

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 DAVID FLEMING**

I, David Fleming, of Winchester Police Centre, corner Benjamin Way and College Street, Belconnen, in the Australian Capital Territory (ACT), swears as follows:

The following statement is provided in response to the subpoena I received from the Board of Inquiry into the Criminal Justice System in the Australian Capital Territory requiring me to give information in a written statement regarding my knowledge of matters set out in the Schedule attached to that subpoena. Attached and marked '**Exhibit 1**' is a copy of the relevant subpoena.

**Background and Professional History**

**Current Employment**

1. I am Detective Sergeant. I am currently the team leader of **WIT\_Personal\_Info** **WIT\_Personal\_Info**, situated at AFP Headquarters, Kings Avenue, Barton, ACT.
2. In my current position I review and conduct investigations into organised crime networks regarding their financial assets and holdings. I have discussed my position in more detail below.

**Tertiary Qualifications**

3. I have a Bachelor of Policing which I obtained in 2010 through Charles Sturt University ('CSU').

**Course and/or Diplomas**

4. I completed the following training courses whilst I was a police officer with the New South Wales Police Force ('NSWPF'):
  - a) Certificate of Policing (1997 NSWPF);

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- b) Close Personal Protection Course (1999 NSWPF);
- c) Breath Analysing Instruments Course (2001 NSWPF);
- d) Operations Support Group Basic Operators Course (2001 NSWPF);
- e) Field Teaching Officers Workshop (2002 NSWPF);
- f) Custody Managers Workshop (2002 NSWPF);
- g) Diploma of Public Safety (2002 CSU);
- h) Informant Management Course (2004 NSWPF); and
- i) Investigators Course (2004 NSWPF);

**Designations NSWPF**

- a) Constable (1997 NSWPF); and
- b) Senior Constable (2002 NSWPF).

5. I have completed the following training courses whilst a member of the Australian Federal Police ('AFP'):

- a) Islamic Cultural Awareness Program (2007 AFP);
- b) Investigators Training Program (2008 AFP);
- c) Command, Control & Coordination Workshop (2009 AFP);
- d) Media Training and Awareness Workshop (2009 AFP);
- e) Certificate IV in Training and Assessment (2009 Bayley & Associates);
- f) Advanced Diploma of Public Safety (2010 AFP);
- g) Human Source Handling Program (2010 AFP);
- h) Victims of Crime Awareness Training (2011 AFP);
- i) Interviewing Vulnerable Witness Program (2012 AFP);
- j) Sexual Offences Investigation Program (2012 AFP);
- k) Brief Adjudication Workshop (2013 AFP);
- l) Advanced Human Source Handling Program (2016 AFP);
- m) Family Violence Evidence in Chief Training Course (2016 AFP); and
- n) Investigative Interviewing (2018 AFP).

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**Designations APF**

- a) Senior Constable (2007 AFP);
- b) Detective Designation (2009 AFP);
- c) Leading Senior Constable (2011 AFP); and
- d) Sergeant (2012 AFP).

**Employment Chronology**

6. I have been a police officer for 26 years. I joined the NSWPF in 1996 and I spent ten years performing general duties policing.
7. Please find the chronology of my employment with NSWPF below:

- a) Personal information
- b)
- c)
- d)
- e)
- f)

8. In 2006, I resigned from the NSWPF and joined the AFP. I completed an eight-week lateral recruit development program. Upon completion of this program, I was assigned to undertake general duties at Belconnen Patrol, North District as part of ACT Policing ('ACTP').
9. In 2007, I transferred to the ACT Territory Investigations Group ('TIG') and performed the following investigative duties:

- a) Property Crime Team (PCT) 2007 – 2009  
Investigative duties into recidivist property theft and high priority offenders identified through intelligence led policing.

- b) Personal information

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c) Drug Investigations Team (DIT) 2009 – 2011

Investigative duties involving protracted investigations relating to drug trafficking and supply, significant drug cultivation and drug manufacture in the ACT. The DIT was also responsible for investigating all sudden deaths resulting from illicit drug use and responding to and processing clandestine laboratories.

d) Response Crime 2011 – 2012

Investigative duties into major and critical criminal incidents including higher level aggravated robberies, arson, serious assaults, bomb/explosive matters, suspicious deaths, suicides, kidnapping, blackmail/extortion, missing person investigations where suspicious circumstances or serious concerns for welfare exist, and any other matter referred by the Superintendent of TIG.

10. In 2012, I was promoted to Sergeant and transferred to City Patrol, North District ACTP. Within this role I supervised the general duties team in ACTP. I also led, guided, mentored, and managed the resources and performance of a team in support of ACTP priorities, strategic and operational objectives.
11. In 2015, I transferred to ACT Criminal Investigations (formerly TIG) CI and undertook the role of Operations Support Sergeant.
12. In this role, I performed a wide variety of corporate, operational, policy and administrative functions to support the CI, Superintendent/Coordinator and Crime Managers. My role included the production of requisite business reports, business plans and AFP Governance documents relevant to ACTP Policing, vetting and adjudication of mention and hearing briefs, vetting and adjudication of affidavits for search warrants, controlled operations, special projects, and forensic procedures and facilitating training to CI.
13. During this time, I also performed the role of Crime Manager within ACT Criminal Investigations whilst the substantive Crime Manager was on leave or assigned to higher duties.

