

Subpoena Number: 2023/S/0027

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

SUBPOENA TO PROVIDE A WRITTEN STATEMENT

To: Ms Sarah Harman

Of: Australian Federal Police
C/- Mr Calvin Gnech
Gnech and Associates Lawyers
Level 9, 193 North Quay
Brisbane QLD 4000

I, WALTER SOFRONOFF KC, Chairperson of the Board of Inquiry established by the Inquiries (Board of Inquiry – Criminal Justice System) Appointment 2023 (NI2023-49)¹ dated 1 February 2023 require you to give a written statement to the Board of Inquiry pursuant to sections 18(c), 26(1)(b) and 26(3)(b) of the *Inquiries Act 1991* in regard to your knowledge of the matters set out in the Schedule annexed hereto.

YOU MUST COMPLY WITH THIS REQUIREMENT BY:

Giving a written statement signed and witnessed in accordance with section 7 of the *Oaths and Affirmations Act 1984* (ACT) to the Board of Inquiry on or before **5:00 pm AEST on 4 April 2023**, by delivering it to Nara House, 3 Constitution Avenue, Canberra City ACT 2601.

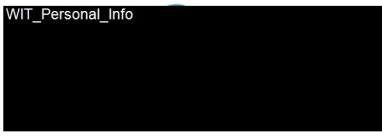
A copy of the written statement must also be provided electronically by email at BOI.Notices@inquiry.act.gov.au with the subject line "Requirement for Written Statement".

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

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

Date: 28 March 2023

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Walter Sofronoff KC
Chairperson
Board of Inquiry

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

Notes

Informal service

1. Even if this notice has not been served personally on you, you must, nevertheless, comply with its requirements, if you have actual knowledge of the notice and its requirements.

Where the addressee is a corporation or agency

2. If this notice is addressed to a corporation or agency, the corporation or agency must comply with the notice by its appropriate person or proper officer.

Objections

3. If you object to a document or thing produced in response to this notice being inspected by a party to the proceeding or anyone else, you must tell the Board of Inquiry about your objection and the grounds of your objection either orally on the return date for this notice or in writing before or after the return date.

Production of copy instead of original

4. If the notice requires you to produce a document, you may produce a copy of the document unless the subpoena specifically requires you to produce the original.
5. The copy of the document may be—
 - (a) a photocopy; or
 - (b) in PDF format; or
 - (c) in any other electronic form that the issuing party has indicated will be acceptable.

Contempt of Board of Inquiry

6. A person commits an offence if the person does something in the face, or within the hearing, of a board that would be contempt of court if the board were a court of record (see *Inquiries Act 1991*, s 36 (**Contempt of Board**)).
7. Failure to comply with a subpoena without lawful excuse is a Contempt of Board and may be dealt with accordingly.
8. Failure to comply with a subpoena may also be a criminal offence (see *Criminal Code*, s 719 (Failing to attend) and s 720 (Failing to produce document or other thing)).

Protections

9. Where a person is required to produce a document (or other thing) or answer a question to the Board of Inquiry, that person is not able to rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to produce the document or other thing or answer the question (see *Inquiries Act 1991*, s 19 (Privileges against self-incrimination and exposure to civil penalty)).
10. However, anything obtained because of the producing of the document or other thing, or the answering of the question, is not admissible in evidence against that person in a civil or criminal proceeding, except for an offence relating to the falsity or misleading nature of the document or other thing or answer, and for an offence against chapter 7 of the *Criminal Code* (see *Inquiries Act 1991*, s 19 (Privileges against self-incrimination and exposure to civil penalty)).

