to my responses to Questions 25 and 38 above and note that the implementation of the recommendations arising from the Steering Committee's Report are within the responsibility of the CPO.

*Question 40*

71. I refer to my responses to Questions 25, 38 and 39 above. Further, it is my clear expectation that all recommendations relevant to ACT Policing from the Steering Committee's Report would be implemented by ACT Policing as a matter of priority.

*Question 41*

72. I refer to my responses to Questions 25, 38-40 above and confirm that I am not on any oversight committee established in response to Recommendation 15 of the Leon Report.

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*Question 42*

73. I refer to my responses to Questions 25 and 38-41 above and say further that I am not aware of any reports requested and/or obtained by the AFP (not including ACT Policing) in relation to the matters addressed in the Steering Committee's Report.

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

*Question 43*

74. I did not have any knowledge of the professional relationship between the ODPP and AFP/ACT Policing prior to the Investigation. To the best of my knowledge, no issues or concerns with the professional relationship between the ODPP and AFP/ACT Policing were raised with me prior to the Investigation and so I understood there was an effective professional relationship between the ODPP and AFP/ACT Policing.

*Question 44*

75. Prior to the commencement of the Investigation I did not have a professional relationship with the DPP. It is not part of my role to have a relationship with the DPP; that is the role of the CPO. I recall that I have met the DPP (see further my response to Question 60).

*Question 45*

76. I refer to my responses to Questions 43-44. My professional relationship with the DPP did not change after the commencement of the Investigation because it is not part of my role as AFP Commissioner to have a professional relationship with the DPP; that is the role of the CPO.

**Victims of Crime Commissioner**

*Question 46*

77. I did not have professional dealings with the Victims of Crime Commissioner prior to the matter of *R v Lehrmann*.

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## Investigation

### Question 47

78. As set out in my response to Question 48, to the best of my knowledge, I first became aware of the alleged sexual assault at Parliament House in March 2020. I first became aware that Ms Higgins had requested to reinstate the investigation on 8 February 2021 when CPO Gaughan contacted me to verbally brief me to the effect that Ms Higgins wished to proceed with a complaint. An email shows that this happened on 8 February 2021. Attached and marked ‘**AFP.0015.0001.0888**’ is an email invitation to the meeting referred to. Attached and marked ‘**AFP.0015.0001.0889**’ and ‘**AFP.0015.0001.0891**’ are attachments to that email invitation. To the best of my knowledge this is the first notification I received regarding Ms Higgins’ request to reinstate the investigation.

### Interactions in relation to the Investigation in 2020

### Question 48

79. The only interactions that I had that I recall that fall within the scope of this question are the following 2 interactions:

a. WIT\_Confidential\_sensitive\_Third\_P



WIT\_Confi On 12 June 2020 I wrote by letter to Speaker Smith and President Ryan confirming that the AFP first became aware of this allegation on 1 April 2019 and briefly setting out the conduct of the investigation to date. Attached and marked ‘**AFP.0002.0002.0156**’ is the 12 June 2020 letter.

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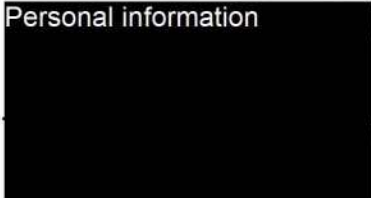
85. On 22 March 2021, a media statement was released in my name confirming the advice I had provided to Mr Gaetjens on 9 March 2021 referred to above.
86. On 5 May 2021 I received an email from CPO Gaughan notifying me that he was of the view that the criminal investigation was ‘sufficiently advanced that there is not problematic intersection between Mr Gaetjen’s administrative inquiry into related matters ... and the current criminal investigation’. Attached and marked ‘**AFP.2003.0014.8871**’ is the 5 May 2021 email.
87. On 10 May 2021 I wrote to Mr Gaetjens to inform him that there is ‘no problematic intersection between the Gaetjens Inquiry and the current criminal investigation’ and I followed that letter up with a call to the same effect. Attached and marked ‘**AFP.0015.0001.0895**’ is the 10 May 2021 letter.