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14. In this role, I performed a variety of corporate, operational, policy and administrative functions to support the CI and, specifically, the Superintendent/Coordinator. This role included representing ACTCI and ACTP in meetings and forums, both internally and externally, fiscal oversight of ACTCI budget and overtime, resourcing, and rostering in response to ACTCI and ACTP priorities and oversight of work conducted by teams within ACTCI.
15. In 2016, I transferred to ACT Intelligence Operations as the team leader of the ACT Human Source Management Team ('HSMT'). In this role, I provided support to ACTP through the delivery of accurate and timely information that assisted and progressed investigations into serious, protracted, and complex criminal offences impacting the ACT.
16. During this time, I performed the role of Officer in Charge ('OIC') of ACT Intelligence Operations. In this role, I managed and directed resources and identified intelligence priorities for ACTP, represented ACTP in meetings and forums, both internally and externally and was accountable for the area and the allocation of resources in support of ACT Policing investigations and initiatives.
17. In 2018, I transferred to ACTCI Response Crime Team stationed at City Police station.
18. In this role, I led and managed an investigations team which was tasked to conduct investigations into major and critical criminal incidents which required an immediate response in support of ACTP. These incidents included higher level aggravated robberies, arson, serious assaults, bomb/explosive matters, suspicious deaths, suicides, kidnapping, blackmail/extortion, missing person investigations where suspicious circumstances or serious concerns for welfare exist, and any other matter referred by the Superintendent of ACTCI.
19. Later in 2018, I transferred to the ACTCI Drugs Organised Crime Team ('DOCT').
20. In this role I led and managed an investigations team, tasked with conducting investigations into organised criminal networks involved in serious and organised crime. This involved:
  - a) planning major operations;
  - b) establishing investigational strategies and objectives;

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- c) coordination of resources and specialist services;
  - d) prioritising tasks and oversight of investigations;
  - e) review of special project applications, search warrant applications, tactical plans and briefs of evidence; and
  - f) reporting outcomes to Criminal Investigations management.
21. In 2021, I transferred to Sexual Assault Child Abuse Team ('SACAT') Team 1.
22. In this role, I led and mentored an investigations team tasked with the investigations of sex-based offences and child abuse.
23. In 2022, I transferred to as team leader of PII - Prejudice investigations Confiscation Criminal Assets Team ('CACT'). I am currently in this role.
24. In this role I am responsible for PII - Prejudice investigations  
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25. In 2021, I undertook a review of ACTCI SACAT at the request of ACTCI management.
26. I was provided with terms of reference ('TOR') which set out the purpose of the review and a set of specific points to examine. The TOR are as follows:
- a) Team structure and composition;
  - b) Governance;
  - c) Investigation allocation;
  - d) Types of jobs which are investigated by SACAT;
  - e) Time on task;
  - f) Current issues with Psych Services to understand current pressures on SACAT investigators' mental health;
  - g) Current operating models used in other jurisdictions;
  - h) Training needs including the requirement for specialist training; and

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i) Child and Youth Protection Services (CYPS) Liaison role.

27. Attached and marked 'Exhibit 2' is a copy of the Review of the ACT Criminal Investigations Sexual Assault and Child Abuse Teams.
28. On 1 July 2021, I commenced the review, and it was completed on 19 September 2021.
29. After the review, I transferred to SACAT as team leader for SACAT Team 1. In this role, I provided guidance and support to the members of the team in the management and investigation of sexual assault and child abuse offences.
30. During my twenty-six years of policing, I cannot recall the number of incidents involving allegations of sexual assault I have attended. All of the incidents I have attended were primarily whilst I was performing general duties as a Constable or Sergeant.
31. As a result, I would not have investigated these matters by myself or other members of the general duties team I led, rather they would have been allocated to a detective to investigate.
32. I have not conducted an investigation into an allegation of sexual assault. This is because whilst I was attached to ACTCI as a Constable, I did not undertake duties in SACAT. I did not recall being allocated an investigation into a sexual assault whilst attached to other areas within ACTCI.

#### Training and Education

33. In 2012, I completed the Sexual Offences Investigation Program 1/2012. The program was an AFP internal training course which was conducted over two weeks.
34. In 2012, I also completed the Interview Vulnerable Witness Program, which was an AFP internal training course which was conducted over three days. I do not have access to the training material to provide a detailed information of the training.
35. During my career I have completed specialised investigative interviewing training which was conducted by NSWPF and the AFP. As stated, I have completed the Investigations Training Program.

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36. I am not currently undertaking any specialised training specific to the investigation into sexual based offences as I am not currently undertaking duties in ACTCI.
37. My view in relation to the correlation between training and education of conducting sexual assault investigations and how investigations are conducted in practice is dependent on the police officer and implementation of their training with regards to real investigations.
38. Training courses can provide fundamental aspects of a specific function, however on the job operations are not the same as the environment provided by the courses. Thus, for a police officer to develop their skills, it is crucial that they are not opposed to work, and rather take on work, experience it from all different angles and expose themselves to a variety of situations. This approach enables a police officer's skills and knowledge to be tested and developed beyond what training can provide.
39. As outlined above, in the review of the ACT Criminal Investigations Sexual Assault and Child Abuse Teams, experience of police conducting investigations of sex-based offences was lacking.
40. This was detailed in page 6 to 8 of **exhibit 2**.
41. In my opinion, this issue is a result of having insufficient policing resources within the ACT jurisdiction to service the work that police are required to undertake.
42. Further, the retention of experienced police officers and providing them with the framework and support to remain in areas such as ACTCI is difficult for the organisation to maintain.
43. I do not have access to information to provide a response on the mandatory training and experience for a member in SACAT as of 1 February 2021.
44. During my time in SACAT, police officers undertaking investigations into sexual based offences and child abuse were required to undergo six-month psychological assessments.
45. This is detailed in page 35 to 39 of **exhibit 2**.