ANNEXURE A
Terms of Reference

1. The Board will inquire into:
 - (a) Whether any police officers failed to act in accordance with their duties or acted in breach of their duties:
 - (i) in their conduct of the investigation of the allegations of Ms Brittany Higgins concerning Mr Bruce Lehrmann;
 - (ii) in their dealings with the Director of Public Prosecutions in relation to his duty to decide whether to commence, to continue and to discontinue criminal proceedings against Mr Lehrmann in relation to those allegations;
 - (iii) in their dealings with the legal representatives for Mr Lehrmann before, during or after the trial in the matter of *R v Lehrmann*;
 - (iv) in their provision of information to any persons in relation to the matter of *R v Lehrmann*.
 - (b) If any police officers so acted, their reasons and motives for their actions.
 - (c) Whether the Director of Public Prosecutions failed to act in accordance with his duties or acted in breach of his duties in making his decisions to commence, to continue and to discontinue criminal proceedings against Mr Lehrmann.
 - (d) If the Director of Public Prosecutions so acted, his reasons and motives for his actions.
 - (e) The circumstances around, and decisions which led to the public release of the ACT Director of Public Prosecutions' letter to the Chief Police Officer of ACT Policing dated 1 November 2022.
 - (f) Whether the Victims of Crime Commissioner acted in accordance with the relevant statutory framework in terms of support provided to the complainant in the matter of *R v Lehrmann*.
 - (g) Any matter reasonably incidental to any of the above matters.
2. The Board will report to the Chief Minister by 30 June 2023.

Subpoena 2023/S/0027**Schedule of Questions for Statement****Ms Sarah Harman****Current Employment**

1. What is your current rank and position within the Australian Federal Police (AFP)/Australian Capital Territory (ACT) Policing?
2. Outline the job description for your current position. If you have a formal job description, **attach** a copy.
3. **Attach** a current CV.

Tertiary Qualifications

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

Courses and/or Diplomas

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

Employment Chronology

6. Outline your policing experience (if any) prior to joining the AFP/ACT Policing. Include dates, and your station, rank, role and the team/area you worked in.
7. When did you first join the AFP?
8. What did your recruitment process for the AFP/ACT Policing involve? Include details of any training you received during recruitment to the AFP/ACT Policing. Include details about when your recruitment training started and finished, what the training involved, the organisation/department/unit that provided the training.
9. Outline your service history with the AFP/ACT Policing. Include your rank, where you were stationed, the dates you held the various positions and the description of the

role/job/work performed by you in the various positions. Include your rank at the relevant times. Outline the section and unit in which the position sat and the general description of the purpose of the relevant section and unit.

10. Outline your appointment to Detective Senior Constable in the Sexual Assault and Child Abuse Team (SACAT). Include details of the job description. **Attach** a job description if one exists.
11. Approximately how many sexual assault investigations have you conducted in your police career? Of those investigations, how many have you conducted in the ACT?

Training and Education

12. Outline the training, courses or education you have undertaken on, or related to, conducting sexual assault investigations. Include information about the dates you undertook the training/course/education, what the training/course/education involved and the name of the training provider and whether you attended a full day SACAT training/meeting on 24 November 2021 where Office of the Director of Public Prosecution (ODPP) staff, Skye Jerome and Andrew Chatterton presented. **Attach** a copy of your training record and the relevant documentation/course material.
13. If you are currently undertaking or in the process of undertaking training, courses or education on, or related to, conducting sexual assault investigations outline the training/course/education. Include information about the date you commenced the training/course/education, what the training/course/education involves and the name of the training provider. **Attach** a copy of the relevant documentation/course material.
14. What are your views (if any) regarding the correlation between the training and education you have received on or related to conducting sexual assault investigations and how investigations are conducted in practice.
15. Outline your observations and/or opinions of the experience and training levels of the SACAT members.