*Question 51*

88. I have caused document searches to be carried out to the best of my ability in the time available. While I have done my best, I cannot guarantee that I have identified or reviewed every relevant document that exists. The following answer is accurate to the best of my knowledge based on the results of my searches. I refer to my responses to Questions 49-50 above and say further as follows.
- a. On 5 February 2021 I attended a meeting with the Presiding Officers of the House of Representatives and the Senate.
  - b. On 12 February 2021 I received a letter from the Presiding Officers **WIT\_Confi**  
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  - c. On 24 February 2021 I received a call from the Prime Minister, the Hon Scott Morrison MP during which I informed the Prime Minister of the general processes the AFP undertook in conducting criminal investigations. I did not discuss the specifics of the investigation with the Prime Minister.
  - d. On 24 February 2021 I called the Minister for Home Affairs and informed him of the call I had received from the Prime Minister. I did not discuss the specifics of the investigation with the Minister.
  - e. On 25 February 2021 I attended a meeting with the Minister for Home Affairs. It was routine for me to meet regularly with the Minister to discuss matters

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related to his portfolio responsibilities for the AFP. To the best of my recollection I did not discuss the investigation.

- f. On 4 March 2021 I sent a letter to Celia Hammond MP requesting that Minister Hammond inform me of the terms of reference of the review that I understood she was conducting into matters relating to the sexual assault allegation. Attached and marked '**Exhibit 47**' is a copy of the 4 March 2021 letter.
- g. On 4 March 2021 I sent a letter to Senator the Hon Simon Birmingham stating that the AFP has been advised by Mr Phil Gaetjens, Secretary of the Department of the Prime Minister and Cabinet, that Senator Birmingham was investigating the alleged assault of Ms Higgins. In that letter I expressed concern at the potential interaction of any such inquiry and the AFP's investigation. My purpose in expressing that concern was to protect the integrity of the investigative process and any future criminal proceedings. Attached and marked '**Exhibit 48**' is a copy of that correspondence.
- h. On 4 March 2021 I understand that Ms Hammond notified my office that she had recommended to Prime Minister the Hon Scott Morrison MP that the process she was conducting be 'rolled into' the Review approach being led by Senator Birmingham and that Mr Morrison had accepted that recommendation.
- i. On 10 March 2021 I received an email from Ms Stephanie Foster PSM, Deputy Secretary in the Department of the Prime Minister and Cabinet, copied to Mr Phil Gaetjens and Ms Mariah Tyler. Attached and marked '**AFP.2003.0014.5679**' includes a copy of the 10 March 2021 email. That email attached a document titled "210219 – STATEMENT FROM BRITTANY HIGGINS.docx". Attached and marked '**AFP.2003.0014.5680**' is Ms Higgins' statement. On 10 March 2021 I forwarded a copy of the email and attachment referred to above to CPO Gaughan and Mr David McLean. Attached and marked '**AFP.2003.0014.5679**' is a copy of my 10 March 2021 email.
- j. On 11 March 2021 I received a letter from Senator the Hon Simon Birmingham regarding the conduct and terms of reference of the Independent Review of Commonwealth Parliamentary Workplaces. Attached and marked '**Exhibit 52**' is a copy of that correspondence.