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**Organisational Structure**

46. On October 2021, the chain of command for SACAT was:
- a) Three team leaders (Two Detective Sergeants and one acting Sergeant);
  - b) Crime Manager (Detective Inspector Marcus Boorman); and
  - c) Superintendent (Detective Superintendent Scott Moller).
47. In November 2021, a Crime Manager position was established to provide oversight and support to SACAT, Child Sex Offender Registry ('CSORT') and Joint Anti Child Exploitation Team ('JACET').
48. I do not currently work within ACTCI, thus cannot provide a response as to the current chain of command, and who holds the relevant positions.

**Duties and Responsibilities**

49. The investigation into an allegation of a sexual assault or a sex-based offence is driven by the victim, and how they wish to proceed with the matter.
50. A report can be received or referred to police in a number of different ways, from on-line reporting, phone call through to ACTP Operations, attendance at a police station, referral from another government department or agency or a referral from another law enforcement jurisdiction.
51. Police will review every report, and based on the circumstances of the incident in conjunction with the wishes of the victim determine how police will respond to the incident. This may involve an immediate police response to prevent further harm being caused to the victim, preserve evidence, and commence an investigation. It may involve the matter being allocated for investigation, which may be suspended until the victim is ready to proceed in reporting the matter. Whether there is an immediate response or delayed response, police will ensure support services are provided to the victim.

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52. A weekly meeting is held within SACAT to discuss each referral that has been made to police over the previous week. The meeting is attended by the team leader for each team within SACAT and the Crime Manager for SACAT.
53. All matters that have been referred to SACAT are placed onto a spreadsheet and allocated to police within a team. This process is undertaken to balance the workload for each individual police officer and provide an oversight of the investigations being undertaken across the area.

#### **Triage Process for Sexual Assault Complaint**

54. The response to an allegation of a sexual assault or sex based offence may take a number different paths before it is allocated to a police officer within SACAT for investigation.
55. If the matter requires an immediate response or the victim has attended a police station to report the matter, the first point of contact the victim will have is with a general duties police officer. They will gather initial details of the incident and engage with their team leader and/or the duty operations manager within ACTP Operations to receive guidance and oversight.
56. The matter may be referred immediately to SACAT, and dependant on the circumstances a whole team may respond to the incident, or two police officers from SACAT attend.
57. Support services will be engaged through a wraparound referral, or contacted to attend the location of the victim to provide immediate support.
58. Attached and marked 'Exhibit 3' is a copy of the AFP Better Practice Guide on Sexual Offence and Child Abuse First Response.

#### **Investigating Sexual Assault Complaints**

59. The typical process of conducting an investigation into the allegation of a sexual assault is victim centric.
60. All measures are put in place to provide the victim with support and access to specialised support services.

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61. Police officers attached to SACAT will form the primary point of police involvement in the matter once it has been referred to SACAT for investigation.
62. A review of all material obtained prior to it being referred to SACAT will be undertaken and arrangements made to speak to the victim. This will involve enabling the victim to have a support person present during the initial meeting and may involve the attendance of an intermediary from the ACT Human Rights Commission ('HRC') or Canberra Rape Crisis Centre ('CRCC').
63. The initial meeting will involve police providing information to the victim about the roles of police and support services and the victim-centric approach that will be undertaken to support the victim through the process. Police will provide information to the victim on the steps that they will need to undertake as part of the investigation and advise the victim of the court process.
64. Attached and marked 'Exhibit 4' is a copy of the 'Information for meet and greet' policy.
65. The use of an intermediary in a formal interview with the victim, may be at the request of a victim, or due to the age, mental capacity or level of trauma suffered by the victim may be at the request of police investigating the matter.
66. The evidence that would need to be obtained, would involve obtaining or gathering information that enables the police officer investigating the matter to meet the proofs of the offence. This would involve obtaining information to establish the common proofs, such as time, date, location, identity of the alleged offender.
67. Police would then need to obtain information about the particular nature of the offence in as much detail as the victim is able to provide. These pieces of information will enable the police officer conducting the investigation to determine avenues of enquiry such as identifying other persons to speak to or the location of forensic evidence that may be available for analysis.
68. If the matter involves a report of an allegation of a sexual assault that is historical, drawing out as much relevant information about the point in time that the victim is referring to is important. This will enable police to gather information and evidence which supports and corroborates the

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allegation such as reviewing historical data and records or identifying persons to whom the victim has disclosed the incident to over time.