16. To your knowledge, what, if any, training and experience was mandatory for a member of the SACAT as at 1 February 2021. At present, is the training and experience mandatory for a member of the SACAT different to as at 1 February 2021. If so, when and what was changed? **Attach** a copy of the relevant training documentation/course material.
17. State whether, prior to and/or during your time in the SACAT, SACAT staff undertook, or were offered, psychological assessments to ensure their wellbeing and welfare. Is so, provide details of:
- (a) whether the assessment was mandatory;
 - (b) your understanding of the purpose of the psychological assessment;
 - (c) the date(s) you underwent psychological assessment(s) (if any) (include details of how long you had been working in the SACAT at the time you undertook the assessment/how long prior to commencing/finishing in the SACAT you underwent the assessment);
 - (d) your understanding of how frequently psychological assessments for SACAT members is required; and
 - (e) any policy, procedure, guideline and/or governance in relation to SACAT psychological assessments that you are aware of.

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

Organisational Structure

18. Outline the AFP/ACT Policing structure/chain of command for SACAT as at April 2019. Include information about who occupied those positions at that time (including the rank and position that person holds) and the function you performed within that structure.
19. **Attach** a copy of the organisational structure/chart for the AFP as at April 2019. Identify in the organisational structure/chart each person in the SACAT, their rank and the position they occupied.

20. Outline the current structure/chain of command for the Criminal Investigations Team. Include information about when the structure changed, why it changed and the function you perform within that structure.
21. **Attach** a copy of the current organisational structure/chart for the AFP Criminal Investigations Team. Identify in the organisational structure/chart each person in the Criminal Investigations Team, their rank, and the position they occupy.

Duties and Responsibilities

22. Explain your understanding of what a police officer's duties and responsibilities are in conducting a sexual assault investigation. Include references to relevant agreements, policies, procedures, guidelines and/or governance where appropriate. **Attach** a copy of any referenced agreement, policy, procedure, guideline and/or governance.
23. Outline your duties and responsibilities as an investigator in Criminal Investigations/SACAT in conducting a sexual assault investigation. Include information about who you directly report to and your direct reports. **Attach** a copy of any relevant agreements, policies and/or guidelines.

Triage Process for Sexual Assault Complaints

24. Outline how sexual assault complaints are triaged through the AFP/ACT Policing. If complaints of historical sexual or child abuse are triaged differently to other complaints, provide details of the different triage processes.. If the current triage process is different to that as at 23 March 2019 and/or 4 February 2021, outline the differences in the processes and when and why the process changed.
25. Identify the initial process for actioning a sexual assault complaint received by the SACAT including how matters are allocated within the team, who is responsible for initially actioning a complaint and contacting a complainant, what initial steps are taken by the relevant AFP officer/s and the services offered to a complainant. If the process was different as at 23 March 2019 and/or 4 February 2021, outline how the process was

different and when and why the process changed.

Investigating Sexual Assault Complaints

26. Outline the typical process of conducting a sexual assault investigation from the perspective of your position. Include the following information about:
- (a) the initial “meet and greet” process with a complainant including the nature of the information that is provided to the complainant at this stage;
 - (b) the nature of the evidence that is ordinarily obtained;
 - (c) the engagement of other relevant parties/entities such as support and intermediary services and the general nature of their support and involvement;
 - (d) when the ODPP or the Director of Public Prosecutions, Mr Shane Drumgold SC (**DPP**) would ordinarily be consulted; and
 - (e) the evidence that would need to be obtained at this stage (particularly in historical matters where forensic evidence is unavailable).

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

27. State whether the typical process of conducting a sexual assault investigation has changed during the period from March 2019 to present. If so, provide details of how the process was different and when and why the process changed.
28. In your experience, state whether you have been involved in a sexual assault investigation in which a Superintendent is actively involved in the investigation. If so, provide details of the level and nature of the Superintendent’s involvement.
29. Explain the adjudication process for compiling briefs of evidence for the ODPP. Provide details as to why the adjudication process is conducted. **Attach** a copy of any relevant documents, guidelines, policies, procedures and/or governance material. If the process has changed during the past four years, outline how the process was different and how, when and why the process changed.