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- k. On 15 March 2021 I met with the Presiding Officers and on 16 March 2021, I sent a letter to the Presiding Officers of the House of Representatives and the Senate regarding the investigation into the allegations of sexual assault. Attached and marked ‘**Exhibit 53**’ is a copy of the 16 March 2021 letter. My purpose in sending this letter was to protect the integrity of the criminal process and to ensure that no potential future criminal investigation would be jeopardised by these investigations and inquiries.
- l. On 23 March 2021, at an extraordinary Executive Leadership Committee (ELC) meeting, I sought the establishment of a small team — independent to both previous and ongoing investigations — to undertake a comprehensive collection and review of all documents held by the AFP (including PROMIS entries, diaries, emails and similar materials) relating to the alleged sexual assault of Ms Brittany Higgins (Ms Higgins) in Minister of Defence Industry Linda Reynolds’ office at APH. The review team was led by Superintendent Phil **WIT\_** and consisted of independent members from Professional Standards, Office of the Commissioner, Specialist Protective Command, and Operational Science and Technology. Attached and marked ‘**AFP.2003.0014.8256**’ is a copy of the Timeline Review.
- m. On 5 April 2021 Mr McLean emailed me and the other members of the ELC attaching a copy of the Brittany Higgins Timeline Review paper. Attached and marked ‘**AFP.2003.0014.8254**’ is a copy of that email.
- n. At some point in time in 2021 during a run **WIT\_Personal\_Info** I encountered Detective Superintendent Moller. To the best of my knowledge, I believe that the encounter would have occurred between about March and May 2021. I recall that when I encountered Mr Moller we had a general discussion about how he was going. My recollection of the conversation is that Mr Moller was concerned about the reliability of Ms Higgins as a witness, including because she had deleted material from her phone. I recall that my reply was to the effect of, if he had some doubts about the matter, he should compile a brief to submit to the DPP to consider the evidence.
- o. On 8 April 2021 I attended an Executive Leadership Committee meeting at which one agenda item related to the investigation, specifically legal advice relating to the matter. Attached and marked ‘**AFP.2003.0014.8480**’ is a copy of the agenda for that meeting at which legal advice titled ‘Advice on **Priv**  
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- p. On 25 May 2021 I attended Senate Estimates at which I was asked and answered questions in relation to the investigation and took a number of questions on notice.
- q. Throughout 2021 I was emailed ‘Hot Issues Briefs’ approximately fortnightly which included, amongst many other things, updates on the investigation and then prosecution of Mr Lehrmann. Attached and marked ‘**AFP.2003.0010.3847; AFP.2003.0010.3881; AFP.2003.0010.3910; AFP.2003.0010.3940; AFP.2003.0010.3975; AFP.2003.0010.4012; AFP.2003.0010.4050; AFP.2003.0010.4091; AFP.2003.0010.4127; AFP.0018.0001.0528; AFP.0018.0001.0527**’ are some of the Hot Issues Briefs described.
- r. Although I do not recall the specifics of any particular conversation, my recollection is that I talked to CPO Gaughan and other senior officers about my expectation that the investigation would follow the usual process, including that evidence would be gathered and a brief compiled.
- s. I receive briefings from senior officers about important investigations from time to time at their discretion. I recall conversations with CPO Gaughan about the investigation and in this respect I refer to my response to Questions 49 and 59. I also expect (but do not recall) I had conversations with him about the issues identified in my response to Question 50.
- t. I attended weekly Executive Leadership Committee meetings with my direct reports and, while I do not recall the specific details, I recall that on occasion I received CPO updates on Operation Covina (the investigation into Mr Lehrmann). I also attend fortnightly Executive Leadership Committee meetings at which the CPO or another attendee may have provided information about Operation Covina. Attached to this statement are notes taken by Joanne Chidgey of the Executive Leadership Committee meetings during which Operation Covina was discussed. I do not recall the specifics of these briefings, but I have no reason to doubt the accuracy of these notes:
- 29 July 2021: Attached and marked ‘**Exhibit 68**’ is a copy of notes of this meeting.
  - 5 August 2021: Attached and marked ‘**Exhibit 69**’ is a copy of notes of this meeting. I also attach a copy of the agenda for the 5 August 2021 meeting: Attached and marked ‘**Exhibit 70**’ is a copy of the agenda for this meeting.

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- 16 September 2021: Attached and marked ‘**Exhibit 71**’ is a copy of notes of this meeting.
  - 18 November 2021: Attached and marked ‘**Exhibit 72**’ is a copy of notes of this meeting.
  - 2 June 2022: Attached and marked ‘**Exhibit 73**’ is a copy of notes of this meeting.
- u. I refer to the briefing I received from DC McCartney in my response to Question 49 and say further that it is at the discretion of the Chair of SIOB to brief me as required about a matter. That may have occurred but I do not recall any further briefings from the Chair of SIOB.
- v. I expect that I may have been made aware of information prepared by the AFP or ACTP in relation to Question Time, but in the time available to prepare this statement I have not been able to identify any relevant materials and I do not recall any further details.
- w. I spoke to the National Press Club about a wide range of issues on 28 July 2021 and I expect that I would have received briefings from a wide range of AFP officers before my appearance. The statement that I made at the National Press Club in relation to the investigation was: “I have been on the public record on this. It is a matter with the ACT DPP right now so it wouldn’t be appropriate for me to comment any further.” Attached and marked ‘**AFP.0018.0001.0670**’ is the briefing I received in relation to my appearance at the National Press Club to the extent that that briefing related to the investigation.
- x. As stated above in sub-paragraph (t), Operation Covina was discussed at the Executive Leadership Committee meeting of 5 August 2021. The notes taken by Joanne Chidgey (attached and marked ‘**Exhibit 69**’) state the following under ‘CPO update’:

*‘HIGGINS: activity this week, looking at summons being served tomorrow. C to brief MHA today that action is imminent and explain the process, and that he will return to brief her once actioned.*

*Plan is that HIGGINS will be told first that a summons will be served within the hour, then offender will be told.’*

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I do not recall this briefing but I have no doubt that the notes are accurate. Given the high-profile nature of the investigation, it is my expectation that I would have been briefed, and that in turn, I would have briefed the Minister of Home Affairs given the likelihood that the decision to charge Mr Lehrmann would attract significant media attention.

y. WIT\_Confidential\_sensitive\_Third\_P

z. In relation to the issue of charging Mr Lehrmann, I refer to my response to Question 59.