69. I am not aware if the investigation process has changed as I left SACAT on 30 June 2022.
70. Apart from the investigation regarding Ms Higgins's complaint, I have not been involved in a sexual assault investigation in which a Superintendent is actively involved in the investigation.
71. Upon the completion of an investigation into an allegation of a sexual assault which results in sufficient evidence being obtained by police, a decision will be made to arrest and charge the offender or to issue a summons for the offender to appear before the court.
72. If a brief of evidence is required to be completed, the brief will be assembled by the case officer for the investigation through an electronic brief format ('**ebrief**'). This will involve all information and evidence that has been obtained by police during the course of the investigation being attached to a Microsoft Excel spreadsheet via a hyperlink.
73. The ebrief would be submitted to the case officer's team leader for vetting and review.
74. The ebrief would then be vetted and reviewed by the Adjudications and Practices Sergeant. This process is undertaken to:
- a) review material contained in the ebrief;
  - b) ensure personal information is removed or redacted from the ebrief;
  - c) determine whether the correct charges have been laid;
  - d) ensure that the ebrief has been assembled in the correct format and order;
  - e) ensure the rules of evidence have been followed;
  - f) ensure the disclosure of material has been properly completed;
  - g) determine whether it is recommended to ensure prosecution continues;
  - h) ensure the correct procedures have been followed in respect to victim impact statements;  
and
  - i) whether further investigation is required to be undertaken.

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75. Attached and marked '**Exhibit 5**' is a copy AFP Hearing Brief Adjudication Sheet and ACTP Brief of Evidence Marking Guide.
76. As stated, the investigation into an allegation of a sexual assault is victim centric. As part of this approach, the police officer involved in conducting the investigation will work together with the victim to develop how they wish to be contacted and kept apprised of the developments or changes in the status of investigation. At a minimum, the police officer conducting the investigation must contact the victim every six weeks.
77. Attached and marked '**Exhibit 6**' is a copy the ACT 'Victim's Rights' and AFP Better Practice Guide Victims' Rights.
78. I note investigations are conducted as per the AFP Investigations Doctrine which states:
- Investigations are an objective search for the truth by the discovery and presentation of evidence in an exhaustive, comprehensive, and organised manner.*
79. Attached and marked '**Exhibit 7**' is a copy AFP Investigations Doctrine.
80. When taking this statement and assessing its validity, the case officer must have reasonable grounds to suspect that an offence has occurred and ensure that the investigation has discovered sufficient inculpatory evidence to suggest that a prima facie case exists with all the proofs of the offence been met.
81. Ideally, this would involve the exploration of all available avenues of enquiry to obtain corroborative evidence in support the information that has been provided by the victim.
82. Police should also seek to obtain any exculpatory evidence that might be reasonably available.
83. The size, scope and outcome of the investigation will be dependent upon each individual set of circumstances which are relative to each sexual assault allegation.

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84. If the police officer conducting an investigation into a sexual assault requires further information from the victim, they would contact the victim in the manner requested by the victim be that via phone, email, in person or through a nominated support person.
85. The process undertaken to advise a victim when a decision has been made to charge or not charge is also dependent upon the victim and deemed the most suitable the circumstances.
86. This decision is done in consultation with the police officer investigating the matter. The decision would be recorded in the police officer's official diary and on the relevant PROMIS case.
87. A process was implemented in 2021, where investigations that did not meet the threshold for an arrest and charge of an offender, or for other reasons were referred to the case officer's team leader for adjudication and review.
88. If the team leader supported the decision of the case officer, the matter was referred to the ACTCI Management Committee ('CIMC') for a further review. If the CIMC supported the decision of the case officer and team leader, the matter would be marked as finalised. The decisions by all parties would be recorded on the PROMIS case and the victim was advised of the decision and the reason for the decision.
89. In relation to a 'perceived culture' that existed within SACAT in respect to how victims of sexual assault were treated, I can state that in the short time that I was attached to SACAT, and through the review that I conducted, I did not observe, identify, or witness a perceived negative culture.
90. I spoke to both current and former officers of SACAT to understand and learn the issues of working within SACAT. Throughout the course my discussions, I did not identify an underlying culture that led me to believe that police officers within SACAT were treating victims of sexual assault and sex based offences, differently to other victims of crime.

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**Challenges, Issues and/or Pressures**

91. Whilst attached to SACAT and in conjunction with my review, it was identified the overriding issues, challenges and pressures were attributable to resourcing, workload, experience, and training.
92. The lack of appropriate levels of police officers, the high and continual flow of work and investigations, and the inability to retain experienced police officers within SACAT greatly impacted the welfare of police officers working at SACAT. These issues collectively impacted upon the time case officers spent to investigate each matter.
93. An example of this is when I took over the management of SACAT Team 1. I reviewed the workload of the team and observed that the team had seventy-one cases. The investigation into Ms Higgins was one of the seventy-one cases we had. Ms Higgin's complaint took prominence over the other cases, which impacted the work, oversight, and management of the other seventy investigations. The workload increased every week, and the team would be allocated new investigations either through immediate response or through the SCACT MC.

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

94. In relation to Final Report of the Sexual Assault Prevention and Response Steering Committee ('report'), I have read some sections of the report that related to the policing response.
95. In relation to the response and steps taken by the AFP and ACT regarding the issues and recommendations made by the Steering Committee Report, I am unable to comment on as I no longer work at SACAT. I do not know the changes and the progress of implemented changes that came from the 'Sexual Assault Prevention and Response Steering Committee report, 'Listen, Take Action to Prevent, Believe and Heal.'
96. Attached and marked 'Exhibit 8' is a copy of the Listen, Take Action to Prevent, Believe and Heal Report.
97. I am unable to comment if there has been a cultural shift within the ODPP and DPP in the prosecution of sexual assault offences since the release of the Steering Committee Report, as I no longer work in SACAT and do not have direct contact with the ODPP or DPP.