30. Explain the redaction process undertaken by AFP/ACT Policing in compiling briefs of evidence. Provide details as to the information that is typically redacted and who typically undertakes this process. **Attach** a copy of any relevant documents, guidelines, policies, procedures and/or governance material. If the process has changed during the period from March 2019 to present, outline how the process was different and, when and why the process changed.
31. Outline the system and methods of communication the AFP/ACT Policing utilise to speak with sexual assault complainants. In particular, explain how frequently the AFP/ACT Policing communicates to a complainant during the conduct of an investigation and the modes of communication available for a complainant to communicate directly with the AFP/ACT Policing. **Attach** a copy of the relevant documents, guidelines, policies, procedures and/or governance material. If the system and methods have changed during the period from March 2019 to present, outline how the system and methods were different and when and why changes have occurred.
32. Describe the AFP/ACT Policing's "victim-centric" approach to liaising with sexual assault complaints. Provide examples to illustrate the approach where appropriate.
33. Explain your understanding of the threshold to charge a person with a sexual offence. Provide examples of what is required and what may affect the threshold, including your understanding of corroboration and whether it is required before charging a person for a sexual offence.
34. If your understanding of the threshold to charge a person with a sexual offence has changed in any way over the period from March 2019 to present, explain when, how and why it has changed.
35. Have you received an email from Inspector Callum Hughes to SACAT staff dated 23 February 2023 in relation to training provided to SACAT by the ODPP on 24 November 2021 relating to the threshold to charge. If so, what is the nature of the information contained in the email. **Attach** a copy of the email from Inspector Callum Hughes dated 23 February 2023.

36. Explain the process that is undertaken by AFP/ACT Policing when further information is required from a complainant. **Attach** a copy of the relevant documents, guidelines, policies, procedures and/or governance material. If the process has changed during the period from March 2019 to present, outline how the process was different and when and why the process changed.
37. Explain the process that is undertaken by AFP/ACT Policing in advising and/or consulting with complainants when a decision has been made to charge or not to charge. **Attach** a copy of the relevant documents, guidelines, policies, procedures and/or governance material. If the process has changed during the period from March 2019 to present, outline how the process was different and when and why the process changed.
38. State whether you believe any underlying culture or views have existed within the AFP/ACT Policing in the period from March 2019 to present with respect to conducting sexual assault investigations. Specifically, whether sexual assault complainants are treated differently to other victims/survivors of crime.
39. Outline the process and procedures for discontinuing an investigation where a complainant indicates they do not want to proceed any further with their complaint. If the process has changed during the period from March 2019 to present, outline how the process was different and when and why the process changed.
40. State whether you believe any underlying culture or views have existed within the AFP in the period from March 2019 to present with respect to conducting sexual assault investigations *after* a complaint has been reinstated by a complainant. Specifically whether, in such instances, a complainant is treated differently to other victims/survivors of crime and whether the conduct of the investigation is therefore affected in any way.

Challenges, Issues and/or Pressures

41. Detail any issues, challenges and/or pressures you perceive to have existed *within* the AFP/ACT Policing in the period from March 2019 to present that have hindered the conduct of sexual assault investigations. Provide examples where possible.

42. Detail any issues, challenges and/or pressures you perceive to exist *external* to the AFP/ACT Policing that hinder the conduct of sexual assault investigations. Provide examples where possible.

Report of the Sexual Assault Prevention and Response Steering Committee

43. State whether you have read the Sexual Assault Prevention and Response Steering Committee's report titled "Listen. Take Action to Prevent, Believe and Heal" published in December 2021 (**Steering Committee Report**).
44. Outline the steps taken by the AFP/ACT Policing in response to the Steering Committee Report in relation to:
- (a) cross-agency cooperation and communication with the Victims of Crime Commissioner for the ACT (VCC), Canberra Rape Crisis Centre and other relevant agencies;
 - (b) implementing training for police officers in relation to conducting sexual assault investigations; and
 - (c) dealing with sexual assault complainants generally.