*Question 52*

89. I chaired Executive Leadership Committee meetings on 28 April 2022 and 5 May 2022 at which the issues of the disclosure of information to Mr Korn and PRS reviews into the conduct of certain matters relating to the investigation were discussed. Attached and marked 'AFP.0015.0001.0899' and 'AFP.0015.0001.0902' are notes of Joanne Chidgey relating to the 28 April 2022 and 5 May 2022 ELC meetings respectively. It had been briefed to me that the service of the brief on Mr Korn was a mistake and that Mr Korn had not accessed any of the material and that the issue had been referred to PRS for consideration.

**Advice Provided by the DPP**

*Question 53*

90. The Assistant Commissioner, Learning and Development Command, is responsible for learning and training. However, it is my understanding that the question of whether and when to seek advice from the ACT DPP is a matter of discretion for the case officer responsible for the investigation. I attach a copy of the AFP-DPP Collaborative Agreement. Attached and marked 'AFP.0005.0001.0001' is a copy of the AFP-DPP Collaborative Agreement.

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*Question 54*

91. My understanding is that the Australian Federal Police Investigations Doctrine provides that ‘investigators should seek specific legal advice from prosecutors or AFP Legal where appropriate and available.’ Attached and marked ‘**AFP.0009.0001.0062**’ is a copy of the AFP Investigations Doctrine.

*Question 55*

92. The Australian Federal Police Investigations Standards and Practices (ISP) sets out investigator practice and competencies. ISP ensures practices and procedures relating to the crown's delivery of evidence remains of the quality expected by the courts and the community. If a CDPP prosecutor is assigned to a matter, they may provide advice on that brief of evidence. For a Commonwealth matter prior to allocation of a CDPP prosecutor, AFP Legal are the source of advice. I understand that a similar practice is adopted by ACT Policing although advice may also be obtained from the ACT Government Solicitor during the course of an investigation in relation to ACT offences. In certain crime types (such as Counter Terrorism, Foreign Interference) and complex matters the AFP may prepare a brief to seek qualified pre-brief advice from the CDPP or ACT DPP.

*Question 56*

93. AFP members may obtain independent legal advice from AFP Legal or, subject to the *Legal Services Directions 2017* (Cth), from external legal providers, to support operational law enforcement activities.

*Question 57*

94. I repeat my response to Question 51 and I otherwise do not recall being involved in any discussions or briefings regarding seeking advice from the DPP in relation to the Investigation.

*Question 58*

95. I received a briefing from CPO Gaughan about the DPP Advice, which is addressed in my response to Question 59 below.

*Question 59*

96. I have not read the DPP Advice. I recall that CPO Gaughan provided me a verbal briefing after the advice had been received, during which said to me words to the effect

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that the matter was proceeding, based on which I understood that the matter would be likely to proceed to prosecution. Mr Gaughan did not tell me about the details of the advice. I recall that I discussed with Mr Gaughan the different procedures for arrest or summons given I had last served in ACT Policing more than 30 years ago. I recall expressing interest about the location of the person and the treatment of offender (whether that would occur via summons or arrest) because of COVID restrictions that were in place. I have not attached a copy of the DPP Advice as I have not read it.

*Question 60*

97. I have not had any interactions with the DPP directly, nor with his staff, in relation to the DPP Advice. I encountered the DPP at the McAulay Oration dinner related to forensics at the AFP College on 30 November 2021 but I do not recall discussing the DPP Advice or the Lehrmann matter with the DPP.