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98. I am unable to comment if there has been a cultural shift within the AFP and ACTP in the prosecution of sexual assault offences since the release of the Steering Committee Report, as I no longer work in SACAT and do not have direct contact with the ODPP or DPP.

**Director of Public Prosecution (DPP), Office of the Director of Public Prosecutions (ODPP)**

99. In relation to the relationship that existed between the ODPP and ACTP prior to the investigation of Ms Higgins's complaint, I can only comment on my personal experience and not on the organisation as a whole.
100. My experience with the ODPP has been varied and reflective of the investigation I was involved with and the member of the ODPP that was prosecuting the matter. Some prosecutors maintained open channels of communication, provided excellent feedback and were thorough in their presentation of the matter in court others were not so good at this.
101. In an attempt to reduce any potential issues, I had with some members of the ODPP, I instigated meetings with the assigned prosecutor at the earliest opportunity once the brief of evidence had been submitted to engage in discussion about the matter. This enabled the ODPP and me to be appraised of any issues that required attention, well in advance of a hearing or sentence. Upon being promoted, I actively encouraged all team members to follow the same approach.
102. Whilst attached to SACAT, fortnightly meetings were held with the ODPP to discuss specific matters that were before the court and any legal issues regarding investigations of sex-based offences. The meetings were attended by the team leaders within SACAT and prosecutors from the ODPP who were attached to the Sexual Offences Unit.
103. My level of involvement as SACAT Team Leader with the ODPP and DPP was dependant on the matters my team had before court or matters in which we were seeking advice on.

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104. During a discussion with ODPP, I was advised a matter could proceed to trial which was only supported by the Evidence in Chief Interview ('EICI') alone, without corroborative evidence. I was concerned because if police took this approach:
- i. they would be criticised for not conducting a thorough investigation;
  - ii. they may not obtain evidence to corroborate or support the information provided by the victim;
  - iii. they would be inundated with requests from the ODPP or DPP to gather and obtain further evidence which may cause significant harm to the victim; and
  - iv. it may lead to a failed prosecution in court.
105. Prior to commencing duties in SACAT, I did not have dealings with Ms Skye Jerome, Mr Mitchell Grieg, Ms Sarah Piney, Ms Erin Priestly, or Mr Andrew Chatterton.

#### Victims of Crime Commissioner

106. In October 2021, I commenced duties in SACAT.
107. I did not have involvement with the Victims of Crime Commissioner ('VCC') in relation to any matter being investigated by police attached to SACAT, or in relation to Ms Higgins's complaint.
108. I met with the VCC on one occasion as part of the SACAT review I conducted, to obtain information about the role of the VCC and intermediaries in the course of an investigation into a sexual assault.

#### The Investigation/pre trial

##### *15 July 2021 meeting*

109. I met with ODPP on 15 July 2021, for the purposes of gathering information to assist in the review that I was conducting.
110. At the time the meeting, I was with former AFP member Ms Marissa [REDACTED], Ms Skye Jerome, and Mr Andrew Chatterton.

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111. The meeting was held at the office of the ODPP. The Director of the DPP attended the meeting and proceeded to go on a twenty-minute speech about the matter of R v Lehrmann.
112. The Director of the DPP made reference to a report that had been disseminated by Detective Inspector Boorman in relation to the matter and stated that it was '*a hatchet job*'. I cannot recall being shown or provided with a copy of the report by Detective Inspector Boorman during the course of the meeting.
113. I had no involvement in the matter and did not have any knowledge about what he was referring to. The Director of the DPP appeared quite emotive, based upon the content of the report, however it was neither the appropriate forum or manner in which to discuss the content of the report. After this meeting, I wrote note in my diary about the meeting with the DPP.
114. Attached and marked '**Exhibit 9**' is a copy of my official AFP Diary D15081 pages 285 to 286, outlining my meeting with the DPP on 15 July 2021.

*Involvement in the Investigation*

115. I became formally involved in the Ms Higgins investigation when I commenced duties in SACAT in October 2021. Prior to October 2021, I had not been involved with the investigation. I was not aware of the details of the complaint, nor was I aware of the any issue, perceived or actual in relation to the investigation and the subsequent nature of relationships between any of the parties involved in the matter.
116. I received a briefing on the investigation by Senior Constable Emma Frizzell, prior to conducting a review of the brief of evidence and investigation. I am unable to recall the exact date that this occurred.

*Interactions with DPP/ODPP pre trial*

117. The interactions that I had with the DPP and ODPP pre-trial related to or involved:
- a) a review of the brief of evidence;

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- b) the disclosure of material that had been gathered, obtained, and recorded by police in relation to the investigation;
- c) the service of subpoenas to witnesses in preparation of the first trial listed for June 2022;
- d) the retrieval and the subsequent examination of USB thumb drives which contained the original brief of evidence in relation to the matter from Mr. John Korn, former legal representative for Mr. Lehrmann;
- e) obtaining a statement from Mr. John Korn, former legal representative for Mr. Lehrmann;
- f) WIT\_Confidential\_sensitive\_Third\_P
- g) obtaining a statement from Ms. Lisa Wilkins, a journalist who at the time was working for Channel 10 as part of the Project; and
- h) obtaining a statement from Samantha Maiden, a journalist for News Corp.

118. The majority of the contact that I had with the ODPP and DPP occurred via email. The emails I received were addressed to me directly, or I was copied into an email which was addressed to another police officer who was involved in the matter.