Include details of when these steps were taken and the current status of the implementation of the Steering Committee Report recommendations.

45. Outline whether you have observed a cultural shift within the ODPP in the prosecution of sexual assault offences since the release of the Steering Committee Report. Provide details of the extent of any cultural shift you have observed and the reasons for your views.
46. Outline whether you have observed a cultural shift within the AFP/ACT Policing in its investigation and charging of sexual assault offences since the release of the Steering Committee Report. Provide details of the extent of any cultural shift you have observed and the reasons for your views.

Director of Public Prosecutions /Office of the Director of Public Prosecutions

47. Describe, the professional relationship between the ODPP and AFP/ACT Policing prior to the investigation of the allegations of Ms Brittany Higgins concerning Mr Bruce Lehrmann (**Investigation**). Include details about whether the relationship was positive or whether you held any concerns about the relationship and the nature of those concerns.
48. During 2019, did the ODPP and AFP/ACT Policing hold regular meetings in relation to sexual offence matters? If so, outline your involvement (if any) in those meetings. Include details about the general nature of those meetings, including who was required to attend, the purpose and frequency of the meetings, whether any file notes were kept and by whom.
49. Outline the typical level of involvement you have with the DPP directly or with the ODPP in your role in relation to an investigation/matter concerning sexual assault.
50. Detail your professional relationship with the DPP prior to the commencement of the Investigation. Include details about whether the relationship was positive or whether you held any concerns about the relationship and the nature of those concerns. Provide examples where appropriate.
51. Describe your professional relationship generally and the extent of your prior dealings with and/or knowledge (if any) of the following ODPP Prosecutors, prior to the commencement of the Investigation:
 - (a) Ms Skye Jerome;
 - (b) Mr Mitchell Greig;
 - (c) Ms Sarah Pitney;
 - (d) Ms Erin Priestly; and
 - (e) Mr Andrew Chatterton.

Include details about your professional views (if any) about those prosecutors and the basis of those views, whether the relationship was positive or whether you held any concerns about the relationship and the nature of those concerns. Provide examples where

appropriate.

52. Outline how often you have formally met with the DPP/ODPP to discuss the conduct of an investigation concerning sexual assault. Provide details of the nature of those investigations and meetings.

Victims of Crime Commissioner

53. Outline your professional dealings (if any) with the VCC prior to the Investigation or matter of *R v Lehrmann*.
54. Based on your experience up to March 2021, describe the role performed by the VCC (or her staff) exercising statutory functions under the *Victims of Crime Act 1994 (ACT)* in relation to a victim of a sexual offence. Provide examples and details where appropriate.
55. Prior to *R v Lehrmann* had you conducted any sexual offence investigations where the VCC (or her staff) had supported a complainant at court or acted as an intermediary between the police and the complainant or between the ODPP and the complainant? If so, provide an estimate of the number of investigations and a brief description of the nature of those investigations.

Involvement in the Investigation from 4 April 2019 to March 2020

56. When did you first become involved in the Investigation? Include information about who informed you of the Investigation, details of the information provided, the position that you were allocated. **Attach** copies of relevant communications and documents including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. To the extent communications were verbal outline the parties to the communications and the effect of the words spoken (**the usual particulars**).
57. In chronological order, outline your interactions with Ms Higgins, AFP/ACT Policing officers and any other persons in relation to the Investigation from 4 April 2019 until March 2020. Include the following information about the interaction:

- (a) who initiated/arranged the interaction;
- (b) the purpose of the interaction;
- (c) where the interaction took place;
- (d) the people in attendance;
- (e) any evidence/material you were provided, including when you reviewed the evidence/material;
- (f) the nature of the interaction in relation to:
 - i. the progress of the Investigation, including the evidence obtained and yet to be obtained;
 - ii. your views in relation to the prospects of the matter and the reasons for your views (in particular, in relation to threshold to charge); and
 - iii. your views in relation to the conduct of the Investigation to date, including the reasons for your views;
- (g) whether any evidence/material was provided by the complainant; and
- (h) your impressions of the interaction.