**Decision to Charge**

*Question 61*

98. As AFP Commissioner, as a matter of course I am not involved in the day to day decision making of whether to charge someone but I am briefed in relation to such decisions where appropriate. The decision to charge is generally made by the officer responsible for the investigation. In making that decision, officers may consult with others, including their team leader and/or the Adjudication Sergeant as appropriate. In some cases, advice will be sought from the DPP prior to charges being laid, for example where there are queries around whether or not evidence proposed to be included in the brief would be admissible. In my view, the independence of an officer's decision to charge should not be "balanced" with legislative requirements. Rather, an officer's decision to charge must be made in accordance with any relevant laws. Similarly, the independence of an officer's decision to charge should not be "balanced" with external pressures or influence such as media or political interest in a case. That is not to say that an officer should never consult with or have regard to the views of others. As outlined above, it is common practice and appropriate for officers to consult with their superiors or the DPP about a matter. It is also typical and appropriate to have regard to the interests and wishes of the victim in reaching the decision to charge. Ultimately, however, the decision is that of the officer alone and should not be affected by external pressure or influences.

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*Question 62*

99. I refer to my response to Question 59 and say further that during the conversation with CPO Gaughan referred to in response to that Question that CPO Gaughan and I discussed the method that would likely be used to charge Mr Lehrmann; that is, whether it would likely occur via arrest or summons. I recall that CPO Gaughan expressed a preference to proceed by way of summons. I expect that I would also have had discussions with staff in my Office about the fact that Mr Lehrmann was likely to be charged.

*Question 63*

100. I was not aware of the attitude of the AFP/ACT Policing officers involved in the investigation towards the prosecution before the trial or while the trial was on foot.

**Trial***Question 64*

101. I do not recall receiving briefings in relation to the trial in the matter of *R v Lehrmann* during the trial, except the updates described below in my response to Question 65.

*Question 65*

102. I received updates in relation to the trial in the matter of *R v Lehrmann* from my immediate team via Signal on 5 October 2022, 6 October 2022, 11 October 2022, 12 October 2022, and 13 October 2022. Attached and marked ‘**AFP.0014.0001.0054**’ are screenshots taken from the phone of an AFP Officer who was part of the Signal chat group relating to the dates described.

103. My office also received daily updates on the trial from ACT Policing. CPO Gaughan also informed the Office of the Commissioner that he would provide me with direct updates on significant issues as they arose. Attached and marked ‘**AFP.2003.0012.6027**’ is an email including an email from CPO Gaughan to the Office of the Commissioner.

104. My Office was emailed the following, which broadly detailed the daily events during the ACT Supreme Court proceedings:

- CASE NOTE : Court update - 05 October 2022;
- CASE NOTE : Court update - 06 October 2022;

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- CASE NOTE : Court update - 07 October 2022;
- CASE NOTE : Court update - 10 October 2022;
- CASE NOTE : Court update - 11 October 2022;
- CASE NOTE : Court update - 12 October 2022;
- CASE NOTE : Court update - 13 October 2022;
- CASE NOTE : Court update - 14 October 2022;
- CASE NOTE : Court update - 17 October 2022; and
- CASE NOTE : Court update - 18 October 2022.

Attached and marked '**AFP.2002.0001.7887**' is a case note entry report for Operation Covina which includes the information described above.

#### **1 November 2022 Correspondence**

##### *Question 66*

105. I was travelling overseas on official duties between 15-23 October 2022 and 3-19 December 2022. During both of these periods DC McCartney acted as AFP Commissioner. I was made aware of the 1 November 2022 letter by acting Deputy Commissioner Lesa Gale on 1 December 2022 via text message, and that DC Gale has a record of the message. Attached and marked '**Exhibit 83**' is a copy of that document. I do not recall seeing the letter on that day. I later received an email about the contents of the letter from DC McCartney on 18 December 2022. Attached and marked '**AFP.2003.0010.8512**' is a copy of the 18 December 2022 email. The Board of Inquiry was then publicly announced on 21 December 2022.

##### *Question 67*

106. I refer to my response to Question 66 and say further that I do not recall discussing the content of the 1 November 2022 Letter with any other person. Further, the document searches carried out to date for this statement have not been able to identify any records of communications with any person (including any AFP/ACT Policing officers, the DPP/ODPP and/or the Victims of Crime Commissioner) about the correspondence and I do not recall any communications to that effect.

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*Question 68*

107. I did not inform the media in relation to the existence/content of the 1 November 2022 letter.

**AFP Internal Reviews***Question 69*

108. I am not materially involved in the conduct of AFP Internal Reviews. In instances where I request a review be conducted, I ordinarily do so by tasking one of my direct reports. I understand that the Investigation Management Standard and Better Practice Guide on Investigations Reviews are two relevant AFP governance documents that should guide the conduct of internal reviews. I would also routinely expect to be provided advice on the completion of any review I task and any recommendations arising as a result of the review.