119. I attended the ODPP office to discuss the brief of evidence that I had reviewed, the issue of disclosure, the CCTV footage from APH and to provide the ODPP with the evidence and information in relation to the matter of *R v Lehrmann*.

120. I do not recall having specific conversations with the ODPP or DPP in relation to:

- i. my views in relation to the conduct of the investigation;
- ii. difficulty in obtaining Ms Higgins's or Mr. Lehrmann's mobile phone to conduct a Cellebrite download;
- iii. conducting an interview with Mr. Lehrmann;
- iv. the credibility of Ms. Higgins and Mr. Lehrmann;
- v. my concerns in relation to Ms. Higgins and Mr. Lehrmann's mental health; and
- vi. encouraging Mr. Higgins not to engage with media during the investigation.

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**CCTV**

121. I have detailed below my interaction with the ODPP/DPP regarding the CCTV footage of Ms. Higgins and Mr. Lehrmann entering the APH.
122. WIT\_Confidential\_sensitive\_Third\_P  
WIT\_Confidential\_sensitive\_Third\_P Police had been requested by the ODPP to obtain a copy of the CCTV footage, as they believed that footage existed which showed Mr. Lehrmann and Ms. Higgins enter APH from the CP gate.
123. WIT\_Confidential\_sensitive\_Third\_P S/C Frizzell and I attended the ODPP on London Circuit, Canberra City, ACT.
124. S/C Frizzell and I were let into the building and shown to a meeting room. In the meeting Ms Skye Jerome, Mr Shane Drumgold, Ms Erin Priestley and Mr Mitchell Grieg from the ODPP were present. The CCTV footage was shown to all people present in the meeting room.
125. They were advised that the footage that they were being shown, was the same footage that was on the master file contained in the brief of evidence.
126. In the meeting it was raised by the ODPP they had seen footage that showed Mr. Lehrmann and Ms. Higgins getting out of a car and entering APH from the CP gate. I cannot recall which member of the ODPP made the point about viewing the footage, but they were very adamant that it existed and that they had seen it.
127. After this meeting, I wrote down notes detailing our conversation whilst at the ODPP office regarding the CCTV footage.
128. Attached and marked '**Exhibit 10**' is a copy of my official AFP Diary D 16242 page 33 to 34 outlining my meeting with the DPP on 23 May 2022 regarding the CCTV.
129. On 24 May 2022, I obtained a USB that contained other material in relation to the Ms Higgins matter and attended ODPP office on London Circuit, Canberra City, ACT.

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130. At the building, I handed the USB drive to Mr Mitchell Grieg from the ODPP.
131. Afterwards, I returned to the Winchester Police Centre and obtained the master CCTV footage from APH, AFP seizure: 3620292 from Detective Leading Senior Constable (DLSC) Madders.
132. I returned to the ODPP office on London Circuit, Canberra City, ACT. I was let into the building and shown to a meeting room. Also present in the meeting room was Ms Skye Jerome, Mr Shane Drumgold, Ms Erin Priestley, and Mr Mitchell Grieg from the ODPP/DPP.
133. They were shown the master CCTV footage from APH that I had just obtained from DLSC Madders.
134. The footage from the master CCTV footage did not contain or show footage that the DPP claimed to have seen. I advised the DPP that the brief of evidence had been disclosed August last year on a hard drive which contained this footage.
135. I further advised the DPP the only CCTV footage police obtained is as contained on the master CCTV footage. I further stated that if any other footage existed, it would be in a police statement, be produced in their statement and be an exhibit contained in the brief of evidence.
136. The DPP stated they wanted the hard drive examined to see if the file exists and can be retrieved and wanted to know how DLSC Madders had made a copy of the CCTV footage.
137. The Director of the ODPP, Mr Shane Drumgold ('DPP') advised Mr John Korn was no longer representing the defendant and that the defendant is seeking legal aid. The trial will still continue, however maybe a week later. The meeting ended.
138. I left the building and returned to the Winchester Police Centre.
139. I believe the misunderstanding around the CCTV footage results from the DPP getting confused with a re-enactment which was televised on the Four Corners program.

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140. I contacted Ms Alicia **Perso** from AFP Digital Forensics and requested that she conduct an examination of the hard drive as the DPP requested. Ms **Perso** advised a quick look through the hard drive would take approximately one hour. The other option would be to conduct a full extraction and review which would take two to three days.
141. I made notes of my conversation with Ms **Perso** on 24 May 2022 in my official AFP Diary.
142. Attached and marked 'Exhibit 11' is a copy of my official AFP Diary D 1624 pages page 35 to 36.
143. On 25 May 2022, I conducted a review of the brief of evidence and folder on the AFP drive that contained the material and information that had been obtained, gathered, and recorded in relation to *R v Lehrmann* and the CCTV footage.
144. On 5.11pm, I sent an email to Ms Skye Jerome from the ODPP in relation to the footage.
145. Attached and marked 'Exhibit 12' is a copy my email sent to Ms Skye Jerome on 25 May 2022 at 5.11pm.
146. On 24 May, 25 May, 26 May and 14 June 2022, I received emails from Ms Skye Jerome requesting the CCTV footage, whether the subsequent examination of an AFP hard drive had been completed and whether the CCTV footage from APH had been located.
147. Attached and marked 'Exhibit 13' is a copy of the emails from Ms Skye Jerome 24 May, 25 May, 26 May and 14 June 2022.
148. On 28 May 2022, I had a meeting with Detective Superintendent Scott Moller, Detective Inspector Marcus Boorman and Detective Inspector Callum Hughes in relation to the matter of *R v Lehrmann*.
149. I advised the DPP wished for a statement to be obtained from Digital Forensics in relation to the hard drive. A decision was made for Digital Forensics to conduct a full extraction and examination of the material obtained from the full extraction in relation to the CCTV footage.