Attach copies of relevant communications and documents including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. To the extent communications were verbal, provide the usual particulars.

58. Outline the AFP/ACT Policing officers you worked with on the Investigation during the period between 4 April 2019 to March 2020 and what their roles were.

Involvement in the Investigation/matter between April 2021 and August 2021

59. In chronological order, outline your involvement in the Investigation/matter of *R v Lehrmann* from April 2021 to August 2021. Include in your response details of any interactions or correspondence with AFP/ACT Policing officers, the DPP/ODPP staff, legal representatives for Mr Lehrmann, Ms Higgins, legal representatives for Ms Higgins and/or the VCC. Include the following information about the interaction:
- (a) who initiated/arranged the interaction;
 - (b) the purpose of the interaction;

- (c) where the interaction took place;
- (d) the people in attendance;
- (e) any evidence/material you were provided;
- (f) the nature of the interaction in relation to:
 - i. the progress of the Investigation, including the evidence obtained and yet to be obtained;
 - ii. your views in relation to the prospects of the matter and the reasons for your views (in particular, in relation to threshold to charge); and
 - iii. your views in relation to the conduct of the Investigation to date, including the reasons for your views; and
- (g) your impressions of the interaction.

Preparation and Trial in the Matter of *R v Lehrmann* following service of Summons on 6 August 2021

*Interactions with AFP/ACT Policing officers in the preparation for and during the trial in the matter of *R v Lehrmann**

60. In chronological order, outline your interactions with AFP/ACT Policing officers leading to and during the trial in the matter of *R v Lehrmann*. Include details about who was involved in those communications, the purpose of the communications, what was discussed, and your impressions of any communications, including but not limited to the preparation of statements. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes, diary notes and calendar invitations/appointments. In the event discussions occurred verbally, provide the usual particulars.

*Interactions with DPP/ODPP in the preparation for and during the trial in the matter of *R v Lehrmann**

61. In chronological order, outline your interactions with the DPP/ODPP leading to and during the trial in the matter of *R v Lehrmann*. Include details about who was involved in those communications, the purpose of the communications, what was discussed, and

your impressions of any communications including but not limited to:

- (a) whether you were called to give evidence as a witness;
- (b) any proofing you attended;
- (c) whether any tasks were requested by the DPP/ODPP. If so, provide details including who made the request, to whom the request was made to, what the task involved and the approximate date the request was made;
- (d) whether any interactions with the DPP/ODPP during the trial were unusual and the basis of your views. Provide examples where appropriate.

Interactions with the legal representatives for Mr Lehrmann in the preparation for and during the trial

- 62. Explain your understanding of whether police officers can speak with legal representatives for a defendant regarding a prosecution case.
- 63. Explain your understanding of the appropriateness or otherwise of disclosing perceived weaknesses in a prosecution case to the legal representatives for the defendant.
- 64. In chronological order, outline your interactions with the legal representatives for Mr Lehrmann during the trial of the matter of *R v Lehrmann*. Include details about who was involved in those communications, the purpose of the communications, what was discussed, and your impressions of any communications.

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

Media

- 65. Outline the communications (if any) you have received and/or had with the media in relation to the matter of *R v Lehrmann*. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, social media messages, calendar invitations, calendar appointments, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

Board of Inquiry

66. State whether you have spoken to any AFP/ACT Policing staff or any other persons (other than legal advisors you have engaged in relation to your involvement in the Board of Inquiry) in relation to your provision of evidence to the Board of Inquiry under s 26(1)(b) of the *Inquiries Act 1991*. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, social media messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

67. Outline any other matters you wish to raise with respect to the Terms of Reference of the Board of Inquiry.