*Question 70*

109. I refer to my response to Question 52 above. I say further that I do not recall and have not in the time available been able to locate any further information in my records relating to any other internal reviews in relation to the Investigation specifically or the conduct of sexual assault allegations in the ACT more generally.

**Impressions of the DPP/ODPP during the Investigation and Trial in the Matter of R v Lehrmann***Question 71*

110. I refer to my response to Questions 64 and 65 and say further that I did not have any issues or concerns regarding the DPP's conduct during the investigation and/or trial in the matter of *R v Lehrmann* at the time.

*Question 72*

111. I refer to my response to Questions 64, 65, and 71 and say further that I did not observe the relationship between the DPP/ODPP and the AFP/ACT Policing during the investigation and/or trial in the matter of *R v Lehrmann* (and, as such, did not observe a breakdown of that relationship). I first became aware of the potential breakdown of the relationship between the DPP/ODPP and the AFP/ACT Policing after the publication on 8 December 2022 of the DPP's 1 November 2022 letter.

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*Question 73*

112. I do not have any impression of the treatment by the DPP/ODPP in relation to the investigation and/or trial in the matter of *R v Lehrmann* as I wasn't aware of any difficulties in the relationship until after the publication of the DPP's 1 November 2022 letter and I did not observe how the DPP/ODPP treated AFP officers or ACT Policing officers.

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

*Question 74*

113. I did not have any issues or concerns regarding the Victim of Crime Commissioner's conduct during the investigation and/or trial in the matter of *R v Lehrmann*.

*Question 75*

114. I did not observe the relationship between the Victims of Crime Commissioner (or her staff) and ACT Policing during the investigation and/or trial in the matter of *R v Lehrmann* and am unaware of any breakdown in that relationship.

*Question 76*

115. I did not observe the treatment by the Victims of Crime Commissioner (or her staff) of ACT Policing during the investigation and/or trial in the matter of *R v Lehrmann* and am unaware of any issues in relation to such treatment.

**Media***Question 77*

116. I believe that the principle of open justice is important and that generally media reporting assists in proper public scrutiny of the exercise of significant powers, such as the power to charge and to prosecute. However, the level of media interest in a matter can have very significant effects on those involved, and that those effects can be wide-ranging and long lasting.

117. Further, the greater the media interest in a particular matter, the more likely it is that I will be briefed and that I, in turn, will brief the Minister. This is an orthodox and appropriate approach in high-profile matters. That is not to say that media scrutiny will necessarily have an effect on the investigation itself. My point is simply that the AFP

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has processes in place to ensure that I (and where appropriate the Minister) am briefed appropriately and in a position to respond to queries.

*Question 78*

118. I understand that I was involved in the preparation of a media release issued on Monday 22 March 2021 at 2:01pm, the contents of which are set out below:

*Australian Federal Police Commissioner Reece Kershaw has made the following statement.*

*"I have examined Mr Gaetjens' opening statement of evidence to Senate Estimates.*

*I confirm I informed Mr Gaetjens on 9 March it was strongly advisable to hold off finalising the records of interviews with staff until the AFP could clarify whether the criminal investigation into Ms Higgins' sexual assault allegations may traverse any issues covered by the administrative process he was undertaking.*

*I support his decision to put on hold the process of finalising his inquiry. At this time, I support him not making any further comments on the process or content of his inquiry to avoid any risk of prejudicing the outcome of the criminal investigation.*

*When the AFP has clarity about whether there is no intersection between Mr Gaetjens' administrative inquiry and the criminal investigation I will contact Mr Gaetjens so he can move to completion of his inquiry."*

*With regard to commenting on investigations, the AFP National Media Handbook provides the overarching policy on this. It states:*

*The AFP does not comment on matters or individuals under investigation or provide a running commentary on any active investigation, even if the matter is widely known in the public domain. The primary purpose of this general rule is to maintain the integrity of AFP investigations, and to ensure that entities, individuals and persons of interest are not aware of police interest or an active operation. This general rule also avoids potential 'natural justice' and procedural fairness issues in subsequent trials or formal legal proceedings.*

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The National Media handbook provides details of the AFP/ACT Policing policies procedures and guidelines and/or governance in relation to publicly commenting on investigations. Attached and marked 'AFP.0014.0001.0059' is a copy of the AFP National Media Handbook.