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*Mr John Korn*

150. I was requested by the DPP to retrieve the USB that had been provided to the former legal representative of Bruce Lehrmann, Mr John Korn.
151. The USB contained a brief of evidence that had been provided to Mr Korn. The DPP requested that the USB be examined to determine whether the files on the USB had been accessed, viewed, and copied.
152. This request was made during the COVID-19 travel restrictions, which required authorisation from a senior officer to travel across the ACT border to be obtained and to mitigate any contact between police involved in the retrieval of the USB to ensure we did not breach health directives.
153. Arrangements were made for two police from SACAT to drive to a meeting point halfway between Canberra, ACT and Sydney, NSW where the USB was obtained from two AFP members from the AFP Sydney office.
154. The officers then returned to the ACT with the USB in question. The DPP requested that the USB be examined by AFP Digital Forensics to determine whether files on the USB had been accessed, viewed, and copied. Arrangements were made for the examination to be undertaken, which revealed that it was unable to determine whether the files were accessed or copied.
155. On 10 June 2022, I received an email which came through chain of command via the DPP. In the email, I was requested to obtain a statement from Mr Korn in relation to a USB he had received in August 2021. I was provided with a list of questions to discuss with Mr Korn in relation to the brief of evidence that was contained on the USB. I made arrangements with Mr Korn to attend his chambers in 370 Pitt Street, Sydney, NSW.
156. About 12.20pm on 16 June 2022, I met with Mr Korn at his chambers. At about 12.29pm, I commenced a record of conversation ('ROC') with Mr Korn which was recorded on a hand held digital recorder. There were no other persons present, other than myself and Mr Korn during the ROC. At about 12.30pm the ROC was suspended so Mr Korn could take an unrelated phone call.

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157. At about 12.31pm, the ROC was resumed. At about 1.06pm, the ROC was suspended for Mr Korn to take a phone call. At about 1.07pm, the ROC was resumed. At about 1.14pm, the ROC was suspended to allow Mr Korn to review emails in relation to the brief of evidence he received from DPP, Mr Shane Drumgold. At about 1.16pm, the ROC was resumed. At about 1.25pm the ROC with Mr Korn was concluded.
158. After the ROC had concluded with Mr Korn, I made notes in my AFP Diary D 16242 regarding the ROC with Mr Korn.
159. Mr Korn advised that he had only received one brief of evidence from ACTP and all subsequent briefs updates were sent to him by the DPP. Mr Korn was requested to relinquish the USBs which contained the updates from the DPP, but he declined.
160. I left Mr Korn's chambers and returned to the ACT. Upon returning to the Winchester Police Centre, I uploaded the audio recordings of the ROC with Mr. John Korn onto an AFP drive.
161. Attached and marked '**Exhibit 14**' is a copy of my official AFP Diary D 16242 pages 40 to 41 and pages 45 to 47.
162. Attached and marked '**Exhibit 15**' is a copy an email from requesting a statement from Mr Korn statement dated 10 June 2022.
163. Attached and marked '**Exhibit 16**' is a copy of audio recording taken Mr Korn's ROC on 10 June 2022.
164. The request for a statement from Mr Korn and request for the USB to be analysed was to determine whether they had been opened and viewed by Mr Korn. The DPP did not advised of the reason for this request or its relevance to the charges before the court for the matter or *R v Lehrmann*.

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*Interactions with Ms Higgins, her legal representatives and/or the Victims of Crime Commissioner*

165. I had no involvement or interaction with Ms Higgins, her legal representatives, and the Victims of Crime Commissioner in relation to the matter subject of the Inquiry.

*DPP concerns*

166. It was obvious that from the meeting I had with the DPP on 15 July 2021, that the Director of the DPP had concerns with the AFP and ACTP officers allocated to the investigation.

167. I form this opinion based on my observations of the DPP and what he stated during the course of the meeting.

168. Other than this interaction, I did not obtain any further information or had any further discussions with the ODPP or DPP in relation to this issue.

**The trial/post trial***Interactions with DPP/ODPP*

169. On 30 June 2022, I transferred from ACTP to AFP Headquarters. I had no involvement in the trial and have had no contact with any members of the ODPP or DPP who were involved in the matter of *R v Lehrmann*.

*Interactions with the legal representatives for Mr. Lehrmann*

170. In my experience, I have relied upon the ODPP to be the conduit for any discussions involving the legal representatives of a person who is before the court on criminal charges and myself as the investigator.

171. I do not discuss or disclose the nature of weaknesses in a prosecution case to the legal representative for a defendant.

172. I had no interactions with the legal representatives for Mr. Lehrmann, in relation to the matter of *R v Lehrmann*, other than to make arrangements and to subsequently obtain a ROC from Mr Korn in relation to the original brief of evidence that he was provided in August 2021.