*Question 79*

119. To the extent not addressed in my responses to other Questions and in the time available to prepare this statement, the communications that I am aware of that I have personally received and/or had with the media in relation to the matter of *R v Lehrmann* include a statement made during an appearance on The Ray Hadley Show on 2 March 2021, during which Mr Hadley asked me about the matter of *R v Lehrmann*. On 28 July 2021 I gave an address at the National Press Club (and I refer in this respect to paragraph [52(w)] above). At the conclusion of my address, attendees were invited to ask questions. Questions were asked in relation to the matter, however I do not recall the specific questions or the journalists that asked them.

**Board of Inquiry**

*Question 80*

120. I have spoken with my immediate team in relation to assisting me with locating documents that are relevant to this witness statement. I have not discussed my evidence to the Board of Inquiry with anyone except my immediate support staff and my legal advisers.

*Question 81*

121. I do not wish to raise any other matters with the Board of Inquiry.

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122. **SIGNED** before me at Darwin in the Northern Territory on 11 April 2023.

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Signature of witness

Malcolm Eric Blackford

SCOT 12736

NAME OF WITNESS

**In the matter of the *Inquiries Act 1991******Inquiries (Board of Inquiry – Criminal Justice System) Appointment 2023*****Board of Inquiry into the Criminal Justice System in the Australian Capital Territory****STATEMENT OF REECE PHILIP KERSHAW****INDEX TO EXHIBITS**

No.	Description	Document ID
1.	Notice 2023/S/0020 – subpoena to provide written statement	AFP.0018.0001.0121
2.	<i>Australian Federal Police Act 1979</i> (Cth)	AFP.0018.0001.0284
3.	Ministerial direction 2019	AFP.0014.0001.0004
4.	Ministerial direction 2020	AFP.0014.0001.0006
5.	Reece Philip Kershaw CV	AFP.0014.0001.0051
6.	Record of Reece Kershaw AFP training since 2019	AFP.0015.0001.0879
7.	ACT/AFP Purchase Agreement	AFP.0012.0001.0064
8.	Commonwealth/ACT Policing Arrangement	AFP.0012.0001.0056
9.	28 September 2022 Ministerial Direction	AFP.0012.0001.0051
10.	AFP organisational chart at October 2019	AFP.0015.0001.0881
11.	Minister Gentleman letter of 3 December 2019	AFP.0014.0001.0002

No.	Description	Document ID
12.	AFP Organisational Chart at April 2023	AFP.0015.0001.0883
13.	AFP Regulations	To be provided
14.	AFP Commissioner's Order on Professional Standards (CO2)	To be provided
15.	<i>Victims of Crime Act (ACT)</i>	To be provided
16.	<i>Director of Public Prosecutions Act 1990 (ACT)</i>	To be provided
17.	Commissioner's Order on Governance (CO1)	To be provided
18.	AFP Investigation Doctrine	AFP.0009.0001.0062
19.	Functional Governance Standard Operating Procedure	To be provided
20.	Senior Investigations Office Guide	AFP.0013.0001.0082
21.	Better Practice Guide on Victim's Rights	AFP.0009.0001.0214
22.	Better Practice Guide on Criminal Investigations Response and Notification	AFP.0009.0001.0047
23.	Better Practice Guide on Child Abuse and Sexual Offence Investigations	AFP.0002.0001.0001
24.	Better Practice Guide on Ministerial Briefings for Investigations	AFP.0012.0001.0039
25.	Handbook on AFP National Media	AFP.0013.0001.0110

No.	Description	Document ID
26.	Leon Report	AFP.0018.0001.0690
27.	Lawler Review	AFP.0013.0001.0131
28.	Case Categorisation and Prioritisation	AFP.0014.0001.0009
29.	SIOB Terms of Reference	AFP.0013.0001.0273
30.	AFP National Guidelines on sensitive investigations	AFP.2001.0001.0071
31.	MOU between the AFP and the AEC	AFP.0013.0001.0277
32.	SIOB briefing template	AFP.0016.0001.0056
33.	Better Practice Guide on Ministerial Briefings for Investigations	AFP.0012.0001.0039
34.	Email invitation to 8 February 2021 meeting	AFP.0015.0001.0888
35.	Email attached to email invitation to 8 February 2021 meeting	AFP.0015.0001.0889
36.	Executive Briefing attached to email invitation to 8 February 2021 meeting	AFP.0015.0001.0891
	WIT_Confidential_sensitive_Third_P	
40.	SIOB minutes Thursday 11 February 2021	AFP.0013.0001.0004

No.	Description	Document ID
41.	Document containing 20 February 2021 letter from Minister for Home Affairs	AFP.2001.0001.0159
42.	Document containing 22 February 2021 correspondence to Mr Gaetjens and Minister for Home Affairs	AFP.2001.0001.0159
43.	24 February 2021 letter to Prime Minister	AFP.0015.0001.0896
44.	5 May 2021 email	AFP.2003.0014.8871
45.	10 May 2021 letter to Mr Gaetjens	AFP.0015.0001.0895
<b>WIT_Confidential_sensitive_Third_P</b>		
47.	4 March 2021 letter to Celia Hammond MP	To be provided
48.	4 March 2021 letter to Senator the Hon Simon Birmingham	To be provided
49.	10 March 2021 email from Ms Foster	AFP.2003.0014.5679
50.	Ms Higgins' statement attached to Ms Foster email	AFP.2003.0014.5680
51.	10 March 2021 email to CPO Gaughan and Mr McLean	AFP.2003.0014.5679
52.	11 March 2021 letter from Senator the Hon Simon Birmingham	To be provided
<b>WIT_Confidential_sensitive_Third_P</b>		

No.	Description	Document ID
54.	Investigation timeline review	AFP.2003.0014.8256
55.	5 April 2021 email attaching investigation timeline review	AFP.2003.0014.8254
56.	Agenda for 8 April 2021 Executive Leadership Committee meeting	AFP.2003.0014.8480
57.	Fortnightly Hot Issues Brief 25 June 2021	AFP.2003.0010.3847
58.	Fortnightly Hot Issues Brief 9 July 2021	AFP.2003.0010.3881
59.	Fortnightly Hot Issues Brief 23 July 2021	AFP.2003.0010.3910
60.	Fortnightly Hot Issues Brief 6 August 2021	AFP.2003.0010.3940
61.	Fortnightly Hot Issues Brief 20 August 2021	AFP.2003.0010.3975
62.	Fortnightly Hot Issues Brief 3 September 2021	AFP.2003.0010.4012
63.	Fortnightly Hot Issues Brief 17 September 2021	AFP.2003.0010.4050
64.	Fortnightly Hot Issues Brief 1 October 2021	AFP.2003.0010.4091
65.	Fortnightly Hot Issues Brief 15 October 2021	AFP.2003.0010.4127
66.	Fortnightly Hot Issues Brief 15 November 2021	AFP.0018.0001.0528
67.	Fortnightly Hot Issues Brief 13 November 2021	AFP.0018.0001.0527
68.	J Chidgey notes of 29 July 2021 Executive Leadership Committee meeting	To be provided



No.	Description	Document ID
69.	Joanne Chidgey notes of 5 August 2021 Executive Leadership Committee meeting	To be provided
70.	Agenda of 5 August 2021 Executive Leadership Committee meeting	To be provided
71.	Joanne Chidgey notes of 16 September 2021 Executive Leadership Committee meeting	To be provided
72.	Joanne Chidgey notes of 18 November 2021 Executive Leadership Committee meeting	To be provided
73.	Joanne Chidgey notes of 2 June 2022 Executive Leadership Committee meeting	To be provided
74.	National Press Club briefing	AFP.0018.0001.0670
75.	Calendar invitation of 5 August 2021 titled: 'Commissioner Kershaw: Minister Andrews   Discussion re Higgins Process'	To be provided
76.	Joanne Chidgey notes of 28 April 2022 Executive Leadership Committee meeting	AFP.0015.0001.0899
77.	Joanne Chidgey notes of 5 May 2022 Executive Leadership Committee meeting	AFP.0015.0001.0902
78.	Australian Federal Police-Director of Public Prosecution Collaborative Agreement	AFP.0005.0001.0001
79.	AFP Investigations Doctrine	AFP.0009.0001.0062

## AUSTRALIAN CAPITAL TERRITORY

BOARD OF INQUIRY  
CRIMINAL JUSTICE SYSTEM

No.	Description	Document ID
80.	Screenshots of signal messages of 5 October 2022, 6 October 2022, 11 October 2022, 12 October 2022, and 13 October 2022	AFP.0014.0001.0054
81.	Email from CPO Gaughan to Office of the Commissioner	AFP.2003.0012.6027
82.	Case note entry report for Operation Covina	AFP.2002.0001.7887
83.	Lesa Gale texts	To be provided
84.	18 December 2022 email of DC McCartney	AFP.2003.0010.8512
85.	AFP National Media Handbook	AFP.0014.0001.0059