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*Interactions with Ms Higgins, her legal representatives and/or the Victims of Crime Commissioner*

173. I had no interactions with the VCC in relation to the matter of R v Lehrmann.

**Bail**

174. I had no interactions with the ODPP or legal representatives for Mr. Lehrmann in relation to bail conditions for Mr. Lehrmann following the listing of the matter for retrial.

175. In my experience, I have relied upon the ODPP to be the conduit for any discussions involving the legal representatives of a person who is before the court on criminal charges, including discussions in relation to bail conditions.

**Conduct of the parties generally***Conduct of the DPP and ODPP*

176. I did not feel that the relationship between police and the DPP was an effective working relationship.

177. There are clearly issues between parties from the AFP, ACTP, ODPP and DPP which affected the working relationship and lines of communication between both organisations and the manner in which the ODPP and DPP communicated with police.

*Conduct of the AFP/ACT Policing Officers*

178. I came involved in the investigation at a very late stage, and was not involved with discussions, meetings and decisions made in relation to the investigation made prior to October 2021.

179. Without having firsthand knowledge and exposure to the period of time prior to October 2021, I am unable to provide comment on the conduct of AFP and ACT Policing.

180. However, I hold Senior Constable Emma Frizzell and DLSC Trent Madders in high regard, and in my working relationship with the both of them, I have found them to be both dedicated and skilled investigators.

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**Media**

181. The significant level of media involvement in the matter of *R v Lehrmann* did affect the conduct of the investigation. It was clear that members of the media used the matter to drive agendas that were in contradiction to the legal system within Australia. This can be shown through comments made by Ms Wilkinson during an acceptance speech for an award she received which affected the October 2022 trial.
182. Further, in a tweet on election night, Ms Wilkinson stated '*this ones for you Brittany Higgins*' after the Liberal Party had lost the Australian Federal election.
183. The only contact I had with the media in relation to the matter or *R v Lehrmann* was with Ms Samantha Maiden from News Corp in relation to attempting to make arrangements to obtain a statement from Ms Maiden in relation to the matter and with Ms Wilkinson when I obtained a ROC with her about her involvement in the matter.

**Board of Inquiry**

184. I attended two meetings in relation to AFP and ACTP response to the Board of Inquiry.
185. The first meeting I attended was on 2 February 2023 and the second meeting I attended was on 30 March 2023.
186. The first meeting was in relation to the proposed Board of Inquiry into *R v Lehrmann* and the ACT Cabinet announcement. The second meeting was in relation to subpoenas that had been served by the Board of Inquiry.
187. The only other occasion I have spoken to other AFP/ACT Policing staff was when I sent Superintendent Muller two emails in relation to contact with the ODPP and DPP and to check on the welfare of S/C Emma Frizzell and DLSC Trent Madders.

SWORN before me at Canberra in the Australian Capital Territory on 24 April 2023.

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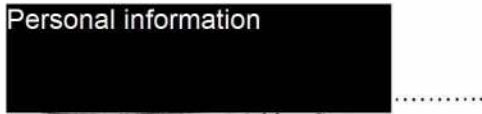
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David Fleming

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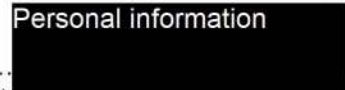


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Signature of Person Making Statement  
DAVID FLEMING

Personal information

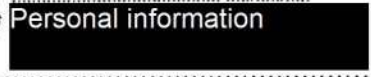


Signature of witness

24/4/2023



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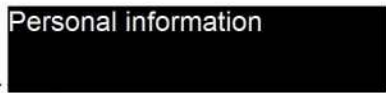


NAME OF WITNESS



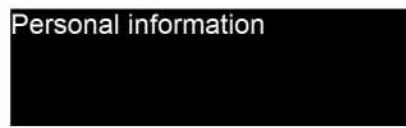
AUSTRALIAN FEDERAL POLICE  
CITY POLICE STATION  
16-18 London Circuit  
CANBERRA CITY ACT 2601

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## 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 DAVID FLEMING**  
**INDEX TO EXHIBITS**

No.	Description
1.	Notice 2023/S/00 – subpoena to provide written statement
2.	Review of the ACT Criminal Investigations Sexual Assault and Child Abuse Teams
3.	AFP Better Practice Guide on Sexual Offence and Child Abuse First Response
4.	Information for meet and greet
5.	AFP Hearing Brief Adjudication Sheet and ACTP Brief of Evidence Marking Guide
6.	ACT Victim's Rights and AFP Better Practice Guide Victims' Rights
7.	AFP Investigations Doctrine
8.	Listen, Take Action to Prevent, Believe and Heal Report
9.	AFP Diary D15081 pages 285 to 286
10.	AFP Diary D 16242 page 33 to 34
11.	AFP Diary D 16242 page 35 to 36
12.	Email sent to Ms Skye Jerome
13.	Emails from Ms Skye Jerome on 24 May, 25 May, 26 May and 14 June 2021
14.	AFP Diary D 16242 pages 40 to 41 and pages 45 to 47
15.	Email requesting a statement from Mr Korn dated 10 June 2022
16.	Audio recording taken during Mr Korn's ROC on 16 June 2022



AUSTRALIAN FEDERAL POLICE  
 CITY POLICE STATION  
 16-18 London Circuit  
 CANBERRA CITY ACT 2601

This is the annexure marked Index Exhibits  
 referred to in the affidavit sworn Statement  
 of David Fleming before me  
 on this 24 day of April 2022.

ACT

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